

COURT FILE NO.	Q.B.G. No. 1705 of 2020
COURT	COURT OF QUEEN'S BENCH OF SASKATCHEWAN
JUDICIAL CENTRE	REGINA
APPLICANTS	R.M. OF EYE HILL NO. 382
RESPONDENTS	HER MAJESTY THE QUEEN, SASKATCHEWAN (as represented by THE MINISTER OF ENERGY AND RESOURCES), BDO CANADA LIMITED in its capacity as Receiver of BOW RIVER ENERGY LTD.
DOCUMENT	<u>BENCH BRIEF OF LIEN CLAIMANT BIDELL GAS COMPRESSION LTD. ('BIDELL')</u>
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McLEOD LAW LLP 300, 14505 Bannister Road S.E. Calgary, AB T2X 3J3 Telephone: (403) 254-3849 Facsimile: (403) 271-1769 Email: sking@mcleod-law.com Attention: Shane B. King File No.: 142003/SBK

INTRODUCTION

1. Bidell Gas Compression Ltd. ("Bidell") is a corporation incorporated pursuant to the laws of the Province of Alberta. Bidell carries on business providing energy equipment and solutions in and around the Provinces of Alberta, Saskatchewan and elsewhere.

THE INTEREST

2. Pursuant to Petroleum and Natural Gas Leases, Bow River Energy Ltd. ("Bow River") has interests in the Crown minerals located in the following lands, pursuant to the following agreements:

Agreement Type / Number	Land
GPN 14904	LSD 11, NW 31-53-25 W3
GPN 11383	LSD 1, SE 13-62-25 W3

(the "Lands" and the "Interests").

THE AGREEMENT AND THE SERVICES

3. Bidell and Bow River entered into an agreement (the "Agreement"), whereby Bidell rented equipment and performed certain field services and maintenance work for maintenance and repair of well site equipment in connection with the recovery of a mineral (the "Equipment" and the "Services").
4. From on or about November 28, 2019, to on or about May 13, 2020, Bidell provided the Equipment and the Services to Bow River in a good and workmanlike manner, according to industry standards, and pursuant to the terms of the Agreement.

THE INVOICES

5. It was a term of the Agreement that Bow River would pay for the Equipment and the Services. During the term of the Agreement, Bidell issued various invoices to Bow River. It was an explicit term, or in the alternative, implicit term, of the invoices that the invoices would be paid by Bow River within thirty (30) days of receipt, otherwise interest was to be incurred, charged and paid at 24% annually.

BOW RIVER FAILS TO PAY BIDELL'S INVOICES

6. Bidell has issued, and Bow River has refused or neglected to pay, Bidell's invoices for the Equipment and the Services in the total amount of \$40,684.79, as follows:

BOW RIVER ENERGY LTD Outstanding Invoices Summary

Invoice	Invoice Date	Due Date	Outstanding Amount	LSD	Last Date on Site	Type	Invoice Ref#	Driver/Engine	Site
061464	December 18, 2019	January 17, 2020	\$2,659.16	12-36-57-27 W3M	November 28, 2019	P&S	Change out engine thermostat	Waukesha 7042 GSI	North Bronson
			\$2,659.16	12-36-57-27 W3M Total					
062900	February 7, 2020	March 8, 2020	\$7,430.65	11-31-53-25 W3M	January 27, 2020	P&S	Service and tune-up	Waukesha 7042 GSI	Fort Pitt
063003	February 10, 2020	March 11, 2020	\$6,484.49	11-31-53-25 W3M	January 27, 2020	P&S	Service and tune-up	Waukesha L510 GL	Fort Pitt
061473	December 18, 2019	January 17, 2020	\$2,493.63	11-31-53-25 W3M	December 7, 2019	P&S	Diagnose and repair dead banl	Waukesha L510 GL	Fort Pitt
			\$16,408.77	11-31-53-25 W3M Total					
062824	February 5, 2020	March 6, 2020	\$1,392.80	09-34-66-26 W3M	January 29, 2020	P&S	Service	CAT 3304	Primrose
			\$1,392.80	09-34-66-26 W3M Total					
LS129212	January 10, 2020	February 9, 2020	\$249.44	06-35-54-26 W3M	January 10, 2020	P&S	Parts Only	n/a	Fort Pitt
			\$249.44	06-35-54-26 W3M Total					
062895	February 7, 2020	March 8, 2020	\$2,118.61	05-26-66-23 W3M	January 29, 2020	P&S	Service	CAT 3306 TA	Muskeg Lake
			\$2,118.61	05-26-66-23 W3M Total					
LS129225	January 30, 2020	February 29, 2020	\$689.10	01-13-62-25 W3M	January 30, 2020	P&S	Parts Only	n/a	
			\$689.10	01-13-62-25 W3M Total					
			\$ 23,517.88	Grand Total					

BOW RIVER ENERGY LTD Outstanding Invoices Summary

Invoice	Invoice Date	Due Date	Outstanding Amount	LSD	Last Date on Site	Type	Invoice Ref#	Driver/Engine	Site
065985	May 25, 2020	June 24, 2020	\$4,119.79	12-36-57-27 W3M	May 13, 2020	P&S	Change out main waterpump and lidler on L7042GSI booster unit #1	Waukesha L7042GSI	North Bronson
064720	April 14, 2020	May 14, 2020	\$3,403.51	12-36-57-27 W3M	March 31, 2020	P&S	Tune-up and Service. Service unit, oil change, V/S comp test, fan pitch to summer on L7042GSI	Waukesha L7042GSI	North Bronson
064721	April 14, 2020	May 14, 2020	\$3,587.64	12-36-57-27 W3M	March 31, 2020	P&S	Service unit, oil change, V/S comp test, fan pitch to summer on L7042GSI	Waukesha L7042GSI	North Bronson
			\$11,110.94	12-36-57-27 W3M Total					
064935	April 20, 2020	May 20, 2020	\$1,465.48	11-31-53-25 W3M	March 25, 2020	P&S	Repair for failed belt tensioner on L7042GSI	Waukesha L7042GSI	Fort Pitt
			\$1,465.48	11-31-53-25 W3M Total					
064376	March 31, 2020	April 30, 2020	\$4,590.49	01-13-62-25 W3	March 5, 2020	P&S	Diagnose and repair for noise in front end, possible fan tensioner bearing on sales unit L7042GL	Waukesha 7042GL	Colony A
			\$4,590.49	01-13-62-25 W3 Total					
			\$17,166.91	Grand Total					

("the Invoices").

