

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

In re:	)	Chapter 11
	)	
GMX RESOURCES INC., <i>et al.</i> <sup>1</sup> ,	)	Case No. 13-11456(SAH)
	)	
Debtors.	)	Jointly Administered
	)	

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JOHN P. MADDEN, in his capacity as	)	
Trustee of the GMX Resources	)	
Creditor Trust,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Adv. Proc.
	)	
PEAK COMPLETION TECHNOLOGIES,	)	
INC.,	)	
	)	
Defendant.	)	

**COMPLAINT**

John P. Madden, in his capacity as trustee (“Trustee”) of the GMX Resources Creditor Trust (the “Creditor Trust”), for his complaint against Peak Completion Technologies, Inc. (the “Defendant”), alleges upon information and belief, as follows:

**SUMMARY OF ACTION**

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<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, include: GMX Resources Inc. (4474), Diamond Blue Drilling Co. (7463), Endeavor Pipeline, Inc. (3948). The location of GMX’s corporate headquarters and the service address for its affiliates is: 9400 N. Broadway, Suite 600, Oklahoma City, OK 73114.

1. This action seeks to avoid and recover preferential transfers made by GMX Resources, Inc. (“GMX” or the “Company”) to Defendant in the ninety (90) days prior to the filing of the above-styled bankruptcy case (the “Preference Period”).

### **JURISDICTION AND VENUE**

2. The United States Bankruptcy Court for the Western District of Oklahoma (the “Court” or the “Bankruptcy Court”) has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b) and 1334(b) and (e).

3. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (F) and (O). To the extent this proceeding is determined to be non-core, the Trustee consents to entry of a final order or judgment by this Court.

4. Venue for this matter is proper in this district pursuant to 28 U.S.C. § 1409.

### **THE PARTIES**

5. The Trustee is a successor to GMX, and has standing and authority to bring this action pursuant to the *First Amended Plan of Reorganization of GMX Resources Inc. and its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code* (the “Plan”), which established the Creditor Trust and appointed the Trustee. The Plan was confirmed by order of the Bankruptcy Court on January 22, 2014 [Docket No. 1033] (the “Confirmation Order”). The Plan is attached as an exhibit to the Confirmation Order, *see* Docket No. 1033, and became effective on February 3, 2014 (the “Effective Date”). *See* Docket No. 1063.

6. The Trustee also has standing and authority to bring this action pursuant to the GMX Resources Creditor Trust Agreement (the “Trust Agreement”), filed with the Bankruptcy Court on February 5, 2014, which is incorporated by and into the Plan. *See* Docket No. 1062. The claims and causes of action asserted herein (the “Causes of Action”) constitute assets of the Creditor Trust. *See* Trust Agreement Exhibit A.

7. The Trustee further has standing and authority to bring this action pursuant to 11 U.S.C. § 547(b).

8. Defendant is a corporation organized under the laws of Texas, with its principal place of business in Midland, Texas. Defendant may be served with process through its registered service agent, Timothy W. Johnson, at 700 Louisiana Street, Suite 4900, Houston, Texas 77002.

### FACTUAL ALLEGATIONS

9. Prior to the time the above-captioned chapter 11 cases were commenced, including in January and February 2013, GMX sought to raise capital through debt and equity offerings, sufficient to continue a drilling program to develop undeveloped oil and gas reserves or liquidity sufficient to pay operational expenses and debt service obligations. But, these efforts were unsuccessful. *See Declaration of Michael Rohleder, President of GMX in Support of the Chapter 11 Petitions and First Day Motions* (the “Rohleder Declaration”) [Docket No. 6], ¶¶ 33–34.

10. Indeed, GMX was, and had been, in a severe liquidity crisis since at least 2011, as net losses and its working capital deficit continued to mount.

11. As a result of its liquidity crunch and insolvency, in March of 2013, GMX did not make an interest payment due on its second lien notes. The failure to make this interest payment triggered a number of cross defaults under the indentures governing certain note issuances. *See Rohleder Declaration*, ¶ 35.

12. On April 1, 2013 (the “Petition Date”), GMX, along with two affiliated entities, filed petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) with the Bankruptcy Court.

13. Within 90 days prior to the Petition Date, GMX made one or more payments to Defendant in the amounts set forth in Exhibit 1 attached hereto.

**FIRST CAUSE OF ACTION**  
**Avoidance of Preference Payments Pursuant to 11 U.S.C. § 547(b)**

14. The Trustee realleges and incorporates by reference the allegations contained in paragraphs 1 through 13 as if fully set forth herein.

15. The payments identified in Exhibit 1 attached hereto (the “Payments”), constitute transfers of an interest in property of the Company, made to or for the benefit of the Defendant who is, and was during the Preference Period, a creditor of the Company.

16. The Payments were made for or on account of antecedent debts owed by the Company to Defendant before such Payments were made.

17. The Company was insolvent at the time of the Payments.

18. The Payments were made on or within the ninety (90) days before the Petition Date.

19. By virtue of the Payments, Defendant received more than it would have received if the above-captioned chapter 11 case were a case under chapter 7 of the Bankruptcy Code, the Payments had not been made, and the Defendant had received payment of the debt(s) owing to it to the extent provided by the provisions of the Bankruptcy Code.

20. The Payments thus constitute preferences pursuant to section 547 of the Bankruptcy Code and should be avoided.

**SECOND CAUSE OF ACTION**  
**Recovery of Preferential Transfers Pursuant to 11 U.S.C. § 550 and Disallowance of Claim Pursuant to 11 U.S.C. 502(d)**

21. The Trustee realleges and incorporates by reference the allegations of paragraphs 1 through 20 as if fully set forth herein.

22. Because the Payments constitute avoidable preferences under section 547 of the Bankruptcy Code, the Trustee may recover the Payments.

23. The Defendant was either (i) an initial transferee of the Payments, or the entity for whose benefit the Payments were made, or (ii) an immediate or mediate transferee of the Payments.

24. As such, the Trustee is entitled to recover the Payments from the Defendant.

25. Pursuant to Section 502(d) of the Bankruptcy Code, any claims of Defendant against the Company must be disallowed until such time as Defendant pays to the Trustee an amount equal to the aggregate amount of all Payments, plus interest and costs.

#### **RESERVATION OF RIGHTS**

26. The Trustee specifically reserves the right to bring any and all other causes of action that he may maintain against the Defendant including, without limitation, causes of action arising out of the same transaction(s) set forth in this Complaint, to the extent discovery in this action or further investigation by the Trustee reveals the existence of such further causes of action.

**WHEREFORE**, the Trustee respectfully requests that the Court enter judgment in his favor as follows: (i) declaring the Payments to be avoidable preferences and award judgment against the Defendant in the amount indicated; (ii) awarding pre-judgment and post-judgment interest; (iii) pursuant to 11 U.S.C. § 502(d), disallowing any claim of the Defendant against the Company pending a satisfaction of judgment; and (iv) granting such other and further relief to the Trustee as may be just and proper.

Dated: March 25, 2015

Respectfully submitted,

*s/Jennifer H. Castillo*

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Jennifer H. Castillo, OBA #19504

Larry G. Ball, OBA #12205

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*s/Jason S. Brookner*

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