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JUDICIAL CENTRE
OF CALGARY

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

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

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NOTICE TO THE DEFENDANTS:

You are being sued. You are a Defendant.

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

Note: State below only facts and not evidence (Rule 13.6)

The Parties

1. The Plaintiff is PricewaterhouseCoopers Inc. LIT (“**PwC**”), a licensed insolvency trustee and the trustee in bankruptcy (the “**Trustee**”) of the estate of Sequoia Resources Corp., formerly known as Perpetual Energy Operating Corp. (“**SRC**” or “**PEOC**”).
2. On or about March 2, 2018, Sequoia filed a Notice of Intention to Make a Proposal (the “**NOI**”) pursuant to the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3, as amended (the “**BIA**”) and on or about March 23, 2018 Sequoia assigned itself into bankruptcy.
3. The Defendants are:
 - 3.1. AlphaBow Energy Ltd., a corporation duly incorporated pursuant to the laws of the Province of Alberta and previously known as 1994450 Alberta Inc. and Sequoia Operating Corp. (“**199**” or “**AlphaBow**”);
 - 3.2. 1986114 Alberta Inc., a corporation duly incorporated pursuant to the laws of the Province of Alberta (“**198**”);
 - 3.3. Hao Wang, an individual carrying on business in the Province of Alberta (“**Wang**”); and
 - 3.4. Wentao Yang, an individual residing and carrying on business in Calgary, Alberta (“**Yang**”).
4. At all material times between October 1, 2016 and SRC’s assignment into bankruptcy:
 - 4.1. SRC and 199 were wholly-owned subsidiaries of 198;
 - 4.2. Wang and Yang were the sole directors and directing minds of SRC and 198;
 - 4.3. Wang was a director and the directing mind of 199; and
 - 4.4. Wang and Yang beneficially owned 100% of the shares in 198.

The Transactions

5. In September 2016 and January 2017 respectively, 199 entered into transactions pursuant to which:
 - 5.1. 199 acquired certain oil and gas assets with significant associated liabilities; and
 - 5.2. 199 then transferred these assets and significant associated liabilities to SRC, for little or no valuable consideration.

The Endurance Transaction

6. Pursuant to an Asset Purchase Agreement dated September 21, 2016 (the “**Endurance APA**”), 199 agreed to purchase from Endurance Energy Ltd. (“**Endurance**”) certain oil and gas assets (the “**Endurance Assets**”) with significant associated liabilities.
7. The Endurance APA provided, *inter alia*, that:
 - 7.1. Endurance, the “Seller”, agreed to sell, assign, convey and transfer certain oil and gas assets to 199, the “Buyer”, and 199 agreed to purchase these assets from Endurance;
 - 7.2. 199 assumed and agreed to discharge when due certain Endurance liabilities (the “**Assumed Liabilities**”);
 - 7.3. the Assumed Liabilities included all “Environmental Liabilities”, which the Endurance APA defined to include “Abandonment and Reclamation Liabilities” (“**ARO**”) associated with the Endurance Assets;
 - 7.4. the purchase price payable by 199 to Endurance was \$1.00, subject to closing adjustments, and the assumption by 199 of the Assumed Liabilities;
 - 7.5. the extent and value of the Environmental Liabilities, including the ARO, were unknown and the parties attributed no specific or agreed to value to them;
 - 7.6. 199 was entitled to appoint a nominee to accept on its behalf the transfer of licenses associated with Endurance Assets;
 - 7.7. as Endurance was then in creditor protection pursuant to the *Companies' Creditors Arrangement Act* (the “**CCAA**”):
 - 7.7.1. Endurance would apply to the Court for an approval and vesting order (“**AVO**”) approving the transaction contemplated by the Endurance APA (the “**Endurance Transaction**”); and
 - 7.7.2. 199 would support that application.
8. SRC was not a party to the Endurance APA or the Endurance Transaction.
9. On September 27, 2016, the Court granted an AVO, *inter alia*, approving the Endurance Transaction.
10. On or about October 26, 2016, in connection with the closing of the Endurance Transaction:
 - 10.1. Endurance and 199 executed Notices of Assignment confirming the transfer and conveyance of the right, title and interest of Endurance in the Endurance Assets from Endurance to 199;

- 10.2. 199 acknowledged receipt of \$3,002,546.07 from Endurance, representing the closing balance payable pursuant to the Endurance APA by Endurance, as seller, to 199, as buyer; and
- 10.3. although SRC was not a party to the Endurance Transaction, Wang, on behalf of 199, instructed Endurance to pay the \$3,002,546.07 balance payable to 199 pursuant to the Endurance APA into a bank account he controlled, which was in the name of SRC.

