

Court of King's Bench of Alberta

Citation: 2585929 Alberta Ltd (Re), 2026 ABKB 75

Date: 20260204
Docket: B301 009380
Registry: Calgary

In the Matter of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as Amended
And in the Matter of the Bankruptcy of 2585929 Alberta Ltd.

**Reasons for Decision
of the
Honourable Justice B.B. Johnston**

[1] The Applicant seeks a declaration that the Trustee's interpretation of certain paragraphs in the Transaction Approval and Reverse Vesting Order granted April 19, 2024 ("RVO") is correct. Alternatively, they apply to amend the RVO. They further seek declarations that certain shares are taxable Canadian property ("TCP"), that the Trustee's TCP analysis is valid, and the TCP plan should be administered in accordance with the Trustee's first report. They seek a similar declaration related to a paid-up capital ("PUC") calculation and analysis.

[2] The application for approval of a proposed distribution was adjourned.

[3] The Attorney General of Canada ("Canada") challenges the jurisdiction of this court to grant the relief sought by the Applicant. Alternatively, they argue such relief is better determined by the Minister of Revenue ("Minister").

Background

[4] On November 1, 2023 Athabasca Minerals Inc, 2132561 Alberta Ltd., 2140534 Alberta Ltd., AMI Aggregates Inc, AMI Rock Chain Inc, AMI Silica and Terra Shift Engineering ("AMI") filed a notice of intention to make a proposal under section 50.4(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 as amended ("*BIA*").

[5] KSV Restructuring was appointed as the proposal trustee.

[6] A highly competitive sales and investment solicitation process ("SISP") was undertaken.

[7] JMAC Energy Services LLC the first ranking secured creditor, participated as the stalking horse bidder.

[8] Following an auction under the SISP with 162 rounds of bidding, Badger Mining Corporation was the successful bidder.

[9] 2585929 Alberta Ltd. (“Residual Co”) was established pursuant to the RVO.

[10] The RVO approved a subscription agreement dated February 9, 2024 (“Subscription Agreement”) and the transfer of certain liabilities and assets to Residual Co.

[11] On April 26, 2024, \$21,954,189.12 was transferred to Residual Co.

[12] Residual Co was deemed to make an assignment in bankruptcy on May 14, 2024.

[13] The appointment of KSV as trustee was affirmed at the first meeting of creditors on June 4, 2024 (“Trustee”).

[14] This application was filed on November 10, 2025.

[15] I granted certain relief on November 17, 2025. The balance of the application was adjourned to allow Canada to file materials.

Issues

1. Do the declarations sought by the Applicant exceed the jurisdiction of this court?
2. If not, should the court grant the RVO declaration or alternatively amend the RVO?
3. Should the court grant the TCP and PUC declarations?

Analysis

Jurisdiction

[16] Canada argues the tax court of Canada has exclusive original jurisdiction to hear and determine references and appeals on matters arising under the *Income Tax Act*, RSC 1985, c 1 (“*ITA*”): *Tax Court of Canada Act*, RSC 1985 c T-2, section 12(1). They assert the determinations sought by the Applicant are not ancillary to future tax proceedings. Rather, the relief sought is fundamentally a tax assessment issue and therefore this court, sitting in bankruptcy, has no jurisdiction. Alternatively, the court should decline jurisdiction.

[17] The Applicant disagrees. They argue they are not asking the court to determine what taxes are owing or to bind the Minister on how to assess the tax liabilities. As such, the application is ancillary to any future tax proceeding, and it is proper for this court to interpret its own order and to give directions to the Trustee prior to filing tax returns. The *BIA* allows the Trustee to apply to this court for advice and directions affecting the administration of a bankrupt estate. Without such direction the Trustee will be forced to make this determination itself. Interpretive certainty provided by the court will assist the parties and foster the efficient resolution of this issue.

[18] I agree with the Applicant that:

- the *BIA* permits a trustee to apply to the court for directions regarding any matter affecting the administration of a bankrupt’s estate: section 34 *BIA*;

Orphan Well Association v Trident Exploration Corp, 2022 ABKB 839 at para 21;

- the RVO, including at paragraphs 22, 36 and 37 allows the Applicant to apply for further advice and direction as may be required to give full effect to the terms of the order and to assist the parties in completing the transaction; and,
- this court retains jurisdiction to, amongst other things, interpret and implement the terms and provisions of the RVO and the Subscription Agreement.

[19] Nevertheless, this cannot oust the jurisdiction of the federal tax court in areas where they have exclusive jurisdiction. I must therefore first determine whether the federal tax court has exclusive jurisdiction.

