

 KeyCite Yellow Flag - Negative Treatment

**Distinguished by** [Herman Trust v. Brashear 711 Trust](#), Neb.App.,  
February 17, 2015

288 Neb. 898  
Supreme Court of Nebraska.

Michael E. **Kelliher**, appellant,  
v.  
Travis **Soundy** et al., appellees.

No. S-13-538  
|  
Filed August 29, 2014

### Synopsis

**Background:** Former member of limited liability company (LLC) filed suit against LLC, remaining member, and subsequent purchaser of real property sold by LLC, seeking, among other relief, to have title to property quieted in him. The District Court, Buffalo County, [John P. Icenogle](#), J., dismissed claims against subsequent purchaser, then cancelled notice of lis pendens. Former member appealed.

**Holdings:** The Supreme Court, Connolly, J., held that:

[1] Supreme Court had jurisdiction over appeal from nonfinal order canceling notice of lis pendens, under collateral order doctrine, and

[2] purchaser failed to demonstrate good cause for canceling notice of lis pendens before time for filing appeal from order dismissing claim against purchaser had expired.

Reversed.

West Headnotes (14)

#### [1] Appeal and Error

 [Review Dependent on Whether Questions Are of Law or of Fact](#)

When a jurisdictional question does not involve a factual dispute, the issue is a matter of law, which

an appellate court reviews independently of the lower court's conclusion.

[4 Cases that cite this headnote](#)

#### [2] Appeal and Error

 [Review Dependent on Whether Questions Are of Law or of Fact](#)

Statutory interpretation is a question of law that an appellate court resolves independently of the trial court.

[2 Cases that cite this headnote](#)

#### [3] Appeal and Error

 [Power of appellate court in general](#)

Before reaching the legal issues presented for review, an appellate court must determine whether it has jurisdiction over the matter before it.

[2 Cases that cite this headnote](#)

#### [4] Appeal and Error

 [Necessity of final determination](#)

For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the court from which the appeal is taken; conversely, an appellate court is without jurisdiction to entertain appeals from nonfinal orders.

[2 Cases that cite this headnote](#)

#### [5] Appeal and Error

 [Affecting collateral matters and proceedings](#)

In order to confer an appellate court with jurisdiction over a nonfinal order under the collateral order doctrine, the order must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment.

[1 Cases that cite this headnote](#)

**[6] Appeal and Error**

🔑 [Affecting collateral matters and proceedings](#)

The requirement under the collateral order doctrine that, in order to confer an appellate court with jurisdiction to review a nonfinal order, the order must resolve an important issue completely separate from the merits of the action, prevents piecemeal review.

[Cases that cite this headnote](#)

**[7] Appeal and Error**

🔑 [Interlocutory and Intermediate Decisions](#)

Nonfinal orders which involve considerations that are enmeshed in the factual and legal issues of the cause of action are not immediately reviewable.

[Cases that cite this headnote](#)

**[8] Lis Pendens**

🔑 [Nature and grounds in general](#)

Although lis pendens statutes are designed to provide a better form of notice to third parties, they generally do so without conferring any additional substantive rights. *Neb. Rev. Stat. § 25-531*.

[Cases that cite this headnote](#)

**[9] Lis Pendens**

🔑 [Nature and grounds in general](#)

**Lis Pendens**

🔑 [Operation and Effect in General](#)

The application of the lis pendens doctrine does not depend on the merits of the underlying action.

[Cases that cite this headnote](#)

**[10] Appeal and Error**

🔑 [Affecting collateral matters and proceedings](#)

Supreme Court had jurisdiction, under collateral order doctrine, over appeal from cancellation

of notice of lis pendens filed by former member of limited liability company (LLC) on real property that LLC member had sold to subsequent purchaser, following dismissal of former member's claims against purchaser, in context of action against LLC, member, and purchaser, in which former member sought, among other relief, that title to property be quieted in him; notice of lis pendens was cancelled before former member had opportunity to appeal dismissal of quiet title claim, cancellation of notice of lis pendens conclusively determined validity of notice, and cancellation of notice was completely separate from merits of underlying action yet would be completely unreviewable on appeal from final judgment.

