SO ORDERED,

Judge Jamie A. Wilson
United States Bankruptcy Judge
Date Signed: July 21, 2025

The Order of the Court is set forth below. The docket reflects the date entered.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI

IN RE:

EL DORADO GAS & OIL, INC., *et al.*,[1] **CASE NO. 23-51715-JAW**

DEBTORS. **CHAPTER 11**

ORDER DENYING MOTION TO ENFORCE SALE ORDER AND TO COMPEL COMPLIANCE WITH PURCHASE SALE AGREEMENT AND, ALTERNATIVELY, APPLICATION FOR ADMINISTRATIVE EXPENSE FILED BY GRAYSTREET CREDIT, LLC

There came before the Court for hearing on April 10, 2025 (the "Hearing"),[2] the Motion to Enforce Sale Order and To Compel Compliance with Purchase and Sale Agreement and, Alternatively, Application for Administrative Expense ("Motion to Enforce") (Dkt. #1200) filed by GrayStreet Credit, LLC ("GrayStreet"); the Trustee's Response in Opposition to the Motion to Enforce Sale Order and To Compel Compliance with Purchase and Sale Agreement and, Alternatively, Application for Administrative Expense ("Trustee's Response") (Dkt. #1262) filed by Dawn M. Ragan, the chapter 11 trustee (the "Trustee"); First Service Bank's (I) Objection to

[1] Jointly administered with *In re Hugoton Operating Company, Inc.*, Case No. 23-51139-JAW; *In re Bluestone Natural Resources II – South Texas, LLC*, Case No. 24-50223-JAW; and *In re World Aircraft, Inc.* Case No. 24-50224-JAW. The debtors in these jointly-administered cases are collectively referred to as the "Debtors."
[2] The last post-hearing brief was filed on June 17, 2025, at which time this matter came under advisement.

the Motion to Enforce Sale Order and To Compel Compliance with Purchase and Sale Agreement and, Alternatively, Application for Administrative Expense and (II) Joinder to the Trustee's Response in Opposition ("FSB's Response") (Dkt. #1263, #1264)[3] filed by First Service Bank ("FSB"); GrayStreet Credit, LLC's Post-Hearing Brief Regarding Motion To Enforce Sale Order (the "GrayStreet Brief") (Dkt. #1280) filed by GrayStreet; the Chapter 11 Trustee's Post-Hearing Brief (the "Trustee's Brief") (Dkt. #1367) filed jointly by the Trustee and FSB; and GrayStreet Credit, LLC's Supplemental/Reply Brief Regarding Motion To Enforce Sale Order ("Supplemental Brief") (Dkt. #1374) filed by GrayStreet in the above-referenced bankruptcy case.

At the Hearing, GrayStreet was represented by Garrett A. Anderson. Michael C. Sanders, who is also GrayStreet's counsel, was present at the Hearing but did not make an appearance on the record. (Dkt. #1317 at 14). The Trustee was represented by R. Michael Bolen, Nancy Ribaudo, and Katherine Hopkins. FSB was represented by David L. Curry, Jr. and Jack A. Crawford, Jr. Two witnesses testified at the Hearing: GrayStreet's managing member, Kevin Covey ("Covey") and the Trustee. GrayStreet introduced two exhibits into evidence, and the Trustee introduced six.[4] (Dkt. #1317 at 3, 15, 43-44).

Before the Hearing began, the parties exchanged, for the first time, voluminous evidentiary documents. (Dkt. #1317 at 5). At the close of the Hearing, the Court did not invite any further briefing and announced its intention to take the matter under advisement. Nevertheless, on April 14, 2025, GrayStreet filed the GrayStreet Brief without first obtaining the Court's permission. In the interest of fairness, the Court allowed the Trustee and FSB an opportunity to obtain the transcript of the Hearing and file a response. (Dkt. #1284). After the Trustee's Brief was filed, GrayStreet filed a motion seeking permission to file a supplemental/reply brief. (Dkt. #1368 at 2).

[3] FSB's Response was filed twice.
[4] The exhibits are cited using the pre-marked labels. The Trustee's exhibits are cited as "(Tr. Ex. __)."

The Court granted the motion, and the Supplemental Brief was filed. (Dkt. #1371).

JURISDICTION

The Court has jurisdiction over the subject matter of and the parties to this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(A), (N), and (O). Notice of the Hearing was proper under the circumstances.

FACTS

On August 9, 2024, the Trustee filed a sale motion (the "AWP & Mecom Sale Motion") (Dkt. #687) seeking the Court's permission to sell the Debtors' oil, gas, and mineral leases and related assets located at the A.W.P. Olmos Field in McMullen County, Texas (the "AWP Assets") and the Mecom Ranch or J.W. Martin Field in Zapata County, Texas (the "Mecom Assets") through a competitive bidding process (the "Auction"). In the AWP & Mecom Sale Motion, the Trustee retained the right to designate a "stalking horse bidder" and to provide it with certain protections. (Dkt. #687 at 9). Attached as an exhibit for the Court's approval was the form "Stalking Horse Selection Notice." (Dkt. #687, Ex. D). On September 4, 2024, the Court entered the Order (A) Establishing Bidding Procedures for the Sale of Certain Oil and Gas Assets; (B) Establishing Assumption and Assignment Procedures; (C) Approving Stalking Horse Designation Procedures and Protections; (D) Scheduling Auction and Sale Hearing; (E) Approving Form and Manner of All Procedures, Protections and Notices; and (F) Granting Certain Related Relief (the "Bid Procedures Order") (Tr. Ex. A) establishing bidding procedures for the sale of the AWP Assets and Mecom Assets. The Trustee repeated this sales process as to oil and gas assets owned by the Debtors in South Texas, including oil, gas, and mineral leases and wells located in Brooks, Duval, Hidalgo, Jim Hogg, Matagorda, McMullen, Starr, Webb, and Zapata Counties (the "South Texas Assets"). She filed a second sale motion (the "South Texas Sale Motion" or together with

the AWP & Mecom Sale Motion, the "Sale Motions") (Dkt. #909). On November 27, 2024, the Court entered an order nearly identical to the first Bid Procedures Order except that it allowed her to sell the South Texas Assets with the AWP Assets and the Mecom Assets or separately. (Dkt. #955, #1262 at 4).[5]

