COURT FILE NO.	1703 12327
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
	IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
	AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF 667402 ALBERTA LTD., 18512398 ALBERTA LTD., 816956 ALBERTA LTD., 1371047 ALBERTA LTD., 1919209 ALBERTA LTD. AND CANADA NORTH GROUP LP HOLDINGS LTD.
DOCUMENT	**REPLY BRIEF OF THE MONITOR, ERNST & YOUNG INC. TO THE BRIEF OF 726 REMOTE ACCOMODATIONS LTD. AND 726 MODULAR FINANCE LTD.**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	DARREN R. BIEGANEK Q.C./ RYAN F.T. QUINLAN Barrister & Solicitor Phone: (780) 441-4336 Fax: (780) 428-9683 File No.: 196164 **DUNCAN CRAIG LLP** LAWYERS MEDIATORS 2800 Scotia Place 10060 Jasper Avenue Edmonton, Alberta, Canada, T5J 3V9

Clerk's Stamp
CENTRE OF EDMONTON
FILED
JAN 0 3 2019
Clerk of the Court

4131-0084-4569.v1

TABLE OF CONTENTS

I. INTRODUCTION

1) Capitalized terms used herein shall have the meanings ascribed to them in the Monitor's Brief filed December 17, 2018.

2) The Monitor is not deliberately intending to be intransigent. The Monitor is following the Court's directions in respect of the management of these proceedings and finds itself not only in the position of Monitor but now also representing the Remaining Applicants, including CNC, and acts as the voice of those entities in these proceedings.

3) This Reply Brief will generally speak to the following three matters:

   a) The adjournment request made by 726 Remote Accommodations Ltd. and 726 Modular Finance Ltd. (collectively "726");
   b) The simple steps which 726 could have taken, but did not, to protect their interests;
   c) Evidentiary issues and how the evidence presented to the Court, particularly by Paul McCracken, does not assist 726 in that:
      i) The evidence is inherently unreliable and likely inadmissible; or
      ii) In any event, is parole and inconsistent with the documents prepared by the parties and inadmissible; and
   d) The fraudulent preference issue.

4) The structure of this Brief will outline any additional facts, to the extent needed, under each particular heading addressing each particular issue noted above.

II. ARGUMENT

A. <u>The Adjournment Regarding the Bonnyville Equipment</u>

5) 726 asserts that:

   a) The issue was lately raised and not properly before the Court prior thereto; and
   b) As a consequence 726 does not have counsel "properly retained" to address the issue.

   The Brief will address the counsel issue first.

6) 726 has had counsel on the service list since at least the fall of 2017.

7) 726 was also listed as a creditor on the list of creditors posted to the Monitor's website.

Creditor List **[TAB 1]**

8) Counsel for 726 appeared in Court on or about December 12, 2017 at which time the Court granted a stay of an action commenced by Kingdom Properties Ltd. ("Kingdom") against, among others, 726 and extended that stay to the benefit of 726.

9) The same counsel has been notified throughout the proceedings and participated in the case management process which gave rise to these matters.

10) The Case Management Order was granted on September 6, 2018 as a result of actions taken by the Municipal District of Greenview ("Greenview") in respect of its municipal tax claims. The Order did not mirror the Claims Process Order but did have some similarities. The Monitor was not generally asked to provide a disallowance or variance on those claims with appeals to follow. Rather, in an effort to bring clarity to issues, that Order directed that:

> "1. On or before October 5, 2018, any secured creditors or parties claiming an ownership interest in the within proceedings, except municipal creditors with respect to unpaid municipal property taxes and arrears, shall file an Affidavit (the "October 5th Affidavits") in the within proceedings identifying:
>
> i) any and all <u>secured claims</u> with respect to <u>property now or previously owned or operated by</u> all or any of 667402 Alberta Ltd., 18512398 Alberta Ltd., 816956 Alberta Ltd., 1371047 Alberta Ltd., 1919209 Alberta Ltd., Canada North Group LLP Holdings Ltd. or any prior Applicants in these proceedings;
> ii) any and all ownership claims with respect to property held or operated by all or any of 667402 Alberta Ltd., 18512398 Alberta Ltd., 816956 Alberta Ltd., 1371047 Alberta Ltd., 1919209 Alberta Ltd., Canada North Group LLP Holdings Ltd. or any prior Applicants in these proceedings;
> iii) the security interest held to secure such claims; or
> iv) the basis of any and all ownership claims;
> v) the municipality in which the collateral charged by the security interest or the property with respect to which ownership is claimed was located immediately prior to the commencement of these proceedings; and
> vi) the debt associated with each secured claim or ownership claim."

[Emphasis added]

11) The purpose behind the Order was to determine, among other things, the essence of whose assets would be subjected to municipal tax claims if those tax claims are to be visited upon the assets at the various camps. This is all part and parcel of the entirety of the remaining proceedings: if the assets are subjected to municipal tax claims, then payment for same must come out of the proceeds of those assets or cash must be paid in order to extract the assets. A determination of ownership <u>and</u> priority is relevant not only to determine whose assets are to be visited with the cost but also to ascertain how to allocate the cost of proceedings to date and whether certain assets are to be subjected to the inevitable cost allocation which must take place in this matter. Ownership and priority is, and always has been, before the Court and is a relevant and material determination to be made in this proceeding to address all of these issues.

12) The Monitor's 17th Report addressed issues with respect to the Bonnyville Lodge assets as they represented a potential material adverse change. That is outlined beginning at paragraph 19 of that Report. Through the proceedings, many of the Bonnyville Lodge assets were represented as owned by CNC.

13) Paragraph 23 of the Report is equivocal. It indicates that the Monitor does not anticipate challenging 726's ownership claim in respect of the claimed assets of the Bonnyville Lodge unless there is a material change in relation to the information or documents that comes to light to alter the accuracy and/or legitimacy of the information obtained and reviewed to date.

14) The Monitor's 17th Report was filed on September 10, 2018.

15) Additionally, and consistent with the Advice and Directions Order made on September 6, 2018, ownership is one thing, priority is another.

16) 726 filed a two volume Affidavit on or about October 4, 2018. Included in Exhibit "B" to that Affidavit (a copy of which is provided at Tab 2B of the Answers to Undertakings given by Paul McCracken and is annexed here at **TAB 2** for ease of reference) indicates that the vendor, CNC, covenanted with the purchaser that: "(d) the equipment is <u>free from any charge, lien, claim, mortgage, security interest, or encumbrance of any kind...</u>". [Emphasis added].

17) The issue of whether the equipment purchased was free and clear is put in issue by 726 through reliance on that Bill of Sale.

18) The Affidavit of Jessie Taha sworn October 3, 2018 included at Exhibit "G" a General Security Agreement dated November 30, 2011, approximately three years prior to the Bonnyville Transaction, whereby CNC granted to CWB security interest in all of its present and after-acquired personal property. That interest was perfected at the time of the Bonnyville Transaction (Tab 2, Book of Evidence).

19) The application of 726 itself seeks a declaration of ownership. The evidence of Barry Roman was that the ownership was acquired free and clear of encumbrances.

20) His Answer to Undertaking No. 3 included a document respecting "Bonnyville Lodge". The second paragraph of that document (Tab C to the Roman Transcript in the Transcript Book) notes that 726 will acquire the assets "free and clear".

21) Mr. McCracken was questioned extensively over a day and a half and questions were put to him by counsel for the Monitor regrading the Bonnyville transaction.

22) Counsel for 726 could have availed themselves of the opportunity to ask questions arising from those questions but did not do so.

23) The simple questions ultimately posed of both Mr. McCracken and Mr. Roman, given that this was a sale out of the ordinary course of business, was whether:

    a) CWB was asked to provide written confirmation that it had no further interest in the assets sold; and
    b) If so asked, whether such written confirmation was received.

24) There has been no response from Mr. McCracken. Mr. Roman has refused to provide the information on the basis of relevance and materiality although now they seek an adjournment so clearly it is relevant and material.

25) Almost a month has passed since questioning. The "retainer issue" does not appear to have been resolved but the issue still remains extant and is one that must be decided in the context of these proceedings. While the jeopardy to 726 may be significant, neither the facts nor the legal test are complicated. The questions are very simple. The legal test results are straightforward.

26) 726 has already received the benefit of:

a) A stay extension for their benefit in respect of the Kingdom Properties litigation (in December, 2017);
b) A further adjournment from December 4 and 5, 2018 to allow them to adduce more evidence and to allow new assisting counsel to get up to speed.

27) This matter has been fully canvassed at great expense and has been on the table since the September 6th Order. No further adjournment should be allowed in respect of it.

B. 726 Could Have Readily Protected Itself

28) In respect of the Bonnyville Transaction and in respect of each of the lease transactions, 726 could have taken steps to protect itself.

29) In respect of the Bonnyville Transaction, they purport to acquire assets free and clear but left those assets in the possession and under the operational control of CNC. To all outside observers, there was no change in status. Where goods remain in the possession of the Seller post-sale, the Buyer, in this case, 726, can take steps pursuant to section 26(2) of the *Sale of Goods Act* (Alberta) to register a financing statement in the Personal Property Registry ("PPR") to protect their interests in the assets.

Sale of Goods Act, R.S.A. 2000, c. S-2, Section 26(2) **[TAB 3]**

30) There is no evidence that 726 did so.

31) With respect to the Lease Agreements in respect of the Remaining Camps, again, those leases were leases for a term in excess of one year and clearly governed by the terms of the PPSA. 726 did not avail themselves of the ability to register to protect their interests against third party claims until November 27, 2018. This is addressed in the Monitor's earlier Brief.

C. The Unreliable Evidence of Paul McCracken

32) 726 relies heavily on the evidence of Paul McCracken to confirm its claims to ownership of additional assets, including small wares and for the purpose of seeking the Court's direction to rectify the contracts between it and CNC or the Partnership.

33) Respectfully, the evidence of Paul McCracken is inherently unreliable. That is the only conclusion to be drawn from his evidence.

34) Throughout these proceedings, the McCrackens', both Paul McCracken and Shayne McCracken, gave evidence that the assets highlighted on the Confidential Exhibit D-1 were assets belonging to the corporate group. They were included in appraisals. They were submitted to the Court in sworn from in Confidential Affidavits. They were utilized to obtain not only the Initial Order but several subsequent stay extensions to support underlying value.

35) Mr. McCracken's evidence is quite clear that he did not tell the CRO nor the Monitor that those assets were not to be included. It was only in February of 2018, as the time for concluding the transaction with Xalta was proceeding, that some subtle changes crept into the appraisal document. At no time, however, was that communicated to either:

a) The Court;
b) The Monitor; or
c) The Bank.

36) The change in the evidence was only communicated after the Xalta transaction closed and both of the McCrackens received approval from both the creditors and the Court in respect of their personal bankruptcy proposals eliminating several millions of dollars in personal debt.

37) Mr. McCracken's evidence ought not now to be given any weight nor relied upon.

38) With respect to ownership of assets, his current evidence is clearly inconsistent with prior sworn statements. Clearly he has been impeached. He cannot now tender or purport to tender, prior consistent statements to rebut the inconsistency.

Tarapaski v. Tarapaski, 2007 ABQB 288, para. 3, 4 **[TAB 4]**

39) Further, and in any event, any additional evidence given, particularly evidence given to support 726's assertion that:

a) It acquired ancillary assets from Bonnyville; and
b) A number of other assets not otherwise listed in their lease agreements were nevertheless to be included in those transactions

is parole and inadmissible.

40) In *Semcams ULC v. Exxonmobil Canada Energy*, 2008 ABQB 469 **[TAB 5]** Booker, J. noted, at paragraph 41 that:

> "The general rule regarding parole evidence as stated by our Court of Appeal in the *Guaranteed Properties* case at paragraph 20 and 25:
>
> > The parole evidence rule generally bars extrinsic evidence that alters, adds to, subtracts from, or varies the meaning of the written document. The parties' intentions are to be found in the document itself. Therefore unless the evidence falls within an exception to the parole evidence rule, it would be inadmissible at trial.
> >
> > ...
>
> External evidence will be allowed to resolve ambiguity, <u>but the ambiguity must arise from the language itself and not from external circumstances."</u>.

41) There is no ambiguity in the documents themselves, either the Bill of Sale in the Bonnyville Transaction or in the Lease Agreements with the remaining Camps they do not include specifically listed additional or ancillary equipment and certainly do not include additional or ancillary equipment or small wares claimed by 726.

42) 726 also purports to rely upon this evidence to allow them to rectify their own documents. As Booker J. notes in the *Semcans ULC* case, parole evidence may be allowed to support a claim for rectification but notes that the Court of Appeal has indicated that a claim for

rectification is only typically granted in cases of common mistake where it can be established that both parties had continually agreed on the term but that term was erroneously and/or inaccurately expressed in the written document. The onus on the applicant is a heavy one.

Semcams ULC v. Exxonmobil Canada Energy, supra, at para. 52 **[TAB 5]**

43) The evidence of both Mr. McCracken, assuming it is even reliable on this point, and Mr. Roman is actually quite clear: neither party used the term "mistake" when giving their evidence with respect to what was or was not included in the Bill of Sale or the Lease Agreements. They agreed the items were not listed. They agreed that, in the case of the Leases, the additional assets were only utilized to establish a value to add to the existing Lease. They were not placed on lease.

44) In the case of the "swapped assets" what there is evidence clearly that one set of units went up to Wandering River when they should have gone to Kilometer 147/Monais. There is no evidence, however, on what assets actually went to Kilometer 147 or Monais and no reliable evidence at all to support 726's contention that the assets they seized (in the face of a stay and without notice to the Monitor or CNC were the assets which were to be placed "on lease").

45) In all the circumstances, these claims of 726 are not supported.

D. Fraudulent Preference Claims

46) The Monitor has two responses generally:

a) The PPSA does authorize the granting of a security agreement for pre-existing debt; and
b) The *Fraudulent Preferences Act* ("FPA"):
   i) Grants an exception in the case where creditors continue to provide ongoing service or credit;
   ii) They must establish proof of intent on the part of the debtor, not CNC, to prefer the claim of CNC. The evidence, assuming it can be believed, does not fit with an intent to defeat, hinder or delay 726. Rather, what it "fits with" is an intent to ensure that CWB was secured.

47) The PPSA provides that a security interest, including a security interest in the nature of a floating charge attaches when value is given and the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party.

PPSA, Section 12(1) **[TAB 6]**

48) Value is defined in paragraph 1(ww) as "any consideration sufficient to support a simple contract, and includes and antecedent debt or antecedent liability".

PPSA, Section 1(1)(ww) **[TAB 6]**

49) Section 12(2) also confirms that without limiting other rights which the debtor may have in the collateral, a debtor has rights and goods leased to the debtor or consigned to the debtor when the debtor obtains possession of them in accordance with the lease or consignment.

PPSA, Section 12(2), **[TAB 6]**

50) Without more, the granting of a security interest by each of the Partnerships to CNC was something which could be done by each of the Partnerships for obligations owing by them to CNC under the terms of the PPSA. This would include, the Monitor submits, for past services rendered and for future services to be rendered.

51) With respect to the fraudulent preferences allegations under the FPA, *bona fide* transactions are accepted: section 6 and section 9.

52) Both sections refer to payments or the granting of security in support of advances made in money.

53) The evidence discloses that each of the LPs owed money to CNC. Evidence also discloses that each of the LPs were managed and fully operated by CNC and each of those LPs receive the benefit of the extended stay under the provisions of the Initial Order.

54) The provision of the ongoing operations, whether fully operational or merely holding pattern and maintain security and insurance, constitutes continued advances of service on the part of CNC and lending benefit to the Partnerships. Additionally, certain of the Partnership Agreements and USAs (as outlined in the Monitor's earlier Brief) specifically authorized certain security being taken (in the form of Leases with CNC), the granting of the security agreements can be taken as simply substitution therefore, particularly in respect of Peace River Lodge.

55) Regardless, and in any event, the evidence relied upon, assuming it can be believed, does not fit with an intent to defeat, hinder or delay 726 on behalf of each of the Partnerships in question (which is where the intent must be found). Rather the evidence fits with what appears to be an intent on the part of CNC, at least according to Mr. McCracken, to ensure that CWB was secured. That is what his evidence says. Again, the Monitor refers back to Section II B of the Reply, and 726 could have protected itself – prejudice to itself was its own doing.

III. CONCLUSIONS

56) For the reasons stated previously in the Monitor's earlier Brief and in this Reply, the conclusions outlined in the Monitor's first Brief must be upheld.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 3RD DAY OF JANUARY, 2019.

DUNCAN CRAIG LLP
Per:

____
Darren R. Bieganek, QC
Counsel for the Monitor

LIST OF DOCUMENTS ATTACHED

1. Creditor List
2. Tab B of the Answers to Undertakings given by Paul McCracken
3. *Sale of Goods Act*, Section 26(2)
4. *Tarapaski v. Tarapaski*, 2007 ABQB 288
5. *Semcams ULC v. Exxonmobil Canada Energy*, 2008 ABQB 469
6. *Personal Property Security Act*, Sections 1(1)(ww), 12(1), 12(2)

TAB 1

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Group Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
Business Development Bank of Canada	Box 6, 505 Burrard Street Vancouver BC V7X 1M3		251.00
Canadian Western Bank	30th Floor, 10303 Jasper Avenue Edmonton AB T5J 3X6		21,033,797.81
Element Financial Corporation	161 Bay Street, Suite 4600, PO Box 621 Toronto ON M5J 2S1		251.00
Element Financial Inc. / EFN Financial Inc.	900, 4 Robert Speck Parkway Missaussaga ON L4Z 1S1		251.00
Northland Mortgage & Investment Corporation	75 Rockland Road Campbell River BC V9W 1N4		251.00
Reinhart Oilfield Services Ltd.	Edgar Industrial Ct Red Deer AB T4P 4E2		251.00
Roterra Piling Ltd.	26230 Township Road 531A Acheson AB T7X 5A4		251.00
SYSCO Canada Inc.	26210 Township Road 531A Acheson AB T7X 5A4		251.00
Weslease Income Growth Fund LP	11464 - 149 Street Edmonton AB T5M 1W7		251.00
Total			21,035,805.81

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
1260030 AB Ltd.	10411 Allendale Road Edmonton AB T6H 5Z9		7,757.11
1371047 Alberta Ltd.	14238 - 134 Avenue Edmonton AB T5L 5V6		170,750.00
1744084 Alberta Inc.	129 Willow Drive Wetaskiwin AB T9A 2S5		63,955.50
3 Boys Tank/Vac Trucks	Box 1176 Fox Creek AB T0H 1P0		5,509.61
726 Modular Finance Canada Ltd	2900 S. Quincy Street, Suite 300A Arlington VA 22206 USA		117,600.00
816956 Alberta Ltd.	16410 - 137 Ave Edmonton AB T5V 1R6		72,700.00
904142 Alberta Ltd.	Box 888 Grimshaw AB T0H 1W0		251.00
ABELL Pest Control Inc- HML	14315-129 Avenue NW Edmonton AB T5L 4N9		315.00
Acklands-Grainger Inc.	15986 - 118 Ave Edmonton AB T5V 1C4		610.61
Aggreko Canada Inc	PO Box 1569, 200 Bay Street, Suite 1800 Toronto ON M5J 2J2		22,944.20
Alberta Food Equipment (2000) Ltd.	3269 Majestic Drive Courtenay BC V9N 9X4		22,611.14
All Peace Petroleum Ltd - VISA	15525-100 Street Grand Prairie AB T8V 7C2		1,835.44
Allarie Cleaners VISA	PO Box 2176 Slave Lake AB T0G 2A0		768.00
Allied Refrigeration	9338 - 60 Avenue Edmonton AB T6E 0C1		4,325.65
Allnite Trucking Ltd.	PO Box 99 Boyle AB T0A 0M0		1,762.00

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
AltaGas Utilities Inc.	5509 - 45 St Leduc AB T9E 6T6		1,306.44
Aquarium Illusions Inc.	16630-109 Avenue Edmonton AB T5P 1C2		348.09
Armour Safety Products	1607 - 134 Avenue Edmonton AB T5L 5V8		3,162.10
ATCO Structures & Logistics Ltd.	Suite 300, 4838 Richard Road SW Calgary AB T3E 6L1		77,806.81
Bear Track Cattle Company	Site 1 Box 4 St. Lina AB T0A 2Z0		3,620.25
Bell Mobility - HML	P.O. Box 5480 Vancouver BC V6B 4B5		517.78
Bell TV-HML	PO Box 3017 Station Terminal Vancouver BC V6B 6L1		11,005.32
Bet Can Industrial Ltd o/a Surface Flow Control	54313 RR 260 Sturgeon County AB T8T 0W1		16,456.46
Black Diamond Limited Partnership	2000, 715 5th Avenue SW Calgary AB T2P 2X6		141,300.00
Blanchett Neon Limited	12850 - St.Albert Trail Edmonton AB T5L 4H6		430.02
Bluewave Energy - (WR)	15609-121A Ave Edmonton AB T5V 1B1		124,855.19
Bluewave Energy - VISA	15609-121A Ave Edmonton AB T5V 1B1		32,546.87
Brave Nose Septic Service	Box 27 Site 4 RR 2 Barrhead AB T7N 1N3		3,445.07
Business Development Bank	121 King St, W #1200 Toronto ON M5H 3T9		265,512.00
Camcork Holdings Ltd	912 - 8 St NW, Box 1574 Slave Lake AB T0G 2A0		375,000.00

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
CampCorp Canada	14238 - 134 Avenue Edmonton AB T5L 5V8		16,607.27
Canada North Group Inc.	14238 - 134 Avenue Edmonton AB T5L 5V8		251.00
Canada Revenue Agency	9755 King George Boulevard Surrey BC V3T 5E1	GST	162,057.68
Canada Revenue Agency	9755 King George Boulevard Surrey BC V3T 5E1	Payroll Source Deductions	829,197.95
Canadian Safety Training Institute Inc.	11411-56 Ave NW Edmonton AB T6H 0Y1		21,648.38
Canadian Strategy Group Inc.	Suite 1720, 10020 101A Avenue Edmonton AB T5J 3G2		5,407.50
Canadian Western Bank	30th Floor, 10303 Jasper Avenue Edmonton AB T5J 3X6		21,033,797.81
Canglobal Technologies	9327 B 63 Ave Edmonton AB T6E 0G2		20,360.75
Canglobal Technologies (WR)	9327B 63 Ave Edmonton AB T6E 0G2		2,123.80
CARMA Systems	16410 - 137 Ave Edmonton AB T5V 1R6		155,688.70
CF Reclamation & Water Services - (WR)	Box 613 Boyle AB T0A 0M0		137,682.46
Challenge Insurance Group Inc.	10466 Mayfield Road Edmonton AB T5P 4P4		39,878.75
Chandel Equipment Rentals	1000, 400 - 5th Avenue SW Calgary AB T2P 0L6		5,000.00
Cimarron Camp Services Ltd.	9711-100 Avenue Fort St John BC V1J 1Y2		3,819.55
Cimarron Lodge LP			1,495.59
Clear Hills County	Box 240 Worsley AB T0H 3W0		726.63

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
Commercial Linen Services (1994) Inc. (WR)	7033 Girard Road NW Edmonton AB T6B 2C4		32,343.95
Cummins Western Canada	11751-181 Street Edmonton AB T5S 2K5		137,701.70
D & R Equipment LTD	9337 - 45 Avenue Edmonton AB T6E 5Z7		52,104.50
Data Tools Custom Software	Box 6531 Hinton AB T7V 1X7		4,042.50
Dentons (Fraser Milner Casgrain)	10180 - 101 St Edmonton AB T5J 2V5		280,955.67
Direct Energy Business-HML	PO Box 1587 Station M Calgary AB T2P 3B9		25,589.44
Direct Energy Regulated Services	P.O. Box 2427 Edmonton AB T5J 2R4		23,409.57
Dunvegan Fab & Welding Ltd	Box 1206 Fairview AB T0H 1L0		6,987.75
E & M foods Ltd.	973- Mistassinity Road Wabasca AB T0G 2K0		405.72
Edmonton petroleum club	11110-108 Street Edmonton AB T5G 2T2		250.00
EFN Financial Inc.	900, 4 Robert Speck Parkway Missaussaga ON L4Z 1S1		251.00
Element Financial Corporation	161 Bay Street, Suite 4600, PO Box 621 Toronto ON M5J 2S1		2,951,652.73
Elite Safety Resources	46 Dalton Way Sherwood Park AB T8H 1T5		3,465.00
Energetic	Box 6639 Fort St. John BC V1J 4J1		8,744.89
Environmental Refuelling Systems Inc	#208, 10464 Mayfield Road Edmonton AB T5P 4P4		10,500.00

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 In the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
EPCOR	P.O. Box 500 Edmonton AB T5J 3Y3		12,061.23
Factoring Solutions Inc.	460, 1121 Centre Street NW Calgary AB T2E 7K6		24,669.75
Flaman Group of Companies	8910 Yellowhead Trail Edmonton AB T5B 1G2		41,439.51
Force Pile Driving	#170,120 Pembina Road Sherwood Park AB T8H 0M2		104,508.89
Frank Lee Consulting and/or Frank Lee	17512 - 104 Street Edmonton AB T5X 5X1		4,200.00
Garda Canada Security Corp	1390 Barre Street Montreal QC H3C 1N4		8,966.44
GE Canada Leasing Services Company	10235 - 101 Street, Suite 2500, Oxford Tower Edmonton AB T5J 3G1		251.00
GFL Environmental Inc.	125 Villarboit Cres, Suite B Vaughan ON L4K 4K2		620.62
GMP Securities L.P.	145 King Street West, Suite 300 Toronto ON M5H 1J8		5,250.00
Golden West Golf Group	16410 - 137 Ave Edmonton AB T5V 1R6		365.09
Great White Sand Tiger Lodging Ltd	PO Box 1540 Fairview AB T0H 1L0		251.00
Green Regional Waste Management Commission	4806-36 Ave, Box 1079 Valleyview AB T0H 3N0		555.93
Greenan Insurance	1203, 10104 -103 Ave. Edmonton AB T5J 0H8		1,669.00
GW Equipment	14238 134 Ave Edmonton AB T5L 5V8		8,914.14
Habitat Social Enterprise - Division of S.P.A.N.	4637 - 45 Avenue St. Paul AB T0A 3A3		145,585.34

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 In the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.

