

In the Court of Appeal of Alberta

Citation: New Star Energy Ltd v Lam, 2025 ABCA 342

Date: 20251020
Docket: 2401-0096AC
Registry: Calgary

Between:

New Star Energy Ltd.

Appellant

- and -

Shing Tak (Michael) Lam and Weija Wang

Respondents

The Court:

**The Honourable Justice Dawn Pentelchuk
The Honourable Justice Anne Kirker
The Honourable Justice Alice Woolley**

Memorandum of Judgment Delivered from the Bench

Appeal from the Order by
The Honourable Justice O.P. Malik
Dated and Filed on the 21st day of March, 2024
(Docket: 2301-14989)

**Memorandum of Judgment
Delivered from the Bench**

Kirker J.A. (for the Court):

[1] The appellant, New Star Energy Ltd., which has changed its name to Highvale Energy Limited, appeals the dismissal of its application to have a consent judgment declared a nullity.

[2] The facts are straightforward.

[3] On December 9, 2021, a consent judgment signed by John Zhao, in his capacity as New Star’s Interim Chief Executive Officer, and by Kenneth Reh, as counsel for the respondents, was filed in the Court of King’s Bench through an “Email Filing Request.” Appended to the signed consent judgment was an affidavit sworn by Mr. Zhao verifying his corporate signing authority. The filing request form provided a style of cause naming the respondents as plaintiffs and New Star as the defendant. It noted that no action number existed and that the signed consent judgment was an “originating document.”

[4] On December 13, 2021, the consent judgment was signed by an applications judge (then known as a master). It was returned to counsel for the respondents on December 21, 2021, under Court File No. 2101-15856. It was the only record listed on the court procedure card in that action.

[5] On or about November 6, 2023, New Star’s banks received a garnishee summons pursuant to the consent judgment. New Star subsequently filed an originating application (Court File No. 2301-14989) seeking:

- (a) A permanent stay of the consent judgment “as having been issued contrary to law”; and
- (b) An interim stay pending the outcome of the originating application and, in the alternative, a stay of enforcement pending the outcome of a separate action (Court File No. 2301-11837) that New Star commenced alleging the consent judgment is the product of fraud and a breach of fiduciary duty.¹

Before the chambers judge, New Star asserted that the consent judgment had “no foundation in law” and was thus a “nullity” because no action was properly commenced and because s. 106(1)(d) of the *Legal Profession Act*, RSA 2000, c L-8, prohibits a person who is not an active member of

¹ An interim order was granted on November 14, 2023, that stayed the consent judgment until further order of the court. The interim order directed, among other things, that New Star pay the judgment amount into court and that a copy of the order be filed in the “Contested Action”, being Court File No. 2101-15856.

the Law Society of Alberta from settling, or negotiating in any way for the settlement of, any claim for loss or damage founded in tort. Mr. Zhao is not a lawyer.

[6] The circumstances surrounding the negotiations that form the basis for the consent judgment will be determined in New Star's separate action. In the meantime, the amount owing under the consent judgment has been paid into court where it will remain pending further court order. For the purposes of this appeal, the consent judgment must be viewed as reflecting an agreed upon resolution of a dispute between New Star and the respondents. In other words, the question put to the chambers judge and now to this Court is a narrow one: is the consent judgment a nullity? The answer is no.

[7] New Star relies upon the 1963 decision in *Hunter v Coombs* (1963), 45 WWR 53 (Alta SC), 1963 CarswellAlta 79. However, the law and rules of court have evolved since then. As succinctly put in *Chandos Construction Ltd v Deloitte Restructuring Inc*, 2024 ABCA 403 at para 21, citing *Bridgeland Riverside Community Association v Calgary (City)*, 1982 ABCA 138, "[t]he idea that procedural errors create 'nullities' has been rejected for many years." See also, *Mazepa v Embree*, 2014 ABCA 438 at para 9. Irregularities in the commencement of proceedings may be cured where no irremediable prejudice arises from the defect: *Chandos* at paras 21 and 23; *Alberta Rules of Court*, Alta Reg 124/2010, rules 1.5(4) and 3.2(6). Here, there is no evidence of such prejudice.

[8] That Mr. Zhao signed the consent judgment on behalf of New Star may be some evidence of a contravention of s. 106(1) of the *Legal Profession Act* to the extent the consent judgment deals with damages founded in tort. Again, we are not deciding that. It is the subject of the separate action. However, assuming this gives rise to an issue with what the applications judge ordered, it does not make a valid judgment of a court of superior jurisdiction a nullity. "[T]here is an overriding principle that the orders of a superior court of record are never nullities. They perhaps should not have been granted, they may be based on procedural irregularities, and they may be undermined by reviewable error. They are, nevertheless, valid orders of the court until they are set aside": *Mazepa* at para 10; see also, *Tempo Alberta Electrical Contractors Co Ltd v Man-Shield (Alta) Construction Inc*, 2025 ABCA 282 at para 26.

[9] The appeal is dismissed. The monies in court shall remain there until further order of the Court of King's Bench.

Appeal heard on October 16, 2025

Memorandum filed at Calgary, Alberta
this 20th day of October, 2025

Pentelechuk J.A.

Kirker J.A.

Woolley J.A.

Appearances:

L.Y. Pan, KC

B. Roberts

for the Appellant

K.P. Reh

for the Respondents