

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

PRESENT: HON. ANDREW BORROK PART IAS MOTION 53EFM

Justice

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ILUKA RESOURCES LIMITED,

Plaintiff,

- v -

CHEMOURS INTERNATIONAL OPERATIONS SARL, THE
CHEMOURS COMPANY SINGAPORE PTE LTD

Defendant.

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INDEX NO. 653398/2020

MOTION DATE 10/05/2020

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 42

were read on this motion to/for

DISMISS

Chemours International Operations Sarl's (**Chemours**) argues that the breach of contract claim and the lawsuit must be dismissed because Iluka Resources Limited (**Iluka**) failed to escalate the unresolved dispute between the parties before bringing this lawsuit. The argument fails because Section 16 of the Supply Agreement, dated September 1, 2017, by and between Iluka and Chemours does not require as a pre-condition to bringing a lawsuit escalating the unresolved disputes and agreeing to engage in mediation. To wit, Section 16 provides:

**16. DISPUTE RESOLUTION/NON-BINDING
MEDIATION/ARBITRATION**

CHEMOURS or SUPPLIER *may* at any time escalate in writing any unresolved dispute ("Dispute") arising out of or relating to this Agreement to a CHEMOURS Executive and a corresponding Executive of SUPPLIER (and any additional agreed-upon designees of the Parties).

If such Executives do not resolve such dispute within 30 days after receipt of written notice (the "Escalated Negotiation Period"), then within 15 days after that CHEMOURS and SUPPLIER may agree to resolve any dispute arising out of or relating to this Agreement promptly by confidential non-binding mediation under the then current Conflict Prevention and Resolution Mediation Procedure published by the International Institute for Conflict Prevention and Resolution (such mediation proceeding to be completed within sixty days) before resorting to arbitration or litigation. Also within such 15 days after the Escalated Negotiation Period, CHEMOURS and SUPPLIER shall determine whether they

agree to binding arbitration of any dispute that may remain after mediation; alternatively if CHEM OURS and SUPPLIER fail to unanimously agree to refer the Dispute to mediation, CHEMOURS and SUPPLIER may elect to proceed directly to binding arbitration without mediation.

Any arbitration shall be seated and conducted in Wilmington, Delaware by a panel of three arbitrators, such arbitration to be conducted in English and in accordance with the then current version of the Commercial Arbitration Rules of the American Arbitration Association.

An appeal may be taken under the CPR Arbitration Appeal Procedure from any final award of an arbitral panel in any arbitration arising out of or related to this Agreement that is conducted in accordance with the requirements of such Appeal Procedure. Unless otherwise agreed by CHEMOURS and SUPPLIER and the appeal tribunal, the appeal shall be conducted in New York, New York, USA.

Any judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof Clause 19 shall apply to any arbitration or the enforcement of any award rendered pursuant to such arbitration.

If CHEMOURS and SUPPLIER do not agree on mediation or arbitration, then either of them may pursue its rights and remedies under this Agreement.

All offers, promises, communications, statements and actions during the course of any informal dispute resolution process, and any mediation or arbitration, by any party or individual:

- A. are confidential, privileged and may not be disclosed (including by any mediator);
- B. are inadmissible, are not discoverable and may not be used (or referred to) for any purpose, including impeachment of any other testimony in an arbitration, judicial, administrative or regulatory proceeding; and
- C. stay all statutory or contractual limitations that limit a Party's right to litigate.

Notwithstanding the above, either Party may petition any Court having jurisdiction for equitable relief at any time without notice.

(NYSCEF Doc. No. 27, § 16 [emphasis added]).

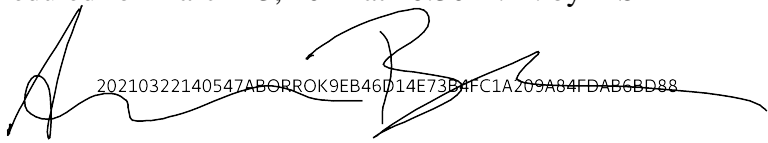
Iluka has indicated that it plans to file an amended complaint to add additional counts to its breach of contract claim and that it is abandoning as a separate cause of action its anticipatory breach and its declaratory judgment causes of action. As such, the court need not consider the branch of the motion seeking dismissal of anticipatory breach and/or declaratory judgment claims as they are now rendered moot.

Accordingly, it is

ORDERED that the motion to dismiss is denied as set forth above, and it is further

ORDERED that the plaintiff may serve an amended complaint within 30 days of the instant decision and order, and it is further

ORDERED that a preliminary conference is scheduled for March 23, 2021 at 10:30 A.M. by MS Teams.



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3/22/2021

DATE

ANDREW BORROK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE