In the Court of Appeal of Alberta

Citation: PrairieSky Royalty Ltd v Yangarra Resources Ltd, 2025 ABCA 240

Date: 20250630
Docket: 2301-0027AC
Registry: Calgary

Between:

PrairieSky Royalty Ltd.

Respondent

- and –

Yangarra Resources Ltd.

Appellant

The Court:

The Honourable Justice William T. de Wit
The Honourable Justice April Grosse
The Honourable Justice Kevin Feth

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice M.H. Bourque
Dated the 6th day of January, 2023
(2023 ABKB 11, Docket: 1701 08362)

Memorandum of Judgment

The Court:

Overview

[1] This appeal addresses whether an overriding royalty granted under a petroleum and natural gas lease for unpatented Crown mineral lands can be a legal interest in the land and therefore binding on *bona fide* purchasers for value of the lease without notice of the royalty.

[2] The appellant, Yangarra Resources Ltd is the successor in interest to a Crown petroleum and natural gas lease encumbered by an 8% overriding royalty ("8% Royalty") held by the respondent, PrairieSky Royalty Ltd. When Yangarra purchased the leasehold interest, it was unaware of the encumbrance. Yangarra argues that as a *bona fide* purchaser for value without notice, it is not bound by the royalty and owes no royalty payments to PrairieSky.

[3] The royalty was created in 2011 by a contract between Home Quarter Resources Ltd and Range Royalty Limited Partnership ("Royalty Agreement") and acquired by PrairieSky through an assignment. PrairieSky contends the royalty is a legal interest running with the land and binding on Yangarra, regardless of whether Yangarra knew about the encumbrance.

[4] The trial judge concluded that as a matter of law, the defence of *bona fide* purchaser of a legal interest for value without notice applies to a competing equitable interest, but not a legal interest. He found that the 8% Royalty is an interest in land and the interest is legal rather than equitable. Accordingly, the royalty is binding on Yangarra and all subsequent working interest owners of the land. Given that finding, the trial judge concluded that determining whether Yangarra was a *bona fide* purchaser for value without notice was unnecessary. He awarded damages against Yangarra for unpaid royalties plus prejudgment interest: ***Prairiesky Royalty Ltd v Yangarra Resources Ltd***, 2023 ABKB 11 (*Decision*).

[5] On appeal, Yangarra accepts that the 8% Royalty is an interest in land but contests the interest being legal rather than equitable and argues that the defence of *bona fide* purchaser for value without notice is available in any event. Yangarra also appeals the damages and prejudgment interest awards.

[6] We conclude that the trial judge correctly interpreted the law in deciding that an overriding royalty can be a legal interest in land and that the defence of *bona fide* purchaser for value without notice does not apply between competing legal interests. The trial judge committed no error in principle and made no palpable and overriding error in concluding that the 8% Royalty is a legal interest in land and that Yangarra and subsequent holders of the working interest are bound by it.

The trial judge's quantification of the damages is also entitled to deference, and we find no error in his assessment.

[7] The appeal is dismissed except in relation to an error in principle made in the calculation of prejudgment interest, and we vary that part of the judgment.

Background

[8] The owner of minerals *in situ* (meaning in their original location) may lease to a potential producer the right to extract those minerals, which is generally known as a working interest. A royalty is an unencumbered share or fractional interest in the gross production of the working interest.

[9] As noted in the *Decision* at paragraph 18, an overriding royalty and its general purpose are described in Michael A Thackray QC, ed, *Canadian Oil and Gas*, loose-leaf (Rel 186, Nov 2021) 3d ed, vol 1 (Toronto: LexisNexis Canada, 2017) at §7.67:

> The overriding royalty is the right to take, in kind or money, a share of future mineral production from a well without the obligation to pay a proportionate share of drilling or producing costs. The overriding royalty is limited to an interest in the production of specified substances from the land and does not include any of the possessory rights normally associated with a working interest. This type of royalty is extremely versatile and is used as a means of raising funds, providing incentives or spreading risk by retaining an economic interest in a mineral prospect without retaining any associated liability... .

[10] The overriding royalty at issue in this appeal arose through a series of transactions involving several companies.

[11] In 1979, the Alberta Crown granted a natural gas lease to Westhill Resources Limited and O'Sullivan Resources Ltd. The Crown lease gave the lessees "the exclusive right to explore for, work, win and recover petroleum and natural gas within and under" certain unpatented Crown lands located in Alberta. As the lands were unpatented, there was no certificate of title under the *Land Titles Act*, RSA 2000, c L-4: *Decision* at paras 4, 122.

[12] Home Quarter eventually acquired a 100% working interest in the Crown lease and entered into the Royalty Agreement by which Home Quarter granted to Range Royalty the 8% Royalty on production earned from the lands. As the Crown owned the minerals, the 8% Royalty could not be registered through the Torrens system under the *Land Titles Act*; registration of caveats against lands for which a certificate of title has not issued is prohibited by s 134(2) of the Act and registration of interests against Crown-owned minerals is prohibited by s 202(a): *Decision* at para 122.

[13] In 2013, Home Quarter conveyed its working interest in the Crown lease to Relentless Resources Ltd, including its interest in the Royalty Agreement.

[14] In 2014, PrairieSky acquired Range Royalty, including its interest in the 8% Royalty.

[15] In 2016, Yangarra acquired Relentless Resources' working interest in the Crown lease. However, the Royalty Agreement was never assigned to Yangarra. Relentless Resources purportedly failed to disclose the 8% Royalty to Yangarra through the due diligence process undertaken in advance of the transaction.

[16] In 2016, PrairieSky discovered that the 8% Royalty was not being paid. In May 2017, PrairieSky demanded payment from Relentless Resources and Yangarra. Between January 2018 and December 2018, Relentless Resources voluntarily made partial payments to PrairieSky of $113,084.79. Yangarra made no payments.

[17] PrairieSky sued Yangarra for all the payments and entered into a standstill agreement with the successor to Relentless Resources (Sugarbud Craft Growers Corp).

[18] The trial between PrairieSky and Yangarra was conducted in 2022. The trial judge granted a declaration that the 8% Royalty is binding on Yangarra and all subsequent working interest owners of the Crown lands and awarded damages of $213,397.60, representing the total amount of royalties due on production from the lands plus prejudgment interest, without a reduction for Relentless Resources' partial payments.

Issues

[19] The appeal raises the following issues:

(a) Did the trial judge err in law by concluding that an overriding royalty can be a legal interest in land?

(b) Did the trial judge err in finding that the 8% Royalty is a legal interest in land?

(c) Did the trial judge err in law by concluding that the *bona fide* purchaser for value without notice defence does not apply in a priority dispute between two competing legal interests?

