The importance of statutory compliance in mineral leasing

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In the recent decision of *Capital Land Services Ltd. v Revitalize Energy Inc*. (*Revitalize Energy*),[1] the Alberta Court of King's Bench (the Court) declared a mineral top lease invalid based on the law of statutory illegality, and applied remedies under the *Land Titles Act* (LTA)[2] to undo steps taken in reliance on the invalid top lease.

Background

In 2011, the original registrant and the County of Vermilion River (the County) entered a Petroleum and Natural Gas Lease (the 2011 Lease) pertaining to certain mineral rights owned by the County (the Lands), and the original registrant registered a corresponding caveat on title to the Lands (the 2011 Caveat). The 2011 Lease was later assigned to Petrocapita GP I Ltd. (Petrocapita), and a transfer of caveat was registered on title to the Lands (the 2016 Transfer Caveat). Revitalize Energy Inc. (Revitalize) eventually acquired the 2011 Lease through a court-approved sale of Petrocapita's assets, and the receiver for Petrocapita assigned the 2011 Lease to Revitalize on August 17, 2020. Revitalize attempted to register a corresponding transfer of caveat, but for unknown reasons, the transfer was not completed.[3]

In the summer of 2020, Capital Land Services Ltd. (Capital Land) became interested in the Lands, believing that the 2011 Lease had lapsed for non-production. Capital Land approached the County, and the parties negotiated an option-to-lease (or top lease) on July 21, 2020 (the Capital Option), followed by a mineral lease on August 24, 2020 (the Capital Top Lease).[4] Capital Land registered corresponding caveats for the Capital Option and the Capital Top Lease (collectively, the Capital Caveats), and initiated proceedings under section 138 of the LTA to lapse the 2011 Caveat and 2016 Transfer of Caveat (collectively, the Prior Caveats) from title to the Lands (the Lapse Proceedings).[5] Revitalize did not receive notice of the Lapse Proceedings.[6]

After discovering that the Prior Caveats had been lapsed, Revitalize brought an originating application against Capital Land and the County, effectively seeking to unwind the Lapse Proceedings and rectify title to the Lands under section 190(1) of the LTA (the Application).

The parties' positions

Revitalize's position was based on section 431(2) of the *Municipal Government Act* (MGA),[7] which directs that a municipality cannot transfer a lease, mortgage, or deal with minerals without first receiving written consent from the Minister of Municipal Affairs (the Minister) and deems offending contracts to be "of no effect". Based on the admitted fact that the Capital Top Lease was entered into without Ministerial consent, Revitalize argued that Capital Land had no interest in the Lands when it initiated the Lapse Proceedings, as required by section 138(5) of the LTA.[8]

The Respondents generally argued that Revitalize should have sought relief through the internal processes outlined in the LTA, that the Capital Top Lease was still enforceable despite non-compliance with the MGA, and that Revitalize lacked standing to challenge the Capital Caveats because the 2011 Lease had lapsed for non-production.[9]

The decision

The Application was originally dismissed by an Applications Judge due to the alleged competing lease interests between Revitalize and Capital Land. In *Revitalize Energy*, the Court agreed with Revitalize's position and granted its appeal.

Non-compliance with the MGA and standing

The Court confirmed that the Capital Top Lease was ineffective for lack of Ministerial consent under section 431(2) of the MGA, and therefore could not be deemed an interest in the Lands. As a result, Capital Land did not have the required interest in the Lands, and therefore did not have standing to initiate the Lapse Proceedings.[10] In contrast, Revitalize had private interest standing to bring the Application based on its legally enforceable interest in the Lands as the court-approved successor to the 2011 Lease.[11]

Remedies under the LTA

The Court was easily convinced that the Prior Caveats should be restored to preserve the *status quo* that should not have been altered, and further directed the transfer of the Prior Caveats to Revitalize.[12] The Court then exercised its discretion to remove the Capital Caveats, which were invalid when registered, given the involvement of public lands and the statutory invalidity of the Capital Top Lease.[13] In doing so, the Court commended Revitalize for its wise decision to initiate the Application outside the LTA regime, which enabled Revitalize to remove the Capital Caveats without needing to establish its own interest under the LTA.[14]

Takeaways

Revitalize Energy shows that energy industry participants must be aware of the requirements under the MGA when dealing with mineral leases on municipal lands. In addition, *Revitalize Energy* demonstrates that despite the intended efficiency of the LTA regime, there are circumstances where it is more effective to proceed directly to the courts to resolve land-related disputes.

BLG was counsel to the applicant in *Revitalize Energy*.

Footnotes

[1] 2025 ABKB 15 [*Revitalize Energy*].

[2] RSA 2000, c L-4.

[3] *Revitalize Energy* at para 4.

[4] *Revitalize Energy* at para 5.

[5] *Revitalize Energy* at para 8.

[6] Notice was served on Petrocapita, the party appearing on title to the Lands. At paragraph 52, the Court observed that honest notice should have been served on Revitalize, which would have ended the Lapse Proceedings with easy proof of Capital Land's inability to satisfy section 138(5) of the LTA.

[7] RSA 2000, c M-26.

[8] *Revitalize Energy* at para 10.

[9] *Revitalize Energy* at paras 12-14.

[10] *Revitalize Energy* at paras 31-39, 46.

[11] *Revitalize Energy* at para 47.

[12] *Revitalize Energy* at paras 57-60.

[13] *Revitalize Energy* at paras 61-65.

[14] *Revitalize Energy* at paras 63-64.

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