

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

IN RE: § CHAPTER 11
§
MISSISSIPPI PHOSPHATES § CASE NO. 14-51667-KMS
CORPORATION, et al, §
§ Jointly Administered
§
Debtors. §

**LIMITED RESPONSE OF BROCK SERVICES, LLC TO
THE MOTION OF THE DEBTORS, PURSUANT TO BANKRUPTCY CODE
SECTIONS 105(a), 363, 365, 503, AND 507, AND BANKRUPTCY RULES 2002, 3007, 6004,
6006, 9007, AND 9014, FOR ENTRY OF: (I) ORDER (A) APPROVING SALES AND
BIDDING PROCEDURES IN CONNECTION WITH SALE OF ASSETS OF THE
DEBTORS, (B) APPROVING FORM AND MANNER OF NOTICE, (C) SCHEDULING
AUCTION AND SALE HEARING, (D) AUTHORIZING PROCEDURES GOVERNING
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, AND (E) GRANTING RELATED RELIEF; AND (II) ORDER
(A) APPROVING PURCHASE AGREEMENT, (B) AUTHORIZING SALE FREE AND
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS,
AND (C) GRANTING RELATED RELIEF
[RELATES TO DKT. # 155]**

BROCK SERVICES, LLC (“Brock”), a creditor and party-in-interest in the above-styled, jointly administered bankruptcy cases (the “Bankruptcy Cases”), files this *Limited Response* (the “Response”) to the *Motion of the Debtors, Pursuant to Bankruptcy Code Sections 105(a), 363, 365, 503, and 507, and Bankruptcy Rules 2002, 3007, 6004, 6006, 9007, and 9014, For Entry of: (I) Order (A) Approving Sales and Bidding Procedures in Connection With Sale of Assets of the Debtors, (B) Approving Form and Manner of Notice, (C) Scheduling Auction and Sale Hearing, (D) Authorizing Procedures Governing Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (E) Granting Related Relief; and (II) Order (A) Approving Purchase Agreement, (B) Authorizing Sale Free and Clear of All Liens, Claims, Encumbrances,*

and Other Interests, and (C) Granting Related Relief [Dkt. # 155] (the “Motion”) and shows the Court the following:

I. BACKGROUND FACTS

1. On October 27, 2014 (the “Petition Date”), Mississippi Phosphates Corporation (“MPC”), Ammonia Tank Subsidiary, Inc. (“ATS”), and Sulfuric Acid Tanks Subsidiary, Inc. (“SATS”, and together with MPC and ATS, the “Debtors”) commenced the Bankruptcy Cases under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors remain debtors-in-possession in these Bankruptcy Cases. An Official Committee of Unsecured Creditors (the “Committee”) was appointed in these Bankruptcy Cases on November 12, 2014.

2. Brock, a Houston-based industrial-services firm, serves a wide variety of industrial customers, including in the construction, chemical, and oil-and-gas industries. On or about June 8, 2010, Brock entered into the MISSISSIPPI PHOSPHATES CORPORATION MASTER SERVICES AGREEMENT, dated June 8, 2010 (the “Master Agreement”), with MPC.¹ Under the Master Agreement, Brock provided MPC with scaffolding-construction and demolition services at MPC’s plant located at 601 Industrial Road, Pascagoula, Mississippi 39568 (the “MPC Plant”). From mid-2010 through November 2014, Brock performed these scaffolding-construction and demolition services at the MPC Plant pursuant to the Master Agreement and the purchase orders and invoices issued in connection with it. However, MPC did not pay Brock for all the pre-petition services Brock had provided at the MPC Plant. As of the Petition Date, MPC’s unpaid pre-petition indebtedness to Brock had swelled to \$201,442.99 (including allowable statutory interest). In addition to these unpaid pre-petition amounts, Brock also continued to provide scaffolding-construction and demolition services at the MPC Plant after the Petition Date at MPC’s request. MPC has not paid Brock for all these post-petition services

¹ A copy of the Master Agreement is attached as Exhibit “A”.

either. As of today's date, MPC owes Brock a total of \$32,469.17 on a post-petition basis.

