

IN THE SUPREME COURT OF THE STATE OF NEVADA

SATICOY BAY LLC SERIES 9050 W
WARM SPRINGS 2079,

Appellant,

vs.

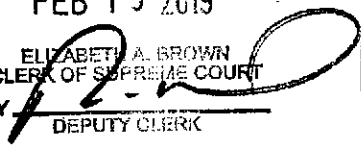
NEVADA ASSOCIATION SERVICES;
JAMES P. MARKEY; AND DITECH
FINANCIAL LLC,

Respondents.

No. 74153

FILED

FEB 19 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER PARTIALLY DISMISSING APPEAL

Counsel for respondent Ditech Financial, LLC, has filed a notice, informing this court that Ditech has filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code. 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. Consequently, an appeal is automatically stayed if the debtor was the defendant in the underlying trial court action. *See Ingersoll-Rand Fin. Corp. v. Miller Mining, Co.*, 817 F.2d 1424 (9th Cir. 1987). It appears that Ditech was an intervenor-defendant below. Therefore, this appeal is stayed as to Ditech Financial, LLC, 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 this appeal is dismissed without prejudice as to Ditech Financial, LLC, only. Because a dismissal *without prejudice* will not require this court to reach the merits of this 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 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”).

Accordingly, we dismiss this appeal as to Ditech Financial, LLC, only. This dismissal is without prejudice to appellant's right to move for reinstatement of this appeal as to Ditech Financial, LLC, upon either

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.

the lifting of the bankruptcy stay or final resolution of the bankruptcy proceedings, if appellant deems such a motion appropriate at that time.²

It is so ORDERED.

1 Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

Silver, J.
Silver

cc: Hon. Timothy C. Williams, District Judge
Law Offices of Michael F. Bohn, Ltd.
Wolfe & Wyman LLP
Christopher V. Yergensen
Law Office of John W. Thomson
Eighth District Court Clerk

²Any such motion to reinstate the appeal must be filed within 60 days of any order lifting the stay or concluding the bankruptcy proceedings.