

**CITATION:** Yaiguaje v. Chevron Corporation, 2017 ONSC 604

**COURT FILE NO.:** CV-12-9808-00CL

**DATE:** 20170125

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**(COMMERCIAL LIST)**

**RE:** DANIEL CARLOS LUSITANDE YAIGUAJE, BENANCIO FREDY CHIMBO GREFA, MIGUEL MARIO PAYAGUAJE PAYAGUAJE, TEODORO GONZALO PIAGUAJE PAYAGUAJE, SIMON LUSITANDE YAIGUAJE, ARMANDO WILMER PIAGUAJE PAYAGUAJE, ANGEL JUSTINO PIAGUAJE LUCITANTE, JAVIER PIAGUAJE PAYAGUAJE, FERMIN PIAGUAJE, LUIS AGUSTIN PAYAGUAJE PIAGUAJE, EMILIO MARTIN LUSITANDE YAIGUAJE, REINALDO LUSITANDE YAIGUAJE, MARIA VICTORIA AGUINDA SALAZAR, CARLOS GREFA HUATATOCA, CATALINA ANTONIA AGUINDA SALAZAR, LIDIA ALEXANDRIA AGUINDA AGUINDA, CLIDE RAMIRO AGUINDA AGUINDA, LUIS ARMANDO CHIMBO YUMBO, BEATRIZ MERCEDES GREFA TANGUILA, LUCIO ENRIQUE GREFA TANGUILA, PATRICIO WILSON AGUINDA AGUINDA, PATRICIO ALBERTO CHIMBO YUMBO, SEGUNDO ANGEL AMANTA MILAN, FRANCISCO MATIAS ALVARADO YUMBO, OLGA GLORIA GREFA CERDA, NARCISA AIDA TANGUILA NARVAEZ, BERTHA ANTONIA YUMBO TANGUILA, GLORIA LUCRECIA TANGUILA GREFA, FRANCISCO VICTOR TANGUILA GREFA, ROSA TERESA CHIMBO TANGUILA , MARIA CLELIA REASCOS REVELO, HELEODORO PATARON GUARACA, CELIA IRENE VIVEROS CUSANGUA, LORENZO JOSE ALVARADO YUMBO, FRANCISCO ALVARADO YUMBO, JOSE GABRIEL REVELO LLORE, LUISA DELIA TANGUILA NARVAEZ, JOSE MIGUEL IPIALES CHICAIZA, HUGO GERARDO CAMACHO NARANJO, MARIA MAGDALENA RODRIGUEZ BARCENES, ELIAS ROBERTO PIYAHUAJE PAYAHUAJE, LOURDES BEATRIZ CHIMBO TANGUILA, OCTAVIO ISMAEL CORDOVA HUANCA, MARIA HORTENCIA VIVEROS CUSANGUA, GUILLERMO VINCENTE PAYAGUAJE LUSITANDE, ALFREDO DONALDO PAYAGUAJE PAYAGUAJE and DELFIN LEONIDAS PAYAGUAJE PAYAGUAJE

Plaintiffs

**AND:**

CHEVRON CORPORATION, CHEVRON CANADA LIMITED and CHEVRON CANADA FINANCE LIMITED

Defendants

**BEFORE:** HAINEY J.

**COUNSEL:** *Alan J. Lenczner, Q.C., Brendan F. Morrison, Kirk M. Baert, Celeste Poltak and Garth Myers, for the Plaintiffs*

*Larry Lowenstein, Eric Morgan, David Rankin, and Robert Frank, for the Defendant / Respondent, Chevron Corporation*

*Benjamin Zarnett and Peter Kolla, for the Defendant / Respondent, Chevron Canada Limited*

*Terrence J. O'Sullivan and Paul Michell, for Chevron Canada Capital Company*

**HEARD:** November 18, 2016

**ENDORSEMENT**

[1] The plaintiffs move to add Chevron Canada Capital Company (“CCCC”) as a party defendant to this action and to further amend their pleading accordingly pursuant to Rule 5.04(2) of the *Rules of Civil Procedure*.

[2] The plaintiffs do not allege a cause of action against CCCC. According to Mr. Morrison’s affidavit sworn in support of the motion, the plaintiffs seek to add CCCC “as a party defendant against which the plaintiffs seek the same relief as that sought against Chevron Canada Limited”.

