Court of King's Bench of Alberta

Citation: Spartan Delta Corp v Orphan Well Association, 2024 ABKB 555

Date: 20240920
Docket: 2401 00909
Registry: Calgary

Between:

Spartan Delta Corp.

Applicant

- and -

Orphan Well Association and Midstream Equipment Corporation Ltd.

Respondents

Reasons for Decision
of the
Honourable Justice M.H. Hollins

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[1] Spartan Delta Corp brought this application for replevin. It claims to own a specialized compressor that was taken by the Orphan Well Association (OWA) and sold to a third party, Midstream Equipment Corporation Ltd (Midstream). Spartan wants the compressor returned but the OWA contends that it had the statutory authority to possess and to sell the compressor.

Background

[2] Nexen Inc. held an oil and gas license that was transferred to CNOOC Ltd and eventually, in 2014, to Trident Exploration. Trident went into receivership in May of 2019. On December 15, 2020, the Trident receiver, PricewaterhouseCoopers Inc. was discharged. The Respondents say that all of Trident's equipment not already dealt with in the receivership, which

included the compressor, devolved to the Alberta Energy Regulator (AER). The AER declared the Trident site to be abandoned and authorized the OWA to clean it up. The OWA sold the compressor to Midstream for $20,000 on January 20, 2022.

[3] Spartan says that the compressor was not OWA's to sell, as it had purchased the compressor on July 15, 2020 by way of a Sale and Vesting Order (SAVO) in the receivership of Bellatrix Exploration Ltd, which had been operating in partnership with the then-licensee, Nexen. Spartan left the compressor at the site after purchase, although it registered its ownership of the compressor with the Alberta Boiler Safety Association (ABSA) and paid the municipal property tax associated with the compressor. It says that it put a great deal of work into upgrading the compressor and estimates its value at $1.8M.

[4] Eventually, Midstream attempted to register the compressor with the ABSA. Spartan says that was when it learned of these developments and sued for the return of the compressor. The OWA says that Spartan's predecessor company, Return Energy Inc., was on the service list in the Trident receivership, although it seems common ground that the compressor was never specifically listed in the Trident receivership proceedings.

[5] The issue comes down to whether or not the OWA knew, within the meaning of its governing legislation, that the compressor belonged to Spartan when it seized and sold the compressor to a third party. If it had that knowledge, then the OWA was acting without statutory authority to sell the compressor. If it did not know that Spartan owned the compressor, the sale was effective to extinguish any pre-existing rights of ownership, or at least this is what OWA argues.

[6] For the reasons that follow, I agree with the OWA that the governing legislation does not include constructive knowledge. As the OWA had no actual knowledge that Spartan owned the compressor, it was authorized to proceed as it did and therefore there can be no "wrongful taking" of the compressor, as is required for replevin.

Replevin and Ownership

[7] Rule 6.49 of the Albert *Rules of Court* says that a party applying for a replevin order for the return of property must establish: (1) the wrongful taking or detention of the property; (2) the value and description of the property; and (3) its ownership of the property.

[8] The replevin order sought here is an interim order and does not require a full adjudication of these issues but rather just that the applicant establish substantial grounds for bringing the application under R.6.49. The threshold was historically quite low; see *Enerplus Corporation v Copyseis Ltd*, 2019 CarswellAlta 2885 at para. 12. However, some more recent jurisprudence of this court held that "substantial grounds" meant showing a high degree of likelihood of success; *Gault v Cowden*, 2023 ABKB 178 at paras.18-20. Given my findings, I need not weigh in on whether these are different and if so, which is the preferred approach.

[9] Even at this preliminary stage, Spartan must still establish that the property was wrongfully taken. If the OWA can establish that it acted with statutory authority, then there can be no "wrongful taking" nor could Spartan establish its current ownership, even on an evidentiary burden of proof that is something less than a summary judgment standard.

