

Glam and Glitz Nail Design, Inc. v. iGel Beauty, LLC (Order Granting Protective Order)

Glam and Glitz Nail Design, Inc. v. iGel Beauty, LLC,
Case No. SA CV 20-00088-JVS (DFMx),
2022 WL 17078947 (C.D. Cal. Sept. 30, 2022)

Plaintiff sought to take the remote deposition of YiJian Jiang, a Chinese national, whom Plaintiff claimed authored relevant schematics in this patent dispute. After learning that Mr. Jiang intended to sit for his deposition while physically located in mainland China, Defendants moved for a protective order, arguing that the deposition would violate Chinese law. The matter was referred to this Court following briefing and argument.

DISCUSSION

The central question is whether Article 284 of the Chinese Civil Procedure Law permits the remote deposition of a Chinese citizen located in mainland China. In determining foreign law, courts may consider any relevant material or source. Fed. R. Civ. P. 44.1; see *Animal Sci. Prods. v. Hebei Welcome Pharm. Co.*, 138 S. Ct. 1865, 1879–80 (2018).

Article 277, the predecessor to Article 284 and identical in substance, provides that absent authorization from Chinese authorities, no foreign authority or individual may conduct investigations or collect evidence within the territory of the People’s Republic of China. See *Sun Grp. U.S.A. Harmony City, Inc. v. CRRC Corp.*, 2019 WL 6134958, at *1 (N.D. Cal. Nov. 19, 2019).

Plaintiff argued that Article 284 applies only to evidence collected by courts and does not prohibit voluntary testimony from a willing witness. Plaintiff’s expert further contended that a remote deposition conducted by attorneys located outside China does not implicate Chinese sovereignty. Defendants countered that depositions constitute investigative acts covered by Article 284 and that U.S. State Department guidance and federal case law uniformly prohibit such testimony from mainland China.

The Court finds Defendants’ interpretation persuasive. U.S. State Department guidance provides that China does not permit attorneys to take depositions in China for use in foreign courts, whether voluntary or compelled, and that participation may expose participants to arrest or other sanctions. Numerous federal courts have likewise rejected attempts to conduct depositions from mainland China. See, e.g., *Junjiang Ji v. Jling Inc.*, 2019 WL 1441130, at *11 (E.D.N.Y. Mar. 31, 2019); *Shenzen Synergy Digital Co. v. Mingtel, Inc.*, 2021 WL 6072565, at *3 (E.D. Tex. Dec. 23, 2021).

Although Plaintiff cited authority permitting testimony under unique circumstances, including *Wu v. Sushi Nomado of Manhattan, Inc.*, 2021 WL 7186735 (S.D.N.Y. Oct. 29,

2021), those cases involved materially different facts and significant noncompliance with discovery obligations. Here, Mr. Jiang's willingness to testify does not override the comity concerns and potential legal risks implicated by violating Chinese law.

The Court concludes that Article 284 is best understood to prohibit depositions of all types conducted while a witness is physically located in mainland China. As another court observed, the Court will not require parties or counsel to gamble on a narrow interpretation of foreign law. See *Zhizheng Wang v. Hull*, 2020 WL 4734930, at *1 (W.D. Wash. June 22, 2020).

CONCLUSION

For the foregoing reasons, Defendants' request for a protective order precluding the deposition of Mr. Jiang unless the testimony occurs outside mainland China is GRANTED.