

IN THE SUPREME COURT OF THE STATE OF NEVADA

DGI OF NEVADA, LTD., A NEVADA CORPORATION,

Appellant,

vs.

GREAT WASH PARK, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Respondent.

GREAT WASH PARK, LLC, A NEVADA LIMITED LIABILITY COMPANY,

Appellant/Cross-Respondent,

vs.

DGI OF NEVADA, LTD., A NEVADA CORPORATION; AND DURRANT GROUP, INC.,

Respondents/Cross-Appellants.

No. 59508 ✓

FILED

JUN 18 2012

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

No. 60150

ORDER DISMISSING APPEAL IN DOCKET NO. 59508,
PARTIALLY DISMISSING APPEAL AND
CROSS-APPEAL IN DOCKET NO. 60150,
AND REINSTATING BRIEFING

These are appeals and a cross-appeal from district court orders in a mechanic's lien action. Eighth Judicial District Court, Clark County; Linda Marie Bell, Judge.

With regard to Docket No. 59508, we lack jurisdiction because the orders appealed, which reduced a notice of mechanic's lien, do not address NRS 108.2275(6)(b) attorney fees and costs. See NRS 108.2275(8); Yonker Construction v. Hulme, 126 Nev. ___, 248 P.3d 313 (2010) (explaining that an order is appealable under NRS 108.2275(8) when it address all of the necessary items noted in the various subsections of NRS 108.2275(6)). Accordingly, we dismiss that appeal. The parties have appealed from the subsequent order addressing attorney fees and costs in Docket No. 60150, however, and thus issues regarding the corresponding orders reducing the notice of mechanic's lien may be properly addressed in that appeal and cross-appeal.

With regard to Docket No. 60150, it appears that Durrant Group, Inc., was improperly named as a respondent/cross-appellant, as that entity was not involved in the mechanic's lien issues and did not file a notice of cross-appeal. Further, Durrant Group has filed a notice and a status report explaining that it has petitioned for relief under Chapter 11 in the U.S. Bankruptcy Court for the Northern District of Iowa, and that the automatic stay under 11 U.S.C. § 362(a) applies to this proceeding. 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, Durrant Group was a defendant. Accordingly, the automatic bankruptcy stay applies to this appeal. Given these circumstances, this appeal may linger indefinitely on this court's docket pending final resolution of the Chapter 11 proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed as to Durrant Group without prejudice. Because the dismissal will not require this court to reach the merits of the 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 dismissal violates the automatic stay only 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, the appeal and cross-appeal in Docket No. 60150 is dismissed as to Durrant Group, only.¹

Finally, we reinstate the deadlines for requesting transcripts and filing briefs. Appellant and cross-appellant shall have 15 days from the date of this order to file and serve a transcript request form. See NRAP 9(a). Appellant shall have 90 days from the date of this order to file and serve the opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 28.1(f)(1).²

It is so ORDERED.

Cherry, C.J.
Cherry

Saitta, J.
Saitta

Hardesty, J.
Hardesty

¹The clerk of this court shall amend the caption accordingly.

²Fennemore Craig, P.C.’s motion for leave to withdraw as counsel for DGI of Nevada, Ltd. in these appeals is granted. SCR 46; RPC 1.16. As no similar motion has been filed by DGI of Nevada counsel Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, that firm remains as counsel on these dockets.

cc: Hon. Linda Marie Bell, District Judge
Lansford W. Levitt, Settlement Judge
Fennemore Craig, P.C./Las Vegas
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP/Las Vegas
Snell & Wilmer, LLP/Las Vegas
Trenk, Dipasquale, Webster, Della Fera & Sodono, P.C.
EHB Companies
DGI of Nevada, Ltd.
Eighth District Court Clerk