

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ASHRAF TULTY, et al	:	
	:	
Plaintiffs	:	
	:	
v.	:	Civil Case No. 04-1780 (JDB)
	:	
	:	
SOCIALIST PEOPLE'S LIBYAN	:	
ARAB JAMAHIRIYA, et al.,	:	
	:	
Defendants	:	
	:	

**PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

COME NOW the plaintiffs, by counsel, and file this Memorandum in Opposition to Defendants' Motion to Dismiss pursuant to this Court's Scheduling Order, stating as follows:

**Failure to Submit to Arbitration**

Plaintiffs concede that the requirement to afford the defendants a reasonable opportunity to arbitrate their claims pursuant to 28 USC §1605(a) (7) (B) (i) has not been met. Due to the status of the defendant Libya as a state sponsor of terrorism, the plaintiffs question the usefulness of such an offer, however, if the court grants the motion to dismiss on this basis, it should do so without prejudice to allow plaintiffs to make such an offer.

**Lack of Subject Matter Jurisdiction**

Conversion of Property

All of the plaintiffs, except for Ashraf Tulty, base their claims upon the conversion of property located within Libya. Libya responds with two positions it

contends demonstrate lack of subject matter jurisdiction—1) that the FSIA does not cover claims for property damage, but only for personal injury or death (Brief at pgs. 9-11); and 2) that the act requires the conversion to occur at a time when the plaintiff was a United States citizen (Brief at pgs 5-8).

However, the FSIA does provide an exception to sovereign immunity under §1605(a) (2) and (3) for expropriation of property and this exception does not require U.S. citizenship at the time of expropriation:

A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case—

(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;...

To the extent that the Amended Complaint did not specify reliance upon §1605(a) (2) and (3), plaintiffs would ask for leave to file a further amended complaint.

*Cf Siderman de Blake v. Republic of Argentina*, 965 F.2d 699 (C.A. 9<sup>th</sup> Cir. 1992)(*cert. den.* 507 US 1017, 113 S.Ct. 1812 (1993)).

Lack of Personal Jurisdiction

As to Defendant Qadhafi's claims of lack of personal jurisdiction and head of state immunity, the plaintiffs agree to his dismissal. However, as to Libya, as defendants concede the issue has already been decided adversely to Libya's position in *Price I*.

Jury Trial Unavailable

Plaintiffs also agree that a jury trial is unavailable against Libya.

**CONCLUSION**

For the reasons stated herein and at any oral argument, plaintiffs pray that the defendants' motion to dismiss be denied to the extent discussed hereinabove.

Dated: August 15, 2005

Respectfully Submitted,

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