

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

In re:

DIAMOND SPORTS GROUP, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 23-90116 (CML)

(Jointly Administered)

Re: Docket Nos. 279, 313

**RANGERS BASEBALL EXPRESS LLC’S JOINDER TO MAJOR LEAGUE
BASEBALL AND CERTAIN MAJOR LEAGUE BASEBALL CLUBS’ (I) LIMITED
OBJECTION TO THE DEBTORS’ EMERGENCY MOTION TO USE CASH
COLLATERAL AND (II) MOTION TO COMPEL PERFORMANCE**

Rangers Baseball Express LLC, the sole member and operator of Rangers Baseball LLC, d.b.a. the Texas Rangers (the “**Rangers**”), hereby submits this joinder to the (a) *Limited Objection of Major League Baseball and Certain Major League Baseball Clubs to Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors’ Use of Cash Collateral, (II) Granting Adequate Protection, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 313] (the “**Cash Collateral Objection**”); and (b) *Emergency Motion of Major League Baseball and Certain Major League Baseball Clubs to Compel Performance Under the Telecast Rights Agreements, or, in the Alternative, to Compel Assumption or Rejection of the Telecast Rights Agreements and for Relief From the Automatic Stay* [Docket No. 279] (the “**Motion to Compel**”) and respectfully states as follows.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.ra.kroll.com/DSG>. The Debtors’ service address for purposes of these chapter 11 cases is: c/o Diamond Sports Group, LLC, 3003 Exposition Blvd., Santa Monica, CA 90404.

Preliminary Statement

1. That “there ain’t no such thing as a free lunch” is a well-recognized, simple, but axiomatic economic principle. Everyone understands it—everyone, apparently, except the Debtors. Here, they are getting lunch—using the right to create content based on the Rangers’ baseball games, and in turn selling that content to distributors—but without paying for it. There is an arms’ length agreement negotiated between a willing buyer and a willing seller that tells us the price of lunch—

[REDACTED]. Unless and until the Debtors convince the Court that some other amount is reflective of the fair price for lunch, that is the amount the Debtors should be required to pay on an interim basis. If the Court later determines that a different amount is fair value, that amount can be adjusted—up or down—in the remaining payments.

2. Under no circumstance, however, should the free lunch be permitted to continue. The Debtors need to make reasonable interim payments for the rights they are using.

3. The Rangers now join the growing list of MLB teams being held hostage by the Debtors. One of the Debtors, Arc Holding Ltd. (“**Arc**”), continues to use the Rangers’ broadcast rights to create content regarding the Rangers’ games and to market and sell that content to the Rangers’ local market through permitted distribution channels. But, as of the date of this filing, Arc, like several of its affiliate Debtors that are party to their own broadcast agreements with other MLB teams, has determined not to make current payments to the Rangers during these chapter 11 cases.

4. Instead, Arc and its fellow Debtors are using the threat of non-payment to try to extract direct-to-consumer concessions from MLB and the teams. The Debtors seek to do so through a two-pronged approach: First, they have put forth a proposed cash collateral order

premised on a budget that, on its face, does not appear to contemplate the payment of fees under their broadcast agreements. Second, they have filed an objection to emergency consideration of the Motion to Compel, wherein they indicate their intention to pay these teams nothing until the Court holds an evidentiary hearing, now scheduled for May 31.

5. This is unfair and improper. The broadcast rights the Debtors are using clearly have value, the best measure of which, unless and until the Court determines otherwise, is the contract rate in such agreements. The Court should not approve use of cash collateral on a final basis without providing for interim payments for the broadcast rights the Debtors are continuing to use postpetition. In addition, the Rangers believe that the fair value of the rights being used postpetition by the Debtors is equal to or greater than what the Debtors are required to pay under their broadcast agreements.

6. As such, the Rangers join the Cash Collateral Objection and the Motion to Compel.

Background

7. The Rangers are one of thirty teams in Major League Baseball. The Rangers and Arc are party to that certain Telecast Rights Agreement dated August 11, 2010 (the “**TRA**”). Under the TRA, the Rangers engage Arc to produce television content featuring its baseball games and related content, which Arc then markets and distributes. Arc retains the revenue that it generates from the distributors and pays the Rangers a fixed annual fee, which in 2023 amounts to

[REDACTED]

[REDACTED] (the “**Telecast Rights Fees**”). Arc broadcasts the Rangers’ games, along with games of NBA teams the Dallas Mavericks, San Antonio Spurs and Oklahoma

City Thunder and NHL team the Dallas Stars, as part of its Bally Sports Southwest regional sports network (“**Bally Southwest**”).²

