

COURT OF APPEAL OF ALBERTA

Form 49
[Rule 13.19]

COURT OF APPEAL FILE NUMBER: 1601-0023AC

TRIAL COURT FILE NUMBER: 1501-12220

REGISTRY OFFICE: CALGARY

PLAINTIFF: ALBERTA TREASURY BRANCHES

STATUS ON APPEAL: RESPONDENT

STATUS ON APPLICATION: RESPONDENT

DEFENDANT: CONSERVE OIL 1ST CORPORATION

STATUS ON APPEAL: APPELLANT

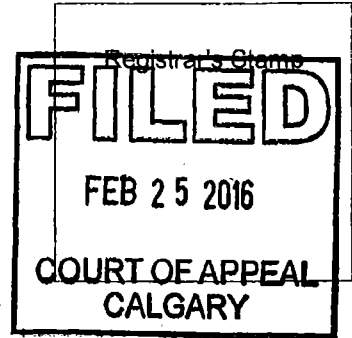
STATUS ON APPLICATION: APPLICANT

DEFENDANTS: COGI LIMITED PARTNERSHIP, CANADIAN OIL & GAS INTERNATIONAL INC., CONSERVE OIL GROUP INC.

STATUS ON APPEAL: NOT PARTIES TO THE APPEAL

STATUS ON APPLICATION: NOT PARTIES TO THE APPLICATION

DOCUMENT: AFFIDAVIT



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AFFIDAVIT OF ALEXANDER GRAMATZKI

Sworn on February 16, 2016

I, Alexander Gramatzki, of the City of Calgary, in the Province of Alberta, SWEAR AND SAY THAT:

1. I am a Director of Big Coulee Resources Ltd., the sole shareholder of the Appellant, Conserve Oil 1st Corporation ("**Amalco**"), and, as such, I have personal knowledge of the facts and matters deposed to herein, except where stated to be based upon my information and belief, in which case, I believe those facts and matters to be true.

Amalco

2. Amalco is a company incorporated pursuant to the laws of Alberta. It was created by way of amalgamation of Conserve Oil 1st Corporation ("**COC1**"), Conserve Oil 2nd Corporation ("**COC2**"), Conserve Oil 6th Corporation ("**COC6**"), and Conserve Oil 7th Corporation ("**COC7**"). It was registered as a corporate entity on December 20, 2013 and has its registered office in Calgary, Alberta. A copy of a Government of Alberta Corporate Registry search for Amalco is attached to the Affidavit of David Crombie sworn February 16, 2016 (the "**Crombie Affidavit**") as Exhibit "A".

The ATB Credit Facilities

3. COC1, COC6, and COC7 (collectively, the "**Old GPs**") were the general partners of three limited partnerships, respectively: Conserve Oil POC Growth Limited Partnership, Conserve Oil Growth POC II Limited Partnership, and Conserve Oil POC Natural Gas I Limited Partnership (collectively, the "**Old LPs**").
4. Between December 2011 and February 2013, the Old GPs each provided the Alberta Treasury Branch ("**ATB**") with a guarantee of credit facilities (the "**Old**

Credit Facilities") obtained by each of the Old LPs of which the Old GPs were the general partners (the **"Old Guarantees"**).

5. In August 2013, the Old Credit Facilities were paid out and cancelled, and the Old LPs were dissolved.
6. Further in August 2013, a new limited partnership called COGI Limited Partnership ("**COGI LP**") acquired 100% interest in all of the Old LPs' property, assets, and liabilities.
7. Effective August 30, 2013, and amended December 23, 2014, COGI LP entered into a Credit Agreement with ATB for a new credit facility for the maximum principal amount of \$94,500,000 (as amended, the "**COGI LP Credit Facility**") comprised of a revolving credit facility in the amount of \$50,000,000 and a non-revolving credit facility in the amount of \$44,500,000. A copy of the COGI LP Credit Facility agreement is attached to the Crombie Affidavit as Exhibit "J".
8. In furtherance of the COGI LP Credit Facility, on August 30, 2013, COGI LP's general partner, Canadian Oil & Gas International Inc. ("**COGI GP**") provided ATB with a guarantee (the "**COGI GP Guarantee**") of COGI LP's obligations under the COGI LP Credit Facility.