By December 6, 2024, the bidding deadline, the Trustee had received nine bids from potential buyers – four of which were qualified.[6] (Dkt. #1262 at 4). The Trustee pushed the Auction back from December 10, 2024 to December 16, 2024 to allow her time to negotiate with each qualified bidder to determine if one would serve as a stalking horse bidder. (Dkt. #1262 at 4). Ultimately, the Trustee did not select – and the Court did not approve – a stalking horse bidder. (Dkt. #1262 at 4). The Trustee instead designated "Baseline Bids"[7] for each of the three sets of assets. (Dkt. #1262 at 4). GrayStreet's bid was not used as one of the Baseline Bids. (Dkt. #1262 at 4). The Auction proceeded on December 16, 2024. GrayStreet was not designated as the lead bidder at the beginning of the Auction. (Dkt. #1317 at 40). At the end of the Auction, the Trustee designated Varas Energy Operating Company, LLC ("Varas") as the successful bidder for the AWP Assets and the South Texas Assets and GrayStreet as the successful bidder for the Mecom Assets. (Dkt. #1262 at 4-5). She also designated GrayStreet as the "backup bidder"[8] for the AWP Assets and the South Texas Assets.[9] (Dkt. #1262 at 5; Dkt. #1317 at 42, 57-58).

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[5] The Bid Procedures Order for the AWP and Mecom Assets (Tr. Ex. A) and the Bid Procedures Order for the South Texas Assets (Dkt. #909) are, together, the "Bid Procedures."

[6] According to the Trustee, "[a] qualified bidder is somebody who adheres to the rules and is entitled to show up at the auction and bid." (Dkt. #1317 at 50).

[7] The Bid Procedures specify that a "Baseline Bid" is the "highest or otherwise best Qualified Bid, or Stalking Horse Bid, if applicable, or combination of Qualified Bids for each Asset or Assets, for which such Qualified Bidder submitted a Bid or combination of Bids, as determined in the Trustee's reasonable business judgment (if not the Stalking Horse Bid, the "**Baseline Bid**")." (Tr. Ex. A at 30). The Trustee was to use "any factors the Trustee deems relevant to the value of the Qualified Bid to the Debtors' estates" in selecting the Baseline Bid. (Tr. Ex. A at 30).

[8] According to the Trustee, "[t]he backup bidder is somebody who is going to close if the winning bidder does not close, for whatever various and sundry reasons." (Dkt. #1317 at 52).

[9] The relevant purchase and sale agreement refers to "Backup Buyer," but the parties use the terms "backup bidder" and "Backup Buyer" loosely and interchangeably. Technically, "Backup Buyer" is the correct terminology.

On December 20, 2024, the Trustee and GrayStreet executed the (1) Purchase and Sale Agreement and (II) Closing of Sale on Mecom Assets ("GrayStreet PSA") (Tr. Ex. H) whereby GrayStreet agreed to purchase the Mecom Assets for $3.6 million in the form of a credit bid and also agreed to be the backup bidder for the AWP Assets and the South Texas Assets "*[i]n the event that [the Debtors] do[] not close with Varas*." (Tr. Ex. H at 10) (emphasis added). Attached to the GrayStreet PSA as "Exhibit A" were descriptions of the oil, gas, and mineral leases and wells comprising the Mecom Assets (Schedule A); AWP Assets (Schedule B); and South Texas Assets (Schedule C). On January 7, 2025, the Court conducted a hearing on the Sale Motions. (Dkt. #991-992). GrayStreet's counsel attended, and no mention was made of stalking horse protections or a breakup fee. The sale to GrayStreet of the Mecom Assets was approved and an order (the "Sale Order") was entered on January 23, 2025. (Tr. Ex. E). That same day, the Court entered separate orders (Dkt. #1103, #1105) approving the sales of the AWP Assets and the South Texas Assets to Varas. All three asset sales closed on January 31, 2025. (Dkt. #1157-1159).

On March 11, 2025, GrayStreet filed the Motion to Enforce, claiming it is entitled to $505,000 under the GrayStreet PSA and the Sale Order as either the Stalking Horse Protections defined in Section 6.6 of the GrayStreet PSA (the "Stalking Horse Protections") under 11 U.S.C. § 363 or an administrative expense under 11 U.S.C. § 503(b).[10] (Dkt. #1200 at 1-2). The Trustee filed the Trustee's Response, arguing that GrayStreet is not entitled to any fees and expenses under the GrayStreet PSA and that it could not meet the burden of proving an administrative expense claim because "it rendered no benefit to the estate." (Dkt. #1262 at 6). FSB joined in the Trustee's arguments and asserted that GrayStreet is not entitled to the Stalking Horse Protections because it was never designated as such before the Auction. (Dkt. #1263 at 1).

[10] From this point forward, all statutory references are to the U.S. Bankruptcy Code at title 11 unless otherwise noted.

