

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

MOTION TO DISMISS AND QUASH SERVICE OF PROCESS

Defendants Antoine Chedid and Afife Nicole Chedid (“Defendants”), by and through undersigned counsel, making a limited appearance solely for the purpose of quashing service and moving to dismiss and without accepting the jurisdiction of the Court in this action, respectfully move this Court 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.

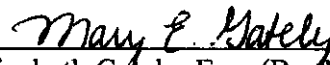
Defendants are the Ambassador of Lebanon to the United States and his wife. They are Lebanese nationals with diplomatic status recognized by the United States Government. Plaintiff’s Complaint alleges numerous allegations relating to Plaintiff’s employment in the Embassy of Lebanon.¹ Under the Vienna Convention on Diplomatic Relations, as implemented in the United States by the Diplomatic Relations Act, 22 U.S.C. §254a *et seq*, Defendants are entitled to diplomatic immunity from this suit and the Court must both dismiss the Complaint and quash service.

¹ Plaintiff never filed a return of service pursuant to Rule 4(l) of the Federal Rules of Civil Procedure. For purposes of this motion, Defendants do not admit that they were served properly under the Federal Rules of Civil Procedure.

Accordingly, and for the reasons explained in the accompanying Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and Quash Service of Process, Plaintiff's Complaint should be dismissed in its entirety and service should be quashed. A proposed order is attached for the Court's consideration.

Date: May 26, 2010

Respectfully Submitted,



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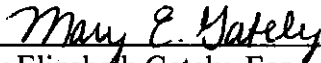
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May, 2010, a true and correct copy of the foregoing Defendants' Motion to Dismiss and Quash Service of Process, Memorandum of Points and Authorities in Support of Defendants' Motion to Dismiss and Proposed Order, were served through the Court's electronic filing system and sent via electronic mail to:

Laurence F. Johnson
2401 Blueridge Avenue, Suite 407
Silver Spring, MD 20902

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Suite 505
Bethesda, MD 20814



Mary Elizabeth Gately, Esq.

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS AND QUASH SERVICE OF PROCESS**

Defendants Antoine Chedid and Afife Nicole Chedid (“Defendants”), by and through undersigned counsel, making a limited appearance solely for the purpose of quashing service and moving to dismiss and without accepting the jurisdiction of the Court in this action, respectfully move this Court 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. INTRODUCTION

The Defendants are Lebanese nationals with diplomatic status recognized by the United States Department of State. The Plaintiff, Araceli Dotarot Montuya (“Plaintiff”), a former domestic worker in the Embassy of Lebanon, filed suit on May 4, 2010 asserting numerous allegations relating to Plaintiff’s employment by Defendants. As discussed below, under the Vienna Convention on Diplomatic Relations, as implemented in the United States by the

Diplomatic Relations Act, 22 U.S.C. §254a *et seq*, Defendants are entitled to diplomatic immunity from this suit and the Court must both dismiss the Complaint and quash service.¹

II. FACTUAL BACKGROUND

Plaintiff, a resident of the District of Columbia and a national of the Philippines, worked at the Embassy of Lebanon from approximately August 3, 2007 through September 9, 2009. (Compl. ¶ 1). Defendant Antoine Chedid is the Lebanese Ambassador to the United States and Defendant Afife Nicole Chedid is his wife. Each possesses a “diplomatic identification card” issued by the United States Government. *See* Ex. 1 (copies of Defendants’ diplomatic identification cards). During the relevant period of this suit (from August 3, 2007 through September 9, 2009), Defendants were on the official Diplomatic List published by the United States Department of State (“State Department”), known as the “White List.” The White List identifies those individuals who are entitled to “full immunity under provisions of the Vienna Convention on Diplomatic Relations.” *See* State Department, Diplomatic List, *at* <http://www.state.gov/s/cpr/rls/dpl/>; key excerpts from the 2007-2009 lists are provided at Ex. 2.

Furthermore, on May 18, 2010, the State Department certified the following:

The official records of the Department of State indicate that Antoine Chedid, a national of Lebanon and not a permanent resident of the United States, was notified to the Department of State on July 27, 2007, as Minister, and then subsequently Ambassador, at the Embassy of Lebanon. He continues to serve in that capacity. At the same time, his spouse, Afife Nicole Chedid was notified as a member of his family forming part of his household.

See Ex. 3 (Letter from Gladys Boluda, Assistant Chief of Protocol of the State Department, May 18, 2010).

¹ Reserving all rights, Defendants will not address the underlying allegations in the Complaint but strongly disagree with the stated allegations.

III. ARGUMENT

This Court must defer to the United States Government's certification of the Defendants' diplomatic status. Based on this status and as provided by the Vienna Convention on Diplomatic Relations, as implemented in the United States by the Diplomatic Relations Act, 22 U.S.C. §254a *et seq*, Defendants are entitled to diplomatic immunity from this suit and the Court must both dismiss the Complaint and quash service.

