

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RREEF Infrastructure (G.P.) Limited; RREEF
Pan-European Infrastructure Two Lux
S.A.R.L.,

Petitioners,

v.

The Kingdom of Spain,

Respondent.

Civil Action No. 1:19-cv-03783-CJN

Petitioners' Motion for Substitution

Pursuant to Rule 25(c) of the Federal Rules of Civil Procedure, Petitioners RREEF Infrastructure (G.P.) Limited and RREEF Pan-European Infrastructure Two Lux S.A.R.L. (collectively, "Petitioners") and Basket Renewable Investments LLC ("Basket") jointly and respectfully move this Court for an order substituting Basket for Petitioners in this action. Pursuant to Local Civil Rule 7(m), Petitioners have conferred with counsel for Respondent the Kingdom of Spain ("Spain"), who stated that Spain intends to oppose this motion.

Despite Spain's opposition, the case for substitution is straightforward because Basket now holds full title to the arbitral award that Petitioners are seeking to enforce in this action (the "Award"). Petitioners and Basket entered into an assignment agreement on October 27, 2022, in which Petitioners "irrevocably and unconditionally assign[ed] to [Basket] with full title guarantee the legal and beneficial title" to "all of the[ir] rights, interests and benefits . . . under or in respect of the Award." Deed of Assignment §§ 1.1, 2.1 (Ex. A to Declaration of Matthew S. Rozen ("Rozen Decl."), Ex. 1 hereto). On January 18, 2023, Petitioners and Basket sent Spain notice of the assignment, as required under the agreement, *id* § 5.2. *See* Rozen Decl. ¶ 5.

Rule 25(c) provides that “[i]f an interest is transferred, the action may be continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party.” Substitution is appropriate if it would “facilitate the conduct of the litigation.” *Paleteria La Michoacana, Inc. v. Productos Lacteos Tocumbo S.A. De C.V.*, 247 F. Supp. 3d 76, 86 (D.D.C. 2017) (quoting *Comm’ns Imp. Exp., S.A. v. Republic of Congo*, 118 F. Supp. 3d 220, 231 (D.D.C. 2015)). That inquiry is rooted in “considerations of convenience and economy.” *Id.* “Since Rule 25(c) is wholly permissive there is no time limit on moving to substitute under its provisions.” 7C Charles Alan Wright et al., *Federal Practice and Procedure* § 1958 (3d ed. 2022 update).

Substitution of Basket as petitioner is warranted to facilitate its participation in the litigation. “Courts have found substitution appropriate when a transfer gives another party ownership of the relevant property and the sole interest in the outcome of the litigation.” *Stewart Title Guar. Co. v. Lewis*, 2018 WL 1964870, at *1 (D.D.C. Feb. 16, 2018) (collecting cases). Pursuant to the assignment agreement, Petitioners have given up all their legal and financial interests in the Award. Basket is now entitled to any payment recouped under the Award, including any recovery obtained by securing a judgment in this Court and enforcing that judgment against Spain’s assets in the United States. It is thus Basket alone that has a legal and practical interest in this Court recognizing the Award. Allowing Basket, rather than Petitioners, to prosecute this action would enable it to more effectively vindicate its rights. *See Paleteria La Michoacana*, 247 F. Supp. 3d at 90 (“[S]ubstituting the owner of the relevant [property] as the sole Plaintiff will best facilitate any ongoing litigation.”); *Cessna Fin. Corp. v. Al Ghaith Holding Co. PJSC*, 2021 WL 603012, at *3 (S.D.N.Y. Feb. 16, 2021) (granting Rule 25(c) motion in suit to confirm arbitration award because, “given that [petitioner] has assigned its interest in, title and

rights to the Award and Judgment to [assignee], substitution of [assignee] as Petitioner for purposes of enforcement of the Judgment is likely to simplify the action” (citations omitted)).

Substitution is also consistent with principles of judicial economy. “Rule 25(c) has no bearing on the substantive relationship between the parties”; regardless of the substitution, “[t]he merits of the case . . . are still determined vis-à-vis the originally named parties.” *Paleteria La Michoacana*, 247 F. Supp. 3d at 86 (quoting *Minn. Mining & Mfg. Co. v. Eco Chem, Inc.*, 757 F.2d 1256, 1263 (Fed. Cir. 1985)). So this Court’s consideration of Spain’s pending motion to dismiss—or of any other issues in the case—will not be impacted by the substitution. And because Petitioners and Blasket share the same counsel, Rozen Decl. ¶ 1, the litigation can continue apace without any disruption or any need for rebriefing.

Petitioners therefore respectfully request that the Court grant their motion for substitution.

Dated: February 6, 2023

Respectfully submitted,

/s/ Matthew McGill

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