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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIP ENGINEERING AND MARKETING, LTD.,

Plaintiff,

- against -

STANDARD CHARTERED BANK,

Defendant.

13 Civ. 4754 (VM)

DECISION & ORDER

VICTOR MARRERO, United States District Judge.

By Order dated September 10, 2013 (the "September 10 Order"), the Court dismissed this action on forum non conveniens grounds. (Dkt. No. 9 at p. 5-6.)[1] The September 10 Order directed defendant Standard Chartered Bank ("Standard Chartered") to file a statement confirming its consent to jurisdiction in the Republic of Tanzania ("Tanzania"). (Id.) Standard Chartered informed the Court by letter dated September 20, 2013 that it would not file such a statement. (Dkt. No. 10.) The Court subsequently issued an Order dated September 23, 2013 (the "September 23 Order"), which deemed Standard Chartered's previous representations that it considered Tanzania to be an adequate alternative forum as "consent to the adjudication

[1] The Court had previously informed the parties of its intent to dismiss the action on forum non conveniens grounds during an August 5, 2013 telephone conference. (Dkt. No. 9 at 1 n.1.)

of this action in Tanzania, and to comply with any final judgment rendered by any court of competent jurisdiction there in connection with the parties' underlying dispute." (Dkt. No. 12 at p. 2.)

In a September 27, 2013 letter to the Court, Standard Chartered opined that the September 23 Order "raises a serious jurisdictional issue" (Dkt. No. 15 at p. 1) and faulted the Court for "resolv[ing] the hotly disputed issue" of whether Standard Chartered had consented to jurisdiction in Tanzania (id. at p. 2). Standard Chartered further explained that it is concerned with how plaintiff VIP Engineering and Marketing, Limited ("VIP") is misrepresenting the September 23 Order in related arbitration proceedings between the parties. (Id. at p. 3.) On September 30, 2013, VIP filed a responsive letter that disputed Standard Chartered's claims. (Dkt. No. 16.)

Standard Chartered's argument proceeds from a faulty premise: that there is a dispute as to whether it consented to jurisdiction in Tanzania. As explained in the September 23 Order, "Standard Chartered had previously represented to the Court, both orally and in writing, that it viewed Tanzania as a proper forum for this action, and that the

parties were engaged in related litigation there." (Dkt. No. 12 at 1; see Def.'s Mem. of Law in Support of Mot. to Compel Arbitration & to Stay or Dismiss 21-22, Dkt. No. 4.) The September 23 Order further deemed these representations, combined with those made during the telephone conference on August 5, 2013, as Standard Chartered's consent to jurisdiction in Tanzania. (Dkt. No. 12 at 2.)

Because Standard Chartered previously informed the Court that Tanzania would be an adequate alternative forum, and thus at least implicitly that it would consent to Tanzanian jurisdiction, the doctrine of judicial estoppel bars Standard Chartered from withdrawing that consent.

Judicial estoppel prevents a party from making a contradictory statement in a later stage of litigation based on "the exigencies of the moment." New Hampshire v. Maine, 532 U.S. 742, 750 (2001) (quoting United States v. McCaskey, 9 F.3d 368, 378 (5th Cir. 1993)). A court will typically apply judicial estoppel if (1) a party's new position is "clearly inconsistent" with the party's earlier position, (2) the party prevailed by having the court adopt its earlier position, and (3) the party would gain an

unfair advantage against the party seeking estoppel. DeRosa v. National Envelope Corp., 595 F.3d 99, 103 (2d Cir. 2010). In addition, the risk of inconsistent results, thereby damaging judicial integrity, must be certain. Simon v. Safelite Glass Corp., 128 F.3d 68, 72 (2d Cir. 1997).

At least one court in this District has recognized that judicial estoppel prevents a party who "obtained a forum non conveniens dismissal . . . on the premise that [an alternative] forum would be adequate" from later attacking the adequacy of that forum. Pavlov v. Bank of N.Y. Co., 135 F. Supp. 2d 426, 435 n.52 (S.D.N.Y. 2001), rev'd on other grounds, 25 F. App'x 70 (2d Cir. 2002).

Standard Chartered, through its counsel, previously represented to the Court that it considered Tanzania as an adequate alternative forum and would consent to jurisdiction in Tanzania. Indeed, Standard Chartered's September 27 letter does not argue otherwise. Statements made by counsel, "who are officers of the court and practice under a duty to be truthful to the court," implicate the doctrine of judicial estoppel. A.I. Trade Fin., Inc. v. Centro Internationale Handelsbank AG, 926 F.

Supp. 378, 389 n.14 (S.D.N.Y 1996) (applying judicial estoppel based on statements made in pleadings). Permitting Standard Chartered to change its position on consent to Tanzanian jurisdiction after the Court had already announced its reliance on the prior representations would have an adverse impact on the integrity of the judicial process. See Uzdavines v. Weeks Marine, Inc., 418 F.3d 138, 148 (2d Cir. 2005) (noting that judicial estoppel applies where party "had [its] earlier position adopted by the tribunal to which it was advanced" (quoting Stichting v. Schreiber, 407 F.3d 34, 45 (2d Cir. 2005))). And Standard Chartered's inconsistent positions have imposed costs on VIP by delaying the resolution of VIP's claims and imposing costs on VIP to continue litigating in this Court. See Intellivision v. Microsoft Corp., 484 F. App'x 616, 620 (2d Cir. 2012) (applying judicial estoppel in part because the plaintiff's previous inconsistent statement determined the choice of law, thereby preserving claims that otherwise would have failed and delaying defendant's relief).

The Court thus finds that the doctrine of judicial estoppel prevents Standard Chartered from asserting inconsistent positions in this action. The Court reaffirms

its September 10 Order and September 23 Order dismissing this action. Standard Chartered's previous representations that it considered Tanzania an adequate alternative forum are deemed to be an expression of Standard Chartered's consent to the adjudication of this action in Tanzania, and to comply with any final judgment rendered by any court of competent jurisdiction there in connection with the parties' underlying dispute. Having previously made those representations, Standard Chartered is estopped from withdrawing them. A court can dismiss an action on forum non conveniens grounds without resolving jurisdictional issues. Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp., 549 U.S. 422, 432 (2007); Figueiredo Ferraz E Engenharia de Projecto Ltda. v. Republic of Peru, 665 F.3d 384, 389 (2d Cir. 2011). The September 23 Order thus raises no jurisdictional issues, contrary to Standard Chartered's claim.

SO ORDERED.

Dated: New York, New York
4 October 2013

Victor Marrero
U.S.D.J.