

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

In Re:	§	
	§	
TEXAS RANGERS BASEBALL PARTNERS,	§	CASE NO. 10-43400-DML-11
	§	
Debtor.	§	Chapter No. 11
	§	(Jointly Administered)
	§	
<u>RANGERS BASEBALL EXPRESS LLC</u>	§	
	§	
Plaintiff,	§	
	§	Adv. Proc. No. 10-4121
v.	§	
	§	
TEXAS RANGERS BASEBALL PARTNERS,	§	
	§	
Defendants.	§	

MOTION OF RANGERS EQUITY HOLDINGS, L.P. AND RANGERS EQUITY HOLDINGS GP, LLC TO INTERVENE IN ADVERSARY PROCEEDING

Rangers Equity Holdings, L.P. (“**Rangers Equity LP**”) and Rangers Equity Holdings GP LLC (“**Rangers Equity GP**,” together with Rangers Equity LP, “**Rangers Equity Owners**”), by and through its proposed undersigned attorneys, Fulbright & Jaworski L.L.P., hereby file this Motion (the “**Motion**”) to Intervene in Adversary Proceeding, and respectfully show as follows:

I. PRELIMINARY STATEMENT

1. Rangers Baseball Express LLC (“**RBE**”) filed a Verified Complaint (the “**Complaint**”), alleging certain defaults by Texas Rangers Baseball Partners (the “**Debtor**”) under the Asset Purchase Agreement (the “**APA**”). The Complaint seeks to compel the Debtor to consummate the APA or, failing specific performance, to obtain compensatory damages. Importantly, the Complaint also seeks to enjoin the Debtor in a manner that would preclude

Debtor and/or its Affiliates from soliciting or negotiating with prospective bidders other than RBE regarding the acquisition of the Texas Rangers franchise. In truth, however, the bulk of the alleged defaults center around the actions of William Snyder, the court-appointed chief restructuring officer for Rangers Equity Owners, and Rangers Equity Owners themselves. See, e.g., Complaint at 18-26. Indeed, the Complaint itself requests that the Court enter judgment for RBE determining that “the Debtor and **the Rangers Equity Owners**’ solicitation of and negotiations with prospective bidders other than Plaintiff regarding the acquisition of the Purchased Assets violates Section 7.16 of the APA.”¹ Complaint at 26 (emphasis added). Despite these allegations directly implicating Rangers Equity Owners, critically, RBE failed to name Rangers Equity Owners as defendants to the Complaint. Accordingly, apart from the direct interests held by Rangers Equity Owners with regard to the Debtor’s assets that grant Rangers Equity Owners the ability to intervene as a matter of right, discussed infra, because RBE’s Complaint attempts to enjoin Rangers Equity Owners from their “continuing violation[s] of the APA,” this Court must permit the requested intervention.

2. Additionally, because the Complaint and accompanying TRO Motion seek to force the Debtor to consummate the APA by virtue of the extreme measure of specific performance, RBE effectively seeks to limit Mr. Snyder’s express authority to advise this Court and subsequently to vote on the Plan on behalf of the Rangers Equity Owners. If RBE succeeds, it will preclude any alternative proposals from consideration, and thus, analysis by Mr. Snyder, regarding what is in the best interests of Rangers Equity Owners. Rangers Equity Owners believe any such restriction does not accord with this Court’s concept of Mr. Snyder’s role:

¹ Along with the Complaint, RBE also filed an emergency motion requesting that the Court enter a temporary restraining order (the “**TRO Motion**”) prohibiting the Debtor and its Affiliates from further violating the APA. See Exhibit A to TRO Motion (proposed order).

What I'm talking about is where a meeting is called by Baseball for the owners to attend to decide to whom the Angels can be sold or whoever. That, it seems to me, it would be appropriate for Mr. Ryan to be the person attending that meeting. If the meeting is one deciding to whom the Rangers can be sold, he probably still would be the one attending it, but the person who would at least play a role in the decisionmaking process respecting what sale or what other resolution of these Chapter 11 cases should occur, that decision would certainly at a minimum involve the CRO. And I don't think anybody questions that at this point. I don't understand that to be a question.

Tr. of June 22, 2010 Hr'g at 27:11-23.