(d) Did the trial judge err in quantifying the damages and the prejudgment interest?

Standard of review

[20] Questions of law are reviewed on a standard of correctness. Questions of mixed fact and law are reviewed for palpable and overriding error, unless the trial judge made an extricable error

of law, which is reviewed for correctness: ***Housen v Nikolaisen***, 2002 SCC 33 at paras 8 and 37, [2002] 2 SCR 235.

[21] Whether an overriding royalty can be a legal interest in land is reviewed for correctness. The trial judge's finding about the 8% Royalty being a legal interest in land relies on the evidence and the application of legal principles to the facts of the case. That finding is reviewed for palpable and overriding error absent an extricable error of law. Whether the *bona fide* purchaser for value defence has any application to competing legal interests is reviewed for correctness.

[22] An assessment of damages and prejudgment interest is entitled to deference unless the assessment is based on an error of principle or is wholly unreasonable: ***Andrews v Grand & Toy Alberta Ltd***, [1978] 2 SCR 229 at 230, 83 DLR (3d) 452; ***Huff v Zuk***, 2021 ABCA 60 at para 26.

Analysis

a) An overriding royalty, as a matter of law, can be a legal interest in land

[23] In ***Bank of Montreal v Dynex Petroleum Ltd***, 2002 SCC 7 at paras 21-22, [2002] 1 SCR 146 [***Dynex***], the Supreme Court of Canada affirmed this Court's finding in ***Bank of Montreal v Enchant Resources Ltd***, 1999 ABCA 363 at paras 82-84 [***Dynex ABCA***] that an overriding royalty can be an interest in land. The Supreme Court at paragraph 22 confirmed the test for whether a royalty can be an interest in land, as "succinctly stated" in ***Vandergrift v Coseka Resources Ltd*** (1989), 67 Alta LR (2d) 17 at para 29, 95 AR 372 (QB):

1) the language used in describing the interest is sufficiently precise to show that the parties intended the royalty to be a grant of an interest in land, rather than a contractual right to a portion of the oil and gas substances recovered from the land; and

2) the interest, out of which the royalty is carved, is itself an interest in land.

[24] ***Dynex ABCA*** and the appeal from that decision in ***Dynex*** did not expressly address whether the interest in land can be legal rather than equitable. For freehold mineral lands subject to the *Land Titles Act,* the distinction generally does not matter because a royalty, whether a legal or equitable interest in land, can be registered against the mineral title by caveat. By operation of the Act, a working interest holder generally acquires that interest subject to any registered royalty, but free and clear of any unregistered royalty. However, for lands outside the *Land Titles Act*, a legal interest is generally enforceable against the whole world while an equitable interest is defeated by a *bona fide* purchaser for value without notice.

[25] Yangarra contends that an interest in land can only be a legal interest if it was: a) created by statute; or b) enforceable in the common law before the fusion of the English courts of law and

equity in 1875. The parties acknowledge that overriding royalties granted for leaseholds on unpatented Crown land are not creatures of statute, so no legal interest arises on that basis.

[26] As for the common law, the parties accept that overriding royalties were not recognized by the English common law as interests in land before 1875. Yangarra asserts that an interest in land can be a legal interest only if it was a recognized category of property rights before the judicature fusion; overriding royalties were not among those categories. The corollary to this assertion is that the new categories of legal interests in land cannot be recognized by the courts, only created by legislatures. Consequently, any new interest in land given effect through the courts must be equitable rather than legal.

[27] In support of this contention, Yangarra relies solely on a brief *obiter* comment in ***Canada Trustco Mortgage Company v Skoretz***, 1983 CanLII 1058 (AB KB) at para 16, [1983] 4 WWR 618 where Miller, J (as he then was) wrote: "A 'legal interest' was one which could, before the 1875 judicature fusion [of the English courts of law and equity], be enforced in common law; the 'equitable interest' similarly only enforceable in equity." However, this commentary describes legal and equitable interests through the general manner of their historical enforcement but does not assert that the categories of legal interests were absolutely closed at the judicature fusion, nor that the development of new legal interests has been prohibited in Canada since then.

[28] While not raised by Yangarra, its argument about an absolute prohibition on new categories of legal interests engages the *numerus clausus* principle of property law, which has been discussed in academia, and expresses the view that the categories of property interests are largely but not entirely closed. Further, the English common law as it existed before reception in Alberta and the subsequent development of property law in Canada accept the possibility of change. Moreover, the policy reasons expressed in ***Dynex ABCA*** and ***Dynex*** for altering the common law to recognize an overriding royalty as an interest in land generally support characterizing such an interest as legal rather than equitable.

i. Recognition of new property interests is possible although heavily constrained

[29] Yangarra's assertion that the categories of legal interests in land are firmly closed fails to appreciate the *numerus clausus* principle. *Numerus clausus* (meaning "a closed number") recognizes that while generally closed, the categories of property interests may expand in carefully controlled and rare exceptions: Eran S Kaplinsky, Malcom Lavoie & Jane Thomson, *Ziff's Principes of Property Law*, 8th ed (Toronto: Thomson Reuters, 2023) at 63-64 [*Ziff's Property Law*]; Robert Chambers, *The Law of Property* (Toronto: Irwin Law, 2021) at 132-133. Property owners are usually not permitted to customize land rights in an entirely novel manner to suit their needs; instead, rights must ordinarily fit within established categories. Courts recognizing new property interests, outside legislative developments, is extraordinary. The principle applies to both legal and equitable interests in land and other forms of property: see generally, Thomas W Merrill

& Henry E Smith, "Optimal Standardization in the Law of Property: The *Numerus Clausus* Principle", (2000) 110 Yale LJ 1.

[30] Several reasons have been advanced for this cautious approach to recognizing new property interests, including:

(a) Creating novel interests in land can cause confusion about the nature of property interests and destabilize the core legal meaning of property, especially where multiple rights co-exist in the same parcel of land. Conversely, by adhering to precedent and a stable understanding of interests, public confidence is fostered and reasonable investment expectations are protected.

(b) Recognizing too many kinds of rights can create social and economic uncertainty because third parties might not be able to anticipate which rights run with a particular parcel of land; a limited menu of interests is more easily understood and applied.

(c) Stable rights are more readily verified and valued.

(d) The cost of assembling information about fragmented and imprecise rights affecting a parcel of land can become overly burdensome; an increased information cost can interfere with third parties who wish to buy property or ensure their actions do not infringe the property rights of others.

(e) Multiple interests can splinter property holdings (causing the anticommons problem of fracturing an existing property into such small pieces that it becomes meaningless) and create transactional gridlock because numerous rights holders must agree on any proposed action, which invites holdouts.

