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Directory number 2024/ 6621
Date of decision 18 June 2024
Role number 2024/QR/30

Uitgifte

Uitgereikt aan	Uitgereikt aan	Uitgereikt aan
op	op	op
€	€	€

N° ,27'/'/

Not registerable

Brussels Court of Appeal

Judgment

17^{de} Chamber,
civil matters

Offered on

Do not register

COVER 01-00003912293-0001-0008-02-01-1



The company BLASKET RENEWABLE INVESTMENTS LLC, incorporated under the Delaware Limited Liability Company Act, with registered office at c/o Coporation Service Company - Little Falls Drive 251, New Castle County WILMINGTON THE 19808, UNITED STATES, appellant,

having as counsel Mr Hakim Boularbah and Mr Alexandra Van Beurden, with offices at Avenue de Tervuren 2, 1040 Brussels;

Having regard to the records of the court proceedings, in particular:

Petition for permission to execute third-party attachment, filed at the registry of the Dutch-speaking court of first instance in Brussels, on 31 May 2024;

The rejection order dated 6 June 2024;

The appeal petition filed at the Registry of the Court of Appeal in Brussels on 14 June 2024;

The papers filed.

The appellant asks the court to reform the contested order and to grant it permission to seize on behalf of the Kingdom of Spain in accordance with Article 1412quinquies of the Judicial Code,

- pursuant to the arbitral award issued on 9 November 2021 by an ICSID tribunal (case number ARB/15/27)

as security for payment of the following amounts: EUR 30,370,513.08 + USD 623,737.08 + JPY 25,260,284.40

- under the same Arbitral Award

as security for payment of the amount corresponding to an interest calculated at a monthly rate of 1.6% from the date of the arbitral award until the date of payment

- pursuant to the arbitral decision in the annulment proceedings of 6 February 2024 as security for payment in the amount of EUR 387,292.68 + JPY 2,007,600.00,

decisions which were declared enforceable in Belgium on (respectively) 6 May 2024 and 16 May 2024,



in the hands of:

EUROCONTROL, having its registered office in Belgium at 1130 Brussels, Rue Rocket 96, whether directly or indirectly through the Spanish State-owned luchtveFkeer ENAIRE, with its registered office at Avenida de Aragon S/N, Bloque 330, Portal 2, 28022 Madrid, Spain.

On 31 May 2024, the appellant filed an application with the attachment judge at the Dutch-speaking Court of First Instance Brussels for permission to execute attachments from third parties in accordance with article 1412quinquies Ger.W.

By order dated 12 January 2024, the Attachment Judge dismissed the appellant's application on the following grounds:

'The applicant partij' argues that only Spain is the owner and creditor of the en-route charges and terminal charges collected by Eurocontrol and considers that these amounts are liable to seizure as they are i'intended for commercial purposes.

Review

3.

3.1.

Article 1412quinquies, §§1 and 2 Judicial Code provide:

"§1. Subject to the application of mandatory supranational and international provisions, the property of a foreign power located ziCh on the territory of the Kingdom, including bank deposits held oy administered there by that foreign power, particularly in" the exercise of the functions of diplomatic representations of the foreign power or its consular posts, its speCial missions, its representations to" international organisations or delegations to bodies of international organisations or to' international conferences, shall not be subject to attachment.

§2. Notwithstanding paragraph 1, the creditor in possession of an enforceable title or authentic or private documents underlying the attachment, as the case may be, may, by" an application to the attachment judge, seek authorisation to attach the property of a foreign power referred to in paragraph 1 if hj" demonstrates that one of the following conditions is met:

1° if the foreign power has expressly and specifically consented to the attachment of such property;



2° if the foreign power has reserved or designated such property in satisfaction of the claim which is the subject of the enforceable title or the authentic or private documents, as the case may be, underlying the attachment;

3 if it is established that such property is used or intended to be used by the foreign power for other than non-commercial governmental purposes and is located in the territory of the Kingdom, provided that only property related to the entity against which the enforceable title or the authentic or private documents, as the case may be, underlying the attachment, iCh may be attached."

3.2.

Spain did not consent to the attachment of the en-route and terminal charges, nor were these monies set aside or designated in satisfaction of the amounts to which it was ordered to pay. (artike11412quinquies §2 1° and 2° Judicial Code).

A p p l i c a n t " bases itself on the exception mentioned under Article 1412 quinquies §2 3° Judicial Code.

The principle of sovereignty over airspace is reflected in Article 1 of the Convention on International Civil Aviation of 7 December 1994. This recognises that each State, including Spain, has complete and exclusive sovereignty over the airspace above its territory.

En-route charges are fees payable by IUchtspace users.

Terminal charges relate to air terminal control and flight information services. Eurocontrol's duties include collecting these charges on behalf of its member states, including Spain.

The applicant explains that Eurocontrol pays the charges due to Spain mainly to Enaire, which acts as an intermediary.

Enaire is a public company apparently responsible for airspace management. Airspace management is part of air traffic safety, which is part of public safety policy, which in itself is a non-commercial public purpose.

Reimbursements for this may be presumed to be public funds.



