

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

In re:	)	
	)	
FARMLAND INDUSTRIES, INC., et al.,	)	Case No. 02-50557-JWV
	)	Joint Administration
Debtors.	)	

**MEMORANDUM OPINION AND ORDER**

On October 17, 2002, Farmland Industries, Inc., et al., (“Debtors” or “Farmland”) filed a Motion for Order Authorizing Procedure for Determining Extent, Validity and Priority of Mechanics’ and Artisans’ Liens (“the Motion”) (Document # 1163). The Motion proposes a procedure for bringing and handling separate adversary actions in the Bankruptcy Court to resolve approximately 60 mechanics’ or artisans’ lien claims affecting eleven of the Debtors’ properties in five states, as opposed to allowing those lien actions to be brought in various state courts. On November 5, 2002, the Court held a hearing on the Motion. Numerous creditors filed objections to the Motion and appeared at the hearing, by counsel, and presented argument: Multicraft Construction Services, Inc., John J. Cruciani Utility Contractors, Inc., Alliance Process Partners, LLC, Logan and Company, Piping & Equipment Company, Inc., PSC Industrial Outsourcing, Inc., Mid-States Supply of Kansas, Inc., Saint-Gobain Ceramics and Plastics, Inc., Savoi Refractories, Cust-O-Fab, Inc., Modern Engineering & Piping, Atlas Steel Products, Inc., Coffeyville Valve, Inc., D & C Welding and Machine Service, Inc., Farris Heating and Air Conditioning, Inc., Fisher Incorporated, J-S Machine and Valve, Inc., Muller Construction, Inc., Taylor Crane & Rigging, Inc., Thompson Brothers Supply, Inc., Tool Supply, Inc., and Deutsche Bank. Other interested parties were also heard, as shown on the record.

After careful consideration of the Motion, the objections, and all of the arguments, and after a review of relevant case law, the Court is convinced that the Debtors’ Motion should be granted, with certain modifications as set out herein. The Court believes that the mechanics’ and artisans’ lien claims (the “Lien Claims”) present common issues of law and fact and will most likely

involve questions of bankruptcy law that the Bankruptcy Court is uniquely equipped to handle.<sup>1</sup> The Court believes that it would be in the best interests of the numerous lien claimants as well as the Debtors and other parties in interest in the bankruptcy proceedings – including the bondholders and the unsecured creditors – to have these issues heard on a “fast track” in the Bankruptcy Court, rather than allowing the lien claimants to pursue their actions in scattered state courts. Allowing the Lien Claims to be prosecuted in various state courts would unnecessarily delay the final resolution of those claims and would unnecessarily delay the reorganization of the Debtors and the administration of this estate.<sup>2</sup>

Because the Court believes that the Lien Claims should be resolved as expeditiously as possible, the Court is issuing this Memorandum Opinion and Order on an expedited basis so that the procedures being approved herein can be put into motion at an early date. Accordingly, the Court’s discussion of the issues will necessarily be brief.

#### **A. The Motion**

As already indicated, the Motion proposes to bring separate adversary actions (“Adversary Actions”) in the Bankruptcy Court to resolve approximately 60 Lien Claims. The Debtors have proposed that they would, most likely, file a separate adversary complaint with respect to each of the Debtors’ eleven properties that are subject to Lien Claims. The complaints would name as defendants all parties (“Lien Claimants”) claiming an interest in the particular property as disclosed by title reports or as known by the Debtors, as well as all secured lenders with an interest in the properties, and would seek a determination of the validity, priority, and extent of those claims pursuant to Fed. R. Bankr. Proc. 7001(2) and 28 U.S.C. § 157(b)(2)(K). The Motion sets out a timetable for handling the adversary actions, and suggests that the complaints could be heard in approximately one year from this date. The Court will generally approve the procedures suggested by the Debtors, but will tighten the timeline somewhat. First, however, we will address the major objections that have been raised to the procedures proposed.

