

2A:15-7

LEGISLATIVE HISTORY CHECKLIST

(Defendants - notice of lis pendens - require service)

NJSA 2A:15-7

LAWS 1982

CHAPTER 200

Bill No. S918

Sponsor(s) Perskie

Date Introduced Feb. 1, 1982

Committee: Assembly Judiciary, Law, Public Safety & Defense

Senate Judiciary

Amended during passage Yes

Senate Committee Substitute (OCR) enacted. Amendments denoted by asterisks.

Date of Passage: Assembly June 21, 1982 Re-enacted 12-8-82

Senate May 24, 1982 Re-enacted 11-8-82

Date of approval Dec. 13, 1982

Following statements are attached if available:

Sponsor statement	Yes	Yes
Committee Statement: Assembly	Yes	Yes
Senate	Yes	No
Fiscal Note	Yes	No
Veto Message	Yes	No
Message on signing	Yes	No

Following were printed:

Reports	Yes	No
Hearings	Yes	No

Case, referred to in sponsor's statement:
Chrysler Corp. v. Fedders Corp., 519 F. Supp. 1282 (1981),
reversed by 670 F.2d. 1316 (1982)

6/22/81

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JUL 1 1982
LEGISLATIVE HISTORY
ADVISORY

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12-13-82

[OFFICIAL COPY REPRINT]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 918

STATE OF NEW JERSEY

ADOPTED MAY 10, 1982

AN ACT concerning notice of lis pendens and amending N. J. S.
2A:15-7.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2A:15-7 is amended to read as follows:

2 2A:15-7. a. **[From]** *In an action to enforce or declare rights in,*
3 *or concerning or for partition of, real estate wherein plaintiff's*
4 *claim arises out of a written instrument, which instrument either*
5 *is executed by defendant and identifies such real estate or appears*
6 *of record with respect to the title thereto, from and after the filing*
7 *of a notice of lis pendens, any person claiming title to, interest in*
8 *or lien upon the real estate described in the notice through any*
9 *defendant in the action as to which the notice is filed shall be*
10 *deemed to have acquired the same with knowledge of the pendency*
11 *of the action, and shall be bound by any judgment entered therein*
12 *as though he had been made a party thereto and duly served with*
13 *process therein.*

14 b. *In an action other than one specified in subsection a. of this*
15 *section, if a notice of lis pendens is filed, that notice shall have the*
16 *same effect as provided in subsection a. until the entry of a*
17 *determination by the court pursuant to this subsection. When a*
18 *notice of lis pendens is filed in such an action, the plaintiff shall,*
19 *within three days after the filing of the notice of lis ***[pendens]****
20 **pendens*, serve upon the defendants ***[and]*** *a copy of the notice*
21 *of lis pendens and of the complaint. Any party claiming an interest*
22 *in the real estate affected by the notice of lis pendens may, at any*
23 *time thereafter,* file with the court*, in accordance with the Rules*
24 *Governing the Courts of the State of New Jersey except as other-**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate amendments adopted in accordance with Governor's recommenda-
tions October 18, 1982.

25 *wise provided herein,* a motion for a determination as to whether*
26 *there is a probability that final judgment will be entered in favor of*
27 *the plaintiff sufficient to justify the filing * or continuation* of the*
28 *notice of lis pendens. The plaintiff shall bear the burden of estab-*
29 *lishing such probability. * [Said motion shall be heard on 10 days*
30 *notice to the defendant and shall include a copy of the complaint*
31 *and a verification of the facts concerning the claim of interest.*
32 *Opposing proofs, if any, shall be served and filed three days prior to*
33 *the return day. For good cause the court may adjourn the return*
34 *day but not for more than seven days.] * The court shall, after hear-*
35 *ing and within 10 days, enter a determination as to whether there is*
36 *a sufficient probability that final judgment will be entered in favor*
37 *of the plaintiff. If the court determines that there is a sufficient*
38 *probability of final judgment in favor of the plaintiff, the notice of*
39 *lis pendens shall be continued of record and shall have the same*
40 *effect as provided in subsection a. If the court fails so to determine,*
41 *the court shall forthwith order the notice of lis pendens discharged*
42 *of record.*

1 2. This act shall take effect 60 days following enactment and shall
2 apply to all actions instituted after that date.

SENATE, No. 918

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1982

By Senator PERSKIE

Referred to Committee on Judiciary

AN ACT concerning notice of lis pendens and supplementing Title 2A
of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. a. Within 7 days after a notice of lis pendens is filed, the
2 plaintiff shall serve upon the defendant a copy of the notice of
3 lis pendens if it has not previously been served upon him.

