

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

In re:

Welded Construction, L.P., *et al.*,

Debtors.¹

Chapter 11

Case No. 18-12378 (CSS)

(Jointly Administered)

Welded Construction, L.P.,

Plaintiff,

vs.

Off Duty Services, Inc.,

Defendant.

Adv. No. 20-50941

ANSWER OF OFF DUTY SERVICES

Defendant Off Duty Services (“Defendant”), hereby answers the Complaint of Welded Construction, LP (“Plaintiff”), filed in the above-captioned matter and asserts affirmative defenses as follows:

NATURE OF THE CASE

1. Paragraph 1 of the Complaint appears to contain no allegation of fact to which a response by Defendant is required. To the extent a response is required, Defendant denies the allegations set forth in paragraph 1, and specifically denies that the Plaintiff is entitled to the relief referenced therein.

2. Paragraph 2 of the Complaint appears to contain no allegation of fact to which a response by Defendant is required. To the extent a response is required, Defendant denies the

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).



allegations set forth in paragraph 2, and specifically denies that the Plaintiff is entitled to the relief referenced in the first sentence of paragraph 2.

JURISDICTION AND VENUE

3. Defendant admits the allegations set forth in paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint appears to contain no allegation of fact to which a response by Defendant is required. To the extent a response is required Defendant denies that the Plaintiff is entitled to relief under the statutory provisions and rules referenced therein.

5. Defendant admits the claims asserted in the Complaint are core proceedings under 28 U.S.C. § 157(b)(2) as asserted in paragraph 5 of the Complaint.

6. Defendant admits the allegations set forth in paragraph 6 of the Complaint.

7. Pursuant to Federal Rule of Bankruptcy Procedure 7012, Defendant does consent to the entry of final orders or judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

8. In response to paragraph 8 of the Complaint, Defendant states that the record of the Court speaks for itself, and Defendant denies any allegation set forth in paragraph 8 that is inconsistent therewith.

9. In response to paragraph 9 of the Complaint, Defendant states that the record of the Court speaks for itself, and Defendant denies any allegation set forth in paragraph 9 that is inconsistent therewith.

10. In response to paragraph 10 of the Complaint, Defendant states that the record of the Court speaks for itself, and Defendant denies any allegation set forth in paragraph 10 that is inconsistent therewith.

11. In response to paragraph 11 of the Complaint, Defendant states that the record of the Court speaks for itself, and Defendant denies any allegation set forth in paragraph 11 that is inconsistent therewith.

12. In response to paragraph 12 of the Complaint, Defendant states that the record of the Court speaks for itself, and Defendant denies any allegation set forth in paragraph 12 that is inconsistent therewith.

13. In response to paragraph 13 of the Complaint, Defendant states that the record of the Court speaks for itself, and Defendant denies any allegation set forth in paragraph 13 that is inconsistent therewith.

THE PARTIES

14. In response to paragraph 14 of the Complaint, Defendant states that the record of the Court speaks for itself, and Defendant denies any allegation set forth in paragraph 1-13 that is inconsistent therewith.

15. In response to the first sentence of paragraph 14 of the Complaint, Defendant admits that it is a creditor that has transacted business in the United States with the Debtor, and admits the remaining allegations set forth therein. Defendant admits the allegations set forth in the second and third sentences of paragraph 14.

16. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations set forth in paragraph 16 of the Complaint.

17. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations set forth in paragraph 17 of the Complaint.

18. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations set forth in paragraph 18 of the Complaint.

19. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations set forth in paragraph 19 of the Complaint.

20. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations set forth in paragraph 20 of the Complaint.

21. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations set forth in paragraph 21 of the Complaint.

22. In response to paragraph 22 of the Complaint, Defendant admits that it provided services to one or more of the Debtors, and received the payments in exchange for the services provided, as listed in Exhibit A to the Complaint during the Preference Period.

23. In response to paragraph 23 of the Complaint, Defendant admits that it conducted business with one or more of the Debtors pursuant to the Agreements.

24. In response to paragraph 24 of the Complaint, Defendant admits that one or more of the Debtors purchased services from Defendant.

25. Paragraph 25 of the Complaint appears to contain no allegation of fact to which a response by Defendant is required. To the extent a response is required, Defendant denies the allegations set forth in paragraph 25, and specifically denies that the Plaintiff is entitled to the relief referenced therein

26. In response to the allegations set forth in paragraph 26 of the Complaint, Defendant admits that the Debtor made transfers to or for the benefit of Defendant during the Preference Period, and Defendant states that such records speak for themselves and denies any

allegation set forth in paragraph 26 or in Exhibit A to the Complaint that is inconsistent therewith.