DISCUSSION

A bidder who is "willing to place a bid on a debtor's asset in order to either set a baseline bid from which the true value of the estate can be assessed or serve as a catalyst to inspire other bidders" is commonly referred to as a stalking horse bidder. *In re Palm Springs II, L.L.C.*, 65 F.4th 752, 757 n.7 (5th Cir. 2023) (quotations & citations omitted). Designated before an auction, a stalking horse bidder is often offered monetary protections in the form of a breakup fee and expense reimbursement, as "an incentive for [the] initial bidder…whose initial research, due diligence, and subsequent bid may encourage later bidders" and to "compensate the bidder for memorializing its interest." *ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 602 n.9 (5th Cir. 2011) (citations omitted). GrayStreet requests $505,000 in Stalking Horse Protections; it calculates the "Breakup Fee" at $390,000[11] and claims a "proportionate reimbursement of professional fees ($115K)." (Tr. Ex. O; Dkt. #1200 at 5).[12] GrayStreet bears the burden of proof under each of the potentially applicable standards.[13]

Bankruptcy courts are divided on which standard to apply to requests for approval of bid protections such as these sought by GrayStreet. Some courts apply the business judgment rule

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[11] In an email to the Trustee, Covey stated "the total amount owed is approximately $505,000, which includes 3% of the final purchase price ($13M)...." (Tr. Ex. O). However, GrayStreet does not explain or provide proof of the $13,000,000 figure.

[12] The Motion to Enforce does not specify under which contractual or statutory provision GrayStreet claims its entitlement to the Stalking Horse Protections. The 13th paragraph states: "The Trustee failed to pay the Breakup Fee of $390,000.00 and the Expense Reimbursement of $115,000.00 as contemplated in the Sale Order and the PSA" and that "[a]lternatively, the Court should allow GrayStreet an administrative expense for the Breakup Fee and Expense Reimbursement in the total amount of $505,000.00." (Dkt. #1200 at 5). But then, after pointing out that "[t]he PSA expressly provides that the Expense Reimbursement 'constitutes an administrative expense in the Bankruptcy Code pursuant to Section 503(b) or 507(a)(1)(2),'" GrayStreet asserts in paragraph 17 that "the Court should approve and allow an administrative expense in favor of GrayStreet for the Expense Reimbursement in the amount of $115,000.00." That paragraph does not mention the $390,000 breakup fee. But the next paragraph reverts to referring to both the "Breakup Fee and Expense Reimbursement" as GrayStreet begins to argue the § 503(b) standard. (Dkt. #1200 at 5). The Court is unable to discern which standard GrayStreet relies upon to support its $505,000 claim, and this lack of specificity was not remedied at the Hearing. The Court treats GrayStreet's request for payment as a request for the full $505,000 whether under the GrayStreet PSA and Sale Order, under § 363, or under § 503(b).

[13] "The claimant seeking administrative expenses bears the burden of proof." *Nabors Offshore Corp. v. Whistler Energy II, LLC (In re Whistler Energy II, LLC*, 931 F.3d 432, 441 (5th Cir. 2019) (citing *In re TransAmerican Nat. Gas Corp.*, 978 F.2d 1409, 1416 (5th Cir. 1992)).

under § 363; others apply the administrative expense standard under § 503(b). The standard for § 363 is simply the business judgment rule – the debtor has discretion to pay fees based on "merely sound business reasons." *Off. Comm. of Unsecured Creditors v. Bouchard Transp. Co.* (*In re Bouchard Transp. Co.),* 74 F.4th 743, 750 (5th Cir. 2023) (citations omitted). The standard for § 503(b) is stricter. Under § 503(b), the administrative expense "must be an actual, necessary cost of preserving the estate," meaning the expense "must have arisen post-petition and as a result of actions taken by the debtor in possession that benefitted the estate." *Id.* (citations omitted).

To determine which standard applies, the Court must consider Fifth Circuit case law, which includes *ASARCO* and *Bouchard.* In *ASARCO*, the Fifth Circuit affirmed the bankruptcy court's application of § 363 to the debtor's request to reimburse a group of invited bidders for their prospective due diligence expenses as an incentive for them to participate in the second phase of a two-phase auction. The bankruptcy court approved the reimbursement because the debtors had demonstrated a sound business justification. On appeal, the debtor's parent company argued that the bankruptcy court should have considered the request under § 503(b) instead. The Fifth Circuit rejected that argument on the ground that "generally [§ 503(b)] applies to third parties that have already incurred expenses in connection with the debtor's estate." *ASARCO,* 650 F.3d at 602. *ASARCO* clarified that § 363 applies when a debtor seeks authorization from the court to reimburse bidders before they incur any expense whereas § 503(b) is the proper channel when the debtor requests permission to reimburse bidders expenses they already incurred without the court's pre-approval. *ASARCO*, 650 F.3d at 601-02. The Fifth Circuit made clear in its ruling, however, that its application of the business judgment rule rather than the administrative expense standard was appropriate only because of the unique facts of that case.

More recently, the Fifth Circuit discussed the "split of authority" recognized in *ASARCO*

on "what substantive standard a judge should use to decide whether such payments are permissible." *Bouchard*, 74 F.4th 743.[14] The Fifth Circuit found that the facts of the case fell somewhere between the two situations outlined in *ASARCO* but held that payment was legal under both standards. *Id.* at 751. That finding rendered it unnecessary for the Fifth Circuit to determine which standard applied. Because GrayStreet seeks repayment under a purported agreement reached with the Trustee before the Auction, the Court will review these facts under § 363 first.

A. GrayStreet was neither the stalking horse nor the *de facto* stalking horse under the GrayStreet PSA and Sale Order.

It is undisputed that GrayStreet was not a Court-approved stalking horse before the Auction. The Sale Motions set out the specific process required to appoint a stalking horse bidder, including the compulsory Stalking Horse Selection Notice Form. (Dkt. #687 at 9; Dkt. #909 at 9). The Bid Procedures, as approved by the Court, read "[i]f no Stalking Horse Bidder is selected, no provision for any type of bid protection is made under the Bidding Procedures….Each Bid must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or similar form of compensation." (Tr. Ex. A at 24).

