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**ATTORNEYS FOR JPMORGAN CHASE
BANK, N.A. AS FIRST LIEN AGENT**

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

In Re:

**TEXAS RANGERS BASEBALL
PARTNERS,

Debtor.**

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**CASE NO. 10-43400-DML-11

Chapter No. 11
(Jointly Administered)**

**RANGERS BASEBALL EXPRESS LLC

Plaintiff,**

Adv. Proc. No. 10-4121

v.

**TEXAS RANGERS BASEBALL
PARTNERS,

Defendants.**

MOTION OF FIRST LIEN AGENT TO INTERVENE IN ADVERSARY PROCEEDING

JPMorgan Chase Bank, N.A., in its capacity as Administrative Agent and Collateral Agent (the "First Lien Agent") under that certain Amended and Restated First Lien Credit and

Guaranty Agreement, dated as of December 19, 2006 (the "First Lien Credit Agreement"), hereby files this Motion (the "Motion") to Intervene in Adversary Proceeding, and respectfully states 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.

2. If granted, the relief requested by RBE would preclude the Debtor from maximizing the value of its assets in a full, fair and competitive process. The lenders under the First Lien Credit Agreement (the "First Lien Lenders") are undersecured creditors of the Debtor's direct parent holding companies, with first priority liens on all assets. The Debtor's direct parent holding companies – 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") – have no material assets other than their equity interest in the Debtor and have no obligations senior in priority to those held by the First Lien Lenders. Accordingly, the First Lien Lenders, for whom the First Lien Agent acts as agent, are the ultimate economic beneficiaries of the Debtor's equity interests. They are the primary – perhaps the only – parties in interest harmed by the Debtor's failure to maximize the value of its estate.

3. Because the First Lien Agent meets the requirements to intervene in this matter as

a matter of right, this Court should grant the Motion. To the extent, however, that the Court disagrees with the First Lien Agent's automatic right to intervene, in the alternative, the First Lien Agent requests 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 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. The First Lien Agent 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, the First Lien Agent satisfies 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. The First Lien Agent filed the Motion one day after RBE filed the Complaint. Accordingly, no party is prejudiced by the Motion. Conversely, should the Court deny the Motion and exclude the First Lien Agent’s participation in the matters concerning the Complaint, the First Lien Agent 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. The First Lien Lenders, for whom the First Lien Agent acts as agent, are the economic beneficiaries of the Debtor’s equity interests, 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, the First Lien Lenders 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 the First Lien Agent's mandatory right to intervene in the instant Complaint, the Court would place the First Lien Lenders' significant interests at great risk.

14. With regard to whether there are any unusual circumstances surrounding the proposed intervention, here, the First Lien Agent's 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, the First Lien Agent 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 the First Lien Agent, as agent for the First Lien Lenders, holds direct, substantial and legally protectable interests in the subject matter of the Complaint. As discussed above, the First Lien Lenders are the economic beneficiaries of the Debtor's equity interests, and any diminution of the Debtor's estate as a result of the Complaint will reduce the First Lien Lenders' recoveries on a dollar for dollar basis. As such, because RBE's Complaint seeks to compel the Debtor to consummate the APA (a transaction that fails to maximize value) and, failing such consummation, seeks compensatory damages that would diminish the ultimate return to the First Lien Lenders, the Court must grant the First Lien Lenders the ability to intervene to protect such interests.

Disposition Would Impair First Lien Agent's Ability to Protect its Interests and the Interests of the First Lien Lenders

16. 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 First Lien Lenders, for whom the First Lien Agent acts as agent, are the economic beneficiaries of the Debtor's equity interests, any resolution of the current dispute without the First Lien Agent's involvement in the litigation will invariably leave the First Lien Agent and the First Lien Lenders unable to protect their interests.

Inadequate Representation by Current Parties

17. Finally, the First Lien Agent must show that its 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 hearing commences on July 22, 2010 concerning the Debtor's Plan.¹ The Debtor's complicity in RBE's extraordinary requests for relief demonstrates that the Debtor has no disinterested fiduciaries capable of representing the best interests of its estate. The Debtor's control person,

¹ 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.").

Thomas O. Hicks, is personally interested in closing the APA and thwarting other bids.² These conflicts of interests prevent the Debtor from protecting the interests of its arms-length stakeholders.

18. 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 the interests of the First Lien Agent and First Lien Lenders in this lawsuit.³ Accordingly, this Court should grant the First Lien Agent the ability to intervene in the Complaint as a matter of right.

B. In the Alternative, This Court Should Permit the First Lien Agent to Intervene

19. In the alternative, the First Lien Agent is entitled to permissively intervene under the permissive standard of Rule 24(b), which provides:

(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.

...

² Hicks stands to gain personally from the consummation of the APA and the related Land Sale Agreement (the closing of which is a condition to close the APA), pursuant to which he would receive approximately \$70m in value from the sale of assets of his affiliate, Ballpark Real Estate LLC, to RBE. In addition, Hicks would personally benefit from valuable releases and indemnities if the APA and Land Sale Agreement were to close and the Plan were to be confirmed.

³ The First Lien Agent notes that the Rangers Equity Owners, through their chief restructuring officer, have moved to intervene in this proceeding [Docket No. 6]. The First Lien Agent respectfully submits that, as agent acting on behalf of the ultimate economic beneficiaries of the Debtor's equity interests, the First Lien Agent holds a unique and vital position in this proceeding, which necessitates the granting of this Motion even if the Rangers Equity Owners' motion to intervene is granted. While the Rangers Equity Owners are entities who are obligated to the First Lien Lenders, the First Lien Lenders themselves hold the ultimate economic interest in the outcome of this litigation. The First Lien Agent is best able to communicate directly with the First Lien Lenders and represent their interests accordingly.

(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 the First Lien Agent to intervene, no prejudice would result to the rights of RBE or the Debtor.

20. As reflected in the Complaint, there certainly exist common questions of law and fact with RBE's stated claims in this action. Fact issues bearing directly on the rights of the First Lien Agent include the alleged defaults under the APA and the Debtor's purported efforts to market and sell its assets. Common questions of law surround whether any defaults under the APA, 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. Any judgment adverse to the Debtor may give rise to claims on the part of the First Lien Agent and First Lien Lenders, either directly or derivatively, for, *inter alia*, breach of fiduciary duty against the Debtor's directors and officers in connection with prepetition negotiation of the APA, their engineering of asset transfers on the eve of bankruptcy for their personal benefit but at the expense of arms' length stakeholders, and their conduct during the Debtor's chapter 11 case. Therefore, if the Court finds that intervention of right is not appropriate, the Court should allow the First Lien Agent to permissively intervene pursuant to Rule 24(b).

IV. CONCLUSION

21. The First Lien Agent respectfully submits that all of the requirements for intervention of right have been fully satisfied. The intervention is timely; the First Lien Agent possesses a direct interest in the assets that are the subject matter of the Complaint; the First Lien Agent is situated such that the disposition of Complaint may, as a practical matter, impair or impede its ability to protect those interests; and neither RBE nor the Debtor adequately represents the First Lien Agent's interests. Alternatively, the Court should approve permissive intervention pursuant to Rule 24(b). Therefore, this Court should grant this Motion and permit the First Lien Agent to intervene in the Complaint.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, the First Lien Agent prays that the Court grant the Motion, and grant the First Lien Agent such other and further relief as is just and necessary.

July 13, 2010

Respectfully submitted,

By: s/ Buzz Rochelle, Esq.

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in its capacity as First Lien Agent*

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 13th day of July, 2010.

/s/ [Buzz Rochelle, Esq.]

[Buzz Rochelle, Esq.]