



1       **I.     BACKGROUND**

2           Debtor filed this pro se appeal of the bankruptcy court’s Sale Order and Expungement  
3       Order on June 19, 2017. *See* Notice of Appeal, ECF 1-1. She also filed an application for TRO  
4       pending appeal. *See* Application for TRO, ECF 1-5. The appeal and TRO application initially  
5       were referred to the Bankruptcy Appellate Panel, but subsequently they were transferred to this  
6       Court pursuant to a Statement of Election filed by the Chapter 7 Trustee. *See* Notice of Referral to  
7       Bankruptcy Appellate Panel, ECF 1-4; Statement of Election, ECF 1-3. This Court denied the  
8       TRO application without prejudice on the basis that Debtor had not presented the TRO application  
9       to the bankruptcy court in the first instance as required by Federal Rule of Bankruptcy Procedure  
10      8007. *See* Order Denying Application for TRO, ECF 3. Debtor subsequently filed a TRO  
11      application in the bankruptcy court, which the bankruptcy court construed as a stay motion and  
12      denied by written order on July 14, 2017. *See* Bankruptcy Court’s Order Denying Debtor’s  
13      Motion for Stay Pending Appeal, ECF 417 in Case No. 15-br-53563. On the same date, Debtor  
14      filed the present Stay Motion in this Court. *See* Stay Motion, ECF 4. The Stay Motion was  
15      docketed and received by the undersigned on July 17, 2017.

16      **II.    LEGAL STANDARD**

17           A motion for a stay pending appeal ordinarily must be brought in the bankruptcy court in  
18      the first instance. Fed. R. Bankr. P. 8007(a). If a party moves for such relief in the district court,  
19      “[t]he motion must: (A) show that moving first in the bankruptcy court would be impracticable;  
20      or (B) if a motion was made in the bankruptcy court, either state that the court has not yet ruled on  
21      the motion, or state that the court has ruled and set out any reasons given for the ruling.” Fed. R.  
22      Bankr. P. 8007(b)(2).

23           Where the bankruptcy court has denied a motion for a stay pending appeal, the district  
24      court may grant a stay only if it determines that the bankruptcy court’s denial was an abuse of  
25      discretion. *See In re Wymer*, 5 B.R. 802, 808 (9th Cir. B.A.P. 1980) (“It is . . . important to the  
26      properly functioning bankruptcy court that the trial judge’s rulings on stays pending appeal be  
27      disturbed only in the event of error or abuse of discretion.”); *In re North Plaza, LLC*, 395 B.R.  
28      113, 119 (S.D. Cal. 2008) (“Where the bankruptcy court has already denied a stay . . . the

1 appellate court’s review is limited to a simple determination of whether the bankruptcy court  
2 abused its discretion.”). “The abuse of discretion standard on review of the bankruptcy court’s  
3 order denying a stay encompasses a *de novo* review of the law and a clearly erroneous review of  
4 the facts with respect to the underlying issues.” *In re North Plaza*, 395 B.R. at 119.

5 **III. DISCUSSION**

6 **A. Requirements of Rule 8007**

7 Debtor has complied with Rule 8007 only in part. Although she states in her Stay Motion  
8 that she first sought relief in the bankruptcy court, and that the bankruptcy court denied her  
9 motion, she does not “set out any reasons given for the ruling” of the bankruptcy court. Fed. R.  
10 Bankr. P. 8007(b)(2). Because it can access the bankruptcy court’s Order Denying Debtor’s  
11 Motion for Stay Pending Appeal, this Court will not deny Debtor’s Stay Motion based on her  
12 failure to comply fully with Rule 8007.

13 **B. The Bankruptcy Court did not Abuse its Discretion in Denying a Stay**

14 As set forth above, this Court’s consideration of Debtor’s motion for a stay is limited to  
15 determining whether the bankruptcy court’s denial of a stay was an abuse of discretion. *See In re*  
16 *Wymer*, 5 B.R. at 808; *In re North Plaza*, 395 B.R. at 119. In making that determination, this  
17 Court reviews the bankruptcy court’s conclusions of law *de novo* and its factual findings for clear  
18 error. *In re North Plaza*, 395 B.R. at 119.

19 Before turning to that review, the Court observes that Debtor does not acknowledge or  
20 discuss the abuse of discretion standard. All of her arguments focus on asserted errors in the  
21 bankruptcy court’s rationale for granting the Sale Order and Expungement Order. However, the  
22 issue presented by Debtor’s motion for a stay is not whether the bankruptcy court erred in issuing  
23 those orders, but whether the bankruptcy court abused its discretion in denying Debtor’s motion  
24 for a stay pending appeal of the orders. For the reasons discussed below, this Court concludes that  
25 the bankruptcy court did not abuse its discretion in denying a stay.

26 **1. The Bankruptcy Court Applied the Correct Legal Standards**

27 In order to conduct a *de novo* review of the bankruptcy court’s conclusions of law, this  
28 Court must determine the correct legal standards and then decide whether the bankruptcy court

1 applied those legal standards in denying Debtor’s motion for a stay.

