

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

GREAT SOCIALIST PEOPLE’S)	
LIBYAN ARAB JAMAHIRIYA)	
)	
)	Case Number: 1:07cv497
Plaintiff,)	Judge T.S. Ellis III
)	Magistrate Judge Theresa C. Buchanan
vs.)	
)	
ARLINGTON COUNTY, VIRGINIA, <u>et al.</u>)	
)	
Defendants.)	

**PLAINTIFF LIBYAN GOVERNMENT’S
MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiff Great Socialist People’s Libyan Arab Jamahiriya, by and through its attorneys, J.P. Szymkowicz, John T. Szymkowicz and the Law Firm of Szymkowicz & Szymkowicz, LLP, respectfully requests that this Honorable Court grant its motion for a preliminary injunction preventing Defendant Arlington County, Virginia and Defendant Fairfax County, Virginia from executing on any alleged lien they might have against the properties listed within the instant complaint pending final resolution of the merits of the case pursuant to F. R. Civ. P. 65 for the following reasons:

Background

Properties at Issue – Arlington County

1. This matter concerns the following three condominium units in Arlington County with distinct tax reference numbers located in the Carlyle House Condominium, 5300 Columbia Pike, Arlington, Virginia 22204:

Unit 501 RPC#: 28-004-130, ACCT#: 06 28004130 00 1

Unit 515 RPC#: 28-004-143, ACCT#: 06 28004143 00 1

Unit 702 RPC#: 28-004-157, ACCT#: 06 28004157 00 1

Property at Issue – Fairfax County

2. This matter concerns the following condominium unit in Fairfax County with distinct tax reference numbers located in the Rotunda Condominium, 8370 Greensboro Drive, Fairfax, Virginia 22204:

Unit 914 Map Reference Number: 0293 17040914
Stub Number: 404563857
Deed Book and Page Number: 05466 0873

Parties

3. Plaintiff Great Socialist People’s Libyan Arab Jamahiriya [hereinafter the “Libyan Government”] is a “foreign state” that conducts its diplomatic relations with the United States of America through its Embassy located in the Watergate complex in Washington, DC.

4. Defendant Arlington County, Virginia [hereinafter “Defendant Arlington County”] is the local governmental entity that has real estate taxing authority over the condominium units located in the Carlyle House Condominium.

5. Defendant Fairfax County, Virginia [hereinafter “Defendant Fairfax County”] is the local governmental entity that has real estate taxing authority over the condominium units located in the Rotunda Condominium.

Libyan Government’s Use of Properties at Issue

6. At all relevant times, these condominium units were owned by the Libyan Government for the use of “diplomatic agents” as their “private residences” as these

terms are defined in Article 1 (d) and (e) and Article 30, Paragraph 1 of the Vienna Convention.¹

7. At all relevant times, the Libyan Government did not charge its “diplomatic agents” rent to live in these condominium units.²

8. At all relevant times, the Libyan Government does not rent these condominium units to third parties.³

9. During all relevant times, there may have been times when a personnel change at the Embassy has rendered one or more of these condominium units temporarily vacant, but, in such cases, the Libyan Government intended to fill these vacancies with other “diplomatic agents” once these individuals assumed their diplomatic positions in the United States.⁴

Defendants’ Tax Liens

10. Despite Plaintiff Libyan Government’s use of the properties at issue as the “private residences” of “diplomatic agents,” both Defendant Arlington County and Defendant Fairfax County have issued real estate tax bills and asserted real estate tax liens on these properties.

Vienna Convention on Diplomatic Relations of April 18, 1961, 23 U.S.T. 3227

11. The Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227), hereinafter “the Vienna Convention,” entered into force with respect to the United States on December 13, 1972.

¹ See Paragraph 8 of Ambassador Ali Aujali’s Affidavit that was attached to the Plaintiff Libyan Government’s Complaint as Exhibit 1. This Affidavit is also re-attached to the instant motion for convenience of the Court and the parties as Exhibit 1.

² Id. at Paragraph 9.

³ Id. at Paragraph 10.

⁴ Id. at Paragraph 11.

12. The Vienna Convention entered into force with respect to the Libyan Government on June 7, 1977.

ARGUMENT

I. THE LIBYAN GOVERNMENT'S MOTION FOR A PRELIMINARY INJUNCTION SHOULD BE GRANTED.

In entering a preliminary injunction, a court must consider:

(1) the likelihood of irreparable harm to the plaintiff if the preliminary injunction is denied; (2) the likelihood of harm to the defendant if the requested relief is granted; (3) the likelihood that the plaintiff will succeed on the merits; and (4) the public interest. U.S. Department of Labor v. United Mine Workers of America, 452 F.3d 275, 280 (4th Cir. 2006).