3. Because Rangers Equity Owners meet the requirements to intervene in this matter as a matter of right, this Court must grant the Motion.² To the extent, however, that the Court disagrees with Rangers Equity Owners' automatic right to intervene, in the alternative, Rangers Equity Owners request that the Court utilize its discretion and allow intervention.

II. JURISDICTION AND PROCEDURAL BACKGROUND

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§1334 and 157. This Motion concerns the administration of the estate; and therefore, it is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A).

5. Venue is proper in this Court pursuant to 28 U.S.C. §§1408 and 1409.

6. On May 24, 2010, the Debtor commenced a voluntary case under chapter 11 of the Bankruptcy Code. The day before filing its bankruptcy petition, on May 23, 2010, the Debtor entered into the APA with RBE. The Debtor continues to operate and manage its businesses as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

7. On June 25, 2010, the Debtor filed its Second Amended Prepackaged Plan of Reorganization (the "**Plan**").

8. On July 12, 2010, RBE filed the instant Complaint, asserting various breaches of

² Because Rangers Equity Owners are seeking to intervene as a party defendant, Rangers Equity Owners' deadline to file an answer to the Complaint has not passed.

the APA by the Debtor and asking this Court to, *inter alia*, award RBE specific performance to compel the Debtor to consummate the APA. RBE also filed a Motion for Expedited Hearing On Plaintiffs' Emergency Motion for Preliminary Injunction and Temporary Restraining Order ("Motion for Expedited Hearing", Clerk's Dkt. 4) which states that RBE and Debtor "have reached an agreement on the terms of a TRO that would remain in place pending a hearing on RBE's request for a preliminary injunction. Motion for Expedited Hearing at ¶ 4. RBE also suggests that the preliminary injunction be taken up at the confirmation hearing. *Id.* at ¶ 2.

9. The Court granted Plaintiff's Motion for Expedited Hearing and set a hearing for July 13, 2010 at 1:30 p.m.

III. ARGUMENT

A. Rangers Equity Owners May Intervene as a Matter of Right

10. Federal Rule of Civil Procedure 24, made applicable pursuant to Rule 7024 of the Federal Rules of Bankruptcy Procedure provides:

(a) Intervention of Right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by federal statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

FED. R. CIV. P. 24(a); see Effjohn Int'l Cruises v. A&L Sales, Inc., 346 F.3d 552 (5th Cir. 2003); see also Edwards v. City of Houston, 78 F.3d 983, 999 (5th Cir. 1996). This test is flexible and a court is entitled to a "full range of reasonable discretion" in determining whether the elements of Rule 24(a)(2) have been met. Rios v. Enterprise Ass'n Steamfitters Local Union No. 638 of U. A., 520 F.2d 352, 355 (2d Cir. 1975); United States v. Texas E. Transmission Corp., 923 F.2d 410, 416 (5th Cir. 1991) ("the inquiry under subsection (a)(2) is a flexible one, which focuses on

the particular facts and circumstances surrounding each application.... [and] intervention of right must be measured by a practical rather than technical yardstick.”). Indeed, as stated in U.S. v. Hooker Chemicals & Plastics Corp.:

The various components of the Rule are not bright lines, but ranges-not all “interests” are of equal rank, not all impairments are of the same degree, representation by existing parties may be more or less adequate, and there is no litmus paper test for timeliness. Application of the Rule requires that its components be read not discretely, but together. A showing that a very strong interest exists may warrant intervention upon a lesser showing of impairment or inadequacy of representation. Similarly, where representation is clearly inadequate, a lesser interest may suffice as a basis for granting intervention.

749 F.2d 968, 983 (2d Cir. 1984). However, if each element is met, a court has no discretion but to permit intervention. See FED. R. CIV. P. 24(a)(2) (stating that “the court must permit” intervention). As is set forth below, Rangers Equity Owners satisfy each of the factors necessary to intervene under the mandatory standard set forth in Rule 24(a)(2). Accordingly, this Court must grant the Motion.

Timeliness

11. Rule 24 fails to define what constitutes a “timely” motion to intervene. To determine whether an intervention is timely, courts look at the following four factors: (1) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of its interest in the case; (2) the extent of the prejudice that the existing parties may suffer as a result of any delay by the potential intervenor; (3) the extent of the prejudice that the potential intervenor may suffer if the motion to intervene is denied; and (4) the existence of unusual circumstances militating either for or against a determination of timeliness. Edwards, 78 F.3d at 1000(citing Sierra Club v. Espy, 18 F.3d 1202 (5th Cir. 1994)).

12. There is no dispute concerning the timeliness of the instant Motion. Upon learning of the filing of Complaint, Rangers Equity Owners commenced drafting the Motion.

Indeed, Rangers Equity Owners filed the Motion the same day that RBE filed the Complaint. Accordingly, no party is prejudiced by the Motion. Conversely, should the Court deny the Motion and exclude Rangers Equity Owners' participation in the matters concerning the Complaint, Rangers Equity Owners will suffer immediate, and potentially irreparable harm.

13. As noted in the Complaint, the assets RBE seeks to purchase pursuant to the APA "include all of the Debtor's right, title, and interest in substantially all of its assets..." Complaint at 9. Rangers Equity Owners, collectively, represent the ultimate equity interest holders of the Debtor, and therefore have a direct interest in the outcome of the requests sought in the Complaint. If, for example, the Court declines to permit RBE to exercise specific performance, but awards RBE its alternative request for relief, i.e., compensatory damages in an amount equal to the difference between the contract price and fair market value of the Purchased Assets, Rangers Equity Owners will receive a dollar for dollar reduction in their interests as those funds will instead flow to RBE as compensatory damages. Accordingly, if the Court declined to recognize Rangers Equity Owners' mandatory right to intervene in the instant Complaint, the Court would place Rangers Equity Owners' significant interests at great risk.

14. With regard to whether there are any unusual circumstances surrounding the proposed intervention, here, Rangers Equity Owners' proposed intervention is straightforward, and no unusual circumstances exist.

An Interest Relating to the Subject Property

15. Having satisfied the first element concerning intervention as a matter of right, Rangers Equity Owners must now show that they have a "direct, substantial, legally protectable interest in the proceedings." Edwards, 78 F.3d at 1004. No party to these proceedings can dispute that Rangers Equity Owners hold direct, substantial and legally protectable interests in

the subject matter of the Complaint. Among other things, Rangers Equity Owners control the Debtor through the powers granted to Rangers Equity Holdings GP (i.e. power to contract, manage, etc.). Moreover, Rangers Equity Holding LP also controls the Debtor through its voting power (as a 99% owner) over the Debtor. As such, because RBE's Complaint seeks to compel the Debtor to consummate the APA and, failing such consummation, seeks compensatory damages that would diminish the ultimate return to Rangers Equity Owners, the Court must grant Rangers Equity Owners the ability to intervene to protect such interests.

16. The "interest" test "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process...." Sierra Club v. Espy, 18 F.3d 1202 (5th Cir. 1994) (citing Ceres Gulf v. Cooper, 957 F.2d 1199, 1203 n.10 (5th Cir. 1992)). Here, Rangers Equity Owners have been directly implicated on the face of RBE's Complaint (declaratory relief that "Rangers Equity Owners' solicitation of and negotiations with prospective bidders" constitutes a breach of the APA) without naming Rangers Equity Owners a party to the Adversary. Thus, RBE seeks a declaratory judgment against Rangers Equity Owners without any due process.

Disposition Would Impair Rangers Equity Owners' Ability to Protect its Interests

17. The third intervention requirement is that the applicant must be so situated that the disposition of the action may, as a practical matter, impair or impede its ability to protect its interest. United States v. Texas E. Transmission Corp., 923 F.2d 410, 413 (5th Cir. 1991). Given that Rangers Equity Owners are the ultimate equity interest holder of the Debtor, any resolution of the current dispute without Rangers Equity Owners' involvement in the litigation will invariably leave Rangers Equity Owners unable to protect their interests. Moreover, because the Complaint seeks to enjoin Rangers Equity Owners, but conveniently fails to name

Rangers Equity Owners as party defendants, if Rangers Equity Owners are not permitted to intervene, any resulting order granting the relief requested in the Complaint will negatively and potentially drastically impact Rangers Equity Owners' interest without affording Rangers Equity Owners constitutional due process.

Inadequate Representation by Current Parties

18. Finally, Rangers Equity Owners must show that their interests are not adequately represented by the existing parties to the Complaint. See Edwards, 78 F.3d at 1005. Here, plaintiff RBE is the potential purchaser of the assets of the Debtor pursuant to the APA. As such, RBE is singularly focused on precluding any party from upsetting its alleged entitlement to such assets, notwithstanding whether another potential bid represents a substantial increase in the overall recovery for equity. And, despite being charged with seeking a maximum recovery for the estates and, by extension, all the creditors and interest holders of the estate, the Debtor has apparently consented to a form of temporary restraining order that would preclude the Debtor from soliciting alternative bids to the proposal set forth in the APA until the confirmation hearings commence on July 22, 2010 concerning the Debtor's Plan.³ Given the apparent alignment of interests between the Debtor and RBE and Debtor's apparent willingness to agree to the TRO, it is clear that the parties to the Complaint cannot, and will not, adequately represent Ranger Equity's interests in this lawsuit. Accordingly, this Court should grant Rangers Equity Owners the ability to intervene in the Complaint as a matter of right.

B. In the Alternative, This Court Should Permit Rangers Equity Owners to Intervene

19. In the alternative, Rangers Equity Owners are entitled to permissively intervene under the permissive standard of Rule 24(b), which provides:

³ See RBE's Motion for Expedited Hearing on its TRO Motion at p. 3 ("As a consequence of discussions between the Debtor and RBE, the parties have reached an agreement on the terms of a TRO that would remain in place pending a hearing on RBE's request for a preliminary injunction.").

(b) Permissive Intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a federal statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

...

(3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

FED. R. CIV. P. 24(b). The requirements for permissive intervention are minimal: the applicant's claim or defense and the main action must have a question of law or fact in common; and in determining whether to grant permissive intervention, the court should consider whether the court will unduly delay or prejudice the adjudication of the rights of the original parties. See United States v. Colvin, 203 B.R. 930, 941 (N.D. Tex. 1996); FED. R. CIV. P. 24(b). In the present matter, should the Court permit Rangers Equity Owners to intervene, no prejudice would result to the rights of RBE or the Debtor.

20. The Motion demonstrates the existence of common questions of law and fact with RBE's stated claims in this action. Common fact issues exist concerning the alleged defaults by the Debtor and Rangers Equity Owners of the APA. Indeed, the majority of the defaults alleged by RBE to have occurred under the APA relate to the actions of William Snyder and Rangers Equity Owners. Common questions of law surround whether any such defaults, in fact, occurred, and whether as a result of these "defaults," RBE is entitled to specific performance or, in the alternative, compensatory damages beyond those specified in the liquidated damages sections of the APA. Moreover, intervention by Rangers Equity Owners is a more efficient use of court resources and time as all issues and interests for all parties will be decided in one

proceeding, rather than stretching the litigation to subsequent actions. Therefore, if the Court finds that intervention of right is not appropriate, the Court should allow Rangers Equity Owners to permissively intervene pursuant to Rule 24(b).

IV. CONCLUSION

21. Rangers Equity Owners respectfully submit that all of the requirements for intervention of right have been fully satisfied. The intervention is timely; Rangers Equity Owners possess direct interests in the assets that are the subject matter of the Complaint; Rangers Equity Owners are situated such that the disposition of Complaint may, as a practical matter, impair or impede their ability to protect those interests; and neither RBE nor the Debtor adequately represent Ranger Equity Owners' interest. Alternatively, the Court should permit the filing of permissive intervention pursuant to Rule 24(b). Therefore, this Court should grant this Motion and permit Rangers Equity Owners to intervene in the Complaint.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Rangers Equity Owners pray that the Court grant the Motion, and grant Rangers Equity Owners such other and further relief as is just and necessary.

Dated: July 12, 2010

Respectfully submitted,

FULBRIGHT & JAWORSKI L.L.P.

By: /s/ Louis R. Strubeck, Jr.

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PROPOSED COUNSEL FOR
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing Motion was served upon the counsel and parties of record, electronically through the Bankruptcy Court's Electronic Case Filing System on those parties that have consented to such service, on the 12th day of July, 2010.

/s/ Louis R. Strubeck, Jr.

Louis R. Strubeck, Jr.

CERTIFICATE OF CONFERENCE

I hereby certify that, on July 12, 2010, I conferenced with counsel for RBE regarding the relief requested in the Motion. RBE is opposed to the instant Motion

/s/ Gregory M. Wilkes

Gregory M. Wilkes