

**IN AN INTERNATIONAL ARBITRATION UNDER
THE UNCITRAL 1976 RULES**

**MR. CARLOS ESTEBAN SASTRE,
MR. RENAUD JACQUET
MS. MARÍA MARGARIDA OLIVEIRA AZEVEDO DE ABREU
MR. EDUARDO NUNO VAZ OSORIO DOS SANTOS SILVA
MR. GRAHAM ALEXANDER
MS. MÓNICA GALÁN RÍOS**
Claimants,

V.

THE UNITED MEXICAN STATES,
Respondent.

WITNESS STATEMENT OF EDUARDO NUNO VAZ OSORIO DOS SANTOS SILVA

31 March 2021

1. I, Eduardo Nuno Vaz Osorio Dos Santos Silva, make this statement in support of the Counter Memorial served in this arbitration proceeding.

I. BACKGROUND

2. I have been a citizen of Portugal from the time I was born in [REDACTED] to the present.¹ I went to grade school, high school, and college in Portugal. I attended the Catholic University's law school in Porto, Portugal, graduating in 1999 with a law degree. During law school, I worked twice in Rome, Italy. First, for a couple of months in the Portuguese embassy, and later for about a year as a legal advisor in a government exchange program.

3. After graduating, I worked for about a year in Portugal in a travel agency. In around 2001/2002, I spent a little more than a year in Paris, France, attending the International Hospitality Management School (CMH). There I earned my Master's Degree in hotel management. During my studies, I worked in a hotel in Paris. When I finished my studies, I returned to my home in Portugal. After concluding my studies, I researched where and how I could develop and operate a hotel property.

II. PURCHASE AND DEVELOPMENT OF HOTEL LOTS IN TULUM

4. In the fall of the year 2000, as I searched for suitable development options, I went on a trip to Mexico and visited the Tulum area with my then wife. Prior to the trip, she had contacted her friend, Karla Lorena Gutiérrez Rodríguez ("Ms. Gutiérrez"), who lived in Mexico, to see if she could connect us with some potential properties to develop a hotel there. She then introduced us to Roberto Palazuelos Badeux ("Mr. Palazuelos") who later took me to see a beachfront lot and there

¹ Portuguese Embassy's Constancia (Certificate), 16 February 2021, NS-0001. *See also* Portuguese Passport (14 July 2017 through 14 July 2022), Nuno Silva, NS-0002; Portuguese Passport (23 August 2012 through 23 August 2017), Nuno Silva, C-0008. I have not renounced my Portuguese nationality before the Portuguese State or any of its agencies. I continue to be a Portuguese national and I have never ceased to be one.

introduced me to the seller of the lot, Castulo Jiménez Figeroa (“Mr. Jiménez”), and his wife. The lot was in the Ejido Jose Maria Pino Suarez (the “Ejido”) in Solidaridad, Quintana Roo. The lot was in a largely barren and deserted beachfront area. It was very remote, about 8 kilometers from the nearest town and accessible only by a dirt road. Toward the beach, the area had many palm trees. The other side of the dirt road was filled with mangroves. There was no access to public utilities. Nonetheless, the beauty of the location was captivating.

5. Its features immediately attracted me. I had previously considered Brazil as a location to develop a hotel, but the untouched beauty of the abundant natural habitats in the Tulum beach area, juxtaposed against the tranquil beachfront, was unique. It would be ideal for yoga retreats and holistic experiences, and it would also be perfect for eco-tourism. Although it was clear that it would require enormous efforts to develop this lot into a hotel, I decided it would be a worthwhile investment.

6. During the following couple of months I conducted research regarding the Ejido and the potential purchase of this land in the Ejido. I then spoke with one or two local realtors about this land. I also discussed this with Ms. Gutiérrez who was also consulting with the local attorneys in Mexico as to the possible land purchase. Based on this research, I concluded that it was a good investment.

