Action No. 1801-03640
E-File No.: CVQ18TEINEENERGY
Appeal No.

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

BETWEEN:

TEINE ENERGY LTD. PLAINTIFF

Plaintiff

and

AUDAX INVESTMENTS LTD.

Defendant

PROCEEDINGS

Calgary, Alberta
October 2, 2018

Transcript Management Services, Calgary
Suite 1901-N, 601-5th Street, SW
Calgary, Alberta T2P 5P7
Phone: (403) 297-7392 Fax: (403) 297-7034

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Master Farrington	Court of Queen's Bench of Alberta
A.E. Stead	For the Plaintiff
P. Robinson	For the Defendant
A. Slack	For the Defendant
P. Mak	Court Clerk

Discussion

THE COURT CLERK: Order in chambers. All rise.

MASTER FARRINGTON: Thank you. Please be seated. So, an application for summary judgment.

MR. STEAD: Yes, Sir.

MASTER FARRINGTON: Go ahead.

MR. STEAD: Thank you, Master Farrington, and good afternoon. For the record, my name is Stead initials A.E. and to my right are my friends Mr. Robinson.

MR. ROBINSON: Good afternoon, Sir.

MASTER FARRINGTON: Good afternoon.

MR. STEAD: And I beg your pardon. I forget your last name. I'm sorry.

MS. SLACK: Slack first initial A.

MASTER FARRINGTON: Thank you.

MR. STEAD: Apologies.

Submissions by Mr. Stead (Application)

So, as you indicated, Sir, this is in fact an application for a summary determination and that's because this is a clear case of contractual interpretation. The bargain here was - and should it please the Court, I'll refer to the parties simply as "Audax" and "Teine" - the bargain here was Audax had to drill a commitment well by the commitment date or, if Audax failed to do that, it had to pay the prearranged amount of damages; that amount was Teine's estimate of the cost to drill a well.

Now, Teine of course has a set period within which to continue the Crown lease which underlies the agreement at issue. So, if Audax drills that well, the key step (INDISCERNIBLE) that lease happens in that eventuality, Teine would have received a well, would have continued its lease but would have given up the cost of 82.5 percent of the revenue from that well. Again, if Audax had drilled the well, Audax would have paid for the cost of drilling the well but then would have received 82.5 of any revenue from the well.

Now, as the agreement anticipated, if that did not happen, then Teine gets damages in the amount of its estimate of the cost of drilling the well. Of course, neither side gets any benefit from revenue because there is no well generating any production. So, that's the agreement. It's a short agreement. It's a simple agreement. It's a clear agreement.

Now, starting with the background, Sir, both parties are long-time players in the oil and gas industry. Audax decided it wanted to look for farmout opportunities in Saskatchewan. Audax -- excuse me -- Audax hired an entity named Watson which I have to say it's curious how much we hear about Watson in this litigation since it's not a party, but nevertheless, Audax hires Watson. Watson's mandate at this stage is to find a potential farmout opportunity.

The evidence is that Audax knew of Teine but had had no dealings with Teine knowing about Audax which I think is essentially just Mr. Duce or primarily Mr. Duce in any event. He didn’t know Mr. Thompson, the principal for Teine, in this litigation, but Audax knew of Teine. So, Watson on behalf of Audax reaches out to Teine. There's some negotiation back and forth.

Now, neither party knew much about the lands at issue prior to forming the agreement. Teine went to a land sale; it acquired a number of different Crown leases that day. This happened to be one of them.

Now, there's no evidence that Teine knew anything specific about the lands at issue in this litigation. Audax could have conducted due diligence - they chose not to. Now, that's always a business decision and we can all agree, Sir, due diligence is taking a step that costs money and so a party, prior to entering a contract, can decide to what extent it wants to incur costs to perform due diligence.

My predecessor firm in Calgary, Sir, Thackray Burgess made quite a bit of money doing title opinions, but a lot of that work's dried up. Folks don't want to pay for gold-plated title opinions anymore; that's fine. That's a choice the parties can make, but the key is that's a choice that Audax made here. All of the information that Audax subsequently acquired with respect to the difficulties in getting the necessary surface rights and regulatory approvals to drill on these lands, all that information was publicly available.

Audax made the decision to forego looking into any of those issues preformation. That's its choice. It did nothing wrong in making that decision, Sir, but like all decision of this nature, consequences flow from it. If one chooses to spend a lot of money and time doing due diligence before forming an agreement, one may lower one's return on investment, one may create enough roadblocks that the deal doesn't happen but one can protect oneself from the unexpected. In this case, Audax went the other route - did no due diligence, fair enough, but that means Audax chose to assume that risk.

Now, once the agreement was formed, the obligations are quite simple. There are two important terms in the agreement - the commitment day and the commitment well. The commitment day or commitment date is the deadline by which Audax had to drill the commitment well which is defined in the agreement as either believe one horizontal or two vertical wells.

Now, without having a deadline within which Audax has to perform that obligation, the agreement would make no sense. It would essentially sterilize Teine's ability to do anything on these lands; in perpetuity then the Crown lease would expire, so that doesn't make sense. There needs to be a well, that's the purpose of the bargain, and there needs to be a deadline by which that well is drilled.

Now, as the commitment day approached, Audax again through Watson, approached Teine for an extension; Teine subsequently granted that extension. So, that moved things from January to November.

Now, Watson is mentioned as having reminded Audax that the initial commitment date was approaching. Again, it's odd that that's put into evidence by Audax since Audax didn't third party Watson - could have done that, but nevertheless, certainly an extension was sought; an extension was granted.

Now, as the new commitment day approached, Audax said nothing. Audax's explanation for this is that apparently it failed to diarize the date itself and Audax was relying on Watson to notify it of these impending deadlines, but apparently, the individual in question at Watson was no longer there and for whatever reason, Watson didn't notify Audax. However, the evidence is Watson was consulted and was paid by the hour.

I haven't seen any evidence giving Watson the direction to keep track of these things and proactively take steps, but whatever the case may be, that is an issue between Audax and Watson. Teine at no point contracted with Watson; neither Teine nor Watson had any duties to each other.

So, the commitment day approaches. Audax does nothing. No well has been drilled. Approximately a month and a half after the revised commitment date, so we're moved now from the end of November to January of this year, Teine makes a demand for payment as it's entitled to pursuant to the agreement.

Now, Audax apparently misfiled or otherwise didn't see the letter right away, but the evidence is clear that the letter was delivered to Audax's address pursuant to the agreement. So, after no response to that letter, (INDISCERNIBLE) silence essentially since before the commitment date, the revised commitment date, Teine brings its claim.

