Docket #0060 Date Filed: 12/8/2020

James Lanter
State Bar No. 11940700
JAMES LANTER, P.C.
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063
(817) 453-4800
(817) 453-4801 FAX
jim.lanter@lanter-law.com

Paul O. Wickes
State Bar No. 00788663
WICKES LAW, PLLC
5600 Tennyson Parkway
Suite 205
Plano, Texas 75024
(972) 473-6900
(972) 767-3225 FAX
pwickes@wickeslaw.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,	§	**Case No. 20-42002-ELM-11**
	§	
Debtors	§	**Jointly Administered**
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adversary No. 20-04064-elm**
	§	
SEQUITUR PERMIAN, LLC,	§	**Removed from Cause No. CV19-003 in the 51st Judicial District Court, Irion County, Texas**
Defendant.	§	
	§	

PLAINTIFF'S SECOND AMENDED SECOND
MOTION FOR PARTIAL SUMMARY JUDGMENT[1]

[1] This amendment amends Maalt's state court motion for summary judgment refiled in this Court on September 28, 2020. (Adv.Doc. 19.)

TO THE HONORABLE UNITED STATES BANKRUPTCY COURT:

Plaintiff, Maalt, LP ("Maalt") files this Amended Motion for Partial Summary Judgment, and in support shows the Court as follows:

Summary

By this motion, Maalt seeks a partial summary judgment on the following grounds:

Background

Maalt owns and operates a rail transloading facility that serves the energy industry in Barnhart, Texas (the "Barnhart Facility"). In 2018, Sequitur Permian, LLC ("Sequitur") desired to obtain crude oil transloading services for its crude oil so it could ship it to higher priced markets and take advantage of an arbitrage opportunity that was project to carry into 2019. In June, 2018, Maalt and Sequitur entered into a letter of intent, and ultimately a Terminal Services Agreement (the "TSA") pursuant to which Maalt would (a) dedicate exclusive use of the Barnhart Facility to Sequitur's use, (b) transload Sequitur's crude oil at the Barnhart Facility onto railcars for shipment to markets outside of the Permian Basin, and (c) give Sequitur a right of first refusal to purchase the Barnhart Facility. The TSA obligated Maalt to exclusively transload Sequitur's crude oil at a price of $1.50 per barrel and required Sequitur to throughput a minimum of 11,424 barrels per day or pay Maalt a minimum fee equal to $17,136.00 per day (the "Minimum Fee"). Sequitur never throughput any crude oil through the Barnhart Facility and never paid Maalt the minimum fee required by the TSA. Instead, Sequitur claimed that a force majeure event occurred, essentially claiming that rail transportation services were completely unavailable *at any price* at the Barnhart Facility, and refused to pay Maalt any amount despite having exclusive use of the Barnhart Facility for approximately 6 months of the 17-month TSA term. This suit followed.

I. *Force Majeure Affirmative Defense*

When Sequitur declared force majeure, it did so because even though transportation services for its crude were available to it at the Barnhart Facility, it had failed to procure the necessary logistics. Sequitur knew that its obligation to pay the Minimum Fee was upon it, and simply did not want to pay it. Thus, in response to this suit, Sequitur asserts the affirmative defense of force majeure. (Adv. Doc. 1-1, p. 386 at ¶6). However, that defense fails because (i) the summary judgment evidence establishes that rail transportation services were available and had not been delayed, interrupted or curtailed and (ii) Sequitur cannot meet its burden of establishing a material fact showing that rail transportation services had been delayed, interrupted, or curtailed.

II. *Impossibility and Commercial Impracticability Affirmative Defenses*

Sequitur plead the affirmative defenses of impossibility and commercial impracticability claiming that it is excused from making the Minimum Payments because it was impossible to find rail transportation or, alternatively, it was not commercially practicable to acquire rail transportation. (Adv. Doc. 1-1, p. 0387 at ¶¶ 10, 12.) These affirmative defenses fail as a matter of law because through the parties' contract, they agreed on the specific conditions that would excuse performance, and none of those conditions occurred. The presence of the force majeure provision in the contract precludes the assertion of the impracticability and impossibility defenses. Further, none of the occurrences that constitute impossibility under Texas law occurred.

III. *Failure of a Condition Precedent Affirmative Defense*

Sequitur alleges the affirmative defense of failure of a condition precedent and argues that its payment obligations under TSA did not ever start because it did not send a notice of the Terminal Operations Commencement date. (Adv. Doc. 1-1, p. 0387 at ¶9). This defense fails as a matter of law because the notice provision created only a covenant binding upon Sequitur and

not a condition precedent. Alternatively, even if the notice provision was a condition, the Court must excuse it or consider it fulfilled because Sequitur had sole discretion over the condition (sending the notice) and prevented its fulfillment (refusing to send the notice even though the Terminal was complete). Finally, the Terminal Completion Date occurred as Sequitur documented the completion of the Barnhart Facility improvements in its own business records.

IV. ***Damages as an Unenforceable Penalty Affirmative Defense***

Sequitur alleges as an affirmative defense that the Minimum Fee required by the TSA is actually a liquidated damages provision that is an unenforceable penalty. (Adv. Doc. 1-1, p. 0388 at ¶14.) This defense fails as a matter of law because the Minimum Fee provision is a part of a through-put-or-pay term akin to a take-or-pay obligation where the contracting party can alternatively perform its obligations by either through putting the crude or paying the minimum fee. Courts have repeatedly held that provisions of that nature provide an alternate method of performance and are not a liquidated damages provision. Because the Minimum Fee is an optional method of performance, it is not a liquidated damages provision and it cannot be deemed a penalty as a matter of law.

V. ***Breach of Contract Counterclaim***

Sequitur plead in the most general terms that Maalt breached the TSA and that its breach caused Sequitur damages. (Adv. Doc. 1-1, p. 0387 at ¶ 11, Adv. Doc. 45 at ¶ 44.) Sequitur claims that (a) Maalt did not provide pollution liability policy as required by the TSA, and (b) that Maalt did not immediately allow Sequitur to retrieve equipment from Maalt's property although it did retrieve its equipment shortly after its request. With respect to the insurance claim, Maalt did have the required insurance in place. Moreover, Sequitur did not give notice and opportunity to cure any claimed default as required by the parties' contract. And, with respect to both claims, Sequitur

has suffered no damage. As shown by this motion, neither claim has merit and summary judgment should be granted for Maalt on Sequitur's breach of contract claim and defense.

Summary Judgment Evidence

Maalt supports this motion with the following evidence contained in its Appendix and Supplemental Appendix to this motion:

Exhibit 1: Excerpts from the Deposition of Braden Merrill ("Merrill Depo"). Merrill is Sequitur's Vice President and Chief Financial Officer.[2]

Exhibit 2: Excerpts from the Deposition of Mike Van Den Bold ("Van Den Bold Depo"). Van Den Bold is Sequitur's, founding partner, President and Chief Operations Officer.[3]

Exhibit 3: Excerpts from the Deposition of Stan Meador ("Meador Depo."). Meador is the Vice President of Sales and Marketing for Texas-Pacifico Transportation, Ltd.

Exhibit 4: Declaration of Brian Hecht.

Exhibit 5: Declaration of Matt Morris.

Exhibit 6: Declaration of Robert Wright. Wright is the Vice President – Crude Oil for Murex, LLC.

Exhibit 7: Terminal Services Agreement (Deposition Ex. 13).

Exhibit 8: Letter of Intent dated June 1, 2018 (Deposition Ex. 6).

Exhibit 9: Letter dated December 7, 2018 (Deposition Ex. 75 [same as Ex. 27]).

Exhibit 10: Letter dated February 8, 2019 (Deposition Ex. 32).

Exhibit 11: Sequitur Weekly Status Update (Deposition Ex. 76).

Exhibit 12: Midstream-assetN-service (master) 2018-11spreadsheet (Deposition Ex. 89).

Exhibit 13: Excerpts from the Deposition of Collin Johansen ("Johansen Depo").