7. Later in 2000, I returned to Mexico to purchase this beachfront lot (the “North Lot”). I then hired a topographer who measured the land. And I continued working with Ms. Gutiérrez, who was getting advice from the Mexican attorney, to ensure the transaction was done correctly. Preparing to finalize the transaction, the draft of the agreement had been circulated for comments among Ms. Gutiérrez, her attorney, Mr. Jiménez, Mr. Palazuelos, and me, and we made edits as needed.

8. On 15 December 2000, Mr. Jiménez and Ms. Gutiérrez signed the Transfer of Rights Agreement at a Notary’s office transferring the lot to Ms. Gutiérrez. The Notary reviewed and

notarized it.² Prior to signing, Mr. Jiménez also presented his paperwork to us, including a Certificate of Possession, which showed he held this lot.³ Pursuant to the contract, I paid Mr. Jiménez for this lot, by transferring the payment to him from my bank account in Portugal.

9. After this, I returned to Portugal. In 2001, I began construction on the lot from Portugal, with Mr. Palazuelos' coordination of the construction in Mexico. This construction included an initial bungalow (made with stone, cement, and a thatch roof), with one bedroom and bathroom, plus a 50-meter stone wall along the roadside, and a tower with a water container of 20,000 liters.

10. In 2002 or 2003, I moved to Mexico to be onsite to deal with the development, construction, design, and operations of the hotel. On July 3, 2003, I formed a company in Mexico called O.m del Caribe S. A. de C.V. ("O.m") to manage the hotel.⁴ As its majority shareholder with 85% of the shares and as its sole administrator, I had full control of the company through which I could develop and operate my real estate projects in Mexico. I assigned 15% of the shares of O.m to my godmother Maria Margarida Oliveira de Abreu ("Ms. Abreu").⁵

11. In 2003, I decided to buy the full adjoining lot (the "South Lot"), which measured 25 meters by 100 meters, from Mr. Jiménez. Again, I spoke with Mr. Jiménez and followed a process similar to that for the North Lot, except this lot was to be transferred from Mr. Jiménez to Ms. Abreu.

² Contrato Privado de Cesión de Derechos Ejidales (Transfer of Rights Agreement), 15 December 2000, NS-0003

³ *See Id.* at para. 1.

⁴ Acta Constitutiva (Articles of Incorporation), O.m Del Caribe S.A. de C.V., 2 July 2003, C-0006

⁵ Ms. Abreu is my godmother. She was born in Portugal, grew up in Portugal and went to school in Portugal. She went to the University of Bellas Artes in Portugal, graduating with a degree in the arts. She also obtained a degree in philosophy from a university in Spain. Although she travelled abroad for extended periods of time for her academic studies and teaching, she has been a Portuguese national from birth until the present. Portuguese Embassy's Constancia (Certificate), Maria Margarida Oliveira de Abreu, 16 February 2021, NS-0004; *see also* Portuguese Passport (27 October 2011 through 27 October 2016), Maria Margarida Oliveira de Abreu, C-0007. Later on, Ms. Abreu also gave me a power of attorney to act on her behalf. Poder General (Power of Attorney), 30 April 2011, NS-0005.

On 22 October 2003, Mr. Jiménez and Ms. Abreu signed a Transfer of Rights Agreement, at a Notary's office, transferring this South lot to Ms. Abreu.⁶

12. Mr. Jiménez again represented that he was the sole holder of this lot and showed documents to me, at the Notary's office, to support this.⁷ I coordinated with Mr. Jiménez on the drafting of the agreement, and finalized it after we exchanged comments, prior to meeting with the Notary. The Notary also reviewed the agreement and then notarized it. Pursuant to the contract, I paid Mr. Jiménez for this lot with a loan from my father by transferring the payment to him from a family bank account in Portugal.

13. In the following month, on 28 November 2003, Ms. Gutiérrez transferred the North Lot to Ms. Abreu when they both signed a Transfer of Rights Agreement.⁸ Together, the two lots now had approximately 5,000 square meters, both held in the name of Ms. Abreu.

