

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LAIG,

Plaintiff,

-against-

MEDANITO S.A.,

Defendant.

Index No. 160103/14

**AFFIDAVIT OF
JORGE DE PABLO**

LAIG states its founding date

JORGE de PABLO, being duly sworn, deposes and states the following:

1. I am the director of LAIG, the plaintiff in this matter, and I submit this affidavit in support of LAIG’s motion for a temporary restraining order and preliminary injunction enjoining defendant, its officers, directors, principals, agents, servants, employees, successors, assigns, and all those acting in concert or participation with them from entering into any transaction related to defendant’s shares in Chañares Herrados Empresa de Trabajos Petroleros S.A. (“CHASA”), without first providing sixty days’ prior written and detailed notice of the terms of any such transaction to LAIG.

2. LAIG is a private investment company focused on the Latin American energy, infrastructure, natural resources, and real estate, with a strong emphasis on Argentina. **Since its founding, in 2008, LAIG** has been in the business of seeking out Latin American investments in a wide variety of industries, including natural resources.

3. **In April of 2012, LAIG identified the Argentinian oil industry as a potential for investment opportunities, in the wake of the government nationalization of YPF, an oil company then owned by Spain’s Repsol. The YPF nationalization had caused a drop of oil assets in Argentina of up to 90% and LAIG correctly anticipated that this shift would create an**

LAIG states that Argentine oil assets are undervalued and sees an investment opportunity



opportunity for investment in Argentinian oil assets. As a result, in June 2012, LAIG began to

analyze transactions in the Argentinian oil sector and, because of its reputation and experience, the company was invited to consider a number of substantial transactions.

4. By early 2013, we learned that CHASA was for sale for what we perceived to be a good value. We understood that CHASA holds the concession rights for the oil and gas exploration and exploitation in the Chañares Herrados and Puesto Pozo Cercado areas of the Argentinian Province of Mendoza. Based on our understanding of the market, LAIG determined that CHASA's purchase price was undervalued and we decided to acquire the whole of CHASA's capital stock.

LAIG states that it is a foreign investor in Argentina



5. As a foreign investor, LAIG sought a local partner to join us in the CHASA acquisition and to facilitate our entry into the Argentinian oil business. Even though LAIG has

extensive experience in the oil and gas industry and technicians specialized in the field among its employees, our management considered it would be useful to partner with a local business with extensive knowledge of the local market. To that end, LAIG entered into conversations with different Argentinian oil businesses.

LAIG describes the outcome of an initial attempt to acquire Argentine oil assets



6. LAIG initially aimed to partner with a group led by Eduardo Eurnekian that had recently successfully acquired another Argentinian oil company in a competitive process with LAIG, brokered by Goldman Sachs, where LAIG had finished second. CHASA accepted

LAIG's offer to purchase the company for approximately \$80 million and signed an offer letter that gave the LAIG/Eurnekian group an exclusive three-month period to analyze the financial status of the company and close the transaction. During that period, LAIG undertook a detailed study of CHASA, which included two independent geology studies carried out by a Canadian

LAIG describes the outcome of another attempt to acquire Argentine oil assets

company, a geologist and hydrocarbon geophysics expert report, an accounting analysis, legal due diligence, and an environmental study.

7. By the end of July, 2013, the Eurnekian group decided to withdraw from the CHASA acquisition to pursue another transaction that was more compatible with its existing oil assets and that had greater strategic importance for it.

8. With the departure of the Eurnekian group, LAIG continued to look for a local partner with expertise in oil and gas operations.

9. In the beginning of November 2013, as part of its inquiries for interested partners, LAIG contacted Medanito S.A. We understood that Medanito had experience operating oil and gas companies in Argentina and was a logical partner in the CHASA investment.

10. Medanito recognized the unique opportunities presented by the CHASA transaction and immediately expressed interest. In addition to CHASA's favorable valuation, Medanito seemed attracted to CHASA because CHASA held development rights in Mendoza, a region into which Medanito desperately wanted to expand.

11. LAIG proposed to Medanito that Medanito undertake to purchase a 20% stake of CHASA, with LAIG purchasing the remaining 80%. Medanito expressed interest in the transaction and decided to continue with a negotiation. It was attracted by the quality of the investment and the fact that LAIG had managed to preserve a purchase price with a valuation of \$3 per barrel, when the main comparable for the market had increased its value from \$5 to \$12 a barrel during the same period.

12. After several further conversations, on November 15, 2013, LAIG and Medanito entered into a confidentiality and non-circumvention agreement ("Confidentiality Agreement"). Pursuant to the Confidentiality Agreement, LAIG agreed to disclose certain information it had

obtained about CHASA under two main conditions: (i) Medanito would not disclose the information provided by LAIG for the acquisition of CHASA; and (ii) Medanito would not acquire CHASA's capital stock without LAIG's participation or consent for the period of one year. Each of these terms was critical to LAIG to ensure that it would not lose the value of the opportunity it had found in CHASA and the extensive work it had done to develop, research, and confirm that opportunity.

