

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-7155**September Term, 2015****1:12-cv-00731-RBW****Filed On:** May 4, 2016

Freedom Watch, Inc.,

Appellant

v.

Organization of Petroleum Exporting
Countries (OPEC),

Appellee

BEFORE: Tatel, Brown, and Pillard, Circuit Judges

ORDER

Upon consideration of the motion to dismiss for lack of prosecution, or alternatively for summary affirmance, the opposition thereto, and the reply; and the motion to extend time to file documents nunc pro tunc, and the opposition thereto, it is

ORDERED that the motion to dismiss for lack of prosecution be denied. Freedom Watch's failings were not sufficiently serious to warrant dismissal. Barber v. American Sec. Bank, 841 F.2d 1159, 1162 (D.C. Cir. 1988) (per curiam). It is

FURTHER ORDERED that the motion to extend time be granted. It is

FURTHER ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). Contrary to Freedom Watch's contentions, this court did not order previously that the district court was required to allow Freedom Watch to effectuate service through the Organization of the Petroleum Exporting States' ("OPEC") United States-based legal counsel. See Freedom Watch v. OPEC, 766 F.3d 74, 84 (D.C. Cir. 2014) (remanding to enable district court to exercise its discretion under Fed. R. Civ. P. 4(f)(3)). Additionally, in the current appeal, Freedom Watch does not argue that the district court abused its discretion in treating as conceded OPEC's position that service under Federal Rule of Civil Procedure 4(f)(3) is not permissible because the OPEC Headquarters Agreement

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between OPEC and the Republic of Austria is an international agreement under Rule 4(f)(3), and the Headquarters Agreement's terms prohibit service without the consent of OPEC's Secretary General. Freedom Watch has therefore forfeited any argument that the district court abused its discretion in treating OPEC's position as conceded. Texas v. U.S., 798 F.3d 1108, 1115-16 (D.C. Cir. 2015); Wannall v. Honeywell, Inc., 775 F.3d 425, 428 (D.C. Cir. 2014). Freedom Watch's other arguments are either irrelevant to the Headquarters Agreement issue, lack support, Terry v. Reno, 101 F.3d 1412, 1415 (D.C. Cir. 1996), or were not preserved, Salazar ex rel. Salazar v. District of Columbia, 602 F.3d 431, 437 (D.C. Cir. 2010).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam