



SO ORDERED.

SIGNED June 26, 2008.

A handwritten signature in black ink, appearing to read "Robert Summerhays", is positioned above the judge's name.

**ROBERT SUMMERHAYS
UNITED STATES BANKRUPTCY JUDGE**

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

IN RE:

**SUNNYSIDE TIMBER, LLC
SUNNYSIDE LAND, LLC**

**CASE NO. 00-51233
CASE NO. 00-51234**

Debtors

Chapter 7

MEMORANDUM RULING

The present matter involves an appeal by S.C. of Oklahoma ("SCO") of an order of this court entered May 26, 2006. The District Court remanded the matter back to this court for (1) a choice of law determination, and (2) a determination whether the record on appeal should be supplemented with a letter from the Trustee to SCO. This court then requested that the parties submit briefs on these two issues. The Trustees, the Brignacs, Washington State Bancshares, and SCO submitted briefs, and the court held a hearing on the matter. The court then took the matter under

advisement. After considering the briefs, the parties' arguments, and the relevant authorities, the court is prepared to rule on the two issues remanded for determination by the District Court. The following summarizes the applicable facts, relevant authorities, and the court's rulings with respect to the issues on remand.

BACKGROUND

These cases involve two debtors, **Sunnyside Land, L.L.C.** ("Land"), and **Sunnyside Timber, L.L.C.** ("Timber", and, with "Land", "Debtors"). The cases were originally filed as chapter 11 cases but have subsequently converted to chapter 7. Elizabeth G. Andrus is the duly appointed chapter 7 trustee of Land and Lucy G. Sikes is the duly appointed chapter 7 trustee of Timber (the "Trustees"). Land owned approximately 26,000 acres of real property in Utah, while Timber owned the timber growing on the property.

The property's main income potential was in timber sales, although there was also potential commercial activity in coal, methane gas and possibly other natural resources. Difficulties with access to the area being logged arose pre-petition, which difficulties appear to be the major factor resulting in the bankruptcy proceeding. Substantial and significant litigation ensued, including complaints against (1) the Debtors' vendor, W. F. Barnes Corporation ("Barnes"), and its principal owner, W. Frank Barnes, (2) the holder of a promissory note secured by the Utah

property, S. C. of Okaloosa, Inc. ("SCO"), and (3) the insurance company which issued a title policy assuring access to the Utah property, First American Title Insurance Company ("First American"). This litigation - much of it commenced in Utah state court and later removed - only tells part of the story of these bankruptcy cases. The Debtor's purchase of the Utah properties spurred a series of complex financial transactions and relationships that expanded the number of parties with a stake in the outcome of the litigation and the bankruptcy case.

Specifically, in connection with purchase of the Utah properties, Debtors entered into promissory notes with Barnes (the "Sunnyside Notes"). Timber also received a secured loan from St. Landry Bank. Barnes latter collaterally assigned the Sunnyside Notes to Regions Bank & Trust ("Regions") as security for a loan. That obligation subsequently went into default and Regions Bank threatened to foreclose. Prior to November 2000, an agreement was reached between Barnes and Paul Sims, the sole shareholder of SCO, relating to the collection of the Sunnyside Notes. In order to prevent the foreclosure, Sims agreed to advance funds in exchange for sharing in the ultimate collection of the Sunnyside Notes. The Barnes Notes were subsequently sold by Regions to SCO and the collateral securing the Barnes Notes was assigned to SCO. These transactions also included a transfer of the Brignacs' stock in

Washington State Bancshares, which had been pledged as security for the St. Landry Bank loan.

Along with the Utah litigation, these transactions generated a significant volume of disputes and litigation in the Debtors' bankruptcy cases. After protracted litigation, the Trustees, the Brignacs, Washington State Bancshares, Regions, SCO, and the other major parties in the bankruptcy (with the exception of Barnes) reached a settlement that resolved most of the significant disputes in the bankruptcy. In this regard, the parties executed the Term Sheet as to Settlement of Sunnyside Land and Sunnyside Timber Litigation (the "Term Sheet"). The Term Sheet provided that:

- (1) The Trustees were to conduct a sale pursuant to section 363.
 - (a) SCO would offer a credit bid of \$6.3 million for the purchase of the Utah property owned by Land;
 - (b) SCO would offer a credit bid of \$3.3 million for the purchase of the timber owned by Timber;
 - ©) If SCO's bid was not exceeded, the Trustees would transfer the property to SCO free and clear of any liens, claims or other encumbrances; and
 - (d) If SCO's bid was exceeded by a cash offer, SCO would receive a minimum of \$9.6 free and clear of any liens, claims or other encumbrances. All claims, liens and encumbrances would attach only to proceeds in excess of \$9.6 million.
- (2) Within 10 days of the sale, Brignac was to loan \$550,000 to the Trustees to allow the Trustees to (a) pay \$325,000 to Regions towards payment of the Sunnyside Note, surrender of SCO's lender's title policy to the Trustee,

and withdrawal with prejudice by SCO of any claims in the bankruptcy cases, (b) pay existing administrative expenses, and ©) maintain a reserve to provide for distribution to unsecured creditors. The \$550,000 superpriority loan would be repaid with interest at prime plus ½% from the net proceeds of recovery from the FATCO litigation.

