IN THE HIGH COURT
of the
REPUBLIC OF THE MARSHALL ISLANDS

AKHMEDOVA, Petitioner, vs. AKHMEDOV, et al., Respondents.	CIVIL ACTION NO. 2018-169 **AMENDED ORDER GRANTING IN PART AND DENYING IN PART PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION AND SUMMARY OF DECISION

Petitioner Tatiana Akhmedova ("Petitioner"), in her Petition for Recognition of a Foreign Judgment filed July 10, 2018 ("Petition"), seeks recognition and enforcement of the two English money judgments ("English Money Judgments"+) she obtained from the Family Division of the High Court of Justice in London (the "English Court"). The two English Money Judgments are against the following:

(1) Farkhad Teimur Ogly Akhmedov, the Petitioner's former husband ("Farkhad"); Cotor Investment, S.A. ("Cotor"), Qubo 1 Establishment ("Qubo 1"), Qubo 2 Establishment ("Qubo 2"), Straight Establishment ("Straight"), and Avenger Assets Corporation ("Avenger"), jointly and severally, in the amount of GBP £125,569,492 plus interest and costs (the "Initial Money Judgment"), and

(2) Straight in the amount of USD $478,278,000 plus interest and costs (the "Straight

Money Judgment").

Petition at ¶ 10.

In response to the Petition, four of the six Respondents,[1] Farkhad, Qubo 1, Qubo 2, and Straight filed motions to dismiss or stay. The Court granted the motions to dismiss as to Farkhad and Qubo 1, but denied the motion to dismiss as to Qubo 2 and Straight. Order Regarding Motions to Dismiss issued November 2, 2018 ("Nov. 2018 Order").

Shortly thereafter, the Petitioner filed Petitioner's Motion and Memorandum in Support of Summary Judgment ("MSJ") against the Respondents Qubo 2 and Straight. For the reasons set forth below, the Court denies the MSJ as to Qubo 2, but grants the MSJ as to Straight. Accordingly, the Court recognizes and enforces the English Money Judgments against Straight, awarding Petitioner judgment against Straight in the amount of GBP £125,569,492, fees, costs, and interest under the Foreign Money Judgments.

The Court's decision is based upon the following background.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Background

Having reviewed the Court's file, including the MSJ at 3-7, Respondents' Memorandum of Law in Opposition to Petitioner's Motion for Summary Judgment ("Opposition to MSJ") at 4, and related declarations, the Court makes the following findings of fact.[2]

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[1]Respondents Cotor and Avenger did not join in the motions to dismiss, so the court did not include them in its decision on the motions to dismiss.

[2]To ensure the parties could present all the relevant facts, the Court allowed the parties additional time and opportunity to engage in discovery (*see* Resp Opp to MSJ at 18-22). The parties did not request more discovery.

1. ***The Parties***

The Petitioner is a resident of England and is a British citizen. Petition at ¶ 2.

Non-party judgment debtor Farkhad is the subject of a divorce proceeding with the Petitioner in the High Court of England and Wales (the "English Court"). Timms Declaration dated July 6, 2018 (hereinafter "Timms Decl.") Exs. A-E.

Respondent Qubo 2 is a Liechtenstein Anstalt, and was registered on October 21, 2016. Petition at ¶ 5; Answer at ¶ 5. The registered agent for Qubo 2 is Walpart Trust, Zollstrasse 2, 9490 Vaduz, Liechtenstein. *Id.* Qubo 2 is a foreign maritime entity registered with the Trust Company of the Marshall Islands on November 29, 2016. *Id.*; *see also* Power Declaration dated July 6, 2018, Ex. 2. Qubo 2 was joined to the English proceedings on December 20, 2016. Timms Decl. Ex. A (December 20, 2016 financial remedy order (the "2016 Financial Remedy Order")) at ¶ 12.

Respondent Straight is a Liechtenstein Anstalt and was established on February 17, 2017, under the register number FL-0002.541.523-0. Petition at ¶ 6; Answer at ¶ 6. Straight is a foreign maritime entity registered with the Trust Company of the Marshall Islands on April 26, 2017. *Id.*; *see also* Power Declaration dated July 6, 2018, Ex. 3. Straight was joined to the English proceedings on March 21, 2018. Timms Decl. Ex. B (March 21, 2018 Straight/Avenger order ("March 2018 Order")) at ¶ 6.

2. ***The English Proceedings and Money Judgments***

On October 24, 2013, the Petitioner issued a divorce petition in London. Timms Decl. Ex. C (December 15, 2016 Approved Judgment ("2016 Financial Remedy Judgment")) at ¶ 3. She applied for financial remedies on October 25, 2013. *Id.* The Petitioner brought proceedings

in the English Court for financial orders consequent on the divorce between herself and Farkhad ("English Proceedings"). *Id.* at ¶ 1.

Farkhad initially opposed the proceedings on the basis that the parties had already been divorced in 2000 in Russia. Timms Decl. at ¶ 36. He then amended his position, stating that the Russian divorce had been annulled in 2004, but argued that the English Court still did not have jurisdiction because divorce proceedings in Russia (which he had issued earlier that month) were ongoing. *Id.* Farkhad changed his position once more (opposing the petition on *forum non conveniens* grounds, in favor of having the divorce proceedings heard in Moscow) before voluntarily submitting to the jurisdiction of the English Court on June 18, 2015, through a letter from his solicitors. *Id.* at ¶ 38-39. The Petitioner was granted a *decree nisi*, stating that the English Court saw no reason why the couple could not divorce on December 2, 2015. Timms ¶ 14. The decree *nisi* was made absolute on December 15, 2016. 2016 Financial Remedy Judgment at ¶ 3.

An eight-day financial remedy hearing was heard in the English Court in November and December of 2016 (the "Financial Remedy Hearing") to establish the value of the couple's assets and to decide how to divide that value in a final distribution. 2016 Financial Remedy Judgment at ¶ 4.

Prior to the Financial Remedy Hearing, Farkhad fully participated in the English Proceedings, including through the pre-trial review in October 2016. *See* 2016 Financial Remedy Order at ¶ 10(b). However, two weeks before the Financial Remedy Hearing, on November 9, 2016, Farkhad's attorneys abruptly came off the record, and no solicitors appeared at the hearing to replace them. *Id.*; 2016 Financial Remedy Judgment at ¶ 5. Farkhad was not present at the

hearing. 2016 Financial Remedy Judgment at ¶ 4. However, he had already submitted to the English Court's jurisdiction, and he and the Respondents received actual or constructive notice of the proceedings. 2016 Financial Remedy Judgment at ¶ 7; *see also* 2016 Financial Remedy Order at ¶ 10(b).

Despite Respondent Farkhad's lack of participation, the English Court considered the documents and witness statements previously filed by Farkhad, and considered and evaluated his counter arguments regarding the financial remedy order. 2016 Financial Remedy Judgment at ¶ 19.

The English Court proceeded to make detailed findings in the 2016 Financial Remedy Judgment has to the proper distribution to be made (totaling GBP £453,226,152.00, consisting of £350,000,000.00 cash ("Cash Award"), plus certain property (together sometimes referred to by the English Court as the "Judgment")). 2016 Financial Remedy Judgment, Conclusion and Order at 34.

Of the £350,000,000.00 Cash Award, the English Court characterized £224,430,508.00 as "maintenance." 2016 Financial Remedy Judgment at ¶¶ 134-136; *see also* 2016 Financial Remedy Order at ¶ 11(d). The balance of the distribution, £125,569,492.00, is the Initial Money Judgment for which Petitioner now seeks recognition and enforcement.

The English Court also noted that proper service and notice was made on Farkhad and certain alter ego respondents pursuant to English law. 2016 Financial Remedy Judgment at ¶¶ 114-131.

