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REPUBLIC OF THE MARSHALL ISLANDS

IN THE SUPREME COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

TATIANA AKHMEDOVA,

Petitioner-Appellee,

vs.

STRAIGHT ESTABLISHMENT, et al,

Respondent-Appellant.

Supreme Court Case No. 2019-003

**ORDER GRANTING "MOTION TO STAY ENFORCEMENT (of Judgment)  
PENDING APPEAL" CONDITIONED UPON POSTING OF BOND**

CADRA, Daniel, C.J., SINGLE JUDGE PROCEDURAL ORDER:

On December 21, 2020, Respondent-Appellant, Straight Establishment, filed a "Motion to Stay Enforcement (of judgment) Pending Appeal" under Supreme Court Rule 8(a). Petitioner-Appellee, Tatiana Akhmedova, filed an "Opposition" on December 30, 2020. The undersigned decides this procedural motion pursuant to Supreme Court Rule 27(c).

Having considered the parties' arguments, the undersigned GRANTS Respondent-Appellant's "Motion to Stay Enforcement Pending Appeal" CONDITIONED UPON the posting of a bond in the amount of \$250,000,000 USD (the estimated present value of the money judgment entered by the High Court in the sum of approximately \$170,000,000 USD plus pre-

and post-judgment interest) and subject to those conditions outlined in the High Court's Order dated December 8, 2020.

### SUMMARY OF DECISION

The undersigned finds a stay is appropriate given this Court's decisions in *Neidenthal v. CEO* and *Nuka v. Morelik*, discussed *infra*, authorizing use of the so-called "sliding scale" approach. Respondent-Appellant has raised "serious questions going to the merits" of its pending appeal. These "serious questions" are of "first impression" in this Republic. Opposing authorities, precedents and arguments are raised by the parties on these serious questions of first impression which require "more deliberate investigation" and consideration by the fully constituted panel when deciding the pending appeal. It is not the function of the undersigned (or the full panel) to decide the merits of the pending appeal on the instant "stay motion." While no opinion is expressed on the ultimate resolution of those issues, the undersigned finds Respondent-Appellant has "more than a minimal or negligible chance of success" on these "serious questions" raised in its appeal.

The "balance of hardships" weighs sharply in favor of Respondent-Appellant. Respondent-Appellant's sole asset sought to be executed upon is the M/Y Luna (the "vessel."). That vessel is "unique," not being easily replaceable or replicable if auctioned and sold to satisfy the underlying judgment(s) prior to resolution of the pending appeal. As a practical matter, Respondent-Appellant will suffer "irreparable harm" if a stay is not granted. That harm is "imminent" if enforcement of judgment proceeds. The hardship to Petitioner-Appellee, at this late stage of appellate proceedings, consists of the delay in pursuing execution on her judgment. That delay is occasioned by awaiting a decision of the fully briefed appeal by the Supreme

Court. Interest on the underlying judgment incurred by this delay can be easily calculated and awarded should Petitioner-Appellee prevail.

The undersigned finds and concludes that the requirements for granting a stay are met under the “sliding scale” approach recognized by this Court’s decisions in the cases of *Neidenthal v. CEO, infra*, and *Nuka v. Morelik, infra*, as discussed further below. The next analytical step is determining the amount of a bond, if any, which should be required to protect Petitioner-Appellant’s interest in her judgment.

The weight of authority is that posting of a bond in the full value of the judgment plus interest is ordinarily required to secure a stay. Respondent-Appellant has not demonstrated “good cause” to depart from this ordinary requirement. Respondent-Appellant has not demonstrated it is financially unable to post a full bond or that posting a bond will endanger its other creditors. Respondent-Appellant has not shown that its ability to satisfy the judgment is “so clear that a bond would be a waste of money.” Respondent-Appellant has not shown that it is financially able to satisfy the judgment if it fails to prevail on appeal. These factors weigh in favor of requiring a full bond.

Absent posting of a full bond, Petitioner-Appellee’s interest in recovering the full value of her judgment diminishes with time. The vessel is not income-generating and is depreciating while docked in Dubai, UAE. Respondent-Appellant maintains the vessel will produce less than the value of the judgment if sold at auction. Thus, absent a bond in the full amount of the judgment, Petitioner-Appellee’s judgment diminishes in value as time passes. Given that the aim of a stay secured by a bond is to preserve the *status quo* awaiting resolution on appeal, a full bond is appropriate because it protects the present value of Petitioner-Appellee’s judgment and ability to recover on that judgment.

Further, the undersigned finds the pending preliminary injunction is not sufficient to protect Petitioner-Appellee's interest in her judgment. The asset sought to be executed upon, the M/Y Luna, is not physically present in the Republic. That asset, by its very nature and intended purpose, is capable of being moved from its present location in Dubai, UAE, to some other location beyond the reach of the RMI courts to escape anticipated execution in aid of judgment. While there is no evidence that Respondent-Appellant has violated the terms of the pending preliminary injunction, there is suggestion of a pattern of conduct by Respondent-Appellant to avoid execution of judgment on the M/Y Luna. The potential for violating the preliminary injunction without adequate security being posted favors the posting a bond in the full value of the judgment plus interest. No alternative security device has been proposed aside from a minimal bond in the amount of \$100,000 to cover Petitioner-Appellee's cost on appeal and maintenance of the preliminary injunction.

The undersigned finds there is no reason to depart from the general rule that a full bond is required to effectuate the stay. Therefore, a stay is granted conditioned upon the posting of a bond in the amount of the judgment plus interest subject to those conditions as imposed by the High Court in its Order dated December 8, 2020, which terms are incorporated by the undersigned's Order by reference.

**I. BRIEF SUMMARY OF FACTS AND PROCEURAL BACKGROUND.**

The relevant facts and procedural background have been thoroughly set forth by the parties in their submissions on this motion and in the briefing of the appeal. The facts and procedural history can be briefly summarized.<sup>1</sup>

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<sup>1</sup> The following summary is drawn from both parties' respective filings on this "motion for stay" and Exhibits appended thereto. The undersigned has also reviewed the briefing of both parties on the pending appeal.

This case arises out of a 2016 English divorce decree between Mr. Farkad Akhmedov and Tatiana Akhedova. A “property division” by the English court awarded Ms. Akhmedova, the equivalent of approximately \$478,278,000 USD, plus interest as against Mr. Akhmedov (“Financial Remedy Order” entered December 20, 2016.) The English court issued several subsequent orders adding, among other corporate entities, Respondent-Appellant Straight Establishment as jointly and severally liable judgment debtors for that judgment. The English court’s theory being the corporate entities, including Straight Establishment, are “alter egos” (or “nominees”) of Farkad Akhmedov.

On July 10, 2018, Petitioner-Appellee Ms. Akhmedova filed a “petition” in the RMI High Court against Respondent-Appellant Straight Establishment, Mr. Akhmedov and others seeking recognition of the English judgments pursuant to the Marshall Islands Uniform Foreign Money Judgments Recognition Act (“UFMJRA”), 30 MIRC Ch. 4, sec. 401 *et seq* and requesting that a judgment be immediately entered against the respondents in the sum of \$478,278,000.00 (the non-maintenance portion of the English judgments.)

Ms. Akhmedova’s choice of the RMI as a forum and personal jurisdiction over Straight Establishment is premised upon Straight Establishment being registered as a foreign maritime entity in the RMI and the singular asset of Straight Establishment, the “M/Y Luna,” being flagged in the Marshall Islands.<sup>2</sup>

Ms. Akhmedova then filed a motion for appointment of a receiver for the “M/Y Luna” and motion for entry of a preliminary injunction. The motion for appointment for a receiver was denied but the petition for a preliminary injunction was granted by the High Court on August 8,

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<sup>2</sup> See Petition for Recognition of a Foreign Judgment, p. 3, para. 8, attached as Exhibit A to Declaration of Derek Adler in Support of Motion for Stay.

Ms. Ahkmedova resides in England and is an English citizen. Mr. Ahkemedov is a resident of Azerbaijan. Straight Establishment is a Liechtenstein corporation. *Id.*

2018. Straight Establishment was restrained from “disposing of, selling, transferring, encumbering, removing, paying over, conveying or otherwise interfering” with the M/Y Luna. The High Court found that that the risk the M/Y Luna would be concealed or damaged constituted “immediate and irreparable harm.”<sup>3</sup> That preliminary injunction remains in effect. It is alleged that Straight Establishment has attempted to violate that injunction.<sup>4</sup>

On August 8, 2018, Straight Establishment moved to dismiss Ms. Akhmedova’s “petition” for lack of personal jurisdiction and on grounds of *forum non conveniens*. That motion was denied as to Straight Establishment on November 2, 2018. The High Court found the assertion of jurisdiction complied with the Republic’s long arm statute because the claims against Straight Establishment were based upon activities in the Republic: to wit; the registration as a foreign maritime entity and flagging of the M/Y Luna in the RMI. The High Court further held that personal jurisdiction complied with due process based on these same activities.<sup>5</sup>

On September 17, 2019, the High Court granted a motion for summary judgment filed by Petitioner-Appellee and entered a judgment against Straight Establishment enforcing the English judgment(s) in the amount of GBP 125,569,492, plus pre- and post-judgment interest. The preliminary judgment remains in effect as per that judgment.<sup>6</sup>

On October 11, 2019, Straight Establishment appealed (1) the Order denying its motion to dismiss for lack of personal jurisdiction, and (2) the judgment granting enforcement of the English judgments. That appeal has been fully briefed as of May 6, 2020, and is ripe for oral

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<sup>3</sup> See Exhibit G, Order Granting Preliminary Injunction, p. 19, appended to Motion for Stay. “Ms. Ahkmedova has shown there is a significant risk the Luna will be concealed or damaged and the Luna is Straight Establishment’s sole asset. The Luna is an extremely high value asset worth hundreds of millions of dollars. The respondents, including Straight, have transferred the title to the Luna at least four times what appears to be a fraudulent attempt to conceal the asset. ...Mr. Akhmedov has taken measures to diminish the value of or to cause the Luna to become derelict and unseaworthy ...”

<sup>4</sup> Opposition to Motion for Stay, pp. 16-18.

<sup>5</sup> See Order Regarding Motion to Dismiss attached as Exhibit H to Declaration of Derek Adler.

<sup>6</sup> See Exhibit I attached to Declaration of Derek Adler in support of instant motion for stay.

argument and decision. The undersigned takes notice that oral argument and ultimate disposition of this appeal has been delayed by the on-going COVID-19 pandemic and resultant travel restrictions into the RMI.

