

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL G. SANZARO,
Appellant,
vs.
LAS VEGAS MONORAIL COMPANY,
Respondent.

No. 54750

FILED

JUN 10 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

On March 1, 2010, this court received notice that respondent filed a petition for relief under Chapter 11 of the Bankruptcy Code on January 13, 2010, in the United States Bankruptcy Court for the District of Nevada (Case No. BK-10-10464-BAM). 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, respondent was the defendant. 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 purposes 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 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 appellant’s 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.

It is so ORDERED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

cc: Hon. Douglas W. Herndon, District Judge
Michael G. Sanzaro
Littler Mendelson/Las Vegas
Eighth District Court Clerk