

20-678-cv (L)  
In Re: Application of Gorsoan

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

SUMMARY ORDER

**RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29<sup>th</sup> day of January, two thousand twenty-one.

PRESENT: GUIDO CALABRESI,  
REENA RAGGI,  
DENNY CHIN,  
*Circuit Judges.*

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IN RE: APPLICATION OF GORSOAN  
LIMITED FOR AN ORDER PURSUANT TO 28  
U.S.C. 1782 TO CONDUCT DISCOVERY FOR  
USE IN A FOREIGN PROCEEDING,  
*Petitioner.*

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GORSOAN LIMITED,  
*Petitioner-Appellee,*

STUART SUNDLUN, ZOE BULLOCK  
REMMEL, EUGENIA BULLOCK, ZOYA  
KUZNETSOVA,

*Respondents-Appellants,*

JANNA BULLOCK,

*Intervenor-Appellant.*

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FOR PETITIONER-APPELLEE  
GORSOAN LIMITED:

CAROLINE S. DONOVAN (Kenneth S.  
Leonetti, *on the brief*), Foley Hoag LLP,  
Boston, Massachusetts.

FOR RESPONDENT-APPELLANT  
STUART SUNDLUN:

MATTHEW J. CRAIG (Sean Hecker, *on  
the brief*), Kaplan Hecker & Fink LLP,  
New York, New York.

FOR RESPONDENTS-APPELLANTS  
ZOE BULLOCK REMMEL, EUGENIA  
BULLOCK, and ZOYA KUZNETSOVA:

NATHANIEL Z. MARMUR, The Law  
Offices of Nathaniel Z. Marmur, PLLC,  
New York, New York.

FOR INTERVENOR-APPELLANT  
JANNA BULLOCK:

ALEXANDRA A.E. SHAPIRO (Jonathan  
P. Bach, Julian S. Brod, *on the brief*),  
Shapiro Arato Bach LLP, New York,  
New York.

Appeal from the United States District Court for the Southern District of  
New York (Abrams, J.).

**UPON DUE CONSIDERATION, IT IS ORDERED, ADJUDGED, AND  
DECREED** that the opinion and order of the district court is **REVERSED** and the case is  
**REMANDED** for the district court to quash the subpoenas in question and dismiss the  
petition.

By order entered October 16, 2018, the district court (Sullivan, *J.*) granted the *ex parte* application of petitioner-appellee Gorsoan Limited ("Gorsoan") pursuant to 28 U.S.C. § 1782 to obtain discovery for use in a proceeding in Cyprus. Thereafter, Gorsoan moved to compel respondents-appellants Stuart Sundlun, Zoe Bullock Rempel, Eugenia Bullock, and Zoya Kuznetsova (collectively, "Respondents") to comply with its subpoenas, and intervenor-appellant Janna Bullock ("Bullock") moved to vacate the *ex parte* order and quash the subpoenas. In an opinion and order entered January 24, 2020, the district court (Abrams, *J.*) granted Gorsoan's motion and denied Bullock's motion. Bullock and Respondents appeal. We assume the parties' familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

In the Cyprus action, Gorsoan and Gazprombank OJSC ("Gazprombank"), a Russian bank, allege that, between 2005 and 2007, Bullock; her husband, a former Russian official; and other parties defrauded investors in municipal bonds, resulting in approximately \$25 million in damages. The court in Cyprus ordered that assets exceeding 10,000 Euros anywhere in the world belonging to Bullock (and other defendants) be frozen and that Bullock (and the other defendants) disclose those assets. The asset-freezing order became final in March 2013.

In 2013, the district court granted an application of Gazprombank and Gorsoan for discovery from Bullock pursuant to § 1782.<sup>1</sup> Bullock produced several thousand documents and sat for two depositions, during the first of which she claimed to have no assets or bank accounts and to be completely dependent on her daughters and mother for all financial support, including cash disbursements. Gorsoan complained to the district court that these responses were patently incredible, and the district court (Sullivan, J.) held Bullock in contempt.<sup>2</sup> In the second deposition, Bullock invoked her Fifth Amendment right and declined to provide an answer to almost every question posed by Gorsoan and Gazprombank. In September 2018, Gorsoan filed the instant application pursuant to § 1782, seeking asset discovery from Bullock's two daughters, her mother, and Sundlun, who has acted as a trustee for the trusts for Bullock's children. Now acting as an intervenor, Bullock opposed the application. As noted above, the district court granted the application, and this appeal followed.

"[W]e review *de novo* the district court's determination as to whether the statutory requirements of § 1782 are met, and if we are satisfied that these requirements are met, we review the district court's decision on whether to grant discovery for abuse

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<sup>1</sup> See *In re Application of Gorsoan Ltd. & Gazprombank OJSC for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in a Foreign Proceeding*, No. 13-mc-397, 2014 WL 7232262, at \*1 (S.D.N.Y. Dec. 10, 2014).

<sup>2</sup> Indeed, Bullock eventually produced documents to Gorsoan showing that, just before her first deposition, she had sold her Southampton property for \$27.5 million and had signed the contract of sale on behalf of the holding company.

of discretion." *Euromepa, S.A. v. R. Esmerian, Inc.*, 154 F.3d 24, 27 (2d Cir. 1998). A party seeking to invoke § 1782 must show:

(1) that the person from whom discovery is sought reside (or be found) in the district of the district court to which the application is made, (2) that the discovery be for use in a proceeding before a foreign tribunal, and (3) that the application be made by a foreign or international tribunal or any interested person.

