

IN THE SUPREME COURT OF THE STATE OF NEVADA

KINGWOOD HOLDINGS, LP; PHILLIP H. DAVIS; THOMAS B. SMILEY; TBS INVESTMENT AND DEVELOPMENT; COMMONWEALTH INVESTMENT AND DEVELOPMENT CORPORATION; COMMONWEALTH HOLDINGS, LLC; RANCH EVENTS, LLC; TAP HOLDINGS, LLC; DI WYNN PARTNERS; LP DI WYNN, LLC; CHEYENNE BELTWAY CENTER, LLC; LVB NELLIS, LLC; LVB NELLIS II; LV HOLDINGS 2000, LLC; AND LONE MOUNTAIN COMMERCIAL, LLC,
Appellants,
vs.
GERALD D. FACCIANI, AN INDIVIDUAL;
AND JOSEPH F. PROTO, AN INDIVIDUAL,
Respondents.

No. 53510

FILED

MAY 07 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Ingersoll*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a district court order for attachment “and all supplements and amendments thereto.” Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

On April 9, 2010, this court received notice that appellants Thomas B. Smiley and Commonwealth Investment and Development Corporation filed petitions for relief under Chapter 11 of the bankruptcy code on March 8, 2010, in the United States Bankruptcy Court for the Southern District of California (Case Nos. 10-03716-PB11 and 10-3719-LA11, respectively). The filing of a Chapter 11 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

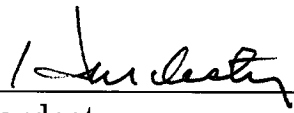
the action in the trial court. See, e.g., Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtors were defendants in the underlying trial court action. Id. In the underlying district court action, Smiley and Commonwealth Investment and Development were defendants and the specific orders challenged in this appeal were entered against these two defendants/appellants.¹ Accordingly, the automatic bankruptcy stay applies to this appeal.

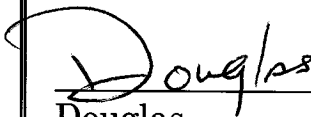
Given the applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice. Because such a dismissal will not require this court to reach the merits of this appeal and is not inconsistent with the primary purpose of the bankruptcy stay—to provide protection for debtors and creditors—we further conclude that the dismissal will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (providing that a post-bankruptcy dismissal violates the automatic stay when “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) (explaining that the automatic bankruptcy stay


¹The orders challenged are a prejudgment order of attachment, a supplement thereto, and an amended supplement, all of which were issued against Smiley's and Commonwealth Investment's settlement proceeds. According to the docketing statement, no final judgment has been entered in this matter, and all of the plaintiffs' claims remain pending. No judgment has been entered as to the remaining appellants.

does not preclude dismissal of an appeal so long as dismissal is “consistent with the purpose of [11 U.S.C. §362(a)]”. Accordingly, this appeal is dismissed without prejudice to appellants’ right to move for its reinstatement 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.²

It is so ORDERED.³


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Stephen E. Haberfeld, Settlement Judge
Gonzalez Saggio & Harlan, LLP
Santoro, Driggs, Walch, Kearney, Holley & Thompson
Eighth District Court Clerk

²On February 12 and March 31, 2010, this court entered orders directing appellants to show cause why this appeal should not be dismissed for lack of jurisdiction, since the challenged orders did not appear appealable under NRAP 3A(b)(2). Appellants responded by notifying this court of the pending bankruptcy court matter. In light of the bankruptcy stay, we do not further address any jurisdictional problem.

³Appellants’ counsel’s unopposed February 2, 2010, motion to withdraw as counsel is granted. See RPC 1.16(b).