

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF CONNECTICUT
HARTFORD DIVISION**

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|-------------------------------|---|----------------------|----------------------|
| IN RE: |) | CASE No. | 21-20111 (JJT) |
| |) | Jointly Administered | |
| OLD CP, INC., <i>et al.</i> , |) | | |
| |) | CHAPTER | 11 |
| Debtors. ¹ |) | | |
| |) | RE: ECF NOS. | 733, 781, 1021, 1095 |

ORDER DENYING MOTION FOR MODIFICATION OF SURETY BOND

Both the Dennis Engineering Group, LLC (“Dennis Group”), as mechanic’s lienor, and People’s United Bank (“PUB”), as mortgage lender and Administrative Agent for itself and BMO Harris Bank, NA, claim to hold a first priority lien on certain sale proceeds (“Sale Proceeds”) realized from the Court-approved sale (“Sale”) of essentially all of the Debtors’ assets. These competing claims are the subject of, among other proceedings, a prior pending Adversary Proceeding in these Chapter 11 cases seeking to determine which of Dennis Group or Lenders’ interest in the Sale Proceeds takes priority. *See* Case No. 21-02004, *The Dennis Engineering Group LLC v. People’s United Bank, N.A., et al.*

Following the Sale, PUB moved for relief from the automatic stay to exercise its right of setoff against the Sale Proceeds, or alternatively, for an Order from this Court directing disbursement of the Sale Proceeds to PUB. *See* ECF No. 564, “Motion for Relief.” The Court resolved the Motion for Relief by denying, without prejudice, the request seeking relief from stay (*see* ECF No. 733), while also authorizing an interim disbursement of \$15,000,000 worth of Sale Proceeds to PUB and granting to the Dennis Group adequate protection of its lien by the

¹ The Debtors in these Chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Old CP, Inc. (5847) and Suri Realty, LLC (5847). The Debtors’ corporate headquarters and service address was 50 Talbot Lane, South Windsor, Connecticut 06074.

substitution of a surety bond (“Surety Bond”) in the amount of \$15,418,497. *See* ECF No. 781, “Disbursement Order.” The Surety Bond contemplated and approved by the Court was intended to secure payment to the Dennis Group should it prevail on its claim in the aforementioned Adversary Proceeding, while allowing PUB to apply the distribution to its claim under the Prepetition Loans (as defined in the Motion for Relief) secured by the Debtors’ Property.

The Dennis Group now moves, pursuant to certain terms of the Disbursement Order,² for an Order modifying the Surety Bond, and specifically seeks to have certain language in the Surety Bond—language that was intended to preserve and protect any interest the Dennis Group had in the Sale Proceeds with the same priority and validity determined to exist on the assets—removed, because Connecticut law “eliminates priority and equity as defenses to payment.” *See* ECF No. 1021, “Motion to Modify.” PUB objected to the Motion to Modify on a number of grounds, but principally, it argued that the Surety Bond is consistent with Connecticut law and it accomplished exactly what the Court directed—that is, to preserve the status quo by granting adequate protection of the value of the Dennis Group’s lien pending the outcome of the Adversary Proceeding. *See* ECF No. 1095, “Objection.”

A hearing on the Motion to Modify and the Objection thereto was held on August 19, 2021, whereat the Dennis Group and PUB fully advanced their respective positions. ECF No. 1097. At the conclusion of the hearing, the Court took the matter under advisement. For the reasons stated herein, the Motion to Modify is hereby DENIED and PUB’s Objection is hereby SUSTAINED.

At the outset, and as PUB’s Objection underscores, the Court cannot grant the relief requested by Dennis, because the bonding company and surety, Travelers Casualty and Surety

² The Disbursement Order provides that “the surety, principal and obligee under the Surety Bond shall have the right to seek modification of the Surety Bond in accordance with applicable law.” Disbursement Order, at p. 5.

