

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

IN RE:

**MEDLEY, LLC,
DEBTOR.**

**MEDLEY LLC LIQUIDATING TRUST,
PLAINTIFF,**

v.

**RSM US LLP,
DEFENDANT.**

**CASE NO. 21-10526 (KBO)
CHAPTER 11**

ADV. PRO. NO. 23-50138 (KBO)

RSM US LLP'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT

COMES NOW Defendant, RSM US LLP ("RSM"), by and through the undersigned counsel, and responds to Plaintiff's Complaint to Avoid and Recover Transfers Pursuant to 11 U.S.C. §§ 544, 547, 548 and 550 [Doc 1] ("Complaint") in the above-captioned adversary proceeding as follows:

ANSWER

1. RSM denies that Plaintiff is entitled to the relief sought in paragraph 1.
2. RSM denies that Plaintiff is entitled to the relief sought in paragraph 2.
3. In response to the allegations in paragraph 3, RSM concurs that this Court has subject-matter jurisdiction over this adversary proceeding.
4. In response to the allegations in paragraph 4, RSM concurs that Plaintiff's action is a core proceeding and that the Court may enter final orders in this adversary proceeding.
5. In response to the allegations in paragraph 5, RSM concurs that venue is proper in this district.



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6. RSM denies that Plaintiff is entitled to the relief sought pursuant to any of the legal authorities referenced in paragraph 6.

7. In response to the allegations in paragraph 7, RSM also consents to this Court entering final orders or judgments in this action even if it is later determined that the Court would not have authority to do so absent the parties' consent.

8. RSM admits the allegations in paragraph 8 on information and belief.

9. RSM admits the allegations in paragraph 9 on information and belief.

10. RSM admits the allegations in paragraph 10 on information and belief.

11. In response to the allegations in paragraph 11, RSM admits on information and belief the allegation regarding the Debtor's initially projected recovery for holders of General Unsecured Claims, but lacks sufficient information and therefore denies the allegation about what the Trust has paid unsecured creditors to date.

12. RSM admits the allegations in paragraph 12 on information and belief.

13. RSM admits the allegations in paragraph 13 on information and belief.

14. Responding to the allegations in paragraph 14:

a. RSM admits that it provided audit or related services to the Debtor and one or more of its affiliates.

b. RSM admits that it maintains a headquarters office at 30 S. Wacker Drive, Suite 3300 Chicago, Illinois 60606.

c. RSM admits that it is a limited liability partnership organized under the laws of the State of Iowa.

RSM denies any remaining or contradictory allegations in paragraph 14.

15. RSM denies the allegations in paragraph 14.

16. In response to the allegations in paragraph 16, RSM admits that it received payment from Medley Capital, LLC for the three invoices specified therein, but denies the remaining allegations.

17. In response to the allegations in paragraph 17, RSM admits that the Debtor made transfers from its account at City National Bank ending in 7483 to Medley Capital, LLC in the specified amounts, but denies the remaining allegations.

18. In response to the allegations in paragraph 18, RSM admits that:

- a. Invoice 6179597 was addressed to Medley Management Inc. for “Professional services rendered in connection with our review of Medley LLC’s September 30, 2020 financial statements on Form 10-Q;”
- b. Invoice 6225649 was addressed to Medley Management Inc. for “Second progress billing for professional services rendered in connection with our audit of Medley LLC’s December 31, 2020 financial statements on Form 10-K.”
- c. Invoice 6243130 was addressed to Medley Management Inc. for “Third progress billing for professional services rendered in connection with our audit of Medley LLC’s December 31, 2020 financial statements on Form 10-K.”

RSM denies any remaining or contradictory allegations in paragraph 18.

19. In response to the allegations in paragraph 19, RSM admits that it received payment from Medley Capital, LLC for services provided as described in invoice numbers 6179597, 6225649 and 6243130. RSM denies any remaining or contradictory allegations in paragraph 19.

20. RSM lacks sufficient information about Plaintiff’s analysis and therefore denies the allegations in paragraph 20 regarding the same. RSM further denies that Plaintiff is entitled to the relief sought in paragraph 20.

21. Paragraph 21 asserts legal conclusions to which no response is required, but to the extent Plaintiff contends it is entitled to the relief sought based on such legal conclusions, RSM denies the same.

22. In response to the allegations in paragraph 22, RSM admits having received a demand letter from Plaintiff, which letter speaks for itself. RSM denies any remaining or contradictory allegations in paragraph 22.

23. RSM lacks sufficient information and therefore denies the allegations in paragraph 23.

24. In response to the allegations in paragraph 24, RSM admits that from April 24, 2017 to September 11, 2020, RSM received payments in the amount of \$185,863.00 from the Debtor, Medley, LLC, and payments in the amount of \$1,483,829.00 from Medley Management, Inc. and Medley Capital, LLC, for a total of \$1,669,692.00. RSM denies any remaining or contradictory allegations in paragraph 24.

25. In response to the allegations in paragraph 25, RSM admits that from April 24, 2017 to September 11, 2020, RSM received payments in the amount of \$185,863.00 from the Debtor, Medley, LLC, and payments in the amount of \$1,483,829.00 from Medley Management, Inc. and Medley Capital, LLC, for a total of \$1,669,692.00, which payments were made in consideration of services that RSM provided for the benefit of the Debtor and others. RSM denies any remaining or contradictory allegations in paragraph 25.