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<sup>1</sup> For example, one issue may be whether the Lien Claims have priority over the claims of the lenders providing post-petition (DIP) financing to the Debtors.

<sup>2</sup> This Court has jurisdiction pursuant to 28 U.S.C. § 1334 and 157 and the Amended General Order of the United States District Court for the Western District of Missouri, as amended. Venue of these Chapter 11 bankruptcy cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**B. The concern that the Lien Claims might be barred or extinguished if not brought in the state courts within the periods established by state law.**

The Lien Claimants' major concern, it appears – and a major concern of the Court – is that requiring the Lien Claims to be adjudicated in the Bankruptcy Court and prohibiting the Lien Claimants from bringing their actions in the state courts might result in the Lien Claims being barred or extinguished because they would not (or might not) be brought in the appropriate state courts within the deadlines set by state mechanics' lien and artisans' lien statutes and procedural rules. However, the Court is satisfied that the Lien Claimants can be and are amply protected in this regard by the provisions of 11 U.S.C. §§ 108(c) and 546(b).

Section 108(c) of the Bankruptcy Code provides:

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of–

(1) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or

(2) 30 days after notice of the termination or expiration of the stay under section 362, 922, 1201, or 1301 of this title, as the case may be, with respect to such claim.

11 U.S.C. § 108(c).

Section 546(b) provides:

(b)(1) The rights and powers of a trustee under sections 544, 545, and 549 of this title are subject to any generally applicable law that--

(A) permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection; or

(B) provides for the maintenance or continuation of perfection of an interest in property to be effective against an entity that acquires rights in such property before the date on which action is taken to effect such maintenance or continuation.

11 U.S.C. § 546(b).

Although this issue has not been litigated frequently, numerous courts have nevertheless held without equivocation that the holders of alleged mechanics' liens can preserve their rights by providing the bankruptcy trustee (or, in this case, the Debtor-in-Possession, who possesses all the powers of a trustee pursuant to 11 U.S.C. § 1107(a)) with notice of their claims, as provided in § 546(b). As all those involved in this case well know, 11 U.S.C. § 362(a) prohibits a creditor, after a bankruptcy petition has been filed, from commencing or continuing any action or proceeding against a bankruptcy debtor that was or could have been commenced before the filing of the bankruptcy case, or from continuing with actions to create, perfect, or enforce any lien against property of the estate. 11 U.S.C. § 362(a)(1)-(8).<sup>3</sup> However, there is an exception: Section

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<sup>3</sup> Section 362 provides:

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning the debtor.

11 U.S.C. § 362(a).

362(b)(3) permits action under § 546(b) by providing that it is not a violation of the automatic stay for a creditor to “maintain or continue the perfection of, an interest in property to the extent that the trustee’s rights and powers are subject to such perfection under § 546(b).”

The Bankruptcy Court for the Southern District of New York recently dealt with this identical issue in *In re 360 Networks (USA) Inc.*, 282 B.R. 756 (Bankr.S.D.N.Y.2001). In that case, numerous creditors asserted mechanics’ liens against the debtors’ properties and sought leave to file lawsuits (called “Continuation Actions” by the Court) in the California and Oregon state courts to preserve their lien rights and claims. The creditors were fearful that their lien rights would be lost if the Continuation Actions were not filed in the state courts before the expiration of the applicable statutory deadlines. The Court said that the state court actions did not have to be filed within the state statutory deadlines to preserve the creditors’ lien rights:

To the extent the filing of a Continuation Action would constitute an act “for the maintenance or continuation of perfection of an interest in property,” within the meaning of §§ 546(b) and 362(b)(3), preservation of the claims could be accomplished by the transmittal of a notice. (Footnote omitted) Indeed, the purpose of § 546(b) is to “protect, in spite of the surprise intervention of a bankruptcy petition, those whom State law protects by allowing them to perfect their liens or interests,” through post-petition notice on liens recorded prior to the bankruptcy petition. (Footnote omitted) To the extent that a filing of a Continuation Action was something more than the “maintenance or continuation of perfection,” and constituted the “enforcement” of a lien - - and therefore might not be within the purview of §§ 546(b) and 362(b)(3) - - it was stayed by virtue of § 362(a) and the time period for commencement of such action was tolled under § 108(c). (Footnote omitted).

