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2022 – HC – DEM – CIV – FDA - 47

IN THE HIGH COURT OF THE SUPREME COURT OF JUDICATURE
REGULAR JURISDICTION

BETWEEN:

GLENN LALL

Applicant

-and-

ATTORNEY GENERAL OF GUYANA

Respondent

-and-

**ESSO EXPLORATION AND
PRODUCTION (GUYANA) LIMITED**

Added Respondent

**AFFIDAVIT OF REPLY TO THE AFFIDAVIT IN DEFENCE OF
THE ADDED RESPONDENT**

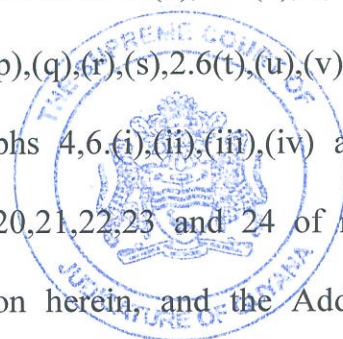
I, **GLENN LALL**, of Lot 24 Saffon Street, Charlestown,
Georgetown, Guyana being duly sworn make oath and say as follows:-

1. That the facts stated herein are true and correct and within my personal knowledge and belief except where otherwise stated to be based on information in which case I verily believe the same to be true.

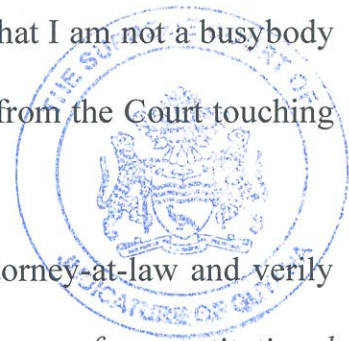
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2. That I have read the Affidavit in Defence on behalf of the Added Respondent sworn to by **ALISTAIR ROUTLEDGE**, President of the Added Respondent herein ESSO Exploration and Production Guyana Limited on the 31st day of March, 2022, and save in so far as the same consists of admissions, I deny each and every allegation of fact or contention of law contained therein as if the same were herein set out verbatim and traversed seriatim.
3. That I make no admission of paragraphs 1, 2, 3 and 4 of the Affidavit in Defence of the Added Respondent.
4. That I admit paragraph 5, 31, 34, 35, 36, 43, 53 and 54 of the Added Respondent's Affidavit in Defence.
5. That with regard to paragraph 6 of the Affidavit in Defence of the Added Respondent, I repeat and rely on Grounds 2.1(b), 2.2(d), e, (f), (g), (h), 2.3(i), (j), (k), 2.4(i), (m), (n), (o), 2.5(p), (q), (r), (s), 2.6(t), (u), (v), (w) and (x) of the FDA and paragraphs 4, 6, (i), (ii), (iii), (iv) and paragraphs 7, 8, 10, 11, 12, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of my Affidavit in Support of this Application herein, and the Added Respondent is put to strict proof thereof.
6. That with regard to paragraph 7 of the Affidavit in Defence of the Added Respondent, I repeat and rely on paragraphs 2, 3, 9 and 25 of my Affidavit in Support of my Application.



7. That I deny paragraph 8 of the Added Respondent's Affidavit in Defence and have been advised and verily believe that as a public-spirited citizen, taxpayer and newspaper publisher I ought to be allowed to seek Declaratory Reliefs where there is a serious issue of public importance which the court considers should be examined.
8. That I have been advised by my Attorney-at-law and verily believe that in the case of **R. v Felixstowe Justices Ex. p. Leigh**, the press has been described as the guardians and watch-dogs of the public interest in the proper administration of justice, and allowed to seek review of decisions of magistrates' courts and examining justices.
9. That I have been further advised by my Attorney-at-law and verily believe that the Agreement and Order 10 of 2016 would lead automatically to excessive fiscal losses and that I am not a busybody but a public-spirited taxpayer seeking relief from the Court touching and concerning the law.
10. That I have been further advised by my Attorney-at-law and verily believe that a citizen who has a *sincere concern for constitutional issues*" ought to be allowed to challenge the lawfulness of the Agreement entered into between the Contractor and the Minister.
11. That I have been advised by my Attorney-at-law and verily believe that as businessman, newspaper publisher and taxpayer of Guyana I



