

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

In re: WELDED CONSTRUCTION, L.P., <i>et al.</i> , ¹ Debtors.	Chapter 11 Case No. 18-12378 (CSS) (Jointly Administered)
WELDED CONSTRUCTION, L.P., Plaintiff, v. DNOW L.P., Defendant.	Adv. Pro. No. 20-50923 (CSS)

ANSWER AND ADDITIONAL DEFENSES

DNOW L.P. (“DNOW”) hereby submits its answer and additional defenses (the “Answer”) in response to the *Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§547, 548, and 550 and to Disallow Claims Pursuant to 11 U.S.C. §502* (the “Complaint”) filed by Plaintiff Welded Construction, L.P. (“Debtor” or “Plaintiff”) in the above-captioned adversary proceeding. In support thereof, DNOW respectfully states as follows:

NATURE OF THE CASE

1. No response is required to the summary statements set forth in paragraph 1 of the Complaint. For the avoidance of doubt, DNOW denies it has liability for any claims or allegations asserted in the Complaint. DNOW reserves and asserts all rights, claims, and defenses available at law or equity.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Welded Construction, L.P (5008) and Welded Construction Michigan, LLC (9830). The mailing address for each of the Debtors is 26933 Eckel Road, Perrysburg, OH 43551.



2. No response is required to the summary statements set forth in paragraph 2 of the Complaint. DNOW denies it has liability for any claims or allegations asserted in the Complaint. DNOW denies there is any basis for Plaintiff to disallow any claims DNOW possesses against any of the Debtors in the above-captioned bankruptcy cases. DNOW reserves and asserts all rights, claims, and defenses available at law or equity.

JURISDICTION AND VENUE

3. The allegations contained in paragraph 3 of the Complaint state legal conclusions to which no response is required.

4. No response is required to the summary statements set forth in paragraph 4 of the Complaint.

5. The allegations contained in paragraph 5 of the Complaint state legal conclusions to which no response is required.

6. The allegations contained in paragraph 6 of the Complaint state legal conclusions to which no response is required.

7. Pursuant to Rule 7012(b) of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rule 7012-1, DNOW consents to entry of a final order or judgment by the Court if it is determined the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution.

PROCEDURAL BACKGROUND

8. The allegations contained in paragraph 8 of the Complaint are admitted upon information and belief.

9. The allegations contained in paragraph 9 of the Complaint are admitted upon information and belief.

10. The allegations contained in paragraph 10 of the Complaint are admitted upon information and belief.

11. The allegations contained in paragraph 11 of the Complaint are admitted upon information and belief.

12. Paragraph 12 of the Complaint states legal conclusions to which no response is required.

13. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 13 of the Complaint.

THE PARTIES

14. Paragraph 14 of the Complaint states legal conclusions to which no response is required.

15. In response to the allegations contained in paragraph 15 of the Complaint, DNOW admits that prior to the Petition Date, it supplied certain goods or products to the Debtor(s) and that DNOW was and is a creditor of the Debtor(s); DNOW maintains a place of business at 7402 N. Eldridge Parkway, Houston, Texas 77041; and DNOW is a limited partnership organized under the laws of Texas. All other allegations contained in paragraph 15 of the Complaint either are denied or are too vague for DNOW to fairly admit or deny.

FACTUAL BACKGROUND

16. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 16 of the Complaint.

17. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 17 of the Complaint.

18. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 18 of the Complaint.

19. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 19 of the Complaint.

20. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 20 of the Complaint.

21. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 21 of the Complaint.

22. In response to the allegations contained in paragraph 22 of the Complaint, it is admitted that prior to the Petition Date, DNOW and one or more of the Debtors did business with each other for a lengthy period of time and that DNOW issued invoices to the Debtor(s) in connection with goods or products ordered by Debtor(s) and supplied by DNOW. DNOW lacks sufficient knowledge or information to admit or deny the remaining allegations contained in paragraph 22 of the Complaint.

23. In response to the allegations contained in paragraph 23 of the Complaint, it is admitted that prior to the Petition Date, DNOW and one or more of the Debtors did business with each other for a lengthy period of time and that as of the Petition Date, the Debtor(s) owed DNOW money for goods or products ordered by Debtor(s) and supplied by DNOW. DNOW lacks sufficient knowledge or information to admit or deny the remaining allegations contained in paragraph 23 of the Complaint.

24. In response to the allegations contained in paragraph 24 of the Complaint, it is admitted that prior to the Petition Date, DNOW and one or more of the Debtors did business with each other for a lengthy period of time and that as of the Petition Date, the Debtor(s) owed

DNOW money for goods or products ordered by Debtor(s) and supplied by DNOW. DNOW lacks sufficient knowledge or information to admit or deny the remaining allegations contained in paragraph 24 of the Complaint.

