

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAN K. SHAW, AN INDIVIDUAL; DAN
K. SHAW, AS FORMER TRUSTEE OF
THE DAN K. SHAW SEPARATE
PROPERTY TRUST UNDER TRUST
INSTRUMENT DATED MAY 6, 1998;
AND THE FORMER DAN K. SHAW
SEPARATE PROPERTY TRUST
UNDER TRUST INSTRUMENT DATED
MAY 6, 1998,

Appellants,

vs.

JAMES M. PLAUTZ D/B/A
GREENMAN FUNDING,

Respondents

No. 56509

FILED

DEC 20 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

Counsel for appellants has filed a “Notice of Filing Petition in Bankruptcy,” informing this court that appellants have filed a bankruptcy petition in the United States Bankruptcy Court, District of Utah. The filing of a bankruptcy petition operates to stay, automatically, the “continuation” of any “judicial . . . action . . . against the debtor.” 11 U.S.C. § 362(a)(1). An appeal, for purposes of the automatic stay, is considered a continuation of the action in the trial court. Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. See Ingersoll-Rand Financial Corp. v. Miller Mining, Co. Inc., 817 F.2d 1424 (9th Cir. 1987). It appears that appellants were defendants below. Therefore, this appeal is stayed pursuant to the automatic stay provisions of federal bankruptcy law.

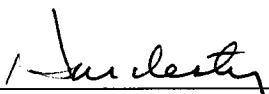
Given the applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice. Because a dismissal *without 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 dismissal will not violate the bankruptcy stay.¹ See Independent Union of Flight Attendants v. Pan American World Airways, Inc., 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 the statute [11 U.S.C. §362(a)]); Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755 (9th Cir. 1995) (holding that a post-bankruptcy petition 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”).

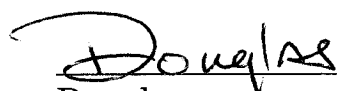
Accordingly, we dismiss this appeal. This dismissal is without prejudice to appellants' right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or final resolution

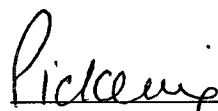
¹ The automatic stay provides a debtor “with protection against hungry creditors” and gives it a “breathing spell from its creditors” by stopping all collection efforts. Dean v. Trans World Airlines, Inc., 72 F.3d 754, 755 (9th Cir. 1995). Further, it assures creditors “that the debtor's other creditors are not racing to various courthouses to pursue independent remedies to drain the debtor's assets.” Id. At 755-6.

of the bankruptcy proceedings, if appellants deem such a motion appropriate at that time.

It is so ORDERED.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Pickering

cc: Hon. Linda Marie Bell, District Judge
Larry J. Cohen, Settlement Judge
Rooker Rawlins LLP
Law Office of Hayes & Welsh
Durham, Jones & Pinegar/Salt Lake City, UT
Eighth District Court Clerk