

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In Re:)	Case No. 02-16172
Level Propane, Gases, Inc., et. al.)	
Debtors.)	Ch. 11
)	
*****)	Hon. Randolph Baxter
Maxus Capital Group, LLC, successor)	
to Maxus Leasing Group, Inc.)	
31300 Bainbridge Road)	
Cleveland, Ohio 44139)	
)	Adv. Pro. Case No. _____
Plaintiff)	
)	
vs.)	
)	
Mark Uhrich, Plan Administrator)	
of the Consolidated Estate of Level)	
Propane Gases, Inc.)	
c/o Benesch, Friedlander, Coplan)	
& Aronoff, LLP)	
2300 BP Tower)	
200 Public Square)	
Cleveland, Ohio 44114,)	
for the Defendants)	

**COMPLAINT OF MAXUS CAPITAL GROUP, LLC, SUCCESSOR TO MAXUS
LEASING GROUP, INC. TO REVOKE CONFIRMATION OF PLAN OF
LIQUIDATION OF
LEVEL PROPANE GASES, INC. ET AL. AND FOR OTHER RELIEF**

Maxus Capital Group, LLC, successor to Maxus Leasing Group, Inc., by and through counsel, for its Complaint to revoke the Confirmed Plan pursuant to 11 U.S.C. Sec. 1144 and for other relief, states as follows:

Parties

1. Plaintiff Maxus Capital Group, LLC, successor to Maxus Leasing Group, Inc. (hereinafter “Maxus” or “Plaintiff”), is an equipment lessor and creditor of the Debtors which compromised its disputed equipment lease claims against the Debtors. This compromise with the Debtors is reflected in the Order Approving Settlement and Distribution, Dkt. No. 1667 (*In Re: Level Propane Gases, Inc., et al.* Case No. 02-16172) and Order Approving Settlement and Litigation Proceeds, Dkt. No. 1728 (*In Re: Level Propane Gases, Inc., et al.* Case No. 02-16172). Plaintiff is a party in interest with respect to Case No. 02-16172.

2. Defendant Mark Uhrich is the Plan Administrator of the Estates of the former Debtors, appointed pursuant to the Confirmation Order of October 9, 2008.

Jurisdiction

3. This Complaint is brought pursuant to 11 U.S.C. § 1144, Revocation of Confirmed Plans, and as such this Court has jurisdiction over this as a bankruptcy proceeding, 28 U.S.C. Sec. 1334, and as a core bankruptcy proceeding under 28 U.S.C. Sec. 157. Venue is proper pursuant to 28 U.S.C. Sec. 1409.

Overview

4. As set forth more fully herein, officers of Level Propane Gases, Inc. (“Level Propane” or the “Company”) committed repeated, material acts of fraud in connection with the administration of Level Propane both before and during the pendency of Case No. 02-16172; and

officers of Level Propane made material, fraudulent misrepresentations to the Court during the pendency of Case No. 02-16172.

5. Orders and actions of the Court (including the Confirmation Order) were materially affected by the fraudulent acts of officers of Level Propane. Fraud has infected the Court's proceedings.

6. Level Propane obtained confirmation of the Plan by deceptive practices.

7. Specific e-mail evidence of the fraudulent acts of Level Propane was only discovered by Plaintiff during the last quarter of 2008.

8. Plaintiff, a party in interest, compromised and surrendered claims and took other actions it would not have compromised, surrendered or taken but for the fraud described herein.

Procedural Matters

9. These bankruptcy proceedings commenced on or about June 6, 2002.

10. Debtors filed their Motion For Order (i) Pursuant to Bankruptcy Code Section 1125 Approving Disclosure Statement, (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Plan, and (iii) Establishing Voting Record Date on March 21, 2008 ("Motion for Approval").

11. Debtors filed their Amended and Supplemented Motion For Order (i) Pursuant to Bankruptcy Code Section 1125 Approving Disclosure Statement, (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Plan, and (iii) Establishing Voting Record Date on May 9, 2008.

