

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT HOLMES, III,

Appellant,

vs.

LAS VEGAS METROPOLITAN
POLICE DEPARTMENT,

Respondent.

Case No.: 71680 Electronically Filed
May 12 2017 01:58 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, The Honorable Douglas E. Smith
Presiding

MOTION TO DISMISS APPEAL

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MOTION TO DISMISS APPEAL

I. INTRODUCTION

Respondent Las Vegas Metropolitan Police Department (“LVMPD”), by and through its attorneys, Marquis Aurbach Coffing, hereby moves this Court to dismiss this appeal based upon the bankruptcy petition filed by Appellant, Robert Holmes, III (“Holmes”) and the automatic bankruptcy stay of 11 U.S.C. § 362.

II. LEGAL ARGUMENT

On May 1, 2017, Debtor filed a voluntary petition for relief under Chapter 7 of the United States Bankruptcy Code (“Bankruptcy Petition”), and administered under Case No. 17-12300-led (Bankruptcy Case”). The Bankruptcy Case is pending before the United States Bankruptcy Court for the District of Nevada.

This entire litigation is stayed pursuant to 11 U.S.C. § 362(a)(1). According to the Ninth Circuit, appeals filed by debtors, such as Plaintiff, are stayed. *See Ingersoll-Rand Fin. Corp. v. Miller Min. Co., Inc.*, 817 F.2d 1424, 1426 (9th Cir. 1987). This reasoning is based in part on the notion that an appeal is simply a continuation of the litigation in the trial court. *Id.* Moreover, dismissal of this appeal is not inconsistent with the purposes of § 362, thus allowing this appeal to be dismissed without violating any penalties of the automatic stay under § 362. *See Independent Union of Flight Attendants v. Pan American World Airways, Inc.*,

966 F.2d 457, 459 (9th Cir. 1992). Since the Court can simply dismiss this appeal without considering the other issues presented by the case, dismissal is favored and expressly permitted. *See Dean v. Transworld Airlines, Inc.*, 72 F.3d 754, 755 (9th Cir. 1995). Therefore, based upon the automatic stay under § 362, applicable to Plaintiff's bankruptcy filing, the Court should dismiss this appeal.

III. CONCLUSION

In summary, the automatic stay of § 362 prevents this appeal from continuing. The Court should dismiss this appeal since the automatic stay applies to this entire appeal, and dismissal is consistent with the purposes of § 362. There is simply no reason to allow this appeal to be stayed and languish on the Court's dockets while the bankruptcy proceedings are ongoing. At the end of the bankruptcy proceedings, Plaintiff may not even want to pursue this litigation, or may not have permission from the bankruptcy trustee.

Dated this 12th day of May, 2017.

MARQUIS AURBACH COFFING

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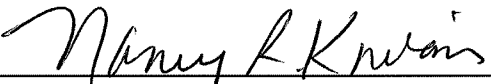
CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO DISMISS APPEAL** was filed electronically with the Nevada Supreme Court on the 12 day of May, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

n/a

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

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Appellant in Proper Person



Nancy R. Knillans, an employee of
Marquis Aurbach Coffing