

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

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In Re:)	Case No. 10-43400-dml-11
)	Chapter 11
TEXAS RANGERS BASEBALL)	
PARTNERS,)	Fort Worth, Texas
)	Wednesday, July 21, 2010
Debtor.)	12:00 p.m. Docket
)	
)	DISCOVERY CONFERENCE
)	

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE D. MICHAEL LYNN,
UNITED STATES BANKRUPTCY JUDGE.

APPEARANCES:

For Rangers Baseball Express:	Craig H. Averch WHITE & CASE, LLP 633 West Fifth Street, Suite 1900 Los Angeles, CA 90071-2007 (213)620-7704
For the Debtor:	Yolanda Garcia WEIL, GOTSHAL & MANGES LLP 200 Crescent Court, Suite 300 Dallas, TX 75201-6950 (214) 746-7700
For Rangers Equity Holding Entities:	Michael Steindorf FULBRIGHT & JAWORSKI, LLP 2200 Ross Avenue Suite 2800 Dallas, TX 77010 (214) 855-8000
For Ad Hoc Group of First Lien Lenders:	Andrew M. Leblanc MILBANK, TWEED, HADLEY & MCCLOY, LLP International Square Building 1850 K Street, NW Washington, DC 20006 (202) 835-7574
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1 FORT WORTH, TEXAS - JULY 21, 2010 - 12:05 P.M.

2 THE COURT: Please be seated. All right. The first
3 thing we're going to do today is deal with a series of
4 discovery issues that have been brought up.

5 Before we go into those, though, I think it will be useful
6 for me to give you my ruling respecting testimony by Mr. West
7 because I think that that may dispose of one of the discovery
8 disputes.

9 Yesterday the Ad Hoc Group of Lenders called Mr. West as a
10 witness, and Weil Gotshal objected because Mr. West is an
11 attorney who represented HSG Sports Group, including the
12 Debtor, in its prepetition efforts to sell the Texas Rangers.
13 Weil Gotshal at that time argued that in the Fifth Circuit
14 there's a general rule that a party's attorney should not be
15 called to testify as a witness unless his testimony is both,
16 one, necessary, and two, unobtainable from other sources, and
17 in support of that argument directed the Court to *United States*
18 *v. Crockett*.

19 After considering the law and facts in this case, I
20 determined that Mr. West should testify, though his testimony
21 will, of course, be subject to the limits of attorney-client
22 privilege, and we'll get back to that in a minute.

23 After *Crockett*, various decisions have been rendered in the
24 Fifth Circuit, including *United States v. Phillips*, which was
25 rendered eight months after *Crockett* and may be found at 519

1 F.2d 48, and *In re Cropwell Leasing* out of the Eastern District
2 of the Louisiana in 1996, which you can find at 1996 U.S. Dist.
3 LEXIS 15361, that made clear that courts are reluctant to allow
4 lawyers to testify in trials where they are advocates. Mr.
5 West is not an advocate for the Debtor in this case. He has
6 not signed any of the Debtor's papers. And except for his
7 presence at the counsel table for the First Day motions and
8 yesterday when he appeared as a potential witness, he has not
9 appeared before the Court in this case. He does not appear on
10 the attorney list filed on CM/ECF.

11 The Texas Code of Professional Responsibility provides, in
12 Section 3.08(b), that a lawyer shall not continue as an
13 advocate in a pending adjudicatory proceeding if the lawyer
14 believes that the lawyer will be compelled to furnish testimony
15 that will be substantially adverse to the lawyer's client,
16 unless the client consents after full disclosure.

17 When Weil Gotshal's employment was brought before the
18 Court, the United States Trustee objected to Weil Gotshal's
19 employment specifically based on Mr. West's prior
20 representation of HSG Sports Group, including the Debtor.

21 The Lenders acquiesced in Weil's employment, though they
22 did so before the specific e-mail that we were talking about
23 was provided to them.

24 During the hearing to employ Weil Gotshal, the following
25 exchange occurred between Mr. Sosland, testifying to the

1 appropriateness of Weil's employment, and Lisa Lambert, counsel
2 for the U.S. Trustee. Ms. Lambert stated, "And Weil Gotshal
3 just doesn't think it's relevant if Glenn West has to become a
4 fact witness in this case?" Mr. Sosland responded, "Weil
5 Gotshal believes that the case law says that if we provide
6 testimony that's not adverse to the client's interest, that
7 that's not a disqualifying factor."

