

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
Eastern Division**

IN RE:

IN PROCEEDINGS UNDER CHAPTER 11

LEVEL PROPANE GASES, INC., et. al.,

CASE NO. 02-16172

Debtors.

AMERIGAS PROPANE, LP

Plaintiff,

ADV. PROC. NO. 08-1284

v.

WILLIAM H. MALOOF, et al.

JUDGE RANDOLPH BAXTER

Defendants.

MEMORANDUM OF OPINION AND ORDER

The matter before the Court is AmeriGas Propane, LP's ("Plaintiff") Motion for Temporary Restraining Order. After conducting a hearing on the matter and considering the pleadings filed by the respective parties, the Court dismissed the subject adversary proceeding for lack of jurisdiction. The following findings of fact and conclusions of law are rendered consistent with this Court's prior bench ruling:

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Although the question of jurisdiction was not raised by William H. Maloof ("Defendant"), federal courts have an independent duty "to inquire *sua sponte* whenever a doubt arises as to the existence of federal jurisdiction." *Mt. Healthy City Sch. Dist. Bd. of Ed. v. Doyle*, 429 U.S. 274, 278

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CLEVELAND

(1977). The jurisdiction of bankruptcy courts, “like that of other federal courts, is grounded in, and limited by statute.” *Celotex Corporation v. Edwards*, 514 U.S. 300, 307 (1995). It is the party “invoking federal jurisdiction [that] bears the burden of establishing its existence.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 104 (1998).

Title 28 U.S.C. § 1334(b) provides that “the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.” A district court may refer “any or all proceedings arising under title 11 or arising in or related to a cause under title 11 . . . to the bankruptcy judges for the district.” 28 U.S.C. § 157(a).

28 U.S.C. § 157(c)(1), which states in pertinent part that:

(c) (1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such a proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge’s proposed findings of fact and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

A civil proceeding is “related to” a bankruptcy case where “the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *Wolverine Radio Co.*, 930 F.2d 1132, 1142 (6th Cir. 1991). *In re Boone*, 52 F.3d 958, 961 (11th Cir. 1995). *See also*, and *In re Kubly*, 818 F.2d 643, 645 (7th Cir. 1987)(“Like other federal courts, a bankruptcy tribunal is one of limited jurisdiction. Its power must be conferred, and it may not be enlarged by the judiciary because the judge believes it wise to resolve the dispute.”)

Herein, Plaintiff, a non-debtor, alleges that the Defendant, also a non-debtor, has “begun a campaign to put AmeriGas out of business and force it from the marketplace by use of unfair, deceptive and defamatory trade practices and by defaming AmeriGas and disparaging AmeriGas’s products.” Plaintiff makes the conclusory statement that this adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (I), (J) and (O). Notwithstanding Plaintiff’s assertion, this Court is without core or non-core jurisdiction of the present matter. Nor has such been demonstrated by Plaintiff.

The matter specifically does not arise under Title 11, nor is it related to a matter which did so arise under Title 11. Neither the Plaintiff or the purported Defendants are the subject of a bankruptcy filing of record. Nor has the Plaintiff so alleged. Essentially, the non-debtor Plaintiff is a third party pursuing injunctive relief against two other non-debtor third parties. Adjudication of the subject adversary proceeding would have no impact whatsoever on the administration of the Debtors’ bankruptcy estate.

Accordingly, the Court is without jurisdiction to adjudicate the subject injunctive motion and, as such, the relief sought herein is hereby denied. Further, the attendant adversary proceeding was filed improvidently, and is dismissed on the same grounds. Each party is to bear its respective costs.

IT IS SO ORDERED.

Dated, this 14th day of
November, 2008


JUDGE RANDOLPH BAXTER
UNITED STATES BANKRUPTCY COURT