

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN S. LEVIN, AN INDIVIDUAL,
Appellant,
vs.
GARY B. THOMSEN, INDIVIDUALLY
AND AS TRUSTEE OF THE THOMSEN
FAMILY TRUST, UNDER
DECLARATION OF TRUST DATED
MARCH 11, 2004,
Respondent.

No. 85840

FILED

APR 03 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

Respondent has filed a notice of bankruptcy notifying this court that an order for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada has been filed by appellant.

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 appellant was a defendant below. Therefore, this appeal is stayed as to appellant pursuant to the automatic stay provisions of federal bankruptcy law.

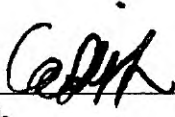
Given the applicability of the automatic stay, this appeal may linger indefinitely on this court's docket pending final resolution of the bankruptcy proceedings. Accordingly, we conclude that judicial efficiency will be best served if the appeal is dismissed without prejudice. Because a dismissal without 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—we further conclude that such dismissal will not violate the bankruptcy stay.¹ *See Indep. 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, 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, we dismiss this appeal.² The dismissal is without prejudice to appellant's right to move for reinstatement of the appeal within 60 days of either the lifting of the bankruptcy stay or

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.


²Because we dismiss this appeal, appellant's motion to substitute parties is denied as moot.

final resolution of the bankruptcy proceedings, if appellant deems such a motion appropriate at that time.

It is so ORDERED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Connie J. Steinheimer, District Judge
Alan S. Levin
Mountainside Law
Washoe District Court Clerk