2 The Court first addresses the standard applicable to a motion for a stay pending appeal.  
3 When considering such a motion, a court must consider four factors: “(1) whether the stay  
4 applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the  
5 applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will  
6 substantially injure the other parties interested in the proceeding; and (4) where the public interest  
7 lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009) (internal quotation marks and citation omitted).  
8 The first two factors are the most critical. *Id.* However, “[t]he party moving for a stay has the  
9 burden of proof on each of these elements, and the movant’s failure to satisfy one prong of the  
10 standard dooms the motion.” *In re Silva*, No. 9:10-bk-14135-PC, 2015 WL 1259774, at \*4 (C.D.  
11 Cal. Mar. 17, 2015); *see also In re Rivera*, No. 5:15-cv-04402-EJD, 2015 WL 6847973, at \*2  
12 (N.D. Cal. Nov. 9, 2015) (“a failure on any one factor dooms the motion”) (internal quotation  
13 marks and citation omitted).

14 “A stay is not a matter of right, even if irreparable injury might otherwise result.” *Nken*,  
15 556 U.S. at 433 (internal quotation marks and citation omitted). “It is instead an exercise of  
16 judicial discretion, and the propriety of its issue is dependent upon the circumstances of the  
17 particular case.” *Id.* (internal quotation marks, citation, and brackets omitted). The party seeking  
18 a stay bears the burden of showing that the circumstances justify a stay. *Id.* at 433-34.

19 The bankruptcy court applied this standard in evaluating Debtor’s motion for stay, citing  
20 *Nken* in its written order and reciting the four-factor test set forth therein. *See* Bankruptcy Court’s  
21 Order Denying Debtor’s Motion for Stay Pending Appeal at 2-3, ECF 417 in Case No. 15-br-  
22 53563. Moreover, with respect to the first *Nken* factor, the bankruptcy court stated correctly that  
23 the movant must show, at a minimum, that she has a “substantial case for relief on the merits.” *Id.*  
24 at 3 (quoting *Leiva-Perez v. Holder*, 640 F.3d 962, 968 (9th Cir. 2011)).

25 **2. The Bankruptcy Court’s Factual Findings are not Clearly Erroneous**

26 Having determined that the bankruptcy court applied the correct legal standards, the Court  
27 next must determine whether the bankruptcy court’s factual findings are clearly erroneous. The  
28 bankruptcy court determined that Debtor had not shown a substantial case for relief on the merits

1 of her appeal because her stay motion was “almost entirely composed of copied-and-pasted text”  
2 from previous filings. Bankruptcy Court’s Order Denying Debtor’s Motion for Stay Pending  
3 Appeal at 3, ECF 417 in Case No. 15-br-53563. The bankruptcy court found that Debtor’s stay  
4 motion was “a simple rehash of arguments that were considered and rejected in the Bankruptcy  
5 Court’s Sale Orders,” and that “Debtor neither advance[d] any new arguments nor suggest[ed] any  
6 previously unasserted error in the Bankruptcy Court’s reasoning.” *Id.* at 3-4.

7 The bankruptcy court’s characterization of Debtor’s stay motion is supported by the record  
8 and, in particular, two of Debtor’s prior filings cited by the bankruptcy court: Debtor’s Opposition  
9 to Trustee’s (1) Motion for Order Authorizing Sale of Real Property Free and Clear of Claims,  
10 Liens and Interests; and (2) Motion for Authority to Enter into Purchase and Sale Agreement and  
11 to Pay Fees, Costs, Taxes, and Homestead, ECF 327 in Case No. 15-br-53563; and Debtor’s  
12 Opposition to Trustee’s Motion to Expunge, or, Alternatively, Sell Real Property Free and Clear  
13 of Lis Pendens, ECF 363 in Case No. 15-br-53563. Repetition of arguments previously made and  
14 rejected is insufficient to satisfy the first *Nken* factor. *See Griffen v. Harrington*, No. CV 10-  
15 08753-VBF-SP, 2013 WL 3873958, at \*3 (C.D. Cal. Jan. 18, 2013) (first *Nken* factor not satisfied  
16 where “respondent’s brief in support of a stay pending appeal merely reasserts arguments . . .  
17 which this Court discussed and rejected” in a prior order).

18 Based on the record before it, the Court concludes that there is ample support for the  
19 bankruptcy court’s factual finding that Debtor’s stay motion was merely a rehash of arguments  
20 previously made and rejected. That factual finding supports the bankruptcy court’s determination  
21 that Debtor failed to show a likelihood of success on the merits. Failure to satisfy even one factor  
22 of the four-factor test dooms a motion for a stay. *See In re Silva*, 2015 WL 1259774, at \*4; *In re*  
23 *Rivera*, 2015 WL 6847973, at \*2. Accordingly, the Court need not reach the other factors to  
24 conclude that the bankruptcy court did not abuse its discretion in denying Debtor’s motion for a  
25 stay pending appeal.

26 Debtor clearly is desperate to prevent the sale of her home, and her arguments reflect a  
27 strong belief that the bankruptcy court erred in issuing the Sale Order and Expungement Order that  
28 are the subjects of her appeal. However, those arguments are misplaced here. This Court’s task in

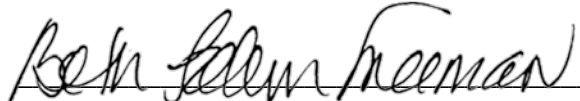
1 evaluating Debtor’s current motion is limited to determining whether the bankruptcy court abused  
2 its discretion in denying a stay pending appeal. Debtor has not demonstrated – or even argued –  
3 that the bankruptcy court did abuse its discretion and therefore she cannot prevail on her motion.

4 **IV. ORDER**

5 Debtor’s motion for a stay pending appeal is DENIED.

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Dated: July 18, 2017

  
BETH LABSON FREEMAN  
United States District Judge