

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

_____)	
In re)	Chapter 11
)	
SAMSON RESOURCES CORPORATION,)	Bankruptcy Case No. 15-11934(BLS)
<i>et al.</i> ,)	
Reorganized Debtors.)	
)	
_____)	Related Docket Nos.: 3234 and 3239

MEMORANDUM ORDER

Before the Court is the *Motion for Contempt – Motion for Sanctions Notice of ND Supreme Court Reversal*¹ (the “Ness Motion”) filed by Lloyd Odell Ness and Mary Patricia Ness which seeks sanctions against the Debtors for contempt of court, reinstatement of the Nesses’ disallowed claims as allowed and secured claims, reimbursement for the Nesses’ efforts in pursuing litigation against the Debtors, including interest on their claims and penalties against the Debtors, and for the Court to adjudicate the Debtors’ alleged breach of contract. In response, the above captioned reorganized debtors (the “Reorganized Debtors”) filed their Objection to the Ness Motion.² Thereafter, the Court held an evidentiary hearing on the Ness Objection on November 19, 2019 (the “Hearing”).³ The Court hereby denies the Ness Motion for the reasons set forth below.⁴

¹ D.I. 3224.

² D.I. 3239.

³ See D.I. 3250.

⁴ The Court finds that (1) it has jurisdiction over these matters, pursuant to 28 U.S.C. § 1334; (2) this is a core proceeding, pursuant to 28 U.S.C. § 157(b); and (3) this Court has the judicial power to enter a final order.

BACKGROUND

1. On June 27, 2007, Sundance Oil and Gas, LLC, a predecessor to the Debtors, entered into a lease with Lois P. Ness (the “Ness Lease”) which created a one-sixth royalty interest in the oil and gas produced from the wells drilled on the Ness property.⁵ The Debtors operated 10 wells on the Ness property (the “Ness Wells”). The Ness Lease provided for the Debtors:

1st. To deliver to the credit of the Lessors, free or cost, in the pipe line to which Lessee may connect wells on said land, the equal [one-sixth (1/6th)] part of all oil produced and saved from the leased premise.

2nd. To pay Lessor [one-sixth (1/6th)] of the gross proceeds each year, payable quarterly, for the gas from each well where gas only is found, which the same is being used off the premises, and if used in the manufacturer of gasoline a royalty of [one-sixth (1/6th)], payable monthly at the prevailing market rate for gas.

3rd. To pay lessor for gas produced from any oil well and used off the premises or in the manufacture of gasoline or any other product a royalty of [one-sixth (1/6th)] of the proceeds, at the mouth of the well, payable monthly at the prevailing market rate.⁶

2. Louis P. Ness’s interest in the Ness Lease was divided among her step-children, including Mr. Ness.⁷

⁵ See *In re Samson Res. Corp.*, 559 B.R. 360, 364 (Bankr. D. Del. 2016) (the “Memorandum Order”). Hereinafter, the Court will refer to the Memorandum Order by the enumerated paragraph numbers therein.

⁶ Ness Lease at ¶ 3.

⁷ See Memorandum Order at ¶ 3.

3. The Debtors contracted with Oneok Rockies Midstream, LLC (“Oneok”) to build a pipeline to take oil and gas from wells, including the Ness Wells, to market.⁸

4. Oneok charged the Debtors for the post-production charges of processing and bringing the oil and gas to market.⁹ Such post-production processing is necessary for the gas from the Ness Wells to be marketable.¹⁰

5. On September 16, 2015, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code in the Court (the “Chapter 11 Cases”).¹¹

6. On October 16, 2015, the Court issued an order establishing November 20, 2015 as the deadline by which non-government holders of pre-petition claims must file proofs of claim in the Debtors’ chapter 11 cases (the “General Bar Date”).¹²

7. From November 12, 2015 to November 19, 2015, the Nesses, in conjunction with several relatives (collectively, the “Ness Claimants”), filed six proofs of claim (the “Ness Claims”) against Samson Resources Corporation.¹³ The Ness Claims asserted “\$75,000 - \$1,000,000” for royalties allegedly owed by the Debtors plus interest. The Ness Claims further asserted that they were secured and entitled to priority pursuant to section 507 of the Bankruptcy Code.¹⁴

⁸ See *id.* at ¶ 4.

⁹ See *id.*

¹⁰ See *id.* at ¶ 6.

¹¹ See *id.* at ¶ 8.

¹² D.I. 224.

¹³ See Proofs of Claim 559, 753, 869, 1798, 1799, and 1800.

¹⁴ See *id.* at ¶13.