At the Hearing, Covey, who testified on GrayStreet's behalf and has "extensive experience in investing in credit, in real estate, oil and gas, and… bankruptcy assets," admitted during his testimony that GrayStreet was not a stalking horse bidder: "[GrayStreet] did not ultimately agree

[14] Bouchard Transportation Company ("Bouchard"), a large petroleum shipping company, filed for chapter 11 bankruptcy and decided to sell off major assets in an auction. *Bouchard*, 74 F.4th at 743-44. Unable to drum up interest in the assets and afraid of a "naked" sale, Bouchard searched for a stalking horse bidder, and the court pushed back the stalking horse designation deadline three times to allow it additional time to find one. On the eve of the auction, Bouchard finally chose between the only two offers it had received and designated Hartree Partners, LP ("Hartree") as the stalking horse. Bouchard notified the court of its selection and disclosed its promise to pay Hartree $4.8 million in bid protections as part of the purchase agreement. The next day at auction, Hartree was not the successful bidder but was orally designated as the backup bidder. *Id.* at 748 n.2. The committee of unsecured creditors objected to payment to Hartree of the bid protections and argued that the breakup fee and expense reimbursement failed to meet the strict necessity standard of § 503(b) for administrative expenses. *Id*. at 748. Bouchard argued the fees were covered by § 363(b), which permits payments related to an asset sale if they are spent in the exercise of reasonable business judgment. *Id.*

with the Trustee to become a stalking horse." (Dkt. #1317 at 23, 27). Additionally, Covey understood that being a stalking horse bidder "is a court designated status" that requires "all kinds of notice" and "has to be adjudicated," which "did not occur" in this case. (Dkt. #1317 at 42). The Trustee testified that on or about December 8, 2024, before the Auction, she communicated to GrayStreet that "[she] wasn't designating GrayStreet as a stalking horse." (Dkt. #1317 at 75). Nevertheless, after the Auction, the Trustee received an email from Covey requesting payment of the Stalking Horse Protections. (#1317 at 30-31). Her full response appears below:

From: Dawn Ragan <dawn.ragan@cr3partners.com>
Sent: Tuesday, February 4, 2025 9:45 AM
To: Kevin Covey <kevin@graystreet.com>
Cc: Dawn Ragan <dawn.ragan@cr3partners.com>
Subject: RE: Varas Closing/DIP

Kevin,
I'm a bit confused at your email, because I never designated a stalking horse. If I had, it would have been the Hillwood folks as my high bidder. I think you are looking at an old version of the APA where you requested it, but that language got struck at some point. See the attached final APA.

I am going to have to negotiate use of cash collateral with FSB this week, but it is not my intention to do another DIP loan with FSB. I don't want to perpetuate this case. I am trying to assess this week what the next steps should be to wind down the estate. Will revert.

Thanks.
DR

(Tr. Ex. O)

As for GrayStreet's argument that it was a *de facto* stalking horse, it contends that whether it was formally designated by the Trustee is irrelevant because "the Trustee used GrayStreet as a *de facto* stalking horse." (Dkt. #1374 at 2-3). GrayStreet's Supplemental Brief contends that "the estate…benefited from GrayStreet's continued participation, due diligence, and readiness to close." (Dkt. #1374 at 3). However, GrayStreet did not present evidence of any due diligence it performed or the effect its bid had on other qualified bidders before or at the Auction. A stalking

horse serves its purpose before and during an auction, not after.[15] Here, GrayStreet rests its claim on an alleged benefit to the estate arising from its status as the Backup Buyer after the Auction.

In the context of this transaction and as a matter of routine bankruptcy practice, the Stalking Horse Protections provided in Section 6.6 – as understood by the Trustee and even by GrayStreet's managing member (Covey) – were intended only for a Court-approved, formally designated stalking horse. Without a stalking horse, the Trustee is under no obligation to pay out the Stalking Horse Protections – to GrayStreet or any other bidder. GrayStreet was not a "*de facto*" stalking horse because it did not provide stalking horse-like benefits to the estate.

B. GrayStreet's status as a Backup Buyer does not entitle it to the Stalking Horse Protections under the GrayStreet PSA and Sale Order.

GrayStreet next presents its request for payment as the Backup Buyer. (Dkt. #1367-1). Both Covey and the Trustee – each with extensive experience – recognize that GrayStreet's posture for such a request is unusual. Neither was aware of any bankruptcy case where a backup bidder received stalking horse-like protections. (Dkt. #1317 at 33 (Q: "I was asking if you've ever seen a backup bidder receive what we refer to [in Section 6.6] as Stalking Horse Protections." Covey: "I have not…"); Dkt. #1317 at 53 (Trustee: "It's not customary, I've never seen it before, and nobody's ever asked for protections.")). GrayStreet insists that the reference in Section 6.6 to "stalking horse" is "surplusage,"[16] that "stalking horse" is not defined in the GrayStreet PSA, and that Sections 6.6 and 6.7 both apply to it as the Backup Buyer (Dkt. #1317 at 32, 80).[17] Even so,

[15] *In re Metaldyne Corp.*, 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009) (approving proposed stalking horse bidder after noting "the stalking horse bid brings value to the estate by setting a floor on the price and providing a structure for potential competing bids" and that "the evidence also showed that the stalking horse bid would provide comfort to the Debtors' employees and customers that the company was entering the auction with a locked-in bid.").

[16] "Under Texas law, court construing a contract cannot disregard as surplusage the succeeding provisions of a contract; it must give effect to all." *In re El Paso Refinery, L.P.*, 244 B.R. 613, 623 (Bankr. W.D. Tex. 2000).

