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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**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

[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.



SEQUITUR PERMIAN, LLC'S AMENDED OPPOSED MOTION FOR CONTINUANCE OF TRIAL SETTING AND BRIEF IN SUPPORT

Defendant, Counter-Plaintiff, and Third-Party Plaintiff, SEQUITUR PERMIAN, LLC ("Sequitur"), files this Amended[2] Opposed Motion for Continuance of Trial Setting and Brief in Support, and in support thereof would show unto the Court, as follows:

I.
MOTION FOR CONTINUANCE

1. Sequitur moves for a continuance of the trial setting for at least 120 days, with an approximate September 13, 2021 docket call, for the following reasons:

(a) The Court will have additional time to rule on the parties' already-argued and pending motions for summary judgment;

(b) The Court can consider the just-filed Plaintiff's third motion for partial summary judgment, currently set for hearing on April 13, 2021;

(c) The parties can save time and expense now and then more efficiently prepare for a trial, if necessary, once the Court rules on the motions for summary judgment;

(d) The additional time will allow the parties to try the case in person and with live witnesses, as the COVID-19 vaccine rollout is anticipated to be mostly complete by the summer of 2021; and

(e) Depending on the Court's rulings on the various motions for summary judgment, the parties can seek an interlocutory appeal on dispositive issues, pursuant to 28 U.S. C § 158(d)(2), so that such issues can be decided before the parties proceed to a full trial that may be unnecessary, as a matter of law.

[2] This motion is amended to correct the electronic filing. The motion was accidentally attached as the order.

II.
BRIEF IN SUPPORT

A. Background.

2. Plaintiff is Maalt, LP. ("Maalt"). Defendant/Counter-Plaintiff/Third-Party Plaintiff is Sequitur Permian, LLC ("Sequitur"). Third-Party Defendant is Vista Proppants and Logistics, LLC ("Vista").

3. Maalt sued Sequitur for breach of contract (*i.e.*, the Terminal Services Agreement a/k/a "TSA") and related declaratory judgment claims, seeking recovery of an alleged contract-based fee or an alternative lost-profits damage theory. Sequitur has counterclaims against Maalt and third-party claims against Vista and various affirmative defenses, including the fact-intensive Force Majeure defense, in response to Maalt's claims.

4. On November 16, 2020, the parties filed countering motions for summary judgment. Maalt filed its Amended Second Motion for Partial Summary Judgment on Sequitur's affirmative defenses of Force Majeure, impossibility and commercial impracticability, and failure of condition precedent, and a counterclaim of breach of contract. Sequitur filed its Motion for Summary Judgment on Its Affirmative Defenses of Failure of Condition Precedent, Express Waiver of Lost Profits and Consequential Damages. On January 14, 2021, the Court conducted an oral hearing on both motions. The motions are still pending, and the Court took them under advisement.

5. On January 12, 2021, Sequitur filed its Motion for Summary Judgment that Maalt Is Not Entitled to a "Minimum Fee" or Any Fee Under the TSA. The Court conducted an oral hearing on Sequitur's second Motion on February 16, 2021. That motion is also still pending and was also taken under advisement. At the close of that hearing, the Court indicated that all then-pending motions for summary judgment would be considered and decided together, considering

that many of the legal issues raised in the motions involve the construction of the TSA as a whole. And although the Court indicated that a ruling could be issued within about thirty days, the Court also suggested that if the parties sought a continuance of the May 2021 trial setting, because of the pending summary-judgment motions, such a continuance would not be "frowned upon."

6. Most recently, on March 1, 2021, which was the dispositive motion deadline in the Scheduling Order in Adversary Proceeding (Doc. 36), Maalt filed its Third Motion for Partial Summary Judgment on Sequitur's counterclaims for fraudulent inducement and negligent misrepresentation and on the affirmative defenses of mutual mistake, failure of implied condition, excuse/justification, statute of frauds, waiver, and failure of consideration. The hearing on that motion is set for April 13, 2021, less than three weeks before the May 3, 2021 docket call.

B. Argument and Authorities.

7. A court has discretion to manage its own affairs in order to achieve the orderly and expeditious disposition of case including the power to control its docket. *Woodson v. Surgitek, Inc*., 57 F.3d 1406, 1417 (5th. Cir. 1995).

8. As stated above, currently under consideration by the Court are three motions for summary judgment on various affirmative defenses and other contract-defense arguments raised by Sequitur. In particular, Sequitur submits that its condition-precedent defense and the argument that Maalt is not entitled to a contract-based fee (*e.g.*, "Minimum Fee," Shortfall Payment, or Throughput Fee) are effectively case-ending defenses that, if granted, render Maalt's claims effectively disposed. Additionally, Sequitur submits that if either of such defensive arguments is deemed meritorious by the Court, its Force Majeure defense will be moot, and there will be no need for a lengthy trial on the fact-based nature of the Force Majeure issues in this case.

