

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: SUPPLEMENTAL AFFIDAVIT OF A. GRAMATZKI

APPELLANT'S ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT: MacPherson Leslie & Tyerman LLP
Suite 1600, 520 – 3rd Avenue SW
Calgary, AB T2P 0R3
Phone: 403.693.4316/4310
Fax: 403.508.4349
Attention: Ariel Z. Breitman/Jonathan J. Bouchier
File: 055637-0012

RESPONDENT'S CONTACT INFORMATION OF ALL OTHER PARTIES: Blakes, Cassels & Graydon LLP
3500, 855 2 Street SW
Calgary, AB T2P 4J8
Attention: Kelly Bourassa/Ryan Zahara
Phone: 403.260.9697/9628
Fax: 403.260.9700

Registrar's Stamp

AFFIDAVIT OF ALEXANDER GRAMATZKI

Sworn on March 9th, 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., a 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.
 2. This Affidavit incorporates and relies on the facts set out in my previous Affidavit, sworn February 16, 2016, and the Affidavit of David Crombie, sworn February 16, 2016 (collectively, the "**Initial Affidavits**"), and is supplemental to the Initial Affidavits.
 3. Capitalized terms used, but not defined herein, have the meaning ascribed to them in the Initial Affidavits.
- A. Records Regarding The Appeal Period**
4. As noted at paragraphs 21 through 31 in my Affidavit, sworn February 16, 2016, on January 8, 2016, David Crombie and I had a conference call with three partners of Bennett Jones LLP to discuss an appeal of the Second Receivership Order. It was during this conference call that a partner at Bennett Jones LLP advised Mr. Crombie and I that Amalco had 30 days within which to file an appeal of the Second Receivership Order.
 5. At the request of Blakes Cassels & Graydon LLP, counsel for ATB, Amalco's counsel obtained records from Bennett Jones LLP relating to the January 8, 2016 conference call and the internal diarization directions noting that the deadline for Amalco's filing of the appeal of the Second Receivership Order was February 6, 2016. Attached hereto and marked as **Exhibits "A", "B" and "C"** respectively

are copies of notes made by a Bennett Jones LLP partner of the conference call on January 8, 2016; the directions of a Bennett Jones Partner to an assistant of January 8, 2016 to diarize the deadline for the filing of an appeal to February 6, 2016; and the Bennett Jones LLP limitation diary entry relating to the February 6, 2016 deadline for the filing of the appeal of the Second Receivership Order.

6. On January 19, 2016, I contacted MLT to inquire as to whether MLT would be prepared to take on the appeal of the Second Receivership Order from Bennett Jones LLP. Attached hereto and marked as **Exhibit "D"** is a copy of an email from myself to Ron Hansford of MLT, dated January 19, 2016, in this regard. This was the first occasion on which I or anyone from Amalco contacted MLT or anyone else in this regard.
7. Neither I, nor Amalco have any intention to waive, and do not waive, any privilege that protects the contents of the January 8, 2016 conference call and the notes thereof, the internal diarization of the appeal deadline by Bennett Jones LLP, or the communication with MLT regarding taking over the appeal from Bennett Jones LLP. This information and the related records are provided solely in relation to Amalco's application to extend the appeal period and to explain the delay in the filing of its appeal of the Second Receivership Order.

B. The ATB Asset-Based Credit Facilities

8. By virtue of my review of the agreements underlying the LP1 Credit Facility, the LP6 Credit Facility and the LP7 Credit Facility (collectively, the "**Old Credit Facilities**") and my discussions with ATB regarding the Old Credit Facilities in the context of the Arrangement, I understood that:
 - (a) the assets of LP1, LP6 and LP7 were held by each of COC1, COC6 and COC7 respectively and, as a result of which any asset-based credit facility for these limited partnerships required security to be given by the general partner;

