

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE:)	Chapter 11
)	
GREATER SOUTHEAST COMMUNITY)	Jointly Administered
HOSPITAL CORP., I, et al.,)	Case No. 02-2250
)	
Debtors,)	Honorable S. Martin Teel, Jr.

**RESPONSE OF CONTECH-MSI CO. TO DCHC LIQUIDATING
TRUST'S OBJECTION TO ALLOWANCE OF CLAIM**

Contech-MSI Co. ("Contech"), a creditor of Michael Reese Medical Center Corporation ("Michael Reese"), hereby objects to DCHC Liquidating Trust's (the "Trust"), as successor-in-interest to Michael Reese, objection to Contech's claim ("Objection") as follows:

BACKGROUND

1. Contech filed a secured claim of \$370,032.80¹ (the "Claim") against Michael Reese in its Chapter 11 case. The Claim has been assigned claim number 1912. A copy of the Claim, with attachments, is attached hereto as Exhibit A and incorporated herein by this reference.

2. Prior to Michael Reese's filing of its Chapter 11 case, Contech, as an original contractor to Michael Reese, installed fire-alarm protection services and provided electrical and construction contracting services and materials for the buildings erected at 2929 South Ellis, Chicago, Illinois (the "Premises") in exchange for payment to Contech for services rendered and materials provided. Pursuant to the Illinois Mechanics Lien Act, Contech recorded a valid

¹Due to a scrivener's error, Contech's secured claim actually totals \$364,039.35. All further references to the amount of the claim will be to the actual amount.

mechanic's lien on the payments due or to become due by the respective owners of Michael Reese and as against the owner's Premises and others. See 770 Ill. Comp. Stat. 60/1:

Any person who shall by any contract or contracts, . . . with the owner of a lot or tract of land, . . . to improve the lot or tract of land or for the purpose of improving the tract of land, or to manage a structure under construction thereon, is known under this Act as a contractor and has a lien upon the whole of such lot or tract of land and upon adjoining or adjacent lots or tracts of land of such owner constituting the same premises . . . for the amount due to him or her for the material, fixtures, apparatus, machinery, services or labor, and interest at the rate of 10% per annum from the date the same is due.

Golfview Developmental Center, Inc. v. All-Tech Decorating Co., 309 B.R. 758, 767-68 (Bankr. N.D. Ill. 2004) (holding that a painter had an inchoate lien against the debtor's leasehold estate and the landlord's reversionary interest for painting services performed on the landlord's premises); *Douglas Lumber Co. v. Chicago Home for Incurables*, 43 N.E.2d 535-541 (Ill. 1942) (finding that a subcontractor had a lien for materials provided on both the money due from the owner to the general contractor, as well as on the real estate.) As the holder of a mechanic's lien, under Illinois law, Contech is a secured creditor of Michael Reese and its successor-in-interest, the Trust. See *Golfview*, 309 B.R. at 769 (holding that the holder of an inchoate mechanic's lien is a secured creditor; *Great American Insurance Co. v. Bailey*, 133 B.R. 929, 932 (Bankr. N.D. Ill. 1991) (allowing a mechanic's lien that was valid and enforceable against the debtor at the time that the bankruptcy petition was filed as a secured claim). As a matter of law, the entire amount of Contech's Claim, \$364,039.35, is entitled to secured status.

3. For more than a year, the Trust, through its attorneys, sought information from Contech concerning its secured Claim in the Michael Reese bankruptcy action. Candidly, the Trust's counsel (Candace Glover) revealed to the undersigned that neither the Trust nor Michael

Reese had the original source documents of Michael Reese with which to evaluate Contech's Claim. Based on the absence of access to any of Michael Reese's business records, the Trust's counsel requested additional information from Contech to analyze the Claim. For many months, Contech provided documents, answered questions, and endeavored, unsuccessfully, to verify entries contained in a report identified to have originated from Michael Reese, without success. The report that the Trust utilized was not a business record of Michael Reese and contained many inexplicably erroneous entries.

4. On November 8, 2007, the Trust's counsel (Ms. Glover) first contacted the undersigned and requested information to process the payout of Contech on its secured Claim in the Michael Reese bankruptcy action. The Trust's counsel sought Contech's business records which itemized Contech's contract amounts, payments received, and extra-work orders entered into between Contech and Michael Reese. Contech provided those documents and additionally provided Contech's application for payment. Copies of the undersigned's e-mail dated November 8, 2007, and those supporting documents are attached hereto as Exhibit B and incorporated herein by this reference. Although not requested by the Trust, Contech maintained copies of those checks issued by Contech in partial payment of certain of Contech's invoices, which corroborated the information set forth in Exhibits A and B hereto and directly refuted the information set forth in Carolyn Jackson's Declaration and Exhibits 1 and 2 appended to the Trust's Objection. See Exhibit 1 to Bondi affidavit at Exhibit D hereto.