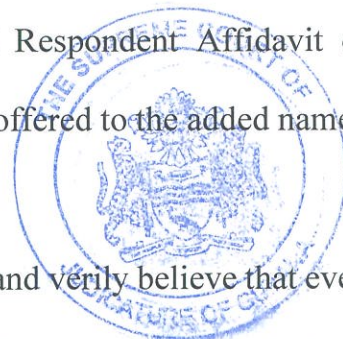
have both the capacity and the legal standing to bring the present proceedings in my own name.

12. I am advised by my Attorney-at-law and verily believe that the Constitution of Guyana and the Judicial Review Act broadly provide me with the right to make this Application for an interpretation by the Honourable Court of whether the concessions given to expatriate employees under Article 15.12(ii) of the Petroleum Agreement are discriminatory of local employees.

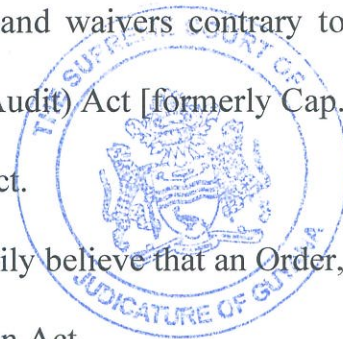
13. I have been advised by my attorney-at-law and verily believe that this Honourable Court is entitled to entertain public interest litigation provided the litigation is bona fide, arguable with sufficient merit to have a real and not fanciful prospect of success, grounded in a legitimate and concrete public interest.

14. That I deny paragraph 9 of the Added Respondent Affidavit of Defence, and will contend that the advice offered to the added named Respondent is bad and without merit.

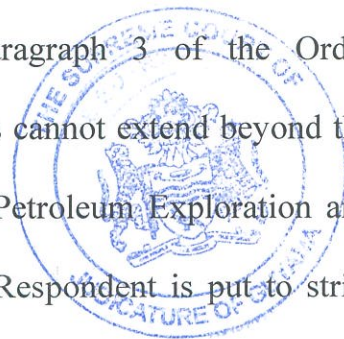
15. That I am advised by my Attorney-a-Law and verily believe that even if this Honourable Court is of the opinion that this matter should have been started by Judicial Review and not by Regular Jurisdiction that it is not fatal to the case since this Honourable Court has the power to convert the action to a Judicial Review matter as provided under the Civil Procedure Rules 2016.



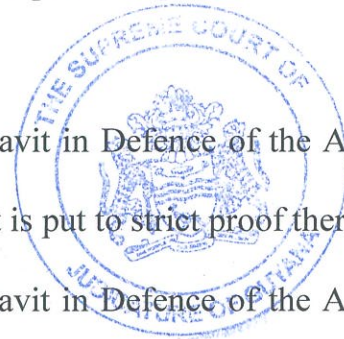
16. That with regard to paragraphs 10 and 11 of the Affidavit in Defence of the Added Respondent, I repeat and rely on paragraphs 6, 7, 8, 9, 10 and 11 of my Affidavit in Support of my Application and the Added Respondent is put to strict proof.
17. That I deny paragraph 12 of the Added Respondent's Affidavit in Defence and contend that *section 6 of the Financial Administration (and Audit) Act [formerly Cap. 73:01]* only allows tax exemption, remissions and concessions to be granted under tax legislation.
18. That with regard to paragraphs 13 and 14 of the Added Respondent's Affidavit in Defence, I have been advised and verily believe that Articles 15.1, 15.4, 15.5, 15.7, 15.9, 15.10, 15.11 and 15.12 of the Petroleum Agreement separately and cumulatively do not alter certain tax laws to grant remissions, concessions and waivers contrary to section 6 of Financial Administration (and Audit) Act [formerly Cap. 73:01], but rather are violative of the said Act.
19. I am advised by my Attorney-at-law and verily believe that an Order, which is subsidiary legislation cannot alter an Act.
20. That with regard to paragraph 15 of the Affidavit in Defence of the Added Respondent, I repeat and rely on paragraphs 12, 13 and 14 of my Affidavit in Support of my Application.



