

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

ASCEND PERFORMANCE MATERIALS
HOLDINGS INC., et al.,¹

Debtors.

Chapter 11

Case No. 25-90127 (CML)

(Jointly Administered)

ASCEND PERFORMANCE MATERIALS
OPERATIONS LLC

Plaintiff,

v.

MASTEC INDUSTRIAL CORPORATION,
F/K/A MASTEC POWER CORPORATION

Defendant.

Adv. Pro. No. 25-[_____]

**ASCEND PERFORMANCE MATERIALS OPERATIONS LLC’S COMPLAINT
AGAINST MASTEC INDUSTRIAL CORPORATION**

Ascend Performance Materials Operations LLC (“Ascend”), a debtor in the above-captioned chapter 11 cases, states this Complaint against MasTec Industrial Corporation, f/k/a MasTec Power Corporation (“MasTec”), on information and belief, as follows:

¹ A complete list of each of the debtors in the captioned chapter 11 cases (the “Debtors”) may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/Ascend>. The location of Debtor Ascend Performance Materials Holdings Inc.’s principal place of business is 1010 Travis St., Suite 900, Houston, Texas 77002.

NATURE OF THE ACTION

1. Ascend and its affiliates are among the largest, fully-integrated producers of nylon, a plastic that is used in everyday essentials like apparel, carpets, and tires, and also in new technologies, like electric vehicles and solar energy systems.² Ascend's business predominately focuses on the production and sale of a specific type of nylon, nylon 6,6 or "PA66," and the chemical intermediates and downstream outputs thereof. PA66 is used in applications that require impact, heat, abrasion, and chemical resistance.

2. Ascend and its affiliates operate eleven manufacturing facilities that span the United States, Mexico, Europe, and Asia. One of these facilities is located in Decatur, Alabama.

3. On December 2, 2019, Ascend and MasTec entered into that certain lump-sum turnkey Engineering, Procurement, and Construction Agreement (the "Contract") for the engineering, procurement, construction, pre-commissioning, commissioning, start-up, and testing of a turnkey cogeneration steam power plant with a nominal generating capacity of 96 megawatts (the "Facility") to be located near Ascend's Decatur, Alabama manufacturing operations.

4. The Facility did not timely meet the performance and availability standards applicable under the Contract.

5. MasTec's performance shortcomings and other breaches of the Contract financially damaged Ascend and may continue to do so into the future.

6. As required by the Contract, MasTec executed an irrevocable standby letter of credit in Ascend's favor (the "Letter of Credit"). On April 15, 2025, Ascend drew on the Letter

² A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of Robert Del Genio, Chief Restructuring Officer of Each of the Debtors, in Support of the Debtors' Chapter 11 Petitions and First Day Motions* [Docket No. 24] (the "First Day Declaration").

of Credit. Upon information and belief, MasTec disputes Ascend's entitlement to the proceeds of the Letter of Credit.

7. MasTec has also asserted a purported mechanic's lien pursuant to ALA. CODE § 35-11-210 *et seq.* (1975) against the Facility. The validity, extent, and priority of this lien may impact the Debtors' restructuring efforts, and may prejudice the interests of the Debtors' secured creditors, unsecured creditors, and other stakeholders interested in their chapter 11 cases.

8. Through this action, Ascend seeks declaratory judgment holding that MasTec does not hold a valid lien on Ascend's property. In the alternative, Ascend seeks declaratory judgment holding that any purported lien is unperfected and avoidable.

9. Further, Ascend seeks declaratory judgment holding that the proceeds of the Letter of Credit are property of Ascend's bankruptcy estate.

JURISDICTION AND VENUE

10. This is an adversary proceeding under Title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in *In re Ascend Performance Materials Holdings Inc., et al.*, Case No. 25-90127, pending before this Court, the United States Bankruptcy Court for the Southern District of Texas, Houston Division.

11. This Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334, as this matter arises in or is related to a proceeding under the Bankruptcy Code. And, under 28 U.S.C. § 157(b)(1)–(2), this is a “core proceeding,” as it is a proceeding to determine the validity, extent, or priority of a lien, to affirm and order turn-over of property of the estate, and to adjudicate other matters concerning administration of the estates.

12. Venue of this adversary proceeding is proper pursuant to 28 U.S.C. § 1409.

13. The relief requested is appropriate pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rule 7007-1 of the Bankruptcy Local Rules for

the Southern District of Texas (the “Bankruptcy Local Rules”), section 105 of the Bankruptcy Code, and 28 U.S.C. §§ 2201 and 2202 (the “Declaratory Judgment Act”).