Now, the claim turns, Sir, on articles 3 and 4 of the agreement. Now, article 3 sets out that one horizontal or two vertical wells must be -- excuse me, so the farmee commits that on or before -- originally it was January 31st of last year, then it was revised to November 30th -- I'm looking at the version that was in Mr. Thompson's affidavit. It's not clear who wrote November 30th there, Sir, but it's common ground the extension was granted, and that's the date, the commitment date subject to rig availability, surface access, weather, terrain and regulatory approval farmee shall drill and complete one horizontal well or two vertical wells, the commitment well to contract depth at a location of its choice on the farmout lands.

So, that's a clear provision.

MASTER FARRINGTON: Your argument - your client's argument - would have me ignore all of the subject 2's.

MR. STEAD: Not at all, Sir.

MASTER FARRINGTON: Okay.

MR. STEAD: No, the subject 2's are there for the obligation to drill because we can agree, Sir, it would be absurd to try to create a contractual duty that forces one to trespass and possibly ignore regulations. That's not the case, but what this says is that's the obligation for the commitment well. Now, if one does not drill the commitment well, then we get to article 4 which is the failure to drill and the pre-agreed amount of damages.

MASTER FARRINGTON: Even if it would have been impossible to drill the well because you couldn't get regulatory approval?

MR. STEAD: Correct.

MASTER FARRINGTON: So, that part's not absurd.

MR. STEAD: No.

MASTER FARRINGTON: Pay the money even if you can't drill?

MR. STEAD: No, that's the bargain that was formed because what Teine is giving up is the right to drill its own well and have someone else drill on those lands.

And it's useful I think to think of it this way, Sir. Before going to that land sale, Teine has its money; has no Crown leases that are going to be posted that day. Now, Teine goes to the land sale and it's common ground. I mean essentially, Sir, and this is --

MASTER FARRINGTON: Is all this in evidence?

MR. STEAD: Yes, Sir.

MASTER FARRINGTON: About Teine going to the sale and all of those --

MR. STEAD: Yes, Sir.

MASTER FARRINGTON: Okay.

MR. STEAD: It's in the cross-examination that Teine went to the land sale.

MASTER FARRINGTON: Okay, thank you.

MR. STEAD: My friend put the sale proceeds to Mr. Thompson - that was marked as an exhibit. so.

MASTER FARRINGTON: Sure.

MR. STEAD: So, Teine went to the land sale. Teine purchased in addition to the lands at issue a number of other Crown leases. We know that Teine paid approximately $66,000 for this particular Crown lease at issue. So, what is Teine getting for that? I mean it's not buying this land to -- it's not buying land to subdivide and build houses on. It's getting a Crown lease, so subject to surface access.

MASTER FARRINGTON: Right.

MR. STEAD: It will then have the right to drill and hopefully produce hydrocarbons, but there's a risk that Teine might not be able to drill or that they'll get a dry hole or that various other misadventures might befall it. But Teine chose to assume that risk. Teine chose to pay the approximately $66,000 and acquire its lease. It did that, so it's out the money. It hopes for upside, but there may be downside.

Audax comes along and seeks out Teine. I mean it's important to remember, Sir, this is not a situation where someone directs the sale -- directs selling someone's grandmother a product she doesn't want. Audax, with its principal who's been in the business for I believe 30-some years - the exact amount's in evidence - Mr. Duce, is in his 60s and he's basically spent his life in the energy industry, Audax seeks out Teine and essentially does what Teine did. It says, all right, there's land there. I'm willing to in this case agree to either drill a well so you'll get a well to continue your lease or pay you the cost of drilling a well if I don’t drill it.

And maybe that works out, maybe it doesn't, but it's essentially the same risk that Teine assumed because Teine gets no value from these lands or from the lease rather without either production or some sort of disposition or some sort of contract with another party.

So, if the parties intended, Sir, article 4 the failure to drill to be contingent on regulatory approval, surface access, environmental issues, it would have included those words in article 4. Moreover, Sir, and this is another key point --

MASTER FARRINGTON: Sure.

MR. STEAD: -- 4(a). It does not say if farmee fails to try to spud the well. It says if farmee fails to spud the commitment well.

So, Sir, the language is clear. It is not about did you try to do it? It is not about subject to these conditions did you do it? It is not about did you make your best efforts to do it? It says if farmee fails to spud. That could not be anymore clear, Sir, and it's a binary concept. Either the commitment well is spudded by the deadline or it isn't.

MASTER FARRINGTON: The commitment well was CW well, so the defined term, right?

MR. STEAD: I believe it's capital (INDISCERNIBLE) single, Sir, because if it's horizontal it's one; if it's vertical, it's two.

MASTER FARRINGTON: Right, so but it's the defined term.

MR. STEAD: M-hm.

MASTER FARRINGTON: And that term's defined in article 3, right?

MR. STEAD: It is.

MASTER FARRINGTON: And the article 3 definition of commitment well includes the subject 2 language, doesn't it?

MR. STEAD: Well, I don’t think it does, Sir, because what it's defining is one horizontal well or two vertical wells.

MASTER FARRINGTON: That's your argument.

MR. STEAD: Yes.

MASTER FARRINGTON: Yes.

MR. STEAD: I mean and if we look at it, Sir, we have a comma after "and regulatory approval." So, it doesn't -- I mean I don’t think it makes sense, Sir, to define wells as being subject to these other things. I mean that wouldn’t be a well, that would be an effort. That would be if we wanted to pick a defined term of a farmee's obligation and we had subject to A, B, C, D either one well or two wells shall be drilled and define that as the farmee's obligation, maybe that would make sense but to define a well as being not just the well itself but subject to other conditions, I mean that strains the definition that's here.

And it would be so easy, Sir -- it would have been so easy to include in article 4 if the

farmee fails to try or flip it around, if the farmee fails to make its best efforts, or unless the farmee makes its best efforts, but none of that's there.

MASTER FARRINGTON: Is there any evidence is to who prepared the agreement?

MR. STEAD: So, it was -- that's a good question. Both sides provided comments.

MASTER FARRINGTON: Okay.

MR. STEAD: I don’t remember who had the first draft and Watson acted as the intermediary back and forth.

MASTER FARRINGTON: Okay, but you say it was a back-and-forth creation?

MR. STEAD: Yes, there was at least one instance of back-and--forth, Sir, yeah.

MASTER FARRINGTON: Okay.

