UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **CV 10-09596 DMG (SSx)** Date August 2, 2011

Title ***Alex Bakalian, et al. v. Republic of Turkey, et al.*** Page 1 of 2

Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

VALENCIA VALLERY	NOT REPORTED
Deputy Clerk	Court Reporter
Attorneys Present for Plaintiff(s) None Present	Attorneys Present for Defendant(s) None Present

Proceedings: IN CHAMBERS—ORDER DENYING BANK DEFENDANTS' MOTION TO DISMISS

On June 1, 2011, Defendants Central Bank of the Republic of Turkey ("Central Bank") and T.C. Ziraat Bankasi ("Ziraat Bank") filed a motion to dismiss for insufficient service of process or, in the alternative, to stay this action pending service on the Republic of Turkey [Doc. # 38]. Plaintiffs filed their opposition on June 20, 2011 [Doc. # 39]. On June 27, 2011, Central Bank and Ziraat Bank (collectively, "Bank Defendants") filed their reply [Doc. # 42]. The Court took this matter under submission on July 8, 2011 [Doc. # 44].

The parties agree (or at least do not dispute) that the Foreign Sovereign Immunities Act ("FSIA"), 28 U.S.C. § 1608(b), governs service on the Bank Defendants, who are alleged to be agencies or instrumentalities of the Republic of Turkey.[1] (*See* Mot. at 1 (citing Compl. ¶¶ 27-28).) As the parties are aware, this Court has previously determined that service under the FSIA requires only substantial compliance based on *Straub v. A P Green, Inc.*, 38 F.3d 448, 453 (9th Cir. 1994), which "formally adopt[ed] a substantial compliance test for the FSIA." *See also Peterson v. Islamic Republic Of Iran*, 627 F.3d 1117, 1129 (9th Cir. 2010) ("The Ninth Circuit has adopted a substantial compliance test for the FSIA's notice requirements . . . ." (citing *Straub*, 38 F.3d at 453)). Under this test, dismissal is inappropriate "if the plaintiff substantially complied with the FSIA's notice requirements and the defendant had actual notice." *Id.* (citing *Straub*, 38 F.3d at 453).

The Bank Defendants do not contend that they lacked actual notice of this lawsuit. Rather, they assert that Plaintiffs did not substantially comply with 28 U.S.C. § 1608(b)(2). As applicable here, Section 1608(b)(2) provides for service "by delivery of a copy of the summons

[1] In a different case, *Davoyan v. Republic of Turkey*, No. CV 10-05636 DMG (SSx) (C.D. Cal. filed July 29, 2010), the Bank Defendants asserted that they are a "foreign state or political subdivision of a foreign state" and thus subject to 28 U.S.C. § 1608(a). In *Davoyan*, this Court concluded that the Bank Defendants were more accurately characterized as "an agency or instrumentality of a foreign state." *Id.* § 1608(b); *see* Order re Defs.' Mot. to Dismiss at 4-9, *Davoyan* (Dec. 7, 2010).

and complaint either to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process in the United States."

Plaintiffs present credible evidence that their process servers made several attempts to serve the Bank Defendants at their addresses in New York City. After being repeatedly denied access to the buildings and, in one case, being misdirected as to Ziraat Bank's actual location, the process servers left copies of the summonses and complaint with the building security guards. Plaintiffs' counsel then mailed additional copies to the each of the Bank Defendants at these same addresses. (*See* Proof of Service upon Central Bank [Doc. # 5]; Proof of Service upon Ziraat Bank [Doc. # 6]; Shah Decl. ¶¶ 2-6, Exs. A-E; Miller Decl.)

The Bank Defendants argue that the security guards, who were not their employees, had neither actual nor apparent authority to accept service of process. (Mot. at 8-9.) The Court disagrees. Even if the guards were not employees, they gave the impression of acting on the Bank Defendants' behalf when they engaged in behavior apparently designed to thwart service of process on the Bank Defendants. A reasonable inference from the guards' behavior was that the guards were in communication with the Bank Defendants and were acting on their instructions. "[S]ervice can be made upon a representative so integrated with the organization that he will know what to do with the papers." *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (finding substantial compliance in the analogous context of Rule 4 where the process server left the complaint and summons with the corporate defendant's receptionist). In this case, the Court concludes that Plaintiffs substantially complied with 28 U.S.C. § 1608(b)(2).

In light of the foregoing, the Bank Defendants' motion to dismiss is **DENIED**. Because the Republic of Turkey has now been served and has a responsive pleading due no later than August 19, 2011, the Bank Defendants' motion to stay is **DENIED** as moot. The Bank Defendants shall file their responsive pleadings by **August 19, 2011**.

IT IS SO ORDERED.