

**THE BOARD OF ARBITRATION**

Under The Surface Rights Acquisition and Compensation Act, RSS 1978 c S-65

Hearing No.2598

Hilton Garden Inn  
Saskatoon, Saskatchewan  
January 12, 2018

**BETWEEN:**

**ARMAND AALBERS**

(Occupant & Applicant)

- AND -

**VENTURA RESOURCES INC.**

(Operator & Respondent)

**CONCERNING:**

**NW ¼ of 15-7-1-W2M**

**PURPOSE OF ARBITRATION:**

To hear and receive evidence regarding a damage claim of February 7, 2017.

**APPEARANCES:**

**For the Operator:**

- Murray Douglas, Kanuka Thuringer LLP
- Ray Dee-Herlick, Senior Construction Foreman, Ventura Resources Inc.
- Craig MacDougall, Caltech Surveys

**For the Occupant:**

-Armand Aalbers

**For the Board of Arbitration:**

- James Chairman
- Pat Maloney, Board Member
- Ken McDonald, Board Member
- Gloria Kimber-Jacklin, Board Member
- Linda Benjamin, Board Secretary

**EXHIBITS:**

**Board Exhibits:**

1. Copy of the Notice of Damage Claim dated February 7, 2017
2. Copy of Application on Damage Claim dated June 6, 2017
3. Copy of the Notice of Hearing

**Operator Exhibits:**

1. Exhibit Book
2. GPS –Craig MacDougall Breadcrumb Trail and Speed Chart for January 7, 2017

**Occupant Exhibits:**

1. Affidavit of Brittany Aalbers
2. Affidavit of John Aalbers
3. Aerial Map of Home Quarter with illustrations
4. Picture of Survey Stake and Building
5. Copy of January 7, 2017 invoice to Ventura Resources - damages
6. Text message conversation – January 4, 2017
7. Copy of January 7, 2017 invoice to Ventura Resources – surveying
8. Copy of Email from Craig MacDougall to Jade McLeod – January 7, 2017

**DECISION:**

The Board conducted the hearing based upon the Application of the Occupant under Sections 62 and 63 of the Surface Rights Acquisition and Compensation Act. The Board acknowledges that prior to any award, a burden of proof is placed upon the owner or occupant to submit evidence to identify damage and justify the accusation of trespass. The Board took into consideration Section 64 of the Act whereby an owner or occupant must prove the operator is liable for a tortious act.

The Board further understands that the Occupant has the right to present their argument without representation from legal counsel. While there may appear to be an imbalance due to the Occupant appearing without legal counsel, the Board states by choice the Occupant has proceeded with the Application on his own merit and self-representation.

The Board rules that survey consent was obtained by the Operator for NW 15 -7 -1 W2. The consent obtained does warrant the Operator's employee and/or third-party to fulfill the required work for the survey of the NW 15. As the yard site of the Occupant is located and registered in the NW15, the Board does not recognize any form of trespass as claimed by the Occupant and/or Owner. The Owner did acknowledge a consent to survey

for the NW15 in the evidence presented to the Board by the Operator. This acknowledgement of consent is the evidence listed as Operator Exhibit 1, Tab 5; and Tab 4, cheque to John Aalbers, the Owner. The Owner's processing of the cheque and acceptance of funds for the survey by Operator is also an act of acknowledgement granting the Operator permission to survey.

The Occupant dispute of the surveyor's need to enter the yard site on NW15 is not admissible. In accordance to regulations pertaining to the location of the well site of NW15, and the location of the residence of NW15, the surveyor is required by regulations to determine if the residence falls within a defined distance from the well site. Therefore, the surveyor required access to the yard site to finalize the survey. The Board does not recognize any form of trespass.

The Board does recognize the Occupant and/or witnesses' affidavit claims to a personal threat due to the surveyor's excessive vehicle speed in the yard site. However, this claim is not accepted by the Board due to the evidence presented in Operator's Exhibit No. 2, Fleet Complete Timeline. The factual evidence therein identified an error in the Occupant and the witness of affidavits opinions of surveyor's vehicle speed compared to the actual document speed in the Exhibit. The Board's view is that the speed of surveyor's vehicle was not excessive from the factual evidence presented in Operator Exhibit No. 2.

The Occupant stated while under oath that three seedling trees were damaged by the surveyor's truck. The Occupant did not provide evidence to prove such damage occurred. The Occupant's statement that the driver of the surveyor vehicle drove over the seedling trees was not proven by the Occupant. In the Operator's Exhibit No. 2, Fleet Complete Map of Location, it is evident that the surveyor's vehicle was not parked in the location of the yard as stated in the Occupant's testimony. This factual evidence along with no tangible evidence presented by the Occupant of damage to the trees does call into question whether the trees were in fact damaged by the vehicle, if at all damaged, or was the damage claimed from another unrelated incident.

