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COURT FILE NUMBERS	25-2332583 25-2332610 25-2335351
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PROCEEDINGS	IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MANITOK ENERGY INC. IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF RAIMOUNT ENERGY CORP. IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CORINTHIAN OIL CORP.
DOCUMENT	**SEVENTEENTH REPORT OF THE RECEIVER** **February 22, 2023**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**RECEIVER** ALVAREZ & MARSAL CANADA INC. Bow Valley Square IV Suite 1110, 250 - 6th Avenue SW Calgary, Alberta T2P 3H7 Attention: Orest Konowalchuk Telephone: (403) 538-4736 Email: okonowalchuk@alvarezandmarsal.com **COUNSEL** Scott Venturo Rudakoff LLP 1500, 222 3rd Avenue SW Calgary Alberta T2P 0B4 Attention: Eugene Bodnar Phone: (403) 231 8209 Fax: (403) 265 4632 Email: e.bodnar@svrlawyers.com File: 69043.001

A&M
ALVAREZ & MARSAL

TABLE OF CONTENTS OF THE SEVENTEENTH REPORT OF THE RECEIVER

LISTING OF APPENDICES TO THE SEVENTEENTH REPORT OF THE RECEIVER

INTRODUCTION

1. On February 20, 2018 (the "**Receivership Date**"), the Court of King's Bench of Alberta (the "**Court**") granted an order in these proceedings (the "**Consent Receivership Order**") appointing Alvarez & Marsal Canada Inc. ("**A&M**") as receiver and manager (the "**Receiver**"), without security, of all of the current and future assets, undertakings and properties of every nature and kind whatsoever, including but not limited to real property and wherever situate including all proceeds thereof (the "**Property**") of Manitok Energy Inc. ("**Manitok**") and its wholly owned subsidiary Raimount Energy Corp. ("**Raimount**") (together, or either of them, as the context requires, the "**Company**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**") and section 13(2) of the *Judicature Act*, RSA 2000, c J-2.

2. Concurrently with the Receivership, Manitok, Raimount and Manitok's other wholly owned subsidiary, Corinthian Oil Corp. ("**Corinthian**"), were deemed bankrupt and A&M became the Licensed Insolvency Trustee of each of them.

3. As discussed in previous Reports, the most significant stakeholders in the Receivership Proceedings are now the National Bank of Canada ("**NBC**") and the Alberta Energy Regulator ("**AER**"). NBC continues to hold a first charge over all of the undistributed assets of the Company and the proceeds therefrom. As a result of the decision of the Supreme Court of Canada ("**SCC**") in *Orphan Well Association v Grant Thornton Ltd*, 2019 SCC 5 ("***Redwater***"), the AER is a significant stakeholder in the Receivership even though it is not a "creditor" *per se*.

4. As was previously reported in the Sixteenth Report dated October 5, 2020, there was a claim and litigation filed against Manitok and the Receiver by Yangarra Resources Limited ("**Yangarra**") relating to a pre-receivership sale transaction (the "**Yangarra Claim**"). The Receiver set aside certain funds from the estate pending resolution of the Yangarra Claim.

5. The Receiver, to resolve the matter, brought its own application to dismiss the claim of Yangarra (the "**Yangarra Dismissal Application**"). Full details of the Yangarra Claim and the Yangarra Dismissal Application are outlined in the Receiver's Sixteenth Report.

6. The Yangarra Dismissal Application was first heard on October 15, 2020 by this Court and, upon appeal by Yangarra, was later heard by the Alberta Court of Appeal ("**ACA**") on January 12, 2022.

PURPOSE

7. The purpose of this Seventeenth Report of the Receiver (the "**Seventeenth Report**" or "**this Report**") is to:

    a) update the Court in respect of the various applications and ultimately, the decisions made by this Court and the ACA on the Yangarra Claim; and

    b) provide information in support of a settlement between the Receiver and Yangarra to be embodied in a proposed Consent Order.

8. Capitalized words or terms not defined in this Report are as defined in the Receivership Order or the previous reports of the Receiver (the "**Prior Reports**").

9. All references to dollars are in Canadian currency.

TERMS OF REFERENCE

10. In preparing this Seventeenth Report, the Receiver has relied upon financial and other information contained in the Company's books and records as well as the pleadings in the action commenced by Yangarra against Orlen Upstream Canada Ltd. ("**Orlen**") in the Count of King's Bench of Alberta as Court File No. 1801-17233 (the "**Orlen Action**"). The Receiver has not performed an audit, review or other verification of such information.

THE COURT AND ACA DECISIONS

11. As discussed above, the Yangarra Dismissal Application was heard by this Court on October 15, 2020. On April 14, 2021, the Court rendered its decision allowing the application of the Receiver to strike the claims of Yangarra (the "KB Decision"). A copy of the KB Decision is attached as **Appendix A.**

12. After an application to determine whether Yangarra had the right to appeal, Yangarra proceeded to appeal the KB Decision and the appeal was heard by the ACA on January 12, 2022.

13. The ACA released its decision on July 29, 2022 and allowed the appeal (the "ACA Decision"). In doing so the ACA stated:

> *In allowing the appeal, we dismiss the Receiver's application to strike Yangarra's claim. However, the balance of the relief sought by Yangarra goes beyond the scope of this appeal. Yangarra was directed by the October 19, 201[9] Consent Order to bring an application to seek leave and file an application in Manitok's receivership proceedings for payment of the Proceeds, which it has yet to do. That, not this Court, is the appropriate forum to address the balance of the relief sought by Yangarra.*

A copy of the ACA Decision is attached as **Appendix B**.

STATUS OF LITIGATION AND SETTLEMENT PROPOSAL

14. The October 29, 2019 Consent Order referred to in the ACA Decision provided that:

    a) Yangarra was directed to seek leave to file and serve an application in the Manitok Receivership Action, #25-2332583, for payment of the Winter Service Funds and Proceeds, as those terms are defined in its Third Party Claim (the "**Yangarra Winter Service Funds Application**").

    b) The Yangarra Claim was stayed pending the determination of the Yangarra Winter Service Funds Application. Within 7 days of a final decision on the Yangarra Winter Service Funds Application or such other

time as agreed by the parties, the Yangarra Claim is to be discontinued without costs.

15. On October 20, 2022, in compliance with the ACA Decision and the Consent Order, Yangarra served (but did not file) the Yangarra Winter Service Funds Application materials on the Receiver to be heard by this Court on November 3, 2022. The Receiver understands Yangarra has now filed the Yangarra Winter Service Funds Application materials for the upcoming application scheduled for February 28, 2023. The Yangarra Winter Service Funds Application seeks, amongst other things, a payment of $263,000 from the Receiver. A copy of the Yangarra Winter Service Funds Application is attached as **Appendix C.**

16. At or about the time the Yangarra Winter Service Funds Application was served (October 22, 2022), the Receiver and Yangarra entered into settlement discussions to resolve the Yangarra Claim. The settlement discussions have concluded with the Receiver agreeing to pay $150,000.00 to Yangarra under the terms set out in the proposed Yangarra Consent Order, which is attached as **Appendix D.**

RECEIVER'S CONCLUSIONS AND RECOMMENDATIONS

17. In view of the foregoing, the Receiver is of the conclusion that the settlement with Yangarra and proposed Yangarra Consent Order is fair and reasonable:

    a) The ACA has indicated that Yangarra, by virtue of the sale approval and vesting order ("**SAVO**") granted to Yangarra (pre-receivership), is the owner of the "Proceeds", which constitutes a large portion but not the entirety of the Yangarra Claim, some of which is arguably unrelated to the SAVO. The Receiver has collected and holds these Proceeds, which should be paid to Yangarra in view of the ACA Decision.

    b) The two remaining stakeholders have been advised of the settlement and have expressed no objection to the Receiver entering into the proposed Yangarra Consent Order.

c) The settlement resolves a long running dispute and avoids further protracted litigation which will allow the Receivership proceedings to be finalized. The Yangarra Claim is the only remaining substantive issue to be finalized before allowing the Receiver to obtain its discharge. The Receiver's discharge application has been set down for March 7, 2023, pending the proposed Yangarra Consent Order being granted.