[2] Merrill Dep. pp. 7:22-25.

[3] Van Den Bold Dep. pp. 4:14 – 5:12

Incorporation of Brief

Pursuant to Local Bankruptcy Rule 7056-1(d)(2), the other items required to be included in Maalt's motion will be set forth in Maalt's Brief in Support of its Second Amended Second Motion for Partial Summary Judgment (previously filed and docketed as Doc. 49).

Conclusion

Wherefore, Maalt prays that the Court grant Plaintiff's Amended Second Motion for Summary Judgment in whole or in part.

DATED: December 7, 2020

Respectfully submitted,

By: */s/ James Lanter*

James Lanter
State Bar No. 11940700
JAMES LANTER, P.C.
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063
(817) 453-4800
(817) 453-4801 FAX
jim.lanter@lanter-law.com

Paul O. Wickes
State Bar No. 00788663
WICKES LAW, PLLC
5600 Tennyson Parkway
Suite 205
Plano, Texas 75024
(972) 473-6900
(972) 767-3225 FAX
pwickes@wickeslaw.com

ATTORNEYS FOR PLAINTIFF MAALT, LP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Court's electronic filing service on December 7, 2020.

/s/ *James Lanter*
James Lanter

James Lanter
State Bar No. 11940700
JAMES LANTER, P.C.
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063
(817) 453-4800
(817) 453-4801 FAX
jim.lanter@lanter-law.com

Paul O. Wickes
State Bar No. 00788663
WICKES LAW, PLLC
5600 Tennyson Parkway
Suite 205
Plano, Texas 75024
(972) 473-6900
(972) 767-3225 FAX
pwickes@wickeslaw.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,[1]	§	**Case No. 20-42002-ELM-11**
	§	
	§	
Debtors	§	**Jointly Administered**
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adversary No. 20-04064-elm**
	§	
SEQUITUR PERMIAN, LLC,	§	**Removed from Cause No. CV19-003 in the 51st Judicial District Court, Irion County, Texas**
Defendant.	§	
	§	

SUPPLEMENTAL APPENDIX TO PLAINTIFF'S SECOND AMENDED SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiff, Maalt, LP ("Maalt" or "Plaintiff"), submits this Supplemental Appendix to its Second Amended Second Motion for Partial Summary Judgment filed contemporaneously

[1]The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Vista Proppants and Logistics, LLC (7817) ("Vista HoldCo"); VPROP Operating, LLC (0269) ("VPROP"); Lonestar Prospects Management, L.L.C. (8451) ("Lonestar Management"); MAALT Specialized Bulk, LLC (2001) ("Bulk"); Denetz Logistics, LLC (8177) ("Denetz"); Lonestar Prospects, Ltd. (4483) ("Lonestar Ltd."); and MAALT, LP (5198) ("MAALT"). The location of the Debtors' service address is 4413 Carey Street, Fort Worth, TX 76119-4219.

herewith. This Appendix supplements the Appendix filed on November 16, 2020 (Doc. 48-1) and contains a copy of the following exhibit to the motion.

EXHIBIT	PAGE	DOCUMENT
13.	Maalt 2nd MPSJ 3334	Excerpts from the Deposition of Collin Johansen

DATED: December 7, 2020

Respectfully submitted,

By: */s/ James Lanter*

James Lanter
State Bar No. 11940700
JAMES LANTER, P.C.
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063
(817) 453-4800
(817) 453-4801 FAX
jim.lanter@lanter-law.com

Paul O. Wickes
State Bar No. 00788663
WICKES LAW, PLLC
5600 Tennyson Parkway
Suite 205
Plano, Texas 75024
(972) 473-6900
(972) 767-3225 FAX
pwickes@wickeslaw.com

ATTORNEYS FOR PLAINTIFF, MAALT, LP

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Court's electronic filing service on December 7, 2020.

