Docket #0013 Date Filed: 12/28/2020

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	
	)	Chapter 11
Welded Construction, L.P., *et al.,*	)	
	)	Case No. 18-12378 (CSS)
Debtors.	)	
	)	(Jointly Administered)
	)	
Welded Construction, L.P.,	)	
	)	
Plaintiff,	)	
vs.	)	Adv. Pro. No. 20-50930 (CSS)
	)	
Gwinnup's Restoration and Environmental Services, Inc.,	)	
	)	
Defendant.	)	

ANSWER TO COMPLAINT

Comes now Gwinnup's Restoration and Environmental Services, Inc. ("Defendant"), by counsel, and for its Answer to the complaint [Adv. Doc. 1] ("Complaint") filed in this matter by Welded Construction, L.P. ("Plaintiff") states that:

NATURE OF THE CASE

1. Paragraph 1 of the Complaint merely states Plaintiff's intentions and, therefore, no response is required. To the extent any response is required, the Defendant denies the allegations in paragraph 1 of the Complaint.

2. Paragraph 2 of the Complaint merely states Plaintiff's intentions and, therefore, no response is required. To the extent any response is required, the Defendant denies the allegations in paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. Defendant admits the allegations in paragraph 3 of the Complaint.

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4. Defendant admits the allegations in paragraph 4 of the Complaint.

5. Defendant admits the allegations in paragraph 5 of the Complaint.

6. Defendant admits the allegations in paragraph 6 of the Complaint.

7. In response to paragraph 7 of the Complaint, Defendant states that it also consents to the 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.

PROCEDURAL BACKGROUND

8. Defendant admits the allegations in paragraph 8 of the Complaint.

9. Defendant admits the allegations in paragraph 9 of the Complaint.

10. Defendant admits the allegations in paragraph 10 of the Complaint.

11. Defendant admits the allegations in paragraph 11 of the Complaint.

12. Defendant admits the allegations in paragraph 12 of the Complaint.

13. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 13 of the Complaint.

THE PARTIES

14. Defendant admits the allegations in paragraph 14 of the Complaint.

15. Defendant admits the allegations in paragraph 15 of the Complaint.

FACTUAL BACKGROUND

16. Defendant admits the allegations in paragraph 16 of the Complaint.

17. Defendant admits the allegations in paragraph 17 of the Complaint.

18. Defendant admits the allegations in paragraph 18 of the Complaint.

19. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 19 of the Complaint.

20. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20 of the Complaint.

21. Defendant admits the allegations in paragraph 21 of the Complaint.

22. Defendant admits the allegations in the first two sentences of paragraph 22 of the Complaint. Defendant denies the allegations in the third and fourth sentences of paragraph 22 of the Complaint, because the description of the "details… under the Agreements" between Plaintiff and Defendant is woefully inadequate. In further response to paragraph 22 of the Complaint, the Defendant states that the relationship between the Plaintiff and Defendant was governed by, among other documents, three subcontracts regarding the Mountaineer Xpress and Leach Xpress projects owned by Columbia Gas Transmission that are not even mentioned in the Complaint.

23. Defendant admits the allegations in paragraph 23 of the Complaint, with the qualification that Defendant continued to conduct business with the Plaintiff after the Petition Date until all of Defendant's obligations under the Agreements were fully performed.

24. In response to paragraph 24 of the Complaint, the Defendant admits that the Plaintiff purchased goods and/or services from Defendant and that Defendant received eight payments during the preference period in the aggregate amount of $4,022,269.79; however, Defendant denies that Exhibit A to the Complaint adequately identifies the relevant Agreements and further denies that Exhibit A accurately depicts the details concerning the payments received by Defendant.

25. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 of the Complaint.

26. In response to paragraph 26 of the Complaint, the Defendant admits that it received eight payments during the preference period in the aggregate amount of $4,022,269.79, but it is unknown whether the payments were funded by Plaintiff or Columbia Gas Transmission. Defendant denies the remaining allegations in paragraph 26 of the Complaint.

27. In response to paragraph 27 of the Complaint, Defendant admits that on September 29, 2020, it received a demand letter from Plaintiff's counsel dated September 23, 2020. However, Defendant lacks knowledge or information sufficient to form a belief about the truth of Plaintiff's allegation that it performed due diligence of the reasonably knowable affirmative defenses available to Defendant.

28. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28 of the Complaint.

29. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29 of the Complaint.

