



SO ORDERED.

SIGNED November 20, 2008.

A handwritten signature in black ink, appearing to read "Robert Summerhays", is written over a horizontal line.

**ROBERT SUMMERHAYS
UNITED STATES BANKRUPTCY JUDGE**

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF LOUISIANA

IN RE:

HC RESOURCES, LLC,

Debtor

CASE NO. 02-51301

Chapter 11

MEMORANDUM RULING

Before the court are two motions: (1) the Motion to Remove William Gray as Manager of the Debtor (the "Motion to Remove") filed by John Bolin, and (2) the Motion Requesting Interpretation of the Debtor's Amended Plan of Reorganization under Chapter 11 of the Bankruptcy Code and for Sanctions (the "Motion to Interpret") filed by William Gray. The court took these motions under advisement following a hearing. After considering the parties' pleadings, arguments, and the record, the court rules as follows.

BACKGROUND

HC Resources, LLC (the "Debtor") filed a voluntary petition under Chapter 11 of the Bankruptcy Code on June 19, 2002. The Debtor's plan of reorganization was subsequently confirmed on March 26, 2003. On June 15, 2005, the Debtor filed a Motion for Final Decree asserting that the confirmed plan had been "substantially consummated." On March 9, 2006, the court entered a final decree and the case was closed. On January 17, 2008, Bolin moved to re-open the case on the grounds that Gray had not complied with the plan. The case was re-opened on January 31, 2008.

After the case was re-opened, Bolin filed the present Motion to Remove requesting that the court remove Gray as manager of the Debtor. Under the plan, Bolin retained a nominal 99% membership interest in the Debtor, but has no management rights or any economic interest in the Debtor as a result of his membership interest. Gray's Motion to Interpret requests that the court interpret the plan and order that Bolin cease and desist any interference in the operations of the Debtor. In support of his motion, Gray introduced correspondence from Bolin to HC Resources in June 2008 requesting the resignation of Gray and asserting that Bolin was prepared to assume control over the Debtor's operations. Bolin's correspondence also directed Gray to turn over documents and funds belonging to the Debtor.

DISCUSSION

The terms of the confirmed plan are dispositive of the present dispute. The provisions of a confirmed plan "bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan, and any creditor, equity security holder, or general partner in the debtor, whether or not the claim or interest of such creditor, equity security holder, or general partner is impaired under the plan and whether or not such creditor, equity security holder, or general partner has accepted the plan." 11 U.S.C. §1141; see also In re Sugarhouse Realty, Inc., 192 B.R. 355 (E.D. Pa. 1996) (upon entry of confirmation order, the terms of the plan and order fix the rights of the parties and become binding). Turning to the present case, the plan provides that Gray was to be retained as the Debtor's manager after confirmation pursuant to a management contract with the Debtor. (Plan at §6.2). The plan further provides that Gray's management of the Debtor is to be overseen by an "Operations Review Committee" consisting of three members chosen by the Debtor's lien creditors and unsecured creditors. (Plan at §6.3). The plan provides no termination date for Gray or the Operations Review Committee. With respect to Gray, the plan provides that Gray's employment cannot be terminated "without the express written consent of all members of the Operations Review Committee, or by a vote of a majority of the

members of the Operations Review Committee for gross negligence or willful misconduct." (Plan at §6.2).

Gray contends that these provisions preclude the relief sought by Bolin because the Operations Review Committee has the sole authority to remove Gray, and the Operations Review Committee has not exercised that authority. Gray also contends that Bolin's attempt to remove Gray and assume control of the Debtor's operations violate plan provisions that limit Bolin's post-confirmation role in the Debtor's management. Specifically, the plan provides that Bolin will retain a 99% equity interest in the Debtor, but that he "will not receive distributions on account of the equity interests and ***shall not have any rights of management of HC.***" (Plan at §3.9) (emphasis added).

The court agrees with Gray that the clear language of the plan precludes the relief requested in the Motion to Remove. Under the plan, the Operations Review Committee, not Bolin, has the sole authority to remove Gray as manager. Moreover, Bolin's actions as reflected in the June 2008 correspondence attached to Gray's Motion to Interpret violate the plan because these actions are an attempt to assert control over the management of the Debtor after confirmation.

In sum, the court denies Bolin's Motion to Remove. The court grants Gray's Motion to Interpret as follows:

- (1) Bolin has no rights under the plan to request the removal of Gray as the manager of the debtor;
- (2) Bolin's extrajudicial attempt to exercise control over the Debtor's operations violate the express provisions of the plan stating that Bolin was to have no role in the management of the Debtor after confirmation; and
- (3) the court orders Bolin to cease and desist his attempt to assume control over the operations of the Debtor as reflected in the June 2008 correspondence.

Gray also requests that the court award sanctions against Bolin for violating the plan. The court concludes that sanctions are not appropriate at this point. However, if Bolin continues to violate the terms of the plan after entry of this memorandum ruling, the court will consider sanctions and other appropriate relief to enforce the plan.

Finally, at the hearing on these two motions, the parties raised the question of whether Bolin could seek relief in state court to enforce what remaining rights he might have in the Debtor. This issue is premature given that Bolin has not sought any relief in state court and, accordingly, any ruling on this issue would be merely an advisory opinion. The court notes, however, that nothing in the plan or in the court's ruling on the parties' motions preclude Bolin from seeking any state court remedies that are

consistent with terms of (and Bolin's rights under) the Debtor's confirmed plan of reorganization.

IT IS SO ORDERED.

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