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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

BRESSANI CONSTRUCTION INC.,  
Plaintiff,  
v.  
CANYON BUILDING & DESIGN, LLC, et  
al.,  
Defendants.

Case No. 15-cv-03539-HRL

**ORDER GRANTING DEFENDANTS’  
MOTION TO EXPUNGE LIS PENDENS**

Re: Dkt. No. 11

Bressani Construction Inc. (“Bressani”) sues Canyon Building & Design, LLC with claims for breach of contract, quantum meruit, account stated, and the reasonable value of work, labor, and services. Bressani sues codefendant Education Capital Solutions, LLC for foreclosure of a mechanic’s lien, account stated, and the reasonable value of work, labor, and services. The parties have consented to magistrate jurisdiction.

Bressani brought this case in state court and then, after a few months, recorded a lis pendens and served the defendants. Defendants filed a notice of removal, Dkt. No. 1, and then moved this court under California Code of Civil Procedure § 405.30 to expunge Bressani’s lis pendens. Dkt. No. 11 at 3. Defendants argue Bressani’s lis pendens should be expunged because it has not been filed with any court and it was recorded late. *Id.* Defendants also request an award of attorney fees and costs. Bressani responds that Defendants’ motion is untimely, that Defendants have not raised any of the four valid reasons that might justify expungement, and that any technical legal errors should be forgiven because Bressani has provided actual notice to Defendants. Dkt. No. 22 at 3-5. Bressani also requests leave to record a new lis pendens in the event of expungement. Cal. Code Civ. P. § 405.36.

The court has read the parties’ briefs and has considered the governing law. The hearing

United States District Court  
Northern District of California

1 on this motion set for October 20, 2015 is vacated. The motion to expunge lis pendens is granted.  
2 The court grants Bressani leave to record a new lis pendens.

3 **Discussion**

4 State law governs the validity of a lis pendens. 28 USC § 1964. A valid lis pendens  
5 provides constructive notice that a pending case might affect an interest in real property. *BGJ*  
6 *Associates, LLC v. Superior Court*, 75 Cal. App. 4th 952, 966 (1999). A lis pendens is “void and  
7 invalid” if the requirements of California’s Code of Civil Procedure § 405.22 are not met by the  
8 claimant. Cal. Code Civ. P. § 405.23. A claimant is required to “[i]mmediately” file a copy of a  
9 newly recorded lis pendens with the court in which the case is pending. Cal. Code Civ. P. §  
10 405.22. California’s statutes do not explicitly provide for expungement of a “void and invalid” lis  
11 pendens, but expungement is nevertheless a proper remedy because a title to real property should  
12 not be clouded by void notices that lack legal effect. *McKnight v. Superior Court*, 170 Cal. App.  
13 3d 291, 303 (1985); Cal. Code Civ. P. § 405.30, Code Comment 2 (citing *McKnight, supra*). The  
14 claimant has the burden to prove the lis pendens should not be expunged. Cal. Code Civ. P. §  
15 405.30.

16 Bressani argues Defendants, in violation of Local Rule 7-2, did not file their moving  
17 papers at least 35 days prior to the date they initially noticed for the hearing on this motion.  
18 Defendants timely filed their moving papers 36 days prior to the hearing that was originally  
19 noticed for October 6, 2015. Dkt. No. 11. The court rejects Bressani’s timeliness argument.

20 Bressani relies on *Carr v. Rosien et al.*, 238 Cal. App. 4th 845, 857 (2015), to argue that  
21 Defendants have not raised any of the “only grounds” that might justify an expungement: (1) the  
22 pleading contains no real-property claim, (2) the claimant has not established the validity of the  
23 real-property claim, (3) an undertaking could secure adequate relief for the claimant, and (4) the  
24 claimant fails to comply with the mailing requirements in § 405.22. Dkt. No. 11 at 4. Bressani  
25 misreads *Carr*—that court did not purport to provide an exclusive list of every situation that might  
26 justify expungement. *Carr, supra*. Rather, *Carr* held that a lis pendens automatically becomes  
27 void of legal force when a claimant fails to follow § 405.22, even if that lis pendens has not yet  
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1 been expunged. *Id.* Furthermore, *Carr* cited and relied upon *McKnight v. Superior Court*, 170  
2 Cal. App. 3d at 303, which established that expungement is proper when a lis pendens becomes  
3 “void and invalid” due to a claimant’s noncompliance with statutory requirements. Bressani failed  
4 to follow § 405.22 when Bressani recorded the lis pendens and then did not “[i]mmediately” file a  
5 copy with the state court. The failure rendered the lis pendens void and expungement is the proper  
6 remedy. *See also* Cal. Code Civ. P. § 405.30, Code Comment 2 (citing *McKnight, supra*).

7 Bressani’s third argument does not change the court’s conclusion. Bressani cites *Biddle v.*  
8 *Superior Court*, 170 Cal. App. 3d 135, 137 (1985), for the proposition that technical legal errors  
9 cannot justify expungement when the claimant has substantially complied with the law by  
10 providing opposing parties with actual notice. The court disagrees. *Biddle* held only that a  
11 defendant may waive the right to raise a technical defect if the defendant waits over a year to  
12 assert the technical defect justifies expungement. *Biddle*, 170 Cal. App. 3d at 138; Cal. Code Civ.  
13 P. § 405.23, Code Comment (clarifying that the modern statutory regime does not “disapprove” of  
14 *Biddle*’s “principles of waiver”). Here, Defendants did not through inaction waive the right to  
15 raise technical defects; instead, they promptly moved for expungement.

16 The court’s preceding analysis renders Defendants’ second argument about the timeliness  
17 of Bressani’s recordation moot. The court shall not address the moot argument.

18 Finally, the court addresses statutory attorney’s fees and costs. A court “shall direct that  
19 the party prevailing on [a motion to expunge under § 405.30] be awarded the reasonable attorney’s  
20 fees and costs of making or opposing the motion unless the court finds that the other party acted  
21 with substantial justification or that other circumstances make the imposition of attorney’s fees  
22 and costs unjust.” Cal. Code Civ. P. § 405.38. It would be unjust to impose attorney’s fees and  
23 costs against Bressani—Defendants received actual notice of the lis pendens, Defendants have not  
24 disputed the substantive validity of the real-property claim related to the lis pendens, and  
25 Defendants were not prejudiced by the technical defect that voided the lis pendens.

26 **Conclusion**


27 The motion to expunge is granted. The court does not award the fees and costs of making  
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this motion to Defendants. Bressani may record a new lis pendens.

**IT IS SO ORDERED.**

Dated: 10/15/15



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HOWARD R. LLOYD  
United States Magistrate Judge