30. Defendant admits the allegations in paragraph 30 of the Complaint.

CLAIMS FOR RELIEF

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

31. In response to paragraph 31 of the Complaint, Defendant incorporates herein by reference its responses to paragraphs 1 through 30 of the Complaint.

32. In response to paragraph 32 of the Complaint, the Defendant admits that it received eight payments during the preference period in the aggregate amount of $4,022,269, but

it is unknown whether the payments were funded by Plaintiff or Columbia Gas Transmission. Defendant denies the remaining allegations in paragraph 32 of the Complaint.

33. Defendant denies the allegations in paragraph 33 of the Complaint. In further response to paragraph 33 of the Complaint, Defendant states that none of the alleged Transfers were paid by check; rather, each of the Transfers was paid by ACH with the exception of the Transfer made on August 15, 2018, which was made by wire transfer.

34. Defendant admits the allegations in paragraph 34 of the Complaint.

35. Defendant admits the allegations in paragraph 35 of the Complaint.

36. Defendant admits the allegations in paragraph 36 of the Complaint, with the qualification that it is unknown whether the transfers at issue were funded by Plaintiff or Columbia Gas Transmission.

37. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 37 of the Complaint; however, Defendant acknowledges that 11 U.S.C. § 547(f) recognizes a presumption of insolvency.

38. Defendant admits the allegations in paragraph 38 of the Complaint.

39. The Defendant denies the allegations in the first sentence of paragraph 39 of the Complaint, and states that Plaintiff cannot meet its burden of proof under 11 U.S.C. § 547(b)(5). Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of paragraph 39 of the Complaint.

40. Defendant denies the allegations in paragraph 40 of the Complaint.

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

41. In response to paragraph 41 of the Complaint, Defendant incorporates herein by reference its responses to paragraphs 1 through 40 of the Complaint.

42. Defendant denies the allegations in paragraph 42 of the Complaint.

43. Defendant denies the allegations in paragraph 43 of the Complaint.

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

44. In response to paragraph 44 of the Complaint, Defendant incorporates herein by reference its responses to paragraphs 1 through 43 of the Complaint.

45. Defendant denies the allegations in paragraph 45 of the Complaint.

46. Defendant denies the allegations in paragraph 46 of the Complaint.

47. Defendant denies the allegations in paragraph 47 of the Complaint.

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

48. In response to paragraph 48 of the Complaint, Defendant incorporates herein by reference its responses to paragraphs 1 through 47 of the Complaint.

49. Defendant denies the allegations in paragraph 49 of the Complaint.

50. Defendant denies the allegations in paragraph 50 of the Complaint.

51. Defendant denies the allegations in paragraph 51 of the Complaint.

52. Defendant denies the allegations in paragraph 52 of the Complaint.

AFFIRMATIVE DEFENSES

1. The Defendant gave new value to the Plaintiff in an amount exceeding the challenged Transfers. 11 U.S.C. § 547(c)(4).

2. Each challenged Transfer was in payment of a debt incurred by Plaintiff in the ordinary course of business or financial affairs of Plaintiff and Defendant, and each Transfer was –

(a) made in the ordinary course of business or financial affairs of Plaintiff and Defendant, or

(b) made according to ordinary business terms. 11 U.S.C. § 547(c)(2).

3. Defendant was designated a critical vendor by Plaintiff and Columbia Gas Transmission, the owner of the pipeline projects at issue, and was induced to execute two Critical Vendor Certifications dated October 26, 2018. Pursuant to the Critical Vendor Certifications, and in consideration for Defendant's continued performance and release of claims against Plaintiff and Columbia Gas Transmission, Plaintiff acknowledged that Defendant would be "paid in full for all work on the Project(s) up to and including October 21, 2018." As a result of the Critical Vendor Certifications, the Plaintiff's claims are barred by the defenses of accord and satisfaction, estoppel, release, and waiver.

PRAYER FOR RELIEF

WHEREFORE, Gwinnup's Restoration and Environmental Services, Inc. requests that the Court: (a) deny the relief requested by the Plaintiff and dismiss this action with prejudice; (b) order Plaintiff to pay Defendant's attorneys' fees incurred in this matter; and (c) grant such other relief as is just and proper.

Dated: December 28, 2020
Wilmington, Delaware

/s/ Kevin G. Collins

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Counsel to Gwinnup's Restoration and Environmental Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2020, I caused a copy of the foregoing *Answer to Complaint* to be served on all parties requesting service through the Court's ECF system and by e-mail on counsel listed below.

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