(f) The courts are not always well situated to examine the consequences of change, especially where the empirical and policy matters are more extensive than the issues litigated by self-interested parties in a single case.

(g) New property rights, if ill-conceived, are difficult to reverse; even legislative abolition may spawn expensive compensation claims by adversely affected owners, undermine commercial activity, and have unintended consequences.

See *Ziff's Property Law* at 63-64; Michael Weir, "Pushing the Envelope of Proprietary Interests: The Nadir of the *Numerus Clausus* Principle?" (2015) 39 Melb UL Rev 651; Bruce Ziff, "Yet Another Function for the *Numerus Clausus* Principle of Property Rights, and a Useful One at That" (March 19, 2012) online: <ssrn.com-2026088>.

[31] This caution long existed in the English common law before the judicature fusion (although not described as the *numerus clausus* principle) but generally focused on the capacity of parties, rather than courts, to make new land rights. For example, in ***Keppell v Bailey*** (1834), 2 My & K 517, 39 ER 1042 at 1049 (LC) [***Keppell***], the English High Court of Chancery held that contractual rights relating to property could be broadly expanded but "great detriment would arise and much confusion of rights if parties were allowed to invent new modes of holding and enjoying real property, and to impress upon their lands and tenements a peculiar character, which should follow them into all hands, however remote." Nevertheless, exceptions arose. Notably, while ***Keppell*** confirmed the conventional rule that covenants do not run with freehold land, that rule was changed just 14 years later in ***Tulk v Moxhay*** (1848), 2 Ph.774, 41 E.R. 1143 (LC), by establishing that covenants could run with the freehold estate in equity.

[32] In Canada, the cautious approach to expanding interests in land was illustrated by ***Durham Condominium Corporation No 123 v Amberwood Investments Limited***, 2002 CanLII 44913 (ON CA), 211 DLR (4th) 1, where the majority of the Ontario Court of Appeal declined to change the common law rule that a positive covenant does not run with land even where adjoining property owners expressed a contrary intention. Legislative action was required. Change to the general rule was considered outside the proper role of the courts, notwithstanding numerous calls from stakeholders for reform of the common law, because of concerns around the unknown consequences of a change, the complex and far-reaching effects, the uncertainty for commercial and property transactions, and the need for careful legislative drafting to prescribe the change.

[33] ***Dynex*** and ***Dynex ABCA***, however, were a departure from this restraint and confirmed that new property interests are not prohibited. Those decisions modified the common law rule that an interest in land could not arise from an incorporeal hereditament (meaning a non-possessory interest in land such as easements, *profits à prendre* and rent). They recognized overriding royalties arising from a working interest (an incorporeal hereditament) as interests in land. The Supreme Court explained in ***Dynex***: "Given the custom in the oil and gas industry and the support found in case law, it is proper and reasonable that the law should acknowledge that an overriding royalty interest can, subject to the intention of the parties, be an interest in land." This change reflected the evolution and unique needs of the oil and gas industry: ***Dynex*** at paras 17-18.

[34] The common law's ability to respond to the unique demands of that industry arose in cases before ***Dynex***. For example, ***Scurry-Rainbow Ltd v Galloway Estate***, 1993 CanLII 7025 (AB KB), 138 AR 321 [***Scurry-Rainbow***], aff'd 1994 ABCA 313, 157 AR 65, accepted that a lessor's royalty can be an interest in land subject to the agreement and intentions between the parties. The royalty was found to be analogous to a kind of rent or a *profit à prendre*: ***Scurry-Rainbow*** at paras 40, 97-100, 111, 115. That conclusion was grounded in earlier authorities such as ***Saskatchewan Minerals v Keyes***, [1972] SCR 703, 23 DLR (3d) 573 (Laskin J's dissent), ***Berkheiser v Berkheiser and Glaister***, [1957] SCR 387, 7 DLR (2d) 721 [***Berkheiser***], and ***Canco Oil & Gas Ltd v Saskatchewan***, 1991 CanLII 7788 (SK KB), 89 Sask R 37. In ***Scurry-Rainbow***, the Court observed at paragraphs 97-98, relying on ***Berkheiser*** at 391, that "this reality about the nature of

oil and gas has not prevented the courts from characterizing the lessee's interests as an interest in land; nor should it prevent a royalty interest from being so characterized...".

[35] In our view, recognizing overriding royalties as legal interests in land, as opposed to equitable interests in land, in response to the unique needs of the oil and gas industry, does not offend the public policy rationale for the *numerus clausus* principle. No material risk is identified of confusing or destabilizing the meaning of property. As leaseholders and working interest owners are largely sophisticated parties in a specialized industry, the risk of social and economic uncertainty is minimal. No risk is demonstrated of excessively splintering property holdings or creating transactional gridlock. Nothing before us suggests that the information cost or fragmentation is overly burdensome or would interfere with third parties wishing to buy leasehold interests. To the contrary, stable rights are promoted to the extent that royalty-holders are protected, and the risk to leaseholders can be mitigated (as discussed below). Finally, the record does not suggest that the industry would be detrimentally affected by recognizing overriding royalties as legal interests in land, nor that the juridical meaning of property will be altered or unduly expanded. Indeed, the parties agree that the issue in this case is unlikely to arise in respect of freehold mineral interests because they are governed by the land titles registration system.

[36] As ***Dynex*** demonstrates and the *numerus clausus* principle confirms, the categories of interests in land are not entirely closed in Canada. While Yangarra suggests that the categories of equitable interests may evolve but legal interests may not, no principled reason for the distinction is offered and none is reflected in the jurisprudence. As the trial judge observed at paragraph 86 of the *Decision*, "Yangarra's position embraces precisely the type of anachronisms the Alberta Court of Appeal in ***Dynex ABCA*** and the Supreme Court in ***Dynex*** sought to do away with. . . ".

ii. The judicature fusion does not preclude recognition by the courts of new categories of legal interests in land

[37] Yangarra also asserts, with little explanation, that the English judicature fusion prevents any change to the categories of legal interests in land absent legislative intervention, seemingly for jurisdictional reasons. We find no compelling logic to this assertion.

[38] English law was received in Alberta (through its predecessor, the North-West Territories) as of July 15, 1870: ***Yin v Lewin***, 2006 ABQB 402 at para 7, affirmed as ***Polra v Kirby***, 2007 ABCA 406. By operation of s 5 of the *Judicature Act*, RSA 2000, c J-2, the Alberta superior courts possess "in addition to any other jurisdiction, powers, rights, incidents, privileges and authorities ... the jurisdiction that on July 15, 1870, was in England vested in [the English courts]." The superior courts of this province have always exercised both legal and equitable jurisdiction.

