IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ARACLI DOTAROT MONTUYA, Plaintiff, v. ANTOINE CHEDID & AFIFE NICOLE CHEDID, Defendants.	Case No. 1:10-cv-00695 Judge Richard W. Roberts

DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO MOTION TO DISMISS AND QUASH SERVICE OF PROCESS

Defendants Antoine Chedid and Afife Nicole Chedid ("Defendants"), by and through undersigned counsel, hereby make a limited appearance solely for the purpose of responding to Plaintiff Aracli Dotarot Montuya's ("Plaintiff") Opposition to Defendants' Motion to Dismiss and Quash Service of Process and do not accept the jurisdiction of the Court in this action.

Plaintiff argues that the plain language of the Vienna Convention on Diplomatic Relations ("Vienna Convention") authorizes this suit, that the hiring of a domestic worker is within the "commercial activity" exception of the Vienna Convention and that this Court can borrow the meaning of "commercial activity" from the Foreign Sovereign Immunities Act ("FSIA"). As set forth below, Plaintiff ignores precedent in this jurisdiction and in other jurisdictions that explicitly hold that the hiring of a domestic worker is not "commercial activity" within the Vienna Convention. Courts also have rejected any attempt to use judicial interpretations of "commercial activity" from the FSIA to interpret the Vienna Convention. A service contract for a domestic worker, such as Plaintiff, is incidental to a diplomat's official

duties and is not a commercial activity outside of his/her official duties. Consequently, Defendants respectfully request that this Court grant its motion to dismiss the Complaint under 22 U.S.C. § 254d and Rule 12(b) of the Federal Rules of Civil Procedure and to quash service of process.

I. FACTUAL BACKGROUND

Defendants are the Ambassador of Lebanon to the United States and his wife. On May 4, 2010, Plaintiff, a former domestic worker in the Embassy of Lebanon, filed suit against Defendants. On May 26, 2010, Defendants moved to dismiss the complaint on the grounds that under the Vienna Convention, they are entitled to diplomatic immunity. Plaintiff, in her opposition, does not and cannot challenge the status of Defendants as bona fide diplomats, whose status as such was certified by the United States Department of State. *See* Exhibit 3 to Motion to Dismiss.

II. ARGUMENT

Plaintiff attempts to undercut Defendants' diplomatic immunity through reliance on an exception to the Vienna Convention. Article 31(c) of the Vienna Convention as implemented in the United States by the Diplomatic Relations Act, 22 U.S.C. §254a *et seq,* provides, in pertinent part, that "[a] diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State . . .[and] its civil and administrative jurisdiction, except in the case of . . . an action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions."

Plaintiff argues that the cited language from the Vienna Convention supports her argument that Defendants engaged in commercial activity when they hired Plaintiff as a domestic worker. (Pl.'s Opp'n at 2.) Plaintiff attempts to support her argument with citations to

numerous cases related to the canons of statutory construction. Plaintiff's argument that the plain language of the exception should control ignores the fact that the Vienna Convention does not define "any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions."[1] Consequently, the statutory interpretation cases cited by the Plaintiff are not relevant.

Moreover, under the "commercial activity" exception, the diplomat must engage in a commercial activity that is performed *outside* his/her official functions. In fact, the Plaintiff recognizes as much in her Opposition, citing to a statement of the drafters of the Vienna Convention that:

> "The third exception arises in the case of proceedings relating to a professional or commercial activity exercised by the diplomatic agent *outside his official functions*. If the diplomatic agent engages in such an activity, those with whom he has had dealings in so doing cannot be deprived of their remedy at law."

(Pl.'s Opp'n at 6.) (citing to the Report of the Commission to the General Assembly, Document A/3623, reprinted in, Yearbook of the International Law Commission, Summary Records of the Ninth Session, 23 April – 28 June 1957, v. 1 at 139 para. 2, 5) (emphasis added).

Instead, as courts in this and other jurisdictions have held, the hiring of personnel to work in an embassy is incidental to the diplomat's diplomatic status, and is not a commercial or profit making activity. *See Tabion v. Mufti*, 73 F.3d 535, 539 (4th Cir. 1996); *Sabbithi v. Al Saleh*, 605 F. Supp. 2d 122, 130 (D.C. 2009) (J. Sullivan);. *Paredes v. Vila*, 479 F. Supp. 2d 187, 193 (D.C. 2007) (J. Friedman). In addition, Plaintiff disregards well-established authority holding that the FSIA should not be used to give meaning to the Vienna Convention. *See Tabioni*, 73 F.3d at 539 n.7; *Sabbithi*, 605 F. Supp. 2d at 128 n. 3; *Paredes*, 479 F. Supp. 2d at 193, n. 5.

