



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SISTEM MÜHENDISLIK INSAAT SANAYI
VE TICARET, A.Ş.,

Plaintiff,

- against -

THE KYRGYZ REPUBLIC,

Defendant.
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12-CV-4502 (ALC) (RWL)

**REPORT & RECOMMENDATION
TO HON. ANDREW L. CARTER:
INTERIM JUDGMENT**

ROBERT W. LEHRBURGER, United States Magistrate Judge.

Defendant the Kyrgyz Republic continues its long-standing defiance of court orders and its obligations to pay the more than eleven-million-dollar judgment (with interest) on which this action is based. The Republic also still has not paid the additional interim judgment for over two million dollars in sanctions imposed for its ongoing noncompliance with post-judgment discovery. With the previous interim judgment having been entered in May 2020, Plaintiff Sistem Mühendislik Insaat Sanayi Ve Ticaret, A.Ş. (“Sistem”) now moves for entry of another interim judgment for \$8,560,000 in sanctions accumulated since then. Sistem’s motion should be granted.

FACTUAL AND PROCEDURAL BACKGROUND

The facts underlying the judgment confirming the arbitration award against the Republic in this case, the Republic’s refusal to pay that judgment, its filing of meritless motions, its failure to comply with post-judgment discovery, the resulting imposition of sanctions, the increase in the daily amount of those sanctions, and the Court’s entry over two years ago of an interim judgment for accumulated sanctions have been set forth in previous orders and opinions of this Court. The

Court reviews in brief only the background most relevant to the instant motion.

On September 9, 2009, Sistem obtained an international arbitration award against the Republic in the amount of \$8.5 million plus costs and interest. The Republic did not pay the award. Accordingly, on June 8, 2012, Sistem filed an action in this District to recognize and enforce the award. (Dkt. 1.) On November 14, 2016, the Court entered a judgment confirming the award in the amount of \$11,603,319. (Dkt. 131.) The Second Circuit affirmed. (Dkt. 184.)

The Republic failed to pay the judgment. Sistem therefore pursued asset discovery. The Republic did not cooperate. On March 30, 2018, this Court issued a certification of facts recommending that the Republic be held in civil contempt. *Sistem Mühendislik Insaat Sanayi Ve Ticaret, A. Ş. v. Kyrgyz Republic*, No. 12-CV-4502, 2018 WL 6251982 (S.D.N.Y. March 30, 2018). The certification explained that the Republic had violated at least five court orders that were clear and unambiguous, and concluded that “civil contempt sanctions of \$5,000 per day of noncompliance are necessary to offset th[e] wrongful benefit to the Republic, to compensate Sistem for the Republic’s ongoing contumacy, and to provide the necessary incentive for the Republic to comply.” *Id.* at *3-4.

On October 31, 2018, the Honorable Andrew L. Carter, United States District Judge, adopted the certification and recommendation in its entirety. *Sistem Mühendislik Insaat Sanayi Ve Ticaret, A. Ş. v. Kyrgyz Republic*, No. 12-CV-4502, 2018 WL 5629900 (S.D.N.Y. Oct. 31, 2018). The contempt sanctions started accruing thirty days later. *Id.* at *3. The Republic still did nothing to comply and instead moved to vacate the Court’s sanctions award. (See Dkt. 186.) On August 8, 2019, Sistem filed

a cross-motion for entry of judgment on sanctions accumulated to date. (See Dkts. 191-94.) On October 1, 2019, this Court issued a Report and Recommendation to deny the Republic's motion to vacate and grant Sistem's motion for entry of interim judgment on sanctions accumulated to date. *Sistem Mühendislik Insaat Sanayi Ve Ticaret, A. Ş. v. Kyrgyz Republic*, No. 12-CV-4502, 2019 WL 8437454 (S.D.N.Y. Oct. 1, 2019). Judge Carter adopted the Report and Recommendation in full on February 25, 2020. *Sistem Mühendislik Insaat Sanayi Ve Ticaret, A. Ş. v. Kyrgyz Republic*, No. 12-CV-4502, 2020 WL 898215 (S.D.N.Y. Feb. 25, 2020.) The Court then entered an interim judgment on May 7, 2020 for accumulated contempt sanctions, which by then amounted to \$2,265,000.¹ (Dkt. 218.) The Republic still did not comply.

