IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-cv-02120-JLK

COMPAÑÍA DE INVERSIONES MERCANTILES S.A.,

Petitioner,

v.

GRUPO CEMENTOS DE CHIHUAHUA, S.A.B. de C.V., and
GCC LATINOAMÉRICA, S.A. de C.V.,

Respondents.

ORDER GRANTING IN PART AND DENYING IN PART
CIMSA'S MOTION TO COMPEL (ECF NO. 227)

Kane, J.

On March 26, 2019, final judgment entered in favor of Petitioner/Judgment-Creditor Compañía de Inversiones Mercantiles S.A. ("CIMSA") and against Respondent/Judgment-Debtors Grupo Cementos de Chihuahua, S.A.B. de C.V. ("GCC S.A.B.") and GCC Latinoamérica, S.A. de C.V. (collectively "GCC") in the amount of $36,139,233 plus interest.[1] GCC has not voluntarily paid a dollar in satisfaction of that judgment, and CIMSA has successfully garnished a mere $642.45. Consequently, post-judgment discovery is ongoing. After GCC S.A.B. refused to answer 13 of the 27 interrogatories propounded by CIMSA in its third set of interrogatories, CIMSA filed the motion presently before me—its Motion to Compel Answers to its Third Post-Judgment Set of Interrogatories and for Leave to Serve Additional

[1] This case was initiated in September 2015 through the filing of a Petition to Confirm a Foreign Arbitral Award (ECF No. 1). The case history has been detailed in my previous Order Denying Motion to Vacate Judgment (ECF No. 214) on pages 2 to 12, and in the Tenth Circuit's Opinion, *Compañía de Inversiones Mercantiles, S.A. v. Grupo Cementos de Chihuahua S.A.B. de C.V.*, 970 F.3d 1269, 1275-80 (10th Cir. 2020).

Interrogatories on a Rolling Basis Pursuant to Rules 69 and 33 (ECF No. 227, Restricted Doc. at 226). GCC opposes the Motion, asserting that CIMSA is not entitled to interrogatories in excess of the presumptive limits set by Federal Rule of Civil Procedure 33(a)(1). Given the substantial outstanding judgment and amount of time that has passed, I disagree with that assessment. I do not, however, find it appropriate to grant CIMSA leave to propound additional interrogatories on a rolling basis, as requested. I therefore grant CIMSA's Motion to Compel in part and deny it in part.

I. LEGAL STANDARDS

Federal Rule of Civil Procedure 69 governs enforcement of a judgment and provides that, "[i]n aid of the judgment or execution, the judgment creditor . . . may obtain discovery from any person—including the judgment debtor—as provided in these [R]ules . . . ." Fed. R. Civ. P. 69(a)(2). Rule 69 "authorize[s] the use of all discovery devices provided in the [Federal Rules of Civil Procedure]," including interrogatories. *Id*. advisory committee's note to 1970 amendment. As I explained in a previous order, the presumption under this Rule "is in favor of full discovery of any matters arguably related to the creditor's efforts to trace the debtor's assets and otherwise to enforce its judgment." Order Denying Mot. to Quash at 7, ECF No. 146 (quoting *E.I. DuPont de Nemours and Co. v. Kolon Indus., Inc.*, 286 F.R.D. 288, 291 (E.D. Va. 2012)).

Federal Rule of Civil Procedure 33 concerns interrogatories specifically. It provides that, "[u]nless otherwise stipulated or ordered by the court, a party may serve . . . no more than 25 written interrogatories, including all discrete subparts." Fed. R. Civ. P. 33(a)(1). The Rule goes on to specify that a court may grant leave to serve additional interrogatories, to any extent consistent with Rule 26(b)(1) and (2). *Id.* Rule 26(b)(1) provides that a party may obtain

discovery regarding matters that are nonprivileged and relevant. In the post-judgment context, discovery is relevant if it is "calculated to assist in collecting on a judgment." *EM Ltd. v. Republic of Argentina*, 695 F.3d 201, 207 (2d Cir. 2012), *aff'd sub nom. Republic of Argentina v. NML Capital, Ltd.*, 573 U.S. 134 (2014). The scope of discovery is also limited by Rule 26(b)(2), "which protects against, *inter alia,* overly burdensome discovery requests, discovery of cumulative materials, and overly costly discovery requests." *Murphy v. Deloitte & Touche Group Ins. Plan*, 619 F.3d 1151, 1163 (10th Cir. 2010). Generally, "discovery must be pertinent to the goal of discovering concealed assets and not be allowed to become a means of harassment." 12 Charles A. Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* § 3014 n.4 (3d ed. 2021).

