

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: : Chapter 11
: :
TEMPLAR ENERGY LLC, *et al.*, : :
: Case No. 20-11441 (BLS)
: :
: **Hearing Date: July 14, 2020, at 10:30 a.m.**
Debtors. :

OBJECTION BY THE BIVINS FAMILY TO DEBTORS’ MOTION FOR ENTRY OF ORDERS (A) (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS’ ASSETS, (II) APPROVING BID PROTECTIONS, (III) SCHEDULING A SALE HEARING AND OBJECTION DEADLINES WITH RESPECT TO THE SALE, (IV) SCHEDULING AN AUCTION, (V) APPROVING THE FORM AND MANNER OF NOTICE OF THE SALE HEARING AND AUCTION, (VI) APPROVING CONTRACT ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (VII) GRANTING RELATED RELIEF; AND (B) (I) APPROVING THE SALE OF THE DEBTORS’ ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF

Certain parties, as the lessors of an Oil and Gas Lease dated May 21, 2013, as amended, (the “Bivins Family”) with the Debtors, file this objection to the Debtors’ Motion for Entry of Orders (A) (I) Approving Bidding Procedures for the Sale of All or Substantially all of the Debtors’ Assets, (II) Approving Bid Protections, (III) Scheduling a Sale Hearing and Objection Deadlines with Respect to the Sale, (IV) Scheduling an Auction, (V) Approving the Form and Manner of Notice of the Sale Hearing and Auction, (VI) Approving Contract Assumption and Assignment Procedures, and (VII) Granting Related Relief; and (B) (I) Approving The Sale of the Debtors’ Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (II) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (III)



Granting Related Relief (“Sale Motion”) [Docket No. 47]. In support of its objection, the Bivins Family avers as follows:

BACKGROUND

1. On June 1, 2020, the Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. [Docket No. 1].

2. On June 1, 2020, the Debtors filed their Joint Prepackaged Chapter 11 Plan of Reorganization (“Plan”).

3. On June 1, 2020, the Debtors filed the Sale Motion.

4. On June 16, 2020, the Debtors filed the Motion to Extend Deadline to File Schedules or Provide Required Information (“Waiver Motion”). [Docket No. 88]. The Debtors recognized in the Waiver Motion that the purpose of filing Schedules and Statements is to provide notice to creditors and to disclose information about the Debtors to the holders of Claims. The Debtors represented that in these cases, the benefits of filing the Schedules and Statements are heavily outweighed by their costs. [Waiver Motion, ¶ 11]. The Debtors alleged that requiring them to complete the Schedules and Statements would be time consuming, distracting to the Debtors’ advisors and management, and costly to the Debtors’ estates. On June 29, 2020, the Bankruptcy Court issued the Order Conditionally Waiving the Requirement to File Schedules and Statements (“Waiver Order”). [Docket No. 144]. The Waiver Order provides that the requirement that the Debtors file the Schedules and Statements is permanently waived effective upon the date of confirmation of the Plan, provided confirmation occurs on or before August 17, 2020. [Waiver Order, ¶ 3].

5. On June 23, 2020, the Debtors filed the Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts (“Assumption

Notice”). [Docket No. 103]. The Assumption Notice does not appear to list any contract with the Bivins Family.

6. On June 30, 2020, the Debtors filed the Proposed Order (A) Approving the Sale of the Debtors Assets Free and Clear of All Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Lease, and (C) Granting Related Relief (“Sale Order”). [Docket No. 153].

OBJECTION

7. To the extent the Debtors are seeking to assume or assign the Bivins Family Lease, the Bivins Family objects to the Sale Motion on the grounds of lack of adequate notice.

8. The Sale Order provides in pertinent part:

Any provisions in any Assumed Contracts that prohibit or condition the assignment of such Assumed Contract or allow the party to such Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assumed Contract constitute unenforceable anti- assignment provisions that are void, and of no force and effect. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and the assignment to the Buyer of the Assumed Contracts have been satisfied. [Sale Order, ¶ 28].

9. If the Debtors intend to assume and assign the Bivins Family lease through the Sale Motion, the Bivins Family objects to the assumption, transfer, sale or other assignment of the such Lease(s), or any other interests of the Bivins Family, unless and until the Debtors and the buyer have complied with the terms of the respective agreement and all applicable non-bankruptcy law. Sections 363 and 365 of the Bankruptcy Code, upon which the Debtors’ sale process primarily relies, do not preempt non-bankruptcy law. Under 11 U.S.C. § 365(c)(1), the Debtors “may not assume or assign any executory contract or unexpired lease of the debtor....if applicable law excuses such a

party, other than the debtor, to such a contract or lease from accepting performance from or rendering performance to any entity other than the debtor or the debtor in possession....”

10. The Bivins Family Lease must be assumed with all benefits and burdens including, among other things, the preservation of any audit and compliance review rights that may reveal additional unpaid or underpaid amounts owing by the Debtors to the Bivins Family that must be cured in full by the Debtors, subject to any defenses and rights that the parties may have under applicable non-bankruptcy laws and regulations. The Bivins Family Lease cannot vest in the Debtors free and clear of their *continuing* liability for any and all decommissioning, reclamation and/or plugging and abandonment obligations that have accrued under such Leases and applicable laws.

11. Since the Petition Date, the Debtors appear to have been paying the revenue payments due to the Bivins Family pursuant to the relevant lease in the ordinary course. However, under the relevant lease, the Debtors pay the Bivins Family the revenue payments in arrears and therefore the terms of any assumption of the Bivins Family Lease and/or the exact amount of a potential cure at the time of closing the proposed sale are not known at this time.

12. Further, liens pursuant to the relevant lease and applicable law attach to the proceeds generated as a result of the actions of the Debtors and, therefore, the Bivins Family objects to the Sale Motion to the extent it attempts to undermine the Bivins Family’s rights and liens in the proceeds. Accordingly, the Bivins Family files this Objection to preserve its rights to contest the terms of any proposed assumption and assignment of the Bivins Family’s Lease of the Sale Motion.

13. Finally, prepetition, due to certain defaults by the Debtors, the terms of the Lease were altered in that the amount of acreage available for exploration decreases significantly and,

the Bivins Family objects to the Sale Motion and any related and/or corresponding relief that attempts to assume and assign, or sell, the Lease regardless of the defaults.

14. The Bivins Family reserves its rights to supplement this Objection and to further object to any assumption and assignment of the relevant lease(s) at the appropriate time, including the right to contest the nature of the agreement and whether or not the agreement is an executory contract that is subject to assumption and assignment under section 365 of the Bankruptcy Code.

CONCLUSION

15. For the reasons stated above, the Bivins Family respectfully requests that any assumption and assignment of its lease be conditioned upon payment of appropriate cure costs, determined as of the date of any assumption thereof or within a reasonable time thereafter, the cure of any non-monetary defaults thereunder, the provision of adequate assurance of future performance by any assignee, and in all respects subject to this Objection. Further, the Bivins Family objects to the Sale Motion as it relates to the Bivins Family lease.

Date: July 9, 2020

THE POWELL FIRM, LLC

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 9, 2020, he caused the foregoing to be electronically filed with the Clerk of the Court using the ECF system that will send notification of such filing to the parties indicated on the Notice of Electronic Filing, and that the foregoing is also being served on the parties listed below via regular U.S. Mail and email:

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