IN THE CIVIL COURT OF THE CITY OF NEW YORK,
COUNTY OF QUEENS, SMALL CLAIMS PART 45

RUTH C. VALDEVIESO Plaintiff, v. TOURIST OFFICE OF SPAIN IN NEW YORK. Defendant.	Index No: 711.SCQ 2017

STATEMENT OF INTEREST OF THE UNITED STATES

INTRODUCTION

The United States, by and through its undersigned counsel, respectfully submits this Statement of Interest pursuant to 28 U.S.C. § 517,[1] to advise the Court of its views as to the impropriety of the Plaintiff's attempt to effectuate service by mailing a summons to the Tourist Office of Spain in New York, which is part of Spain's Consulate General. As many courts have recognized, such service on a foreign consulate is inconsistent with both the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1330, 1602, *et seq*. ("FSIA") and the Vienna Convention on Consular Relations ("VCCR"). The United States regularly objects when a foreign court or other body attempts service through delivery to U.S. embassies and consulates abroad, and thus has strong reciprocity interests at stake. The United States therefore respectfully requests that the Court recognize that service of a lawsuit against the Tourist Office of Spain in New York may be effected only in conformity with the FSIA's service provisions.

BACKGROUND

On March 22, 2017, the Tourist Office of Spain in New York received a mailed summons in this case, dated March 20, 2017. The summons names the Tourist Office as a defendant in Plaintiff's action "to recover monies arising out of defective services rendered." Summons at 1. The summons states that the Tourist Office is required to appear and present its defense at a hearing before the Court on May 23, 2017 at 6:30 PM. *Id.*

[1] This provision provides that "[t]he Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517. It provides a mechanism for the United States to submit its views in cases in which it is not a party. *See, e.g.*, *Application of Blondin v. Dubois*, 78 F. Supp. 2d 283, 288 n.4 (S.D.N.Y. 2000).

DISCUSSION

The FSIA is "the sole basis for obtaining jurisdiction over a foreign state" in United States courts. *Republic of Austria v. Altmann*, 541 U.S. 677, 699 (2004) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S 428, 434 (1989)); *see also Garb v. Republic of Poland*, 440 F.3d 579, 581 (2d Cir. 2006). A lawsuit against a consulate is considered a suit against the foreign state itself for purposes of the FSIA. *See, e.g.*, *Fagan v. Deutsche Bundesbank*, 438 F. Supp. 2d 376, 385 (S.D.N.Y. 2006); *Gerritsen v. Consulado General de Mexico*, 989 F.2d 340, 345 (9th Cir. 1993). As explained further below, the United States considers the Tourist Office of Spain in New York part of the Spanish Consulate. Personal jurisdiction exists under the FSIA where there is both subject matter jurisdiction and proper service. *See* 28 U.S.C. § 1330(a)–(b); *U.S. Titan, Inc. v. Guangzhou Zhen Hua Shipping Co., Ltd.*, 241 F.3d 135, 151 (2d Cir. 2001) ("[S]ubject matter jurisdiction plus service of process equals personal jurisdiction under the FSIA.").[2]

The FSIA sets out, in hierarchical order, four exclusive methods for service of process on foreign states in 28 U.S.C. § 1608. The first two procedures allow for service according to a special arrangement between the parties or "an applicable international convention on service of judicial documents." 28 U.S.C. § 1608(a)(1)–(2). If service cannot be made using either of these methods, it may be accomplished

> by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned.[3]

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[2] The United States takes no position at this time on the question of whether the court would have subject matter jurisdiction, which turns on whether an exception to foreign sovereign immunity would apply. *See* 28 U.S.C. §§ 1330(a); 1605.

[3] The most natural understanding of this text is that the mail will be sent to the head of the ministry of foreign affairs at his or her regular place of work—*i.e.*, at the ministry of foreign affairs in the state's seat of government—not to some other location for forwarding. *See, e.g.*, *Barot v.*

Id. at § 1608(a)(3). If service cannot be accomplished in that fashion within thirty days, it must be done under section 1608(a)(4), which provides for service

> by sending two copies of the summons and complaint and a notice of suit together with a translation of each into the official language of the foreign state by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

Id. at § 1608(a)(4). None of these options, however, permits mailing a summons to a foreign state's consulate in the United States. Plaintiff therefore has failed to comply with the FSIA's requirements in this case. Courts have made clear that section 1608(a) "mandate[s] strict adherence to its terms, not merely substantial compliance." *Finamar Investors, Inc. v. Republic of Tajikistan*, 889 F. Supp. 114, 117 (S.D.N.Y. 1995); *see also Magness v. Russian Federation*, 247 F.3d 609, 615 (5th Cir. 2001); *Transaero, Inc. v. La Fuerza Boliviano*, 30 F.3d 148, 154 (D.C. Cir. 1994); *Alberti v. Empresa Nicaraguense De La Carne*, 705 F.2d 250, 253 (7th Cir. 1983).

In addition, both Spain and the United States are parties to the VCCR, which provides that "[c]onsular premises shall be inviolable." 21 U.S.T. 77, art. 31. Article 1(j) of the VCCR defines "consular premises" to mean "the buildings or parts of buildings and the land ancillary thereto, irrespective of ownership, used exclusively for the purposes of the consular post." The VCCR further defines "consular functions" to include, among other things, "furthering the development of commercial, economic, cultural and scientific relations between the sending state and the receiving state." VCCR, Art. 5(b). Under these provisions, the Tourist Office of Spain in New

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Embassy of Republic of Zambia, 785 F.3d 26, 30 (D.C. Cir. 2015) (directing service to be sent to foreign minister in state's capital city).

York is considered part of the consulate. Courts have held that service of process on consular premises is contrary to the VCCR's guarantee of consular inviolability. *See Swezey v. Merrill Lynch*, 997 N.Y.S.2d 45, 47 (N.Y. App. Div. 2014); *Sikhs for Justice v. Nath*, 850 F. Supp. 2d 435, 441 (S.D.N.Y. 2012); Restatement (Third) of Foreign Relations Law § 466, note 2 (1987) ("Service of process at diplomatic of consular premises is prohibited."). Thus, under both the FSIA and the VCCR, the attempted service on the Tourist Office in this case is inappropriate and ineffective.

The United States has strong reciprocity interests in the enforcement of the applicable rules governing service of process on sovereign states, including application of and strict adherence to the requirements of the FSIA and the VCCR. The United States has long maintained that the United States must be served in a manner consistent with international law when it is sued abroad, and the United States regularly objects when such service does not take place. If the FSIA and VCCR were interpreted to permit parties in the United States to serve papers by mailing them to a consulate, it could make U.S. consulates abroad vulnerable to similar treatment by foreign courts, contrary to the United States' consistently asserted view of the law.

Absent service in strict compliance with the FSIA, 28 U.S.C. § 1608(a), this Court does not have personal jurisdiction over the Tourist Office of Spain in New York in this case.

CONCLUSION

In accordance with the authorities set forth herein, and given the United States' substantial policy interest as described, the United States respectfully urges the Court to recognize the impropriety of personal service on the Tourist Office of Spain in New York.

Dated: May 23, 2017

Respectfully Submitted,

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