

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

**ORCA DEFENDANTS’ MOTION TO COMPEL ARBITRATION OF PLAINTIFFS’
BREACH OF CONTRACT CLAIM**

TO THIS HONORABLE COURT:

COME NOW Defendants, Orca ICI Development JV (“Orca ICI”) and Orca Assets, GP, LLC (“Orca Assets”), collectively referred to as “Orca” in the above-captioned cause, and file their Motion to Compel Arbitration of Plaintiffs’ Breach of Contract Claim (“Motion”), and, in support thereof, would respectfully show this Honorable Court as follows:

**I.
INTRODUCTION**

Plaintiffs in this case bring a variety of claims, including a breach of contract claim against Orca Defendants, a tortious interference claim against MRC Energy Corporation (“MRC”), and a request for a declaratory judgment of Plaintiffs’ rights under the Working Interest Purchase and Sale Agreement (hereinafter referred to as the “Working Interest Agreement”) and the Purchase, Sale and Participation Agreement (“PSPA”). Based on the express arbitration provisions of the PSPA, on July 7, 2014, MRC properly moved to compel the tortious interference claim and request for declaratory judgment to arbitration.

This Motion requests that the Court refer Plaintiffs' claim for breach of contract under the Working Interest Agreement to arbitration. The Working Interest Agreement is subject to the terms of the PSPA, and consequently, so too is the Plaintiffs' breach of contract claim. Through the pursuit of this claim, Plaintiffs are seeking to directly benefit from the contractual rights and terms of the PSPA. In so doing, the Plaintiffs are estopped as a matter of law from avoiding the obligations imposed by the PSPA, one of which is a mandatory arbitration provision.

II. FACTUAL BACKGROUND

The following undisputed facts are pertinent to this Motion.

The MRC-Orca PSPA. On or about May 16, 2011, MRC and Orca entered into the PSPA for the purpose of drilling certain oil and gas wells in the Eagle Ford shale in South Texas.¹ Pursuant to the PSPA and the related Joint Operating Agreement, MRC proposed the drilling of two wells in DeWitt County, Texas; the Cowey 3H and the Cowey 4H.

Two provisions of the PSPA are key to this Motion:

1. **Consent to Assignment.** “The PSPA provides that Orca ‘may assign or otherwise transfer its right to participate arising under this agreement *with the consent of [MRC], which consent may not be unreasonably withheld.*’ ”²
2. **Arbitration.** The PSPA provides that all disputes concerning the agreement are subject to resolution by arbitration:

“(b) **Arbitration.**
(i) If mediation is unsuccessful, the Parties agree to submit all disputes to binding arbitration in San Antonio, Texas”³

¹ A true and correct copy of the PSPA is attached to this Motion as Exhibit A.

² Plaintiffs' Fourth Amended Petition, ¶ 23 (emphasis added).

³ PSPA, ¶ 14(b). Under the PSPA, ¶ 14(a) makes clear the broad scope of claims covered by the agreement: “[i]f a dispute arises out of or in connection with this Agreement or the alleged breach thereof, or if a dispute arises out of the operations contemplated in this Agreement, and if dispute cannot be settled through negotiation, the Parties hereby agree to submit all disputes, controversies, claims, and matters of differences (“Disputes”) to mandatory mediation under the Commercial Mediation Rules of the American Arbitration Association.” PSPA ¶ 14(a). Since

The Orca-XS Working Interest Agreement. On or about February 14, 2013, the Plaintiffs and Orca entered into a Working Interest Agreement.⁴ Under the Working Interest Agreement, Plaintiffs were to pay Orca's share of the drilling and completion cost for the Cowey 3H and the Cowey 4H wells, owed to MRC under the terms PSPA. In exchange, Orca was to assign its working interest in the Cowey 3H and Cowey 4H wells to the Plaintiffs. In the Working Interest Agreement, the parties acknowledged that it is subject to and encumbered by the terms and provisions of the PSPA:

1. Joint Operating Agreement. Buyer understands and acknowledges that the Well is subject to 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.⁵
2. Permitted Encumbrances. The Assets shall be conveyed to Buyer subject to the following title matters, being referred to herein as the "Permitted Encumbrances":

(m) the terms and provisions of the JOA and the PSPA.⁶

Ultimately, MRC exercised its contractual right pursuant to the PSPA to withhold its consent to the proposed assignment to the Plaintiffs. Thereafter, the Plaintiffs sued MRC and Orca.