14. Pursuant to Bankruptcy Local Rule 7008-1, Ascend consents to the entry of final orders or judgments by this Court to the extent that it is later determined that the Court, absent such consent, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

PARTIES

15. Debtor Ascend Performance Materials Operations LLC is a Delaware limited liability company with its principal place of business in Houston, Texas.

16. Defendant MasTec Industrial Corporation, f/k/a MasTec Power Corporation is a Florida corporation with its principal place of business in Coral Gables, Florida.

FACTS

A. The EPC Contract & MasTec’s Failure to Deliver

17. On December 2, 2019, Ascend and MasTec entered into the Contract regarding the Facility to be located at 1050 Chemstrand Avenue, Decatur, Alabama, 35601, near existing Ascend manufacturing operations. The Contract required MasTec to design and build the Facility such that it would have, among other relevant capacities, the ability to reliably produce 96 megawatts of electric power and 700,000 pounds of steam per hour. In exchange for the successful development of the Facility, Ascend agreed to pay MasTec more than \$130 million.

18. The Contract defines various industry terms of art that relate to the Facility’s completion status.³ “Mechanical Completion” requires, in basic terms, that the Facility be built

³ Definitions of the terms provided in this Complaint are for ease of reference only, and are not intended to supersede the definitions of such terms provided in the Contract.

and operable. “Substantial Completion” requires, among other things, that the mechanically-complete Facility pass certain performance tests. “Final Completion” requires, among other things, that the substantially-complete Facility pass an “availability test” that measures the Facility’s ability to reliably perform for sustained periods of time.

19. The original project schedule called for Substantial Completion by October 1, 2021, and Mechanical Completion prior to that date. On March 3, 2020, MasTec sent Ascend a letter suggesting that the COVID-19 pandemic and related state of affairs might impact the project schedule. MasTec did not then or at any time in 2020 or 2021 formally submit a change order on account of or in relation to the COVID-19 pandemic.

20. MasTec relied on various subcontractors during the construction of the Facility. Upon information and belief, certain of these subcontractors do not hold required licenses in the state of Alabama.

21. On December 21, 2021, Ascend executed (at MasTec’s request) a mechanical completion certificate evidencing the parties’ agreement that the Facility became Mechanically Complete on December 16, 2021.

22. In December 2021, the parties engaged in anticipated, contractually required performance testing of the Facility. The performance tests measured the Facility’s electric and steam generation ability, and other metrics, and compared the results with the standards defined by the Contract. The Facility failed several of these tests. As a result, the Facility was not “substantially complete” under the Contract.

23. Despite the failed performance test, MasTec asserted that the Facility was substantially complete on December 21, 2021, and sought payments associated with substantial completion. Ascend rejected MasTec’s assertions of substantial completion in January 2022.

24. Ascend and MasTec nevertheless proceeded with other items related to the Facility, such as reaching agreement on remaining “punchlist” fixes in January 2022.

25. On March 14, 2022, nearly three months after the mechanical completion of the Facility and months after MasTec failed the performance tests, MasTec sent Ascend a purported “change order.” This change order sought more than \$14.5 million, or more than 10% of the original contract price, in additional compensation from Ascend allegedly on account of the COVID-19 pandemic. On March 24, 2022, Ascend rejected MasTec’s change order.

26. Despite their disagreements, Ascend and MasTec agreed to proceed with availability testing, beginning in April 2022.⁴ The availability test occurred during the spring and summer of 2022, but the Facility failed the availability test. The Facility never passed the availability test.

27. Although Ascend and MasTec continued to dispute MasTec’s change order and the outcome of relevant tests, both parties continued to progress the remaining “punchlist” items and other corrective work on the Facility. By June 2022, MasTec’s onsite involvement in construction activity, if any, was minimal.

28. By this time, Ascend was using steam and electricity produced by the Facility to support Ascend’s manufacturing processes—albeit without the level of reliability and capability required under the Contract.

29. Despite the ongoing disputes, on or about August 12, 2022, MasTec departed from the Facility work site, leaving only a warranty manager.

⁴ Ascend reserved all rights and claims related to the failure of certain of the performance tests and of “substantial completion” under the Contract when Ascend and MasTec proceeded with the availability test.

30. MasTec's breaches of the Contract and the Facility's underperformance relative to pre-construction expectations imposed material financial costs and operational strain on Ascend.

