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Lis pendens claim could taint sale or development of property

San Antonio Business Journal - by [Todd A. Prins](#)

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With the real estate market heating up and a wave of development coming to La Cantera, Helotes, Boerne and the continuing expanse of Stone Oak, companies, landowners, developers and corporations navigate a treacherous legal landscape with millions of dollars in contracts and property at stake.

The weapon of choice in the legal arena is the lis pendens, sometimes inaccurately referred to as a lien on the property, but more properly categorized as a notice: a notice to all those taking title to the property -- the person, persons or corporation that owns the land -- that someone is litigating a claim against the property.

This litigant could claim a right to the property title for numerous reasons, including right of first refusal, a contract to buy or the seller's failure to close a contract. Even in the case of estates, inheritance of property could create interested parties.

A lis pendens can tie up a property for years, blocking the titleholders from developing, bleeding investors dry and handing over the property to an outside party, even if development is already underway.

Legal actions

As with any legal action, there must be merit to the claim. However, litigation, regardless of its merit, takes time to process and find in favor of one party or the other. It takes resources to mount a legal defense. Should the claim against the titleholders be legitimate, the interested party can potentially win title to the property, foreclose and if they so choose, liquidate it.

The first defense against a lis pendens is to make sure that any contracts that would result in a sale of the property or create an interest in it are clear and concise. In the case of a corporation or partnership, the contract should state explicitly if it is selling the property, or a share or interest in the company that owns the property.

Other contracts may provoke a lis pendens if the contract does not expire. When negotiations with Company A conclude, and then Company B purchases the property, Company A can simply claim they were denied the right of first refusal if there was no expiration on the contract to buy.

Secondly, a lis pendens that has any chance of success can only be filed against the relevant property when there are issues directly affecting it, not merely collateral ones. This means a litigant cannot use a lis pendens to tie up land in order to execute against it after some future judgment. This is like saying "If I win, I get this." You have to win first; then the court has to decide what damages you are entitled to, which may not include the property.

Still, a wrongfully-filed lis pendens can keep a company from selling a property while under litigation.

A good illustration of this case would be a wrongful death suit. A worker is killed on a construction site and the worker's family claims wrongful death. Simultaneously, they file a lis pendens against the land, naming it in payment of damages. Fault for the worker's death has not been determined, whether it was the worker's negligence or the company's faulty equipment. The family's interest in the land is contingent on winning the wrongful death suit. If they lose the case, they have no claim to the land.

Impact

A lis pendens is a blight on a company's business. No developer or lender would want to undertake a venture on a property if such a claim on its title is in place. This is where business practices and philosophies come into play. There is simply no telling what a landowner, be it a person or corporation, wants to do with the land. Construction companies probably will not sign contracts to begin development with the possibility of being replaced half way into their job. With the possibility of land changing hands, a lender probably will not release funding to the construction company. Development stagnates, projects end, and land value drops.

With a lis pendens comes collateral damage to a property holder's image. Even with the lis pendens deemed improper and canceled, the appearance of impropriety raises the suspicions of developers, insurers, tenants and other prospective buyers.

Landowners, however, have little recourse. A lis pendens is a privileged action and cannot form the basis of a slander of title or tortious interference with contract suit. The only remedy in this case is to maintain good relations with lenders, creditors, stockholders and stakeholders. Privileged information is important, but so are strong business relationships. These people need to know what your company is planning.

Land development is a high-stakes game and it helps to know the rules. Not all filings of lis pendens are legitimate and not everybody plays by the rules. Property owners need good real estate attorneys and trusted teams of lenders, developers and contractors. Fair and responsible business practices pay off.

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