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.	)	
	)	
US CROSSINGS UNLIMITED, LLC,	)	Adv. Pro. No. 20-50954
	)	
Defendant.	)	

ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES the Defendant, US Crossings Unlimited, LLC (the "Defendant") and responds to the Complaint to Avoid Transfers as follows:

1. Denied insofar as Plaintiff is alleging that the subject transfers are avoidable.

2. Denied as Defendant has not asserted any such claims.

3-7. Denied as stating legal conclusion(s) or as otherwise not containing averment(s) of fact.

8-14. Admitted, upon information and belief. By way of further response, the record speaks for itself.

15. Admitted, except that Defendant's principal place of business was, at all times material hereto, 40397 National Road, Belmont, OH 43718.

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16-21. Admitted, upon information and belief.

22. Admitted.

23. Admitted that the Defendant conducted business with the Debtor as alleged. Denied that Defendant held a debt owed by Debtor as alleged (*see* Affirmative Defenses, below).

24. Admitted.

25. Denied as stating a legal conclusion or as otherwise not containing averment(s) of fact.

26. Denied. To the contrary, the majority of said transfers were not made to or for the benefit of the Defendant (*see* Affirmative Defense, below).

27. Denied for lack of knowledge, as Defendant did not receive the alleged Demand Letter.

28. Denied. By way of further response, *see* Affirmative Defenses, below.

29. Denied as not containing averment(s) of fact.

30. Admitted that the Transfers are subject to defense(s) under the Bankruptcy Code.

COUNT I - Avoidance of Preference Period Transfers

31. The preceding paragraphs are incorporated herein by reference.

32. Denied, as the majority of said Transfers were not made to or for the benefit of Defendant (*see* Affirmative Defenses, below).

33. Denied, Plaintiff will be left to prove their assertions, Exhibit A did not identify the bank or bank account no. of the alleged transfers, nor the entity to which the transfer was made payable.

34-36. Denied. By way of further response, *see* Affirmative Defenses, below.

37-40. Denied as stating legal conclusions and for the reasons set forth in Affirmative Defenses, below.

WHEREFORE, Defendant requests that Count I be dismissed.

COUNT II - Avoidance of Fraudulent Conveyances

41. The preceding paragraphs are incorporated herein by reference.

42. Denied, as none of the Transfers identified on Exhibit A to the Complaint were Fraudulent Transfers under the Bankruptcy Code. By way of further response, *see* Affirmative Defenses, below. Plaintiff has failed to plead a single specific fact for a constructive transfer and is merely asserting the elements of the statutory code. This cause of action should be dismissed for failure to state a claim for which relief can be granted.

43. Denied for the reasons hereinbefore and hereinafter set forth, and as stating a legal conclusion.

WHEREFORE, Defendant requests that Count II be dismissed.

COUNT III - Recovery of Avoided Transfers

44. The preceding paragraphs are incorporated herein by reference.

45. Denied as stating legal conclusion(s).

46. Denied for the reasons set forth in Affirmative Defenses, below.

47. Denied as stating a legal conclusion.

WHEREFORE, Defendant requests that Count III be dismissed.

COUNT IV - Disallowance of All Claims

48. The preceding paragraphs are incorporated herein by reference.

49-52. Denied as stating conclusions of law, and for the reasons hereinbefore set forth.

WHEREFORE, Defendant requests that Count IV be dismissed.

AFFIRMATIVE DEFENSES

53. Referring to the Transfers listed on Exhibit A to the Complaint, only the Transfer in payment of Invoice No. USC-18-012, in the amount of $333,500.00 (the "USC Transfer") was made to or for the benefit of Defendant.

54. The USC Transfer was made pursuant to the Debtor's purchase of equipment from the Defendant (*see* Invoice attached hereto as Exhibit 1). Delivery of said equipment was made to the Defendant contemporaneously with the USC Transfer.

55. The USC Transfer was a contemporaneous exchange of New Value and is not avoidable under Section 547(c)(1) of the Bankruptcy Code or otherwise.

56. The remaining Transfers listed on Exhibit A to the Complaint (the "Remaining Transfers") were made to Amerifactors Financial Group, LLC ("Amerifactors"), pursuant to the terms of a (non-recourse) Factoring Agreement whereby Amerifactors purchased, and became the owner of, the remaining invoices listed on Exhibit A to the Complaint.

57. The Remaining Transfers were made by Debtor to Amerifactors pursuant to written Notices of Assignment provided by Amerifactors.

