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

HOY MAI and SMIN TIT, Applicants, v. THE COCA-COLA COMPANY, Respondent.	CIVIL ACTION FILE NO. 1:21-mi-106-TCB

O R D E R

This case comes before the Court on Applicants Hoy Mai and Smin Tit's motion [1] for an order pursuant to 21 U.S.C. § 1782 to obtain discovery from Respondent The Coca-Cola Company. Applicants seek this discovery for use in a civil case in Thailand in which they are plaintiffs.

In March 2018, Applicants brought a putative class action against Mitr Phol Sugar Corporation in a Thai civil court, seeking redress for forced evictions, illegal land-grabbing, destruction of property, and

other offenses. To aid their case, Applicants seek discovery from Coca-Cola—a major purchaser of Mitr Phol's sugar.

I. Legal Standard

Section 1782 allows district courts to compel discovery from individuals and businesses in its district to aid in litigation in a foreign tribunal. The Court has the authority compel discovery if the requirements in § 1782(a) 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 Clerici, 481 F.3d 1324, 1331–32 (11th Cir. 2007).

That said, "a district court is not required to grant a § 1782(a) discovery application simply because it has the authority to do so." *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264 (2004). The Court considers four factors to be considered in exercising its discretion granted under § 1782:

> (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."

Clerici, 481 F.3d at 1334 (quoting *Intel*, 542 U.S. at 264–65). "The Supreme Court in *Intel* added that 'unduly intrusive or burdensome requests may be rejected or trimmed.'" *Id.* (quoting *Intel*, 542 U.S. at 265).

II. Discussion

The Court finds that the four § 1782 requirements are met. First, Applicants, as named plaintiffs in the class action suit in Thailand, are "interested parties" in those proceedings. Second, Applicants seek "evidence" in the form of documents and a Rule 30(b)(6) deposition. Third, the information sought is "for use in" the Thai proceedings. Finally, Coca-Cola is headquartered in Atlanta, Georgia and thus "resides or may be found" in the Northern District of Georgia.

Additionally, the Court finds that the discretionary factors set out in *Intel* weigh in favor of granting the Application.

First, Coca-Cola is not a named party in the foreign proceedings. "On this ground alone the first *Intel* factor is satisfied." *In re Roz Trading Ltd.*, No. 1:06-cv-02305-WSD, 2007 WL 120844, at *2 (N.D. Ga. Jan. 11, 2007).

Second, based on evidence presented by Applicants, the Thai court will be receptive to § 1782 assistance in this case, and the Court finds that the evidence sought will be beneficial to resolving the issues in dispute in the Thai court.

Third, the Court is satisfied that this application does not conceal an attempt to circumvent foreign proof-gathering restrictions and is a good faith effort to obtain probative evidence for use in the Thai proceedings.

Finally, the discovery sought falls within the scope allowable under the Federal Rules of Civil Procedure and is thus not unduly intrusive or burdensome. An applicant under § 1782 "may seek discovery of any nonprivileged matter that is relevant to any party's

claim or defense." *In re O'Keeffe*, 660 F. App'x 871, 872–73 (11th Cir. 2016). Applicants' discovery requests are relevant and proportional and are limited to a very specific dispute.

Accordingly, the Court finds that the information sought by the application is essential to the full and fair adjudication of the Thai proceedings, and Applicants' motion [1] for leave to serve Coca-Cola with the discovery is granted.

Within thirty days of this Order, Coca-Cola shall respond to the document request that is attached as Exhibit F to Applicants' motion [1], in accordance with Rule 34 of the Federal Rules of Civil Procedure.

Similarly, within thirty days of this Order, Coca-Cola shall respond to the notice of deposition that is attached as Exhibit G to Applicants' motion, in accordance with Rule 30 of the Federal Rules of Civil Procedure.

IT IS SO ORDERED this 18th day of January, 2022.

Timothy C. Batten, Sr.
Chief United States District Judge