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# Hughes Hubbard & Reed

## Firm Serves Up Another Victory for TicoFrut in Pineapple Case

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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**March 24, 2017** — Hughes Hubbard captured another sweet victory for TicoFrut S.A. when a Florida federal magistrate judge denied fruit giant Del Monte's motion to enjoin the Costa Rican juice company from buying pineapples from a Costa Rican pineapple grower.

In a report and recommendation issued on March 7, U.S. Magistrate Judge Jonathan Goodman denied Del Monte's bid for a preliminary injunction, finding that Del Monte failed to meet its burden of demonstrating that it would be irreparably harmed if TicoFrut isn't blocked from buying pineapples from Inprosta, a Costa Rican pineapple grower against which Del Monte obtained a \$32 million arbitral award.

In July, Del Monte filed suit against TicoFrut for buying "black market" pineapples from Inprosta after Inprosta was ordered by an ICC arbitral panel to pay Del Monte \$32 million and sell all pineapples to Del Monte or destroy all of its crop. After the award was issued in June, Del Monte claims it warned TicoFrut, a non-party to the contract and to the arbitration proceeding, to stop buying pineapples from Inprosta. Del Monte is seeking to confirm the \$32 million arbitral award in a separate lawsuit that is pending in Costa Rica. In January, Judge Goodman denied Del Monte's request to garnish TicoFrut's debt to Inprosta to satisfy the award.

In his latest ruling, Judge Goodman quoted Green Day's 1995 song "Walking Contradiction" -- in which the punk rock band advised "do as I say not as I do" -- to emphasize that Del Monte's preliminary injunction bid was premised on an inconsistency.

Judge Goodman noted that Del Monte had the contractual right to permit Inprosta to sell certain pineapples to TicoFrut and now has the contractual right not to provide that permission. "But that does not alter the practical reality that the very irreparable harm that Del Monte is now complaining about was expressly permitted before, by Del Monte itself," he said.

"In effect, Del Monte cannot avoid the inevitable conclusion that it either expressly permitted irreparable harm before or it is now arguing that the very same conduct was not generating irreparable harm before but is doing

so now for some odd and seemingly untenable reason," Judge Goodman said.

Judge Goodman held that Del Monte failed to establish irreparable harm, the most important of the four prerequisites for injunctive relief, because Del Monte's purported damages can be compensated by monetary damages and because Del Monte sought injunctive relief after a significant delay.

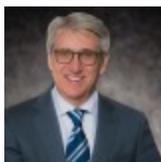
"Specifically, Del Monte waited more than a month after the award was issued to file the complaint in this action and then another six weeks to actually seek injunctive relief," Judge Goodman said "This pace is not indicative of a true sense of urgency and 'militates against a finding of irreparable harm.'"

Ruben Diaz, Nick Swerdloff, Aviva Wernick, Joann Velez, Jeff Goldberg, Ryan Kim, Gil Ben-Ezra and Margot Warhit are representing TicoFrut.

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