

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.	§	234TH JUDICIAL DISTRICT

**DEFENDANT MRC ENERGY CORPORATION'S SPECIAL
EXCEPTION AND PLEA TO THE JURISDICTION REGARDING STANDING**

TO THIS HONORABLE COURT:

NOW COMES DEFENDANT MRC ENERGY CORPORATION f/k/a MATADOR RESOURCES COMPANY ("MRC") and files this Special Exception and Plea to the Jurisdiction Regarding Standing ("Plea"), and in support thereof, respectfully shows the following:

**I.
INTRODUCTION**

This Plea focuses on the Plaintiffs' standing to assert one of the several individual claims asserted in Plaintiffs' First Amended Original Petition and Request for Disclosure ("Amended Petition"). In paragraph 22 of the Amended Petition, Plaintiffs sue MRC for breach of a Purchase, Sale and Participation Agreement ("PSPA") between MRC (f/k/a Matador Resources Company) and Defendant Orca ICI Development JV ("Orca"). Plaintiffs, who are not parties to the PSPA, claim that they are third-party beneficiaries to this agreement, and therefore have standing to bring this claim. The PSPA expressly provides to the contrary.¹

¹ A true and correct copy of the PSPA is attached hereto as Exhibit "A". PSPA, p. 23 ¶ 15(n).

Standing is a threshold legal issue that should be decided at an early stage in this case. As demonstrated herein, Plaintiffs are not third-party beneficiaries to the PSPA and have no standing to assert a breach of the PSPA.²

II. **PLAINTIFFS' ALLEGATIONS**

The relevant factual background is reflected in the Amended Petition as follows:

1. The PSPA.

On or about May 16, 2011, Orca and MRC entered into a Purchase Sale and Participation Agreement (the "PSPA") for the sale of an undivided interest in certain oil and gas leases. Amended Petition ¶ 11.

2. The Working Interest Agreement.

Under the PSPA, and related Joint Operating Agreement, MRC proposed the drilling of two wells, the Cowey 3H and Cowey 4H. Amended Petition ¶¶ 11, 12. The Orca Defendants entered into a February 14, 2013 Working Interest Purchase and Sale Agreement (the "Working Interest Agreement") to provide funding for Orca's retained interest in these two wells.³ Amended Petition ¶ 12. In return for this funding, the Working Interest Agreement provided for an assignment of Orca's working interest in the Cowey 3H and 4H wells to the Plaintiffs. Amended Petition ¶¶ 12, 13. The Working Interest Agreement was, however, expressly subject to the terms of the PSPA, which included certain restrictions on assignments. Working Interest Agreement, Section 1.3.

² The PSPA contains an arbitration provision. PSPA, p. 19 ¶ 14(b). In questioning the Plaintiffs' standing to prosecute a claim under the PSPA, MRC is not waiving its right to enforce this arbitration provision. *In re Vesta Ins. Group, Inc.*, 192 S.W.3d 759, 764 (Tex. 2006) (holding that a motion to dismiss a claim based on lack of jurisdiction does not waive a party's right to compel arbitration).

³ A true and correct copy of the Working Interest Agreement is attached as Exhibit A to the Amended Petition. A true and correct copy of the First Amendment to Purchase, Sale and Participation Agreement is attached as Exhibit B to the Amended Petition.

A copy of the PSPA was provided to Plaintiffs prior to the execution of the Working Interest Agreement. Working Interest Agreement, Section 1.3.

3. The Alleged Breach of the PSPA.

The PSPA requires the consent of MRC for any assignment or transfer of rights, which consent may not be unreasonably withheld. Amended Petition ¶ 16. The Plaintiffs were informed that MRC would not consent to the sale and assignment contemplated by the Working Interest Agreement. Amended Petition ¶ 17. The Plaintiffs contend that MRC breached the PSPA by withholding its consent. Amended Petition ¶ 22. Specifically the Plaintiffs allege as follows:

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.

MRC hereby excepts to the above referenced claim on the grounds that Plaintiffs have no standing to bring this claim.