[Cases that cite this headnote](#)

**[11] Lis Pendens**

🔑 [Nature and grounds in general](#)

The scope of the lis pendens rule is determined by its end and purpose. *Neb. Rev. Stat. § 25-531*.

[Cases that cite this headnote](#)

**[12] Lis Pendens**

🔑 [Nature and grounds in general](#)

**Lis Pendens**

🔑 [Operation and Effect in General](#)

The lis pendens statute serves to hold the property within the court's jurisdiction until the parties' rights are finally determined: its purpose is to prevent third persons, during the pendency of the litigation, from acquiring interests in the land which would preclude the court from granting the relief sought. *Neb. Rev. Stat. § 25-531*.

[Cases that cite this headnote](#)

**[13] Lis Pendens**

🔑 [Cancellation, discharge, or modification](#)

“Good cause” to cancel a notice of lis pendens does not include a consideration of the merits of the underlying action. *Neb. Rev. Stat. § 25-531*.

[Cases that cite this headnote](#)

**[14] Lis Pendens**

🔑 [Cancellation, discharge, or modification](#)

Neither perceived merits of underlying quiet title action brought by former member of vendor limited liability company (LLC) against purchaser, nor purchaser's prospective sale of property to third party, constituted good cause for canceling notice of lis pendens filed by former member while time for appeal from dismissal of action to quiet title remained. [Neb. Rev. Stat. § 25-531](#).

[Cases that cite this headnote](#)

**\*\*720** Appeal from the District Court for Buffalo County: JOHN P. ICENOGLE, Judge. Reversed.

**Attorneys and Law Firms**

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[Heavican, C.J.](#), [Wright, Connolly, Stephan, McCormack](#), and [Miller-Lerman, JJ.](#)

*Syllabus by the Court*

**\*898 1. Judgments: Jurisdiction.** When a jurisdictional question does not involve a factual dispute, the issue is a matter of law.

**2. Judgments: Appeal and Error.** An appellate court reviews questions of law independently of the lower court's conclusion.

**3. Statutes: Appeal and Error.** Statutory interpretation is a question of law that an appellate court resolves independently of the trial court.

**4. Jurisdiction: Appeal and Error.** Before reaching the legal issues presented for review, an appellate court must determine whether it has jurisdiction over the matter before it.

**5. Jurisdiction: Final Orders: Appeal and Error.** For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the court from which the appeal is taken; conversely, an appellate court is without jurisdiction to entertain appeals from nonfinal orders.

**6. Final Orders: Appeal and Error.** To fall within the collateral order doctrine, an order must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment.

**7. Final Orders: Appeal and Error.** The requirement that a court order must resolve an important issue completely separate from the merits of the action prevents piecemeal review.

**8. Final Orders: Appeal and Error.** Court orders which involve considerations that are enmeshed in the factual and legal issues of the cause of action are not immediately reviewable.

**9. Property: Sales: Intent.** The scope of the lis pendens statute is determined by its end and purpose. The purpose of the lis pendens statute is to prevent third persons, during the pendency of the litigation, from acquiring interests in the land which would preclude the court from granting the relief sought.

**10. Actions: Property: Notice.** Cancellation of a notice of lis pendens is completely separate from the merits of the underlying action.

**\*899 11. Actions: Property: Notice: Time: Appeal and Error.** “Good cause” to cancel a notice of lis pendens under [Neb.Rev.Stat. § 25-531 \(Cum.Supp.2012\)](#) **\*\*721** does not include a consideration of the merits of the underlying action.

**12. Property: Title: Notice.** A court may cancel a notice of lis pendens if the face of the complaint shows that the underlying action does not involve title to real property.

**13. Property: Sales: Notice.** The existence of a prospective purchaser who wants to buy the property free of the pending litigation is not good cause to cancel a notice of lis pendens.

Connolly, J.

