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## Summary Judgment on Contested Amounts Owing under Natural Gas Processing and Related Agreements

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Case Commented On: *SemCAMS ULC v Blaze Energy Ltd*, [2015 ABQB 218](#)

This is an important judgment on the interplay between the rules for the interpretation of contracts and the post *Hryniak* law on summary judgment: see *Hryniak v Mauldin*, [2014 SCC 7](#). The short version of the holding is that a producer cannot avoid summary judgment for outstanding amounts owing under a natural gas processing or related agreement on the basis that the producer has called for an audit of the operator's accounts or otherwise disputes the amounts owing – at least where the agreements in question clearly oblige producers to settle invoices promptly, notwithstanding the existence of a dispute as to whether the invoices properly reflect the amounts owing.

Blaze was the successor in interest to a number of agreements pursuant to which SemCAMS provided gas transportation, gas processing and contract operating services. These agreements all provided, as one might expect, that producers such as Blaze would promptly settle their accounts once properly invoiced. Given the challenges involved in both assessing actual costs and allocating those costs to particular gas streams, the agreements in question provided both a means for truing up accounts (13<sup>th</sup> month adjustment) and a means for allowing producers to question the accounts by way of audit.

The action related to invoices served by SemCAMS between July 2012 and April 2013 for a total of \$6.9 million; remarkably (at para 11) “Blaze has made no payments whatsoever to SemCAMS, despite the fact that SemCAMS has been processing its gas since June 2012.” Blaze had filed a counterclaim, alleging, *inter alia*, wrongful shutting in of its wells.

Some, but importantly not all, of the agreements expressly stated (at para 13) that the “Producer shall not be allowed to withhold payment of any portion of the bill presented by the Operator, due to a protest or question relating to such bill”; and others provided that the Operator can maintain an action for unpaid amounts “as if the obligation to pay such amount and the interest thereon were liquidated demands due and payable on the relevant date such amounts were due to be paid, without any right or resort of such Producer to set-off or counterclaim”.

The evidence before the Court on this application for summary judgment consisted of affidavits by an official of each company and the transcripts from the questioning on those affidavits. Justice Jo'Anne Streckaf summarized (at para 24) the tests for summary judgment drawing on the

Court of Appeal's decision in *Windsor v Canadian Pacific Railway Ltd*, [2014 ABCA 108](#) as follows:

Summary judgment is now an appropriate procedure where there is no genuine issue requiring a trial:

There will be no genuine issue requiring a trial when the judge is able to reach a fair and just determination on the merits on a motion for summary judgment. This will be the case when the process (1) allows the judge to make the necessary findings of fact, (2) allows the judge to apply the law to the facts, and (3) is a proportionate, more expeditious and less expensive means to achieve a just result.

The modern test for summary judgment is therefore to examine the record to see if a disposition that is fair and just to both parties can be made on the existing record.

On this record, SemCAMS sought judgment for the full invoiced amount (subject to one adjustment) on the basis that the contracts contemplated immediate recovery notwithstanding the potential for subsequent adjustments (at para 38). Blaze on the other hand argued that SemCAMS' interpretation of the contracts led to an absurdity since it "suggests that Blaze would be obligated to pay whatever SemCAMS invoiced and that underpinning the obligation to make a payment under the Agreements is the requirement that the invoices reasonably reflect the goods or services that were provided" (at para 40).

Justice Strekaf rejected Blaze's absurdity argument. She concluded (at para 48) that:

It can be inferred that the Operator needs to be able to rely on a reliable cash flow. If there was a dispute between the Operator and a Producer as to the amounts owing, the parties could have decided to allocate the risk so that either the disputed amount could be withheld by the Producer pending resolution of that dispute, or that it would be paid and subsequently adjusted following resolution of that dispute. The language used in this case suggests that they chose the latter approach. This arrangement is not an unreasonable allocation of risk.

In doing so Justice Strekaf immediately acknowledged (at para 49) that this was perhaps an unusual situation:

Typically in order for a party who provides services under an agreement to collect on an unpaid account that they must satisfy the Court that the amounts are ultimately owing under the agreement, not that they have simply been billed. It is unusual that a party would be able to obtain summary judgment on the basis of amounts billed, subject to subsequent adjustment following an audit. However, in this case the language used by the parties in the Agreements in the context of an Operator providing gas processing and transportation services to numerous parties supports that interpretation as reflecting the true intention of the parties.

Justice Strekaf's judgment clearly turns on the language of the particular contracts; but, given that similar language will be used in the many different types of agreements adopted by the oil and gas industry in western Canada, the implications of this judgment are potentially very far reaching. To the extent that the judgment will make it difficult for a producer to postpone or dodge its obligations to pay, even any amount owing, simply by triggering the audit provisions of the relevant agreements, I suspect that the judgment will be broadly welcomed; and if upheld on appeal it certainly provides useful guidance as to the type of contractual language that operators need to insist upon as part of obtaining effective remedies to secure necessary cash flow in return for services provided.

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