On March 12, 2020, Petitioner-Appellee moved for an “order in aid of execution” against the “M/Y Luna.” Respondent Straight Establishment cross-motivated for an order staying enforcement of the judgment during the pendency of the appeal and modification of the preliminary injunction. That modification of the preliminary injunction was sought so as to allow the “M/Y Luna” to be removed from the water, drydocked for repairs, and to allow regular sea trials within the domestic waters of the UAE. The High Court held a hearing on November 18, 2020, stating its intent to grant a stay pending appeal and to modify the preliminary injunction to allow the M/Y Luna to be drydocked and sea trials conducted. The High Court directed the parties to meet and confer in an effort to agree on the form of an appropriate order. The parties were unable, for whatever reason, to do so.

The parties being unable to agree as to the form of an order, the High Court then entered an Order on December 8, 2020, granting a stay conditioned on the posting of a bond in the sum of \$250,000,000 USD. Upon posting of the bond, the preliminary injunction was to be dissolved to the extent of allowing certain repairs and drydocking of the “M/Y Luna” as well as conducting sea trials in the domestic waters of the UAE. In the event the required bond was not posted by December 24, 2020, the parties were to appear on December 29, 2020, for a hearing pursuant to the Enforcement of Judgments Act, 30 MIRC 110, 11, to take evidence and hear submissions from the parties regarding how the Amended Judgment should be enforced.<sup>7</sup>

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<sup>7</sup> See Exhibit B attached to Declaration of Derek Adler in support of instant motion for stay.

Respondent-Appellant Straight Establishment did not post the required bond by December 24, 2020. Instead, the instant “Motion to Stay Pending Appeal” was filed with this Court on December 21, 2020. Petitioner-Appellee requested an unopposed extension of time until January 4, 2020, in which to file her opposition; which motion was granted on December 24, 2020. Petitioner-Appellee filed her opposition on December 30, 2020.

## II. THE PARTIES’ CONTENTIONS

### A. Respondent-Appellant’s Arguments on the “Motion for Stay.”

Respondent-Appellant Straight Establishment urges the use of the “alternative” or “sliding scale” standard for granting of a stay recognized by this Court’s decisions in *Neidenthal* and *Nuka*, discussed *infra*. That alternative standard requires a showing of “serious issues” raised on appeal and a “balancing of hardships.”

Straight Establishment argues the pending appeal raises “serious questions regarding matters of first impression in the Republic.” These serious questions include, among others: (1) whether the High Court erred by asserting *long arm jurisdiction* over Straight Establishment where its sole contacts with the Republic is registration as a foreign maritime entity and flagging of the “M/Y Luna” as an RMI registered vessel. Straight Establishment’s contention is that 27 MIRC 251(1)(p) and 52 MIRC 125(2)(d) require that Ms. Akhmedova’s cause of action must arise from the Straight Establishment’s particular contacts with the forum. The “serious question” presented on appeal is whether Ms. Akhmedova’s action to enforce a foreign money judgment based on a matrimonial property division against Straight Establishment, a foreign maritime entity, “arises from” that maritime entity’s act of registering as a foreign maritime entity and flagging a vessel (the M/Y Luna) under the laws of the RMI; (2) *Personal jurisdiction* comporting with the requirements of due process is challenged on these same grounds; (3) Aside



from the jurisdictional issues raised on appeal, ancillary issues regarding the High Court's grant of Petitioner's motion for summary judgment are raised including (a) which party bears the burden of proving mandatory grounds for non-recognition under the UFMJRA, and (b) the amount of deference owed to a foreign court's (the English court's) jurisdictional determination over a non-resident defendant in an action to enforce a foreign money judgment.<sup>8</sup>

Straight Establishment argues "irreparable harm" will result if a stay is not granted because its sole asset sought to be executed upon, the M/Y Luna, is "unique" being a "singular and irreplaceable vessel." Straight Establishment further argues that its appeal will moot its appeal if the stay is denied. Thus, Straight Establishment concludes the balance of hardships tips sharply in its favor justifying issuance of the requested stay of enforcement of the judgment pending appeal.

Regarding the bond requirement, Straight Establishment contends the existing preliminary injunction is sufficient to protect Ms. Akhmedova's interests and that, if anything, a nominal bond in the amount of \$100,000 to cover her costs of appeal is appropriate.

#### **B. Petitioner-Appellee's Arguments on the "Motion for Stay."**

Ms. Akhmedova contends Straight Establishment has failed to demonstrate its entitlement to a stay under either test (traditional or alternative tests) recognized by *Neidenthal* and *Nuka*, discussed *infra*. She contends Straight Establishment has failed to meet either the "likelihood of success" or the lower "serious questions" standards. Personal or long arm jurisdiction is argued to exist based on acts taken with respect to Straight Establishment's registration as a maritime entity and flagging of the "M/Y Luna" under RMI law. Regarding the allocation of the burden of proof of mandatory grounds for non-recognition of the English

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<sup>8</sup> See Motion for Stay and Opening Brief on Appeal.

