In the Court of Appeal of Alberta

Citation: Spartan Delta Corp v Alberta (Energy and Minerals), 2025 ABCA 181

Date: 20250522
Docket: 2501-0104AC
Registry: Calgary

Between:

Spartan Delta Corp. and Canadian Natural Resources Limited

Respondents

-and-

His Majesty the King in right of Alberta as Represented by the Minister of Energy and Minerals

Applicant

Reasons for Decision of
The Honourable Justice Kevin Feth

Application for Leave to Appeal

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Introduction

[1] His Majesty the King in Right of Alberta ("Alberta Energy") applies for directions clarifying whether leave to appeal is required, and if so, for permission to appeal a chambers decision that found Alberta Energy is precluded from collecting certain royalty arrears associated with Bellatrix Exploration Ltd (Bellatrix).

Background

[2] The chambers application in the court below was brought by Spartan Delta Corporation (Spartan), which purchased Bellatrix's interest in Crown mineral leases pursuant to insolvency proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 [CCAA], and an Approval and Vesting order dated May 8, 2020 ("Vesting Order"). The Crown leases were jointly shared by Bellatrix and other co-lessees, including Canadian Natural Resources Limited (CNRL), as provided for under the *Mines and Minerals Act*, RSA 2000, c M-17 [MMA], and allowed Bellatrix to extract oil and gas from Crown land, subject to royalties owed to the Province.

[3] The Purchase and Sale Agreement ("Agreement") between Bellatrix and Spartan provided that Spartan would assume all liabilities related to the Bellatrix Crown leases from the closing date onwards (post-filing), while Bellatrix retained those liabilities prior to the Agreement including payment of Crown lease royalties (pre-filing). The CCAA Monitor certified that the purchase and sale transaction closed on June 1, 2020. Pursuant to the transaction, the Monitor retained an $8.5 million holdback to cover any post-filing liability claims against Beatrix up to the closing date, including any royalty arrears owed under the Crown leases.

[4] Under the MMA and its regulations, a lessee can provide data in relation to a royalty period up to three years after the end of the period, and Alberta Energy has a further 2.5 years to review that data for recalculations. On June 11, 2020, Alberta Energy sent a letter citing Bellatrix in default for royalties owed to the Crown for a period prior to closing. In October 2021, Alberta Energy determined that Spartan was not liable for Bellatrix's royalty arrears, and that it would not pursue payment or take any collection action against Spartan for those arrears. Shortly thereafter, it further advised the Monitor that Bellatrix's royalty deposit of $710,392.13 was sufficient to cover the debt owed by Bellatrix.

[5] The holdback monies were ultimately released and a CCAA termination order issued on July 7, 2022. The Monitor terminated the CCAA proceedings on September 21, 2022. Pursuant to

the Vesting Order however, Spartan retained the right to seek further directions from the Court of King's Bench.

[6] In November 2024, Alberta Energy issued notices to Spartan and several of Spartan's working interest partners (co-lessees) in the Crown mineral leases, including CNRL, seeking payment of alleged Bellatrix royalty arrears. CNRL was alleged to owe $255,848.88. Spartan brought an application in the Court of King's Bench pursuant to the Vesting Order, seeking relief including that Alberta Energy be precluded from collecting any payments in relation to the Bellatrix royalty arrears, and return to third party co-lessees any offset credits or payments in that regard.

[7] Alberta Energy responded that while it was not pursuing payment against Bellatrix or Spartan, it had the right to pursue third parties for arrears under the leases because the interests of the co-lessees were not conveyed under the Agreement to Spartan, and the Vesting Order did not release the third parties from joint liability under the MMA.

[8] The chambers judge found that Alberta Energy's claims related to the Bellatrix royalty arrears were unenforceable for three primary reasons: "Firstly, the claims are barred by the clear wording of the vesting order. Secondly, the claims undermine the integrity and finality of the Bellatrix CCAA process. And thirdly, the claims are not supported by the provisions of the *Mines and Minerals Act*."

[9] In particular, the chambers judge found that paragraphs 4 and 11 of the Vesting Order applied to bar Alberta Energy's claim to pre-filing royalties. The chambers judge further determined that Alberta Energy was on the CCAA notice list, knew about the $8.5 million holdback for post-filing claims including royalties and in October 2021, after being approached by the Monitor, Alberta Energy confirmed that the Bellatrix deposit was "sufficient to offset the debt owed" and the Monitor may proceed "with the closing of the estate."

[10] As to his second finding regarding the integrity and finality of the CCAA process, the chambers judge relied on ***Peace River Hydro Partners v Petrowest Corp***, 2022 SCC 41, 475 DLR (4th) 1, and the Supreme Court of Canada's reiteration of the importance of a "single procedure model" centralizing all claims related to debtor's insolvency before a single court. Here the Monitor supervised the process for all of Bellatrix's liabilities, "including pre-filing royalty arrears" and "a post-filing liability process involving a holdback." The chambers judge concluded:

> ... Alberta Energy should have raised the issue of pre-filing royalty arrears during the [CCAA] process. It appears it elected not to do so. Third parties, like CNRL, relied on the processes established in the CCAA proceedings to assess the respective risks and rights ... the collection actions taken by Alberta Energy

> undermined the integrity of the Bellatrix CCAA process and also offend fundamental principles of fairness.

[11] Thirdly, the chambers judge found that while s 20(2.1) of the MMA provides that registered participants on a lease are jointly responsible for obligations and liabilities under the lease, "no such liabilities and obligations currently exist with respect to the Bellatrix royalty arrears. They were expunged by the vesting order", and particularly paragraph 11 which bars any further claims on the purchased assets. He also accepted the submissions of Spartan and CNRL that the royalty arrears had not existed on the filing date but were at most a "contingent liability" which only fully materialized after an audit was conducted post-filing; thus, the Vesting Order operated to prevent the Bellatrix royalty arrears from "crystallizing".

[12] The chambers judge found one additional reason barring Alberta Energy from pursuing the royalty arrears. He determined that Alberta Energy's "active participation" in the CCAA proceedings, including approval of the transfer of Bellatrix's mineral lease agreements and its written release in "October 2021 prior to the release of the holdback, constitute[d] an estoppel or waiver by acquiescence of any claims for royalties".

[13] Spartan's application was granted, and Alberta Energy was precluded from collecting any payments related to the Bellatrix royalty arrears and was ordered to immediately return any credits.

Proposed issues for appeal

[14] Alberta Energy has identified three issues for appeal in this application:

a) The effect of an insolvency vesting order with respect to obligations of solvent co-lessees who are jointly and severally liable under the MMA;

b) The effect of an alleged estoppel by representation or promise to the debtor and/or Monitor with respect to separate claims against solvent third parties; and

c) Interpretation of the MMA and its interaction with insolvency processes.

Is leave to appeal required?

[15] Pursuant to s 13 of the CCAA, leave is required to appeal an order or decision made under that statute:

Leave to appeal

> 13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

[16] As set out in ***Hurricane Hydrocarbons Ltd v Komarnicki***, 2007 ABCA 361 at paras 14- 15, 425 AR 182, the requirement of leave is intended to further the objectives and purpose of the CCAA, which is to enable insolvent companies to carry on business or otherwise deal with their assets in a planned manner considered by their creditors and by the court, in order to resolve matters and bring finality. Requiring leave to appeal "similarly reinforces the finality of orders made under a CCAA proceeding and prevents continuing litigation where there are no serious or arguable grounds of significance to the parties." As such, the "scope of CCAA proceedings has been interpreted expansively ... because the objective is to include proceedings that may work against the interests of creditors and render impossible the achievement of effective arrangements." See also ***Sandhu v MEG Place LP Investment Corporation***, 2012 ABCA 91 at paras 14-17; ***Aurora v Safeguard Real Estate Investment Fund LP***, 2012 ABCA 58 at paras 2-7; ***Luscar Ltd v Smoky River Coal Ltd***, 1999 ABCA 62 at para 20, 237 AR 83.

[17] Alberta Energy argues that leave is not required because the chambers judge's decision was not made in the context of supervising a restructuring or liquidation under the CCAA, citing ***Essar Steel Algoma Inc (Re)***, 2016 ONCA 138 [***Essar***]. More specifically, the chambers judge was not exercising his discretion under the CCAA because the insolvency process had long-since finished, and the chambers judge was merely interpreting the Agreement, the Vesting Order and the MMA.

[18] A s 13 analysis is "purpose-focused": ***Essar*** at para 33. When considering whether leave to appeal an order or decision is required, this Court must "ascertain whether the order was made in a CCAA proceeding in which the judge was exercising his or her discretion in furtherance of the purposes of the CCAA ... If the order resulted from such an exercise of judicial decision-making, then it is an order 'made under' the CCAA for the purposes of s. 13". This necessarily includes whether the issue before the judge raised questions about the "finality" of a CCAA order.

[19] ***Essar*** listed various indicia in considering whether a decision was "made under" the CCAA. The list is non-exhaustive and includes whether:

a) the decision was necessarily incidental to a proceeding under the CCAA or any order made thereunder;

b) the decision required the interpretation of a previous order made under the CCAA proceeding;

c) the decision "determined rights arising under an agreement that arose out of and that was related entirely to the CCAA proceeding": ***Re Hemosol Corp***, 2007 ONCA 124 at para 3;

d) CCAA considerations informed the decision or exercise of discretion by the chambers judge;

e) the claim is being prosecuted by virtue or as a result of the CCAA;

f) the notice of motion and reasons of the chambers judge explicitly state that the matter is a CCAA proceeding; and,

g) there was an independent originating process in the court below.

Many of these indicia are present in this matter.

[20] I conclude that leave is required under s 13 of the CCAA. While Alberta Energy correctly submits that the CCAA insolvency process is complete, Spartan's application came before the chambers judge by way of Part 17 of the Vesting Order issued under that CCAA process, and which specifically reserved Spartan's right as the "Purchaser" of Bellatrix's assets, including its interest in Crown mineral leases, to apply for "further advice, assistance and direction" from the court about the Vesting Order. There was no independent originating process in this matter.

[21] As acknowledged by Alberta Energy, the chambers judge's decision interprets the Vesting Order issued under the CCAA, and Alberta Energy took no issue in the court below with the application being a CCAA proceeding and the chambers judge's jurisdiction thereunder. The chambers judge's analysis also interpreted the CCAA, including that the "Court's broad authority under the CCAA ensures that all disputes, claims, and matters related to insolvency are dealt with expeditiously in the best interests of the debtor's creditors" under a "single procedure model". Further, the parties to the application before this Court are the same parties involved in the CCAA proceedings, including Alberta Energy, and the chambers judge's decision arguably affects the certainty and finality of the commercial reorganization that was approved through the CCAA process and the Vesting Order, and upon which parties to that proceeding rely.

Test for leave to appeal

[22] As recently reiterated in ***Henenghaixin Corp v Long Run Exploration Ltd***, 2025 ABCA 58 at paras 11-12, an applicant seeking leave to appeal under s 13 of the CCAA must establish

serious and arguable grounds of real and significant interest to the parties. The proposed grounds are considered under the following four criteria:

a) whether the issues raised by the proposed appeal are significant to the practice;

b) whether the issues are of significance to the action itself;

c) whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and

d) whether the appeal will unduly hinder the progress of the action.

[23] Generally, decisions made by judges supervising CCAA proceedings are entitled to significant deference and will only be interfered with if the judge acted unreasonably, erred in principle or made a manifest error. Appellate courts exercise their discretion to grant leave sparingly.

Analysis

[24] The respondents fairly concede that the issues identified by Alberta Energy are of significance to the practice and will not otherwise unduly hinder the progress of the CCAA proceeding. They maintain however that the appeal is not *prima facie* meritorious.

