

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

A.D. TRADE BELGIUM S.P.R.L.,
Plaintiff/Judgment Creditor,

v.

REPUBLIC OF GUINEA,
Defendant/Judgment Debtor.

C.A. No. 1:23-mc-00358-CFC

VERIFIED ANSWER OF THIRD-PARTY GARNISHEE

Third-party garnishee Compagnie des Bauxites de Guinée (“CBG”), by and through its undersigned counsel, hereby responds to the writ of attachment *feri facias* (the “Writ”) issued in favor of plaintiff A.D. Trade Belgium S.P.R.L. (“A.D. Trade”) as follows:

1. CBG is an innocent third party that is being dragged into a dispute between A.D. Trade and the Republic of Guinea (“the Republic”). The dispute has nothing to do with CBG’s business in any way. The Writ was issued in aid of A.D. Trade’s execution on a judgment against the Republic. The Writ concerns shares of stock owned by the Republic in CBG.

2. CBG is a mining company. It has extracted bauxite from its Sangaredi mine in the Republic since 1963. Bauxite is used to create aluminum and other industrial products.

3. In response to the Writ, CBG conducted an investigation into the shares of its stock held by the Republic. Based on that investigation, CBG states that:

- A. The Republic owns 49,000 shares of CBG stock, representing 49% of the total 100,000 outstanding shares of CBG stock.
- B. The book value of the Republic’s shares is approximately \$195,738,145, or \$3,995 per share.

4. Notably, the Republic's shares are not in CBG's possession, custody, or control. CBG believes that they are in the possession of the Republic.

5. The Republic's shares do not carry any rights to dividends or any other economic rights. Accordingly, no monies are currently owed by CBG to the Republic in respect of the Republic's shares (nor will any monies be capable of coming due to the Republic in respect of its shares).

6. Independent of the Republic's shares, CBG owes various taxes to the Republic. CBG's tax liability is governed by an agreement, dated October 1, 1963, between the Republic and CBG (as amended from time to time, the "Basic Agreement"). The Basic Agreement is governed by Guinean law and disputes under the Basic Agreement are resolved pursuant to the ICC arbitration rules in Geneva. The taxes due under the Basic Agreement are as follows:

- A. CBG is required to pay taxes on industrial and commercial profit (*impôts sur le bénéfice industriel et commercial*) and a special tax on mining products (*taxe spéciale sur les produits miniers*). These amounts have already been paid in full for fiscal year 2023 and no further payments are contemplated in this regard in 2023.
- B. The Guinean government is currently conducting its periodic tax audit for fiscal years 2017, 2018, and 2019. This process, which is designed to ensure that the Republic has received the proper amount of taxes under its contracts with CBG over the preceding years, ultimately may determine whether CBG owes additional income taxes to the Republic pursuant to the Basic Agreement. CBG does not know when the audit will conclude and cannot predict its outcome.

C. CBG also owes monthly customs and duty payments to the Republic pursuant to the Basic Agreement. Again, the sums vary every month depending on the company's operations. For November 2023, CBG will be paying approximately \$1,765,000.

7. In addition, CBG owes other sums to the Republic in the form of monthly payments, withholdings, and deductions. The sums vary every month depending on the company's operations. For November 2023, CBG will be paying to the Republic approximately \$212,000 for deductions from wages (*retenue sur les traitements salariaux*), approximately \$235,000 for employer flat-rate payments (*versement forfaitaire (partie employeur)*), approximately \$212,000 for withholding tax on non-wage income (*retenue à la source sur les revenus non-salariaux*), and approximately \$24,000 for flat-rate payments (*paiements forfaitaire*). These payments are also not connected to the Republic's shares.

8. CBG believes that the taxes and other amounts owed by CBG to the Republic raise immunity considerations under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1609 ("FSIA"). The garnishment of any of those amounts would raise concerns for CBG and potentially subject it to double liability if and when the Republic asserts that those taxes and other amounts are payable under the (Guinean law-governed) Basic Agreement irrespective of this proceeding.

9. It is also important to note that the sale of the Republic's shares in CBG, or even the commencement of a purported sale process, could have catastrophic consequences on CBG's business. Specifically, if the Republic no longer owned the shares in CBG, this may raise questions from the Republic as to CBG's mandate to operate in Guinea. In addition, the change of control of the Republic's shares or the existence of litigation or enforcement proceedings

involving CBG has the potential to trigger defaults under CBG's debt financing arrangements with international financial institutions and render that debt immediately due and payable, which would immediately create solvency issues for CBG.

10. Moreover, it is extremely unlikely that there will be a willing purchaser of the Republic's shares. As explained above, the shares held by the Republic have no dividends or economic rights, which means they are of little or no financial value to a third party despite the book value. So, there is unlikely to be any benefit to A.D. Trade to try to sell the Republic's shares, whereas the sale process will cause significant harm to CBG, an innocent third party.

11. To the extent that A.D. Trade tries to force a sale of CBG's shares notwithstanding the above, CBG reserves all of its rights and remedies, including holding A.D. Trade responsible for any and all damages caused to CBG by such a forced sale.

12. In serving this answer, CBG does not concede that any of its shares owned by the Republic or any other payments owed by CBG to the Republic are subject to attachment and execution. To the contrary, CBG preserves any and all such objections, including without limitation that the Republic's shares and other amounts owing to the Republic can be seized or attached under Delaware law or the FSIA, and that A.D. Trade has satisfied the requirements for obtaining the Writ in the first place.

13. For the avoidance of doubt, CBG serves this answer without prejudice to its right to move to quash or dismiss the Writ with respect to any rights the Republic may have with respect to the enforcement of the underlying judgment and/or the Writ, and CBG expressly reserves the right to oppose or file a motion to quash or dismiss the Writ in whole or in part, and to seek any other relief with respect to the Writ as appropriate.

Dated: November 17, 2023

Respectfully submitted,

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