9. Further, as noted, Maalt just recently filed the fourth dispositive motion in this case, Maalt's Third Motion for Partial Summary Judgment on two counterclaims and six affirmative defenses of Sequitur. In addition to the already-argued motions for summary judgment, the adjudication of Maalt's newest will further materially alter what issues, if any, may be addressed during a trial, if one is still necessary.

10. To the extent a trial is still necessary on Maalt's claims and Sequitur's affirmative defenses, including Force Majeure, as well as the counterclaims and third-party claims, the issues related to those matters will require testimony by significant number of party representatives, non-party fact-witnesses, and experts, as well as the admission of related documentary exhibits and evidence. Because the third major COVID-19 vaccine has just been approved by the U.S. federal government, it is anticipated that most adults, including counsel, parties, and witnesses in this case, will have received a vaccine by the summer of 2021. Considering the importance of the issues in this case, and the amounts involved, Sequitur seeks a continuance of the trial setting, at a minimum, to allow any trial to proceed with live witnesses and presentation of evidence in the courtroom.

11. Finally, consistent with the goal of avoiding the cost, time spent, and use of precious judicial resources for a trial, when dispositive issues may render a trial unnecessary, Sequitur submits that depending on how the Court rules on some of the summary-judgment issues, it may be appropriate to seek a direct-review appeal by permission under Rule 6 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 158(d)(2).

12. Specifically, Section 158(d)(2) permits immediate appeals from a bankruptcy-court order when, among other grounds, "an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken." *See* 28 U.S.C. § 158(d)(2)(A)(iii); *see, e.g., Ries v. Paige (In re Paige)*, 610 F.3d 865, 868 (5th Cir. 2010)

(in an adversary proceeding, granting "leave to appeal directly to this court pursuant to 28 U.S.C. § 158(d)(2)(A)(iii) after the bankruptcy court granted summary judgment to the debtor" and affirming summary judgment ruling that claims were barred by res judicata); *see also In re Genon Energy, Inc*., No. 17-33695 (DRJ), 2018 Bankr. LEXIS 4214, at *25 (S.D. Tex. June 19, 2018) (certifying "direct appeal to the Fifth Circuit pursuant to 28 U.S.C. § 158(d)(2)(A)(iii) on the grounds that an immediate appeal from this Order may materially advance the progress of these chapter 11 cases").

13. In sum, this request is not for mere delay, but so that justice may be done. Furthermore, this Motion will not cause prejudice to Maalt or Vista as they will similarly benefit from having saved the costs associated with preparing for a trial that may not be necessary at all or potentially preparing for issues at trial that may be decided via summary judgment, in addition to the benefit of being able to examine witnesses live in the courtroom.

RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, Sequitur Permian, LLC requests that the Court grant this Motion for Continuance of the Trial Setting at least until September of 2021 and for all other and further relief to which it is entitled, whether at law or in equity.

Dated: March 5, 2021.

Respectfully Submitted,

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ATTORNEYS FOR DEFENDANT, SEQUITUR PERMIAN, LLC

CERTIFICATE OF CONFERENCE

I hereby certify that, on March 3 and 4, 2021, I conferred with Jim Lanter, and he indicated today that this motion is opposed by his clients, Maalt and Vista, but no explanation was provided.

/s/ Dylan B. Russell
Dylan B. Russell

CERTIFICATE OF SERVICE

I hereby certify that on March 5, 2021 a copy of the foregoing document was served through the Court's ECF system on those parties receiving ECF notice, and as indicated below on the parties reflected below.

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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**
	§	**(Jointly Administered)**
Debtors.	§	
	§	
MAALT, LP,	§	
	§	
Plaintiff,	§	
	§	**ADV. PROC. NO. 20-04064-ELM**
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	
	§	
Defendant.	§	
	§	

[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.

ORDER

ON THIS DAY, the Court considered Defendant's Amended Opposed Motion for Continuance of Trial Setting and Brief in Support. After giving consideration to the Motion and all related documents, the Court is of the opinion that it should be granted.

The dates and deadlines in the Scheduling Order In Adversary Proceeding (Doc. 36), page 2, are amended, as follows:

A. Docket Call/Trial. Trial is set before the Honorable Edward L. Morris at 501 W. 10th St., Room 204, Fort Worth, TX 76102 in the month of September 2021. Docket Call for this trial will be held on September ___, 2021 at 1:30 p.m., at 501 W. 10th St., Room 204, Fort Worth, TX 76102. Trial will take place on during the month of September 2021 unless ordered otherwise by the Court.

Signed this the _____ day of _____, 2021.

_____

Judge Edward L. Morris

END OF ORDER

Prepared and submitted by:

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