/s/ James Lanter
James Lanter

EXHIBIT 13

CAUSE NO. 19-003

MAALT, LP,	§	IN THE DISTRICT COURT OF
Plaintiff,	§	
VS.	§	IRION COUNTY, TEXAS
SEQUITUR PERMIAN, LLC,	§	
Defendant.	§	51st JUDICIAL DISTRICT

ORAL AND VIDEOTAPED DEPOSITION OF

COLLIN JOHANSEN

November 21, 2019

Volume 1

ORAL AND VIDEOTAPED DEPOSITION OF COLLIN JOHANSEN, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 21st day of November, 2019, from 1:02 p.m. to 1:34 p.m., before Patricia Palmer, CSR, in and for the State of Texas, reported by machine shorthand, at the offices of Mr. Matthew A. Kornhauser, Hoover Slovacek LLP, 5051 Westheimer Road, Suite 1200, Houston, Texas 77056, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record herein.

A P P E A R A N C E S

FOR THE PLAINTIFF:
Mr. James Lanter
JAMES LANTER, P.C.
560 North Walnut Creek, Suite 120
Mansfield, Texas 76063
817.453.4800
Jim.lanter@lanter-law.com

FOR DEFENDANT: Sequitur Permian, LLC
Mr. Matthew A. Kornhauser
Mr. Christopher J. Kronzer
HOOVER SLOVACEK, LLP
5051 Westheimer Road, Suite 1200
Houston, Texas 77056
713.977.8686
Kornhauser@hooverslovacek.com
Kronzer@hooverslovacek.com

ALSO PRESENT:
Mr. Daniel Alpizar, Videographer

INDEX

PAGE

Appearances..... 2

Stipulations..... 4

COLLIN JOHANSEN
Examination by Mr. Lanter.....4
Correction Sheet..... 34
Signature Page..... 35

Reporter's Certificate..... 36

EXHIBITS

NO. DESCRIPTION PAGE
Exh 89..... 19
Spreadsheet (USB Flash Drive)

THE VIDEOGRAPHER: Today's date is November 21st, 2019. This is the video deposition of Collin Johansen. The time is 1:02. We are on the record. The court reporter may now swear in the witness.

THE REPORTER: Are there any stipulations?

MR. LANTER: I think the same as we had before.

THE REPORTER: And will this be waived or read and sign?

MR. LANTER: He will want to read and sign.

MR. KORNHAUSER: Yeah, please, read and sign.

COLLIN JOHANSEN,
having been first duly sworn, testified as follows:

EXAMINATION

BY MR. LANTER:

Q. All righty. Can you state your name for us, please?

A. Collin Johansen.

Q. Okay. What do you for a living?

A. Accounting at Sequitur.

Q. Okay. And which company is your employer?

A. Sequitur.

Q. Is there a particular one? Sequitur Permian?

A. Sequitur operating, probably. Yeah.

Q. Okay. Have you ever given a deposition before?

A. Uh-uh (negative response).

Q. Okay. Well, let me start off with a couple of things that we need to do for Patricia to do her job well. One thing is try and wait for me to finish my question before you answer. And I will extent the same courtesy back to you. It is hard for her to take down two people talking at the same time, fair?

A. Yes.

Q. Second thing is if you would answer with yes or no instead of uh-huh (positive response) or uh-uh (negative response), and the reason is uh-huh (positive response) and uh-uh (negative response) look exactly on the same on paper. And if you use yes or no we will know what your answer is; is that fair?

A. Yes.

Q. Okay. If I ask you something you don't understand what I am asking, just please tell me and I will rephrase it and make sure you understand my question when you answer; is that fair?

A. Yeah.

Q. Okay. How long have you been employed by Sequitur?

A. Probably two years.

there, tank batteries, gathering systems.
Q. When you say "midstream," are you talking about between well and market?
A. Yeah so from well head on.
Q. Okay. And you say tanks and batteries?
A. Like, tank batteries, yeah.
Q. So a tank battery is, like, maybe six, 12 --
A. Yeah they kind of vary.
Q. -- tanks, kind of standing side by side?
A. Uh-huh (affirmative response).
Q. And you put oil this those?
A. Yeah.
Q. Okay.
A. Yeah they gather from the different wells.
Q. Yeah. Have you ever been out to the property in Barnhart that your company operates on?
A. No ours. I've been near it, but...
Q. Near it. But you never saw yours where there is a tank battery on the property next to that owned by Maalt?
A. No.
MR. LANTER: Okay. All right. I am going to ask you about a spreadsheet that I have marked as Exhibit 89. And I am going to show it to you on the computer because it was too wide to print.

