UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HELEN DIANE McCARTHY, **Plaintiff,** **v.** **MICHAEL HEATH JOHNSON,** **Defendant.**	**Case No. 21-mc-4 (GMH)**

MEMORANDUM OPINION & ORDER

Plaintiff Helen Diane McCarthy[1] has come to this Court seeking information she believes is needed to collect on a multi-million dollar judgment she obtained against Defendant Michael Heath Johnson in the District of Utah on August 6, 1990.[2] More than 30 years later, Defendant, who is now deceased, evidently has not satisfied the judgment, which arose from a finding that he committed violations of the Racketeer Influenced and Corrupt Organization ("RICO") Act, 18 U.S.C. § 1961 *et seq*. To determine whether Defendant's estate has funds available to pay any or all of what he owed, Plaintiff has filed a Motion for Examination of Gordon Oldham ("Oldham") pursuant to Federal Rule of Civil Procedure 69(a) and Local Civil Rule 72.1(b)(6). ECF No. 3. According to Plaintiff, Oldham is "a lawyer in Hong Kong who [did] business with and advised" Defendant before his death and may have information concerning his estate's assets. ECF No. 3-1 at 1. Oldham opposes the motion on jurisdictional grounds, asserting that he is a British citizen

[1] Plaintiff died in July 2015 and is represented by her estate in these proceedings. ECF No. 3-1 at 1.

[2] Judge Reggie Walton assigned this case to the undersigned for all purposes. *See* Minute Order (April 21, 2022). Any appeal of this decision should be made within 14 days of service of this Memorandum Opinion & Order and directed to Judge Walton. *See* Federal Rule of Civil Procedure 72(a) (objections to decision of a magistrate judge must be filed within 14 days after service and directed to the district judge); 28 U.S.C. § 636(b)(1)(A); *see also Menashe v. Covington & Burling, LLP*, Case No. 21-7091 (D.C. Cir. Jan. 6, 2022) (finding that appeal of a magistrate judge's decision denying a miscellaneous application for an order permitting discovery under 28 U.S.C. § 1782 must first be directed to a district judge).

living in Hong Kong with no connections to the District of Columbia and therefore this Court is without jurisdiction to authorize the discovery Plaintiff seeks. The Court agrees and will deny the motion for examination.[3]

I. BACKGROUND

The full factual and procedural background of this case is lengthy and unnecessary to recount in full for the purposes of resolving the pending motion, so the Court will hit only the highlights before providing a short overview of the relevant briefing.

A. The Utah Judgment and Rule 45 Subpoena

In 1987, Plaintiff filed a civil RICO case in the United States District Court for the District of Utah against Defendant and others, claiming they had bilked her out of hundreds of thousands of dollars. ECF No. 3-1 at 2; *see also id.* at 12–43. Specifically, Plaintiff alleged that during a period in the early 1980s in which she was suffering from mental illness and alcoholism, Defendant convinced her to hand over control of her assets—including significant stock holdings in the Salt Lake Tribune Corporation and equity in a home in Bel Air, California—ostensibly to invest them. *Id.* at 16–17. In fact, Plaintiff says, Defendant and a confederate "systematically and fraudulently converted hundreds of thousands of dollars of her estate to his own use and to the use of . . . independent enterprises that themselves were fueled by the profits derived from the fraud." *Id.* at 13. After Defendant failed to participate in the discovery process, the District Court in Utah entered a default against him and thereafter held a hearing to ascertain Plaintiff's damages, which were ultimately determined to be $6,243,738. *Id.* at 45–46; 87–89. Judgment was entered against

[3] The relevant docket entries for purposes of this Memorandum Opinion & Order are: (1) Plaintiff's Motion for Order of Examination (ECF No. 3); (2) Oldham's opposition (ECF No. 8); (3) Plaintiff's reply (ECF No. 9), and (4) Oldham's Supplemental Declaration (ECF No. 15-1). Oldham also filed what appears to be sur-reply, *see* ECF No. 10, but the Court's briefing schedule did not contemplate such a filing, *see* ECF No. 7, and so the sur-reply will not be considered here. The page numbers cited herein are those assigned by the Court's CM/ECF system.

