17-3854-cv
Dr. Lucille Levin, et al. v. JP Morgan Chase Bank, N.A.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of October, two thousand eighteen.

Present:

RICHARD C. WESLEY
DEBRA ANN LIVINGSTON,
Circuit Judges,
GEOFFREY W. CRAWFORD,
District Judge.*

DOCTOR LUCILLE LEVIN and JEREMY LEVIN,

Plaintiffs — Third-Party Defendants — Cross-Defendants — Counter-Claimants — Counter-Defendants — Appellants,

v. 17-3854-cv

JPMORGAN CHASE BANK, N.A.,

Defendant — Third-Party Plaintiff — Third-Party Defendant — Counter-Defendant — Cross-Defendant — Counter-Claimant — Appellee.†

For Plaintiff-Appellants: SUZELLE M. SMITH, Howarth & Smith, Los Angeles, CA,

For Defendant-Appellee: STEVEN B. FEIGENBAUM, Levi Lubarsky Feigenbaum & Weiss LLP, New York, NY,

Appeal from an October 27, 2017 judgment of the United States District Court for the Southern District of New York (Oetken, *J.*).

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* Chief Judge Geoffrey W. Crawford, of the United States District Court for the District of Vermont, sitting by designation.

† The Clerk of Court is respectfully instructed to amend the caption as set forth above.

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is **AFFIRMED**.

Lucille and Jeremy Levin ("the Levins") appeal from an October 27, 2017 order of the United States District Court for the Southern District of New York (Oetken, *J.*), which was certified as a final judgment under Federal Rule of Civil Procedure 54(b) on February 12, 2018, denying their motion for leave to file a supplemental complaint pursuant to Federal Rule of Civil Procedure 15(d). We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

* * *

The Levins hold an unsatisfied judgment against the Islamic Republic of Iran ("Iran") arising out of the 1984 kidnapping of Jeremy Levin in Beirut, Lebanon. On February 6, 2008, the United States District Court for the District of Columbia entered judgment in the amount of $28,807,719 in the Levins' lawsuit against Iran pursuant to § 1605(a)(7) of the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602 et seq. ("FSIA").[1] *See Levin v. Islamic Republic of Iran*, 529

[1] Section 1605(a)(7) has since been repealed and replaced. Pub. L. No. 110-181, Div. A., § 1083(b)(1)(A)(iii), 122 Stat. 341 (2008). The new provision, 28 U.S.C. § 1605A, now provides an exception to the general immunity from suit of foreign governments where "the foreign state [has been] designated as a state sponsor of terrorism" by the U.S. Department of State. § 1605A(a)(2)(A)(i)(l).

F. Supp. 2d 1 (D.D.C. 2007). The Levins now seek to attach funds to satisfy that judgment.

On June 26, 2009, the Levins filed their initial complaint in the instant lawsuit, alleging that JPMorgan Chase Bank, N.A. ("JPMCB") possessed "assets blocked by the U.S. government due to the fact that Iran has an interest in them either directly or indirectly ('Iranian Blocked Assets')." App 183. A later round of discovery revealed the existence of two previously undisclosed Iranian Blocked Assets in JPMCB's possession: (1) a deposit account under the name of Lebanese businessman Kassim Tajideen (the "Tajideen Account") and (2) an account (the "Saderat Account") holding the proceeds of a wire transfer, also known as an electronic funds transfer (the "EFT"), that was blocked by JPMCB in accordance with Iranian sanctions regulations promulgated by the Office of Foreign Assets Control ("OFAC"). On July 12, 2017, the Levins sought leave under Fed. R. Civ. P. 15(d) to file a supplemental complaint seeking turnover of the Tajideen Account and the Saderat Account pursuant to

§ 201(a) of the Terrorism Risk Insurance Act of 2002 ("TRIA")[2] and §§ 1610(f)(1)(A) and (g)(1) of the FSIA.[3]

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[2] Section 201(a) of the TRIA provides:

> Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA, Pub. L. No. 107-297, 116 Stat. 2322 (2002) (reprinted following 28 U.S.C. § 1610).

