

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
LAREDO DIVISION**

In re: GBG RANCH, LTD., Debtor.	§ § § § §	Case No. 14-50155 Chapter 11
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RESPONSE TO DEBTOR'S MOTION TO APPROVE SALE PROCEDURE
AND FORM OF NOTICE FOR SALE OF ALL OR PART OF
THE CORAZON RANCH
(Doc. No. 285)

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Now comes Quita Wind Energy Co., L.L.C. ("Quita Wind"), joined by Guillermo Benavides, Z. ("Memo Benavides") and Guillermo R. Benavides ("Will Benavides") as managers thereof, and Guillermo Benavides Z., individually, (collectively the "Respondents"), and files their Response to Debtor's Motion to Approve Sale Procedure and Form of Notice for Sale of all or Part of the Corazon Ranch. In support of their Response they would respectfully show the following:

I. Summary of Response

1. On December 19, 2014, the Court entered an Order approving a stipulation signed by counsel for the Debtor G.B.G. Ranch, Ltd., and interested parties Guillermo Benavides Z, Quita Wind Energy Co., LLC, Guillermo R. Benavides and the Court appointed Chapter 11 Examiner, Ronald Hornberger. **(Doc. No. 171).**¹
2. The Stipulation required the Debtor to include in its Chapter 11 Plan that all of the acreage of the Corazon Ranch would be conveyed to a long term trust, along with the acreage of the Oilton Ranch and the mineral classified tract (Tract 5) of the Hill Ranch.

¹ The Order approving the stipulation of the parties was signed by the Hon. Marvin Isgur, sitting for the Hon. David R. Jones.

3. Debtor's Motion to Approve Sale Procedure and Form of Notice for Sale of all or Part of the Corazon Ranch is ancillary to the Motion for Authority to Sell the Corazon Ranch (**Doc. No. 286**). Neither Motion furthers the goals nor the purpose of the Stipulation, which requires the Debtor to submit a Plan placing the Corazon Ranch in a long term trust designed for the benefit of the equity interest owners of the Debtor and the members of Quita Wind. Both Motions are in direct contravention to and in violation of it. For this reason, both of these Motions which involve the Debtor's proposed sale of all or part of the Corazon Ranch should be denied.

4. The Stipulation was entered into as a result of negotiation and compromise of a contested matter, *i.e.* the Debtor's Motion to Reject Correction Wind Lease and Easement Agreement. (**Doc. No. 106**). This was the contested matter that produced the agreements memorialized in the Stipulation. The Stipulation is enforceable and there is no legally compelling reason why it should be set aside.

5. Respondents will show at a hearing on this Motion that it will be feasible to place the Corazon Ranch into the long term trust mandated by the Stipulation, contrary to the assertions made by the Debtor in this Motion and in its Amended Disclosure Statement.

6. Respondents will also show at a hearing on this Motion that a sale of the Corazon Ranch is not in the best interests of the equity interest owners of the Debtor or the members of Quita Wind. In fact, Respondents expect to show that such a sale would penalize both.

II. Admissions and Denials

7. Respondents ADMIT the allegations of jurisdiction and venue in paragraphs 1.01 and 1.02 of the Motion.

8. Respondents ADMIT the allegations in paragraph 2.01.
9. Respondents ADMIT the allegations in paragraph 2.02, except that they DENY that expense reimbursement for Loma Linda Ranch---capped at \$ 15,000.00---should be approved.
10. Respondents ADMIT the assertions in paragraph 3.01.
11. Respondents ADMIT the allegations in paragraph 3.02, except they are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding surveys done of the Corazon Ranch.
12. Respondents ADMIT the allegations or assertions in paragraph 3.04 that Louis Pellegrin signed an exclusive listing agreement for the all of the Debtor's ranches which has been approved by the Court, but they DENY that Pellegrin was responsible for the contracts on the Hill Ranch that closed and funded.
13. Respondents ADMIT that Rancho Loma Linda was the stalking horse bidder on both the Hill Tracts, but DENY the remainder of the allegations in paragraph 3.05.
14. Respondents DENY the allegations in paragraph 3.06.
15. Respondents DENY the allegations in paragraph 3.07 because it is not necessary for the Court to approve sales procedures and form of notice and the sale of the Corazon Ranch is not in the best interests of the equity owners of the Debtor.
16. Respondents DENY that the sale and bid procedures and form of notice set out in paragraph 4.01 because it is not necessary for the Court to approve sales procedures and form of notice and the sale of the Corazon Ranch is not in the best interests of the equity owners of the Debtor.

