

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FILED
O'clock & min. **11**

IN RE:

Georgetown Steel Company, LLC,

Debtor.

ENTERED

AUG 19 2005

C/A No. 03-13156-W

Chapter 11

AUG 19 2005

United States Bankruptcy Court
Columbia, South Carolina (11)

K. E. P. JUDGMENT

Based upon the Findings of Fact and Conclusions of Law as recited in the attached Order of the Court, the Liquidating Trustee may avoid CPI's mechanic's lien under §§ 544(a)(3) & 545(2), or alternatively under § 544(a)(3); and thus, CPI's claim shall be treated as a class 7 general unsecured claim under Debtor's confirmed Chapter 11 plan.


UNITED STATES BANKRUPTCY JUDGE

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No. 03-13156-01

Chapter 11

ORDER

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States Bankruptcy Court
Columbia, South Carolina (11)

This matter comes before the Court upon the Third Omnibus Objection to Claims ("Third Omnibus Objection") filed by the Liquidating Trustee¹ for Georgetown Steel Company, LLC ("Debtor"). The Liquidating Trustee objected to the amount and secured status of Carolina Piping Systems, Inc.'s ("CPI") claim,² and CPI filed a timely response. Thus, the central issue the Court must resolve is whether CPI's claim is secured in the amount asserted in its proof of claim. Accordingly, in light of the evidence and legal arguments asserted by the Liquidating Trustee and CPI, the Court makes the following Findings of Fact and Conclusions of Law.³

FINDINGS OF FACT

1. From June 30, 2003 to October 2, 2003, CPI installed or constructed various piping, backflow preventers, motor pumps, withdrawal pipes, valves, tanks and accompanying materials on Debtor's real property. Debtor and CPI intended for these items to become part of Debtor's real estate. CPI also provided related maintenance services that Debtor requested. Upon the completion of certain construction projects,

¹ Pursuant to the Court's order confirming Debtor's Chapter 11 plan and the terms of Debtor's confirmed Chapter 11 plan, the Liquidating Trustee assumed Debtor's obligations to make distributions under the confirmed plan, and assumed all rights and powers of Debtor.

² Pursuant to Court order, the Liquidating Trustee set aside certain sale proceeds that were subject to claims litigation. CPI asserts a secured interest in such proceeds.

³ To the extent any of the following Findings of Fact constitute Conclusions of Law, they are adopted as such, and to the extent any Conclusions of Law constitute Findings of Fact, they are also adopted as such.

installation projects or maintenance services, CPI would bill Debtor for each completed task separately.

2. On October 21, 2003, Debtor filed a voluntary petition for Chapter 11 bankruptcy relief with this Court.

3. At the time of the Debtor's bankruptcy filing, Debtor was delinquent in making payments on invoices that CPI charged Debtor.

4. On November 19, 2003, CPI filed a Notice and Certificate of Mechanic's Lien ("Notice of Mechanics Lien") in the Office of the Register of Deeds of Georgetown County.

5. On February 13, 2004, CPI filed proof of claim number 494, in which CPI asserted a secured claim for \$55,866.97 against Debtor's bankruptcy estate.

6. On January 14, 2005, Debtor's Liquidating Trustee filed the Third Omnibus Objection, in which he objected to the amount and secured status of CPI's claim.

7. CPI filed a response and disputed the Liquidating Trustee's objection.

8. On May 2, 2005, the Liquidating Trustee filed a complaint against CPI in order to institute an adversary proceeding to avoid the mechanic's lien that CPI asserted in its proof of claim. In response, CPI filed a timely answer. However, pursuant to a joint stipulation filed by the Liquidating Trustee and CPI, the parties agree that the Court's adjudication of the Third Omnibus Objection shall bind the parties, and resolve the adversary proceeding.

CONCLUSIONS OF LAW

In this matter, the Liquidating Trustee contends that, pursuant to 11 U.S.C. §§ 544(a)(3) & 545,⁴ he may avoid CPI's mechanic's lien on property of the Debtor's estate because CPI failed to perfect its mechanic's lien by the prepetition filing of a Notice of Mechanics Lien with the register of deeds.

