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MARCH 4, 2024

Losing Ground: The Perils and Pitfalls of the Lis Pendens in Connection with an Arbitration Proceeding

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The notice of pending action, usually referred to by its Latin antecedent, “lis pendens,” is an important pretrial mechanism for preserving or maintaining priority of a litigant’s claim to title or a lien on the real property held by the op-posing party. A properly recorded notice of a pending action not only places any successor in interest to the property on notice that the action is pending, but it also means that the judgment in the action will “relate back” to the filing of the lis pendens and potentially supersede any intervening lien or transfer of the property that is recorded after the date of the notice and prior to the date of the judgment.1 As a result, the lis pendens effectively clouds the title of the defendant in the action,2 making it unlikely anyone will accept a conveyance or lien from the defendant until the action is resolved, which in turn can give the plaintiff who filed the notice of lis pendens significant leverage over the defendant as long as the notice remains of record.

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