

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

In Re:)
Level Propane, Gases, Inc., et. al.) Case No. 02-16172
)
) Ch. 11
)
) Hon. Randolph Baxter

**WILLIAM MALOOF’S OBJECTION TO DEBTORS’ MOTION FOR EXPEDITED
DISCOVERY**

Now comes William H. Maloof, shareholder, by and through counsel undersigned, and for his opposition to the Debtors’ Motion for Expedited Discovery states as follows:

1.) The purported Debtors invoke 11 U.S.C. Sec. 542(e) in order to seek an order from this Court to expedite discovery from him related to the Verbos emails, upon which his recent R. 60(b)(2) Motion to Vacate is premised. They claim that their purpose in doing so:

“Debtors have a very short time period to conduct the *forensic analysis necessary to show the e-mails are not authentic* before the hearing on the Motion of William H. Maloof to Vacate the Court’s Decision of February 28, 2008. Furthermore, Debtors are concerned that the electronic backup tapes and discs purportedly made from these tapes are at risk of further alteration or destruction.” Motion at 3, emphasis supplied.

The statute, 11 U.S.C. Sec. 542(e), provides in pertinent part that the Court may order the turnover of “recorded information, including books, documents, records, and papers, relating to the debtor’s property or financial affairs.” The purported Debtors’ purpose in seeking the backup tapes and discs from the shareholder is altogether inconsistent with the clear intent of the statute by which they seek to justify their request for they seek the tapes and discs not to advance the administration of an estate, the purpose for which this provision was enacted in the first place:

“It is a new provision that deprives accountants and attorneys of the leverage that they have today, under State law lien provisions, to receive payment in full ahead of other creditors *when the information they hold is necessary to the*

administration of the estate,” Legislative History (P.L. 98-353), 11 U.S.C. Sec. 542(e), emphasis supplied

but, rather, to discredit emails that would establish the wrongful intent of those involved in initiating these bankruptcy proceedings.

2.) Independently of the reason set forth above, the backup tapes and discs of which the purported Debtors seek expedited discovery on the strength of 11 U.S.C. Sec. 542(e) cannot be related to the administration of the estate for three reasons: first, any information contained on the backup tapes and discs necessarily relates a going concern that has been sold out of the estate since June, 2003, so cannot possibly serve any purpose within the statute’s contemplation. Second, if the emails “are not authentic” as maintained by the purported Debtors, they cannot have any bearing on the property or financial affairs of the purported Debtors. Third, if the emails are authentic as maintained by the shareholder, the fraud that they establish would result in the vacation of the orders by which the estate was created, thereby extinguishing any estate that would be administered. Thus, under no logical reading of the statute can the backup tapes and discs be within the ambit of 11 U.S.C. Sec. 542(e) in these circumstances.

3.) In conclusion, the purported Debtors cannot invoke 11 U.S.C. Sec. 542(e) to expedite discovery of the backup tapes and discs sought because 1.) the purported Debtors cannot invoke the statute to advance their discovery request since its purpose is to assist in the administration of an estate not as a device to gather evidence; 2.) the going concern to which the backup tapes and discs relate has been sold out of the estate since June, 2003, so any information on the backup tapes or discs could serve no administrative purpose within the contemplation of the statute; 3.) if, as the purported Debtors maintain, the emails “are not authentic” the backup tapes and discs could have no bearing on the administration of the estate, since they would not contain information necessary to the estate; and 4.) if, as the shareholder maintains, the emails are

authentic the result would be the extinguishment of the estate, rendering any information relating to its administration altogether irrelevant.

WHEREFORE, for the reasons set forth above, the shareholder respectfully requests that the Debtors' Motion for Expedited Discovery be denied.

Respectfully Submitted,

/s/David C. Eisler

David C. Eisler, Counsel for the Movant
Ohio Reg. No. 0020362
P.O. B. 1721
Medina, OH 44258
(216) 214-2106
inqs@AOL.com

SERVICE

I hereby certify that on this 7th day of July, 2008, the foregoing was filed electronically.

Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

Parties may access this filing through the Court's system.

/s/David C. Eisler

David C. Eisler, Counsel for the Movant