In the Court of Appeal of Alberta

Citation: Geophysical Service Incorporated v Canadian Natural Resources Limited, 2025 ABCA 426

Date: 20251223
Docket: 2401-0236AC
Registry: Calgary

Between:

Geophysical Service Incorporated

Appellant

- and -

Canadian Natural Resources Limited

Respondent

The Court:

The Honourable Justice Michelle Crighton
The Honourable Justice Jolaine Antonio
The Honourable Justice April Grosse

Memorandum of Judgment

Appeal from the Orders by
The Honourable Justice J.C. Price

Dated the 12th day of August, 2024
Filed on the 9th day of September, 2024
(2024 ABKB 491, Docket: 2001 07678)

Dated the 31st day of January, 2025
2025 ABKB 60, Docket: 2001 07678

Memorandum of Judgment

The Court:

I. Introduction

[1] The appellant, Geophysical Service Incorporated, appeals a decision summarily dismissing its action against the respondent, Canadian Natural Resources Limited. The chambers judge determined the underlying action was statute barred by operation of the 10-year ultimate limitation period. The appellant argues the chambers judge erred by holding the limitation period was not suspended on account of fraudulent concealment. It submits there is at least a genuine issue requiring trial in that regard. It also argues the chambers judge erred in awarding the respondent $405,000 in costs. For the reasons that follow, the appeal is dismissed.

II. Background

[2] In November 2012, the appellant filed a statement of claim alleging, in part, that the respondent was liable for breach of contract, copyright infringement, contractual interference, conversion and unjust enrichment because it possessed, distributed and used the appellant's seismic data without permission. The appellant asserted the respondent had come to possess the data through its acquisition of Anadarko Canada Corporation in 2006.

[3] In 2017, the respondent filed affidavit evidence from three employees, including its Chief Geophysicist, in support of a summary dismissal application. The employees attested that the respondent did not obtain the appellant's seismic data when it acquired Anadarko Canada, and that the data was not in the respondent's database.

[4] In 2018, the appellant agreed its action against the respondent could be dismissed on a without costs basis. After hearing from counsel, and upon noting the consent of the parties, a case management judge issued a consent order dismissing the action against the respondent, with each party bearing its own costs. The appellant's action continued against two other Anadarko entities, referred to herein as Anadarko Petroleum.

[5] In 2019, the appellant questioned a number of Anadarko Petroleum witnesses in the continuing action. The appellant says that as a result of that questioning it learned the respondent did receive seismic data from Anadarko Canada in 2006.

[6] In June 2020, the appellant filed a statement of claim commencing the underlying action against the respondent, making substantially the same allegations as it had advanced in its prior action.

[7] In November 2020, the respondent filed a statement of defence, asserting it did not possess the seismic data and stating that, in any event, the new action was limitation barred and an abuse of process because the prior action, raising substantially the same allegations, had already been dismissed. The respondent filed an application to strike or summarily dismiss the new action.

[8] In December 2020, the appellant filed a reply. The appellant asserted the underlying action was not an abuse of process, because the respondent had induced its consent to dismissing the prior action by a misrepresentation. The appellant alleged the respondent had "deceived [the appellant], intentionally, negligently, fraudulently or otherwise" about its possession and control of seismic data. It also pleaded fraudulent concealment under section 4 of the *Limitations Act*, RSA 2000, c L-12.

[9] Later in December, the appellant became aware the respondent had, in the preceding months, determined that a number of boxes in its possession from Anadarko Canada actually belonged to Anadarko Petroleum. The appellant demanded that the respondent inspect and provide a full inventory of those boxes.

[10] In January 2021, the respondent adduced affidavit evidence explaining: in 2006, when it acquired Anadarko Canada, the respondent came into possession of 35,928 boxes; those boxes were stored offsite by a third-party storage provider; over the years, the respondent undertook multiple projects to identify the contents of the boxes; by 2020, 8,028 Anadarko Canada boxes had yet to be reviewed and identified; and in 2020, as part of a project to address the remaining boxes, the respondent determined that 285 of the Anadarko Canada boxes should have been sent to Anadarko Petroleum in 2006 because they related to assets the respondent did not acquire. The respondent stated that since it did not own the boxes, it had not opened them and knew only that they belonged to Anadarko Petroleum.

