

In the Court of Appeal of Alberta

Citation: Flowers v Persist Oil and Gas Inc, 2026 ABCA 172

Date: 20260522
Docket: 2501-0105AC
Registry: Calgary

Between:

Roy Flowers

Respondent

- and -

Persist Oil and Gas Inc.

Appellant

The Court:

**The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Jolaine Antonio
The Honourable Justice Jane Fagnan**

Memorandum of Judgment

Appeal from the Judgment by
The Honourable Justice C.A. Rickards
Dated the 10th day of March, 2025
Filed on the 18th day of March, 2025
(2025 ABKB 142, Docket: 2101 14998)

Memorandum of Judgment

The Court:

I Introduction

[1] The appellant, Persist Oil and Gas Inc, appeals a chambers judge's decision granting the respondent summary judgment and a permanent injunction preventing the appellant from operating a bitcoin mining operation on lands owned by the respondent.

[2] The appeal is dismissed for the following reasons.

II Background

[3] The surface rights lease which is at the heart of this appeal was originally executed on November 12, 1999. It provides the operator access to a road and a gas compressor site for purposes and uses necessary for the exploration, development and production of hydrocarbons. The term of the lease was for 10 years. It was automatically renewed for a further 10 years from November 12, 2009 until November 12, 2019. It contained no further terms granting an automatic right of renewal.

[4] The appellant acquired the lease in 2018. The lease expired in November 2019. Attempts by the parties to renew the lease have been unsuccessful.

[5] Section 144 of the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 prevents the termination of a surface rights lease until a reclamation certificate is issued. No such certificate has been issued by the Alberta Energy Regulator, and therefore the lease continues to be operable.

[6] The appellant has been operating a natural gas compressor station on the land pursuant to an Alberta Energy Regulator license. The compressor station separates, compresses, and processes natural gas produced in off-site wells. The gas is transported off site for further processing.

[7] In April 2021, the appellant brought two 1-megawatt natural gas generators, computer equipment, shipping containers and other structures onto the land. The appellant began using the natural gas flowing through the compressor station to run a bitcoin mining operation to generate revenue during periods of low natural gas market prices.

[8] On August 30, 2021, the respondent made a formal written demand that the appellant cease the bitcoin mining operation and remove the equipment from the land. The appellant continued to operate the mine. In September 2021, it brought an additional 1-megawatt generator and other

equipment onto the land. Two of the generators were connected to roughly 780 data processors housed in shipping containers on-site. They were operated intermittently at up to 70% of capacity.

[9] The respondent issued a second demand on October 25, 2021, requesting the appellant cease operating the mine and remove the equipment from the land. The appellant refused to do so.

[10] The respondent filed a statement of claim on November 24, 2021, seeking a declaration that the bitcoin mining operation breached the surface rights lease and constituted a trespass and a nuisance. The respondent also sought a permanent injunction and an order for disgorgement of benefits gained by the appellant from the bitcoin mining operation or \$125,000 in the alternative.

[11] The appellant filed a statement of defence on January 26, 2022.

[12] The respondent applied for summary judgment on September 8, 2022. The application was originally scheduled to be heard in morning chambers on October 3, 2022. It was adjourned to a special chambers hearing on November 2, 2023.

[13] On September 26, 2022, the respondent filed an application with the Land and Property Rights Tribunal for a review of compensation under the lease pursuant to s 27 of the *Surface Rights Act*, RSA 2000, c S-24.

[14] On December 20, 2022, the appellant applied to the Land and Property Rights Tribunal for a Right of Entry order. The respondent immediately objected to the application largely on the basis that the appellant was conducting the bitcoin mining operation on the lands in violation of the lease.

[15] On March 20, 2023, the appellant submitted a checklist application to the Alberta Utilities Commission for approval to construct and operate a 2.295-megawatt natural gas-fired power plant.

[16] On April 24, 2023, the Alberta Utilities Commission approved the application.

