

# LIS PENDENS IN TEXAS

*Presented by*

**STEVEN C. HALEY**

**MOORMAN, TATE, MOORMAN,  
URQUHART & HALEY, L.L.P.**

207 E. Main Street  
Brenham, Texas 77833  
(979) 836-5664

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**STEVEN C. HALEY**

**Moorman, Tate, Moorman, Urquhart & Haley, L.L.P.**

**207 E. Main**

**Brenham, Texas 77833**

**979-836-5664**

**FAX: 979-830-0913**

**shaley@moormantate.com**

**BIOGRAPHICAL INFORMATION**

## **EDUCATION**

B.S., Agricultural Economics, cum laude, Texas A&M University, 1978

J.D., cum laude, Bates College of Law, University of Houston, 1981

Articles Research Editor, Houston Law Review

## **PROFESSIONAL ACTIVITIES**

Partner, Moorman, Tate, Moorman, Urquhart & Haley, L.L.P.

Admitted to the State Bar of Texas, 1981

Admitted to practice in Texas in the U.S. Fifth Circuit Court of Appeals, U. S. District Courts for the Northern, Eastern, Southern, and Western Districts of Texas

General Counsel, Texas Department of Agriculture (1981-82)

Senior Staff Attorney, Texas A&M University System (1982-85)

Member: Texas College of Real Estate Attorneys (Chairman 2002-2003)

American College of Real Estate Lawyers

State Bar of Texas' Real Estate, Probate and Trust Law Council(REPTL) (1998-2003)

State Bar of Texas' Real Estate Forms Committee (1997-)

State Bar of Texas' Agricultural Law Committee (Chairman 1997-98)

College of the State Bar of Texas

American Agricultural Law Ass'n

Washington County Bar Ass'n (President 1986-87)

Texas Aggie Bar Ass'n (President 2005-06)

Texas Super Lawyer, *Texas Monthly Magazine*

## **LAW RELATED PUBLICATIONS AND HONORS**

Co-Course Director for the University of Texas School of Law and Texas Mortgage Bankers' Association; Texas Mortgage Lending Institute 2001

Co-Course Director for the State Bar of Texas; Advanced Real Estate Law Course, 2000

Co-Course Director for the State Bar of Texas; Advanced Real Estate Drafting Course, 2007

Co-Course Director for the South Texas College of Law; Real Estate Conference, 2002

Author/speaker for the State Bar of Texas; Advanced Real Estate Drafting Course 2008; *Lis Pendens in Texas*

Author/speaker for the University of Texas School of Law and Texas Mortgage Bankers' Association; Texas Mortgage Lending Institute 2005; *The Recording Statute in Texas*

Author/speaker for the State Bar of Texas; Advanced Real Estate Drafting Course, 2003; *Drafting Hunting and Agricultural Leases*

Author/speaker for the Southern Methodist University; Real Estate Transactions in Depth, 2000; *Texas Abstracts of Judgment and Judgment Liens*

Author/speaker for the South Texas College of Law; Real Estate Law Conference, 1999; *Texas Law of Acknowledgments*

Author/speaker for the University of Texas School of Law and Texas Mortgage Bankers Association; Texas Mortgage Lending Institute, 1998, *Sale or Disposition of Personal Property Collateral*

Author/speaker for the State Bar of Texas; Advanced Real Estate Law Course, 1997; *Homestead Update*

Author/speaker for the University of Texas School of Law and Texas Mortgage Bankers Association; Texas Mortgage Lending Institute, 1997, *Creative Ways To Get To The Homestead: Resulting And Constructive Trusts*

Author/speaker for the University of Texas at Austin; Texas Mortgage Lending Institute, 1996, *Texas Law of Acknowledgments*

Author/speaker for the University of Texas at Austin; Texas Mortgage Lending Institute, 1995, *Material Alteration of Documents*

Author/speaker for the University of Texas at Austin; Texas Mortgage Lending Institute, 1994, *Homestead Update*

Author/speaker for the State Bar of Texas; Agricultural Law Seminar, 1994, *Texas Farm Products as Collateral*

Author/speaker for the State Bar of Texas; Agricultural Law Seminar, 1993, *Distinguishing the Rural and Urban Homestead*

**LIS PENDENS IN TEXAS**

**Table of Contents**

**I. INTRODUCTION.** . . . . . 1

**II. LIS PENDENS DOCTRINE** . . . . . 1

**A. Lis Pendens Doctrine, Generally.** . . . . . 1

**B. Either Actual or Constructive Notice is Sufficient to Invoke Lis Pendens.** . . . . . 1

**C. Notice Defined.** . . . . . 1

**D. Extent of Notice Required to Invoke Lis Pendens.** . . . . . 1

**E. Purposes of Lis Pendens Doctrine.** . . . . . 1

    1. Prevention of Multiplicitious Litigation. . . . . . 1

    2. Preservation of Res of Litigation. . . . . . 2

    3. Protection of Innocent Purchasers. . . . . . 2

**III. HISTORY AND DEVELOPMENT OF LIS PENDENS DOCTRINE** . . . . . 2

**A. Common Law Lis Pendens Doctrine.** . . . . . 2

**B. Common Law Lis Pendens Doctrine Partially Abrogated by Statute.** . . . . . 2

**C. Common Law Lis Pendens Doctrine After Adoption of Lis Pendens Statute.** . . . . . 2

    1. Purchaser Pendente Lite with Actual Knowledge of the Litigated Claim. . . . . . 3

    2. Purchaser Pendente Lite With Constructive Notice of the Litigated Claim. . . . . . 3

**IV. LITIGATION WITHIN THE LIS PENDENS DOCTRINE.** . . . . . 3

**A. General Rules.** . . . . . 3

**B. Nature of Suit Determined From Pleadings.** . . . . . 4

    1. Subject Tract Must be Described in Pleadings. . . . . . 4

    2. Effect of Amended Pleadings. . . . . . 4

**C. Application of Lis Pendens Doctrine to Particular Suits.** . . . . . 5

    1. Suit for Money Judgment. . . . . . 5

    2. Forcible Entry and Detainer. . . . . . 5

    3. Action for Accounting. . . . . . 5

    4. Fraud. . . . . . 5

    5. Suit for Breach of Lease/Constructive Eviction. . . . . . 5

    6. Bankruptcy Proceedings. . . . . . 5

    7. Trespass. . . . . . 5

    8. Enforcement of Zoning Ordinances. . . . . . 5

    9. Unjust Enrichment and Restitution. . . . . . 6

    10. Suit to Enforce/Set Aside Contract to Purchase Property. . . . . . 6

    11. Suit for Cancellation of Instrument. . . . . . 6

    12. Constructive Trusts. . . . . . 6

    13. Divorce Proceedings. . . . . . 7

**D. Suit Must Be Brought By Authorized Party.** . . . . . 7

**E. Suit Must Be Pending** . . . . . 7

**V. PROPERTY WITHIN THE LIS PENDENS DOCTRINE.** . . . . . 7

**A. Real Property.** . . . . . 7

**B. Personal Property.** . . . . . 7

**VI. PERSONS TO WHOM LIS PENDENS APPLIES.** . . . . . 8

<b>A. Lis Pendens Applies to Purchaser Pendente Lite.</b>	8
<b>B. Persons Who May File a Notice of Lis Pendens.</b>	8
<b>VII. DURATION AND CANCELLATION OF LIS PENDENS.</b>	8
<b>A. Commencement of Lis Pendens.</b>	8
1. Under Lis Pendens Statute.	8
a. <u>At What Point in the Suit May a Notice of Lis Pendens Be Filed?</u>	8
2. Under the Common Law Lis Pendens Doctrine.	8
3. <u>Effect on Purchaser Ante Litem.</u>	8
a. <u>Effect of Deferred Purchase Consideration.</u>	8
4. <u>Origin of Title Determines if Purchase Made Ante Litem.</u>	9
<b>B. Termination of Lis Pendens.</b>	9
1. <u>Effect of Appeal.</u>	9
2. <u>Effect of Other Post Judgment Proceedings.</u>	9
3. <u>Effect of Dismissal.</u>	9
4. <u>Effect of Transfer of Venue.</u>	9
<b>C. Cancellation or Removal of Lis Pendens.</b>	9
1. <u>Cancellation Upon Final Adjudication.</u>	9
2. <u>Prejudgment Cancellation of Non-Conforming Notice of Lis Pendens.</u>	9
a. <u>Evidence Considered in Prejudgment Removal of Non-Conforming Notice of Lis Pendens.</u>	10
b. <u>Lis Pendens as a Violation of Automatic Stay in Bankruptcy.</u>	10
3. <u>Pre-Judgment Cancellation of Conforming Notice of Lis Pendens.</u>	10
a. <u>Cancellation By Deposit of Money.</u>	11
b. <u>Cancellation By Giving an Undertaking.</u>	11
4. <u>Enjoining Future Lis Pendens Filings.</u>	11
5. <u>Jurisdiction to Cancel Lis Pendens.</u>	11
<b>VIII. REQUIREMENTS FOR NOTICE OF LIS PENDENS.</b>	11
<b>A. Statutory Elements of Notice of Lis Pendens.</b>	12
1. <u>Description of Property.</u>	12
2. <u>Kind of Proceeding.</u>	12
3. <u>Parties to Suit.</u>	12
4. <u>Style and Number of Suit.</u>	12
5. <u>Court in Which Suit Pending.</u>	12
<b>B. Filing and Indexing.</b>	12
<b>IX. EFFECT OF LIS PENDENS.</b>	12
<b>A. Notice Effect of Lis Pendens.</b>	12
1. <u>Notice Effect of Non-Conforming Notice of Pendens.</u>	13
2. <u>Effective Date of Constructive Notice.</u>	13
<b>B. Effect of Lis Pendens on the Pending Litigation.</b>	13
1. <u>Joinder of Purchaser Pendente Lite.</u>	13
2. <u>Intervention by Purchaser Pendente Lite.</u>	13
3. <u>Intervention to Cancel Notice of Lis Pendens.</u>	14
4. <u>Effect of Settlement on Purchaser Pendente Lite.</u>	14
<b>C. Effect of Lis Pendens on the Sale Pendente Lite.</b>	14
1. <u>Effect of Mineral Production by Purchaser Pendente Lite.</u>	14
2. <u>Effect of Improvements Made by Purchaser Pendente Lite.</u>	14
3. <u>Effect of Deferred Purchase Consideration.</u>	14
<b>D. Evidentiary Effect of Lis Pendens.</b>	14



<b>E.</b>	<b><u>Lis Pendens Creates No Interest in Property.</u></b>	14
<b>F.</b>	<b><u>Effect of Lis Pendens on Statute of Limitations.</u></b>	14
<b>G.</b>	<b><u>The Privileged Nature of Lis Pendens Filing.</u></b>	15
	1. <u>Extent of Privilege.</u>	15
	2. <u>Effect of Non-Conforming Notice of Lis Pendens.</u>	15
	3. <u>Effect of Malice.</u>	15
<b>X.</b>	<b>DEFENSES TO APPLICATION OF LIS PENDENS DOCTRINE.</b>	15
<b>A.</b>	<b><u>Collusion.</u></b>	15
<b>B.</b>	<b><u>Laches.</u></b>	16
<b>XI.</b>	<b>PRACTICE AND PROCEDURE.</b>	16
<b>A.</b>	<b><u>Governing Law.</u></b>	16
<b>B.</b>	<b><u>Burden of Proof.</u></b>	16
<b>C.</b>	<b><u>Attorney's Fees.</u></b>	16
	<b>ENDNOTES</b>	17

## LIS PENDENS IN TEXAS

### I. INTRODUCTION.

Under Texas' recording statute, a good faith purchaser for valuable consideration without notice of a prior interest in real estate takes the property free of that prior interest.<sup>1</sup> In some cases, a party claiming the protections of a good faith purchaser may be a purchaser *pendente lite* - that is a purchaser acquiring an interest in property during the pendency of litigation affecting the title to that property.<sup>2</sup> The lis pendens doctrine (1) determines when and under what circumstances a purchaser *pendente lite* can qualify as a good faith purchaser for value taking free of the result of the pending litigation and (2) provides a mechanism by which parties to the litigation may provide notice of their claims to prospective purchasers to prevent those purchasers from acquiring an interest in the property superior to the claims being litigated.<sup>3</sup>

### II. LIS PENDENS DOCTRINE

**A. Lis Pendens Doctrine, Generally.** Under the lis pendens doctrine, a person purchasing a lien or interest in land during the pendency of litigation affecting the title to the property having actual or constructive notice of the claims made in the litigation takes the property subject to the outcome of the suit.<sup>4</sup> The application of the rule effectively prevents a purchaser *pendente lite* from becoming a good faith purchaser.<sup>5</sup>

**B. Either Actual or Constructive Notice is Sufficient to Invoke Lis Pendens.** Either actual or constructive notice of the claim(s) made in the pending litigation is sufficient to invoke the lis pendens doctrine.<sup>6</sup> Under lis pendens, if a purchaser has actual notice of the litigated claim, it is immaterial whether constructive notice has been properly effected.<sup>7</sup> Likewise, if constructive notice is properly given of the pendency of the litigation, it avails the purchaser nothing to show that he did not have actual notice of the suit.<sup>8</sup>

**C. Notice Defined.** Notice means whatever puts a person on inquiry.<sup>9</sup> Notice is complete when, given the means of knowledge at hand, if pursued by proper inquiry, the full truth could be ascertained.<sup>10</sup> Notice embraces those things of which one sought to be charged has express information as well as those

things which a reasonably diligent inquiry using the means of information at hand would have disclosed.<sup>11</sup>

**D. Extent of Notice Required to Invoke Lis Pendens.** Notice, within the lis pendens doctrine, means notice of the adverse claim being litigated in the pending suit.<sup>12</sup> The purpose of the lis pendens doctrine is not to give notice that a clamant has filed suit to assert the claim - only that he has a claim.<sup>13</sup> As a result, in some cases, lis pendens will apply to prevent a purchaser *pendente lite* from becoming a good faith purchaser even if that purchaser has no actual or constructive notice of the pending suit so long as the purchaser *does* have knowledge of the underlying claim being litigated.<sup>14</sup> For example, in *Ater v. Knight*,<sup>15</sup> a purchaser was not a good faith purchaser with respect to a vendor's lien even though no proper notice of lis pendens was filed in the suit to foreclose that lien.<sup>16</sup> The purchaser had actual notice of the lien from reviewing an abstract of title on the land and from discussions with the seller contemporaneous to the purchase.<sup>17</sup> Same result in *Paddock v. Williamson*,<sup>18</sup> when the purchaser had constructive notice of the lien from the deed records of Montgomery County, although no notice of lis pendens had been filed in the lienholder's suit to foreclose that lien.<sup>19</sup>

**E. Purposes of Lis Pendens Doctrine.** Although lis pendens is now heavily regulated by statute, it remains in part an equitable doctrine. As a result, its underlying purpose is important because, in some cases, equitable principles prevent the rule's enforcement when the reasons for the enforcement of the doctrine are not present.<sup>20</sup> The underlying purposes of the lis pendens doctrine have been alternatively expressed as follows:

1. Prevention of Multiplicitious Litigation. Lis pendens puts an end to suits by making it impossible for a litigant to thwart an adjudication of title to property by the expediency of transferring the property pending the suit.<sup>21</sup> Without the rule, suits could be absolutely interminable at the option of a litigant who, with the collusion of others, could protract litigation forever by the simple device of repeated and successive transfers.<sup>22</sup> To promote the

certainty of title, a judgment should bind the property notwithstanding any conveyance *pendente lite*.<sup>23</sup> Lis pendens is essential to assuring the finality of judgments.<sup>24</sup>

2. **Preservation of Res of Litigation.** An additional purpose of the lis pendens doctrine is to preserve the subject matter of litigation without interference pending final judgment in the case.<sup>25</sup> The doctrine enforces the maxim "*pendente lite nihil inovateur*" by keeping the *res* of the action within the power of the court until the final judgment or decree is entered.<sup>26</sup> By this means the court can give effect to its judgment.<sup>27</sup> Lis pendens prevents either party to a suit from alienating the property so as to affect the rights of his opponent.<sup>28</sup> Without lis pendens a litigant might be deprived of the just results of the litigation.<sup>29</sup>

3. **Protection of Innocent Purchasers.** Other authorities have determined that the purpose of the lis pendens doctrine is to protect innocent buyers from unwittingly purchasing property subject to litigation by putting those interested in the property on inquiry as to the facts and issues involved in the pending suit.<sup>30</sup>

### **III. HISTORY AND DEVELOPMENT OF LIS PENDENS DOCTRINE**

**A. Common Law Lis Pendens Doctrine.** At common law, purchasers *pendente lite* were not regarded with favor.<sup>31</sup> They were viewed as volunteers or intermeddlers whose rights were not entitled to any special favor or protection.<sup>32</sup> As a result, any party dealing with property involved in a pending suit and having actual or constructive knowledge either of the suit or of the claim of title asserted in the suit was charged with notice of the rights of the litigants and, in the purchase of the property, acquired only such title as remained in his vendor upon final adjudication of the suit.<sup>33</sup> Under common law, the mere filing or pendency of a suit was sufficient to give constructive notice to the world of the pending litigation.<sup>34</sup> No one, howsoever innocent, who purchased the property in litigation from either party was afforded the protections of a good faith purchaser.<sup>35</sup> This rule applied regardless of whether the purchaser *pendente lite* paid full value and had no knowledge or opportunity to know of the pending suit.<sup>36</sup> There was no requirement that anything be filed in the

records of the county where the property was located. As a matter of law, the suit itself visited prospective purchasers with notice of the court proceedings.<sup>37</sup> This rule obtained regardless of whether the suit was in state or federal court and irrespective of whether the suit was pending in a county remote from the property itself.<sup>38</sup>

This common law rule on constructive notice eventually fell into disfavor. It came to be considered as an instrument of oppression and injustice toward purchasers *pendente lite*.<sup>39</sup> It was viewed as a means of divesting persons of property or liens acquired in good faith and in reliance on the records of the county where the property was located.<sup>40</sup> The rule was signally oppressive when the suit was in a county remote from that where the property was located.<sup>41</sup> Buyers, even after exercise of reasonable diligence, could not be assured that their title would not be destroyed by some unknown litigation.<sup>42</sup>

### **B. Common Law Lis Pendens Doctrine Partially Abrogated by Statute.**

Dissatisfaction with the harshness of the common law rule led to its partial abrogation by statute in 1905.<sup>43</sup> The 1905 legislation was the forerunner of the current lis pendens statutes found at TEX. PROP. CODE ANN. §§ 12.007, 12.008, and 13.004.