MR. STEAD: Now obviously, Sir, Teine has no right to seek specific performance here. If a party is not able to -- well frankly, if a party is not able to drill the commitment well because of one of the issues raised or frankly, something else - if there had been a war, for example or some other force majeure issue, Teine can't come to court and say I'm entitled a well. I'm entitled to have a well drilled. I need an order directing me -- or excuse me, directing Audax to hire some folks, get its tools, and drill.

That wouldn’t make any sense, but the bargain here is Teine says I'm essentially freezing my lands or this -- these specific lands, the Crown lease for the hydrocarbons and the (INDISCERNIBLE). You are (INDISCERNIBLE) an exclusive period of time to either drill a well or pay me the cost of drilling that well. And obviously, everyone hopes it's the former because then assuming the well produces, there's also revenue to be shared and in that scenario, Teine gives up 82.5 percent of the royalty.

But looking at paragraph 4, Sir, it has to be looked at a binary outcome - either Audax drills the well by the commitment date or it doesn't.

Now, it's clear, Sir, that the Court's duty is to interpret and uphold contracts. The factual matrix cannot be used to change the words that are actually in the agreement. Audax's

position asks the Court to add words to article 4, something to the effect of instead of just the failure to drill, the failure to try to drill. That's an error. Likewise, it's common ground no -- a court's job is not to add terms to a contract and if a party wants to amend a contract post-formation, it has to do so through negotiation.

Now, we have clear evidence from Teine about the amount of the pre-estimate of -- and the agreed upon pre-estimate of damages. Teine was asked -- Mr. Thompson, Teine's representative -- was asked in cross-examination - this was at paragraph 1-- excuse me, paragraph 31 -- I'm sorry, Sir, page 31 of the cross-examination lines 23 to 26.

MASTER FARRINGTON: Yes, I've got that. Yes?

MR. STEAD: So, Mr. Thompson was asked if it was a yes. And he said no, it was a best effort estimate. That was something my friend raise -- that was something my friend put to Mr. Thompson in cross-examination. In re-direct he was asked how he came up with it.

MASTER FARRINGTON: I'm sorry, I've got the wrong transcript.

MR. STEAD: Oh, I apologize, Sir.

MASTER FARRINGTON: I've got the of -- no, that -- my apology. I've got the transcript of Dallas Duce. I don’t know if I've got the Thompson transcript here. I will look.

MR. ROBINSON: I think we may have a clean copy.

MASTER FARRINGTON: I think I do, yes.

MR. STEAD: Sure, okay.

MR. ROBINSON: You found it, Sir?

MASTER FARRINGTON: I do.

MR. ROBINSON: Thank you.

MASTER FARRINGTON: I do.

MR. STEAD: Sorry, Sir, so that's page --

MASTER FARRINGTON: Page 31.

MR. STEAD: That's correct.

MASTER FARRINGTON: Okay, yes. I've got it. Thanks, Mr. Stead.

MR. STEAD: Thank you, Sir. So, Mr. Thompson's being asked where that estimate came from and the answer is it was his -- well, it's not a guess. It was a best effort estimate. Then in redirect, Sir, Mr. Thompson was asked how he came up with that estimate and he said it was used as a drilling and casing cost for a typical horizontal Viking well that had been established through past negotiations with industry partners.

So again, Sir, we come back to the point of the agreement for Teine is it either gets a well on these lands which is necessary to continue the Crown lease or -- so either Audax drills that well or damages flow to Teine from Audax for Teine's estimate of what it would cost to drill that well.

Now, Audax offered no contradictory evidence as to the -- where that number came from. I put it to Mr. Duce that he has no basis for challenging Mr. Thompson's evidence on that point. His answer was: (as read)

> I don’t know. If that's how he came up with the number, then I get (sic) that's how he came up with the number, but that's nothing I've ever seen before. I've never connected the two things.

So, where that gets us to, Sir, in terms of the sum itself is we have one side explaining where the amount came from - it's the estimate of what it cost to drill a well in that area - and the other side conceding it has no idea how that amount was calculated.

And the other point, Sir, is this was something the parties already agreed upon. There's no requirement to prove after the fact with supporting documents how one reached the number. The whole point of agreeing on damages in advance is that a party does not have to do so in court later. If one has to prove one's damages in court, that essentially undoes the bargain between the parties saying we've thought about it. This is what the amount of damages are.

The other key point, Sir, is Audax could have inquired about the amount in preformation. Audax could have said hey, how did you come up with this number? Audax could have asked for some supporting information from Teine before forming the agreement showing how Teine landed on that 250. Audax could have also done its own due diligence on the cost of spudding a well in this area and said to Teine actually, we think the amount should

be this.

That was something the parties could have negotiated. Audax didn't give any thought to where that number came from. Again, Sir, fair enough. I'm not saying Audax did anything wrong in doing that, but it's clear this is a genuine pre-estimate of damages and not a penalty. Teine's evidence uncontradicted is that it landed on this number because it's drilled other wells in the area and that's what it understands -- that's what it estimates the cost to be.

Now, Sir, it's telling just how many arguments Audax is trying to advance. One might perhaps speculate that if one throws that many things at the door hoping something will stick, one may not have that much confidence in the contractual interpretation issue alone.

Now, first of all, Sir, the *CNRL* decision is not helpful here. First of all, that underlying agreement uses the 1990 capital operating procedure; it's common ground in this dispute the agreement uses the 1997 capital formar (phonetic) procedure.

So, on that basis, it's apples to oranges, but next, Sir, it's a fundamentally different agreement. Now, my friends produce an excerpt of this case in their brief.

MR. ROBINSON: We have a full copy here.

MASTER FARRINGTON: Thank you.

MR. STEAD: But if we look, Sir, on page 3 --

MASTER FARRINGTON: I have that.

MR. STEAD: This is the Court of Appeal decision and this is the Court of Appeal quoting what we'll call the "marauder agreement," the agreement underlying this dispute and it has a fundamentally different clause in it. What this clause says: (as read)

> If in Farmee's sole opinion, either or both governmental restrictions and ground conditions make the Test Well drillsite inaccessible and preclude Farmee from drilling such well on or before the date provided herein, Farmor shall grant Farmee an extension to Spud such well until such time as either or both governmental restrictions and ground conditions permit Farmee to access the well drillsite together with such reasonable additional time as may be necessary to permit

Farmee to organize and effect the Spudding thereof.

That, Sir, is an entirely different clause than what we have in the agreement in this dispute. This clause creates a positive obligation on the farmor to extend what's in this agreement called the commitment date, but to extend the deadline for drilling if these very issues arise.

