

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROLLAND WEDDELL,
Appellant,


vs.

AURORA INVESTMENTS, LP; BROUWERS
FAMILY LIMITED PARTNERSHIP; BROUWERS
FAMILY TRUST; BWJ INVESTMENTS, INC.,
PENSION PLAN; CHRISTOPHER T. MOORE;
FRANCIS FAMILY TRUST; JWB INVESTMENTS,
INC., COMPANY PENSION PLAN; MAURICE
FINK TRUST; MORNINGSIDE HOMES, INC.,
DEFINED BENEFIT PENSION PLAN; PAUL
BLOCH LIVING TRUST; RANDLE P. PHELPS;
ROXANNE C. PHELPS; ROBERT M. PORTNOFF;
SARAH PORTNOFF; STEVEN JANOVITCH;
LINDA JANOVITCH; SIMON FAMILY TRUST;
AND STEVEN PORTNOFF,
Respondents.

No. 53494

FILED

AUG 25 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK


ORDER DISMISSING APPEAL


On July 6, 2009, this court received notice that appellant Rolland Weddell filed a Chapter 11 bankruptcy petition on May 10, 2009, in the United States Bankruptcy Court for the District of Nevada (Case No. BK-N09-51425-GWZ). 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). 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 debtor was the defendant in the underlying trial court action. Id. A review of the district court documents submitted to this court pursuant to NRAP 3(e) reveals that appellant was the defendant in the action below. Accordingly, the automatic bankruptcy stay applies to this appeal.

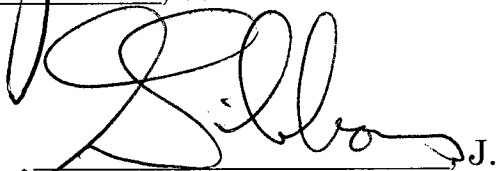
Given the applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice to appellant's right to 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. 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 this appeal. This dismissal is without prejudice to the parties' right to move for reinstatement of this appeal 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.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Abbi Silver, District Judge
Rolland P. Weddell
Pengilly Robbins Slater
Eighth District Court Clerk