

ALBERTA SURFACE RIGHTS BOARD
(the "Board")

Citation: Petroglobe Inc. v Lemke, 2014 ABSRB 401

Date: 2014-06-11

File No. RC2013.0275

Decision No. 2014/0401

In the matter of the *Surface Rights Act*, RSA 2000, c S-24 (the "*Act*")

And in the matter of land in the Province of Alberta within the:
SE ¼ 26-47-3 W5M (L.S. 2) (the "Land")

BETWEEN:

PETROGLOBE INC.

Operator,

- and -

DOUG LEMKE

-and -

MARG LEMKE

Applicant,

BEFORE: Gerald C Hawranik Q.C.
(the "Panel")

DECISION

A Panel of the Surface Rights Board convened on June 5, 2014, to consider an application under s.36 of the *Surface Rights Act* (*Act*).

BACKGROUND:

An application under s.36 of the *Act* was received from the above Applicant for annual rental in the amount of \$3,700.00 due for the year 2013. The Board received a sworn Statutory Declaration dated April 22, 2014 from Doug Lemke, one of the applicants, stating that \$3,700.00 is owing and has not been paid by the Operator.

A well licence search reveals that Petroglobe Inc. is the current Operator and well licence holder.

A search with the office of the Superintendent of Bankruptcy Canada revealed that as at October 17, 2013, the Operator made an assignment into bankruptcy pursuant to s.50.4 of the *Bankruptcy and Insolvency Act* ("BIA").

The current certificate of title confirms the Applicants are the registered owner of the land. A surface lease has been provided and the rental amount is supported by documentation on file. The surface lease entered into on June 24, 2006 indicates that the annual rental is \$2,525.00; however the Applicants provided documentation to the Board dated June 1, 2012 which indicated that the annual rental was increased to \$3,700.00 effective in 2012. The well license is registered in name of the Operator.

The Panel notes that the site has not been reclaimed and accordingly the surface lease remains in effect.

ISSUES:

- 1) Have the Applicants received the annual payment under the surface lease for the year 2013?
- 2) Does the assignment into bankruptcy of the Operator preclude the Board from proceeding with the application under s.36 of the *Act*?

DECISION:

- 1) The Applicants have not received their annual payment under the surface lease for the year 2013.
- 2) THE ASSIGNMENT INTO BANKRUPTCY OF THE OPERATOR PRECLUDES THE BOARD FROM PROCEEDING WITH AN APPLICATION UNDER S.36 OF THE *ACT*.

REASON FOR THE DECISION:

- 1) Have the Applicants received the annual payment under the surface lease for the year 2013?

Based on the statutory declaration filed by the Applicants, the Panel is satisfied that the Applicant did not receive the rental payment that was due under their surface lease for the year 2013.

- 2) Does the assignment into Bankruptcy of the Operator preclude the Board from proceeding with the application under s.36 of the *Act*?

Section 36 of the *Act* provides landowners with a remedy to recover payments due under a compensation order or surface lease. However, s.69(1)(a) of the *BIA* provides that "no creditor has any remedy against the insolvent person or the insolvent person's property, or shall commence or continue any action...".

Proceeding with a s.36 application would allow the landowner (as a creditor) to commence an action against the Operator (an insolvent person).

Under the doctrine of federal paramountcy, the *Act*, as Provincial legislation, "is rendered inoperative to the extent of the incompatibility" with the federal law – *Canadian Western Bank v. Alberta*, 2007 SCC 22, (2007) 2 S.C.R. 3 at paragraph 69.

While s. 69.6 of the *BIA* creates an exception for proceedings before a “regulatory body”, and the definition of regulatory body appears to include the “Board”, the exception excludes “the enforcement of payment ordered by the regulatory body”. Since the object of s.36 of the *Act* is to enforce payment from the Operator through suspension and termination of its rights, it falls outside the exception of s.69.6 of the *BIA*, and is inoperable with respect to Operators in bankruptcy proceedings.

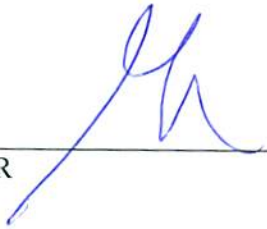
The Applicant’s only recourse at this time is through the bankruptcy proceedings.

The Board is precluded from proceeding with a s.36 application, while an Operator is in bankruptcy proceedings.

Dated at the City of Edmonton in the Province of Alberta this 11th day of June, 2014.

SURFACE RIGHTS BOARD

MEMBER

A handwritten signature in blue ink, consisting of a large, stylized 'H' followed by a series of loops and a final flourish, is written over a horizontal line.