12. Debtors filed their Third Amended and Supplemented Motion For Order (i) Pursuant to Bankruptcy Code Section 1125 Approving Disclosure Statement, (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Plan, and (iii)

Establishing Voting Record Date on May 29, 2008 (“Third Amended Motion”). The Third Amended Motion contained, as Exhibit A, Debtor’s Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code for the Joint Liquidation of Level Propane Gases, Inc., Level Energy Distribution, Inc., EP Transport, Inc., WHM Emprises, Inc., WHM Management Services, Inc., Amware Distribution Warehouses, Incorporated, Over-Flo Lot, Incorporated, Park Place, Inc., Park Place Management, Inc. and The Park Place Companies, Inc. (“**Disclosure Statement**”), and its Proposed Plan for Liquidation for Level Propane Gases, Inc., Level Energy Distribution, Inc., EP Transport, Inc., WHM Emprises, Inc., WHM Management Services, Inc., Amware Distribution Warehouses, Incorporated, Over-Flo Lot, Incorporated, Park Place, Inc., Park Place Management, Inc. and The Park Place Companies, Inc. (“**Plan**”).

13. Debtors filed their Fourth Amended and Supplemented Motion For Order (i) Pursuant to Bankruptcy Code Section 1125 Approving Disclosure Statement, (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Plan, and (iii) Establishing Voting Record Date, and (iv) Extending General Bar Date to August 15, 2008, on July 8, 2008

14. This court issued its Order (i) Pursuant to Bankruptcy Code Section 1125 Approving Amended Disclosure Statement, (ii) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Plan, (iii) Approving Form of Ballot and Plan Solicitation Package, (iv) Establishing Voting Record Date and Related Deadlines, and (v) Extending Claims Bar Date to August 15, 2008, on July 18, 2008 (“Approval Order”).

15. This Court issued its Order Confirming Joint Plan Of Liquidation for Level Propane Gases, Inc., Level Energy Distribution, Inc., EP Transport, Inc., WHM Emprises, Inc., WHM Management Services, Inc., Amware Distribution Warehouses, Incorporated, Over-Flo

Lot, Incorporated, Park Place, Inc., Park Place Management, Inc. and The Park Place Companies, Inc. on October 9, 2008 (“Confirmation Order”).

16. This action pursuant to 11 U.S.C. Sec. 1144 is timely filed within one hundred eighty (180) days of the Confirmation Order.

Factual Basis of Plaintiff’s Complaint

17. During late 2001 and early 2002, Richard Anter (“Anter”), future President of Level Propane and John Verbos (“Verbos”), Chief Information Officer of Level Propane, began falsifying Level Propane’s cash flow by withholding and hiding customer checks.

18. On information and belief, Anter and Verbos were motivated by both the desire for financial gain and by personal animosity toward the owner of Level Propane, William Maloof (“Maloof”).

19. On the morning of December 16, 2001, Anter told Verbos via e-mail that “I believe holding checks back will help our cause on obtaining the company. Hold back about 65% of the checks and when we walk in, we will start adding them back...”

20. Verbos confirmed he had been taking checks in an e-mail to Anter on the morning of January 19, 2002. Verbos said in that e-mail to Anter that he would add the checks back in at a later date.

21. Anter responded by e-mail on January 19, 2002 instructing Verbos to “stay the course” and let him know the amount that had been held back. Anter specifically instructed Verbos not to send that amount over email but to let him know when they had lunch sometime the following week. Anter and Verbos continued their conspiracy to falsify cash flow information about Level Propane and effectively seize control of the Company during January, February and March of 2002.

22. E-mail correspondence from Verbos to Anter on February 13, 2002 indicates that the check concealment conspiracy involved thousands of checks.

23. Email correspondence between Anter and Verbos on March 31, 2002 confirms that Verbos was and had been taking and holding checks as part of a scheme to remove the then current owner and manager of the company, William Maloof, and seize control of the Company. Verbos and Anter continued their conspiracy to falsify cash flow of Level Propane during the months of April through July 2002.

24. The Bank Group (as identified more fully later in this Complaint) dominated the affairs of Level Propane from March 2002 and continued its domination of Level Propane's affairs throughout the time it operated during these bankruptcy proceedings. Anter and Verbos were installed and/or retained as officers of Level Propane by action of the Bank Group, as set forth more fully herein.

25. The Bank Group had full control of Level Propane (through its appointment of officers and directors of Level Propane) throughout the time it operated during these proceedings. Verbos, Anter, Stephen G. Sues and other officers of Level Propane worked in cooperation with and under authority of the Bank Group during the course of these proceedings.