58. The Remaining Transfers were made in the ordinary course of business between

Debtor and Defendant and are therefore not avoidable under Section 547(c)(2) of the Bankruptcy Code; however, Amerifactors, as purchaser and owner of the subject invoices, bears sole responsibility for any liability under Section 547.

59. The Remaining Transfers were not made to or for the benefit of Defendant; and are therefore not recoverable from the Defendant under Section 547 or Section 548.

60. The payments made to the Defendant are excepted from the Plaintiff's avoidance powers pursuant to 11 U.S.C. §547(c)(4) to the extent that new value was given.

61. Defendant was at all times material hereto a "Critical Vendor" to the Plaintiff and is entitled to a waiver of preference and avoidance liability, and elevated status above other unsecured creditors.

61. Pursuant to Federal Rules of Civil Procedure ("F.R.Civ.P.) 12(b)(6), the Complaint fails to state a claim upon which relief may be granted as the Plaintiff failed to name the specific entity to whom the transfers were made payable and failed to identify a specific bank account; as well as, Count II of the Complaint, merely recites the elements of section 548 in lieu of any Rule 9(b) specificity of factual allegations and is insufficient to withstand a motion to dismiss. *See Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949–50 (2009).

62. Defendant reserves the right to assert or amend additional affirmative defenses as discovery progresses and facts are ascertained to support such affirmative defenses.

63. Plaintiff, if entitled to interest at all, would only be entitled to interest from the date of demand for the return of any transfers ultimately proven to be preferential.

64. Plaintiff is not entitled to a recovery of attorney's fees and costs.

WHEREFORE, Defendant requests entry of the following relief:

A. Dismissal of the Plaintiffs' Complaint, with prejudice;

B. For judgment against the Plaintiff and in favor of the Defendant on the purposed claims for relief under Section 547 of the Bankruptcy Code;

C. For judgment against the Plaintiff and in favor of the Defendant on the purposed claims for relief under Section 548 of the Bankruptcy Code;

D. For judgment against the Plaintiff and in favor of the Defendant on the purposed claims for relief under Section 550 of the Bankruptcy Code;

E. For an order that the Plaintiff and Debtors receive nothing from the Defendant under or by the Complaint;

F. For an order that any and all purported transfers made by the Debtor(s) to the Defendant alleged in the Complaint were not preferential within the meaning of Section 547 of the Bankruptcy Code, nor fraudulent within the meaning of Section 548, and are not recoverable under Section 550 of the Bankruptcy Code.

G. For an order that any and all claims filed by Defendant are not disallowed within the meaning of Section 502(d) of the Bankruptcy Code;

H. For an order requiring Plaintiff and Debtors to pay the costs, expenses, and reasonable attorneys' fees incurred in the defense of this action; and

I. For such other and further relief as the Court deems just and appropriate.

Date: May 27, 2021
Wilmington, Delaware

Respectfully submitted,

/s/ Robert W. Pedigo
Robert W. Pedigo, (DSB# 4047)
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Counsel for US Crossings Unlimited, LLC

EXHIBIT 1

U.S. CROSSINGS UNLIMITED
40397 NATIONAL ROAD
BELMONT, OHIO 43718

Invoice USC-18-012

Bill to:	Job:
WELDED CONSTRUCTION, L.P. 26933 Eckel Rd. Perrysburg, OH 43551	SUNOCO LOGISTICS PARTNERS, L.P., SPREAD 2 WASHINGTON, PA

Job #: 2016-22	Date: 09-18-2018	Customer P.O. #:	Net Terms: PAID UPON RECEIPT

(2) 20" FLEXTOOLS (2) 30" FLEXTOOLS	333,500.00

Total: 333,500.00

PAID UPON RECEIPT VIA WIRE:

HUNTINGTON BANK
305 S MAIN #110, ANN ARBOR, MI 48104
ACT#: 01382714356
ABA#: 044 000 024

EXHIBIT
1

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	)	(Jointly Administered)
WELDED CONSTRUCTION, L.P.,	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
US CROSSINGS UNLIMITED, LLC,	)	Adv. No. 20-50954
	)	
Defendant	)	

CERTIFICATE OF SERVICE

I, Robert W. Pedigo, Esquire certify that on May 27, 2021, caused the attached documents to be served on the parties, via the ECF email notice, and on the attached service list in the manner indicated.

COOCH AND TAYLOR, P.A.

/s/ Robert W. Pedigo
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Counsel for US Crossings Unlimited, LLC

Dated: May 27, 2021

SERVICE LIST:

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