[11] In July 2021, pursuant to a court order, the appellant inspected the 285 boxes on site at the respondent's third-party storage provider. The appellant determined that approximately 20 of the boxes contained its seismic data. The respondent delivered those boxes to the appellant.

[12] During a questioning in October 2021, the appellant asked the respondent to search its database for a specific list of seismic data. The appellant's counsel acknowledged at the time, "You probably have not... conducted any search in respect to that list because it was only sent this morning". The respondent's Chief Geophysicist conducted the requested search and advised he had located a line of seismic data with an identifier similar to the identifier for one of the listed lines and 13 other lines "that potentially match based on partial line names or area names". For all 14 lines identified, the Chief Geophysicist advised, "CNRL has no use for this line" and "no information on its prov[ena]nce".

[13] In June 2022, the appellant filed a cross-application for summary judgment against the respondent in the underlying action, based in part on the results of the July 2021 inspection.

[14] In December 2023, the respondent's application to strike or summarily dismiss the action and the appellant's cross-application for summary judgment were heard together by the chambers judge.

III. Decision below

[15] The chambers judge concluded the appellant's action was barred by operation of the 10-year ultimate limitation period. She rejected the appellant's argument that section 4(1) of the *Limitations Act* applied, as the respondent had not fraudulently concealed its possession of the seismic data. While the respondent's "averment that it did not possess" any of the data was incorrect, that "was a product of inadvertent error rather than fraud". The chambers judge emphasized the "sheer volume of boxes" in the respondent's possession and found the respondent had been "simply mistaken". There was "no merit to any of the claims... as the claims... were filed outside the 10-year limitation period". On that basis, the chambers judge granted the respondent's application for summary dismissal and denied the appellant's application for summary judgment: *Geophysical Service Incorporated v Canadian Natural Resources Limited*, 2024 ABKB 491 at paras 35-36, 44-48, 52, 64 [*Merits Decision*].

[16] The chambers judge also held she "would have granted summary dismissal" on the other basis argued by the respondent: that the new action was an attempt to relitigate claims already determined in the previous action. There was no basis to set aside the consent dismissal order granted in the previous action, because it had not been "obtained through fraud". Therefore, the consent dismissal order operated to prevent re-litigation in the new action: *Merits Decision* at paras 27-29, 35-37, 65.

[17] The chambers judge issued subsequent reasons awarding the respondent $405,000 in costs: *Geophysical Service Incorporated v Canadian Natural Resources Limited*, 2025 ABKB 60 [*Costs Decision*].

IV. Grounds of appeal

[18] The appellant appeals, arguing the chambers judge erred in holding a) there had been no fraudulent concealment; b) there was no basis to set aside the consent dismissal order; and c) the respondent was entitled to $405,000 in costs.

V. Analysis

A. Fraudulent concealment

[19] Section 3(1)(b) of the *Limitations Act* provides immunity for claims that arose more than 10 years before an action was commenced, regardless of discoverability. Section 4(1) of the *Limitations Act* suspends operation of the 10-year ultimate limitation period "during any period of

time that the defendant fraudulently conceals the fact that the injury for which a remedial order is sought has occurred".

[20] A plaintiff who seeks to rely on section 4(1) has the burden of proving the limitation period was suspended: *Limitations Act*, s 4(2). They must show: 1) the defendant perpetrated "some kind of fraud"; 2) the fraud concealed a material fact; and 3) the plaintiff exercised reasonable diligence to discover the fraud: *Bruno v Samson Cree Nation*, 2021 ABCA 381 at para 79; *WP v Alberta*, 2014 ABCA 404 at para 33; *Ambrozic v Burcevski*, 2008 ABCA 194 at para 21 [*Ambrozic*].

[21] The chambers judge properly identified these requirements: *Merits Decision* at para 45. She accepted the respondent's affidavit evidence was "inaccurate": *Merits Decision* at paras 30, 32, 48. Nevertheless, the chambers judge was not satisfied that the first part of the test was made out. She concluded the respondent's "averment that it did not possess GSI Seismic Data, while incorrect, was a product of inadvertent error rather than fraud": *Merits Decision* at para 48.

[22] The appellant argues the chambers judge took an overly restrictive view of fraud for the purposes of section 4(1). It submits she failed to appreciate that any type of unconscionable concealment or failure to disclose, including a reckless one, would satisfy the first part of the test.