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[1] The term "plain meaning" is often invoked but "[s]eldom does language carry one true and undisputed meaning." *Tabion v. Mufti*, 73 F.3d 535, 537 (4th Cir. 1996).

A. This Jurisdiction and the United States Government Both Recognize that the "Commercial Activity" Exception to the Vienna Convention on Diplomatic Relations Does Not Apply to the Hiring of Domestic Employees.

Plaintiff argues that Defendants are not entitled to diplomatic immunity because they have engaged in "commercial activity" by hiring a domestic employee. (Pl.'s Opp'n at 2.) Plaintiff, however, ignores case law in this jurisdiction, which Defendants cited in their Motion to Dismiss, (Def.'s Mot. to Dismiss at 5), as well as the position of the United States Government. The position of this Court, as well as the United States Government, is that the hiring of domestic employees by a diplomat does not qualify as "commercial activity" under the Vienna Convention. For these reasons, the Court should reject Plaintiff's argument.

Plaintiff makes no attempt to address, let alone distinguish, two cases in the District of Columbia that reject the very arguments asserted by the Plaintiff. In *Paredes v. Vila*, 479 F. Supp. 2d 187 (D.C. 2007) (J. Friedman), a domestic worker sued her former employees, both diplomats, for alleged violations of the Fair Labor Standards Act and for common law breach of contract and unjust enrichment. As in this case, the plaintiff in *Paredes* contended that by hiring a domestic worker, the defendants were engaging in "commercial activity" and, therefore, were not entitled to diplomatic immunity afforded by the Vienna Convention. *Id.* at 192-193. The plaintiff in *Paredes* also argued that the use of the domestic worker to watch the diplomats' children while the diplomat pursued academic studies in the United States was further commercial activity. *Id.* at 190. This Court rejected these arguments and held that the term "commercial activity" as used in the Vienna Convention does not "have so broad a meaning as to include occasional service contracts . . . but rather relates only to trade or business activity engaged in for personal profit." *Id.* at 193 (citing *Tabion v. Mufti,* 877 F.Supp. 285 (E.D. Va. 1995) *aff'd* 73 F.3d 535 (4th Cir. 1996).

In reaching its conclusion, the *Paredes* court gave deference, as this Court should do, to the United States Department of State's interpretation of the Vienna Convention since it is the government agency charged with its negotiation and enforcement. *Paredes*, 479 F. Supp. 2d at 193 (citing *United States v. Stuart*, 489 U.S. 353 (1989)). The position of the State Department has been consistent: "[w]hen diplomats enter into contractual relationships for personal goods or services incidental to residing in the host country, *including the employment of domestic workers*, they are not engaging in 'commercial activity' as that term is used in the Diplomatic Relations Convention." 479 F. Supp. 2d at 193. For all of the above reasons, the *Paredes* court granted the defendants' motion to dismiss.

Similarly, in another case from this Court, *Sabbithi v. Al Saleh*, 605 F. Supp. 2d 122 (D.C. 2009) (J. Sullivan), domestic workers brought suit against Kuwaiti diplomats residing in the United States alleging violations of the Trafficking Victims Protection Act and the Fair Labor Standards Act. Like the *Paredes* court, the *Sabbithi* court, also dismissed the plaintiffs' argument that the "commercial activity" exception to the Vienna Convention prevented the defendants from invoking diplomatic immunity. 605 F. Supp. 2d at 127-128. The court concluded that the "commercial activity" exception did not apply because "hiring household help is incidental to the daily life of a diplomat and therefore not commercial for purposes of the exception." *Id.* at 130.

In addition to the District of Columbia cases, the United States Court of Appeals for the Fourth Circuit similarly has held that the hiring of a domestic worker does not constitute "commercial activity" for purposes of the Vienna Convention. In *Tabion v. Mufti*, 73 F.3d 535 (4th Cir. 1996), a domestic worker brought suit against Jordanian diplomats alleging violations of the Fair Labor Standards Act. The Fourth Circuit noted that the "drafters of the Vienna

Convention recognized that a diplomat's engaging in professional or commercial activity *for profit* in the receiving state had always been contrary to international standards of conduct." 73 F.3d at 538 (citing 23 U.S.T. 3227, 3247) (emphasis added). In contrast, the court explained that "[d]ay-to-day living services such as dry cleaning or domestic help . . . are incidental to daily life [and] diplomats are to be immune from disputes arising out of them." *Id.* at 539. For this reason, the Fourth Circuit affirmed the dismissal of the plaintiff's suit.