Defendant on August 6, 1990 (the "Utah Judgment"), and subsequently renewed in 1997 and 2014, by which time the judgment (factoring in interest) had ballooned to over $20 million. *Id.* at 46; 51–52; 57–58. By December 2020, the compounding interest had further increased the value of the judgment to nearly $30 million. *Id.* at 74–78. Defendant has paid none of it, and died in South Africa in December 2020. *Id.* at 70.

Plaintiff registered the Utah Judgment in this Court on January 8, 2021, pursuant to 28 U.S.C. § 1963. ECF No. 1. Thereafter, in March 2021, Plaintiff's counsel had contact with Oldham, who (according to Plaintiff) confirmed that he (Oldham) "is the ultimate owner of the homes that [Defendant] occupied in South Africa for the last twenty-five years." ECF No. 3-1 at 3; 61–70. However, Oldham rebuffed all additional entreaties to "provide [] further information or documents about the assets of [Defendant]." *Id.* at 4. Plaintiff then served Oldham with a Rule 45 subpoena seeking information about the assets in Defendant's estate. *Id*. That process was less fruitful than Plaintiff had hoped, with Oldham only "produc[ing] a few corporate records of" a holding company that owned the real estate Defendant occupied during at least some of his time in South Africa. *Id*. She then filed the motion for examination in June 2021.[4] ECF No. 3.

B. The Motion for Examination

Plaintiff brings her motion for examination under Federal Rule of Civil Procedure 69(a)(2) and Local Civil Rule 72.1(b)(6). The former provides a judgment creditor the ability to "obtain discovery from any person . . . as provided in these rules or by the procedure of the state where the court is located" in aid of satisfying and/or executing the judgment. Fed. R. Civ. P. 69(a)(2). The latter provision authorizes Magistrate Judges in this District to, "[a]t the request of the district judge to whom the case is assigned . . . [c]onduct examinations of judgment debtors and other

[4] Plaintiff explains that, at present, she is not attempting to compel compliance with the subpoena, and is only asking the Court to examine Oldham pursuant to Local Civil Rule 72.1(b)(6). ECF No. 9 at 5–6.

persons in accordance with Fed. R. Civ. P. 69." LCvR 72.1(b)(6). Pursuant to those provisions, Plaintiff requests that the Court "examine" Oldham "about [Defendant's] assets available to satisfy" the Utah Judgment. ECF No. 3-1 at 1. Plaintiff also asks that Oldham be required to produce a number of documents before any examination. ECF No. 3 at 3–7. She contends that an examination is "fully authorized and appropriate" because Rule 69(a)(2) provides that post-judgment discovery may be had "from any person," and such an examination is authorized by D.C. law. ECF No. 3-1 at 5–6 (citing D.C. Sup. Ct. R. 69-I). To the extent Oldham does not appear for an examination, Plaintiff says she will seek an order of contempt and arrest against him. *Id*. She also avers that service of the Rule 45 subpoena was proper under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (November 15, 1965). *Id.* at 7–8.

On May 24, 2022, the Court entered an Order directing Oldham, whose counsel made an appearance in July 2021, to respond to Plaintiff's motion and setting a briefing schedule. ECF No. 7. The Order instructed that further briefing should address the following issues:

> (1) the Court's jurisdiction to authorize the discovery sought by Plaintiff; (2) whether the subpoena propounded on Oldham in March 2021 was properly served and, if it was not, how that failure impacts these proceedings; (3) whether the discovery sought comports with Rule 26 of the Federal Rules of Civil Procedure (e.g., whether the discovery sought is relevant and proportional to the needs of the case); and (4) the format of any examination of Oldham, and particularly whether the undersigned need personally conduct the examination or, instead, could permit the examination to be conducted by Plaintiff's counsel.