[3] Section 1610 of FSIA provides, in pertinent part:

> (f)(1)(A) Notwithstanding any other provision of law . . . any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality of such state) claiming such property is not immune under section 1605(a)(7) (as in effect before the enactment of section 1605A) or section 1605A.
>
> . . .
>
> [(g)(1)] Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or

JPMCB did not oppose the Levins' motion with respect to the Tajideen Account. With respect to the Saderat Account, however, the parties differed. The Levins argued that the Saderat Account was attachable because the funds belonged to an "agency or instrumentality" of Iran—Bank Saderat, an Iranian bank based in Tehran ("Saderat").[4] JPMCB argued that Saderat lacked title to the funds because the immediate transferor of the funds to JPMCB was not Saderat but Lloyds Bank Plc ("Lloyds"), a U.K. bank headquartered in London that transferred the funds in its capacity as Saderat's correspondent bank.

The district court granted the Levins' motion to supplement their complaint with respect to the Tajideen Account but denied the motion with respect to the Saderat Account. With respect to the Saderat Account, the court concluded that supplementation of the complaint would be futile under *Calderon-Cardona v. Bank of New York Mellon*, 770 F.3d 993 (2d Cir. 2014), and *Hausler v. JP Morgan Chase Bank, N.A.*, 770 F.3d 207 (2d Cir. 2014). The court quoted *Hausler* for the proposition that "in order for an EFT to be a blocked asset of [a terrorist state] under TRIA §201(a), either [the terrorist state] itself or an agency or instrumentality

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> instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section . . . .

28 U.S.C. § 1610.

[4] Both parties agree, for the purposes of this appeal, that Saderat qualifies as an "agency or instrumentality" of Iran.

thereof (such as a state-owned financial institution) [must have] transmitted the EFT *directly* to the bank where the EFT is held pursuant to the block." *Levin v. Bank of New York Mellon*, No. 09-CV-5900 (JPO), 2017 WL 4863094, at *4 (S.D.N.Y. Oct. 27, 2017) (quoting *Hausler*, 770 F.3d at 212 (emphasis and brackets in original)). Because the blocked EFT in question was transmitted to JPMCB directly by Lloyds, rather than Saderat, the EFT constituted property of Lloyds and could not be attached under TRIA or FSIA. *Id.*

* * *

We review the district court's holding *de novo.* A district court's denial of leave to amend or supplement a complaint is generally reviewed for abuse of discretion. *See, e.g.*, *McCarthy v. Dun & Bradstreet Corp*., 482 F.3d 184, 200 (2d Cir. 2007). However, "[w]hen the denial of leave to amend is based on a legal interpretation, such as a determination that amendment would be futile, a reviewing court conducts a *de novo* review." *Hutchison v. Deutsche Bank Sec. Inc.*, 647 F.3d 479, 490 (2d Cir. 2011); *see also Gorman v. Consol. Edison Corp.*, 488 F.3d 586, 592 (2d Cir. 2007) (reviewing *de novo* a district court's denial of leave to amend on grounds of futility). Because the district court denied the Levins' motion to amend their complaint on grounds of futility, we review that decision *de novo.*

Whether the Levins may attach the Saderat Account to satisfy their judgment against Iran turns on the issue of ownership of those funds. *See* FSIA § 1610(g)(1) (authorizing attachment of "the *property*

of a foreign state against which a judgment is entered under section 1605A, and the *property of* an agency or instrumentality of such a state" (emphasis added)); TRIA § 201(a) ("the *blocked assets of* [a] terrorist party (including the *blocked assets of* any agency or instrumentality of that terrorist party)" (emphasis added)); FSIA § 1610(f)(1)(A) ("any *property* with respect to which financial transactions are prohibited or regulated" (emphasis added)). *See also Calderon-Cardona*, 770 F.3d at 1000 ("Whether attachment of [] EFTs under §1610(g) is possible turns . . . on whether the blocked EFTs at issue are 'property of' [a foreign state or its agency or instrumentality].").