4 b. The notice shall specify the title of the action and general
5 object thereof; a description of the affected real estate and the
6 time within which defendant is required to move for dismissal or
7 modification of the notice and the name and address of the attorney
8 or party upon whom the motion is required to be served.

9 c. Service of the notice upon a defendant who has previously
10 appeared in the action shall be made as provided in the Rules
11 Governing the Courts of the State of New Jersey, upon a defendant
12 who has not previously appeared in accordance with the rules, or
13 upon any defendant, as the court by order directs. If service cannot
14 be made except by publication, a copy of the notice of lis pendens
15 need not be served, but plaintiff shall furnish defendant or his
16 attorney with a copy thereof within 5 days after written request
17 therefor.

1 2. A defendant may apply to the court for an order discharging
2 the notice of lis pendens. Such motion shall be freed within 20
3 days after personal service of the notice of lis pendens if service is
4 made within this State, or within 35 days after service of the notice
5 of lis pendens if service is made outside of this State or by regis-
6 tered or certified mail, or within 35 days after the publication if
7 service is made by publication alone, or within such time as has
8 been fixed by order of the court.

1 3. a. No motion by the defendant to discharge the notice of lis
2 pendens shall constitute a general appearance. No objection to

3 notice of lis pendens raised by a defendant in such a motion is
4 waived by being joined with an objection to the complaint as to
5 whether it states a claim upon which relief can be granted, or with
6 any other objection.

7 b. Upon such motion, proof may be presented by affidavits,
8 depositions, or oral testimony. The plaintiff shall have the burden
9 of establishing, by a preponderance of the evidence, (1) the filing
10 of the notice of lis pendens is necessary to protect the plaintiff's
11 interest and that the filing of the notice does not cause an undue
12 hardship on the defendant; (2) there are statutory grounds for
13 filing the notice of lis pendens and; (3) there is real property of the
14 defendant at a specific location within this State which is subject to
15 the notice of lis pendens.

16 c. The court may allow amendments and the submission of addi-
17 tional affidavits or other proof to sustain the notice of lis pendens.
18 All questions of fact and law shall be determined by the court with-
19 out a jury.

20 d. If the court finds that the notice of lis pendens should not
21 have issued, it shall order it discharged. If it finds that the notice
22 of lis pendens is defective, it may order it discharged or corrected.

23 e. The action shall not abate by reason of the discharge of a
24 notice of lis pendens and the court may order the issuance of other
25 process or a new notice of lis pendens as the circumstances require.

1 4. This act shall take effect 30 days following enactment.

STATEMENT

A lis pendens statute allows a plaintiff in a lawsuit to file a notice warning potential buyers that title to certain property is in litigation. In a recent federal district court opinion, New Jersey's lis pendens statute was found unconstitutional because it did not require timely notice to the defendants of such filing and because it did not permit the defendant an opportunity to challenge the legitimacy of the filing of a lis pendens notice. This bill attempts to cure those deficiencies in New Jersey's lis pendens statute by requiring service of the notice of lis pendens on the defendant and affording the defendant an opportunity to challenge that notice.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
SENATE, No. 918

STATE OF NEW JERSEY

DATED: JUNE 10, 1982

A notice of lis pendens is a legal notice for the purpose of warning all persons that the title to certain real property is in litigation and that if a person purchases or takes a lien on the defendant's interest in the same, he is in danger of being bound by an adverse judgment. Practically, the filing of lis pendens has a restrictive effect during pendency of the litigation on the ability of the defendant to sell or encumber the property.

The bill is designed to prevent the unfair use of notices of lis pendens for the purpose of creating hardship or exerting coercion on real estate owners desiring to sell or encumber their property where the alleged interest of the plaintiff in the property is uncertain or problematical. The bill provides that if the plaintiff's action is not one to enforce or declare rights arising out of a recorded written instrument identifying the real estate rights in the property of record, he should be required to show the probability of his success in the action in order for the lis pendens notice to continue.

Recent cases on both the federal and state level have expressed concern over the lack of procedural safeguards for a defendant whose property has been subjected to a notice of lis pendens in a case where the plaintiff did not have a recorded interest in the property. These courts have recommended a hearing requiring the plaintiff to show at least minimal merit for his claim, as is required of a plaintiff in attachment proceedings under present court rules. This bill parallels the procedural requirements in attachment proceedings.

The committee emphasizes that it is its intent that the nature of the proofs considered at the hearing be handled by the court without undue formal restrictions.

SENATE JUDICIARY COMMITTEE
STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 918

STATE OF NEW JERSEY

DATED: MAY 6, 1982

A notice of lis pendens is a legal notice filed for the purpose of warning all persons that the title to certain real property is in litigation and that if a person purchases or takes a lien on the defendant's interest in the same, he is in danger of being bound by an adverse judgment.

