UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
EPIC COMPANIES, LLC,	§	**Case No. 19-34752 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**
JEFFREY T. VARSALONE, LIQUIDATING TRUSTEE, **Plaintiff.**	§	**Adv. No. 21- _____**
vs.	§	
IHI E&C INTERNATIONAL CORPORATION **Defendant.**	§	

COMPLAINT TO AVOID AND RECOVER TRANSFERS
PURSUANT TO 11 U.S.C. §§ 547 AND 550

Jeffrey T. Varsalone, as the Liquidating Trustee for Epic Companies, LLC Trust (the "Liquidating Trustee" or the "Plaintiff"), files this complaint (the "Complaint") against IHI E&C International Corporation (the "Defendant") seeking to avoid and recover certain pre-petition transfers as preferences pursuant to sections 547 and 550 of chapter 5 of title 11 of the United States Code (the "Bankruptcy Code").

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Epic Companies, LLC (1473), Epic Diving & Marine Services, LLC (2501), Epic Applied Technologies, LLC (5844), Epic Specialty Services, LLC (8547), Epic Alabama Steel, LLC (6835), Epic San Francisco Shipyard, LLC (5763) and Zuma Rock Energy Services, LLC (1022). The mailing address of the Debtors is: P.O. Box 79625, Houston, Texas 77279-9625.

THE PARTIES

1. The Plaintiff is an individual appointed pursuant to the confirmed *Joint Plan of Liquidation of Epic Companies, LLC and its Debtor Subsidiaries under Chapter 11 of the Bankruptcy Code* [Case No. 19-34752, Docket No. 581] (the "Plan"). Articles V.D, V.E, and V.H of the Plan provide that the Liquidating Trustee succeeded to the rights of the Debtors (as defined below) and may pursue causes of action on their behalf. The Plaintiff's mailing address, for the purpose of notice and communications is c/o Eric M. English, Porter Hedges, LLP 1000 Main Street, 36th Floor, Houston, Texas 77002.

2. The Defendant is a corporation, which on information and belief is organized under the laws of Delaware and can be served through its registered agent for service of process, CT Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. The statutory and legal predicates for the relief sought herein are sections 547 and 550 of the Bankruptcy Code, rule 7001 of the Federal Rules of Bankruptcy Procedure, Bankruptcy Local Rule 7008-1, and other applicable law.

4. This adversary is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (F), and (O). Pursuant to Bankruptcy Local Rule 7008-1, the Plaintiff consents to the entry of final orders or judgment by the bankruptcy judge if it is determined that the bankruptcy judge, absent consent of the parties, cannot enter final orders or judgment consistent with Article III of the United States Constitution.

5. Venue is proper in this district pursuant to 28 U.S.C. § 1409(a).

SUMMARY OF THE COMPLAINT

6. The Plaintiff seeks to avoid and recover from the Defendant, or from any other person or entity for whose benefit the transfers were made, all preferential transfers of property that occurred during the ninety (90) day period prior to the Petition Date (as defined below) pursuant to sections 547 and 550 of the Bankruptcy Code, plus pre- and post-petition interest in accordance with applicable law.

STATEMENT OF RELEVANT FACTS

A. The Debtors

7. Epic Companies, LLC and certain of its affiliates and subsidiaries, as debtors and debtors in possession in the above captioned cases (collectively, the "Debtors") formed a full-service provider to the global decommissioning, installation and maintenance markets headquartered in Houston, Texas. The Debtors' services included heavy lift, diving and marine, specialty cutting and well plugging and abandonment services. The Defendant leased real property to the Debtors, specifically, the office space at 1080 Eldridge Parkway, Suite 1300 77077.

8. On August 26, 2019, (the "Petition Date"), the Debtors each commenced these bankruptcy cases by filing a petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases").

