

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

In re:)	
)	
PATRIOT COAL CORPORATION, et al.,	)	Cause No.: 12-51502-659
	)	CHAPTER 11
Debtors,)	
	)	JOINTLY ADMINISTERED
	)	Honorable Kathy Surratt-States
ARTISAN CONTRACTING, INC.)	
	)	MOTION FOR RELIEF
Movant,	)	FROM AUTOMATIC STAY
)	
v.)	
	)	Hearing Date: April 23, 2013
HERITAGE COAL, LLC	)	Hearing Time: 10:00 a.m. CDT
	)	Location: Courtroom 7 North
Respondent.	)	Response Due: April 20, 2013
)	
Debtors.)	

NOTICE AND MOTION FOR RELIEF FROM THE AUTOMATIC STAY

PLEASE TAKE NOTICE THAT Movant's Motion for Relief from the Automatic Stay will be presented for hearing on April 23, 2013, at 10:00 a.m., in Bankruptcy Courtroom Seventh Floor North, in the Thomas F. Eagleton U.S. Courthouse, 111 South Tenth Street, St. Louis, Missouri, 63102.

WARNING: ANY RESPONSE OR OBJECTION TO THIS MOTION MUST BE FILED WITH THE COURT BY APRIL 20, 2013. (SEE L.B.R. 9013-1 B.) A COPY MUST BE PROMPTLY SERVED UPON THE UNDERSIGNED. FAILURE TO FILE A TIMELY RESPONSE MAY RESULT IN THE COURT GRANTING THE RELIEF REQUESTED PRIOR TO THE HEARING DATE.

**MOTION FOR RELIEF FROM THE AUTOMATIC STAY
TO ENFORCE MECHANIC'S LIEN**

COMES NOW Artisan Contracting, Inc. ("Artisan"), by and through its undersigned counsel, and for its Motion for Relief from Automatic Stay states as follows:

Relief Requested

1. By this motion (the “**Motion**”), Artisan respectfully moves this Court, pursuant to 11 U.S.C. § 362(b)(3) and (d)(1) and Local Rule 4001-1 to enter an Order allowing Movant to enforce its interest in certain real property located in Kentucky in which Heritage Coal Company, LLC (“**Heritage**”), one of the debtors in this case, has an interest. Artisan seeks permission from this Court to lift the automatic stay to allow it to file a lawsuit to enforce its Mechanic’s Lien as required by Kentucky law.

INTRODUCTION

2. On July 9, 2012 (the “**Petition Date**”), Patriot Coal Corporation (“**Patriot**”) along with certain affiliates (hereafter collectively referred to as “**Debtors**”) including, but not limited to, Heritage, filed their respective voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of New York.

3. The Debtors continue to operate their respective businesses and manage their respective assets as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4. The Debtors cases are being jointly administered by the Court pursuant to a Joint Administration order dated July 10, 2012. [Docket No. 30].

JURISDICTION

5. This case was transferred from the United States Bankruptcy Court for the Southern District of New York pursuant to 28 U.S.C. § 1412 by order of Judge Shelley C. Chapman dated November 27, 2012.

6. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A), (G) and (O).

7. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§1408 and 1409.

8. The statutory predicate for the relief sought herein is 11 U.S.C. §362(b)(3) and (d)(1) .

BACKGROUND

10. On or about January 22, 2009, Artisan entered into a Master Performance Agreement (“MPA”) with Patriot as agent for its subsidiary, Heritage.

11. Following the execution of the MPA, Artisan entered into various purchase orders with Heritage, and, as a result of such purchase orders, Artisan performed certain labor and provided materials for certain improvements on three parcels of property in which Heritage has an interest and which properties are known as the Camp 9 office/lab/bathhouse and/or McClure Chapel Road lot in Morganfield, Kentucky and the River Facility in Uniontown, Kentucky (collectively the “**Property**”).

12. The work performed by Artisan included the repair, re-fabrication and servicing of large equipment and machinery at the Property and the outstanding balance due and owing to Artisan for the work it performed for Heritage, and for which it has not been paid, is \$538,852.39.

13. As a result, within the time required by Kentucky law, Artisan filed its Mechanic’s Lien Statement in the amount of \$538,852.39 with the Union County Clerk on November 20, 2012 as Document No. 001069400015 (“**Mechanic’s Lien**

Statement”) which is referred to herein as **Exhibit 1**. In addition, Artisan sent notice of the Mechanic’s Lien Statement to Heritage as required by Kentucky law (“**Notice of Mechanic’s Lien**”) and such Notice of Mechanic’s Lien is referred to herein as **Exhibit 2**.

