

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARCHITECTURAL SYSTEMS  
CORPORATION,  
Appellant,  
vs.  
NANCY DAGENHART,  
Respondent.

No. 47083

**FILED**

**MAR 02 2007**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. R. [Signature]*  
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL WITHOUT PREJUDICE

This is an appeal from district court corrected judgment granting a writ of garnishment against appellant Architectural Systems Corporation (ASC).<sup>1</sup> Although the notice of appeal designated Todd Rasmussen (who is allegedly ASC's sole shareholder) as the appellant, ASC subsequently filed in this court a "Notice of Errata and Proper Party," explaining that ASC, rather than Rasmussen, is the proper appellant. Respondent Nancy Dagenhart has filed a motion to dismiss this appeal on the ground that Rasmussen is not an aggrieved party and his attorney's recent attempt to "fix his error is too little, too late."<sup>2</sup> ASC opposes the motion.

In her motion to dismiss, Nancy explains that the underlying case arises from the domestication of a California divorce judgment entered in her favor. According to Nancy, after her husband Scott

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<sup>1</sup>We direct the clerk of this court to modify this court's docket to conform to this order's caption.

<sup>2</sup>Rasmussen and ASC are represented by the same attorney.

Dagenhart “moved to Nevada and went into hiding,” she discovered that there was a substantial business connection between Scott and ASC. Thereafter, Nancy served ASC with garnishment interrogatories and, when ASC apparently failed to respond, the district court entered a corrected judgment in favor of Nancy and against ASC. A notice of appeal was timely filed in this court on Rasmussen’s behalf. Pointing out that Rasmussen was not aggrieved by the district court’s order, and that a notice of appeal was not filed on ASC’s behalf, Nancy urges this court to dismiss this appeal.

In opposition, ASC responds that, although the notice of appeal incorrectly named Rasmussen as appellant, the docketing statement filed with the appeal designated ASC as the appellant and noted that ASC was filing bankruptcy. ASC contends that its notice of errata served to correct the notice of appeal’s “scrivener’s error.” According to ASC, this matter should be stayed due to the pending bankruptcy, rather than dismissed. ASC argues that, because the notice of appeal demonstrated its intention to appeal from the district court’s order, and the defect, inadvertently designating Rasmussen instead of ASC as appellant, did not materially mislead Nancy, dismissal is not appropriate here. Although we agree with ASC and deny Nancy’s motion,<sup>3</sup> we nevertheless dismiss this appeal without prejudice in light of

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<sup>3</sup>See Las Vegas Metropolitan Police Dept. v. Moyes, 106 Nev. 226, 790 P.2d 999 (1990) (explaining that a defective notice of appeal does not warrant dismissal where the appealing party’s intention may be reasonably inferred from the text of the appeal notice and where the defect has not materially misled the respondent); Ross v. Giacomo, 97 Nev. 550, 553 (1981) (explaining that NRAP 3(c)’s notice of appeal content requirement was not designed to be a “technical trap”), overruled on other  
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the “Notice of Bankruptcy” filed by ASC’s counsel, informing this court that ASC has filed a bankruptcy petition under Chapter 7 of the United States Bankruptcy Code.

The filing of a bankruptcy petition operates to stay, automatically, the “continuation” of any “judicial . . . action . . . against the debtor.”<sup>4</sup> An appeal, for purposes of the automatic stay, is considered a continuation of the trial court action. Consequently, an appeal is automatically stayed if the debtor was a defendant in the underlying trial court action.<sup>5</sup> It appears that ASC effectively was a defendant below. Therefore, this appeal is stayed pursuant to federal bankruptcy law’s automatic stay provisions.

Given the applicability of the automatic stay, this appeal may linger indefinitely on this court’s docket pending final resolution of the bankruptcy proceedings. Accordingly, 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<sup>6</sup>—we

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*. . . continued*

grounds by Winston Products Co. v. DeBoer, 122 Nev. \_\_\_, 134 P.3d 726 (2006).

<sup>4</sup>11 U.S.C. § 362(a)(1).


<sup>5</sup>See Ingersoll-Rand Financial Corp. v. Miller Mining, Co. Inc., 817 F.2d 1424 (9th Cir. 1987).

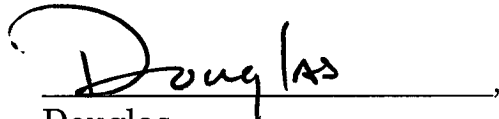
<sup>6</sup>See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755-56 (9th Cir. 1995) (observing that an automatic stay provides a debtor “with  
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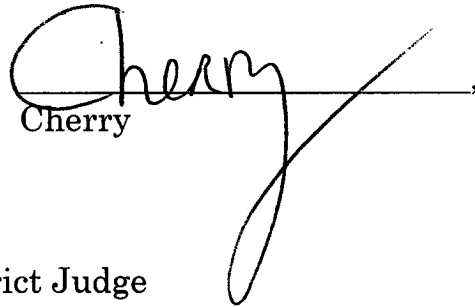
further conclude that such dismissal will not violate the bankruptcy stay.<sup>7</sup>

Accordingly, we dismiss this appeal without prejudice to ASC's right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if ASC deems such a motion appropriate at that time.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Cherry

cc: Hon. Brent T. Adams, District Judge  
Lester H. Berkson, Settlement Judge  
Brian R. Morris  
Richard G. Hill  
Washoe District Court Clerk

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protection against hungry creditors” and assures a creditor “that the debtor’s other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor’s assets”).

<sup>7</sup>See Independent Union of Flight Attendants v. Pan American World Airways, Inc., 966 F.2d 457, 459 (9th Cir. 1992) (holding that an automatic stay does not preclude dismissal of an appeal so long as dismissal is “consistent with the purpose of the statute[’s stay provision]”).