*Id.* (internal quotation marks omitted). "In analyzing the second element of this test, . . . we have . . . focused on two questions: (1) whether a foreign proceeding is adjudicative in nature; and (2) when there is actually a foreign proceeding." *Id.* "[T]he planned proceedings must be within *reasonable* contemplation. In other words, the applicant must have more than a subjective intent to undertake some legal action, and instead must provide some objective indicium that the action is being contemplated." *Certain Funds, Accounts &/or Inv. Vehicles v. KPMG, L.L.P.*, 798 F.3d 113, 123 (2d Cir. 2015).

The parties disagree as to whether § 1782 is properly invoked to obtain discovery related not to the merits of an underlying dispute but to asset identification. We need not decide the issue, for, on this record, even assuming § 1782 reaches discovery sought only to identify assets, we conclude that Gorsoan has not satisfactorily demonstrated that its purported "use" of the discovery it seeks is in "reasonable contemplation" of planned proceedings.

The ongoing litigation in Cyprus is centered on Bullock's alleged participation in a fraudulent scheme between 2005 and 2007. Gorsoan has admitted

that the information it seeks pursuant to its instant § 1782 application relates to Bullock's current assets and is therefore unlikely to bear on the alleged fraud; Gorsoan is motivated instead by the desire to "shore up that Ms. Bullock has not complied with the freezing and discovery allegations, or freezing and disclosure obligations in the Cyprus court." App'x at 332. In other words, Gorsoan is not seeking the discovery for use in the ongoing litigation in Cyprus but for use in a contempt proceeding that it may decide someday to bring. As the district court described Gorsoan's anticipated "use":

At oral argument, Gorsoan explained that Respondents' financial information would assist in determining the extent to which Bullock has complied (or failed to comply) with the Asset Freeze and Disclosure Order. It further represented that, after obtaining this information, it intends to file a motion for contempt against Bullock in the Cypress court regarding her "satisfaction of the freezing order abroad."

S. App'x at 14 (footnote and citation omitted).

Before this court, Gorsoan asserts that the discovery sought could inform the fraud action in Cyprus because, if Bullock is held in contempt by a Cypriot court, that could limit her ability to advance certain arguments or offer certain evidence in defending the fraud action. We need not decide the likelihood of this consequence because it is contingent, in any event, on a finding of contempt, and it is such a proceeding that is too remote to satisfy § 1782 here. In reaching this conclusion, we are mindful of Bullock's own efforts to avoid providing discovery ordered by a United States court.


Nevertheless, Gorsoan has known for years that Bullock was not in compliance with the Cyprus freeze order, and it could have moved for contempt in Cyprus long ago. Indeed, it made a contempt motion in 2014 but then withdrew it and has made no effort to pursue such a motion since. Moreover, when Gorsoan first filed its petition below, some five years after the issuance of the freeze order, Gorsoan made no mention of a possible contempt motion, explaining only that it was seeking discovery for the same reason it had sought discovery in its earlier § 1782 petition, that is, that discovery would be "relevant to [its claims in] the Cyprus Proceeding." App'x at 19. In these circumstances, Gorsoan has failed to show that a contempt motion in Cyprus is anything more than a possibility, and a possibility is not enough. *See Certain Funds*, 798 F.3d at 124. Indeed, as we stated in *Certain Funds*, "At a minimum, a § 1782 applicant must present . . . some concrete basis from which it can determine that the contemplated proceeding is more than just a twinkle in counsel's eye." *Id.* Accordingly, we conclude that Gorsoan has failed to meet the requirements of § 1782.

\* \* \*

We have considered Gorsoan's remaining arguments and conclude they are without merit. For the foregoing reasons, we **REVERSE** the order of the district

court and **REMAND** with instructions for the district court to quash the subpoenas and dismiss the petition.

FOR THE COURT:  
Catherine O'Hagan Wolfe, Clerk



**United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007**

**DEBRA ANN LIVINGSTON**  
CHIEF JUDGE

Date: January 29, 2021  
Docket #: 20-678cv  
Short Title: In Re: Application of Gorsoan

**CATHERINE O'HAGAN WOLFE**  
CLERK OF COURT

DC Docket #: 18-mc-431  
DC Court: SDNY (NEW YORK  
CITY)  
DC Judge: Fox  
DC Judge: Abrams

**BILL OF COSTS INSTRUCTIONS**

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- \* be filed within 14 days after the entry of judgment;
- \* be verified;
- \* be served on all adversaries;
- \* not include charges for postage, delivery, service, overtime and the filers edits;
- \* identify the number of copies which comprise the printer's unit;
- \* include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- \* state only the number of necessary copies inserted in enclosed form;
- \* state actual costs at rates not higher than those generally charged for printing services in New York, New York; excessive charges are subject to reduction;
- \* be filed via CM/ECF or if counsel is exempted with the original and two copies.

**United States Court of Appeals for the Second Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007**

**DEBRA ANN LIVINGSTON**  
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CITY)  
DC Judge: Fox  
DC Judge: Abrams

**VERIFIED ITEMIZED BILL OF COSTS**

Counsel for

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respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

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and in favor of

\_\_\_\_\_

for insertion in the mandate.

Docketing Fee \_\_\_\_\_

Costs of printing appendix (necessary copies \_\_\_\_\_ ) \_\_\_\_\_

Costs of printing brief (necessary copies \_\_\_\_\_ ) \_\_\_\_\_

Costs of printing reply brief (necessary copies \_\_\_\_\_ ) \_\_\_\_\_

**(VERIFICATION HERE)**

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Signature