

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EMERGE ENERGY SERVICES, LP, *et al.*¹

Debtor.

Chapter 11

Case No. 19-11563 (KBO)

(Jointly Administered)

POWNALL SERVICES, LLC,

Plaintiff,

v.

SUPERIOR SILICA SANDS LLC, and
HPS INVESTMENT PARTNERS, LLC,

Defendants.

Adversary Proceeding No. 19-50295 (KBO)

HPS INVESTMENT PARTNERS, LLC'S ANSWER AND AFFIRMATIVE DEFENSES

In accordance with Rule 7012 of the Federal Rules of Bankruptcy Procedure, Defendant HPS Investment Partners, LLC (“**HPS**”) respectfully submits this Answer in response to the Complaint filed by Plaintiff Pownall Services, LLC (“**Plaintiff**”) against HPS and Superior Silica Sands LLC (“**Superior**” or the “**Debtors**”). To the extent that claims and allegations in the Complaint are asserted against the Debtors, not HPS, HPS is not required to respond as no

¹ The debtors in these chapter 11 cases (the “Debtors”), along with the last four digits of each of the Debtors’ 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.



relief is sought from HPS. HPS reserves its rights to seek dismissal of the action against it on this basis. HPS denies all allegations in the Complaint not expressly admitted in this Answer.

RESPONSE TO NATURE OF THE CASE

1. The allegations contained in Paragraph 1 state legal conclusions to which no response is required. To the extent a response is required, HPS denies the allegations of Paragraph 1.

RESPONSE TO JURISDICTION AND VENUE

2. The allegations contained in Paragraph 2 state legal conclusions to which no response is required. To the extent a response is required, HPS admits that the Court has subject matter jurisdiction over this adversary proceeding and denies the remaining allegations of Paragraph 2.

3. The allegations contained in Paragraph 3 state legal conclusions to which no response is required. To the extent a response is required, HPS admits that this adversary proceeding is a core proceeding.

4. The allegations contained in Paragraph 4 state legal conclusions to which no response is required. To the extent a response is required, HPS admits that venue is proper in this District.

5. The allegations contained in Paragraph 5 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 5.

RESPONSE TO PARTIES

6. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 6, and on that basis denies the allegations in Paragraph 6.

7. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 7, and on that basis denies the allegations of Paragraph 7.

8. HPS admits the allegations of Paragraph 8.

RESPONSE TO FACTS

9. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 9, and on that basis denies the allegations of Paragraph 9.

10. The allegations of Paragraph 10 are not directed at HPS and therefore no response is required. To the extent a response is required, HPS admits the allegations of Paragraph 10.

11. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 11, and on that basis denies the allegations of Paragraph 11.

12. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 12, and on that basis denies the allegations of Paragraph 12.

13. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 13, and on that basis denies the allegations of Paragraph 13.

14. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 14, and on that basis denies the allegations of Paragraph 14.

15. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 15, and on that basis denies them. HPS further refers the Court to Exhibit A to Plaintiff's Complaint for a full statement of its terms.

16. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 16, and on that basis denies them. HPS further refers the Court to Exhibit B for a full statement of its terms.

17. The allegations contained in Paragraph 17 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 17.

RESPONSE TO PROCEDURAL POSTURE

18. HPS admits the allegations of Paragraph 18.

19. HPS admits the allegations of Paragraph 19.

20. HPS admits the allegations of Paragraph 20, and further refers the court to the *Motion (I) Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 Authorizing the Debtors to (A) Obtain Senior Secured Priming Superpriority Postpetition Financing, (B) Grant Liens and Superpriority Administrative Expense Status, (C) Use Cash Collateral of Prepetition Secured Parties, and (D) Grant Adequate Protection to Prepetition Secured Parties; (II) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and 4001(c); and (III) Granting Related Relief* [D.I. 20] (the "**Financing Motion**") for a full statement of its terms.

21. HPS admits the allegations of Paragraph 21, and further refers to the Court to the Financing Motion for a full statement of its terms.

22. HPS admits the allegations of Paragraph 22.

23. HPS admits the allegations of Paragraph 23.

24. HPS admits that the quoted language in Paragraph 24 appears in the *Joint Plan of Reorganization for Emerge Energy Services LP and its Affiliate Debtors Under Chapter 11 of the Bankruptcy Code* [D.I. 98] (the “**Plan**”), but denies any implications being drawn therefrom, and refers the Court to the Plan for a full statement of its terms.

25. HPS admits that the quoted language in Paragraph 25 appears in the Plan, but denies any implications being drawn therefrom, and refers the Court to the Plan for a full statement of its terms.

26. HPS admits that the Plan classifies Other Secured Claims as “Class 2,” and further refers the Court to the Plan for a full statement of its terms.

