

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AES Solar Energy Coöperatief U.A. and
Ampere Equity Fund B.V.,

Petitioners,

v.

The Kingdom of Spain,

Respondent.

Civil Action No. 1:21-cv-03249-RJL

Motion for Substitution

Pursuant to Rule 25(c) of the Federal Rules of Civil Procedure, Petitioners AES Solar Energy Coöperatief U.A. (“AES”) and Ampere Equity Fund B.V. (“Ampere”) (collectively, “Petitioners”) and Blasket Renewable Investments LLC (“Blasket,” and together with Petitioners, “Movants”) jointly and respectfully move this Court for an order substituting Blasket for Petitioners in this action. Movants are concurrently filing a separate motion for expedited briefing of and decision on this motion. Pursuant to Local Civil Rule 7(m), Movants have conferred with counsel for Respondent the Kingdom of Spain (“Spain”), who stated that Spain intends to oppose both this motion and Movants’ request for expedited briefing and decision.

Despite Spain’s opposition, the case for substitution is straightforward because Blasket now holds full title to the arbitral award that Petitioners are seeking to enforce in this action (the “Award”). AES and Ampere entered into agreements with Blasket on January 17 and January 13, 2023, respectively, in which Petitioners “irrevocably and unconditionally assign[ed] to [Blasket]” “the legal and beneficial title” to “all of the[ir] rights, interests and benefits . . . under or in respect of the Award.” AES Deed of Assignment §§ 1.1, 2.1 (Ex. A to Declaration of Matthew S. Rozen (“Rozen Decl.”), Ex. 1 hereto); Ampere Deed of Assignment §§ 1.1, 2.1 (Ex. B to Rozen Decl.).

On January 18, 2023, Petitioners and Blasket sent Spain notice of the assignments, as required under the agreements, AES Deed § 5.1; Ampere Deed § 5.2. *See* Rozen Decl. ¶ 6.

Rule 25(c) provides that “[i]f an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.” Substitution is appropriate if it would “facilitate the conduct of the litigation.” *Paeteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. De C.V.*, 247 F. Supp. 3d 76, 86 (D.D.C. 2017) (quoting *Comm’ns Imp. Exp., S.A. v. Republic of Congo*, 118 F. Supp. 3d 220, 231 (D.D.C. 2015)). That inquiry is rooted in “considerations of convenience and economy.” *Id.* “Since Rule 25(c) is wholly permissive there is no time limit on moving to substitute under its provisions.” 7C Charles Alan Wright et al., *Federal Practice and Procedure* § 1958 (3d ed. 2022 update).

Substitution of Blasket as petitioner is warranted to facilitate its participation in the litigation. “Courts have found substitution appropriate when a transfer [of a legal interest] gives another party ownership of the relevant property and the sole interest in the outcome of the litigation.” *Stewart Title Guar. Co. v. Lewis*, 2018 WL 1964870, at *1 (D.D.C. Feb. 16, 2018) (collecting cases). Pursuant to the assignment agreement, Petitioners lawfully gave up all their legal and financial interests in the Award. Blasket is now entitled to any payment recouped under the Award, including any recovery obtained by securing a judgment in this Court and enforcing that judgment against Spain’s assets in the United States. It is thus Blasket alone that has a legal and practical interest in this Court recognizing the Award. Allowing Blasket, rather than Petitioners, to prosecute this action would enable it to more effectively vindicate its rights. *See Paeteria La Michoacana*, 247 F. Supp. 3d at 90 (“[S]ubstituting the owner of the relevant [property] as the sole Plaintiff will best facilitate any ongoing litigation.”); *Cessna Fin. Corp. v.*

Al Ghaith Holding Co. PJSC, 2021 WL 603012, at *3 (S.D.N.Y. Feb. 16, 2021) (granting Rule 25(c) motion in suit to confirm arbitration award because, “given that [petitioner] has assigned its interest in, title and rights to the Award and Judgment to [assignee], substitution of [assignee] as Petitioner for purposes of enforcement of the Judgment is likely to simplify the action” (citations omitted)).

Substitution is also consistent with principles of judicial economy. “Rule 25(c) has no bearing on the substantive relationship between the parties”; regardless of the substitution, “[t]he merits of the case . . . are still determined vis-à-vis the originally named parties.” *Paleteria La Michoacana*, 247 F. Supp. 3d at 86 (quoting *Minn. Mining & Mfg. Co. v. Eco Chem, Inc.*, 757 F.2d 1256, 1263 (Fed. Cir. 1985)). Here, the substitution can be seamless, since the resolution of this case depends solely on questions of law—specifically, the application of the FSIA and of the New York Convention and its implementing legislation—and on the plain text of the Award. Basket is therefore fully equipped to step into Petitioners’ shoes and prosecute this action, and this Court’s consideration of Spain’s pending motion to dismiss—or of any other issues in the case—will not be affected by the substitution. And because Petitioners and Basket share the same counsel, Rozen Decl. ¶ 1, the litigation can continue apace without any disruption or any need for rebriefing.

