STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 30-2019-CV-00180

Energy Transfer LP, (formerly known as Energy Transfer Equity, L.P.), Energy Transfer Operating, L.P. (formerly known As Energy Transfer Partners, L.P., and Dakota Access, L.L.C., Plaintiffs,	
-vs-	OPINION DENYING MOTION FOR ANTI-SUIT INJUNCTION
Greenpeace International (also known as "Stichting Greenpeace Council"; Greenpeace Inc.; Greenpeace Fund, Inc. Red Warrior Society (also known as "Red Warrior Camp; Cody Hall and Krystal Two Bulls; Defendants.	

¶1. The Plaintiffs (Energy Transfer) filed a Motion for Anti-Suit Injunction on July 22, 2025, requesting the Court prohibit Greenpeace International (GPI) from proceeding with a legal action filed in a Dutch court. In the Dutch action GPI seeks damages from Energy Transfer for tortious acts, including the filing of a SLAPP suit in the United States, instituting a federal RICO action and publishing false statements about GPI regarding GPI's criminal activity and facilitation of acts of terrorism. GPI also insists Energy Transfer cannot enjoin GPI because of a lack of personal jurisdiction in the North Dakota matter. Energy Transfer maintains the Dutch action is vexatious and duplicative of the North Dakota action, claiming the jury decision rendered in this action resolved the matter and allowing GPI to proceed would serve to undermine the result of this action.

¶2. The above matter reached a jury trial in February and March of 2025, resulting in a substantial jury verdict in favor of Energy Transfer and against the Greenpeace Defendants Greenpeace Inc., Greenpeace Fund and GPI. GPI claims, without contest from Energy Transfer, that GPI notified Energy Transfer on July 23, 2024, GPI claimed relief under Dutch and European law, and the Energy Transfer and GPI exchanged correspondence regarding the matter in September through December of 2024. GPI filed its Summons with the Court of Amsterdam, the Netherlands on February 11, 2025. The Morton County, North Dakota jury trial began at the end of February 2025. The jury awarded damages to Energy Transfer (including Dakota Access) on twelve claims, plus exemplary damages. The claims were as follows: 1) Trespass to land; 2) Aiding and abetting trespass to land; 3) Trespass to Chattel; 4) Aiding and abetting trespass to chattel; 5) Conversion; 6) Aiding and abetting conversion; 7) Nuisance; 8) Aiding and abetting nuisance; 9) Conspiracy; 10) Defamation; 11) Defamation *per se*; and 12) Tortious interference. The Greenpeace Defendants raised no counterclaims.

¶3. From a perusal of the Summons in the Dutch action, which seems to combine the Summons and Complaint seen in the courts of North Dakota, GPI apparently claims the North Dakota action filed by Energy Transfer qualified as a "SLAPP" suit – **S**trategic **L**itigation **A**gainst **P**ublic **P**articipation, a cause of action recognized in the Netherlands under anti-SLAPP suit law. Additionally, as mentioned above, GPI appears to claim Energy Transfer defamed GPI by filing a RICO suit in the federal court, which was dismissed, and claiming GPI engaged in criminal activity and facilitation of terrorism.

¶4. . In reviewing the cases cited by Energy Transfer and GPI, the Court failed to find much discussion about the four requirements for a preliminary injunction. BAE discussed the four requirements: 1- the movant must show a likelihood of success on the merits; 2 – there must

exist a potential for irreparable harm without preliminary relief; 3 – a balancing of the equities must favor the movant; and 4 – granting the preliminary injunction would be in the public interest. Neither Energy Transfer or GPI spent much, if any, time on discussing these four requirements in depth, probably because of the unique factors involved with an anti-suit injunction against another country, rather than a sister state.

¶5. The anti-suit injunction combines elements of a preliminary judgment with special consideration because a court in the forum state (here, North Dakota) issues a ruling with a direct impact on the foreign court (the Dutch Court). Energy Transfer cited BAE Systems Technology Solutions & Services, Inc. v. Republic of Korea's Defense Acquisition Program Administration, 195 F. Supp 3d 776 (D. Md. 2016) which contains an extensive discussion of the various factors to be considered:

> The suitability of an anti-suit injunction involves different considerations from the suitability of other preliminary injunctions. An anti-suit injunction, by its nature, will involve detailed analysis of international comity. Often . . . the injunction will be defensive in nature. * * * The parties agree that other circuits have taken two different approaches, which Plaintiff refers to as the "liberal" standard, which favors granting an injunction, and the "conservative" standard, which favors simultaneous litigation in the two fora. * * * [T]he District of South Carolina has observed that a third approach exists, under which " '[t]he equitable circumstances surrounding each request for an injunction must be carefully examined to determine whether . . . the injunction is required to prevent an irreparable miscarriage of justice.' * * *.
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> Analysis of the propriety of a foreign anti-suit injunction is a three-step process under either of the approaches. First, the court resolves the threshold considerations of whether the parties and issues are the same. Second, the court considers four factors to determine the effect the foreign suit would have if it were to continue. Third, the court considers principles of comity.* * *.
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> The anti-suit injunctions factors are similar under both approaches. Preliminarily, the court considers whether "(1) 'the parties are the same in both [the foreign and domestic lawsuits],' " and whether "(2) 'resolution of the case before the enjoining court is dispositive of the action to be enjoined.' * * * Courts taking both liberal and conservative approaches have considered substantial similarity, instead of

looking only for whether the parties and claims were identical or whether the case in the enjoining court is dispositive of the other case. * * *.

If the answer to these preliminary inquiries is "yes," the court assesses the effect of the foreign suit, if it were to proceed. The Courts of Appeals that have discussed this assessment agree that the court should consider the following four factors: "whether the parallel litigation would '(1) frustrate a policy in the enjoining forum; (2) be vexatious; (3) threaten the issuing court's *in rem* or *quasi in rem* jurisdiction; [or] (4) prejudice other equitable considerations .... * * * The Second Circuit also considers a fifth factor—whether allowing the foreign suit to proceed would " 'result in delay, inconvenience, expense, inconsistency, or a race to judgment. * * *.

If the preliminary and secondary factors are satisfied, the court must consider principles of comity. * * *

The parties agree that the main difference in the approaches is that the conservative approach "accords greater weight to comity concerns." Pl.'s Mem. 13; *see* Defs.' Opp'n 14 n.10. Under the liberal approach, the standard does not "exclude[ ] the consideration of principles of comity," but it also does not "require a district court to genuflect before a vague and omnipotent notion of comity every time that it must decide whether to enjoin a foreign action.

The "strict" (or conservative) cases favoring simultaneous litigation "presume a threat to international comity whenever an injunction is sought against litigation in a foreign court." In contrast, the "lax" (or liberal) cases favoring injunctions, while not "deny[ing] that comity could be impaired by such an injunction[,] ... demand evidence (in a loose sense—it needn't be evidence admissible under the Federal Rules of Evidence) that comity is likely to be impaired" by an injunction. The evidence needed is "some indication" from the opponent that "the issuance of an injunction really would throw a monkey wrench, however small, into the foreign relations of the United States."

Additionally, under the liberal approach favoring injunctions, the plaintiff "need not meet [the] usual test of a likelihood of success on the merits of the underlying claim to obtain an antisuit injunction against [the defendant] to halt the [foreign] proceedings," but rather "need only demonstrate that the factors specific to an anti-suit injunction weigh in favor of granting the injunction." ("Although both the district court and the parties discussed all four prerequisites to the issuance of a traditional preliminary injunction, the suitability of [a foreign anti-suit injunction] ultimately depends on considerations unique to antisuit injunctions."). In contrast, at least one circuit employing the conservative approach favoring simultaneous proceedings has held that "[a] preliminary anti-suit injunction may be entered only if the multi-factor test [specific to antisuit injunctions] and the ordinary test for a preliminary injunction are both satisfied." In an abundance of caution, I will address the standard preliminary injunction factors as well, although it seems to me that the

better-reasoned approach is that the factors unique to whether to grant a preliminary foreign anti-suit injunction are sufficient in and of themselves.

At 784-790.

¶6. The Court considered the threshold considerations: 1 – Are the parties and issues the same?, 2 – Would the parallel litigation a) frustrate a policy in the enjoining forum; b) be vexations; c) threaten the issuing court's *in rem* or *quasi in rem* jurisdiction; or d) prejudice other equitable considerations?, and 3 – Do the principles of comity affect the consideration?