Id. at 2. Although Oldham's response is styled as a "Motion to Quash Rule 45 Subpoena," he does at least address the first issue the Court sought clarity on—its jurisdiction to authorize the discovery Plaintiff seeks.[5] ECF No. 8. Oldham contends that jurisdiction is lacking because he is

[5] Following the completion of the briefing on the Motion for Examination, Oldham filed a motion for sanctions against Plaintiff under Federal Rule of Civil Procedure 11, arguing that there was "no conceivable basis that would support the exercise of personal jurisdiction over [him] in this forum" and that he was "entitled to an award of attorneys' fees

a British citizen who "lives and works in Hong Kong," "has never lived, worked, or transacted any business in the District of Columbia," "holds no property in the District," and "his law firm has no offices in the District" and he is "is not authorized to practice law" there. *Id.* at 1, 5; ECF No. 15-1 at 1–2.

In reply, Plaintiff urges that Rule 69 "does not state that such discovery may only be obtained from persons with 'minimum contacts' with judicial district in which the Court is situated," and therefore seems to argue that there is no jurisdictional bar to this Court's examination of Oldham. ECF No. 9 at 3–4.[6]

On July 29, 2022, the Court ordered that Oldham file a supplemental declaration clarifying his nationality and/or citizenship status by August 5, 2022. *See* Minute Order (July 29, 2022). Oldham submitted the requested declaration on August 2, 2022, in which he averred that he was a

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and costs incurred in defending this motion which was filed with no legal or factual basis." ECF No. 12 at 2, 4. Plaintiff opposed the motion, and Oldham replied. ECF Nos. 13–14. The Court addresses the motion for sanctions in separate minute order filed contemporaneously with this Memorandum Opinion & Order. However, Plaintiff's opposition to the motion for sanctions does contain material relevant to the motion for examination. In particular, she argues that Plaintiff conceded the jurisdictional issue by not opposing the motion for examination within 14 days, which she says is required by Local Civil Rule 7(b). She also asserts that Oldham "never opposed" her motion for examination because he styled his responsive motion as a "Motion to Quash Rule 45 Subpoena" and not as an opposition to the motion for examination. Setting to the side the fact that Plaintiff made neither argument in her reply brief (ECF No. 9), her contentions miss the mark. First, Local Civil Rule 7(b) reads:

> Within 14 days of the date of service or at such other time as the Court may direct, an opposing party shall serve and file a memorandum of points and authorities in opposition to the motion. If such a memorandum is not filed within the prescribed time, the Court may treat the motion as conceded.

LCvR 7(b). Here, although 14 days passed after the initial filing of the Motion for Examination in June 2021, the Court "direct[ed]" another time for Oldham to oppose to the motion, and he did so timely. *See* ECF Nos. 7–8. And even if the rule did not invest courts with discretion to set briefing schedules and instead instituted a hard-and-fast 14-day clock, the rule merely provides that courts "may treat the motion as conceded" if a timely opposition is not filed—there is no requirement that they do so. Additionally, the Court construes Oldham's "Motion to Quash Rule 45 Subpoena" as an opposition to the motion for examination. Indeed, Oldham's filing directly responds to the jurisdictional question the Court identified in its May 24 Order—something Plaintiff herself concedes. *See* ECF No. 7; ECF No. 9 at 2 (Plaintiff characterizing Oldham's "Motion to Quash" as being "Motion to Quash presumably filed in partial response to the Court's May 24 Order"). To treat Oldham's filings otherwise would unjustly elevate form over substance.

[6] Plaintiff's reply addresses the other issues for which the Court sought briefing, ECF No. 9 at 6–10, but because the Court lacks jurisdiction to authorize the discovery sought, those issues will not be discussed further.

British citizen, has "always held an English passport," and, other than the "occasional" vacation, has no connections to the United States. ECF No. 15-1 at 1–2.

