

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE APPLICATION OF ANTON
STOECKL FOR DISCOVERY PURSUANT
TO 28 U.S.C. § 1782

12 Civ. 414 (PGG)

ORDER

PAUL G. GARDEPHE, U.S.D.J.:

Anton Stoeckl, proceeding pro se, seeks discovery from Deutsche Bank Trust Company Americas (“DBTCA”), The Bank of New York Mellon (“BNY Mellon”), and Marfin Laiki Bank (“Marfin”) (collectively, the “Banks”) in aid of foreign litigation, pursuant to 28 U.S.C. § 1782. For the reasons set forth below, Stoeckl’s application will be denied.

BACKGROUND

Stoeckl alleges that he was defrauded by a “Ponzi type scheme” that “operat[ed] out of Cyprus.” (Appl. ¶¶ 39-40) Stoeckl states that he was hoping to obtain a \$50 million loan to start a company that would build a series of hydroelectric dams in British Columbia under contract with the Canadian government. (Appl. ¶ 43) Certain unidentified people – whom Stoeckl refers to as the “Cyprus Group” – told Stoeckl that they would arrange a short term loan of \$50 million. (Appl. ¶ 41) According to Stoeckl, the “Cyprus Group included GK Banking, George Kallis, Brian Rance and their companies.” (Appl. ¶ 40, n.4)

Stoeckl asserts that he was told that, in order to secure the loan, he would have to pay a \$1 million “refundable security deposit” to the Cyprus Group. (Appl. ¶ 47) Stoeckl says that he was instructed to make a \$1 million check payable to “Bank of New York.” (Appl. ¶ 48) He then flew to Cyprus, where he signed a contract and gave someone a \$1 million check made out to The Bank of New York. (Appl. ¶¶ 48-52)

Stoeckl does not provide a copy of the contract or identify the signatories to the alleged contract. He likewise does not explain who he met with in Cyprus or who he gave the check to. Nor does he provide a copy of the \$1 million check. Instead, Stoeckl provides a copy of a different check, dated March 28, 2000, that is made payable to “Anton Stoeckl & Hubert Lau.” (Appl., Ex. 3) This check is endorsed by Stoeckl (but not by Lau) and then appears to have been negotiated. (*Id.*) Stoeckl does not explain any of the discrepancies regarding the check he says he gave the Cyprus Group and the check he attaches as an exhibit to his application.

Stoeckl asserts that he is “a named interested party” in several foreign “Court proceedings,” including “Court proceedings pending currently in . . . Innsbruck . . . [and] Vienna.” (Appl. ¶ 26) Stoeckl states that these Austrian court proceedings relate to “a criminal prosecution against one of the agents of the Cyprus Group.” (Appl. ¶ 76) Stoeckl does not identify the member of the Cyprus group who is the subject of the alleged criminal prosecution, nor does he explain the role of that person in defrauding him. Stoeckl likewise does not identify the court or courts in which these alleged actions are pending; nor has he produced any pleadings from these alleged actions. As best as this Court can determine from Stoeckl’s application, it appears that he is referencing prosecutors’ offices, and not courts. There is no evidence that any judicial proceeding is pending in Austria.¹

As to the alleged German tax case, Stoeckl represents that German authorities are attempting to assess taxes on the \$1 million check made payable to him and Lau, based on a mistaken view that Stoeckl is or was in possession of the money. (Appl. ¶¶ 85-95) Stoeckl says

¹ While Section 1782(a) authorizes courts to order discovery “for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation,” see 28 U.S.C. § 1782(a), Stoeckl has represented that “Court proceedings [are] pending currently,” and there is no evidence corroborating this claim. (Appl. ¶ 26)

that the “German Tax Court” has brought a “collection action” against him “and other [unnamed] German nationals” because another victim of the Cyprus fraud told the taxing authorities “that when he was defrauded he gave the monies to [Stoeckl].” (Appl. ¶¶ 85, 89, 93) Once again, Stoeckl has provided no proof that any court case is currently pending. He has not identified the court in which the action is proceeding, nor has he provided copies of any of the pleadings. Given that Stoeckl alleges that he is a defendant in these proceedings, his failure to provide this information and documents is inexplicable, particularly after – as explained below – other courts have denied his discovery requests in part because of his failure to provide such pleadings.