On December 20, 2016, the English Court held that the purported transfer of assets to Qubo 2 was at an undervalue, and was made by Respondent Farkhad for the purposes of putting

assets beyond the reach of the Petitioner. 2016 Financial Remedy Order at ¶ 11; *see also* Timms Decl. Ex. D (Approved Judgment issued December 20, 2016) at ¶¶ 3-6.

The English Court ordered Qubo 2 joined to the English proceedings as a respondent, and ruled that it had constructive notice of the proceedings as an alter ego of Farkhad and that it shall have 7 days to object to such joinder. 2016 Financial Remedy Order at ¶¶ 10(f), 12.

Farkhad and Qubo 2 were ordered to pay the Petitioner the £350,000,000.00 Cash Award by January 6, 2017. 2016 Financial Remedy Order at ¶ 13.

The English Court ordered that interest shall run on the £350,000,000.00 Cash Award due at the rate of 8% per annum. 2016 Financial Remedy Order at ¶ 14.

The Petitioner was ordered to serve the 2016 Financial Remedy Order and the 2016 Financial Remedy Judgment on Qubo 2 by serving its registered agent in Liechtenstein. 2016 Financial Remedy Order at ¶ 23(e). The Petitioner did so serve the order. Timms Decl. at ¶¶ 47-48. Qubo 2 did not present any evidence to show that it objected to joinder or otherwise appeared to dispute the 2016 Financial Remedy Judgment before the English Court.

On March 21, 2018, following the transfer of the luxury yacht, *M/Y Luna* ("*Luna*") from Qubo 2 to Straight, the English Court joined Straight to the proceedings as an alter ego of Farkhad. March 2018 Order at ¶ 1.

The English Court concluded that assets held and previously held in Straight's name beneficially belonged to Farkhad, including the *Luna*, registered in the Marshall Islands in Straight's name with Certificate of Registry No. 5817-PY. March 2018 Order at ¶¶ 2-5.

The English Court set aside the transfer of the *Luna* to Straight, held that Petitioner is the "legal and beneficial owner of the [*Luna,*]" and ordered that Farkhad and Straight turn over title

to the *Luna* within seven days or Straight shall pay the liquidated sum of $487,278,000, the Straight Money Judgment. March 2018 Order at ¶ 10.

The English Court found Straight jointly and severally liable for the previously-ordered award (the December 15, 2016 Judgment). March 2018 Order at ¶ 13.

The English Court held that because Farkhad had submitted to the English Court's jurisdiction and because Straight is the alter ego of Farkhad, the English Court has jurisdiction over Straight. March 2018 Order at ¶ 1. The Court further held that service by alternative methods as of March 5, 2018, was proper, including service by registered post and email to the registered agents of Qubo 2 (March 2018 Order at ¶ 15(b)) and Straight (*Id.* at ¶ 15(c)).

Payments of the Straight Money Judgment reduce *pro tanto* the amount outstanding the lump sum Cash Award of £350,000,000 (of which Initial Money Judgment is a part). March 2018 Order at ¶ 13. Also, reduction of the lump sum below the amount of the Straight Money Judgment reduces *pro tanto* the amount outstanding of the Straight Money Judgment. *Id.*

No payment has been made under either the Initial Money Judgment in the amount of £125,569,492.00, or the Straight Money Judgment for liquidated damages in the amount of $487,278,000. Petition at ¶ 33; Answer at ¶ 33.

The above facts formed the basis of the Court rulings on both the Respondents' motions to dismiss and the Petitioner's MSJ.

B. Procedural Background: Motions to Dismiss

Respondents' motions to dismiss or stay were based on three grounds: (1) under MIRCP, Rule 12(b)(2), because the Court lacks personal jurisdiction over the Respondents, (2) under MIRCP, rule 12(b)(6), because the Court should not recognize the English judgments under the

Uniform Foreign Money-Judgment Recognition Act, 30 MIRC Chp. 4 ("UFMJRA"), or, alternatively, (3) under the doctrine of *forum non conveniens.*

The Court, in its Nov. 2018 Order, in part, granted the motions to dismiss, dismissing the Petition as to Respondents Farkhad and Qubo 1. The Court concluded that Petitioner Tatiana Akhmedova had failed to sufficiently allege facts and inferences to support the Court's personal jurisdiction over Respondents Farkhad and Qubo 1, non-residents who have not consented to the Court's jurisdiction and who do not have minimum contacts with the Republic. However, with respect to Respondents Qubo 2 and Straight, the Court denied their motion to dismiss. The Court concluded Petitioner Tatiana Akhmedova had sufficiently alleged facts and inferences for this Court (1) to exercise of personal jurisdiction over Respondents Qubo 2 and Straight, (2) to recognize and enforce the English Money Judgments under the UFMJRA, and (3) and to reject the doctrine of *forum non conveniens.*

First, as to this Court's personal jurisdiction, the Court concluded that Qubo 2 and Straight have taken actions in the Republic that support specific personal jurisdiction over them. Under 52 MIRC Chapter 1, Division 13, Foreign Maritime Entities, Qubo 2 and Straight registered in the Republic as RMI foreign maritime entities, they registered the *Luna* under the RMI Flag, and they operated the *Luna* under the RMI flag, as part of a scheme to avoid payment of the English Money Judgments. MSJ at ¶ 19. Because Qubo 2 and Straight are foreign maritime entities, the Court, pursuant to 27 MIRC §.251(1)(p), has civil jurisdiction over them subject to the limitations of section 125 of 52 MIRC [Chapter 1], Business Corporation[s Act ('BCA')]." (*Emphasis added*). Subsection 125(2), in relevant part, provides as follows:

> an action . . . against a foreign maritime entity may be maintained in the

Republic . . . by a non-resident in the following cases only:

> (d) where **the action . . . is based on a liability for acts done within the Republic** by a foreign maritime entity. (Emphasis added.)

Accordingly, the Court can exercise personal jurisdiction over Qubo 2 and Straight in the present enforcement action where their liability is based upon their "acts done within the Republic": *i.e.*, registering as a foreign maritime entity, registering *Luna* under the RMI Flag, and transferring the *Luna's* registration, as part of a scheme to avoid payment of the English Money Judgments. But for these acts in the Republic, there would be no enforcement action in the Republic, and this Court would not have specific personal jurisdiction over Qubo 2 and Straight. By their acts, Qubo 2 and Straight have "performed some act or consummated some transaction within the forum or otherwise purposefully availed [it]self of the privileges of conducting activities in the forum." Nov. 2018 Order at 2 citing *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154-1155 (9th Cir. 2006). By their acts, Qubo 2 and Straight have effectively "consented" to the Court's jurisdiction, specific jurisdiction, over them under 27 MIRC § 251(1)(p) and 52 MIRC 125(2)(d).

Second, with respect to the Petitioner's claims under the UFMJRA, the Court concluded that under the facts and inferences before the Court, the Petitioner had adequately alleged grounds for recognition of her foreign money judgments. "The Respondents argue[d] that the Petition must be dismissed pursuant to MIRCP 12(b)(6) because the English Money Judgments are not entitled to recognition as [a] the English Court lacked jurisdiction over Respondents and they were not properly served, [b] the Straight Money Judgment is a 'fine or penalty' under the

wording of the UFMJRA, or [c] the judgments are 'financial relief ancillary to divorce proceedings,' or for matrimonial support." Nov. 2018 Order at 20. However, based upon the facts and arguments before it, the Court rejected the Respondents' arguments attacking the English Court's exercise of personal jurisdiction over Straight and Qubo 2, as alter egos of Respondent Farkhad, and attacking the adequacy of service. *Id.* at 22-23. Further, the Court concluded that the English Judgments were not fines or penalties (*id.* at 24-27), and the Court concluded that the judgments were not judgments for matrimonial support (*id.* at 27-28).