[17] In support of its "surplusage" argument, GrayStreet stated: "And it's our position that the sale order, it adopted the Purchase and Sale Agreement…and that it controls over the bid procedures order. So anything about lack of a stalking horse being selected or lack of approval for protections in the bid procedures order, it's irrelevant." (Dkt. #1317 at 79).

GrayStreet's claims are based solely on the provision in the GrayStreet PSA that refers to the "***Stalking Horse Protections***." There are no "backup buyer protections." The Trustee testified that "[i]t wasn't discussed that we would provide any reimbursement to a [B]ackup [Buyer]." (Dkt. #1317 at 77). She argued that Sections 6.6 and 6.7 "[are] two separate sections" and that Section 6.6 does not apply to the Backup Buyer, who is specifically, separately addressed in Section 6.7 and is not offered protections. (Dkt. #1317 at 82).

GrayStreet's argument requires this Court to determine whether the Stalking Horse Protections in Section 6.6 apply to GrayStreet as the Backup Buyer for the AWP Assets and South Texas Assets. (Dkt. #1317 at 27, 32 (Q: "So it's your position today that even though that provision states Stalking Horse Protections in Section 6.6, GrayStreet is entitled to it as a [B]ackup [Buyer]?" A: "Yes.")).

Section 6.6 of the GrayStreet PSA states:

> In the event the Bankruptcy Court approves an alternative transaction and the alternative transaction closes, and such alternative transaction is not the result of Buyer's breach …, Buyer shall be entitled to payment by Seller of the aggregate of…an amount not to exceed… $150,000.00…of Buyer's out-of-pocket fees and expenses incurred in connection with this Agreement… (the "***Expense Reimbursement***") [and] …3% of cash proceeds received in a sale…("***Breakup Fee***", and together with the Expense Reimbursement [], the "***Stalking Horse Protections***").

(Tr. Ex. H at 36). It also provides that "Buyer shall provide evidence of all such fees and expenses to Seller." (Tr. Ex. H at 36). Section 6.6.2 states that the Expense Reimbursement is an administrative expense "pursuant to Section 503(b) or 507(a)(2)." (Tr. Ex. H at 36).[18]

Section 6.7 explains the Backup Buyer's position in the sale:

> In the event that the Bankruptcy Court approves the sale of the AWP and South Texas Packages to Varas…Buyer agrees to be the backup buyer for the AWP and South Texas Packages at the Purchase Prices stated above for these Packages.

[18] GrayStreet requests an even $115,000 in expenses but did not provide the Court with any evidence of the fees and expenses claimed.

(Tr. Ex. H at 37). Section 6.7 does not mention or reference the Breakup Fee or Expense Reimbursement of Section 6.6. It provides that the Trustee will return the Performance Deposit[19] after 30 days and does not provide for any protections, fees, or expenses of the Backup Buyer. (Tr. Ex. H at 37-38; Dkt. #1317 at 46 (Q. "Ms. Ragan, you just testified that Section 6.6 of the Purchase and Sale Agreement at Docket 1158-1 does not contain any backup bidder protections, is that correct? Was that your testimony?" A. "Yes.")).

Covey clearly knew and recognized that GrayStreet was the Backup Buyer, not a stalking horse. (Dkt. #1317 at 42). Further, when asked "[d]id the Trustee ever tell you that GrayStreet would receive the Section 6.6 protections for being [the Backup Buyer] here," he answered, "[o]utside of the APA drafts, no, not specifically." (Dkt. #1317 at 29). Covey also acknowledged that, in the GrayStreet PSA, the Backup Buyer received no contractual protections. (Dkt. #1317 at 27 (Q: "Sure. So the Bid Procedures here, did they provide any protections when it came to backup bidders?" A: "No, only stalking horse.")).

Further, Section 6.6 of the GrayStreet PSA states that in the event "the Bankruptcy Court approves an alternative transaction…, Buyer shall be entitled to payment by Seller" of the Stalking Horse Protections. (Tr. Ex. H at 36). The Seller's payment obligations in Section 6.6 would be triggered by the condition precedent of a Court approved "alternative transaction." GrayStreet argues that this condition precedent is satisfied (so it is entitled to payment of the Stalking Horse

[19] The Performance Deposit ($437,500 deposited by GrayStreet into an escrow account) "is solely to assure the performance of [GrayStreet's] obligations under this Agreement as to the AWP and South Texas Packages." (Tr. Ex. H at 8). The amount of the Performance Deposit was also the agreed-upon estimate of damages if GrayStreet failed to perform its contractual duties. (Tr. Ex. H at 38). The Performance Deposit is addressed in both Sections 6.6 and 6.7. Ultimately, Sections 2.1.2 and 6.8.3 read: "For the avoidance of doubt, the Performance Deposit shall be returned to Buyer if Seller closes on the sale of the AWP and South Texas Packages to Varas or any other third-party." (Tr. Ex. H at 8, 38). So whether GrayStreet was the stalking horse bidder (if the assets sold to "any other third-party" in an alternative transaction) or the Backup Buyer (if the assets sold to Varas), they should have received their Performance Deposit back. However, including treatment of the Performance Deposit in both Sections 6.6 and 6.7 show that the sections were intended to function separately.

Protections in Section 6.6) using a contrived, stretched understanding of what "buyer," "property," and "alternative transaction" mean in the context of this transaction. (Dkt. #1317 at 78-80).