Our agreement has no such terms, Sir. It has no such language. So, Sir, it's only on the basis of this term from -- and the marauder agreement as a whole, that any trial court would have considered regulatory restrictions, but there's a further distinguishing feature between the *CNRL* case and ours, Sir.

THE COURT: Yes?

MR. STEAD: And that's that issue or that litigation arose from the question of a ROFR (right of first refusal) being triggered and that then affecting the timeline for drilling a well. And to be fair, the CAPL 1990 Operating Procedure didn't address that and certainly subsequent versions have resolved that issue. But what we have here, Sir, is a different operating procedure, we've got different contractual terms, and we have different underlying events. And that was essentially the juxtaposition in the *CNRL* decision, Sir, is on one hand under the right of first refusal, under the ROFR, a certain timeline was triggered, but on the other hand, there's this provision that says if in farmee's sole opinion it gets perpetual extension.

So, that's essentially the underlying mess that the *CNRL* case has to deal with. We have none of those things. We have no language saying if in farmee's sole opinion it's entitled to extensions and we don't have in article 4 if farmee tries to drill or if farmee fails to try to drill or if farmee fails to make best efforts. Article 4 is clearly written as a binary - either the well is drilled or it isn't. So, these -- the trial and appeal decisions are of no assistance here, Sir, because one can't use authority relying on a different contract to add language to the current one.

Next, Sir, the idea that only one party benefits from the farmout agreement is completely false. Now, we know that farmout agreements are common. We know that, Sir, because CAPL's gone to the trouble of creating a farmout and royalty procedure. It's not as if Teine and Audax created some sort of unheard of esoteric form of agreement. They created a form of agreement that adopts the industry's operating procedure for this kind of agreement.

So, Audax could have chosen to do nothing - would have incurred no risk for doing so, but that's not what Audax wanted to do. Audax sought out a farmout partner - that was its choice, but the consequence of doing that, Sir, is an incurred risk, the very same way Teine incurred risk when it chose to go to that land sale and pay for a number of Crown leases.

Teine could have stayed home that day. Wouldn't have had to write cheques. Also wouldn't have acquired Crown leases.

So, Audax chose to form the agreement; in doing so hoping it would be able to drill, the well would produce, and then Audax would receive the benefit of 82.5 percent of the royalty from that producing well. Without the farmout agreement, Audax has -- does not have that upside. It could have of course sought upside and other arrangements, but that's not why we're here, Sir. We're here because Audax chose to enter this agreement and in doing so, get that potential upside.

Now, along with that upside came risk. The risk was if Audax did not drill by the commitment date, then it would have to pay damages. It's not up to us and it's certainly not up to the Court, Sir, to decide whether Audax made a good decision, to decide whether Audax should have made that decision or to consider whether or not Audax regrets that decision. The fact of the matter is Audax chose to enter a form of agreement which is common in the industry and in different fact patterns. If Audax had been able to drill, and was enjoying 82.5 percent of the revenue from a productive well, we wouldn't be here, Sir. Audax wouldn't be coming to court saying no, no, no. That's -- this agreement should be undone. I shouldn't be held to my obligations thereunder.

Neither Teine when it acquired the Crown lease, nor Audax when it entered the farmout agreement, were guaranteed of anything. They had the potential of upside and the potential of downside. They both chose to assume those risks, but the suggestion that this agreement - the farmout agreement - only provides a benefit to Teine is completely false. If one accepts that argument, then one must also necessarily accept that the Crown lease itself should be invalid because the only party that benefited was the Crown, not Teine.

MASTER FARRINGTON: Do we have in evidence what the expiry or obligation date under the Crown lease was?

MR. STEAD: It was -- came out in cross-examination, Sir. I believe it was four years.

MASTER FARRINGTON: So still four years left on it?

MR. STEAD: No, I believe it was four years from when it was acquired.

MASTER FARRINGTON: So, what would that make the expiry date?

MR. STEAD: That's a good question, Sir. Let me -- if you'll

give me --

MR. ROBINSON: It's on the schedule of the farmout agreement.

MR. STEAD: Okay.

MASTER FARRINGTON: Is it?

MR. ROBINSON: We've got -- it expires -- Sir, just assisting my friend --

MASTER FARRINGTON: Sure, thank you.

MR. ROBINSON: -- it's schedule A to the actual farmout agreement. I don't think it's contentious. It says March 31, 2020.

MASTER FARRINGTON: Okay.

MR. ROBINSON: And I have no evidence that that's not the date.

MASTER FARRINGTON: That looks to be. Okay, Thank you.

MR. ROBINSON: Sorry.

MR. STEAD: Oh, not at all. Thank you. So, on that point, Sir, the -- I mean that shapes why Teine would form the bargain it did, but that fact like any fact cannot change the words that are on the page.

MASTER FARRINGTON: Okay.

MR. STEAD: And as Mr. Duce conceded, he understood before forming the agreement this was not a farm-in on an existing well. There was nothing but the Crown lease and it was Audax that was receiving the exclusive right to spud a well there and in the Capital Operating Procedure it states one is not a farmor; once a farmout agreement is formed, it is not allowed to then bring in another farmee without permission. So, that's the bargain that was created.

Now, Audax also attempts to make an issue of the difference between the lease cost and the amount of damages. Now, first, they're two different costs. One is the cost of the lease at what is essentially I understand to be at public auction and something costs what it costs that day. The second is the estimate of what it would cost to drill a well. Now, it makes

sense, Sir, there may be -- the cost of drilling a well may factor into what someone is willing to pay in acquiring a lease, but they are two different calculations.

Next, the whole point of a commercial enterprise is to turn a profit, Sir. Every party -- oh, excuse me, most parties who are entering into these sorts of agreements do so because they hope to profit. My friend pointed out in cross-examination there are times when parties acquire something for a tax loss and fair enough, I mean -- and just about anything is possible, but generally speaking, Sir, commercial enterprises exist with the objective of being profitable.

So, it is no criticism, it is no compelling argument or attack to say that Teine was able to get a lease for $66,000, be willing to potentially give up 82.5 percent of the royalty from a well that was on those lands but if breached, get damages for the cost of that well. The fact that Teine may have formed an agreement which it benefited from is, as one says in the modern parlance, Sir, a feature, not a bug. That's what parties go into agreements trying to do in the same way that Audax formed the agreement hoping to profit from it.

