

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEAL GASKIN, D/B/A GASKIN
ARCHITECTURAL GROUP,
Appellant,
vs.
155 EAST TROPICANA LLC,
Respondent.

No. 51064

FILED

DEC 23 2008

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

ORDER DISMISSING APPEAL WITHOUT PREJUDICE

On November 17, 2008, this court entered an order directing appellant to show cause why this appeal should not be dismissed for lack of jurisdiction. Specifically, it appeared that the notice of appeal was premature as a tolling motion remains pending in the district court. On November 18, 2008, appellant (defendant in the case below) filed a notice indicating that he recently filed a bankruptcy petition in the United States Bankruptcy Court for the District of Nevada, Case No. 08-23078-bam. Appellant requests a stay of the instant appeal pursuant to 11 U.S.C. § 362(a)(6).¹

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

¹On December 1, 2008, appellant filed a response to our November 17, 2008, order to show cause, wherein he again requested a stay of the instant appeal pursuant to 11 U.S.C. § 362.

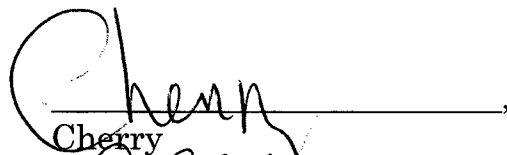
defendant in the underlying trial court action. See Ingersoll-Rand Financial Corp. v. Miller Mining Co., Inc., 817 F.2d 1424 (9th Cir. 1987). It appears that appellant was the defendant below. Therefore, this appeal is stayed pursuant to the automatic stay provisions of federal bankruptcy law.

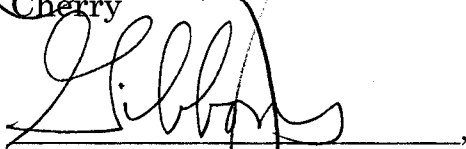
Given the applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice. Because a dismissal *without 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.² See Independent Union of Flight Attendants v. Pan American World Airways, Inc., 966 F.2d 547, 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”).

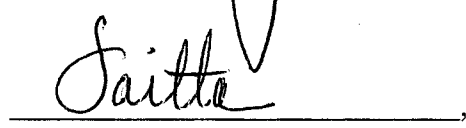
²The automatic stay provides a debtor “with protection against hungry creditors” and gives it a “breathing spell from its creditors” by stopping collection efforts. Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755 (9th Cir. 1995). Further, it assures creditors “that the debtor's other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor's assets.” Id. at 755-56.

Accordingly, we dismiss this appeal. This dismissal is without prejudice to appellant'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 appellant deems such a motion appropriate at that time. We remind appellant that if he chooses to move for reinstatement of this appeal, he must provide proof that the noted jurisdictional defect has been cured at that time.

It is so ORDERED.


_____, J.
Cherry


_____, J.
Gibbons


_____, J.
Saitta

cc: Hon. Allan R. Earl, District Judge
Thomas Tanksley, Settlement Judge
Coleman Law Associates
Lionel Sawyer & Collins/Las Vegas
Eighth District Court Clerk