MR. KORNHAUSER: Are we going to use a flash drive for Exhibit 89?
(Exhibit 89 marked.)
MR. LANTER: Yep right here. I've got it marked.
Q. This is a document that was provided by your company's lawyers to me. And the file name assigned to the document is Midstream-assetN-service (master) 2018-11, and then it is an XLS spreadsheet document.
A. Okay.
Q. You were familiar with X --
A. Yeah.
Q. -- XL aren't you?
A. Uh-huh (positive response).
Q. Okay. Do you recognize that spreadsheet?
A. Yep. Yeah I created this.
Q. Okay. And were you the one responsible for inputting the data into it?
A. Uh-huh (positive response). Yep.
Q. Okay.
MR. KORNHAUSER: You need to say yes.
A. Yes.
MR. LANTER: I was about to remind you as well.
THE WITNESS: Yeah.

Q. All right. Tell me, what is the purpose of that spreadsheet.
A. It is to hold assets in a certain group until it is in service then we can start depreciating it for financials. So it just accumulates them throughout time and then this is to trigger when depreciation starts.
MR. LANTER: Okay. Do you mind if we put that up here so that we can both kind of take a look at it.
THE WITNESS: Yeah.
MR. LANTER: Since we don't have another computer.
Q. So the first column you have AFE number.
A. Uh-huh (affirmative response).
Q. On the left, what is an AFE number?
A. It is just unique code. An AFE is authority for expenditure. So it is kind of, like, a miniature budget inside of a big budget that tracks projects.
Q. Okay. And on this spreadsheet is there -- are there cells that are linked to information in different programs or documents on your company's server?
A. This would get pulled from our, like, accounting operating system, so it's, like, a general ledger detail.
Q. So it pulls from your general ledger --

A. Uh-huh (affirmative response).
Q. -- to populate the cells?
A. Yep.
Q. Okay. Yes?
A. Yes.
MR. LANTER: Okay. It's -- old habits die hard. Trust me.
Q. And then sub-account is the second column. And what does that mean to you?
A. That is a unique code to identify certain -- it could be a project or well, any sort of asset. It just identifies different ones.
Q. Okay. And then if we look down toward the bottom on line 51. Let me do this. The spreadsheet starts at line 37.
A. Uh-huh (affirmative response).
Q. And goes to what? 52?
A. Yeah.
Q. And there are some numbers missing in between, why is that?
A. There is probably a filter on it.
Q. Uh-huh (affirmative response).
A. So this was awhile ago. I am guessing it is filtering out projects that have been already cleared.
Q. Okay. And so if we go down in the third column

it says sub-account name?
A. Uh-huh (positive response).
Q. And then the second -- yes?
A. Yes.
Q. Okay.
A. Yeah.
Q. The second one up from the bottom says what?
A. The second one up from the bottom?
Q. Yeah.
A. Barnhart supply system.
Q. Okay. I may be thinking of the wrong one then. No, that's the bottom one. It's the second from the bottom.
A. Oh, on the bottom. Vista railroad.
Q. Are you having trouble seeing it?
A. Yeah.
Q. Okay.
A. Vista railroad.
Q. Yeah. Do you know what that refers to?
A. The Piedra Vista train yard area.
Q. Okay. Is that the trains loading facility out in Barnhart?
A. Yeah.
Q. Okay. And then as we go across you have field and then there is Barnhart Texon and another one on

there. Is that the oil field in which the asset is located?
A. Yeah field. Yeah it's more or less an oil field. It is an area we designate.
Q. Okay. And then you have some cost columns, right?
A. Yes.
Q. Is that how much money it is costing you to either acquire or complete those assets?
A. Yeah. That's what is in the accounting system.
Q. Uh-huh (affirmative response).
A. So it is not invoices that are outstanding.
Q. Right.
A. But as of that time inside of the system, that's the amount of the cost.
Q. So the amount paid?
A. Yeah. The amount that has been recorded paid in the system.
Q. Okay.
A. So there is a lot more invoices, like, that are floating that haven't got processed.
Q. Uh-huh (affirmative response).
A. But these are the ones that have actually gotten into the system.
Q. Okay. Do y'all operate on an accrual basis?

