



REPUBLIC OF DJIBOUTI v. DORALEH CONTAINER TERMINAL SA

2023 | Cited 0 times | District of Columbia | September 21, 2023

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA DORALEH
CONTAINER TERMINAL SA,

Petitioner, v. REPUBLIC OF DJIBOUTI,

Respondent.

Misc. Action No. 23-83 (BAH) Judge Beryl A. Howell

MEMORANDUM OPINION AND ORDER

CT-party banks in connection with post-judgment discovery efforts in Doraleh Container Terminal SA v. Republic of Djibouti, No. 20-cv-2571 (D.D.C.). See No. No. 3. DCT opposes the motion to quash and cross-moves and costs incurred See Resp. s Mot. Quash & Mem. Supp. Cross-Mot. Sanctions Mem. Cross-Mot. Sanctions, ECF No. 17. For the reasons below, both motions are denied. I.

BACKGROUND

The factual and procedural history of the underlying dispute are detailed in this prior opinions. See Doraleh Container Terminal SA v. Republic of Djibouti (Doraleh I), No. 20-

cv-2571 (TFH), 2023 WL 2016934, at *1 3 (D.D.C. Feb. 15, 2023) (confirming arbitration awards to DCT); Mem. Op. & Order (Doraleh II), No. 20-cv-2571 (BAH), ECF No. 57 (Apr. 24, 2023) (execution of judgment without requiring posting of supersedeas bond). As relevant here, on February 17, 2023, judgment was entered in favor of DCT, confirming two foreign arbitration awards issued in 2019 by the London Court of International Arbitration against Djibouti, totaling approximately \$541 million. See Doraleh I, 2023 WL 2016934, at *1; Doraleh II at 1, No. 20-cv-2571, ECF No. 57. On February 24, 2023, Djibouti appealed that ruling to the D.C. Circuit, where the appeal remains pending. See Notice of Appeal to D.C. Cir. Ct., No. 20-cv-2571, ECF No. 48.

Meanwhile, Djibouti moved to stay execution of the judgment and post-judgment discovery without requiring the posting of a supersedeas bond. See No. 20- cv-2571, ECF No. 50. This motion was denied since [DCT bond, and thus is not entitled to an exception from the usual requirement that a supersedeas bond be posted to Doraleh II at 2, No. 20-cv-2571, ECF No. 57. At the same time, remains free to secure a stay in this matter by posting a bond, pursuant to Federal Rule of Civil Id. at 6.



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Since then, Djibouti has not sought to secure a stay of execution of the judgment or post-judgment discovery, and DCT has thus proceeded with its post-judgment discovery efforts. As part of these efforts, DCT served subpoenas on ten non-party banks, seeking SWIFT messages received or transmitted through the banks portals or stored in the banks databases that reflect transactions of at least \$25,000 USD, between July 1, 2012, and the date of the search, and that contain any keyword on a list attached by DCT to the subpoenas. See, e.g., Barclays Bank Subpoena at 9 24, Exhibit A-1 of Decl. of Matthew M. Madden Mot. Quash, ECF No. 4-1. 1

The list of keywords 338 different people or entities that are

1 The parties disagree over whether nine or ten subpoenas have been served, see Mem. at 8, but the subpoenas are the same in all material respects, and thus this dispute is immaterial to the analysis allegedly related to Djibouti and its government spans 15 pages and is broken down into several categories: Chinese Government Organizations (12); Chinese State Owned Companies (22); Companies in the Port/Shipping Sector (15); Djibouti Government Organizations (67); Djibouti Judiciary (18); Djibouti State Owned Companies (58); Private Companies/Individuals Linked to China in Djibouti (5); Private Companies/Individuals Linked to Djibouti President (140); and Others (1). See id. The banks have not sought to quash these subpoenas in court DCT to tailor Mem. at 22. By contrast, Djibouti seeks to quash the subpoenas. See . motion to quash and cross- and costs incurred responding to the motion. See Pet. Mem. at 25. II. DISCUSSION

Although Djibouti has standing to move to quash the subpoenas and its motion is timely, Djibouti fails to persuade that the subpoenas should be quashed. The subpoenas seek SWIFT messages of at least \$25,000 USD, during an eleven-year period when the litigation, the arbitration, and the allegations that led to the dispute occurred, and that refer to any of 338 entities or individuals related to Djibouti. T attempts to enforce a \$541 million judgment and are therefore permitted by Federal Rules of

Civil Procedure 26 and 69. For these reasons, explained more fully below, quash is denied.

