

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

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

Debtors.

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

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.

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

Re: AP Docket No. 62

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

Counterclaim-Plaintiffs,

v.

MESABI METALLICS COMPANY LLC,

Counterclaim-Defendant.

CLEVELAND-CLIFFS INC. (F/K/A CLIFFS
NATURAL RESOURCES INC.);
CLEVELAND-CLIFFS MINNESOTA
LAND DEVELOPMENT LLC,

Third-Party Plaintiffs

v.

CHIPPEWA CAPITAL PARTNERS, LLC;
and THOMAS M. CLARKE,

Third-Party Defendants.

MEMORANDUM ORDER

Upon consideration of the Motion to Dismiss the Counterclaims and Third-Party Claims of Cleveland-Cliffs, Inc and Cleveland-Cliffs Minnesota Land Development, LLC [AP Docket No. 62] filed by Plaintiff Mesabi Metallics Company LLC (f/k/a Essar Steel Minnesota LLC “ESML”) (hereinafter “Mesabi”) and the Third-Party Defendants; and briefing on the matter having been completed; the record reflects as follows:

1. Mesabi commenced this adversary proceeding against Cleveland-Cliffs, Inc. on September 7, 2017. Subsequently, Mesabi filed a Second Amended Complaint [AP Docket No. 18] that asserted additional claims against Glacier Park Iron Ore Properties LLC (“GPIOP”) and Cleveland-Cliffs Minnesota Land Development LLC (collectively with Cleveland-Cliffs, Inc., “Cliffs”).

2. In response, Cliffs filed four Counterclaims [AP Docket No. 34]. Cliffs alleges (1) tortious interference with contractual relations against Mesabi, Chippewa,

and Thomas Clarke; (2) civil conspiracy to commit tortious interference against Mesabi, Chippewa, and Thomas Clarke; (3) aiding and abetting tortious interference against Chippewa and Thomas Clark; and (4) libel against Thomas Clarke.

3. Mesabi, Chippewa, and Thomas Clarke (collectively, the “Plaintiffs”) then filed a Motion to Dismiss Cliffs’ Counterclaims pursuant to Fed. R. P. 12(b)(1) for lack of subject-matter jurisdiction and 12(b)(6) for failure to state a claim upon which relief can be granted [AP Docket No. 62] (the “Motion”).

4. Cliffs filed an Answering Brief in Opposition [AP Docket No. 85], the Plaintiffs filed a Reply [AP Docket No. 91], and the Court took the matter under advisement.

FACTS

5. Mesabi Metallica Company LLC is an iron ore mining and processing company with operations in the Mesabi Iron Range in Minnesota. In 2006, Mesabi’s predecessor ESML entered a series of mineral leases with the Great Northern Trust, the then-owner of land in the Mesabi Range (“Mineral Leases”). The Mineral Leases provided in relevant part that Mesabi, as lessee, would have the right to mine iron ore from the premises.

6. On July 8, 2016, Mesabi’s predecessors ESML and ESML Holdings, Inc. (collectively, the “Debtors”) filed for relief under Chapter 11. Sometime thereafter, GPIOP acquired the Great Northern Trust’s interest in the land and became the lessor under the Mineral Leases.

7. During the Chapter 11, Chippewa Capital Partners, LLC (“Chippewa”) agreed to sponsor to the Debtors’ Plan and provided funding to support Debtors’ reorganization [Decl. of Thomas Clarke, Docket No. 1009]. Thomas Clarke (“Clarke”) is Chippewa’s Chief Executive Officer.

8. Following a dispute over whether Mesabi could assume the Mineral Leases, GPIOP, Mesabi, Superior, and Chippewa entered into a Settlement Agreement [Docket No. 1161]. Significantly, the Settlement Agreement provided that Mesabi could assume the Mineral Leases, but the assumption was contingent on its Plan going effective no later than October 31, 2017 (“Assumption Deadline”).

9. Mesabi failed to meet the Assumption Deadline and its Plan eventually went effective on December 22, 2017. Following a dispute in this Court over whether Mesabi could assume the Mineral Leases, the Court ruled that Mesabi no longer had the right to assume under the terms of the Settlement Agreement. *In re Essar Steel Minnesota LLC*, 590 B.R. 109 (Bankr. D. Del. 2018).

10. Shortly after the Assumption Deadline had lapsed, Cliffs purchased from GPIOP interests in land that had been subject to the Mineral Leases (the “Land Acquisition”). Cliffs therefore became a co-tenant on the land alongside Superior.

