

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JEFFRY S. VODENICHAR, and DAVID
M. KING, JR., and LEIGH V. KING,
husband and wife, and JOSEPH B. DAVIS
and LAUREN E. DAVIS, husband and
wife,

Civil Action No. 2:12-cv-01624-AJS

Plaintiffs,

v.

HALCÓN ENERGY PROPERTIES, INC.,

Defendants.

RESPONSE TO MOTION TO DISMISS WITHOUT PREJUDICE

Defendant, Halcón Energy Properties, Inc. ("Halcón"), by and through its undersigned counsel, Kevin L. Colosimo, Andrew G. Jenkins, and Nicholas J. Koch, of Burleson LLP, hereby responds to Plaintiffs' Motion to Dismiss Without Prejudice pursuant to Fed. R. Civ. P. Rule 41(a)(2) as follows:

1. Plaintiffs initiated this action against Halcón by filing suit in The Western District of Pennsylvania on November 6, 2012. Plaintiffs averred that federal jurisdiction was proper pursuant to 28 U.S.C. § 1332. Complaint, at ¶ 6.

2. At the time Plaintiffs filed this action, they had in their possession a copy of the Letter of Intent ("LOI") entered into between Halcón and Co-Exprise, Inc. ("CX") and Morascyzk & Polochak ("M&P"). *Id.* at ¶ 17-19. Plaintiffs were also aware of CX's and M&P's obligations to the purported class at the time they filed this action. *Id.* at ¶ 12-17.

3. Despite possessing information regarding CX's and M&P's potential liability, Plaintiffs chose to only pursue an action against Halcón.

4. On February 22, 2013, Plaintiffs filed a Complaint against Halcón, CX, and M&P in the Court of Common Pleas of Mercer County. Plaintiffs' Motion to Dismiss Without Prejudice, Exhibit 1. This Complaint contains claims against Halcón that are substantially similar to the claims in this pending case, and adds claims against CX and M&P for breach of contract, breach of fiduciary duty, declaratory relief, and negligent misrepresentation. *Id.*

5. Plaintiffs now seek to voluntarily dismiss this pending action in favor of the state court case on the grounds that "they cannot assert [their] claims against M&P and/or CX-Energy in this Court because diversity of citizenship does not exist between plaintiffs and M&P and/or CX-Energy, each of whom is a citizen of Pennsylvania." Plaintiffs' Motion to Dismiss Without Prejudice, ¶ 6. Plaintiffs further state "supplemental jurisdiction under 28 U.S.C. § 1367(a) cannot supply a jurisdictional basis for plaintiffs' claims because 28 U.S.C. § 1367(b) forbids the exercise of supplemental jurisdiction 'over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure' ... Thus, plaintiffs may assert their claims against M&P and CX-Energy only in state court." *Id.*

6. Halcón does not oppose Plaintiffs' desire to join CX and M&P as defendants in this action. Halcón also agrees that Plaintiffs' claims against Halcón, CX and M&P are best heard in a single court.

7. Contrary to Plaintiffs' assertions, however, they can join CX and M&P as defendants in this pending action, and this Court can retain federal jurisdiction pursuant to the Class Action Fairness Act ("CAFA").

8. Given the amount of discovery produced to date, the nature of the discovery produced (e.g. electronic discovery in native format), the pending Early Neutral Evaluation, and

Plaintiffs' decision to file in federal court, this Court is the proper forum for this action and this Court should retain jurisdiction.

9. In the event that this Court declines to retain jurisdiction pursuant to CAFA, Halcón respectfully requests that Plaintiffs' Dismissal Without Prejudice be conditioned upon their return and/or destruction of all electronic discovery materials produced in native format. Plaintiffs' are not entitled to that information in state court, and they should not be allowed to utilize Federal Court solely to gain an advantage in the discovery process.

February 28, 2013

Respectfully submitted,

/s/ Kevin L. Colosimo

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