


IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT E. RICH; IRWIN S. COOPER;
SAMUEL Z. FEIGENBAUM; AND J.
MANNING WINIKUS & CO., LLP,
Appellants,
vs.
AUSTIN D. POTENZA, M.D.,
Respondent.

No. 45809

FILED

SEP 20 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL AND
GRANTING COUNSEL'S MOTION TO WITHDRAW

This appeal was docketed in this court on August 22, 2005. This appeal has been stayed pursuant to the automatic stay provisions of federal bankruptcy law since February 7, 2006. See U.S.C. § 362(a)(1). Appellants' most recent status report, filed on March 22, 2006, indicates that the automatic stay remains in effect.

Given the applicability of the automatic stay, this appeal may languish indefinitely on this court's docket until appellants' bankruptcy proceedings are concluded. Under these circumstances, we conclude that judicial efficiency will be best served if this appeal is dismissed, without prejudice. Because a dismissal *without prejudice* will not require this court to reach the merits of this appeal and is not inconsistent with the primary purposes of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that such dismissal will not violate the bankruptcy stay.¹ See Independent Union of Flight Attendants

¹The automatic stay provides a debtor “with protection against hungry creditors” and gives it a “breathing spell from its creditors” by stopping all collection efforts. Dean v. Trans World Airlines, Inc., 72 F.3d

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v. Pan American World Airways, Inc., 966 F.2d 457, 459 (9th Cir. 1992) (holding that the automatic stay does not preclude dismissal of an appeal so long as dismissal is “consistent with the purpose of the statute [11 U.S.C. § 362(a)]”), Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (holding that a post-bankruptcy petition dismissal will violate the automatic stay “where the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case”).

Accordingly, cause appearing, we dismiss this appeal. This dismissal is without prejudice to appellants’ right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if appellants deem such a motion appropriate at that time.

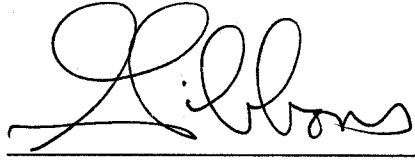
Attorney Glenn F. Meier of the law firm Howard, Meier & Fine has filed a motion to withdraw as counsel for appellants Robert E. Rich, Samuel Z. Feigenbaum, and J. Manning Winikus & Co., LLP (appellants). In support of the motion, Mr. Meier states that appellants have failed to pay for the legal services rendered on their behalf by his law firm. Mr. Meier served the motion on appellants by mail on May 2, 2005. See Womack v. Warden, 95 Nev. 806, 603 P.2d 267 (1979). Appellants have not opposed the motion or otherwise responded to it.


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754, 755 (9th Cir. 1995). Further, it assures creditors “that the debtor’s other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor’s assets.” Id. at 755-6.

Cause appearing, we grant the motion. See SCR 46(2) and RPC 1.16(b)(5), (6). The clerk of this court shall remove Mr. Meier and the law firm of Howard, Meier & Fine as counsel for appellants Rich, Feigenbaum and J. Manning Winikus & Co., LLP in this appeal.

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Maupin


_____, J.
Douglas

cc: Hon. Nancy M. Saitta, District Judge
Paul E. Richitt Jr., Settlement Judge
Howard Meier & Fine
Schreck Brignone/Las Vegas
Lionel Sawyer & Collins/Las Vegas
Robert E. Rich
Samuel Z. Feigenbaum
J. Manning Winikus & Co., LLP
Clark County Clerk