\* \* \* \*

It appears to this Court that the requirement of the filing of a Continuation Action is within the purview of § 546(b), and that holders of alleged mechanic’s liens can preserve their rights by notice without putting debtors to the burden and expense of litigation and motions for relief from the automatic stay.

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There is ample precedent for the proposition that where the filing of an enforcement action is required to preserve a lien under State law, § 546(b) allows, and indeed compels, creditors to give notice to a debtor instead of filing suit. (Footnote omitted) As for the Continuation Action itself, an alleged lienholder, who provided

§ 546(b) notice, would be fully protected by virtue of the fact that § 108(c) tolls the time for prosecuting the suit. (Footnote omitted)

*360 Networks*, 282 B.R. at 762-63.

Numerous courts have held that § 108(c) extends the state statutory period during which a lien creditor must file suit to enforce its lien so long as the creditor is barred by the automatic stay from enforcing its judgment against the property of the bankruptcy estate. It is abundantly clear that this is the law in Missouri and Illinois. In *Sachs Electric Company v. HS Construction Company*, 2002 WL 31197546 (Mo.App.2002), and *Major Lumber Company, Inc., v. G & B Remodeling, Inc.*, 817 S.W.2d 474 (Mo.App.1991), two districts of the Missouri Court of Appeals have unequivocally held that, where the automatic stay is in effect to prevent the filing of a mechanics' lien action within the time period prescribed by MO. REV. STAT. § 429.170, § 108(c) applies to extend the filing period as set out in § 108(c). The Illinois Supreme Court reached a similar conclusion in *Garbe Iron Works, Inc. v. Preister*, 99 Ill.2d 84, 75 Ill.Dec. 428, 457 N.E.2d 422 (Ill.1983). Other courts announcing similar conclusions include *Sirtos v. Moreno (In re Sirtos)*, 221 F.3d 1079 (9<sup>th</sup> Cir. 2000); *In re Hunters Run Ltd. Partnership*, 875 F.2d 1425 (9<sup>th</sup> Cir. 1989); *Valley Transit Mix of Ruidoso, Inc. v. Miller (In re Ruidoso Recreation, Inc.)*, 928 F.2d 354 (10<sup>th</sup> Cir. 1991); *In re Design Builders*, 18 Bankr. 392, 394-95 (Bankr. D. Idaho 1981); *In re Houts*, 23 Bankr. 705, 707 (Bankr. W.D. Mo. 1982); *In re New England Carpet Co.*, 26 Bankr. 934, 939 (Bankr. Vt. 1983); *In re Victoria Grain Co.*, 45 Bankr. 2, 6 (Bankr. Minn. 1984); and *In re Morton*, 866 F.2d 561, 566 (2d Cir.1989).

The language of § 108(c) is clear that, if applicable nonbankruptcy law “fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor,” and that period has not expired before the date of the filing of the bankruptcy petition, then that period does not expire until the end of that statutory period or 30 days after notice of the termination or expiration of the automatic stay, whichever comes later. 11 U.S.C. § 108(c). Where the statutory language is clear and unambiguous, the Court’s duty is to enforce it according to its terms. “[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute.” *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240-41, 109 S.Ct. 1026, 103 L.Ed.2d 290 (1989).

