UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In re Patriot Coal Corporation, *et al.*, Debtors.	Chapter 11 Case No. 12-51502-659 (Jointly Administered)
Robin Land Company, LLC, Plaintiff, v. STB Ventures, Inc., *et al.*, Defendant.	Adv. Proc. No. 12-04355-659 **Responses Due: March 19, 2013** **Hearing Date: March 19, 2013** **Hearing Time: 10:00 a.m.** **Location: Courtroom 7-North**

EMERGENCY MOTION OF ARCH COAL, INC., ARK LAND COMPANY AND ARK LAND KH, INC. TO DISMISS PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS AS PREMATURE AND IN VIOLATION OF FEDERAL RULE 12 (C) AS THE PLEADINGS ARE NOT CLOSED

Defendants Arch Coal, Inc., Ark Land Company and Ark Land KH, Inc. (collectively, "Arch"), by and through their attorneys Cleary Gottlieb Steen & Hamilton LLP and Lewis Rice & Fingersh, L.C., respectfully move this Court for entry of an order pursuant to section 105(a) of title 11 of the United States Code (the "Bankruptcy Code"), Rule 12(c) of the Federal Rules of Civil Procedure (the "Federal Rules"), made applicable to this proceeding pursuant to Rule 7012 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), Bankruptcy Rule 9006

and L.R.s 9006 and 9013-2 of the Local Rules of the Bankruptcy Court for the Eastern District of Missouri (i) dismissing the Motion for Judgment on the Pleadings And to Dismiss Defendants' Counterclaims [D.I. 36] (the "Motion for Judgment on the Pleadings") filed by Robin Land Company, LLC (the "Debtor" or "Robin Land") as premature and in violation of Federal Rule 12(c), and (ii) staying the obligation of Arch to respond to such motion on the merits pending this Court's decision on such dismissal (the "Motion to Dismiss").

Preliminary Statement

1. Debtor's Motion for Judgment on the Pleadings violates the most central requirement of Federal Rule 12 (c) – a motion for judgment on the pleadings may only be made "[a]fter the pleadings are closed." Yet, the Debtor has brought its Motion for Judgment on the Pleadings prior to answering the counterclaims that have been brought against it, such that, as a matter of law, the pleadings remain open.

2. Having impermissibly filed its Motion for Judgment on the Pleadings prematurely, the Debtor has placed Arch in the untenable position of having a looming response date of March 25, 2013 for their opposition papers to the Debtor's premature and improper motion and an inability to respond due to the facially improper nature of Debtor's motion and the incomplete record from which Arch would have to respond. In light of the improper nature of Debtor's motion, Arch requested that the Debtor withdraw its motion for the reasons stated herein (including providing the Debtor with the operative case law). Despite the clear law, the Debtor has refused. Accordingly, Arch seeks emergency relief to prevent undue prejudice to it and requests that the Court dismiss the Debtor's Motion for Judgment on the Pleadings as premature and in violation of Federal Rule 12(c) and grant a stay of Arch's obligation to respond to the Debtor's motion while this Court's decision is pending.

Procedural History

3. On August 10, 2012 the Debtor filed its Complaint for Declaratory Relief [D.I. 1] (the "Complaint") naming only STB Ventures, Inc. ("STB") as a defendant. Arch filed the Motion of Arch Coal Inc., Ark Land Company and Ark Land KH, Inc. To Intervene As Defendants [D.I. 15] on November 28, 2012. In response the parties negotiated the Stipulation And Agreed Order Allowing Arch Coal, Inc., Ark Land Company And Ark Land KH, Inc. To Intervene As Defendants, Withdrawing And Denying The Motion To Dismiss Of STB Ventures, Inc., Scheduling Remaining Pleadings And Scheduling Plaintiff's Motion For Judgment On The Pleadings [D.I. 27], which this Court so ordered on February 4, 2013 (the "Stipulation and Agreed Order").