judgment under the UFMJRA and the High Court's granting of summary judgment, she argues the majority of U.S. precedents hold that the respondent must raise a disputed issue of material fact as to mandatory grounds for non-recognition. She argues Straight Establishment will not suffer "irreparable harm" should she be allowed to enforce to judgment and execute upon the "M/Y Luna." The "M/Y Luna," according to Ms. Akhmedova, is not a "unique" asset and Straight Establishment can be monetarily compensated should the judgment be reversed on appeal. Thus, Ms. Akhmedova contends the "balance of hardships" tips in her favor because "petitioner faces serious harm if the sole asset of Straight is destroyed, removed from reach or seriously depreciated." She argues the existing preliminary injunction "does not protect the Vessel from external, environmental harms or other risks such as accidental damage or destruction or other accidents causing liability." Ms. Akhmedova questions whether Straight Establishment will abide with the terms of the preliminary injunction pointing to alleged instances where Straight Establishment and/or Mr. Akhmedov has attempted to violate that injunction. Those alleged instances include an attempt to re-register the vessel in Sierra Leon during the pendency of the preliminary injunction; Straight Establishment's attempts to amend the preliminary injunction to place the vessel in the hands of third-parties potentially exposing the vessel to additional risks and liabilities, thus compromising the protections afforded by the preliminary injunction; and, generally, Straight Establishment's and Mr. Akhmedov's history of attempted "evasion of the English and RMI judgments and worldwide freezing orders." Ms. Akhmedova urges a bond in the amount of \$250,000,000 as set by the High Court.

### III. THE APPLICABLE LEGAL STANDARDS

#### A. Requirements for a Stay Pending Appeal.

The test for granting a stay under Supreme Court Rule 8 is essentially the same as for granting a stay under High Court Rule of Civil Procedure, Rule 62. *See, e.g., Hilton v. Braunskill*, 481 U.S. 770,776 (1987). The purpose of a stay is to preserve the status quo pending the outcome of an appeal. *Neidenthal v. CEO*, S.Ct. Case No. 2015-001, slip op, at 3, (2015) citing *McClendon v. City of Albuquerque*, 79 F.3d 1014, 1020 (10<sup>th</sup> Cir. 1996.) “Because a stay intrudes into ordinary judicial review, it is generally not a matter of right even if irreparable harm might otherwise result. The party requesting the stay bears the heavy burden of showing circumstances justifying a stay.” *Neidenthal, supra* (citations omitted.) The issuance of a stay is left to the court’s discretion and will depend on the facts of each particular case. *Nken v. Holder*, 556 U.S. 418 at 433 (2009). A motion to a court’s “discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by ‘sound legal principles.’” *Id.* at 434 (quoting *Martin v. Franklin Capital Corp.*, 546 U.S. 132, 139 (2005))(internal quotation marks added.).

Four factors or “sound legal principles” are traditionally considered when determining whether to grant a stay of judgment pending appeal: (1) the likelihood of success on the merits of defendant’s appeal – or at a minimum, serious questions going to the merits; (2) whether the balance of hardships tips sharply in the defendant’s favor; (3) whether defendant will suffer irreparable harm in the absence of a stay; and (4) whether the stay would be in the public interest. *Neidenthal v. CEO, supra*, citing *Nuka v. Morelik*, 3 MILR 39 (2009); see also *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9<sup>th</sup> Cir. 2011). A “sliding scale” or “alternative” approach has been recognized for the granting of a stay. Under the “alternative

standard,” the moving party may meet its burden by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury or (2) that serious questions exist and the balance of hardships tips sharply in its favor. This last formulation represents two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. *Neidenthal, supra*, at 4 citing *Nuka v. Morelik*, 3 MILR 39 (2009); *Oakland Tribune, Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1376 (9<sup>th</sup> Cir. 1985). In other words, the greater the showing of irreparable harm the less a showing of success on the merits is required and vice versa. These two tests are not separate and unrelated; they represent “merely extremes of a single continuum.” *Benda v. Grand Lodge of Int’l Ass’n of Machinists & Aerospace Workers*, 584 F.2d 308, 315 (9<sup>th</sup> Cir. 1978); *Coal. to Defend Affirmative Action v. Granholm*, 473 F.3d 237, 244 (6<sup>th</sup> Cir. 2006)(These four factors “are not prerequisites but are interconnected considerations that must be balanced together.”) “Under any formulation of the test, plaintiff must demonstrate that there exists a significant threat of irreparable injury.” *Oakland Tribune, supra*, at 1376. “Irreparable harm” means that mere harm, even of substantial, in terms of money, time and injury that would be expended is not enough. *Sampson v. Murray*, 415 U.S. 61, 90 (1974). “Irreparable harm” means “harm that cannot be undone.” *Neidenthal, supra*. The threat of irreparable harm must be “imminent.” *Heideman v. South Salt Lake City*, 348 F.3d 1182, 1189 (10<sup>th</sup> Cir. 2003.)

District Court cases from within the Ninth Circuit are instructive in applying the above stated “sound legal principles” required for granting a stay. In order to satisfy the first factor supporting grant of a motion to stay proceeding pending appeal, a strong showing that the moving party is likely to succeed on the merits, the moving party need not show that success on appeal is more likely than not, but must instead make a strong showing on the merits;