8. The TRA provides in relevant part that

[REDACTED]

[REDACTED]

[REDACTED]

9. The TRA further provides that

[REDACTED]

[REDACTED]

[REDACTED]

10. On February 15, 2023, Arc timely paid the first of its quarterly installments due in 2023 under the TRA.

11. Also on February 15, 2023, Diamond Sports Group, LLC failed to make approximately \$140 million in cash interest payments due on its 5.375% Senior Secured Second Lien Notes due 2026, 5.375% Senior Secured Notes due 2026, and 6.625% Senior Notes due 2027.³ Arc guarantees these notes as well as the remainder of the Debtors’ approximately \$8 billion in funded debt obligations.⁴

12. Based on this default as well as statements made by representatives of Arc and its affiliates that Bally Southwest was losing massive amounts of money, the Rangers concluded that

² See “Sinclair Bally Sports,” available at <https://sbgi.net/sports/regional-sports-networks/>, last accessed April 17, 2023.

³ See *Declaration of David DeVoe in Support of Chapter 11 Petitions and First Day Relief* ¶¶ 47, 71 [Docket No. 26] (“**DeVoe Declaration**”).

⁴ DeVoe Declaration ¶ 49.

Arc [REDACTED]
[REDACTED].

13. On March 11, 2023, the Rangers exercised their rights under the TRA and delivered a termination notice (the “**Termination Notice**”) to Arc advising that an event of default had occurred thereunder [REDACTED] and terminating the TRA effective March 15, 2023 without further notice or action of any kind by the Rangers, unless certain conditions were met.

14. On March 13, 2023, Arc responded to the Termination Notice, disputing [REDACTED] and asserting that the TRA had not been validly terminated.

15. On March 14 and 15, 2023, the Debtors filed voluntary petitions under chapter 11.

16. On March 16, 2023, the Rangers, Arc and Diamond Sports Group, LLC executed a confidentiality and standstill agreement (the “**Standstill Agreement**”) commencing a 30-day period during which (a) the Rangers agreed to take no further action to terminate the TRA (as the Rangers believed they had already taken all action necessary to terminate the TRA as of March 15, 2023), (b) Arc agreed not to bring any legal proceeding against the Rangers based on the Rangers’ claimed termination of the TRA, and (c) the Rangers and Arc agreed that notwithstanding any provision of the TRA to the contrary, the Rangers would be permitted to enter immediately into discussions and negotiations with potential alternative counterparties to replace the services provided by Arc under the TRA, provided that the Rangers would not enter into any agreement regarding such services for the duration of the standstill period. The parties reserved all rights with respect to the TRA, including with respect to the validity of termination under the Termination Notice. In connection with entry into the Standstill Agreement, Arc continues to monetize its performance by continuing to market the Rangers’ games to distributors for broadcast.

17. On April 14, 2023, the Rangers and Arc executed a further agreement (the “**Standstill Extension**”) providing that, notwithstanding expiration of the Standstill Agreement on April 15, 2023, the Rangers shall provide 20 days’ advance written notice to Arc before (a) taking any further action to terminate the TRA (as the Rangers believed they had already taken all action necessary to terminate the TRA), or (b) transitioning the rights granted under the TRA to any person or entity other than Arc. Likewise, Arc agreed to provide the Rangers 20 days’ advance written notice before ceasing to broadcast any games under the TRA. The Standstill Extension also permits the Rangers to immediately enter into or continue discussions and negotiations with potential alternative counterparties until the earliest of: (a) entry of a court order determining that the TRA was not terminated pursuant to the Termination Notice; (b) entry of a court order authorizing assumption of the TRA pursuant to section 365 of the Bankruptcy Code; and (c) mutual written agreement of the parties. The Standstill Extension expressly reserves the rights of both the Rangers and Arc with respect to the TRA, including as to whether the Rangers validly terminated the TRA.

18. Notwithstanding the termination, Arc has continued to use the Rangers’ property to create content based on the Rangers’ games and to market and sell that content to distributors in exchange for payment, all on terms that the Rangers believe are consistent with the TRA, the Standstill Agreement, and the Standstill Extension.

19. The Rangers remained optimistic that Arc would in return timely pay the Telecast Rights Fees in exchange for Arc’s ongoing use of the Rangers’ broadcast rights. But on April 15, Arc failed to make the second quarterly payment due even as it continued (and continues) to monetize the Rangers’ property.