The 199/SRC Transaction

- 11. On or about January 1, 2017, 199 and SRC entered into a Petroleum, Natural Gas and General Rights Conveyance Agreement (the “**199/SRC Conveyance Agreement**”).
- 12. The 199/SRC Conveyance Agreement provided, *inter alia*, that:
 - 12.1. in exchange for the purchase price of \$1.00, to be paid by SRC subject to adjustments, 199, as “Vendor”, agreed to sell, assign, transfer, convey and set over to SRC, as “Purchaser”, all of 199’s right, title, estate and interest in the Endurance Assets; and that
 - 12.2. the 199/SRC Conveyance Agreement reflected the entire agreement between 199 and SRC and superseded all other agreements, documents, writings and verbal understandings between 199 and SRC.
- 13. On or about January 31, 2017, after the closing of the transaction contemplated by the 199/SRC Conveyance Agreement (the “**199/SRC Transaction**”):
 - 13.1. 199 and SRC executed Notices of Assignment in respect of the transfer of 199’s right, title and interest in the Endurance Assets from 199 to SRC;
 - 13.2. The same individual executed the Notices of Assignment on behalf of 199 and SRC, as Chief Operating Officer of both Parties; and
 - 13.3. The Notices of Assignment were effective January 1, 2017, the date of the 199/SRC Conveyance Agreement.

Value and Consideration

- 14. The Endurance Assets SRC received from 199 as a result of the 199/SRC Transaction had no positive fair market value at the time of the Asset Transaction, but represented a significant net negative value:
 - 14.1. The value of the actual consideration given by SRC to 199 in the 199/SRC Transaction was no less than \$26,973,000; and
 - 14.2. The value of the consideration received by SRC from 199 in the 199/SRC Transaction was no more than \$14,385,000.

15. As a result of the 199/SRC Transaction:

- 15.1. SRC acquired the Endurance Assets with associated ARO and other liabilities which exceeded the value of the Endurance Assets;
- 15.2. SRC received consideration from 199 which was conspicuously less than the consideration provided by SRC to 199;
- 15.3. even if SRC had not already been insolvent, it was rendered insolvent as a result of the 199/SRC Transaction, as the liabilities associated with the Endurance Assets exceeded the net value of SRC's assets and it was unable to pay its debts as they became due.

Wang and Yang as Directors of SRC

16. At all material times from October 1, 2016 to SRC's assignment into bankruptcy in March 2018, Wang and Yang:

- 16.1. were the sole directors and directing minds of SRC;
- 16.2. were also the sole directors and directing minds of 198, which controlled both 199 and SRC;
- 16.3. owed fiduciary duties to SRC, including a duty to act honestly, in good faith and with a view to the best interests of SRC, in accordance with s. 122(1)(a) of the *Alberta Business Corporations Act*, RSA 2000 c B-9 (the "*ABCA*");
- 16.4. owed SRC a duty of care, including a duty 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
- 16.5. were required to comply with the provisions of the *ABCA*, including s. 120.

17. Wang and Yang breached their duties to SRC, *inter alia*, by:

- 17.1. failing to act honestly, in good faith and with a view to the best interests of SRC;
- 17.2. failing to exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
- 17.3. causing SRC to enter into the 199/SRC Transaction in circumstances where Wang and Yang:
 - 17.3.1. were aware that SRC was insolvent or would be rendered insolvent by the 199/SRC Transaction;
 - 17.3.2. were aware that the liabilities associated with the Endurance Assets exceeded their value;

