Court of King's Bench of Alberta

Citation: AlphaBow Energy Ltd (Re), 2025 ABKB 550

Date:
Docket: 2401 05179
Registry: Calgary

In the Matter of the Companies' Creditors Arrangement Act, RSC 1985, c C-36, as amended
And in the Matter of the Compromise or Arrangement of AlphaBow Energy Ltd.

Decision
of the
Honourable Justice B.B. Johnston

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[1] The Applicant AlphaBow, seeks a declaration that the CO2 Stream Purchase and Sale Agreement with ME Global Canada ULC as the seller and AlphaBow as the buyer, dated December 1, 2004 ("CO2 Agreement") be retained as part of the previously approved subscription agreement, free and clear of any liabilities, claims or encumbrances other than retained liabilities as defined in the subscription agreement.

[2] The Applicant further requests amendments to the Amended and Restated Subscription Agreement dated December 16, 2024 between AlphaBow and 2628071Alberta Ltd. ("2628071") (the "Subscription Agreement").

[3] The Applicant disputes any Cure Costs are owing to ME Global but proposes that recourse for amounts claimed by ME Global would be against the Creditor Trust as is the case for other creditors whose claims are not being retained.

[4] ME Global opposes the application.

[5] The Resurgent Group, which is collectively 2628069 Alberta Ltd. ("2628069"), its nominee Cascade Capture Ltd ("Cascade") and 2628071 support the relief sought by the Applicant.

[6] The monitor takes no position on the application.

Background

[7] AlphaBow is a privately-owned company in the business of acquisition, development, and production of oil and natural gas in Alberta. At the time of commencing these proceedings, it held licenses issued by the AER to operate 3,785 wells, 4,038 pipelines and 321 facilities across Alberta.

[8] The CO2 Agreement was executed on December 1, 2004 with amendments on January 1, 2019, December 1, 2019, and January 1, 2020 pursuant to which ME Global agreed to sell and deliver CO2 gas to AlphaBow.

[9] The CO2 Agreement expires on December 31, 2028 and ME Global can opt out of any extensions by providing two years notice.

[10] On March 28, 2024, AlphaBow filed a notice of intention ("NOI") to make a proposal under the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 ("BIA").

[11] On April 26, 2024, AlphaBow sought and obtained an initial order continuing the NOI proceedings under the *Companies' Creditors Arrangement Act* RSC 1985, c C-36, as amended ("CCAA"). A number of stay extensions were granted.

[12] On September 20, 2024, Justice Neilson issued a Claims Process Order. Cure Costs were defined in the Claims Process Order.

[13] On October 23, 2024, ME Global submitted a proof of claim in the amount of $10,293,055.20 in accordance with the Claims Process Order. This includes $6,700,734.11 in pre filing amounts and $3,592,321.09 in post filing amounts. The proof of claim was filed prior to the Claims Bar Date.

[14] AlphaBow conducted a court approved sales and investment solicitation process (SISP) which resulted in a number of asset transactions and a corporate transaction involving the sale of all of AlphaBow's shares by way of the Subscription Agreement.

[15] One of the transactions involved an asset purchase and sales agreement between AlphaBow and 2628069 ("2628069 APA"). In the application materials filed with the court seeking approval of the 262809 APA, the CO2 Agreement was initially listed as an asset to be included in the 2628069 APA.

[16] On December 18, 2024, counsel for ME Global sent an email to counsel for 2628069 stating "I note that your client as purchaser of certain assets has listed contracts with my client that it wishes to acquire. (I have excerpted and attached the corresponding schedule from the APA). Please find attached my client's Proof of Claim."

[17] Counsel for 2628069 responded on December 18, 2024 and noted "Please be advised that your client's contract will be disclaimed and it, and its related claims, will be included in the Transferred Assets. Accordingly, the following contracts have been removed from Schedule "A" to the 2628069 Alberta Ltd. Asset Purchase Agreement (under "Contracts: 1 CO2 Facilities Agreements")". The email then listed the CO2 Agreement and all three of the amending agreements.

[18] Given the representations of counsel, counsel for ME Global did not appear before Justice Jeffery on December 19, 2024.

[19] On December 19, 2024, Justice Jeffrey granted amongst other things, the Transaction Approval and Reverse Vesting Order ("RVO") approving the transfer of all the common shares of AlphaBow to 2628071 pursuant to the Subscription Agreement and approving the asset sale to 2628069 contemplated in the 2628069 APA. 2628069 is an affiliate of 2628071. The CO2 Agreement was not included as a retained contract in any of the transactions approved in the Jeffrey Order.

