UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ANATOLIE STATI; GABRIEL STATI; ASCOM GROUP, S.A.; TERRA RAF TRANS TRAIDING LTD.,	)	
Petitioners,	)	
v.	)	Civil Action No. 14-1638 (ABJ)
REPUBLIC OF KAZAKHSTAN,	)	
Respondent.	)	

ORDER

On March 23, 2018, this Court entered judgment in favor of petitioners, Anatolie Stati, Gabriel Stati, Ascom Group, S.A., and Terra Raf Trans Traiding Ltd. (collectively, the "Stati Parties"), confirming a foreign arbitral award in the amount of approximately $500 million against respondent, the Republic of Kazakhstan ("Kazakhstan"). Order [Dkt. # 69]; Mem. Op. [Dkt. # 70]. Kazakhstan appealed that ruling to the D.C. Circuit on April 9, 2018. Notice of Appeal to D.C. Cir. Ct. [Dkt. # 71].

Since then, the Stati Parties have moved to attach Kazakhstan's property in the United States in execution of the judgment pursuant to 28 U.S.C. § 1610(c), and to register the judgment in any judicial district in the United States under 28 U.S.C. § 1963. Notice of Pet'rs' Mot. for Relief Pursuant to 28 U.S.C § 1610(c) & 28 U.S.C. § 1963 [Dkt. # 73]; Mem. of P. & A. in Supp. of Pet'rs' Mot. [Dkt. # 73-1] ("Pet'rs' Mot."). Kazakhstan opposed that motion[1] and filed its own motion to stay execution of the judgment, as well as any post-judgment discovery pursuant to

1 *See* Kazakhstan's Mem. of P. & A. in Opp. to Pet'rs' Mot. [Dkt. # 79] ("Resp't's Opp.").

Federal Rule of Civil Procedure 69, without posting a supersedeas bond. Resp't's Mot. to Stay Execution of J. Pending Appeal Without Requiring Supersedeas Bond [Dkt. # 83]; Mem. of P. & A. in Supp. of Resp't's Mot. [Dkt. # 83-1] ("Resp't's Mot.") at 1.[2] The parties also filed several motions concerning post-judgment discovery which the Court held in abeyance until it resolved the stay issue. Min. Order (Aug. 7, 2018).

Because Kazakhstan has not demonstrated that the appellee's interest in ultimate recovery are adequately protected, *Fed. Prescription Serv., Inc. v. Am. Pharm. Ass'n*, 636 F.2d 755, 760 (D.C. Cir. 1980), nor has it satisfied the stringent standards required for an unsecured stay pending appeal, *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977), the Court will deny without prejudice the motion to stay execution of the judgment pending appeal. Kazakhstan remains free, however, to obtain a stay by posting a bond in accordance with Federal Rule of Civil Procedure 62(d).

Moreover, the Court will grant the Stati Parties' motion to execute on the judgment pursuant to 28 U.S.C. § 1610(c) since it finds that a reasonable amount of time has passed since the judgment was entered. But it will deny without prejudice the motion to register the judgment in any judicial district because petitioners have not shown good cause.

ANALYSIS

I. Kazakhstan's Motion to Stay Execution of Judgment Pending Appeal

Under Federal Rule of Civil Procedure 62(d), an appellant may obtain a stay of proceedings to enforce a judgment by posting a supersedeas bond. Fed. R. Civ. P. 62(d). "The purpose of the supersedeas bond is to secure the appellee from loss resulting from the stay of execution." *Fed.*

2 Petitioners oppose the stay. Mem. of P. & A. in Supp. of Pet'rs' Opp. to Resp't's Mot. [Dkt. # 89] ("Pet'rs' Opp.").

Prescription Serv., 636 F.2d at 760. If the bond provided is an "amount to satisfy the judgment in full, together with costs, interest, and damages for delay," it is "beyond question" that an appellant is entitled to a stay "as a matter of right." *Id*. at 758–59.

