

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
Eastern Division

FILED
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CLERK OF COURT
CLEVELAND, OHIO

In Re:

**LEVEL PROPANE GASES, INC.
ET. AL.,**

Debtor.

**In Proceedings Under Chapter 11
(Jointly Administered)
Case No.: 02-16172**

JUDGE RANDOLPH BAXTER

MEMORANDUM OF OPINION AND ORDER

Before the Court is William H. Maloof's ("Maloof") Motion to Vacate Pursuant to R. 60(b)(2) the Court's Decision of February 28, 2008 Denying Motion to Vacate Agreed Conversion Order and Sale Order and his Motion for Evidentiary hearing thereon. The Debtors opposed the Motion. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and General Order No. 84 of this District. This is a core proceeding as defined by 28 U.S.C. § 157(b)(2)(A) and (O). After considering the parties' pleadings and conducting a hearing on Maloof's request for an evidentiary hearing, the Court denied such request for lack of jurisdiction at the July 8, 2008 hearing on the matter. The following written decision is consistent with this Court's July 8, 2008 bench ruling and also denies Maloof's Motion to Vacate for lack of jurisdiction.

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On February 28, 2008, this Court entered an order denying Maloof's Third Amended Motion to Vacate Agreed Order and Conversion Order. That same day, Maloof filed an appeal of this Court's decision and such appeal is now pending before the United States District Court for the Northern District of Ohio. *William H. Maloof v. Level Propane Gases, et. al.*, Case No.

1:08cv0679 (N.D. Ohio). Because of the pending appeal, this Court lacks jurisdiction over Maloof's Motion to Vacate and request for evidentiary hearing thereon. See *Workman v. Tate*, 958 F.2d 164, 167 (6th Cir. 1992)("It is well settled that the filing of a notice of appeal transfers jurisdiction over the merits of the appeal to the appellate court.") and *Pittock v. Otis Elevator Co.*, 8 F.3d 325, 327 (6th Cir. 1993)("As a general rule, a district court no longer has jurisdiction over an action as soon as a party files a notice of appeal, and at that point the appellate court assumes jurisdiction over the matter.") Maloof alleges that this Court can decide a motion brought pursuant to Rule 60 despite the pendency of his appeal and relies on *Ferrell v. Trailmobile, Inc.*, 223 F.2d 697 (5th Cir. 1955) in support of such argument. That case, however, is contrary to the well-settled law in this Circuit that the filing of an appeal divests this Court of jurisdiction over matters related to such appeal. As such, Maloof's Motion to Vacate and Motion for Evidentiary Hearing thereon are not well-premised and are hereby denied.

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Accordingly, Maloof's Motion to Vacate Pursuant to R. 60(b)(2) the Court's Decision of February 28, 2008 Denying Motion to Vacate Agreed Conversion Order and Sale Order and his Motion for Evidentiary hearing thereon are hereby denied. The Debtors' opposition is sustained.

IT IS SO ORDERED.



**JUDGE RANDOLPH BAXTER
UNITED STATES BANKRUPTCY COURT**

Dated, this 28th day of
July, 2008.