



ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
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The following constitutes the order of the Court.

Signed December 30, 2003.

United States Bankruptcy Judge

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

IN RE:	§	
	§	
AURION TECHNOLOGIES, L.L.C.,	§	CASE NO. 02-31988-SAF-11
	§	
AURORA NATURAL GAS, L.L.C.,	§	CASE NO. 01-36709-SAF-7
	§	
ANG HOLDINGS, L.L.C.,	§	CASE NO. 01-36900-SAF-11
	§	
GPR HOLDINGS, L.L.C.,	§	CASE NO. 01-36736-SAF-11
	§	
GOLDEN PRAIRIE SUPPLY SERVICES, L.L.C.,	§	
	§	CASE NO. 01-36904-SAF-7
	§	
DEBTOR(S).	§	
	§	
EDGE PETROLEUM OPERATING CO., INC.,	§	(Transferred from the U.S. District Court, Southern District of Texas, Houston Division)
PLAINTIFF,	§	
	§	
vs.	§	ADVERSARY NO. 03-3564
	§	
DUKE ENERGY TRADING AND MARKETING, L.L.C.,	§	
DEFENDANT.	§	

MEMORANDUM OPINION AND ORDER

GPR Holdings, L.L.C., and the trustees of the bankruptcy estates of Aurora Natural Gas, L.L.C., and Golden Prairie Supply Services, L.L.C. (the debtors), move the court to intervene as the plaintiff in this adversary proceeding. Edge Petroleum Operating Co., Inc., the plaintiff, opposes the motion. The court conducted a hearing on the motion on December 8, 2003. At the hearing, Duke Energy Trading and Marketing, L.L.C., the defendant, supported the debtors' position.

Edge sold gas to the debtors. Edge alleges that the debtors did not pay for the gas. Invoking section 9.343 of the Tex. Bus. & Com. Code, Edge claims a lien on the gas and, if not paid, a lien on the proceeds of the gas. The debtors sold the gas to Duke. The debtors assert Duke did not pay for the gas. Duke asserts that it overpaid the debtors for the gas. To recover the alleged overpayments, Duke applied offsets to the purchase of gas from the debtors. Duke sold the gas to subsequent buyers. Edge alleges that Duke converted its security interest in the gas or the proceeds of the gas when Duke sold the gas to subsequent buyers and did not pay Edge the amount the debtors owed Edge. In separate litigation, the debtors have brought claims to recover accounts receivable and to avoid transfers under 11 U.S.C. § 547 against Duke.

The debtors seek to intervene of right under Fed. R. Civ. P.

24(a), made applicable by Bankruptcy Rule 7024. The debtors contend that Edge is attempting to recover property of the bankruptcy estates or prosecute claims belonging to the bankruptcy estates. The debtors argue that only they may recover that property or prosecute those claims. The debtors maintain that Edge must assert its security interest against the proceeds recovered by the bankruptcy estates, be they recovered on the collection of accounts receivable or the avoidance of the offset transfers under § 547. Edge counters that it will only prosecute its claim for conversion by Duke of Edge's alleged security interest in natural gas or the proceeds from the natural gas.

In two decisions in this adversary proceeding before it was transferred to this court, the United States District Court for the Southern District of Texas explained the parameters of the issue. Assuming that Edge has a producer's lien as security for the sale of gas to the debtors, the lien would attach to proceeds that belong to the debtors. In other words, if the debtor bought the gas from Edge, did not pay Edge and then sold the gas to a third party, Edge's lien would presumably attach to the proceeds received by the debtors. Upon the filing of a bankruptcy petition, those proceeds would become property of the bankruptcy estate. Edge's lien would therefore have attached to property of the bankruptcy estate. Since the debtors allege that Duke, the third party buyer, did not pay the debtors for the gas, the

District Court observed that the presumed lien would attach to the property of the debtors "in the form of accounts receivable" for the sale of the gas. Edge Petroleum Operating Co., Inc. v. Duke Energy Trading & Marketing, LLC, No. H-02-1906, slip op. at 4 (S.D. Tex. Oct. 7, 2002). The debtors would collect that property directly as an account receivable or by avoiding the offset transfers.