21. That with regard to paragraph 16 of the Affidavit in Defence of the Added Respondent, I repeat and rely on paragraphs 15, 16 and 17 of my Affidavit in Support of my Application and the Added Respondent is put to strict proof.
22. That I deny paragraph 17 of the Affidavit in Defence of the Added Respondent and will contend that any and all provision of the Petroleum Agreement must not be inconsistent with the law, and the Added Respondent is put to strict proof thereof.
23. That with regards to paragraph 18 of the Added Respondent's Affidavit in Defence and will contend that the paragraph is not a fact in dispute nor is it relevant to the Application herein.
24. That I admit paragraphs 19 and 20 of the Added Respondent's Affidavit in Defence merely as a statement of the law.
25. That I deny paragraph 21 of the Affidavit in Defence of the Added Respondent and will contend that paragraph 3 of the Order purportedly affirming the tax concessions cannot extend beyond the authority conferred by section 51(1) of Petroleum Exploration and Production Act (PEPA) and the Added Respondent is put to strict proof with regards to Parliament's intention to recognize this modification and adaptation.



26. That I deny paragraph 22 of the Added Respondent Affidavit of Defence, and will contend that the advice offered to the added named Respondent is bad advice and without merit.
27. That I admit paragraph 23 of the Added Respondent's Affidavit in Defence merely as a statement of the law.
28. That I deny paragraph 24 of the Added Respondent Affidavit of Defence, and will contend that the advice offered to the added named Respondent is bad advice and without merit.
29. That I admit paragraph 25 of the Added Respondent's Affidavit in Defence to the extent that the Minister responsible for finance was indeed specifically empowered by section 51 of the Petroleum Act to make the section 51 Order. However, I maintain that Article 15. 1, 15.4, 75.5, 15.7, 15.9, 15.10, 15.11 and 15.12 violate section 6(1) of the Financial Administration [and Audit] Act since the Minister is empowered only to modify the law.
30. That I deny paragraph 26 of the Affidavit in Defence of the Added Respondent and the Added Respondent is put to strict proof thereof.
31. That I deny paragraph 27 of the Affidavit in Defence of the Added Respondent and will contend that the advice offered to the added named Respondent is bad advice and without merit. I further contend that a tax act is simply an Act whose principal purpose is to impose a tax.



32. That I admit paragraph 28 of the Added Respondent's Affidavit in Defence merely as a statement of the law.
33. That I deny paragraph 29 of the Affidavit in Defence of the Added Respondent and will contend that the advice offered to the added named Respondent is bad advice and without merit.
34. That I admit paragraph 30 of the Affidavit in Defence of the Added Respondent. I am advised and verily believe that such an approach cannot be applied in extant case.
35. That I admit paragraph 31 of the Added Respondent's Affidavit in Defence merely as a statement of the law.
36. That I deny paragraph 32 of the Affidavit in Defence of the Added Respondent and will contend that even if one is to revert to the purposive approach as suggested by Counsel, the Hansard of the parliamentary debate on the Petroleum exploration Act, records the minister as stating "that the bill also make provision for the grant in appropriate cases of tax concessions and exemptions to holders of petroleum prospecting and production licenses and it also makes provisions for the remission of royalties in certain cases and, where applicable, the deferment of the payment of royalty."
37. That I am further advised by Attorney-at-law and verily believe that pursuant to section 57(3) of the Interpretation and General Clauses Act, "Every schedule, table or **marginal note** to any written law,

together with any notes to any Act or note to any Part thereof shall be construed and have effect as part of the written law.” [Emphasis added]

