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In re: PATRIOT COAL CORPORATION, *et al.* Debtors,	Chapter 11 Case No. 12-12900 (SCC) (Jointly Administered)
ROBIN LAND COMPANY, LLC, Plaintiff, v. STB VENTURES, INC., Defendant.	Adv. Pro. No. 12-01793 (SCC)

DEBTOR ROBIN LAND COMPANY, LLC'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

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STATUTES & RULES

Plaintiff Robin Land Company, LLC ("RLC"), 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 STB Ventures, Inc.'s ("STB") Motion to Dismiss for Failure to Join a Party (the "Motion").

PRELIMINARY STATEMENT

This Motion is a waste of time and resources for STB, RLC, and the Court. The Motion itself confirms that STB has no basis to oppose the relief requested in RLC's Complaint for Declaratory Relief ("Complaint"). This action can and should be resolved promptly by a consensual stipulation.

In the Complaint, RLC seeks a declaration that the STB Override Agreement (defined below) is not an executory contract for purposes of section 365 of the Bankruptcy Code and is not integrated with any other agreement. In the Motion, STB does not – and cannot – claim that the STB Override Agreement is executory, because the only performance due under that agreement is RLC's payment of certain "overriding royalty" payments based on coal mined from certain coal reserves. Nor does STB argue that it is party to any agreement that could possibly be integrated with the STB Override Agreement. In short, STB does not appear to dispute the relief requested in the Complaint.

Instead, STB contends that the Complaint should be dismissed pursuant to Rule 12(b)(7) because RLC did not name Ark Land Company ("Ark") and Ark Land KH, Inc. ("ALKH") as required parties under Rule 19. The argument has no legal or factual basis. Ark was the obligor under the STB Override Agreement until December 2005, when Ark assigned the contract to RLC (along with two separate lease agreements to which STB was not a party). STB contends that if the STB Override Agreement is "severed" from the 2005 assignment agreement between Ark and RLC, then Ark will somehow suffer damages and assert claims against RLC. The

argument is a non-sequitur – Ark never received any benefits under the STB Override Agreement, and it assigned all of its obligations under that agreement to RLC in 2005. Ark is now a stranger to the STB Override Agreement.

STB's argument that ALKH is somehow affected is even more convoluted. ALKH is currently the lessor under a lease agreement to which RLC is a party. STB is not a party to that lease. ALKH simply has no connection to the STB Override Agreement.

The Motion has no apparent purpose other than to cause delay, and it should be denied. There is no reason why STB and RLC cannot resolve this action promptly on a consensual basis without wasting any more of the Court's or the parties' time and resources.

BACKGROUND

The Motion confirms that STB and RLC agree on the following facts:

1. STB and others ("Sellers") entered into an Asset Purchase Agreement dated October 31, 1994 with Ark and others ("Purchasers"). (Compl. ¶ 12; Mot. at 3.)

2. Pursuant to the Asset Purchase Agreement, the Sellers agreed to sell, assign, and deliver to the Purchasers certain real property, real property leases, equipment and other assets related to a tract of land located in West Virginia, including STB's leasehold interests in certain coal reserves (the "Guyan Leases"). (Compl. ¶ 13; Mot. at 3-4.)

3. The Purchasers agreed (i) to make a lump sum payment to the Sellers; (ii) to assume the Sellers' obligations under the Guyan Leases, including various liabilities in connection with the assigned properties; and (iii) to have Ark enter into the Overriding Royalty Agreement dated October 31, 1994 ("STB Override Agreement"), which provided that Ark would make ongoing "overriding royalty" payments to STB based on the amount of coal mined from reserves covered by the Guyan Leases. (Compl. ¶¶ 13-15; Mot. at 4.)

4. STB thereafter had no remaining interest in the Guyan Leases, which were assumed by Ark. (Compl. ¶ 14; Mot. at 4.)

5. In separate agreements between Ark and the underlying landowner-lessors, the Guyan Leases were then combined and restated into two leases: the Lawson Heirs Lease and the Kelly Hatfield Lease. (Compl. ¶ 14 n.3; Mot. at 4-5.)