4. The Stipulation and Agreed Order, inter alia, permitted Arch to intervene, and set forth a schedule for the parties to respond to the Complaint and any counterclaims brought by any party.[1]

5. The Stipulation and Agreed Order also stated that "Plaintiff intends to file a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c)", Stipulation and Agreed Order, Sixth Whereas Clause, and noted that, should Robin Land file such a motion in compliance with Federal Rule 12 (c), the schedule for submitting pleadings with respect to such motion set forth in the Stipulation and Agreed Order would be followed. Finally, the Stipulation and Agreed Order stated that "the parties will coordinate with the Court to schedule a date for a hearing on Plaintiff's Motion." Stipulation and Agreed Order ¶ 6.[2]

[1] Notably, the Stipulation and Agreed Order was silent as to any pleading schedule for motions to dismiss counterclaims.

[2] Despite this express term of the Stipulation and Agreed Order, the Debtor unilaterally scheduled the hearing on its motion without consulting with Arch.

6. As provided in the Stipulation and Agreed Order, Arch and STB filed their respective Answers to the Complaint on February 19, 2013 [D.I.s 32 and 33]. Both Answers asserted multiple counterclaims.

7. On March 4, 2013, without answering either Arch's or STB's counterclaims, Plaintiff filed their Motion for Judgment on the Pleadings.

8. On March 14, 2013, counsel for Arch contacted counsel for the Debtor and alerted counsel of the facially improper nature of Debtor's motion and asked counsel to withdraw it, so as to avoid Arch having to burden the Court with this Motion. The Debtor, despite being provided black letter law supporting Arch's position, refused, and refused to consent to Arch proceeding with this Motion to Dismiss on an expedited basis.

Argument

I. Robin Land's Motion for Judgment on the Pleadings Should be Dismissed as Premature and in Violation of Federal Rule of Civil Procedure 12(c) as the Pleadings are Not Closed.

9. The pleadings in this case remain open pending either the Debtor's answering of STB's and Arch's counterclaims or the dismissal of those counterclaims. It is black letter law that a party may move for judgment on the pleadings under Federal Rule 12(c) only "[a]fter the pleadings are closed" (emphasis added). Fed. R. Civ. P. 12(c). Where, as here, Arch and STB have asserted counterclaims against the Debtor, the law is clear that the pleadings are not "closed" for purposes of Rule 12(c) until the plaintiff answers such counterclaims. In State Farm Fire and Cas. Co. v. Spradling Home Inspections, LLC, No. 4:10-CV-01887NAB, 2011 WL 4056042, (E.D. Mo. Sept. 13, 2011), the Court, faced with the identical facts of a plaintiff having filed a motion for judgment on the pleadings despite having filed a motion to dismiss as opposed to an answer to the counterclaims brought by the defendant, stated:

> [A] Rule 12 motion is not a pleading and it does not, unless granted, dispose of a party's obligation to file an answer to a counterclaim. Therefore, as long as a Rule 12 motion is pending as to a counterclaim, pleadings are not considered closed because a party, against whom a counterclaim is asserted, must file an answer to the counterclaim if the Rule 12 motion is denied. . . . This view is in line with the position of federal courts across the country that have addressed this issue. . . . A Rule 12(c) motion for judgment on the pleadings can only be filed "[a]fter the pleadings are closed[.]" Since, as plaintiff acknowledges, the pleadings are not closed in this case (because Defendant filed a counterclaim and Plaintiff never answered the counterclaim), the parties' Rule 12(c) motions were improperly filed.

Id. at *2-*3 (citations omitted). See also Doe v. U.S., 419 F.3d 1058, 1061-62 (9th Cir. 2005) (stating that the district court should have denied a motion for judgment on the pleadings filed before the defendant filed their answer); Edelman v. Locker, 6 F.R.D. 272, 274-75 (E.D. Pa. 1946) (denying a motion for judgment on the pleadings for reasons including that replies had not been filed with respect to counterclaims); 5C Wright & Miller Federal Practice and Procedure § 1367 ("Rule 7(a) provides that the pleadings are closed upon the filing of a complaint and an answer (absent a court-ordered reply), unless a counterclaim, cross-claim, or third-party claim is interposed, in which event the filing of a reply to a counterclaim, cross-claim or third-party answer normally will mark the close of the pleadings."); cf. Curry v. Pyramid Life Insurance Co., 271 F. 2d 1, 5-6 (8th Cir. 1959) (citing Edelman for the proposition that the pleadings remained open for Federal Rule 38 purposes until a reply was filed with respect to counterclaims). Absent a closure of the pleadings, a motion for judgment on the pleadings is per se improper and should be dismissed. See, e.g., State Farm Fire and Cas. Co. v. Spradling Home Inspections, LLC, 2011 WL 4056042 at *2-*3.[3]

