No. 20A160

IN THE SUPREME COURT OF THE UNITED STATES

ROLLS-ROYCE PLC, APPLICANT

v.

SERVOTRONICS, INC.

REPLY IN SUPPORT OF APPLICATION FOR A STAY OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA'S ORDER PURSUANT TO 28 U.S.C. § 1782 TO TAKE DISCOVERY FOR USE IN A FOREIGN PROCEEDING, AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

LARRY KAPLAN
KMA ZUCKERT LLC
200 West Madison Street
16th Floor
Chicago, IL 60606
(312) 345-3000
lkaplan@kmazuckert.com

LISA S. BLATT
Counsel of Record
SARAH M. HARRIS
CHARLES L. MCCLOUD
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
lblatt@wc.com

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This Court should enter a stay. At Servotronics' request, the Court granted certiorari to decide whether Servotronics can use section 1782(a) to obtain discovery for its private, overseas commercial arbitration with Rolls-Royce. Now, Servotronics wants lower courts to rush to judgment, issue orders that presuppose that Servotronics will prevail before this Court, and compel the gathering of evidence in the United States for Servotronics' use in the private, overseas arbitration. Servotronics does not dispute that the subject of the stay request -- the District of South Carolina's April 16 order -- is inextricably linked to the Seventh Circuit's judgment that this Court is reviewing. This Court should follow its ordinary course and preserve the status quo while this Court considers the pending case and Rolls-Royce's substantial arguments for affirmance of the Seventh Circuit.

All the stay factors favor Rolls-Royce, which is at least as likely to prevail on the merits as Servotronics. Rolls-Royce faces quintessential irreparable harm. Rolls-Royce bargained for the right to have a private arbitration proceeding outside the United States that would not involve discovery within the U.S. court system. That right cannot be restored if the depositions the district court compelled go forward. Servotronics has no response.

Finally, Servotronics does not dispute that the equities favor Rolls-Royce. The arbitral panel concluded, and Servotronics previously conceded, that Servotronics does not need the requested

discovery to receive a fair hearing. See Resp. App. 3ra, 7ra. The arbitral panel reiterated on April 21, 2021, that all the evidence Servotronics seeks is marginal. See Resp. App. 4ra-8ra. The arbitral panel thus concluded that Servotronics will suffer "no, or no real, prejudice" if it cannot obtain the section 1782 discovery it seeks before the May 10 arbitration. Resp. App. 3ra.

ARGUMENT

I. A STAY IS PROCEDURALLY PROPER

Servotronics (at 8-11) wrongly objects that Rolls-Royce's stay application is procedurally improper.

1. This Court's authority is not limited to staying enforcement of the Seventh Circuit's judgment (i.e., the judgment this Court granted certiorari to review on March 22). This Court clearly has authority to stay the District of South Carolina's order in an inextricably related case. Rule 23(1) authorizes the Court to grant a stay "as permitted by law." And the All Writs Act empowers the Court to "issue all writs necessary or appropriate in aid of [its] jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. § 1651.

These broad grants of authority include the power to stay lower-court orders that would interfere with this Court's ultimate ruling on the merits in an inextricably related case. The Court has previously granted stays of similar orders when this Court has granted review of a judgment in related proceedings. See, e.g.,

Heckler v. Blankenship, 465 U.S. 1301, 1303 (1984) (O'Connor, J., in chambers) (granting stay of district court order requiring promulgation of regulations pending disposition of petition in separate case involving same regulations); Pasadena City Bd. of Educ. v. Spangler, 423 U.S. 1335, 1336 (1975) (Rehnquist, J., in chambers) (granting stay of district court order pending disposition by the Supreme Court of a separate case that could pose "serious doubt as to the correctness of the order of the District Court which applicants now seek to stay").

Here, the South Carolina district court's order authorizing subpoenas to aid Servotronics in the May 10 London arbitration is inextricably linked to this Court's consideration of a pending case (No. 20-794). This Court granted review of the Seventh Circuit's decision holding that section 1782(a) does not authorize U.S. district courts to order the production of testimony or documents for use in foreign private arbitral proceedings. This Court is specifically reviewing that question in the context of Servotronics' efforts to obtain documents in Illinois for use in the May 10 London arbitration with Rolls-Royce.

