

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC LUDIAN AND RACHEL LUDIAN,  
Appellants,

vs.

HARRISON LANDSCAPE COMPANY,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY; DONALD L. HARRISON;  
CHERYL HARRISON, AN  
INDIVIDUAL; HARRISON DOOR  
COMPANY, A NEVADA  
CORPORATION; AND HARRISON  
BUILDING PRODUCTS, A NEVADA  
CORPORATION,  
Respondents.

No. 49659

**FILED**

**MAR 10 2010**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DISMISSING APPEAL

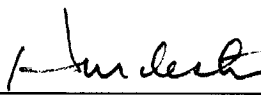
This is an appeal from a district court judgment in a contract and tort action. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

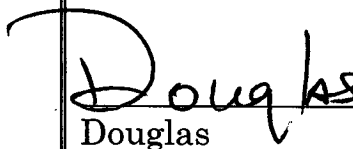
On February 17, 2010, this court received notice that appellants filed a petition for relief under Chapter 7 of the bankruptcy code on February 3, 2010, in the United States Bankruptcy Court for the District of Nevada (Case No. BK-10-11686). The filing of a Chapter 7 petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the [bankruptcy] debtor." 11 U.S.C. § 362(a)(1) (2006). An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action in the trial court. See, e.g., Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtors were defendants in the underlying trial court action. Id. In the underlying district court action, appellants were defendants and

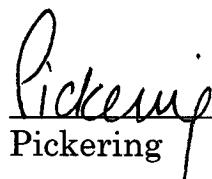
counterclaimants and judgment was entered against them. Accordingly, the automatic bankruptcy stay applies to this appeal.

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 such a dismissal 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 the dismissal will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (providing that a post-bankruptcy dismissal violates the automatic stay when “the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case”); see also IUFA v. Pan American, 966 F.2d 457, 459 (9th Cir. 1992) (explaining that the automatic bankruptcy stay does not preclude dismissal of an appeal so long as dismissal is “consistent with the purpose of [11 U.S.C. §362(a)]”). Accordingly, this appeal is dismissed without prejudice to appellants' right to move for its reinstatement upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if such a motion is deemed appropriate at that time.

It is so ORDERED.

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

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

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Timothy C. Williams, District Judge  
Nathaniel J. Reed, Settlement Judge  
McDonald Law Group  
Lionel Sawyer & Collins/Las Vegas  
Eighth District Court Clerk