But Rule 62(d) is not the exclusive means of obtaining a stay pending appeal. *Id*. In *Federal Prescription Service*, the D.C. Circuit clarified that district courts may also exercise their discretion to grant an unsecured or partially-secured stay, and that Rule 62(d) "speaks only to stays granted as a matter of right." *Id*. at 759. The Court cautioned that an unsecured or partially secured stay is warranted only in "unusual circumstances." *Id.* at 760–61. Because "the stay operates for the appellant's benefit and deprives the appellee of the immediate benefits of his judgment, a full supersedeas bond should be the requirement in normal circumstances, such as where there is some reasonable likelihood of the judgment debtor's inability or unwillingness to satisfy the judgment in full upon ultimate disposition of the case and where posting adequate security is practicable." *Id.* (footnote omitted). If the Court finds that there is an unusual circumstance that warrants departing from the bond requirement, a party must establish that the partially secure or unsecured stay will not "unduly endanger the judgment creditor's interest in ultimate recovery." *Id.* (footnote omitted). "[T]he district court ha[s] broad discretion to determine the type of security needed." *So v. Suchanek*, 670 F.3d 1304, 1309 (D.C. Cir. 2012).

The Supreme Court and the D.C. Circuit have clearly set out the stringent standard for a stay pending appeal.[3] These factors are:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Nken v. Holder, 556 U.S. 418, 426 (2009), quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *see also Holiday Tours, Inc.*, 559 F.2d at 843. The first two factors are the "most critical." *Nken*, 556 U.S. at 434. It is well-established that a stay pending appeal is an "extraordinary remedy," *Cuomo v. U.S. Nuclear Regulatory Comm'n*, 772 F.2d 972, 978 (D.C. Cir. 1985), and the moving party bears the burden to justify the relief it seeks. *Nken*, 556 U.S. at 433–34.

Here, Kazakhstan argues that a completely unsecured stay pending appeal is justified because "the amount of the Stati Parties' judgment is already fully secured, and the additional form of protection afforded by a supersedeas bond in this case is therefore entirely unnecessary." Resp't's Mot. at 11.[4] In its motion, Kazakhstan explains that the Stati Parties levied attachments in enforcement on the arbitral award in parallel proceedings in Belgium, Luxembourg, Sweden and the Netherlands in an amount totaling approximately $5.92 billion. *Id.* at 1. The problem with that is that Kazakhstan admits that it is actively seeking to vacate the attachments in each of the

3 The parties dispute whether the traditional four-factor test is a necessary first step in the analysis or simply an alternative means of obtaining an unsecured stay, apart from the standard articulated in *Federal Prescription Service* which did not mentioned the four-factor test. Pet'rs' Opp. at 3–5; Reply at 1. The Court need not resolve the issue because it finds that under either standard respondent has not met its burden, and in any event, the D.C. Circuit considers both standards relevant. *See, e.g., TMR Energy, Ltd. v. State Prop. Fund of Ukr.,* No. 03-7191, 2004 U.S. App. LEXIS 8195 (D.C. Cir. Apr. 23, 2004) (per curiam) (relying on both lines of cases to deny motion to extend unsecured stay).

4 Since Kazakhstan has not proposed to post any form of partial security, this Order does not address the question of whether something short of the full supersedeas bond could suffice.

foreign jurisdictions. Reply in Supp. of Resp't's Mot. [Dkt. # 90] ("Resp't's Reply") at 6. Thus, those foreign attachments, over which the Court has no control, are plainly inadequate as alternative security. Moreover, Kazakhstan's prediction that the European courts will not issue any rulings until after the D.C. Circuit appeal has been resolved is speculative and of little assurance. Resp't's Reply at 6. Since Kazakhstan has not offered any other alternatives, the Court finds that it has not met its burden of justifying a departure from the usual bond requirement.[5]

Kazakhstan insists that an application of the traditional stay factors would support a stay in the absence of a bond, but its arguments are conclusory and unavailing. As to the first factor, Kazakhstan contends, without further explanation, that it is likely to succeed because it raised "substantive meritorious arguments" on appeal. Resp't's Mot. at 13. In an equally conclusory sentence, it adds that the issues on appeal present "difficult legal questions" which constitutes another basis to justify the stay. *Id.* Kazakhstan takes the position that it need not elaborate further because it helpfully supplied the Court with a copy of its appeal brief. Resp't's Reply at 14. Since the brief simply re-argues the issues rejected by this Court, the Court finds that it has failed to establish a likelihood of success.