Third, with respect to the Respondents' *forum non conveniens* defense (*id.* at 28-33), the Court concluded that the Respondents had failed to show that Dubai would provide the Petitioner with an adequate alternative forum or that the private or public interests weigh in favor of the Dubai proceedings over RMI proceedings. *Id.* at 11-14. Since the Nov. 2018 Order, counsel for the Respondents has advised the Court that the Dubai Court had released the *Luna* from arrest, further undermining the adequacy of Dubai as an alternative forum.

Shortly after the Court issued its Nov. 2018 Order, the Petitioner filed her MSJ, the motion that is now before the Court.

III. LEGAL STANDARD FOR SUMMARY JUDGMENT

The legal standard for granting summary judgment motions is the two-part test set forth in MIRCP, Rule 56(a). Under Rule 56(a), the Court shall grant summary judgment if "the moving party shows **[1]** that there is no genuine issue as to any material fact and **[2]** that the moving party is entitled to a judgment as a matter of law." MIRCP 56(a).

A. No Genuine Issue as to Any Material Fact

A party is entitled to summary judgment when there is no "genuine issue of material fact"

and the undisputed facts warrant judgment for the moving party as a matter of law. MIRCP 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).[3] The moving party has the initial burden of demonstrating the absence of a disputed issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Once the motion for summary judgment is properly made, the burden shifts to the non-moving party, which "must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 250. The nonmovant "may not rely on conclusory allegations or unsubstantiated speculation," *Scotto v. Almenas*, 143 F.3d 105, 114 (2d Cir. 1998). "Instead, the non-movant must produce specific facts indicating that a genuine factual issue exists." *Id.* (internal citations omitted).

In order to raise a "genuine" issue of fact, the "evidence [must be] such that a reasonable [trier of fact] could return a verdict for the nonmoving party." *Anderson,* 477 U.S. at 248. With respect to the materiality of facts, "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Id.* "A material fact is one which may affect the outcome of the litigation." *Commodity Futures Trading Com'n* v. *Savage,* 611 F.2d 270, 282 (9th Cir. 1979).

On a motion for summary judgment, the court must view the record in the light most favorable to the non-moving party and draw all reasonable inferences in its favor. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986). In the case of ambiguities, ambiguities must be resolved and all reasonable inferences must be drawn in favor of the nonmoving party. *Heyman v. Commerce & Indus. Ins. Co.*, 524 F.2d 1317, 1320 (2d Cir. 1975).

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[3]Rules of the Marshall Islands Rules of Civil Procedure that mirror rules of the Federal Rules of Civil Procedure carry the construction placed upon them by the Federal Courts. *Kabua v. Kabua, et al.*, 1 MILR (Rev.) 96, 104 (1988).

If reasonable minds could differ as to import of nonmoving party's evidence, and if there is any evidence in the record from any source from which reasonable inference in nonmoving party's favor may be drawn, the moving party simply cannot obtain summary judgment. *R.B. Ventures, Ltd. v. Shane*, 112 F.3d 54, 59 (2d Cir. 1997). However, there must be more than a "scintilla" of evidence favoring the nonmoving party to create an issue of material fact. *Sumners* v. *Teichert & Son, Inc.*, 127 F.3d 1150, 1152 (9th Cir. 1997). Once the moving party makes its showing, the nonmoving party may not defeat a motion for summary judgment in the absence of any significant probative evidence tending to support its legal theory. *Commodity Futures Trading Com'n*, 611 F.2d at 282. Whether any disputed issue of fact exists is for the court to determine. *Balderman v. U.S. Veterans Admin.*, 870 F.2d 57, 60 (2d Cir. 1989).

If under the above standard the moving party can demonstrate that there is no genuine issue as to a material fact, the moving party must next show that it is entitled to judgment as a matter of law. In the present case, the applicable law is the UFMJRA.

B. The Legal Standard for Recognition and Enforcement of a Foreign Money Judgment

1. *Judgments to Which the UFMJRA Applies; Grounds for Non-recognition*

The legal standards for recognition and enforcement of a foreign judgment are set forth in the UFMJRA, 30 MIRC Ch. 4. First, Sections 402, 403, and 404 of the UFMJRA define the judgments to which the UFMJRA applies. Second, Section 405 sets forth defenses to recognition, *i.e.*, mandatory and non-mandatory grounds for non-recognition.

Specifically, Section 402(2) provides that a "foreign judgment" for purposes of the UFMJRA means a judgment of a foreign nation "granting or denying recovery of a sum of money,

other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial matters." 30 MIRC 402(2). Section 403 provides that the UFMJRA applies to "any foreign judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending, or subject to appeal." 30 MIRC 403. Section 404 provides that a judgment "is conclusive between the parties to the extent that it grants or denies recovery of a sum of money." 30 MIRC 404. Except as provided for in Section 405, judgments meeting these requirements are to be recognized and enforced under the UFMJRA.

Section 405 of the UFMJRA sets forth the mandatory grounds for non-recognition. Subsection 405(1) sets forth the mandatory grounds for recognition:

> (1) A foreign judgment is not conclusive if:
>
> (a) the judgment was rendered under a system which does not provided impartial tribunals or procedures compatible with the requirements of due process law;
>
> (b) the foreign court did not have personal jurisdiction over the defendant; or
>
> (c) the foreign court did not have jurisdiction over the subject matter.

Id. 405(1)(a)-(c). Subsection 405(2) provides discretionary grounds for non-recognition:

> (2) A foreign judgment need not be recognized if:
>
> (a) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
>
> (b) the judgment was obtained by fraud;
>
> (c) the cause of action on which the judgment is based is repugnant to the public policy of the Republic;
>
> (d) the judgment conflicts with another final and conclusive judgment;
>
> (e) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in the court;
>
> (f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action; or
>
> (g) the foreign state does not recognize or enforce the judgments of any other foreign nation.

Id. 405(2)(a)-(g).

2. *Burden of Proof*

The UFMJRA, which is based upon the Uniform Foreign Money-Judgments Recognition Act drafted by the Nation Conference of Commissioners on Uniform State Laws and approved in 1962 ("1962 Recognition Act"), does not contain specific provisions on burden of proof. The parties agree that the burden of proving that the judgment falls within the scope of the Act (*i.e.*, meets the requirements of Sections 402, 403, and 404) is on the party seeking recognition. Also, the parties agree that the burden of proving the discretionary grounds for non-recognition (*i.e.*, the grounds set forth in Subsection 405(2)) is on the party resisting recognition. *See* Petitioner's Post-Argument Memorandum of Law in Support of Summary Judgment ("Petr's Post-Argument Memo") at 3; Resp Opp to MSJ at 10-11 (citing cases). However, as to mandatory grounds for non-recognition (*i.e.*, the grounds set forth in Subsection 405(1)), the parties and the cases are split. *See* Petr's Post-Argument Memo at 3, 6-7 (citing cases); Respondents' Post-Argument Memorandum of Law in Further Opposition to Petitioner's Motion for Summary Judgment at 6 (citing cases).

Some courts concluded that the moving party should bear burden of proving that the foreign court did not lack personal jurisdiction over the resisting party. Such is the case where a plaintiff in the United States is trying to enforce a default judgment from a sister State, if the resisting party alleges the sister State's court lacked persoual jurisdiction. *Id.* On the other had, some courts concluded that the resisting party should bear the burden of proving mandatory, as well as discretionary, grounds for non-recognition, because the grounds for non-recognition are akin to affirmative defenses, and the party asserting affirmative defenses bears of burden of proof.

Petr's Post-Argument Memo at 6-7.

In an effort to clarify the burden of proof question, the Uniform Foreign-Country Money Judgments Recognition Act 2005 ("2005 Recognition Act")[4] clearly places the burden of meeting the requirements of Sections 402, 403, and 404 on the party seeking recognition and the burden of proving both mandatory and discretionary grounds for non-recognition under Section 405 on the party resisting recognition. *See* Ronald A. Brand, *Recognition and Enforcement of Foreign Judgments*, Federal Judicial Center International Litigation Guide, Apr. 2012 at 25[5]; *see also*, Restatement (Fourth) of Foreign Relations Law § 485 (2018).

