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E-Filed 1/21/2011

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

GABRIELA R. CARNERO,
Plaintiff,
v.
WASHINGTON MUTUAL, et al.,
Defendants.

Case Number 5:09-cv-05330-JF
AMENDED¹ ORDER² GRANTING
MOTION TO EXPUNGE LIS
PENDENS; AND VACATING
HEARING
[re: document no. 104]

After considering Defendants’ motion to expunge lis pendens, Plaintiff’s opposition, and Defendants’ reply, the Court concludes that this matter is appropriate for submission without oral argument pursuant to Civil Local Rule 7-1(b).

A lis pendens is a “recorded document giving constructive notice that an action has been filed affecting title or right to possession of the real property described in the notice.” *Urez Corp. v. Superior Court*, 190 Cal. App. 3d 1141, 1144 (1987). The practical effect of a lis

¹ The Order has been amended to add the description of the real property that is the subject of the lis pendens.

² This disposition is not designated for publication in the official reports.

1 pendens is to cloud the property's title and prevent its transfer until the litigation is resolved or
2 the lis pendens is expunged or released. *Malcom v. Superior Court*, 29 Cal. 3d 518, 523-24
3 (1981). "The court shall order that the notice be expunged if the court finds that the claimant has
4 not established by a preponderance of the evidence the probable validity of the real property
5 claim." Cal. Civ. Code § 405.32. "The court shall direct that the party prevailing on any motion
6 [regarding lis pendens] be awarded the reasonable attorney's fees and costs of making or
7 opposing the motion unless the court finds that the other party acted with substantial
8 justification or that other circumstances make the imposition of attorney's fees and costs unjust."
9 Cal. Civ. Code § 405.38.

10 On November 22, 2010, the Court dismissed the instant action on the merits and entered
11 judgment against Plaintiff and for Defendants. Under these circumstances, Plaintiff cannot
12 establish the probable validity of her federal claims. Moreover, even if Plaintiff has actions
13 pending in other courts, Plaintiff acted without substantial justification in opposing the motion to
14 expunge with respect to this action, as her opposition was filed *after* the court dismissed the
15 action. Accordingly, the Court will direct Plaintiff to pay Defendants' reasonable attorneys' fees
16 in the amount of \$800.00.

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ORDER

(1) Defendants' motion to expunge lis pendens is GRANTED. IT IS HEREBY ORDERED that the Notice of Pendency of Action recorded on December 30, 2009, in the County of Santa Clara Recorder's Office as Instrument Number 20560920 shall be expunged without conditions on the grounds that the notice of pendency of action does not establish by a preponderance of evidence the probable validity of the real property claim. The Notice of Pendency of Action that is the subject of this Order concerns real property located in the County of Santa Clara, California, commonly known as 5645 Blossom Avenue, San Jose, CA 95123, and legally described as:

LOT 117, AS SHOWN ON THAT CERTAIN MAP OF TRACT NO. 2836, WHICH MAP WAS FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, ON OCTOBER 6, 1961, IN BOOK 138 OF MAPS, PAGE(S) 50 & 51. EXCEPTING THEREFROM THE UNDERGROUND WATER OR RIGHTS THERETO, WITH NO RIGHT OF SURFACE ENTRY, AS GRANTED TO SAN JOSE WATER WORKS, A CALIFORNIA CORPORATION BY INSTRUMENTS RECORDED NOVEMBER 2, 1961 IN BOOK 5351, PAGE 121, OFFICIAL RECORDS.

(2) Plaintiff is ordered to pay Defendants' attorneys' fees in the amount of \$800.00.

DATED: January 21, 2011



JEREMY FOGEL
United States District Judge

1 Copies of Order served on:

2

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