Because of the Republic's continued recalcitrance, Sistem moved to increase the amount of daily sanctions. On November 5, 2020, this Court issued a Report and Recommendation that sanctions be increased from \$5,000 per day to \$15,000 per day. *Sistem Mühendislik Insaat Sanayi Ve Ticaret, A. Ş. v. Kyrgyz Republic*, No. 12-CV-4502, 2020 WL 7890222 (S.D.N.Y. Nov. 5, 2020). Judge Carter adopted the Report and Recommendation in full on January 5, 2021. *Sistem Mühendislik Insaat Sanayi Ve Ticaret, A. Ş. v. Kyrgyz Republic*, No. 12-CV-4502, 2021 WL 39582 (S.D.N.Y. Jan. 5, 2021).

The Republic nevertheless continues its defiance. It still has not complied with discovery. It still has not paid the original judgment confirming the arbitration award against it.² It still has not paid the interim judgment on sanctions. (Kry Decl. ¶ 6.) As

¹ The May 7, 2020 judgment additionally included \$16,371.82 in awards for unpaid attorney's fees. (Dkt. 218.)

² In October 2019, Sistem obtained recovery of a modest \$350,000 by executing on the

a result, sanctions have continued to accumulate, amounting to \$8,560,000 as of May 6, 2022 (the date Sistem filed the instant motion).³

The Republic has never indicated that it could not pay the judgments against it. The Republic even recently has added to its coffers. On April 4, 2022, the Republic announced the settlement of an international dispute as a result of which the Republic recovered full ownership of a valuable gold mine and over \$400 million in profits, dividends, and cash. (Kry Decl. ¶¶ 8-10 and Exs. A, B.) An interim judgment of accumulated sanctions at this time in this case seems particularly fitting.

A SECOND INTERIM SANCTIONS JUDGMENT IS WARRANTED

This Court previously has found it appropriate to enter an interim judgment of accumulated sanctions against the Republic. That was over two years ago, and since then the Republic has done nothing to purge its contempt or pay any of the judgments issued in Sistem's favor.

As this Court previously found, “[e]ntering periodic judgments based on accumulated sanctions or fines is appropriate where a contemnor, like the Republic, refuses to comply.” 2019 WL 8437454, at *8 (citing *CE International Resources Holdings LLC v. S.A. Minerals Ltd. Partnership*, No. 12-CV-8087, 2013 WL 324061, at *3 (S.D.N.Y. Jan. 24, 2013) (noting power to “enter judgment ... from time to time for the accrued amounts of [the] fines”)); *Paramedics Electromedicina Comercial Ltda. v.*

judgment against a third-party custodian in Canada, which was applied against principal and interest on the confirmed arbitration award. Declaration of Robert K. Kry, Sistem's counsel, dated May 6, 2022 (Dkt. 256) (“Kry Decl.”).

³ The amount of sanctions incurred since the previous interim judgment issued on February 26, 2020 is calculated as follows: \$5,000 per day from February 26, 2020 through February 4, 2021, plus \$15,000 per day from February 4, 2021 (being 30 days after entry of the order increasing sanctions) to May 6, 2022.

GE Medical Systems Information Technologies, Inc., No. 02-CV-9369, 2004 WL 1810597, at *5 (S.D.N.Y. Aug. 12, 2004) (entering judgment and permitting defendant “every three months ... [to] serve and file a letter requesting an interim judgment confirming ... a specific dollar amount”); *Agudas Chasidei Chabad of U.S. v. Russian Federation*, 128 F. Supp.3d 242, 249 (D.D.C. 2015) (entering judgment and permitting plaintiff to “petition the clerk for [an] additional judgment every 90 days until defendants comply”); see also *Burgie v. Euro Brokers, Inc.*, No. 05 CV 968, 2008 WL 4185701, at *7-8 (E.D.N.Y. Sept. 8, 2008) (entering judgment on unpaid fee award).

Given the Republic’s repeated and continuing failure to comply, a second interim judgment in Sistem’s favor for sanctions currently accumulated against the Republic is warranted.

CONCLUSION

For the foregoing reasons, a second interim judgment should be entered against Defendant in the amount of \$8,560,000.

RIGHT TO OBJECT AND PRESERVE APPELLATE REVIEW

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b), the parties shall have fourteen (14) days to file written objections to this recommendation. Such objections shall be filed with the Clerk of the Court, with extra copies delivered to the Chambers of the Honorable Andrew L. Carter, Jr., 40 Foley Square, New York, New York 10007, and to the Chambers of the undersigned, 500 Pearl Street, New York, New York 10007. Failure to file timely objections will preclude appellate review.

Respectfully submitted,



ROBERT W. LEHRBURGER
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York,
August 31, 2022

Copies transmitted to all counsel of record.