20. The Rangers are now one of at least four MLB teams (together with the Diamondbacks, the Twins, and the Guardians) that are not being paid by the relevant Debtor counterparty to their broadcast agreements.⁵ The Rangers supported the Motion to Compel when filed, which also indicated that if any of the clubs supporting the relief requested did not receive payments as and when they became due under their respective telecast rights agreements or any other agreements with the Debtors during the chapter 11 cases, they may join in the relief requested. Motion to Compel, n.2. The Motion to Compel seeks entry of an order: (a) compelling the Debtors to make postpetition payments to the Twins and Guardians as provided for in their respective broadcast agreements, or, (b) in the alternative, compelling the Debtors to assume or reject the respective broadcast agreements and pay all postpetition fees at the contract rate. *Id.* ¶ 10. The Diamondbacks sought substantially identical relief in their own subsequent motion. *See generally* Diamondbacks Motion.

21. On April 10, 2023, MLB filed the Cash Collateral Objection requesting that the Court: (a) require that the budget approved in connection with the final cash collateral order include a sufficient reserve for fees due to the teams under their broadcast agreements with the Debtors; (b) deny the proposed waiver of rights under section 506(c) of the Bankruptcy Code, which would allow the Debtors to use revenues derived from broadcasts of the teams' games to support collateral value rather than to pay the teams on account of their priority claims; (c) deny the proposed waiver of the "equities of the case" exception under section 552(b) of the Bankruptcy Code, which would limit potential means to pay the teams on account of their priority claims; and

⁵ See Motion to Compel; *Emergency Motion of AZPB Limited Partnership to Compel Debtors to Perform Under the Telecast Rights Agreement, or in the Alternative, to Compel Assumption or Rejection of the Telecast Rights Agreement and for Relief From the Automatic Stay* [Docket No. 305] (the "**Diamondbacks Motion**").

(d) require the Debtors to provide certain information to the teams until their broadcast agreements had been assumed or rejected. Cash Collateral Objection ¶¶ 8-16.

22. The Debtors have argued in response to the Motion to Compel that, pending assumption or rejection of their broadcast agreements, they only owe the fair market value of benefits received under those agreements, which they contend is less than the agreed contract rate. *See, e.g., Debtors' (1) Omnibus Objection to Emergency Consideration of Motions; and (2) Motion to Adjourn Hearing Requested for April 13, 2023 to May 12, 2023* [Docket No. 311] (“**Debtors’ Opposition**”) ¶ 1.

23. On April 13, 2023, the Court declined to consider on an emergency basis the Motion to Compel and instead scheduled an evidentiary hearing on May 31, 2023 to consider the right of those clubs (and of any clubs that join in the request for relief) to postpetition payments on a current basis under their respective broadcast agreements and the appropriate amount of any such payments. The Court instructed the parties to negotiate a discovery schedule based on that hearing date. The Court also stated that in connection with the April 19, 2023 hearing on the Debtors’ request to use cash collateral on a final basis, it would consider whether the Debtors are required to make interim payments pending the May 31 hearing and whether they need to budget or reserve for those payments.

Joinder

24. The Rangers join in the Motion to Compel and the Cash Collateral Objection and seeks to participate in full in the discovery, briefing and hearing related to the Motion to Compel and at the final cash collateral hearing.

25. Based on Arc’s failure to make the April 15, 2023 payment, the Rangers are in the same position as the other clubs that have not received postpetition payments from their Debtor

counterparties under relevant broadcast agreements. Arc continues to produce, broadcast, and sell on an exclusive basis the Rangers' valuable property, but it refuses to pay for the very content it then monetizes through permitted distribution channels. This deprives the Rangers of important revenue it relies on to operate its business and provides the estate with a windfall.

26. The Debtors do not dispute that their broadcast agreements with their MLB club counterparties provide an actual and necessary benefit to their estates. Indeed, the Debtors acknowledge that the "telecast rights agreement portfolio is the lifeblood of their business and the core assets around which they intend to restructure their business." Debtors' Opposition ¶ 9. Nevertheless, they argue that the reasonable value of that benefit is less than the amounts agreed to in the relevant broadcast agreements. *Id.* ¶ 1.

27. It is well-settled that the contract rate carries "a presumption of reasonableness unless the objector introduces evidence to the contrary." *In re Acis Capital Mgmt., L.P.*, Case No. 18-30264, 2019 Bankr. LEXIS 1833, at *15 (Bankr. N.D. Tex. May 2, 2019). As courts in this circuit have consistently recognized, "[t]here is an initial assumption that, where a contract exists, the contractual rate is the reasonable value of the goods or services provided to the estate." *In re Washington-St. Tammany Electric Coop., Inc.*, 111 B.R. 555, 559 (Bankr. E.D. La. 1989) (citing *Memphis-Shelby County Airport Auth. v. Braniff Airways, Inc.*, 783 F.2d 1283, 1285 (5th Cir. 1986)). In order to rebut this presumption in favor of the negotiated contract rate, a debtor must introduce "convincing evidence to the contrary." *Id.* (citations omitted).