II. DISCUSSION

CIMSA's Motion to Compel makes two requests: First, it seeks an order compelling GCC to answer Interrogatory Nos. 15 to 27 of its third set of interrogatories. And, second, it moves for leave to serve an unlimited number of additional interrogatories "on a rolling basis until GCC complies with this Court's judgment." Mot. to Compel at 1. I grant the former request and deny the latter.

Responses to Interrogatory Nos. 15-27

As stated above, a party is only permitted to serve 25 written interrogatories unless the court grants it leave to serve more.[2] Fed. R. Civ. P. 33(a)(1). I have not granted such leave

[2] The parties may also stipulate to a greater number of interrogatories. GCC has agreed to respond to 30 interrogatories, the number permitted by Colorado Rule of Civil Procedure 26(b)(2)(B). The number CIMSA propounded well exceeds 30, so the parties' agreement does not impact my analysis.

previously. Thus far, CIMSA has propounded a total of 64 interrogatories, including all subparts.[3] GCC S.A.B. has responded to 51 of those interrogatories, but it has refused to answer the final 13 from the third set (i.e., Interrogatory Nos. 15 to 27). GCC does not object to the relevance of the information sought in these interrogatories. Instead, it describes them as "burdensome and unnecessary"[4] and argues that it is not required to respond because they exceed the number permitted by Rule 33(a)(1). I assume Interrogatory Nos. 15 to 27 are relevant and "calculated to assist in collecting on a judgment," *EM Ltd.*, 695 F.3d at 207, and consider only whether they are overly burdensome or unnecessary. I find that they are not.

CIMSA calculates that the total outstanding judgment—which is nearly two-and-a-half years old—now exceeds forty-seven million dollars. Suppl. to Mot. for Turnover at 3 (Public

[3] I independently reviewed the interrogatories, and my count differs from that of both parties. CIMSA's second set of interrogatories contained five questions, but CIMSA later propounded a corrected second set because references to two corporate entities, "GCC" and "Cementos," had been mistakenly interchanged in two of the interrogatories. *See* CIMSA's Second Post-Judgment Set of Interrogatories at 4, ECF No. 231-2. GCC counts the corrected interrogatories as new inquiries, but I do not. The remaining disputes concern the number of subparts that independently qualify as separate inquiries. Once an interrogatory introduces a new topic that is in a distinct field of inquiry, an interrogatory is no longer a single, subdivided request for information. Instead, an inquiry that can stand alone is counted as a separate interrogatory. *See Banks v. Office of Senate Sergeant-at-Arms*, 222 F.R.D. 7, 10 (D.D.C. 2004) (citing *Kendall v. GES Exposition Services*, 174 F.R.D. 684 (D. Nev. 1997)). On the other hand, "subparts directed at eliciting details concerning a common theme should be considered a single question." 8B Charles A. Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* § 2168.1 (3d ed. 2021). I decline to count Interrogatory No. 5 from CIMSA's first set of interrogatories as containing subparts simply because it refers to "patents, trademarks, copyrights, or other intangible rights ow[n]ed directly or indirectly by GCC" in lieu of a general reference to GCC's intellectual property rights. Resp. to Mot. to Compel at 3. Likewise, I do not consider Interrogatory No. 9 from CIMSA's third set of interrogatories to include subparts. There, CIMSA asks GCC to identify the title and role of twelve named "individuals within GCC, Cementos, GCC Cementos, or their subsidiaries/affiliates," and to specify if any of the individuals have multiple roles for multiple subsidiaries. The roles of employees who may work simultaneously for multiple entities are not "discrete separate subjects." *See* Fed. R. Civ. P. 33 advisory committee's note to 1993 amendment. Two interrogatories contained in the third set of interrogatories do contain subparts, however: Interrogatory No. 5 contains three subparts, and Interrogatory No. 12 contains 22 subparts. *See* Resp. to Mot. to Compel at 4.

[4] GCC has not moved for a protective order, however.

