The following constitutes the ruling of the court and has the force and effect therein described.

United States Bankruptcy Judge

Signed September 01, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

IN RE:	§	
	§	
TEXAS RANGERS BASEBALL	§	
PARTNERS,	§	CHAPTER 11
	§	
	§	CASE NO. 10-43400 (DML)
DEBTOR.	§	

Memorandum Order

Before the court is the *Emergency Motion of the First Lien Agent for an Order Conforming Second Amendment to Asset Purchase Agreement to Terms of Successful Bid at Auction* (the "Motion") filed by JPMorgan Chase Bank, N.A. ("Chase") in its capacity as agent for the first lienholders in the above-styled chapter 11 case. Rangers Baseball Express ("Express") filed its [I] *Objection of Rangers Baseball Express to Motion to Expedite Hearing on Emergency Motion of the First Lien Agent for an Order Conforming Second Amendment to Asset Purchase Agreement to Terms of Successful Bid at Auction*; and [II] *Preliminary Objection of Rangers Baseball Express to the Emergency Motion to*

the First Lien Agent for an Order Conforming Second Amendment to Asset Purchase Agreement to Terms of Successful Bid at Auction opposing both the Motion and its consideration by the court on an expedited basis. Thereafter Express filed its *Supplemental Objection of Rangers Baseball Express to the Motion of the First Lien Lenders to Reform the Second Amendment to Asset Purchase Agreement* (the "Supplemental Objection") stating further its opposition to the Motion.

The court conducted a hearing on the Motion on August 25, 2010 (the "Hearing") at which time it heard testimony from Martin A. Cauz and received into evidence various exhibits identified as necessary below. Chase, Express, Debtor, the Ad Hoc Group of First Lien Holders (the "Ad Hoc Group") and the Chief Restructuring Officer (the "CRO")[1] actively participated in the Hearing.

The court exercises its core jurisdiction in this matter. 28 U.S.C. §§ 1334 and 157(b)(2)(A),(L), (M) and (O). This memorandum order constitutes the court's findings of fact and conclusions of law. FED. R. BANKR. P. 9014 and 7052.

I. Background

The background to the commencement of this chapter 11 case and its history up to the week before the auction of Debtor's assets (the "Auction") and confirmation of Debtor's *Fourth Amended Plan of Reorganization of Texas Rangers Baseball Partners Under Chapter 11 of the Bankruptcy Code* (the "Plan") are given in two prior opinions, *In re Texas Rangers Baseball Partners*, 2010 WL 3155998, ___ B.R. ____ (Bankr. N. D.

[1] The CRO was appointed to act for the Rangers Equity Owners (as defined in the July 30 Opinion, defined below). Though the CRO appeared (through counsel) at the Hearing on behalf of the Rangers Equity Owners, his conduct and position as related to the Motion are significant in his individual capacity as CRO and he is so referred to accordingly.

Tex. June 22, 2010) (the "June 22 Opinion"), and *In re Texas Rangers Baseball Partners*, 431 B.R. 706 (Bankr. N. D. Tex. 2010) (the "July 30 Opinion"). Following the hearing described in the July 30 Opinion and after several attempts by Express to short-circuit the need for an auction, the Auction was held on August 4, 2010. At the conclusion of the Auction, Express proved to be the successful bidder, and the following day, August 5, the Plan, including sale of Debtor's assets to Express, was confirmed.

The sale of Debtor's assets to Express was documented in an asset purchase agreement originally entered into by Debtor and Express in May 2010, immediately prior to commencement of Debtor's chapter 11 case,[2] and thereafter amended; the final amendment (the "Amendment") (Chase exhibit 6) was executed on August 10, 2010, effective as of August 5. The Amendment was intended to effect changes to the May APA to conform it to the results of the Auction.

By the Motion, Chase asserts that the Amendment, through its provision for Debtor's payment of up to $1.9 million of lease payments for an aircraft for September, October and November of 2010 (the "Lease Payments"), in fact does not conform to the winning bid by Express at the Auction. Chase claims that the effect of the Amendment is to reduce recovery by the Rangers Equity Owners (and, hence, as explained in the June 22 Opinion, the various lenders to them) by the amount of the Lease Payments. Chase therefore asks in the Motion that the court direct "Debtor and [Express] to modify the Amendment . . . to delete the provisions that require the Debtor to pay the [Lease Payments]." Motion, p. 9.

