UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

ANATOLIE STATI, GABRIEL STATI, ASCOM GROUP, S.A., AND TERRA RAF TRANS TRAIDING LTD.,

Petitioners,

v.

REPUBLIC OF KAZAKHSTAN,

Respondent.

Civil Action No. 14-cv-1638 (ABJ)

PETITIONERS' OMNIBUS MEMORANDUM OF LAW IN SUPPORT OF MOTIONS FOR (1) EMERGENCY RELIEF CONCERNING SALE OF REAL PROPERTY AND PROCEEDS FROM ANY SALE, (2) ATTACHMENT-RELATED RELIEF IN AID OF EXECUTION ON JUDGMENT, AND (3) WRIT OF EXECUTION ON JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

Petitioners Anatolie Stati, Gabriel Stati, Ascom Group, S.A., and Terra Raf Traiding Ltd. ("Petitioners") respectfully submit this omnibus memorandum of law in support of their motions for (1) emergency relief concerning sale of real property and proceeds from any sale, (2) attachment-related relief in aid of execution on judgment, and (3) writ of execution on judgment. The motions should be granted, for all the reasons that follow.

I. INTRODUCTION

These motions present a rare opportunity for Petitioners to collect a small portion of a half-billion dollar judgment debt that the Republic of Kazakhstan (the "ROK") has steadfastly refused to honor. As the Court is aware, this Court rendered judgment against the ROK confirming an arbitral award in favor of Petitioners and requiring the ROK to pay Petitioners more than US$ 500 million (the "Judgment") as a result of the ROK's violations of international law. The ROK has refused to pay a single penny due under the Judgment or the underlying award (which was itself issued on December 19, 2013), and it has engaged in a pattern of intransigence with respect to its post-judgment discovery obligations that has resulted in extensive (and expensive) motion practice before this Court. Now, however, there is an opportunity for Petitioners to obtain a small measure of satisfaction.

According to information recently obtained by Petitioners from public business databases, one of three properties owned by the ROK in this District is currently being used by two private commercial enterprises – a language school (Russian With Natalia) and a remodeling general contractor (Modern Style Construction LLC) – both of which are managed by Mr. Sergei Tsoy, a Kazakh national who appears not to have diplomatic status. The ROK purchased the property in question – a two-story "multi-family dwelling" located at 1529 O Street, NW (the "Property") – on June 15, 1998, after having obtained permission from the United States Department of State to use it as a diplomatic residence. Petitioners understand that, from in or about June 1998 to in or

about January 2013, the ROK used the Property as the residence of its ambassador to the United States. However, the ROK subsequently changed the use of the Property from diplomatic residence to commercial use without having requested or obtained approval from the State Department, in violation of Sections 4305(a) and 4315(a) of the Foreign Missions Act, 22 U.S.C. §§ 4301-4316, and Diplomatic Note 20-1830.

By allowing two private commercial enterprises to maintain offices at 1529 O Street, NW, the ROK is now undoubtedly using the Property "for a commercial activity in the United States" within the meaning of Section 1610(a) of the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. §§ 1330, 1332, 1391(f), 1441(d), 1602–1611. For this reason, and further because the Judgment is based on an order confirming an arbitral award rendered against the ROK, the Property is not immune from attachment or execution under the FSIA.

The Property also is not immune from attachment or execution under Articles 22(3) and 30(1) of the Vienna Convention on Diplomatic Relations ("Vienna Convention") because it is not now being used as a diplomatic residence. Rather, as already noted, the ROK is allowing the Property to be used by two commercial enterprises, rendering its prior use of the Property as the residence of its ambassador to the United States from 1998 to 2013 irrelevant to the immunity determination.

Crucially, emergency injunctive relief is also necessary, given the risk that the ROK could sell the Property and spirit away the proceeds during the pendency of these proceedings. This risk is substantial, given: (1) the ROK's steadfast refusal over more than seven years to satisfy the arbitral award underlying the Judgment; (2) the ROK's continuing violation of the Foreign Missions Act and Diplomatic Note 20-1830 in connection with its use of the Property for commercial purposes; and (3) the ROK's well-established attempts to shield its assets from

Petitioners' enforcement efforts before various European courts.[1] And, importantly, neither the FSIA nor the Vienna Convention bars the Court from ordering emergency relief to preserve otherwise attachable real property of a foreign sovereign.

II. FACTUAL BACKGROUND

A. The ROK's Use of the Property as the Residence of Its Ambassador to the United States From 1998 to 2013

On June 15, 1998, the ROK purchased the following three adjacent parcels of real property in Washington, DC from the same seller in a single transaction: (1) 1529 O Street, NW; (2) 1401 16th Street, NW; and (3) 1407 16th Street, NW. Declaration of Thomas C.C. Childs, dated July 19, 2021 ("Childs Decl."), ¶ 3; Exs. C, D, E. The purchase price for the three parcels was $5,000,000. *Id.*

The ROK had received permission from the United States Department of State to purchase the three parcels for diplomatic use. Specifically, it had received permission to purchase the Property "for use as a diplomatic residence," *id.*, ¶ 2; Ex. A, and it had received permission to purchase the 1401 and 1407 16th Street, NW properties "for chancery use and accessory parking," *id.*, ¶ 2; Ex. B.

