

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ROSALIE SIMON, et al.,

Plaintiffs,

v.

REPUBLIC OF HUNGARY, et al.,

Defendants.

Civil Action No. 10-01770 (BAH)

Judge Beryl A. Howell

**DECLARATION OF ATTILA CZÖNDÖR  
IN SUPPORT OF THE MOTION OF  
DEFENDANT RAIL CARGO HUNGARIA TO  
SET ASIDE THE ENTRY OF DEFAULT AND DISMISS THE COMPLAINT**

Attila Czöndör hereby declares, pursuant to 28 U.S.C. § 1746:

1. I am currently a project manager of defendant Rail Cargo Hungaria Zrt. ("RCH"), a corporation incorporated in Hungary in 2005, with its principal place of business in Budapest, Hungary. I have been employed by RCH since 2007, initially as its head of investor relations, and later as head of portfolio management.

2. I submit this declaration in support of RCH's motion to vacate the entry of default and dismiss the complaint against RCH in this action. I make this Declaration based upon my personal knowledge and my familiarity with the business activities of RCH. I am fluent in Hungarian (my native language) and proficient in English.

**RCH's lack of jurisdictional contacts with the United States**

3. RCH is in the business of providing freight transport in Hungary and related services throughout Europe. At no time since its incorporation in 2005 has RCH

engaged in any continuous or systematic business in the District of Columbia or anywhere else in the United States. Specifically, at no time has RCH:

- (a) been licensed to do business anywhere in the United States;
- (b) conducted or transacted business anywhere in the United States;
- (c) had a registered agent for service of process in the District of Columbia or anywhere else in the United States;
- (d) owned or leased any office space or other facility of any kind anywhere in the United States;
- (e) maintained a telephone, telex or telefax number anywhere in the United States;
- (f) owned any real property or tangible personal property anywhere in the United States;
- (g) had any directors, officers, employees or agents anywhere in the United States;
- (h) had a bank or brokerage account anywhere in the United States;
- (i) shipped freight to any customer located anywhere in the United States;
- (j) committed any tortious act anywhere in the United States;
- (k) caused any injury anywhere in the United States;
- (l) availed itself of the courts or other government agencies or services anywhere in the United States; or
- (m) engaged in any other continuous and systematic activity of any kind anywhere in the United States.

4. I have read paragraph 86 of the first amended complaint in this action, in which plaintiffs set forth the “contacts” on which they base their claim that RCH is subject to personal jurisdiction in the United States. As an examination of that paragraph readily shows, the only “contact” alleged is that RCH has an English-language website that is accessible in the United States. What plaintiffs omit to mention is that the website is “passive”, rather than “interactive”; it merely provides information concerning the services that RCH provides and allows access to various shipping forms as a convenience to current customers who log into the site.

**RCH is a newly created company**

5. RCH was incorporated in 2005 by co-defendant Magyar Allamvasutak Zrt (“MÁV”). Subsequently, RCH acquired certain assets of MÁV. In 2008 Rail Cargo Austria (“RCA”) acquired 95% of RCH’s shares, and RCA has since increased its holding in RCH to more than 99.9%.

6. RCH did not assume any Holocaust or World War II liabilities as part of these transactions.

**The default resulted from erroneous advice of Austrian Counsel**

7. When RCH was formally served in Hungary on December 31, 2010, it forwarded the complaint to its parent company RCA for review. RCA’s general counsel informed us that, based on RCH’s lack of jurisdictional contacts with the United States and RCH’s lack of liability for the Hungarian Holocaust, an American court lacked jurisdiction to adjudicate the plaintiffs’ claims against RCH and that any judgment that an American court might render in these circumstances would not be recognized in Hungary or Austria.

8. RCH relied in good faith on this advice from its parent company's general counsel because it knew him to be experienced and knowledgeable.

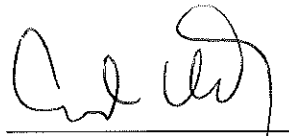
9. As soon as RCH learned that although these factors may be a basis for moving to dismiss or otherwise defending the action, they would not relieve RCH of the obligation to respond to the complaint, RCH retained U.S. counsel to respond to the complaint.

**RCH has been materially prejudiced by plaintiffs' delay in bringing suit**

10. Plaintiffs' 65-year delay in bringing suit has materially decreased the likelihood of finding witnesses with knowledge of the subject matter of the action, as any person who could have been an adult during the time at issue in the complaint would be at least 85 years old now. In addition, under normal document retention policies in place in Hungary, documents that are 65 or more years old are unlikely to have been retained in the normal course of business.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on June 22, 2011

  
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Attila Czöndör