Ownership of property is generally a question of state law. In *Calderon-Cardona*, we noted that "Congress has not defined the type of property interests that may be subject to attachment under FSIA § 1610(g)." *Id.* at 1001; *see also Hausler*, 770 F.3d at 211 (observing the same with regard to TRIA § 201(a)). Absent a federal definition of "property" in either FSIA or TRIA, we apply the "general rule in this Circuit that when Congress has not created any new property rights, but 'merely attaches consequences, federally defined, to rights created under state law,' we must look to state law to define the 'rights the [judgment debtor] has in the property the [creditor] seeks to reach.'" *Calderon-Cardona*, 770 F.3d at 1001 (quoting *Export-Import Bank v. Asia Pulp & Paper Co.*, 609 F.3d 111, 117 (2d Cir. 2010) (brackets in original)). The relevant state law governing EFTs blocked by New York banks is Article 4 of the New York Uniform Commercial Code

("N.Y. UCC"). *See* N.Y. UCC § 4-A; *Asia Pulp*, 609 F.3d at 118 (Article 4-A was "enacted to provide a comprehensive body of law that defines the rights and obligations that arise from wire transfers." (internal quotation marks omitted)).

The application of N.Y. UCC Article 4 to EFTs has received extensive consideration in this Circuit. In *Shipping Corp. of India Ltd. v. Jaldhi Overseas Pte Ltd.*, 585 F.3d 58 (2d Cir. 2009), we determined that under New York law "EFTs are neither the property of the originator nor the beneficiary while briefly in the possession of an intermediary bank." *Id.* at 71. Subsequently, both *Calderon-Cardona* and *Hausler* addressed this issue with particular clarity. In *Calderon-Cardona*, we observed that "under the N.Y. UCC's statutory scheme, the only entity with a property interest in an EFT while it is midstream is the entity immediately preceding the bank 'holding' the EFT in the transaction chain." Therefore, *Calderon-Cardona* held:

> "[A]n EFT blocked midstream is 'property of a foreign state' or 'the property of an agency or instrumentality of such a state,' subject to attachment under 28 U.S.C. § 1610(g), *only* where either the state itself or an agency or instrumentality thereof (such as a state-owned financial institution) transmitted the EFT *directly* to the bank where the EFT is held pursuant to the block."

Calderon-Cardona, 770 F.3d at 1002 (emphasis added). *Hausler* then further extended *Calderon-Cardona*'s

holding to the TRIA context. In *Hausler*, we held that "in order for an EFT to be a 'blocked asset of' Cuba under TRIA § 201(a), either Cuba 'itself or an agency or instrumentality thereof (such as a state-owned financial institution) [must have] transmitted the EFT *directly* to the bank where the EFT is held pursuant to the block." *Hausler*, 770 F.3d at 212 (quoting *Calderon-Cardona*, 770 F.3d at 1002) (emphasis added) (brackets in original)).

The Saderat Account falls squarely within the holding of these cases. Here, as in *Hausler*, "it is undisputed that no [terrorist entity] transmitted any of the blocked EFTs in this case directly to a blocking bank." *Id.* Instead, the Saderat Account funds were transmitted directly to JPMCB by Lloyds Bank. The Levins nowhere assert that Lloyds constitutes an "agency or instrumentality" of Iran. Because the EFT was not transferred directly to JPMCB by a foreign state or an agency or instrumentality of a foreign state, it was not "property of" a foreign state or an agency or instrumentality of such a state, and thus not attachable under FSIA or TRIA.

On appeal, the Levins principally contend that ownership of the Saderat Account at the time of blocking is a disputed question of fact and that the district court should have allowed supplementation of their complaint in order to proceed to discovery on that question. We disagree. New York's law of property—as applied to the context of EFTs blocked pursuant to OFAC sanctions—has been established by *Calderon-Cardona* and *Hausler.* Under those cases, ownership of

an EFT blocked by a New York bank depends entirely on the identity of the immediate transferor to that bank. *See Calderon-Cardona*, 770 F.3d at 1002 (permitting attachment "*only* where either the state itself or an agency or instrumentality thereof . . . transmitted the EFT *directly* to the bank where the EFT is held pursuant to the block") (emphasis added); *Hausler*, 770 F.3d at 212 (same). In this case, the identity of the immediate transferor—Lloyds Bank—is undisputed. Since neither party contends that Lloyds Bank is an agency or instrumentality of Iran itself, the EFT is not attachable.