27. HPS denies the allegations of Paragraph 27, except admits that on August 9, 2019, the Debtor filed the *Schedules of Assets and Liabilities for Superior Silica Sands LLC* [D.I. 149] (“**Debtor’s Schedules**”) and admits that Plaintiff is identified as an unsecured creditor. HPS further refers the Court to the Debtor’s Schedules for a full statement of its terms.

28. HPS admits the allegations of Paragraph 28, and further refers the Court to the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Certain Protections to Prepetition Secured Parties, (III) Scheduling a*

Final Hearing, and (IV) Granting Related Relief [D.I. 209] (the “**Final DIP Order**”) for a full statement of its terms.

29. HPS denies the allegations in Paragraph 29, except admits that the quoted language appears in the Final DIP Order but denies any legal conclusions suggested by Plaintiff, and further refers the Court to the Final DIP Order for a full statement of its terms.

30. The allegations contained in Paragraph 30 state legal conclusions to which no response is required. To the extent a response is required, HPS denies the allegations of Paragraph 30, and refers the Court to the Final DIP Order for a full statement of its terms.

31. HPS admits the allegations of Paragraph 31, and further refers the Court to the Final DIP Order for a full statement of its terms.

RESPONSE TO COUNT I

32. HPS incorporates by reference its Answer to Paragraphs 1-31 as if fully set forth herein.

33. The allegations contained in Paragraph 33 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief as to whether the Kingfisher Lien is a valid, perfected, and unavoidable prepetition lien upon the Kingfisher Premises.

34. The allegations contained in Paragraph 34 state legal conclusions to which no response is required. To the extent a response is required, HPS denies the Kingfisher Lien is a “Senior Lien” under the terms of the Final DIP Order.

35. HPS denies knowledge or information sufficient to form a belief as to whether the Debtor's Schedules recognize the Kingfisher Lien, except admits that the Debtor's Schedules do not identify Plaintiff as a secured creditor. HPS further refers the Court to the Debtor's Schedules for a full statement of its terms.

36. The allegations contained in Paragraph 36 state legal conclusions to which no response is required. To the extent a response is required, HPS admits that an actual controversy exists between the Defendants and Plaintiff, and denies the remaining allegations of Paragraph 36.

37. The allegations contained in Paragraph 37 state legal conclusions to which no response is required. To the extent a response is required, HPS denies the allegations of Paragraph 37.

38. The allegations contained in Paragraph 38 state legal conclusions to which no response is required.

RESPONSE TO COUNT II

39. HPS incorporates by reference its Answer to Paragraphs 1-38 as if fully set forth herein.

40. The allegations contained in Paragraph 40 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief as to whether the Kingfisher Lien is a valid, perfected, and unavoidable prepetition lien upon the Kingfisher Premises.

41. The allegations contained in Paragraph 41 state legal conclusions to which no response is required. To the extent a response is required, HPS denies the Kingfisher Lien is a “Senior Lien” under the terms of the Final DIP Order.

42. The allegations contained in Paragraph 42 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief as to whether the Kingfisher Lien is a “Senior Lien” under the terms of the Final DIP Order and as to whether any DIP Liens granted by the DIP Lenders in the Kingfisher Premises through the DIP Order are junior to the Kingfisher Lien.

43. HPS denies knowledge or information sufficient to form a belief as to whether the Debtor’s Schedules recognize the Kingfisher Lien, except admits that the Debtor’s Schedules do not identify Plaintiff as a secured creditor. HPS further refers the Court to the Debtor’s Schedules for a full statement of its terms.

44. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 44.

45. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 45.

46. The allegations contained in Paragraph 46 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 46.

47. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 47, except admits that Market & Johnson, Bollenbach Concrete,

TMT Solutions, EnDeCo Engineers, and RB Scott Company are listed as secured creditors in the Debtor's Schedules. HPS further refers the Court to the Debtors' Schedules for a full statement of its terms.

48. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 48.

49. HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 49, and further refers the Court to the Debtor's Schedules for a full statement of its terms.

50. The allegations contained in Paragraph 50 state legal conclusions to which no response is required. To the extent a response is required, HPS admits that a controversy has arisen between HPS and Plaintiff as to the existence of the Kingfisher Lien for purposes of the Debtor's chapter 11 cases, and denies the remaining allegations of Paragraph 50.

51. The allegations contained in Paragraph 51 state legal conclusions to which no response is required. To the extent a response is required, HPS denies the allegations of Paragraph 51.

