

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

IN RE:	)	Chapter 11
	)	Case No. 19-12269 (CSS)
MTE Holdings, LLC, <i>et al.</i>	)	
	)	Jointly Administered
	)	
Debtors.	)	
_____	)	Related D.I. 653

**MEMORANDUM ORDER**

Before the Court is *Peter I. Shah's Motion for Allowance and Immediate Payment of Administrative Claim Pursuant to 11 U.S. Code § 503* (D.I. 653; filed on February 25, 2020) (the "Motion"); the Debtors' objection to the Motion (D.I. 802; filed on March, 24, 2020) (the "Objection"); and the Court having heard argument and statements of counsel by the parties on May 4, 2020;<sup>1</sup> and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and finding that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that this Court has the judicial power to enter a final order; the Court hereby finds that:

**BACKGROUND**

1. On October 22, 2019, Debtor MTE Holdings LLC filed a voluntary petition of relief under chapter 11 of the Bankruptcy Code in this court. Subsequently on October 23, 2019, Debtors Olam Energy Resources I LLC and MTE Partners LLC filed voluntary

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<sup>1</sup> See Transcript of Hrg. May 4, 2020 (D.I. 1076).

petitions for relief under chapter 11. The remaining debtors, including MDC Energy LLC (“MDC”), filed chapter 11 petitions on November 8, 2019 (the “Petition Date”).

#### **A. Procedural History between the Parties**

2. Pursuant to certain lease agreements, MDC leases the mineral rights, such as those for oil and gas interests, beneath the surface of land owned by Mr. Peter Shah. In accordance with its rights as lessee, MDC advised Mr. Shah in July 2019 that it would require access to Mr. Shah’s property to, among other things, build a tank battery (the “Tank Battery”) in support of its oil and gas drilling activities.

3. In response to MDC’s notice, Mr. Shah asserted that MDC has no right of access to his property and sought exorbitant payments to consent to MDC’s exercise of its rights. To resolve the dispute, MDC offered Mr. Shah \$30,000. Mr. Shah rejected the offer.

4. On February 11, 2020, Mr. Shah sent the Letter to the Court, accusing MDC of attempting to strong-arm him and demanding an emergency injunction to prevent MDC from entering onto and operating on his property. He also attached correspondence detailing the settlement negotiations with MDC and including his damages claim.

5. On February 18, 2020, the Court held a telephonic hearing on Mr. Shah’s request for an immediate injunction to prevent MDC from entering his property. The Court explained that sending the Letter to chambers was not the proper procedure for requesting a temporary or preliminary injunction and also explained that Mr. Shah could

choose to file an administrative expense claim for damages resulting from the installation of the Tank Battery.

6. On February 25, 2020, Mr. Shah filed the Motion<sup>2</sup> for an administrative claim of \$50,000 (the “Claim”).

7. MDC has installed the Tank Battery on Mr. Shah’s acreage, but no settlement has been reached regarding a payment for potential damages.

**B. Factual History**

8. In the Motion, Mr. Shah represents that he is owner of the real property, lots 31, 32, 33, and 24, Section 8, Block C-18 in Reeves County, Texas (Property ID 15281) (the “Property”). Mr. Shah seeks an administrative expense claim in the amount of \$50,000 for post-petition surface entry(ies), surface damages, certain construction and other such activities performed by MDC. Mr. Shah further explains that on or around November 1, 2019, the Debtor entered the Property to perform some preliminary survey work and site preparation to build a pad for tank battery construction and installation. Mr. Shah further explains in the Motion that the administrative claim is for post-petition damages, services, site work, entries, exists, and electricity access, as well as other services provided to the Debtor by Mr. Shah. Mr. Shah attached to the Motion an email between himself and MDC (the “Surface Use Agreement”), dated November 10, 2019.

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<sup>2</sup> D.I. 653.

## ANALYSIS

### A. Administrative Expense Claim

9. Section 503(b) of the Bankruptcy Code provides administrative expense status for the actual and necessary expenses of a creditor whose efforts preserve a debtor's estate. Delaware courts use the following two-prong test to evaluate a potential administrative claim: "the expense must have arisen from a post-petition transaction between the creditor and the debtor, and the transaction must have been 'actual and necessary' to preserve the estate."<sup>3</sup>

10. Mr. Shah, as the claimant, has the burden of establishing that his claim qualifies for administrative expense status.<sup>4</sup>

11. MDC is the mineral lessee to the property owned by Mr. Shah. In Texas, "[i]t is clear that the right to minerals in place carries with it the rights to enter and extract them and all other incidents thereto as are necessary to the enjoyment of those rights. In other words, the lessee of a mineral lease has the right to use as much of the premises in such a manner as is reasonably necessary to effectuate the purpose of the lease."<sup>5</sup>

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<sup>3</sup> See *In re Unidigital, Inc.*, 262 B.R. 283, 288 (Bankr. D. Del. 2001) (citing *Microsoft Corp. v. DAK Indus., Inc. (In re DAK Indus., Inc.)*, 66 F.3d 1091, 1094 (9th Cir. 1995); *Gen. Am. Transp. Corp. v. Martin (Mid Region Petroleum, Inc.)*, 1 F.3d at 1130, 1133 (10th Cir. 1993); *In re Jartran, Inc.*, 732 F.2d 584, 587 (7th Cir. 1984); *Cramer v. Mammoth Mart, Inc. (In re Mammoth Mart, Inc.)*, 536 F.2d 950, 954 (1st Cir. 1976); *In re Mid-American Waste*, 228 B.R. 816, 821 (Bankr. D. Del. 1999); *In re Molnar Bros.*, 200 B.R. 555, 559 & n.3 (Bankr. D.N.J. 1996); *In re Chateaugay Corp.*, 102 B.R. 335, 353 (Bankr. S.D.N.Y. 1989)).