25. To the extent a response is required, DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 25 of the Complaint.

26. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 26 of the Complaint, except it is admitted that DNOW received certain payments from the Debtor(s) during the ninety (90) day period prior to the Petition Date (hereafter, the “Preference Period”).

27. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 27 of the Complaint. To the extent a letter was sent in September 2020 by or on behalf of Plaintiff to DNOW, the contents of the letter speak for themselves.

28. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 28 of the Complaint. DNOW denies it has liability for any claims or allegations asserted in the Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

29. No response is required to the statements and/or conclusions of law contained in paragraph 29 of the Complaint. To the extent a response is required, any allegations, statements, and/or conclusions of law are denied. DNOW denies it has liability for any claims or allegations asserted in the Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

30. No response is required to the statements and/or conclusions of law contained in paragraph 30 of the Complaint.

CLAIMS FOR RELIEF

COUNT I

(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)

31. DNOW incorporates all preceding responses as if fully restated here.

32. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 32 of the Complaint, except it is admitted DNOW received certain payments from Debtor(s) during the Preference Period.

33. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 33 of the Complaint.

34. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 34 of the Complaint, except it is admitted DNOW received certain payments from Debtor(s) during the Preference Period.

35. Paragraph 35 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 35 of the Complaint except it is admitted that DNOW was and is a creditor of the Debtor(s).

36. Paragraph 36 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 36 of the Complaint except it is admitted that DNOW was and is a creditor of the Debtor(s).

37. Paragraph 37 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 37 of the Complaint.

38. DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 38 of the Complaint, except it is admitted DNOW received certain payments from Debtor(s) during the Preference Period.

39. Paragraph 39 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, DNOW lacks sufficient knowledge or information to admit or deny the allegations contained in paragraph 39 of the Complaint.

40. Paragraph 40 of the Complaint states legal conclusions to which no response is required. DNOW denies it has liability for any claims or allegations asserted in the Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

COUNT II

(Avoidance of Fraudulent Conveyances – 11 U.S.C. § 548(a)(1)(B))

41. DNOW incorporates all preceding responses as if fully restated here.

42. No response is required to the statements and/or conclusions of law contained in paragraph 42 of the Complaint. To the extent a response is required, any allegations, statements, and/or conclusions of law are denied. DNOW denies it has liability for any claims or allegations asserted in the Complaint, including in Count II, and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

43. Paragraph 43 of the Complaint states a legal conclusion to which no response is required. DNOW denies it has liability for any claims or allegations asserted in the Complaint,

including in Count II, and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

COUNT III

(Recovery of Avoided Transfers – 11 U.S.C. § 550)

44. DNOW incorporates all preceding responses as if fully restated here.

45. Paragraph 45 of the Complaint states legal conclusions to which no response is required. DNOW denies it has liability for any claims or allegations asserted in the Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

46. Paragraph 46 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, any allegations contained in paragraph 46 of the Complaint are denied. DNOW denies it has liability for any claims or allegations asserted in the Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

47. Paragraph 47 of the Complaint states legal conclusions to which no response is required. DNOW denies it has liability for any claims or allegations asserted in the Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

COUNT IV

(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))

48. DNOW incorporates all preceding responses as if fully restated here.

49. Paragraph 49 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, any allegations contained in paragraph 49 of the Complaint are denied. DNOW denies it has liability for any claims or allegations asserted in the

Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

50. In response to the allegations contained in paragraph 50 of the Complaint, DNOW admits it has not paid any monies to Debtor(s) as demanded in the Complaint. DNOW denies it has liability for any claims or allegations asserted in the Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

51. Paragraph 51 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, any allegations contained in paragraph 51 of the Complaint are denied. DNOW denies it has liability for any claims or allegations asserted in the Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

52. Paragraph 52 of the Complaint states legal conclusions to which no response is required. To the extent a response is required, any allegations contained in paragraph 52 of the Complaint are denied. DNOW denies it has liability for any claims or allegations asserted in the Complaint and expressly reserves and asserts all rights, claims, and defenses available to it at law or equity.

ADDITIONAL DEFENSES

53. Plaintiff fails to state a claim upon which relief can be granted. The Complaint should be dismissed with prejudice.

54. Any transfer(s) made by Debtor(s) to DNOW during the Preference Period were (a) made in payment of a debt(s) incurred by Debtor(s) in the ordinary course of business or financial affairs of the Debtor(s) and DNOW and (b) were made in the ordinary course of

business or financial affairs of the Debtor(s) and DNOW. Any such transfers therefore are protected from avoidance pursuant to 11 U.S.C. § 547(c)(2)(A).

