

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

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RICHARD W. AND MICHELLE MORAN,
Plaintiff,
vs.
AMERICAN GENERAL FINANCE,
Defendant.

CASE NO. 10cv1366-LAB (RBB)
**ORDER STRIKING NOTICE OF
LIS PENDENS**

On September 21, Plaintiffs, who are proceeding *pro se*, filed a notice of *lis pendens*. The notice was uncaptioned, signed by them, and notarized. A notice of *lis pendens* is a creature of California state law. Under Cal. Code Civ. Proc. § 405.21, notices of *lis pendens* may be signed by an attorney of record or by a judge of the court in which the action is pending. That section directs unrepresented party to request the judge to sign the notice, and recognizes the judge’s authority to approve such notices. That same section provides:

A notice of pendency of action shall not be recorded unless (a) it has been signed by the attorney of record, (b) it is signed by a party acting in *propria persona* and approved by a judge as provided in this section, or (c) the action is subject to Section 405.6.

Plaintiffs have not requested the Court’s approval or signature, and the notice contains no space for the Court’s signature anything else that would indicate Plaintiffs are asking for the Court’s approval of the notice. The other exceptions don’t apply.


1 The explanatory notes to § 405.21 make clear that the Court's approval is required
2 to prevent misuse of such notices: "[t]he court's duty to review a lis pendens proposed by
3 a party *in propria persona* prior to [its] recordation is intended to aid in avoiding abuse of . . .
4 lis pendens procedures in actions prosecuted by parties *in propria persona*." Here, that
5 purpose is particularly important because the notice is unacceptable in its present form. It
6 contains a statement that Plaintiffs have adversely possessed the property for seven years.
7 This makes no sense, because the property at issue is Plaintiffs' own house. The claim in
8 this case concerns a refinance of a mortgage on that house. The doctrine of adverse
9 possession thus has no application here, and does not belong in a notice of *lis pendens*.

10 While the complaint identifies the street address of the property at issue, it also
11 identifies a lot and map number. At this point, the Court has no assurance the lot and map
12 number correspond accurately to Plaintiffs' property. This could create problems if, for
13 example, the notice were recorded on the wrong property.

14 The notice of *lis pendens* filed as docket number 19 in this case is therefore
15 **REJECTED** and the Clerk is directed to strike it and remove it from the docket. If Plaintiffs
16 seek the Court's approval of a notice of lis pendens, they must file a request in the correct
17 pleading form, and include documentation showing that the property description is correct.
18 They must also submit a proposed notice for the Court's approval.

19 **IT IS SO ORDERED.**

20 DATED: September 22, 2010

21 
22 **HONORABLE LARRY ALAN BURNS**
23 United States District Judge
24
25
26
27
28