31. On November 10, 2022, Ascend filed suit in the United States District Court for the Southern District of Texas against MasTec to recover for injuries sustained as a result of MasTec's failure to perform under the Contract. On the same date, MasTec filed suit in Texas state court for its alleged injuries. The Texas state litigation was later consolidated with the Texas federal litigation. The case, *MasTec Industrial Corp. f/k/a MasTec Power Corp. v. Ascend Performance Materials Operations LLC*, Case No. 4:22-cv-03932 (S.D. Tex.) (Eskridge, J.) (the "District Court Action") was stayed upon Ascend's chapter 11 filing.

B. MasTec's Invalid Mechanic's Lien

32. Ascend acquired the land identifiable by the address 1050 Chemstrand Avenue, Decatur, Alabama 35601 (the "Property") on or about June 1, 2009.

33. On or about May 22, 2020, Ascend conveyed the Property to the Industrial Development Board of the City of Decatur ("IBD"). Simultaneously, IBD conveyed a leasehold interest in the Property to Ascend.

34. On June 30, 2022, MasTec signed a \$15,781,148.71 Verified Statement of Lien against the Property, which was filed with the Morgan County Probate Office on July 6, 2022 (the "First Lien") in Morgan County, Alabama. The First Lien named Ascend Performance Materials Operations LLC f/k/a Ascend Performance Materials, LLC as the owner of the Property, even though neither Ascend nor any Ascend affiliate then owned the Property in light of the sale to IBD over two years prior.

35. On October 12, 2022, MasTec signed a \$7,837,540.79 Verified Statement of Lien against the Property, which was filed with the Morgan County Probate Office on October 17, 2022 (the "Second Lien"). The Second Lien named Ascend Performance Materials Operations LLC

f/k/a Ascend Performance Materials, LLC as the owner of the Property, even though neither Ascend nor any Ascend affiliate then owned the Property in light of the sale to IBD over two years prior.

36. On December 28, 2022, over six months after the filing of the First Lien, MasTec signed a \$23,618,689.50 Verified Statement of Lien, which was filed with the Morgan County Probate Office on January 11, 2023 (the “Amended Lien”) against the Property. The Amended Lien changed MasTec’s representations regarding the ownership of the Property to name IBD as the Property owner. The Amended Lien states that it replaces the First Lien and the Second Lien.

37. On or about February 22, 2023, IBD sold the property back to Ascend. IBD no longer has an ownership interest in the Property.

38. MasTec has not filed any further liens, or replaced or amended the Amended Lien on the Property or the Facility.

39. During the construction of the Facility, Ascend received from MasTec invoices and Ascend paid to MasTec funds satisfying those invoices. The invoices were accompanied by lien and claim waivers under which MasTec “waive[d] and release[d] any and all liens or claims of liens against the Project and the Property and all claims, demands, actions, causes of actions or other rights at law, in contract, tort, equity or otherwise” through the date listed on the waiver. The waivers also included a space for MasTec to list any exceptions to the causes of action, claims, and lien rights that it agreed to release and waive. The waivers made clear that if MasTec did not list any exceptions, MasTec was “deemed not to have reserved any claim.” In consideration for these waivers, the Contract contemplated that Ascend would pay the invoice associated with each waiver.

40. On June 7, 2022, MasTec submitted “Invoice 29” to Ascend with an accompanying lien and claim waiver, under which MasTec “waive[d] and release[d] any and all liens or claims of liens against the Project and the Property and all claims, demands, actions, causes of actions or other rights at law, in contract, tort, equity or otherwise” through May 31, 2022. MasTec stated that there were no exceptions to the waiver. Ascend paid Invoice 29 in full.

41. On February 20, 2023, MasTec filed suit against Ascend and IBD in Alabama state court seeking to enforce the Amended Lien. Ascend removed to the United States District Court for the Northern District of Alabama. That court subsequently dismissed IBD. The case, No. 5:23-cv-00228, *MasTec Industrial Corp. f/k/a MasTec Power Corp. v. Ascend Performance Materials Ops. LLC* (N.D. Ala.) was stayed in January 2024 pending the outcome of the District Court Action.

C. Ascend’s Draw on the Letter of Credit

42. The Contract required that MasTec cause to be issued and deliver to Ascend the Letter of Credit. On or before March 12, 2020, Bank of America N.A. issued a \$13,267,470.00 Letter of Credit, at the request and for the account of MasTec, that named Ascend as beneficiary.