11. In the wake of the Land Acquisition, a series of events took place that ultimately led to the instant dispute. First, Mesabi added GPIOP as a Defendant in this adversary proceeding. Mesabi asserted numerous claims against GPIOP, including that GPIOP had breached the terms of both the Settlement Agreement and the Mineral Leases when it transferred its interest in the land to Cliffs.

12. Second, Cliffs sought to acquire the remaining interests in the land held by Superior. To that end, it engaged in discussions with Superior about the possibility of leasing or purchasing Superior's interests in the property. A little more than a month after Mesabi had added GPIOP as a Defendant in this adversary, Superior informed Cliffs that it would no longer pursue the transaction and did not intend to convey its interest in the land to Cliffs.

13. Cliffs asserts that Mesabi added GPIOP to this adversary proceeding to intimidate Superior and thereby interfere with Cliffs' effort to acquire interests in the land. Cliffs also alleges that Mesabi made overt threats that it would file a lawsuit against Superior for claims similar to those levelled herein at GPIOP.

14. Cliffs also alleges Chippewa and Clarke encouraged and have acted in concert with Mesabi to thwart Cliffs' potential transaction with Superior.

15. Early in 2018, Clarke made a number of public statements regarding Cliffs. Specifically, Clarke sent letters (the "Clarke Letters") to the offices of the United Steelworkers ("USW") near the Mesabi Range. Around the same time, Clarke made a statement to the Duluth News Tribune, which subsequently published an article that repeated some of the statements contained in the Clarke Letters (the "Clarke Article").

16. Cliffs asserts the Clarke Letters and the Clarke Article contain damaging statements that Clarke knew were false when he made them. More specifically, Cliffs alleges Clarke wrongfully stated that:

- a. Clarke assumed over \$200 million of UMWA pension liabilities from Cliffs;

- b. Cliffs closed mines in 2015;
 - c. Clarke owns more Cliffs stock than 17 of the 18 Directors and Executive Officers of Cliffs; and
 - d. Lourenco Goncalves (“Goncalves”), the Chairman, President and CEO of Cliffs, owns only 404,000 shares of Cliffs stock.
17. Cliffs maintains that each of those statements is false, that Clarke knew they were false when he made them, and that he made them to purposefully harm Cliff’s reputation.

STANDARD OF REVIEW

18. Fed. R. Civ. P. 12(b)(6) (made applicable through Bankr. R. 7012) governs a motion to dismiss for failure to state a claim upon which relief can be granted. “The purpose of a motion to dismiss is to test the sufficiency of a complaint, not to resolve disputed facts or decide the merits of the case.” *Paul v. Intel Corp. (In re Intel Corp. Microprocessor Antitrust Litig.)*, 496 F.Supp. 2d 404, 407 (D.Del 2007). When reviewing a motion to dismiss, the Court will construe the complaint “in the light most favorable to the plaintiff.” *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 220 (3d Cir. 2011).

19. “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 570 (2007). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the grounds of his entitle[ment] to relief require more than labels and conclusions, and a

formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555 (internal citations omitted).

JURISDICTION

20. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and § 157(b)(2)(A) and (O). Venue is proper pursuant to 28 U.S.C. §§ 1408, 1409.

21. The Court has the power to enter an order on a motion to dismiss even if the matter is non-core or the Court lacks authority to enter a final order. *See, e.g., Boyd v. Kind Par, LLC*, No. 1:11-CV-1106, 2011 WL 5509873, at *2 (W.D. Mich. Nov. 10, 2011) (“[U]ncertainty regarding the bankruptcy court’s ability to enter a final judgment . . . does not deprive the bankruptcy court of the power to entertain all pretrial proceedings, including summary judgment motions.”). *See also In re Amcad Holdings, LLC*, 579 B.R. 33, 37 (Bankr. D. Del. 2017).

ANALYSIS

22. As noted above, Cliffs has alleged claims of tortious interference, conspiracy, aiding and abetting, and libel. Each Counterclaim is addressed in turn.

*Tortious Interference with Prospective Business Advantage*¹

23. As noted above, Cliffs has alleged Mesabi committed tortious interference when it added GPIOP to this adversary and threatened to sue Superior. Cliffs alleges these actions ultimately dissuaded Superior from selling or leasing its interests in the land.

