

**UNDER THE UNCITRAL ARBITRATION RULES AND
SECTION B OF CHAPTER 10 OF THE DOMINICAN REPUBLIC -
CENTRAL AMERICA - UNITED STATES FREE TRADE AGREEMENT**

CASE NO. UNCT/13/2

BETWEEN:

**SPENCE INTERNATIONAL INVESTMENTS, LLC, BOB F. SPENCE,
JOSEPH M. HOLSTEN, BRENDA K. COPHER, RONALD E. COPHER,
BRETT E. BERKOWITZ, TREVOR B. BERKOWITZ,
AARON C. BERKOWITZ AND GLEN GREMILLION**

Investors/Claimants

AND:

THE GOVERNMENT OF THE REPUBLIC OF COSTA RICA

Party/Respondent

**FIRST WITNESS STATEMENT
OF BOB F. SPENCE**

Submitted April 25, 2014

I, Bob Frederick Spence, with a business address c/o Spence Enterprises LLC, 1508 Eureka Road, #200 Roseville, California, state the following on behalf of myself and Spence International Investments, LLC (“Spence Co.”) in support of the Claimants’ First Memorial in connection with an arbitration pursuant to the UNCITRAL Arbitration Rules between the above listed Claimants and the Government of the Republic of Costa Rica (the “Respondent” or the “Government”):

1. I am a citizen of the United States of America and reside in California.¹
2. This witness statement was prepared with the assistance of the attorneys for the Claimants in this proceeding. However, this statement accurately reflects my knowledge and recollection of the facts described herein. This testimony was drafted in English, which is the language that I would be prepared to testify in, if necessary.

¹ Appendix A.2.

3. I am a businessman and the Manager of Spence Co., as well as a number of other privately-held companies. In addition to experience in other industries, I have over forty years of experience as a real estate developer. I have real estate holdings in both the United States and Costa Rica. In the United States, my holdings are mostly office and retail properties totalling approximately 1,500,000 square feet.
4. In Costa Rica, I own properties both personally and for development through Spence Co.² Unlike my holdings in the US, the properties in Costa Rica are for high-end, residential use. The CFO of Spence Co. is Bob Reddy. In this capacity, Bob Reddy was involved in the initial purchase of the investment and is responsible for the day-to-day management of it. Bob Reddy was not involved in the initial purchase of my personal investment properties. This witness statement will address those properties.
5. I first visited Playa Grande and Playa Ventanas in 2003 at the invitation of my friend, Ronnie Copher, whom I was visiting at the time. We went to look at lots that Ronnie was planning to purchase.
6. I liked the area, which was largely undeveloped other than a few recently constructed homes. It was on a beautiful small secluded white sand beach with lots of privacy. Ronnie's real estate agent, Penny Wheeler of Century 21 real estate, met me on Ronnie's property, and informed me that five additional lots at the north end of Playa Ventanas had recently become available for sale. The registry information for the five lots identified them as building lots.
7. At the time, there were a few houses on Playa Ventanas, which had been recently built. One of the homes was being renovated to add an addition to the existing house and there was at least one other home in the process of being built.
8. On 20 August 2003, I purchased two lots on Playa Ventanas, V32 and V33. I purchased Lot V32³ through The Purple Esmerald, SA, a company established under the laws of Costa Rica, and of which I was the sole shareholder in 2003. I purchased Lot V33⁴ through Windows of the Blue Sky Net, SA, a company established under the laws of Costa Rica, and of which I was the sole shareholder in 2003.
9. On 30 September 2003, I purchased two further lots on Playa Ventanas, V30⁵ and V31.⁶ I purchased Lot V30 through My New Land of Costa Rica TRC, SA, a company established under the laws of Costa Rica, and of which I was the sole shareholder in 2003. I purchased Lot V31 through Luxury Lands of Costa Rica QRZ, SA, a company established under the laws of Costa Rica, and of which I was the sole shareholder in 2003.

² Appendix A.1. Spence International Investments, LLC is a California company.

³ Folio Real No. 5-042334-000. Appendix B.40. Also see Exhibit C-5b.

⁴ Folio Real No. 5-042336-000. Appendix B.38. Also see Exhibit C-6b.

⁵ Folio Real No. 5-042330-000. Appendix B.39. Also see Exhibit C-3b.

⁶ Folio Real No. 5-042332-000. Appendix B.41. Also see Exhibit C-4b.