II. LEGAL STANDARD

A party may register "in any judicial district" a copy of a "judgment in an action for the recovery of money . . . entered in any . . . district court." 28 U.S.C. § 1963. "A judgment so registered shall have the same effect as a judgment of the district court of the district where registered and may be enforced in like manner." *Id.* If a party registers a judgment in this manner, it may invoke Federal Rule of Civil Procedure 69 to seek discovery in aid of enforcing the judgment. Fed. R. Civ. P. 69. Subsection (a)(2) of Rule 69 provides that "[i]n aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record may obtain discovery from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located." Fed. R. Civ. P. 69(a)(2). "[J]udgment creditors are entitled to the broad range of discovery procedures authorized in the Federal Rules of Civil Procedure." *U.S. Equal Emp. Opportunity Comm'n v. Consol Energy, Inc.*, No. 13-cv-215, 2017 WL 11682405, at *3 (N.D.W. Va. Nov. 20, 2017); *see also* Fed. R. Civ. P. 69 advisory committee's note to 1970 amendment (explaining that all modes of discovery in the Federal Rules of Civil Procedure are available to the judgment creditor in aid of execution on a judgment). "'The scope of discovery under Rule 69(a)(2) is constrained principally in that it must be calculated to assist in collecting on a judgment.'" *Mwani v. Al Qaeda*, No. 99-cv-125, 2021 WL 5800737, at *11 (D.D.C. Dec. 7, 2021) (quoting *EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 207 (2d Cir. 2012), *aff'd sub nom. Republic of Argentine v. NML Capital, Ltd.*, 573 U.S. 134 (2014)); *see also British Int'l Ins. Co. v. Seguros La Republica*, 200 F.R.D. 586, 589 (W.D. Tex. 2000) ("The purpose of post-judgment discovery is to learn information relevant to the existence or transfer of

the judgment debtor's assets."). Importantly, once a judgment creditor "take[s] [a] case beyond a simple registration of a judgment . . . personal jurisdiction is necessary to" seek discovery from a judgment debtor. *Dietz v. Dietz*, No. 11-cv-1692, 2012 WL 1931549, at *3 (D. Colo. May 29, 2012). "A federal court must presume that it 'lack[s] jurisdiction unless the contrary appears affirmatively from the record,'" and "[t]he party asserting jurisdiction has the burden of demonstrating the contrary." *Ctr. for Biological Diversity v. Bernhardt*, 490 F. Supp. 3d 40, 45 (D.D.C. 2020) (first alteration in original) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 n.3 (2006)).

III. DISCUSSION

Plaintiff asks the Court to exercise its authority under Federal Rule of Civil Procedure 69(a)(2) and Local Civil Rule 72.1(b)(6) to conduct an examination of Oldham—a foreign national residing in Hong Kong—to aid in determining whether Defendant, whose estate Oldham and his law firm represent, has any assets available to satisfy the Utah Judgment. The Court agrees with Oldham that such discovery cannot be permitted because the Court lacks personal jurisdiction over him.[7] For that reason, Plaintiff's motion is denied.

To start, the Court notes that nothing in the parties' papers suggests that Oldham has any contacts or connections with the United States, much less the District of Columbia. Indeed, Oldham disclaims any connections with the United States, other than the "occasional" vacation. ECF No. 15-1 at 2. Neither Oldham nor his law firm reside or are incorporated in the District of

[7] Plaintiff argues in her opposition to Oldham's motion for sanctions that Oldham has waived his objections to jurisdiction because his attorney entered a general appearance in this case in July 2021. ECF No. 13 at 5–6; *see also* ECF No. 4 (July 29, 2021 notice of appearance by Lars Liebeler on behalf of Gordon Oldham). Yet "this Court has long recognized that special appearances are no longer required in order to oppose personal jurisdiction." *Lemon v. Kramer*, 270 F. Supp. 3d 125, 138 (D.D.C. 2017); *see also Chase v. Pan-Pac. Broad., Inc.*, 750 F.2d 131, 133 (D.C. Cir. 1984) ("It was a central purpose of Rule 12(b) to do away with the necessity for a 'special appearance' by a defendant who sought to present a personal jurisdiction challenge."). Thus, the fact that Oldham's counsel did not enter a "special appearance" in this matter is not dispositive.

Columbia. Oldham further avers that he is a British citizen residing in Hong Kong and "has never lived, worked, or transacted any business in the District of Columbia," "holds no property in the District," "his law firm has no offices in the District," and he "is not authorized to practice law" there. ECF No. 8 at 1, 5; ECF No. 15-1 at 1–2. Plaintiff does not contest those claims in her reply brief, and so the Court will treat them as conceded. *See, e.g.*, *Day v. D.C. Dep't of Consumer & Regulatory Affairs*, 191 F. Supp. 2d 154, 159 (D.D.C. 2002) (recognizing that a court may "treat[] [the non-moving party's] arguments made in opposition to [a] motion . . . as conceded [if] the [moving party] 'failed to respond to these arguments in its reply memorandum'" (quoting *Lewis v. United States*, No. 90-cv-991, 1990 WL 179930, at *2 (D.D.C. Oct. 29, 1990))).