The derisory picture of damage in Occupant's Exhibit No.4, of the water building is so miniscule to make any form of award. The Occupant did state that wall panels were replaced on the building. Once again, there is no proof of this or any evidence presented

for the Board to acknowledge a related direct cost to the Occupant. The Board recognizes the slight and vague overspray of 'locating paint marker' and finds the damage insufficient to consider a monetary award. The understanding of the Board is the paint used in the field by a survey or utility industries does wash off or dissipates in due time.

The Board's opinion is the illogicalities of the arguments of trespass are ludicrous. Further, the consideration of damages presented is embellished and not admissible due to the lack of evidence presented at the hearing that damages occurred.

The Operator brought forth the ability for the Board to end the Hearing under a Nonsuit application, whereby the Applicant had not proven his case. The ruling of the Board was that the Hearing should continue in fairness for the Occupant to present his argument and the fact that the Occupant is self-representing their case before the Board.

The Board observed contradictions and inconsistencies in the statements between parties during testimony and the affidavits submitted. The Board considers any form of statements made during testimony as valued evidence to support the arguments of both parties surrounding the allegations. The Board placed limited weighting on the affidavits due to the contradictions between the testimony presented and that of the affidavits. The Board's inability to further question the parties of the affidavits restricted an ability to validate the statements to the affidavits and the testimony during the Hearing. Since the Board found that witnesses contradicted their testimony, all parties should take note for future reference, they are under oath, and as such, shall demonstrate personal traits of integrity and respect for the process by upholding truthful testimony under oath.

#### **SUMMARY OF EVIDENCE:**

1. The Applicant and Occupant, Armand Aalbers was sworn in and provided the Board with a summary of the events leading up to the damage claim. He filed Occupant Exhibit Nos. 1, 2 and 3.
2. Occupant Exhibit No. 4 was filed. Mr. Aalbers testified that he and Ray Dee-Herlick had agreed to have the survey of the proposed site on the northwest quarter of 15 to take place on Saturday, January 7, 2017. He stated he was in the yard site that morning helping to load grain for hauling. He further stated at approximately 10:10 a.m.

he drove out to the access road entrance and waited for Ray to come and get him as he was driving an SUV and the snow was deep. He said two trucks were in the field, one being Ray's and one Caltech truck. A snowmobile and quad were out surveying. No one came to get him so he went back to the yard for warmer clothes and boots. He walked part way out to the site from the yard and Ray picked him up and offered him a ride back to the yard. Mr. Aalbers indicated that Ray had said they were done surveying. As they entered the yard site, the two of them stopped to talk to his father Johnny. Mr. Aalbers indicated the surveyor's Caltech truck entered the yard at high speed (he estimated 40-45 kilometers per hour), drove past them and headed to his residence across the front lawn of his house and through his small trees, with his dogs running along side. Armand indicated that he ran after the truck and saw one of the men run around the backside of the house as he approached. His wife was at the door, calling the dogs in and quickly closed the door when she saw someone approaching the house. Armand went to the driver, Craig MacDougall and asked why they were in his yard site. He said that Mr. MacDougall told him very rudely that it was their right to do so. Armand asked them to leave as they did not have permission to be there. When Craig's partner returned to the vehicle they left and Armand went to speak to Ray Dee Herlick, who indicated "they must have needed something". He testified he told Ray that they had no permission to be there and did not want them to enter without permission or talking to him first. Exhibit 5, 6 and 7 were also filed by the Occupant and reviewed during his testimony.

3. In cross examination Mr. Aalbers was questioned about survey permission. He indicated that his grandfather had given survey permission for 14 of 15-7-1-W2M, but was not aware of any permission to enter his yard site on the quarter. The timeline between Mr. Aalber's first contact with Ray Dee-Herlick and the surveying of January 7<sup>th</sup> was reviewed in detail by the Operator's solicitor. Mr. Aalbers was questioned about the depth of snow by the residence and where the trees were planted. Mr. Aalbers was not able to provide any photographs of the tracks over his lawn to the east of the house, nor did he have any photographic evidence of three trees that were damaged. When questioned about the paint on the watershed photograph, Mr. Aalbers indicated he was

not able to remove the paint and had replaced the siding. The Board questioned Mr. Aalbers if he had invoices to file for the cost of replacing and he indicated he did not.

5. At this point, the solicitor for the Operator made application for a Nonsuit as he stated the Occupant had not established a threshold for his evidence and had not proven his case. The Board adjourned briefly and made the decision to continue with the hearing in fairness to the Occupant, to be heard, in the absence of legal representation.

