

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TE HOLDCORP, LLC,

Debtor.

Chapter 11

Case No. 20-11442-JKS

Hearing Date: April 14, 2021 at 1:30 p.m. (ET)
Related to Docket Nos. 111 & 115

**SPITFIRE ENERGY GROUP LLC'S REPLY IN SUPPORT OF ITS MOTION TO
RECONSIDER AND AMEND ORDER WITH BRIEF IN SUPPORT [DOC. NO. 115]**
(Order Enforcing (A) the Sale Order and (B) the Confirmation Order [Doc. No. 111])

Spitfire Energy Group LLC ("Spitfire") hereby submits its reply in support of its *Motion to Reconsider and Amend Order with Brief in Support* [Doc. No. 115] (the "Motion to Reconsider"), and respectfully requests the Court reconsider and amend its (i) *Order Enforcing (A) the Sale Order and (B) the Confirmation Order* [Doc. No. 111] (the "Order") and (ii) related oral ruling [Doc. No. 102] (the "Ruling") to deny Presidio Petroleum LLC's ("Presidio's") *Motion for Entry of an Order (I) Enforcing (A) the Sale Order and (B) the Confirmation Order, and (II) Granting Related Relief* [Doc. No. 44] (the "Enforcement Motion"). In support thereof, Spitfire respectfully represents as follows:

OVERVIEW

1. Presidio misrepresented Spitfire's Motion to Reconsider as being premised on the discovery of new evidence when it actually seeks to correct clear errors of law and fact. Presidio misrepresented Spitfire as having consented to this Court's jurisdiction when it has challenged it at every opportunity in this matter. And, Presidio misrepresented the effect of the plain language of the Court's *Amended Order* [Doc. No. 226]. Stripped of its duplicity, Presidio's response to the



Motion to Reconsider provides no basis for denying same. And so, the Court should reconsider and amend its Ruling and Order to correct the clear errors of fact and law identified by Spitfire.

ARGUMENT AND AUTHORITIES

A. Spitfire’s affidavit is proper and evidences a clear error of fact in the Ruling and Order.

2. To the main point of Presidio’s objection, it may be true that previously available evidence is not sufficient to support a motion to reconsider premised on the availability of *new evidence*, but that proposition is wholly inapposite where, as here, a motion to reconsider is premised on the need to correct a clear error of law or fact or prevent a manifest injustice. Showing a clear error of fact inherently requires the presentation of facts. Presidio’s argument that only newly discovered facts are admissible to show a clear error of fact would unnecessarily reduce the scope of that well established basis for reconsideration. And so, Presidio’s authority on this point must be disregarded. *See, e.g., Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985); *In re ID Liquidation One, LLC*, Case No. 11-11046 (BLS) (Jointly Administered), 2013 WL 6701911, *1 (Bankr. D. Del. Dec. 19, 2013).

3. Indeed, Spitfire’s argument in favor of reconsideration is not that new facts have come to light, but rather that a clear error of fact resulting from Presidio’s misrepresentations needs to be corrected.

4. The facts set out in the *Affidavit of David D. Le Norman* [Doc. No. 115-2] became relevant to this matter because Presidio’s counsel made misrepresentations on the record in the hearing on the Enforcement Motion that need to be corrected.¹ But, at the time of Presidio’s misrepresentation, briefing on the Enforcement Motion had been completed and the parties were

¹ Enforcement Motion Hr’g Tr. [Doc. No. 101] 52:1-7, 21-53:1.

in the throes of what the Court specifically noted was not to be an evidentiary hearing.²

5. Plainly, Spitfire’s Motion to Reconsider was the first available opportunity for Spitfire to furnish the Court the *Affidavit* [Doc. No. 115-2] after it and the facts to which it speaks became relevant. And, to whatever extent these facts might have been raised earlier (to be sure, they were raised by Spitfire’s counsel in the Enforcement Motion Hearing³), they were not “inexcusably” omitted from earlier proceedings before this Court. See *In re W.R. Grace & Co.*, 398 B.R. 368, 371-71 (D. Del. 2008). So, the *Affidavit* [Doc. No. 115-2] is proper.

6. Because the *Affidavit* [Doc. No. 115-2] evidences the inaccuracy of Presidio’s contrary claims during the Enforcement Motion hearing, the Court should reconsider and amend its Ruling and Order to correct its reliance on Presidio’s misrepresentations.

B. Spitfire did not consent to the jurisdiction of this Court.

7. From the outset of this dispute (that is, after Presidio’s default order was set aside [Doc. No. 66] and Spitfire was given due and proper notice of and an opportunity to oppose Presidio’s Enforcement Motion) Spitfire has denied this Court’s jurisdiction to hear this matter, including by specifically taking issue with same in its *Motion to Set Aside* [Doc. No. 58], *Reply* in support of same [Doc. No. 64], *Objection to Presidio’s Enforcement Motion* [Doc. No. 73], and, now, the Motion to Reconsider.

8. Spitfire also maintained there is no federal bankruptcy jurisdiction over this matter in its Texas Action pleadings, including its *Opposed Motion to Remand and Brief in Support* [Texas Action Doc. No. 7], *Response to [Presidio’s] Motion to Transfer Venue* [Texas Action Doc. No. 9], *Notice of Denial of Bankruptcy Jurisdiction Allegations and Statement of No Consent*

² Enforcement Motion Hr’g Tr. [Doc. No. 101] 20:3-4 (“And, again, this is not an evidentiary hearing. . .”).

