

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

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In re:	:	Chapter 11
BROOKSTONE HOLDINGS CORP.,	:	
<i>et al.</i> ,	:	Case No. 18-11780 (BLS)
	:	(Re: docket no. 1290, 1293, 1294)
Debtors.	:	

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Gregory J. Flasser, Esquire  
Bayard, P.A.  
600 N. King Street, Suite 400  
Wilmington, DE 19801

Daniel C. Kerrick, Esquire  
Hogan McDaniel  
1311 Delaware Avenue  
Wilmington, DE 19806

James S. Carr, Esquire  
Kelley Drye & Warren LLP  
101 Park Avenue  
New York, NY 10178  
*Counsel for the Brookstone  
Liquidating Trust*

Rick A. Steinberg, Esquire  
Price Meese Shulman & D'Arminio,  
P.C.  
50 Tice Boulevard, Suite 380  
Woodcliff Lake, NJ 07677  
*Counsel for the Claimants*

MEMORANDUM ORDER<sup>1</sup>

Before the Court is the Liquidating Trustee's Sixth Omnibus (Substantive) Objection to Certain (A) Misclassified Claims; (B) Overstated Claims; and (C) Overstated and Misclassified Claims (the "Claim Objection"),<sup>2</sup> and the responses filed by Ocean Network Express Pte. Ltd. ("Ocean Network")<sup>3</sup> and Yang Ming

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<sup>1</sup> This Memorandum Order constitutes the Court's findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure.

<sup>2</sup> Docket No. 1290.

<sup>3</sup> Docket No. 1293.

(America) Corp (“Yang Ming”).<sup>4</sup> After a hearing held on October 7, 2019, and after due deliberation, the Court hereby FINDS as follows:

1. On August 2, 2018 (the “Petition Date”), each of the Debtors filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code.

2. On March 20, 2019, the Court entered the *Findings of Fact, Conclusions of Law and Order Confirming the Third Amended Joint Plan of Liquidation Under Chapter 11 of the Bankruptcy Code of Brookstone Holdings Corp., et al., Submitted by the Debtors and the Official Committee of Unsecured Creditors as Co-Proponents* (the “Confirmation Order”),<sup>5</sup> and the Plan<sup>6</sup> became effective on April 1, 2019 (the “Effective Date”).

3. The Plan and Confirmation Order provide for the establishment of the Brookstone Liquidating Trust (the “Trust”) on the Effective Date according to the terms and conditions of the Liquidating Trust Agreement, at which time META Advisors LLC was appointed as Liquidating Trustee to administer the Trust. Under section IV.C.3 of the Plan, and section 2.1(f) of the Trust Agreement, the Liquidating Trustee is authorized, among other things, to investigate, review, object to and resolve all Claims filed against the Debtor’s estates.

4. On July 29, 2019, the Liquidating Trustee filed the Claim Objection which included objections to: (1) Claim number 297 filed by Ocean Network asserting a secured claim against the Debtors in the amount of \$79,862.00; and (2) Claim

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<sup>4</sup> Docket No. 1294.

<sup>5</sup> Docket No. 1138.

<sup>6</sup> Docket No. 1114.

number 687 filed by Yung Ming asserting a secured claim in the amount of \$15,800.00.

5. Both Ocean Network and Yang Ming (the “Claimants”) assert secured claims based upon liens arising under general maritime law and the applicable bills of lading.

6. The Liquidating Trustee’s Claim Objection seeks to reclassify the claims as unsecured, arguing that the liens asserted are possessory in nature and that neither Claimant contends that it has retained possession of any of the Debtors’ goods to secure its claim.

#### STANDARD

7. When a claim objection is filed in a bankruptcy case, the burden of proof as to the validity of the claim ‘rests on different parties at different times.’<sup>7</sup> “The objecting party carries the burden of going forward with the evidence in support of its objection which [must] be of a probative force equal to that of the allegations of the creditor's proof of claim.”<sup>8</sup> “If the objecting party succeeds in overcoming the *prima facie* effect of the proof of claim, the ultimate burden of persuasion then rests upon the claimant to prove the validity of the claim by a preponderance of the evidence.”<sup>9</sup>

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<sup>7</sup> *In re Samson Resources Corp.*, 569 B.R. 605, 614-15 (Bankr. D. Del. 2017) (citing *In re Allegheny Int’l, Inc.*, 954 F.2d 167, 173 (3d Cir. 1992)).

