

COURT OF APPEAL OF ALBERTA

FORM AP-1

[RULE 14.8 AND 14.12]

COURT OF APPEAL FILE NUMBER: **2001-0228AC**

TRIAL COURT FILE NUMBER: 25-2679073
25-2679074

REGISTRY OFFICE: CALGARY



APPLICANTS/CROSS-RESPONDENTS: GREENFIRE OIL & GAS LTD. AND
GREENFIRE HANGINGSTONE OPERATING
CORPORATION

STATUS ON APPEAL: RESPONDENT

RESPONDENT/CROSS-APPLICANT: WARNER PETROLEUM CORPORATION AND
LIBERATOR CRUDE TRADING, LLC

STATUS ON APPEAL: APPELLANTS

NON-PARTY: ALVAREZ & MARSAL CANADA INC. IN ITS
CAPACITY AS PROPOSAL TRUSTEE OF
GREENFIRE OIL & GAS LTD. AND
GREENFIRE HANGINGSTONE OPERATING
CORPORATION

STATUS ON APPEAL: RESPONDENT

DOCUMENT: **CIVIL NOTICE OF APPEAL**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT:

BENNETT JONES LLP
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Client File No.: 87366.2

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the *Alberta Rules of Court*, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: November 17, 2020

Date entered: Not yet entered

Date served: Not yet served

Official neutral citation of reasons for decision, if any: N/A

2. Indicate where the matter originated:

☒ Court of Queen's Bench

Judicial Centre: Edmonton

Justice: The Honourable Mr. Justice J.S. Little

On appeal from a Queen's Bench Master or Provincial Court Judge?

☐ Yes ☒ No

Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge: N/A

☐ Board, Tribunal or Professional Discipline Body

Specify Body: N/A

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)):

☒ Permission not required, or ☐ Granted:

Date: The Appellants submit that an appeal lies to this Court from the decision of the application judge of the Court of Queen's Bench of Alberta pursuant to subsections 193(a), 193(b) and 193(c) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**"). In the alternative, the Appellants are filing an application for leave to appeal pursuant to subsection 193(e) of the BIA, concurrently with the filing of this Civil Notice of Appeal.

Justice:

4. **Portion being appealed (Rule 14.12(2)(c)):**

☐ Whole, or

☒ Only specific parts (if specific part, indicate which part):

The Appellants, Warner Petroleum Corporation ("**Warner**") and Liberator Crude Trading, LLC ("**Liberator**"), appeal the portions of the application judge's decision concluding that:

- 1) the Form 44.1 – *Notice by Debtor to Disclaim or Resiliate an Agreement*, issued by Greenfire Oil and Gas Ltd. ("**GOGL**") and Greenfire Hangingstone Operating Corporation ("**GHOC**" and collectively "**Greenfire**") pursuant to s. 65.11(1) of the BIA on November 6, 2020 (the "**Disclaimer**") in respect of the Marketing Agreement dated April 15, 2019 (the "**Agreement**") between Greenfire and Warner is valid and effective;
- 2) the Agreement does not grant Warner an interest in land;
- 3) the Agreement is not an eligible financial contract within the meaning of the BIA; and
- 4) Warner's application pursuant to s. 65.11(3) of the BIA for an order that the Agreement is not to be disclaimed or resiliated is dismissed.

5. **Provide a brief description of the issues:**

This appeal relates to interpretation of the Agreement, the BIA, and the *Eligible Financial Contract General Rules (Bankruptcy and Insolvency Act)*, SOR/2007-256 (the "**EFC Rules**").

The issues are whether the application judge applied the correct legal tests, correctly interpreted the applicable legislation, committed other extricable errors of law, or made palpable and overriding errors of fact in concluding that:

- 1) the Agreement does not grant an interest in land;
- 2) the Agreement is not an eligible financial contract as contemplated by the BIA and the EFC Rules; and
- 3) the Disclaimer should be approved and Warner's application pursuant to s. 65.11(3) of the BIA should be dismissed, upon consideration of the statutory factors required to be considered by the court in deciding whether to order that the Agreement is not to be disclaimed or resiliated, pursuant to s. 65.11(5) of the BIA.

6. **Provide a brief description of the relief claimed:**

Warner and Liberator seek a declaration that:

- 1) the Agreement grants Warner an interest in land in relation to the Area of Dedication (as defined in the Agreement);
- 2) the Agreement is an eligible financial contract as contemplated by the BIA and the EFC Rules; and
- 3) Greenfire is prohibited from disclaiming the Agreement and the Disclaimer is invalid and of no force or effect.

7. **Is this appeal required to be dealt with as a fast track appeal?** (Rule 14.14)

☐ Yes ☒ No

8. **Does this appeal involve the custody, access, parenting or support of a child?**
(Rule 14.14(2)(b))

☐ Yes ☒ No

9. **Will an application be made to expedite this appeal?**

☐ Yes ☒ No

10. **Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate?** (Rule 14.60)

☐ Yes ☒ No

11. **Could this matter be decided without oral argument?** (Rule 14.32(2))

☐ Yes ☒ No

12. **Are there any restricted access orders or statutory provisions that affect the privacy of this file?** (Rules 6.29, 14.12(2)(e), 14.83)

☒ Yes ☐ No

The Order appealed from also grants a sealing order which will be attached as soon as it is filed.

If yes, provide details:

Greenfire and Warner are parties to a non-disclosure agreement that prohibits the disclosure of certain confidential information exchanged between the parties. Certain of this information, which was relied upon by the Court below, was contained in a confidential portion of a transcript of questioning on affidavits, and certain of this information was included as a confidential exhibit to an affidavit and as confidential exhibits marked at the questioning. That portion of the transcript and those exhibits to which the sealing order applies have been marked as confidential.

13. **List respondents or counsel for the respondents, with contact information:**

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Counsel for the Respondent, Alvarez & Marsal Canada Inc.
in its capacity as Proposal Trustee of Greenfire Oil & Gas
Ltd. and Greenfire Hangingstone Operating Corporation

14. **Attachments (check as applicable):**

- ☐ Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))
- ☐ Earlier order of Master, etc. (Rule 14.18(1)(c))
- ☐ Order granting permission to appeal (Rule 14.12(3)(a))
- ☐ Copy of any restricted access order (Rule 14.12(2)(e))