10. I purchased all five lots from the same seller for a price of \$800,000. The transfer involved the purchase of shares of the companies that owned the various lots.
11. The five lots, combined, were roughly 4200 square meters, so I paid an average of about \$190 per square meter or \$160,000 per lot. A few months after I purchased the lots, Penny Wheeler contacted me to let me know that she had someone who was interested in purchasing one of the lots for approximately double what I had paid for it. There were no individual lots remaining on the market for sale at that time. In early 2004, I sold lot V34 to a US buyer for \$300,000 and it does not form part of this claim.
12. I still own the remaining four lots, which form one contiguous tract of land: V30, V31, V32 and V33. All four of these lots lay entirely within a distance of 125 meters from the mean high tide point east of the Pacific Ocean. I planned to build a personal residence to enjoy in my retirement on at least two of the lots. I was willing to sell up to two of the other lots if I was offered a good price for them. If not, I would keep them to increase the privacy of the other lots with my home on it.
13. In 2012, three of the four companies owned directly by me: My New Land of Costa Rica TRC, SA, Luxury Lands of Costa Rica QRZ, SA, and The Purple Esmerald, SA were consolidated, with all of their assets, into the fourth, Windows of the Blue Sky Net, SA.⁷ Thus, today, all four lots are owned by Windows of the Blue Sky Net, SA, which is an enterprise that is wholly owned by me.⁸
14. Shortly after I returned to the US, I started considering further investments in Costa Rica for commercial purposes. At that time, I thought that the real estate market in the US was becoming overheated. I decided that it made sense to pursue new projects in Costa Rica instead of buying additional projects in the US. I sent Bob Reddy to Costa Rica to perform due diligence and locate potential properties in desirable areas.
15. I established Spence Co. as a holding company to hold my investments for development in Costa Rica. Between February 2005 and May 2007, Spence Co. purchased a number of beachfront and beach view properties in the Playa Grande, Playa Ventanas, Playa Flamingo, and Playa Prieta areas. The plan was to develop those properties as high-end, low density residential properties to be marketed to Americans looking for vacation or retirement properties in Costa Rica.

⁷ Appendices B.35, B.36.

⁸ See Appendix B.37. Exhibit C-2b sets out the corporate structure of Spence's companies.

16. Bob Reddy was in charge of the day to day management of those investments. Eventually, he would also oversee any issues relating to my lots on Playa Ventanas. I relied on him to relay information on recent developments in Costa Rica, as he had frequent contact with our local people, including attorneys.
17. In October 2007, the Government declared Lots V30, V31, V32 and V33 “of public interest”.⁹ Administrative appraisals have also been issued for these lots. The value of Lot V30 was appraised at approximately \$406/m²;¹⁰ Lot V31 was appraised at approximately \$403/m²;¹¹ Lot V32 was appraised for approximately \$407/m²;¹² and Lot V33 was appraised at approximately \$390/m².¹³
18. In light of my experience in Costa Rica, I considered these valuations to be very low. The market has increased substantially since I purchased the properties in late 2003. I objected to these appraisals. However, nothing has happened in respect of these lots since the Government issued the Decree of Public Interest and administrative appraisals.
19. Despite its commencement of the expropriation process, the Government has still failed to take the steps necessary to advance the administrative phase of its municipal expropriation proceedings in respect of each lot.
20. I have received no money from the Government. I cannot build on my property. I was disappointed with the Government’s decision to expropriate. More importantly, I have been extremely disappointed with the slow pace of the process. If the Government wants to include my personal property in a park, it should get on with paying me a fair price for it.
21. In the meantime, I have continued to pay annual property taxes to the municipal Government, as I understand that it is required by law. The lots are collectively valued at about \$3.095 million¹⁴ and between \$730,000 to \$828,000 each for tax purposes.¹⁵ The tax rate is 0.25% of the value. For example, for 2013, I paid approximately \$7,700 in property taxes for these four lots.¹⁶

⁹ See Exhibits C-3c, C-4c, C-5c and C-6c.

¹⁰ Administrative Appraisal AA-79-2008 set a value of 203,300 CRC per square meter for Lot V30. Exhibit C-3d.

¹¹ Administrative Appraisal AA-77-2008 set a value of 201,400 CRC per square meter for Lot V31. Exhibit C-4d.

¹² Administrative Appraisal AA-76-2008 set a value of 203,500 CRC per square meter for Lot V32 Exhibit C-5d.

¹³ Administrative Appraisal AA-75-2008 set a value of 195,700 CRC per square meter for Lot V33. Exhibit C-6d.

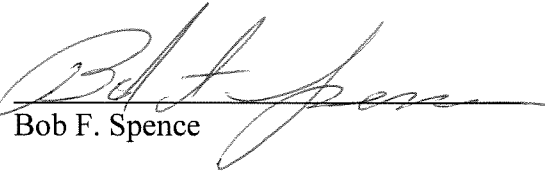
¹⁴ 1,547,765,660 CRC at rough exchange rate of 500 CRC to the USD.

¹⁵ Applying a rough exchange rate of 500 CRC to the USD to CRC values of 365,698,700 to 414,183,540.

¹⁶ See Exhibit C-36. Lot V30, Valor Fiscal of 365,698,700 CRC; Lot V31, Valor Fiscal of 380,557,840 CRC; Lot V32, Valor Fiscal of 387,325,580 CRC; Lot V33, Valor Fiscal of 414,183,540 CRC for a total Valor Fiscal of 1,547,765,660 CRC or approximately \$3,095,531 US based on a rough exchange rate of 500 CRC to the USD. 0.25% of this amount is \$7,738.83.

22. Although I have visited Costa Rica frequently since making my first investment there, I did not interact with the local owner community. I have never met Brett Berkowitz, Reinhard Unglaube or Glen Gremillion.

I confirm that the facts stated in this witness statement are true.

Signed: 
Bob F. Spence

Date: 4/21/14