

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. §

**NOTICE OF PERFECTION, CONTINUATION AND ENFORCEMENT OF LIEN
OF BROCK SERVICES, LLC UNDER 11 U.S.C. § 546(b)**

BROCK SERVICES, LLC (“Brock”), a creditor and party-in-interest in the above-styled, jointly administered bankruptcy cases (the “Bankruptcy Cases”), hereby files its *Notice of Perfection, Continuation and Enforcement of Lien of Brock Services, LLC Under 11 U.S.C. § 546(b)* (the “546(b) Notice”) and shows the Court the following:

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 above-styled, jointly administered Bankruptcy Cases in this Court under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtors remain debtors-in-possession in these Bankruptcy Cases.

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 would provide MPC with scaffolding-construction and demolition services at

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

MPC's plant located at 601 Industrial Road, Pascagoula, Mississippi 39568 (the "MPC Plant"). From time to time, Brock and its personnel would build scaffolds at the MPC Plant to enable MPC's employees to, *inter alia*, access various parts of the plant's buildings and other structures. Once MPC no longer needed certain scaffolds, Brock's employees would break them down and return the individual scaffolding components to Brock's inventory. At all times, the scaffolding components themselves remained Brock's property. Brock would invoice MPC for the labor that Brock's employees expended building and breaking down the scaffolds.

3. Brock performed these scaffolding-construction and demolition services at the MPC Plant from mid-2010 through October 2014. As of the Petition Date, MPC owed Brock \$201,442.99 for services that Brock had provided to MPC at the MPC Plant prior to the Petition Date, but for which MPC had not yet paid Brock. 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 of this amount and all other amounts then due to Brock (including allowable, unpaid pre-petition interest). See MISS. CODE ANN. § 85-7-403(1)(a) (2014). On October 31, 2014, Brock filed its *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 as required by Mississippi law.² The Lien Notice was properly filed within the requisite, statutory time-period. The Lien Notice reflected that the original pre-petition amount due was \$197,367.00. Under Mississippi law, the Lien perfects the total principal amount of \$201,442.99 due pre-petition notwithstanding the lower amount cited in the Lien Notice. If necessary, Brock will amend the Lien Notice to reflect the additional amounts due.

4. At this time, Brock also continues to provide scaffolding-construction and

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

demolition services at the MPC Plant. These post-petition amounts remain unpaid. If MPC does not pay these post-petition amounts as required under the Master Agreement and applicable law, Brock will file an additional lien to include these unpaid post-petition amounts. As for the Master Agreement itself, it constitutes an executory contract of MPC under Bankruptcy Code § 365. *See* 11 U.S.C. § 365. MPC has not yet assumed or rejected the Master Agreement.

NOTICE OF PERFECTION, CONTINUATION AND ENFORCEMENT OF LIENS

A. Basis of Lien

5. Under Mississippi Code § 85-7-403(1)(a), a licensed contractor like Brock who furnishes “labor, services, or materials” for the “improvement of real estate” located in the State of Mississippi has a lien on both the real estate as well as on any associated buildings or improvements. *See* MISS. CODE ANN. § 85-7-403(1)(a). To perfect this lien, the contractor must record it in the office of the chancery court clerk for the county where the property is located. *Id.* § 85-7-405(1)(b). That recording must occur within ninety (90) days after the contractor completely finishes providing the labor, materials or services in question. To maintain this perfected lien, the contractor must then, within 180 days of the lien’s recordation, file both a lawsuit to recover the amount owed and a *lis pendens* in that same chancery court. *Id.* § 85-7-405(1)(c). However, the contractor need not file this suit if it cannot obtain a final judgment against the debtor because of, among other reasons, the debtor’s bankruptcy. *Id.* § 85-7-405(1)(d)(i). In Brock’s case, its Lien Notice was filed with the Jackson County chancery clerk on October 31, 2014—well within the requisite, 90-day time-period, and Brock’s Lien is therefore a properly perfected contractor’s lien under Mississippi law. *See* § 85-7-403(1)(a)-(b). Because of MPC’s bankruptcy filing, Brock does not need to file a payment action against MPC at this time.

