

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

In re Welded Construction, L.P., <i>et al.</i> , ¹	Chapter 11 Case No. 18-12378 (CSS) (Jointly Administered)
Welded Construction, L.P., Plaintiff, vs. Worldwide Machinery, Inc. dba Worldwide Rental Services, Defendant.	Adv. No.: 20-50960-CSS

**ANSWER AND AFFIRMATIVE DEFENSES TO 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**

Comes now, Worldwide Machinery, Inc. dba Worldwide Rental Services (the “**Defendant**”), by and through its undersigned counsel, and files this *Answer and Affirmative defenses* (“**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* (“**Complaint**”) filed by Plaintiff Welded Construction, L.P. (the “**Plaintiff**”).

NATURE OF THE CASE

1. The averments contained in Paragraph 1 are legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits the allegations contained therein.

2. The averments contained in Paragraph 2 are legal conclusions or statements to

¹The 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).



which no response is required. To the extent a response is required, the Defendant admits that the Plaintiff seeks to disallow, pursuant to sections 502(d) and 502(j) of the Bankruptcy Code, any claim that Defendant has filed or asserted against the Debtors or that has been scheduled for Defendant.

JURISDICTION AND VENUE

3. Admitted.

4. The averments contained in Paragraph 4 are legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that the statutory and legal predicates for the relief sought in the Complaint are sections 502, 547, 548, and 550 of the Bankruptcy Code and Rules 3007 and 7001 of the Federal Rules of Bankruptcy Procedure.

5. Admitted.

6. Admitted.

7. The averments contained in Paragraph 7 are legal conclusions or statements to which no response is required. To the extent a response is required, pursuant to Fed. R. Bankr. P. 7012(b) and Local Bankr. R. 7012-1, the Defendant states that it consents to entry of final orders or judgments by this Court.

PROCEDURAL BACKGROUND

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. The averments contained in Paragraph 13 are legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits the allegations contained therein.

THE PARTIES

14. The averments contained in Paragraph 14 are legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that the Plan and the Confirmation Order speak for themselves.

15. The averments contained in Paragraph 15 of the Complaint are admitted in part and denied in part. Defendant admits that it provided pipeline services for the Debtors. The Defendant also admits that its principal place of business is located 2200 Post Oak Boulevard, Suite 1400, Houston, Texas 77056. The Defendant is incorporated in Texas. The remaining allegations in this paragraph are denied.

FACTUAL BACKGROUND

16. The Defendant admits that the Debtors were a mainline pipeline construction contractor headquartered in Perrysburg, Ohio. The Defendant also admits that the Declaration of Frank Pometti in Support of Debtors' Chapter 11 Petitions and First-Day Motions speaks for itself.

17. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 17 of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

18. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 18 of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

19. The Defendant is without knowledge or information sufficient to form a belief as

to the truth of the averments contained in Paragraph 19 of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

20. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 20 of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

21. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 21 of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

22. The averments contained in Paragraph 22 of the Complaint are admitted in part and denied in part. The Defendant admits that it provided services and goods and issued invoices to the Debtor. Defendant is without knowledge as to the remaining averments contained in this paragraph of the Complaint, including the vague description of the defined term “Agreements”; and therefore the averments are denied. To the extent that the averments contained in this paragraph rely on various documents referenced therein, those documents speak for themselves. To the extent a further response is deemed to be necessary, the averments are denied.

23. The averments contained in Paragraph 23 of the Complaint are admitted in part and denied in part. The Defendant admits that it provided services and goods and issued invoices to the Debtor prior to the Petition Date. Defendant is without knowledge as to the remaining averments contained in this paragraph of the Complaint, including the vague description of the defined term “Agreements”; and therefore the averments are denied.

24. The averments contained in Paragraph 24 of the Complaint are admitted in part and denied in part. The Defendant admits that it provided services and goods and issued invoices to the Debtor. The Defendant is without knowledge as to the remaining averments contained in this

paragraph of the Complaint, including the vague description of the defined term “Agreements”; and therefore the averments are denied.