28. The Rangers expect that the Debtors' efforts to rebut this strong presumption will fail. If anything, the evidence to be presented on May 31 will prove that the contract rate is *lower* than the fair value of what the estates are actually receiving. *See, e.g., In Re Braniff Airways, Inc.*, 783 F.2d at 1285 (5th Cir. 1986) (noting that portion of lessor's claim against debtor due admin

expense priority pursuant to section 503 was “ordinarily presumed to be the contract rental rate, adjusted *downward or upward* to reflect the extent to which the debtor actually used the [leased] premises”) (emphasis added); *In re Patient Educ. Media, Inc.*, 221 B.R. 97, 104 (Bankr. S.D.N.Y. 1998) (“The contract rate is presumed to set the reasonable value, but *either party may offer evidence to prove a different reasonable value . . .*”) (emphasis added).

29. In the meantime, the Court should require Arc to pay the Rangers in arrears for all missed payments. At this time, the Debtors have not even attempted to rebut the presumption in favor of contract pricing, and their counterparties should not be further prejudiced pending an evidentiary hearing on that issue. Even if Arc could prove that the fair value of the benefit it receives under the TRA is less than the amount set forth in the contract prior to an evidentiary hearing on that issue, the value of the benefits received will indisputably amount to more than zero. As such, the Court should require at least some interim payment pending the evidentiary hearing.

30. The proposed cash collateral budget, however, does not currently contemplate *any* payments (partial or otherwise) to MLB clubs on account of the Debtors’ broadcast agreements.⁶ The Court should not approve the Debtors’ use of cash collateral on a final basis without requiring that the budget reflect these necessary interim payments and reserve payment for the full contract rate under all broadcast agreements. That amount would, at any rate, be required in the form of a cure payment to assume these agreements which the Debtors have described as “central to any chapter 11 reorganization.” Debtors’ Opposition ¶ 9.

⁶ The Debtors have not filed an updated cash collateral budget and are seeking entry of a final order based on the budget attached to the cash collateral motion filed at the outset of the chapter 11 cases [Docket No. 25, Ex. 1].

Reservation of Rights

31. The Rangers reserve all rights to supplement or amend this joinder, to participate in the discovery and briefing schedule to be agreed among the parties, and to present argument or evidence, including cross-examination of witnesses, at any hearing. In addition, the Rangers reserve all rights with respect to the termination of the TRA.

Conclusion

For the foregoing reasons and the reasons set forth in the Motion to Compel and the Cash Collateral Objection, the Rangers join the Motion to Compel and the Cash Collateral Objection. The Rangers respectfully request that the Court condition approval of the Debtors' use of cash collateral on a final basis on the terms set forth in the Cash Collateral Objection, including modification of the budget to provide for payment of all amounts due under the TRA. The Rangers respectfully request that the Court grant the Motion to Compel following consideration of the evidence.

Dated: April 17, 2023
Houston, Texas

Respectfully submitted,

/s/ Thomas E Lauria

Thomas E Lauria (Texas Bar No. 11998025)

Laura Femino (admitted *pro hac vice*)

Samuel Kava (admitted *pro hac vice*)

WHITE & CASE LLP

200 South Biscayne Blvd., Suite 4900

Miami, Florida

Telephone: (305) 371-2700

Facsimile: (305) 358-5744

Email: tlauria@whitecase.com

laura.femino@whitecase.com

sam.kava@whitecase.com

– and –

Glenn M. Kurtz (admitted *pro hac vice*)

Harrison Denman (admitted *pro hac vice*)

WHITE & CASE LLP

1221 Avenue of the Americas

New York, New York 10020

Telephone: (212) 819-8200

Facsimile: (212) 354-8113

Email: gkurtz@whitecase.com

harrison.denman@whitecase.com

– and –

Charles Koster (Texas Bar No. 24128278)

WHITE & CASE LLP

609 Main Street, Suite 2900

Houston, Texas 77002

Telephone: (713) 496-9700

Facsimile: (713) 496-9701

Email: charles.koster@whitecase.com

Counsel for Rangers Baseball Express LLC

Certificate of Service

I certify that on April 17, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Thomas E Lauria

Thomas E Lauria