

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**FADI ELSALAMEEN**

Plaintiff,

v.

Case No. 16-cv-1976 (ABJ)

**BANK OF PALESTINE, P.L.C.**

Defendant.

**STATUS REPORT AND RENEWED MOTION TO DEEM SERVICE EFFECTED**

Plaintiff Fadi Elsalameen, by and through his undersigned counsel, in accordance with Fed. R. Civ. P. 4(f) and 4(h), Convention on the Service Abroad of Judicial and Extrajudicial Documents, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 (the “Hague Convention”), and this Court’s Minute Orders of March 31, 2017, May 4, 2017, July 3, 2017, and September 6, 2017, respectfully submits the following status report and renews his request that the Court find that service of the Summons and Complaint on Defendant Bank of Palestine, P.L.C. (“Bank of Palestine”), be deemed effected in this matter. In support of his motion, Mr. Elsalameen provides the following statement of law and points of authority:

**BACKGROUND**

As explained in Mr. Elsalameen’s prior Status Reports of February 3, 2017 (ECF No. 6) and March 20, 2017 (ECF No. 7) and in his Status Reports and Motions to Deem Service Effected on May 2, 2017 (ECF No. 8), June 30, 2017 (ECF No. 9), and August 31, 2017 (ECF No. 10), he has attempted to effect service on Bank of Palestine in accordance with the Hague Convention.

Mr. Elsalameen filed the Complaint in this matter on October 5, 2016. Promptly after filing the Complaint and receiving the executed Summons in a Civil Action (ECF No. 2), Mr. Elsalameen caused TransPerfect Legal Solutions to translate the Complaint, Civil Cover Sheet, and Summons into the Hebrew and Arabic languages. ECF No. 6, Exs. D and E. Mr. Elsalameen's counsel received the translations on October 10, 2016, and, that day, sent the Complaint, Civil Cover Sheet, Summons, translations, and a Request for Service Abroad of Judicial or Extrajudicial Documents to the Israeli Central Authority, requesting that it serve Defendant Bank of Palestine. ECF No. 6, Exs. F and G. Federal Express delivered the Hague Convention Service Request to the Israeli Central Authority on October 13, 2016. ECF No. 6, Ex. H ¶ 7. At no time has the Israeli Central Authority informed undersigned counsel, in accordance with Article 4 of the Hague Convention, that it objects to the request for service. ECF No. 6, Ex. H ¶ 8; ECF No. 7, Ex. B ¶ 8.

On October 19, 2016, Mr. Elsalameen's counsel provided a copy of the Complaint and Hague Convention Service Request to Bank of Palestine's District of Columbia counsel, DLA Piper LLP, asking whether Bank of Palestine would accept service of the Complaint through its counsel. ECF No. 9, Ex. A. Bank of Palestine's counsel responded that Bank of Palestine had not authorized its counsel to accept service of process of Mr. Elsalameen's Complaint. *Id.* Nevertheless, Bank of Palestine has had notice of the pendency of this action and Mr. Elsalameen's Hague Convention Service Request since October 20, 2016. *See id.*

On February 3, 2017, after submitting his First Status Report to the Court, Mr. Elsalameen's counsel sent correspondence to the Israeli Central Authority, informing it that the Court had requested a further status report on or before March 20, 2017 and requesting an update regarding service of the Complaint. ECF No. 7, Ex. B. Enclosed with the letter was a

self-addressed, prepaid Federal Express envelope for the Israeli Central Authority to use in sending return correspondence. *Id.* The Israeli Central Authority did not respond to that correspondence. *Id.*

On April 19, 2017, Mr. Elsalameen's counsel emailed the Israeli Central Authority at the email address it provides through the website of the Hague Conference on Private International Law requesting an update on the status of serving the Complaint. ECF No. 9, Ex. B. On April 20, 2017, the Israeli Central Authority's office of Administration of Courts, Legal Assistance to Foreign Countries, responded to Mr. Elsalameen's counsel and informed him that "[y]our request for service the Bank of Palestine [*sic*] was received in our offices and was sent at the 02.11.16 [*sic*] to the relevant authority in the Israeli Ministry of Justice." ECF No. 9, Ex. C. The email did *not*, however explain how long service would take or when it would be completed. *See id.* Instead, it noted that "[d]ue to the fact that there is a special procedure followed in such cases, [service] is time consuming" and that it would seek an update on the process. *Id.*