[39] The judicature fusion occurred after the reception of English law in Alberta. The *Judicature Act, 1873* (UK), 36 & 37 Vict, c 66 and the *Judicature Act,* 1875 (UK), 38 & 39 Vict, c 77 established a unified court system in England and Wales combining the previously separate courts

of law and equity and allowing for concurrent application of their doctrines. The substantive nature and consequences of the merger are the subject of continuing academic and jurisprudential debate; for a discussion, see Leonard I Rotman, "The "Fusion" of Law and Equity?: A Canadian Perspective on the Substantive, Jurisdictional, or Non-Fusion of Legal and Equitable Matters", 2016 2-2 *Canadian Journal of Comparative and Contemporary Law* 497, 2016 CanLIIDocs 83. However, the unified legal and equitable jurisdictions did not "bring to a sudden halt the whole process of development of the substantive law of England that had been so notable an achievement of the preceding decades": ***United Scientific Holdings Ltd v Burnley Borough Council***, [1978] AC 904 per Lord Diplock at 926 and cited with approval in ***Canson Enterprises Ltd v Boughton & Co***, [1991] 3 SCR 534 at 580, 85 DLR (4th) 129.

[40] The Supreme Court of Canada has expressly confirmed that Canadian common law may change, especially when necessary to "keep the common law in step with the evolution of society ... to clarify a legal principle ... or to resolve an inconsistency." However, "the change should be incremental, and its consequences must be capable of assessment": ***Friedmann Equity Developments Inc v Final Note Ltd***, 2000 SCC 34 at para 42, [2000] 1 SCR 842 [***Friedmann***].

[41] In ***Dynex*** at paragraphs 17-19, the Supreme Court affirmed the change to property law for the advancement of the oil and gas industry while reasoning that "some common law concepts, developed in different social, industrial and legal contexts, are inapplicable in the unique context of the industry and its practices." Mere "fidelity to common law principles" was an insufficient justification for resisting that change. Indeed, the Supreme Court expressly approved of this Court's views in ***Dynex ABCA*** at paragraph 52 that overriding royalties "need not be classified into a traditional common law property category unsuited to the realities of the oil and gas industry and need not be subject to arcane strictures of traditional categories."

[42] We conclude that that the judicature fusion is not a basis for refusing to recognize overriding royalties as legal interests in land.

iii. The reasoning in *Dynex ABCA* and *Dynex* supports the availability of a legal interest

[43] This Court concluded in ***Dynex ABCA*** at paragraphs 28-29 that overriding royalties can be interests in land for "practical reasons" and cautioned against "rigid reliance on English common law" that developed in vastly different circumstances and might not serve the needs of Alberta's oil and gas industry. While neither ***Dynex ABCA*** nor ***Dynex*** expressly addressed whether the new interest in land could be legal rather than equitable, the policy discussion in those cases aligns with recognizing a legal interest.

[44] The policy reasons for finding an interest in land were grounded in protecting and enhancing investment in the development of petroleum production. In particular, the explanation in ***Dynex ABCA*** included (at paras 34-36, 43, 45):

(a) Royalties are used to finance the costs of drilling and to spread the risk of exploration, which promotes stability in a volatile industry and enhances investment.

(b) Royalties induce necessary high-risk investments through fractional returns on production because investors are enticed to bet that many losses will be rewarded through a small number of successes.

(c) By promoting investment in a specific parcel of land rather than an operator or company, royalties offer another means of investment and expand the market of investors.

(d) Royalties, as non-operating interests, facilitate certainty and stability which are desirable qualities in the industry. Conversely, if royalties are not interests in land, the leases encumbered by overriding royalties may be more valuable to the bank holding those leases as security if the company is petitioned into bankruptcy and the leases are sold free of the overriding royalties, rather than the company continuing in operation and paying the royalties. This risk could invite unnecessary bankruptcies.

(e) Overriding royalties "as real property interests protect owners and purchasers against double conveyancing, innocent or otherwise".

[45] These rationales were generally endorsed by the Supreme Court in ***Dynex*** at para 6.

[46] Moreover, some of the commentary in ***Dynex ABCA*** strongly suggests that this Court contemplated the interest in land as a legal interest. First, at paragraph 44, the importance of classifying an overriding royalty as a property interest rather than a mere contractual right was considered necessary "to protect the interests against the rights of *third persons generally*" (emphasis added). Legal interests in land are rights *in rem,* meaning they are enforceable against the whole world by binding all owners or users of that property or property interest (such as a leasehold). In contrast, equitable interests are not enforceable against third parties generally and can be defeated by *bona fide* purchasers for value without notice. Characterizing the interest as legal better serves the stated objective underlying the change to the common law – broadly sheltering the holders of overriding royalties from third party rights.

[47] Second, at paragraph 45, this Court endorsed safeguarding the owners and purchasers of overriding royalties from "double conveyancing". In this context, a "double conveyance" is two successive transfers of the minerals lease that defeat an overriding royalty. More specifically, the original leaseholder transfers the lease to an intermediary, without disclosing the royalty (either deliberately or not), and the intermediary then transfers the lease for value to the ultimate purchaser who is unaware of the royalty. If the overriding royalty is merely an equitable interest in land, at

least in Crown lease situations, the royalty is unenforceable against the ultimate purchaser and the royalty holder loses its investment. Conversely, a legal interest in land is not defeated by double conveyancing because the overriding royalty runs with the land regardless of the ultimate purchaser's knowledge.

[48] In short, and as will be discussed in more detail below, permitting a *bona fide* purchaser for value without notice to acquire the minerals lease free and clear of an overriding royalty injects uncertainty and increased risk into the royalty holder marketplace, which potentially destabilizes investment. That outcome is incompatible with the industry goals endorsed in ***Dynex ABCA***.

[49] Yangarra argues that characterizing the interest in land as equitable is necessary to protect innocent purchasers of the minerals lease because unpatented Crown lands generally cannot be recorded under Alberta's Torrens system of land registration and transfers, and the trial judge concluded that no other public registries exist "where Range Royalty and its successors could have registered notice of the 8% Royalty against the Crown Lands": *Decision* at paras 122, 128. The suggestion is that purchasers of interests in Crown minerals leases have no meaningful recourse to identify encumbrances or to protect their investments. We disagree.

[50] Purchasers of minerals leases on unpatented Crown land are generally sophisticated commercial actors capable of undertaking due diligence investigations to discover overriding royalties. The vendor's records can be reviewed, including those addressing the acquisition of the lease. A complete chain of title for the lands can be sought from the date the Crown lease was first granted. The prospective purchaser can specifically inquire about encumbrances (including overriding royalties) and demand that any purchase and sale agreement contain representations and warranties about the encumbrances. If the vendor fails to disclose or misrepresents an encumbrance, the purchaser can sue. The purchaser can also demand holdbacks or security. In short, various mechanisms are available to protect a purchaser.