¶7. Clearly both Energy Transfer and GPI are parties in both the North Dakota case and the Dutch case. All of the contention between the parties arises from the same activities – the establishment of the Dakota Access Pipeline (DAPL) in the area south and west of Bismarck-Mandan, which expanded into a national and international campaign by opponents of DAPL. To the extent Energy Transfer claims damages from the activities involved with the protests and the campaign, (the North Dakota action) and the Greenpeace Defendants assert their involvement in any of the protests and the campaigns were protected under freedom of expression and the North Dakota action was brought as a SLAPP, both actions are based on the protests and campaign. However, as indicated by the recitation of the claims in the respective actions, the issues do not seem to be the same. As noted in GPI's brief, North Dakota does not recognize a SLAPP or anti-SLAPP action, as such. So, as that issue was not raised in North Dakota, but is alleged and recognized in the Netherlands, there is a difference on that issue. Likewise, the North Dakota action did not consider any allegations of defamatory statements directed toward GPI from Energy Transfer. All of the defamatory claims in the North Dakota action addressed those from the Greenpeace Defendants toward Energy Transfer.

¶8. The Court next considered the effect of the litigation in the Netherlands on the North Dakota proceeding. The first of the four factors deals with frustration of a policy in the North Dakota

court. The jury verdict has been reached, and the Court is wading through the post-trial motions, but expects those motions to be addressed prior to September 19, 2025 -the date proffered by Energy Transfer in the oral arguments. Admittedly this Court has no familiarity with the civil procedure in the Netherlands, and therefore no idea how quickly the Dutch court moves on civil matters. However, the Court believes the only manner in which a Dutch action could impact the policy of the North Dakota courts would be to reach a final conclusion prior to this Court's ruling on the motions and the filing of any documents required by the rulings. Energy Transfer posited the Dutch action would result in a blatant disregard for this Court's and the jury's decisions, and while that is a possibility, that is not a certainty.

¶9. The second factor deals with a potential 'vexatious' nature of the Dutch action. GPI's claims certainly are not welcomed by Energy Transfer, any more than the Court would welcome those claims being lodged before this Court after the marathon all the parties and the Court ran in the North Dakota matter. Rule 58(2)(b), N.D. Sup. Ct. Admin. R., defines "vexatious litigant" as "a person who habitually, persistently, and without reasonable grounds engages in conduct" that:

> (1) serves primarily to harass or maliciously injure another party in litigation;
>
> (2) is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law;
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> (3) is imposed solely for delay;
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> (4) hinders the effective administration of justice;
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> (5) imposes an unacceptable burden on judicial personnel and resources; or
>
> (6) impedes the normal and essential functioning of the judicial process.

Matter of Hirsch, 2017 ND 291, ¶ 5, 904 N.W.2d 740, 742–43.

Because GPI's Dutch claims do not require the parties to relitigate the claims of the North Dakota action, the Court does not find the Dutch action to be vexatious.

¶10. The Dutch action does not appear to threaten the North Dakota courts' *in rem* or *quasi in rem* jurisdiction, as that action appears to be against Energy Transfer for damages, and fails to raise a question about property in North Dakota. The Dutch action fails to prejudice any equitable considerations in the North Dakota action because the matter has proceeded through trial.

¶10. The Court then considered the principles of comity.

> Comity is a principle under which a court voluntarily defers action on a matter properly within its jurisdiction until a court in another jurisdiction, with concurrent jurisdiction and who is already cognizant of the litigation, has an opportunity to pass upon the matter. *See Rose v. Lundy,* 455 U.S. 509, 518, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982). Under the principles of comity, the court that first acquires jurisdiction will retain it. *State ex rel. Paulson v. Meier,* 127 N.W.2d 665, 671 (N.D.1964). Comity is not a right, but is a willingness to grant privilege out of deference and good will. *Hansen v. Scott,* 2004 ND 179, ¶ 8, 687 N.W.2d 247.

State ex rel. Stenehjem v. Simple.net, Inc., 2009 ND 80, ¶ 14, 765 N.W.2d 506, 510.

The issue of comity does not apply to GPI's SLAPP claims or GPI's defamation claims, as those matters are not pending before the North Dakota court. Even if the consideration of comity applied, the Court notes the Eighth Circuit has adopted the 'conservative' approach regarding comity which presumes a threat to international comity whenever an injunction is sought against litigation in a foreign court. That conservative approach argues for a denial of the anti-suit injunction.

¶11. Accordingly, the Court denies Energy Transfer's Motion for Anti-Suit Injunction. The Court requests GPI to provide the appropriate order.

¶12. During oral argument, Energy Transfer asked the Court, in the event of an adverse ruling on their Motion, to certify the question to the North Dakota Supreme Court. As the Court understands the procedure, Energy Transfer would have to file a Motion and GPI would be allowed time to respond. From its experience in the first week or so of the trial, the Court is also aware of N.D.App.P. 21 regarding supervisory writs which may address the matter more expeditiously.

Dated this 9th day of September, 2025.

BY THE COURT:

James D. Gion

James D. Gion, Judge