

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
<i>Caption in Compliance with D.N.J. LBR 9004-1(b)</i> OBERMAYER REBMANN MAXWELL & HIPPEL LLP Edmond M. George, Esquire Michael D. Vagnoni, Esquire (pro hac vice) Turner N. Falk, Esquire 1120 Route 73, Suite 420 Mount Laurel, NJ 08054-5108 Telephone: (856) 795-3300 Facsimile: (856) 482-0504 E-mail: edmond.george@obermayer.com michael.vagnoni@obermayer.com turner.falk@obermayer.com	
Counsel to the Debtor and Debtor in Possession	
In re: ALUMINUM SHAPES, L.L.C., Debtor.	Chapter 11 Case No. 21-16520-JNP
ALUMINUM SHAPES, L.L.C., Plaintiff, v. PYROTEK, INC., Defendant.	ADVERSARY NO. COMPLAINT

Aluminum Shapes, L.L.C. (the “Debtor” or the “Plaintiff”), by and through its counsel, Obermayer Rebmann Maxwell & Hippel LLP, brings this adversary proceeding against the Defendant and Creditor, Pyrotek, Inc. (“Pyrotek” or the “Defendant” or the “Creditor”) and states as follows:

PRELIMINARY STATEMENT

1. This adversary proceeding is commenced by the Debtor, pursuant to §§ 502, 506, 544, and 547 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.(as amended, the “Bankruptcy Code”), and Rules 7001(2) and (8) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

2. This adversary proceeding arises from Pyrotek’s failure to properly levy upon a judgment it obtained in the Superior Court of New Jersey, Camden County.

3. Pyrotek’s failure to properly levy renders the Lien created by that judgment avoidable pursuant to sections 502, 506, 544, and 547 of the Bankruptcy Code.

4. Accordingly, the Debtor requests avoidance of the Lien, a determination that Pyrotek’s claim is unsecured, and related relief.

I. PARTIES

5. The Debtor, Aluminum Shapes, L.L.C., is a limited liability company doing business in New Jersey, with an address at 9000 River Road, Delair, New Jersey 08110.

6. Upon information and belief, Pyrotek is a Washington corporation, with an address at 705 West 1st Avenue, Spokane, Washington 99201.

II. JURISDICTION AND VENUE

7. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b) and (e). This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(F), (H), (O), and (K).

8. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157, 1334, and Sections 502, 506, 544, and 547 of the Bankruptcy Code.

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

10. This adversary proceeding is initiated under Bankruptcy Rule 7001(2) and (8) for avoidance and recovery, determination of secured status, bifurcation, and related relief pursuant to sections 502, 506, 544, and 547 of the Bankruptcy Code.

11. The Debtor consents to the entry of a final order by this Court in the event that, absent such consent, this Court does not possess the authority to enter a final order pursuant to Article III of the Constitution.

III. BACKGROUND

The Debtor's Business and Bankruptcy

12. The Debtor is an industry leader in the fabrication, processing, and extruding of aluminum metals for use in, *inter alia*, the swimming pool, trucking, trailer, and outdoor storage industries (the "Business"). See First Day Declaration of Jordan Meyers in Support of First Day Motions. (Bkr. DI #17).

13. The Debtor owns and operates a single location at 9000 River Road, Delair, New Jersey, consisting of approximately 500,000 square feet of industrial space, including a cast house, foundry, and processing area (the "Real Property"). Id.

14. The Debtor also owns machinery, fixtures, and equipment, including a valuable cast house and foundry furnace, several presses, and processing equipment. Id.

15. On June 18, 2021, the Debtor engaged Cowen and Company, LLC ("Cowen") as investment banker to explore a sale of the Debtor's Business or Assets.

16. Based on market feedback, the Debtor, in consultation with its advisors, determined that a continued operation of Debtor's business was not viable or achievable under the current financial circumstances, and the Debtor decided to sell the Debtor's business or assets (the "Assets").

17. On August 15, 2021 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the District of New Jersey, Camden Vicinage (the “Bankruptcy Court”).

18. The Debtor continues to operate its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtor is the Plaintiff in the instant adversary proceeding.

19. No request has been made for the appointment of a trustee or examiner.

20. An Official Committee of Unsecured Creditors has been appointed in this case.

21. The Debtor has employed professionals to market and sell the Assets pursuant to a motion to sell, which sale will establish the fair market value of the Assets and the allocation of that value between specific Assets.

22. As of the Petition Date, the Debtor had outstanding secured debt obligations in the aggregate principal amount of no less than \$9,270,525.89 (the “Prepetition Secured Debt”) to its pre-petition secured lender, Tiger Finance, LLC (“Tiger”), pursuant to that Certain Credit Agreement between Tiger and the Debtor dated June 5, 2019 (as subsequently amended¹), and term notes issued thereunder. The Prepetition Secured Debt was secured by a first priority lien on all of the Debtor’s Assets.

