In the Court of Appeal of Alberta

Citation: Conifer Energy Inc v Razor Energy Corp, 2025 ABCA 14

Date: 20250121
Docket: 2401-0040AC
Registry: Calgary

Between:

Conifer Energy Inc.

Appellant

- and -

Razor Energy Corp.

Respondent

The Court:

The Honourable Justice Frans Slatter
The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Bernette Ho

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice M.J. Lema
Dated the 21st day of February, 2024
(2024 ABKB 100; B301-037330; B301-037334;
B301-037338; B01-037340)

Memorandum of Judgment

The Court:

[1] Conifer Energy Inc. operates the Judy Creek Gas Conservation Plant. Conifer receives and processes a significant portion of Razor Energy Corp.'s gas production pursuant to an ownership and operating agreement with Razor. Conifer and Razor, with others, are owners of the gas plant.

[2] In December 2023, Conifer physically locked Razor out of the gas plant because Razor was in default of financial obligations under the ownership and operating agreement. Because of the way the gathering system was configured, Conifer was unable to lockout 100% of Razor's gas production and continued to process approximately one-third of Razor's volumes.

[3] In January 2024, Razor filed a Notice of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 which invoked the statutory stay outlined in section 69(1)(a) of the *BIA*.

[4] An order was pronounced on February 21, 2024 declaring that Conifer was in breach of the stay because Conifer continued to lockout Razor from the gas plant following Razor's filing of the Notice of Intention.

[5] Conifer appeals the February 2024 order arguing that the chambers judge erred in finding that the lockout was a "continuing remedy" or "other proceeding" for the purposes of section 69(1)(a) of the *BIA*, as opposed to a completed step. Conifer submits, among other things, that forcing it to reconnect Razor without directing payment up front was akin to forcing it to provide services on credit (prohibited by section 65.1(4)(b) of the *BIA*) and failed to have sufficient regard for the terms of the ownership and operating agreement.

[6] Shortly after the February 2024 order was pronounced, Razor converted its bankruptcy proceeding to one under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36. The *CCAA* proceeding led to a sale transaction that closed on December 11, 2024, with the result that Razor became wholly owned by a third party.

[7] On December 19, 2024, the panel asked Conifer to be prepared to discuss at the oral hearing whether this appeal has been rendered moot by the events subsequent to the February 2024 order recorded in *Razor Energy Corp (Re*), 2024 ABKB 553, and described above.

[8] In *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342, 1989 CanLII 123 (SCC) at 353, the Supreme Court established a two-part test with respect to mootness. First, the court determines whether the tangible and concrete dispute between the parties has disappeared and the

issues have become academic. Second, the court assesses whether the circumstances nonetheless warrant addressing the issues raised by the case.

[9] "In determining whether the parties still have a tangible and concrete dispute, the court should assess whether a live controversy exists, the resolution of which affects the rights of the parties": *CM v Alberta*, 2024 ABCA 136 at para 21. A live controversy may no longer exist when the question before the court has been eliminated due to subsequent events, when the decision would no longer have any practical effect on the parties' rights, or where the practical relief sought is no longer available because of changes in the factual or legal circumstances of the case: *CM* at para 22, citing *Prince Albert Right to Life Association v Prince Albert (City)*, 2020 SKCA 96 at para 54.

[10] We are satisfied that in this case a live controversy no longer exists because of subsequent events. Razor's bankruptcy and *CCAA* proceedings have now been completed and a sale transaction has closed such that Razor became wholly owned by a third party. Conifer acknowledges that the chambers judge's decision was never fully implemented and there is no prospect of the chambers judge's decision being implemented.

[11] Even if a matter no longer raises a live controversy, a court may exercise its discretion to hear it if the circumstances warrant addressing the issues raised. In deciding whether the circumstances warrant doing so, the court should consider: a) the presence of an adversarial context, b) the concern for judicial economy, and c) its proper law-making function: *CM* at para 34, citing, among other cases, *Borowski* at 358-363 and *BN v Alberta (Director of Child Welfare)*, 2004 ABCA 40 at para 13.

[12] Conifer urges the court to exercise our discretion to hear the appeal because the ownership and operating agreement is a standard form agreement and therefore there would be precedential value in addressing the chambers judge's decision. In addition, Conifer itself seeks clarity around its rights as operator of the gas plant. Finally, Conifer submits that the issues presented in this case are evasive of review because they arise in the context of what is often fast-paced bankruptcy and insolvency proceedings.

[13] The adversarial context (or lack thereof) weighs significantly against the exercise of discretion to decide the appeal. Razor, as named respondent, did not file submissions on appeal, nor did the trustee or monitor. Thus, the issues have not been "fully and vigorously argued" by both sides: *CM* at para 35, citing *BN* at para 14. Rather, Razor only attended the hearing to address the mootness question. In our view, Conifer's submissions regarding the possible precedential value associated with this case heightens the importance of considering the issues with the benefit of comprehensive written and oral submissions from different perspectives.

[14] We are not persuaded that the issues raised on appeal are evasive of review merely because they may arise in the context of future bankruptcy proceedings. Although such litigation may, at

times, be fast-paced, that does not necessarily mean that issues cannot be addressed in the future, with the benefit of a full record and argument.

[15] We conclude the appeal is moot and we decline to exercise our discretion to decide it. Accordingly, the appeal is dismissed.

Appeal heard on January 16, 2025

Memorandum filed at Calgary, Alberta
this 21st day of January, 2025

Slatter J.A.

Strekaf J.A.

Ho J.A.

Appearances:

K. Cameron
S. Aaron (no appearance)
for the Appellant

K.E. Barr
for the Respondent