

# Lis Pendens: What Owners and Claimants Need to Know to Effectively and Legally Protect & Defend Their Real Property Rights

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**Lis pendens can be powerful tools to protect and defend real property rights. The author of this article discusses lis pendens and advises that they must be used properly to effectively protect real property rights while at the same time avoiding unnecessary liabilities.**

To effectively and legally protect and defend their real property rights, owners and property claimants need to know what a lis pendens is and does, what makes a lis pendens enforceable, and what to do about an improperly filed lis pendens that may be clouding title.

Imagine a buyer has a deal to purchase real property that is critical to its next market move. But the seller is now not proceeding to closing, and the situation has become ugly fast. The buyer has heard through the grapevine that the seller has been talking to some of the buyer's competitors about this same key property. In the buyer's view, the seller is blatantly breaching the sales contract—now what? Send demand and file suit for specific performance or breach of the sales contract—sure. But the lawsuit will not likely be resolved overnight, since the seller looks to be up for a fight and may strike a deal with a new purchaser anyway. How can the

buyer protect its interests in the property until the dust settles and the lawsuit is finally resolved? Along with the lawsuit, a lis pendens in most instances should be filed in the real property record to protect and preserve the buyer's claim to the property.

Flip the foregoing scenario, and view it from the owner's perspective. The owner has a completely different understanding of the situation and has determined that the alleged buyer's claims are a leverage tactic, since the owner does not believe there was a valid sales agreement. Now the lis pendens filed by the buyer in connection with the lawsuit is effectively clouding title and making it impossible for the owner to complete a sale of the property, or perhaps, it is thwarting the owner's efforts to obtain a desperately needed loan to be secured by the property. Now what for the owner? Depending on the jurisdiction in which the property is located, the owner may be able to initiate a proceed-

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ing to remove the lis pendens in the underlying lawsuit, which is faster, or the owner may be able to file a separate lawsuit to clear title, which will take longer. Although lis pendens are generally privileged as a matter of law, this traditional notion is shifting in the law, and the owner may be able to seek additional damages, fees, or sanctions, if the lis pendens and related suit are entirely baseless, depending upon location of the property.

Especially vexing are instances in which fraud is linked to the purchase and/or sale of real estate and the implementation of a constructive trust becomes tied into the analysis of whether a lis pendens is valid or enforceable. The issues surrounding lis pendens in these situations can cut both ways for fraud victims attempting to preserve their interest in real estate and for subsequent innocent purchasers (or even lenders) who may end up becoming victims themselves.

### Lis Pendens

“Lis pendens” literally translates from Latin as “suit pending.” A lis pendens, frequently referred to as a “notice of pendency,” is just that—a notice, which is filed in the real property record warning all persons considering taking an interest in certain real property that the property identified is the subject matter of identified litigation. The lis pendens notice preserves the plaintiff’s claim to the real property while the litigation is pursued, since any party that takes an interest in the property after the lis pendens is filed takes such interest subject to the outcome of the litigation noticed. If the plaintiff prevails on the claim to the real property in the litigation, and a judge or jury, for example, finds that the plaintiff has title to the property, rather than the defendant, a purchaser who bought the

property from the defendant after the lis pendens was filed may not have valid title to the property, assuming the lis pendens notice is valid.

The idea is to allow the plaintiff to preserve the claim to the property so that it cannot be interrupted, prolonged, or even mooted by the defendant’s subsequent disposition or encumbrance of the real estate before resolution of the lawsuit, while at the same time protecting would-be innocent purchasers or encumbrancers from unknowingly taking a losing interest in the property. Ultimately, a lis pendens “prevent[s] either party to the litigation from alienating the property in dispute, so as to affect the rights of his opponent.”<sup>1</sup> According to long standing case authority in Texas, “the effect of a statutory lis pendens notice . . . is to put those interested in a particular tract of land on inquiry as to the facts and issues involved in the suit or action concerned.”<sup>2</sup> In short, filing of a lis pendens:

[D]irect[s] all parties desiring to deal with the property involved, either as purchaser or incumbrancer, to the pleadings filed and pending in the case and the record of proceedings had therein, for the purpose of becoming advised as to the facts constituting the claims of the respective parties to such litigation concerning the real estate in question.<sup>3</sup>

The upshot is the subsequent purchaser or lender has the burden to check out the noticed litigation to determine whether it is a good idea to proceed with taking an interest in the property at issue, since there is a risk that they might not be taking a valid interest in the property, despite payment to the seller or funding to the borrower, depending on the future outcome of the noticed suit.

