

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

COMMISSIONS IMPORT EXPORT S.A.,

Petitioner,

-v.-

REPUBLIC OF THE CONGO and ECREE LLC,

Respondents.

19 Misc. 195 (KPF)

**ORDER**

KATHERINE POLK FAILLA, District Judge:

As of June 3, 2022, the parties' briefing on Respondents' motions to dismiss was complete. (*See* Dkt. #117-18). Having reviewed the parties' briefing, the Court requests supplemental briefing from Petitioner and Respondent Republic of the Congo. Specifically, the Court requests supplemental briefing on two discrete issues:

- i. Whether the alleged actions in the Amended Petition related to embezzlement of funds and use of the Condo may be attributed to Respondent Republic of the Congo. Attribution of these alleged actions relates to this Court's ancillary jurisdiction over this case, as well as execution immunity under the Foreign Sovereign Immunities Act. The parties should address, at a minimum, the legal import of *Republic of Iraq v. ABB AG*, 768 F.3d 145 (2d Cir. 2014), *First Fidelity Bank, N.A. v. Government of Antigua & Barbuda--Permanent Mission*, 877 F.2d 189 (2d Cir. 1989), and *Rubin v. Islamic Republic of Iran*, 33 F. Supp. 3d 1003 (N.D. Ill. 2014), *aff'd*, 830 F.3d 470 (7th Cir. 2016).

- ii. Whether Petitioner's first claim for relief under the Declaratory Judgment Act, 28 U.S.C. § 2201, requires that the Court find, applying New York Debtor and Creditor Law ("DCL"), that Petitioner has adequately alleged that Respondent Republic of the Congo fraudulently conveyed assets. In so addressing this issue, the parties should address any relevant differences between Petitioner's claim for relief under the Declaratory Judgment Act and Petitioner's second and alternative claim for relief brought under DCL 278.

The parties' supplemental briefs should not exceed 15 pages double-spaced. Respondent Republic of the Congo shall submit its supplemental brief addressing the above issues by **February 24, 2023**, and Petitioner shall submit its supplemental brief by **March 24, 2023**.

SO ORDERED.

Dated: January 20, 2022  
New York, New York



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KATHERINE POLK FAILLA  
United States District Judge