Nor can we diverge from that result based on the Levins' purported distinction between the "intermediary bank" at issue in *Calderon-Cardona* and *Hausler* and the "correspondent bank" relationship at issue here. To begin with, many authorities apparently consider these categories indistinct. *See, e.g.*, *Sec. & Exch. Comm'n v. Homa*, 514 F.3d 661, 668 n.15 (7th Cir. 2008) ("A correspondent bank is an intermediary bank that a primary bank uses to facilitate currency transactions in the country in which the intermediary bank is located."). More importantly, however, our precedents interpreting N.Y. UCC Article 4 render the asserted distinction irrelevant. As the district court properly held, the purported distinction between correspondent and intermediary banks "is a distinction without a difference, at least as it relates to the Second Circuit's rule in *Hausler*." *Levin*, 2017 WL 4863094, at *4. Regardless of the particular relationship between the immediate transferor of the funds and the entity that

held title to those funds at the beginning of the transaction, the ownership of blocked EFT funds is clearly assigned by *Calderon-Cardona* and *Hausler*. "[E]ven where an EFT is transferred to a blocking bank by a 'correspondent bank,' the transferred asset is considered the 'sole property' of the correspondent bank, rather than the 'principal' bank (i.e., Bank Saderat)." *Id.* (citing *Doe v. Ejercito De Liberacion Nacional*, No. 15 Civ. 8652-LTS, 2017 WL 591193, at *1-3 (S.D.N.Y. Feb. 14, 2017), *aff'd*, 899 F.3d 152 (2d Cir. 2018)).

Finally, we note that our circuit's recent opinion in *Doe v. JPMorgan Chase Bank, N.A.*, 899 F.3d 152 (2d Cir. 2018), further bolsters our conclusion that the funds blocked by JPMCB are not attachable. In *Doe*, a terrorist entity, Tajco Ltd. ("Tajco"), originated an EFT that flowed to an intermediary bank, AHLI United Bank UK PLC ("AHLI"), which then transmitted the funds to JPMCB, which then blocked the funds. *Id.* at 155. That sequence of events is highly analogous to the one at issue here, with Tajco taking the place of Iran, AHLI taking the place of Lloyds, and JPMCB playing the same role. *Doe* applied *Calderon-Cardona* and *Hausler* in upholding the district court's ruling that the funds were not attachable. *See id.* at 157 ("[O]ur decisions in *Calderon-Cardona* and *Hausler* compel the conclusion that neither Grand Stores nor Tajco has any attachable property interest in the blocked funds at JPMorgan since they were not the entities that directly passed the EFTs to JPMorgan."). We do the same.

* * *

We have considered the Levins' remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the district court.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

[SEAL]

/s/ Catherine O'Hagan Wolfe

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JEREMY LEVIN and LUCILLE LEVIN, Plaintiffs, -v- THE BANK OF NEW YORK MELLON, et al., Defendants.	09-CV-5900 (JPO) OPINION AND ORDER
THE BANK OF NEW YORK MELLON, et al. Third-Party Plaintiffs, -v- STEVEN M. GREENBAUM, et al., Third-Party Defendants.	

J. PAUL OETKEN, District Judge:

Plaintiffs Jeremy Levin and Dr. Lucille Levin ("Plaintiffs") are judgment creditors of the Islamic Republic of Iran ("Iran"). In 2009, they filed this suit seeking turnover of Iranian assets within the United States in an effort to enforce an unsatisfied judgment against Iran. Plaintiffs now move for leave to file a supplemental complaint pursuant to Federal Rule of Civil Proecudre [sic] Rule 15(d). For the reasons that follow, the motion is granted in part.

I. Background

The Court presumes familiarity with the factual and procedural history of this case, as discussed in its two prior Opinions and Orders issued on March 4, 2011, and September 23, 2013. *See Levin v. Bank of N.Y.* (*Levin I*), No. 09 Civ 5900, 2011 WL 812032, at *1–4 (S.D.N.Y. Mar. 4, 2011) (Patterson, J.); *Levin v. Bank of N.Y. Mellon* (*Levin II*), No. 09 Civ 5900, 2013 WL 5312502, at *1–2 (S.D.N.Y. Sept. 23, 2013) (Patterson, J.).

