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Summary Judgement to Recover Monies Owing Under a Unit Operating Agreement

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Cases Considered:

Canada Capital Energy Corporation v Barracuda Energy Ltd, [2013 SKQB 134](#).

This is a nice, straightforward case in which the court granted summary judgment for amounts owing under a unitization agreement.

Facts

CCEC was the operator under a unit agreement and operating agreement in which Barracuda had a 3.71% working interest. The operating agreement provided that expenditures of over \$10,000 required approval by way of an authorization for expenditure (AFE) approved by three or more working interest owners having a combined voting interest of at least 80%. Owners must respond within 15 days and failure to respond is deemed to be a vote in favour of the expenditure. Between February and March 2012 CCEC sent out 20 AFEs seeking approval for capital expenditures of \$5.6 million of which Barracuda's share was \$208,422. Barracuda failed to respond but the requisite number and percentage of working interest owners did and the operator proceeded. Barracuda failed to settle the resulting invoices and CCEC commenced this action. Barracuda admitted it was a party to the agreement but defended on the basis that it had not received adequate financial disclosure of the basis of the charges or any production payments. CCEC sought summary judgment.

Judgment

Justice Whitmore granted the application for summary judgment. The affidavit evidence showed that Barracuda had received or obtained credit for all of the production payment to which it was entitled. It was no defence to say that the unit was once profitable and should still be profitable.

Commentary

There is nothing profound about this short decision but it does illustrate one important difference between a unit operating agreement and the ordinary CAPL operating agreements used for exploration and development activities in western Canada. Whereas under the CAPL agreements a joint operator cannot be made to contribute to an expenditure over a certain threshold amount without executing an AFE, (and failure to respond is deemed to be non-consent) the prevailing norm with respect to unit agreements is, as here, majority decision making. This increases the

risk for small operators who may be exposed to significant expenditures with no effective way of avoiding the liability which comes their way.

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