-motion for fees is likewise denied. Federal Rule of Civil Procedure 37(a) does not apply discovery. Fed. R. Civ. P. 37(a). Inherent power sanctions are also inappropriate because DCT not only has failed to prove ly motion to quash was filed in bad faith, but also has raised several questionable arguments of its own about timeliness and standing. These motions are discussed in turn.

A. Motion to Quash DCT raises two threshold objections to motion to quash as to standing and timeliness that are easily dispatched and addressed before proceeding to consider the merits of the motion. See *Bauer v. Marmara*, 774 F.3d 1026, 1031 32 (D.C. Cir. 2014) (explaining that has standing and turn straight to the merits).

1. Standing



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unless the party claims some personal right or privilege in the information sought by the United States v. Idema, 118 F.2d 1121, 1126 (2d Cir. 1975) (similar); Progressive Emu Inc. v. Nutrition & Fitness Inc., 785 F.2d 1121, 1126 (2d Cir. 1975) (similar); see also TransUnion LLC v. Ramirez must demonstrate standing for each. Recognizing this principle, DCT nonetheless argues that Djibouti, as only a judgment creditor, privacy or confidentiality desire to thwart disclosure of information by a non-party is simply not an interest sufficient to Mem. at 12-14 (quoting Chevron Corp. v. Donziger, 325 F. Supp. 3d 371, 387 (S.D.N.Y. 2018)). DCT severely sought by the subpoenas. Djibouti clearly has a personal interest in its confidential financial information and that of its government officials, judges, and agencies information that the subpoenas undoubtedly seek. See -Mot. Sanctions & Reply Supp. 5 standing to protect this interest by moving to quash. See Khouj v. Darui, 248 F.R.D. 729, 732

Est. of Ungar v. Palestinian Auth., 332 F.3d 1111, 1116 (9th Cir. 2003) (concluding that pa standing to challenge the subpoena served on non-party as overbroad).

2. Timeliness Federal Rule of Civil Procedure neither defined in the rule nor discussed in the advisory committee notes, and in the context of this rule. Courts are split on whether a motion to quash must be filed before the time specified in the subpoena for compliance. See U.S. ex rel. Pogue v. Diabetes Treatment Ctrs. of Am., Inc., 238 F. Supp. 2d 270, 278 (D.D.C. 2002) (collecting cases). Nonetheless, a motion to quash filed before the time specified in the subpoena for compliance is generally accepted as timely. See, e.g., id.; Nguyen v. Faunhofer-Gesellschaft Zur Forderung der Angewandten Forschung E.V., No. 21-mc-14, 2021 WL 5800741, at *2 (D.D.C. Dec. 7, 2021). under Rule 45(d)(3).

Relying on Rule 45(d)(2), DCT See Mem. at 10-11. By its own terms, not Djibouti are the to Djibouti motion.

3. Merits ictors may engage in broad post- Amduso v. Republic of Sudan, 288 F. Supp. 3d 90, 94 (D.D.C. - Republic of Argentina v. NML Cap., Ltd., 573 U.S. 134, 138 (2014). Pursuant to Federal Rule of Civil Procedure 69, a judgment provided by the federal rules and state law. Fed. R. Civ. P. 69(a)(2); see also Fed. R. Civ. P.

26(b)(1) (Parties may obtain discovery regarding any nonprivileged matter that is relevant to . -judgment discovery against foreign sovereigns, including

in the form of subpoenas to non-party banks. NML Cap., 573 U.S. at 146; see also EM Ltd. v. Republic of Argentina is not uncommon to seek asset discovery from third parties, including banks, that possess information pertaining to the , , 573 U.S. 134. The Supreme Court explained the reason for allowing broad subpoenas that seek : does not yet know what property [the foreign sovereign] has and where it is, let alone whether NML Cap., 573 U.S. at 144.



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Despite these expansive principles, Djibouti contends that the subpoenas should be quashed for two reasons. First, it ecause 11 characterization of the subpoenas is not entirely fair by ignoring other limitations built into the requests for records. The subpoenas are limited to SWIFT transfers of at least \$25,000 USD, which is hardly an limitation, for example. Notably, the bank subpoena- recipients have, according to DCT DCT to tailor Mem. at 22.