Spain may respond (as it did in opposing a materially identical substitution motion in a similar enforcement action in this Court, *see RREEF Infrastructure (G.P.) Ltd. v. Kingdom of Spain*, No. 1:19-cv-03783 (D.D.C. Feb. 20, 2023), ECF No. 52 at 2-3) that substitution is inappropriate because it would harm Spain’s interests—not in this Court, but in the Netherlands. There, Spain has initiated a proceeding (the “Dutch Action”) seeking to obtain an anti-suit injunction barring Petitioners from pursuing any action to enforce the Award in this Court. *See* Writ of Summons at 30-31 (Ex. C to Rozen Decl.) (asking the Dutch court to order Petitioners to

“suspend the proceedings currently pending” in this Court and “withdraw” this action, “on pain of forfeiting a penalty sum of EUR 30,000 per day” if Petitioners fail to comply).

But Spain’s objection to substitution on that basis would be meritless: Any prejudice Spain may experience from the substitution is attributable only to its own improper attempt to collaterally attack the Court’s jurisdiction over this case. As this Court recently recognized in blocking two materially identical anti-suit injunction requests by Spain in European courts, “the express and primary purpose of Spain’s suit” is “to *terminate* this action—ordering [Petitioners] to withdraw this suit, imposing penalties upon failure to do so, and issuing a worldwide injunction preventing [Petitioners] from taking any action to confirm the Award.” *NextEra Energy Glob. Holdings B.V. v. Kingdom of Spain*, 2023 WL 2016932, at *9 (D.D.C. Feb. 15, 2023) (cleaned up); *accord 9Ren Holding S.À.R.L. v. Kingdom of Spain*, 2023 WL 2016933, at *8 (D.D.C. Feb. 15, 2023) (same). Spain thus is “actively seeking” to “frustrate the operation of U.S. law” and “deprive this [C]ourt of jurisdiction” by barring Petitioners from proceeding here. *NextEra*, 2023 WL 2016932, at *10.¹ If Spain’s gamesmanship is inconvenienced by substituting Blasket as the petitioner here, that is a problem of Spain’s “own making” that should garner no sympathy. *Id.*

In any event, such purported prejudice is irrelevant to the substitution standard in this Court. The inquiry under Rule 25(c) is whether substitution would “facilitate the conduct of the

¹ Spain’s illegitimate efforts to undermine this Court’s authority are not limited to the Dutch Action. As discussed in greater detail in Petitioners’ concurrently filed Emergency Motion for Expedited Briefing and Consideration, Spain also filed an *additional* action in the Netherlands on February 28, 2023—this time against both Petitioners and Blasket—seeking a preliminary injunction and temporary restraining order prohibiting Petitioners and Blasket from seeking an anti-anti-suit injunction motion to enjoin the Dutch Action. The very next day, the Dutch court granted Spain’s request, issuing an *ex parte* order temporarily restraining Petitioners and Blasket from requesting an anti-anti-suit injunction in this Court, pending a March 13 hearing on Spain’s request for a preliminary injunction against an anti-anti-suit injunction. That injunction does not, however, bar Petitioners or Blasket from filing this motion, nor does it in any way bar the *Court* from taking whatever action it may deem appropriate, including entry of judgment against Spain.

litigation” at hand—not whether it would prevent Spain from circumventing this Court’s jurisdiction through a *separate* proceeding in a foreign court. *Paeteria La Michoacana*, 247 F. Supp. 3d at 86, 89 (citation omitted); *see also Danaher Corp. v. Travelers Indem. Co.*, 2020 WL 6712193, at *5 (S.D.N.Y. Nov. 16, 2020) (ordering substitution because it would not “delay [or] complicate *this litigation*” (emphasis added)).

Movants therefore respectfully request that the Court grant their motion for substitution.²

Dated: March 2, 2023

Respectfully submitted,

/s/ Matthew McGill

Matthew McGill, D.C. Bar #481430
mmcgill@gibsondunn.com
Matthew S. Rozen, D.C. Bar #1023209
mrozen@gibsondunn.com
Ankita Ritwik, D.C. Bar #1024801
aritwik@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036
Telephone: 202.955.8500
Facsimile: 202.467.0539

*Attorneys for Petitioners AES Solar Energy
Coöperatief U.A. and Ampere Equity Fund
B.V., and for Assignee Blasket Renewable
Investments LLC*

² If the Court declines to order substitution, it should, at minimum, join Blasket as a petitioner so it can participate in the adjudication of the enforceability of an award that it owns. *See Fed. R. Civ. P. 25(c)* (permitting substitution *or* joinder of the transferee).

CERTIFICATE OF SERVICE

I hereby certify that on March 2, 2023, I caused a true and correct copy of the foregoing Motion for Substitution to be filed with the Clerk for the U.S. District Court for the District of Columbia through the ECF system. Participants in the case who are registered ECF users will be served through the ECF system, as identified by the Notice of Electronic Filing.

/s/ Matthew McGill

Matthew McGill