SUPREME COURT OF YUKON

Citation: *Carlock v. ExxonMobil Canada Holdings ULC,* 2017 YKSC 37

Date: 20170620
S.C. No.: 16-A0193
Registry: Whitehorse

BETWEEN:

CHARLES A. CARLOCK

PETITIONER

AND

EXXONMOBIL CANADA HOLDINGS ULC

RESPONDENT

Before Mr. Justice R.S. Veale

Appearances:
Meagan Hannam — Counsel for the Petitioner and Dennis Travis
Grant Macdonald, Q.C. and Michael Dixon — Counsel for the Respondent

REASONS FOR JUDGMENT

[1] VEALE J. (Oral): This Court approved an arrangement, effective February 22, 2017, where Exxon Mobil acquired all of InterOil Corporation's issued and outstanding shares. Under the terms of the arrangement, shareholders have the right to provide written objections. In fact, 83 written objections representing 263,065 shares beneficially owned by a variety of shareholders were filed. I note, in passing, dissent rights were exercised by less than one percent of InterOil shares.

[2] I want to make it clear that the validity of the exercise of dissent rights by the dissenting shareholders has not yet been determined, which is the reason why we are here today, to set out a schedule for that.

[3] Charles Carlock commenced proceedings on his own behalf on March 17, 2017, as a dissenting shareholder and asked the Court to determine the fair value of InterOil shares.

[4] On March 14, 2017, pursuant to s. 193(7) of the Yukon *Business Corporations Act*, R.S.Y. 2002, c. 20, Exxon Mobil extended an offer to all dissenting shareholders in the amount of $45 U.S. per share, plus participation in the contingent resource agreement on the same terms as non-dissenting shareholders. Approximately 20 of the dissenting shareholders have taken up this offer, which would leave 63 dissenting shareholders who have not accepted this offer.

[5] On May 19, 2017, Exxon Mobil filed its notice of application seeking to join as parties all the dissenting shareholders who have not accepted the offer and also to establish a schedule for the proceeding.

[6] It is clear that no one is taking exception to the joinder application and, in fact, all parties represented at this hearing are consenting to such an order going. I do not think there is any doubt that it is the appropriate order to make. The Court is permitted to give it as a direction under s. 193(12)(a) of the Yukon *Business Corporations Act*. I note that in several other Canadian jurisdictions (Saskatchewan, Manitoba, and Ontario statutes), it is mandatory in their proceedings. However, surprisingly, there are no reported decisions considering this application, so that is the reason that I am giving these oral reasons at this time.

[7] The main purpose of having the joinder application succeed is to avoid a multiplicity of actions, as well as promote the fair and efficient resolution of these proceedings at an efficient cost, in terms of judicial economy as well as the economy of the parties in the proceeding. Such an application, of course, is encouraged under s. 12 of Yukon's *Judicature Act*, R.S.Y. 2002, c. 128, so as to avoid a multiplicity of legal proceedings.

[8] There are two cases that particularly address this issue: *Yukon Energy Corporation v. Chant Construction Company Inc.*, 2007 YKSC 22, a Yukon jurisdiction; and *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63.

[9] Additionally, Rule 1(6) of the *Rules of Court* indicates "the object of these rules is to secure the just, speedy and inexpensive determination of every proceeding on its merits", and that is wholly applicable and should be followed in this particular application.

[10] This is also consistent with recent authority from the Supreme Court of Canada. In particular, I refer to *Hryniak v. Mauldin*, 2014 SCC 7, and *R. v. Jordan*, 2016 SCC 27, although in a criminal context but similarly important in a civil context.

[11] I am therefore ordering that all dissenting shareholders from the court-approved arrangement between InterOil and Exxon Mobil Corporation who have not accepted the offer extended by Exxon Mobil on March 14, 2017, be joined as parties to this petition and be bound by any determination, judgment, or other order of this Court.

[12] Turning to the case management aspect of the application, one of the difficulties that has been presented both to Exxon Mobil and the Court is that there has not been any information provided, regarding the view that the dissenting shareholders and, in

particular, Mr. Carlock wish to put forward. I am very pleased that he has now retained counsel from Toronto, who have been involved in the previous proceedings to assist him in this matter.

[13] Setting out the schedule for proceeding in this matter:

1. Any joined dissenting shareholders who wish to receive copies of the evidence and outlines or take an active role in the proceedings shall file and deliver an appearance in response no later than July 14, 2017.
2. There will be a case conference on August 8, 2017 at 9 a.m. or any future date that may be more convenient for counsel to discuss this proceeding further.
3. On September 18, 2017, the dissenting shareholders shall file and deliver any affidavit evidence and expert reports on which they intend to rely.
4. On November 15, 2017, Exxon Mobil shall file and deliver any affidavit evidence and expert reports on which they intend to rely.
5. There will then be a further case conference in late November or when convenient for counsel and the Court to address the status of the proceeding and the deadlines for any cross-examination that may be required.
6. On December 11, 2017, dissenting shareholders shall file any reply evidence or reports and provide them to the Court. It is the intention that either on the August 8th case management or in the late November case management to set two days for hearing the substantive issues in this matter in either January or February 2018.

7. Counsel are going to attempt to determine those dates as early as possible with the trial coordinator.

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VEALE J.