26. In response to the allegations in paragraph 26, RSM denies that Plaintiff is entitled to amend the Complaint other than in strict compliance with applicable law.

27. In response to the allegations in paragraph 27, RSM incorporates all preceding paragraphs of this Answer as if restated in full.

28. In response to the allegations in paragraph 28, RSM admits that it received payment from Medley Capital, LLC for the three invoices specified in paragraph 16, but denies the remaining allegations.

29. In response to the allegations in paragraph 29, RSM admits that the Debtor made transfers from its account at City National Bank ending in 7483 to Medley Capital, LLC in the amounts stated in paragraph 16, but denies the remaining allegations.

30. In response to the allegations in paragraph 30, RSM admits that it was a creditor of the Debtor at some point in time during the Preference Period, but denies the remaining allegations.

31. RSM denies the allegations in paragraph 31.

32. RSM denies the allegations in paragraph 32.

33. RSM denies the allegations in paragraph 33.

34. In response to the allegations in paragraph 34, RSM admits that it received payment from Medley Capital, LLC for three invoices during the Preference Period, but denies the remaining allegations.

35. RSM denies the allegations in paragraph 35.

36. RSM denies the allegations in paragraph 36.

37. In response to the allegations in paragraph 37, RSM incorporates all preceding paragraphs of this Answer as if restated in full.

38. RSM denies the allegations in paragraph 38.

39. RSM denies the allegations in paragraph 39.

40. In response to the allegations in paragraph 40, RSM incorporates all preceding paragraphs of this Answer as if restated in full.

41. RSM denies that Plaintiff is entitled to the relief sought pursuant to any of the legal authorities referenced in paragraph 41.

42. RSM denies the allegations in paragraph 42.

43. RSM denies the allegations in paragraph 43.

44. In response to the allegations in paragraph 44, RSM incorporates all preceding paragraphs of this Answer as if restated in full.

45. RSM denies the allegations in paragraph 45.

46. RSM denies the allegations in paragraph 46.

47. RSM denies the allegations in paragraph 47.

RESIDUAL GENERAL DENIAL

Except as expressly admitted above, all other and remaining allegations in Plaintiff's Complaint are hereby expressly denied.

ADDITIONAL DEFENSES

For a First Defense – Ordinary Course of Business

To the extent that RSM received a transfer from the Debtor within the applicable time period, the transfer was for a debt incurred by the Debtor in the ordinary course of business between the Debtor and RSM, and was made in the ordinary course of business or financial affairs between the Debtor and RSM or made according to ordinary business terms pursuant to 11 U.S.C. § 547(c)(2). Therefore, the transfer, if made, is not recoverable by the Plaintiff as a voidable preference.

For a Second Defense – Subsequent New Value

To the extent that RSM received a transfer from the Debtor within the applicable time period, RSM gave subsequent new value to or for the Debtor's benefit not secured by an otherwise unavoidable security interest and on account of which new value the Debtor did not make an otherwise unavoidable transfer to or for the benefit of RSM pursuant to 11 U.S.C. § 547(c)(4). Pleading further in the alternative, the new value that RSM gave to the Debtor was in amounts

sufficient to diminish and/or eliminate any recovery that the Plaintiff alleges it is entitled to in the Complaint. Therefore, the transfer, if made, is not recoverable by the Plaintiff as a voidable preference.

For a Third Defense – Lack of Insolvency

To the extent that RSM received a transfer from the Debtor within the applicable time period, Plaintiff's claim must fail because the Debtor was not insolvent when the transfer was made; did not become insolvent as a result of the transfer; was not about to engage in business or a transaction for which any property remaining with the Debtor was an unreasonably small capital; and did not intend to incur or believe it would incur debts that would be beyond the Debtor's ability to pay as such debts matured.

For a Fourth Defense – Failure to Meet Burden of Proof on Hypothetical Liquidation

To the extent that RSM received a transfer from the Debtor within the applicable time period, the transfer did not enable RSM to receive more than it would have received in a Chapter 7 proceeding, pursuant to the provisions of 11 U.S.C. §§ 101 *et seq.* Therefore, the Plaintiff is precluded from recovering the alleged transfer as a voidable preference.

For a Fifth Defense – Reasonably Equivalent Value and Fair Consideration

To the extent that RSM received a transfer from the Debtor within the applicable time period, Plaintiff's claim must fail because the Debtor received reasonably equivalent value and fair consideration in exchange for the transfer.

For a Sixth Defense – Good Faith Transferee for Value

To the extent that RSM received a transfer from the Debtor within the applicable time period, RSM received the transfer for value and in good faith and therefore has a lien on or may retain the interest transferred to the extent of value given to the Debtor in accordance with 11 U.S.C. § 548(c) and applicable state law.

For an Seventh Defense – Statute of Limitations

To the extent that RSM received a transfer from the Debtor as alleged, Plaintiff's claims are barred by the applicable state or federal statute of limitations.

WHEREFORE, Defendant RSM prays that the Court:

1. Dismiss Plaintiff's Complaint against RSM with prejudice;
2. Such other and further relief as the Court may deem just and proper.

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Derek C. Abbott

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November 3, 2023

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CERTIFICATE OF SERVICE

I, Derek C. Abbott, Esquire, do hereby certify that a copy of the foregoing **RSM US LLP'S ANSWER AND AFFIRMATIVE DEFENSES TO COMPLAINT** was served this 3rd day of November, 2023, upon the following in the manner indicated:

BY CM/ECF AND EMAIL

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