

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA
CIRCUIT

**Process and Industrial Developments Limited v. Federal Republic of
Nigeria and Ministry of Petroleum Resources of the Federal Republic
of Nigeria**

No. 18-7154, United States Court of Appeals for the District of Columbia Circuit (June 19, 2020)

SUMMARY

The D.C. Circuit held that a district court order requiring a foreign sovereign to brief the merits of an arbitral award confirmation petition before resolving a colorable assertion of sovereign immunity is immediately appealable under the collateral-order doctrine. The court further held that the Foreign Sovereign Immunities Act requires threshold resolution of immunity before a sovereign may be compelled to defend on the merits, and the Federal Arbitration Act does not mandate simultaneous briefing of immunity and merits issues. The case involved Nigeria's challenge to a \$9 billion arbitral award, with the court finding Nigeria's immunity defense colorable under the arbitration and waiver exceptions.

CASE DETAILS

COURT	United States Court of Appeals for the District of Columbia Circuit
WRITING FOR THE COURT	Katsas; Pillard; Wilkins
JURISDICTION	Federal
DECIDED	June 19, 2020
DOCKET	18-7154
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from an order of the United States District Court for the District of Columbia requiring the foreign sovereign to brief the merits before resolving a colorable assertion of sovereign immunity.
STANDARD OF REVIEW	Not explicitly stated; the court reviewed the legal question of the district court's authority to require merits briefing before resolving immunity de novo.
PRECEDENTIAL VALUE	Published

PARTIES

Federal Republic of Nigeria and Ministry of Petroleum Resources of the Federal Republic of Nigeria v. Process and Industrial Developments Limited

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QUESTIONS PRESENTED

1. Whether the district court's order requiring the foreign sovereign to brief the merits before resolving its immunity assertion is immediately appealable under the collateral-order doctrine.
2. Whether the district court erred in requiring the foreign sovereign to present merits arguments before resolving its colorable assertion of sovereign immunity.

HOLDINGS

1. The order is immediately appealable under the collateral-order doctrine because it conclusively rejects the sovereign's assertion of immunity from having to defend the merits, resolves an important question separate from the merits, and is effectively unreviewable on appeal from final judgment.
2. The district court erred because the FSIA requires a threshold determination of immunity before a foreign sovereign can be compelled to defend the merits. The FAA does not require simultaneous briefing of immunity and merits issues.

KEY QUOTATIONS

"The 'basic objective' of foreign sovereign immunity is 'to free a foreign sovereign from suit.'" (11)

"We repeatedly have described the immunity as one 'from trial and the attendant burdens of litigation.'" (11)

"The district court's order thus abrogated the entirety of Nigeria's asserted immunity from having to defend this case." (14)

"Unless an immunity exception applies, the FSIA does not permit courts to contemplate how much merits litigation is too much. Instead, they must resolve colorable assertions of immunity before the foreign sovereign may be required to address the merits at all." (15)

FACTUAL BACKGROUND

In 2010, P&ID contracted with Nigeria to build and operate a natural gas processing facility. Nigeria agreed to supply gas and build infrastructure. The deal fell apart; P&ID never broke ground, and Nigeria never supplied gas. The contract provided for arbitration in London under Nigerian law. The arbitral panel found Nigeria liable

for breach and awarded \$6.597 billion plus interest, now about \$9 billion. Nigeria challenged the award in Nigerian courts, which set it aside. P&ID sought confirmation of the award in the United States.

PROCEDURAL HISTORY

P&ID filed a petition to confirm an arbitral award against Nigeria. Nigeria moved to dismiss for lack of subject-matter jurisdiction under the FSIA, arguing immunity. The district court ordered Nigeria to file a response containing both immunity and merits arguments. Nigeria appealed. P&ID moved to dismiss the appeal for lack of appellate jurisdiction. A motions panel referred the motion to the merits panel.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

For further proceedings consistent with the opinion, including that the district court must first resolve Nigeria's colorable assertion of sovereign immunity before requiring it to address the merits.

CASES CITED

- Kilburn v. Socialist People's Libyan Arab Jamahiriya, 376 F.3d 1123 (D.C. Cir. 2004)
- Price v. Socialist People's Libyan Arab Jamahiriya, 294 F.3d 82 (D.C. Cir. 2002)
- Foremost-McKesson, Inc. v. Islamic Republic of Iran, 905 F.2d 438 (D.C. Cir. 1990)
- Phoenix Consulting, Inc. v. Republic of Angola, 216 F.3d 36 (D.C. Cir. 2000)
- Steel Co. v. Citizens for a Better Env't, 523 U.S. 83 (1998)
- Mansfield, Coldwater & Lake Mich. Ry. v. Swan, 111 U.S. 379 (1884)
- Catlin v. United States, 324 U.S. 229 (1945)
- Mohawk Indus. Inc. v. Carpenter, 558 U.S. 100 (2009)
- Butler v. Sukhoi Co., 579 F.3d 1307 (11th Cir. 2009)
- United States v. Moats, 961 F.2d 1198 (5th Cir. 1992)
- Cheney v. U.S. Dist. Court, 542 U.S. 367 (2004)
- In re Stone, 940 F.3d 1332 (D.C. Cir. 2019)
- In re Papandreou, 139 F.3d 247 (D.C. Cir. 1998)
- Bell v. Hood, 327 U.S. 678 (1946)
- Creighton Ltd. v. Gov't of Qatar, 181 F.3d 118 (D.C. Cir. 1999)
- TermoRio S.A. E.S.P. v. Electranta S.P., 487 F.3d 928 (D.C. Cir. 2007)
- Tatneft v. Ukraine, 771 F. App'x 9 (D.C. Cir. 2019) (per curiam)
- In re Grant, 635 F.3d 1227 (D.C. Cir. 2011)
- Bolivarian Republic of Venezuela v. Helmerich & Payne Int'l Drilling Co., 137 S. Ct. 1312 (2017)
- Dole Food Co. v. Patrickson, 538 U.S. 468 (2003)

- *Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480 (1983)
- *Republic of Philippines v. Pimentel*, 553 U.S. 851 (2008)
- *Blue Ridge Invs., L.L.C. v. Republic of Argentina*, 735 F.3d 72 (2d Cir. 2013)
- *Zapata v. Melson*, 750 F.3d 481 (5th Cir. 2014)
- *Workman v. Jordan*, 958 F.2d 332 (10th Cir. 1992)
- *Liberty Prop. Trust v. Republic Props. Corp.*, 577 F.3d 335 (D.C. Cir. 2009)

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