UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re:

MIRON BUILDING PRODUCTS CO., INC.,	Chapter 11
Debtor.	Case No.: 00-14489

APPEARANCES:

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Breakell Law Firm, P.C. Attorneys for Cranesville Block Company, Inc. 10 Airline Drive Albany, NY 12205	Walter G. Breakell, Esq.
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Hon. Robert E. Littlefield, Jr., United States Bankruptcy Judge

MEMORANDUM-DECISION AND ORDER

Before the court is the motion of Miron Building Products Co., Inc. (the "Debtor") pursuant to Fed. R. Bankr. P. 9023, which incorporates Fed. R. Civ. P. 59(e), for reconsideration of the court's April 9, 2004 Memorandum-Decision and Order ("April 2004 Decision"). The court ruled that Cranesville Block Co., Inc. ("Cranesville"), a post-petition creditor, is entitled to administrative priority status pursuant to §§ 503(b)(1)(A) and 507(a)(1).[1] The circumstances surrounding the parties' transactions that give rise to

[1] The Debtor does not seek reconsideration of conclusions of law contained in the April 2004 Decision. Rather, the Debtor advises that it intends to pursue an appeal once a determination is made on this motion. (Mot. for Recons. Pursuant to [Fed. R. Bankr. P.] 9023 and [Fed. R. Civ. P.] 59(e) at 2, fn 1.) These conclusions, however, are inextricably intertwined with the court's January 10, 2002

Cranesville's administrative claim are fully detailed in the April 2004 Decision; therefore, the court will not recite them here. In sum, the Debtor is obligated to indemnify Cranesville for costs and expenses incurred in the environmental remediation of real property that was contaminated by the Debtor, but purchased by Cranesville. The Debtor's factual challenges to the April 2004 Decision are that the court erroneously found that (1) Cranesville is entitled to an administrative claim in the amount of $68,008.91; and (2) an escrow is appropriate in the amount of $80,800 for future compliance costs. (April 2004 Decision at 11) (Dkt. No. 753.)

The Debtor contends that it raised, prior to entry of the April 2004 Decision, that there were material issues of fact concerning the amounts claimed by Cranseville. Specifically, the Debtor questions whether: (1) Cranesville performed its environmental cleanup obligations under the parties' agreement;[2] (2) Cranesville adequately documented the specifics of the labor for which it seeks reimbursement; and (3) the escrow properly includes costs that are described as speculative, "potential cost overruns", and a "30% contingency". Each of these questions was asked and answered prior to the court's issuance of the April 2004 Decision.

Federal Rule of Civil Procedure 59(e) grants a court the power to alter or amend a judgment after its entry when there has been a clear error of law or manifest injustice in an order of the court or if newly discovered evidence is unearthed. *See In re Bradlees Stores, Inc., et al.*, 291 B.R. 307, 311 (Bankr. S.D.N.Y. 2003) (citing *Bowers v. Andrew Weir Shipping, Ltd.*, 817 F. Supp. 4, 5 (S.D.N.Y. 1993); *In re Bird*, 222 B.R.

Memorandum, Decision and Order ("January 2002 Decision"), holding that the Debtor is wholly responsible for the costs that give rise to Cranesville's administrative claim. (January 2002 Decision at 7) (Dkt. No. 404.) The Debtor did not appeal the January 2002 Decision.

[2] The referenced agreement is an October 22, 1999 Memorandum of Agreement setting Cranesville's maximum contribution for specific tasks associated with the remediation project at $12,587. All documents pertinent to the court's decisions, including the Memorandum of Agreement, were attached as Exhibits to the September 28, 2000 Motion of Debtor in Possession for Authorization to Sell Real Property, Furniture, Fixtures and Equipment of Debtor's Rapid Mix and Precast Concrete Business at Route 52, Liberty, New York, Free and Clear of Liens and Other Interests Pursuant to 11 U.S.C. § 363(b)(1). (Dkt. No. 65.)

229, 235 (Bankr. S.D.N.Y. 1998)).[3] To prevail, the Debtor must show that the court overlooked factual matters or controlling precedent "that might have materially influenced its earlier decision." *In re Bird*, 222 B.R. at 235 (quoting *Robins v. Max Mara, U.S.A., Inc.*, 923 F. Supp. 460, 473 (S.D.N.Y. 1996)). "This criterion is strictly construed against the moving party." *Id.* (citations omitted). In this case, none of the factual matters that the Debtor points to were overlooked by the court in reaching its April 2004 Decision.

