



COURT FILE NUMBER 1801-10960

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity

DEFENDANTS PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP., and SUSAN RIDDELL ROSE

DOCUMENT **APPLICATION FOR SUMMARY DISMISSAL**

PARTIES FILING THIS DOCUMENT PERPETUAL ENERGY INC., PERPETUAL OPERATING TRUST, PERPETUAL OPERATING CORP. (the **Perpetual Defendants**)

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File No.: 59140-43

NOTICE TO PLAINTIFF:

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

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

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

DATE	<u>August 30, 2018</u>
TIME	<u>4:00 pm – Commercial List</u>
WHERE	<u>Calgary Courts Centre</u>
BEFORE WHOM	<u>The Honourable Justice P.R. Jeffrey</u>

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

Remedy claimed or sought:

1. The Perpetual Defendants seek orders:
 - (a) summarily dismissing this action against the Perpetual Defendants pursuant to Rule 7.3;
 - (b) in the alternative, striking this action against the Perpetual Defendants pursuant to Rule 3.68;
 - (c) directing the Plaintiff to pay to the Perpetual Defendants the costs of this application and this action on a full indemnity basis or on such scale as this Honourable Court determines to be just; and
 - (d) granting such other relief that this Honourable Court determines to be just.
2. The abbreviations and defined terms in the Perpetual Defendants' Statement of Defence are used in this application.

Grounds for making this application:

3. There is no merit to any of the Plaintiff's claims against the Perpetual Defendants. The claims under the *BIA*, the oppression claim, and claims on the ground of public policy, statutory illegality and equitable rescission in the Statement of Claim do not raise any genuine issues for trial or, alternatively, do not disclose a reasonable claim against the Perpetual Defendants, constitute an abuse of process, and are frivolous, irrelevant or improper.
4. This application raises three threshold issues to be decided before any other proceedings in this action:
 - (a) Were the parties dealing at arm's-length with each other within the meaning of the *BIA*?
 - (b) Is the Plaintiff a "complainant" entitled to bring an oppression claim under s. 242 of the *ABCA*?

(c) Should the claim made on the grounds of "Public Policy, Statutory Illegality and Equitable Rescission" in paragraph 24 of the Statement of Claim be struck?

The parties were dealing at arm's-length within the meaning of the BIA

5. The allegation that the parties were not dealing at arm's-length is bound to fail, and as a result the whole of the claim under the *BIA* is bound to fail.

6. The Transaction as a whole is the proper subject of an analysis under s. 96(1) of the *BIA*. The merger of the legal and beneficial interest in PEOC was a technical step required by the purchaser before it acquired PEOC's shares.

7. The Transaction, including the Share Purchase Agreement and the Asset Purchase Agreement, was entered into by an informed buyer and an informed seller, in a free market, dealing with each other in their own self-interest and at arm's-length.

8. Even if the Asset Purchase Agreement is analyzed in isolation under s. 96(1) of the *BIA*, the parties were dealing at arm's-length. When that agreement was executed, 198 had *de facto* control of and was negotiating on behalf of PEOC, while Perpetual controlled and was negotiating on behalf of POT. 198 and Perpetual were dealing at arm's-length.

The Plaintiff is not a complainant under s. 242 of the ABCA

9. The oppression claim is bound to fail. Alternatively, the oppression claim does not disclose a cause of action and should be struck.

10. Only a "complainant" may bring an oppression claim under s. 242 of the *ABCA*. The Plaintiff is not a complainant.

11. Section 239(b) defines "complainant" for the purposes of s. 242 to include a securityholder, a current or former director or officer, a creditor (if the Court exercises its discretion under s. 239(b)(iv)) or "any other person who, in the discretion of the Court, is a proper person to make an application under this Part."

12. The Plaintiff is not a securityholder, current or former director or officer, or a creditor of PEOC.

13. The Plaintiff has not sought the discretion of the Court pursuant to s. 239(b)(iv) to become a complainant.

14. In any event, the Plaintiff is not a proper person to make an oppression application and would not be entitled to leave under s. 239(b)(iv).

The claim of "Public Policy, Statutory Illegality and Equitable Rescission" does not disclose a cause of action

15. The vague and unparticularized allegations in paragraph 24 of the Statement of Claim that the Transaction is void on the grounds of public policy, on the basis of statutory illegality or on equitable grounds do not disclose a reasonable claim, constitute an abuse of process, are frivolous, irrelevant and improper, and should be struck.

16. The Plaintiff as Sequoia's trustee in bankruptcy has no authority to sue based on the Alberta Energy Regulator's or other parties' agenda or view of public policy.

Material or evidence to be relied on:

17. Affidavit of Susan Riddell Rose, to be filed.

18. Pleadings and proceedings herein.

19. Such other materials as counsel advises and this Honourable Court admits.

Applicable Rules:

20. Rules 3.68 and 7.3 of the *Alberta Rules of Court*, Alta. Reg. 124/2010.

Applicable Acts and Regulations:

21. The *Bankruptcy and Insolvency Act* (Canada), s. 96.

22. The *Business Corporations Act* (Alberta), ss. 239(b)(iv), 242.

23. The *Responsible Energy Development Act* (Alberta) and the *Oil and Gas Conservation Act* (Alberta), and the regulations and directives promulgated thereunder.

How the application is proposed to be heard or considered:

24. Orally.

WARNING

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