

**IN THE MATTER OF AN ARBITRATION UNDER THE ARBITRATION RULES OF
THE LONDON COURT OF INTERNATIONAL ARBITRATION**

CASE NO 142683

BETWEEN

VALE S.A.

Claimant

and

BSG RESOURCES LIMITED

Respondent

Second Witness Statement

ASHER AVIDAN

I, **ASHER AVIDAN**, will say as follows:

A. INTRODUCTION

1. I make this second witness statement in support of the Respondent in the claim issued by Vale SA ("**Vale**") against BSG Resources Limited ("**BSGR**"), and in order to supplement my First Witness Statement of 28 June 2015 ("**Avidan-1**").
2. In this Second Witness Statement, I will respond to allegations made against me by Vale in its Statement of Reply ("**SoR**") and accompanying witness evidence. Rather than commenting on each of Vale's claims, I have sought to limit myself to addressing those allegations and inaccuracies which I understand to be the most central to the issues in this

claim. Where I do not comment on a particular aspect of Vale's claim, this should not be construed as an admission on the part of BSGR.

3. I speak Hebrew, French, English and Arabic. However, my native language is Hebrew. The corporate culture within BSGR was to send written communications in English. This is something which I was competent to do although I never felt totally comfortable because I felt that my English correspondence lacked the subtlety and precision which it might otherwise have had, had I drafted the correspondence in Hebrew. I have prepared this statement in English with the assistance of BSGR's lawyers, Asserson Law Offices. I reserve the right to give evidence in Hebrew should it be necessary to do so.
4. Save where I indicate otherwise, the facts and matters set out in this statement are based on my knowledge of the events in question.

B. PROFESSIONAL BACKGROUND

5. In Avidan-1 I mentioned that I spent the first 22 years of my career working in government service for the Israeli Ministry of Foreign Affairs. During my career at the Foreign Ministry I learnt and refined the skills needed to be an international diplomat. For example, in 1993 I was posted to Morocco. At that time Israel did not have diplomatic relations with Morocco. My mandate was to improve the relationship and, if possible, to establish some level of formal diplomatic ties between Israel and Morocco. I was well placed for this mission not only because I already had 7 or so years' experience of diplomacy, but also because I was born in Morocco and I understood French fluently, it being the language my parents spoke at home when I was growing up. When I arrived in Morocco my spoken French improved dramatically. I also improved my spoken Moroccan Arabic.
6. I served in Morocco for just under two years, during which time Israel's then Prime Minister Yitzchak Rabin, and then Foreign Minister Shimon Peres, made an official state visit to Morocco in 1993 and diplomatic relations were formally established. In 1994 we opened an economic convention between Israel and Morocco, and bilateral liaison offices were opened. Thus during a short time, primarily through regular meetings with the King of Morocco and relevant ministers, I succeeded in negotiating full relations between Morocco and Israel.

7. During my time at the Foreign Ministry, I became accustomed to working alongside senior government officials. I developed close relationships with several senior ministers, including Prime Ministers, within the Israeli government and abroad. Communicating appropriately with senior government officials was an essential part of my job, and this was a skill which I developed and refined over a period of 22 years.

C. BUSINESS WITH GHASSAN BOUTROS

8. Our mining activities required technical equipment that was often very expensive. One machine alone could cost millions of dollars. In order to reduce costs we initially rented much of the required machinery from suppliers. However, later we found that it was more cost effective for us to purchase the machines and to rent them out to third parties when we did not need them. For example, we rented our drilling machines to Geoprospects, our main contractor. The rent from these machines was set off against Geoprospects' invoices to us.
9. I did not purchase equipment exclusively from Ghassan. In fact, some other Lebanese businessmen set up in competition with Ghassan. On a number of occasions I purchased products from them where they offered better terms. However, I found that whilst the first order was cheap, they would vastly inflate their prices thereafter. By contrast, Ghassan was reliable with his pricing and delivery, so I continued to go back to Ghassan and throughout my time in Guinea he was the principal supplier.
10. In mid-2009 I was told by my technical team that we needed to purchase specific types of tractors. I approached Ghassan about whether he could source a Caterpillar D9R and a Caterpillar 336DL, which are both models of Caterpillar brand tractors. I placed an order with Ghassan.
11. BSGR received an invoice from LMS dated 18 August 2009 in the amount of US\$1.3 million in respect of these two tractors and a generator.¹ This invoice was paid by BSGR that same day by bank transfer to an account designated by Ghassan.² I understand that the payment details were different from the ones which Ghassan usually provided to us. I do not now recall this level of detail, although from the accounting information I have now been shown it

¹ Exhibit R-187, p. 2.

