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IN THE SUPREME COURT
STATE OF FLORIDA

W. W. GAY MECHANICAL CONTRACTOR,
INC.,

Plaintiff/Petitioner,

vs.

CASE NO.: 72,357

WHARFSIDE TWO, LTD., and CHANEN
CONSTRUCTION COMPANY, INC.,

Defendants/Respondents.

FILED
SID J. WHITE

JAN 8 1988

CLERK, SUPREME COURT

By _____
Deputy Clerk

BRIEF OF RESPONDENT, CHANEN CONSTRUCTION COMPANY, INC. ON
THE SUBJECT OF WHARFSIDE TWO, LTD.'S BANKRUPTCY PETITION
AND THE AUTOMATIC STAY PROVISIONS OF THE BANKRUPTCY ACT

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STATEMENT OF THE CASE AND FACTS

For the purpose of this Brief, on the effect of WHARFSIDE TWO, LTD.'S filing for bankruptcy, CHANEN CONSTRUCTION COMPANY, INC. (hereinafter referred to as "CHANEN") will accept the Statement of the Case and Facts contained in the Brief of the Petitioner, W. W. GAY MECHANICAL CONTRACTOR, INC. (hereinafter referred to as "GAY").

SUMMARY OF ARGUMENT

Under normal circumstances, the automatic stay provisions of the present Bankruptcy Act, which govern this matter, does not apply to a co-defendant. However, in this case, there is a "special circumstance" in that the interests of WHARFSIDE TWO, LTD. (hereinafter referred to as "WHARFSIDE") and CHANEN are so intertwined on the issue of the fundamental inconsistency of the verdict that this Court's ruling cannot be made against CHANEN without effecting, one way or the other, WHARFSIDE, the debtor in bankruptcy and a co-defendant in this case. In this special situation, the automatic stay provisions of the Bankruptcy Act should apply to CHANEN as well as WHARFSIDE until the automatic stay is modified, vacated or lifted by the appropriate Court having jurisdiction to do so.

ARGUMENT

POINT ONE

WHERE A FINAL JUDGMENT HAS BEEN RENDERED BY THE TRIAL COURT AGAINST JOINT DEFENDANTS AND DEFENDANTS TOOK AN APPEAL AND POSTED A SUPERSEDEAS BOND WITH THE TRIAL COURT; AND THEREAFTER ONE OF THE JOINT DEFENDANTS PETITIONED FOR A CHAPTER XI BANKRUPTCY RESULTING IN AN "AUTOMATIC STAY" UNDER THE BANKRUPTCY LAW, WILL THE "AUTOMATIC STAY" PREVENT THE APPEAL FROM FURTHER PROSECUTION AND DECISION BY THE APPELLATE COURT?

CHANEN adopts by reference, as if set forth herein, the Argument contained in WHARFSIDE'S Brief on the effect of the automatic stay provisions provided for in the Bankruptcy Act.

CONCLUSION

The automatic stay provisions of the Bankruptcy Act should be recognized by this Court and the appellate proceedings against WHARFSIDE should be stayed until such time as the appropriate Court having jurisdiction either modifies, vacates or lifts the stay so that this appellate proceeding may continue.

The issue of whether the jury's verdict is fatally inconsistent effects both WHARFSIDE and CHANEN; a ruling on this issue cannot be made as to CHANEN without effecting WHARFSIDE. This is a "special circumstance". Therefore, this Court should defer ruling on this issue as to CHANEN until such time as a ruling can be made as to WHARFSIDE.

GAY'S remedy is to apply to the Bankruptcy Court for relief from the automatic stay.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing instrument has been furnished to S. Gordon Blalock, Esquire, 2301 Independent Square, Jacksonville, FL 32202, and J. Richard Moore, P.A., 500 North Ocean Street, Jacksonville, FL 32202, by U. S. Mail, this 30th day of December, 1988.



Attorney