

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN J. NICHOLAS, AN
INDIVIDUAL; JN CONSULTING CO.,
INC., A NEVADA CORPORATION; AND
BRUSSEL GROUP OF COMPANIES,
INC., A NEVADA CORPORATION,

Appellants,

vs.

ALLIANCE BANK, A CALIFORNIA
CORPORATION,

Respondent.

No. 49158

FILED

JUN 26 2007

WINEATE M. BLOOM
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

Appellant JN Consulting Co., Inc. and respondent have filed notices informing this court that JN Consulting has filed a bankruptcy petition. Additionally, appellant John J. Nicholas has filed a notice informing this court that he has filed a bankruptcy petition, as well. 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 a defendant in the underlying trial court action. See Ingersoll-Rand Financial Corp. v. Miller Mining, Co. Inc., 817 F.2d 1424 (9th Cir. 1987). It appears that both JN Consulting and John J. Nicholas were defendants below. Therefore, this appeal is stayed pursuant to the automatic stay provisions of federal bankruptcy law.

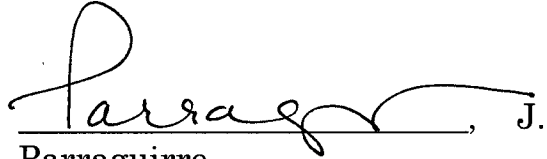
Given the applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice. Because a dismissal *without 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.¹ See Independent Union of Flight Attendants 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, 755 (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, 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

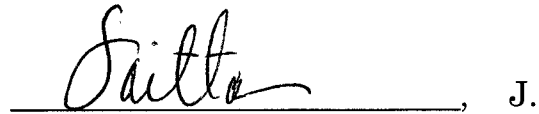
¹The automatic stay provides a debtor “with protection against hungry creditors” and gives it a “breathing spell from its creditors” by stopping all collection efforts. Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755 (9th Cir. 1995). Further, it assures creditors “that the debtor's other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor's assets.” Id. at 755-6.

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

It is so ORDERED.²


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Chief Judge, Eighth Judicial District
Hon. J. Charles Thompson, Senior Judge
Gordon & Silver, Ltd.
Jolley Urga Wirth Woodbury & Standish
Brownstein Hyatt Farber Schreck, P.C.
Alan A. Greenburg
Eighth District Court Clerk

²Before the notices regarding the bankruptcy petitions were filed, appellants JN Consulting and John J. Nicholas filed an “emergency” motion to stay the order that is the subject of this appeal. Appellant Brussel Group of Companies, Inc. filed a joinder in the stay motion, and respondent filed an opposition to the motion. In light of this order, we deny the request for this court to enter a stay as moot.