## SUMMARY

Michael E. **Kelliher** appeals from the district court's order canceling a notice of lis pendens he filed against property in which he claimed title. His business partner, Travis **Soundy**, sold the property to Schijohn, L.L.C. **Kelliher** then filed suit, alleging that **Soundy** did not have authority to sell the property without **Kelliher's** consent and that the owners of Schijohn knew that he claimed an interest in it.

The first issue is jurisdictional. **Kelliher** concedes the district court's June 2013 order canceling the notice of lis pendens is not a final order. But he contends that review is proper under the collateral order doctrine. The second issue is whether the court erred in canceling the notice of lis pendens before **Kelliher** has had an opportunity to appeal the summary judgment order denying him relief. We conclude that we have jurisdiction under the collateral order doctrine and that the district court erred by canceling the notice of lis pendens.

## \*900 BACKGROUND

### FACTUAL HISTORY

In 2006, **Kelliher** and **Soundy** filed articles of organization for Clover Investments, L.L.C. (Clover), in which they made equal contributions and had equal membership rights. About 3 months later, Clover purchased a bar in Kearney, which was its sole asset. In March 2007, **Soundy** purchased **Kelliher's** interest in Clover.

In July 2008, **Soundy** and **Kelliher** negotiated an oral agreement for **Kelliher** to earn back his 50-percent interest in Clover. According to **Kelliher**, he agreed to manage the bar and inject his own funds into the operations, which duties he fulfilled. According to **Soundy**, the oral agreement required **Kelliher** to successfully manage the bar, including "restoring and maintaining the amortization of loans" to Clover and keeping current all of Clover's obligations. In November 2009, **Soundy** terminated the management agreement. He contends that he was the sole owner of Clover. In March 2010, Clover sold the bar to Schijohn.

## PROCEDURAL HISTORY

**Kelliher** sued **Soundy**, Clover, and Schijohn. He alleged that in July 2008, after **Soundy** had unsuccessfully tried to sell Clover's property, **Soundy** contacted **Kelliher** to see if he would be interested in repurchasing an interest. **Kelliher** alleged that he agreed to do this by making capital improvements and had fulfilled that duty. \*\*722 **Kelliher's** general allegations asserted four claims for relief. First, he claimed that he had unsuccessfully demanded access to Clover's records, which were in **Soundy's** sole possession, and sought an accounting. Second, he sought a judicial dissolution of Clover. Third, he alleged that **Soundy** had breached a duty of care and loyalty to Clover and himself, and sought damages. Fourth, he claimed that **Soundy** lacked authority to sell Clover's property and asked the court to quiet title in him.

Schijohn moved for summary judgment on **Kelliher's** quiet title claim. The court granted the motion, concluding, as a \*901 matter of law, that Schijohn was entitled to rely on the apparent authority of **Soundy** to convey the property.

**Kelliher** moved to vacate or modify the judgment and, alternatively, to certify the order as appealable under Neb.Rev.Stat. § 25-1315(1) (Reissue 2008). The court denied the motion to vacate its order but granted the certification request. In case No. A-11-612, the Nebraska Court of Appeals dismissed the appeal without opinion on September 9, 2011.

**Kelliher** did not seek further review. On remand, Schijohn moved to cancel **Kelliher's** notice of lis pendens against the property. Its attorney stated that Schijohn was trying to sell the building and needed clear title. **Kelliher** argued that he had not yet had an opportunity to appeal and that the majority of courts in other jurisdictions have held it is improper to release a notice of lis pendens until after an appeal or after the time to seek review has passed.

In a June 2013 order, the court ruled on various motions and noted that a trial was scheduled for August. Nonetheless, the court canceled the notice of lis pendens, based on its earlier dismissal of the claim against Schijohn.

## ASSIGNMENT OF ERROR

**Kelliher** assigns, restated, that the district court erred by granting Schijohn's motion to cancel the notice of lis pendens.