13. Shortly after signing the agreement, LAIG began performing under the contract, by disclosing confidential information to Medanito, including two independent geology studies carried out by a Canadian company, a geologist and hydrocarbon geophysics expert report, an accounting analysis, legal due diligence, and an environmental study.

14. After entering into the Confidentiality Agreement, LAIG shared with Medanito the extensive information on CHASA it had gathered and developed, and the two companies began to negotiate the terms of a joint acquisition agreement. As negotiations progressed, Medanito proposed acquiring 51% of CHASA's stock, with LAIG acquiring the remaining 48%. LAIG initially rejected this proposal, but ultimately the parties agreed on this allocation of relative ownership in exchange for additional terms to benefit LAIG to ensure LAIG would receive a minimum profit, in the event that it eventually decided to sell its interest.

15. Medanito and LAIG entered into a formal joint venture agreement on December 6, 2013 ("Joint Venture Agreement"). The Joint Venture Agreement provided, among other things, that Medanito would purchase 51% of CHASA's capital stock; LAIG would purchase 49% of CHASA's capital stock; and the jointly-proposed purchase price would be approximately \$85 million for the whole of the stock with an additional \$5 million for taxes and no more than \$500,000 for transactional costs. LAIG, as a minority shareholder, would have special minority

rights. In addition, Medanito and LAIG undertook to agree and execute a shareholders' agreement and an options agreement where Medanito would have the option, but not the obligation, to buy LAIG's stake in CHASA in the third and fourth year after the acquisition of CHASA, for a minimum price equivalent to an annual compounding interest rate of 18.3% applied on the price of the acquisition of CHASA, or market prices, whichever was higher, estimated to be a minimum profit of \$40 million for LAIG in the fourth year though the parties expected the profits to be substantially higher than. And LAIG would have the option but not the obligation to sell its stake in CHASA to Medanito on exactly the same terms that Medanito could buy LAIG's stake in CHASA. Finally, Medanito undertook to cause CHASA to issue preferred shares in favor of LAIG, as a finder's fee to LAIG, equivalent to 5% of the whole of CHASA's capital stock purchased by Medanito, which under LAIG's valuation should be worth no less than \$8 million today.

16. After LAIG executed the Joint Venture Agreement with Medanito and CHASA had accepted the LAIG and Medanito binding offer ("Binding Offer"), LAIG contracted with several investors, which it had kept informed for months, to invest in the CHASA transaction.

17. In the beginning of May, approximately a month before the closing date, Medanito attempted to re-open negotiations with LAIG regarding the Joint Venture Agreement. Medanito demanded that the parties change the conditions under which both LAIG and Medanito would jointly acquire CHASA. LAIG insisted that the parties continue to abide by the agreed-upon terms in the December Joint Venture Agreement.

18. Unable to renegotiate the basic terms of the deal, Medanito took steps to undermine that agreement. For example, Medanito failed to take the actions required to close the CHASA transaction, including failing to negotiate an options agreement, as it had promised to

do. Medanito knew that by not entering into the Options Agreement, as promised, it was impeding the conditions necessary to close the CHASA acquisition according to the terms of the Joint Venture Agreement.

19. In addition, Medanito stopped regular communications with LAIG concerning the necessary work to prepare for the closing. LAIG ceased receiving regular communications from the parties' transaction attorneys, Estudio Beccar Varela ("EBV"). LAIG later obtained an email from EBV, dated May 5, 2014, concerning the transaction, where EBV attorneys wrote to Medanito: "Please note that LAIG is not copied on this email so that we can first receive instructions from you as to how you intend to proceed in this new stage of the transaction in connection with the parties involved."

20. Despite Medanito's increasingly obstructionist behavior, LAIG continued to express flexibility in conversations with Medanito. LAIG was willing to consider some alternative proposals relating to the purchase of CHASA, provided that it was a party to the transaction and that the terms of the Joint Venture Agreement were honored.

21. A week before the June 5 closing, Medanito's Chairman Emilio Carosio informed LAIG that Medanito intended to carry out the acquisition without LAIG. LAIG demanded that Medanito abide by the Joint Venture Agreement and that under no circumstances was LAIG to be left out of the transaction. LAIG also reminded Medanito that, as it had been LAIG who found the deal, it would be LAIG who would purchase 100% of CHASA, if anyone. Emilio Carosio appeared to relent and falsely ensured LAIG that Medanito would finalize their agreements with LAIG prior to the acquisition.

22. As of May 28, 2014, LAIG, which until then had played a crucial role in the negotiations of the SPA with CHASA, stopped receiving communications from CHASA and EBV.

23. According to the terms of the Binding Offer, CHASA's board members were supposed to sign and deliver their resignations to Medanito and LAIG by June 4, 2014, the day before the closing. They did not deliver them to LAIG.