8 At the time, though the e-mail at issue was not before the
9 Court then or known to the parties, nevertheless, other e-mails
10 of Mr. West had been raised with the Court which made it clear
11 that Mr. West might be called upon to testify. And it is
12 questionable whether, had this Court believed that Weil
13 Gotshal's continuation in the case depended on keeping Mr. West
14 from testifying, I would have approved the employment under
15 those circumstances. Certainly, Weil should have known that
16 Mr. West was a potential fact witness, and Mr. Sosland's
17 comments anticipated that Mr. West would in fact have to
18 testify.

19 Now, that said, any examination of Mr. West cannot run to
20 Mr. West's conversations with his clients. It must be limited
21 to his discussions with other parties. The e-mail in question
22 was sent solely to lawyers, and I'm going to come back to that
23 in a minute because there's a question about whether one of
24 them was acting as a lawyer in that case. And therefore it
25 does not appear that there is any way that that Lenders can get

1 testimony respecting the e-mail that's before the Court today
2 other than by asking a lawyer to testify.

3 The one possible exception to that is Mr. DuPuy, who is
4 President of Major League Baseball. However, Mr. DuPuy is a
5 graduate of law school, admitted to practice, I believe, in New
6 York, though I may have that wrong, in which case I apologize,
7 Mr. DuPuy. He practiced as a lawyer until the late 1990s,
8 serving as outside counsel to Major League Baseball during that
9 time. And it is unclear to me at this point whether, as a
10 recipient of the e-mail, Mr. DuPuy was acting in the capacity
11 of being an attorney, though he appears to have received it as
12 President of Major League Baseball.

13 I mention this because it may be that you will find
14 examination of Mr. DuPuy easier to conduct without treading on
15 privilege than examination of Mr. West, but I'm certainly not
16 going to tell the Lenders what to do.

17 However, in any event, I think that that disposes of the
18 question of whether or not Mr. West can be deposed, keeping in
19 mind that I do not expect Mr. West to be asked about
20 conversations between him and his client, but only about
21 conversations and activities involving other parties who are
22 not his client. That's the ruling with respect to Mr. West.

23 If you want the transcript cite, by the way, it's the
24 transcript of June 28, 2010, and it's Page 49 of the transcript
25 at Lines 15 through 19.

1 Now, we can move on to the various discovery disputes. And
2 what I'd like to do is it is my understanding that the only
3 open issue with respect to the Lenders -- we'll start with the
4 lenders. And as I understand it, we've now disposed of the
5 dispute concerning Mr. West, and as I understand it from Mr.
6 Shimshak's e-mail, that an agreement has been reached regarding
7 the deposition of Mr. Selig. Is that so, Mr. Leblanc?

8 MR. LEBLANC: That is, Your Honor.

9 THE COURT: All right. Well, that leaves open the
10 question of the Lenders requesting Rangers Baseball Express to
11 produce documents related to their debt and equity financing.
12 And I'm going to give you five minutes to speak to that, and
13 then I'll allow whoever is speaking on behalf of Rangers
14 Baseball Express to respond. All right?

15 MR. LEBLANC: Yes. Andrew Leblanc, Milbank Tweed, on
16 behalf of the Ad Hoc Group of First Lien Lenders.

17 Your Honor, I don't think I'll take five minutes.

18 THE COURT: Good.

19 MR. LEBLANC: We received our initial set of
20 production from Rangers Baseball Express two days ago. I
21 believe it was two days ago, at about 11:00 o'clock at night,
22 as I mentioned yesterday, when I was on a flight down here.
23 That did not include documents relating to their debt and
24 equity financing, despite the fact that those have been
25 requested for production on July -- the production date on that

1 originally was July 6th. We had asked for those documents and
2 had further discussions with them with respect to those
3 documents because of its relevance to this issue, the issues
4 that are now before the Court, and the importance of the August
5 12 date.

6 We'd like the ability to understand whether the August 12
7 date is a real date or date that could be moved. And so we
8 think that the discussions between RBE and its equity sources
9 and its lenders are appropriate for that.