On the same day, the office of Legal Assistance to Foreign Countries followed up on its previous email, informing Mr. Elsalameen's counsel that "[t]he relevant authority at the Israeli Ministry of Justice has confirmed that this request is still under execution." ECF No. 9, Ex. D. The email noted that "[o]nce we will receive [*sic*] another update regarding this case, you will be notified." *Id.* Again, the email did not state how long service would take or when it would be completed. *See id.* Thus, while the email correspondence did show some progress, after over six months of waiting, Mr. Elsalameen was still left without any definitive assurance as to when Bank of Palestine would be officially served by the Israeli Central Authority.

In light of the foregoing, Mr. Elsalameen filed a Status Report and Motion to Deem Service Effected in this Court on May 2, 2017. ECF No. 8. Given the amount of time that had

passed and the lack of any definitive assurance as to when service would be effected, Mr. Elsalameen requested that the Court deem service effected in accordance with Fed. R. Civ. P. 4 and Article 15 of the Hague Convention. On May 4, 2017, the Court denied Mr. Elsalameen's Motion without prejudice in a Minute Order. Therein, the Court ordered that "Plaintiff shall file proof of service, an updated status report, or a renewed motion, by June 30, 2017."

On June 30, 2017, Mr. Elsalameen filed a Status Report and Renewed Motion to Deem Service Effected in this Court, reporting that he had not further heard from the Israeli Central Authority regarding the status of service of the Complaint and motioned again that service be deemed effective. ECF No. 9. On July 3, 2017, the Court denied Mr. Elsalameen's renewed motion without prejudice and directed him to make further inquiries of the Israeli government and to file a further status report or motion to deem service effected by August 31, 2017.

In accordance with the Court's order, Mr. Elsalameen, through counsel, again contacted the Israeli Central Authority by email on August 1, 2017, requesting a status update and informing the Israeli Central Authority of the Court's order. ECF No. 10, Ex. A. On August 29, 2017, the Legal Assistant to Foreign Countries with the Israeli Administration of Courts reported that "[t]he matter is being checked with the competent authorities who are assisting us with the Palestinian Authority." ECF No. 10, Ex. B. On August 30, 2017, the Legal Assistant to Foreign Countries with the Israeli Administration of Courts further reported that "[i]t is hereby possible to update the court that the documents were sent by registered mail to the recipient in the Palestinian Authority, but no delivery confirmation has yet been received." ECF No. 10, Ex. C.

Mr. Elsalameen filed a Renewed Status Report and Motion to Deem Service Effected in this Court on August 31, 2017. ECF No. 10. Given the time that had passed since the delivery

of the Hague Convention Service Request and the lack of any definitive assurance as to when delivery confirmation from the Defendant would be received, Mr. Elsalameen requested that the Court deem service effected in accordance with Fed. R. Civ. P. 4 and Article 15 of the Hague Convention. On September 6, 2017, the Court denied Mr. Elsalameen's Motion without prejudice in a Minute Order. The Court stated in the Minute Order that it would be "more fair to deem service to be effected either when the return receipt has been received, or six months after the date that Israel sent the papers to the defendant bank." The Court ordered that "plaintiffs shall file a further status report by February 28, 2018, unless proof of service has been received in the interim."

On February 21, 2018, Mr. Elsalameen, through counsel, contacted the Israeli Central Authority via the office of Legal Assistance to Foreign Countries with the Israeli Administration of Courts, requesting a status update regarding the delivery confirmation, and informing the office of the Court's order. **Exhibit A.** On February 22, 2018, the office of Legal Assistance to Foreign Countries confirmed that there was no further update on the status of delivery, and suggested counsel to contact the office of Legal Assistance to the Palestinian Authority for questions regarding proof of receipt. **Exhibit B.** Pursuant to this suggestion, Mr. Elsalameen, through counsel, contacted the office of Legal Assistance to the Palestinian Authority that same day. **Exhibit C.** On February 28, 2018, the office of Legal Assistance to Foreign Countries confirmed that the documents were sent by registered mail to Bank of Palestine on May 16, 2017 and again on August 24, 2017 and that, to date, no delivery certificate has been received from Bank of Palestine. **Exhibit D.** The response also attached an official notice regarding the service attempts, written in Hebrew, from the office of Legal Assistance to the Palestinian

Authority. **Exhibit E.** Accordingly, Mr. Elsalameen respectfully renews his Motion to Deem Service Effected.