3. On October 31, 2014, Brock filed a *Notice of Claim of Special Lien* (the "Lien Notice") with the Chancery Clerk of Jackson County, Mississippi under Records No. 201416321 asserting its special lien for the unpaid prepetition amounts owed to it as required by Mississippi law.² Under § 85-7-403(1)(a) of the Mississippi Code, Brock may assert a special lien (the "Lien") against the MPC Plant (including both the underlying real estate and any buildings or improvements on it) (collectively, the "Collateral") to secure payment for the unpaid principal amounts owed to Brock as well as all other amounts then properly due (including allowable, unpaid pre-petition interest). *See* MISS. CODE ANN. § 85-7-403(1)(a) (2014). (A complete, legal description of the Collateral appears in the Lien Notice.)

4. On November 12, 2014, the Debtors filed the Motion seeking to approve sales and bidding procedures under which they would seek to sell all or substantially all of their assets to the Prevailing Purchaser at an Auction tentatively scheduled for Friday, March 6, 2015.³ Brock's Collateral comprises a portion of the assets that the Debtors intend to market and sell using the procedures described in the Motion.

III. LIMITED RESPONSE AND RESERVATION OF RIGHTS

5. In reply to the Motion, Brock files this Response in order to preserve its right, as a holder of a Lien against the Collateral, to object to any Sale of the Collateral if and when the Debtors seek to have this Court approve any such Sale according to the procedures outlined in the Motion and to clarify that Brock has not yet consented to any such Sale at this time. Bankruptcy Code § 363(f) provides for the sale of estate property free and clear of liens under one of the following five conditions:

² A copy of the Lien is attached as Exhibit "B".

³ A capitalized terms not otherwise defined in this Response will have the meanings ascribed to them in the Motion.

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)-(5); *see also, e.g., GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Group, Ltd.)*, 331 B.R. 251, 254 (N.D. Tex. 2005) (analyzing § 363(f) in context of a sale of real property); *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25, 39-41 (9th Cir. B.A.P. 2008) (concluding that § 363(f)(3) permits a sale free and clear of liens only if the proposed sale price for the property exceeds the aggregate face amount of all liens against that property). As a legal matter, Brock does not think the Debtors can satisfy any of the other four (4) prongs of § 363(f) if Brock does not consent to a sale of its Collateral. *See* 11 U.S.C. § 363(f)(1)-(5).

6. At this time, Brock has not yet determined whether it will or will not consent to the sale of its Collateral. The Debtors have not yet provided a copy of the proposed purchase agreement, identified any potential bidders, or set a purchase price. In particular, without the proposed purchase agreement, Brock cannot ascertain whether its Lien constitutes a Permitted Lien that the Prevailing Purchaser will assume when it purchases the Sellers Assets. (Mtn. Dkt. # 155). All this information, among other issues, will bear on Brock's final decision, if any, to object to the Sale. For this reason, Brock files this Response out of an abundance of caution in order to preserve its right to object to any proposed Sale that the Debtors may seek to have this Court approve and to require the Debtors to obtain Brock's consent to any sale of its Collateral.

7. Brock further reserves the right to amend, modify or supplement this Response at

any time (including at any hearing to approve the Motion and/or the Sale before this Court).

WHEREFORE BROCK SERVICES, LLC, requests that this Response be considered, that Brock's rights be reserved in connection with the Motion and any Sale of the Collateral that the Debtors may seek to have this Court approve, and that Brock be granted all other proper relief to which it may be entitled under law or at equity.

Date: January 2, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that, on January 2, 2015, a true and correct copy of the foregoing *Response* was served in accordance with Bankruptcy Rule 9013 and the Debtors' December 12, 2014 *Notice* [Dkt. # 312] on all parties receiving service via electronic case filing in these Bankruptcy Cases and by United States regular mail on the following:

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