A. Yeah.
Q. And so on the ones reflected on here, are these the ones that have accrued and have been keyed in the system?
A. Those are unaccrued numbers.
Q. Okay.
A. So those are just pure accounting numbers --
Q. Okay.
A. -- that have been processed. So there would have been an accrual for outstanding stuff.
Q. Okay. So this just represents hard cost actually paid as of that time?
A. Actually put into the system, yeah.
Q. Right. Going across in column J, and there is no HI, but column J is what?
A. Inservice date.
Q. And what does that mean to you?
A. It is an estimate of when the asset can start being depreciated.
Q. Uh-huh (affirmative response).
A. So you don't have to have all the cost in necessarily because, again, there might be, like, invoices outstanding.
Q. Uh-huh (affirmative response).
A. But it is just the date when depreciation can

start.
Q. Is that also the date in which the asset is in service and ready for use?
A. Yeah it is pretty close. There is a little difference with accounting, but more or less --
Q. Okay.
A. -- that's the date.
Q. And when you say there is a little difference with accounting, what are we talking about, a day, two days?
A. Yeah.
Q. Three days?
A. Yeah the day is different and so if it's in service, like, is it, like, functional.
Q. Uh-huh (affirmative response).
A. Or is it -- is more there more of the project that's going to increase it.
Q. Uh-huh (affirmative response).
A. So it's -- it varies --
Q. Okay.
A. -- by project.
Q. For the Vista rail yard, what it is noted as in service, what's the date?
A. 12/10/18.
Q. Okay. Were you responsible for putting that

information into this system?
A. Yeah.
Q. Okay.
A. Yes.
Q. And what information would you use to reach your conclusion as far as the inservice date goes?
A. That would usually either come from e-mailing the field and getting a reply back and then if it wasn't from them, I would try to, like, source it from anything I could find on the system, but it usually always comes from the field.
Q. Okay. And in this case in Barnhart, who would you have e-mailed?
A. Nick Eldridge.
Q. Okay. If there was anything left to do to complete the particular project or the asset, would your spreadsheet reflect an inservice date or would it show a work in process date?
MR. KORNHAUSER: Objection form.
A. It would -- it would show an -- well, if it is not ready for service?
Q. Yes.
A. So this is a newer thing that I got started --
Q. Uh-huh (affirmative response).
A. -- probably six months before this. But a lot

of times there would be an estimate date column and an inservice.
Q. Uh-huh (affirmative response).
A. But if this is the November file, the 1210 inservice could be an estimate too since it was the November accounting period.
Q. Is there any way for you to tell if it's the November accounting period or something else?
A. Well, the name Midstream 201811 would be November 2018.
Q. Okay. Would there be a December spreadsheet like this?
A. Yes, it should be.
Q. And where would that be located?
A. I think we would have it somewhere on our share drive.
Q. Your server?
A. Yeah.
Q. Okay. And would it have the same file name, but be dash 12?
A. Yes.
Q. Okay.
A. And then when that goes we just record when it is in service. It is just the first of the month.
Q.

A. Because it doesn't matter for accounting.
Q. If I go up here and open up the properties on this spreadsheet, it looks like the last modified date was 12/11/2018; do you see that?
A. Uh-huh (positive response).
Q. Yes?
A. Yeah. Yes.
Q. We're getting there.
A. Yeah.
Q. Would that indicate to you when this particular spreadsheet was last updated by somebody in your company?
A. Yes.
Q. And would that give you more information as to whether the inservice date that we talked about earlier was an estimate or an actual date?
A. So I bet it is still estimated because if it was 1211 modified it would have been for November accounting close.
Q. Uh-huh (affirmative response).
A. So it wouldn't have -- from an accounting perspective, we wouldn't have put anything in there hard, like, we wouldn't have started depreciating until December.
Q. Okay.

