

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

_____)	
HULLEY ENTERPRISES LTD., YUKOS)	
UNIVERSAL LTD., AND VETERAN)	
PETROLEUM LTD.,)	
)	
<i>Petitioners,</i>)	
)	
<i>v.</i>)	Case No. 1:14-cv-01996-BAH
)	
THE RUSSIAN FEDERATION,)	
)	
<i>Respondent.</i>)	
_____)	

RESPONDENT’S STATUS REPORT

In accordance with the Court’s Order of November 20, 2020 (ECF 193, 194), the Russian Federation submits this Status Report¹ to advise the Court regarding the status of the set-aside proceedings in the Netherlands (the “Set-Aside Proceedings”):

1. The Dutch Supreme Court issued a cassation judgment in Case No. 20/01595 (the “Second Dutch Appeal”) on November 5, 2021. The original Dutch version of this judgment, together with an unofficial English translation, is attached hereto as **Exhibit A** (“DSC Judgment”).

2. In its judgment, the Dutch Supreme Court explicitly “sets aside the judgments of the Court of Appeal of The Hague dated 25 September 2018 and 18 February 2020,” *see* ECF 167-1, ECF 176-1, and sustains the Russian Federation’s first ground for cassation, while denying the other grounds for cassation. DSC Judgment §§ 7.1, 8. On this basis, the Dutch

¹ The Parties have conferred regarding the legal consequences of the Dutch Supreme Court’s judgment, but were not able to reach agreement on key issues. The Parties therefore are advising the Court of their differing views in separate Status Reports, as they did previously in such circumstances (*e.g.*, ECF 159, 161, 167, 173).

Supreme Court has now referred the Set-Aside Proceedings to the Court of Appeal of Amsterdam “for further assessment and judgment.” DSC Judgment § 8. According to Dutch counsel, the result is that the interim and final arbitral awards (ECF 2-1, 2-2, 2-3, 2-4, 2-5, and 2-6) are now set aside (annulled) once again and cannot be enforced, such that the arbitral awards do not exist as a matter of Dutch law.

3. Specifically, the Dutch Supreme Court found that the Russian Federation’s first ground for cassation was successful as a matter of Dutch law, such that the Russian Federation is entitled to a full hearing on its evidence as to whether Petitioners “acted fraudulently in the arbitration proceedings.” DSC Judgment §§ 5.1.4, 5.1.19. As this Court is aware (*e.g.*, Status Report ¶ 7, ECF 167), the Russian Federation has proffered evidence that Petitioners committed fraud on the arbitral tribunal “among other things by submitting false statements, by withholding documents that are relevant to crucial points in dispute in the arbitration, and by making secret payments to one of [Petitioners’] key witnesses.” DSC Judgment § 5.1.4. These arguments are among the “overlapping issues” to be decided by this Court and the Dutch courts, as previously observed in this Court’s Memorandum Opinion of November 20, 2020 (“Mem. Op.”). (ECF 194, at 21; *see also* ECF 179-1, at 2 (“Whether the Awards are invalid based upon grave violations of due process during the arbitration, including Petitioners’ fraudulent withholding of documents and fraudulent statements to the arbitral tribunal.”)).

4. In its judgment of November 5, 2021, the Dutch Supreme Court agreed that in 2017, during the Dutch set-aside proceedings before the Court of Appeal of The Hague, the Russian Federation had properly raised its challenge with respect to fraud on the tribunal as a potential violation of public policy. DSC Judgment §§ 5.1.8, 5.1.12 (“If an arbitral award was rendered under the influence of fraud, that may constitute grounds for finding that the award . . . is contrary to public policy . . .”). The Court of Appeal of The Hague, however, did not address

the substance of Russian Federation’s public policy argument based on a misinterpretation of Dutch procedural law. *Id.* §§ 3.4(i), 5.1.18. The Dutch Supreme Court therefore has now “refer[red] the dispute to the Court of Appeal of Amsterdam for further assessment” of the Russian Federation’s evidence regarding Petitioners’ fraud on the arbitral tribunal. *Id.* § 8. This potential “remand to a lower Dutch court” was fully anticipated and analyzed during the briefing before this Court in 2020 concerning the latest extension of the stay.²

5. Accordingly, the Dutch Supreme Court’s judgment of November 5, 2021, has not provided a “resolution of proceedings . . . to set aside the arbitral awards at issue,” *see* Order 1 (ECF 193) (emphasis added), such that this Court’s explicit condition for the termination of the stay has not been satisfied. *See also* Mem. Op. 29 (ECF 194) (“[T]his action is stayed pending resolution of the proceedings to set aside the Awards” (emphasis added)). Based on its plain meaning, a remand to a lower court is not a final “resolution” of the Set-Aside Proceedings. Indeed, the ultimate decision of the Court of Appeal of Amsterdam may later be appealed once again to the Dutch Supreme Court, such that further “proceedings” in the Dutch Supreme Court are foreseeable. *See id.* The Russian Federation therefore understands that the Court’s stay, by its own terms, remains in effect.

6. In a motion to withdraw their petition for mandamus pending before the D.C. Circuit, Petitioners have suggested that the stay is now terminated. *See* Mot. for Voluntary Dismissal (“Pet’rs’ Mot.”), Case No. 20-7113, Doc. #1922936 (“The District Court’s Stay Order has therefore expired based on its own terms”). Petitioners are wrong, however, as reflected in the reasoning of this Court’s Memorandum Opinion. Specifically, the Dutch Supreme Court’s

² *E.g.*, Sixth Decl. of Albert Jan van den Berg ¶ 22 (ECF 182-1) (describing the possibility of “a remand to a lower Dutch court to further consider aspects of the Russian Federation’s set-aside application”); Decl. of Tobias Cohen Jehoram ¶¶ 84-86 (ECF 181-43) (same); Second Decl. of Robert Meijer ¶ 15 (ECF 182-10) (same).

referral to the Court of Appeal of Amsterdam demonstrates that this Court's finding regarding "the lack of finality in the Dutch proceedings regarding resolution of issues highly pertinent in this case" is still fundamentally correct. Mem. Op. 13 (ECF 194). The advice provided by Petitioners' own Dutch lawyers evidently confirms this understanding. Pet'rs' Mot. 3-4 (acknowledging that "the Russian Federation prevailed" on the issue of the admissibility of "the allegations of purported fraud during the arbitration").

7. Further, the stay remains both appropriate and fully justified. As this Court previously emphasized, further litigation in the United States "may be a fruitless exercise," because Petitioners would be left with "no cause of action" if the Russian Federation prevails in the Amsterdam proceedings or in any further appeals to the Dutch Supreme Court. See Mem. Op. 12-13 (ECF 194) (quoting *TermoRio v. Electranta*, 487 F.3d 928, 930 (D.C. Cir. 2007)). In addition, as the Awards are currently unenforceable and non-existent while the Dutch proceedings remain ongoing, security for the stay is especially unwarranted.

8. The Parties will file their next Status Report on May 20, 2022, in accordance with this Court's Order of November 20, 2020 (ECF 193). If this Court is inclined to revisit any aspect of the stay, the Russian Federation requests a full briefing schedule.

Dated: November 22, 2021

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