18. For the reasons noted above, the Receiver is of the conclusion that the settlement with Yangarra is fair and reasonable and respectfully recommends the Honouable Court grant the proposed Yangarra Consent Order.

All of which is respectfully submitted this 22nd day of February 2023.

ALVAREZ & MARSAL CANADA INC.,
in its capacity as Receiver of Manitok
and not in its personal or corporate capacity

Orest Konowalchuk, CPA, CA, CIRP, LIT
Senior Vice President

APPENDIX A
Court Decision

Court of Queen's Bench of Alberta

Citation: Manitok Energy Inc (Re), 2021 ABQB 288

Date:
Docket: B201 332583, B201 332610, B201 335351
Registry: Calgary

In the Matter of the Notice of Intention to Make a Proposal of Manitok Energy Inc.

In the Matter of the Notice of Intention to Make a Proposal of Raimount Energy Corp.

In the Matter of the Notice of Intention to Make a Proposal of Corinthian Oil Corp.

Between:

Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver and manager of Manitok Energy Inc.

Applicant

- and -

Yangarra Resources Limited and Orlen Upstream Canada Ltd..

Respondents

Reasons for Decision
of the
Honourable Madam Justice B.E. Romaine

I. Introduction

[1] The Receiver of Manitok applies to strike various claims made by Yangarra Resources Limited arising from Manitok's pre-receivership sale of assets to Yangarra, and subsequent litigation between Yangarra and Orlen Upstream Canada Ltd involving a third-party claim against the Receiver.

[2] The issue involves the interpretation of the purchase and sale agreement between Yangarra and Manitok, and the scope and interpretation of a pre-receivership approval and vesting order relating to such sale.

[3] The Receiver's application to strike Yangarra's claims is allowed. A cross-application by Orlen is dismissed.

II. Facts

[4] On February 20, 2018, Alvarez & Marsal Canada Inc. was appointed receiver and manager (the "Receiver") of all of the assets and properties, including all proceeds of sale thereof, of Manitok Energy Inc. and its wholly owned subsidiary Raimount Energy Corp. pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended and section 13(2) of the *Judicature Act*, RSA 2000, c J-2.

[5] Concurrently, Manitok, Raimount and another subsidiary, Corinthian Oil Corp. were deemed bankrupt and Alvarez & Marsal became the trustee in bankruptcy of each of them.

[6] On October 15, 2020, the Receiver applied for an order dismissing Yangarra Resources Inc.'s claim to funds relating to production from certain oil and gas property. Yangarra opposes the application.

[7] On October 21, 2020, while the decision was on reserve, Orlen Upstream Canada Ltd. sought, and was granted, leave to provide evidence and submissions with respect to the Receiver's application, and the application was resumed on November 25, 2020.

[8] Pursuant to an asset purchase agreement made effective October 1, 2017, Yangarra purchased certain assets, including natural gas wells, from Manitok (the "Ferrier transaction"). The Ferrier transaction closed on February 16, 2018, just prior to the date the receivership order was granted. As Manitok had filed a notice of intention to make a proposal under the *BIA* on January 11, 2018, the transaction had to be, and was, approved by an approval and vesting order dated February 14, 2018 (the "February Order"). The February Order order was obtained by Manitok as debtor-in-possession and not by the yet to be appointed Receiver, and the Ferrier purchase and sale agreement refers to the vendor as Manitok, not the proposal trustee or the Receiver.

[9] The February order approves the transaction and authorizes Manitok to take such additional steps as necessary to complete it and to convey the purchased assets to Yangarra. It provides that, upon the delivery of a certificate from the proposal trustee, and subject to the approval of the Alberta Energy Regulator, Manitok's title to the purchased assets "shall vest absolutely" in the name of the purchaser Yangarra.

[10] The form of Proposal Trustee's certificate attached to the February order stipulates that the order provides for the vesting in the purchaser of Manitok's title in the purchased assets, "such vesting ... to be effective ... upon the delivery by [the proposal trustee] to the purchaser of [the certificate”].

[11] Prior to the sale, Orlen processed the natural gas and related products from the purchased wells through its facilities and charged Manitok processing and related fees. Manitok took production in kind and arranged for its sale to various third party purchasers, who paid Manitok directly. By assignment dated October 1, 2017, Manitok assigned its rights under its agreements

with Orlen to Yangarra "from and after October 1, 2017". Manitok requested Orlen to consent to the assignments on February 16, 2018, and Orlen did so on February 28, 2018.

[12] Under the terms of the assignments, Yangarra agreed to assume all of Manitok's obligations under the Orlen agreements "from and after the Effective Date", and indemnified Manitok from any claims arising from the assignment.

[13] Orlen invoiced Manitok in December, 2017 for processing fees for October, November and December, 2017, which were unpaid. After consenting to the assignments, Orlen billed Yangarra for all fees arising from the Orlen agreements from October 1, 2017 onward, totalling $120,900 (net approximately $95,000).

[14] The Ferrier purchase and sale agreement includes the following provisions relevant to this application:

a) The purchase price to be paid at closing was a certain sum plus or minus any adjustments made pursuant to sections 2.6 and 2.7 of the agreement;

b) Pursuant to section 2.6, all costs and expenses relating to the assets were to be apportioned as of the Effective Date of the agreement on an accrual basis in accordance with generally accepted accounting principles, with Manitok bearing and paying the costs and expenses accruing on the closing date and Yangarra bearing costs and expenses accruing thereafter, subject to certain exceptions;

c) Manitok was only liable to make an adjustment in respect to a liability that related to the period prior to the closing date "if and to the extent that the proprietary interest to which such liability relates continues to be binding upon the assets, or the payment thereof must be made in order to ensure such proprietary interest is not terminated", but "such liability shall be paid by [Manitok] from the Purchase Price";

d) Under section 2.7, "[a]s soon after the Closing Date as reasonably practicable, and in any event within sixty (60) days following the Closing Date, the Parties shall cooperate in preparing a final accounting of the adjustments pursuant to Section 2.6 (the "Final Statement of Adjustments"), and no further or other adjustments whatsoever will be made thereafter." The section provides for the appointment of an independent accounting firm if the parties are unable to agree. A Final Statement of Adjustments was never prepared;

e) Section 2.7 provides that all adjustments shall be adjustments to the purchase price.

[15] A general conveyance was executed at closing indicating that "title to and possession of [Manitok's] interest in and to the Assets will, subject to the terms of the Agreement, be effective as of the Closing Date".

[16] An interim statement of adjustments was prepared and delivered at closing, which adjusted the purchase price to reflect net operating expenses, net operating income, and net royalties for the period from October 1 to December 31, 2017.

[17] Yangarra commenced action against Orlen in the Court of Queen's Bench of Alberta on December 4, 2018 claiming damages of $600,000. In January, 2019, Orlen filed a counterclaim

against Yangarra in the Orlen action seeking damages in the amount of $94,975 with respect to processing and related fees for the period from October 2017 to January 2018.

[18] In a statement of defence to counterclaim filed March 4, 2019, Yangarra in addition to a general denial states that:

> a) Further and in the alternative, ... [Orlen] has failed to properly mitigate its damages by failing to register its claim as against Manitok with the current [Receiver].
>
> b) ... Orlen's avenue for recovery by way of Counterclaim is improper. The proper course of recovery of any unpaid fees owed by Manitok to Orlen was to register a claim with the [Receiver].
>
> c) ... the Counterclaim is an attempt to recover any unpaid liabilities of Manitok as against Yangarra, and is an attempt to circumvent the proper bankruptcy and insolvency procedure and is invalid and improper.

[19] On October 29, 2019, Yangarra filed an amended third party claim against Manitok and the Receiver in the Orlen action seeking contribution and indemnity in respect of any liability for the amount being sought in the Orlen counterclaim. The Yangarra third party claim asserts that the Ferrier purchase and sale agreement provides that the purchase funds included amounts owing to Orlen, defined as the Winter Service Funds, for the period of October 2017 through January 2018 (further defined as the Processing and Related Fees), and seeks payment of the "Proceeds", defined as "the related proceeds [of processing gas substances from the Ferrier property] for December 2017 and January 2018."

