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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, <i>et al.</i>,	§	Case No. 20-42002-elm11
	§	
Debtors.	§	(Jointly Administered)
	§	

**SEQUITUR PERMIAN, LLC'S LIMITED OBJECTION TO
THE ASSUMPTION OF CONTRACTS LISTED AS
EXECUTORY IN DEBTORS' NOTICE OF CURE PROCEDURES**

Sequitur Permian, LLC files this objection to the assumption of certain agreements the Debtors have listed as executory contracts in its Notice of Cure Procedures [Docket No. 407] (the "**Cure Notice**") and in support thereof, respectfully represents as follows:

PRELIMINARY STATEMENT

1. The Cure Notice filed by the Debtors identifies three agreements between Sequitur Permian, LLC ("**Sequitur**"), Vista Proppants and Logistics, LLC ("**Vista**"), and Maalt, LP ("**Maalt**"). Each of these contracts terminated well before the Debtors initiated these bankruptcy proceedings. Accordingly, none of the agreements are subject to assumption by the Debtors and Sequitur requests that the Court enter an order finding that these agreements may not be assumed under 11 U.S.C. § 365(a).



BACKGROUND

A. General Background

2. On June 9, 2020 (the “**Petition Date**”), the Debtors each filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code commencing the above captioned cases (the “**Chapter 11 Cases**”). The Debtors continue to manage and operate their businesses as debtors-in-possession pursuant to sections 1107 and 1108 of chapter 11 of title 11 of the Bankruptcy Code.

3. On August 19, 2020, the Court approved the solicitation of the Debtors’ *Second Amended Disclosure Statement in Support of the Second Amended Joint Plan of Reorganization of Vista Proppants and Logistics, LLC, et al., Pursuant to Chapter 11 of the Bankruptcy Code* (the “**Disclosure Statement**”). The order approving the Disclosure Statement required the Debtors to serve the Cure Notice to each party to an executory contract or unexpired lease. Any party identified in the cure notice must file objections to the assumption of an executory contract no later than September 10, 2020.

4. The Cure Notice identifies Sequitur as a party to three executory contracts, namely (1) a Terminal Services Agreement with Maalt (the “**TSA**”); (2) a Letter of Intent with Vista (the “**LOI**”); and (3) and a Premises Access Agreement with Maalt¹ (the “**PAA**”).

B. Background on LOI, TSA and PAA

5. Sequitur is in the crude oil production business, with a primary focus of approximately 88,000 net acres including Irion County, Texas as part of the Wolfcamp Shale. In about May of 2018, Sequitur was looking to obtain access to a transloading facility or rail terminal in or around Irion County, Texas to efficiently transfer crude oil to refineries near the Gulf Coast.

¹ The Cure Notice mistakenly identifies Vista as the Debtor Counterparty.

6. Around this time Sequitur reached out to Vista, the parent of Maalt, regarding the rail depot Maalt owns in Barnhart, Texas (the “**Terminal**”). Because Vista had experience transloading frac sand, Sequitur believed it would be an ideal candidate to transload its crude oil.

7. On June 1, 2018, after several weeks discussing the prospect, Sequitur and Vista entered into the LOI. The LOI reflected the parties’ intent to enter the TSA which would grant Sequitur exclusive right to use Maalt’s terminal.

8. On August 6, 2018, Maalt and Sequitur signed the TSA. The PAA was related to the TSA and granted Sequitur early access to the Terminal before the TSA was executed. The term of the TSA became effective upon Sequitur’s declaration that operations at the Terminal were commenced and, regardless of the commencement date, was effective through January 1, 2020 unless the term was extended in writing, which it was not. Before transloading operations could begin, Sequitur, at its sole cost and significant expense, installed equipment and facilities at the Terminal valued at over \$4 million. While construction was underway, Sequitur, with Vista and Maalt’s assistance, tried to secure trains and railcars certified to transport crude oil.

9. Generally, and subject to numerous terms and conditions, the TSA provided that Maalt would be compensated for transloading crude oil exclusively for Sequitur. Under the TSA, Sequitur’s requirement to begin paying Maalt was conditioned on the Terminal being fully capable of transloading Sequitur’s crude oil, e.g. the commencement date being reached. Assuming the Terminal became capable of transloading crude oil, the TSA was also terminable for, among other things, an event of Force Majeure including the unavailability of transportation services to transload the crude oil.

10. Unfortunately, because of Vista’s and Maalt’s misrepresentations to Sequitur, the Terminal never became capable of transloading its crude oil. Specifically, Sequitur was unable to

secure certified trains and railcars to effectively transload and transport its crude oil despite Vista's and Maalt's misleading assurances otherwise. Due to these circumstances, operations at the Terminal never commenced. In addition, these circumstances led to an unavailability, interruption, delay, and curtailment of oil transportation services beyond Sequitur's control, a "Force Majeure" event under the TSA.