6. Bankruptcy Code § 546(b) provides that a debtor’s lien avoidance powers “are subject to any generally applicable law that...permits perfection of an interest in property to be

effective against an entity that acquires rights in such property before the date of perfection.” 11 U.S.C. § 546(b). Brock acquired its rights in the Collateral under Mississippi law before the Petition Date when Brock delivered the scaffolding construction and demolition services to the MPC Plant. *See* MISS. CODE ANN. § 85-7-403(1)(a). Thus, the Lien’s perfection is unavoidable under Bankruptcy Code § 546(b).

7. Brock files this 546(b) Notice to apprise MPC, the other Debtors, and all other parties claiming an interest in the Collateral (including in all proceeds, cash collateral, replacements, accessions, products, rents, and profits of the Collateral) of Brock’s intent to perfect, continue, maintain, and/or enforce its Lien and to comply with any and all present and/or future notice, perfection, maintenance, and enforcement requirements under the Bankruptcy Code and/or Mississippi law. Furthermore, Brock files this 546(b) Notice in order to ensure that the perfected status of its Lien will be maintained and continued while these Bankruptcy Cases are still pending and the automatic stay under Bankruptcy Code § 362 remains in effect.

B. Total Indebtedness Secured by the Lien.

8. The total Indebtedness secured by the Lien consists of principal and pre- and post-petition interest, as more fully described below.

9. First, the total, pre-petition principal amount due to Brock is \$201,442.99. This represents the total cost of the unpaid services and materials Brock had provided to MPC at the MPC Plant as of the Petition Date.³ At this time, Brock has also provided certain additional services to MPC after the Petition Date. These post-petition amounts remain unpaid, and Brock may also claim a post-petition lien for these amounts.

10. Second, under Mississippi Code § 87-7-3(a), if a contractor’s invoices are not paid in full within thirty (30) calendar days of their original due date, “they shall bear interest from the due

³ Brock intends to file an amended Lien Notice with the Jackson County chancery court to reflect the total principal amount due pre-petition.

date at the rate of one percent (1%) per month until fully paid.” MISS. CODE ANN. § 87-7-3(a). At that rate, the total pre-petition interest due on the \$201,442.99 owed through the Petition Date is \$791.13.⁴ Under the Lien, the Collateral also secures this unpaid, pre-petition interest. Moreover, if the value of the Collateral exceeds the total amount due to Brock, then the total indebtedness secured by the Lien will include post-petition interest due at the same rate. Post-petition interest will continue accruing (up to the value of the Collateral itself) until all pre- and post-petition amounts due to Brock are paid. *See* 11 U.S.C. § 506(b).

C. Demand For Adequate Protection and Reservation of Rights

11. Finally, please take notice that Brock does not consent to the use of its cash collateral (including any and all proceeds generated by the Collateral and/or from any sale of the Collateral) and demands immediate segregation of that cash collateral pursuant to Bankruptcy Code § 364(c)(4). Brock further reserves all its rights with respect to all amounts owed to it, the Lien, the Collateral, and Brock’s other claims and interests in these Bankruptcy Cases and otherwise.

⁴ A chart reflecting the total pre-petition principle and interest owed is attached as Exhibit “C”.

Date: January 7, 2015

Respectfully Submitted,

LOCKE LORD LLP

By: /s/ C. Davin Boldissar

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CERTIFICATE OF SERVICE

I certify that, on January 7, 2015, a true and correct copy of the foregoing *Notice* was served on all parties receiving service via electronic case filing and/or by United States regular mail in accordance with Bankruptcy Rule 9013 and the attached Limited Service List.

/s/ C. Davin Boldissar

C. Davin Boldissar