

ENGLISH TRANSLATION

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(CIVIL DIVISION)**

SUIT NO. S2-23-38 OF 2006

BETWEEN

- 1. SARAWAK SHELL BHD. (71978-W)**
- 2. SHELL MALAYSIA TRADING SENDIRIAN BERHAD (6078-M)**
- 3. SHELL REFINING COMPANY (FEDERATION OF MALAYA) BHD.
(3926-U)**
- 4. SHELL TIMUR SDN. BHD. (113304-H)**
- 5. SHELL EXPLORATION AND PRODUCTION MALAYSIA B.V.
(993963-V)**
- 6. SHELL OIL AND GAS (MALAYSIA) LLC (993830-X)**
- 7. SHELL SABAH SELATAN SDN. BHD. (228504-T)**
- 8. SABAH SHELL PETROLEUM COMPANY LTD. (993229-W)**

..... PLAINTIFFS

AND

HUONG YIU TUONG

..... DEFENDANT

AFFIDAVIT IN REPLY OF ALFRED ERNEST DONOVAN

I, ALFRED ERNEST DONOVAN (United Kingdom Passport No. **0000000**), a citizen of the United Kingdom of full age and residing at **00 0000000 00000**,

XXXXXXXXXX, XXXXX XXX XXX, United Kingdom, do solemnly and sincerely affirm and state as follows:

- 1. I am duly authorised by the Defendant to depose this Affidavit to reply to the Affidavit affirmed by Thavakumar Kandiah Pillai on 5.4.2006 (hereinafter referred to as “the Plaintiffs’ Affidavit”).**
- 2. Unless stated otherwise, all facts and matters deposed herein are based on my personal knowledge and/or are derived from documents in the Defendant’s possession and/or the Defendant’s solicitors and are true to the best of my knowledge, information and belief.**
- 3. In this Affidavit, I will use the phrase “the Royal Dutch Shell Group of Companies” to refer to the Shell group of companies, being the Royal Dutch/Shell group of companies and/or the recently unified Royal Dutch Shell Plc and all its subsidiary and related companies worldwide, including the Plaintiffs herein.**

Personal history

- 4. At this present time, I am retired and unemployed.**
- 5. Previously, I was in the British Regular Army until I was invalided out of the Army in 1945. Subsequently, I worked for 14 years in the United Kingdom Civil Service.**
- 6. Subsequent to my retirement from the United Kingdom Civil Service, I co-founded Don Marketing Limited, United Kingdom (hereinafter referred to as “Don Marketing”) with my son, John Alfred Donovan (hereinafter referred to as “John Donovan”).**
- 7. The business of Don Marketing was to supply specialist marketing advice to the Royal Dutch Shell Group of Companies, including Shell UK**

Limited, Shell Canada, Shell New Zealand, Irish Shell and Shell Singapore. As regards Shell Canada, Shell New Zealand, Irish Shell and Shell Singapore, I am not able to remember the exact names of these entities but I can confirm that they were companies within Royal Dutch Shell Group of Companies, which were operating in Canada, New Zealand, the Republic of Eire and Singapore respectively.

8. Don Marketing had created many multi million pound national promotions for Shell UK Limited, including the award winning Shell “Make Money” promotion in 1984. The Shell “Make Money” promotion was acknowledged in a United Kingdom marketing profession poll as being one of the most successful sales promotions in the United Kingdom in the 20th century.
9. Until recently, I was a long time shareholder in the Shell Transport and Trading Company Plc, United Kingdom, being a company within the Royal Dutch Shell Group of Companies.
10. As such, I have had a long business relationship with the Royal Dutch Shell Group of Companies, dating back 49 years.
11. Don Marketing and/or John Donovan and/or myself have also been involved in many litigation proceedings against Shell UK Limited in the period from 1994 to 2003 with respect to:
 - 11.1 promotional concepts which Don Marketing had proposed to Shell UK Limited on a confidential basis, which Shell UK Limited had then made use of without the knowledge or consent Don Marketing and/or John Donovan and/or myself and in breach of confidence and/or breach of contract and without making any payment to Don Marketing and/or John Donovan and/or myself;

11.2 John Donovan and myself had also commenced libel proceedings against Shell UK Limited;

11.3 all the litigation proceedings which were commenced by Don Marketing and/or John Donovan and/or myself were settled by Shell UK Limited.