24. Mesabi alleges that Cliffs has failed to plead facts showing its actions were independently tortious. In support, it invokes the *Noerr-Pennington* doctrine for the principle that the act of petitioning the government for redress through a lawsuit is immune from liability. See *Braintree Labs., Inc. v. Schwartz Pharma, Inc.*, 568 F. Supp. 2d 487, 494-95 (D. Del. 2008); *Cheminor Drugs, Ltd. V. Ethyl Corp.*, 168 F.3d 119, 128-29 (3d Cir. 1999) (applying *Noerr-Pennington* to claims for tortious interference with prospective business advantage). Under the doctrine, Mesabi argues, it is immune from any tort liability for adding GPIOP to this adversary proceeding or threatening to bring a lawsuit against Superior.

25. Mesabi is correct that *Noerr-Pennington* may protect it from tort liability for filing the lawsuit. However, *Noerr-Pennington* is not a carte-blanche to file any lawsuit and it does not extend immunity where the litigation is a “mere sham to cover what is actually nothing more than an attempt to interfere directly with the business

¹The parties agree that Minnesota law applies to Cliffs’ claim for tortious interference. Under Minnesota law, the elements for tortious interference with a prospective business advantage are (1) the existence of a reasonable expectation of economic advantage; (2) defendant’s knowledge of the same; (3) intentional interference that is either independently tortious or in violation of a state or federal statute or regulation; (4) that in the absence of the wrongful act it is reasonably probable that plaintiff would have realized the economic advantage or benefit; and (5) damages. See *Gieseke v. IDCA, Inc.*, 844 N.W.2d 210, 219 (Minn. 2014).

relationships of a competitor.” *E.R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 144 (1961).

26. Cliffs has made the following allegations in support of its claim that the lawsuit against GPIOP was a sham:

- a. In January of 2018, Cliffs and Superior were actively discussing the possibility of a deal involving the land that had been subject to the Mineral Leases.
- b. Around the same time, a representative from Chippewa contacted Superior to ask that it engage in discussions about the land exclusively with Mesabi.
- c. Shortly after Mesabi filed its Amended Complaint, Superior contacted Cliffs and stated it had determined not to pursue a transaction regarding the land with Cliffs.
- d. Upon information and belief, Mesabi threatened to bring claims against Superior that were similar to those brought against GPIOP in the Amended Complaint.
- e. Mesabi used its Amended Complaint to bolster its threat against Superior and Superior withdrew from considering the deal with Cliffs because of the threat.

27. On a 12(b)(6) motion, the Court must take the foregoing allegations as true. Thus constrained, the Court concludes Cliffs has alleged enough to survive Mesabi’s Motion to Dismiss. However, the Court notes that this Motion to Dismiss arises under procedurally unusual circumstances because that the Court has already issued a ruling on Summary Judgment in this adversary proceeding. The Court further notes that under *Noerr-Pennington*, the tortious interference claim would only survive if Mesabi’s threatened lawsuit was objectively meritless.² Given the

² See *CBS Interactive Inc. v. Nat’l Football League Players Ass’n, Inc.*, 259 F.R.D. 389, 413 (D. Minn. 2009).

Court's extensive familiarity with this dispute, it observes that Cliffs bears a heavy burden to demonstrate that the suit is a sham, notwithstanding the ruling adverse to Mesabi. *In re Essar Steel Minnesota LLC*, 590 B.R. 109 (Bankr. D. Del. 2018) [Docket No. 1541].

28. On a motion to dismiss, a complaint only needs to allege facts sufficient to "plausibly establish" that the litigation activity was baseless to avoid dismissal under the *Noerr-Pennington* doctrine. *Inline Packaging, LLC v. Graphic Packaging Int'l, Inc.*, 164 F. Supp. 3d 1117 (D. Minn. 2016). On a strict reading of Rule 12, Cliffs has done so and its claim for tortious interference will survive Mesabi's Motion.

Civil Conspiracy and Aiding and Abetting

29. Mesabi has moved to dismiss Cliffs' claims for civil conspiracy and aiding and abetting in the commission of the tortious interference discussed above.

30. Under Minnesota law, claims for both civil conspiracy and aiding and abetting are predicated upon the commission of the underlying tort.³

31. In support of its Motion, Mesabi argues Cliffs failed to state a claim for the underlying tortious interference and relies on the argument articulated above. Therefore, it posits, Cliffs' claims for conspiracy and aiding and abetting must also fail.

³ *Stephenson v. Deutsche Bank AG*, 282 F. Supp. 2d 1032, 1070 (D.Minn.2003); *Zayed v. Associated Bank, N.A.*, 779 F.3d 727, 733 (8th Cir. 2015).

32. For the reasons discussed above, Mesabi has adequately pleaded a claim for tortious interference and also, therefore, claims for civil conspiracy and aiding and abetting. Cliffs' Counterclaims II and III will survive Mesabi's Motion.