<sup>8</sup> *Id.* (citing *In re Kincaid*, 388 B.R. 610, 614 (Bankr. E.D. Pa. 2008)).

<sup>9</sup> *Id.*

## ANALYSIS

8. The Trustee argues that any maritime liens held by the Claimants were lost upon release and delivery of the goods to the Debtors prepetition.<sup>10</sup>

9. The Claimants argue that their bills of lading, which constitute contracts of carriage between the parties, as well as receipts for the goods, contain language providing that the maritime liens survive delivery of the goods.

a. Ocean Network's Bill of Lading states in paragraph 7.1 that:

The Carrier shall have a lien on the Goods and any documents relating thereto, *which shall survive delivery*, for all sums payable to the Carrier under this contract and for general average contributions, to whomsoever due. The Carrier shall also have a lien against the Merchant on the Goods and any documents relating thereto for all sums due from the Merchant to the Carrier under any other contract. For recovering any sums due, the Carrier shall have the right to sell the Goods by public auction or private sale, without notice to the Merchant and the Carrier's lien shall extend to cover the cost of recovering any sums due.<sup>11</sup>

b. Yang Ming's Bill of Lading states in paragraph 25:

The Carrier shall have a lien on Goods and any documents relating thereto (including this Bill), *which shall survive delivery* and release of such Goods, for any and all sums payable to the Carrier under the contract and/or any other contracts between the Carrier and the Merchant whether or not related to or concerned with the Carriage and expenses incurred by the Carrier for the account of the Merchant and for general average and salvage contributions to whomsoever due and for the costs of recovering same and for any penalties and

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<sup>10</sup> The Declaration and Supplemental Declaration (docket no. 1327) submitted in support of the Trustee's objection to the classification of the Claimants' claims sufficiently rebuts the *prima facie* validity of the claims and shifts the burden of persuasion to the Claimants.

<sup>11</sup> Docket No. 1293, Ex. A (emphasis added).

assessments charged to the Carrier as a result of its Carriage of Goods. In order to recover any sums due the Carrier shall have the right to sell Goods by public auction or private treaty without notice to the Merchant. If on sale of Goods, the proceeds fail to cover the amount due and the costs and expenses incurred, the Carrier shall be entitled to recover the deficit from the Merchant.<sup>12</sup>

10. “Under United States law, it has been settled for over a century that [Courts] presume a maritime lien exists in favor of a shipowner on cargo for charges incurred during the course of its carriage.”<sup>13</sup> A lien for unpaid freight ‘arises from the right of the ship-owner to retain the possession of the goods until the freight is paid,’ and thus is lost upon ‘unconditional delivery to the consignee.’”<sup>14</sup>

11. In *World Imports*, the Third Circuit Court recognized that “despite the non-contractual origins and traditional form of maritime liens, parties are free to contractually extend or modify an existing lien ‘as they please.’”<sup>15</sup> The Court found that the parties’ contracts in that case provided that the maritime liens would (i) survive delivery, and (ii) be applied to any of the merchant’s goods currently in the carrier’s possession.<sup>16</sup> The Court held that the contracts were enforceable and, therefore, the carrier’s maritime liens for goods delivered prepetition survived delivery and attached to goods held in the carrier’s possession postpetition.<sup>17</sup>

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<sup>12</sup> Docket No. 1294, Ex. A (emphasis added).

<sup>13</sup> *Dampskibsselskabet Norden A/S v. 25,001.078 Metric Tons of Fly Ash*, 308 F. Supp. 3d 693, 696 (N.D. N.Y. 2018) (quoting *Arochem Corp. v. Wilomi, Inc.*, 962 F.2d 496, 499 (5<sup>th</sup> Cir. 1992)).

<sup>14</sup> *World Imports, Ltd. v. OEC Group New York (In re World Imports Ltd.)*, 820 F.3d 576, 584 (3d Cir. 2016), cert. denied, 137 S. Ct. 340, 196 L. Ed. 2d 262 (2016) (quoting *The Bird of Paradise*, 72 U.S. (5 Wall.) 545, 555 (1866)).

<sup>15</sup> *World Imports*, 820 F.3d at 588 (quoting *Bird of Paradise*, 72 U.S. at 555)).

<sup>16</sup> *World Imports*, 820 F.3d at 586.