[17] On April 26, 2023, a Panel of the Land and Property Rights Tribunal granted the appellant a Right of Entry: ***Persist Oil and Gas Inc v Flowers***, 2023 ABLPRT 236. The order provides:

[1] The Operator shall have right of entry in respect of 3.15 acres of the surface of the Land as shown outlined in red on Plan A attached and forming part of this Order for or incidental to the operation of a compressor station as described in Alberta Energy Regulator Licence No. F3655 and to give the operator access to the operator's operations from a public roadway or other public way, and egress from the operations to the public roadway or other public way.

[18] With respect to the respondent's submissions regarding the bitcoin mining operation, the Panel wrote:

[18] The Panel has considered the Landowner's submissions and objection, and finds that addressing the allegation of past bitcoin mining is outside of its jurisdiction. The Application is supported by a valid AER facility license for a compressor station. The Tribunal's order is limited to activities for or incidental to the operation of that facility and access to that facility, and is subject to the requirements of that AER licence.

[19] On November 1, 2023, the appellant successfully applied to adjourn the summary judgment/dismissal applications pending the Tribunal's decisions on the respondent's compensation review application and on the compensation payable pursuant to the Right of Entry order.

[20] On May 31, 2024, the Tribunal rendered its compensation decisions: *Flowers v Persist Oil and Gas Inc*, 2024 ABLPRT 271. It noted the issue of the bitcoin mining operation was the subject of a court action and declined to address that dispute.

[21] Around January 23, 2025, the respondent approached Rocky View County regarding the appellant's bitcoin mining activity. The County advised the respondent that the lands were zoned as "Agricultural, General District" and did not allow bitcoin mining operations.

[22] On February 5, 2025, the County issued a formal notice to the respondent advising him the mine was not in compliance with the County's land use bylaw and that the appellant did not possess the requisite municipal development permit. Two days later, the County issued a bylaw compliance notice requiring the respondent to bring the appellant's bitcoin mining operation into compliance - by applying for a development permit and changing the zoning of the lands - or to cease operating the mine by March 13, 2025. The notice stated that failure to comply may result in enforcement action being commenced against the respondent, and that the permit granted to the appellant by the Alberta Utilities Commission does not satisfy the requirement for a development permit issued by the County.

[23] The applications for summary judgment/dismissal were heard on February 12, 2025.

III Special Chambers Decision

[24] The chambers judge found the bitcoin mining operation was not permitted under the lease. He granted a permanent injunction against the appellant, prohibiting it from operating the bitcoin mine and requiring it to remove associated chattels and fixtures not otherwise used in permitted operations under the surface rights lease and the Right of Entry order. He dismissed the

respondent's claims in trespass and nuisance and for disgorgement: *Flowers v Persist Oil and Gas Inc*, 2025 ABKB 142.

[25] The chambers judge held the words used in the lease must be understood according to their plain and ordinary meaning, unless doing so would result in contractual absurdity, and that courts should resist implying unwritten terms which do not give effect to the plain and ordinary meaning of the contract. He also applied the principle of *ejusdem generis*: where general words follow specific ones, the general words must be confined to the same class or category as the specific words.

[26] The chambers judge concluded the operation of a bitcoin mine was not within the scope of the plain and ordinary meaning of the language used in the surface rights lease, nor was it in the same category as an operation producing "oil, gas, related hydrocarbons or substances produced in association therewith".

[27] In deciding whether a permanent injunction was an appropriate remedy, he determined the claimant had established his legal rights and that an injunction was an appropriate remedy in the circumstances. He found damages were inadequate. Without an injunction, the breach would continue at the appellant's discretion, which would require the respondent to repeatedly return to court seeking additional damages. Moreover, the County was threatening proceedings against the respondent if the bitcoin mining operation continued. He held the appellant's desire to increase its profit was not a sufficient reason to justify breaching the lease.