[25] I agree that this application comes down to whether serious and arguable grounds for appeal have been established. At its core, Alberta Energy's argument is that while the Vesting Order released any possible royalty claims against the assets purchased by Spartan from Bellatrix, its claims for royalty arrears against Bellatrix's third-party co-lessees were not released under the Vesting Order or the CCAA and are otherwise enforceable under the MMA. Alberta Energy maintains that it has the right to pursue those arrears against the co-lessees' interests not sold under the Agreement, and the chambers judge erred in finding otherwise.

[26] Alberta Energy further argues that its claim for arrears did not offend the single procedure model of the CCAA, which was never meant to prohibit claims against solvent third parties, but rather to process all actions against the debtor. It maintains that third party liability does not impact such concerns and to require creditors to bring actions against solvent third parties under the CCAA umbrella or to foreclose such actions on the same basis is an unwarranted expansion of the single procedure model.

[27] In contrast, the respondents maintain that no reason arises to challenge the finding of the chambers judge that the Vesting Order barred or "expunged" Alberta Energy's claims to Bellatrix royalties in their entirety. Bellatrix's interest in the Crown mineral leases were purchased assets

under the Agreement, and the royalties arise therefrom; as a result, *any* claims for those royalties arising from the pre-filing period are barred by the Vesting Order. Further, they state that the chambers judge's reliance on s 20(2.1) of the MMA was correct. That provision must be narrowly construed in creating joint responsibility among co-lessees for any liabilities, and there are no current liabilities with respect to the Bellatrix royalties due to the Vesting Order. While the co-lessees are admittedly still liable for their own obligations and royalty accounts, this dispute is about Bellatrix's lease interests which have been dealt with under the CCAA.

[28] At the hearing of this application, all parties agreed that the Vesting Order in this matter is in fairly standard form. This is in keeping with the respondents' concession that the issues raised in this appeal are of importance to the practice. The parties also agreed that a clear dispute exists between the Alberta Crown and sophisticated participants in the oil and gas industry on the language used in the Vesting Order, and how it should be interpreted together with the CCAA and the obligations and liabilities created in the MMA.

[29] No one disagrees that the interpretation of this standard form Vesting Order is in issue, and that what it means for third party co-lessees and pre-filing arrears is significant. The respondents raise issues of finality when it comes to both CCAA proceedings and the reach of the Vesting Order in this matter, and the concern that Alberta Energy is improperly trying to extend the time to collect on an extinguished claim. As they note, third parties who participate in good faith in CCAA proceedings assess their own risk based on the representations made therein and the orders that result. However, those very points also serve to inform the importance of granting permission to appeal for a full panel to assess the interpretation of this Vesting Order, and the critical interplay of the CCAA and the MMA.

[30] I have considered the specific arguments raised by Alberta Energy on the merits and the respondents' counter-arguments. I find that Alberta Energy has met its burden of establishing sufficiently serious and arguable issues warranting a full appeal before a panel of this Court.

Conclusion

[31] The application is allowed and permission to appeal is granted on the following issues:

1. Did the chambers judge err in finding that the Alberta Crown's claims for pre-filing Bellatrix royalty arrears are not recoverable from the other co-lessees under the lease agreements because of the Vesting Order?

2. Did the chambers judge err in finding that the Alberta Crown's claims for post-filing Bellatrix royalty arrears are not recoverable from the other co-lessees under the lease agreements?

[32] As a final note, I must comment on the excessive amount of application material that was placed before this Court. All parties are reminded that relevance and efficiency guide the selection of materials submitted on a leave application. An indiscriminate "document dump" of the materials filed in the court below, rather than curating them for the specific issues raised by the application, wastes judicial resources and prolongs proceedings. This Court has repeatedly admonished the practice of including irrelevant and excessive materials, including the written arguments filed in the court below. Such a practice can lead to costs awards.

Application heard on May 8, 2025

Reasons filed at Calgary, Alberta
this 22nd day of May, 2025

Feth J.A.

Appearances:

J. Reynaud
M. Zouravlioff
K. Bansaccal (no appearance)
for the Respondent Spartan Delta Corp.

E. Paplawski
for the Respondent Canadian Natural Resources Limited

D.S. Nishimura
T.A. Batty (no appearance)
for the Applicants