

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

Leffer, et al.

Plaintiffs,

v.

FEDERAL REPUBLIC OF GERMANY, et al.

Defendants.

Case No. 19-cv-3529 (CJN)

**MOTION OF THE FEDERAL REPUBLIC OF GERMANY TO QUASH SERVICE FOR
INSUFFICIENCY OF PROCESS AND INSUFFICIENCY OF SERVICE OF PROCESS**

The Federal Republic of Germany, by counsel, Rubin, Winston, Diercks, Harris and Cooke, LLP moves this Court pursuant to:

1. Fed. R. Civ. P. 12 (b)(4) to quash service on Federal Republic of Germany for insufficiency of process; and
2. Fed. R. Civ. P. 12(b)(5) to quash service on Federal Republic of Germany for insufficiency of service of process as required by 28 U.S.C. 1608(a).

Memorandum of Law

The Federal Republic of Germany submits this memorandum of law in support of its motion.

Background Facts

This is an action against Federal Republic of Germany, and other defendants. The causes of action, to the extent they can be deducted from the complaint, relate to the allegation that the Free City of Danzig (now Gdansk, Poland) never lost its status because the decision by the Allied Powers to have it administered by Poland came with a the caveat that the administration should last until a peace treaty has been executed and that such peace treaty has never been executed and therefore the administration of the Free City of Danzig should be under the control

of the United States until a peace treaty is executed.

The relevant background facts with regard to attempts to serve the Federal Republic of Germany are as follows: Plaintiff Beowulf von Prince mailed by registered first class mail with advice of receipt, the complaint, summons and translations of both, once to the Ministry of Justice of the Defendant Federal Republic of Germany, which received said mailing on February 17, 2020, and once to the Ministry of Finance of the Defendant Federal Republic of Germany which received it on or about February 13, 2020. Plaintiffs also attempted to serve the Federal Republic of Germany via the Convention On The Service Abroad Of Judicial And Extrajudicial Documents In Civil Or Commercial Matters (“the Hague Convention”).¹

Federal Republic of Germany seeks to appear before this Court for the limited purpose of contesting the sufficiency of process and the sufficiency of the service of process only and does so by filing the accompanying motion to quash.

Argument

Foreign Sovereign Immunities Act

The Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. 1602 *et. seq.* contains a broad grant of sovereign immunity to foreign states, including their agencies and instrumentalities, subject to specific enumerated exceptions. The FSIA is the sole source of subject matter jurisdiction against a foreign state and its agencies or instrumentalities. *Belize Soc. Dev. Ltd. v. Gov't of Belize*, 794 F.3d 99 , 101 , 417 U.S. App. D.C. 257 (D.C. Cir. 2015) (quoting *Argentine Republic v. Amerada Hess Shipping Corp.*, 488 U.S. 428 , 443 , 109 S. Ct.

¹ Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Feb. 10, 1969, 20 U.S.T. 361, T.I.A.S. No. 6338

683 , 102 L. Ed. 2d 818 (1989)); *see also* 28 U.S.C. §§ 1605-1607.

The FSIA also specifies in how service must be made upon foreign states and their agencies and instrumentalities in §1608 (28 U.S.C. 1608). The requirements for service of process on a foreign state are set out in §1608 (a).

Service Under 28 U.S.C. 1608(a)

The FSIA, at 28 U.S.C. 1608(a) states in pertinent part:

- (a) Service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:
- (1) by delivery of a copy of the summons and complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or
 - (2) if no special arrangement exists, by delivery of a copy of the summons and complaint in accordance with an applicable international convention on service of judicial documents; or
 - (3) if service cannot be made under paragraphs (1) or (2), by sending a copy of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the head of the ministry of foreign affairs of the foreign state concerned, or
 - (4) if service cannot be made within 30 days under paragraph (3), by sending two copies of the summons and complaint and a notice of suit, together with a translation of each into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the Secretary of State in Washington, District of Columbia, to the attention of the Director of Special Consular Services--and the Secretary shall transmit one copy of the papers through diplomatic channels to the foreign state and shall send to the clerk of the court a certified copy of the diplomatic note indicating when the papers were transmitted.

28 U.S.C. § 1608(a) requires that plaintiff “must attempt service by the first method (or determine that it is unavailable) before proceeding to the second method, and so on.” *Ben-Rafael*

v. Islamic Republic of Iran, 540 F.Supp.2d 39, 52 (D.D.C.2008), *Angellino v. Royal Family Al-Saud*, 688 F.3d 771, 773, 402 U.S. App. D.C. 136, 138, 2012 BL 185851, 2 (D.C. Cir. 2012).