7. Bidell last supplied the Equipment and performed the Services on behalf of Bow River on or about May 13, 2020.
8. The total amount owing to Bidell as at or about May 13, 2020, was \$40,684.79, plus interest since this date.

THE BUILDER'S LIENS

9. As at or about May 13, 2020, the amount of \$40,684.79, plus solicitor and client costs and interest was due and owing by Bow River to Bidell.
10. Pursuant to the *Builders' Lien Act*, c. B-7.1 ("BLA"), Bidell caused to be registered with the Minister of Energy and Resources at the Government of Saskatchewan, the following Claims of Lien, against the Interests in the Lands:

Registration Date	Registration No.	Lands	Sum claimed as due
March 27, 2020	265454	LSD 11, NW 31-53-25 W5	\$16,408.77
August 13, 2020	266257	LSD 1, SE 13-62-25 W5	\$15,701.43

(the "Liens").

[Tab 1: Claim of Lien No. 265454]
[Tab 2: Claim of Lien No. 266257]

11. By reason of the supply of the Equipment and the Services performed, the Lands have increased in value in an amount not less than the amount for which Bidell claims to be entitled to, pursuant to the Liens.

ARGUMENT

12. Sections 6 and 7 of the BLA states that all funds received by an owner, are held in trust for the benefit of the contractor. Thus, all funds received by Bow River, or the Receiver in its stead, are to be held in trust for Bidell.

[Tab 2: *Builder's Lien Act, C. B-7.1, s. 6 and 7*]

13. In the recent decision at the Alberta Court of Queen's Bench, *Manitok Energy Inc. (Re)*, 2021 ABQB 227, Romaine J. held that the Redwater decision did not affect the rights of lienholders, such that the lienholders were to receive payment for their lien amounts.

[Tab 4: *Manitok Energy Inc. (Re)*, 2021 ABQB 227 ("*Manitok*")]

14. Based upon the interaction of Sections 6 and 7 of the BLA and the *Manitok* decision, the amount of \$40,684.79 is rightly due and owing to Bidell, or, in the alternative, the amount of \$32,110.20, being the amount of the Liens.

ALL OF WHICH IS RESPECTFULLY SUBMITTED at the City of Calgary, in the Province of Alberta, this 10th day of March, 2022.

McLEOD LAW LLP



Shane B. King
Solicitors for the Lien Claimant,
Bidell Gas Compression Ltd.

LIST OF ATTACHMENTS AND AUTHORITIES

Tab 1: Claim of Lien No. 265454

Tab 2: Claim of Lien No. 266257

Tab 3: *Builder's Lien Act*, C. B-7.1, s. 6 and 7

Tab 4: *Manitok Energy Inc. (Re)*, 2021 ABQB 227

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registered & recorded at
Regina, Sask. on
the 27 day of March
2020 as Document No. 265454


Record Officer
Ministry of Energy and Resources

CLAIM OF LIEN

(The Builders' Lien Act - Section 50(3) - Form E)

PART A

NAME OF LIEN CLAIMANT: Bidell Gas Compression Ltd.

ADDRESS OF LIEN CLAIMANT: 6900 - 112 Avenue SE
Calgary, Alberta T2C 4Z1

ADDRESS FOR SERVICE OF LIEN CLAIMANT: c/o Kanuka Thuringer LLP
1400 - 2500 Victoria Avenue
Regina, Saskatchewan S4P 3X2

NAME OF OWNER: Bow River Energy Ltd. and Bonavista Energy Corporation

CLAIM OF LIEN IS MADE AGAINST THE ESTATE OR INTEREST OF:

Bow River Energy Ltd. and Bonavista Energy Corporation, and in all minerals severed from the ground and all fixtures, equipment and appurtenances to the wells on such lease as detailed below.

ADDRESS OF OWNER:

Bow River Energy Ltd.
500 - 321 - 6th Avenue SW
Calgary, Alberta T2P 3H3

and

Bonavista Energy Corporation
1500, 525 - 8th Avenue SW
Calgary, Alberta T2P 1G1

NAME OF PERSON FOR WHOM SERVICES OR MATERIALS WERE PROVIDED:

Bow River Energy Ltd.

ADDRESS OF PERSON FOR WHOM SERVICES OR MATERIALS WERE PROVIDED:

500 - 321 - 6th Avenue SW
Calgary, Alberta T2P 3H3

NAME OF ASSIGNOR: None

SHORT DESCRIPTION OF SERVICES OR MATERIALS THAT HAVE BEEN PROVIDED:

Services and materials for maintenance and repair of well site equipment in connection with the recovery of a mineral.

AMOUNT CLAIMED AS OWING IN RESPECT OF SERVICES OR MATERIALS THAT HAVE BEEN PROVIDED:

\$16,408.77

DESCRIPTION OF LAND (sufficient for purposes of registration or, where this claim of lien is to be given to the Crown, for purposes of identification):

Petroleum and Natural Gas Lease number GPN 14904
(LSD 11, NW 31-53-25 W3)

BIDELL GAS COMPRESSION LTD.


