Docket #0013 Date Filed: 1/7/2021

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.[1]	(Jointly Administered)
Welded Construction, L.P.,	
Plaintiff,	
vs.	Adversary Proceeding No. 20−50932−CSS
Industrial Fabrics, Inc.,	
Defendant.	

ANSWER AND AFFIRMATIVE DEFENSES
TO THE COMPLAINT

Industrial Fabrics, Inc., the defendant in the above-referenced adversary proceeding (the "Defendant") by and through its undersigned counsel, hereby answers the Complaint of Welded Construction, L.P. (the "Plaintiff").

NATURE OF THE CASE

1. Paragraph 1 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies that the Plaintiff is entitled to the relief sought in the Complaint.

2. Paragraph 2 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies that the Plaintiff is entitled to the relief sought in the Complaint.

[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)

JURISDICTION AND VENUE

3. In response to paragraph 3 of the Complaint, the Defendant denies. The Defendant affirmatively objects to jurisdiction in this case and specifically denies jurisdiction and does not waive any objection connected to jurisdiction. The Complaint contains claims which are non-core or claims over which the Bankruptcy Court has no jurisdiction pursuant to *Stern v. Marshall*, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011) reh'g denied 132 S. Ct. 56, 180 L. Ed. 2d 924 (U.S. 2011). Further, the Defendant is informed and believes that the status of the case is as reflected in the Court records, but, except as so admitted, denies each and every allegation of Paragraph 3 of the Complaint.

4. Paragraph 4 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies that the Plaintiff is entitled to the relief sought in the Complaint.

5. In response to paragraph 5 of the Complaint, the Defendant denies. The Defendant alleges that there are non-core proceedings under *Stern v. Marshall*. The Defendant does not consent to final orders and judgment by the Court.

6. The Defendant admits Paragraph 6 of the Complaint, but only if this Court finds jurisdiction over Defendant.

7. Paragraph 7 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies that the Plaintiff is entitled to the relief sought in the Complaint.

PROCEDURAL BACKGROUND

8. The Defendant is informed and believes that the status of the case is as reflected in the Court records, but, except as so admitted, denies each and every allegation of Paragraph 8

of the Complaint.

9. The Defendant is informed and believes that the status of the case is as reflected in the Court records, but, except as so admitted, denies each and every allegation of Paragraph 9 of the Complaint.

10. The Defendant is informed and believes that the status of the case is as reflected in the Court records, but, except as so admitted, denies each and every allegation of Paragraph 10 of the Complaint.

11. The Defendant is informed and believes that the status of the case is as reflected in the Court records, but, except as so admitted, denies each and every allegation of Paragraph 11 of the Complaint.

12. The Defendant is informed and believes that the status of the case is as reflected in the Court records, but, except as so admitted, denies each and every allegation of Paragraph 12 of the Complaint.

13. The Defendant is informed and believes that the status of the case is as reflected in the Court records, but, except as so admitted, denies each and every allegation of Paragraph 13 of the Complaint.

THE PARTIES

14. Paragraph 14 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies that the Plaintiff is entitled to the relief sought in the Complaint.

15. The Defendant admits only that its principal place of business is located at 510 O'Neal Lane Ext., Baton Rouge, Louisiana 70819. Except as so admitted, the Defendant denies paragraph 15 of the Complaint.

FACTUAL BACKGROUND

16. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 16 of the Complaint.

17. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 17 of the Complaint.

18. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 18 of the Complaint.

19. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 19 of the Complaint.

20. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 20 of the Complaint.

21. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 21 of the Complaint.

22. The Defendant admits only that a document described in paragraph 22 of the Complaint is attached as Exhibit A. Except as so admitted, the Defendant denies paragraph 22 of the Complaint.

23. Paragraph 23 of the Complaint contains statements and legal conclusions to which

no response is required. To the extent a response is required, the Defendant denies that the Plaintiff is entitled to the relief sought in the Complaint.

24. The Defendant admits only that a document described in paragraph 24 of the Complaint is attached as Exhibit A. Except as so admitted, the Defendant denies paragraph 24 of the Complaint.

25. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 25 of the Complaint.

26. The Defendant admits only that a document described in paragraph 26 of the Complaint is attached as Exhibit A. Except as so admitted, the Defendant denies paragraph 26 of the Complaint.

27. Paragraph 27 of the Complaint contains statements to which no response is required. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations relating to the Plaintiff's due diligence. To the extent a response is required, the Defendant denies that the Plaintiff is entitled to the relief sought in the Complaint.

28. Paragraph 28 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies that the Plaintiff is entitled to the relief sought in the Complaint.

