

INTERNATIONAL LEGAL UPDATE

Clapper v. Amnesty International USA, 568 U.S. --- (2013). Attorneys and human rights, labor, legal, and media organizations brought action seeking a declaration that provision of Foreign Intelligence Surveillance Act (FISA) allowing surveillance of individuals who were not “United States persons” and were reasonably believed to be located outside the United States, was unconstitutional, as well as an injunction against surveillance authorized by the provision. The United States District Court for the Southern District of New York, Circuit Judge, reversed, Defendants petitioned for certiorari. The Supreme Court held that United States persons-- including attorneys and human rights, labor, legal, and media organizations--claiming to engage in sensitive international communications with individuals who they believe to be likely targets of surveillance under the FISA Amendments Act of 2008 lack standing to seek declaratory and injunctive relief against such surveillance.

Institution of Cetacean Research v. Sea Shepherd Conservation Society, ___ F.3d ___, 2013 WL 673712 (9th Cir. Feb. 25, 2013). Japanese researchers who held of a permit to hunt whales, pursuant to treaty brought action against defendant, a Washington-based conservation organization, which engaged in acts of violence and harassment at sea, including ramming plaintiff’s ships, hurling glass containers of acid, dragging metal-reinforced ropes in the water to damage propellers and rudders, launching smoke bombs and flares with hooks, and pointing high-powered lasers. The United States District Court for the Western District of Washington, denied plaintiff’s request for a preliminary injunction requiring organization’s ships and boats to stay at least 800 meters from their vessels, and prohibiting attacks on whaling crew members or its ships, and dismissed its piracy claims. Plaintiff appealed, and was granted injunction pending its appeal. The Court of Appeals reversed and remanded Plaintiff’s claims, and held that the district court: 1) erred in dismissing plaintiff’s piracy claims because the activities that plaintiff alleges defendant has engaged in are clear instances of violent acts for private ends, the very embodiment of piracy; 2) abused its discretion in denying the injunction because a) plaintiff is likely to succeed on the merits of its claim that organization violated the Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation, b) defendant’s dangerous acts if committed often enough, will inevitably lead to harm, which could easily be irreparable, c) the balance of equities favors preliminary injunction, and d) there is a strong public interest in the health of the marine ecosystem and the safety of international waterways; and 3) abused its discretion in denying the injunction based on unclean hands.

Chafin v. Chafin, 568 U.S. ____ (2013). A mother brought suit in the United States District Court for the District of Alabama to obtain order under the International Child Abduction Remedies Act (ICARA), directing her daughter’s return to Scotland as her purported country of habitual residence. The District Court entered judgment in favor of mother and required father to pay her costs and attorney fees, and father appealed. The United States Court of Appeals for the Eleventh Circuit dismissed appeal as moot following mother’s and child’s return to Scotland. Certiorari was granted. The Supreme Court held that the return of a child to his or her country of habitual residence pursuant to a return order under the Hague Convention on the Civil Aspects of International Child Abduction (ICARA) does not render an appeal of that order moot, and

therefore the courts below continue to have jurisdiction to adjudicate the merits of the parties' respective claims.

Rothstein v. UBS AG, ___ F.3d ___, 2013 WL 535770 (2d Cir. Feb. 14, 2013). Judgment dismissing claim against bank for facilitating terrorism by transferring U.S. currency to Iran is affirmed, where the plaintiffs who are Victims of violence perpetrated by terrorist organizations in the form of bombings in Israel, did have standing but failed to state a claim against the bank on which relief can be granted under the Anti-Terrorism Act. The international bank had no direct involvement in terrorist attacks, under the private right of action provision of the Antiterrorism Act. Plaintiffs did not allege that bank was a participant in the terrorist attacks that injured plaintiffs, that bank provided money to terrorist organizations, that U.S. currency bank transferred to Iran was given to terrorist organizations, or that, had bank not transferred U.S. currency to Iran, Iran would not have funded the attacks in which victims were injured

Linde v. Arab Bank, PLC, 706 F.3d 92 (2d Cir. 2013) In claims brought by victims and families of victims of terrorist attacks committed in Israel between 1995 and 2004 alleging defendant-Jordanian bank provided financial services and support to terrorists during this period, facilitating the attacks that caused them grave harm, defendant's writ of mandamus challenging district court's order imposing discovery sanctions on defendant is denied, and appeal is dismissed, where: 1) the sanctions order is not a reviewable collateral order and thus, there is no jurisdiction over the appeal; and 2) this is not an appropriate case for issuance of the extraordinary writ of mandamus because defendant has not established, among other factors, that it has a "clear and indisputable right" to such drastic relief or that review after final judgment will not provide adequate relief.

Konowaloff v. Metropolitan Museum of Art, 702 F. 3d 140 (2d Cir. 2012). Plaintiff Pierre Konowaloff appeals from a judgment of the United States District Court for the Southern District of New York, dismissing his action against defendant Metropolitan Museum of Art for its acquisition, possession, display, and retention of a painting that had been confiscated by the Russian Bolshevik regime from Konowaloff's great-grandfather in 1918. The district court granted the Museum's motion to dismiss plaintiff's Amended Complaint, ruling that the pleading reveals that his claims are barred by the act of state doctrine. On appeal, plaintiff contends principally that the district court erred in holding that the painting was taken pursuant to a valid act of state despite factual allegations in his Amended Complaint to the contrary. The United States Court of Appeals affirmed the judgment of dismissal, where plaintiff's claims are barred by the act of state doctrine.

Man Ferrostaal, Inc. v. M/V Akili, 704 F.3d 77 (2d Cir. 2012). In action for damage to cargo shipped aboard defendant-vessel, judgment holding defendant-vessel liable in rem is affirmed, where: 1) a vessel's in rem liability for damage to cargo exists under maritime common law for a violation of a carrier's contractual or statutory obligations; 2) the free-in-and-out provision does not prevent in rem liability of the vessel; 3) the Voyage Charter Party's Clause Paramount contractually incorporates the Hague-Visby rules prohibiting a carrier from contracting for a waiver of its obligations regarding damage to cargo; and 4) the district court did not err in holding there was no in personam liability for defendants ship owner and manager under bailment theory.

Lebel v. Mai, 210 Cal.App.4th 1154 (2012). In tenant's suit against her former landlord for constructive eviction and fraud, trial court's grant of defendant's motion to quash service of process is affirmed where: 1) tenant's own evidence and service declaration showed the Hague Convention applied, but was wholly disregarded; and 2) tenant failed to make a colorable showing that the service of documents on defendant's mother in California constituted proper service on defendant, a resident of England.