

CL-2014-000070

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)**

B E T W E E N :

- (1) ANATOLIE STATI
(2) GABRIEL STATI
(3) ASCOM GROUP S.A.
(4) TERRA RAF TRANS TRADING LTD

Claimants

- and -

THE REPUBLIC OF KAZAKHSTAN

Defendant

THIRD WITNESS STATEMENT OF EGISHE DZHAZOYAN

I, **EGISHE DZHAZOYAN**, of King & Spalding International LLP, 125 Old Broad Street, London EC2N 1AR, **WILL SAY:**

1. I am a Solicitor of the Senior Courts of England and Wales and a partner in the firm of King & Spalding International LLP, solicitors for the Claimants. This is my third Witness Statement in these proceedings. I assist in the care and conduct of these proceedings. I am authorised by the Claimants to make this Witness Statement on their behalf.
2. My Second Witness Statement was made on 13 March 2018 ("**Dzhazoyan 2**").¹ Unless states otherwise, I adopt the defined terms used in Dzhazoyan 2 in this Witness Statement. Unless I indicate otherwise, the facts and matters set out in this Witness Statement are within my knowledge or derived from documents which I identify. Where I rely on what others have told me, I identify the source of that information which is true

¹ [B/6/89-120]

to the best of my knowledge, information and belief. No waiver of privilege is made or intended in making this witness statement.

3. There is now produced and shown to me a paginated bundle of copy documents which is annexed and marked "ED-3" to which I shall refer below. I refer to the documents by page number. Documents referred to in this witness statement which are included with the hearing bundle are referenced in the form "[Volume/Tab Number/Page Number/Paragraph Number]".

A. PURPOSE OF STATEMENT

4. I make this witness statement as a result disclosures made in Section E of the Second Witness Statement of Philip Maitland Carrington dated 16 March 2018 ("**Carrington 2**").² These disclosures (which I will collectively refer to as the "**Second Correction**") appear to:

- 5.1 directly contradict other evidence submitted to the Court record by the RoK in these Proceedings, including evidence that was verified by a statement of truth; and

- 5.2 when considered in combination with the other correction made by the RoK in Nacimiento 6 (the "**First Correction**"), which is also discussed in Section E of Carrington 2, amplify the concerns of the Stati Parties that this Court may have been misled by the RoK throughout these Proceedings, most notably during the February 2017 hearing of the RoK's Amendment Application.

5. Notwithstanding that the Stati Parties have filed a Notice of Discontinuance³ to properly bring these Proceedings to an end, the Stati Parties believe it is necessary to address these issues because, *inter alia*:

- 6.1 the issue of whether the Court was misled by the evidence submitted by the RoK, particularly the evidence given in pleadings and witness statements that were verified by a statement of truth, have implications in relation to the RoK's pending Application irrespective of the discontinuance; and

- 6.2 both the First and Second Correction are relevant to the issue of costs in relation to the RoK's pending Application and the related hearing on 26 March 2018.

6. I further note in this regard that Carrington 2, in which the Second Correction is made, was served after Dzhazoyan 2. The Stati Parties have therefore had no other opportunity

² [B/7/134-138]

³ [A/12/107]

to address this evidence. In this regard, it should be noted that the RoK knew of the Second Correction "...a matter of days prior to the deadline for standard disclosure on Thursday, 22 February 2018"? well before the date of Dzhazoyan 2 (and even in advance of Carrington 1⁵ to which Dzhazoyan 2 responded) and the Notice of Discontinuance. Despite the Stati Parties' request that it do so, the RoK has not provided any explanation as to why it delayed revealing the Second Correction by over three weeks until this very late stage and so close to the hearing of the Application.

B. THE FIRST CORRECTION

7. To avoid rehearsing the details provided with regard to the First Correction in Dzhazoyan 2, I will limit this section to providing a brief summary of the most pertinent points for the current context.
8. The First Correction is relevant, not only because it undermines an important aspect of the evidence on which the Knowles J Judgment is based as set out in Dzhazoyan 2 (for which reason I will not expand further on this point at this juncture), but also because - when viewed in light of the Second Correction - establishes a pattern of late (and as will be explained below, even then, incomplete) disclosure of important evidence relevant to key issues in dispute in the Proceedings which is contradictory to evidence previously presented by the Defendant to the Court.
9. The First Correction is summarised in Carrington 2. In brief, the Defendant alleges that as opposed to 2015, which was the date previously given in the previous RoK's evidence, Nacimiento 6 now states that the RoK in fact became aware of '*The enforcement proceedings against Montvale in Kazakhstan in 2014*' and of "*unsubstantiated rumours from around late 2012/early 2013 that the Stati Parties might be involved in arbitral proceedings against VitoF*".⁶
10. However, the First Correction is incomplete and gives rise to further questions and doubts as to the veracity of the evidence submitted in the Proceedings by the RoK. In particular, the Claimants will seek to demonstrate that the RoK had knowledge of the Related Arbitrations in excess of mere "*unsubstantiated rumours*" in early 2013. In this regard, the Mangistau Oblast Specialised Inter-District Economic Court, made an order for enforcement of the award made in the second of the Related Arbitrations on 11 February 2013⁷ and the Mangistau Department for Enforcement of Court Orders, part of the RoK's Ministry of Justice, issued a letter relating to the said court order on 26 March

⁴ [D/121-122]

⁵ [B/1/1-19]

⁶ [B/7/136/44]

⁷ ED-3/1-7

2013.⁸ This evidence demonstrates that the RoK - via its courts and the Ministry of Justice - knew of the Related Arbitrations in early 2013.

