

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re Application of CHEVRON CORPORATION :
for an Order Pursuant to 28 U.S.C. § 1782 to : Case No.: 14-MC-392 (LAK)
Conduct Discovery from MCSquared PR, Inc. for :
Use in Foreign Proceedings, :
Petitioner. :
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MOTION TO STAY COMPLIANCE WITH SUBPOENA

MCSquared PR, Inc. (“MCSquared”), specially appearing to challenge this Court’s jurisdiction, through undersigned counsel, respectfully request this Court to stay compliance with the subpoena served by Chevron Corp. (“Chevron”) on December 1, 2014 pursuant to 28 U.S.C. § 1782 until the Court rules on MCSquared’s pending Motion to Vacate and Incorporated Memorandum of Law (“Motion to Vacate”) and Motion to Quash or Modify Subpoena and Incorporated Memorandum of Law (“Motion to Quash”) filed simultaneously herewith. In support thereof, MCSquared state as follows:

1. On November 24, 2014, Chevron filed the Application requesting judicial assistance pursuant to 28 U.S.C. § 1782 [ECF No. 2]. The Application was supported by a Memorandum of Law [ECF No. 3] and by the Declaration of Anne Champion [ECF No. 4] which attached 210 exhibits.

2. On November 25, 2014, the Court entered an order granting the Application (the "1782 Order") [ECF No. 8] which allowed Chevron to seek wide-ranging discovery from MCSquared.

3. On December 1, 2014, Chevron served MCSquared with a subpoena (the "Subpoena") pursuant to the 1782 Order. Chevron and MCSquared entered into an stipulation extending the Subpoena's return date to December 22, 2014 [ECF No. 17].

4. As asserted in the Motion to Vacate there are substantial legal grounds to vacate the 1782 Order based on the fact that Chevron failed to meet the statutory and discretionary requirements set forth by the U.S. Supreme Court in *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241 (2004). Significantly, MCSquared has asserted in its Motion to Vacate that the 1782 Order must be vacated based on the sole fact that MCSquared neither "resides" nor is "found" in the Southern District of New York.

5. Similarly, as asserted in the Motion to Quash, to the extent that the 1782 Order is not vacated, as it should be, there are substantial grounds to quash, or in the alternative, modify the Subpoena including, but not limited to, lack of relevance, confidentiality, the application of privileges including the deliberate process privilege, the Act of State Doctrine, and the fact that the Subpoena is unduly burdensome and intrusive.

6. In addition, the Republic of Ecuador, MCSquared's client and the contractual owner of the work product sought by Chevron [ECF No. 4-65:16], has

moved to intervene (the “Motion to Intervene”) [ECF No. 11-12]. The Republic of Ecuador indisputably has an interest in this litigation because the Republic of Ecuador, by contract, own the documents currently sought by Chevron. The Motion to Intervene remains pending adjudication. If the Republic of Ecuador’s intervention is granted, it may assert the application of certain privileges including the deliberate process privilege which would shield from production some, if not all, of the materials sought by Chevron. However, if a stay of discovery is not granted, the rights of the Republic of Ecuador may be prejudiced since it will not have an opportunity to assert any privileges that may be applicable to the discovery sought by Chevron.

7. A stay of discovery is appropriate where the movant shows good cause and reasonableness. *See Varga v. Palm Beach Capital Mgmt., LLC*, No. 09-82398-CIV, 2010 WL 8510622, at *1 (S.D. Fla. Sept. 3, 2010). “[C]ourts have held good cause to stay discovery exists wherein resolution of a preliminary motion may dispose of the entire action.” *Association Fe Y Alegria v. Republic of Ecuador*, No. 98 CIV. 8650 (BSJ), 1999 WL 147716 (S.D.N.Y. Mar. 16, 1999); *Complaint of Akropan Shipping Corp.*, No. 86 CIV. 4873 (JFK), 1990 WL 16097, at *2 (S.D.N.Y. Feb. 14, 1990) (same); *Gumowitz v. Citibank, N.A.*, Case No. 91-cv-5339, 1993 WL 364476, at *4 (S.D.N.Y. Sept. 13, 1993) (citing *Hachette Distrib., Inc. v. Hudson County News Co.*, 136 F.R.D. 356, 358 (E.D.N.Y. 1991)) (granting stay of discovery pending the determination of dispositive motions); *see also Spencer Trask Software and Info. Servs., LLC v. Rpost Int’l Ltd.*, 206 F.R.D. 367 (S.D.N.Y. 2002)

(holding good cause for discovery stay exists where dispositive motion has been filed and stay is for short time period that does not prejudice opposing party).

8. In addition, a stay of discovery is also warranted when the discovery would compel the production of arguably privileged material. *See Gimenez v. Law Offices of Hoffman & Hoffman*, Cases Nos. 12-cv-669; 12-cv-2884, 2012 WL 2861014, at *2 (E.D.N.Y. July 11, 2012) (granting stay of discovery pending jurisdictional objection and resolution of assertions privilege). A stay of discovery in a proceeding pursuant to 28 U.S.C. § 1782 is particularly warranted when dealing with privilege assertions because once discovery in § 1782 action is produced further proceedings, including an appeal, are moot. *See McKeivitt v. Pallasch*, 339 F.3d 530, 531 (7th Cir. 2003).

9. Furthermore, granting the stay will not prejudice Chevron. MCSquared is only asking for only a short stay until the Court has an opportunity to rule on the pending motions, which as set forth above, may dispose with the entire Application.

10. For the foregoing reasons, MCSquared respectfully requests that this Court stay compliance with the Subpoena until it has ruled on the Motion to Vacate, Motion to Quash, and Motion to Intervene.

Dated: Miami, Florida
December 15, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that a true and correct copy fo the foregoing MOTION TO STAY COMPLIANCE WITH SUBPOENA was served on December 15, 2014 upon all counsel of record by filing it on that day by means of the U.S. District Court for the Southern District of New York's Case Management/Electronic Case Filing (CM/ECF) system.

Dated: Miami, Florida
December 15, 2014

By: /s/ Rodrigo S. Da Silva
Rodrigo S. Da Silva, Esq.