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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, § **Case No. 20-42002-ELM-11**
LLC, ET AL.,¹ §
§
Debtors § **Jointly Administered**

MAALT, LP, §
§
Plaintiff, §
§
vs. § **Adversary No. 20-04064-elm**
§
SEQUITUR PERMIAN, LLC, § **Removed from Cause No. CV19-003 in**
§ **the 51st Judicial District Court, Irion**
Defendant. § **County, Texas**
§

**PLAINTIFF’S STATEMENT OF POSITION REGARDING
CORE VERSUS NONCORE PROCEEDINGS**

Plaintiff, Maalt, LP (“Maalt” or “Plaintiff”), submits this Statement of Position Regarding Core Versus Noncore Proceedings.

Introduction.

While this suit and the counterclaim filed by Defendant were originally brought in state court well before the Chapter 11 cases were filed, the Defendant filed proofs of claim in the



Chapter 11 cases against both Maalt, LP and Vista Proppants and Logistics, LLC (“Vista LLC”) that echo the counterclaims and third-party claims alleged by Defendant in this adversary proceeding.² Those proofs of claim are attached hereto as Exhibits A and B. In other words, Defendant’s proofs of claim incorporate its pleadings from this adversary proceeding, and therefore asserts identical claims in both its proofs of claim and this adversary proceeding. The debtors in the Chapter 11 cases have objected to those claims. (Doc. 593.) Moreover, Defendant has moved to consolidate its proofs of claim and the debtors’ objections to those claims with this adversary proceeding. (Doc. 675.) Therefore, it is Plaintiff’s position that Defendant’s action in the underlying Chapter 11 cases has transformed what may otherwise be noncore proceedings to core proceedings within this Court’s jurisdiction. Nonetheless, Plaintiff offers the following with respect to each claim asserted by the parties in this adversary proceeding.

Plaintiff’s claims.

(a) *Whether each claim asserted is “core” within the provisions of 28 USC § 157(b)(2).*

Maalt’s claims fall into two categories, the first being breach of the parties’ Terminal Services Agreement (“TSA”) and the second being a request for declaratory judgment of the rights and obligations of the parties under the TSA. Under its breach of contract claim, Maalt seeks approximately \$6.6 million in damages plus interest and attorneys’ fees, among other things. As an alternative remedy, Maalts seeks an order of specific performance ordering the Defendant to pay the Minimum Fee and interest it is obligated to pay under the TSA. Under the Texas Declaratory Judgement Act, Maalt seeks a declaration that no force majeure event occurred as alleged by the Defendant, that Maalt did not breach the TSA, that Defendant repudiated and

² While Vista LLC was not a party to the state court action, Defendant has sought leave to amend its third party claims in the adversary proceeding to join Vista LLC, and in its amended pleading asserts the same claims that it asserted against Vista Proppants and Logistics, Inc., which is not a party to the Chapter 11 cases. The parties have submitted an agreed order permitting Defendant to do so.

therefore breached the TSA, and that Defendant is obligated to pay Maalt the Minimum Fee under the TSA in the approximate amount of \$6.6 million plus interest, attorneys' fees and other expenses.

Maalt's position is that its breach of contract and Texas Declaratory Judgment Act claims are core proceedings under 28 U.S.C. § 157(b)(2)(B), (C) and/or (O). *Matter of Baudoin*, 981 F.2d 736, 741 – 742 (5th Cir. 1993). Alternatively, Defendant transformed Maalt's claims into core claims upon Defendant's filing of proofs of claim (Claim Nos. 142 and 143), which claims are based on claims that Maalt breached the TSA, that it engaged in tortious conduct toward Defendant, and that Vista LLC engaged in tortious conduct toward Defendant. The claims asserted by Defendant against Maalt and Vista LLC are so intertwined that they affect the allowance and disallowance of claims, thus rendering the claims core claims. *See Kurz v. EMAK Worldwide, Inc.*, 464 B.R. 635, 643 (D. Del. 2011).

(b) *If noncore in nature, whether the party consents to final judgment by this Court with respect to those particular claims that are asserted to be noncore.*

If the Court determines that any of Maalt's claims are noncore, Maalt consents to final judgment by this Court.

(c) *Whether a jury demand has been made or is being made in relation to any of the claims that are pending.*

Maalt has not made a jury demand. The TSA between the parties contains a jury waiver that reads as follows:

THE PARTIES WAIVE ALL RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY ACTION OR LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DISPUTE CONCERNING OR INTERPRETATION OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THEIR WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE THE TERMS.

- (d) *If there has been a jury demand or is a jury demand in relation to any of those claims, whether the parties consent to the jury trial being handled before this Court.*

In the event a jury demand is made with respect to a claim asserted in this adversary proceeding, and the Court determines that the jury waiver does not apply, then Maalt consents to a jury trial of such claim(s) in this Court.

Defendant's claims.

- (a) *Whether each claim asserted is "core" within the provisions of 28 USC § 157(b)(2).*

Defendant's claims fall into three categories, the first being breach of the parties' TSA, and the second being tort claims of promissory estoppel,³ negligent misrepresentation, and common law fraud, and the third being a request for declaratory judgment of the rights and obligations of the parties under the TSA that mirrors Maalt's to a large degree. When it filed its proofs of claim in the Chapter 11 cases, Defendant attached a copy of its state court pleading and incorporated the claims asserted in this adversary into its proofs. (See Claim Nos. 142 and 143.) By doing that, Defendant's proofs of claim raise identical issues to those raised in the state court case that is now this adversary proceeding. As a result, Defendant has invoked this Court's core jurisdiction, and transformed its claims into core claims under 28 U.S.C. § 157(b)(2)(B) and (O). See *Kurz v. EMAK Worldwide, Inc.*, 464 B.R. 635, 643 (D. Del. 2011).

- (b) *If noncore in nature, whether the party consents to final judgment by this Court with respect to those particular claims that are asserted to be noncore.*

If the Court determines that any of Defendant's claims are noncore, Maalt consents to final judgment by this Court.

³ Prior to removal, the state court granted summary judgment in Maalt's favor on Defendant's promissory estoppel claim.

- (c) ***Whether a jury demand has been made or is being made in relation to any of the claims that are pending.***

Defendant has not made a jury demand. The TSA between the parties contains a jury waiver that reads as follows:

THE PARTIES WAIVE ALL RIGHTS TO A TRIAL BY JURY IN CONNECTION WITH ANY ACTION OR LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY DISPUTE CONCERNING OR INTERPRETATION OF THE AGREEMENT, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES SPECIFICALLY ACKNOWLEDGE THAT THEIR WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER AN ADEQUATE OPPORTUNITY TO NEGOTIATE THE TERMS.

All of Defendant's claims against both Maalt and Vista LLC fall within the jury waiver.

- (d) ***If there has been a jury demand or is a jury demand in relation to any of those claims, whether the parties consent to the jury trial being handled before this Court.***

In the event a jury demand is made with respect to a claim asserted in this adversary proceeding, and the Court determines that the jury waiver does not apply, then Maalt consents to a jury trial of such claim(s) in this Court.

DATED: November 16, 2020

Respectfully submitted,

By: /s/ James Lanter

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ATTORNEYS FOR PLAINTIFF, MAALT, LP
and THIRD PARTY DEFENDANT VISTA
PROPPANTS AND LOGISTICS, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Court's electronic filing service on November 16, 2020.

/s/ James Lanter
James Lanter