Creditor	Address	Account#	Claim Amount
Habitat Social Enterprises - (WR)	4637 - 45 Avenue St Paul AB T0A 3A3		3,596.97
Habitat Social Enterprises - VISA	4637 - 45 Avenue St. Paul AB T0A 3A3		50,670.20
Hauger Equipment Service Ltd.	Box 807 Grimshaw AB T0H 1W0		1,608.80
Hillbilly Haulin' Ltd.	Box 23068 RPO Prairie Mall Grande Prairie AB T8V 6X2		4,020.00
HML Lodge - CCS	14238 - 134 Avenue Edmonton AB T5L 5V8		7,688.94
HML Lodge - CNC	14238 - 134 Avenue Edmonton AB T5L 5V8		719,048.47
Hugh's Electronics & Computers Ltd	Box 5869 Westlock AB T7P 2P6		9,203.36
Implicit Engineering Ltd.	5255 MUllen Crest Edmonton AB T6R 0P9		10,500.00
Jet Rentals & Sales	BOX 1289 Blackfalds AB T0M 0J0		91,225.00
Kingdom Cats Ltd	177 Christina Lake Drive Conklin AB T0P 1H0		25,251.45
Klassen Blade Contracting Ltd. - (WR)	P.O. Box 5599 Lacombe AB T4L 1X2		140,230.18
Klovansky Contracting	Box 888 Grimshaw AB T0H 1W0		251.00
K-Lynn Trucking Ltd	P.O Box 360 Whitecourt AB T7S 1N5		555.46
Lakeland Petroleum Services Co-operative Ltd.	6020 - 54 Avenue Bonnyville AB T9N 2M8		19,615.12
Lakeshore Communications	#30 Meteor DR Etobicoke ON M9W 1A4		5,910.00

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
Leon's Heavy Equipment	14-100 Real Martin Drive Fort McMurray AB T9K 2S1		2,607.47
Little Guy Oilfield Rentals	6801 - 39 Street Leduc AB T9E 0Z4		56,525.00
Luxury Plumbing Limited	14755 131 St NW Edmonton AB T6V 1J9		35,217.01
M & F Mechanical	316-12 St SE Slave Lake AB T0G 2A3		3,395.44
Major Bonertz Rentals	Box 2618 Valleyview AB T0H 3N0		5,585.00
Manitoba Heavy Construction Association	Unit#3,1680 Ellics Ave Winnipeg MB R3H 0Z2		1,126.13
Marnevic Construction	Box 113 Fox Creek AB T0H 1P0		1,940.38
Max Fuel Distributors Ltd	P.O. Box 327, 5503 Kepler Whitecourt AB T7S 1N5		44,494.94
MCKAR Commercial Appliance Services	Box 103 Millet AB T0C 1Z0		1,536.41
Midwest Surveys Inc.	2827 Sunridge Blvd. NE Calgary AB T1Y 6G1		4,575.96
Minister of Finance - Hotel Tax	9811 - 109 St Edmonton AB T5K 2L5		76,539.07
Mission Building Supplies	15935 - 114 Avenue Edmonton AB T5M 2Z3		10,244.76
Morton & Jagodich Incorporated	340 Midpark Way SE Calgary AB T2X 1P1		3,280.91
Mountain West Camp Services	17356 - 108 Avenue Edmonton AB T5S 1E8		251.00
Municipal District of Greenview No.16	4806 - 36 Ave, Box 1079 Valleyview AB T0H 3N0		334.50

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.

Creditor	Address	Account#	Claim Amount
Mutual Propane	16203-114 Ave Edmonton AB T5M 2Z3		489.27
Mutual Propane Ltd - HML	16203-114 Ave Edmonton AB T5M 2Z3		3,121.52
Mutual Propane Ltd-HML	16203-114 Ave Edmonton AB T5M 2Z3		10,506.96
National Leasing - current owing on long term lease	1525 Buffalo Pl Winnipeg MB R3T 1L9		494,502.68
Northern Food Services	353 A Old Airport Rd Yellowknife NT X1A 3T4		30,052.41
Northland Mortgage & Investment Corp	75 Rockland Rd Campbell River BC V9W 1N4		750,000.00
NorthSat Distribution - VISA	9645-82 Avenue Edmonton AB T6C 0Z9		59,067.47
Nutec Electro Tel	3720B - 48 Ave. Camrose AB T4V 4S1		1,472.60
Orion	Box 1144 Whitecourt AB T5L 5V8		764.73
Pennock Acheson Nielsen Devaney	2201 Toronto Dominion Tower, 10088-102 AVE Edmonton AB T5J 2Z1		344,305.00
Perron Ventures Ltd.	PO Box 2182 Valleyview AB T0H 3N0		1,134.00
Petro Canada	150 6 Ave SW Calgary AB T2P 3Y7		27,173.46
Poulins Pest Control -	8737 118 Ave NW Edmonton AB T5B 0T2		5,747.70
Prairie Disposal Ltd - VISA	65029 HWY43, County of Grande Prairie No.1 Grande Prairie AB T8W 5E7		4,561.20
Praxair - VISA	1 City Centery Drive, Suite 1200 Mississauga ON L5B 1M3		431.29

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
Premium Trailer Rentals	4103 Whitemud Road Edmonton AB T6H 5R5		251.00
Progess Land	12831-163 Street Edmonton AB T5V 1M5		531.09
Qtec Tankers Ltd.	P.O. Box Viking AB T0B 4N0		1,410.00
R.D.E. Inc	PO Box 4180 Spruce Grove AB T7X 3B4		671.00
Ram Mechanical Plumbing and Heating	201, 21 Perron Street St. Albert AB T8N 1E6		1,353.45
Rayko Industries Inc.	27331 Township RD 534 Parkland County AB T7X 3S1		2,598.75
Reinhart Oilfield Services Ltd	Box 1315 Red Deer AB T4N 7B6		77,106.00
Remote Waste LP	9514 - 97 Street, Box 458 Sexsmith AB T0H 3C0		341,899.66
Renee McCracken	C/O DLA Piper 1201, 10060 Jasper Avenue Edmonton AB T5J 4E5		358.29
Reynolds Mirth Richards & Farmer	3200 10180 101 Street Edmonton AB T5J 3W8		2,089.82
Reynolds Mirth Richards & Farmer	3200 10180 101 Street Edmonton AB T5J 3W8		3,611.39
Rockwater Energy Solutions Canada Inc	c/o CH3024 P.O. Box 2509, Station M Calgary AB T2P 0E2		8,818.45
Samax Industries Inc.	Box 5999 Westlock AB T7P 2P7		275.63
Saurus Heaters Inc.	6012 Centre Steet S.E, Calgary AB T2H 0C3		819.00
Securiguard Services Limited	300-1575 West Georgia Street Vancouver BC V6G 2V3		35,970.80

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
Select Equipment Rentals	4 Riel Drive St Albert AB T8N 5C8		3,304.88
Shaw) Direct	P.O. Box 5099 Burllington ON L7R 4W6		12,001.29
Spallumcheen Golf & Country Club	Box 218 Vernon BC V1T 6M2		1,945.50
SterlingBackcheck Canada Corp	Suite 200 - 19433 96 Avenue Surrey BC V4N 4C4		3,448.72
Stratis Oilfield Services Ltd.	982 Boulder Blvd. Stony Plain AB T7Z 0E5		6,163.50
Sun Rise Disposal Ltd.	Box 692 Fox Creek AB T0H 1P0		6,304.69
Suncorp Valuations	955 - 10020 101A Ave Edmonton AB T5J 3G2		1,837.50
Super Save Disposal	19395 Langley Bypass Surrey BC V3S 6K1		515.84
Superior Propane Acc# 1003699 - VISA	PO Box 4568, Stn A Toronto ON M5W 0J5		10,157.28
Superior Propane Acc# 1015610	PO Box 4568, Stn A Toronto ON M5W 0J5		401.94
Superior Propane Acc# 1038498 - VISA	PO Box 4568, Stn A Toronto ON M5W 0J5		331.72
Sure Hire	Suite #8726, 1000 Airport Road Edmonton AB T9E 0H3		21,889.04
Surehire	11822 160 St NW Edmonton AB T5V 1C9		8,268.75
SYSCO Canada Inc.	26210 Township Road 531A Acheson AB T7X 5A4		878,291.55
SYSCO Canada Inc.	26210 Township Road 531A Acheson AB T7X 5A4		335,039.65

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.

Creditor	Address	Account#	Claim Amount
Tee Box Corp.	14820-112 Ave NW Edmonton AB T5M 2T9		10,295.97
Telus Mobility	14310 - 111 Ave Edmonton AB T5M 3Z7		4,199.37
Telus Services Inc	PO Box 2210 Station Terminal Vancouver BC V6B 8P3		2,993.13
Terrapro	P.O. Box 79027 Sherwood Park AB T8A 5S3		8,940.75
Thatchuk's Oil and Water Transport	11012B - 89 Ave Grande Prairie AB T8V 4W4		4,721.00
Toshiba Business Solutions	12908 - 170 Street Edmonton AB T5V 0B4		251.00
Town of Fox Creek	P.O. Box 149 Fox Creek AB T0H 1P0		9,591.12
Travellers Financial Corporation	210, 2880 Glenmore Trail SE Calgary AB T2C 2E7		251.00
Triple 7 Oilfield Rentals	35173 RR 284A Red Deer County AB T4G 0G4		9,576.00
Tyco Integrated Fire & Security	PO Box 4484 Stn A Toronto ON M5W 5Z2		11,941.01
Vertex Oilfield Services Ltd	121 2055 Premier Way Sherwood Park AB T8H 0G2		36,202.35
Wabasca E & M Foods	Box 360 Wabasca AB T0G 2K0		1,497.74
Wakefield Canada Inc.	3620 Lakeshore Blvd West Toronto ON M8W 1P2		251.00
Waste Management of Canada Corp - HML	PO Box 15259 Station A Toronto ON M5W 1C1		7,989.66
Weber Supply	7239 68 Ave NW Edmonton AB T6B 3K3		502.43

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Canada North Camps Inc.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
Wells Fargo Leasing - current owing on long term lease	1025 - 101 Street Edmonton AB T5J 3G1		173,411.65
Weslease Income Growth Fund-	11464 149 St NW Edmonton AB T5M 1W7		251.00
Whitmoor Vacuum Services Ltd. - HML	PO Box 6168, Stn Main Fort McMurry AB T9H 4W1		23,630.25
Winsham Fabrik Canada Ltd. - Visa	8712 - 53 Ave Edmonton AB T6E 5G2		14,129.64
Workers Compensation Board	9912 107 St NW Edmonton AB T5K 1G5		83,114.23
WSP	7710 Edgar Industrial Court Red Deer AB T4P 4E2		12,075.00
XPLORNET	300 Lockhart Mill Road, PO Box 9060 Woodstock NB E7M 6B5		15,197.37
Zoi Tech Inc.	135 Laurier Drive Edmonton AB T5R 5P8		404.25

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Campcorp Structures Ltd.

List of Creditors with claims of $250 or more.