Libel

33. Finally, Mesabi has moved to dismiss Cliffs' claim for libel against Clarke.⁴ The Plaintiffs have challenged Cliffs' libel claim on numerous grounds, including that this Court lacks jurisdiction, that the statements are not defamatory, and that Cliffs is a public figure and has failed to plead actual malice.

34. The Court will first address jurisdiction. The standard for post-confirmation jurisdiction is whether the matter has a "close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter." *In re Resorts Int'l Inc.*, 372 F.3d 154, 166 (3d. Cir. 2004).

35. Before the Court is a state-law claim between Cliffs and Clarke, both non-Debtor parties. Cliffs argues this Court has jurisdiction over this matter because the statements relate to the Plan. To understand the relationship between the statements and the Plan, Cliffs asks the Court to follow a string of events and conditions allegedly related to the effectiveness of the Plan:

- a. Mesabi must assume certain leases with the Department of Natural Resources ("DNR") before the Plan can go effective.

⁴ To establish a claim for libel under Minnesota law, the plaintiff must allege 1) a defamatory statement is communicated to someone other than plaintiff, 2) the statement is false, and 3) the statement tends to harm the plaintiff's reputation and to lower the plaintiff in the estimation of the community, and (4) the recipient of the false statement reasonably understands it to refer to a specific individual. *McKee v. Laurion*, 825 N.W.2d 725, 729-30.⁴ In addition, where the plaintiff in a libel action is a public figure, the complaint must assert "actual malice, i.e., that the defendant acted with willful or reckless disregard for the truth or falsity of the matter published." *Jadwin v. Minneapolis Star & Tribune Co.*, 367 N.W.2d 476, 480 (Minn. 1985) (citing *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967)).

- b. Pursuant to the Omnibus Amendment to the Plan, Mesabi may assume the DNR leases only if it secures \$1 billion in equity and debt commitments, acquires a contract to build a facility, and secures an off-take agreement for 4.2 million metric tons of pellets.
- c. To meet those requirements, Mesabi needs the support of the USW and the State of Minnesota.
- d. The Clarke Letter and the Clarke Article were intended to publicly tarnish Cliffs' reputation and, ultimately, encourage the USW and the State of Minnesota to support Mesabi to the detriment of Cliffs.
- e. Therefore, Cliffs asserts, the statements were intended to shape public attitudes about Cliffs and Mesabi, which ultimately facilitated the implementation of the Plan.

36. Upon consideration of the arguments advanced by the Plaintiffs and Cliffs, the Court concludes that it does not have jurisdiction to adjudicate Cliffs' libel claim. Again, a bankruptcy court may exercise post-confirmation jurisdiction when the dispute forms a close nexus to the plan or proceeding. *Resorts*, 372 F.3d at 166. There is no such close nexus here. At its core, Cliffs' libel claim is a state-law cause of action between two non-debtor parties. The fact that the interested parties have each at some point participated in these proceedings is not enough for this claim to form a close nexus with the bankruptcy. According to Cliffs' own factual allegations, Clarke's statements have, at best, an indirect relationship with the Debtors' Plan.

37. In addition, the remedy sought by Cliffs would have no effect on the estate. A bankruptcy court lacks jurisdiction where the proceeding could not have "any effect on the estate being administered in bankruptcy." *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984). Cliffs seeks damages against Clarke personally.

Whatever damages this Court may award on behalf of the claim would be enforceable against Clarke and would have no direct effect on the administration of the estate.

38. Cliffs argues that “Mr. Clarke, as Chippewa’s spokesperson, made his defamatory statements on Mesabi’s behalf.” Accepting that allegation as true, there is still no close nexus between the bankruptcy and the libel claim. The inquiry for defamation centers on whether Clarke made a false statement that tended to hurt Cliffs’ reputation. The fact that Clarke may have had a bankruptcy-related motive to make the statements may be relevant on the periphery, but it is not central to the libel analysis.

39. Having determined that there are no grounds for jurisdiction, this Court does not reach the remaining questions raised by Mesabi, namely whether the statements were defamatory or if Cliffs’ improperly failed to plead actual malice.

CONCLUSION

Based on the foregoing, Mesabi’s Motion is GRANTED in part and DENIED in part. Cliffs has asserted sufficient facts that form the basis of cognizable claims for tortious interference, conspiracy, and aiding and abetting. However, Cliffs’ claim against Clarke for libel is dismissed pursuant to Fed. R. Civ. P. 12(b)(1).

BY THE COURT:

Dated: December 10, 2018
Wilmington, Delaware


Brendan Linehan Shannon
United States Bankruptcy Judge