

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re:

ACR MANAGEMENT, L.L.C., *et al.*,¹

Debtors.

Case No. 04-27848-MBM
Chapter 11
(Jointly Administered)

ANTHONY CRANE RENTAL, L.P.,

Plaintiff,

Adversary No.

Docket No.: _____

v.

PARISH OF IBERVILLE SALES TAX
DEPARTMENT,

Defendant.

COMPLAINT

Debtor, Anthony Crane Rental, L.P., by and through its undersigned counsel, files this adversary Complaint against Defendant, Parish of Iberville Sales Tax Department, stating as follows:

Parties

1. Anthony Crane Rental, L.P. (“Debtor”) is a Pennsylvania limited partnership, with its principal place of business at 1225 Washington Pike, Bridgeville, Pennsylvania.
2. The Defendant collects taxes for the Parish of Iberville, a political subdivision of the State of Louisiana, and other political subdivisions located in that Parish.

¹ The Debtors are the following entities: ACR Management, L.L.C., Anthony Crane Rental Holdings, L.P., ACR/Dunn Acquisition, Inc., Anthony Crane Capital Corporation, Anthony Crane Holdings Capital Corporation, Anthony Crane International, L.P., Anthony Crane Sales & Leasing, L.P., Anthony International Equipment Services Corporation, Anthony Sales & Leasing Corporation, Carlisle Equipment Group, L.P., Carlisle GP, L.L.C., Husky Crane, Inc., Anthony Crane Rental, L.P., d/b/a Maxim Crane Works, Maxim Crane Works, LLC, Sacramento Valley Crane Service, Inc., The Crane & Rigging Company, LLC, Thompson & Rich Crane Service, Inc.

Jurisdiction and Venue

3. Jurisdiction in this Court is proper under 28 U.S.C. § 157(a) and the Standing Order of Reference for this District entered by the District Court judges for this District.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

Statutory Predicates

5. The statutory predicates for this action are 11 U.S.C. §§ 502, 505 and 542, Rule 7001(a) Fed.R.Bankr.Proc. and Chapter 2, Subtitle II, Title 47 of the Louisiana Revised Statutes, dealing with sales and use tax (the “Sales Tax Law”), and various local ordinances enacted by the Parish of Iberville and the other political subdivisions located in that Parish, all of which are modeled on the Sales Tax Law.

Background

6. Historically, the Debtor was engaged in the state of Louisiana in the business of renting pieces of large construction equipment, most notably cranes.

7. The equipment was purchased or acquired outside of Louisiana and rented within the state.

8. By letter dated December 9, 2002 (attached hereto as Exhibit “A”), the Defendant notified the Debtor that the Defendant had assessed the Debtor use tax, interest and penalties for the period from January 1, 1998 to June 30, 2001 (the “Relevant Period”), in the total amount of \$434,890.65 (the “Tax Assessment”). The due date for the payment of the Tax Assessment was specified as January 7, 2003.

9. By letter dated January 2, 2003 (attached hereto as Exhibit “B”), counsel to the Debtor transmitted to the Defendant a check in the amount \$434,890.65 - the precise amount of the Tax Assessment - notified the Defendant that the payment was being made under protest,

directed the Defendant to place the proceeds of the payment in a segregated escrow fund and notified the Defendant of the Debtor's intention to sue for a refund.

10. By Letter dated January 8, 2003, (attached hereto as Exhibit "C"), the Defendant acknowledged that the proceeds of the Debtor's payment had been segregated.

11. Thereafter, on January 22, 2003, the Debtor filed a Petition for Refund (attached hereto as Exhibit "D") in the 18th Judicial District Court, Parish of Iberville, State of Louisiana (the "State Court") seeking the refund of the entire payment of \$434,890.65, thereby initiating a refund action.

12. While this refund action was still pending in the State Court, on June 14, 2004, the Debtor and 16 of its affiliates filed voluntary Chapter 11 bankruptcy petitions with the Clerk of this Court.

13. Thereafter, on September 10, 2004, the Debtor removed the Refund Action to the United States Bankruptcy Court for the Middle District of Louisiana and on October 19, 2004, moved that Court to transfer the Refund Action to this Court. However, pursuant to the Defendant's October 11, 2004 Motion for Remand, the Bankruptcy Court for the Middle District of Louisiana remanded the Refund Action to the State Court.

14. As of December 13, 2004, there had been no adjudication of the propriety of the Tax Assessment or of the Debtor's entitlement to a refund. Accordingly, on that date, the Debtor, pursuant to Rule 3004, Fed.R.Bankr.Proc., filed a proof of claim in the name of the Defendant (attached hereto as Exhibit "E") in the amount of \$434,890.65.

15. In this action, the Debtor's objection to the Defendant's claim seeks the return by the Defendant of the proceeds of the segregated escrow account established by the Defendant.