The third point, Sir, is Audax could've gone to the land sale itself. If Audax wanted to do what Teine did and acquire its own Crown lease and then drill its own well, Audax could've done that. But we have clear, uncontradicted evidence Audax did not want to do that. In this instance, Audax actively sought a farmout partner. So, to say that Teine did something differently and is receiving different benefits because of those different choices, that's irrelevant to this argument. Audax made the choice to form this agreement and is now bound by it.

Next, Sir, there's quite a bit of evidence about Audax's efforts that is all irrelevant. If we were dealing with something like that marauder agreement from the *CNRL* decision, then perhaps one would say, yes, show me what steps you've taken, show me that you've at least tried. That provision says if in farmee's sole opinion which doesn't necessarily mean one has to prove what one did. But, if the test isn't did you spud or did you not, but if the test is did you try, then all those underlying efforts matter.

But in this agreement, Sir, where article 4 does not say did you try, but simply did you drill, it doesn't matter what steps Audax took. It's common ground that no well was drilled by the revised commitment date. That is the key fact, Sir.

Now, it is clear and Audax tries to score points with the fact that Teine did not provide information to Audax about the environmental issues, the Aboriginal burial grounds, the -- whatever environmental problems befell on Audax. Teine didn't warn Audax about that. However, Sir, there's no evidence that Teine knew any of this either. The only evidence is that Teine went to the land sale, purchased a number of Crown leases that day. One can't

provide what one does not have.

Furthermore, it's not as if Teine post-formation was the source of this information that Audax acquired. Audax hired folks to go out and assist with the various approvals that were necessary. And those folks, using publicly available information, realized the issues. Now, to be fair to Mr. Duce in cross-examination, he wasn't aware of the exact dates when various legislation was passed. But it's 20, 30 years before the agreement was formed. The concept of Aboriginal burial grounds are obviously not new. So, these were all issues that it comes back to the due diligence issue. These were things that Audax could've discovered before forming the agreement, but chose not to. If one decides to purchase a car second-hand, as/is, one decides to do so. There is risk and there is reward.

Next, Sir, Audax tries to suggest that Mr. Thompson's evidence should be disregarded. If we look specifically at paragraph 56 of my friend's brief, I apologize, Sir, 54.

MASTER FARRINGTON: Okay. Thanks. Got it.

MR. STEAD: So what my friend is suggesting here, Sir --

MASTER FARRINGTON: Yes?

MR. STEAD: -- is that Mr. Thompson attempts to draw a conclusion of law. And you'll see at paragraph 54 there's an excerpt. But if we go to Mr. Thompson's affidavit, what it actually starts out saying, Sir, is "in my experience in the industry." Mr. Thompson is attempting to usurp the Court's job and reach a legal conclusion. Mr. Thompson is explaining what his experience in the industry is. So, it is wrong to say it's a legal conclusion, but it's also disappointing, Sir, to see evidence manipulated because that excerpt alone does perhaps make it seem as if Mr. Thompson is drawing a conclusion. Audax is free to make whatever arguments it wants, Sir, but it needs to -- it needs to put all of that paragraph in its brief if it's going to try to make those arguments.

But Teine's position turns on the agreement. There has to be an affidavit of course to confirm that this is the agreement to put into evidence, there has to be an affidavit to confirm this is -- to put the demand letter or the demand for payment into evidence and then to confirm that it was delivered. So, that's the affidavit. I mean, it's obvious, Sir, it is a short affidavit, it's 11 paragraphs. But no part of Teine's position turns on Mr. Thompson drawing any sort of conclusion. Teine's position comes down to if the parties attended the damages clause in article 4 to turn on making efforts or on making attempts it would say that.

I turn now, Sir, to the suggestions of bad faith. And, again, it's disappointing to see it raised in the pleadings and the brief because it simply has no place here.

At first in cross-examination, Mr. Duce conceded that the only thing Teine might've done wrong is not reach out to Audax after the January letter. Now, my way of looking at that, Sir, if one sends someone a letter and that person doesn't respond to the letter and there's no other contractual obligation to remind that person then the fault lies with the recipient, not the sender. I mean, if I misdiarized this afternoon's proceedings, Sir, and failed to attend, I might certainly expect either my friend or the Court to try to contact me, not to proceed without me, but I would not say I was someone else's fault if I'm not here. So, there was no obligation in the agreement for Teine to reach out multiple times to Audax.

And, again, we have this issue of perhaps Watson didn't notify Audax that the revised commitment date was approaching, but that's between Audax and Teine -- excuse me, that's between Watson. And, again, it's not as if Teine ran to the courthouse on January 13th, the day after sending this letter. But, other than that, Mr. Duce could point to nothing that Teine had done wrong.

Next, the issue of the duty of good faith in performing a contract is also misapplied here, Sir. This concept refers to a positive obligation to fulfill contractual duties in good faith. Now again, Sir, if we were dealing with a marauder agreement there could absolutely be positive duties to perform steps in good faith. One could not, for example, take steps to seek approvals that one would knowingly -- that one knows would fail. One could not, if one was in a joint venture agreement, acquire supplies that inflated prices say from one's brother-in-law and receive a profit back. Those are instances of having a duty to perform one's contractual obligations in good faith.

But Teine had no such duty here, Sir. Teine, frankly, had no duty to grant the first extension. It did, fair enough. When the second -- when the revised commitment date came and went, Teine frankly waited until January 12th to send its demand for payment. At no point did Audax reach out to it. But at no point, and this is the key part, Sir, at no point did Teine have any contractual duty to do anything. That's the nature of the farmout Agreement. Teine agrees its lands are essentially sterilized to everybody else while Audax has the opportunity to drill the commitment well.

Now, if Teine had been in an act of duplicity, if Teine had gone and found someone else and let that person farmout on the same lands, one might argue that was a failure to abide by one's contractual obligations in good faith. But Teine did nothing of that nature. Teine entered the farmout Agreement, Teine agreed to one extension, and then when the second extension came due approximately six weeks later -- or, excuse me, when the second -- when the revised commitment date came and went, approximately six weeks later Teine

sent a demand for payment as it's entitled to under the agreement. There's no a single instance where Teine didn't do anything it was supposed to do.

Now, Audax also tries to raise the issue that Teine didn't mention its rights to damages at the time of the first extension. But, Sir, that's not sensible. The whole point of the commitment date is that it ends the period of time when Audax can drill and triggers the entitlement to the damages. It does not make sense to extend the deadline and also request the damage at the same time. Teine has no right to the damages unless and until the commitment date passes with no commitment well on it.

