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COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PROCEEDINGS IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36 AS AMENDED

AND IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF 2669337 ALBERTA LTD.

DOCUMENT **BENCH BRIEF OF SABRE ENERGY PARTNERSHIP,
SABRE ENERGY LTD. and SABRE OIL AND GAS LTD.**

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I. INTRODUCTION

1. This Bench Brief is submitted on behalf of Sabre Energy Partnership (“**SEP**”), Sabre Energy Ltd. and Sabre Oil and Gas Ltd. (collectively “**Sabre**”), in relation to Sabre’s application for:
 - (a) A declaration that 266937 Alberta Ltd. holds in trust an amount equal to the amounts of certain gas cost allowance credits transferred by Sabre to Razor Energy Corp. (“**Razor Energy**”); and,
 - (b) A declaration that Sabre’s proof of claim be allowed.
2. Sabre opposes the application of FTI Consulting Canada Inc., in its capacity as Court-appointed monitor of 2669337 Alberta Ltd., (the “**Monitor**”) dismissing Sabre’s proprietary/trust claim.
3. Sabre has acted in good faith throughout these Companies’ Creditors Arrangement Act proceedings with the understanding that Sabre’s claim will be paid, if proven, pursuant to the summary claims process.

II. FACTS

A. CCAA Proceedings

4. On January 30, 2024, Razor Energy Corp. (“**Razor Energy**”) and related entities (collectively Razor Energy and the related entities “**Razor**”) each filed a Notice of Intention to Make a Proposal (“**NOI**”) pursuant to subsection 50.4(1) of the Bankruptcy and Insolvency Act (Canada).
5. Sabre filed a Statement of Claim against Razor Energy on February 1, 2024, without knowledge of the filing of the NOIs, seeking payment of amounts held in trust by Razor Energy on behalf of Sabre (the “**Claim**”).

6. By Order Justice N.J. Whitling of February 28, 2024 (the “**Initial CAAA Order**”), the Razor proceedings were continued under the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended (the “**CCAA**”). Further to paragraph 14 of the Initial CCAA Order, Sabre was stayed from prosecuting its Claim.
7. Sabre took no active steps, for instance to lift the stay, throughout the CCAA proceedings other than to assert a right to prove its claim.
8. On October 29, 2024, Razor filed an application seeking the approval of a reverse vesting transaction pursuant to which Texcal Energy Canada Inc. (“Texcal”) would purchase certain Razor assets free and clear of liabilities and encumbrances. Unwanted assets and liabilities (Sabre’s claim) were to be vested in a residual co.
9. Following a lengthy negotiation process involving Razor and many of its creditors, but not including Sabre, Razor succeeded in negotiating and obtaining an order for the compromise and reorganization of Razor culminating in the Approval and Reverse Vesting Order of Justice Romaine dated December 6, 2024 (the “**Approval Order**”).
10. Pursuant to the Approval Order, Texcal agreed to purchase Razor subject to a number of conditions including: unwanted assets and liabilities were to be vested in 2669337 Alberta Ltd. (“**ResidualCo**”); and, approximately \$2.3 million was to be paid to 2669337 Alberta Ltd. for future payment of specifically enumerated classes of uncompromised claims against Razor (trust or proprietary claims, post-filing obligations and priority secured claims) that were to be proven pursuant to a summary claims process.¹
11. Further, pursuant to the Approval Order, Razor Energy and the related entities ceased to be applicants under the CCAA proceedings were no longer bound by the proceedings.²
12. On February 19, 2025, Justice Lema the Court granted an Order setting out the summary claims process.