- (3) Upon closing of the sale and funding of the loan, the Trustees were to pay \$325,000 to Regions toward payment of the balance on the Sunnyside Note whereupon SCO and Regions would waive any claim under the lender's title policy and would surrender the policy to the Trustees and all claims by SCO and Regions against Timber would be withdrawn. Upon closing of the sale and funding of the loan, SCO and Regions were to release the Bancshares stock pledged as security.
- (4) SCO and Regions were to release their collateral assignment of Barnes' claim against Timber. Barnes would retain an unsecured claim against Timber of approximately \$2.7 million.
- (5) Regions was to be dismissed from all claims to which the Sunnyside entities were parties in the Utah litigation. If SCO was named, it was also to be dismissed.
- (6) All parties to the settlement agreement were to execute receipt and release of any and all claims between them.
- (7) The FATCO litigation was to proceed and was not to be compromised except upon consultation with special counsel Mr. Walsh and Mr. Durio. Any fees and costs advanced by Brignac would be repaid as administrative expenses from the proceeds of any recovery in the litigation prior to distribution to creditors.
- (8) SCO was the holder in due course of Sunnyside Note.
- (9) Notice of the settlement was to be provided to FATCO with the right to object if the settlement impairs the subrogation rights of FATCO. The parties were to seek a finding by the court that the settlement does not affect FATCO's subrogation rights and does not adversely affect coverage under the owner's insurance policies.

On December 1, 2004, the court approved the settlement, and noted that the settlement "finally brings resolution of a substantial number of disputes and provides for some distribution to creditors."

The present matter involves a dispute over the provisions in the Term Sheet requiring the payment of the \$325,000 to Regions. Specifically, the Trustees issued a Notice of Sale of the Debtors' land and timber located in Utah to SCO or the highest bidder pursuant to the Term Sheet. SCO's credit bid was the highest and best offer, and, on February 1, 2005, the court entered an Order Approving the Sale of Real Property and Standing Timber to SCO Free and Clear of all Liens, Claims, Interest, Mortgages and Encumbrances. The Trustees thereafter delivered a deed in escrow to Robert Reynolds, counsel for Regions, in order to advance the performances by the other parties to the Term Sheet.

On July 22, 2005, SCO sold the Utah property for the sum of \$13 million. Based upon the sales price, the obligation to Regions was satisfied. As a result, the Trustees, Washington State Bancshares, and the Brignacs took the position that there was no obligation to pay the \$325,000 to either Regions or SCO. On September 12, 2006, the Trustees, the Brignacs, and Washington State Bancshares filed a Motion to Confirm and Approve Performance Pursuant to Settlement Agreement (the "Motion to Confirm"), and, on

October 18, 2005, SCO filed a Motion to Compel Compliance with the Terms of the Settlement Agreement and Motion for Sanctions (the "Motion to Compel"). In its Motion to Compel, SCO argued that the Term Sheet should be interpreted to provide that the \$325,000 is due to SCO regardless of the balance on the note. SCO argued that Regions was only receiving the funds as collateral assignee of SCO, that the payment was not dependant upon the existence of a balance due on the note, and that the funds were being paid in exchange for the release of the stock. On May 26, 2006, the court entered an order that granted the Motion to Confirm and denied the Motion to Compel. In denying SCO's Motion to Compel, the court rejected SCO's interpretation of the Term Sheet:

The court believes that the Term Sheet is clear and unambiguous and must be interpreted to provide that the Trustees are not required to pay the sum of \$325,000 to either Regions or SCO as the remaining balance due on account of the St. Landry Bank note was zero. Further, under the clear provisions of the Term Sheet, Regions and SCO must immediately release the Bancshares pledged as security.

The parties did not address choice of law in their motions or in their arguments to the court. However, the court cited Louisiana law in its analysis of the Term Sheet.

SCO timely appealed the May 26th Order. On appeal, the District Court questioned the application of Louisiana law to the Term Sheet given that the settlement involved property located in

Utah. Accordingly, the District Court remanded the matter back to this court to conduct a choice of law analysis. Furthermore, on appeal, the Trustees, the Brignacs, and Washington State Bancshares moved to supplement the record with a January 25, 2005 letter from SCO's counsel to counsel for the Trustees. This letter referenced a proposed increased credit bid by SCO. On remand, this court requested the parties to submit briefs on choice of law as well as the request to supplement the record. Although the parties disagree on whether the January 25th letter should be added to the record, they agree that Louisiana law governs the Term Sheet.

