

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
SUPERIOR ENERGY SERVICES, INC., <i>et al.</i> ,	§	Case No. 20-35812 (DRJ)
Debtors.	§	(Jointly Administered)
	§	
	§	

**OBJECTION OF AGUA DULCE, LLC TO
DEBTORS’ JOINT PREPACKAGED PLAN OF REORGANIZATION FOR
SUPERIOR ENERGY SERVICES, INC. AND ITS AFFILIATE DEBTORS
UNDER CHAPTER 11 OF THE BANKRUPTCY CODE [DOC. #11]**

Agua Dulce, LLC (“Agua Dulce”) files this *Objection of Agua Dulce, LLC to Debtors’ Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Doc. #11] (the “Objection”) pursuant to 11 U.S.C. § 1123, 1124, 1126, 1128(b) and 1129, Rules 3020, 7008 and 9014 of the Federal Rules of Bankruptcy Procedure, and Rules 3016-1 and 9013-1(g) of the Bankruptcy Local Rules, and Agua Dulce would show:

1. Superior Energy Services, Inc. and its affiliates (“Debtors”) filed their Chapter 11 bankruptcy cases on December 7, 2020 (the “Petition Date”). Debtors filed the *Joint Prepackaged Plan of Reorganization for Superior Energy Services, Inc. and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [Doc. #11] (the “Plan”) on the Petition Date.

2. Agua Dulce, as Lessor, and SPN Well Services, Inc. (“SPN”), as Lessee, are parties to the *Commercial Lease Agreement* (the “Rock Springs Lease”) for certain premises in Rock Springs, County of Sweetwater, Wyoming.

3. The Rock Springs Lease premises are used by Debtors in their oil field services operations and have a gun loading facility and an explosives bunker on the premises. Agua Dulce has recently completed significant repairs and improvements to the premises, expending in



excess of \$2 million on such work. On December 18, 2020, SPN advised Agua Dulce that the repairs were complete and accepted. This occurred after Debtors' bankruptcy filings and the filing of the Rejection Motion (defined below). Pre-petition, Debtors had advised Agua Dulce that it should continue to undertake the repairs and finish same. SPN even executed the Rock Springs Lease in October 2020 as the parties had been waiting to execute the Rock Springs Lease while the repairs were in progress. Debtors never notified Agua Dulce that they were contemplating filing bankruptcy and intended to reject the Rock Springs Lease, and even after such filing, they confirmed that the repairs were satisfactory.

4. Debtors in this case, including SPN, filed the *Debtors' Omnibus Motion for Entry of an Order Authorizing the Debtors to (I) Reject Certain Unexpired Leases Effective as of the Dates Specified in the Motion and (II) Abandon Certain remaining Personal Property in Connection Therewith* [Doc. #37] (the "Rejection Motion") on the Petition Date. The Rejection Motion sought, *inter alia*, to reject the Rock Springs Lease effective as of the date Debtors remove their property from the leased premises but no later than the "Effective Date" under Debtors' Plan. It also sought to allow Debtors to abandon property at the leased premises.

5. On January 8, 2021, the Court entered the *Order Authorizing the Debtors to (I) Reject Certain Unexpired Leases Effective as of the Dates Specified in the Motion and (II) Abandon Certain Remaining Personal Property in Connection Therewith* [Doc. #211] (the "Rejection Order").

6. Debtors have not fully removed their personal property from the leased premises, appropriately cleaned the premises, and provided notice of same, such that the effective date of rejection of the Rock Springs Lease has not occurred. It is anticipated that such notice of effective rejection date will be delivered to Agua Dulce in the very near future.

7. Agua Dulce is examining the facts and issues related to the rejection of the Rock Springs Lease. Potentially, certain of the purportedly abandoned property may consist of hazardous materials, such that abandonment is not appropriate. *Midlantic Nat'l Bank v. New Jersey Dist. of Environmental Protection*, 474 U.S. 494, 106 S. Ct. 755 (1986). Agua Dulce will address these issues through other filings (such as a Motion to Reconsider the Rejection Order) with the Court if necessary.

8. Per applicable Local Bankruptcy Rules, Agua Dulce admits that proceedings relating to confirmation of the Plan are core proceedings and consents to entry of a final order thereon by the Bankruptcy Court with respect thereto.

9. Agua Dulce's lease is with SPN, one of the Affiliate Debtors under Article I, Section B of the Plan, and any claim of Agua Dulce would only be against SPN. Agua Dulce would, therefore, be in Class 8 under the Plan, "General Unsecured Claims Against Affiliate Debtors". Plan, Article III, Section A, page 22 and Article III, Section B(8), page 28.