26 1 03 2020
day/month/year


Per: 

PART B

AFFIDAVIT OF VERIFICATION

I, Kevin Thompson, of Calgary, Alberta, being an agent of and for the lien claimant named in Part A hereof, hereby make oath and say that the facts set out in the Claim of Lien in Part A are true.

SWORN before me at the City)
of Calgary, in the Province of Alberta,)
this 26th day of March, 2020.)
)



Kevin Thompson

A COMMISSIONER FOR OATHS
for Alberta.
My Commission expires: N/A
or Being a Solicitor
Cameron M. Danyluk
Barrister and Solicitor

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Registered & Recorded at
Regina, Sask. on
the 13th day of August
2020 as Document No 266257


Records Officer

Ministry of Energy and Resources

CLAIM OF LIEN

(The Builders' Lien Act - Section 50(3) - Form E)

PART A

NAME OF LIEN CLAIMANT: Bidell Gas Compression Ltd.

ADDRESS OF LIEN CLAIMANT: 6900 – 112 Avenue SE
Calgary, Alberta T2P 4Z1

ADDRESS FOR SERVICE OF LIEN CLAIMANT: c/o Kanuka Thuringer LLP
1400 – 2500 Victoria Avenue
Regina, Saskatchewan S4P 3X2

NAME OF OWNER: Bow River Energy Ltd. and Bonavista Energy Corporation

CLAIM OF LIEN IS MADE AGAINST THE ESTATE OR INTEREST OF:

Bow River Energy Ltd. and Bonavista Energy Corporation, and in all minerals severed from the ground and all fixtures, equipment and appurtenances to the wells on such lease as detailed below.

ADDRESS OF OWNER:

Bow River Energy Ltd.
500 – 321 – 6th Avenue SW
Calgary, Alberta T2P 3H3

and

Bonavista Energy Corporation
1500, 525 – 8th Avenue SW
Calgary, Alberta T2P 1G1

NAME OF PERSON FOR WHOM SERVICES OR MATERIALS WERE PROVIDED:

Bow River Energy Ltd.

ADDRESS OF PERSON FOR WHOM SERVICES OR MATERIALS WERE PROVIDED:

500 – 321 – 6th Avenue SW
Calgary, Alberta T2P 3H3

NAME OF ASSIGNOR: None

SHORT DESCRIPTION OF SERVICES OR MATERIALS THAT HAVE BEEN PROVIDED:

Services and materials for maintenance and repair of well site equipment in connection with the recovery of a mineral.

AMOUNT CLAIMED AS OWING IN RESPECT OF SERVICES OR MATERIALS THAT HAVE BEEN PROVIDED:


\$15,701.43

DESCRIPTION OF LAND (sufficient for purposes of registration or, where this claim of lien is to be given to the Crown, for purposes of identification):

Petroleum and Natural Gas Lease number GPN 11383
(LSD 1, SE 13-62-25 W3)

BIDELL GAS COMPRESSION LTD.

06 10 2020
day/month/year

Per: 

PART B

AFFIDAVIT OF VERIFICATION

I, Kevin Thompson, of Calgary, Alberta, being an agent of and for the lien claimant named in Part A hereof, hereby make oath and say that the facts set out in the Claim of Lien in Part A are true.

SWORN before me at the City)
of Calgary, in the Province of Alberta,)
this 6 day of August, 2020.)
_____)



Kevin Thompson

A COMMISSIONER FOR OATHS
for Alberta.
My Commission expires: N/A
or Being a Solicitor

Cameron M. Danyluk
Barrister and Solicitor

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The Builders' Lien Act

being

Chapter B-7.1* of the *Statutes of Saskatchewan, 1984-85-86* (effective January 1, 1986) as amended by the *Statutes of Saskatchewan, 1986, c.8; 1988-89, c.54; 1989-90, c.29; 1993, c.C-26.1; 1996, c.E-9.3 and c.47; 1997, c.S-50.11; 2000, c.L-5.1; 2001, c.23; 2002, c.C-11.1, R-8.2 and S-35.02; 2004, c.C-11.2 and L-16.1; 2005, c.M-36.1 and S-35.03; 2006, c.C-1.1 and c.25; 2010, c.N-5.2; 2010, c.E-9.22; 2013, c.S-15.1 and c.32; 2014, c.1; 2015, c.21; 2016, c.27, 2017, c.P-30.3; 2018, c.42; and 2019, c.2.*

***NOTE:** Pursuant to subsection 33(1) of *The Interpretation Act, 1995*, the Consequential Amendment sections, schedules and/or tables within this Act have been removed. Upon coming into force, the consequential amendments contained in those sections became part of the enactment(s) that they amend, and have thereby been incorporated into the corresponding Acts. Please refer to the Separate Chapter to obtain consequential amendment details and specifics.

NOTE:

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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Editorial Appendix

CHAPTER B-7.1

An Act respecting Liens in the Construction Industry

PART I

Title and Interpretation

Short title

1 This Act may be cited as *The Builders' Lien Act*.

Interpretation

2(1) In this Act:

- (a) **“adjudication”** means construction dispute interim adjudication pursuant to Part II.1 with respect to a matter mentioned in section 21.21;
- (a.01) **“adjudicator”** means a person who is qualified by the Authority as an adjudicator and listed in the registry established pursuant to clause 21.12(1)(c);
- (a.02) **“architect”** means an architect registered pursuant to *The Architects Act, 1996* and includes a corporation licensed to practise architecture pursuant to the bylaws of The Saskatchewan Association of Architects;
- (a.03) **“Authority”** means the Adjudication Authority designated pursuant to section 21.12;
- (a.1) **“contract”** means the contract between the owner and contractor and includes any amendment to that contract;
- (b) **“contractor”** means a person contracting with or employed directly by the owner or his agent to provide services or materials to an improvement, but does not include a labourer;
- (c) **“court”** means the Court of Queen’s Bench;
- (d) **“Crown”** means:
 - (i) the Crown in right of Saskatchewan;
 - (ii) an agent of the Crown in right of Saskatchewan, including The Workers’ Compensation Board;
 - (iii) a board, local authority or municipal corporation that is created by or under:
 - (A) *The Cities Act*;
 - (A.1) *The Conservation and Development Act*;
 - (B) **Repealed.** 2019, c2, s.3.

