

CANADA / JUDGMENT

SunOil Ltd. v. Big Snowy Resources, L.P.

2014 BCSC 1242

COURT

Supreme Court of British Columbia

DECIDED

27 June 2014

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2014 BCSC 1242 SunOil Ltd. v. Big Snowy Resources, L.P. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: SunOil Ltd. v. Big Snowy Resources, L.P., 2014 BCSC 1242 Date: 20140627 Docket: S141392 Registry: Vancouver Between: SunOil Ltd. Plaintiff And Big Snowy Resources, L.P., Antelope Resources, Inc., Crazy Mountain Group LLC, Bouda LLC, 648564 B.C. Ltd., Western Sun Exploration, Inc., Jake Oil & Gas Consultants LLC John Campbell, Robert Gardner, Robert Stuart Angus, Brian Smith, Wayne Moorehouse and Michael Farley Defendants Before: The Honourable Mr. Justice Savage Oral Reasons for Judgment Counsel for the Plaintiff: J.A. Frank Counsel for the Defendant R. Gardner: J. Shields No other appearances Place and Date of Hearing: Vancouver, B.C. June 27, 2014 Place and Date of Judgment: Vancouver, B.C. June 27, 2014

- [1] This is an application for an order that the plaintiff produce Randy Sealy for examination for discovery. The plaintiff has gone through a series of name changes. It was incorporated as Stealth Energy Inc., but has changed its name twice since, and is now known as SunOil Ltd. There have been various changes so that the current employees, directors and officers have no firsthand knowledge of the matters in issue. The plaintiff alleges that a report known as the Jake Report was deliberately prepared to induce the plaintiff to purchase, at an inflated price, a property called the East Teapot Property.
- [2] The plaintiff has sued its former directors, their companies, the vendor and the company who prepared the Jake Report. The plaintiff never acquired the East Teapot Property, however its US subsidiary, Stealth Energy USA Inc., owns the East Teapot Property.
- [3] The applicant defendant say that the key player in this case is not one of the parties but a man named Randy Sealy. Mr. Sealy provided all the data used in the preparation of the Jake Report, authorized the preparation of the Jake Report, and signed, on behalf of the vendor, an assignment and bill of sale over the East Teapot Property to the plaintiff.
- [4] The applicants say that Mr. Sealy was: a director of the plaintiff's subsidiary, Stealth Energy USA Inc., when the Jake Report was prepared and the East Teapot Property acquired; an employee of the plaintiff as the plaintiff's operations manager in 2008 and 2009; and the source of the key documentation of the plaintiff which launched the lawsuit. Thus, the applicants say that Mr. Sealy is a key witness.

- [5] The plaintiff has refused to produce Randy Sealy for discovery. The applicant says that Mr. Sealy is a proper examinee under Rule 7-2(5)(ii) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, as "any other person the examining party considers appropriate and who is or has been a director, officer, employee, agent or external auditor of the party to be examined". On the basis of the evidence before me, much of which is contained in the affidavit of the plaintiff, and the authorities cited, I am satisfied that Mr. Sealy is a proper examinee under the Rule.
- [6] The further question then concerns whether service of the appointment should be on plaintiff's counsel. Rule 7-2(13) reads as follows:
- (13) Before conducting an examination for discovery under this rule, the party wishing to conduct that examination for discovery must do the following:
- (a) if the person to be examined is a party of record to, and has a lawyer in, the action, ensure that, at least 7 days before the examination for discovery,
 - (i) an appointment in Form 23 is served on that lawyer, and (ii) witness fees in the amount required under Schedule 3 of Appendix C are tendered to that lawyer;
 - (b) in any other case, ensure that, at least 7 days before the examination for discovery,
 - (i) an appointment in Form 23 is served on the person to be examined, and (ii) witness fees in the amount required under Schedule 3 of Appendix C are tendered to the person to be examined;
 - (c) at least 7 days before the examination for discovery, serve a copy of the appointment on all parties of record. [am. B.C. Reg. 112/2012, Sch. A, s. 2.]
- [7] The main issue here is whether Rule 7-2(13)(a) or Rule 7-2(13)(b) applies. The applicant says that Rule 7-2(13)(a) applies. The plaintiff says that Rule 7-2(13)(b) applies. The applicant says that in this case the person to be examined is a party of record and has a lawyer in the action and that an appointment must only be served on the lawyer with witness fees. The respondent says that is not the case and that Mr. Sealy must be served personally under Rule 7-2(13)(b).
- [8] In my opinion the interpretation of the applicant is to be preferred. In my view the "person to be examined" is Mr. Sealy who is to be examined qua former director, employee, and agent of the plaintiff. As such, the applicant is entitled to serve, in this case, an appointment on the lawyer for the plaintiff. The plaintiff raised various potential difficulties which might arise in it securing a former director, officer, employee or agent's attendance at such examination, including the spectre of being in breach of the Rules because of an inability to produce the former director, officer, employee or agent in a timely way or at all.

[9] Of course, difficulties might occur, as the former director, officer, employee or agent might not be located or be uncooperative. It seems to me that should those difficulties be encountered they must be dealt with at that time. The proper route ultimately may be in such event to make an application for directions to this court, which would include providing evidence of the efforts made (to produce the examinee) which have proven unsuccessful.

[10] The applicant is entitled to costs of this application. "The Honourable Mr. Justice Savage"

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Prepared on 29 October 2026 · Esheria