



COURT FILE NUMBER 1801- 10960

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity

DEFENDANTS PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE

DOCUMENT STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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NOTICE TO THE DEFENDANTS:

You are being sued. You are a Defendant.

Go to the end of this document to see what you can do and when you must do it.

Note: State below only facts and not evidence (Rule 13.6)

The Parties

1. The Plaintiff is PricewaterhouseCoopers Inc. LIT (“**PwC**”), a licensed insolvency trustee and the trustee in bankruptcy (the “**Trustee**”) of the estate of Sequoia Resources Corp. (“**Sequoia**” or “**PEOC**”).
 - 1.1. Sequoia was formerly known as Perpetual Energy Operating Corp. and was the trustee of Perpetual Operating Trust (“**POT**”) until October 1, 2016.
 - 1.2. On or about March 2, 2018, Sequoia filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended (the “**BIA**”) and on or about March 23, 2018 Sequoia assigned itself into bankruptcy.
2. The Defendants are:
 - 2.1. Perpetual Energy Inc. (“**PEI**”), a corporation duly incorporated pursuant to the laws of the Province of Alberta;
 - 2.2. POT, an unincorporated trust formed pursuant to the laws of the Province of Alberta;
 - 2.3. Perpetual Operating Corp. (“**POC**”), a corporation duly incorporated pursuant to the laws of the Province of Alberta, and
 - 2.4. Susan Riddell Rose (“**Rose**”), an individual residing in Calgary, Alberta.
3. At all material times:
 - 3.1. Rose was a director of PEI, PEOC and POC;
 - 3.2. Rose was the beneficial owner of shares in PEI;
 - 3.3. PEOC and POC were wholly-owned subsidiaries of PEI; and
 - 3.4. PEI controlled POT, as the parent corporation of its trustee, PEOC and then POC.

The Agreements

4. In or about the summer or fall of 2016, PEOC and the Defendants entered into a series of transactions, with the intent to benefit the Defendants to the prejudice of PEOC, by:
 - 4.1. transferring a large number of shallow gas wells and related assets with significant associated liabilities (the “**Goodyear Assets**”) from POT to PEOC; and then
 - 4.2. severing the corporate relationship between PEOC and the Defendants by:
 - 4.2.1. the transfer, by PEOC, of the rights, licenses and other interests it held in trust for POT, to POC;

- 4.2.2. the sale, by PEI, of all the shares of PEOC to a third-party purchaser;
- 4.2.3. the replacement of PEOC as trustee for POT;
- 4.2.4. the resignation of Rose as director of PEOC; and
- 4.2.5. the change of the name of PEOC, from Perpetual Energy Operating Corp. to Sequoia Resources Corp.

The Asset Transaction

- 5. Pursuant to a Purchase and Sale Agreement dated October 1, 2016 (the “**Asset PSA**”), PEOC, as trustee for POT, purchased the Goodyear Assets, which had significant associated abandonment and reclamation liabilities (the “**ARO**”), from POT for \$10.00.
- 6. In the Asset PSA, POT, through its trustee PEOC, agreed with PEOC, *inter alia*, that:
 - 6.1. the amount and scope of the ARO associated with the Goodyear Assets were not capable of being quantified;
 - 6.2. the ARO was inextricably linked to the Goodyear Assets;
 - 6.3. PEOC would be liable for the ARO;
 - 6.4. there was an inextricable link between the Goodyear Assets and the ARO which had been taken into account in establishing the purchase price for the Goodyear Assets;
 - 6.5. PEOC would indemnify POT for all Losses and Liabilities (as defined in the Asset PSA), including the ARO; and that
 - 6.6. no value was attributed to the assumption by PEOC of the ARO or for the indemnities provided by PEOC.

The Share Transaction

- 7. Pursuant to a Share Purchase and Sale Agreement dated September 26, 2016 (the “**Share PSA**”), PEI sold all the shares in PEOC to 1986114 Alberta Inc. (“**198**”) for \$1.00.
- 8. In the Share PSA, PEI and 198 agreed, *inter alia*, that:
 - 8.1. there would be a “Pre-Transaction Reorganization”, defined as the sale and transfer of the Goodyear Assets from POT to PEOC, and the resignation of PEOC as trustee of POT;
 - 8.2. the assumption by 198 of responsibility for the ARO was taken into account in determining the purchase price;

- 8.3. an independent engineering evaluation of the assets held by PEOC, prepared by McDaniel & Associates Consultants reasonably represented the value of the Goodyear Assets; and that
 - 8.4. PEI would continue to benefit from the Goodyear Assets from October 1, 2016 through August 31, 2018.
9. The transaction contemplated by Share PSA (the “**Share Transaction**”) closed immediately after the related transaction contemplated by the Asset PSA (the “**Asset Transaction**”).

