

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007 IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT’S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION “SUMMARY ORDER”). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

1 At a stated term of the United States Court of Appeals for the Second Circuit, held at
2 the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New
3 York, on the 10th day of April, two thousand thirteen.

4
5 PRESENT:

6 BARRINGTON D. PARKER,
7 RAYMOND J. LOHIER, JR.,
8 SUSAN L. CARNEY,
9 *Circuit Judges.*

10 _____
11
12 SKANGA ENERGY & MARINE LIMITED,
13 *Plaintiff-Appellee,*

14
15 v.

16
17 PETROLEOS DE VENEZUELA S.A.,
18 *Defendant-Appellant,*

12-2891-cv

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20
21 AREVENCA S.A., JAVIER GONZALEZ
22 ALVAREZ,
23 *Defendants.*
24
25 _____
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1 FOR APPELLANT:

LAWRENCE H. MARTIN (Ronald E. M. Goodman and Vivek H. Krishnamurthy, *on the brief*), Foley Hoag LLP, Washington D.C.; Marjorie Berman, Krantz & Berman LLP, New York, NY, *on the brief*.

8 FOR APPELLEE:

ANNETTE G. HASAPIDIS, Law Offices of Annette G. Hasapidis, South Salem, NY; Olufemi G. Salu, Salu & Salu Law Firm, PLLC, Southaven, MS, *on the brief*.

13 Appeal from a judgment of the United States District Court for the Southern District
14 of New York (Denise Cote, *Judge*).

15 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED,
16 AND DECREED that the judgment of the District Court is AFFIRMED.

17 Appellant Petróleos de Venezuela, S.A. (“PDVSA”), a corporation owned by the
18 Venezuelan government, appeals from the District Court’s judgment entered June 21,
19 2012. On appeal, PDVSA argues that the District Court erred in determining that it had
20 subject matter jurisdiction because the “commercial activities exception” to the Foreign
21 Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1605(a)(2), does not apply. We assume
22 the parties’ familiarity with the facts and record of the prior proceedings, to which we refer
23 only as necessary to explain our decision to affirm.

24 “The standard of review applicable to district court decisions regarding subject
25 matter jurisdiction under the FSIA is clear error for factual findings and *de novo* for legal
26 conclusions.” Robinson v. Gov’t of Malaysia, 269 F.3d 133, 138 (2d Cir. 2001)

1 (quotation marks omitted); see USAA Cas. Ins. Co. v. Permanent Mission of the Republic
2 of Namibia, 681 F.3d 103, 107 (2d Cir. 2012).

3 Where a plaintiff seeks to sue a foreign sovereign in the United States under the
4 FSIA, “the plaintiff has the burden of going forward with evidence showing that, under
5 exceptions to the FSIA, immunity should not be granted.” Rogers v. Petroleo Brasileiro,
6 S.A., 673 F.3d 131, 136 (2d Cir. 2012) (quotation marks omitted).

7 [I]n assessing whether a plaintiff has sufficiently alleged or proffered
8 evidence to support jurisdiction under the FSIA, a district court must review
9 the allegations in the complaint, the undisputed facts, if any, placed before it
10 by the parties, and – if the plaintiff comes forward with sufficient evidence to
11 carry its burden of production on this issue – resolve disputed issues of fact,
12 with the defendant foreign sovereign shouldering the burden of persuasion.

13
14 Robinson, 269 F.3d at 141.

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16 The parties primarily dispute (1) whether an actual authority agency relationship
17 existed between Arevenca S.A. and PDVSA, and (2) whether PDVSA’s alleged
18 commercial activities can be said to have caused a direct effect in the United States to
19 satisfy 28 U.S.C. § 1605(a)(2).

20 With respect to agency the District Court concluded that the plaintiff-appellee,
21 Skanga Energy & Marine Limited (“Skanga”), “carried its burden of pleading that an
22 agency relationship existed” by providing “circumstantial evidence at the pleading stage to
23 establish a reasonable inference of a PDVSA agency relationship with Arevenca.” We
24 agree that Skanga carried its burden of establishing an agency relationship through its
25 allegations about Enrique Arrundell’s statements and activities and the transaction

1 documents – including a bill of lading for the purported diesel shipment – bearing
2 PDVSA’s logo. PDVSA, on the other hand, failed to submit any evidence indicating that
3 Arevenca lacked authority to act on PDVSA’s behalf. As a result, there was no “factual
4 dispute,” Robinson, 269 F.3d at 141, for the District Court to resolve as to whether an
5 agency relationship existed, see Virtual Countries, Inc. v. Republic of South Africa, 300
6 F.3d 230, 241 (2d Cir. 2002). Accordingly, the District Court properly concluded that
7 PDVSA failed to meet its burden of demonstrating that the commercial activities exception
8 does not apply.

9 For substantially the reasons stated by the District Court in its opinion and order
10 entered June 21, 2012, we also agree that, based on the undisputed allegations in Skanga’s
11 complaint, “PDVSA’s activities caused a direct effect in the United States.”

12 We have considered PDVSA’s remaining arguments and conclude that they are
13 without merit. For the foregoing reasons, the judgment of the District Court is
14 **AFFIRMED.**

15 FOR THE COURT:
16 Catherine O’Hagan Wolfe, Clerk
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