

News

A costly smear; International; Miami banker awarded \$37 million after Nicaraguan politician planted defamatory news stories about him

Jessica M. Walker

1,657 words

3 February 2006

Miami Daily Business Review

1

Volume 52; Issue 83

English

Copyright 2006 ALM Properties, Inc. All Rights Reserved.

Miami banker awarded \$37 million after Nicaraguan politician planted defamatory news stories about him

Jessica M. Walker

Nicaraguan presidential candidate Haroldo J. Montealegre was hit with a \$37 million default judgment in a defamation lawsuit for planting stories in the media that sullied the reputation of prominent Miami banker **Roberto Zamora**.

The verdict last week in Miami-Dade Circuit Court is the latest twist in a long and acrimonious legal battle between the two Nicaraguans. It has played out both in South Florida courts and in the Nicaraguan legal system.

Montealegre is a University of Chicago-educated economist and founder of Nicaraguan bank Banco Mercantil. He is running for president of Nicaragua on the Liberal Unity Party ticket. He is campaigning as an outsider and reformer.

Zamora is a native of Nicaragua and heads Miami-based Latin American Financial Services (Lafise), a financial services company serving Latin American and the Caribbean customers in foreign exchange transactions and accessing capital markets.

The defamation case was spawned by a business deal gone bad.

In 2000, Zamora, who owns several Central American banks, agreed to buy Montealegre's 60 percent stake in Banco Mercantil.

Montealegre sued Zamora in 2001, alleging that he reneged on a contract to buy his shares in Banco Mercantil. The agreement was based on hastily scrawled one-page contract drafted by the two men after a dinner at the Red Fish Grill in Miami.

After Zamora refused to buy the shares, the Miami banker filed a lawsuit claiming that he became the victim of a smear campaign aimed at forcing him to go through with the deal.

In 2002, Zamora filed his defamation claim, alleging that Montealegre spread false reports in the Nicaraguan media about him. He also claimed the slanderous comments were intended to influence the contract dispute case in Montealegre's favor. That case was being litigated in both Nicaragua and Miami.

In the defamation suit, Zamora claimed that soon after the contract litigation began, Montealegre began the smear campaign against Zamora. According to Zamora's lawsuit, Montealegre accused him of being an accomplice and co-conspirator in the murder of a former employee of Montealegre. The false information Montealegre spread, including that Zamora was being investigated for murder in El Salvador; that Zamora's financial services company, Lafise, was engaged in money laundering; that Zamora had made millions in drug trafficking; that Zamora's acquisition of banks through Lafise resembled the mafia; and that Zamora had used graft and corruption to influence judges to protect his money laundering.

The suit alleged that the defamatory allegations were published either unsourced or pseudonymously in the Nicaraguan newspapers El Nuevo Diario and La Prensa as well as in the Greenwich, Conn.-based LDC Bond Watch. The suit also claimed that the Nicaraguan newspapers had been circulated in Miami's Nicaraguan exile community. The publications were not named in the defamation suit.

In both the defamation and contract cases, Zamora was represented by Ron Weil and Tom Manos, partners at Burlington Weil Schwieep Kaplan & Blonsky in Miami.

Weil said that the allegations against Zamora were false and that the hefty verdict was justified.

"There is no cure, no remedy for erasing what was said," Weil said. "We have some satisfaction with the jury's verdict, but the consequence is that my client will have to listen to something that has not a shred of truth in it for the rest of his life."

Zamora did not claim any economic damages in the case, and refused to turn over his tax returns at the request of Montealegre's counsel. The \$37 million award was composed of \$7.2 million for injury to Zamora's health and reputation, for shame humiliation, mental anguish and hurt feelings, \$10 million for the injury to Lafise's reputation, \$10 million in punitive damages for Zamora and \$10 million in punitives for Lafise.

By the time the defamation trial rolled around, Montealegre had already run out of money for his attorney. Miami-Dade Circuit Judge Maria Esquiroz had entered a default judgment against Montealegre on the merits of the case in 2004, based on Montealegre's failure to show up for a mediation, so the trial was solely to determine damages. No one appeared on Montealegre's behalf.

Montealegre has been represented by a parade of attorneys since the litigation began in 2001. Initially Lida Rodriguez-Taseff of Duane Morris represented him in the contract and defamation case, and later a team of Greenberg Traurig attorneys joined in. Montealegre's most recent counsel, Jay Gayoso, a solo practitioner, took the case and served as Montealegre's only attorney shortly after the default judgment was issued in the defamation case in September 2004.

