

Court of Appeals of the State of Georgia

ATLANTA, March 19, 2002

The Court of Appeals hereby passes the following order:

A01A2298. KMART CORPORATION et al. v. MERRIWEATHER et al.

On February 22, 2002, this Court issued an opinion affirming the judgment below. Having received no motion for reconsideration, this Court transmitted the remittitur to the trial court on March 14, 2002. On March 15, appellant Kmart Corporation filed a "Motion to Vacate" this Court's opinion, claiming that the opinion was issued in contravention of the automatic stay provisions of the bankruptcy code. See 11 U.S.C. § 362 (a). Kmart's motion is in effect a motion for reconsideration, which was required to be filed within ten days of the opinion and is therefore untimely. See Court of Appeals Rule 37 (b). Moreover, Kmart's motion lacks merit. Since this appeal was brought by Kmart as appellant debtor, the bankruptcy code did not bar this Court from proceeding to a final resolution of the case. *McDuffie v. Hoobler*, 203 Ga. App. 325, 327 (1) (416 SE2d 853) (1992).

It is ordered that the motion is hereby DISMISSED.

Court of Appeals of the State of Georgia
Clerk's Office, Atlanta MAR 19 2002

*I certify that the above is a true extract from
the minutes of the Court of Appeals of Georgia.*

*Witness my signature and the seal of said court
hereto affixed the day and year last above written.*

John Z. Martin, III Clerk.

Court of Appeals of the State of Georgia

ATLANTA, August 9, 1994

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A94A0701. JOHNSON et al. v. JONES et al.

THE COURT IS WITHOUT JURISDICTION TO CONSIDER APPELLANT'S MOTION FOR RECONSIDERATION BECAUSE IT WAS NOT TIMELY FILED. IT IS THEREFORE DISMISSED. THE REMITTITUR IN THIS CASE WAS SENT TO THE LOWER COURT ON JUNE 3, 1994, THEREBY RETURNING JURISDICTION TO THE LOWER COURT.

*Court of Appeals of the State of Georgia
Clerk's Office, Atlanta August 9, 1994*

*I certify that the above is a true extract
from the minutes of the Court of Appeals of
Georgia.*

*Witness my signature and the seal of said
court hereto affixed the day and year last
above written.*

William S. McIntire Clerk.