[23] Fraudulent concealment is an equitable doctrine that prevents limitation periods from being used as an instrument of injustice. It is concerned with "equitable fraud", which is broader than the common law action for fraud. The central consideration is "whether it would be, for *any* reason, *unconscionable* for the defendant to rely on the advantage gained by having concealed" the fact that the injury occurred. The inquiry is "into the *unconscionability* of the conduct itself". Unconscionable conduct can include "some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts": *Pioneer Corp v Godfrey*, 2019 SCC 42 at paras 52-54 [*Pioneer*]; see also *Ambrozic* at paras 22-23; *Huet v Lynch*, 2000 ABCA 97 at paras 31, 35 [*Huet*]; *M(K) v M(H)*, [1992] 3 SCR 6 at 57 [*M(K)*].

[24] The chambers judge recognized that fraudulent concealment could be made out generally where "some kind of fraud" was established: *Merits Decision* at para 45. While she did not elaborate on what "kind of fraud" might qualify, her reasons make clear she found nothing unconscionable about the respondent's conduct in this case.

[25] The chambers judge considered the respondent's "data storage practices and the circumstances in which the" boxes containing the appellant's seismic data and the electronic data were discovered. She highlighted the respondent's uncontroverted evidence that the boxes had been packed up in 2006 to be sent to Anadarko Petroleum, were not sent to Anadarko Petroleum for reasons it did not know, and sat unopened and unused until they were discovered in 2020. She had "little difficulty believing that such a small fraction of such an enormous number of boxes could inadvertently go astray". She found the respondent was not aware it possessed the seismic data. She concluded the affidavit evidence filed in the previous action was "a product of

inadvertent error" and that the respondent had been "simply mistaken": *Merits Decision* at paras 11, 35, 36, 48, 51, 62.

[26] The appellant takes issue with the chambers judge's finding of inadvertent error and simple mistake, arguing "it is not a 'mistake' on the part of [the respondent] when three of its senior employees each attest to the same false evidence, and one of them doubles down and swears a second false affidavit to the same effect". However, the findings of inadvertent error and simple mistake were amply supported on the record before the chambers judge, and they are owed deference on appeal.

[27] These findings preclude any conclusion that "some abuse of a confidential position, some intentional imposition, or some deliberate concealment of facts" occurred: *Pioneer* at para 54; *Ambrozic* at para 23; *M(K)* at 57. Insofar as it may be relevant (*Huet* at para 35; *Walczak v Canadian Imperial Bank of Commerce*, 2024 ABKB 373 at para 24), they also preclude any conclusion that the respondent recklessly committed wrongdoing.

[28] The appellant also argues summary dismissal was not appropriate due to the presence of "conflicting evidence" and "issues of credibility". However, the mere presence of some conflicting evidence on the record does not preclude summary disposition: *Weir-Jones Technical Services Incorporated v Purolator Courier Ltd*, 2019 ABCA 49 at para 36 [*Weir-Jones*]; *Geophysical Service Incorporated v Falkland Oil and Gas Limited*, 2020 ABCA 21 at para 17. The appellant does not identify any material conflicts or credibility issues. It does not identify evidence conflicting with the respondent's evidence about how the boxes of seismic data were discovered in 2020, calling into question the circumstances under which the 14 lines of seismic data were identified in 2021, or suggesting that the respondent did not perform the searches or make the inquiries its affiants attested to in its earlier affidavits. The appellant has not identified any reviewable error with the chambers judge's determination that the question of fraudulent concealment could fairly be determined on a summary basis. That determination is owed deference on appeal: *Weir-Jones* at para 10

[29] The chambers judge committed no reviewable error in concluding "there was no fraudulent concealment that prevented the 10-year limitation period from running": *Merits Decision* at para 48. The appeal of the order granting summary dismissal is dismissed.

B. Consent dismissal order

[30] The appellant argues the chambers judge erred by focusing on fraud as the only potential basis for setting aside the consent dismissal order. According to the appellant, "any consent order obtained... based on a misrepresentation should not stand". Since the appellant relied on the respondent's affidavits to enter into the consent order dismissing the prior action, and since those affidavits turned out to be wrong, the appellant submits the consent dismissal order does not operate as a bar to its claims in the underlying action.