CPI contends otherwise, and attacks the Liquidating Trustee's §§ 544(a)(3) & 545 authority on the following grounds:

- 1) Since CPI provided fixtures to Debtor's real estate, § 544(a)(3) may not be used to avoid CPI's lien;
- 2) The Liquidating Trustee cannot obtain the status of bona fide purchaser under §§ 544(a)(3) & 545 because the Court should impute Debtor's actual knowledge of CPI's claims to the Liquidating Trustee; and
- 3) Pursuant to § 546(b) and § 108(c), the Court should allow CPI's postpetition filing of its Notice of Mechanics Lien, and provide CPI's mechanic's lien priority status.

In order to determine the issues presented, it is necessary to examine South Carolina's mechanic's lien statute, South Carolina's common law concerning the priority of bona fide purchaser interests and mechanic's liens, South Carolina's recording statute, and the structure of §§ 544(a)(3), 545, 546(b) and § 108(c).

I. The Liquidating Trustee's Avoiding Powers under §§ 544(a)(3) & 545(2)

11 U.S.C. § 544(a)(3) provides as follows:

- (a) The trustee shall have, as of the commencement of the case, and without regard to any knowledge of the trustee or

⁴ Hereinafter, internal references to the Bankruptcy Code (11 U.S.C. § 101, *et seq.*) shall be made by section number only.

of any creditor, *the rights and powers of, or may avoid any transfer of property of the debtor or any obligation that is avoidable by-*

* * * *

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

Although federal law provides the Liquidating Trustee with the ability to avoid CPI's mechanic's lien, whether the Liquidating Trustee may avoid CPI's mechanic's lien depends upon whether the rights and powers conferred by § 544(a)(3) take priority over CPI's mechanic's lien under state law. See In re A& N Lumber Co., 266 B.R. 337, 340 (Bankr. M.D.N.C. 2001) ("The substance of the Trustee's rights and powers under section 544(a), which may result in the avoidance of liens, is determined by applicable state law. Specifically, the Trustee's strong-arm powers are defined by the law of the situs where the subject property is located.") (internal quotations omitted).

Section 545 provides that the trustee may avoid statutory liens on debtor's property if such lien "is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such purchaser exists." 11 U.S.C. § 545(2). In order to determine whether a statutory lien is perfected or enforceable against the hypothetical bona fide purchaser contemplated by § 545(2), the Court must also refer to state law. In re America West Airlines, Inc., 217 F.3d 1161, 1164 n. 2 (9th Cir. 2000). See also United States v. Hunter (In re Walter), 45 F.3d 1023, 1029 (6th Cir. 1995) (noting that whether a bona fide purchaser may avoid a statutory lien is matter left to state law if the statutory lien in question is created under state law) In re Enron, 294 B.R. 232,

237 (Bankr. S.D.N.Y. 2003) (noting that the Supreme Court determined that property interests are created and defined by state law (citing Butner v. United States, 440 U.S. 48 (1979)). Accordingly, a close examination of applicable South Carolina law is necessary.

Under South Carolina law, "[a] mechanic's lien arises, inchoate, when labor is performed or material furnished." Preferred Savings and Loan Assoc., Inc. v. Royal Garden Resort, Inc., 301 S.C. 1, 4-5, 389 S.E.2d 853, 854 (1990). "However, to be valid, the lien must be perfected and enforced in compliance with the Mechanic's Lien Statutes." Id. To validate and enforce its mechanic's lien under applicable South Carolina law, CPI was required to (1) serve Debtor notice of its mechanic's lien and record a certification of lien within ninety (90) days after completing work performed for Debtor, and (2) institute a suit to foreclose the lien within six months of filing the certificate of lien. See Preferred Savings and Loan Assoc., Inc. v. Royal Garden Resort, Inc., 301 S.C. 1, 4-5, 389 S.E.2d 853, 854-55 (1990) (noting that S.C. Code Ann. § 29-5-90 mandates service and filing of a certificate of lien and holding that the six month limitations period for enforcing a mechanic's lien "necessarily commences *no later than* the date the certificate of lien is filed"). See also S.C. Code Ann. § 29-5-90 (Law. Co-op. 1991 & West Supp. 2004) (requiring serving and filing of a statement of amounts due within ninety (90) days of completing work or providing materials to a debtor in order to enforce a mechanic's lien); S.C. Code Ann. 29-5-120 (Law. Co-op. 1991) (requiring a mechanic's lien holder to bring a foreclosure suit within six month of completing work or providing materials in order to keep a mechanic's lien valid and enforceable). Furthermore, under South Carolina's recording statute, the holder of a mechanic's lien must record its notice of mechanic's lien before a subsequent purchaser for value without

notice records a deed in order affect the rights of the subsequent purchaser. S.C. Code Ann. § 30-7-10 (Law. Co-op. 1991 & West Supp. 2004). See also The Lite House, Inc. v. J.C. Roy Company, Inc., 309 S.C. 50, 55, 419 S.E.2d 817, 819 (Ct. App. 1992) (holding that a creditor with a mechanic's lien may foreclose its lien against a subsequent purchaser for value "only if the mechanic records the certificate of lien before the subsequent purchaser records the deed.").

