

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. IFM EFECTOR 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, IFM Efector Inc. (“IFM” or the “Defendant” or the “Creditor”) and states as follows:

PRELIMINARY STATEMENT

1. This adversary proceeding is commenced by the Debtor, pursuant to §§ 506 and 544 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 IFM’s failure to properly levy upon a judgment it obtained in the Superior Court of New Jersey, Special Civil Part, Camden County.

3. IFM’s failure to properly levy renders the lien created by that judgment avoidable pursuant to sections 506 and 544 of the Bankruptcy Code.

4. Accordingly, the Debtor requests avoidance of the lien, a determination that IFM’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, IFM is a Pennsylvania corporation with an address at 1100 Atwater Drive, Malvern, Pennsylvania 19355.

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 and 1334, and Sections 506 and 544 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 506 and 544 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 (as defined below).

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 IFM, determine secured status of IFM’s claims, bifurcate claims, and determine the allowance of IFM’s claims, if any.²

The Creditor’s Claims

26. Upon information and belief, IFM manufactures sensors and other products for industrial automation.

27. The Debtor contracted with IFM for certain products and services.

28. On March 17, 2021, IFM initiated a collections action in the Superior Court of New Jersey, Special Civil Part, Camden County Docket Number DC-002545-21 for all sums alleged to be due owing on the underlying debt (the “Pre-Petition Action”).

29. On May 5, 2021, a judgment was entered in the Pre-Petition Action in favor of IFM and against the Debtor in the amount of \$4,302.15 (the “Judgment”).

30. Pursuant to New Jersey law, a judgment of the Special Civil Part does not

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

automatically become 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”) unless a Statement for Docketing is filed in the Superior Court.

31. IFM did not file a Statement for Docketing.

32. IFM failed to take any steps to execute upon or otherwise perfect the Judgment and the Lien. A true and correct copy of the docket for the Pre-Petition Action is attached as **Exhibit “A”** hereto.

33. On September 9, 2021, IFM filed a proof of claim against the Debtor’s Bankruptcy estate (the “POC”) asserting a claim for \$4,775.27. (POC #16).

34. The POC was filed as a secured claim, but did not indicate any property securing the Claim.

35. The POC does not include any documentation that a levy on personal property was actually performed, and upon information and belief no such levy was actually performed.

FIRST COUNT

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

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

37. Pursuant to section 544(a) of the Bankruptcy Code, 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.

38. 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.

39. 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.

40. The Lien of a Special Civil Part judgment does not automatically attach to any property under New Jersey law.

41. IFM has failed to file a Statement for Docketing.

42. IFM has failed to execute and levy upon the Judgment and Lien and levy upon the Debtor's Assets.

43. As a result of IFM's failure to levy upon the Judgment and the Lien, the Lien is lesser in priority to a creditor 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.

44. 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.

WHEREFORE, the Debtor respectfully requests this Court enter judgment in its favor and against IFM, 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

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

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

46. "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).

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

48. The Claim must be bifurcated into a secured claim in the amount of the value of that Debtor's Assets subject to the purported 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 its favor and against IFM, 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.

THIRD COUNT

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

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

50. 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."

51. To the extent 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 its favor and against IFM, 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

Special Civil Part Case Summary

Case Number: CAM DC-002545-21

Case Caption: Ifm Efector Inc. Vs Aluminum Shapes L.L. C.

Court: Special Civil Part

Venue: Camden

Case Initiation Date: 03/18/2021

Age: 00 YR 00 MO

Case Type: Contract Dispute

Case Status: Closed

Demand Amount: \$3,987.14

Case Track:

Judge:

Jury Demand: None

Disposition Date: 08/15/2021

Case Disposition: Dismissed
By Court Without Prejudice

Statewide Lien:

Plaintiffs

Ifm Efector Inc.

Party Description: Business

Attorney Name: Cary R Sternback

Address Line 1: Po Box 270

Address Line 2:

Attorney Bar ID: 052671992

City: Wickatunk

State: NJ

Zip: 07765

Phone:

Attorney Email: CRS@NYCNJLAW.COM

Defendants

Aluminum Shapes L.L.

C. AKA Aluminum Shapes Inc., Aluminum Shapes Inc.

Party Description: Business

Attorney Name: Mathieu J Shapiro

Address Line 1: 900 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
03/18/2021	A Complaint for CAM-DC-002545-21 submitted by STERNBACK, CARY R, HEITNER & BREITSTEIN PC on behalf of IFM EFECTOR INC. against ALUMINUM SHAPES L.L.C.	SCP2021484578	03/18/2021
03/19/2021	Summons Mailed Notice submitted by Case Management	SCP2021491494	03/19/2021
05/04/2021	REQUEST TO ENTER DEFAULT JUDGMENT submitted by STERNBACK, CARY, R of HEITNER & BREITSTEIN PC on behalf of IFM EFECTOR INC. against ALUMINUM SHAPES L.L.C.	SCP2021820804	05/04/2021
05/05/2021	Judgment Notice submitted by Case Management	SCP2021825531	05/05/2021
08/25/2021	NOTICE OF APPEARANCE (OTHER THAN IN LIEU OF ANSWER) submitted by SHAPIRO, MATHIEU, J of OBERMAYER REBMANN MAXWELL & HIPPEL LLP on behalf of ALUMINUM SHAPES L.L.C. against IFM EFECTOR INC.	SCP20211559884	08/25/2021
08/25/2021	BANKRUPTCY submitted by SHAPIRO, MATHIEU, J of OBERMAYER REBMANN MAXWELL & HIPPEL LLP on behalf of ALUMINUM SHAPES L.L.C. against IFM EFECTOR INC.	SCP20211559914	08/25/2021
08/30/2021	Signed Order submitted by Court	SCP20211587355	08/30/2021