

**IN THE HIGH COURT OF JUSTICE Claim Nos: CL-2017-000583 and CL-2019-000644
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)**

BETWEEN:

EURASIAN NATURAL RESOURCES CORPORATION LIMITED

Claimant

-and-

**(1) DECHERT LLP
(2) DAVID NEIL GERRARD**

Defendants

-and-

THE DIRECTOR OF THE SERIOUS FRAUD OFFICE

Defendant

B e f o r e :

MR JUSTICE WAKSMAN

EXECUTIVE SUMMARY OF JUDGMENT

HANDED-DOWN ON 21 DECEMBER 2023

Introduction

1. This is a short précis of the written judgment handed-down today, after a trial which took place on 6-9 and 13-16 March 2023. It does not form part of, nor is it a substitute for, the actual judgment to which reference should be made for my detailed findings and reasons.
2. There have now been two trials in these proceedings. The first trial, held in 2021 (“the Phase 1 Trial”), culminated in a judgment handed down on 16 May 2022 (“the Phase 1 Judgment”). That judgment was mainly concerned with liability, as opposed to causation and loss. Its subject-matter consisted of the various claims of a serious nature made by Eurasian Natural Resources Corporation Limited (“ENRC”) against (a) Dechert LLP (“Dechert”) a firm of city solicitors, and Mr Neil Gerrard then a partner in Dechert (collectively “the Dechert Defendants”), who were acting for ENRC at all material times and (b) the Director of the Serious Fraud Office (“the SFO”).

3. In particular, ENRC alleged that Mr Gerrard had a number of meetings or other contacts with the SFO, in the course of which he acted in gross breach of duty towards ENRC because he disclosed information to the SFO when he had no authority to do so and/or information which was privileged. There was a total of 30 such meetings, known as Disputed Contacts (“DCs”). ENRC also alleged that Mr Gerrard instigated three particular leaks of information pertaining to ENRC to the press, resulting in articles in August and December 2011 and March 2013. In addition, it alleged that Dechert was in breach of numerous other duties arising from its retainer, the overall effect of which was to increase massively the scope and extent of the investigation for ENRC which Dechert had been engaged to lead, and which concerned aspects of ENRC’s operations in Kazakhstan and Africa, in particular in the DRC.
4. As against the SFO, ENRC alleged that it acted wrongfully by taking part in and facilitating the DCs when it knew, or was reckless as to the fact that Mr Gerrard was acting without authority and in breach of his (and Dechert’s) duties towards ENRC.
5. The SFO and the Dechert Defendants denied all the allegations made against them.
6. However, I found, first, that the Dechert Defendants had acted in breach of their contractual and fiduciary duties and negligently in the following respects:
 - (1) Mr Gerrard was indeed the instigator of all three leaks to the press;
 - (2) He was in at least reckless breach of duty in respect of DCs 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 15A, 17, 18, 19A, 20, 21, 23, 24, 25 and 25A;
 - (3) He was also in breach of duty in relation to his failure to record in writing his own advice, wrong advice about ENRC’s potential criminal liability, the risk of raids by the SFO, potential penalties, the risks involved in engaging with the SFO in the way that ENRC did, and not suggesting a different course, failing to determine the scope of the SFO’s concerns in relation to ENRC in the context of the investigation, unnecessary expansion of the investigation, wrong advice about bringing documents into this jurisdiction, failing to protect ENRC in relation to privilege, and failing to disclose to ENRC his knowledge of the fact that Mr Cary Depel, ENRC’s then Head of Compliance had been interviewed by the SFO on 16 May 2012.
7. As for the SFO, I found that, acting by Mr Alderman and/or Mr Thompson and/or Mr Gould, it was in serious breach of its own duties in relation to 15 out of the 30 DCs, which included engaging

with and taking information from Mr Gerrard which was plainly unauthorised and against his client's interests. These DCs were DCs 1, 4-11, 13, 15, 19A, 20, 23 and 24. I shall refer to them as "IDCs" (Induced DCs). On the facts, I found that in relation to the IDCs (and subject to proof of causation and loss) the tort of inducement to breach of contract on the part of Mr Gerrard had been established.