Gayoso withdrew in December because Montealegre could no longer pay him. With trial set for January, Montealegre requested a continuance, but it was denied.

"Montealegre was horribly underfunded and basically ran out of money," Gayoso said. "He has been fighting lawsuits here and in Nicaragua for five years. Based on the history of these guys, this case was headed to an appellate court anyway, and he had to use his funds the best way possible."

Before Montealegre ran out of money, he had denied defaming Zamora. He said he never spread any of the false information he was accused of spreading.

"His position was that, on the merits, he never published anything and he has never said anything about Zamora," Gayoso said. "Whatever was published in LDC Bond Watch was based on documents that he did not prepare."

Gayoso also argued that Zamora was a public figure, so he would have to prove malice to make a defamation claim, and that there were no damages since Zamora did not provide records of his mental health or financial status.

Weil said that the publisher of LDC Bond Watch fingered Montealegre as the source of allegations that Zamora was the subject of a murder and money laundering investigation in El Salvador.

The contract disputes both in Miami and Nicaragua remain unsettled.

The Miami case is on hold until the Nicaraguan litigation is resolved. After five years of aggressive litigation, Miami-Dade Circuit Court Judge Ronald Friedman entered an order on Dec. 28, 2005, saying that he would enforce any judgment by the Nicaraguan Supreme Court.

Currently there are conflicting opinions in Nicaraguan courts over the bank shares dispute. The Nicaraguan Supreme Court has not yet reached a final decision on the case.

The contract dispute has been long and complicated due to many appeals in the U.S. and Nicaragua.

In 2001, Montealegre filed suit in the U.S. and Nicaragua seeking to enforce the \$5.9 million sale of his shares in Banco Mercantile to Zamora. Zamora argued that the deal scrawled on a napkin was not enforceable. Zamora also pointed out that three weeks after the deal was reached, Montealegre entered into a deal with another banker to sell his shares. Shortly after that, the bank ran into problems with Nicaraguan banking regulators, causing the share prices to drop.

Zamora claimed in court documents that it was only after the bank shares were rendered worthless — and that another deal didn't go through — that Montealegre began trying to enforce the \$5.9 million deal.

Montealegre has leveled defamation charges against Zamora, too. In a deposition in the contract case, Montealegre claimed that Zamora lodged false and defamatory allegations against him at the U.S. Embassy in Managua, which led to the cancellation of his visa in 2002. Montealegre also filed a defamation complaint against Zamora in Nicaragua. Montealegre claimed Zamora's accusations that Montealegre spread false reports in the media were slanderous. A Nicaraguan court issued a judgment in Montealegre's favor. Defamation is treated as a crime in Nicaragua, and Zamora was ordered to pay a fine. However, that judgment was later vacated, Weil said.

In 2003, Judge Friedman sided with Zamora in the contract case, while Montealegre prevailed in a similar suit in Nicaragua. Montealegre appealed Friedman's decision to the 3rd District Court of Appeal, and began trying to collect on his Nicaraguan victory.

Friedman ordered Montealegre to stop his attempts to collect on the foreign judgment, and in 2004, after Montealegre continued trying to collect the judgment, Friedman entered a contempt order against Montealegre levying a \$12 million fine against him and issuing a writ of bodily attachment, which ordered his arrest upon entering the country. Montealegre also appealed that judgment.

Montealegre won both the contract appeal and the contempt appeal, but while they were pending, Zamora began to push the defamation case.

Now, both sides in the case are waiting for the Nicaraguan courts to hash out the final contract case. Weil said he is in the process of finding a way to collect on the \$37 million judgment. However, Gayoso said he is unaware of any assets Montealegre has in the United States.

Weil said that the recent finding was a comfort to Zamora, although he will never fully recover from the allegations against him.

"We are grateful that the jury understood how damaging this was," he said. "My client was relieved by the verdict, but it's like it is with a great soldier, at the end of the day he's still got the scars."

However, Gayoso doubts the battle is over.

"There's no way to avoid going up on appeal," he said. "If things go [Montealegre's] way, he'll have to go back to square one, and knowing these parties it'll go up on appeal again. This has been very much a scorched-earth situation with these guys. This is a great example of why people shouldn't get in lawsuits." u

Jessica M. Walker can be reached at jmwalker@alm.com or at (305) 347-6649.