10. Under the Plan, Class 8 Creditors are "unimpaired" and all of their legal, equitable and contractual rights against the Affiliate Debtor are unaltered by the Plan. Unless agreed otherwise, Debtor is to pay Allowed Claims of Class 8 creditors or dispute such claims in the ordinary course of business in accordance with applicable law and the Plan contemplates that such creditors will receive 100% of their claims. *Id.*

11. Class 8 Creditors do not vote on the Plan. Plan, Article III, Section B, page 28.

12. Class 8 Creditors are also not required to file a proof of claim in the jointly administered cases. *See Order (I) Establishing (A) Bar Dates and (B) Related Procedures for Filing Proofs of Claim Against Superior Energy Services, Inc. and (II) Approving the Form and*

Manner of Notice Thereof [Doc. #88] (the “Bar Date Order”), ¶ 9, page 4. *See also* Plan, Article VIII, Section A(4), page 53.

13. The Lease Rejection Order, conversely, appears to require Agua Dulce to file a claim to be adjudicated by the Bankruptcy Court. *See* Rejection Order, ¶ 7, page 3. The Plan appears to require same. Plan, Article VI, Section D, page 44.

14. While seeming to treat Agua Dulce as “unimpaired”, the Plan does not provide for a mechanism for Agua Dulce to assert its full legal, equitable and contractual rights outside of the Bankruptcy Court and under non-bankruptcy law although the Plan specifically provides protections for Debtors. For instance, in Article VI, Section 8, page 44, and Article X, Section G, page 63, the Plan appears to provide that upon confirmation that an injunction will arise preventing Agua Dulce from pursuing its claims under applicable law, which would be Wyoming law, in a Wyoming state court, even though there is a forum selection clause in the Rock Springs Lease. *See* Rock Springs Lease, Section 18.1, pages 18-19. On the other hand, the Plan allows Debtors and Reorganized Debtors to contest the amount and validity of Agua Dulce’s claims in a non-Bankruptcy Court venue or in the Bankruptcy Court at their discretion (Article VIII, Section A(1), page 52 and Article VIII, Section A(4), page 53). The Plan also proposes to reserve jurisdiction in the Bankruptcy Court to allow the Debtors and Reorganized Debtors to liquidate rejection claims. Plan, Article XI, Sections 1, 3, 6, and 9. Again, however, “unimpaired” creditors are not given their rights or a right to the appropriate adjudication forums under their agreements with Debtors. Plan, Article V, Section (B)(2), Section D, Section G and Section H, pages 57-64.

15. As an “unimpaired” creditor, Agua Dulce also questions whether the lease rejection damage limitations under 11 U.S.C. § 502(b)(6) would be applicable to any claim of Agua Dulce or which court should determine that issue.

16. For confirmation of the Plan, Debtors must demonstrate by a preponderance of the evidence that the Plan complies with section 1129 of the Bankruptcy Code. *See In re Briscoe Enters, Ltd. II*, 994 F.2d 1160, 1165 (5th Cir. 1993) (finding “preponderance of the evidence is the debtor’s appropriate standard of proof under § 1129(a) and in a cramdown.”); *In re Cypresswood Land Partners, I*, 409 B.R. 396, 422 (Bankr. S.D. Tex. 2009) (finding debtor as the proponent of the plan has the burden of proving all elements of section 1129 are met); *In re J T Thorpe Co.*, 308 B.R. 782, 785 (Bankr. S.D. Tex. 2003). Section 1129 requires the Debtors to establish their Plan complies with all applicable provisions of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(1). Section 1129 also requires the Debtors to establish their Plan is proposed in good faith and not by any means forbidden by law. *See* 11 U.S.C. § 1129(a)(3). Agua Dulce questions whether it is actually an “unimpaired” creditor and, as an “impaired” creditor it should have been allowed to vote on the Plan. In the circumstances here, the Plan should not be confirmed as it violates 11 U.S.C. § 1122, 1123(a)(1), (2), (3) and (7), 1124(1) and 1129(a)(1), (2) and (3).

17. Alternatively, the Court should find and order that the injunction provisions of the Plan do not apply to Agua Dulce, that Agua Dulce does not have to file a claim in the jointly administered cases unless it chooses to do so, and that it can liquidate and pursue recovery of its claims under Wyoming law in the Wyoming state courts. The Court should also determine that nothing in the Plan limits Agua Dulce’s claims and that those claims can be fully pursued under applicable Wyoming law.

18. Agua Dulce also opts out of the releases contained in Article X, Section B(2), on page 59 of the Plan.

WHEREFORE, Agua Dulce also requests that the Court deny confirmation of the Plan or, alternatively, provide for the determinations and protections set out above to clearly reflect Agua Dulce's "unimpaired" status under the Plan in any confirmation order entered confirming the Plan. Agua Dulce also requests such other and further relief to which it is justly entitled.

Dated: January 12, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify a copy of the foregoing document will be served by electronic notification by the Electronic Case Filing system for the United States Bankruptcy Court for the Southern District of Texas to those parties registered to receive ECF Notice and by pdf email on the parties listed below on January 12, 2021.

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