6. The Operator's first witness was Ray dee-Herlick, Senior Construction Foreman. He referred to his typed notes (Tab 7 of Operator Exhibit No. 1) and gave evidence regarding the contact with Mr. Aalbers and the 7<sup>th</sup> of January, 2017 when the survey took place. He stated that he had contacted Armand several times that they were about to survey and then that they were actually surveying, if he wanted to join them. After picking Armand up in the field approximately 45 minutes later he offered to drive him to the yard, after the surveyors drove up and stated that they were done. Once, they entered the yard they visited briefly with Johnny Aalbers (Armand's father) in the driveway. He indicated Armand's dogs were present. Ray stated that the surveyors entered the yard and approached Armand's residence. Armand asked why they were there and Ray replied that they were probably "gonna shoot the yard and house". He said he had indicated to Johnny that they would not hurt the trees but Johnny told Armand that he should let them know where they were located. He testified that Armand ran over to the surveyor's vehicle and spoke with them. The surveyors left the yard and Armand returned to tell Ray that he did not want that particular surveyor in his yard as he had said things about him that had harmed him in at a previous court. He said Johnny Aalbers was not present for this conversation.

7. When questioned, Mr. dee-Herlick said he felt the surveyors were not driving irresponsibly, estimating their speed to be 20 kilometers per hour. He also testified that John Aalbers, the Owner, did not convey any objection to surveying anywhere else on the quarter, but that his main concern was where the access entrance onto the land would be located.

8. Upon cross-examination, Ray indicated that the surveyor (Craig) had said "We're all done here" and that Ray then gave Armand a ride home. He agreed with Armand that the snow was deep in the field. He stated he had often driven into someone's yard

to ask permission to survey and tell them his intentions. When asked why the surveyor's did not knock on the door first, he stated he did not know. He stated that they should have knocked and wanted to further state that the other surveyor did not run around the back of the house.

9. Craig MacDougall of Caltech Surveys, next provided sworn testimony. He said he drove to the area on January 7<sup>th</sup> at approximately 8:30 a.m. to set up and waited at the approach for Mr. Ray dee-Herlick and Armand Aalbers. When Mr. Herlick arrived and attempted to contact Armand, with no results, they started their survey (he and Mike Willard). They staked the wellsite and when completed drove up to Ray's vehicle to indicate they were done. Ray had picked Armand up in the field and was going to drive him back to the yard.

10. Craig indicated that they entered the yard a few minutes behind Mr. dee-Herlick and pulled up to the house, at a normal speed and followed previous tracks to the house, approximately 30-40 feet south of the east door to the residence. His partner, Mike exited the vehicle and went to the corner of the house, while he prepared to go to the door to knock. He testified that Armand came running up and said that they had no permission to be in his yard site. Craig said he told Armand he was allowed to be there to tie in the residence in the survey. He indicated that Armand had told him he "had said some mean things about him" and to leave. His partner Mike came back to the vehicle and they left. They then met Ray at the access road. When questioned, he indicated that Mike did not run to the back of the house and nothing had been said by Armand to them regarding trees. He also indicated that the house door was not open when he approached, only that a woman opened it when Armand met him at the house.

11. Operator Exhibit No. 2 was filed and reviewed at length. This was a GPS speed chart and bread crumb map. He testified that the speed as shown on the chart was 19 kilometers per hour when they entered Mr. Aalbers yard. He also pointed out where they had parked during the residence tie-in.

12. When cross-examined Mr. MacDougall agreed there was deep snow in the field that day as he had broken trail for Ray and that Armand had indeed walked out to the field. He said he was not aware of the paint overspray as he did not spray the stake, but perhaps it had bubbles in it because of the cold weather. He said he did drive into the

yard site of Mr. Aalbers to tie in the house but did not think it would be a problem as they had permission to survey.

13. In closing remarks Mr. Aalbers stated that it appeared Ventura Resources showed no effort to contact prior to doing things and only checked later. He indicated that people from Ventura made it difficult to discuss, settle or negotiate. He felt only LSD 14 was to be surveyed and not his yard site without permission.

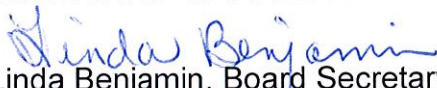
14. In closing remarks the solicitor for the Operator said that permission had been granted for surveying the parcel as a quarter section and that one Owner's consent was to be taken for consent of all. He also said that any claim for another party (Armand's wife) had to be made by that person and that no evidence of tree damage was produced at the hearing. He advised the Board that the paint used by the surveyors was removable and that any claim for damage should represent significant damage before it is submitted to the Board. He said the reason they were present that day was because "Armand Aalbers doesn't like Craig MacDougall".

The above award is unanimously agreed to by the Board Members present namely:

James Wilson, Pat Maloney, Ken McDonald and Gloria Kimber-Jacklin.

**DATED** at the Town of Kindersley, in the Province of Saskatchewan this 19<sup>th</sup> day of January, 2018.

THE BOARD OF ARBITRATION

  
Linda Benjamin, Board Secretary  
For James Wilson, Chairman

TO: Armand Aalbers

TO: Ventura Resources Inc.  
Attention: Murray Douglas