26. Level Propane was forced into bankruptcy by the filing of an involuntary bankruptcy action on or about June 6, 2002.

27. The case was converted to a Chapter 11 proceeding by Agreed Order of June 11, 2002, which Order was amended on June 17, 2002.

28. On information and belief, Verbos and Anter both participated in the preparation of monthly operating statements and/or other financial information to the Court about the financial condition of Level Propane.

29. On information and belief, the financial information provided by Anter and/or Verbos was false and misleading and intentionally misrepresented the cash flow of Level Propane and misrepresented the financial conditional of Level Propane, as well as its value as a going concern, all of which was done with fraudulent purpose.

30. By email correspondence of July 31, 2002 (during the pendency of this Case No. 02-16172) Anter and Verbos continued a discussion of their on-going scheme to misrepresent the cash flow of Level Propane.

31. By email correspondence of July 31, 2002 Anter instructed Verbos to speed up the process of cashing checks he had been holding so that the company would not look like it was going to fail, but a company that would succeed “with a little investment from our friends.”

32. Verbos and Anter continued their scheme to falsify the cash flow of Level Propane during August of 2002.

33. On August 15, 2002, Verbos informed Anter through email correspondence that he did not want to send any more emails and was going to get rid of the ones he had sent and received from Anter up to this point. He further stated that “we are close to having this process completed and I want to make sure my cut is coming soon.”

34. By email correspondence of August 16, 2002, Anter informed Verbos that his cut would be coming soon and “I agree that we should only talk face to face from now on. I don’t want anyone to find this out and for this to come back and bite anyone of us in the ass.... As for your cut it will be coming in the next few days. Thanks for all that you have done to help us out.”

35. Jeff Kessler (“Kessler”), Accounts Receivable Manager for Level Propane, has provided independent confirmation of the check concealment scheme described above. Kessler

has signed a Statement Under Penalty of Perjury dated March 9, 2007 (the “Kessler Statement”). As stated by Kessler, following the sale of Level Propane as a going concern to Horizon Propane, LLC on or about June 27, 2003, “an enormous amount of money appeared from previous months’ activity in the cash room of Horizon Propane.” Kessler was in charge of the cash room as Accounts Receivable Manager. The value of cash received during the summer of 2003 was not consistent with cash that would have been expected for the time during which it was received. When Kessler would pick up the checks from the U.S. Post Office, as part of his ordinary job duties, he observed that such pick-ups “were of the usual....volume.” As stated by Kessler, “The extraordinary volume arrived in bags delivered on a daily basis...by John Verbos.”

Tank Concealment and Customer Count Concealment

36. On information and belief, officers of Level Propane (including Verbos) also intentionally falsified Level Propane’s tank count and customer count.

37. The number of propane tanks leased by Level Propane for its customers for use at customers’ residences or business was a critical component of the value of Level Propane.

38. Falsifying and/or concealing the tank count had a material impact on the apparent financial condition and going concern value of Level Propane.

39. Verbos was directly involved in compiling information for Level Propane’s tank count.

40. On information and belief, Verbos was actively involved in a customer/tank concealment scheme.

41. On information and belief, actions by officers of Level Propane (including Verbos) in hiding customer addresses from tank lessors, and falsifying and/or concealing tank

and customer counts, were done knowingly with intent to defraud creditors and the Court, and materially impacted orders of the Court.

42. Actions taken by officers of Level Propane and parties in control of Level Propane made it difficult or impossible for Plaintiff and other tank lessors to discover the fraud described herein.

43. On the morning of January 13, 2003, in an e-mail to Jeff J. Marwil (counsel for the Bank Group), Verbos, and others, Stephen G. Sues, CEO of Level Propane, stated, “We are having the CD of the serial number/customer # prepared.”

44. By e-mail on the afternoon of January 13, 2003 Marwil asked Sues if “this new file would be held in strict confidence so that the lessors cannot know the addresses and customers of their tanks, correct?”

45. By e-mail several sent several minutes thereafter, John A. Gleason responded, “Yes. At this point all we will give them is the database with serial # and customer #.” Sues was copied on the Gleason e-mail.