<sup>17</sup> *Id.* at 592

12. In *World Imports*, the carrier's maritime liens extended to goods that remained in the carrier's possession to secure claims for both current and previous deliveries. The Claimants here have not provided any evidence that they possess any of the Debtors' goods to secure their claims.

13. However, the Claimants argue that delivery of the goods did not terminate their maritime liens because their contracts provide that the liens will "survive delivery." Courts have recognized that "a shipowner enjoys a strong presumption that, absent a clear indication to the contrary, he has not waived his cargo lien upon delivery of that cargo,"<sup>18</sup> "[b]ecause it would frustrate commerce to require shipowners to retain their liens only by actual possession of the implicated cargo."<sup>19</sup>

14. However, for liens to survive delivery, there must still be identifiable goods in the *constructive possession* of the carrier. "[A] vessel owner's lien on cargo for unpaid freight is 'possessory,' i.e., it 'continues only so long as the cargo remains in the owner's actual or constructive possession.'"<sup>20</sup> Here, the Claimants have not

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<sup>18</sup> *Id.* at 584 (citing *In re 4,885 Bags of Linseed*, 66 U.S. (1 Black) 108, 114 (1861); *Bird of Paradise*, 72 U.S. at 556).

<sup>19</sup> *Id.* "To overcome the presumption against waiver [of a maritime lien], a court determining whether a cargo lien has been waived by unconditional delivery may consider, among other things, whether there was an understanding between the parties regarding retention of the lien either before or at the time the consignee took possession of the cargo, whether there was a stipulation in the contract of affreightment inconsistent with the exercise of a lien, or whether other security was taken when the cargo was discharged." *Id.* at 584 (citing *The Eddy*, 72 U.S. (5 Wall.) 481, 495-96 (1866); 2 Thomas A. Russell, *Benedict on Admiralty*, § 44, at 352 (7<sup>th</sup> ed. Rev. 2010)).

<sup>20</sup> *Hawspere Shipping Co., Ltd. v. Intamex, S.A.*, 330 F.3d 225, 230 n. 3 (4<sup>th</sup> Cir. 2003) (quoting *Beverly Hills Nat'l Bank & Trust Co. v. Compania De Navegacion Almirante S.A.*, 437 F.2d 301, 304 (9<sup>th</sup> Cir. 1971)). In *Norden*, the Court held that the carrier met its burden of demonstrating that its maritime liens remained in place on cargo delivered to third-party custodians for demurrage and other costs and expenses due from the charterer. *Norden*, 308 F. Supp. 3d at 697-98. The carrier transmitted Notices of Liens to the charterer and the custodians to evidence its intent that delivery was conditional. *Id.*

identified any goods subject to their constructive possession to which their liens attached.

15. The Third Circuit Court recognized the concern over granting a continuing maritime lien on cargo that had passed into the stream of commerce and limited its *World Imports* decision, writing:

[W]hile we understand the Bankruptcy Court’s resistance to “the proposition that the freight charges for goods upon their release from a warehouse and entry into the hands of others in the ordinary course of commerce remain secured by a pre-existing *maritime* lien,” *In re World Imports*, 498 B.R. [58], 62 [(Bankr. E.D. Pa. 2013)] (original emphasis), we emphasize that the disposition of this case concerns only the enforceability of a contractual transfer of a lien from previously released good to currently held goods. In short, the enforceability of a provision asserting a maritime lien on goods that have already been released into the stream of commerce is not at issue in this case.<sup>21</sup>

16. Because the Claimants have not identified any goods in their actual or constructive possession that are subject to their maritime liens, the Court concludes that the Claimants have not met their burden of persuasion that their claims are secured.

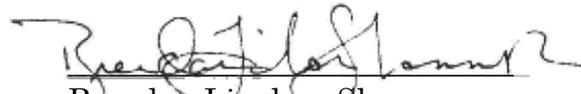
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<sup>21</sup> *World Imports*, 820 F.3d at 188 n. 13.

Accordingly, it is hereby:

**ORDERED** that the Liquidating Trustee's Claim Objection to the classification of Claim No. 297 filed by Ocean Network and Claim No. 687 filed by Yung Ming as secured claims is **SUSTAINED** and those claims are hereby reclassified as general unsecured claims.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Brendan Linehan Shannon", written over a horizontal line.

Brendan Linehan Shannon  
United States Bankruptcy Judge

Dated: November 20, 2019  
Wilmington, Delaware