

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANGAUR, LLC, A NEVADA LIMITED
LIABILITY COMPANY AND BALAJI
PROPERTIES INVESTMENT, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,
Appellants,
vs.
WELLS CARGO, INC.,
Respondent.

No. 55079

FILED

APR 09 2010

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

ORDER DISMISSING APPEAL

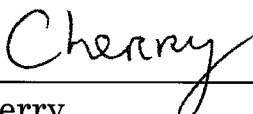
This is an appeal from (1) a district court order, certified as final pursuant to NRCP 54(b), granting a motion for summary judgment; and (2) a subsequent district court order denying a pending motion to postpone the hearing on the summary judgment motion. Eighth Judicial District Court, Clark County; Doug Smith, Judge.

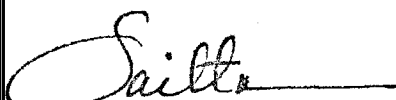
On March 18, 2010, this court received notice that appellants filed petitions for relief under Chapter 11 of the bankruptcy code on March 17, 2010, in the United States Bankruptcy Court for the District of Nevada (Case Nos. 10-14331-MKN and 10-14336-MKN). The filing of a Chapter 11 petition operates 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, appellants were defendants and judgment


was entered against them. 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 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.

It is so ORDERED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. Doug Smith, District Judge
Eva Garcia-Mendoza, Settlement Judge
Fennemore Craig, P.C./Las Vegas
Foley & Oakes, PC
Eighth District Court Clerk