46. Withholding customer addresses from the lessors (including Plaintiff) made it impossible for Plaintiff and other lessors to verify Level Propane’s customer count or tank count, and thus made it difficult or impossible for Plaintiff and others to discover the fraudulent acts of Level Propane described herein.

47. By e-mail correspondence in February of 2003, Jeff Bogusz of the MIS department of Level Propane informed Verbos that Level Propane had approximately 115,000 customers and approximately 60,000 propane tanks located at the residence or place of business of customers.

48. On information and belief, during April of 2003 the customer account database of Level Propane was fraudulently manipulated by Verbos and/or others at his direction to hide customers identified as “pre-April 2002,” amounting to at least approximately thirty percent (30%) to forty percent (40%) of the customer base.

49. By purging customers who had purchased gas the previous season from the database, the number of visible customer accounts was materially reduced.

50. On or about May 19, 2003 Stephen G. Sues presented an Affidavit to the Court stating that there were approximately 45,000 customers, despite Bogusz’s indication that there were 115,000 customers only twelve weeks earlier.

51. Sues further states in his Affidavit that approval of the Settlement Agreement and the Litigation Proceeds Agreement are in the best interest of all the Propane Level Propane’s creditor constituencies, including Level Propane customers, when in fact those Agreements were not in the best interest of the creditor constituencies (and in particular not in the best interest of Plaintiff).

52. On information and belief the Sues statements that there were 45,000 customers on or about May 19, 2003 and that the Litigation Proceeds Agreement and the Settlement Agreement were in the best interest of creditors were false, made with fraudulent intent, and materially impacted orders of this Court.

53. E-mail correspondence from James Palkovic, an employee of AmeriGas (ultimate purchaser of Level Propane), to Verbos on October 10, 2003 specifically discussed hiding tank movements from “BM and anyone else who might want to see them.”

Impact of the Fraud

54. Level Propane was a party to a certain revolving line of credit provided by Deutsche Bank and other banks (hereinafter the “Bank Group”). This line of credit, in the approximate initial amount of \$75 million, was secured by a pledge of the stock of Level Propane, Park Place and affiliated companies.

55. On information and belief, the Bank Group made such a sizeable loan to Debtors based on its confidence in the strong financial condition of Level Propane and its value as a going concern.

56. In or about February of 2002, Stargas LLP, a national propane distributor, made an offer to purchase Level Propane’s home heat business for approximately \$150 million. This amount was well in excess of all debt owed by Level Propane.

57. Parthenon Capital made a subsequent initial offer for Level Propane in the amount of approximately \$129 million in the spring of 2002.

58. On or about March 7, 2002 Grant Thornton prepared a valuation of Level Propane at approximately \$160 million.

59. As set forth above, numerous sophisticated financial experts and prospective purchasers believed the going concern value of Level Propane during the early part of 2002 was well in excess of all debt owed by Level Propane.

60. The going concern assets of Level Propane were conveyed to Horizon Propane on or about June 27, 2003, pursuant to a Sale Order issued by this Court, for \$19.2 million and the assumption by Horizon Propane of less than \$6 million of debt of Level Propane.

61. On information and belief, the precipitous, catastrophic decline in value of Level Propane was actually the result of a massive fraud on Level Propane and on the Court

perpetrated by officers of Level Propane who, acting as officers of the Court, had been placed in charge of Level Propane by the Bank Group.

62. The Verbos/Anter check concealment scheme and/or the fraudulent tank count and/or the fraudulent customer count artificially and fraudulently reduced the apparent going concern value of Level Propane.

63. Parties to these proceedings compromised claims, and this Court issued orders, as a result of these frauds perpetrated on the Court.

64. Plaintiff, a party in interest in these proceedings, compromised its claims against Level Propane for an amount drastically less than it would have but for the fraudulent actions outlined in this Complaint. Had Plaintiff known of the Verbos/Anter check concealment scheme and/or the other fraudulent actions described herein, it would not have compromised its disputed claims in these proceedings.

65. On information and belief, if other creditors had known of the check concealment scheme and/or the other fraudulent actions described herein, those creditors would also have not compromised disputed claims and would have taken actions that were materially different than ones they took during the course of these proceedings.

Fraud Infected the Court's Proceedings

66. The check concealment scheme and the fraudulent misrepresentations made by Verbos and Anter as officers of the Court materially affected, impacted, and infected the proceedings in Case No. 02-16172.

