IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

IN RE:

PANTHERA ENTERPRISES, LLC, Debtor.

BANKRUPTCY CASE NO.: 2:19-bk-00787
CHAPTER 7

CLAIMANTS' MOTION TO RECONSIDER, ALTER AND AMEND JUNE 25, 2021 ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION FOR AN ORDER APPROVING THE SALE OF THE DEBTOR'S REAL PROPERTY AND NOVATING CERTAIN GOVERNMENT CONTRACTS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES PURSUANT TO 11 U.S.C. 363

Comes now the Claimants, Renick C. Williams, Betty Williams and Robert R. Williams, by and through their attorney, James E. Smith, II, and pursuant to Rule 59(e) of the Federal Rules of Civil Procedure and Rule 9023 of the Federal Rules of Bankruptcy Procedure would move this Honorable Court to alter and amend its Order entered the 25th day of June, 2021 granting the Chapter 7 Trustee's Motion to Sell Debtor's Real Estate, based upon the following grounds:

1) On March 29, 2021, Aaron C. Amore, Esq., Court-Appointed Chapter 7 Trustee, filed a Motion for an Order Approving the Sale of the Debtor's Real Property and Novating Certain Government Contracts Free and Clear of Liens, Claims, Interests, and Encumbrances Pursuant to 11 U. S. C. Section 363.

2) The Claimants, Renick C. Williams and Betty P. Williams, his wife, were the previous owners and Grantors of certain real estate located in the Moorefield District of Hardy County, West Virginia, containing 689.40 acres, +/-, of which TENX Group, LLC, the predecessor of the Defendant/Debtor, purchased. That Deed of Conveyance was recorded among the Land Records of Hardy County, West Virginia in Deed Book 328, Page 506. That Deed contained ten (10) restrictive covenants.

3) On April 20, 2021, the Claimants filed their Objection to sale on the grounds that the sale should not be free and clear of the restrictive covenants contained in the aforesaid Deed of Conveyance. On even date therewith, the Claimants filed an adversarial proceeding styled: Renick C. Williams, Betty P. Williams, his wife, and Robert R. Williams v. Panthera Enterprises, LLC; Adversarial Case Number: 2:21-ap-00006, seeking an Order of Court declaring that the restrictive covenants contained in the aforesaid Deed of Conveyance would be considered running with the land.

4) Upon the filing of Memoranda by both the Chapter 7 Trustee and the undersigned Counsel for the Claimants, a hearing on the Trustee's Motion was conducted on June 22, 2021, Judge Paul M. Black presiding, On June 25, 2021, the Court entered an Order granting the Trustee's Motion; rendered findings that only Restrictive Covenants previously numbered as 7 and 8 were executory contracts which were not assumed and deemed rejected and were personal rights not running with the subject land; and overruled the Claimants' Objection.. The Court did not make a specific ruling as to the nature of the remaining restrictive covenants, notwithstanding

the finding in Paragraph 4 and 5 which acknowledged "The *unresolved objection* of the Williams involves a "right of first refusal" contained in the original deed and conveyance to the Debtor, along with a claimed right to compensation if the property is sold to a third party.; The issue before the Court is whether the provisions in the deed numbered 7 and 8 are covenants running with the land and binding on the Chapter 7 Trustee and subsequent purchaser...." (Emphasis added).

5) The Claimants desire to protect their remaining property rights as outlined in the original Deed of Conveyance and request an affirmative declaration from this Honorable Court that the following remaining restrictive covenants be considered touching and concerning the land, running with the land burdening and benefitting the parties' successors and assigns:

> A. The former Grantors, Renick C. Williams and Betty P. Williams, his wife, have expressly reserved all minerals, including oil and gas, mineral rights and the rights to the extractions of same, underlying and appurtenant to the subject 689.40 acre tract. The parties acknowledge that there is a current oil and gas lease with Chesapeake Allegheny and conveyance of this real estate is made subject to same. Surface disruption for the purpose of extracting minerals shall be made without the agreement of the surface owner and the title holder of mineral rights.
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> B. In the event the former Grantors, Renick C. Williams and Betty P. Williams, his wife should purchase adjoining real estate to the subject 689.40 acre tract, they do hereby reserve the necessary easements across the subject 689.40 acres to provide sewer, water, gas telephone and electric service and such additional easements, as my be required to provide for septic, waste disposal, and storm water drainage to meet local and State government requirements, relating to any structures or construction upon such adjoining tract. Said rights of way shall not exceed 20 feet in width, unless required by the service provider. Said rights of way will be 20 feet on either side of Fish Pond Road and 20 feet along property boundaries. The location of the reserved areas shall be made after giving reasonable notice to the Grantee, its successors or assigns, with placement in the least obstructive location as is possible and the Grantee, its successor and assigns shall not unreasonable withhold access to such services by the Sellers.