[10] Whether the OWA had the authority to seize and sell the compressor without making any meaningful inquiry into its ownership depends on the proper interpretation of s.102(1) of the *Oil and Gas Conservation Act*, RSA 2000, c.0-6 (*OGCA*):

> 102(1) When the work of control, completion, operation, suspension or abandonment of a well or facility is conducted by the Regulator or a person authorized by it, the Regulator may sell or dispose of in a manner it sees fit any drilling, producing or operating equipment, installation or material found on the site or taken from the well or facility, but the Regulator shall not sell any equipment, installation or material that it knows is owned by someone other than the licensee, approval holder or working interest participant.
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> 102(2) A person to whom any equipment, installation or material is sold pursuant to subsection (1) receives good title to the equipment, installation or material, free of any claim whatsoever.
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> [emphasis added]

[11] Spartan says that the OWA has some obligation to ascertain the ownership of equipment it sells under this legislative provision. The OWA says that "knows" means actual knowledge and cannot be interpreted to include constructive knowledge.

Statutory interpretation

[12] The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament; *Re Rizzo & Rizzo Shoes*, 1998 CanLii 837 (SCC) at para.21. Notwithstanding this was almost 30 years ago, this is the articulation of the "modern principle of statutory interpretation" and remains the law.

[13] This approach – looking at the word(s) in the larger context of the legislative objectives or intentions – was described thus by our Court of Appeal:

> But such a non-contextual purely word-based literal approach to defining words in an *Act* is no longer the proper method of interpretation today in Canada (if it ever was). See *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559, 287 N.R. 248 (S.C.C.) (para. 26); *Rizzo & Rizzo Shoes Ltd., Re*, [1998] 1 S.C.R. 27, 221 N.R. 241 (S.C.C.) (para. 21); *R. v. Craig*, 2009 SCC 23, [2009] 1 S.C.R. 762, 388 N.R. 254 (S.C.C.), 292 (para. 81); *R. v. N. (L.)* (1999), 237 A.R. 201 (Alta. C.A.) (para. 53).
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> *Chieu v. Canada (Minister of Citizenship & Immigration)*, 2002 SCC 3, [2002] 1 S.C.R. 84 (S.C.C.) at para. 34 states:
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> > ... this Court has long rejected a literal approach to statutory interpretation. Instead, [the statute section at issue] must be read in its entire context. This inquiry involves examining the history of the provision at issue, its place in the overall scheme of the Act, the object of the Act itself, and Parliament's intent both in enacting the Act as a whole, and in enacting the particular provision at issue.

> One of the most important modern canons of construction is as follows. Try to make the words in question fit into, and faithfully advance, the overall legislative scheme and objectives of the *Act*. See the *Bell ExpressVu Ltd. Partnership* and *Rizzo & Rizzo Shoes Ltd., Re* cases, *supra*. That is like the rule in *Heydon's Case*: see what was the mischief the *Act* aims at, and what solution it adopts. See (1584), 3 Co. Rep. 7a, 76 E.R. 637 (Eng. K.B.), 638.
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> *Brick Protection Corp v Alberta (Provincial Treasurer)*, 2011 ABCA 214 at paras.31-33

The Objectives of the Act

[14] The *OGCA* regulates the licensing regime for oil and gas industry participants in Alberta. The AER licences participants and enforces the statutory obligations imposed on those participants under the *OGCA*, including obligations of abandonment and reclamation. As part of that process, the AER can declare any well site or facility "abandoned". The OWA then steps in and cleans it up. The costs of doing so are a debt owed to the AER and the proceeds of sale of any abandoned assets go first to payment of that licensee's debt. A more comprehensive explanation of this regime can be found at *Orphan Well Association v Grant Thorton Ltd [Redwater]*, 2019 SCC 5 at paras.14-23.

[15] Among the stated purposed of this statutory regime are:

> to secure the observance of safe and efficient practices in the locating, spacing, drilling, equipping, constructing, completing, reworking, testing, operating, maintenance, repair, suspension and abandonment of wells and facilities and in operations for the production of oil and gas or the storage or disposal of substances;
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> to provide for the economic, orderly, efficient and responsible development in the public interest of the oil and gas resources of Alberta; and
>
> to provide for the responsible management of a well, facility, well site or facility site throughout its life cycle.
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> *Oil and Gas Conservation Act*, RSA 2000, c.O-6, ss.4(b), (c) and (c.1)

[16] Given the broad reclamation and abandonment obligations of the OWA and the large number of sites and facilities for which it is responsible, the court must be cautious not to enlarge the responsibilities of the OWA to the point where its ability to achieve the objectives of the Act is diminished. In other words, in my view, the objectives of the legislation favour the OWA's proposed interpretation.