6. STB had no performance obligations under the STB Override Agreement, which simply entitled STB to receive the overriding royalty payments from Ark based on coal mined from certain coal reserves covered by the Lawson Heirs Lease and the Kelly Hatfield Lease. (Compl. ¶ 15; Mot. at 4.)

7. In December 2005, in connection with a purchase and sale transaction between Arch Coal, Inc. ("Arch") and Magnum Coal Company ("Magnum"), Ark (then a subsidiary of Arch) assigned its rights, title, and interest in the Lawson Heirs Lease, the Kelly Hatfield Lease, and the STB Override Agreement to RLC (then a subsidiary of Magnum) (the "2005 Assignment"). (Compl. ¶ 17; Mot. at 5.)

8. Thereafter, STB received the overriding royalty payments under the STB Override Agreement from RLC rather than Ark. STB still had no interest in the Lawson Heirs Lease or the Kelly Hatfield Lease. (Id.)

Given the parties' agreement on the above facts, there is no apparent basis for STB to dispute that the STB Override Agreement is not an executory contract for purposes of section 365 or that it is not integrated with any other agreement.

Nonetheless, STB argues in its motion that an Amended and Restated Partial Assignment and Assumption of Lease between Ark and RLC (and ALKH as Consenting Lessor) dated May

22, 2007 ("2007 Assignment") is somehow relevant.[1] That argument is based on a mischaracterization of the 2007 Assignment.[2]

In all material respects, the 2007 Assignment is no different from the 2005 Assignment. As noted above, pursuant to the 2005 Assignment, Ark assigned to RLC certain rights and obligations under the Lawson Heirs Lease, the Kelly Hatfield Lease, and the STB Override Agreement. The 2007 Assignment simply assigned additional premises covered by the Kelly Hatfield Lease that were not previously assigned under the 2005 Assignment. The 2007 Assignment specifically recites that "[RLC] has requested that [Ark] partially assign further rights and obligations under the Lease to [RLC] relating to a portion of the Premises covered by the Lease." (2007 Assignment at Fourth Whereas Clause (emphasis added).) ALKH, which had succeeded Kelly Hatfield as the lessor under the Kelly Hatfield Lease, was a party to the 2007 Assignment solely to evidence its consent to the additional assignment of the Lease. (2007 Assignment § 2.)

In short, the 2007 Assignment did nothing more than assign from Ark to RLC additional coal reserves under the Kelly Hatfield Lease. RLC agreed to assume Ark's obligations under the Kelly Hatfield Lease with respect to the additional coal reserves. (Id. § 3.) RLC also agreed in the 2007 Assignment to assume any obligations owed to third-party STB under the separate STB Override Agreement (previously assigned under the 2005 Assignment) to the extent that agreement applied to the additional coal reserves being assigned. (Id.)

[1] A copy of the 2007 Assignment is attached as Exhibit B to the Certification of Joseph G. Bunn in Support of STB Ventures, Inc.'s Motion to Dismiss for Robin Land Company, LLC's Failure to Join a Party.

[2] In the Motion, STB defines the 2007 Assignment as the "Amended and Restated Kelly Hatfield Lease" (Mot. at 1), but the agreement is an assignment, not a lease, under which Ark assigned to RLC additional premises covered by the Kelly Hatfield Lease that had not been assigned under the 2005 Assignment.

Indeed, Ark and RLC made crystal clear in the 2007 Assignment that the Kelly Hatfield Lease is separate and distinct from the STB Override Agreement:

> [RLC] hereby assumes, accepts and agrees to perform the duties and obligations of [Ark] contained in or arising under the Lease in accordance with the terms and conditions thereof, and [RLC] also assumes the obligation to pay the "STB Override" as defined and identified in that certain Overriding Royalty Agreement dated October 31, 1994 between [Ark] and STB Ventures, Inc. and as assigned to [RLC] by that certain Assignment and Assumption Agreement dated December 30, 2005 between [Ark] and [RLC] to the extent that the STB Override applies to coal mined from the Assigned Lease Portion of the Premises.