DISCUSSION

A. Choice of Law.

In Klaxon, the Supreme Court held that a court must apply the choice-of-law rules of the forum in which it sits when the court has jurisdiction based on diversity of citizenship. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941). However, this court's jurisdiction over the present matter is grounded upon 28 U.S.C. § 1334(b), not upon diversity under 28 U.S.C. § 1332. Even though not explicitly bound by Klaxon, bankruptcy courts generally apply the choice-of-law rules of the forum in which they sit over state-law claims that do not implicate federal policy. Woods-Tucker Leasing Corp. of Ga. v. Hutcheson-Ingram Dev. Co., 642 F.2d 744, 748 (5th Cir.1981); In re

Gaston & Snow, 243 F.3d 599, 605 (2d Cir.2001); In re Merritt Dredging Co., Inc., 839 F.2d 203, 206 (4th Cir.1988); In re Southwest Equip. Rental, Inc., No. Civ. 1-90-62, 1992 WL 684872, at *9 (E.D. Tenn. July 9, 1992); see also Warfield v. Carnie, No. 3:04-cv-633-R, 2007 WL 1112591, at *7 (N.D. Tex. Apr.13, 2007). While the present matter implicates federal policy in the sense that the settlement resolved a range of claims and disputes in the present bankruptcy cases, these policy considerations do not override the application of Louisiana choice-of-law rules given that this dispute is grounded in state contract law. Accordingly, this court will follow Louisiana choice-of-law rules.

Article 3537 of the Louisiana Civil Code provides that contract issues are to be "governed by the law of the state whose policies would be most seriously impaired if its law were not applied to that issue." La. Civ. Code Ann. art 3537. The code further provides that courts should consider the pertinent contacts of each state to the parties and the transaction, such as the place of negotiation, formation, and performance of the contract; the nature and purpose of the contract; and the policies of promoting interstate commerce and protection of one party from the undue imposition of another party. Id.

Louisiana, Utah, Alabama and Florida all have connections to the parties and the Term Sheet. Utah has a significant connection

to the Term Sheet because key provisions of the Term Sheet involve the sale of property in Utah, as well as the resolution of litigation based in Utah. However, Louisiana also has a significant connection to the parties and the transaction:

- (1) The Debtors are Louisiana limited liability companies;
- (2) the Debtors' bankruptcy cases are pending in Louisiana;
- (3) the Trustees, the Debtors, and the Brignacs are based in Louisiana;
- (4) although some of the negotiations over the Term Sheet occurred in Florida and Alabama, Louisiana was the focal point of the negotiations given the central role of the Trustees; and
- (5) although the Term Sheet settled litigation pending in Utah, it also settled claims filed in the bankruptcy cases as well as litigation filed in Louisiana.

With respect to Florida and Alabama, the contacts of these states were relatively minor: SCO was domiciled in Florida and Regions was domiciled in Alabama.

Considering the record as a whole, Louisiana is the state "whose policies would be most seriously impaired if its law were not applied" to the Term Sheet. Although the disposition of the Utah property was a key component of the settlement, the overriding purpose of the Term Sheet was the comprehensive settlement of a range of bankruptcy claims and litigation centered in Louisiana. The crucial phases of parties' negotiations over the Term Sheet occurred Louisiana, and the Term Sheet could not have been

implemented until approved by this court. Moreover, many of the key parties to the Term Sheet and the bankruptcy are based in Louisiana. Considering the relative weight of the contacts of each state, Louisiana has the most significant connection to this matter. Given that the court's original ruling on the Term Sheet was based on Louisiana law, the court's conclusions on choice of law do not require modification of the court's ruling as reflected in the May 26th order.

B. The January 25, 2005 Letter.

The court now turns to the motion by the Trustees, the Brignacs, and Washington State Bancshares to supplement the record with a January 25, 2005, letter from SCO to the Trustees. This letter purports to increase SCO's credit bid from \$9,600,000 to \$10,711,013.91. According to the moving parties, this letter "disposes of the central issue in this appeal" because, pursuant to the Term Sheet, any amounts payable to SCO "shall be reduced dollar for dollar by any credit bid by SCO in excess of \$9.6 million." The problem with this argument is that, even if this letter constitutes a valid offer, there is no evidence that it was accepted. As SCO points out in its brief, the court's May 13, 2005 order approving the sale was based upon the original \$9,600,000 credit bid, and makes no reference to the January 25th letter. Based on the record, the court agrees with SCO that this letter is

not relevant to the present dispute and, accordingly, the motion to supplement the record with this letter is **DENIED**.