Plaintiffs hold an unsatisfied final judgment of $28,807,719 against Judgment-Debtor Iran, arising out of the 1984 kidnapping of Jeremy Levin in Beirut, Lebanaon [sic]. (Dkt. No. 1099-1 ("Supp. Compl.") ¶ 1.) Levin's abductors were terrorists who were trained, supported, aided, funded, and directed by Iran.[1] *Id.*

Plaintiffs filed the original Complaint in this action in 2009 (the "2009 Complaint"), seeking turnover of all assets within the jurisdiction of the United States in which Iran has a direct or indirect interest. (Dkt. No. 1099 at 2; Dkt. No. 70.) The 2009 Complaint alleged that Defendant-Garnishee J.P. Morgan Chase Bank,

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[1] The facts set forth in this section are taken from Plaintiffs' proposed Supplemental Complaint. (*See* Supp. Compl.) Because Defendant J.P. Morgan Chase Bank, N.A. partially opposes leave to supplement on futility grounds, "the allegations of the [proposed supplemental] pleading . . . must be presumed true, and the Court must draw all reasonable inferences in the pleading party's favor" in deciding whether to grant leave to supplement. *Unique Sports Generation, Inc. v. LGH-III, LLC*, No. 03 Civ. 8324, 2005 WL 2414452, at *5 (S.D.N.Y. Sept. 30, 2005).

N.A. ("JPMCB"), along with other New York banks, possessed "assets blocked by the U.S. government due to the fact that Iran has an interest in them either directly or indirectly ('Iranian Blocked Assets')." (Dkt. No. 70 ¶ 3).[2]

Although Plaintiffs, along with other judgment creditors, have obtained turnover of certain Iranian assets from Defendant-Garnishee JPMCB (*see, e.g.*, Dkt. No. 1089), Plaintiffs' judgment has not been fully satisfied. (Dkt. No. 1100 ¶ 4). On November 29, 2016, Plaintiffs served interrogatories on JPMCB. (Supp. Compl. ¶ 4.) JPMCB's responses, which were served on January 12, 2017, revealed the existence of two additional, previously undisclosed Iranian Blocked Assets: (1) "a deposit account" under the name of Lebanese businessman Kassim Tajideen ("Tajideen Account"); and (2) an account "hold[ing] the proceeds of a wire transfer, also known as an electronic funds transfer ('EFT'), that was blocked by JPMCB under . . . 31 C.F.R. Parts 560, 561 and 594 ['Iranian Sanctions']" ("Saderat Account"). (*Id.*; Dkt. No. 1101 at 1).

Plaintiffs move for leave to file a supplemental complaint seeking turnover of the Tajideen Account and the Saderat Account for collection and partial

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[2] More specifically, these assets were blocked by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"). *See Levin I*, 2011 WL 812032, at *1. "OFAC administers various sanctions against terrorists . . . and state sponsors of terrorism . . . by enforcing prohibitions on transactions and trades and/or blocking property or assets of . . . terrorism-supporting countries . . . ." (Supp. Compl. ¶ 34.)

satisfaction of their judgment against Iran pursuant to § 201(a) of the Terrorism Risk Insurance Act of 2002 ("TRIA")[3] and §§ 1610(f)(1)(a) and (g)(1) of the Foreign Soverign [sic] Immunities Act ("FSIA").[4] (Dkt. No. 1099 at 4; Supp. Compl. ¶¶ 8–9.)

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[3] Section 201(a) of TRIA provides:

> Notwithstanding any other provision of law, and except as provided in subsection (b), in every case in which a person has obtained a judgment against a terrorist party on a claim based upon an act of terrorism, or for which a terrorist party is not immune under section 1605(a)(7) of title 28, United States Code, the blocked assets of that terrorist party (including the blocked assets of any agency or instrumentality of that terrorist party) shall be subject to execution or attachment in aid of execution in order to satisfy such judgment to the extent of any compensatory damages for which such terrorist party has been adjudged liable.

TRIA, Pub. L. No. 107-297, § 201(a), 116 Stat. 2322, 2337 (2002) (codified at 28 U.S.C. § 1610 note).