Entry at ECF No. 233, Restricted Doc. at ECF No. 223). And, as CIMSA states, "GCC is not the usual judgment debtor with relatively static financial affairs that can [be] discovered in a single set of post-judgment interrogatories." Reply to Mot. to Compel at 4, ECF No. 235. The record supports CIMSA's assertion that this is "a highly fluid situation," *id*., particularly in regard to the movement of funds between GCC and Cementos de Chihuahua, S.A. de C.V. ("Cementos"). The following transactions exemplify CIMSA's challenge in identifying GCC's assets:

- In October 2018, GCC loaned three hundred million dollars to Cementos. Oct. 19, 2018 Loan Agreement, ECF No. 124-4.
- In July 2020, GCC nearly liquidated a bank account by moving ten million dollars to an unknown location. July 2020 BBVA Statement, Public Entry at ECF No. 232-9, Restricted Doc. at ECF No. 222-10.
- From March 2018 until at least October 2020, GCC was investing and reinvesting funds in short-term certificates of deposit ("CDs"), but in March 2021, those funds were transferred to Cementos. *See* Resp. to Suppl. to Mot. for Turnover at 4 n.5, ECF No. 229.
- In June 2021, Cementos placed GCC's funds from the CDs into four different banks, all located in Chihuahua, Mexico. Responses to Second Set of Interrogatories at 2, Public Entry at ECF No. 232-8, Restricted Doc. at ECF No. 222-9.

GCC accuses CIMSA of using the discovery process to harass it by "questioning every single transaction disclosed by GCC in the tens of thousands of pages of discovery it has produced." Resp. to Mot. to Compel at 2, ECF No. 231.[5] GCC exaggerates and seeks to deflect

[5] GCC argues it would have been more appropriate for CIMSA to ask GCC's corporate representative about the implicated transactions during a March 2021 deposition. Resp. to Mot. to Compel at 6. CIMSA complains that depositions "have proven unusually difficult and costly"

attention from the 11 discrete transactions at issue in Interrogatory Nos. 15 to 27. Those transactions are not insignificant; they range in size from nineteen million Mexican pesos (approximately one million dollars) to forty million dollars. In the years since judgment issued, CIMSA has collected only $642.45. Clearly, additional post-judgment discovery is necessary. And given the "thousands of pages of discovery" GCC has produced that demonstrate numerous transfers of millions of dollars to third parties, including subsidiaries, CIMSA has done a commendable job of limiting its inquiries into specific transactions.

GCC further contends the interrogatories are a form of harassment because GCC S.A.B. possesses no attachable assets in the United States. An objection to post-judgment discovery cannot be sustained on the bald claim that discovery is unlikely to bear fruit. It may well be that GCC S.A.B. has no attachable assets in the United States, but CIMSA is not required to take GCC's word for it.

The size of the judgment, the length of time the judgment has gone unpaid, and the nature of GCC's business dealings demonstrate the necessity of Interrogatory Nos. 15 to 27. Combined, these factors warrant a significant expansion of the presumptive limit of 25 interrogatories. CIMSA asks GCC to account for eleven transactions involving at least a million dollars. It is not unduly burdensome for GCC to do so, and it remains necessary. As such, I order GCC to respond to Interrogatory Nos. 15 to 27.

---

because GCC has produced non-English speakers as corporate representatives thereby necessitating the use of professional translators. Both arguments are weak. Regarding CIMSA's argument, GCC is a Mexican corporation, and a Spanish-speaking representative should be predicable if not anticipated. As to GCC's argument, while CIMSA may have had a previous opportunity to make the relevant inquiries in the context of a deposition, it was not required to do so. "Rule 33 . . . permits either interrogatories after a deposition or a deposition after interrogatories." Fed. R. Civ. P. 33 advisory committee's note to 1946 amendment.

Future Interrogatories Served on a Rolling Basis

CIMSA also seeks authorization from this Court to "propound additional interrogatories on a rolling basis without needing to seek leave each time," asserting that no rule forbids this drastic measure. Mot. to Compel at 4. Despite my finding that further discovery is warranted, I agree with GCC that the limitless discovery requested by CIMSA is inappropriate. First, though CIMSA has not come close to "questioning every single transaction disclosed by GCC," it has also failed to produce any evidence of assets located in the United States. If GCC possesses no assets subject to execution, permission to serve an unlimited number of interrogatories on a rolling basis could authorize impermissible harassment. Second, the recently issued Order Granting Motion for Turnover Order (ECF No. 236), may have the effect of rendering answers to future interrogatories unnecessary.

III. CONCLUSION

Accordingly, CIMSA's Motion to Compel (ECF No. 227) is GRANTED IN PART and DENIED IN PART. GCC is DIRECTED to provide full and complete responses to Interrogatory Nos. 15 to 27 of CIMSA's Third Set of Post-Judgment Interrogatories on or before October 20, 2021. CIMSA will not, however, be permitted to serve additional interrogatories on a rolling basis. If additional discovery is desired by CIMSA, a motion articulating just cause with particularity should be filed.

DATED this 20th day of September, 2021.

John L. Kane

JOHN L. KANE
SENIOR U.S. DISTRICT JUDGE