A. **The Diplomatic Status of the Defendants is Clear and Conclusive and Binding on this Court**

This Circuit recognizes that the determination of diplomatic status is in the province of the United States Government. *See Jungquist v. Nahyan*, 940 F.Supp. 312, 321 (D.D.C. 1996) (noting that "the determination of a diplomat's status as such is made by the State Department, not the Court"), *rev'd in part on other grounds*, 15 F.3d 1020 (D.C. Cir. 1997); *Gonzalez Pardes v. Vila*, 479 F. Supp. 2d 187, 192 (D.D.C. 2007) (recognizing that "[i]t is enough that [the diplomat] has requested immunity, that the State Department has recognized that the person for whom it was requested is entitled to it, and that the Department's recognition has been communicated to the court") (quoting *Carrera v. Carrera*, 174 F.2d 496, 497 (D.C. Cir. 1949)); *Sabbithi v. Al Saleh*, 605 F. Supp. 2d 122, 126 (D.D.C. 2009) (concluding that the defendants are entitled to diplomatic immunity in view of the State Department's determination that they are diplomats). As discussed above, Defendants are included on the White List published by the State Department, they both possess "diplomatic identification cards" issued by the United States Government, and the State Department recently certified Defendants' diplomatic status during the period of time covered by the Complaint. *See Exs. 1-3*. For these reasons, this Court must defer to Defendants' diplomatic status as certified by the United States Government.

B. Under the Vienna Convention, Defendants are Immune from this Suit

As a result of their diplomatic status, Defendants are immune from this suit. The Vienna Convention on Diplomatic Relations (the “Vienna Convention”), of which both Lebanon and the United States are parties, sets forth the law of diplomatic immunity.² It provides, in part, that “[t]he person of a diplomatic agent shall be inviolable” and that “[t]he private residence of a diplomatic agent shall enjoy the same inviolability and protection as the premises of the mission.” Vienna Convention, arts. 29, 30, para. 1. More importantly, the Vienna Convention establishes that “[a] diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State . . . [and] also immunity from its civil and administrative jurisdiction.” Vienna Convention, art. 31, para 1.³

The Vienna Convention is implemented in the United States through the Diplomatic Relations Act, 22 U.S.C. §254a *et seq.* This statute requires that “[a]ny action or proceeding brought against an individual who is entitled to immunity with respect to such action or proceeding under the Vienna Convention on Diplomatic Relations . . . *shall be dismissed.*” 22

² The Vienna Convention, 23 U.S.T. 3227, T.I.A.S. 7502, was opened for signature on April 18, 1961 and was ratified by the United States on November 8, 1972 and Lebanon on March 20, 1975. *See* http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf. A copy of the Vienna Convention is attached as Ex. 4.

³ The Vienna Convention establishes four exceptions to diplomatic immunity, none of which are applicable here. Article 31, para. 1 provides that immunity shall not apply in the case of:

- (a) A real action relating to private immovable property situated in the territory of the receiving State, unless he holds it on behalf of the sending State for the purposes of the mission;
- (b) An action relating to succession in which the diplomatic agent is involved as executor, administrator, heir or legatee as a private person and not on behalf of the sending State;
- (c) An action relating to any professional or commercial activity exercised by the diplomatic agent in the receiving State outside his official functions.

Article 32, para. 3 establishes the fourth exception, stating that “[t]he initiation of proceedings by a diplomatic agent or by a person enjoying immunity from jurisdiction under article 37 shall preclude him from invoking immunity from jurisdiction in respect of any counterclaim directly connected with the principal claim.”

U.S.C. § 254d (emphasis added). Further, “such immunity may be established upon motion or suggestion by or on behalf of the individual” *Id.*

The D.C. Circuit recognizes immunity for diplomats *and* their families. In *Carrera v. Carrera*, the Court of Appeals explained that “[i]t has long been a settled rule of law that foreign diplomatic representatives are exempt from all local processes from the country to which they are accredited . . . [and] [t]he same immunity is not only given to the ambassador himself, but to his subordinates, family and servants as well.” *Carrera v. Carrera*, 174 F.2d 496, 498 (D.C. Cir. 1949) (quoting 27 Harv. L. Rev. 489 (1914)). Furthermore, the Vienna Convention provides that “[t]he members of the family of a diplomatic agent forming part of his household shall, if they are not nationals of the receiving State, enjoy the privileges and immunities specified.” Vienna Convention, art. 37, para. 1. Defendant Afife Nicole Chedid enjoys the same immunities as her husband and is entitled to diplomatic immunity.

On several occasions, this and other Circuits have dismissed similar suits on the basis of diplomatic immunity. *See Tabion v. Mufti*, 73 F.3d 535, 536 (4th Cir. 1996) (holding a diplomat and his spouse immune from a suit filed by a domestic employee); *Gonzalez Paredes v. Vila*, 479 F. Supp. 2d 187 (D.D.C. 2007) (holding same); *Sabbithi v. Al Saleh*, 605 F. Supp. 2d 122 (2009) (holding same). For these reasons, it is clear that Defendants in this case possess diplomatic immunity and, as a result, the Court must dismiss the Complaint.

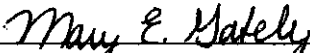
C. Under the Vienna Convention, Defendants are also Immune from Service of Process

This Court has recognized that “diplomatic immunity provides protection from the exercise of jurisdiction by a federal court over a diplomat.” *Aidi v. Yaron*, 672 F.Supp. 516, 518 (D.D.C. 1987). As a result, an individual entitled to diplomatic immunity “is likewise shielded from service of process” because “if jurisdiction is not available, then service of process is void,

making a motion to quash service of process a valid remedy.” *Id.* at 517-518; *see also Tabion*, 73 F.3d at 539 (affirming lower court’s quash of service of process based on diplomatic immunity). For these reasons, Defendants respectfully request that this Court quash service of process in this case.

Date: May 26, 2010

Respectfully submitted,



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