alternatively, the moving party can attempt to satisfy the first factor by showing that its appeal raises serious legal questions, even if the moving party has only a minimal chance of prevailing on those questions (emphasis added). See, e.g., *Mohammed v. Uber Technologies*, 115 F.Supp.3d 1024, 1028 (N.D. Cal. 2015)(reversed in part on other grounds) citing *In re Carrier IQ*, 2014 WL 2922726, at \*1 (recognizing that under Ninth Circuit law, the above factors “are considered to be a continuum; thus, for example, a stay may be appropriate if the party moving for a stay demonstrates that serious legal questions are raised and the balance of hardships tips sharply in its favor.”)(citing *Golden Gate Rest. Ass’n v. City and Cnty of S.F.*, 512 F.3d 1112, 1115-16 (9<sup>th</sup> Cir. 2008)). Where only such a lesser showing (of success on the merits) is made, the appellant must further demonstrate that the balance of the hardships absent a stay tips “sharply” in its favor. *Uber Technologies, supra.* (citations omitted.) “[F]or a legal question to be serious, it must be a ‘question going to the merits so serious, substantial, difficult and doubtful, as to make the issues ripe for litigation and deserving of more deliberate investigation. *Uber Technologies, supra,* (citations omitted.) A “serious legal issue” or “substantial case” is “one that raises genuine issues of first impression within the Ninth Circuit,” or which may “otherwise address a pressing legal issue which urges that the Ninth Circuit hear the issue. *Id.* (citations omitted)(emphasis added.)

#### **B. Bond Requirement and Conditions for Bond Waiver.**

Assuming the moving party has met its burden for obtaining a stay, the next inquiry or step in the analysis is whether a bond or alternate security should be required and, if so, in what amount.

The purpose of the supersedeas bond is to preserve the status quo during the pendency of an appeal of a money judgment.

The purpose of a supersedeas bond is to preserve the status quo while protecting the non-appelling party's rights pending appeal. A judgment debtor who wishes to appeal may use the bond to avoid the risk of satisfying the judgment only to find that restitution is impossible after reversal after appeal. At the same time, the bond secures the prevailing party against any loss sustained as a result of being forced to forego execution in a judgment during the course of an ineffectual appeal.

*Poplar Grove Planting & Refining Co., Inc. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190-91 (5<sup>th</sup> Cir. 1979).

The bond thus offers “dual protection” for both the judgment creditor and the judgment debtor. The judgment debtor is able to hold the judgment in abeyance pending a favorable result on appeal, while the judgment creditor is ensured of the availability of funds to cover the judgment, along with appropriate interest, in the event the judgment is affirmed. The “dual protections” served by the bond require that in the normal case, the amount of the bond be set to cover the entirety of the judgment along with interest accruing over the course of the period for appeal. The supersedeas bond secures the appellees from a loss resulting from a stay of execution, and a full supersedeas bond usually should be required. *Rachel v. Banana Republic, Inc.*, 831 F.2d 1503, 1505 n. 1 (9<sup>th</sup> Cir. 1987). Even in unusual circumstances, the court must avoid undue risk to the judgment creditor's interest in ultimate recovery:

Because the stay operates for the appellant's benefit and deprives the appellee of the immediate benefits of the judgment, a full supersedeas bond should be the requirement in normal circumstances, such as where there is some reasonable likelihood of the judgment debtor's inability or unwillingness to satisfy the judgment in full upon ultimate disposition of the case and where posting adequate security is practicable. In unusual circumstances, however, the district court in its discretion may order partially secured or unsecured stays if they do not unduly endanger the judgment creditor's interest in ultimate recovery.

*Federal Prescription Serv., Inc. v. American Pharmaceutical Ass'n*, 636 F.2d 755, 760 (D.C. Cir. 1980) citing *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1191 (5<sup>th</sup> Cir. 1979).

Factors or “sound legal principles” considered in approving stays without security in the full amount of the judgment include: (1) the complexity of the collection process, (2) the amount of time required to obtain a judgment after it is affirmed on appeal; (3) the degree of confidence the court has in the availability of funds to pay the judgment; (4) whether the defendant’s ability to pay the judgment is so plain that the cost of a bond would be a waste of money; and (5) whether the defendant is in such a precarious financial situation that the requirement to post a bond would place other creditors of the defendant in an insecure position. *Dillon v. City of Chicago*, 866 F.2d 902, 904-905 (7<sup>th</sup> Cir. 1989) quoted in *U.S. ex rel. Cafasso v. General Dynamics C4 Systems, Inc.*, 2010 WL 384594 (AZ Dist. Ct. 2010.) Courts addressing motions for bond waiver have focused on and expressed a willingness to grant such requests when: (1) defendant’s ability to pay is so plain that the cost of the bond would be “a waste of money” or (2) requiring a bond “would put the defendant’s other creditors in undue jeopardy.” *Olympia Equip. v. W. Union Tel. Co.*, 786 F.2d 794, 796 (7<sup>th</sup> Cir. 1986); see also, *Safeco Ins. Co. of Am. v. City of San Bernardino*, 2007 WL 9719254, at \*3 (C.D. Cal. July 27, 2007).

The burden is on the moving party to demonstrate the reasons for “depart[ing] from the usual requirement of a full security supersedeas bond.” *Poplar Grove Planting & Refining Co. v. Bache Halsey Stuart, Inc.*, 600 F.2d 1189, 1190 (5<sup>th</sup> Cir. 1979). Although a court may forego the requirement of a bond in certain circumstances, a bond is the favored form of security, and the party seeking to dispense with the requirement bears the burden of showing why an alternative form of security is appropriate. See, e.g., *Lewis v. Joint Venture*, 2009 WL 1654600 (W.D. Mich. June 10, 2009.)

