

IN THE SUPREME COURT OF THE STATE OF NEVADA

WPH ARCHITECTURE, INC., A  
NEVADA CORPORATION,  
Appellant,

vs.

VEGAS VP, LP, A NEVADA  
LIMITED PARTNERSHIP,  
Respondent.

No. 54389

**FILED**

NOV 12 2010

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DISMISSING APPEAL

On September 16, 2010, this court entered an order directing respondent to file in this court a status report regarding respondent's potential bankruptcy. This status report was due by October 8, 2010. To date, respondent has not provided the required status report. Appellant, however, has provided this court with a status report but has requested that this appeal not be dismissed because the bankruptcy action is progressing and creditors, including appellant, "will be submitting their proofs of claims in the near future." Appellant also states that it intends to seek relief from the automatic bankruptcy stay for the purposes of this appeal, although no indication of when such relief will be sought is provided.

The filing of a bankruptcy petition operates to stay, automatically, the "continuation" of any "judicial . . . action . . . against the [bankruptcy] debtor." 11 U.S.C. § 362(a)(1). An appeal, for purposes of the automatic bankruptcy stay, is considered a continuation of the action

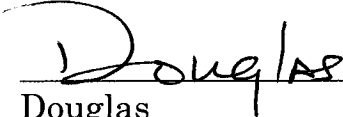
in the trial court. See, e.g., Ingersoll-Rand Financial Corp. v. Miller Min. Co., 817 F.2d 1424 (9th Cir. 1987). Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. Id. A review of the district court documents submitted to this court pursuant to NRAP 3(g) reveals that respondent was a defendant in the action below. Accordingly, the automatic bankruptcy stay applies to this appeal.


Given the applicability of the automatic stay, and the fact that appellant provides no indication as to when it will seek relief from 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 to appellants' right to timely move to reinstate its appeal against respondent upon the lifting of the bankruptcy stay. 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 a dismissal will not violate the bankruptcy stay. See Dean v. Trans World Airlines, Inc., 72 F.3d 754, 756 (9th Cir. 1995) (holding that a post-bankruptcy 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”); see also IUFA v. Pan American, 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 [11 U.S.C. §362(a)]”).

Accordingly, we dismiss this appeal without prejudice to the parties' right to timely move for reinstatement of the appeal upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings

It is so ORDERED.

, J.  
Hardesty

, J.  
Douglas

, J.  
Pickering

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Stephen E. Haberfeld, Settlement Judge  
Weil & Drage, APC  
Greenberg Traurig, LLP  
Edward L. Rothberh  
Eighth District Court Clerk