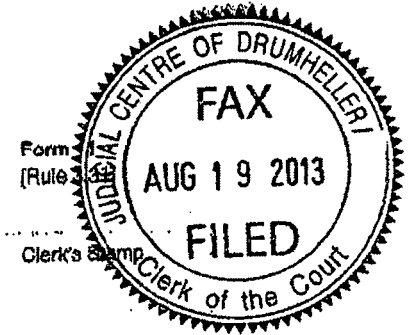


COURT FILE NUMBER 0702-00120
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE DRUMHELLER
PLAINTIFF JESSICA ERNST
DEFENDANTS ENCANA CORPORATION,
ENERGY RESOURCES
CONSERVATION BOARD and
HER MAJESTY THE QUEEN IN
RIGHT OF ALBERTA
DOCUMENT STATEMENT OF DEFENCE
PARTY FILING THIS DOCUMENT ENCANA CORPORATION
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT OSLER, HOSKIN & HARCOURT LLP
Barristers & Solicitors
Suite 2500, 450 - 1st Street SW
Calgary, AB T2P 5H1
Solicitor: Maureen Killoran / Thomas Gelbman
Telephone: (403) 260-7003/7073
Facsimile: (403) 260-7024
Email: mkilloran@osler.com / tgelbman@osler.com
File Number: 1114214



Let this Statement of Defence be filed.
[Signature]
C. J. WITTMANN
AUGUST 17th, 2013

Statement of Facts Relied On:

1. The Defendant, Encana Corporation ("Encana") denies each and every allegation contained in the Fresh Statement of Claim (the "Claim"), filed June 25, 2012, except as may be hereinafter expressly admitted.
2. Encana has no knowledge of paragraphs 27-28, 31-38 and 61-80 of the Claim.
3. Encana agrees that a trial of this action will take more than 25 days.

Overview

4. In answer to the whole Claim, Encana denies that it caused harm to the land described as Plan 9813427, Block 2, located in SE 13-27-22-2WM in Horseshoe Canyon in Wheatland County (the “**Ernst Property**”), or the water well located on the Ernst Property (the “**Ernst Well**”), as alleged or at all.

5. At all material times, Encana complied with or exceeded the requirements of all relevant laws, directives and regulations in respect of its coal bed methane (“**CBM**”) exploration, drilling, stimulation, and production operations in and around the Ernst Property (the “**Operations**”), and took all necessary precautions to protect the Ernst Property and Ernst Well. The Operations were authorized and regulated by the Energy Resources Conservation Board (“**ERCB**”) and Government of Alberta.

6. Encana conducted the Operations safely, diligently, and in accordance with accepted and established industry practice. To the extent that natural gas or related substances have been detected on the Ernst Property or in the Ernst Well, which is denied, such substances occurred naturally or by other causes.

Encana Corporation

7. Encana is incorporated pursuant to the *Canada Business Corporations Act*, with its head office in Calgary, Alberta. It is engaged in the exploration and production of oil, natural gas and natural gas liquids throughout North America.

Coal Bed Methane Development in South-Central Alberta

8. CBM is natural gas contained in porous rock or coal, composed primarily of methane, carbon dioxide and other components derived from coal. Encana has engaged in the development of oil and natural gas assets in south-central Alberta for over 60 years and, over the past seven years, has engaged in CBM extraction in the area, with a focus on the Horseshoe Canyon formation.

Well Development

9. Fresh water and additives are generally used to drill a wellbore during the well development process. These additives, which are subject to government regulations, are mixed with the fresh water to build viscosity, remove calcium, inhibit the reactive clays, maintain pH levels, and coagulate the drill solids.

Well Completion

10. Encana may complete a well using two separate processes. The first is used to extract natural gas from sand formations, using a process called hydraulic fracturing. Hydraulic fracturing is a controlled operation that pumps a mixture of fluids, comprised primarily of water, nitrogen, sand, and a small amount of chemical additives into the wellbore to the target formation at a high pressure. As the mixture is forced through perforations in the wellbore into the surrounding rock, the pressure causes the rock to fracture, allowing the gas to flow through the wellbore to the surface.

11. The second process, called stimulation, is used to extract CBM from coal seams. The coal seams are stimulated by pumping inert nitrogen gas into individual coal seams at a high rate. This stimulation performs two functions: first, it provides a near wellbore access to the natural cleats in the coal seam allowing the CBM to flow from the coal seam to the wellbore. Second, the nitrogen gas injection aids in the flushing of drilling water from the coal seams, allowing them to flow gas more effectively.

The Encana Wells at Issue

12. The Plaintiff's allegations relate to the Operations in respect of two wells: 02/06-04-27-22W4M (the "**06-04 Well**") and 00/05-14-027-22W4M (the "**05-14 Well**") (collectively, the "**Encana Wells**").

13. The 06-04 Well is a vertically drilled natural gas well, with a surface location approximately 6.4 kilometres southwest of the Ernst Property. The 06-04 Well was initiated and completed between July 3 and October 10, 2001. The 06-04 Well was determined to be unproductive, and was abandoned on October 8, 2004.