14. As it turned out, between the initial construction in 2001 and 2016, I developed the hotel, into what became known as *Uno Astrolodge*. It was an unconventional resort, dotted by bungalows and huts among lavish foliage and tranquil beaches. It was an immersive experience to make the guests feel as if they were in an oasis surrounded by nature.

15. During each phase, I hired architects and construction personnel and obtained the necessary permits from the Tulum Municipality, the State of Quintana Roo, and the Mexican Federal Government. I also had to learn about, develop, and install, a sewage system, a water treatment facility, solar panels, and battery-powered generators for electricity.

⁶ Contrato Privado de Cesión de Derechos (Transfer of Rights Agreement), dated 22 October 2003, C-0020.

⁷ *Id.* at p. 2.

⁸ Contrato Privado de Cesión de Derechos de Propiedad (Transfer of Rights Agreement), 28 November 2003, C-0021; Poder Especial (Power of Attorney) from Ms. Gutiérrez to me, 12 August 2003, NS-0018.

16. Between 2003 and 2004, I built a bungalow on top of the water tower and remodeled a structure. In 2005, two hurricanes (Dean and Wilma) damaged the property and I received an open environmental authorization from the federal Secretary of the Environment and Natural Resources for re-building and improving.⁹ I started to build again.

17. Amidst the construction, in around 2005, I learned from some neighbors, that the Ejido Commissariat was going to conduct a census of lot holders to synchronize the records in the National Agrarian Registry (“RAN”) and issue Certificates of Possession to those who it determined were the current possessors. I went to two or three meetings, set by a team from the Ejido who explained the process and told us the Certificates would recognize, and certify, the holder’s rights to possess and use the given lot. The Ejido representatives who were present varied, but included the Ejido’s attorney, Polo Betancourt (“Mr. Betancourt”) who seemed to lead the process, and the Ejido Treasurer, Maria Isabel Caro Cetina (“Ms. Caro”).

18. During the meeting, Mr. Betancourt and Ms. Caro invited us to present our documents to the Commissariat Secretary’s office. I presented the Transfer of Rights Agreement, with the certified copies of Ms. Abreu’s identification, to the Commissariat’s representative at the Ejido’s office. About one or two weeks later, I met with two topographers who came to the lot and told me they were sent by the Ejido to inspect and measure the property. They then conducted lot measurements. Because there was an error, the topographers came back and conducted additional measurements.

19. After a process of less than a year, on 25 June 2006 the Ejido Commissariat issued a Certificate of Possession, confirming Ms. Abreu’s right to possess the north and the south

⁹ Letter from the Office of the Federal Secretary of the Environment and Natural Resources to N. Silva (O.m), 7 December 2005, NS-0006.

lots.¹⁰ Later on, I heard from a neighbor, Roberto Hernández, that the certificates were ready for pick up. On 1 August 2006, I picked up the Certificate on behalf of Ms. Abreu, and I paid 94,983.18 Mexican pesos for the related fees.¹¹ On that day, Mr. Betancourt, the Ejido's lawyer, told me the Certificate would protect the lot possessors against any other person's claim to the lot, even any claims by the Ejido itself, and would be recognized by the RAN.

20. While the above process was underway, between 2005 and 2006, I re-built the property that was damaged in the hurricanes, including the three bungalows. I developed a reception area and four more bungalows each with 1 bedroom. I also built five single-room wood huts (without bathrooms) spread out among the property.

21. After I finished a portion of the construction, in 2005, I opened the hotel for business as *Uno Astrolodge*.

22. In early 2006, I built a yoga hall, which became an important attraction for the retreat organizers. Within the existing structures, I added 6 or 7 wood-structured tents to give the guests a more authentic rustic ambiance. At that time, I also added a kitchen, adding to the other kitchen on the site. In 2006, I opened the hotel's website, for guests to book reservations.

23. On June 25, 2007, Ms. Abreu and O.m signed a Commodatum Agreement. This transferred the combined lot to O.m for 10 years, renewing automatically absent objection by either party.¹² My attorney drafted this and Ms. Abreu and I, on behalf of O.m, signed it.