(2007 Assignment § 3 (emphasis added).)

In sum, Ark no longer has any interest in the STB Override Agreement. (ALKH, which is simply a lessor under the Kelly Hatfield Lease, never had any interest in the STB Override Agreement.). As a result of the 2005 Assignment, RLC replaced Ark as the obligor under the STB Override Agreement. STB's contention that Ark will somehow be harmed if the STB Override Agreement is "severed" from the 2005 Assignment (or the 2007 Assignment) is quite simply a non-sequitur. While Ark assigned the STB Override Agreement to RLC pursuant to the 2005 Assignment, that assignment meant that RLC owed obligations to STB – not Ark – under the STB Override Agreement. In any event, as between RLC and STB, there certainly can be no reasonable dispute that the STB Override Agreement is neither executory nor integrated with any other agreement, and a stipulation to that effect should not be delayed simply for delay's sake.

ARGUMENT

POINT I.

ARK AND ALKH ARE NOT REQUIRED PARTIES UNDER RULE 19

STB's contention that Ark and ALKH are required parties under Rule 19 has no merit. As explained in detail below, STB's self-serving attempt to assert interests on behalf of absent

parties is not permitted under Rule 19, and in any event the supposed "interests" of Ark and ALKH do not come close to making them required parties.

A. STB Does Not – And Cannot – Argue That Ark and ALKH Are Required Parties Under Rule 19(a)(1)(A)

As an initial matter, STB does not argue that Ark and ALKH are required parties under Rule 19(a)(1)(A), which requires joinder where "the court cannot accord complete relief among existing parties." Fed. R. Civ. P. 19(a)(1)(A). Nor could it, because Rule 19(a)(1)(A) "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).

Ark and ALKH are not required to accord complete relief between RLC and STB precisely because they are not parties to the STB Override Agreement. See ConnTech Dev. Co. v. Univ. of Conn. Educ. Props. Inc., 102 F.3d 677, 682 (2d Cir. 1996) ("A nonparty to a commercial contract ordinarily is not a necessary party to an adjudication of rights under the contract." (internal quotation marks omitted)); Bastille Props., Inc. v. Hometels of America, Inc., 476 F. Supp. 175, 178 (S.D.N.Y. 1979) (noting that assignors like Ark, by "fully surrendering any interest they may have had in the contract," "have made their presence unnecessary to afford complete relief to the parties").

B. Ark and ALKH Are Not Required Parties Under Rule 19(a)(1)(B)

STB's sole argument is that Ark and ALKH are required parties under Rule 19(a)(1)(B), which requires joinder of a party if:

> (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:
>
> > (i) as a practical matter impair or impede the person's ability to protect the interest; or

> (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Fed. R. Civ. P. 19(a)(1)(B). STB's argument has no merit, because the Rule applies only if "that person" – i.e., the absent party – claims an interest relating to the litigation,[3] and because none of the supposed "interests" identified by STB on behalf of Ark and ALKH satisfy the requirements of the Rule.

1. STB Cannot Assert the Supposed "Interests" of Third Parties

As the very cases cited by STB demonstrate, Rule 19(a)(1)(B) is expressly contingent "upon an initial requirement that the absent party claim a legally protected interest relating to the subject matter of the action." ConnTech, 102 F.3d at 683 (internal quotation marks omitted) (emphasis added); see also Peregrine Myanmar Ltd. v. Segal, 89 F.3d 41, 49 (2d Cir. 1996) (ruling that "[i]t is the absent party that must 'claim an interest'" for Rule 19(a)(1)(B) to apply). Neither Ark nor ALKH – which are not parties to the STB Override Agreement – has claimed an interest in the subject matter of this litigation.

