

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E-Filed 07/30/2010

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

KAROL DAVENPORT,

No. C 10-0679 RS

Plaintiff,

ORDER

v.

LITTON LOAN SERVICING, et al.,

Defendants.

Defendants ask the Court to expunge a lis pendens plaintiff Karol Davenport had recorded on January 14, 2010 following the sale of her home at foreclosure. This matter is appropriately resolved without oral argument, pursuant to Civil Local Rule 7-1(b). The hearing scheduled for August 5, 2010 at 1:30 p.m. is therefore **vacated**.

Under California law, a court “shall” expunge a lis pendens if it finds that “the claimant has not established by a preponderance of the evidence the probable validity of the real property claim.” Cal. Civ. Proc. § 405.32. “Probable validity” means that “it is more likely than not that the claimant will obtain a judgment against the defendant on the claim.” *Orange County v. Hongkong and Shanghai Banking Corp. Ltd.*, 52 F.3d 821, 824 (9th Cir. 1995).

The moving defendants concede that several claims for relief, including Davenport’s state law rescission claim, at least arguably constitute real property claims. (Defs.’ Mot. at 6.) On July,

No. C 10-0679 RS
ORDER

1 16, 2010, this Court dismissed all twenty-six claims brought in Davenport's First Amended
2 Complaint. Most, including the state law rescission claim, were dismissed with leave to amend.
3 Davenport has not yet filed a Second Amended Complaint and it would be premature to assess the
4 probable validity of this or any of her real property claims. The moving defendants' motion to
5 expunge the lis pendens is therefore denied as premature. Defendants' request for attorney fees is
6 also denied.

7
8
9 IT IS SO ORDERED.

10
11 Dated: 07/30/2010

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE