

IN THE SUPREME COURT OF THE STATE OF NEVADA

MGP APEX 582 MULTIFAMILY, LLC, A
NEVADA LIMITED LIABILITY
COMPANY; MGP APEX 582
DEVELOPMENT, LLC, A NEVADA
LIMITED LIABILITY COMPANY; AND
MGP APEX 582 GUARANTY, LLC, A
NEVADA LIMITED LIABILITY
COMPANY,

Appellants,

vs.

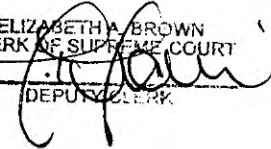
TREZ CAPITAL WINSTON LP, A
DELAWARE LIMITED PARTNERSHIP;
AND TREZ CAPITAL FUNDING II,
LLC, A DELAWARE LIMITED
LIABILITY COMPANY,

Respondents.

No. 86963

FILED

NOV 15 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DISMISSING APPEAL

On September 20, 2023, appellants filed a response to this court's August 30, 2023, order informing this court that on August 9, 2023, appellants filed an Involuntary Bankruptcy Petition under Chapter 11 of the United State Code in the United States Bankruptcy Court for the District of Nevada, thereby commencing a Chapter 11 Bankruptcy, Case No. 23-13321-nmc. The bankruptcy petition pertains to BH&G Holdings, LLC (BH&G).

The filing of a bankruptcy petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the debtor." 11 U.S.C. § 362(a)(1). An appeal, for purposes of the automatic stay, is considered a continuation of the action in the trial court. See *Ingersoll-Rand Fin. Corp. v. Miller Mining Co., Inc.*, 817 F.2d 1424 (9th Cir. 1987). Counsel indicates that because the pending appeal is from a

derivative action commenced by appellants on behalf of the nominal defendant BH&G, and because the order appealed from was the denial of a motion for preliminary injunction seeking to stay and enjoin a scheduled August 10, 2023, foreclosure sale of property owned by BH&G, the automatic bankruptcy stay applies to this appeal. We agree.

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 this appeal is dismissed without prejudice. Because a dismissal *without prejudice* will not require this court to reach the merits of this appeal and is not inconsistent with the primary purposes 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 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”).

¹The automatic stay provides a debtor “with protection against hungry creditors” and gives the debtor 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.