² Ibid., p. 1.

appears that the beneficiary bank account was called "L.M.S SARL" which is the name of Ghassan's company. Subsequently, the tractors were delivered to BSGR, although I do not recall precisely when.

12. I have been shown a copy of a Guinean Import Declaration dated 17 August 2009 for a Caterpillar D9R and a Caterpillar 336DL, with a collective value of US\$998,000.³ The importer is stated to be "LMS SARL", and the seller is stated to be "Mitilda&Co Ltd". However, at the time, I did not enquire and I was not aware of the identity of Ghassan's supplier.

13. I understand from BSGR's lawyers that Ghassan has alleged before the Court of Appeal of Conakry that BSGR produced false invoices for these tractors, which never arrived, in order to funnel payments to Mamadie Touré⁴:

13.1 Ghassan alleges that on 18 August 2009 BSGR made payment to him of US\$998,000 in order that he would transfer these funds to Mamadie Touré, via her company Matinda.⁵ This is false. Ghassan never acted as the intermediary of BSGR. I have not been shown any evidence that Ghassan did in fact transfer these funds to Mamadie Touré.

13.2 Ghassan alleges that these tractors were never delivered.⁶ This is not true: as shown above, these tractors were delivered. Vale personnel witnessed these tractors in the field first hand on their site visits before the joint venture partnership was concluded.

14. Since submitting Avidan-1 I understand that Ghassan has made a further allegation which Vale has adopted. Ghassan alleges that he made a US\$2 million cash deposit on 18 May 2010 into Mamadie Touré's bank account at the Banque Populaire Maroco-Guinéene in Conakry under the instruction of BSGR.⁷ This is not true. I did not give this instruction and I am not aware that anyone else at BSGR did.

³ Exhibit R-259.

⁴ Exhibit R-132, p. 7, paragraph 3.

⁵ Ibid., p. 6, paragraph 5, and p. 7, paragraph 2.

⁶ Ibid., p. 7, paragraph 3.

⁷ SoR [451].

D. MAMADIE TOURÉ

15. Mamadie makes a series of allegations concerning me. Her evidence is untrue. Mamadie had no direct business relations with BSGR. The only evidence of the alleged relationship which Vale has adduced is three forged contracts. I have already commented on these contracts and Mamadie's blackmail attempts *inter alia* at paragraphs 96-97 and 103-115 of Avidan-1.
16. Mamadie alleges that I visited her in early 2008, together with Benjamin Issiaga Bangoura, to ask for help in securing Simandou blocks 1 and 2.⁸ She claims that during these meetings BSGR entered into agreements with Matinda on 27 February 2008 and on 28 February 2008, both executed by Mamadie, on behalf of Matinda, and myself, on behalf of BSGR.
17. Vale states that "*Avidan (who is alleged to have been present) does not directly deny that this meeting occurred.*"⁹ This is incorrect. I plainly stated at paragraph 97 of Avidan-1: "*That is another fictional meeting and another lie*". I state once again: I did not meet with Mamadie Touré on 27 or 28 February 2008, nor did I sign any agreements with her in February 2008 or at all.
18. I was not even in Guinea on 27 or 28 February 2008. I was in Israel, as is seen from BSGR's expense records at that time¹⁰ and the records of Diesenhaus travel agents.¹¹
19. As well as relying on Mamadie's allegations, Vale claims that:
- "A BSGR expense report from February 2008 includes several entries that suggest Avidan and Bangoura visited Mme Touré in late February 2008, just around the time these meetings would have taken place and these contracts were signed: (1) one entry on 22 February 2008 refers to "Different expenses for the visit of delegation, Toure," (2) Bangoura is paid a "salary" of US\$1,000 on 26 February 2008, and (3) there is an expense on 28 February 2008 for "Copy of documents, making stamps".*"¹²
20. The expense report does not suggest that I visited Mamadie:

⁸ Exhibit C-6, CGS&H p. 38, paragraph 18.

⁹ SoR [425].

¹⁰ Exhibit C-346, p. 3, see entry for 27.02.2008 ("*rent a car, travel charges in Israel, Asher*").

¹¹ Exhibit R-296, p. 2, showing that I flew from Conakry to Tel Aviv on 18 February 2008, returning on 23 April 2008.

¹² SoR [426].