29. Paragraph 29 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies that the Plaintiff is entitled to the relief sought in the Complaint

30. Paragraph 30 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies that the

Plaintiff is entitled to the relief sought in the Complaint

CLAIMS FOR RELIEF

First Claim for Relief
(Avoidance of Preference Period Transfers – 11 U.S.C. § 547)

31. The Defendant restates and incorporates by reference its answers set forth in paragraphs 1 through 30 above.

32. The Defendant admits only that a document described in paragraph 32 of the Complaint is attached as Exhibit A. Except as so admitted, the Defendant denies paragraph 32 of the Complaint.

33. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 33 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 33 of the Complaint.

34. The Defendant admits only that a document described in paragraph 34 of the Complaint is attached as Exhibit A. Except as so admitted, the Defendant denies paragraph 34 of the Complaint.

35. The Defendant admits only that a document described in paragraph 35 of the Complaint is attached as Exhibit A. Except as so admitted, the Defendant denies paragraph 35 of the Complaint.

36. The Defendant admits only that a document described in paragraph 36 of the Complaint is attached as Exhibit A. Except as so admitted, the Defendant denies paragraph 36 of the Complaint.

37. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 37 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 37 of the Complaint.

38. The Defendant admits only that a document described in paragraph 38 of the Complaint is attached as Exhibit A. Except as so admitted, the Defendant denies paragraph 38 of the Complaint.

39. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 39 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 39 of the Complaint.

40. Paragraph 40 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies paragraph 40 of the Complaint.

Second Claim for Relief
(Avoidance of Fraudulent Conveyances – 11 U.S.C. § 548(a)(1)(B))

41. The Defendant restates and incorporates by reference its answers set forth in paragraphs 1 through 40 above.

42. Paragraph 42 of the Complaint and its subparagraphs contain statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies paragraph 42 of the Complaint and its subparagraphs.

43. Paragraph 43 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies paragraph 43 of the Complaint.

Third Claim for Relief
(Recovery of Avoided Transfers – 11 U.S.C. § 550)

44. The Defendant restates and incorporates by reference its answers set forth in paragraphs 1 through 43 above.

45. Paragraph 45 of the Complaint contains statements and legal conclusions to which

no response is required. To the extent a response is required, the Defendant denies paragraph 45 of the Complaint.

46. Paragraph 46 of the Complaint contains statements and legal conclusions to which no response is required. To the extent, a response is required, the Defendant denies paragraph 46 of the Complaint.

47. Paragraph 47 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies paragraph 47 of the Complaint.

Fourth Claim for Relief
(Disallowance of all Claims – 11 U.S.C. § 502(d) and (j))

48. The Defendant restates and incorporates by reference its answers set forth in paragraphs 1 through 39 above.

49. Paragraph 41 of the Complaint contains statements and legal conclusions to which no response is required. To the extent, a response is required, the Defendant denies paragraph 41 of the Complaint.

50. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation in paragraph 42 of the Complaint. To the extent, a response is required, the Defendant denies paragraph 42 of the Complaint.

51. Paragraph 43 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies Paragraph 43 of the Complaint.

52. Paragraph 44 of the Complaint contains statements and legal conclusions to which no response is required. To the extent a response is required, the Defendant denies Paragraph 44 of the Complaint.

WHEREFORE, based upon the foregoing, the Transfers are not recoverable by the Plaintiff. The Defendant requests that the Court deny the Plaintiff's requests for relief and award the Defendant such other and further relief as the Court may deem just and proper, including but not limited to attorneys' fees incurred in the defense of this action.

AFFIRMATIVE DEFENSES

Without undertaking any burden of proof not otherwise assigned to it by law, Defendant asserts the following affirmative defenses with respect to the claims the Plaintiff asserts in the Complaint should the Court find that the Defendant received the Transfers.

FIRST AFFIRMATIVE DEFENSE

53. The Plaintiff is barred from recovering the alleged preferential transfers pursuant to 11 U.S.C 547 (the "Preferential Transfers") to the extent that the Preferential Transfers were:

(A) in payment of a debt or debts incurred by Welded Construction, L.P. and its affiliated debtor and debtor in possession (the "Debtors") in the ordinary course of business or financial affairs of the Debtors and the Defendant;

(B) made in the ordinary course of business or financial affairs of the Debtors and the Defendant, or

(C) made according to ordinary business terms.

54. Pursuant to 11 U.S.C. 547(c)(2) such Preferential Transfers are not avoidable by the Plaintiff.

SECOND AFFIRMATIVE DEFENSE

55. Pursuant to 11 U.S.C. 547(c)(1), the Plaintiff is barred from recovering the alleged Preferential Transfers to the extent that the Transfers were: (A) intended by the Debtors and the Defendant to or for whose benefit such Transfers were made to be a contemporaneous

exchange for new value given to the Debtors; and (B) in fact a substantially contemporaneous exchange.

