

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: GAVILAN RESOURCES, LLC, <i>et al.</i>¹ DEBTORS.	§ § § § §	Chapter 11 CASE NO. 20-32656 (Jointly Administered)
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BRISCOE RANCH, INC, JANEY BRISCOE MARMION GST TRUST, RANCHO LA COCHINA MINERALS LTD.’S OBJECTION TO DEBTORS’ NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT MAY BE ASSUMED OR ASSUMED AND ASSIGNED IN CONNECTION WITH SALE [DKT. 303]

TO THE HON. MARVIN ISGUR, UNITED STATES BANKRUPTCY JUDGE:

Briscoe Ranch, Inc., Janey Briscoe Marmion GST Trust, Rancho La Cochina Minerals Ltd (collectively “Respondent”) files this Objection to Debtors’ Notice of Executory Contracts That May Be Assumed or Assumed and Assigned In Connection With Sale [ECF 303] (the “Notice”), as follows:

1. Respondent, each, some, or all of them, is the original Lessor under a series of Oil & Gas Leases (the “Leases”), in which Anadarko E & P Company, LLC and/or Anadarko E & P Onshore, LLC (collectively “**Anadarko**”) were Lessees. The underlying oil and gas leases, along with amendments thereto, pooling agreements, surface leases and contracts and certain other agreements were assigned (with the written consent of Respondent) as part of the sale transaction between Anadarko, SN EF Maverick, LLC and Gavilan. Many of the various leases and contracts are identified in proofs of claim heretofore filed in this proceeding, to which reference should be

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Gavilan Resources, LLC (6688); Gavilan Resources HoldCo, LLC (6425); Gavilan Resources Holdings, LLC (4496); and Gavilan Resources Management Services, LLC (3961). The Debtors’ mailing address is 920 Memorial City Way, Suite 1400, Houston, Texas 77024.

made.

2. Additionally, the Leases provide consent rights to Respondent for any assignment.

The Leases contain a standard provision requiring consent:

No assignment of this Lease shall be made by Lessee, in whole or in part unless the written consent of Lessor shall have been first obtained. Any attempt to make such assignment without first obtaining Lessor's written consent thereto shall be void. In the event Lessee is acquired, in whole or in part, by another entity, such event shall be deemed an assignment of the whole of this Lease and shall require consent of Lessor.

See, e.g., excerpts of "Oil And Gas Lease" between Anadarko and Briscoe dated March 1, 2010, at Section XX (B). In connection with the assignment dated December 24, 2016, Briscoe executed a "Consent to Assignment of Interest," which contemplated that Sanchez would remain the operator. Additionally, that Consent provided that it was "exclusive as to [Sanchez] and any further assignment by [Sanchez] to any third party will be governed by the terms of the Lease and such contracts and subject to the consent of the consenting parties." *See* Consent to Assignment.

3. Consent to assignment clauses are enforced in Texas. *Barrow-Shaver Resources Co. v. Carrizo Oil and Gas, Inc.*, 590 S.W.3d 471, 478-79 (Tex. 2019); *see also Newco Energy v. Energytec, Incorporated (Matter of Energytec, Incorporated)*, 739 F.3d 215 (5th Cir. 2013)(interpreting consent provisions as covenants running with the land). Moreover, Gavilan cannot simply assume and assign the Leases, because they are not "leases" or "executory contracts" subject to 11 U.S.C. §365. *River Production Co., Inc. v. Webb (Matter of Topco, Inc.)*, 894 F.2d 727, 739 n.17 (5th Cir. 1990)(oil and gas leases create real property interests under Texas law); *Terry Oilfield Supply Co, Inc. v. American Security Bank, N.A.*, 195 B.R. 66, 70 (S.D. Tex. 1996)(same).

4. Though not purporting to assume or assume and assign any identified leases, the agreements to which Respondent is a counterparty that are identified in Notice are agreements

which relate to or which are incident to leases (some of which are amendments or modifications) or which concern operations under a lease. Such agreements are inseparable from the underlying leases themselves. Anadarko is listed as the contract party for each, and Gavilan has asserted, informally, that it owns the rights to these agreements pursuant to the purchase from Anadarko.² These include all of the listed contracts identified in the Notice Exhibit to which Respondent is identified as a counterparty.

5. Respondent objects to assumption or assumption and assignment of these agreements, which are not subject to assumption or assumption and assignment.

6. Additionally, though the deadline for doing so passed on September 30, 2020, Debtors have not identified the proposed purchaser of assets. Respondent reserves all rights to object to any proposed assumption and assignment when the Debtors provide notice. Additionally, Respondent continues to assert its rights to consent to any assignment as well as any designation of an Operator.

² Debtors can only assume, or assume and assign, such interests as they may hold under the purported executory contracts or unexpired leases.
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WHEREFORE, based on the foregoing, Respondent requests that the Court sustain these objections and grant Respondent such other and further relief to which it may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 2, 2020 a true and correct copy of the above and foregoing was served upon counsel below and all parties via the Court's electronic case filing system (ECF).

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