Now, Teine's position is grounded in its interpretation of the agreement. Audax disagrees, and that's fine. That's why we have courthouses, that's why we have masters, that's why we have justices. But taking a different view of contractual interpretation, Sir, cannot be acting in bad faith. The suggestion that one takes a position in interpreting a contract that the other side does not like amounts to bad faith, is both absurd and a legal error.

I also draw the Court's attention to the fact that at no point, at no point, has Teine suggested bad faith or made any sort of attack on either Audax and Mr. Duce's integrity.

I have, and do, point out that it's odd for Audax on one hand to point the finger at Watson at various points, but then on the other hand not third-party wise. And, I mean, to me, it's none of my business, it's none of my client's business, but either Watson -- if Audax wants to say Watson had a duty to us and it breached that duty, it should've third-partied Watson. If it's not saying that, then we shouldn't be hearing about Watson. But that's -- that's not a question of integrity, that doesn't approach bad faith. So it's -- again, I'm using the word disappointing, Sir, that in a contract that really boils down to what does article 4 mean? We have this allegation of bad faith. That shouldn't be there, Sir.

So what we have, Sir, are two sophisticated parties who formed an agreement that is crystal clear. Teine would get the benefit of either, on one hand, a well on these lands and then 17.5 percent royalty on any production coming from that well, or else damages for the cost of the well but obviously no chance of revenue until the well gets drilled. That's what Teine signed up for.

What Audax signed up for was an 82.5 percent royalty on a well drilled, the exclusive right to drill that well on these lands, but the risk that if it did not do so it would have to pay damages on an agreed upon amount. Whether or not Audax likes that bargain now, Sir, doesn't change what's there. And that key point is that there is no reference in article 4 to making effort to trying. Article 4 is clearly if a well was (INDISCERNIBLE).

MASTER FARRINGTON: Nothing to do with article 3.

MR. STEAD: No, Sir.

MASTER FARRINGTON: Okay. Why did -- is there any explanation in the evidence as to why your client referred to article 3 in Exhibit B to Mr. Thompson's letter?

MR. STEAD: Because commitment well -- oh, excuse me, we're saying is there any evidence there. I'm not sure that matters, Sir.

MASTER FARRINGTON: Any explanation given in evidence, yes.

MR. STEAD: Yeah. Well, I think the answer is -- I don't remember the answer Mr. Thompson may have given, but my view of the answer is article 3 is where commitment well is defined. But, again, we look at that comma before horizontal or vertical --

MASTER FARRINGTON: Oh, I understand that argument.

MR. STEAD: Yeah.

MASTER FARRINGTON: But, factually, your client referred to 3(a) in the obligation in the letter saying please send $250,000.

MR. STEAD: Right, Sir, but --

MASTER FARRINGTON: Saying you didn't drill the 3(a) well, please send money under 4(b).

MR. STEAD: Well, I mean, two points there, Sir. First, without 3(a) we don't have the definition of commitment well. So, there's that.

MASTER FARRINGTON: So you need 3(a) for that.

MR. STEAD: Yes.

MASTER FARRINGTON: Yes.

MR. STEAD: But secondly, Sir, whatever's in the demand can't modify the agreement. The agreement has to stand on its own. And, I mean, we -- I don't think my friends raised any argument either about post-formation conduct being used to interpret agreements.

MASTER FARRINGTON: Right. Yes, I didn't see that.

MR. STEAD: Yeah, the law is -- my submission, Sir, I've looked at this in other matters, the law is clear it's only to be used in extraordinary circumstances. So, it is obviously -- it would behoove any party who forms an agreement they regret. Acting one way and then try to say well I'm entitled to act this way because the way I act proves what the contract says. What matters, Sir, is where the parties got to in November 2016.

MASTER FARRINGTON: Okay.

MR. STEAD: Now, the only other issue and I, to be honest, don't really understand my friend's position on this, is that there's no issues requiring a trial. I mean, what you heard me say several times, Sir, we're looking at this page of this agreement and we're interpreting it, and my submission is we're noting there's no reference to effort. There's no effort that's -- it's binary, did the well get spud or not? However, Sir, your eyesight and your cognitive prowess --

MASTER FARRINGTON: Yes?

MR. STEAD: -- at looking at this agreement are just as equipped as any justice presiding at trial. I mean, in the post *Hryniak* world, Sir, we are told only go to trial if there's an issue requiring trial. Now, *Hryniak* also tells us, Sir, that if the Court isn't satisfied for some reason that the matter can be determined in this instance, to consider what further fact finding should be there. Because the reality, Sir, is we don't have trials with any regularity anymore and we're supposed to try to avoid them because of how expensive they are to the parties.

But, to be frank, Sir, I cannot think of a more clear situation where summary determination is appropriate. It's not as if Audax has pled mistake or some sort of defect in the agreement. Both parties are saying, yes, that's the agreement. Both parties agree there was no well spudded by the commitment date. So there is no possible benefit to a trial judge that does not exist for you, Sir.

MASTER FARRINGTON: Okay.

MR. STEAD: So, on that basis alone, I mean, as I said, I'm confused. I appreciate my friends are going to argue a different interpretation of the agreement, that's fine. But it just does not make any sense to me, Sir, that one can suggest we can't decide this in a summary fashion.

MASTER FARRINGTON: Now, you say the *CNRL* case deals with the different wording in the agreement and I understand that, and I understand your argument on that. I didn't see any cases in your materials that are close to this type of wording in an agreement. Do you have any?

MR. STEAD: I'm not aware of this particular provision --

MASTER FARRINGTON: Okay.

MR. STEAD: -- having been interpreted previously, Sir.

MASTER FARRINGTON: Okay. Thank you.

MR. STEAD: I mean, we'll get there today but --

MASTER FARRINGTON: Okay. Okay.

MR. STEAD: -- I just want to be clear on the *CNRL* thing, Sir. It's three things, Sir --

MASTER FARRINGTON: Right.

MR. STEAD: -- it's a different operating procedure --

MASTER FARRINGTON: Right.

MR. STEAD: -- it's the issue of the ROFR triggering -- maybe I should explain that better because I think we all might be aware that rights of first refusal --

MASTER FARRINGTON: Right.

MR. STEAD: -- usually come with short time frames. And if one doesn't act within the time frame, one is deemed to have lost one's right of first refusal and so someone else can come in and seize it. So the underlying issue with the *CNRL* decision is, on one hand, there's the farmout Agreement, but on the other hand there's a right of first refusal trigger and so that created competing forces I suppose. And then the third point, as you touched on, Sir, is the completely different contractual language.

MASTER FARRINGTON: Okay.

