

UNITED STATES DISTRICT COURT
for the
Southern District of New York

NO ENDORSEMENT

Samiha Alayan and Zeyad Barazanji
Plaintiff(s)
v.
Permanent Mission of Saudi Arabia to the United Nations
Defendant(s)

Civil Action No. 1:18-CV-10068 ALC
APPLICATION FOR ORDER FOR SERVICE BY PUBLICATION; ORDER FOR SERVICE BY PUBLICATION

APPLICATION FOR ORDER FOR SERVICE BY PUBLICATION

COMES NOW THE PLAINTIFFS, Samiha Alayan and Zeyad Barazanji, who submit this Application for Order for Service by Publication.

FACTS OF THE CASE

This case is related to a civil dispute as described in the Complaint, including breach of contract, breach of implied-in-fact contract, fraud, and unjust enrichment.

REQUEST

Plaintiff has been unable to properly serve the Permanent Mission of Saudi Arabia to the United Nations, ("Defendant") or locate a

valid address for service on the Defendant, through their agents or officers. Plaintiff hereby requests that the Court issue an Order for Service by Publication for a minimum period of once a week for four (4) consecutive weeks in the online legal notice publication, *Global Legal Notices®*, a website of general circulation which specializes in international service by publication in Saudi Arabia. Their publication policy is to publish the Order, any notices, and all court-issued documents continuously for a period of four (4) consecutive months, which exceeds statutory requirements, or until such time as may be requested by attorney for Plaintiff.

ARGUMENT

Plaintiff has attempted unsuccessfully to serve the Defendant utilizing traditional service of process methods. However, the Defendant has made itself unavailable for service. Attempts were made to personally serve an officer, agent or appropriate employee of the Defendant without success, as described in the Declaration of Diligence, attached hereto, as Exhibit "B".

The only available alternative method of service is service by publication. However, newspapers in Saudi Arabia do not allow for publication of legal notices which originate outside of Saudi Arabia. The only known method for service by publication in Saudi Arabia is through *Global Legal Notices®* which provides a more

thorough method to give actual notice to the defendant, as described on their legal notice website at www.GlobalLegalNotices.com.

This method allows for a greater opportunity to give actual notice to the Defendant than service by publication in a traditional newspaper, see Exhibit "A", attached hereto. It provides publication of the Court Order, plus the entire set of Court-issued documents. Further, the publication period exceeds the customary once a week for four (4) consecutive weeks by continually publishing the documents for four (4) months. In addition, a Google search by the Defendant's name and country will typically appear on page one of the Google search after approximately 5 days, thus, providing a greater opportunity to give actual notice to the Defendant.

POINTS AND AUTHORITIES

The U.S. Supreme Court in *Mullane v. Central Hanover Trust & Bank Co.*, 22 ILL.339, U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950), found that, "*It is a logical step forward in the evolution of civil procedure that the use of new technologies in common communication be utilized.*"

U.S. courts have reasoned that service by publication on foreign defendants is permitted under Federal Rules of Civil Procedure 4(F)(3). Rule 4 allows service of process on a foreign individual:

(1) by internationally agreed upon means of service reasonably calculated to give notice; (2) by a reasonably calculated method as prescribed by the country's law for service for general actions or as the foreign authority directs to a letter rogatory; or (3) by other means not prohibited by international agreement. Because the 1993 amendments to FRCP 4(F) urge that FRCP (4)(3) be construed liberally, the courts have interpreted FRCP 4(F)(3) as authorizing them to utilize technological advancements for serving foreign defendants.

Federal Rules of Civil Procedure, Rule 4((3)(1) provides that *"Service of an individual . . . may be effected in any judicial district of the United States pursuant to the law of the state in which the district court is located . . ."*

The challenge facing plaintiff in this case is there are no traditional newspapers in Saudi Arabia that will allow for publication of legal notices which originate in courts in the United States.

CONCLUSION

Global Legal Notices® offers an improved method of providing actual notice to a defendant of a pending lawsuit while satisfying the Court's requirements for service by publication.

It is widely held that service by publication has a limited success rate in providing actual notice to a defendant that a legal case is pending. Yet, courts routinely issue an order allowing for service

by publication in a newspaper, either print or online, as a last resort method to complete service of process.

Wherefore, Plaintiff respectfully requests that the Court issue an Order for Service by Publication in the instant case.

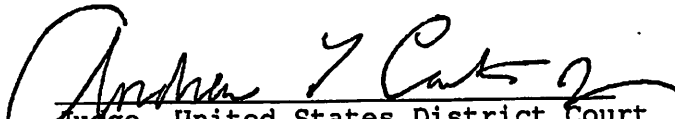
Respectfully submitted,



Michael L. Ferch
On behalf of Plaintiff

ORDER FOR SERVICE BY PUBLICATION

IT IS SO ORDERED THAT the Summons in a Civil Action, Complaint, and this Order shall be served by publication in Global Legal Notices, an online legal notice publication for a period of four (4) consecutive weeks and that Proof of Publication be filed with this Court.



Judge, United States District Court
Southern District of New York

12-13-19

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Samiha Alayan and Zeyad Barazanji

Plaintiff(s)

v.

Permanent Mission of Saudi Arabia to the United Nations

Defendant(s)

Civil Action No. 18-cv-10068

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Permanent Mission of Saudi Arabia to the United Nations
c/o Kingdom of Saudi Arabia
Ministry of Foreign Affairs
Nasseriya Street
Riyadh, Saudi Arabia 11124

A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Michael L. Ferch, Esq.
Law Office of Michael L. Ferch
280 Madison Avenue #912
New York, New York 10016

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 03/29/2019

/s/ D. Howie

Signature of Clerk or Deputy Clerk



AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 18-cv-10068

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x	:	
	:	
SAMIHA ALAYAN and ZEYAD BARAZANJI,	:	<u>COMPLAINT</u>
	:	
Plaintiffs,	:	
	:	Index No.
- against -	:	
	:	
PERMANENT MISSION OF SAUDI ARABIA	:	
TO THE UNITED NATIONS,	:	
	:	
Defendant.	:	
-----x	:	

Plaintiffs SAMIHA ALAYAN ("Alayan") and ZEYAD BARAZANJI ("Barazanji"), by their attorneys, Law Office of Michael L. Ferch, as and for their Complaint, hereby allege as follows:

Preliminary Statement

1. Plaintiffs Alayan and Barazanji bring this civil action against their former employer, the Permanent Mission of Saudi Arabia to the United Nations (the "Mission") for breach of contract, breach of implied-in-fact contract, fraud, and unjust enrichment, in violation of Plaintiffs' rights pursuant to various Federal, New York State and common laws.

2. As a result of Defendant's wrongful conduct, Plaintiffs seek compensatory and punitive damages, as well as interest, costs and attorneys' fees pursuant to applicable laws.

The Parties

3. Plaintiff Samiha Alayan ("Alayan") is a resident of the City of Freeport, County of Nassau, State of New York. Alayan is over 60 years old.

4. Plaintiff Zeyad Barazanji ("Barazangi") is a resident of Riverdale, Borough of the Bronx, County of New York, State of New York. Barazangi is over 60 years old.

5. Defendant Permanent Mission of Saudi Arabia to the United Nations (the "Mission"), has its business located at 809 U.N. Plaza, 10th Floor, New York, New York 10017.

Jurisdiction and Venue

6. The amount in controversy herein exceeds Seventy-Five Thousand (\$75,000) Dollars exclusive of interest and costs.

7. The Court has jurisdiction over Defendant and this action based on the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§1330, 1602 - §1611, and this Court's pendent jurisdiction.