### **ARGUMENT**

Mr. Elsalameen respectfully requests that the Court find that service on Bank of Palestine in this matter be deemed effected in accordance with Fed. R. Civ. P. 4(f) and (h) and Article 15 of the Hague Convention because: (1) the Complaint was transmitted by a method provided for in the Convention, (2) a period of more than six months has elapsed since the transmission of the Hague Convention Service Request, and (3) no certificate of any kind has been received, even though Mr. Elsalameen has made every reasonable effort to obtain it through the Israeli Central Authority.

Fed. R. Civ. P. 4(h) provides that a “foreign corporation” when served “at a place not within any judicial district of the United States,” must be served “in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).” Fed. R. Civ. P. 4(f), in turn, provides that “an individual . . . may be served at a place not within any judicial district of the United States . . . by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents.” Thus, where service is properly effected under the Hague Convention, service is also effected under Rule 4. *See id.*

Article 15 of the Hague Convention provides:

Each Contracting State shall be free to declare that the judge . . . may give judgment even if no certificate of service or delivery has been received, if all of the following conditions are fulfilled –

- a) the document was transmitted by one of the methods provided for in this Convention,

- b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
- c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed.

The United States has declared that, “[i]n accordance with the second paragraph of Article 15, . . . the judge may . . . give judgment even if no certificate of service or delivery has been received, if all the conditions specified in subdivisions (a), (b) and (c) of the second paragraph of Article 15 are fulfilled.” *See* ECF No. 10, Ex. D (United States Declarations Regarding Hague Convention); *see also Silverman v. Modulgranito Iberico, S.A.*, No. 89-0432-OG, 1990 U.S. Dist. LEXIS 5264, at \*3 (D.D.C. April 30, 1990) (entering default under Hague Convention Article 15); *Marshauer v. Travelers Indem. Co.*, 145 F.R.D. 605, 609–10 (S.D. Fla. 1992) (finding that the “Court has the authority to enter an Order of Default in this matter, notwithstanding that Marschauser cannot demonstrate actual proof of service on Israel and the Consulate [under the Hague Convention].”).

Here, the requirements of Article 15 of the Hague Convention have been satisfied. Mr. Elsalameen therefore respectfully requests that service be deemed effected under Fed. R. Civ. P. 4, so that he may proceed to vindicate his rights before the Court.<sup>1</sup> Mr. Elsalameen has waited patiently for nearly 16 months. Now that sufficient time has elapsed, and given Bank of Palestine’s notice of the pendency of this action, its counsel’s receipt of the Complaint, and the Israeli Central Authority’s confirmation that the Complaint was sent by registered mail to Bank of Palestine over nine months ago, Mr. Elsalameen respectfully submits that all of the

---

<sup>1</sup> Mr. Elsalameen is providing the Bank of Palestine’s U.S. counsel with a courtesy copy of this filing by email so that they will have an opportunity to respond, if they so choose.

considerations of Article 15 of the Hague Convention are plainly satisfied here and that he should be allowed to move forward with this case.

**I. MR. ELSALAMEEN'S HAGUE CONVENTION SERVICE REQUEST WAS TRANSMITTED BY A METHOD PROVIDED FOR IN THE HAGUE CONVENTION.**

Both the United States and the State of Israel are party to the Hague Convention. The Hague Convention provides that “[t]he . . . judicial officer competent under the law of the State in which the documents originate shall forward to the Central Authority of the State addressed a request conforming to the model annexed to the present Convention, without any requirement of legalisation or other equivalent formality.” Hague Convention art. 3.<sup>2</sup> Article 4 of the Hague Convention requires that, “[i]f the Central Authority considers that the request does not comply with the provisions of the present Convention[,] it shall promptly inform the applicant and specify its objections to the request.” If the request complies with the Hague Convention, “[t]he Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency.” Hague Convention art. 5.