The Retained Interests Agreement

10. Pursuant to a Retained Interests Agreement with PEOC, also dated October 1, 2016 (the “**Retained Interests Agreement**”), POT, by its new trustee, POC, and PEOC agreed, *inter alia*, that:
- 10.1. PEOC would retain an undivided 1% legal interest in certain highly productive gas assets (the “**Retained Interests**”) and the right to be the licensee of record with respect to the wells associated with those assets;
 - 10.2. PEOC would hold the Retained Interests as bare trustee in trust for POT;
 - 10.3. POT would retain 100% of the beneficial interest in the Retained Interests, in contemplation of the eventual transfer of the Retained Interests from PEOC to POT; and that
 - 10.4. PEOC would transfer the Retained Interests back to POT if, one year after the closing date, PEOC’s LLR, calculated without reference to the Retained Interests, was 1.1 or higher.
11. The objective of the transaction contemplated by the Retained Interests Agreement (the “**Retained Interests Transaction**”) was to support the LLR rating for PEOC, as determined by the Alberta Energy Regulator (“**AER**”), to allow the Asset Transaction and Share Transaction to be completed without regulatory intervention by the AER.

Value and Consideration

12. Prior to the Asset Transaction, the Share Transaction and the Retained Interests Transaction (collectively, the “**Transactions**”), Sequoia, then known as PEOC, had functioned solely as trustee for POT and had no material assets or operations.
13. The Goodyear Assets had no positive fair market value at the time of the Asset Transaction, but represented a significant net liability;
- 13.1. The value of the actual consideration given by Sequoia, then known as PEOC, in the Asset Transaction was at least \$223,241,000 and

- 13.2. The value of the actual consideration received by Sequoia in the Asset Transaction was at most \$5,670,200.
14. As a result of the Transactions:
 - 14.1. Sequoia acquired assets with associated ARO and other liabilities which exceeded the value of the assets;
 - 14.2. Sequoia received consideration which was conspicuously less than the consideration provided by Sequoia; and
 - 14.3. if Sequoia was not already insolvent, it was rendered insolvent, as its liabilities exceeded its assets and it was unable to pay its debts as they became due.

Rose as Director of PEOC

15. At all material times until her resignation as director of PEOC following the closing of the Transactions, Rose:
 - 15.1. was the sole director and directing mind of PEOC;
 - 15.2. owed fiduciary duties to PEOC, including a duty to act honestly and in good faith with a view to the best interests of PEOC, in accordance with s. 122(1)(a) of the *Alberta Business Corporations Act*, RSA 2000 c B-9 (the “*ABCA*”);
 - 15.3. owed PEOC a duty of care, including a duty to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, in accordance with s. 122(1)(b) of the *ABCA*; and
 - 15.4. was required to comply with the provisions of the *ABCA*, including s. 120.
16. Rose breached her duties to PEOC, *inter alia*, by:
 - 16.1. failing to act honestly and in good faith with a view to the best interests of PEOC;
 - 16.2. failing to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
 - 16.3. causing PEOC to enter into the Asset Transaction with POT in circumstances where:
 - 16.3.1. Rose and the other Defendants had determined that the assets to be purchased by PEOC were high liability assets that should be disposed of by, and for the benefit of, the Defendants;
 - 16.3.2. Rose was aware that PEOC was unable to meet the obligations associated with the Goodyear Assets;
 - 16.3.3. Rose was aware that PEOC was insolvent, or would be rendered insolvent by the Asset Transaction; and

- 16.3.4. Rose would benefit personally from the Asset Transaction, including as a beneficial shareholder in PEI;
- 16.4. failing to disclose to PEOC, contrary to sections 120 and 122 of the *ABCA*, *inter alia*:
 - 16.4.1. that the Transactions were not reasonable or fair to PEOC and were not in PEOC's best interests;
 - 16.4.2. that the Transactions were highly prejudicial to PEOC's interests; and
 - 16.4.3. that Rose, as a beneficial shareholder and director of PEI, had a material interest in PEI, POT and POC, which benefited from the Transactions, at the expense of PEOC; and
- 16.5. causing PEI to require 198 to agree that, as a condition of closing the Share Transaction, 198 would deliver to PEI releases executed by PEOC's new directors, purporting to release Rose from any claims by PEOC relating to her conduct as a director of PEOC, contrary to s. 122(3) of the *ABCA*.
17. As a result of the breaches by Rose of her duties as the director of PEOC:
 - 17.1. the Asset Transaction should be set aside and declared void, *inter alia* pursuant to s. 120(9) of the *ABCA*;
 - 17.2. Rose should be required to account to PEOC for any profit she realized as a result of the Asset Transaction; and
 - 17.3. PEOC suffered damages, including:
 - 17.3.1. the difference between the consideration given and received by PEOC as a result of the Asset Transaction;
 - 17.3.2. costs incurred until the Goodyear Assets are returned to POT, including the costs related to address safety, environmental and other issues relating to the Goodyear Assets; and
 - 17.3.3. costs incurred to investigate the Transactions and to act in the best interests of creditors of PEOC.

