

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re Application of:

Civil Case No.
1:13-MI-0038-CAP-LTW

H.M.G., a natural person and citizen of
the Republic of Austria,

Applicant.

MAGISTRATE JUDGE'S ORDER

This case is presently before the Court on the Ex Parte Application of Helga M. Glock (“the Applicant”) for an order directing Smyrna-based companies Glock, Inc., Glock Professional, Inc., and Consultinvest, Inc. (collectively referred to as “the Glock entities”) to produce documents for use in court proceedings pending in Austria pursuant to 28 U.S.C. § 1782. According to the Applicant, she and her former husband, Gaston Glock, Sr. (“Mr. Glock”) were divorced on June 28, 2011, and she is now litigating against him in Austrian courts (i) to identify and divide their marital assets; (ii) to determine the level of monthly support Mr. Glock must pay her; and (iii) to recover her shares in Glock GmbH and marital property Mr. Glock transferred into illusory trusts he controlled.

According to the Applicant, she and her husband founded Glock GmbH, which started as a garage machine shop and transformed into the globally-recognized gun-manufacturing corporation. (Aff. of Helga Glock, hereinafter “Glock Aff.,” ¶ 3). The Applicant argues that the majority of the estimated earnings of Glock GmbH comes from

Glock, Inc., one of the Smyrna-based Glock entities, from whom she seeks discovery. (Glock Aff., Ex. A; Docket Entry [1-8], p. 12). The Applicant contends that Mr. Glock has erected a complex and opaque structure of holding companies and trusts for Glock-affiliated entities throughout the world through which he is moving marital assets in order to hide them during the Austrian court proceedings and to reduce the wealth of the Applicant and her children. (Glock Aff. ¶¶ 13-15, 19). The Applicant states that she is concerned that Mr. Glock is intending to transfer Glock assets within the United States outside of her reach. (Glock Aff. ¶ 19). As a result, the Applicant seeks to serve a subpoena upon the Glock entities requesting documents pertaining to their finances, such as their assets, loans, contracts with shareholders and amongst each other, financial statements, financial reports, tax returns, as well as the distribution of their dividends and revenues. (Docket Entry 1-1, pp. 2-5). The Applicant argues that the requested discovery is necessary to the success of her proceedings against Mr. Glock in Austria because they will assist her in identifying and valuing marital assets to be divided and in estimating Mr. Glock's worldwide income for purposes of asset division. The Glock entities, who have not been served with the Applicant's request for an order directing the discovery, have not responded in opposition to the requested discovery.

Under 28 U.S.C. § 1782, federal district courts may assist interested parties in foreign legal proceedings to obtain documents and other tangible evidence from entities or individuals within the district. Section 1782 provides:

(a) The district court of the district in which a person resides or is found may

order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made pursuant to letter rogatory issued, or request made, by a foreign or international tribunal or upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court. By virtue of his appointment, the person appointed has the power to administer any necessary oath and take the testimony or statement. The order may prescribe the practice and procedure, which may be in whole or part the practice and procedure of the foreign country or the international tribunal for taking the testimony or statement or producing the document or other thing. To the extent that the order does not prescribe otherwise, the testimony or statement shall be taken, and the document or other thing produced, in accordance with the Federal Rules of Civil Procedure.

A person may not be compelled to give his testimony or statement or to produce a document or other thing in violation of any legally applicable privilege.

28 U.S.C. § 1782. “A district court has the authority to grant an application for judicial assistance under Section 1782 if four statutory requirements are met: (1) the request must be made by a foreign or international tribunal, or by any interested person; (2) the request must seek evidence, whether it be the testimony or statement of a person or the production of a document or other thing; (3) the evidence must be ‘for use in a proceeding in a foreign or international tribunal’; and (4) the person from whom discovery is sought must reside or be found in the district of the district court ruling on the application for assistance.” In re Consorcio Ecuatoriano de Telecomunicaciones, S.A. v. JAS Forwarding (USA), Inc., 685 F.3d 987, 993 (11th Cir. 2012).

