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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re
PATRIOT COAL CORPORATION, *et al.*,
Debtors.

Chapter 11
Case No. 12-12900 (SCC)
Jointly Administered

MAGNUM COAL COMPANY, LLC,
Plaintiff,
v.
ROYALTYCO, LLC,
Defendant.

Adv. Pro. #12-01791 (SCC)

**DEFENDANT'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE,
FOR A MORE DEFINITE STATEMENT**

Pursuant to Fed. R. Civ. P. 12(b)(7) and 19, made applicable here by Fed. R. Bankr. P.
7012 and 7019, RoyaltyCo, LLC ("RoyaltyCo") hereby moves this Court for entry of an order

dismissing this proceeding because Magnum Coal Company LLC (“Plaintiff”) has failed to join parties needed for a just determination of this proceeding. In the alternative, pursuant to Fed. R. Civ. P. 12(e), made applicable here by Fed. R. Bankr. P. 7012, RoyaltyCo seeks entry of an order for a more definite statement. In support hereof, RoyaltyCo states as follows:

BACKGROUND

1. This adversary proceeding was commenced by Plaintiff on August 10, 2012.
2. Pursuant to the Court’s ECF docket, a *Summons and Notice of Pretrial Conference* [ECF No. 3] (the “Summons”) was issued on August 15, 2012. RoyaltyCo was served with the Summons by first class mail on or about August 23, 2012.
3. Pursuant to the Summons, the initial deadline for RoyaltyCo to respond to the Complaint was September 14, 2012. By consent of the parties, that deadline was extended to October 10, 2012.
4. Pursuant to its Complaint, Plaintiff seeks a declaratory judgment that “the Payment Agreements are not integrated with or are severable from any other agreement.” However, although the Complaint refers to various ancillary agreements associated with the transactions contemplated by the Payment Agreements, it fails to identify all ancillary agreements that the Plaintiff seeks this Court to determine are either not integrated or are severable from the Payment Agreements. RoyaltyCo has engaged in a review of its files and has attempted to conduct its own investigation regarding the transactions contemplated by the Payment Agreements, but is unable to ascertain whether it has identified all agreements concerning which the Plaintiff seeks a declaratory judgment. Further, there are parties to the Payment Agreements (as well as the ancillary agreements) which may not have been joined in this proceeding but whose rights the Plaintiff seeks to have adjudicated.

LEGAL ARGUMENT

Dismissal

5. This action should be dismissed pursuant to Fed. R. Civ. P. 12(b)(7) and 19 because the Plaintiff has failed to join necessary parties who will suffer great prejudice by not being joined. A defendant may, in lieu of an answer, assert a defense by motion if such defense pertains to the plaintiff's failure to join a party under Fed. R. Civ. P. 19. *See* Fed. R. Bankr. P. 7012(b); Fed. R. Civ. Proc. 12(b)(7). Rule 19 sets forth a two-prong test to determine whether an action must be dismissed pursuant to a Rule 12(b)(7) motion. First, the court must consider whether a party is "necessary" to an action. *See* Fed. R. Civ. P. 19(a). If the court finds that an additional party's joinder is "necessary," it must then determine whether it should dismiss the action pursuant to the Rule 19(b).

6. Here, the Plaintiff has failed to join the counterparties to the agreements which it seeks to have declared to be either not integrated or severable. Those parties' rights will be impaired or impeded by disposing of this action without their joinder. In the event that those parties are not joined in this action, this action should be dismissed because the lack of joinder is prejudicial to those parties' interests and Plaintiff has an adequate remedy if this proceeding is dismissed for non-joinder, namely filing a new complaint.

More Definite Statement

7. In the alternative, the Court should order Plaintiff to more definitely delineate the agreements which it seeks to have declared as "not integrated or severable." Fed. R. Civ. P. 12(e) provides that a "party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot prepare a response." Here, the Plaintiff has recited to numerous agreements in its

Complaint, but seeks an adjudication that the Payment Agreements are not integrated or severable from “any other agreement,” and not merely those referenced in the Complaint. RoyaltyCo has attempted to delineate what might be encompassed by the vague reference to “any” other agreement but is unable to do so because of the complex nature of the transactions, the fact that the transactions occurred many years ago and the lack of detail provided by Plaintiff. For example, the Payment Agreements themselves reference multiple agreements, including “leases” relating to coal reserves pursuant to which, presumably, the royalty payments due under the Payment Agreements arise. However, there is no information in the Complaint identifying those leases, who the parties to the leases are, or any other information that would permit RoyaltyCo to investigate their status or to determine whether they are integrated with the Payment Agreements. Accordingly, in order to permit it to prepare a proper response to the Complaint, RoyaltyCo requires a more definite statement from Plaintiff regarding what agreements the Plaintiff is seeking to have declared not integrated or severable.

WHEREFORE, RoyaltyCo respectfully requests this Court enter an order:

- (i) Dismissing this proceeding;
- (ii) Alternatively, for a more definite statement; and
- (iii) Granting such other relief as is just and proper.

Respectfully Submitted,

ROYALTYCO, LLC,

By its attorneys,

October 10, 2012

/s/ Christopher J. Panos
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