

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

WELDED CONSTRUCTION, L.P., ET AL.

Debtor.

Chapter 11

Case No. 18-12378 (CSS)

WELDED CONSTRUCTION, L.P.,

Plaintiff,

v.

DBLASTING SERVICES, INC.,

Defendant.

Adv. Proc. No. 20-50925 (CSS)

ANSWER TO COMPLAINT AND AFFIRMATIVE DEFENSES

Defendant Blasting Services, Inc. (“**Defendant**”), by and through its undersigned counsel, hereby files this Answer (the “**Answer**”) to the Complaint (the “**Complaint**”) filed by Welded Construction (“**Plaintiff**”), as follows:

1. It is admitted that the Complaint seeks to avoid and recover certain transfers. Defendant specifically denies that Plaintiff may avoid or recover such transfers. The remaining allegations and characterizations are denied.

2. It is admitted that the Complaint seeks to disallow certain claims. Defendant specifically denies that Plaintiff may disallow such claims. The remaining allegations and characterizations are denied.

3. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.



4. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

5. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

6. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

7. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

8. Upon information and belief, the allegations of Paragraph 8 of the Complaint are admitted.

9. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, and accordingly Defendant denies this paragraph.

10. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and accordingly Defendant denies this paragraph.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the Complaint, and accordingly Defendant denies this paragraph.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and accordingly Defendant denies this paragraph.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the Complaint, and accordingly Defendant denies this paragraph.

14. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint, and accordingly Defendant denies this paragraph.

15. It is admitted that Defendant was a vendor or creditor of the Debtors during the Preference Period defined in the Complaint. It is further admitted that Defendant is a Virginia Corporation with a business address of 2379 Lanier Road, Rockville Virginia 23146. The remaining allegations are denied.

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Complaint, and accordingly Defendant denies this paragraph.

17. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Complaint, and accordingly Defendant denies this paragraph.

18. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Complaint, and accordingly Defendant denies this paragraph.

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Complaint, and accordingly Defendant denies this paragraph.

20. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint, and accordingly Defendant denies this paragraph.

21. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint, and accordingly Defendant denies this paragraph.

22. It is admitted only that Exhibit A to the Complaint is statement titled Transfers During Preference Period. The terms of Exhibit A speak for themselves. The remaining allegations of this Paragraph state legal conclusions or principles of law to which no response is required. To the extent a further response is required, it is denied.

23. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint, and accordingly Defendant denies this paragraph.

24. Denied as stated.

25. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Complaint, and accordingly Defendant denies this paragraph.

26. It is admitted only that Exhibit A to the Complaint is statement titled Transfers During Preference Period. The terms of Exhibit A speak for themselves. The remaining allegations of this Paragraph state legal conclusions or principles of law to which no response is required. To the extent a further response is required, it is denied.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint, and accordingly Defendant denies this paragraph.

28. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of the Complaint, and accordingly Defendant denies this paragraph.

29. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint, and accordingly Defendant denies this paragraph.

30. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of the Complaint, and accordingly Defendant denies this paragraph.

COUNT I

31. Defendant repeats and re-avers its answers set forth in the preceding paragraphs of this Answer as if fully set forth herein.

32. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

33. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

34. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

35. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

36. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

37. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

38. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

39. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

40. Denied.

COUNT II

41. Defendant repeats and re-avers its answers set forth in the preceding paragraphs of this Answer as if fully set forth herein.

42. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

43. Denied.

COUNT III

44. Defendant repeats and re-avers its answers set forth in the preceding paragraphs of this Answer as if fully set forth herein.

45. Denied.

46. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

47. Denied.

COUNT IV

48. This Paragraph states a legal conclusion or principle of law to which no response is required. To the extent a response is required, it is denied.

49. Denied.

50. Defendant admits that it has not paid any amounts or turned over any assets to Plaintiff. Defendant specifically denies that it is obligated to pay any amounts or turn over any assets to Plaintiff.

51. Denied.

52. Denied.

AFFIRMATIVE DEFENSES

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

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

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

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

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

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

NINTH AFFIRMATIVE DEFENSE

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

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

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

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

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.

SEVENTEENTH 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.

FOX ROTHSCHILD LLP

By: /s/ Seth A. Niederman
Seth A. Niederman, Esquire (No. 4588)
919 North Market Street – Ste. 300
Wilmington, DE 19801
Telephone: (302) 654-7444

*Attorneys for Defendant
Blasting Services, Inc.*

Dated: January 25, 2021