Petitioners understand that, from in or about June 1998 to in or about January 2013, the ROK used the Property as the residence of its ambassador to the United States. *See* Ex. A. The

---

[1] On June 29, 2021, in enforcement proceedings brought by Petitioners in Belgium, the Brussels Court of Appeal entered judgment in favor of Petitioners upholding the "conservatory" attachment of certain assets belonging to the ROK on the ground (*inter alia*) that Petitioners' recovery was "at risk" because of the ROK's steadfast refusal to comply with the arbitral award. Childs Decl., ¶ 23; Ex. AA at 19-21. The Brussels Court of Appeal found the ROK had made "clear attempts . . . to withhold/shield assets from the right of recourse of the creditors in the context of the judgment rendered against Kazakhstan." Ex. AA at 32. Similarly, in Swedish enforcement proceedings, on January 24, 2018 the Stockholm District Court ordered the attachment of property belonging to the ROK in Sweden on the ground (*inter alia*) that "it may reasonably be surmised that Kazakhstan will try to evade the debt by disposing of the property or by other means." *Id.*, ¶ 22; Ex. Z at 26.

Property is described in the current District of Columbia Tax Assessor Record as a two-story "multi-family dwelling" built in 1890, comprising nine rooms spread across two units, with 2,054 total square feet of living space and 1,027 total square feet of basement space. *Id.*, ¶ 4; Ex. F. In tax year 2020, the assessed value of the Property according to the Tax Assessor was $1,521,980. Ex. F.

Since in or about June 1998, the ROK has used the 1401 16th Street, NW property as the administrative offices of its Embassy to the United States. *See id.*, ¶ 6; Ex. I. In tax year 2019, its assessed value according to the Tax Assessor was $17,125,990. *Id.*, ¶ 5; Ex. G. The 1407 16th Street, NW property is a parking lot, *id.*, ¶ 5; Ex. H; it remains the property of the ROK, *id.*, although the ROK failed to include it on a list of its real property in the United States prepared in discovery in this action, *id.*, ¶ 6; Ex. I, and Petitioners have no information concerning its past or current use by the ROK. In tax year 2020, its assessed value according to the Tax Assessor was $2,794,880. *Id.*, ¶ 5; Ex. H.

B. The ROK's Current Use of the Property for Commercial Purposes

Petitioners understand that the ROK continued to use the Property as the residence of its ambassador to the United States until in or about January 2013, when it purchased a larger and more luxurious residence for its ambassador in the Woodland Normanstone neighborhood of Washington, DC. *See id.*, ¶ 7; Ex. J. The purchase price for this property, which is located at 2910 Edgevale Terrace, NW, was $5,495,000. *Id.* As of tax year 2020, its assessed value according to the Tax Assessor was $5,946,350. *Id.*, ¶ 7; Ex. K. Petitioners understand that, since in or about January 2013, the ROK has used 2910 Edgevale Terrace, NW as the residence of its ambassador to the United States. *See id.*, ¶ 6; Ex. I.

On September 11, 2020, in response to Petitioners' Document Request No. 1 (seeking documents "sufficient to identify and locate any Asset of the ROK in the United States"), the ROK

produced a list of six parcels of real property in the United States, as well as various documents related to the ROK's purchase or lease of the properties. *Id.*, ¶ 6; Ex. I. The list of properties was prepared by the ROK's counsel specifically for the purposes of discovery in this action. *Id.* Item 1 on the list is 1401 16th Street, NW, which is described as "Administrative building of the Embassy"; item 2 is 2910 Edgevale Terrace, NW, described as "Residence of the Ambassador"; and item 3 is 1529 O Street, NW, described as "Residential building of the Embassy."[2] Ex. I.

The ROK's description of the Property as "Residential building of the Embassy" appears to be incorrect. According to information recently obtained by Petitioners from public business databases, the following two commercial enterprises currently maintain offices at 1529 O Street, NW:

Russian With Natalia. According to a OneStop Report created by D&B Hoovers on June 30, 2021, Russian With Natalia is a language school that maintains its only offices at 1529 O Street, NW. *Id.*, ¶ 9; Ex. M. Several other online business databases confirm that Russian With Natalia has its offices at 1529 O Street, NW. *Id.,* ¶¶ 10-13; Exs. N, O, P, Q. Business databases report that the company is managed by Mr. Sergei Tsoy, *see* Exs. N, Q, a Kazakh national who appears not to have diplomatic status.[3] Databases also report that all four of the company's employees work in the 1529 O Street, NW building. Exs. M, N. Russian With Natalia was incorporated in 2017 and has annual sales of approximately $371,000. Ex. M. The company does not appear to be affiliated with the ROK or its Embassy in any way.