The doctrine of lis pendens originated in the common law, where in many jurisdictions the filing of a lawsuit alone was sufficient to put subsequent purchasers on notice of a

claim to a property. Due to harsh outcomes to subsequent innocent purchasers or lenders, who had no notice of the lawsuit, many states have migrated to statutory lis pendens, requiring the filing and recordation of lis pendens notices in the real property record (typically in the county where the real estate is located) meeting certain specific statutory requirements.<sup>4</sup>

For example, in Texas, the lis pendens notice filed of record must state:

- the style and number, if any, of the proceeding;
- the court in which the proceeding is pending;
- the names of the parties;
- the kind of proceeding; and
- a description of the property affected.<sup>5</sup>

Similar requirements are commonly found in other state's lis pendens statutes.

### Constructive Notice

In many jurisdictions, the fallout to subsequent purchasers can still be harsh since the notice provided by a filed and recorded lis pendens is *constructive notice*, rather than *actual notice*.<sup>6</sup> Lis pendens statutes give litigants a method to constructively notify anyone taking an interest in real property that a claim is being litigated against the property.<sup>7</sup> If a subsequent purchaser or lender has actual notice of litigation concerning title or interest to a property, they will more than likely be bound to the outcome of the litigation, but actual notice of the litigation by a purchaser can be hard to prove.<sup>8</sup> Once a lis pendens has been recorded, it is generally deemed that the entire world is put on notice

of the claim to the property.<sup>9</sup> A subsequent purchaser or lender exercising due diligence, in theory, will have the opportunity at the very least to discover the lis pendens, evaluate the underlying lawsuit, and will be able to then assess the risk of moving forward with the purchase or encumbrance of the real property at issue.

### Lis Pendens: Shield and Sword

Title companies are not likely to insure a transaction (without an exception) when a lis pendens is discovered in the real property record and the identified litigation has not been resolved (or favorably resolved to the grantor). This effect leads to the misconception that lis pendens are liens on real property. They are not liens; rather, lis pendens are only notices that a dispute concerning title or interest to the property may be resolved in the plaintiff's favor. Likewise, a lis pendens is not an injunction, although a lis pendens can assist in maintaining the status quo with respect to a property and can effectively enjoin, or at least slow down, the transfer or encumbrance of the property. However, a lis pendens does not legally prevent disposition of a property nor does it void a conveyance during the pendency of the lawsuit, but rather the interest of the grantor merely passes subject to the determination of the cause.<sup>10</sup> Thus, it is only the practical effect of the recordation of the lis pendens that results in real estate effectively being tied up. In this regard, a lis pendens can be used as a shield and also potentially as a sword, which can lead to abuse of the lis pendens process, as discussed in more detail below.

### Real Property

Traditionally, lis pendens are effective in relation to real property, although some

states apply lis pendens to personal property as well.<sup>11</sup> A lis pendens is effective if the litigation that it notices directly impacts title or interest to the real property at issue. For example, the Texas lis pendens statute provides:

*[D]uring the pendency of an action involving title to real property, the establishment of an interest in real property, or the enforcement of an encumbrance against real property, a party to the action who is seeking affirmative relief may file for record with the county clerk of each county where a part of the property is located a notice that the action is pending.*<sup>12</sup>

. . .

*A recorded lis pendens is notice to the world of its contents. The notice is effective from the time it is filed for record . . .*<sup>13</sup>

The California lis pendens statute likewise provides:

*A party to an action who asserts a real property claim may record a notice of pendency of action in which that real property claim is alleged . . .*<sup>14</sup>

. . .

