Docket #1870 Date Filed: 3/24/2021

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11
EXTRACTION OIL & GAS, INC., et al,	Case No. 20-11548(CSS)
Reorganized Debtors.	824 Market Street Wilmington, Delaware 19801
	Tuesday, March 23, 2021
ANNETTE LEAZER, et al,	Adv. Proc. No. 20-50963(CSS)
vs.	
EXTRACTION OIL & GAS, INC., et al.	

TRANSCRIPT OF ZOOM HEARING
BEFORE THE HONORABLE CHRISTOPHER S. SONTCHI
CHIEF UNITED STATES BANKRUPTCY JUDGE

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Also Appearing:	Walt Stoddard, *Pro Se* Ana Lucia Hurtado REORG RESEARCH, INC.

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(Proceedings commence at 10:00 a.m.)

THE COURT: Good morning, everyone. This is Judge Sontchi. We're here for the Extraction Oil omnibus hearing.

I'll turn it over to the reorganized debtor.

MR. GERALD: Good morning, Your Honor. Steve Gerald on behalf of the reorganized debtors.

Your Honor, we filed an amended agenda at Docket 1863, which notes that all of the matters that were previously scheduled for today have been resolved, other than the pretrial in the Leazer adversary proceeding.

I guess, before I turn it over to Mr. Young from Kirkland, I do see Mr. Stoddard on Zoom, whose claim was subject to the fifth omnibus objection. And pursuant to emails that Mr. Stoddard had with Mr. Riley from my office, Mr. Stoddard had indicated that he was no longer disputing the objection to his claim, and so we noted as much in the certification of counsel. The order has been entered regarding his claim.

But I think he's on, so we'll give him an opportunity to speak to Your Honor if he chooses to do so.

THE COURT: All right. Mr. Stoddard, do you wish to have -- do you have anything to say? You are muted, sir.

(No verbal response)

THE COURT: You're on mute, sir. Mr. Stoddard, you're on mute. I can't hear you, you're on mute. There you

go. No, you did it -- you turned it on mute again, sir. Sir, you ...

(Pause in proceedings)

THE COURT: Okay. I didn't hear a word you said because you're on mute. I can't hear you. You have to unmute your Zoom.

MR. STODDARD: Okay. Can you hear me now?

THE COURT: Yes, sir. You have to start all over. I didn't hear a word.

MR. STODDARD: All right. I'm sorry.

So, anyway, from my understanding -- can you still hear me?

THE COURT: Yes.

MR. STODDARD: Great. So my understanding is that I just had a misunderstanding of what the objection was. And so, so long as I'm going to be paid royalties in the future, however small they are, I really don't have an objection to this. I just had a misunderstanding for it. And consistent with the email that I received and traded with Stephen, you know, I'm fine just to -- you know, withdrawing the claim, so ...

THE COURT: Okay. Yeah, that's not unusual, that happens all the time. If you're not -- if you're not -- you know, if you don't do this for a living, just like if I tried to do what you do for a living, I'm sure it would be a

disaster. If you don't do this for a living, it can be very confusing, no matter how educated you are.

MR. STODDARD: (Indiscernible)

THE COURT: So not a problem, not a problem.

MR. STODDARD: All right.

THE COURT: Okay.

MR. STODDARD: Is there any reason for me to be involved in this any longer then?

THE COURT: Unless you've got nothing better to do, you're free to go.

MR. STODDARD: Okay. Thank you.

THE COURT: You're welcome. Bye-bye.

MR. STODDARD: Bye.

THE COURT: All right, Mr. Gerald.

MR. GERALD: Your Honor, I would turn it over to Mr. Young.

THE COURT: Okay. Mr. Young?

MR. YOUNG: Good morning, Your Honor. Kenneth Young, Kirkland & Ellis, for the reorganized debtors.

As a way of quick update on the adversary proceeding, as the Court is aware the Leazer adversary has been brought by a number of royalty owners, relating to a number of claims about the underpayment of the royalties. There are currently in the adversary two motions that have been filed by Extraction:

The first is a motion to dismiss under 12(b)(6), which covers some of the claims. That motion has been fully briefed.

The second motion is a motion to dismiss for lack of subject matter jurisdiction, and that was filed -- that covers all of the claims in the adversary. That was filed on March 16th, and the briefing on that motion should be completed around April 6th.

And today, because of the two motions to dismiss that are pending cover all of the claims in the case, including one related to subject matter jurisdiction, it's our position that entry of a scheduling order at this time would be premature. We would prefer to allow the Court to have time to consider and rule on the motions to dismiss , at which point the parties will know which, if any, of the claims will be proceeding in the case, at which point the parties can negotiate in good faith, knowing the claims at issue, to come up with an agreed scheduling order that we could hopefully submit to the Court as a joint proposed scheduling order.