Respondent has also not shown that it would suffer irreparable harm if its request for an unsecured stay is denied. Kazakhstan states that "there is a risk that the Stati parties would enjoy a double recovery . . . as the judgment is already secured in other jurisdictions." Resp't's Mot. at 14. This claim, which is entirely speculative and unexplained, fails to establish irreparable harm. *Nken,* 556 U.S. at 435; *see also Wis. Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985)

5 In its reply Kazakhstan also contends that the Stati Parties are judicially estopped from arguing that the foreign attachments provide inadequate security because they proffered an inconsistent position before a tribunal in London. Resp't's Reply at 7–11. This is entirely beside the point. The burden rests on Kazakhstan to prove to the Court that the judgment is secure by other means, and it has failed to do so.

("Bare allegations of what is likely to occur are of no value since the court must decide whether the harm will *in fact* occur.") (emphasis in original). And Kazakhstan's prediction that it will incur costs in post-judgment discovery is also insufficient to establish irreparable harm. Resp't's Reply at 15. It is well-established that "[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough." *Wis. Gas.*, 758 F.2d at 674. Because respondent has failed to meet its burden under the first two and "most critical" factors, the motion for an unsecured stay is denied.

II. Stati Parties' Motion for Relief Pursuant to 28 U.S.C. § 1610(c) and 28 U.S.C. § 1963

A. Relief pursuant to 28 U.S.C. § 1610(c) is proper because a reasonable period of time has elapsed following the entry of judgment.

Section 1610(c) of the Foreign Sovereign Immunities Act ("FISA") provides that when a judgment has been entered against a foreign state and a litigant seeks to execute on the judgment by attaching the property of a foreign state located in the United States, such attachment is not permitted "until the court has . . . determined that a reasonable period of time has elapsed following the entry of judgment." 28 U.S.C. § 1610(c).

When the Stati Parties filed their motion on April 23, 2018, one month after the Court entered judgment in this case, they argued that one month was "more than a reasonable period" under the statute. Pet'rs' Mot. at 5. Kazakhstan responded that a "two-month long period" was more appropriate. Resp't's Opp. at 4. Now that approximately seven months have passed since the entry of judgment, this issue appears to be moot since defendant conceded that a much shorter period would be reasonable.[6]

6 In opposition to petitioners' motion, Kazakhstan also argued that there was no need to enforce the award in the United States since the attached assets abroad satisfied the full amount of the award. Resp't's Opp. at 4. As the Court explained earlier, the foreign attachments are inadequate in securing the judgment because they are being challenged by respondent.

Accordingly, the Court will grant petitioners' motion to execute on the judgment pursuant to 28 U.S.C. § 1610(c), unless Kazakhstan posts a bond pursuant to Rule 62(d) by November 30, 2018, and they may initiate steps to do so as of December 3, 2018.

B. Relief pursuant to 28 U.S.C. § 1963 is improper because the Stati Parties have not shown "good cause."

Section 1963 provides in relevant part:

> A judgment in an action for the recovery of money or property entered in any . . . district court . . . may be registered by filing a certified copy of the judgment in any other district . . . when the judgment has become final by appeal or expiration of the time for appeal or when ordered by the court that entered the judgment for good cause shown

28 U.S.C. § 1963.

The Stati Parties argue that "good cause" exists because "[a]s far as the Stati parties are aware, Kazakhstan has no significant assets (other than diplomatic property) in this District that may be used to satisfy the Judgment, and whatever assets Kazakhstan does have are insufficient to satisfy the roughly US $ 500 million Judgment." Pet'rs' Mot. at 8. They seek permission to register the judgment in *any* judicial district in the United States. *Id.* at 9.

This motion is premature. The Stati Parties concede that they "do not have full insight into exactly what assets Kazakhstan owns in which jurisdictions." Pet'rs' Mot. at 8 n.3, and they acknowledge that post-judgment discovery would be illuminating on this point. *Id.* at 8. The Stati Parties supplied a declaration from their attorney averring that "Minister Beketayev . . . declared that the Embassy of Kazakhstan and the Ambassador's residence are the only property held by Kazakhstan in Washington, D.C." Decl. of Enrique J. Molina [Dkt. # 73-2] ¶ 9 ("Molina Decl."). But this statement fails to specify Minister Beketayev's official title or when and where he purportedly made his statement. The declarant also vaguely states that based "on information and

belief" Kazakhstan has assets in Massachusetts and New York. Molina Decl. ¶ 10.[7] These vague and unsupported assertions fail to establish good cause.

