



SO ORDERED.

SIGNED November 13, 2008.

**ROBERT SUMMERHAYS
UNITED STATES BANKRUPTCY JUDGE**

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA**

IN RE:

WRT ENERGY CORPORATION,

CASE NO. 96-50212

Debtor

Chapter 11

REASONS FOR DECISION

The present matters before the court are (1) Central Boat Rentals, Inc.'s ("CBR") Motion for Preliminary Injunction, and (2) Goldin Associates, LLC's ("Goldin") Motion to Require Undertaking to Pay Defense Costs. Goldin is the designated Trustee of the WRT Creditors Liquidation Trust (the "Trust"). The Trust is governed by a trust agreement approved by the court in connection with plan confirmation (the "Trust Agreement"). CBR is a beneficiary of the Trust, and has filed an action in the district court against the Trustee and other defendants asserting breach of contract, breach

of fiduciary duty, and other state-law claims. CBR seeks certification of a class consisting of all beneficiaries of the Trust. The Preliminary Injunction Motion and the Undertaking Motion were originally filed in the district court. However, the district court referred both motions to this court. The court took both motions under advisement following a hearing on the motions. The court rules on the motions as follows.

JURISDICTION

This case has been referred to this court by the Standing Order of Reference entered in this district which is set forth as Rule 83.4.1 of the Local Rules of the United States District Court for the Western District of Louisiana. No party in interest has requested a withdrawal of the reference. The court finds that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). These Reasons for Decision constitute the court's findings of fact and conclusions of law pursuant to Rule 7052, Federal Rules of Bankruptcy Procedure.

DISCUSSION

A. CBR'S PRELIMINARY INJUNCTION MOTION

CBR seeks a preliminary injunction barring Goldin from using any trust assets to pay defense costs incurred in the district court class action. This dispute centers on section 8.05 of the Trust Agreement, which provides:

8.05 *Indemnity*. The Trustee, its employees, officers and principals (collectively, the "Indemnified Parties") shall be indemnified by the Trust from any losses, claims, damages, liabilities or expenses (**including, without limitation, reasonable attorneys fees, disbursements and related expenses**) which the Indemnified Parties may incur or to which the Indemnified Parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against the Indemnified Parties on account of the acts or omissions of the Trustee in its capacity as such, including, without limitation, the Trust Actions, provided, however, that the Trust shall not be liable to indemnify the Indemnified Parties for any of its acts or omissions constituting fraud, gross negligence or willful misconduct, and, provided further, that nothing in this Section 8.05 shall be deemed to restrict the Trustee's right to receive an Indemnity based on acts or omissions taken in accordance with Sections 8.01 and 8.02 hereof. **Notwithstanding any provision herein to the contrary, the Indemnified Parties shall be entitled to obtain advances from the Trust to cover their expenses of defending themselves in any action brought against them as a result of the acts or omissions of the Trustee in its capacity as such, provided, however, that the Indemnified Parties receiving such advances shall repay the amounts so advanced to the Trust upon the entry of a Final Order finding that the Indemnified Parties were not entitled to any indemnity under the provisions of this Section 8.05.**

(emphasis added). CBR contends that Goldin is not entitled to indemnification or advances from the Trust for defense costs because the Trust terminated on July 10, 2000. CBR cites a clause from the "Declaration of Trust" recitals of the Trust Agreement, which states "upon termination of the Trust in accordance with Section 4.01 hereof, this Agreement shall cease, terminate and be of no further force and effect." Goldin contends that a termination of *the Trust* under section 4.01 of the Trust Agreement

does not automatically terminate the *Trust Agreement* because section 4.03 provides for a "winding up" period after the termination of the Trust.

The text of the Trust Agreement determines the resolution of this dispute. Section 13.01 of the Trust Agreement provides that New York law applies to the interpretation of the agreement. New York's rules of contract interpretation require "an interpretation which gives meaning to every provision of a contract or, in the negative, no provision of a contract should be left without force and effect." Muzak Corp. v. Hotel Taft Corp., 150 N.Y.S.2d 171, 174, 133 N.E.2d 688, 690 (N.Y. Ct. App. 1956). CBR's argument that the Trust Agreement terminated in 2000 when the Trust terminated violates this rule of contract construction because this interpretation of the agreement would leave the "wind up" provisions of section 4.03 "without any force or effect." This court has previously held that the Trust terminated under section 4.01, but that Goldin and the Trust could exercise their wind up powers under section 4.03. Section 4.03 provides that "[a]fter termination of the Trust and solely for the purpose of liquidating and winding up the affairs of the Trust, the Trustee shall continue to act as such until its duties have been fully performed." This language suggests that the Trust Agreement (and, hence, section 8.05 of the Trust Agreement) remains in effect after the Trust

terminates under section 4.01 pending completion of the activities required to wind up the affairs of the Trust. If not, the Trustee would have no contractual basis to continue as Trustee during the wind up phase. Moreover, section 8.05 contains no language that would eliminate Goldin's indemnification rights upon termination of the Trust under section 4.01.

The court therefore concludes that the Trust Agreement and the indemnification provisions in section 8.05 of the agreement did not terminate in 2000, and that Goldin is entitled to obtain advances for litigation costs consistent with section 8.05. Accordingly, CBR's request for injunctive relief barring Goldin from exercising its rights under section 8.05 is denied.

B. GOLDIN'S UNDERTAKING MOTION

In the Undertaking Motion, Goldin requests that the court order CBR to post a bond pursuant to section 11.02 of the Trust Agreement to cover Goldin's costs of defending the district court litigation. Section 11.02 of the Trust Agreement provides:

11.02 *Requirement of Undertaking* The Trustee may request the Bankruptcy Court to require, in any such suit for the enforcement of any right or remedy under this agreement, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, including reasonable attorneys fees

Based on the language of section 11.02, the requirement of an undertaking is discretionary. Goldin contends that the court

should exercise its discretion to order an undertaking because CBR could "single-handedly deplete the funds available for distribution to other beneficiaries" even though CBR holds only a 0.00978 percent interest in the approximately 15.1 million trust units outstanding. This argument might have more force if CBR was pursuing its own individual claims. However, CBR is seeking to represent a class of all trust beneficiaries. If the court certifies a class, CBR's efforts (if successful) would benefit the entire class of beneficiaries. Accordingly, the court denies Goldin's motion at this stage of the proceeding. However, this denial is without prejudice to Goldin reasserting its request for an undertaking should CBR's request for class certification be denied.

Separate orders in conformity with the foregoing reasons will be entered into the record of this proceeding.

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