

IN THE SUPREME COURT OF THE STATE OF NEVADA

POSHBABY LLC, A NEVADA LIMITED
LIABILITY COMPANY,

Appellant,

vs.

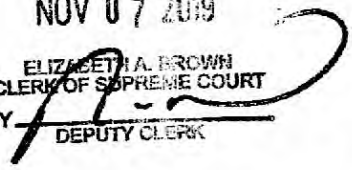
ELSINORE III, LLC, A NEVADA
LIMITED LIABILITY COMPANY; AND
BRIGHTON PROPERTIES LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Respondents.

No. 73700

FILED

NOV 07 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from a final judgment and post-judgment order awarding attorney fees in a real property action. Eighth Judicial District Court, Clark County; Joanna Kishner, Judge.

Counsel for respondents has filed a Notice of Bankruptcy, informing this court that respondent Elsinore III, LLC, has filed for relief under Chapter 11 of the Bankruptcy Code. 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 Fin. Corp. v. Miller Mining Co., Inc.*, 817 F.2d 1424 (9th Cir. 1987). It appears that Elsinore was a defendant below.

On September 9, 2019, this court entered an order directing both appellant and respondent Brighton Properties, LLC, to provide this court with a status report on the effect of the automatic stay as a result of Elsinore’s bankruptcy petition, and whether the entire appeal should be

stayed pending the bankruptcy proceedings. Respondents have filed a status report and indicate that the bankruptcy proceedings are ongoing, and that the automatic stay applies in this instance. Further, respondents express their “serious doubts” as to whether this appeal will ever even need to proceed. Appellant has not filed a status report or any objection to the content of respondents’ status report.

Given the applicability of the automatic stay and respondents’ expressed doubt as to whether this appeal will proceed, this appeal may linger indefinitely on this court’s docket pending final resolution of the bankruptcy proceedings. Accordingly, 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—such dismissal will not violate the bankruptcy stay.¹ See *Indep. Union of Flight Attendants v. Pan Am. 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 [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 a decision to dismiss requires the court to first consider other issues presented by or related to the underlying case”).

¹The 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 755-56.

Accordingly, this appeal is dismissed. This dismissal is without prejudice to the parties' rights to move for reinstatement of this appeal 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.

Pickering, J.
Pickering

Parraguirre, J.
Parraguirre

Cadish, J.
Cadish

cc: Hon. Joanna Kishner, District Judge
Ghidotti Berger/Las Vegas
Ayon Law, PLLC
Fennemore Craig, P.C./Las Vegas
Eighth District Court Clerk