

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAXTON INCORPORATED D/B/A
SARATOGA LAND AND
DEVELOPMENT,

Appellant,

vs.

HEAVY DUTY, LLC, A NEVADA
LIMITED LIABILITY COMPANY; AND
BUENA ENGINEERS, INC., A
DELAWARE CORPORATION,

Respondents.

No. 39010

FILED

APR 12 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DISMISSING APPEAL


This appeal has been docketed in this court for several years. The appeal was stayed pursuant to the mandatory provisions of federal bankruptcy law in 2003. See 11 U.S.C. §362(a). Pursuant to this court's orders, appellant has filed several status reports regarding the bankruptcy proceedings. Appellant's most recent status report indicates that the bankruptcy proceedings and stay are continuing.

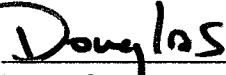
We note that this appeal has languished on our docket for many years. Further, given the apparent applicability of a continuing and possibly permanent stay, this appeal may languish indefinitely on this court's docket. Under these circumstances, we conclude that judicial efficiency will be best served if this appeal is dismissed, without prejudice. Because a dismissal *without prejudice* is not inconsistent with the primary purposes of the bankruptcy stay – to provide protection for debtors and creditors – and will not require this court to reach the merits of this appeal, we further conclude that such dismissal will not violate the bankruptcy stay. See Independent Union of Flight Attendants v. Pan American 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

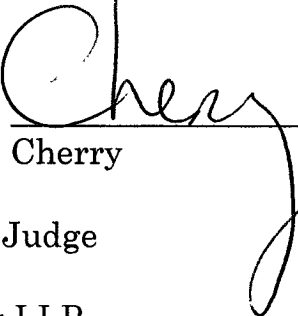
dismissal is “consistent with the purpose of the statute [11 U.S.C. § 362(a)]”, Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (holding that a dismissal of an action after the filing of a bankruptcy petition will violate the automatic stay “where the decision to dismiss first requires the court to consider other issues presented by or related to the underlying case”).

Accordingly, cause appearing, we dismiss this appeal. This dismissal is without prejudice to appellant’s right to move for reinstatement of this appeal if and when such a motion becomes appropriate.

It is so ORDERED.¹


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

cc: Hon. Kathy A. Hardcastle, District Judge
Lee S. Molof
Rooker Mohrman Rawlins & Bailey LLP
Wieczorek & Associates
Eighth District Court Clerk

¹Counsel for respondent Heavy Duty, LLC, and the bankruptcy trustee filed a “Status Report” indicating that appellant and Heavy Duty “have settled their disputes” and that this appeal should be dismissed with respect to Heavy Duty. Heavy Duty’s counsel has also filed a letter directed to the clerk of this court regarding the information in the “Status Report” and the application of the bankruptcy stay. In light of the instant order, we will take no action with respect to the “Status Report” or counsel’s letter.