

**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
)	
*****)	
William H. Maloof)	Adv. Pro. Case No. 09-1127
Plaintiff)	
)	
vs.)	
)	Hon. Randolph Baxter
Mark Uhrich, Plan Administrator)	
of the Consolidated Estate of)	
Level Propane Gases, Inc.)	
c/o Benesch, Friedlander, Coplan)	
& Aronoff, LLP)	
Defendant)	

**AMENDED COMPLAINT OF WILLIAM H. MALOOF TO REVOKE
CONFIRMATION OF PLAN OF LIQUIDATION OF LEVEL PROPANE GASES, INC
ET AL. AND FOR OTHER RELIEF**

Now comes William H. Maloof, sole shareholder of the Debtors, now in Liquidation pursuant to a Confirmed Plan under 11 U.S.C. Sec. 1129, by and through counsel undersigned, and for his Amended Complaint to Revoke the Confirmed Plan pursuant to 11 U.S.C. Sec. 1144 states as follows:

Parties

- 1.) Plaintiff William H. Maloof was the sole shareholder of the former Debtors until the Liquidation Plan was confirmed by this Court on October 9, 2008 pursuant to 11 U.S.C. Sec. 1129;

- 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. Sec. 1144, Revocation of Confirmed Plans, and as such this Court has jurisdiction over this as a Federal Question, 28 U.S.C. Sec. 1334 and as a core bankruptcy proceedings under 28 U.S.C. Sec. 157(b)(1)(O). Venue is proper pursuant to 28 U.S.C. Sec. 1409.

Procedural History

4.) The case in which the liquidation plan subject of this action proposed and confirmed by this Court was by which Level Propane Gases, Inc. and Park Place, Inc., together with their affiliated corporations, were brought under the jurisdiction of this Court by an involuntary petition on June 6, 2002. The case was subsequently converted to a Chapter 11 proceeding by Agreed Order of June 11, 2002, which Order was amended on June 17, 2002.

5.) The going-concern assets of Level Propane were conveyed to Horizon Propane, Inc. on June 27, 2003, pursuant to a Sale Order of that date. The proceeds of that Sale were distributed to certain of the secured creditors pursuant to a separate Global Settlement.

6.) The going concern assets of Park Place were sold pursuant to a Sale Order on December 10, 2003, Docket Item No. 2161. The proceeds of that Sale were distributed pursuant to the above-said Global Settlement.

7.) Once the going concern assets were sold, the Debtors turned their attention to liquidation of certain causes of action. A suit against Squire, Sanders & Dempsey, the former law firm representing Level Propane, for malpractice had been filed pre-petition and was ongoing.

This suit has not been resolved, and is scheduled for trial in July, 2009. The Debtors also brought suit against Walter Himmelman, the former CFO, and the Plaintiff, William Maloof, *Level Propane et al. v. Maloof* Case No. 041300 (U.S.B.C., N.D.O.) the former CEO, seeking recovery for mismanagement, funded by a Directors & Officers (D&O) policy. After extensive discovery, Mr. Himmelman and the Debtors mediated and settled the dispute. The Plaintiff, William Maloof did not participate in the mediation and rejected the settlement. This Court's approval of the settlement is on appeal to the District Court Level Propane et al. v. Maloof, Case No. 08-0835.

8.) On March 3, 2008, the Debtors moved for approval of a Plan of Liquidation, and Disclosure Statement. After repeated amendment, the Disclosure Statement and Voting Procedure were approved by Order of this Court on July 18, 2008 (Docket Item No. 3377) and the Plan approved on October 9, 2008 (Docket Item No. 3471) by Order of this Court.

