


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD AFRAND,
Appellant,
vs.
NEVADA PROPERTY 1, LLC,
Respondent.

No. 84103-COA

FILED

MAR 03 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is an appeal from several orders entered in proceedings supplementary to execution following the confirmation of an arbitration award. On February 24, 2023, respondent filed a notice informing this court that appellant has filed a petition for bankruptcy relief under Chapter 7 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada, Case No. 23-10069-nmc. A copy of the notice of bankruptcy is attached to respondent's notice. 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). 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, 1426 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtor was a defendant in the underlying trial court action. *Id.* Here, the appellant was the defendant below, and this appeal is therefore stayed pursuant to the automatic stay provisions of federal bankruptcy law.

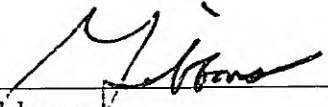
23-06494

On February 28, 2023, the trustee of appellant's bankruptcy estate, Brian D. Shapiro, filed a motion seeking an order staying this appeal until further notice given the applicability of the automatic stay. Because this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings, however, we conclude that judicial efficiency will be best served if the appeal is dismissed without prejudice. And since a dismissal without prejudice will not require this court to reach the merits of the appeal and is not inconsistent with the primary purpose of the bankruptcy stay—to provide protection for debtors and creditors—we conclude that this 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)]”); see also *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 756 (9th 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”). Accordingly, we dismiss this appeal. The dismissal is without prejudice to the right to move for reinstatement of the appeal within 90 days of either the lifting of the bankruptcy stay or final

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.

resolution of the bankruptcy proceedings, if such a motion is deemed appropriate at that time.

It is so ORDERED.²


_____, C.J.
Gibbons


_____, J.
Bulla


_____, J.
Westbrook

cc: Hon. Nancy L. Alf, District Judge
Richard Afrand
Snell & Wilmer, LLP/Las Vegas
Atkinson Law Associates LTD
Eighth District Court Clerk

²Because we dismiss this appeal, we necessarily deny Shapiro's motion to stay the appeal as moot. Further, in light of our dismissal of this appeal, we decline to take any action at this time with respect to Shapiro's request to be substituted into this action as the appellant. Nevertheless, we direct the clerk of court to add Shapiro's counsel, Atkinson Law Associates LTD, to the mailing list for this appeal for notice purposes.