Websites operated

12. Since around 1998, John Donovan and/or myself have operated various websites relating to the Royal Dutch Shell Group of Companies. These websites include:

12.1 “www.shell2004.com”, subsequently known and accessible as “www.shellnews.net”;

12.2 “www.royaldutchshellplc.com”; and

12.3 “www.royaldutchshellgroup.com”.

13. The website, which is concerned in the case Kuala Lumpur High Court Civil Suit No. S2-23-41-2004 and in this proceedings is the website “www.shell2004.com”, subsequently known and accessible as the website “www.shellnews.net” (hereinafter referred to as “the Website”).

14. As regards the Website, I state that:

14.1 the Website is concerned with and monitors the activities of the Royal Dutch Shell Group of Companies and all newspaper reports relating to the Royal Dutch Shell Group of Companies;

14.2 the Website seeks to report and to disclose to the world at large all the activities of the Royal Dutch Shell Group of Companies,

including information which Royal Dutch Shell Group of Companies may have tried to withhold from their own shareholders;

- 14.3 the Website is operated on a non-profit basis and does not accept any advertising and/or sponsorship revenue;**
 - 14.4 all costs and expenses of operating the Website are borne by John Donovan and/or myself;**
 - 14.5 John Donovan and/or myself have the sole discretion and power to decide on what to publish on the Website and the contents of what are published on the Website;**
 - 14.6 John Donovan and/or myself have the sole discretion and power to edit and/or to add commentary to any contributions received before the same are published on the Website;**
 - 14.7 due to the nature of the Website, which does not have a “blog” function, no other person apart from John Donovan and/or myself, have at any time, been able to publish any thing on the Website;**
 - 14.8 further, no other person apart from John Donovan and/or myself, have at any time, been able to edit and/or add commentary to any thing which has been published on the Website;**
 - 14.9 as such, John Donovan and/or myself are and at all times have been solely responsible for all articles and/or commentaries which have been published on the Website.**
- 15. By way of clarification, since January 2006, John Donovan and/or myself also operate the website “www.tellshell.net”, which is a “blog” style website, meaning that contributors are able to post directly to this website.**

- 16. As regards the website “www.tellshell.net”, I state that:**
 - 16.1 persons viewing the website “www.tellshell.net” are able to easily access to the Website;**
 - 16.2 as such, publications on the Website may also be accessed through the website “www.tellshell.net”;**
 - 16.3 the Defendant has never posted on the website “www.tellshell.net”.**

- 17. The Royal Dutch Shell Group of Companies are fully aware that:**
 - 17.1 the Website is owned and operated by John Donovan and/or myself;**
 - 17.2 the purpose for which the Website is operated;**
 - 17.3 the basis and policies in accordance to which the Website is being operated.**

- 18. Further, the Royal Dutch Shell Group of Companies have acknowledged in their Complaint dated 18.5.2005, which was submitted to the World Intellectual Property Organisation in the Case No. D2005-0538 that:**

“The Complainant and the Group it represents have been aware of the site since the beginning and whilst they would not endorse or agree with many of the comments made by the Respondent on the website, they have taken the view that the Respondent is entitled to express his opinions and to use the Internet as a medium for doing so.”