Pursuant to § 544(a)(3), the Liquidating Trustee is deemed to hold a recorded interest in Debtor's real property at the commencement of Debtor's bankruptcy case on October 21, 2003. See 11 U.S.C. § 544(a)(3) (providing that a trustee has the rights of a bona fide purchaser of debtor's real property that holds a perfected interest at the commencement of debtor's bankruptcy case). Therefore, under S.C. Code Ann. § 30-7-10, the Liquidating Trustee's bona fide purchaser interests in Debtor's real property takes priority over interests recorded after October 21, 2003. See S.C. Code Ann. 30-7-10 ("In the case of a subsequent purchaser of real estate . . ., the instrument evidencing the subsequent conveyance . . . must be filed for record in order for its holder to claim under this section as a . . . purchaser for value without notice, and the priority is determined by the time of filing for record."). In this case, CPI recorded its Notice of Mechanic's Lien at the Registrar of Deeds for the County of Georgetown on November 19, 2003. Since the Liquidating Trustee's rights as a bona fide purchaser were deemed perfected on October 21, 2003 under § 544(a)(3), CPI's mechanic's lien did not encumber the Liquidating Trustee's interests in Debtor's real property under S.C. Code Ann. § 30-7-10. See S.C. Code Ann. § 30-7-10 (providing that mechanic's liens "are valid so as to affect the rights of subsequent . . . purchasers for valuable consideration without notice,

only from the day and hour they are recorded' and that "priority is determined by the time of the filing for record") (emphasis added).

In light of the foregoing, the Court concludes that in order to assert a valid and enforceable mechanic's lien in Debtor's real property at the commencement of Debtor's bankruptcy case, CPI should have filed and served its Notice of Mechanic's Lien before Debtor commenced its bankruptcy case. Because CPI filed its Notice of Mechanic's Lien postpetition, the avoidance powers and rights that the Liquidating Trustee asserts under § 544(a)(3) have priority over CPI's lien.

Along with the avoidance powers expressed in § 544(a)(3), the Liquidating Trustee also contends that he may avoid CPI's mechanic's lien pursuant to § 545(2).

Section 545(2) in pertinent part provides as follows:

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien-

(2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such purchaser exists

Section 101(53) of the Bankruptcy Code defines a "statutory lien" as a "lien arising solely by force of a statute on specified circumstances or conditions." 11 U.S.C. § 101(53). In Clo-Car Trucking. Co., Inc. v. Cliffure Estates of South Carolina, Inc., the South Carolina Court of Appeals stated, "[b]ecause a mechanic's lien exists only by virtue of statute, one's right to a mechanic's lien is wholly dependent upon the language of the statute creating it." 282 S.C. 573, 575, 320 S.E.2d 51, 53 (Ct. App. 1984). Therefore, since CPI's mechanic's lien "exists only by virtue of statute," CPI's lien is a statutory lien subject to avoidance under § 545.

As stated earlier, in order to assert a valid or enforceable mechanic's lien against competing interests at the commencement of Debtor's case under state law, CPI should have filed its Notice of Mechanic's Lien prepetition. Since the Liquidating Trustee holds the status of a bona fide purchaser that has perfected a transfer of Debtor's real property at the *commencement* of Debtor's case pursuant to § 544(a)(3), the Liquidating Trustee is treated as a prior recorded interest holder under state law. Pursuant to South Carolina's recording statute, a creditor with a mechanic's lien has priority only if it records its lien pursuant to state law *before* that subsequent purchaser records its deed. CPI failed to file its Notice of Mechanic's lien prepetition. Therefore, CPI's mechanic's lien can be avoided by virtue of the Liquidating Trustee's avoidance powers under § 544(a)(3) and § 545(2).⁵

II. CPI's Arguments that Sections 544(a)(3) & 545 are Inapplicable

CPI made several arguments in which it contended that § 544(a)(3) and § 545 are unavailable to the Liquidating Trustee. The Court shall now address those contentions in turn.