10 We don't need the names, necessarily, of the people on the
11 documents. They have attached -- they have given to us, either
12 last night or this morning, documents that they intend to use
13 today, apparently, in heavily-redacted form, that include their
14 subscription agreements and other documents related to their
15 equity financing.

16 But they are so heavily redacted, we've discussed with
17 counsel even this morning questions that we have about
18 definitions that don't appear in the portions that are
19 unredacted. What they've essentially done is only left in the
20 parts that I expect that they intend to use today, and not
21 given us any of the other parts that we could really question
22 the position that they're taking here today.

23 So we think it's appropriate. There is a -- we are not a
24 bidder in this case. The Lenders are not a bidder in this
25 case. We are actively talking to bidders; I will concede that.

1 But we are not a bidder in this case.

2 THE COURT: You understand that if any of your clients
3 interferes in the bidding process, you will be violating my
4 court order, and respond accordingly?

5 MR. LEBLANC: Without any question, Your Honor. And
6 we've respected every highly confidential designation, which in
7 this case means attorney's eyes only. We have respected that
8 even though the Debtors have, for example, designated every
9 document they've produced as attorney's eyes only. Our clients
10 have suffered as a result of that, but we've respected that,
11 and we've respected if they --

12 THE COURT: It didn't look like Mr. Galatioto was
13 suffering too much yesterday. He seemed to enjoy himself.

14 MR. LEBLANC: Well, he may have, Your Honor.

15 THE COURT: Yes.

16 MR. LEBLANC: But he certainly would like to know what
17 the theory of our case is, --

18 THE COURT: Right.

19 MR. LEBLANC: -- and it's hard to explain that to him
20 because I can't show him the documents that have been produced
21 to us and marked highly confidential. But we're living with
22 that, and we've worked -- we've talked with the Debtor about
23 trying to resolve that issue. But we'll accept, if they're
24 marked highly confidential and they come to me, they're going
25 to stay with me, or with --

1 THE COURT: All right.

2 MR. LEBLANC: -- the people who are entitled to
3 receive it.

4 So we think that request is appropriate. It's narrowly
5 tailored. We're not intending to -- this isn't a question of
6 chilling bidding. We don't think that that's a real question
7 with these equity subscribers or even the Lenders. But we just
8 want to be able to test the assertions that have been made in
9 chambers with respect to the --

10 THE COURT: Okay.

11 MR. LEBLANC: -- certainty of August 12th.

12 THE COURT: We're going to have, I understand, Mr.
13 Greenberg testify today, and he will -- he is going to have to
14 explain that as well, to the extent that Mr. Snyder has not
15 already covered it with respect to the fee to be paid in order
16 to keep the lending in place.

17 Let me hear from -- Mr. Averch, will you be speaking for
18 Express? I gather Mr. Lauria is stranded in Delaware or has
19 had to return to his villa in Tuscany?

20 MR. AVERCH: Actually, Mr. Lauria is looking forward
21 to being back before Your Honor and before the conclusion of
22 this matter.

23 THE COURT: I'm sure he's looking forward to it like a
24 root canal.

25 MR. AVERCH: He is not hiding out at his villa, Your

1 Honor.

2 Craig Averch with White & Case on behalf of Rangers
3 Baseball Express.

4 Your Honor, if I may approach with the exhibits that we
5 intend to use today.

6 THE COURT: Well, let's deal with the discovery
7 dispute first, --

8 MR. AVERCH: The --

9 THE COURT: -- because we've sort of -- we've set the
10 hearing on the reconsideration to begin at 1:00.

11 MR. AVERCH: Your Honor, Rangers Baseball Express has
12 produced all of the documents relating to their equity
13 subscriptions, the legal documents. They are heavily redacted.
14 The one issue that's not redacted throughout the documents is
15 with respect to deadlines.

16 Your Honor, the equity investors of Rangers Baseball
17 Express have already funded their equity subscriptions.
18 There's over a quarter billion dollars in cash sitting in a
19 bank account. It's already been funded. These individuals are
20 passive investors. If they wanted to be active investors, they
21 would be appearing before Your Honor.

22 THE COURT: Let me ask you this. You are --
23 currently, under the bidding procedures, at your request, you
24 are one of the parties that will receive all the bids that are
25 made in this case, right?

