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.	§	
	§	

PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

TO THE HONORABLE COURT:

Plaintiff, Maalt, LP ("Maalt"), submits the following Proposed Findings of Fact and Conclusions of Law:

Findings of Fact

Background

1. In 2018 to 2019, Maalt was in the business of operating transloading facilities that transload materials used in the Texas oil and gas industry.

[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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2. Maalt's transloading activities typically involve transloading materials from rail cars to trucks for delivery to well sites and vice versa.

3. During that time, Maalt operated a transloading facility in Barnhart, Texas (the "Barnhart Facility") that is provided rail service by Texas Pacifico Transportation, Ltd. ("TXPF").

4. TXPF has track that runs through the Permian Basin and interchanges (connects) to tracks owned by other railroads including the Union Pacific, BNSF, and Fort Worth and Western Railroad ("FWWR").

5. The FWWR in turn interchanges with track owned by BNSF and The Kansas City Southern Railway ("KCS").

6. Through those interchanges and railroads, goods can be shipped into and out of the Permian Basin area by rail.

7. The Barnhart Facility can accept goods brought to it by truck or train from anywhere in the country, and then transloaded to either truck or train for delivery either within the Permian Basin or other areas throughout the country.

8. In approximately May, 2018, Sequitur Permian, LLC ("Sequitur") contacted Maalt to discuss arrangements through which Maalt would transload Sequitur's crude oil at Maalt's Barnhart Facility because that facility was adjacent to land on which Sequitur had producing oil wells.

9. At the time, the pipelines leading from the Permian Basin to various oil markets were at capacity and oil was in a state of oversupply at Midland, Texas.

10. Because of that situation, the price of crude oil at Midland was far less in 2018 than it was for crude oil sold at the Gulf Coast.

11. Sequitur believed that the spread in the prices made the cost of transporting crude oil by rail attractive and created an opportunity to transport crude oil from the Permian Basin to the Gulf Coast by train.

12. Sequitur wanted to take advantage of that opportunity which promised to provide it with significant financial returns.

13. On or about June 5, 2018, Sequitur and Maalt signed a letter of intent ("LOI") with respect to the transloading of crude oil at the Barnhart Facility.

14. Before signing the LOI, Sequitur had already spent millions of dollars on transloading machines and tank storage to be used at the facility.

15. The LOI also contained the following provision reflecting that Maalt was to be paid at least $17,136.00 per day (11,424 times $1.50) so that it would be paid as if the minimum volume obligation of Sequitur (11,424 barrels per day) had been met. If more than Sequitur's minimum volume obligation was transloaded, then Maalt would be paid at the $1.50 rate times the excess volume in addition to the minimum volume amount. In other words, Maalt would be guaranteed a minimum of $17,136.00 per day on average from the date the terminal improvements were completed by Sequitur through the end of term of the agreement.

16. The letter of intent was extended two times at the request of Sequitur, and eventually expired on July 23, 2018.

17. Sequitur requested and obtained from Maalt an access agreement in July 2018 allowing it to begin constructing improvements and installing equipment that would be used for the transloading process even though it did not have a definitive agreement for the use of the facility.

18. Sequitur began work on the terminal improvements after the access agreement was signed and before signing the definitive agreement.

19. In August 2018, Maalt and Sequitur entered into a Terminal Services Agreement ("TSA") pursuant to which Maalt would provide crude oil transloading from trucks to rail cars for Sequitur.

20. The TSA gave Sequitur exclusive use of the facility during the term of the agreement, and a right of first refusal to purchase the facility.

21. Pursuant to the TSA, Sequitur was to provide and install the equipment needed to transload Sequitur's crude oil from trucks (and potentially a pipeline) to rail cars, and Maalt was to provide Sequitur exclusive access to and use of its Barnhart Facility, the labor required for the transloading process, and the ROFR.

22. The TSA granted Sequitur the exclusive right to have crude oil transloaded at the Barnhart Facility to the exclusion of any other transloading operations, whether crude oil, sand, or other goods.

23. In exchange, Sequitur agreed to pay Maalt $1.50 per barrel of crude oil transloaded with a minimum average daily volume obligation of 11,424 barrels on a quarterly basis (for example, 1,039,584 barrels in a 91-day quarter).

24. If Sequitur failed to deliver any crude for transloading, it was obligated to pay Maalt a shortfall payment equal to the price per barrel times the minimum daily volume requirement times the number of days in each calendar quarter or part thereof in the term of the TSA (for example, in the case of a 91-day quarter, $1.50 X 11,424 X 91 = $1,559,376.00) (the "Shortfall Payment").

