

OPINION OF THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

KOMET INC., and
KONETEHIDAS OY KOMET,

Plaintiffs,

v.

REPUBLIC OF FINLAND and
JOHN DOE,

Defendants.

Civil Action No. 99-6080 (JWB)

OPINION

APPEARANCES:

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BISSELL, Chief Judge

This matter comes before the Court on defendant Republic of Finland's ("Finland") motion to vacate the default judgment entered by the Court on July 5, 2001. The motion raises issues of the Court's subject matter jurisdiction and, in particular, requires the Court to consider whether Finland is immune from suit in this Court for claims arising under a cooperative tax treaty between Finland and the United States.

FACTS

A. The Parties

Plaintiff Konetehdas Oy Ko-met ("Komet-Finland") is a limited liability company of the Republic of Finland. (Compl., ¶ 2). Komet-Finland is in the machine tool business, specializing in the modification or manufacture and marketing of precision, balanced parts, such as drive shafts and fans. (Id., ¶ 7).

Plaintiff Komet USA Inc. ("Komet-USA") is a corporation of the State of Delaware whose business address is located in Riverdale, New Jersey. (Id., ¶ 1). Komet-USA was incorporated to serve as the operational arm of and in joint venture with Komet-Finland. (Id., ¶ 9). The President and "main owner" of both Komet-USA and Komet-Finland is Treho Linnavuorri. (Id., ¶ 8). Defendant Finland is a sovereign country located in Scandinavia (Europe). (Id., ¶ 3).

B. Plaintiffs' Cause of Action

The Complaint alleges that, for the tax years 1989 through 1991, Komet-USA supplied consulting services to Komet-Finland. As a result Komet-USA invoiced Komet-Finland and was paid for those consulting services. These payments were deducted by Komet-Finland to reduce its Finnish tax liability as a corporate expense. For tax years 1992 through 1995, however, Finland's taxing authority did not approve these payments as tax deductions. Komet-Finland sought rectification in accordance with Finnish procedure and secured partial deductions for 1993 and 1994. Plaintiffs contend that the Finnish tax authorities treated Komet-Finland differently than other domestic corporations in regard to these deductions. Moreover, they assert that Finland's failure to approve the tax deductions in toto have resulted in an unjust taking of revenue from Komet-USA in violation of international law and treaties. Plaintiffs

alleged generally that Finland failed to abide by the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, Dec. 30, 1990, U.S.-Fin., T.I.A.S. No. 12101 [hereinafter "Convention on Double Taxation" or "the Convention"].

PROCEDURAL HISTORY

On December 29, 1999, plaintiffs filed the instant action and a summons was issued for defendant Finland. On August 21, 2000, a return of service executed as to Finland on June 29, 2000 was filed with the Clerk. By May 21, 2001, no answer had been filed and plaintiffs moved for default judgment. On July 2, 2001, the Court entered default judgment in the amount of \$146,769.50 plus post-judgment interest and costs in favor of plaintiffs against Finland, at which time the case was marked closed.¹

On August 30, 2001, Finland filed the instant motion to vacate the default judgment pursuant to Fed. R. Civ. P. 60(b). On December 18, 2001, with consent of the parties and permission of the Court, the United States of America submitted an amicus brief on behalf of Finland.

¹ Although the Court had received correspondence in regard to plaintiffs' Complaint from a representative of the Finnish Government, these communications contained only generalized claims to sovereign immunity and were deemed inadequate to avoid the entry of default judgment.

DISCUSSION

A. Governing Legal Standard

Defendant seeks relief from the default judgment entered against it under Federal Rule of Civil Procedure 60(b). Rule 60(b) permits a court to vacate a prior judgment if, inter alia, the judgment is void, or for "any other reason justifying relief from the operation of the judgment." Fed. R. Civ. P. 60(b)(4) and (6). A judgment is void, for instance, if the court lacked subject matter jurisdiction over the action when it entered the judgment. Marshall v. Bd. of Educ., 575 F.2d 417, 422 (3d Cir. 1978) (citing United States v. Walker, 109 U.S. 258, 265-67 (1883)) (determining that a judgment may be void, and therefore subject to relief under 60(b)(4), if the court that rendered it lacked jurisdiction of the subject matter).