8. The Court has jurisdiction based on the complete diversity of the parties pursuant to 28 U.S.C. §1332.

9. Venue in this District is proper pursuant to 15 U.S.C. §§1391(a)(1) and (2) in that the Defendant transacts business, maintains its principal place of business, and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in, the Southern District of New York.

Statement of Facts

10. Plaintiff Alayan was employed full-time by the Mission

for over 34 years.

11. Alayan was employed as a secretary for the entirety of her employment by the Mission, until she was abruptly terminated by the Mission in or about November 2017.

12. Plaintiff Barazanji was employed full-time by the Mission for over 28 years.

13. Barazanji was employed as a translator for the entirety of his employment by the Mission, until he was abruptly terminated by the Mission in or about November 2017.

The First Contracts

14. The first contracts (hereinafter referred to as the "First Contract" or "First Contracts") were signed by Plaintiffs: in or about October 1984 for Alayan, and in or about July 1989 for Barazanji.

15. The First Contracts provided for a one-year term of employment, automatically renewable unless one of the parties notified the other to the contrary.

16. Under the First Contracts, Plaintiffs were afforded vacation and sick leave, but not health insurance or social security benefits. Severance was also stated as two weeks pay for every year Plaintiffs, respectively, worked for the Mission.

17. The First Contracts were drafted by the Mission and it received no input from Plaintiffs and was not otherwise subject to any negotiation or amendment whatsoever.

The Second Contracts

18. In or about 2009 or 2010, the Mission updated its contract with Plaintiffs ("Second Contract" or "Second Contracts"), yet the two-week's pay for each year of service severance provision remained.

The Third Contracts

19. However, in or about 2014, the Mission changed its contracts again ("Third Contract" or "Third Contracts") to follow the example of all other Arab Missions to the United Nations by stating in its employment contracts that the Mission would pay one-month's last base salary as compensation for each year of service, to be applied retroactively.

20. On the very same day the Third Contracts were discussed with Plaintiffs, then Ambassador to the U.N., Abdallah Yahya A. Al-Mouallimi, stated "I have good news: you are covered with one (1) month of severance for each year of service," or words to that effect.

21. Plaintiffs, and approximately 10-15 other employees, were in a conference room at the Mission's New York City office when they were told and promised this by the Mission's representative.

22. Plaintiffs signed the Third Contracts at that time and were informed by the Mission that it would then sign them and return a fully-executed contract to Plaintiffs.

23. Despite repeated requests thereafter, Plaintiffs never received copies of the fully executed Third Contracts and were informed by or lead to understand by the Mission that these Third Contracts were never fully executed and/or removed from Plaintiffs' personnel files.

24. Nevertheless, Plaintiffs continued to work for the Mission in reliance on the Third Contract and the promise of receiving one month's severance per year of employment should they leave, retire, or be terminated.

Termination and Post-Termination

25. Plaintiffs were both terminated by the Mission in or about November 2017.

26. At that time, again in a meeting in a conference room at the Mission's New York City office with other employees present, the head of Human Resources for the Mission at that time, Mr. Fahad Al-Harbi, and Mr. Ayman Abu Shal, the prior Chief of Finance and Personnel, both promised Plaintiffs one month's severance for each year of employment dating back to their original employment date for their years of loyal service.

27. The Mission was aware of this promise and its obligation to pay the severance amounts as calculated based on a one-month base pay per year of service, as promised and set forth in the Third Contracts, but declined to honor its promise.

28. Mr. Fahad Al-Harbi, stated to Plaintiffs that their respective personnel files did not include any signed, Third Contracts.

29. Prior to Plaintiffs' termination, several other Mission employees were terminated and received one-month severance for each year of employment.

30. In April 2018, Plaintiffs (and many if not all of the terminated employees) were told at the Mission's offices by a group of three nationals who traveled to the Mission from the Kingdom of Saudi Arabia that under no uncertain terms (and under pressure and great duress), that to receive any severance at all, they must sign a severance agreement drafted by the Mission.

31. The severance payment offered to Plaintiffs was approximately Twenty-Two Thousand (\$22,000.00) Dollars (US) each.

32. Plaintiffs were instructed to sign, then pick up their respective checks the very next day, or else they would forfeit any and all rights to severance, and that "the money would be taken right back to Saudi Arabia," or words to that effect.

33. Plaintiffs would not accept the Mission's reversal of its severance policy, promises and contractual obligations, and declined to sign any severance agreement or accept the amount offered by the Mission.

COUNT ONE -- Breach of Contract

34. Plaintiffs re-allege Paragraphs 1 through 33 and

incorporate them by reference with the same force and effect as if fully set forth herein.

35. Plaintiffs and the Mission entered into a revised, Third Contract in or about 2014, which gave Plaintiffs one-month's severance at their last pay rate for every year worked for the Mission.

36. Plaintiffs dutifully and diligently worked for the Mission pursuant to the terms and conditions of the Third Contract until their termination by the Mission.

37. The Mission breached the Third Contract by failing to honor the Third Contract severance provisions.

38. Accordingly, Plaintiffs were damaged by the Mission's breach of contract.

COUNT TWO -- Breach of Implied-in-Fact Contract

39. Plaintiffs re-allege Paragraphs 1 through 38 and incorporate them by reference with the same force and effect as if fully set forth herein.

40. Plaintiffs were employed by the Mission and worked faithfully and loyally for decades.

41. The Mission promised Plaintiffs that they would receive severance amounting to one month's pay for each year of service for the Mission.

42. All parties understood this agreement, and the Mission

clearly and unequivocally expressed its intention to provide said severance compensation to Plaintiffs.

43. The Mission provided other terminated employees with one month's severance at their last pay rate for every year worked for the Mission.

44. Defendant Mission failed to honor its arrangement with Plaintiffs.

45. Accordingly, Plaintiffs were damaged by the Mission's breach of the parties' implied contract.

COUNT THREE -- Fraud

46. Plaintiffs re-allege Paragraphs 1 through 45 and incorporate them by reference with the same force and effect as if fully set forth herein.

47. Separate and apart from Plaintiffs contracting to receive a more generous severance pursuant to their Third Contracts, the Mission and its representatives fraudulently misrepresented to Plaintiffs (and many other terminated Mission workers) that, indeed, they would receive the severance as promised.

48. Based on the statements by the Mission and its individual representatives as alleged hereinabove, the Mission fraudulently induced Plaintiffs to work and continue working for the Mission, all the while realizing it was enticing Plaintiffs to

work for the Mission under the false promise of increased and retroactive severance.

49. The Mission and its representatives were reckless in making such false, fraudulent, and misleading statements to Plaintiffs.

50. Accordingly, Plaintiffs were damaged by the Mission's breach of the parties' implied contract.

COUNT FOUR - Unjust Enrichment

51. Plaintiffs re-allege Paragraphs 1 through 50 and incorporate them by reference with the same force and effect as if fully set forth herein.

52. The Mission promised Plaintiffs one-month's severance. By refusing to pay Plaintiffs as promised, the Mission has been enriched at the expense of Plaintiffs by failing to pay any severance, let alone the one-month severance.