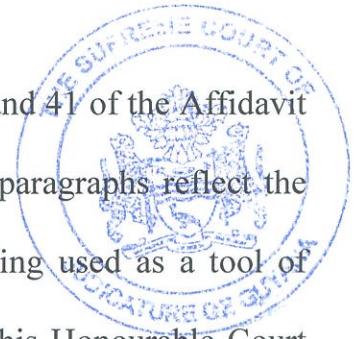
38. That I have been advised by my Attorney-at-law and verily believe that the New Oxford English Dictionary, the plain and ordinary meaning of the word modify means “*to make partial or minor changes to (something), typically so as to improve it or to make it less extreme.*”

39. That I deny paragraph 33 of the Affidavit in Defence of the Added Respondent and will contend that the advice offered to the added named Respondent is bad advice and without merit since this Honourable Court is free to arrive at its own conclusion.

40. That I admit paragraph 34 of the Added Respondent’s Affidavit in Defence merely as a statement of the law.

41. That I deny paragraphs 35, 36, 37, 38, 39, 40 and 41 of the Affidavit in Defence of the Added Respondent. These paragraphs reflect the opinion of the Added Named Respondent being used as a tool of interpretation of the words “in relation to”. This Honourable Court ought not to rely on this as a significant factor in interpreting the words in place of the established aids of interpretation.

42. That I deny paragraph 42 of the Affidavit in Defence of the Added Respondent and aver that the Added Respondent is contradicting

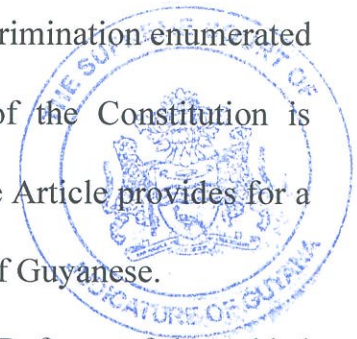


himself by stating that Article 15.12 is not discriminatory to Guyanese, while at the same time stating that the exemption from income tax is only given to expatriate employees of the Contractor, affiliated companies and/or non-resident sub-Contractors who are physically present in Guyana for 183 days or less in any year of assessment.

43. That I admit paragraph 43 of the Added Respondent's Affidavit in Defence merely as a statement of the law.

44. That I deny paragraphs 44 and 45 of the Affidavit in Defence of the Added Respondent and aver that because expatriate employees of the Contractor, affiliated companies and/or non-resident sub-Contractors are non-Guyanese benefiting from concessions of the state not afforded to Guyanese is a direct reference to the classifications of "place of origin" as one of the grounds for discrimination enumerated in Article 149(2). Further, Article 149(3) of the Constitution is misconstrued by the Added Respondent, as the Article provides for a positive discrimination by the state in favour of Guyanese.

45. That I deny paragraph 46 of the Affidavit in Defence of the Added Respondent and aver that I am advised by my Attorney-at-law and verily believe the Prevention of Discrimination Act provides for matters not only constrained to employer and employee who are in an employment relationship.



46. I am further advised and verily believe that convenient point of departure to demonstrate this would be the long title of the said Act, which states that it is an Act to “*provide for the elimination of discrimination in employment, training, recruitment and membership of professional bodies and the promotion or equal remuneration to men and women in employment who perform work of equal value, and for matters connected therewith.*”

47. That I deny paragraph 47 of the Affidavit in Defence of the Added Respondent and repeat and rely on my affidavit in support of application.

48. That I deny paragraph 48 of the Affidavit in Defence of the Added Respondent and will contend that Petroleum Exploration and Production Act is not a tax act as alleged by the Added Named Respondent, and further that the advice offered to the Added Named Respondent is bad advice and without merit.

49. That I deny paragraphs 49 and 50 of the Affidavit in Defence of the Added Respondent and will contend that the advice offered to the added named Respondent is bad advice and without merit.