Servotronics' efforts to obtain similar and related testimony in the Fourth Circuit for use in the exact same arbitration self-evidently bears upon this Court's review of the Seventh Circuit's decision. As the District of South Carolina and the District of

Minnesota observed when staying further consideration of Servotronics' pending ex parte section 1782 applications in those jurisdictions, "The matter before the Supreme Court is this case, albeit involving a different subpoena. The matter before the Supreme Court involves the same parties, seeking resolution of the same issue and for the same reasons." App. 30a (D.S.C. stay order, quoting D. Minn. stay order). The Fourth Circuit then ordered the District of South Carolina to lift its stay, yet agreed that this Court "granted certiorari to review a decision from the Seventh Circuit . . . that arose from the same incident and that addressed the same issue that underlies the [mandamus] petition here." App. 22a. In short, the district court's order implementing the Fourth Circuit's mandate -- the decision that Rolls-Royce asks this Court to stay -- is plainly bound up with the case presently before this Court.

Servotronics (at 1) mischaracterizes Rolls-Royce's position. Rolls-Royce has never claimed that all of these proceedings involve "the same discovery." The Seventh Circuit denied Servotronics' request for documents, while the Fourth Circuit and District of Minnesota proceedings involve Servotronics' requests for witness testimony. Our point is that both these proceedings involve Servotronics' efforts to wield section 1782(a) to obtain discovery for use in the exact same foreign private arbitral proceeding with Rolls-Royce, regarding the same underlying incident, to address

the same underlying question of which party bears responsibility for a 2016 aircraft engine fire during a ground test. Not only that, the arbitral panel has considered all of this evidence together in (repeatedly) determining that the evidence is unnecessary to ensure a fair arbitral proceeding -- especially given Servotronics' concession that this evidence "was not necessary for the final hearing of th[e] arbitration." Resp. App. 7ra.

Further, Servotronics does not contest that allowing the subpoenas to proceed would undermine this Court's disposition of a pending case. Both district courts concluded that if they jumped the gun and issued subpoenas, their decisions might "very well be contrary to a subsequent decision from the Supreme Court." App. 30a (D.S.C. stay order); see App. 37a (D. Minn. stay order). Indeed, lower courts ordinarily stay their hands when this Court grants review of a related case -- let alone review involving literally the same parties and same nucleus of operative facts -- in order to respect this Court's authority as the ultimate arbiter of the question presented. This Court should not allow an errant mandamus order (or the district court order implementing it) to interfere with this Court's authority.

Finally, it is irrelevant whether the Court considers the stay application to be a request for an order in aid of its existing jurisdiction in a closely related case, or a request for review of a separate judgment. If the Court so chooses, it can construe

this stay application as a petition for a writ of certiorari and stay the district court's subpoena orders under 28 U.S.C. § 2101(f) pending disposition of the petition. See Nken v. Mukasey, 555 U.S. 1042 (2008) (treating stay application as petition for a writ of certiorari and granting petition); Purcell v. Gonzalez, 549 U.S. 1, 2 (2006) (per curiam) (same). The Court could then hold the petition pending the resolution of the already granted petition in No. 20-794, or grant the petition and consolidate it with No. 20-794. The bottom line is the same.

2. Servotronics is incorrect (at 9-11) that Rolls-Royce waived its right to relief from the District of South Carolina's April 16 order authorizing subpoenas by not seeking this Court's review of the Fourth Circuit's March 2020 ruling on the scope of section 1782(a). Rolls-Royce is not seeking review (much less belated review) of the Fourth Circuit's March 2020 ruling interpreting section 1782(a). Rather, the present application seeks a stay of an order the district court in South Carolina issued just days ago, which implemented the Fourth Circuit's command that the court authorize deposition subpoenas.