⁵ The Court notes that some courts have utilized solely the provisions of § 544 to avoid statutory liens. See In re LMS Holding Co., 50 F.3d 1526, 1527 n.2 (10th Cir. 1995) ("In their summary judgment motion, debtors relied on 11 U.S.C. § 544; the bankruptcy and district courts also applied § 544. While we believe that the more specific provision for avoidance of statutory liens under § 545 is applicable here, either section provides the same avoidance power.") (emphasis added); In re Enron Corp., 294 B.R. 232 (Bankr. S.D.N.Y. 2003) (citing § 544(a) during its analysis of avoidance powers under § 545(2)); In re Ian Homes, Inc., 126 B.R. 933, 934-35 (Bankr. D. Md. 1991) (applying trustee's strongarm powers under § 544(a) to deny relief from stay to a creditor holding a statutory lien); Great Southwest Supply Company of Texas, Inc. v. Ernest & Associates, Inc. (In re Ernest & Assocs. Inc.), 59 B.R. 495, 497-98 (Bankr. W.D. Tex. 1985) (holding that creditor's failure to perfect a statutory lien prepetition subjected the lien to avoidance under § 544(a)(3) and § 545(2)). Neither party raised the issue of which statutory provisions should specifically apply, and the parties addressed avoidance under both § 544 and § 545. Accordingly, it appears that either the combination of § 544 and § 545 or § 544 alone is sufficient to provide avoidance as addressed herein.

A. Section 544(a)(3)'s Application & Security Interests in Fixtures

CPI contends that the Liquidating Trustee may not avoid CPI's mechanic's lien under § 544(a)(3) because § 544(a)(3) excludes security interests in fixtures from the Liquidating Trustee's avoidance powers by stating, "[t]he trustee shall have . . . the rights and powers of, . . . a bona fide purchaser of real property, *other than fixtures*, from the debtor" 11 U.S.C. § 544(a)(3). CPI cites to Lucero v. Green Tree Financial Servicing Corp. (In re Lucero), 203 B.R. 322 (B.A.P. 10th Cir. 1996) for the proposition that the Liquidating Trustee cannot avoid CPI's secured interests in the fixtures installed on Debtor's real property. However, Lucero focused upon the structure and application of the unique provisions of New Mexico statutes that dealt with perfection of fixtures, and in the matter before the Court, CPI proceeded under the procedure for the filing and perfection of such lien under the statutory provisions for mechanics' liens and not those governing "fixture filings."⁶ Further, upon review of the facts and legal conclusions made in Lucero, the Court notes that unlike CPI, the creditor in Lucero perfected a security interest in the fixture at issue *before* debtors' bankruptcy filing. In this case, the Liquidating Trustee asserts § 544(a)(3) because CPI's mechanic's lien is an encumbrance upon Debtor's interests in real property.

Under South Carolina law, a person entitled to a mechanic's lien "shall have a lien upon the building or structure *and upon the interest of the owner of the building or structure in the lot of land upon which it is situated* to secure the payment of the debt due to him." S.C. Code Ann. § 29-5-10 (Law. Co-op. 1991 & West Supp. 2004) (emphasis added). The South Carolina Court of Appeals has also recognized that a mechanic's lien

⁶ "A 'fixture filing' is the filing, in the office where a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of Section 36-9-402(5). S.C. Code Ann. § 36-2A-309 (Law. Co-op. 2003).

is an encumbrance upon all of a debtor's real property interests in the land upon which improvements giving rise to the mechanic's lien are situated. See A.V.A Construction Cow. v. Santee Wando Construction, 303 S.C. 333, 336, 400 S.E.2d 498, 500 (Ct. App. 1990) (holding that a lower court erred in concluding that a mechanic's lien attached only to the ground upon which certain structures were erected, rather than debtor's entire acreage). Because CPI failed to perfect its lien interest prepetition and CPI's lien is an encumbrance on Debtor's real property interests under South Carolina law, the law and factual circumstances at issue in this case are clearly distinguishable from the law and facts at issue in Lucero. Accordingly, the reasoning in Lucero appears distinguishable from the issue before this Court.

