

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.

Civil Action No. 1:23-mc-00358-CFC

**PLAINTIFF'S EXCEPTIONS TO THE VERIFIED ANSWER OF  
COMPAGNIE DES BAUXITES DE GUINÉE**

PLAINTIFF A.D. TRADE BELGIUM S.P.R.L. ("A.D. Trade") respectfully submits the following Exceptions to the Verified Answer of Compagnie des Bauxites de Guinée ("CBG"), *see* ECF 12, pursuant to Rule 5(aa)(2) of the Delaware Superior Court Civil Rules, as made applicable here by Rule 69(a)(1) of the Federal Rules of Civil Procedure:

1. On May 5, 2023, A.D. Trade obtained a Judgment against the Republic of Guinea ("Guinea") in the U.S. District Court for the District of Columbia in the amount of US \$59,774,993.40, plus interest, which has now been registered as a Judgment of this Court. *See* ECF 1 & 1-1. The Judgment confirms two separate and final arbitration awards in favor of A.D. Trade against Guinea that were issued by the International Chamber of Commerce's International Court of Arbitration in Paris, France.

2. On August 25, 2023, A.D. Trade moved this Court for an order authorizing the issuance of a writ of attachment *feri facias* directed at garnishee CBG, for attachment and execution on the shares in CBG owned by Guinea, as well as on any other assets or rights Guinea may have incident to its ownership of those shares, any debts owed by CBG to Guinea, and any other assets owned by Guinea in the possession of CBG. *See* ECF 2.

3. On September 5, 2023, the Court granted A.D. Trade’s motion and directed the Clerk of the Court to issue the requested writ of attachment *feri facias* directed at garnishee CBG in aid of A.D. Trade’s execution of its underlying Judgment against Guinea. *See* ECF 7.

4. On October 12, 2023, the U.S. Marshals Service served CBG with the writ of attachment *feri facias*. *See* ECF 8.

5. On November 17, 2023, CBG filed a Verified Answer in response to A.D. Trade’s writ of attachment *feri facias*, which confirms both that CBG owes debts to Guinea, and that shares of CBG, a Delaware corporation, are owned by Guinea. *See* ECF 12. CBG’s Verified Answer attaches no exhibits and comprises just thirteen paragraphs.

6. CBG admits that it owes debts to Guinea, ECF 12 ¶¶ 6-7, and Delaware law permits attachment of “debts owed the judgment debtors by the garnishee.” *See LNC Invests., Inc. v. Democratic Republic of Congo*, 69 F. Supp. 2d 607, 611 (D. Del. 1999) (citing 10 *Del. C.* §§ 3508, 5031). While debts may not be subject to execution if immune under the Foreign Sovereign Immunities Act (“FSIA”), CBG does not assert that these debts *are* immune. Instead, CBG asserts that the amounts it owes to the Republic “raise immunity considerations under the Foreign Sovereign Immunities Act, 28 U.S.C. § 1609.” ECF 12 ¶ 7. CBG’s debts to Guinea are subject to A.D. Trade’s writ of attachment *feri facias*, and are subject to execution by A.D. Trade, to the extent that one of the FSIA’s enumerated exceptions to immunity from execution apply. *See* 28 U.S.C. § 1610(a). If the debts owed to Guinea are “used for a commercial activity in the United States,” they are not immune from attachment or execution to enforce a “judgment [] based on an order confirming an arbitral award,” such as the Judgment here. *See* 28 U.S.C. § 1610(a)(6). CBG’s Answer, however, provides no information about the debts owed to Guinea, including whether those debts have been used in the United States for commercial (as opposed to sovereign) activities.

7. CBG's Answer also admits that "[Guinea] owns 49,000 shares of CBG stock." ECF 12 ¶ 3(A). CBG avers that the "shares are not in CBG's possession, custody, or control," and that it "believes that [the shares] are in the possession of the Republic [of Guinea]." *Id.* ¶ 4. However, CBG's Verified Answer offers no factual basis for that belief. Further, under Delaware law, the legal situs of the shares is with CBG in Delaware and therefore the shares are subject to A.D. Trade's writ of attachment *feri facias*. 8 *Del. C.* § 169 ("[T]he situs of the ownership of capital stock of all corporations existing under the laws of this State . . . shall be regarded as in this State," under Delaware law). And while CBG's Answer asserts that Guinea's shares of CBG stock "do not carry any rights to dividends or any other economic rights," ECF 12 ¶ 5, CBG offers neither any documentary support for that assertion nor any explanation of what rights those shares do carry.

8. To develop evidence sufficient for the Court to resolve the issues of whether the CBG shares owned by Guinea and the debts owed by CBG to Guinea are amenable to execution, A.D. Trade served a subpoena for the production of documents on CBG today pursuant to Federal Rule of Civil Procedure 69(a)(2), which incorporates by reference Rules 26, 34, and 45 of the Federal Rules of Civil Procedure, and Local Civil Rule 5.4 of the U.S. District Court for the District of Delaware. A copy of that subpoena is attached hereto as **Exhibit A**. This discovery will be used to ascertain, and to help the Court ultimately determine, what property can be used to satisfy the Judgment.

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9. A.D. Trade reserves all rights to seek further relief from this Court to enforce the writ of attachment *feri facias* and to execute against any assets in satisfaction of the Judgment.

Respectfully submitted,

**KOBRE & KIM LLP**

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Dated: November 27, 2023