

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

In re)	Chapter 11
)	
Level Propane Gases, Inc., et al.)	Case No. 02-16172
Debtors)	
)	
)	Hon. Randolph Baxter
)	

**MOTION OF TAL FINANCIAL CORPORATION TO VACATE AGREED
CONVERSION ORDER, DOCKET NO. 5, ORDER APPROVING EAGLEROCK
MANAGEMENT AGREEMENT, DOCKET NO. 676, ORDER APPROVING POST-
PETITION FINANCING AGREEMENT, DOCKET NO. 679, ORDER APPROVING
GLOBAL SETTLEMENT, DOCKET NO. 1667 AND ORDER APPROVING SALE OF
THE GOING CONCERN ASSETS OF LEVEL PROPANE, DOCKET NO. 1721,
PURSUANT TO BANKRUPTCY RULES 9044 AND 9024**

Now comes Tal Financial Corporation, a creditor in the above-captioned Chapter 11 Case, by and through counsel undersigned, and moves that the Agreed Conversion **Order**, Docket Item No. 5, the Order approving the Management Agreement between Eaglerock Propane and purported Debtors, Docket No. 676, the Order Approving Post-Petition Financing Agreement, Docket No. 679, the Order Approving the Global Settlement between the purported Debtors and the lead secured creditors, Docket Item No. 1667 and the Order Approving Sale of the Going Concern Assets Of Level Propane, Docket No. 1721, to be vacated, pursuant to Bankruptcy Rule 9024, and R. 60(b)(6), F.R.C.P., incorporate by reference, for the following reasons:

Introductory Statement

Based on information supplied to the moving party, the above-described Orders were obtained in part due to fraud upon the Court, which fraud was apparently proximate and integral to said bankruptcy proceedings. To permit these Orders to remain (no matter how otherwise just

and equitable their terms may appear to be) would be in opposite of the law. The president of Tal Financial Corporation was appraised of the prior history of this case and, in particular, the shareholder's efforts to alert this Honorable Court of the conduct of the lead creditors both before and after the involuntary petition had been filed. The evidence espoused by the shareholders demonstrates that indeed a fraud has been advanced on this court. Tal Financial Corporation strongly urges that the Court avail itself of the opportunity to vacate said Orders and have an independent prosecutor or other capable party investigate the same and, quite frankly, in the law, fraud perpetrated on the court undermines the lynchpin of our judicial system and the rule of law.

Statement of Facts

On or about September 17, 2002, Tal Financial Corporation filed its claim in the above-captioned case, docketed as Claim No. 1, in the amount of \$262,158.12 (a copy of the Purchase Money Security Agreement is annexed hereto). Since that time, no action has been taken on this claim. It has recently come to the attention of the moving party that Orders by which these bankruptcy proceedings were allegedly obtained as the result of fraud on this Court. The history of the fraud and the supporting exhibits documenting the fraud are set out in the Shareholder's R. 60(b)(6) Motion to Vacate Agreed Conversion Order of June 11, 2002 and Agreed Sale Order of June 27, 2003, Docket No. 3140, as amended, hereby incorporated by reference, and in the Shareholder's R. 60(b)(2) Motion to Vacate Order of February 28, 2008, Docket No. 3348, hereby incorporated by reference, and Shareholder's Motion for Reconsideration of the Court's denial of his R. 60(b)(2) Motion, Docket No. 3397, hereby incorporated by reference. (Copies of these documents having been sent to the moving party).

Law and Argument

The moving party has been advised that other creditors have or will be filing similar motions so it incorporates by reference the arguments made in Docket Nos. 3140, 3348 and 3397, above, and observing that the initial Motion to Vacate made pursuant to R. 60(b)(6) was denied on the basis of laches and the doctrine of finality, makes the following observations with respect to this Motion: first, that this creditor had no notice of any sort whatsoever of the allegations of such fraud nor was it or its officers in a position to obtain such notice, having not participated in proceedings nor having notice, being located in Massachusetts but the moving party's name was on the Creditor List and in the Creditor Matrix. As such, in contrast to the Plaintiff in *Stone v. Williams*, 873 F.2d 620, 622 (2nd Cir., 1989), the moving party has had no prior notice of the fraud upon the Court that is the basis of this motion. Moreover, and more fundamentally, the claim here is that there has been fraud upon the Court, and, as such, the prejudice to the non-moving party that triggers the application of the doctrine of laches, which prejudice the doctrine addresses by means of its strictures, see *Gutierrez v. Waterman Steamship Co.* 373 U.S. 206 (1963) at 215, *Costello v. United States* 365 U.S. 265 (1961), *Gardner v. Panama Railroad Co.* 342 U.S. 29 (1951) *Robin Island Preservation Fund v. Southold Development Corporation*, 959 F.2d 409 (2d Cir, 1991), simply cannot exist, because no claim is not directed to the non-moving party, but the Court. That claim is that the Court has been defrauded, and having been so defrauded must protect itself as an institution, see *Pumphrey v. KW Thompson Tool Co.*, 62 F.3d 1128 (9th Cir., 1998), *In Re Levander* 180 F.3d 1114 (9th Cir. 1999) and *Demjanjuk v. Petrovsky*. 10 F.3d 338 (6th Cir, 1993).

Second, based on information and belief, the evidence presented with the 60(b)(2) Motion, Docket No. 3348, consisting of the Verbos-Anter emails that detail a sophisticated check

concealment scheme, and in the Motion for reconsideration, Docket No. 3397, consisting of a third-party expert authentication of the emails takes this Creditor's Motion into the rule articulated in *Coal Resources, Inc. v. Gulf & Western, Inc.*, 895 F2d 761(6th Cir., 1989), by which exceptional circumstances preclude the application of prior rulings by this Court, that "the evidence in a subsequent trial was substantially different," 895 F2d at 766. Whereas the doctrine of law of the case, or finality, might apply absent this new evidence, under *Coal Resources, supra*, in the face of this new evidence, which establishes that the check concealment scheme was part of the *pre-petition drive to put Level Propane into involuntary bankruptcy in order seize control of it as going concern*, the doctrine cannot be applied. It cannot be applied because the Verbos check concealment scheme establishes that a drive to put Level Propane into involuntary bankruptcy to seize control of it as a going concern, which is entirely new evidence establishing entirely new facts.

Conclusion

In conclusion, for the reasons set forth above, the evidence incorporated and presented by reference presents a prima facie case of fraud on the Court for which this Creditor has been proximately damaged in that absent said fraud, there would be no bankruptcy proceeding that would leave this Creditor with approximately 1% of its claim instead of \$262, 158.00, which it is entitled to.

Wherefore, for the reasons set forth above, the moving party prays that its Motion to Vacate the enumerated Orders be granted pursuant to Bankruptcy Rule 9024.

Respectfully submitted

TAL FINANCIAL CORPORATION
By its Attorney

/s/ Evans J. Carter

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Dated: September 23, 2008

Service

I hereby certify that on this 23rd day of September, 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/ Evans J. Carter

Evans J. Carter, Esq.
Counsel for the Moving Party, Tal Financial
Corporation