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UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re

L.L. BERGER, INC.

Case No. 91-10102 K

Debtor

WEXNER & JACOBSON, INC.

Plaintiff

-vs-

AP 92-1207 K

L.L. BERGER, INC.
d/b/a BERGER'S
d/b/a BERGER'S BACKDOOR and
MARINE MIDLAND BANK, N.A.

Defendants

ORDER AND MEMORANDUM

It having been reported to the Court that the Plaintiff Wexner and Jacobson, Inc. ("Wexner") is a Chapter 11 Debtor-in-Possession in Tennessee and that the automatic stay of 11 U.S.C. § 362 has not been lifted there in order to permit the counter-claims here to be adjudicated together with the Complaint proper, and

It appearing to the Court that even if Plaintiff Wexner were to be found to be entitled to judgment on its Complaint, the Defendant/Debtor-in-Possession L.L. Berger, Inc. ("Berger") might be entitled to setoffs upon its counterclaims, and

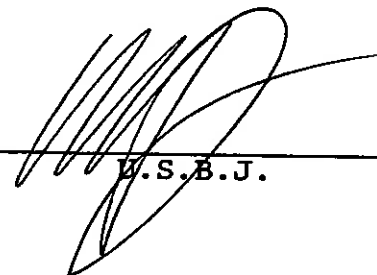
Wexner having opposed the Motions of Defendant Marine Midland Bank and of Berger for Summary Judgment, Wexner insisting upon a trial on the merits of its Complaint, and

It appearing to the Court that complete relief cannot be accorded to the parties unless the Court is free to adjudicate all claims among them as raised in the pleadings, it is now

ORDERED, that unless within 60 days Wexner obtains relief from the 11 U.S.C. § 362 stay in its case under the Bankruptcy Code to permit complete adjudication of the Adversary Proceeding it has commenced here, the Complaint shall be dismissed with prejudice for failure to prosecute, but such dismissal will be without prejudice to the filing of a Proof of Claim against Berger's estate.

Proceedings upon the Motions for Summary Judgment are suspended accordingly.

Dated: Buffalo, New York
July 6, 1993



U.S.B.J.