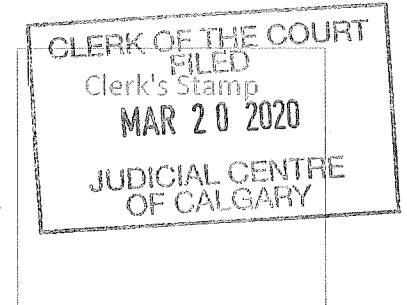


Form 11
[Rule 3.31]



COURT FILE NUMBER 1901-09160

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS STEPHEN FLESCHE, MARSHAL THOMPSON, TYLER MAKSYMCHUK,
and REID CHAMBERLAIN

DEFENDANTS APACHE CORPORATION; PARAMOUNT RESOURCES LTD.,
WILLIAM C. MONTGOMERY, ANNE R. BAY, DANIEL W. RABUN,
RENE R. JOYCE, and CHARLES J. PITMAN

DOCUMENT **STATEMENT OF DEFENCE OF THE DEFENDANT, APACHE
CORPORATION**
Brought Under the Class Proceedings Act

PARTY FILING THIS DEFENDANT, APACHE CORPORATION
DOCUMENT

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
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Note: State below only facts and not evidence (Rule 13.6)

1. Except as expressly admitted, the Defendant, Apache Corporation ("**Apache**"), denies each and every allegation in the Amended Statement of Claim.
2. Apache admits paragraphs 8 to 9 and paragraphs 12 to 16 of the Amended Statement of Claim.
3. This Action has not yet been, and may never be, certified as a class proceeding. As such, at this time, Apache can only set forth its anticipated defences to matters which may at one point

be certified as common issues among the parties. Apache reserves all rights to amend its Statement of Defence as needed to address those issues, if any, that are in fact certified as common issues among the parties.

4. Capitalized terms that are not defined in this Statement of Defence have the same definition as set out in the Amended Statement of Claim.

Overview

5. Before the shares of Apache Canada were sold, certain Apache Canada employees received discretionary unvested stock-based compensation that did not form part of their employment agreements. This discretionary compensation was governed by controlling plan documents and took the form of Stock Options (Options), Restricted Stock Units (RSUs), Performance Awards (PAs), or some combination thereof, which varied among employees in terms of scope, reward and value. When Apache sold its Canadian operations by selling the shares of Apache Canada to Paramount, these unvested discretionary awards were validly cancelled and forfeited pursuant to the terms of the applicable agreements. There is no basis or merit to any of the Plaintiffs' claims.

The AOCPP and Grant Agreements Did Not Form Part of the Plaintiffs' Terms of Employment

6. In response to paragraphs 27 and 58 of the Amended Statement of Claim, none of the AOCPP or any of the Grant Agreements formed part of the terms of employment of any Apache Canada employee. The AOCPP (including Sections 1.2, 3.1, 3.2, 5.1, 15.1, 16) and each Grant Agreement, namely, the RSU Agreement (including Section 15), the Option Agreement (including Section 15) and the PA Agreement (including Section 16), expressly stated that they were discretionary agreements and did not form part of the terms of employment of the employee in question.

The AOCPP and Grant Agreements are all Governed by the Laws of the State of Texas

7. Pursuant to Section 18.4 of the AOCPP, it is an express term of the AOCPP that the AOCPP, and all agreements pursuant to it, which includes all Grant Agreements in issue in this Action, shall be construed in accordance with and governed by the laws of the State of Texas.

No Breach of Contract

8. In paragraph 59 of the Amended Statement of Claim, the Plaintiffs assert that, upon the sale of the Apache Canada shares, there was a "Change in Control" as defined in the AOCPP, and that the members of the potential Class were "Involuntarily Terminated", as defined in the AOCPP. It is alleged that these alleged "Involuntary Terminations" should have caused full vesting of the unvested RSUs, Options and PAs of the potential members of the Class.

9. However, the sale of the Apache Canada shares did not constitute either a "Change of Control" or result in an "Involuntary Termination" of any member of the potential Class.

No “Change of Control”

10. Paragraph 37 of the Amended Statement of Claim states that the AOC and Grant Agreements addressed what would occur to the long-term incentive compensation provided in the form of RSUs, Options and PAs in the event of a Change of Control of the “Company”, and states that the Grant Agreements incorporate by reference the AOC, including the provisions related to a Change of Control.