Since 1976, subject matter jurisdiction of suits against foreign sovereign states has been governed by the Foreign Sovereign Immunity Act ("FSIA"), which is codified in a number of sections of the United States Code, Title 28. In the first instance, § 1330 vests in the district courts original jurisdiction of any non-jury civil action against a foreign state as to any claim for relief in personam with respect to which the foreign state is not entitled to sovereign immunity. 28 U.S.C. § 1330. From this point, the FSIA states broadly that foreign states enjoy sovereign immunity from all suits except in certain

situations. 28 U.S.C. § 1604. Section 1605, in turn, sets forth the specific categories of actions as to which foreign states are not immune. Thus, if a civil action against a foreign state does not fit within a § 1605 exception to the general rule of sovereign immunity, the foreign state defendant is immune, and, concomitantly, the district court lacks subject matter jurisdiction. Argentine Republic v. Amerada Hess Shipping Corp., 488 U.S. 428, 434-39 (n.1 (1989) (determining that the text and structure of the FSIA demonstrate Congress's intention that the FSIA be the sole basis for obtaining subject matter jurisdiction over a foreign state in federal courts); Erickson v. Alitalia Linee Aeree Italiane, 1991 WL 117797, at *2 (D.N.J. June 5, 1991).

With respect to analyzing particular claims to immunity under the FSIA, Congress intended courts to apply certain burden-shifting standards. Federal Ins. Co. v. Richard I. Rubin & Co., Inc., 12 F.3d 1270, 1285 and n.13 (3d Cir. 1993). The defendant bears an initial burden of making a prima facie showing that it is a "foreign state" and thus enjoys sovereign immunity. (Id.) If this showing is made, the burden then shifts to the plaintiff to produce evidence establishing that the foreign state is not entitled to immunity under one of the exceptions of § 1605. (Id.) The ultimate burden of proving immunity rests with the party claiming that it is a foreign state. (Id.)

B. Analysis

In the instant case, the plaintiffs have sought direct relief in personam against Finland. Finland claims immunity from suit under the FSIA as a foreign state. That Finland is a "foreign state" under the FSIA is uncontested; therefore, the burden shifts to the plaintiffs to establish that their claims fall within a § 1605 exception.

Although plaintiffs do not cite any part of § 1605, they apparently seek to persuade the Court to determine that Finland has waived its sovereign immunity under the "express language" of the Convention.² (Plaintiffs' Br. at 2). The lone support for this argument comes in the form of the following excerpt from Article 25 of the Convention:

Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this

² The issue of waiver is treated in the exception appearing in § 1605(a)(1) which provides:

(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case -

(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver,...

Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or national

Convention on Double Taxation, supra., art. 25, para. 1.

(Emphasis added). The scope of the term "competent authority" as used in this paragraph, plaintiffs argue, should extend to the district courts, and, thus, this provision should be found to constitute a waiver of Finland's immunity from suit in this Court.

This argument is unpersuasive. First, it is significant that plaintiffs do not cite a single decision that supports this view. Second, plaintiffs' interpretation of the express language is flawed because it renders incoherent the subsequent provisions of Article 25, which further inform the role of the "competent authority." Plaintiffs tacitly admit this fact given their complete failure to discuss the significance of the remaining paragraphs of Article 25. Third, and finally, plaintiffs' understanding is controverted by the very practice of the government in discharging its duties under the Convention. The amicus submission of the United States substantially establishes that the competent authority referred to throughout Article 25, far from pertaining to a United States court, is in fact an officer of the Department of State who negotiates with a Finnish counterpart in aid of the claim management procedure contemplated

clearly by the Convention. In sum, plaintiffs' selective employment of portions of the Convention is wholly insufficient to establishing the type of unequivocal waiver that must be present in order to support a deprivation of immunity provided a foreign state by the FSIA.³

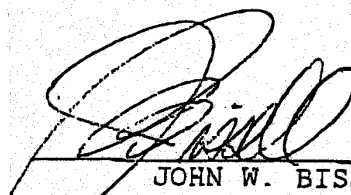
Plaintiffs have offered nothing that addresses these difficulties with their waiver theory. Accordingly, the Court determines that plaintiffs have failed to demonstrate that a § 1605 exception applies in this case. In the absence of an applicable § 1605 exception, the FSIA compels a finding that Finland is immune from the instant suit. This conclusion, in turn, is the equivalent of a determination that this Court was without subject matter jurisdiction to enter default judgment against Finland. A judgment entered by a Court without subject matter jurisdiction is void. Marshall, 575 F.2d at 422. Consequently, defendant Finland is entitled to vacation of the default judgment pursuant to Fed. R. Civ. P. 60(b)(4).

CONCLUSION

For the foregoing reasons, defendant Finland's motion to vacate the default judgment is granted, and the Amended Complaint is dismissed without prejudice, for lack of subject matter

³ Aquinda v. Texaco, Inc., 175 F.R.D. 50, 52 (S.D.N.Y. 1997) (citing cases) (recognizing as well settled that waiver of sovereign immunity must be clear, complete, unambiguous and unmistakable in order to be effective), vacated on other grounds sub nom., Jota v. Texaco, Inc., 157 F.3d 153 (2d Cir. 1998)).

jurisdiction in this forum. Each side shall bear its own costs and expenses.

A handwritten signature in dark ink, appearing to read "J. Bissell", written over a horizontal line.

JOHN W. BISSELL
Chief Judge
United States District Court

DATED: February 1st, 2002

