

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:

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

*Debtors.*<sup>1</sup>

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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

**DEFENDANT'S MOTION TO FILE UNDER SEAL DEFENDANT'S REPLY TO THE  
PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT AND TO CONSIDER THE REPLY AS TIMELY FILED**

Industrial Fabrics Inc. (the "Defendant"), moves for the entry of an order, in substantially the form attached hereto as Exhibit A (the "Proposed Order"), to file under seal the *Defendant's Reply to the Plaintiff's Response to Defendant's Motion for Summary Judgment* (the "Reply"), to file a redacted version of the Reply in the Court's public docket pursuant to Local Bankruptcy Rule 9018-1(d), and to consider the Reply as timely filed.

**JURISDICTION**

1. The Court has jurisdiction over this matter under 28 U.S.C. § 1334. This is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, which is where Debtors filed their chapter 11 petition on October 22, 2018. The statutory basis for the relief requested in this Motion is 11 U.S.C.

<sup>1</sup> 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)



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§§105 and 107(b), as complemented by Fed.R.Bankr.P. 9018 and Local Bankr. Rule 9018-1.

**BACKGROUND**

2. On October 20, 2020, Plaintiff commenced this adversary proceeding against Defendant Industrial Fabrics, Inc. ("Defendant").

3. On March 24, 2022, Defendant filed *Industrial Fabrics, Inc.'s Motion for Summary Judgment* [Adv. D.I. 39].

4. On May 9, 2022, Plaintiff filed the *Plaintiffs Response in Opposition to Defendant's Motion for Summary Judgment* (the "Response"). [Adv. D.I. 47].

5. Contemporaneously therewith, Plaintiff filed the *Stipulated Confidentiality and Protective Order* [Adv. D.I. 48] (the "Confidentiality Order").

6. On May 16, 2022, the Defendant filed its Reply [Adv. D.I. 53].

7. On May 23, 2022, the Court approved the Confidentiality Order [Adv. D.I. 55].

8. On May 26, 2022, the Defendant filed a *Notice of Withdrawal of Reply to the Plaintiffs Response to Defendants Motion for Summary Judgment* [Adv. D.I. 58] because confidential information had been inadvertently included in the Reply.

9. On May 26, 2022, the Defendant filed its *[SEALED] Reply to the Plaintiffs Response to Defendants Motion for Summary Judgment* [Adv. D.I. 59] (the "Reply").

10. The Defendant thus files the instant motion to: (a) file the Reply under seal; (b) file a redacted version of the Reply in the Court's public docket pursuant to Local Bankruptcy Rule 9018-1(d); and (c) to consider the Reply as timely filed.

11. Defendant is filing separately an unredacted version of the Reply as a "Proposed Sealed Document" pursuant to Local Bankruptcy Rule 9018-1(d).

### **ARGUMENT**

12. The Reply contains confidential information which has been designated as confidential under the Confidentiality Order. Accordingly, Defendant requests that this Court enter an order sealing the unredacted version of the Reply (the “Proposed Sealed Document”); permitting the Defendant to file a redacted version of the Reply; and considering the Reply as timely filed. Defendant is filing separately a proposed redacted version of the Reply contemporaneously herewith, redacting portions of the Reply designated confidential under the Confidentiality Order.

13. Pursuant to § 107(b) of the Bankruptcy Code, a bankruptcy court must protect entities from potential harm that may result from the disclosure of certain confidential information. 11 U.S.C. § 107(b). Specifically, section 107(b) provides, in relevant part as follows:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—

(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

*Id.* Similarly, § 105(a) codifies the inherent equitable powers of bankruptcy courts and empowers them to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

14. Federal Rule of Bankruptcy Procedure 9018 states that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information[.]” Local Bankruptcy Rule 9018-1(d) states that “[a]ny entity seeking to file a document under seal must file a motion requesting such relief.”

15. If the material sought to be protected satisfies one of the categories identified in

section 107(b) of the Bankruptcy Code, "the court is required to protect a requesting party and has no discretion to deny the application." *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994); accord *In re Global Crossing, Ltd.*, 295 B.R. 720, 723 n.7 (Bankr. S.D.N.Y. 2003). Put otherwise, section 107(b) of the Bankruptcy Code does not require a party seeking its protections to demonstrate "good cause." *Orion Pictures*, 21 F.3d at 28. "Courts have supervisory powers over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose." *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005). Courts are required to provide such protections "generally where open inspection may be used as a vehicle for improper purposes." *Orion Pictures*, 21 F.3d at 27. Indeed, the "authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice." *Global Crossing*, 295 B.R. at 724.

16. "Commercial information"—defined as "information which would result in 'an unfair advantage to competitors by providing them information as to the commercial operations of the debtor'"—is one category of information within § 107(b)'s scope. *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *Orion Pictures*, 21 F.3d at 27–28); see *Global Crossing*, 295 B.R. at 725 (holding that the purpose of Bankruptcy Rule 9018 is to "protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury"). Commercial information need not rise to the level of a trade secret to be protected under § 107(b). See *Orion Pictures*, 21 F.3d at 27–28 (holding that § 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party has to show only that the information it wishes to seal is "confidential" and "commercial" in nature).