[20] I agree with Canada that part of the relief sought relates to a direction regarding the tax treatment of funds received by Residual Co. I do not, however agree that the application is in the nature of “a reference or appeal on a matter arising under the *Income Tax Act*” such that the tax court would have exclusive jurisdiction. There is no extant reference or appeal. There has been no notice of assessment issued. The return has not been filed. The Application relates to an interpretation of the RVO. I therefore find that the tax court does not have exclusive jurisdiction.

[21] I must determine whether this court should nevertheless decline jurisdiction.

[22] I agree with Canada that the Applicant in effect, seeks to have the court declare their interpretation of the RVO correct in order to assert a resulting tax consequence, notwithstanding they seek an order that is without prejudice to any final assessment by the Minister.

[23] As the Applicant’s note at paragraph 8 of their brief:

In this case there is a complex intersection of tax law and insolvency law and as a result a potentially significant amount of taxes are likely owing for which the Trustee could be deemed liable if insufficient amounts are withheld and disbursed to Canada Revenue Agency. It is therefore fair and reasonable that the Trustee have this Court’s oversight and direction prior to distributing funds to creditors and equity claimants.

[24] The Applicant further states at paragraph 26 of their reply brief:

[T]o address the issue and provide guidance to the Trustee’s professional advisors when completing Residual Co’s tax returns and to the Minister when calculating whether taxes are owing as a result of the Transaction, the RVO should be interpreted to explicitly characterize the Distributable Proceeds *as proceeds of disposition of the AMI Shares*. This is a logical and commercially reasonable reading of the RVO and related Transaction and is consistent with the underlying purpose of the Transaction.

[25] Canada relies on several cases where the court has declined jurisdiction in what they argue are analogous situations.

[26] In *GLP NT Corporation v Canada (Attorney General)*, 2003 CanLII 41554 (ON SC), the court declined jurisdiction and refused to provide a declaration that a corporation was a mutual fund corporation.

[27] The court found the real purpose of the application was to influence the hearing before the tax court. Further, the court opined that “a court should not issue a declaratory order that would interfere with the jurisdiction assigned to a specialized tribunal”: *GLP* at para 21.

[28] Justice K. Nixon in *Sheila Holmes Spousal Trust v Canada (Attorney General)*, 2013 ABQB 489, also declined jurisdiction. She found the application was an attempt to seek the court’s opinion for the purposes of using it in the tax assessment process.

[29] In *Bosa v Canada*, 2025 BCSC 1284 at para 50, the court declined to provide declaratory relief given the application was an attempt to impact an appeal before the tax court of Canada. The assumption of jurisdiction would undermine the independence and specialization of the tax court.

[30] I find the above cases distinguishable. Unlike the cases cited by Canada, no return has been filed by the Applicant, no assessment has been made, nor has an appeal been filed.

[31] Given the strong policy reasons for a single proceeding model in the insolvency context, I find it appropriate to exercise my jurisdiction: *Alberta (Attorney General) v Moloney*, 2015 SCC 51, at paras 33-34.

RVO Declarations

[32] The Applicant argues the RVO declaration is appropriate given the ambiguity in sections 5(e) and 11(e) of the RVO. Specifically, section 11(e) provides that distributable proceeds “vest” in Residual Co without any characterization of the nature of the proceeds. Similarly, paragraph 5(e) provides that the shares in AMI Minerals Inc (“AMI Shares”) are cancelled for no consideration. The absence of express characterization of these amounts creates uncertainty under the *ITA* particularly if the receipt of the distributable proceeds were to be treated as income rather than proceeds of disposition. This uncertainty could result in tax inefficiency. To provide certainty for Residual Co and its stakeholders, the RVO should be interpreted to explicitly characterize the distributable proceeds as proceeds of the disposition of the AMI Shares by reading the order as though the following wording was included:

5(e) – Each Equity Interest that is issued and outstanding immediately prior to the Closing Date, together with any agreement, contract, plan, indenture, deed, certificate, subscription rights, conversion rights, pre-emptive rights, options (including stock options or share purchase or equivalent plans), or other documents or instruments governing or having been created or granted in connection with the share capital of AMI shall be deemed terminated and cancelled for no consideration *other than any consideration received as proceeds of disposition for the cancellation of such shares pursuant to Paragraph 11(e) of the Order*, in accordance with and pursuant to the Reverse Vesting Order;

11(e)–AMI shall satisfy the amounts owing under the ResidualCo Notes... using the Purchase Price. ... If the aggregate principal amount of the ResidualCo Notes is less than the Purchase Price then any remaining Purchase Price shall vest in ResidualCo *as*

proceeds of disposition for the cancellation of the AMI Shares, to be administered by the Proposal Trustee (as trustee of ResidualCo) for the benefit of ResidualCo's creditors (which creditors arise from the assumption of the Transferred Liabilities);

[Emphasis Showing Proposed Changes].