---

2 Similarly, in deposition testimony given on May 9, 2019 in this action, Mr. Kalymzhan Ibraimov, an employee of the ROK's Ministry of Finance, stated that "[t]he Republic of Kazakhstan has three real estate objects [*sic*] in Washington, D.C. One is an embassy and the two buildings for where the embassy's employees reside." Childs Decl., ¶ 20; Ex. Y at 72:16-19.

3 As discussed below, Mr. Tsoy also is the manager of Modern Style Construction LLC, a remodeling general contractor that has its main office in Potomac, Maryland. According to the "About us" page on the website of Modern Style Construction LLC, the firm specializes in "kitchen, bathroom and basement remodeling." Childs Decl., ¶ 16; Ex. T.

Modern Style Construction LLC. Modern Style Construction LLC (also known as "MSC LLC-Kitchen Bathroom") is a remodeling general contractor that also occupies 1529 O Street, NW. *Id.*, ¶¶ 13-14; Exs. Q, R. Like Russian With Natalia, Modern Style Construction LLC is managed by Mr. Tsoy. *Id.*, ¶ 13; Ex. Q. It is organized as a limited liability company and has its main office in Potomac, Maryland. *Id.*, ¶¶ 15-16; Exs. S, T. According to a June 2021 Westlaw Company Investigator report, the company has an office at "1529 O ST NW #202, WASHINGTON, DC, 2005." *Id.*, ¶ 13; Ex. Q. At least one online business directory confirms that Modern Style Construction LLC has an office at 1529 O Street, NW. *Id.*, ¶ 14; Ex. R.

Modern Style Construction LLC has carried out a significant amount of remodeling work on the ROK's Embassy and other properties in the District of Columbia. *Id.*, ¶ 17; Ex. U. The company's website includes the following testimonial by the ROK Embassy:

> Our historic building in Washington DC is definitely in great hands. Modern Style has completed numerous projects for our Embassy and continues to be our general contractor. They provide quality service, efficient cost and it is very pleasant to work with such a great group of people. The work they have done includes: electrical work, roof replacement, HVAC replacement, major restoration and remodeling of our main office building and residencies. I would recommend their company to anyone who is in need of professional general contracting and consultation.

Id. Modern Style Construction LLC thus appears to have a continuing business relationship with the ROK, which allows it to use office space in the Property.

C. The ROK's Violations of United States Law in Connection With Its Use of the Property for Commercial Purposes

The ROK's use of the Property for commercial purposes constitutes a continuing violation of Sections 4305(a) and 4315(a) of the Foreign Missions Act, 22 U.S.C. §§ 4301-4316, and Diplomatic Note 20-1830.

Section 4305(a) of the Foreign Missions Act requires a foreign mission to notify the Secretary of State prior to any proposed acquisition or sale of real property or "any change in the purpose for which real property is used by a foreign mission." 22 U.S.C. §§ 4305(a)(1)-(2). Section 4315(a) of the Foreign Missions Act provides that "[a] foreign mission may not allow an unaffiliated alien the use of any premise of that foreign mission which is inviolable under United States law (including any treaty) for any purpose which is incompatible with its status as a foreign mission, including use as a residence." 22 U.S.C. § 4315(a).

Diplomatic Note 20-1830, issued by the United States Department of State on December 3, 2020, "restate[s] policies and procedures regarding application of the Foreign Missions Act . . . concerning the rules and procedures associated with the acquisition, alteration, construction, renovation, use, or disposition of real property by foreign missions in the United States." Childs Decl., ¶ 18; Ex. V at 1. It supersedes Diplomatic Note 11-189, issued on September 6, 2011.[4] *Id.*

Diplomatic Note 20-1830 provides that "[a]bsent [Office of Foreign Missions] approval of a proposed acquisition, alteration, construction, renovation, use, or disposition of real property, foreign governments are advised that their properties would not enjoy any otherwise applicable privileges and immunities, including inviolability and exemption from real estate taxation." Ex. V at 2. It specifies that "change in use of a property (including change in tenant if property is being leased)" is considered an "acquisition" under the Foreign Missions Act and "must be approved by [the Office of Foreign Missions]." *Id.*

Diplomatic Note 20-1830 further provides that a foreign mission's written request for approval should include, "[a]t a minimum," the following information:

---

4 Diplomatic Note 11-189, which was in effect from September 6, 2011 to December 3, 2020, imposed materially the same requirements on a foreign mission as Diplomatic Note 20-1830. *See* Childs Decl., ¶ 19; Ex. W.