*“Real property claim” means the cause or causes of action in a pleading which would, if meritorious, affect (a) title to, or the right to possession of, specific real property . . .*<sup>15</sup>

. . .

*From the time of recording the notice of pendency of action, a purchaser, encumbrancer, or other transferee of the real property described in the notice shall be deemed to have constructive notice of the pendency of the noticed action as it relates to the real property . . .*<sup>16</sup>

Many other states have lis pendens statutes similar to these statutory frameworks found in Texas and California.<sup>17</sup>

### Litigation

Litigation can and does occur over whether a claim or suit supporting a lis pendens directly involves or affects title or interest to the property at issue or whether the suit asserts a valid real property claim. Lis pendens

statutes on their face simply do not address all of the myriad disputes that may arise with respect to real property. The validity of a lis pendens will thus often hinge on the facts of the underlying lawsuit and how the claim to the property at issue was worded in a petition or complaint filed in the suit.

Generally, for a lis pendens to be valid, the claim lodged in the underlying lawsuit typically must be for the property itself, rather than only a claim for monetary damages. In Texas, for example, if the property is named and involved in the lawsuit only as a way to satisfy a monetary award, such that the property is merely “collateral” to the claim or suit, the lis pendens generally will not be valid.<sup>18</sup> Whether a property is “collateral” to a lawsuit supporting a lis pendens is subject to debate in case law interpreting lis pendens statutes.

This debate is crystallized in the context of constructive trusts supporting lis pendens. A constructive trust is an equitable remedy asserted in a lawsuit to avoid or undo a defendant’s unjust enrichment.<sup>19</sup> If a defendant wrongfully acquires a property through fraud or other inequitable conduct and would be unjustly enriched by the continued retention of that property, a constructive trust requires that the defendant, who wrongfully holds title to the property, has a duty to convey that title to the rightful owner of the property.<sup>20</sup> Thus, when property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest of the property, equity converts the title holder into a trustee, holding title in trust for the rightful owner.<sup>21</sup>

As such, a plaintiff may assert a claim in a lawsuit seeking the imposition of a constructive trust with respect to a property acquired by the defendant through fraudulent or ineq-

uitable conduct, and the plaintiff may file and record a lis pendens notice concerning the property and the litigation. Whether the lis pendens is valid and enforceable, such that it preserves the plaintiff's claim to the property if the defendant were to subsequently transfer or encumber the property, will be a question decided pursuant to state law applied by appellate courts interpreting the applicable lis pendens statute. Broadly, the way the constructive trust is plead in the lawsuit will help to determine whether title or interest to the property is collateral to the suit or directly involved. Many jurisdictions favor the use of "magic words" in an underlying complaint or petition where the plaintiff makes a claim directly implicating title or interest to the property. For example, a plaintiff might shore up a lis pendens where a constructive trust had been alleged by adding in language to the petition or complaint in the underlying suit alleging that the plaintiff seeks title to and/or seeks to be declared the owner of the subject property in connection with and as a result of the related constructive trust.

### **Enforceability of Lis Pendens Based upon Constructive Trust Claims**

The enforceability of lis pendens based upon constructive trust claims has been extensively considered by a number of Texas courts, including the Texas Supreme Court. For example, in *First National Petroleum Corp. v. Lloyd*,<sup>22</sup> First National and Neftegas sought the imposition of a constructive trust on property purchased with fraudulently obtained funds. Defendants brought a motion to cancel a lis pendens filed on the property at issue, and the trial court granted the motion. First National and Neftegas sought a writ of mandamus, and the Houston appellate court determined the trial court had abused its discretion in ordering the release of the

notice of lis pendens. The court of appeals found that the action brought by First National and Neftegas alleging that defendants diverted funds fell within the Texas lis pendens statute. The court found that the suit involved establishing an interest in the real property that had been purchased with the diverted funds. The court also found it significant that the plaintiff alleged in an amended petition a constructive trust over the property covered by the lis pendens and actually sought to have title conveyed to First National and Neftegas.

