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5 **UNITED STATES DISTRICT COURT**  
6 **NORTHERN DISTRICT OF CALIFORNIA**  
7 **SAN JOSE DIVISION**  
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9 LAURA A. GENS,  
10 Appellant,  
11 v.  
12 DORIS KAELIN,  
13 Appellee.

Case No. 17-cv-03601-BLF

**ORDER DENYING DEBTOR'S  
MOTION FOR RECONSIDERATION  
OF ORDER DENYING STAY PENDING  
APPEAL**

[Re: ECF 8]

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15 On July 14, 2017, Debtor filed an “Ex Parte Emergency Application for a Temporary  
16 Restraining Order Pending Appeal of Orders Authorizing and Confirming Sale of Appellant’s  
17 Residence Free and Clear of Lis Pendens,” which the Court construed as a motion for stay pending  
18 appeal of the bankruptcy court’s Order Granting Trustee’s Motions to (1) Sell Real Property and  
19 Pay Fees, Costs, Taxes, and Commissions, Other than the Lien of Wells Fargo, and (2) Sell Free  
20 and Clear of Claims, Liens, and Interests (“Sale Order”); and Order Granting Trustee’s Motion to  
21 Expunge, or, Alternatively, Sell Real Property Free and Clear of Lis Pendens (“Expungement  
22 Order”). *See* Stay Motion, ECF 4. The Court denied that motion on July 18, 2017. *See* Order  
23 Denying Debtor’s Motion for Stay Pending Appeal, ECF 7.

24 On July 19, Debtor filed a “*Revised* Ex Parte Emergency Application for a Temporary  
25 Restraining Order Pending Appeal of Orders Authorizing and Confirming Sale of Appellant’s  
26 Residence Free and Clear of Lis Pendens, which the Court construes as a motion for  
27 reconsideration. *See* Motion for Reconsideration, ECF 8. The motion for reconsideration is  
28 DENIED for the reasons discussed below.

1 In order to obtain reconsideration of an interlocutory order, the moving party “must  
2 specifically show reasonable diligence in bringing the motion” and also must show one of the  
3 following: (1) “a material difference in fact or law exists from that which was presented to the  
4 Court before entry of the interlocutory order for which reconsideration is sought”; (2) “[t]he  
5 emergence of new material facts or a change of law occurring after the time of such order”; or  
6 (3) “[a] manifest failure by the Court to consider material facts or dispositive legal arguments  
7 which were presented to the Court before such interlocutory order.” Civ. L.R. 7-9(a), (b).

8 Debtor has not identified any material difference in fact or law as required under the first  
9 prong, or the emergence of new material facts or a change of law as required under the second  
10 prong. Debtor does appear to argue that the Court failed to consider material facts or dispositive  
11 legal arguments as required under the third prong. The Court addresses those arguments below.

12 Debtor asserts that the Court denied her Stay Motion because of her failure to analyze the  
13 abuse of discretion standard. Motion for Reconsideration at 2, ECF 8. Debtor’s failure to analyze  
14 the correct legal standard was not the basis for the Court’s ruling. To the contrary, the Court set  
15 forth the applicable abuse of discretion standard, explaining that the Court reviews the bankruptcy  
16 court’s conclusions of law de novo and its factual findings for clear error. *See* Order Denying  
17 Debtor’s Motion for Stay Pending Appeal at 3, ECF 7. The Court expressly determined that the  
18 bankruptcy court has applied the correct legal standards and had not committed clear error in its  
19 factual findings. *See id.* at 3-5. Importantly here, the Court concluded that the bankruptcy court  
20 made a factual finding that Debtor’s stay motion filed in the bankruptcy court was a rehash of  
21 arguments previously made and rejected; the bankruptcy court’s factual finding was supported by  
22 the record and thus was not clearly erroneous; and the bankruptcy court’s factual finding provided  
23 a sufficient legal basis for the bankruptcy court’s determination that Debtor had not established a  
24 likelihood of success on the merits. *See id.* at 5. The Court’s ruling was based on those  
25 substantive determinations and not on the procedural deficiencies in Debtor’s Stay Motion.  
26 Debtor has not presented any factual or legal basis for reconsideration of the substantive  
27 determinations upon which the Court’s denial of her Stay Motion was based.

28 While the above conclusion is determinative of Debtor’s motion for reconsideration, the

Court briefly addresses Debtor's argument that the bankruptcy court lacked jurisdiction to expunge the lis pendens which Debtor had recorded with the County Clerk. That jurisdictional argument was presented to and expressly rejected by the bankruptcy court prior to its issuance of the Expungement Order. *See* Tr. of Hearing on Motion to Expunge 20:1 – 23:22, Exh. to Motion for Reconsideration, ECF 8. Thus Debtor's reiteration of the jurisdictional argument in moving the bankruptcy court for a stay pending appeal properly was rejected by the bankruptcy court as a rehash of arguments previously made and rejected.

Moreover, Debtor's jurisdictional argument is incorrect as a matter of law. Under California law, which Debtor asserts applies (and which the bankruptcy court did apply), a party who asserts a real property claim in any action may record a lis pendens, that is, a notice of pendency of action, "in the office of the recorder of each county in which all or part of the real property is situated." Cal. Civ. P. Code § 405.20. "At any time after notice of pendency of action has been recorded, any party, or any nonparty with an interest in the real property affected thereby, may apply to the court in which the action is pending to expunge the notice." Cal. Civ. P. Code § 405.20. Debtor argues that the "court in which the action is pending" is the district court, and that as a result the bankruptcy court lacks authority to expunge a lis pendens. However, the "action" at issue is the bankruptcy case which was commenced in the bankruptcy court and will remain "pending" until final determination on appeal. *See In re Thatcher*, 24 B.R. 764, 765 (E.D. Cal. 1982). Consequently, the bankruptcy court retains jurisdiction to expunge a lis pendens, even where the lis pendens was recorded after the filing of an appeal. *Id.*; *see also In re Weston*, 110 B.R. 452, (E.D. Cal. 1989) (same).

Debtor's motion for reconsideration is DENIED.

Dated: July 19, 2017

  
BETH LABSON FREEMAN  
United States District Judge