

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:
ESSAR STEEL MINNESOTA LLC and
ESML HOLDINGS INC.

Debtors.

MESABI METALLICS COMPANY LLC,

Plaintiff,

v.

CLEVELAND-CLIFFS INC. (F/K/A CLIFFS
NATURAL RESOURCES INC.);
CLEVELAND-CLIFFS MINNESOTA
LAND DEVELOPMENT LLC; GLACIER
PARK IRON ORE PROPERTIES LLC, and
DOES 1-10

Defendants.

Chapter 11
Case No. 16-11626 (BLS)
Jointly Administered

Adv. Proc. No. 17-51210 (BLS)

Re: Docket No. 115

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MEMORANDUM ORDER¹

Upon consideration of the Motion for Summary Judgment (“Motion”) filed by the Defendant Glacier Park Iron Ore Properties LLC (“GPIOP”) [AP Docket No. 115]; and briefing on the matter having been completed; and following argument held on February 27, 2019; the record reflects as follows:²

1. Plaintiff Mesabi Metallics Company LLC (“Mesabi”) is an iron ore mining and processing company. In 2006, Mesabi’s predecessor entered into a series of mineral leases (the “Mineral Leases”) with the Great Northern Trust. The Mineral Leases provided in relevant part that Mesabi, as lessee, would pay royalties based on the amount of ore it extracted from the premises.

2. In 2016, Mesabi’s predecessors filed petitions for relief under Chapter 11. By that time, GPIOP had stepped into the place of the Great Northern Trust as the lessor under the Mineral Leases.

3. Over the course of its reorganization, Mesabi sought to assume the Mineral Leases. To that end, it entered a Settlement Agreement with GPIOP that provided Mesabi could assume the Mineral Leases, so long as its Plan of Reorganization went effective by October 31, 2017 (“Assumption Deadline”). [Docket No. 1168-1].

¹ This Memorandum Order constitutes the Court’s findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure.

² The Court has previously issued two Opinions in this adversary proceeding that each contain an extensive recitation of the relevant factual background. [AP Docket Nos. 98 and 148]. To avoid covering the same ground, the Court includes only abbreviated relevant facts in this Memorandum Order.

4. Mesabi failed to meet the Assumption Deadline. Soon thereafter, Mesabi commenced this adversary proceeding against Cliffs and GPIOP. [AP Docket No. 18]. Subsequently, GPIOP, Cliffs, and Mesabi filed cross Motions for Summary Judgment on some, but not all, of the Counts in the Complaint. [AP Docket Nos. 31, 46, 49]. The Court rendered an Opinion on those Motions and granted Summary Judgment on certain Counts in favor of Cliffs and GPIOP. *In re Essar Steel Minnesota LLC*, 590 B.R. 109 (Bankr. D. Del. 2018).

5. Following entry of the Opinion, the Court requested that the parties provide a written form of order consistent with its reasoning. Unable to agree, the parties submitted competing proposed orders. [AP Docket No. 101]. GPIOP's proposed order granted Summary Judgment on Count Five. Mesabi's proposed order did not.

6. Consistent with Mesabi's proposal, the Court entered an Order that omitted Count Five (the "Order"). [AP Docket No. 104].

7. Soon thereafter, GPIOP filed the instant Motion seeking Summary Judgment on Counts Five, Fifteen, and Seventeen. [AP Docket No. 115]. Those causes of action are as follows:

- a. *Count Five: Breach of the Implied Covenant of Good Faith and Fair Dealing.* Mesabi alleges GPIOP breached the Settlement Agreement when it refused to renegotiate the Mineral Leases.
- b. *Count Fifteen: Avoidance of Fraudulent Transfers.* Under the Mineral Leases, Mesabi made royalty payments to GPIOP. Mesabi alleges those payments are fraudulent transfers under 11 U.S.C. § 548.

c. *Count Seventeen: Recovery of Fraudulent Transfers*. Flowing from Count Fifteen, Mesabi seeks to recover the royalty payments pursuant to 11 U.S.C. § 550.

