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IN THE COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL DISTRICT OF CALGARY

BETWEEN:

ADECO EXPLORATION COMPANY LTD., SHAMAN ENERGY
CORPORATION and RANA RESOURCES LTD.

Plaintiffs

- and -

HUNT OIL COMPANY OF CANADA, INC.

Defendant

- and -

ADECO EXPLORATION COMPANY LTD. and
SHAMAN ENERGY CORPORATION

Third Parties

REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE MILLER

THE COURT: In this matter I indicated
that I would give judgment today, and I thank you
for attending. I will just give my reasons from the
bench and there will be no written reasons.

In the 1990's the parties to this lawsuit

1 became involved in joint activities relating to the
2 exploration and drilling for oil in Central Alberta.
3 This case involves a claim brought by the plaintiffs
4 concerning some operations and development of the
5 Rosevear Bluesky 8 Oil Pool located in Townships 54
6 and 55, Range 16, West of the 5th.

7 The defendant, Hunt Oil Company of Canada,
8 Inc., through its predecessor Newport Petroleum
9 Corp., and two of the plaintiffs, Adeco Exploration
10 Company Limited and Shaman Energy Corporation,
11 entered into an operating agreement on March 17,
12 1994, which is Exhibit 4, for the purposes of
13 exploring, operating and developing certain oil
14 reserves in Alberta. At the relevant time periods,
15 the participating interests of the parties were as
16 follows: Hunt, or its predecessor Newport, had 75
17 per cent interest; Adeco, 16.6675 per cent; and
18 Shaman, 8.3325 per cent.

19 In this operating agreement, Hunt was appointed
20 the operator under the operating procedure. In
21 February of 1997, by way of an inclusion agreement,
22 which is Exhibit 7, two new leases were brought
23 under the control of the original operating
24 agreement, namely PNG Lease No. 0596050099 and PNG
25 0596050107. They will be referred to as Lease 99
26 and 107 hereinafter.

27 Both leases were for a term of five years

1 commencing on May 2, 1996. The PMG Lease 99 covered
2 the north half of Section 33 and has been referred
3 to as the Section 33 Lease, and 107 covered Section
4 4, or the Section 4 Lease.

5 These lands or leases came to the attention of
6 Hunt, or its predecessor, and Adeco and Shaman
7 through the efforts of Rana Resources Ltd. These
8 lands were included in a royalty agreement entered
9 into by all four parties on July 21, 1998, which is
10 Exhibit 8, and was made effective for several years
11 previous. The royalty agreement provided for an
12 overriding royalty of 3 per cent on all crude oil,
13 natural gas and petroleum produced from the leases
14 and lands. The lease and lands were located on what
15 is known as the Rosevear Bluesky A Oil Pool.

16 Lease 099 and Lease 107, as I said, were
17 entered into on May 2, 1996, and in May 2001, their
18 five-year term was up for renewal. On April 3,
19 2001, Chantelle Duval, on behalf of Hunt, sent
20 letters to both Adeco and Shaman recommending on
21 behalf of Hunt that the leases be continued and
22 asked for their concurrence. On April 5th, Adeco
23 responded with their concurrence to Hunt's
24 recommendation, and on April 9, 2001, Shaman
25 responded with their concurrence to Hunt's
26 recommendation. On May 2, 2001, the date the leases
27 were to expire, Ms. Duval submitted the application

1 on behalf of Hunt to Alberta Resource Development
2 for a continuation of those leases.

3 It is important to note that in the
4 continuation application form which was before me as
5 Exhibit 15, Hunt represented that it was the
6 designated representative and that they were
7 applying for continuance of the entire agreement.
8 Included with the continuance application were well
9 logs and recent production data for the leases.

10 The application was clearly received by the
11 Department of Resource Development in the afternoon
12 of May 2, 2001. Nothing was heard from the
13 Government until a letter dated August 3, 2001 in
14 relation to each lease was apparently received by
15 Hunt on August 22, 2001, and that is evidenced as
16 Exhibits 17 and 18. In these letters the Crown
17 stated that they would grant a continuation of only
18 part of the leased property, but not all of it.
19 Regarding PNG 099, the northwest quarter of Section
20 33-54-16-W5, and regarding Lease 107, the northeast
21 quarter of 4-55-16-W5, would not be continued unless
22 within one month of the August 3, 2001 date Hunt
23 provided "additional evidence of productivity to
24 support the application". No further evidence or
25 information was supplied to the Crown by Hunt or
26 anyone else, and the leases in respect to the
27 northwest quarter of 33 and the northeast quarter of

1 4 were terminated, as evidenced by letters dated
2 September 12, 2001 and marked as Exhibits 20 and 21
3 in these proceedings.

