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UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. Case No. 20-11442 (BLS)
TE HOLDCORP, LLC, .
. .
. .
Debtors. . 824 Market Street
. Wilmington, Delaware 19801
. .
. Friday, February 12, 2021
. 11:02 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Electronically
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MOTIONS:

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1) Court's Ruling

3

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1 (Proceedings commenced at 11:02 a.m.)

2 THE COURT: 20-11442. And, specifically, this is
3 the time set by the Court for a ruling on Presidio's motion
4 for an order enforcing the sale order and the confirmation
5 order.

6 The motion is opposed by Spitfire Energy Group and
7 a hearing on the motion was held on January 13, or I'm sorry,
8 January 12th, 2021. For the reasons that I will provide,
9 Presidio's motion will be granted, and Spitfire's objection
10 will be overruled.

11 As a threshold matter, I note that there were some
12 procedural issues attendant to this motion and to today's
13 hearing. Specifically, the record reflects that Presidio
14 originally filed its motion in October of 2020 and the Court
15 granted the motion in absence of any opposition from Spitfire
16 or any other party.

17 Upon being advised that Spitfire, in fact, opposed
18 the relief that was requested and asserted that it did not
19 receive proper notice of the motion, consistent with my
20 practice, I vacated the order, and I set the matter for a
21 hearing on the merits by letter, dated December 16, 2020.

22 Turning to the motion, the record reflects that
23 the debtors filed their voluntary petitions on June 1, 2020,
24 and shortly thereafter, filed a bidding procedures and sale
25 motion, seeking a sale of substantially all of their assets.

1 Also shortly after the petition date, the debtors
2 filed their proposed plan of liquidation to travel along a
3 timeline with the sale process. And the debtors' business,
4 as of the petition date, was as an oil and gas exploration
5 and production company.

6 The record reflects that prior to the petition
7 date, Spitfire entered into a master services contract on
8 January 1, 2018, with the debtor and with Le Norman Operating
9 Group. The master service contract provided the terms by
10 which Spitfire would provide saltwater disposal services to
11 Templar and to the Le Norman parties.

12 Now, the record further reflects that Spitfire
13 timely filed an objection in this court to confirmation of
14 the debtors' plan; although, Spitfire did not file an
15 objection to the sale. Specifically, Spitfire objected to
16 the plan's proposed releases and to other provisions in the
17 plan that it believed were discriminatory to Spitfire.

18 Separately, Spitfire filed an objection to the
19 debtors' proposed cure amount relating to the master services
20 contract, stating that the master services contract was an
21 executory contract and that Section 365 of the Bankruptcy
22 Code precluded assumption of the master services contract,
23 absent payment of a cure claim in excess of \$4 million.

24 Review of the docket reflects that Spitfire did
25 not object to the debtors' proposed sale of assets to

1 Presidio under Section 363.

2 The parties resolved the Spitfire objections by
3 entry into a stipulation appearing at Docket Number 181.
4 That stipulation provides that the parties agreed that the
5 master services contract, "Is an executory contract that may
6 be assumed or rejected, pursuant to Section 365 of the
7 Bankruptcy Code."

8 The stipulation further affixed a cure claim at
9 \$2.75 million and provided that Spitfire could file a claim
10 for rejection damages in the event the master services
11 contract was rejected.

12 Presidio was designated by the debtors as the
13 successful bidder for substantially all of their assets. The
14 Court entered its sale order, which approved the sale of the
15 debtors' assets to Presidio and provides, in relatively
16 typical language for a sale order, that the assets were being
17 sold to Presidio free and clear of all liens, claims, and
18 encumbrances, pursuant to Bankruptcy Code Section 363(f).

19 Specifically, the sale order, which was not
20 objected to by Spitfire, was not appealed and is now a final
21 order, transferred assets, free and clear, of all claims,
22 servitudes, restrictive covenants, and other interests.
23 Again, in typical language, the sale order also provided that
24 Presidio could not be sued, on account of claims arising
25 prior to the closing.

1 The record reflects that the master services
2 contract was rejected by the debtors and was not assumed and
3 assigned to Presidio in connection with the sale. As noted,
4 the record does reflect that Spitfire did not object to the
5 sale, but Spitfire did opt-out of any releases it would have
6 granted under the plan in favor of Presidio. The
7 confirmation order was entered by the Court in late July
8 2020.