The effect of these statutes was to eliminate the common law rule that the mere pendency of a suit litigating an interest in land was sufficient to impart constructive notice of the claims made in the suit.<sup>44</sup> Under the lis pendens statute, good faith purchasers for value<sup>45</sup> are not charged with constructive notice of the pending litigation unless a notice of lis pendens is filed with the county clerk in each county where the land is located.<sup>46</sup> The purpose of the change was to allow purchasers to rely on information obtained from an ordinary prudent examination of the indices of records and conveyances available in the county where the land is located.<sup>47</sup>

### **C. Common Law Lis Pendens Doctrine After Adoption of Lis Pendens Statute.**

The lis pendens statute did not entirely supplant the common law lis pendens doctrine.<sup>48</sup> Persons otherwise obtaining actual or constructive notice of the claim being litigated are outside the protection of the statute irrespective of whether a notice of lis pendens is properly filed.<sup>49</sup> A purchaser *pendente lite* with

actual or constructive notice of the litigated claim takes subject to the result of the suit the same as if no lis pendens statute had ever been passed.<sup>50</sup> Such a party becomes bound by the litigation to the same extent as the grantor from whom the purchaser *pendente lite* asserts his title.<sup>51</sup>

1. Purchaser Pendente Lite with Actual Knowledge of the Litigated Claim. A purchaser *pendente lite* with actual notice of an adverse claim cannot become an innocent buyer irrespective of whether or not a valid notice of lis pendens is filed.<sup>52</sup> Thus is *Palmer v. First Nat'l Bank in Rhome*,<sup>53</sup> when Palmer bought a property by deed specifically referencing a lien in favor of the bank, Palmer was not a good faith purchaser notwithstanding the failure of the bank to file a notice of lis pendens in its then pending suit to foreclose that lien.<sup>54</sup> A similar result in *Ater v. Knight*,<sup>55</sup> where Ater knew of the litigated lien because of his examination of an abstract of title and because of contemporaneous discussions with the seller at the time of the purchase.<sup>56</sup>

In some cases a notice of lis pendens, although ineffective as constructive notice, may be effective to give actual notice of the disputed claim. In *Hexter v. Pratt*,<sup>57</sup> the effectiveness of a notice of lis pendens as constructive notice was questioned because of the dismissal of the pending suit for want of prosecution on July 28, 1919.<sup>58</sup> Hexter, the beneficiary of a deed of trust dated November 19, 1919 claimed good faith purchaser status as to the claims formerly litigated in the dismissed suit.<sup>59</sup> However, prior to the execution of the deed of trust, in negotiations with the debtor, Hexter reviewed an abstract of title referring to the prior notice of lis pendens.<sup>60</sup> This was sufficient to put Hexter on actual notice of the litigated claims later reinstated by subsequent order of the court.<sup>61</sup> However, a different result in *Vehle v. Wagner*.<sup>62</sup> A notice of lis pendens filed in a case in which judgment had been entered adverse to the claimants/plaintiffs, although known to a subsequent purchaser, did not prevent that subsequent purchaser from the protections of a good faith purchaser.<sup>63</sup> The final disposition of the case by judgment adverse to such claims eliminated any further duty of inquiry.<sup>64</sup> The filing of a notice of lis pendens in the suit terminated by judgment could not be actual notice of claims made in a later companion suit filed by other similarly aggrieved parties.<sup>65</sup>

2. Purchaser Pendente Lite With Constructive Notice of the Litigated Claim. While a statutory notice of lis pendens is a mechanism by which a litigant may put prospective purchasers on constructive notice of the claims being litigated, it is not the exclusive means by which constructive notice may be effected.<sup>66</sup> If a purchaser has constructive notice of the litigated claim by means of some independent source, he is not an innocent purchaser irrespective of whether a notice of lis pendens is properly recorded.<sup>67</sup> For example in *Texas Co. v. Dunlap*,<sup>68</sup> purchasers *pendente lite* were not good faith purchasers even though no notice of lis pendens had been filed in the suit at the time of the purchase.<sup>69</sup> This was because the lien sought to be foreclosed by the suit was expressly retained in a recorded deed comprising an essential link in the purchasers' title.<sup>70</sup> It is elementary that all persons are charged with constructive notice of everything revealed by any document or instrument in the chain of title under which they claim an interest in the property.<sup>71</sup> Likewise, in *Elder v Craddock*,<sup>72</sup> possession of the property by Elder was sufficient to put a purchaser *pendente lite* on constructive notice of Elder's claims to the property notwithstanding that no notice of lis pendens was filed in the then pending litigation involving title to the property.<sup>73</sup>

#### **IV. LITIGATION WITHIN THE LIS PENDENS DOCTRINE.**

**A. General Rules.** The statutory lis pendens doctrine applies to all actions (1) constituting eminent domain proceedings, (2) involving title to real property, (3) to establish an interest in real property, or (4) to enforce an encumbrance against real property.<sup>74</sup>

The suit must be one affecting an interest in<sup>75</sup> or title to specific property,<sup>76</sup> and that title must be the direct subject matter of the suit.<sup>77</sup> A lis pendens notice is not authorized nor is the lis pendens doctrine implicated where there is only an indirect or collateral question in the litigation which might ultimately affect title to the property.<sup>78</sup>

The reason for constraining the operation of lis pendens to suits directly affecting title to property is to avoid the great potential for abuse presented by this powerful *ex parte* remedy. The filing of a notice of lis pendens is not a court supervised procedure.<sup>79</sup> If a notice is presented to the clerk for filing, the clerk must record it without further inquiry.<sup>80</sup> The

recordation of the notice, which any litigant may undertake with an impunity borne of absolute privilege,<sup>81</sup> has the effect of placing an immediate cloud on the property described.<sup>82</sup> Its draconian effect makes it virtually impossible for the owner to sell or mortgage the property.<sup>83</sup>

It is beyond the intended purpose of the lis pendens doctrine to use it as a means of securing the payment of any judgment which might be awarded in the pending litigation.<sup>84</sup> In such a case the title to the affected property is only a collateral question in the suit.<sup>85</sup> Misuse of lis pendens to secure payment of a judgment is the functional equivalent of imposing a prejudgment involuntary lien on the assets of the affected party without benefit of bond, proof, or opportunity for hearing.<sup>86</sup>

It is the unilateral self-help privileged nature of lis pendens that provides an inherent opportunity for abuse as an unfair lever to force unreasonable settlements which may be unrelated to the merits of the plaintiff's case.<sup>87</sup> The lis pendens doctrine was designed to give notice of litigation - not to aid plaintiffs to exert financial pressure on a defendant by rendering his property virtually unmarketable for the life of the litigation.<sup>88</sup> These concerns have caused some commentators to raise serious due process questions concerning lis pendens practice in light of *Snidach v. Family Finance*,<sup>89</sup> *Fuentes v. Shevin*,<sup>90</sup> and their progeny.<sup>91</sup> These questions emphasize the necessity of strictly constraining the operation of lis pendens to suits directly adjudicating title to property.<sup>92</sup>

### **B. Nature of Suit Determined From Pleadings.**

A notice of lis pendens acts as a mere memorandum referring intending purchasers to examine the court records and pleadings in the case.<sup>93</sup> The purchaser is charged with knowledge of the pleadings and papers on file in the suit.<sup>94</sup> Notice extends to all claims expressly involved in and evident from the suit<sup>95</sup> as well as those claims reasonably discoverable therefrom.<sup>96</sup> The notice extends to all parties and things in controversy in the suit and charges the purchaser with a duty to investigate the litigation to discover its scope, facts, and applicable defenses and counterdefenses.<sup>97</sup> The pleadings are critical to the breadth of the notice.

#### **1. Subject Tract Must be Described in Pleadings.**

Cases decided before the lis pendens statute required that the subject tract be specifically described in the

pleadings before constructive notice was effective.<sup>98</sup> Justice required that interested parties have a means of informing themselves of the specific property imperiled by the outcome of the suit.<sup>99</sup> While the lis pendens statute now requires that the affected property be described in the notice of lis pendens,<sup>100</sup> the pleadings must also describe the property.<sup>101</sup>

2. **Effect of Amended Pleadings.** The claims to which lis pendens applies are those asserted in the pleadings in the case.<sup>102</sup> There is no notice of claims that could have been but were not asserted.<sup>103</sup> To determine the extent of notice provided, the active pleadings are examined as of the date of the transfer to which lis pendens is sought to be applied.<sup>104</sup> A purchaser *pendente lite* is not affected by claims added by amended pleadings *after* the date of the transfer.<sup>105</sup> It is the suit pending at the date of the conveyance that serves as the basis for lis pendens and not matters raised by subsequent amendments or suits.<sup>106</sup> A general prayer for relief in the plaintiff's pleadings is not sufficient to put the purchaser *pendente lite* on constructive notice of claims that could be added after the conveyance.<sup>107</sup> For example, in *New England Loan & Trust Co. v. Miller*,<sup>108</sup> New England Loan & Trust took a deed of trust from Dixon during the pendency of the suit by Miller against Dixon.<sup>109</sup> Miller's suit sought to impose a constructive trust against certain properties of Dixon inclusive of the property described in New England's deed of trust.<sup>110</sup> An agreed judgment was entered in the suit granting a constructive trust in favor of Miller for 5/7 of the land and partitioning the property between Miller and Dixon.<sup>111</sup> Held that lis pendens did not apply to the partition relief not prayed for at the time that the New England deed of trust was executed.<sup>112</sup> In order for the purchaser *pendente lite* to be bound by the results of the litigation in the event of any post-sale amendments or parties, the purchaser must be joined as a party to the suit.<sup>113</sup>

However, post-sale amendments to pleadings may bind a purchaser *pendente lite* if the amendment does not change the nature of the suit save to substitute one litigant for another. In *Jones v. Robb*,<sup>114</sup> a suit was pending adjudicating the claims of Gilbert in certain property at the time of a sale *pendente lite*.<sup>115</sup> Later Cleveland intervened in the suit after buying out the claims of Gilbert.<sup>116</sup> The subsequent judgment in favor of Cleveland was binding on the purchaser *pendente lite*.<sup>117</sup>



Cleveland's claims were pending at the time of the sale even if then prosecuted by another party.<sup>118</sup>

**C. Application of Lis Pendens Doctrine to Particular Suits.**

1. Suit for Money Judgment. The lis pendens doctrine is inapplicable to a suit to recover only a money judgment.<sup>119</sup> Thus in *Lane v. Fritz*,<sup>120</sup> the court properly cancelled lis pendens notices filed in Lane's suit against Fritz for alienating the affections of her former husband.<sup>121</sup> The suit was one to collect an unliquidated claim for money damages against the defendant.<sup>122</sup> Same result in *Garza v. Pope*,<sup>123</sup> where the claim sought damages to the plaintiff's property from the development activity of the defendant.<sup>124</sup> The tract described in the notice of lis pendens was not the subject of the suit but one chosen because it was the only tract owned by the defendant that had no liens against it.<sup>125</sup>

An enterprising plaintiff cannot circumvent this general rule by anticipating a favorable judgment and additionally pleading for a lien on the defendant's real property to secure that judgment.<sup>126</sup> Lis pendens is not appropriate until a money judgment has been rendered and made a lien against the property by post judgment remedy.<sup>127</sup> While lis pendens is available to enforce an encumbrance against real property, the lien sought to be enforced must exist prior to rendition of judgment arising under some provision of contract, statute, or the constitution.<sup>128</sup>

2. Forcible Entry and Detainer. A suit for forcible entry and detainer, being an action for possession but not title to property, is not within the lis pendens doctrine.<sup>129</sup>

3. Action for Accounting. A suit for an accounting does not of itself concern title to real property bringing the case within the lis pendens doctrine.<sup>130</sup> In *Hughes v. Houston Northwest Medical Center*,<sup>131</sup> Hughes brought suit *inter alia* for an accounting and distribution of partnership assets.<sup>132</sup> These allegations alone were insufficient to support the filing of a notice of lis pendens.<sup>133</sup>

4. Fraud. An action for fraud even if in connection with a sale of property does not necessarily bring the case within the lis pendens doctrine. In *Bowen v. Kirkland*,<sup>134</sup> an heir's suit against the administrator of an estate seeking the

removal of the administrator and voiding the administration based on irregularities and fraud was not lis pendens to a purchaser *pendente lite* taking his title from the heir.<sup>135</sup> Title to the property was not in question in the fraud litigation.<sup>136</sup>

5. Suit for Breach of Lease/Constructive Eviction. In *Helmsley-Spear of Texas, Inc. v. Blanton*,<sup>137</sup> a tenant sued the landlord for breach of lease and constructive eviction.<sup>138</sup> When the landlord contracted to sell the shopping center, the tenant filed a notice of lis pendens.<sup>139</sup> The notice of lis pendens was properly cancelled because the tenant's suit did not involve title to the property.<sup>140</sup>

6. Bankruptcy Proceedings. Bankruptcy proceedings *may* be lis pendens if the litigated issues satisfy the requirements of TEX. PROP. CODE ANN. § 12.007.<sup>141</sup> An action to confirm a Chapter 11 Plan is not an action involving title to real property or the enforcement of an encumbrance against real property, even if certain property is directed to be sold or transferred by the plan.<sup>142</sup> In *Matter of Texas Extrusion*,<sup>143</sup> Richard and Louise Pickens appealed the confirmation of a Chapter 11 plan which required the sale of certain real property by the Pickenses.<sup>144</sup> This was not an action involving title to the property, the establishment of an interest in the property, or the enforcement of an encumbrance thereagainst.<sup>145</sup> Under these circumstances it was proper for the bankruptcy court to cancel the notice of lis pendens filed by the Pickenses.<sup>146</sup>

7. Trespass. Lis pendens is inapplicable to an action for trespass.<sup>147</sup>

8. Enforcement of Zoning Ordinances. In *Olbrich v. Touchy*,<sup>148</sup> property owners surrounding Olbrich brought suit to invalidate a subdivision plat on Olbrich's lot which they claimed violated city ordinances.<sup>149</sup> Held the concerned property owners had no interest in the subject lot. Any claimed violation of zoning and subdivision ordinances could not constitute an encumbrance against the property.<sup>150</sup> The notice of lis pendens was cancelled.<sup>151</sup>

9. Unjust Enrichment and Restitution. In *FDIC v. Walker*,<sup>152</sup> Walker filed suit against the FDIC to recover the value of improvements made by Walker to the FDIC's property in anticipation of the

consummation of an unenforceable contract to buy the property.<sup>153</sup> Walker's action for restitution of the value of these improvements was not one involving title to or the establishment of an interest in the property.<sup>154</sup> Walker's notice of lis pendens was wrongfully filed.<sup>155</sup>

10. Suit to Enforce/Set Aside Contract to Purchase Property. A suit either to specifically enforce<sup>156</sup> or set aside<sup>157</sup> a contract to purchase real property does affect title and will support the recordation of a notice of lis pendens.

However, in *Lewis v. Foxworth*,<sup>158</sup> a suit to enforce forfeiture of earnest money under a contract of sale with no pleadings seeking to specifically enforce the contract was not a suit supporting a lis pendens filing.<sup>159</sup>

11. Suit for Cancellation of Instrument. A suit to cancel an instrument in the chain of title to property has an obvious impact on title and is within the lis pendens doctrine.<sup>160</sup> However, in *Lewis v. Foxworth*

12. Constructive Trusts. Recently it has become *de rigueur* among more aggressive plaintiffs to attempt to broaden the application of the lis pendens doctrine by including a count in their pleadings seeking to imply a constructive trust. Decisional authorities are conflicting and difficult to reconcile on the application of lis pendens to a suit seeking a constructive trust against real property. The disagreement among authorities centers on what property may be lawfully included within the lis pendens filing. The matter is often a close call.<sup>161</sup>

As a general rule, a property cannot be included in a notice of lis pendens unless the property is the true subject matter of the parties' dispute.<sup>162</sup> A lis pendens is proper in a constructive trust suit to restore to the aggrieved party the actual property that was misappropriated.<sup>163</sup> For example, in *Hughes v. Houston Northwest Medical Center*,<sup>164</sup> minority stockholders brought a derivative action on behalf of Houston Northwest Medical Center, Inc.<sup>165</sup> The plaintiffs claimed that the defendants had arranged to sell corporate property to a defendant-controlled partnership in fraud on the corporation.<sup>166</sup> The plaintiffs sought to cancel contracts for sale on the property.<sup>167</sup> Held the subject matter of the shareholder derivative suit included contracts which affected title to corporate property.<sup>168</sup> The plaintiffs' suit to impose a constructive trust against the

disputed tract entitled them to include the property in a notice of lis pendens.<sup>169</sup>

In *In re Med Plus Equity Inv.*,<sup>170</sup> Sheth, et al sued Sarabia, et al *inter alia* on a constructive trust theory alleging that Sarabia had fraudulently prevented Sheth from participating in a partnership to purchase real estate.<sup>171</sup> Held the suit would not support a lis pendens filing against partnership property.<sup>172</sup> Sheth's claim was only a claim to an interest in the partnership.<sup>173</sup> An interest in a partnership is distinct from an interest in the real estate which may be owned by the partnership.<sup>174</sup>

In *In re: Fitzmaurice*,<sup>175</sup> a property owner in a residential subdivision sued the developer on *inter alia* a constructive trust theory to enforce unfulfilled promises to construct community infrastructure and amenities.<sup>176</sup> The Plaintiff filed a lis pendens on all unsold lots in the subdivision and on adjacent property not in the subdivision.<sup>177</sup> Held that the lis pendens should be removed. The pleadings of the plaintiff did not identify any specific properties within the subdivision where the alleged amenities were to be built.<sup>178</sup> No adequate nexus existed between the claims and the property effected by the notice of the lis pendens.<sup>179</sup>

A more difficult question is presented when the plaintiff seeks to trace the proceeds or fruits of the defendant's wrongful conduct into a property later acquired by the defendant and to impose thereon a constructive trust.<sup>180</sup> The issue in such cases is whether there is an adequate nexus between the claim against the owner of the property and the property in question.<sup>181</sup> Without that nexus, lis pendens is not available.<sup>182</sup>

In *Moss v. Tenant*,<sup>183</sup> Hoffman brought suit against the Guises to recover damages for breach of warranty, fraud, and deceptive trade practices arising out of the Guises sale of a home to Hoffman.<sup>184</sup> Hoffman contended that the Guises had purchased a second home from the proceeds of the disputed sale. Hoffman sought to impose a constructive trust on the second home.<sup>185</sup> Held Hoffman's constructive trust allegations sought an implied trust to secure the recovery of money damages.<sup>186</sup> In effect, Hoffman sought a pre-judgment judgment lien.<sup>187</sup> The title to the second home was only collateral to the suit.<sup>188</sup> The notice of lis pendens was properly cancelled.<sup>189</sup>

The Supreme Court carried this rationale a step further in *Flores v. Haberman*.<sup>190</sup> Here Flores' pleadings contended that Haberman converted property belonging to Flores and used the proceeds to buy certain properties upon which Flores sought to imply a constructive trust.<sup>191</sup> Held the lis pendens should be cancelled as to the purchased properties.<sup>192</sup> When a constructive trust is sought only to impair the transfer of the defendant's property to protect the collection of a future judgment, only a collateral question on title is presented.<sup>193</sup>

However, other decisions (even after *Flores v. Haberman*) take an opposite view.<sup>194</sup> For example, in *First Nat'l Petroleum Corp. v. Lloyd*,<sup>195</sup> the plaintiffs filed suit for fraud claiming funds diverted by such fraud were used to purchase the real property upon which they sought to impose a constructive trust.<sup>196</sup> Held the suit to obtain title to the tract purchased with the fruits of the defendant's unjust enrichment brought the case within lis pendens.<sup>197</sup> The title to the purchased tract was at issue in the suit.<sup>198</sup>

13. **Divorce Proceedings.** A lis pendens is proper in a divorce proceeding where the separate/community character of a property is at issue. In *In re: Kroupa-Williams*,<sup>199</sup> Kroupa-Williams filed a divorce petition to end a putative common law marriage.<sup>200</sup> Included in the petition was a claim to quiet title to certain properties in which she claimed a community interest.<sup>201</sup> The division of the claimed community estate was an adequate nexus to the real property to support a lis pendens filing.<sup>202</sup>

**D. Suit Must Be Brought By Authorized Party.** A suit is not lis pendens if brought by an unauthorized party.<sup>203</sup> In *Jones v. Robb*,<sup>204</sup> John P. Austin and his uncle, W.T. Austin owned joint

interests in a tract.<sup>205</sup> The Austins had close ties of blood and business. W.T. Austin was in charge of their joint business while John P. Austin was absent from the state.<sup>206</sup> W.T. Austin, a lawyer, brought suit to adjudicate all of their joint interest in the land. John P. Austin did not specifically authorize the suit or know of its existence.<sup>207</sup> The suit continued this way for many years without objection.<sup>208</sup> The death of most of the parties and the destruction of court records by a fire made it difficult to ascertain all facts relating to W.T. Austin's authority when finally challenged.<sup>209</sup> Held that these facts showed that W.T. Austin's suit on behalf of John P. Austin was authorized.<sup>210</sup>

In *Hughes v. Houston Northwest Medical Center*,<sup>211</sup> minority stockholders in a corporation brought a shareholder derivative suit on behalf of the corporation to cancel contracts to sell corporate real property to a defendant-controlled partnership in fraud on the corporation.<sup>212</sup> The defendants challenged the standing of the plaintiffs to file a lis pendens.<sup>213</sup> Held the shareholder derivative action affecting title to corporate property entitled the shareholders to file a lis pendens on behalf of the corporation.<sup>214</sup>

**E. Suit Must Be Pending.** A notice of lis pendens is not authorized for filing after judgment has been entered in the underlying litigation.<sup>215</sup>

## V. PROPERTY WITHIN THE LIS PENDENS DOCTRINE.

**A. Real Property.** A suit affecting title of any kind of real property<sup>216</sup> including mineral interests<sup>217</sup> is within the lis pendens doctrine.