As set out above, §1608(a) provides four methods of service. The first two involve either special arrangements between the United States and the Federal Republic of Germany or an international convention to which the United States and the Federal Republic of Germany are parties. The last two methods involve the clerk of the court dispatching the summons and complaint to either the foreign minister of the Federal Republic of Germany or to the United States Secretary of State for further transmission through diplomatic channels to the Federal Republic of Germany. Both of the latter methods require a “notice of suit” and full German translations of all the papers to be served as well.

I. The process purportedly served on Federal Republic of Germany was insufficient and service should be quashed.

Federal Republic of Germany, *infra*, contests the method by which process was served on it in the instant case. In this section of its Memorandum of Law, Federal Republic of Germany contests the adequacy of the process itself. The process in this case was fatally insufficient because the process did not include the Notice of Suit required by 28 U.S.C. 1608 (a) (3) and (4).

The appropriate method of service is dependent upon whether a foreign sovereign is a “foreign state or [its] political subdivision” or a foreign sovereign’s “agency or instrumentality”. Thus, a court must determine into which category a defendant falls before it can determine if service was effected properly. See *Transaero, Inc. v. La Fuerza Aerea Boliviana*, 30 F.3d 148, 154 (D.C. Cir. 1994).

It is undeniable that the Federal Republic of Germany is a “foreign state” and as such is subject to 28 USC § 1608(a). Thus, the service requirements must be adhered to rigorously.

Howe v. Embassy of Italy, 68 F. Supp. 3d 26, 32, 2014 BL 251121, 6 (D.D.C. 2014).

The form of Notice of Suit that is required by 28 U.S.C. 1608(a) is set forth in regulations promulgated by the Secretary of State and is found at 22 C.F.R. 93.2.:

§ 93.2 Notice of suit (or of default judgment)

(a) A Notice of Suit prescribed in section 1608(a) of Title 28, United States Code, shall be prepared in the form that appears in the Annex to this section.

(b) In preparing a Notice of Suit, a party shall in every instance supply the information specified in items 1 through 5 of the form appearing in the Annex to this section. A party shall also supply information specified in item 6, if notice of a default judgment is being served.

(c) In supplying the information specified in item 5, a party shall in simplified language summarize the nature and purpose of the proceeding (including principal allegations and claimed bases of liability), the reasons why the foreign state or political subdivision has been named as a party in the proceeding, and the nature and amount of relief sought. The purpose of item 5 is to enable foreign officials unfamiliar with American legal documents to ascertain the above information.

(d) A party may attach additional pages to the Notice of Suit to complete information under any item.

(e) A party shall attach, as part of the Notice of Suit, a copy of the Foreign State Immunities Act of 1976 (Pub. L. 94-583; 90 Stat. 2891). Annex Notice of Suit (or of Default Judgment.n1²

In addition to the information required to be included in the Notice of Suit, the plaintiff is required to include a copy of the FSIA.

² n1 Relevant only if items 4 and 6 indicate that a default judgment has occurred.

1. Title of legal proceeding; full name of court; case or docket number.

2. Name of foreign state (or political subdivision) concerned:

3. Identity of the other Parties: Judicial Documents

4. Nature of documents served (e.g., Summons and Complaint; Default Judgment):

5. Nature and purpose of the proceedings; why the foreign state (or political subdivision) has been named; relief requested:

6. Date of default judgment (if any):

7. A response to a "Summons" and "Complaint" is required to be submitted to the court, not later than 60 days after these documents are received. The response may present jurisdictional defenses (including defenses relating to state immunity).

8. The failure to submit a timely response with the court can result in a Default Judgment and a request for execution to satisfy the judgment. If a default judgment has been entered, a procedure may be available to vacate or open that judgment

9. Questions relating to state immunities and to the jurisdiction of United States courts over foreign states are governed by the Foreign Sovereign Immunities Act of 1976, which appears in sections 1330, 1391(f), 1441(d), and 1602 through 1611, of Title 28, United States Code (Pub. L. 94-583; 90 Stat. 2891).

In the instant case the papers mailed by Plaintiff to the Ministry of Justice and to the Ministry of Finance of the Federal Republic of Germany did not contain a Notice of Suit and did not contain a copy of the FSIA and thus was legally insufficient. *Ellenbogen v. Canadian Embassy*, 2005 U.S. Dist. LEXIS 35262, 6-7 and n.2 (D.D.C. November 9, 2005) (“plaintiff failed to include the required notice of suit with a copy of the summons and complaint . . . [said] notice of suit must include basic information about the case, including the nature and purpose of the proceedings,” and the text of the FSIA. 22 C.F.R. § 93.2.); *Lucchino v Foreign Countries of Brazil, South Korea*, 631 F Supp 821(E.D. Pa. 1986) (service was not valid where plaintiff failed to serve all required documents with initial pleading, including federal notice of suit.)

