

IN THE SUPREME COURT OF THE STATE OF NEVADA

TIM SCULLY, AN INDIVIDUAL,
Appellant,
vs.
JAMES VINCENT CHICO D/B/A
DESERT ENGINEERING,
Respondent.

No. 62501

FILED

MAR 10 2014

THACIE K. LINDEMAN
CLERK OF SUPREME COURT
Thacie K. Lindeman
DEPUTY CLERK

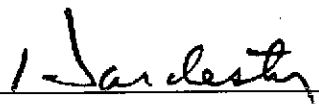
ORDER DISMISSING APPEAL

On December 12, 2013, this court was notified that appellant petitioned for relief under Chapter 7 in the United States Bankruptcy Court for the District of Nevada on December 5, 2013. 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) (2010). 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 Fin. Corp. v. Miller Mining Co.*, 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtor was a defendant in the underlying trial court action. *Id.* In the underlying district court action, appellant was a defendant. Accordingly, the automatic bankruptcy stay applies to this appeal.

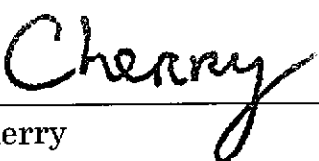
Given the applicability of the automatic stay, this appeal may linger indefinitely on this court’s docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if this appeal is dismissed without prejudice. Because such a dismissal 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 Am.*, 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 appellant’s right to move for its reinstatement within 60 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.


_____, J.
Hardesty


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Jerome Polaha, District Judge
Janet L. Chubb, Settlement Judge
Goodman Law Center
Kreitlen & Walker
Washoe District Court Clerk