Creditor	Address	Account#	Claim Amount
A.J. Williams Architect Ltd.	3604-13A Street S.W. Calgary AB T2T 3S7		8,400.00
A.T.S. K 9 Ltd.	484 Hwy 20, RR3 Fenwick ON L0S 1C0		1,017.00
Apex Upholistery	7035 Girard Road Edmonton AB T6B 2C4		1,800.75
Business Development Bank of Canada	Box 6, 505 Burrard Street Vancouver BC V7X 1M3		251.00
Canada North Camps Inc.	c/o DLA Piper 1201, 10060 Jasper Avenue Edmonton AB T5J 4E5		12,524.01
Canada North Group Inc.	14238 - 134 Avenue Edmonton AB T5L 5V8		251.00
Canada Revenue Agency	9755 King George Boulevard Surrey BC V3T 5E1		41,009.96
Canadian Western Bank	30th Floor, 10303 Jasper Avenue Edmonton AB T5J 3X6		21,033,797.81
CSA Group	P.O. Box 1924, Postal Station A Toronto ON M5W 1W9		14,341.00
DBK Engineering Ltd.	Unit 1,5608- 1 Street SE Calgary AB T2H 2W9		4,568.87
Dentons (Fraser Milner Casgrain)	2900 Manulife Place, 10190 - 101 St Edmonton AB T5J 3V5		44,849.39
Doorwest	Bay 13 30 Chevigny Street St.Albert AB T8N 5A3		1,352.29
Duxton - Edmonton	45 Higgins Ave Winnipeg MB R3B 0A8		8,684.48
Fedex	5985 Explorer Drive Missaussaga ON L4W 5K6		652.95
GFL Environmental Solid Waste Inc. Ed	8409-15 Street NW Edmonton AB T6B 0B8		2,913.67

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Campcorp Structures Ltd.

List of Creditors with claims of $250 or more.

Creditor	Address	Account#	Claim Amount
GW Equipment A diivision Of 1878674 Alberta Ltd.	14238-134 Ave Edmonton AB		1,012.80
Implicit Engineering Ltd.	5255 Mullen Crest Edmonton AB T6R 2W5		4,759.52
Klondike Crane Inspections Ltd.	10616-169 Street NW Edmonton AB T5P 3X6		2,315.26
Marlowe Smith Trucking LTD.	P.O. Box 150 Coaldale AB T1M 1M2		3,700.00
McKinley & Taylor Production Center	11402-120 Street Edmonton AB T5G 2Y2		51,092.75
Mission Building Supplies Ltd.	15935 -114 Ave Edmonton AB T5M 2Z3		9,081.95
Mutual Propane	16203 - 114 Avenue Edmonton AB T5M 2Z3		542.36
National Leasing Group Inc.	1525 Buffalo Place Winnipeg MB R3T 1L9		251.00
NC EQUIPMENT LTD.	506-19 AVE NISKU AB T9E 7W1		16,016.82
Nufloors	201 - 4 Avenue NW, PO Box 109 Slave Lake AB		393.12
Partition Systems Ltd.	1647 - 70 Avenue Edmonton AB T6P 1N5		998.86
Primco	12300 - 44 Street SE Calgary AB T2Z 4A2		1,109.10
Remo's Masonry & Concrete Ltd.	5728-159B Ave Edmonton AB T5Y 2T5		4,987.50
Remote Waste LP	9514-97 Street, Box 458 Sexsmith AB T0H 3C0		418,211.11
Runners Light Hauling Ltd	4734 - 76 Ave Edmonton AB T6B 0A5		1,791.26

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
Campcorp Structures Ltd.

List of Creditors with claims of $250 or more.			
Creditor	Address	Account#	Claim Amount
Sima Contracting Ltd.	Unit 5 2001 34th Ave. SW Calgary AB T2T 2C4		7,822.50
Telus Communications	PO Box 2525, Station M Calgary AB T2P 5A5		1,287.82
Tyco Integrated Fire & Safety	P.O. Box 4484 STN A-25 The Esplande Toronto ON M5W 5Z2		11,968.91
Warkentin Building Movers	Site9, Com 11. RR#4 Calmar AB T0C 0V0		28,290.43

Listing of Creditors Pursuant to the Initial Order Granted July 5, 2017 in the Matter of the CCAA filing of Canada North Group Inc., Canada North Camps Inc., Campcorp Structures Ltd., D. J. Catering Ltd., 816956 Alberta Ltd. and 1371047 Alberta Ltd.

Listing of Creditors for
D.J. Catering Ltd.

List of Creditors with claims of $250 or more.

Creditor	Address	Account#	Claim Amount
Business Development Bank Canada	Box 6, 505 Burrard Street Vancouver BC V7X 1M3		251.00
Canada North Group Inc.	14238 - 134 Avenue Edmonton AB T5L 5V8		251.00
Canada Revenue Agency	9755 King George Boulevard Surrey BC V3T 5E1	GST	129,238.17
Canadian Western Bank	30th Floor, 10303 Jasper Avenue Edmonton AB T5J 3X6		21,033,797.81
Dentons Canada LLP	2900 Manulife Place, 10180 - 101 Street Edmonton AB T5J 3V5		525.00
Minister of Finance-Hotel Tax	9811-109 Street NW Edmonton AB T5K 2L5		36,105.91
Municipal District of Greenview #16	4707 - 50 Street, Box 1079 Valleyview AB T0H 3N0		128,138.41
National Leasing Group Inc.	1525 Buffalo Place Winnipeg MB R3T 1L9		251.00
Progress Land	12831-163 St Edmonton AB T5V 1M5		750.96
RCAP Leasing	PO Box 67 Burlington ON L7R 3X8		707.74
Superior Propane 04762791	PO BOX 2875 Station M Calgary AB T2P 5G1		435.75
WSIB	PO BOX 4115 STN A Toronto ON M5W 2V3		514.05
Total			21,330,966.80

1371047 Alberta Ltd

Vendor List as of 09/30/2017

Name	Street 2	City	Province	Postal Code	Phone No. 1	Balance Owing
Active Asphalt Ltd.	10703-31 Street	Edmonton	AB	T5W 1W6	(780) 919-4302	787.50
Adtel Inc.	11630 Kingsway Avenue NW	Edmonton	AB	T5G 0X5	(780) 424-7777	450.03
Athabasca County	3602 - 48 Ave	Athabasca	AB	T9S 1M8	(780) 675-2273	462,094.64
CRA: GST	9755 King George Blvd.	Surrey	BC	V3T 5E1		10,578.37
Dentons (Fraser Milner Casgrain)	2900, 10180 101 Street	Edmonton	AB	T5J 3V5	(780) 423-7100	417.84
EPCOR	PO BOX 500	Edmonton	AB	T5J 3Y3		5,068.65
Municipal District of Bonnyville No 87	4905 50th Ave, Bag 1010	Bonnyville	AB	T9N 2J7		29,999.60
Shaw Business	Suite 100, 3636 23rd Street NE	Calgary	AB	T2E 8Z5	1-866-244-7474	7,807.28
Town of Bonnyville	4917 - 49th Ave, Bag 1006	Bonnyville	AB	T9N 2J7	(780) 826-4396	297,704.63
Mortgages						
Northland Mortgage & Investment Corp	75 Rockland Rd,	Campbell River	BC	V9W 1N4	250 923.0719	1,500,000.00
Jeffrey & Jackie Hadfield	4 Berry Crescent	Fort McMurray	AB	T9H 1L9	780.742.8075	810,950.00

816956 Alberta Ltd.

Vendor List as of 12/31/2017

Name	Street 1	City	Province	Postal Code	Phone No. 1	Balance Owing
CRA: GST	9755 King George Blvd.	Surrey	BC	V3T 5E1		19,313.73
Dentons (Fraser Milner Casgrain)	2900, 10180 - 101 St	Edmonton	Alberta	T5J 3V5	423-7100	1,585.91
Direct Energy	P.O. Box 1520	Calgary	Alberta	T2P 5R6		488.31
George Abrams	13323-126 Avenue	Edmonton	Alberta	T5L 3C9	(780) 451-9029	1,260.00
Mortgage First Island Secured Real Estate Investments	101 - 727 Fisgard St	Victoria	BC	V8W 1R8	250.361.9160	4,400,000.00

TAB 2

BILL OF SALE

THIS BILL OF SALE made effective December __, 2014.

BY:

CANADA NORTH CAMPS INC.
an Alberta corporation
(the "Vendor")

- in favour of -

726 REMOTE ACCOMMODATIONS, LTD.
a British Columbia corporation
(the "Purchaser")

IN CONSIDERATION of payment of the sum of Twenty Million ($20,000,000.00) Dollars, plus GST by the Purchaser to the Vendor, the receipt and sufficiency of which is hereby acknowledged by the Vendor, the Vendor absolutely transfers and conveys unto the Purchaser the equipment, installation, setup and startup costs, more particularly described on Schedule "A" attached hereto (collectively the "Equipment").

1. The Vendor covenants with the Purchaser that:

   (a) it is now rightfully and absolutely possessed of the Equipment and has the right to transfer and convey the Equipment to the Purchaser;

   (b) the Purchaser shall enjoy quiet possession of the Equipment;

   (c) the Vendor will do and execute all such further acts, deeds and assurances with respect to the Equipment that the Purchaser may reasonably request;

   (d) the Equipment is free from any charge, lien, claim, mortgage, security interest or encumbrance of any kind; and

   (e) the Equipment is transferred on an as-is, where is basis, with no representations or warranties of any kind.

2. This Bill of Sale shall be governed by the laws of the Province of Alberta.

3. This Bill of Sale may be executed in counterparts and each such counterpart shall together constitute one and the same document. An executed copy of this Bill of Sale transmitted by email or facsimile shall have the same force and effect as an originally executed document.

IN WITNESS WHEREOF the parties hereto have executed this Bill of Sale as of the date first written above.

CANADA NORTH CAMPS INC.

Per: ______________________

726 REMOTE ACCOMMODATIONS, LTD.

Per: ______________________

SCHEDULE "A"

EQUIPMENT

See attached

Schedule A
Bonnyville West
SERIAL NUMBERS
3 WELLSITES
116 Wellsite
118 Wellsite
201323001SSSL Wellsite

22 UNIT KDR
CCSLKS076 Kitchen Storage
260072575 Kitchen
260072576 Kitchen
260072577 Kitchen
CCSLKD077 Kitchen Diner
CCSLKD078 Kitchen Diner
CCSLKD079 Kitchen Diner
FX11UD201318001 Diner
FX11UD201318002 Kitchen Diner
FX11UD201318003 Kitchen Diner
FX11UD201318004 Diner
FX11UD201318005 Diner
FX11UD201318006 Diner
FX11UD201318007 Diner
FX11UD201318008 Diner
FX11UD201318009 Diner
FX11UD201318010 KDR Diner
FX11UD201318011 Diner
FX4UK201324001 Kitchen
FX4UK201324002 Kitchen
FX4UK201324003 Kitchen
FX4UK201324004 Kitchen

1 DORM
FX30201305001 Dorm 30 Room
FX30201305002 Dorm 30 Room
FX30201305003 Dorm 30 Room
FX30201305004 Dorm 30 Room
FX30201305005 Dorm 30 Room
FX30201305006 Dorm 30 Room
FX30201305007 Dorm 30 Room
FX30201305008 Dorm 30 Room

6 J&J DORMS

Bonnyville West

SERIAL NUMBERS

270085789 FH J&J Dorm 1
265085790 FH J&J Dorm 1
265085791 FH J&J Dorm 1
270085792 FH J&J Dorm 1
270085793 FH J&J Dorm 1
265085794 FH J&J Dorm 1
265085795 FH J&J Dorm 1
270085796 FH J&J Dorm 1

270085798 FH J&J Dorm 2
260585799 FH J&J Dorm 2
265085800 FH J&J Dorm 2
270085801 FH J&J Dorm 2
270085802 FH J&J Dorm 2
265085803 FH J&J Dorm 2
265085804 FH J&J Dorm 2
270085805 FH J&J Dorm 2

270085807 FH J&J Dorm 3
265085808 FH J&J Dorm 3
265085809 FH J&J Dorm 3
270085810 FH J&J Dorm 3
270085811 FH J&J Dorm 3
265085812 FH J&J Dorm 3
265085813 FH J&J Dorm 3
270085814 FH J&J Dorm 3

270085816 FH J&J Dorm 4
265085817 FH J&J Dorm 4
265085818 FH J&J Dorm 4
270085819 FH J&J Dorm 4
270085820 FH J&J Dorm 4
265085821 FH J&J Dorm 4
265085822 FH J&J Dorm 4
270085823 FH J&J Dorm 4

Bonnyville West

SERIAL NUMBERS

270085825 FH J&J Dorm 5
265085826 FH J&J Dorm 5
265085827 FH J&J Dorm 5
270085828 FH J&J Dorm 5
270085829 FH J&J Dorm 5
265085830 FH J&J Dorm 5
265085831 FH J&J Dorm 5
270085832 FH J&J Dorm 5

270085834 FH J&J Dorm 6
265085835 FH J&J Dorm 6
265085836 FH J&J Dorm 6
270085837 FH J&J Dorm 6
270085838 FH J&J Dorm 6
265085839 FH J&J Dorm 6
265085840 FH J&J Dorm 6
270085841 FH J&J Dorm 6

Installation, setup and startup costs

TAB 3

RSA 1980 cS-2 s26;1988 cP-4.05 s95

Possession of goods after sale

26(1) When a person who has sold goods continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for that person of the goods or documents of title under any sale, pledge or other disposition thereof, to any person receiving them in good faith and without notice of the previous sale has the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make it.