[28] The appellant questioned the scope of the permanent injunction. In a subsequent ruling on costs, the chambers judge clarified which chattels and fixtures must be removed, and which could remain on the land.

IV Grounds of Appeal

[29] The appellant submits the chambers judge erred in:

1. failing to properly identify and apply the legal principles of contractual interpretation in interpreting the surface rights lease;
2. failing to consider whether the bitcoin mining operation was a permitted use under the right of entry order;
3. considering irrelevant evidence and misapprehending and failing to consider relevant evidence; and
4. misapprehending and misapplying the legal test for a permanent injunction.

V Standard of Review

[30] To the extent a judge's interpretation of a contract involves findings of fact or mixed fact and law, it is reviewed for reasonableness: *Sattva Capital Corp v Creston Moly Corp*, 2014 SCC 53 at para 50; *IFP Technologies (Canada) Inc v EnCana Midstream and Marketing*, 2017 ABCA 157 at para 57. The determination as to whether a contract is ambiguous is reviewed for palpable and overriding error: *Bighorn (Municipal District No. 8) v Bow Valley Waste Management Commission*, 2015 ABCA 127 at para 9. An extricable question of law is reviewed for correctness: *Sattva* at para 53. It is an error of law not to consider the factual matrix in interpreting a contract regardless of whether the contract is ambiguous: *IFP* at paras 58-59 and cases cited therein.

[31] This Court will not interfere with a decision regarding injunctive relief unless there is an error in law or principle, a palpable and overriding error of fact, or the order is unreasonable in the circumstances: *Rutherford Seniors Development Ltd v Manchester Rose Group Inc*, 2026 ABCA 155 at para 8.

VI Analysis

[32] The chambers judge properly focused on the following wording in the surface rights lease:

...to be held by the Lessee as tenant...for any and all purposes and uses as may be necessary for the exploration, development and production of oil, gas, related hydrocarbons or substances produced in association therewith, including the right to lay a pipeline or pipelines, construct and operate a sweet natural gas compressor facility, remediation and reclamation.

[33] The appellant argues that bitcoin mining is necessary in the circumstances to avoid shutting in natural gas production when natural gas prices are low. The appellant reasons that production of electricity comes within the scope of the above wording and it can use the electricity it produces as it sees fit to encourage the continued production of natural gas on the leased premises, in particular through bitcoin mining.

[34] The appellant submits interpretation of contracts in the oil and gas industry requires a specialized approach taking into account the specific intentions and practical realities of the parties and the industry. The appellant says the chambers judge failed to consider broader factors such as the objective intentions of the parties, the surrounding factual matrix, the legislative and regulatory context, the nature of the oil and gas industry, and the commercial realities influencing the interpretation of the surface rights lease and the Right of Entry order.

[35] The appellant asserts that by extracting natural gas, developing it into electricity to power data processors, and producing bitcoin for value, it is acting within the purpose of the surface rights lease. It submits the objective intention of parties to an oil and gas lease is to make a profit, citing *Stewart Estate v TAQA North Ltd*, 2015 ABCA 357 at para 73. Further, it argues mining bitcoin during low-value periods promotes the statutory objective of efficient economic development of resources.

[36] The chambers judge was mindful of the appellant's arguments. He did not err in interpreting the words of the surface rights lease in their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the lease. Given that bitcoin mining only began in 2009, it cannot be inferred that the wording of the lease, which dates back to 1999, was intended to contemplate the use proposed by the appellant. The lease language is certainly broad enough to encompass changes in the industry, such as novel enhanced hydrocarbon recovery techniques or new technology for the separation or compression of gas. But it is limited to purposes *necessary* for the exploration, development and production of hydrocarbons or substances produced in association therewith. The bitcoin mining operation is not an industry improvement or a modification to processes or equipment that is necessary for the exploration, development and production of hydrocarbons.