53. It is unjust for the Mission to withhold and keep severance monies promised and rightfully belonging to Plaintiffs.

Prayer for Relief

WHEREFORE, Plaintiffs demand compensatory and punitive damages from Defendant, in an amount to be determined by this Court, but in no event less than One Hundred Twenty-Nine Thousand Seven Hundred Forty-Three Dollars and Eighty-Two Cents (\$129,743.82 (US)) for Plaintiff Alayan, and One Hundred Thirty-One Thousand Seven Hundred Ninety Dollars (\$131,790.00 (US)) for contractual


damages, punitive damages in an amount to be determined by this Court, the costs and disbursements of this action, including reasonable attorneys' fees, all applicable interest, and any and all such other and further relief to Plaintiffs that this Court deems just and proper.

Dated: New York, New York
October 31, 2018

Yours, etc.,

PLAINTIFFS SAMIHA ALAYAN and
ZEYAD BARAZANJI

LAW OFFICE OF MICHAEL L. FERCH

By: 
Michael L. Ferch [MF6211]
*Attorneys for Samiha Alayan and
Zeyad Barazanji*
280 Madison Avenue #912
New York, New York 10016
Tel: (212) 757-2520
Fax: (718) 972-4505
michael@ferchlaw.com

Certificate of Accuracy

On this 4th day of February 2019 personally appeared before me
Abduljabbar Yousif, who after being duly sworn, stated:

that he is a translator/reviser of the Arabic and English languages by
profession and as such is connected with the New York Times; that he is
thoroughly conversant with these languages; that the attached translation is
a true and correct version of such original to the best of his knowledge.

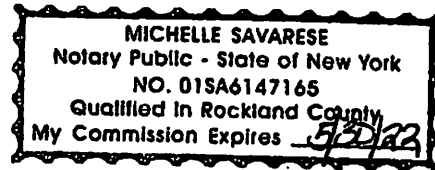
Subscribed and sworn to before me on this 4th day of February 2019.

Translator

Abduljabbar Yousif

Notary Public

Michelle Savarese



Certificate of Accuracy

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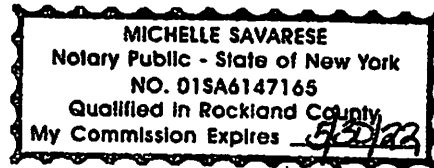
Subscribed and sworn to before me on this 4th day of February 2019.

Translator

Abduljabbar Yousif

Notary Public

Michelle Savarese



Foreign Sovereign Immunities Act of 1976, as amended,
28 USC 1330, and 28 USC 1602 et seq.

§1330. Actions against foreign states

(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605–1607 of this title or under any applicable international agreement.

(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service has been made under section 1608 of this title.

(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605–1607 of this title.

§1602. Findings and declaration of purpose

The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts insofar as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

§1603. Definitions

For purposes of this chapter—

(a) A "foreign state", except as used in section 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

(b) An "agency or instrumentality of a foreign state" means any entity—

(1) which is a separate legal person, corporate or otherwise, and

(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

(3) which is neither a citizen of a State of the United States as defined in section 1332 (c) and (e) of this title, nor created under the laws of any third country.

(c) The "United States" includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(d) A "commercial activity" means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

(e) A "commercial activity carried on in the United States by a foreign state" means commercial activity carried on by such state and having substantial contact with the United States.

§1604. Immunity of a foreign state from jurisdiction

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605 to 1607 of this chapter.

§1605. General exceptions to the jurisdictional immunity of a foreign state

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

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

(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;

(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue;

(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to—

(A) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function regardless of whether the discretion be abused, or

(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights; or

(6) in which the action is brought, either to enforce an agreement made by the foreign state with or for the benefit of a private party to submit to arbitration all or any differences which have arisen or which may arise between the parties with respect to a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration under the laws of the United States, or to confirm an award made pursuant to such an agreement to arbitrate, if (A) the arbitration takes place or is intended to take place in the United States, (B) the agreement or award is or may be governed by a treaty or other international agreement in force for the United States calling for the recognition and enforcement of arbitral awards, (C) the underlying claim, save for the agreement to arbitrate, could have been brought in a United States court under this section or section 1607, or (D) paragraph (1) of this subsection is otherwise applicable.

(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state: *Provided*, That—

(1) notice of the suit is given by delivery of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; and if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit, the service of process of arrest shall be deemed to constitute valid delivery of such notice, but the party bringing the suit shall be liable for any damages sustained by the foreign state as a result of the arrest if the party bringing the suit had actual or constructive knowledge that the vessel or cargo of a foreign state was involved; and

(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days either of the delivery of notice as provided in paragraph (1) of this subsection or, in the case of a party who was unaware that the vessel or cargo of a foreign state was involved, of the date such party determined the existence of the foreign state's interest.

(c) Whenever notice is delivered under subsection (b)(1), the suit to enforce a maritime lien shall thereafter proceed and shall be heard and determined according to the principles of law and rules of practice of suits in rem whenever it appears that, had the vessel been privately owned and possessed, a suit in rem might have been maintained. A decree against the foreign state may include costs of the suit and, if the decree is for a money judgment, interest as ordered by the court, except that the court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose. Such value shall be determined as of the time notice is served under subsection (b)(1). Decrees shall be subject to appeal and revision as provided in other cases of admiralty and maritime jurisdiction. Nothing shall preclude the plaintiff in any proper case from seeking relief in personam in the same action brought to enforce a maritime lien as provided in this section.

(d) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any action brought to foreclose a preferred mortgage, as defined in section 31301 of title 46. Such action shall be brought, heard, and determined in accordance with the provisions of chapter 313 of title 46 and in accordance with the principles of law and rules of practice of suits in rem, whenever it appears that had the vessel been privately owned and possessed a suit in rem might have been maintained.

[(e), (f) Repealed. Pub. L. 110–181, div. A, title X, §1083(b)(1)(B), Jan. 28, 2008, 122 Stat. 341.]

(g) Limitation on Discovery.—

(1) In general.—(A) Subject to paragraph (2), if an action is filed that would otherwise be barred by section 1604, but for section 1605A or section 1605B, the court, upon request of the Attorney General, shall stay any request, demand, or order for discovery on the United States that the Attorney General certifies would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action, until such time as the Attorney General advises the court that such request, demand, or order will no longer so interfere.

(B) A stay under this paragraph shall be in effect during the 12-month period beginning on the date on which the court issues the order to stay discovery. The court shall renew the order to stay discovery for additional 12-month periods upon motion by the United States if the Attorney General certifies that discovery would significantly interfere with a criminal investigation or prosecution, or a national security operation, related to the incident that gave rise to the cause of action.

(2) Sunset.—(A) Subject to subparagraph (B), no stay shall be granted or continued in effect under paragraph (1) after the date that is 10 years after the date on which the incident that gave rise to the cause of action occurred.

(B) After the period referred to in subparagraph (A), the court, upon request of the Attorney General, may stay any request, demand, or order for discovery on the United States that the court finds a substantial likelihood would—

(i) create a serious threat of death or serious bodily injury to any person;

(ii) adversely affect the ability of the United States to work in cooperation with foreign and international law enforcement agencies in investigating violations of United States law; or

(iii) obstruct the criminal case related to the incident that gave rise to the cause of action or undermine the potential for a conviction in such case.

(3) Evaluation of evidence.—The court's evaluation of any request for a stay under this subsection filed by the Attorney General shall be conducted ex parte and in camera.

(4) Bar on motions to dismiss.—A stay of discovery under this subsection shall constitute a bar to the granting of a motion to dismiss under rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure.

(5) Construction.—Nothing in this subsection shall prevent the United States from seeking protective orders or asserting privileges ordinarily available to the United States.