11. The AOC defines “Change of Control” as having the meaning assigned to that term in Apache’s Income Continuation Plan, which defines “Change of Control” as:

“Change of Control” shall mean the event occurring when a person, partnership or corporation together with all persons, partnerships or corporations acting in concert with each person, partnership or corporation, or any or all of them, acquires more than 20% of **the Company’s** outstanding voting securities; provided that **a Change of Control shall not occur if** such persons, partnerships or corporations acquiring more than 20% of the Company’s voting securities is **solicited** to do so by the Company’s board of directors, upon its own initiative, and such persons, partnerships or corporations have not previously proposed to acquire more than 20% of the Company’s voting securities in an unsolicited offer made either to the Company’s board of directors or directly to the stockholders of the Company.

(emphasis added)

12. In response to paragraph 38 of the Amended Statement of Claim, Apache agrees the AOC defines “Company” to mean Apache together with its Affiliates. However, Apache states the plain meaning of the word “together” in the definition of “Company” means Apache *and all* its Affiliates, not Apache *or any* of its Affiliates, as alleged by the Plaintiffs.

13. In further response to paragraph 38 of the Amended Statement of Claim, the AOC defines “Company” to mean Apache together with its Affiliates “except where the context otherwise requires”. Therefore, the word “Company” in the AOC does not include the Apache Affiliates where the context otherwise requires.

14. In response to paragraphs 39 and 40 of the Amended Statement of Claim, the term “Company” means Apache together with its Affiliates. It does not mean, and cannot mean, simply one Affiliate, as alleged by the Plaintiffs.

15. Alternatively, in response to paragraphs 39 and 40 of the Amended Statement of Claim, the context of the provisions of the AOC at issue in this Action requires that all references to “Company” at issue in this Action refer only to Apache.

16. As such, any relevant reference to “Change of Control” of the “Company” in the AOC or the Grant Agreements refers either to a change of control of Apache together with its Affiliates,

or it refers only to a change of control of Apache itself, and not to any of its Affiliates, including Apache Canada.

17. There has been no “Change of Control” of Apache at any time material to this lawsuit. The purchase of the shares of Apache Canada by Paramount was not a “Change of Control” as defined in the AOC. As a result, at any time material to this lawsuit, there has been no “Change of Control” as defined in the AOC or the Grant Agreements.

18. In any event, Apache solicited Paramount to take over Apache Canada. Therefore, even if “Company” as defined in the AOC were to apply to Apache Canada in the context of a “Change of Control”, which is not admitted but expressly denied, there has been no “Change of Control” of Apache Canada as defined in the AOC or the Grant Agreements.

No “Involuntary Termination”

19. “Involuntary Termination” is defined in the AOC as “the termination of employment of the Participant by the Company or its successor for any reason on or after a Change of Control [...]”.

20. The sale of the Apache Canada shares did not constitute or effect a termination of employment of any of the members of the potential Class, and therefore did not constitute or effect an “Involuntary Termination”.

21. Therefore, in response to paragraph 61 of the Amended Statement of Claim, Apache did not refuse “to honour the Class’ RSUs, Options and PAs” as alleged, because there was no Class-wide vesting of the unvested RSUs, Options or PAs to honour.

22. As a result, there has been no breach of the AOC and no breach of any of the Grant Agreements.

Not “Eligible Persons”

23. In addition, the AOC defined “Eligible Person” as “those employees of the Company or of any Affiliates, members of the Board, and members of the board of directors of any Affiliates who are designated as Eligible Persons by the Committee.”

24. The PA Agreements expressly state that cessation of employment prior to the end of the Performance Period will result in the forfeiture for all purposes of the performance award RSUs specified in the Award Notice.

25. In addition, the Award Notice, which is incorporated into the PA Agreement, states that as a condition of a grant of any performance award under the PA Agreement, the Recipient must remain an Eligible Person and “employed by Apache or its Affiliate as of the final day of the Performance Period”.

26. The RSU Agreements expressly state that, to receive the RSUs, the Recipient must remain employed as an Eligible Person on the vesting date of the RSUs in question.

27. Therefore, pursuant to the PA Agreements and the RSU Agreements, among other things, for an individual to be entitled to a grant of any shares of Apache through either a PA Agreement or a RSU Agreement, the individual must have been an employee of Apache or any of its Affiliates on the vesting date or other operative date.

