

COURT FILE NUMBER 1801-10960

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

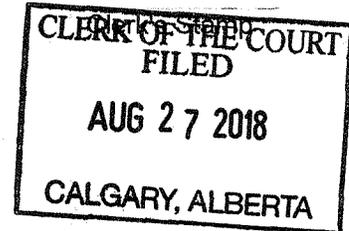
PLAINTIFFS PRICEWATERHOUSECOOPERS INC., LIT, in its capacity as the TRUSTEE IN BANKRUPTCY OF SEQUOIA RESOURCES CORP. and not in its personal capacity

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

DOCUMENT **STATEMENT OF DEFENCE
of Susan Riddell Rose**

PARTY FILING THIS DOCUMENT Susan Riddell Rose

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT NORTON ROSE FULBRIGHT CANADA LLP
3700, 400 Third Avenue SW
Calgary, Alberta T2P 4H2
Phone: 403-267-8140
Fax: 403-264-5973
Attention: Steven H. Leitl
Aditya Badami
Email: steven.leitl@nortonrosefulbright.com
File No.: 1001040549



Introduction

1. This is the Statement of Defence of Susan Riddell Rose (**Rose**).
2. Save as expressly and clearly admitted in this Statement of Defence, Rose denies each allegation made in the Statement of Claim.
3. The filing of the Statement of Claim was done without authority, and the allegations in the Statement of Claim against Rose are wholly without merit.

Adoption and Incorporation of Statement of Defence of Perpetual Defendants

4. Rose adopts and incorporates the Statement of Defence of the defendants Perpetual Energy Inc. (**PEI**), Perpetual Operating Trust (**POT**) and Perpetual Operating Corp. (**POC**) filed August 27, 2018, including the terms defined therein unless otherwise defined herein.

PEOC and Sequoia

5. It is important to understand the significant differences between PEOC and Sequoia (as defined below).

Prior to October 1, 2016

6. PEOC was a wholly-owned, single-purpose subsidiary of PEI, a publicly traded oil and gas company based in Calgary.
7. Rose was the sole director of PEOC, and one of 7 members of the board of directors of PEI.
8. PEOC owned the legal interests in certain Alberta oil and gas assets (the **PEOC Assets**) in trust for the beneficial owner. The trust indenture was entered in 2002.
9. Immediately prior to the closing of the Transaction, neither the AER nor any municipalities were creditors with any provable claims against PEOC, and PEOC was not insolvent.

After October 1, 2016

10. As a result of the completion of the Transaction:
 - 10.1 Rose resigned as a director of PEOC;
 - 10.2 the shares of PEOC were sold to an arm's length third party, 1986114 Alberta Inc. (**198**);
 - 10.3 198 caused PEOC to change its name to Sequoia Resources Corp. (**Sequoia**);
 - 10.4 Sequoia continued to own the legal interests in a subset of the PEOC Assets (the **Goodyear Assets**), and now owned the beneficial interests in those assets as well;
 - 10.5 Sequoia had the benefit of the Gas Marketing Agreement; and
 - 10.6 198 caused Sequoia to agree to the Resignation and Mutual Release Agreement (defined below).
11. Thereafter, Sequoia, under the ownership and control of 198 and with new management:
 - 11.1 conducted business operations under a new business plan in connection with some of the Goodyear Assets;
 - 11.2 abandoned and reclaimed other Goodyear Assets; and
 - 11.3 acquired and operated additional assets from third parties, some with concessions given by the Alberta Energy Regulator (**AER**).
12. The sole registered shareholder of Sequoia continues to be 198.

13. The bankruptcy of Sequoia occurred one and a half years after the closing of the Transaction. It resulted from the failure of Sequoia's business plan, due to the decisions of Sequoia's management in an environment of collapsing natural gas prices. The bankruptcy could not, and did not, have anything to do with the conduct of Rose as a director of PEOC one and a half years earlier.

PwC duties and obligations as trustee in bankruptcy

14. PriceWaterhouseCoopers Inc. (**PwC**) is a corporation incorporated under the laws of Canada.
15. In March 2018, PwC was appointed as the trustee in bankruptcy of Sequoia.
16. This law suit is aimed at indirectly advancing policy agendas of the AER and/or other parties that have no causes of action against Rose. PwC has no authority to pursue such claims as the trustee in bankruptcy of Sequoia.
17. Rose pleads the *Bankruptcy and Insolvency Act (BIA)*, RSC 1985, c. B-3, the *Responsible Energy Development Act*, S.A. 2012, c. R-17.3, the *Oil and Gas Conservation Act*, RSA 2000, c. O-6, the *Pipeline Act*, RSA 2000, c. P-15, and the regulations and directives promulgated thereunder.