Oppression

18. The Trustee is a proper complainant within the meaning of Part 19 of the *ABCA*, including sections 239 and 242.
19. Through the acts and omissions set out in this Statement of Claim, including causing PEOC, PEI, POT and POC to enter into and carry out the Transactions:
 - 19.1. Rose exercised her powers as a director of PEOC and its affiliates in a manner; and

19.2. PEI and POC carried on or conducted their business or affairs in a manner that was: oppressive, unfairly prejudicial to or unfairly disregarded the interests of the creditors of PEOC, including its contingent creditors.

20. As a result of the Transactions generally, and the Asset Transaction in particular:

20.1. if PEOC was not insolvent, it was rendered insolvent;

20.2. PEOC was liable for, but unable to pay, the municipal property taxes with respect to the Goodyear Assets pursuant to the *Municipal Government Act*; and

20.3. PEOC became liable for, but unable to pay, the ARO associated with the Goodyear Assets;

all for the benefit of PEI, POC and Rose personally.

Transfer at Undervalue

21. The Asset Transaction constituted a transfer at undervalue within the meaning of the *BIA*, including sections 2 and 96.

22. The Asset Transaction:

22.1. was a disposition of property for which the consideration received by PEOC was conspicuously less than the fair market value of the consideration given by PEOC, including by its assumption by PEOC of the ARO associated with the Goodyear Assets;

22.2. was entered into between PEOC and POT in circumstances where:

22.2.1. PEOC was the trustee of POT;

22.2.2. PEI controlled PEOC and POT;

22.2.3. Rose was a director and beneficial shareholder of PEI and the sole director of PEOC;

22.2.4. PEOC, PEI, POC, POT and Rose were not dealing at arm's length with each other within the meaning of the *BIA*; and

22.2.5. PEI, POC and Rose benefited from and were privy to the Asset Transaction within the meaning of s. 96 of the *BIA*;

22.3. occurred in October 2016, less than 5 years before Sequoia filed the NOI and assigned itself into bankruptcy in March 2018; and

22.4. was entered into while PEOC was insolvent, *alternatively* rendered PEOC insolvent.

23. Pursuant to s. 96 of the *BIA*:
 - 23.1. the Asset Transaction is void as against the Trustee; or
 - 23.2. the Trustee is entitled to judgment against PEI, POC, POT and Rose for the difference between the value of the consideration received by PEOC and the value of the consideration given by PEOC in the Asset Transaction.

Public Policy, Statutory Illegality and Equitable Rescission

24. The Transactions are void:
 - 24.1. on grounds of public policy, for being contrary to the public policy reflected in Alberta's oil and gas regulatory regime, including the *Oil and Gas Conservation Act*, RSA 2000, ch. O-6, the *Oil and Gas Conservation Rules*, AR 151/71 and the AER's Directive 001, Directive 006, Directive 011 (the "**Regulatory Regime**");
 - 24.2. on the basis of statutory illegality, as they were expressly or impliedly prohibited by the Regulatory Regime; and
 - 24.3. on equitable grounds, for the reasons and in the circumstances set out in this Statement of Claim.

Remedy sought:

1. An order setting aside Asset Transaction and declaring the Asset Transaction void as against the Trustee;
2. *Alternatively to paragraph 1*, judgment against PEI, POC, POT and Rose, jointly and severally, for the difference between the value of the consideration received by PEOC and the value of the consideration given by PEOC pursuant to the Asset Transaction;
3. Judgment against Rose for damages caused by the breach of her duties to PEOC;
4. An Order, directing Rose to account to the Trustee for any profit or gain realized on the Transactions;
5. An Order pursuant to Part 19 of the *ABCA*;
6. Costs of this Action on a solicitor-and-own-client, full indemnity basis; and
7. Further and/or alternative relief.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.