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NEWS

FERRERE HELPS AHOLD WIN NINE-YEAR DISPUTE

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Uruguay's Ferrere Abogados and Argentina's Estudio O'Farrell Abogados, alongside a three-country legal team, have helped Dutch retailer Ahold win a nine-year-long litigation case.

On 29 February, the bankruptcy court of the first circuit in Uruguay dismissed a US$10 million claim by the depositors of Trade & Commerce Bank, represented by Uruguay's Aguirre & Vidal. This is the first of the three cases before Uruguayan courts against Ahold, with a total exposure of more than US$100 million, and the decision will give a noteworthy precedent for the other two.

Ferrere Abogados partner Andrés Cerisola says the case has kept the legal team on tenterhooks. "We had been holding our breaths for weeks pending this resolution, especially when, adding to the drama, the court decided to postpone its decision at the end of 2011." Cerisola adds that although the case was launched in difficult political and economic circumstances, the firm opted to "build our case brick by brick with a long term view".

The case originated in the 2002 economic crisis in Argentina, as several banks owned by the Peirano family failed: the Velox Bank of Argentina, Banco Montevideo of Uruguay, Banco Alemán of Paraguay and Trade & Commerce Bank of Cayman. As a result of these failures, creditors filed lawsuits against many companies which maintained close business relationships with the Peirano family. At the time, Ahold, then the world's third largest retail conglomerate behind Walmart and Carrefour, was in the process of selling its stake in the Disco supermarket chain, in which the Peirano family was also a shareholder.

The roots of the plaintiffs' argument come from Ahold's acquisition of its stake in the Disco and Santa Isabel supermarket chains, from the Peirano family's Velox Retail Holdings. Velox had financed its contributions to the joint venture with Deutsche Bank, ING Bank, ABN Amro, Philips pension fund, and the Dutch insurance company Nationale-Nederlanden. The lenders secured put rights as part of their financing in the event that Velox defaulted.

In 2002, while Ahold was trying to exit the JV, those put rights were exercised. As a result, an attachment was placed on shares in Disco's Argentine operations, injunctions blocking the sale were issued, and a major litigation case triggered. The plaintiffs argued that the exercise of the put rights meant that Ahold's acquisition of the former Velox Retail Holding's shares was fraudulent, conveying Velox's assets to Ahold to the detriment of the creditors of the banks belonging to the Velox Group.

Overall, Ahold faced over US$100 million of litigation in Uruguay with provisional remedies adopted or threatened in both Argentina and Chile. Over time, the Dutch retailer succeeded in lifting provisional remedies that had blocked the sale of Disco of Argentina to Cencosud, but in Uruguay the case continued, until this year.

In February, the Uruguayan Bankruptcy Court of the First Circuit ruled that the shares had not been fraudulently conveyed, and that Ahold's acquisition was made pursuant to existing, legitimate contracts. The case confirms the lifting of numerous provisional remedies that had affected the sale of Disco of Argentina to Cencosud, and has material precedent value for the remaining two cases pending resolution.

Aguirre & Vidal declined to comment on the case, although partner Fernando Aguirre says of the lawsuit: "I have thirty years of legal practice and this is the case that has taken me more time and work in my life. I have not done this for the fees, I did it because I think it is a case in which justice is at stake."

Counsel to Ahold

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