[51] The trial judge correctly observed at paragraph 148 of his *Decision* that the policy reasons identified in ***Dynex ABCA*** and ***Dynex*** for recognizing overriding royalties as interests in land also support characterizing the interest as legal rather than equitable:

> . . . In order for royalties to play their useful role in financing and spreading risk in upstream extractive industries, investors must have some certainty of continuity regarding their royalties when the title or working interest in the property in which they've invested changes hands. If Royalties were extinguishable upon the underlying interest changing hands without the subsequent acquirer's knowledge of the royalty, there would be no point in labelling them interests in land.

Equitable interests in land are less protected than legal interests in land and are therefore less desirable in the oil and gas industry. An equitable interest cannot provide the same certainty and continuity as its legal counterpart.

[52] The analysis in ***Dynex ABCA*** and ***Dynex*** accepted that royalty-holders are generally more vulnerable than leaseholders, requiring the protection afforded through interests in land. The same reasoning holds in preferring a legal interest to an equitable interest.

iv. Conclusion on the nature of the interest in land

[53] Recognizing that an overriding royalty can be a legal interest in land is compatible with the limited exceptions permitted by the *numerus clausus* principle, consistent with the evolutionary nature of the common law, and supported by the public policy rationale expressed in ***Dynex*** and ***Dynex ABCA***.

[54] We find that an overriding royalty can be a legal interest in land. This conclusion represents a clarification of the legal principle expressed in ***Dynex*** and ***Dynex ABCA*** and confirms the incremental change to the common law arising from those decisions.

b) No error in finding that the 8% Royalty is a legal interest in land

[55] Yangarra submits that even if an overriding royalty can be a legal interest in land, the trial judge erred in principle when determining that the 8% Royalty is a legal rather than an equitable interest. In particular, the trial judge allegedly misconstrued the distinction between legal and equitable interests by characterizing the former as "rights *in rem*" and the latter as *in personam* rights. Further, he allegedly assumed that if the overriding royalty was an interest in land, the resulting interest must be legal rather than equitable. Finally, the trial judge purportedly erred in finding that the overriding royalty complied with the statutory requirements for the creation and conveyance of an interest in land.

[56] We disagree. The trial judge's reasoning accepted that a legal interest binds the entire world regardless of notice, whereas an equitable interest binds the entire world except for the *bona fide* purchaser of a legal estate without notice of a prior equitable interest. In keeping with ***Dynex***, to find a legal interest, the parties to the Royalty Agreement must have intended, on an objective basis, to create a legal interest in the land. The interest created must also comply with the formal statutory and common law requirements pertaining to such an interest.

[57] The trial judge addressed the objective intentions of the parties to the Royalty Agreement and the legal requirements for creating and conveying an interest in land. His findings of mixed fact and law about the parties' intentions and compliance with legal requirements are entitled to deference. Read holistically and contextually, the trial judge's reasons reveal no material error in principle.

i. The trial judge considered the objective intentions of the parties to the Royalty Agreement

[58] The trial judge initially assessed whether the contracting parties' intended the 8% Royalty to be an interest in land. He found that Range Royalty and Home Quarter "intended for the 8% Royalty to constitute an interest in land that runs with and binds the Royalty Lands subject to the Crown Lease . . . based on the plain language of the Interest in Land Clause and because the remainder of *the 2011 Royalty Agreement . . . is drafted to ensure that the 8% Royalty will last for the duration of the underlying Crown Lease*" (emphasis added): *Decision* at para 120. Further, the agreement "specifies that the 8% Royalty is to last for the duration of the underlying Crown Lease, regardless of whether the Crown Lease is assigned to a third party". Moreover, he concluded that the contractual language suggests the overriding royalty was intended to be "enforceable against [any] Grantor and any successors in interest to the Grantor" and "strongly conveys the parties' intention that the 8% Royalty constitutes an interest in land that runs with the underlying Lands and is enforceable against Home Quarter's successors in interest to the Crown Lease": *Decision* at paras 93-94, 96. Nowhere in the reasons did the trial judge mention or suggest that the parties intended to create an interest in land that was not enforceable against the entire world, or that would be subject to the rights of a *bona fide* purchaser for value without notice, or that the 8% Royalty could be extinguished when it changed hands between Crown lessees. The opposite is true.

[59] The trial judge then specifically addressed whether the interest created is legal or equitable. To frame the distinction, he referred to general commentary from AJ Oakley, ed, *Megarry's Manual of the Law of Real Property*, 8th ed (London: Sweet and Maxwell Limited, 2002) at 58 [Megarry], and described legal rights as "rights '*in rem'*, which permanently bind the lands over which they are exercisable and may be enforced against the land" and equitable rights, which "are '*in personam*', and may only be enforced against certain persons": *Decision* at para 130.

[60] Yangarra complains that the trial judge's description of equitable rights as *in personam* rights (meaning against a person) is an "inaccurate and cursory definition". Yangarra notes that the trial judge relied on a historical view of legal and equitable rights, which has since evolved. Referring to Megarry at 58, Yangarra argues that the modern expression of equitable rights is more nuanced:

> … it finally became established as one of the most important rules of equity that trusts and other equitable rights would be enforced against everyone except a bona fide purchaser of a legal estate for value without notice of these rights, or someone claiming through such a person. Equitable rights thus gradually came to look less and less like mere rights *in personam* and more and more like rights *in rem*. Although it is possible still to regard them as rights *in personam*, it is perhaps best to treat them as hybrids, being neither entirely one nor entirely the other. They have

> never reached the status of rights *in rem*, yet the class of persons against whom they will be enforced is too large for them to be regarded as mere rights *in personam*.

[61] In our view, Yangarra's argument fails to appreciate the trial judge's reasoning, and focuses on nuances in the definition of equitable rights that have no bearing on his analysis. The trial judge's conclusion was that the contracting parties' objective intention to enforce the 8% Royalty against the entire world, without exception, was inconsistent with an equitable interest. Conversely, if it had been contemplated that the royalty might not apply against the world or someone in particular, the contracting parties might have indicated an intention to create an equitable interest that would not be enforceable against a *bona fide* purchaser for value without notice. The specific definition of an equitable interest was otherwise inconsequential.

[62] Yangarra also contends that the trial judge engaged in circular reasoning by assuming that if the overriding royalty gave rise to an interest in land rather than a contractual interest, then the resulting interest must be legal in nature. We disagree with this characterization of the judge's reasoning.