17. Respondents DENY the allegations or assertions in paragraph 4.02 that the proposed Sale Procedures are substantially similar to the procedures that were used in the sale of the two Hill Ranch Tracts because (a) these procedures require bids to be submitted through contracts that are substantially similar to the proposed stalking horse contract, and (b) fails to provide for any deviation from such contract.

III. Argument and Authorities

A. The Stipulation approved by Court Order on December 19, 2015 is an enforceable Agreement. Enforcement of the Stipulation precludes the Sale of the Corazon Ranch and makes the proposed Sale Procedure improper.

18. When parties enter into an agreed order or agreed stipulation, the agreement is enforceable as a contract and is construed under rules of contract construction. *Neirbo Co. et al. v. Bethlehem Shipbuilding Corp., Ltd.*, 308 U.S. 165, 60 S.Ct. 153, 84 L.Ed. 167 (1939); *Rathborne Land Co., L.L.C. v. Ascent Energy, Inc.*, 610 F.3d 249, 262 (5th Cir.2010); *In Re: General Homes, Corp.*, 134 B.R. 853, 864 (Bankr. S.D. Tex. 1991); *In re Bettis*, 97 B.R. 344, 347 (Bankr.W.D.Tex.1989). Because they are usually reached after negotiation and compromise and allow parties to avoid costly and protracted litigation, agreed orders or stipulations are highly favored by courts in bankruptcy matters. *Alberti v. Klevenhagen*, 46 F.3d 1347, 1364 (5th Cir.1995). *In re: Rolsafe Intern, LLC*, 477 B.R. 883, 903 (Bankr. M.D. Fla. 2012).

19. Agreed orders and stipulations that are entered into freely and fairly and which, like the stipulation in issue here, are approved by the Court, should not be set aside lightly. *In re Argose, Inc.*, 372 B.R. 705,708 (Bankr. D. Del 2007). An agreed order or stipulation should not set aside unless the Court determines the order or stipulation was entered into as a result of fraud, misrepresentation, mistake of fact, or excusable neglect,

or that the facts have changed, or that there is some other special circumstance that would make it unjust to enforce the stipulation. *In re: O'Neil*, 468 B.R. 308, 337 (Bankr. E.D. Ill. 2012).

20. The Stipulation entered on December 19, 2015 requires the Debtor to submit a Plan that places the Corazon Ranch in a long term trust for the benefit of specifically identified beneficiaries. The Stipulation was the result of extensive negotiation and was a compromise of a hotly contested matter, *i.e.* the Debtor's Motion to Reject Correction Wind Lease and Easement Agreement. (**Doc. No. 106**). The terms of that Wind Lease Agreement have not changed since the Stipulation was entered just six months ago.

21. The Stipulation was not the product of fraud or misrepresentation nor did it result from a mistake of fact. Instead, it was reached after the development of the facts as they then existed concerning the enforceability of the wind lease and value of the wind rights held by Quita Wind. The underlying circumstances have not materially changed since the Stipulation was entered in such a way that would make enforcement of the terms of the Stipulation unjust or inequitable. To the contrary, enforcement of the Stipulation is necessary to protect the rights of both the Debtor and Quita Wind.

22. The expert testimony Respondents will present at the hearing will demonstrate that it is feasible to place the Corazon Ranch in the agreed upon long term trust and to develop both wind and solar energy on it. The future revenue stream that can reasonably be anticipated to flow from wind and solar energy leases, coupled the income generated by the lease of grazing and hunting rights, would be in the best interest of both the equity interest owners of the Debtor and the members of Quita Wind. The income would fund the Trust and maximize the value of this important asset and insure a long term source of

income for the Trust beneficiaries.

23. The Debtor sought bankruptcy protection, not because it could not pay its debts on time and in full, but to facilitate the resolution of the family litigation encompassed in the consolidated state court case that is now encompassed in the adversary proceeding. The Stipulation was intended to initiate the process of resolving the underlying family disputes and reduce the associated costs of litigation. The Debtor's attempt to violate the Stipulation by filing this Motion simply prolongs the dispute and will produce more costly and protracted litigation.

24. The Stipulation, which was approved by Court order, was reached through negotiation and compromise after the Respondents changed their position in reliance upon and with the expectation that the Stipulation would be honored by the Debtor; and if not honored, that it would be enforceable in accordance with well established principles of law.

B. The Quita Correction Wind Lease should not be rejected which the Court would do by implication if it authorized the Sale of the Corazon Ranch

25. As noted before, the Stipulation which the Court approved was the result of a compromise reached by the Debtor and Respondents on the Debtor's Motion to Reject the Correction Wind Lease and Easement Agreement with Quita Wind. **(Doc. No. 106).**

26. The Respondents filed a detailed Response to that Motion **(Doc. No. 141)**. Rather than repeat the response in its entirety, Respondents adopt the arguments made therein in opposition to the Debtor's motion to reject. Those arguments in summary form are:

- a. The Correction Wind Lease and Easement Agreement (the "Wind Lease")
is not an executory contract and it cannot be rejected because the Wind
Lease does not impose reciprocal, post-petition obligations on both the

“Debtor and Quita Wind.

- b. The Wind Lease is supported by adequate consideration. The Wind Lease contains a recitation of consideration which constitutes *prima facie* evidence of sufficient consideration to support the Wind Lease.
- c. The Wind Lease is still enforceable because the Debtor, as well as its current directors and President expressly ratified the Wind Lease on multiple occasions.
- d. By accepting benefits under the Lease, Debtor is estopped under the doctrine of quasi-estoppel from taking the inconsistent position that the Wind Lease should be rejected
- e. The Wind Lease is not illusory because implied covenants will supply the obligation to perform that the Debtor claims is lacking.
- f. Under Texas law, a lease does not have to describe its purpose in order to be enforceable. A statement of purpose would merely be a recital and would not form part of the agreement.
- g. Failure to develop wind energy—which Quita emphatically denies has occurred---is not a basis for canceling or rejecting the Wind Lease.
- h. The Wind Lease does not materially impair the marketability of the Corazon Ranch, and the Court should hear evidence on the value of the wind rights in relation to the value of the surface estate.

27. To the extent that this Motion seeks to reject the Quita Correction Wind Lease, it should be denied for the reasons set out above.

IV. Conclusion

28. The proposed sale of the Corazon Ranch violates the Stipulation the parties made and the sale procedures are similarly violative of the Stipulation. Since the proposed sale of the Corazon Ranch is improper and the Motion for Authority to Sell should be denied the Motion to Approve Sales Procedures is likewise improper.

29. In addition the proposed Sales Procedures lack the provisions necessary for the Court to receive and contemplate a bid that deviates from the stalking horse bid. Also the expense reimbursement proposed in the procedure is improper because it does not require an accounting of the costs incurred. Nor does it limit the reimbursement for feasibility expenses as opposed to attorney's fees expended to participate in the bankruptcy proceeding.

For the reasons stated herein, Respondents request that Debtor's Motion to Approve Sale Procedure and Form of Notice for Sale of all or Part of the Corazon Ranch should be denied. Respondents request any other relief to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served electronically upon those parties registered to receive electronic notice via the Court's CM/ECF filing system on this 11th day of June, 2015:

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/s/ Stephen L. Dittlinger

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