**B. Personal Property.** The lis pendens doctrine applies with equal force to most types of personal property.<sup>218</sup> However, unmatured negotiable instruments, commercial paper, and bonds are not covered by the doctrine.<sup>219</sup> The purpose of this exception is to preserve the negotiability of these instruments.<sup>220</sup> Negotiable instruments which are matured are subject to lis pendens.<sup>221</sup>

The *common law* lis pendens doctrine applies to personal property. It is not possible to file a statutory notice of lis pendens in reference to a suit to determine title to personal property.<sup>222</sup>



## VI. PERSONS TO WHOM LIS PENDENS APPLIES.

**A. Lis Pendens Applies to Purchaser Pendente Lite.** Lis pendens doctrine applies only to a purchaser *pendente lite*.<sup>223</sup> A purchaser *pendente lite* is one who purchases an interest in the property (1) during the pendency of litigation affecting title and (2) from a party to the suit.<sup>224</sup> In *Houston Oil Co. of Texas v. Village Mills Co.*,<sup>225</sup> McLean was not a purchaser *pendente lite*.<sup>226</sup> While he acquired his interest during a suit affecting title, his vendor was not a party to that litigation.<sup>227</sup>

**B. Persons Who May File a Notice of Lis Pendens.** Any party who seeks affirmative relief in a qualified action may file a notice of lis pendens.<sup>228</sup>

In *In re: Jamail*,<sup>229</sup> Jamail filed suit against PIB in part to enforce a Rule 11 Agreement whereby PIB was obligated to purchase certain lots in Jamail's subdivision.<sup>230</sup> PIB filed a lis pendens to preserve its right under the Rule 11 Agreement while defending against Jamail's claims on appeal.<sup>231</sup> Held that the lis pendens was not properly filed because PIB was not pursuing any affirmative claims against Jamail.<sup>232</sup>

## VII. DURATION AND CANCELLATION OF LIS PENDENS.

A lis pendens generally operates only during the pendency of a suit.<sup>233</sup> A number of Texas authorities have refined the concept of when a suit is pending.

### A. Commencement of Lis Pendens.

1. Under Lis Pendens Statute. If constructive notice is effected by the filing of a statutory notice of lis pendens, the notice is effective from the time that the notice is filed.<sup>234</sup>

a. At What Point in the Suit May a Notice of Lis Pendens Be Filed?

A notice of lis pendens may be filed after the plaintiff's statement (in an eminent domain proceeding) or at any time during the pendency of the action.<sup>235</sup> This can include a lis pendens filing after judgment while the cause remains pending.<sup>236</sup>

2. Under the Common Law Lis Pendens Doctrine. If resort is made to the common law doctrine, lis pendens is effective not when the suit is filed but at the time service is made on the defendant.<sup>237</sup> For absent or unknown defendants, lis pendens is

effective when citation is published.<sup>238</sup> If the defendant makes a voluntary appearance absent service, lis pendens is effective at the time of this appearance.<sup>239</sup>

3. Effect on Purchaser Ante Litem. Generally, a notice of lis pendens has a prospective not retroactive effect.<sup>240</sup> A purchaser acquiring the property before the lis pendens is effective is a purchaser *ante litem* rather than a purchaser *pendente lite*. Such a purchaser is not subject to the lis pendens doctrine.<sup>241</sup> This rule is true even if the deed of the purchaser *ante litem* is not recorded until after the lis pendens is filed.<sup>242</sup>

a. Effect of Deferred Purchase Consideration. While a notice of lis pendens filed *after* a purchase will not affect the title of a purchaser *ante litem*, it may require the purchaser to account to the true owner for any deferred purchase price remaining unpaid after the lis pendens filing.<sup>243</sup> In *Earnhardt Dev. Co. v. Ray*,<sup>244</sup> Ray and Earnhardt agreed to buy a tract together from Leucks by giving Leucks a note for \$5,200.<sup>245</sup> However, Earnhardt misappropriated the opportunity by secretly buying the property on his own in the name of his company, Earnhardt Development Co., Inc. (Earnhardt Development).<sup>246</sup> The tract was then resold to another Earnhardt controlled entity, Earnhardt-Deming Co., Inc. (Earnhardt-Deming).<sup>247</sup> Earnhardt-Deming agreed to assume the Leucks' note and gives its own note to Earnhardt Development for an additional \$10,000.<sup>248</sup> Earnhardt-Deming then sold the tract to Cowden on October 9, 1930 for \$21,000 cash and Cowden assumption to pay both the \$10,000 note to Earnhardt Development, and the \$5,200 note to Leucks.<sup>249</sup> Ray then sued Earnhardt and Earnhardt Development to recover his interest in the property.<sup>250</sup> Ray filed a notice of lis pendens *after* the sale to Cowdens.<sup>251</sup> Held the notice of lis pendens filed after Cowden acquired the property did not affect Cowden's legal title to the tract.<sup>252</sup> However, the notice was sufficient to put Cowden on notice of Ray's interest in the remaining unpaid deferred purchase price.<sup>253</sup> The judgment properly required Cowden to account to Ray for all of Ray's interest in post-lis pendens payments made on the \$10,000 not to Earnhardt Development.<sup>254</sup>

4. Origin of Title Determines if Purchase Made Ante Litem. If a lien which is created prior to the lis

pendens filing later ripens into fee title to the property as the result of a foreclosure occurring after the lis pendens filing, the purchaser at foreclosure is not a purchaser *pendente lite*.<sup>255</sup> The rights of the lienholder are fixed prior to the lis pendens,<sup>256</sup> and are not affected by the pending suit.<sup>257</sup> For example in *Baker v. West*,<sup>258</sup> Baker recovered a judgment against Ramsey and recorded a judgment lien in July, 1915.<sup>259</sup> West filed a trespass to try title suit on the same lots in May, 1925 without joining Baker as a party.<sup>260</sup> Baker later foreclosed her judgment lien at an execution sale conducted in July 1925.<sup>261</sup> Held Baker was not bound by the judgment in the trespass to try title suit.<sup>262</sup> Though Baker bought after the suit was commenced, Baker was not a purchaser *pendente lite*.<sup>263</sup> This is because Baker's title originated with a judgment lien preceding the lis pendens filing.<sup>264</sup>

**B. Termination of Lis Pendens.** Once filed the effect of the lis pendens will continue through the entire time that the suit is pending.<sup>265</sup> As a general rule, a lis pendens has no existence separate and apart from the litigation of which it gives notice.<sup>266</sup> As a result, generally the effect of a lis pendens as constructive notice will end when the suit is terminated by final judgment.<sup>267</sup>

1. Effect of Appeal. A timely appeal or motion for new trial will extend the effectiveness of the lis pendens through the final determination of the review.<sup>268</sup> The same rule applies to restricted appeals (under former parlance "writs of error").<sup>269</sup> It is not necessary that the appeal actually be filed prior to the sale in order for the lis pendens to continue. Any purchase after rendition of judgment and within the time to perfect a review is a sale *pendente lite*.<sup>270</sup>

2. Effect of Other Post Judgment Proceedings. In cases where the judgment directs the sale of property, the effectiveness of a lis pendens will continue after rendition of judgment until the sale is made.<sup>271</sup>

3. Effect of Dismissal. The pre-judgment dismissal of suit terminates the effectiveness of any lis pendens attendant to that suit.<sup>272</sup> Any subsequent reinstatement of the original suit or the filing of a new suit upon the same cause of action will not

cause the effectiveness of the original lis pendens to continue.<sup>273</sup>

In *Bryson & Hartgrove v. Boyce*,<sup>274</sup> a lis pendens arose concerning a ranch in Concho County when Boyce filed suit against Concho Cattle Company to vacate a tax deed and remove a cloud upon title.<sup>275</sup> Concho Cattle Company filed a counterclaim claiming title to the property.<sup>276</sup> Boyce's suit was later dismissed for want of prosecution.<sup>277</sup> This dismissal did not remove the lis pendens.<sup>278</sup> The counterclaim (also a suit affecting title to the property) continued to pend.<sup>279</sup>

4. Effect of Transfer of Venue. A purchaser *pendente lite* is charged with knowledge of the pendency of the suit and that a transfer of venue may become part of the history of the litigation.<sup>280</sup> A transfer of venue will not cause lis pendens to terminate.<sup>281</sup>

**C. Cancellation or Removal of Lis Pendens.**<sup>282</sup>

1. Cancellation Upon Final Adjudication. Upon entry of judgment or summary judgment adjudicating the claim giving rise to a lis pendens filing, the lis pendens is no longer necessary.<sup>283</sup> It is proper for the court to provide for the cancellation of the lis pendens by the judgment.<sup>284</sup> In so doing it is not necessary to satisfy the requirements of TEX. PROP. CODE ANN. § 12.008 (relating to the prejudgment cancellation of conforming notices of lis pendens).<sup>285</sup>

2. Prejudgment Cancellation of Non-Conforming Notice of Lis Pendens. If a notice of lis pendens fails to satisfy the requirements of TEX. PROP. CODE ANN. § 12.007, it is void<sup>286</sup> and may be cancelled by a court during the pendency of the suit.<sup>287</sup> This can be done upon motion filed in the pending suit (usually a motion to cancel lis pendens, motion to quash, motion to remove, or motion for summary judgment)<sup>288</sup> or by independent suit for cancellation.<sup>289</sup> For example, in *Helmsley-Spear of Texas, Inc. v. Blanton*,<sup>290</sup> a notice of lis pendens was properly cancelled because the plaintiff's suit for breach of lease/constructive eviction did not come within TEX. PROP. CODE ANN. § 12.007.<sup>291</sup> The action sought monetary damages and did not directly affect title to the property.<sup>292</sup>

When the notice of lis pendens does not comply with TEX. PROP. CODE ANN. § 12.007, this is the only showing necessary to its cancellation. It is not

necessary for the party seeking cancellation to comply with TEX. PROP. CODE ANN. § 12.008 (applying to prejudgment cancellation of conforming notices of lis pendens).<sup>293</sup>

Mandamus relief is available if the trial court refuses to cancel a non-conforming notice of lis pendens.<sup>294</sup> Likewise, a party contending that the trial court improperly cancelled a notice of lis pendens may appeal that decision.<sup>295</sup>

a. Evidence Considered in Prejudgment Removal of Non-Conforming Notice of Lis Pendens. The Courts of Appeal are split on the issue of whether the nature of the suit should be determined solely from the pleadings, or whether the trial court may look beyond the pleadings and consider evidence relevant to whether a party's interest in the property is direct or collateral.<sup>296</sup> Some courts have determined that the matter should be decided solely by examining the pleadings.<sup>297</sup> Other courts have allowed evidence to be considered in determining whether the lis pendens filing is proper.<sup>298</sup>

In *In re Collins*,<sup>299</sup> the Fort Worth Court of Appeals surveyed this conflict among the authorities and determined that the correct balancing approach was to adopt a rule similar to that used in considering pleas to the jurisdiction.<sup>300</sup> If a motion seeking to remove a lis pendens challenges the pleadings supporting the filing, the court should examine the pleadings to determine if the pleader has alleged facts that affirmatively demonstrate that the lis pendens is proper.<sup>301</sup> In conducting this examination the court should construe the pleadings liberally in favor of the pleader and look to the pleader's intent.<sup>302</sup> If the pleadings do not contain sufficient facts to affirmatively demonstrate the propriety of the lis pendens, the pleader should be afforded an opportunity to amend before the court rules on the motion to dismiss the lis pendens.<sup>303</sup> However, if the pleadings affirmatively negate the existence of facts supporting the lis pendens, then the motion to dismiss the lis pendens should be granted without allowing the pleader an opportunity to amend.<sup>304</sup>

If the motion seeking the removal of the lis pendens challenges the existence of facts supporting the pleader's alleged interest in the property, the *Collins* court determined that trial court should receive evidence relevant to the question of whether

the alleged property interest is direct or collateral.<sup>305</sup> In so doing the trial court should not decide the merits of the parties' claims, but confine itself to the issue of whether the property interest is direct or collateral.<sup>306</sup> If the evidence raises a fact of issue of whether the alleged property interest is a direct interest, the motion should be denied and the issue resolved by the trier of fact.<sup>307</sup> If, however, the relevant evidence is undisputed or fails to raise a fact of issue concerning the true nature of the property interest, the court should rule on the validity of the lis pendens as a matter of law.<sup>308</sup> *Collins* determined that this procedure strikes the necessary balance between protecting the pleader's asserted interest in the property, on the one hand, and protecting the property owner from the adverse effect of a lis pendens based on a sham pleading.<sup>309</sup>

b. Lis Pendens as a Violation of Automatic Stay in Bankruptcy. The filing of a notice of lis pendens violates the automatic stay in bankruptcy of U.S.C. § 362.<sup>310</sup> Because such a notice of lis pendens is voidable and may be cancelled as a non-conforming filing.<sup>311</sup>

3. Pre-Judgment Cancellation of Conforming Notice of Lis Pendens. If, based upon the pleadings, the notice of lis pendens comes within the requirements of TEX. PROP. CODE ANN. § 12.007, the notice may not be cancelled save in accordance with the provisions of TEX. PROP. CODE ANN. § 12.008.<sup>312</sup> Cancellation under this section is available only if the court determines that the party seeking affirmative relief can be adequately protected by other security.<sup>313</sup> This is done upon motion and hearing after notice to each affected party.<sup>314</sup> The motion may be brought at any time during the proceeding.<sup>315</sup> The substitute security supporting the cancellation of a notice of lis pendens may be (1) a deposit of money into the registry of the court or (2) the giving of a bond or undertaking.<sup>316</sup>

Because the filing of a lis pendens notice is privileged, an aggrieved party cannot recover in damages if the underlying suit is later determined to lack merit.<sup>317</sup> As a result of the absence of any remedy in damages, the removal provisions of TEX. PROP. CODE ANN. § 12.008 are read broadly.<sup>318</sup> The right to seek cancellation applies to *all* suits for which a lis pendens has been filed.<sup>319</sup> The cancellation relief is not limited to suits for recovery

of money secured by a lien on real estate.<sup>320</sup> In *Ransopher v. Deer Trails Ltd.*,<sup>321</sup> Ransopher filed suit to impose a constructive trust upon a 132 acre tract in which he claimed an undivided interest.<sup>322</sup> Deer Trails cancelled Ransopher's notice of lis pendens by posting a \$150,000 bond.<sup>323</sup> Ransopher contended that because his suit was one for title to the property not one for recovery of a money judgment secured by a lien on the property, that cancellation was not available.<sup>324</sup> Held cancellation under the predecessor of TEX. PROP. CODE ANN. § 12.008 was available in *all* suits in which a notice of lis pendens has been filed.<sup>325</sup> This result avoids plaintiffs denying cancellation by artful pleading.<sup>326</sup>

If a notice of lis pendens complies with TEX. PROP. CODE ANN. § 12.007, a court is not authorized to cancel or terminate its effectiveness unless the party opposing provides alternate security under TEX. PROP. CODE ANN. § 12.008.<sup>327</sup> Mandamus and appellate relief are available if the trial court cancels a conforming notice of lis pendens without authority.<sup>328</sup>

a. Cancellation By Deposit of Money. A conforming notice of lis pendens may be cancelled at any stage of the proceedings by filing with the court a monetary deposit.<sup>329</sup> The monetary deposit must be in an amount equal to the total of (1) the judgment sought, (2) interest which the court considers likely to accrue during the proceeding, and (3) costs.<sup>330</sup>

*In re Kroupa-Williams*,<sup>331</sup> an order cancelling a notice of lis pendens failed to comply with TEX. PROP. CODE ANN. § 12.008 when it required deposit of the amount of the plaintiff's claim but failed to require an additional deposit for interest and costs.<sup>332</sup> In addition, the order failed to condition the dissolution of the lis pendens on the deposit being actually made.<sup>333</sup>

b. Cancellation By Giving an Undertaking. An alternative method of cancelling a conforming notice of lis pendens is for the party seeking the cancellation to give a guarantee of payment of the judgment plus interest and costs in favor of the party recording the lis pendens.<sup>334</sup> The guarantee must be equal to twice the amount of the judgment sought and have two sufficient sureties approved by the court.<sup>335</sup> The statute must be followed before cancellation is authorized.<sup>336</sup> In *Hughes v. Houston Northwest Medical Center*,<sup>337</sup> the cancellation of a

notice of lis pendens was overturned when the amount of the bond was not based on the pleadings and evidence.<sup>338</sup>

The amount of the bond need only be based on the pleadings on file in the case at the time that the bond is filed and conditioned that the principal and sureties will pay the amount of any judgment rendered on the existing pleadings.<sup>339</sup> *Frankfort v. Wilson*<sup>340</sup> involved an action to collect on a lis pendens bond.<sup>341</sup> The plaintiff sought to collect the amount of a judgment rendered on a new cause of action raised by amended pleadings filed after the original bond was posted.<sup>342</sup> Held the lis pendens bond was strictly construed in accordance with its terms.<sup>343</sup> No recovery on the bond was possible based on the amended pleadings.<sup>344</sup>

If a party seeks cancellation of a notice of lis pendens by substituted security, the party seeking the cancellation must serve the attorney of the party who filed the notice with a copy of the proposed guarantee and notice of its submission to the court not less than two days prior to submission.<sup>345</sup>

4. Enjoining Future Lis Pendens Filings. Lis pendens is a statutory right afforded parties litigating claimed interests in land.<sup>346</sup> A court is without authority to enjoin a party from any future lis pendens filings.<sup>347</sup>

5. Jurisdiction to Cancel Lis Pendens. Only the Court hearing the underlying action may cancel a lis pendens.<sup>348</sup>

## **VIII. REQUIREMENTS FOR NOTICE OF LIS PENDENS.**

A notice of lis pendens is a notice recorded in the chain of title to real property to warn all persons that the property is the subject matter of litigation.<sup>349</sup> It is a mechanism to give constructive notice to all those taking title to the property that the lis pendens claimant is litigating a claim affecting title to property.<sup>350</sup>

### **A. Statutory Elements of Notice of Lis Pendens.**

A notice of lis pendens must contain: (1) the style and number, if any, of the proceeding; (2) the court in which the proceeding is pending; (3) the names of the parties; (4) the kind of proceeding; (5) a description of the property effected; and (6) the



signature of the filing party or that party's attorney.<sup>351</sup>

1. Description of Property. The property description required for a notice of lis pendens is not a demanding standard. In *Pope v. Beauchamp*,<sup>352</sup> a notice of lis pendens was upheld which described the subject property as "631 acres out of the M.V. Delgado Survey of land in Titus County, Texas and situated on the Sulphur River and on Timber Lake about fourteen or fifteen miles N.W. from Mt. Pleasant, Texas".<sup>353</sup> In *Gene Hill Equip. Co. v. Merryman*,<sup>354</sup> the lis pendens property description was sufficient which described certain specific lots and "all other property owned by or recorded in the name of [the Defendants]".<sup>355</sup> The catch-all description was sufficient to affect other lots owned by the Defendants but not specifically described in the notice of lis pendens.<sup>356</sup>

*Garza v. Pope*,<sup>357</sup> determined that a notice of lis pendens should be cancelled which described property other than that being litigated in the underlying suit.<sup>358</sup>

2. Kind of Proceeding. A complete failure of the notice of lis pendens to show the kind of suit involved is grounds for cancellation of the lis pendens.<sup>359</sup>

The nature of the pending suit may change with amended pleadings. In *Pickens v. Bacle*,<sup>360</sup> Bacle filed suit for trespass to try title and to remove a cloud on title.<sup>361</sup> This was how the suit was described in a contemporaneous lis pendens filing.<sup>362</sup> The suit alleged that a purported mineral deed was actually a "mortgage".<sup>363</sup> A later amended petition referred to this pivotal instrument somewhat differently but still contended it was not a deed.<sup>364</sup> Held that the notice of lis pendens adequately described the suit even as amended.<sup>365</sup> Even after the amended petition the action remained one for trespass to try title and to remove a cloud on title.<sup>366</sup> The amended allegations did not constitute a change in the cause of action described in the notice of lis pendens.<sup>367</sup>

3. Parties to Suit. In *Johnson v. Marti*,<sup>368</sup> a notice of lis pendens describing litigation involving "G.W. Poulter" was not constructive notice of title emanating out of his brother John L. Poulter.<sup>369</sup>

4. Style and Number of Suit. A failure to include the style and number of the suit is grounds to cancel a notice of lis pendens.<sup>370</sup>

5. Court in Which Suit Pending. A failure to include the court in which the suit is pending is grounds for cancellation of a notice of lis pendens.<sup>371</sup>

**B. Filing and Indexing.** A notice of lis pendens must be filed for record with the county clerk in each county where a part of the land is located.<sup>372</sup> Thereafter the clerk is required to index the notice in the direct and reverse index under the name of each party to the proceeding.<sup>373</sup> However proper indexing is not necessary to the effectiveness of the notice.<sup>374</sup> A notice of lis pendens is effective at the instant of its filing.<sup>375</sup>