14. On January 4, 2013, Artisan filed its Amended and Supplemental Verified Mechanic’s Lien filed with the Union County Clerk as Document No. 001077820007 (“**Amended Mechanic’s Lien Statement**”) and filed the Corrected Amended and Supplemental Verified Mechanic’s Lien with the Union County Clerk on January 7, 2013 as Document No. 001077930007 (“**Corrected and Amended Mechanic’s Lien Statement**”). The Amended Mechanic’s Lien Statement is referenced herein as **Exhibit 3** and the Corrected and Amended Mechanic’s Lien Statement is referenced herein as **Exhibit 4**. The Amended Mechanic’s Lien Statement was filed to add the legal description of a small parcel of property which was not included in the Mechanic’s Lien Statement. The Corrected and Amended Mechanic’s Lien Statement was filed because two lines at the top of page two were inadvertently cut off on the copy of the Amended Mechanic’s Lien Statement that was filed. All exhibits are summarized in the Exhibit Summary attached hereto and incorporated herein by reference.

15. In order to enforce its Mechanic’s lien, however, Artisan is required to file suit (“**Enforcement Action**”) within twelve (12) months of filing the Mechanic’s lien pursuant to KY. REV. STAT. §376.090. If Artisan fails to do so, the Mechanic’s lien will be “deemed dissolved.”

16. Section 376.090 states: “Any lien provided for in KRS 376.010 shall be deemed dissolved unless an action is brought to enforce the lien within twelve (12)

months from the day of filing the statement in the clerk's office, as required by KRS 376.080." KY. REV. STAT. §376.090.

AUTOMATIC STAY

17. Section 362(a) of the Bankruptcy Code defines the scope of the automatic stay in pertinent part as follows:

"[A] petition filed under ... this title ... operates as a stay ... of –

- (1.) The commencement or continuation ... 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;
- (4.) Any act to create, perfect or enforce against property of the debtor 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.

18. Although Sections 362(a)(4) and (5) stay any act to create, perfect or enforce a lien, Section 362(b)(3) excludes from the automatic stay "any act to perfect, or 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 section 546(b) [of the Code]"

19. Section 546(b) provides that the rights and powers of a trustee ... 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).

20. Kentucky law meets the requirement of Section 546(b) in that it provides that a mechanic's lien will relate back to the date that: (1) work was first performed at the

Property or (2) materials were first delivered and will be superior to any encumbrance created subsequent to the beginning of the work or the furnishing of the materials. KY. REV. STAT. §376.010(1).

21. Section 376.010(1) states, in relevant part, as follows: “The lien on the land or improvements shall be superior to any mortgage or encumbrance created subsequent to the beginning of the labor or the furnishing of the materials, and the lien, if asserted as hereinafter provided, shall relate back and take effect from the time of the commencement of the labor or the furnishing of the materials.” KY. REV. STAT. §376.010(1).

22. Artisan performed all of the labor and delivered all of the materials, for which it seeks payment for, prior to the Petition Date.

23. Section 362(d) of the Bankruptcy Code provides, in pertinent part, as follows:

(d.) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying or conditioning such stay ...

(1.) for cause, including the lack of adequate protection of an interest in property of such party in interest.

11 U.S.C. § 362(d)(1).

24. The bankruptcy court “shall” lift the automatic stay for “cause.” 11 U.S.C. § 326(d)(1). If a creditor seeking relief from the automatic stay makes a *prima facie* case of “cause” for lifting the stay, the burden going forward shifts to the debtor pursuant to Bankruptcy Code § 362(g). See In re 234-6 West 22nd St. Corp., 214 B.R. 751, 756 (Bankr. S.D.N.Y. 1997).

25. The Bankruptcy Code does not define “cause.” Instead, whether “cause” exists to lift the automatic stay should be determined on a case by case basis. See Izzarelli v. Rexene Prod. Co. (In re Rexene Prod. Co.), 141 B.R. 574, 576 (Bankr. D. Del. 1992). See also, In re Texas State Optical, Inc., 188 B.R. 552, 556 (Bankr. E.D.Tex. 1995) (finding that “cause” for modification of the automatic stay is “an intentionally broad and flexible concept that permits ... [a] [b]ankruptcy [c]ourt, as a court of equity, to respond to inherently fact-sensitive situations.”) Courts determine what constitutes “cause” based on the totality of the circumstances in each particular case. Baldino v. Wilson (In re Wilson), 116 F.3d 87, 90 (3d Cir. 1997).

