



IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAN 04 2021

David J. Bradley, Clerk of Court

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In re:	Chapter 11
HI-CRUSH, INC., et al.,	Case No. 20-33496 (DJR)
Debtors	(Jointly Administered)

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Objection to Debtors Omnibus Objection of Shareholders Claims both Specifically (Claim 428) and In Toto

Debtors seek to render void all private property held as common stock by High Crush shareholders. The superficial basis of their Objection, that such private property cannot constitute the basis of a valid "claim," is based entirely on a self serving, circular regulatory definition that would presuppose any "claim's" rejection without the due process of deeper judicial consideration.

Further, such a specious argument disguises the real violation of shareholders' fundamental constitutional rights that Debtors seek.

I allege that regardless of whatever regulatory definition, the result of the Court allowing Debtors Objection would be to seize and render void all private property in the form of common stock held by High Crush shareholders. Such action by this Court would be a taking of private property in violation of the 5th Amendment of the United States Constitution. Such action would thus be void and without legal basis.

Argument.

In allowing Debtors' Objection this Court would be wiping out all value of shareholders' common stock, effecting a taking of private property without any just compensation and further, not for the sake of a public good but for the dubious management of High Crush alone.

The "Takings" clause of the 5th Amendment forbids governmental seizure of private property for a public good without just compensation

Is common stock private property protected by the Takings Clause. Indeed it is. The original limitation to real property has long since been widened.

Is this Court proposing compensation of any kind, much less just. No it is not.

Is there any public good involved. Quite the opposite.



This Court's proposed taking of private property in this instance would be a violation of the Constitution.

Debtors' entire argument is based upon a circular regulatory definition that they presume takes precedence over and cancels the rights granted by the United States Constitution.

This definition states in effect: A shareholder's legal and valid property right in a firm is void if they seek to claim that fully legal property right. An assertion of such property rights, a "claim," is void not in reality but by definition because it is a property right.

Further, any statute or case which is relied on to justify the governmental taking of such private property for the benefit of a private party violates the Constitution and is therefore void.

But at the time of filing for bankruptcy were not the common shares already without value?

Nonsense. Prior to any rumors of bankruptcy common shares of High Crush were positive. I allege that such rumors artificially drove the share price down, further exacerbated by the announcement of the bankruptcy itself. Even at such time, the share price was positive.

Further, even if the price were to be considered to be near zero such shares continue to have great inherent value. Post virus oil drilling will increase, sand sales will increase, profits will increase. This company is before the Court not to alleviate any failure of production and delivery but for the questionable purpose of relieving High Crush management of any responsibility for incompetent decisions in assuming excessive debt.

To further allege that they have zero value is the height of hypocrisy given that this firm's creditors are being bought off with so called "rights" that, semantic juggling aside, are nothing other in reality than "shares," with their investment in the proposed future improvement of this company's fortunes.

I allege that this Court has no legal power to negate my specific claim, the fact of ownership and attendant rights, nor any claim on the part of other High Crush shareholders to their private property in the form of common shares, to then seize and destroy such private property of High Crush common stock shareholders without just compensation, much less for a private good.

Legal Remedies and Justice

1. I would propose that each shareholder have the option of selling their shares at a fair price under the circumstances and recent historical context. Say \$1.00 per share. Funds to be provided by High Crush.
2. If this is not practical under the otherwise legal provisions of the reorganisation, that shareholders be allowed the option of acquiring the same "rights" as the creditors, on a pro rata basis.
3. The public and this Court should certainly be aware of the entirely self serving and, in my view, thoroughly bad faith actions of the High Crush Board. Immediately prior to declaring bankruptcy, the Board gave nearly \$3,000,000 in "bonuses" to four High Crush executives with \$1,350,000 going to CEO Robert Rasmus. Apart from being rewarded for driving the firm into bankruptcy, this action was taken knowing full well management, in full violation of its fundamental fiduciary duty, would seek to destroy all shareholder value.

I would propose, therefore, a remedy in this context that the reorganisation include a provision that an equivalent amount be withdrawn from High Crush assets and divided among shareholders on an equal basis.

Conclusion.

That this Court would seize the private property of individuals without just compensation to benefit not a public good but the management of a corporation alone, based upon an inane definition that cannot stand before the rights granted by the 5th Amendment of the United States Constitution, would be pure error.

Filing Party:

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December 28, 2020.

David,

Happy Holidays to you and yours.

Please find enclosed my Objection to this firm's attempt to violate the Takings Clause of the Constitution. As a former Alaskan Magistrate, advisor in judicial education in Morocco and Kosovo, a law clerk in Vermont for two years I have nothing but respect for your efforts and those of Judge Jones. I fear, however, that the Court if it continues to acquiesce to all requests of the Debtors would be falling into serious error. A fundamental issue of basic property rights is at stake and deserves a wider audience.

I live on a farm in a very rural valley in Oregon where internet can be spotty and my phone is ancient. I would not therefore be able to appear aurally. My argument, however, is I believe strait forward, based upon well established principles. If there are any questions my email is provided. I would hope the Judge would take my circumstances into consideration and allow my "appearance" through my document alone.

As requested a copy of my Objection has been sent to Debtors' attorneys. Further, a copy is being sent to a law firm that has successfully sued High Crush management for fraud in the past who may become involved further down the line.

Thank you.

Sincerely,



John F. Epling

PhD, JD, MALD

Holder of the Secretary of Defence Medal, the Achievement Medal for Civilian Service from the Department of the Army, and the Non Article Five NATO Medal, for distinguished service in Afghanistan.