---

[2] Debtor and Express initially entered into an asset purchase agreement in January of 2010 (the January APA, as defined below) which subsequently expired. The May APA (as defined below) is thus, as amended, the operative contract between the parties.

II. Discussion

The court here limits itself to determining whether it should direct Debtor and Express to modify the Amendment to eliminate Debtor's obligation to make the Lease Payments.[3] It does not address any other issue respecting responsibility or liability for the Lease Payments or what remedies Debtor or any other party may pursue respecting the Lease Payments.

In essence, Chase argues that Express's winning, accepted bid did not provide for payment of the Lease Payments by Debtor (and so from the amount bid) and established the substance of the agreement between Express and Debtor. Chase claims Express should pay the Lease Payments, since its bid otherwise would not have been the winning bid.[4] Chase therefore asks that the court modify the contract — the May APA as amended — to eliminate the portion of the Amendment that requires Debtor to make the Lease Payments.

A court may only so reform a contract if the written contract does not reflect the bargain of the parties.[5] *See Cherokee Water Co. v. Forderhause*, 741 S.W.2d 377 (Tex. 1987); *Ford v. Ford*, 492 S.W.2d 376, 377 (Tex. Civ. App. – Texarkana 1973, writ refused n.r.e.); 10 Tex. Jur. Cancellation and Reformation of Instruments § 121 (2010) ("The mistake [giving rise to the reformation] must have occurred through the reduction

---

[3] Express opposes the Motion on various bases, including that Chase lacks standing to seek the relief sought by the Motion. The court, however, chooses not to address the issue of standing but rather to dispose of the Motion on the merits.

[4] Express disputes this, contending its bid, even reduced by $1.9 million, would have been the high bid at the Auction.

[5] The court accepts (without deciding) that Express's assertion that the test for reformation is the proper one to apply in deciding the Motion.

to writing of the understanding and agreed intent of the parties, in such a manner that the instrument does not represent their real agreement."). The question, then, is whether the "meeting of the minds" that occurred at the Auction and led to the acceptance of Express's bid, as to the Lease Payments, was, in fact, something other than what is reflected in the Amendment.

Chase, in support of the Motion, offered a series of charts (Chase exhibits 2-5) that, it asserts, were prepared and distributed by the CRO to permit parties to evaluate the bids being made by, *inter alia*, Express at the Auction.[6] Chase argues that the totals shown on the charts for the Express bids could only be reached (after the first Express overbid) by excluding from calculation of those totals payment by Debtor of the Lease Payments.

Express, however, disputes the probative value (as well as the admissibility) of the charts. The charts, accepting that they were prepared by the CRO to reflect his understanding of the bids, do not bear the signature of anyone authorized to act for Express (or Debtor). On their face, the charts are presented as unaudited and "subject to provisions in the [asset purchase agreement]." At no point in the transcribed portion of the Auction (Express exhibit 7) did Express agree that it, rather than Debtor, would make the Lease Payments.

Moreover, Express presented considerable evidence respecting the history of its efforts to purchase Debtor's assets to show that it was always contemplated that Debtor, not Express, would be responsible for the Lease Payments. *See,* Express exhibits 1 (the

[6] At the Hearing, the court took under advisement the question of admissibility of the charts. Given the court's conclusion respecting the Motion, their admissibility will be assumed.

original, January 2010 asset purchase agreement (the "January APA"))[7]; 2 (the May 2010 asset purchase agreement (the "May APA"))[8]; 5 (the July amendment to the May APA), at ¶ ¶ 3 and 6; 6 (the term sheet for a proposed July 28 agreement among Express, Debtor, and the Rangers Equity Owners, attached as exhibit A to Debtor's motion to vacate or reconsider bidding procedures), at ¶ (2)(D) and (E); and 8 (the term sheet for a proposed August 3 agreement among Express, Debtor, the Rangers Equity Owners and others, agreed to by the Ad Hoc Group), at ¶ 2(D) and (E). Express also points to the July 29, 2010 motion containing the proposed settlement between Express and the CRO (Express exhibit 6)[9] to the same effect.

