

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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DAVID L. de CSEPEL, <i>et al.</i> ,)	
)	
)	
Plaintiffs,)	
)	
vs.)	No. 1:10-cv-01261(ESH)
REPUBLIC OF HUNGARY, <i>et al.</i> ,)	
)	
)	
Defendants.)	
_____)	

**MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF DEFENDANTS’ MOTION TO CONTINUE
THE INITIAL SCHEDULING CONFERENCE AND STAY ALL
PROCEEDINGS AND DISCOVERY IN THIS MATTER**

Pursuant to Rule 7(b) of the Federal Rules of Civil Procedure, and LCvR 7, the Republic of Hungary, The Hungarian National Gallery, The Museum of Fine Arts, The Museum of Applied Arts, and The Budapest University of Technology and Economics (collectively, “Hungary”), through counsel, submit this Memorandum of Points of Authorities in Support of Hungary’s Motion to continue Initial Scheduling Conference (the “Conference”) recently scheduled by this Court, and stay all proceedings and discovery in this matter.

BACKGROUND FACTS

Plaintiffs commenced this action by filing a Complaint against Hungary on July 27, 2010. On February 15, 2011, Hungary filed its Motion to Dismiss [Dkt No. 15]. Hungary’s Motion to Dismiss was based, in part, on the contention that this Court lacks jurisdiction to adjudicate Plaintiffs’ claims against Hungary based on application of the Foreign Sovereign Immunities Act, 28 U.S.C. §§ 1602 *et seq.* (“FSIA”). By way of a Memorandum Opinion, and an Order,

both dated September 1, 2011, this Court denied Hungary's claim of immunity, and determined that Plaintiffs' had alleged a sufficient factual basis to confer the jurisdiction of this Court over Hungary. *See* [Dkt. Nos. 33 and 34]. On September 12, 2011, Hungary filed a Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit. On appeal, Hungary disputes, *inter alia*, this Court's jurisdiction to adjudicate Plaintiffs' claims against it based on application of the FSIA. *See* [Dkt. No. 37].¹ If Hungary prevails on this issue on appeal, all issues in this underlying litigation will be resolved.

On the same date that this Court issued its Memorandum Opinion and Order denying, in part, Hungary's Motion to Dismiss, the Court also issued an Order for Initial Scheduling Conference [Dkt. No. 35], which set the Initial Scheduling Conference (the "Conference") in this matter for September 20, 2011. Counsel for Plaintiffs and Counsel for Hungary have conferred via telephone as to the topics to be discussed during the Conference. Counsel for Hungary informed Plaintiffs' counsel of its position that the proceedings in this Court should be stayed pending resolution of Hungary's appeal and requested their consent to continue the September 20th hearing. Counsel for Plaintiffs stated that they would prefer that the Conference go forward on September 20, 2011, but take no position on this motion. Hungary now requests that this Court continue the Conference date and stay the district court proceedings pending resolution of Hungary's appeal.

ARGUMENT

This Court should continue the Conference and stay all proceedings and discovery in this case pending resolution of Hungary's appeal. This Court's denial of Hungary's sovereign

¹ Hungary also intends to file a motion to amend this Court's September 1, 2011, Order, requesting that this Court certify certain other issues for appeal, such as the Court's denial of Hungary's *forum non conveniens* defense. Plaintiffs have stated that they intend to oppose that motion.

immunity defense is immediately appealable as a matter of right. *See Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 91 (D.C. Cir. 2002). Hungary has appealed this Court's denial of Hungary's sovereign immunity defense under the FSIA to the United States Court of Appeals for the District of Columbia Circuit. As such, this Court is divested of jurisdiction over the issues involved in Hungary's appeal. *See Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982) (multiple citations omitted).

Where, as here, a foreign defendant appeals a court's denial of a motion to dismiss on the grounds of sovereign immunity, all proceedings in the trial court must cease until the appeal is resolved. *See Princz v. Federal Republic of Germany*, 998 F.2d 1, 1 (D.C. Cir. 1993) (denying, as unnecessary, appellant's emergency motion for a stay of all proceedings in the district court because an appeal from the denial of a motion to dismiss on grounds of sovereign immunity divests the district court of jurisdiction over the entire case) (*per curiam*); *cf. Bombardier Corp. v. Nat'l R.R. Passenger Corp.*, No. 02-7125, 2002 U.S. App. LEXIS 25858, *1 (D.C. Cir. Dec. 12, 2002) (denying, as unnecessary, an emergency motion to stay all district court proceedings because an appeal as to whether a dispute is arbitrable divests the district court of jurisdiction over the case) (*citing, inter alia, Princz*, 998 F.2d 1). Moreover, a stay of all proceedings and discovery in this Court is particularly appropriate because sovereign immunity is not merely a defense against liability, but also "immunity from trial and the attendant burdens of litigation." *Foremost-McKesson, Inc. v. Islamic Republic of Iran*, 905 F.2d 438, 443 (D.C. Cir. 1990) (quoting *Rush-Presbyterian-St. Luke's Med. Center v. Hellenic Republic*, 877 F.2d 574, 576 n.2 (7th Cir. 1989)). As such, this Court should continue the Conference and stay all proceedings and discovery in this matter until Hungary's appeal is resolved.

CONCLUSION

For the reasons set forth above, Hungary respectfully requests that this Court continue the Conference and stay all other proceedings and discovery in this matter until such time as Hungary's pending appeal has been resolved.

Dated: September 12, 2011

Respectfully submitted,

/s/ D. Grayson Yeargin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of September, 2011, I caused true and correct copies of the foregoing Defendants' Motion to Continue the Initial Scheduling Conference and Stay all Proceedings and Discovery in this Matter, Memorandum of Points and Authorities in support thereof, and Proposed Order, to be filed electronically with the United States District Court for the District of Columbia. I also certify that I caused the foregoing to be served, via first-class mail, postage prepaid, upon the following:

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