

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 06/15/2016

TIME: 10:57:00 AM

DEPT: CX103

JUDICIAL OFFICER PRESIDING: Ronald L. Bauer

CLERK: Janet E Frausto

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Joseph Tran

CASE NO: 30-2013-00688150-CU-BC-CJC CASE INIT.DATE: 11/15/2013

CASE TITLE: **Farmers & Merchants Trust Company, as administrator and trustee of the Elliott
Broidy SEP IRA vs. Terra Resources PLC**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Breach of Contract/Warranty

EVENT ID/DOCUMENT ID: 72392830

EVENT TYPE: Chambers Work

APPEARANCES

30 2013 00688150 FARMERS & MERCHANTS TRUST COMPANY VS TERRA RESOURCES
No appearances.

The court having taken this case under submission on 6-6-2016 now rules as follows:

See attached

Defendants Anatoly Vanetik and Yuri Vanetik move for a new trial and for judgment notwithstanding the verdict following the entry of judgment against each of them.

Most of the issues raised in these motions merit little discussion. For example, the defendants have previously unsuccessfully sought to compel the plaintiff to proceed on a fraud claim or on a contract claim, but not on both; they now add nothing new to those failed arguments.

Nor does their contention that they should not be personally liable for this claim do any more than fill some of their available fifteen pages. They were the artful puppeteers who masterminded the scam that relieved the plaintiff of \$750,000. That money was used to personally enrich these defendants and enable them to travel the world trolling for more big fish. Not a spoonful of dirt was turned in any Russian oil field. As near as the court can recall, there was no testimony that

either of these defendants ever even visited the oil fields with any of the plaintiff's money in their pockets. The jury surely had little trouble concluding that the Vanetiks should be personally liable for the misdeeds committed behind the screen of some corporate name.

These defendants placed their heaviest emphasis, in both their briefs and their oral argument, upon their attack on the award of punitive damages. Wisely, they do not challenge the predicate finding of malice, oppression, or fraud. There was clear and convincing evidence supporting the jury's finding, and the court will respect the wisdom of the Vanetiks' counsel and not belabor that point here. The amount of these awards does deserve some discussion. As listed in CACI 3942, there are three factors to be considered in determining the amount of such an award: (1) the reprehensibility of the defendant's conduct; (2) a reasonable relationship between the amount of punitive damages and the plaintiff's harm; and (3) considering the defendant's financial condition, what amount is necessary to punish the defendant and discourage future wrongful conduct? These are not easily separated for analysis, but they will be reviewed in the order listed.

1. While the defendant's conduct was indefensible, there is one subordinate factor in the CACI analysis that may slightly diminish their culpability. This plaintiff was not financially weak or vulnerable. Elliott Broidy regularly played in the financial big leagues and took great risks. On balance, however, the trickery and deceit practiced by the Vanetiks and the brazen nature of their lies favor a notable award under this factor.

2. This second factor seems to garner the most attention in appellate cases, but finding a clear guideline remains a challenge. One court may suggest that a 1:1 ration of punitive damages to compensatory damages should be the standard; another might suggest that 4:1 is the norm; another proposes that a ratio greater than 9:1 should be avoided; and the United States Supreme Court has approved a ratio of 526:1. The awards in this case pass nearly any such test. For Anatoly Vanetik, the ratio was 1.67:1; for Yuri Vanetik, it was 2.67:1. Each of these is acceptable. In fact, neither has been challenged of the basis of an excessive ratio.

3. It is sometimes said that the only acceptable measure of the defendant's financial condition is his net worth. This rule is often supported by citation of the leading case of *Adams v. Murakami* (1991) 54 Cal. 3rd 105. Yet that court was not so rigid, stating that "we cannot conclude on the record before us that any particular measure of ability to pay is superior to all others or that a single standard is appropriate in all cases." *Id.* At 116. Subsequent cases have recognized the need for flexibility. Some of these cases are cited in the plaintiff's brief and will not be repeated here. In the second phase of this trial, the plaintiff presented several markers of the defendants' wealth. The first phase of the trial also included evidence that the jury might consider on this issue. Any one fact alone might be inadequate, but the combined effect was to paint a picture of two people who live a rich lifestyle. All of this evidence was

tied together by the opinion and analysis of an expert forensic accountant. The plaintiff has the burden of proof on all issues relating to any award of punitive damages. The defendants have the right to stand (or sit) mute. In doing so, however, they leave the plaintiff's evidence uncontested and risk invocation of other standard instructions regarding the failure to explain or deny evidence and the suppression of evidence.

For the foregoing reasons, the motions of Yuri Vanetik and Anatoly Vanetik for a new trial and for judgment notwithstanding the verdict are denied.

CLERK'S CERTIFICATE OF MAILING: I certify I am not a party to this cause, over age 18, and a copy of this document was mailed first class postage, prepaid in a sealed envelope addressed as shown, on 6-15-2016, at Santa Ana, California.

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Janet Frausto deputy.

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