- 17.3.3. were aware that SRC would be unable to meet the obligations associated with the Endurance Assets; and
- 17.3.4. 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;
- 17.4. failing to disclose to SRC, contrary to sections 120 and 122 of the *ABCA*, *inter alia*:
 - 17.4.1. that the 199/SRC Transaction was not reasonable or fair to SRC and was not in SRC's best interests;
 - 17.4.2. that the 199/SRC Transaction was highly prejudicial to SRC's interests; and
 - 17.4.3. 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.
- 18. As a result of these breaches by Wang and Yang of their duties as SRC's sole directors:
 - 18.1. the 199/SRC Transaction should be set aside and declared void, *inter alia* pursuant to s. 120(9) of the *ABCA*;
 - 18.2. Wang and Yang should be required to account to SRC for any profit they realized as a result of the 199/SRC Transaction; and
 - 18.3. SRC suffered damages, including:
 - 18.3.1. the difference between the consideration given and received by SRC as a result of the 199/SRC Transaction;
 - 18.3.2. costs incurred until the Endurance Assets are returned to 199, now known as AlphaBow, including the costs related to addressing safety, environmental and other issues relating to the Endurance Assets; and
 - 18.3.3. costs incurred to investigate the 199/SRC Transaction and to act in the best interests of creditors of SRC.

Transfer at Undervalue

- 19. The transfer of the Endurance Assets from 199 to SRC as part of the 199/SRC Transaction constituted a transfer at undervalue within the meaning of the *BIA*, including sections 2 and 96 of the *BIA*.
- 20. The transfer of the Endurance Assets from 199 to SRC:

- 20.1. was a disposition of property in circumstances where the consideration received by SRC was conspicuously less than the fair market value of the consideration given by SRC, including its assumption of the liabilities associated with the Endurance Assets;
 - 20.2. was entered into between 199 and SRC in circumstances where:
 - 20.2.1. both 199 and SRC were wholly-owned subsidiaries of 198;
 - 20.2.2. Yang and Wang were the sole directors of both SRC and 198;
 - 20.2.3. Wang was a director of both 199 and SRC;
 - 20.2.4. SRC, 199, Yang, Wang and 198 were all related persons not dealing at arm's length with each other within the meaning of the *BIA*; and
 - 20.2.5. Yang, Wang and 198 benefited from and were privy to the 199/SRC Transaction within the meaning of s. 96 of the *BIA*;
 - 20.3. occurred in January 2017, less than 5 years before SRC filed the NOI and assigned itself into bankruptcy in March 2018; and
 - 20.4. was entered into while SRC was insolvent and would have rendered SRC insolvent in any event.
21. Pursuant to s. 96 of the *BIA*:
- 21.1. the 199/SRC Transaction is void as against the Trustee; or
 - 21.2. the Trustee is entitled to judgment against AlphaBow, Yang, Wang and 198 for the difference between the value of the consideration received by SRC and the value of the consideration given by SRC in the 199/SRC Transaction.

Public Policy, Statutory Illegality and Equitable Rescission

22. The 199/SRC Transaction is void:
- 22.1. on grounds of public policy, for being contrary to the public policy reflected in Alberta's oil and gas regulatory regime, including the *Oil and Gas Conservation Act*, RSA 2000, c. O-6, the *Oil and Gas Conservation Rules*, AR 151/71 and the AER's Directive 001, Directive 006, Directive 011 (the "**Regulatory Regime**");
 - 22.2. on the basis of statutory illegality, as they were expressly or impliedly prohibited by the Regulatory Regime; and
 - 22.3. on equitable grounds, for the reasons and in the circumstances set out in this Statement of Claim.

Remedy sought:

1. An Order setting aside 199/SRC Transaction and declaring the 199/SRC Transaction void as against the Trustee;
2. *Alternatively to paragraph 1*, judgment against AlphaBow, Yang, Wang and 198, jointly and severally, for the difference between the value of the consideration received by SRC and the value of the consideration given by SRC pursuant to the 199/SRC Transaction;
3. Judgment against Yang and Wang for damages caused by the breach of their duties to SRC;
4. An Order directing Yang and Wang to account to the Trustee for any profit or gain realized on the 199/SRC Transaction;
5. Costs of this Action on a solicitor-and-own-client, full indemnity basis; and
6. Further and/or alternative relief.

NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

- 20 days if you are served in Alberta
- 1 month if you are served outside Alberta but in Canada
- 2 months if you are served outside Canada.

You can respond by filing a statement of defence or a demand for notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your statement of defence or a demand for notice on the plaintiff's address for service.

WARNING

If you do not file and serve a statement of defence or a demand for notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the plaintiff(s) against you.