



Portfolio Media, Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Bankrupt Gulfco Claims Creditor Had 'Scheme To Steal' Unit

By **Matt Chiappardi**

Law360, Wilmington (February 03, 2014, 9:53 PM ET) -- Bankrupt oil drilling equipment holding company Gulfco Holding Corp. lodged an adversary action in its case late Friday claiming its Chapter 11 filing stems from secured creditor Prospect Capital Corp.'s "scheme to steal" its nondebtor operating affiliate Gulf Coast Machine & Supply Co.

In a complaint filed in the Delaware bankruptcy court, Gulfco said it had borrowed about \$42 million from Prospect in order to buy Texas-based Gulf Coast for \$72 million at a blind auction in 2012.

But unbeknownst to the debtor, Prospect also had its eyes on the asset and concocted a plot to leverage its power as a lender and get its hands on Gulf Coast, Gulfco alleged.

"In the 13 months that followed the debtor's acquisition of Gulf Coast, Prospect implemented a scheme to systematically pressure Gulf Coast in an effort to realize its true goal: to own Gulf Coast," the complaint said. "Prospect seized upon the effects of an industry downturn by asserting a financial covenant default under its loan agreement and then charged and collected significant default interest while Gulf Coast's other lender did not."

The adversary action seeks to have Prospect's takeover of 99 percent of Gulf Coast's ownership declared a fraudulent transfer, and have the court return the asset to the debtor.

Gulfco **filed for Chapter 11 protection** in November, listing between \$10 million and \$50 million against the same in assets. An attorney for the debtor said in court in December that an industrywide decline in drilling equipment sales played a large role in the company's financial woes and the operating affiliate wound up reducing its workforce, shrinking overhead and implementing a change in management.

The deflated revenue led to both Prospect and PNC Bank NA issuing default notices in May asserting that Gulfco had violated a financial covenant under the credit agreement, according to the debtor.

But while PNC Bank didn't charge any extra interest, Prospect "began to unreasonably pile pressure" onto Gulfco by charging an extra \$69,000 per month, the debtor alleges in its complaint.

Gulfco met with its lenders in June, and it was at then that they learned Prospect had participated in the auction for Gulf Coast and had tried to buy the unit, the debtor claimed.

"At this meeting, it became evident that defendant had no desire to work with the debtor and Gulf Coast to resolve any issues outstanding under the credit agreement," the complaint said. "To the contrary, it became evident that defendant had a scheme to take Gulf Coast from the debtor."

Prospect had refused to waive its default assertion and reset the loan's covenant levels, despite PNC Bank's willingness to do so, and demanded Gulfco make a nearly \$6 million equity infusion into the affiliate even though the unit wasn't suffering a liquidity crisis, the debtor claims.

The stalled negotiations eventually led to PNC Bank installing a \$1 million credit block out of

concern its money was being used simply to pay Prospect, which did create a cash flow problem, according to the debtor.

Meanwhile, Gulf Coast was experiencing record sales that weren't translating into revenues because of debt woes, and Gulfco again approached Prospect in November, this time with a restructuring proposal, the debtor states.

"Little did Gulf Coast and the debtor know that at all relevant times hereto defendant had no intention of ever engaging in good faith discussions in connection with Gulf Coast, had no intention of ever engaging in any transaction that would provide financial relief to debtor and Gulf Coast, and in fact, had taken steps to gain control of debtor's most significant asset," the complaint said.

Within days, Prospect exercised certain disputed rights on equity in Gulf Coast to vote in a new board of directors and assume control of the unit, leaving Gulfco with only a 0.1 percent ownership interest and no control, according to the debtor.

An attorney for Prospect declined to comment Monday, but counsel for the firm has said in court that the lender doesn't agree with the debtor's version of the facts.

Gulfco is represented by Michael J. Barrie, Jennifer R. Hoover and David W. Mellott, of Benesch Friedlander Coplan & Aronoff LLP.

Prospect is represented by Jeffrey C. Wisler and Kelly M. Conlan of Connolly Gallagher LLP, as well as Timothy A. Davidson II of Andrews Kurth LLP.

The adversary case is Gulfco Holding Corp. v. Prospect Capital Corp., case number 1:14-ap-50037 in the U.S. Bankruptcy Court for the District of Delaware.

The bankruptcy case is In re: Gulfco Holding Corp., case number 1:13-bk-13113 in the same venue.

--Editing by Chris Yates.

All Content © 2003-2014, Portfolio Media, Inc.