25. The averments contained in Paragraph 25 are legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant admits that the Plaintiff is seeking to avoid all transfers of an interest of the Debtors’ property made by the applicable Debtor(s) to Defendant within the Preference Period. The Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegation that the Plaintiff has completed an analysis of all readily available information of the Debtors, and therefore the averments are denied.

26. The averments contained in Paragraph 26 are legal conclusions or statements to which no response is required. To the extent a response is required, the averments are denied.

27. The averments contained in Paragraph 27 of the Complaint are admitted in part and denied in part. The Defendant admits that the Plaintiff, through counsel, sent a demand letter to Defendant, seeking return of the transfers. The Defendant is without knowledge as to the extent to which the Plaintiff performed its own due diligence evaluation of the reasonably knowable affirmative defenses available to the Defendant. Therefore, the remaining averments are denied.

28. The averments contained in Paragraph 28 are legal conclusions or statements to which no response is required. To the extent a response is required, the averments are denied.

29. The averments contained in Paragraph 29 are legal conclusions or statements to which no response is required. To the extent a response is required, The Defendant answers that to the extent the Plaintiff purports to reserve rights in this paragraph of the Complaint beyond those rights afforded to it under applicable law, the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure, and/or any scheduling orders entered by the Court in this matter, such

reservation is improper and the Defendant objects to the same. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 29 of the Complaint. Therefore, the remaining averments are denied.

30. The averments contained in Paragraph 30 are legal conclusions or statements to which no response is required. To the extent a response is required, the Defendant additionally and affirmatively alleges that the transfers are subject to affirmative defenses. The Defendant further admits that 11 U.S.C. § 547(g) places the burden of proof for nonavoidability of the transfers on the Defendant.

CLAIM FOR RELIEF

COUNT I

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

31. The Defendant repeats and re-alleges each and every allegation contained in the preceding paragraphs as if the same were set forth at length, herein.

32. The averments contained in Paragraph 32 of the Complaint are admitted in part and denied in part. The Defendant admits only that it received payment within 90 days of the Petition Date. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining averments contained in Paragraph 32 of the Complaint, in particular with regards to the defined term “Transfers”. Therefore, the remaining averments are denied.

33. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 33 of the Complaint. To the extent a further response is deemed to be necessary, the averments are denied.

34. The averments contained in Paragraph 34 of the Complaint are admitted in part and denied in part. The Defendant admits only that it was a creditor at the time each Transfer by virtue of supplying the Debtor(s) with goods and services. The Defendant is without knowledge or

information sufficient to form a belief as to the truth of the averments contained in Paragraph of the Complaint, in particular with regards to the defined terms “Agreements” and “Transfers”. Therefore, the remaining averments are denied.

35. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 35 of the Complaint, in particular with regards to the defined terms “Transfers”. To the extent a further response is deemed to be necessary, the averments are denied.

36. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 36 of the Complaint, in particular with regards to the defined terms “Agreements” and “Transfers”. To the extent a further response is deemed to be necessary, the averments are denied.

37. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 37 of the Complaint. The averments contained in Paragraph 37 of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, all averments are denied.

38. The averments contained in Paragraph 38 of the Complaint are admitted in part and denied in part. The Defendant admits only that it received payment within 90 days of the Petition Date. The remaining averments contained in in Paragraph 38 are denied.

39. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 39 of the Complaint, including with regards to the defined term “Transfers”. To the extent a further response is deemed to be necessary, the averments are denied.

40. The Defendant denies the averments contained in Paragraph 40.

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

41. The Defendant repeats and re-alleges each and every allegation contained in the preceding paragraphs as if the same were set forth at length, herein.