20.1 The entries in February 2008 that refer to a “*delegation*” are not references to a meeting with Mamadie Touré. We often had delegations to different villages. Very often Ibrahima Touré, who spoke local languages and knew local customs, would lead such delegations. It is likely that he is the Touré referred to in the expenses sheet.

20.2 Between 21 February 2008 and 26 February 2008, the last reference to a delegation in this expense report and presumably the date of the delegation itself, there are entries for: “*cost the visa for the delegation*”¹³; “*local ceremony*”, “*expenses for the visit of the delegation BSG*”, “*different expenses for the visit of delegation, Toure*”¹⁴; “*organisation of the concert for the delegation BSG*”¹⁵; “*expenses for the delegation BSG*”¹⁶; and “*meal for the delegation*”.¹⁷ This delegation had nothing to do with Mamadie Touré and there is no reason why BSGR would have organised a concert or meals in order to sign a secret contract with Mamadie Touré.

20.3 Bangoura was indeed paid a salary of US\$1,000 on 26 February 2008; this was his monthly salary at that time.¹⁸ In fact, on that same day, BSGR also paid the salaries of Moise Koivogui, Frederic Haba, Ibrahima Sory Touré, and Koumba Conde.

20.4 I do not recall that there was a specific purpose for the expense recorded on 28 February 2008 for “*Copy of documents, making stamps*”. This is a generic administrative expense for a company and I do not believe that it is indicative of anything.

E. FOFANA

21. I have already addressed Mr Fofana’s role at paragraphs 150-151 of Avidan-I. Vale alleges that it is “*implausible that [I] simply forgot about [Fofana] during the Project Hills negotiations.*”¹⁹ I did not say in Avidan-I that I forgot about Fofana; I said that “*I never considered Mr Fofana to be a consultant and it never occurred to me that he should be disclosed.*”²⁰ This is true.

¹³ C-346, 21.02.2008 entry.

¹⁴ Ibid., 22.02.2008 entry.

¹⁵ Ibid., 23.02.2008 entry.

¹⁶ Ibid., 25.02.2008 entry.

¹⁷ Ibid., 26.02.2008 entry.

¹⁸ Bangoura had been paid a monthly salary of US\$1,000 from December 2007: US\$1,000 on 26 December 2007, Exhibit R-297; US\$1,000 on 28 January 2008, Exhibit R-298; and US\$1,000 on 26 February 2008, Exhibit C-346.

¹⁹ SoR [225].

²⁰ Avidan-I [151], p. 38.

22. During the due diligence period, Yossie had carriage of the Due Diligence Questionnaires. When Yossie asked me about BSGR's consultants during the Project Hills negotiation, I understood this to mean BSGR's current consultants. By then, Fofana had become a friend. For example, when he commented on the terms of the Convention de Base in December 2009,²¹ and advised BSGR in relation to press articles which had been published in February 2010,²² he was not paid for his advice. This was simply the counsel of a trusted friend who understood local politics. It never occurred to me at the time that Fofana was a current consultant who should be disclosed.

F. VALE DUE DILIGENCE

23. In Avidan-1 I mentioned that Vale flew out a number of people to carry out due diligence on site in Guinea.²³ I recall making clear to our employees, including Tania Rakitina, that Vale had permission to access any files that they wanted in the office. All of the accounting and payment files were available for their inspection. I do not recall what they did or did not request or look at.

24. I recall a meeting with our lawyers from Skadden about the due diligence. In particular I recall a conversation between Mr Hatchard of Skadden and Beny during which the subject of Pentler arose and Mr Hatchard said that Pentler did not need to be disclosed.

G. APPROACH BY VALE

25. I recall that, after the Committee Technique had made its allegations about bribery, Vale made an approach to purchase Simandou 1 and 2. I was not part of the initial discussions but I did attend a meeting in Dag Cramer's office in London, which was attended by Clovis Torres and Pedro Rodrigues of Vale and myself, Dag Cramer and Beny Steinmetz.

26. At that meeting I recall that Vale made an offer to BSGR to walk away from Simandou 1 and 2 and be paid US\$200 million and that BSGR could keep Zogota. This would be a deal between BSGR and Vale and did not involve the GoG. I recall that we had a short

²¹ Exhibit C-274.

²² Exhibit C-275 and Exhibit C-276.

²³ Avidan-1 [142]-[143], pp. 35-36.

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discussion outside the meeting room and that BSGR decided to reject the offer which was seen as a low ball offer.

I confirm this statement is true to the best of my knowledge and belief.



Asher Avidan

18 July 2016