[33] The Applicant further argues that the RVO contemplates a sequence of actions tied to the closing of the transaction. However, the RVO does not expressly state certain outcomes that are implicit in the broader value maximization strategy of the proceedings. Accordingly, the RVO must be interpreted in light of the surrounding materials and the overall intention of the court to affect a value maximizing restructuring. This purposive approach ensures the RVO is applied in a manner consistent with the court's intention and the objectives of the restructuring process. They argue the evidentiary record demonstrates that this interpretation is consistent with the purpose and substance of the RVO including statements relating to the intention to maximize value for all stakeholders.

[34] The Trustee in their first report emphasized “that it understood the parties to the SISP and Transaction were seeking to maximize the value payable to the creditors (and possibly the shareholders) and the Transaction was intended to be tax efficient to allow for value maximization. The relief sought, whether by declaration or amendment to the RVO, is necessary to provide clarity to allow the Trustee to efficiently wind up the Estate with maximal proceeds from the Transaction flowing to AMI creditors and investors as intended.”

[35] Canada disagrees and argues this relief is inappropriate.

[36] I accept that the RVO was intended to maximize recoveries for stakeholders. This is a laudable objective. However, the Supreme Court of Canada has opined that there are many important policy objectives underlying insolvency statutes, including (i) providing for timely, efficient and impartial resolution of a debtor's insolvency; (ii) preserving and maximizing the value of a debtor's assets; (iii) ensuring fair and equitable treatment of the claims against a debtor; (iv) protecting the public interest; and (v) in the context of a commercial insolvency, balancing the costs and benefits of restructuring or liquidating the company: **9354-9186 Québec inc. v. Callidus Capital Corp.**, 2020 SCC 10 at para 40.

[37] I accept that maximizing value is an important policy objective of the *BIA*. But it is not the only objective- nor is it sufficient on its own to satisfy a court that there was an intention to treat the funds paid to Residual Co as proceeds of disposition.

[38] General statements about maximizing value for stakeholders is insufficient evidence. More is required. There is a paucity of evidence that the parties intended for the RVO to be interpreted in the manner urged by the Applicant.

[39] In fact, there is some evidence to the contrary. On April 19, 2024, the RVO amongst other things, approved the Subscription Agreement which included similar language to that found in section 5(e) and 11(e) of the RVO. Copies of the RVO and the Subscription Agreement were before the court. The Proposal Trustee supported the application and the forms of order and agreements.

[40] The transaction closed and the terms of the RVO were implemented including the transfer of \$21, 954,189.12 to Residual Co. The transfer of significant funds to Residual Co was in the contemplation of the parties at least as early as the granting of the RVO and likely earlier given the robust auction process.

[41] Even if there was sufficient evidence, there is also the public interest to consider. I have concerns that asking the court to declare an interpretation correct in advance of filing tax returns may not be in the public interest.

[42] Further, the RVO structure is itself a vehicle to maximize tax efficiencies. The structure is sophisticated and intentional. Professional advisers were actively engaged in the structuring of the deal. The Proposal Trustee spoke in favour of the structure when the RVO was approved. Notwithstanding this, the Applicant now asks this court almost two years after the order was issued, to provide a declaration to achieve the most tax advantageous treatment.

[43] I also have concerns about the timing of this application and the fact the court is being asked to read in language that was not argued when the RVO was granted. The RVO was approved based on the form of order and materials before the court. Stakeholders made submissions based on these materials.

[44] The approval of an RVO structure involves “close scrutiny” by the courts. An applicant must demonstrate an RVO structure is necessary; that it produces an economic result at least as favourable as any other viable alternative; that a stakeholder is not worse off under the RVO structure than under any other viable alternative and that the consideration paid for the debtors business reflects the importance and value of any intangible assets being preserved under the RVO structure. A court in approving an RVO structure must be diligent in ensuring that the restructuring is fair and reasonable to all parties having regard to the objectives and statutory constraints of insolvency legislation: *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para 38. This is not a rubber stamp.

[45] It may be that the court would have approved the RVO with the included language. It also may be that no stakeholders would have opposed the application. That is not for this court to decide. But the fact is, the approval of an RVO can be nuanced and the impact of changing an order after the fact can be problematic. Courts ought to be cautious in granting such after the fact amendments: *AlphaBow Energy Ltd (Re)*, 2025 ABKB 550.

[46] I decline to grant the declaration sought.