[20] In the third party claim, Yangarra seeks:

> a) indemnification in respect to any judgment, damages or interest given against Yangarra (presumable, the approximately $95,000 claimed by Orlen);
>
> b) to have the Winter Service Funds returned to it by the Receiver; and
>
> c) to have the Proceeds remitted to it by the Receiver.

[21] The amended third party claim named the Receiver in its personal capacity. The Receiver took the position that it did not disclose a proper claim against the Receiver, and, eventually, the parties entered into a consent order filed October 29, 2019 in the Orlen action that provides that Yangarra shall file an amended third party claim substituting the Receiver in its role as receiver for Alvarez & Marsal in its personal capacity, and "shall seek leave to file and serve an application in [the receivership action] for payment of the Winter Service Funds and Proceeds, as those terms are defined in its Third Party Claim (the "Receivership Application").

[22] The Yangarra third party claim was stayed pending the determination of the Receivership Application as defined in the consent order. Yangarra has not made such an application. Therefore, aApproximately a year later, the Receiver brought this application.

[23] Yangarra states that there was a general agreement that the dispute would be best resolved by an application pursuant to paragraph 15 of the Ferrier purchase and sale agreement, which appears to be an error as the agreement does not have a paragraph 15. However, paragraph 15 of the February order provides that Manitok, the proposal trustee, Yangarra, and any other

interested party may apply for advice and directions in order to give effect to the order and to assist the parties in closing the purchase and sale transaction.

III. Positions of the Parties

[24] The Receiver takes the position that, given that the Ferrier transaction giving rise to the claim was pre-receivership, the Receiver has no obligation or requirement to pay any claim relating to or arising from that transaction.

[25] The Receiver submits that, as the Winter Service Fees were pre-receivership obligations, they are unsecured claims in the receivership, subordinate to both the secured claim of the National Bank of Canada and end-of-life obligations to the Alberta Energy Regulator.

[26] The Receiver submits that Orlen's knowledge of a claim for Proceeds and for Winter Service Fees would have existed in late 2017, and that, to the extent that Orlen has a claim against Manitok, the limitation period for these claims has lapsed and that they are now statute-barred. The Receiver also submits that Yangarra's claim against Manitok is statute-barred.

[27] Yangarra seeks a direction that it is entitled to the Winter Proceeds, and that the Receiver should remit them to Yangarra forthwith, on the basis that the Receiver is in breach of the terms of the Ferrier purchase and sale agreement.

[28] Orlen submits that this Court should address the issue of whether Yangarra has an independent obligation to pay Orlen the Winter Service Fees irrespective of its ultimate recovery from the Receiver. Orlen seeks the following relief:

> (a) in the event that the Court directs that the Receiver disburse the funds in its possession to Yangarra on the basis they are benefits or proceeds of the agreements with Orlen, an order directing:
>
> > (i) $94,975.00 plus interest and costs be paid out of the funds directly to Orlen for the Winter Service Fees; or, in the alternative
> >
> > (ii) that $94,975.00 plus interest and costs be paid out of the funds into Court pending the outcome of the Orlen action; or
>
> (b) in the event that the Court directs that Yangarra has a provable claim against Manitok's estate, an order directing that Yangarra's indebtedness to Orlen under the Orlen agreements is not affected by such a direction.

[29] Yangarra submits that Orlen lacks standing to participate in the application. However, I find that Orlen has standing as an interested party, particularly as Yangarra in its statement of defence to counterclaim alleges that Orlen failed to mitigate its damages by failing to make a claim against Manitok’s estate and that Orlen’s counterclaim is an attempt to circumvent proper bankruptcy procedure.

IV. Analysis

A. Yangarra Claim – Interpretation of Approval and Vesting Order

[30] Yangarra submits that this dispute can and should be addressed through a proper interpretation of the February order. However, there is nothing in that order that would change the status of any claim that Yangarra may have from an unsecured claim in the Manitok

receivership to a secured claim or that obliges the Receiver to treat the claim as anything other than an unsecured claim.

[31] Yangarra submits that the only possible interpretation of the February order is that Yangarra is legally entitled to the rights and obligations arising from the February order, "without limitation", relying on ***Extreme Retail (Canada) Inc v Bank of Montreal***, [2002] OJ No 3304. While the approval and vesting order in that case included wording similar to that in the February order with respect to vesting of title, the ***Extreme*** case is distinguishable on its facts.

[32] Extreme involved a priority dispute between Extreme, as purchaser of certain franchise agreements and security with respect to such agreements from a CCAA debtor, the Denninghouse Group, and the BMO, a secured creditor of the franchisees.

[33] Extreme's purchase of the assets occurred during the course of the CCAA proceedings and BMO was represented when the Court granted an approval and vesting order with respect to the purchase. In fact, BMO provided a comfort letter on the closing of the transaction that, on its face, waived any rights it had to pursue Extreme for enforcement of money arising from any security executed in favour of BMO by the Denninghouse Group. Subsequently, several franchisees encountered financial problems and their assets were liquidated. A dispute arose between Extreme and BMO as to which of them was entitled to priority over the proceeds of realization. The security agreements registered by BMO were subsequent to the registration of the security interests acquired by Extreme.

[34] Extreme relied on the paragraph of the approval and vesting order providing that the assets, which including the franchisee security, "... are vested in Extreme ... absolutely and forever, free and clear of ... any security interests, whether contractual, statutory, by operation of law, or otherwise, whether secured, unsecured or otherwise."

[35] BMO argued that the CCAA debtors had either signed subordination agreements on behalf of a subsidiary that dealt directly with the franchisees, or that there was an oral subordination agreement between the subsidiary and BMO. It submitted further that the order was never intended to deprive BMO of its priority.

[36] The Court found that the dispute was governed by the plain language of the approval and vesting order. In the Court's view, the language of the order:

> ...makes it plain that the assets that Extreme acquired were not subject to any higher rights. In this respect, the language of the order is unambiguous and far-reaching. Accordingly, assuming that there had existed an enforceable subordination agreement as between [the subsidiary] and BMO in relation to BMO's [security interests], and assuming that BMO's rights ranked ahead of [the subsidiary's] rights, that higher BMO security interest was a right or encumbrance that was deleted by the Approval and Vesting Order': para 17.

[37] The Court noted that BMO was a party to the proceedings, was represented in court when the order was granted, and even provided a comfort letter in order to fulfill one of the conditions for the closing of the sale transaction.

[38] There are a number of important distinctions between Extreme and this case. Manitok's Receiver had not been appointed at the time of the February order, and there is no evidence that it had any involvement in the sale or the application for the order. While the February order

includes similar, usual-course vesting language, the issue in this application is not whether any existing security has been expunged by the order, and the Receiver is not seeking to amend or vary the order, which was essentially what was sought in ***Extreme***.

[39] What the February order affected was approval of a sale transaction, defined as the Transaction, contemplated by an agreement for purchase and sale, and the execution of the sale agreement.

[40] As stated previously, the sale agreement provides that expenses and revenue that may accrue between the Effective Date and closing are to be adjusted by adjustment to the purchase price.

[41] Such a final adjustment of purchase price was never done, but the interim statement of adjustments delivered at closing indicates the intention of the parties to make such adjustments through the purchase price, as does the paragraph of the agreement stipulating that any adjustments shall be adjustments to the purchase price.

[42] In summary, the February order does not create any rights in Yangarra or obligations of Manitok with respect to the Ferrier purchase and sale that are not contemplated by the agreement.

[43] While the February order provides that the vesting of the purchased assets will be binding on any trustee in bankruptcy, it does not expand Yangarra's rights under the purchase and sale agreement.

[44] It is not necessary that I decide whether Yangarra's various direct claims against Manitok accrue from the Effective Date of the agreement or the closing date of the transaction. Either case would have the same result: Yangarra's claim, to the extent it has a claim, would be a contingent unsecured claim in the Manitok receivership. It is academic whether such a claim would be made, or allowed to be made, at this late date, as the proceeds of any recovery in the receivership will likely be insufficient for any unsecured claim to be recovered.

