

Insights: Publications

Barriers to Overcome to Obtain International Discovery

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International discovery is not as simple as merely issuing process to either obtain documents or testimony. Such discovery must be crucial to the pending action. Normally, the discovery is issued through a letter of request, which is a request from a judge in the United States through the Central Authority of the foreign country to the judiciary of a foreign country requesting the performance of an act which, if done without the sanction of the foreign court, would constitute a violation of that country's sovereignty.

In all cases involving international discovery, the court should take into account (i) the importance of the information sought to the litigation, (ii) the degree of specificity of the request, (iii) the availability of alternative means of securing the information, (iv) the extent which noncompliance with the request would undermine important interests in the US and (v) whether compliance with the request would undermine important interests of the foreign country. *Societe Nationale Industrielle Aerospatiale v. United States Dist. Ct.*, 482 U.S. 522, 544 (1987).

A recent decision in New York state court, *Bagatelle Little West 12th LLC v. JEC II, LLC*, 82 Misc. 3d 1231 (A) (Sup. Ct. NY County April 19, 2024), reveals the difficulties. There, in a dispute over a restaurant joint venture, defendants sought to issue letters rogatory to the ministry of justice in France to compel the production of documents from a nonparty. The defendants asserted that the documents were material and necessary to provide information about improper transfer of funds out of plaintiff's account which left it without capital to operate. The court concluded that defendants failed to show how its requests differ from anything it could request from the parties in the litigation directly. Defendants also failed to establish how information regarding a third-party international investment is crucial to the resolution of a key issue in the case. Thus, the request was denied.

Simply, in seeking international discovery, a party must establish the link between the information sought and key issues in the case.

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