- 19. I confirm that in the passage quoted above, “Respondent” refers to me and “the website” refers to the website “www.shell2004.com”, which is the Website.**

20. **Annexed hereto and marked as exhibit “AD-1” are true copies of the Notification of Complaint and Commencement of Administrative Proceeding and the Complaint Transmittal Sheet issued by the World Intellectual Property Organisation and the Complaint dated 18.5.2005 which was submitted by Shell International Petroleum Company Limited, United Kingdom, which is a company in the Royal Dutch Shell Group of Companies, to the World Intellectual Property Organisation, in the Case No. D2005-0538.**

My dealings with the Defendant

21. **To the best of my knowledge, the Defendant had found the website “www.shell 2004.com”, being the Website, while he was surfing the Internet in or around April 2004. Subsequently, the Defendant had contacted John Donovan and/or myself.**
22. **In the period from April 2004 to March 2006, John Donovan and/or myself had numerous correspondences and/or telephone conversations with the Defendant.**
23. **As regards the relationship of John Donovan and/or myself with the Defendant, I wish to state that:**
- 23.1 **the Defendant had sought advice from John Donovan and/or myself upon reading of our long association with the Royal Dutch Shell Group of Companies and the numerous litigation proceedings that we had been involved in against the Royal Dutch Shell Group of Companies;**
- 23.2 **further, the Defendant sought the advice of John Donovan and/or myself as due to our operation of the Website, we have extensive knowledge of the legal proceedings that the Royal Dutch Shell**

Group of Companies have been and/or are involved in around the world;

- 23.3 at no time whatsoever, were John Donovan and/or myself agents or servants of the Defendant;**
- 23.4 at no time whatsoever, were John Donovan and/or myself under any duty and/or obligation to accept any instruction or request from the Defendant;**
- 23.5 at all times, John Donovan and/or myself retained the discretion and power to decide whether or not to publish any correspondence to or received from the Defendant and/or whether to edit and/or add any commentary to any correspondence to or received from the Defendant before the same is published on the Website;**
- 23.6 at all times, John Donovan and/or myself had never indicated to the Defendant, either by word or deed, that any correspondence from the Defendant would be published on the Website or any other website owned and/or operated by John Donovan and/or myself, as a matter of course or certainty;**
- 23.7 the Defendant has absolutely no power or means to compel or coerce John Donovan and/or myself to publish any thing on the Website or any other website owned and/or operated by John Donovan and/or myself;**
- 23.8 similarly, Defendant has absolutely no power or means to compel or coerce John Donovan and/or myself to remove any publication from the Website or any other website owned and/or operated by John Donovan and/or myself;**

23.9 also similarly, Defendant has absolutely no power or means to compel or coerce John Donovan and/or myself to edit or to add commentary to any publication on the Website or any other website owned and/or operated by John Donovan and/or myself.

The 2.2.06 publication of the Defendant's letter to Jyoti Munsiff on the Shellnews.net website

- 24. The Defendant had contacted John Donovan and/or myself after having read on the Website a leaked internal communication of the Royal Dutch Shell Group of Companies, being an email that was circulated by Jyoti Munsiff, in her capacity as the Chief Ethics and Compliance Officer of Royal Dutch Shell Plc, a company within the Royal Dutch Shell Group of Companies.**
- 25. As this was the first indication that Jyoti Munsiff had been appointed the Chief Ethics and Compliance Officer of Royal Dutch Shell Plc, the Defendant informed John Donovan and/or myself that he wished to send an email to Jyoti Munsiff to offer his advice on her new area of responsibility and to seek some clarification with regard to the position taken by the Royal Dutch Shell Group of Companies in relation to himself.**
- 26. As such, the Defendant sought the assistance of John Donovan and/or myself to prepare the email to be sent to Jyoti Munsiff.**
- 27. In particular, John Donovan and/or myself had decided to use the phrase "readers of this communication aware that" as we anticipated that the said email from the Defendant would be circulated by Jyoti Munsiff within the Royal Dutch Shell Group of Companies.**
- 28. John Donovan and/or myself had decided that this said email should be copied to me as my name had been mentioned in the said email and as**

such, I wished to be copied with any reply from Jyoti Munsiff so as to have an opportunity to respond to the same.