Facts Demonstrating Fraudulent Misrepresentations to the Court

9.) The Debtors were parties to a certain loan facility in which the banks, Deutsche Bank, BT Commercial Corporation, as Agent, Provident Bank (succeeded in interest by National City Bank) and LaSalle Bank (a subsidiary of ABN Ambro Bank, M.V., hereinafter the Bank Group. Said facility provided a line of revolving credit and was secured by all the assets of Level Propane as well as Park Place, Inc. and its affiliated companies. Further, as additional security, the Bank Group had the right to exercise the voting rights in all the shares of the companies in the event of certain defaults set out in the terms of the credit facility.

10.) In February, 2002, Star Gas, LLP, a national propane distributor, made a formal offer to purchase Level Propane's home-heat business for \$160 Million. This offer would have paid off the indebtedness incurred by use of the line of credit with the Bank Group, and left Level

Propane with tens of millions of dollars in cash, the propane hauling (bulk transport) business, the trading and wholesale businesses, rights to market retail propane in the State of Florida and ownership of the satellite system protocols of which Star Gas would be a licensee. Since November, 2001, Level Propane had engaged Benesch, Freidlander, Coplan & Aronoff, LPA (hereinafter BFCA), a law firm in Cleveland, Ohio, with respect to a possible voluntary Chapter 11 reorganization under the Bankruptcy Code in the event it was necessary to protect the completion of any business sale. Mark Schlachet was the primary attorney on the file until James Hill took over the file in January, 2002, as a merger and acquisition matter, in anticipation of the sale of the home heat business.

11.) During the same month, February, 2002, the Bank Group prepared for its take-over of the Debtors by dictating terms of a Forbearance Agreement to BFCA and securing the services of John Rudd as Chief Restructuring Officer (CRO) and his consulting firm, Newmarket Partners, as its management-in-place to manage the Debtors on its behalf.

12.) On March 7, 2002, the Bank Group obtained the Forbearance Agreement from the Debtors, which, among its many stringent terms, included the provision that the above-said John Rudd serve as CRO. It further provided that Rudd's departure from the position of CRO, for any reason, would be an event of default. It further provided that the Debtors must conclude a sale of its going-concern assets to Parthenon Capital, which had tendered an offer for \$147 Million, and complete that sale by a date certain, failure to do so would likewise be an event of default. It further provided that any attempt by the Debtors to seek protection from creditors by means of any court process would be an event of default and that, in the event that the Debtors sought reorganization under Chapter 11 of the Bankruptcy Code, the Debtors specifically waived any right to contest any application the Bank Group would make to lift the automatic stay.

13.) John Rudd served as CRO from March 7, 2002 to June 3, 2002. During that time the Bank Group seized the opportunity to cripple the cash flow of the Debtors by its deliberate failure to intercede with respect to the Debtors' fully insured "pre-buy" program, by which propane customers could purchase fuel for the winter prior to the start of the heating season, thereby securing their supply and locking in the per-gallon price of fuel. The value of the program was \$2 Million per month. By its refusal to either to segregate the funds generated by the program, or to authorize the simultaneous purchase of gas to assure supply, it ratified the suspension of the pre-buy program, prompted by the intense and deliberately false protests of BFCA that such a program would violate consumer protection laws because the Debtors, as insolvent debtors, could not reasonably assure delivery of the product purchased. As set out below, the apparent insolvency was created by the conduct of those designated by the Bank Group as the purchaser, Parthenon Capital, and as the investment firm, Blair & Co. Especially when segregation of the funds generated by fully insured pre-buy sales was consistent with the Bank Group's interests as lenders, in that the supply for the pre-buy customers would be assured as would the funding for delivery of the purchased gas, thereby reducing the need for the extension of further credit. Mr. Rudd was the person through whom the Bank Group exercised its complete and wrongful domination and control of the Debtors.