RVO Amendments

[47] The Applicant alternatively seeks to amend sections 5(e) and 11(e) of the RVO to expressly add the language related to the tax treatment of the AMI Shares.

[48] The Applicant argues that section 187(5) of the *BIA* confers a narrow and cautiously exercised power to “review, rescind or vary orders” made under the courts bankruptcy jurisdiction. This extends to non-substantive clarifications that make an order accurately reflect the courts intention particularly in insolvency proceedings. They argue that the proposed amendments do not reopen the merits of the RVO but rather “clarify the language already adopted by the court so that the RVO continues to function in accordance with its restructuring purpose and the court’s supervisory authority over its own orders.” Therefore, the clarifications fall squarely within the limited jurisdiction recognized under section 187(5) of the *BIA* and the availability of non-substantive clarifications is supported by a harmonious reading of the *BIA* and *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36. The Applicant submits that this court’s decision in *AlphaBow* read together with section 187(5) of the *BIA*, supports this court’s limited but meaningful authority to issue clarifying variations to final orders. They nevertheless

acknowledge that the RVO is a final order and that the transactions contemplated in the RVO have been concluded.

[49] Canada argues the amendments are not justified given the transactions contemplated in the RVO were completed over 18 months ago; the form of RVO and Subscription Agreement were already approved by the court, and the Trustee was supportive of the approvals. Further, the SISP process that resulted in the RVO and Subscription Agreement included template forms of order that included the RVO structure. Finally, the RVO terms are consistent with the Subscription Agreement, and the proposed amendments seek to introduce new terms that were not in the Subscription Agreement to achieve a particular tax outcome.

[50] The same concerns discussed above related to the approval of the RVO under *Harte Gold* apply to the amendments. There is insufficient evidence to support the Applicant's assertion that the amendments reflect the court's intention. I have also considered that the transactions contemplated by the RVO have been concluded. The order was granted almost two years ago.

[51] I agree that a possible interpretation of the RVO could result in tax inefficiencies, but this is the language chosen by the parties in both the RVO and again in the Subscription Agreement. And this is the language approved by the court.

[52] Most significantly the RVO is a final order and the clarifications sought are substantive.

[53] I decline to amend the RVO.

TCP and PUC Declarations

[54] The Applicant asks the court to provide advice and directions regarding the TCP and PUC plans. Specifically, they seek advice and direction on how to determine the appropriate holdback amounts in respect of tax obligations to allow the Trustee to distribute the remaining funds to equity claimants. They argue it is appropriate as the declaration will not bind the Minister but will provide guidance to the Trustee's tax advisors when preparing relevant tax returns.

[55] The Applicant acknowledges that this issue is both ancillary to these bankruptcy proceedings and a potential decision made by the Minister at a future date but argue this court can interpret provisions of the *ITA* if it is necessary to decide an issue properly before the court: *783783 Alberta Ltd v Canada (Attorney General)*, 2010 ABCA 226 at paras 26-28.

[56] The Applicant urges the court to make the declarations as absent such direction from the court, the Trustee may be required to delay distribution to the prejudice of stakeholders or to arbitrarily hold back and pay Canada Revenue Agency the most conservative estimate of potential holdback obligations. Both outcomes, they argue are contrary to the *BIA* as the relief sought is to avoid the paralysis not to displace the tax regime.

[57] Canada argues that the determination of whether property is taxable property as defined in the *ITA* and what the paid-up capital is for income tax purposes, is not within the jurisdiction of the court. Further, the requested declarations are not a proper matter for advice and direction from the court under section 34 of the *BIA*.

[58] I agree.

[59] Although the court's ability to provide advice and direction is broad, I do not find it appropriate to provide advice and direction on matters which are in effect advance tax

determinations. The Applicant acknowledges that they are seeking guidance to assist the Trustee’s tax advisors when preparing their returns. The advice and direction sought is not ancillary to a tax issue. It is a tax issue.

[60] The decision in **783** is distinguishable. The court held in **783** that the action did not involve “in any way the tax liability or assessments of the plaintiff or defendants” and neither the validity of any assessment or their liability to pay tax was plead: **783** at para 23.

[61] In this case, the Applicant asks the court to make a determination regarding tax treatment including the appropriate hold backs in respect of these tax obligations.

[62] I decline to do so.

Conclusion

[63] The application is dismissed.

Heard on the 19th day of January, 2026.

Dated at Calgary, Alberta this 4th day of February, 2026.

B.B. Johnston
J.C.K.B.A.

Appearances:

Michael W. Selnes and Chyna Brown
for the Trustee KSV Restructuring Inc.

Douglas Nishimura
for JMAC Energy Services LLC

Daniel G. Segal
for the Attorney General of Canada