- (C) *The Education Act, 1995*;
 - (C.01) **Repealed.** 2002, c.R-8.2, s.71.
 - (C.1) **Repealed.** 2002, c.R-8.2, s.115.
 - (D) *The Irrigation Act, 1996*;
 - (D.1) **Repealed.** 2002, c.R-8.2, s.71.
 - (E) *The City of Lloydminster Act*;
 - (F) *The Northern Municipalities Act, 2010*;
 - (F.1) section 85 of *The Public Health Act*;
 - (F.2) *The Provincial Health Authority Act*;
 - (G) *The Municipalities Act*;
 - (H) **Repealed.** 2001, c.23, s.7.
 - (H.1) *The Saskatchewan Water Corporation Act*;
 - (H.2) **Repealed.** 2019, c2, s.3.
 - (H.3) *The Water Security Agency Act*;
 - (I) **Repealed.** 2002, c.R-8.2, s.71.
 - (J) **Repealed.** 2002, c.R-8.2, s.71.
 - (K) **Repealed.** 2002, c.R-8.2, s.71.
 - (L) *The University of Regina Act*;
 - (M) *The University of Saskatchewan Act*;
 - (N) **Repealed.** 2005, c.M-36.1, s.417.
 - (N.1) **Repealed.** 2002, c.R-8.2, s.71.
 - (O) **Repealed.** 2002, c.S-35.02, s.97.
 - (P) **Repealed.** 2019, c2, s.3.
 - (Q) *The Watershed Associations Act*;
- (iv) the Saskatchewan Cancer Agency continued pursuant to *The Cancer Agency Act*;
- (d.1) **“engineer”** means a professional engineer, as defined in *The Engineering and Geoscience Professions Act*, and includes the holder of a certificate of authorization granted pursuant to section 22 of that Act;
- (e) **“estate or interest in land”** includes a statutory right given or reserved to the Crown to enter any lands or premises for the purpose of doing any work, construction, repair or maintenance in, on, through, over or under any such lands or premises;

- (f) “**general lien**” means a lien mentioned in section 29;
- (g) “**holdback**” means the amount required to be withheld from payment in section 34;
- (h) “**improvement**” means a thing constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled or intended to be constructed, erected, built, placed, altered, repaired, improved, added to, dug or drilled on or into, land, except a thing that is not affixed to the land or intended to become part of the land and includes:
- (i) landscaping, clearing, breaking, excavating, digging, drilling, tunnelling, filling, grading or ditching of, in, on or under land;
 - (ii) the demolition or removal of any building, structure or works or part thereof;
 - (iii) services provided by an architect, engineer or land surveyor;
- and “**improved**” has a corresponding meaning;
- (i) “**labourer**” means a person who is employed for wages to perform labour of any kind, whether employed under a contract of service or not;
- (i.1) “**land surveyor**” means a Saskatchewan land surveyor or professional surveyor who is licensed to practise in accordance with *The Land Surveyors and Professional Surveyors Act*;
- (j) “**materials**” means every kind of movable property that becomes or is intended to become, part of the improvement, or that is used to facilitate directly the making of the improvement;
- (j.1) “**minister**” means the member of the Executive Council to whom for the time being the administration of this Act is assigned;
- (j.2) “**ministry**” means the ministry over which the minister presides;
- (k) “**owner**” includes a person having an estate or interest in land, other than an encumbrance, at whose request, express or implied, and:
- (i) on whose credit;
 - (ii) on whose behalf;
 - (iii) with whose privity and consent; or
 - (iv) for whose direct benefit;
- an improvement is made to the land;
- (l) “**payer**” means the owner, contractor or subcontractor who is liable to pay for the services or materials provided to an improvement under a contract or subcontract;
- (m) “**payment certifier**” means an architect, engineer or any other person on whose certificate payments are made under a contract or subcontract;

- (n) **“prescribed”** means prescribed in the regulations;
- (o) **“registered”** means:
- (i) in the case of a claim of lien mentioned in section 50 and in the case of any other registrable interest, registered as an interest pursuant to *The Land Titles Act, 2000* or filed in the Abstract Directory pursuant to that Act where no title has been issued for the parcel of land affected;
 - (ii) in the case of a claim of lien mentioned in section 51, filed with the Records Officer, Ministry of Energy and Resources;
 - (iii) in the case of a claim of lien mentioned in section 52, given to the Crown;
- and **“registering”** and **“registration”** have corresponding meanings;
- (p) **“registrar”** means the Registrar of Titles as defined in *The Land Titles Act, 2000*;
- (q) **“services”** means any labour done or service performed on or in respect of an improvement and includes the rental of equipment and the wages of any operator provided with the equipment;
- (r) **“services or materials”** includes both services and materials;
- (s) **“subcontract”** means any agreement between the contractor and a subcontractor, or between two or more subcontractors, relating to the provision of services or materials and includes any amendment to that agreement;
- (t) **“subcontractor”** means a person, not contracting with or employed directly by an owner or his agent, but who provides services or materials to an improvement under an agreement with the contractor or under him with another subcontractor, but does not include a labourer;
- (u) **“wages”** means remuneration or compensation of any kind of a person employed as a labourer whether by time, or as piece work or otherwise and includes:
- (i) salary, pay or commission;
 - (ii) remuneration in respect of overtime;
 - (iii) statutory holiday pay;
 - (iv) money required to be paid to an employee under Part II of *The Saskatchewan Employment Act*; and
 - (v) all supplementary benefits whether provided for by statute, contract or collective bargaining agreement;
- (v) **“written notice of a lien”** means a written notice, which may be in the prescribed form, claiming a lien and which sets out:
- (i) the name and address of:
 - (A) the person claiming the lien;