23. On September 29, 2021, the Court entered a Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, and 507 and Fed. R. Bankr. P. 2002, 4001, 6003, 6004 and 9014 (I) Authorizing Debtor to Obtain Post-Petition Financing, (II) Granting Liens and Superpriority Claims, (III) Authorizing Use of Cash Collateral, and (IV) Modifying the Automatic Stay (the “Final DIP Order”). (Bkr. DI #116). Pursuant to the Final DIP Order, the Debtor was authorized

¹ The Credit Agreement was most recently amended by a Seventh Forbearance Agreement and Seventh Amendment to Credit Agreement, dated July 27, 2021.

to borrow up to \$15,500,000 in debtor-in-possession financing (the “DIP Facility”) from Tiger, including a roll-up of the Prepetition Secured Debt, pursuant to the term of a Senior Secured Super-Priority Debtor-in-Possession Credit Agreement between Tiger and the Debtor, dated August 15, 2021. As security for the DIP Facility, the Final DIP Order provided Tiger with superpriority claims secured by priming, first priority liens on all of the Debtor’s Assets that are “senior and superior in priority to all other secured and unsecured creditors of the Debtor’s estate.” Final DIP Order at ¶ 6.

24. The Debtor’s Assets will be sold pursuant to the outcome of an auction conducted on or about November 10, 2021.

25. The instant proceeding is intended to *inter alia* recover transfers to Pyrotek, determine secured status of Pyrotek’s claims, bifurcate claims, and determine the allowance of Pyrotek’s claims, if any.²

The Creditor’s Claims

26. Upon information and belief, Pyrotek is a corporation specializing in the manufacturing of equipment used in the production of aluminum as well as other high-temperature process industries.

27. Prior to the Petition Date, the Debtor ordered specialized equipment for use in aluminum extrusions from Pyrotek.

28. On December 3, 2020, Pyrotek initiated a collections action in the New Jersey Superior Court, Camden County, Docket Number L-003963-20, for all sums alleged to be due owing on the underlying debt, together with interest and costs (the “Pre-Petition Action”).

29. On May 21, 2021, a default judgment was entered in the Pre-Petition Action in

² The Debtor has filed other adversary proceeding complaints contemporaneously herewith seeking to avoid certain other liens on similar grounds as set forth herein.

favor of Pyrotek and against the Debtor in the amount of \$97,333.34 (the “Judgment”).

30. Pursuant to New Jersey law, upon its entry, the Judgment automatically became a lien against all real property in the State of New Jersey currently owned or thereafter acquired by the Debtor (the “Lien” and together with the Judgment, the “Claim”).

31. Pyrotek has made no efforts and has taken no steps to execute or levy upon the Judgment. A true and correct copy of the docket for the Pre-Petition Action is attached as **Exhibit “A”** hereto.

32. On October 18, 2021, Pyrotek filed a proof of claim against the Debtor’s Bankruptcy estate (the “POC”) asserting a claim for \$97,333.34 secured by the Debtor’s Real Property. (POC #10014).

FIRST COUNT

AVOIDANCE OF THE LIEN UNDER 11 U.S.C. §544

33. The Debtor incorporates by reference the foregoing paragraphs as if set forth fully herein and at length.

34. Pursuant to 11 U.S.C. §544(a), the Debtor, as debtor in possession, stands in the shoes of a hypothetical ideal creditor who obtains an execution against the Debtor that is returned unsatisfied on the Petition Date.

35. Under New Jersey law, a creditor holding an unexecuted levy occupies a lower priority on real property than a creditor who has already executed upon its lien, even if such execution remains unsatisfied.

36. Although real property is subject to execution and levy, neither execution nor levy are automatic upon the entry of a judgment, and require additional affirmative acts for any lien to become perfected. N.J.S.A. §2A:17-17.

37. A writ of execution is not binding until it is delivered to the sheriff of the appropriate county. N.J.S.A. §2A:17-10.

38. Pyrotek has made no efforts and taken no steps to execute upon the Judgment and the Lien or levy upon the Debtor's Assets. See Exhibit "A" attached hereto.

39. As a result of Pyrotek's failure to to both execute upon the Judgment and the Lien, and levy upon the Debtor's Assets, the Lien is lesser in priority to creditors with superior priority interest in the Debtor's Assets, including creditors that have executed against the Real Property as of the Petition Date, even if unsatisfied.

40. Pursuant to section §544(a)(2) of the Bankruptcy Code, the Debtor is vested with the power of an unsatisfied judgment holder that has executed upon the Judgment and the Lien and levied upon the Assets, including the Real Property; and therefore, may avoid the Lien.