14. The 05-14 Well is a vertically drilled natural gas well, with a surface location approximately three kilometres southwest of the Ernst Property. The 05-14 Well was initiated and completed on October 13, 2003. The 05-14 Well was determined to be unproductive, and was abandoned on October 10, 2004.

15. Encana states that both Encana Wells were stimulated, but neither was hydraulically fractured.

Allegations of Negligence

16. While Encana owes a general duty of care to the public in carrying out its oil and gas exploration and development activities, Encana states, and the fact is, that due to the extensive distances between the Ernst Well and the surface locations of the Encana Wells, there was no reasonably foreseeable potential for harm to occur to the Plaintiff, the Ernst Property or the Ernst Well, and therefore no duty of care arises with respect to the Plaintiff in the circumstances.

17. Alternatively, if a duty of care does exist, which is denied, Encana did not breach the standard of care it owed to the Plaintiff. At all material times, Encana conducted the Operations safely, diligently, and in accordance with accepted and established oilfield practices. Encana took all necessary and reasonable precautions to, *inter alia*, protect the Ernst Property and Ernst Well from foreseeable harm, including groundwater testing and monitoring before, during and after the Operations.

18. Encana further states that, at all material times, it complied with or exceeded the requirements of all relevant laws, regulations and directives in respect of the Operations. Contrary to the allegations contained in paragraphs 16 and 19(o) of the Claim, at no time was Encana in breach of any groundwater protection legislation or regulations, as alleged or at all.

19. Contrary to paragraphs 19(m) and (n) of the Claim, Encana denies that it was aware of the contamination of the Ernst Well, as alleged or at all. Since becoming aware of the Plaintiff's concerns, Encana has offered to test the Ernst Well on several occasions, but has been unable to obtain access to the Ernst Property and Ernst Well in order to perform such testing.

Allegations of Nuisance

20. Encana denies that it caused or permitted a nuisance on the Ernst Property, as alleged or at all. Specifically, the Operations did not: (a) affect the Plaintiff's use or enjoyment of the Ernst Property or Ernst Well; or (b) result in damages or a significant degree of discomfort to the Plaintiff.

21. In the alternative, if the Operations did affect the Plaintiff's use or enjoyment of the Ernst Property or Ernst Well, which is denied, then such interference was reasonable in the circumstances.

Rylands v. Fletcher

22. Encana denies that the Operations:

- (a) amount to a non-natural use of the land;
- (b) caused, or were likely to cause, the escape of any harmful substances on to the Ernst Property or into the Ernst Well, as alleged or at all; or
- (c) caused damage to the Ernst Property or the Ernst Well.

23. In the alternative, if the Operations did cause damage to the Ernst Property or Ernst Well, which is denied, then such damage was not foreseeable in the circumstances.

24. In the further alternative, if there was damage to the Ernst Property or Ernst Well, which is denied, then the damage occurred as a result of circumstances beyond Encana's control, including naturally occurring migration of natural gas or related substances into the Ernst Well.

Trespass

25. Encana denies that it caused or permitted direct and physical intrusion onto the Ernst Property, as alleged or at all.

26. Encana denies that the Operations caused the migration of natural gas or harmful substances into the Ernst Well or onto the Ernst Property, as alleged or at all.

27. Encana further denies that it caused, deliberately or inadvertently, fractures or cleats that enabled natural gas or harmful substances to enter into the Ernst Well or onto the Ernst Property.

To the extent that any natural gas or other substances migrated into the Ernst Well, it occurred naturally or by other causes.

Encana Denies the Damages Alleged by the Plaintiff

28. Encana denies that the Plaintiff has suffered any loss, harm or damage as alleged or at all, and puts the Plaintiff to the strict proof thereof.

29. In the alternative, if the Plaintiff has suffered any loss, harm or damage, which is denied, then the damages claimed by the Plaintiff are excessive, remote, not recoverable in law, and not caused by the Operations.

30. Encana states that, to the extent the Plaintiff suffered any personal injury, which is denied, any such injuries or problems are unrelated to the Operations and are the result of the pre-existing medical, psychological or other condition of the Plaintiff.

31. Encana denies that the Plaintiff has any cause of action in waiver in tort. In the alternative, Encana denies that the Plaintiff has met the requirements for waiver in tort, or that she is entitled to any other relief under the law of restitution.

32. Encana states that any and all of the Plaintiff's allegations can be explained by the actions or inactions of the Plaintiff in failing to take appropriate steps to construct or maintain the Ernst Well, water supply and handling system including, *inter alia*, maintaining the Ernst Well to standards necessary under the *Water Act* R.S.A. 2000, c.W-3 and corresponding regulations.

33. Encana further states that the Plaintiff had a duty to take reasonable steps to mitigate her alleged damages, and she has failed to take reasonable and adequate steps to do so. Encana pleads and relies upon the provisions of the *Contributory Negligence Act*, R.S.A. 2000, c. C-27.

Remedy Sought:

34. Encana seeks the following relief:

- (a) the Plaintiff's claim be dismissed with costs awarded to Encana; and
- (b) such further and other relief as counsel may advise and this Honourable Court may deem just.