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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

TIMOTHY GENS,
Appellant,
v.
DORIS KAELIN,
Appellee.

Case No. 17-cv-03616-BLF

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

[Re: ECF 8]

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

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

In order to obtain reconsideration of an interlocutory order, the moving party “must specifically show reasonable diligence in bringing the motion” and also must show one of the following: (1) “a material difference in fact or law exists from that which was presented to the Court before entry of the interlocutory order for which reconsideration is sought”; (2) “[t]he

1 emergence of new material facts or a change of law occurring after the time of such order”; or
2 (3) “[a] manifest failure by the Court to consider material facts or dispositive legal arguments
3 which were presented to the Court before such interlocutory order.” Civ. L.R. 7-9(a), (b).

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

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

25 Appellant’s motion for reconsideration is DENIED.

26 Dated: July 19, 2017

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28 BETH LABSON FREEMAN
United States District Judge