IN THE SUPREME COURT OF THE STATE OF NEVADA

JANET D. PETRILLO, AN INDIVIDUAL, Appellant, vs. DANIEL J. WARTENBERG, AN INDIVIDUAL; AND ALLA V. WARTENBERG, AN INDIVIDUAL, Respondents.	No. 58051
DANIEL J. WARTENBERG, AN INDIVIDUAL; AND ALLA V. WARTENBERG, AN INDIVIDUAL, Appellants, vs. JANET D. PETRILLO, AN INDIVIDUAL, Respondent.	No. 58464

FILED

OCT 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Ingersoll
DEPUTY CLERK

ORDER DISMISSING APPEALS

These are appeals from a district court judgment on a breach of contract claim (Docket No. 58051) and from an order denying attorney fees (Docket No. 58464).

The parties have filed timely reports concerning the status of the automatic bankruptcy stay arising from the filing of Janet D. Petrillo's voluntary petition under Chapter 11 of the bankruptcy code. 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 debtor was the defendant in the underlying trial court action. Id. In the underlying district court action here, Petrillo was a counterdefendant. Accordingly, the automatic bankruptcy stay applies to these appeals from the judgment

resolving the counterclaims and the order denying attorney fees. Additionally, the bankruptcy trustee has not, at this point, pursued the appeal with respect to the district court's denial of Petrillo's fraud claim.

Given these circumstances, these appeals 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 these appeals are dismissed without prejudice. Because the dismissals will not require this court to reach the merits of these appeals 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)]").

Accordingly, these appeals are dismissed without prejudice to 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.

Douglas, J.

Hardesty, J.

Parraguirre, J.

cc: Hon. Michael Villani, District Judge
Robert F. Saint-Aubin, Settlement Judge
Gordon & Silver, Ltd.
Bourke & Nold
Gordon & Rees, LLP
Eighth District Court Clerk