The Bankruptcy Code contains a coherent and consistent scheme for the preservation of mechanics' and artisans' liens in §§ 546(b) and 108(c). Because such actions against the debtor and property of the debtor are stayed by § 362(a), the Bankruptcy Code provides an alternate procedure to preserve those rights and interests. Therefore, the lien creditors may – and should – give the trustee or debtor-in-possession, as the case may be, notice of the creditors' claims pursuant to § 546(b), if they have not already done so. Once that is done, the claim is preserved. Furthermore, under § 108(c), the applicable nonbankruptcy law (i.e., state law) for the filing of actions to enforce the lien is extended.<sup>4</sup>

The Court further believes that the creditors' concerns in this regard are unfounded because the Debtors propose to bring the Adversary Actions to determine the validity, priority, and extent of the various liens before the expiration of the state statutory periods for the filing of the Lien Claims. In those actions, the Lien Claimants will be entitled and allowed to assert their Lien Claims, and the Court will enter judgment(s) on those issues. Thereafter, the Lien Claimants would most likely be barred from bringing any such actions in the state courts – after final judgments are entered by this Court – on principles of *res judicata* and collateral estoppel. They would not, of course, be barred from registering and enforcing this Court's judgments in the state courts, unless such actions are prohibited by the terms of a confirmed Chapter 11 plan.

### **C. The artisans' lien claims.**

Alliance Process Partners, L.L.C., d/b/a International Alliance Group ("IAG"), objected to the Motion because it does not wish to be joined in the mechanics' lien adversary actions. IAG has asserted two artisans' liens on the Debtors' Coffeyville, Kansas, refinery property, with respect to certain personal property and equipment that IAG installed at the refinery. IAG insists that it should be granted relief from the automatic stay so that it can proceed to enforce its artisans' liens in the Kansas state courts, since artisans' liens are enforceable under a different state statute than are mechanics' liens. Moreover, IAG argues that the personal property and equipment it

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<sup>4</sup> It is this Court's belief that § 108(c), by its express terms, acts to extend the state statutory periods for filing mechanics' lien and artisans' lien lawsuits, whether the state statutes are regarded as statutes of limitation or statutes of duration. The language of the statute makes no distinction between the two. See *Major Lumber*, 817 S.W.2d at 476; *Hunters Run*, 875 F.2d at 1427. Cf. *In re Birdview Satellite Communications, Inc.*, 90 B.R. 465 (Bankr.D.Kan.1988).

installed in the refinery are not fixtures and thus are not part of the real property, but rather are personal property that could be removed from the refinery without impairing its market value.<sup>5</sup>

The Court has previously refused to lift the automatic stay to allow IAG to pursue its artisans' liens in the Kansas state courts, and nothing has occurred to change the Court's mind. According to the statements of counsel, there are some 60 or more mechanics' liens being asserted against the Coffeyville refinery, as well as IAG's two artisans' liens. Allowing IAG to pursue its artisans' liens but prohibiting the other 60 or so Lien Claimants from pursuing their Lien Claims would be highly prejudicial and unfair to the other Lien Claimants. Allowing IAG to remove the personal property and equipment from the refinery would likewise be prejudicial and unfair to the other Lien Claimants, as well as to the interests of the Debtors and the bankruptcy estate. IAG's objections are without merit.

#### **D. Objections to the Debtors' proposed schedule.**

Virtually all of the Lien Claimants have objected that the Debtors' proposed timeline for the filing of the Adversary Actions, for the completion of discovery, and for the trial of any unsettled Lien Claims is too long. This is understandable, considering the number of claims and the large amounts of money involved (several million dollars). On the other hand, *all* parties, including the Debtor, must have an adequate amount of time to obtain title reports, to review all lien documents, and conduct the discovery necessary to prepare adequately for trial. Some time must be allowed also for the parties to conduct at least a minimal amount of settlement discussion, because many of the Lien Claims probably can – and should – be resolved without the necessity of trial. In fact, while it is generally supportive of the Debtors' Motion, Deutsche Bank Trust Company Americas ("Deutsche Bank"), an agent for the prepetition and DIP lenders, urges a longer discovery period than that proposed by the Debtors, because of the number of parties likely to be involved in the litigation.