[45] Even if the Receiver had a responsibility to cooperate with Yangarra in preparation of a Final Statement of Adjustments, despite Yangarra's inaction, any claim arising from such obligation would only result in an adjustment to the purchase price and would be unsecured.

[46] With respect to the indemnity claim, if, as Yangarra submits, Orlen should have made a claim directly against the Manitok estate in the receivership, such a claim would have been known to Orlen in December, 2017, when it billed Manitok for processing fees for October through December, 2017. At any rate, Orlen appears to be relying on the terms of the assignment agreements, and makes no claim against Manitok.

[47] While Yangarra's indemnity claim against Manitok may not be statute-barred, it would still be a contingent unsecured claim in the receivership.

[48] In the circumstances, the Receiver is entitled to the relief it seeks: Yangarra's claim to the funds held by the Receiver pending the resolution to its claim relating to the sale of property to Yangarra is struck.

B. Orlen Intervention

[49] For the reasons set out herein, Yangarra is not entitled to an order disbursing funds from the Manitok estate. Therefore, the relief sought by Orlen in terms of a redirection of funds

payable by the estate is not available. The relief sought with respect to Yangarra's indebtedness under the operating agreements relates to the action between Orlen and Yangarra, and this is not the appropriate forum for the determination of that issue.

[50] Given my decision, it is not necessary to address whether the relief sought is essentially summary judgment or an attachment order, other than to agree with Yangarra that there is no basis for Orlen seeking to have an issue in the Yangarra action determined in this application, and no prejudice to Orlen arising from the resolution of the application.

V. Conclusion

[51] The Receiver's application to strike Yangarra's claims is allowed, and Orlen's cross-application is dismissed.

[52] If the parties are not able to agree on costs, they may make written submissions on that issue.

Dated at Calgary, Alberta this 14th day of April, 2021.

B.E. Romaine
J.C.Q.B.A.

Appearances:

Eugene J. Bodnar
for the Receiver

Andrew E. Stead
for Yangarra Resources Limited

Ryan Algar and Alison Scott
for Upstream Canada Ltd.

APPENDIX B
ACA Decision

In the Court of Appeal of Alberta

Citation: Manitok Energy Inc (Re), 2022 ABCA 260

Date: 20220729
Docket: 2101-0119AC
Registry: Calgary

In the Matter of the Notice of Intention to Make a Proposal of Manitok Energy Inc.

In the Matter of the Notice of Intention to Make a Proposal of Raimount Energy Corp.

In the Matter of the Notice of Intention to Make a Proposal of Corinthian Oil Corp.

Between:

Alvarez & Marsal Canada Inc. in its capacity as the Court-appointed receiver and manager of Manitok Energy Inc.

Respondent

- and -

Yangarra Resources Limited

Appellant

- and -

Orlen Upstream Canada Ltd.

Not a Party to the Appeal

The Court:

The Honourable Justice Barbara Lea Veldhuis
The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Elizabeth Hughes

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice Romaine
Dated the 14th day of April, 2021
Filed on the 31st day of May, 2021
(2021 ABQB 288, Docket: B201 332583, B201 332610, B201 335351)

Memorandum of Judgment

The Court:

I. Introduction

[1] The appellant purchased natural gas assets from a company that had filed a notice of intention to make a proposal under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (*BIA*). The sale transaction, as contemplated by an Asset Purchase Agreement with an effective date of October 1, 2017, was approved by a sale approval and vesting order (SAVO) granted on February 14, 2018 by a judge of the Court of Queen's Bench sitting in Bankruptcy and Insolvency. The sale transaction closed two days later.

[2] Six days after the SAVO was granted, a receiver for the vendor was appointed. A dispute arose with respect to the status of proceeds from natural gas produced from the assets covered by the Asset Purchase Agreement between the effective date and closing date of the Agreement. The receiver took the position that the proceeds are a contingent unsecured pre-receivership obligation, subordinate to the secured claims in the receivership. The chambers judge agreed with the receiver and struck the appellant's claim to the proceeds.

[3] The appellant acknowledges that in the absence of the SAVO, its claim for the proceeds would be an unsecured claim in the receivership. The issue on this appeal is whether the SAVO changed the status of the appellant's claim.

[4] The appeal is allowed. The SAVO is a court order that vests the assets covered by the Asset Purchase Agreement, including the proceeds, "absolutely" in the appellant. It provides that persons claiming through the vendor "stand absolutely barred and foreclosed from all estate, right, title, interest" in the assets. By virtue of the SAVO, the appellant is the owner of the proceeds, not simply an unsecured creditor of the vendor.

II. Background

A. The Asset Purchase Agreement and SAVO

[5] Manitok Energy Inc (Manitok), a junior oil and gas exploration and production company, filed a Notice of Intention to make a proposal under sections 50.4(1) of the *BIA* on January 10, 2018.

[6] The appellant, Yangarra Resources Limited (Yangarra), purchased certain natural gas assets in the Ferrier region of Alberta from Manitok pursuant to an Asset Purchase Agreement (Agreement) that was effective as of October 1, 2017, and executed on January 31, 2018 (the sale transaction).

[7] Because Manitok had filed a notice of intention to make a proposal under *BIA*, a Sale Approval and Vesting Order (SAVO) was sought. The SAVO approving the sale transaction was granted on February 14, 2018. The SAVO provided that Manitok's right, title and interest to the assets described in the Agreement (the Purchased Assets) "shall vest absolutely" in the name of Yangarra. It also provided that all persons claiming by, through or under Manitok "shall stand absolutely barred and foreclosed from all estate, right, title, interest ... of the Purchased Assets". The proceeds of the sale of the Purchased Assets, net of all reasonable expenses and adjustments in connection with the sale transaction, were payable to the National Bank of Canada in partial satisfaction of Manitok's indebtedness to the National Bank.

[8] The sale transaction closed two days later, on February 16, 2018.

B. The Receivership Proceedings

[9] On February 20, 2018, Alvarez & Marsal Canada Inc (the Receiver) was appointed receiver and manager of all assets of Manitok pursuant to section 243(1) of the *BIA* and section 13(2) of the *Judicature Act*, RSA 2000, c J-2. Concurrently, the proposal proceedings were terminated, Manitok and its subsidiaries were deemed bankrupt, and the Receiver became the trustee in bankruptcy of Manitok and its related entities.

C. The Orlen Action

[10] Prior to the sale transaction, Orlen Upstream Canada Ltd (Orlen) processed natural gas from the Ferrier gas wells through its facilities and charged processing fees to Manitok, which received the related proceeds. Manitok assigned its rights under its contracts with Orlen to Yangarra effective October 1, 2017, and Orlen consented to the assignment on February 28, 2018. Thereafter, Orlen billed Yangarra for the processing fees from the October 1, 2017, the effective date of the Agreement, totaling approximately $94,975 (this amount is referred to as the Winter Service Funds).

[11] In December 2018, Yangarra sued Orlen, claiming $600,000 in damages for alleged breach of Orlen's duties as operator of the Ferrier gas wells. Orlen counterclaimed against Yangarra, seeking $94,975 with respect to the Winter Service Funds. Yangarra denied responsibility for the Winter Service Funds and argued that Orlen should have made a claim with the Receiver through Manitok's receivership proceedings. On August 23, 2019, Yangarra filed a third-party claim against the Receiver seeking contribution and indemnity in respect of any liability sought by Orlen.

[12] Yangarra also sought to collect from the Receiver its proportional share of the proceeds from production of the Ferrier gas wells for the period between December 2017 and February 2018 (the Proceeds). Yangarra had received (presumably from Manitok) proceeds from production for the months of October and November 2017, following the effective date of the Agreement, but had not received any proceeds for December 2017, January 2018, or February 2018. The Receiver

refused to pay the Proceeds to Yangarra and refused to pay the Winter Service Funds to Orlen, taking the position that those amounts are unsecured pre-receivership obligations.

[13] On October 29, 2019, Yangarra, the Receiver, and Orlen entered into a Consent Order which, among other things, directed Yangarra to seek leave to and file an application in Manitok's receivership proceedings for payment of the Proceeds and Winter Service Funds. Yangarra's third-party claim against the Receiver was stayed pending the determination of its claim in the receivership proceedings.