¹⁰ Constancia (Certificate of Possession), 25 June 2006, NS-0007.

¹¹ Receipt signed by Treasurer of Ejido Commisariat, 1 August 2006, NS-0008.

¹² Contrato de Comodato (Commodatum Agreement), 25 June 2007, NS-0009.

24. In 2008, or 2009, I built a massage room. In 2010, I built a juice bar and a restaurant in the front. In addition, around 2010 through 2014, I re-arranged and improved the huts to make seven small bungalows.

25. After completing this construction, to obtain the city's approval of the construction, I submitted an application to Tulum's Urban Development Office. This included submission of the construction drawings, various other documents, the Transfer of Rights Agreement, the Certificate of Possession, a power of attorney for Ms. Abreu, O.m's corporate formation document, the Commodatum Agreement, and my identification, all of which demonstrated Ms. Abreu and I held the lot. Afterwards, the Urban Development Office inspectors came to the property, met with me, spent several hours there, inspected every portion of the construction and improvements, and took measurements.

26. Sometime after 2006, I heard that the Ejido was involved in litigation concerning its borders. In around 2010, I got together with some neighboring hotel owners and collectively we hired Álvaro López Joers to protect our interests. He had a plan in place and was going to defend and add security to our possession documents. A few months later, I heard he was murdered by gunshot at his law office. The news spread quickly. My family, my neighbors, and I were shocked. After the murder, Mr. López Joers' efforts dissipated and I never received back the documentation that he had concerning my hotel. I understand that all of documents from his office were confiscated by the Public Ministry of Quintana Roo.

27. Despite this event, I continued with the development. On 8 July 2015¹³, the Urban Development Office issued a Construction Regularization license approving this construction.¹⁴ It specified the construction included (a) an office, (b) a reception, (c) a bathroom area, (d) 2 cabanas with bedroom and bathrooms, (e) a spa, (f) 4 cabanas with bedrooms, bathrooms and terrace, (g) a kitchen / dining room, (h) an adobe oven area, (i) public bathroom / bodega, (j) an entertainment area, and (k) a stage. At the same time, the Urban Development Office issued a Land Use Certificate permitting the use of the property for tourism.¹⁵ On 17 August 2015, it also issued (a) a Commercial Land Use License to O.m authorizing the use of the land for the establishment named “Cabanas Nuno” as a commercial business for lodging, and (b) a Signage License permitting the use of a sign with the word “Uno”. I had a sign with the word “Uno” at the hotel site and used *Uno Astrolodge* as the name of the hotel for marketing purposes.

28. In addition to the above, while I operated the hotel I had other licenses, such as:

- Operating License issued by the Urban Development Department permitting the hotel to operate. Before issuing the license, both state and federal inspectors came to the hotel, confirmed my business and my identity, and inspected the property and application documents to their satisfaction.
- Operating License issued by the state of Quintana Roo permitting the hotel to operate.¹⁶
- Provisional Municipal Permits, renewable yearly, from the Municipality of Tulum for operating (a) the hotel, (b) the spa and/or massage services, and (c) the restaurant.¹⁷

¹³ Prior to this, on 4 April 2014, the Urban Development Office had issued a Construction Regularization license approving a phase of the construction and issued Commercial Land Use Licenses for use of the property for a restaurant, and a spa with meditation services. *Licencias de Uso de Suelo Comercial* (Commercial Land Use Licenses), 4 April 2014, NS-0010.

¹⁴ Regularización de Obra (Construction Regularization License), 8 July 2015, NS-0011.

¹⁵ Constancia de Uso de Suelo (Land Use Certificate) 8 July 2015, NS-0012.

¹⁶ *E.g.*, *Licencias de Funcionamiento* (Operating Licenses), 2014, for purposes of (a) restaurant and (b) spa massage, 9 June 2014, NS-0013.