17. Here, the confidential information consists of certain provisions of construction contracts between Debtor and third parties. The contracts are stamped and/or deemed “confidential” and constitute trade secret and commercially sensitive information that has been protected from disclosure in the Debtor’s chapter 11 cases, thus satisfying one of the categories enumerated in § 107(b), and should be protected from public disclosure in the Reply.

18. Defendant respectfully submits that it is appropriate to authorize it to file under seal the confidential information from the Reply because such information is protected from public disclosure under the Confidentiality Order.

19. Defendant is providing, on a confidential basis, an unredacted version of the Reply to the Plaintiff and the Court, and will so provide to the Office of the United States Trustee upon request.

20. For these reasons, Defendant should be authorized to file those redacted portions of the Reply thereto under seal. Defendant submits that other parties in interest will not be materially prejudiced because Reply may be reviewed by the Court and the U.S. Trustee.

**COMPLIANCE WITH LOCAL RULE 9018-1(D)**

21. In accordance with Local Rule 9018-1(d), counsel to Defendant and counsel to Plaintiff have conferred in good faith and reached agreement concerning the information to be redacted from the 9019 Motion and Settlement Agreement and remain sealed from public view.

22. Contemporaneously herewith, Defendant files its “Notice of Proposed Redacted Version.”

**NOTICE**

23. Notice of this Motion shall be given to (a) the office of the United States Trustee for

the District of Delaware; (b) counsel to Plaintiff. In light of the nature of the relief requested in this Motion, Defendant submits no other or further notice is necessary.

**NO PRIOR REQUEST**

24. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, Defendant respectfully requests that the Court enter the Proposed Order, substantially in the form attached hereto as Exhibit A, granting the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Dated: May 27, 2022

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**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

IN RE:

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

*Debtors.*

-----  
Welded Construction, L.P.,

*Plaintiff,*

vs.

Industrial Fabrics, Inc.,

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Chapter 11

Case No: 18-12378 (LSS)

(Jointly Administered)

Adversary Proceeding No. 20-50932-LSS

Re: \_\_\_\_\_

**ORDER GRANTING DEFENDANT’S MOTION TO FILE UNDER SEAL  
DEFENDANT’S REPLY TO THE PLAINTIFF’S RESPONSE TO DEFENDANT’S  
MOTION FOR SUMMARY JUDGMENT AND TO CONSIDER THE REPLY AS  
TIMELY FILED**

Upon the motion (the “Motion”) of Defendant Industrial Fabrics, Inc. (“Defendant”), for entry of this Order Granting Defendant’s Motion To File Under Seal Defendant’s Reply To The Plaintiff’s Response To Defendant’s Motion For Summary Judgment and To Consider The Reply As Timely Filed sealing the *Defendant’s Reply to the Plaintiff’s Response to Defendant’s Motion for Summary Judgment* [Adv. D.I. 59] (the “Reply”), permitting, but not directing, Defendant to redact confidential information in designated as confidential pursuant to the *Stipulated Confidentiality and Protective Order* [Adv. D.I. 48] (the “Confidentiality Order”), and considering the Reply as timely filed; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding in accordance with 28 U.S.C. § 157(b)(2); and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and due and

proper notice of the Motion being adequate and appropriate under the particular circumstances; and upon the record of all proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor's estate, its creditors and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

1. The Motion is granted. Any objections, whether filed or not, to the relief requested by the Motion are hereby overruled with prejudice.
2. Defendant's Reply is sealed.
3. Defendant is authorized to redact confidential information in the Reply. Defendant shall provide an unredacted version of the Reply and any other applicable filed documents to the Court, Plaintiff, and the Office of the U.S. Trustee.
4. Defendant's Reply is considered timely filed.
5. Defendant is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
6. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

**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: center;"><i>Debtors.</i><sup>1</sup></p> <p>-----</p> <p>Welded Construction, L.P.,</p> <p style="text-align: center;"><i>Plaintiff,</i></p> <p style="text-align: center;">vs.</p> <p>Industrial Fabrics, Inc.,</p> <p style="text-align: center;"><i>Defendant.</i></p>	<p>Chapter 11</p> <p>Case No: 18-12378 (LSS)</p> <p>(Jointly Administered)</p>     <p>Adversary Proceeding No. 20-50932-LSS</p>
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**CERTIFICATE OF SERVICE**

I, James Tobia, hereby certify that on May 27, 2022, I caused the Foregoing Defendant's Motion to File Under Seal Defendant's Reply to the Plaintiff's Response to Defendant's Motion for Summary Judgment and to Consider the Reply as Timely Filed to be served upon Plaintiff's counsel by CM/ECF:

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Dated: May 27, 2022

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