9. On April 7, 2020, the Court entered an order [Docket No. 681] (the "Confirmation Order") approving the Debtors' *Disclosure Statement for Joint Plan of Liquidation of Epic Companies, LLC and Its Debtors Subsidiaries under Chapter 11 of the Bankruptcy Code* [Docket No. 582] (the "Disclosure Statement") on a final basis and confirming the Plan. The effective date of the Plan (the "Effective Date") occurred on April 13, 2020. Pursuant to the Plan and the

Confirmation Order, on the Effective Date Jeffrey T. Varsalone was appointed as the Liquidating Trustee and the Debtors' assets were transferred to the Liquidating Trust.

B. The Transfers

10. During the ninety (90) days before and including the Petition Date, that is between May 28, 2019 and August 26, 2019 (the "Preference Period"), the Debtors continued to operate their businesses, including the transfer of money, either by checks, cashier checks, wire transfers, ACH transfers, direct deposits, or otherwise, to various entities.

11. Upon information and belief, the Debtors entered into agreements for the purchase of goods and/or services from the Defendant on behalf of one or more of the Debtors, as evidenced by one or more contracts, purchase orders, invoices, communications, and other documents (collectively, the "Agreements"). The payments to the Defendant in respect of the Agreements during the Preference Period are set forth below:

DATE	PAYMENT TYPE	AMOUNT
06/03/2019	Electronic Payment	$34,765.33
07/16/2019	Electronic Payment	$34,765.33
Total		**$69,530.66**

12. One or more of the Debtors made transfers of an interest of the Debtors' property to or for the benefit of the Defendant during the Preference Period through payments aggregating not less than $69,530.66 (each a "Transfer" and collectively, the "Transfers").

13. The Plaintiff is seeking to avoid all of the Transfers made by the Debtors to the Defendant within the Preference Period, subject to the new value defense discussed below.

C. The Defendant's Statutory Defenses

14. On October 30, 2020, the Plaintiff, through counsel, sent a demand letter (the "Demand Letter") to the Defendant seeking a return of the Transfers. The Demand Letter requested that if the Defendant had any affirmative defenses, it contact counsel so the Plaintiff could review the same. The Defendant never responded to the Demand Letter; therefore, the Defendant failed to assert any statutory defenses to the Transfers.

15. The Plaintiff conducted its own evaluation of the reasonably knowable affirmative defenses to avoidance of the Transfers, and the Plaintiff has determined that it may avoid some of the Transfers even after taking into account the Defendant's potential statutory defense under section 547(c)(4) of the Bankruptcy Code. The Plaintiff concluded that the Defendant provided new value under section 547(c)(4) of the Bankruptcy Code in the amount of $34,765.33 as the Defendant leased its property after certain of the Transfers were made. Therefore, the net preferential amount of the Transfers is $34,765.33. *See* 11 U.S.C. § 547(c)(4).

16. During the course of this proceeding, the Plaintiff may learn (through discovery or otherwise) of additional transfers made to the Defendant during the Preference Period or that may be avoidable under other provisions of the Bankruptcy Code. It is the Plaintiff's intention to avoid and recover all avoidable transfers of property made by the Debtors, as well as interests of the Debtors in property, to or for the benefit of the Defendant or any other transferee. The Plaintiff reserves its right to amend this original Complaint to include the following: (a) further information regarding the Transfers; (b) additional transfers; (c) modifications of and/or revision to the Defendant's name; (d) additional defendants; and/or (e) additional causes of action, if applicable (collectively, the "Amendments"), that may become known to the Plaintiff at any time

during this adversary proceeding, through formal discovery or otherwise, and for the Amendments to relate back to this original Complaint.

CLAIMS FOR RELIEF

First Claim for Relief
(Avoidance of Preferential Transfers under 11 U.S.C. § 547)

17. The Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

18. The Transfers received by the Defendant within the Preference Period in the aggregate amount not less than $34,765.33 are avoidable as preferential transfers under section 547 of the Bankruptcy Code. Under section 547, the Plaintiff:

> may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—
>
> (1) to or for the benefit of a creditor;
>
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
>
> (3) made while the debtor was insolvent;
>
> (4) made—
>
> (A) on or within 90 days before the date of the filing of the petition; or
>
> (B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and
>
> (5) that enables such creditor to receive more than such creditor would receive if—
>
> (A) the case were a case under chapter 7 of this title;
>
> (B) the transfer had not been made; and
>
> (C) such creditor receive payment of such debt to the extent provided by the provisions of this title.
>
> 11 U.S.C. § 547(b).

