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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,	§	
	§	
v.	§	
	§	
SEQUITUR PERMIAN, LLC,	§	**ADV. PROC. NO. 20-04064**
Defendant.	§	

BRIEF IN SUPPORT OF SEQUITUR PERMIAN, LLC'S
MOTION TO STAY PENDING DIRECT APPEAL

[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.

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TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW Defendant, Counter-Plaintiff, and Third-Party Plaintiff, Sequitur Permian, LLC ("Sequitur") and hereby requests that the Court grant its Motion to Stay Pending Direct Appeal, and would respectfully show the Court the following:

1. Pursuant to Rule 8007 of the Federal Rules of Bankruptcy Procedure, Sequitur moves that the Court stay all proceedings, including the to-be-scheduled trial date, pending a direct appeal pursuant to 28 U.S.C. § 158(d)(2)(A). *See* Fed. R. Bankr. P. 8007(a)(1)(D) (stating "[o]rdinarily, a party must move first in the bankruptcy court for the following relief: . . . the suspension or continuation of proceedings in a case or other relief permitted by subdivision (e)).

2. Sequitur's motion is timely. *See* Fed. R. Bankr. P. 8007(a)(2) (stating "[t]he motion may be made either before or after the notice of appeal is filed").

3. Rule 8007(e), in pertinent part, provides that "the bankruptcy court may: (1) suspend . . . the continuation of other proceedings in the case; or (2) issue any other appropriate orders during the pendency of an appeal to protect the rights of all parties in interest." *See id.* 8007(e).

4. Rule 8007(e) does not provide any guidance on what are the relevant criteria in deciding whether to grant a stay pending appeal. In the more typical case where one party is seeking to stay an unfavorable monetary judgment or other similar order pending appeal, courts have applied four criteria, as follows: "(1) whether the movant has made a showing of likelihood of success on the merits; (2) whether the movant has made a showing of irreparable injury if the stay is not granted; (3) whether the granting of the stay would substantially harm the other parties; and (4) whether the granting of the stay would serve the public interest." *In re First South Sav. Ass'n*, 820 F.2d 700,709 (5th Cir. 1987) (footnote omitted). But the Fifth Circuit also explained

that "'on motions for stay pending appeal the movant need not always show a 'probability' of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.'" *Id.* at 709, n.10 (quoting *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981)).

5. Most relevant here, however, the Fifth Circuit takes an even more cautious approach to denying a stay when a direct bankruptcy appeal is certified. *See Bank of New York Trust Co., NA v. Official Unsecured Creditors' Comm. (In re Pacific Lumber Co.)*, 584 F.2d 229 (5th Cir. 2009) (hereinafter "*In re Pacific Lumber*"). In *In re Pacific Lumber*, the bankruptcy certified a direct appeal of a challenge to the legality of a confirmed Chapter 11 reorganization plan, but the bankruptcy court did not stay the plan pending the appeal. *See id.* at 236. As such, the plan was substantially consummated, and thus on appeal, certain parties argued that the appeal should be dismissed as equitably moot. *See id.* But the Fifth Circuit noted that "Congress's purpose [in enacting 28 U.S.C. § 158(d)(2)] may be thwarted if equitable mootness is used to deprive the appellate court of jurisdiction over a properly certified appeal." *Id.* at 241-42. The Court also recognized the "incongruity of the bankruptcy court's actions—in both denying a stay pending appeal and certifying its orders for direct appeal to this court." *Id.* at 242.

6. In light of the incongruity, and citing to footnote 10 in *In re First South Savings Ass'n* discussed above, the Fifth Circuit explained that denying a stay when substantial legal issues exist may not be appropriate, as follows:

> Although the exigencies of the case appeared to demand prompt action, simply **denying a stay seems to have been, and often will be, too simplistic a response**. A plan may be designed to take effect, as it was here, after a lapse of sufficient time to initiate appellate review. A supersedeas bond may be tailored to the scope of the appeal. An appeal may be expedited. As with all facets of

> bankruptcy practice, myriad possibilities exist. Thus, **substantial legal issues can and ought to be preserved for review**.

In re Pacific Lumber, 584 F.2d at 243 (emphasis added).