It's my understanding that counsel for the plaintiffs disagree and wanted to go forward with this conference with the Court to discuss the matter.

THE COURT: Ms. Sawczuk?

MS. SAWCZUK: Good morning, Your Honor. Maria

Sawczuk on behalf of the royalty claimants.

Your Honor, while normally I would agree with Mr. Young's determination that, because there are motions to dismiss pending, a scheduling order should not be entered, in this case it's a little -- I'm struggling. And I'll -- and if Your Honor would give me about three minutes to explain what's happened in this case.

We filed the complaint in, I think late October, early November. And debtors immediately reached out and said can we discuss this, we'd like to, you know, have an opportunity to maybe resolve this without litigation. So, of course, we were open to that. We exchanged a few documents, we've asked for many more. We've been stalled. Mr. Young has said, you know, I'll talk to my client, I'll get back to you, and then we don't hear anything. And eventually, we set an answer deadline, and Mr. Young and the debtors filed the original motion to dismiss.

We responded to the original motion to dismiss by filing an amended complaint in January, but apparently, that, according to the debtors, did not resolve the issues, and a second motion to dismiss was filed in February, early February. That motion to dismiss has been fully briefed and we have requested an oral argument, and I believe that's in front of Your Honor for a decision.

On February 17th, I let counsel know that we wanted

to proceed with this pretrial, which originally was scheduled for February 24th, and that I wanted to get a scheduling order in place to deal with the counts that were not included in the motion to dismiss, and I believe there were three of them that were not included. So, even if he was successful on all of the motions to dismiss, there would still be three counts out there that would need to be resolved, and we wanted to get started on discovery with respect to those three counts.

The following day, Mr. Young reached out and said that he was in, I think Houston, if I'm not mistaken, but somewhere in Texas and was involved in that historical storm that knocked out power in Texas, and asked if we could continue the schedule -- the pretrial conference that was scheduled for the following week because he wasn't sure if they would still have power and internet, and he wasn't in a position, he said, to, quote, "reasonably fully analyze and consider" our scheduling order.

So, Your Honor, I, of course, agreed to that. I didn't want to put him at a disadvantage because counsel was in the storm area. But quite honestly, I feel like I've been played because I -- we continued it for a full month, and I agreed to that. And then I sent a proposed scheduling order around about a week ago, and I was met the following day with this motion to dismiss for lack of subject matter

jurisdiction. So I gave them basically a month to come up with this new stall tactic.

And quite honestly, Your Honor, it makes no sense to me. If there's no subject matter jurisdiction, I guess they're admitting that this money is not property of the estate because, otherwise, I can't see how Your Honor doesn't have subject matter jurisdiction over it. But we can brief that and get to that, but I think it's a fairly quick process and decision for Your Honor.

And I really would like to have a scheduling order that either -- if it doesn't begin immediately, then perhaps it can have a trigger that, once Your Honor decides this motion to dismiss for lack of subject matter jurisdiction, you know, five days thereafter, this order kicks in, or something like that.

But I would really like -- we've been waiting for -- quite frankly, I think some of these claims date back to 2016, if I'm not mistaken. And Mr. Louis-Prescott is on the phone -- or on the Zoom and can correct me if I'm wrong. But you know, these are landowners with -- you know, some with smaller claims, some with bigger claims. But they'll been pulled around by a chain for a while in this, and we really want to get to an answer.

And quite frankly, I'm also concerned whether the debtors are truly holding the amount that's in dispute in

their disputed claims reserve, so we want to also make sure that that's being done pursuant to the plan.

So, like I said, in a normal situation, I, of course, would have postponed this, but I really felt that we need to have something to get this moving as quickly as possible, with Your Honor's schedule in mind, of course.

THE COURT: What's the basis for the allegation about reserving the money?

MS. SAWCZUK: I just haven't seen any documentation to that effect. So I just want to confirm that it is being -- and I'm not saying that they're not. I just want to confirm that it is being withheld.

THE COURT: Mr. Young, reply?

MR. YOUNG: Just to that last question?

THE COURT: No, to the entire thing.

MR. YOUNG: Okay. So, just to be clear, I mean, I don't know if the Court is really interested in a back-and-forth on assigning blame for kind of, you know --

THE COURT: Not really.

MR. YOUNG: -- delay in the case, so I don't really want to get into that. But suffice it to say I disagree with the characterization that's been made as to kind of how we got here. Certainly, there have been discussions about settlement; unfortunately, those haven't come to fruition. So that's kind of where we are, here today.