8. Mesabi opposes the Motion for Summary Judgment. [AP Docket No. 124]. The parties filed briefs, the Court heard oral argument on February 27, 2019, and the matter was taken under advisement.

STANDARD

9. GPIOP filed its Motion under Rule 56(a) of the Federal Rules of Civil Procedure.³ FRCP 56 states “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). “[T]he judge’s function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). “[S]ummary judgment will not lie if the dispute about a material fact is genuine, that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248 (internal quotation omitted).

THE PARTIES’ POSITIONS

10. GPIOP argues the Court should grant Summary Judgment on Count Five. GPIOP admits that the Settlement Agreement anticipated that the parties would “negotiate and execute” restated Mineral Leases. However, GPIOP asserts that provision is unenforceable. Moreover, under the terms of the Settlement

³ Made applicable to this proceeding through Bankruptcy Rule 7056.

Agreement, GPIOP argues it was impossible for its conduct to delay the Effective Date since the Mineral Leases would have been deemed amended had the Effective Date occurred by the Assumption Deadline. As to Counts Fifteen and Seventeen, GPIOP argues Mesabi received reasonably equivalent value in exchange for the royalty payments it made under the Mineral Leases.

11. Conversely, Mesabi asserts each of the relevant Counts should survive Summary Judgment. It argues that the Court already declined to dismiss Count Five and that GPIOP has not presented any reason to reconsider that determination. As to Counts Fifteen and Seventeen, Mesabi argues that there remains a factual dispute over whether it received reasonably equivalent value in exchange for the royalty payments.

ANALYSIS

12. Again, GPIOP has moved for Summary Judgment on Counts Five, Fifteen, and Seventeen. The Court will address GPIOP's arguments in turn.

Count Five: Breach of the Settlement Agreement

13. Mesabi alleges in Count Five that GPIOP breached the implied covenant of good faith in the Settlement Agreement when it refused to re-negotiate the Mineral Leases. Mesabi notes this Court already declined to grant Summary Judgment on Count Five. In response, GPIOP argues that it is entitled to Summary Judgment because Mesabi cannot succeed on Count Five.

14. The Court has discretion to consider a "successive summary judgment motion seeking precisely the same relief as before." *Siemens Westinghouse Power*

Corp. v. Dick Corp., 219 F.R.D. 552, 554 (S.D.N.Y. 2004). Generally, a court will exercise that discretion only when the parties have presented new material that was unavailable when the first motion was filed. *Id.* The Court declines to exercise that discretion in this instance. GPIOP does not argue that anything has changed since its last motion and has not presented any new material. In substance, GPIOP's Motion as to Count Five is identical to the one this Court denied several months ago. For those reasons, GPIOP's Motion on Count Five is denied.⁴

Counts Fifteen and Seventeen: Avoidance and Recovery of Fraudulent Transfers

15. As described above, Counts Fifteen and Seventeen allege that the royalty payments Mesabi made under the Mineral Leases were fraudulent transfers. Pursuant to 11 U.S.C. § 548(a)(1)(B)(i), a debtor may avoid a transfer made within two years of the petition date if it “received less than reasonably equivalent value in exchange for such transfer or obligation.” As a gateway matter, Mesabi must show that it received less than reasonably equivalent value in exchange for the royalty payments.

16. Mesabi admits it received value in return for the royalty payments. However, it alleges there is a factual dispute over whether that value was

⁴ GPIOP's request could be construed as a Motion for Reconsideration. In that case, the Court would still deny the Motion. Under FRCP 60, a court may “relieve a party . . . from a final judgment” for a set of defined reasons, including mistake, fraud, or newly discovered evidence. GPIOP has not articulated any facts that would justify reconsideration of the Order and has therefore failed to meet the standard in FRCP 60. In addition, under Third Circuit precedent a party seeking reconsideration must meet a high burden and show (1) change in the controlling law; (2) availability of new evidence; or (3) the need to correct a clear error or to prevent manifest injustice. *Max's Seafood Cafe ex rel. Lou-Ann, Inc. v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999).

reasonably equivalent. In reply, GPIOP posits the royalties *per se* conferred reasonably equivalent value because the parties agreed to those payments through an arm's length transaction.

