

COURT FILE NUMBER 1501-09424
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANT NATIONAL BANK OF CANADA
RESPONDENTS **WALDRON ENERGY CORPORATION**
DOCUMENT **FIFTH REPORT OF FTI CONSULTING
CANADA INC., IN ITS CAPACITY AS
COURT APPOINTED RECEIVER AND
MANAGER OF WALDRON ENERGY
CORPORATION**

September 15, 2017

ADDRESS FOR SERVICE AND
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INTRODUCTION

1. On August 17, 2015 (the “**Date of Appointment**”), FTI Consulting Canada Inc. was appointed as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties (the “**Property**”) of Waldron Energy Corporation (“**Waldron**” or the “**Company**”) pursuant to an Order of the Honourable Mr. Justice K.D. Yamauchi (the “**Receivership Order**”).
2. The Receivership Order authorized the Receiver, among other things, to carry on the business of the Company, to market and solicit offers to purchase the Property, and to make such arrangements or agreements as deemed necessary by the Receiver.
3. On April 4, 2016, this Honourable Court granted an Order which, among other things, authorized and approved the execution of an asset purchase agreement (the “**APA**”) between the Receiver and Capital Oil Ltd. (“**Capital Oil**”), and authorized and directed the Receiver to take such additional steps to complete the transaction contemplated by the APA (the “**Transaction**”).
4. On August 24, 2016, this Honourable Court granted an Order (the “**Payment into Court Order**”) which, among other things, authorized Blake, Cassels & Graydon LLP, as escrow agent, to pay the deposit made by Capital Oil pursuant to the APA (the “**Deposit**”) into Court pending further order and direction from this Honourable Court, as Capital Oil was unable to complete the Transaction.
5. Also on August 24, 2016, this Honourable Court granted an Order (the “**Bonavista Approval and Vesting Order**”) which, among other things, authorized and approved the execution of the Bonavista APA (as defined below) and authorized and directed the Receiver to take such additional steps to complete the transaction contemplated by the Bonavista APA (the “**Bonavista Transaction**”).

6. On October 24, 2016, this Honourable Court granted an Order (the “**Sequoia Approval and Vesting Order**”) which, among other things, authorized and approved the execution of the Sequoia asset and purchase agreement and authorized and directed the Receiver to take such additional steps to complete the transaction contemplated by the Sequoia APA (the “**Sequoia Transaction**”).
7. Upon closing the Sequoia Transaction and the Bonavista Transaction, all Waldron’s oil and gas assets were sold. The last material matter with respect to these receivership proceedings relate to the Deposit, as discussed in further detail below.
8. The Receiver’s reports and other publically available information in respect of these proceedings (the “**Receivership Proceedings**”) are posted on the Receiver’s website at <http://cfcanada.fticonsulting.com/waldron> (the “**Receiver’s Website**”).
9. The purpose of this report (the “**Fifth Report**”) is to provide this Honourable Court with an update and detailed summary on the background on the Capital Oil APA and the Deposit.
10. The Receiver is requesting this Honourable Court to direct the Clerk of the Court to pay the Capital Oil Deposit to the Receiver.

TERMS OF REFERENCE

11. In preparing this Fifth Report, the Receiver has relied upon unaudited financial information, other information available to the Receiver and, where appropriate, the Company’s books and records and discussions with various parties (collectively, the “**Information**”).
12. Except as described in this Fifth Report:

- (a) the Receiver has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
 - (b) the Receiver has not examined or reviewed financial forecasts and projections referred to in this Fifth Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
- 13. Future oriented financial information reported or relied on in preparing this Fifth Report is based on assumptions regarding future events. Actual results may vary from forecasts and such variations may be material.
- 14. The Receiver has prepared this Fifth Report further to directions from the Court and in connection with the continuation of the Receiver's Application that is scheduled to be heard at 2:00 p.m. on October 13, 2017. This Fifth Report should not be relied on for other purposes.
- 15. Any information and advice described in this Fifth Report has been provided to the Receiver by its counsel, Blake, Cassels & Graydon LLP (the "**Receiver's Counsel**"), in order to assist the Receiver in considering its course of action, and is not intended as legal or other advice to, and may not be relied upon by, any other person.
- 16. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Receivership Order.