11. On December 7, 2018, Sequitur sent written notice to Maalt that declared an existing "Force Majeure" event under the TSA. On February 8, 2019, Sequitur sent written notice to Maalt that the Force Majeure event had continued for sixty (60) days despite Sequitur's continued efforts to overcome it. As a result, Sequitur terminated the TSA in accordance with Sequitur's rights under the TSA to terminate it early.

12. On February 13, 2019, Maalt sued Sequitur in Irion County for breach of contract. Sequitur has since filed counterclaims against Maalt and Vista for promissory estoppel, negligent misrepresentation, common law fraudulent inducement, and breach of contract alleging that Sequitur repudiated the TSA. The suit is pending as *Maalt, LP v. Sequitur Permian, LLC*, In the 51st Judicial District Court of Irion County, Texas (the "**Lawsuit**").

13. Further, the PAA was never extended in writing and terminated according to its terms on January 1, 2020.

14. A Notice of Bankruptcy was filed in the Lawsuit shortly after the Petition Date and has stayed the proceedings in the state court.

15. On September 4, 2020, the Lawsuit was removed to this Court and is currently pending as Adversary No. 20-4064, *Maalt, LP v. Sequitur Permian, LLC*.

OBJECTION

16. The Bankruptcy Code gives the Debtors the right to assume executory contracts. 11 U.S.C. § 365(a). However, a contract may not be if assumed it has expired according to its

terms. *Ctys. Contracting & Constr. Co. v. Constitution Life Ins. Co.*, 855 F.2d 1054, 1061 (3d Cir. 1988).

17. The LOI was itself not a contract, but a non-binding agreement to enter into the TSA, and in any event, was superseded by the TSA. The TSA was terminated on February 8, 2019, the date that Sequitur gave written notice of termination due to the continuing event of Force Majeure. As a result, the LOI, PAA and TSA are no longer subject to assumption.

18. Maalt contends, in the Lawsuit, that the notice of Force Majeure was ineffective to terminate the TSA. But by initiating the Lawsuit and alleging that Sequitur repudiated the TSA, Maalt also cancelled the TSA effective February 13, 2019. Thus, as a result of Maalt's own actions, it has precluded itself from assuming the LOI, PAA or TSA.

19. Finally, assuming *arguendo* the agreements did not expire in February 2019, the TSA still expired by its own terms on January 1, 2020 because Sequitur did not extend the term in writing. Accordingly, the Debtors cannot assume the LOI, TSA or PAA.

20. Because the LOI, TSA and PAA are not executory, the cure amounts listed in the Cure Notice are inapplicable. However, to the extent the Court finds that these agreements are executory and subject to assumption, Sequitur asserts the cure amount for assuming the contract is \$4,029,977, the amount it asserts it was damaged in its counterclaim.

21. Finally, Sequitur requests that the Court find that its rights to pursue its counterclaims against Vista and Maalt are preserved for all purposes regardless of the outcome of this Objection.

WHEREFORE, Sequitur Permian, LLC requests that the Court find that (i) the Debtors cannot assume the LOI, the TSA or the PAA under 11 U.S.C. § 365(a); (ii) its rights to pursue its

counterclaims against Vista and Maalt are preserved for all purposes; and (iii) for such other and further relief to which it may be entitled in law or equity.

DATED: September 8, 2020

Respectfully submitted,

HOOVERSLOVACEK LLP

By: /s/ Melissa A. Haselden

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CERTIFICATE OF SERVICE

I certify that on September 8, 2020 a copy of *Sequitur Permian, LLC's Limited Objection to the Assumption of Contracts Listed as Executory in Debtors' Notice of Cure Procedures* was served through the Court's ECF system on those parties receiving ECF notice and on the parties identified in the Notice of Cure Procedures.

/s/ Melissa A. Haselden

MELISSA A. HASELDEN

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

In re

Vista Proppants and Logistics, LLC, *et al.*,

Debtors.

§
§
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§
§
§
§

Chapter 11

Case No. 20-42002-elm11

(Jointly Administered)

**ORDER ON SEQUITUR PERMIAN, LLC’S LIMITED OBJECTION TO
THE ASSUMPTION OF CONTRACTS LISTED AS
EXECUTORY IN DEBTORS’ NOTICE OF CURE PROCEDURES**

Came on for consideration the *Limited Objection to the Assumption of Contracts Listed as Executory in Debtors’ Notice of Cure Procedures* (the “**Objection**”) filed by Sequitur Permian, LLC (“**Sequitur**”) and the Court, having considered the Objection finds that the contracts identified by the Debtors are not subject to assumption.

It is therefore ORDERED THAT

1. The Debtors may not assume the (1) Terminal Services Agreement between Sequitur and Maalt, LP; (2) the Letter of Intent between Sequitur and Vista Proppants and

Logistics, LLC; or (3) and a Premises Access Agreement between Sequitur and Vista Proppants and Logistics, LLC pursuant to 11 U.S.C. § 365(a).

2. Sequitur's rights to pursue any claims it may have against Vista Proppants and Logistics, LLC and Maalt, LP are preserved for all purposes.

End of Order

Submitted by:

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