Likewise, in *Teve Holdings, Ltd. v. Jackson*,<sup>23</sup> the Houston court of appeals held that where a plaintiff's pleadings sought a constructive trust for a piece of property and prayed that the plaintiff be granted an interest in that property, plaintiff's notice of lis pendens against that property was valid. The plaintiffs in *Teve* alleged fraud and sought the imposition of a constructive trust on the real property purchased with fraudulently obtained funds. The plaintiffs in *Teve* pled that property was purchased by defendants with money that the defendants received as a result of fraud. In holding that the lis pendens was valid, the *Teve* court of appeals found the nature of a constructive trust instructive in reaching its conclusion, returning to the notion that the title holder who wrongfully gains title holds title merely in trust for the rightful owner, the plaintiff.

In *Moss v. Tennant*,<sup>24</sup> the plaintiff had alleged a constructive trust but *did not seek title to or an interest in the property at issue*. The lis pendens was determined to be invalid. The request for the imposition of a constructive trust in *Moss* was more akin to a prayer for a judgment lien, where the plaintiffs were more interested in the proceeds rather than title or interest to property. This result pri-

marily turned on how the plaintiff pled the constructive trust claim in the underlying petition.

Significantly, in *Flores v. Haberman*,<sup>25</sup> which was decided before the *First National* case, the Texas Supreme Court found that “the plaintiffs seek a constructive trust in the purchased properties only to satisfy the judgment they seek against Flores. As such, the interest is no more than a collateral interest in the property.” The plaintiffs alleged that the defendant converted properties and used the proceeds to buy other properties, and thus sought the imposition of a constructive trust. The Texas Supreme Court found the lis pendens ineffective based on the constructive trust because the plaintiffs were seeking to satisfy their monetary judgment against the defendant, rather than seeking the property itself. As such, the court determined that the interest in the property was only collateral and insufficient under the lis pendens statute in Texas.

In *In re Watts*,<sup>26</sup> the intermediate court found that “like the plaintiffs in *Flores*, realtors seek a constructive trust in the property . . . only to satisfy the judgment they seek against Ballow.” In *Watts*, stolen funds, rather than being traced to the purchase of a single property, were used to construct improvements on a property owned by a third party, Tri-Star. The plaintiff in *Watts* did not seek the return of Tri Star’s property because the plaintiff did not have an actual interest in the property itself. The plaintiff was only interested in using the constructive trust as a way to secure a claim for monetary damages against the defendant, hence the lis pendens was found to be invalid.

This body of Texas case law has lead up to the recent decision handed down in *Long Beach Mortgage Company v. Evans*.<sup>27</sup> This

decision, rendered by the Dallas Court of Appeals in 2009, that was implicitly affirmed by the Texas Supreme Court in late 2009, when it denied Long Beach’s petition for review, and most recently in 2010 when the United States Supreme Court likewise denied Long Beach’s petition for writ of certiorari. In this case, Robb Evans was appointed Receiver for TLC American, Inc. in connection with SEC litigation in California. As Receiver, Robb Evans (the “Receiver”) was tasked with recovering assets of the receivership estate on behalf of elderly investors who had been defrauded of millions in a real estate investment scheme centered in California. The Receiver filed suit against James Garro, David Price and others in a federal lawsuit in California, asserting claims for fraud, amongst other claims, and seeking the imposition of a constructive trust on properties purchased with the defrauded funds. The Receiver sought to be deemed the rightful owner of such properties. The Receiver, in the complaint in the California litigation, requested a constructive trust and also sought to be deemed owner of “any other properties” wrongfully purchased by the Defendants.

The Receiver later learned that over \$2.5 million of TLC funds had been transferred into a bank account in Dallas. David Price and his wife, Carol Price, had used \$1 million of these funds to purchase and furnish, in cash, a residential property in Dallas, the Marquette Property. The Receiver then filed a lis pendens in the Dallas County real property records concerning the California litigation and the Marquette Property. The lis pendens was filed on July 23, 2002.