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<sup>5</sup> It should be noted that IAG's claim is for more than \$5,000,000.00, so it is safe to conclude that the personal property and equipment it installed at the refinery is of more than minimal or inconsequential value. Based on the arguments of counsel at this and previous hearings, it appears to the Court that the refinery could not operate if this equipment were removed. It is far-fetched to argue that removal of such equipment would not impair the value of the property; surely, an operating refinery is more valuable than one that is not operating.



The Court is aware of and sensitive to all of these concerns. Accordingly, the Court will establish a timeline that it believes will enable the parties to do the necessary research and discovery, conduct settlement negotiations, and prepare for trial, but at the same time bring all unsettled Lien Claims to trial and final judgment(s) in an expeditious manner.

Therefore, the following procedures and schedule will be implemented for the conduct of the Adversary Actions to determine the extent, validity and priority of the Lien Claims:

1. Adversary complaints shall be filed by the Debtors no later than January 15, 2003. This will allow ample time for the Debtors to obtain and review title reports on the properties and determine who must be named as defendants in the actions. The Court would urge – but not require – the Lien Claimants to provide the Debtors’ attorneys with copies of their documentation immediately so that the Debtors’ attorneys can begin their review of the documentation at the earliest possible date.
2. Discovery shall be completed by April 15, 2003.
3. Dispositive motions shall be filed by May 15, 2003.
4. Trial of the actions would take place in June-August, 2003, depending on the amount of time required for each action.
5. Negotiations and settlement discussions should commence as soon as the parties have exchanged sufficient documentation to intelligently discuss settlement. If requested in specific instances, the Court may order mediation or binding arbitration, if agreed to by the parties, or may consider other alternative dispute resolution procedures.

Therefore, on the basis of the foregoing discussion, it is

ORDERED that the Debtors’ Motion for Order Authorizing Procedure for Determining Extent, Validity and Priority of Mechanics’ and Artisans’ Liens be and is hereby GRANTED, except as modified herein. It is

FURTHER ORDERED that the objections filed by the various creditors as set out above be and are hereby OVERRULED, except to the extent set out hereinabove. It is

FURTHER ORDERED that the deadlines under applicable state mechanics’ and artisans’ lien statutes to commence civil actions in state court against the Debtors and/or the Debtors’

properties are extended by 11 U.S.C. § 108(c) so long as the automatic stay imposed by § 362 is in effect. It is

FURTHER ORDERED that the automatic stay of § 362 shall continue to prohibit the filing or prosecution of state law actions to enforce or foreclose mechanics' liens and/or artisans' liens against any of the Debtors' properties until further order of this Court, subject to the condition that the Debtors shall commence the Adversary Actions in this Court as provided herein. It is

FURTHER ORDERED that, although the Motion is granted in part, the schedule proposed therein for the exchange of documents, settlement negotiations, and trial is not adopted by this Court. Instead, this Court reserves entering a scheduling order, if appropriate, after the Adversary Actions are commenced. In the meantime, the Court strongly recommends that all parties to the Adversary Actions promptly exchange relevant information, attempt to stipulate to material facts, enter into settlements, whenever possible, submit summary judgment motions designed to resolve and/or narrow the issues and, be prepared to commence the trial of remaining issues as early as June 2003. The Court will enter orders scheduling the trial of each Adversary Action in accordance with the readiness of the parties. It is

FURTHER ORDERED that, in the event the Court determines at any time that resolution of the Adversary Actions would be expedited by the entry of a scheduling order, an order mandating alternative dispute resolution, and/or the appointment of a Special Master, the Court may do so on its own motion or pursuant to the motion of any party to the Adversary Actions.

SO ORDERED this 8<sup>th</sup> day of November, 2002.

/s/ Jerry W. Venters  
United States Bankruptcy Judge

Laurence M. Frazen to serve all defendants not  
receiving notice electronically.