

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

No. 3:07-CV-00049

THE LIQUIDATING COMMITTEE,)
)
Plaintiff,)
)
v.)
)
BINSKY & SNYDER, INC. et. al.)
)
Defendants.)
_____)

**CONSENT ORDER
FINDING THAT APPEAL IS
INTERLOCUTORY AND
DISMISSING APPEAL**

This matter came before the Court on a notice of appeal filed by the Liquidating Committee from the United States Bankruptcy Court for the Western District of North Carolina (the "Bankruptcy Court") January 16, 2007 Order Partially Granting and Partially Denying Defendants' Motion for Summary Judgment (the "Order") which was filed in various adversary proceedings pending before the Bankruptcy Court. The Order granted partial summary judgment in favor of the Defendants on the legal issue of whether subcontractors who had released statutory lien rights could assert a new value defense pursuant to 11 U.S.C. § 547(c)(1) if the Defendants were to make certain requisite showings of fact. The Order was entered upon stipulated facts from the parties in an attempt to reduce unnecessary discovery, and the parties specifically reserved their rights to contest the facts and conduct discovery in each adversary proceeding.

The Liquidating Committee appealed the Order in an abundance of caution in order to ensure that its rights to appeal were preserved. The parties have subsequently agreed that the Order is interlocutory and have jointly requested that the Court enter an order dismissing the appeal and finding that the Order is interlocutory.

Upon review of the Order, the Court agrees with the parties and finds that the Order is

interlocutory and not final.

Accordingly, the appeal is hereby DISMISSED as interlocutory without prejudice to the rights of the parties to appeal from any final order of the Bankruptcy Court in the underlying adversary proceedings.

CONSENTED TO this 8th day of February 2007.

/s/ David A. Matthews

David H. Conaway (N.C. Bar no. 10648)
David M. Grogan (N.C. Bar no. 19570)
David A. Matthews (N.C. Bar No. 28306)
Shumaker, Loop & Kendrick, LLP
128 South Tryon Street, Suite 1800
Charlotte, North Carolina 28202

Counsel for the Liquidation Committee

/s/ William L. Esser IV

J. William Porter (N.C. #7975)
William L. Esser IV (N.C. #29201)
PARKER, POE, ADAMS & BERNSTEIN, L.L.P.
401 South Tryon Street
Suite 3000
Charlotte, North Carolina 28202
phone: (704) 372-9000
fax: (704) 334-4706

Systems, Inc.,
Counsel for Binsky & Snyder, Inc., Electro Chemical
Engineering & Mfg., Inc., Specialty Flooring
Fine Painting and Decorating Co., Inc.

/s/ Christopher J. Fernandez, Esq.

Christopher J. Fernandez, Esq.
ALSTON & BIRD, LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280
Telephone: (704) 444-1132

Counsel for S.M. Electric Company, Inc., Schoonover
Electric Company, Inc., and EII, Inc.

/s/ Daniel P. Mazo

Daniel P. Mazo
CURTIN & HEEFNER, LLP

250 N. Pennsylvania Avenue
Morrisville, PA 19067
Telephone: (215) 736-2521

Counsel for Spacesaver Systems of New Jersey, Inc.

/s/ Zakarij O. Thomas
Zakarij O. Thomas
BUCHANAN INGERSOLL & ROONEY PC
One Oxford Centre, 40th Floor
Pittsburgh, PA 15219-6498
Telephone: (412) 392-2130

Counsel for Clemens Construction Company, Inc.

/s/ Michael B. Stein
Michael B. Stein
Matthew T. McKee
Kellam & Pettit, P.A.
2701 Coltsgate Rd., Suite 300
Charlotte, NC 28211
Telephone: (704) 442-9500

Counsel for Workspace Solutions, Inc.

SO ORDERED.

Signed: February 8, 2007



Graham C. Mullen
United States District Judge