¹ Approval Order para 5

² Approval Order para 4 (k)

13. Sabre has met the procedural requirements of the summary claims process.³

B. History of the Transfer of Gas Cost Allowance Credits

14. Following SEP's sale of its Swan Hills assets to Razor Energy, Razor Energy requested the transfer of Judy Creek Gas Plant Gas Cost Allowance Credits (the "**Credits**") from SEP to Razor Energy in advance of the annual 13th month adjustment.⁴
15. Razor Energy noted that it was paying for royalties associated with the Judy Creek production without receiving the benefit of the Credits. Despite it not being standard practice, SEP agreed that the transfer of the Credits to Razor would be equitable given the circumstances.⁵
16. Sabre agreed to transfer the Credits based upon an understanding that Razor, in turn, would hold amounts equal to the transferred credits in trust on behalf of Sabre and return to Sabre such amounts pending the results of the Crown's thirteenth month adjustment. No other restrictions were made regarding the manner in which Razor was to treat the transferred amounts. Sabre was concerned that in agreeing to help Razor in contravention of standard practice, by transferring credits, it would then leave Sabre in an uncertain and difficult position if the Crown were to cancel SEP's credits following a thirteenth month adjustment. Sabre would not have agreed to transfer the credits without such an understanding.⁶

³ Affidavit of Sam Smith, sworn May 20, 2025 (the "Smith Affidavit"), paras 5-7

⁴ Smith Affidavit, paras 11-15.

⁵ Smith Affidavit, para 15 and 16.

⁶ Smith Affidavit, para 17.

III. LAW AND ARGUMENT

17. As stated by Gibbs J.A. in *Hongkong Bank v. Chef Ready Foods* (1990), [1990 CanLII 529 \(BC CA\)](#), 4 C.B.R. (3d) 311 (B.C.C.A.) at 315-16:

The purpose of the [C.C.A.A.](#) is to facilitate the making of a compromise or arrangement between an insolvent debtor company and its creditors to the end that the company is able to continue in business. It is available to any company incorporated in Canada with assets or business activities in Canada that is not a bank, a railway company, a telegraph company, an insurance company, a trust company, or a loan company. When a company has recourse to the *C.C.A.A.*, the Court is called upon to play a kind of supervisory role to preserve the status quo and to move the process along to the point where a compromise or arrangement is approved or it is evident that the attempt is doomed to failure. Obviously time is critical. Equally obviously, if the attempt at compromise or arrangement is to have any prospect of success, there must be a means of holding the creditors at bay, hence the powers vested in the Court under s. 11.

18. Such fundamental purpose has been achieved in the present instance through sale of Razor in accordance with terms of the Approval Order. The Court has successfully fulfilled its supervisory role over the reorganization of Razor. Further, the agreement and compromise reached by the majority of stakeholders (including the secured creditors) and Razor has left the determination of only a very limited number of claims to be addressed by the court ordered summary claims process.
19. Included in the limited classes of claims to be addressed in accordance with the Approval Order are trust or proprietary claims.
20. Sabre's asserts that its agreement with Razor to transfer the Credits is a form of trust.

21. Trusts can take one of many forms: a trust agreement (express or implied); a constructive trust in which one party has been unjustly enriched; or, a constructive trust founded upon one party's wrongful conduct.

A. Express Trust

22. Sabre agreed to transfer the Judy Creek GCA credits based upon an understanding that Razor, in turn, would hold amounts equal to the transferred credits in trust on behalf of Sabre and return to Sabre such amounts subject to the results of the Crown's thirteenth month adjustment. Amounts paid to Razor following the thirteenth month adjustment were held in trust on behalf of Sabre and fall within the class of claims enumerated by the Approval Order.
23. The Credit amounts were the property of Sabre and are not the property of Razor. Upon receiving Sabre's property (the amounts erroneously paid to Razor by the Crown), Razor was to hold the Credits or those amounts in trust on behalf of Sabre. Razor and hence the creditors of Razor have no entitlement to the Credits or the amounts paid to Razor by the Crown.
24. In accordance with the terms of the Approval Order, Sabre has a valid and enforceable claim against the ResidualCo for the Credits or the amounts paid to Razor by the Crown.

B. Implied Trust

25. Further, and in the alternative, to the extent that the Court finds there was no express trust agreement between the parties, Sabre asserts that there exists an implied trust agreement. As stated by the Court of Appeal in **Edmonton Regional Airports Authority v. Lynx Air Holdings Corporation**, [2025 ABCA 116 \(CanLII\)](#) at paragraph 30:

A trust requires three certainties to be present: a) certainty of intent (that the settlors clearly expressed the intention to create a trust and impose binding fiduciary duties

on the trustee), b) certainty of subject matter (the trust property was separated from other property), and c) certainty of object (the beneficiaries are clearly identifiable).