C. There is an adjoining 18 acres, more or less, parcel, lying along the bounds of "Corridor H", which is the subject of a pending condemnation proceeding by the State of West Virginia, Department of Transportation, and upon completion of the condemnation proceedings, should this 18 acre tract become available for purchase, the Grantee herein may also purchase such additional acreage for the price of $4,500 per acre. Should said 18 acres become available and the Grantee herein elects not to purchase same, then the Grantors and their successors in interest, will be given an adequate right of way by the Grantee, or its successors in interest, which right of way area will allow for the construction of a road which satisfies Hardy County subdivision road standards and provides access from Fish Pond Road.

D. The former Grantors, Renick C. Williams and Betty P. Williams, his wife have hereby expressly reserved, for themselves, their heirs, successors in interest and assigns, one half (½) of the unobstructed water flow from the spring situate upon said property, to supply potable water for the use of their adjoining real estate. The Grantee agrees that it shall not restrict the natural flow, nor cause or allow to be caused, any contamination of the tributaries to Anderson Run, by any operations upon the subject property and shall take all proper precautions to protest the water source in compliance with federal, state and local laws, statues, ordinance, rules and regulations relating to liability for, or cost of other actual or threatened danger to human health or the environment, including, without limitations, laws relating to emissions, discharges, disposal practices, or release of regulated materials into the environment, including, without limitation, ambient air, indoor air, surface water, ground water, land surface of sub-surface strata, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of regulated materials.

In addition thereto, either party, that being the former Grantors, Renick C. Williams and Betty P. Williams, his wife, Grantee, or their successors in interest, may develop the spring to service acreage owned by the respective parties hereto. Then, and in such event, the party or parties desiring to so develop the spring, shall share on a pro rata basis, the cost of such development and maintenance of the facility based upon their respective usage. In either event, the Grantee, its successors and assigns, agrees it shall grant easements for the spring development including land for collection, treatment and holding facilities. Easements of 20 feet in width will also be granted for utility lines necessary to operate the facilities and utility lines used to disseminate water to Fish Pond Road along existing road or by following the edge of the stream bed. Location of these facilities and utility easements must be granted in such locations as to prevent incurring unreasonable expense in developing the spring.

E. It is understanding of the parties hereto that the Grantee shall operate a facility upon the subject real estate to provide training for security personnel from the State Department, Department of Homeland Security, Department of Defense, Law Enforcement and Defense contractors, and any substantial change in use of the property following the execution of this sales agreement and thereafter, must first be authorized by the former Grantors, Renick C. Williams and Betty P. Williams, his wife and/or their then surviving children.

F. The Grantee shall adhere to all terms and conditions as approved by the Hardy County Planner's Office, as testified to and documented by the Hardy County Board of Appeals at its May 29, 2009 meeting, regarding to operation of their facilities upon this real estate. Any variance from the application which was previously approved by the County authorities must be properly applied for through the Hardy County Planner's Office, with notice thereof to the former Grantors, Renick C. Williams and Betty P. Williams, his wife. This condition shall include all limitations and representations (both written and oral) made to the Hardy County Planner's Office regarding night driving, shooting, caliber of guns and size of explosives.

G. The Grantee agrees that it shall comply with all applicable Federal, State and local laws, ordinances, rule and regulations having jurisdiction over the subject property, including applicable environmental hazardous water or substances, and underground storage laws and for any Department of Environmental Protection work not completed at time the sale is complete.

6) Motions to amend judgments are evaluated by Rule 59(e) of the Federal Rules of Civil Procedure as made applicable by Rule 9023 of the Bankruptcy Rules of Procedure. Such a motion must be brought no later than ten (10) days after the entry of the Judgment.

7) The party seeking such amendment or reconsideration must show the following:

1. There has been a intervening change in the controlling law;

2. New evidence has become available;

3. There is a need to prevent manifest injustice or correct a clear error of fact or law. (See: In Re: Conex Holdings, LLC. 524 B. R.55 [Bankr. D. Del.2015]).

In determining whether there was a manifest injustice or clear error, "a movant bears a heavy burden" to demonstrate that relief is appropriate. (Energy Future Holdings Corp. 575 B. R.616 [Bankr. D. Del.2017]; Hutchinson v. Staton, 994 F. 2d 1076 [4th Cir. 1993]; In Re: Davis, 2020 Bankr. LEXIS 385, 2020 WL 748160]). While there is no uniform application or an agreed upon definition of "manifest injustice" and "clear error of law or fact", some courts have concluded manifest injustice to mean "an error in the trial court that is direct, obvious, and observable... the record presented must be so patently unfair and tainted that the error is manifestly clear to all that view it". (In Re: Titus , 479 B. R. 362 [Bankr. W. D. Pa.2012]).

