Docket #0004 Date Filed: 6/26/2020

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re: WELDED CONSTRUCTION, L.P., et al., Debtors.	Chapter 11 Case No. 18-12378 (CSS) (Jointly Administered)
EARTH PIPELINE SERVICES, INC., Plaintiff, v. COLUMBIA GAS TRANSMISSION, LLC, WELDED CONSTRUCTION, L.P., Defendants.	Adv. No. 19-50274 (CSS) Adv. No. 19-50275 (CSS) (Consolidated)
WELDED CONSTRUCTION, L.P., Plaintiff, v. EARTH PIPELINE SERVICES, INC. Defendants.	Adv. Proc. No. 20-50612 (CSS) (Consolidated)

ANSWER OF EARTH PIPELINE SERVICES, INC. TO THE COMPLAINT AND OBJECTION TO PROOF OF CLAIM NUMBER 592

Defendant, Earth Pipeline Services, Inc. ("EPS"), by and through its undersigned attorneys, hereby responds to the Complaint and Objection to Proof of Claim Number 592 of Debtor and Plaintiff Welded Construction, L.P. ("Welded") as follows:

SUMMARY OF ACTION

The Summary of Action set forth before the numbered paragraphs of Welded's Complaint do not constitute specifically enumerated allegations of fact to which a response is required. To the extent that a response is required to any allegations of fact, those allegations are denied. By way of further answer and as set forth more fully herein, the accuracy of Welded's characterizations is specifically denied.

JURISDICTION AND VENUE

1. Admitted that Welded filed its petition as stated. After reasonable investigation, EPS is without sufficient information to admit or deny the allegations of this paragraph, and therefore the same are denied.

2. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

3. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

4. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied. Defendant does not consent to the entry of final orders or judgment by the Bankruptcy Court in this action.

5. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

PARTIES

6. Admitted.

7. Admitted.

8. Admitted that EPS is a Wyoming Corporation with a place of business at the address stated. EPS has agreed, through its undersigned counsel, to accept service of Welded's Complaint.

FACTUAL BACKGROUND

I. The Subcontracts

9. a-d Admitted that the referenced Subcontracts were signed on the dates stated. The Subcontracts are documents, the terms of which are their own best evidence. The accuracy of Welded's characterization of those terms is specifically denied. By way of further answer, on or about April 27, 2018, Welded purported to unilaterally revise the construction schedule, which revision EPS did not consent to. It is specifically denied that EPS fell behind schedule. To the contrary, Welded unilaterally attempted to compress EPS' schedule without EPS' consent and failed to provide information requested.

10. After reasonable investigation, EPS is without sufficient information to admit or deny the allegations of this paragraph, and therefore the same are denied.

11. Denied. To the contrary, EPS rejected the steep slope plan as part of EPS' proposals. EPS conditioned its Proposal on the following, which was accepted by Welded: "Based on IFC documents dated: 02/23/18; Based on Construction Line

List dated: 02/23/18; Based on moving in a linear direction with zero (0) move arounds; Based on full access road availability and usability shown in IFC documents dated: 02/23/18; Based on Earth Pipelines' winch plan submitted on 02/12/18. All items may be revised if scope or schedule changes, as stated above."

II. EPS's Alleged Failure to Comply with the Project Schedule

12. Denied. To the contrary, Welded was delayed, including but not limited to a shut-down caused by Welded having a line strike and work being delayed because Welded failed to have access roads constructed, available and usable for EPS.

13. Denied as stated. Work on each of the three sections began on different days.

14. Admitted that the correspondence was sent by Julie Conn on behalf of Mett Carrol. The referenced correspondence is a document, the contents of which is its own best evidence.

15. Admitted that the correspondence was sent by Julie Conn on behalf of Mett Carrol. The referenced correspondence is a document, the contents of which is its own best evidence.

16. Admitted that the written directive correspondence was sent by Welded. The referenced directive is a document, the contents of which is its own best evidence. It is specifically denied that EPS could not comply with an agreed upon project schedule.

17. Admitted that the referenced correspondence was sent by Welded. The

referenced directive is a document, the contents of which is its own best evidence. The remaining allegations of this paragraph are specifically denied.

18. Admitted that the written directive correspondence was sent by Welded. The referenced directive is a document, the contents of which is its own best evidence. The remaining allegations of this paragraph are specifically denied.

19. Admitted that the written directive correspondence was sent by Welded. The referenced directive is a document, the contents of which is its own best evidence. The remaining allegations of this paragraph are specifically denied.