26. As noted above, Sabre intended to create a trust and impose binding fiduciary duties upon Razor regarding the transfer of the Credits. The Credits are clearly separate and apart from other property being transferred by Sabre to Razor, and by the Crown to Razor, and Sabre is clearly the beneficial owner of the Credits.

C. Constructive Trust (Unjust Enrichment)

27. In the further alternative, it is Sabre's position that the circumstances support the imposition of a constructive trust based upon Razor's unjust enrichment. The test for the imposition of such a constructive trust is set forth in *Redstone Investment Corporation (Re)*, [2015 ONSC 533](#) where Morawetz J. states at paragraph 68:

The following criteria is to be considered in determining the availability of the remedial constructive trust:

1. The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
2. The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
3. The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties; and

4. There must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case; e.g., the interests of intervening creditors must be protected.
28. In answer to the first prong of the test, Sabre transferred the Credit amounts at Razor's request as it was fair and equitable to do so in the circumstances. The fair and equitable treatment of Sabre and the repayment by Razor the credits it received on behalf of Sabre is an obligation enforceable by the courts of equity.
 29. In answer to the second prong, the Credits came into the possession of Razor by virtue of its request and agreement to accept the Credit amounts pending completion of the 13th month adjustment. To paraphrase paragraph 69 of *Redstone*, while it may not have been a breach of Razor's obligations to receive the Credit amounts, it is a breach of Razor's equitable obligations to retain those amounts and not remit them to Sabre.
 30. In answer to the third prong, upholding the agreement between Sabre and Razor for the return of the Credit amounts and to ensure others in a similar position honour their commitments is a legitimate reason to uphold the imposition of a constructive trust.
 31. In the answer to the fourth prong, as noted earlier, the fundamental purpose of these CCAA proceedings has been met through the sale of Razor to Texcal. The remaining creditors are subject to the summary claims process, as contemplated by the Approval Order, specifically created to address, amongst other enumerated classes of claims, trust and propriety claims. It is not unjust to enforce a claim in a process specifically contemplated by Court order to deal with such type of claim.

D. Constructive Trust (Wrongful Conduct)

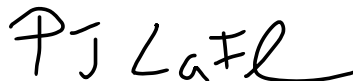
32. In the further alternative, it is submitted that a constructive trust be imposed given that Razor knew, following the 13th month adjustment, it received Credits/ amounts from the Crown that Razor knew to be the property of Sabre having already requested from and received the Credits from Sabre. As noted in *Ontario Wheat Producers' Marketing Board*

v. Royal Bank of Canada (1984), [1984 CanLII 2004 \(ON CA\)](#), 9 D.L.R. (4th) 729 (Ont. C.A.) which was subsequently approved by the Supreme Court in *Soulos v Korkontzilas*, [1997] 2 SCR 217, [1997 CanLII 346.](#), the retention of amounts in these circumstances, in and of itself, is grounds for the imposition of a constructive trust.

IV. CONCLUSION

33. Razor Energy should not, in good conscience, be allowed retain the beneficial interest of the Credits transferred to Razor Energy in error. It is fair and equitable to order ResidualCo to pay to Sabre the amount set out in Sabre's Proof of Claim as contemplated by the Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of June, 2025.



Phillip LaFlair
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SABRE ENERGY PARTNERSHIP,
SABRE ENERGY LTD. and
SABRE ENERGY OIL AND GAS LTD.

V. TABLE OF AUTHORITIES

TABS

1. [Chef Ready Foods Ltd. v. Hong Kong Bank of Canada](#), 1990 CanLII 529 (BC CA)
2. [Edmonton regional Airports Authority v. Lynx Air Holding Corporation](#) 2025 ABCA 116 (CanLII)
3. [Redstone Investment Corporation \(Re\)](#), 2015 ONSC 533 (CanLII)
4. [Soulos v. Korkontzlas](#), 1997 CanLII 346 (SCC), [1997] 2 SCR 217
5. [Ontario Wheat Producers' Marketing Board v Royal Bank of Canada et al.](#), 1984 CanLII 2004 (ON CA)