Docket #0009 Date Filed: 2/28/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: WELDED CONSTRUCTION, L.P., *et al*.,[1] Debtors.	Chapter 11 Case No. 18-12378 (CSS) (Jointly Administered)
SUNBELT TRACTOR & EQUIPMENT COMPANY, Plaintiff, v. COLUMBIA GAS TRANSMISSION, LLC, TRANSCANADA USA SERVICES, INC., and WELDED CONSTRUCTION, L.P., Defendant	Adv. Pro. No. 20-50446 (CSS) (Transferred after removal from Circuit Court of Wetzel County, W.Va., Civil Action No. 19-C-52)
SUNBELT TRACTOR & EQUIPMENT COMPANY, Plaintiff, v. COLUMBIA GAS TRANSMISSION, LLC, TRANSCANADA USA SERVICES, INC., and WELDED CONSTRUCTION, L.P., Defendant	Adv. Pro. No. 20- 50448 (CSS) (Transferred after removal from Circuit Court of Marshall County, W.Va., Civil Action No. 19-C-161)

STATUS REPORT

Sunbelt Tractor & Equipment Company ("STEC" or "Plaintiff"), by its undersigned counsel, hereby submits this Status Report for the two related, above-captioned Adversary Proceedings pursuant to the Court's request, and sets forth the following:

I. PROCEDURAL HISTORY

1. STEC, a company which provided equipment and related services to Welded Construction, L.P. (the "Debtor") as part of the Mountaineer Express Pipeline Project in West Virginia, filed Mechanic's Liens in Marshall and Wetzel Counties, West Virginia in January 2019,

[1] The debtors in these Chapter 11 cases are Welded Construction, L.P. and Welded Construction Michigan, LLC (together, the "Debtors").

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as a result of non-payment by the Debtor.

2. On July 5, 2019, STEC filed a motion in this Court for relief from the automatic stay (the "Stay Relief Motion") [D.I. 823], seeking authority to pursue mechanics lien actions in West Virginia against Columbia Gas Transmission, LLC ("CGT), the reputed owner of the real property interests in the Project, and TransCanada USA Services, Inc. (TransCanada"), which STEC asserted may also own a real property interest in the Project. Consistent with West Virginia law, STEC also needed to include the Debtor as a nominal defendant in such actions.

3. This Court granted STEC's Stay Relief Motion, by Order dated July 11, 2019 [D.I. 857].

4. On July 15, 2019, Plaintiff filed two complaints for enforcement of its mechanics liens against CGT and TransCanada and, nominally, against the Debtor: one in the Circuit Court of Wetzel County, West Virginia [C.A. No. No. 19-C-52] and the other in the Circuit Court of Marshall County, West Virginia [C.A. No. 19-C-161] (collectively, the "Actions"). Two filings were required because the real property interests to which the liens apply (the "Property") are located in both Wetzel and Marshall Counties.

5. In each complaint, Count I is based on breach of contract, Counts II and III are counts based on unjust enrichment, and Count IV is based on enforcement of mechanics lien.

6. On or about November 25, 2019, CGT and TransCanada filed Notices of Removal, removing both Actions from state court to the United Stated Bankruptcy Court for the Northern District of West Virginia (the "W.Va. Bankruptcy Court"), where the Actions were docketed respectively as Adv. Pro. No. 5:19-ap-00052 (Wetzel County action) and Adv. Pro. No. 5:19-ap-00054 (Marshall County action).

7. On December 2, 2019, CGT and TransCanada filed motions for dismissal of the

complaints (the "Motions to Dismiss"), seeking dismissal of the two unjust enrichment causes of action and of the entire action.

8. On December 2, 2019, the United States District Court for the Northern District of West Virginia (the "W. Va. District Court") entered an Order *sua sponte*, withdrawing the automatic reference of the Actions and directing that the Actions proceed in the District Court. [no. 5:19-ap-00052 was docketed as Civil Action No. 5:19-cv-321; no. 5:19-ap-0054 was docketed as Civil Action No. 5:19-cv-323].

9. On January 7, 2020, the W.Va. District Court entered orders in both Actions granting the dismissal of counts II and III of the complaints – the two unjust enrichment counts – but denying dismissal of any of the rest of the complaints.

10. On January 22, 2020, the W. Va. District Court entered orders in both Actions granting motions made by CGT and TransCanada to transfer the venue of these Actions to the United States District Court for the District of Delaware (the "Delaware District Court").

11. In the Delaware District Court, the Action that was originally the Wetzel County action was docketed as Civ. No. 20-cv-0094-CFC; the Action that was originally the Marshall County action was docketed as Civ. No. 20-cv-0096 -CFC.

12. On February 3, 2020, the Delaware District Court, having received these actions, entered an order of referral of these Actions to this Bankruptcy Court. In this Court, they were docketed as captioned above.

13. Defendants CGT and TransCanada have not yet filed an answer to the Complaints (*i.e.*, to Counts I and IV).

14. The Debtor, as nominal defendant, has not answered the Complaint.

II. STATUS OF ADVERSARY PROCEEDING

15. Since the commencement of the Actions, the parties and their counsel have engaged in discussions regarding the factual and legal matters at issue.

16. The parties have engaged in limited settlement discussions. To date, the parties have not been able to reach a settlement. Plaintiffs believe that an additional 21 days' time is warranted for allowing the parties to explore settlement, prior to setting a pre-trial discovery schedule.

17. Defendants CGT and TransCanada will need to file an answer to the Complaint (other than the two dismissed Counts).

18. Thereafter, the parties are prepared to proceed with necessary discovery and will prepare a proposed scheduling order for the Court's consideration and approval.

19. Because the Actions and the corresponding two (2) above-captioned Adversary Proceedings are related, Plaintiff suggests that the Adversary Proceedings be consolidated and administered as one proceeding.

Dated: February 28, 2020

MORRIS JAMES LLP

/s/ *Stephen M. Miller*

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AFFIDAVIT OF WILLIAM W. WELLER, PARALEGAL

STATE OF DELAWARE :
: SS:
NEW CASTLE COUNTY :

I, William W. Weller, certify that I am, and at all times during the service, have been an employee of Morris James LLP, not less than 18 years of age and not a party to the matter concerning which service was made. I certify further that on February 28, 2020, I caused to be served:

STATUS REPORT

Service was completed upon the parties on the attached list as indicated thereon.

Dated: February 28, 2020

William W. Weller

SWORN AND SUBSCRIBED before me this 28th day of February, 2020.

Notary

RUTH F. SALOTTO
MY COMMISSION EXPIRES MARCH 21, 2023
NOTARY PUBLIC
STATE OF DELAWARE

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