[20] The Jeffrey order was not appealed.

[21] The Subscription Agreement approved by the Court required that any contracts to be retained were to have been identified two business days prior to the application for the approval.

[22] On December 23, 2024, counsel for ME Global again wrote to counsel for 2628069 and indicated "as you can see from the below correspondence, Cascade seems to be under the mistaken understanding that the ME Global contracts were assigned pursuant to the SAVO. I attach your correspondence confirming the opposite. The redline SAVO that I reviewed confirmed this as well. Can you please clarify with your client that the Prentiss CO2 agreements were not transferred."

[23] On December 24, 2024, counsel for 2628069 again responded and stated "To answer your question, the current state of the contract is that it has been disclaimed. That said our client is very much interested in continuing in discussions with ME Global to carry on business together..." .

[24] On April 8, 2025, counsel for ME Global wrote to counsel for AlphaBow stating "On December 18, 2024, Mr. David Mann of Blue Rock Law LLP confirmed to me that the CO2 Agreement and Lease were to be disclaimed. Additionally, Mr. Mann confirmed that they were disclaimed to me via email on December 24, 2024. Although the CO2 Agreement and Lease have been disclaimed, AlphaBow has Buyer Responsible Equipment on my clients' site and therefore, AlphaBow is herby notified that it must remove all Buyer Responsible Equipment at its sole cost, risk, and expense. Additionally, AlphaBow must restore the land."

[25] The Applicant filed an application on June 17, 2025 seeking various relief. As part of the application, ME Global learned for the first time that the Applicant now intended to retain the disclaimed CO2 Agreement as part of the RVO Transaction by amending the Subscription Agreement to make the CO2 Agreement a retained contract.

[26] Justice Armstrong issued an Amending Order on June 17, 2025 granting some of the relief sought in the Application. The issues of the further "amendments to the definition of Cure Costs set out in section 1.1(ee)" of the Subscription Agreement and "the retention of the" CO2 Agreement were adjourned. This part of the application is now before me.

Analysis

Authority to Amend

[27] The Applicant seeks to amend the definition of Cure Costs in section 1.1(ee) of the Subscription Agreement by amongst other things adding the following to the definition:

> provided, however, that "Cure Costs" shall not include any amounts claimed by ME Global under the Claims Process or in connection with the ME Global Contract.

[28] They further seek to have the CO2 Agreement retained under the Subscription Agreement free and clear of any claims.

[29] The Applicant argues that the Court has authority to make the amendments sought as there is no actual amendment to the RVO. Rather, they assert that the authority to amend comes from the Subscription Agreement itself and the RVO. In any event, they submit that rule 9.15 of the Alberta rules of court allows an applicant to vary an order where information arose or was discovered after the order was made. Further, section 11 of the CCAA provides the court with broad remedial discretion which includes the ability to amend any order granted as part of the CCAA proceedings. They contend that the amendments sought do not change the fundamental terms of the corporate transaction but rather clarify when Cure Costs will and will not be paid in the case of a retained contract.

[30] The Respondent disagrees. They note in their brief that "Alpha Bow seeks the Court's assistance, in essence, to secure a more favourable transaction for the purchaser than what was approved by Justice Jeffrey at the sale approval application by disguising the proposed amendments as a mere clarification of the Subscription Agreement". They assert that the amendments sought are material and not of the sort contemplated by the Subscription Agreement or RVO. The amendments, they argue, substantially narrow the circumstances under which the purchaser would be required to pay Cure Costs in respect of a retained contract and specifically, they create a carve out for any amounts claimed by ME Global. Significantly, the liability extinguishing relief materially alters how the ME Global claim is treated compared to how it would be treated under the RVO.

[31] I disagree with the Applicant that they are not seeking to amend the RVO. I agree that the RVO approved December 19, 2024 at paragraph 30, permits AlphaBow and 2628071 to amend the Subscription Agreement. Indeed, Justice Armstrong made amendments to the Subscription Agreement in his June 26, 2025 order. However, section 30 of the RVO contemplates "incremental changes". I do not agree that the changes contemplated by the Applicant are incremental and therefore find this section inapplicable.

[32] Further, I agree with the Respondent that rule 9.15 only applies to interim orders. An RVO is not an interim order, but rather a final order which makes rule 9.15(4) inapplicable.