(2) Subsection (1) does not apply to a sale, pledge or other disposition of goods or of documents of title to goods, other than negotiable documents of title to goods, that is out of the ordinary course of business of the person having sold the goods where, prior to the sale, pledge or disposition, the interest of the owner is registered in the Personal Property Registry in accordance with the regulations made under the *Personal Property Security Act*, and Part 4 of that Act applies, with the necessary modifications, to that registration.

(3) When a person who has bought or agreed to buy goods obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person, or by a mercantile agent acting for that person, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving them in good faith and without notice of any lien or other right of the original seller in respect of the goods has the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner.

(4) Subsection (3) does not apply to a sale, pledge or other disposition of goods or documents of title to goods by a person who has obtained possession of the goods pursuant to a security agreement under which the seller has a security interest as defined in the *Personal Property Security Act*.

(5) In this section, "mercantile agent" means a mercantile agent having, in the customary course of the agent's business as a mercantile agent, authority to sell goods or to consign goods for the purpose of sale, or to buy goods or to raise money on the security of goods.

RSA 1980 cS-2 s27;1988 cP-4.05 s95

Part 3
Performance of the Contract

Duties of seller and buyer

27 It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them in accordance with the terms of the contract of sale.

RSA 1980 cS-2 s28

Payment and delivery as concurrent conditions

28 Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is,

(a) the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and

TAB 4

Court of Queen's Bench of Alberta

Citation: Tarapaski v. Tarapaski, 2007 ABQB 288

Date: 20070502
Docket: 4803 130814
Registry: Edmonton

Between:

Sharon Lee Tarapaski

Plaintiff

- and -

Alan Kenneth Tarapaski

Defendant

- and -

Teem Energy Ltd.

Third Party

Memorandum of Decision
of the
Honourable Madam Justice J.B. Veit

Summary

[1] During cross-examination at trial, Ms. Tarapaski's credibility has been impeached. Specifically, Mr. Tarapaski has put to her statements she made when being cross-examined on an affidavit in June 2004, some three and half months after the parties' separation, when she stated that she could not give specifics of her allegations of abuse against Mr. Tarapaski. In re-examination, Ms. Tarapaski applies to enter as exhibits her affidavit of March 17, 2004, which

was the basis of the cross-examination, and the transcript of her evidence at an Emergency Protection Order hearing on February 25, 2004, the date of separation; both documents contain some allegations of physical and emotional abuse.

[2] Ms. Tarapaski's application is denied.

[3] Even when a witness' credibility is impeached, that witness cannot tender prior consistent statements except in very limited circumstances, for example, to rebut an allegation of recent fabrication or to establish that a statement was made that forms part of the event itself, sometimes called *res gestae*. None of the recognized exceptions to the rule against the admissibility of prior consistent statements applies here.

[4] Moreover, event assuming that there is no closed category of exceptions to the introduction of prior consistent statements, any prior consistent statement presented to rebut impeachment must be highly relevant to the particular mode of impeachment. Here, the mode of impeachment is a mere challenge of fabrication. The forms of prior consistent statement tendered are not highly relevant to that mode of impeachment, given that neither was made in a contested situation and that Ms. Tarapaski has, in other evidence, suggested that affidavits - being drafted by lawyers - may not represent a litigant's full position on a particular point.

Cases and authority cited

[5] **By the court:** *On the general exceptions to the rule against admissibility of prior consistent statements:* Hon. D. Watt, *Watt's Manual of Criminal Evidence* (2000 - Carswell); Sopinka, Lederman, Bryant, *The Law of Evidence in Canada,* 2nd ed. (1999 - Toronto, Butterworths Canada Ltd., pp 313 ff.; Sopinka, Lederman, Bryant, *The Law of Evidence in Canada,* 2nd ed. Supplement (2004 - LexisNexis Canada Inc.).

[6] On the recency of fabrication: ***R. v Hoffman*** (1994) 32 C.R. (4th) 396 (Alta. C.A.); ***R. v Beattie*** (1989) 89 Cr. App. R. 302 (C.A.).

[7] *On time as a factor in res gestae:* ***R. v Keeler*** (1977) 36 C.C.C. (2d) 8 (Alta. C.A.); ***R. v Khan*** (1982) 66 C.C.C. (2d) 32 (Ont. C.A.).

1. Background

[8] On June 16, 2004, Ms. Tarapaski was cross-examined on an affidavit she had sworn on March 17, 2004 in these proceedings. That affidavit contained some allegations of physical and emotional abuse by her husband. Ms. Tarapaski was represented at that cross-examination; the lawyer who represented her on that occasion is not representing her in this trial.

[9] Prior to swearing the affidavit in question, Ms. Tarapaski had, on February 25, 2004, the date of separation, appeared *ex parte* before a Provincial Court Judge and obtained an

Emergency Protection Order. During that hearing, Ms. Tarapaski made some allegations of physical and emotional abuse against her husband.

[10] At this trial, in examination-in-chief, Ms. Tarapaski testified to incidents of physical and emotional abuse committed against her by her husband. In cross-examination, it was put to Ms. Tarapaski that, on June 16, 2004, relatively shortly after separation, while being cross-examined on her affidavit of March 17, 2004, she gave several answers to the effect that she could not remember any incidents of physical or emotional abuse other than, for example, the hamburger incident in Red Deer, whereas at trial she testified in chief to numerous instances of physical and emotional abuse.

[11] Ms. Tarapaski's answers on cross-examination about why she did not describe those incidents on June 16, 2004 were generally to the effect that the lawyer who was cross-examining her at that time, who is not one of the lawyers at trial, behaved nastily, aggressively, and cruelly towards her as a result of which her brain froze, as, indeed, she testified has happened to her during the course of this trial. She also testified that she probably answered some questions about the February 25, 2004 soap incident during the June, 2004 cross-examination without listening to the cross-examiner's question.

[12] When being cross-examined about the affidavit she had filed in support of her application for a divorce judgment in an earlier marriage, Ms. Tarapaski testified to the effect that lawyers had drafted her affidavit and she had signed it, and that, in drafting her affidavit, lawyers were doing their lawyer thing.

[13] During re-examination, in reply to the attack on her credibility, Ms. Tarapaski applies to introduce two documents: a transcript of the EPO hearing in the Provincial Court, from which transcript the statements of the RCMP officer who accompanied Ms. Tarapaski to the hearing have been edited out, and her affidavit of March 17, 2004.

2. General principles concerning admissibility of prior consistent statements

[14] The common law generally does not admit prior consistent statements, described in some texts on evidence as self-serving or self-corroborative evidence. The policy underlying the rule against the admissibility of prior consistent statements has been variously expressed as lack of relevance, or lack of value, or lack of indicia of reliability. As is consistently pointed out in the jurisprudence, "a statement is not made more probable or trustworthy simply by repetition" *Manual of Criminal Evidence,* at p. 186.

[15] The law does, however, recognize certain exceptions to that rule. Those exceptions have been usefully set out in *The Law of Evidence in Canada* at pp. 314-5:

> 7.5 Not all situations of impeachment, however, open the door to this exception (the exception referred to in para. 7.4 permitting the introduction of a witness' prior consistent statement when credibility has

> been impeached). The prior consistent statement must be highly relevant to rebut the particular mode of impeachment. . . The law has in fact limited prior consistent statement evidence of a witness to situations where its admissibility is sought specifically:
> (1) to rebut allegations of recent fabrication;
> (2) to establish eye-witness prior identification of the accused;
> (3) to prove recent complaint by a sexual assault victim;
> (4) to establish that a statement was made that forms part of the *res gestae* or to prove the physical, mental or emotional state of the accused;
> (5) to adduce facts as part of the narrative;
> (6) to prove that a statement was made on arrest;
> (7) to prove that a statement was made on the recovery of incriminating articles; or,
> (8) to prove videotaped complaints under s. 715.1 of the *Criminal Code*

[16] The 2004 Supplement to the same authority does not add commentary or cases.

[17] The jurisprudence also establishes that, when assessing a request for treatment as an exception, because of the principles embodied in the rule, a court must be satisfied that the situation comes within an exception.

[18] It goes without saying that the laws or rules of evidence apply equally in civil and criminal proceedings, although, of course, they must sometimes be applied with necessary contextual changes, or as lawyers sometimes say, *mutadis mutandis*.

3. Do the proposed prior consistent statements come within any of the recognized exceptions to the rule?

[19] None of the recognized exceptions to the rule against the admissibility of prior consistent statements apply here.

[20] The exceptions relating to specific criminal law situations obviously have no application here. Only two possible exceptions from the above list might be invoked by Ms. Tarapaski, items (1) and (4).

a) Has Mr. Tarapaski invoked recent fabrication?

[21] Mr. Tarapaski has not invoked recent fabrication, either directly or indirectly. Rather, Mr. Tarapaski has taken the position throughout that Ms. Tarapaski's allegations of physical and emotional abuse are and were fabricated, or exaggerated, or materially incomplete in the sense that they omitted what led up to an incident and excluded any reference to Ms. Tarapaski's own conduct. Mr. Tarapaski has never suggested that they were recently fabricated as that term is

used in the case law (***Hoffman***). He has pointed out inconsistencies in her presentation of her evidence on physical and emotional abuse (***Beattie)***. His position is that, on the cross-examination in June 2004, when first challenged to provide information about the physical and emotional abuse, Ms. Tarapaski did not provide details when it would be expected that she would do so. In order to rebut that type of allegation, in re-examination Ms. Tarapaski could, of course, have referred to other portions of the July 10, 2004 cross-examination where reference to those details was given. That is not, however, the type of challenge which allows the introduction of prior consistent statements.

b) Is the first of these documents part of the *res gestae*, or admissible to prove the physical, emotional or mental state of the witness?

(i) Is it part of the *res gestae*?

[22] The transcript of the hearing at the EPO is not part of the events of separation, or the *res gestae.*

[23] The evidence establishes that, after an event occurred on the morning of February 25, 2004, and after having attended the children's school in the morning and spoken with school authorities, Ms. Tarapaski went home to think about her situation and telephone her mother, before returning to the school. She then remained at the school for some time while the RCMP and other services were summoned. She then had discussions with members of the RCMP. She was then driven to the courthouse by an RCMP officer who has testified that it was her habit while she was in the service to tell individuals that an Emergency Protection Order was a time-our for adults who couldn't play nice. She then went into a courtroom and provided information in support of her application for an EPO to the Provincial Court Judge.

[24] Not only has a statement made 5 hours after an alleged criminal act been excluded as being part of the *res gestae* (***Keeler)***, a statement made as early as 10 minutes after an arrest has also been excluded (***Khan***).

[25] In the circumstances here, there is too great a time lapse between the event in the parties' home prior to 9 a.m. on the morning of February 25 to the statements made before the Provincial Court Judge at approximately noon on the same day to allow the statements made in court on that date to constitute an exception to the rule against prior consistent statements. Moreover, in the circumstances disclosed in the evidence, the required spontaneity to constitute a *res gestae* exception is not present.

(ii) Is it admissible to prove the state of mind of the witness?

[26] The transcript of the hearing before the Provincial Court on February 25, 2004 is not admissible as proof of the physical or emotional state or the state of mind of the witness on February 25, 2004.

[27] I have come to that conclusion for two reasons - the first is that the challenge is not to the witness' state on that occasion, but rather to her credibility as a result of the cross-examination on July 16, 2004. The second is that, for the reasons set out in connection with non-admissibility as *res gestae*, the transcript cannot have the reliability as to physical or emotional state which is provided by spontaneity.

4. Do the prior consistent statements come within a principled exception to the rule even if they do not come within any recognized category of exception?

[28] The proferred prior consistent statements do not come within a principled exception to the rule against admissibility of prior consistent statements.

[29] I assume, for purposes of this ruling, that contemporary Canadian standards of fairness and justice would not admit that the categories of exception to the rule against admissibility of prior consistent statements are closed. I do assume, however, that in order to be admissible, any prior consistent statement which does not come within one of the recognized exceptions must "be highly relevant to rebut the particular mode of impeachment".

[30] Here, the particular mode of impeachment is a mere allegation of fabrication, not one of recent fabrication.

[31] For the following two reasons, I have concluded that the two forms of proposed rebuttal to that particular mode of impeachment are not highly relevant.

[32] First, on the basis of Ms. Tarapaski's evidence concerning the nature of affidavits, the fact that there might be additional evidence of physical and emotional abuse in the affidavit of March 17, 2004 is not highly relevant. On the basis of her own testimony, the drafting of affidavits is an example of lawyers doing their thing whereas the challenge to her credibility is aimed directly at her own, direct, unassisted testimony of events; by her own admission, the contents of her affidavits are not the best gauge of that type of testimony.

