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Nov-14-2007 9:08 am

Case Number: CGC-03-417580

Filing Date: Nov-13-2007 9:08

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ORDER

LARRY BOWOTO VS. CHEVRONTEXACO CORPORATION

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FILED
San Francisco County Superior Court
NOV 13 2007
GORDON PARK-LI, Clerk
By: [Signature]
Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Larry Bowoto, et. al.,)	Case No.: CGC-03-417580
)	
Plaintiff,)	ORDER RE ACT OF STATE DOCTRINE
)	AND CHOICE OF LAW
vs.)	
)	
ChevronTexaco Corporation, et. al.,)	
)	
Defendant.)	

THE PRECLUSIVE AFFECT OF FEDERAL COURT'S DECISION

The principles of collateral estoppel prevent this court from relitigating the issues already ruled upon by the Honorable Judge Illston in the recently decided Bowoto v. Chevron Corp., No. C 99002506 (N.D. Cal.) available at WL 2349336. This court is bound by Judge Illston's findings in regards to choice-of-law and the act of state doctrine.

1 **a.) Collateral Estoppel**

2
3 Collateral estoppel applies “[w]hen an issue of fact or law is actually litigated and
4 determined by a valid and final judgment, and the determination is essential to the judgment, the
5 determination is conclusive in a subsequent action between the parties, whether on the same or a
6 different claim.” Lumpkin, 49 Cal. App. 4th at 1229-30 (quoting Restatement (Second)
7 Judgments § 27).

8 Collateral estoppel is a fundamental principle of our judicial system. The principle
9 promotes a number of policy objectives. It “prevents a litigant from being ‘subjected to
10 consecutive proceedings raising the same factual allegations.’” Lumpkin v. Jordan (1996) 49
11 Cal. App. 4th 1223, 1229-30. By doing so, collateral estoppel helps to ensure judicial efficiency
12 and consistency.

13
14 The federal court’s decision in Bowoto, at WL 2349336 involves the same general set of
15 facts at issue in the state case. In addition, the parties have briefed and the federal court has
16 decided the act of state and choice of law questions presented here. The question presented is
17 whether a party who has fully litigated an issue in Federal court, and has received a final
18 judgment on the merits is allowed to relitigate the same issue in State court against the same
19 adversary. The answer is no.

20 **b.) Full Faith and Credit**

21
22 Because the original litigation occurred in Federal court and the request for preclusion is
23 being made in State Court, a brief discussion of the interrelationship between the two
24 jurisdictions is an appropriate starting point for the discussion.

1 Article IV, section 1 of the Constitution of the United States requires that state courts
2 afford full faith and credit to the judgments of the courts of sister states. The implementing
3 statute, 28 USC Section 1738 requires that state courts likewise accord full faith and credit to
4 federal court judgments. This includes federal preclusion rules. See Restatement (Second) of
5 Judgments section 87; Howard M. Erichson, Interjurisdictional Preclusion, 96 Mich.L.Rev. 946
6 (1998).

7
8 Consequently, a federal court "order or judgment has the same effect in the courts of this
9 state as it would have in a federal court." Estate of Hilton (1988) 199 Cal.App.3d 1145, 1168;
10 Levy v. Cohen, (1997) 19 Cal. 3d 165, 172-173 ("Full faith and credit must be given to a final
11 order or judgment of a federal court.").

12 **c.) Do Judge Illston's orders in the federal case have a preclusive effect on this**
13 **court?**

14
15 The first question is whether Judge Illston's orders, which are subject to appeal, are final
16 judgments on the merits. They are

17
18 California courts look to federal law to determine whether a federal court judgment is
19 final for collateral estoppel purposes. Levy v. Cohen, (1977) 19 Cal. 3d 165, 172; Lumpkin v.
20 Jordan (1996) 49 Cal. App. 4th 1223, 1230; Martin v. Martin (1970) 2 Cal.3d 752761, fn.13.

21
22 "The federal rule is that a judgment or order, once rendered, is final for purposes of res
23 judicata, until reversed on appeal or modified or set aside in the court of rendition." Levy, 19
24 Cal. 3d at 172. "A federal court judgment is final even if an appeal for that judgment is currently
25 pending." (Calhoun v. Franchise Tax Board (1978) 20 Cal.3d 881, 887. "Furthermore, for

1 collateral estoppel purposes, the federal court's ruling on the summary judgment, even though
2 appealed, must be considered final.” Lumpkin, 1230.

3
4 Accordingly, Judge Illston’s orders are final judgments on the merits for the purposes of
5 precluding relitigation of the issues.

