

## **EXHIBIT B**

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

ILEASE BARTLETTE,	)	
	)	
Plaintiff,	)	
	)	Civil No. 2002-100
v.	)	
	)	
KMART CORPORATION,	)	
	)	
Defendant.	)	
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Ilease Bartlette, pro se  
St. Thomas, U.S.V.I.

Bennett Chan, Esq.  
St. Thomas, U.S.V.I.  
For defendant, Kmart Corporation

JUDGMENT

Before the Court is the motion of defendant Kmart Corporation ("Kmart") to dismiss the above-captioned case.

BACKGROUND

Plaintiff, Ilease Bartlette ("Bartlette") was employed in varying capacities by Kmart until May 14, 2001, when K-mart terminated her employment.

On January 22, 2002, K-mart filed a voluntary petition for relief under Title 11 of the United States Bankruptcy Code in the Northern District of Illinois (the "Bankruptcy Court"). On May 28, 2002, Bartlette filed this action, which seeks monetary damages for employment discrimination, violations of the Americans

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with Disabilities Act, breach of contract, wrongful discharge and intentional infliction of emotional distress. On June 7, 2002, Kmart filed a Notice of Bankruptcy Filing and Automatic Stay in this action.

Pursuant to Bankruptcy Rule 3003(c)(3), the Bankruptcy Court entered an order on January 16, 2004, requiring potential claimants to complete and execute a proof of claim, and send it with attached documentation, "so that the Proof of Claim is actually received on or before 4:00 p.m., Eastern Standard Time, on February 23, 2004...." See Supplemental Bar Date Order, Jan. 16, 2004, at ¶ A(1) (N.D. Ill, Case No. 02-B02474)<sup>1</sup>. Despite this order, there is no evidence that Bartlette submitted a proof of claim with the Bankruptcy Court at any time.

On April 23, 2004, the Bankruptcy Court confirmed Kmart's Plan of Reorganization. Thereafter, Kmart filed its motion to dismiss.

#### ANALYSIS

Under the Bankruptcy Code, any judicial action against the debtor "that was or could have been commenced" before the filing of a bankruptcy petition is automatically stayed. See 11 U.S.C. § 362 (a)(1); see also *Maritime Elec. Co. Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991) (observing that "the

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<sup>1</sup> For the purposes of this action, the Court takes judicial notice of all orders issued by the Bankruptcy Court in Civil No. 02-B02474.

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automatic stay gives the bankrupt a breathing spell from creditors.... [and] permits a bankrupt to attempt a repayment or reorganization plan..."). Once an automatic stay takes effect, any action from this Court against the debtor would be void *ab initio*. See *In re Siciliano*, 13 F.3d 748, 750 (3d Cir. 1994).

To determine which actions could commence prior to the bankruptcy petition, the Court considers when the alleged cause of action accrued. See *Matter of M. Frenville Co. Inc.*, 744 F.2d 332, 335 (3d Cir. 1984) (holding that the cause of action arises at the time of the harm); *Jones v. Chemetron Corp.*, 212 F.3d 199, 206 (3d Cir. 2000) ("[I]n most circumstances a 'claim' arises for bankruptcy purposes at the same time... [that] the underlying... cause of action accrues."). If the plaintiff's cause of action accrued prior to the filing of a bankruptcy claim, then the claim is considered pre-petition. See *Frenville*, 744 F.2d at 335; see also *In re Chateaugay Corp.*, 53 F.3d 478, 497 (2d Cir. 1995) ("A claim will be deemed pre-petition when... the relationship between the debtor and the creditor contained all the elements necessary to give rise to a legal obligation-'a right to payment'-under the relevant non-bankruptcy law.")

On May 14, 2001, Bartlette allegedly suffered the harm underlying her complaint, specifically, the termination of her employment. By that date, Bartlette's cause of action accrued,

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and she could have commenced an action against Kmart on each of the several counts in her complaint. Five months later Kmart's bankruptcy petition triggered an automatic stay pursuant to 11 U.S.C. § 362 (a) (1).<sup>2</sup> Because Bartlette's cause of action accrued five months before Kmart filed for bankruptcy, her claims are pre-petition.