8. On February 16, 2016, the Debtors objected to the Ness Claims¹⁵ (the “Claim Objection”) because, among other reasons, the Debtors had made all required royalty payments and the Nesses’ theory of improper deductions was incorrect as a matter of law. The Court held an evidentiary hearing on the Claim Objection on July 6, 2016 (the “Hearing”).¹⁶ The Ness Claimants did not file a written response to the Claim Objection, but raised several arguments at the Hearing, including that (i) relevant case law that permits the deduction of post-production costs from royalty payments did not apply to gas from the Ness property; (ii) the Ness Lease predated the relevant case law and thus was inapplicable to the Ness Claims; (iii) the automatic stay should be modified, or in the alternative, the Bankruptcy Court should abstain from hearing the Claim Objection so that the North Dakota courts can hear the matter instead; and (iv) post-production costs of gas that exceeded the amount the gas is sold for should not be netted against the royalties.

9. Subsequently, the Court issued the Order Regarding Supplemental Briefing¹⁷ and held a telephonic status conference on July 12, 2016 (the “Status Conference”). The parties then filed supplemental briefing regarding the propriety of netting post-production gas processing costs against oil royalties.¹⁸ On September 13,

¹⁵ See D.I. 675 and 677.

¹⁶ See D.I. 1151.

¹⁷ D.I. 1141.

¹⁸ See D.I. 1190 and 1193.

2016, the Court entered the Memorandum Order granting the Claim Objection. The Court held that the Debtors' calculation of royalty payments was correct, that post-production costs were required to make oil and gas from the Ness Wells marketable and that North Dakota permitted the netting of post-production costs against the Nesses' royalties.¹⁹ The Memorandum Order also denied the Nesses' request for relief from the automatic stay and to "send" the matter to North Dakota because the Nesses failed to show cause to justify relief from the automatic stay and the Debtors would suffer "extreme prejudice".²⁰ The Court reasoned that the Nesses had engaged in extensive discovery in the matter, had litigated it through a full evidentiary hearing, had failed to provide any justification for the amount of their claims, and would not prevail on the merits if the case were transferred.²¹ Accordingly, the Court refused to modify or lift the automatic stay so that the Nesses could re-try the matter in North Dakota.²²

10. Ultimately, the Memorandum Order rejected all of the Nesses' legal and factual arguments, denied their requests for relief, and disallowed and expunged the Ness Claims.²³ On September 27, 2016, the Nesses filed a motion seeking the Court's

¹⁹ See Memorandum Order at ¶¶ 54, 57.

²⁰ See *id.* at ¶¶ 28-30.

²¹ See *id.*

²² See *id.*

²³ See *id.* at ¶ 59. 13.

reconsideration of the Memorandum Order (the “Reconsideration Motion”).²⁴ The Nesses supplemented the Reconsideration Motion on October 17, 2016.²⁵

11. On October 28, 2016, the Court entered an order (the “Sale Order”) approving the sale of the Debtors’ interests in the Ness Wells to Resource Energy Can-AM LLC (“RECA”).²⁶ Pursuant to the Sale Order, RECA purchased the Ness Wells “free and clear of any and all Liens, Claims, and Interests of any kind or nature whatsoever.”²⁷ Accordingly, from October 28, 2016, forward the Debtors held **no interests** in the Ness Wells.

12. On November 16, 2016, the Court held a hearing on the Reconsideration Motion and denied it by order entered on the same day (the “Reconsideration Order”).²⁸ Twenty-one days after entry of the Reconsideration Order, on December 7, 2017, the Nesses filed a Notice of Appeal and Statement of Election (the “Appeal”).²⁹

²⁴ D.I. 1408.

²⁵ D.I. 1570.

²⁶ See B.D.I. 1617 at Exhibit 1.

²⁷ See *id.* ¶ 8.

²⁸ See D.I. 1661.

²⁹ D.I. 1728.

13. On February 13, 2017, the Court confirmed the Debtors' plan of reorganization (the "Plan").³⁰ The Plan contains the following discharge and injunctive provisions (the "Plan Injunction"):

Pursuant to section 1141(d) of the Bankruptcy Code, and except as otherwise specifically provided in the Plan . . . the distributions, rights, and treatment that are provided in the Plan shall be in complete satisfaction, discharge, and release, effective as of (a) the Initial Effective Date, with respect to General Unsecured Claims, or (b) otherwise, the Final Effective Date, of Claims . . . Interests, and Causes of Action of any nature whatsoever... that arose before the Final Effective Date.

Except as otherwise expressly provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released pursuant to [the Plan]... [or] discharged pursuant to [the Plan] ... are permanently enjoined, from and after the Initial Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Non-Debtor Subsidiaries, the Reorganized Debtors, the Released Parties, or the Exculpated Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests.³¹

14. The Confirmation Order specifically "approved and authorized in their entirety" the "discharge [and] injunction ... related provisions set forth in Article VIII of

³⁰ D.I. 2009; *see also* D.I. 2019 (the "Confirmation Order").