First, presumably to reduce the amount of Cranesville's administrative claim, the Debtor argues that Cranesville failed to show that it performed its obligations under the Memorandum of Agreement. This argument was previously advanced by the Debtor[4] and fully addressed by Cranesville through the submission of affidavit testimony from the President of Cranesville, John A. Tesiero, III.[5] In fact, the Tesiero Affidavit was cited in support of the court's finding that "Cranesville initially requested an administrative priority claim totaling $65,734.73; however, it amended its request *in response to the Debtor's opposition* and now seeks $68,008.91." (April 2004 Decision at 4, ¶ 11) (emphasis added).) Cranesville conceded that certain costs were inadvertently included in its claim, and credited the Debtor for those costs in the amount of $2,500.82. (Tesiero Affidavit ¶¶ 9, 12.) Cranesville scrutinized its own documentation and, to the Debtor's detriment, discovered unreported costs that increased the amount of its claim. As a basis for its claim amount, Cranesville submitted hundreds of pages of documents, including invoices, receipts, correspondence, man power logs, and check copies. All of these documents were available to the Debtor, but it nonetheless

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[3] Fed. R. Civ. P. 59(e) provides:

> **(e) Motion to Alter or Amend Judgment.** Any motion to alter or amend a judgment must be filed no later than 10 days after entry of the judgment.

[4] *See* May 27, 2003 Affirmation in Opposition to Order to Show Cause on Application of Cranesville Block Co., Inc. for a Determination of Claim as a Class 3 Administrative Claim and an Award of Environmental Remediation Costs Pursuant to 11 U.S.C. §§ 503 and 507 at 5, ¶ 14 ("Affirmation in Opposition"). (Dkt. No. 654.)

[5] *See* June 18, 2003 Affidavit of John A. Tesiero, III in Reply and in Further Support of Cranesville Block's Motion Pursuant to 11 [U.S.C.] §§ 503 and 507 to Have its Claim for Environmental Remediation Declared and Paid as an Administrative Expense ("Tesiero Affidavit"). (Dkt. No. 662.)

failed to raise particularized objections to the amounts requested. It cannot do so now as a basis for reconsideration.

Second, the Debtor argues that Cranesville did not adequately document the labor and services performed for which it seeks reimbursement. This argument was also previously advanced by the Debtor[6] and fully addressed by Cranesville through the submission of affidavit testimony from Edward T. Bailey, a consultant for Cranesville who was responsible for managing and coordinating the environmental clean-up activities at the subject property.[7] The Bailey Affidavit incorporated a detailed summary describing the work completed, and numerous Statements of Activity that itemized the work performed by Mr. Bailey on an hourly basis from May 2001 through June 2002. (*See* Bailey Affidavit, Ex. D.) The Debtor did not attack Mr. Bailey's qualifications, or otherwise provide the court with reason to believe that the amount requested by Cranesville for labor and services was overstated or otherwise suspect. Thus, though not directly alluded to, this argument was fully considered and rejected in the April 2004 Decision.

Third, the Debtor argues that the court erroneously determined the amount of the escrow. This argument was also previously advanced by the Debtor[8] and fully addressed by Cranesville through the Bailey Affidavit. The court found:

> In support of Cranesville's request for an additional escrow fund totaling $80,800, Cranesville submitted the Affidavit of the Project Manager, Edward T. Bailey, who advises the court that the estimate 'provides a fair representation of the expected costs that will be necessary to comply with the Corrective Action Plan reviewed, approved and closely monitored by the NYSDEC for the remediation of the Kingston property.'

(April 2004 Decision at 4-5, ¶12.) In determining the reasonableness of Cranesville's request, the court considered that (1) the remediation project has already significantly overrun the parties' original cost

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[6] *See* Affirmation in Opposition at 5-6, ¶ 15.

[7] *See* June 19, 2003 Affidavit of Edward T. Bailey in Reply and in Further Support of Cranesville Block's Mot. Pursuant to 11 [U.S.C.] §§ 503 and 507 to Have its Claim for Environmental Remediation Declared and Paid as an Administrative Expense ("Bailey Affidavit"). (Dkt. No. 661.)

[8] *See* Affirmation in Opposition at 6, ¶ 16.

projections; (2) based on the January 2002 Decision, the Debtor's liability is not capped at $80,800; and (3) upon completion of the project, any unused funds will be returned to the Debtor. Thus, nothing in the Debtor's prior submissions or this motion indicates any error in fixing the escrow at $80,800.

None of the Debtor's arguments have merit. In support of its motion for reconsideration, the Debtor essentially reiterates the arguments presented in its Affirmation in Opposition. These arguments were considered and rejected in the April 2004 Decision. Therefore, the Debtor's motion for reconsideration is denied.

It is SO ORDERED.

Dated:
Albany, New York

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Hon. Robert E. Littlefield, Jr.
United States Bankruptcy Judge