[4] Section 1610 of FSIA provides, in relevant part:

> (f)(1)(A) Notwithstanding any other provision of law, including but not limited to section 208(f) of the Foreign Missions Act (22 U.S.C. 4308(f)), and except as provided in subparagraph (B), any property with respect to which financial transactions are prohibited or regulated pursuant to section 5(b) of the Trading with the Enemy Act (50 U.S.C. App. 5(b)), section 620(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2370(a)), sections 202 and 203 of the International Emergency Economic Powers Act (50 U.S.C. 1701-1702), or any other proclamation, order, regulation, or license issued pursuant thereto, shall be subject to execution or attachment in aid of execution of any judgment relating to a claim for which a foreign state (including any agency or instrumentality or such state) claiming such property is not immune under section 1605(a)(7) (as in

II. Discussion

Under Federal Rule of Civil Procedure 15(d), a party may "move to serve a supplemental pleading and the district court may grant such a motion, in the exercise of its discretion, upon reasonable notice and upon such terms as may be just." *Quaratino v. Tiffany & Co.*, 71 F.3d 58, 66 (2d Cir. 1995). "Absent undue delay, bad faith, dilatory tactics, undue prejudice to the party to be served with the proposed pleading, or

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effect before the enactment of section 1605A) or section 1605A.

. . .

[(g)(1)] Subject to paragraph (3), the property of a foreign state against which a judgment is entered under section 1605A, and the property of an agency or instrumentality of such a state, including property that is a separate juridical entity or is an interest held directly or indirectly in a separate juridical entity, is subject to attachment in aid of execution, and execution, upon that judgment as provided in this section, regardless of—

(A) the level of economic control over the property by the government of the foreign state;

(B) whether the profits of the property go to that government;

(C) the degree to which officials of that government manage the property or otherwise control its daily affairs;

(D) whether that government is the sole beneficiary in interest of the property; or

(E) whether establishing the property as a separate entity would entitle the foreign state to benefits in United States courts while avoiding its obligations.

28 U.S.C. § 1610.

futility, the motion should be freely granted." *Id.* (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

With respect to the Tajideen Account, the Court concludes that Plaintiffs should be permitted to supplement their original complaint. Upon discovering the existence of the Tajideen Account on June 12, 2017, Plaintiffs acted promptly by delivering writs of execution for immediate service and levy on Defendant JPMCB on June 13, 2017. (Dkt. No. 1100 ¶ 7.) There is no evidence of "undue delay, bad faith, [or] dilatory tactics." *Quaratino*, 71 F.3d at 66. Nor is there any evidence of undue prejudice or futility. *See id.* Most important, JPMCB does not oppose Plaintiffs' motion as it relates to the Tajideen Account. (Dkt. No. 1101 at 2.)

With respect to the Saderat Account, however, the Court concludes that supplementation would be futile. In order to "execute a judgment on the blocked assets of a terrorist party, or its agency or instrumentality, to satisfy a judgment against the terrorist party," a plaintiff must establish that

> (1) the plaintiff obtained a judgment against the terrorist party; (2) the judgment is for a claim based on an act of terrorism; (3) the assets are "blocked assets" within the meaning of TRIA; and (4) execution is sought only to the extent of the plaintiff's outstanding judgment for compensatory damages.

Doe v. Ejercito De Liberacion Nacional, No. 15 Civ. 8652, 2017 WL 591193, at *2 (S.D.N.Y. Feb. 14, 2017).

Here, JPMCB argues that supplementation would be futile because the Saderat Account does not qualify as a "blocked asset" under TRIA, as it is not the property of a terrorist party. The Court agrees.

In *Hausler v. JP Morgan Chase Bank, N.A.*, the Second Circuit identified certain conditions precedent to treating an EFT at a bank located in New York[5] as the property of a terrorist state under TRIA § 201(a):

> [U]nder New York law EFTs are neither the property of the originator nor the beneficiary while briefly in the possession of an intermediary bank. As such, the only entity with a property interest in the stopped EFT is the entity that passed the EFT on to the bank where it presently rests. Thus, in order for an EFT to be a blocked asset of [a terrorist state] under TRIA § 201(a), either [the terrorist state] itself or an agency or instrumentality thereof (such as a state-owned financial institution) [must have] transmitted the EFT *directly* to the bank where the EFT is held pursuant to the block.