7) The Trustee has previously admitted that "the covenants in Paragraph One through Five of the Williams' Deed are reservations that appear to run with the land and as such would not be affected by the sale of real property. Paragraphs Nine and Ten are simply representations of the Grantee, i.e. the Debtor, will comply with local, federal and state laws and regulations". (See Page 5, Memorandum of Law in Support of Chapter 7 Trustee's Motion for an Order Approving the Sale of the Debtor's Property and Novating Certain Government Contracts Free and Clear of Liens, Claims, Interest and Encumbrances Pursuant to 11 U. S. C. Section 363 Docket Entry 348, filed May 21, 2021). [1]

8) Notwithstanding this acknowledgment, the Trustee now resists either entering into a stipulation that would reiterate that the above stated restrictive covenants do indeed run with the land, or to enter into an agreed order in the Adversary Proceeding filed by the Claimants.

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[1] The original Restrictive Covenant Number 5 dealing with the removal of stones and structures are deemed moot by the Williams, as that Covenant required action on or before one (1) year from the date of conveyance. The Chapter 7 Trustee initially objected to original restrictive covenant number 6 (Covenant "E" above); however only original covenants numbered 7 and 8 were argued by the Chapter 7 Trustee during the June 25, 2021 hearing.

9) The undersigned Counsel for the Claimants have provided a plethora of legal authority providing that the remaining covenants are not executory nature and run with the land. But without this Honorable Court's specific and affirmative declaration that the remaining covenants do indeed run with the land, manifest injustice will be inflicted upon the Claimants, since they will be denied their use, enjoyment and value of not only their remaining and surrounding land, but the property rights that they attempted to secure within the original Deed of Conveyance will be stripped and devalued.

10) This Honorable Court's overruling of the Claimants' Objection without acknowledging the remaining restrictive covenants amounts to the Court's misapprehending the facts as presented by the undersigned Counsel for the Claimants and previously agreed to by the Chapter 7 Trustee.

11) This Honorable Court in amending its June 25, 2021 Order will result in effecting judicial economy, inasmuch as the Claimants would then be in a position to dismiss the Adversarial Proceeding seeking a declaratory judgement from this Honorable Court as to the validity and the existence of the remaining covenants running with the land.

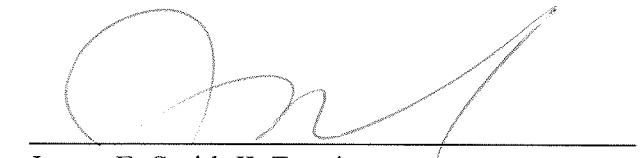
WHEREFORE, the Claimants pray for the following:

1. That this Honorable Court would accept this Motion as being timely filed;

2.That this Honorable Court would amend its June 25, 2021, Order to reflect that the heretofore referenced Restrictive Covenants do indeed run with the land, touching and concerning the land, burdening and benefitting the parties' successors and assigned; and

3. As for such other relief as this Honorable Court deems equitable and just.

RENICK C. WILLIAM and BETTY P. WILLIAMS, husband and wife ROBERT R. WILLIAMS, CLAIMANTS, BY COUNSEL



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Counsel for the Claimants

CERTIFICATE OF SERVICE

I, James E. Smith, II, Esquire, a practicing attorney, do hereby certify that on the 1st day of July, 2021, I served the foregoing Motion to Alter and Amend Order Granting Chapter 7 Trustee's Motion to Sell Real Property and Novating Certain Government Contracts Free and Clear of Claims, Interests, and Encumbrances Pursuant to 11 U. S. C. Section 363 by electronic filing via CM/ECF with the Clerk of Court, which will send notification of such filing to all interested parties and creditors having entered their appearance herein, as well as by Electronic Mail transmission to the following:

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Manual Notice List

Notice was not mailed to be parties below as no addresses were provided. To the extend the Trustee has email addresses the below notice parties, they were emailed.

Rob Duncan

Manager/Duncan Development Group, LLC

Rob Duncan

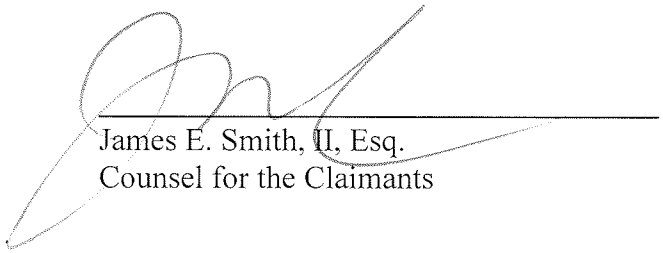
Manager/TR&L, LLC,

a Virginia Limited Liability Company

Successor to SMI, LLC,

A Virginia Limited Liability Company

Bruce Hardy; Stacie Hardy; Anthony McLntyre; Timothy Miller



James E. Smith, II, Esq.
Counsel for the Claimants