42. The Defendant denies the averments contained in Paragraph 42.

A. The Defendant denies the averments contained in Paragraph 42.A.

B. The Defendant denies the averments contained in Paragraph 42.B.

C. The Defendant denies the averments contained in Paragraph 42.C.

43. The Defendant denies the averments contained in Paragraph 43.

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

44. The Defendant repeats and re-alleges each and every allegation contained in the preceding paragraphs as if the same were set forth at length, herein.

45. The averments contained in Paragraph 45 are legal conclusions or statements to which no response is required. To the extent a response is required, the averments are denied.

46. The averments contained in Paragraph 46 are legal conclusions or statements to which no response is required. To the extent a response is required, the averments are denied.

47. The averments contained in Paragraph 47 are legal conclusions or statements to which no response is required. To the extent a response is required, the averments are denied.

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

48. The Defendant repeats and re-alleges each and every allegation contained in the preceding paragraphs as if the same were set forth at length, herein.

49. The averments contained in Paragraph 49 are legal conclusions or statements to which no response is required. To the extent a response is required, the averments are denied.

50. The averments contained in Paragraph 50 of the Complaint are admitted in part and denied in part. The Defendant admits only that it has not paid any amounts or turned over property of any alleged transfer. The Defendant denies the remaining averments contained in Paragraph 50.

51. The averments contained in Paragraph 51 of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

52. The averments contained in Paragraph 52 of the Complaint constitute legal conclusions to which no response is required. To the extent a response is deemed to be necessary, the averments are denied.

AFFIRMATIVE DEFENSES

The Defendant asserts the following defenses in opposition to the claims asserted by the Plaintiff against the Defendant in the Complaint.

FIRST AFFIRMATIVE DEFENSE

The Complaint, including each of the Counts set forth therein, fails to state facts sufficient to constitute a claim for relief against the Defendant.

SECOND AFFIRMATIVE DEFENSE

The Plaintiff cannot establish all of the elements required to avoid a preferential transfer under 11 U.S.C. § 547(b).

THIRD AFFIRMATIVE DEFENSE

Plaintiff cannot establish all the elements required to avoid a fraudulent conveyance under 11 U.S.C. § 548.

FOURTH AFFIRMATIVE DEFENSE

The Plaintiff is barred from any recovery sought in the Complaint on the grounds that any

and all payments made by the Debtors to the Defendant, either directly or indirectly, were intended as a contemporaneous exchange, and are excused from avoidance under Section 547(c)(1) of the Bankruptcy Code.

FIFTH AFFIRMATIVE DEFENSE

The Plaintiff is barred from any recovery sought in the Complaint pursuant to Section 547(c)(2) of the Bankruptcy Code because any and all payments made by the Debtors to the Defendant, either directly or indirectly, were (1) in payment of a debt incurred by the Debtor in the ordinary course of business or financial affairs of the Debtor and Defendant and made in the ordinary course of business or financial affairs of the Debtor and Defendant; or (b) made according to ordinary business terms.

SIXTH AFFIRMATIVE DEFENSE

The Plaintiff is barred from any recovery sought in the Complaint on the grounds that, following any and all payments made by the Debtors to the Defendant, either directly or indirectly, the Defendant provided subsequent new value to or for the benefit of the Debtors and/or the bankruptcy estate after the Transfers, therein excusing the Transfers from avoidance under Section 547(c)(4) of the Bankruptcy Code.

SEVENTH AFFIRMATIVE DEFENSE

The Defendant is not liable to the Plaintiff and the alleged Transfers are not avoidable, because, to the extent the Transfers occurred, the Debtors and the estates received equivalent value and fair consideration in exchange for the Transfers.

EIGHTH AFFIRMATIVE DEFENSE

The Plaintiff is barred from any recovery sought in the Complaint by the doctrines of waiver, estoppel, unclean hands, and laches.

NINTH AFFIRMATIVE DEFENSE

The Plaintiff is barred from any recovery sought in the Complaint by the doctrine of accord and satisfaction.

TENTH AFFIRMATIVE DEFENSE

Any alleged Transfer is not avoidable to the extent that it was the fixing of a statutory lien that is not avoidable under § 545 of the United States Bankruptcy Code. 11 U.S.C. §547(c)(6).

