

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

RICHARD BLEIER, ELFRIEDE KORBER, and)	
CHRISTOPHER MARK, Individually and on Behalf)	
of All Others Similarly Situated,)	
)	
Plaintiffs,)	
v.)	Case No. 08-cv-6254
)	
BUNDESREPUBLIK DEUTSCHLAND)	
a/k/a "FEDERAL REPUBLIC OF GERMANY",)	Hon. James B. Zagel
et al,)	U.S. District Judge
)	
Defendants.)	

**OPPOSITION OF DEFENDANT DEUTSCHE BUNDESBANK
TO PLAINTIFF'S MOTION FOR A DEFAULT JUDGMENT**

Defendant Deutsche Bundesbank entered an appearance, by counsel, for the limited purpose of opposing Plaintiffs' motion for a default judgment. Defendant Deutsche Bundesbank does not hereby impliedly or expressly waive its defense of sovereign immunity granted by the Foreign Sovereign Immunities Act, 28 U.S.C. 1602, *et. seq.*¹, and, if ever properly served, will assert its immunity and the Court's lack of subject matter jurisdiction in a responsive pleading which this Opposition is not such a responsive pleading.²

¹ The Deutsche Bundesbank is an instrumentality of a foreign state, the Federal Republic of Germany. It is the central bank of the Federal Republic of Germany and roughly equivalent to the Federal Reserve Bank. *United States v. First Nat'l City Bank*, 396 F.2d 897, 900 (2d Cir. N.Y. 1968)

² "The legislative history of the FSIA gives three examples of cases in which courts have found implied waivers: (1) a foreign state has agreed to arbitration in another country; (2) a foreign state has agreed that a contract is governed by the law of a particular country; and (3) a foreign state has filed a responsive pleading in a case without raising the defense of sovereign immunity. H.R. Rep. No. 1487, 94th Cong., 2d Sess. 18, reprinted in 1976 U.S. Code Cong. & Ad. News 6604, 6617; S. Rep. No. 1310, 94th Cong., 2d Sess. 18. Since the FSIA became law, courts have been reluctant to stray beyond these examples when considering claims that a nation has implicitly waived its defense of sovereign immunity." *Frolova v. Union of Soviet Socialist Republics*, 761 F.2d 370, 377 (7th Cir. 1985).

On September 15, 2010 Plaintiffs' attorney filed an affidavit of service, (D.E. 219), which falsely claims that on July 14, 2010 the summons and Second Amended Complaint in this case were served upon the defendant Deutsche Bundesbank.

Plaintiff's Motion for Default Judgment should be denied. Service on Defendant Bundesbank was not perfected and Plaintiff's affidavit of service is insufficient prove of service.

Plaintiffs' attorney attempted to make service on the Deutsche Bundesbank under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638 (hereinafter "Hague Convention"),³ by delivering the summons and Second Amended Complaint to the Central Authority for the State of Hesse, in which the offices of Deutsche Bundesbank are located, as designated under the Hague Convention⁴ to receive such documents and in turn, if found to be proper under the Hague Convention, to serve said summons and Second Amended Complaint on the party to be served. As the Court knows, Co-defendants Federal Republic of Germany and Bundesministerium of Finance have already asserted that service under the Hague Convention is an improper form of service upon the Federal Republic of Germany and its instrumentalities and agencies, including, but not limited to, the Deutsche Bundesbank. Since the Central Authority has not, as of today, served the Second Amended Complaint upon Deutsche Bundesbank, Deutsche Bundesbank reserves it argument that service cannot be made on it under the Hague Convention and nothing in this pleading shall be construed as an agreement by Deutsche Bundesbank to accept service under the Hague Convention.

³ The United States ratified the Hague Convention on August 24, 1967 and The Federal Republic of Germany ratified the Hague Convention on April 27, 1979.

⁴ The Central Authority for the State of Hesse is the Oberlandesgericht Frankfurt/Main, the equivalent of a Federal District Court.

The Second Amended Complaint and summons were never served on Deutsche Bundesbank. Plaintiffs' counsel incorrectly asserts in his Affidavit that the Central Authority made service on the Deutsche Bundesbank on or about July 14, 2010. In fact, the Central Authority has, of this date, not served the papers on Deutsche Bundesbank as confirmed by a letter by Deutsche Bundesbank dated September 23, 2010, which is attached as Exhibit A hereto.

The Affidavit of Service is insufficient evidence that service was perfected on Deutsche Bundesbank. The Affidavit of Service filed by Plaintiff's attorney does not confirm service on Deutsche Bundesbank, it only shows that the Central Authority had received the Second Amended Complaint and summons. Plaintiff's attorney's affidavit is nothing more than an attestation that Plaintiff's attorney delivered the Second Amended Complaint and summons to the process server. What is missing is an affidavit from the process server, (*i.e.* the Central Authority), that service was made. The statement that the Central Authority has forwarded the Second Amended Complaint and summons on July 14, 2010 (Affidavit of Service ¶(6) is, at best, an erroneous conclusion by Plaintiff's counsel, and not sufficient to proof actual service, which, as discussed above, did not take place.

In addition, the filed Affidavit of Service is not acceptable proof of service on Deutsche Bundesbank. The filed affidavit does not meet the requirements under Fed. R. Civ. Proc 4(l) and the Hague Convention.

The affidavit is not sufficient proof of service under the Hague Convention. Service outside the United States must be proven as set forth in the applicable treaty or convention.

Fed. R. Civ. Proc. 4(l). The Hague Convention requires, that:

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered.

Article 6 of the Hague Convention.

The certificate required by Article 6 of the Hague Convention was never filed. The Affidavit provided by Plaintiff's attorney cannot be considered as such a certificate. It does not include the required information, notably the method of filing, the place and the date of the service and it does not identify the person to whom the document was delivered. It does not meet the requirements under the Hague Convention.

Lastly, even if one would assume that Plaintiff's Affidavit of Service set out the correct facts, the Motion for Default Judgment is premature. Plaintiff alleges that the 60-day time period for a response to the complaint ran out on September 13, 2010. However, the beginning date cannot be on July 14, 2010. According to Plaintiff's Affidavit of Service, July 14, 2010, was the date on which the Second Amended Complaint and summons were (allegedly) sent to the Deutsche Bundesbank by the Central Authority. The actual date of service is nowhere to be found in the Affidavit. The 60 day period to respond to the Second Amended Complaint commences once proper service has been made. As service of process on Deutsche Bundesbank has not been made the 60 day response period has not begun to run.

Conclusion

The motion for default judgment against Deutsche Bundesbank must be denied. The Deutsche Bundesbank is not a party in this matter. Service on Deutsche Bundesbank has not been perfected.

Dated: September 27, 2010

Respectfully submitted,

DEUTSCHE BUNDESBANK

By: /s/ Jeffrey Harris

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Date
23 September 2010

The undersigned hereby confirm that Deutsche Bundesbank has not been served, as of the date of this letter, the complaint and summons in Bleier, the . al. vs. Federal Republic of Germany the al. on the Deutsche Bundesbank by the Central Authority under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters for the State of Hesse, the Oberlandesgericht Frankfurt/Main.

DEUTSCHE BUNDESBANK

Kempf

Freimuth

