

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TENARIS S.A.,

– and –

TALTA-TRADING E MARKETING
SOCIEDADE UNIPessoAL LDA,

Petitioners,

v.

BOLIVARIAN REPUBLIC OF
VENEZUELA,

Respondent.

Civil Action No. 18-1373 (CJN)

**REPLY MEMORANDUM IN SUPPORT OF
PETITIONERS’ MOTION FOR ENTRY OF DEFAULT JUDGMENT**

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Petitioners Tenaris S.A. (“Tenaris”) and Talta-Trading e Marketing Sociedade Unipessoal Lda (“Talta” and, together with Tenaris, “Petitioners”) submit this reply in support of Petitioners’ Motion for Entry of Default Judgment dated November 5, 2019, ECF No. 16.

PRELIMINARY STATEMENT

Respondent, the Bolivarian Republic of Venezuela (“Venezuela”), “does not oppose the imposition of judgment.” Resp’t Mem. in Opp’n 1. The Court should therefore enter default judgment against Venezuela. That judgment should include an award of attorneys’ fees given Venezuela’s brazen, years-long refusal to comply with its legal obligations under the arbitration award underlying this case (the “ICSID award”). Finally, Venezuela’s request that this Court stay enforcement of the judgment because of the current Venezuelan sanctions regime should be rejected as unjustified and redundant.

ARGUMENT

I. Venezuela’s Unjustifiable Refusal to Abide by the ICSID Award Warrants an Award of Attorneys’ Fees and Costs

Attorneys’ fees should be awarded when “a party [is] confronted with a clear [legal] duty [but] is so recalcitrant in performing that duty that the injured party is forced to undertake otherwise unnecessary litigation to vindicate plain legal rights.” *American Hosp. Ass’n v. Sullivan*, 938 F.2d 216, 220 (D.C. Cir. 1991) (quoting *Fitzgerald v. Hampton*, 545 F. Supp. 53, 57 (D.D.C. 1982)). *See also American Employers Ins. Co. v. American Sec. Bank, N.A.*, 747 F.2d 1493, 1502 (D.C. Cir. 1984) (an “exception to the American rule which allows an award of attorneys’ fees [exists] when the party has been the victim of unwarranted, oppressive, or

vexatious conduct on the part of his opponent and has been forced to sue to enforce a plain legal right.”¹

When an arbitration award debtor “unjustifiably refuse[s] to abide by the arbitral award,” the arbitration award creditor may recover reasonable attorneys’ fees and costs. *Concesionaria Dominicana de Autopistas y Carreteras, S.A. v. Dominican State*, 926 F. Supp. 2d 1, 3 (D.D.C. 2013). In *Concesionaria*, the district court granted the arbitration award creditor \$324,932.76 in attorneys’ fees and costs incurred in its action to confirm an arbitration award against a foreign sovereign under 9 U.S.C. §§ 201 *et seq.* *Id.* at 1, 3. In granting the arbitration award creditor’s request for attorneys’ fees, the court considered the fact that the award was issued in January 2012, but as of February 2013 the arbitration award debtor, the Dominican Republic, had neither satisfied the award nor provided assurances that it would pay the sums owed under it. *Id.* at 3. “Simply put, the Dominican Republic . . . ignored [the] arbitral award, and [such] inaction is inherently unjustified and in bad faith.” *Id.*

Venezuela has similarly ignored its legal obligations, and its unjustified failure to satisfy the ICSID award for *over three years* warrants an award of attorneys’ fees. Like the Dominican

¹ In *Miminco, LLC v. Democratic Republic of the Congo*, 79 F. Supp. 3d 213 (D.D.C. 2015), the court denied the arbitration award creditor’s request for attorneys’ fees incurred in its *ex parte* action to confirm an ICSID arbitration award. Respondent, the Democratic Republic of the Congo, had not appeared in the action, so the court found that the respondent had not acted with bad faith “in this litigation.” *Miminco*, 79 F. Supp. 3d at 219. Here, however, not only has Venezuela refused to comply with the ICSID award, but its failure to timely appear necessitated motion practice that, following its belated appearance, was shown to be unnecessary given Venezuela’s admission that judgment should be entered. *See also American Hosp. Ass’n*, 938 F.2d at 219–20 (“Bad faith can support an award of attorneys’ fees in circumstances where the bad faith . . . was an aspect of the conduct giving rise to the lawsuit.”).

