

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

**STATEMENT OF DEFENCE OF
CHEVRON CANADA LIMITED**

Admissions and Denials

1. The Defendant, Chevron Canada Limited (“Chevron Canada”), admits the first sentence of paragraph 24 of the Amended Amended Statement of Claim.
2. Except as expressly admitted herein, Chevron Canada denies the balance of the allegations in the Amended Amended Statement of Claim.
3. Chevron Canada denies that the Plaintiffs are entitled to any of the relief claimed against it in paragraph 1 and elsewhere in the Amended Amended Statement of Claim.

Overview

4. Although the Plaintiffs are seeking recognition and enforcement in Ontario against Chevron Canada of an Ecuador judgment referred to in paragraphs 1 and 9 to 16 of the Amended Amended Statement of Claim (the “Ecuador Judgment”), that claim is without any foundation whatsoever. The Ecuador Judgment:
 - (a) was not granted by a Court which could properly take jurisdiction over Chevron Canada;
 - (b) was not granted in a jurisdiction – Ecuador – in which Chevron Canada ever conducted any activity or to which Chevron Canada had (or has) any real or substantial connection;
 - (c) was not granted in a proceeding which named Chevron Canada as a party or of which Chevron Canada was given notice of any claims against it or in which it in any way participated;

- (d) was not granted in an action about any conduct ever undertaken, or acts or defaults ever committed, by Chevron Canada; and
 - (e) was not granted against Chevron Canada, nor did it name Chevron Canada as a judgment debtor.
5. Chevron Canada is a corporation that is separate and distinct from Chevron Corporation (“Chevron Corp”). Chevron Canada owns its own assets. There is no basis to permit the Plaintiffs to ignore Chevron Canada’s separate corporate and legal personality so as to allow the Plaintiffs to obtain Chevron Canada’s assets to satisfy an alleged judgment debt of Chevron Corp. The shares of Chevron Canada are not owned by Chevron Canada or Chevron Corp., but by a corporation who is not a party to this action or the Ecuador Judgment. There is no basis to allow the Plaintiffs to seize the shares or property of non-parties to satisfy a judgment debt allegedly owing by Chevron Corp.
6. In any event, the Ecuador Judgment is not, for the reasons set out in the Statement of Defence of Chevron Corp., a judgment which can be recognized and enforced against Chevron Corp., the judgment debtor thereunder.
7. As found by the United States District Court for the Southern District of New York (“SDNY”) as facts, the Ecuador Judgment was obtained by “corrupt means,” including bribing the judge and the principal court-appointed expert, extorting judicial employees, wire fraud, money laundering, obstructing justice, tampering with witnesses, and violating

the Racketeer Influenced and Corrupt Organizations Act of the United States (“RICO”).¹ The Ecuador Judgment cannot be recognized and enforced against Chevron Corp. - *a fortiori* there is no basis to recognize and enforce it against Chevron Canada.

Chevron Canada

8. Chevron Canada was incorporated in 1966 pursuant to the *Canada Corporations Act*, S.C. 1964-65, c. C-52 and was continued pursuant to the *Canada Business Corporations Act*, S.C. 1974-75-76, c. C-33, as amended (“CBCA”) on October 27, 1980. Chevron Canada’s registered and head office is located in Calgary, Alberta.
9. As a corporation continued under the CBCA, Chevron Canada is a separate and distinct legal entity, which owns its own assets. Chevron Canada’s assets are not owned legally, beneficially, equitably or otherwise by Chevron Corp. or Chevron Corp.’s shareholders as groundlessly alleged by the Plaintiffs in the Amended Amended Statement of Claim. Chevron Canada is not responsible for any debts or liabilities of Chevron Corp., its indirect shareholder. Chevron Canada pleads and relies on sections 2, 15 and 45 of the CBCA.

No Connection to Ecuador

10. The Ecuador court that granted the Ecuador Judgment had no jurisdiction over Chevron Canada.
11. Chevron Canada never carried on or conducted any business or activities in Ecuador. The activities that the Plaintiffs allege gave rise to the Ecuador Judgment, which allegedly

¹ The judgment of the United States District Court for the S.D.N.Y. (*Chevron Corp. v Donziger et al.*, 974 F Supp 2d 362 (S.D.N.Y. 2014)) was appealed to the United States Court of Appeals for the Second Circuit, and is currently under reserve.

occurred in the period 1972-1990 by Texaco Inc. or an affiliate thereof, were not activities of Chevron Canada, nor were they even activities of an affiliate of Chevron Canada when they allegedly occurred. Chevron Canada never amalgamated or merged with Texaco Inc. or an affiliate thereof which allegedly conducted the activities in Ecuador of which the Plaintiffs complain.

