

JUL 11 2006

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re)	Chapter 13
)	
DANIEL ROCHE and)	Case No. 05-63544-MGD
JULIANNA ROCHE,)	
)	
Debtors.)	Judge Diehl
)	
JULIANA ROCHE,)	Adversary Proceeding
)	
Plaintiff,)	No. 05-09040-MGD
)	
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.)	
)	

ORDER DENYING DEFENDANTS' MOTION
FOR APPROVAL OF SIGNATURE BOND AND
GRANTING MOTION FOR STAY CONTINGENT UPON
POSTING APPROPRIATE SUPERSEDEAS BOND

On May 17, 2006, this Court entered a Final Judgment in the above Adversary Proceeding awarding Plaintiff monetary damages in the amount of \$16, 063.36. Defendants filed a Notice of Appeal on May 27, 2006 and filed a Motion for Stay Pending Appeal and For Approval of Signature Bond on June 1, 2006. Plaintiff filed a Response to the Motion on that same date.

Entitlement to a stay of a judgment pending appeal is governed by Fed. Civ. P. R. 62(d), made applicable by Fed. R. Bankr. P. 7062 which provides:

Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Since the exceptions of Fed. R. Bankr. P. 7062(a) are not applicable here, Defendants have a right to a stay if a bond is posted and the role of the Court limited to approving or not approving the bond. *In re Swift Airlines, Inc.*, 21 B.R. 12 (9th Cir. B.A.P. 1982); *Matter of Ridgmont Apartment Assoc.*, 93 B.R. 788 (Bankr. N.D. Ga. 1988). The “signature bond” proposed by Defendants will not be approved. First, as noted by Plaintiff in her response, the bond does not comply with LR 65.1 which does not permit attorneys or officers of the court to act as sureties. Second, a bond given by a party who is not an approved surety must be supported by sufficient financial information or assets to provide the certainty which a supersedeas bond is designed to assure. Here, the signature bond is merely an agreement to pay what the Court has already ordered be paid and does not provide any security to the Plaintiff to back up that payment. The purpose of a supersedeas bond is to maintain the status quo during the pendency of an appeal and while any levy plaintiff chooses to undertake is at its peril, a plaintiff is at risk that assets which the defendants have at this point in time will not be available if the judgment is affirmed on appeal. Thus, the Court will not approve the signature bond.


However, the Court will approve a bond which is in the amount of the judgment (\$16,063.36) plus estimated accruing interest, costs and expenses on appeal for a total of \$20,000

and provided that both Defendants are principals on the bond and the surety company is authorized to do business in the State of Georgia and is on the list of approved sureties maintained by the Clerk's Office of the United States District Court for the Northern District of Georgia. The condition of the bond shall be to pay in full the Judgment, including costs and interest, if the appeal is dismissed or the judgment is affirmed. The bond shall also provide that the surety submits to the jurisdiction of the Court, after motion and notice, without the necessity of an independent action. Since the Plaintiff is only entitled to one satisfaction of any judgment, only one bond need be posted by Defendants.

F. Rule Bank. Pro. 8005 alternatively provides for a stay pending appeal even in the absence of a supersedeas bond. Defendants have not made a motion under Rule 8005 and it does not appear from the record that Defendants have satisfied the requirements for such a stay. See *In re Arnal* 2003 WL 22709326, 1 (Bankr. S.D. Ga. 2003); *Garcia-Mir*, 781 F. 2d 1450, 1453 (11th Cir. 1986). This Order is without prejudice, however, to any motion under Rule 8005 which may be filed by Defendants.

It is hereby ORDERED that Defendant's Motion for Approval of Signature Bond is **DENIED**. Defendants may obtain a stay by the posting of a bond in accordance with the terms of this Order.

This 7th day of July, 2006.



Mary Grace Diehl
United States Bankruptcy Judge

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Kaiden & Kaiden, LLC
Robert A. Kaiden
Cristina I. Kaiden
1850 Lake Park Dr.
Suite 204
Smyrna, GA 30080

Juliana Roche
3134 Ramblewood Ct.
Powder Springs, GA 30127

Pep Boys Inc.
40 Technology Pkwy South #300
Norcross, GA 30092

James W. Martin
J. Christopher Simpson
Simpson Law Offices, LLP
One Securities Centre - Suite 300
3490 Piedmont Road
Atlanta, GA 30305

Mary Ida Townson, Chapter 13 Trustee
Suite 300 The Equitable Building
100 Peachtree Street
Atlanta, GA 30303