[3] Arch notes that the 2007 stylistic amendments to Federal Rule of Civil Procedure 7 do not affect whether an answer to a counterclaim is a required pleading. The Advisory Committee notes given in connection with such amendments state that "[t]he language of Rule 7 has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These

10. The fact that the Debtor has styled its motion as a "Motion for Judgment on the Pleadings and Motion to Dismiss Defendants' Counterclaims" in no way alters the improper nature of its premature filing. A motion to dismiss pursuant to Fed. R. Civ. P.12(b) does not constitute a responsive pleading to a counterclaim and accordingly cannot close the pleadings for purposes of Federal Rule 12(c). See e.g., State Farm Fire and Cas. Co. v. Spradling Home Inspections, LLC, 2011 WL 4056042 at *2-*3 ("[A] Rule 12 motion is not a pleading and it does not, unless granted, dispose of a party's obligation to file an answer to a counterclaim."); Trinity Hospice, Inc. v. Miles, No. 04:06-CV-1674, 2006 WL 3825287 at *1 (E.D. Mo. Dec. 27, 2006) ("A motion to dismiss is not a pleading").

11. Similarly, the fact that the Stipulation and Agreed Order set forth a briefing schedule if the Debtor chose to file a motion for judgment on the pleadings pursuant to Rule 12(c) is inapposite to the Debtor's obligation to comply with Rule 12(c). In fact, the Stipulation and Agreed Order specifically states that the Debtor "intends to file a motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c)" (emphasis added) and that its right to file such a motion is "under Federal Rule of Civil Procedure 12(c)." Stipulation and Agreed Order Sixth Whereas Clause, ¶ 6.

12. The Debtor is not entitled to file its Motion for Judgment on the Pleadings until the record is closed, which it is not, and nothing excuses the Debtor from complying with the rules as written. Accordingly, the Debtor's Motion for Judgment on the Pleadings should be dismissed.[4]

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changes are intended to be stylistic only." Courts in this District applying the amended language of Federal Rule 7 have held that the pleadings are not closed for purposes of Federal Rule 12(c) until counterclaims are answered. See State Farm Fire and Cas. Co. v. Spradling Home Inspections, LLC, 2011 WL 4056042 at *2-*3.

[4] To the extent that the Debtor intends to avoid the implication of its improper Federal Rule 12(c) motion by arguing that it should be treated as a summary judgment motion pursuant to Federal Rule of Civil Procedure 56, its Motion for Judgment on the Pleadings should fare no better. First, having not even answered the counterclaims, the

II. Arch Should Not Be Forced to Respond to the Merits of the Debtor's Facially Improper Motion for Judgment on the Pleadings.

13. With the pleadings still open in this case, not only is Debtor's motion facially improper, but requiring Arch to respond to it, while the pleadings remain open pursuant to the pleadings schedule set forth for a motion for judgment on the pleadings contemplated to be filed in compliance with Federal Rule 12(c), would be highly prejudicial.

14. First, Arch would be forced to file an opposition that may never be necessary. Until the Debtor answers Arch's and STB's counterclaims, or should the Debtor elect to move to dismiss the counterclaims and those claims are dismissed, thus closing the pleadings, the Debtor cannot know whether it will still believe that it has a meritorious motion for judgment on the pleadings that it will wish to file, and if it does, what that motion will say in light of the complete record. Arch should not be forced to expend further resources responding to a motion that cannot be granted on its face and that may never have to be litigated.

15. Second, even if the Debtor's motion is not facially improper, which it is, and the Debtor insists that it would not change a word of it regardless of what the remainder of the pleadings state, Arch would still be prejudiced by having to respond to the motion without the benefit of the complete record from which to respond.