> "1. The exact address of the property, including apartment, suite, floor number, square footage, etc.
>
> 2. The proposed or existing use of the property, i.e., chancery, chancery annex, consulate, consular annex, Chief of Mission residence, staff residence, [miscellaneous foreign government offices], etc.
>
> 3. The proposed transaction, i.e., purchase, lease (including proposed lease start and end dates), sale, alteration, expansion, or use.
>
> 4. The inclusion of one of the following statements:
>
> a. No part of this property is or will be used for commercial purposes; or
>
> b. A portion or all of this property is or will be used for commercial purposes and by doing so the mission understands that such use deprives the area used for such purposes of both its inviolability status and eligibility for exemption from property taxation.
>
> . . .
>
> 5. The inclusion of the following statements: . . . The mission further acknowledges that it must request and obtain the Department's approval prior to changing the use of this property from that which is described in this note."

Ex. V at 3-4.

In addition, Diplomatic Note 20-1830 provides that "[i]f a portion or all of a property is or will be used for commercial purposes, missions are required to provide [the Office of Foreign Missions] with information detailing the total square footage of the premises and the square footage of the premises that is or will be used for commercial purposes." Ex. V at 3 (emphasis added).

Finally, Diplomatic Note 20-1830 expressly prohibits the commercial use of a property authorized for diplomatic use:

> "Unless specifically approved otherwise, properties acquired by foreign missions for diplomatic or consular purposes are to be used in their entirety for such purposes. Without separately requesting and obtaining [Office of Foreign Missions] approval, properties authorized for diplomatic or consular purposes may not be used, even in part, for any other purpose, such as office space for other governmental organizations, state-owned or private commercial entities, and may not be leased to any other party not affiliated with the mission."

Ex. V at 5.

The ROK violated Section 4305(a) of the Foreign Missions Act and Diplomatic Note 20-1830, which implements Section 4305(a), when it permitted the Property to be used for commercial purposes by non-diplomatic persons, without having requested or obtained the approval of the Office of Foreign Missions.[5] As set forth above, on June 15, 1998, the Department of State granted the ROK permission to purchase the Property "for use as a diplomatic residence." *Id.*, ¶ 2; Ex. A. Petitioners understand that, in accordance with this permission, the ROK used the Property as the residence of its ambassador to the United States from in or about June 1998 to in or about January 2013. *See id.* At present, despite the ROK never having requested or obtained permission to change the use of the Property from diplomatic to commercial, two commercial enterprises (Russian With Natalia and Modern Style Construction LLC) occupy the two-story building.[6] *Id.*, ¶¶ 9-14; Exs. M, N, O, P, Q, R. Moreover, the ROK continues to receive a 100%

---

5 As noted above, Diplomatic Note 11-189, which was in effect from September 6, 2011 to December 3, 2020, imposed materially the same requirements on a foreign mission as Diplomatic Note 20-1830. *See* Childs Decl., ¶ 19; Ex. W. Accordingly, to the extent that the ROK changed the use of the Property from diplomatic to commercial during this period, it violated Diplomatic Note 11-189.

6 Even if the two commercial enterprises with offices at 1529 O Street, NW occupy only a portion of the two-story building (which seems unlikely), Diplomatic Note 20-1830 required the ROK both (1) to notify the Office of Foreign Missions of the square footage of the area that it proposed to use for commercial purposes and (2) to include a statement in its request for approval that it understood that such commercial use would deprive this area of both its inviolability and eligibility for exemption from property taxation. *See* Ex. V at 3. The ROK did not comply with either of these requirements.

exemption from property taxation with respect to the Property, despite its use of the building for commercial purposes. *See id.* ¶ 8; Ex. L at 273.

The ROK's use of the Property for commercial purposes also violates Section 4315(a) of the Foreign Mission Act, which prohibits a foreign mission from "allow[ing] an unaffiliated alien the use of any premise of that foreign mission which is inviolable under United States law (including any treaty) for any purpose which is incompatible with its status as a foreign mission, including use as a residence." *See* 22 U.S.C. § 4315(a). Mr. Tsoy, the manager of Russian With Natalia and Modern Style Construction LLC, appears not to have diplomatic status or to be affiliated with the ROK Embassy in any way; his use of the Property as the premises for these two commercial enterprises clearly is "incompatible with its status as a foreign mission."

III. ARGUMENT

Petitioners are entitled to the relief sought here – namely, emergency relief concerning the proceeds from any sale of the Property by the ROK, attachment-related relief in aid of execution, and ultimately execution itself. Moreover, the FSIA does not immunize the Property against the relief sought by Petitioners, because the Judgment at issue is "based on an order confirming an arbitral award," and because the relief sought concerns property now being "used for a commercial activity in the United States." The relief sought also is not barred by the Vienna Convention because the Property is not now being used for diplomatic purposes.