C. THE SECOND CORRECTION

11. Like the First Correction, the Second Correction came out of the blue to the Claimants and seeks to introduce new evidence that was not provided previously, which is contradictory to the evidence put by the RoK before Knowles J in the February 2017 hearing of the Amendment Application.
12. In summary, the Second Correction states that the RoK had the Perkwood Contract in its possession, by virtue of the Perkwood Contract having been provided to Bolashak Consulting Group ("**Bolashak**"), the RoK's legal advisors in Kazakhstan, at the time of the ECT Arbitration.⁹ It is not explained on exactly what date Bolashak received the Perkwood Contract as the RoK has refused/been unable to provide this information despite the Stati Parties' request that it do so.¹⁰
13. This Second Correction contradicts the RoK's previous evidence, including the evidence presented to the Court in the February 2017 hearing before Mr Justice Knowles. For example, it is stated in Nacimiento 4 that "...the Perkwood Agreement was only obtained as part of the Disclosed Material [the documents received pursuant to the subpoena of the SDNY Court made on 22 June 2015]".¹¹ I note in this regard that the Second Correction is made in Carrington 2, however Ms. Nacimiento (who has previously submitted six witness statements in these Proceedings) has not amended her evidence or explained the position otherwise. This is particularly conspicuous given the weight given to Ms. Nacimiento's evidence in these Proceedings¹² and means that there are now two directly contradictory accounts within the RoK's evidence on the Court record, both of which are verified by a statement of truth.
14. The Second Correction also contradicts statements made in the RoK's pleadings and in correspondence. The RoK explicitly denies in its Points of Reply dated 7 November 2017¹³ ("**Points of Reply**") that it had the Perkwood Contract in its possession during the ECT Arbitration: "*Even if the Perkwood Contract was already in the possession, custody, or control of the Defendant at the relevant time during the Arbitration (which is*

⁸ ED-3/8-9

⁹ [B/7/137/48]

¹⁰ [D/117/2(a)]

¹¹ [B/3/56/31]

¹² Paragraph 25 of the Knowles J Judgment records that "I proceed on the basis that Ms Nacimiento has taken every care in the written evidence she gives, under a statement of truth. She is to be taken to know that this Court will have high expectations in these respects, especially in a case of this nature involving very serious allegations."

¹³ [A/8/90-97]

denied)"¹⁴ Furthermore, as recently as 29 December 2017, in the course of correspondence regarding the First Correction, the RoK stated in a letter that the RoK "...and its legal representatives were not (and had no reason to be) aware of"¹⁵ even the existence of the Perkwood Contract during the Arbitration.¹⁶

15. Carrington 2 also states that "[u]pon making enquiries of Bolashak and a former employee of the MoJ involved in the conduct of the Arbitration"¹⁷ it appeared that the Perkwood Contract "might have been received from the General Prosecutor's Office of the Republic of Kazakhstan (the "GPO") during the course of the Arbitration".¹⁸ The GPO is plainly part of the RoK. The RoK was therefore, in fact, in possession of the Perkwood Contract from the date on which the GPO came to possess it, even before it was received by Bolashak. This has never been explained and the Second Correction is accordingly incomplete.
16. The RoK has identified the 'former employee of the MoJ' Mr. Gani Bitenov, as the source of this information. The Stati Parties previously requested that Mr Bitenov be included as a custodian in the RoK's standard disclosure exercise¹⁹ but the RoK refused to search the documents in Mr. Bitenov's possession on the grounds that he was "not likely to hold any documents which are relevant to the issues in dispute".²⁰ The opposite now appears to be true.
17. Further, it is wrong for the RoK to say that the GPO was not involved in the ECT Arbitration; a number of representatives from the RoK's GPO appeared on behalf of the RoK in the ECT Arbitration, including:
 - a. Mr Alan Tlenchiev, Head of the Division on the Supervision over Compliance with Environmental Legislation of the Department of Supervision over Compliance with Legislation in the socio-economic sphere of the RoK's GPO;²¹
 - b. Mr Aman Sagatov, Senior Prosecutor of the Division on the Supervision over Compliance with Environmental Legislation of the Department of Supervision over

¹⁴ [A/8/95/17(2)(a)]

¹⁵ [D/39/9]

¹⁶ Indeed, the latter statement is also inconsistent with paragraph 17(1) of the RoK's Points of Reply in which "[i]s admitted that the Excel file titled "LPG Cataraga" refers to a contract with an entity named "Perkwood Inv LTD, USD" dated 17 February 2006 in respect of "Delivery of technologic facility complex Liquid gas production unit" [the Perkwood Contract] which was disclosed by the RoK itself to the Claimants in the ECT Arbitration in April 2012. This admission was made for the first time in the Points of Reply and therefore, like the Corrections at hand, postdates the Knowles J Judgment.

