

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

GAIL I. AUSTER, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Civil Action No. 02-733 (EGS)
v.)	
)	
GHANA AIRWAYS Ltd., <i>et al.</i> ,)	
)	
Defendants.)	
)	

MEMORANDUM OPINION AND ORDER

Upon consideration of plaintiffs' appeal in this case, the D.C. Circuit Court of Appeals remanded the record to this Court for: "(1) a finding as to whether defendant the Republic of Ghana was served with process in this case, and a conclusion as to whether the district court has personal jurisdiction over the Republic of Ghana; and (2) clarification as to whether the court intended to dispose of [Plaintiffs'] claims against Ghana in its order of dismissal." Order, U.S. Ct. of Appeals for the D.C. Circuit, Jan. 13, 2006 (per curiam). Pursuant to directions of this Court, the parties have filed supplemental memoranda concerning the issues raised in this order. Based on these memoranda, the applicable law, and the entire record, the Court hereby makes the following findings with regard to the D.C. Circuit's order:

1. Because defendants have conceded that plaintiffs' revised service was proper, Defs.' Supp. Mem., Nov. 3., 2006, at 2, the Court concludes that defendant Ghana was properly served under 28 U.S.C. § 1608(a)(3). Regarding personal jurisdiction, plaintiffs have conceded that the only basis for a waiver of sovereign immunity is if Ghana falls under the provisions of the Warsaw Convention. See 28 U.S.C. §§ 1604, 1605(a)(1); Pls.' Supp. Mem., Nov. 3, 2006, at 3. As this Court has previously found that the air travel at issue does not qualify as "international transportation" under the Warsaw Convention, Mem. Op., Sept. 21, 2005, at 12, the Court concludes that Ghana is not covered by the Warsaw Convention in this case. Therefore, the Court lacks personal jurisdiction over defendant Ghana. See 28 U.S.C. § 1330.¹

2. The Court intended to dispose of plaintiffs' claims against defendant Ghana in its order of dismissal because Ghana is not covered by the Warsaw Convention in this case.

¹ Plaintiffs have repeatedly argued that defendant Ghana has waived the defense of lack of personal jurisdiction under Federal Rule of Civil Procedure 12. Even if waiver is relevant to these proceedings on remand, the Court finds that Ghana has not waived the defense because Ghana did not file a Rule 12 motion after the Court granted defendants' initial motion to dismiss and Ghana asserted the defense in its amended answer filed in response to plaintiffs' proper service of Ghana. See Fed. R. Civ. P. 12(h)(1).

CONCLUSION

It is by the Court hereby **ORDERED** that the Clerk shall notify the D.C. Circuit Court of Appeals that this Court has concluded its proceedings pursuant to the D.C. Circuit's January 13, 2006 order in this case.

Signed: Emmet G. Sullivan
United States District Judge
April 4, 2007