

**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.

Wampum Hardware Co.,

Defendant.

Adv. No. 20-50957

**DEFENDANT’S 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**

Defendant, Wampum Hardware Co. (the “Defendant”), by and through its counsel, Clark Hill PLC, for its 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, states as follows:

PRELIMINARY STATEMENT

- A. Unless expressly admitted, each factual allegation is denied as untrue.
- B. Any document referred to, quoted, or paraphrased is the best evidence of the contents thereof and must be considered in its entirety.

NATURE OF CASE

1. Upon information and belief Defendant admits that Plaintiff seeks the relief that it describes in Paragraph 1 of the *Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C.*

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).

§§ 547, 548, and 550 and to Disallow Claims Pursuant to 11 U.S.C. § 502 (the “Complaint”). Defendant denies the factual allegations, if any, in Paragraph 1 of the Complaint. Defendant also denies that Plaintiff is entitled to avoid and recover any transfers made to Defendant or any other person or entity for whose benefit the transfers were made pursuant to sections 547, 548, or 550 of the Bankruptcy Code because the allegations are untrue.

2. Upon information and belief, Defendant admits that Plaintiff seeks the relief that it describes in Paragraph 2 of the Complaint. Defendant denies the factual allegations, if any, in Paragraph 2 of the Complaint. The remaining allegations in Paragraph 2 of the Complaint state a reservation of rights to which no response is required. Defendant denies that any claim that it has filed or asserted, or any claim scheduled on behalf of the Defendant may be disallowed pursuant to sections 502(d) and (j) of the Bankruptcy Code. Defendant further denies that the Plaintiff or any of the Debtors have any basis for objecting to any claim filed or asserted by Defendant or scheduled on behalf of Defendant.

JURISDICTION AND VENUE

3. Defendant admits that the court has subject matter jurisdiction over this adversary proceeding, which arises under title 11, arises in, and relates to cases under title 11, in the United States Bankruptcy Court for the District of Delaware (the “Court”), captioned *In re Welded Construction, L.P., et al.*, Case No. 18-12378 (CSS), pursuant to 28 U.S.C. § 157 and § 1334(b).

4. Paragraph 4 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

5. Paragraph 5 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

6. Defendant admits that venue is proper in the District of Delaware pursuant to 28 U.S.C. § 1409.

7. Pursuant to Local Bankruptcy Rule 7008-1, Defendant states that it consents to entry of final orders or judgments by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution,

8. Upon information and belief, Defendant admits on October 22, 2018 (the “Petition Date”), each of the Debtors commenced a case by filing a voluntary petition for relief in this Court under chapter 11 of the Bankruptcy Code.

9. Upon information and belief, Defendant admits that the Court entered an order for joint administration of the chapter 11 cases for procedural purposes pursuant to Bankruptcy Rule 1015(b). [D.I. 33].

10. Upon information and belief, Defendant admits that the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Amended Chapter 11 Plan of Welded Construction, L.P. and Welded Construction Michigan, LLC* [D.I. 1505].

11. Upon information and belief, Defendant admits that the effective date of the Plan occurred on July 31, 2020 [D.I. 1555].

12. Paragraph 12 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or

information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

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

THE PARTIES

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

15. Defendant denies that it was, “at all relevant times, a vendor or creditor that provided bulk explosives and blasting services to or for the Debtors” because it does not know what time period “all relevant times” captures. By way of further answer, Defendant states that it was a vendor that provided bulk explosives and blasting services to or for the Debtors. Defendant admits that its principal place of business is located at 636 Paden Road, New Galilee, Pennsylvania 16141. Defendant admits that it is a corporation residing in and subject to the laws of the State of Pennsylvania.

FACTUAL BACKGROUND

16. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations. Defendant further states that the referenced *Declaration of Frank Pometti in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) [D.I.4] and the Disclosure Statement [D.I. 1344] are the best evidence of their

contents. By way of further answer, Defendant affirmatively states that the Disclosure Statement referenced in footnote 6 of the Complaint is the best evidence of its contents.