26. In re Rexene provides a “balancing test” to determine whether cause exists to lift the automatic stay. 141 B.R. at 576. Under Rexene, the balancing test looks at three factors to decide whether to lift the automatic stay, including:

- (a.) whether prejudice will be caused to the estate or the debtor;
- (b.) whether hardship to the movant from continuing the stay outweighs any hardship to the debtor; and
- (c.) whether the movant has a reasonable probability of prevailing on the merits of the suit. Id.

27. Artisan satisfies the three factors set forth in Rexene. Artisan seeks relief simply to protect its status as a secured creditor by filing an Enforcement Action to enforce its mechanic’s lien as required by Kentucky law.

28. The Enforcement Action will not cause prejudice to the debtor or the estate as there does not appear to be any dispute about the work that Artisan performed, the quality of the work it performed, the amount of money owed to Artisan or the

agreements between Artisan and debtor and therefore, it is unlikely that any significant discovery would need to be conducted.

29. With respect to the second Rexene factor, the hardship to Artisan from continuing the stay strongly outweighs any possible hardship to the Debtors. Were Artisan not granted relief from the stay, it would likely be unable to enforce its mechanic's lien against the Property within the relevant time period as required by Kentucky law. While 11 U.S.C. §108(c) suggests that the Kentucky time limitation on filing an Enforcement Action may be tolled, Artisan does not have comfort that the Kentucky court will agree. In addition, the security that Artisan has in the form of its perfected mechanic's lien is in the equipment and the mineral deposits which currently exist on the Property. Needless to say, those interests are being depleted on a daily basis as the equipment is being used and subjected to the harsh conditions within the coal processing plant and the mineral reserves are being depleted. While Artisan is not in a position to know the value of the equipment and mineral reserves, it is fair to assume that such value is diminishing and will continue to do so. As a result, the hardship to Artisan in maintaining the Automatic Stay outweighs any burden on the Debtor from allowing Artisan to proceed with its state law Enforcement Action in Kentucky.

30. With respect to the third Rexene factor, Artisan has a reasonable probability of prevailing on the merits with its mechanic's lien. Upon information and belief, Debtors do not challenge the quality of the work provided or the amount of the outstanding balance owed to Artisan. See In re: SCO Group, Inc., 395 B.R. 852, 859 (Bankr. D. Del. 2007) (“Even a slight probability of success on the merits may be sufficient to support a lifting of the automatic stay in an appropriate case”).

31. For the reasons stated herein, Artisan believes it has provided ample cause to lift the automatic stay and allow it to file an Enforcement Action to enforce its Mechanic's Lien in state court in Kentucky.

CONCLUSION

WHEREFORE, Artisan request that this Court enter an Order modifying the automatic stay with respect to Artisan, allowing it to file and proceed with its Enforcement Action in Kentucky state court, allowing Artisan to liquidate its claim against Heritage by obtaining a judgment in the Enforcement Action but prohibiting Artisan from seeking to collect on any judgment it might obtain outside of the bankruptcy court process, and granting such other and further relief as this Court may deem just and proper under the circumstances.

Date: March 7, 2013

HOCKENSMITH McKINNIS HAMILL, P.C.

/s/ Paul C. Hamill

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Respondent.)	

EXHIBIT SUMMARY

Pursuant to the Local Rules of Bankruptcy Procedure, the following exhibits are referenced in support of the Motion for Relief from the Automatic Stay. Copies of these exhibits will be provided as required by the Local Rules:

Exhibit 1: Artisan Contracting, Inc.'s Verified Mechanic's Lien Statement in the amount of \$538,852.39 filed with the Union County Clerk on November 20, 2012 and labeled Document No. 001069400015 for Property referred to as Camp 9 Offic/Lab/Bathhouse and/or McClure Road lot, Marganfield, Union County Kentucky, Parcel Nos. 86-27-02, 87-27-01 and 87-27 AND property known as the River Facility, Uniontown, Union County, Kentucky, Parcel No. 59-12 (the "**Property**").

Exhibit 2: Notice of Mechanic's Lien Claim sent to Heritage Coal, LLC dated November 21, 2012.

Exhibit 3: Artisan's Amended and Supplemental Verified Mechanic's Lien on the Property filed with the Union County Clerk on January 4, 2013 as Document No. 001077820007.

Exhibit 4: Artisan's Corrected Amended and Supplemental Verified Mechanic's Lien on the Property filed with the Union County Clerk on January 7, 2013 as Document No. 001077930007.

Date: March 7, 2013

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