In this case, this Court has the authority to grant the Applicant’s application for judicial assistance because each of the four statutory requirements appear to be met.

Based on the Affidavit of Drs. Amhof and Damian, it is apparent that the requests for discovery were made by an interested person, seeking evidence for use in a foreign tribunal from a person residing in the Northern District of Georgia. First, the Applicant is an interested person and is seeking to use evidence in a foreign tribunal because she is a party before the Austrian district court. (Amhof and Damian GmbH Aff. ¶¶ 1-3); Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241, 256 (2004) (noting that interested persons for purposes of Section 1782 include litigants and that the legislative history of Section 1782 indicates that the term “tribunal” includes investigating magistrates, administrative and arbitral tribunals, quasi-judicial agencies, as well as civil, commercial, criminal, and administrative courts); In re Consorcio, 685 F.3d at 993 (concluding that party to the dispute is an interested person and that the term foreign tribunal includes proceedings before conventional courts as well as administrative and quasi-judicial proceedings). According to the Applicant, the requested documents are for use in court proceedings in Austria relating to the division of marital assets, the determination of spousal support, and the recovery of her shares in Glock GmbH and marital property Mr. Glock transferred into illusory trusts he controlled. Additionally, the request seeks production of documents from Glock, Inc., Glock Professional, Inc., and Consult Invest, Inc. which, according to the Georgia Secretary of State, are each domestic corporations which have located their principal office within the Northern District of Georgia, in Smyrna, Georgia. See Docket Entry [1-1].

Once the aforementioned statutory requirements have been met, the district court

must determine whether to exercise its discretion to grant the discovery request. In re Consorcio, 685 F.3d at 998; Kang v. Noro-Moseley Partners, 246 F. App'x 662, 663-64 (11th Cir. 2007). In doing so, the district court should consider the following factors: (1) whether “the person from whom discovery is sought is a participant in the foreign proceeding,” because “the need for § 1782(a) aid generally is not as apparent as it ordinarily is when evidence is sought from a nonparticipant”; (2) “the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign government or the court or agency abroad to U.S. federal-court judicial assistance”; (3) “whether the § 1782(a) request conceals an attempt to circumvent foreign proof-gathering restrictions or other policies of a foreign country or the United States”; and (4) whether the request is otherwise “unduly intrusive or burdensome.” In re Consorcio, 685 F.3d at 998; Kang, 246 F. App'x at 663-64. “[U]nduly intrusive or burdensome requests may be rejected or trimmed.” In re Consorcio, 685 F.3d at 998, citing In re Clerici, 481 F.3d 1324, 1334 (11th Cir. 2007).

Based on the information presented to this Court, it appears that these factors militate in favor of granting the Applicant’s request. First, the Glock entities from whom the Applicant seeks discovery do not appear to be party to the Court proceedings in Austria. According to the Applicant’s Austrian counsel, the actions in Austria are seeking to identify and divide marital assets, assign spousal alimony, challenge Mr. Glock’s changes to trust documents, and revoke the transfer of the Applicant’s shares in Glock GmbH to the Glock Privatstiftung. (Amhof and Damian Aff. ¶¶ 3, 6, 8). There

is no indication that either Glock, Inc., Glock Professional, Inc., and Consultinvest, Inc. are parties to those proceedings. Thus, this factor weighs in favor of granting the application. See In re Chevron Corp., No. 1:10-MI-0076-TWT-GGB, 2010 WL 8767265, at *4 (N.D. Ga. Mar. 2, 2010) (noting that because the individual from whom discovery was sought was not a party to the proceedings, it was not a situation where a foreign tribunal had jurisdiction over the individual and could itself order the individual to produce evidence).