1. Definitions of "Buyer" and "Property"

The GrayStreet PSA defines "Buyer" as GrayStreet. (Tr. Ex. H at 4). GrayStreet maintains that the "alternative transaction" occurred when the AWP and South Texas assets were sold to Varas and the Court approved that sale. (Dkt. #1374 at 3). GrayStreet argues those assets were included in the GrayStreet PSA's definition of "Property" and were sold to someone (Varas) who was not the "Buyer" (GrayStreet), so GrayStreet is entitled to the Stalking Horse Protections. (Dkt. #1317 at 78-79).

GrayStreet highlights that the GrayStreet PSA's definition of "Property" in Section 1.1.1 included "the oil, gas, and mineral leases described in Exhibit A, Schedules 1-a, 1-b, and 1-c." (Tr. Ex. H at 4). GrayStreet's Brief explains: "The Property is further broken down into three different packages in the [GrayStreet] PSA. For each package (Mecom, AWP, and South Texas), there are separate schedules of leases and wells attached to the PSA." (Dkt. #1280 at 4). GrayStreet's counsel argued at the Hearing: "[T]he definition of property points to the exhibits in the PSA which include property that was transferred to Varas, not GrayStreet." (Dkt. #1317 at 81). GrayStreet interprets Exhibit A to mean that the GrayStreet PSA's definition of "Property" includes all three asset groups or, more specifically, includes "assets that were sold to Varas in the South Texas and AWP sales." (Tr. Ex. H; Dkt. #1317 at 80-81). GrayStreet posits that because two of the asset groups were not sold to it (as the defined "Buyer"), it is now entitled to the Stalking Horse Protections provided for in Section 6.6. (Dkt. #1317 at 71-72).

But Section 2.1 of the GrayStreet PSA clearly defines, sorts, and names the packages:

> 2.1 **Purchase Price and Performance Deposit**.
>
> 2.1.1 Purchase Price. This Agreement is entered into with regard to three packages of properties (the "Packages" and each a "Package"):
>
> | Package Name | Schedules and Exhibits Describing the Package |
> |---|---|
> | Mecom | Schedules A-1a, A-2a, A-3a, A-4a |
> | AWP | Schedules A-1b, A-2b, A-3b, A-4b |
> | South Texas | Schedules A-1c, A-2c, A-3c, A-4c |
>
> Buyer and Seller acknowledge that Buyer is the "Successful Bidder" on the Mecom Package, Buyer is the "Back Up Bidder" on the AWP and South Texas Packages, and Varas Energy, LLC ("Varas") is the Successful Bidder on the AWP and South Texas Packages. Buyer will pay Seller

(Tr. Ex. H at 9). At the Hearing, the Trustee explained why the leases and wells for all three asset packages were listed in Exhibit A to the GrayStreet PSA: Q: "…so were those assets included in this PSA in the event that GrayStreet did end up serving as they buyer should Varas not close?" A: "Yes. It was meant to be a dual-purpose APA." (Dkt. #1317 at 77). Her testimony is in conformity with the unambiguous terms of Section 2.1.1 of the GrayStreet PSA, which clearly set forth that GrayStreet was the Buyer of only one Package, the "Mecom Package [and] the 'Back Up Bidder' on the AWP and South Texas Packages." (Tr. Ex. H at 7).

The Trustee argues that regardless of the language in the GrayStreet PSA, the Sale Order clearly limits the definition of "Property" to the Mecom Assets. (Dkt. #1317 at 68). It states:

> (i) authoriz[es] and approv[es] **the sale of certain oil and gas assets located at the Mecom Ranch (J.W. Martin Field), Zapata County, TX** (as defined in the Purchase Agreement, the "Property"), …(ii) approv[es] the Purchase and Sale Agreement between the Trustee on behalf of the Debtors and the Successful Bidder; … and (vi) grant[s] related relief, all as more fully described in the Sale Motion.

(Tr. Ex. E at 2-3) (emphasis added). Further, the Sale Order provides that the Court considered all of the documents involved in the transaction before granting the Trustee's sale motion: "this Court . . . reviewed and considered the Sale Motion, the Purchase Agreement…, the Bid Procedures Order, and the record." (Tr. Ex. E at 3).

Both the Trustee and Covey acknowledged at the Hearing that in the event of conflicting provisions, the Sale Order controls. The Sale Order reads: "To the extent there are any inconsistencies between the terms of this Sale Order or the Bid Procedures Order, on the one hand, and the Purchase Agreement or any Transaction Document, on the other hand, the terms of this sale order shall govern."[20] (Tr. Ex. E at 38).

The Court rejects GrayStreet's request that it view the use of "***Stalking Horse Protections***" as surplusage. Because the GrayStreet PSA, when read as a whole, defines the property sold to GrayStreet as the Mecom Assets and because the Sale Order, which controls the transaction, clearly defines the property sold to GrayStreet as only the Mecom Assets, then the "Property" referred to in Section 6.6 means the Mecom Assets – it does not mean the AWP Assets and South Texas Assets.

2. Alternative Transaction

GrayStreet argues that the provisions of the GrayStreet PSA "allow… [GrayStreet's] recovery of [the Stalking Horse Protections] if an alternative transaction is approved by the Court." (Dkt. #1317 at 78). In order for there to have been an alternative transaction, the Varas sale must not have closed as a condition precedent. The Trustee testified that no Court-approved alternative transaction occurred. (Dkt. #1317 at 55-56). The Court agrees and finds that GrayStreet, as the Backup Buyer, never obtained the right to purchase the AWP Assets and South Texas assets. It just did not happen.

In the absence of any contractual obligation to pay GrayStreet, it is unnecessary for the Court to apply § 363,[21] and there is no need for the Court to consider the business judgment rule.

[20] Covey, when asked "[A]re you aware of the fact that the sale order specifically has a provision saying that in the event there's any disagreement between the [GrayStreet] PSA and the sale order that the sale order would govern?" answered, "I'm not familiar with that. But again, I would not be surprised if it said that." (Dkt. #1317 at 29).