³¹ Plan, at Art. VIII.B, VIII.H.

the Plan.”³² Moreover, the Confirmation Order deemed the Plan Injunction “essential to the Plan and... necessary to implement the Plan.”³³ Consequently, the Plan and the Confirmation Order both preclude any party from pursuing any pre-effective date claims or causes of action against the Reorganized Debtors.

15. On February 28, 2017, the Plan’s initial effective date occurred and on March 1, 2017 (the “Effective Date”), the Plan was substantially consummated and Samson Resources Corporation and certain of its affiliates emerged from Chapter 11 as the Reorganized Debtors.³⁴

16. On August 23, 2017,³⁵ the District Court entered an Order [D.I. 31] dismissing the Nesses’ Appeal for lack of subject matter jurisdiction because the appeal was not timely filed.³⁶

³² See Confirmation Order at ¶ 98.

³³ See Confirmation Order at ¶ 38.

³⁴ See D.I. 2070.

³⁵ While the Appeal was pending, the Nesses filed their *Motion for Just Relief Pursuant to 11 U.S.C. § 523(a)(2)(A), (B)(i)(iii)(iv), pursuant to FRCP 60(b)(3) and FRCP 60(b)(2), Seeking Just Relief of Memorandum Order #1346, Just Relief of Order Docket #1068 DE Bankruptcy Case 1:15-bk11934, and Just Relief and Court Permission to Attend September Open Meeting with Certain North Dakota Regulators, Legislators, & Commissioners and to Proceed to North Dakota District Court Antitrust Case #4:15-cv-00063 Pursuant to Notice of Status Conference Held to Proceed* [D.I. 29] (the “Just Relief Motion”). The Just Relief Motion sought relief from the Memorandum Order to meet with and inform North Dakota regulators of an alleged gathering fee scheme and to pursue antitrust claims in the North Dakota Federal District Court.

³⁶ See Order D.I. 31. The District Court also dismissed the Just Relief Motion and directed the Clerk of the District Court to close the case. *Id.* at ¶ 14.

DISCUSSION

17. The Ness Motion is predicated on the ground that *Newfield Exploration Co, v. State of North Dakota*³⁷ overturned retroactively *Bice v. Petro-Hunt, LLC*.³⁸ Although *Newfield* reversed the district court's (the lower court) decision, it does not affect the holding in *Bice*. The court in *Bice* interpreted a lease agreement containing an "at the well" clause, while the lease agreement in *Newfield* did not contain that clause.³⁹ In fact, the *Newfield* court held that the "general rule requires the lessor and lessee to share the costs of making the product marketable."⁴⁰ However, in *Newfield*, the parties contracted around the "general rule" of allocating the expense of making the gas marketable.⁴¹ As a result, not only is *Newfield* consistent with *Bice*, it actually supports and endorses the *Bice* holding that "at the well" provision in an oil and gas lease allocates the expenses of making the gas marketable.⁴² As a result, the Ness Motion is predicated on a misunderstanding and misinterpretation of *Newfield*.⁴³

³⁷ 931 N.W.2d 478 (N.D. 2019).

³⁸ 768 N.W.2d 496 (N.D. 2009).

³⁹ See *Bice*, 768 N.W.2d at 500; *Newfield*, 931 N.W. 2d at 480.

⁴⁰ *Newfield*, 931 N.W.2d at 480.

⁴¹ *Id.*

⁴² *Bice*, 768 N.W.2d at 502 ("We join the majority of states adopting the "at the well" rule and rejecting the first marketable product doctrine. Thus, we conclude the district court properly determined Petro-Hunt can deduct post-production costs from the plant tailgate proceeds prior to calculating royalty.").

⁴³ As *Newfield* did not affect the Supreme Court of North Dakota's holding in *Bice*, the Court declines to discuss whether a subsequent opinion would be applied retroactively or the affect generally of a change in the law. As the North Dakota law has not changed and as *Newfield* and *Bice* are consistent, the Court does not need to discuss this issue further.

18. The Ness Claims have already been fully adjudicated and the Nesses do not have any allowed claims. Nothing in the Ness Motion nor the record at the hearing on November 19, 2019, establishes additional claims. The Ness Motion relates to claims that have already been disallowed and expunged by the Court, and are based on pre-Effective Date acts, if any, by the Debtors.

