



COURT FILE NUMBER

1901- **09591**

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

ALPHABOW ENERGY LTD., 1986114 ALBERTA INC., HAO WANG and WENTAO YANG

DOCUMENT

APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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NOTICE TO THE RESPONDENTS: ALPHABOW ENERGY LTD., 1986114 ALBERTA INC., HAO WANG and WENTAO YANG

This application is made against you. You are a 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: July 29, 2019
Time: 4: 00 p.m. – Commercial List
Where: Calgary Courts Centre, 601 - 5 Street SW, Calgary, Alberta
Before Whom: The Honourable Madam Justice K.M. Horner

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

Remedy claimed or sought:

The Applicant PricewaterhouseCoopers Inc. LIT (the “**Trustee**”), in its capacity as the trustee in bankruptcy of Sequoia Resources Corp. (“**SRC**”), seeks an Order:

1. setting aside the January 2017 transaction entered into between AlphaBow Energy Ltd., formerly known as 1994450 Alberta Inc. and Sequoia Operating Corp, (“**AlphaBow**” or “**199**”), and SRC (the “**199/SRC Transaction**”) and declaring the 199/SRC Transaction void as against the Trustee;
2. *alternatively*, granting judgment against the Respondents AlphaBow, 1986614 Alberta Inc. (“**198**”), Hao Wang (“**Wang**”) and Wentao Yang (“**Yang**”) (collectively, the “**Respondents**”), jointly and severally, for the difference between the consideration received by SRC in the 199/SRC Transaction and the value of the consideration given by SRC in the 199/SRC Transaction, in the amount of not less than \$12,588,000;
3. awarding costs of the application against the Respondents on a full-indemnity basis; and
4. granting further and/or alternative relief.

Grounds for making this application:

1. In January 2017, 199 and SRC, both wholly-owned subsidiaries of 198, entered into the 199/SRC Transaction, pursuant to which 199 transferred certain oil and gas assets and associated liabilities which 199 had previously acquired from Endurance Energy Ltd. (the “**Endurance Assets**”), to SRC, for nominal consideration.
2. Following the closing of the 199/SRC Transaction, 199 and SRC executed Notices of Assignment, confirming the transfer of 199’s right, title and interest in the Endurance Assets from 199 to SRC.

Transfer at Undervalue

3. The 199/SRC Transaction constituted a transfer at undervalue within the meaning of sections 2 and 96 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the “**BIA**”).
4. The 199/SRC Transaction:
 - 4.1. was a disposition of property for which the consideration received by SRC from 199 was conspicuously less than the fair market value of the consideration given by SRC to 199, including SRC’s assumption of the liabilities associated with the Endurance Assets;
 - 4.2. was entered into between 199 and SRC in circumstances where:

- 4.2.1. both 199 and SRC were wholly-owned subsidiaries of 198;
- 4.2.2. Yang and Wang were the sole directors of both SRC and 198;
- 4.2.3. Wang was a director of both 199 and SRC; and
- 4.2.4. SRC, 199, Yang, Wang and 198 were all related persons not dealing with each other at arm's length within the meaning of the *BIA*;
- 4.2.5. Yang, Wang and 198 benefited from and were privy to the 199/SRC Transaction within the meaning of s. 96 of the *BIA*;
- 4.3. occurred in January 2017, less than 5 years before SRC filed its Notice of Intention to Make a Proposal and assigned itself into bankruptcy in March 2018; and
- 4.4. was entered into by SRC while it was insolvent or rendered SRC insolvent.
- 5. Pursuant to s. 96 of the *BIA*:
 - 5.1. the 199/SRC Transaction is void as against the Trustee; *alternatively*
 - 5.2. the Trustee is entitled to judgment against the Respondents, jointly and severally, for the difference between the value of the consideration received by SRC in the 199/SRC Transaction and the value of the consideration given by SRC in the 199/SRC Transaction.

Breach of Director's Duties

- 6. At all material times after October 1, 2016, Wang and Yang were the sole directors of SRC and 198, the parent company of SRC and 199.
- 7. Wang and Yang:
 - 7.1. owed fiduciary duties to SRC, including a duty to act honestly and in good faith with a view to the best interests of PEOC, in accordance with s. 122(1)(a) of the *Alberta Business Corporations Act*, RSA 2000 c B-9 (the "*ABCA*");
 - 7.2. owed SRC a duty of care, including to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, in accordance with s. 122(1)(b) of the *ABCA*; and
 - 7.3. were required to comply with the provisions of the *ABCA*, including s. 120.
- 8. Wang and Yang breached their duties to SRC, *inter alia*, by:
 - 8.1. failing to act honestly, in good faith and with a view to the best interests of SRC;

- 8.2. failing to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- 8.3. causing SRC to enter into the 199/SRC Transaction in circumstances where Wang and Yang:
 - 8.3.1. were aware that SRC was insolvent or would be rendered insolvent by the 199/SRC Transaction;
 - 8.3.2. were aware that the liabilities associated with the Endurance Assets exceeded their value;
 - 8.3.3. were aware that SRC would be unable to meet the obligations associated with the Endurance Assets; and
 - 8.3.4. would benefit personally from the 199/SRC Transaction, including as the sole directors and beneficial shareholders of 198, the parent company of 199 and SRC;
- 8.4. failing to disclose to SRC, contrary to sections 120 and 122 of the *ABCA*, *inter alia*:
 - 8.4.1. that the 199/SRC Transaction was not reasonable or fair to SRC and was not in SRC's best interests;
 - 8.4.2. that the 199/SRC Transaction was highly prejudicial to SRC's interests; and
 - 8.4.3. that Wang and Yang, as beneficial shareholders and directors of 198, had a material interest in 198 and 199, which benefited from the 199/SRC Transaction at the expense of SRC.
- 9. As a result of these breaches by Wang and Yang of their duties as SRC's sole directors, the 199/SRC Transaction should be set aside and declared void, *inter alia* pursuant to s. 120 of the *ABCA*.

Material or evidence to be relied on:

- 10. The Affidavit of Paul J. Darby, sworn on July 4, 2019; and
- 11. Such further evidence as counsel for the Trustee may advise and the Court may allow.

Applicable rules:

- 12. Rules 6.3, 6.11, 7.3, 10.29, 10.31 and 10.33 of the *Alberta Rules of Court*, AR 124/2010.

Applicable legislation:

- 13. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, including ss. 2, 4 and 96

14. *Business Corporations Act*, RSA 2000, c. B-9, including s. 120.

How the application is proposed to be heard or considered:

15. It is proposed that the Application be heard on the Commercial List.

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.