

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD D. ALPERN, INDIVIDUALLY
Appellant,

vs.

BILL HEARD CHEVROLET, INC.,
CORPORATION-NW LAS VEGAS, A
NEVADA CORPORATION, D/B/A VISTA
CHEVROLET,
Respondent.

No. 51529

FILED

NOV 07 2008

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

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court order confirming an arbitration award in a contract action. Eighth Judicial District Court, Clark County; Lee A. Gates, Judge.

On October 8, 2008, this court received notice that respondent, Bill Heard Chevrolet Corp.-NW Las Vegas d/b/a Vista Chevrolet, filed a Chapter 11 bankruptcy petition on September 28, 2008, in the United States Bankruptcy Court for the Northern District of Alabama (Case No. 08-83036-JAC-11). The filing of a bankruptcy petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the [bankruptcy] debtor."¹ An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action in the trial

¹11 U.S.C. § 362(a)(1).

court.² Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action.³ A review of the district court documents submitted to this court pursuant to NRAP 3(e) reveals that respondent was the defendant in the action below. 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 to appellant's right to move to reinstate this appeal upon the lifting of the bankruptcy stay. 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 a dismissal will not violate the bankruptcy stay.⁴

Accordingly, we dismiss this appeal. This dismissal is without prejudice to the parties' right to move for reinstatement of this appeal

²See, e.g., Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987).

³Id.

⁴See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (holding that a post-bankruptcy 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”); see also IUFA v. Pan American, 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)]”).

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.

1 Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Douglas, J.
Douglas

cc: Hon. Lee A. Gates, District Judge
Richard D. Alpern
Fisher & Phillips LLP
Eighth District Court Clerk