A. But...
Q. So even as of December 11th?
A. Yeah. So I am guessing as of December 11th that might have been Nick's idea of inservice date. But for accounting we wouldn't have put anything in their system.
Q. Okay. Do you see who last modified this spreadsheet?
A. Nick Eldridge.
Q. Okay. And he did it on 12/11, right?
A. Yes.
Q. Okay. If there are hidden worksheets in this Excel spreadsheet, do you know what those would be?
A. On the inservice?
Q. Uh-huh (affirmative response). Or on anything?
A. I don't know if I started a process yet at that point. On future runs I take some of our fixed asset modular information.
Q. Okay.
A. And put them in tabs just for -- that automatically links to that tab to pretty much automat everything. But I don't know if at that point in time I had built that yet.
Q. All right. Now, the next page, it looks like it is D-E-P-R, Sched S-C-H-E-D.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS,
FORT WORTH DIVISION

In re:	§	**Chapter 11**
	§	
VISTA PROPPANTS AND LOGISTICS, LLC, ET AL.,	§	**Case No. 20-42002-ELM-11**
	§	
	§	
Debtors	§	**Jointly Administered**
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	
vs.	§	**Adversary No. 20-04064-elm**
	§	
SEQUITUR PERMIAN, LLC,	§	**Removed from Cause No. CV19-003 in**
	§	**the 51st Judicial District Court, Irion**
Defendant.	§	**County, Texas**

ORDER ON PLAINTIFF'S SECOND AMENDED SECOND MOTION FOR PARTIAL SUMMARY JUDGMENT

ON THIS DAY, the Court considered the Amended Second Motion for Partial Summary Judgment filed by Plaintiff, Maalt, LP ("Maalt"), the response filed by Sequitur Permian, LLC ("Sequitur"), Defendant, and any reply, and the entirety of the summary judgment evidentiary record. After giving consideration to the Motion and all related documents, the Court is of the opinion that it should be granted.

IT IS, THEREFORE ORDERED THAT:

1. There is no material question of fact with respect to Sequitur's affirmative defense of force majeure, and summary judgment is granted in favor of Maalt with respect to the affirmative defense of force majeure;
2. Both as a matter of law and because there is no material question of fact with respect to Sequitur's affirmative defenses of impossibility and commercial impracticability, summary judgment is granted in favor of Maalt with respect to the affirmative defenses of impossibility and commercial impracticability;
3. Both as a matter of law and because there is no material question of fact with respect to Sequitur's affirmative defense of failure of a condition precedent, summary judgment is granted in favor of Maalt with respect to the affirmative defense of failure of a condition precedent;
4. As a matter of law, the shortfall payment provisions imposed upon Sequitur in Article 3 of the Terminal Services Agreement do not result in a liquidated damages provision triggered by a default or breach of the agreement and do not create an unenforceable penalty provision, therefore, summary judgment is granted in favor of Maalt on that defense; and

5. There is no material question of fact with respect to Sequitur's counterclaim and affirmative defense asserting that Maalt breached the Terminal Services Agreement, and summary judgment is granted in favor of Maalt dismissing Sequitur's breach of contract cause of action and its affirmative defense.

END OF ORDER # #

Submitted by:

James Lanter
State Bar No. 11940700
JAMES LANTER, P.C.
560 N. Walnut Creek
Suite 120
Mansfield, Texas 76063
(817) 453-4800
(817) 453-4801 FAX
jim.lanter@lanter-law.com

Paul O. Wickes
State Bar No. 00788663
WICKES LAW, PLLC
5600 Tennyson Parkway
Suite 205
Plano, Texas 75024
(972) 473-6900
(972) 767-3225 FAX
pwickes@wickeslaw.com