41. The Lien is an unperfected secured claim, and therefore, is avoidable.

WHEREFORE, the Debtor respectfully requests this Court enter judgment in its favor and against Pyrotek avoiding the Lien pursuant to section 544(a) of the Bankruptcy Code and providing such other and further relief as the Court deems just and equitable.

SECOND COUNT

AVOIDANCE OF THE JUDGMENT AND THE LIEN UNDER 11 U.S.C. §547

42. The Debtor incorporates by reference the foregoing paragraphs as if set forth fully herein and at length.

43. The Judgment was a transfer of interest in the Debtor's property.

44. The Judgment was entered within ninety (90) days of the Petition Date, as the transfer, namely, the Judgment, occurred on May 21, 2021, eight-six (86) days prior to the Petition Date.

45. The Judgment was granted on account of an antecedent debt.

46. The Debtor was insolvent at the time of this transfer, as it was not paying its debts as they came due, and is presumed to have been insolvent on and during the ninety (90) days immediately preceding the Petition Date pursuant to section 547(f) of the Bankruptcy Code.

47. To the extent Pyrotek secured the Lien, its position within the preference period renders the Lien avoidable.

48. The Judgment and the Lien enabled Pyrotek to obtain more than it would have: (i) in a hypothetical chapter 7 liquidation on the Petition Date; (ii) had the Levy not been made; and (iii) if it received payment as otherwise provided under the Bankruptcy Code.

49. Based on the Debtor's reasonable due diligence, taking into account Pyrotek's known or reasonably knowable affirmative defenses under section 547(c) of the Bankruptcy Code, The Judgment and the Lien are avoidable as a preference under Section 547(b) of the Bankruptcy Code.

WHEREFORE, the Debtor respectfully requests that this Court enter judgment in its favor and against Pyrotek, avoiding the Judgment and the Lien pursuant to section 547(b) of the Bankruptcy Code and providing such other and further relief as the Court deems just and equitable.

THIRD COUNT

OBJECTION TO PROOF OF CLAIM UNDER 11 U.S.C. §502(d)

50. The Debtor incorporates by reference the foregoing paragraphs as if set forth fully herein and at length.

51. The Court "shall disallow any claim of any entity... that is a transferee of a transfer avoidable under [sections 544 and 547 of Bankruptcy Code]..." 11 U.S.C §502(d).

52. As Pyrotek filed the POC in the Debtor's chapter 11 case based upon the Judgment and the Lien.

53. Pyrotek is the recipient of an avoidable transfer, the Judgment and the Lien are avoidable pursuant to Sections 544(a) and 547(b) of the Bankruptcy Code.

54. The POC must be disallowed.

WHEREFORE, the Debtor respectfully requests that the Court enter a judgment in its favor and against Pyrotek, disallowing the POC pursuant to section 502(d) of the Bankruptcy Code and such further relief as is just and equitable.

FOURTH COUNT

DETERMINATION OF SECURED CLAIM AND BIFURCATION OF CLAIM UNDER 11 U.S.C. §506(a)(1)

55. The Debtor incorporates by reference the foregoing paragraphs as if set forth fully herein and at length.

56. "An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C §506(a)(1).

57. The Claim and Lien are subordinate to the superpriority claims and first priority liens in the Debtor's Assets held by Tiger.

58. The Claim must be bifurcated into a secured claim in the amount of the value of that Debtor's Assets subject to the Lien, after accounting for the value of Tiger's first priority liens and any other superior liens in the Debtor's Assets, and an unsecured claim for the remainder.

WHEREFORE, the Debtor respectfully requests that the Court enter a judgment bifurcating the Claim into secured and unsecured portions pursuant to section 506(a) of the Bankruptcy Code, and providing such further relief as is just and equitable.

FIFTH COUNT

LIEN STRIP OF UNSECURED CLAIM UNDER 11 U.S.C. §506(d)

59. The Debtor incorporates by reference the foregoing paragraphs as if set forth fully herein and at length.

60. Pursuant to section 506(d)(1) of the Bankruptcy Code, "to the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void."

61. To the extent that the Claim is determined to be unsecured, this Court must enter a judgment voiding the Lien.

WHEREFORE, the Debtor respectfully requests that the Court enter a judgment in its favor and against Pyrotek voiding the Lien to the extent the Lien exceeds the value of the allowed secured claim and providing such other relief as is just and equitable.