#### IV. DISCUSSION/ANALYSIS

##### A. A Stay Should Issue Pending Resolution of the Pending Appeal.

###### 1. *Serious issues are raised by Straight Establishment on appeal.*

Straight Establishment raises “serious questions” on appeal. Straight Establishment’s challenge to “long arm jurisdiction” and “specific jurisdiction” present questions of “first impression” in the Republic which are “deserving of more deliberate and further inquiry.” Straight Establishment contends the Republic’s long arm statute, 27 MIRC 251, et seq., does not authorize the exercise of personal jurisdiction because Petitioner’s claim under the UFMJRA does not assert liability for acts done within the Republic.<sup>9</sup> Reduced to its simplest form, Straight’s jurisdictional argument is that the acts of registration and flagging within the Republic do not comprise any element of Petitioner’s claim or cause of action for enforcement of its English judgment under the UEFMJA. Rather, Petitioner’s claim or cause of action arises from a matrimonial property division; not from acts performed by Straight within the Republic. Straight analogizes the instant case to *Pacific International, Inc. v. United States of America*, 2 MILR 244 (2004). Straight argues that the phrase “based upon” as used in Section 125 of the Business Corporations Act, allowing an action against a foreign maritime entity only where “the action ... is based on a liability for acts done within the Republic,” means that 52 MIRC 125(2)(d) should be construed as to require that the “gravamen” of Petitioner’s claim must be based on acts compromising elements of the Petitioner’s cause of action. The “gravamen” of Petitioner’s claim is the failure of Respondent to pay the English Judgments, not Straight Establishment’s acts of registering as a foreign maritime entity and registering the “M/Y Luna” as an RMI flagged vessel. Thus, according to Straight Establishment, jurisdiction does not exist under the

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<sup>9</sup> Opening Brief on Appeal, pp.10-16.



Republic's long arm statute. The High Court, however, found that "it is not the registration alone, but registration for the purpose of hindering, delaying, and avoiding satisfying English Money Judgments, which results in the respondent being liable to the Petitioner for acts done within the Republic."<sup>10</sup> In response, Straight Establishment argues that there is no allegation of a fraudulent transfer in Ms. Akhmedova's Petition. What must be pled under the UFMJRA, 30 MIRC 493, et seq, according to Straight Establishment, is that the foreign judgement is final and conclusive. Straight Establishment argues "all the elements of a claim for recognition, as well as all available defenses, focus on what took place in the foreign forum," not what may have occurred in the Marshall Islands after that foreign judgment (such as registration and flagging of the "M/Y Luna" in the RMI.) Straight Establishment supports its theory by citing two New York federal cases, *Ackerman v. Levine*, 788 F.2d 830, 842 n. 12 (2<sup>nd</sup> Cir.) and *Bridgeway Corp. v. Citibank*, 45 F.Supp.2d 276, 286 (S.D.N.Y. 1999).

The arguments raised by Respondent-Appellant on the issue of long arm jurisdiction are of "first impression" in the Republic, are supported by authorities, and there is a good faith difference of opinion between the parties on this issue. The undersigned expresses no opinion on the ultimate success of Straight Establishment's arguments but finds Straight Establishment stands more than a minimal or negligible chance of success on appeal.

Straight Establishment makes a similar argument in support of its contention that the High Court's assertion of specific jurisdiction does not comport with due process.<sup>11</sup> Appellant's theory, again reduced to its simplest form, is that "the elements of a claim for recognition of a foreign money judgment under the UFMJRA have little or nothing to do with a judgment creditor's (sic) in-forum activity ...Here, Straight's only purported in-forum actions were that it

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<sup>10</sup> December 6, 2020 "Order," p. 5; Order regarding Motions to Dismiss, pp. 16-18.)

<sup>11</sup> Opening Brief on Appeal, pp. 16-19.

had registered the RMI as a foreign maritime entity, had registered the Luna in the RMI, and had operated Luna under the RMI's flag." Again, these acts are not part of Petitioner's claim or cause of action. Petitioner's cause of action arose from the entry of the English judgments and Straight's failure to pay those judgments. Straight has no assets or property in the RMI and there is no specific jurisdiction based on either acts within the RMI or property within the RMI. Relying on a law review article, Linda J. Silberman & Aaron D. Simowitz, *Recognition and Enforcement of Foreign Judgments and Awards: What Hath Daimler Wrought?*, 91 N.Y.U.L.Rev. 344, 351 (2016), Respondent-Appellant questions whether the doctrine of specific jurisdiction has any application at all in the context of enforcing foreign judgments.

Petitioner-Appellee, of course, contends the acts of Straight Establishment in registering as a foreign maritime entity in the RMI, registering the vessel in the RMI, and operating the vessel under the RMI flag constitutes "acts within the Republic" as part of a fraudulent scheme to avoid payment of the English Judgments. These acts need not have been accomplished by Straight while being physically present within the Republic. These wrongful acts by Straight in an attempt to avoid the English Judgments is sufficient to support jurisdiction under the Republic's long arm statute. Further these acts are sufficient constitute "minimum contacts" with the Republic sufficient to support assertion of personal jurisdiction comports with due process. Caselaw is cited in support of Petitioner-Appellee's arguments and Straight Establishment's authorities are discussed and/or distinguished.<sup>12</sup>

The undersigned expresses no opinion on whether Straight Establishment will ultimately prevail on its jurisdictional arguments. The undersigned does find, however, that the jurisdictional issues are "issues of first impression" in this Republic on which there is no clearly

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<sup>12</sup> Answering Brief on Appeal, pp. 5-11.

dispositive precedent from this Court and/or chain of reasoning from existing RMI authorities clearly determinative of these issues. There is good faith disagreement between the parties on these issues. Both parties have made cogent arguments supported by precedent/authorities. The undersigned concludes that Straight Establishment has made more than a negligible or minimal showing of success on the merits and that a serious question has been raised on these jurisdictional issues sufficient to justify a more searching inquiry. Having found that Straight Establishment has raised jurisdictional issues deserving of further inquiry, the undersigned need not address the remaining bevy of issues raised on appeal.