25. If Sequitur delivered less than the required minimum amount in a quarter, it was obligated to pay the throughput fee times the number of volumes actually transloaded plus a Shortfall Payment equal to the shortfall amount below the required minimums times $1.50 per barrel, so that Maalt was guaranteed a minimum payment equivalent to $17,136.00 per day on average during each calendar quarter and part thereof.

26. If Sequitur delivered more than the required minimum amounts of crude to the Barnhart Facility, then Sequitur was obligated to pay an amount equal to the number of barrels transloaded times $1.50 per barrel.

27. In other words, the TSA was an alternative performance or throughput-or-pay contract (comparable to a take-or-pay contract) that allowed Sequitur to perform its obligations by either (i) providing the minimum throughput of crude oil at the Barnhart Facility for Maalt to transload, or (ii) paying the Throughput Fee and the Shortfall Payment if applicable.

28. In exchange, Sequitur would receive transloading of its crude oil during the times specified in the TSA, the dedication of manpower for that transloading, the reservation of the Barnhart Facility for Sequitur's exclusive use, and the ROFR.

29. Pursuant to the TSA, Sequitur constructed the Phase I Project improvements at the Barnhart Facility consisting of equipment necessary to transload crude oil brought to the Barnhart Facility by trucks onto railcars.

30. While the completion of the improvements was targeted for early September, 2018, Sequitur's completion of those improvements was delayed and ultimately completed and became operational and/or in service on or about December 10, 2018 according to Sequitur's records.

31. The Terminal Operations Commencement Date under the TSA occurred on December 10, 2018.

32. Under the terms of the TSA, Sequitur's obligation to pay Maalt the amounts required by the TSA began at that time.

33. By December, 2018, Sequitur had not procured the logistics necessary to have railcars delivered to the Barnhart Facility for the purpose of carrying crude oil.

34. Rather than implement its own logistics to get crude oil and the necessary rail cars to the Barnhart Facility, Sequitur looked for a crude oil purchaser that already had logistical services in place to purchase its crude oil and serve as a joint venture partner to share the arbitrage.

35. That way, Sequitur would not have to invest the time or manpower necessary to learn the logistical requirements of transporting crude oil by rail. It could simply rely on others to do that while enjoying the arbitrage; that is, the economic value of selling its crude oil at the Gulf Coast for a higher price than it could command in the Permian Basin.

36. Sequitur was, however, unsuccessful in finding such a joint venture partner with the result that it never had crude oil transloaded at the Barnhart Facility.

37. According to Sequitur's internal records, the Phase 1 Project improvements were completed and the Barnhart Facility was "in service" on December 10, 2018.

38. Sequitur failed to comply with the structure of the TSA that provided for Sequitur to give notice to Maalt of the completion of the improvements to serve as evidence of the Terminal Operations Commencement Date.

39. Despite the completion of the Phase 1 Project improvements, Sequitur did not begin transloading crude oil as required by the TSA.

40. Instead, realizing that it was contractually obligated to start its alternative performance obligations of either transloading crude or making the Shortfall Payment, Sequitur declared that a force majeure event occurred so it would not have to pay Maalt the amounts required under the TSA.

41. On December 7, 2018, knowing that it owed Maalt the payments starting on December 10, 2018, Sequitur sent Maalt a letter claiming that it was experiencing a force majeure event because of the "unavailability, interruption, delay, or curtailment of rail transportation services for the Product. . .."

42. Sequitur has since refused to pay Maalt the amounts it was required to pay under the TSA.

43. At all relevant times, rail transportation services were available and there was no "interruption, delay, or curtailment of rail transportation services."

44. At all relevant times, there was never an unavailability of sufficient tank cars complying with federal and individual railroad requirements.

45. Sequitur made no effort to develop the logistics services "in-house," made no effort to investigate or retain a third-party logistics provider, and made no effort to negotiate directly with the railroads or any supplier of rail cars to obtain the cars and services necessary to move its crude by rail.

46. On the other hand, in November 2018, Murex, LLC was willing and able to contract with Sequitur to move Sequitur's crude oil by rail from the Barnhart Facility, but the cost to Sequitur would eliminate the arbitrage opportunity it sought. Sequitur failed to accept or follow up with Murex after it made an offer to provide rail cars and obtain rail service.

