No. 18-938

IN THE

Supreme Court of the United States

RITZEN GROUP, INC.,

Petitioner,

v.

JACKSON MASONRY, LLC,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF

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CORPORATE DISCLOSURE STATEMENT

Petitioner Ritzen Group, Inc., has no parent corporation, and no publicly held company owns 10% or more interest in the company.

Upon information and belief, Jackson Masonry, LLC, is a limited liability company, has no parent corporation, and no publicly held company owns 10% or more interest in the company.

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REPLY IN SUPPORT OF PETITION

In *Fusari v. Steinberg*, Chief Justice Burger recognized that this Court "must rely on counsel to present issues fully and fairly." 419 U.S. 379, 391 (1975) (Burger, J. concurring). Respondent Jackson Masonry, LLC ("Respondent") failed to live up to this mandate in its Brief in Opposition (the "Response"). It could not definitively challenge the existence of a circuit split on this issue—which Respondent concedes exists and ineffectively tries to distinguish. Rather, Respondent attempts to thwart *certiorari* in this matter by promoting a falsehood about the appellate record. Petitioner Ritzen Group, Inc. ("Petitioner") files this reply to the Response for the limited purpose of correcting the misrepresentation of the record to this honorable Court.

Specifically, Respondent mischaracterized the appellate record by arguing in Section VII of the Response that Petitioner waived one of its arguments by failing to raise it at the Sixth Circuit. Respondent incorrectly states that "Petitioner never argued that its requested stay relief (based in part on bad faith grounds) was also a basis for asserting that the order was not final." *See* Response, at p. 12. Based on this statement, Respondent asserts that "Petitioner argues for the first time that its allegation of bad faith is relevant to the issue of finality" and argues that "Petitioner has waived this position" and should thus be barred from making such argument by Supreme Court Rule 15. *Id.*

This is simply not true.[1]

1. This reply is limited to solely to this issue, as Petitioner

In both its principal brief and in its reply brief before the Sixth Circuit, Petitioner argued that the "bad faith" nature of Respondent's bankruptcy case was relevant to the finality of the order denying stay relief.

In its principal brief to the Sixth Circuit, Petitioner argued the following: "Where[as] a grant of stay relief immediately adjudicates that discrete issue, denial thereof, especially in a case involving a bad faith bankruptcy filing, does not." *See* Brief of Appellant to Sixth Circuit, *Ritzen Group, Inc. v. Jackson Masonry*, Case No. 18-5157, Docket No. 16. This statement directly addresses the issue that "bad faith" implicates the finality of a denial of stay relief. It further directly contradicts Respondent's argument that Petitioner waived this issue.

While Petitioner could understand if Respondent had simply overlooked this sentence in its review of the record in preparation for drafting the Response, such benefit of the doubt cannot be given here. Petitioner devoted more than a page of its reply brief in the Sixth Circuit—indeed an entire subsection—to this argument. Subsection II of the reply brief was entitled "The Denial Order was Interlocutory Because it Did Not Adjudicate All of the Underlying Issues Between the Parties." *See* Reply Brief of Appellant to Sixth Circuit, *Ritzen Group, Inc. v. Jackson Masonry*, Case No. 18-5157, Docket No. 18. This section explicitly argues that "bad faith" is relevant to the issue of finality in this case:

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is otherwise confident that its Petition for a Writ Certiorari sufficiently sets forth the appropriate reasons for why *certiorari* should be granted in this case—particularly the existence of an entrenched circuit split on the issue of the finality of orders denying stay relief and the need for clarity arising therefrom.

Jackson Masonry argues that regardless of whether the Denial Order was interlocutory, it makes little difference because "the only issue raised in the Stay Relief Motion was whether venue for the litigation should be transferred back to the State Court or remain in the Bankruptcy Court." Jackson Masonry cites no case law for this argument, which is simply another attempt to disregard the "bad faith" factors raised by Ritzen. The issue before the Bankruptcy Court was not only which forum was appropriate to adjudicate the issues, but also whether the bankruptcy case was filed in bad faith. The Bankruptcy Court recognized as much when it noted that Ritzen had presented "a case to dismiss a Chapter 11 for bad faith filing."

Because Ritzen presented issues going to the very merits of Jackson Masonry's bankruptcy case, the issues between the parties were not fully resolved through the Denial Order. As articulated in the Appeal Brief, the Denial Order was not final because it did not "completely resolve all issues" between the parties regarding the claim, its adjudication, or the good faith nature of the bankruptcy case. *See Caterpillar Fin. Servs. Corp. v. Braunstein (In re Henriquez)*, 261 B.R. 67, 71-72 (B.A.P. 1st Cir. 2001) (holding that denial of stay relief was interlocutory because "to be final, [the order denying stay relief] would have to completely resolve all issues between Caterpillar and the trustee with regard to the Loader"). The

> issues between Ritzen and Jackson Masonry were not "fully resolved" until the final order was entered regarding the trial between the parties, at which point Ritzen immediately and timely filed its notice of appeal.

Id. at pp. 5-6. (internal citations to the Sixth Circuit record omitted).

Simply put, Petitioner properly raised the issue of whether "bad faith" implicates the issue of finality in the Sixth Circuit in both its principal and reply briefs. Respondent has materially misstated the record by arguing otherwise.

This honorable Court should disregard Respondent's waiver argument in Section VII of its Response.

CONCLUSION

This case is a proper vehicle for bringing clarity and uniformity to this clouded area of bankruptcy law and nothing in the Response sufficiently articulates any reason why *certiorari* should not be granted. Accordingly, for the reasons articulated therein, the petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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