Ver2'oekende partij", however, does not conclusively demonstrate that the funds owed by Eurocontrol to Spain and paid through Enaire are used or intended for commercial use.

The fact that Enaire is a public law entity that carries out both administrative and Commercial activities (a so-called 'public business entity') is not sufficient for this purpose. The observation in the report by Arroyo Jiménez, professor of Spanish administrative law at the University of Castilla-La Mancha, that Enaire's revenues also have commercial uses is also insufficient for this purpose.

Assuming that Enaire is a service provider that exists outside the public service and has certain commercial vriyities to provide services does not, in itself, allow it to be concluded that the inkOmS on which the applicant party" wishes to seize" will be di'ned or used for commercial purposes.

Applicant" dUs not prove that the conditions are met to seize assets of a foreign power, so its application is rejected as unfounded.

Therefore, to what extent Spain should be considered the sole owner of the levies paid to Enaire is not examined further.

Nor does it further examine the extent to which it has been demonstrated that the claim that was transferred requesting party" is not covered by law of 12 July 2015 to address the activities of vulture funds."

Pursuant to article 1412quinquies, §2 of the Judicial Code, the creditor holding an enforceable title may, by application to the attachment judge, request authorisation to attach the property of a foreign power referred to in paragraph 1 if he demonstrates that one of the conditions mentioned in that article has been met.

The appellant's enforceable titles are the aforementioned enforceable arbitral awards dated (respectively) 9 November 2021 and 6 February 2024.

On gFond of article 1412quinquies, §2, 3° Ger.W., authorisation may be given to seize the property of a foreign power if it is property used or intended to be used for commercial purposes ("other than non-commercial government purposes").



The appellant makes it sufficiently plausible that the conditions van article 1412 quinquies Ger.W. are met.

The appellant has an enforceable title against the garnishee in the amount of the amounts for which the application for authorisation to attach is sought.

The intended properties comply with the conditions set out in article 1412 quinquies, §2, 3° Ger.W.:

Eurocontrol collects en-route and terminal charges in the name and on behalf of the Contracting States to the Eurocontrol Convention, including Spain.

Spain has designated Enaire to receive these levies.

Based on the explanations provided in the application for appeal and the documents submitted, it appears that Enaire is a Spanish state-owned company engaged in commercial activities and was designated by Spain as a recipient of the en-route and terminal charges.

The appellant makes a plausible case that Enaire is a commercial public company with legal personality.

Enaire apparently operates on commercial principles and is funded by market revenue and income from its commercial activities.

Moreover, Enaire focuses on its development and, as an air navigation service provider, is subject to principles such as competitiveness, competition (sregels), efficiency and cost-effectiveness.

Enaire's updated annual reports show that the company operates on a commercial basis.

Enaire's activities, its operations and the regulations and policies to which it is subject confirm this.

On top of that, Spain was definitively ordered to pay by enforceable judgments, that nothing prevents the Kingdom of Spain from voluntarily fulfilling its obligation to pay,



that Spanish law recognises that enforcement measures can be taken against Spain in the absence of payment of a debt under an enforceable title: documents B 8 and 9 of the appellant.

Article 1539 Ger.W. states:

"The creditor who holds an enforceable title may, by" bailiff's writ, execute attachments from third parties, on the amounts and things that are duly owed to his debtor.

The attachment may also apply to claims with tiyds provision, conditional or disputed claims belonging to the debtor."

The contested decision is reformed as follows.

OM THESE REASONS,
The court,

Adjudicating on unilateral petition; Having

regard to the Act of 15 June 1935;

Reforms the contested order pronounced by the attachment judge in the Dutch-speaking court of first instance in Brussels on 31 May 2024;

Rectifying again;

Authorises the appellant to levy executive attachment against third parties at the expense of the Kingdom of Spain,

owned by EUROCONTROL, having its registered office in Belgium at 1130 Brussels, rue de la Raketstraat 96, whether directly or indirectly through the Spanish State-owned air transport company ENAIRE, with its registered office at Avenida de Aragon S/N, Bloque 330, Portal 2, 28022 Madrid, Spain

on all present and future amounts, titles, securities or things of any kind or other claims, including installment, contingent or disputed claims that EUROCONTROL has or will have, is due or will be due to the KINGDOM OF SPAIN, whether directly or indirectly through the Spanish state-owned air traffic company ENAIRE

- as security for payment of 30,370,513.08 euro +623 ,737.08 USD +
25,260,284.40 JPY



- and of the amount corresponding to interest calculated at a monthly rate of 1.6% from the date of the arbitral award to the date of payment
- and of an amount of €387,292.68 + JPY 2,007,600.00;


Declares that the rolling charge, in the amount of EUR 400, amount to be paid to the Belgian State, FPS Finance, in application of Article 269, par.1 of the Code of Registration, Mortgage and Court Fees, is to be borne by the appellant, sole litigant, who should also bear the contribution to the Fund for Legal Secondary Assistance in the amount of EUR 24.

Thus pronounced in chambers of the 17^{de} chamber of the Brussels Court of Appeal on 18 June 2024

where were present
D. Degreeef, Chairman
S. De Cooman, Registrar



De Cooman



Degreeef