B. Imputed Knowledge and the Liquidating Trustee's Status as a Bona Fide Purchaser under §§ 544(a)(3) & 545

CPI also contends that the Liquidating Trustee cannot be considered a bona fide purchaser under § 544(a)(3) because the Court should impute Debtor's actual knowledge of CPI's claims to the Liquidating Trustee pursuant to the Fourth Circuit's holding in Pyne v. Hartman Paving Inc., 745 F.2d 307 (4th Cir. 1984). However, this Court has previously rejected the application of Hartman Paving because developments in the law have led to widespread criticism and rejection of Hartman Paving. See Dunes Hotel Assocs. v Hyatt Corp. (In re Dunes Hotel Assocs.), 194 B.R. 967,979-82 (Bankr. D.S.C. 1995) (citing numerous authorities criticizing, rejecting or holding contrary to Hartman Paving). Since this Court rejected Hartman Paving in Dunes Hotel Assocs, the Court concludes that Hartman Paving is not controlling in this matter. Therefore, in light of the foregoing, the Liquidating Trustee may utilize § 544(a)(3) to avoid CPI's mechanic's lien.

With respect to the Liquidating Trustee's assertion of § 545, CPI contends that the Court should impute Debtor's knowledge of CPI's claims to the Liquidating Trustee because § 545(2) lacks the "without regard to any knowledge of the trustee or of any creditor" language found in § 544(a).⁷ Compare 11 U.S.C. § 544(a)(3) ("The trustee shall have, as of the commencement of the case, *and without regard to any knowledge of the trustee or of any creditor*, the rights and powers of a bona fide purchaser of real property") (emphasis added), with 11 U.S.C. § 545(2) ("The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien . . . is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case"). Thus, CPI concludes that the Liquidating Trustee cannot avail itself of the avoiding powers of § 545(2) because the imputed knowledge of CPI's claim prevents the Liquidating Trustee from assuming the position of a bona fide purchaser. However, the actual knowledge of Debtor and the Liquidating Trustee is not a controlling factor in determining whether to apply § 545(2). Rather, the issue is whether the Liquidating Trustee can demonstrate that CPI's lien interest is not perfected or enforceable against a *hypothetical* bona fide purchaser that purchases Debtor's property at the time of Debtor's bankruptcy filing. See In re Hudgins, 967 F.2d 973, 975 (4th Cir. 1992) ("[S]ection 545(2) requires us to determine whether the IRS lien was valid as against a hypothetical bona fide purchaser at the time [debtor] filed for bankruptcy."). Accordingly, the Court finds no reason to bar the Liquidating Trustee from asserting § 545(2) as a means to avoid CPI's mechanic's lien.

⁷ The Court notes that avoidance solely under § 544(a)(3) as recognized by some courts (see n.5 suura.) renders CPI's arguments with respect to § 545 moot.

III. Limitation of Avoidance Powers under § 546(b)(1)

CPI contends that § 546(b)(1) limits the Liquidating Trustee's avoidance authority under § 544(a)(3) and § 545(2) because it permits CPI to perfect its mechanic's lien postpetition and take a priority interest that the Liquidating Trustee cannot avoid.

Section 546(b) provides, in pertinent part, as follows:

(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.

In order to qualify for the exception provided by § 546(b), CPI must demonstrate that South Carolina's mechanic's lien law provides CPI with the ability to perfect its lien and assert a priority interest over a party that perfected an interest in Debtor's property before CPI perfected its lien. See In re 229 Main Street Limited P'ship, 262 F.3d 1, 11 (1st Cir. 2001) (holding that the key to applying § 546(b)(1) is not relation back, but instead, "whether a statute in question provides for an interest that, once perfected, trumps earlier filed claims"). See also In re Enron Corp., 294 B.R. at 237 ("[T]he filing of a bankruptcy petition will not prevent the holder of an interest in property from perfecting its interest if, absent the bankruptcy filing, the interest holder could have, under generally applicable law, perfected its interest against an entity acquiring rights in the property before the date of perfection.").