Stoeckl’s application seeks the production of documents and account statements related to Hannon Co. Ltd., GK Banking, George Kallis, Brian Rance, and Fintop Limited – entities and individuals he asserts, in a conclusory fashion, were “involved in the fraud.” (Appl. ¶ 14(b)) Stoeckl seeks responsive documents created over the past thirteen years – between March 2000 and the present. He seeks:

- (1) Correspondence, documents, account openings and/or closing documentation, directions, instructions, signatories, signature cards, monthly statements and other materials, during the period from March 2000 to present, related to the accounts [at DBTCA and BNY Mellon] through which [the] \$1 million check w[as] transferred in March/April 2000;
- (2) Correspondence, documents, account openings and/or closing documentation, directions, instructions, signatories, signature cards, monthly statements and other materials, during the period from March 2000 to present, related to the accounts at [DBTCA, BNY Mellon, and Marfin] held or maintained at [these] banks in the names of Hannon Co. Ltd., GK Banking, George Kallis, Brian Rance, [and] Fintop Ltd. . . .;
- (3) Instructions given by Hannon Co. Ltd., GK Banking, George Kallis, Brian Rance, Fintop Ltd. to [DBTCA and BNY Mellon] to transfer [the] \$1 million check deposited into [DBTCA] to [BNY Mellon] and then to [Marfin] from which it disappeared in March/April 2000.

(Appl. ¶14(a)-(c)). Stoeckl asserts that the Banks “MUST have documents related” to the foreign proceedings because their names appear on the back of the \$1 million check. (Appl. ¶ 9)

PRIOR APPLICATIONS

Stoeckl has unsuccessfully sought nearly identical discovery from other judges in this District on two prior occasions. On October 4, 2011, Judge Duffy, sitting in Part I, denied Stoeckl’s application for the production of documents and account statements – for the same entities and individuals – from seven banks: BNY Mellon, HSBC Bank, Credit Suisse, UBS, Deutsche Bank AG, Barclay’s Bank, and Citibank NA. Judge Duffy denied Stoeckl’s application because “the information in the Application is insufficient . . . to determine that the applicant is entitled to any relief. The relevance of any such documents to any overseas proceedings is unclear.” In re Application of Anton Stoeckl for Discovery Pursuant to 28 U.S.C. § 1782, No. 11 Misc. 319, Dkt. No. 2 (S.D.N.Y. Oct. 4, 2011) (“Stoeckl I”).

On October 7, 2011, Stoeckl filed another application in Part I, this time before Judge Pauley, which sought “the same materials from the same seven financial institutions for [the same] eleven-year period.” In re Application of Anton Stoeckl for Discovery Pursuant to 28 U.S.C. § 1782, 11 Misc. 360, Dkt. No. 3, at 2 (S.D.N.Y. Oct. 19, 2011) (“Stoeckl II”). Judge Pauley denied the application, finding that

Stoeckl’s Re-Filed Application fails to establish that he is entitled to relief because he does not draw any connection between the foreign proceedings and the evidence he seeks in this proceeding. While he claims that he needs documentation from the seven international financial institutions identified above to obtain restitution against individuals who defrauded him in the Austrian proceeding, he fails to allege that the individuals who defrauded him are the persons whose bank records he now seeks.

As for the German proceeding, Stoeckl asserts that the account records are necessary to prove to German tax authorities that he is not in possession of certain monies. It is difficult to understand how these account records would provide that evidence. While Stoeckl alleges that he transferred certain monies through “NY

banks and financial institutions,” he does not allege that any of those entities are the New York banks and financial institutions from which he now seeks documents.

Finally, Stoeckl continues to fail to provide sufficient information regarding the Austrian or German actions, including any pleadings in the actions, the identities of the parties in the actions, or the status of the actions.

