

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAYAKUMAR SUNDARAN NAIR et al.,

Plaintiffs,

v.

ALEX TOTH et al.,

Defendants.

CASE NO. 2:23-cv-00454-TL

ORDER ON EX PARTE MOTION TO  
CANCEL LIS PENDENS

This matter is before the Court on Defendant Dean Kalivas’s Ex Parte Motion to Cancel Lis Pendens. Dkt. No. 24. Defendant argues that his “house-cleaning motion” is appropriate because the Court dismissed this case without prejudice on August 30, 2023. Defendant notes that despite the case being dismissed, on September 28, 2023, Plaintiff Jayakrishnan Nair referenced this case as cause for encumbering the title to two properties that are claimed to be at issue in this matter pursuant to RCW 4.28.320. Dkt. No. 24 at 1–2. That same day, Plaintiffs filed a motion to reconsider the Court’s order of dismissal, which was eventually denied. *See* Dkt. Nos. 17, 19. Plaintiffs filed a notice of appeal to the Ninth Circuit on November 20, 2023.

1 See Dkt. No. 20. Defendant Kalivas filed an ex parte motion to cancel lis pendens on  
2 December 4, 2023. Dkt. No. 24. The appeal is still pending at the Ninth Circuit.

3 A “lis pendens” is an “instrument having the effect of clouding the title to real property.”  
4 RCW 4.28.328(1)(a). A court has discretion to cancel a lis pendens when three conditions are  
5 met: (1) the action must be settled, discontinued, or abated, (2) an aggrieved person must move  
6 to cancel the lis pendens, and (3) the aggrieved person must show good cause and provide proper  
7 notice. RCW 4.28.320; *see also Suess v. Nw. Timber & Dev., Inc.*, 24 Wn. App. 2d 1010, 2022  
8 WL 14297047, at \*15 (2022) (unpublished) (quoting *Guest v. Lange*, 195 Wn. App. 330, 336,  
9 381 P.3d 130 (2016)). “[A] notice of appeal, by transporting a case from a trial court to a court of  
10 appeals, renders the action in that case not ‘settled, discontinued, or abated.’” *Guest*, 195 Wn.  
11 App. at 340. Further, “the weight of authority from other jurisdictions suggests that an appeal  
12 preserves the lis pendens.” *Id.* at 339.

13 The Court finds that this case is not fully “settled, discontinued, or abated” due to the  
14 pending Ninth Circuit appeal. *See, e.g., Suess*, 2022 WL 14297047 at \*15. Therefore, the Court  
15 DENIES Defendant’s motion without prejudice.

16 Dated this 26th day of March 2024.

17   
18 \_\_\_\_\_  
19 Tana Lin  
20 United States District Judge  
21  
22  
23  
24