Coincidentally, on the same day the Receiver’s lis pendens was filed for record in Dallas County, on July 23, 2002, David Price and his wife entered a \$400,000 loan, se-

cured by a deed of trust on the Marquette Property, with Long Beach Mortgage Company. Long Beach filed its deed of trust in the real property record weeks later. The Prices defaulted on the full loan on the Marquette Property.

The Receiver ultimately secured judgment against David Price and others in the California litigation. In December 2002, the California federal court awarded the Receiver over \$3.5 million and awarded the Receiver a constructive trust on the Marquette Property. A Texas federal court later divested David Price and his wife, Carol Price, of all title and interest to the Marquette Property and vested full fee simple interest in the Marquette Property in the Receiver.

The Receiver sought to sell the Marquette Property, but could not complete the sale as a result of Long Beach's deed of trust, which clouded title to the property. Long Beach refused to release its lien, and the Receiver filed suit in Dallas County to clear title to the Marquette Property, seeking declaratory judgment that the Receiver's lis pendens was valid and superior and that Long Beach's lien was therefore invalid and of no force or effect concerning the Marquette Property. The Receiver prevailed in the trial court, and Long Beach appealed three times, including to the United State Supreme Court, but each time the trial court's judgment affirming the lis pendens' validity and superiority was either explicitly or implicitly affirmed.

The Dallas Court of Appeals ultimately determined that the lis pendens was supported by the pleadings filed by the Receiver. The court determined that it was not necessary for the Receiver to specifically identify the Marquette Property in the underlying complaint, in light of the catch all language encompassing "other other properties" pur-

chased by the defendants. The court noted that it did not find any case authority requiring such a specific description.

Significantly, the court acknowledged that the suit on which a lis pendens is based must claim a direct interest in real property, not a collateral one, finding that the property against which the lis pendens is filed must be the subject matter of the underlying lawsuit. The court found that the Receiver's pleadings governed whether the suit sought to establish an interest in the real property involved, entitling the Receiver to file a lis pendens. The court determined that where the pleadings seek a constructive trust for property and pray that an interest be granted in that property, the notice of lis pendens against that property is valid. Harkening back to the catchall phrasing used by the Receiver in his complaint, the court found that because the Receiver sought a constructive trust to obtain a conveyance of an interest in the real property (as the rightful owner), and not merely an interest in judgment proceeds, the Receiver's request for a constructive trust thus sought a direct interest in the real property, validating the Receiver's lis pendens, which was superior to Long Beach's lien.

Clearly, the Texas courts have walked a relatively fine line in determining the validity of lis pendens based upon constructive trusts, which can be used either as remedy to return property to a rightful owner, in the sense of a traditional equitable trust, or as a vehicle for a judgment lien. Similar close shaves have been played out in other jurisdictions, and the analysis courts perform is driven by particular state law and the specific circumstances of a case and the nature and extent of the claims supporting the lis pendens.

Reliance upon a plaintiff's pleadings to

support a lis pendens has been criticized, since this policy allows parties to use those “magic words” concerning title, interest, and conveyance, even if their intent is to deliberately and wrongly tie up property to another party’s detriment. Some protections do exist in the statute to ward off this sort of abuse to some degree.

### Statutory Protections

To thwart abuse of lis pendens, for example, Tex. Prop. Code Ann. § 12.008 provides for removal of a lis pendens upon posting of a bond by the movant seeking cancellation of the lis pendens. The protection offered by the lis pendens is then replaced with some other form of security provided by the movant. To address the more egregious and blatant abusive filings of lis pendens with no basis or valid claim, the Texas legislature recently enacted Tex. Prop. Code Ann. § 12.0071, applicable to lis pendens filed after September 1, 2009, to provide a more direct route for expunging such invalid lis pendens, without having to post a bond. This new statutory provision provides that a motion to expunge a lis pendens must be granted if (1) the pleading on which the notice is based does not contain a real property claim; (2) the claimant fails to establish by a preponderance of the evidence the probable validity of the real property claim; or (3) the person who filed the notice for record did not serve a copy of the notice on each party entitled to a copy under Section 12.007(d) [mandating service on parties to proceeding of notice of filing of a lis pendens within three days from filing].” As such the plaintiff must show that title or interest to the property is involved in the litigation, plus the plaintiff must make an evidentiary showing that, more likely than not, this claim is valid, in addition to meeting notice service require-