[33] Finally, the Respondent argues that section 11 of the CCAA does not provide the court broad authority to amend court orders once the court is *functus*. I disagree. Section 11 of the CCAA provides as follows:

> 11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, **make any order that it considers appropriate in the circumstances**.(emphasis added).

[34] Subject to some exceptions, section 11 of the CCAA gives this court broad remedial power which I find includes the authority to amend orders as part of the CCAA process. A

CCAA process must be fluid. Indeed, this is why the court is granted such broad remedial powers. If the courts powers were circumscribed as the Respondent suggests, this would be anathema to the entire purpose of the legislation.

[35] I also note that the Subscription Agreement itself contemplates amendments.

[36] I therefore conclude this Court has the jurisdiction to make the amendments to the Subscription Agreement.

[37] I will therefore turn my analysis to consider whether this court should exercise its broad remedial authority under section 11 of the CCAA.

Should the Court Exercise its Broad Remedial Powers under the CCAA?

[38] There is no doubt that a court has broad discretion to craft any orders that are appropriate in the specific circumstances of any given CCAA. These powers however are not unlimited.

[39] In ***Canada v Canada North Group***, 2021 SCC 30 at para 21, the Supreme Court of Canada confirmed that although a court's discretion under section 11 of the CCAA is broad, there are limits on this discretion. First, section 11 is constrained by any restrictions in the CCAA. Second, the discretion must be appropriate in the circumstances. As the Supreme Court noted in Canada North, jurisprudence has developed "baseline requirements of appropriateness, good faith and due diligence in order to exercise this power." In other words, a justice must be satisfied that the order is appropriate, and the Applicant has acted in good faith and with due diligence. A justice must further be satisfied that the order will advance the policy and remedial objectives of the CCAA.

[40] The Applicant argues the CO2 Agreement was previously excluded under the Subscription Agreement because 2628071 was in discussions with ME Global regarding entering a new agreement which never materialized. They assert that the amendment to the Subscription Agreement is "a key agreement for the purchaser and their business model which has enabled them to seek to assume significant amounts of environmental liability from AlphaBow." Further they assert that the amendments would not change the fundamental terms of the Corporate Transaction but "rather clarify the circumstances in which Cure Costs will and will not be paid in the case of a Retained Contract". They further submit that the claim for Cure Costs is not required to be paid by the purchaser in the circumstances as this is a share deal. In any event, they dispute that any Cure Costs are owing as alleged. Finally, even if the transaction had required the CO2 Agreement be assigned, the terms of the CO2 Agreement allow for the assignment. There is no requirement under section 11.3(1) and 11.3(4) of the CCAA for a debtor to pay Cure Costs prior to assigning an agreement that does not require consent.

[41] The Resurgent group argues in support of the Application that there is no evidence of bad faith, and the relief sought will enhance the proceedings to the benefit of all stakeholders and assist the Resurgent Group with the assumption of AlphaBow's environmental liability. They also assert that since the CO2 Agreement is assignable under section 13.12(a) and (d) on its express terms, there is minimal downside to the Court granting the relief sought.

[42] In considering whether I should exercise my remedial authority under the CCAA, I must decide whether the order is appropriate in the circumstances. In this case, if find it is not.

[43] The monitor plays an important role in CCAA proceedings. They are officers of the Court, and the Court relies on their insight and good judgment. They are obligated to act independently and objectively considering the interests of all stakeholders. Although not determinative, I note the monitor has taken no position on the amendments before this Court.

[44] I have also considered the manner in which the Applicant and the Resurgent group have acted. I find they have not acted with due diligence, and I am not satisfied that they have acted in good faith.

[45] Section 11.3(4) of the CCAA provides that a Court may not approve the assignment of an agreement unless it is satisfied that all monetary defaults, with enumerated exceptions, in relation to the agreement will be remedied before the day fixed by the Court. The Claims Order set out the process to deal with the amounts that may be owing under section 11.3(4). The Respondent filed their claims in accordance with the claims process eleven months ago.

[46] In materials provided to ME Global before the Jeffrey appearance, the CO2 Agreement was included. The affidavits before this Court show that the purchaser initially sought to retain the CO2 agreement through its affiliate 2628069 pursuant to the 2628069 APA. Counsel for ME Global wrote to counsel for 2628069 on December 16, 2024 stating "I note that your client as purchaser of certain assets has listed contracts with my client that it wishes to acquire".