The State of Israel asserts jurisdiction with respect to service of process under the Hague Convention in areas subject to the jurisdiction of the Palestinian National Authority, with the proviso that documents to be served be translated into both Hebrew and Arabic. *See* ECF No. 10, Ex. F. The Israeli Central Authority is located at Administration of Courts, 22 Kanfei Nesharin Street, Jerusalem 95464, Israel. *Id.*

Bank of Palestine is a public shareholding company organized under the laws of the Palestinian National Authority and is headquartered in Ramallah. *See* Complaint, ECF No. 1.

---

<sup>2</sup> The United States has clarified that “any attorney” is a person “competent to forward service requests pursuant to Article 3” of the Hague Convention. *See* ECF No. 10, Ex. E.

As an entity in Palestinian territory, the bank is properly served through the Israeli Central Authority under the Hague Convention.

Here, Mr. Elsalameen, through counsel, submitted his Hague Convention request for service of the Complaint with the requisite forms and translations to the Israeli Central Authority on October 10, 2016, and the Israeli Central Authority received the request on October 13, 2016. ECF No. 6, Ex. H ¶ 7. The Israeli Central Authority has not objected to service or otherwise suggested that the request does not comply with the requirements of the present Hague Convention. *See* ECF No. 9, Ex. D (noting only that Mr. Elsalameen's request "is still under execution"). On the contrary, the Israeli Central Authority has confirmed that the Complaint was sent to Bank of Palestine by registered mail on two occasions, the first being over nine months ago. **Exhibit D.** While no return receipt has been received, that is beyond the control of either the Israeli Central Authority or Mr. Elsalameen. Accordingly, Mr. Elsalameen submits that he has properly transmitted his Hague Convention Service Request by one of the methods provided for in the Hague Convention.

## **II. MORE THAN SIX MONTHS HAVE ELAPSED SINCE SUBMITTING THE SERVICE REQUEST.**

The Court may "give judgment" against a foreign defendant if, as here, the other requirements of Article 15 of the Hague Convention are met and "a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document." Hague Convention art. 15. Here, the Israeli Central Authority received Mr. Elsalameen's Hague Convention Service Request on October 13, 2016. Thus, nearly 16 months has elapsed since transmission of the documents to be served, thereby meeting the six-month requirement of the Article.

Moreover, the specific facts and circumstances of this particular case militate strongly toward finding this time period to be “adequate” for service under the Hague Convention. *See id.* Notably, Mr. Elsalameen’s counsel notified Bank of Palestine’s U.S. counsel, DLA Piper, of this suit on October 19, 2016. *See* ECF No. 9, Ex. A. Mr. Elsalameen’s counsel provided DLA Piper with a copy of the summons and complaint in English, Arabic, and Hebrew. While Bank of Palestine’s counsel declined to accept service, this shows that Bank of Palestine has had notice of the pendency of this action for nearly 16 months as well. This notice satisfies the purpose behind the service requirements of Fed. R. Civ. P. 4, and counsels against allowing additional time before deeming service effective under Hague Convention Article 15. *See Ali v. Mid-Atlantic Settlement Servs., Inc.*, 233 F.R.D. 32, 36 (D.D.C. 2006) (“the rules governing service of process are utilized for the purpose of providing a likelihood of bringing actual notice to the intended recipient . . . and actual notice satisfies the due process notice requirement and provides the court with personal jurisdiction.” (citation omitted)).<sup>3</sup>

Similarly, the continued uncertainty surrounding when service will be effected formally by the Israeli Central Authority appears dependent upon Defendant Bank of Palestine returning a receipt confirmation (**Exhibit D**), and further counsels towards finding this 16-month period “adequate” under the Hague Convention. At present, over nine months have elapsed since the Complaint and Summons were sent to the Defendant by the Israeli Central Authority, during which time the Defendant Bank of Palestine has neglected to return a receipt confirmation. In light of this Court’s Minute Order, this fact further reinforces the adequacy of this time period. Bank of Palestine should not be permitted by this simple expedient to defeat effective service and thereby frustrate Mr. Elsalameen’s efforts to vindicate his rights before this Court.

---

<sup>3</sup> This case has also generated attention in the local, regional, and international press.

