IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

SAUDI BASIC INDUSTRIES CORPORATION,	)	
Plaintiff/Counterclaim Defendant,	)	
v.	)	C.A. No. 00C-07-161-JRJ
MOBIL YANBU PETROCHEMICAL COMPANY, INC. and EXXON CHEMICAL ARABIA, INC.,	)	
Defendants/Counterclaim Plaintiffs.	)	

Date Submitted: June 3, 2003
Date Decided: August 26, 2003

Upon SABIC's Motion for Judgment as a Matter of Law, or in the Alternative for a New Trial on Statute of Limitations Grounds - ***DENIED***

ORDER

Upon review of SABIC's Motion for Judgment as a Matter of Law, or in the Alternative for a New Trial on Statute of Limitations Grounds, ExxonMobil's opposition thereto, and the record, it appears to the Court that:

1. On February 10, 2003, the Court denied SABIC's Motion for Summary Judgment on the Statute of Limitations, holding that (a) the Delaware Borrowing Statute does not require application of Delaware's three-year statute of limitations for contract claims to ExxonMobil's claims, and (b) as a matter of substantive Saudi Arabian Law, property rights are eternal and cannot be extinguished by the passage of time.[1]

2. At no time after the Court's February 10, 2003 decision denying SABIC's motion for summary judgment on the statute of limitations did SABIC move for reargument as permitted by Superior Court Civil Rule 59(e). Moreover, at no time after the Court's February 10, 2003 decision did SABIC seek certification of an interlocutory appeal on this issue as permitted by Supreme Court Rule 42.

3. On March 21, 2003, following a two-week trial, the jury awarded damages in excess of $416 million to ExxonMobil.

4. On April 4, 2003, SABIC filed the instant motion.

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[1] Teleconference Tr. at 50-65, *Saudi Basic Indus. Corp. v. Mobil Yanbu Petrochemical Co., Inc. & Exxon Chem. Arabia, Inc.,* Del. Super., C.A. No. 00C-07-161-JRJ, Jurden, J. (Feb. 10, 2003) (bench ruling) (denying SABIC's motion for summary judgment on the statute of limitations).

5. As explained below, SABIC's motion for judgment as a matter of law pursuant to Superior Court Civil Rule 50(b) is improper given the procedural history of this case.

6. Rule 50(b) provides:

> *Renewal of motion for judgment after trial; alternative motion for new trial.* Whenever a motion for a judgment as a matter of law made at the close of all the evidence is denied or for any reason is not granted, the Court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. Such a motion may be renewed by service and filing not later than 10 days after entry of judgment. A motion for a new trial under Rule 59 may be joined with a renewal of the motion for judgment as a matter of law, or a new trial may be requested in the alternative. If a verdict was returned, the Court may, in disposing of the renewed motion, allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as a matter of law. If no verdict was returned, the court may, in disposing of the renewed motion, direct the entry of judgment as a matter of law or may order a new trial.

7. Rule 50(a) provides:

> *Judgment as a matter of law.* (1) If during a trial by jury a party has been fully heard on an issue and there is no legally sufficient evidentiary basis for a reasonable jury to find for that party on that issue, the Court may determine the issue against the party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue.

8. SABIC cannot properly move for judgment as a matter of law under Rule 50(b) because SABIC did not move for judgment as a matter of

law under Rule 50(a).[2] This Court ruled *before* trial, *as a matter of law* that Delaware's three-year statute of limitations on contract claims did not time bar ExxonMobil's claims, which were brought under Saudi Arabian Law. Thus, this issue, which is a legal issue, was decided before trial and was not submitted to the jury.

9. Given the procedural history, Superior Court Civil Rule 50 does not apply.[3] Consequently, SABIC's Motion for Judgment as a Matter of law on Statute of Limitations Grounds is **DENIED**.

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[2] *See Episcopo v. Minch*, 203 A.2d 273, 276 (Del. 1964) (holding a motion under Rule 50(b) "is dependent upon the making of a proper motion under Rule 50(a)").

[3] Additionally, SABIC argues that "SABIC's summary judgment motion, which was decided by this Court on purely legal grounds, and SABIC's subsequent offer of proof asking the Court to reconsider its prior limitations ruling, were in effect Rule 50(a) motions for judgment as a matter of law." On March 19, 2003, SABIC filed an Offer of Proof on its Limitations Defense. In its reply brief, SABIC attempts to characterize its Offer of Proof as a "Motion for Reconsideration" and argues that because this Court never explicitly ruled as to the offer of proof and stated generally at the close of evidence, "motion[s] renewed and rulings remain the same," that the offer of proof was "in effect [a] Rule 50(a) motion for judgment as a matter of law." The Court has reviewed SABIC's offer of proof on this issue and does not agree. SABIC's offer of proof was filed as exactly that, an offer of proof, titled "Saudi Basic Industries Corporation's Offer of Proof on Its Limitations Defense," it was not filed or titled as a motion. It gave no notice to the Court or to ExxonMobil that SABIC viewed its filing as a motion for reconsideration. Furthermore, SABIC had every opportunity to file a motion for reconsideration within five (5) days after the Court's ruling on February 10, 2003 and chose not to do so. In light of this, SABIC's remedy is not a Rule 50 motion but rather an appeal to the Delaware Supreme Court. *See* SABIC's Reply Br. Supp. Mot. J. Matter Law, or Alternative New Trial on Statute of Limitations Grounds at 2-3.

10. In the alternative, SABIC seeks a new trial on statute of limitations grounds pursuant to Superior Court Civil Rule 59.

11. Rule 59 provides, in pertinent part:

> (a) *Grounds*. A new trial may be granted as to all or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in the Superior court. On a motion for a new trial in an action tried without a jury, the Court may open the judgment, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.
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> (b) *Time and procedure for motion.* The motion for a new trial shall be served and filed not later than 10 days after the entry of judgment, or the rendition of the verdict, if pursuant to Rule 58, the Court has directed that the judgment shall not be entered forthwith upon the verdict, the motion to be accompanied by a brief and affidavit, if any. The motion shall briefly and distinctly state the grounds therefor.

12. As noted above, the legal issue of what, if any, statute of limitations applied to ExxonMobil's claims was not submitted to the jury. Thus, by its Rule 59 Motion, SABIC improperly seeks a new trial on a legal issue that was resolved by the Court prior to trial on a motion for summary judgment pursuant to Superior Court Civil Rule 56 and was not an issue in

the trial. Rule 59 is not applicable. Consequently, SABIC's Motion for a New Trial is **DENIED**.

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Jan R. Jurden, Judge