43. The Contract permitted Ascend to draw on the Letter of Credit in various circumstances, including but not limited to the occurrence of losses or damages related to MasTec’s performance under the Contract, an event of default by MasTec, or the owing by MasTec of liquidated damages to Ascend.

44. On April 15, 2025, Ascend sought to and later did fully draw down on the Letter of Credit. Proceeds from the Letter of Credit were deposited into Ascend’s account.

45. On April 16, 2025, the United States District Court for the Southern District of Texas issued a temporary restraining order requiring that Ascend deposit the proceeds of the Letter of Credit into the court’s registry. Ascend complied with that order.

46. On April 25, 2025, Ascend and MasTec stipulated, with this Court's approval, that this Court shall decide whether the proceeds of the Letter of Credit constitute property of Ascend's bankruptcy estate. *See In re Ascend Performance Materials Holdings Inc., et al.*, Case No. 25-90127, Docket No. 151.

47. The proceeds of the Letter of Credit remain in the registry of the United States District Court for the Southern District of Texas.

CLAIMS

Count I: Declaratory Judgment That MasTec Does Not Hold Any Lien Against Ascend's Property

48. The Debtors incorporate the allegations in paragraphs 13 through 47 as though fully stated herein.

49. This Court may issue declaratory relief regarding the validity and effect of MasTec's purported lien pursuant to 28 U.S.C. §§ 2201 and 2202, 11 U.S.C. §§ 105(a), Bankruptcy Rules 7001(b) and 7001(i), and other applicable law.

50. MasTec's Amended Lien is invalid and of no effect because MasTec filed the lien against IBD, which does not own the Property. MasTec's First and Second Liens, if either survive, are similarly of no effect both because they were replaced by the Amended Lien, and because they named the then-incorrect owners of the Property.

51. In the alternative, MasTec's Amended Lien is invalid and of no effect because it was not timely filed. *See* ALA. CODE § 35-11-215.

52. In the alternative, MasTec's Amended Lien is invalid and of no effect because MasTec did not timely file suit to enforce it. *See* ALA. CODE § 35-11-221.

53. In the alternative, MasTec's Amended Lien is invalid and of no effect to the extent that it results from the efforts of subcontractors that did not comply with Alabama licensing law.

54. In the alternative, MasTec's Amended Lien is invalid and of no effect, in whole or in significant part, because of MasTec's signed lien and claim waivers.

55. In the alternative, MasTec's Amended Lien is unperfected, for reasons including, but not limited to, the fact that no judgment makes the Amended Lien more than inchoate and imperfect under relevant state law. An unperfected mechanic's lien is avoidable pursuant to section 545 of the Bankruptcy Code.

56. The Amended Lien withdrew and replaced the First and Second Liens, which accordingly are invalid and of no effect. But should the First and Second Liens survive, then they are invalid and of no effect for the same reasons as set forth against the Amended Lien in paragraphs 51 through 55.

Count II: Declaratory Judgment That The Proceeds Of The Letter of Credit Are Property Of The Estate

57. The Debtors incorporate the allegations in paragraphs 13 through 47 as though fully stated herein.

58. This Court may issue declaratory relief regarding the extent of Ascend's interest in property pursuant to 28 U.S.C. §§ 2201 and 2202, section 105(a) of the Bankruptcy Code, Bankruptcy Rules 7001(b) and 7001(i), and other applicable law.

59. Ascend complied with the terms of the Letter of Credit defining the procedure for properly drawing that Letter of Credit when Ascend drew on the Letter of Credit on April 15, 2025. Accordingly, the proceeds of the Letter of Credit are property of Ascend's bankruptcy estate and should immediately be released to the Debtors.

RESERVATION OF RIGHTS

60. Nothing in this Complaint is intended to waive any of Ascend's claims or defenses in the District Court Action or to waive any claims or defenses that Ascend or its affiliates may

have against MasTec in connection with the chapter 11 cases. Ascend reserves the right to appropriately amend this Complaint.

PRAYER

Ascend respectfully requests that the Court enter judgment finding:

1. On Count I, that MasTec does not hold a valid lien against Ascend's property. In the alternative, Ascend respectfully requests that the Court find MasTec's purported lien(s) unperfected and avoidable.
2. On Count II, that the proceeds of the Letter of Credit drawn by Ascend constitute property of Ascend's bankruptcy estate.
3. That Ascend is entitled to such other relief as may be just and proper.

Respectfully submitted,

Houston, Texas
Dated: May 28, 2025

/s/ Jason G. Cohen

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