[63] The trial judge determined at paragraph 133 (referring to his earlier discussion about the contracting parties' intentions):

> As previously discussed, the 8% Royalty is no mere contractual, *in personam* right — it is a proprietary interest in land (see paragraph [88]) that is legally recognizable by virtue of satisfying the common law ***Dynex*** test for a royalty that constitutes an interest in land. The 8% Royalty is therefore a *legal* interest, or an *in rem* right, that runs with the lands and is enforceable against the underlying interest in land. [Emphasis in original]

[64] The statement that the overriding royalty is a legal interest because the ***Dynex*** test was satisfied requires context. The trial judge referred to paragraph 88 in the *Decision* which is the culmination of his discussion about the Royalty Agreement's contracting parties intending to create an interest in land (including his assessment of the evidence at paragraph 76). He accepted their evidence that the royalty was "an interest in land running with the lands, and it was there forever" and that it was to be immune from efforts by receivers to "wash royalty interests in bankruptcy". The purpose underlying the intention to create an interest running with the land was to ensure that the 8% Royalty remained enforceable against the entire world. The trial judge's subsequent reference to compliance with the test in ***Dynex*** was expressing that intention, which supported his finding that the royalty "is therefore a *legal* interest, or an *in rem* right" (emphasis in original).

[65] We find no error in principle in the reasoning path followed by the trial judge to conclude that the contracting parties intended to create a legal interest. Further, his finding that they objectively intended to create a legal interest is supported by the evidence and entitled to deference.

ii. Compliance with statutory requirements

[66] Even where contracting parties intended to create a legal interest, that intention may be defeated if the legal requirements for creating and conveying the interest were not satisfied. Yangarra argues that failure to comply with the legal requirements means the overriding royalty "will constitute, at most, an equitable interest in land".

[67] The trial judge concluded that the contracting parties complied with the legal requirements to create a binding contract for the conveyance of an interest in land because "there was an offer, acceptance, consideration, and a written agreement signed by the parties (***Statute of Frauds***, 1677, (29 Car 2) c 3 s 4; ***1353141 Alberta Ltd v Roswell Group Inc***, 2019 ABQB 559 at para 205, citing ***Austie v Aksnowicz***, 1999 ABCA 56 at para 23)": *Decision* at para 134. However, Yangarra contends that the trial judge considered the wrong section of the *Statute of Frauds* (section 4 rather than sections 1 and 3) and failed to consider the impact of the *English Law of Property Act*, (1845) 8 & 9 Vict, c 106, which was received into the law of Alberta as of July 15, 1870. Taken together, says Yangarra, the *Statute of Frauds* and the *English Law of Property Act* require that the conveyance be in writing and by deed (under seal). The Royalty Agreement was not under seal so the creation of the royalty was invalid.

[68] We find no merit in this argument. First, the only issue engaging the *Statute of Frauds* was the requirement for the agreement to be in writing and signed by the parties. That requirement is common to sections 1, 3 and 4 of the statute, and was satisfied here. While the trial judge referred to the wrong section of the statute, whether by typographical error or otherwise, the error was immaterial to the analysis.

[69] Second, Yangarra asserts that section 3 of the *English Law of Property Act* required the Royalty Agreement to be supported by a deed. However, that provision only applies to certain transactions: a) feoffments; b) a lease of any tenements or hereditaments; c) the partition or exchange of any tenements or hereditaments; d) the assignment of a chattel interest; and e) the surrender of an interest in any tenements or hereditaments.

[70] We agree with the respondent at paragraph 52 of its factum, that an overriding royalty confers on the royalty holder an unencumbered share or interest in the resources extracted from the lands. Consequently, the transaction here did not fall within the scope of s 3 of the *English Law of Property Act* because it did not involve:

(a) A feoffment, which is the conveyance of a freehold interest in land - the Crown is the fee simple owner of the minerals *in situ*.

(b) A lease of a tenement or hereditament - the only lease is the Crown lease. Home Quarter did not convey to Range Royalty a portion of its lessee working interest in the Crown lease. Instead, Home Quarter granted to Range Royalty an overriding

royalty interest, which is distinct from a working interest.

(c) A partition, which is the division of concurrent interests by joint-tenants or tenants in common - at the time of the transaction, Range Royalty had no interest in the lands and was not a joint-tenant or tenant in common with Home Quarter.

(d) An exchange, which is a mutual grant of the same type of interest (such as two fee simple interests) of any tenement or hereditament - the transaction did not involve a "mutual grant" of the "same type" of interests because Home Quarter only received money, not an interest in the lands, in exchange for granting Range Royalty an overriding royalty interest in the lands, which is different from Home Quarter's working interest in the lands.

(e) The assignment of a chattel interest - an assignment is the act of transferring all or part of one's property, interest or rights to another person. A chattel interest is an interest in corporeal hereditaments less than a freehold. A corporeal hereditament is an interest in land capable of being held in possession, such as fee simple - through the transaction, Home Quarter did not and could not assign to Range Royalty an interest in a corporeal hereditament because Home Quarter did not hold an interest in a corporeal hereditament. Home Quarter only held an incorporeal hereditament, which was its working interest in the Crown lease. Moreover, the overriding royalty is an interest carved out of an incorporeal hereditament and therefore is not a corporeal hereditament.

(f) The surrender of an interest in a tenement or hereditament, which is the reversion of a lesser estate into a greater estate by yielding an estate to the person having the immediate reversion or the reminder - here, Range Royalty did not revert or yield any interest to Home Quarter. Instead, Range Royalty acquired a new interest in the lands.

[71] Accordingly, the Royalty Agreement does not fall within section 3 of the *English Law of Property Act* and is not subject to the deed requirement.

[72] Given our conclusion, we need not address PrairieSky's alternative argument that the deed requirement is no longer applicable in Alberta because of possible conflicting provisions in s 10(2) of the *Law of Property Act*, RSA 2000, c L-7 and s 161 of the *Land Titles Act*.

[73] Lastly, as the common law in ***Dynex ABCA*** and ***Dynex*** confirmed that a royalty is an interest in land, and the reasoning in those cases supports such an interest being a legal interest in land rather than equitable, the trial judge's finding that the common law posed no bar to the creation of a legal interest in the circumstances of this case is sound.

[74] In summary, the trial judge did not err in finding that the test for whether a legal interest in land has been created considers both the objective intention of the parties to create a legal interest, and whether the interest created complies with the relevant statutory requirements and the common law. He did not err in finding that both parts of the test were met in this case, and the parties to the Royalty Agreement created a legal interest in the land.

c) A *bona fide* purchaser for value without notice defence does not apply in a priority dispute between two competing legal interests

[75] Yangarra contends that even if an overriding royalty is a legal interest in land, the application of the *bona fide* purchaser for value without notice defence should be expanded to render the overriding royalty unenforceable against Yangarra's legal interest as a successor lessee. This modification would protect lessees who cannot reasonably obtain notice of the overriding royalty – in effect creating a due diligence defence to a legal interest in land. Such a change would be similar to provisions in the *Land Titles Act* providing, with some exceptions, that a person acquiring an interest without fraud is not bound by prior unregistered interests or claims: see ss 60-61 and 203; *Decision* at para 122. However, unlike the priorities established by the Act, the courts would create the proposed change without the Legislature's intervention.