9 The record reflects that several months after the
10 closing and post-confirmation, in September of 2020, Spitfire
11 commenced litigation against Presidio in Texas State Court
12 seeking damages of well over \$100 million from Presidio,
13 arising out of the breach of the master services contract.

14 The Court is advised that the litigation in Texas
15 has been removed to Federal Court and proceedings there are
16 held in abeyance, pending this Court's ruling on Presidio's
17 motion.

18 The parties respective positions are well laid out
19 in their papers. Presidio contends that it purchased the
20 debtors' assets free and clear, and that it cannot be sued or
21 held liable for damages arising from the debtors' rejection
22 of the master services contract. Presidio further contends
23 that this Court has the authority and the responsibility to
24 enforce its own orders and to provide Presidio with the
25 protections it negotiated for and that the Court approved

1 under Bankruptcy Code Section 363(f).

2 Spitfire's position is both, legal and procedural.
3 First, Spitfire contends that the obligations under the
4 master services contract are real property covenants that
5 burdened the land acquired by Presidio from the debtors,
6 irrespective of the terms of the sale order or Section
7 363(f). Spitfire also asserts that its opt-out of the plan
8 releases preserved its rights to pursue Presidio on account
9 of the rejected master services contract and damages and
10 liabilities arising therefrom.

11 On the procedural front, Spitfire questions this
12 Court's jurisdiction to afford relief to Presidio and submits
13 that this dispute should be heard in Texas. I will address
14 the procedural point raised by Spitfire at the outset.

15 The relief sought by Presidio is limited to
16 enforcement of clear provisions in a final sale order and
17 confirmation order entered by this Court. This Court enjoys
18 core jurisdiction to construe and enforce its own orders.

19 This Court is the proper forum for consideration
20 of this dispute. The master services contract was rejected
21 under Section 365 of the Code and the debtors' assets were
22 sold to Presidio, free and clear, pursuant to Section 363(f).

23 Presidio seeks the benefit of the bargain it
24 obtained by participating in a bankruptcy sale process and
25 obtaining court approval of its transaction.

1 I am not satisfied that this matter would be
2 better or more appropriately presented in Texas. This type
3 of litigation against a buyer from a counterparty to a
4 debtors' rejected contract is precisely the type of
5 litigation Section 363(f) is designed and intended to
6 forestall.

7 It would frustrate the purpose of this bankruptcy
8 proceeding and Section 363(f) if Presidio were obliged to
9 defend itself in another forum against claims that it is
10 statutorily and contractually protected from; accordingly,
11 Spitfire's request that this Court either abstain or transfer
12 this matter back to Texas is denied.

13 Turning to the substance of the dispute, it is
14 clear that the sale order, which was not objected to by
15 Spitfire, effected the transfer of the debtors' assets, free
16 and clear, of claims arising out of the master services
17 contract.

18 Spitfire contends that the master services
19 contract is both an executory contract and a covenant,
20 burdening the land transferred to Presidio. This Court need
21 not answer that question, since the result is the same,
22 irrespective of whether the master services contract gave
23 rise to covenants that burdened the land.

24 The sale order provides for sale and transfer,
25 free and clear, including expressly free and clear of any

1 covenants. That order is final, and it is effective.

2 Spitfire's decision to opt-out of the plan
3 releases does not change this result. Spitfire presumably
4 preserved through its opt-out, any claims it may have had to
5 assert directly against Presidio; however, the rejection of
6 the master services contract by the debtor means that any
7 claim or damages Spitfire may have arising from breach of the
8 master services contract may be asserted only against the
9 debtors, not against Presidio.

10 And as noted above, since Presidio acquired the
11 assets free and clear, Spitfire does not possess any claims
12 against Presidio arising out of the asset transfer or the
13 rejection of the master services contract; accordingly,
14 Presidio's motion for an order enforcing the sale order and
15 the confirmation order will be granted. And I would request
16 that the parties confer and submit an appropriate order,
17 consistent with my ruling, within seven days.

18 Are there any questions?

19 (No verbal response)

20 THE COURT: I will assume there are no questions.

21 All right. With that, then, I do appreciate
22 everyone's time this morning. I apologize for the time that
23 it took to turn and dispose of or address this matter, and I
24 will look forward to submission of the order, consistent with
25 my direction.

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I hope everyone has a nice weekend. Be well.

We are adjourned. Thank you, Counsel.

UNIDENTIFIED: Thank you, Your Honor.

(Proceedings concluded at 11:12 a.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

February 16, 2021

William J. Garling, CET**D-543
Certified Court Transcriptionist
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