7. Based on the foregoing, Sequitur submits that if this Court finds one of the grounds for a direct appeal exists, and thus certification of a direct appeal is mandatory, the stay should be granted. Moreover, unlike in *In re Pacific Lumber*, because this is an adversary proceeding involving only two parties and a breach of contract claim and defenses, the sole proceeding that would stayed is the not-yet-scheduled trial. Because there has not been any trial and because the summary-judgment rulings reflect there are many remaining factual disputes, the final result of the parties' disputes is uncertain. In sum, there has not been a final adjudication on the breach of contract claim, and therefore, concerns about delay that might exist when an appeal involves the consummation of a reorganization plan simply do not apply here.

8. As to the first criterion for a stay, Sequitur asserts that the grounds for its direct appeal involve a "substantial case on the merits" because they involve legal issues that are "serious" for the reasons noted in Sequitur's motion for direct appeal under 28 U.S.C. § 158(d)(2)(A). *See Ruiz*, 650 F.2d at 565. To be sure, the primary question at issue is whether an agreed-to condition precedent event, potentially triggering Maalt's right to a Shortfall Payment, can be judicially excused when enforcement of the unambiguous terms of the TSA would otherwise preclude Maalt's right to a fee. In other words, the answer to the fundamental legal question could effectively dispose of Maalt's breach of contract claim, without the need for a trial on the still remaining disputed issues. And as explained in Sequitur's motion for direct appeal, the Supreme Court of Texas has adopted that rule that contract terms will be honored unless declared in violation of law or against public policy, but that Court has never held that an "extreme forfeiture" resulting from the enforcement of an arm's length contract negotiated between

sophisticated business parties will allow a court to excuse the non-happening of a condition precedent event. Therefore, Sequitur has met the first criterion.

9. As to the irreparable injury criterion, if this Court certifies a direct appeal of the legal issues framed in Sequitur's motion for direct appeal, but it does not stay the case and the parties proceed to a trial this summer, the time and expenses of a potentially unnecessary trial will have been forever wasted, for both parties. Furthermore, even though Sequitur could appeal the same legal issues from a final judgment after a trial, the efficiencies and purpose behind 28 U.S.C. § 158(d)(2) would be thwarted. *See In re Pacific Lumber*, 584 F.2d at 241-42. For example, in a traditional final-judgment appeal, Sequitur would be required to first appeal to the district court and then to the Fifth Circuit, which would increase the cost and time for the appeal.

10. As to whether granting the stay would substantially harm the other parties, the only harm to Maalt would be the delay, something Maalt is at least partially responsible for, having filed bankruptcy and then moved for removal to federal when the state-court trial was already set about one year ago. But, at the same time, Maalt will also benefit from the stay of the case, particularly a stay of the trial, since it too would avoid the potentially unnecessary time and expense to try a case that may not need to be tried at all.

11. Finally, as to whether the granting of the stay would serve the public interest, Sequitur submits that the public interest is served by stay because the subject-matter of the legal issues in the motion for direct appeal, as noted, involve important and fundamental questions about Texas contract law. In the simplest terms, the direct appeal sought involves "Texas's strong public policy favoring freedom of contract." *Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 482 (Tex. 2017). Stated another way, the Supreme Court of Texas has held that "competent parties shall have

the utmost liberty of contract, and that their contracts when entered into freely and voluntarily shall be sacred and shall be enforced by the Courts of Justice." *See Bradberry*, 526 S.W.3d at 481.

12. Based on the foregoing, Sequitur asserts that to the extent the four criteria in *In re First South Sav. Ass'n*, as modified by *Ruiz*, must be met for a stay to be granted under Rule 8007, all such criteria have been met. A stay should be granted pending final resolution of the direct appeal, should this Court certify one under 28 U.S.C. § 158(d)(2).

13. As indicated in the Certificate of Conference below, counsel for plaintiff, Maalt, LP, is opposed to the Motion to Stay Pending Direct Appeal.

Dated: May 4, 2021.

Respectfully Submitted,

/s/ Matthew A. Kornhauser

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LOCAL COUNSEL FOR DEFENDANT, SEQUITUR PERMIAN, LLC

CERTIFICATE OF CONFERENCE

I hereby certify that on May 4, 2021, I contained James Lanter, Esq., counsel for plaintiff, Maalt, LP, via email regarding Sequitur's Motion to Stay Pending Direct Appeal. Mr. Lanter indicated that Maalt, LP opposes the Motion to Stay Pending Direct Appeal

/s/ *Dylan B. Russell*
Dylan B. Russell

CERTIFICATE OF SERVICE

I hereby certify that on May 4, 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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