RULING

First Circuit Court, State of Hawai‘i

RE: City & County of Honolulu and BWS v. Sunoco, LP, et al;
Civ. No. 1CCV-20-0000380 (JPC)

RE: Ruling on Chevron Defendants’ Special Motion to Strike (etc);
(motion filed 6/2/21; Dkt. 349)

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1. The above motion was heard on the record remotely via Zoom on 8/27/21. The court took the motion under advisement, and now issues its ruling.

2. This ruling is intended as a short-form and broad explanation or outline for the court’s ruling. It is not intended as an all-encompassing document that includes all legal citations, all reasons, all issues, or all exhibits underlying the court’s ruling.

3. The Motion is hereby DENIED. Generally, the court concludes that Hawai‘i has a more significant relationship to the parties and subject matter than does California.

4. The court’s reasons include:

A. For this choice of law issue, the court primarily applies Mikelson v. USAA, 107 Haw 192 (2005), and Lewis v. Lewis, 69 Haw. 497

(1988). Mikelson adopted a flexible balancing approach. No one factor is dispositive. The court is to assess the factors, interests, and policy factors involved. The goal is to determine which state has the most significant relationship to the parties and subject matter. 107 Haw at 198.

B. The Pltfs (City & County of Honolulu and the Board of Water Supply) are in Hawai‘i. This weighs in favor of applying Hawai‘i law.

C. Pltfs obviously have specific, enduring, and substantial attachments to Hawai‘i (as opposed, say, to if Pltfs were individuals who moved to Hawai‘i six months before suit was filed). This further weighs in favor of applying Hawai‘i law.

D. There are some Hawai‘i Defts. This weighs in favor of applying Hawai‘i law.

E. The alleged damages include harm to the shoreline, infrastructure, buildings, and economy of Hawai‘i. This weighs in favor of applying Hawai‘i law.

F. Hawai‘i has its own anti-SLAPP law, HRS 634F. It is more limited than California’s version. Hawai‘i’s statute protects testimony to a governmental body during a government proceeding. The court concludes as a matter of law that the Hawai‘i statute provides no relief to movant. In other words, Hawai‘i’s legislative policy does not favor the protection sought by this motion. This weighs against applying California’s anti-SLAPP law in Hawai‘i.

G. California’s anti-SLAPP law may not protect Chevron if a similar suit were brought in California by a California municipality. Cal. Civ. Proc. Code Section 425.16(d) and Section 731 indicate that city public nuisance actions are not protected by the anti-SLAPP law. The court understands this language can be parsed and distinguished (e.g., must the action be brought “in the name of the people?”). That said, it generally indicates a public policy in California that public enforcement actions ought not be overly constrained by the anti-SLAPP provisions. This weighs against applying California’s anti-SLAPP law in Hawai‘i.

H. There are non-California Defts. This weighs against applying California's anti-SLAPP law.

I. Chevron is domiciled in California. This clearly weighs in favor of applying California's anti-SLAPP law, but is not dispositive.

J. Chevron argues that the allegedly tortious conduct would all originate in its California headquarters. As far as the court is aware, this is not alleged in Pltfs' operative pleading and is disputed. More importantly, even if Chevron is correct, the location where alleged tortious conduct originated is not dispositive. It is a factor to consider, along with where the alleged harm occurred, where the alleged victims reside, etc. On balance, the court concludes this factor weighs in favor of applying California's anti-SLAPP law, but not substantially.

K. California's anti-SLAPP law has a "commercial speech" exception. The parties raise several complex arguments on whether or not that exception would apply to the conduct alleged here. The court is not clearly convinced one way or the other on this limited record, and concludes it is a gray area under the circumstances and current record of this case. On balance, the court concludes that if this factor weighs at all, it weighs slightly in favor of applying California's anti-SLAPP law.

L. Chevron argues the Noerr-Pennington doctrine immunizes it. The court concludes it is premature to apply Noerr-Pennington at this early stage. For example, the court cannot conclude based on the current record that all or most of the alleged tortious conduct is actually "petitioning." That is a complex and fact-based exercise which the court declines to resolve at this time based on the limited record.

M. On the issue of *dépeçage*, the court concludes it simply provides that different states' laws can apply to different issues *in the same case*. It does not dictate any particular choice of law result. It does not supplant Mikelson's emphasis on a flexible approach that weighs and balances multiple factors.

5. Pltfs shall submit a proposed order per the usual Rule 23 process. If the parties cannot agree on the form of an order, rather than spend time on resolving differences between the parties' respective proposed orders, the court prefers to sign a short form order that simply states the outcome and adds language such as "for reasons including but not limited to those stated on the record at the hearing and/or the court's written ruling dated 2/3/22." If the parties prefer to submit opposing orders that is also acceptable and the court will then settle the order per Rule 23.

Dated: 2/3/22. /s/Jeffrey.P.Crabtree.
/END

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