

IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT CAGNINA, AN INDIVIDUAL;  
AND ROXANNE CAGNINA, AN  
INDIVIDUAL,

Appellants,


vs.

TERESA PASZEK, AN INDIVIDUAL,  
Respondent.

No. 48818

**FILED**

**AUG 07 2007**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER REMOVING APPEAL FROM SETTLEMENT CONFERENCE  
PROGRAM AND DISMISSING APPEAL

Pursuant to NRAP 16, the settlement judge has filed a settlement conference status report informing this court that appellants have filed for bankruptcy under Chapter 13 of the United States Bankruptcy Code. A "Notice of Bankruptcy Case Filing" from the United States Bankruptcy Court, District of Nevada, is attached to the report.

The filing of a bankruptcy petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the debtor." 11 U.S.C. § 362(a)(1). An appeal, for purposes of the automatic stay, is considered a continuation of the action in the trial court. Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. See Ingersoll-Rand Financial Corp. v. Miller Mining, Co. Inc., 817 F.2d 1424 (9<sup>th</sup> Cir. 1987). It appears that appellants were defendants in the action below. Therefore, this appeal is stayed pursuant to the automatic stay provisions of federal bankruptcy law. Accordingly, we remove this appeal from the settlement conference program.

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—we further conclude that such dismissal will not violate the bankruptcy stay.<sup>1</sup> See Independent Union of Flight Attendants v. Pan American World Airways, Inc., 966 F.2d 457, 459 (9<sup>th</sup> 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, 755 (9<sup>th</sup> 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, 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

---


<sup>1</sup> The 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 754, 755 (9<sup>th</sup> 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.

bankruptcy proceedings, if appellants deem such a motion appropriate at that time.

It is so ORDERED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Hardesty

  
\_\_\_\_\_, J.  
Saitta

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Janet Trost, Settlement Judge  
David Lee Phillips  
Christopher T. Smith  
Eighth District Court Clerk