BUILDERS' LIEN

C. B-7.1

- (B) the owner or the person who the claimant or the agent of the claimant believes to be the owner; and
 - (C) the person for whom the services or materials were provided;
 - (ii) a short description of the services or materials that were provided;
 - (iii) the amount claimed in respect of services or materials that have been provided;
 - (iv) a description, sufficient for identification of the land; and
 - (v) an address for service of the lien claimant.
- (2) For the purposes of this Act, materials are provided to an improvement when they are:
- (a) placed on the land on which the improvement is being made;
 - (b) placed on land designated by the owner or his agent that is in the immediate vicinity of the land, but placing materials on the land so designated does not, of itself, make that land subject to a lien; or
 - (c) in any event, incorporated into or used in making or facilitating directly the making of the improvement.
- (3) Where an owner, contractor or subcontractor to whom materials are provided, or his agent, signs an acknowledgement of receipt of the materials stating that the materials are received for inclusion in an improvement at a named address, the materials will prima facie be deemed to have been delivered to the land described by the address.

1984-85-86, c.B-7.1, s.2; 1989-90, c.29, s.3;
 1996, c.47, s.21; 1996, c.E-9.3, s.57; 2000,
 c.L-5.1 s.208; 2001, c.23, s.7; 2002, c.C-11.1,
 s.371; 2002, R-8.2, s.71; 2002, S-35.02, s.97;
 2004, c.C-11.2, s.14; 2005, c.S-35.03, s.104;
 2005, c.M-36.1, s.417; 2006, c.C-1.1, s.24; 2002,
 c.R-8.2, s.115; 2010, c.N-5.2, s.449; 2013, c.32,
 s.8; 2014, c.1, s.3; 2013, c.S-15.1, s.10-16; 2017,
 cP-30.3, s.11-1; 2018, c.42, s.65; 2019, c.2, s.3.

When contract or subcontract substantially performed

- 3(1)** For the purposes of this Act, a contract or subcontract is substantially performed:
- (a) when the improvement to be made under that contract or subcontract or a substantial part of the improvement is ready for use or is being used for the purposes intended; and
 - (b) when the improvement to be made under the contract or subcontract is capable of completion or, where there is a known defect, correction, at a cost of not more than the aggregate of:
 - (i) 3% of the first \$500,000 of the contract price or subcontract price;

PART II
Trust Provisions

Owner's trust

6(1) All amounts received by an owner, other than the Crown, that are to be used in the financing of an improvement, including the purchase price of the land and the payment of prior encumbrances, constitute, subject to the payment of the purchase price of the land and prior encumbrances, a trust fund for the benefit of the contractor.

(2) Where the owner provides his own capital or where the owner is the Crown, and where amounts become payable under a contract to a contractor, the moneys in the hands of the owner or received by him for payment under the contract at any time thereafter constitute a trust fund for the benefit of the contractor.

(3) Where the owner's interest in an improvement is sold by the owner, an amount equal to the positive difference between:

(a) the value of the consideration received by the owner as a result of the sale; and

(b) the reasonable expenses arising from the sale and the amount, if any, paid by the vendor to discharge any encumbrances which are entitled to priority under this Act;

constitutes a trust fund for the benefit of the contractor.

(4) The owner is the trustee of the trust fund created by subsections (1) to (3), and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until the contractor is paid all amounts related to the improvement owed to him by the owner.

1984-85-86, c.B-7.1, s.6.

Contractor's trust

7(1) All amounts:

(a) owing to a contractor, whether or not due or payable; or

(b) received by a contractor;

on account of the contract price of an improvement constitute a trust fund for the benefit of:

(c) subcontractors who have subcontracted with the contractor and other persons who have provided materials or services to the contractor for the purpose of performing a contract; and

(d) labourers who have been employed by the contractor for the purpose of performing the contract.

(2) The contractor is the trustee of the trust fund created by subsection (1) and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until all persons for whose benefit the trust is constituted are paid all amounts related to the improvement owed to them by the contractor.

1984-85-86, c.B-7.1, s.7.

Subcontractor's trust

8(1) All amounts:

- (a) owing to a subcontractor, whether or not due or payable; or
- (b) received by a subcontractor;

on account of the subcontract price of an improvement constitute a trust fund for the benefit of:

- (c) subcontractors who have subcontracted with the subcontractor and other persons who have provided materials or services to the subcontractor for the purpose of performing the subcontract; and
- (d) labourers who have been employed by the subcontractor for the purpose of performing the subcontract.

(2) The subcontractor is trustee of the trust fund created by subsection (1) and he shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until all persons for whose benefit the trust is constituted are paid all amounts related to the improvement owed to them by that subcontractor.

1984-85-86, c.B-7.1, s.8.