The First Receivership Order

9. On June 11, 2015, in relation to the repayment of credit extended under the COGI LP Credit Facility, counsel for ATB sent demands for payment to: (i) COGI LP, in its capacity as the borrower under the COGI LP Credit Facility; (ii) COGI GP, in its capacity as a guarantor of the COGI LP Credit Facility under the COGI GP Guarantee; and (iii) Conserve Oil Group Inc., in its capacity as guarantor of the COGI LP Credit Facility under a December 23, 2014 guarantee provided in furtherance of the amendments to the COGI LP Credit Facility (collectively, the "**Demands**"). Copies of the Demands are attached to the Crombie Affidavit as Exhibit "Z".

10. ATB did not deliver a concurrent demand for payment to Amalco.
11. On October 23, 2015, ATB filed an Application for an Order (the "**First Receivership Order**") appointing a receiver over the assets, undertakings, and properties of COGI LP, COGI GP, and Conserve Oil Group Inc. (collectively, the "**COGI LP Credit Facility Guarantors**")
12. On October 26, 2015, ATB was granted the First Receivership Order appointing a receiver over the current and future assets, undertakings, and properties of the COGI LP Credit Facility Guarantors.

The Second Receivership Order

13. On November 16, 2015, approximately five months after delivering the Demands, ATB's counsel sent a letter (the "**Amalco Demand**") to Amalco demanding payment from Amalco for the indebtedness of COGI LP that had arisen under the COGI LP Credit Facility. ATB purported to seek repayment of COGI LP's debts under the COGI LP Credit Facility from Amalco as the amalgamation successor of the Old GPs, on the basis that the Old Guarantees granted in connection with the Old Credit Facilities applied to guarantee the obligations of COGI LP under the COGI LP Credit Facility. A copy of the Amalco Demand is attached to the Crombie Affidavit as Exhibit "BB".
14. On November 23, 2015, ATB filed an Application to add Amalco as a respondent in its action against the COGI LP Credit Facility Guarantors and for a second receivership Order (the "**Second Receivership Order**") over the current and future assets, undertakings, and properties of Amalco, an entity unrelated to the COGI LP Credit Facility Guarantors.
15. Justin Lambert of Bennett Jones LLP ("**BJ**") represented Amalco in its opposition to ATB's application to add Amalco as a respondent to ATB's action against the New Credit Facility Guarantors and for the Second Receivership Order.

16. On January 6, 2016, the Honourable Madam Justice K.M. Horner granted the Second Receivership Order. A copy of the Second Receivership Order and the related Reasons for Judgment are attached to the Crombie Affidavit as Exhibits "DD" and "EE", respectively.

Bona Fide Intention to Appeal

17. Prior to Madam Justice Horner granting the Second Receivership Order, I advised Mr. Lambert of BJ that if the Second Receivership was granted, Amalco would appeal (the "**Amalco Appeal**").
18. On January 6, 2016, immediately following Madam Justice Horner granting ATB the Second Receivership Order, Mr. Lambert advised the Court that "[Amalco] has instructed me that they would like to appeal in the event you granted [the Second Receivership Order]".
19. Also on January 6, 2016, Mr. Lambert applied to the Court of Queen's Bench for an Order staying the Second Receivership Order (the "**Stay Application**") pending a determination of the Amalco Appeal. ATB opposed the Stay Application. Madam Justice Horner denied the Stay Application.
20. At all times since the granting of the Second Receivership Order on January 6, 2016, Amalco has had a *bona fide* intention to appeal the Second Receivership Order and communicated that intention to ATB, through its counsel, on January 6, 2016.

Explanation for Delay

21. At approximately 9:30am, on January 8, 2016, David Crombie, a Director of Amalco, and I had a conference call (the "**January 8, 2016 Conference Call**") with three partners from BJ to discuss the Second Receivership Order and the Amalco Appeal. I am advised by my counsel, Jonathan Bouchier, that the contents of the January 8, 2016 Conference Call are protected by solicitor-client privilege.