[76] We acknowledge that the new interest in land recognized by the decisions in ***Dynex ABCA*** and ***Dynex*** raises the question of whether defences, including a *bona fide* purchaser for value without notice, may necessarily arise in response to the new interest. However, any defence must be considered in the specific context discussed and accepted in those cases. More particularly, the interest created is a fractional interest in the gross oil and gas production of the working interest in the land. An interest in land was recognized to lend certainty to the industry, decrease risk in the royalty holder marketplace and prevent destabilization of investment. Permitting a *bona fide* purchaser for value without notice to acquire the minerals lease free and clear of an overriding royalty would defeat those purposes. In an industry where such purchasers are generally sophisticated participants, little if any cause is presented to afford such a defence.

[77] The trial judge correctly found that the *bona fide* purchaser for value without notice defence is an equitable doctrine that does not apply between competing legal interests. As the trial judge noted, the full name of the defence is "*bona fide* purchase of a legal interest for value without notice of a pre-existing equitable interest", and where the defence operates, the pre-existing equitable proprietary rights are "stripped away" through the transaction by which the defendant acquires its legal proprietary interest: *Decision* at para 149, quoting ***i Trade Finance Inc v Bank of Montreal***, 2011 SCC 26 at para 60, [2011] 2 SCR 360, and Lionel D Smith, *The Law of Tracing* (Oxford: Clarendon Press, 1997) at 386.

[78] Yangarra proposes a significant change to legal principle and the common law. However, as discussed earlier, such reforms are warranted only in limited circumstances, including to "keep the common law in step with the evolution of society": ***Dynex*** at para 20, citing ***Friedmann*** at

para 42. Further, the Supreme Court of Canada in ***Friedmann*** at paragraph 43 articulated five factors to be considered when assessing whether to modify the common law: a) previous dissenting opinions in the Supreme Court; b) a trend in the provincial appellate courts to depart from existing principles in the jurisprudence; c) criticism of the case law or the adoption of a contrary rule in other jurisdictions; d) doctrinal criticism of the case law and its foundations, and e) inconsistency between the prevailing case law and other decisions. The factors are not prerequisites for reform to the common law but help to identify compelling reasons for change. Nevertheless, intervention is generally avoided "where the proposed change will have complex and far-reaching effects, setting the law on an unknown course whose ramifications cannot be accurately measured".

[79] Yangarra presents no evidence that its proposed reform is necessary to keep the common law in step with an evolving society. For example, nothing suggests that the oil and gas industry, in practice, has treated royalty interests as mere equitable interests or operated as if the *bona fide* purchaser for value without notice defence is available in respect of royalty interests granted by lessees of Crown mineral rights. To the contrary, the record here suggests that the industry recognizes the importance of due diligence during acquisitions to uncover any royalties, and that the industry has generally understood that these interests run with the land and bind all subsequent purchasers regardless of contractual privity or notice.

[80] Yangarra also fails to demonstrate that broadening the application of the *bona fide* purchaser for value without notice defence to legal interests responds to a societal or systemic concern. To the contrary, Yangarra acknowledges the rarity of this issue, noting in its factum that "this case is the first time in which the [*bona fide* purchaser for value without notice] defence, and the distinction between legal and equitable interests in land, has been expressly argued in the context of the enforceability of a [gross overriding royalty] against a successor in interest." Moreover, while ***Dynex ABCA*** and ***Dynex*** created a new interest in land, the change was narrow in its context and effect.

[81] Yangarra has not identified any appellate authority or dissenting opinion supporting its position, academic criticism of the existing case law, the adoption of a contrary rule in other jurisdictions, or doctrinal criticism of the current case law and its foundations.

[82] As for any inconsistency between the prevailing case law and other decisions, Yangarra refers only to the chambers decision in ***Chippewas of Sarnia Band v Canada (Attorney General)***, [1999] OJ No 1406, 1999 CarswellOnt 1244 at paras 738-739 (ON SC) for the proposition that the conventional distinction between law and equity has less relevance in modern society when considering the application of the *bona fide* purchaser for value without notice defence. That case involved a First Nation's action against the Crown and others for the return of Indigenous lands surrendered in 1839. In addressing summary judgment applications, the chambers judge commented at paragraph 739: "The distinction between legal and equitable interest in land is not relevant in modern times to the defence of innocent purchaser for value without notice. The defence extinguishes any ordinary legal or equitable interest in land."

[83] That commentary is distinguishable and not authoritative. First, the chambers judge expressly stated at paragraph 832 that the "decision affects these lands only ... This case is driven entirely by its own narrow facts" with an emphasis on Indigenous rights and an appreciation that "aboriginal title is no ordinary interest in land". Consequently, no broader application of the statement of principle was contemplated. Second, no authority was cited in support of the chambers judge's commentary, which is contrary to a wealth of jurisprudence. Third, the chambers decision was overturned by the Ontario Court of Appeal, which held that while the "rigid dichotomy" between legal and equitable rights has broken down since the judicature fusion, "historical factors continue to influence the applicability of equitable principles to claims traditionally associated with the common law": ***Chippewas of Sarnia Band v Canada (Attorney General)***, [2000] OJ No 4804 at para 276, 51 OR (3d) 641 (ON CA), leave to appeal dismissed [2001] SCCA No 63. Yangarra's reliance on ***Chippewas*** is therefore unpersuasive.

[84] We conclude that Yangarra's proposed reform should be rejected. Such a change would potentially have far-reaching and complex effects and would set the common law and the oil and gas industry on an unpredictable course. The change is not supported by any persuasive authority nor shown to be necessary to keep pace with the evolving demands of society generally or the oil and gas industry in particular. To the extent such a change might benefit certain leaseholders, other means are available to protect their interests. The departure from established principle is not shown to be warranted.

d) No error in the damages award, but a variation to the interest award

[85] The trial judge concluded that PrairieSky suffered a royalty loss from April 1, 2017, to December 2021 ("Royalty Period"), and accepted PrairieSky's evidence that the damages were the principal sum of $179,520.48, plus prejudgment interest for the Royalty Period of $33,876.82, for a total of $213,397.60.