55. Any transfer(s) made by Debtor(s) to DNOW during the Preference Period were (a) made in payment of a debt(s) incurred by Debtor(s) in the ordinary course of business or financial affairs of the Debtor(s) and DNOW and (b) were made according to ordinary business terms. Any such transfers therefore are protected from avoidance pursuant to 11 U.S.C. § 547(c)(2)(B).

56. Transfer(s) made by Debtor(s) to DNOW during the Preference Period were followed by transfers of new value made by DNOW to Debtor(s) during the Preference Period. Such transfers of new value by DNOW actually exceeded the value of transfers received by DNOW. The transfers of new value by DNOW were not secured by an otherwise unavoidable security interest and on account of which new value the Debtor(s) did not make an otherwise unavoidable transfer(s) to DNOW. Any transfers received by DNOW from Debtor(s) during the Preference Period therefore are protected from avoidance pursuant to 11 U.S.C. § 547(c)(4).

57. To the extent any transfer(s) received by DNOW during the Preference Period were (a) intended by Debtor(s) and DNOW to be a contemporaneous exchange for new value given to Debtor(s) and (b) in fact a substantially contemporaneous exchange, such transfers are protected from avoidance pursuant to 11 U.S.C. § 547(c)(1).

58. DNOW asserts all defenses available to it pursuant to 11 U.S.C. §§ 548(a)(1) and 548(c). DNOW, at all times and with respect to all transfer(s) received from Debtor(s) during the Preference Period, (a) took for value and in good faith and (b) gave value to the Debtor(s) in exchange therefor.

59. DNOW asserts all defenses available to it pursuant to 11 U.S.C. § 550(b).

60. DNOW asserts all rights and defenses available to it pursuant to 11 U.S.C. § 547(b). That statute requires Plaintiff, without limitation, to “perform reasonable due diligence in the circumstances of the case and [take] into account a party’s known or reasonably knowable affirmative defenses under subsection (c).” To the extent Plaintiff failed or fails to do as required, DNOW reserves the right to request its reasonable attorneys’ fees and costs incurred in this action, particularly those fees and costs incurred after Plaintiff has been or will be presented with proof of DNOW’s meritorious and complete defenses in this action.

61. DNOW asserts all rights of setoff and all rights under the doctrine of recoupment.

62. DNOW denies Plaintiff is entitled to receive any prejudgment interest or recovery of any attorneys’ fees, as requested in the Prayer for Relief contained in the Complaint.

63. All proper factual allegations contained in the Complaint but not expressly admitted in this Answer are hereby denied. DNOW reserves the right to raise additional defenses and to amend and/or supplement the defenses asserted herein upon further analysis and discovery of information learned or exchanged in this action.

WHEREFORE, DNOW respectfully requests (i) dismissal of this Adversary Proceeding, with prejudice, (ii) its reasonable attorneys’ fees and costs as determined to be due and owing, and (iii) such other and further relief as this Court deems just and equitable.

Dated: January 4, 2021

ASHBY & GEDDES, P.A.

/s/ Michael D. DeBaecke
Michael D. DeBaecke (DE Bar No. 3186)
500 Delaware Avenue, 8th Floor
P.O. Box 1150
Wilmington, Delaware 19899
Telephone: (302) 504-3728
Email: mdebaecke@ashbygeddes.com

Counsel to DNOW L.P.

CERTIFICATE OF SERVICE

I, Michael D. DeBaecke, hereby certify that on January 4, 2021, I caused one copy of the *Answer and Additional Defenses* to be served upon (1) all parties of record via CM/ECF and (2) the parties listed below via electronic mail.

<p>Young Conaway Stargatt & Taylor Attn: Sean M. Beach Rodney Square 1000 North King Street Wilmington, DE 19801 Email: sbeach@ycst.com</p> <p><i>Counsel for Welded Construction, L.P. et al., the Post-Effective Date Debtors</i></p>	<p>Ask LLP Attn: Joseph L. Steinfeld, Jr., Anastasia Kazmina, and Gary Underdahl 2600 Eagan Woods Drive, Suite 400 St. Paul, MN 55121 Email: jsteinfeld@askllp.com Email: akazmina@askllp.com Email: gunderdahl@askllp.com</p> <p><i>Counsel for Welded Construction, L.P. et al., the Post-Effective Date Debtors</i></p>
--	---

/s/ Michael D. DeBaecke

Michael D. DeBaecke (DE Bar No. 3186)