## **IX. EFFECT OF LIS PENDENS.**

**A. Notice Effect of Lis Pendens.** The general effect of lis pendens is to put a purchaser *pendente lite* on notice of inquiry of the claims involved in the suit and their possible injurious effect on the title to the property.<sup>376</sup> Once lis pendens is properly invoked, a purchaser *pendente lite* proceeds with the purchase at his own peril.<sup>377</sup> The purchaser is chargeable with notice of the litigated matters<sup>378</sup> and whatever title the purchaser acquires will be subject to the outcome of the litigation<sup>379</sup> with all of its attendant hazards and contingencies.<sup>380</sup> The purchaser is a virtual party to the suit<sup>381</sup> who stands in the same attitude as his vendor.<sup>382</sup> When judgment is entered in the litigation, the purchaser is bound by the result of that suit to the same extent as the person from whom he acquired his title.<sup>383</sup> Just as his vendor, the purchaser *pendente lite*, must allow his title to abide the result of the suit.<sup>384</sup> If his vendor is successful in the litigation, the judgment will inure to the benefit of the purchaser *pendente lite* and he will acquire all interest awarded to his vendor at the conclusion of the suit.<sup>385</sup> However, a purchaser *pendente lite* likewise accepts the chance that his vendor may be defeated in the litigation.<sup>386</sup> If the suit is not concluded successfully in favor of the vendor, the purchaser *pendente lite* may acquire nothing and be left with only a claim for damages against his vendor.<sup>387</sup>

1. Notice Effect of Non-Conforming Notice of Pendens. A notice of lis pendens which is not authorized by law to be recorded does not impart

constructive notice.<sup>388</sup> In *Countrywide Home Loans, Inc. v. Howard*,<sup>389</sup> a notice of lis pendens was not constructive notice of its contents when it was not authorized to be filed because the plaintiff's suit was one seeking to impose a constructive trust claiming a direct interest in the subject property.<sup>390</sup>

2. Effective Date of Constructive Notice. A notice of lis pendens is constructive notice of its contents immediately upon being filed. It is not dependent on service being obtained on the other parties to the suit.<sup>391</sup>

**B. Effect of Lis Pendens on the Pending Litigation.** Generally, lis pendens does not affect the progress or determination of the suit.<sup>392</sup> It does not impair any right of recovery in the suit or cause any dismissal or termination.<sup>393</sup>

1. Joinder of Purchaser Pendente Lite. A purchaser *pendente lite* is bound by the pending suit the same as if a party to the suit.<sup>394</sup> It is not necessary to join the purchaser as a party in order for the judgment to be binding upon him.<sup>395</sup> For example, in *Queen v. Turman*,<sup>396</sup> Turman took an oil and gas lease from Queens in all of Queen's undivided interest in a 121.3 acre tract during the pendency of a partition suit between Queens and her fellow cotenants.<sup>397</sup> When the judgment in the partition suit later awarded to Queens a 15 acre tract out of the whole, Turman's lease was likewise restricted to the 15 acres notwithstanding that Turman was never a party to the partition.<sup>398</sup>

Procedurally, purchasers *pendente lite* are not necessary parties whose non-joinder prevents the progress of the case.<sup>399</sup>

2. Intervention by Purchaser Pendente Lite. A purchaser *pendente lite* bears the burden of remaining vigilant,<sup>400</sup> protecting his interest in the litigation,<sup>401</sup> and keeping himself apprised of the progress of the suit.<sup>402</sup> The purchaser is charged with making sure that his vendor does nothing to injure the purchaser's rights in the suit. A purchaser *pendente lite* will be bound by all agreements made by his vendor in the litigation.<sup>403</sup> For example, in *Jones v. Robb*,<sup>404</sup> a purchaser *pendente lite* was bound by a transfer of venue agreed to by his vendor.<sup>405</sup>

If there is a defense or claim which, if urged, would protect the rights of the purchaser *pendente*

*lite*, the purchaser must raise it. Otherwise, the defense may be waived.<sup>406</sup> In *York v. Carlisle*,<sup>407</sup> a purchaser *pendente lite* failed to raise the defense that the property made the subject of a foreclosure was exempt from forcible seizure.<sup>408</sup> The failure to raise this defense prior to judgment waived the exemption and made the judgment of foreclosure binding on the purchaser *pendente lite*.<sup>409</sup> If the purchaser *pendente lite* fails to appear in the pending litigation, he may have no right to appeal any judgment adverse to him.<sup>410</sup>

In many cases, complete protection may require the purchaser *pendente lite* to intervene in the pending suit. The purchaser is in an awkward and vulnerable position because the transfer may cause his vendor to lose incentive to vigorously pursue the case.<sup>411</sup> Some cases indicate that it is the duty of purchaser to intervene in protection of his interest.<sup>412</sup> However, the cases are conflicting and difficult to reconcile on the right of the purchaser to make himself a party to the litigation. Some authorities indicate the purchaser *pendente lite* is a proper party and has an absolute right to intervene.<sup>413</sup> Other cases have determined that the purchaser has no right to be made a party.<sup>414</sup> Some decisions have determined that the purchaser *pendente lite* cannot intervene over the objections of the opposing party<sup>415</sup> or if the intervention would delay the proceedings or complicate the issues.<sup>416</sup>

Some cases indicate that if the purchaser *pendente lite* is allowed to intervene, the issues he may raise should be restricted. These cases conclude that the intervening purchaser *pendente lite* must take the case as he found it and may not raise new issues of fact or of law not already raised by his vendor.<sup>417</sup> Other cases, citing the sound policy of resolving by one suit all matters in litigation on one subject matter, have allowed the intervening purchaser *pendente lite* to add new claims of title to the suit.<sup>418</sup>

*Ferris v. Streeper*,<sup>419</sup> considered how late in the proceedings a purchaser *pendente lite* may wait to intervene. The court concluded that such a purchaser may intervene after judgment by motion for new trial on behalf of his vendor.<sup>420</sup>

Upon intervention, the purchaser *pendente lite* does not assume personal responsibility for costs incurred in the suit before his intervention.<sup>421</sup> Only costs incurred after the purchaser's appearance may be adjudged against the purchaser.<sup>422</sup>

3. Intervention to Cancel Notice of Lis Pendens. In *Olympic Diamond v. Kotwitz*,<sup>423</sup> Countrywide Home Loans sought to intervene in the underlying litigation to remove notice of lis pendens on property on which Countrywide claimed a lien.<sup>424</sup> Intervention was denied when the underlying suit was dismissed anyway for want of prosecution effectively terminating the effectiveness of the lis pendens.<sup>425</sup>

4. Effect of Settlement on Purchaser *Pendente Lite*. If a settlement is made of the pending litigation, the purchaser *pendente lite* is bound by the agreement made by his vendor.<sup>426</sup> This rule applies even when the purchaser had no notice of the intended settlement.<sup>427</sup> In *Hamman v. Southwestern Gas Pipeline*,<sup>428</sup> Southwestern Gas Pipeline took an easement from a life tenant, Gladys, during the pendency of title litigation between Gladys and Eva.<sup>429</sup> Gladys and Eva settled with Gladys giving up her life estate to Eva.<sup>430</sup> The settlement had the effect of terminating the easement. Southwestern Gas Pipeline became a trespasser after the settlement.<sup>431</sup>

**C. Effect of Lis Pendens on the Sale *Pendente Lite*.** A lis pendens, once filed, does not prevent a litigant from transferring his interest in the property.<sup>432</sup> A sale *pendente lite* is not rendered void by the pending litigation only subservient to the outcome of the suit.<sup>433</sup>

Practically, a lis pendens is a powerful tool in the hands of a litigant that can provide significant protection and leverage to the party seeking an interest in a specific parcel of property.<sup>434</sup> A timely filed lis pendens can effectively halt real estate sales and tie up millions of dollars in assets pending the outcome of the litigation.<sup>435</sup>

1. Effect of Mineral Production by Purchaser *Pendente Lite*. If the purchaser *pendente lite* proceeds with mineral production on the litigated property prior to final disposition of the suit, he does so at risk to the outcome of the suit.<sup>436</sup> In *Tide Water Associated Oil Co. v. Hammer*,<sup>437</sup> Tide Water leased property for oil and gas production during the pendency of litigation over the title to the property.<sup>438</sup> When the suit was resolved unfavorably to Tide Water's lessor, Tide Water was required to account to the successful party for the value of production of the property.<sup>439</sup> If the purchaser

*pendente lite* incurs development costs to produce minerals from the property, and the pending litigation is ultimately resolved against his vendor, these development costs are not recoverable by the purchaser.<sup>440</sup>

2. Effect of Improvements Made by Purchaser *Pendente Lite*. If the purchaser *pendente lite* improves the litigated property during the pendency of the litigation, he does so at his own risk.<sup>441</sup> If the title of the purchaser *pendente lite* is destroyed by the litigation, the purchaser is not entitled to recover the value of the improvements made.<sup>442</sup>

3. Effect of Deferred Purchase Consideration. Refer to VII(A.) (3.) (a.) *supra*.

**D. Evidentiary Effect of Lis Pendens.** A notice of lis pendens has no extraordinary evidentiary value. It is merely an affidavit having no more evidentiary weight than any other affidavit.<sup>443</sup> It is not conclusive evidence of the fact recited therein.<sup>444</sup>

The filing of a lis pendens is a matter of public record and is subject to judicial notice.<sup>445</sup>

**E. Lis Pendens Creates No Interest in Property.** The filing of a notice of lis pendens claiming an interest or lien does not have the effect of creating any interest.<sup>446</sup> That interest must be established in the underlying litigation.<sup>447</sup>

**F. Effect of Lis Pendens on Statute of Limitations.** The filing of a notice of lis pendens does not have the effect of suspending or tolling the statute of limitations on causes of action inuring in favor of the plaintiff but not asserted in the underlying suit.<sup>448</sup> For example, in *Cherokee Water Co. v. Advance Oil & Gas Co.*,<sup>449</sup> Cherokee Water filed suit (Cherokee I) to void certain oil and gas leases which should have been offered to Cherokee under its right of first refusal.<sup>450</sup> Cherokee filed a notice of lis pendens in the action.<sup>451</sup> Cherokee's superior right to the lease was upheld in the suit.<sup>452</sup> During the pendency of the suit, a lease on the disputed mineral estate was executed and subsequently assigned to Advance Oil & Gas Co.<sup>453</sup> Cherokee later instituted a second suit (Cherokee II), this time against Advance, for trespass and conversion pertaining to production from the disputed lands.<sup>454</sup> The suit was instituted after the expiration of the normal two year limitations period

for such suits.<sup>455</sup> Cherokee contended that the notice of lis pendens filed in Cherokee I had the effect of suspending or tolling the limitations period applicable to Cherokee II.<sup>456</sup> Held the lis pendens doctrine has no application to the statute of limitations.<sup>457</sup>

**G. The Privileged Nature of Lis Pendens Filing.**

Generally any communications, oral or written, uttered or published in the course of a judicial proceeding is absolutely privileged.<sup>458</sup> A notice of lis pendens is part of judicial proceedings.<sup>459</sup> It has no separate existence apart from the underlying litigation.<sup>460</sup> A notice of lis pendens is as entitled to privilege as the pleadings filed in the suit.<sup>461</sup> As a result an absolute privilege bars any suit arising from the filing of a notice of lis pendens.<sup>462</sup>

The basis of the privilege is to allow litigants the utmost access to the judicial system to secure their rights and defend themselves without fear of being harassed by suits.<sup>463</sup>

While a lis pendens is generally privileged, this does not mean that the underlying pleading supporting the lis pendens is absolutely privileged. TEX. R. CIV. P. Rule 13 prescribes sanctions for pleadings which are groundless, brought in bad faith, or for the purposes of harassment.<sup>464</sup> As a result, claims arising out of bad faith filings are best directed to the motivation of the underlying suit to determine if it has any basis in fact or law or could be justified by a good faith argument for extension, modification, or reversal of existing law.<sup>465</sup>

1. Extent of Privilege. The absolute privilege for filing a notice of lis pendens extends to any theory upon which a suit complaining of the lis pendens might be brought including slander of title,<sup>466</sup> tortious interference with contract,<sup>467</sup> or interference with business.<sup>468</sup> The privilege extends to both the party filing the notice and their counsel.<sup>469</sup>

2. Effect of Non-Conforming Notice of Lis Pendens. A notice of lis pendens is privileged even if filed in connection with a suit not lawfully supporting the filing.<sup>470</sup> In *Prappas v. Meyerland Community Improvement Ass'n*,<sup>471</sup> a homeowners' association filed a notice of lis pendens ancillary to a suit seeking a declaratory judgment and injunctive relief in enforcement of deed restrictions.<sup>472</sup> In the opposing party's subsequent suit against the association for damages from the filing, the court

found it unnecessary to consider whether the associations original suit was one concerning title, interest, or an encumbrance against real property.<sup>473</sup> The lis pendens filing was absolutely privileged, even if there was not statutory basis for the filing.<sup>474</sup>

*Prappas* also concluded that the absolute privilege is not lost if the notice of lis pendens fails to include all required statutory elements.<sup>475</sup>

3. Effect of Malice. The filing of a notice of lis pendens is an absolute privilege.<sup>476</sup> The privilege does not turn upon the presence or absence of good faith.<sup>477</sup> In applying the privilege it is immaterial whether or not the filing was made with malice.<sup>478</sup>

**X. DEFENSES TO APPLICATION OF LIS PENDENS DOCTRINE.**

A. Collusion. It is a defense to the application of the lis pendens doctrine that the suit was collusively or fraudulently prosecuted so as to dispossess the purchaser *pendente lite*.<sup>479</sup> For example, in *Wolf v. Butler*,<sup>480</sup> Wolf took a deed of trust on Wagenheaser's brewery during the pendency of a suit against Wagenheaser by Butler to foreclose a statutory mechanic's and materialman's lien on the brewery.<sup>481</sup> Wolf was persuaded to make the loan by assurances from Wagenheaser that there was an absolute homestead defense to Butler's mechanic's lien which Wagenheaser would vigorously raise in the pending action.<sup>482</sup> Wagenheaser and Butler conspired to put Wolf off his guard and prevent his active intervention in the litigation by "losing" the court's file and misrepresenting the likely date that the matter would come to trial.<sup>483</sup> Wagenheaser and Butler inflated the amount of Butler's claim, then entered into an agreed judgment giving Butler the property with the express purpose of dispossessing Wolf and Wolf's successors in title to the brewery (made considerably more valuable by later improvements).<sup>484</sup> Held this collusion between Butler and Wagenheaser barred the application of lis pendens.<sup>485</sup> Wolf was not bound by the judgment.<sup>486</sup>

B. Laches. In order for lis pendens to remain in effect, the underlying suit must be prosecuted in good faith with all reasonable diligence and without unnecessary delay.<sup>487</sup> Long inaction in the suit amounting to unusual or unreasonable negligence has the effect of prejudicing an innocent purchaser *pendente lite* and relieves the purchaser of the effect of the lis pendens doctrine.<sup>488</sup> In *Maes v. Thomas*,<sup>489</sup>



a suit was allowed to lay dormant for 35 years.<sup>490</sup> All parties treated the matter as though fully adjudicated.<sup>491</sup> Held that under these facts that the application of lis pendens was a gross injustice and palpable fraud.<sup>492</sup>

To invoke the laches defense, the delay in prosecuting the suit must be inexcusable.<sup>493</sup> This is a question to be determined with reference to the facts and circumstances of each individual case.<sup>494</sup> In *Jones v. Robb*,<sup>495</sup> laches did not apply when a four year delay in prosecuting the suit was explained by unsettled conditions prevailing in the state following the late War of Northern Aggression.<sup>496</sup>

A purchaser *pendente lite* cannot invoke laches if the inexcusable delay is chargeable to his vendor.<sup>497</sup> The delay must be attributable to the *other* party to suit.<sup>498</sup> In *Latta v. Wiley*,<sup>499</sup> a purchaser *pendente lite* taking his interest from the plaintiff in a suit not actively prosecuted could not invoke laches against the defendant in the suit.<sup>500</sup> The defendant was not required to actively pursue the suit but could remain in a passive defense posture.<sup>501</sup> If the law were otherwise, a plaintiff need only sell a property *pendente lite*, then delay prosecution of the suit as to avoid the effect of an unfavorable judgment.<sup>502</sup>

A purchaser *pendente lite* may not avoid the lis pendens rule upon the basis of laches unless the purchase was made in good faith without notice of the claims of the litigants.<sup>503</sup>

## **XI. PRACTICE AND PROCEDURE.**

**A. Governing Law.** Lis pendens is a doctrine of substantive law. Texas law not federal law governs the creation and/or cancellation of a lis pendens.<sup>504</sup>

**B. Burden of Proof.** If a purchaser contends that he is a good faith purchaser such that the lis pendens doctrine does not have application to his purchase, the burden is on the purchaser to establish that fact.<sup>505</sup> This requires proof that the purchaser acquired the property in good faith, for value, and without actual or constructive notice of the litigated claim against the property.<sup>506</sup> In the establishment of this proof, no presumption will be indulged in favor of the purchaser.<sup>507</sup> It falls upon the purchaser to clearly prove that he is not a purchaser *pendente lite*.<sup>508</sup> When the record is silent about the absence of knowledge and the payment of valuable consideration, the lis pendens doctrine will be applied.<sup>509</sup> In *Carlisle v. MacDonald*,<sup>510</sup> the

purchaser failed to produce proof of the payment of valuable consideration.<sup>511</sup> This rendered unnecessary proof of a valid lis pendens filing.<sup>512</sup>

**C. Attorney's Fees.** A party seeking to cancel a lis pendens filing by suit under the Declaratory Judgment Act is not entitled to recover attorneys fees thereunder.<sup>513</sup>

ENDNOTES

1. TEX. PROP. CODE ANN. § 13.001 (Vernon 2004). *See also Houston First Am. Sav. v. Musick*, 650 S.W.2d 764, 769 (Tex. 1983).
2. *See Rio Bravo Oil Co. v. Hebert*, 130 Tex. 1, 10, 106 S.W.2d 242, 247 (1937); *Black v. Burd*, 265 S.W.2d 553, 555 (Tex. Civ. App. - Fort Worth 1953, writ ref'd n.r.e).
3. *In re Jamail*, 156 S.W.3d 104, 107 (Tex. App. – Austin 2004); *In re Fitzmaurice*, 141 S.W.3d 802, 803 (Tex. App. – Beaumont 2004); *Financial Center, Inc. v. State*, 2002 WL 31126788 (Tex. App. – Houston [14<sup>th</sup> Dist.]); *In re Wolf*, 65 S.W.3d 804, 805 (Tex. App. – Beaumont 2001); *Mangione v. Jaffe*, 61 S.W.3d 591, 592 (Tex. App. – San Antonio 2001, pet. dismiss'd).
4. *Hartel v. Dishman*, 135 Tex. 600, 606-07, 145 S.W.2d 865, 868 (1940); *Paddock v. Williamson*, 9 S.W.2d 452, 455-56 (Tex. Civ. App. - Beaumont 1928, writ ref'd); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted).
5. *Houston First Am. Sav. v. Musick*, 650 S.W.2d 764, 769 (Tex. 1983); *Cardwell v. Shiflett*, 294 S.W. 519, 521 (Tex. Comm'n App. 1927, judgment adopted); *Walston v. Lockhart*, 2005 WL 428, 433 (Tex. App. – Waco); *Abraham Inv. Co. v. Payne Ranch, Inc.*, 968 S.W.2d 518, 528 (Tex. App. – Amarillo 1998, pet. denied); *Cherokee Water Co. v. Advance Oil & Gas Co.*, 843 S.W.2d 132, 135 (Tex. App. - Texarkana 1992, writ denied).
6. *Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 868 (1940); *Texas Co. v. Dunlap*, 41 S.W.2d 42, 44 (Tex. Comm'n App. 1931, judgment adopted); *Palmer v. First Nat'l Bank in Rhome*, 77 S.W.2d 902, 903 (Tex. Civ. App. - Fort Worth 1934, writ ref'd); *Paddock v. Williamson*, 9 S.W.2d 452, 455 (Tex. Civ. App. - Beaumont 1928, writ ref'd); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted).
7. *See Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 868 (1940); *Hexter v. Pratt*, 283 S.W. 653, 655 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted).
8. *First Southern Properties, Inc. v. Vallone*, 533 S.W.2d 339, 342 n.3 (Tex. 1976); *Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 868 (1940); *Briscoe v. Bronaugh*, 1 Tex. 326, 333 (1846); *Allen-West Comm'n Co. v. Gibson*, 228 S.W. 342, 345 (Tex. Civ. App. - Dallas 1921, writ ref'd); *Latta v. Wiley* 92 S.W. 433, 436 (Tex. Civ. App. 1905, writ ref'd).
9. *Orme v. Roberts*, 33 Tex. 768, 772-73 (1870); *Hexter v. Pratt*, 10 S.W.2d 692, 693, (Tex. Comm'n App. 1928, judgment adopted).
10. *Hexter v. Pratt*, 10 S.W.2d 692, 693 (Tex. Comm'n App. 1928, judgment adopted).
11. *Id.*
12. *See Texas Co. v. Dunlap*, 41 S.W.2d 42, 44 (Tex. Comm'n App. 1931, judgment adopted); *Paddock v. Williamson*, 9 S.W.2d 452, 455-56 (Tex. Civ. App. - Beaumont 1928, writ ref'd); *Ater v. Knight*, 218 S.W. 648, 651 (Tex. Civ. App. - Amarillo 1920, writ ref'd).
13. *Paddock v. Williamson*, 9 S.W.2d 452, 455 (Tex. Civ. App. - Beaumont 1928, writ ref'd).
14. *See Texas Co. v. Dunlap*, 41 S.W.2d 42, 44 (Tex. Comm'n App. 1931, judgment adopted); *Paddock v. Williamson*, 9 S.W.2d 452, 455-56 (Tex. Civ. App. - Beaumont 1928, writ ref'd); *Ater v. Knight*, 218 S.W. 648, 651 (Tex. Civ. App. - Amarillo 1920, writ ref'd).
15. 218 S.W. 648 (Tex. Civ. App. - Amarillo 1920, writ ref'd).