Trust for insurance proceeds

9 Where an improvement is wholly or partly destroyed or damaged, any amount received or receivable by reason of insurance on the property by a trustee mentioned in section 6, 7 or 8, or a prior mortgagee:

- (a) takes the place of the improvement so destroyed or damaged to the extent of the value of the improvement as part of the contract price; and
- (b) constitutes, after satisfying the claim of any mortgagee which is otherwise entitled to priority, a trust fund for the benefit of the beneficiaries mentioned in sections 6, 7 or 8, as the case may be;

and the trustee shall not appropriate or convert any part of the trust fund to his own use or to any use inconsistent with the trust until the beneficiaries for whose benefit the trust is created are paid all amounts related to the improvement owed to them by the trustee.

1984-85-86, c.B-7.1, s.9.

4



Manitok Energy Inc (Re), 2021 ABQB 227 (CanLII)

Date: 2021-03-24
 File number: B201 332583, B201 332610, B201 335351
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Court of Queen's Bench of Alberta

Citation: Manitok Energy Inc (Re), 2021 ABQB 227

Date: 20210324
Docket: B201 332583, B201 332610, B201 335351
Registry: Calgary

In the Matter of the Notice of Intention to Make a Proposal of Manitok Energy Inc.

In the Matter of the Notice of Intention to Make a Proposal of Raimount Energy Corp.

In the Matter of the Notice of Intention to Make a Proposal of Corinthian Oil Corp.

Between:

Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver and manager of Manitok Energy Inc.

Applicant

- and -

Prentice Creek Contracting Ltd. and Riverside Fuels Ltd.

Respondents

**Reasons for Decision
 of the
 Honourable Madam Justice B.E. Romaine**

I. Introduction

[1] The sole issue in this application is whether end-of-life obligations associated with the abandonment and reclamation of unsold oil and gas properties must be satisfied by the Receiver from Manitok's estate in preference to satisfying what may otherwise be first-ranking builders' lien claims based on services provided by the lien claimants before the receivership date.

[2] In the specific circumstances of these proceedings, the respondent lien claimants, if their lien claims are valid, have priority to funds held in trust arising from the sale of certain property by the Receiver.

II. Facts

[3] On February 20, 2018, Alvarez & Marsal Canada Inc. was appointed receiver and manager (the "Receiver") of all of the assets and properties, including all proceeds of sale thereof, of Manito Energy Inc. and its wholly owned subsidiary Raimount Energy Corp. pursuant to [section 243\(1\)](#) of the *Bankruptcy and Insolvency Act, RSC 1985, c B-3*, as amended and [section 13\(2\)](#) of the *Judicature Act, RSA 2000, c J-2*.

[4] Concurrently, Manito, Raimount and another subsidiary, Corinthian Oil Corp., were deemed bankrupt and Alvarez & Marsal became the trustee in bankruptcy of each of them.

[5] At the time of its insolvency, Manito was an Alberta Energy Regulator licensee of 907 wells and 137 facilities and pipelines with an associated deemed liability for end-of-life obligations of \$72.2 million.

[6] Subsequently, the Receiver entered into a purchase and sale agreement with Persist Oil & Gas Inc. for certain property of the debtors. The sale approval and vesting order, filed on January 18, 2019, discharged certain lien registrations, including those of the applicants Prentice Creek Contracting Ltd. and Riverside Fuels Ltd., and required the Receiver to establish separate holdbacks for Prentice and Riverside in the total amount of \$581,778.48 to stand in the place and stead of their lien registrations pending further order of the Court. The lien claims arise from services provided prior to the receivership.

[7] The sale to Persist had not closed when the Supreme Court decision in *Orphan Well Association v Grant Thornton Ltd.*, [2019 SCC 5](#) ("*Redwater*") was released on January 31, 2019.

[8] The sale of Persist closed on April 15, 2019. Under the purchase and sale agreement, Persist assumed all environmental liabilities with respect to the assets that are the subject of the discharged liens.

[9] The purchase and sale agreement includes the following terms:

11. For the purposes of determining the nature and priority of Claims, and pending any further or other distribution Order of this Court.

(a) The net proceeds from the sale of the Purchased Assets (to be held in an interest bearing trust account by the Receiver) shall stand in the place and stead of the Purchased Assets, and from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale...(emphasis added)

12 ... the amount to be [held in trust by the Receiver] shall include at least the following with respect to the following contingent or disputed claims:

(a) \$119,093.08 in relation to builders' lien claims filed by [Riverside] in relation to certain Purchased Assets;

(b) \$462,685.40 in relation to builders' lien claims filed by [Prentice] in relation to certain Purchased Assets; ...

[10] Although the agreement and the order have been amended, the parties are in agreement that the amendments do not impact the provisions relating to the lien holdbacks.

[11] In accordance with a Partial Discharge Order filed July 9, 2019, the Receiver renounced and disclaimed and was discharged over the majority of the remaining unsold oil and gas assets in the Manito estate. Despite the Receiver's further efforts in collaboration with the AER, many of the retained assets had proved to be unsaleable.

[12] The AER issued abandonment and reclamation orders to Manito on August 1, August 12, August 21 and August 30, 2019, including to its remaining working interest participants. Where there were no remaining responsible parties, the AER designated the sites as "orphan" to enable the abandonment and reclamation work to be conducted by the Orphan Well Association. It is anticipated that end-of-life obligations are in the neighbourhood of \$44.5 million, substantially more than the proceeds of sale of the debtors' estates.

[13] According to the lienholders, the AER orders do not relate to any of the assets sold to Persist.

[14] The Receiver anticipates renouncing and disclaiming the remaining unsold assets. Total realizations from the receivership will be substantially less than the cost of satisfying the end-of-life obligations associated with the discharged assets.

[15] Although the parties have agreed to proceed with this application on the basis that the lien claims are valid, the Receiver has concerns about such validity, and reserved the right to dispute that issue if the lien claimants

are found to have priority over end-of-life obligations.