1 MR. AVERCH: Correct.

2 THE COURT: Okay. What of what you are withholding,
3 if anything, would you expect to receive from other bidders?

4 MR. AVERCH: Nothing, Your Honor. We're going to
5 provide our entire loan agreement, credit agreement. It's
6 provided in redacted form for public consumption, but we're
7 going to provide it to the parties in this case under the
8 highly confidential designation. The information on
9 individuals, you know, has gone out to Baseball. We are not
10 withholding any information relating to our bid. In fact,
11 everything regarding our bid is public. The credit agreement
12 is signed. The equity is funded.

13 There is a dispute -- well, I don't even think there's a
14 dispute, but that an issue has been raised with respect to the
15 termination date. As Your Honor pointed out, Mr. Greenberg
16 will be before the Court and can testify to that.

17 There are confidential relationships, business, proprietary
18 relationships relating to individuals that, frankly, are
19 irrelevant. And --

20 THE COURT: All right. Well, let me ask you this.
21 Why do you have a problem sharing this with the Lenders'
22 attorneys, assuming that they will keep their word and not
23 share it with anyone else, including their clients?

24 MR. AVERCH: With respect to the individual private
25 investors?

1 THE COURT: Right.

2 MR. AVERCH: Because, Your Honor, we don't see how,
3 when the investors have already funded their full commitments
4 and the issue before the Court is limited. If there are fields
5 that were redacted -- for example, Mr. LeBlanc said we
6 redacted the defined term APA -- we'll go back and look at the
7 reduction.

8 THE COURT: Why could you not just redact the name of
9 the investor?

10 MR. AVERCH: Names, amounts, and bank accounts are the
11 main redactions. But, you know, there's personal
12 correspondence that has nothing whatsoever to do with this
13 case, specifically or generally. There are terms in the
14 subscription agreement that deal with governance issues that
15 are, you know, completely irrelevant from this case
16 perspective.

17 Mr. Greenberg and Mr. Ryan are the face principals. They
18 are going to appear before Your Honor. They're going to answer
19 questions, all the questions that Mr. LeBlanc has. If there is
20 a document or a -- that comes up that Mr. Greenberg or Mr. Ryan
21 refer to that needs to be produced, we'll produce it.

22 THE COURT: All right.

23 MR. AVERCH: I think we've gone over and above what we
24 would expect other bidders to produce.

25 THE COURT: All right.

1 MR. AVERCH: Now, that said, Your Honor, there are --
2 we, as a party in interest, as the Court will hear in another
3 discovery dispute, haven't received any information from any
4 other bidders. Everything we have is public, yet we're not
5 receiving anything, any communications that they've had with
6 other bidders. Nothing.

7 And that puts us not only at a competitive disadvantage,
8 but practically and legally, Your Honor, because Your Honor has
9 noted in your correspondence to counsel on Monday that there
10 are serious issues if there are no other bidders at the
11 auction. We don't know what the willingness of other bidders
12 are. We don't know what's been offered to other bidders. We
13 don't know what other bidders are offering to come into this
14 process.

15 None of that's been produced, yet we're receiving
16 complaints --

17 THE COURT: All right. Until they make a bid -- well,
18 go ahead.

19 MR. AVERCH: Well, actually, that's not true, Your
20 Honor. If it was just the bid, that would be one thing. But
21 what we're talking about here in the motion to reconsider and
22 Mr. Snyder's testimony is the fact that no bidder is making a
23 bid. According to Mr. Snyder, no bidder is willing to come
24 into this process.

25 THE COURT: Well, I'm not sure --

1 MR. AVERCH: According --

2 THE COURT: I'm not sure that's a correct
3 characterization of Mr. Snyder's testimony, but go ahead.

4 MR. AVERCH: Well, on this time frame, Your Honor.
5 And nobody can get their financing on this time frame, Your
6 Honor. And --

7 THE COURT: Well, I'm not even sure that that's a
8 correct characterization of Mr. Snyder's testimony. I think it
9 was more along the lines of, "I'm afraid we won't have any
10 bidders on this time frame."

