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VIA ELECTRONIC COURT FILING

Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10037-7312

Re: *Republic of Kazakhstan v. Chapman*, 21-cv-03507

Dear Judge Koeltl:

We represent Defendants in the above-captioned matter. Pursuant to your Individual Practices I.F, II.B, we respectfully submit this letter requesting a pre-motion conference and setting forth the grounds of Defendants' anticipated: (1) motion to dismiss Plaintiff Republic of Kazakhstan's claims under Federal Rules of Civil Procedure 8(a), 9(b), and 12(b)(6); and (2) motion to compel arbitration and dismiss Plaintiff Outrider Management L.L.C.'s claims. Defendants also intend to seek a stay of discovery pending the outcome of the motions. For a number of reasons, the claims of both Kazakhstan and Outrider should be dismissed.[1]

This case is part of Kazakhstan's years-long attempt to evade payment on a $500 million arbitration award that was entered against it in Sweden in 2013 (the "SCC Award"). That very same award was confirmed by the Honorable Amy Berman Jackson, U.S. District Court for the District of Columbia, in an opinion issued in 2018, and affirmed by the U.S. Court of Appeals for the District of Columbia. In a separate opinion, Judge Jackson likewise dismissed Civil RICO claims asserted by Kazakhstan in connection with the confirmation of the SCC Award. Litigation remains pending before Judge Jackson over the identity of various Kazakh assets, hidden or otherwise, in the United States that may be subject to attachment.

Kazakhstan's harassment campaign to avoid payment of this validly-confirmed final award started with lawsuits against the prevailing parties in the Swedish arbitration, non-parties Anatolie Stati, Gabriel Stati, and companies controlled by them (collectively, the "Statis"), whose assets in oil and gas development were expropriated by Kazakhstan through the well-known tactics used by autocratic governments around the world and identified by the arbitrators in the SCC Award,

[1] Prior to filing this letter, we conferred with Plaintiffs and have been advised that Plaintiffs intend to move to remand this matter. We will oppose that motion and believe a motion to dismiss is appropriate at this time.

including manipulation of license requirements, bogus fee and tax assessments, imposition of meritless criminal charges on Statis employees, and interfering with the Statis' ability to obtain funding – in short, "a string of measures of coordinated harassment." *See* Award, Exhibit A to Declaration of Charlene Sun, *Stati v. Republic of Kazakhstan*, No. 1:14-cv-1638 (D.D.C. Sept. 30, 2014), ECF. No. 2-1, ¶¶ 1088–89, 1093, 1095. Courts around the world, in addition to the U.S. District Court for the District of Columbia, have consistently rejected Kazakhstan's allegations of fraud as transparent and meritless attempts to re-litigate the SCC Award. Because its claims of fraud have been continually frustrated in subsequent enforcement actions, Kazakhstan now attempts to re-litigate those same claims against Defendants, which include the investment manager to various funds ("ACP Funds") holding interests in publicly-traded notes (the "Notes") that were issued by a holding company for the Statis' activities in Kazakhstan.

While Kazakhstan was initially the sole Plaintiff, it recently filed an Amended Complaint that names Outrider as an additional Plaintiff. Like the ACP Funds, Outrider also purchased Notes. After Kazakhstan expropriated the Statis' assets, the Statis and various noteholders (including Outrider and the ACP Funds) became party to an agreement (the "Sharing Agreement") restructuring the repayment terms of the Notes. Under the Sharing Agreement, the noteholders will be repaid by funds collected on the SCC Award. Despite the fact that Outrider sold its Notes nearly five years ago, it recently joined Kazakhstan's complaint and sued Defendants in their capacity as fellow noteholders. Outrider alleges, without any factual basis, that Defendants conspired with the Statis to fraudulently induce Outrider to enter into the Sharing Agreement and otherwise reiterates Kazakhstan's baseless allegations of fraud against the Statis.

The gravamen of the complaint is Kazakhstan's attempt to re-litigate its unsupported fraud claims against the Statis and collaterally attack the underlying SCC Award. Because Defendants, as noteholders to the Sharing Agreement, have a contractual right to a portion of the proceeds of the SCC Award, and because Defendants have financed a portion of the Statis' litigation expenses to enforce the SCC Award, Kazakhstan alleges that Defendants' funding assistance equates to "conspiring to commit fraud" (Count I), "aiding and abetting fraud" (Count II), and "unlawful means conspiracy" under English law (Count III).