A. The Relief Sought Should be Ordered

Supplementary proceedings "to enforce judgments are meant to be swift, cheap, informal." *Resolution Tr. Corp. v. Ruggiero*, 994 F.2d 1221, 1226 (7th Cir. 1993). Key to enforcement is timing: To ensure that there is something to enforce against, a host of related interim mechanisms function to safeguard the asset to be collected against. For instance, as the D.C. Court of Appeals has noted, the "main purpose" of attachment of assets prior to execution is "to secure the debt,"

such that speed is critical – "*Surprise is often the key to a successful attachment.*" *Lomax v. Spriggs*, 404 A.2d 943, 946, 948 (D.C. Ct. App. 1979) (emphasis added).

As shown below, the District of Columbia's judgment-enforcement scheme, which is made applicable here by Rule 69(a)(1), allows for the Court to order relief concerning sale of the property and proceeds from any sale on an emergency basis. The Court is further empowered by its inherent power to order procedural relief and regulate the practice of litigation before it in any manner it chooses, consistent with federal law. *See* Fed. R. Civ. P. 83(b).

1. Emergency Relief

Emergency relief is necessary, given the risk that the ROK could sell the Property and spirit away the proceeds during the pendency of these proceedings. This risk is substantial, given: (1) the ROK's steadfast refusal over more than seven years to satisfy the arbitral award underlying the Judgment; (2) the ROK's continuing violation of the Foreign Missions Act and Diplomatic Note 20-1830 in connection with its use of the Property for commercial purposes; and (3) the ROK's well-established attempts to shield its assets from Petitioners' enforcement efforts before various European courts.

On June 29, 2021, in enforcement proceedings brought by Petitioners in Belgium, the Brussels Court of Appeal entered judgment in favor of Petitioners upholding the "conservatory" attachment of certain assets belonging to the ROK on the ground (*inter alia*) that Petitioners' recovery was "at risk" because of the ROK's steadfast refusal to comply with the arbitral award. Childs Decl., ¶ 23; Ex. AA at 19-21. The Brussels Court of Appeal found the ROK had made "clear attempts . . . to withhold/shield assets from the right of recourse of the creditors in the context of the judgment rendered against Kazakhstan." Ex. AA at 32. Similarly, in Swedish enforcement proceedings, on January 24, 2018 the Stockholm District Court ordered the attachment of property belonging to the ROK in Sweden on the ground (*inter alia*) that "it may

reasonably be surmised that Kazakhstan will try to evade the debt by disposing of the property or by other means." *Id.*, ¶ 22; Ex. Z at 26.

Accordingly, to safeguard assets for execution, Petitioners request the following narrowly tailored emergency relief:

A. for the next 180 days, or until this Court is able to address the instant motions for attachment-related relief and execution on judgment, the Property may not be sold; and

B. if the Property is sold, the proceeds of any sale shall be paid to the Court Registry Investment System (CRIS), pending final outcome of this enforcement action.

The emergency relief sought is grounded soundly in multiple provisions of the D.C. Code. In particular, D.C. Code § 16-550, by its plain language, affords the Court the authority to issue catchall relief to preserve property in aid of execution, including directing that sale proceeds be paid first to the Court pending the outcome of an enforcement action. As the statute provides (emphases added):

> ***Section 16-550. Preservation of property; sale.***
>
> The court may make all orders necessary for the preservation of the property attached. When the property is perishable, or for other reasons a sale of it appears expedient, the court may order that the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case.

Other provisions similarly grant the Court wide-ranging powers to preserve property while the Court makes determinations that may impact its title. As another illustration, while Petitioners are not at present asking for the Court to appoint a receiver to force a sale, it would be within the Court's power to order so – which is what D.C. Code Section 16-518 contemplates:

> ***Section 16-518. Preservation of property; sale; receiver.***
>
> ….

> When it seems expedient, the court may appoint a receiver to take possession of the property. The receiver shall give bond for the due performance of his duties, and, under the direction of the court, shall have the same powers and perform the same duties as a receiver appointed according to the practice in civil actions.

Meanwhile, other provisions make clear that the Court has ample authority to issue wide-ranging emergency and interlocutory relief to safeguard property in aid of execution. *See, e.g.*, D.C. Code § 15-321 ("An interlocutory order may be enforced by such process as might be had upon a final judgment or decree to the like effect[.]"); D.C. Code § 15-320(a)(2) ("For the purpose of executing a decree, . . . the [court] may: order an immediate sequestration of his real and personal estate[.]").

Thus the D.C. Code allows, among other things, for "immediate sequestration" (D.C. Code § 15-320(a)(2)) and for "all orders necessary for the preservation of the property attached" (D.C. Code § 16-550).