III. PLAINTIFFS' CLAIMS AT ISSUE IN THIS MOTION

Plaintiffs seek to hold Orca accountable for a litany of breaches—all centered around Orca's failure to sell, assign, and deliver to Plaintiffs all of Orca's working interest in the Cowey

Plaintiffs' claims "arise out of or in connection" with the PSPA, or at a minimum, "arises out of the operations contemplated" by the PSPA, Plaintiffs are therefore required to submit their claims to binding arbitration, pursuant to 14(b), quoted above.

⁴ A true and correct copy of the Working Interest Agreement is attached to this Motion as Exhibit B.

⁵ Working Interest Agreement, ¶ 1.3.

⁶ Working Interest Agreement, ¶ 4.1(m).

3H and 4H Wells.⁷ However, under the PSPA, MRC had the right to withhold its consent and preclude Orca's sale, assignment, and delivery of Orca's working interest to Plaintiffs.⁸ As a result, the terms, provisions, and rights of MRC under the PSPA to consent to the Working Interest Agreement are central to this case, as stated throughout Plaintiffs' Petition. First, Plaintiffs challenges MRC's right to withhold consent under the PSPA, "to the extent that [MRC] claims it withheld its consent under the PSPA, such consent was unreasonably withheld."⁹ Second, Plaintiffs request this Court to declare that:

Pursuant to Tex. Civ. Prac. & Rem. Code Ann. § 37.001, Plaintiffs seek a declaration that:

- f. [MRC] consented to the transaction by accepting Plaintiffs' money;
- g. In the alternative, to the extent that [MRC] withheld its consent, any such withholding of consent by [MRC] was unreasonable under the PSPA.¹⁰

Finally, consistent with the above, Plaintiffs specifically requests relief from this Court to "declare [Plaintiffs'] rights under the Working Interest Agreement **and the PSPA.**"¹¹

As evident, the crux of Plaintiffs' argument and claims center on the terms of the PSPA. Specifically, the Plaintiffs allege MRC tortiously interfered with the Working Interest Agreement by improperly withholding consent under the PSPA and thereby precluding Orca's assignment of its working interests. At the same time, Plaintiffs allege that Orca breached the Working Interest

⁷ Plaintiffs' Fourth Amended Petition, ¶ 36.

⁸ *Id.* ¶ 23.

⁹ *Id.* ¶ 60.

¹⁰ *Id.* ¶ 63.

¹¹ *Id.* p. 22. (emphasis added).

Agreement for the very same reasons. By pursuing this lawsuit, of which the core facts and conditions are dependent upon the PSPA, the Plaintiffs have placed the terms of the PSPA at the forefront and seek a direct benefit from the contractual provisions of the PSPA.

IV. ARGUMENT & AUTHORITIES

A. **Plaintiffs seek to derive benefits from the PSPA and are thus estopped from avoiding any obligations set forth by the same agreement.**

The Plaintiffs are not parties to the PSPA, and as previously pointed out to this Court, they are also not third party beneficiaries to this agreement. Nonetheless, they are seeking to derive a direct benefit from the PSPA and are specifically asking the Court to “declare” their rights under the PSPA. A non-party is compelled “to arbitrate a claim if it seeks, through the claim, to derive a direct benefit from [a] contract containing [an] arbitration provision.”¹² This principle—“direct benefits estoppel”—is rooted in equity: “[u]nder ‘direct benefits estoppel,’ a non-signatory plaintiff seeking the benefits of a contract is estopped from simultaneously attempting to avoid the contract’s burdens, such as the obligation to arbitrate disputes. Thus, a non-signatory plaintiff may be compelled to arbitrate if it seeks to enforce terms of a contract containing an arbitration provision.”¹³ Given that Plaintiffs seek a direct benefit from the PSPA and also seek to have their rights under the PSPA declared and enforced, they must do so in arbitration, as mandated by the terms of the PSPA.

This Motion asks this Court to follow Texas law and compel arbitration of Plaintiffs’ claims for breach of the Working Interest Agreement. Any doubts regarding the scope of the PSPA’s arbitration clause are to be resolved in favor of arbitration because there is a

¹² *In re Vesta Ins. Group, Inc.*, 192 S.W.3d 759, 761 (Tex. 2006).

¹³ *In re Kellogg Brown & Root*, 166 S.W.3d 732, 739 (Tex. 2005).

presumption, both in Texas and federal law, favoring the arbitration of agreements.¹⁴ To be subject to arbitration, the “allegations need only be factually intertwined with arbitrable claims or otherwise touch upon the subject matter of the agreement containing the arbitration provision.”¹⁵ Here, since Plaintiffs’ claims “arise out of or in connection” with the PSPA, or at a minimum “arise[s] out of the operations contemplated” by the PSPA, Plaintiffs are required to submit their claims to arbitration.¹⁶

B. Plaintiffs’ claims for tortious interference, breach of contract, and request for declaratory judgment are intertwined with the PSPA and must therefore be compelled to arbitration.

On July 7, 2014, MRC properly moved to compel Plaintiffs’ claims to arbitration because the claims are rooted in the terms of the PSPA, which includes both MRC’s right to withhold consent and the mandatory, binding arbitration provision. Plaintiffs’ right to recover depends upon the very terms of PSPA, as they are requesting the Court grant relief and “declare [the Plaintiffs’] rights under the Working Interest Agreement and the PSPA.”¹⁷ Because Plaintiffs claims and requested relief seek the benefits of the PSPA, they are estopped from avoiding the PSPA’s obligations—namely, the obligation to “submit all Disputes [arising thereunder] to binding arbitration in San Antonio, Texas.”¹⁸

¹⁴ *In re FirstMerit Bank*, 52 S.W.3d 749, 753 (Tex. 2001); *Cantella & Co. v. Goodwin*, 924 S.W.2d 943, 944 (Tex. 1996).

¹⁵ *Valerus Compression Services, LP v. Austin*, 417 S.W.3d 202, 208 (Tex. App.—Houston [1st Dist.], 2013, no pet.) (citing *In re B.P. Am. Prod. Co.*, 97 S.W.3d 366, 370 (Tex. App.—Houston [14th Dist.] 2003, orig. proceeding).

¹⁶ PSPA ¶ 14(a) – (b).

¹⁷ Plaintiffs’ Fourth Amended Petition, p. 22.

¹⁸ *See Meyer v. WMCO-GP, LLC*, 221 S.W.3d 302, 307 (Tex. 2006) (“When a party’s right to recover and its damages depend on the agreement containing the arbitration provision, the party is relying on the agreement for its claims.”).

However, if this Court compels Plaintiffs' claims against MRC to arbitration while retaining Plaintiffs' breach of contract claim against Orca, the result would lead to two different tribunals simultaneously deciding application of the same contractual provisions to the same set of facts: more specifically, AAA arbitrators would determine MRC's right to withhold consent in defense of Plaintiffs' tortious interference claim, while the very same issue would be heard before this Court as it relates to Plaintiffs' breach of contract claim. As detailed herein, Plaintiffs' claims against both MRC and Orca are inseparably intertwined with and founded upon the PSPA. Therefore, all claims arising out of or in connection with the PSPA, including Plaintiffs' allegations that Orca breached the Working Interest Agreement, should be compelled to arbitration in accordance with Texas law and the terms of the PSPA.¹⁹

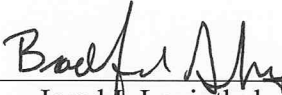
PRAYER

WHEREFORE, PREMISES CONSIDERED, Orca Defendants respectfully request that this Court **GRANT** this Motion, and issue an Order compelling arbitration of Plaintiffs' breach of contract claim against Orca Defendants and granting all other relief, whether at law or equity, to which Orca Defendants may otherwise be entitled.

¹⁹ See *id.*; *Valerus Compression Services, LP v. Austin*, 417 S.W.3d at 208; see also PSPA ¶ 14(a) – (b).

Respectfully submitted,

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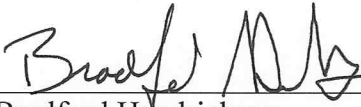
**ATTORNEYS FOR ORCA ICI
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CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of July 2014, a true and correct copy of the above and foregoing was served in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on the following:

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