Having considered the authorities cited, the Court concludes that the burden of proving UFMJRA is applicable to the English Judgments falls upon the Petitioner under UFMJRA Sections 402, 403, and 404. However, consistent with the treatment of affirmative defenses, the burden of proving grounds for both mandatory and discretionary non-recognition falls upon Respondents Qubo 2 and Straight under Subsections 405(1) and (2). *See* Nov. 2018 Order at 21.

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[4]https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=ae280c30-094a-4d8f-b722-8dcd614a8f3e&tab=librarydocuments.

[5]"The 1962 Recognition Act does not contain specific provisions on burden of proof. Burden of proof issues may arise at several stages in the recognition process. At the outset, the court is faced with the question whether the action is within the scope of the 1962 Recognition Act. Cases decided under the Act tend to place the burden on the party seeking recognition of the foreign judgment. Section 3(c) of the 2005 Recognition Act makes clear that "[a] party seeking recognition of a foreign-country judgment has the burden of establishing that this [Act] applies to the foreign-country judgment."

The burden is reversed once it is established that the judgment is within the scope of the 2005 Recognition Act—that is, the judgment is final, conclusive, and enforceable where rendered, and is not a judgment for taxes, fines, penalties, or domestic relations relief. Section 4(d) provides that "[a] party resisting recognition of a foreign-country judgment has the burden of establishing" both mandatory and discretionary grounds for non-recognition." (Footnotes omitted).

IV. DISCUSSION

A. The English Money Judgments are "Foreign Judgments" for Purposes of UFMJRA Section 402

Under the above legal standards, the Petitioner bears the burden of proving the Initial Money Judgment and the Straight Money Judgment are "foreign judgments" for purposes of the UFMJRA. As explained below, both are judgments of a foreign nation "granting . . . a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial matters." Accordingly, the Petitioner has met the burden of proving the Initial Money Judgment and the Straight Money Judgment meet the UFMJRA's definition of a foreign judgment. 30 MIRC 402(2).

1. *The English Money Judgments are Foreign Judgments Granting a Sum of Money.*

As noted above in the Factual Background section, both English Money Judgments, the Initial Money Judgment and the Straight Money Judgment, are judgments issued by a foreign nation, the United Kingdom, and both award a sum of money (GBP £125,569,492 and USD $478,278,000). Hence, they are "foreign judgments" for purposes of UFMJRA.

2. *The English Money Judgments Are Not "Fines" or "Penalties."*

In response, the Respondents argue that the Straight Money Judgment should not be recognized by this Court because it constitutes a "fine or other penalty" under UFMJRA. 30 MIRC 402(2). The Respondents argue that the "liquidated" portion of the Straight Money Judgment, ordering the payment of the judgment amount to Petitioner, acts as a punishment for Respondent Straight's failure to comply with a court order that required that Respondents Farkhad and Straight take steps to turn over the *Luna*.

As an initial matter, the liquidated sum (in the amount of the value of the *Luna*) is part of the monetary sum already owed to the Petitioner by virtue of the 2016 Financial Remedy Judgment. Therefore, it cannot be considered a penalty in connection with Respondent's failure to comply with the ordered turnover of the *Luna*. Moreover, case law interpreting the UFMJRA demonstrates that the judgment is also not properly categorized as a fine or penalty because it is a judgment aimed at compensating a private party in a civil dispute, not punishing or deterring criminal behavior against the public. In considering whether a New York judgment could be enforced in Maryland, the Supreme Court in *Huntington v. Atrill*, 146 U.S. 657 (1892) considered whether the judgment arose out of a statute that was penal in nature. The Supreme Court included a thorough discussion of the meaning of "penal" and "penalty," and while recognizing that "[a]ll damages for neglect or breach of duty operate to a certain extent as punishment . . . the test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public or a wrong to the individual." *Id.* at 667-68.

Other courts have applied this analysis when considering whether to recognize foreign country judgments under their respective recognition acts. *Chase Manhattan Bank, N.A. v. Hoffman*, 665 F. Supp. 73, 75-76 (D. Mass. 1987) (enforcing Belgian damages award and noting that the exclusion of a fine or penalty from recognition originates out of the principal that a state will not enforce foreign penal judgments); *Erbe Elektromedizin GMBH v. Canady*, 545 F. Supp. 2d 491, 496 (W.D. Penn. 2008) (holding that award of attorneys' fees that would not be recoverable under ordinary circumstances and are not considered a penalty); *Desjardins Ducharme v. Hunnewell*, 585 N.E.2d 321,323 (Mass. 1992) (same, because attorneys' fees

awards were remedial in nature, affording a private remedy to an injured person as opposed to penal in nature, punishing an offense against the public); *L' Institute Nat. de L' Audiovisuel v. Kultur Int'l Films, Ltd.*, No. 11-6309, 2012 WL 296997 at *3 (D. N.J. Feb. 1,2012) (French judgment not a "fine or other penalty" under the recognition act because monetary damages were compensatory in nature).

Nor would the use of the word "penalty" in the judgment be sufficient to change the analysis. *Commissions Import Export SA v. Republic of Congo*, 118 F. Supp. 3d 220, 225 (D. D.C. 2015) (portion of English Money Judgment labeled as "penalty interest" was not a penalty under the meaning of the D.C. recognition act because it is remedial in nature and not designed to punish an offense against the public justice); *Moersch v. Zahedi*, 228 F. Supp. 3d 1079, 1085 (C.D. Cal. 2017) (foreign award pursuant to a contract's "penalty clause" not considered a penalty under the CA recognition act).

Specifically, the Straight Money Judgment at issue, declares that Petitioner is the legal and beneficial owner of the *Luna*, and orders Farkhad and Straight to effect transfer of the title to her name within seven days. March 2018 Order at 9. The judgment provides that if the transfer of title is not effected within 7 days, that Straight shall pay the "liquidated sum . . . representing the capital value of the [*Luna*], namely $487,278,000." *Id.* ¶ 10. It is clear by its terms that the purpose of the liquidated sum is to compensate Petitioner for Straight's failure to turn over property that belongs to her ("it is DECLARED that with immediate effect the [Petitioner] is the legal and beneficial owner of the [*Luna*]." *Id.* ¶ 9). Regardless of Respondents' characterizations of the liquidated sum as punishment, it is clear that it does not arise out of any penal action, or to punish Straight for an offense against the State or the public. Accordingly, the Straight Money

Judgment is not unenforceable under the UFMJRA as a "fine or other penalty."

In this regard, Respondents have also argued that the Petitioner seeks a double recovery in this action. However, it is clear from the March 2018 Order that any recovery of the Cash Award, including the Initial Money Judgment, reduces the Straight Money Judgment and vise-versa. March 2018 Order at ¶ 13.

3. *The English Money Judgments Are Not Judgments Awarded for Support in Matrimonial Matters.*

Not only is the Straight Money Judgment not a fine or penalty, but also the Initial Money Judgment and the Straight Money Judgment are not awards "for support in matrimonial matters."

With respect to the Initial Money Judgment, the English Court only designated £224,430,508.00 of the Petitioner's £350,000,000.00 Cash Award as "maintenance." The remaining £125,569,492.00, of the Cash Award, the Initial Money Judgment, was not designated as maintenance. The Initial Money Judgment cannot be said to be attributable to maintenance or support. The Initial Money Judgment is not unenforceable under the UFMJRA as a judgment for matrimonial support.

With respect to the Straight Money Judgment, the English Court ordered that payment of the Straight Money Judgment reduces the amount "*pro tanto*" owed by Respondents under the Cash Award and vice-versa. March 2018 Order at ¶ 13. That is, as the Initial Money Judgment, a part of the Cash Award, is paid down, the Respondents' obligation under the Straight Money Judgment reduces. Hence, just as the Initial Money Judgement is not attributable to maintenance or support, so £125,569,492 of the Straight Money Judgment is not maintenance or support and is not unenforceable under the UFMJRA as a judgment for matrimonial support.