In any case, the subpoenas are within the realm of what Rules 26 and 69 permit for post- judgment discovery. complaint that the scope of the eleven-year period of 2012 to 2023 for requested information is unreasonable because DCT filed its petition to confirm the arbitration awards in September 2020, is entirely million judgment corresponds to damages, legal costs, unpaid royalties, legal fees, and interest

awarded to DCT Djibouti breached the Concession Agreement that the parties entered in October 2006 and that was ratified by the Djibouti Parliament in December 2006. See Doraleh I, 2023 WL 2016934, at *1 2. DCT seeks information is also unavailing because SWIFT transfers of at least \$25,000 USD involving these DCT to collect the \$541 million judgment against Djibouti. See Fed. R. Civ. P. 69(a)(2); Fed. R. Civ. P. 26(b)(1). The relevance of SWIFT transfers related to Djibouti government or state-owned institutions is self-explanatory, and information about Chinese government or state-owned institutions is relevant here, where the concession rights to Chinese state- Mem. at 21. Djibouti has thus not carried its burden of demonstrating that the subpoenas are overbroad in light of DCT million judgment against Djibouti.

Second, Djibouti argues that only DCT and not its counsel at Quinn Emanuel had the authority to serve these subpoenas. Resp. s Mem. 7 11. Djibouti has raised this argument before. In opposing the arbitration awards, for example, Djibouti argued that counsel at Quinn Emanuel did not have authority to seek confirmation of t because 9 U.S.C. § confirmation. Doraleh I 11 12, No. 20-cv-2571, ECF No. 37). Rejecting this argument, the Court explained:

DCT is named on the record in both the London Arbitration and this suit. In both proceedings, DCT is represented by Quinn Emanuel. briefing, the same board that authorized the arbitration authorized this ancillary proceeding seeking to enforce the Awards. Under any reasonable reading of the statute, DCT was a party to the underlying arbitration, and is therefore able to bring suit under § 207. Id. at *5 (citations omitted and alterations in original accepted was, in fact,

Id.

As a technical matter, law of the case and preclusion may not apply. See In re Subpoena Duces Tecum Issued to Commodity Future Trading WD Energy Servs. Inc., 439 F.3d 740, 749 action is technically a different (citation omitted and alteration in original accepted)). Nonetheless, the reasoning in Doraleh I,



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question of authority, is informative and persuasive. See *tay J.* at 11 & n.5, No. 20-cv-2571, ECF No. 50
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In this post-judgment discovery dispute, as with the London arbitration and the petition to confirm the arbitration awards, DCT is represented by Quinn Emanuel. Quinn Emanuel has authority to serve these subpoenas in an effort to enforce the judgment it won for its client.

Djibouti has made no secret that it wants to halt all proceedings by DCT to identify and

creation. As this Court has made cle posting a See *Doraleh II* at 6, No. 20- cv-2571, ECF No. 57. Rather than posting bond, Djibouti now attempts to delay discovery to which DCT is entitled by moving to quash, seemingly in a disguised attempt to again stay been rejected. See *id.* at 5 6.

B. Cross-Motion for Fees In its cross-motion, DCT seeks fees and costs motion to quash. See *Mem.* at 22 24. DCT contends it is entitled to reimbursement of such fees and costs under Federal Rule of Civil Procedure 37(a), which provides that a court

in making the motion or if the disclosure or required discovery is DCT, however, fails to explain why Rule 37(a) applies here, where DCT has not moved to compel and thus has not incurred expenses in making the motion, and disclosure of the discovery at issue is entirely out of Dji

Alternatively, DCT requests that *Mem.* at 22 t abuses of the judicial process with

Parsi v. Daiouleslam, 778 F.3d 116, 176 (D.C. Cir. 2015) (quoting *Shepherd v. Am. Broad. Cos.*, 62 F.3d 1469, 1472 (D.C. Cir. 1995)) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 44 (1991)). clear

Id. at 177 (citation omitted). DCT argues that Djibouti acted in bad *Mem.* at 23. Specifically, DCT o quash was

untimely, that it did not have standing to bring the motion, and that the motion sought to relitigate an issue it already lost on before. *Id.* at 23 & n.4. For the reasons explained above, the clear and convincing standard required to impose inherent power sanctions has not been met here, where Djibouti filed a timely motion to quash and had standing to challenge the subpoenas as overbroad. Djibouti is nonetheless cautioned that further attempts to delay post-judgment discovery may result in sanctions in the future. III. CONCLUSION AND ORDER

For the foregoing reasons, it is hereby: ORDERED -Party Subpoenas, ECF No. 1, is DENIED; and it is further

ORDERED that petitioner Doraleh Container Terminal SA -Motion for Sanctions, ECF No. 17, is DENIED; and it is further



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ORDERED that the Clerk of Court shall close this case. SO ORDERED.

Date: September 21, 2023

BERYL A. HOWELL United States District Judge