24. I have now reviewed Medanito's board minutes that reflect that at 4:30 p.m. on June 4, its board of directors resolved to acquire 52% of CHASA's capital stock with their shareholders Exmed Inversions S.A. and Exmed S.A. acquiring the remaining 48%. This resolution approved a deal that would grant Medanito an additional 1% more of the CHASA stock than the 51% provided for in its Joint Venture Agreement with LAIG and would exclude LAIG completely from the transaction, in direct contravention of the Confidentiality Agreement

25. At about 4:35 p.m. on June 4, 2014, we delivered a letter to Medanito that reminded it that LAIG was ready to close according to the terms agreed upon in the December 2013 Joint Venture Agreement and that it would be Medanito's sole responsibility if the acquisition was not consummated because Medanito had unilaterally excluded LAIG.

26. About an hour after it resolved to obtain 52% of CHASA's stock and buy the other 48% with its controlling shareholder, Exmed, Medanito then sent LAIG a legal notice about an hour later demanding that LAIG provide a bank extract within a peremptory two-hour period proving that it had the necessary funds to acquire the 49% of CHASA's shares contemplated by the Joint Venture Agreement. Medanito's board had already decided to exclude LAIG; it had no right to demand this condition; there was no contractual agreement to provide this information; Medanito had never asked for it before; and, given the time it was sent, the

information was impossible to obtain because, as Medanito knew when it sent its demand at 5:45 p.m., none of the necessary banks were open or available to provide the demanded certificate.

27. On June 5, 2014, the day of the CHASA closing, I met with Medanito's Emilio Carosio and a member of Medanito's board, Mari Esterman, at Mr. Carosio's offices. Mr. Carosio told me that the closing was delayed but assured me that Medanito would not purchase CHASA without LAIG (contrary to Medanito's secret board resolution of the day before). This was the first time anyone had suggested to me that the closing was delayed. I thought Mr. Carosio's statement was an act of deception intended to dissuade me from attending the closing later that afternoon, thus leading me to breach my agreements. Mr. Carosio did not dispel my concerns when he refused to sign a document stating that closing had been deferred and explaining the reasons for such deferral.

28. Despite Medanito's indication that the closing had been adjourned, I appeared on behalf of LAIG that afternoon at the sellers' office, which had been designated as the closing location. On the date of the closing, LAIG was prepared, able, and entitled to purchase 100% of CHASA, in the event that Medanito did not attend the closing. The consequence of the fact that the Binding Offer was joint and several between LAIG and Medanito was that if one of the parties did not perform, the other would need to purchase the entire company. As a result, we went to the closing not knowing if LAIG would need to purchase 49% or 100% of CHASA; and we had the funds to do either. Given that Medanito had failed to complete the documents necessary to execute a joint purchase of CHASA, LAIG was prepared and intended to purchase 100% of the CHASA stock for itself and its investors.

29. We arrived at the closing location with a notary public to record and certify the events at the closing, given the increasingly suspicious behavior of Medanito and CHASA.

When we first rang the intercom to CHASA's offices and I said my name and the purpose of the visit, a voice answered and told us that no closing would be taking place and that I was explicitly prohibited from entering the premises. The notary public then prevailed on a security guard to admit us to the building. When we were subsequently admitted to the floor of CHASA's offices, we could see lights and hear activity behind a locked door, but no one answered when we repeatedly rang the doorbell.

**LAIG
describes the
outcome of yet
another
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Argentine oil
assets**

30. Unable to enter the offices designated for the closing, we left and sent a formal notice that we had been denied entry. Neither the CHASA sellers nor Medanito responded.

31. A few days after the closing, as published on June 13, 2014, in the Buenos Aires Stock Exchange and in the Comisión Nacional de Valores ("CNV"), I came to learn that Medanito had acquired all of CHASA with its own shareholder, Exmed, as approved under Medanito's board resolution.

32. I have recently learned that Medanito or Exmed is seeking to sell about one third of the total outstanding shares in CHASA to recoup a portion of the investment and make a profit from its purchase of those shares.

33. LAIG will suffer irreparable harm if Medanito is permitted to sell shares of CHASA which are the subject of this action.

34. Absent an injunction, requiring sixty days' notice of any transaction regarding the CHASA stock, LAIG will be irreparably harmed in three different ways.

35. First, if Medanito is able to sell its shares, it will impede LAIG's ability to obtain those shares in a constructive trust in this action.

36. Second, Medanito's sale or encumbrance of the CHASA shares will deprive LAIG of the unique opportunity of managing CHASA.

37. Finally, I have already begun to hear complaints from investors about their frustration that the CHASA deal did not close. The failure of the CHASA transaction has already and will continue to be unfairly attributed to LAIG to the detriment of my business's reputation. If LAIG is unable to deliver this promised business opportunity, due to Medanito's illegal conduct, LAIG's business partners will lose faith in LAIG's ability to produce investments for them in the future.

Dated: October 15, 2014
New York, New York



JORGE de PABLO

Sworn to before me this 15th day of
October, 2014



Notary Public

Geraldine Paulino
NOTARY PUBLIC, STATE OF NEW YORK
No. 01PA6295280
Qualified in Suffolk County
Commission Expires Dec. 30, 2017