[16] The most significant stakeholders in the receivership are the National Bank of Canada and the Alberta Energy Regulator. The NBC continues to hold a first charge over all of the undistributed assets of the debtors and the proceeds therefrom. As a result of the *Redwater* decision, the AER is a significant stakeholder in the receivership even though it is not a "creditor" *per se* (*Redwater* at para 122).

III. Analysis

A. Prentice Creek Contracting Ltd.

[17] Prentice Creek submits that it was not the intention of the decision in *Redwater* to extend the enforcement of end-of-life obligations against specific assets improved by a lienholder that are unrelated to the environmental condition or damaged properties of Manitek. Prentice Creek notes that its liens were registered against property that was sold to Persist, which has assumed all of the end-of-life obligations of that property.

[18] The work performed by Prentice Creek related to the reclamation and clean-up of specific oil and gas sites.

[19] The Receiver submits that, in accordance with *Redwater*, end-of-life obligations must be satisfied in preference to any builders' liens that may otherwise be first ranking.

B. Riverside Fuels Ltd.

[20] Riverside submits that the holdback funds should be used to satisfy the debt owing to Riverside on the basis of equity and unjust enrichment. It notes that the materials furnished and services provided enhanced the particular assets, and that the liened assets are unrelated to the environmental claims and end-of-life obligations for the remaining assets.

[21] Riverside's liens relate to the provision of fuels and lubricants on a periodic basis for use at specific production and operation sites. While Riverside continued to provide services after the commencement of the receivership, its lien claims relate to services provided before that time.

[22] The Receiver responds with the same submission as it made with respect to Prentice Creek: end-of-life obligations must be satisfied in preference to builders' liens that may otherwise be first ranking.

C. The Effect of the Redwater Decision on the Claims

[23] In order to determine whether the *Redwater* decision is dispositive of this application, it is necessary to analyze the decision.

[24] Counsel for the Receiver has provided a useful summary of the *Redwater* decision as follows:

- Trustees in bankruptcy are bound by and must act in compliance with valid provincial laws, provided the obligations thereunder do not constitute provable claims and no conflict engages the paramountcy doctrine.
- Regulatory laws governing abandonment and reclamation are valid provincial laws of general application. They do not conflict with the BIA or frustrate the purpose of the BIA, even though estate assets may have to be expended to comply with provincial regulatory laws.
- Abandonment and reclamation obligations are not provable claims because a regulator is not a creditor when enforcing a public duty. Further, any right of reimbursement in the circumstances of the case was too speculative to be accepted as a provable claim by the AER.
- In the result, the *Redwater* estate must comply with ongoing environmental obligations that are not claims provable in bankruptcy (para 162).

[25] However, as submitted by the lien claimants, the facts and certain comments of the Court in *Redwater* are relevant to add context to the findings of the Court.

[26] *Redwater* was the AER licensee of about 84 oil and gas wells, seven facilities, and 36 pipelines. Of these, only 19 wells were producing: the remainder were inactive. Most of these were spent and burdened with abandonment and reclamation liabilities that exceeded their value (*Redwater*, para 48).

[27] *Redwater* was placed into receivership on May 12, 2015. Within two days, the AER advised the Receiver that it must fund its abandonment obligations before it distributed any funds or finalized a proposal to creditors. The AER warned that it would not approve a transfer unless both transferee and transferor would be in a position to fulfil all regulatory obligations (para 47).

[28] In response, the Receiver advised that it was only taking possession and control of the productive wells and, in its view, it had no obligation with respect to renounced assets (para 50). Almost immediately, the AER

issued orders requiring Redwater to suspend and abandon the renounced assets, such work to be carried out within a short period of time (para 51).

[29] Soon after that, the AER and the OWA applied for an order declaring that the Receiver's renunciation of assets was void, requiring the Receiver to comply with the abandonment orders and requiring it to fulfill its statutory obligations as licensee in relation to the abandonment, reclamation and remediation of all of Redwater's licensed properties. The AER did not seek to hold the Receiver liable for these obligations beyond the assets in the Redwater estate.

[30] The Receiver cross-applied, seeking approval to pursue a sales process excluding the renounced assets and an order directing that the AER could not prevent the transfer of the licenses of the retained assets on the basis of, among other things, a failure to comply with the abandonment orders, refusal to take possession of the renounced assets or Redwater's outstanding debts to the regulator (para 52).

[31] The chambers judge approved the sale procedure. It appears that at the time of the hearing before the Supreme Court, Redwater's assets had been sold and the sale proceeds were being held in trust (para. 108).

[32] Chief Justice Wagner made certain comments in the majority decision that are relevant to this application.

[33] At para 75, on the issue of paramountcy, he noted that the result of a trustee's "disclaimer" of real property, "where an environmental order has been made in relation to that property, is that the trustee is protected from personal liability, while the ongoing liability of the bankrupt estate is unaffected."

[34] In interpreting section 14.06(4) of the *BIA*, the Chief Justice stated that "[u]nder s. 14.06(4)(a)(ii), a trustee is not personally liable for an environmental order where the trustee abandons, disposes of or otherwise releases any interest in any real property", thus making it clear that s.14.06(4)'s scope in limiting the personal liability of a trustee is not narrowed to disclaimer in the formal sense (para 87).

[35] He notes further that "the provision is clear that, where an environmental order has been made, the result of an act of 'disclaimer' is the cessation of personal liability" (para 86).

[36] In para 96, the Court noted that, prior to 1997, "it was unclear what effect 'disclaimers' might have on the liability of the bankrupt estate, given that environmental legislation imposed liability based on the achievement of the status of owner, party in control or licensee" (emphasis added) (see also para 97).

[37] Thus, the Court concluded, disclaimer by a trustee "has no effect on the bankrupt estate's continuing liability for orders to remedy any environmental condition or damage" (para 98). "[The trustee] continues to have the responsibilities and duties of a 'licensee' to the extent that assets remain in the Redwater estate" (para 114).