Rule 19(a)(1)(B) is designed specifically to prevent just what happened here: a defendant's "self-serving attempts to assert interests on behalf of [absent parties]." ConnTech, 102 F.3d at 683; see also Cont'l Cas. Co. v. Am. Home Assurance Co., No. 05-7874, 2008 WL 1752231, at *4 (S.D.N.Y. Apr. 14, 2008) ("Defendants' attempt to assert the interests on [the absent party's] behalf is not sufficient to make [the absent party] a necessary party.").

The Motion should be denied on this basis alone.

[3] STB carefully omits this portion of Rule 19 in the Motion. (Mot. at 8.)

2. Even If Ark And ALKH Had Themselves Claimed The Purported "Interests" Identified By STB, They Would Not Be Required Parties

STB argues that if the STB Override Agreement is ruled to be a standalone, fully integrated agreement, then Ark will somehow have a cause of action against RLC for breach of the 2005 Assignment, and ALKH will somehow have a cause of action against RLC for breach of the 2007 Assignment.[4] (Mot. at 9-11.) Neither argument makes sense, and even if correct would not satisfy the requirements of Rule 19(a)(1)(B).

Pursuant to the 2005 Assignment, Ark assigned to RLC all of its obligations under the STB Override Agreement. STB never explains – because it cannot – how Ark could conceivably be harmed if RLC obtains the relief requested in this action. Under the 2007 Assignment, Ark and RLC simply agreed that to the extent the STB Override applied to the additional premises assigned by Ark, RLC had assumed such obligations pursuant to the 2005 Assignment. While STB claims that ALKH would have claims against RLC under the 2007 Assignment, that makes no sense because ALKH was a party to that agreement solely to evidence its consent to the further assignment of the Kelly Hatfield Lease.

Even if, contrary to fact, Ark or ALKH would have a claim against RLC if the relief in this action is granted, that fact would not make Ark or ALKH a required party. The Second Circuit has ruled that "[t]he speculative possibility of future litigation" is not a basis for compulsory joinder. Health-Chem Corp. v. Baker, 915 F.2d 805, 810 (2d Cir. 1990). That is so because "necessary parties under [Rule 19(a)(1)(B)(i)] are only those parties whose ability to protect their interests would be impaired because of that party's absence from the litigation."

[4] STB's argument that Ark or ALKH are necessary because they could provide "information" regarding the dispute is equally unavailing. (Mot. at 9-10.) To the extent either party has information relevant to this action, the information can be obtained through third-party discovery mechanisms, and it does not make that party "required" under Rule 19. See Greenwich Life Settlements, Inc. v. ViaSource Funding Group, LLC, 742 F. Supp. 2d 446, 456 (S.D.N.Y. 2010); see also Johnson v. Smithsonian Inst., 189 F.3d 180, 188-89 (2d Cir. 1999), aff'd 4 Fed. App'x 69, 2001 U.S. App. LEXIS 2521 (2d Cir. 2001).

Mastercard, 471 F.3d at 387 (emphasis in original). Accordingly, it is not enough "for a third party to have an interest, even a very strong interest, in the litigation. Nor is it enough for a third party to be adversely affected by the outcome of the litigation." Id.; see also id. at 388 ("Whether Visa is or is not a party in the underlying lawsuit, FIFA and Visa will litigate their dispute under their contract later on down the road if MasterCard prevails here." (emphasis in original)).

Accordingly, Ark and ALKH are not required parties under Rule 19(a), and the Motion should be denied.[5] STB should be directed to answer the complaint so that this action can be resolved promptly by motion or stipulation based on the undisputed facts.

[5] The Court need not reach the issue of dismissal under Rule 19(b), as STB suggests (Mot. at 11-12). See Viacom Int'l, Inc. v. Kearney, 212 F.3d 721, 724 (2d Cir. 2000) ("If a party does not qualify as necessary under Rule 19(a), then the court need not decide whether its absence warrants dismissal under Rule 19(b).").

CONCLUSION

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

Dated: New York, New York
October 22, 2012

Respectfully submitted,

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