(h) Jurisdictional Immunity for Certain Art Exhibition Activities.—

(1) In general.—If—

(A) a work is imported into the United States from any foreign state pursuant to an agreement that provides for the temporary exhibition or display of such work entered into between a foreign state that is the owner or custodian of such work and the United States or one or more cultural or educational institutions within the United States;

(B) the President, or the President's designee, has determined, in accordance with subsection (a) of Public Law 89–259 (22 U.S.C. 2459(a)), that such work is of cultural significance and the temporary exhibition or display of such work is in the national interest; and

(C) the notice thereof has been published in accordance with subsection (a) of Public Law 89–259 (22 U.S.C. 2459(a)),

any activity in the United States of such foreign state, or of any carrier, that is associated with the temporary exhibition or display of such work shall not be considered to be commercial activity by such foreign state for purposes of subsection (a)(3).

(2) Exceptions.—

(A) Nazi-era claims.—Paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and—

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a covered government during the covered period;

(iii) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and

(iv) a determination under clause (iii) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(B) Other culturally significant works.—In addition to cases exempted under subparagraph (A), paragraph (1) shall not apply in any case asserting jurisdiction under subsection (a)(3) in which rights in property taken in violation of international law are in issue within the meaning of that subsection and—

(i) the property at issue is the work described in paragraph (1);

(ii) the action is based upon a claim that such work was taken in connection with the acts of a foreign government as part of a systematic campaign of coercive confiscation or misappropriation of works from members of a targeted and vulnerable group;

(iii) the taking occurred after 1900;

(iv) the court determines that the activity associated with the exhibition or display is commercial activity, as that term is defined in section 1603(d); and

(v) a determination under clause (iv) is necessary for the court to exercise jurisdiction over the foreign state under subsection (a)(3).

(3) Definitions.—For purposes of this subsection—

(A) the term "work" means a work of art or other object of cultural significance;

(B) the term "covered government" means—

(i) the Government of Germany during the covered period;

(ii) any government in any area in Europe that was occupied by the military forces of the Government of Germany during the covered period;

(iii) any government in Europe that was established with the assistance or cooperation of the Government of Germany during the covered period; and

(iv) any government in Europe that was an ally of the Government of Germany during the covered period; and

(C) the term "covered period" means the period beginning on January 30, 1933, and ending on May 8, 1945.

§1606. Extent of liability

As to any claim for relief with respect to which a foreign state is not entitled to immunity under section 1605 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state except for an agency or instrumentality thereof shall not be liable for punitive damages; if, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been

construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

§1607. Counterclaims

In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim—

- (a) for which a foreign state would not be entitled to immunity under section 1605 or 1605A of this chapter had such claim been brought in a separate action against the foreign state; or
- (b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or
- (c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

§1608. Service; time to answer; default

(a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or

(4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services—and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

As used in this subsection, a "notice of suit" shall mean a notice addressed to a foreign state and in a form prescribed by the Secretary of State by regulation.

(b) Service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

(1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

(2) if no special arrangement exists, by delivery of a copy of the summons and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States; or in accordance with an applicable international convention on service of judicial documents; or

(3) if service cannot be made under paragraphs (1) or (2), and if reasonably calculated to give actual notice, by delivery of a copy of the summons and complaint, together with a translation of each into the official language of the foreign state—

(A) as directed by an authority of the foreign state or political subdivision in response to a letter rogatory or request or

(B) by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

(C) as directed by order of the court consistent with the law of the place where service is to be made.

(c) Service shall be deemed to have been made—

(1) in the case of service under subsection (a)(4), as of the date of transmittal indicated in the certified copy of the diplomatic note; and

(2) in any other case under this section, as of the date of receipt indicated in the certification, signed and returned postal receipt, or other proof of service applicable to the method of service employed.

(d) In any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.

(e) No judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service in this section.

§1609. Immunity from attachment and execution of property of a foreign state

Subject to existing international agreements to which the United States is a party at the time of enactment of this Act the property in the United States of a foreign state shall be immune from attachment arrest and execution except as provided in sections 1610 and 1611 of this chapter.

§1610. Exceptions to the immunity from attachment or execution

(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, or

(2) the property is or was used for the commercial activity upon which the claim is based, or

(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

(4) the execution relates to a judgment establishing rights in property—

(A) which is acquired by succession or gift, or

(B) which is immovable and situated in the United States: *Provided*, That such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment, or

(6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement, or

(7) the judgment relates to a claim for which the foreign state is not immune under section 1605A or section 1605(a)(7) (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved with the act upon which the claim is based.

(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a

judgment entered by a court of the United States or of a State after the effective date of this Act, if—

(1) the agency or instrumentality has waived its immunity from attachment in aid of execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605(a)(2), (3), or (5) or 1605(b) of this chapter, regardless of whether the property is or was involved in the act upon which the claim is based, or

(3) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of section 1605A of this chapter or section 1605(a)(7) of this chapter (as such section was in effect on January 27, 2008), regardless of whether the property is or was involved in the act upon which the claim is based.

(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if—

(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

(e) The vessels of a foreign state shall not be immune from arrest in rem, interlocutory sale, and execution in actions brought to foreclose a preferred mortgage as provided in section 1605(d).

(f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)),¹ section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701–1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign

state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.

(B) Subparagraph (A) shall not apply if, at the time the property is expropriated or seized by the foreign state, the property has been held in title by a natural person or, if held in trust, has been held for the benefit of a natural person or persons.

(2)(A) At the request of any party in whose favor a judgment has been issued with respect to a claim for which the foreign state is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A, the Secretary of the Treasury and the Secretary of State should make every effort to fully, promptly, and effectively assist any judgment creditor or any court that has issued any such judgment in identifying, locating, and executing against the property of that foreign state or any agency or instrumentality of such state.

(B) In providing such assistance, the Secretaries—

(i) may provide such information to the court under seal; and

(ii) should make every effort to provide the information in a manner sufficient to allow the court to direct the United States Marshall's office to promptly and effectively execute against that property.

(3) Waiver.—The President may waive any provision of paragraph (1) in the interest of national security.

(g) Property in Certain Actions.—

(1) In general.—Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property;

or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

(2) United states sovereign immunity inapplicable.—Any property of a foreign state, or agency or instrumentality of a foreign state, to which paragraph (1) applies shall not be immune from attachment in aid of execution, or execution, upon a judgment entered under section 1605A because the property is regulated by the United States Government by reason of action taken against that foreign state under

the Trading With the Enemy Act or the International Emergency Economic Powers Act.

(3) Third-party joint property holders.—Nothing in this subsection shall be construed to supersede the authority of a court to prevent appropriately the impairment of an interest held by a person who is not liable in the action giving rise to a judgment in property subject to attachment in aid of execution, or execution, upon such judgment.

§1611. Certain types of property immune from execution

(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if—

(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

(2) the property is, or is intended to be, used in connection with a military activity and

(A) is of a military character, or

(B) is under the control of a military authority or defense agency.

(c) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution in an action brought under section 302 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 to the extent that the property is a facility or installation used by an accredited diplomatic mission for official purposes.

