

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

B E T W E E N:

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 LUSITANTE, ALFREDO DONALDO PAYAGUAJE PAYAGUAJE and DELFIN LEONIDAS PAYAGUAJE PAYAGUAJE

Plaintiffs

- and -

CHEVRON CORPORATION, CHEVRON CANADA LIMITED and
CHEVRON CANADA FINANCE LIMITED

Defendants

NOTICE OF MOTION FOR SUMMARY JUDGMENT

The Defendant, Chevron Canada Limited (“Chevron Canada”), will make a motion to the presiding Judge on the Commercial List, on a date to be fixed, at 330 University Avenue, Toronto, Ontario, M5G 1R7.

PROPOSED METHOD OF HEARING: The motion is to be heard orally.

THE MOTION IS FOR

- (a) an Order for summary judgment, dismissing the claim by the Plaintiffs as against Chevron Canada as set out in the Plaintiffs’ Amended Amended Statement of Claim pursuant to Rule 20.01(3) of the *Rules of Civil Procedure*;
- (b) The costs of this motion and of the action; and
- (c) Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

- (a) In this action, the Plaintiffs seek relief against Chevron Canada and its assets and shares, in respect of an Ecuador judgment referred to in paragraphs 1 and 9 to 16 of the Amended Amended Statement of Claim (the “Ecuador Judgment”).
- (b) Chevron Canada has delivered a statement of defence.
- (c) The Ecuador Judgment is only against, and is only alleged by the plaintiffs to be against, the defendant Chevron Corporation (“Chevron Corp.”).
- (d) Chevron Canada is a Canadian corporation incorporated in 1966 under the *Canada Corporations Act* and later continued under the *Canada Business Corporations Act*. Its registered office is in Calgary, Alberta.

- (e) Chevron Canada is an indirect subsidiary of Chevron Corp. and is a distinct and legally separate entity from Chevron Corp.
- (f) Chevron Canada is not named in, and is not a judgment debtor under, the Ecuador Judgment. Chevron Canada had no involvement in the events that gave rise to the Ecuador Judgment, nor did it have any involvement in Ecuador at all.
- (g) The Ecuador Judgment orders no relief or remedy against Chevron Canada.
- (h) The Plaintiffs do not allege that Chevron Canada was ever a party to the Ecuador action, or that Chevron Canada played any role in the events underlying the action. Neither do the Plaintiffs allege that Chevron Corp. is itself unable to satisfy the Ecuador Judgment. They simply assert that the assets of Chevron Canada are “beneficially-owned by Chevron [Corp.] and, through it, by the shareholders of Chevron [Corp.]”
- (i) All of the shares of Chevron Canada are owned by Chevron Canada Capital Company, which was not a party to the Ecuador action and is not a party to this action.
- (j) The Plaintiffs do not plead any facts which might allow a court to disregard the separate corporate personality of Chevron Canada.
- (k) The Plaintiffs’ Amended Amended Statement of Claim specifically admits that the Plaintiffs do not allege any wrongdoing against Chevron Canada.

- (l) The Plaintiffs assert an entitlement to “execute against Chevron Canada any legal, equitable or other right, personal property, interest, whether direct or indirect, or equity of redemption that Chevron [Corp.], the judgment debtor, has in Chevron Canada.” This admission that Chevron Canada is not a judgment debtor under the Ecuador Judgment, coupled with the fact that there is no judgment of this Court against Chevron Corp. recognizing and enforcing the Ecuador Judgment, and that Chevron Corp. does not have any interests in the assets of Chevron Canada against which execution could be lawfully effected, is fatal to the Plaintiffs’ claim against Chevron Canada.
- (m) There is no genuine issue requiring a trial.
- (n) Summary judgment is a proportionate, expeditious and less expensive means than a trial to achieve a fair and just result.
- (o) Rules 1.05, 20 and 37 of the *Rules of Civil Procedure*, and section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.
- (p) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- (a) The Affidavit of Jeffrey Wasko, sworn August 8, 2012, and the exhibits attached thereto;

- (b) The affidavit of Frank Soler, sworn August 7, 2012, and the exhibits attached thereto;
- (c) The public exhibits to the cross-examination of Frank Soler conducted on October 17 and 31, 2012;
- (d) Subject either to confirmation that the Protective Order dated October 1, 2012 will remain in force with respect to the within summary judgment motion or to the granting of a further protective order:
 - (i) The cross-examination of Jeffrey Wasko conducted on October 18 and 31, 2012 and the exhibits and answers to undertakings to that cross-examination;
 - (ii) The cross-examination of Frank Soler conducted on October 17 and 31, 2012 and the confidential exhibits and answers to undertakings to that cross-examination;
- (e) The pleadings in this action;
- (f) Such further and other evidence as counsel may advise and this Honourable Court deem just.

October 2, 2015

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YAIGUAJE *et al.*
Plaintiffs Defendants

Court File No. CV-12-9808-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

NOTICE OF MOTION (SUMMARY JUDGMENT)

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