ments, to allow the other parties to the suit the opportunity to file a motion to cancel or expunge. Once a lis pendens has been expunged under this provision, it no longer has any preserving notice effects with respect to subsequent disposition of the property at issue. This new provision of Texas law is similar to a California statute, but California has even more stringent protections that require the plaintiff seeking an interest in the property in the litigation, rather than the party seeking cancellation, to post bond in the face of a motion for removal.<sup>28</sup>

### Damages

Additional damages for the filing of a lis pendens are still limited, since lis pendens are largely considered privileged as a communication published in the court of a judicial proceeding.<sup>29</sup> The same privilege rule traditionally applied in California.<sup>30</sup> But the California Civil Code was amended to expressly provide that a lis pendens is not privileged unless it identifies an action that affects title or right to real property as required by law.<sup>31</sup> The *Palmer v. Zaklama* decision,<sup>32</sup> relying on this provision, determined that a lis pendens, expunged because the underlying lawsuit does not allege a real property claim or a probable valid real property claim, may support a claim and damages for slander of title. Therefore, the view that lis pendens are absolutely privileged is shifting.

### Conclusion

Claimants should be cautious about the possibility of drawing a motion to expunge, or even a separate lawsuit to clear title, with the filing of a less than proper lis pendens. Doing so, may open claimants up to liability in the form of potential additional damages, attorneys’ fees, and possibly sanctions, if there is no valid basis for the filing of a lis

pendens and/or the related suit. Those faced with a potentially wrongful lis pendens tying-up property have the option of removal proceedings based upon applicable state law and have the ability to fight back abusive lis pendens to some degree. Lis pendens can be powerful tools to protect and defend real property rights, but they should be used properly to effectively protect those rights while at the same time avoiding unnecessary liabilities.

**NOTES:**

<sup>1</sup>*Black v. Burd*, 255 S.W.2d 553, 555 (Tex. Civ. App. Fort Worth 1953), writ refused n.r.e..

<sup>2</sup>*Kropp v. Prather*, 526 S.W.2d 283, 287 (Tex. Civ. App. Tyler 1975), writ refused n.r.e., (Dec. 10, 1975).

<sup>3</sup>*Hexter v. Pratt*, 283 S.W. 653, 655 (Tex. Civ. App. Dallas 1926), writ granted, (Oct. 14, 1926) and aff'd, 10 S.W.2d 692 (Tex. Comm'n App. 1928).

<sup>4</sup>See, e.g., Tex. Prop. Code Ann. §§ 12.007, 13.004; N.J. Stat. Ann. 2A:15-6; Wis. Stat. Ann. § 840.10 (1)(a); Conn. Gen. Stat. § 52-325; La. Code Civ. Proc. Ann. art. 3751; Fla. Stat. Ann. § 48.23; Ga. Code Ann. § 44-14-610; N.Y. Civ. Prac. Law and Rules 6501; Cal. Civ. Proc. Code § 405, et seq.

<sup>5</sup>Tex. Prop. Code Ann. § 12.007(b).

<sup>6</sup>See, e.g., Tex. Prop. Code Ann. § 12.007(b); Cal. Civ. Proc. Code § 405.24.

<sup>7</sup>*Long Beach Mortg. Co. v. Evans*, 284 S.W.3d 406, 414 (Tex. App. Dallas 2009), reh'g overruled, (June 17, 2009) and review denied, (Nov. 20, 2009) and cert. denied, 130 S. Ct. 3470, 177 L. Ed. 2d 1056 (2010).

<sup>8</sup>See, e.g., Tex. Prop. Code Ann. § 13.004(b).

<sup>9</sup>See, e.g., Tex. Prop. Code Ann. § 12.007(a).

<sup>10</sup>*Cherokee Water Co. v. Advance Oil & Gas Co.*, 843 S.W.2d 132, 135 (Tex. App. Texarkana 1992), writ denied, (Mar. 31, 1993).