Rolls-Royce obviously could not have sought to stay the effect of the subpoenas sooner. As Servotronics acknowledges (at 5), the Fourth Circuit's March 2020 decision did not require the district court to authorize the subpoenas, but instead remanded for the district court to determine whether authorizing the subpoenas

would be a proper exercise of discretion under section 1782(a). App. 2a-3a, 22a. Without an order compelling the challenged testimony, the Fourth Circuit's holding that section 1782(a) allowed these subpoenas in theory did not inflict any harm on Rolls-Royce in practice. Now, however, Rolls-Royce faces imminent harm, and "prudence dictates that implementation of the District Court's order await [the Court's] decision" in the granted 20-794 case. Heckler, 465 U.S. at 1303.

Further, this Court often exercises its authority to "consider questions determined in earlier stages of the litigation" by granting review of "the most recent of the judgments of the Court of Appeals." Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 508 n.1 (2001) (per curiam); Mercer v. Theriot, 377 U.S. 152, 153 (1964) (per curiam). That rule applies even if a prior appeal conclusively settled the question presented and the parties did not litigate it further on remand. See Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916).

3. Servotronics (at 11) is similarly mistaken that Rolls-Royce violated Rule 23(3) in not seeking rehearing en banc of the Fourth Circuit's March 30, 2020 order. As noted, Rolls-Royce does not seek relief from that order (which remanded the case to the district court to decide whether to grant Servotronics' section 1782 application as a discretionary matter). In any event, seeking rehearing en banc is not a prerequisite to exhaustion.

Rolls-Royce exhausted all feasible avenues to obtain a stay of the district court's April 16 order authorizing the subpoenas, i.e., the actual relief Rolls-Royce seeks. On April 14, the district court granted a stay of further proceedings on Servotronics' section 1782 application, reasoning that "it would be imprudent to resolve an issue while that exact same issue, in the exact same case, is pending before the United States Supreme Court." App. 28a. On April 15, the Fourth Circuit vacated that stay by issuing a writ of mandamus compelling the district court to grant Servotronics' section 1782 application and authorize the subpoenas "without delay." App. 22a-23a. On April 16, the district court implemented that command and authorized the subpoenas. App. 1a. Servotronics does not dispute the only point relevant under Rule 23(3): it would have been futile for Rolls-Royce to turn around and ask the Fourth Circuit to stay that district court order.

II. A STAY IS MANIFESTLY WARRANTED

A. Rolls-Royce Is Likely To Prevail in the Pending Case

Rolls-Royce is likely to succeed in defending the merits of the Seventh Circuit's decision that section 1782(a) does not extend to private arbitrations in foreign jurisdictions. Servotronics (at 12-15) notes that the Fourth and Sixth Circuits adopted a contrary reading. But the existence of a circuit split is a reason for this Court's review, not proof of a likely outcome on the

merits. If a tally of appellate decisions is relevant, the majority view supports Rolls-Royce. Pet. for Cert. 11 (citing Second, Fifth, and Seventh Circuits going Rolls-Royce's way).

Servotronics (at 12-13) relies heavily on out-of-context quotes using the word "tribunal" to refer to arbitrators. But "tribunal," standing alone, is not the statutory phrase in question, and none of Servotronics' cited authorities involve section 1782(a). Section 1782(a) permits district courts to authorize discovery for use in a "foreign or international tribunal." 28 U.S.C. § 1782(a) (emphasis added). That full phrase most naturally refers to entities that exercise authority conferred by a foreign government. Appl. 12-13. Servotronics' claim (at 14) that the Seventh Circuit imposed atextual limitations ignores that context, as well as related statutory provisions that confirm Rolls-Royce's interpretation. Appl. 13-14.

At best, Servotronics' quotes show that courts sometimes use the word "tribunal" loosely. But there is no indication that Congress intended to adopt that colloquial usage when Congress adopted the current version of section 1782(a) in 1964. Quite the contrary, it is implausible for Congress to have adopted Servotronics' preferred interpretation of a "tribunal" when doing so would create inconsistencies with the Federal Arbitration Act. Appl. 14-16. Servotronics offers no response to that point.

Servotronics' vague invocation (at 15) of "international comity" is misplaced. "International comity reflects deference to foreign states . . . ." Restatement (Fourth) of The Foreign Relations Law of the United States § 401 cmt. a (2018). The arbitral panel is not a foreign state; it is a group of private individuals whom private parties agreed to appoint to conduct a commercial arbitration.

