

CAUSE NO. 2013-59098

XS CAPITAL INVESTMENTS, LP and	§	IN THE DISTRICT COURT
RURAL ROUTE 3 HOLDINGS, LP	§	
	§	
Plaintiffs,	§	
	§	
v.	§	
	§	HARRIS COUNTY, TEXAS
ORCA ICI DEVELOPMENT JV,	§	
ORCA ASSETS G.P., LLC,	§	
and MRC ENERGY CORPORATION	§	
f/k/a MATADOR RESOURCES	§	
COMPANY	§	
	§	
Defendants.	§	234 th JUDICIAL DISTRICT

PLAINTIFFS’ SECOND AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs XS Capital Investments, LP and Rural Route 3 Holdings, LP and file this Second Amended Petition complaining of Defendants Orca ICI Development JV, Orca Assets G.P., LLC, and MRC Energy Corporation f/k/a Matador Resources Company. In support thereof, Plaintiffs would show unto the Court as follows:

I.
DISCOVERY LEVEL 2

1. Plaintiffs respectfully request, pursuant to TEX. R. CIV. P. 190.1, that discovery be conducted in accordance with discovery Level 2.

II.
PARTIES

2. Plaintiff, XS Capital Investments, LP (“XS Capital”) is a Texas limited partnership duly authorized and conducting business in the State of Texas.

3. Plaintiff, Rural Route 3 Holdings, LP (“Rural Route”) is a Texas limited partnership duly authorized and conducting business in the State of Texas.

4. XS Capital and Rural Route are collectively referred to herein as “Plaintiffs.”

5. Defendant, Orca ICI Development JV (“Orca ICI”), is a general partnership organized and conducting business in the State of Texas. Orca ICI has been served with process and has made an appearance in this action.

6. Defendant, Orca Assets G.P., LLC, (“Orca Assets”) is a limited liability company organized and conducting business in the State of Texas. It has been served with process and has made an appearance in this action.

7. Orca ICI and Orca Assets are collectively referred to herein as “Orca.”

8. Defendant, MRC Energy Corporation f/k/a Matador Resources Company (“Matador”), is a corporation organized and conducting business in the State of Texas. It has been served with process and has made an appearance in this action.

III. **JURISDICTION AND VENUE**

9. This Court has subject matter jurisdiction over this dispute because it involves the application of Texas law, the subject matter has not been preempted by other law or statute, and the amount in controversy exceeds the minimum jurisdictional limits of this Court. This Court has personal jurisdiction over Defendants because all of them both reside and conduct business within the State of Texas and, as a consequence, have maintained the requisite purposeful and systematic contacts which subject them to the personal jurisdiction of this Court. Venue is proper in Harris County, pursuant TEX. CIV. PRAC. & REM. CODE ANN. § 15.002, since all or a

substantial part of the events or omissions giving rise to the claims occurred in Harris County, Texas.

IV.
OVERVIEW

10. This is an oil and gas dispute. Defendants conspired to defraud Plaintiffs into paying the Drilling and Completion Costs of the Cowey 3H and 4H wells in DeWitt County. Those costs exceeded \$8,600,000. Defendants conspired to breach the promise to sell, assign, and deliver all of Orca's working interest in the Cowey 3H and 4H wells to Plaintiffs. As is explained in more detail below, this wrongful behavior triggers liability under a number of different causes of action.

V.
BACKGROUND

11. On or about May 16, 2011, Orca and Matador entered into a Purchase Sale and Participation Agreement (the "PSPA") for the sale of certain oil and gas leases in DeWitt, Karnes, Wilson and Gonzales Counties. Two of the several wells covered by the PSPA, the Cowey 3H and the Cowey 4H, are located in DeWitt County, Texas.

12. The spud date for the Cowey 3H well was February 10, 2013. A few days later, on February 14, 2013, Plaintiffs and Orca entered into a Working Interest Purchase and Sale Agreement (the "Working Interest Agreement"). Orca entered into this Working Interest Agreement because it lacked the funds necessary to participate in the drilling and completion of the Cowey 3H and 4H wells. Without the benefit of Plaintiffs' funding, Orca would have been deemed a Non-consenting Party under the Joint Operating Agreement ("JOA"). As a Non-consenting Party under the JOA, Orca would have been excluded from the substantial financial benefits of the Cowey 3H and 4H wells.

13. To accomplish its desire to be deemed a Consenting Party, Orca agreed to sell, assign, and deliver all of its working interests in the Cowey 3H and 4H wells to Plaintiffs.¹ In exchange for Orca's working interest, Plaintiffs agreed to pay, directly to the well operator (Matador) Orca's 50% share of the Drilling and Completion Costs of the Cowey 3H and 4H wells.² The Drilling and Completion Costs paid by Plaintiffs to Matador attributable to the interest acquired from Orca ultimately exceeded \$8,600,000.00. A copy of the Working Interest Agreement is attached hereto as **Exhibit "A."**

14. The Cowey 3H and 4H wells have both been completed and are producing substantial quantities of oil and gas with 100% of the working interest shares of proceeds being paid to Matador.

15. Article 1.3 of the Working Interest Agreement is entitled, "Joint Operating Agreement." It states as follows: "Buyer understands and acknowledges that the Well is subject to the terms and provisions of the JOA, as well as that certain Purchase, Sale and Participation Agreement dated May 16, 2011 between Seller and MRC (the "PSPA"), a copy of which has been provided to Buyer."

16. Both the JOA and the PSPA allow for the assignment, transfer, or other disposition of interest between the parties and between third parties. While the JOA has no limitations on transfer, the PSPA does require the consent of Matador for any assignment or transfer of rights. The PSPA specifically provides, however, that the consent of Matador "may not be unreasonably withheld." In this case, consent was unreasonably withheld.

¹ Although Orca sold all of its working interest to Plaintiffs, it retained a Net Revenue Interest ("NRI").

² Plaintiffs also purchased the right to participate in subsequent wells Matador planned to drill. Plaintiffs seek recovery of the damages caused by their exclusion from those subsequent wells.

17. For on May 28, 2013, more than three months after Plaintiffs made their first payment of \$4,343,122 to Matador for 50% of the cost of drilling and completing the Covey 3H well and nearly six weeks after Plaintiffs made a second payment of \$4,343,122 to Matador for 50% of the drilling and completion costs for the Cowey 4H well, Orca informed Plaintiffs by email that Matador would not consent to the sale, and that “Orca considers the deal 100% dead at COB [close of business] today.”

18. Thereafter, on June 12, 2013, in an attempt to justify their actions, Orca and Matador entered into the First Amendment to the PSPA (the “Amended PSPA”). In that document, Orca falsely represented that it “rightfully terminated” the Working Interest Agreement with Plaintiffs and instructed Matador to return the \$8,686,244 (without interest) to Plaintiffs. A copy of the Amended PSPA is attached hereto as **Exhibit “B.”**

19. Pursuant to the Amended PSPA, once the Cowey 3H and the Cowey 4H wells reach Payout, Orca will receive a 25% working interest in the well and Matador will retain the 25% after Payout working interest paid for and earned by Plaintiffs under the Working Interest Agreement. Thus, as a consequence of Defendants’ wrongful actions, instead of Plaintiffs owning 50% of the working interest in the Cowey 3H and 4H wells (*i.e.*, 100% of Orca’s 50% working interest before Payout and 25% of the working interest in each well after Payout for as long as the wells produce oil and gas), after Payout Orca will own a 25% working interest, Matador will own a 75% working interest, and Plaintiffs—who paid the \$8,686,244 in Drilling and Completion Costs—will own nothing.

VI.

CAUSES OF ACTION BREACH OF CONTRACT

20. Plaintiffs incorporate herein all the allegations set forth in paragraphs 1-19, above.

21. The Working Interest Agreement is a valid, enforceable contract. Orca breached the Working Interest Agreement by refusing to sell, assign, and deliver to Plaintiffs all of Orca's working interest in the Cowey 3H and 4H wells in exchange for the payment by Plaintiffs of all the Drilling and Completion Costs of those wells. Orca also breached the representations and warranties it made to Plaintiffs in the Working Interest Agreement. Orca's breaches caused injury to Plaintiffs. All conditions precedent to recovery have been met, waived, or excused.

22. The PSPA is a valid, enforceable contract. Matador breached the PSPA by unreasonably withholding its consent for the assignment or other transfer of Orca's rights to Plaintiffs. Plaintiffs are third party beneficiaries of the PSPA and thus are in privity with Matador. Matador's breach caused injury to Plaintiffs. All conditions precedent to recovery have been met, waived, or excused.

STATUTORY FRAUD, COMMON-LAW FRAUD, AND FRAUD IN THE INDUCEMENT

23. Plaintiffs incorporate herein all the allegations set forth in paragraphs 1-19, above.

24. The sale, assignment, and delivery of Orca's working interest is a transaction involving real estate. During the transaction, Matador made false, material representations of fact and false promises with the intent and for the purpose of inducing Plaintiffs into the Working Interest Agreement. Plaintiffs relied on the false representations and promises. That justifiable reliance caused damage to Plaintiffs. All conditions precedent to recovery have been met, waived, or excused.

CIVIL CONSPIRACY

25. Plaintiffs incorporate herein all the allegations set forth in paragraphs 1-19, above.

26. Orca and Matador conspired to defraud Plaintiffs into paying the Drilling and Completion Costs of the Cowey 3H and 4H wells. Orca and Matador had a meeting of the minds to unlawfully accomplish the goal of having Plaintiffs pay all the Drilling and Completion Costs

of the Cowey 3H and 4H wells. All conditions precedent to recovery have been met, waived, or excused.

TORTIOUS INTERFERENCE WITH CONTRACT

27. Plaintiffs incorporate all the allegations set out in paragraphs 1-19, above.

28. Plaintiffs and Orca had a valid contract. Matador willfully and intentionally interfered with the Working Interest Agreement. The interference by Matador proximately caused injury to Plaintiffs. All conditions precedent to recovery have been met, waived, or excused.

DECLARATORY JUDGMENT

29. Plaintiffs incorporate all the allegations set out in paragraphs 1-19, above.

30. Pursuant to TEX. CIV. PRAC. & REM. CODE ANN. § 37.001, Plaintiffs seek a declaration of their rights under both the Working Interest Agreement and the PSPA. All conditions precedent to recovery have been met, waived, or excused.

QUASI ESTOPPEL

31. Plaintiffs incorporate all the allegations set out in paragraphs 1-19, above.

32. Defendants accepted the benefits of the Working Interest Agreement and subsequently took an inconsistent position regarding the Working Interest Agreement and PSPA to avoid their corresponding obligations to Plaintiffs. Defendants are stopped from taking such an inconsistent position, as allowing them to do so would be unconscionable.

MONEY HAD AND RECEIVED

33. Plaintiffs incorporate all the allegations set out in paragraphs 1-19, above.

34. Defendant Matador holds \$8,686,244 belonging to Plaintiffs. The money belongs to Plaintiffs in equity and good conscience. Matador should return the money to Plaintiffs to avoid unjust enrichment.

WAIVER, RATIFICATION, COURSE OF CONDUCT / DEALING

35. Plaintiffs incorporate all the allegations set out in paragraphs 1-19, above.

36. Plaintiffs affirmatively invoke the doctrines of waiver, ratification, and course of conduct/dealing.

EXEMPLARY DAMAGES

37. Defendants' aggravated conduct entitles Plaintiffs' to the recovery of exemplary damages.

ATTORNEYS' FEES

38. Pursuant to TEX. CIV. PRAC. & REM. CODE ANN. §§ 37.001, 38.001 and TEX. BUS. & COM. CODE ANN. § 27.01(e), Plaintiffs are entitled to recovery of their reasonable and necessary attorneys' fees, costs, and expert witness fees.

VII.
RELIEF REQUESTED

WHEREFORE, PREMISES CONSIDERED, Plaintiffs, XS Capital Investments, LP and Rural Route 3 Holdings, LP, pray that Defendants, Orca ICI Development JV, Orca Assets G.P., LLC and MRC Energy Corporation f/k/a Matador Resources Company, be cited to appear and answer this Petition, and that this Court enter judgment in their favor, declare their rights under the Working Interest Agreement and PSPA, order Defendants to assign and deliver an undivided 50% of 100% working interest in the Cowey 3H and 4H wells to Plaintiffs, award Plaintiffs their monetary damages, pre- and post-judgment interest, attorneys' fees, costs of suit, expert witness

fees, and such other and further relief to which Plaintiffs may be justly entitled, including any such other orders, directions, and inquiries that the circumstances require.

Respectfully submitted,

CRADY, JEWETT & MCCULLEY, LLP

By: /s/ Carlton D. Wilde, Jr.

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**ATTORNEYS FOR PLAINTIFFS,
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of May, 2014, all counsel of record have been served with the foregoing by electronic filing and/or by fax, hand delivery, or certified mail, return receipt requested, as follows:

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