<sup>11</sup>See, e.g., Fla. Stat. Ann. § 48.23.

<sup>12</sup>Tex. Prop. Code Ann. § 12.007(a).

<sup>13</sup>Tex. Prop. Code Ann. § 13.004(a).

<sup>14</sup>Cal. Civ. Proc. Code § 405.20.

<sup>15</sup>Cal. Civ. Proc. Code § 405.4.

<sup>16</sup>Cal. Civ. Proc. Code § 405.24.

<sup>17</sup>See, e.g., N.J. Stat. Ann. 2A:15-6; Wis. Stat. Ann. § 840.10 (1)(a); Conn. Gen. Stat. § 52-325; La. Code Civ. Proc. Ann. art. 3751; Fla. Stat. Ann. § 48.23; Ga. Code Ann. § 44-14-610; N.Y. Civ. Prac. Law and Rules 6501.

<sup>18</sup>See *In re Jamail*, 156 S.W.3d 104, 107 (Tex. App. Austin 2004).

<sup>19</sup>See *Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905 (Tex. App. Houston 1st Dist. 1988); *Newby v. Enron Corp.*, 188 F. Supp. 2d 684, 703, Fed. Sec. L. Rep. (CCH) P 91663 (S.D. Tex. 2002).

<sup>20</sup>*Teve Holdings*, supra.

<sup>21</sup>See *American Nat. Bank and Trust Co. of Rockford, Ill. v. U.S.*, 832 F.2d 1032, 1039, 87-2 U.S. Tax Cas. (CCH) P 13738, 60 A.F.T.R.2d 87-6164 (7th Cir. 1987); *Newby*, supra.

<sup>22</sup>*First Nat. Petroleum Corp. v. Lloyd*, 908 S.W.2d 23 (Tex. App. Houston 1st Dist. 1995).

<sup>23</sup>*Teve Holdings Ltd. v. Jackson*, 763 S.W.2d 905 (Tex. App. Houston 1st Dist. 1988).

<sup>24</sup>*Moss v. Tennant*, 722 S.W.2d 762 (Tex. App. Houston 14th Dist. 1986).

<sup>25</sup>*Flores v. Haberman*, 915 S.W.2d 477 (Tex. 1995).

<sup>26</sup>*In re Watts*, 2003 WL 204879 (Tex. App. Houston 1st Dist. 2003) (not designated for publication).

<sup>27</sup>*Long Beach Mortg. Co. v. Evans*, 284 S.W.3d 406 (Tex. App. Dallas 2009), reh'g overruled, (June 17, 2009) and review denied, (Nov. 20, 2009) and cert. denied, 130 S. Ct. 3470, 177 L. Ed. 2d 1056 (2010).

<sup>28</sup>Cal. Civ. Proc. Code § 405.31, et seq.

<sup>29</sup>See *Kropp v. Prather*, 526 S.W.2d 283 (Tex. Civ. App. Tyler 1975), writ refused n.r.e., (Dec. 10, 1975); *Hauglum v. Durst*, 769 S.W.2d 646 (Tex. App. Corpus Christi 1989).

<sup>30</sup>*Manhattan Loft, LLC v. Mercury Liquors, Inc.*, 173 Cal. App. 4th 1040, 1050, 93 Cal. Rptr. 3d 457 (2d Dist. 2009), as modified, (May 18, 2009) and review denied, (Aug. 12, 2009); *Salma v. Capon*, 161 Cal. App. 4th 1275, 1285, 74 Cal. Rptr. 3d 873 (1st Dist. 2008); *Sylmar Air Conditioning v. Pueblo Contracting Services, Inc.*, 122 Cal. App. 4th 1049, 1056, 18 Cal. Rptr. 3d 882 (2d Dist. 2004).

<sup>31</sup>Cal. Civ. Code § 47(b)(4).

<sup>32</sup>*Palmer v. Zaklama*, 109 Cal. App. 4th 1367, 1 Cal. Rptr. 3d 116 (5th Dist. 2003).