IN THE SUPREME COURT OF GIBRALTAR

No 2014-C-110

BETWEEN:

CHEVRON CORPORATION

Claimants

-and-

(1) AMAZONIA RECOVERY LIMITED
~~(2) WOODSFORD LITIGATION FUNDING LIMITED~~
(3) PABLO ESTENIO FAJARDO MENDOZA
(4) LUIS FRANCISCO YANZA ANGAMARCA
(5) ERMEL GABRIEL CHAVEZ PARRA
~~(6) JULIAN ROSS JARVIS~~

Defendants

Mr J Corbett QC, Mr A Stafford QC and Mr S Catania (instructed by Attias & Levy) appeared on behalf of the Claimant

The First, Third, Fourth and Fifth Defendants did not attend and were not represented

JUDGMENT

JACK J:

1. The Claimants ("Chevron") make two applications. Chevron seek firstly judgment without trial following the striking out of the Defence of the First Defendant ("Amazonia") and the assessment of those damages at US$28,035,219.37. Secondly it seeks an extension of the validity of the Amended Claim Form, so that the Third, Fourth and Fifth Defendants ("the Ecuadorian directors") can be served through diplomatic channels and the adding of two

additional addresses as places for alternative service on the Fourth and Fifth Defendants respectively.

2. For completeness I should say that the claims brought by Chevron against the Second and Sixth Defendants have settled.

3. The application to extend the validity of the Amended Claim Form I can deal with quite shortly. By order of 4th May 2015 I authorised service on the Ecuadorian directors by alternative means. Chevron have effected service by those means. However, they are -- in my judgment understandably – concerned to ensure that any judgment they recover against the Ecuadorian directors will be afforded the greatest recognition possible internationally. For this reason, they are seeking to serve the Ecuadorian directors personally through diplomatic channels, even though (as a matter of Gibraltarian law) service has been effected by alternative means.

4. Thus far their attempts to serve through diplomatic channels have not been successful. The documents to be served have been forwarded to the British Embassy in Quito by the Foreign and Commonwealth Office in London. Requests for service are being submitted to the Ecuadorian Ministry of Foreign Affairs, who should then serve the documents. It is wholly unclear how long the process will take or even if service will be affected at all.

5. In these circumstances I have no hesitation in granting the extension sought. Likewise, further addresses for the Fourth and Fifth Defendants have been discovered, so it is appropriate to add those as addresses at which alternative service can be effected.

6. So far as the relief sought against Amazonia is concerned, on 4th May 2015 I ordered that Amazonia by 4pm on 5th June 2015 file a disclosure report and a witness statement explaining its failure to

participate in the litigation since it filed its Defence dated 24th December 2014. In default I ordered that the Defence be struck out.

7. When I made that order, I was well aware that Amazonia had limited means. It is a Gibraltarian company, so it was completely proper that it be sued in Gibraltar. In order to permit Amazonia to defend itself in the event that it could not afford legal representation, by the same order I authorised it to appear and be represented by an employee. Since the filing of its defence, Amazonia have not participated in the case at all, either through lawyers or through an employee.

8. Amazonia did not comply with the order to file a disclosure report and a witness statement. Accordingly its Defence was struck out automatically. Chevron are now entitled to judgment for an amount of money to be decided by the Court: CPR rule 3.5(2)(b)(ii). In order to decide the amount of the sum to be awarded, a claimant needs to adduce evidence. In the current case, Mr Catania's ninth witness statement gives such evidence. By contrast, because Amazonia's defence has been struck out, the allegations relevant to liability are treated as having been admitted by Amazonia.

9. Chevron have voluntarily limited their claim against Amazonia to the costs incurred by it in bringing proceedings in the United States of America. They have further limited the claim to the period of time during which Amazonia was a party to the conspiracy alleged against it. Chevron say that this is without prejudice to their claims for damages against other conspirators. Whether they are able to make such a reservation is not for this court to determine on this application (but see Contract and Tort Act 1960 section 5(1)(a) and (b)).

10. The costs incurred in the American proceedings are referable to Chevron's attempts to prevent the conspiracy causing further damage to its business. Thus in principle they are in my judgment a valid head of damage, which Chevron are able to claim against Amazonia: see the discussion in *McGregor on Damages* (19th Ed, 2014) at para 20-003ff.

11. If the costs claimed were costs incurred in Gibraltar, then there would be an issues (a) as to whether the costs should be subject to detailed assessment in accordance with the CPR, and (b) whether the basis of the assessment should be on the standard basis or on the (more generous) indemnity basis: *ibid.*

12. In the current case, the costs were costs incurred in the United States. The test here is that described by Sir Anthony Coleman, sitting as a High Court judge, in *National Westminster Bank plc v Rabobank Nederland (No 3)* [2007] EWHC 1742 (Comm) at [20], [2008] 1 Lloyd's Rep 16 at 23:

> "[W]here… the innocent party has incurred the expenditure of legal costs… in another jurisdiction…, that party will have incurred loss of a kind reasonably foreseeable and therefore *prima facie* recoverable as damages for breach of contract. If and to the extent that its expenditure on the pursuit of or defence to those proceedings does not exceed what in all the circumstances is reasonable that would ordinarily be its recoverable loss. To the extent that its costs exceed that amount it ought to in principle to be precluded from recovering them simply because to that extent the expenditure was not caused by the breach of contract by the innocent party's profligate expenditure and failure to mitigate its loss."

That was a case where the defendant had issued proceedings in California in breach of an exclusive jurisdiction clause, but no different rule should in my judgment apply to a claim in tort.

13. In the current case, Mr Catania has explained how the sum of US$28,035,219.37 is made up and has provided detailed records of how the sums are calculated. That sum is undoubtedly very

large. However, the American litigation was extremely heavy, with extraordinarily serious allegations of fraud and bribery being made. Likewise disclosure was particularly onerous. As such I cannot say that the sum claimed is excessive. Amazonia have not made any submissions, either generally as to the amounts claimed or in relation to specific items. In these circumstances I hold that the sums claimed are reasonable and I disallow nothing.

14. Chevron seek an injunction, limited to Gibraltar, the main purpose of which is to enjoin Amazonia from assisting the Lago Agrio Plaintiffs in the enforcement of the judgment for over US$9 billion obtained in Ecuador. Since liability on Amazonia's part is established, in my judgment it is appropriate to grant the injunction, so that Amazonia cannot take any further steps to damage Chevron. A penal notice directed to Amazonia and the Ecuadorian directors should be affixed to the order. It may well be, however, that insolvency proceedings will be begun against Amazonia. If a liquidator is appointed over Amazonia, he should be at liberty to seek a lifting of the injunction.

Adrian Jack,
Puisne Judge

9th December 2015