## STANDARD OF REVIEW

[1] When a jurisdictional question does not involve a factual dispute, the issue is a matter of law.<sup>1</sup> An appellate court reviews questions of law independently of the lower court's conclusion.<sup>2</sup>

[2] Statutory interpretation is a question of law that an appellate court resolves independently of the trial court.<sup>3</sup>

## \*902 ANALYSIS

### JURISDICTION

[3] [4] Before reaching the legal issues presented for review, an appellate court must determine whether it has jurisdiction over the matter before it.<sup>4</sup> For an appellate court to acquire jurisdiction of an appeal, there must be a final order entered by the court from which the appeal is taken; conversely, an appellate court is without jurisdiction to entertain appeals from nonfinal orders.<sup>5</sup>

[5] **Kelliher** concedes that the June 2013 order canceling the notice of lis pendens was not a final order. But **Kelliher** argues that this court has jurisdiction under \*\*723 the collateral order doctrine. To fall within the collateral order doctrine, an order must (1) conclusively determine the disputed question, (2) resolve an important issue completely separate from the merits of the action, and (3) be effectively unreviewable on appeal from a final judgment.<sup>6</sup>

The June 2013 order satisfied the first and third elements of the collateral order doctrine. The order conclusively determined the validity of the notice.<sup>7</sup> Furthermore, the order will be effectively unreviewable on appeal from a final judgment because, if review is so delayed, the property might be sold in the interim to a third party whose rights are not affected by the judgment.<sup>8</sup>

[6] [7] The jurisdictional dispute centers on the second element of the collateral order doctrine: Whether the release

of the notice was completely separate from the merits of the underlying action. The requirement that a court order must resolve an important issue completely separate from the merits of the action prevents piecemeal review.<sup>9</sup> Orders which involve considerations that are enmeshed in the factual and legal \*903 issues of the cause of action are not immediately reviewable.<sup>10</sup> Because our collateral order doctrine has its source in decisions of the U.S. Supreme Court,<sup>11</sup> we review cases decided by the federal courts for guidance.

Federal courts hold that whether the cancellation of a notice of lis pendens is completely separate from the merits depends on the language of the relevant statute. When the lis pendens statute is silent as to the grounds for release or includes grounds other than the merits of the underlying suit, an order canceling a notice of lis pendens is independent of the merits of the underlying suit.<sup>12</sup> But the cancellation of a notice of lis pendens is not independent of the merits where the statute directs courts to consider the probability of the plaintiff's success in the underlying action.<sup>13</sup> Thus, whether the district court's order canceling **Kelliher's** notice of lis pendens is within the collateral order doctrine depends on whether Nebraska's lis pendens statute makes the probable merits of the underlying action relevant to the cancellation of a notice.

[Neb.Rev.Stat. § 25–531 \(Cum.Supp.2012\)](#), the lis pendens statute, allows a court to cancel a notice of lis pendens any time after the complaint is filed “on good cause shown.” [Section 25–531](#), in relevant part, provides:

The court in which such action was commenced or any judge thereof may at any time thereafter on the application of any person aggrieved, on good cause shown, and on such notice as the court or judge may determine, order the notice to be \*\*724 canceled by the clerk or register of deeds \*904 of any county in which the notice may have been filed or recorded by filing a notice of release.

Although [§ 25–531](#) does not expressly make the merits of the underlying action relevant to a motion to cancel a notice of lis pendens, the phrase “good cause” is potentially broad enough to include this consideration. So, we consider whether

the “good cause” requirement includes the perceived merits (or lack thereof) of the pending litigation.