The process that was purportedly served on Federal Republic of Germany is fatally defective. The failure to include a Notice of Suit mandates that service be quashed.

II. Service of process should be quashed for insufficiency of service of process as there has not been proper service of the summons and complaint on Federal Republic of Germany pursuant to 28 U.S.C. 1608(a).

Plaintiffs’ attempted to serve Federal Republic of Germany by mailing the summons and complaints to the German Ministry of Justice in Berlin and, in a separate mailing, to the Ministry of Finance. The purported service was not proper service as required by the FSIA, and pursuant to Fed R. Civ. P. 12(b)(5), service should be quashed.

As stated above, §1608(a) permits service by special arrangement between the Plaintiff and the foreign sovereign. There is no such special arrangement between the Federal Republic of Germany and the Plaintiffs that would allow service by mail, nor does Plaintiff allege the existence of one.

Plaintiffs in their certificate of service filed on February 26, 2020, stated that they also

used the second method of service namely service pursuant to an international convention, in this case the Hague Convention, to which the Federal Republic of Germany and the United States are parties ,by sending the complaint to the German Central Authority in Berlin with a cover letter dated December 27, 2019. The German Central Authority, the *Senatsverwaltung für Justiz, Verbraucherschutz und Antidiskriminierung* in Berlin, rejected the service attempt and informed Plaintiffs accordingly on January 29, 2020. The rejection of service was two-fold, one based on the fact that the lawsuit seeks remedies that are not within the scope of the Hague Convention since they are neither civil nor commercial in nature, *see* Art 1 Hague Convention, and secondly, because compliance would infringe the Federal Republic of Germany’s sovereignty or security. *See* Art 13 Hague Convention.

The German Central Authority in Berlin informed the Plaintiffs in writing about their right to appeal the decision to the *Kammergericht* in Berlin (equivalent of a US Federal Circuit Court) within 30 days after the date of the decision, however, Plaintiffs did not appeal the decision. Thus, the attempt serve the complaint under the Hague Convention on the Federal Republic of Germany was not effective.

The last two methods involve the clerk of the court dispatching the summons and complaint to either the foreign minister of the Federal Republic of Germany³ or to the United States Secretary of State for further transmission through diplomatic channels to The Federal Republic of Germany. As noted above, both of the latter methods require a “Notice of Suit” and full German translations of all the papers to be served as well. It is clear that the purported two attempts to service of process by mail in this case fall far short of complying with the mandate of

³ Attempts at service by mail, are considered illegal in Germany and an affront to its judicial

§1608(a). The mailings did not come from the clerk of the court, but from one of the Plaintiffs. Service that is required under § 1608(a) is insufficient if a party, instead of the clerk of the court as required by § 1608(a)(3) mails the service packet to the foreign state. *Barot v. Embassy of Republic of Zambia*, 11 F. Supp.3d 33, 35 (D.D.C. 2014).

As discussed above, the mailed copies also did not include a Notice of Suit. Thus, Plaintiffs have not attempted, no less made, service in accordance with Section 1608(a) of the FSIA.

Courts in this Circuit require “strict adherence to the terms of 1608(a)” and will dismiss the plaintiff’s case absent exact compliance with the statute. *Transaero* at 154 (D.C. Cir. 1994); *see also Doe I v. State of Israel*, 400 F.Supp.2d 86, 102 (D. D.C. 2005). As a result, service of process should be quashed pursuant to Fed. R. Civ. P 12(b)(5) as there was insufficient service of process.

Conclusion

Plaintiffs’ process and their attempts to serve process were both defective. The process failed to include the required German translation of the papers and failed to include the required Notice of Service. For these reasons service should be quashed pursuant to Rule 12(b)(4). In addition, Plaintiffs’ have failed to serve Federal Republic of Germany pursuant to the requirements of 28 U.S.C. §1608(a). Service of process therefore should also be quashed for this reason pursuant to Rule 12(b)(5).

sovereignty.

Dated: March 25, 2020

Respectfully submitted,

s/ Jeffrey Harris

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CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2020, I electronically filed the foregoing document and proposed order with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notice of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

s/ Jeffrey Harris
Jeffrey Harris

Service List:

Via U.S. Mail to:

KARIN LEFFER
c/o Beowulf von Price
Schweizer Strasse 38
AT-6830 Rankweil
Austria
PRO SE

BOWULF VON PRINCE
Schweizer Strasse 38
AT-6830 Rankweil
Austria
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