8. On causation and loss, ENRC alleged as follows:

- (1) Both the Dechert Defendants and the SFO were jointly and severally liable for its primary losses which consisted of (a) fees paid to Dechert which ENRC should never have paid, because they related to work which in truth was unnecessary ("Unnecessary Work"), in the sum of £11.25m (b) the costs of various third-party providers which were similarly unnecessary ("Unnecessary Costs"), in the sum of £9.5m and (c) wasted management time ("WMT") in the sum of £232,000;
- (2) As against the SFO only, that it would not have commenced the criminal investigation ("CI") into ENRC which it in fact commenced in April 2013 (and which was recently terminated, without charges being brought, in August 2023) but for the SFO's breaches of duty as against ENRC.

9. The second trial, with which the current judgment is concerned, is known as the Phase 1A Trial. It was held to deal with a number of items of causation and loss following on from the findings I made in the Phase 1 Judgment referred to above. These further issues were as follows:

- (1) As for causation, and in relation to the SFO only:
 - (a) was its wrongdoing an effective cause of ENRC's primary losses (set out in paragraph 8(1) above) at all?
 - (b) would the SFO have commenced the CI but for its own wrongdoing?
- (2) Were there any defences available to the SFO on the basis that the primary losses claimed against it were in any event not reasonably foreseeable, or otherwise too remote because the wrongdoing on the part of Dechert broke the chain of causation, or on the basis that ENRC had failed reasonably to mitigate those losses?
- (3) In respect of the quantum of the primary losses and as against the Dechert Defendants and the SFO (subject to its prior point that it did not cause any of those losses at all), how much of those losses can be established?

- (4) Insofar as the SFO was liable to ENRC in respect of its primary losses, what contribution should be made as between the SFO, on the one hand, and the Dechert Defendants on the other?
 - (5) Should there be an award of exemplary damages as against the SFO and in favour of ENRC?
 - (6) Should that part of my Phase 1 Judgment which dealt with Mr Gerrard's responsibility for the March 2013 leak to the press be re-opened?
10. Prior to the commencement of the Phase 1A Trial, Dechert paid to ENRC the sums for which it said it was liable, in terms of the primary losses, namely £6m in respect of Unnecessary Work and £3m in respect of Unnecessary Costs. This meant that in any event, the primary losses claimed by ENRC could not now exceed £5.26m for Unnecessary Work and £6.5m for Unnecessary Costs. The claim for WMT was unaffected because the Dechert Defendants continued to maintain (as did the SFO) that there was no basis for it at all.
11. It was agreed that there should be no new witness evidence adduced at the Phase 1A Trial. Nor would any documents be referred to which had not been in the trial bundle for the Phase 1 Trial (unless otherwise agreed or permitted). However, if a document referred to was in the trial bundle, it did not matter whether it was actually referred to in the Phase 1 Trial. Accordingly, the Phase 1A Trial itself consisted entirely of oral submissions which followed the lodging of extensive written submissions by the parties. The submissions made at the Phase 1A Trial thus referred back to (a) what I had found in my Phase 1 Judgment, (b) evidence given at the Phase 1 Trial both in witness statements ("WSs") and orally and (c) documents from the Phase 1 Trial bundle.
12. I have now found as follows in relation to the Phase 1A Trial:
- (1) The SFO's wrongdoing was an effective cause of the losses claimed by ENRC in respect of Unnecessary Work, Unnecessary Costs and WMT;
 - (2) But for the SFO's wrongdoing, it would not have commenced the CI; the separate losses claimed by ENRC in this respect will have to be assessed at a yet further trial;
 - (3) The effect of my assessment of Quantum in relation to Unnecessary Work, Unnecessary Costs and WMT is that ENRC is entitled to significantly more by way of damages than Dechert and the SFO have contended, though not as much as ENRC has sought; the detailed implications of my findings, in terms of actual figures, will have to be worked out by the parties;

- (4) The SFO's claimed defences on the basis of remoteness as to reasonable foreseeability or *novus actus*, and failure to mitigate, are rejected;
- (5) So far as contribution is concerned:
 - (a) In respect of liability for Unnecessary Work, Dechert and Mr Gerrard are 100% responsible and must indemnify the SFO accordingly on a joint and several basis;
 - (b) In respect of liability for Unnecessary Costs and WMT, where Dechert and Mr Gerrard sought a 50% contribution from the SFO, the just and equitable contribution from the SFO to the Dechert Defendants is 25%; the Dechert Defendants are therefore liable to contribute to the SFO, 75% of the Unnecessary Costs and WMT damages awarded, on a joint and several basis;
- (6) This is not a case appropriate for an award of exemplary damages against the SFO;
- (7) There is no basis for re-opening the Phase 1 Trial in relation to the March 2013 leak.