(Id.)

PROCEDURAL HISTORY

Stoeckl filed this application on January 18, 2012. (Dkt. No. 2) Judge Cedarbaum, sitting in Part I, designated the application as a civil case (Dkt. No. 1), which was thereafter assigned to this Court. On February 23, 2012, BNY Mellon filed an affidavit in opposition and moved to dismiss the application. (Dkt. No. 4) On April 19, 2012, Stoeckl filed a motion for default against DBTCA for failure to respond. (Dkt. No. 7) On June 6, 2012, DBTCA filed an affidavit in opposition. (Dkt. No. 11) On July 19, 2012, Stoeckl filed a response to DBTCA’s affidavit. (Dkt. No. 20)

DISCUSSION

I. APPLICABLE LAW

“28 U.S.C. § 1782(a) authorizes a federal district court to assist a foreign or international tribunal, or a person interested in a proceeding before such a tribunal, to obtain testimony, documents, or other discovery in aid of the proceeding.” Thai-Lao Lignite (Thailand) Co., Ltd. v. Gov’t of Lao People’s Democratic Republic, No. 11 Civ. 4363 (KMW), 2012 WL 966042, at *1 (S.D.N.Y. Mar. 20, 2012). To obtain this assistance, an applicant must show: (1) the person from whom discovery is sought “resides” or is “found” in this District; (2) the discovery is “for use in a proceeding in a foreign . . . tribunal”; and (3) the applicant is an

“interested person.” 28 U.S.C. § 1782(a); see Euromepa, S.A. v. R. Esmerian, Inc., 154 F.3d 24, 27 (2d Cir. 1998).

“Section 1782 grants district courts wide discretion to determine whether to grant discovery.” In re Application of Esses, 101 F.3d 873, 876 (2d Cir. 1996) (per curiam); see also Intel Corp. v. Advanced Micro Devices, Inc., 542 U.S. 241, 266 (2004) (“§ 1782 authorizes, but does not require, a federal district court to provide judicial assistance to foreign or international tribunals or to ‘interested person[s]’ in proceedings abroad.”). “[A] district court [ruling on a Section 1782(a) request] should consider whether: (1) the person from whom discovery is sought is a participant in the foreign proceeding; (2) the foreign tribunal might be receptive to U.S. federal court judicial assistance; (3) the § 1782(a) request conceals an attempt to circumvent foreign proof gathering restrictions or other policies of a foreign country or of the United States; and (4) the request is unduly intrusive or burdensome.” In re Application of Auto-Guadeloupe Investissement S.A., for an Order to Take Discovery Pursuant to 28 U.S.C. Section 1782, No. 12 MC 221(RPP), 2012 WL 4841945 at *4 (S.D.N.Y. Oct. 10, 2012) (citing Intel Corp., 542 U.S. at 264-65)). Even where the statutory requirements are met, “[a] district court . . . is not required to grant a Section 1782 application simply because it has the authority to do so.” In re Application of Chevron Corp., 709 F. Supp. 2d 283, 290 (S.D.N.Y. 2010).

Because Stoeckl is proceeding pro se, this Court construes his application liberally, see Erickson v. Pardus, 551 U.S. 89, 94 (2007) (“A document filed pro se is to be ‘liberally construed.’” (citing Estelle v. Gamble, 429 U.S. 97, 106 (1976))), and “to raise the strongest arguments that it suggest[s].” Fulton v. Goord, 591 F.3d 37, 43 (2d Cir. 2009) (quoting Green v. United States, 260 F.3d 78, 83 (2d Cir. 2001)).

II. ANALYSIS

Stoeckl's application before this Court differs from those he filed before Judge Duffy and Judge Pauley only insofar as it seeks production of documents from DBTCA, BNY Mellon, and Marfin, rather than all seven of the banks listed in his two earlier applications.