20. After reasonable investigation, EPS is without sufficient information to admit or deny the allegations of this paragraph regarding costs allegedly incurred by Welded, and therefore the same are denied. The change directives are documents, the contents of which are their own best evidence.

III. Alleged Safety Violations

21. a-g Denied as stated. It is admitted that some of the incidents occurred, though it is specifically denied that EPS was responsible for the incidents or that the incidents constituted safety violations. The characterization that EPS' performance was "marked" by such incidents is denied as vague and ambiguous. By way of further answer, after reasonable investigation, EPS is without sufficient information to admit or deny the allegations of this paragraph.

22. Denied.

IV. Termination of EPS for Convenience

23. After reasonable investigation, EPS is without sufficient information to admit or deny the allegations of this paragraph regarding communications between Welded and TransCanada. The remaining allegations of this paragraph are denied.

24. Admitted that the referenced correspondence was sent. The referenced correspondence is a document, the contents of which is its own best evidence. The remaining allegations of this paragraph are specifically denied.

25. Admitted.

26. Denied that EPS was in breach of the Subcontracts. After reasonable investigation, EPS is without sufficient information to admit or deny the remaining allegations of this paragraph

V. The Steep Slope Change Order and Invoice

27. Admitted that the referenced change order and correspondence were exchanged. The referenced documents are writings, the terms of which are their own best evidence.

28. Admitted that the referenced change order and correspondence were exchanged. The referenced documents, including EPS' initial Notice of Mechanic's Lien, are writings, the terms of which are their own best evidence. Denied that the steep slope plan was rejected. Welded's reference to "numerous inquiries" is denied as vague and ambiguous.

VI. The Alleged Preferential Transfers

29. After reasonable investigation, EPS is without sufficient information to admit or deny the allegations of this paragraph, and therefore the same are denied.

30. After reasonable investigation, EPS is without sufficient information to admit or deny the allegations of this paragraph, and therefore the same are denied.

31. Denied. The allegations of this paragraph are denied as conclusions of law to which no response is necessary. To the extent that a response is required, the allegations are denied.

32. Admitted.

33. After reasonable investigation, EPS is without sufficient information to admit or deny the allegations of this paragraph, and therefore the same are denied.

34. Admitted.

35. This paragraph does not contain any allegations of fact to which a response is necessary. To the extent that a response is required, the allegations are denied.

36. This paragraph does not contain any allegations of fact to which a response is necessary. To the extent that a response is required, the allegations are denied.

37. Admitted that EPS filed Claim No. 592. It is denied that Welded disputed any part of the invoices submitted. It is further denied that Welded has any proper basis to dispute any part of the invoices now.

38. Denied.

39.The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

40.The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

VII. The Mechanics Lien Action

41. Admitted.

42. Admitted.

43. Admitted.

44. Admitted.

CLAIMS

COUNT I
(Breach of Contract)

45. This paragraph does not contain any allegations of fact to which a response is necessary.

46. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

47. Denied. The allegations of this paragraph are denied as false. By way of further answer, the allegations of this paragraph are conclusions of law to which no response is necessary.

48. Denied. The allegations of this paragraph are denied as false. By way of further answer, the allegations of this paragraph are conclusions of law to which no

response is necessary.

49. Denied. The allegations of this paragraph are denied as false. By way of further answer, the allegations of this paragraph are conclusions of law to which no response is necessary.

50. Denied. The allegations of this paragraph are denied as false. By way of further answer, the allegations of this paragraph are conclusions of law to which no response is necessary.

51. Denied. The allegations of this paragraph are denied as false. By way of further answer, the allegations of this paragraph are conclusions of law to which no response is necessary.

COUNT II
(Claim to Avoid Preferential Transfers Pursuant to Section 547)

52. This paragraph does not contain any allegations of fact to which a response is necessary.

53. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

COUNT III
(Claim to Recover Property Pursuant to Bankruptcy Code Section 550)

54. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

55. This paragraph does not contain any allegations of fact to which a response is necessary.

56. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

57. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

58. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

59. This paragraph does not contain any allegations of fact to which a response is necessary.

60. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

61. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

62. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

63. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

COUNT V (DESIGNATED AS COUNT III)
(Declaratory Judgment – Setoff)

64. This paragraph does not contain any allegations of fact to which a response

is necessary.

65. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

66. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

67. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

68. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

69. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

70. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

71. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

72. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

73. The allegations of this paragraph are conclusions of law to which no response is necessary, and therefore the same are denied.