Dated: November 9, 2021

By: /s/ Edmond M. George
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Michael D. Vagnoni, Esquire (*pro hac vice*)
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Aluminum Shapes, L.L.C.*

Exhibit A

Case Summary

Case Number: CAM L-003963-20

Case Caption: Pyrotek Incorporated Vs Aluminum Shapes Llc

Court: Civil Part

Venue: Camden

Case Initiation Date: 12/03/2020

Case Type: Book Account (Debt Collection Matters Only)

Case Status: Closed

Jury Demand: 6 Jurors

Case Track: 1

Judge: Michael J Kassel

Team: 202

Original Discovery End Date:

Current Discovery End Date:

of DED Extensions: 0

Original Arbitration Date:

Current Arbitration Date:

of Arb Adjournments: 0

Original Trial Date:

Current Trial Date:

of Trial Date Adjournments: 0

Disposition Date: 08/26/2021

Case Disposition: Dismissed By Court Without Prejudice

Statewide Lien: J -81895-21

Plaintiffs

Pyrotek Incorporated

Party Description: Business

Attorney Name: Philip M Granite

Address Line 1: 1285 Claremont Road

Address Line 2:

Attorney Bar ID: 309322019

City: Carlisle

State: PA

Zip: 17015

Phone:

Attorney Email:

Defendants

Aluminum Shapes Llc

Party Description: Business

Attorney Name: Mathieu J Shapiro

Address Line 1: 9000 River Road

Address Line 2:

Attorney Bar ID: 048241995

City: Delair

State: NJ

Zip: 08110

Phone:

Attorney Email: MATHIEU.SHAPIRO@OBERMAYER.COM

Case Actions

Filed Date	Docket Text	Transaction ID	Entry Date
12/03/2020	Complaint with Jury Demand for CAM-L-003963-20 submitted by GRANITE, PHILIP M, LEWIS BRISBOIS BISGAARD & SMITH LLP on behalf of PYROTEK INCORPORATED against ALUMINUM SHAPES LLC	LCV20202197028	12/03/2020
12/04/2020	TRACK ASSIGNMENT Notice submitted by Case Management	LCV20202202345	12/04/2020
12/05/2020	TRACK ASSIGNMENT Notice submitted by Case Management	LCV20202213606	12/05/2020
01/06/2021	AFFIDAVIT OF SERVICES submitted by PREZIOSI, JONATHAN, M of LEWIS BRISBOIS BISGAARD & SMITH LLP on behalf of PYROTEK INCORPORATED against ALUMINUM SHAPES LLC	LCV202129003	01/06/2021
02/25/2021	REQUEST FOR DEFAULT submitted by PREZIOSI, JONATHAN, M of LEWIS BRISBOIS BISGAARD & SMITH LLP on behalf of PYROTEK INCORPORATED against ALUMINUM SHAPES LLC	LCV2021430850	02/25/2021
02/25/2021	Default has been entered against the following party/parties: ALUMINUM SHAPES LLC	LCV2021436787	02/25/2021
05/21/2021	FINAL JUDGMENT BY DEFAULT submitted by PREZIOSI, JONATHAN, M of LEWIS BRISBOIS BISGAARD & SMITH LLP on behalf of PYROTEK INCORPORATED against ALUMINUM SHAPES LLC	LCV20211264633	05/21/2021
05/24/2021	Default has been entered against the following party/parties: ALUMINUM SHAPES LLC	LCV20211282531	05/24/2021
05/21/2021	Final Judgment By Default uploaded by Case Management Staff submitted by PHILIP M GRANITE	LCV20211377887	06/07/2021
06/30/2021	JUDGMENT BY DEFAULT - J submitted by PREZIOSI, JONATHAN, M of LEWIS BRISBOIS BISGAARD & SMITH LLP on behalf of PYROTEK INCORPORATED against ALUMINUM SHAPES LLC	LCV20211561808	06/30/2021
07/16/2021	CLERK NOTICE: re: JUDGMENT BY DEFAULT - J [LCV20211561808] -Entered in the Civil Judgment and Order Docket in the Superior Court Clerk's Office J-081895-21	LCV20211676620	07/16/2021
08/25/2021	NOTICE OF APPEARANCE (NOT THE FIRST PAPER) submitted by SHAPIRO, MATHIEU, J of OBERMAYER REBMANN MAXWELL & HIPPEL LLP on behalf of ALUMINUM SHAPES LLC against PYROTEK INCORPORATED	LCV20211970052	08/25/2021
08/25/2021	NOTICE OF BANKRUPTCY submitted by SHAPIRO, MATHIEU, J of OBERMAYER REBMANN MAXWELL & HIPPEL LLP on behalf of ALUMINUM SHAPES LLC against PYROTEK INCORPORATED	LCV20211970161	08/25/2021
08/26/2021	Order Dismiss/Bankruptcy - GRANTED by Judge KASSEL, MICHAEL, J	LCV20211978283	08/26/2021

STATEWIDE LIEN(S)

Judgment Number	Case Status	Status Date
J -81895-21	OPEN	07/16/2021