محكمة الولايات المتحدة المحلية

لمقاطعة نيويورك الجنوبية

المشتكيان

سميحة عليان وزياد برزنجي

الدعوى المدنية رقم 18-10068،
18-cv-10068

المشتكى عليه

البعثة الدائمة للمملكة العربية السعودية
لدى الأمم المتحدة

أمر استدعاء في دعوى مدنية

إلى: (اسم المشتكى عليه وعنوانه) البعثة الدائمة للمملكة العربية السعودية لدى الأمم المتحدة
بواسطة سفارة المملكة العربية السعودية في واشنطن، DC 20037
The Embassy of the Kingdom of Saudi Arabia

601 New Hampshire Avenue, NW Washington, DC 20037

لقد تم رفع دعوى ضدكم

يجب عليكم في غضون 60 يوما بعد تبليغكم بأمر الاستدعاء هذا (لا يُحسب اليوم الذي تتسلمون به التبليغ) أو في غضون 60 يوما إذا كنت الولايات المتحدة أو وكالة تابعة لولايات المتحدة، أو موظف أو موظف تابع للولايات المتحدة الموصوفة في القواعد الداخلية للإجراءات المدنية. الفقرة 12 (أ) (2) أو (3) -الرد على الشكوى المرفقة المقدمة من المشتكى أو على أو الطلب المقدم بموجب القاعدة 12 من القواعد الاتحادية للإجراءات المدنية. ويجب إبلاغ الرد إلى المشتكى أو محامي المشتكى المبين اسمه وعنوانه فيما يلي:

Michael L. Ferch, Esq.

Law Office of Michael L. Ferch

280 Madison Avenue #912

New York, New York 10016

مايكل ل. فريتش المحامي.

المكتب القانوني لمايكل ل. فريتش

280 مديسون أفينيو، غرفة رقم 912

نيويورك، نيويورك 10016

إذا لم تبعثوا بالرد على ذلك، سيصدر الحكم اقتراضيا ضدكم فيما يتعلق بالتعويض المطالب به في الشكوى. يجب عليكم أيضا تقديم ردمكم أو الائتماس الخاص بكم إلى المحكمة.

كاتب المحكمة

التاريخ:

توقيع كاتب المحكمة أو نائبه

أمر استدعاء في دعوى مدنية (الصفحة 2) (Rev. 06/12) AO 440

الدعوى المدنية رقم 18-10068، 18-cv-10068

مصدقة تبليغ

(لا يجوز تقديم هذا القسم إلى المحكمة إلا وفقا لما تتطلبه القواعد الداخلية للإجراءات المدنية، الفقرة 12)

أمر الاستدعاء هذا يخص (اسم الفرد واللقب، إن وجدا) _____

استلمته شخصيا في (التاريخ) _____.

قمت أنا شخصيا بتسليم أمر الاستدعاء للشخص في (المكان) _____

في (التاريخ) _____ ؛ أو

كت أمر الاستدعاء في مكان سكن الشخص أو مكان إقامته المعتاد مع (اسم الشخص) _____

، وهو شخص بالغ ومدرك هناك، في (التاريخ) _____ وأرسل

بالبريد نسخه إلى آخر عنوان معروف لذلك الشخص؛ أو

قمت أنا شخصيا بتسليم أمر الاستدعاء إلى (اسم الشخص) _____ المحدد بموجب

القانون لقبول طلب الاستدعاء بالنيابة عن (اسم المنظمة) _____

في (التاريخ) _____ ؛ أو

أرجعت أمر الاستدعاء غير منفذ بسبب _____ ؛ أو

لأسباب أخرى (انكرها):

تكلفة أتعابي _____ دولار ومصاريف سفر _____ دولار مقابل خدمة التبليغ ما

مجموعه _____ دولار

أعلن تحت طائلة الحنث بالشهادة ان هذه المعلومات صحيحة.

التاريخ: _____

توقيع الشخص الذي قام بالتبليغ

الاسم والمنصب:

عنوان الشخص الذي قام بالتبليغ

معلومات إضافية تتعلق بمحاولة التبليغ، وما إلى ذلك:

محكمة الولايات المتحدة المحلية
الدائرة القضائية لجنوب نيويورك
سميحة عليان وزياى برزنجي،
المدعيان،

شكوى

- ضد -

البعثة الدائمة للمملكة العربية السعودية
لدى الأمم المتحدة،
المدعى عليه
رقم المرجع

المدعيان سميحة عليان (عليان) وزياى برزنجي (برزنجي) يدعيان، بواسطة محاميهما، المكتب القانوني لمايكل ل. فيرش، بما يرد فيما يلي:

بيان تمهيدي

- 1- تقدم المدعيان عليان وبرزنجي بهذه الدعوى المدنية ضد رب عملهما السابق، البعثة الدائمة للمملكة العربية السعودية لدى الأمم المتحدة ("البعثة") لإخلالها بالعقد، وخرقها لعقد ضمني بحكم الواقع، والغش، والإثراء الجائر، مما يشكل انتهاكا لحقوق المدعين عملا بمختلف قوانين الدولة الاتحادية وقوانين ولاية نيويورك والقوانين العامة.
- 2- نتيجة للسلوك غير المشروع للمدعى عليه، يلتمس المدعيان تعويضا عن الأضرار التي لحقت بهما ويطالبان أيضا بتعويضات عقابية، فضلا عن الفوائد، والتكاليف وأتعاب المحامين، وفقا للقوانين المعمول بها.

أطراف الشكوى

3- المدعية سميحة عليان ("عليان") تقيم في مدينة فريبورت، مقاطعة ناسو، ولاية نيويورك. عليان عمرها أكثر من 60 عاما.

4- المدعي زياد برزنجي ("برزنجي") يقيم في ريفرديل، حي برونكس، مقاطعة نيويورك، ولاية نيويورك. برزنجي عمره أكثر من 60 عاما.

5- الطرف المدعى عليه البعثة الدائمة للمملكة العربية السعودية لدى الأمم المتحدة ("البعثة")، ويقع مقر عملها في المبنى الكائن في 809 U.N. Plaza, 10th Floor, New York, New York 10017.

الاختصاص القضائي والمكاني

6- المبلغ موضع الخلاف هنا يتجاوز خمسة وسبعين ألف دولار (75,000 دولار) إضافة إلى الفوائد والتكاليف.

7- المحكمة لديها الاختصاص القضائي للنظر في القضية المقامة على المدعى عليه، ويرتكز هذا الإجراء القضائي على قانون الحصانات السيادية الخارجية للأجانب ("FSIA")، الفقرات 1330، و1602 إلى 1611 من المادة 28 من قانون الولايات المتحدة والاختصاص القضائي الاستثنائي لهذه المحكمة.

8- وإن المحكمة لديها الاختصاص القضائي استنادا إلى التنوع الكامل للأطراف، وذلك عملا بالفقرة 1332 من المادة 28 من قانون الولايات المتحدة.

9- ومكان النظر في الدعوى هو المكان المناسب في هذه المنطقة المحلية، وذلك عملا بالفقرة 1391 (أ) (1) و (2) من المادة 15 من قانون الولايات المتحدة لكون المدعى عليه يعمل فيها، ويحتفظ فيها بحيز مكاني رئيسي يدير منه عمله، والقدر الكبير من هذه الأعمال أو الامتناع عن القيام بالأعمال يعطي سببا لرفع دعاوى المدعين أمام المحكمة الواقعة في المنطقة الجنوبية لولاية نيويورك.

بيان الوقائع

10- وظّفت البعثة المدعية عليان لديها للعمل على نحو متفرغ وكامل لمدة تزيد على 34 عاماً.

11- عملت عليان بصفة سكرتيرة طوال فترة توظيفها من قبل البعثة، إلى أن قامت البعثة فجأة بإنهاء خدماتها في أو نحو شهر تشرين الثاني/نوفمبر 2017.

12- وظّفت البعثة المدعي برزنجي لديها على نحو متفرغ وكامل للعمل لمدة تزيد على 28 عاماً.

