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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF	**CASE NUMBERS**
DANIEL ROCHE and JULIANA ROCHE, Debtors.	BANKRUPTCY CASE NO. 05-63544-MGD
JULIANA ROCHE, Plaintiff, v. PEP BOYS, INC. f/k/a PEP AUTO SUPPLY COMPANY, a/d/b/a THE PEP BOYS-MANNY, MOE, & JACK, INC., and SIMPSON LAW OFFICES, LLP, Defendants.	ADVERSARY CASE NO. 05-09040 IN PROCEEDINGS UNDER CHAPTER 13 OF THE BANKRUPTCY CODE

ORDER DENYING DEFENDANTS' MOTION FOR STAY PENDING APPEAL

This above-referenced adversary proceeding is before the Court on a Motion for Stay Pending Appeal ("Motion") (Adversary Proceeding Docket No. 27) filed by Pep Boys, Inc., f/k/a Pep Auto Supply Company, a/d/b/a The Pep Boys - Manny, Moe & Jack, Inc. ("Pep Boys") and Simpson Law Offices, L.L.P. (collectively referred to as "Defendants"). Juliana Roche ("Plaintiff") filed a response notifying the Court that she does not oppose Defendants' Motion. The Court has reviewed Defendants' Motion and the entire record in the case and has determined that a hearing is not necessary to dispose of the matter.

On December 30, 2005, the Court entered an order which denied Defendants' motion for summary judgment and granted Plaintiff's cross motion for summary judgment. The Court

scheduled an evidentiary hearing for the purpose of establishing damages, to be held before the undersigned on February 3, 2006. Defendants, who have filed an appeal of the December 30 order contend that it would conserve the resources of all parties involved if the evidentiary hearing is continued until after the appellate process has been completed. The Court, while considering Defendants' request to be well intentioned, concludes that its December 30, 2005 order is not a final order within the meaning of 28 U.S.C. § 158(a) and therefore, since the District Court will likely dismiss the appeal for lack of jurisdiction, no purpose would be served by continuing the evidentiary hearing on damages until after the resolution of the appeal.

In *In re Atlas*, 210 F.3d 1305 (11th Cir. 2000), the Eleventh Circuit Court of Appeals held that a bankruptcy court order imposing sanctions is not final and appealable where the determination of damages remains outstanding. In that case the bankruptcy court determined that there was a willful violation of the automatic stay, but left for assessment punitive and actual damages. As such, the Court of Appeals held that the order did not fully dispose of the plaintiff's prayer for relief. "In sum, for a bankruptcy court order to be final within the meaning of 28 U.S.C. § 158(a), the order ... must completely resolve all of the issues pertaining to a discrete claim, including issues as to the proper relief." *Id.* at 1308 *citing In re Fugazy Express, Inc.*, 982 F,2d 769, 776 (2nd Cir. 1992). The Eleventh Circuit dismissed the appeal for lack of jurisdiction where the bankruptcy court found liability for a violation of the automatic stay, but deferred assessment of damages.

The Court concludes that its December 30, 2005 order, which also determined that there was a willful violation of the automatic stay but deferred the assessment of damages, is similarly not a final order as defined by 28 U.S.C. § 158(a). Therefore the Court finds that no purpose would be served by staying the evidentiary hearing on damages until after the completion of the pending appeal. However, the Court is mindful that it is likely that the parties anticipated that Defendants' unopposed Motion would be granted, and will reschedule the evidentiary hearing to give the parties more time to prepare for the trial. Accordingly, it

is

ORDERED that Defendants' Motion for Stay Pending Appeal is **DENIED**.

IT IS FURTHER ORDERED and NOTICE IS HEREBY GIVEN that the evidentiary hearing on the amount actual damages suffered by Plaintiff is rescheduled and will be held before the undersigned on **March 6, 2006 at 10:00 a.m.** in Courtroom 1201, United States Bankruptcy Court, 75 Spring Street SW., Atlanta, Georgia 30303. The parties are directed to submit two copies of any exhibits to be used at the hearing to the Courtroom Deputy no later than 4:00 p.m. on March 1, 2006.

The Clerk is directed to mail a copy of the Order to the parties listed on the attached distribution list.

IT IS SO ORDERED.

At Atlanta, Georgia, this the 27th day of January, 2006.

Mary Grace Diehl

MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE

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