

<b>UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY</b>	
<i>Caption in Compliance with D.N.J. LBR 9004-1(b)</i> <b>OBERMAYER REBMANN MAXWELL &amp; HIPPEL LLP</b> 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.  DIRECT ENERGY BUSINESS, LLC and DIRECT ENERGY BUSINESS MARKETING, LLC D/B/A DIRECT ENERGY BUSINESS,  Defendant.	ADVERSARY NO.  <b>COMPLAINT</b>

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 Defendants and Creditors, Direct Energy Business, LLC (“DEB”) and Direct Energy Business Marketing, LLC d/b/a Direct Energy Business (“DEBM” and collectively with DEB the

“Defendants” or the “Creditors”), 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 instant adversary proceeding arises from Defendants’ failure to properly levy upon a judgment it obtained in the Superior Court of New Jersey, Camden County.

3. The Defendants’ 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 the Defendants’ 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, DEB is Delaware limited liability company, with an address at 194 S. Wood Avenue, Iselin, New Jersey 08830.

7. Upon information and belief, DEBM is Delaware limited liability company, with an address at 194 S. Wood Avenue, Iselin, New Jersey 08830.

**II. JURISDICTION AND VENUE**

8. 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).

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

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

11. 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.

12. 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**

13. 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).

14. 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.

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

16. 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.

17. 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").

18. 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").

19. 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.

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

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

22. 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.

23. 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 amended<sup>1</sup>), and term notes issued thereunder. The Prepetition Secured Debt was secured by a first priority lien on all of the Debtor's Assets.

24. 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)

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

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 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.

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

26. The instant proceeding is intended to *inter alia* recover transfers to Direct Energy, determine secured status of Direct Energy’s claims, bifurcate claims, and determine the allowance of Direct Energy’s claims, if any.<sup>2</sup>

### **The Creditor’s Claims**

27. Upon information and belief, the Defendants are energy service companies in the business of selling natural gas and electricity to end-users.

28. Prior to the Petition Date, the Defendants provided natural gas service to the Debtor.

29. On August 26, 2019, the Defendants initiated a collections action in the Superior Court of New Jersey, Camden County, Docket Number L-003390-19, for all sums alleged to be due owing on the underlying debt (the “Pre-Petition Action”).

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

30. On March 19, 2021, a judgment based upon an arbitration award was entered in the Pre-Petition Action in favor of the Defendants and against the Debtor in the amount of \$834,252.47 (the “Judgment”).

31. Pursuant to New Jersey law, 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”).

32. The Defendants 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. Defendants filed a proof of claim on October 22, 2021, alleging an unsecured claim of \$834,252.47 (the “POC”). (POC #10025).

### **FIRST COUNT**

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

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

35. 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.

36. 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.

37. 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.

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

39. The Defendants have not taken any steps to execute upon the Judgment and the Lien, and levy upon the Debtor's Assets. See **Exhibit "A"** attached hereto.

40. As a result of the Defendants' failure 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.

41. 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 the Defendants 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**

### **DISALLOWANCE OF PROOF OF CLAIM UNDER 11 U.S.C. §502(d)**

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

43. 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).

44. Defendants filed the POC in the Debtor's chapter 11 case based upon the Claim.

45. Defendants are the recipient of an avoidable transfer: the Judgment and the Lien are avoidable pursuant to section 544(a) and/or section 547(b) of the Bankruptcy Code.

46. The POC must be disallowed under section 502(d), as Defendants have not returned the avoidable transfer.

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

### **THIRD COUNT**

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

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

48. "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).

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



50. The Claim must be bifurcated into a secured claim in the amount of the value of the 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 in its favor and against the Defendants, 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.

#### **FOURTH COUNT**

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

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

52. 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."

53. 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 in its favor and against the Defendants, voiding the Lien to the extent the Lien exceeds the value of the allowed secured claim and such other relief as is just and equitable.