That is significant because a chorus of federal courts have held that where, as here, a party seeks discovery from a nonparty foreign national residing in a foreign country over whom the court lacks jurisdiction, such discovery is governed by the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, Mar. 18, 1970, 23 U.S.T. 2555 (the "Hague Evidence Convention"). Indeed, "[t]here is no question that a party attempting to obtain discovery from a foreign nonparty must resort to the Hague Evidence Convention's discovery procedures (where available) if," as in this case, "the Court does not have personal jurisdiction over the nonparty." *In re 3M Combat Arms Earplug Prod. Liab. Litig.*, No. 3:19-md-2885, 2020 WL 5578428, at *7 n.6 (N.D. Fla. 2020); *see also Gubarev v. BuzzFeed, Inc.*, No. 17-cv-60426, 2017 WL 5634935, at *1 (S.D. Fla. Aug. 15, 2017) ("The court here has no personal jurisdiction over [the foreign, nonparty individual from whom discovery was sought], and thus the Hague [Evidence] Convention is the only means by which to facilitate discovery."); *Crouch v. Liberty Pride Corp.*, No. 15-cv-974, 2016 WL 4718431, at *3 (E.D.N.Y. Sept. 9, 2016) ("In light of the facts that [the foreign, nonparty individual] has refused to consent to the taking of his deposition and that he is a non-

party citizen of England who is beyond the jurisdiction of this court, the procedures of the Hague Evidence Convention, such as the issuance of a Letter of Request, may be the only means available to obtain [the foreign, nonparty individual's] testimony."); *In re Baycol Prods. Litig.*, 348 F. Supp. 2d 1058, 1060 (D. Minn. 2004) ("It also appears that resort to the [Hague Evidence] Convention is the only means available to obtain the requested discovery from [the individual from whom discovery was sought], as he is a foreign person that is not a party to this case, and who is not otherwise subject to the jurisdiction of this Court.").[8] As one court has put it, "'[w]hen discovery is sought from a non-party in a foreign jurisdiction, application of the Hague [Evidence] Convention . . . is virtually compulsory.'" *Tulip Computs. Int'l B.V. v. Dell Comput. Corp.*, 254 F. Supp. 2d 469, 474 (D. Del. 2003) (second alteration in original) (quoting *Orlich v. Helm*

[8] And there are yet other courts that have reached the same conclusion. *See, e.g.*, *Liqwd, Inc. v. L'Oreal USA, Inc.*, No. 17-cv-14, 2018 WL 11189616, at *6 (D. Del. Nov. 16, 2018) ("[A]s a non-party located in a foreign jurisdiction, the [Hague Evidence] Convention provides the only means of compelling discovery from" the foreign corporation.); *Metso Mins. Inc. v. Powerscreen Int'l Distribution Ltd.*, No. 06-cv-1446, 2007 WL 1875560, at *3 (E.D.N.Y. June 25, 2007) ("It also appears that the procedures of the Hague Evidence Convention may be the only means by which the requested discovery may be obtained given the fact that [the individual from whom discovery was sought] is a citizen of Northern Ireland, who is not a party to this action and is similarly not subject to the jurisdiction of this court."); *Saudi v. Marine Atl., Ltd.*, No. 02-cv-2495, 2003 WL 27384297, at *1 (E.D.N.Y. July 22, 2003) (concluding that the discovery proponent "must pursue Atil's deposition through the Hague Evidence Convention because," as here, "(1) Atil is foreign nonparty witness beyond the territorial limits of the Court's subpoena power, and (2) the Court lacks personal jurisdiction over Atil" (internal citations omitted)); *Tulip Computs.*, 254 F. Supp. 2d at 474 ("Resort to the Hague Evidence Convention in this instance is appropriate since [the individuals from whom discovery was sought] are not parties to the lawsuit, have not voluntarily subjected themselves to discovery, are citizens of the Netherlands, and are not otherwise subject to the jurisdiction of the Court."); *Gap, Inc. v. Stone Int'l Trading, Inc.*, No. 93-cv-638, 1994 WL 38651, at *1 (S.D.N.Y. Feb. 4, 1994) ("As a practical matter, in many cases the Hague [Evidence] Convention provides the only means to request documents or testimony from foreign non-parties over whom the court has no personal jurisdiction and who are beyond the subpoena power of the court."); *see also* 3 Ved P. Nanda, et al., *Litig. of Int'l Disputes in U.S. Courts* § 17:42 (2d ed. 2008, updated 2019) ("A person seeking documents must assume that discovery may be had from a non-party in federal court only from a location that has personal jurisdiction over the burdened person. Regardless of theoretical issues, a court will have serious difficulty issuing a contempt order for noncompliance if it should lack personal jurisdiction. Personal jurisdiction may be in the district of litigation, permitting discovery from the court adjudicating the case. Personal jurisdiction may be in other districts in the U.S., permitting discovery in one or more of those districts consistent with other rules imposed by [Rule] 45. Absent the above, discovery must be made through the aid of foreign legal processes (including the Hague Evidence Convention) in the nation with jurisdiction over the burdened party. At best, a foreign nation will take time to honor a discovery request under the Hague Convention, and at worst, the foreign nation is not a signatory to the Hague Convention.").

