

ORDER
[Rule 9.1]

COURT FILE NUMBER 1901-09160
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
PLAINTIFFS STEPHEN FLESCH, MARSHAL THOMPSON, TYLER MAKSYMCHUK, AND REID CHAMBERLAIN
DEFENDANTS APACHE CORPORATION; PARAMOUNT RESOURCES LTD., WILLIAM C. MONTGOMERY, ANNELL R. BAY, DANIEL W. RABUN, RENE R. JOYCE, AND CHARLES J. PITMAN

Clerk's Stamp

Brought under the Class Proceedings Act

DOCUMENT **CERTIFICATION ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT **Koskie Minsky LLP**
900-20 Queen Street West
Toronto, ON M5H 3R3
Attention: David Rosenfeld
Phone: 416-595-2700
drosenfeld@kmlaw.ca

DATE ON WHICH ORDER WAS PRONOUNCED: June 25, 2021
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Mr. Justice G.H. Poelman
LOCATION AT WHICH ORDER WAS MADE: Calgary, Alberta

UPON THE APPLICATION of the Plaintiffs for an order certifying this action as a class proceeding; **AND UPON READING** the affidavits filed by the Plaintiffs and Defendants, the transcripts of the cross-examinations thereon, and the briefs and authorities submitted by the parties; **AND UPON HEARING** the oral submissions of counsel for the parties; **IT IS HEREBY ORDERED THAT:**

1. This action is certified as a class proceeding pursuant to the *Class Proceedings Act*, SA 2003, c C-16.
2. The "**Class**" is defined as follows:

All employees of Apache Canada Ltd. ("**Apache Canada**") as of August 18, 2017 who were then participating in Apache Corporation's Omnibus Compensation Plan and had outstanding Awards as defined in that Plan.
3. The claims asserted on behalf of the Class are breach of contract, breach of duty of good faith, breach of fiduciary duty, and unjust enrichment as set out in the Plaintiffs' Amended Statement of Claim filed September 11, 2019.
4. The relief sought by the Class in this proceeding includes damages, declarations, interest and costs in relation to the claims for breach of contract, breach of trust and fiduciary duty, and unjust enrichment as set out in paragraph 79 of the Plaintiffs' Amended Statement of Claim filed September 11, 2019.
5. Stephen Flesch, Marshal Thomson, Tyler Maksymchuk and Reid Chamberlain are appointed as representative Plaintiffs for the Class.
6. Koskie Minsky LLP, Koskie Glavin Gordon, and Scott Venturo Rudakoff LLP are appointed as counsel for the Class.
7. This proceeding is certified on behalf of the Class in respect of the following common issues:
 - (1) In relation to the sale of the shares of Apache Canada by Apache Corporation ("**Apache**") to Paramount Resources Ltd. ("**Paramount**") which sale closed on August 18, 2017 (the "**Share Acquisition Date**"), what contractual obligations (including good faith) did the Defendants or any of them, jointly or severally, owe to Class members regarding their unvested awards of restricted stock units, stock options and performance awards (collectively "**the Unvested Awards**") issued under the Apache Omnibus Compensation Plan ("**the Plan**") to Class Members prior to the Share Acquisition Date?
 - (2) Were any contractual obligations, as identified in paragraph 7(1) above, breached by the Defendants, or any of them? Are the Defendants, or some of them, jointly or severally liable for any breach of these contractual obligations?

- (3) In relation to Apache's sale of the shares in Apache Canada to Paramount, what fiduciary duties, if any, did William C. Montgomery, Annell R. Bay, Daniel W. Rabun, Rene R. Joyce and Charles J. Pittman (collectively "**the Directors**") owe to Class members under section 13 of the Plan (section 14 of the version of the Plan effective May 12, 2016) regarding the Unvested Awards?
 - (4) Were any fiduciary duties, as identified in paragraph 7(3) above, breached by the Directors?
 - (5) If the Directors are liable for breaching their fiduciary duties, as identified in paragraph 7(4) above, is Apache vicariously liable therefor?
 - (6) With respect to the Plaintiffs' claim of unjust enrichment:
 - (a) Were Apache and Paramount, or either of them, enriched as a result of the Class members' loss of the Unvested Awards?
 - (b) If the answer to paragraph 7(6)(a) is yes, was there a corresponding deprivation to the Class members?
 - (c) If the answers to paragraphs 7(6)(a) and (b) are yes, was there a juristic reason for the enrichment?
 - (7) If liability is found against one or more Defendants, can damages be determined as an aggregate amount, or if not what methodology – including dates for assessment – should be used?
 - (8) Should the Class members be entitled to punitive damages against the Defendants or any of them, and if so, in what amount?
8. The parties may schedule a further appearance to address a litigation plan, notice of certification (including to the two employees who left between the notice of sale and its closing), any restrictions on the Defendants' communications with the class during the notice and opt out period, the Defendants' access to opt out information, and other matters arising out of this Order.
 9. The parties may speak to any claims for costs if they are unable to agree on the same.
 10. This Order may be entered notwithstanding Rule 9.5(2).

11. This Order may be approved in counterpart and via facsimile or electronic transmission.



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APPROVED AS TO FORM AND CONTENT:

KOSKIE MINSKY LLP

McLENNAN ROSS LLP



Handwritten signature in cursive script, enclosed in a rectangular box.

Per: David Rosenfeld
Counsel for the Plaintiffs

Per: D. Robb Beeman
Counsel for Paramount

JENSEN SHAWA SOLOMON DUGUID HAWKES LLP

Per: Andrew Wilson
Counsel for Apache and the Directors

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