In any event, the arbitral panel has determined repeatedly that the discovery Servotronics seeks is inessential, App. 43a, Resp. App. 3ra; that the events at issue are already "well-documented" in the arbitration record, Resp. App. 6ra; that the inability to depose the South Carolina witnesses "should not . . . cause [Servotronics] any prejudice," Resp. App. 6ra; and that the requested discovery "is not a compelling reason for an adjournment" of the May 10 arbitral hearing, App. 45a. The arbitral panel has "done nothing" to stop Servotronics from "seek[ing] further evidence in the United States," but held that allowing Servotronics to delay the arbitration on this basis would pervert "the interests of justice and fairness in this arbitration." Resp. App. 8ra.

B. Absent a Stay, Rolls-Royce Will Suffer Irreparable Harm

The depositions the district court ordered are scheduled to start on May 3. If those depositions proceed, Rolls-Royce will be irreparably harmed. Denial of a stay means that Rolls-Royce will lose the ability to have its dispute with Servotronics decided

without the use, and burdens, of United States discovery. It is irrelevant that Rolls-Royce could object to the introduction of deposition testimony during the arbitration. Cf. Resp. 11-12. By agreeing to private arbitration in London, Rolls-Royce bargained for the right to be free of such discovery in the first place.

Servotronics (at 11 n.5) belittles the injury to Rolls-Royce by reciting far-afield examples of cases where stays were granted in death-penalty and deportation cases. But Rule 23 is not a competition to show more injury than anyone else. What matters is that, on the facts of this case, Rolls-Royce faces a harm that is irreparable absent a stay. And the Court has previously granted relief where, as here, the threatened harm was the loss of a contractual right to be free from litigation. E.g., Henry Schein Inc. v. Archer and White Sales, Inc., No. 17A859 (Mar. 2, 2018) (granting stay where asserted harm was loss of contractual right to arbitration).[1]

Contrary to Servotronics' insinuations (at 6-8), Rolls-Royce is not arguing for a blanket entitlement to stop Servotronics from

[1] Chief Justice Rehnquist's in-chambers opinion in Rubin v. United States, 524 U.S. 1301 (1998), does not refute the irreparable harm here. In Rubin, even were the challenged subpoenas enforced, disclosure of past information "w[ould] not affect the President's relationship" with his subordinates going forward. Here, there is no ongoing relationship to protect; the harm flows from the imminent, irreparable violation of Rolls-Royce's contractual rights.

obtaining documents or witness testimony. Rolls-Royce simply objects to giving up its contractual right to a private U.K. arbitration and supplanting the arbitrators' evidentiary rules with discovery rulings by U.S. courts. Rolls-Royce has confirmed that one of the subpoenaed South Carolina witnesses (Mr. Walston) is expected to testify at the May 10 arbitration hearing; the arbitral panel agreed there is zero prejudice to Servotronics in not getting to depose him in the United States in advance. Resp. App. 5ra-6ra.

The other witness, Mr. Sharkshnas, is a former Boeing employee. The only reason his appearance at the arbitral hearing is in question is that he is no longer a Boeing employee. He has already supplied a witness statement, and the arbitral panel deemed the value of his deposition "at best . . . marginal." Resp. App. 8ra. More broadly, the arbitral panel has observed that "[t]here is no suggestion that [Rolls-Royce's] disclosure has fallen short," App. 43a, and all agree at this point that the discovery Servotronics seeks is inessential to the arbitration, see Resp. App. 3ra.

CONCLUSION

For the foregoing reasons, and the reasons presented in the application, the Court should issue a stay of the district court's order authorizing the subpoenas pending the Court's resolution of case No. 20-794.

Respectfully submitted,

/s/ Lisa S. Blatt

LISA S. BLATT
Counsel of Record
SARAH M. HARRIS
CHARLES L. MCCLOUD
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
lblatt@wc.com

Counsel for applicant

LARRY KAPLAN
KMA ZUCKERT LLC
200 West Madison Street
16th Floor
Chicago, IL 60606
(312) 345-3000
lkaplan@kmazuckert.com

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