5. As late as May 13, 2008, the Trust's counsel continued to attempt to verify information concerning Michael Reese's payments to Contech. Unable to verify the payments contained in the Michael Reese spreadsheet, Contech specifically requested Michael Reese to produce original source documents—namely, the fronts and backsides of all Michael Reese

checks—which would establish payment to and deposit by Contech. In fact, the Trust had no access to any checks or other original source documents of Michael Reese. Candace Glover informed the undersigned that “the Trustee has no records of certain checks that it contends Michael Reese issued.” Candace Glover informed the undersigned that “a request for a copy of check no. 80102 was forwarded to the corporate headquarters of DCHC on or about January 25, 2008. Unfortunately, the corporate headquarters has not located a copy of this particular check nor could an estimate be provided regarding when a copy might be located.” Copies of Ms. Glover’s e-mail of April 29, 2008, conceding the Trust’s lack of access to Michael Reese’s business records and source documents, and the undersigned’s responsive e-mail dated May 13, 2008, are attached hereto as Group Exhibit C.

CONTECH’S RESPONSE TO THE TRUST’S OBJECTION

6. On October 2, 2008, the Trust filed its Objection to Contech-MSI Co.’s claim, seeking disallowance of the claim based on 11 U.S.C. § 502 and Rule 3007. The Trust failed to properly serve the Objection on Contech’s counsel, despite having had numerous contacts by phone and e-mail during 2007 and 2008, including the months leading up to the filing of the Objection. The Trust and Contech agreed that Contech may file its Response to Objection on December 17, 2008.

7. By its Objection, the Trust seeks to assert that Contech’s entire Claim has been paid in full. That contention is directly refuted by Allen Bondi, Contech’s secretary and treasurer and a certified public accountant (“CPA”). His affidavit is attached hereto as Exhibit D. Allen Bondi has sworn under oath that Contech is owed \$364,039.35 under its secured Claim. See Exhibit D, ¶ 8. The Trust fails to offer any original source documents, business records,

or other competent evidentiary basis to establish its conclusory allegation that the secured Claim has been paid in full. Moreover, the Declaration of Carolyn Jackson tendered in support of the relief sought by the Trust contains no competent evidence and no business records, and the declarant has no basis in fact or in law to assert the statements contained in her Declaration. More troubling, the Trust has uncovered no facts in its investigation which would establish facts asserted in its Objection signed by the Trust's counsel, or which would establish that Contech is owed any less than the \$364,039.35 asserted in its Claim.

8. Even the most cursory review of Carolyn Jackson's Declaration reveals glaring evidentiary deficiencies in the facts purportedly asserted. Ms. Jackson establishes no basis for, or even any familiarity with, the individual report entries (Exhibit 2 to her Declaration), the method of entering the information contained therein, the accuracy of the underlying information in Exhibit 2, the location of any of the Michael Reese original source documents which purportedly serve as a basis for the entries for the report, or any personal knowledge of the identities of the persons who entered the information, when the information was entered, or whether anyone utilized original source documents in the preparation of the report (Exhibit 2) which was utilized by her to "create" a spreadsheet (Exhibit 1).

9. Besides the lack of any competence for her to make the Declaration, Ms. Jackson then asserts, wrongfully, that she listed "dates, check numbers and amounts of individual payments." Those allegations are demonstrably false, and the Trust's counsel knows those assertions to be false, based on conversations in 2007 and 2008 with Contech's counsel. The entries in Ms. Jackson's spreadsheet do not match the actual checks issued by Michael Reese. See Exhibit D.

10. Ms. Jackson's assertion, at paragraph 4 of her Declaration, that the information contained in the report is accurate is also false. Specifically, her assertion that four payments were made on June 25, 2004, in the amount of \$147,725, \$19,934, \$5,600, and \$5,600, respectively, is false. Contech never received those four payments asserted by the Trust to have been made as of that date, and its analysis into this matter was unable to reference receipt of those payments as of any date. See Exhibit D.