Under the common-law doctrine of *lis pendens* (literally “[a] pending lawsuit”<sup>14</sup>), the mere pendency of a suit affecting title to real property was constructive notice to the world of the disputed claim.<sup>15</sup> Before 1887, Nebraska’s *lis pendens* statute “was a legislative adoption of the equity rule of *lis pendens* that had existed from time immemorial.”<sup>16</sup> Under the rule then in effect that a suit was not commenced until the service of summons, the traditional application of the doctrine proved problematic.<sup>17</sup> Persons aware of the filing of a complaint but not yet served with a summons could freely alienate the property and preclude a court from awarding the relief requested in the complaint.<sup>18</sup> To address this problem, the Legislature amended the *lis pendens* statute in 1887 to permit a plaintiff to record a notice of *lis pendens* with the register of deeds and thereby bind any subsequent purchaser to the outcome of the proceedings.<sup>19</sup> The 1887 act also permitted any aggrieved person to petition for the cancellation of the notice “in good cause shown.”<sup>20</sup>

[8] [9] \*905 The development of Nebraska’s *lis pendens* statute is instructive. As one court has noted, statutes did not create the *lis pendens* doctrine, but instead limit its application by requiring the plaintiff to record a notice that complies with statutory requirements.<sup>21</sup> Although *lis pendens* statutes are designed to provide a better form of notice to third parties, they generally do so without conferring any additional substantive rights.<sup>22</sup> Traditionally, the application of the *lis pendens* doctrine does not depend on the merits of the underlying action.<sup>23</sup> We find no express or implied legislative intent to alter this aspect of the rule.

We decided a similar issue concerning the *lis pendens* statute in *Merrill v. Wright*.<sup>24</sup> In that case, an action was brought in 1892 to foreclose a tax lien but the sale did not occur until 1902. In the interim, the appellant received a tax deed \*\*725 for the same property for taxes assessed after those on which the foreclosure suit was based. The purchaser from the foreclosure sale sought to eject the appellant, arguing that the appellant had taken title subject to the outcome of the foreclosure action. The issue presented was whether the *lis pendens* statute applied to a deed that was not derived from or dependent on the titles of any parties to the pending litigation. To answer this question, we interpreted the *lis pendens* statute in the context of the preexisting common-law doctrine:

Counsel contends that [the *lis pendens* statute] is broader than the general rule, and must constrain us to extend it so as to include all interests acquired by third persons \*906 pending suit, whatever their nature or source. While the language of that section, “no interest can be acquired by third persons in the subject-matter thereof, as against the plaintiff’s title,” is very broad, we are satisfied that it should be construed with reference to the pre-existing equity rule, which it evidently intended to adopt, and the obvious reason and principle behind it.<sup>25</sup>

Because “the scope of the *lis pendens* rule must be confined to the interests and estates sought to be subjected,” we held that it did not extend to “independent and adverse titles.”<sup>26</sup>

[10] [11] [12] Interpreting “good cause” to include a perceived weakness in the merits of the pending action would also be contrary to the purpose of the *lis pendens* statute. We have recognized that “[t]he scope of the [*lis pendens*] rule is determined by its end and purpose.”<sup>27</sup> The *lis pendens* statute serves to hold the property within the court’s jurisdiction until the parties’ rights are finally determined: “ ‘The purpose of the rule as to *lis pendens* is to prevent third persons, during the pendency of the litigation, from acquiring interests in the land which would preclude the court from granting the relief sought.’ ”<sup>28</sup> Here, the district court canceled Kelliher’s notice of *lis pendens* “[b]ased upon the prior rulings of the court finding that defendant Schijohn was an innocent purchaser of property and dismissing it from these proceedings....” Kelliher, however, has not had the opportunity to appeal the dismissal of his quiet title claim. If the court cancels the notice of *lis pendens* and Schijohn conveys the property to a third party, any subsequent appeals by Kelliher would “prove mere idle ceremonies.”<sup>29</sup>

[13] \*907 We conclude that we have jurisdiction over the appeal under the collateral order doctrine. The court’s order canceling the notice of *lis pendens* conclusively determined the validity of the notice and would be effectively unreviewable on appeal from a final judgment. We also determine that the cancellation of the notice is completely separate from the merits of the underlying action. “Good cause” to cancel a notice of *lis pendens* under § 25–531 does not include a consideration of the merits of the underlying action.

