

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SYLVAN SCHACHTER, ind. & : CIVIL ACTION
t/a GENERAL SERVICES GROUP :
 :
v. :
 :
LINI, INC. : NO. 96-892

MEMORANDUM ORDER

Plaintiff has asserted a claim in this action for breach of contract. Defendant filed a counterclaim for breach of contract.

Plaintiff's counsel advised the court by letter of April 18, 1997 that plaintiff had filed a bankruptcy petition and asked that "under the circumstances" this case be placed on the suspense docket. Counsel did not more precisely define the "circumstances" or explain why proceedings on plaintiff's claim, which was about to be called for trial, should be stayed. The court assumed that counsel might need time to consult with the trustee or trustee's counsel, or perhaps there was some prospect of comprehensively resolving the parties' disputes under the auspices of the bankruptcy court. The court was willing to delay proceedings for a reasonable time.

The court has now received a Stipulation by counsel for both parties that all proceedings in this action be stayed until the resolution of plaintiff's bankruptcy case. It now appears from the Stipulation that the reason for the request is plaintiff's counsel's assessment that "if this matter were to

proceed to trial, defendant is more likely to prevail in its counterclaim against GSG than is GSG likely to prevail against defendant Lini." The Stipulation then incorrectly recites that "the bankruptcy petition affecting this matter requires that all judicial proceedings be stayed under Section 362." The automatic stay, of course, applies only to claims against a bankruptcy petitioner and not claims by the debtor which could inure to the benefit of the bankruptcy estate. Maritime Electric Co., Inc. v. United Jersey Bank, 959 F.2d 1194, 1204 (3d Cir. 1991).

Thus, absent a grant by the bankruptcy court of relief from the automatic stay, proceedings on defendant Lini's counterclaim are stayed. Id. at 1205; Action Drug Co., Inc. v. Overnite Transportation Co., 724, F. Supp. 269, 278 (D. Del. 1989). Therefore, the cause for plaintiff's counsel's concern about the likely result of a trial of the counterclaim is not readily discernable. There is, however, no basis for staying proceedings in this case on plaintiff's breach of contract claim. Indeed, to stay such proceedings until the bankruptcy case has concluded could deprive the estate and the creditors of funds to which they may be entitled.

If the parties and the trustee have entered into some agreement with the approval of the bankruptcy court to dismiss plaintiff's claim in this case or which would otherwise obviate the need for a trial, now is the time to make this clear. Otherwise, the court will proceed to try plaintiff's claim next week.

ACCORDINGLY, this day of July, 1997, **IT IS**
HEREBY ORDERED that the Stipulation of the parties to stay all
proceedings in this case is **DISAPPROVED**, proceedings on
defendant's counterclaim are stayed pending the conclusion of
plaintiff's pending bankruptcy case or further order of court and
trial in the above action will commence at 10:00 a.m. on
Wednesday, July 16, 1997 in Courtroom 9-B, Ninth Floor, U.S.
Courthouse, 601 Market Street, Philadelphia.

BY THE COURT:

JAY C. WALDMAN, J.