770 F.3d 207, 212 (2d Cir. 2014) (last alteration in original) (emphasis added) (citations omitted) (quoting *Calderon-Cardona v. Bank of New York Mellon*, 770

[5] Here, as in *Hausler*, "the bank[ ] at which the EFTs are blocked are in New York, so we look to New York property law" to "define the 'rights the judgment debtor has in the property the [creditor] seeks to reach.'" *Hausler v. JP Morgan Chase Bank, N.A.*, 770 F.3d 207, 212 (2d Cir. 2014) (second alteration in original) (quoting *Calderon-Cardona v. Bank of New York Mellon*, 770 F.3d 993, 1001 (2d Cir. 2014)).

F.3d 993, 1001–02 (2d Cir. 2014)) (internal quotation marks omitted). In other words, unless a terrorist state transferred the EFT in question directly to the blocking bank, the EFT is not attachable "[b]ecause no terrorist party or agency or instrumentality thereof has a property interest" in it. *Id.*; *see also Ejercito*, 2017 WL 591193, at *3 ("[O]nly property of a target party can be attached under TRIA[,] and . . . a mid-stream EFT is the sole property of the entity that transmitted the EFT to the blocking bank.").

Here, as in *Hausler* and *Ejercito*, it is "undisputed that no [terrorist state] transmitted any of the blocked EFTs in this case directly to the blocking bank." *Ejercito*, 2017 WL 591193, at *2 (quoting *Hausler*, 770 F.3d at 212) (internal quotation mark omitted). The blocked EFT in question was transmitted to JPMCB directly by Lloyd's Bank. (Dkt. No. 1101 at 11; Dkt. No. 1104 at 6). Under established Second Circuit law, the EFT is thus considered property of Lloyd's Bank, which is not an agent or instrumentality of Iran; consequently, the EFT cannot be attached under TRIA.

Plaintiffs attempt to sidestep *Hausler*'s rule based on the fact that Bank Saderat used Lloyd's bank as a "correspondent bank"[6] rather than an "intermediatry

[6] According to Plaintiffs, a "correspondent bank" is a "bank 'that acts as an agent for another bank, or engages in an exchange of services with that bank, in a geographical area to which the other bank does not have direct access.' " (Dkt. No. 1104 at 8 (quoting *Bank, Black's Law Dictionary* (10th ed. 2014)).) *See also Sidwell & Co. v. Kamchatimpex*, 632 N.Y.S.2d 455, 457 (N.Y. Sup. Ct. 1995) ("[A] foreign financial institution . . . that is unable to operate a branch or subsidiary office in the United States maintains

bank." [sic] (Dkt. No. 1104 at 6.) The Court concludes that this is a distinction without a difference, at least as it relates to the Second Circuit's rule in *Hausler*. As the *Ejercito* court explained, even where an EFT is transferred to a blocking bank by a "correspondent bank," the transferred asset is considered the "sole property" of the correspondent bank, rather than the "principal" bank (i.e., Bank Saderat). *See Ejercito*, 2017 WL 591193, at *1–3. Therefore, the EFT is not attachable unless the correspondent bank is itself a terrorist state or an agent or instrumentality thereof. Because Lloyd's Bank is not a terrorist state, the Saderat Account is not attachable, and supplementation would be futile as to that asset.

III. Conclusion

For the foregoing reasons, Plaintiffs' motion for leave to file a supplemental complaint is GRANTED in part and DENIED in part.

The Clerk of Court is directed to close the motion at Docket Number 1098.

SO ORDERED.

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a dollar account at a [correspondent bank], to effect US dollar transactions for itself and its customers.").

Dated: October 27, 2017
New York, New York

/s/ J. Paul Oetken
J. PAUL OETKEN
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of November, two thousand eighteen.

Doctor Lucille Levin
and Jeremy Levin,

Plaintiffs - Third-Party Defendants – Cross-Defendants - Counter-Claimants - Counter-Defendants - Appellants,

v.

JPMorgan Chase Bank, N.A.,

Defendant - Third-Party Plaintiff - Third-Party Defendant - Counter-Defendant - Cross-Defendant - Counter-Claimant - Appellee.

ORDER

Docket No: 17-3854

Appellants, Jeremy Levin and Lucille Levin, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

[SEAL]

/s/ Catherine O'Hagan Wolfe