

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOHN OKOYE; AND AHUNNA OKOYE,  
Appellants,  
vs.  
REZA DESIGN & CONSTRUCTION,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 81386-COA

FILED

OCT 18 2021

ELIZABETH A. BROWN  
CLERK OF APPEALS COURT  
BY *Elizabeth A. Brown*  
DEPUTY CLERK

*ORDER DISMISSING APPEAL*

John and Ahunna Okoye appeal from a district court order granting a motion for reconsideration of a prior order awarding attorney fees and costs in connection with the expungement of a mechanic's lien. Eighth Judicial District Court, Clark County; Rob Bare, Judge.

On September 17, 2021, this court issued an order giving the appellants 21 days to show cause why the automatic stay stemming from respondent's Chapter 7 bankruptcy proceedings does not apply to this appeal such that it should not be dismissed without prejudice. The Okoyes have not filed a response to that order, and they have therefore failed to show cause why the automatic stay does not apply to this appeal. Consequently, and because the appeal is a continuation of legal proceedings against respondent, it appears that the automatic stay applies. See 11 U.S.C. § 362(a)(1) (providing that a petition for bankruptcy relief operates to stay "the commencement or continuation . . . of a judicial . . . proceeding against the debtor that was . . . commenced before the commencement of the [bankruptcy] case"); *Alpern v. Lieb*, 11 F.3d 689, 690 (7th Cir. 1993) (treating defendants' motion for Rule 11 attorney fees as a separate action

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against the plaintiff bankruptcy debtor, but holding the stay was inapplicable because actions brought pursuant to governmental police or regulatory powers are statutorily exempt from the stay); *Wolgast v. Richards*, 463 B.R. 445, 450 (E.D. Mich. 2012) (concluding that a motion seeking attorney fees from a debtor plaintiff is automatically stayed under 11 U.S.C. § 362(a)(1)); *Roach v. First Nat'l Bank of Anchorage*, 636 P.2d 608, 614 (Alaska 1981) (construing defendant's application for fees and costs as a proceeding against the plaintiff bankruptcy debtor covered by the automatic stay), *modified on reh'g*, 643 P.2d 690 (Alaska 1982); *see also Nanyah Vegas, LLC v. Rogich*, Docket Nos. 79917, 81038, and 81238 (Order Dismissing Appeals in Docket Nos. 81038 and 81238, June 18, 2021) (dismissing appeals—without prejudice—from attorney-fee awards against a plaintiff bankruptcy debtor).

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, judicial efficiency will best be served if the appeal is dismissed without prejudice. Because such a dismissal does not require this court to reach the merits of the appeal and is not inconsistent with the primary purposes of the bankruptcy stay, we conclude that this dismissal will not violate the bankruptcy stay.<sup>1</sup> *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

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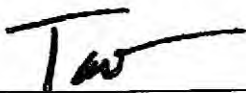
<sup>1</sup>The automatic stay provides a debtor “with protection against hungry creditors” and gives it a “breathing spell from its creditors” by stopping all collection efforts. *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 755 (9th Cir. 1995) (internal quotation marks omitted). Further, it “assures 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.

an appeal so long as dismissal is “consistent with the purpose of [11 U.S.C. § 362(a)]”; *cf. Dean*, 72 F.3d at 755 (holding that a post-bankruptcy petition dismissal will violate the automatic stay “where a decision to dismiss requires the court to first consider other issues presented by or related to the underlying case”).

We therefore dismiss this appeal without prejudice to the Okoyes’ right to move for reinstatement of the appeal upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if the Okoyes deem such a motion appropriate at that time.

It is so ORDERED.

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

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

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

cc: Chief Judge, Eighth Judicial District Court  
Eighth Judicial District Court, Dept. 32  
Lovato Law Firm, P.C.  
Reza Design & Construction, LLC  
Eighth District Court Clerk