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Discovery denied in Spanish gaming dispute

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A US appeals court has dismissed a bid for reciprocal discovery by the respondents in an ICC arbitration where a bitter fight for control of a Spanish gaming group is playing out.

In a ruling on 1 May, the US Court of Appeals for the Second Circuit denied the application by several shareholders and board members of gaming group Codere.

The applicants sought disclosure of evidence for use in a boardroom power struggle at Codere, with two brothers from the family that founded the group on the one side and its board members and shareholders on the other.

Spanish businessman Luis Javier Martínez Sampedro and his brother [filed their ICC claim in 2018](#) after they were ousted from their leadership positions at Codere.

Sampedro [obtained a discovery order](#) from the Connecticut district court later that year, in aid of separate litigation that he and his brother have lodged against Codere before the Commercial Court of Madrid.

In that discovery request, Sampedro targeted four of the 30 named respondents in the ICC case: investment funds Silver Point Capital and Contrarian Capital Management and Codere board members David Reganato and Norman Sorensen, who are all resident in Connecticut.

The order did not prohibit the use of the discovery in the ICC arbitration and it is understood the documents obtained have been used in that proceeding.

Following the order, the four respondents targeted sought reciprocal discovery from Luis Sampedro. The request was denied by a magistrate judge who ruled that reciprocal discovery was not warranted because the “only foreign proceeding at issue” was the Madrid litigation, to which the four respondents were not parties and could not submit evidence.

The US District Court for the District of Connecticut upheld this decision, dismissing the respondents’ argument that the order was “clearly erroneous” in light of the broad discretion granted to district courts to determine if and when reciprocal discovery is warranted.

In the latest ruling, the appeals court affirmed this position, holding that while a district court may order reciprocal discovery to “address any concerns about parity” between parties, it does not have to do so.

When the brothers obtained their original discovery order, the district court had allowed the material to be used in the arbitration given the absence of evidence that the request for its use in the Madrid litigation was “merely a ruse” for obtaining evidence to be used in the ICC proceeding.

However, the appeals court said this “did not trigger an obligation” on the part of the district court to consider the arbitration when determining whether to grant reciprocal discovery.

The appeals court dismissed the respondents’ arguments that the Madrid litigation alone justified reciprocal discovery given their interest in Codere and that the magistrate judge “created a bright-line rule that reciprocal discovery is only available to *parties* to the foreign proceeding” subject to a discovery application. It held that the order was a “permissible exercise” to the judge’s discretion to grant reciprocal discovery.

“Put simply,” the appeals court said it was reasonable to consider whether the party seeking reciprocal discovery “would be able to *use* that discovery” in the foreign proceeding that was the subject of the discovery application, which given the respondents are not parties to the Madrid litigation, was doubtful.

In the appeals court, Silver Point, Contrarian Capital and Reganato were represented by Boies Schiller Flexner and Sorensen by Latham & Watkins. Luis Javier Martínez Sampedro used US litigation boutique Holwell Shuster & Goldberg.

The ICC arbitration is being chaired by Swiss arbitrator **Franz Stirnimann**. He is joined by two well-known institutional figures in Spain, **Manuel Conthe**, the former president of the Spanish Court of Arbitration, and **José María Alonso**, the president of the Madrid Bar Association.

The case was initially heard by emergency arbitrator **Luca Radicati di Brozolo**, the Italian co-founder of Arblit. He rejected the brothers’ request for an order suspending the effect of the January board meeting.

Hearings in the Madrid-seated arbitration are expected to take place this summer.

The Martínez Sampedro brothers are represented by Spanish firm B Cremades & Asociados. Boies Schiller Flexner and Jones Day are representing various shareholders and directors and Latham & Watkins is representing several independent directors that were appointed to the Codere board. Codere is itself a respondent in the arbitration and has instructed Hogan Lovells.

The brothers are seeking to reverse the decisions removing them, arguing they breached the shareholders agreement, as well as the election of a new board of directors. They are also claiming €250,000 they say is due to Luis under a service contract and the annulment or reduction of a costs award issued against them by di Brozolo in the emergency proceeding.

Codere has launched a yet-to-be-quantified counterclaim seeking compensation for its mismanagement by the brothers. The company alleges the brothers misused up to €20 million of its funds for their personal benefit.

Meanwhile, the brothers have also used information from the discovery won by Luis to support a complaint to the Spanish securities regulator, CNMV, a matter which is currently in a pre-investigation phase.

If the CNMV finds evidence the shareholders coordinated in removing the brothers from their positions, GAR understands it could order them to launch a forced takeover bid at Codere's share price in January 2018, which is several times higher than today.

The Sampedro family retains a 19% stake in the company after having to give up 50% to creditors in a US\$1.4 billion debt restructuring in 2014.

Silver Point Capital, Contrarian Capital Management, David Regnato and Norman Raúl Sorensen v Luis Javier Martínez Sampedro

In the US Court of Appeals For the Second Circuit

Counsel to Silver Point, Contrarian Capital and Regnato

- Boies Schiller Flexner

Partner **Duane Loft** in New York

Counsel to Sorensen

- Latham & Watkins

Partner **Jason Hegt** in New York

Counsel to Martínez Sampedro

- Holwell Shuster & Goldberg

Partners **Vincent Levy** and **Scott Danner** in New York

The Martínez Sampedro brothers v Codere and others (ICC arbitration)

Tribunal

- **Franz Stirnimann** (Switzerland) (chair)
- **Manuel Conthe** (Spain) (appointed by the brothers)
- **José María Alonso** (Spain) (appointed by the respondents)

Emergency arbitrator

- **Luca Radicati di Brozolo** (Italy)

Counsel to Martinez Sampedro brothers

- B Cremades & Asociados

Partners **Bernardo Cremades** and **Bernardo Cremades Jr** and in Madrid

Counsel to Codere

- Hogan Lovells

Partner **Jose Luis Huerta** in Madrid

Counsel to the shareholders and directors

- Boies Schiller Flexner

Partners **Natasha Harrison** and **Ken Beale** in London

- Jones Day

Partner **Mercedes Fernández** in Paris

Counsel to the independent directors

- Latham & Watkins

Partner **Fernando Mantilla-Serrano** in Paris

The Martínez Sampedro brothers v Codere

In the Madrid Commercial Court

Counsel to Martinez Sampedro brothers

- B Cremades & Asociados

Partners **Bernardo Cremades** and **Bernardo Cremades Jr** in Madrid

Counsel to Codere

- Jones Day

Partner **Mercedes Fernández** in Madrid

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