Having found that Respondent-Appellant has made at least a minimal showing of “substantial questions” raised in its appeal, the next step in the analysis under the “sliding scale” approach becomes the “balancing of hardships.”

***2. The balance of hardships tips sharply in favor of Respondent-Appellant.***

However slight Respondent-Appellants chances for success on appeal may be, the “balance of hardships” favors granting a stay of enforcement of judgment pending resolution of the instant appeal.

The M/Y Luna is a “unique asset” in that it is not easily replaceable with a substantially identical product or reasonably replicable in the marketplace. The “M/Y Luna” is a “one of a kind superyacht,” the second largest in the world, custom built and containing amenities, such as heli-pads, a mini-submarine, a 20 meter outdoor pool, and security features designed to protect against potential attacks by bombs or missiles.<sup>13</sup> According to the website referenced by Respondent-Appellant, [https://en.wikipedia.org/wiki/Luna\\_\(yacht\)](https://en.wikipedia.org/wiki/Luna_(yacht)), the M/Y Luna was originally constructed at a cost exceeding 400 million pounds. “The M/Y Luna is a unique and

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<sup>13</sup> Motion for Stay, p. 15.

extraordinary vessel being custom built designed by NewCruise of Germany with its interior designed by Donald Starkey.” *Id.* A google search of the links in the cited Wikipedia entry reveals that Donald Starkey Designs founded in Dubai, has won “no less than 26 Design Awards for his work. ‘Unique and timeless elegance are synonymous with the design from this renown studio’” or so touts the website.<sup>14</sup> Petitioner-Appellee concedes “[t]he vessel is a superyacht measuring 115 meters (337 feet); there are only a handful of vessels like it in the world.”<sup>15</sup> Petitioner-Appellee has also characterized the vessel as being “unique in its own right” in her application for preliminary injunction.<sup>16</sup> In the view of the undersigned, the extraordinary cost and custom design of the “M/Y Luna” makes it “unique” in much the same way as real estate or a work of art. It is “one of a kind” and potentially extremely difficult, if not impossible, to replace were it to be executed upon, auctioned and sold to satisfy the judgments. Respondent-Appellant is thus exposed to “irreparable harm” should a stay not issue.

Ms. Akhmedova argues that “the turnover of a yacht which can be repurchased or built is a monetary harm” which fails to meet *Nuka’s* requirement of “irreparable harm.”<sup>17</sup> The problem with this argument is that it is entirely unclear (at least to the undersigned) whether this vessel can be substantially replicated or replaced should it be executed upon prior to the resolution of the instant appeal. The vessel was custom designed and built; it is not a production yacht mass produced and readily available in the marketplace.<sup>18</sup> It is much like real estate which is

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<sup>14</sup> See link for Donald Starkey Designs at <https://www.superyachts.com/directory>.

<sup>15</sup> Opp. To Motion for Stay,

<sup>16</sup> Motion for Stay, p. 17 referencing Exhibit F appended thereto.

<sup>17</sup> Opp. to Motion for Stay, pp 14-15.

<sup>18</sup> Although the parties have not addressed or proffered evidence on the issue, it may certainly be possible if not probable that the interior/exterior design, layout and engineering plans of the M/Y Luna are protected by copyright of non-functional components, utility or design patents of functional components, hull design covered by the Vessel Hull Protection Act (VHPA Title 17 United States Code, Chpt. 13, et seq.) or some foreign equivalent, trade dress, trademark, licensing agreements or contracts preventing replication of design, etc., etc., which would make construction of a substantial equivalent legally impossible or impractical. No findings are made in this regard.

considered unique, the disposition of which may constitute “irreparable harm” justifying the issuance of a stay. The point is that the undersigned is not convinced that money damages can redress the loss of the “M/Y Luna” if executed upon by construction of an identical or substantially equivalent replacement. If auctioned and sold, it may also be unlikely that the “M/Y Luna” itself can be recovered from a third-party purchaser. There is the further risk that Ms. Akhmedova may not be financially capable of returning the value of the M/Y Luna if sold and Straight Establishment prevails on its appeal. As argued by Straight Establishment, Ms. Akhmedova has no assets in the Republic and has no connection to the Republic.

The hardship to Ms. Ahkmedova consists of the time spent waiting for resolution of the pending appeal. The appeal has been fully briefed awaiting only oral argument and decision by the Supreme Court. If the judgment is affirmed Ms. Akhmedova can then expeditiously proceed with execution on the M/Y Luna. The hardship to Ms. Ahkmedova is, thus, the time remaining to hear and decide the appeal which time can be compensated by interest accruing on the judgement should the judgment be affirmed.

The undersigned finds Straight Establishment has raised serious questions going to the merits of its appeal which require more deliberate consideration by this Court. The balance of hardships tips sharply in favor of Respondent-Appellant. Utilizing the “sliding scale” approach, the undersigned concludes a stay is appropriate.