## CANCELLATION OF NOTICE

[14] The substantive issue raised by this appeal is whether good cause existed **\*\*726** for the court to cancel the notice of lis pendens. **Kelliher** argues that the court's order was contrary to the purpose of the lis pendens statute and, more broadly, that a court may never cancel a notice of lis pendens if time for appeal remains. Schijohn contends that **§ 25–531** confers on courts a wide discretion and that the order was justified by the dismissal of **Kelliher's** quiet title action and the existence of a prospective buyer. We conclude that there was not good cause to cancel the notice of lis pendens.

As an initial matter, we reject **Kelliher's** argument that a court may never cancel a notice of lis pendens unless the time for appeal has expired. We reach this decision for two reasons. First, the plain language of **§ 25–531** permits an aggrieved person to move to cancel a notice “any time” after the commencement of the action. The lis pendens statute, as amended by the 1887 act, permitted a person to petition for cancellation only after the action was “settled, discontinued or abated.”<sup>30</sup> In 1959, the Legislature removed this language.<sup>31</sup>

Second, a bright-line rule that a court could never cancel a notice of lis pendens if time for appeal remains would extend the lis pendens statute beyond its legislative purpose. Although it is true that the right to appeal usually extends the time for which property is subject to the lis pendens **\*908** doctrine,<sup>32</sup> a court may cancel a notice of lis pendens if the face of the complaint shows that the underlying action does not involve title to real property.<sup>33</sup> **Section 25–531** allows a plaintiff to file a notice of lis pendens only if the action is “brought to affect the title to real property.” This requirement would not be met if, for example, a plaintiff files an action for breach of a land sale contract but the only relief requested in the complaint is damages.<sup>34</sup> In such a case, a notice of lis pendens would not be necessary to permit courts to grant the

relief sought and would needlessly burden the record owner's title.

Here, **Kelliher's** quiet title claim clearly sought to affect title to real property and we hold that good cause to cancel the notice of lis pendens did not exist. In its June 2013 order, the court stated that the notice should be canceled because it had dismissed **Kelliher's** quiet title action against Schijohn. As we explained above, however, the perceived merits of the underlying action are not good cause to cancel a notice while time for appeal remains. In its motion to cancel the notice, Schijohn also stated that it had a buyer who wanted to purchase the property. But neither is the existence of a prospective purchaser who wants to buy the property free of the pending litigation good cause to cancel a notice. The very purpose of the lis pendens statute is to prevent third parties from acquiring interest in the property that would preclude a court from granting the relief sought.<sup>35</sup>

## CONCLUSION

We conclude that we have jurisdiction over the appeal under the collateral order **\*\*727** doctrine and that it was error to **\*909** cancel the notice of lis pendens. If time for appeal remains, the merits of the underlying action affecting the title to real property are not relevant to whether good cause to cancel a notice of lis pendens exists. Nor does the existence of a prospective purchaser of the subject property amount to good cause. Accordingly, we reverse the district court's order canceling **Kelliher's** notice of lis pendens.

REVERSED.

Cassel, J., not participating.

## All Citations

288 Neb. 898, 852 N.W.2d 718

## Footnotes

- 1 [VKGS v. Planet Bingo](#), 285 Neb. 599, 828 N.W.2d 168 (2013).
- 2 *Id.*
- 3 [ML Manager v. Jensen](#), 287 Neb. 171, 842 N.W.2d 566 (2014).
- 4 [Hallie Mgmt. Co. v. Perry](#), 272 Neb. 81, 718 N.W.2d 531 (2006).
- 5 *Id.*
- 6 [Big John's Billiards v. State](#), 283 Neb. 496, 811 N.W.2d 205 (2012).

