

**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
)	
*****)	Hon. Randolph Baxter
Maxus Leasing Group, division of)	
Maxus Capital Group, LLC)	
Plaintiff)	Adv. Pro. Case No. 09-1118
)	
vs.)	
)	
Mark Uhrich, Plan Administrator)	
of the Consolidated Estate of)	
Level Propane Gases, Inc.)	
Defendant)	

**MOTION OF TAL FINANCIAL SERVICES, INC. TO INTERVENE
PURSUANT TO Bankr. R. 7024.**

Now comes the TAL Financial Services, Inc. (hereinafter TAL), a party in interest in the above-captioned Chapter 11 Proceedings, by and through counsel undersigned, and moves to intervene in above-captioned adversary proceeding pursuant to R. 7024, Bankruptcy Rules of Procedure and R. 24, Fed. R. Civ. Pro., for the reasons set out below:

PROCEDURAL BACKGROUND

On April 2, 2009, Maxus Capital Group brought suit to revoke the October 9, 2008 Confirmation of the Plan of Liquidation in this Chapter 11 case, styled *Maxus Capital Group v.*

Mark Uhrich, Plan Administrator, Adv. Pro. Case No. 09-1118. In its Complaint, Maxus seeks revocation of the Plan of Liquidation pursuant to 11 U.S.C. Sec. 1144, and other relief, specifically that certain agreed orders, converting the case from a Chapter 7 to a Chapter 11, approving a global settlement, approving distribution of settlement and litigation proceeds, be adjudicated null and void. TAL moves to intervene in this Adversary Proceeding pursuant to Bankr. R. 7024 and R. 24 Fed.R.Civ.Pro. as a matter of right.

LAW AND ARGUMENT

-1.-

TAL May Intervene as a Matter of Right.

This rule, R. 24, Fed. R. Civ. Pro., provides that a party may intervene as a matter of right. TAL may intervene as a matter of right because it

“claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest,” R.24(a)(2), Fed. R. Civ. Pro.

TAL’ seeks to revoke Confirmation of the Liquidation Plan, and to the extent that it seeks this Revocation, its interests are aligned with Maxus Capital. It further seeks to recover the contract value of its leases with Level Propane Gases, Inc. which it compromised as a direct consequence of the fraud on the court alleged in Maxus’ complaint. Maxus Capital, by contrast, seeks return to its status as party to certain equipment leases that, but for the wrongful institution and maintenance of these Chapter 11 proceedings, would still be in place or have concluded on their own terms to the profit of Maxus Capital. TAL also seeks revocation of the Liquidation Plan because of fraud on the Court, but, rather than the further remedy sought by Maxus Capital, the

restoration of its equipment leases, TAL seeks the recovery of the contract value of its equipment leases with Level Propane Gases, Inc. Propane. Maxus Capital cannot be expected to advocate on TAL' behalf for that recovery.

As such, TAL may intervene in this Adversary Proceeding as of Right, pursuant to Bankr. R. 7024, incorporating R. 24, Fed. R. Civ. Pro. This circuit has interpreted the rule strictly by its terms to permit intervention in the appropriate circumstances, applying each element of R. 24(a)(2) to applications for intervention as of right. The first requisite is that a Motion to Intervene be timely:

“ a court will consider the following factors: (1) the point to which the suit has progressed; (2) the purpose for which intervention is sought; (3) the length of time preceding the application during which the proposed intervenor knew or reasonably should have known of his interest in the case; (4) the prejudice to the original parties due to the proposed intervenor's failure, after he or she knew or reasonably should have known of his or her interest in the case, to apply promptly for intervention; and (5) the existence of unusual circumstances militating against or in favor of intervention.” *Grubbs v. Norris* 870 F2d 343 (6th Cir., 1989) at 345-346.

Here, (1.) the Motion is timely – the Complaint initiating the Adversary Proceeding was filed on April 2, 2009, and there has been no responsive pleading, let alone time for a return of service; (2.) its purpose is within the contemplation of the rule – TAL seeks to intervene in order to participate in the Complaint to Revoke the Confirmation in order that it might pursue relief otherwise unavailable to it were it not to so participate; (3.) the intervenor knew about the Maxus Complaint for four (4) days – the Maxus Complaint was filed on April 2, 2009, TAL could not be reasonably expected to have known of the case prior to that date and TAL here seeks to intervene within days of the docketing of the Complaint; (4.) the intervention will present no prejudice any original party – there has been no practical delay on the part of this intervenor, since it seeks intervention within days of the filing of the original complaint; and (5.) there are no

unusual circumstances militating against intervention – TAL has a parallel interest to that of Maxus in revoking the Confirmation, but intends to recover the contract value of its equipment leases with Level Propane Gases, Inc. that Maxus cannot possibly seek on behalf of TAL.