**B. Issuance of a Stay Should be Conditioned on Posting of a Bond in the Full Amount of the Judgment.**

As discussed above, the usual requirement is that a bond in the full amount of the judgment be posted to secure a stay. The movant, Straight Establishment, bears the burden of demonstrating a full bond is not necessary to protect Ms. Ahkmedova’s interest in her judgment and that some alternative security is appropriate.

The two main factors or “sound legal principles” focused upon are defendant’s ability to pay the judgment if unsuccessful on its appeal and whether requiring the posting of a full bond will endanger defendant’s other creditors.

First, it is entirely unclear whether Straight Establishment has the ability to pay the judgment if unsuccessful on its appeal. Straight acknowledges that the M/Y Luna is already worth less than the value of Petitioner’s judgment, which continues to accrue interest, while the vessel continues to depreciate, reinforces the need for Petitioner to either obtain security in the form of a Bond, or to immediately execute against the vessel in order to maintain her recovery.<sup>19</sup> Straight “maintains that the Luna would command between 110,000,000 and 200,000,000 EUR (between approximately \$135,000,000 and \$240,000,000 USD) at auction.”<sup>20</sup> Thus, the sale of the M/Y Luna is unlikely to cover Petitioner-Appellant’s judgment in the current estimated value of \$250,000,000. As time passes, the M/Y Luna continues to depreciate in value. This factor weighs against granting a bond waiver or departure from the general rule that a bond in the full amount of the judgment plus interest must be posted to secure a stay.

Second, it is unknown whether the posting of a full bond would endanger Straight Establishment’s other creditors. Straight bears the burden of proof on this issue which burden has not been met.

Turning to the other factors to be considered in setting of a reduced bond or bond waiver, “the complexity of the collection process” favors the requirement of posting a full bond. The M/Y Luna is physically present in Dubai, UAE. It is unclear whether *in rem* jurisdiction exists in the RMI over the vessel sufficient to order and execute a sale. This Court need not decide that issue at this juncture but the posting of a full bond to satisfy Petitioner-Appellant’s judgment if

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<sup>19</sup> Opp. To Motion for Stay, p. 20.

<sup>20</sup> Motion for Stay, p. 22.

affirmed on appeal would expedite the collection process avoiding further legal wrangling in this or another forum. This factor cuts in favor of requiring a full bond.

Although the M/Y Luna is Straight Establishment's sole asset there has been no showing that Straight is unable to post a bond in the full amount of the judgment. Straight Establishment has offered no alternative form of security other than the posting of a nominal bond in the sum of \$100,000 USD to cover Ms. Akhmedova's costs of appeal. That suggested nominal bond is insufficient to protect Ms. Akhmedova's interest in her judgment.

Straight Establishment argues that "maintaining the Preliminary Injunction is sufficient to ensure that Petitioner can obtain what she is entitled to if the judgment is sustained on appeal – application of the value of the Luna to the satisfaction of the judgment."<sup>21</sup> The problem with that argument is that the preliminary injunction might be violated leaving Petitioner with no asset, the M/Y Luna or a bond, to execute upon should she prevail on appeal. Ms. Akhmedova alleges Mr. Akhmedov has taken "steps to violate the RMI injunction and physically remove the Vessel to a place where the English money judgments are difficult or impossible to enforce, thereby insulating Straight's sole asset from collection by Petitioner."<sup>22</sup> Specific examples of such conduct including an attempt to re-flag the "M/Y Luna" in Sierra Leon and attempting to enter into a towage contract with Mubarak Marine are cited by Petitioner-Appellee.<sup>23</sup> Whether those allegations by Appellee are true or not, there is the possibility that the Preliminary Injunction might be violated leaving no asset to execute upon should the High Court's judgments be affirmed on appeal. The posting of a bond in the value of the judgment plus interest eliminates that possibility.

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<sup>21</sup> Motion for Stay, p. 19.

<sup>22</sup> Opposition to Motion, p. 7.

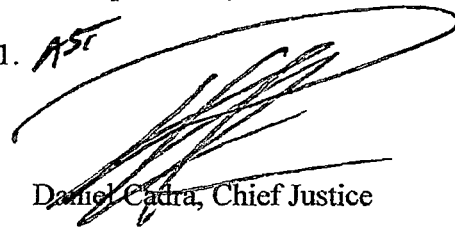
<sup>23</sup> *Id.* at pp. 7-9.

Finally, posting of a bond in the full amount of the judgment plus interest is the ordinary requirement to secure a stay and maintain the status quo. The undersigned finds no reason to depart from that ordinary practice or “sound legal principle.”

**V. CONCLUSION & ORDER**

For the reasons set forth above, the undersigned: (1) GRANTS Straight Establishment’s motion for stay pending appeal CONDITIONED UPON the posting of a bond in the amount of \$250,000,000 USD (the estimated value of the judgment plus interest.); (2) Respondent-Appellant shall have 14 days from the date of this order to post said bond; (3) Upon posting of the bond the stay shall become effective subject to those conditions set forth by the High Court in its December 8, 2020, Order, which conditions are incorporated by reference thereto.

SO ORDERED this 18 day of January, 2021. *ASr*



Daniel Cadra, Chief Justice

**ENTERED AS A SINGLE JUDGE PROCEDURAL ORDER PURSUANT TO SUPREME COURT RULE 27(c).**