

IN THE SUPREME COURT OF THE STATE OF NEVADA

NEVADA IMMEDIATE CARE, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY; AND EXIGENCE  
HEALTHCARE SOLUTIONS OF  
NEVADA, LLC, A NEVADA LIMITED  
LIABILITY COMPANY,

Appellants,

vs.


SMITH CONSULTING GROUP, INC., A  
NEVADA CORPORATION,

Respondent.

No. 70422

**FILED**

**AUG 15 2016**

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DISMISSING APPEAL*

Counsel for appellants has filed Notices of Bankruptcy, informing this court that appellants have filed for Chapter 7 relief, and the settlement judge has filed a status report indicating that the settlement conference has been vacated unless relief from the automatic stay is obtained.

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 (9<sup>th</sup> 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.<sup>1</sup> See *Independent Union of Flight Attendants v. Pan American World Airways, Inc.*, 966 F.2d 457, 459 (9<sup>th</sup> 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 (9<sup>th</sup> 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”).

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<sup>1</sup> 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 (9<sup>th</sup> 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 755-56.

Accordingly, we dismiss this appeal. This dismissal is without prejudice to appellants' right to move for reinstatement of this appeal within 90 days of either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if appellants deem such a motion appropriate at that time.

It is so ORDERED.

Cherry, J.  
Cherry

Douglas, J.  
Douglas

Gibbons, J.  
Gibbons

cc: Hon. Gloria Sturman, District Judge  
M. Nelson Segel, Settlement Judge  
Morris Law Group  
Hall Jaffe & Clayton, LLP  
Eighth District Court Clerk