CAPITAL OIL DEPOSIT

17. The Receiver is seeking approval from this Honourable Court to have the Deposit, in the amount of \$110,000, that is currently held by this Honourable Court, be paid to the Receiver due to the inability of Capital Oil to close the APA.
18. The Receiver has provided a summary of the history of the Transaction and APA below and have provided copies of relevant documents and emails relating to the failed transaction.
19. A summary of the Transaction is provided below:
 - (a) The APA was entered into on February 1, 2016¹ between the Receiver and Capital Oil;
 - (b) On April 4, 2016, this Honourable Court granted the Sale Approval and Vesting Order which authorized and directed the Receiver to take such additional steps to complete the Transaction;
 - (c) A deposit of \$110,000 was paid to the Receiver in three separate installments of \$20,000 by various individuals. Additionally, \$50,000 of the Deposit was received by the Receiver's counsel directly from counsel to Capital Oil by way of a solicitor's trust cheque which is attached as Appendix "A";
 - (d) The closing date was to be April 5, 2016 (the business day following the day Court approval was obtained);

¹ A copy of the Capital Oil APA was previously provided to this Honourable Court as Confidential Appendix I to the First Report.

- (e) Capital Oil advised that it was unable to close the Transaction on April 5, 2016 as it had various concerns over the interim statement of adjustments. Discussions continued between the Receiver and Capital Oil during April 2016 in an effort to address the questions raised by Capital Oil regarding the interim statement of adjustments. Attached as Appendix “B” is an email dated April 21, 2016 outlining the concerns raised by counsel (Mr. Bradley McFadden) for Capital Oil regarding the interim statement of adjustments and the response of the Receiver to those concerns dated April 24, 2016;
- (f) On April 28, 2016, the Receiver’s counsel sent a letter to Capital Oil’s counsel (Mr. Peter Yates of Field Law) advising of the proposed closing on May 5, 2016;
- (g) On May 2, 2016, Mr. Chris Hynes, President of Capital Oil, sent an email to the Receiver confirming its ability to close that week (See email from Mr. Hynes attached at Appendix “C”);
- (h) On May 5, 2016, Mr. Hynes sent a further email to the Receiver advising that it now had several diligence related questions in regarding to the Capital Oil. A copy of this email is attached at Appendix “D”. At this point the APA was signed and approved by Court and was unconditional. However, the Receiver continued to work with Mr. Hynes to address his concerns in an attempt to close the Transaction in good faith;
- (i) Attached at Appendix “E” is a copy of the Receiver’s response on May 6, 2016 to Capital Oil, addressing its various questions and suggesting a closing date of May 10, 2016;
- (j) Capital Oil’s counsel sent an email dated May 10, 2016 that proposed that the closing be scheduled for May 13, 2016. That email is attached as Appendix “F”;

- (k) On May 12, 2016, the Receiver's counsel emailed Capital Oil's counsel to confirm the closing agenda and time for the closing scheduled on May 13, 2016. This May 12, 2016 email is attached as Appendix "G";
- (l) On May 13, 2016, Capital Oil's counsel contacted the Receiver's counsel advising that it was unlikely that it would be able to close the Transaction that day but would have the funding in place to close the transaction on Monday May 16, 2016. A copy of the relevant email is attached at Appendix "H";
- (m) On the morning of May 16, 2016, the Receiver emailed counsel for Capital Oil to confirm the time of closing on May 16, 2016. Counsel for Capital Oil confirmed that it was reaching out to its client to confirm timing of closing on May 16, 2016. The Receiver's counsel then followed up and advised closing would have to occur by 3:00 p.m. on Monday May 16, 2016 or additional assurances would have to be put in place to further extend the Closing Date. This email correspondence is attached as Appendix "I";
- (n) Capital Oil was unable to close on May 16, 2016;
- (o) On May 16, 2016, the Receiver's counsel provided a letter agreement via email to Capital Oil's counsel outlining the terms under which the Receiver would be prepared to extend the closing date past May 16, 2016. A copy of the partially executed agreement is attached at Appendix "J";
- (p) Capital Oil did not respond to the Receiver's correspondence on May 16, 2016. At day's end on May 16, 2016, the Receiver's counsel emailed counsel to Capital Oil's counsel advising that due to the failure of Capital Oil to meet the extended closing date of May 16, 2016 that the APA was terminated and the deposit was forfeited. Attached as Appendix "K" is a copy of the email sent by the Receiver's counsel on May, 16, 2016.

- (q) On May 25, 2016, the Receiver’s counsel provided a copy of the joint direction to Capital Oil in relation to the Deposit Escrow Agreement in connection with the APA;
- (r) Capital Oil contacted the Receiver’s selling agent and the Receiver on August 8, 2016. In response to this inquiry, the Receiver’s counsel further confirmed that the Receiver had not waived, amended or extended the requirements of the APA. The Receiver also explicitly advised that it would not proceed with the closing of the Transaction due to the breaches of the agreement by Capital Oil. A copy of this correspondence is attached at Appendix “L”;
- (s) On August 15, 2016, Mr. Hynes, president of Capital Oil emailed the Receiver seeking to apply the toward other assets owned by Waldron. On August 16, 2016, the Receiver responded to Mr. Hynes advising again that the Capital Oil Deposit was forfeited. A copy of the letter is attached at Appendix “M”;
- (t) On August 24, 2016, this Honourable Court granted the Payment into Court Order.

