

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

CASE NO. HQ

BETWEEN:-

DMITRY FIRTASH

AND

Claimant

(1) PUBLIC MEDIA
(2) JOHN MARONE
(3) BRIAN BONNER
(4) MOHAMMAD ZAHOOR

Defendants

PARTICULARS OF CLAIM

1. The Claimant is a well-known and prominent businessman who lives in Ukraine but also enjoys a reputation in this Jurisdiction, and in others.
2. The First Defendant is the publisher of the Ukrainian newspaper "The Kyiv Post", which describes itself as "Ukraine's leading English-language newspaper since 1995", and its website which it owns and maintains at <http://kyivpost.com> that was at all material times open to general access by any user of the Internet. It appears to be a trading entity situate in the Ukraine, but its precise corporate status is unclear at the present time. The Second Defendant is a journalist who writes for The Kyiv Post. The Third Defendant is the Chief Editor of the Kyiv Post. The Fourth Defendant is the owner of the First Defendant and describes himself, or is described on The Kyiv Post website, as its "Publisher". He is described in an interview or profile by The Kyiv Post as a UK Citizen.

3. On 2nd July 2010, The First Defendant published or caused to be published an article entitled "Gas trade leaves trail of lawsuits, corruption", as written by the Second Defendant at,

<http://www.kyivpost.com/news/nation/detail/71733/>

where it continues to be published, to a substantial but unquantifiable number of readers in this jurisdiction (by an inference which the Claimant intends to prove and/or to identifiable third parties to be identified during these proceedings following further investigation), the following words defamatory of the Claimant (as accompanied by a photograph of the Claimant), itself accompanied by the caption "*After getting squeezed out of the gas trade by his nemesis, ex-Prime Minister Yulia Tymoshenko, billionaire Dmytro Firtash is riding high again in the administration of President Viktor Yanukovich*":

"[Headline] Gas trade leaves trail of lawsuits, corruption

- *Jul 2 at 01:41 – John Marone.*
- *If there is any sector in Ukraine's ailing economy that U.S. Secretary of State Hillary Clinton should urge authorities to kick off an anti-corruption campaign with, it's the murky – yet highly lucrative – natural gas sector, which dominates the activities of many of the nation's top politicians and businessmen.*
- *Recent events in the sector have proven that, if you want to take control of a couple billion dollars worth of natural gas from the Ukranian government, having friends or partners in the energy ministry, media and law enforcement is enough to seal the deal.*

- *Such is the situation for controversial Ukrainian businessman Dmitry Firtash. His efforts to regain possession of 11 billion cubic meters of blue fuel seized from him by former Prime Minister Yulia Tymoshenko are again highlighting the ever-present issues of corruption, abuse of power and conflict of interest – this time ahead of the July 2 visit by Clinton.*
- *During a July 1 press conference where she revealed new and crucial details about alleged multi-billion-dollar gas scams under way, Tymoshenko – with fire in her eyes – told the Kyiv Post that she fully intends to bring up such alleged massive corruption during her scheduled meeting with Clinton.*
- *“I will hand her the documents in English, myself,” Tymoshenko said, insisting again that no amount of politically-motivated investigations are enough to silence her fight against the corruption that threatens the sovereignty and fiscal stability of Ukraine, as well as the energy security of Europe.*
- *But the authorities in Kyiv don't seem all that bothered that Clinton or other Western leaders might criticize their shadowy gas games, or recent police action against Tymoshenko loyalists.*
- *“They aren't worried about Western censure because they think Washington and Brussels are afraid to push Ukraine into Russia's arms,” said Vadym Karasyov, a political analyst and adviser to former President Viktor Yushchenko.*

- Last week's jailing of ex-customs chief Anatoly Makarenko and the house arrest of the former deputy head of state oil and gas company Naftogaz, Ihor Didenko, are meant to demonstrate restraint to the West and to serve up scapegoats to the Ukrainian people, Karasyov said.
- Tymoshenko, who ordered Makarenko and Didenko in 2009 to seize the disputed gas, has challenged the government to arrest her instead, insisting such subordinates were merely following orders. But the authorities, nonetheless, are unlikely to take the bait, fearing that arresting Tymoshenko could turn her into a martyr, and invigorate a sleepy opposition movement.
- These [individuals arrested] are just bureaucrats, not politicians. If they persecute her, she wins, because she's a former premier and presidential candidate," according to Karasyov.
- **Fight the power**
- Despite her former political standing, Tymoshenko is up against the nation's top TV channel (Inter TV), a number of powerful government officials in the energy ministry and elsewhere, and the Security Service of Ukraine (SBU), the spy agency that is the successor to the Soviet KGB. All entities are stacked with Firtash associates.
- During a briefing held on June 25, SBU chief Valery Khoroshkovsky, who manages the assets of Inter television, confirmed that a criminal case had been opened against former Naftogaz executive Didenko on June 10 for

grand larceny, and that Makarenko had been jailed for criminal negligence in his duties as customs chief.

