

THE SURFACE RIGHTS BOARD of MANITOBA

BOARD ORDER

Under The Surface Rights Act – C.C.S.M. c. S235.

Hearing:

Virtual Meeting

ORDER NO: 01-2020

File No: 2020-01

Date Issued: November 25, 2020

BEFORE: Donovan Toews, Presiding Member
June Greggor, Deputy Presiding Member
David King, Member
Rhonda Russell, Member

Linda Rogoski, Board Administrator

BETWEEN:

Applicant Everett Clair Jones
(Landowner)

– AND –

Respondent 1576062 Alberta Ltd.
(Operator)

CONCERNING:

NW19-05-28W in the Province of Manitoba (the well site and surface leases, hereinafter referred to as the “well site”) and an application for Well Licence dated February 15, 2010 from Koors Oil & Gas Ltd. (#7226).

PURPOSE OF HEARING:

To hear and receive evidence regarding an application under Section 21 (1) and Section 37 of The Surface Rights Act for:

- a determination of arrears in annual compensation under an existing Manitoba Surface Lease dated December 30, 2009, between Everett Clair Jones (Lessee) and Koors Oil & Gas Ltd. (Lessor) and referring to LSD12 NW19-05-28W (subsequently acquired by 1576062 Alberta Ltd.);
- for compensation in lieu of performance of the Lessor's obligation to control weeds under the Lease paragraph 5 (d); and
- for compensation for costs related to restoration of the land.

VARIATION OF COMPENSATION

BACKGROUND:

The Applicant applied via application dated, April 17, 2020 with proof of service. The Applicant requested the Board determine the compensation that should be paid in respect of the well site.

On August 17, 2020, the Board forwarded the matter to the parties indicating a hearing on the matter would be scheduled.

On September 3, 2020, the Board received a response from the Respondent stating its position on the matter.

Pursuant to Subsection 25(1) of the Act, a Notice of Hearing was sent to the Parties on September 7, 2020 informing them that the application would be heard at a hearing scheduled for September 21, 2020 via a virtual meeting. A Notice sent September 11, 2020 also informed that the Board would be viewing the well sites on September 16, 2020. On October 5, 2020 a revised Notice of Hearing was forwarded rescheduling the hearing to October 26, 2020.

The subject property was viewed on September 16, 2020 by the parties, together with two Board members, and found to be fully restored and in use as crop land (post harvest) for the 2020 crop year, with the exception of a circular depression (approximately 4 meters in diameter and not more than 2 meters deep containing the well bore), within the confines of the original lease.

Prior to the hearing, there was some question as to whether 1576062 Alberta Ltd. was in fact the correct respondent. The Surface Rights Board traced the activity on the subject lease and found that:

- a) 1576062 Alberta Ltd. was the correct respondent inasmuch as they were determined to be the holder of the well license #7226; and
- b) the surface lease on LSD12 19-05-28W had not been terminated.

ISSUES:

1. Determination of whether the annual compensation payable for the well site is, in fact, outstanding and payable?
2. Determination of whether costs for rehabilitation and maintenance by the Applicant is payable?
3. Is the Applicant entitled to interest on any amounts owing?
4. The amount of Costs, if any, to be awarded?

APPEARANCES:

APPLICANT: Mr. Everett Clair Jones (landowner)

RESPONDENT: Ms. Patricia Jones (1576062 Alberta Ltd.)

EXHIBITS:

- Exhibit #1 Submitted by Everett Jones. Invoice dated September 2, 2020 Total \$32,400.
- Exhibit #2 Submitted by Everett Jones. Invoice dated December 14, 2018 for Land Reclamation Total \$4,593.75.
- Exhibit #3 Submitted by Everett Jones. Receipt, dated December 2, 2018 for \$525 for clean up.
- Exhibit #4 Default notice letter, dated December 8, 2010 from Meighen Haddad LLP on behalf of Everett Jones to Koors Oil and Gas Ltd.
- Exhibit #5 Default notice letter, dated February 2, 2011 from Meighen Haddad LLP on behalf of Everett Jones to Koors Oil and Gas Ltd.
- Exhibit #6 Schedule B - Form of Well Licence Transfer between Koors Oil and Gas Ltd. and 1576062 Alberta Ltd.
- Exhibit #7 Assignment of Surface and Mineral Leases, includes Original Assignment, dated January 30, 2012, and 2nd Assignment, dated June 27, 2012 for License #7226.
- Exhibit #8 Letter from Koors Oil and Gas Ltd. to the Manitoba Petroleum Branch dated February 14, 2012, authorizing transfer of Koors Oil and Gas Ltd.'s total performance bond to 1576062 Alberta Ltd.
- Exhibit #9 Letter, dated Feb. 23, 2012, from the Manitoba Petroleum Branch to Koors Oil and Gas Ltd. re: Outstanding Inactive Well Levies.
- Exhibit #10 December 15, 2010 Bill of Sale. Koors Oil and Gas Ltd. to 1576062 Alberta Ltd.
- Exhibit #11 Letter, dated July 11, 2012, from the Manitoba Petroleum Branch re: Confirmation of Transfer of Well Licence #7226.
- Exhibit #12 Application for Well Licence, Koors Oil and Gas Ltd., dated February 15, 2010.
- Exhibit #13 Letter from 1576062 Alberta Ltd. to Everett and Sandra Jones, dated March 11, 2020.

DECISION:

Upon hearing the evidence and the submissions of the Parties; decision being reserved.

It is the Order of this Board that:

1. Amounts for outstanding lease payments as follows:
 - 2013 - \$2,300.
 - 2014 - \$2,300.
 - 2015 - \$2,300.
 - 2016 - \$2,300.
 - 2017 - \$2,300.
 - 2018 - \$2,300.
2. An amount of \$4,900 for site remediation works undertaken in 2018.
3. An amount of \$3,000 for weed control costs undertaken for each of six seasons from 2013 through 2018, which can be granted in accordance with Section 55(3) of the Act.

4. **Interest:** No interest shall be paid.
5. **Costs:** No costs shall be paid.

REASONS FOR DECISION

The following provides relevant information pertaining to the well sites, which the Board considered when determining compensation payable:

Well Site: LSD12 NW 19-05-28W

Position of the Applicant

The Applicant presented the following arguments in support of their position:

1. Annual rental payments have not been received since 2009 and that he took action on February 2, 2011 to notify the Lessor of default under paragraph 5 (k) of the Lease.
2. Default was not remedied nor did the Applicant terminate the Lease.
3. The Lessor failed to provide weed control as per paragraph 5 (d) of the Lease and as required by Section 55 (1) of the Act, forcing the Applicant to protect his crops by spraying the 3.61 acre lease for weeds approximately three times per year as allowed by Section 55(2) of the Act, for crop years 2010 - 2018 at an estimated cost of \$500/year.
4. Subsequent to issuing the notice of default, the Applicant reported he tried numerous times to contact the Respondent, with mail returned to sender and telephone calls not returned or number invalid.
5. Sometime after 2012, the Applicant learned that the well license had passed to 1576062 Alberta Ltd. from Koors Oil & Gas Ltd. The Applicant confirmed he was not notified of any assignment or change of ownership by the Respondent as required under paragraph 5 (i) and (j) of the Lease.
6. The Applicant took action in December 2018 at his own expense to have the 3.61 acre site restored for his use. Invoices totalling \$4900 were submitted. The Applicant confirmed he is satisfied with the crop yield on the site.

Position of the Respondent

The Respondent presented the following arguments in support of their position:

1. The Surface Lease dated December 30, 2009 was located in the company's archives and she had been unaware it existed.
2. Ms. Jones believed 1576062 Alberta Ltd. had considered the notice of default had terminated the lease but agreed that it was, in fact, still valid.
3. Ms. Jones confirmed that 1576062 Alberta Ltd. was the holder of the well license #7226 for the site located on LSD12 NW 19-05-28W as specified in letter dated July 11, 2012 to the company from Keith Lowden, Director, Petroleum Branch, which letter stated that the well license

transfer, and the acquisition of Koors Oil and Gas Ltd.'s \$60,000 performance deposit and referring to 3.61 acres LSD12 NW19-05-28W, made 1576062 Alberta Ltd. responsible for rehabilitation issues.

4. Ms. Jones stated it was incorrect to refer to 1576062 Alberta Ltd. as Terroco as the two companies were legally distinct and did not share principals.
5. Ms. Jones confirmed the company had no contact with the Applicant until recently and that contact had been facilitated by the Petroleum Branch.

Analysis and Findings of the Board

Upon consideration of the evidence provided the Board offers the following:

1. The Board finds that 1576062 Alberta Ltd. is the well license holder and therefore is responsible for the lease payments from the time the well license transferred until the time that Mr. Jones remediated the land, regardless of the extent to which 1576062 Alberta Ltd. made use of the purchased lease.
2. Mr. Jones made reasonable efforts to communicate with the Respondent over a period of time in order to remedy his concerns without success.
3. The Board does not believe 1576062 Alberta Ltd. should be responsible for payments prior to the time at which they acquired the well license (i.e. before 2013).
4. In 2018, Mr. Jones executed his own solution for the situation by remediating the site at his own expense, at which point he was able to farm the land and indicated that the land was subsequently productive, and therefore the Board does not believe 1576062 Alberta Ltd. should be responsible for lease payments beyond that time.

2. Is the Applicant entitled to interest on any amounts owing?

The Board is of the opinion that the Applicant holds certain responsibility for waiting a long time before bringing the matter to the Board notwithstanding his own efforts to remedy the matter, and therefore no interest shall be paid.

3. The amount of Costs, if any, to be awarded?

The Board is of the opinion that neither party knowingly or intentionally delayed the matter, nor does it appear significant costs were associated with preparing for the hearing, and therefore costs are not awarded.

Decision delivered this 25th of November, 2020.



Donovan Toews,
Presiding Member