4 This information was not passed on to Adeco and
5 Shaman by Hunt. The continuation application in the
6 form presented on May 2, 2001 was doomed to fail for
7 the quarter sections ultimately terminated. When
8 Hunt received the original rejection letter dated
9 August 3, 2001, it appears no earlier than August
10 22nd, they were the only party that knew that the
11 continuation application was flawed and that they
12 had only 12 short days to correct the problem.

13 There is some debate as to whether Adeco and
14 Shaman received the original continuation
15 application, and if so, when, and some discussion
16 when they would have received the Crown letters
17 dated August 3, 2001. It is clear to me that while
18 Ms. Duval testified that it was her standard
19 practice while at Hunt to provide copies of the
20 continuation application, she had no independent
21 recollection of actually having done so. In Adeco's
22 case, Mr. Williams confirmed that it was Adeco's
23 practice to keep written communication on file, but
24 their file did not reveal the continuation
25 application. Further, under cross-examination he
26 testified that he was "as certain as he can be" that
27 he or Adeco did not receive the continuation

1 application. Mr. Williams was not shaken on cross-
2 examination on this point.

3 The August 3, 2001 letter of the Crown may have
4 been received by Mr. Williams sometime after August
5 22nd, but the evidence is not clear on this.

6 With respect to Shaman, it is clear that
7 neither Shaman as a company, nor Mr. Hartman, did
8 receive the continuation application until sometime
9 just before August 29th, 2001. This is evidenced by
10 Mr. Hartman's notation on page 3 of Exhibit 17,
11 which is dated August 29, 2001 and asks his
12 assistant to contact Hunt and get a copy of "their
13 submission to the Crown".

14 While there was a very brief time that both
15 Adeco and Shaman would first have been aware of the
16 problems with the continuance application, i.e.
17 August 23rd to September 3rd, 2001, they were not
18 concerned, as both parties relied on Hunt as the
19 operator. Shaman stated that Hunt had done a good
20 job as operator, "Things will get done. They are a
21 good operator." Hunt had a huge interest in the
22 leases and had more at stake than Shaman did. Adeco
23 relied on Hunt because the quarters were extremely
24 valuable. Hunt was obligated to do it and get paid
25 to do it. There was no cost for Hunt to do it and
26 it was a slam dunk. It made sense that Hunt would
27 protect its interests and everyone else's, according

1 to Adeco.

2 The plaintiffs Adeco and Shaman contend that
3 Hunt is liable to them for any one of the number of
4 the following: (1) breach of the operating agreement
5 and by incorporation CAPL; (2) breach of a fiduciary
6 duty, and; (3) negligence.

7 The plaintiff Rana contends that Hunt is liable
8 to it as a result of Hunt breaching the royalty
9 agreement and breach of fiduciary duty and
10 negligence.

11 The relationship of Adeco, Shaman and Hunt is
12 established by the operating agreement, which is
13 Exhibit 4, and the inclusion agreement, Exhibit 7,
14 whereby Hunt's predecessor, and by clear implication
15 Hunt, is designated as the operator. The operating
16 agreement by incorporation brings into play the
17 Canadian Association of Petroleum Landmen Operating
18 Procedure Guide 1990, or CAPL 1990 for short, which
19 is entered as Exhibit 2.

20 I have heard the argument of Hunt and read and
21 re-read their brief as to why Hunt should be
22 exempted from liability due to Section 401 of CAPL
23 1990. I do not find Hunt's argument compelling.
24 Clauses like 401 should be narrowly interpreted, and
25 in light of the clear obligation under Section 309
26 to maintain title documents, I am satisfied that
27 they have breached their contractual obligation

1 under Section 309 and are not exempted or saved
2 under Section 401. Any other interpretation of 401
3 would make the clauses such as 309 meaningless in my
4 view. Hunt is therefore liable for breach of
5 contract to Adeco and Shaman and damages should
6 result.

7 The relationship between Rana and Hunt is
8 governed by the royalty agreement which is Exhibit
9 Number 8 and was entered into between Rana and Hunt
10 - Rana as the royalty owner and Hunt's predecessor
11 and Adeco and Shaman, all three, as grantors. There
12 is a clear obligation on all the grantors to keep
13 leases in good standing, and paragraph 11.01 states
14 in part that the grantors:

15
16 ... shall not allow the said leases
17 to terminate or become subject to
18 forfeiture.

19
20 To me the facts are clear, grantors had a clear
21 obligation under the royalty agreement. Hunt took
22 over all the responsibility in this area by becoming
23 the operator and it failed in keeping up the leases.
24 Hunt is therefore liable for breach of contract and
25 breach of the royalty agreement to Rana, and damages
26 should flow from that breach.