The debtors argue that Edge is, in essence, trying to collect those accounts receivable to recover the value of its lien. By doing so, the debtors argue that Edge is exercising control over property of the estate or property recoverable by the estate. The debtors request that they be allowed to intervene as plaintiff to collect the accounts receivable and avoid the transfers. The debtors contend that Edge can assert its secured claim against the recovered property of the bankruptcy estates.

But Edge insists that it is merely attempting to recover damages for Duke's alleged conversion of Edge's security interest in the gas and its proceeds. The District Court recognized that Edge might have its own cause of action for conversion. Edge may assert its statutory lien against the gas. Edge alleges that it sold the gas to the debtors, who, in turn, sold the gas to Duke, who, in turn, sold the gas to other persons. Edge's lien presumably flowed with the gas. Edge alleges that when Duke sold

the gas and failed to pay Edge, Duke converted Edge's security interest in the gas. The District Court recognized that claim would belong to Edge, not to the bankruptcy estates. Edge Petroleum Operating Co., Inc. v. Duke Energy Trading & Marketing, LLC, No. H-02-1906, slip op. at 6 (S.D. Tex. May 12, 2003).

At this stage of the proceeding, Edge appears to be asserting alternative claims, one against the proceeds of the debtors, and one against Duke for conversion of the lien on the gas. Edge Petroleum, slip op. at 5 (May 12, 2003). The former would implicate property of the bankruptcy estates; the latter would not. Accepting the District Court's analysis, as this court must, under the former, Edge in essence contends that it has a security interest in the debtor's proceeds for the sale of the gas in the form of accounts receivable including recoverable transfers. Edge would be asserting a lien against property of the bankruptcy estate. The debtors should be allowed to intervene as party defendants, not party plaintiffs, to protect the bankruptcy estate's interest. Under the latter, Edge seeks to recover on its own claim for conversion of property by Duke that would not involve property of the bankruptcy estate. The debtors have no basis to intervene on that claim. Under the latter claim, Duke could conceivably have liability to Edge for conversion and to the debtors on the accounts receivable or under § 547.

Based on this analysis, the debtors must be allowed to intervene to protect the bankruptcy estates' interest in property owed the debtors for the sale of gas to Duke in the form of accounts receivable or otherwise recoverable transfers. The debtors have no basis to intervene in the conversion claim.

The court concludes that the motion to intervene is timely. Intervention works no prejudice to Edge on its conversion claim. Edge must recognize that if it recovers on a claim against proceeds owed the debtors, it may be asserting a security claim against property of the estates. The debtors must be able to protect the estates' interest in that property and, under the Bankruptcy Code, may contest the validity, extent and priority of the alleged lien. Edge may narrow its litigation in the pretrial order. If Edge does not pursue, in this litigation, a secured claim against the debtors' proceeds, then the debtors' participation in the litigation would be at an end. In any event, and because of the conversion claim, the debtors' intervention will not interfere with Edge's right to a jury trial in the early spring of 2004. The debtors agree and consent to the jury trial before this court. The intervention will not constitute a reason for a delay in the trial.

Based on the foregoing,

IT IS ORDERED that the motion to intervene is **GRANTED IN PART** and **DENIED IN PART**.

GPR Holdings, L.L.C., and the trustees of the bankruptcy estates of Aurora Natural Gas, L.L.C., and Golden Prairie Supply Services, L.L.C., may intervene as party defendants limited to any claim asserted by Edge Petroleum Operating Co., Inc., on proceeds allegedly owed to the debtors for sales of gas to Duke Energy Trading and Marketing, L.L.C., in the form of accounts receivable or recoverable transfers. In all other respects, the motion is **DENIED**.

###END OF ORDER###