Dated: November 9, 2021

By: /s/ Edmond M. George  
Edmond M. George, Esquire  
Michael D. Vagnoni, Esquire (*pro hac vice*)  
Turner N. Falk, Esquire  
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*Counsel to Chapter 11 Debtor*  
*Aluminum Shapes, L.L.C.*

# Exhibit A

### Case Summary

**Case Number:** CAM L-003390-19

**Case Caption:** Direct Energy Busine Ss, Llc Vs Aluminum Shapes,

**Court:** Civil Part

**Venue:** Camden

**Case Initiation Date:** 08/26/2019

**Case Type:** Contract/Commercial Transaction

**Case Status:** Closed

**Jury Demand:** None

**Case Track:** 2

**Judge:** Yolanda C Rodriguez

**Team:** 201

**Original Discovery End Date:** 07/30/2020

**Current Discovery End Date:** 07/30/2020

**# of DED Extensions:** 0

**Original Arbitration Date:** 11/02/2020

**Current Arbitration Date:**

**# of Arb Adjournments:** 1

**Original Trial Date:**

**Current Trial Date:**

**# of Trial Date Adjournments:** 0

**Disposition Date:** 03/19/2021

**Case Disposition:**

**Statewide Lien:**

#### Plaintiffs

**Direct Energy Business Marketi AKA Direct Energy Business**

**Party Description:** Business

**Attorney Name:** Steven Miles Lucks

**Address Line 1:**

**Address Line 2:**

**Attorney Bar ID:** 038972004

**City:** State: NJ

**Zip:** 00000

**Phone:**

**Attorney Email:** SLUCKS@FISHKINLUCKS.COM

**Direct Energy Business, Llc**

**Party Description:** Business

**Attorney Name:** Steven Miles Lucks

**Address Line 1:**

**Address Line 2:**

**Attorney Bar ID:** 038972004

**City:** State: NJ

**Zip:** 00000

**Phone:**

**Attorney Email:** SLUCKS@FISHKINLUCKS.COM

#### 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:** Pennsauken Towns State: NJ

**Zip:** 08110

**Phone:**

**Attorney Email:** MATHIEU.SHAPIRO@OBERMAYER.COM

#### Case Proceeding

Created Date	Scheduled Time	Court Room	Judge Name	Proceeding Description	Motion Type	Proceeding Status	Motion Status
11/02/2020	09:00	REMO T	CAMDEN ARBITRATION	ARBITRATION HEARING		ADJ STL PEND	
01/04/2021	09:00	REMO T	CAMDEN ARBITRATION	ARBITRATION HEARING		COMPLETED	
03/19/2021	09:00	REMO T	YOLANDA C RODRIGUEZ	MOTION HEARING	MOTION CONFIRM ARBITRATOR/ENTER JUDGMENT	COMPLETED	CM

#### Case Actions

Filed Date	Docket Text	Transaction ID	Entry Date
08/26/2019	Complaint for CAM-L-003390-19 submitted by LUCKS, STEVEN MILES, FISHKIN LUCKS LLP on behalf of DIRECT ENERGY BUSINESS, LLC, DIRECT ENERGY BUSINESS MARKETI against ALUMINUM SHAPES, LLC	LCV20191518001	08/26/2019
08/27/2019	TRACK ASSIGNMENT Notice submitted by Case Management	LCV20191522467	08/27/2019
09/06/2019	TRACK ASSIGNMENT Notice submitted by Case Management	LCV20191592335	09/06/2019
09/09/2019	AFFIDAVIT OF SERVICE submitted by LUCKS, STEVEN, MILES of FISHKIN LUCKS LLP on behalf of DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC against ALUMINUM SHAPES, LLC	LCV20191605638	09/09/2019
10/04/2019	NOTICE OF APPEARANCE - FIRST PLEADING submitted by BIEMER, THOMAS, STEVEN of DILWORTH PAXSON LLP on behalf of ALUMINUM SHAPES, LLC against DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV20191809166	10/04/2019
10/04/2019	NOTICE OF APPEARANCE (NOT THE FIRST PAPER) submitted by HARTMAN, KATHARINE, VIRGINIA of DILWORTH PAXSON LLP on behalf of ALUMINUM SHAPES, LLC against DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV20191809433	10/04/2019
11/06/2019	STIPULATION TO EXTEND TIME FOR ANSWER submitted by HARTMAN, KATHARINE, VIRGINIA of DILWORTH PAXSON LLP on behalf of ALUMINUM SHAPES, LLC against DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV20192045871	11/06/2019