There is no stall tactic in terms of the motions, you know. I think, when the Court has the opportunity to review them -- certainly, we take filing, you know, motions to dismiss, especially motions to dismiss for lack of subject matter jurisdiction very seriously. And you know, we won't file them, unless we feel like it's correct, and that subject matter jurisdiction is at issue based on, you know, recent case law that has come out of the District of Colorado and positions that have been taken by the plaintiffs in the motion to dismiss under -- the Rule 12(b)(6) motion, we felt like it confirmed for us that subject matter jurisdiction was lacking in this case, and the Court can decide that at that time.

In terms of the amounts that have been set aside, you know, my understanding -- and I can confirm it with the rest of the team -- is that the entire amount had been set aside, and so there's no issue with that.

It's -- coming back to what I said before, it's difficult to -- I guess, in a situation where we don't know what claims are going to continue, to have a productive conversation about what the schedule should be, considering that there might not be any, and if we, you know, set a schedule and move forward with a bunch of claims for which there's no subject matter jurisdiction to be heard here, you know, with the possibility that, certainly, there are

discovery disputes and other things that are raised with the Court, we think that it's just more efficient to allow the Court to have time to consider those issues before we rush headlong into discovery that might be wasted.

I don't know if there's anything else that the Court would -- you know, questions that the Court has for us, but I'm happy to answer anything.

THE COURT: No, no questions.

Well, a couple of things. You know, one, I normally actually would not wait to issue a scheduling order based on filings of motions to dismiss. motions to dismiss are sometimes granted, but it is rare, actually, when an entire complaint is dismissed. And it can take a long time for the Court to wade through its matters under advisement list, which is somewhat lengthy at a given time. And it's been, frankly, harder for the Court to stay on top of those issues because of the COVID situation. So, you know, I've got a lot of matters under advisement.

I've skimmed your quite lengthy, quite detailed motion to dismiss on the various counts, and it's a good project for somebody to go through. And you know, that's a forty-to-fifty-page opinion, and I don't know when I can get to that, frankly. Subject matter jurisdiction might be an easier issue to deal with, and I'll look at that when it's fully -- when it's fully briefed.

You know, the reality is these claims are going to be pursued somewhere, so, you know, you're likely as not to have to engage in discovery at some point, somewhere. So I don't see why doing it here, when there's an active complaint, is any worse than doing it two years from now, maybe, in State Court in Colorado. And I'm concerned, as well, with Ms. Sawczuk's comment that some of these claims go back a ways, four or five years.

And you know, the staler claims get, the more memories fade, the harder it is to find documents, and it's more difficult to come to, you know, the actual truth, which we occasionally deal with here, to decide the decision -- to make the decision. So I'd like you to enter into a scheduling order.

Now I wouldn't -- I don't think you need to build in summary judgment briefing and, you know, expert -- well, maybe experts. But I think just a discovery-related motion -- order that deals with fact discovery and expert discovery, if necessary. All these issues like post-discovery/pretrial merit briefing, like on summary judgment, motions in limine, or something like that, to be dealt with at a different time because it's very difficult to know how long this is all going to take, and I don't think we need to get ahead of ourselves. I certainly don't want to get a summary judgment brief before I've actually decided the motion to dismiss.

So, you know, I think something along those lines. Mr. Gerald and Ms. Sawczuk can point me to the forms I generally use. They are forms; they are not to be slavishly followed. Whatever works for the parties, I'm very flexible, but that's the general outline that I do. The reason I have those forms on the -- are mainly for preference and fraudulent conveyance cases, which this is not; this is more complicated. So all those 90 days for discovery and -- et cetera, those really are designed to deal with preference cases, not something that would be more complex, like perhaps this. So don't really feel like you're going to -- you know, you're going to be held.

You have to follow those recommendations, particularly will fill in the probative (indiscernible) the brief, so, you know, we can't pretend that this is sort of 2019. It's 2021, so everything takes longer and everything is more complicated, so you will probably want go right into the order. But you can negotiate that with Ms. Sawczuk, no problem, I'm sure.

MR. YOUNG: Will do, Your Honor.

THE COURT: Okay? All right.

Anything else for today?

MR. GERALD: Nothing else, Your Honor.

THE COURT: Okay. Great. We're adjourned.

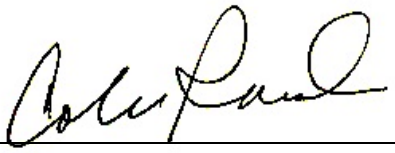
MS. SAWCZUK: Thank you, Your Honor.

(Proceedings concluded at 10:17 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.



March 23, 2021

Coleen Rand, AAERT Cert. No. 341

Certified Court Transcriptionist

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