6
7 When an issue of fact or law is actually litigated and determined by a valid and final
8 judgment, and the determination is essential to the judgment, the determination is conclusive in a
9 subsequent action between the parties, whether on the same or a different claim.” Lumpkin, 49
10 Cal. App. 4th at 1229-30 (quoting Restatement (Second) Judgments § 27).

11 Collateral estoppel “prevents a litigant from being ‘subjected to consecutive proceedings
12 raising the same factual allegations.’” Id. at 1230. Unlike res judicata, it does not matter for
13 collateral estoppel whether the same cause of action was involved in the two actions or whether
14 the cause of action in the second case could have been litigated in the previous suit. Collateral
15 estoppel “preclude[s] a party to prior litigation from redisputing issues therein decided against
16 him, even when those issues bear on different claims raised in a later case.” Roos v. Red (2005)
17 130 Cal. App. 4th 870, 879.

18 For the following issues: choice-of-law and act of state doctrine, it is this court’s
19 determination that an identical issue was presented to Judge Illston, sufficiently argued by the
20 litigants, and ruled on. Therefore, her decision collaterally estops this court from reconsidering
21 the issues.

1 Judge Illston's Orders Which are Binding on This Case

2
3 Judge Illston ruled on two issues which bind this court through collateral estoppel. The
4 issues are: choice-of-law and the act of state doctrine.

5
6 **a.) Choice-of-Law**

7
8 Judge Illston determined that Nigerian law governs the events that occurred on the barge,
9 and that California law should govern the remainder of plaintiff's claims.

10
11 **b.) The Act of State Doctrine**

12 Judge Illston determined that the act of state doctrine does not prevent plaintiffs from
13 litigating their claims.

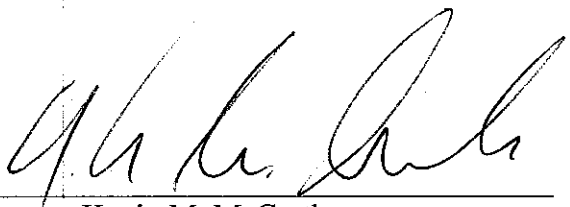
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15 Defendant's urge the court to reconsider the applicability of the act of state doctrine due
16 to the fact that the plaintiffs in this case are seeking injunctive relief instead of the monetary
17 relief that they sought in the federal court case. Judge Illston's ruling, however, was that there
18 was no act of state. Any consideration of the type of relief sought, in the act of state doctrine
19 analysis, would necessarily come after finding that there was an act of state.

20
21 Judge Illston's ruling is that the defendants failed to make even the threshold showing
22 that an act of state was being considered. As Judge Illston writes, "Defendants urge that the acts
23 were "not ad hoc decision of local officers, but authorized operation conducted within the chain
24 of command of the Nigerian military," yet they fail to present evidence of the "chain of
25 command" at work." (See Order Re: Cross-Motions for Summary Judgment on the Act of State

1 Defense). Without this evidence, Judge Illston correctly finds that the act of state doctrine can
2 not apply. This issue is not changed even in the slightest because the plaintiff's in the state court
3 case are seeking injunctive relief. Therefore, Judge Illston's decision does collaterally estop this
4 court from reanalyzing whether the act of state doctrine is a viable defense in this case.

5
6 IT IS SO ORDERED.

7
8 DATED: 11/13/07

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11 _____
12 Kevin M. McCarthy
13 Judge of the Superior Court
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SUPERIOR COURT OF CALIFORNIA
County of San Francisco
Department 604

Larry Bowoto, et. al.

Plaintiffs

Case Number: 417580

vs.

ChevronTexaco Corporation, et. al

Defendants

CERTIFICATE OF MAILING
(CCP 1013a (4))

I, Marilyn L. Flores, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On November 13, 2007 I served the attached ORDER RE ACT OF STATE DOCTRINE AND CHOICE OF LAW by placing a copy thereof in a sealed envelope, addressed as follows:

Theresa M. Traber, Esq.
TRABER & VOORHEES
128 N. Fair Oaks Avenue, Suite 204
Pasadena, CA 91103

Robert Mittelstaedt, Esq.
Caroline Mitchell, Esq.
Lara Kolios, Esq.
JONES DAY
555 California St., 25th Floor
San Francisco, CA 94104

Cindy Cohn, Esq.
ELECTRONIC FRONTIER FOUNDATION
454 Shotwell Street
San Francisco, CA 94110

and, I then placed the sealed envelopes in the outgoing mail at 400 McAllister Street, San Francisco, CA. 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practices.

Dated: November 13, 2007

GORDON PARK-LI, Clerk

By: 

Marilyn L. Flores, Deputy Clerk