14.) On February 1, 2002, April 5, 2002, April 26, 2002, May 31, 2002 and August 16, 2002, John Verbos sent a series of emails to BT Commercial Corp. agent of the Bank Group, BFCA, and Baker & Hostettler, in which he set out the means by which the proceeds of the seizure of the going concern from Level Propane would be distributed among these parties as well as the means by which these parties would communicate. This series of emails indicated that he had caused to be established certain bank accounts in which would be deposited each

party's share of the above-said proceeds, as well as had built a server by means of which the parties' emails would be concealed. In his final email to this group, August 16, 2002, Verbos exhorted each of them to "enjoy the wealth." Further, in furtherance of the scheme contemplated by the above-said emails, Michael Primrose, a partner at BFCA, requested by email on June 1, 2002, that Verbos provide such customer numbers to be presented to Maloof, the sole shareholder, director and CEO of Level Propane, as would force him to surrender control of Level Propane. In that same email above-said, Primrose assured Verbos that once Maloof surrendered control, Verbos would be given executive authority to manage the affairs of Level Propane until such time as the going concern was sold. All of the conduct subsequent to these email communications, by which the control of Level Propane was seized and maintained under the putative authority of this bankruptcy court, was in furtherance of the scheme to unlawfully take control of Level Propane and dispose of its going concern assets.

15.) Further, while Rudd was acting as CRO and Verbos was acting with the parties above-said in furtherance of the scheme to seize control of Level Propane, the Star Gas offer was permitted to stall after having completed its due diligence, and Parthenon Capital, the purchaser chosen by the Bank Group, repeatedly dropped its offer price until, at \$29 Million, the Bank Group debt could not be discharged. Simultaneously, the appraisal by Grant-Thornton, the big six accounting firm which had provided the Debtors with certified financials for the past years previously, establishing the equity value of the Debtor Level Propane Gases, Inc. for purposes of a cash-collateral order in the contemplated Chapter 11 reorganization set the going concern value at between \$125 to \$150 Million, without the satellite communication system, was countered by the assessment of Blair & Co., the investment firm chosen by the Bank Group, that the sale value of the going concern could not exceed \$80 Million. The Grant-Thornton appraisal put the value

of the going concern at 100% above the debt, while the Blair & Co. appraisal put the going concern in an insolvent position.

16.) Further, during this same period, Newmarket Partners, through Patty Geitgey, acted to cut off all of the Debtor Level Propane Gases, Inc.'s propane supply pipeline allocation upon which it depended for its winter gas supply by instructing the transport division to so limit its loads pulled from the pipeline that no allocation was earned. Newmarket also abandoned 20 million gallons in propane supply pipeline allocation that had already been earned from Amoco Canada.

17.) Further, the Bank Group was charged with knowledge of a certain scheme advanced by John Verbos, the Chief Information Officer of the Debtors and one Richard Anter, later the President of the Debtors during the time they operated as Debtors-in-Possession, to conceal customer payment checks between December, 2001 and August, 2002, in order to misrepresent the cash-flow of the Debtors. The misrepresentation of the cash-flow served to simultaneously misrepresent the solvency of the going concern and to misrepresent the customer base, because the customer count relied on the calculation of those to whom product was delivered who paid for that delivery. The Bank Group took advantage of this separate check concealment scheme as additional pretext for declaration of default in order seize control of the Debtors, thereby endorsing and ratifying the scheme.

18.) On May 31, 2002, John Rudd announced his resignation as CRO, effective June 3, 2002. Upon the effective date of his resignation, and upon the rebuff of the Debtors' attempt to obtain a substitute CRO, the sole shareholder resumed the day-to-day operation of the Debtors, and on his authority, resumed the sale of pre-buys. During this same period, Debtor was offered

\$165 Million for its home-heat business by FerrellGas, in which it retained ownership of its transport division, its wholesale and trading division, its satellite system protocols. This resumption of the pre-buy program operated as the pretext to justify the precipitous resignation of BFCA as counsel for the Debtors on June 6, 2002, while Rudd's resignation as CRO provided the immediate pretext for the Bank Group to vote the shares securing their line of credit and elect Charles Sweet as their sole director and to petition this Court to initiate involuntary bankruptcy proceedings that thrust the Debtors into a liquidation Chapter 7 case.

