ABlawg.ca

July 6, 2017

Court of Appeal Confirms that Summary Judgement Not Available in a Factually Complex Oil and Gas Case

By: Nigel Bankes

Case Commented On: *Talisman Energy Inc v Questerre Energy Corporation*, 2017 ABCA 218 (CanLII)

The Court of Appeal has concluded that summary judgement will not be available for monies owing based upon the liquidated demand clause in the 1990 CAPL Operating Agreement where the matter involves the existence of an alleged additional or collateral agreement that, if proven, may vary the terms or application of the Operating Agreement on which the claim depends.

This case involved a farmout and participation agreement between T and Q with the 1990 CAPL Operating agreement attached. T presented Q with an Authorization for Expenditure (AFE) and an Independent Operations Notice for a well. Q indicated that it would not participate unless T committed in advance to complete the well. Correspondence between the parties followed in which T appears to have made some sort of commitment to complete the well. Q executed the unamended AFE. The parties followed a similar procedure for a second well.

T relied on the executed AFEs to recover the drilling and completion costs associated with the two wells and in addition the drilling costs for four other wells as to which there was no argument about the completion issue or a second agreement.

Master Prowse (2015 ABQB 775 (CanLII)) was prepared to grant summary judgement with respect to the drilling costs issue but recognized that a trial would be necessary with respect to the existence of any agreement in relation to completion and the terms of such an agreement. I commented on Master Prowse's decision here. On appeal, Justice Hawco (2016 ABQB 618 (CanLII)) concluded that this was not an appropriate case for summary judgement insofar as the alleged agreement might undermine T's claim to drilling costs. I commented on that judgement by way of a note on the original post.

The Court of Appeal (Justice Veldhuis with Justice Sheilah Martin concurring and Justice O'Ferrall concurring in the result) agreed with Justice Hawco that (at para 26) "a trial is necessary to determine the nature of the alleged second agreement, along with its possible effect on the first."

The only new point in the Court's judgement relates to the four additional wells where the record was not complicated by any suggestion of an additional agreement. Nevertheless, Q resisted summary judgement in relation to the drilling costs of these four wells on the basis that T had (at para 27) "imposed an operator's lien over these four wells" and would not recognize Q's rights as a joint operator for these wells or discharge the liens until T was paid for all six wells. In the

view of the Court that this was enough (at para 28) to bring "the fate of the four other wells into the ambit of the litigation concerning the Fortierville and Ste. Gertrude wells where a trial is necessary to resolve the outstanding issues." However, this finding (at para 29) "does not preclude a further application for summary judgment regarding these four wells in the event that Talisman changes its position with respect to maintaining its liens and otherwise recognizing the respondent's rights with respect to them."

This post may be cited as: Nigel Bankes "Court of Appeal Confirms that Summary Judgement Not Available in a Factually Complex Oil and Gas Case" (6 July, 2017), online: ABlawg, http://ablawg.ca/wp-content/uploads/2017/07/Blog_NB_Talisman.pdf

To subscribe to ABlawg by email or RSS feed, please go to **http://ablawg.ca**

Follow us on Twitter **@ABlawg**