17. The Court agrees with GPIOP and finds Mesabi received reasonably equivalent value for the royalty payments. In reaching this conclusion, the Court notes that the undisputed record reflects that the Mineral Leases were negotiated at arm's length between sophisticated parties represented by counsel. If Mesabi had failed to make any of the payments, Mesabi may have immediately lost the right to mine the land. The royalty payments therefore conferred value on Mesabi because they preserved its continuing mining rights.

18. Mesabi cites to a handful of cases that stand for the principle that payments made pursuant to a contract do not *per se* confer reasonably equivalent value. Specifically, Mesabi relies on *Mellon Bank, N.A. v. Official Comm. Of Unsecured Creditors of R.M.L. (In re R.M.L.)*, where the Third Circuit upheld a bankruptcy court's determination that payments a debtor made under a commitment letter did not confer reasonably equivalent value. 92 F.3d 139 (3d Cir. 1996). But the facts of that case are immediately distinguishable. In *R.M.L.*, the debtor Intershoe received a nonbinding proposal for an equity infusion from an investor. With the proposal in hand, Intershoe approached several banks hoping to secure a loan that would allow it to refinance. Eventually, Mellon Bank agreed to make a loan to Intershoe, contingent on the fulfillment of the equity infusion. Mellon Bank also required Intershoe to make a series of upfront non-refundable

deposits. When the equity infusion fell through, the loan with Mellon also collapsed. *Id.* at 142-144.

19. The Third Circuit held that Intershoe did not receive reasonably equivalent value in exchange for the deposits. It emphasized that “the loan was highly conditional” and “all parties should have known there was a substantial probability that the loan would not close.”⁵ *Id.* at 154. Because Intershoe had paid the deposits in anticipation of a loan that “had little chance of closing,” the Third Circuit held it did not receive reasonably equivalent value. *Id.*

20. In contrast, there was nothing contingent about the Mineral Leases. When Mesabi made the royalty payments, it immediately realized the benefit by continuing to enjoy the right to mine the land.⁶

21. In determining whether an exchange conferred reasonably equivalent value, courts must look to the “totality of the circumstances.” *Id.* at 153. Mesabi has failed to articulate any facts that would suggest the royalty payments did not confer reasonably equivalent value. Moreover, the authority on which Mesabi relies is

⁵ In addition, the bankruptcy court observed that the “arm’s-length nature of Intershoe’s relationship with Mellon had disintegrated” and Intershoe’s financial condition was so dire that “Mellon appeared to be one of the few . . . option[s] Intershoe had to survive as a going concern. Mellon, then, had the opportunity to extract fees not ordinarily warranted on a (*sic*) arm’s length commercial basis.” *R.M.L.*, 92 F.3d at 146.

⁶ Mesabi also cites to *Emerald Capital Advisors Corp. v. Bayerische Motoren Werke Aktiengesellschaft (In re FAH Liquidating Corp.)*, 2018 U.S. Dist. LEXIS 97196, *14, 2018 WL 2793944. There, the plaintiff challenged transfers that had been made pursuant to an agreement with BMW. The payments were made upfront and in anticipation that BMW would deliver engines to the debtor. The transfers were paid, but the engines never delivered. Citing *R.M.L.*, the district court concluded the payments did not confer reasonably equivalent value.

inapposite. In each of those cases, the debtor made an initial payment in anticipation of a benefit that never materialized.

22. Further, if in fact the Mineral Leases failed to confer reasonably equivalent value, the Debtor's stated intent to assume them would have been illogical. In that case, it seems apparent the Debtor would have promptly rejected the Mineral Leases pursuant to 11 U.S.C. § 365—indeed, it would have been obliged to do so. Thus, in the absence of a genuine dispute, the Court will grant GPIOP's Motion as to Counts Fifteen and Seventeen.

CONCLUSION

Based on the foregoing, GPIOP's Motion is DENIED as to Count Five of the Second Amended Complaint. The Motion is GRANTED as to Counts Fifteen and Seventeen.

BY THE COURT:

Dated: March 5, 2018
Wilmington, Delaware


Brendan Linehan Shannon
United States Bankruptcy Judge