Company of America (“Travelers”), was neither served with the Motion to Modify nor joined as a respondent. *See* Fed. R. Civ. P. 19(a)(1); Fed. R. Bankr. P. 7019; Fed. R. Bankr. P. 9014(c).³ Here, the Court finds that Travelers must be joined as a required party pursuant to Fed. R. Civ. P. 19(a)(1) and Bankruptcy Rules 7019 and 9014, without which the Court cannot accord complete relief; Travelers will be deprived of the right to protect its interest; and the granting of the Motion to Modify may subject PUB to inconsistent or multiple obligations—all factors which necessitate denying the Motion to Modify in its entirety. However, even if Travelers is determined not to be a required party, the Court nonetheless finds that the relief requested in the Motion to Modify is inappropriate and inconsistent with the intent of Conn. Gen. Stat. § 49-37 and this Court’s Disbursement Order.

Conn. Gen. Stat. § 49-37 allows for the substitution of a bond in place of a mechanic’s lien, and provides, in relevant part, that “[w]henver any mechanic’s lien has been placed upon any real estate . . . any person interested in it, may make an application to any judge of the Superior Court that the lien be dissolved upon the substitution of a bond with surety . . . If the judge is satisfied that the applicant in good faith intends to contest the lien, he shall, if the applicant offers a bond, with sufficient surety, conditioned to pay to the lienor or his assigns such amount as a court of competent jurisdiction may adjudge to have been secured by the lien, with interest and costs, order the lien to be dissolved and such bond substituted for the lien” Conn. Gen. Stat. § 49-37(a).

“[T]he legislative intent in enacting [Conn. Gen. Stat.] § 49-37(a) was to enable the owner or any person ‘interested’ in the property to obtain a dissolution of the mechanic’s lien *so long as the lienor’s rights are not prejudiced in doing so.*” *Henry F. Raab Connecticut, Inc. v.*

³ Pursuant to Fed. R. Bankr. P. 9014(c), “[t]he court may at any stage in a particular [contested] matter direct that one or more of the other rules in Part VII shall apply.”

J.W. Fisher Co., 183 Conn. 108, 115 (1981) (citation omitted) (emphasis added). For purposes of substituting a bond under Conn. Gen. Stat. § 49-37, “[t]he lienor’s rights are considered adequately protected if the [bond applicant] demonstrates a good-faith intention to contest the lien and substitutes a bond with surety in its place.” *Six Carpenters, Inc. v. Beach Carpenters Corp.*, 172 Conn. 1, 6, 372 A. 2d 123, 126 (1976).⁴ “Accordingly, while the statutory provisions are designed to facilitate the transfer of the property by dissolution of the lien, they are also intended to ensure the continued existence of assets out of which the lienor may satisfy his claim if he should later prevail and obtain a judgment on the merits of the mechanic’s lien.” *Henry F. Raab, supra*, 183 Conn., at 115–16 (quoting *Six Carpenters, supra*, 372 A.2d at 126). “When a bond has been substituted for a mechanic’s lien pursuant to [Conn. Gen. Stat.] § 49-37, the effect is to shift the lien from the real property to the bond.” *NAES Power Contractors, Inc. v. Gemma Power Systems, LLC*, 2018 WL 1445578, *2 (D. Conn. 2018) (citations omitted).

Here, all objectives of Conn. Gen. Stat. § 49-37 were met. PUB, an interested party asserting a first priority mortgage on the Property, substituted the Surety Bond and obtained a dissolution of the Dennis Group’s mechanic’s lien in the Sale Proceeds. As the Court previously found, the “Surety Bond filed by PUB . . . fairly and unambiguously provides adequate protection to Dennis” by protecting the value of Dennis’ lien pending the outcome of the Adversary Proceeding. The Dennis Group’s rights were not prejudiced because, as set forth in the Disbursement Order, the Surety Bond was substituted for the Dennis Group’s mechanic’s lien to the same extent “as it attached to the Sale Proceeds pursuant to the Sale Order” and because “any interest held by the Dennis Group in the Sale Proceeds arising from the Mechanic’s Lien in the Sale Proceeds shall attach to the Surety Bond.” Lastly, the Surety Bond, in the agreed

⁴ The notion of adequate protection likewise is defined in 11 U.S.C. § 361(3) as the granting of “such other relief . . . as will result in the realization by such entity of the indubitable equivalent of such entity’s interest in such property.”

upon amount of \$15,418,497.00, represents an equivalent financial mechanism from which the Dennis Group may satisfy its claims should it later prevail and obtain a judgment on the merits of its mechanic's lien asserted in the Adversary Proceeding.