19.) The Bank Group, however, had no intention of liquidating the Debtors, rather, it secured a conversion of the involuntary case (Case No. 02-16172, USBC, NDO), into a voluntary Chapter 11 reorganization, over the administration of which it had complete and domination and control. By the terms of the conversion, the sole shareholder was banned from the Debtors' headquarters premises, the election of Charles Sweet as the Debtors' sole director by the Bank Group was ratified, and John Rudd and Newmarket Partners, LLC were returned to the premises as the shadow-management of the Debtors when they were named the Bank Group's on-site consultants. Shortly thereafter, in July, 2002, the Bank Group installed its management personnel, including Steven Sues, as CEO, and Robert Angart, as CFO.

20.) The Bank Group, in complete control the Debtors, then entered into a Post-Petition Credit Agreement, by the terms of which the Debtors released the Bank Group from all potential claims arising from their relationship. Said release, as well as all other restatements of that release made by the Debtor, was made while Debtors were under the complete and wrongful control and domination of the Bank Group.

21.) The Bank Group made it its apparent object, as the lead creditor in the bankruptcy proceedings, the sale of the going-concern assets of Level Propane Gases, Inc. before the onset of the 2002-2003 winter heating season. An auction of the going-concern assets was set with notice to the Bankruptcy Court (the motion seeking approval of the auction was later withdrawn.) This auction, however, was sabotaged by the Bank Group when first, at the specific instruction of the Bank Group, a stalking horse bidder was abandoned, second, basic information about the going concern, including gallonage of propane purchased and the identification of propane suppliers, was not supplied to bidders on the claim that it was proprietary data, and third, the wiring instructions for the deposits required of all bidders were received so late that the deposits could not be made by the bidders, thereby voiding all of the bids.

22.) On the date of the would-be auction, September 23, 2002, which, because no deposits were made by the would-be bidders, never, in fact, took place, Eaglerock Propane, LLC, appeared with a bid and check for its deposit, contrary to the rules of the auction. The auction was then cancelled, and never reset. Instead, the Debtors, at the instance of, and pursuant to the purpose of the Bank Group, entered into a management agreement with Eaglerock Propane, LLC, for the heating season of 2002-2003 in October, 2002. Eaglerock Propane, LLC, was organized by the Jacobs Group for the purpose of participating in the Chapter 11 in which the Debtor was to be reorganized. Richard Anter, still a participant in the customer check concealment scheme with John Verbos, as an agent of Richard Jacobs, of Eaglerock Propane, LLC, and other Jacobs companies, was appointed President of Debtor Level Propane Gases, Inc.

23.) As above stated, among those placed in management was Robert Angart as CFO. In December, 2002, Angart disposed of massive quantities of essential financial documents of the Debtor, enough to fill several large board boxes with paper. Thereafter, other essential

documents were disposed of or shredded in January, February and March, 2003. The disposal and shredding of essential financial and operational documents was concealed with the active participation of the Bank Group installed management, culminating in a bonfire of thousands of banker boxes of documents. The purpose of the disposal and/or shredding of these essential documents were to conceal the schemes by which the Bank Group and its confederates fraudulently and unlawfully seized and maintained control of the Debtors, both pre-petition and post-petition.

24.) In January, 2003, the equipment lessors, who leased customer tanks to the Debtor under various agreements, initiated an Adversary Proceeding calling for the equitable subordination of the Bank Group as a result of their wrongful domination and control of the Debtor.

25.) In February, 2003, the United States Trustee moved for the appointment of an Examiner in the Debtors' Chapter 11 proceedings, in response to allegations made by Mark Schlachet, an attorney formerly of-counsel with BFCA, of BFCA's wrongful conduct to facilitate the Bank Group's domination and control of the Debtors. This motion was granted on April 14, 2003, solely on the statutory basis that in excess of \$5MM in unsecured debt was due creditors from the Estate. Within a matter of days the Debtor moved the Court for approval of the sale of its going-concern assets to Horizon Propane, LLC, a Jacobs entity, and a global settlement of all the controversies among them and the equipment lessors. The Examiner was appointed on April 28, 2003.