29. As such, the Defendant's email to Jyoti Munsiff, the copying of the said email to me and the subsequent publication of the email on the Website was entirely orchestrated by John Donovan and/or myself.
30. I further confirm that the publication of this said email on the Website was done by John Donovan and/or myself without the advance knowledge or consent of the Defendant.

The 7.2.06 Shellnews.net publication

31. In or around December 2005, the Defendant had contacted John Donovan and/or myself to seek our help as he had been advised by his solicitors that he had to prepare "the Defence and the Affidavit In Reply".
32. The Defendant informed that he required the help of John Donovan and/or myself as he knew that we had extensive knowledge of the activities of the Royal Dutch Shell Group of Companies around the world and the legal proceedings that the Royal Dutch Shell Group of Companies have been and/or are involved in around the world.
33. As such, John Donovan and/or myself prepared a 72 page draft affidavit to set out a defence of justification for the Defendant to utilise at the appropriate time (hereinafter referred to as "the Draft Affidavit").
34. I state that the contents of the Draft Affidavit were based on the previous correspondences and telephone conversations between John Donovan and/or myself with the Defendant.
35. Upon completion of the Draft Affidavit, John Donovan and/or myself sent a copy to the Defendant by email.

36. In addition, John Donovan and/or myself decided to publish the Draft Affidavit in its entirety on the Website.
37. I hereby confirm that the publication of the Draft Affidavit on the Website was done by John Donovan and/or myself without the advance knowledge or consent of the Defendant.
38. I further confirm that the Draft Affidavit was authored by John Donovan and/or myself and that the Defendant had not forwarded the Draft Affidavit to John Donovan and/or myself.
39. I confirm that the decision to email to James Ross, the Senior Legal Adviser to the Human Rights Watch was made solely by John Donovan and/or myself and that the said email was authored by John Donovan and/or myself.
40. This said email contained a reference to the Draft Affidavit and a link to access to the Draft Affidavit published on the Website.
41. I also confirm that John Donovan and/or myself did not seek the Defendant's consent and did not give him advance notice before we emailed the Human Rights Watch and provided the link to the Draft Affidavit.
42. I also confirm that John Donovan and/or myself did not seek the Defendant's consent and did not give him advance notice before we published the said email to the Human Rights Watch on the Website.

The 8.2.06 Shellnews.net publication

43. I verily believe that the Defendant had copied to me his email dated 8.2.2006 to the Human Rights Watch because:

43.1 the Defendant's said email it was in connection with my email to Human Rights Watch;

41.1 43.2 my name was mentioned in the Defendant's said email to the Human Rights Watch;

43.3 the Defendant wished to allow me the opportunity to respond to any statement in relation to myself which was contained in the said email to the Human Rights Watch.

44. I hereby confirm that the decision to publish the Defendant's email dated 8.2.2006 to the Human Rights Watch was made by John Donovan and/or myself without any prior notice to the Defendant and without the Defendant's consent.

**To an affidavit of the deponent)
ALFRED ERNEST DONOVAN who does not)
understand Bahasa Malaysia affirmed on the)
day of May 2006 in)
through the translation of)**

Before me,

.....
A Notary Public

The said _____ having been first sworn that he had truly, distinctly, and audibly translated the contents of this affidavit and the exhibit therein to the deponent ALFRED ERNEST DONOVAN and that he would truly and faithfully interpret the affirmation in the English Language.

Before me,

.....

A Notary Public

This AFFIDAVIT IN REPLY OF ALFRED ERNEST DONOVAN was affirmed on _____ and was filed on _____ by M/s Lee Ong & Kandiah, solicitors for the Defendant, with an address for service at Suite 2.07-2.10, 2nd Floor, Wisma Mirama, Jalan Wisma Putra, 50460 Kuala Lumpur.

Tel: 03-2144 8336

Fax: 03-2144 8760

(Ref. No.: ES/67/4/06/JH)