Similarly, the Sixth Circuit required the District Court in *Michigan State AFL-CIO v. Miller* 103 F.3d 1240 (6th Cir., 1996) to permit the intervention of the Michigan Chamber of Commerce, when, having timely sought intervention, on the slenderest of showings as to each element of R. 24(a)(2), see at 1245-1248. TAL as intervenor satisfies each of the elements articulated in the Rule and interpreted in *Michigan State AFL-CIO, supra*. TAL has a substantial legal interest in the revocation complaint, in that it is a “party in interest,” with a complaint in the tens of thousands of dollars, capable of seeking revocation of the Confirmation of the Liquidation Plan under 11 U.S.C. Sec. 1144, see *Michigan State AFL-CIO, supra* at 1246, which found a substantial legal interest when an association was “permitted to intervene as of right in order to defend their financial interests” at 1246.

TAL, to satisfy the element requiring the impairment of its substantial legal interest, “a would-be intervenor must show *only that impairment of its substantial legal interest is possible if intervention is denied*. This burden is minimal,” at 1247, citing *Purnell v. City of Akron*, 925 F.2d 941 at 948 (6th Cir. 1991), emphasis supplied. Here, if the Maxus challenge to the Confirmation of the Liquidation Plan is turned down by this Court, TAL is without recourse – it cannot appeal a decision to which it would not be a party, yet its ability to seek restoration of its settlement in this Court due to fraud is entirely foreclosed. TAL has the right to intervene in this suit to avoid the possibility that its opportunity to seek the recovery of the contract value of its equipment leases with Level Propane Gases, Inc. due to fraud on this Court not be foreclosed.

Finally, TAL has to demonstrate that the Plaintiff in this action, Maxus Capital, cannot adequately protect its interests. Under the *Michigan State AFL-CIO* analysis “One is not required to show that the representation will in fact be inadequate. For example, it may be enough to show that the existing party who purports to seek the same outcome will not make all of the prospective intervenor's arguments,” 103 F.3d at 1247. Here, the Plaintiff may focus one set of facts that will go to its particular remedy, leaving facts supporting TAL’s claim to one side, so that its goal of recovery on the contract value of its equipment leases goes unrealized. The mere possibility is sufficient. That possibility exists in this litigation, and that possibility supports TAL’s right to intervene.

The result in *Michigan State AFL-CIO*, *supra*, is instructively contrasted to *In Re Troutman Enterprises* 286 F.3d 359, 365 (6th Cir., 2002) when intervention was denied when it was sought a year and a half after the adversary proceeding had commenced, after the standing of the shareholders, who the proposed intervenors maintained had to that point adequately represented their interests, had been successfully challenged after a protracted litigation by the Trustee of which the proposed intervenors had long-standing knowledge. Here, intervention is sought days after the filing of the Complaint, upon a showing that the Plaintiff will represent its own interests, not those of TAL, which are distinct from that of the Plaintiff.

-2.-

TAL Should be Granted Intervention Permissively, in the Alternative.

TAL has demonstrated above that, as a matter of right, it may intervene. If the ground for intervention set out in R.24(a) is satisfied, as here, then permissive intervention, set out in R. 24(b) is, per force, satisfied, see *Michigan State AFL-CIO*, *supra*, 103 F3d at 1248. Here, every reason exists to grant this intervention permissively: the legal interests of the Plaintiff and

intervenor, though aligned, significantly differ, the interests of judicial economy would be served by the intervention, and no prejudice to any party would arise from the intervention.

CONCLUSION

Wherefore, for the reasons set forth above, TAL prays this Court grant its Motion to Intervene in order to effectively protect its interests.

Respectfully Submitted,

/s/ Faye J. Maloof-Wolfe
Faye J. Maloof-Wolf,
OBR No. 0041550
1804 Farris Garden Path
Westlake, OH 44145
440-871-2717
Email: Fayelhm@aol.com

SERVICE

I hereby certify that on this 6th day of April, 2009, 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/ Faye J. Maloof-Wolf
Faye J. Maloof-Wolf,