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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DEBORAH D. PETERSON,)
Personal Representative of)
the Estate of James C.)
Knipple (Dec.), et al.,)
)
Plaintiff(s),)
)
v.)
)
ISLAMIC REPUBLIC OF IRAN,)
et al.,)
)
Defendant(s).)
_____)

No. 08-80030 MISC JSW (BZ)

**REPORT AND RECOMMENDATION TO
GRANT PLAINTIFFS' MOTION FOR
ASSIGNMENT OF RIGHTS (CMA
CGM)**

Before the court are a series of motions in which plaintiffs seek orders pursuant to California Code of Civil Procedure § 708.510 compelling judgment debtor the Islamic Republic of Iran (Iran) to assign certain rights it has from third parties. Through a series of scheduling orders, I have focused on the motion involving CMA CGM. I stayed the other motions, which are virtually identical, pending the disposition of this motion. Having considered the papers filed by plaintiffs and CMA CGM. I recommend that the court enter the attached order **GRANTING** plaintiffs' motion. This

1 order, which is more limited than the order plaintiffs sought,
2 is recommended for the following reasons:

3 1. Federal Rule of Civil Procedure 69 permits this court
4 to enforce a money judgment in accordance with California law,
5 except to the extent a federal statute applies. California
6 Code of Civil Procedure § 708.510 permits a court to order a
7 judgment debtor, such as Iran, to assign certain rights to the
8 judgment creditor. The statute grants a court broad
9 discretion in determining whether to order an assignment. See
10 Rick Schwartz, Allen M. Ahart, CALIFORNIA PRACTICE GUIDE: ENFORCING
11 JUDGMENTS AND DEBTS, § 6.1422.5 (Alan M. Ahart ed., 2008).

12 2. CMA CGM has erroneously asserted that the recent
13 amendments to the FSIA have deprived this court of subject
14 matter jurisdiction to order the requested assignment. As a
15 threshold matter, I recommend waiting to see whether Iran
16 appears in response to the recommended order, as any issue of
17 sovereign immunity would be better raised by Iran than by non-
18 party CMA CGM.¹ In any event, CMA CGM's jurisdictional
19 arguments appear misguided. CMA CGM argues that § 1083(c) of
20 the 2008 Defense Authorization Act, which repealed the section
21 of the FSIA (§ 1605(a)(7)) originally used by plaintiffs to
22 overcome Iran's sovereign immunity, strips this court of
23 jurisdiction because plaintiffs failed to file or re-file
24 their § 1605(a)(7) action under the newly enacted § 1605A.
25 While it may be true that plaintiffs did not originally file
26 their action under § 1605A or even re-file their action as a §

27
28 ¹ It has also been suggested that the U. S. Department of
State may wish to be heard on this and other immunity issues.

1 1605A claim within the time limits permitted by that section,
2 this would appear only to constrain the *remedy* to which
3 plaintiffs are entitled (e.g., punitive damages, now permitted
4 under § 1605A), not whether this court has jurisdiction to
5 enforce the judgment. In numerous other cases similar to this
6 one, where jurisdiction was originally brought under §
7 1605(a)(7) and a default judgment was entered before the
8 enactment of § 1083(c), courts have retained jurisdiction
9 despite the plaintiff's failure to file (or re-file) the case
10 under § 1605A. See Kirschenbaum v. The Islamic Republic of
11 Iran, No. 03-1708C 2008 WL 3905962 (D.D.C. Aug. 26, 2008);
12 Blais v. The Islamic Republic of Iran, 567 F. Supp. 2d 143
13 (D.D.C. 2008).

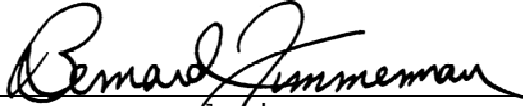
14 3. CMA CGM has asserted numerous other objections to
15 plaintiffs' requested order. Plaintiffs' principal response
16 is that the objections should be deferred until they actually
17 try to enforce the assignment. Under California law, entry of
18 an assignment order does not preclude an obligor such as CMA
19 CGM from later challenging whether the judgment debtor's
20 claims were assignable in the first instance. Kracht v.
21 Parrin, Gartland & Doyle, 219 Cal.App.3d 1019, 1021 n.1
22 (1990). Presumably this is why California law requires that a
23 motion for assignment of rights be served on the judgment
24 debtor but not necessarily on the obligor. California Code of
25 Civil Procedure § 708.510(b). Plaintiffs have suggested that
26 all the objections made by CMA CGM be deferred under this
27 section. I recommend including several limitations in the
28 assignment order, most of which are well settled, to avoid

1 potential multiplicity of litigation if the plaintiffs try to
2 enforce the assignment order in multiple jurisdictions, and to
3 avoid any mischief that might occur if it is not clear that
4 the order is limited to the United States, should plaintiffs
5 try to enforce the order in foreign courts which may not be
6 familiar with California and American collection procedures.
7 See e.g., Philippine Export and Foreign Loan Guarantee Corp.
8 v. Chuidian, 218 Cal.App.3d 1058, 1099 (1990). Other
9 objections that CMA CGM or other obligors share, such as
10 claims of sovereign immunity, can, if necessary, be resolved
11 after the assignment has been made.

12 4. Cases interpreting § 708.510(b) have placed a number
13 of limitations on assignment orders, which I recommend the
14 court adopt. First, I recommend that the right to payment be
15 one that exists within the United States. Chuidian, 218
16 Cal.App.3d at 1094,1099-1100; Quaestor Investments, Inc., v.
17 The State of Chiapas, No. CV-95-6723, 1997 WL 34618203, at *7
18 (C.D.Cal.); Autotech Tech. v. Integral Research & Dev., 499
19 F.3d 737, 749-51 (7th Cir. 2007). Second, I recommend that
20 the right to payment be derived from property of Iran that was
21 used for a commercial activity in the United States.
22 Chuidian, 218 Cal.App.3d at 1092; Autotech, 499 F.3d at 750;
23 Rubin v. Islamic Republic of Iran, No. 03-C-9370, 2008 WL
24 192321, at *5 (N.D. Ill.). Third, I recommend that only the
25 Islamic Republic of Iran, the judgment debtor, be required to
26 make the assignment for the reasons set forth in my Report and
27 Recommendation dated July 2, 2008. Finally, I recommend that
28 the assignment be limited to existing payment rights, even if

1 the right to payment has not yet come due or will come due in
2 the future. Though no case law has considered this
3 limitation, I believe that assignment of non-existent rights
4 would lack sufficient concreteness to enable the parties to
5 understand what their future rights and obligations are and
6 would be commercially unreasonable. It is hard to understand
7 why the judgment debtor would engage in future commercial
8 dealings with CMA CGM if Iran knew that any right it would
9 have to future payments under that commercial transaction had
10 already been assigned to the plaintiffs. If nothing else,
11 this would seem to punish non-party CMA CGM in that Iran would
12 tend to do business with companies that were not subject to
13 such an assignment order and would pay it.

14 Dated: October 14, 2008

15 
16 Bernard Zimmerman
United States Magistrate Judge

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