³ Enforcement Motion Hr’g Tr. [Doc. No. 101] 54:14.

[Texas Action Doc. No. 11], and *Response to [Presidio's] Motion to Dismiss and Brief in Support* [Texas Action Doc. No. 12]. Each of these pleadings was pending before the United States District Court for the Northern District of Texas, Amarillo Division, when the Enforcement Motion was considered by this Court.

9. Spitfire's denial of federal bankruptcy jurisdiction is premised on legal arguments fully set out in the briefing in this matter and in the Texas Action, which include that

i. post-confirmation bankruptcy jurisdiction is limited and does not exist for this state law property dispute when appropriate factors are analyzed;

ii. the dispute is not a core bankruptcy proceeding because it involves nondebtor third parties and real covenants that were created outside of bankruptcy court and bankruptcy law; and

iii. the dispute is not even a "related to" bankruptcy matter because it does not affect the bankruptcy estate or the administration of the bankruptcy, and does not require interpretation of bankruptcy documents but rather the application of those documents which can be done by any court of competent jurisdiction.

See, generally, Opposed Motion to Remand and Brief in Support [Texas Action Doc. No. 7].

10. And yet, to argue the Court should continue to disregard Spitfire's jurisdictional argument made in reliance on *Lone Star Industries, Inc. v. Liberty Mutual Insurance*, 131 B.R. 269 (D. Del. 1991), Presidio now inexplicably claims (by misleadingly truncating a statement by Spitfire's counsel) that Spitfire has consented to this Court's jurisdiction. It has not.

11. Reading Spitfire's statement in full reveals instead that Spitfire was simply stating (again) its basis for challenging the Court's jurisdiction:

Mr. Carsey: Well, Your Honor, first of all, I would never question the Court's jurisdiction with regards to its orders –

The Court: Of course.

Mr. Carsey: --and its intentions, not at all. My response to that would be, how would the Court entertain the idea that everything that we're claiming in the Texas lawsuit that was filed is post-confirmation issues. And there was an intention in the Court's confirmation order that that was likely to occur. And in fact we were told not to file anything further in these Chapter 11 cases as part of our agreement.

And so, you know, while I would tell Your Honor that if there's some pre-confirmation cans of worms that need to be opened up, I certainly would not question the Court's jurisdiction whatsoever, but I would say that's what happened post-confirmation, okay, is not going to change the actual sale itself. . . .⁴

12. And so, despite Presidio's claims to the contrary, Spitfire has not consented to this Court's jurisdiction. Therefore, there is no consent justification for the Court failing to abide (or even address) *Lone Star* and the Court should reconsider its Ruling and Order to apply the principles of *Lone Star*, which counsel holding the Enforcement Motion in abeyance pending the outcome of the motions pending in the Texas Action.

C. Presidio is bound by the agreement it struck, which expressly did not release disputes between it and Spitfire.

13. Despite its protestations, Presidio is plainly bound by the agreement memorialized in the *Amended Order* [Doc. No. 226] by which Spitfire did not object to the sale of the Debtors' assets to Presidio in consideration for the preservation of Spitfire's claims against Presidio for at least two reasons.

14. First, Presidio engaged in the discussions resulting in that agreement. *See* Affidavit of David D. Le Norman [Doc. No. 115-2].

15. Second, the Court's *Amended Order* [Doc. No. 226] provides that "[t]he settlements, releases, exculpations, and injunctions set forth in Article X of the Plan are approved

⁴ Enforcement Motion Hr'g Tr. [Doc. No. 101] 35:16-36:8.

in their entirety as if set forth herein at length, and will be effective immediately and, except as otherwise provided in the Plan, *binding on all Parties in Interest* on the Effective Date.” (emphasis added).

16. And so, whether because Presidio agreed to be or because the Court said so, and regardless of Presidio’s feelings on the matter today, Presidio is bound by the agreement set out in Paragraph 45 of the *Amended Order* [Doc. No. 226]. Accordingly, the Court’s reading of that agreement in a way that renders it meaningless surplusage is a clear error that counsels reconsidering and amending the Ruling and Order.

D. Presidio’s request for fees and costs is as baseless as its objection.

17. Because of the manifest error shown in Spitfire’s Motion to Reconsider and this Reply, there is no basis to award Presidio its fees and costs. But, even if this Court were inclined to deny Spitfire’s Motion to Reconsider, Presidio has provided the Court with no authority or basis on which to award fees and costs. That bare and baseless request should be ignored and, if necessary, denied.

CONCLUSION

For the foregoing reasons, Spitfire respectfully requests the Court reconsider and amend its Ruling and Order to deny Presidio’s Enforcement Motion. Alternatively, the Court should at a minimum afford Spitfire an opportunity to present evidence regarding Presidio’s participation in the subject negotiations with Spitfire that led to the agreement memorialized in the *Amended Order* [Doc. No. 226].

[Signature Page to Follow]

Dated: April 9, 2021

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CERTIFICATE OF SERVICE

I, Ricardo Palacio, hereby certify that, on April 9, 2021, I caused one copy of the foregoing to be served upon the parties on the attached service list via first class mail and electronic mail, unless otherwise indicated.

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