Count I - Objection to Claim

16. The allegations of Paragraphs 1 through 15 are incorporated herein by reference.

17. The Debtor hereby objects to the foregoing proof of claim in its entirety, for the following reasons:

- a. Certain items of rental equipment were acquired by the Debtor outside of Louisiana in an isolated or occasional sale of tangible personal property within the meaning of R.S. 47:301(10)(c)(ii)(bb). While this provision applies specifically to retail sales, both the United States and Louisiana Supreme Courts have held that in order for this exclusion to be valid under the Commerce Clause, this exclusion must be equally applicable to use taxes. See Halliburton Oil Well Construction Company v. Reily, Collector of Revenue, State of Louisiana, 373 U.S. 64 (1983); Chicago Bridge & Iron Company v. Cocreham, 317 So.2d 605 (La. 1975);
- b. Certain items of the Debtor's rental equipment constitute a "motor vehicle" as that term was used in the version of R.S. 47:301(10)(a)(ii) that was in effect during the period in question. Because that provision effected an exclusion from sales and use taxes, the Debtor's equipment is excluded from the use tax;
- c. Louisiana law provides that a person, who purchases tangible personal property in a parish which does not levy a sales tax, is entitled to a credit equal to 1.58% of the property's purchase price as an offset against any use tax levied by a parish where the property is subsequently used. In order to avoid offending the Commerce Clause of the United States Constitution, a similar credit must be offered to persons who purchase property, tax free, in another state and subsequently use the property in a Louisiana parish; and
- d. With respect to one of the units of rental equipment assessed, the Debtor has already paid use tax to another parish in the amount of \$47,493.03. Section 5.3 of the Iberville Parish Sales and Use Tax Ordinance provides for a credit in the amount of any use tax paid in respect of the same piece of tangible personal property to another parish. The portion of the Tax Assessment attributable to previously assessed equipment is entirely negated by the available credit.
- e. Finally, the Debtor has reasonable grounds for not paying the taxes and the penalties are punitive, not compensatory. Accordingly, all penalties should be disallowed.

18. For the foregoing reasons, the Debtor respectfully requests that the Defendant's proof of claim be disallowed in its entirety.

Count II - Casual Sale Exemption

19. The allegations of Paragraphs 1 through 18 are incorporated herein by reference.

20. Certain pieces of the equipment that the Debtor rented to third parties in the Parish of Iberville and which were included in the Tax Assessment had been purchased or acquired by the Debtor outside of the State of Louisiana.

21. During the Relevant Period, the Sales Tax Law contained an exclusion from sales tax for the "isolated or occasional sale of tangible personal property."

22. In order that the Sales Tax Law does not violate the Commerce Clause, the foregoing exclusion must apply equally to use tax and to sales tax. Halliburton Oil Well Construction Company v. Reily, Collector of Revenue, State of Louisiana, 373 U.S. 64 (1983); Chicago Bridge & Iron Company v. Cocreham, 317 So.2d 605 (La. 1975).

23. Because the Debtor would be entitled to this exclusion, certain transactions included in the Tax Assessment should not have been taxed.

Count III – Motor Vehicle Exemption

24. The allegations of Paragraphs 1 through 23 are incorporated herein by reference.

25. During the relevant period, the Sales Tax Law provided an exclusion for "motor vehicles."²

26. Certain pieces of the Debtor's equipment that were taxed as part of the Tax Assessment were, in fact, subject to this exclusion and should not have been taxed.

Count IV - Inter-Parish Credit

27. The allegations of Paragraphs 1 through 26 are incorporated herein by reference.

² See R.S. 47:301(10)(a)(i) (2001).

28. The Sales Tax Law provides a credit against the use tax levied by a Parish for property purchased in a Parish which does not levy a sales tax.

29. In order to avoid offending the Commerce Clause, out of state transactions must be entitled to the same credit that intrastate transactions enjoy. See Halliburton, Chicago Bridge & Iron, supra.

30. Certain pieces of the Debtor's equipment that were taxed as part of the Tax Assessment were, in fact, entitled to this credit.

Count V – Credit For Parish Taxes Actually Paid

31. The allegations of Paragraphs 1 through 30 are incorporated herein by reference.

32. Section 5.3 of the Iberville Parish Sales & Use Tax Ordinance provides for an Iberville use tax credit in the amount of any use tax paid in respect of the same piece of tangible personal property, to another parish.

33. As to a particular piece of equipment, the Debtor had already paid a use tax to another parish in the amount of \$47,493.03.

34. As the portion of the Tax Assessment attributable to that piece of equipment is only \$14,418.37, it is entirely negated by the credit set forth in the prior paragraph.

Count VI - Removal of Penalties

35. The allegations of Paragraphs 1 through 34 are incorporated herein by reference.

36. The Debtor had reasonable grounds for not paying the disputed taxes in the first instance. Accordingly, all penalties should be removed from the Tax Assessment.

37. Additionally, the penalties are punitive, not compensatory in nature, and accordingly must be stricken from the Tax Assessment.

Count VII - Turnover Under 11 U.S.C. § 542

38. The allegations of Paragraphs 1 through 37 are incorporated herein by reference.

39. The segregated escrow fund currently being held by the Defendant is property of the estate, within the meaning of 11 U.S.C. § 541

40. Pursuant to 11 U.S.C. § 542(a), the Defendant is obligated to deliver to the Debtor the proceeds of the segregated escrow account.

41. Defendant has not delivered to the Debtor the proceeds of the segregated escrow account.

Reservation

42. The Debtors hereby reserve the right to object in the future to the claim on any other grounds, and to amend, modify and/or supplement this Complaint, including without limitation, to object to an amended, surviving, transferred, reclassified and newly-filed claims of the Defendant. Separate notice will be served and a separate hearing will be scheduled for any such objection.

43. The Debtors also file this Complaint, without prejudice to filing additional objections to other proofs of claim filed in these Chapter 11 Cases.

WHEREFORE, the Debtor respectfully requests that pursuant to 11 U.S.C. §§ 502, 505 and 542, Defendant's claim in the amount of \$434,890.65 be disallowed in its entirety and judgment be entered against the Defendant and in favor of the Debtor in the amount of \$434,890.65.

Respectfully submitted,

CAMPBELL & LEVINE, LLC

Dated: March 7, 2005

By: /s/ David B. Salzman

David B. Salzman, Esquire

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