Accordingly, for purposes of Section 402, the Petitioner has met her burden of proof, establishing that the Initial Money Judgment and £125,569,492 of the Straight Money Judgment are "foreign judgments," other than judgments for taxes, a fine, or other penalty, or judgments for support in matrimonial matters.

B. The UFMJRA Applies to the English Money Judgments Under Section 403 and 404

In addition to demonstrating that the English Money Judgments are qualified "foreign judgments" under Section 402, the Petitioner bears the burden of proving that the UFMJRA applies to the English Money Judgments under Sections 403 and 404 of the UFMJRA. Section 403 provides that the UFMJRA"applies to any foreign judgment that is *final and conclusive and enforceable where rendered* even though an appeal therefrom is pending, or [it is] subject to appeal (emphasis added)." Section 404 provides that "[e]xcept as provided in Section 405, a foreign judgment meeting the requirements of section 403 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money."

In this regard, the Court has reviewed the English Court's decisions submitted in the case, including without limitation the following:

> Justice Haddon-Cave's 2016 Financial Remedy Order issued December 20, 2016, granting the Initial Money Judgment. Timms Decl. Ex. A.
>
> Justice Haddon-Cave's March 2018 Order issued March 21, 2018, holding Qubo 2 and Straight jointly and severally liable to by the Initial Money Judgment. Timms Decl. Ex. B.
>
> Justice Haddon-Cave's 2016 Financial Remedy Judgment issued December 15, 2016. Timms Decl. Ex. C.
>
> Justice Haddon-Cave's Approved Judgment issued December 20, 2016. Timms Decl. Ex. D.
>
> Justice Haddon-Cave's Freezing Order issued December 20, 2016. Timms Decl. Ex. E.

Justice Haddon-Cave's Approved Judgment issued April 19, 2018. *See* March 12, 2019, Declaration of Dr. Hannes Arnold, M.B.L.-HSG, Ex. 1 ("Apr. 2018 Order").

Based upon the English Court's decisions and the submissions of counsel, the Court concludes that the Initial Money Judgment and the Straight Money Judgment are "final and conclusive and enforceable where rendered," *i.e.*, they are final and conclusive and enforceable between the parties in England. Respondents Qubo 2 and Straight have not shown otherwise. The Respondents have not appealed or challenged the decisions. Hence, for purposes of Section 403, the UFMJRA applies to the Initial Money Judgment and the Straight Money Judgment. Further, as the judgments meet the requirements of Section 403 and are judgments for the recovery of money, they are by the language of Section 404 conclusive between the parties, subject to any grounds for non-recognition under Section 405.

In summary, the Petitioner has, for purposes of Section 402, met her burden of proof, establishing that the Initial Money Judgment and the Straight Money Judgment are "foreign judgments," other than judgments for taxes, a fine, or other penalty, or judgments for support in matrimonial matters. Further, the Petitioner has, for purposes of Sections 403 and 404, met her burden of proof, establishing that the Initial Money Judgment and the Straight Money Judgment are final and conclusive foreign money judgments between the parties where rendered, *i.e.,* in England. Accordingly, the burden of proof now shifts to Respondents Qubo 2 and Straight to establish that the Section 405 mandatory or discretionary grounds for non-recognition apply.

The Court will address first the discretionary grounds for non-recognition and then the mandatory grounds.

C. Discretionary Grounds for Non-Recognition: Sufficiency of Service

Subsection 405(2) of the UFMJRA sets forth the discretionary grounds for non-recognition:

> (2) A foreign judgment need not be recognized if:
>
> (a) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;
>
> (b) the judgment was obtained by fraud;
>
> (c) the cause of action on which the judgment is based is repugnant to the public policy of the Republic;
>
> (d) the judgment conflicts with another final and conclusive judgment;
>
> (e) the proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in the court;
>
> (f) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action; or
>
> (g) the foreign state does not recognize or enforce the judgments of any other foreign nation.

30 MIRC 405(2)(a)-(g). Respondents Qubo 2 and Straight bear the burden of proving discretionary grounds for non-recognition exits.

Respondents Qubo 2 and Straight argue that the Court should not recognize the English Money Judgments (the Initial Money Judgment and the Straight Money Judgment), because under Paragraph 405(2)(a) "the [respondents] in the proceedings in the [English Court] did not receive notice of the proceedings in sufficient time to enable [them] to defend."[6] Also, with respect to the

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[6]In Resp Opp to MSJ at 21-22, the Respondents requested discovery implicating two additional discretionary grounds for non-recognition under Subsection 405(2): "(c) the cause of action on which the judgment is based is repugnant to the public policy of the Republic [*i.e.*, compelling testimony from the opposing party's attorney] . . . [and] (d) the judgment conflicts with another final and conclusive judgment [in Russia]." However, the Respondents failed to develop these arguments. Further, the Petitioner demonstrated that was no factual or legal basis for either. *See* the Petitioner's Supplemental Memorandum of Law in Further Support of Summary Judgment at 17-20. For these reasons, the Court will not address the two implicated grounds for non-recognition and considers them to have been waived by the Respondents. *See Smith v. Chippewa Falls Area Unified School District*, 302 F. Supp. 2d 953, 957 (W.D. Wis. 2002), 01-C-678-C, May 29, 2002 "'Arguments not developed in any meaningful way are waived.' *Central States,*

sufficiency of service, the Respondents argue that the Petitioner's service upon them did not meet the requirements of due process. Due process requires service to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988) (citing *Mullane v. Central Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

1. ***Sufficiency of Service on Qubo 2***

In the December 2016 Financial Remedy Order, the English Court (i) at ¶10.f joined Qubo 2 to the English Proceedings as a nominee of Respondent Farkhad, holding Qubo 2 had constructive notice of the proceedings and claims, and (ii) at ¶ 12 granted Qubo 2 liberty to seek to be disjoined. However, under the facts before this Court, Qubo 2 has shown that it did not receive actual or timely notice of November and December 2016 proceedings prior to issuance of the 2016 Financial Remedy Order.

It is this lack of prior notice that Qubo challenges. *See* Respondents' First Supplemental Memorandum of Law in Opposition to Petitioner's Motion for Summary Judgment ("Resp First Supp Opp to MSJ") at 15-16 (citing Schurti Decl. ¶¶ 28, 36; *see also* Adler Decl. ¶ 7 & Ex. C (March 21, 2018 Petitioner's Position Statement) ¶ 6 (noting that Qubo 1 and Qubo 2 were joined to the English proceeding, and judgment entered against them, on the same day, without

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Southeast and Southwest Areas Pension Fund v. Midwest Motor Express, Inc., 181 F.3d 799, 808 (7th Cir. 1999); see also *Finance Investment Co. (Bermuda) Ltd. v. Geberit AG*, 165 F.3d 526, 528 (7th Cir. 1998); *Colburn v. Trustees of Indiana University*, 973 F.2d 581, 593 (7th Cir. 1992) ('[plaintiffs] cannot leave it to this court to scour the record in search of factual or legal support for this claim'); *Freeman United Coal Mining Co. v. Office of Workers' Compensation Programs, Benefits Review Board*, 957 F.2d 302, 305 (7th Cir. 1992) (court has 'no obligation to consider an issue that is merely raised, but not developed, in a party's brief')."

notice)); Respondents' Second Supplemental Memorandum of Law in Opposition to Petitioner's Motion for Summary Judgment ("Resp Second Supp Opp to MSJ") at 8-11. ·In response, the Petitioner has not provided evidence that Qubo 2 received actual notice of the December 20, 2016 proceedings prior to their occurrence.