In denying Stoeckl's second application, Judge Pauley noted that "Stoeckl continues to fail to provide sufficient information regarding the Austrian or German actions, including any pleadings in the actions, the identities of the parties in the actions, or the status of the actions." Stoeckl II, at 2. Stoeckl's current application before this Court suffers from the same defects. Stoeckl still has not identified the courts in which the alleged actions are proceeding, nor has he provided any pleadings from those actions, identified the parties to those alleged actions, or explained the status of those actions. Assuming that there is any actual ongoing foreign proceeding – and there is no way to know from Stoeckl's application – it remains entirely unclear how the discovery Stoeckl seeks would be relevant to those proceedings.

Stoeckl likewise has not offered any facts demonstrating that the Banks have any information related to the people and entities named in his application. Indeed, his application raises more questions than it answers. As an initial matter, the \$1 million check Stoeckl has proffered (Appl., Ex. 3) is not made out to the Bank of New York – as he alleges the unnamed fraudsters instructed him to do – but instead is made payable to him and Hubert Lau. Stoeckl has not explained how his preparation, endorsement, and negotiation of this check constituted or facilitated a fraud on him. Lau's role is entirely unexplained. Stoeckl has likewise not explained what role Hannon Co. Ltd., GK Banking, George Kallis, Brian Rance, and Fintop Limited played in defrauding him and why he believes they have accounts at the Banks. Stated another way –

assuming arguendo that Stoeckl was defrauded – Stoeckl has still not proffered any facts demonstrating that “the individuals who defrauded him are the persons whose bank records he now seeks.” Stoeckl II at 2.

Even absent the unexplained discrepancy regarding the \$1 million check, the fact that a check was processed by a New York bank serving in a correspondent capacity does not indicate that that bank has any information pertaining to the ultimate recipient of the check proceeds. Stoeckl does not plausibly allege, and DBTCA and BNY Mellon deny, that they played any role in the alleged fraud. (See Feb. 23, 2012 Kandel Aff. (Dkt. No. 4) ¶ 4 (noting that “the check is not payable to The Bank of New York . . . and was not deposited into an account at The Bank of New York. . . . The Bank of New York . . . was the United States correspondent bank on which the check was drawn by its issuer.”); June 6, 2012 Kandel Aff. (Dkt. No. 12) ¶ 10 (noting that DBTCA was a “correspondent bank [which] never took possession of the funds in question as the \$1 million check was not transferred to or deposited into a [DBTCA] account”). In short, Stoeckl has provided no basis for the Court to conclude that the Banks have information about any alleged fraud regarding the \$1 million check.

Finally, as to the German tax proceeding, Stoeckl does not explain how the records sought would prove to the German tax authorities that he did not receive the proceeds of the check. As Judge Pauley noted, given that Stoeckl is one of the payees on the check (see Appl., Ex. 3), and that the check appears to bear his endorsement (id.), “[i]t is difficult to understand how these account records would provide that evidence.” Stoeckl II, at 2.

Absent facts showing a relationship between the documents sought and the alleged proceedings in Germany and Austria – a connection Stoeckl has not been able to

demonstrate in three separate applications, and after two adverse court rulings – the Court will not order the Banks to conduct a discovery exercise concerning a thirteen-year-old check.

CONCLUSION

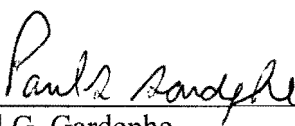
For the reasons stated above, Stoeckl’s application for judicial assistance is denied, his motion for default against Deutsche Bank Trust Company Americas is denied, and this case is dismissed. The Clerk of the Court is directed to close this case and to terminate all pending motions.

If Stoeckl files another application in this District seeking documentation and account records from any financial institutions, he is directed to attach to such application a copy of Judge Duffy’s October 4, 2011 Order, a copy of Judge Pauley’s October 19, 2011 Order, and a copy of this Order.

The Clerk is further directed to mail a certified copy of this order to Anton Stoeckl (pro se), Box 30, Baldonnel, B.C., V0C 1C0, Canada.

Dated: New York, New York
March 18, 2013

SO ORDERED.



Paul G. Gardephe
United States District Judge