26.) Further, beginning in December, 2002, and until April, 2003, tens of millions of dollars in customer payment checks were hidden in the basement of the Debtor Level Propane

Gases, Inc.'s headquarters to conceal the existence of tens of thousands of customers so that any misrepresentation of the customer count could not be contradicted by a count of sales receipts. This concealment of customer payment checks was a continuation of the pre-petition check-concealment scheme in which John Verbos and Richard Anter, then President of Level Propane, were participants. Concomitantly, in January, 2003, the customer account reconciliation library, the hard-copy record of all payments made to and all customer accounts with the Debtor, used to make credit decisions regarding customers and to resolve payment disputes, was taken off-premises to an unknown location. Concomitantly, the decision was made by the management installed by the Bank Group, in consultation with the Bank Group, to sever the serial numbers of the leased customer tanks from the customer account records so that the number of active accounts could not be ascertained by means of a tank count, leaving payments made to the Debtors as the only means to establish a customer count.

27.) Thereafter, in April, 2003, the customer account database was stripped of all customers identified as "pre-April, 2002," amounting to fully 30%-40% of the customer base. These stripped customers were not purged from the system but rendered inaccessible and thereby hidden. These customers could only be hidden with the customer account reconciliation library made inaccessible and the leased customer tank serial numbers severed from the customer account records. The result of all of these actions: the concealment of the checks, the concealment of the customer account reconciliation library, the tampering with the customer database, was the concealment of 30%-40% of the Debtor's leased-tank customer base. The customer-owned purchasers of propane, numbering 40,000 customers, were simply disavowed when the heating season began, so that they were excluded from the customer base.

28.) Thereafter, in April, May and June, 2003, the Debtor was forced to operate its business with 40% of its customers concealed from its own employees. Those handling customer accounts were forced to resort to hand-written requests for customer information which was fetched out of a concealed duplicate database or the concealed customer account reconciliation library. A subsequent attempt to launder these concealed accounts by means of a “tank recovery” committee failed when those contacted to surrender their tanks stated repeatedly and emphatically that they remained Debtor’s customers so had no reason to surrender the tanks they leased from the Debtor.

29.) The Examiner submitted his Report, pursuant to Court Order, on June 6, 2003. The going-concern assets of the Debtor passed out the bankruptcy estate to Horizon Propane, LLC on June 27, 2003, for \$19.2 Million cash and assumption of \$5.63 Million in debt. On October 1, 2003, these assets were conveyed to Amerigas, LP for the sum of \$31 Million.

30.) At all times relevant to this Complaint the proponents of the Liquidation Plan and drafters of the Disclosure Statement knew of the schemes to fraudulently seize and maintain control of Level Propane and Park Place, and further knew of the steps taken to conceal the fraudulent schemes by which control was seized and maintained both pre-petition and post-petition. No mention of the schemes set forth above were set out in either the Disclosure Statement, the Motion for Approval of the Liquidation Plan or at any point in open Court.

31.) At all times relevant to this Complaint, the proponents of the Liquidation Plan and the drafters of the Disclosure Statement, knew that the settlement of *Level Propane v. Maloof, et al.*, Adv. Pro. Case No. 04-1300, U.S.B.C., N.D.O., was subject to appeal and that the Defendant, William Maloof, specifically objected to the settlement made with his co-defendant,

Walter Himmelman, and specifically refused to endorse it. They further failed to disclose the merits of the appeal, instead dismissed the merits by assuring this Court that the settlement would be affirmed on appeal.

