

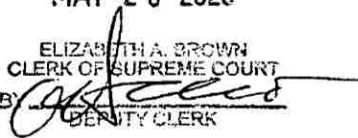
IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN D. SHAPIRO, CHAPTER 7
TRUSTEE,
Appellant,
vs.
NEVADA PROPERTY 1, LLC,
Respondent.

No. 85748

FILED

MAY 26 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

*ORDER GRANTING MOTION TO SUBSTITUTE AND DISMISSING
APPEAL*

This is an appeal from a district court order denying a claim of exemption from a writ of execution. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Respondent filed a notice informing this court that appellant Richard Afrand has filed a petition for relief under Chapter 7 of the Bankruptcy Code. Attorney Robert E. Atkinson then filed a motion to substitute bankruptcy trustee Brian D. Shapiro as appellant in place of Afrand, and Shapiro filed a supplement to the motion. In the motion and supplement, Shapiro informs this court that he is the Chapter 7 trustee, the district court has substituted him in place of Afrand in the underlying district court proceedings, and the bankruptcy court has entered an order prohibiting Afrand from pursuing any appeals or actions in this court arising from the district court litigation.

Cause appearing, the motion to substitute is granted. *See* NRAP 43(a)(1), (b); Fed. R. Bankr. P. 6009 (“With or without court approval, the trustee . . . may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and

prosecute any action or proceeding in behalf of the estate before any tribunal.”); *In re DiSalvo*, 219 F.3d 1035, 1039 (9th Cir. 2000) (“In [Chapter 7] liquidation proceedings, *only* the trustee has standing to prosecute or defend a claim belonging to the estate.”) (alteration in original) (citations omitted). The clerk of this court shall remove Richard Afrand as appellant, add Brian D. Shapiro as appellant, and amend the caption to conform with the caption on this order. The clerk shall add attorney Atkinson and the law firm of Atkinson Law Associates Ltd. as counsel of record for Shapiro.

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.* It appears that Afrand was the defendant 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, this court concludes that judicial efficiency will be best served if the appeal is dismissed without prejudice. Because 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—this court further concludes that 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 the statute [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 the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case”). Accordingly, this appeal is dismissed. The dismissal is without prejudice to any party’s right to move for reinstatement of the appeal within 90 days of either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if deemed appropriate at that time.

It is so ORDERED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

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.

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