[14] When Yangarra failed to seek leave to file the application in the receivership proceedings, the Receiver brought an application in those proceedings to strike Yangarra's claim to the Proceeds and Winter Service Funds. Orlen joined the Receiver's application and cross-applied for an order directing payment of the Winter Service Funds.

III. Chambers Decision

[15] The chambers judge granted the Receiver's application to strike Yangarra's claims: *Manitok Energy Inc (Re)*, 2021 ABQB 288. She concluded that Yangarra's claim to the Proceeds was an unsecured claim in the Manitok receivership, and that status was not affected by the SAVO.

[16] The chambers judge dismissed Orlen's cross-application, finding that it related to a dispute between Yangarra and Orlen and that the Receiver's application was not the appropriate forum to decide the issue.

[17] This appeal deals only with Yangarra's claim to the Proceeds; the dispute between Yangarra and Orlen regarding the Winter Service Funds is the subject of other proceedings.

IV. Court of Appeal Single Judge Application

[18] On May 11, 2021, Yangarra filed a notice of appeal regarding the chambers decision. Yangarra subsequently applied to a single judge of this Court for an order confirming that its notice of appeal was appropriately filed within one month of the chambers decision (pursuant to Rule 14.8(2)(a)(iii) of the Alberta Rules of Court, Alta Reg 124/2010) or, if Yangarra was required to file its appeal within 10 days pursuant to section 183(2) of the *BIA*, extending the time to file.

[19] The Receiver cross-applied to strike Yangarra's notice of appeal on the grounds that it had been filed late and that Yangarra was required to seek leave to appeal pursuant to section 193(e) of the *BIA* and had failed to do so.

[20] The applications were heard by a single judge of this Court. She concluded that Yangarra's appeal was a bankruptcy matter and that section 183(2) of the *BIA* and the 10-day period for bringing an appeal applied. She granted an extension of time. She next considered whether Yangarra had an appeal as of right pursuant to sections 193(a), (b) or (c) of the *BIA*, or if permission

to appeal was required pursuant to section 193(e). She concluded that determination should be made by a full panel in conjunction with the hearing on the merits of the appeal: *Manitok Energy Inc (Re)*, 2021 ABCA 269.

V. Issues

[21] There are three issues to be determined:

1. Does Yangarra have an appeal as of right pursuant to sections 193(a), (b) or (c) of the *BIA*?
2. If not, should leave to appeal be granted pursuant to section 193(e) of the *BIA*?
3. Did the chambers judge err in interpreting the SAVO?

VI. Analysis

A. *Does Yangarra have an appeal as of right pursuant to sections 193(a), (b) or (c) of the BIA?*

[22] Section 193 of the *BIA* provides:

> Unless otherwise expressly provided, an appeal lies to the Court of Appeal from any order or decision of a judge of the court in the following cases:
>
> (a) if the point at issue involves future rights;
>
> (b) if the order or decision is likely to affect other cases of a similar nature in the bankruptcy proceedings;
>
> (c) if the property involved in the appeal exceeds in value ten thousand dollars;
>
> (d) from the grant of or refusal to grant a discharge if the aggregate unpaid claims of creditors exceed five hundred dollars; and
>
> (e) in any other case by leave of a judge of the Court of Appeal.

[23] Yangarra submits that this appeal can be brought as of right pursuant to sections 193(a), (b) or (c). The Receiver says none of the appeal as of right provisions apply and Yangarra requires permission to appeal under section 193(e).

[24] For the reasons that follow, we have determined that Yangarra has an appeal as of right pursuant to section 193(c), as the value of the property involved in the appeal is more than $10,000. We have therefore not considered the other subsections of section 193.

Section 193(c): Does the property involved in the appeal exceed in value $10,000?

[25] Yangarra argues that the value of the property involved in the appeal exceeds $10,000, because the value of the Proceeds being claimed exceeds that amount. Yangarra estimates that the Proceeds amount to something in excess of $150,000 and this estimate does not seem to be disputed.

[26] While the language of section 193 appears broad, it has been interpreted narrowly and "purposively, to ensure that bankruptcy proceedings are administered efficiently and expeditiously": *Athabasca Workforce Solutions Inc v Greenfire Oil & Gas Ltd*, 2021 ABCA 66 at para 8. In particular, section 193(c) has been narrowly construed: see *Athabasca Workforce* at paras 12-13; *2403177 Ontario Inc v Bending Lake Iron Group Limited*, 2016 ONCA 225. In *Bending Lake*, Brown JA noted that the predecessor section to section 193(c) was enacted at a time when the *Bankruptcy Act* did not include the right to seek leave to appeal where there was not an automatic right, and courts were therefore inclined to a broad interpretation. Moreover, the *Companies' Creditors Arrangement* Act, RSC 1985, c C-36 (the *CCAA*) has a requirement to obtain leave to appeal in all circumstances, and Brown JA saw no principled basis to distinguish the treatment of a sale by a receiver from that under the *CCAA*. Finally, were the provision more broadly interpreted, "(a)lmost every case would qualify, making the requirement for leave meaningless and undermining one of the most important purposes of the act, expeditious determination and the prospect of finality": *Athabasca* at para 12; *Dominion Foundry Co Ltd Continental Forwarding Ltd et al v Canadian Credit Men's Association Ltd,* 1965 CanLII 596, 52 DLR (2d) 79 (MB CA).

[27] Adopting a narrow approach to the provision, the court in *Bending Lake* held that an appeal is not available under section 193(c) in each of the following situations: (1) orders that are procedural in nature; (2) orders that do not bring into play the value of the debtor's property; and (3) orders that do not result in a loss.

[28] Challenges to a sale of assets by a trustee as being improvident have been considered procedural, as have challenges to the method by which assets are sold, and whether a SAVO and interim financing order are appropriate methods of monetizing the debtor's assets in order to satisfy the claims of creditors: see *Dominion Foundry*; *Alternative Fuel Systems Inc v EDO (Canada) Limited*, 1997 ABCA 273; *Athabasca Workforce* at para 14. The Receiver notes several cases, including *Bending Lake* and *Athabasca*, in which issues involving approval and vesting orders concerned the methods by which the receiver realized the estate's assets and were therefore found to be procedural and not subject to an automatic right to appeal: see *Bending Lake* at paras 43-70; *Athabasca Workforce* at paras 12-16.

[29] Not every appeal regarding an approval and vesting order will be procedural, however. The issue in this case does not address the methods used to monetize the estate's assets. Rather, this appeal concerns the status of the Proceeds and whether Yangarra's claim to the Proceeds is covered

by the Agreement and SAVO or is it an unsecured claim in the receivership. We view this issue as more substantive than procedural in nature.

[30] Another dimension of section 193(c), as noted in *Bending Lake* at para 61, is that the order in question "must contain some element of a final determination of the economic interests of a claimant in the debtor". In *Trimor Mortgage Investment Corporation v Fox*, 2015 ABCA 44, Paperny JA described this aspect of section 193(c) at para 8:

> The test to be applied under this section was originally articulated in *Orpen v Roberts*, 1925 CanLII 2 (SCC), [1925] SCR 364 at 367, [1925] 1 DLR 1101, and confirmed in *Fallis and Deacon v United Fuel Investments Ltd.*, 1962 CanLII 96 (SCC), [1962] SCR 771, 4 CBR (NS) 209, which set out that the amount or value of the matter in controversy is the loss which the granting or refusal of that right would entail.

[31] In *Bending Lake,* the approval and vesting order did not determine the entitlement of any party with an economic interest in the debtor to the sale proceeds and, in that sense, no interested party gained or lost as a result of the order. In contrast, the order sought to be appealed here did determine the status of the monies being claimed under the SAVO, and the entitlement of Yangarra to those monies.

[32] In the circumstances, we find that section 193(c) applies to Yangarra's appeal. As the amount involved in the appeal is in the vicinity of $150,000, it falls within section 193(c) and there is an appeal as of right.