32.) At all times relevant to this Complaint, the proponents of the Liquidation Plan and the Drafters of the Disclosure Statement specifically relied on the proceeds of the suit in Cuyahoga County Common Pleas Court, known as *Level Propane Gases, Inc. v. Squire, Sanders & Dempsey*, Cuyahoga County Court of Common Pleas, Case No. 02-469882 to fund the proposed Plan. Further, the proponents of the Plan characterized the suit as an asset of the Estate. At the time the Liquidation Plan was first proposed in March, 2008, the proponents of the Plan knew that there was scant evidentiary support for the claim. By the time of the final hearing regarding the approval of the Plan in October, 2008, the proponents knew that the suit would almost certainly fail as a source of funding and the Defendants George Barry and Squires Sanders & Dempsey would successfully defend the suit. Despite this, the proponents continued to represent the suit as a source of funding for the Plan, and induced the Court to rely on the claim as a source of such funding. That this source of funding could not be relied upon, and the knowledge of the proponents that it could not be a reliable source of funding, was born out when, on the date that dispositive motions in the Common Pleas case were to be filed, December 12, 2008, the Defendants filed a Motion for Summary Judgment and the Plaintiff did not do so. Further, the Defendants have filed motions to exclude the testimony of Plaintiff's experts. Plaintiff asserts that any settlement subsequent to this filing, as the Common Pleas case is presently postured, can only be self-serving.

CLAIMS FOR RELIEF

I.

Revocation of the Confirmed Plan

33.) Plaintiff hereby incorporates by reference all the foregoing as if fully rewritten herein. The proponents of the Plan made specific misrepresentations to this Court and fraudulently concealed the wrongdoing, outlined above, which misrepresentations and fraudulent concealments were material to the feasibility of the Plan, in that the sources of funding for the plan represented would not yield the funding represented and in that unlawfulness of these proceedings would make any approval of a Liquidation Plan, even were a source of funding found, would be impossible as a matter of law: in that any Plan confirmed in furtherance of an involuntary bankruptcy filed in bad faith in violation of 11 U.S.C. Sec. 303, as here, which Plan was possible only as a result of such a bad faith filing, which bad faith was concealed from the Court with fraudulent intent, was itself procured by fraud upon the Court. These misrepresentations and fraudulent concealments, to the effect that the bankruptcy was initiated and maintained not adjust debt, the lawful purpose of a bankruptcy petition, but to seize control of Level Propane's going concern, were made in violation of 11 U.S.C. Sec. 1144. Said 11 U.S.C. Sec. 1144 specifically provides for revocation of any Confirmed Plan if such plan were confirmed on the basis of fraud representations to the Court and if such allegations of fraud are made pursuant to the statute within 180 days of the Order so confirming the Plan. The complaint was filed within 180 days of the Confirmation Order of October 9, 2008.

II.

Action to Enjoin Enforcement of Agreed Order Converting Case to Chapter 11 Proceeding

34.) Plaintiff hereby incorporates by reference all the foregoing as if fully rewritten herein. The Agreed Order by which the involuntary Chapter 7 case was converted to a voluntary case under Chapter 11 of the Bankruptcy Code was procured by fraud and was a fraud upon the

Court. While the Plaintiff, William Maloof, as the sole shareholder, was at once fraudulently induced to consent to the conversion by a misrepresentation that such conversion would preserve Level Propane as an intact going concern and coerced by the prospect of its dismemberment in a forced Chapter 7 liquidation, all of the other parties to the Agreed Order colluded unlawfully and fraudulently to use the Order as a means to seize control of the alleged Debtors. Among those who so colluded was BFCA, which signed on behalf of the alleged Debtors, knowing full well that the alleged Debtors were dominated by the Bank Group and that the alleged Debtors had no independent will. Further counsel for the Bank Group colluded with BFCA to bring about the Agreed Order so that their seizure of control of the alleged Debtors could be with the apparent approval of this Bankruptcy Court. Further, the parties in the fraudulent collusion above-said, so colluded to cut off any rights that the alleged Debtors may have had to challenge the involuntary petition as a bad-faith filing pursuant to 11 U.S.C. Sec. 303.

