

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN A. RITTER, AN INDIVIDUAL;
AND DARRIN D. BADGER, AN
INDIVIDUAL,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK; AND THE HONORABLE
JERRY A. WIESE, DISTRICT JUDGE,

Respondents,

and

OMNI FAMILY LIMITED
PARTNERSHIP, A NEVADA
DOMESTIC LIMITED PARTNERSHIP,

Real Party in Interest.

No. 67835

FILED

MAR 18 2016

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

ORDER

Petitioner John A. Ritter has filed a suggestion of bankruptcy notifying this court that an involuntary petition for relief under Chapter 7 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Nevada has been filed against him. A copy of an "Involuntary Petition Against an Individual" from the bankruptcy court is attached to the motion.

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). A petition for extraordinary relief in an ongoing action, 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, a writ proceeding is automatically stayed if the debtor was a defendant in the underlying trial court action. *Id.* It appears that Ritter is a defendant below. Therefore, this matter is stayed as to John Ritter pursuant to the automatic stay provisions of federal bankruptcy law.

Given the applicability of the automatic stay, Ritter's petition 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 petition is dismissed as to Ritter without prejudice. Because a dismissal without prejudice will not require this court to reach the merits of Ritter's petition 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 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, 755 (9th Cir. 1995) (holding that a post-bankruptcy petition dismissal will violate

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 755-6.

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 petition as to Ritter only. This dismissal is without prejudice to Ritter's right to move for reinstatement of his petition upon either the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if Ritter deems such a motion appropriate at that time.

It is so ORDERED.

Douglas, J.
Douglas

Cherry, J.
Cherry

Gibbons, J.
Gibbons

cc: Hon. Jerry A. Wiese, District Judge
Reid Rubinstein Bogatz
Lewis Roca Rothgerber Christie LLP/Las Vegas
Roger P. Croteau & Associates, Ltd.
Eighth District Court Clerk