47. In October 2018, Equinor, a buyer of crude, was in discussions with the Kansas City Southern Railway Company ("KCS") in conjunction with Jupiter Marketing and Trading ("Jupiter") for the purpose of obtaining rail service to move Sequitur's crude oil out of the Barnhart Facility.

48. At the time, Jupiter was negotiating with Sequitur to become a joint venture partners for the purpose of pursuing the arbitrage opportunity through the Barnhart Facility. Those negotiations did not result in a contract between Jupiter and Sequitur.

49. Equinor had a commercial relationship with Jupiter providing for the purchase of crude oil and the transportation of that oil by rail from the Permian Basin, including the Barnhart Facility, to the Gulf Coast.

50. KCS was willing and able to provide that rail transportation service, and in fact provided Equinor with rates for that service in or about October 2018.

51. Jupiter, acting as Sequitur's joint venture partner, also retained a rail logistics consultant to negotiate rail rates with the KCS in November 2018, and was able to do so.

52. However, the rates quoted by the KCS were not low enough to provide an arbitrage advantage.

53. Thus, rail transportation for Sequitur's crude was available, just not at a price that provided Sequitur the economic return it sought. In other words, Sequitur could move its oil by rail, but it was not a good deal for it.

54. The railroads that serve the Barnhart Facility were providing rail transportation for crude oil in 2018 and 2019.

55. The means by which Sequitur chose to try to procure rail transportation for its crude oil were within its control since it had several options.

56. The means chosen by Sequitur did not result in Sequitur obtaining a joint venture partner who was able to provide the transportation.

57. Despite its pursuit of a joint venture partner and its inability to find one, rail transportation was available.

58. Rail transportation for crude oil was never made unavailable or curtailed by the railroads.

59. No seller or lessor of rail cars ever refused to sell or lease rail cars to Sequitur.

60. No railroad refused transportation services to Sequitur.

61. Rail transportation services to the Barnhart Facility were never interrupted or delayed.

62. Therefore, rail transportation service was not unavailable or curtailed by the railroads for reasons outside of the control of Sequitur.

63. While rail transportation services were available in 2018 and 2019, Sequitur's efforts to obtain the available services simply failed.

64. Sequitur did not make any effort to obtain rail cars on its own, but relied on trying to find a joint venture partner who had access to rail cars.

65. The efforts Sequitur made or did not make to obtain rail cars and transportation services were within its control.

66. Sequitur's failure to obtain rail cars was not a force majeure event.

67. Rail transportation service for Sequitur's crude oil was also available through Murex, LLC; however, Sequitur did not follow up with it to either sell it oil or engage it to provide transportation services.

68. Because Sequitur never affirmatively responded to quotes for providing rail services or rail cars, any argument that it could not have obtained rail cars or rail transportation services is purely speculation.

69. Because Sequitur never affirmatively sought and was refused rail transportation services or rail cars, any argument that it could not have obtained rail cars or rail transportation services is purely speculation.

70. The Barnhart Facility was fully operational to enable the performance and receipt of crude oil for transloading, and all regulatory approvals had been obtained, as of December 10, 2018.

71. On February 8, 2019, Sequitur sent Maalt a letter stating it was terminating the TSA pursuant to the force majeure provisions of the TSA.

72. At the time of Sequitur's February 8, 2019 letter, Maalt was ready, willing and able to perform its obligations under the TSA.

73. However, there was never a force majeure event as rail service to the Barnhart Facility was never unavailable, interrupted, delayed or curtailed.

74. Rather, Sequitur asserted its force majeure claim as a pretext to terminate the TSA simply because it was unable to find an oil buyer who was able to move crude oil by rail while providing the arbitrage benefit to Sequitur, and because it did not want to invest resources into undertaking the logistics efforts itself.

75. In the months before its February 8, 2019 letter, Sequitur realized that the spread in crude oil prices, and thus the potential arbitrage it sought, was shrinking while the cost of rail service was higher than it expected or increasing during that time frame.

76. The spread in oil prices that resulted in the arbitrage opportunity in 2018 closed by February 2019.

77. Sequitur made the decision to terminate the TSA by claiming force majeure in order to avoid having to pay Maalt the shortfall payments under the TSA.

78. Through its February 8, 2019 letter, Sequitur was absolutely and unconditionally refusing, and continued to refuse, to perform its obligations under the TSA, including the obligation to pay the Shortfall Payments or other amounts owed under the TSA.