27 With respect to the plaintiffs' argument that

1 the defendant Hunt breached a fiduciary duty, I find
2 a clear breach that Hunt's inaction in 2001 was a
3 breach in that area. The cases in this province are
4 clear that these types of relationships between the
5 plaintiffs and the defendant create a fiduciary
6 relationship. They possess three general
7 characteristics: (1) the fiduciary has scope for the
8 exercise of some discretion or power; (2) the
9 fiduciary can unilaterally exercise that power or
10 discretion so as to effect the beneficiary's legal
11 or practical interests, and; (3) the beneficiary is
12 peculiarly vulnerable to or at the mercy of the
13 fiduciary holding the discretion or power.

14 These characteristics fit the relationships
15 between all plaintiffs as beneficiaries and the
16 defendant as fiduciary in this case without
17 question. I find that Hunt therefore breached its
18 fiduciary duty to the plaintiffs and as a result of
19 that breach damages should naturally flow. I find
20 that the argument that Hunt did not benefit from its
21 own misdeeds and therefore could not be liable as a
22 fiduciary unpersuasive.

23 In terms for the claim for negligence, I find
24 that the six-part test as presented in the
25 plaintiffs' argument by Professor Klar (phonetic) is
26 appropriate analysis for this type of action. When
27 one applies the facts of this case to the classic

1 analysis, Hunt is clearly negligent. Hunt submitted
2 an incomplete continuation application that was
3 bound to fail. Insufficient staffing or lack of
4 properly trained staff resulted in failing to get
5 the information in within the one-month appeal
6 period, failure to submit the data it had on file
7 which would have continued the lease, and Hunt chose
8 to unilaterally proceed no further with an appeal,
9 as evidenced by the e-mail exchange in late August,
10 which is found at Exhibit Number 19. Staff for Hunt
11 were simply wrong in saying that there was no
12 additional evidence to submit.

13 Exhibit Number 27, being the e-mail from the
14 president of Hunt to staff that worked on the
15 Rosevear Bluesky Oil Pool, is revealing. This
16 e-mail in my view is the classic smoking gun. The
17 actions and inactions of Hunt and its employees
18 clearly have breached the standard of care as
19 expected in the industry and damages should flow
20 from that breach. The defences of laches, estoppel
21 and acquiescence are in my view not available to the
22 defence.

23 Now I will deal with the third party notice.

24 The defendant has named Adeco and Shaman as
25 third parties in this action. The defendant Hunt
26 alleges that if this Court finds that Hunt is liable
27 to Rana, then Hunt claims contribution from Adeco

1 and Shaman. At best, if Hunt is correct, there was
2 a 12-day window within which Adeco and Shaman could
3 have acted according to this theory - from August
4 23rd to September 3rd, 2001. Adeco and Shaman had
5 no right to deal with the Crown. They were not the
6 operator and in my view Adeco and Shaman had no duty
7 whatsoever to Hunt in this regard. Therefore the
8 claim in the third party notice must fail.

9 By way of the agreed statement of facts and
10 based on counsel's submission, I have been asked to
11 deal only with liability in this matter. As I
12 indicated, I find Hunt liable to all three
13 plaintiffs and the third party notice of the
14 defendant must fail.

15 The plaintiffs are all entitled to their costs,
16 and if counsel cannot agree on that issue, they are
17 free to contact me.

18 I would like to note that both counsel
19 conducted their advocacy in a first rate manner, or
20 all counsel, and that the Court certainly
21 appreciates the hard work and effort in preparing
22 for this trial in getting the agreed statement of
23 facts and the exhibit book together. Those items
24 saved a tremendous amount of time for the Court and
25 when they are done well, they are most appreciated,
26 and they were done very well in this case.

27 Finally, I would suggest that both counsel

1 ensure that their pleading amendments are filed in
2 this matter formally.

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4 PROCEEDINGS CONCLUDED

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1 Delivered orally at the Courthouse, Calgary, Alberta, on
2 the 3rd day of May, 2007.

3

4 C.A. Crang, Ms. and N.B. Johnson, Esq.

5 For the Plaintiffs

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7 M. Killoran, Ms. and K. Osaka, Esq.

8 For the Defendants

9

10 P. Lorenz, Esq.

11 Court Official

12

13 CAC

14 Typed - May 15, 2007

15

16 *Certificate of Record

17 I, Paula Lorenz, certify that the recording herein
18 is a record of the oral evidence of these
19 proceedings held in Courtroom 201 at the Court of
20 Queen's Bench in Calgary, Alberta on Thursday, May
21 3, 2007, and I was in charge of the sound-recording
22 equipment.

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