Without prior notice of the November and December 2016 proceedings, the Court concludes that Qubo 2 had neither (i) sufficient time to defend as required under Paragraph 405(2)(a) of the UFMJRA nor (ii) an opportunity to present its objections as required by due process. For these reasons, the Court, as to Qubo 2, denies Petitioner's MSJ and dismisses this case. However, as to Straight, the situation is difference.

2. *Sufficiency of Service on Straight*

In a March 1, 2018 application to join Straight to the English Proceedings, the Petitioner sought permission to serve Straight (i) by registered post to its registered agent, Counselor Trust in Liechtenstein, (ii) by email to Walch & Schurti, the law firm associated with Counselor Trust Registered, and (iii) by email to Walpart Trust Registered. In a March 15, 2018 Second Affidavit of Sonia Michaelides ¶ 11(c), she confirmed that on March 2, 2018, she served notice of the application and hearing date by registered mail on Counselor Trust Registered (signed for on March 5, 2018), by email on Walch & Schurti, and by email on Walpart Trust Registered. TA-000270. Based upon Michalelides's service, on March 21, 2018, the English Court joined Straight to the English Proceedings. March 2018 Order at ¶ 6.

Later, in response to the Petitioner's application for an order validating the service, the English Court in its Apr. 2018 Order at ¶ 38 again accepted Ms. Michaelides's evidence of service and found that all the Respondents and Intended Respondents (Straight and Avenger Assets) had

received notice on March 2, 2018. The English Court, *id.* at ¶ 40, set forth English legal principles for alternative service (constructive service) and service in a foreign jurisdiction (*i.e.*, "good reason" and "exceptional circumstances"), and, *id.* at ¶¶ 41-44, applied the principles to the case before it.

The English Court found "good reason" validate service by alternative means: (i) service via judicial channels would take weeks, months, or even years; (ii) in the past 18 months, Farkhad a repeatedly shown a willingness to take rapid and multiple steps to evade enforcement; (iii) it was clear from Straight's jurisdictional challenge in Dubai that time was of the essence in the enforcement proceedings; (iv) Farkhad will take every step to render the 2016 Financial Remedy Judgment nugatory; (v) enforcement must proceed expeditiously to avoid further dissipation or diminishment of Farkhad's assets; and (vi) the Petitioner's English lawyers have confirmed the service methods used would not contravene the laws of the foreign jurisdiction in which service was effected. The English Court also found Farkhad efforts to evade enforcement gave rise to "exceptional circumstances." Additionally, the English concluded that for the same reason it concluded service on Farkhad was good service on Cotor (*see* 2016 Financial Remedy Judgment ¶¶ 122-129), service on Farkhad was good service on Straight.

As in England, both the Marshall Islands and the United States have provisions allowing for alternative (or constructive) service on defendants, particularly defendants located in foreign countries. *See* MIRCP 4(f)(3); 27 MIRC 255. Straight has shown no constitution impediment to alternative or constructive service.

In response to the facts established by the Petitioner, Straight claims that it was not properly served, that is, (i) neither Walch & Schurti nor Walpart Trust Registered were

authorized to receive service for Straight, (ii) under Liechtenstein law service must be through the Liechtenstein courts by letters rogatory, and (iii) that Straight did not receive sufficient time to respond. *See* Resp Opp to MSJ at 18; Resp First Supp Opp to MSJ at 17-18; Resp Second Supp Opp to MSJ at 9-11.

However, Straight's arguments are unavailing. First, even if neither Walch & Schurti nor Walpart Trust Registered were authorized to receive service for Straight, Counselor Trust Registered was authorized to receive service and it signed for the notice on March 5, 2018. Second, the Court has reviewed the parties' dueling opinions on Liechtenstein law and concludes (i) Straight as not demonstrated that the law of Liechtenstein governs service by the English Court on Straight, and (ii) even if Liechtenstein law does govern, Straight has not demonstrated that service by registered mail was unlawful. *See* Petitioner's Supplemental Reply in Further Support of Summary Judgment at 11-12 citing *Marks v. Alfa Group*, 615 F. Supp. 2d 375, 379 (E.D. Penn. 2009). Third, as to the sufficiency of service, Straight received actual notice on March 2, 2018, providing 19 days' notice, or on March 5, 2018, providing at least 16 days' notice. Given Farkhad's record of evading enforcement, the Petitioner has shown that Straight had sufficient time to defend or to request more time. Straight has offered no reason why the time given was not sufficient. Straight just chose not to defend in England. Fourth, retroactively approved service of process comports with due process when notice was actually received. *Id.* at 379-80.

Accordingly, the Court finds that Straight has failed to bear it burden of proving that it did not have sufficient notice in time to defend, as required under Paragraph 405(2)(a) of the UFMJRA, or sufficient notice in time to present its objections, as required or under due process.

For these reasons, the Court concludes that the Petitioner's constructive service on Straight does not provide grounds for non-recognition of the English Judgments.

The Court now turns to the question of mandatory grounds for non-recognition.

D. Mandatory Grounds for Non-Recognition: Lack of Personal Jurisdiction

Subsection 405(1) of the UFMJRA sets forth the mandatory grounds for non-recognition:

> (1) A foreign judgment is not conclusive if:
>
> (a) the judgment was rendered under a system which does not provided impartial tribunals or procedures compatible with the requirements of due process law;
>
> (b) the foreign court did not have personal jurisdiction over the defendant; or
>
> (c) the foreign court did not have jurisdiction over the subject matter.

30 MIRC 405(1)(a)-(c). Respondents Qubo 2 and Straight bear the burden of proving mandatory grounds for non-recognition exits. Under Subsection 405(1), Respondents Qubo 2 and Straight argue that this Court must not recognize the Initial Money Judgment and the Straight Money Judgment because the English Court "(b) did not have personal jurisdiction over the [respondents]." As the Court has dismissed Qubo 2 for insufficient service, the Court will limit its consideration of personal jurisdiction to Straight.

1. *The English Court's Assertion of Personal Jurisdiction over Straight*

Even though the burden of proof is not on the Petitioner to establish that the English Court has personal jurisdiction over Straight, the Petitioner has, in its moving papers, made a *prima facie* showing that the English Court has personal jurisdiction over Straight under English law. The English Court sets forth its basis for personal jurisdiction over Straight under the law of England in its Apr. 2018 Order at ¶¶ 45-68. The English Court concludes it has personal jurisdiction over Straight based upon (i) finding Straight to be a nominee, cipher, bare trustee, or

resulting trustee of Farkhad and (ii) piercing the corporate veil under the principle of "evasion."

a. Nominee-ship

In concluding that Straight was a nominee of Farkhad, the English Court relied upon (a) its findings in the 2016 Financial Remedy Order that Cotor, Qubo 1, and Qubo 2, were all nominees, mere ciphers, of Farkhad holding their assets absolutely for Farkhad and (b) the timing of Straight's creation (*i.e.*, shortly after the English Court ruled Qubo 2 was liable for Petitioner's judgment against Farkhad, Straight was created (*see* Conclusion and Order in the 2016 Financial Remedy Judgment at 34)). Specifically, the English Court concluded that Farkhad remained the beneficial owner of the *Luna*, and never intended to part with his ownership as title to the *Luna* passed from him to Tiffany, to the Avenger, to Stern Management, to Qubo 2, and ultimately to Straight. Farkhad provided all the monies for the transactions for no apparent consideration, leading to a presumption of a resulting trust, which presumption was not rebutted. For these reasons, the English Court declared Straight to be a "resulting trustee, 'bare trustee' or nominee" of Farkhad. Apr. 2018 Order at ¶¶ 21-27, 47-50.

b. Piercing the Corporate Veil

Having found Straight to be a nominee of Farkhad, the English Court, under the evasion principle outlined in *Petrodel Resources Ltd v Prest* [2013] 2 AC 415, pierced the corporate veil to find Straight liable for the judgment debt. The judgment in *Prest* rests on four propositions. First, under the evasion principle, "the court may disregard the corporate veil if there is a legal right against the person in control of it which exists independently of the company's involvement, and a company is interposed so that the separate legal personality of the company will defeat the right or frustrate its enforcement." Apr. 2018 Order at ¶53, quoting Lord Sumption JSC, *Prest* at

¶ 28. Second, the evasion principle applies where a person deliberately frustrates enforcement by interposing a company under his control. *Id.* ¶ at 54. Third, piercing the corporate veil should only be used when necessary. *Id.* at ¶ 55. Fourth, piercing the corporate veil should be used when the controlling party has acted with "impropriety" rather than merely "improperly." That is, transferring assets for "wealth protection and the avoidance of tax may be improper, but transferring assets to avoid a judgment is an act of impropriety. *Id.* at ¶ 56.