- (u) Mr. Hynes also attended court on August 24, 2016 at the Receiver's application to approve the sale of certain of Waldron's assets to Bonavista Energy Corporation ("**Bonavista**"). These assets included the assets that were originally included in the APA. Mr. Hynes advised the Court that he was willing and able to close the transaction as contemplated under the APA and requested the Court not approve the Bonavista sale and approve the APA; however, he advised the Court that the funding was not in place at that time. The Receiver's counsel advised the Court of the failed APA (which was also set out in detail in the Receiver's Second Report dated August 16, 2016) and the Court approved the asset sale to Bonavista. Attached as Appendix "N" is a copy of the transcript from those proceedings before Justice Graesser.

- (v) On July 17, 2017 the Receiver and the Receiver's Counsel received an e-mail correspondence from Amanoh and Company stating that it had been retained by Capital Oil. Ms. Mercy Amanoh, of Amanoh and Company, advised that she had been retained by Capital Oil and advised that Mr. Hynes was no longer an officer or director of Capital Oil and that Mr Hynes had no authority to represent or bind Capital Oil.

- (w) On July 17, 2017, the Receiver contacted Ms. Amanoh and provided a summary background of the failed Transaction and instructed the Receiver's counsel to add Ms. Amanoh to the service list;

- (x) Ms. Amanoh was advised of the court application on August 24, 2017 and the Receiver's counsel has served Ms. Amanoh with respect to this application scheduled for October 13, 2017

- (y) The Receiver's counsel received a telephone call from Ms. Amanoh on September 11, 2017 advising that she had received the Receiver's previous materials and correspondence to Capital Oil, but as of that date, she had not received instructions from her client with respect to the Deposit. Mr. Amanoh did not attend the previous application regarding the Deposit that was heard on August 24, 2017;
 - (z) Amanoh and Company have been provided with notice of this application.
20. As previously stated, the failure of Capital Oil to complete the Transaction resulted in significant additional costs in the Receivership Proceedings including:
- (a) costs associated with remarketing the Property;
 - (b) operating costs incurred from the termination of the APA and completing the Bonavista Transaction and Sequoia Transaction; and
 - (c) additional professional fees.
21. The Receiver used its best efforts and good faith to complete the Transaction, however, Capital Oil was unable or unwilling to complete the transaction. It became clear to the Receiver after obtaining Court approval of the APA that Capital Oil was never able to obtain the financing necessary to satisfy its obligations under the terms of the APA and sought to delay closing for as long as possible in order to obtain the necessary financing, which it was ultimately unable to do.
22. Accordingly, the Receiver requests that this Honourable Court direct the Clerk of the Court to release the Deposit that was paid into Court pursuant to the Payment into Court Order to the Receiver and declare that the Deposit was forfeit by Capital Oil in accordance with the APA, as Capital Oil was unable to complete the Transaction.

Other Matters

23. The Receiver understands that Mr. Murray Stodalka, former Chief Operating Officer of Waldron, who was also retained by the Receiver throughout the receivership proceedings, attended court on August 24, 2017. The Receiver now understands that Mr. Stodalka provided certain funding to Capital Oil in relation to the Deposit. The Receiver was not aware of this fact prior to the execution of the APA or the receipt of the Deposit, but was subsequently advised of this by Mr. Stodalka.
24. The Receiver advises that it never had any agreement or knowledge with respect to Mr. Stodalka's involvement prior to the receipt of the Deposit. Mr. Stodalka had not formally advised the Receiver of any claim in respect of the Deposit until the application on August 24, 2017.
25. While Mr. Stodalka has been provided service of this application, the Receiver does not believe Mr. Stodalka to have any claim to the Deposit.

CONCLUSION AND RECCOMENDATIONS

26. The Receiver respectfully requests that this Honourable Court order the Deposit paid to the Receiver and the dismissal of any claim to the Deposit by Capital Oil or Mr. Stodalka.

All of which is respectfully submitted this 15th day of September, 2017.

FTI Consulting Canada Inc. in its capacity as
Receiver of the assets, undertakings and properties of
Waldron Energy Corporation



Name: Deryck Helkaa
Title: Senior Managing Director,
FTI Consulting Canada Inc.