[33] Second, both the appearance in the Provincial Court and the March 17, 2004 affidavit were situations in which Ms. Tarapaski's evidence was not challenged and was not spontaneous. That evidence is not therefore highly relevant in a situation of challenge to her evidence.

Conclusion

[34] For the reasons set out above, Ms. Tarapaski's application to introduce evidence of prior consistent statements is denied.

Heard on the 26th day of April, 2007.
Dated at Edmonton, Alberta this 27th day of April, 2007.

J.B. Veit
J.C.Q.B.A.

Counsel:

Ronald S. Foster, Q.C.
Foster Stock Richmond, and
Rosanna Saccomani,
Biamonte, Cairo, and
Norm Picard, Q.C.
Barr Picard
for Ms. Tarapaski

Brian Beresh, Q.C.
Beresh Cunningham, and
Doug Skovberg, and
Christine Barker
Skovberg, Hinz
for Mr. Tarapaski

TAB 5

Court of Queen's Bench of Alberta

Citation: Semcams ULC v. Exxonmobil Canada Energy, 2008 ABQB 469

Date:20080730
Docket: 0601 04256
Registry: Calgary

Between:

Semcams ULC

Applicant

- and -

Exxonmobil Canada Energy

Respondent

Reasons for Judgment
of the
Honourable Mr. Justice C.S. Brooker

INTRODUCTION

[1] Semcams ULC ("Semcams") brings this Originating Notice of Motion pursuant to Rule 410 of the *Alberta Rules of Court,* Alta. Reg.390/68 for an order declaring that Semcams is entitled, under the terms of an "Agreement for the Construction, Ownership and Operation of the Spotter Gas Gathering System" ("the Spotter Agreement") to transport all gas owned by it at the acceptance point through the Spotter Gathering System within the capacity allocated to it as "its Gas," being either Natural Gas or Outside Gas owned by it as an Owner (as the case may be), including transporting of such gas without the prior approval of the Operating Committee and without payment of transportation fees. In the alternative, it seeks an order granting a trial of an issue on this specific matter.

[2] ExxonMobil Canada Energy ("ExxonMobil") brings a cross motion seeking to dismiss Semcams' Originating Notice of Motion or alternatively, directing that it be converted into a Statement of Claim with the matter proceeding to trial in the ordinary course.

FACTS

[3] Semcams is a partner in a mid-stream business and owns gas gathering and processing facilities. Semcams offers services to gas producers including gathering, processing, transporting, storing, and marketing of gas and natural gas liquids.

[4] By virtue of a succession of interest from previous owners, Semcams is a party to and an owner under the Spotter Agreement dated July 1, 1989.

[5] In March 2006, Semcams negotiated with a producer of natural gas known in Alberta as Mancal Energy Inc. ("Mancal") to purchase all of Mancal's right, title and interest in and to natural gas at the wellhead of various wells in central northwestern Alberta.

[6] It was Semcams' intention to have the gas it acquired from Mancal transported through the Spotter Gathering System to the Kaybob Amalgamated Gas Plant for processing.

[7] On March 23, 2006, Semcams informed ExxonMobil, the Operator of the Spotter Gathering System, of its nomination to transport gas purchased by Semcams at the wellhead from Mancal within Semcams' capacity on the Spotter Gathering System.

[8] On March 24, 2006, ExxonMobil advised Semcams of its position that the Spotter Agreement does not allow for wellhead buy / sell arrangements and that ExxonMobil considered the gas purchase from Mancal to be third party gas (i.e. "Non-Owner's gas") and that if Semcams attempted to transport it through the Spotter Gathering System within its Owner's capacity, ExxonMobil would shut-in the gas.

[9] Previously, Mancal had processed its gas under the contract as a third party and paid third party fees which were shared pursuant to the terms of the contract by the Owners. On March 22, 2006, ExxonMobil advised Semcams that Mancal had served notice of termination of its gas transportation agreement and therefore assumed the delivery of its gas to the Spotter Gas Gathering System would be discontinued. It was in response to that advice that Semcams informed ExxonMobil of its intention to transport gas purchased by Semcams at the wellhead from Mancal within Semcams' Owners' capacity in the Spotter Gas Gathering System.

[10] After the initial application was argued before the court, further evidence was adduced by the parties through affidavits and supplemental briefs were filed. Additional oral arguments took place. In the final result, I have for consideration, the initial briefs and supplemental briefs of the parties as well as a variety of affidavits, none of which was cross-examined upon. I will outline the salient evidence from these affidavits.

[11] In his affidavit of April 4, 2006, John McGruther deposes that he is the representative of Semcams and states that Semcams is a partner in a mid-stream business and owns gas gathering

and processing facilities. It offers various services to gas producers including gathering, processing, transporting, storing, and marketing gas and natural gas liquids. He states that Semcams became an Owner under the Spotter Agreement as a successor in interest of a previous Owner. He describes the plan to have the gas Semcams purchased from Mancal at the wellhead transported through the Spotter System to the Kaybob Amalgamated Gas Plant for processing, using Semcams' capacity allotment under the Spotter Agreement thus avoiding transportation fees. ExxonMobil objected to this procedure on the basis that the Spotter Agreement did not allow for such a procedure. As a result of ExxonMobil's position, Semcams brought this motion.

[12] In his later affidavit sworn February 13, 2007, John McGruther notes that it acquired its interest in the Spotter Agreement for value and without notice of any purported mistake in the wording of that Agreement. He outlines in detail the process and procedure by which Semcams came to acquire its interest in the Spotter Agreement.

[13] Ian Clarke deposes in his affidavit sworn June 1, 2006, that he is a professional engineer with ExxonMobil. He states that the Spotter Agreement is dated July 1, 1989 and that the parties to the agreement at that time were Conoco Canada Ltd. ("Conoco"), Unocal Canada Ltd. ("Unocal"), and Gulf Canada Resources Ltd. ("Gulf"). Mobil, now ExxonMobil, obtained Gulf's interest in the agreement in 1993. However, the Spotter Agreement was not formally executed until 1995. Mr. Clarke states that at the time of the execution of the Spotter Agreement, modifications to address the emergence of mid-stream gas companies "would not have been required or considered as each of the original parties to the Spotter Agreement were producers of natural gas." He notes that that "reality" is further demonstrated by the terms of the Kaybob Gas Processing Agreement which is appended to his affidavit. Further, he deposes that, prior to the Semcams negotiation with Mancal, Mancal gas was being transported through the Spotter pipeline as " Non-Owners' gas". Finally, he swears that he is presently in the process of searching and reviewing the historical files to identify all relevant materials and individuals so that "...ExxonMobil can present all information available to it regarding the true intention of the parties to the Spotter Agreement when it was negotiated and executed".

[14] Wayne Larry Fuller swore an affidavit on November 2, 2006, and filed it with the court on February 26, 2007. In it, he deposes that he has been involved in the oil and gas industry since 1966. Between 1990 and 2002, he was the "agreements facilitator" for ExxonMobil.

[15] Mr. Fuller deposes that he was responsible for representing ExxonMobil's interest in the drafting and facilitating the execution of the Spotter Agreement . He states that Gulf, Conoco and Unocal began drafting the Spotter Agreement prior to 1989. At that time, those companies owned producing wells in the Spotter area. They therefore decided to build a pipeline to the nearest gas plant in order to have their working interest production processed in that gas plant.

[16] Mobil (now ExxonMobil) purchased Gulf's interest in both the wells and the Spotter pipeline in 1993. Although the Spotter Agreement existed in draft form at the time of the purchase, it was not formally executed until 1995. Upon execution, the form of the document was substantially similar to the draft document which existed in 1993.

[17] Mr. Fuller describes the drafting process for the Spotter Agreement, of which he was the primary drafter for ExxonMobil. He also describes the various priorities for the pipeline and specifically notes that last priority was given to gas from a Non-Owner well from inside or outside the designated area, thereby permitting all Owners to share in the transportation fee revenue from Non-Owner gas transported in the Spotter pipeline. He goes on to depose "the concept of an Owner purchasing gas at the wellhead of a Non-Owner and transporting through its capacity, thus avoiding the Non-Owner gas transportation fee, was not industry practice at the time and was not allowed in any Mobil agreements. Furthermore, having companies such as mid-streamers, whose sole purpose was to do just that was not specifically contemplated and addressed in the agreement because such mid-stream companies were not commonplace at the time the Spotter CO & O Agreement was drafted." Mr. Fuller states that it was ExxonMobil's practice to ensure that an Owner could not use their own capacity for gas they purchased from a Non-Owner well and that ExxonMobil would not have executed a document that allowed for this to occur.

[18] Mr. Fuller goes on in his affidavit to discuss amendments in the 1999 Petroleum Joint Venture Association model CO & O Agreement which was apparently drafted to accommodate the issue of mid-stream gas companies. He further proposes a revision to the Spotter Agreement to avoid what he terms "this mistaken interpretation" that is, an interpretation of the Spotter Agreement permitting an Owner to purchase gas at a wellhead and transport that gas under its own capacity allocation under the CO & O Agreement.

[19] Nester Raymond Shular sworn an affidavit on November 13, 2006, which was filed with the court on February 26, 2007. In it, he deposes that he has been involved in the oil and gas industry since 1966. He worked for Unocal for 29 years, retiring from Unocal in 1996. He was responsible for representing Unocal's interest in the drafting and facilitating the execution of the Spotter Agreement. Mr. Shular's affidavit tracks closely the affidavit of Mr. Fuller. He deposes that the concept of an Owner purchasing gas at the wellhead of a Non-Owner and then transporting it through its allocated capacity thereby avoiding the Non-Owner gas transportation fee was not industry practice at the time and that mid-stream companies whose purpose was to do that were not commonplace at the time that the Spotter Agreement was drafted. He further states that the Spotter Agreement was solely intended as a way for Owners to transport their working interest or royalty interest gas from their own wells to the processing facility and the capacity not utilized for the Owner's working interest or royalty interest gas would be allocated to gas from Non-Owner wells and charged a transportation fee for the collective benefit of the Owners. Mr. Shular goes on in his affidavit to say that during the time-frame of the drafting and execution of the Spotter Agreement, it was not Unocal's practice to allow an Owner to purchase gas at the wellhead and to use their own capacity in any facility to transport it and that Unocal would not have executed a document that allowed for that nor would he have drafted an agreement to reflect such an arrangement. He then goes on to adopt the correction proposed by Mr. Fuller in his affidavit to deal with any "mistaken interpretation" of the Spotter Agreement in this regard.

[20] James Douglas Bouwmeester swore his affidavit on December 14, 2006. It was filed February 26, 2007. His affidavit indicates that he has been involved in the oil and gas industry since 1977. In 1995 when the Spotter Agreement was executed, he had worked with Conoco for three years. He deposes that he was responsible for representing Conoco's interest in the drafting and facilitating execution of the Spotter Agreement. His affidavit also tracks very closely those of Mr. Fuller and Mr. Shular. Specifically, he deposes that mid-streamers were not commonplace during the time-frame when the Spotter Agreement was being drafted and therefore they were not taken into account in the drafting of that Agreement. He further indicates that the definition of ownership was based on mineral title ownership and that any alteration of the transportation and processing fees charged could only result from a change in the ownership of the mineral title rights. He also adopts Mr. Shular and Mr. Fuller's proposed revision to the definition of "outside gas" in clause 101(u) of the Spotter Agreement to clarify what he describes as the original intent of the Spotter Agreement whereby an Owner's capacity was to be used for the purpose of transporting that Owner's gas from the wells owned by it.

[21] Finally, there is an affidavit sworn and filed June 1, 2006, by Ib Moller, a professional engineer. His affidavit was tendered as expert evidence concerning industry practices and CO & O Agreements at the time that the Spotter Agreement was negotiated and executed. He explains that CO & O Agreements have been common since the 1950's to permit the construction, ownership and operation of jointly owned gas gathering, transportation and processing facilities by companies engaged in exploration and production of gas in order to effect various economies by the sharing of the costs and thereby avoiding the requirement of each well owner/producer of natural gas from having to build its own facilities. As an owner's gas production declined, excess capacity in the system would be made available, at a fee, for use by Third Parties with such fees being shared by system owners.

[22] Mr. Moller explains that mid-stream gas companies were uncommon in the upstream Canadian gas industry before the early to mid 1990's. Midstream companies are in the business of owning gas facilities and make their money by charging fees to the owners of gas who use those facilities. Thus, whereas the exploration and production companies make their money from selling the oil and gas produced from their wells, the mid-stream gas companies make their money by charging gas owners to use their facilities. In Mr. Moller's view, these two business models are incompatible in the context of joint-ownership of facilities like those in the Spotter Agreement, due to the potential for competition between the parties for the use of the facilities.