MR. STEAD: One that gives a farmee, in its sole opinion, the right to a perpetual extension. And so if one's going to give that kind of right to someone, then perhaps, I mean, this was obviously well before Bassen (phonetic), but the concept of exercising that duty in good faith and what steps one's taken, all those issues may become relevant. But we don' have that here.

MASTER FARRINGTON: Okay.

MR. STEAD: Subject to any other questions and to reply, those are my submissions. Thank you, Sir.

MASTER FARRINGTON: Thank you, Mr. Stead.

Mr. Robinson, notwithstanding Mr. Stead's best efforts, I don't need to hear from you.

MR. ROBINSON: Very good, Sir. Thank you.

Decision

MASTER FARRINGTON: I think, Mr. Stead, you've said it as eloquently as it can be said in terms of trying to pursue the case for summary judgment but, in my view, the case for summary judgment has not been made out. The law in summary judgment, as we're all aware, is a little bit uncertain now from the Court of Appeal as between the *Stefanyk* case which requires proof on a balance of probabilities and some of the other cases such as *Whissell* which extend to an unsaleable standard. All of them require the Court to be satisfied that the record is sufficient in terms of the ability to make a fair and just determination.

In this case, the starting position has to start with interpretation of the contract and interpretation of the contract in accordance with its ordinary meaning of the words on the paper. And, in my view, nothing that I say on this particular issue is binding because all that I'm really asked to decide here today is whether summary judgment can be granted, but in my view the interpretation that I would favour is an interpretation that incorporates and makes use of the words subject to rig availability, surface access, weather, terrain and regulatory approval. Paragraph 4(a) and 4(b) specific of the agreement particularly refer to the Commitment Well which is a defined term in paragraph 3(a). The Commitment Well definition, in my view, is not altered by the comma in the sense. In my view, the Commitment Well, probably the interpretation is it does include those conditions in it. And, in my view, that is sufficient for the purpose of finding that the case for summary judgment has not been made out.

I don't want to say anything more about sort of the issues generally, given that I've found that summary judgment is not available today. There's other issues here such as the good faith issues, such as whether there was sufficient compliance with trying to pursue the various things along the way in terms of the conditions. There's counterclaims here, there's various other things. So, in my view, a trial is necessary, at least based on the record before the Court at this stage. And, notwithstanding Mr. Stead's best efforts, I just don't think the case for summary judgment and summary determination of the issues has been made out so I dismiss the application for summary judgment.

MR. ROBINSON: Sir, I would like to speak to costs now except it won't be me because my colleague will be taking the lead --

MASTER FARRINGTON: Sure.

MR. ROBINSON: -- on costs, Ms. Slack, with your leave.

MASTER FARRINGTON: Sure.

Submissions by Ms. Slack (Costs)

MS. SLACK: Thank you, Master Farrington.

MASTER FARRINGTON: Yes.

MS. SLACK: Audax submits that it should be entitled to double the costs that would be allowable under column 3. As you're aware, *Rule* 10.29 is the general rule that provides that costs are generally awarded against the unsuccessful party, as well as *Rule* 10.31 provides that you have general discretion.

We have a letter -- we made an offer on July 17th, 2018, that withdrawal of the -- for withdrawal of the summary judgment application in exchange for $500. I do have a copy here if you'd like to see it.

MASTER FARRINGTON: Sure.

MS. SLACK: It was a *Calderbank* offer that was open until the beginning of the cross-examination of Mr. Thompson. We have been successful on this application. You did not have to hear Audax's submissions and we were wholly successful on the contractual interpretation argument. Our letter of July 17th, 2018, as you'll see, it is a *Calderbank* offer with -- that would provide for double costs of steps after that point.

We filed a fulsome affidavit of Mr. Duce which you have in front of you, compared to their brief affidavit evidence. We have a brief that advanced law not only on contractual interpretation, but frustration in regulatory approvals and the law of liquidated damages. In addition to, of course, the law on summary judgment, their brief offered little legal backup for their contractual interpretation position.

It is our submission that this was a poor use of time in this action and our client should be compensated for that given the fulsome argument that they have advanced in their favour.

We have a draft bill of costs here that comes to $6,000. I can provide you a copy if you would like to see it.

MASTER FARRINGTON: Sure.

MS. SLACK: That draft bill of costs, however, just has -- it has not multiplier on the column 3 tariffs that are provided for --

MASTER FARRINGTON: Yes.

MS. SLACK: -- in the *Rules of Court.* We submit that double that would be $12,000. Considering that we were successful, and considering that although there is some mixed case law and this Court does have ultimate discretion in the matter, in the case of *Weatherford Canada Partnership v. Addie* which is a decision of the Alberta Court of Queen's Bench in 2018, I have a highlighted copy of that as well if you'd like to see it.

MASTER FARRINGTON: Sure. Please.

MS. SLACK: At paragraphs 54 and 55 of that decision, the Court does note that costs -- that a general rule of costs is that 40 to 50 percent of the client's bill should be indemnified. And, thus, considering the fulsome effort that we have put forth -- considering the effort that we have put forth and the fact that Teine is a large oil and gas company, we seek to have our costs assessed at $15,000 at this hearing. Their position of absolute liability and given all the evidence that we put forward shows that there was no amount of evidence that would have stopped this application from proceeding despite it not having merit on the contractual interpretation.

So we submit that $15,000 is reasonable for this application.

MASTER FARRINGTON: What column is this bill of costs under?

MS. SLACK: Column 3, I believe.

MASTER FARRINGTON: It's done under -- calculated under column 3?

MS. SLACK: Yes.

MASTER FARRINGTON: And the double costs treatment, is that typical of *Calderbank* offers?

MS. SLACK: Correct. Yes. In the sake of full disclosure, it's typical of I believe the steps that are taken after the offer is filed. So that wouldn't be our statement of defence. But considering, as I noted, that we were successful, that this may not have been the best use of resources given the effort that we put forward, I -- the $12,000 is double the entire bill of costs.

MASTER FARRINGTON: Right.

MS. SLACK: Not just double the steps afterwards.

MASTER FARRINGTON: Okay. Thank you.

Mr. Stead?

Submissions by Mr. Stead (Costs)

MR. STEAD: Thank you, Sir. A few points, Sir.

MASTER FARRINGTON: Sure.