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

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

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

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

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

22. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint as stated, and therefore, denies the allegations. By way of further answer, and upon information and belief, Defendant affirmatively states that during the course of its business relationship with one or more of the Debtors, it may have entered into agreements with one or more of the Debtors, but is without knowledge or information sufficient to form a belief as to the truth of the allegations that any

such agreements “are evidenced by invoices, communications and other documents (collectively, the “Agreements”),” and therefore denies the allegations. Defendant is also without knowledge or information sufficient to form a belief as to the truth of the allegation that “[t]he Agreements concerned and related to the goods and/or services provided by Defendant to one or more of the Debtors as described in the ‘Parties’ section of [the] Complaint,” and therefore, denies the allegations. Defendant affirmatively states that at various times it provided goods and services to one or more of the Debtors. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that “[t]he details of each the transfers under the Agreements made during the Preference Period are set forth on the Statement of Account, which is attached [to the Complaint] and incorporated by reference as Exhibit A [thereto]” and therefore, denies the allegations. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that “[s]uch details include “Invoice Number,” “Invoice Date,” and “Invoice Amount” and therefore, denies the allegations.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint as stated, and therefore, denies the allegations. By way of further answer, Defendant admits that it conducted business with one or more of the Debtors through and including the Petition Date. By way of further answer, Defendant admits that it held a debt owed by one or more of the Debtors as of the Petition Date.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint as stated, and therefore, denies the allegations. By way of further answer, Defendant admits that one or more of the Debtors purchased goods and/or services from Defendant.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint as stated, and therefore, denies the allegations.

26. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint as stated, and therefore, denies the allegations. By way of further answer, Defendant affirmatively states that it received payments in the aggregate amount of \$175,000.00 during the Preference Period.

27. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint as stated, and therefore, denies the allegations. Defendant admits that it received a letter seeking return of the Transfer and submits that the letter is the best evidence of its contents.

28. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint as stated, and therefore, denies the allegations.

29. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint as stated, and therefore, denies the allegations. Defendant denies that Plaintiff is entitled to avoid any transfer of an interest of Debtors' property made by the applicable Debtor(s) to Defendant within the Preference Period because the allegation is untrue. Defendant denies that Plaintiff is entitled to amend the Complaint or for those amendments to relate back to the Complaint because the allegation is untrue.

30. Paragraph 30 of the Complaint states a legal conclusion to which no answer is required. To the extent that a response is required, Defendant is without knowledge or

information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

CLAIMS FOR RELIEF

COUNT I

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

31. Defendant answers and incorporates by reference Paragraphs 1 through 30 as set forth above.

32. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations. By way of further answer, Defendant affirmatively states that it received payments in the aggregate amount of \$175,000.00 during the Preference Period.

33. Paragraph 33 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

34. Paragraph 34 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

35. Paragraph 35 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

36. Paragraph 36 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

37. Paragraph 37 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

38. Defendant denies the allegation in Paragraph 38 of the Complaint because it is untrue. By way of further answer, Defendant admits that a transfer in the amount of \$175,000.00 was made to Defendant during the Preference Period.

39. Paragraph 39 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

40. Paragraph 40 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations. By way of further answer, Defendant denies that any of the referenced transfers are avoidable pursuant to 11 U.S.C. § 547(b).

COUNT II

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

41. Defendant answers and incorporates by reference Paragraphs 1 through 40 as set forth above.

42. Paragraph 42 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

43. Paragraph 43 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations. By way of further answer, Defendant denies that any of the referenced transfers are avoidable pursuant to 11 U.S.C. § 548(a)(1)(B).

COUNT III

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

44. Defendant answers and incorporates by reference Paragraphs 1 through 43 as set forth above.

45. Paragraph 45 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

46. Paragraph 46 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

47. Paragraph 47 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations. Defendant denies that Plaintiff is entitled to recover any payment made to Defendant and denies that Plaintiff is entitled to recover interest thereon and/or the costs of this action.