[23] Mr. Moller opines that agreements such as the Spotter Agreement did not contemplate and therefore did not intend that non-Owned gas purchased at the well head by an Owner under the Spotter Agreement, would be considered "Owner's Gas"under the Agreement and entitled to be transported without fee, under the Owner's allocated capacity.

[24] Finally, Mr. Moller states that in his opinion, the interpretation of the Spotter Agreement suggested by John McGruther in his affidavit is "...inconsistent with the normal industry practice surrounding CO & O Agreements of the time".

ISSUES

[25] The issues in this application are as follows:

1. Should Semcams' application be resolved pursuant to the process under Rule 410(e) or is a full trial necessary?

2. If the answer to issue one is that Rule 410(e) is appropriate, is Semcams entitled under the terms of the Spotter Agreement to transport gas wholly acquired by it from Mancal at the wellhead as "its Gas" in accordance with the terms of the Spotter Agreement?

ANALYSIS

1. Should Semcams' application be resolved pursuant to the process under Rule 410(e) or is a full trial necessary?

[26] Semcams argues that the Rule 410(e) procedure is designed to address disputes between parties which turn solely on the proper construction of a written instrument, including a contract, and that this dispute turns solely on the construction of a written contract. It is Semcams' position that the Spotter Agreement — the written contract — allows Semcams as an Owner of the Spotter System, to transport "its" Gas through the system without paying additional transportation fees. Semcams says that the contract is clear and unambiguous and that there is no basis for resorting to extrinsic evidence in order to interpret it. It says that there are no material facts in dispute and therefore there is no need for a trial and that the matter should be determined by the Rule 410(e) procedure.

[27] On the other hand, ExxonMobil submits that as there are triable issues of fact to be determined, material facts in dispute and complex legal issues to be addressed, the matter should proceed by way of a Statement of Claim with full discovery and trial. Accordingly, ExxonMobil submits that this action is not properly determinable by way of Originating Notice under Rule 410(e). Specifically, it argues that this matter does not turn solely on the construction of a written agreement, but rather that a great deal of contextual evidence and parol evidence is required in order to allow a court to properly interpret the contract.

[28] When this matter first came on before me, one of ExxonMobil's arguments was that the matter should not proceed under Rule 410(e) because it was still attempting to retrieve historical files and documents and obtain the evidence of witnesses personally involved in negotiating the Spotter Agreement and who were not presently available. ExxonMobil argued that such evidence was necessary so that the Court "...can obtain a complete factual matrix of the context in which the contract was developed and executed."

[29] After hearing oral argument on the Motion, I reserved my decision. While the matter was under reserve, counsel, by consent, submitted additional evidence, in the form of affidavits from

a number of persons including those involved in negotiating and drafting the Spotter Agreement. As well, they filed additional briefs and made further oral argument on the matter. As a result of the additional affidavits, I am satisfied that the essential evidence concerning the "factual matrix of the context" surrounding the Spotter Agreement is before the court. I acknowledge, however, Semcams concerns as to the relevance and admissibility of this evidence on the interpretation of the contract.

[30] Semcams brings its application under Rule 410(e) of *The Rules of Court*. That rule provides:

> "410. Proceedings may be commenced by originating notice in the following cases:
>
> ...
>
> (e) proceedings for the determination of any question where there are no material facts in dispute and the rights of the parties depend upon the construction of
>
> (i) a written instrument, or
> (ii) a statute or order-in-council or a regulation,
>
> and for a declaration of the rights of the persons interested;
> ..."

[31] In *Guaranty Properties Ltd. v. Edmonton (City)*, (2000), 261 A.R.376, 2000 ABCA 215 at paras. 14-15, the Court of Appeal set out the test for granting relief under Rule 410 (e). There, the court stated:

> "The Rule requires a two step analysis. The applicant must first establish the three technical requirements outlined by Ritter, J. in *Edmonton Telephones Corp. v. Stephenson* (1994), 24 Alta. L.R. (3d) 96 (Alta. Q.B.) at 106, aff'd (1994) 26 Alta. L.R. (3d) 33 (Alta C.A) leave to appeal to the S.C.C. refused [1995] 1S.C.R. xi (S.C.C.):
>
> (a) the question must be real and not theoretical;
> (b) the applicant must have a real interest in advancing it and the opponent must have a true interest in opposing it; and
> (c) it is unlikely that evidence at trial would affect the outcome.
>
> To this must be added of course, requirements that there be no material facts in dispute, and that the question turn on the construction of a written instrument.
>
> The second step requires the exercise of discretion of the chambers judge, which must be exercised with restraint. As Ritter J. stated in *Edmonton Telephones* (at 107):

> "...R. 410(e)...provides the court with an overriding authority to compel proceedings by way of Statement of Claim, discovery process and full trial even where the circumstances technically fit within the parameters of R. 410(e) if the interests of justice demand such process."

[32] ExxonMobil concedes that Semcams has met the first two of these technical requirements.

[33] The accuracy of evidence before me has not been challenged in any material fashion by either party. I therefore conclude that there are no material facts in dispute.

[34] I also find that the question — whether Semcams is entitled under the terms of the Spotter Agreement to transport, without payment of transportation fees, all gas owned by it at the "Acceptance Point", through the Spotter System within the capacity allocated to it as "its Gas" — turns on the interpretation of a written instrument, specifically, the Spotter Agreement.

[35] ExxonMobil argues that Semcams fails to meet the third technical requirement. It says that there is a great deal of evidence to be called at trial which will likely affect the outcome of this case. Semcams disagrees, arguing that the evidence which ExxonMobil wants to call is either not admissible or irrelevant.

[36] In *Edmonton Telephones Corp.* Ritter J. went on to consider the requirement that it be unlikely that evidence at trial would affect the outcome. At paragraph 35 he says:

> "Once the foregoing considerations have been met, the court should endeavour to make a practical determination as to whether there is a sufficient likelihood of relevant evidence being admitted at trial which will significantly assist the Court in interpreting the words of the document or documents to warrant the expense and delay of a full trial process."

[37] The issue in this case is whether or not Semcams is entitled to transport gas it purchases at the wellhead, under the capacity allotted to it under the Spotter Agreement. The answer to that question depends on the proper interpretation of provisions of the Spotter Agreement and in particular, the meaning of "its Gas".

[38] Semcams says, in essence, that the answer to that question can be determined by looking to the provisions of the Spotter Agreement and that they clearly indicate that it can do so. ExxonMobil disagrees. Its argument in support of its position that a trial is necessary in order to call extrinsic evidence in this matter is founded on three bases. First, that the court needs to hear evidence regarding the factual background and circumstances in which this Agreement came into being, in order that the court has the "factual matrix" when it interprets the Agreement. Second, it says that the Agreement is ambiguous as to what "its Gas" means and therefore parol evidence is necessary to resolve that ambiguity. Third, ExxonMobil argues that parol evidence is

necessary because there may be a claim for rectification of the Agreement. I will deal with each of these sub-issues in turn.

(i) factual matrix

[39] It seems clear that evidence of the factual matrix in which a contract was made, particularly a commercial contract, may be admissible to assist a court in ascertaining the intent of the parties from the language they have used: *Qualico Developments Ltd. v. Calgary (City)* (1987), 81 A.R.161 (Q.B.) at paras. 44 to 47.

[40] When ExxonMobil initially made its arguments in this regard, it was still attempting to locate witnesses and documents. As indicated earlier, additional affidavits and arguments were subsequently filed, although their relevance and admissibility is disputed by Semcams. Nevertheless, I am satisfied that the parties have by now placed before me what they consider to be the critical evidence in support of their positions. Semcams was not an original party to the Spotter Agreement and simply has subsequently acquired its contractual interest in the manner described by Mr. McGruther in his second affidavit. ExxonMobil has submitted affidavits from the three individuals directly involved in the final negotiation and execution of the Spotter Agreement, as well as the expert, Mr. Moller. In the result, regardless of the issue of relevance and admissibility, I am satisfied that it is very unlikely that there is additional admissible evidence on factual matrix that could be called at trial which would be likely to affect the outcome of this case. Accordingly, this argument fails.

(ii) ambiguity

[41] The general rule regarding parol evidence is stated by our Court of Appeal in the *Guaranty Properties* case at paras. 20 and 25:

> The parol evidence rule generally bars extrinsic evidence that alters, adds to, subtracts from, or varies the meaning of the written document. The parties intentions are to be found in the document itself: [citations omitted]. Therefore, unless the evidence falls within an exception to the parol evidence rule, it would be inadmissible at trial.
>
> ...
>
> External evidence will be allowed to resolve ambiguity, <u>but the ambiguity must arise from the language itself and not from external circumstances</u>: [citations omitted and emphasis added].

[42] Here, we are dealing with an Agreement drafted and executed by three highly sophisticated companies in the oil and gas industry that sets out its own definitions[1], articulates

[1]Clause 101

the purpose of the agreement[2], establishes rights of an Owner to transport "its Gas"[3], sets out the priorities for capacity utilization of the system[4], contemplates and provides for the transfer, sale and assignments of Owners' interests under the Agreement[5], contains a "no implied covenants" clause[6], an "enurement" clause[7] and a "paramountcy" clause[8].

[43] Semcams buys Mancal's gas at the wellhead at which time title to the gas would transfer from the well Owner / producer to Semcams. Then, as an Owner under the Spotter Agreement, it proposes to transport "its Gas" under its capacity allotment under the Spotter Agreement. As defined in the Agreement:

> (j) "Gas" means Natural Gas and Outside Gas or either of them;
>
> (q) "Natural Gas" means gas, as defined in *The Oil and Gas Conservation Act (Alberta)* as amended, from wells located in the Designated Area belonging to an Owner before it has been subjected to any processing except water removal;
>
> (u) "Outside Gas" means Gas, as defined in *The Oil and Gas Conservation Act (Alberta)* as amended, which is not Natural Gas, before it has been subjected to processing except water removal;
>
> (v) "Owner" means a party to this Agreement who has executed a counterpart;

[44] Thus, argues Semcams, it is clear from these definitions that the Gas it intends to transport is "its Gas".

[45] ExxonMobil's position is that there is an ambiguity on the issue before the court and that the Agreement is ambiguous in respect to the definitions of "Natural Gas", "Outside Gas", "Owner's Outside Gas" and "Non-Owner's Gas" with the result that it is unclear from these definitions whether Owner's gas must come from a well that it owns. It also refers to Clause 1201 and 302. It says that extrinsic evidence must be looked at to resolve the ambiguity.

---

[2] Clause 301

[3] Clause 903(a)

[4] Clause 903(c)

[5] Article X

[6] Clause 1508

[7] Clause 1510

[8] Clause 1514

[46] I do not accept ExxonMobil's position.

[47] Clause 1201 of the Agreement reads:

> Each Owner warrants that it has the right to produce and deliver to the Gathering System, its portion of the Gas and agrees to indemnify and save harmless Operator and the other Owners from all actions, causes of action, claims and demands that may be made by any Person, firm or corporation who has or claims to have an interest in such Gas attributable thereto.

[48] The purpose of that clause is self-evident and unrelated to the issue before me. Moreover, "produce" does not mean to "own". This clause does not, as ExxonMobil argues, mean that an owner must own the well from which the gas is produced. It does not create an ambiguity as to the meaning of "its Gas" under clause 903.

[49] Clause 302 states:

> Subject to the provisions of this Agreement and unless excused from delivery by the Operating Committee, each Owner shall deliver or cause to be delivered its Natural Gas to an Acceptance Point and the Operator shall accept all of each Owner's Natural Gas so delivered.

[50] With respect, I fail to see how this clause creates an ambiguity or means that "its Gas" under Clause 903 means gas from wells owned by it. In my view, Clause 302 is not inconsistent with Semcams' position that "its Gas" under Clause 903 means gas belonging to it, not gas produced from a well owned by it.

[51] In my opinion, the Agreement is not ambiguous. The definition of Gas is clear. So is the definition of Natural Gas and Outside Gas. Natural Gas must be gas which comes from wells located in the Designated Area, it must be gas owned by an Owner, and, other than water removal, it must not have been subjected to any processing. "Its", not surprisingly, is not defined in the Agreement. Its meaning is well known. It means simply "of or belonging to it": Canadian Oxford Dictionary, 2nd. Edition. 2004. Oxford University Press, Don Mills, Ontario. As there is no ambiguity, the court has no need and is not entitled to refer to extraneous evidence to interpret "its Gas". Thus, ExxonMobil's argument that a trial is necessary to permit it to call and refer to extraneous or parol evidence on the basis of ambiguity must fail.

(iii) rectification

[52] Parol evidence may be allowed to support a claim for rectification. It is an exception to the parol evidence rule. The *Guaranty Properties* case re-states a number of important principles in relation to a claim for rectification, notably:

at para.29: "A claim for rectification is typically granted only in the case of common mistake where it can be established that both parties had continually agreed on the term, but that term was erroneously and/or inaccurately expressed in the written document...."