This bill is designed to prevent the use of notices of lis pendens unfairly to create hardship or exert coercion on real estate owners desiring to sell or encumber their property where the claimed interest of the plaintiff in the property is uncertain or problematical. The thesis of the bill is that if plaintiff's claim does not arise out of an instrument signed by the defendant identifying the real estate in question or out of a record title, he should be required soon after the filing of the notice of lis pendens to show the probability of his success in the action in order for the notice to continue to exert its normal restrictive effect during pendency of the action on the ability of the defendant to sell or encumber the property.

Recent cases on both the federal and state level have expressed concern over the lack of procedural safeguards for a defendant whose property has been subjected to a notice of lis pendens in a case where the plaintiff did not have a recorded interest in the property. These courts have recommended a hearing requiring the plaintiff to show at least minimal merit for his claim, as is required of a plaintiff in attachment proceedings under present court rules. This bill parallels the procedural requirements in attachment proceedings, but these requirements apply only where the action is not one to enforce or declare rights arising out of a recorded written instrument identifying the real estate or rights in the property of record. If the action fits that description, the notice of lis pendens retains its legal effect as heretofore without the necessity of a preliminary hearing and showing of merit.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 16, 1982

SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 918

To the Senate:

Pursuant to Article V, Section I, paragraph 14 of the Constitution, I herewith return the Senate Committee Substitute for Senate Bill No. 918 with my objections, for reconsideration.

This bill requires service of a notice of lis pendens on all defendants in an action to enforce or declare rights to real estate, and provides for an automatic preliminary hearing testing that notice except where the plaintiff claims through a written instrument executed by a defendant or where the plaintiff's interest appears of record with respect to the title. The reason for this bill is that the present New Jersey statute does not require timely notice to the defendant of such filing and does not permit the defendant an opportunity to challenge the legitimacy of the filing of a lis pendens. Under the current system, a notice can be discharged only after a decision on the merits of the case or where it is determined that the action is a judgment for money or damages only. It is believed that this is unfair to defendants as their land may be burdened by a notice for a substantial period of time because of a claim that has only slight merit.

I agree that, with the exception of those claims derived from a written instrument, a procedure that provides for a preliminary review of a notice of lis pendens is salutary. It provides an additional, hopefully less burdensome, remedy to a defendant without compromising the efficacy of the lis pendens concept. I do not believe, however, that a mandatory preliminary hearing in all such cases is the optimal solution to the problem presented by the current statute. It has the potential to lead to an unnecessary expenditure of judicial time, and unnecessary legal expenditures by plaintiffs and defendants. I believe that an optional hearing procedure, activated by the motion of an affected defendant, will be as effective in ameliorating the inequity in the current statute as the mandatory hearing procedure. Such an optional procedure would, at the same time, minimize or eliminate the expenditure of unnecessary resources.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

Page 2

Accordingly, I herewith return the Senate Committee Substitute for Senate Bill No. 918 for reconsideration and recommend that it be amended as follows:

- Page 1, Section 1, Line 19: DELETE "pedens" INSERT "pendens"
- Page 1, Section 1, Line 20: After "defendants" DELETE "and"
INSERT "a copy of the notice of lis pendens and of the complaint. Any party claiming an interest in the real estate affected by the notice of lis pendens may, at any time thereafter,"
- Page 1, Section 1, Line 20: After "court" INSERT ", in accordance with the Rules Governing the Courts of the State of New Jersey except as otherwise provided herein,"
- Page 1, Section 1, Line 22: After "filing" INSERT "or continuation"
- Page 1, Section 1, Line 24: DELETE "Said motion shall be heard on 10 days"
- Page 2, Section 1, Lines 25-28: DELETE in their entirety
- Page 2, Section 1, Line 29: DELETE "day but not for more than 7 days."

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards

Chief Counsel to the Governor

OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE
MONDAY, DECEMBER 13, 1982

CONTACT: PAUL WOLCOTT

Governor Thomas H. Kean has signed the following bills:

A-1183, sponsored by Assemblyman Martin Herman (D-Salem), makes it a fourth degree crime for a parent who has not been awarded custody of a child to remove the child to another state. The bill makes possible the application of extradition statutes.

S-918, sponsored by Senator Steven Perskie (D-Atlantic), requires timely notice of lis pendens to defendants in real estate actions; lis pendens allows plaintiffs to warn potential real estate buyers that a title is in litigation.

AJR-60, sponsored by Assemblywoman Barbara Kalik (D-Burlington), declares the week of October 17 through October 23 as Business Women's Week in the State of New Jersey.

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