

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

IN RE:

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

*Debtors.*¹

Welded Construction, L.P.,

Plaintiff,

vs.

Industrial Fabrics, Inc.,

Defendant.

Chapter 11

Case No: 18-12378 (LSS)

(Jointly Administered)

Adversary Proceeding No. 20-50932-LSS

**NO HEARING WILL BE HELD
UNLESS REQUESTED OR ORDERED
BY THE COURT**

Objection Deadline:
April 7, 2022 @ 4:00 p.m.

**INDUSTRIAL FABRICS, INC.'S
MOTION FOR SUMMARY JUDGMENT**

Industrial Fabrics Inc. (the “Defendant”), by and through the undersigned counsel, pursuant to Federal Rule of Bankruptcy Procedure 7056, moves for summary judgment in its favor against Welded Construction, L.P. (the “Plaintiff”). In support of this Motion for Summary Judgment, the Defendant submits and incorporates by reference the Affidavit of James Mitchel, a Statement of Facts Pursuant to Fed.R.Civ.P. Rule 56 and a Brief in Support.

WHEREFORE, for the reasons set forth in the documents in support of this Motion for Summary Judgment, the Defendant respectfully requests that this Court enter an Order granting summary judgment in its favor and dismissing the Plaintiff’s complaint for lack of merit.

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)



181237822032400000000002

Dated: March 24, 2022

Respectfully submitted,

THE LAW OFFICE OF JAMES TOBIA, LLC

By: /s/ James Tobia

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Admitted pro hac vice

Counsels for the Defendant

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

<p>In re:</p> <p>Welded Construction, L.P., <i>et al.</i>,</p> <p style="text-align: right;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 18-12378 (LSS)</p> <p>(Jointly Administered)</p>
<hr/> <p>Welded Construction, L.P.,</p> <p style="text-align: right;">Plaintiff,</p> <p>vs.</p> <p>Industrial Fabrics, Inc.,</p> <p style="text-align: right;">Defendant.</p>	<p>Adv. No. 20-50932-LSS</p> <p>NO HEARING WILL BE HELD UNLESS REQUESTED OR ORDERED BY THE COURT</p> <p>Objection deadline: April 7, 2022 @ 4:00 p.m.</p>

**STATEMENT OF FACTS PURSUANT TO
FEDERAL RULE OF CIVIL PROCEDURE 56**

Industrial Fabrics, Inc. (the “Defendant”), submits this statement in support of its Motion for Summary Judgment. The Defendant believes that there is no genuine dispute with respect to the following material facts:

I. PROCEDURAL BACKGROUND

1. On October 22, 2018 (the “Petition Date”), Welded Construction, L.P., et al. (the “Debtors”) each filed a voluntary petition under Chapter 11 of the Bankruptcy Code. ¶8 of Complaint.

2. On October 20, 2020, the Plaintiff filed a Complaint with claims for Avoidance of Preferential Transfers under 11 U.S.C. § 547; Avoidance of Fraudulent Conveyances under 11 U.S.C. § 548(a)(1)(B); Recovery of Property under 11 U.S.C. § 550; and Disallowance of Claims under 11 U.S.C. § 502(d) and (j) against the Defendant [D.I. 1]. The Plaintiff seeks to recover three transfers with a total amount of \$280,349.42 (the “Transfers”).

3. On January 7, 2021, the Defendant filed its Answer. [D.I. 13].

II. FACTUAL BACKGROUND

4. Prior to the Petition Date, the Debtors, as a mainline pipeline construction contractor, maintained business relationships with various business entities, through which the Debtors regularly purchased, sold, received, and/or delivered goods and services. ¶17 of Complaint.

5. On the other hand, the Defendant is a manufacturer and distributor of geotechnical products, including geotextile fabrics, geogrids, liner material, silt fence, erosion control, pipeline protection and paving products for the construction industry. *See Mitchell Affi.* ¶4.

6. The parties started doing business for around 17 months prior to the Petition Date. *See Mitchell Affi.* ¶5.

7. In the course of their dealings, the Defendant supplied the Debtors with construction materials for their projects. The goods covered by the invoices paid by the Transfers consist of RockGuard[®] HD, a mesh rock shield designed to provide long-term protection to pipelines, and RockGuard[®] Tape, a filament tape specially designed to install RockGuard[®] products. These goods were shipped and utilized in pipeline construction projects wherein the Debtors were the general contractors. More particularly:

- a. The first Transfer amounting to \$82,829.42 made on August 13, 2018 represents payment for goods shipped to and utilized in the Mariner East Pipeline Project (the “Mariner Pipeline”) in Pennsylvania owned by Sunoco Pipeline, L.P. (“Sunoco”). A copy of the Plaintiff’s responses to the Defendant’s Interrogatories is hereto attached as *Appendix B. See Appendix C and Plaintiff’s Response to Interrogatory Nos. 18 and 21.*
- b. The second Transfer amounting to \$98,760.00 made on September 10, 2018

represents payment for goods shipped to and utilized in the Mountaineer Xpress Pipeline Project (the “Mountaineer Pipeline” and, collectively with Mariner Pipeline, the “Pipeline Projects”) in West Virginia owned by Columbia Gas Transmission, LLC (“Columbia Gas” and, collectively with Sunoco, the “Project Owners”). *See Appendix D and Plaintiff’s Response to Interrogatory Nos. 18 and 21.*

- c. The third Transfer amounting to \$98,760.00 made on September 24, 2018 also represents payment for goods shipped to and utilized in the Mountaineer Pipeline. *See Appendix E, Mitchell Affi. ¶6, and Plaintiff’s Response to Interrogatory Nos. 18 and 21.*

8. The Defendant would send invoices to the Debtors for each delivery of goods. Despite the invoices having “Net 30” terms, the Debtors hardly ever paid on time. *See Mitchell Affi. ¶7.*

9. There was no significant difference in the manner and timing of the payments during the 90-day period prior to the Petition Date (the “Preference Period”) and the 14-month period prior to the start of the Preference Period (the “Historical Period”). *See Mitchell Affi. ¶8.*

10. During the Historical Period, the Debtors always paid each invoice with a single check, with the average dollar amount of the checks being \$72,840.54, and the average payment being made 51.64 days after the invoice date. *See Appendix F and Mitchell Affi. ¶9.*

11. Similarly, during the Preference Period, the Debtors always paid each invoice with a single check, with the average dollar amount of the checks being \$93,449.81, and the average payment being made 63 days after the invoice date. *See Appendix G and Mitchell Affi. ¶10.*

12. The Defendant did not exert any unusual collection pressure on the Debtors during the Preference Period. The Defendant did not, for example, demand shorter payment terms or COD

terms; did not threaten to halt the performance of services; did not threaten to sue the Debtors or have its attorneys call the Debtors. See Mitchell Affi. ¶11.

13. In accordance with its standard business practices, the Defendant would have placed liens on the Pipeline Projects and sought payment from the Project Owners had the Debtors failed to pay prior to the deadline to perfect the liens. See Mitchell Affi. ¶12.

14. At the time of each Transfer, the Debtors had outstanding invoices collectible from the Project Owners for good utilized in and services rendered on their respective Pipeline Projects. The total amounts due from these outstanding invoices were equal to or more than the amount of each Transfer. More particularly:

- a. On August 13, 2018, the Debtors had outstanding invoices collectible from Sunoco for good utilized in and services rendered on the Mariner Pipeline. The total amounts due from these outstanding invoices were equal to or more than \$82,829.42. A copy of the spreadsheet showing the invoice and payment history between the Debtors and Sunoco is hereto attached as *Appendix H. See Plaintiff's Response to Interrogatory Nos. 22 and 23.*
- b. On September 10, 2018, the Debtors had outstanding invoices collectible from Columbia Gas for good utilized in and services rendered on the Mountaineer Pipeline. The total amounts due from these outstanding invoices were equal to or more than \$98,760.00. A copy of the spreadsheet showing the invoice and payment history between the Debtors and Columbia Gas is hereto attached as *Appendix I. See Plaintiff's Response to Interrogatory Nos. 22 and 23.*
- c. On September 24, 2018, the Debtors had outstanding invoices collectible from Columbia Gas for good utilized in and services rendered on the Mountaineer

Pipeline. The total amounts due from these outstanding invoices were equal to or more than \$98,760.00. *See Appendix I and Plaintiff's Response to Interrogatory Nos. 22 and 23.*

Dated: March 24, 2022

Respectfully submitted,

THE LAW OFFICE OF JAMES TOBIA, LLC

By: /s/ James Tobia

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Admitted Pro Hac Vice

Counsels for the Defendant

PROPOSED ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
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Welded Construction, L.P., *et al.*,

Debtors.

Chapter 11

Case No. 18-12378 (LSS)

(Jointly Administered)

Adv. No. 20-50932-LSS

Welded Construction, L.P.,

Plaintiff,

vs.

Industrial Fabrics, Inc.,

Defendant.

Re: _____

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Before this Court is a Motion for Summary Judgment (the "Motion") by the defendant, Industrial Fabrics, Inc. (the "Defendant"). This Court, having considered the Motion and finding good cause to grant the same -

IT IS HEREBY ORDERED THAT:

1. the Motion is GRANTED; and
2. this Adversary Proceeding is hereby DISMISSED with prejudice.