2. Attachment-Related Relief in Aid of Execution

In addition to emergency relief, and consistent with the "main purpose" of attachment which is "to secure the debt" to be executed upon, *Lomax*, 404 A.2d at 946, the Court should issue the attachment-related relief listed below, in order to safeguard Petitioners' rights in the Property and the proceeds from any sale of the Property, pending this enforcement action. As to the components of the relief sought:

Filing and Recording of Judgment to Create Lien Rights. The D.C. Code contemplates that Petitioners record their Judgment in order to create lien rights (*i.e.*, an attachment) over the Property. As Sections 15-102(a)(1)-(2) provide, any "final judgment or decree for the payment of money . . . shall constitute a lien on [the judgment debtor's] freehold and leasehold estates . . . from the date such judgment . . . is filed and recorded in the office of the Recorder of Deeds of the

District of Columbia[.]" (Emphasis added.) Petitioners accordingly request leave from the Court to record the lien. And recording of the Judgment is furthermore necessary as a steppingstone to later execution. As Section 15-311 of the D.C. Code provides, a later writ of execution "may be levied on all legal leasehold and freehold estates of the debtor in land, *but only after such judgment has been filed and recorded in the office of the Recorder of Deeds of the District of Columbia*." (Emphasis added.)

Attachment of Property and Proceeds. Consistent with D.C. Code § 16-550 ("all orders necessary for the preservation of the property") and the practices of courts in this District, the Court additionally may directly order attachment of the Property itself in aid of execution. *See Bennett v. Islamic Republic of Iran*, 604 F. Supp. 2d 152 (D.D.C. 2009) (granting writs of attachment issued against real property belonging to a foreign sovereign before considering attempts to quash). The ROK's interest in any sales proceeds are eligible to be attached, too, particularly if any proceeds are directed to be paid to the Court first. *See* D.C. Code § 16-544 ("An attachment may be levied upon the judgment debtor's goods, chattels, and credits."); *see also* D.C. Code § 16-549 ("An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator[.]"); D.C. Code § 16-515 (attachment may also be "levied upon money or property of the defendant in the hands of the marshal").

3. Execution

After attachment, it is of course important to ensure that Petitioners are actually paid the money they are owed – namely, through execution of the Judgment. "In contrast to a writ of attachment, which freezes or seizes property to maintain the status quo, a writ of execution is the means by which a judgment is satisfied." *Lomax*, 404 A.2d at 947. The purpose of any writ of execution is "to place the parties in the relative positions mandated by the judgment[.]" *Id.*

The D.C. Code specifically authorizes execution against the ROK's right, title, and interest in the Property. *See* D.C. Code § 16-532 (judgment creditor may "enforce his judgment against an equitable interest in real or personal estate of the judgment defendant[.]"). In addition, the D.C. Code allows for execution against the ROK's interest in any proceeds from a sale of the Property or in any proceeds then-existing at the time of the issuance of the execution writ. As D.C. Code Section 15-311 provides, "[t]he writ of *fieri facias*" – which is a type of writ of execution – "may be levied on all goods and chattels of the debtor . . ., and upon money, bills, checks, promissory notes, or bonds . . ., and upon his money in the hands of the marshal[.]" Likewise, D.C. Code Section 15-307 specifically allows for the "writ of *fieri facias*" to serve as a "lien upon the equitable interest of the judgment defendant in goods and chattels in his possession," such as an interest in the proceeds from the sale of real property.

B. The FSIA Does Not Bar the Relief Sought

With the relief requested here soundly grounded in the D.C. Code, we now turn to potential claims of immunity under the FSIA. Congress enacted the FSIA to create a "'comprehensive set of legal standards governing claims of immunity" where property of foreign states is concerned. *Republic of Arg. v. NML Capital, Ltd.*, 573 U.S. 134, 141 (2014) (quoting *Verlinden B.V. v. Central Bank of Nigeria*, 461 U.S. 480, 488 (1983)). As shown below, the relief sought here is not barred by the FSIA.

The FSIA "confers on [property of] foreign states" immunity against attachment and execution "except as provided in sections 1610 and 1611" of the Act. *NML*, 573 U.S. at 142 (quoting 28 U.S.C. § 1609). As explained below, Section 1610's exceptions to attachment-and-execution immunity are met. Section 1610's requirements for overcoming such immunity turn on the nature of the property being acted upon, whether an enumerated exception to such immunity

is established, and whether there has been sufficient notice to the sovereign of the underlying judgment debt. The relevant language of Section 1610 is as follows:

> "(a) The property in the United States of a foreign state, . . . used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States . . . if –
>
> . . .
>
> > (6) the judgment is based on an order confirming an arbitral award rendered against the foreign state, provided that attachment in aid of execution, or execution, would not be inconsistent with any provision in the arbitral agreement[.]"

(Emphasis added.) *See also FG Hemisphere Assocs., LLC v. Democratic Republic of Congo*, 637 F.3d 373, 375-76 (D.C. Cir. 2011) ("Where 'the judgment is based on an order confirming an arbitration award,' a plaintiff may only execute on '[t]he property in the United States of a foreign state . . . used for commercial activity in the United States.'").