19. The Transfers set forth above were each a transfer of an interest in property of the Debtors.

20. The Transfers were to or for the benefit of the Defendant as a creditor (within the meaning of 11 U.S.C. § 101(10)) because each Transfer either reduced or fully satisfied a debt or debts then owed by the Debtors to the Defendant.

21. The Transfers were on account of an antecedent debt owed by the Debtors to the Defendant before the Transfers were made.

22. The Transfers were made while the Debtors were insolvent. The Debtors are entitled to the presumption of insolvency for each Transfer made during the Preference Period pursuant to 11 U.S.C. § 547(f).

23. The Transfers were made during the Preference Period.

24. As a result of the Transfers, the Defendant received more than the Defendant would have received if: (a) the Chapter 11 Cases were cases under chapter 7 of the Bankruptcy Code; (b) the Transfers had not been made; and (c) the Defendant received distributions on account of its debts under the provisions of the Bankruptcy Code. As evidenced by the Debtors' schedules filed in the underlying bankruptcy case as well as the proofs of claim that have been received to date, the Plan, the Confirmation Order, and the Disclosure Statement, the Debtors' liabilities exceed their assets such that unsecured creditors will not receive payment of their claims in full from the Debtors' estates.

25. In accordance with the foregoing, the Transfers are avoidable pursuant to section 547(b) of the Bankruptcy Code.

Second Claim for Relief
(Recovery of Avoided Transfers Pursuant to 11 U.S.C. § 550)

26. The Plaintiff incorporates all preceding paragraphs as if fully re-alleged herein.

27. After accounting for the reasonably knowable affirmative defenses to avoidance, the Plaintiff is entitled to avoid the Transfers in the amount not less than $34,765.33 pursuant to section 547(b) of the Bankruptcy Code (collectively, the "Avoidable Transfers").

28. Under section 550(a) of the Bankruptcy Code, the Plaintiff may recover the Avoidable Transfers from "the initial transferee of such transfer or the entity for whose benefit such transfer was made; or any immediate or mediate transferee of such initial transferee." 11 U.S.C. § 550(a)(1) and (2).

29. The Defendant was the initial transferee of the Avoidable Transfers or the immediate or mediate transferee of such initial transferee or the entity for whose benefit the Avoidable Transfers were made.

30. Accordingly, pursuant to section 550(a) of the Bankruptcy Code, the Plaintiff is entitled to recover the Avoidable Transfers made within the Preference Period as set forth above plus pre- and post-judgment interest.

REQUEST FOR PRE- AND POST-JUDGMENT INTEREST

31. The Plaintiff seeks pre-judgment interest on the value of the Avoidable Transfers from the date of demand through the date of judgment at the maximum legal rate and to the fullest extent allowed by applicable law. The Plaintiff seeks post-judgment interest on all money damages awarded hereunder from the date of judgment until paid at the prevailing federal judgment rate.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff requests the Court grant it the following relief against the Defendant:

A. On Plaintiff's First and Second Claims for Relief, judgment in favor of the

Plaintiff and against the Defendant avoiding all of the Avoidable Transfers and directing the Defendant to return to the Plaintiff the amount of the Avoidable Transfers, pursuant to sections 547(b) and 550(a) of the Bankruptcy Code, plus interest from the date of demand at the maximum legal rate and to the fullest extent allowed by applicable law and post-judgment interest at the maximum legal rate and to the fullest extent allowed by applicable law, together with the costs and expenses of this action including, without limitation, attorneys' fees; and

B. Such other and further relief as this Court may deem just and proper.

Dated: August 25, 2021
Houston, Texas

PORTER HEDGES LLP

By: /s/ *Eric M. English*

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