[3] The proposed addition of CCCC as a party defendant does not change the relief claimed by the plaintiffs in paras. 1(c) and 1(d) of their Amended Amended Statement of Claim in which they seek “a declaration that the shares of Chevron Canada Limited are exigible to satisfy the judgment of this Honourable Court” and “the appointment of an equitable receiver over the shares and assets of Chevron Canada Limited”.

[4] The plaintiffs seek to add CCCC because it is the 100% shareholder of Chevron Canada Limited (“Chevron Canada”).

[5] On January 20, 2017, I released my Reasons for Decision in respect of three motions for summary judgment in this action. I concluded that Chevron Canada’s shares and assets are not exigible and available for execution and seizure by the plaintiffs in satisfaction of the Ecuadorian judgment against Chevron Corporation. Further, I concluded that Chevron Canada’s corporate veil should not be pierced for this purpose. I, therefore, dismissed the plaintiffs’ claim against Chevron Canada.

[6] Because the plaintiffs seek the same relief against CCCC as they did against Chevron Canada, I am of the view that their claim against CCCC cannot succeed for the same reasons that I concluded it could not succeed against Chevron Canada.

[7] The test that applies on a motion to add a party under Rule 5.04(2) is as follows:

- (i) The amendment must not result in irremediable prejudice.
- (ii) The amended pleading must be legally tenable and must disclose a cause of action.
- (iii) The proposed amendment must comply with the rules of pleading.
- (iv) Joinder of the party must be appropriate under Rule 5.02(2) or required under Rule 5.03.
- (v) The addition of the party should not unduly delay or complicate the hearing or cause undue prejudice to the other party.
- (vi) The addition of the party must not be an abuse of process.

[8] The proposed addition of CCCC as a defendant in this action is neither legally tenable because of my decision regarding the corporate separateness of Chevron Canada nor does it disclose a cause of action against CCCC which the plaintiffs admit. In my view, this is fatal to the plaintiffs’ motion.

[9] Further, the plaintiffs do not plead any grounds to establish the jurisdiction of the Ontario Court over CCCC. At para. 27 of their Amended Amended Statement of Claim they plead as follows:

Service out of Ontario is authorized by Rule 17.02(m) and (o) of the *Rules of Civil Procedure*.

[10] Rule 17.02(m) provides for service of a statement of claim outside Ontario in respect of a claim “on a judgment of a court outside Ontario”. However, this rule requires that the foreign judgment must be against the defendant served outside Ontario. The Ontario Court of Appeal concluded in its decision in this case that Rule 17.02(m) is not applicable to Chevron Canada for this reason. At para. 36 of the Court of Appeal’s decision MacPherson J.A. stated as follows:

However, the jurisdictional analysis with respect to Chevron Canada is distinct. Chevron Canada was not a party to the Ecuadorian action, and was not found liable under the Ecuadorian judgment. Accordingly, rule 17.02(m) is not applicable with respect to Chevron Canada.

[11] This conclusion is equally applicable to CCCC which was not a party to the Ecuadorian action and is not liable under the Ecuadorian judgment against Chevron Corporation.


[12] Chevron Canada was found to be subject to the Ontario Court’s jurisdiction because of its “bricks-and-mortar presence” in Ontario and because it has operations and assets in Ontario. This is not the case with CCCC which is a Nova Scotia company with no assets or operations in Ontario.

[13] The plaintiffs also submit that CCCC is “a proper party to be joined ... to permit the Court to fully adjudicate all the issues before the Court” and that CCCC “is also a necessary party to this proceeding given that it will be bound or affected by the ultimate outcome”.

[14] Rule 17.02(o) which allowed a “necessary party” to be served outside Ontario has been repealed. This is no longer a valid basis to serve a party outside of Ontario. In any event, Chevron Canada is no longer a defendant in the action so that CCCC is not a necessary party on the basis that it owns Chevron Canada’s shares. There is, therefore, no basis for service upon CCCC outside Ontario. This is another reason why the plaintiffs’ motion fails.

[15] For these reasons, the plaintiffs’ motion to add CCCC as a party defendant is dismissed.

[16] If the parties cannot agree on the costs of this motion they may file brief written costs submissions of no more than three pages.

  
HAINEY J.

**Date:** January 25, 2017