[21] "The business judgment rule is the presumption that in making a business decision, the trustee, … will act on an informed basis, in good faith, and in honest belief that actions taken … are in the best interest of the debtor, its estate, and creditors." *In re Johns*, 667 B.R. 322, 325 (N.D. Tex 2025) (citations omitted). GrayStreet "[has] the burden of rebutting the presumption of validity" of the Trustee's business decisions. *Id.*

The Trustee's decisions – not to appoint a stalking horse bidder and not to pay GrayStreet the Stalking Horse Protections – are entitled to deference as she clearly demonstrated sound business justification in making those decisions.[22]

C. GrayStreet failed to prove an administrative expense claim under § 503(b).

GrayStreet alternatively argues that it is entitled to a breakup fee and expense reimbursement as an administrative expense. To prove an administrative expense claim, GrayStreet must demonstrate that the breakup fee and expense reimbursement (1) arose post-petition and as a result of actions taken by the Trustee and (2) were "actual" and "necessary costs and expenses of preserving the estate." *Bouchard,* 74 F.4th at 751 (citations omitted). While both parties have invested their briefing energy into disputing the terms of the GrayStreet PSA, "[t]he focus of the [post-petition requirement] is not so much on the *agreement*, but on its *postpetition* nature." *Bouchard,* 74 F.4th at 751. In fact, the Fifth Circuit specified that "an agreement for services in bankruptcy is enforceable even if the post-petition business relationship is not clearly defined." *Id.* (citation omitted).[23] Therefore, although GrayStreet and the Trustee's business relationship – and the payment obligations flowing from that relationship[24] – may not be perfectly

[22] The Trustee's testimony illustrates that she would not have been reasonably justified in paying GrayStreet, as the Backup Buyer, any bid protections. She testified that backup bidders do not customarily receive bid protections and that paying such protections would not have provided value to the estate. (Dkt. #1317 at 62-63). The Trustee also testified that she had other qualified bids – one of which was higher than GrayStreet's bid and would have been the stalking horse (if one were appointed) – and that GrayStreet's bid was not used to force Varas to close the sale. (Dkt. #1262 at 4; Dkt. #1317 at 31). The evidence presented shows that the typical justifications for having a stalking horse were not present. The Trustee's judgment was not "clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code." *Richmond Leasing Co. v. Capital Bank, N.A*., 762 F.2d 1303, 1309 (5th Cir. 1985). The Trustee's decision not to pay (or promise to pay) GrayStreet was based on (1) the informed basis that other qualified bids were presented, (2) the honest belief in those bidders to follow through with the auction and their bids if selected, (3) the general context that backup bidders are not traditionally granted bid protections, and (4) the goal to act in the best interest of the estate (to save those funds).

[23] "For example, in *Whistler Energy II*, we upheld the payment of fees under § 503(b) where the debtor requested specific services and a counter-party voluntary preformed them, even though there was no formal written agreement." *Bouchard*, 74 F.4th at 751. Bouchard asked Hartree to act as the stalking horse and the purchase agreement was signed to that effect. Here, the Trustee did not ask GrayStreet to serve as the stalking horse and in fact explicitly told it that it was not being designated as the stalking horse. (Dkt. #1317 at 31). However, even if there was no formal written agreement, GrayStreet could still be entitled to an administrative expense claim if it met the applicable standards.

[24] GrayStreet argues that the inclusion of Section 6.6 in the final Court-approved version of the GrayStreet PSA was

clear from the Bid Procedures, GrayStreet PSA, and Sale Order, there is little dispute that the transaction did occur postpetition. (Dkt. #1317 at 29-31). GrayStreet has met that element of its claim.

The Court now turns to whether the breakup fee and administrative expense constitute an actual and necessary cost under § 503(b) in this case. "An actual and necessary cost…must have…benefitted the estate." *In re Talen Energy Supply, LLC*, No. 22-90054, 2023 WL 2816683, at *4 (Bankr. S.D. Tex. Apr. 6, 2023). A benefit to the estate "must be truly necessary." *In re Erin Energy Corp.*, No. 18-32106, 2024 WL 3616731, at *3 (Bankr. S.D. Tex. July 31, 2024). "If it was of no 'benefit,' it cannot have been 'necessary.'" *In re Northstar Offshore Grp, LLC*, 628 B.R. 286, 299 (S.D. Tex. 2020).[25]

Dissimilar to the facts in *Bouchard*, GrayStreet provided no proof that its bid at auction provided any benefit to the estate worthy of any bid protections. In *Bouchard*, without the stalking horse's bid, the debtor was in danger of a "naked" auction (an auction without any known bidders to set a floor price) despite having reached out to 150 potential bidders. *Bouchard*, 74 F.4th at 752. Here, the Trustee received nine bids before the Auction. (Dkt. #1262 at 4). In fact, the Trustee testified that when she asked GrayStreet to increase their bid (as to be the stalking horse), "[Covey] declined and said that if I wouldn't accept him as the stalking horse, [GrayStreet] would still show up" and bid at the Auction. (Dkt. #1317 at 75). The Trustee received a bid higher than GrayStreet's, and that bidder would have been more likely to be used as the stalking horse (if one had been

intentional by the Trustee and is only explained as her "induc[ing] GrayStreet to serve as the backup bidder and to force Varas to close on time." (Dkt. #1280 at 10). However, the Trustee explained that the reason the reference to an alternative transaction was included in Section 6.6 was because "I always take the position that if somebody shows up with a big check all the way up until the ink is dry on the sale order, then I'm going to consider it." (Dkt. #1317 at 55). This reasoning conforms with the Trustee's fiduciary duty to select the most beneficial offer for the estate.

