

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREMONT BRUCE, LLC,  
Appellant/Cross-Respondent,  
vs.  
DENNIS E. RUSK, ARCHITECT, LLC, A  
LIMITED LIABILITY COMPANY; AND  
DENNIS E. RUSK, INDIVIDUALLY,  
Respondents/Cross-Appellants.

No. 55309

**FILED**

**FEB 14 2012**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *T. K. Lindeman*  
DEPUTY CLERK

ORDER DISMISSING APPEAL AND CROSS-APPEAL

This is an appeal and cross-appeal from a district court judgment following a bench trial in a contract action. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

In response to this court's November 8, 2011, order, the parties have filed reports concerning the status of appellant/cross-respondent Fremont Bruce, LLC's U.S. Bankruptcy Court case, which was converted from Chapter 11 to Chapter 7 of the bankruptcy code, and whether this appeal and cross-appeal has been stayed by the bankruptcy action. The parties report that a trustee has been appointed, and they indicate that there has been no order entered in the bankruptcy proceeding lifting the automatic stay under 11 U.S.C. § 362(a)(1) (2006).

The filing of a Chapter 7 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. In the underlying district court action here, Fremont Bruce, LLC, was a counterdefendant. Accordingly, the automatic bankruptcy stay applies to this appeal and cross-appeal from the judgment resolving the counterclaims and denying attorney fees. Additionally, the stay apparently has not been lifted, and the bankruptcy trustee has not, at this point, pursued the appeal with respect to the district court's dismissal of Fremont Bruce's claims.<sup>1</sup>

Given these circumstances, this appeal and cross-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 and cross-appeal are dismissed without prejudice. Because the dismissals will not require this court to reach the merits of the appeal or cross-appeal and are not inconsistent with the primary purposes of the bankruptcy stay, to provide protection for debtors and creditors, we further conclude that the dismissals 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)]").

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<sup>1</sup>The claims and counterclaims in the underlying action were based on the same contract, with both Fremont Bruce and respondents/cross-appellants alleging breaches thereof.

Accordingly, this appeal and cross-appeal are dismissed without prejudice to appellant's and cross-appellants' right to move for their reinstatement within 90 days of 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.<sup>2</sup>

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Gibbons

 \_\_\_\_\_, J.  
Parraguirre

cc: Hon. Valerie Adair, District Judge  
Lansford W. Levitt, Settlement Judge  
Thomas J. Tanksley  
Sterling Law, LLC  
Eighth District Court Clerk

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<sup>2</sup>In light of this order, all pending motions and requests for relief are denied as moot.