[38] In the majority's conclusion on whether end-of-life obligations are claims provable in bankruptcy, Wagner, CJ found that such obligations are not claims, and therefore do not conflict with the general priority scheme in the *BIA*. In support of this conclusion, he notes at para 159:

In crafting the priority scheme set out in the *BIA*, Parliament intended to permit regulators to place a first charge on real property of a bankrupt affected by an environmental condition or damage in order to fund remediation (see s. 14.06(7)). Thus, the *BIA* explicitly contemplates that environmental regulators will extract value from the bankrupt's real property if that property is affected by an environmental condition or damage. Although the nature of property ownership in the Alberta oil and gas industry meant that s.14.06(7) was unavailable to the Regulator, the Abandonment Order and the LMR replicate s.14.06(7)'s effect in this case. Furthermore, it is important to note that Redwater's only substantial assets were affected by an environmental condition or damage. Accordingly, the Abandonment Orders and LMR requirements did not seek to force Redwater to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage. In other words, recognizing that the Abandonment Orders and LMR requirements are not provable claims in this case does not interfere with the aims of the *BIA* - rather, it facilitates them. (emphasis added)

[39] It is here that the distinction between the facts of Redwater and the facts in this case becomes apparent. In this case, the AER is seeking to require Manito Energy to fulfill end-of-life obligations with assets unrelated to the environmental condition or damage represented by the abandonment orders it has issued, assets over which Manito Energy no longer has ownership or control. This change in ownership occurred prior to any action by the AER, so that the orders a) do not apply to property over which the respondents claim a lien, and b) do not apply to contiguously owned property at the time.

[40] The Supreme Court in paragraph 159 finds support for the conclusion that requiring Redwater to pay for abandonment before distributing value to creditors does not disrupt the priority scheme of the *BIA* by referring to section 14.06(7), which allows a regulator to place a charge on the real property of the debtor that is contaminated or affected by an environmental condition, but only on that property or contiguous property.

[41] The Court notes that abandonment orders "replicate s.14.06(7)'s effect". Clearly, the decision of the Court in *Redwater* expands the limited scope of section 14.06(7), but it does not appear to expand it to cover trust funds relating to the proceeds of sale of property to which the debtors no longer have the status of "owner, party in control, or licensee" at the time the orders were issued.

[42] Thus, the findings in *Redwater* do not extend to a situation, such as in this case, where property unrelated to property that is affected by an environmental condition is sold to a new licensee before any abandonment or reclamation orders are made, and where the new licensee assumes the inherent end-of-life obligations for that property. In this case, the AER is not at risk for any current costs of reclamation of the transferred property.

[43] The lien claimants were protected by the purchase agreement terms that were approved by court order. As the funds have been held in trust in accordance with the order and the purchase and sale agreement pending resolution of the claims, they are not property of the estate, and would not become part of the estate unless the claims are denied. As the Court in *Redwater* comments at para 114, a trustee, or Receiver/trustee in this case, has the responsibilities and duties of a licensee "to the extent that assets remain in the ... estate".

[44] Therefore, the decision in *Redwater* does not provide priority to the trust funds to the AER in these circumstances. Assuming that the liens are valid, and that they only refer to the Persist lands, there is no reason to deny the lien holders' claims to the proceeds in trust.

[45] It is not necessary to consider the claims of other creditors, as this application involves only the amounts held in trust.

D. Other Submissions

1. Unjust Enrichment

[46] Both Prentice Creek and Riverside submit that the release of the trust funds to satisfy end-of-life obligations of Manito Energy would be an unjust enrichment of the AER. However, whether or not the enrichment and corresponding deprivation requirements for a finding of unjust enrichment could be satisfied in this case, there would have been a juristic reason for the enrichment if I am incorrect in finding that the decision in *Redwater* does not extend to the facts in this case, arising from the statutory obligation. Therefore, if I am incorrect in my interpretation of *Redwater*, I would not find a constructive trust arising from unjust enrichment to be an appropriate remedy.

2. Equity and Fairness

[47] Riverside submits that this Court could find for the lien claimants on the basis of equity and fairness. Neither the *Judicature Act* nor the *BIA* give the Court carte blanche to do what is fair despite binding authority. In any event, the same argument could be made on behalf of any creditor of the debtors that supplied goods or services, particularly secured creditors, who prior to the decision in *Redwater* had reason to think that they had done all that was necessary or possible to ensure the priority of their claims.

3. Status of Lien Claimants

[48] Riverside also submits that lien claimants are not creditors; that they have a proprietary claim that is not subject to the *BIA* priority scheme. This is incorrect. The essence of the lien provisions is that they create a lien over the property that was improved or remediated, and if the property is sold, the lien goes with the property, or, in this case the proceeds of sale held in trust. It is a security interest subject to the priority scheme of the *BIA* in the same way as other provable claims: *BIA* section 2, definition of "secured creditor".

IV. Conclusion

[49] In the specific circumstances of this case, I find that the *Redwater* decision does not affect the rights of Prentice Creek and Riverside to the trust funds arising from the Persist purchase of Manito Energy's property.

[50] If the parties are unable to agree on costs, they may make written submissions on that issue.

Dated at Calgary, Alberta this 24th day of March, 2021.

B.E. Romaine
J.C.Q.B.A.

Appearances:

Howard A. Gorman, QC, D. Aaron Stephenson and Meghan Parker
for the Receiver/ Trustee

Glyn L. Walters
for Prentice Creek Contracting Ltd.

Garrett S.E. Hamilton
for Riverside Fuels Ltd.

Maria Lavelle
for the Alberta Energy Regulator