## Lis Pendens in Texas

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16. *Id.* at 651.
17. *Id.* at 650-51.
18. 9 S.W.2d 452 (Tex. Civ. App. - Beaumont 1928, writ ref'd).
19. *Id.* at 455-56.
20. *Rippetoe v. Dwyer*, 65 Tex. 703, 707 (1886).
21. *Texas Water Comm'n v. Crow Iron Works*, 502 S.W.2d 768, 771 (Tex. 1979); *City Nat'l Bank v. Craig*, 113 Tex. 375, 379, 257 S.W. 210, 211 (1923); *Lee v. Salinas*, 15 Tex. 495, 497 (1855); *Cherokee Water Co. v. Advance Oil & Gas Co.*, 843 S.W.2d 132, 135 (Tex. Civ. App. - Texarkana 1992, writ denied); *Houston Chronicle Publishing Co. v. Bergman*, 128 S.W.2d 114, 116 (Tex. Civ. App. - Galveston 1939, writ dismiss'd judgm't cor.).
22. *Latta v. Wiley*, 92 S.W. 433, 436 (Tex. Civ. App. 1906, writ ref'd).
23. *Wernecke v. Seabury*, 720 S.W.2d 886, 888 (Tex. App. - Fort Worth 1988, no writ); *Allen-West Comm'n Co. v. Gibson*, 228 S.W. 342, 345 (Tex. Civ. App. - Dallas 1921, writ ref'd).
24. *Houston Chronicle Publishing Co. v. Bergman*, 128 S.W.2d 114, 116 (Tex. Civ. App. - Galveston 1939, writ dismiss'd judgm't cor.). The public policy of promoting an end to litigation (*interest rei publicae ut sit finis litium*) is considered indispensable to the administration of justice. *Houston Chronicle Publishing Co. v. Bergman*, 128 S.W.2d 114, 116 (Tex. Civ. App. - Galveston 1939, writ dismiss'd judgm't cor.); *Allen-West Comm'n Co. v. Gibson*, 228 S.W. 342, 345 (Tex. Civ. App. - Dallas 1921, writ ref'd); *Latta v. Wiley*, 92 S.W. 433, 436 (Tex. Civ. App. 1905, writ ref'd).
25. *Texas Water Rights Comm'n v. Crow Iron Works*, 582 S.W.2d 769, 771 (Tex. 1979); *Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905, 909 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1988, no writ); *Group Purchases, Inc. v. Lance Inv. Inc.*, 685 S.W.2d 729, 731 (Tex. App. - Dallas 1989, writ ref'd n.r.e.); *York v. Carlisle*, 46 S.W. 257, 259 (Tex. Civ. App. 1898, no writ); *377 Realty Partners, L.P. v. Taffarello*, 2006 WL 783446 (E.D. Tex.).
26. *Bowen v. Kirkland*, 44 S.W. 189, 194 (Tex. Civ. App. 1897, writ ref'd).
27. *York v. Carlisle*, 46 S.W. 257, 259 (Tex. Civ. App. 1898, no writ); *Bowen v. Kirkland*, 44 S.W. 189, 194 (Tex. Civ. App. 1897, writ ref'd).
28. *Texas Water Comm'n v. Crow Iron Works*, 502 S.W.2d 768, 771 (Tex. 1979); *Black v. Burd*, 265 S.W.2d 553, 555 (Tex. Civ. App. - Fort Worth 1953, writ ref'd n.r.e.); *Maes v. Thomas*, 140 S.W. 846, 847 (Tex. Civ. App. - El Paso 1911, writ ref'd).
29. *Rippetoe v. Dwyer*, 65 Tex. 703, 707 (1886); *Harle v. Langdon's Heirs*, 60 Tex. 555, 561 (1883); *Vehle v. Wagner*, 201 S.W.2d 636, 642 (Tex. Civ. App. - El Paso 1947, writ ref'd n.r.e.); *Turner v. Cochran*, 63 S.W. 151, 153 (Tex. Civ. App. 1901, no writ); *York v. Carlisle*, 46 S.W. 257, 259 (Tex. Civ. App. 1898, no writ).
30. *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. - Austin); *Hawk v. Estate of Hawk*, 2006 WL 2433966 (Tex. App. - Houston [14<sup>th</sup> Dist.]); *In re Medistar Corp.*, 2005 WL 3050447 (Tex. App. - San Antonio 2005); *In re Jamail*, 156 S.W.3d 104, 108 (Tex. App. - Austin 2004); *In re Mousa*, 2004 WL 2823172 (Tex. App. - Houston [1<sup>st</sup> Dist.]).
31. *Ferris v. Streeper*, 59 Tex. 312, 314 (1883); *Punchard v. Delk*, 55 Tex. 304, 307 (1881); *Hamman v. Southwestern Gas Pipeline*, 812 F.2d 299, 304 (5<sup>th</sup> Cir. 1997).
32. *Ferris v. Streeper*, 59 Tex. 312, 314 (1883); *Southern Rock Island Plow Co. v. Pitluk*, 63 S.W. 354, 356 (Tex. Civ. App. 1901, no writ); *York v. Carlisle*, 46 S.W. 257, 259 (Tex. Civ. App. 1898, no writ).

## Lis Pendens in Texas

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33. *Hexter v. Pratt*, 283 S.W. 633, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted).
34. *Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 868 (1940); *City Nat'l Bank v. Craig*, 113 Tex. 375, 380, 257 S.W. 210, 211 (1923); *Evans v. Welborne*, 79 Tex. 530, 533-34, 12 S.W. 230, 231 (1889); *Bradshaw v. House*, 43 Tex. 143, 146 (1875); *Burford v. Rosenfeld*, 37 Tex. 42, 45-46 (1872).
35. *Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 868 (1940); *Briscoe v. Bronaugh*, 1 Tex. 526, 533 (1846); *Allen-West Comm'n Co. v. Gibson*, 228 S.W. 342, 345 (Tex. Civ. App. - Dallas 1921, writ ref'd); *Latta v. Wiley*, 92 S.W. 433, 436 (Tex. Civ. App. 1905, writ ref'd); *Willie v. Ellis*, 54 S.W. 922, 924 (Tex. Civ. App. 1900, no writ).
36. *First Southern Properties, Inc. v. Vallone*, 533 S.W.2d 339, 342 n.3 (Tex. 1976); *Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 868 (1940); *Briscoe v. Bronaugh*, 1 Tex. 526, 533 (1846); *Allen-West Comm'n Co. v. Gibson*, 228 S.W. 342, 345 (Tex. Civ. App. - Dallas 1921, writ ref'd); *Latta v. Wiley*, 92 S.W. 433, 436 (Tex. Civ. App. 1905, writ ref'd).
37. *Crawford v. Ruby*, 239 S.W. 1024, 1026 (Tex. Civ. App. - Beaumont 1922, no writ).
38. *City Nat'l Bank v. Craig*, 113 Tex. 375, 379, 257 S.W. 210, 211 (1923); *Crawford v. Ruby*, 239 S.W. 1024, 1026 (Tex. Civ. App. - Beaumont 1922, no writ). *But see Jones v. Robb*, 80 S.W. 395, 400 (Tex. Civ. App. 1904, writ ref'd) (suit not lis pendens unless pending in the county where the property is situated).
39. *First Southern Properties, Inc. v. Vallone*, 533 S.W.2d 339, 342 n.3 (Tex. 1976); *Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 868 (1940); *City Nat'l Bank v. Craig*, 113 Tex. 375, 379, 257 S.W. 210, 211 (1923).
40. *Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 868 (1940); *City Nat'l Bank v. Craig*, 113 Tex. 375, 379, 257 S.W. 210, 211 (1923).
41. *City Nat'l Bank v. Craig*, 113 Tex. 375, 379, 257 S.W. 210, 211 (1923).
42. 113 Tex. at 379, 257 S.W. at 211. Requiring purchasers to look for suits affecting title pending in any possible jurisdiction effectively required the purchaser to "look for a needle in a haystack". Olds, *Lis Pendens* 4 HOUSTON L.REV. 231 (1966).
43. *City Nat'l Bank v. Craig*, 113 Tex. 375, 380, 257 S.W. 210, 211 (1923); *Crawford v. Ruby*, 239 S.W. 1024, 1026 (Tex. Civ. App. - Beaumont 1922, no writ).
44. *Kuehn v. Kuehn*, 242 S.W. 719, 721 (Tex. Comm'n App. 1922, judgment adopted); *Fannin Bank v. Blystone*, 417 S.W.2d 502, 503 (Tex. Civ. App. - Waco 1967, no writ); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted).
45. TEX. PROP. CODE ANN. §§ 12.007, 13.004 (Vernon 1984). *See also Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 868 (1940); *Baker v. West*, 7 S.W.2d 634, 635 (Tex. Civ. App. - Austin 1928), *rev'd on other grounds*, 36 S.W.2d 695 (Tex. 1931).
46. TEX. PROP. CODE ANN. §§ 12.007, 13.004 (Vernon 2004). *See also Hartel v. Dishman*, 135 Tex. 600, 606, 145 S.W.2d 865, 867-68 (1940); *Benn v. Security Realty & Dev. Co.*, 54 S.W.2d 146, 150 (Tex. Civ. App. - Beaumont 1932, writ ref'd); *Baker v. West*, 7 S.W.2d 634, 635 (Tex. Civ. App. - Austin 1928), *rev'd on other grounds*, 36 S.W.2d 695 (Tex. 1931); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted); *Jiles v. Citizens Nat'l Bank of Tyler*, 257 S.W. 945, 946 (Tex. Civ. App. - Texarkana 1923, writ dismissed).
47. *City Nat'l Bank v. Craig*, 113 Tex. 375, 381-82, 257 S.W. 210, 211 (1923); *In re Jamail*, 156 S.W.3d 104, 108 n.4 (Tex. App. - Austin 2004).

48. See *Texas Co. v. Dunlap*, 41 S.W.2d 42, 44 (Tex. Comm'n App. 1931, judgment adopted); *Palmer v. First Nat'l Bank in Rhome*, 77 S.W.2d 902, 903 (Tex. Civ. App. - Fort Worth 1934, writ refused); *Paddock v. Williamson*, 9 S.W.2d 452, 455 (Tex. Civ. App. - Beaumont 1928, writ refused); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted); *Ater v. Knight*, 218 S.W. 648, 651 (Tex. Civ. App. - Amarillo 1920, writ refused).
49. TEX. PROP. CODE ANN. § 13.004(b) (Vernon 2004). See *Texas Co. v. Dunlap*, 41 S.W.2d 42, 44 (Tex. Comm'n App. 1931, judgment adopted); *Palmer v. First Nat'l Bank in Rhome*, 77 S.W.2d 902, 903 (Tex. Civ. App. - Fort Worth 1934, writ refused); *Paddock v. Williamson*, 9 S.W.2d 452, 455 (Tex. Civ. App. - Beaumont 1928, writ refused); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted).
50. *Hartel v. Dishman*, 135 Tex. 600, 607, 145 S.W.2d 865, 868 (1940).
51. 135 Tex. at 607, 145 S.W.2d at 868.
52. *Hartel v. Dishman*, 135 Tex. 600, 606-07, 145 S.W.2d 865, 868 (1940); *Texas Co. v. Dunlap*, 41 S.W.2d 42, 44 (Tex. Comm'n App. 1931, judgment adopted); *Palmer v. First Nat'l Bank in Rhome*, 77 S.W.2d 902, 903 (Tex. Civ. App. - Fort Worth 1934, writ refused); *Paddock v. Williamson*, 9 S.W.2d 452, 455-56 (Tex. Civ. App. - Beaumont 1928, writ refused); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted).
53. 77 S.W.2d 902 (Tex. Civ. App. - Fort Worth 1934, writ refused).
54. *Id.* at 903.
55. 218 S.W. 648 (Tex. Civ. App. - Amarillo 1920, writ refused).
56. *Id.* at 650-51. See also *Hexter v. Pratt*, 283 S.W. 653, 656-58 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted) (actual notice imparted by purchaser's examination of an abstract of title).
57. 283 S.W. 653 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted).
58. *Id.* at 657.
59. *Id.* at 655-58.
60. *Id.* at 658.
61. *Id.*
62. 201 S.W.2d 636 (Tex. Civ. App. - El Paso 1947, writ refused n.r.e.).
63. *Id.* at 642-43.
64. *Id.* at 642.
65. *Id.* at 642-43.
66. See *Hartel v. Dishman*, 135 Tex. 600, 606-07, 145 S.W.2d 865, 868 (1940); *Texas Co. v. Dunlap*, 41 S.W.2d 42, 44 (Tex. Comm'n App. 1931, judgment adopted); *Palmer v. First Nat'l Bank in Rhome*, 77 S.W.2d 902, 903 (Tex. Civ. App. - Fort Worth 1934, writ refused); *Paddock v. Williamson*, 9 S.W.2d 452, 455 (Tex. Civ. App. - Beaumont 1928, writ refused); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 1092 (Tex. Comm'n App. 1928, judgment adopted).

67. See *Hartel v. Dishman*, 135 Tex. 600, 606-07, 145 S.W.2d 865, 868 (1940); *Texas Co. v. Dunlap*, 41 S.W.2d 42, 44 (Tex. Comm'n App. 1931, judgm't adopted); *Palmer v. First Nat'l Bank in Rhome*, 77 S.W.2d 902, 903 (Tex. Civ. App. - Fort Worth 1934, writ ref'd); *Paddock v. Williamson*, 9 S.W.2d 452, 455 (Tex. Civ. App. - Beaumont 1928, writ ref'd); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 1092 (Tex. Comm'n App. 1928, judgm't adopted).
68. 41 S.W.2d 42 (Tex. Comm'n App. 1931, judgm't adopted).
69. *Id.* at 43-44.
70. *Id.* at 44. See also *Palmer v. First Nat'l Bank in Rhome*, 77 S.W.2d 902, 903 (Tex. Civ. App. - Fort Worth 1934, writ ref'd); *Paddock v. Williamson*, 9 S.W.2d 452, 455 (Tex. Civ. App. - Beaumont 1928, writ ref'd); *Ater v. Knight*, 218 S.W. 648, 651 (Tex. Civ. App. - Amarillo 1920, writ ref'd).
71. *Texas Co. v. Dunlap*, 41 S.W.2d 42, 44 (Tex. Comm'n App. 1931, judgm't adopted).
72. 223 S.W. 314 (Tex. Civ. App. - Austin 1923, writ dism'd).
73. *Id.* at 315.
74. TEX. PROP. CODE ANN. § 12.007(a) (Vernon 2004). See also *Flores v. Haberman*, 915 S.W.2d 477, 478 (Tex. 1995); *Lewis v. Foxworth*, 2007 WL 499649 (Tex. App.- Dallas); *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. - Austin); *In re GMAC Mortgage Corp.*, 2006 WL 648300 (Tex. App. - Eastland 2006); *Jordan v. Hagler*, 179 S.W.3d 217, 221 (Tex. App. - Fort Worth 2005, no pet.)
75. The "interest" sought to be established in the suit may be less than "title". *In re Wolf*, 65 S.W.3d 804, 805 (Tex. App. - Beaumont, 2001); *Mangione v. Jaffe*, 61 S.W.3d 591, 592 (Tex. App. - San Antonio 2001, pet. dism'd); *Olbrich v. Touchy*, 780 S.W.2d 6, 7 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1989, no writ).
76. *Mansur & Tebbetts Implement Co. v. Beer*, 45 S.W. 972, 973 (Tex. Civ. App. 1898, writ ref'd).
77. *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. - Austin); *Jordan v. Hagler*, 179 S.W.3d 217, 221 (Tex. App. - Fort Worth 2005, no pet.); *In re Collins*, 172 S.W.3d 287, 293 (Tex. App. - Fort Worth 2005, no pet.); *Khraish v. Hamed*, 762 S.W.2d 906, 908 (Tex. App. - Dallas 1988, writ denied); *Milberg Factors, Inc. v. Hurwitz-Nordlicht Joint Venture*, 676 S.W.2d 613, 616 (Tex. App. - Austin 1984, writ ref'd n.r.e.);
78. *Flores v. Haberman*, 915 S.W.2d 477, 478 (Tex. 1995); *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. - Austin); *In re Collins*, 172 S.W.3d 287, 293 (Tex. App. - Fort Worth 2005, no pet.); *In re Med Plus Equity Inv.*, 2005 WL 1385238 (Tex. App. - Dallas); *In re Jamail*, 156 S.W.3d 104, 107 (Tex. App. - Austin 2004).
79. *Khraish v. Hamed*, 762 S.W.2d 906, 908 (Tex. App. - Dallas 1988, writ denied); *Wernecke v. Seabury*, 720 S.W.2d 886, 887 (Tex. App. - Fort Worth 1988, no writ).
80. TEX. PROP. CODE ANN. § 12.007(a) (Vernon 2004). See also *Khraish v. Hamed*, 762 S.W.2d 906, 908 (Tex. App. - Dallas 1988, writ denied); *Wernecke v. Seabury*, 720 S.W.2d 886, 887 (Tex. App. - Fort Worth 1988, no writ).
81. Refer to notes 394-412 *infra* and accompanying text..
82. *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. - Austin); *FDIC v. Walker*, 815 F.Supp. 987, 900 (N.D. Tex. 1993); *Hill v. Imperial Sav.*, 852 F.Supp. 1354, 1374 (W.D. Tex. 1992).
83. *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. - Austin); *In re Mousa*; 2004 WL 2823172 (Tex. App. - Houston [1<sup>st</sup> Dist.]); *Francis v. Sterling*; 45 S.W.3d 194, 195 (Tex. App. - Tyler 2001); *Ingrum v. Ingrum*, 555 S.W.2d 553, 555 (Tex. Civ. App. - San Antonio 1977, no writ); *Manders v. Manders*, 897



F.Supp. 972, 975 (S.D. Tex. 1995); *In re Thornburg*, 277 B.R. 719, 729 (Bankr. E.D. Tex. 2002).

84. See *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. – Austin); *Khraish v. Hamed*, 762 S.W.2d 906, 908 (Tex. App. - Dallas 1988, writ denied); *Moss v. Tenant*, 722 S.W.2d 762, 763 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1986, no writ); *Helmsley-Spear of Texas, Inc. v. Blanton*, 699 S.W.2d 643, 645 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1985, no writ).

85. See *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. – Austin); *Khraish v. Hamed*, 762 S.W.2d 906, 908 (Tex. App. - Dallas 1988, writ denied); *Moss v. Tenant*, 722 S.W.2d 762, 763 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1986, no writ); *Helmsley-Spear of Texas, Inc. v. Blanton*, 699 S.W.2d 643, 645 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1985, no writ).

86. See *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. – Austin); *Moss v. Tenant*, 722 S.W.2d 762, 763 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1986, no writ); *Helmsley-Spear of Texas, Inc. v. Blanton*, 699 S.W.2d 643, 645 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1985, no writ); *Neyland v. Brammer*, 146 S.W.2d 261, 263 (Tex. Civ. App. - Galveston 1940, writ dism'd judgm't cor.); *FDIC v. Walker*, 815 F. Supp. 987, 990 (N.D. Tex. 1993).

87. See *Wardley Dev., Inc. v. Superior Court*, 262 Cal.Rptr. 87, 90 (Cal. App. 1989).

88. See *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. – Austin); *LaPaglia v. Superior Court*, 264 Cal.Rptr. 63, 66 (Cal. App. 1989).

89. 395 U.S. 337 (1969).

90. 407 U.S. 67 (1972).

