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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. No. 12-01791 (SCC)

DEBTOR MAGNUM COAL COMPANY LLC'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS, OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT

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STATUTES & RULES

Plaintiff Magnum Coal Company LLC ("**Magnum**"), one of the affiliated debtor entities in the above-captioned chapter 11 case, by and through its undersigned attorneys, respectfully submits this memorandum of law in opposition to RoyaltyCo, LLC's ("**RoyaltyCo**") Motion To Dismiss, Or, In the Alternative, For a More Definite Statement (the "**Motion**").

PRELIMINARY STATEMENT

The Motion has no merit. It should be denied so that the parties can reach a prompt resolution of this action, ideally through a consensual stipulation. As an initial matter, RoyaltyCo appears to concede that the Payment Agreements (as defined in the Complaint) – which solely require Magnum to make certain "overriding royalty" payments to RoyaltyCo – do not constitute an executory contract for purposes of section 365. Accordingly, there can be no dispute that Magnum, as a debtor in possession, is not required under the Bankruptcy Code to continue making the payments to RoyaltyCo.

In an abundance of caution, Magnum filed this declaratory judgment action to confirm that the Payment Agreements are not integrated with any other agreement. Magnum is not aware of any agreement that could be integrated with the Payment Agreements. RoyaltyCo's Motion confirms that it, too, is unaware of any such agreement.

For the reasons explained below, the legal arguments asserted in the Motion are baseless. The Motion should be denied, and RoyaltyCo should be directed to answer the Complaint within 14 days. See Fed. R. Bankr. P. 7012(a). In the meantime, Magnum is willing to work with RoyaltyCo's counsel, as necessary, so that RoyaltyCo can reasonably satisfy itself that there are in fact no agreements that could conceivably be integrated with the Payment Agreements. If the parties agree, this matter can be resolved by stipulation. If RoyaltyCo somehow identifies a contract that it believes to be integrated with the Payment Agreements, that contract can be specified in RoyaltyCo's answer, and the matter can be resolved through a motion for judgment

on the pleadings. In all events, this action should be resolved promptly, without further waste of the parties' or the Court's time and resources.

BACKGROUND

Notwithstanding RoyaltyCo's feigned confusion in the Motion, the facts here are simple and straightforward:

1. The action concerns certain "overriding royalty" payments (the "**Royalty Stream**") that are based on coal mined and sold from certain coal reserves in West Virginia and Illinois. (Compl. ¶ 12.)

2. The Royalty Stream arises out of two agreements entered into in 2003: (i) the Purchase Option Agreement and (ii) the Wildcat Agreement (each defined in, and attached to, the Complaint). (Compl. ¶ 15, Exs. A-B.)

3. Magnum became the payor of the Royalty Stream after acquiring the assets of Trout and Trout II (each defined in the Complaint), which were the original payors of the Royalty Stream. (Compl. ¶ 13.)

4. Christopher Cline was the original beneficiary of the Royalty Stream. (Compl. ¶ 15.)

5. On January 4, 2007, Cline assigned all right, title, and interest in the Royalty Stream to RoyaltyCo in exchange for $19 million. The assignment was effected through the Royalty Contribution Agreement, the Assignment Agreement, and the Assignment and Bill of Sale (all defined in, and attached to, the Complaint). (Compl. ¶ 17, Exs. C-E.)

6. Since January 4, 2007, Magnum has paid the Royalty Stream to RoyaltyCo. (Compl. ¶ 18.)

7. In March 2008, Magnum and RoyaltyCo entered into a Royalty Clarification Agreement (as defined in, and attached to, the Complaint), the purpose of which was to "avoid any confusion regarding the payment terms of the Royalty Stream." (Compl. ¶ 19, Ex. F.)

8. The Royalty Clarification Agreement, the Purchase Option Agreement, and the Wildcat Agreement (together, the "**Payment Agreements**") do not require any performance by RoyaltyCo, which merely collects the Royalty Stream. (Compl. ¶ 20, Exs. A, B, F.)

ARGUMENT

POINT I.

ROYALTYCO'S REQUEST FOR DISMISSAL PURSUANT TO RULE 19 IS BASELESS

RoyaltyCo's motion to dismiss for failure to join required parties under Rule 19(a)(1)(B) is baseless.[1] RoyaltyCo does not – because it cannot – even try to identify any potentially "required" parties. The Motion refers only to unnamed "counterparties" to the agreements attached to the Complaint. (Mot. ¶ 6.) But the only "counterparty" to those agreements that is not related to Magnum is Cline, who assigned his entire interest in the Royalty Stream to RoyaltyCo in 2007 and therefore has no conceivable interest in this litigation.