As explained below, both of the requirements underlined above are met, starting with a Judgment "based on an order confirming an arbitral award against the foreign state."

1. The Relief Sought Pertains to a Judgment "Based on an Order Confirming an Arbitral Award Against the Foreign State"

Petitioners seek emergency relief, attachment in aid of execution, and execution upon this Court's Judgment of July 16, 2019 confirming an arbitral award issued in favor of Petitioners and against the ROK in the amount of more than US$ 500 million.[7] Dkt. 69. The total amount due on the Judgment as of July 19, 2021, including both prejudgment and post-judgment interest, is $556,586,617. Childs Decl., ¶ 24.

---

[7] On April 19, 2019, the United States Court of Appeals for the District of Columbia Circuit issued a *per curiam* summary order affirming this Court's decisions of March 23, 2018 granting Petitioners' Petition to Confirm the Arbitral Award and denying the ROK's Motion for Reconsideration of the Court's May 11, 2016 Order. Childs Decl., ¶ 20; Ex. X.

2. The Relief Sought Concerns Property Being "Used for a Commercial Activity in the United States"

Regardless of its prior use as a diplomatic residence, now that two private commercial enterprises (Russian With Natalia and Modern Style Construction LLC) maintain offices at 1529 O Street, NW, the Property is being "used for a commercial activity" within the meaning of Section 1610(a) of the FSIA. Accordingly, the Property is not immune from attachment or execution.

As the Supreme Court has explained, the commercial activity requirement under the FSIA is satisfied when a foreign government acts in the same manner as a private market actor would. Notably, it does not matter why the ROK is allowing two commercial enterprises to maintain offices in the Property – *i.e.*, what the government's motive is – only that the Property is being used as commercial office space:

> [W]hen a foreign government acts, not as regulator of a market, but in the manner of a private player within it, the foreign sovereign's actions are "commercial" within the meaning of the FSIA. Moreover, because the Act provides that the commercial character of an act is to be determined by reference to its "nature" rather than its "purpose," 28 U.S.C. § 1603(d), the question is not whether the foreign government is acting with a profit motive or instead with the aim of fulfilling uniquely sovereign objectives. Rather, the issue is whether the particular actions that the foreign state performs (whatever the motive behind them) are the type of actions by which a private party engages in "trade and traffic or commerce."

Republic of Arg. v. Weltover, Inc., 504 U.S. 607, 614 (1992); *see also* 28 U.S.C. § 1603(d) (in defining commercial activity, "[t]he commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose"). In addition, it does not matter what the property was previously used for – rather, what matters is only that it is now being used for commercial purposes. The FSIA itself specifies that "either a regular course of commercial conduct or a particular commercial transaction or act" qualifies as commercial activity. 28 U.S.C. § 1603(d) (emphases added).

Consistent with that usage, courts have recognized that "attempting to quantify the number of commercial uses associated with the property . . . would unnecessarily complicate the determination." *Af-Cap, Inc. v. Chevron Overseas (Congo), Ltd.*, 475 F. 3d 1080, 1091 (9th Cir. 2007).

Here, it is clear that the Property is being used by two private commercial enterprises. Regardless of whether the ROK has signed a lease with either company, and regardless of whether it charges them rent for the office space occupied by them, its use of the Property as commercial office space plainly qualifies as commercial activity within the meaning of the FSIA. *See* H.R. Rep. No. 1487, 94th Cong., 2d Sess. 16, reprinted in 1976 U.S.C.C.A.N. 6604, 6615 ("[C]ertainly, if an activity is customarily carried on for profit, its commercial nature could readily be assumed."). Likewise, it also follows that, because the Property has been "put . . . in the service of the commercial activity" by virtue of being used as commercial office space, the Property is being used for such commercial activity. *Conn. Bank of Commerce v. Republic of Congo*, 309 F.3d 240, 254 (5th Cir. 2002).

Nor does the FSIA bar the Court from ordering the supplementary relief of directing that any proceeds generated from the sale of the Property be paid to a Court registry. Supplementary relief – distinct from attachment and execution itself – has independent grounding in the Federal Rules, which separately authorize "proceedings supplementary to and in aid of judgment or execution" under the laws of the state where the Court is located. Fed. R. Civ. P. 69(a)(1); *see also* Fed. R. Civ. P. 64 ("[E]very remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment."). Here, of course, D.C. Code Section 16-550 separately authorizes that, "[w]hen the property is perishable, or for other reasons a sale of it appears expedient, the court may order that

the property be sold and its proceeds paid into court and held subject to its order on the final decision of the case."