[17] Spartan argues that the OWA, had it taken the most basic of steps – checking the serial number with the ABSA registry, looking at the property tax rolls – would have known that the compressor was not owned by Trident but by Spartan. Spartan says that there is an implied duty, however minimal, to make some inquiry as to ownership. The OWA can only point to the fact that the signage at the site said "Trident".

[18] The OWA argues that imposing any duty to inquire runs counter to the clear language of s.102(1) *OGCA*. The ordinary meaning of "know" is to have information in one's mind; *Cambridge Dictionary* (Cambridge: Cambridge University Press, 2024).

[19] There are no cases interpreting this word within that section of the Act. However, in both Saskatchewan and British Columbia – which have similar licensing regimes – abandoned equipment is forfeit to the Crown with no obligation to find the owner thereof. In Saskatchewan, there is an obligation to try and find the owner, operator or licensee of the well, but not of the equipment. If the licensee cannot be located, the equipment is forfeit; *Oil and Gas Conservation Act*, RSS 1978, c.O-2, s.17.06. In British Columbia, if the property is not claimed within one year of being declared abandoned, it is forfeit to the government; *Petroleum and Natural Gas Act*, RSBC 1996, c.361, s.119.

[20] If the Alberta legislature had meant that the OWA could not dispose of equipment "that it knows or ought to know" is owned by someone other than the licensee, it could have said that and thereby effectively imposed those minimal duties of inquiry on the OWA. But it did not. The courts are simply not authorized to act as alternative legislators; *Canada v Canada North Group Inc*, 2019 ABCA 314 at paras. 107, 108 and112.

[21] While the implications of this seem arguably extreme – that the OWA can sell a piece of equipment without making any inquiry at all into its ownership – in this case perhaps that is mitigated by reference to the fact that Spartan knew or could have known that Trident (the licensee of the property on which the compressor was located) was in receivership. Given it had placed a high value on this piece of equipment, it is not unreasonable to think that Spartan might have taken steps to assert its ownership to PricewaterhouseCoopers Inc. prior to the equipment devolving to the OWA in May of 2021.

[22] Spartan advanced two other arguments. The first is that the Bellatrix SAVO by which it purchased the compressor somehow trumped the operation of the *OGCA*. I cannot accept that argument. The effect of the SAVO was to vest title to the compressor in Spartan, the same as would happen under a private bill of sale. There is no question that the SAVO was effective to make Spartan the owner until the AER declared the site abandoned and the OWA carried out its legislative (and legal) mandate, depriving Spartan of its ownership.

[23] The second Spartan argument was around s.9 of the *Orphan Fund Delegated Administration Regulation,* Alta Reg 45/2001, which provides statutory immunity to the OWA for acts done in good faith under the direction of the AER. What qualifies as an act done in good faith must still be referable to the governing legislation under which the body is acting. As the OWA did exactly what it was authorized and directed to do, there can be no maintainable claim of bad faith nor any need for the OWA to rely on this protection.

Conclusion

[24] Based on my conclusion that s.102(1) *OGCA* means actual knowledge that seized equipment belongs to someone other than the licensee, which it is agreed that the OWA did not have, Spartan's application for replevin is dismissed.

[25] If the parties cannot agree on costs of this application, they may contact my office.

Heard on the 17th day of June, 2024.
Dated at the City of Calgary, Alberta this 20th day of September, 2024.

M.H. Hollins
J.C.K.B.A.

Appearances:

Matti Lemmens and Eric Blay
for the Applicant, Spartan Delta Corp.

Justin R. Lambert and Sarah Aaron
for the Respondent, the Orphan Well Association and
Midstream Equipment Corporation Ltd.