Furthermore, there is nothing within the information presented by the Applicant to suggest that the Court should decline the application based on the nature of the foreign tribunal or the character of the proceedings in Austria or that the Applicant's request is merely an attempt to circumvent an Austrian proof-gathering restriction. In re Application of Mesa Power Group, LLC, 878 F. Supp. 2d 1296, 1305 (S.D. Fla. July 13, 2012) ("Absent a persuasive showing that a section 1782 applicant like Mesa Power is actively seeking to circumvent the foreign tribunal's discovery methods and restrictions, which showing has clearly not been made here, this factor does not counsel against section 1782 relief."); Ex rel Application of Winning Shipping, No. 09-22659-MC, 2010 WL 1796579, at *10 (S.D. Fla. Apr. 30, 2010) (concluding that where no evidence or case law submitted to the court showed that the foreign court would be unreceptive to federal-court judicial assistance or that request concealed an attempt to circumvent foreign proof-gathering restrictions, second and third factors weighed in favor of granting the application).

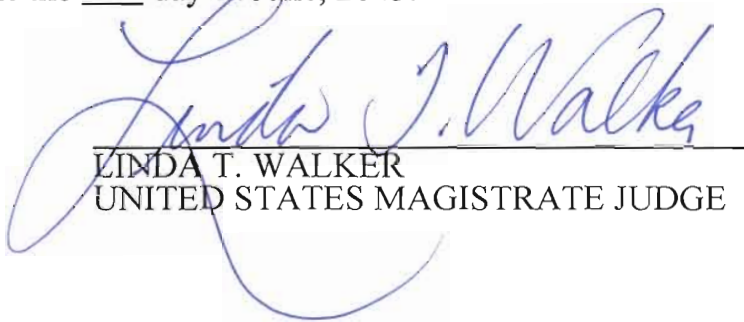
Finally, at this juncture, based on the information presented thus far, this Court cannot conclude that the information in the proposed subpoena is unduly intrusive or burdensome. (Docket Entry [1-1]). This Court does not have sufficient information about the nature or quantity of responsive documents within the Glock entities' possession to make the determination as to the burdensomeness of the requested information. Once the Applicant has served the Glock entities with the subpoenas, the Glock entities may seek relief from this Court for any burdensome or overly intrusive requests after working with the Applicant's counsel to narrow the scope of such requests. Accordingly, the Application is **GRANTED**.¹

As a result of the foregoing, it is hereby **ORDERED** that the Applicant is authorized, under 28 U.S.C. § 1782(a), to seek discovery from the Glock entities pursuant to the Federal Rules of Civil Procedure by serving subpoenas on the Glock

¹ This Court concludes that it is appropriate for this Court to enter an order on the instant discovery matter, rather than a report and recommendation. Under 28 U.S.C. § 636(b), a district judge may designate a magistrate judge to hear and determine certain pretrial matters. 28 U.S.C. § 636(b). In the present case, the application for an order to take discovery has been referred to the undersigned magistrate judge by the assigned district judge under Local Rule 72.1(A), which provides: "Non-dispositive matters in a civil action referred to a magistrate judge by a district judge shall be heard and an order entered in compliance with Fed.R.Civ.P. 72(a)." LR 72.1(A), NDGa. Thus, in this case, the request for discovery is a non-dispositive matter, which allows this Court to enter an order rather than a report and recommendation. In re Chevron Corp., 2010 WL 8767265, at *2; In re Qwest Commc'n Int'l Inc., No. 3:08MC93, 2008 WL 2741111, at *3 (W.D.N.C. July 10, 2008) (concluding that the petition had been properly referred and that jurisdiction existed under Section 636(b) for the magistrate judge to consider such application); Weber v. Finker, No. 3:07-MC-27-J-32MCR, 2008 WL 2157034, at *1 (M.D. Fla. May 20, 2008), aff'd 554 F.3d 1379 (11th Cir. 2009).

entities attaching the document request located at Appendix A of Docket Entry [1-1].

IT IS SO ORDERED this the 3 day of June, 2013.



LINDA T. WALKER
UNITED STATES MAGISTRATE JUDGE