MR. STEAD: I'm not aware of any authority anywhere that allows one to double disbursements. So, that would be -- I mean, doubling the fees would be doubling $4,500 and then adding the disbursements one time. But we are directed, Sir, by Part 1 of the *Rules of Court* to try to identify the key issues in a dispute and resolve them as quickly as possible. That's what we did. Now, I appreciate obviously, Master Farrington, you disagreed, but I think it's -- even disagreeing in the disposition of the application one can still see that we did that. We said this is the key issue and we tried to -- not tried, we did put it before the Court. And obviously you decided, Sir, it's not appropriate to determine the issue today. Fair enough.

But my friend's suggestion that because they provided a longer affidavit and that makes

things better, I disagree with, Sir. It's not as if, I mean, our position was ground in contractual interpretation. So to say -- to criticize us for a short affidavit is counterintuitive. We put exactly what we felt we needed before the Court and nothing more.

Now, in terms of the cross-examinations themselves, Sir, in a situation such as this the appropriate thing to do is to direct that they may be treated as questioning transcripts and then on those points to award costs in the cause. Because we've covered that ground already, we don't need to cover it again. And since the -- this isn't a case where my friend's cross-applied and they won. This is a case where the Court said there isn't enough before me to day to decide the issue. So, that's what you have then with the cross-examination transcripts.

The other point I would add, Sir, is that Mr. Thompson's cross-examination was on July 18th. Getting a *Calderbank* offer a day or two beforehand, that's not I think enough time in advance to really give a party the opportunity to consider it or to face cost ramifications for it.

There -- this is not a formal offer under the *Rules of Court,* but in those situations there are prescribed time periods before which the formal offers have to be applied. So, I would say, Sir, the double costs for the preparation for questioning -- the costs for the questioning steps, those should be costs in any event of the cause -- excuse me, costs in the cause, I apologize, and a direction that those transcripts may be used as questioning transcripts.

With respect to the application itself, the costs of that which is $1,500, I have no issue with that being doubled, Sir, but that would take us to 3,000. And then -- yeah, the disbursements should be, in my view, also in the cause because those are essentially the costs of the court report, the costs of the transcripts.

MASTER FARRINGTON: So in the bill of costs, a contested application with brief, item 8(1), you don't have any objection or argument about that being doubled?

MR. STEAD: That's correct, Sir.

MASTER FARRINGTON: And the other things though you would submit ought not to be doubled; is that right?

MR. STEAD: Well, I submit primarily, Sir --

MASTER FARRINGTON: Yes.

MR. STEAD: -- there should be a direction those are treated as

discovery transcripts now or as --

MASTER FARRINGTON: Okay.

MR. STEAD: -- now questioning, what we used to think of them as discovery transcripts. And then costs in the cause for those because they're going to be used down the road in this action. It doesn't make sense to question -- to question anew if these can't be used in that way. And if they can be used in that way, then it should be costs in the cause. But at a bare minimum, Sir, the disbursements should not be doubled and the first two items of 5(1) and 5(2) should not be included because of how close to the first questioning date the offer was given.

MASTER FARRINGTON: Okay. Thank you.

MR. STEAD: Thank you, Sir.

MASTER FARRINGTON: Reply, please?

MS. SLACK: I'd just like to reiterate that there's nothing that we could've done to stop the application so I'm not criticizing the short affidavit, I'm just saying that in the --

MASTER FARRINGTON: Right.

MS. SLACK: -- it's my submission that in the face of fulsome evidence they didn't back down.

Second, we don't agree to transcript -- to using these transcripts for questioning. Cross-examination on an affidavit is entirely different than when there's -- there's no affidavit of records yet, questioning will have to take place on that. The questioning that would take place on these affidavits is different than the questioning in the action which is one of the reasons why we're seeking double costs on that.

I have a draft order --

MASTER FARRINGTON: Okay. Let's see that.

MS. SLACK: -- for your consideration here.

MASTER FARRINGTON: If you can pass a copy to your learned friend as well.

MS. SLACK: Yeah. Of course.

Ruling (Costs)

MASTER FARRINGTON: Okay. On costs, what I'm going to do is this, I think Mr. Stead's argument on the costs is reasonable. They were entitled to some time to digest the offer that was made. But, that being said, this application was heard and argued today with plenty of time in advance to digest the implications. So I think double costs for the contested application with brief, item 8(1), is acceptable so that becomes $3,000.

Everything else will be as set out in the -- as set out in the bill of costs. So the total fees become $6,000 instead of $4,500, adds $1,500 onto that, costs award that I make, if my math is right, is $7,519. Does that sound correct?

MR. ROBINSON: That's fine, Sir.

MASTER FARRINGTON: Yes. $7,519 in total. And -- I think I've got it right. So that's payable to the defendants forthwith in any event of the cause. And then on the transcripts, I'm not going to make the direction sought by Mr. Stead. The reason, of course, is different techniques are used in the -- in questioning for discovery and questioning on an affidavit. Questioning for discovery, of course you can ask whatever you want without regard to what the answer's going to be and you can explore things. Questioning on affidavit, you have to be more narrowly focussed and question things in the context of the particular application. And in the context of knowing that the entire transcript becomes evidence. So, they're different procedures, different purposes and different techniques so I won't make that direction.

So I've signed the form of order. Thank you, everyone.

MR. STEAD: Thank you, Sir.

MASTER FARRINGTON: Thank you.

MR. STEAD: Sorry, Sir, just one question.

MASTER FARRINGTON: Sure.

MR. STEAD: I'm trying to do the math as well. So I've got -- oh, no, right. $6,000 and then adding the other amounts. So, my apologies.

MASTER FARRINGTON: The net addition, yes, was $1,500 I think. Yes. That make sense?

MR. STEAD: It does. Thank you, Sir.

MASTER FARRINGTON: Okay. Thank you. Thank you, everyone.

MR. ROBINSON: Thank you, Sir.

THE COURT CLERK: Order in chambers.

MASTER FARRINGTON: Mr. Clerk, I'll leave the file there.

PROCEEDINGS CONCLUDED

Certificate of Record

I, Paul Mak, certify that this recording is the record made of the evidence in the proceedings in the Court of Queen's Bench, held in courtroom 903, at Calgary, Alberta, on the 2nd day of October, 2018, and that I was the court official in charge of the sound-recording machine during the proceedings.

Certificate of Transcript

I, Su Zaherie, certify that

(a) I transcribed the record, which was recorded by a sound-recording machine, to the best of my skill and ability and the foregoing pages are a complete and accurate transcript of the contents of the record, and

(b) the Certificate of Record for these proceedings was included orally on the record and is transcribed in this transcript.

TEZZ TRANSCRIPTION, Transcriber
Order Number - 1001-6507
Dated: October 16, 2018