"Consolidating all pre-petition claims against the debtor in one collective proceeding before a bankruptcy court is the essence bankruptcy." *Maritime Elec. Co.*, 959 F.2d at 1207.<sup>3</sup> Accordingly, bankruptcy claimants must participate in reorganization by filing proofs of claim with the bankruptcy court. See *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995); Bankruptcy Rule 3003 (c). These proofs of claim shall be filed prior to the bar date, established by the bankruptcy court. See *Chemetron Corp.*, 72 F.3d at 346; Bankruptcy Rule 3003 (c). If the bar date passes before the bankruptcy claimant files a proof of claim, the claimant cannot participate in the reorganization without establishing

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<sup>2</sup> There is no indication on the record that Bartlette ever received relief from the automatic stay. Cf. *Maritime Elec. Co.*, 959 F.2d at 1207 (noting that only the bankruptcy court has the jurisdiction to grant such relief).

<sup>3</sup> Notably, under the Bankruptcy Code, a "claim" includes any right to payment "whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured..." 11 U.S.C. § 101(5); see also *Fa. Dep't of Public Welfare v. Davenport*, 495 U.S. 552, 558 (1990) (observing that Congress intended to use the broadest possible definition of a claim, so that the Code "contemplates that all legal obligations of the debtor. . . will be able to be dealt with in the bankruptcy case.") (quoting U.S. Code Cong. & Admin. News 1978, p. 5266).

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sufficient grounds for failure to file a timely proof of claim. See *Chemetron Corp.*, 72 F.3d at 346. Here, the Bankruptcy Court set a bar date of February 23, 2004. Bartlette never filed a proof of claim.<sup>4</sup>

Once a bankruptcy court confirms a reorganization plan, all prior claims against the debtor are discharged. See *Jones*, 212 F.3d at 209; see also *In re Benjamin Coal Co.*, 978 F.2d 823, 827 (3d Cir. 1992) ("[T]he discharge of all existing claims... upon confirmation of a Chapter 11 [reorganization] plan is unambiguous...."); 11 U.S.C. § 1141(d).<sup>5</sup> The Bankruptcy Court approved Kmart's reorganization plan on April 23, 2004. Accordingly, Bartlette's claims were discharged.

The effect of discharge is that the claimant is precluded from pursuing her claims against the debtor at any time in the future. See, e.g., *In re Friedberg*, 192 B.R. 338, 341 (S.D.N.Y. 1996) ("Upon confirmation... all prior obligations and rights of the parties were extinguished...."); see also 11 U.S.C. § 1141 (c)

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<sup>4</sup> The Court is unaware of any effort by Bartlette to get relief from the Bankruptcy Court for her failure to file a timely claim.

<sup>5</sup> The statute outlines limited exceptions to this general rule. See 11 U.S.C. § 1141(d) (outlining discrete categories of non-dischargeable debt); see also *Chemetron Corp.*, 72 F.3d at 346 (recognizing "narrow statutory exceptions" to the general rule that confirmation discharges all prior claims against the debtor). There are also exceptional cases in which due process concerns prevent the discharge of a debt. See, e.g., *Jones* 212 F.3d at 209 (noting that "if a potential claimant lacks sufficient notice of a bankruptcy proceeding, due process considerations dictate that his or her claim cannot be discharged by a confirmation order"). However, none of these exceptions are relevant to Bartlette's claims.

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(stating that after confirmation "the [debtor's] property is free and clear of all claims and interests..."). Accordingly, Bartlette cannot now pursue her claims in this Court.

**CONCLUSION**

The premises considered,

It is hereby **ORDERED** that Kmart's motion to dismiss is **GRANTED**; and

It is further **ORDERED** that all of Bartlette's claims against Kmart are **DISMISSED**; and

It is further **ORDERED** that the Clerk of the Court shall close the file of the above-captioned case.

**August 17, 2007**

**/s/ Curtis V. Gómez**  
**Chief Judge**