[86] Yangarra contends that two reviewable errors arose: a) the trial judge failed to deduct the royalty payments made by Relentless Resources for that period, which totalled $113,084.79, and b) the trial judge awarded prejudgment interest to PrairieSky for the gross amount of the royalties without reducing the interest award to account for PrairieSky having received the benefit of the Relentless Resources payments. Yangarra submits that double recovery must be avoided, so the damages and prejudgment interest should be reduced to $77,612.60, consisting of the principal sum of $66,435.69 plus prejudgment interest of $11,176.91.

[87] At trial, PrairieSky acknowledged receiving the payments from Relentless Resources but argued that Yangarra was liable for the full amount of the claim and that concerns about double recovery from Relentless Resources could be addressed through the civil enforcement process. A judgment against Yangarra for the full claim amount ensures that PrairieSky is made whole if Relentless Resources (or its successor Sugarbud) seeks to recover the partial payments from PrairieSky. The same reasoning applies to prejudgment interest because of the possibility that a

successful recovery claim by Relentless Resources or Sugarbud would include an award of prejudgment interest against PrairieSky.

i. The damages award is sound

[88] We agree with the trial judge that PrairieSky is entitled to a judgment against Yangarra for all the royalties payable during the Royalty Period without a reduction for the Relentless Resources payments.

[89] PrairieSky had discrete causes of action against Yangarra (proprietary) and Relentless Resources (contractual`) for the same loss. A claimant is not precluded from obtaining separate judgments for the same loss, even involving the same subject matter, where the defendants' obligations are "separate and distinct": ***Sherwood Steel Ltd v Odyssey Construction Inc***, 2014 ABCA 320 at para 31 [***Sherwood Steel***]. Even where obligations are co-extensive, there is no general rule that different causes of action against different parties, merge into a single judgment against one of them. "Apart from joint debts or joint tort-feasors or those alternately liable, a plaintiff may sue and take judgment at different times against different persons liable": ***Tangye v Calmonton Investments Ltd***, 1988 ABCA 206 at para 44, 87 AR 22 [***Tangye***].

[90] Yangarra argues, in part, that the reasoning in ***Sherwood Steel*** and ***Tangye*** is distinguishable because PrairieSky does not have a judgment or pending claim against Relentless Resources. We disagree. PrairieSky's ability to obtain a judgment for the full amount of the royalties is not dependent on the existence of another action or judgment.

[91] Moreover, PrairieSky resists a reduced damages calculation because Relentless Resources or Sugarbud might advance a claim for the recovery of the Relentless Resources payments once Yangarra's liability is established. If such a claim is successful, PrairieSky would seek to recover the refunded royalties from Yangarra. The record provides little explanation for the basis of such a claim, although counsel for PrairieSky represented to this Court that Sugarbud communicated the possibility of such a claim after the trial below. Given the passage of time and the possible expiration of the limitation period, such a claim seems unlikely, but we cannot exclude that possibility.

[92] PrairieSky is therefore free to obtain an unconditional judgment against Yangarra. Concerns about double-recovery can be addressed through civil enforcement by way of set-off: ***Sherwood Steel*** at para 34.

[93] PrairieSky has proffered a variation to the judgment roll that would include language clarifying that it cannot recover more than $213,397.60 from Yangarra and Relentless Resources (and Sugarbud) in combination. In ***Sherwood Steel*** at paras 33-34, this Court acknowledged that while some courts have drafted the form of the judgment roll to stipulate the total amount which the plaintiff can collect from the judgment debtor, this approach is not "preferable". Nevertheless,

PrairieSky's proposal clarifies the total recovery without inviting the concerns identified in ***Sherwood Steel***, particularly because a separate judgment has not been obtained against Relentless Resources and duplicative enforcement proceedings are unlikely.

[94] Accordingly, we are prepared to vary paragraph 2 of the judgment roll to provide the clarity offered by PrairieSky, except that the amount of the award will be decreased for a reduction in prejudgment interest as discussed below.

ii. The interest calculation contains an error in principle

[95] The trial judge, relying on calculations provided by PrairieSky, determined that the prejudgment interest payable on $179,520.48 is $33,876.82. Yangarra contends that the interest calculation should be reduced to $11,176.91, which would deduct $22,699.91 in interest awarded for the payments PrairieSky received in a timely manner from Relentless Resources. We agree that PrairieSky received the benefit of the Relentless Resources payments and would be over-compensated if prejudgment interest was awarded for those royalty payments.

[96] We also observe that when Relentless Resources made a payment to PrairieSky of $88,606.82 for the period of October 2016 to December 31, 2017, PrairieSky represented to Relentless Resources that the payment would be "credited" against amounts owed by Yangarra on account of the Royalty. PrairieSky's acknowledgment is incompatible with prejudgment interest accruing on those payments.

[97] If Relentless Resources or Sugarbud obtains a judgment against PrairieSky for the recovery of the royalty payments, the successful claimant might pursue prejudgment interest from PrairieSky on the money previously advanced. While we recognize that if prejudgment interest is awarded, PrairieSky would not have an existing prejudgment interest award against Yangarra to recover the interest payable to Relentless or Sugarbud, the speculative nature of a future prejudgment interest claim does not support granting such an anticipatory award on any principled basis. More generally, PrairieSky should not have been awarded prejudgment interest for the lost value of money it *actually* received.

[98] No absolute entitlement to prejudgment interest exists and the Court retains a discretion not to award interest or to vary the rate from the default rates set by the *Judgment Interest Act*, RSA 2000, c J-1, s 2(3). Whether Relentless Resources or Sugarbud might receive an award of prejudgment interest against PrairieSky (and the amount of such an award) is unknown. Further, the judge asked to make such an award can address the competing equities, including the reason for the voluntary payments made by Relentless Resources, any delay by Relentless Resources in advancing such a claim, and any prejudice to PrairieSky in not being able to recover that interest from Yangarra.

[99] The judgment roll is varied to reduce the prejudgment interest award to $11,176.91.

[100] The total amount of the award against Yangarra for damages and prejudgment interest is therefore varied to $190,697.39.

Conclusion

[101] The appeal is allowed, in part, to reduce the award of prejudgment interest. The balance of the appeal is dismissed.

[102] Paragraph 2 of the judgment roll is varied to read:

> PrairieSky Royalty Ltd ("PrairieSky") is awarded Judgment against Yangarra in the amount of $190,697.39, payable forthwith, provided however that PrairieSky is not entitled to recover more than $190,697.39 from Yangarra and Relentless Resources Ltd (now Sugarbud Craft Growers Corp) in total for damages and prejudgment interest.

[103] PrairieSky shall have its costs of this appeal.

Appeal heard on September 11, 2024

Memorandum filed at Calgary, Alberta
this 30th day of June, 2025

de Wit J.A.

Grosse J.A.

Feth J.A.

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