

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 19 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

JAK SUKYAS and EDWARD SUKYAS,

No. 17-56557

Plaintiffs-Appellants,

D.C. No.

v.

2:15-cv-01946-FMO-JC

ROMANIA and RADEF ROMANIA FILM,

MEMORANDUM\*

Defendants-Appellees.

Appeal from the United States District Court  
for the Central District of California  
Fernando M. Olguin, District Judge, Presiding

Argued and Submitted March 4, 2019  
Pasadena, California

Before: WARDLAW and BENNETT, Circuit Judges, and SESSIONS,\*\* District Judge.

Jak and Edward Sukyas (the Sukyas brothers) appeal the district court's grant of summary judgment in favor of Romania and RADEF România Film (an instrumentality of the Romanian government) for lack of subject matter

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable William K. Sessions III, United States District Judge for the District of Vermont, sitting by designation.

jurisdiction under the Foreign Sovereign Immunities Act (FSIA). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm the district court’s conclusion that FSIA’s commercial activity exception to sovereign immunity does not apply, 28 U.S.C. § 1605(a)(2), but reverse as to the expropriation exception, *id.* § 1605(a)(3).

1. The district court correctly concluded that the commercial activity exception to sovereign immunity does not apply because the Sukyas brothers fail to establish that Romania’s acts outside of the United States had a direct effect in the United States.<sup>1</sup> 28 U.S.C. § 1605(a)(2); *see also Terenkian v. Republic of Iraq*, 694 F.3d 1122, 1135 (9th Cir. 2012). The Sukyas brothers’ claims arise from the Romanian government’s alleged expropriation of their family’s film company, Cinegrafia Română (CIRO), disruption of CIRO’s business relationships with U.S. companies, and continued operation of CIRO’s film business in Romania. However, with no evidence that identifies any specific contractual relationships

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<sup>1</sup> The other requirements of the third clause of the commercial activity exception are met. The commercial activity underlying the Sukyas brothers’ action took place in Romania. Record evidence also shows that the Romanian government’s alleged interference with Cinegrafia Română’s (CIRO) business relations were “in connection with a commercial activity of the foreign state,” i.e., the Romanian government’s acquisition of CIRO in 1948 and continued use of CIRO’s assets. 28 U.S.C. § 1605(a)(2). Romania’s alleged acts “are clearly . . . of a kind in which a private party might engage.” *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 709 (9th Cir. 1992); *see also* 28 U.S.C. § 1603(d) (defining “commercial activity” for FSIA purposes).

(and resulting contractual duties) between CIRO and U.S. film companies at the time CIRO was expropriated, the Sukyas brothers cannot show that Romania disrupted or assumed specific business relationships CIRO had with U.S. companies. Thus, they have presented no “direct connection” between Romania’s conduct and any effect in the United States, much less demonstrated Romania’s “failure . . . to perform in the United States [or] any other legally significant event in this country.” *Terenkian*, 694 F.3d at 1135, 1138.

2. The district court incorrectly concluded that the expropriation exception is inapplicable because the Sukyas brothers could not show that RADEF România Film “is engaged in a commercial activity in the United States.” 28 U.S.C. § 1605(a)(3). In fact, by licensing U.S. films to screen in Romania, RADEF România Film receives “profits and benefits . . . derived from U.S. sources,” thus bringing the Sukyas brothers’ claims within the second commercial-activity nexus clause of 28 U.S.C. § 1605(a)(3). *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 709, 712 (9th Cir. 1992); *see also Cassirer v. Kingdom of Spain*, 616 F.3d 1019, 1032–34 (9th Cir. 2010) (en banc) (finding that an art foundation, an instrumentality of Spain, “had many contacts with the United States,” including “licensing reproductions of images,” which constituted commercial activity in the United States under § 1605(a)(3)).

Because the Sukyas brothers have satisfied their burden of production that

the expropriation exception applies, “jurisdiction exists unless the defendant demonstrates by a preponderance of the evidence that the claimed exception does not apply.” *Packsys, S.A. de C.V. v. Exportadora de Sal, S.A. de C.V.*, 899 F.3d 1081, 1088 (9th Cir. 2018). Romania, however, presents no evidence refuting the Sukyas brothers’ proof.

The district court did not address the other requirements of the expropriation exception. Although the Sukyas brothers sufficiently allege that the rights in issue—their ownership rights in CIRO’s assets, real estate, and business—are property rights, we remand for the district court to decide in the first instance whether CIRO “was indeed ‘taken in violation of international law.’” *Bolivarian Republic of Venezuela v. Helmerich & Payne Int’l Drilling Co.*, 137 S. Ct. 1312, 1316, 1319 (2017); *see also id.* at 1316 (“[W]here jurisdictional questions turn upon further factual development, the trial judge may take evidence and resolve relevant factual disputes.”).

Costs are to be taxed against Romania and RADEF România Film.

**AFFIRMED IN PART; REVERSED IN PART; REMANDED.<sup>2</sup>**

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<sup>2</sup> The Sukyas brothers’ motion to correct and supplement the record on appeal (ECF No. 6) is DENIED. The Sukyas brothers’ motion for judicial notice (ECF No. 33) is GRANTED.