

COURT OF APPEAL FOR ONTARIO

CITATION: Petersen Energía Inversora, S.A.U. v. Argentina, 2025 ONCA 785

DATE: 20251119

DOCKET: M56188 (COA-25-CV-0823)

Roberts, Miller, and Monahan JJ.A.

BETWEEN

Petersen Energía Inversora, S.A.U., Petersen Energía, S.A.U., Eton Park Master Fund, Ltd., Eton Park Fund, L.P. and Eton Park Capital Management, L.P.

Applicant (Respondents/Moving Parties)

and

The Republic of Argentina

Respondent (Appellant/Responding Party)

Linda Plumpton and Molly McMahon, for the moving parties

Matthew J. Latella, and Bryan Hsu, for the responding party

Heard: November 13, 2025

REASONS FOR DECISION

[1] The moving parties, Petersen Energía Inversora, S.A.U. et al., seek to quash the appeal of the responding party, the Republic of Argentina, of an order validating service of an application record upon the responding party (the “Impugned Order”).

[2] The moving parties argue that the Impugned Order is interlocutory and therefore appealable to the Divisional Court with leave, since it is merely

procedural and does not resolve any of the parties' substantive rights or the subject matter of the litigation.

[3] For the reasons set out below, the motion is granted, and the appeal is quashed.

I. BACKGROUND

[4] The moving parties seek to have a judgment granted by the United States District Court in the Southern District of New York (the "SDNY Judgment") against the responding party recognized and enforced in Ontario. On October 23, 2024, the moving parties transmitted the application record to the responding party through diplomatic channels, as provided for under ss. 9(1)(c) and (2) of the *State Immunity Act*, R.S.C. 1985, c. S-18 (the "SIA").

[5] The responding party claimed that the moving parties were required to serve the application record in accordance with the *Hague Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 15 November 1965, 658 UNTS 163* (the "Convention"). Because service was not validly effected in accordance with the *Convention*, the moving party argued that it had not been duly served and sought a declaration to that effect.

[6] The motion judge found that because procedural matters are governed exclusively by the laws of the forum state, and the *SIA* provides the procedural

framework for actions commenced in Canada against foreign states, it follows that service on foreign states may be effected pursuant to s. 9 of the *SIA*. The motion judge rejected the responding party's argument that s. 9(1) should be interpreted to require service under the *Convention* when service is on a signatory foreign state to ensure Canada's adherence to the *Convention*, concluding that this interpretation was contrary to modern principles of statutory interpretation and Parliament's clear language. Accordingly, since ss. 9(1)(c) and (2) specifically provide for service on a foreign state through diplomatic channels, as was done in this case, the motion judge found that the responding party had been duly served and dismissed the responding party's motion for a declaration to the contrary.

II. DISCUSSION

[7] The issue on this motion is not the merits of the Impugned Order but merely whether it is final and thus appealable as of right to this court, or interlocutory and appealable with leave to the Divisional Court.

[8] The responding party relies upon this court's decisions in *Paulpillai Estate v. Yusuf*, 2020 ONCA 655, leave to appeal to S.C.C. refused, 39881 (February 24, 2022) and *Ball v. Donais* (1993), 13 O.R. (3d) 322, arguing that an order that finally disposes of any substantive right or defence of a party in an action is final, even if the order does not finally dispose of the dispute between the parties. It argues that the Impugned Order meets that description, since it determined its rights under both the *SIA* and the *Convention*, specifically regarding state sovereignty and

sovereign immunity. It further relies upon this court's decision in *Khan Resources Inc. v. Atomredmetzoloto JSC*, 2013 ONCA 189, 115 O.R. (3d) 1 ("*Khan*"), as confirming that orders regarding service under the *Convention* implicate substantive legal rights and are appealable directly to this court.

[9] We do not agree. The only issue resolved by the motion judge was the validity of the service of the application record on the responding party. As this court has affirmed, orders confirming the validity of service are generally interlocutory for the purposes of determining the appropriate route of appeal: *Xela Enterprises Ltd. v. Castillo*, 2014 ONCA 275, at para. 3; *Shanghai Lianyin Investment Co. Ltd. v. Lu*, 2023 ONCA 285, at para. 1.

[10] The fact that the Impugned Order determined that service upon a state party to the *Convention* can be validly effected in accordance with ss. 9(1)(c) and (2) of the *SIA* does not make the Impugned Order final. As this court explained in *Paulpillai*, at para. 16, an order that determines the question raised by a motion will be considered interlocutory if the real matters in dispute and the substantive rights of the parties remain undecided.

[11] That is the case here. As in *Shanghai Lianyin Investment Co. Ltd*, the only "real matter in dispute" before the motion judge was the validity of the service on the responding party. We see no reason why the general rule that such procedural orders are interlocutory should not apply in the context of service effected under

the *SIA*. Nor is this conclusion inconsistent with *Khan*, since the issue of this court's jurisdiction to hear the appeal was not raised or decided in *Khan* such that it cannot establish this court's jurisdiction: *CIBC Mortgages Inc. v. Computershare Trust Co. of Canada*, 2015 ONCA 846, at para. 12; *Singh v. Heft*, 2022 ONCA 135, at para. 15.

[12] While the practical effect of the Impugned Order is to allow the recognition and enforcement application to proceed in Ontario, it does not deprive the responding party of any jurisdictional or other defences, including those relating to sovereign immunity, to which it may otherwise be entitled to make in the underlying proceeding.

[13] Accordingly, the motion is granted, and the appeal is quashed. The moving party is entitled to its costs on a partial indemnity basis in the amount of \$10,931.22, all-inclusive.

“L.B. Roberts J.A.”

“B.W. Miller J.A.”

“P.J. Monahan J.A.”