ELEVENTH AFFIRMATIVE DEFENSE

The Plaintiff is barred from any recovery sought in the Complaint as said claims are barred, in whole or in part, by the doctrines of setoff and/or recoupment, as recognized by Section 553 of the Bankruptcy Code or other applicable law.

TWELFTH AFFIRMATIVE DEFENSE

The Plaintiff has not based its allegations on reasonable due diligence in the circumstances of the case, taking into account reasonably knowable affirmative defenses. Accordingly, the Plaintiff is unable to meet its burden in proving the required elements to maintain the cause of action.

THIRTEENTH AFFIRMATIVE DEFENSE

The Plaintiff cannot establish all of the elements required to disallow the Defendant's claim against the Debtors' estates under 11 U.S.C. § 502(d) and/or (j).

FOURTEENTH AFFIRMATIVE DEFENSE

Any alleged transfer is not avoidable to the extent that they are protected by the earmarking doctrine.

FIFTEENTH AFFIRMATIVE DEFENSE

Any alleged transfer is not avoidable to the extent that they consisted of funds provided by any party other than the Debtor.

SIXTEENTH AFFIRMATIVE DEFENSE

Pursuant to § 547(c)(3) of the Bankruptcy Code, any alleged transfer is not avoidable to the extent that they create a security interest in property acquired by the Debtor to the extent such security interest secures new value that was given at or after the signing of a security agreement that contains a description of such property as collateral, given by or on behalf of the secured party under such agreement, given to enable the Debtor to acquire such property, and in fact used by the Debtor to acquire such property and that is perfected on or before thirty days after the debtor receives possession of such property.

SEVENTEENTH AFFIRMATIVE DEFENSE

Any alleged transfer is not avoidable to the extent that they created a perfected security interest in inventory or a receivable or the proceeds of either not otherwise excepted within the limitations of 11 U.S.C. § 547(c)(5).

EIGHTEENTH AFFIRMATIVE DEFENSE

The alleged transfers are not avoidable to the extent that the Defendant has or had statutory lien rights related to or otherwise arising from any goods or services provided.

NINETEENTH AFFIRMATIVE DEFENSE

The alleged transfers are not avoidable because any and all money or property transferred to the Defendant was held in trust by the Debtor for the benefit of Defendant.

TWENTIETH AFFIRMATIVE DEFENSE

Any alleged transfer is not avoidable to the extent that they consisted of funds provided by any party other than the Debtor.

TWENTY FIRST AFFIRMATIVE DEFENSE

The alleged transfers are not avoidable to the extent that any of the goods or services

provided by Defendant were subject to a bond or otherwise subject to liability or payment by a third party surety.

RESERVATION OF RIGHTS

Defendant reserves its rights to amend its Answer and add additional defenses that may be ascertained during the course of this litigation. Further, the Defendant reserves the right to claim setoff rights and assert administrative expense status.

WHEREFORE, the Defendant respectfully requests that the Court deny the Plaintiff's request for relief under the Complaint, dismiss the Complaint with prejudice and grant such further relief as this Court deems just and proper.

Dated: January 11, 2021
Wilmington, Delaware

Respectfully submitted,

/s/ Mark T. Hurford
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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	Chapter 11
Welded Construction, L.P., <i>et al.</i> ,	Case No. 18-12378 (CSS)
Debtors.	(Jointly Administered)
Welded Construction, L.P.,	
Plaintiff,	
v.	
Worldwide Machinery, Inc. dba Worldwide Rental Services,	Adv. No.: 20-50960 (CSS)
Defendant.	

CERTIFICATE OF SERVICE

I, Mark T. Hurford, of Campbell & Levine, LLC, hereby certify that on this date I caused a copy of the foregoing to be filed with the Clerk of Court and served upon the individuals listed below via the Court's CM/ECF system and via email to the addresses listed below:

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Dated: January 11, 2021

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