¹⁷ *E.g.*, *Permisos Provisionales* (Provisional Permits), 2016, NS-0014.

- License from the department of civil protection, which made inspections one time per year.

29. In connection with the lot, I paid the municipality for (a) the yearly property taxes (*aportaciones*) for the lot,¹⁸ (b) for the use of the Federal Zone in front of the hotel property,¹⁹ and (c) for the collection of garbage from the property.²⁰

30. The licenses were issued in the name of O.m or Ms. Abreu, but were taken out and paid by me. Although the property was operated as *Uno Astrolodge*, it was also known as “Cabanas Nuno”, “Cabanas Uno”, “Uno”, or for the spa, “Spa Uno”. The restaurant on the property was named “Hongo”.

31. Over time, the hotel grew to include 6 bungalows, an office / reception area, a restaurant, a store, two public bathrooms, a spa with massage services, a yoga studio, terrace, clay oven area, entertainment area, and a stage, as well as system for water treatment and sewage, and electricity generated by solar panels and a battery-powered generator.²¹ All of this development required a lot of time and effort, and the assistance of construction workers and other personnel. Throughout the time I operated the property, I had multiple employees, including two employees in the kitchen, one to two stewards, two gardeners and maintenance persons, one receptionist, two housekeepers, staff to fill yoga hall activities and the sweat lodge (a dome structure used for

¹⁸ Receipt from Tesorería Municipal Tulum (Tulum Municipal Treasury), 27 January 2016, NS-0015.

¹⁹ *E.g.*, ZOFEMAT, Municipal Treasury, Federal Zone Office receipt showing payment in the name of Ms. Abreu, dated 10 March 2016, NS-0016.

²⁰ *E.g.*, Receipts for garbage collection, NS-0017.

²¹ Sample photographs, C-0072.

indigenous purification rituals), and artists and musicians who cooperated through an exchange initiative.

32. I used my personal funds from my bank account in Portugal, loans from my family, and proceeds from the operation of the hotel business, to pay for the construction, improvements, and operation of the hotel and the associated expenses.

33. The hotel grew to be profitable and very popular. During high season, it was fully booked. Among others, it drew yoga enthusiasts, musicians, and celebrities such as [REDACTED]. The resort was even named the top retreat in Tulum by Yogascapes Magazine.²² I had on-line marketing and on-line reservation systems. As time went on, the area grew from a wild deserted area into an eco-tourism hotspot, with other similar hotels in the area. I was one of the first to establish my business in what today is one of the world's premier tourist destinations.

34. Sometime in 2014, Patricio O'Farrill, who said he was a lawyer and represented the Schiavon family, told me the Schiavons claimed to be the owners of my lot. He then demanded that I pay them about \$1.3 million for the lot. I was perplexed because the Ejido certified that this was Ejido land. Therafter, I never agreed to pay him anything. In 2015, I began the process to become a naturalized Mexican citizen. Hugo Sulub, the delegate at the office of the Secretary of Foreign Relations in Cancun, told me I would only be renouncing my Portuguese nationality in Mexico only while on Mexico's soil.²³ I have never renounced my Portuguese nationality before any agency of the Portuguese government. I never discussed the Portugal-Mexico investment treaty with the

²² Yogascapes Magazine, C-0022.

²³ The Mexican government never asked me to hand over my Portuguese passport and I have never surrendered it to anyone.

delegate or any other official of Respondent. I have also never discussed waiving my treaty rights pertaining to my specific tourism business with Respondent.

III. MEXICAN GOVERNMENT AUTHORITIES SEIZE HOTEL

35. As I continued to operate the hotel, on June 17, 2016, I woke up in the morning with a call from Mario, my employee, telling me that armed people were coming to take over the hotel. I could not believe it. Since I was in my house in the mangroves about 300 meters across the street from the hotel, I walked out my door, about 300 meters through the mangroves, and to the hotel. When I arrived, I asked one of my employees to barricade the door. With that, we waited.