Both the Supreme Court and the Court of Appeals for this Circuit have held that the FSIA does not preclude the application of supplementary federal rules that bear on enforcement proceedings. For instance, global post-judgment asset discovery against a sovereign is allowed, and so too are contempt orders against sovereigns to pay money into the court's registry – because the FSIA does not contain any provision specifically and clearly abrogating those procedures. *See NML*, 573 U.S. at 143 (global post-judgment asset discovery upheld because the FSIA does not contain "the 'plain statement' necessary to preclude application of" an otherwise available mechanism in aid of enforcement under federal law); *FG*, 637 F.3d at 378 (upholding a contempt order against a foreign sovereign and rejecting the view that "a contempt order requiring the Republic of Congo to pay money into the court's registry" is inconsistent with the FSIA).

Here, by the same token, there is no such clear command within the FSIA that limits this Court's use of otherwise-available post-judgment mechanisms to preserve and execute against otherwise attachable real property of a foreign sovereign. To the contrary, this Court has previously ordered similar equitable relief. In *Am. Int'l Grp., Inc. v. Islamic Republic of Iran*, 657 F.2d 430, 434 (D.C. Cir. 1981), this Circuit upheld a 1981 executive agreement between the U.S. and the Islamic Republic of Iran to, *inter alia*, repatriate Iranian assets in the United States. Of special relevance, some of the assets were subject to a preliminary injunction that "prevent[ed] Iran or Central Insurance of Iran from taking any action that would remove their assets from the jurisdiction of the court." *Id.* Not only did the D.C. Circuit ultimately uphold the right of the President to enforce the bilateral agreement regardless of the lower court's orders, but critically, this Circuit did not question the availability of such supplementary relief under the FSIA.

* * *

In short, the Property is now "used for a commercial activity" and thus subject to attachment and execution under the FSIA. Petitioners ultimately seek satisfaction of the judgment debt through the sale of the Property and recovery of the attendant proceeds. And as part of ensuring that such enforcement can occur, this Court has the supplementary authority under the D.C. Code, and notwithstanding the FSIA, to further prevent the ROK "from taking any [other] action that would remove their assets from the jurisdiction of the court" and instead direct any sale proceeds to the Court first. *Am. Int'l Grp.*, 657 F.2d at 434.

C. The Vienna Convention Does Not Bar the Relief Sought

The Vienna Convention also does not bar the relief sought by Petitioners. Article 22(3) of the Vienna Convention grants immunity from attachment or execution to the "premises of the mission," a term defined in Article 1(i) as "the buildings or parts of building and the land ancillary thereto . . . used for the purposes of the mission including the residence of the head of the mission.") (emphasis added). The Vienna Convention thus requires the Court to consider whether the property sought to be attached or executed upon is currently being "used for" the purposes of the mission; the property's previous use is not relevant to the Court's determination.

The Property is not immune from attachment or execution under Article 22(3) of the Vienna Convention because it is not now being used for the purposes of the mission. As discussed above, the ROK is currently using the Property as office space for two private commercial enterprises; its use of the Property as the residence of its ambassador to the United States from 1998 to 2013 is irrelevant to the immunity determination under Article 22(3).

Article 30(1) of the Vienna Convention, which provides that "[t]he private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission," also does not bar the relief sought by Petitioners, for two reasons. First, Article 30(1) only applies

to a property that is currently serving as the "private residence" of a diplomatic agent; prior use of the property is irrelevant, just as it is irrelevant under Article 22(3). Second, unlike Article 22 of the Vienna Convention, which provides that the premises of a mission (defined as including "the residence of the head of mission") shall enjoy inviolability, protection, and immunity from attachment or execution, Article 30 provides that the private residence of a diplomatic agent shall enjoy only inviolability and protection. Accordingly, even if the Property were currently being used as the private residence of a diplomatic agent other than the ROK's ambassador, it would not enjoy immunity from attachment or execution under the Vienna Convention.

That the State Department and the District of Columbia Tax Assessor may still consider the Property as "diplomatic" and exempt from local property taxation also is plainly irrelevant to the immunity determination under the Vienna Convention, given that the ROK failed to request (much less obtain) approval from the State Department before it changed the use of the Property from diplomatic to commercial. As discussed above, the ROK's failure to request such approval violated Section 4305(a) of the Foreign Missions Act and Diplomatic Note 20-1830.

IV. CONCLUSION

For the foregoing reasons, this Court should grant Petitioners' motions.

Dated: New York, New York
July 19, 2021

Respectfully submitted,

/s/ James E. Berger

James E. Berger (D.C. Bar 481408)
Charlene C. Sun (D.C. Bar 1027854)
Thomas C.C. Childs *(pro hac vice app. forthcoming)*

KING & SPALDING LLP
1185 Avenue of the Americas
New York, NY 10036-4003

Tel: (212) 556-2202
Fax: (212) 556-2222
jberger@kslaw.com
csun@kslaw.com

Attorneys for Petitioners Anatolie Stati, Gabriel Stati, Ascom Group, S.A., Terra Raf Trans Traiding Ltd.