13- عمل برزنجي بصفة مترجم طوال فترة توظيفه من قبل البعثة، إلى أن قامت البعثة فجأة بإنهاء خدماته في أو نحو شهر تشرين الثاني/نوفمبر 2017.

العقود الأولى

14- العقود الأولى (يشار إليها فيما بعد (" بالعقد الأول" أو العقود الأولى") والتي تم توقيعها في أو حوالي تشرين الأول/أكتوبر 1984 بالنسبة لعليان، وفي أو حوالي تموز/يوليه 1989 بالنسبة لبرزنجي.

15- العقود الأولى تنص على التوظيف لمدة سنة واحدة، وتجدد تلقائياً إلا إذا أخطر أحد الأطراف الطرف الآخر بخلاف ذلك.

16- بموجب العقود الأولى، أتيحت للمدعين فوائد العطلة والإجازة المرضية، ولكن من دون منحهما أي تأمين صحي أو ضمان اجتماعي. وورد في العقود الأولى أيضاً تعويض إنهاء الخدمة بمقدار أسبوعين لكل سنة واصل المدعيان فيها، على التوالي، العمل في البعثة.

17- قامت البعثة بصياغة العقود الأولى، ولم يساهم في صياغتها أي من المدعين ولم تخضع لأي تفاوض أو تعديل على الإطلاق

العقود الثانية

18- في أو حوالي عام 2009 أو 2010، عملت البعثة على تحديث العقد الذي أبرمته مع المدعين (العقد الثاني أو العقود الثانية)، ومع ذلك بقي مقدار التعويض عند إنهاء الخدمة راتب أسبوعين عن كل سنة من الخدمة.

العقود الثالثة

19- ولكن، في أو حوالي عام 2014، غيّرت البعثة عقودها مرة أخرى (العقد الثالث أو العقود الثالثة) لكي تحذو حذو سائر البعثات العربية لدى الأمم المتحدة بأن جعلت عقودها مع الموظفين تنص على دفع البعثة مبلغاً قدره شهراً من الراتب الأساسي كتعويض عن كل سنة من سنوات الخدمة، على أن يُطبق ذلك بأثر رجعي.

20- في ذات اليوم الذي جرى فيه النقاش بشأن العقود الثالثة مع المدعين، قال السفير السعودي لدى الأمم المتحدة، عبد الله يحيى المعلمي: " لدي أخبار جيدة، إنكم مشمولون بتعويض مكافأة نهاية الخدمة بمبلغ مقداره راتب شهر واحد (1) عن كل سنة من سنوات الخدمة"، أو بعبارة أخرى بهذا المعنى.

21- حضر ذلك الاجتماع المدعيان وموظفون آخرون في البعثة يتراوح عددهم من 10 إلى 15 موظفاً، وعقد ذلك الاجتماع في غرفة الاجتماعات بمقر البعثة في مدينة نيويورك، وفي ذلك الاجتماع أخبر ممثل البعثة الموظفين بذلك ووعدهم بتنفيذه.

22- وقع المدعيان العقود الثالثة في ذلك الوقت وأبلغتهم البعثة بأنها ستوقع على العقود وتعيدها إلى المدعين مستوفية تماماً الشروط القانونية.

23- على الرغم من الوعود المتكررة بعد ذلك، لم يتسلم المدعيان قط نسخاً من العقد الثالث موقعة ومستوفية الشروط القانونية بالكامل، ولم يتم إبلاغهما نصاً أو ضمناً بأن العقود الثالثة هذه لم تستكمل قط و/أو أنها أزيلت من الملفات الشخصية للمدعين.

24- على الرغم من ذلك، واصل المدعيان العمل في البعثة اعتماداً على العقد الثالث والوعد بالحصول على شهر تعويض عن كل سنة قضياها في العمل، في حالة تركهما العمل أو تقاعدهما أو إنهاء خدماتهما.

إنهاء الخدمة وما بعد إنهاء الخدمة

25- أنهت البعثة خدماتهما في أو حوالي تشرين الثاني/نوفمبر 2017.

26- في ذلك الوقت، ومرة أخرى، في اجتماع حضره موظفون آخرون في البعثة، عُقد في غرفة الاجتماعات في مكتب البعثة بمدينة نيويورك، وحضره أيضا السيد فهد الحربي، رئيس قسم شؤون الموظفين في البعثة في ذلك الحين، والسيد أيمن أبو شال، الرئيس الأسبق لقسم الشؤون المالية وشؤون الموظفين، وعدا كلاهما المدعين بأنهما سيتسلمان مكافأة نهاية الخدمة، وهي راتب شهر واحد عن كل سنة من سنوات الخدمة واعتبارا من التاريخ الأصلي الذي بدأ به العمل عن سنوات الخدمة المخلصة.

27- كانت البعثة على علم بهذا الوعد وبواجبها بدفع المبالغ المستحقة بسبب إنهاء الخدمة بمقدار شهر من الراتب الأساسي عن كل سنة من سنوات الخدمة، كما تم الوعد بذلك، وكما نصت عليه العقود الثالثة، غير أن البعثة نكثت بوعدھا.

28- قال السيد فهد الحربي للمدعين إن ملفاتهما الشخصية خالية من أي عقود ثالثة موقعة.

29- قبل إنهاء خدمات المدعين، أُهيت خدمات عدة موظفين آخرين في البعثة وتلقوا تعويضا مقداره راتب شهر واحد عن كل سنة من سنوات الخدمة.

30- في نيسان/أبريل عام 2018، وفي اجتماع في مكتب البعثة جرى إبلاغ المدعين (والعديد إن لم يكن جميع الموظفين الذين أُهيت خدماتهم) من قبل مجموعة مؤلفة من ثلاثة أشخاص سعوديين سافروا إلى البعثة من المملكة العربية السعودية، أبلغوهم بشكل لا لبس فيه (وتحت قدر كبير من الضغط والإكراه)، بأنهم حتى يتسلموا أي مبلغ على الإطلاق كتعويض عن إنهاء الخدمة، يتعين عليهم أن يوقعوا على اتفاق يتعلق بالتعويض عن إنهاء الخدمة وتصيغه البعثة.

31- عُرض على المدعين تعويض عن إنهاء الخدمة قيمته حوالي اثنين وعشرين ألف دولار (22,000.00 دولار) (من دولارات الولايات المتحدة).

32- صدرت تعليمات للمدعين بأنهما يجب أن يوقعا أولا وبعد ذلك يتسلم كل منهما شيكا خاصا به في اليوم التالي تحديدا، وأنهما، "بخلاف ذلك، سيفقدان أي أو كل حقوق لهما واستعاد تلك المبالغ إلى السعودية،" أو بعبارة أخرى بهذا المعنى.

33- لم يقبل المدعيان بنقض البعثة لسياسة تعويض إنهاء الخدمة ونكثها الوعد بذلك، والالتزامات التعاقدية، ورفضاً التوقيع على أي اتفاق يتعلق بتعويض إنهاء الخدمة أو قبول المبلغ الذي عرضته البعثة.

الاتهام الأول- خرق العقد

34- يكرر المدعيان ادعاءهما الوارد في الفقرات من 1 إلى 33 وإن كل ما جاء فيها جزء لا يتجزأ مما سيرد ذكره تالياً وبنفس القوة والفعالية.

35- أبرم المدعيان والبعثة عقداً منقحا ثالثاً في أو حوالي عام 2014 أعطى المدعين مكافأة شهر واحد عن آخر راتب تقاضاه عن كل سنة عمل في البعثة.