Neither South Carolina's recording statute nor does its mechanic's lien statute provide priority treatment of CPI's mechanic's liens over intervening interests perfected or recorded *before* CPI filed its Notice of Mechanic's Lien, and neither statute appears to permit perfection of a mechanic's lien to relate back to a prepetition event. Instead, South Carolina law provides that a mechanic's lien is valid "only from the day and hour they are recorded." See S.C. Code Ann. § 30-7-10 (Law. Co-op. 1991 & West Supp. 2004) ("all statutory liens on buildings and lands for materials or labor furnished on them, . . . , except as otherwise provided by statute, are valid so as to affect the rights of subsequent creditors . . . , or purchasers for valuable consideration without notice, *only from the day and hour when they are recorded. . .*") (emphasis added). See also The Lite House, Inc. v. J.C. Roy Company, Inc., 309 S.C. at 55,419 S.E.2d at 819 ("sections 29-5-370 and 30-7-10 [of the South Carolina Code] permit a mechanic to foreclose a mechanic's lien against a subsequent purchaser of real property for value without notice only if the mechanic records the certificate of lien *before* the subsequent purchaser records the deed."); S.C. Code Ann. § 29-5-320 (Law. Co-op. 1991) ("If the interest of the owner in the building, structure or land is under attachment at the time of filing and recording the statement of account, the attaching creditor shall be preferred...."). Thus, § 546(b)'s exception is unavailable to CPI.⁸

⁸ Since § 546(b) is unavailable and CPI did not demonstrate that it perfected its lien within the time prescribed by § 547(e)(2)(A), CPI may have lacked the ability to perfect its mechanic's lien by serving and filing its Notice of Mechanic's Lien postpetition because it did not satisfy the criteria for asserting § 362(b)(3), a statutory exception to the automatic stay.

IV. Application of § 108(c)

CPI also contends that the provisions of § 108(c) extend the time for CPI to perfect its mechanic's lien, and permit the lien to take priority over the Liquidating Trustee's avoiding powers.

Section 108(c) in pertinent part provides as follows:

Except as provided in section 524 of this title, 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 such period has not expired before 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 the 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.

Pursuant to its terms, § 108(c) does not provide CPI with the authority to perfect its mechanic's lien postpetition. Furthermore, § 108(c) does not permit such a lien to take priority over the avoiding powers of the Liquidating Trustee under §§ 544(a)(3) and 545(2). Rather, § 108(c) "tolls the period under nonbankruptcy law for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor. . . ." In re 360 Networks. Inc., 282 B.R. 756, 762 (Bankr. S.D.N.Y. 2001). Therefore, had CPI filed its Notice of Mechanic's Lienprepetition, § 108(c) would have tolled the six (6) month period S.C. Code Ann. § 29-5-120 required CPI to sue Debtor while the automatic stay was in effect.

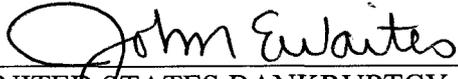
Furthermore, assuming that § 108(c) permitted the postpetition perfection of CPI's lien, § 108(c) does not provide priority treatment of its lien over the avoiding power asserted by the Liquidating Trustee under §§ 544(a)(3) & 545(2) because the

priority status that CPI seeks is the product of state law, not the application of § 108(c). Therefore, CPI is not entitled to perfect its mechanic's lien postpetition in order to assert a priority interest over the Liquidating Trustee's §§ 544(a)(3) & 545(2) avoidance power by application of § 108(c).⁹

V. **Conclusion**

In light of the foregoing analysis, the Court concludes that the Liquidating Trustee may avoid CPI's mechanic's lien under §§ 544(a)(3) & 545(2), or alternatively under § 544(a)(3); and thus, CPI's claim shall be treated as a class 7 general unsecured claim under Debtor's confirmed Chapter 11 plan.

AND IT IS SO ORDERED.


UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina
August 19, 2005

⁹ CPI cites In re Petroleum Piping Contractors, 311 B.R. 290,307 (Bankr. N.D. Ind. 1997) and In re 360 Networks, Inc., 282 B.R. 756,763 (Bankr. S.D.N.Y. 2001) for the proposition that § 108(c) extends the time to perfect its mechanic's lien. While it is generally acknowledged, as previously stated, that § 108(c) tolls the period for *commencing* an action, see id., the above cited cases are distinguishable from the facts of this case in two significant ways. First, some of the liens in those cases were perfected prepetition. Presumably if CPI had perfected its lien by filing its notice of lien prepetition, § 108(c) would have tolled the time for *commencement* of a lawsuit. Second, the applicable state law creating the liens provided the liens with priority over intervening interests recorded before perfection. Therefore, since CPI failed to file its Notice of Mechanic's Lien prepetition and South Carolina law does not provide CPI's lien priority over intervening interests recorded before CPI filed its Notice of Mechanic's Lien, the authorities cited by CPI do not appear to square with the circumstances of this case.