B. Did the chambers judge err in interpreting the SAVO?

[33] The chambers judge concluded that Yangarra's claim to the Proceeds should be treated as an unsecured claim in the Manitok receivership and that there was nothing in the SAVO that would change the status of that claim (para 30). She found that the Proceeds were intended to be distributed through a final adjustment of the purchase price under the Agreement, but that the adjustment was never completed. The Proceeds were not captured by the SAVO and were solely an unsecured claim in Manitok's receivership (paras 39-44).

[34] Yangarra acknowledges that in the absence of the SAVO, its claim to the Proceeds would be an unsecured claim. However, it submits that the SAVO vested the assets covered by the Agreement, including the Proceeds, in Yangarra, and therefore those funds do not form part of Manitok's estate.

[35] At issue is the meaning and application of the SAVO. The interpretation of a court order is a question of law reviewable on a correctness standard: *Wagner v Wagner*, 2014 ABCA 428 at para 21. However, the Receiver submits that the issue on appeal is a question of mixed fact and

law involving the application of the SAVO to the facts found by the chambers judge, and is reviewable for palpable and overriding error.

[36] The essence of the chamber judge's decision is that the SAVO did "not create any right in Yangarra or obligations of Manitok...that are not contemplated in the [Agreement]" (para 42). "While the [SAVO] provides that the vesting of the purchased assets will be binding on any trustee in bankruptcy, it does not expand Yangarra's rights under the [Agreement]" (para 43). There was nothing in the SAVO "that would change the status of any claim that Yangarra may have from an unsecured claim in the Manitok receivership to a secured claim or that obliges the Receiver to treat the claim as anything other than an unsecured claim." (para 30).

[37] We are satisfied that the chambers judge's interpretation of the SAVO involves an extricable question of law, reviewable for correctness.

Vesting and approval orders in bankruptcy and insolvency proceedings

[38] The purpose and significance of vesting orders in the context of bankruptcy and insolvency proceedings was outlined in *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras 25-27. A vesting order "effects the transfer of purchased assets to a purchaser on a free and clear basis, while preserving the relative priority of competing claims against the debtor vendor with respect to the proceeds generated by the sale transaction": *Third Eye Capital* at para 25, citing David Bish & Lee Cassey, "Vesting Orders Part 1: The Origins and Development" (2015) 32:4 Nat'l. Insolv. Rev. 41, at p. 42. The order conveys title in the purchased assets and extinguishes encumbrances on title.

[39] At para 27, the court in *Third Eye Capital* refers to the following discussion by Bish and Cassey at pp 41-42 of the significance of vesting orders in modern insolvency practice:

> Over the past decade, a paradigm shift has occurred in Canadian corporate insolvency practice: there has been a fundamental transition in large cases from a dominant model in which a company restructures its business, operations, and liabilities through a plan of arrangement approved by each creditor class, to one in which a company instead conducts a sale of all or substantially all of its assets on a going concern basis outside of a plan of arrangement ...
>
> Unquestionably, this profound transformation would not have been possible without the *vesting order*. It is the cornerstone of the modern "restructuring" age of corporate asset sales and secured creditor realizations ... The vesting order is the holy grail sought by every purchaser; it is the carrot dangled by debtors, court officers, and secured creditors alike in pursuing and negotiating sale transactions. If Canadian courts elected to stop granting vesting

> orders, the effect on the insolvency practice would be immediate and extraordinary. Simply put, the system could not function in its present state without vesting orders.

The language of the SAVO

[40] As with any court order, the interpretation and effect of the SAVO depend upon its language. Paragraph 3 of the SAVO states in part:

> Upon the delivery of a certificate by the Proposal Trustee to the Purchaser... all of Manitok's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the name of the Purchaser (or its nominee), free and clear of and from any and all security interests (whether contractual, statutory or otherwise), hypothecas, caveats, mortgages, trusts or deemed trust (whether contractual, statutory, or otherwise), lines, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "claims") including, without limiting the generality of the foregoing:
>
> ...
>
> (c) those Claims listed on Schedule "B" hereto (all of which are collectively referred to as the "Encumbrances");
>
> for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

[41] The Encumbrances listed in Schedule B to the SAVO include a security agreement and land charge in favour of National Bank.

[42] Paragraphs 10 and 11 of the SAVO state:

> Manitok and all persons who claim by, through or under Manitok in respect of the Purchased Assets, shall stand absolutely barred and foreclosed from all estate, right, title, interest, royalty, rental and equity of redemption of the Purchased Assets and, to the extent that any such person remains in possession or control of any of the Purchased Assets, they shall forthwith deliver possession thereof to the Purchaser (or its nominee).
>
> The Purchaser (or its nominee) shall be entitled to enter into and upon, hold and enjoy the Purchased Assets for its own use and benefit without any interference of or by Manitok, or any person claiming by or through or against Manitok.

[43] Paragraph 14 states:

> Notwithstanding:
> ...
>
> (c) Any assignment in bankruptcy made in respect of Manitok
>
> the vesting of the Purchased Assets in the Purchaser (or its nominee) pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Manitok...

[44] The SAVO describes the "Purchased Assets" that vested in Yangarra as the "assets described in the Agreement". Section 1.1(g) of the Agreement defines "Assets" as:

> "Assets" means all of Vendor's right, title, estate and interest in:
>
> (i) the Petroleum and Natural Gas Rights;
>
> (ii) the Tangibles;
>
> (iii) the Miscellaneous Interests;
>
> (iv) all revenues, debts, accounts, demands and choses in action of Vendor and all claims of whatsoever nature or kind of Vendor; and
>
> (v) any tangible equipment or other tangible personal property in which Vendor has an interest located or used by Vendor in the leased premises located at Ferrier, Alberta ....

[45] The asset in dispute is the Proceeds, being monies payable for gas processed from natural gas wells in the Ferrier region from December 2017 to February 2018, a period between the effective date (October 1, 2017) and closing date (February 18, 2018) of the Agreement. We agree with the appellant that the Proceeds fall within the definition of Assets in the Agreement, and within the definition of Purchased Assets in the SAVO.

Extreme Retail

[46] There are few authorities dealing with vesting orders in a similar context to the one presented by this appeal. Yangarra referred the chambers judge to a decision of the Ontario Superior Court of Justice in *Extreme Retail (Canada) Inc v Bank of Montreal*, [2007] OJ No 3304 (ONSC), which involved an approval and vesting order that contained similar wording to that in the SAVO. The case involved a priority dispute between Extreme, who had purchased certain franchise agreements from a debtor in proceedings under the *Companies' Creditors Arrangement Act*, and BMO, who claimed to be a secured creditor of the franchisees. The court found in favour

of Extreme, regardless of whether BMO had been able to establish a prior secured claim, saying at para 17:

> In my view, this dispute is governed by the plain language of the Approval and Vesting Order relating to the terms upon which Extreme acquired the assets that it purchased. I have earlier quoted the operative provision of that order. In my view, that language makes it plain that the assets that Extreme acquired were not subject to any higher rights. In this respect, the language of the order is unambiguous and far-reaching. Accordingly, assuming that there had existed an enforceable subordination agreement as between ABOT and BMO in relation to the ABOT GSAs, and assuming that BMO's rights ranked ahead of ABOT's rights, that higher BMO security interest was a right or encumbrance that was deleted by the Approval and Vesting Order.

[47] The chambers judge distinguished *Extreme Retail* because Manitok's Receiver had not been appointed when the SAVO was granted and there was no evidence the Receiver had been involved in the sale transaction or the application. She noted that Manitok's Receiver was not seeking to amend the order, unlike in *Extreme Retail*. She also noted that, in *Extreme Retail*, BMO was a party to the transaction, was represented in court when the vesting order was granted, and had provided a comfort letter.

[48] The relevance of these distinctions is not apparent. While Manitok's Receiver had not been appointed when the SAVO was granted, the chambers judge and the Receiver both acknowledge that the Receiver was expressly bound by the SAVO. Moreover, National Bank, like BMO in the *Extreme Retail* case, participated in the SAVO proceedings.

