

IT IS SO ORDERED.

Dated: 14 November, 2008 11:07 AM



RANDOLPH BAXTER
UNITED STATES BANKRUPTCY JUDGE

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

In re:)	Chapter 11
)	
LEVEL PROPANE GASES, INC., <i>et al.</i> ,)	Case No. 02-16172
)	Jointly Administered
Debtors.)	
_____)	JUDGE: RANDOLPH BAXTER

ORDER DENYING TAL FINANCIAL CORPORATION’S (I) MOTION TO VACATE AGREED CONVERSION ORDER, ORDER APPROVING EAGLEROCK MANAGEMENT AGREEMENT, ORDER APPROVING POST-PETITION FINANCING AGREEMENT, ORDER APPROVING GLOBAL SETTLEMENT, AND ORDER APPROVING SALE OF THE GOING CONCERN ASSETS OF LEVEL PROPANE AND (II) REQUEST FOR EVIDENTIARY HEARING OF SUCH MOTION

This matter came before the Court for hearing on November 4, 2008 upon the motion (Dkt. No. 3449, the “Motion”) of Tal Financial Corporation (“Tal”) to vacate five orders entered by this Court during 2002 and 2003 (the “Challenged Orders”)¹ and the Objection (“Objection”)

¹ The Challenged Orders are: (i) the Agreed Order entered June 11, 2002 (Dkt. No. 5) (the “Conversion Order”); (ii) the order entered October 17, 2002 (Dkt. No. 676) approving the management agreement between Eaglerock Propane and Level Propane (the “Management Order”); (iii) the order entered October 17, 2002 (Dkt. No. 679) amending the final order authorizing the Debtors to enter into a post-petition financing agreement (the “Amended Financing Order”); the order entered June 20, 2003 (Dkt. No. 1667) approving the global

to the Motion filed by Level Propane Gases, Inc., and its affiliated debtor entities, former debtors in possession herein (collectively, the “Debtors”).

The Court, having reviewed the Motion and the Objection and having heard the arguments of counsel for Tal and counsel for Mark Uhrich, the Plan Administrator of the consolidated liquidating estate of the Debtors (“Plan Administrator”), FINDS AND CONCLUDES as follows:

1. In the Motion, Tal relies entirely upon arguments and allegations previously presented by William H. Maloof (“Maloof”), merely incorporating by reference Maloof’s prior motions and briefs and then arguing that the Court’s rejection of those attempts to unravel six years of proceedings should not apply to it.

2. The Motion is brought pursuant to Fed.R.Civ.P. 60(b)(6). However, the Motion is time-barred under both the “reasonable time” requirement of Fed.R.Civ.P. 60(b) and the equitable doctrine of laches.

3. The Motion is also barred and should be denied pursuant to Bankruptcy Code section 1141(a). As set forth in the Court’s October 27, 2008 Memorandum of Opinion and Order, the confirmed Plan of the Debtors “‘constitutes a final judgment in [the] bankruptcy proceeding’ and is binding upon all creditors.” *Sanders Confectionary Products, Inc. v. Heller Financial, Inc.*, 973 F.2d 474, 480 (6th Cir. 1992). The Court incorporates herein its reasoning of its October 27, 2008 Memorandum of Opinion and Order. The Plan is *res judicata* as to all the matters raised in the Motion, which Motion is a proscribed collateral attack on the Plan. The Motion should be denied accordingly.

settlement between and among the certain of the Debtors, the so-called “Bank Group,” the Equipment Financiers and the Official Committee of Unsecured Creditors (the “Global Settlement Order”); and the order entered June 27, 2003 (Dkt No. 1721) approving the sale of the going concern assets of Level Propane (the “Sale Order”).

Accordingly, it is hereby ORDERED that:

The Motion is DENIED and the Debtors' Objection is SUSTAINED.

#

ORDER SUBMITTED BY:

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