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# THE SHIFTING LANDSCAPE OF INSOLVENCY

*Redwater and Virginia Hills – What do they  
Mean? What is Next?*

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Thursday, September 26, 2019

Prepared for the 2019 ADOA Conference





# Insolvency Cases

- Municipalities have had to get involved in insolvency proceedings in the last number of years in connection with the collection of municipal property taxes
  - Two major insolvency law cases in Alberta will, and are, having an impact on Municipalities:  
*Redwater and Virginia Hills*



# *Redwater*

- Facts

- Redwater – oil and gas producer that became insolvent and a receiver was appointed by application by Redwater’s principal secured lender, ATB
- Initially, the Receiver found buyers for the most attractive assets and applied to transfer those licences BUT the AER insisted that the liability ratings for the transfers take into account the other assets that had significant remediation obligation.



## *Redwater con't...*

- Facts con't.....
  - SO, the Receiver decided it would only take control of 20 of the 127 Redwater properties licenced by the AER and the remaining properties were disclaimed or renounced.
  - In response, the AER issued closure and abandonment orders in respect of the renounced assets and filed an application to order the receiver to comply with the orders.



## *Redwater con't...*

- Facts con't.....
  - A bankruptcy order was issued and Redwater was bankrupt and the Receiver became the Trustee. It disclaimed the same assets that had been renounced and stated that it would not comply with the orders by the AER to address abandonment, reclamation and remediation responsibilities.
  - Everyone went to Court.



## *Redwater con't...*

- **The Issue**

- If the Trustee was compelled to undertake these responsibilities, it would have to use the assets of the estate (which assets are securing the outstanding amounts owed to the secured creditors and any unsecured creditors). In this way, it would practically give “priority” to the reclamations obligations imposed by the AER over the secured creditors.



## *Redwater con't...*

- **What Happened?**

- The conflict (between the orders and the scheme in the *Bankruptcy and Insolvency Act* that allows trustees to disclaim property) was raised in the bankruptcy proceedings. The Court of Queen's Bench found there was a conflict between the Provincial scheme and the *BIA* – and so the Provincial scheme was inoperative.
- The AER appealed to the Court of Appeal. The Court of Appeal dismissed the appeal.



## *Redwater con't...*

- **What Happened? Con't....**

- The AER sought leave to appeal to the Supreme Court of Canada. Leave was granted.
- The SCC found there was no conflict.
- The majority of the SCC found that the Trustee's disclaiming of the property protected the Trustee from personal liability BUT did not mean that the balance of the estate wasn't potentially available to satisfy the orders.
- The Court found there was no priority issue because the AER's orders were not a claim provable in bankruptcy AND so did not need to comply with the priority scheme in the BIA.





## *Redwater con't...*

- **Impact for Municipalities**

- There is no immediate impact on municipalities except it has created significant issues in the financing of oil and gas operations. This creates greater financial headwinds for the oil and gas sector – which may create issues for municipalities whose tax base also relies on oil and gas operators.



## *Virginia Hills*

- **Facts**

- Virginia Hills was an oil and gas operator in insolvency proceedings. A number of oil and gas assets were being sold in the receivership.
- After the sale and prior to the distribution application, funds had been set aside as suggested by the Justice to deal with outstanding municipal linear tax claims.



## *Virginia Hills con't...*

- **The Issue**

- The question was whether linear taxes constituted a secured claim with priority to the bank.

- **What Happened?**

- An application was set to determine the municipal tax priority issue and distribution of the holdback. The municipalities did not attend and the Receiver argued that linear taxes were not property taxes and were not secured by s. 348
- Three municipalities appealed. Northern Sunrise, the MD of Opportunity and Lamont County.



## *Virginia Hills con't...*

- **What Happened con't...**
- Three municipalities appealed. Northern Sunrise, the MD of Opportunity and Lamont County.
- The Court of Appeal found that linear taxes were unsecured because it would be manifestly unfair to lien property that might not be owned by the party liable to pay the tax.
- They also found the language in the statute (s. 348) wasn't clear enough in terms of what the lien would attach to.
- Leave was sought from the SCC but denied.



## *Virginia Hills con't...*

- **Impact for Municipalities**

- If linear taxes are unsecured, then it is very difficult to collect outstanding linear taxes and corporations in financial trouble have little incentive to pay.
- Arguments that were accepted by the Court of Appeal may be used to avoid the lien in respect of other types of taxes.



## Next Steps

- Review other arguments to collect taxes
- *i.e. Land Titles Act*
- S. 331 MGA
- Lobbying of Government for legislative change
- Municipalities must be active in insolvency proceedings if they want to collect any amounts



## Next Steps con't...

- There are negotiations that are occurring amounts oil and gas firms, receivers and the AER to get clarity on how end of life obligations for oil and gas assets will be dealt with.
- Having a strategy to dealing with oil and gas firms or other industries that may have financial issues in your community is a good idea.
- *Reid-Built* decision and other cases.

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# **Thank You For Your Attention Questions Are Welcome**

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