The English Court found the following facts justify and order piercing the 'corporate veil' so as to make Straight liable for the 2016 Financial Remedy Judgment against Farkhad. *Id.* at 62. First, in transferring the *Luna* to Straight, Qubo 2 (the legal owner) and Farkhad (the beneficial owner) violated their legal obligations not to do so. *Id.* at ¶ 63. Second Straight was incorporated to make enforcement of the 2016 Financial Remedy Judgment against Qubo 2 and Farkhad more difficult. Straight was created and interposed and the Luna was transferred to the Straight to evade enforcement of the 2016 Financial Remedy Judgment. "Straight's entire raison d'etre was evasion of the subsisting [2016 Financial Remedy Judgment]." *Id.* at ¶ 64. Third, an order piercing the corporate veil was clearly necessary in the interests of justice. Without such an order, the Petitioner's efforts to enforce the 2016 Financial Remedy Judgment could fail altogether. *Id.* at ¶ 65. Fourth, the English Court, it found as follows: "[Farkhad] is acting with real impropriety and deliberately seeking to evade his legal obligations to [Petitioner] by employing the device[] of . . . Straight to put legal obstacles in the way of enforcement of the Judgment by her against him. Accordingly, in my judgment, the 'evasion' principle applies and it is appropriate to pierce the 'corporate veil' in this case and I do so." *Id.* at ¶ 57. For these reasons, the English Court concluded that "the test for piercing the 'corporate veil' set out in

Prest is clearly satisfied in the present case and the interests of justice require the making of such an order in this case." *Id.* at ¶ 66.

With respect to piercing the 'corporate veil,' the English Court also examined the conflict of the law question as to whether to apply the law of the forum, the law of England, or the law of incorporation, Liechtenstein. The English Court concluded in favor of applying the law of the forum, the law of England. First, the English Court concluded that as the Petitioner's claim is based upon the evasion principle it is remedial in nature, designed to prevent dishonest attempts to evade enforcement. Second, under English law, the mode and method of enforcement is for the law of the forum. Third, for reasons of common-sense and policy the law of the forum should apply in cases concerning the evasion principle. That is, applying the law of incorporation would aid the international fraudster. *Id.* at ¶¶ 58-61.

c. <u>Applying the Principles</u>

Applying the above principles of "nominee-ship" and "piercing the corporate veil," the English Court concluded that Straight can be said to have parasitically submitted to the court's jurisdiction through Farkhad, who had voluntarily submitted to the court's jurisdiction and who had participated in the proceedings. *Id.* at ¶ 67. This Court must now determine if the English Court's exercise of personal jurisdiction over Straight (a non-consenting, non-resident) comports with Marshall Islands law? *Kaupthing ehf. v. Bricklayers and Trowel Trades Int'l Pension Fund Liquidation Portfolio*, 291 F. Supp.3d 21, 33 (D.D.C. 2017).

2. *The English Court's Exercise of Jurisdiction over Straight Comports with Marshall Islands Law*

Although Marshall Islands law does not authorize its courts to exercise personal jurisdiction by piercing the corporate veil under the "evasion principle" outlined in *Prest*, Marshall Islands law does allow courts to exercise jurisdiction over a non-consenting, non-resident like Straight. With respect to non-resident parties, the Marshall Islands Supreme Court has held that, in the absence of consent, "there are two elements which must be satisfied to give the court specific personal jurisdiction [over them]: (1) the law which governs the court must give it authority to assert jurisdiction over the parties in the case and (2) the jurisdiction, even where allowed by the law governing the court, must not violate the due process clause of the Constitution. Hence, the determination of whether or not a court has personal jurisdiction over a non-resident defendant involves a two-step analysis. First, the court must decide whether the facts satisfy the forum state's longarm statute. If the statute has been satisfied, then the court must address whether the facts show that the nonresident has 'minimum contacts' with the forum state such that the court's exercise of jurisdiction would be fair and in accordance with due process." *See Samsung Heavy Equipment Industries Co., Ltd v. Focus Investment Ltd and Karamehmet*, SCT Civil Case No. 2018-02 at *5 (May 28, 2018) (internal citations omitted).

Under the Marshall Islands longarm statute, 27 MIRC 251(1)(n)[7] "[a]ny person . . . who . . . [i] commits an intentional act, [ii] which is aimed at the Republic and [iii] causes harm, the brunt of which is suffered and the person who commits the act knows is likely to be suffered by a resident of the Republic, in the Republic . . . is subject to the civil jurisdiction of the courts of

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[7]*See Calder v. Jones*, 465 U.S. 783 (1984), upon which 251(1)(n) is based.

the Republic as to any cause of action arising from [the act]." If England had in place a law like Paragraph 251(1)(n), the facts before the English Court would support its exercise of specific personal jurisdiction over Straight. That is, Straight (i) intentionally incorporated in Liechtenstein, registered as a foreign maritime entity in the Marshall Islands, and registered the *Luna* in the Marshall Islands as part of a scheme to evade (ii) in England a judgment (*i.e.*, the 2016 Financial Remedy Judgment, including the Initial Money Judgment) (iii) to the detriment of a resident of England, the Petitioner, in England. Furthermore, the exercise of personal jurisdiction under the standard set forth in Paragraph 251(1)(n) comports with due process.

The due process standard for the exercise of specific personal jurisdiction is stated as follows:

> For due process to be satisfied, a defendant, if not present in the forum, must have "minimum contacts" with the forum state such that the assertion of jurisdiction "does not offend traditional notions of fair play and substantial justice."

Pebble Beach, 453 F.3d at 1155 (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 315 (1945)). The test for "minimum contacts" has three prongs:

> "(i) a defendant has performed some act or consummated some transaction within the forum or otherwise purposefully availed itself of the privileges of conducting activities in the forum, (ii) the claim arises out of or results from the defendant's forum-related activities, and (iii) the exercise of jurisdiction is reasonable."

Pebble Beach, 453 F.3d at 1155 (internal punctuation omitted). "If any of the three requirements is not satisfied, jurisdiction in the forum would deprive the defendant of due process of law." *Id.* (quoting *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 270 (9th Cir. 1995)) (emphasis added). "The plaintiff bears the burden of satisfying the first two prongs of the test. If the plaintiff fails to satisfy either of these prongs, personal jurisdiction is not established in the forum

state. If the plaintiff succeeds in satisfying both of the first two prongs, the burden then shifts to the defendant to "present a compelling case" that the exercise of jurisdiction would not be reasonable. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (C.A.9 (Cal.), 2004) (*citing Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 476–78, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985)).

For purposes of due process, Straight maintains that it has not engaged in activities within the forum, England. However, even if a defendant has not conducted activities in the forum, the first and second prongs can be satisfied only if the defendant has '"purposefully directed' his activities toward the forum." *Pebble Beach*, 453 F.3d at 1155. Purposeful direction is evaluated under the "effects test" articulated by the U.S. Supreme Court in *Calder v. Jones*, 465 U.S. 783 (1984).

> To satisfy this test the defendant must have (1) committed an intentional act, which was (2) expressly aimed at the forum state, and (3) caused harm, the brunt of which is suffered and which the defendant knows is likely to be suffered in the forum state.