- *While still serving as deputy head of the SBU last year, Khoroshkovsky ordered a raid on Naftogaz headquarters, shortly after RosUkrEnergo had its monopoly abolished by Tymoshenko.*
- *Firtash has acknowledged an interest in Inter, in addition to his nearly 50 percent stake in RosUkrEnergo, which used to monopolize Ukraine's billion-dollar gas import business with Russia until Tymoshenko cut her own deal with the Kremlin.*
- *Subsequent to the Tymoshenko-Putin deal, monopoly gas importer RosUkrEnergo, whose other half is owned by Gazprom, had 11 billion cubic meters of its gas (valued at \$2.6 billion) seized by Ukraine's state gas company Naftogaz. Putin was quoted at the time as accusing RosUkrEnergo's Ukrainian owners, seen as close associates of incumbent President Victor Yanukovich, of financing politics at home.*
- *Earlier this year, after Tymoshenko lost her bid for the presidency against Yanukovich, whom Firtash is widely believed to have supported, the tables began to turn. Under Yanukovich, close associates of Firtash were placed in key positions at Naftogaz, its subsidiaries as well as the energy ministry, including the appointment of Yury Boyko, who once sat on RosUkrEnergo's board, as energy minister.*
- *With Firtash associates representing the government in the highest of positions, and still close to Firtash himself, many observers joined*

Tymoshenko in questioning whose interests these associates would defend: Ukraine's or their own? The answer for many came on June 8, when an arbitrator in Stockholm ordered state-owned Naftogaz to return the 11 billion cubic meters of gas to Swiss registered RosUkrEnergo, plus an additional 1.1 billion cubic meters of gas as compensation and an earlier damage awarded on March 30 for \$200 million for contractual violations.

- *During a recent television appearance, Tymoshenko drew attention to blatant conflicts of interest that, she claims, led to Ukraine losing the vital lawsuit: "In the Stockholm court, there was on the one hand Yanukovich, Firtash and [Energy Minister Yury Boyko] representing RosUkrEnergo, while on the other side, the state was represented by Yanukovich, Boyko and Firtash, who is in essence the shadow prime minister."*
- *She further questioned why the new government under Yanukovich had fired members of the legal team representing Naftogaz against RosUkrEnergo. Kyiv-based law firm Magisters, which contributed to that team, confirmed that it had been dismissed by the government shortly after the new government had been formed.*
- *Then, on July 1, Tymoshenko presented journalists with documentation that indicate Naftogaz, under the Boyko-led Energy Ministry, caved in to the arguments of RosUkrEnergo in Stockholm. Equally indicting is recent evidence published by Tymoshenko, a photo copy of a sales contract between Naftogaz and Gazprom, indicating that the Ukrainian government*

had paid in full for the 11 billion cubic meters of gas, before taking possession of it.

- *Serhiy Pashinsky, a lawmaker in Tymoshenko's parliamentary faction who sits on the legislature's fuel and energy commission, said Gazprom was paid \$1.7 billion. "[Gazprom Deputy CEO Alexander] Golubev signed for Gazprom and Didenko signed for Naftogaz," he said.*
- *But it remains unclear what legal right Russia's all-powerful and state-controlled gas giant Gazprom may have had to resell gas held in Ukraine's storage by RosUkrEnergo.*
- *This is one of many key details in the case that nobody appears willing to answer. Gazprom's press service, for example, wasn't talking. Didenko's personal assistant said he was unavailable.*
- *Meanwhile, Serhiy Lyovochkin, the head of the presidential administration and widely considered to be part of the Firtash faction in Yanukovich's ruling coalition, insisted that the administration was taking a hands-off approach to the affair.*
- *"We aren't going to interfere in this matter, and we don't consider it necessary to comment," he told journalists.*
- *Victor Pynzenyk, a former finance minister who had a bitter falling out with Tymoshenko, confirmed that Ukraine owed nothing to the Russians or RosUkrEnergo. But he nonetheless accused Tymoshenko of mucking things up.*

- *"Gazprom was paid in full for all of the gas, so Ukraine doesn't owe anyone, but the previous government failed to iron out the transfer of the gas in a court of law, and just seized it," Pynzenyk said.*
- *With such secrecy, billions of dollars and Ukraine's already-stretched finances at stake, the need for more transparency in such dealings is vital. Perhaps Clinton will have a word with Yanukovych about these primitive disputes.*
- *Kyiv post staff writer John Marone can be reached at marone@kyivpost.com."*

4. In their natural and ordinary meaning the said words meant and were understood to mean (i) that the Claimant is engaging in massive criminal corruption which threatens the very sovereignty and fiscal stability of his own country (Ukraine), as well as the energy security of Europe; and (ii) that he corruptly conspired to secure a legally unjust award of billions of dollars at the expense of the Ukrainian state from an arbitration held in Stockholm on 8th June 2010.
5. By reason of the publication of the words complained of in this jurisdiction through publication of them on the First Defendant's website, the Claimant has been injured in his personal and professional reputation in this jurisdiction.

AND THE CLAIMANT CLAIMS

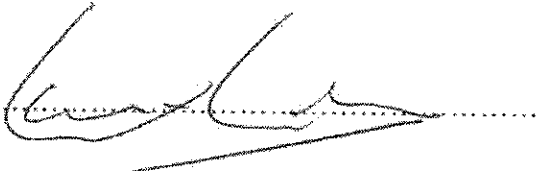
(1) Damages for libel;

(2) Costs.

SIMON SMITH

STATEMENT OF TRUTH

The Claimant believes the facts stated in these Particulars of Claim are true.

A handwritten signature in black ink, appearing to read 'Simon Smith', written over a horizontal dotted line. The signature is fluid and cursive.

Simon Smith, Solicitor

Served this ^{23rd} day of ~~November~~ 2010 by PSB Law LLP, Media House, 4 Stratford Place,
London, W1C 1AT.

Solicitors for the Claimant.