67. The Confirmation Order was procured by the active conspiracy perpetrated by Anter and Verbos to misrepresent the financial state of Level Propane to the company's

creditors, prospective purchasers, and the Court, and by the submission of a materially defective disclosure statement, which constituted fraud on the Court.

68. Level Propane secured the Court's reliance on its fraudulent omissions and misrepresentations through the Disclosure Statement.

69. When Level Propane prepared its initial disclosure statement pursuant to 11 USC § 1125, and submitted it to the Court for approval on March 21, 2008, and later submitted the amended Disclosure Statement, Level Propane was under a duty to disclose material information. The sources of Level Propane's duty are to be found in the disclosure requirements of §1125, the plan proponent's duty under §1129 to propose the Plan in good faith, and the fiduciary duty of a debtor in possession.

70. Under section 1125, a disclosure statement must contain "adequate information." §1125(b). "Adequate information" means, in effect, information sufficient to allow a potential investor of the relevant class to make an informed judgment about the Plan. 11 USC §1125(a)(1).

71. The Plan was missing information regarding (1) a conspiracy among the officers of Level Propane to misrepresent the value of Level Propane; and (2) the months-long concealment and diversion of thousands of checks representing millions of dollars of revenue to Level Propane; and (3) other fraudulent, negligent and/or improper actions by parties in control of Level Propane.

72. A court may only confirm a plan that meets the requirements of §1129, which includes a proposal of the plan in good faith. §1129(a)(3). The Disclosure Statement itself represents that it was prepared "in good faith and in compliance with the applicable provisions of

the Bankruptcy Code”, when in fact it was not prepared in good faith and intentionally omitted material financial information.

73. Other Orders of the Court have been materially impacted by the fraud described herein. For example, the Court’s Order of June 20, 2003 approving the Global Settlement states “it is further undisputed that these same secured parties are undersecured on their respective lien interests,” when in fact the secured creditors were not “undersecured,” and the fraud described herein resulted in the Court making an erroneous conclusion of a critically material fact.

74. The Disclosure Statement was prepared expressly to gain the approval of the plan by the Court. Level Propane submitted the Disclosure Statement to the Court pursuant to section 1125, as an exhibit to its motion to “seek entry of an order approving the form and the content of the Disclosure Statement.” Motion for Approval, p. 5.

75. The Court approved the Disclosure Statement by the Approval Order dated July 18, 2008. The Approval Order stated that “the Court finds and concludes that the Disclosure Statement fully complies” with the Court’s requirements. Approval Order, paragraph E. Without disclosure of the fraud by Anter and Verbos, the Court was led to rely on the Disclosure Statement as “adequate,” Approval Order, paragraph I(2), when in fact it was misleading and incomplete.

Breach of Fiduciary Duty

76. Debtors in possession and those in control of them have a fiduciary duty to their creditors and to the Bankruptcy Court. The duty is to disclose all material information, and to maximize the value of the bankruptcy estate.

77. Level Propane and those in control of Level Propane breached their fiduciary duty to creditors, including Plaintiff, and to the Court.

78. Revocation of the Confirmation Order will enable creditors and the Court to properly investigate the fraud described herein; enable Plaintiff and certain other creditors to pursue actions relating to the fraud described herein; and will enable the Court to investigate the fraud described herein and take appropriate action.

WHEREFORE, Plaintiff prays that based on the foregoing that it be granted the following relief:

1. That the Confirmation Order be revoked pursuant to 11 U.S.C. Sec. 1144.
2. That the Global Settlement Agreement approved by the Bankruptcy Court on June 30, 2003 be adjudicated null and void.
3. That the Order approving Settlement and Distribution, Docket No. 1667 and the Order Approving Settlement and Litigation Proceeds, Docket No. 728, in which this Plaintiff gave up valuable rights and causes of action, be adjudicated null and void.
4. Such other relief as the Court deems just and equitable, including attorney fees and cost of suit.

Respectfully submitted,

/s/ Ryan P. Nowlin

Kenneth J. Laino (0009102)

James D. Vail (0006723)

Ryan P. Nowlin (0079769)

Schneider, Smeltz, Ranney & LaFond, PLL

1111 Superior Avenue, Suite 1000

Cleveland, Ohio 44114

Attorneys for Plaintiff