PwC does not have standing as a complainant under the ABCA

18. In its capacity as trustee in bankruptcy of Sequoia, PwC had no right to commence legal proceedings pursuant to Part 19 of the *Alberta Business Corporations Act (ABCA)*.
19. Insofar as PwC, in its capacity as trustee in bankruptcy of Sequoia, has the general authority to sue on behalf of the creditors of Sequoia, which is denied in the circumstances of this claim, it has no standing to sue Rose pursuant to s. 242 of the ABCA without first having obtained an order from this Court declaring that it is a proper person to do so (a **Standing Order**).
20. PwC has failed to seek or obtain a Standing Order.
21. Unless and until PwC obtains a Standing Order, it has no authority to proceed with any claim against Rose. The within claim against Rose should be dismissed or stayed on this ground.
22. PwC does not qualify for standing as a complainant for the purposes of its claim against Rose because, at the time of the closing of the Transaction:
 - 22.1 Sequoia's current creditors were not creditors of PEOC with provable claims against PEOC;
 - 22.2 specifically, neither the AER nor the municipalities to whom PEOC paid property taxes from time to time were creditors of PEOC with provable claims against PEOC;
 - 22.3 any claims against Rose in respect of her tenure as a director of PEOC were fully released by Sequoia pursuant to the Resignation and Mutual Release Agreement (defined below);
 - 22.4 the claim against Rose is not authorized by the BIA ; and
 - 22.5 the claim is an abuse of the process of this Court.
23. The claim against Rose should be dismissed on this ground.

Resignation and Mutual Release Agreement is a complete bar to the claims against Rose

24. As required by the Share Purchase Agreement, Rose resigned as an officer and director of PEOC effective October 1, 2016.
25. Rose's resignation was documented in a written Resignation and Mutual Release Agreement (the **Resignation and Mutual Release Agreement**), executed on October 1, 2016 by Rose and PEOC (then as owned and controlled by 198).
26. The Resignation and Mutual Release Agreement was negotiated at arm's length and did not involve the transfer of any PEOC assets. PwC has no standing to ask this Court to review the Resignation and Mutual Release Agreement pursuant to s. 96 of the BIA.
27. Clause 3 of the Resignation and Mutual Release Agreement provides:

PEI and PEOC do hereby release and forever discharge Susan Riddell Rose from all Claims (as defined in the [Share Purchase Agreement]) which PEI and PEOC now have or can have or can hereafter have against Susan Riddell Rose by reason of, existing out of or in connection with Susan Riddell Rose having acted, at the request of PEI, as a director and officer of PEOC, but which shall exclude any Claim based on the fraud, criminal conduct, or deceitful conduct of Susan Riddell Rose. [Emphasis added.]
28. "Claim" is defined broadly in the Share Purchase Agreement. The claim of PwC against Rose is a Claim.
29. By virtue of the Resignation and Mutual Release Agreement, PwC is barred and estopped from making the claims against Rose in this proceeding. The claim should be dismissed on this ground.

Rose as director of PEOC

30. Contrary to the allegations in paragraph 4 of the Statement of Claim, Rose was not a party to the Transaction.
31. All material times prior to the closing of the Transaction, Rose, exercising her business judgment, acted as a director of PEOC in full satisfaction of her fiduciary duties and duty of care owed to PEOC.
32. Rose's fiduciary duty to PEOC concerned the best interests of PEOC, and Rose fulfilled her duty in that regard. PEI ratified and affirmed the conduct of Rose as a director of PEOC. PwC, as trustee in bankruptcy of Sequoia appointed 18 months after Rose's resignation, has no standing to assert otherwise. Rose pleads s. 122(4) of the ABCA.
33. At no time did any of the creditors of Sequoia have any actionable, reasonable expectations regarding the conduct of Rose prior to the closing of the Transaction.
34. PwC does not have standing to maintain a claim in relation to Rose's statutory duty of care owed to PEOC, nor has PwC pleaded a reasonable claim in that regard.
35. At no time did Rose owe any duty of care to any of the past or current creditors of Sequoia.
36. Rose did not "personally benefit" from the Transaction as frivolously and vexatiously alleged in the Statement of Claim with no particulars.

“Public Policy, Statutory Illegality and Equitable Rescission”

37. The Statement of Claim pleads no reasonable cause of action based on “grounds of public policy”, “statutory illegality” or “equitable grounds”.
38. PwC has no authority under the BIA to plead such claims.
39. This Honourable Court has no jurisdiction to adjudicate such claims. That the AER is dissatisfied with the scope of its mandate and powers is a matter for the Legislature.
40. The pleading of such a claim against Rose personally is an acute abuse of the process of this Honourable Court.

There is no damage claim against Rose

41. The consideration exchanged under the Transaction was fair market value.
42. PwC’s allegation as to the nature and amount of the consideration is baseless and commercially absurd.
43. PwC has pleaded no reasonable claim for damages against Rose personally.

Abuse of Process

44. The claim against Rose is an abuse of the process of this Honourable Court.
45. The claim was made without a Standing Order in circumstances where PwC does not qualify for a Standing Order.
46. The claim is an unlawful attempt to advance policy agendas of the AER and other parties who have no causes of action against Rose.
47. The claim against Rose personally was made for tactical purposes in violation of PwC’s duties as trustee in bankruptcy.

Failure to Mitigate

48. PwC and/or the AER have failed to take reasonable steps to operate productive Sequoia assets or realize upon Sequoia’s assets for the benefit of Sequoia’s creditors.

Conclusion

49. The claim against Rose is unauthorized by statute, is barred, has no merit, is an abuse of process, and should be dismissed with costs to Rose.