

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Date: 20080912  
Docket: S083864  
Registry: Vancouver

Between:

**Transpacific Petroleum Corp.  
and Ghareeb Awad**

**Plaintiffs**

And:

**The Minister of Petroleum-Egypt,  
Dover Investments Limited and  
Sea Dragon Energy Inc.**

**Defendants**

Before: The Honourable Mr. Justice Savage

**Oral Reasons for Judgment**

In Chambers  
September 12, 2008

Appearing on behalf of the Plaintiffs:

G. Awad

Counsel for the Defendant Minister of Petroleum-Egypt:

D. Laudan  
J.Z. Murray

Counsel for the Defendant Dover Investments Limited:

L. Gold

Place of Trial/Hearing:

Vancouver, B.C.

**Introduction:**

[1] **THE COURT:** This is an application by the Minister of Petroleum-Egypt (the "Minister of Egypt") to strike out all claims against him in this action on the basis of state immunity under s. 3 of the ***State Immunity Act***, R.S.C. 1985, c. S-18, and state immunity at common law. In the alternative, the Minister of Egypt seeks to have the court declare that there has been no valid service of these proceedings on the Minister of Egypt, because the purported service complies neither with the British Columbia ***Rules of Court*** or the Hague Convention of November 1985 on the service abroad of judicial and extrajudicial documents in civil or commercial matters.

[2] The action brought on behalf of Transpacific Petroleum Corp. and Ghareeb Awad names the Minister of Egypt and Dover Investments Ltd. ("Dover") and Sea Dragon Energy Inc. ("Sea Dragon"). It is apparent that the action involves the granting of concessions to the corporate defendants and the failure to grant concessions to the plaintiffs by the defendant Minister of Egypt.

[3] The action makes claims against the Minister of Egypt based on the Minister of Petroleum's actions and defaults. It does so in his capacity as a minister in the government of Egypt.

[4] Dover and Sea Dragon consent to the Minister of Egypt's application.

**State Immunity Act:**

[5] Section 3 of the ***State Immunity Act*** provides that a foreign state is immune from the jurisdiction of any court in Canada. The term "foreign state" is defined in

the **State Immunity Act**. It includes the government and political subdivisions of the foreign state acting in a public capacity.

[6] Filed with the materials before me is a certificate made pursuant to s. 14(1) of the **State Immunity Act** that states, *inter alia*, that the Arab Republic of Egypt is a foreign state for the purposes of the Act. It names the Minister of Petroleum as part of a ministry that is a government department in the government of the foreign state. Section 14(1) of the **State Immunity Act** provides that such certificate is "conclusive proof of any matter stated in the certificate".

[7] It follows that the Minister of Egypt is immune from the jurisdiction of this court unless an exception applies. The plaintiff argues that there are three exceptions that apply: the exception for commercial activity, the exception for property damage, and the exception for criminal proceedings.

**Commercial Activity:**

[8] Section 5 of the **State Immunity Act** makes an exception for the commercial activity of a state. The term "commercial activity" is defined to mean:

... any particular transaction, act or conduct or any regular course of conduct that by reason of its nature is of a commercial character.

[9] As I read the statement of claim in this proceeding, the allegations against the Minister of Egypt are that the Minister of Egypt approved or failed to approve concessions or deeds of assignment in its capacity as part of the government of the Arab Republic of Egypt and under the authority of Egyptian law. Although those

actions have consequences for commercial activity, the actions themselves are not commercial in nature.

[10] In the leading case of *Re Canada Labour Code*, [1992] 2 S.C.R. 50, La Forest J. for the majority conceded that there are both ontological and teleological aspects to an activity. The nature of the actions, the approval or lack of approval is clearly not commercial in nature. The purposes of the actions may be to allow commercial activity to occur, but that could be said of any regulatory action by government.

[11] In my opinion the purpose of the actions complained of here cannot convert the fundamental ontology of the acts into something commercial in nature. The actions complained of are here governmental and regulatory in nature and not commercial in nature. It follows that the exception that gives a court jurisdiction over a foreign state for commercial activity does not apply.

**Property Damage:**

[12] Dr. Awad appears to suggest that the exception for property damage applies to this proceeding. Section 6 of the *State Immunity Act* provides that:

6. A foreign state is not immune from the jurisdiction of a court in any proceedings that relate to ...

(b) any damage to or loss of property that occurs in Canada.

In this case, however, the loss of property relates to the concessions in the Arab Republic of Egypt, over which the Arab Republic of Egypt has jurisdiction. There is

no damage to or loss of property that has occurred in Canada. This section does not apply.

**Criminal Proceedings:**

[13] Dr. Awad argues that the actions of the Minister of Egypt are illegal and therefore criminal. Section 18 of the **State Immunity Act** provides that:

18. This Act does not apply to criminal proceedings or proceedings in the nature of criminal proceedings.

The action here is a civil proceeding. It is not a criminal proceeding, nor is it "in the nature of a criminal proceeding". While the immunities conferred by the **State Immunity Act** do not apply to criminal proceedings, they do apply to civil proceedings, so the s. 18 exception does not apply.

**Service Requirements:**

[14] In the circumstances it is unnecessary to determine whether there has been proper service of these proceedings on the Minister of Egypt because, as argued before me, the purported service complies neither with the British Columbia **Rules of Court** nor the Hague Convention of November 1985 on the service abroad of judicial and extrajudicial documents in civil or commercial matters.

**Summary:**

[15] This matter is governed by the **State Immunity Act**. As the Arab Republic of Egypt is a foreign state and the actions complained of are the public actions of a minister acting in a ministry of the government of a foreign state, the Minister of Egypt is immune from the jurisdiction of this court. The claims against the Minister

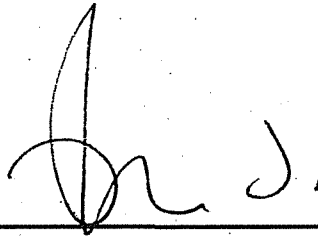
of Egypt in the within proceeding are struck, as this court is without jurisdiction to adjudicate those claims.

[16] The Minister of Egypt will have his costs against the plaintiff to be taxed at scale B.

[17] Is there anything further?

[18] MR. LAUDAN: Yes, My Lord. Just ask that the consent of the plaintiffs to the form of the order be dispensed with.

[19] THE COURT: Very well.



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***The Honourable Mr. Justice Savage***