

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

QBG No. 1705 of 2020 – J.C.R.

R.M of Eye Hill No. 382 v Her Majesty the Queen, Saskatchewan (as represented by the Minister of Energy and Resources

Russel Q Gregory, for the applicants

K. James Rose, for the respondent, Saskatchewan, The Minister of Energy and Resources

Keely Cameron, for the respondent, BDO Canada Limited, in its capacity as Receiver of Bow River Energy Ltd.

FIAT – July 5, 2021 – McCREARY J.

[1] The applicant, R.M. of Eye Hill No. 382 [Eye Hill], supported by R.M. Senlac No. 411, R.M. Grasslake No. 381, and R.M. Frenchman Butte No. 501, disputes the respondent Minister of Energy and Resources' (MER) priority claim to residual proceeds arising from the application of the respondent, BDO Canada Limited, in its capacity as Receiver in respect of Bow River Energy Ltd. [Bow River].

[2] The Receiver advised that, as at December 31, 2020, affected municipalities in Saskatchewan are collectively owed \$2,230,449.22 by Bow River. The Receiver takes the position that an insolvent oil and gas company such as Bow River remains liable to satisfy environmental obligations and that the proceeds from the sale of Bow River's assets must first be used to address those obligations. Accordingly, the Receiver has indicated that MER's claim of \$20,286,375 ranks in priority to the claims of all creditors, including all affected municipalities in Saskatchewan (which includes the applicant and the municipalities supporting this application).

[3] On March 29, 2021, I issued a distribution and discharge order which, among other things, approved the actions of the Receiver in respect of Bow River. However, I allowed any interested party to make an application to the court for adjudication of the issue of the priority distribution of residual proceeds (as defined at paragraph 40 of the First Report of BDO Canada Limited in its Capacity as Receiver and Manager of Bow River Energy Ltd.). The deadline for such applications was April 28, 2021.

[4] On April 27, 2021, Eye Hill filed an application seeking a declaration that Saskatchewan municipal taxes owed by Bow River are payable in priority over any claim by MER. As a preliminary matter, Eye Hill also

sought leave to cross-examine the MER's affiant on her March 19, 2021 affidavit, and sought an order directing MER, as well as the Receiver, to provide certain accounting information. The applicant contends that the information discoverable through the cross-examination and the accounting is necessary to resolve the dispute with respect to MER's priority claim.

[5] I agree with Eye Hill. This is the first time the Supreme Court of Canada's decision in *Orphan Well Association v Grant Thornton Ltd.*, 2019 SCC 5 [*Redwater*] will be considered in Saskatchewan in relation to *The Oil and Gas Conservation Regulations 2012*, RRS c O-2 Reg 6 [*Oil and Gas Regs*]. The designation of Bow River's property as an abandoned "orphan well" is a matter falling within the discretion of the MER: *Oil and Gas Regs*, s. 44. As it is apparent that Eye Hill is challenging that exercise of discretion, some of the information requested by Eye Hill is relevant and necessary for its application, and particularly is relevant to the following issues:

- (a) whether the Receiver is correct in its position that MER's "orphan well" claim ranks in priority to the claims of the applicant and other affected municipalities in Saskatchewan;
- (b) whether the MER has appropriately exercised its discretion in accordance with ss. 44 and 115-117 of the *Oil and Gas Regs*;
- (c) whether the MER acted in a manner which has unlawfully deprived the applicant, together with the other affected municipalities in Saskatchewan, of property taxes owing by Bow River.

[6] Finally, I note that while MER takes issue with whether R.M. Senlac No. 411, R.M. Grasslake No. 381, and R.M. Frenchman Butte No. 501 have standing in this application, the issue need not be decided at this time. For the purpose of the current proceedings, it is sufficient for Eye Hill to be the applicant on the style of cause, and I accept that Eye Hill is supported by R.M. Senlac No. 411, R.M. Grasslake No. 381, and R.M. Frenchman Butte No. 501. Ultimately, a decision respecting whether MER's claim has priority will be relevant for all affected municipalities.

[7] I therefore make the following order:

- (a) pursuant to Rule 6-13 of *The Queen's Bench Rules*, Candy Dominique, affiant for the MER, shall submit to cross examination by Eye Hill on her Affidavit, sworn March 19, 2021;
- (b) the MER and/or Ms. Dominique shall provide to Eye Hill relevant accounting data that MER relied upon in making its determination that Bow River was an "orphan well" pursuant to the *Oil and Gas Regs*; and;
- (c) the Receiver shall provide to Eye Hill, as at October 20, 2020, a full accounting of the production income and liabilities paid from October 20, 2020 to the conclusion of the sales contemplated in the Orders of March 29, 2021 ("Receivership Period").

[8] Costs shall be in the cause.

[9] Once this disclosure is complete and the parties are ready to proceed, they should apply to the local registrar for a hearing date to determine the substantive issue, if necessary.



M.R. McCREARY J.