As demonstrated by the above cases, which Plaintiff failed to bring to this Court's attention or even address in her opposition, this and other jurisdictions, as well as the United States Government, have decisively rejected the Plaintiff's argument that the hiring of a domestic employee rises to the level of "commercial activity" under the Vienna Convention. For this reason, as stated in Defendants' Motion to Dismiss and Quash Service, Defendants are entitled to diplomatic immunity under the Vienna Convention and Plaintiff's complaint must be dismissed and service of process must be quashed.

B. Courts Have Declined to Use the Foreign Sovereign Immunities Act to Interpret the Vienna Convention on Diplomatic Relations.

As noted, the Vienna Convention does not define "commercial activity." As a result, Plaintiff urges this Court to apply the definition of "commercial activity" in the FSIA to the Vienna Convention despite well-established precedent from courts in this and other jurisdictions, as well as guidance from the United States Government, rejecting this approach. (Pl.'s Opp'n at 5, 9-12).

This Court previously has rejected the Plaintiff's argument that case law interpreting "commercial activity" under the FSIA should "inform the interpretation of the commercial activity exception to diplomatic immunity" under the Vienna Convention. *See Paredes*, 479 F. Supp. 2d at 193 n.5. This Court explained that the FSIA was enacted *after* the Vienna

Convention and "thus could not have been a textual source for Convention delegates," and that the legislative history clearly supports the proposition that Congress specifically did not intend for the FSIA to change the meaning of existing international agreements, such as the Vienna Convention. *Id.* (citing *Tabion v. Mufti*, 73 F.3d 535, 539 n.7 (4th Cir. 1996)); *see also Sabbithi*, 605 F. Supp. 2d at 128 (rejecting reliance on the FSIA to interpret "commercial activity" under the Vienna Convention).[2]

In addressing this same question, the United States Court of Appeals for the Fourth Circuit similarly held that the FSIA should not be used to interpret the Vienna Convention. In *Tabion v. Mufti*, 73 F.3d 535, 539 n.7 (4th Cir. 1996), the appeals court noted that the Vienna Convention pre-dates the FSIA and that Congress enacted the FSIA "[s]ubject to existing international agreements to which the United States is a party at the time of the enactment of this Act." (quoting *H.R. Rep. No. 1487, 94th Cong., 2d Sess. 12 (1976)* reprinted in *1976 U.S.C.C.A.N. 6604, 6610).* Furthermore, the Fourth Circuit reasoned that it is inappropriate to compare the FSIA, "a statute which establishes the framework for determining when federal or state courts in the United States may exercise jurisdiction over federal states," *id.* at 539 n. 7, with the Vienna Convention, a treaty designed to "ensure the efficient performance of the functions of diplomatic missions as representing States," *Id.* at 538. As the lower court in *Tabion* explained "the FSIA is a statute enacted by the legislative bodies of the United States, while the Vienna Convention is a treaty among foreign sovereigns. While it may be reasonable to assume that Congress intends like phrases to carry like meanings in the legislation it enacts, courts cannot assume that foreign nations attach the same significance to these phrases." *Tabion v. Mufti*, 877 F.Supp. 285, 289 (E.D. Va. 1995).

[2] In addition, the United States Government agreed that "the case law interpreting the term "commercial activity" under the FSIA should not be used to interpret the same term under the Diplomatic Relations Convention." *Paredes*, 479 F. Supp. 2d at 193 n.5.

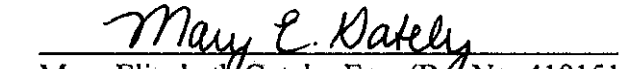
For these reasons, Plaintiff's attempt to urge this Court to consider cases applying the definition of "commercial activity" under the FSIA to the Vienna Convention is misplaced and should be rejected.

III. CONCLUSION

For the foregoing reasons and as supported by a clear line of cases in this Court as well as other precedent, Plaintiff's attempt to apply the "commercial activity" exception to the facts of this case and reliance on the FSIA to interpret the Vienna Convention must be rejected. Defendants respectfully request that this Court grant Defendants' Motion to Dismiss and Quash Service of Process.

Date: June 18, 2010

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of June 2010, a true and correct copy of the foregoing Defendants' Reply to Plaintiff's Opposition to Defendants' Motion to Dismiss and Quash Service was served through the Court's electronic filing system and sent via electronic mail to:

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