COUNT IV

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

48. Defendant answers and incorporates by reference Paragraphs 1 through 47 as set forth above.

49. Paragraph 49 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations.

50. Paragraph 50 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations. By way of further answer, Defendant

denies that it is liable for the amount of the “Avoidable Transfer(s)” and denies that it is required to pay or turnover the amount of the “Avoidable Transfer(s).”

51. Paragraph 51 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations. By way of further answer, Defendant denies that its claims must be disallowed and denies that it is liable for the amount of the “Avoidable Transfer(s),” plus interest thereon and costs.

52. Paragraph 50 of the Complaint states a legal conclusion to which no response is required. To the extent that a response is required, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in this Paragraph of the Complaint, and therefore, denies the allegations. By way of further answer, Defendant denies that it is liable for the amount of the “Avoidable Transfer(s)” and denies that it is required to pay or turnover the amount of the “Avoidable Transfer(s).”

PRAYER FOR RELIEF

WHEREFORE, Defendant respectfully requests the entry of an Order: (i) dismissing the Complaint with prejudice; (ii) awarding Defendant attorneys’ fees and costs incurred in defending this action; and (iii) granting such other and further relief as the Court deems just and proper.

AFFIRMATIVE DEFENSES

Defendant relies on the following affirmative and other defenses to the allegations contained in the Complaint.

1. Plaintiff fails, in whole or in part, to state a claim upon which relief may be granted.
2. Plaintiff's claims may be barred, in whole or in part, because they are time barred by the applicable statute of limitations.
3. Plaintiff's claims may be barred, in whole or in part, because the asserted causes of action are not property of the Plaintiff.
4. Plaintiff's claims may be barred, in whole or in part, because the Plaintiff lacks standing or capacity to sue or is not the real party in interest.
5. Plaintiff's claims are barred, in whole or in part, because Plaintiff cannot satisfy one or more of the elements of 11 U.S.C. §547(b).
6. Any alleged preferential transfer is or may be exempt from recovery, either in whole or in part, pursuant to 11 U.S.C. §547(c)(1).
7. Any alleged preferential transfer is or may be exempt from recovery, either in whole or in part, pursuant to 11 U.S.C. §547(c)(2).
8. Any alleged preferential transfer is or may be exempt from recovery, either in whole or in part, pursuant to 11 U.S.C. §547(c)(4).
9. Plaintiff's claims are barred, in whole or in part, because Plaintiff cannot satisfy one or more of the elements of 11 U.S.C. § 548(a)(1)(B).
10. Plaintiff's claims are barred, in whole or in part, because Defendant provided reasonably equivalent value to one or more of the Debtors in exchange for each transfer the Plaintiff seeks to avoid.
11. Plaintiff's claims are barred, in whole or in part, by section 548(c) of the Bankruptcy Code.

12. Plaintiff's claims may be barred, in whole or in part, by the doctrine of *res judicata*.

13. Plaintiff's claims may be barred, in whole or in part, by the doctrine of estoppel (including judicial, collateral, and equitable estoppel) and similar doctrines.

14. Plaintiff's claims may be barred, in whole or in part, by the doctrine of waiver.

15. Plaintiff's claims may be barred, in whole or in part, by the doctrine of laches.

16. Plaintiff's claims may be barred, in whole or in part, by the doctrine of accord and satisfaction.

17. Plaintiff's claims may be barred, in whole or in part, by the doctrine of recoupment and/or setoff.

18. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

19. Plaintiff's claims are barred to the extent the earmarking doctrine applies to prevent the avoidance and the recovery and any alleged transfers.

20. Pursuant to Fed. R. Bankr. P. 7013, Defendant reserves the right to file counterclaims as and when they become known through discovery or otherwise.

21. Defendant reserves the right to amend these affirmative defenses and/or raise any and all additional defenses as may become apparent through the course of formal and informal discovery.

WHEREFORE, Defendant respectfully requests the entry of an Order: (i) dismissing the Complaint with prejudice; (ii) awarding Defendant attorneys' fees and costs incurred in defending this action; and (iii) granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

CLARK HILL PLC

By:

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Dated: February 11, 2021

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