50. That I deny paragraph 51 of the Affidavit in Defence of the Added Respondent and have been advised and verily believe that the Minister responsible for finance violated section 51 of the Petroleum



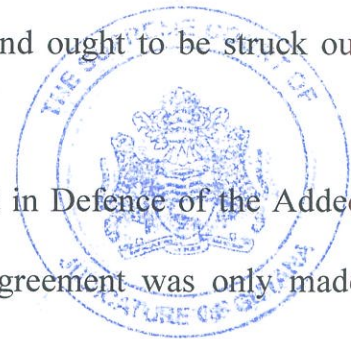
Exploration and Production Act and the Financial Administration [and Audit] Act.

51. I am further advised and verily believe that the Minister responsible for finance is empowered by virtue of section 51 of the Petroleum Exploration and Production Act to grant concessions and other tax relief, but subject to the provisions of a tax act. Further, for the avoidance of doubt paragraph 23 of the Affidavit in Support of Application was intended to be read in conjunction with paragraph 22 of the said Affidavit.

52. That I deny paragraph 52 of the Affidavit in Defence of the Added Respondent and will contend that the advice offered to the added named Respondent is bad advice and without merit.

53. That I deny paragraphs 53, 54, 55, 56 and 57 of the Affidavit in Defence of the Added Respondent and will contend that the said paragraphs are without merit, irrelevant and ought to be struck out forthwith by the Honourable Court.

54. That I deny paragraph 58 of the Affidavit in Defence of the Added Respondent and will contend that the Agreement was only made public approximately eighteen months after signing. I aver that I sought but was unable to obtain legal representation, and that financial constraints prevented an earlier action from being filed. Further, I will contend that several local and international reports were brought to



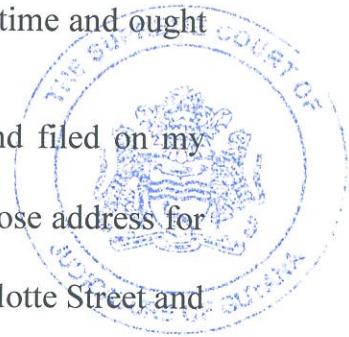
light and I was hoping that renegotiation would settle this unfair contract for the State's most valuable natural resource.

55. That I deny paragraph 59 of the Affidavit in Defence of the Added Respondent and repeat and rely on my Affidavit in support of the Application herein.

56. That I deny paragraph 60 of the Affidavit in Defence of the Added Respondent and will repeat and rely on my Affidavit in support of Application herein.

57. I am respectfully asking that this Honourable Court to grant the Declarations prayed for in my Fixed Date Application and to strike out the Added Respondent Affidavit of Defence which is frivolous and vexatious and constitutes an abuse of the Court's time and ought to be dismissed immediately with cost.

58. That this Affidavit was drawn on my instructions and filed on my behalf by **Mr. Mohamed R. Ali**, Attorney-at-law, whose address for service and place of business is situate at Lot 185 Charlotte Street and King Streets, Lacytown, Georgetown, Guyana.



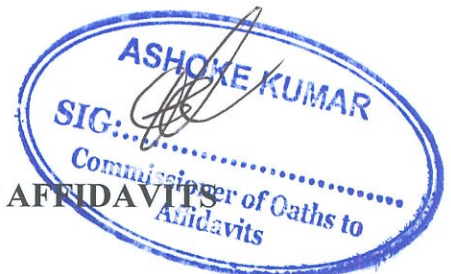

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GLENN LALL

Sworn to at Georgetown Demerara

This 21st day of April, 2022

BEFORE ME

COMMISSIONER OF OATHS TO AFFIDAVITS



Filing Attorney: Mohamed R. Ali, Attorney-at-law
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Lacytown, Georgetown, Guyana
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**AFFIDAVIT OF REPLY TO
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DEFENCE OF THE ADDED
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MR. MOHAMED R. ALI, ATTORNEY-AT-LAW
FOR THE APPLICANT, OF 185 CHARLOTTE
AND KING STREETS, LACYTOWN,
GEORGETOWN, GUYANA.