Brothers, Inc., 160 A.D.2d 135, 143 (N.Y. 1990)[9]).

The fact that Rule 69 permits discovery from "any person" and "does not state that such discovery may only be obtained from persons with 'minimum contacts' with judicial district in which the Court is situated," ECF No. 9 at 3, "does not expand the Court's ability to exercise personal jurisdiction over a party," *Townsend Farms, Inc. v. Göknur Gida Maddeleri Enerji Imalate Ithalat Ihracat Ticaret Ve Sanayi A.Ş.*, No. 20-mc-75, 2020 WL 7260513, at *2 (S.D.N.Y. Dec. 9, 2020) (concluding that discovery requests directed to a foreign nonparty "cannot be enforced if the Court does not have personal jurisdiction over [that party]"); *see also* Fed. R. Civ. P. 82 ("[The Federal Rules of Civil Procedure] do not extend or limit the jurisdiction of the district courts or the venue of actions in those courts."); *cf. Cunningham v. Richeson Restaurants, Inc.*, No. 05-cv-1114, 2006 WL 8437520, at *5 n.2 (N.D. Tex. Aug. 15, 2006) ("While Rule 69(a) permits the use of state procedures to enforce federal judgments, it does not create or expand federal subject matter jurisdiction."). Thus, in order to seek discovery from Oldham—a nonparty foreign national residing in Hong Kong—Plaintiff was required to resort to the procedures set forth in the Hague Evidence Convention.[10]

It appears she has failed to do so. Under the Hague Evidence Convention, "'[t]here are

[9] *Orlich* made that statement "in the context of explaining that it was virtually compulsory for parties to use the Hague [Evidence] Convention to obtain overseas evidence from non-parties rather than other forms of discovery." *Ingenico Inc. v. Ioengine, LLC*, No. 18-cv-826, 2021 WL 765757, at *1 (D. Del. Feb. 26, 2021).

[10] Plaintiff's citation of *Hake v. Citibank*, No. 19-mc-125, 2020 WL 1467132 (S.D.N.Y. Mar. 26, 2020) in support of her motion is unavailing. ECF No. 9 at 4. As an initial matter, *Hake* involves a Rule 45 subpoena—which Plaintiff here is not attempting to enforce, *id.* at 5–6—and does not discuss the jurisdictional limits of post-judgment discovery and therefore is largely inapposite here. Further, Plaintiff seems to rely on *Hake* for the proposition that discovery can be taken of any person or entity—including a nonparty, foreign individual—so long as the discovery is served "by an internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents." *Id.* (quoting *Hake*, 2020 WL 1467132 at *8). That is not correct, at least for nonparty foreign nationals living abroad. In *In re 3M Combat Arms Earplug Products Liability Litigation*, the court concluded that although service was proper under the Hague Service Convention—something this Court need not decide at this juncture—the discovery sought in that case nevertheless could not be compelled because the court lacked personal jurisdiction over the foreign nonparty to whom the discovery request was targeted. 2020 WL 5578428, at *5–7.

