

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN JOHNSTON AND MARGARET
JOHNSTON, HUSBAND AND WIFE,
Appellants,

vs.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEM, INC., AS
NOMINEE FOR TAYLOR BEAN &
WHITAKER MORTGAGE
CORPORATION, FOREIGN
CORPORATIONS,
Respondents.

No. 54053

FILED

FEB 05 2010

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

ORDER DISMISSING APPEAL

Respondent Mortgage Electronic Registration System, Inc.

In responding to the November 20, 2010, order directing a status report issued by this court, appellants indicated that respondent Mortgage Electronic Registration System, Inc. (MERS) is not properly a respondent to this appeal because it was never served in the underlying action. Likewise, respondent Taylor Bean & Whitaker Mortgage Corporation indicated, in its response to our order directing a status report, that MERS never appeared in the underlying action.¹ Accordingly, because it appears that MERS is not a proper respondent to this appeal, we dismiss the appeal as to MERS.

¹Counsel for Taylor Bean has further indicated that it does not represent MERS on appeal. As a result, the clerk of this court shall remove the law firm of Alverson Taylor Mortensen & Sanders from being listed as counsel of record for MERS on the court's docket.

Respondent Taylor Bean & Whitaker Mortgage Corporation

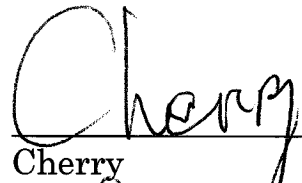
On August 28, 2009, this court received notice that Taylor Bean filed a Chapter 11 bankruptcy petition on August 24, 2009, in the United States Bankruptcy Court for the Middle District of Florida. The filing of a bankruptcy petition operates to stay, automatically, the “continuation” of any “judicial . . . 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 Taylor Bean was a 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 appellants’ right to move to reinstate their appeal against Taylor Bean 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

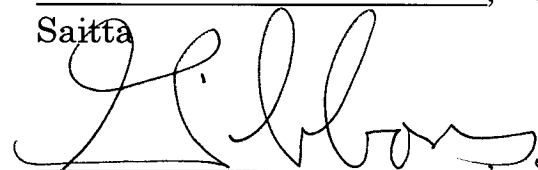
to dismiss first requires the court to consider other issues presented by or related to the underlying case”); see also IUFA v. Pan American, 966 F.2d 457, 459 (9th Cir. 1992) (holding that the automatic stay does not preclude dismissal of an appeal so long as dismissal is “consistent with the purpose of [11 U.S.C. §362(a)]”).

Accordingly, we dismiss this appeal as to Taylor Bean. 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

It is so ORDERED.²

 _____ J.
Cherry

 _____ J.
Saitta

 _____ J.
Gibbons

cc: Hon. David R. Gamble, District Judge
Lester H. Berkson, Settlement Judge
Mortgage Electronic Registration System, Inc.
Jeffrey A Dickerson
Alverson Taylor Mortensen & Sanders
Douglas County Clerk

²In light of this order, we deny as moot all motions currently pending in this appeal.