28. The members of the potential Class were never employees of Apache.

29. Further, upon the sale of the shares of Apache Canada, that entity was no longer an Affiliate of Apache, and all member of the potential Class therefore ceased being employees of an Affiliate of Apache. As a result, every member of the potential Class ceased being an "Eligible Person" as defined in the AOCF at that time.

30. For this additional reason, no member of the potential Class has any claim against Apache for any unvested PAs or RSUs.

Acquiescence and Estoppel

31. Alternatively, even if there were any breach of the AOCF or any of the Grant Agreements, which there was not, after the sale of the shares of Apache Canada, members of the potential Class continued their employment with full awareness of the alleged change of terms and cancellation of their Apache Options, RSUs and PAs. Therefore, those members of the potential Class accepted and acquiesced to any such alleged change in terms or cancellation, and are estopped from now bringing any claim for any such alleged breach.

No Breach of Duty of Good Faith and Fair Dealing

32. In response to paragraphs 67 and 68 of the Amended Statement of Claim, Apache denies that there is any duty of good faith and fair dealing as a feature of the contractual relationship of the parties as alleged. In any event, even if there were any such duty, which is not admitted but denied, Apache has discharged its obligations arising from that duty. In addition, as there has been no breach of the AOCF and no breach of any of the Grant Agreements, there has been no breach by Apache of any contractual duty of good faith or fair dealing.

No Unjust Enrichment of Apache

33. In general response to paragraphs 72 and 73 of the Amended Statement of Claim, there has been no unjust enrichment of Apache, no corresponding deprivation of the potential Class and, in any event, there is a valid juristic reason for any benefits Apache might have enjoyed.

34. There has been no breach of the AOCF or any applicable Grant Agreement. As such, any benefits received by Apache are valid contractual benefits flowing to Apache, and are not an unjust enrichment. Similarly, there can be no corresponding deprivation as alleged (and any such deprivations are not admitted but expressly denied), as any deprivation arises contractually from

the terms of the AOCIP and the Grant Agreements. In any event, the AOCIP and the Grant Agreements create a valid juristic reason for any benefit obtained by Apache.

35. The Parties are to be held to their bargain, and the Plaintiffs' cannot validly claim restitutionary relief as a means of undermining the express terms of the AOCIP or the Grant Agreements.

The Damages Claimed are Individualistic and Overstated

36. In response to the entire Amended Statement of Claim, Apache states the Plaintiffs have no valid cause of action against Apache, and as such the issue and computation of damages is moot.

37. In specific response to paragraphs 74, 75 and 79(f) of the Amended Statement of Claim, the damages allegedly suffered and claimed in the Amended Statement of Claim, although denied, are inherently individual issues and not common issues.

38. For example, even if the Plaintiffs had a valid claim against Apache, which is not admitted but expressly denied, to prove their specific damages, each individual Plaintiff would need to establish such matters as the specific types of Options, RSUs or PAs granted to that employee; the quantity of the Options, RSUs or PAs granted to that employee; the grant date or dates of every Option, RSU or PA granted to that employee; the vesting dates of every Option, RSU or PA granted to that employee; the value at cancellation, if applicable, of every Option, RSU or PA received and cancelled of that employee; the date and nature of the end of that employee's employment with Apache Canada or Paramount; the quantity of Options, RSUs or PAs outstanding at the date of the sale of Apache Canada to Paramount; the value of every Option, RSU or PA still in the hands of the employee at the date of sale of Apache Canada to Paramount; and the value of any similar style compensation received by the employee from Paramount. This is not an exhaustive list of the inherently individualistic issues at play in the determination of damages in this Action.

39. In any event, the damages claimed are excessive and do not accurately reflect the actual losses suffered by members of the potential Class.

No Basis for Punitive Damages

40. In response to paragraphs 76-78 and 79(g) of the Amended Statement of Claim, there has been no breach of any contractual or other duty by Apache to the members of the potential Class. There has been no improper conduct on Apache's part, either as alleged or at all. As such, there is no basis for a claim in damages *simpliciter* by the members of the potential Class against Apache, much less any basis for punitive damages.

41. The claim for punitive damages by the Plaintiffs is itself improper, and justifies an award of full indemnity costs in favour of the Defendants.

Remedy sought:

42. The Plaintiffs' claim against Apache should be dismissed, with full indemnity costs.