22. During the January 8, 2016 Conference Call, BJ advised Mr. Crombie and I that Amalco had 30 days within which to file its Civil Notice of Appeal of the Second Receivership Order (the "**BJ Advice**"). I and Amalco have no intention to waive, and do not waive, the solicitor-client privilege which protects the contents of the January 8, 2016 Conference Call beyond the BJ Advice set out herein.
23. At no time following BJ providing Mr. Crombie and I the BJ Advice, and until January 29, 2016, did BJ or anyone else advise us that Amalco actually had only 10 days under Rule 31(1) of the *Bankruptcy and Insolvency General Rules*, C.R.C. c. 368 (the "**BIA Rules**") within which to file the Amalco Appeal.
24. Had Mr. Crombie and I not been provided the BJ Advice on January 8, 2016, or had Amalco been advised of the 10-day appeal period under Rule 31(1) of the *BIA Rules* prior to January 16, 2016, Amalco would have filed the Amalco Appeal within the prescribed 10-day time period.

Amalco's Retention of New Counsel

25. Following the granting of the Second Receivership Order, Amalco decided it required alternate counsel to represent it in the Amalco Appeal. Amalco immediately began seeking alternate counsel to replace BJ.
26. Amalco understood from the BJ Advice that it had 30 days from the granting of the Second Receivership Order to retain new counsel and to have Amalco's new counsel prepare and file Amalco's Civil Notice of Appeal respecting the Second Receivership Order. Amalco relied on the BJ Advice while seeking replacement counsel for BJ.
27. On January 29, 2016 (the "**January 29, 2016 Meeting**"), Amalco retained Ariel Breitman and Jonathan Bouchier of MacPherson Leslie & Tyerman ("**MLT**") to conduct the Amalco Appeal. I am advised by my counsel, Jonathan Bouchier, that the contents of the January 29, 2016 Meeting are protected by solicitor-client privilege.

28. During the January 29, 2016 Meeting, MLT advised Amalco that the time to appeal the Second Receivership Order was 10 days under the *BIA Rules* and not 30 days under the *Alberta Rules of Court*, Alta. Reg. 124/2010 (the "**MLT Advice**"). I and Amalco have no intention to waive, and do not waive, the solicitor-client privilege which protects the contents of the January 29, 2016 Meeting beyond the MLT Advice set out herein.
29. At the time Amalco received the MLT Advice on January 29, 2016, the 10-day appeal period to appeal the Second Receivership Order under the *BIA Rules* had already expired.
30. On February 3, 2016, Amalco filed its Civil Notice of Appeal respecting the Second Receivership Order and commenced the Amalco Appeal.
31. Since receiving the MLT Advice on January 29, 2016, Amalco and MLT have taken all steps possible to commence the Amalco Appeal in a timely manner.

No Prejudice to ATB

32. I am aware of no prejudice that ATB will suffer by the granting of an extension of the time to appeal the Second Receivership Order.
33. Amalco, through its former counsel, Bennett Jones LLP, provided ATB, through its counsel, Blake, Cassels & Graydon LLP, with timely notice of Amalco's *bona fide* intention to appeal the Second Receivership Order.
34. To the best of my knowledge, permitting the Amalco Appeal to proceed will not prevent ATB from proceeding with the bankruptcy and receivership proceedings. ATB's bankruptcy and receivership proceedings have continued since the granting of the Second Receivership Order.

Amalco has Received No Benefit of the Second Receivership Order

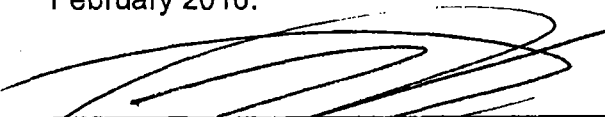
35. Amalco has received no benefit of the Second Receivership Order.

Conclusion

- 36. At all material times, Amalco has had a *bona fide* intention to appeal the Second Receivership Order.

- 37. Had Amalco not received the BJ Advice, or had Amalco received the MLT Advice prior to the expiry of the 10-day appeal period under the *BIA Rules*, Amalco would have taken all steps possible to commence the Amalco Appeal within the time period prescribed by the *BIA Rules*.

SWORN BEFORE ME at City of Calgary)
in the Province of Alberta, this 16th day of)
February 2016.)



Commissioner for Oaths in and for the)
Province of Alberta)



ALEXANDER GRAMATZKI

Jonathan J. Bouchier
Barrister & Solicitor