WHEREFORE, for all of the foregoing reasons, Defendant Hajoca

Corporation respectfully requests that the Court enter judgment on all claims against Plaintiff and its favor and grant Defendant such other and further relief as is just and proper.

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief can be granted.

2. All or part of Plaintiff's claims are barred by the statute of limitations.

3. All or part of Plaintiff's claims are barred by the doctrine of latches.

4. Plaintiff's claims are barred by the doctrine of unclean hands.

5. Plaintiff's claims are barred by its attempt to unilaterally change terms of the Subcontract after accepting EPS' Proposal.

6. Defendant EPS performed all of its obligations under the Subcontract in a timely and workmanlike manner under all of the circumstances.

7. Plaintiff's claims are barred by its own breaches of the covenants of good faith and fair dealing.

8. Plaintiff's claims are contrary to the terms and conditions to which they mutually agreed.

9. Plaintiff failed to properly mitigate its alleged damages.

10. At the time of the alleged preferential transfers, Debtor was not insolvent, nor did Debtor become insolvent as a result of the alleged transfer.

11. The alleged preferential transfers cannot be recovered because the

transfers did not enable Defendant to receive more that in would have received if the case were a liquidation under Chapter 7, the transfer had not been made, and/or the Defendant received payment to the extent provided by the Bankruptcy Code.

12. The transfers or conveyances allegedly received by Defendant are not avoidable because some or all of the transfers or conveyances were (a) in payment of a debt in the ordinary course of business or financial affairs of the debtor and the Defendant; (b) made in the ordinary course of business or financial affairs of the and the Defendant; and (c) made according to ordinary business terms.

13. The transfers or conveyances received by Defendant cannot be recovered because such transfers were intended by Debtor and Defendant to be a contemporaneous exchange for new value, and in fact were a substantially contemporaneous exchange.

14. The transfers or conveyances received by Defendant cannot be recovered because after receiving the alleged preferential transfers, Defendant advanced new value to the Debtor in that EPS refrained from asserting a lien claim against the property owner because of its receipt of each such payment.

15. The transfers or conveyances received by Defendant cannot be recovered because EPS waived its lien rights against the property owner in reliance on each such payment.

16. Plaintiff’s claims are excepted from avoidance pursuant to 11 U.S.C. §

547 (c) 1, 2 and 4.

17. The alleged transfers are not avoidable pursuant to the provisions of the United States Bankruptcy Code, 11 U.S.C. § 101, et. seq.

18. Debtor received fair consideration and/or reasonably equivalent value for any alleged transfers after the transfers were made.

19. Plaintiff is not entitled to pre-judgment interest or costs.

20. Plaintiff's claims are barred by equitable principles, including, but not limited to latch use, estoppel, waiver, unjust enrichment and unclean hands.

21. Plaintiff's claims are subject to set off, recoupment and other equitable defenses.

22. Plaintiff cannot recover some or all of the alleged transfers as the funds were not received from Debtor and/or were not property of the estate of the Debtor.

23. Plaintiff has failed to plead the allegations of fraud with such specificity needed to sustain a claim to recover property pursuant to section 550 of the Bankruptcy Code.

24. Any transfer made to Defendant by Plaintiff are not avoidable given the nature of the services provided and the status of the debt at the time of the transfer.

25. Plaintiff's claims are barred because Defendant, by and through its

principals, was engaged in fraudulent and deceptive conduct at the time the Petition was filed and throughout the preference period.

26. Plaintiff is precluded from recovering attorney's fees because some of the allegations of the Complaint are made without any good faith factual or legal basis.

27. Defendant reserves the right to assert such additional claims, defenses and third party claims as may be revealed through discovery and ongoing investigation.

WHEREFORE, for all the foregoing reasons, Creditor Earth Pipeline Services respectfully requests that it be deemed to have an allowed claim in the amount of $3,650,300.42 for purposes of voting on the Debtor's Proposed Plan.

COHEN, SEGLIAS, PALLAS, GREENHALL & FURMAN, P.C.

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DATED: June 26, 2020 *Attorneys for Earth Pipeline Services, Inc.*

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CERTIFICATE OF SERVICE

I, Sally J. Daugherty, hereby certify that on this 26th day of June 2020, I caused a true and correct copy of ***Earth Pipeline Services, Inc.'s Answer and Affirmative Defenses to Welded's Adversary Proceeding*** to be served upon the parties identified below via email and by the Court's CM/ECF System:

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DATED: June 26, 2020

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