27. Paragraph 27 of the Complaint appears to contain no allegation of fact to which a response by Defendant is required. To the extent a response is required, Defendant denies the allegations set forth in paragraph 27, and specifically denies that the Plaintiff is entitled to the relief referenced therein

28. Paragraph 28 of the Complaint appears to contain no allegation of fact to which a response by Defendant is required. To the extent a response is required, Defendant denies the allegations set forth in paragraph 28, and specifically denies that the Plaintiff is entitled to the relief referenced therein

29. Paragraph 29 of the Complaint appears to contain no allegation of fact to which a response by Defendant is required. To the extent a response is required, Defendant denies the allegations set forth in paragraph 29, and specifically denies that the Plaintiff is entitled to the relief referenced therein

30. Paragraph 30 of the Complaint appears to contain no allegation of fact to which a response by Defendant is required. To the extent a response is required, Defendant denies the allegations set forth in paragraph 30, and specifically denies that the Plaintiff is entitled to the relief referenced therein

CLAIMS FOR RELIEF

COUNT I

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

31. Defendant incorporates and repeats its responses to paragraphs 1 through 30 above as though set forth fully herein.

32. Defendant admits that it received the transfers described on Exhibit A, as set forth in Paragraph 32 of the Complaint.

33. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 of the Complaint.,

34. In response to Paragraph 34 of the Complaint, Defendant admits that it is a creditor of the Debtor, that it provided services to one or more of the Debtors, and received the payments in exchange for the services provided, as listed in Exhibit A to the Complaint during the Preference Period.

35. In response to paragraph 35 of the Complaint, Defendant states that 11 U.S.C. § 547(b)(1) speaks for itself, and Defendant denies any allegation set forth in paragraph 35 that is inconsistent therewith. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 35.

36. Defendant denies that the alleged transfers were made for, or on account of, an antecedent debt or debts owed by the Debtor to Defendant before such transfers were made. Defendant states that the provisions of the Bankruptcy Code speak for themselves, and Defendant denies any allegation set forth in paragraph 36 inconsistent therewith.

37. In response to paragraph 37 of the Complaint, Defendant states that 11 U.S.C. § 547(f) speaks for itself, and Defendant denies any allegation set forth in paragraph 37 that is inconsistent therewith. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 37.

38. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations set forth in paragraph 38 of the Complaint.

39. Defendant denies the allegations set forth in paragraph 39 of the Complaint.

40. Defendant denies the allegations set forth in paragraph 40 of the Complaint.

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

41. Defendant incorporates and repeats its responses to paragraphs 1 through 40 above as though set forth fully herein.

42. Defendant denies the allegations set forth in paragraph 42 of the Complaint.

43. Defendant denies the allegations set forth in paragraph 43 of the Complaint.

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

44. Defendant incorporates and repeats its responses to paragraphs 1 through 43 above as though set forth fully herein.

45. Defendant is without knowledge or information at this time sufficient to form a belief as to the truth of the allegations set forth in paragraph 45 of the Complaint.

46. Defendant denies the allegations set forth in paragraph 46 of the Complaint.

47. Defendant denies the allegations set forth in paragraph 47 of the Complaint.

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

48. Defendant incorporates and repeats its responses to paragraphs 1 through 47 above as though set forth fully herein.

49. Defendant denies the allegations set forth in paragraph 48 of the Complaint.

50. In response to paragraph 50 of the Complaint, Defendant denies that it has any liability for the Transfers under 11 U.S.C § 550 and that it has any obligation to pay the amount of the Transfers or turn over such property, and therefore admits that it has not paid such amount or turned over such property.

51. Defendant denies the allegations set forth in paragraph 51 of the Complaint.

52. Defendant denies the allegations set forth in paragraph 52 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

53. Defendant denies each and every allegation of the Complaint not expressly admitted herein to be true or otherwise addressed in the foregoing Answer.

SECOND AFFIRMATIVE DEFENSE

54. This court lacks jurisdiction to enter a Final Order on the claim for relief.

THIRD AFFIRMATIVE DEFENSE

55. The Complaint fails to state a claim upon which relief can be granted by this Court.

FOURTH AFFIRMATIVE DEFENSE

56. Some or all of the transfers at issue herein are exempt from avoidance as payment of a debt incurred in the ordinary course of business of the Debtor(s) and transferee, made in the ordinary course of business of the Debtor(s) and the transferee, and made according to ordinary business terms, all as set forth in 11 U.S.C. §547(c)(2).

FIFTH AFFIRMATIVE DEFENSE

57. Some or all of the transfers herein are exempt from avoidance to the extent that, after such transfer, Defendant gave new value to or for the benefit of the Debtors not secured by an otherwise unavoidable security interest and on account of which new value the Debtor(s) did not make otherwise avoidable transfers to or for the benefit of Defendant, all as set forth in 11 U.S.C. §547(c)(4).

SIXTH AFFIRMATIVE DEFENSE

58. The Transfers may not be avoided because they were intended by the Debtor and the Defendant “to be a contemporaneous exchange for new value given to the” Debtor and in fact was a substantially contemporaneous exchange.”

SEVENTH AFFIRMATIVE DEFENSE

59. The Defendant reserves its right to present additional defenses.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed and that it recover its costs expended herein.

Dated: January 11, 2021

**MONZACK MERSKY BROWDER
AND HOCHMAN, P.A.**

/s/ Rachel B. Mersky

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ATTORNEYS FOR OFF DUTY SERVICES

**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,	
vs.		
Off Duty Services, Inc.,	Defendant.	Adv. No. 20-20-50941

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 11th day of January, 2021, a copy of the foregoing was electronically filed and served via CM/ECF on all parties requesting electronic notification in this case, and also was served on the parties listed below by electronic mail.

Dated: January 11, 2021

/s/ Rachel B. Mersky
Rachel B. Mersky (DE #2049)

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