79. By sending its February 8, 2019 letter, Sequitur improperly attempted to terminate the TSA in order to avoid its contractual obligations.

80. Under the terms of the TSA, Sequitur was able to perform its obligations by either paying Maalt to transload more than the minimum quantity specified by the TSA, or, if there was a shortfall, pay the Shortfall Payment plus the fee for the amount actually transloaded.

81. Sequitur did not perform its obligations under the TSA.

82. Maalt fully performed its obligations under the TSA, which performance was accepted by Sequitur until it repudiated the TSA.

83. At the time of Sequitur's failure to perform its obligations under the TSA, there was no "interruption, delay, or curtailment of rail transportation services" excusing Sequitur's performance.

84. Maalt is entitled to recover the sum of $6,614,496.00 being the amount of the Shortfall Payment under the TSA for the period of December 10, 2018 through January 1, 2020.

85. Maalt is entitled to recover interest in the amount awarded to it at the rate specified in the TSA.

86. Maalt presented its claim to Sequitur more than thirty days before trial as required by Texas Civil Practice and Remedies Code Chapter 38.

87. Maalt has incurred reasonable and necessary attorneys' fees in the amount of $_____ in prosecuting this case.

88. No fraudulent representations were made by Maalt to induce Sequitur into signing the TSA.

89. No negligent misrepresentations were made by Maalt to induce Sequitur into signing the TSA.

90. Sequitur is a sophisticated entity that is capable of performing due diligence in connection with transactions such as that involved in this case.

91. The LOI imposed on Sequitur the obligation to conduct its own due diligence before signing the TSA.

92. Sequitur knew, before signing the TSA, that signing the TSA carried market risks that it could lose money and even not be able to take advantage of any arbitrage opportunity that existed in 2018.

93. Maalt did not make any false statements of material fact that induced Sequitur to sign the TSA.

94. The statements alleged by Sequitur to have been made by Maalt to induce it into signing the TSA were unactionable "trade" or "sales talk," opinions, statements about future performance or events, or otherwise unactionable.

95. Any reliance placed on any representations made by Maalt were not reasonable or justifiable.

Conclusions of Law

1. Sequitur repudiated the TSA, and by doing so materially breached the TSA.

2. Sequitur's repudiation of the TSA constitutes a material breach of the TSA.

3. No force majeure event excused Sequitur from performing under the TSA.

4. As a result of Sequitur's breach of the TSA, Maalt has sustained actual damages

5. The amount of actual damages sustained by Maalt as a result of Sequitur's breach of the TSA is $6,614,496.00.

6. Alternatively, Maalt is entitled to specific performance of the Shortfall Payments required by the TSA and a judgment in the amount of $6,614,496.00.

7. Maalt is entitled to recover interest on its actual damages calculated as specified in the TSA.

8. Under the contractual interest provision, Maalt is entitled to recover pre-judgment interest through the date of judgment in the amount of two percent over the prime rate as published under "Money Rates" in the *Wall Street Journal* in effect at the close of the Business Day on which payment was due.

9. Maalt is entitled to recover its reasonable and necessary attorneys' fees, accountants' fees, costs and expenses pursuant to Section 15.19 of the TSA.

10. Maalt is entitled to recover its reasonable and necessary attorneys' fees, pursuant to Texas Civil Practice and Remedies Code Chapter 38.

11. Maalt is not liable to Sequitur for negligent misrepresentation.

12. Maalt is not liable to Sequitur for fraudulent inducement of the TSA.

13. There was no mutual mistake between the parties that would have abrogated Sequitur's alternate performance obligations to throughput or pay the Shortfall Payment and Sequitur's mutual mistake affirmative defense fails.

14. There were no implied conditions in the TSA that were not spelled out within it and Sequitur's failure of implied conditions of the contract affirmative defense fails.

15. Sequitur's affirmative defenses of excuse and justification fail because the defenses are no different than the defense of force majeure under the TSA.

16. Sequitur's affirmative defense of statute of frauds fails because Maalt seeks only a recovery of Shortfall Payments owed under the TSA.

17. Sequitur's affirmative defense of waiver fails as Maalt did not intentionally relinquish any known right.

18. Maalt is not liable to Sequitur for damages in any amount regardless of the theory of recovery.

Respectfully submitted,

By: */s/ James Lanter*

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record via the court's electronic filing and service system on June 4, 2021.

/s/ James Lanter
James Lanter