[31] We agree the chambers judge erred in law by considering only whether the consent dismissal order "was obtained through fraud": *Merits Decision* at para 28. Generally speaking, a "consent judgment may be set aside on the same grounds as the agreement giving rise to the judgment": *Rick v Brandsema*, 2009 SCC 10 at para 64, citing *McCowan v McCowan* (1995), 24 OR (3d) 707, 1995 CanLII 1085 (ONCA); see also *Stairs v CFM Corporation et al*, 2017 NBCA 8 at para 63; *Custom Metal Installations Ltd v Winspia Windows (Canada) Inc*, 2020 ABCA 333 at paras 43, 57; *Esteghamat-Ardakani v Taherkhani*, 2023 BCCA 290 at para 92. Other than fraud, recognized grounds for setting aside a consent judgment include duress and mutual mistake: *Rozinsky v Rozinksy*, 2013 ABCA 113 at para 6; *Macdonald v King*, 2021 ABCA 149 at para 10; *Steenberg v Steenberg*, 2023 ABCA 132 at para 9. The chambers judge erred by failing to consider whether the respondent's misrepresentation, even though not fraudulent, was nevertheless a sufficient basis for setting aside the consent dismissal order in the circumstances of this case.

[32] Given we have upheld the chambers judge's determination that the underlying action is limitation barred, we need not answer that question. It suffices for us to say that the chambers judge's analysis on whether the consent dismissal order could be set aside was incomplete.

C. Costs

[33] The appellant argues the chambers judge "did not adequately take into account [the respondent's] misconduct in the Prior Action and in the within Action, and as a result erred in awarding a significant multiplier of costs" to the respondent. In particular, the appellant submits the chambers judge erred by failing to appreciate that the respondent had committed equitable fraud by providing "false" affidavit evidence. As explained above, the chambers judge's factual findings foreclose holding that the respondent committed equitable fraud.

[34] Moreover, the chambers judge was "satisfied that [the appellant had] persisted in its fraud claims beyond the point at which it should have known those claims were unsustainable". She committed no reviewable error in considering the appellant's conduct when making her costs award: *Costs Decision* at para 20.

[35] The appellant also submits the chambers judge erred in awarding enhanced costs as a result of the respondent's informal settlement offer, made January 25, 2022, to accept a discontinuance without costs. The appellant argues "there could not have been any reasonable expectation that it would" accept the offer at that time, because the evidence regarding the boxes and lines of seismic data had only recently been discovered.

[36] To attract costs consequences, an offer must be a "genuine offer" of a sufficient compromise at the time it was served and remained open for acceptance: *Innes v Kleiman*, 2023 ABCA 307 at para 11; *H2S Solutions Ltd v Tourmaline Oil Corp*, 2020 ABCA 201 at para 13 [*H2S*]. By January 2022, the respondent had incurred significant costs defending the underlying litigation. Its offer to forego those costs was an "identifiable and sufficient compromise": *H2S* at para 21. The offer remained open for acceptance until March 25, 2022. The respondent was well

aware by then of the primary evidence ultimately relied on by the chambers judge to grant summary dismissal, including the respondent's explanation regarding the unopened boxes, the information it provided about the electronic data, and the details of the searches it had undertaken. The chambers judge made no reviewable error in treating the offer as a genuine offer of sufficient compromise.

[37] Finally, the appellant takes issue with the chambers judge's holding that the legal expenses incurred by the respondent were not unreasonable. It argues the respondent engaged in misconduct, including by providing "false" affidavit evidence, that "unnecessarily inflated" the respondent's legal expenses. The chambers judge rejected this argument. She wrote, "I disagree with [the appellant's] allegation that [the respondent] complicated the proceedings". She held, on the contrary, that the respondent's approach by seeking summary dismissal actually shortened the proceedings, including by obviating the need for trial: *Costs Decision* at paras 32-33. There is no basis for us to interfere with this conclusion either.

[38] The costs appeal is also dismissed.

VI. Conclusion

[39] For the foregoing reasons, the appeal is dismissed.

Appeal heard on November 13, 2025

Memorandum filed at Calgary, Alberta
this 23rd day of December, 2025

Authorized to sign for: Crighton J.A.

Antonio J.A.

Grosse J.A.

Appearances:

M.C.C.L. Lemmens
J. Maslowski
for the Appellant

C. Alcock
for the Respondent