III.
LEGAL FRAMEWORK

To prosecute a breach of contract claim, it is elementary that a Plaintiff must have standing. Plaintiffs' standing rests solely on the allegation that they "are third party beneficiaries of the PSPA." Amended Petition ¶ 22. A third-party beneficiary exists only if 1) the parties to the contract intend to secure a benefit for the third party and 2) the parties to the contract entered into the contract directly for the third party's benefit. *Basic Capital Mgmt. v. Dynex Commercial, Inc.*, 348 S.W.3d 894, 899–900 (Tex. 2011).

There is a presumption against third-party beneficiary agreements. *City of Houston v. Williams*, 353 S.W.3d 128, 145 (Tex. 2011). “The intention to contract or confer a direct benefit to a third party must be clearly and fully spelled out or enforcement by the third party must be denied.” *Basic*, 348 S.W.3d at 900. Whether a contract expresses the intent to confer a direct benefit on a third party is a question of law for the Court. *Id.*

“Standing is a prerequisite to subject-matter jurisdiction If a party lacks standing, a court lacks subject-matter jurisdiction to hear a case,” and the case must be dismissed. *In the Interest of C.M.C.*, 192 S.W.3d 866, 868 (Tex. App.—Texarkana 2006, no pet.) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993)). This black letter law applies in this instance to the Plaintiffs’ claim against MRC for the alleged breach of the PSPA.

IV. ANALYSIS AND ARGUMENT

The starting point in the Court’s analysis should be the PSPA itself, which the Court may properly consider for purposes of this motion. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000) (“In sum, a court deciding a plea to the jurisdiction is not required to look solely to the pleadings but may consider evidence *and must do so when necessary to resolve the jurisdictional issues raised.*”) (emphasis added). The language of the PSPA clearly expresses the intent not to create a third-party beneficiary:

“(n) **Third-Party Beneficiaries**. Unless expressly stated to the contrary⁴, no third party is intended to have any rights, benefits or remedies under this Agreement.” PSPA, p. 23, ¶ 15(n).

⁴ A complete and detailed review of the PSPA will reveal that none of the Plaintiffs are identified or referenced therein.

The PSPA contains an integration clause, which confirms that the PSPA is the “complete agreement” between Orca and MRC.⁵ The Parties’ expression of their own intent in the PSPA should therefore be conclusive.

In *MCI Telecomms. Corp. v. Texas Utils. Elec. Co.*, 995 S.W.2d 647, 649–50 (Tex. 1999), the Texas Supreme Court considered a contract with a strikingly similar provision expressly disclaiming any intent to create a third-party beneficiary.⁶ The Court, relying on the plain language of the contract and the presumption against third-party beneficiary agreements, found that it was “the intention of the parties that there be no third-party beneficiaries to the contract.” The language in the PSPA at issue here is just as clear as the language in the *MCI* contract, and the presumption against third-party beneficiary agreements just as strong. Accordingly, this Court should give effect to the intent expressed in the PSPA and follow the ruling of the Texas Supreme Court in *MCI*.

Because Plaintiffs are not parties or third party beneficiaries of the PSPA, they have no standing to prosecute a claim for breach of this agreement. Because Plaintiffs lack standing, this Court lacks subject-matter jurisdiction over this claim. Thus, this Plea should be granted.

PRAYER

WHEREFORE, PREMISES CONSIDERED, MRC respectfully prays that:

- (1) This special exception be granted and the portion of the Amended Petition alleging a breach of the PSPA be stricken; and

⁵ PSPA p. 20, ¶ 15(b) (“**Entire Agreement**. This Agreement, together with the Exhibits and Schedules attached hereto and the Assignment and other documents to be delivered pursuant to the terms hereof, shall constitute the complete agreement between the parties hereto and shall supersede and terminate all prior agreements, whether written or oral, including that certain letter agreement between the parties dated as of March 17, 2011, and any representations or conversations with respect to the Property.”)

⁶ The clause in question in *MCI* reads as follows: “Except as provided in this subparagraph, neither this Agreement, nor any term or provision hereof, nor any inclusion by reference, shall be construed as being for the benefit of any party not in signatory hereto.” *Id.* at 649-50.

(2) That the Court grant this Plea and hold that Plaintiffs have no standing to bring a claim for breach of the PSPA; and

(3) For such further relief to which Defendant MRC may be justly entitled.

Respectfully submitted,

By: /s/ D. Patrick Long

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following via email on this 22nd day of January, 2014:

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