[49] The chambers judge stated that the issue before her was not whether existing security had been expunged by the SAVO, but what adjustments to the purchase price should be made as contemplated in the Agreement. She concluded the SAVO "does not create any rights in Yangarra or obligations of Manitok with respect to the Ferrier purchase and sale that are not contemplated by the agreement" (para 42). However, this approach did not address whether the Proceeds had vested absolutely in Yangarra by way of the SAVO and if, as a result, the Proceeds were not part of Manitok's estate.

[50] In our view, the unambiguous language of the SAVO makes clear that the Assets covered by the Agreement vested absolutely in Yangarra and that Manitok, and anyone claiming through Manitok, was required to deliver up possession of any Assets covered by the Agreement, including the Proceeds.

National Bank's recovery

[51] The preamble of the SAVO states that National Bank's counsel made submissions when the SAVO was granted. Paragraph 7 of the SAVO provides that all proceeds of the sale of the

Purchased Assets shall be immediately "paid by Manitok to NBC to be applied on account of and in partial payment of the obligations due and owing by Manitok to NBC." National Bank was the secured creditor who appointed the Receiver and, as Manitok's secured creditor, would be the beneficiary if Yangarra's claim to the Proceeds was rejected. Yangarra submits that the result of a rejection of its claim would be that National Bank will receive both the proceeds of the sale transaction approved by the SAVO, which contemplates that Yangarra will receive the Proceeds as part of the Purchased Assets, and also receive the Proceeds as part of Manitok's estate.

[52] In our view, that is not the result intended by the SAVO.

[53] We are satisfied that the chambers judge erred in her interpretation of the SAVO and allow the appeal.

VII. Remedy

[54] Yangarra seeks an order dismissing the Receiver's application to strike Yangarra's claim, a declaration that it is the rightful owner of the Proceeds, and an order directing the Receiver to remit that amount to Yangarra forthwith.

[55] In allowing the appeal, we dismiss the Receiver's application to strike Yangarra's claim. However, the balance of the relief sought by Yangarra goes beyond the scope of this appeal. Yangarra was directed by the October 19, 2018 Consent Order to bring an application to seek leave and file an application in Manitok's receivership proceedings for payment of the Proceeds, which it has yet to do. That, not this Court, is the appropriate forum to address the balance of the relief sought by Yangarra.

Appeal heard on January 12, 2022

Memorandum filed at Calgary, Alberta
this 29th day of July, 2022

Authorized to sign for: Veldhuis J.A.

Strekaf J.A.

Hughes J.A.

Appearances:

E.J. Bodnar
for the Respondent

A.E. Stead
P. Saini
for the Appellant

R.E. Algar
for Orlen Upstream Canada Ltd.

APPENDIX C
Yangarra Winter Service Funds Application

COURT FILE NUMBER	25-2332583 25-2332610 25-2335351
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PROCEEDINGS	IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MANITOK ENERGY INC. IN THE MATTER OS THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF RAIMONT ENERGY CORP. IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CORINTHIAN OIL CORP.
DOCUMENT	**APPLICATION**
APPLICANT	**YANGARRA RESOURCES LIMITED**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

McMillan LLP
1700, 421 – 7th Avenue SW
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File No.	269125

NOTICE TO RESPONDENT: ALVAREZ AND MARSAL CANADA INC. as Receiver and Manager of Manitok Energy Inc.

This application is made against you. You are the respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the application is heard as shown below:

Date:	November 3, 2022
Time:	3:00 pm
Where:	Calgary via WebEx
Before Whom:	Justice K.M Horner

Go to the end of this document to see what else you can do and when you must do it.

Relief claimed or sought

1. Yangarra Resources Limited ("**Yangarra**") seeks an order:

    a. directing that Alvarez and Marsal Canada Inc. (the "**Receiver**") pay Yangarra the sum of $263,000.00 forthwith;

    b. alternatively, granting Yangarra leave to apply for the above direction, if necessary;

    c. alternatively, directing the Receiver to provide an accounting of the funds received and expended relating to the issues in dispute in this application;

    d. awarding Yangarra costs and interest on appropriate scales; and

    e. such further relief as counsel may request.

Grounds for making this application

Overview

2. In late 2017 Yangarra became interested in acquiring Manitok Energy Inc.'s ("**Manitok**") interest in the lands legally described as TWP 037-08W5 S/2 Sec 26 (the "**Ferrier Property**") including two gas wells thereupon.

3. Manitok filed a Notice of Intention to make a proposal under sections 50.4(1) of the Bankruptcy and Insolvency Act, RSC 1985, c B-3 on January 10, 2018.

4. Yangarra and Manitok entered into an Asset Purchase Agreement (the "**Purchase Agreement**") dated January 31, 2018 with an effective date of October 1, 2017, with respect to the Ferrier Property.

5. At all material times and including during the negotiating of the Purchase Agreement, Yangarra understood that Manitok was facing or otherwise on the brink of insolvency. Thus, Yangarra was only prepared to transact with Manitok on the condition that Yangarra would be assured that it received the benefits of the bargain which it would form.

6. Yangarra understood that obtaining a court order confirming Yangarra's rights, prior to closing the Purchase Agreement, would provide such assurance.

7. Based upon the above, a Sale and Approval Vesting Order ("**SAVO**") was sought. The SAVO approving the Purchase Agreement was granted on February 14, 2018. The SAVO provided that Manitok's right, title and interest to the assets described in the Purchase Agreement "shall vest absolutely" in the name of Yangarra. It also provided that all persons claiming by, through or under Manitok "shall stand absolutely barred and foreclosed from all estate, right, title, interest…of the Purchased Assets."

8. The proceeds of the sale of the Purchased Assets, net of all reasonable expenses and adjustments in connection with the sale transaction, were payable to National Bank of Canada in partial satisfaction of Manitok's indebtedness to the National Bank.

9. The sale transaction closed on February 16, 2018.

10. On February 20, 2018 the Receiver was appointed receiver and manager of all assets of Manitok. Manitok and its subsidiaries were deemed bankrupt and the Receiver became the trustee in bankruptcy of Manitok and its related entities.

11. At all material times to this application, Orlen Upstream Canada Ltd. ("**Orlen**") had contracted with Manitok such that Manitok's produced substances from the Ferrier Property, which are the subject of the Purchase Agreement, would be processed by Orlen.

12. Yangarra, as the purchaser of the assets in the Purchase Agreement, has no firsthand knowledge of the steps taken by Orlen and Manitok pursuant to their agreement respecting the production from the wells on the Ferrier Property. To the best of Yangarra's knowledge:

    a) during the period of October 1, 2017 through February 16, 2018, these produced substances were delivered to Orlen;

    b) Orlen in turn processed them;

    c) Orlen provided the proceeds (the "**Proceeds**") thereof to Manitok/the Receiver; and

    d) Orlen has not been paid for processing these hydrocarbons (the "**Processing Fees**").

13. After the Purchase Agreement closed, Manitok and Yangarra had an obligation to prepare a final statement of adjustments.

14. Of course Yangarra, as the purchaser, had none of the records, information or knowledge necessary to prepare the final statement of adjustments. The first draft could only be prepared by Manitok/the Receiver.

15. Yangarra reached out to the Receiver multiple times so that the final statement of adjustments could be completed. Yangarra did not receive a meaningful response to these communications, nor did Yangarra receive a draft final statement of adjustments from the Receiver.

The Yangarra-Orlen dispute

16. Yangarra and Orlen became involved in a dispute, which resulted in a separate Court of King's Bench of Alberta action, filed December 4, 2018 (the "**Orlen Action**"). One of the issues therein was the fact that Orlen has processed the natural gas produced from the Ferrier Property, but the Processing Fees had not been paid and remained outstanding.

17. Given the above, and the fact that the Receiver had failed to provide Yangarra with a final statement of adjustments pursuant to the Purchase Agreement or otherwise remit the Proceeds to Yangarra, Yangarra brought a third party claim against the Receiver within the Orlen Action.

The King's Bench and Court of Appeal Decisions

18. Several further procedural steps ensued. Yangarra filed an amended third party claim in which the Orlen Action changed the capacity in which the Receiver was named, and on October 29, 2019 a consent order was granted providing that Yangarra would apply for leave to advance its third party claim given the automatic stay in this proceeding. Yangarra and the Receiver had a number of discussions and agreed to attempt a more efficient approach whereby the parties would seek advice and directions pursuant to paragraph 15 of the SAVO.