Given (1) Bank of Palestine's notice of this suit; (2) the fact that all substantive requirements for service have been met; and (3) the uncertainty as to when, if ever, Bank of Palestine will choose to return a receipt confirmation to the Israeli Central Authority, Mr. Elsalameen respectfully submits that there is no need to extend the Hague Convention's time requirements beyond the nearly 16 months that has already elapsed. Accordingly, Mr. Elsalameen respectfully submits that the Court should rule the 16-month time period since Mr. Elsalameen's submission of his Complaint to the Israeli Central Authority "adequate" under the Hague Convention and that the requirement of Article 15 has been met. *See id.*

**III. NOTWITHSTANDING REASONABLE EFFORTS, MR. ELSALAMEEN HAS RECEIVED NO CERTIFICATE OF ANY KIND.**

The final requirement for entering a default (or deeming service effective) under Article 15 of the Hague Convention is that "no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed." Hague Convention art. 15(c). Here, the Israeli Central Authority has provided no certificate of any kind in response to Mr. Elsalameen's Hague Convention Service Request.

Mr. Elsalameen, through counsel, requested an update regarding service of process from the Israeli Central Authority on February 3, 2017, providing a self-addressed, prepaid Federal Express envelope for return correspondence. ECF No. 7, Ex. B. Mr. Elsalameen's counsel also inquired by email regarding the status of service using the contact email address the Israeli Central Authority has provided to the Hague Conference on Private International Law. ECF No. 9, Ex. B. At the time, the Israeli Central Authority noted only that "this request is still under execution," and that counsel will be notified of further updates in this case, should any be received. ECF No. 9, Ex. D. Six months ago, on August 30, 2017, the Israeli Central Authority

first confirmed that the Complaint was sent by registered mail to Bank of Palestine. ECF No. 10, Ex. C. On February 28, 2018, the Israeli Central Authority specified that the Complaint was sent by registered mail to Bank of Palestine on May 16, 2017 and again on August 24, 2017, but no return receipt has been received. **Exhibit D.** Mr. Elsalameen has received neither a certificate under Article 15 nor any timeline for when such a certificate will be received, despite multiple follow-up inquiries. Therefore, Mr. Elsalameen submits that he has met the requirements of Article 15(c) of the Hague Convention. *See Silverman*, 1990 U.S. Dist. LEXIS 5264, at \*3 (unacknowledged and unanswered correspondence and follow-up inquiry to Spain's Central Authority sufficient to satisfy Hague Convention art. 15(c)).

\* \* \*

Accordingly, Mr. Elsalameen respectfully submits that the requirements of the Hague Convention have been clearly and fully satisfied, and thus service has been effected on Defendant Bank of Palestine.

### **CONCLUSION**

Having met the requirements of Article 15(c) of the Hague Convention, and in light of the fact that Defendant Bank of Palestine's counsel has had notice of this action and copies of the Complaint in English, Hebrew, and Arabic since mid-October 2016, and for the other reasons set forth above, Mr. Elsalameen respectfully requests that the Court rule that service of the Summons and Complaint on Bank of Palestine in this matter has been effected under Fed. R. Civ. P. 4. In the alternative, Mr. Elsalameen respectfully requests that the Court issue a renewed summons and further extend the period of time to complete service of process or deem service effected as appropriate.

Dated: February 28, 2018

Respectfully submitted,

FADI ELSALAMEEN

By: /s/ Scott D. Gilbert

Scott D. Gilbert (D.C. Bar No. 290932)

GILBERT LLP

1100 New York Avenue NW, Suite 700

Washington, DC 20005

Telephone: (202) 772-2200

Facsimile: (202) 772-3333

Email: gilberts@gotofirm.com

*Counsel for Plaintiff Fadi Elsalameen*

**CERTIFICATE OF SERVICE**

I hereby certify that, on the 28th day of February 2018, a true and correct copy of the foregoing will be electronically filed with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to any counsel of record. I further certify that I will provide a true and correct courtesy copy of the foregoing by electronic mail to the following counsel for Bank of Palestine:

Mary Gately, Esq.  
DLA Piper, LLP  
500 Eighth Street, NW  
Washington, DC 20004  
Telephone: (202) 799-4507  
Facsimile: (202) 799-5507  
Email: mary.gately@dlapiper.com

/s/ Scott D. Gilbert  
Scott D. Gilbert (D.C. Bar No. 290932)  
GILBERT LLP  
1100 New York Avenue NW, Suite 700  
Washington, DC 20005  
Telephone: (202) 772-2200  
Facsimile: (202) 772-3333  
Email: gilberts@gotofirm.com

*Counsel for Plaintiff Fadi Elsalameen*