91. See Janzen, *Texas Statutory Notice of Lis Pendens: A Deprivation of Property Interest Without Due Process*, 19 ST. MARY'S L.J. 377 (1987); Brown, *The Use of Lis Pendens in Actions Alleging Constructive Trusts or Equitable Liens*, 24 SANTA CLARA L.REV. 137 (1934).

92. See *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. – Austin).

93. See *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 1092 (Tex. Comm'n App. 1928, judgm't adopted); *Holford v. Patterson*, 240 S.W. 341, 346 (Tex. Civ. App. - Amarillo 1922), *aff'd*, 257 S.W. 213 (Tex. 1923); *Ater v. Knight*, 218 S.W. 648, 651 (Tex. Civ. App. - Amarillo 1920, writ ref'd).

94. *John H. Maxwell Co. v. Maxwell*, 225 S.W.2d 988, 991 (Tex. Civ. App. - Fort Worth 1949, writ ref'd n.r.e.).

95. *Rosborough v. Cook*, 108 Tex. 364, 367, 194 S.W. 131, 132 (1917); *Hoffman v. Blume*, 64 Tex. 334, 336 (1885); *Shearon v. Henderson*, 38 Tex. 246, 251 (1873); *Ater v. Knight*, 218 S.W. 648, 651 (Tex. Civ. App. - Amarillo 1920, writ ref'd); *Hamman v. Southwestern Gas Pipeline*, 812 F.2d 299, 304 (5<sup>th</sup> Cir. 1997).

96. *Hamman v. Southwestern Gas Pipeline*, 812 F.2d 299, 304 (5<sup>th</sup> Cir. 1997).

97. *Willie v. Ellis*, 54 S.W. 922, 924 (Tex. Civ. App. 1900, no writ); *Hamman v. Southwestern Gas Pipeline*, 812 F.2d 299, 304 (5<sup>th</sup> Cir. 1997).

98. *Russell & Seisfeld v. Kirkbride*, 62 Tex. 455, 459 (1884); *Bowen v. Kirkland*, 44 S.W. 189, 194 (Tex. Civ. App. 1897, writ ref'd).

99. *Russell & Seisfeld v. Kirkbride*, 62 Tex. 455, 459 (1884); *Bowen v. Kirkland*, 44 S.W. 189, 194 (Tex. Civ. App. 1897, writ ref'd).

100. TEX. PROP. CODE ANN. § 12.007(b)(5) (Vernon 2004).

## Lis Pendens in Texas

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101. *See Neyland v. Brammer*, 146 S.W.2d 261, 263 (Tex. Civ. App. - Galveston 1940, writ dismissed judgment corrected.)
102. *Wortham v. Boyd*, 66 Tex. 401, 404, 1 S.W. 109, 110 (1886); *Russell & Seisfeld v. Kirkbride*, 62 Tex. 455, 459 (1884); *Shearon v. Henderson*, 38 Tex. 246, 251 (1873); *Mansur & Tebbetts Implement Co. v. Beer*, 45 S.W. 972, 973 (Tex. Civ. App. 1898, writ refused).
103. *Wortham v. Boyd*, 66 Tex. 401, 404, 1 S.W. 109, 110 (1886).
104. *Wortham v. Boyd*, 66 Tex. 401, 404, 1 S.W. 109, 110 (1886); *Russell & Seisfeld v. Kirkbride*, 62 Tex. 455, 459 (1884); *Shearon v. Henderson*, 38 Tex. 246, 251 (1873); *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. - Austin); *Mayer v. Rust*, 94 S.W. 110, 111 (Tex. Civ. App. 1906, writ refused).
105. *Wortham v. Boyd*, 66 Tex. 401, 404, 1 S.W. 109, 110 (1886); *Russell & Seisfeld v. Kirkbride*, 62 Tex. 455, 459 (1884); *Shearon v. Henderson*, 38 Tex. 246, 251 (1873); *Mayer v. Rust*, 94 S.W. 110, 111 (Tex. Civ. App. 1906, writ refused); *Mansur & Tebbetts Implement Co. v. Beer*, 45 S.W. 972, 973 (Tex. Civ. App. 1898, writ refused). The effect of amended pleadings is to set up a new lis pendens on the added cause of action which dates from the date of the amendment. *Lechter v. Reese*, 60 S.W. 256, 257 (Tex. Civ. App. 1900, no writ).
106. *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. - Austin); *Mansur & Tebbetts Implement Co. v. Beer*, 45 S.W. 972, 973 (Tex. Civ. App. 1898, writ refused). *But see Portis v. Hill*, 30 Tex. 529, 569 (1868) (All persons who purchase subject to suit are bound to take notice of it until its final disposition and must be vigilant against all amendments prior to final disposition).
107. *New England Loan & Trust Co. v. Miller*, 40 S.W. 646, 647 (Tex. Civ. App. 1897, no writ).
108. 40 S.W. 646 (Tex. Civ. App. 1897, no writ).
109. *Id.* at 646-47.
110. *Id.* at 647.
111. *Id.*
112. *Id.*
113. *Wortham v. Boyd*, 66 Tex. 401, 404, 1 S.W. 109, 110 (1886).
114. 80 S.W. 395 (Tex. Civ. App. 1904, writ refused).
115. *Id.* at 400.
116. *Id.*
117. *Id.*
118. *Id.*
119. *P.J. Willis & Bros. v. Ferguson*, 59 Tex. 172, 176 (1883); *Garza v. Pope*, 949 S.W.2d 7, 9 (Tex. App. - San Antonio 1997, no writ); *Milberg Factors, Inc. v. Hurwitz-Nordlicht Joint Venture*, 676 S.W.2d 613, 616 (Tex. App. - Austin 1984, writ refused n.r.e.); *Lane v. Fritz*, 404 S.W.2d 110, 112 (Tex. Civ. App. - Corpus Christi 1966, no writ); *Mansur & Tebbetts Implement Co. v. Beer*, 45 S.W. 972, 973 (Tex. Civ. App. 1898, writ refused).
120. 404 S.W.2d 110 (Tex. Civ. App. - Corpus Christi 1966, no writ).
121. *Id.* at 112.



## Lis Pendens in Texas

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122. *Id.* See also *Neyland v. Brammer*, 146 S.W.2d 261, 263 (Tex. Civ. App. - Galveston 1940, writ dismiss'd judgment cor.).
123. 949 S.W.2d 7 (Tex. App. - San Antonio 1997, no writ).
124. *Id.* at 9.
125. *Id.*
126. See *Lane v. Fritz*, 404 S.W.2d 110, 112 (Tex. Civ. App. - Corpus Christi 1966, no writ).
127. *Lane v. Fritz*, 404 S.W.2d 110, 112 (Tex. Civ. App. - Corpus Christi 1966, no writ); *Neyland v. Brammer*, 146 S.W.2d 261, 263 (Tex. Civ. App. - Galveston 1940, writ dismiss'd judgment cor.).
128. *Lane v. Fritz*, 404 S.W.2d 110, 112 (Tex. Civ. App. - Corpus Christi 1966, no writ); *Neyland v. Brammer*, 146 S.W.2d 261, 263 (Tex. Civ. App. - Galveston 1940, writ dismiss'd judgment cor.); *In re Duval County Ranch Company*, 155 B.R. 723, 726 (Bankr. S.D. Tex. 1993).
129. *Hoffman v. Blume*, 64 Tex. 334, 336 (1885).
130. *Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 7 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dismiss'd); *Lane v. Fritz*, 404 S.W.2d 110, 112 (Tex. Civ. App. - Corpus Christi 1966, no writ).
131. 647 S.W.2d 5 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dismiss'd).
132. *Id.* at 7.
133. *Id.*
134. 44 S.W. 189 (Tex. Civ. App. 1897, writ refused).
135. *Id.* at 193-94.
136. *Id.* at 193.
137. 699 S.W.2d 643 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1985, no writ).
138. *Id.* at 644.
139. *Id.*
140. *Id.* at 645.
141. See *Matter of Texas Extrusion Corp.*, 844 F.2d 1142, 1152-53 (5<sup>th</sup> Cir. 1988); *In re Duval County Ranch Company*, 155 B.R. 723, 726 (Bankr. S.D. Tex. 1993). But see *Coppard v. Gardner*, 199 S.W. 650, 651 (Tex. Civ. App. - San Antonio 1917, no writ) (filing of bankruptcy petition operates as lis pendens).
142. See *Matter of Texas Extrusion Corp.*, 844 F.2d 1142, 1152-53 (5<sup>th</sup> Cir. 1988); *In re Duval County Ranch Company*, 155 B.R. 723, 726 (Bankr. S.D. Tex. 1993).
143. 844 F.2d 1142 (5<sup>th</sup> Cir. 1988).
144. *Id.* at 1153.
145. *Id.*

146. *Id.*
147. *Lane v. Fritz*, 404 S.W.2d 110, 112 (Tex. Civ. App. - Corpus Christi 1966, no writ).
148. 780 S.W.2d 7 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1989, no writ).
149. *Id.* at 6.
150. *Id.* at 7.
151. *Id.* at 7-8.
152. 815 F.Supp. 987 (N.D. Tx. 1993).
153. *Id.* at 988.
154. *Id.*
155. *Id.*
156. *See Edwards v. Norton*, 55 Tex. 405, 407 (1881); *In re Mousa*, 2004 WL 2823172 (Tex. App. – Houston [1<sup>st</sup> Dist.]); *Kress v. Soules*, 255 S.W.2d 244, 247-48 (Tex. Civ. App. - Austin 1953), *rev'd on other grounds*, 261 S.W.2d 703 (Tex. 1953).
157. *See Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 7 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ *dism'd*).
158. 2007 WL 499649 (Tex. App. – Dallas).
159. *Id.*
160. *Rio Delta Land Co. v. Johnson*, 475 S.W.2d 346, 350 (Tex. Civ. App. - Corpus Christi 1972, writ *ref'd n.r.e.*).
161. *Countrywide Home Loans v. Howard*, 2007 WL 1790684 (Tex. App. - Austin).
162. *See Khraish v. Hamed*, 762 S.W.2d 906, 908 (Tex. App. - Dallas 1988, writ *denied*); *Moss v. Tenant*, 722 S.W.2d 762, 763 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1986, no writ).
163. *Countrywide Home Loans v. Howard*, 2007 WL 1790684 (Tex. App. – Austin).
164. 647 S.W.2d 5 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ *dism'd*).
165. *Id.* at 6.
166. *Id.*
167. *Id.* at 7.
168. *Id.*
169. *Id.* *See also In re Collins*, 172 S.W.3d 287, 295-97 (Tex. App. – Fort Worth 2005, no *pet.*); *Russell v. Campbell*, 725 S.W.2d 739, 749-50 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1987, writ *ref'd n.r.e.*).
170. 2005 WL 1385238 (Tex. App. – Dallas).

171. *Id.*
172. *Id. But see Jordan v. Jordan*, 2001 WL 856209 (Tex. App. – Dallas).
173. *Id.*
174. *Id.*
175. 141 S.W.3d 802 (Tex. App. – Beaumont 2004).
176. *Id.* at 803.
177. *Id.* at 805.
178. *Id.*
179. *Id.*
180. *See Flores v. Haberman*, 915 S.W.2d 477, 478 (Tex. 1995); *First Nat’l Petroleum Corp. v. Lloyd*, 908 S.W.2d 23, 25 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1995, no writ); *Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905, 908-09 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1988, no writ); *Khraish v. Hamed*, 762 S.W.2d 906, 908-09 (Tex. App. - Dallas 1988, writ denied); *Moss v. Tenant*, 722 S.W.2d 762, 763 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1986, no writ).
181. *In re: GMAC Mortgage Corp.*, 2006 WL 648300 (Tex. App. – Eastland).
182. *Id. See also In re: Wolf*, 65 S.W.3d 804, 806 (Tex. App. – Beaumont 2001).
183. 722 S.W.2d 762 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1986, no writ).
184. *Id.* at 762-63.
185. *Id.* at 763.
186. *Id.*
187. *Id.*
188. *Id.*
189. *Id.*
190. 915 S.W.2d 477 (Tex. 1995).
191. *Id.* at 478.
192. *Id.*
193. *Id. See also Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. – Austin); *In re GMAC Mortgage Corp.*, 2006 WL 648300 (Tex. App. – Eastland); *Jordan v. Hagler*, 179 S.W.3d 217, 222 (Tex. App. - Fort Worth 2005, no pet.); *In re Collins*, 172 S.W.3d 287, 293 (Tex. App. – Fort Worth 2005, no pet.); *In re Medistar Corp.*, 2005 WL 3050447 (Tex. App. – San Antonio).
194. *First Nat’l Petroleum Corp. v. Lloyd*, 908 S.W.2d 23, 25 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1995, no writ); *Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905, 908-09 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1988, no writ).

195. 908 S.W.2d 23 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1995, no writ).
196. *Id.* at 24.
197. *Id.*
198. *Id.* See also *Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905, 908-09 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1988, no writ).
199. 2005 WL 1367950 (Tex. App. – Dallas).
200. *Id.*
201. *Id.*
202. *Id.*
203. See *Jones v. Robb*, 80 S.W. 395, 398-99 (Tex. Civ. App. 1904, writ ref'd).
204. 80 S.W. 395 (Tex. Civ. App. 1904, writ ref'd).
205. *Id.* at 398.
206. *Id.*
207. *Id.*
208. *Id.*
209. *Id.*
210. *Id.* at 399.
211. 647 S.W.2d 5 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dismiss'd).
212. *Id.* at 6.
213. *Id.* at 6-7.
214. *Id.* at 7.
215. See *Francis v. Sterling*, 45 S.W.3d 194, 196 (Tex. App. – Tyler 2001); *FDIC v. Walker*, 815 F. Supp. 987, 988 n.1 (N.D. Tex. 1993).
216. See TEX. PROP. CODE ANN. § 12.007(a) (Vernon 2004).
217. See *Vehle v. Wagner*, 201 S.W.2d 636, 639 (Tex. Civ. App. - El Paso 1946, writ ref'd n.r.e.); *Aurelius v. Stewart*, 219 S.W. 863, 864 (Tex. Civ. App. - Fort Worth 1920, no writ).
218. *Poole v. Frank*, 11 S.W.2d 611, 613 (Tex. Civ. App. - Austin 1928, no writ) (drilling rig); *Myatt v. Lock*, 10 S.W.2d 779, 781 (Tex. Civ. App. - Amarillo 1928, no writ) (machines, tools, and furniture); *York v. Carlisle*, 56 S.W. 257, 258 (Tex. Civ. App. 1898, no writ) (livestock).

219. *Pope v. Beauchamp*, 110 Tex. 271, 276, 219 S.W. 447, 448 (1920); *Gannon v. Northwestern Nat'l Bank*, 83 Tex. 274, 276, 18 S.W. 573, 574 (1892); *Board v. T. & P.R.R. Co.*, 46 Tex. 316, 328 (1876); *Landrum v. Centennial Rural High School Dist.*, 146 S.W.2d 799, 801 (Tex. Civ. App. - Austin 1940, writ dismiss'd judgment cor.); *Farmers' & Merchants' Nat'l Bank v. Waco Elec. Ry. & Light Co.*, 36 S.W. 131, 135 (Tex. Civ. App. 1896, writ dismiss'd).
220. *Board v. T. & P.R.R. Co.*, 46 Tex. 316, 328 (1876).
221. *See Warren v. Parlin - Orendorff Implement Co.*, 207 S.W. 586, 591 (Tex. Civ. App. - Amarillo 1919, writ refused).
222. *See* TEX. PROP. CODE ANN. § 12.007(a) (Vernon 2004).
223. *See Houston Oil Co. of Texas v. Village Mills Co.*, 123 Tex. 253, 71 S.W.2d 1087, 1089 (1934).
224. 123 Tex. at 259, 71 S.W.2d at 1089.
225. 123 Tex. 253, 71 S.W.2d 1087 (1934).
226. 123 Tex. at 259, 71 S.W.2d at 1089.
227. 123 Tex. at 259, 71 S.W.2d at 1089.
228. TEX. PROP. CODE ANN. § 12.007(a) (Vernon 2004); *See also In re Jamail*, 156 S.W.3d 104, 107 (Tex. App. - Austin 2004).
229. 156 S.W.3d 104 (Tex. App. - Austin 2004).
230. *Id.* at 106-07.
231. *Id.*
232. *Id.*
233. *Id.* *See also Rosborough v. Cook*, 108 Tex. 364, 367, 194 S.W. 131, 132 (1917).
234. TEX. PROP. CODE ANN. § 13.004(a) (Vernon 2004). *See also Kress v. Soules*, 255 S.W.2d 244, 250 (Tex. Civ. App. - Austin 1953), *rev'd on other grounds*, 261 S.W.2d 703 (Tex. 1953); *Earnhardt Dev. Co. v. Ray*, 51 S.W.2d 732, 734-35 (Tex. Civ. App. - San Antonio 1932, no writ); *Moran v. Midland Farms Co.*, 282 S.W. 608, 612 (Tex. Civ. App. - El Paso 1926, no writ); *Creager v. Beamer Syndicate*, 274 S.W. 323, 332 (Tex. Civ. App. - San Antonio 1925, writ dismiss'd).
235. TEX. PROP. CODE ANN. § 12.007(a) (Vernon 2004).
236. *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 795 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied).
237. *Barker v Temple Lumber Co.*, 120 Tex. 244, 251, 37 S.W.2d 721, 722 (1931); *Sparks v. Taylor*, 99 Tex. 411, 421, 90 S.W. 485, 487 (1906); *Smith v. Cassidy*, 73 Tex. 161, 165-66, 12 S.W. 14, 16 (1889); *Gulf Oil Corporation v. State*, 170 S.W.2d 798, 800 (Tex. Civ. App. - El Paso 1942, no writ); *Houston Chronicle Publishing Co. v. Bergman*, 128 S.W.2d 114, 116 (Tex. Civ. App. - Galveston 1939, writ dismiss'd judgment cor.).
238. *Cassidy v. Kluge*, 73 Tex. 154, 159-60, 12 S.W. 13, 14 (1889); *King v. Cassidy*, 73 Tex. 161, 165, 12 S.W. 14, 16 (1889); *Board v. T. & P.R.R. Co.*, 46 Tex. 316, 327 (1876); *Houston Chronicle Publishing Co. v. Bergman*, 128 S.W.2d 114, 116 (Tex. Civ. App. - Galveston 1939, writ dismiss'd judgment cor.); *Meador v. Hines*, 165 S.W. 915, 921 (Tex. Civ. App. - Amarillo 1914, writ refused).

239. *Hanrick v. Gurley*, 93 Tex. 458, 469-70, 54 S.W. 347, 352 (1899); *Humphrey v. Beaumont Irrigating Co.*, 93 S.W. 180, 182 (Tex. Civ. App. 1906, writ ref'd).
240. *Earnhardt Dev. Co. v. Ray*, 51 S.W.2d 732, 735 (Tex. Civ. App. - San Antonio 1932, no writ).
241. *See Lee v. Salinas*, 15 Tex. 495, 496-97 (1855); *Herbert v. Smith*, 183 S.W.2d 191, 193 (Tex. Civ. App. - Austin 1944, writ ref'd w.o.m.); *Eakin v. Glenn*, 141 S.W.2d 420, 424 (Tex. Civ. App. - Amarillo 1940, no writ); *Martin v. Marquardt*, 111 S.W.2d 285, 286 (Tex. Civ. App. - San Antonio 1937, writ dism'd); *Holford v. Patterson*, 240 S.W. 341, 344 (Tex. Civ. App. - Amarillo 1922), *aff'd*, 257 S.W. 213 (Tex. 1923).
242. *Herbert v. Smith*, 183 S.W.2d 191, 193 (Tex. Civ. App. - Austin 1944, writ ref'd w.o.m.); *Martin v. Marquardt*, 111 S.W.2d 285, 286 (Tex. Civ. App. - San Antonio 1937, writ dism'd). *But see Bryson & Hartgrove v. Boyce*, 92 S.W. 820, 822 (Tex. Civ. App. 1906, writ ref'd).
243. *Earnhardt Dev. Co. v. Ray*, 51 S.W.2d 732, 735 (Tex. Civ. App. - San Antonio 1932, no writ).
244. 51 S.W.2d 732 (Tex. Civ. App. - San Antonio 1932, no writ).
245. *Id.* at 732.
246. *Id.* at 732-33.
247. *Id.* at 733.
248. *Id.*
249. *Id.* at 734.
250. *Id.* at 733.
251. *Id.* at 734.
252. *Id.* at 735.
253. *Id.*
254. *Id.*
255. *See Baker v. West*, 120 Tex. 113, 120, 36 S.W.2d 695, 697-98 (Tex. 1931); *Harris Realty Co. v. Austin*, 137 S.W.2d 19, 20 (Tex. Comm'n App. 1940, opinion adopted); *Goldenrod Finance Co. v. Ware*, 142 S.W.2d 614, 620 (Tex. Civ. App. - Galveston 1940, writ dism'd judgm't cor.).
256. *Goldenrod Finance Co. v. Ware*, 142 S.W.2d 614, 620 (Tex. Civ. App. - Galveston 1940, writ dism'd judgm't cor.).
257. *Harris Realty Co. v. Austin*, 137 S.W.2d 19, 20 (Tex. Comm'n App. 1940, opinion adopted).
258. 120 Tex. 113, 36 S.W.2d 695 (Tex. 1931).
259. 120 Tex. at 115, 36 S.W.2d at 695.
260. 120 Tex. at 116, 36 S.W.2d at 695-96.
261. 120 Tex. at 115-16, 36 S.W.2d at 695.
262. 120 Tex. at 120, 36 S.W.2d at 698.