¹⁷ [D/7/137/48]. The RoK's solicitors have refused/been unable to give details of the enquiries made or who made them, or to identify the individuals at Bolashak to whom such enquiries were addressed.

¹⁸ [D/7/137/48]

¹⁹ [D/3/3]

²⁰ [D/6/8]

²¹ See paragraph 110 of the ECT Award.

Compliance with Legislation in the socioeconomic sphere of the RoK's GPO;²²
and

c. Mr Andrey Kravchenko, Deputy General Prosecutor of the RoK's GPO.²⁰

18. But even leaving to one side the issue of the GPO's involvement in the underlying arbitration, the position remains that the RoK now admits that it is "*possible that this former MoJ employee [Mr Bitenov] might have had an electronic copy of the Perkwood Contract in his possession during the Arbitration*"²³ (emphasis added). Given that there can be no dispute that the Ministry of Justice was in charge of the Defendant's representation in the Arbitration, this admission casts further doubt, to say the least, on the veracity of the RoK's representations to the Court at the February 2017 hearing.
19. Notably, the RoK is not able to give the exact date on or the circumstances in which the RoK's GPO came to possess the Perkwood Contract as these details are apparently "*presently unclear*".²⁵ However, it is noted in the ECT Award that the RoK's Financial Police seized TNG documents regarding contracts with third parties and the construction of pipelines in December 2008 and that TNG subsequently complained to the RoK's GPO about these actions in January 2009.²⁶ It is also noted in the ECT Award that the RoK's GPO then carried out a number of unscheduled inspections of TNG together with the Financial Police and other RoK agencies in 2010.²⁷ All of these events pre-date the conclusion of the ECT Arbitration by at least 3 years and are occasions on which the RoK is likely to have come to possess the Perkwood Contract.²⁸ Notwithstanding the above, the Claimants are still in the complete dark as to the true position with respect to this issue.
20. Carrington 2 then attempts to downplay the importance of the fact that the RoK had the Perkwood Contract in its possession with respect to its ability to have discovered and raised the Alleged Fraud during the ECT Arbitration by stating that "*...even if the Perkwood Contract was in the possession of the [RoK] during the Arbitration, it would still not have been possible for the [RoK], acting with reasonable diligence, to have discovered the [Stati Parties'] fraud during the Arbitration*".²⁰

²² See paragraphs 110 and 155 of the ECT Award.

²³ See paragraphs 114, 455, 1043, 1047 and 1054 of the ECT Award.

²⁴ [D/7/137/48]

²⁵ [D/7/137/48]

²⁶ See paragraphs 358 and 274 of the ECT Award.

²⁷ See paragraph 587 of the ECT Award.

²⁸ The RoK argued in the course of the arbitration that Perkwood was deployed by the Claimants with a view to "*siphoning off* moneys in the course of their business activities in Kazakhstan (*see* paragraph 1450 of the ECT Award).

²⁹ [D/7/138/49]

21. However, this is, on the RoK's own case, wrong. Previously the RoK claimed not to have the Perkwood Contract in its possession during the ECT Arbitration and this was alleged to be the reason why it could not have, with reasonable diligence, discovered the Alleged Fraud at the time of the ECT Arbitration. In particular, the RoK stated that the Perkwood Contract was "*the key document that enabled [it] to begin to discover*"³⁰ the Alleged Fraud and that "*The [RoK] was not able to discover the facts and matters underpinning the Fraud Case during the Arbitration, because the uncovering of the Stati Parties' fraud rested on four critical factors, none of which was discoverable by the Defendant until recently... The second was the Perkwood Agreement itself. This was a critical document...*"³¹ (emphasis added).

D. CONCLUSION

22. In combination, the First and Second Corrections demonstrate that, contrary to the evidence presented to Knowles J in the February 2017 hearing, it is highly likely, to put it at its lowest, that the RoK (i) knew about the Related Arbitrations as early as February 2013 and (ii) had the Perkwood Contract in its possession during the ECT Arbitration such that it could have, acting with reasonable diligence, discovered the Alleged Fraud at the time of the ECT Arbitration.
23. Accordingly, there is, at the very least, a *prima facie* case that both the Stati Parties and the Court have been misled by the RoK with respect to the issue of the RoK's knowledge of the Alleged Fraud in the lead up to the February 2017 hearing before Knowles J.

Statement of Truth

I believe that the facts stated in this Witness Statement are true.



Egishe Dzhazoyan

Dated 22 March 2018

³⁰ [O/6/204/31(1)]

³¹ [B/4/83/38]