

IN THE SUPREME COURT OF THE STATE OF NEVADA

WARREN CHAN, AN INDIVIDUAL;
AND KARA A. VAN MARION, AN
INDIVIDUAL,

Appellants,

vs.

JACK S. JACOBSON, AN INDIVIDUAL;
AND LAURA S. JACOBSON, AN
INDIVIDUAL,

Respondents.

No. 50347

FILED

JAN 15 2009

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

ORDER DISMISSING APPEAL WITHOUT PREJUDICE

This is an appeal taken jointly by appellants Warren Chan and Kara A. Van Marion from the district court's order granting summary judgment in favor of respondents, and the district court's subsequent judgment allowing respondents to recover money damages, attorney fees and costs from appellant Chan. Our preliminary review of the docketing statement and the documents submitted to this court pursuant to NRAP 3(e) revealed potential jurisdictional defects. Specifically, it appeared that the notice of appeal may have been untimely filed as to the order granting summary judgment. Further, it appeared that appellant Van Marion lacked standing to appeal the district court's judgment allowing respondents to recover money damages, attorney fees and costs from appellant Chan.

Appellants have filed a response to our July 9, 2008, order to show cause. Respondents have not filed a reply. In their response, appellants' counsel indicates that he "has been advised that Appellants have filed a petition for bankruptcy in United States Bankruptcy Court."

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 (9th Cir. 1987). It appears that appellants were defendants below. Therefore, this appeal is stayed pursuant to the automatic stay provisions of federal bankruptcy law.

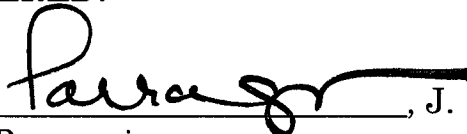
Given the applicability of the automatic stay, this appeal may linger indefinitely on this court’s docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice. Because a dismissal *without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

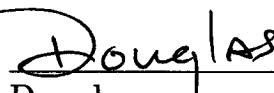
¹The automatic stay provides a debtor “with protection against hungry creditors” and gives it a “breathing spell from its creditors” by stopping all collection efforts. Dean v Trans World Airlines, Inc., 72 F.3d 754, 755 (9th Cir. 1995). Further, it assures creditors “that the debtor’s other creditors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

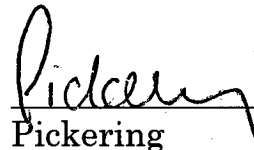
“consistent with the purposes of the statute [11 U.S.C. § 362(a)"]; Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755 (9th Cir. 1995) (holding that a post-bankruptcy petition dismissal will violate the automatic stay “where the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case”).

Accordingly, we dismiss this appeal.² 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.

It is so ORDERED.


_____, J.
Parraguirre


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Jackie Glass, District Judge
William F. Buchanan, Settlement Judge
The Bach Law Firm
Ellsworth Moody & Bennion Chtd.
Eighth District Court Clerk

²Attorney Jason Bach’s motion to withdraw as counsel of record for appellants is denied as moot.