[47] The proof of claim from ME Global was attached to the email.

[48] On December 18, 2024 counsel for the purchaser wrote back and advised as follows:

> Please be advised that your client's contract will be disclaimed, and it and its related claims will be included in the Transferred Assets.

[49] Counsel again confirmed in writing that the CO2 contract was being disclaimed on December 24, 2024.

[50] The Applicant represented to the Court in both oral submissions and through sworn evidence that Cure Costs would be payable. Notwithstanding they expressly advised ME Global that the CO2 Agreement was being disclaimed, they now, over nine months later, seek to include the contract as a retained contract and ask that ME Global be expressly carved out of the definition of the Cure Costs.

[51] They also seek to include the CO2 Agreement in the Subscription Agreement rather than the 2628069 APA and argue since it is now a share deal, section 11.3(4) of the CCAA has no application.

[52] In this case, there was an express intention to exclude the CO2 Agreement when the matter came before the Court for approval of the transactions. I accept that the purchaser may well have hoped to negotiate a new agreement with ME Global and avoid paying Cure Costs. That clearly failed. When the purchaser was unable to negotiate a new agreement, and only after ME Global asked that equipment be removed from their land, the Applicant then filed the within application seeking to now include the CO2 Agreement as an included agreement in the Subscription Agreement.

[53] Further, notwithstanding the definition of Cure Costs in the Claims Order and the asset purchase agreements that were before the Court, the Applicant then sought to expressly amend the definition of Cure Costs to exclude ME Global. They then argued in their brief that in any event, the Cure Costs claimed by ME Global were improper and not owing. However, in oral

argument they acknowledged if Cure Costs were payable, there would be some that would be properly owing.

[54] This Court is further concerned that in the appearance before Justice Jeffrey on December 19, 2024, counsel made oral representations to the Court that Cure Costs would be paid for retained contracts. Further, in the affidavit sworn by Ben Li on December 9, 2024 that was before Justice Jeffrey, Mr. Li swore that all Cure Costs for retained contracts would be paid in accordance with the Claims Process.

[55] I also note that the preamble to the Jeffrey order states "and upon the Court being satisfied based on the written submissions that the factors in ***Heart Gold Corp (Re)***, 2022 ONSC 653 ("***Heart Gold***") have been met and the transaction has not been structured to override voting on a plan".

[56] The factors in ***Heart Gold*** are in part premised on the non exhaustive factors in section 36(3) of the CCAA. Part of the analysis includes a consideration of whether the process leading to the proposed sale or disposition was reasonable in the circumstances. The fairness and equitable treatment of the claims against the company and the protection of the public interest are considerations: ***Heart Gold*** at para 77.

[57] It is unclear whether Justice Jeffrey would have approved the RVO with the proposed changes that are before this Court. That is not for me to decide.

[58] In this case I do not find that it is appropriate for the Court to exercise its broad discretion under section 11 of the CCAA. Ultimately, the Applicant and the Resurgent group made their decision to exclude the CO2 Agreements when they presented the transactions before the Court for approval. Having received the precise approval they were after; they now want to change the approved transaction in a way that would have a material adverse impact on one of the stakeholders. The Applicant not only wants the Court to sanction this major alteration to the transaction but also make a pre-determination of the value of the affected creditor's Cure Costs. I see no reasonable basis to do either and I decline to do so.

[59] I therefore need to consider whether the Cure Costs are payable under the circumstances.

Conclusion

[60] I dismiss the application.

Heard on the 10th day of September, 2025.
Dated at the City of Calgary, Alberta this 23rd day of September, 2025.

B B Johnston

B.B. Johnston
J.C.K.B.A.

Appearances:

Michael Selnes
for AlphaBow Energy Ltd.

Jeffrey Oliver
for the Monitor KSV Restructuring Inc.

Jerritt Pawlyk and Anthony Mersich
for ME Global Canada ULC

Taylor Henschel
for 2628069 Alberta Ltd., 2628071 Alberta Ltd., and Cascade Capture Ltd.

Tristen Cones
for the Department of Justice Canada, Minister of National Revenue

Maria Lavelle
for the Alberta Energy Regulator

Nathan Stewart
for Strathcona Resources Ltd.

Dylan Sigurdson
for County, Lamont County, Starland County, County of Stettler No. 6, County of Warner No. 5, MD of Provost, Ponoka County, and County of Paintearth No. 18