



COURT OF APPEAL OF ALBERTA

Form AP-1
[Rules 14.8 and 14.12]



COURT OF APPEAL FILE NUMBER: 1801-0249 AC

TRIAL COURT FILE NUMBER: 1701-03460

REGISTRY OFFICE: CALGARY

PLAINTIFF: ALBERTA ENERGY REGULATOR

STATUS ON APPEAL: Not Party to the Appeal

DEFENDANT: LEXIN RESOURCES LTD., 1051393 B.C. LTD., 0989
RESOURCE PARTNERSHIP, LR PROCESSING LTD. and
LR PROCESSING PARTNERSHIP

STATUS ON APPEAL: Not Party to the Appeal

APPELLANT/APPLICANT: MFC ENERGY FINANCE INC.

RESPONDENT/RESPONDENT: GRANT THORNTON LIMITED in its capacity as the Court
Appointed Receiver and Manager of LEXIN RESOURCES
LTD., 1051393 B.C. LTD., 0989 RESOURCE
PARTNERSHIP, LR PROCESSING LTD. and LR
PROCESSING PARTNERSHIP

DOCUMENT: CIVIL NOTICE OF APPEAL

~~AND~~

~~APPLICATION FOR LEAVE TO APPEAL~~

APPELLANT'S ADDRESS FOR
SERVICE AND CONTACT
INFORMATION:

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File No. 55825-3/DDG

WARNING

To the Respondent: If you do not respond to this appeal as provided for in the Alberta Rules of Court, the appeal will be decided in your absence and without your input.

1. Particulars of Judgment, Order or Decision Appealed From:

Date pronounced: August 8, 2018

Date entered:

Date served:

Official neutral citation of reasons for decision, if any:

(do not attach copy): Alberta Energy Regulator v. Lexin Resources Ltd, 2018 ABQB 590

(Attach a copy of order or judgment: Rule 14.12(3). If a copy is not attached, indicate under item 14 and file a copy as soon as possible: Rule 14.18(2).)

2. Indicate where the matter originated:

Alberta Court of Queen's Bench

Judicial Centre: Calgary

Justice: B.E.C. Romaine

On appeal from a Queen's Bench Master or Provincial Court Judge?:

No

Official neutral citation of reasons for decision, if any, of the Master or Provincial Court Judge: (do not attach copy)

(If originating from an order of a Queen's Bench Master or Provincial Court Judge, a copy of that order is also required: Rule 14.18(1)(c).)

Board, Tribunal or Professional Discipline Body

Specify Body:

3. Details of Permission to Appeal, if required (Rules 14.5 and 14.12(3)(a)).

Leave to appeal is not required as the Appellant has an automatic right to appeal pursuant to subsection 193(c) of the *Bankruptcy and Insolvency Act* R.S.C. 1985 c B-3 (the "BIA").

On August 8, 2018, Madam Justice Romaine disallowed entirely the Appellants first-ranking secured claim in the amount of \$15,058,116.08, which has resulted in an actual loss to the Appellant in excess of \$10,000.00.

In the alternative, if leave to appeal is required, the Appellant seeks leave to appeal pursuant to subsection 193(e) of the BIA.

If necessary, the Appellant will schedule a hearing in respect of the leave issues before this Honourable Court as soon as possible, and if necessary file an Application (the "Leave Application"). An Affidavit in support of the Leave Application will be filed and served as soon as possible.

In the alternative that leave to appeal is necessary:

- a) the point of appeal is of significance to the practice to clarify the case law on (1) whether Rules 7.2 to 7.11 of the *Alberta Rules of Court* regarding Summary Judgment and Summary Trial apply to proceedings under the BIA (2) when secured advances are properly characterized as equity or debt, (3) when section 137 of the BIA is applicable to postpone a secured claim, and (4) whether the doctrine of equitable subordination is law in Canada, and if so, when equitable subordination may be applied to subordinate a secured claim;
- b) the point raised on appeal is of the utmost significance to the Lexin receivership proceedings, as the Appellant is the first ranking senior secured creditor, but for the decision appealed from;
- c) the appeal is *prima facie* meritorious and is not frivolous; and
- d) the appeal will not unduly hinder the progress of the proceedings below.

4. Portion being appealed (Rule 14.12(2)(c)):

Whole.

5. Provide a brief description of the issues:

The procedure implemented by the Court for the litigation and determination of the Appellant's secured claim was unfair and was prejudicial to the Appellant.

Madam Justice Romaine erred in refusing to follow the rule in *Brown v. Dunn*.

Madam Justice Romaine erred in not directing a trial notwithstanding the need for expert evidence, the conflicting evidence before her Ladyship, and the need to access the credibility of the witnesses.

Madam Justice Romaine erred in characterizing the Appellant's secured loan as equity.

Madam Justice Romaine erred in postponing the Appellant's secured loan pursuant to section 137 of the BIA.

6. Provide a brief description of the relief claimed:

An Order reversing the disposition of Madam Justice Romaine and directing the Respondent to accept the Appellant's secured claim in the amount of \$15,058,116.08.

In the alternative, an Order directing a trial of an issue concerning the validity of the Appellant's secured claim.

7. Is this appeal required to be dealt with as a fast track appeal? (Rule 14.14)

No

8. Does this appeal involve the custody, access, parenting or support of a child? (Rule 14.14(2)(b))

No

9. Will an application be made to expedite this appeal?

Yes

10. Is Judicial Dispute Resolution with a view to settlement or crystallization of issues appropriate?
(Rule 14.60)

No

11. Could this matter be decided without oral argument? (Rule 14.32(2))

No

12. Are there any restricted access orders or statutory provisions that affect the privacy of this file?
(Rules 6.29, 14.12(2)(e), 14.83)

Yes, the Appellant's evidence is subject to a non-disclosure order.

13. List respondent(s) or counsel for the respondent(s), with contact information:

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Counsel to the Respondent

If specified constitutional issues are raised, service on the Attorney General is required under s. 24 of the Judicature Act: Rule 14.18(1)(c)(viii).

14. Attachments (check as applicable)

Order or judgment under appeal if available (not reasons for decision) (Rule 14.12(3))

Earlier order of Master, etc. (Rule 14.18(1)(c))

Order granting permission to appeal (Rule 14.12(3)(a))

Copy of any restricted access order (Rule 14.12(2)(e))

If any document is not available, it should be appended to the factum, or included elsewhere in the appeal record.