

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re Application of

BANCO BTG PACTUAL S.A., and TRAVESSIA
SECURITIZADORA DE CRÉDITOS
FINANCEIROS VIII S.A.,

Applicants,

Pursuant to 28 U.S.C. § 1782 for Judicial
Assistance in Obtaining Evidence for Use in
Foreign and International Proceedings Pending in
the Federative Republic of Brazil,

ANALISA TORRES, District Judge:

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24 Misc. 304 (AT)

ORDER

On July 1, 2024, Petitioners, Banco BTG Pactual S.A. and Travessia Securitizadora de Créditos Financeiros VIII S.A., submitted an *ex parte* petition for an order pursuant to 28 U.S.C. § 1782 to obtain discovery for use in two pending legal proceedings in São Paulo, Brazil (the “Petition”). Pet. ¶ 5, ECF No. 4; *see also* Pistorresi Decl. ¶¶ 8–10, ECF No. 2. Petitioners seek permission to serve a subpoena on Admel Properties, Inc. (“Respondent”). Pet. ¶ 15. Petitioner also seeks to proceed *ex parte*. *Id.* ¶¶ 49–50. For the following reasons, the Petition is GRANTED.

DISCUSSION

I. Legal Standard

“A district court has authority to grant a § 1782 application where: (1) the person from whom discovery is sought resides (or is found) in the district of the district court to which the application is made, (2) the discovery is for use in a foreign proceeding before a foreign or international tribunal, and (3) the application is made by a foreign or international tribunal or any interested person.” *Mees v. Buiter*, 793 F.3d 291, 297 (2d Cir. 2015) (internal quotations and

alterations omitted). Courts routinely grant such petitions *ex parte*. *Gushlak v. Gushlak*, 486 F. App'x 215, 217 (2d Cir. 2012) (“[I]t is neither uncommon nor improper for district courts to grant applications made pursuant to § 1782 *ex parte*.”).

In determining whether to grant a § 1782(a) petition, the Court may also consider “(1) whether the person from whom discovery is sought is a participant in the foreign proceeding, in which case the need for § 1782(a) aid generally is not as apparent; (2) the nature of the foreign tribunal, the character of the proceedings underway abroad, and the receptivity of the foreign . . . 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; and (4) whether the request is unduly intrusive or burdensome.” *In re Catalyst Managerial Servs., DMCC*, 680 F. App'x 37, 38–39 (2d Cir. 2017) (quoting *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264–65 (2004)) (internal quotation marks omitted).

II. Analysis

A. *Ex Parte* Proceeding

Courts routinely grant similar petitions *ex parte*. Accordingly, Petitioners’ request to proceed without serving the Petition on Respondent is GRANTED. *Gushlak*, 486 F. App'x at 217.

B. The Petition

Petitioners have met all three mandatory *Mees* requirements. First, Petitioners provide evidence that Respondent maintains offices and does business in this district. Pet. ¶ 29; *see* ECF No. 4-2; *In re JSC BTA Bank*, 577 F. Supp. 3d 262, 266 (S.D.N.Y. 2021). Second, Petitioners have established that they intend to use the discovery in ongoing Brazilian legal proceedings. Petitioners have been assigned interests in loan agreements to “companies within the Bioverde

group and their shareholders” (the “Foreign Defendants”). Pet. ¶¶ 2–3, 6. The Foreign Defendants “fail[ed] to fulfill their payment obligations” under the credit agreements and breached them. Pet. ¶¶ 4–5. Petitioners now seek to “uncover potential fraudulent transfers or other efforts undertaken by . . . members of the Bioverde Group to avoid paying the significant debt owed to Banco BTG and Travessia by hiding assets outside of the jurisdiction of the Brazilian [c]ourts,” and have evidence that the Foreign Defendants own significant assets in the name of Admel Properties. Pet. ¶¶ 12, 32; Pistoresi Decl. ¶¶ 11, 16, 18–20. Under the plain text of Section 1782, a foreign proceeding includes “a proceeding in a foreign or international tribunal.” 28 U.S.C. § 1782(a); *Mees*, 793 F.3d at 299 (“[A]n applicant may seek discovery of any materials that can be made use of in the foreign proceeding to increase her chances of success.”). Third, Petitioners are parties to the foreign proceeding. Pet. ¶ 35; Pistoresi Decl. ¶¶ 9–10, 16.

Each of the discretionary factors also weigh in favor of granting the Petition. First, Respondent is not a participant or party in the Brazilian proceedings, and Petitioners do not “intend to join Admel Properties as a party.” Pet. ¶ 39; Pistoresi Decl. ¶ 38. Second, Petitioners provide evidence that they have an “active, ongoing duty to locate the Foreign Defendants’ assets globally and present them before the Brazilian [c]ourts,” Pet. ¶ 41, and there is no “authoritative proof that a foreign tribunal would reject evidence obtained with the aid of section 1782,” *Euromepa S.A. v. R. Esmerian, Inc.*, 51 F.3d 1095, 1100 (2d Cir. 1995). Third, there is no evidence that Petitioner is attempting to circumvent any proof-gathering restrictions imposed by Japanese law or otherwise seeking the discovery in bad faith. Pistoresi Decl. ¶ 40. Finally, the subpoenas Petitioner proposes are narrowly tailored “to identify and trace potential transfers and the purchase and disposition of the assets in this [d]istrict belonging to the Foreign

Defendants,” and are not unduly intrusive or burdensome. Pet. ¶ 47; *see* ECF No. 4-1.

CONCLUSION

For the reasons stated above, the Petition is GRANTED. The Clerk of Court is directed to terminate the motion at ECF No. 4 and to close the case.

SO ORDERED.

Dated: July 15, 2024
New York, New York



ANALISA TORRES
United States District Judge