IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DAVID L. de CSEPEL, *et al.*,	)	
Plaintiffs,	)	
vs.	)	**No. 1:10-cv-01261(ESH)**
REPUBLIC OF HUNGARY, *et al.*,	)	
Defendants.	)	

REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR JUDICIAL NOTICE OF DOCUMENTS AND FACTS

Defendants Republic of Hungary, The Hungarian National Gallery, The Museum of Fine Arts, The Museum of Applied Arts, and The Budapest University of Technology and Economics (collectively, "Hungary"), through counsel, submit this Reply in Support of Defendants' Motion for Judicial Notice of Documents and Facts ("Motion"). In their Opposition, Plaintiffs do not dispute the authenticity of any documents (or translations thereof) for which Hungary requests judicial notice. Nor do Plaintiffs dispute that the contested documents are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *See* Fed. R. Evid. 201. Indeed, in their Opposition to Hungary's Motion to Dismiss, Plaintiffs themselves put the validity of numerous Hungarian decisions, including Hungarian court documents relating to the Nierenberg lawsuit, before the Court. For the various reasons set forth below, Hungary's Motion should be granted in its entirety.

I. Hungarian Legislation

It is proper for the Court to take judicial notice of the existence of the various Hungarian statutes and foreign treaties requested by Hungary. Plaintiffs have not disputed the authenticity of these documents or their associated translations. Instead, Plaintiffs argue that Hungary should have brought such legislation to the attention of the Court by issuing notice pursuant to Federal Rule of Civil Procedure 44.1. As evidenced by the plain language of Federal Rule of Civil Procedure 44.1, however, it applies where a litigant seeks to "raise an issue about a foreign country's law" and details how a court may make a "determination" of foreign law. When such determination is made, it is treated as a "ruling on a question of law." Fed. R. Civ. P. 44.1.

Here, Hungary's Motion does not request that the Court make any "determination" of foreign law. Rather, Hungary brought these documents to the Court's attention to make the Court aware of the existence of these documents so that the Court can consider these documents, along with the other facts of the case, as background information, and to put the claims leveled in the Complaint into historical perspective. That these documents exist and are authentic is not subject to reasonable dispute, and judicial notice is therefore appropriate. *See* Fed. R. Evid. 201.

II. Nierenberg Complaint and the Final Judgment

It is appropriate for the Court to take judicial notice of Martha Nierenberg's 1999 Complaint ("Nierenberg Complaint") and the resultant 2008 Final Judgment ("Final Judgment"). Hungary properly utilized these documents to argue that certain of Plaintiffs' claims are barred by *res judicata*.

Under Federal Rule of Evidence 201, courts may take judicial notice of adjudicative, but not legislative, facts. Plaintiffs distort Hungary's request that the Court take judicial notice of the Nierenberg Complaint and Final Order by arguing that they are "legislative facts." In making

this argument, Plaintiffs properly recognize the difference between adjudicative facts, which "are simply the facts of the particular case" and legislative facts, "which are those which have relevance to legal reasoning and the lawmaking process, whether in the formulation of a legal principle or ruling by a judge or court or in the enactment of a legislative body." Opposition at 2 (*citing* Fed. R. Evid. 201, Note to Subdivision (a)) (internal quotations omitted). Hungary's request for judicial notice of the Nierenberg Complaint and Final Judgment has nothing to do with legal reasoning or the formulation of legal principles.[1] Hungary does not utilize these documents to argue the state of Hungarian law. Rather, Hungary utilizes them to establish the relief sought by Ms. Nierenberg and the fact that such requested relief resulted in a final judgment. Hungary seeks judicial notice of these documents to establish the particular facts of the previous litigation.

Plaintiffs also argue that it is an improper use of judicial notice to utilize the Nierenberg Complaint and Final Judgment to establish *res judicata*. Opposition at 4. It is entirely proper for the Court to notice court records for purposes of establishing *res judicata*. *See Hemphill v. Kimberly-Clark Corp.*, 530 F. Supp. 2d 108, 111 (D.D.C. 2008); 21B Wright & Graham, Federal Practice and Procedure: Evidence 2d § 5106.4 ("Courts can properly notice prior judicial acts for the purpose of acting upon them. The best-known example is the use of judicial records in ruling on a claim that the present case is barred or controlled by res judicata . . . .").

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[1] Similarly, Plaintiffs argue that the Court may not grant judicial notice regarding the Nierenberg Complaint and Final Judgment because they are "matters of foreign law" and thus subject to Federal Rule of Civil Procedure 44.1, not Federal Rule of Evidence 201. Opposition at 3. Rule 44.1, pursuant to its own text, applies when "[a] party intends to raise an issue about a foreign country's law". Here, Hungary is doing no such thing.

III. The Journal News Article

Hungary requested that the Court take judicial notice of the existence of an article published within The Journal News. As Plaintiffs concede, courts may take judicial notice of published articles for limited purposes. Opposition at 5. Plaintiffs do not appear to dispute that judicial notice of the article is appropriate, but rather take issue with the manner in which it is used in Hungary's Motion to Dismiss. Hungary's request should be granted as the Court may properly take judicial notice of the article as evidence of what was in the public domain at the time. The existence of the article establishes that information regarding Ms. Nierenberg's potential claims was readily available in the public domain. Further, because Ms. Nierenberg was purportedly quoted in the article, it makes it even more likely that the article was brought to her attention. In any event, the weight to be given to the article does not impact the fact that judicial notice of the article is proper.

Dated: June 15, 2011

Respectfully submitted,

/s/ D. Grayson Yeargin

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of June, 2011, I caused a true and correct copy of the foregoing Reply in Support of Defendants' Motion for Judicial Notice of Facts and Documents to be filed electronically with the United States District Court for the District of Columbia. I also certify that I caused the foregoing to be served via first-class mail, postage prepaid, upon the following:

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