

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD MARIS, AN INDIVIDUAL,
Appellant,
vs.
WESTERN PRIDE CONSTRUCTION, A
NEVADA LIMITED LIABILITY COMPANY,
Respondent.

No. 51615

FILED

MAY 20 2009

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

ORDER DISMISSING APPEAL

This is a proper person appeal from a district court judgment following a bench trial in a breach of contract and indemnity action. Eighth Judicial District Court, Clark County; Jennifer Togliatti, Judge.

On March 6, 2009, this court entered an order granting appellant's attorney's motion to withdraw as counsel. The March 6 order allowed Maris 20 days to obtain substitute counsel and to cause counsel to enter an appearance. Alternatively, the March 6 order directed Maris, within that same timeframe, to inform this court if he did not intend to obtain new counsel. The order warned Maris that his failure to comply with those directives might result in the dismissal of this appeal. Although Maris's response was due in this court by March 26, 2009, to date, he has not responded.

Thereafter, on April 15, 2009, respondent Western Pride Construction, LLC, filed in this court a notice indicating that Maris had filed a petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada and that the automatic stay pursuant to 11 U.S.C. § 362(a) is in effect. According to the notice, the bankruptcy petition was filed in federal bankruptcy court on February 19, 2009, under case number 09-12172-bam. Although a copy of the bankruptcy petition was not provided with the notice, Western Pride

Construction attached a copy of the "Notice of Bankruptcy Case Filing" from the Bankruptcy Court, confirming that the petition was filed on the date indicated.

The filing of a bankruptcy 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, 1426 (9th Cir. 1987). Consequently, an appeal is automatically stayed in proceedings that were originally brought against the debtor, regardless of whether the debtor is the appellant or respondent in the appeal. Id.

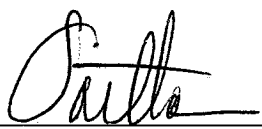
A review of the district court documents submitted to this court pursuant to NRAP 3(e) reveals that Maris was the plaintiff/counter-defendant below and, following a bench trial, he was awarded nothing on his breach of contract claims and a money judgment was entered against him on Western Pride Construction's counterclaims for breach of contract and indemnity. Accordingly, the automatic bankruptcy stay applies to this appeal.

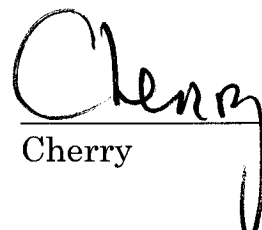
Although Maris's failure to respond to this court's directive regarding obtaining new counsel or notifying this court of his intention to proceed on appeal in proper person is grounds for dismissing this appeal, the bankruptcy stay has a legal effect warranting dismissal on other grounds. In particular, given the applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Thus, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice to Maris's right to move to reinstate this appeal upon the lifting of the

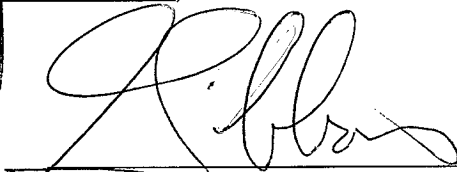
bankruptcy stay. Because a dismissal without prejudice will not require this court to reach the merits of this appeal and is not inconsistent with the primary purposes of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that such a dismissal will not violate the bankruptcy stay. See 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 [11 U.S.C. §362(a)]”).

Accordingly, we dismiss the appeal without prejudice to Maris’s right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or the final resolution of the bankruptcy proceedings, if such a motion is deemed appropriate at that time.

It is so ORDERED.


_____, J.
Saitta


_____, J.
Cherry


_____, J.
Gibbons

cc: Hon. Jennifer Togliatti, District Judge
Stephen E. Haberfeld, Settlement Judge
Richard Maris
Pengilly Robbins Slater
Eighth District Court Clerk