16. Accordingly, given that the Debtor has noticed Arch's Opposition for March 25, 2013, Arch's obligation to respond to the Debtor's Motion for Judgment on the Pleadings on the merits should be stayed pending the Court's decision on this Motion. Given this impending

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Debtor would be asking the Court to grant summary judgment based only on the Debtor's allegations of the facts, which is patently improper. Second, summary judgment is only proper where the non-movant has had adequate time for discovery. See Iverson v. Johnson Gas Appliance Co., 172 F. 3d 524, 530 (8th Cir. 1999) (noting "summary judgment is proper 'only after the nonmovant has had adequate time for discovery'") (citing In re TMJ Litigation, 113 F.3d 1484, 1490 (8th Cir. 1997)). Here, the Debtor has not responded to any of the discovery posed to it by STB, and Arch has not yet been able to conduct discovery, as it was presented with the Debtor's improper Motion for Judgment on the Pleadings the day that Arch expected an answer to its counterclaims. Third, granting a Federal Rule 56 motion is only proper where there is no disputed issue of material fact. Simply reading the Debtor's Complaint and Arch's and STB's counterclaims makes clear that there are plainly disputed issues of material fact.

deadline, Arch requests that its Motion to Dismiss be docketed for the March 19, 2013 Omnibus hearing, so that it may be considered prior to the noticed date of Arch's opposition. The right to grant such a stay[5] is within the inherent power of the Court to manage its docket and to dismiss facially improper motions.[6]

17. To the extent that the Debtor intended Point III of its Motion for Judgment on the Pleadings (set forth in total on pages 19-21 of such motion) to be severable from the consideration of its Federal Rule 12(c) motion—a position that is not apparent to Arch, not least of which because it is inconsistent with Debtor's position that it need not withdraw its motion—pursuant to L.R. 9013-2 B. the time for Arch to respond to such motion is seven (7) days prior to the hearing date. As noted above, nothing in the Stipulation and Agreed Order addressed, much less altered, the timing for a motion to dismiss. Accordingly, should the Debtor wish to proceed with Point III of its Motion for Judgment on the Pleadings as a distinct motion to dismiss, Arch will file its opposition by April 16, 2013.[7]

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[5] See Landis v. N. Am. Co., 299 U.S. 248, 254 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants."); Webb v. Rowland & Co., 800 F.2d 803, 808 (8th Cir. 1986) (A court "has the inherent power to grant a stay in order to control its docket, conserve judicial resources, and provide for a just determination of the cases pending before it."); City of Sterling Heights General Employees' Retirement System v. Hospira, Inc., No. 11 C 8332, 2013 U.S. Dist. LEXIS 19156 at *33 (N.D. Ill. Feb. 13, 2013) (noting that courts have the "inherent power to strike impermissible filings").

[6] Such a stay would also be consistent with Bankruptcy Rule 9006 and L.R. 9006, each of which contemplate the extension of time to comply with Court-ordered deadlines. If the Stipulation and Agreed Order applies to the Motion for Judgment on the Pleadings, and Arch does not believe that it does given the lack of compliance with Federal Rule 12(c), Arch's responses to the Motion for Judgment on the Pleadings is due on March 25, 2013, which date has not passed. Arch respectfully submits that the arguments raised above constitute "cause" under Bankruptcy Rule 9006(b).

[7] Should the Court grant this Motion and dismiss the Motion for Judgment on the Pleadings, if the Debtor should then elect to move to dismiss Arch's and STB's counterclaims as opposed to answering them, Arch is available to discuss with the Debtor a mutually agreeable briefing schedule for such a motion.

III. Expedited Relief is Appropriate.

18. For the reasons set forth above, Arch believes that it has shown "cause" under Bankruptcy Rule 9006(c) and that expedited relief is appropriate pursuant to L.R. 9013-2 A. Arch respectfully requests that this Motion be heard at the upcoming omnibus hearing in these jointly administered chapter 11 cases scheduled for March 19, 2013 at 10:00 a.m. C.S.T.

CONCLUSION

Arch respectfully requests that the Court grant this Motion to Dismiss and dismiss the Motion for Judgment on the Pleadings and stay Arch's obligation to respond to the Motion for Judgment on the Pleadings on the merits pending this Court's decision on the Motion to Dismiss.

Dated: New York, New York
March 15, 2013

Respectfully submitted,

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