<sup>4</sup> See *In re NE Opco, Inc.*, 501 B.R. 233, 241 (Bankr. D. Del. 2013) ("[The claimant] bears the burden of establishing that its claim qualifies for administrative priority status." (citing *In re Goody's Family Clothing Inc.*, 401 B.R. 131, 136 (Bankr. D. Del. 2009); *In re Insilco Techs., Inc.*, 309 B.R. 111, 114 (Bankr. D. Del. 2004); *Unidigital*, 262 B.R. at 288)).

<sup>5</sup> *Davis v. Devon Energy Prod. Co., L.P.*, 136 S.W.3d 419, 423 (Tex. App. 2004) (citing *Tarrant County Water Control & Improvement Dist. v. Haupt*, 854 S.W.2d 909, 911 (Tex.1993)). See also *Gulf Oil Corp. v. Walton*, 317 S.W.2d 260, 263-64 (Tex. Civ. App. 1958) (finding that "the holder of the mineral estate has the right to put his wells where he wants to, and that does not mean that he shall forced to use or try to utilize abandoned

Furthermore, “only when the conduct of the lessee destroys or substantially impairs the surface owner’s use of the surface does the question arise as to whether that conduct is reasonably necessary.”<sup>6</sup>

The Texas courts do speak of a restriction upon the lessee to that use of the surface as is “reasonably necessary,” but that is simply a limit on the manner in which the mineral operation is done, and it does not limit the right of the lessee to develop and extract minerals in accordance with the lease. This right carries with it the legal privilege to use the surface of the land and to interfere with the surface owner’s use of it. The surface estate is servient in this respect to the dominant mineral estate.<sup>7</sup>

12. Mr. Shah argues that MDC entered his land to perform preliminary survey work and site preparation to build a pad for tank battery construction and installation.<sup>8</sup> Mr. Shah provides no other information regarding damage to his property, unreasonableness of the Debtor’s actions, or any evidence or argument regarding the Debtor’s actions or destruction of Mr. Shah’s property.

13. Installing a Tank Battery appears to be within MDC’s rights to pursuant to the mineral lease.<sup>9</sup> Texas law requires Mr. Shaw to show that MDC’s actions have

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wells, or that he must drill so close to such abandoned wells that he can utilize all or part of the former drill site. We believe it would be an unwarranted restriction on the rights and privileges held by the holder of the mineral estate, as he is presumed to know from exploration in this section and expert testimony, the best place, or the place in his best judgment, where he wants to drill his well.”)

<sup>6</sup> *Davis v. Devon Energy Prod. Co., L.P.*, 136 S.W.3d 419, 424 (Tex. App. 2004).

<sup>7</sup> *Vest v. Exxon Corp.*, 752 F.2d 959, 961 (5th Cir. 1985) (citing *Humble Oil & Refining Co. v. Williams*, 420 S.W.2d 133 (Tex.1967)).

<sup>8</sup> Motion at ¶ 7.

<sup>9</sup> *Gulf Oil Corp. v. Walton*, 317 S.W.2d 260, 263–64 (Tex. Civ. App. 1958) (mineral lessee was able to construct permanent roads across irrigation farm).

substantially interfered with or precluded the existing surface use.<sup>10</sup> “Sadly for the surface owner, Texas law, which governs in the present case, implies that a mineral lease gives a large measure of deference to the lessee’s view of reasonableness.”<sup>11</sup> Here, Mr. Shah has failed to show that MDC “substantially interfered with” or “precluded” Mr. Shah’s rights by constructing a Tank Battery. Furthermore, Mr. Shah, as the “person who seeks to recover from the lessee for damages to the surface has the burden of alleging and proving either specific acts of negligence or that more of the land was used by the lessee than was reasonably necessary.”<sup>12</sup> Here, Mr. Shah offered no such proof and, thus, fails to meet the burden imposed by Texas law, nor has Mr. Shah provided any evidence that such claim constitutes an administrative claims against MDC.

### CONCLUSION

For the reasons set forth above, the Motion is DENIED.



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Christopher S. Sontchi  
Chief United States Bankruptcy Judge

Dated: June 8, 2020

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<sup>10</sup> *Getty Oil Co. v. Jones*, 470 S.W.2d 618, 622 (Tex. 1971) (citation omitted) (“There may be only one manner of use of the surface whereby the minerals can be produced. The lessee has the right to pursue this use, regardless of surface damage.”).

<sup>11</sup> *Vest v. Exxon Corp.*, 752 F.2d 959, 960–61 (5th Cir. 1985).

<sup>12</sup> *Humble Oil & Ref. Co. v. Williams*, 420 S.W.2d 133, 134 (Tex. 1967) (citations omitted).