

# UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

## In re Patricio Clerici

481 F.3d 1324 (11th Cir. 2007) · No. No. 06-11141 · Decided March 21, 2007

### SUMMARY

The Eleventh Circuit affirmed an order granting judicial assistance under 28 U.S.C. § 1782 to obtain sworn answers from a Florida resident for use in a Panamanian proceeding. The court held that the request sought evidence rather than enforcement of a foreign judgment, that Rule 69(a) did not bar the discovery, and that domestication of the Panamanian judgment was not required.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                         |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | United States Court of Appeals for the Eleventh Circuit                                                                                                                                                                                                                 |
| WRITING FOR THE COURT | Hull, Circuit Judge; Tjoflat, Circuit Judge; Bowman, Circuit Judge, sitting by designation                                                                                                                                                                              |
| JURISDICTION          | Federal                                                                                                                                                                                                                                                                 |
| DECIDED               | March 21, 2007                                                                                                                                                                                                                                                          |
| DOCKET                | No. 06-11141                                                                                                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                |
| PROCEDURAL POSTURE    | Clerici appealed the Southern District of Florida's denial of his motion to vacate an order granting the government's application under 28 U.S.C. § 1782 for assistance in obtaining his sworn answers to written questions for use in a pending Panamanian proceeding. |
| STANDARD OF REVIEW    | The grant of § 1782 assistance is reviewed for abuse of discretion, under an extremely limited and highly deferential standard. Legal interpretations of treaties and federal statutes, including § 1782, are reviewed de novo.                                         |
| PRECEDENTIAL VALUE    | published precedential opinion                                                                                                                                                                                                                                          |
| PARTIES               | Patricio Clerici v. United States                                                                                                                                                                                                                                       |

### TOPICS

- civil procedure
- evidence
- appellate procedure
- standard of review
- foreign affairs

### PRACTICE AREAS

## QUESTIONS PRESENTED

1. Whether the Panamanian court's request for Clerici's sworn answers satisfied the statutory requirements for judicial assistance under 28 U.S.C. § 1782(a).
2. Whether a post-judgment or supplementary proceeding that is not necessarily adjudicative qualifies as a proceeding in a foreign tribunal under § 1782(a).
3. Whether Federal Rule of Civil Procedure 69(a) barred § 1782 discovery until NoName domesticated its Panamanian judgment in the United States.
4. Whether the district court abused its discretion in granting the § 1782 application.

## HOLDINGS

1. The request satisfied § 1782(a)'s requirements because it was made by or on behalf of a foreign tribunal, sought evidence, was for use in a foreign proceeding, and concerned a person residing in the district.
2. Section 1782(a) does not require the foreign proceeding to be adjudicative; a pending post-judgment proceeding seeking information about a judgment debtor's assets qualifies.
3. Federal Rule of Civil Procedure 69(a) did not bar the § 1782 discovery because Rule 69(a) governs execution and related post-judgment discovery, whereas § 1782 and the Federal Rules govern the authority and manner of obtaining the requested testimony.
4. Domestication of the foreign judgment in the United States was not required before the district court could grant § 1782 assistance for use in the foreign proceeding.
5. The district court did not abuse its discretion in granting the § 1782 application.

## KEY QUOTATIONS

*“The Panamanian Court requested only assistance in obtaining evidence sworn answers from Clerici to written questions and this is the primary purpose of § 1782.”* (¶ 34)

*“However, we do agree that until NoName's foreign judgment has been domesticated in this country, NoName cannot sequester, levy on, or seize control of, any assets of Clerici in this country.”* (¶ 52)

## FACTUAL BACKGROUND

Clerici, a Panamanian citizen residing in Florida, had been ordered by a Panamanian court to pay NoName Corporation more than two million balboas in damages and costs after an earlier lawsuit and property-attachment proceeding. NoName's judgment had not been domesticated or made enforceable in Florida. In a pending post-judgment proceeding in Panama, the Panamanian court issued a letter rogatory seeking Clerici's sworn answers concerning his assets, income, transfers, citizenships, tax filings, and financial relationships worldwide.

## PROCEDURAL HISTORY

The district court granted the government's ex parte § 1782 application on October 12, 2005, appointing an Assistant United States Attorney as commissioner to obtain evidence requested in a Panamanian court's letter rogatory. Clerici moved to vacate, arguing that the request was defective under the Inter-American Convention Regarding Letters Rogatory, sought enforcement of an undomesticated foreign judgment, and was unduly intrusive. The district court denied the motion on January 27, 2006, and Clerici appealed; the Eleventh Circuit affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241 (2004)
- Lo Ka Chun v. Lo To, 858 F.2d 1564 (11th Cir. 1988)
- United Kingdom v. United States, 238 F.3d 1312 (11th Cir. 2001)
- In re Commissioner's Subpoenas, 325 F.3d 1287 (11th Cir. 2003)
- In re Letter Rogatory Issued by Second Part of III Civil Regional Court of Jabaquara/Saude, Sao Paulo, Brazil, No. 01-MC-212, 2002 WL 257822 (E.D.N.Y. Feb. 6, 2002)
- Tacul, S.A. v. Hartford National Bank & Trust Co., 693 F. Supp. 1399 (D. Conn. 1988)
- Euromepa, S.A. v. R. Esmerian, Inc., 154 F.3d 24 (2d Cir. 1998)
- In re Letters Rogatory Issued by Director of Inspection of Government of India, 385 F.2d 1017 (2d Cir. 1967)
- In re Request for Assistance from Ministry of Legal Affairs of Trinidad and Tobago, 848 F.2d 1151 (11th Cir. 1988)
- FDIC v. LeGrand, 43 F.3d 163 (5th Cir. 1994)