## Lis Pendens in Texas

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263. 120 Tex. at 120, 36 S.W.2d at 698.
264. 120 Tex. at 120, 36 S.W.2d at 697-98.
265. *Maes v. Thomas*, 140 S.W. 846, 847 (Tex. Civ. App. - El Paso 1911, writ ref'd); *Latta v. Wiley* 92 S.W. 433, 436 (Tex. Civ. App. 1905, writ ref'd); *Olympic Diamond v. Kotwitz*; 2005 WL 2416614 (S.D. Tex).
266. *Hawk v. Estate of Hawk*, 2006 WL 2433966 (Tex. App. - Houston [14<sup>th</sup> Dist.]); *Financial Center, Inc. v. State*, 2002 WL 31126788 (Tex. App. - Houston [14<sup>th</sup> Dist.]); *Olympic Diamond v. Kotwitz*, 2005 WL 2416614 (S.D. Tex.).
267. *Rosborough v. Cook*, 108 Tex. 364, 367, 194 S.W. 131, 132 (1917); *Vehle v. Wagner*, 201 S.W.2d 636, 642 (Tex. Civ. App. - El Paso 1947, writ ref'd n.r.e.); *Maes v. Thomas*, 140 S.W. 846, 847 (Tex. Civ. App. - El Paso 1911, writ ref'd); *Latta v. Wiley* 92 S.W. 433, 436 (Tex. Civ. App. 1905, writ ref'd).
268. *Hartel v. Dishman*, 135 Tex. 600, 609, 145 S.W.2d 865, 869 (1940); *Rosborough v. Cook*, 108 Tex. 364, 367, 194 S.W. 131, 132 (1917); *Sharp v. Elliott*, 70 Tex. 666, 668-69, 8 S.W. 488, 489-90 (1888); *Randall v. Snyder*, 64 Tex. 350, 353 (1885); *Group Purchases, Inc. v. Lance Inv. Inc.*, 685 S.W.2d 729, 731 (Tex. App. - Dallas 1989, writ ref'd n.r.e).
269. *Moore v. Moore*, 67 Tex. 293, 297, 3 S.W. 284, 286 (1887); *Harle v. Langdon's Heirs*, 60 Tex. 555, 561-65 (1883); *Bryson & Hartgrove v. Boyce*, 92 S.W. 820, 822 (Tex. Civ. App. 1906, writ ref'd).
270. *Hartel v. Dishman*, 135 Tex. 600, 609, 145 S.W.2d 865, 869 (1940); *Sharp v. Elliott*, 70 Tex. 666, 668-69, 8 S.W. 488, 489-90 (1888); *Moore v. Moore*, 67 Tex. 293, 297, 3 S.W. 284, 286 (1887); *Randall v. Snyder*, 64 Tex. 350, 353 (1885); *Harle v. Langdon's Heirs*, 60 Tex. 555, 564 (1883). *But see Glover v. Coit*, 81 S.W.136, 139 (Tex. Civ. App. 1904, no writ) (purchase was not made *pendente lite* although time within which appeal of judgment could have been made by writ of certiorari had not expired).
271. *Hartel v. Dishman*, 135 Tex. 600, 608, 145 S.W.2d 865, 869 (1940); *Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905, 908 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1988, no writ).
272. *Wortham v. Boyd*, 66 Tex. 401, 404, 1 S.W. 109, 110 (1886); *Flanagan v. Pearson*, 61 Tex. 302, 304 (1884); *Vehle v. Wagner*, 201 S.W.2d 636, 641 (Tex. Civ. App. - El Paso 1947, writ ref'd n.r.e.); *Evans v. McNeill*, 41 S.W.2d 268, 269 (Tex. Civ. App. - Austin 1931, writ dism'd); *Hexter v. Pratt*, 283 S.W. 653, 657 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgm't adopted).
273. *Hexter v. Pratt*, 283 S.W. 653, 657 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgm't adopted).
274. 92 S.W. 820 (Tex. Civ. App. 1906, writ ref'd).
275. *Id.* at 821.
276. *Id.*
277. *Id.*
278. *Id.* at 822.
279. *Id.*
280. *Latta v. Wiley* 92 S.W. 433, 439 (Tex. Civ. App. 1905, writ ref'd); *Jones v. Robb*, 80 S.W. 395, 400 (Tex. Civ. App. 1904, writ ref'd).

281. *Latta v. Wiley* 92 S.W. 433, 439 (Tex. Civ. App. 1905, writ ref'd); *Jones v. Robb*, 80 S.W. 395, 400 (Tex. Civ. App. 1904, writ ref'd).
282. Decisional authorities use the terms cancellation and dissolution interchangeably in reference to lis pendens. There is no apparent difference between the terms. *See In re Kroupa-Williams*, 2005 WL 1367950 (Tex. App. – Dallas).
283. *Hawk v. Estate of Hawk*, 2006 WL 2433966 (Tex. App. – Houston [14<sup>th</sup> Dist.]); *R.I.O. Systems v. Union Carbide*, 780 S.W.2d 489, 493 (Tex. Civ. App. - Corpus Christi 1989, writ denied).
284. *R.I.O. Systems v. Union Carbide*, 780 S.W.2d 489, 493 (Tex. Civ. App. - Corpus Christi 1989, writ denied); *Ingrum v. Ingrum*, 555 S.W.2d 553, 555 (Tex. Civ. App. - San Antonio 1977, no writ); *Valley Ranch Dev. Co. v. FDIC*, 960 F.2d 550, 555 (5<sup>th</sup> Cir. 1992).
285. *Hawk v. Estate of Hawk*, 2006 WL 2433966 (Tex. App. – Houston [14<sup>th</sup> Dist.]); *R.I.O. Systems v. Union Carbide*, 780 S.W.2d 489, 493 (Tex. Civ. App. - Corpus Christi 1989, writ denied); *Douglas v. Ingersoll*, 2006 WL 2345968 (Tex. App. – Houston [14<sup>th</sup> Dist.]).
286. *In re Med Plus Equity Inv.*, 2005 WL 1385238 (Tex. App. – Dallas).
287. *In re Med Plus Equity, Inv.*, 2005 WL 1385238 (Tex. App. – Dallas); *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 796 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied); *Khraish v. Hamed*, 762 S.W.2d 906, 909 (Tex. App. - Dallas 1988, writ denied); *Helmsley-Spear of Texas, Inc. v. Blanton*, 699 S.W.2d 643, 645 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1985, no writ); *Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 7 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
288. *Jordan v. Hagler*, 179 S.W. 3d 217, 221 n.1 (Tex. App. – Fort Worth 2005, no pet.); *Lane v. Fritz*, 404 S.W.2d 110, 110-112 (Tex. Civ. App. - Corpus Christi 1966, no writ) with *Helmsley-Spear of Texas, Inc. v. Blanton*, 699 S.W.2d 643, 644 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1985, no writ).
289. *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 798 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied).
290. 699 S.W.2d 643 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1985, no writ).
291. *Id.* at 645.
292. *Id.*
293. *Jordan v. Hagler*, 179 S.W.3d 217, 221 (Tex. App. – Fort Worth 2005, no pet.); *In re Pollard*, 2005 WL 2716277 (Tex. App. – Dallas 2005); *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 796 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied); *Khraish v. Hamed*, 762 S.W.2d 906, 909 (Tex. App. - Dallas 1988, writ denied); *Helmsley-Spear of Texas, Inc. v. Blanton*, 699 S.W.2d 643, 645 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1985, no writ).
294. *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 796 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied); *Manders v. Manders*, 897 F.Supp. 972, 976 (S.D. Tex. 1995).
295. *Wernecke v. Seabury*, 720 S.W.2d 886, 887 (Tex. App. - Fort Worth 1986, no writ); *Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 7-8 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
296. *In re Collins*, 172 S.W.3d 287, 293-94 (Tex. App. – Fort Worth 2005, no pet.)
297. *See e.g., In re Medistar Corp.*, 2005 WL 3050447 (Tex. App. – San Antonio); *In re Med Plus Equity Inv.*, 2005 WL 1385238 (Tex. App. – Dallas); *In re Jamail*, 156 S.W.3d 104, 107 (Tex. App. – Austin 2004); *In re Mousa*, 2004 WL 2823172 (Tex. App. – Houston [1<sup>st</sup> Dist.]); *Mangione v. Jaffe*; 61 S.W.3d 591, 592 (Tex. App. – San



Antonio 2001, pet. dismissed).

298. See *In re Collins*, 172 S.W.3d 287, 294 (Tex. App. – Fort Worth 2005, no pet.); *In re Wolf*, 65 S.W.3d 804, 805 (Tex. App. – Beaumont 2002); *Francis v. Sterling* 45 S.W.3d 194, 196 (Tex. App. – Tyler 2001, no pet.); *Khraish v. Hamed*, 762 S.W.2d 906, 909 (Tex. App. – Dallas 1988, writ denied).

299. 172 S.W.3d 287 (Tex. App. – Fort Worth 2005, no pet.).

300. *Id.* at 294.

301. *Id.*

302. *Id.* at 295 n. 28.

303. *Id.*

304. *Id.*

305. *Id.* at 295.

306. *Id.*

307. *Id.*

308. *Id.*

309. *Id.*

310. *In re Thornburg*, 277 B.R. 719, 730 (Bankr. E.D. Tex. 2002).

311. *Id.* at 730-31.

312. *In re Collins*, 172 S.W.3d 287, 293 (Tex. App. – Fort Worth 2005, no pet.); *In re Pollard*, 2005 WL 2716277 (Tex. App. – Dallas 2005); *In re Kroupa-Williams*, 2005 WL 1367950 (Tex. App. – Dallas); *Reeves v. Memorial Terrace, Ltd.*, 2004 WL 2933807 (Tex. App. – Houston [14<sup>th</sup> Dist.]); *377 Realty Partners, L.P. v. Taffarello*, 2006 WL 783446 (E.D. Tex.).

313. TEX. PROP. CODE ANN. § 12.008(a) (Vernon 2004). See also *In re Collins*, 177 S.W.3d 287, 293 (Tex. App. – Fort Worth 2005, no pet.).

314. *Id.*

315. *Id.*

316. *Id.*

317. Refer to notes 394-412, *infra* and accompanying text.

318. *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 798 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied); *Manders v. Manders*, 897 F.Supp. 972, 976 (S.D. Tex. 1995).

319. *Ransopher v. Deer Trails Ltd.*, 647 S.W.2d 106, 107-09 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1983, no writ).

320. *Id.*

- 321. 647 S.W.2d 106 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1983, no writ).
- 322. *Id.* at 107.
- 323. *Id.*
- 324. *Id.*
- 325. *Id.* at 109.
- 326. *Id.*
- 327. *In re Collins*, 267 S.W.3d 287, 293 n.15 (Tex. App. – Forth Worth 2005 - no pet.); *Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 7-8 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
- 328. *See In re Collins*, 267 S.W.3d 287, 293 n.15 (Tex. App. – Forth Worth 2005 - no pet.); *First Nat'l Petroleum Corp. v. Lloyd*, 908 S.W.2d 23, 24-25 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1995, no writ); *Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 7-8 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
- 329. TEX. PROP. CODE ANN. § 12.008(b) (Vernon 2004). *See also Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 8 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
- 330. TEX. PROP. CODE ANN. § 12.008(b) (Vernon 2004). *See also Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 8 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
- 331. 2005 WL 1367950 (Tex. App. – Dallas).
- 332. *Id.*
- 333. *Id.*
- 334. TEX. PROP. CODE ANN. § 12.008(c) (Vernon 2004). *See also Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 8 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
- 335. TEX. PROP. CODE ANN. § 12.008(c) (Vernon 2004). *See also Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 8 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
- 336. *Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 8 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
- 337. 647 S.W.2d 5 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dism'd).
- 338. *Id.* at 8.
- 339. *See Frankfort v. Wilson*, 353 S.W.2d 490, 497 (Tex. Civ. App. - Dallas 1961, no writ).
- 340. 353 S.W.2d 490 (Tex. Civ. App. - Dallas 1961, no writ).
- 341. *Id.* at 497.
- 342. *Id.*
- 343. *Id.*
- 344. *Id.*

345. TEX. PROP. CODE ANN. § 12.008(c) (Vernon 2004); *In re Medistar Corp.*; 2005 WL 3050447 (Tex. App. – San Antonio); *Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 8 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1983, writ dismiss'd).
346. *Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 8 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1982, writ dismiss'd).
347. *In re Medistar Corp.*, 2005 WL 3050447 Tex. App. – San Antonio); *Hughes v. Houston Northwest Medical Center*, 647 S.W.2d 5, 8 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1982, writ dismiss'd).
348. TEX. PROP. CODE ANN. § 12.008 (Vernon 2004). *See also 377 Realty Partners, L.P. v. Taffarello*, 2006 WL 783446 (E.D. Tex.).
349. *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. – Austin).
350. *In re Collins*, 172 S.W.3d 287, 292 (Tex. App. – Fort Worth 2005, no pet.); *In re Pollard*, 2005 WL 2716277 (Tex. App. – Dallas 2005).
351. TEX. PROP. CODE ANN. § 12.007(b) (Vernon 2004). *See also City Nat'l Bank v. Craig*, 113 Tex. 375, 380, 257 S.W. 210, 212 (1923); *Pickens v. Bacle*, 105 S.W.2d 212, 213 (Tex. Comm'n App. 1937, opinion adopted); *In re Pollard*, 2005 WL 2716277 (Tex. App. – Dallas 2005).
352. 206 S.W. 928 (Tex. Comm'n App. 1918), *rev'd on other grounds*, 110 Tex. 271, 219 S.W. 447 (1920).
353. *Id.* at 931.
354. 771 S.W.2d 207 (Tex. App. - Austin 1989, no writ).
355. *Id.* at 209.
356. *Id.*
357. 949 S.W.2d 7 (Tex. App. - San Antonio 1997, no writ).
358. *Id.* at 9-10.
359. *In re Pollard*, 2005 WL 2716277 (Tex. App. – Dallas).
360. 105 S.W.2d 212 (Tex. Comm'n App. 1937, opinion adopted).
361. *Id.* at 213.
362. *Id.*
363. *Id.*
364. *Id.*
365. *Id.*
366. *Id.*
367. *Id.*
368. 214 S.W. 726 (Tex. Civ. App. - Fort Worth 1919, writ ref'd).

369. *Id.* at 728.
370. *In re Pollard*, 2005 WL 2716277 (Tex. App. – Dallas).
371. *Id.*
372. TEX. PROP. CODE ANN. § 12.007(a) (Vernon 2004).
373. *Id.* at § 12.007(c).
374. *Pope v. Beauchamp*, 206 S.W. 928, 931 (Tex. Comm’n App. 1918), *rev’d on other grounds*, 110 Tex. 271, 219 S.W. 447 (1920).
375. TEX. PROP. CODE ANN. § 13.004(a) (Vernon 2004). *See also Pope v. Beauchamp*, 206 S.W. 928, 931 (Tex. Comm’n App. 1918), *rev’d on other grounds*, 110 Tex. 271, 219 S.W. 467 (1920).
376. TEX. PROP. CODE ANN. § 13.004(a) (Vernon 2004). *See also Evans v. Welborne*, 79 Tex. 530, 534, 12 S.W. 230, 231 (1889); *In re Kroupa-Williams*, 2005 WL 1367950 (Tex. App. – Dallas); *Sharif-Munir-Davidson Dev. Corp. v. Bell*, 788 S.W.2d 427, 430 (Tex. App. - Dallas 1990, writ denied); *Gene Hill Equip. Co. v. Merryman*, 771 S.W.2d 207, 209 (Tex. App. - Austin 1989, no writ); *Griffin v. Rowden*, 702 S.W.2d 692, 694 (Tex. App. - Dallas 1985 writ ref’d n.r.e.).
377. *Edwards v. Norton*, 55 Tex. 405, 411 (1881); *Resolution Trust Corp. v. Kemp*, 951 F.2d 657, 663 (5<sup>th</sup> Cir. 1992).
378. *See Jordan v. Hagler*, 179 S.W.3d 217, 221 (Tex. App. – Fort Worth 2005, no pet.); *In re Medistar Corp.*, 2005 WL 3050447 (Tex. App. – San Antonio); *In re Mousa*, 2004 WL 2823172 (Tex. App. – Houston [1<sup>st</sup> Dist]); *Gene Hill Equip. Co. v. Merryman*, 771 S.W.2d 207, 209 (Tex. App. - Austin 1989, no writ); *Harrison v. Bailey*, 260 S.W.2d 702, 704 (Tex. Civ. App. - Eastland 1953, no writ); .
379. *Rosborough v. Cook*, 108 Tex. 364, 366, 194 S.W. 131, 132 (1917); *Wortham v. Boyd*, 66 Tex. 401, 403, 1 S.W. 109, 110 (1886); *In re Medistar Corp.*, 2005 WL 3050447 (Tex. App. – San Antonio); *Walston v. Lockhart*, 2005 WL 428433 (Tex. App. – Waco); *In re Mousa*, 2004 WL 2823172 (Tex. App. – Houston [1<sup>st</sup> Dist.]).
380. *Lovenskiold v. Casas*, 229 S.W. 888, 891 (Tex. Civ. App. - San Antonio 1921, writ dism’d); *Scudder v. Cox*, 80 S.W. 872, 873 (Tex. Civ. App. 1904, writ ref’d).
381. *See Houston Oil Co. of Texas v. Village Mills Co.*, 123 Tex. 253, 258, 71 S.W.2d 1087, 1089 (1934).
382. *Smith v. Olsen*, 92 Tex. 181, 183, 436 S.W. 631, 632 (1898); *King v. Tubb*, 551 S.W.2d 436, 444 (Tex. Civ. App. - Corpus Christi 1977, no writ); *John H. Maxwell Co. v. Maxwell*, 225 S.W.2d 988, 991 (Tex. Civ. App. - Fort Worth 1949, writ ref’d n.r.e.); *Poole v. Frank*, 11 S.W.2d 611, 613 (Tex. Civ. App. - Austin 1928, no writ); *Hall v. Nunn Elec. Co.*, 214 S.W. 452, 456 (Tex. Civ. App. - Amarillo 1919, no writ).
383. *Texas Water Comm’n v. Crow Iron Works*, 582 S.W.2d 768, 771 (Tex. 1979); *Hartel v. Dishman*, 135 Tex. 600, 607, 145 S.W.2d 865, 868 (1940); *Rio Bravo Oil Co. v. Hebert*, 130 Tex. 1, 9, 106 S.W.2d 242, 247 (1937); *City Nat’l Bank v. Craig*, 113 Tex. 375, 379, 257 S.W. 210, 211 (1923); *Berg v. Ingalls*, 79 Tex. 522, 523 (1891). *But see Parker v. Campbell*, 95 Tex. 82, 85, 65 S.W. 482, 483 (1901) (Presenting an exception to this general rule. If purchaser *pendente lite*’s claims are severed into a separate suit, the purchaser *pendente lite* is entitled to have his claims adjudicated separately from those of his vendor).
384. *Wortham v. Boyd*, 66 Tex. 401, 403, 1 S.W. 109, 110 (1886); *Portis v. Hill*, 30 Tex. 529, 569 (1868); *Herndon v. Robertson*, 15 Tex. 593, 596 (1855); *Allen-West Comm’n Co. v. Gibson*, 228 S.W. 342, 345 (Tex. Civ. App. - Dallas 1921, writ ref’d); *Mayes v. Rust*, 94 S.W. 110, 111 (Tex. Civ. App. 1906, writ ref’d).