Pebble Beach, 453 F.3d at 1156 (internal quotation marks omitted).

With respect to Straight, the English Court, applied a standard analogous to the *Calder* test. The English Court, in concluding for purposes of the Section 423 of the Insolvency Act 1986 that the subject transactions [the transfers of *Luna*] had sufficient connection to England to make it just and proper to give Section 423 extra-territorial effect, expressly found "sufficient connection [to England] is established in this case by the fact that the transfers were deliberately effected to evade an English claim brought by the spouse of the transferor, who was resident in England." Apr. 2018 Order at ¶78. These facts before the English Court meet the *Calder* test,

just as they satisfy Paragraph 251(1)(n) of the Marshall Islands longarm statue, a codification of the *Calder* test. As noted above, Straight (i) intentionally incorporated in Liechtenstein, registered as a foreign maritime entity in the Marshall Islands, and registered the *Luna* in the Marshall Islands as part of a scheme to evade (ii) in England a judgment (*i.e.*, the 2016 Financial Remedy Judgment, including the Initial Money Judgment) (iii) to the detriment of a resident of England, the Petitioner, in England. Hence, the Petitioner has met the first two parts of the *Pebble Beach* test.

With respect to the third part of the *Pebble Beach* test, *i.e.*, that "the exercise of jurisdiction is reasonable," the burden of proof is on Straight. Straight has not shown that the English Court's exercise of jurisdiction is not reasonable. The facts before this Court demonstrate that if the English Court had not exercise jurisdiction over Straight, Farkhad's alter ego, Farkhad would have successfully frustrated the Petitioner's attempted to collect on her 2016 Financial Remedy Judgment, including the Initial Money Judgment. The same is true if this Court does not exercise jurisdiction over Straight.

3. *Straight's Opposition to the English Court's Determination that It had Personal Jurisdiction over Straight*

In response to the English Court's assertion of personal jurisdiction over Straight, Straight argues the English Court's assertion of jurisdiction fails for three reasons. *See* Resp First Supp Memo at 9-11.

First, Straight asserts that the transfer of the *Luna* from Qubo 2 to Straight did not violate the English Court's orders, as the English Court asserts. Resp First Supp Memo at 9. However, read together paragraphs 2 and 22 of Justice Haddon-Cave's Freezing Order issued December 20,

2016 (Timms Decl. Ex. E.) prohibit Farkhad and Qubo 2 from transferring the *Luna* to Straight. That is, paragraph 22 prohibits the Respondent Farkhad from transferring his property whether or not listed in the order, and paragraph 2 defines the "Respondent" to include all the Respondents, which would include the Fifth Respondent Qubo 2, Farkhad's alter ego.

Second, Straight asserts that in piercing its corporate veil the English Court did not consider all the evidence regarding Straight's legal structure and purpose. Resp First Supp Memo at 10-11. The evidence to which Straight refers is Qubo's analogous legal structure and purpose as set forth in the Declaration of Dr. Andreas I. Schurti in Opposition to Petitioner's Motion for Summary Judgment, filed February 27, 2019, ¶¶ 32-24. However, both Qubo 2 and Straight failed to appear before the English Court on March 21, 2018, and failed to present this evidence. They cannot now be heard to complain that the English Court did not consider evidence they failed to present. Moreover, in his declaration Dr. Schurti states that to shield the *Luna* "from further efforts to enforce the judgment of the English court" he created a new trust and establishment, Straight, solely for the purposes of holding the *Luna*. *Id.* at ¶ 31. The decision to transfer *Luna* to Straight was made during a meeting with Farkhad onboard the *Luna*. *Id.* at ¶¶ 29-31. That is, Straight was expressly formed to avoid the 2016 Financial Remedy Judgment, including the Initial Money Judgment. Although this evidence was not before the English Court when it made its ruling on the March 21, 2018, it supports the court's decision in its March 2018 Order to pierce Straight's corporate veil, as it shows Straight was created for an abusive purpose: to evade the 2016 Financial Remedy Judgment, including the Initial Money Judgment. March 2018 Order at ¶¶ 62-66.

Third, Straight claims that prior to seeking to pierce Straight's corporate veil, the

Petitioner did not demonstrate to the English Court that she had exhausted all other means available to her to enforce her claims. Resp First Supp Memo at 10. However, based upon the facts before the English Court, the court concluded that piercing the corporate veil was "clearly necessary." *Id.* at 65. Straight has not demonstrated otherwise.

In summary, the Petitioner has demonstrated that the English Court's exercise of personal jurisdiction over Straight comports with the laws of the Marshall Islands and does not violate the due process clause of the Constitution of the Marshall Islands. Straight has not proven otherwise. Straight has failed to establish under Section 405(1)(b) of the UFMJRA the mandatory grounds for non-recognition "lack of personal jurisdiction."

E. Comity

In addition to and consistent with the UFMJRA, the Court grants comity to, *i.e.*, recognizes and gives effect to, the English Money Judgments. "[C]omity has long counseled courts to give effect, whenever possible, to the executive, legislative and judicial acts of a foreign sovereign so as to strengthen international cooperation." *Asignacion v. Rickmers*, H. Ct. Civ. No. 2016-026 at 18 (Nov. 10, 2016) (citation omitted); *see also Highland Floating Rate Opportunities Fund, et al., v. Dryships, Inc., et al.*, S. Ct. No. 2018-010 at 9 (Sept. 10, 2019). Consistent with the public policy evidenced by the UFMJRA, it is not in the public interest of the Marshall Islands to allow entities to register under the BCA as foreign maritime entities as part of schemes to avoid their lawful obligations.

V. RESPONDENTS COTOR AND AVENGER

With respect to the remaining Respondents, Cotor Investment, S.A., and Avenger Assets Corporation, the Court has received no filings other than the initial summons and the Petition.

Further, the Court's file does not contain a return of service showing they have been served with the summons and the Petition. Accordingly, if the Petitioner does not file evidence of service of process upon remaining Respondents Cotor Investment, S.A., and Avenger Assets Corporation within 7 days of the date of this decision, then this case shall be deemed dismissed without prejudice as to them as of the date of this order.

VI. CONCLUSION

For the above reasons, the Court grants the Petitioner's Motion for Summary Judgment against Straight and denies the motion against Qubo 2 Establishment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT the Court, under the Uniform Foreign Money-Judgment Recognition Act, 30 MIRC Chp. 4, recognizes the Initial Money Judgment and Straight Money Judgement and grants Petitioner Tatiana Akhmedov judgment against Straight Establishment as follows:

1. with respect to the Initial Money Judgment, GBP £125,569,492, pre-judgment interest at the rate of 8% per annum from December 20, 2016, to the date of this judgment, court costs, and service fees, plus post-judgment interest on the sum at a rate of 9% per annum from the date of this judgment until the judgment is paid in full; and
2. with respect to the Straight Money Judgment, the same amount as under the Initial Money Judgment;
3. with any payment made with respect to the Initial Money Judgment to reduce the amount due with respect to the Straight Money Judgment, and any payment made with respect to the Straight Money Judgment to reduce the amount due with

respect to the Initial Money Judgment.

FURTHERMORE, with respect to with respect to Qubo 2 Establishment, the Court dismissed this case.

AND FURTHERMORE, the Court order that its August 8, 2018 Order Granting Preliminary Injunction . . . remain in effect until the above money judgments are paid in full, except as otherwise ordered by this Court or the Supreme Court.

The Court need not, at this time, address the issue of enforcement of the judgment, as MIRCP Rule 62(a), in relevant part, provides "no execution may issue on a judgment, nor may proceedings be taken to enforce it, until 30 days have passed after its filing."

So Ordered and Entered: September 15, 2019.

/s/Carl B. Ingram
Carl B. Ingram
Chief Justice, High Court