36- عمل المدعيان في البعثة بجد وعلى النحو الواجب ولم يدخرا أي جهد وفقاً لشروط العقد الثالث إلى أن أنهت البعثة خدماتيهما.

37- لقد خرقت البعثة العقد الثالث بعدم وفائها بالأحكام المتعلقة بدفع تعويض نهاية الخدمة.

38- وبناءً على ذلك، لحقت بالمدعين أضرار بسبب خرق البعثة للعقد.

الاتهام الثاني- خرق عقد ضمني بحكم الواقع.

39- يكرر المدعيان ادعاءهما الوارد في الفقرات من 1 إلى 38 وإن كل ما جاء فيها جزء لا يتجزأ مما سيرد ذكره تالياً وبنفس القوة والفعالية.

40- وظفت البعثة المدعين وعمالاً فيها بصدق وإخلاص لعقود من الزمن.

41- وعدت البعثة المدعين بأنهما سيحصلان على تعويض نهاية الخدمة مقداره راتب شهر عن كل سنة خدمة في البعثة.

42- كانت جميع الأطراف تفهم هذا الاتفاق، وأعربت البعثة بوضوح وبشكل لا لبس فيه عن عزمها على دفع تعويض نهاية الخدمة للمدعين.

43- دفعت البعثة لموظفين آخرين كانت قد أنهت خدماتهم مكافأة قدرها شهرا واحدا، وفقا لآخر راتب تقاضوه، عن كل سنة عملوا فيها في البعثة.

44- أخفقت البعثة المدعى عليها في الوفاء ببنود ترتيباتها مع المدعين.

45- ووفقا لذلك، تضرر المدعيان جراء خرق البعثة لعقد ضمني بحكم الواقع.

الاتهام الثالث - الغش

46- يكرر المدعيان ادعاءهما الوارد في الفقرات من 1 إلى 45 وإن كل ما جاء فيها جزء لا يتجزأ مما سيرد ذكره تاليا وبنفس القوة والفعالية.

47- قامت البعثة وممثلوها، على نحو منفصل ومستقل عن تعاقد المدعين لتلقي تعويض أسخى عن إنهاء الخدمة، وفقا لعقدتهما الثالث، وكان ذلك عن طريق الغش من جانبهم، بتحريف معلومات خاطئة أعطتها للمدعين (ولموظفين آخرين كثيرين من الذين أنهت البعثة خدماتهم) مفادها بأنهم سيتلقون بالفعل تعويضا عن إنهاء الخدمة كما ووعدوا به.

48- استنادا إلى بيانات البعثة والأفراد الذين يمثلونها، كما أدعي أعلاه، قامت البعثة عن طريق الغش، ببحث المدعين على العمل والاستمرار في العمل في البعثة، مع أنها كانت تدرك في الوقت نفسه بأنها تفرر بالمدعين للعمل في البعثة بتقديم وعد زائف لهما بزيادة تعويض إنهاء الخدمة وسريانه بأثر رجعي.

49- استهزت البعثة وممثلوها بالمدعين بأن قدموا لها هذه البيانات الكاذبة والزائفة والمضللة.

50- وبناء على ذلك، تضرر المدعيان جراء خرق البعثة للعقد الضمني.

الاتهام الرابع - الإثراء الجائر

51- يكرر المدعيان ادعاءهما الوارد في الفقرات من 1 إلى 50 وإن كل ما جاء فيها جزء لا يتجزأ مما سيرد ذكره تاليا وبنفس القوة والفعالية.

52- وعدت البعثة المدعين بأن تدفع لهما راتب شهر عن كل سنة خدمة كتعويض عن إنهاء الخدمة، وبذلك فإن البعثة أثرت على حساب المدعين بالامتناع عن دفع أي مكافأة لهما، ناهيك عن مبلغ راتب شهر عن كل سنة خدمة كتعويض نهاية الخدمة.

53- إنه لمن المجحف أن تحجب البعثة أموال تعويض نهاية الخدمة وتحتفظ بها - وهي أموال تعود بحق المدعين.

التماس عدالة المحكمة بالتعويض عن الضرر

يطالب المدعيان، بما يقضي، المدعي عليه، بدفع تعويضات عن الخسائر المتكبدة وتعويضات عقابية بمبلغ يُترك تحديده لهذه المحكمة، ولكن لا يجوز بأي حال من الأحوال أن يقل عن مائة وتسعة وعشرين ألفا وسبعمائة وثلاثة وأربعين دولارا واثنتين وثمانين سنتا (\$129,743.82) إلى المدعية عليان، ولا يقل عن مائة وواحد وثلاثين ألفا وسبعمائة وتسعين دولارا (\$131,790.00) إلى المدعي زياد برزنجي، بالإضافة إلى التعويضات عن الأضرار التعاقدية والأضرار العقابية، وهو مبلغ تحدده هذه المحكمة، وعن التكاليف والمصروفات الناتجة عن هذا الإجراء، بما في ذلك دفع أتعاب محاماة معقولة، وجميع الفوائد المنطبقة، وكل سبل الانتصاف الأخرى بلا استثناء للمشتكين التي قد تراها المحكمة عادلة ومناسبة.

التاريخ: نيويورك، نيويورك

31 تشرين الأول/أكتوبر، 2018

المخلص، وما إلى ذلك،

المدعيان سميحة عليان

وزياد برزنجي

مكتب المحامي مايكل ل. فيرش

موقعة بخط

مايكل ل. فيرش

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Certificate of Accuracy

On this 16th day of January 2019 personally appeared before me Abduljabbar Yousif, who after being duly sworn stated:

that he is a senior translator/reviser of the Arabic and English languages by profession and as such is connected with the New York Times; that he is thoroughly conversant with these languages; that the attached translation is a true and correct version of such original to the best of his knowledge.

Subscribed and sworn to before me on
this day of January 2019

Translator

Notary Public

الاستئناف والمراجعة على النحو المنصوص عليه في القضايا الأخرى الخاصة بالاختصاص البحري. لا شيء يمنع المدعي في أي قضية ملائمة من التماس الانتصاف في نفس الإجراء الذي اتخذ لإنفاذ الرهن البحري على النحو المنصوص عليه في هذا القانون.

(د) لا تكون الدولة الأجنبية محصنة من الولاية القضائية لمحاكم الولايات المتحدة في أي دعوى ترفع أمامها لاسترداد رهن عقاري مفضل، على النحو المحدد في الفرع 31301 من التشريع 46. ويتم رفع هذه الدعوى والاستماع إليها وتحديدتها وفقا لأحكام الفصل 313 من التشريع 46 ووفقا لمبادئ القانون وقواعد الممارسة المتبعة في الدعاوى العينية، كلما بدا أن ملكية السفينة ملكية خاصة وذات حيازة خاصة، يجوز الإبقاء على أي دعوى عينية.

[(هـ)، (و) ملغاة. القانون العام 110 - 181، الفرع ألف، التشريع العاشر، القانون رقم 1083 (ب) (1) (باء)، الصادر في 28 كانون الثاني/يناير، 2008، مجموعة القوانين الأمريكية الأساسية 122، 341.]
(ز) وضع قيود على اكتشاف المعلومات:

(1) بشكل عام.- (ألف) وفقا للفقرة (2)، إذا قدمت دعوى وكانت محظورة بموجب المادة 1604، باستثناء الفرع 1605 ألف من التشريع أو الفرع 1605باء، تُعلق المحكمة، بناء على طلب وزير العدل، النظر في أي التماس أو طلب أو أمر بشأن اكتشاف معلومات عن الولايات المتحدة مؤداه أن وزير العدل يقرر بأنه سيتدخل بدرجة كبيرة في التحقيق الجنائي أو الملاحقة القضائية، أو في عملية تتعلق بالأمن الوطني، تتصل بالحادث الذي أوجد سبب رفع الدعوى، إلى أن يحين الوقت الذي يقوم فيه وزير العدل بإبلاغ المحكمة بأن هذا الالتماس أو الطلب أو الأمر لم يعد يتطلب أي تدخل من جانبه.