Applying the factors listed above, it is clear that the motion for a preliminary injunction should be granted since (1) the Libyan Government will suffer irreparable harm if the preliminary injunction is denied because it will be without the use or possession of its properties; (2) the Arlington and Fairfax County Governments will not suffer any damages once the requested relief is granted since if the Court finds that the properties are not tax-exempt, the tax lien will simply continue to grow; (3) as is more fully stated in the Libyan Government's motion for summary judgment, there is a strong likelihood that the Libyan Government will prove that the properties at issue are tax-exempt; and (4) it is in the public interest for the motion to be granted since this will give full effect to a treaty entered into between the U.S. and a foreign nation.

II. THE DIPLOMATIC RELATIONS ACT AND THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS PREVENT ARLINGTON AND FAIRFAX COUNTIES FROM TAXING THE LIBYAN GOVERNMENT'S PROPERTIES.

The Diplomatic Relations Act, 22 U.S.C. § 254a and the Vienna Convention on Diplomatic Relations of April 18, 1961, 22 U.S.T. 3227, prevent Arlington and Fairfax

Counties from taxing the Libyan Government's properties that are used, as the properties that are the subject of the instant lawsuit, as "private residences" of "diplomatic agents."

**The Diplomatic Relations Act, 22 U.S.C. § 254a and the
Vienna Convention on Diplomatic Relations of April 18, 1961, 23 U.S.T. 3227**

The Diplomatic Relations Act, 22 U.S.C. § 254a (3) and (4), provides

As used in this Act,

(3) the term "mission" includes missions within the meaning of the Vienna Convention and any missions representing foreign governments, individually or collectively, which are extended the same privileges and immunities, pursuant to law, as are enjoyed by missions under the Vienna Convention; and

(4) the term "Vienna Convention" means the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227), entered into force with respect to the United States on December 13, 1972.

The preamble to the Vienna Convention states:

The States Parties to the present Convention,

Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents,

Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,

Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,

Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,

Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention,

Having agreed as follows: . . .

Article 1 (a) of the Vienna Convention defines the term “head of the mission” as “the person charged by the sending State with the duty of acting in that capacity.” Article 1 (d) of the Vienna Convention defines the term “members of the diplomatic staff” as “members of the staff of the mission having diplomatic rank.” Article 1 (e) of the Vienna Convention defines the term “diplomatic agent” as “the head of the mission or a member of the diplomatic staff of the mission.” Article 1 (i) of the Vienna Convention defines “premises of the mission” as “the buildings or parts of the buildings and land ancillary thereto, irrespective of ownership, used for the purposes of the mission including the residence of the head of the mission.”

Article 22 of the Vienna Convention states:

(1) The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.

(2) The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.

(3) The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.

Article 23 (1) of the Vienna Convention states:

The sending State and the head of the mission shall be exempt from all national, regional or municipal dues and taxes in respect of the premises of the mission, whether owned or leased, other than such as represent payment for specific services rendered.

Article 29 of the Vienna Convention states:

The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving state shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity.

Article 30, Paragraph 1 of the Vienna Convention states:

The private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.

Since private residences of “diplomatic agents” “enjoy the same inviolability and protection as the premises of the mission,” the properties at issue are exempt from property taxes assessed by the Arlington County and Fairfax County Governments pursuant to Articles 22 and 23 (1) of the Vienna Convention.

CONCLUSION

Plaintiff Great Socialist People’s Libyan Arab Jamahiriya respectfully requests that this Honorable Court enter an order granting its motion for a preliminary injunction preventing Defendant Arlington County, Virginia and Defendant Fairfax County, Virginia from executing on any alleged lien they might have against the properties listed within the instant complaint pending final resolution of the merits of the case.

