

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

December 10, 2021

Lyle W. Cayce
Clerk

No. 21-20434

JEAN BISSONNET; JACQUES CHAMPY; RENATO PICCIOTTO;
BANOKA S.A.R.L.; ATYS S.A.,

Plaintiffs—Appellees,

versus

WESTMONT INTERNATIONAL DEVELOPMENT, INC.,

Defendant—Appellant.

Appeal from the United States District Court for the
Southern District of Texas
USDC No. 4:20-MC-03378

Before WIENER, GRAVES, and HO, *Circuit Judges.*

PER CURIAM:*

Plaintiffs seek a subpoena under 28 U.S.C. § 1782 against Westmont International Development, Inc. The district court granted Plaintiffs' *ex parte* subpoena application in a brief written order. Later, the district court

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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denied Westmont’s motion to quash in a one-line order. This court subsequently stayed these proceedings pending appeal.

We now vacate and remand to allow the district court an opportunity to revisit its previous orders and to articulate its reasoning on the following four questions:

1. Whether the forum selection clause forecloses a U.S. court from issuing a § 1782 subpoena in this matter, considering that the clause codifies the parties’ understanding that “the courts of England and Wales shall have exclusive jurisdiction in relation to any dispute arising out of or in relation to [the offer].”
2. Whether the subpoena implicates extraterritorial discovery, and if so, whether § 1782 applies extraterritorially.
3. Whether § 1782’s requirement that the requested discovery is “for use in a proceeding in a foreign or international tribunal” is met.
4. Whether the four discretionary *Intel* factors weigh in favor of or against the issuance of a § 1782 subpoena. *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 247 (2004).

We vacate the denial of the motion to quash and remand to the district court with instructions to address these four issues and to determine whether the motion to quash should be granted or denied, and to do so within sixty days of the entry of this decision. We retain jurisdiction over this appeal. *See United States v. Arellano-Banuelos*, 912 F.3d 862, 869 (5th Cir. 2019).