

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:	:
	:
	:
APPLICATION OF INTERNATIONAL	:
MINERAL RESOURCES B.V. FOR AN	:
ORDER TO TAKE DISCOVERY	: Civil Action No. 14-mc-340 (GK)
PURSUANT TO 28 U.S.C. § 1782,	:
	:
Applicant.	:
	:

MEMORANDUM ORDER

On April 3, 2014, Applicant International Mineral Resources B.V. ("Applicant" or "IMR") filed an Application for an Order to Take Discovery Pursuant to 28 U.S.C. § 1782 ("Application") [Dkt. No. 1], authorizing it to depose and request documents from Rinat Akhmetshin ("Respondent" or "Akhmetshin"), a resident of the District of Columbia. IMR hoped to obtain relevant testimony and documents "for use in foreign proceedings pending in the Amsterdam District Court in the Netherlands captioned EuroChem Volga-Kaliy LLC v. International Mineral Resources B.V. with case number C/13/539097 [the "Dutch Action"]." Id. at 1.

On June 27, 2014, IMR provided the Court with Notice [Dkt. No. 16] that it had prevailed in the Dutch Action before the relevant court of first instance (or trial court). On September 23, 2014, this Court issued a Memorandum Order [Dkt. No. 17] denying IMR's Application without prejudice, concluding that the

Application was premature because it was not known whether either party would take advantage of the opportunity to submit additional evidence on appeal in the Dutch court system ("Dutch Appeal"). Id.

On October 30, 2014, IMR submitted its Motion to Renew its Application for 28 U.S.C. § 1782 Discovery [Dkt. No. 18], noting, inter alia, that it hoped to use evidence discovered from Mr. Akhmetshin in the Dutch Appeal.

On February 5, 2015, the Court granted IMR's Renewed Application for an Order under 28 U.S.C. § 1782 Permitting International Mineral Resources B.V. to Issue a Subpoena for the Taking of a Deposition and the Production of Documents from Rinat Akhmetshin [Dkt. No. 22].

On June 26, 2015, Respondent filed a Motion for a Protective Order [Dkt. No. 44] pursuant to Federal Rule of Civil Procedure 26(c) to limit the use of Akhmetshin's testimony and documents to the Dutch Action/Appeal and to prevent the disclosure of confidential information. On July 13, 2015, Applicant filed its Opposition [Dkt. No. 45], and on July 20, 2015, Respondent filed his Reply [Dkt. No. 46].

Rule 26(c)(1) provides in relevant part:

A party or any person from whom discovery is sought may move for a protective order . . . in the court for the district where the deposition will be taken. . . . The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment,

oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
- (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

Fed. R. Civ. P. 26(c)(1).

Respondent contends that the Court should issue a Protective Order because much of the information IMR seeks is "of a proprietary and confidential nature . . . [including] client names, client lists, pricing data, sources, means and methods of research, politically sensitive information, and related information that is valuable to Mr. Akhmetshin." Respondent's Motion for a Protective Order ("Resp't's Mot.") at 8. According to Akhmetshin, release of

certain information "would be an economic (and political) disadvantage to [him], if people associated with [his] economic competitors, or people associated with the regime of Mr. [Nursultan] Nazarbayev [the President of Kazakhstan], were to obtain [his] confidential information and materials." Resp't's Mot. at 9 (quoting Akh. Decl. ¶ 20).

IMR contends that the harm Akhmetshin alleges is not enough to satisfy Rule 26(c)'s "good cause" standard. The Court disagrees. Akhmetshin has described how release of particular types of information would likely do injury to his competitive standing. That is sufficient.

Akhmetshin also argues that under 28 U.S.C. § 1782, IMR should be prohibited from using information it obtains through discovery for purposes beyond the Dutch Action/Appeal. Section 1782(a) provides in relevant part that "[t]he 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." 28 U.S.C. § 1782(a) (emphasis added).

Citing authority from other jurisdictions, IMR contends that § 1782(a) permits the use of discovery obtained under that statute in proceedings beyond the one for which it is requested. Pet'r's

Mot. at 3 (citing In re Chevron, 749 F. Supp. 2d 141, 143-46 & n.8 (S.D.N.Y. 2010)). However, as IMR admits, the "primary purpose in pursuing this action is and always has been to obtain evidence for use in the ongoing Dutch Action." Petitioner's Opposition to Motion for Protective Order ("Pet'r's Opp'n") at 5; see also Application [Dkt. No. 1]. This Court granted IMR's Application explicitly for that purpose.

Our Court of Appeals has stated clearly that "to guard against abuse of section 1782, the district court must insist on reliable indications of the likelihood that proceedings will be instituted within a reasonable time." In re Letter of Request from Crown Prosecution Serv. of United Kingdom, 870 F.2d 686, 692 (D.C. Cir. 1989). In the same case, the Court of Appeals also approvingly noted that the district court's order limited use of the discovered evidence to the purpose for which it was requested. Id. at 693 n.11 ("The district court's order does not permit the Commissioners to do anything but send the evidence to the British prosecutors . . . and any other use by them would require court permission." (internal citations and quotation marks omitted)). Although IMR has suggested that it is contemplating future actions that may incorporate information learned from Akhmetshin, Pet'r's Opp'n at 5, it has shown no reliable indications that such proceedings are likely to begin within a reasonable time.

For these reasons, the Court concludes that a limited Protective Order is reasonably necessary to protect the interests asserted by Akhmetshin and to prevent misuse of the testimony and documents IMR has requested. However, the Proposed Order submitted by Mr. Akhmetshin is, as IMR contends, overbroad. Moreover, it improperly shifts the burden to IMR to defeat any of Respondent's claims of confidentiality. Cf. Crown Prosecution, 870 F.2d at 693 n.11 (noting that proponent of protective order could assert objection to "improper use of [] evidence . . . at the proper time and place" rather than obtain blanket protective order in advance).

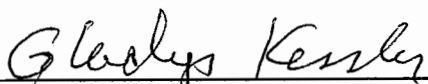
In the alternative to its argument in chief, IMR submitted its own Proposed Protective Order. With only a few modifications limiting the use of discovered materials, that Order will serve to protect Akhmetsin's interests, and so the Court adopts it as amended.

Upon consideration of the Motion, Opposition, Reply, and the entire record herein, and for the reasons stated above, it is hereby

ORDERED that Respondent's Motion for a Protective Order shall be **granted in part and denied in part**; and it is further

ORDERED that the Parties to this case and their agents shall abide by the terms of the attached Protective Order.

November 17, 2015



Gladys Kessler
United States District Judge

Copies to: attorneys on record via ECF