[25] "[A] breakup fee can confer a benefit on the estate even though the contemplated transaction with the claimant was not consummated." *Neutra, Ltd. v. Terry* (*In re Acis Cap. Mgmt., L.P.*), 604 B.R. 484, 517 (N.D. Tex. 2019). The benefit could be "more competitive bidding" or research "on which other bidders can rely." *Id.* (*citing In re Lamb*, No. 96-1-1099, 2002 WL 31508913, at *1 (Bankr. D. Md. Oct. 11, 2002)).

designated) than GrayStreet. (Dkt. #1317 at 31).[26] Conversely, in *Bouchard*, the stalking horse's bid drove up the price that the purchaser ultimately paid. *Id*.

Moreover, unlike the designation of the stalking horse bidder before the auction in *Bouchard*, GrayStreet's designation as the Backup Buyer occurred after the Auction. Thus, any benefit to the estate had to occur between December 20, 2024 when the GrayStreet PSA was signed and January 31, 2025 when the sales to Varas closed. Covey "assumed that the Trustee would use [GrayStreet] and [he] encouraged her to use [GrayStreet's] backup bid in order to close on the sale with Varas," but he had no evidence that the Trustee actually did so. (Dkt. #1317 at 34-35) (Q: "Do you have any evidence of Ms. Ragan doing that?" A: "I do not.")). The Trustee testified that she never "leverage[d] GrayStreet as [the Backup Buyer] to close with Varas." (Dkt. #1317 at 57). She agreed that Covey had encouraged her to do so, but explained, "I did not take his offer to Varas and say, hey, if you don't close these guys are going to close. I appreciate him making the offer, but I did not rely on it with Varas." (Dkt. #1317 at 57). In fact, the Trustee testified that such leverage was never needed because "there was never an intention [on behalf of Varas] or discussion regarding backing out." (Dkt. #1317 at 45). If Varas needed motivation to close, the $1,160,000 Performance Deposit it paid the Trustee to assure its performance under their Purchase and Sale Agreement would have more aptly served that purpose than the presence of a Backup Buyer. (Dkt. #1200 at 7; Tr. Ex. H at 10).

Covey's undeveloped assumption that the Trustee used GrayStreet to pressure Varas into closing – asserted without evidence – is insufficient to support its claim. (Dkt. #1317 at 20, 34-

[26] The Trustee's email to Covey was that "if [she] had" designated a stalking horse, "it would have been the Hillwood folks as [her] high bidder – higher bidder." (Tr. Ex. O; Dkt. #1317 at 31). She also testified that Section 6.6 was left in for the "possibility" "that there might have been a stalking horse, not just GrayStreet. There were other folks that I was trying to convince to be the stalking horse, to come up in their bid. But ultimately I couldn't get anybody as high as I wanted them." (Dkt. #1317 at 76).

35); *see In re SpecialtyChem Prods. Corp*., 372 B.R. 434, 440 (E.D. Wis. 2007) (the unsuccessful bidder did not introduce any evidence of the successful bidder's alleged reliance on its bid and "conjecture [was] insufficient to meet this burden"). GrayStreet asks the Court to "connect the dots… and infer that its bid served as a catalyst for" the sales with Varas closing but provided no concrete evidence of that being true. *SpecialtyChem Prods.*, 372 B.R. at 440. While the Court appreciates GrayStreet's participation in the Auction and their role as a Backup Buyer,[27] "the [Trustee] has no duty to reward bidders merely for bidding." *Id.* at 441. The estate is not bound to pay given that GrayStreet did not offer any proof that a breakup fee and the expense reimbursement was an actual and necessary benefit to the estate. GrayStreet may very well have provided value to the estate by participating in the Auction,[28] but it did not deliver the type of value that earned payment of bid protections or an administrative expense claim.[29]

CONCLUSION

GrayStreet and the Trustee are both sophisticated, knowledgeable parties that entered into this transaction with substantial bankruptcy experience and familiarity with typical stalking horse procedures. GrayStreet was not a stalking horse or a "*de facto*" stalking horse and is not entitled to the Stalking Horse Protections as the Backup Buyer (or bidder). As for GrayStreet's request for an administrative expense claim of $505,000, it failed to prove a benefit to the estate.

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[27] When asked if Section 6.7 of the GrayStreet PSA did not provide "specific backup bidder protections" because "it wasn't customary and really didn't provide value to the estates," the Trustee answered affirmatively. (Dkt. #1317 at 76-77 ("Both of those. It's not customary. You provide expense reimbursement and protections to a stalking horse, not to a backup bidder.")).

[28] When asked, "[if] GrayStreet provide[d] value during these bankruptcy cases" the Trustee answered yes, citing both Covey's expertise as an "oil and gas person" and a "finance investment professional" and his help as "a great sounding board." (Dkt. #1317 at 62-63).

[29] The type of service rendered must have "conferred a benefit on the estate as required to garner administrative priority status." *Lasky v. Phones For All, Inc. (In re Phones For All, Inc*.), 288 F.3d 730, 732 (5th Cir. 2002). The Court cannot grant each bidder that participated in the auction according to the Bid Procedures this priority status. *See SpecialtyChem Products*, 372 B.R. at 441 (if "a party negotiating to become the stalking horse bidder" was permitted to recover bid protections without proving a benefit to the estate, then any party "would be entitled to an administrative expense claim").

Accordingly, the Court finds that the Motion to Enforce should be denied because GrayStreet failed under both the § 503(b) and § 363 standards and is not entitled to receive payment of the Stalking Horse Protections or to an administrative expense claim from the Debtors' estate.

IT IS, THEREFORE, ORDERED that the Motion to Enforce is denied.

##END OF ORDER##