11/06/2019	Answer submitted by HARTMAN, KATHARINE, VIRGINIA of DILWORTH PAXSON LLP on behalf of ALUMINUM SHAPES, LLC against DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV20192045936	11/06/2019
05/25/2020	DISCOVERY END DATE REMINDER Notice submitted by Case Management	LCV2020934593	05/25/2020
09/04/2020	COURT Notice submitted by Case Management	LCV20201561081	09/04/2020
10/30/2020	ADJOURNMENT REQUEST submitted by LUCKS, STEVEN, MILES of FISHKIN LUCKS LLP on behalf of DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC against ALUMINUM SHAPES, LLC	LCV20201952134	10/30/2020
10/30/2020	CLERK NOTICE: re: ADJOURNMENT REQUEST [LCV20201952134] -The 11/02/20 arbitration has been adjourned to 01/04/2021. Thank you	LCV20201952556	10/30/2020
10/31/2020	COURT Notice submitted by Case Management	LCV20201959607	10/31/2020
12/30/2020	ADJOURNMENT REQUEST submitted by HARTMAN, KATHARINE, VIRGINIA of DILWORTH PAXSON LLP on behalf of ALUMINUM SHAPES, LLC against DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV20202377591	12/30/2020
12/31/2020	CLERK NOTICE: re: ADJOURNMENT REQUEST [LCV20202377591] -Your request for an adjournment of the 01/04/21 arbitration has been denied. The 01/04/21 arbitration is to go forward as scheduled. Thank you	LCV20202386023	12/31/2020
01/04/2021	Arbitration Award submitted by Staff	LCV202110276	01/04/2021
02/23/2021	MOTION CONFIRM ARBITRATOR/ENTER JUDGMENT submitted by SILVERMAN, ZACHARY, WINTHROP of FISHKIN LUCKS LLP on behalf of DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC against ALUMINUM SHAPES, LLC	LCV2021417950	02/23/2021
02/24/2021	The motion filed on 02/23/2021 will be decided on 03/19/2021. Do not come to the courthouse because no oral argument has been requested. The court's decision will be provided to you. Re: MOTION CONFIRM ARBITRATOR/ENTER JUDGMENT [LCV2021417950]	LCV2021420205	02/24/2021
03/12/2021	PROOF OF SERVICE submitted by SILVERMAN, ZACHARY, WINTHROP of FISHKIN LUCKS LLP on behalf of DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC against ALUMINUM SHAPES, LLC	LCV2021549601	03/12/2021
03/19/2021	ORDER CONFIRM ARBITRATOR/ENTER JUDGMENT-Granted by Judge RODRIGUEZ, YOLANDA, C re: MOTION CONFIRM ARBITRATOR/ENTER JUDGMENT [LCV2021417950]	LCV2021600608	03/19/2021
04/15/2021	SUBSTITUTE ATTORNEY submitted by COMERFORD, CHRISTIE, CALLAHAN of DILWORTH PAXSON LLP on behalf of ALUMINUM SHAPES, LLC against DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV2021977062	04/15/2021
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 DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV20211963648	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 DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV20211963745	08/25/2021
08/31/2021	SUBSTITUTE ATTORNEY submitted by COMERFORD, CHRISTIE, CALLAHAN of DILWORTH PAXSON LLP on behalf of ALUMINUM SHAPES, LLC against DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV20212021247	08/31/2021
08/31/2021	SUBSTITUTE ATTORNEY submitted by BIEMER, THOMAS, STEVEN of DILWORTH PAXSON LLP on behalf of ALUMINUM SHAPES, LLC against DIRECT ENERGY BUSINESS MARKETI, DIRECT ENERGY BUSINESS, LLC	LCV20212021337	08/31/2021