11 MR. AVERCH: Well, I think even with Mr. Crane, Mr.
12 Snyder was clear that Mr. Crane wanted to be the stalking
13 horse, and there is --

14 THE COURT: Yes, I recall that.

15 MR. AVERCH: You know, there's take-back notes, and
16 there was a commitment letter from the lenders.

17 THE COURT: Yes.

18 MR. AVERCH: The fact that Mr. Crane cannot get
19 financing may be an issue before the Court on the 4th if there
20 are no other bidders. If there are other bidders, of course,
21 there is not an issue. But for this motion to reconsider, that
22 issue has been teed up. I mean, they want an extension, yet
23 they are not providing us any documents. Mr. Beagles was up
24 here with a document referring --

25 MR. LEBLANC: Your Honor, Your Honor, --

1 THE COURT: Just --

2 MR. LEBLANC: -- if we're going to deal with that
3 issue, I'd prefer to deal with it in chambers, if we could.
4 And I can explain why. I just don't want to do that in open
5 court.

6 MR. AVERCH: All right. Well, Your Honor, --

7 THE COURT: Which issue are we getting to now, the one
8 of you not producing --

9 MR. LEBLANC: Correct.

10 THE COURT: -- or the CRO not producing information
11 from other bidders?

12 MR. LEBLANC: Correct.

13 THE COURT: All right. All right.

14 MR. AVERCH: Well, Your Honor, I don't want --

15 THE COURT: Let me tell you what we're going to do
16 here. Anything that you would expect to receive from another
17 bidder, you must provide in unredacted form.

18 In other words, if you think it is something that you would
19 say, "This bid is inadequate because it doesn't provide x," you
20 must provide x as well. Okay? So if you don't provide, for
21 example, a list of your equity owners, whether their money is
22 up or not, then you can't require that list from another
23 bidder. Otherwise, you may provide the document in redacted
24 form.

25 I would ask you to work with Mr. LeBlanc to make sure that

1 the reductions leave the form or what you're producing
2 intelligible. Do you understand me?

3 MR. AVERCH: I do, Your Honor.

4 THE COURT: Okay. That'll be the ruling on that
5 dispute.

6 All right. Let's see. Next we have -- okay. Do we have
7 any other discovery disputes remaining, other than Rangers
8 Baseball Express' demand for information from the CRO? Ms.
9 Garcia? I'm sorry. I don't mean to interrupt you. But I --

10 MS. GARCIA: Your Honor, Yolanda Garcia with Weil
11 Gotshal, for the record.

12 We also had requested documents in connection with our
13 motion. And while we have conferred several times, we have not
14 been able to reach an agreement for the production of any of
15 those types of documents. And we do not disagree that perhaps
16 that discussion of those particular document requests happen in
17 chambers so that not all of the information that we are seeking
18 be disclosed, --

19 THE COURT: All right.

20 MS. GARCIA: -- as Mr. Leblanc has suggested --

21 THE COURT: All right. Then let's --

22 MS. GARCIA: -- for purposes of Rangers Baseball
23 Express.

24 THE COURT: Let's go ahead and, if it's by the consent
25 of the parties, we'll do it in chambers. But let's first of

1 all take up the request by Express from the Chief Restructuring
2 Officer.

3 Yes, Mr. Leblanc?

4 MR. LEBLANC: Your Honor, that request actually I
5 think relates to the same topic, so if we could do that in
6 chambers. I think they're related to one another. The subject
7 matter that's sought to be produced in both of those discovery
8 disputes is the same. It's just one is by the Debtor, one is
9 by RBE.

10 And so we'd like to -- and for reasons I can explain in
11 chambers, we'd like to have those discussions in chambers.

12 THE COURT: All right. Is there someone here
13 representing the equity owners? Oh, you're here? I'm sorry.

14 MR. STEINDORF: Yes, Your Honor.

15 THE COURT: I didn't know you were here from
16 Fulbright.

17 MR. STEINDORF: Mike Steindorf for Fulbright for
18 Ranger Equity, Your Honor.

19 THE COURT: All right. Okay. Let's go into chambers,
20 then.

21 THE CLERK: All rise.

22 (Proceedings in open court concluded at 12:27 p.m.
23 Chambers conference conducted until 1:03 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Kathy Rehling
Certified Electronic Court Transcriber
CET**D-444

Date

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