three available methods of taking evidence: (1) by a Letter of Request or 'letter rogatory' from a U.S. judicial authority to the competent authority in the foreign state . . . , (2) by an American or foreign diplomatic or consular officer or agent after permission is obtained from the foreign state, and (3) by a private commissioner duly appointed by the foreign state.'" *Tulip Computs.*, 254 F. Supp. 2d at 472 (quoting Newman & Zaslowsky, *Litigating Int'l Com. Disputes* 139 n.3 (1996)); *see also Sec. Inv'r Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, No. 08-cv-7189, 2019 WL 1055958, at *5 (Bankr. S.D.N.Y. Mar. 5, 2019) ("Letters rogatory . . . may be 'the only means to request documents or testimony from foreign non-parties over whom the court has no personal jurisdiction and who are beyond the subpoena power of the court.'" (quoting *Gap*, 1994 WL 38651, at *1)). Yet Plaintiff does not seek discovery from Oldham by any of those means. Instead, she asks that Oldham be haled into Washington so this Court can conduct an "examination" of him. *See* ECF No. 3. Clearly, that is not one of the allowable modes of discovery authorized by the Hague Evidence Convention—which, as explained, governs here because Oldham is a nonparty foreign national residing in a foreign country over whom the Court lacks jurisdiction.[11] The Court therefore denies the motion for examination.

[11] The Court notes that exercising jurisdiction over a nonparty foreign national residing in a foreign country is far different than exercising jurisdiction over a foreign country whose sovereign immunity has been waived, as was the case in *Walters v. People's Republic of China*, 72 F. Supp. 3d 8 (D.D.C. 2014), which Plaintiff cites in her papers. *See* ECF No. 3-1 at 5–6. In that case, the defendant foreign country's sovereign immunity had been waived pursuant to the Foreign Sovereign Immunities Act ("FSIA"), and the defendant had been properly served pursuant to that Act, thereby establishing the court's personal jurisdiction over the foreign country. *Id.* at 9. The FSIA is unique in that, "[i]f service of process has been made under [the FSIA], personal jurisdiction over a foreign state exists for every claim over which the court has subject matter jurisdiction. In turn, the statute automatically confers subject matter jurisdiction whenever the state loses its immunity" *Price v. Socialist People's Libyan Arab Jamahiriya*, 294 F.3d 82, 89 (D.C. Cir. 2002); *see also Harris v. VAO Intourist, Moscow*, 481 F. Supp. 1056, 1065 (E.D.N.Y. 1979) (noting the way in which the FSIA collapses subject matter jurisdiction, *in personam* jurisdiction, and sovereign immunity into a single inquiry); Joseph W. Dellapenna, Suing Foreign Governments and Their Corporations 9 (1988) (commenting on this "significant compression," whereby both "competence [subject matter jurisdiction] and personal jurisdiction depend upon whether the foreign state is immune under the substantive rules in the act"). Nothing in the Court's analysis here—which is focused on jurisdiction in discovery matters involving nonparty foreign nationals—should be understood as trenching on courts' abilities to fully adjudicate matters brought under the FSIA.

CONCLUSION

It may be that Gordon Oldham has information bearing on Defendant's assets available to satisfy the Utah Judgment that has gone unfulfilled for more than 30 years. At present, however, the Court lacks the authority to conduct Plaintiff's desired examination of Oldham. Oldham is a British citizen living in Hong Kong and seemingly has no ties whatsoever to the District of Columbia (or the United States as a whole), and so the Court lacks the power necessary to haul Oldham into court thousands of miles from his residence. It would therefore appear that any discovery of Oldham must be accomplished, if at all, through the procedures set forth in the Hague Evidence Convention. Accordingly, Plaintiff's Motion for Examination of Gordon Oldham (ECF No. 3) is **DENIED**.

Date: August 2, 2022

G. Michael Harvey
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G. MICHAEL HARVEY
UNITED STATES MAGISTRATE JUDGE