[37] The appellant argues the chambers judge erred by failing to consider whether the terms of the Right of Entry order superseded or modified the terms of the surface rights lease and he ought to have found the operation was "incidental to" the operation of the compressor station. The chambers judge did not err in choosing not to comment on the Right of Entry order. It has no bearing on whether bitcoin mining is permitted under the lease. The Right of Entry order simply granted the appellant the right to access and operate the compressor station. The Land and Property Rights Tribunal expressly stated it had no jurisdiction to address the bitcoin mining issue. Its order cannot be interpreted as a tacit approval of the bitcoin mining activity as being "incidental" to operating the compressor station. The operations are distinct undertakings, differing in purpose and character.

[38] The appellant submits the chambers judge failed to consider relevant evidence. It says the Alberta Energy Regulator expressly regulates cryptocurrency mining operations which consume produced gas. The appellant asserts that *Directive 007: Volumetric and Infrastructure Requirements* and *Directive 017: Measurement Requirements for Oil and Gas Operations* confirm that cryptocurrency operations fall under the regulator's purview as part of the orderly, efficient, and economic development of hydrocarbons. It argues consideration of these directives would have led to the conclusion that bitcoin mining is a permissible use under the surface rights lease.

[39] Neither directive refers to bitcoin mining or cryptocurrency. Nor was counsel in oral argument able to point to anything in those directives that would suggest the Alberta Energy Regulator views bitcoin mining as being necessary for production of hydrocarbons.

[40] The appellant also cites *Bulletin 2022-12, Request for Information regarding Cryptocurrency Mining Operations Associated with AER-Regulated Activities*. However, that document confirms that the regulator views a cryptocurrency mining operation which consumes gas as a “consumer”, even if the third-party operation is owned or operated by the same entity that produced the gas. The *Bulletin* is not helpful to the appellant’s argument.

[41] The appellant suggests the approval of the AUC checklist application has an impact on the interpretation of the lease. It reasons that the AUC approval necessarily includes the right to consume the generated power. The appellant argues it may “consume” the generated electricity to operate heaters in a trailer, charge laptops and phones, and run refrigeration which may be incidental to operation of the gas compressor station. It submits consumption for bitcoin mining is no different.

[42] The AUC approval does not authorize the appellant to use the electricity generated on the leased premises for any and all purposes, nor to breach a term of the lease. Again, the question is whether the bitcoin mining is necessary for hydrocarbon exploration, development and production.

[43] The appellant argues the chambers judge inappropriately accepted the respondent’s hearsay evidence about the bylaw compliance notice issued by the County at face value, without any evidence directly from the municipality itself. The chambers judge did not rely on that evidence in interpreting the lease. He did rely on it in determining whether an injunction should be granted.

[44] The chambers judge properly identified and applied the test for a permanent injunction. He found the respondent had established the appellant’s operation of a bitcoin mining operation on the leased premises constituted a breach of the lease. His determination that a permanent injunction was appropriate in the circumstances is entitled to deference. The permanent injunction merely ensured the appellant would abide by the terms of the lease. The chambers judge reasonably considered that the appellant might continue the bitcoin mining operation and expand it, as it had done in the past, and that the respondent ran the risk of proceedings by the County. At the special chambers hearing, counsel for the appellant had declined an adjournment to respond to the materials relating to the County. That the ultimate outcome of those proceedings was uncertain did not render the respondent’s concern about the risk of being embroiled in such proceedings an unreasonable or improper consideration.

VII Conclusion

[45] The chambers judge committed no reviewable error in finding the bitcoin mining operation does not fall within the purposes or uses permitted under the surface rights lease. Nor did he err in granting the permanent injunction.

VIII Disposition

[46] The appeal is dismissed.

Appeal heard on May 12, 2026

Memorandum filed at Calgary, Alberta
this 22nd day of May, 2026

Strekaf J.A.

Authorized to sign for: Antonio J.A.

Fagnan J.A.

Appearances:

R. Barata
A. Crang-Semadeni
for the Respondent

A. Gray, KC
E. McCartney
for the Appellant