In short, RoyaltyCo's self-serving and vague assertion that unidentified absent parties are "required" here does not come close to meeting the requirements of Rule 19(a)(1)(B). See ConnTech Dev. Co. v. Univ. of Conn. Educ. Props. Inc., 102 F.3d 677, 683 (2d Cir. 1996) (noting that Rule 19(a)(1)(B) requires that "the absent party claim a legally protected interest relating to the subject matter of the action"); Peregrine Myanmar Ltd. v. Segal, 89 F.3d 41, 49 (2d Cir. 1996) (same).

[1] RoyaltyCo does not – and cannot – argue that any absent parties are required under Rule 19(a)(1)(A), which "is concerned only with those who are already parties." Mastercard Int'l Inc. v. Visa Int'l Service Ass'n, 471 F.3d 377, 385 (2d Cir. 2006). There is no dispute that the Court can "accord complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A).

POINT II.

ROYALTYCO'S REQUEST FOR A MORE DEFINITE STATEMENT IS BASELESS

RoyaltyCo argues in the alternative that a more definite statement is required under Federal Rule of Civil Procedure 12(e) so that Magnum can "more definitely delineate the agreements which it seeks to have declared as 'not integrated or severable.'" (Mot. ¶ 7.)

Rule 12(e) simply does not apply under these circumstances. A motion for a more definite statement is "only granted if the complaint is so unintelligible that the defendant does not know what claims to prepare a defense against." Peek & Cloppenburg KG v. Revue, LLC, 2012 U.S. Dist. LEXIS 140691, at *16 (S.D.N.Y. Sept. 18, 2012). It is not granted "for lack of specificity," or "to correct a lack of detail." Id. The Complaint manifestly provides a "short and plain" statement of relief, which is all that is required under Rule 8(a). See id.; see also Olsson v. Vertis Commcn's & Am. Media, Inc., No. 09 Civ. 5428 (GBD), 2009 U.S. Dist. LEXIS 121632, at *2 (S.D.N.Y. Dec. 29, 2009) (motions for a more definite statement "are appropriate only in limited circumstances").

Indeed, the relief requested in the Complaint could not be more clear. Magnum seeks a declaration that the Payment Agreements are not integrated with any other agreement.[2] The Motion itself demonstrates that RoyaltyCo understands the relief being requested. RoyaltyCo merely professes to be unable to identify any agreements that might be integrated with the Payment Agreements. But that is precisely the point. There are no such agreements.

[2] There is no ambiguity in the word "any." See, e.g., Pina v. Dora Homes, Inc., No. 09-CV-1626 (FB), 2010 U.S. Dist. LEXIS 73941, at *5 (E.D.N.Y. July 22, 2010) (holding there is "no ambiguity" in an insurance policy denying coverage to "any additional insureds"); Worth Constr. Co. v. I.T.R.I. Masonry Corp., No. 98 Civ. 2536 (CM), 2001 U.S. Dist. LEXIS 2144, at *17 (S.D.N.Y. Feb. 21, 2001) (holding there is "no ambiguity" in an agreement to release "any and all" claims).

RoyaltyCo also has this backward. Magnum does not believe that the Payment Agreements are integrated with any other agreements. If Magnum were to list every agreement that it believes is not integrated with the Payment Agreements, as RoyaltyCo suggests, the list would be infinite. If RoyaltyCo disputes Magnum's position, RoyaltyCo can identify in its answer any agreement that it asserts is integrated with the Payment Agreements, and the dispute can be resolved by a motion for judgment on the pleadings.

That said, Magnum is prepared to work with RoyaltyCo's counsel so that RoyaltyCo can reasonably satisfy itself that there are in fact no agreements that RoyaltyCo could conceivably argue are integrated with the Payment Agreements. It should be noted, however, that Magnum and RoyaltyCo entered into the Royalty Clarification Agreement in 2008 to "avoid any confusion regarding the payment terms of the Royalty Stream" (Compl. Ex. F), and the agreement makes perfectly clear that the Payment Agreements constitute a standalone agreement to pay the Royalty Stream, and nothing more.

The Motion should be denied, and RoyaltyCo should be required to answer the Complaint within 14 days, see Fed. R. Bankr. P. 7012(a), so that this action can be resolved promptly either by motion or by consensual stipulation. Both parties have already wasted more time and money than this straightforward matter warrants.

CONCLUSION

For the foregoing reasons, Magnum respectfully requests that the Court deny the Motion.

Dated: New York, New York
October 22, 2012

Respectfully submitted,

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