- (ii) the Old GPs no longer holding any assets of the Old LPs; and
 - (iii) the cancellation of the Old Credit Facilities;
- (b) the COGI LP Credit Facility was an asset-based credit facility;
- (c) the value of the COGI LP's assets securing the COGI LP Credit Facility was determined by ATB to be equal to or greater than the quantum of the COGI LP Credit Facility such that the COGI LP Credit Facility was fully secured and no additional security against any non-COGI LP assets was requested or required by ATB as of August 2013; and
- (d) in any event, at the time at which the COGI LP Credit Agreement was entered into, the parties did not and could not have intended that the Arrangement, COGI LP Credit Agreement and the Old Guarantees be interpreted as continuing the Old Guarantees such that they were to secure the COGI LP Credit Agreement, as the Old GPs would no longer hold any assets of the Old LPs against which ATB could have recourse and the Old Credit Facilities had been cancelled.
10. Moreover, during the course of the negotiations relating to the Arrangement and the proposed COGI LP Credit Agreement with ATB, ATB expressly advised me that the Old Guarantees were not intended to continue as security for the COGI LP Credit Facility. As a result of which, the Old GPs:
- (a) were not required to be parties to and did not become parties to the COGI LP Credit Agreement; and
 - (b) were not required to and did not sign an acknowledgement and confirmation to the effect that the Old Guarantees would continue to apply in relation to the COGI LP Credit Facility.
11. I confirmed to ATB that, based on the representations made to me by ATB, it was my understanding, intention and expectation that the Arrangement, the proposed

COGI LP Credit Agreement and the Old Guarantees should not be interpreted such that the Old Guarantees would continue as security for the COGI LP Credit Facility, given that: (a) the COGI LP Credit Facility was an asset-based facility; (b) all of the assets of the Old LPs had been transferred to COGI LP and backed the COGI LP Credit Facility; and (c) the Old Credit Facilities had been paid out and cancelled.

12. Due to my involvement with COGI LP, COGI GP and Conserve Oil Corporation and other entities, I have had the opportunity to be involved in the application for and granting of a number of credit facilities from various lending institutions, including ATB. Based on this experience, it is my understanding that there are certain general practices followed by ATB and other lending institutions to ensure that guarantees continue to be binding and are understood to continue to be binding, including, but not limited to:

- (a) when there are changes to a credit facility for which a guarantee has been given, whether positive or negative, then the lender will obtain a confirmation and acknowledgement from the guarantor that the changes do not adversely impact the validity of the guarantee;
- (b) when an existing credit facility is renewed or a new credit facility is entered into, then any existing guarantor is requested and required to either provide a new guarantee or to provide a confirmation and acknowledgement that the existing guarantee continues to be effective and binding to secure the renewed or new credit facility; and
- (c) lending institutions require guarantors to provide ongoing financial disclosure so that the lending institution can monitor the financial status of the guarantor to ensure there are assets available to satisfy the guaranteed obligations.

13. ATB's actions in relation to amendments to the credit facilities granted to LP1 and COGI LP are consistent with the general practices described above. More

particularly, concurrent with the changes to the credit facilities extended by ATB to LP1 and to COGI LP respectively, which changes are more fully set out at paragraphs 16 and 54 of the Affidavit of D. Crombie, sworn February 16, 2016, ATB expressly sought and obtained from each of COC1, COGI LP and COGI GP a confirmation and acknowledgement that their guarantees continued to be binding in relation to their amended credit facilities.

14. Furthermore, from my experience with ATB's general practices, had ATB intended that the Arrangement, the proposed COGI LP Credit Agreement and the Old Guarantees be interpreted such that the Old Guarantees would serve as security for the COGI LP Credit Facility, then I would have expected:
 - (a) ATB to have demanded a new guarantee from the Old GPs in relation to the COGI LP Credit Facility or, alternatively, have the Old GPs confirm and acknowledge that the Old Guarantees would continue to bind the Old GPs and secure the COGI LP Credit Facility; and
 - (b) ATB to have monitored the financial status of the Old GPs by requiring financial disclosure from the Old GPs on a regular basis following the closing of the Arrangement and the implementation of the COGI LP Credit Facility.

There were no new guarantees requested, there were no confirmation and acknowledgement agreements requested, and there was no financial monitoring of any of the Old GPs or Amalco after the implementation of the COGI LP Credit Facility.

C. The Creation of Amalco


15. COC2 was not a part of the Arrangement or the COGI LP Credit Facility, nor did COC2 have any credit facility with ATB at any time.
16. Amalco was created in December of 2013 by way of amalgamation of COC1, COC2, COC6 and COC7. The purpose of the amalgamation was to aggregate

the tax losses of COC1, COC2, COC6 and COC7 for their use against the future tax liabilities of Amalco's future business operations.