19. Essentially, if Yangarra's rights constituted an unsecured claim, there would be no reason to seek leave, much less for this Court to grant it. Alternatively, if Yangarra's rights had already been established by the SAVO, Yangarra would not be bringing a new claim against Manitok's estate, but rather would be seeking to have the SAVO's terms enforced, and no leave would be required.

20. Yangarra and the Receiver corresponded between June through September 2020, including the exchange of draft agreed statements of fact. These exchanges are privileged but can be tendered if required.

21. On October 5, 2020 the Receiver determined an agreed statement of facts was not possible, and without any notice to Yangarra of this change in approach brought an application to have Yangarra's third party claim struck.

22. The Receiver's application was eventually determined on April 14, 2021 (the "**KB Decision**"), finding that Yangarra was an unsecured creditor and thus Yangarra's third party claim was struck.

23. Yangarra appealed, and on July 29, 2022 the KB Decision was overturned (the "**Appeal Decision**"). The Appeal Decision confirmed that the SAVO was binding and otherwise remained in effect, including the terms of the Purchase Agreement.

The Relief Sought Herein

24. Yangarra seeks payment from Manitok's estate of:

    a) the Proceeds; and

    b) the Service Fees.

25. As the Appeal Decision determined, Yangarra was not a creditor of Manitok's. Yangarra was a purchaser of certain assets from Manitok pursuant to the Purchase Agreement, and which the SAVO judicially approved.

26. Thus, Yangarra is not seeking leave to bring a claim against Manitok or its estate. To the contrary, Yangarra is seeking only to enforce its existing rights which were established by the SAVO. No party is required to seek permission to enforce an existing order of this Court.

27. Yangarra is the legal owner of the Proceeds. For several years, the Receiver has been improperly refusing to provide Yangarra with its own property.

28. Yangarra is unable to calculate the Proceeds given the current information, but is prepared to accept that they are $164,000.00.

29. Yangarra and Orlen resolved the Orlen dispute, reaching a new business arrangement including:

    a) these parties formed a new gas handling agreement whereby Yangarra will process Orlen's produced substances at reduced rates;

    b) these parties formed a new farmout agreement; and

    c) the debt to Orlen arising from the unpaid Processing Fees was settled by Yangarra.

30. Manitok, and thus by extension the Receiver, were required to pay Orlen for its services rendered. Manitok's obligations as owner of the Ferrier Property and pursuant to the Purchase Agreement remained in effect, and the SAVO creates a mandatory obligation to comply therewith.

31. It was therefore not open to Manitok or the Receiver to fail or otherwise refuse to pay the Processing Fees to Orlen.

32. In the Orlen action, Orlen alleged that it was owed $94,975.00.

33. Orlen filed an application in this action, giving evidence that the amount due and owing to it for the Processing Fees was $120,900.99.

34. Yangarra has no information to the contrary.

35. National Bank of Canada has already received the benefit of the Purchase Agreement. Sale and approval orders generally are a valuable tool when disposing of insolvent estates. Yangarra was arm's length to Manitok. Yangarra was not a creditor of Manitok's. Yangarra was a party that was interested in purchasing certain oil and gas assets from a party that was known to be financially unstable. The policy reason for granting these kinds of orders is that they are mutually beneficial: the buyer has the commercial certainty that its purchase will be enforceable and not constitute a preference or otherwise be subject to any challenge, while the seller's creditors benefit from attracting a much higher sale price for such assets than would be available without such commercial certainty.

36. This is a zero sum issue; whatever monies Yangarra is denied will revert to Manitok's estate and then National Bank of Canada. National Bank of Canada has had the benefit of having received the $2.08 million sale price since the Purchase Agreement closed in 2018. National Bank of

Canada, as Manitok's primary creditor, has thus long had the entire benefit of the Purchase Agreement. In contrast, Yangarra has been correspondingly denied its full benefit of the Purchase Agreement and the SAVO. Any deviation from the Purchase Agreement will result in improving National Bank of Canada's position to Yangarra's detriment, and will disturb the bargain which was already formed and judicially approved.

37. It would be a windfall for National Bank of Canada, Manitok's primary creditor, if Manitok's estate is permitted to retain the Processing Fees. There is no jurisdiction reason for such an outcome.

38. Yangarra acknowledges throughout this application that, as purchaser, it lacks firsthand information.

39. In the circumstances, Yangarra is prepared to proceed with the amounts referenced herein, such as they are. However, if the Court determines that proper calculations should be made, Yangarra requests that the Receiver be directed to provide Yangarra with an accounting with respect to the amounts at issue in this application, and that the balance of this application be adjourned until after such accounting has been rendered.

Material or evidence to be relied on:

40. the affidavit of Jim Evaskevich sworn October 18, 2022;

41. the pleadings in this action and other pleadings as may be tendered; and

42. such further material as counsel may advise.

Applicable Rules:

43. Alberta *Rules of* Court, Alta Reg 124/2010, without limitation, including Rule 6.3; and

44. such other rules as counsel may advise.

Applicable Acts and regulations:

45. none beyond those described herein.

Any irregularity complained of or objection relied on:

46. none are anticipated.

How the application is proposed to be heard or considered:

47. orally.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

APPENDIX D
Proposed Yangarra Consent Order

COURT FILE NUMBER	25-2332583 25-2332610 25-2335351
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PROCEEDINGS	IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF MANITOK ENERGY INC. IN THE MATTER OS THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF RAIMOUNT ENERGY CORP. IN THE MATTER OF THE NOTICE OF INTENTION TO MAKE A PROPOSAL OF CORINTHIAN OIL CORP.
DOCUMENT	**CONSENT ORDER**
PARTY FILING THIS DOCUMENT	**YANGARRA RESOURCES LIMITED**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	**McMillan LLP** 1700, 421 – 7th Avenue SW Calgary, AB T2P 4K9 **Attention:** **Andrew E. Stead** Telephone: (403) 531.8748 Fax: (403) 531.4720 Email: andrew.stead@mcmillan.ca File No. 269125

DATE ON WHICH ORDER WAS PRONOUNCED:

NAME OF JUSTICE WHO MADE THIS ORDER:

LOCATION OF HEARING: Calgary Courts Centre

UPON THE APPLICATION of Yangarra Resources Limited returnable November 3, 2022 (the "**Application**"), which was served upon the service list in these actions; **AND UPON** having read the pleadings herein; **AND UPON** noting the consent of the parties below to this order;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. Alvarez and Marsal Canada Inc. (the "**Receiver**"), in its capacity as receiver and manager of Manitok Energy Inc. ("**Manitok**"), shall pay Yangarra Resources Limited ("**Yangarra**") the sum of $150,000.00 forthwith. This sum is the remaining amount owing from the Purchased Assets, as defined in the sale approval and vesting order granted February 14, 2018 (the "**SAVO**").

2. After the above payment has been made to Yangarra, all of the obligations of the Receiver and Manitok to Yangarra pursuant to the SAVO, the Sale Agreement referred to therein, and otherwise, including but not limited to payment of the Proceeds and the Processing Fees referred to in the Application, will be satisfied and Yangarra shall have no further claims against the Receiver or the Estate of Manitok in any proceedings, including but not limited to these proceedings whether in bankruptcy or receivership.

3. The third party claim brought by Yangarra against the Receiver and Manitok in Court of King's Bench Action no. 1801-17233 is hereby dismissed, without costs, and this order shall be filed in that action. Such dismissal shall be for all purposes of the same force and effect as if an order had been pronounced at a hearing of that action on the merits.

4. This order may be consented to electronically and in counterpart.

5. This order is granted without costs.

_____

J.C.C.K.B.A

CONSENTED TO BY:

Scott Venturo Rudakoff LLP

Per:_____

Eugene J. Bodnar
Counsel for the Receiver

McMillan LLP

Per:_____

Andrew E. Stead
Counsel for Yangarra Resources Limited