

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NEW YORK

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In re

GROSS PLUMBING & HEATING  
COMPANY, INC.

BK 91-12445 K

Debtor  
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DECISION AND ORDER

Van Hook Service Company, Inc. has sought relief from the automatic stay [11 U.S.C. § 362(d)] to permit it to continue a certain action pending in Supreme Court, Monroe County, against Debbie-Dan Properties, an entity which is not a debtor in this Court. The automatic stay of 11 U.S.C. § 362 is implicated by virtue of the fact that Debbie-Dan Properties has counterclaimed against Gross Plumbing and Heating Company, Inc. (Gross) under N.Y. Civ. Prac. L. & R. § 3019 and Gross is a debtor in a case before this Court.

Counsel for Van Hook and for Debbie-Dan appeared before me on October 30, 1991, as did counsel for the debtor. Counsel for Debbie-Dan explained that if Van Hook is permitted to continue its action against Debbie-Dan without Debbie-Dan being permitted to pursue its counterclaim against Gross, Debbie-Dan is at risk of having to litigate the issues twice and at risk of inconsistent results. Counsel for Van Hook appears satisfied that the posture of the State Court action is such that it is in fact currently stayed from proceeding even against Debbie-Dan alone.

Having examined N.Y. Civ. Prac. L. & R. § 3019(d), I am convinced that the stay must be lifted in favor of Van Hook to a

very limited extent -- the stay shall be and hereby is lifted only to the extent necessary for Van Hook (if it so chooses) to seek from the Supreme Court an order permitting it to have "separate process, trial or judgment" as to Debbie-Dan alone. The stay is not lifted to permit any further acts against the debtor or its property.

If Supreme Court does grant an order permitting Van Hook to proceed against Debbie-Dan alone, then Debbie-Dan may move here under 11 U.S.C. § 362(d) and I will consider at that time whether "cause" exists to require the debtor to defend itself in Supreme Court or whether the best interests of Gross' creditors requires Debbie-Dan to pursue the debtor exclusively in this Court by litigating a Proof of Claim.

If Supreme Court does not grant an order permitting separate action against Debbie-Dan, then Van Hook is free to seek further relief from this Court.

SO ORDERED.

Dated: Buffalo, New York  
November 4, 1991

/S/ MICHAEL J. KAPLAN  

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U.S.B.J.