(باء) بموجب هذه الفقرة، يسري مفعول التعليق خلال فترة الاثني عشر شهرا التي تبدأ اعتبارا من التاريخ الذي تصدر فيه المحكمة أمر التعليق بشأن الكشف عن معلومات متصلة بالدعوى. وتجدد المحكمة أمر تعليق الكشف هذا لفترات إضافية لمدة 12 شهرا بناء على طلب من الولايات المتحدة إذا كان وزير العدل **قرر أن** الكشف والبحث عن معلومات سيتداخل بشكل كبير مع التحقيق الجنائي أو الملاحقة القضائية أو أي عملية تتعلق بالأمن القومي، ومتصلة بالحادث الذي أوجد سبب الدعوى.

(2) انتهاء فترة سريان النفاذ.- (ألف) وفقا للفقرة الفرعية (ب)، لا يجوز منح التعليق أو بالاستمرار في نفاذه بموجب المادة (1) بعد انقضاء عشر سنوات على تاريخ وقوع الحادث الذي أوجد سبب رفع الدعوى.

(ب) كانت ناشئة عن معاملة أو حدث هو موضوع دعوى الدولة الأجنبية؛ أو

(ج) ضمن الإطار الذي لا تلتزم فيه الدعوى المضادة الانتصاف الذي

يتجاوز المبلغ النقدي المطلوب من الدولة الأجنبية أو يختلف عنه عينا.

القانون 1608- التبليغ بالدعوى؛ الفترة الزمنية للرد؛ والتخلف عن الرد

(أ) تقوم محاكم الولايات المتحدة ومحاكم الولايات بتبليغ أي دولة أجنبية أو

فرع سياسي تابع لدولة أجنبية بالدعوى المقامة ضدها على النحو التالي:

(1) عن طريق تسليم نسخة من الاستدعاء والشكوى وفقا لأي ترتيب خاص

للتبليغ بين المدعي والدولة الأجنبية أو الفرع السياسي التابع لها؛ أو

(2) إذا لم يكن هناك ترتيب خاص، فيتم التبليغ عن طريق تسليم نسخة من

الاستدعاء والشكوى وفقا لاتفاقية دولية قابلة للتطبيق بشأن التبليغ بالوثائق القضائية؛ أو

(3) إذا تعذر تسليم التبليغ بموجب الفقرتين (1) أو (2)، فيتم إرسال نسخة

من أمر الاستدعاء والشكوى وأشعار بالدعوى، إلى جانب ترجمة كل واحد منها إلى

اللغة الرسمية للدولة الأجنبية، بأي شكل من أشكال البريد الذي يتطلب إيصالا موقعا،

يقوم كاتب المحكمة بكتابة العنوان عليه ويرسله إلى وزير الخارجية في الدولة الأجنبية

المعنية، أو

(4) إذا تعذر تسليم التبليغ في غضون 30 يوما بموجب الفقرة (3)، عن

طريق إرسال نسختين من الاستدعاء والشكوى وإشعار بالدعوى، إلى جانب ترجمة كل

واحد منها إلى اللغة الرسمية للدولة الأجنبية، بأي شكل من أشكال البريد الذي يتطلب

إيصالا موقعا بالاستلام، يقوم كاتب المحكمة بكتابة العنوان عليه ويرسله إلى وزير

الخارجية في واشنطن، مقاطعة كولومبيا، ويكون موجهة إلى عناية مدير الخدمات

القنصلية الخاصة-ويرسل وزير الخارجية نسخة واحدة من **الورقات** إلى الدولة الأجنبية

عن طريق القنوات الدبلوماسية، وترسل إلى كاتب المحكمة نسخة مصدقة من المذكرة

الدبلوماسية التي تشير إلى تاريخ إرسال الأوراق.

كما هو وارد في هذه الفقرة الفرعية، "الإشعار بالدعوى" يقصد به الإشعار

الموجه إلى دولة أجنبية في شكل يحدده وزير الخارجية بموجب اللائحة الخاصة

بالأمر.

(باء) تقوم محاكم الولايات المتحدة ومحاكم الولايات بتبليغ أي وكالة أو

واسطة تابعة لدولة أجنبية وذلك:

(ه) ما إذا كان إنشاء الممتلكات ككيان مستقل سيخول الدولة الأجنبية الاستفادة من الاستحقاقات في محاكم الولايات المتحدة بينما تتحاشى الوفاء بالتزاماتها.

(2) عدم انطباق الحصانة السيادية للولايات المتحدة على: أي ممتلكات لدولة أجنبية، أو وكالة أو واسطة تابعة لدولة أجنبية، تنطبق عليها الفقرة (1) لا تكون محصنة من الحجز التحفظي والمساعدة في التنفيذ، والتنفيذ، بناء على حكم صدر بموجب الفرع 1605 ألف من وذلك لأن الممتلكات تديرها حكومة الولايات المتحدة بسبب إجراء قانوني متخذ ضد تلك الدولة الأجنبية بموجب قانون التجارة مع العدو أو قانون الصلاحيات الاقتصادية الدولية في حالات الطوارئ.

(3) الأطراف الثالثة التي لديها ممتلكات مشتركة: لا يجوز تفسير أي شيء وارد في هذه الفقرة الفرعية على أنه يُبطل سلطة المحكمة للحيلولة بشكل مناسب دون الإخلال بأي مصلحة بحوزة شخص ما غير مسؤول عن الدعوى التي تفضي إلى صدور حكم بشأن الممتلكات الخاضعة للحجز التحفظي للمساعدة في التنفيذ، والتنفيذ، بناء على هذا الحكم.

القانون 1611: أنواع معينة من الممتلكات محصنة من التنفيذ

(أ) على الرغم من أحكام القانون 1610 من هذا الفصل، فإن ممتلكات المنظمات التي يحددها الرئيس لها الحق في التمتع بالامتيازات والإعفاءات والحصانات التي ينص عليها قانون الحصانات للمنظمات الدولية، ولا يجوز أن تخضع للحجز التحفظي أو لأي عملية قضائية أخرى تعوق صرف الأموال إلى دولة أجنبية أو بأمر منها نتيجة لدعوى رُفعت أمام محاكم الولايات المتحدة أو أمام محكمة تابعة لولاية من الولايات.

(ب) على الرغم من أحكام القانون 1610 من هذا الفصل، تكون الممتلكات العائدة لدولة أجنبية محصنة من الحجز التحفظي ومن التنفيذ:

(1) إذا كانت الممتلكات مودعة في مصرف مركزي أجنبي أو لدى سلطة نقد أجنبية لحسابها الخاص، ما لم يكن هذا المصرف أو السلطة، أو حكومتها الأجنبية الأم، قد تنازلت صراحة عن حصانتها من الحجز التحفظي للمساعدة في التنفيذ، أو عن حصانتها من التنفيذ، على الرغم من أي سحب للتنازل الذي قد يدعيه البنك أو السلطة أو الحكومة بأنه لا يكون نافذاً إلا وفقاً لشروط التنازل؛ أو