At para.30: "A claim for rectification is not granted lightly, and the onus on the applicant is a heavy one: ...."

[53] ExxonMobil argues that if this court determines on this application that there is evidence which may support a claim for rectification, then the summary proceeding under Rule 410(e) is not appropriate and the matter should proceed to a trial. It refers to para.34 of the *Guaranty Properties* which states in part:

> ...all this court needs to decide is whether the extrinsic evidence might be admissible for the purpose of demonstrating the context in which the servicing agreements were drafted, and rectify a mistake if one can be established....

[54] ExxonMobil contends that the evidence contained in the affidavits it has filed in this matter is or might be admissible to rectify a mistake if one can be established.

[55] The position of Semcams is that there is no merit to a claim for rectification and any such claim is bound to fail and therefore there is no justifiable basis for proceeding to a trial rather than a determination of the issue under Rule 410(e).

[56] For the following reasons, I agree with Semcams' position.

[57] First, having regard to the affidavits of Mr. Fuller, Mr. Bouwmeester and Mr. Shular, there was no mistake in failing to account for mid-streamers when the Spotter Agreement was drafted and later executed. According to their evidence, none of them ever addressed his mind to mid-streamers at the time. Consequently it cannot be argued now that mid-streamers were intended to be excluded. There is no other agreement that reflects the "true" agreement reached between the parties that was erroneously or mistakenly expressed in the Spotter Agreement as executed. Thus there is no basis for a rectification.

[58] Secondly, I am satisfied that rectification cannot be granted in this case because Semcams is a *bona fide* purchaser for value without notice of the alleged mistake and who is more than a mere assignee of a *chose in action.* While ExxonMobil might (if there has been a mistake) be able to obtain rectification against Semcams if it were a simple assignee of the previous Owner's rights under the Spotter Agreement, Semcams is more than that. It is a novated party. That fact particularly distinguishes this case from the authorities relied on by ExxonMobil in its second brief.

[59] The doctrine of novation is explained in *National Trust Company v. Mead,* [1990] 2 S.C.R .410. The basic principle of novation is set out at para.36:

> A novation is a trilateral agreement by which an existing contract is extinguished and a new contract brought into being in its place. Indeed, for an agreement to effect a valid novation the appropriate consideration is the discharge of the original debt in return for a promise to perform some obligation. The assent of the beneficiary (creditor or mortgagee) of those obligations to the discharge and substitution is crucial. This is because the effect of novation is that the creditor may no longer look to the original party if the obligations under the substituted contract are not subsequently met as promised. [emphasis added]

[60] Here, Semcams acquired its interest in the Spotter Agreement as a result of a series of transactions which constituted a novation or series of novations. As McGruther's uncontested affidavit shows, the consent of the various Owners was obtained in the transactions giving rise to Semcams acquiring its interest in the Spotter Agreement. Of note, the "old party" was replaced by the "new party". The obligations of the "old party" were discharged and assumed by the "new party."

[61] Semcams is a *bone fide* purchaser for value. It had no notice of ExxonMobil's now suggested error in the Spotter Agreement that it was meant to exclude mid-streamers. Rectification to exclude mid-streamers from transporting their gas purchased at the wellhead would clearly be to Semcams' prejudice. Equity would not allow it. As noted in *Snell's Equity* (J. McGhee, ed., 31st. ed. London: Sweet & Maxwell, 2005) at 341-342: rectification "...will not be granted to the prejudice of a *bona fide* purchaser for value without notice who takes an interest conferred by the instrument".

[62] I am mindful of the comments from *Guaranty Properties* set out above in para.53. They, of course, were made in the context of the facts of that case. Nevertheless, here it seems to me that having regard to the evidence put before me, there is simply no plausible basis for a claim of rectification. Put differently, any claim for rectification is bound to fail. Additional parol evidence is unnecessary. Therefore, ExxonMobil's argument to permit the matter to proceed through a full trial procedure instead of a Rule 410(e) determination in order to adduce further parol evidence on the issue of rectification must fail.

[63] In conclusion, I find that it is unlikely that evidence adduced at trial would affect the outcome of the issue before the court. Accordingly, I find that Semcams has satisfied the third technical requirement of the *Guaranty Properties* test.

[64] There remains the second step in the analysis: should I exercise my discretion to allow this matter to proceed under the summary procedure of Rule 410(e)? In considering this step, I note that the determination of the question put before the court will essentially provide the parties with a final determination of the issue between the parties: *Guaranty Properties* at para.37. I am mindful of the cases of *Oracle Resources Ltd. v. Dome Petroleum Ltd.* (1988), 86 A.R. 281 (Q.B.) and *Re Ulster Petroleums Ltd. v. Pan-Alberta Gas Ltd.* (1975), 53 D.L.R. (3d) 459 (Alta. S.C.A.D.) which caution courts to exercise restraint in complex oil and gas

transactions when there is a lack of understanding as to the factual matrix surrounding the transactions. At paragraph 27 of its initial brief, ExxonMobil sets out a number of matters upon which it argues evidence is necessary before the contract can be properly interpreted. These matters have subsequently been addressed in the additional evidence filed by ExxonMobil and I have dealt with these matters in the preceding paragraphs.

[65] In the final analysis, having considered the authorities, the rule and the evidence before me, I am satisfied that it is appropriate to exercise my discretion by declining to order this matter to proceed by way of Statement of Claim, discoveries and full trial. Rather, I believe that this is an appropriate case in which to proceed to determine the matter summarily under Rule 410(e).

2. Is Semcams entitled under the terms of the Spotter Agreement to transport gas wholly acquired by it from Mancal at the wellhead as "its Gas" in accordance with the terms of the Spotter Agreement?

[66] ExxonMobil contends that it was never the intention of the parties who drafted the Spotter Agreement to permit mid-streamers to transport gas purchased at the wellhead. However, as the Court of Appeal has recently noted in *Adeco Exploration Company Ltd. v. Hunt Oil Company of Canada Inc.*, 2008 ABCA 214 at para. 33:

> "Generally, the intention of contracting parties is determined using the ordinary meaning of the words, within the context of the contract as a whole: [citations omitted]."

That is the approach I take.

[67] Article I of the Spotter Agreement contains a definition section. The following terms, germane to this analysis, are specifically defined in Clause 101 of the Spotter Agreement:

> (c) "Capacity" means the volume of Gas each Segment or Lateral is capable of transporting as determined from time to time pursuant to Clause 902;.
>
> (j) "Gas" means Natural Gas and Outside Gas or either of them;
>
> (q) "Natural Gas" means Gas, as defined in *The Oil and Gas Conservation Act (Alberta)* as amended, from wells located in the Designated Area belonging to an Owner before it has been subjected to any processing except water removal;
>
> (u) "Outside Gas" means Gas, as defined in *The Oil and Gas Conservation Act (Alberta)* as amended, which is not Natural Gas, before it has been subjected to processing except water removal;
>
> (v) "Owner" means a party to this Agreement who has executed a counterpart;

[68] Clause 1510 of the Spotter Agreement provides that it enures to the benefit of and is binding on the Owners and "...their permitted successors and assigns". The affidavits of John McGruther show how Semcams acquired its novated interest in the Spotter Agreement and satisfies me that Semcams is a permitted successor and assign of one of the original Owners, Unocal. Indeed, ExxonMobil did not argue otherwise. Accordingly, I find that Semcams is an Owner with all the rights of an Owner under the Spotter Agreement.

[69] Clause 903(a) provides, in part:

> Each Owner shall have the right to use that percentage of the Capacity of a Lateral or Segment equal to its respective Lateral Participation or Segment Participation in that Lateral or Segment, for the transportation of its Gas....[emphasis added].

[70] The net effect of this clause is that an Owner is entitled to use its proportionate share of the Capacity of the Spotter system, to transport its Gas.

[71] Clause 904(a) provides that an Owner will be charged transportation fees only if it exceeds its share Capacity. It also provides for charging Non-Owners fees for transporting their Gas. Semcams is not a Non-Owner and further, it does not intend to exceed its capacity.

[72] The crux of the issue is what is meant by "its Gas" in Clause 903(a)? As I have stated above, the definition of Gas is clear as is the definition of Natural Gas and Outside Gas. Natural Gas must be gas which comes from wells located in the Designated Area, it must be gas owned by an Owner, and, other than water removal, it must not have been subjected to any processing. "Its" means it belongs to the Owner. Therefore I interpret the Clause to permit Semcams, an Owner, to transport gas owned by / belonging to it, and which is produced from a well in the Designated Area. I do not interpret that clause to require that the producing wells be owned by Semcams.

[73] Accordingly, Semcams application under Rule 410(e) is allowed and the requested declaration granted. ExxonMobil's cross motion is dismissed.

Dated at the City of Calgary, Alberta this 30th day of July, 2008.

C.S. Brooker
J.C.Q.B.A.

Appearances:

Peter Linder, Q.C. and Lorenz Berner
Peacock Linder & Halt LLP
for the Applicant

Douglas G. Mills
Burnet Duckworth and Palmer LLP
for the Respondent

TAB 6

unless the parties have otherwise evidenced an intention to create or provide for investment property interest in the goods, and

(ii) the interest of

(A) a transferee arising from the transfer of an account or a transfer of chattel paper,

(B) a person who delivers goods to another person under a commercial consignment, and

(C) a lessor under a lease for a term of more than one year,

whether or not the interest secures payment or performance of the obligation;

(uu) "specific goods" means goods identified and agreed on at the time a security agreement in respect of those goods is made;

(uu.1) "standardized future" means an agreement traded on a futures exchange pursuant to standardized conditions contained in the bylaws, rules or regulations of the futures exchange, and cleared and settled by a clearing house, to do one or more of the following at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

(i) make or take delivery of the underlying interest of the agreement;

(ii) settle the obligation in cash instead of delivery of the underlying interest;

(vv) "trust indenture" means any deed, indenture or document, however designated, including any supplement or amendment to it, by the terms of which a person issues or guarantees, or provides for the issue or guarantee of debt obligations secured by a security interest and in which a person is appointed as trustee for the holder of the debt obligations issued, guaranteed or provided for under it;

(vv.1) "uncertificated security" means an uncertificated security as defined in the *Securities Transfer Act*;

(ww) "value" means any consideration sufficient to support a simple contract, and includes an antecedent debt or antecedent liability.

(1.1) For the purposes of this Act,

(a) a secured party has control of a certificated security if the secured party has control in the manner provided for in section 23 of the *Securities Transfer Act*;

(b) a secured party has control of an uncertificated security if the secured party has control in the manner provided for in section 24 of the *Securities Transfer Act*;

(c) a secured party has control of a security entitlement if the secured party has control in the manner provided for in section 25 or 26 of the *Securities Transfer Act*;

(d) a secured party has control of a futures contract if

(iv) a statement that a security interest is taken in all of the debtor's present and after-acquired personal property except specified items or kinds of personal property or except personal property described as "goods", "chattel paper", "investment property", "documents of title", "instruments", "money" or "intangibles".

(2) For the purposes of subsection (1)(a), a secured party is deemed not to have taken possession of collateral that is in the apparent possession or control of the debtor or the debtor's agent.

(3) A description is inadequate for the purposes of subsection (1)(d) if it describes the collateral as consumer goods or equipment without further reference to the kind of collateral.

(4) A description of collateral as inventory is adequate for the purposes of subsection (1)(d) only while it is held by the debtor as inventory.

(5) A security interest in proceeds is not unenforceable against a third party by reason only that the security agreement does not contain a description of the proceeds.

RSA 2000 cP-7 s10;2006 cS-4.5 s108(9);2016 c18 s14

Delivery of copy of security agreement

11 Where a security agreement is in writing, the secured party shall deliver a copy of the security agreement to the debtor not later than 10 days after the execution of the security agreement, and if the secured party fails to do so after a request by the debtor the Court may, on application by the debtor, make an order for the delivery of a copy to the debtor.

1988 cP-4.05 s11

Attachment of security interests

12(1) A security interest, including a security interest in the nature of a floating charge, attaches when

(a) value is given,

(b) the debtor has rights in the collateral or power to transfer rights in the collateral to a secured party, and

(c) except for the purpose of enforcing rights between the parties to the security agreement, the security interest becomes enforceable within the meaning of section 10,

unless the parties specifically agree in writing to postpone the time for attachment, in which case the security interest attaches at the time specified in the agreement.

(2) For the purposes of subsection (1)(b) and without limiting other rights that the debtor may have in the collateral, a debtor has rights in goods leased to the debtor or consigned to the debtor when the debtor obtains possession of them in accordance with the lease or consignment.

(3) For the purposes of subsection (1), a debtor has no rights in

(a) crops until they become growing crops,

(b) the young of animals until they are conceived,