

**South32 Chile Copper Holdings Pty Ltd v Sumitomo  
Metal Min. Co., Ltd.**

2025 NY Slip Op 31114(U)

April 1, 2025

Supreme Court, New York County

Docket Number: Index No. 650642/2023

Judge: Robert R. Reed

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 43

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SOUTH32 CHILE COPPER HOLDINGS PTY LTD  
(FORMERLY BLUE MURRAY PTY LTD),

Plaintiff,

- v -

SUMITOMO METAL MINING CO., LTD., SUMITOMO  
CORPORATION

Defendant.

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INDEX NO. 650642/2023

MOTION DATE 03/18/2025

MOTION SEQ. NO. 006

**DECISION + ORDER ON  
MOTION**

HON. ROBERT R. REED:

The following e-filed documents, listed by NYSCEF document number (Motion 006) 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131

were read on this motion to/for MISCELLANEOUS

This is a breach of contract action involving tax liability for profits realized from operations at a Chilean gold mine. In motion sequence 006, plaintiff moves for an order for the issuance of a Letter Rogatory to Sedef Inci Ozcelik (Ozcelik) and RBC Dominion Securities (RBC). No opposition to the motion was filed.

RBC was purportedly a financial advisor to the defendants. Sedef Inci Ozcelik is allegedly the Managing Director at RBC Dominion Securities based in Toronto, Canada. Plaintiff represents that RBC was integral to the bidding process surrounding the sale of defendants' interests in the Sierra Gorda mining operation to South32, and submits that Ozcelik is the most important witness from RBC regarding how the parties were interpreting the disputed tax provision. Counsel for plaintiff attempted to obtain documents from RBC by service of nonparty subpoenas on third-party entities. Plaintiff also sought the deposition of Ozcelik along with any documents in her possession regarding the disputed tax issue. Plaintiff was purportedly

advised, by RBC U.S. affiliates, that responsive documents may be located with an RBC affiliate in London, United Kingdom (NYSCEF doc. no. 117, para. 6). RBC U.S. also advised that service upon Ozcelik, located in Canada, and employed by RBC Dominion Securities, may be the proper way to obtain the requested evidence (*id.* at 19).

Plaintiff previously requested that this court issue Letters of Request to the Government Legal Department of the Foreign Process Section of the Royal Courts of Justice in the United Kingdom. That request was granted (motion seq. nos. 002-005). Notwithstanding, the request(s) were rejected by the Department of the Foreign Process Section as “too vague and wide ranging.” The department stated that the plaintiff’s demand for records should not be “dealt with under the Letter of Request procedure” (*id.* at 10). Plaintiff now moves for an order granting international assistance by way of Letter of Rogatory.

Where a litigant seeks international discovery the court considers several factors: (1) the specificity of the request, (2) the importance of the information sought, (3) the availability of alternative means of obtaining the information, (4) the extent to which noncompliance with the request would undermine important interests of the United States, and (5) whether compliance with the request would undermine important interests of the state where the information is located (*Richbell Info. Servs., Inc. v Jupiter Partners L.P.*, 32 AD3d 150, 155–56 (1st Dept 2006); Restatement (Third) of the Foreign Relations Law of the United States §442[1][c]).

The scope of American discovery is often significantly broader than is permitted in other jurisdictions; therefore, a more stringent test should apply in international discovery than in purely domestic discovery (*id.* at 156; *Societe Nationale Industrielle Aerospatiale v United States Dist. Ct.*, 482 US 522, 542 [1987]). To compel the production of discovery from international entities, the movant must establish that the information sought is “crucial to the

resolution of a key issue in this case” (*Kahn v Leo Schachter Diamonds, LLC*, 139 AD3d 635 [1st Dept 2016]).

As previously determined by this court in its response to plaintiff’s motion for letters of request, it is this court’s view that the documents sought are both material and necessary to the legal claims in this matter (NYSCEF doc. no. 100). Therefore, the request for international discovery is proper, and for the reasons set forth in that order (*id.*) the court grants plaintiff’s request for international judicial assistance in a manner consistent with the Legal Department of the Foreign Process Section of the Royal Courts of Justice’s directives to comply with the Evidence Act of Ontario and the Canada Evidence Act.

Accordingly, this request having been brought before the court by counsel for plaintiff seeking an order granting the issuance of a Letter Rogatory, and having found that the testimony of the witness is relevant, material, and necessary to the just resolution of the action, it is hereby

ORDERED that plaintiff’s motion to obtain the deposition of Sedef Inci Özçelik, Managing Director of RBC Dominion Securities, Inc., located in Toronto, Ontario, Canada, is granted, without opposition; and it is further

ORDERED that the clerk shall affix the court’s seal on the attached Letter Rogatory.

4/1/25  
DATE

  
ROBERT R. REED, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
		<input checked="" type="checkbox"/>	OTHER
		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: