

CAUSE NO. 2013-59098

XS CAPITAL INVESTMENTS, LP and	§	IN THE DISTRICT COURT
RURAL ROUTE 3 HOLDINGS, LP,	§	
	§	
Plaintiffs,	§	
	§	
vs.	§	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

**DEFENDANT MRC ENERGY CORPORATION'S REPLY
TO PLAINTIFFS' RESPONSE TO MRC ENERGY CORPORATION'S
SPECIAL EXCEPTION AND PLEA TO THE JURISDICTION**

To This Honorable Court:

Now comes Defendant MRC Energy Corporation ("MRC") and files this Reply to Plaintiffs' Response to MRC's Special Exception and Plea to the Jurisdiction (the "Plea"), and respectfully shows the following:

**I.
Introduction**

The Plea addresses the Plaintiffs' standing to prosecute a breach of contract claim. The contract is a Purchase, Sale and Participation Agreement ("PSPA") between Defendant MRC (f/k/a Matador Resources Company) and Defendant Orca ICI Development JV ("Orca"). The Plaintiffs are not parties to the PSPA.

The question of standing turns on whether the Plaintiffs are, as they allege, third party beneficiaries under the PSPA. A third party is a beneficiary of a contract *only* if the contract clearly and fully expresses the intent to confer a direct benefit on the third party. *Basic Capital*

Management v. Dynex Commercial, Inc., 348 S.W.3d 894, 900 (Tex. 2011). To the contrary in this instance, the PSPA unambiguously disclaims any third party beneficiaries:

“(n) **Third-Party Beneficiaries.** Unless expressly stated to the contrary¹, no third party is intended to have any rights, benefits or remedies under this Agreement.” PSPA, p. 23, ¶ 15(n).

The Plaintiffs’ Response fails to address the above provision, either directly or indirectly.

II. **Argument and Analysis**

To prosecute an action for breach of contract, the Plaintiffs must establish that they have standing as a proper party to assert the claim. Proper parties with standing are (1) parties to the contract, (2) assignees of parties to the contract, and (3) intended third party beneficiaries of the contract. This is black letter law.

The Reply by the Plaintiffs confuses the concept of ‘assignee’ or ‘successor-in-interest’ with the concept of ‘third party beneficiary.’ In support of their third party beneficiary argument, the Plaintiffs misguidedly cite Paragraph 7 of the PSPA, which basically provides that the Parties’ successors or assigns are bound by and subject to the joint operating agreement. Reply at p. 5.

The Plaintiffs acknowledge, however, that the PSPA requires the consent of MRC for any assignment to Plaintiffs. Reply at p. 6. The crux of Plaintiffs’ complaint against MRC is that MRC unreasonably held this consent. Plaintiffs’ Second Amended Petition ¶ 22. By the nature of this complaint, the Plaintiffs concede that they are not approved assignees or successors-in-

¹ A complete and detailed review of the PSPA will reveal that none of the Plaintiffs are identified or referenced therein.

interest, and indeed, the Plaintiffs do not claim this status. Thus, the clauses in the PSPA relating to successors-in-interest are irrelevant to the issue at hand.

“A third party may recover on a contract [as a third party beneficiary] *only if* the contracting parties intended to secure some benefit to that third party and *only if* the contracting parties entered into the contract directly for the third party’s benefit.” *Union Pacific R.R. v. Novus Intern, Inc.*, 113 S.W.3d 418, 421 (Tex.App.—Houston [1st Dist.] 2003, pet. denied) (explanation added). “It is well settled that third-party beneficiary claims succeed or fail according to the provisions of the contract upon which suit is brought.” *Id.* “The intention to confer a direct benefit on a third party must be clearly and fully spelled out in the four corners of the contract; otherwise, enforcement of the contract by a third party must be denied.” *Id.* at p. 422. In this case, the language of the PSPA is dispositive: “. . . **no third party is intended to have any rights, benefits or remedies under this Agreement.**” This language conclusively negates the “intent to confer a direct benefit” requirement, and dooms the Plaintiffs’ third party beneficiary argument.²

III. Conclusion

Whether the PSPA expresses an intent to confer a direct benefit on a third party is a question of law for the court. *Basic Capital*, 348 S.W.3d at 900. In this instance, there is no language in the PSPA that remotely supports a third party beneficiary argument. In fact, the opposite is true. The PSPA expressly disclaims any third party beneficiaries in clear and concise

² The Plaintiffs are not named or mentioned in the PSPA. Although not determinative of the issue, whether a third party is named in the contract is language to consider when deciding if the third party is an intended beneficiary of the contract. *Novus Intern*, 113 S.W.3d at 422, fn. 1.

language. Accordingly, MRC's Special Exception and Plea to the Jurisdiction should be in all respects granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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