12. The action brought by the Plaintiffs in the SDNY in 1993, referred to in paragraphs 3, 5 to 7 and 21 of the Amended Amended Statement of Claim, was not an action against Chevron Canada, nor was Chevron Canada a party to that action. The proceedings therein and any statements made about Ecuador and its jurisdiction, as now alleged by the Plaintiffs, were not proceedings that involved, or statements made by, Chevron Canada.
13. The action brought by the Plaintiffs in Ecuador in 2003, referred to in paragraphs 8 to 16 of the Amended Amended Statement of Claim, was not an action which named Chevron Canada as a party, nor was it one about which Chevron Canada was given notice. Chevron Canada did not participate in that action in any way.
14. The Ecuador Judgment referred to in paragraphs 1 and 9 to 16 of the Amended Amended Statement of Claim, which the Plaintiffs seek to have recognized and enforced in this action, does not name Chevron Canada as a judgment debtor.
15. The Plaintiffs therefore have no basis to claim any relief against Chevron Canada with respect to the Ecuador Judgment. The Ecuador Judgment cannot be recognized and enforced against Chevron Canada and Chevron Canada has no obligation to pay the Ecuador Judgment or have any of its shares or assets made subject to any seizure or

Receiver, contrary to what the Plaintiffs claim, without any foundation whatsoever, in paragraph 1 and elsewhere in the Amended Amended Statement of Claim.

Chevron Canada is a Corporation that is Separate and Distinct from Chevron Corp.

16. Contrary to the allegations in paragraphs 18 and 26 of the Amended Amended Statement of Claim, Chevron Canada is a 7th level indirect subsidiary of Chevron Corp. One hundred per cent (100%) of the voting shares of Chevron Canada are owned by Chevron Canada Capital Company (“CCCC”), which is a Nova Scotia company. Neither indirect ownership of a 7th level subsidiary by Chevron Corp., nor indirect control within the meaning of the CBCA, detracts in any way from Chevron Canada’s separate corporate identity. The CBCA expressly contemplates that one corporate body may own shares in a CBCA corporation, and have control, without that in any way meaning that the separate corporate identities are at all compromised. Accordingly, the relationship of a 7th level indirect parent and a 7th level indirect subsidiary, cannot possibly affect their separate corporate identities.
17. Contrary to the Plaintiffs’ allegations in paragraph 20 of Amended Amended Statement of Claim, the board of directors of Chevron Canada is independent, separate and distinct from the board of directors of Chevron Corp. The directors of Chevron Canada are elected by its shareholder, CCCC.
18. Chevron Canada is engaged in the business of exploring, producing, refining and marketing petroleum products. Its operations are carried out through two divisions (Exploration and Production, and Products) that employ hundreds of people. Chevron Canada operates, and has assets, in certain locations in Canada. Chevron Canada deploys

the results of its operations for proper corporate purposes - to fund operations and capital projects, to service debt, and to pay dividends.

19. Contrary to the bald allegations in paragraphs 18 and 26 of the Amended Amended Statement of Claim, Chevron Canada's assets are not owned (legally, beneficially, equitably or otherwise) by Chevron Corp. or Chevron Corp.'s shareholders. Such allegations are factually baseless and legally untenable. In particular, contrary to the vague assertions in paragraphs 24 and 25 of the Amended Amended Statement of Claim, there is no basis whatsoever, including no statutory basis, for the Plaintiffs' claim that they will execute against Chevron Canada due to an alleged interest of Chevron Corp. in assets of Chevron Canada.
20. Contrary to the Plaintiffs' allegations in paragraph 20 of the Amended Amended Statement of Claim, Chevron Corp. does not generally guarantee Chevron Canada's debts. In certain cases, Chevron Corp. has provided guarantees of obligations of Chevron Canada. Chevron Corp. has never been called upon to perform its obligations under a guarantee; moreover, such guarantees are simply a further indication that Chevron Corp. and Chevron Canada are legally distinct and that one has no responsibility for obligations of the other unless a specific written guarantee is negotiated and agreed to.
21. Accordingly, Chevron Canada is a legally distinct entity from Chevron Corp. Nothing in Chevron Corp.'s public disclosure nor in its manner of financial reporting, which are inaccurately described in the Amended Amended Statement of Claim, does or could change that.

22. Further, the Plaintiffs do not allege, and there is no basis for any assertion, that Chevron Canada is or has been an instrument of fraud or a mechanism to shield Chevron Corp. from any liability. Indeed, the Plaintiffs admit in paragraph 24 of the Amended Amended Statement of Claim that they “do not allege any wrongdoing” against Chevron Canada. No basis to pierce the corporate veil could exist on the Plaintiffs’ own allegations.

The Ecuador Judgment Cannot Be Enforced

23. Further, or in the alternative, there can be no basis for recovery upon the Ecuador Judgment against Chevron Canada because recognition and enforcement of the Ecuador Judgment is prohibited by the defences of natural justice, public policy, and fraud, even against the judgment debtor, Chevron Corp. as set out in the Statement of Defence of Chevron Corp. For those same reasons, which are incorporated herein to the extent necessary, the Ecuador Judgment cannot be enforced against anyone else, including but not limited to Chevron Canada.

Action Should be Dismissed

24. The Plaintiffs have no cause of action against Chevron Canada. Chevron Canada requests that this action be dismissed against it, with costs on a full indemnity scale.

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

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Proceeding commenced at Toronto

**STATEMENT OF DEFENCE OF
CHEVRON CANADA LIMITED**

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