

Court of King's Bench of Alberta

Citation: *Pentelechuk v Grand Rapids Pipeline GP Ltd*, 2024 ABKB 283

Date: 20240517
Docket: 2103 06839
Registry: Edmonton

Between:

Darren Ward Pentelechuk and NPS Farms Ltd.

Plaintiffs

- and -

Grand Rapids Pipeline GP Ltd.

Defendant

**Endorsement on Interest
of the
Honourable Justice M.E. Burns**

[1] I issued my decision in *Pentelechuk v Grand Rapids Pipeline GP Ltd*, 2023 ABKB 692 on December 6, 2023, allowing the parties to write to me should they not be able to agree to costs. On March 22, 2024, I received correspondence from counsel advising that they were unable to agree to interest that might flow from my decision. Specifically, whether interest is payable under the *Surface Rights Act*, RSA 2000, c S-24, or the *Judgment Interest Act*, RSA 2000, c J-1.

[2] My initial decision arose from an appeal of a decision and compensation order of the Surface Rights Board under s 26 of the *Surface Rights Act*. I determined that the appeal should be allowed, and the compensation order was varied to increase the compensation payable.

[3] The Appellant argues that interest payable is determined by the *Surface Rights Act* during the period between the date the right of entry order was granted to the date of the decision of the Surface Rights Board, following which interest is to be calculated under the *Judgment Interest Act*. Alternatively, the Appellant argues that interest on the amounts ordered by me is governed entirely by the *Judgment Interest Act*.

[4] The Respondent argues that the *Judgment Interest Act* does not apply because (i) my decision was not a judgment for the payment of money but was a direction to vary a compensation order; or (ii) the determination of interest is in accordance with s 25(9) of the *Surface Rights Act* which means that the *Judgment Interest Act* does not apply under section 2(2)(i) of that Act.

[5] I accept the submissions of the Respondent on this point.

[6] The *Judgment Interest Act* provides the following with respect to pre-judgment interest:

2(1) Where a person obtains a judgment for the payment of money or a judgment that money is owing, the court shall award interest in accordance with this Part from the date the cause of action arose to the date of the judgment.

(2) The court shall not award interest under this Part...

(i) where the payment of pre-judgment interest is otherwise provided by law.

[7] The *Surface Rights Act* provides:

25(9) The Tribunal may order the operator to pay interest on any or all of the compensation payable on and from the date the right of entry order was made, at the Bank of Canada rate on the date the right of entry order was made.

[8] At the hearing of the appeal, I had the following jurisdiction:

26(7) The Court

(a) has the power and jurisdiction of the Tribunal in determining the amount of compensation payable and the person to whom the compensation is payable,

(b) shall determine the amount of compensation payable and the person to whom the compensation is payable,

(c) shall

(i) confirm the order of the Tribunal, or

(ii) direct that the compensation order be varied in accordance with its judgment, and

(d) shall make directions as to costs of the appeal in accordance with subsection (9).

[9] I note the legislation also provides:

26(10) A judgment of the Court of King's Bench or the Court of Appeal shall be served on the Tribunal, and the Tribunal without any further proceedings shall vary its order in accordance with the judgment.

[10] In its original decision the Surface Rights Board ordered at paragraph 137 that interest would be payable “from the date of the ROEs [Right of Entry] until payment in full, less payments already made by the Operator and being held by the Board. The appropriate interest rate is the Bank of Canada Rate in effect on the date of issue of the respective ROE.”

[11] My decision did not change the Surface Rights Board’s decision on this point. It changed the amount of compensation that would be paid. Given that s 25(9) of the Surface Rights Board was applied and interest addressed in the decision, I find that payment of prejudgment interest was otherwise provided by law and the *Judgment Interest Act* does not apply.

[12] With respect to “post-judgment interest” under the *Judgment Interest Act*, the *Act* provides:

6(1) In this section, “judgment debt” means a sum of money or any costs, charges or expenses made payable by or under a judgment in a civil proceeding.

(2) Notwithstanding that the entry of judgment may have been suspended by a proceeding in an action, including an appeal, a judgment debt bears interest from the day on which it is payable by or under the judgment until it is satisfied, at the rate or rates prescribed under section 4(3) for each year during which any part of the judgment debt remains unpaid.

[13] The application of this section to this case is problematic for two reasons, (i) there is no “judgment debt” arising from my decision – just an amended compensation order, and (ii) the *Surface Rights Act* specifically addresses the question of how long interest is paid and for what amount post compensation order. There is no need for this court to alter what the legislature found was a fair rate of interest in surface rights cases. The specific application of provisions under the *Surface Rights Act* takes precedence over the more generally applicable provisions of the *Judgment Interest Act*.

[14] I accept the Respondent’s position that as all amounts specified in the original decision was determined, paid (including interest) and those payments were provided to the Appellants’ former counsel in trust on behalf of the Appellants in May 2021, and not appealed, there is no basis to vary the interest determined and accepted with respect to the previously paid compensation.

[15] The amounts outstanding based on my decision will be based on the 0.75% as at the right of entry date as the Board is prepared to apply that rate to the incremental compensation payment. The interest will accumulate until the compensation order is paid in full.

[16] I will not determine the issue of interest on the costs payable under the consent order as it was not within the scope of the question put to me. I trust that counsel can work through that issue without the court’s guidance.

Heard by written application filed on the 30th day of April, 2024.

Dated at Edmonton, Alberta this 16th day of May, 2024.

M.E. Burns
J.C.K.B.A.

Appearances:

Gavin S. Fitch, KC and Marika Cherkawsky
McLennan Ross LLP
for the Appellants

Lars Olthafer
Blake, Cassels & Graydon LLP
for the Respondent