Respectfully submitted,

/s/ _____
J.P. Szymkowicz (Virginia State Bar #39120)
John T. Szymkowicz (not admitted in Virginia)
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Attorney for Plaintiff Great Socialist People’s
Libyan Arab Jamahiriya

Certificate of Service

I hereby certify that on May 25, 2007, I mailed the foregoing Motion for a Preliminary Injunction to:

Stephen MacIsaac, County Attorney
2100 Clarendon Boulevard, Suite 403
Arlington, Virginia 22201

Attorney for Defendant Arlington County, Virginia

via Certified 1st Class U.S. Mail, postage prepaid, return receipt requested #7006-2150-0000-7298-2960

and

David P. Bobzien, County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035

Attorney for Defendant Arlington County, Virginia

via Certified 1st Class U.S. Mail, postage prepaid, return receipt requested #7006-2150-0000-7298-2977

/s/ _____
J.P. Szymkowicz (Virginia State Bar #39120)

Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

GREAT SOCIALIST PEOPLE’S)
LIBYAN ARAB JAMAHIRIYA)
)
Plaintiff,)
)
vs.) Case Number: _____
)
ARLINGTON COUNTY, VIRGINIA, et al.)
)
Defendants.)

**AFFIDAVIT OF AMBASSADOR AUJALI IN SUPPORT OF
THE LIBYAN GOVERNMENT’S COMPLAINT**

I, Ali Aujali, being duly sworn state the following under oath and under the penalties of perjury that:

1. The statements contained in this Affidavit are made upon personal knowledge of the facts contained in each statement.
2. The statements contained in this Affidavit are true and correct to the best of my knowledge, information and belief.
3. The statements contained in this Affidavit set forth such facts as would be admissible in evidence.
4. I am over the age of eighteen and am competent to testify to the matters stated in this Affidavit.
5. I am the Great Socialist People’s Libyan Arab Jamahiriya’s Ambassador to the United States of America.
6. I conduct my official government affairs at the Embassy of the Libyan Arab Jamahiriya located in the Watergate office complex in Washington, DC.

7. I am familiar with the Libyan Government's ownership and use of the following properties that are the subject of the instant law suit: Carlyle House Condominium Units 501, 515 and 702, 5300 Columbia Pike, Arlington, Virginia 22204 and Rotunda Condominium Unit 914, 8370 Greensboro Drive, Fairfax, Virginia 22204.

8. These condominium units are owned by the Libyan Government for the use of "diplomatic agents" as their "private residences" as these terms are defined in Article 1 (d) and (e) and Article 30, Paragraph 1 of the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227).

9. The Libyan Government does not charge its "diplomatic agents" rent to live in these condominium units.

10. The Libyan Government does not rent these condominium units to third parties.

11. There may be times when a personnel change at the Embassy renders one or more of these condominium units temporarily vacant, but, in such case, the Libyan Government intends to fill these vacancies with other "diplomatic agents" once these individuals assume their diplomatic positions in the United States.

5/21/07
Date



Ali Aujali

Ambassador of the Great Socialist
People's Libyan Arab Jamahiriya



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GREAT SOCIALIST PEOPLE’S)
LIBYAN ARAB JAMAHIRIYA)
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Plaintiff,) Case Number: 1:07cv497
) Judge T.S. Ellis III
vs.) Magistrate Judge Theresa C. Buchanan
)
ARLINGTON COUNTY, VIRGINIA, et al.)
)
Defendants.)

**ORDER GRANTING PLAINTIFF LIBYAN GOVERNMENT’S
MOTION FOR A PRELIMINARY INJUNCTION**

Upon consideration of Plaintiff Great Socialist People’s Libyan Arab Jamahiriya’s motion for a preliminary injunction and any response thereto, IT IS HEREBY ORDERED THAT Plaintiff Great Socialist People’s Libyan Arab Jamahiriya’s motion for a preliminary injunction is GRANTED. IT IS FURTHER ORDERED THAT Defendant Arlington County, Virginia and Defendant Fairfax County, Virginia are directed not to execute on any alleged tax liens assessed against the following properties pending the final resolution of the merits of the instant case:

1. Carlyle House Condominium, 5300 Columbia Pike, Arlington, Virginia 22204:

Unit 501 RPC#: 28-004-130, ACCT#: 06 28004130 00 1
Unit 515 RPC#: 28-004-143, ACCT#: 06 28004143 00 1
Unit 702 RPC#: 28-004-157, ACCT#: 06 28004157 00 1

2. Rotunda Condominium, 8370 Greensboro Drive, Fairfax, Virginia 22204:

Unit 914 Map Reference Number: 0293 17040914
 Stub Number: 404563857
 Deed Book and Page Number: 05466 0873

Date

T.S. Ellis, III
United States District Judge

We ask for this:

/s/ _____
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Attorney for Plaintiff Great Socialist People's
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Seen:

/s/ _____
Stephen MacIsaac, County Attorney
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Attorney for Defendant Arlington County, Virginia

and

/s/ _____
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