Republic in *Concesionaria*, Venezuela has provided no assurance that it will pay Petitioners the sums owed under the ICSID award.²

In its Memorandum in Opposition, Venezuela does not contest the validity of, or the sums owed under, the ICSID award, and does not oppose an entry of judgment in this case. That is, Venezuela understands its legal obligations but has simply chosen to ignore them.³ In these circumstances, Venezuela’s “refus[al] to abide by the arbitral award” is not only “unjustified,” *Concesionaria*, 926 F. Supp. 2d at 3, but has also “forced [Petitioners] to undertake otherwise unnecessary litigation to vindicate plain legal rights.” *American Hosp. Ass’n*, 938 F.2d at 220. An award of attorneys’ fees is plainly warranted in this case.

II. Venezuela’s Request for a Stay of Enforcement of the Judgment Should be Denied as Redundant in Light of Venezuelan Sanctions

Unless and until it is changed, the current Venezuelan sanctions regime prohibits Petitioners from attaching or executing on any Venezuelan assets in the U.S. without first obtaining a license to do so from the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”). *See* Resp’t Mem. in Opp’n 7–8. Given that the present sanctions regime

² This case is not comparable to *Konoike Construction Co. Ltd. v. Ministry of Works, Tanzania*, No. 17-1986, 2019 WL 1082337 (D.D.C. Mar. 7, 2019), where the court declined to award attorneys’ fees to the arbitration award creditor seeking confirmation of an arbitration award under 9 U.S.C. §§ 201 *et seq.* In that case, the arbitration award debtor had paid over \$11 million owed under the award, participated in settlement negotiations with the arbitration award creditor, and presented arguments that the award in question had already been satisfied. *Konoike Construction*, 2019 WL 1082337 at *4.

³ Note, however, Venezuela’s carefully worded statement that it has “every intention of honoring *valid* ICSID awards.” Resp’t Mem. in Opp’n 9 (emphasis added). That offers no comfort to the Court or Petitioners: the facts of this case undermine that statement, and in any event Venezuela has no right to arrogate to itself the power to determine the validity of ICSID awards—Venezuela is bound by law to comply with them, and it has not done so. *See* Blackaby Declaration dated June 8, 2018, Exhibit C (ICSID Convention Excerpts), ECF No. 1-5, art. 53(1) (“The award shall be binding on the parties [to the arbitration] and ... [e]ach party shall abide by and comply with the terms of the award.”).

prohibits such actions, Venezuela’s request for a stay of enforcement “until [Petitioners] obtain[] a license from OFAC or the relevant sanctions are lifted,” Resp’t Mem. in Opp’n 9, is redundant, and should be denied on that basis. *See, e.g., Ojo v. Luong*, No. 14-4347, 2015 WL 1808514, at *6 (D.N.J. Apr. 21, 2015) (refusing to grant plaintiff’s request for an injunction declaring that the FBI must comply with the Fourth Amendment because such relief “would be redundant and unnecessary”); *J & J Sports Productions, Inc. v. El 33, LLC*, No. EP-11-CV-519-KC, 2013 WL 164521, at *7 (W.D. Tex. Jan. 14, 2013) (denying plaintiff’s request for an injunction preventing defendants from engaging in illegal activity because “[t]here is no need to order an entirely redundant remedy of this kind”). Unsurprisingly, Venezuela has cited no authority in support of its redundant request.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court enter judgment for Petitioners and against Venezuela, award Petitioners attorneys’ fees and costs, and not impose any stay of enforcement. A proposed form of judgment is submitted herewith.

Dated: March 6, 2020

Respectfully submitted,

By: /s/ Elliot Friedman

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