- 7 See *Suess v. Stapp*, 407 F.2d 662 (7th Cir.1969).
- 8 See *Keith v. Bratton*, 738 F.2d 314 (8th Cir.1984).
- 9 4 Am.Jur.2d *Appellate Review* § 105 (2007).
- 10 *Id.*
- 11 See *Hallie Mgmt. Co. v. Perry*, *supra* note 4.
- 12 See, *U.S. v. Parrett*, 530 F.3d 422 (6th Cir.2008); *Keith v. Bratton*, *supra* note 8; *Chrysler Corp. v. Fedders Corp.*, 670 F.2d 1316 (3d Cir.1982); *Beefy King International, Inc. v. Veigle*, 464 F.2d 1102 (5th Cir.1972); *Suess v. Stapp*, *supra* note 7; *Preston v. United States*, 284 F.2d 514 (9th Cir.1960). See, also, *Hill v. Department of Air Force*, 884 F.2d 1321 (10th Cir.1989).
- 13 See, *Orange Cty. v. Hongkong & Shanghai Banking Corp.*, 52 F.3d 821 (9th Cir.1995); *Demenus v. Tinton 35 Inc.*, 873 F.2d 50 (3d Cir.1989).
- 14 Black's Law Dictionary 1073 (10th ed. 2014).
- 15 *White v. Wensauer*, 702 P.2d 15 (Okla.1985).
- 16 *Sheasley v. Keens*, 48 Neb. 57, 63, 66 N.W. 1010, 1012 (1896), *overruled on other grounds*, *Munger v. Beard & Bro.*, 79 Neb. 764, 113 N.W. 214 (1907).
- 17 See, *Munger v. Beard & Bro.*, *supra* note 16; *Sheasley v. Keens*, *supra* note 16.
- 18 See *id.*
- 19 *Id.*
- 20 1887 Neb. Laws, ch. 92, § 1, p. 645.
- 21 *White v. Wensauer*, *supra* note 15.
- 22 See *id.*
- 23 See 54 C.J.S. *Lis Pendens* § 40 (2010). See, also, *Richard J. Zitz, Inc. v. Pereira*, 965 F.Supp. 350 (E.D.N.Y.1997); *Boca Petroco, Inc. v. Petroleum Realty II*, 292 Ga.App. 833, 666 S.E.2d 12 (2008); *Bonded Concrete Inc. v. Johnson*, 280 A.D.2d 758, 720 N.Y.S.2d 227 (2001); *Utsunomiya v. Moomuku Country Club*, 75 Haw. 480, 866 P.2d 951 (1994); *Jay Jenkins Co. v. Financial Planning & c., Inc.*, 256 Ga. 39, 343 S.E.2d 487 (1986).
- 24 *Merrill v. Wright*, 65 Neb. 794, 91 N.W. 697 (1902).
- 25 *Id.* at 798, 91 N.W. at 699.
- 26 *Id.*
- 27 *Id.* at 797, 91 N.W. at 699.
- 28 *Coffin v. Old Line Life Ins. Co.*, 138 Neb. 857, 865, 295 N.W. 884, 889 (1941). See, *Hadley v. Corey*, 137 Neb. 204, 288 N.W. 826 (1939); *Lincoln Rapid Transit Co. v. Rundle*, 34 Neb. 559, 52 N.W. 563 (1892).
- 29 See *Lincoln Rapid Transit Co. v. Rundle*, 34 Neb. at 566, 52 N.W. at 566.
- 30 1887 Neb. Laws, ch. 92, § 1, p. 645.
- 31 1959 Neb. Laws, ch. 140, § 1, p. 545.
- 32 51 Am.Jur.2d *Lis Pendens* § 67 (2011). See, *State ex rel. Bannister v. Goldman*, 265 S.W.3d 280 (Mo.App.2008); *Zweber v. Melar Ltd., Inc.*, 276 Wis.2d 156, 687 N.W.2d 818 (Wis.App.2004); *Group Purchases, Inc. v. Lance Investments*, 685 S.W.2d 729 (Tex.App.1985). But see, *UFG, LLC v. Southwest Corp.*, 784 N.E.2d 536 (Ind.App.2003); *Kirkley v. Jones*, 250 Ga.App. 113, 550 S.E.2d 686 (2001).
- 33 See, e.g., 54 C.J.S., *supra* note 23, § 32.
- 34 See, e.g., *id.*, § 11.
- 35 See *Coffin v. Old Line Life Ins. Co.*, *supra* note 28.