

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No.	CV 17-7100 PA (Ex)	Date	October 23, 2017
Title	In re Application of Hulley Enterprises Ltd., et al.		

Present: The Honorable PERCY ANDERSON, UNITED STATES DISTRICT JUDGE

Kamilla Sali-Suleyman

None

N/A

Deputy Clerk

Court Reporter

Tape No.

Attorneys Present for Plaintiffs: None

Attorneys Present for Defendants: None

Proceedings: IN CHAMBERS—ORDER TO SHOW CAUSE

Before the Court is a Motion for Review of Magistrate Judge’s Ruling (Docket No. 15) filed by petitioners Hulley Enterprises Ltd., Yukos Universal Ltd., and Veteran Petroleum Ltd. (collectively “Petitioners”). Pursuant to Rule 78 of the Federal Rules of Civil Procedure and Local Rule 7-15, the Court finds that this matter is appropriate for decision without oral argument. The hearing calendared for October 30, 2017, is vacated, and the matter taken off calendar.

Petitioners commenced this action on June 19, 2017, by filing an Application for an Order Pursuant to 28 U.S.C. § 1782 to Conduct Discovery for Use in a Foreign Proceeding (the “Application”). According to the Application, Petitioners seek to depose and obtain documents from Edward Mouradian, who resides in the Central District, for use in connection with Veteran Petroleum Limited, Yukos Universal Limited, Hulley Enterprises Limited v. The Russian Federation, Case No. 200.197.079/01, an ongoing litigation pending in the Court of Appeal of The Hague (the “Dutch Appellate Proceeding”). Petitioners’ Application sought the issuance of a Subpoena to Testify at a Deposition and a Subpoena to Produce Documents, Information, or Objects using the Central District’s Federal Rule of Civil Procedure 45 subpoena forms. On June 22, 2017, the Magistrate Judge assigned to this action granted Petitioners’ Application and authorized the issuance of the Rule 45 subpoenas directed to Mr. Mouradian.

After several unsuccessful attempts to personally serve Mr. Mouradian with the subpoenas, Petitioners filed a Motion to Serve Subpoenas by Alternative Means, detailing their efforts to personally serve Mr. Mouradian, his apparent efforts to evade service, and seeking permission to serve him by certified mail, overnight courier, or by leaving the subpoenas with Mr. Mouradian’s son, who is over 18 years old and lives at Mr. Mouradian’s residence. The Magistrate Judge denied the Motion to Serve Subpoenas by Alternative Means on September 13, 2017. In denying the Motion to Serve Subpoenas by Alternative Means, the Magistrate Judge concluded that the Motion “seeks an advisory ruling that attempted service of subpoenas on Mr. Mouradian by ‘alternative means,’ including but not limited to ‘certified mail,’ ‘overnight courier’ or ‘leaving the subpoenas with Mr. Mouradian’s son,’ purportedly would fulfill the service requirements of Rule 45(b)(1) of the Federal Rules of Civil Procedure.” Petitioners then filed a Motion for Review of the Magistrate Judge’s Ruling. Petitioners contend that the Magistrate Judge’s analysis of the service requirements of Rule 45 is erroneous.

A magistrate judge’s decision on a nondispositive discovery matter “is entitled to great deference by the district court.” U.S. v. Abonce-Barrera, 257 F.3d 959, 969 (9th Cir. 2001). Indeed, a district court will only reverse or modify a magistrate judge’s ruling on nondispositive pretrial matter if it is “clearly

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erroneous or contrary to law.” 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). The clearly erroneous standard is “significantly deferential, requiring a definite and firm conviction that a mistake has been committed.” Concrete Pipe & Prods. v. Constr. Laborers Pension Trust, 508 U.S. 602, 623 (1993) (internal quotation marks omitted); see also Sec. Farms v. Intern. Brotherhood of Teamsters, 124 F.3d 999, 1014 (9th Cir. 1997) (citation omitted); Federal Deposit Ins. Corp. v. Fidelity & Deposit Co. of Maryland, 196 F.R.D. 375, 378 (S.D. Cal. 2000). A decision is “contrary to law” if it applies an incorrect legal standard or fails to consider an element of the applicable standard. See Hunt v. National Broadcasting Co., 872 F.2d 289, 292 (9th Cir. 1989) (such failure constitutes an “abuse of discretion”). The “contrary to law” standard permits independent review of purely legal determinations made by the magistrate judge. Haines v. Liggett Group, Inc., 975 F.2d 81, 91 (3d Cir. 1992); Federal Deposit Ins. Corp., 196 F.R.D. at 378. However, the reviewing court may not simply substitute its judgment for that of the deciding court. Grimes v. City and County of San Francisco, 951 F.2d 236, 241 (9th Cir. 1991).

The Court concludes that the Magistrate Judge’s order finding that Petitioners seek an advisory opinion concerning the effectiveness of service of a Rule 45 subpoena by alternative means is not clearly erroneous or contrary to law. See Coalition for a Healthy Cal. v. F.C.C., 87 F.3d 383, 386 (9th Cir. 1996) (“[F]ederal courts have never been empowered to issue advisory opinions.” (quoting FCC v. Pacifica Found., 438 U.S. 726, 735, 98 S. Ct. 3026, 3033 (1978))). The Court therefore denies Petitioners’ Motion for Review.

IT IS SO ORDERED.