The court concurs with Express's conclusions respecting these documents. In particular, the May APA, if not initially, certainly as amended in July, specifically provided that Debtor would be responsible for the Lease Payments. It was the May APA, as amended in July, that was the basis for Express's bids, and thus it was the May APA as amended to which the CRO's bid charts were, on their face, subject.

---

[7] In the Supplemental Objection Express argues that it is not liable for the Lease Payments under the January APA because, though exhibit 1.1(a)(i) to the January APA (Express exhibit 16), entitled "Non-Excluded Affiliate Contracts," lists the "Aircraft Lease Agreement to the extent relating to the rights and obligations of TRBP thereunder" (effectively including the Aircraft Lease Agreement as a Purchased Contract (¶ 7.21explicity includes the Aircraft Lease Agreement as a Purchased Contract "to the extent, and only to the extent, relating to the rights and obligations of TRBP thereunder")), exhibit B to the January APA (appended to Express exhibit 1) controls which payments due under the Aircraft Lease Agreement would be owed by the Texas Rangers post-closing, and thus Express. Exhibit B to the January APA includes a schedule of payments that the Texas Rangers are liable for, but the schedule does not include payments due in September, October, and November of 2010; therefore, Express argues, it is not liable for the Lease Payments.

"Aircraft Lease Agreement" and "Texas Rangers" are here given the definitions they were given in the January APA.

[8] Express argues that it is not responsible for the Lease Payments under the May APA for the same reasons it would not have been liable for them under the January APA.

[9] The August 3 term sheet and the July 29 motion resulted from attempts by Express to resolve Debtor's chapter 11 case without conducting the Auction. The present context is not an appropriate one in which to comment on those machinations.

Even more significantly, the Amendment was executed by Debtor as properly reflecting Express's winning bid and was reviewed and approved by the CRO and his counsel.[10] At a minimum, therefore, the record before the court supports the conclusion that (1) there was no "meeting of the minds" to the effect that Express, not Debtor, would be responsible for the Lease Payments, and (2) the Amendment indeed represents the agreement between Debtor and Express established by the Auction.

When a party[11] asks a court to change a term of a contract, that party must prove by clear and convincing evidence[12] that the reformed agreement — as opposed to the agreement prior to its reformation — truly represents the bargain agreed to by the parties. *Texas Co. v. Cain*, 177 S.W.2d 251 (Tex. Civ. App. – Texarkana 1944, writ refused w.o.m.); *Seaton v. White*, 50 S.W.2d 874 (Tex. Civ. App. – 1932 Amarillo, no writ); 10 Tex. Jur. Cancellation and Reformation of Instruments § 147 (2010). In the case at bar, Chase has not met that burden. The bid charts, even if they unambiguously showed Express paying the Lease Payments, would be insufficient alone to warrant reformation of the Amendment. As it is, given the limited probative value of the charts, their reference to the asset purchase agreement and the substantial evidence that it was always the intent of Express and Debtor that Debtor would be responsible for the Lease

---

[10] It is not clear that the CRO agrees that the Amendment reflects Express's winning bid. At the Hearing his counsel indicated the CRO agreed with Chase's position but was unable to explain why he and the CRO nevertheless approved the Amendment as written.

[11] The court recognizes that Chase was not a party to the Amendment. The court need not reach the question of whether Chase was a proper party to file the Motion.

[12] Even if the standard of proof applicable to contract reformation actions were the lower preponderance of the evidence standard, the ruling embodied in this memorandum order would be the same because Chase did not meet that burden.

Payments, the court must find that the Amendment accurately reflects the bargain of the parties[13] and Express's winning bid.[14]

For the foregoing reasons, the Motion must be and is **DENIED**.

It is so **ORDERED**.

 # # # END OF MEMORANDUM ORDER # # #

---

[13] A written agreement is the best evidence of the bargain struck by the parties. *Seaton v. White*, 50 S.W. 2d. 874, 875 (Tex. Civ. App. – 1932 Amarillo, no writ); *Williams v. Nettles*, 56 S.W. 2d 321, 322 (Tex. Civ. App. – 1932, writ dismissed).

[14] For the court to conclude that Express intentionally misled Chase and others by making a bid that it knew was distorted to conceal Debtor's responsibility for the Lease Payments would require it to find that Express was willing to risk a $600 million transaction for the sake of, at most, $1.9 million (about .3% of the total), something that strains credulity.