

SUPERIOR COURT
COMMERCIAL DIVISION

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

N° : 500-11-061884-231

DATE : JANUARY 25, 2023

BY THE HONOURABLE DAVID R. COLLIER, J.S.C.

ZHONGSHAN FUCHENG INDUSTRIAL INVESTMENT CO. LTD.
Plaintiff

v.

THE FEDERAL REPUBLIC OF NIGERIA
Defendant

and

TIBIT LIMITED

Mise-en-Cause/Garnishee

and

AVIATION ETCETERA S.E.C.

and

STARLINK AVIATION INC.

Mises-en-cause/Custodians

JUDGMENT

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- [1] **CONSIDERING** Plaintiff's *ex parte Request for the issuance of an order to seize property in the hands of a third person before judgment*;
- [2] **CONSIDERING** the affidavit of M^{tre} Christopher Birks in support thereof;
- [3] **CONSIDERING** the exhibits filed in support thereof;
- [4] **CONSIDERING** the representations made by Plaintiff's counsel;
- [5] **CONSIDERING** there is sufficient evidence to establish both the existence of the Plaintiff's claim and a reasonable, objective reason to fear that the recovery of the claim might be jeopardized without the seizure;
- [6] **CONSIDERING** the Defendant's assertion that it is the true owner of the property which the Plaintiff wishes to seize;
- [7] **CONSIDERING** the provisions of the *State Immunity Act*, R.S.C. 1985, c. S-18, including *inter alia* its provisions regarding immunity from jurisdiction and the exceptions thereto (ss. 3, 4 and 5), as well as its provisions regarding immunity from execution and the exceptions thereto (s. 12);
- [8] **CONSIDERING** Plaintiff's verbal motion to extend the delay provided by article 521 of the *Code of Civil Procedure* for the service of its *Originating application for the recognition and enforcement of a foreign arbitration award*.

FOR THESE REASONS, THE COURT :

- [9] **GRANTS** Plaintiff's *Request for the issuance of an order to seize property in the hands of a third person before judgment*
- [10] **AUTHORIZES** Plaintiff to seize before judgment the property described below, currently in the hands or under the control of the *Mise-en-cause* (Tibit Limited) and/or the Custodians (Aviation Etcetera S.E.C. and/or Starlink Aviation Inc.) or any of their parent, subsidiary or affiliated entities:
- [10.1] A Bombardier 6000 Jet (type BD-700-1A10) with Tail number M-MYNA and serial number 9471, registered with the Isle of Man Aircraft Registry (the "**Aircraft**") and all rights of the Federal Republic of Nigeria in, to or against (i) the Aircraft; and (ii) any proceeds from the sale or transfer of the Aircraft that is payable or belonging to Nigeria;
- [10.2] The Aircraft's logbook;

[11] **EXTENDS** the delay provided by article 521 of the *Civil Code of Procedure* and **AUTHORIZES** Plaintiff to serve its *Originating Application for the recognition and enforcement of a foreign arbitration award* within four (4) months of the service of its notice of execution of the seizure before judgment;

[12] **THE WHOLE** with costs to follow suit.

DAVID R. COLLIER, J.S.C.

Mtre Patrick Ferland
Mtre Nicolas Roche
LCM ATTORNEYS INC.
Counsel for Plaintiff

Hearing date : January 25, 2023