

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID KUTLESA,

Appellant,

vs.

RAURBAZEL, INC., D/B/A
ASSOCIATED BENEFIT
CONSULTANTS; AND CURTIS
ALEXANDER,

Respondents.

No. 41615

FILED

MAY 01 2006

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

ORDER DISMISSING APPEAL

This appeal was docketed in this court on June 24, 2003. This appeal has been stayed pursuant to the automatic stay provisions of federal bankruptcy law since October 17, 2003. See U.S.C. § 362(a)(1).

On February 9, 2006, this court entered an order noting that counsel for appellant had reported that although the matter remained stayed, the parties had reached a settlement and that a supplemental status report would be filed upon "completion and acceptance of the settlement agreement and [the] discharge in bankruptcy court." Our order directed counsel to file an updated status report and, if appropriate, a motion or stipulation to dismiss the appeal within 15 days of that order. On February 27, 2006 counsel filed a report indicating that appellant and the trustee "have yet to reach a settlement." Further, counsel represents that bankruptcy proceedings are continuing and that a status hearing is scheduled for May 25, 2006. Thus, it appears this matter remains stayed and the bankruptcy proceedings are ongoing.


Given the applicability of the automatic stay, this appeal may languish indefinitely on this court's docket until appellant's bankruptcy proceedings are concluded. Under these circumstances, we conclude that judicial efficiency will be best served if this appeal is dismissed, without

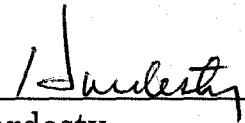
prejudice. Because a dismissal *without prejudice* is not inconsistent with the primary purposes of the bankruptcy stay – to provide protection for debtors and creditors – and will not require this court to reach the merits of this appeal, we further conclude that such dismissal will not violate the bankruptcy stay.¹ 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 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, cause appearing, we dismiss this appeal. This dismissal is without prejudice to appellant’s right to move for reinstatement of this appeal upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if appellant deems such a motion appropriate at that time.

It is so ORDERED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

¹ The 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 755-6.

cc: Honorable Jackie Glass, District Judge
Howard Roitman, Settlement Judge
Lovell & Lovell
Schreck Brignone/Las Vegas
Clark County Clerk