

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

EMERGE ENERGY SERVICES LP, *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11563 (KBO)

Related D.I.: 362

**JOINDER OF B & B ELECTRIC, INC. TO OBJECTIONS TO CONFIRMATION OF
FIRST AMENDED JOINT PLAN OF REORGANIZATION FOR EMERGE ENERGY
SERVICES LP AND ITS AFFILIATE DEBTORS UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE**

B & B Electric, Inc. (“**B & B**”), by and through its undersigned counsel, hereby files this joinder (the “**Joinder**”) to the objections of similarly situated mechanics lien claimants to confirmation of the *First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [D.I. 362] (the “**Plan**”), the extent not otherwise inconsistent with this Joinder. In support of this Joinder, B & B respectfully states:

BACKGROUND

A. The Bankruptcy Case

1. On July 15, 2019 (the “**Petition Date**”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court. Since the Petition Date, the Debtors have remained in possession of their assets and have continued to operate and manage their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: Emerge Energy Services LP (2937), Emerge Energy Services GP LLC (4683), Emerge Energy Services operating LLC (2511), Superior Silica Sands LLC (9889), and Emerge Energy Services Finance Corporation (9875). The Debtors’ address is 5600 Clearfork Main Street, Suite 400, Fort Worth, Texas 76109.



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2. On July 25, 2019, the Debtors filed their *Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [D.I. 98] (as amended by D.I. 362, the “**Plan**”) and a *Disclosure Statement* for the same [D.I. 99] (as amended by D.I. 363, the “**Disclosure Statement**”). According to the same, there are ten classes of claimholders, only two of which are entitled to vote on the Plan—“Prepetition Notes Claims” and “General Unsecured Claims.” Plan, Art. III.A. The Plan provides that Class 2 claimholders (“**Other Secured Claims**”) are unimpaired and are “Deemed to Accept.” *Id.* While not immediately apparent from the Plan, the Disclosure Statement provides clarity as to which claims are subject to treatment as Other Secured Claims in the context of its discussion of what it refers to as “M&M Liens.” Specifically, the Disclosure Statement states

In some cases, vendors have asserted liens (“**M&M Liens**”) to secure allegedly accrued and unpaid amounts owing under prepetition contracts with the Debtors. The Debtors are aware of the assertion of M&M Liens filed against various of the Debtors’ properties at which the subject work and/or services were allegedly supplied. These properties include Debtor-owned property at Kingfisher, Oklahoma, Kosse, Texas, San Antonio, Texas, and Chippewa County, Wisconsin. The Debtors continue to examine the validity and perfection of such liens and their related claims, as well as the relative priority of any such valid and perfected liens relative to other valid and perfected liens on the affected properties. To the extent any valid and perfected M&M Liens enjoy a priority in respect of the affected property sufficient to render the related claims secured, *those claims will be treated as Other Secured Claims under the Plan, while any deficiencies will be treated as General Unsecured Claims.* The Debtors continue to reserve all rights in respect of the asserted M&M Liens.

Disclosure Statement, Art. II.C.3. (emphasis added).

3. On September 11, 2019, the Court entered its order approving the Disclosure Statement [D.I. 361] (the “**DS Order**”).

4. On October 4, 2019, the Debtors filed their *Notice of Filing of Plan Supplement for [the Plan]* [D.I. 436].

5. The hearing on confirmation of the Plan is set for October 24, 2019.

B. Background Related to B & B

6. Prior to the Petition Date, B & B provided labor, services, materials and/or equipment for the improvement of the Debtors' property located in Wisconsin and Texas (collectively, the "**Properties**"). As has been detailed in both B & B's proof of claim [Claim No. 258] and *Notice of Perfection of Liens Pursuant to 11 U.S.C. § 546(b)(2)* [D.I. 453], as well as in the Debtors' schedules of assets and liabilities and statement of financial affairs, B & B maintains mechanics lien claims on the Properties approximating \$793,000.21 (the "**Secured Claims**").

7. Notwithstanding that the Plan makes clear that mechanics lien claimants in Wisconsin and Texas are essentially out of the money—thus rendering its Secured Claims entirely general unsecured deficiency claims under Class 6—B & B received no ballot for its deficiency claims. The Debtors own service records confirm this. On or about September 13, 2019, the Debtors purported to serve materials (the "**Solicitation Materials**") related to solicitation of the Plan in accordance with the DS Order. Service of the same is reflected in the *Affidavit of Service* filed on September 20, 2019 at D.I. 390 (the "**AOS**"). B & B appears nowhere in the AOS except as a "Core/2002 Service List" party; B & B is not identified as having received a ballot for any purpose, and indeed, it has not. *See* AOS, Exhs. M, N. At no other time on the docket do the Debtors attest to having served B & B or similarly styled mechanics lienholders with the Solicitation Materials as they relate to their purported deficiency claims; upon information and belief, the Debtors have not done so.

JOINDER AND OBJECTION

8. In light of the Debtors' failure to comport with its obligations under the DS Order and Section 1129(a) of the Bankruptcy Code, B & B joins in the objection of RB Scott Company, Inc. filed contemporaneously herewith, and all other objections by similarly situated mechanics lien claimants to the extent not inconsistent with this Joinder.

CONTESTED MATTER

9. Pursuant to Bankruptcy Rule 9014, confirmation of the Plan is a contested matter and B & B reserves all rights to seek discovery and present evidence at the Confirmation Hearing.

CONCLUSION

WHEREFORE, B & B respectfully requests that the Court deny confirmation of the Plan and grant such other and further relief as the Court deems just and proper.

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Dated: October 11, 2019
Wilmington, DE

BAYARD, P.A.

/s/ Evan T. Miller

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CERTIFICATE OF SERVICE

I, Evan T. Miller, hereby certify that on October 11, 2019, I caused a copy of the foregoing *Joinder of B & B Electric, Inc. to Objections to Confirmation of First Amended Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* to be served on the parties below in the manner indicated.

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