385. *Houston Oil Co. of Texas v. Village Mills Co.*, 123 Tex. 253, 258, 71 S.W.2d 1087, 1089 (1934); *Doss v. Honeycutt*, 406 S.W.2d 504, 506 (Tex. Civ. App. - Waco 1966, writ ref'd); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. - Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgm't adopted); *Sanders v. Farrier*, 271 S.W. 293, 297 (Tex. Civ. App. - Texarkana 1924, writ dism'd); *Busk v. Manghum*, 37 SW. 459, 461 (Tex. Civ. App. 1896, no writ). Should the suit end unfavorable to the adverse party, the rights of the purchaser *pendente lite* remain as if no suit had ever been commenced. *Wortham v. Boyd*, 66 Tex. 401, 404, 1 S.W. 109, 110 (1886).
386. *York v. Carlisle*, 46 S.W. 257, 259 (Tex. Civ. App. 1898, no writ).
387. *Neel v. Fuller*, 557 S.W.2d 73, 76 (Tex. 1977); *Rosborough v. Cook*, 108 Tex. 364, 366, 194 S.W. 131, 132 (1917); *Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905, 909 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1988, no writ); *Group Purchases, Inc. v. Lance Inv. Inc.*, 685 S.W.2d 729, 731 (Tex. App. - Dallas 1985, writ ref'd n.r.e.); *Hamman v. Southwestern Gas Pipeline*, 821 F.2d 299, 304 (5<sup>th</sup> Cir. 1987).
388. *Countrywide Home Loans, Inc. v. Howard*. 2007 WL 1790684 (Tex. App. – Austin).
389. 2007 WL 1790684 (Tex. App. – Austin).
390. *Id.* See text at IV(c)(12).
391. *In re Collins*, 172 S.W.3d 287, 293 (Tex. App. – Fort Worth 2005, no pet).
392. *Smith v. Olsen*, 92 Tex. 181, 183, 436 S.W. 631, 632 (1898); *Sanders v. Farrier*, 271 S.W. 293, 297 (Tex. Civ. App. - Texarkana 1924, writ dism'd); *Busk v. Manghum*, 37 SW. 459, 461 (Tex. Civ. App. 1896, no writ); *Texas Mortgage Co. v. Phillips Petroleum Co.*, 470 F.2d 497, 502 (5<sup>th</sup> Cir. 1972).
393. *Sanders v. Farrier*, 271 S.W. 293, 297 (Tex. Civ. App. - Texarkana 1924, writ dism'd); *Texas Mortgage Co. v. Phillips Petroleum Co.*, 470 F.2d 497, 502 (5<sup>th</sup> Cir. 1972).
394. *Black v. Burd*, 265 S.W.2d 553, 555 (Tex. Civ. App. - Fort Worth 1953, writ ref'd n.r.e).
395. *Mealy v. Lipp*, 91 Tex. 182, 184 (1897); *Jemison v. Halbert*, 47 Tex. 180, 188 (1877); *Bradshaw v. House*, 43 Tex. 143, 146 (1875); *Portis v. Hill*, 30 Tex. 529, 569 (1868); *Lee v. Salinas*, 15 Tex. 495, 497 (1855); *Black v. Burd*, 265 S.W.2d 553, 555 (Tex. Civ. App. - Fort Worth 1953, writ ref'd n.r.e).
396. 257 S.W. 1092 (Tex. Comm'n App. 1924, judgm't adopted).
397. *Id.* at 1094.
398. *Id.*
399. *Black v. Burd*, 265 S.W.2d 553, 555 (Tex. Civ. App. - Fort Worth 1953, writ ref'd n.r.e); *Cox v. Gaines*, 75 S.W.2d 172, 174 (Tex. Civ. App. - Austin 1934, no writ); *Lovenskiold v. Casas*, 229 S.W. 888, 891 (Tex. Civ. App. - San Antonio 1921, writ dism'd); *Busk v. Manghum*, 37 SW. 459, 461 (Tex. Civ. App. 1896, no writ); *B.C. Evans v. Reeves*, 26 S.W. 219, 220 (Tex. Civ. App. 1894, no writ).
400. *Portis v. Hill*, 30 Tex. 529, 569 (1868); *Poole v. Frank*, 11 S.W.2d 611, 613 (Tex. Civ. App. - Austin 1928, no writ); *Hamman v. Southwestern Gas Pipeline*, 812 F.2d 299, 304 (5<sup>th</sup> Cir. 1997).
401. *Hamman v. Southwestern Gas Pipeline*, 812 F.2d 299, 304 (5<sup>th</sup> Cir. 1997).
402. *Portis v. Hill*, 30 Tex. 529, 569 (1868).
403. *Delk v. Punchard*, 64 Tex. 360, 363 (1885); *Punchard v. Delk*, 55 Tex. 304, 305-07 (1881); *Hall v. Nunn Elec. Co.*, 214 S.W. 452, 456 (Tex. Civ. App. - Amarillo 1919, no writ); *Latta v. Wiley* 92 S.W. 433, 438 (Tex. Civ. App. 1905, writ ref'd); *Jones v. Robb*, 80 S.W. 395, 400 (Tex. Civ. App. 1904, writ ref'd).

- 404. 80 S.W. 395 (Tex. Civ. App. 1904, writ ref'd).
- 405. *Id.* at 400.
- 406. *York v. Carlisle*, 46 S.W. 257, 259 (Tex. Civ. App. 1898, no writ).
- 407. 46 S.W. 257 (Tex. Civ. App. 1898, no writ).
- 408. *Id.* at 259.
- 409. *Id.*
- 410. *Ferris v. Streeper*, 59 Tex. 312, 314 (1883).
- 411. *See Olds, Lis Pendens* 4 HOUSTON L.REV. 221 n.1 (1966).
- 412. *Poole v. Frank*, 11 S.W.2d 611, 613 (Tex. Civ. App. - Austin 1928, no writ).
- 413. *Gabb v. Boston*, 109 Tex. 26, 31, 193 S.W. 137, 139 (1917); *Wolf v. Butler*, 81 Tex. 86, 93, 16 S.W. 794, 796 (1891); *Fleming v. Seeligson*, 57 Tex. 524, 532-33 (1881); *Cox v. Gaines*, 75 S.W.2d 172, 172 (Tex. Civ. App. - Austin 1934, no writ).
- 414. *Houston Oil Co. of Texas v. Village Mills Co.*, 123 Tex. 253, 259, 71 S.W.2d 1087, 1089 (1934); *Hearne v. Erhard*, 33 Tex. 61, 67 (1870); *Weatherford v. Nat'l Life Ins. Co.*, 94 S.W.2d 250, 254 (Tex. Civ. App. - Dallas 1936, writ dism'd); *Duke v. Trabue*, 180 S.W. 910, 911 (Tex. Civ. App. - Texarkana 1915, no writ).
- 415. *Weatherford v. Nat'l Life Ins. Co.*, 94 S.W.2d 250, 254 (Tex. Civ. App. - Dallas 1936, writ dism'd). *See also Jemison v. Halbert*, 47 Tex. 180, 188 (1877).
- 416. *Sherrod v. Terrell*, 97 Tex. 97, 97, 76 S.W. 444, 442 (1903); *Weatherford v. Nat'l Life Ins. Co.*, 94 S.W.2d 250, 254 (Tex. Civ. App. - Dallas 1936, writ dism'd); *Cox v. Gaines*, 75 S.W.2d 172, 174 (Tex. Civ. App. - Austin 1934, no writ).
- 417. *Weatherford v. Nat'l Life Ins. Co.*, 94 S.W.2d 250, 254 (Tex. Civ. App. - Dallas 1936, writ dism'd).
- 418. *Fleming v. Seeligson*, 57 Tex. 524, 532-33 (1881).
- 419. 59 Tex. 312 (1883).
- 420. *Id.* at 314.
- 421. *Kalteyer v. Wipf*, 92 Tex. 673, 685, 52 S.W. 63, 69 (1899).
- 422. 92 Tex. at 685, 52 S.W. at 69.
- 423. 2005 WL 2416614 (S.D. Tex.).
- 424. *Id.*
- 425. *Id.*
- 426. *Hamman v. Southwestern Gas Pipeline*, 812 F.2d 299, 305-06 (5<sup>th</sup> Cir. 1997); *377 Realty Partners, L.P. v. Taffarello*, 2006 WL 783446 (E.D. Tex.).
- 427. *Id.*



## Lis Pendens in Texas

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428. 821 F.2d 299 (5<sup>th</sup> Cir. 1987).
429. *Id.* at 301-02.
430. *Id.* at 302.
431. *Id.* at 302-06.
432. *Neel v. Fuller*, 557 S.W.2d 73, 76 (Tex. 1977); *In re Kroupa-Williams*, 2005 WL 1367950 (Tex. App. – Dallas); *Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905, 909 (Tex. App. – Houston [1<sup>st</sup> Dist.] 1988, no writ); *Group Purchases, Inc. v. Lance Inv. Inc.*, 685 S.W.2d 729, 731 (Tex. App. – Dallas 1985, writ ref'd n.r.e); *Hexter v. Pratt*, 283 S.W. 653, 656 (Tex. Civ. App. – Dallas 1926), *aff'd*, 10 S.W.2d 692 (Tex. Comm'n App. 1928, judgment adopted). Lis pendens actually promotes the alienability of property by promoting the certainty of title. *Wernecke v. Seabury*, 720 S.W.2d 886, 887 (Tex. App. – Fort Worth 1986, no writ).
433. *Texas Water Comm'n v. Crow Iron Works*, 502 S.W.2d 768, 771 (Tex. 1979); *Neel v. Fuller*, 557 S.W.2d 73, 76 (Tex. 1977); *Rosborough v. Cook*, 108 Tex. 364, 366, 194 S.W. 131, 132 (1917); *Lee v. Salinas*, 15 Tex. 495, 497 (1855); *Cherokee Water Co. v. Advance Oil & Gas Co.*, 843 S.W.2d 132, 135 (Tex. App. – Texarkana 1992, writ denied).
434. *Countrywide Home Loans, Inc. v. Howard*, 2007 WL 1790684 (Tex. App. – Austin).
435. *Id.*
436. *See Tide Water Associated Oil Co. v. Hammer*, 163 S.W.2d 232, 235 (Tex. Civ. App. – Texarkana 1942, writ ref'd).
437. 163 S.W.2d 232 (Tex. Civ. App. – Texarkana 1942, writ ref'd).
438. *Id.* at 235.
439. *Id.*
440. *Eppenauer v. Ohio Oil Co.*, 128 F.3d 363, 365 (5<sup>th</sup> Cir. 1942).
441. *See Harle v. Langdon's Heirs*, 60 Tex. 555, 565 (1883); *Bishop v. Honey*, 34 Tex. 245, 253 (1870); *Willie v. Ellis*, 54 S.W. 922, 924 (Tex. Civ. App. 1900, no writ); *Davis v. John V. Farwell Co.*, 49 S.W. 656, 658 (Tex. Civ. App. 1899, no writ).
442. *See Harle v. Langdon's Heirs*, 60 Tex. 555, 565 (1883); *Bishop v. Honey*, 34 Tex. 245, 253 (1870); *Willie v. Ellis*, 54 S.W. 922, 924 (Tex. Civ. App. 1900, no writ); *Davis v. John V. Farwell Co.*, 49 S.W. 656, 658 (Tex. Civ. App. 1899, no writ).
443. *Hubert Lumber Co. v. Baumgart*, 464 S.W.2d 728, 729 (Tex. Civ. App. – Houston [1<sup>st</sup> Dist.] 1971, no writ).
444. *Id.*
445. *Douglas v. Ingersoll*, 2006 WL 2345968 (Tex. App. – Houston [14<sup>th</sup> Dist.]) (not authorized for publication).
446. *Onyx Refining Co. v. Evans Prod. Corp.*, 182 F.Supp. 253, 256 (N.D. Tex. 1959).
447. *See Id.*
448. *Cherokee Water Co. v. Advance Oil & Gas Co.*, 843 S.W.2d 132, 135 (Tex. App. – Texarkana 1992, writ denied).

449. 843 S.W.2d 132, 135 (Tex. App. - Texarkana 1992, writ denied).
450. *Id.* at 133-34.
451. *Id.* at 135.
452. *Id.* at 134.
453. *Id.*
454. *Id.* at 135.
455. *Id.*
456. *Id.*
457. *Id.*
458. *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 796 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied); *Sharif-Munir-Davidson Dev. Corp. v. Bell*, 788 S.W.2d 427, 430 (Tex. App. - Dallas 1990, writ denied); *Griffin v. Rowden*, 702 S.W.2d 692, 694 (Tex. App. - Dallas 1985 writ ref'd n.r.e.); *Krupp v. Prather*, 526 S.W.2d 283, 286 (Tex. Civ. App. - Tyler 1975, writ ref'd n.r.e.).
459. *Bayou Terrace Inv. Corp. v. Lyles*, 881 S.W.2d 810, 818 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1994, no writ); *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 797 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied); *Sharif-Munir-Davidson Dev. Corp. v. Bell*, 788 S.W.2d 427, 430 (Tex. App. - Dallas 1990, writ denied); *Griffin v. Rowden*, 702 S.W.2d 692, 694-95 (Tex. App. - Dallas 1985 writ ref'd n.r.e.); *Krupp v. Prather*, 526 S.W.2d 283, 287 (Tex. Civ. App. - Tyler 1975, writ ref'd n.r.e.).
460. *Taliaferro v. Smith*, 804 S.W.2d 548, 550 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1991, no writ); *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 797 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied); *Krupp v. Prather*, 526 S.W.2d 283, 287 (Tex. Civ. App. - Tyler 1975, writ ref'd n.r.e.).
461. *Krupp v. Prather*, 526 S.W.2d 283, 287 (Tex. Civ. App. - Tyler 1975, writ ref'd n.r.e.) *Manders v. Manders*, 897 F.Supp. 972, 976 (S.D. Tex. 1995).
462. *Spitaleri v. Estate of Dominguez*; 2005 WL 2988732 (Tex. App. - San Antonio); *Chale Garza Inv., Inc. v. Madaria*, 931 S.W.2d 597, 600 (Tex. App. - San Antonio 1996, writ denied); *Bayou Terrace Inv. Corp. v. Lyles*, 881 S.W.2d 810, 818 (Tex. App. - Houston [1<sup>st</sup> Dist.] 1994, no writ); *Griffin v. Rowden*, 702 S.W.2d 692, 694 (Tex. App. - Dallas 1985 writ ref'd n.r.e.); *International Shortstop, Inc.*, 939 F.2d 1257, 1269 n.12 (5<sup>th</sup> Cir. 1991).
463. *Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 797 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied); *Griffin v. Rowden*, 702 S.W.2d 692, 695 (Tex. App. - Dallas 1985 writ ref'd n.r.e.); *Manders v. Manders*, 897 F.Supp. 972, 977 (S.D. Tex. 1995).
464. TEX. R. CIV. P. Rule 13 (Vernon 2003).
465. *See e.g., Parker v. Walton*, 233 S.W.3d 535 (Tex. App. - Houston [14<sup>th</sup> Dist.] 2007, no pet.)
466. *Griffin v. Rowden*, 702 S.W.2d 692, 694 (Tex. App. - Dallas 1985 writ ref'd n.r.e.); *Manders v. Manders*, 897 F.Supp. 972, 976 (S.D. Tex. 1995).
467. *Chale Garza Inv., Inc. v. Madaria*, 931 S.W.2d 597, 600 (Tex. App. - San Antonio 1996, writ denied); *Griffin v. Rowden*, 702 S.W.2d 692, 695 (Tex. App. - Dallas 1985 writ ref'd n.r.e.).
468. *Manders v. Manders*, 897 F.Supp. 972, 977 (S.D. Tex. 1995).

469. *See Id.* at 476.
470. *See Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 796 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied).
471. 795 S.W.2d 794 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied).
472. *Id.* at 796.
473. *Id.*
474. *Id.* *See also Manders v. Manders*, 897 F.Supp. 972, 976 (S.D. Tex. 1995).
475. *See Id.* at 798.
476. *Id.* at 799.
477. *Id.*
478. *Id.*
479. *Wolf v. Butler*, 81 Tex. 86, 92, 16 S.W. 794, 796 (1891); *Rippetoe v. Dwyer*, 65 Tex. 703, 707 (1886); *Beurline v. Smith*, 426 S.W.2d 295, 299 (Tex. Civ. App. - Corpus Christi 1968, writ ref'd n.r.e.); *Panhandle Lumber Co. v. Fairey*, 3 S.W.2d 941, 945 (Tex. Civ. App. - Amarillo 1928, no writ); *Waggoner v. Oliver*, 256 S.W. 302, 304 (Tex. Civ. App. - Amarillo 1923, writ dism'd).
480. 81 Tex. 92, 16 S.W. 794 (1891).
481. 81 Tex. at 88, 16 S.W. at 794.
482. 81 Tex. at 92, 16 S.W. at 796.
483. 81 Tex. at 89-90, 16 S.W. at 795.
484. 81 Tex. at 89-93, 16 S.W. at 795-96.
485. 81 Tex. at 92, 16 S.W. at 796.
486. 81 Tex. at 92-93, 16 S.W. at 796.
487. *Maes v. Thomas*, 140 S.W. 846, 847 (Tex. Civ. App. - El Paso 1911, writ ref'd); *Latta v. Wiley* 92 S.W. 433, 436 (Tex. Civ. App. 1905, writ ref'd).
488. *Latta v. Wiley* 92 S.W. 433, 437 (Tex. Civ. App. 1905, writ ref'd). *But see Prappas v. Meyerland Community Improvement Ass'n*, 795 S.W.2d 794, 800 (Tex. App. - Houston [14<sup>th</sup> Dist.] 1990, writ denied) (lis pendens, now heavily regulated by statute is no longer the equitable device that invites the laches defense).
489. 140 S.W. 846 (Tex. Civ. App. - El Paso 1911, writ ref'd).
490. *Id.* at 847.
491. *Id.* at 846-47.
492. *Id.* at 847. *See also McMaster v. Childress*, 30 S.W. 843, 844 (Tex. Civ. App. 1895, writ ref'd).

493. *Hartel v. Dishman*, 135 Tex. 600, 609, 145 S.W.2d 865, 869 (1940); *Latta v. Wiley* 92 S.W. 433, 436 (Tex. Civ. App. 1905, writ ref'd).
494. *Jones v. Robb*, 80 S.W. 395, 399 (Tex. Civ. App. 1904, writ ref'd).
495. 80 S.W. 395 (Tex. Civ. App. 1904, writ ref'd).
496. *Id.* at 399.
497. *Latta v. Wiley* 92 S.W. 433, 437 (Tex. Civ. App. 1905, writ ref'd).
498. *Id.* at 437.
499. 92 S.W. 433 (Tex. Civ. App. 1905, writ ref'd).
500. *Id.* at 437.
501. *Id.*
502. *Id.*
503. *Id.* at 438.
504. *Matter of Texas Extrusion Corp.*, 844 F.2d 1142, 1153 (5<sup>th</sup> Cir. 1988).
505. *Hartel v. Dishman*, 135 Tex. 600, 607, 145 S.W.2d 865, 868 (1940); *Carlisle v. MacDonald*, 200 S.W.2d 436, 440 (Tex. Civ. App. - Texarkana 1947), *modified on other grounds*, 146 Tex. 206, 206 S.W.2d 244 (1947); *Waitz v. Uvalde Rock Asphalt Co.*, 58 S.W.2d 884, 886 (Tex. Civ. App. - Beaumont, no writ); *Holford v. Patterson*, 240 S.W. 341, 347 (Tex. Civ. App. - Amarillo 1922), *aff'd*, 113 Tex. 410, 257 S.W. 213 (1923); *Burke-Simmons Co. v. Konz*, 178 S.W. 587, 589-90 (Tex. Civ. App. - Fort Worth 1915, writ ref'd).
506. *Hartel v. Dishman*, 135 Tex. 600, 607, 145 S.W.2d 865, 868 (1940); *Holford v. Patterson*, 240 S.W. 341, 346 (Tex. Civ. App. - Amarillo 1922), *aff'd*, 257 S.W. 213 (Tex. 1923).
507. *Burke-Simmons Co. v. Konz*, 178 S.W. 587, 590 (Tex. Civ. App. - Fort Worth 1915, writ ref'd).
508. *Id.* at 590.
509. *Carlisle v. MacDonald*, 200 S.W.2d 436, 440 (Tex. Civ. App. - Texarkana 1947), *modified on other grounds*, 146 Tex. 206, 206 S.W.2d 244 (1947).
510. 200 S.W.2d 436 (Tex. Civ. App. - Texarkana 1947), *modified on other grounds*, 146 Tex. 206, 206 S.W.2d 244 (1947).
511. *Id.* at 440.
512. *Id.*
513. *Baker Boulevard Partners, Ltd. v. Sparks*, 2007 WL 2460362 (Tex. App. - Fort Worth 2007); *Jordan v. Hagler*, 179 S.W.3d 217, 222-23 (Tex. App. - Fort Worth 2005, no pet.).