19. Article VIII.B of the Plan implements the Debtors' discharge, while Article VIII.H permanently enjoins creditors from taking action against the Reorganized Debtors based on claims arising prior to the Effective Date. The Court is certain that any of the "bad acts" alleged by the Nesses, if any, occurred prior to the Effective Date as the Debtors sold all of their interests in the Ness Wells prior to the Effective Date.⁴⁴ As a result, after the date of the sale of the Ness Wells, the Debtors could take no action that affected the Ness claimants in any way related to these wells. Accordingly, the Plan's discharge and injunction provisions preclude the Nesses from pursuing any pre-Effective Date claims or causes of action against the Reorganized Debtors.⁴⁵

20. Injunctive provisions such as these are commonly approved and enforced.⁴⁶ The Plan Injunction enforces the discharge obtained by the Reorganized Debtors against

⁴⁴ The Debtors sold their interests in the Ness Wells shortly after entry of the Memorandum Order and prior to the Effective Date of the Plan. *See* Sale Order at Exhibit 1. Thus, the Plan did not (and could not) transfer any interests in the Ness Wells to the Reorganized Debtors. *See* Plan at Art. IV.G.

⁴⁵ *See* Confirmation Order at ¶98.

⁴⁶ *See, e.g., Monarch Life Ins. Co. v. Ropes & Gray*, 65 F.3d 973, 984-85 (1st Cir. 1995) (plan injunctions appropriate to prevent proceedings where pursuit of such actions would adversely impact the bankruptcy estate); *Don Hanvey Oil Trust, Inc. v. Unit Tex. Drilling, LLC*, 2011 WL 606264, at *10 (S.D. Tex. Feb. 16, 2011) (affirming bankruptcy court's denial of motion to lift plan injunction when claims sought to be brought fell

parties who held claims against the Debtors.⁴⁷ As a result, post-confirmation actions against the Reorganized Debtors based upon pre-Effective Date claims are prohibited.⁴⁸

21. As the Court believes that the Ness Claims have been fairly and fully adjudicated before this Court, and as the Court finds that the Ness have no claims against the Reorganized Debtors, the Court finds that any further pleadings filed by the Nesses related to the Ness Wells would only be vexatious and burdensome to the Reorganized Debtors. Accordingly, any further documents, whether in the form of a motion, notice or otherwise, submitted to the Court in these bankruptcy cases by Mr. and Mrs. Ness will be docketed but will not be considered nor acted upon by the Court. Neither the Reorganized Debtors nor any other party in interest are required to respond to any

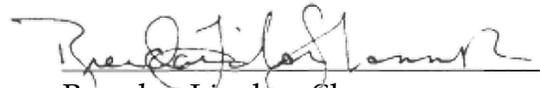
within scope of injunction); *In re IT Group, Inc.*, 339 B.R. 338, 343 (D. Del. 2006) (affirming bankruptcy court holding that government agency's claim was enjoined by plan injunction); *In re Orleans Homebuilders, Inc.*, 561 B.R. 46, 52, 55-56 (Bankr. D. Del. 2016) (plan injunction enforced against claimant commencing or continuing action based upon pre-petition conduct).

⁴⁷ See Confirmation Order ¶ 38; Plan, at Art. VIII.H.

⁴⁸ The Court's ruling is based on interpretation of its own Confirmation Order. See, e.g., *In re Tribune Co.*, 464 B.R. 126, 179 n.63 (Bankr. D. Del. 2011) ("The Supreme Court has recognized that a 'Bankruptcy Court plainly ha[s] jurisdiction to interpret and enforce its own prior orders.'") (quoting *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009)); *In re Continental Airlines, Inc.*, 236 B.R. 318, 325-26 (Bankr. D. Del. 1999) ("It is axiomatic that a court possesses the inherent authority to enforce its own orders."), *aff'd*, 279 F.3d 226 (3d Cir. 2002). However, for completeness, in further support of the Court's ruling, the discharge and injunction of the Plan and Confirmation Order are mirrored by the statutory discharge and injunction contained in sections 1141 and 524 of the Bankruptcy Code. Section 1141 provides for the discharge of a debtor's debts after the confirmation of a plan. Specifically, the confirmation of a plan discharges the debtor from any pre-confirmation debt. 11 U.S.C. § 1141(d)(1)(A). In addition, section 524 states that a discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived." 11 U.S.C. § 524(a)(2). Accordingly, the Nesses' alleged claims against the Reorganized Debtors are discharged by section 1141 of the Bankruptcy Code, and the Nesses are permanently enjoined from pursuing such claims under section 524 of the Bankruptcy Code.

documents or notices filed or served by Mr. and Mrs. Ness in these bankruptcy cases, unless otherwise ordered by the Court.

22. The Court retains jurisdiction over all matters arising from or related to this Order.


Brendan Linehan Shannon
United States Bankruptcy Judge

Date: December 6, 2019