52. The allegations contained in Paragraph 52 state legal conclusions to which no response is required.

RESPONSE TO COUNT III

53. HPS incorporates by reference its Answer to Paragraphs 1-52 as if fully set forth herein.

54. The allegations contained in Paragraph 54 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief as to whether the Kingfisher Lien is a valid, perfected, and unavoidable prepetition lien upon the Kingfisher Premises.

55. The allegations contained in Paragraph 55 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information as to whether Plaintiff is a secured creditor to the extent of the value of Plaintiff's interest in the Kingfisher Premises.

56. HPS denies knowledge or information sufficient to form a belief as to whether the Debtor's Schedules recognize the Kingfisher Lien, except admits that the Debtor's Schedules do not identify Plaintiff as a secured creditor. HPS further refers the Court to the Debtor's Schedules for a full statement of its terms.

57. The allegations contained in Paragraph 57 state legal conclusions to which no response is required. To the extent a response is required, HPS admits that a controversy has arisen between HPS and Plaintiff as to whether Plaintiff is a secured creditor or general unsecured creditor for all purposes in these chapter 11 cases, and denies the remaining allegations of Paragraph 57.

58. The allegations contained in Paragraph 58 state legal conclusions to which no response is required. To the extent a response is required, HPS denies the allegations of Paragraph 58.

59. The allegations contained in Paragraph 59 state legal conclusions to which no response is required.

RESPONSE TO COUNT IV

60. HPS incorporates by reference its Answer to Paragraphs 1-59 as if fully set forth herein.

61. The allegations contained in Paragraph 61 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief as to whether the Kingfisher Lien is a valid, perfected, and unavoidable prepetition lien upon the Kingfisher Premises.

62. The allegations contained in Paragraph 62 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief about the truth of the allegations of Paragraph 62.

63. The allegations contained in Paragraph 63 state legal conclusions to which no response is required. To the extent a response is required, HPS denies knowledge or information sufficient to form a belief as to whether the Kingfisher Lien is a "Senior Lien" under the terms of the Final DIP Order.

64. HPS denies knowledge or information sufficient to form a belief as to whether the Debtor's Schedules recognize the Kingfisher Lien, except admits that the Debtor's Schedules do not identify Plaintiff as a secured creditor. HPS further refers the Court to the Debtor's Schedules for a full statement of its terms.

65. The allegations contained in Paragraph 65 state legal conclusions to which no response is required. To the extent a response is required, HPS admits that a controversy has arisen between HPS and Plaintiff as to the character of the Kingfisher Lien as a “Senior Lien” for purposes of the Final DIP Order, and denies the remaining allegations of Paragraph 65.

66. The allegations contained in Paragraph 66 state legal conclusions to which no response is required. To the extent a response is required, HPS denies the allegations of Paragraph 66.

67. The allegations contained in Paragraph 67 state legal conclusions to which no response is required.

RESPONSE TO RESERVATION OF RIGHTS

68. The allegations contained in Paragraph 68 state legal conclusions to which no response is required. To the extent a response is required, HPS denies that Plaintiff has any rights to bring objections, causes of action, or other claims, except to the extent authorized by the Court and/or applicable law.

RESPONSE TO PRAYER FOR RELIEF

69. HPS admits that Plaintiff seeks relief from the Court, but denies Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

70. The Complaint fails to state a claim upon which relief can be granted.

71. The Complaint fails to plead a basis for naming HPS as a defendant in this action: none of the claims are asserted against HPS and HPS is not even mentioned in the Complaint after page 1. To the extent Plaintiff is asserting a derivative theory of liability, HPS incorporates by reference each of the affirmative defenses asserted by the Debtor in its Answer to the Complaint.

Dated: September 16, 2019

/s/ Laura Davis Jones

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

In re: EMERGE ENERGY SERVICES, LP, <i>et al.</i> ¹ Debtor.	Chapter 11 Case No. 19-11563 (KBO) (Jointly Administered)
POWNALL SERVICES, LLC, Plaintiff, v. SUPERIOR SILICA SANDS LLC, and HPS INVESTMENT PARTNERS, LLC, Defendants.	Adversary Proceeding No. 19-50295 (KBO)

CERTIFICATE OF SERVICE

I, Timothy P. Cairns, hereby certify that on the 16th day of September, 2019, I caused a copy of the following document to be served on the individuals on the attached service list in the manner indicated.

**HPS INVESTMENT PARTNERS, LLC'S ANSWER
AND AFFIRMATIVE DEFENSES**

/s/ Timothy P. Cairns
Timothy P. Cairns, Esq. (DE Bar 4228)

1 The debtors in these chapter 11 cases (the “Debtors”), along with the last four digits of each of the Debtors’ 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.

Emerge Energy-Adv. Service List
Adv. 19-50295, Pownall Services v Superior, HPS
Doc #225386
01-Hand Delivery
01-First Class Mail

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