Court of King's Bench of Alberta

Citation: Savanna Well Servicing Inc v Cleo Energy Corp, 2023 ABKB 595

Date: 20231020
Docket: 1701 13016
Registry: Calgary

Between:

Savanna Well Servicing Inc.
and Fort McKay - Savanna Energy Services Limited Partnership

Plaintiffs/
Defendants by Counterclaim

- and -

Cleo Energy Corp.

Defendant/
Plaintiff by Counterclaim

Reasons for Decision
of the
Honourable Justice R.A. Neufeld

Appeal from the Decision by
Applications Judge Prowse
Dated the 21st day of November 2022

[1] Cleo Energy Corp. ("Cleo Energy") appeals a decision by Applications Judge Prowse granting summary judgment to Savanna Well Servicing Inc and Fort McKay – Savanna Energy Services Limited Partnership ("Savanna") for unpaid well servicing work: Savanna Well Servicing v. Cleo Energy, 2022 ABKB 769. The amount invoiced (and adjudged owing) was $605,867. With interest owing under the contract, and no payment made, the total amount adjudged owing is now over $1,000,000.

[2] Appeals of Applications Judge decisions are adjudicated on a standard of review of correctness. They are considered *de novo* hearings, in which new evidence may be tendered. That is not to say that the Applications Judge decision is to be ignored or discarded, especially when no new evidence is presented, and the decision below is issued with detailed reasons, as is the case here. The decision can and often will provide an appropriate framework of analysis for examining whether, based on the record, the Applications Judge was correct: ***Boyko v Boyko***, ABQB 266 at para 5. The correctness review is undertaken with a view to determining whether the decision of the Applications Judge contains material misapprehensions of fact, errors of reasoning or outcomes that are clearly wrong: ***Canuck v Yangarra***, 2022 ABQB 145 at para 36.

Background

[3] In early 2016, Cleo Energy was the operator of hundreds of wells that were no longer in operation and needed to be properly abandoned. Part of the abandonment process is removal of tubing from the casing.

[4] Cleo Energy sent a Request for Proposal to 18 well service companies. One of those was Savanna.

[5] Savanna's proposal made it clear that it would be providing service rigs to Cleo Energy on a day rate basis.

[6] The proposal was accepted, and a contract was entered into between Savanna and Cleo Energy. The contract used was the industry standard form contract that had been negotiated between the Canadian Association of Oil Well Drilling Contractors (representing the drilling service industry) and Canadian Association of Petroleum Producers (representing energy producers).

[7] The contract provides that specific terms can be added as schedules. In this case, such a schedule was added - a Service Work Order.

[8] Earlier, the Savanna bid had also included a Rate Sheet detailing how its Day Rate would be calculated. Assuming a 10- hour workday, the rate was $5,310 for a single rig.

[9] Savanna provided tubing removal services to Cleo Energy starting in February 2017. The work was done under the supervision and direction of Cleo Energy, whose onsite supervisor would sign off on daily Tour Sheets describing the work done over the course of the day, any unusual problems and so forth.

[10] As noted by Applications Judge Prowse, no recorded complaints were made to Savanna regarding the quality of its work. However, concern was expressed by Cleo Energy representatives regarding progress in the tubing removal program, including once at a Calgary Flames hockey game.

[11] After a pause in work for spring break-up, Savanna crews returned. A few days later, Cleo Energy discharged Savanna, giving the work to one of its competitors.

The Contract

[12] The Master Well Service Contract is, as the term connotes, intended to operate as a standard form, umbrella agreement. It contains important provisions that limit the cost and scope of potential litigation. First, the contract contains an entire agreement clause. There is no room to

argue that side deals or pre-contractual negotiations or representations prevail over the agreement as approved and executed by both companies. Second, the Operator has the opportunity to dispute invoices, but must do so within 30 days of receipt. This places the onus on those responsible for accounts payable to act in a reasonably expeditious manner so that billing problems are identified and rectified properly. Third, the agreement allows the Operator to terminate the contract if dissatisfied, without cause or explanation.

[13] As found by Judge Prowse, given these contractual provisions and the evidence before the Court, Cleo Energy has no defence to the claim against it. The contract it entered into, with open eyes, was for day rate services. Those services were supplied by Savanna (including its third party contractor Savanna-Fort McKay Limited Partnership) which rendered invoices. Those invoices remain completely unpaid over six years later, in breach of the agreement.

[14] Cleo Energy's complaints regarding pace of work (whether well-founded or not) were addressed by Cleo Energy in the manner contemplated in the Master Well Service Contract: it terminated Savanna. As permitted by the contract, that termination was without advance notice and as a result the remaining work went to one of Savanna's competitors, without recourse.

[15] In short, the contract operated as written. The only problem is that Cleo Energy decided not to pay the invoices. Its reason for doing so is that it considers that the contract should be interpreted to include unwritten representations allegedly made by Savanna representatives regarding pace of work before and after it was entered into. Even if such representations were made (which Savanna disputes) this is not allowed under the contract.

[16] In summary, I agree with the reasoning and result of the decision by Applications Judge Prowse. His decision contains no material misapprehensions of fact, and his analysis of the contract (including the applicability of ***Horizon Resource Management Ltd v Blaze Energy Ltd***, 2011 ABQB 658, aff'd on appeal 2013 ABCA 139) is also apt and on point. I also agree with his finding that the involvement of the Fort McKay Savanna Energy Services Limited Partnership is some of the drilling does not give rise to a defence for Cleo Energy as such charges were recoverable under Article 8.1 of the contract.

[17] The appeal is therefore dismissed, with costs.

[18] If the parties cannot agree on costs within 30 days of this decision, that matter can be remitted to me for direction by way of written submissions. Those submissions may be five pages or less, exclusive of authorities.

Heard on the 11th day of October 2023.
Dated at the City of Calgary, Alberta this 20th day of October 2023.

R.A. Neufeld
J.C.K.B.A.

Appearances:

Kevin Pedersen, Gowling WLG (Canada) LLP
for Cleo Energy Corp.

Shannon Hayes and Jahaan Premji, Lawson Lundell LLP
for Savanna Well Servicing Inc and Fort McKay – Savanna Energy Services Limited Partnership