35.) All of the parties so colluding did so with the purpose to advance the Bank Group's maintenance of its inequitable and oppressive control over the alleged Debtors. Further, said frauds upon the Court: that an agreement was in fact entered by the parties and that the agreement was in the best interests of the alleged Debtors, were made to the Court by officers of the Court, to wit: counsel for the Bank Group in collusion with the purported counsel for the alleged Debtors.

III.

Action to Enjoin Enforcement of Sale Order of Level Propane Gases, Inc.

36.) Plaintiff hereby incorporates by reference all the foregoing as if fully rewritten herein. The sale of the going-concern assets of Level Propane Gases, Inc. and its affiliated companies took place under the authority of this Court June 23, 2003 order approving the sale

and its terms. Said order was the result of the fraudulent misrepresentations made by counsel for the Debtors and engineered by the schemes of the officers of then purported Debtors in Possession, acting as officers of the Court. All of the Officers of the Court knew at the time they represented to the Court that the going-concern assets were sold as the result of a fair and impartial auction procedure that the assets of the purported Debtors were misrepresented, the size of the customer base was artificially suppressed, that the sales of the purported Debtors were concealed, and that 40% of the customer base was concealed. The officers of the Court responsible for conducting the bidding knew that they withheld critical information, such as the number of gallons distributed during the 2002-2003 heating season, on a specious claim that it was proprietary information when such information was essential to any due diligence of a propane distribution business.

37.) Further, by means of the fraudulent manipulation of the bidding process, the Officers of the Court, both attorney and corporate officer, made these misrepresentations with the purpose of directing the going-concern assets to Horizon Propane, Inc. This representation that the bidding procedure was followed to attract the best bids by the best qualified bidders and not that the going-concern assets were directed to Horizon Propane, Inc., was a knowingly false representation to the Court that represented a fraud on the Court. Further, the false representation that any auction took place was a direct misrepresentation to the Court when the entire process was managed to direct the going concern assets to Horizon Propane, Inc. Plaintiff, for the reasons foregoing, prays that this court enjoin the enforcement of this judgment.

IV.
Action to Enjoin Enforcement of Sale Order of Park Place, Inc.

38.) Plaintiff hereby incorporates by reference all the foregoing as if fully rewritten herein. The sale of the going-concern assets of Park Place, Inc. and its affiliated companies took

place under the authority of this Court December 10, 2003 (Dkt. Item No. 2161) order approving the sale and its terms. Said order was the result of the fraudulent misrepresentations made by counsel for the Debtors and engineered by the schemes of the officers of then purported Debtors in Possession, acting as officers of the Court. Plaintiff, for the reasons foregoing, prays that this court enjoin the enforcement of this judgment.

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

- 1.) As to Count I: that the Confirmation Order be revoked;
- 2.) As to Count 2: that the enforcement of the Agreed Conversion Order be enjoined and that the Order be adjudicated null and void as a product of fraud upon the Court;
- 3.) As to Count 3: that the enforcement of the Sale Order as to the going-concern assets of Level Propane Gases, Inc. be enjoined and that the Order be adjudicated null and void as a product of fraud upon the Court;
- 4.) As to Count 4: that the enforcement of the Sale Order as to the going-concern assets of Park Place, Inc. be enjoined and that the Order be adjudicated null and void as a product of fraud upon the Court;
- 5.) Such other relief as is just and equitable in the premises, including attorney fees and costs of suit.

Respectfully Submitted,

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

SERVICE

The foregoing was filed electronically. It may be accessed by any party by means of the electronic filing system of the Court. Further, I hereby certify that on this 7th day of May, 2009, the foregoing was mailed, postage prepaid to Mark Uhrich, Plan Administrator, c/o Benesch, Freidlander, Coplan & Aronoff 2300 BP Tower, 200 Public Square Cleveland, Ohio 44114-2378.

/s/ David C. Eisler
David C. Eisler, Counsel for Appellant