11. Ms. Jackson has no basis to make the Declaration or to attach a bare spreadsheet generated on July 22, 2008 (based on "RUN DATE" entered on said spreadsheet), to her Declaration, because Michael Reese has no source documents with which to prepare said spreadsheet or report. See Exhibit D. Clearly, summaries are not admissible in evidence when the underlying documents have not been provided so as to be able to check the veracity of the summary documents. The spreadsheet and report attached to Ms. Jackson's Declaration purport to be mere summaries of other source documents. However, no source documents have ever been produced by the Trust, despite numerous, repeated requests on Trustee's counsel by Contech. In particular, Contech made requests of Candace Glover and Jeff Schmitt, both acting as counsel for the Trust. Both Mr. Schmitt and Ms. Glover have never produced original source documents, including the checks which the Trust asserts were made as payment to Contech. See Exhibits B, C, and D.

12. Contech attaches its own request for production, which it serves on the Trust herewith. A copy of the request for production is attached hereto as Exhibit E and incorporated herein by this reference. Although the Trust has failed to comply with informal requests, Contech issues its formal request for production to obtain the underlying source documents which would have been necessary to prepare the spreadsheet or report in question.

13. The spreadsheet asserted to have been “created” by Ms. Jackson (paragraph 3 of her Declaration) suffers from even more fatal flaws than those identified above. The Jackson spreadsheet, at Exhibit 1 to her Declaration, is not a separate or independent document created by Ms. Jackson, as asserted in her Declaration. In fact, it is merely a restatement of identical information contained on the report marked as Exhibit 2 to the Jackson Declaration. This Court can take judicial notice that merely reordering the entries of a report onto a spreadsheet does not amount to the “creation of a document,” and the Trust should be admonished accordingly for its misleading assertion that Ms. Jackson did anything more than merely copy the entries contained on the report to a spreadsheet, albeit in slightly different order, under the guise of creating a second independent document.

14. Moreover, Jackson’s assertions concerning the entries on the report and spreadsheet, including, most particularly, that the check numbers and amounts of payments are listed on her spreadsheet, are simply false. A review of the spreadsheet indicates that no check numbers are contained on the spreadsheet attached to her Declaration, and certain payments listed are false, while other amounts listed have not been verified by the Trust or by Contech, despite laborious analysis conducted by Contech, which exceeded twenty hours of Mr. Bondi’s time. See Exhibit D, ¶ 8. Furthermore, the Trust and Ms. Jackson have completely failed to explain the discrepancies in the payment amounts listed and have failed to produce any original source documents. Contech’s business records include copies of individual checks received from Michael Reese which corroborate the entries contained in Contech’s records and contradict the information contained in the exhibits to the Jackson Declaration. The spreadsheet and report attached to Ms. Jackson’s Declaration are inaccurate and cannot be relied on to support the Trust’s assertion that Contech has been paid in full. See Exhibit D.

15. There is no credible basis for Michael Reese to assert full payment of Contech's secured Claim in its Objection. No source documents have been produced, and the absence of the source documents has not been adequately explained. The Objection lacks any evidentiary foundation. As such, the assertions made in Ms. Jackson's Declaration are based on hearsay and must be disregarded. Moreover, Contech's counsel has made numerous requests on the Trust's counsel for production of the original source documents and attaches its formal production request hereto, as well as serving it separately, to accomplish production of the documents to verify the payments falsely asserted by the Trust as having been made to Contech.

CONCLUSION

The Objection to Contech's secured Claim violates Rule 9011(b)(1), (2), and (3) of the Bankruptcy Rules, but the pursuit of a motion for sanctions would only cause Contech more expense and delay than the harassing Objection has so far caused. Furthermore, Contech has provided credible and competent underlying materials which exclusively establish that Contech is entitled to payment on its secured Claim of \$364,039.35.

WHEREFORE, Contech respectfully requests that this Court enter an order denying the Trust's Objection as it pertains to Contech's Claim, and granting other and further relief as is reasonable and just.

Respectfully submitted,

CONTECH-MSI CO.

By: s/Kim D. Mann

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VERIFICATION

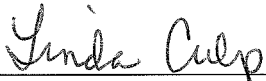
STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Christopher A. Kreid, do hereby certify that the statements set forth in paragraphs 3, 4, 5, and 6 of the foregoing document are true and correct.



Christopher A. Kreid

Subscribed and Sworn to before me this 17th
day of December, 2008.



Notary Public



CERTIFICATE OF SERVICE

I, Kim D. Mann, an attorney, certify that on December 17, 2008, I served a copy of the foregoing document on each party of record registered with the CM/ECF system by electronically filing it with the Clerk of the United States Bankruptcy Court for the District of Columbia, who will send notification of such filing to each of them, and by mailing a copy to each party of record not registered with the CM/ECF system, if any.

s/Kim D. Mann