Before the Court can find that good cause exists to permit the Stati Parties to register the judgment in any district in the United States, they must first establish the absence of assets in the judgment forum and the existence of substantial assets in other forums. *Chevron Corp. v. Republic of Ecuador*, 987 F. Supp. 2d 82, 84–85 (D.D.C. 2013) (allowing plaintiff to register judgment in any district where there was "no question" that defendant did not have sufficient assets in judgment forum and "ha[d] substantial assets in other forums"); *Cheminova A/S v. Griffin L.L.C.*, 182 F. Supp. 2d 68, 80 (D.D.C. 2002) ("Good cause can be established by an absence of assets in the judgment forum, coupled with the presence of substantial assets in the registration forum.") (internal quotation marks and citations omitted).

Therefore, based on the record before it, the Court will deny the motion without prejudice.

III. Discovery Motions

On July 19, 2018, after they filed their motion to institute attachment proceedings in the United States, the Stati Parties filed a motion to compel Kazakhstan to comply with discovery requests concerning its U.S. assets. Notice of Pet'rs' Mot. to Compel Discovery [Dkt. # 81]. In response, and in connection with its motion to stay enforcement proceedings pending appeal, Kazakhstan filed a series of unnecessarily duplicative pleadings: an opposition to the motion to compel [Dkt. # 85], a motion for a protective order concerning the same discovery requests

7 The Stati Parties also argue that they need immediate permission to register the judgment in any judicial district because there is a risk that advance notice of enforcement targets would allow Kazakhstan to dissipate and remove assets in those jurisdictions. Pet'rs' Mot. at 9. As proof of this danger, they cite the fact that Kazakhstan has for years opposed enforcement of the award in numerous courts. Molina Decl. ¶ 8. That is not proof of the risk they raise, therefore this argument also fails to establish "good cause."

[Dkt. # 86], and a motion to strike the motion to compel [Dkt. # 87], which has already been denied. All of these pleadings argued, in part, that discovery should not proceed while the motion to stay was pending. Since the Court has now denied the motion to stay, that is no longer a factor in connection with the discovery motions, and insofar as the motion for a protective order was premised on the pendency of the motion to stay, the motion is hereby denied.

What remains to be resolved are the parties' disputes over the breadth, vagueness, and relevance of the discovery requests and whether they are unduly burdensome. The Court directs the parties to meet and confer in an effort to narrow the areas of dispute, and any matters that cannot be resolved will be referred to a Magistrate Judge for decision.

CONCLUSION

It is hereby **ORDERED** that:

1. Respondent's Motion to Stay Execution of Judgment Pending Appeal Without Requiring Supersedeas Bond, [Dkt. # 83], is **DENIED** without prejudice.
2. Petitioners' motion to execute on the judgment pursuant to 28 U.S.C. § 1610(c) is **GRANTED**. [Dkt # 73].
3. Petitioners' motion to register the judgment in any judicial district in the United States under 28 U.S.C. § 1963 is **DENIED** without prejudice. [Dkt. # 73].
4. With respect to the discovery motions, it is **FURTHER ORDERED** that the Stati Parties may, if necessary, file a single combined reply to the opposition to the motion to compel and opposition to the motion for protective order, which may not exceed five pages, and may not repeat any arguments that have already been made, by November 20, 2018; and Kazakhstan may, if necessary, file a single reply in support of its motion for protective order, which may not exceed five pages, and may not repeat any

arguments that have already been made, by November 30, 2018. If this matter has not been stayed in accordance with Federal Rule of Civil Procedure 62(d) by that date, the parties must file a joint status report on November 30, 2018 informing the Court whether the parties have resolved the discovery disputes among themselves or whether areas of difference remain. The areas of difference need not be identified in the report, and the parties may not utilize the report as yet another opportunity to present arguments to the Court. If any dispute remains, the discovery motions will be referred to a Magistrate Judge for decision pursuant to Local Civil Rule 72.2 on December 3, 2018.

AMY BERMAN JACKSON
United States District Judge

DATE: November 13, 2018