36. In a short time, [REDACTED] an *actuario* (court representative), from the Mexican government, arrived at the hotel and told everybody in the hotel and me to leave the premises because he had a court order giving him the power to evict everybody from the hotel. Accompanying the court representative was a crowd of about 250 to 300 men, mostly in black attire, some appearing to be police officers and others with shirts bearing the word “security” who looked intimidating and had scarves covering their faces. They carried guns, tear gas, machetes and metal sticks. Some of them were working directly at the court representative’s direction. I showed them my documentation supporting my possession of the lot. He glanced at them, but ignored them. He would not listen to me and did not care. The court representative showed me some papers but they did not mention my hotel, my name, O.m or Ms. Abreu; they just described a property. The police seemed to support this mass of men because they stood idly by and did not say or do anything. I tried to show them my documentation but they ignored me.

37. While I was trying to speak with the court representative, the mass of people broke the door down and came into the hotel. Everybody was very confused, caught by surprise, and shocked. I had about 25 guests that day. My guests, my employees, and I were all forced to leave the property and remove whatever personal property we could take by noon that day. The armed men removed

the rest. I was forced to leave the hotel in a span of about two and a half hours. My employees and I struggled to move what we could into my house 300 meters away, but were unable to retrieve all of my property. My wife made sure my daughter did not see anything.

38. My employees were helping my panicked guests to collect and move their belongings. My reception employees quickly re-arranged our guests' accommodations. I later had to release my employees and pay them a severance. In the aftermath, I had to deal with cancelling reservations, returning deposits, unwinding hotel matters, trying to figure out how I could recover my business and had to pay legal fees. It was a massive loss. I had to go into debt and the effects linger.

39. Prior to this day, neither O.m, Ms. Abreu, nor I had any notice of any court proceedings, lawsuit, hearing or any eviction order directed at any of us. I was stunned and caught by surprise. I felt powerless amidst this tumultuous event. From here, I was suddenly unable to access or control the property at all. I lost the property and the facilities, equipment, materials – everything contained therein.

IV. AFTERMATH OF THE SEIZURE OF UNO ASTROLODGE

40. Because I was left without my source of income, I had to leave my house and rent it out to generate income to survive. From there, later in 2016, I moved with my wife and my three daughters (two 8-month-old twins and one 6 year-old daughter) to a friend's house in the jungle. It was 20 kilometers west of Tulum, in a different Ejido, far from the beach area, where I thought it would be more relaxed. Instead, while there, my family and I were infected by the poisonous gum fly causing serious skin wounds for six to eight months, creating permanent scars. We stayed there for several months and later moved to another friend's house 20 kilometers south of Tulum. In December 2016, when I no longer had the hotel to attend to, I moved back to Portugal, my home country. I was unable to move back to Portugal sooner because I had to attend to the aftermath of the seizure and the ongoing legal matters. All of this affected my wife, my children and me.

41. Soon after the seizure, I hired two attorneys to pursue legal action in attempts to recover my property. During this process I learned from them that the purported lawsuit that was the basis for the seizure was between two unrelated parties that never included, or even mentioned me, O.m or Ms. Abreu. I did not personally know the parties to this purported lawsuit or that they were in possession of any lot or facility in the area.

42. On about July 2, 2016, I filed an *amparo* (constitutional protection) action with the courts in Mexico, asking the court to protect our due process rights.

43. Sometime after the seizure, the people who took over the property demolished most of my hotel and replace it with another hotel, Delek. However, a few of the structures I built are still there.

V. **STATEMENT OF TRUTH**

44. I make this statement on the basis of my personal knowledge or on the basis of documents that I have reviewed in preparing this statement. All of the matters set out in this witness statement are true to the best of my knowledge and belief.

45. This statement has been prepared in English. If I am called to testify at an evidentiary hearing in this arbitration, I anticipate I will do so in English.

Signed: *E. Nuno Vaz Osorio Dos Santos Silva*
Eduardo Nuno Vaz Osorio Dos Santos Silva