Kazakhstan's claims against Defendants are meritless and vexatious and warrant dismissal for a variety of reasons, including: (1) Kazakhstan fails entirely to plead valid fraud-based claims; (2) Defendants cannot be held liable for unlawful means conspiracy under English Law; and (3) Defendants are protected by the *Noerr-Pennington* doctrine.

Kazakhstan cannot sufficiently plead allegations to support its claims for civil conspiracy to commit fraud and aiding and abetting wrongful conduct against Defendants, non-parties to the SCC arbitration. To assert these claims, Kazakhstan must allege a primary tort. *See Kirch v. Liberty Media Corp.*, 449 F.3d 388, 401 (2d Cir. 2006); *Lerner v. Fleet Bank, N.A.*, 459 F.3d 273, 292 (2d Cir. 2006). Here, Kazakhstan relies on its previously rejected fraud allegations against the Statis: that the Statis allegedly defrauded the SCC arbitrators by providing false evidence that caused the arbitrators to issue a fraudulent award. However, Kazakhstan's fraud allegations have been adjudicated and rejected by the U.S. District Court for the District of Columbia, which confirmed the SCC Award, and the Svea Court of Appeal. Accordingly, Kazakhstan's fraud allegations are barred by collateral estoppel, which "forecloses successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment, even if the issue recurs in the context of a different claim." *Lefkowitz v. McGraw-Hill Glob. Educ. Holdings, LLC*, 23 F. Supp. 3d 344, 358–59 (S.D.N.Y. 2014) (citation omitted).

Additionally, because Kazakhstan has otherwise failed to plead the elements of civil conspiracy and aiding and abetting, its claims must be dismissed.

Kazakhstan's claim for "Unlawful Means Conspiracy" under English law also fails because Kazakhstan cannot apply English law here. A conflict exists between New York and English law because English law allows a freestanding claim for conspiracy and New York law does not. Under New York choice-of-law rules, New York law governs the current dispute because New York has the greater interest in the matter as it is the location of the alleged tortious acts. As such, Kazakhstan's attempt to avail itself of certain foreign causes of actions to its complaint, in a manner that is inconsistent with New York law, warrants dismissal. *City of Almaty v. Sater*, 2020 WL 7027566, at *8 (S.D.N.Y. Nov. 30, 2020) (noting that the plaintiff could not "pick and choose [its] favorite causes of action from different legal systems").

Kazakhstan's claims must also be dismissed because Kazakhstan attacks Defendants' First Amendment right to seek legal relief, which is protected by the *Noerr-Pennington* doctrine. *See Singh v. NYCTL 2009-A Tr.*, 683 F. App'x 76, 77–78 (2d Cir. 2017).

Outrider's claims must be dismissed because its claims are subject to a mandatory arbitration clause. Outrider and the ACP Funds purchased Notes and, in turn, became parties to the Sharing Agreement. The Sharing Agreement includes a clear and unambiguous arbitration clause (the "Arbitration Clause"). While Outrider's claims lack merit for numerous reasons, in the Arbitration Clause, the parties agreed to arbitrate "any suit, action or proceeding" between or among any of the noteholders "arising out of or based upon [the Sharing] Agreement." The parties also agreed that arbitration "shall be finally settled under the International Chamber of Commerce Rules of Arbitration (the 'ICC Rules')."

Outrider's claims must be compelled to arbitration because by explicitly incorporating the ICC Rules into the Arbitration Clause, the parties agreed that an arbitrator, not a court, would resolve questions of arbitrability. *See Shaw Grp. Inc. v. Triplefine Int'l Corp.*, 322 F.3d 115, 120 (2d Cir. 2003). However, even if this Court considers the arbitrability issue, Outrider's claims must be compelled to arbitration because, under the Federal Arbitration Act, the Arbitration Clause is a valid, binding arbitration agreement and Outrider's claims fall within the Arbitration Clause's broad scope. *See Weiss v. Travex Corp*., 2002 WL 1543875, at *2 (S.D.N.Y. July 12, 2002). Therefore, Outrider's claims must be compelled to arbitration and dismissed. *See Lewis v. ANSYS, Inc.*, 2021 WL 1199072, at *3 (S.D.N.Y. Mar. 30, 2021).

We respectfully request a pre-motion conference to file a motion to dismiss and motion to compel arbitration.[2]

Sincerely,

/s/ Stephen M. Baldini

Stephen M. Baldini
Paul Butler

[2] In so far as Your Honor's rules are silent on the issue of whether the filing of a request for a pre-motion conference for a 12(b)(6) motion stays the time for the filing of an answer, we respectfully request that a stay of the time for filing an answer be imposed until, at least, after the conference is held.