The Dennis Group now argues—notwithstanding the Court's stated intention in authorizing the Surety Bond, in addition to the legislative intent in enacting the statutory provisions and the binding authority interpreting the statute—that the substitution of the Surety Bond for its lien somehow ostensibly *enhanced* its rights, and otherwise obviated the need to fully adjudicate its underlying claim in the Adversary Proceeding, claiming that “[Conn. Gen. Stat.] § 49-37 eliminates priority and equity as defenses to payment” and that “neither the parties nor the Court need resolve the priority dispute. . . . [because] the statute simply asks whether the lien is ‘valid.’” What's more, the Dennis Group claims that, “as a practical matter, if Dennis Group's lien is found to be valid under [Conn. Gen. Stat.] § 49-37, it would be entitled to be paid in full, whether from Lenders [PUB] directly or by calling the bond. *For practical purposes that would likely end the litigation.*” *Id.*, at n.4 (emphasis added). The relief the Dennis Group is seeking, if granted, would effectively have this Court partially granting judgment in favor of Dennis in the pending Adversary Proceeding without a plenary determination as to priority.

This construction urged by the Dennis Group is simply irreconcilable with the relief this Court contemplated and authorized in the Disbursement Order under notions of adequate protection, and the purpose of Conn. Gen. Stat. § 49-37. Critically, it would discourage the substitution of bonds for liens or sale proceeds because of a fear of inadvertently waiving defenses to the underlying lien. Such a contrary rule would give the lienor *greater* rights than those prescribed by the statute. *See Camputaro v. Stuart Hardwood Corp.*, 180 Conn. 545, 549 (1980) (“Obviously, the plaintiff's rights on the bond can rise no higher than those acquired

under the underlying mechanic's lien for which the bond is merely a substitute.”). Conn. Gen. Stat. § 49-37 clearly preserves the rights of a lienor when its lien is dissolved and substituted for a bond, and nothing under the Bankruptcy Code, or in the nature of adequate protection, otherwise enhances those rights.

The Dennis Group's interest and rights under its underlying mechanic's lien—those rights that are the subject of a priority dispute which the Dennis Group initiated, and those rights that are preserved and adequately protected by the posting of the Surety Bond—are to be adjudicated in the underlying Adversary Proceeding, and not by a re-write of the Court-approved Surety Bond. The objectives of Conn. Gen. Stat. § 49-37 have been met, the Dennis Group's interest in the Sale Proceeds has been adequately protected by the Surety Bond, and should the Dennis Group prevail and obtain a judgment on the merits of its mechanic's lien asserted in the Adversary Proceeding, the Surety Bond represents equivalent assurances to satisfy its claim.

The Court rejects the Dennis Group's attempt to circumvent the requirement of an adversary proceeding to resolve its lien priority dispute. *See* Fed. R. Bankr. P. 7001(2); *see also In re Robert*, 313 B.R. 545, 549 (Bankr. N.D.N.Y. 2004) (“[A]n adversary proceeding is required under Rule 7001(2) when the dispute between the parties raises an issue as to the validity, priority, or extent of the underlying lien.”). Accordingly, for the reasons discussed herein, it is hereby

ORDERED: That the Motion to Modify is DENIED; and it is further

ORDERED: That PUB's Objection is SUSTAINED.

IT IS SO ORDERED at Hartford, Connecticut this 14th day of September 2021.

James J. Tancredi
United States Bankruptcy Judge
District of Connecticut