THIRD AFFIRMATIVE DEFENSE

56. Pursuant to 11 U.S.C. 547(c)(4), the Plaintiff is barred from recovering the alleged Preferential Transfers to the extent that, after such Preferential Transfers, the Defendant gave new value to or for the benefit of the Debtors: (A) that was not secured by an otherwise unavoidable security interest; and (B) on account of which new value the Debtors did not make an otherwise unavoidable transfer to or for the benefit of the Defendant.

FOURTH AFFIRMATIVE DEFENSE

57. The Plaintiff is barred from recovering the alleged Preferential Transfers and the alleged transfers pursuant to 11 U.S.C 548 (the "Fraudulent Transfers"; and collectively with the Preferential Transfers shall be referred to as the "Transfers") because at all times relevant to the matters complained of the Debtors were solvent and were not rendered insolvent or left with unreasonably small capital as result of any transactions with the Defendant. Consequently, the Defendant's claims may not be disallowed.

FIFTH AFFIRMATIVE DEFENSE

58. The claims of the Plaintiff are barred, in whole or in part, by reason that, to the extent that it received any Fraudulent Transfers, the Defendant was at all times a good faith transferee for reasonably equivalent value pursuant to 11 U.S.C § 548(c).

SIXTH AFFIRMATIVE DEFENSE

59. The claims of the Plaintiff are barred, in whole or in part, pursuant to 11 U.S.C. § 550 (b) by reason that Defendant, to the extent it took any transfer(s), took the alleged transfers for value, in good faith, and without knowledge of the voidability of the alleged transfers.

SEVENTH AFFIRMATIVE DEFENSE

60. The Plaintiff seeks to disallow the Defendant's claims due to the Fraudulent Transfers which the Plaintiff is barred from recovering to the extent that the transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on or may retain any interest transferred or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the Debtors in exchange for such transfer or obligation.

61. Pursuant to 11 U.S.C. 548(c) such Fraudulent Transfers are not avoidable by the Plaintiff and, consequently, the Defendant's claims may not be disallowed.

EIGHTH AFFIRMATIVE DEFENSE

62. The Plaintiff's Complaint contains claims which, pursuant to *Stern v. Marshall*, 131 S. Ct. 2594, 180 L. Ed. 2d 475 (2011) reh'g denied, 132 S. Ct. 56, 180 L. Ed. 2d 924 (U.S. 2011) are claims which implicate only private rights. Consequently, the Bankruptcy Court has no authority to issue final judgments over those private rights claims without the consent of the Defendant.

63. The Defendant reserves its right to a jury trial before the District Court, does not consent to a jury trial before the Bankruptcy Court and does not consent to the entry of final orders by the Bankruptcy Court.

NINTH AFFIRMATIVE DEFENSE

64. The Plaintiff's actions are barred to the extent that the Defendant has an earmarking or a conduit defense.

TENTH AFFIRMATIVE DEFENSE

65. The Plaintiff's claims are barred by all applicable state and federal statutes of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

66. The Defendant denies these allegations to the extent that the Defendant was not an initial transferee within the meaning of 11 U.S.C. § 550 and acted as a mere conduit.

TWELFTH AFFIRMATIVE DEFENSE

67. The Defendant denies these allegations to the extent that the Transfers were not property of the Debtors and were held in trust by the Debtors for the benefit of the Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

68. The Defendant hereby gives notice that it intends to rely upon such other and further defenses as may become available or apparent during the discovery process in this action, and hereby reserves the right to amend its answer to assert any such defenses. The assertion of the above defenses by Defendant is not intended and should not be deemed or construed to alter or shift any burden of proof Plaintiff may have in connection with the claims asserted in the Complaint.

JURY TRIAL IS DEMANDED AS TO ALL ALLEGATIONS, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS, IF ANY.

Dated: January 7, 2021

Respectfully submitted,

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Counsels for the Defendant

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.	Adversary Proceeding No. 20−50932−CSS
Industrial Fabrics, Inc.,	
Defendant.	

CERTIFICATE OF SERVICE

I, James Tobia, hereby certify that on _____, I caused the foregoing Industrial Fabrics, Inc.'s Answer and Affirmative Defenses to be served upon Plaintiff's counsel by CM/ECF:

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Dated: _____

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Welded Construction, L.P.,	
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vs.	Adversary Proceeding No. 20−50932−CSS
Industrial Fabrics, Inc.,	
Defendant.	

CERTIFICATE OF SERVICE

I, James Tobia, hereby certify that on January 7, 2021, I caused the foregoing Industrial Fabrics, Inc.'s Answer and Affirmative Defenses to be served upon Plaintiff's counsel by CM/ECF:

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Dated: January 7, 2021

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[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)