17. Subsequent to the Arrangement: (a) Amalco was created; (b) Amalco engaged in various business activities; and (c) Big Coulee Resources Ltd. acquired, for consideration, shares in Amalco. These events all occurred in reliance on ATB's express representation to me that the Arrangement, the COGI LP Credit Agreement and the Old Guarantees were not intended to and should not be interpreted as continuing the Old Guarantees in relation to the COGI LP Credit Facility. Without ATB's representation in this regard and my reliance on that representation, none of these events would have occurred due to a concern that, if the Old Guarantees continued to be binding in relation to the COGI LP Credit Facility, then a default on the COGI LP Credit Facility would entitle ATB to recourse against Amalco's assets.

18. I swear this Affidavit in support of Amalco's application for leave to appeal the Second Receivership Order.

SWORN BEFORE ME at City of Calgary)
in the Province of Alberta, this 9th day of)
March 2016.)



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

Sarah Louw
Barrister and Solicitor



ALEXANDER GRAMATZKI)

Conserve

①.

Cris Appeal Prospects. Jan. 8th 16 @ 9:30 AM }

→ David, Me, Simoni
- Alex & D. Combia

THIS IS EXHIBIT "A" TO THE
affidavit of Alexander Bramatzki
Sworn before me this 04th day of
March A.D. 2016

{ A Commissioner for Oaths }
{ A Notary Public }

in and for the
Province of Alberta

Sarah Louw
Barrister and Solicitor

- Divize Aggent
Deadline.


Marjorie Villar

From: Marjorie Villar
Sent: 08 January 2016 2:01 PM
To: Jacqueline Mill
Subject: FW: Diarization (file 75334.1)

Hello Jacqueline,


Can you please enter the date/event below into our limitation diarization system? (Conserve Oil1st Corp re: ATB)

Thanks again.
Marjorie

 Marjorie Villar
Assistant to Justin R. Lambert and John D. Siddons, Bennett Jones SLP

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
P. 403 298 3470 | F. 403 265 7219
E. villarm@bennettjones.com

THIS IS EXHIBIT " B " TO THE
affidavit of Alexander Gramatzki
Sworn before me this 9th day of
March A.D. 2016



{ A Commissioner for Oaths } In and for the
{ A Notary Public } Province of Alberta

Sarah Louw
Barrister and Solicitor

From: Justin Lambert
Sent: 08 January 2016 1:56 PM
To: Marjorie Villar <VillarM@bennettjones.com>
Subject: Diarization

For the Conserve 1st file

Date: February 6, 2016
Event: Deadline to file Notice of Appeal
Resp. Lwyr: Me (#1248)
Alt. Lwyr: C. Simard (#642)

 Justin Lambert
Partner, Bennett Jones LLP

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7
P. 403 298 3046 | F. 403 265 7219
E. lambertj@bennettjones.com

Plug into my [bio](#)

LIMITATION DIARY - DAILY REMINDER NOTICE FOR


CASE: 075334.00001
 CLIENT: CONSERVE OIL 1ST CORPORATION
 MATTER: ATB

EVENT DATE	INDEX #	JURISD	ATTY	NUMBER	TYPE	REMINDERS
06-02-2016	30831	ALL	Simard C.D.	0642	ALT	22-01-2016 29-01-2016 05-02-2016
06-02-2016	30831	ALL	Lambert J.R.	1248	RESP	22-01-2016 29-01-2016 05-02-2016

NARRAT: Deadline to file Notice of Appeal is February 6, 2016.

TYPE: 1 EVENT: Miscellaneous

THIS IS EXHIBIT " C " TO THE
 affidavit of Alexander Gramatki
 Sworn before me this 24 day of
March A.D. 2016


 { A Commissioner for Oaths } in and for the
 { A Notary Public } Province of Alberta

Sarah Louw
Barrister and Solicitor

Ron Hansford


From: Alex Gramatski - GA <alex@globaladvisory.ca>
Sent: Tuesday, January 19, 2016 9:26 PM
To: Ron Hansford
Subject: Conserve Oil 1st Appeal

Ron,

Would it be possible for MLT to do the appeal for Conserve Oil 1st Corporation instead of Bennett Jones?

Alexander Gramatzki

THIS IS EXHIBIT " D " TO THE
affidavit of Alexander Gramatzki
Sworn before me this 9th day of
March A.D. 2016


{ A Commissioner for Oaths } in and for the
{ A Notary Public } Province of Alberta
Sarah Louw
Barrister and Solicitor