

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

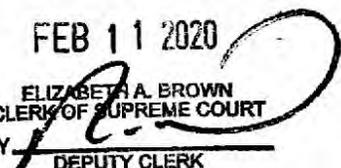
IN RE: DANELLE MERBACH.

No. 77847-COA

DANELLE MERBACH,  
Appellant,  
vs.  
NATIONSTAR MORTGAGE LLC,  
Respondent.

**FILED**

FEB 11 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DISMISSING APPEAL*

Danelle Merbach appeals from a district court order directing a foreclosure certificate to issue. Second Judicial District Court, Washoe County; Kathleen M. Drakulich, Judge.

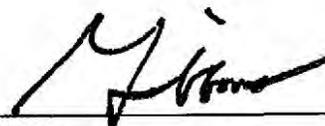
On January 3, 2020, Merbach filed a notice of bankruptcy filing which notified this court that she has petitioned for relief under Chapter 7 in the United States Bankruptcy Court for the District of Nevada. The automatic bankruptcy stay applies to any action to obtain possession of or to enforce a lien against property of the bankruptcy estate, and thus it applies to the foreclosure proceedings. 11 U.S.C. § 362(a)(3), (4) and (5) (2010); *see, e.g., Ingersoll-Rand Fin. Corp. v. Miller Mining Co.*, 817 F.2d 1424 (9th Cir. 1987).

Given the applicability of the automatic stay to the foreclosure proceedings, 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

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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”); *IUFA v. Pan Am. World Airways, Inc.*, 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 Merbach’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.<sup>1</sup>

It is so ORDERED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Tao

  
\_\_\_\_\_, J.  
Bulla

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<sup>1</sup>On April 22, 2019, the Nevada Supreme Court stayed the district court’s order allowing a certificate to issue and enjoined respondent from proceeding with any trustee’s sale of the subject property pending further order of the court. Because this order resolves the appeal, albeit without prejudice to Merbach’s right to seek reinstatement, the April 22 stay order has necessarily expired with the entry of this order. Nonetheless, the automatic bankruptcy stay seemingly remains in effect pending further order of the bankruptcy court, and in the event Merbach timely seeks to reinstate her appeal, following the lifting of the automatic stay or the conclusion of the bankruptcy proceedings, she may renew her stay request with this court.

cc: Hon. Kathleen M. Drakulich, District Judge  
Danelle Merbach  
Akerman LLP/Las Vegas  
McCarthy & Holthus, LLP/Las Vegas  
Washoe District Court Clerk