



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**MARIAN B. FARRIS v. ADVANTAGE CAPITAL CORPORATION,  
CV-07-0114-CQ**

**PARTIES AND COUNSEL:**

*Plaintiff:* Marian B. Farris (“Farris”) is represented by Richard R. Thomas and Lori A. Curtis of Davis and Miles, PLLC.

*Defendant:* Advantage Capital Corporation (“Advantage Capital”) is represented by Janet Weinstein and James D. Burgess of Fennemore Craig.

**FACTS:**

[The Arizona Supreme Court has been asked to decide an issue of law certified to this Court by a federal court. That court has provided a summary of the allegations in the lawsuit pending in federal court, but no findings of fact have been made. This summary is based on allegations not yet proven.]

Farris alleges that Advantage Capital wrongfully recorded a Notice of Lis Pendens in violation of A.R.S. § 33-420 in connection with a suit by Advantage Capital alleging a fraudulent transfer of real property to Farris by her son, Charles L. Bolton, III, and her ex-daughter-in-law, Brenda Bolton. Advantage Capital asserts that its fraudulent transfer action is an action “affecting title to real property” within the meaning of A.R.S. § 12-1191, and that Advantage Capital was authorized to record the Notice of Lis Pendens.

Charles Bolton is a former registered representative of Advantage Capital, a licensed securities brokerage firm. On December 19, 2005, Advantage Capital terminated Mr. Bolton. In or about January 2006, two of Advantage Capital’s customers complained that \$649,000 was missing from their accounts that Mr. Bolton serviced. Based upon this alleged misconduct and upon Mr. Bolton’s alleged violation of contractual and other duties to Advantage Capital, Advantage Capital filed a Verified Complaint on March 31, 2006, in the Arizona Superior Court.

In 2002, the Boltons bought a residence in Scottsdale, Arizona (the “Windrose Drive Property”) and held it as community property. In transactions dated January 22, 2003, March 23, 2004, and April 21, 2004, Mr. and Mrs. Bolton transferred the Windrose Drive Property between themselves, resulting in Mrs. Bolton purporting to hold the Windrose Drive Property as her sole and separate property. On September 23, 2005, the Boltons sold their Windrose Drive home to Mr. Bolton’s mother, Farris, for \$1,050,000. Advantage Capital makes no claim that it is entitled to claim title to the Windrose Drive Property.

On March 31, 2006, Advantage Capital filed a Verified Complaint in the Arizona Superior Court alleging seven claims for relief against Mr. Bolton, his then-wife, Brenda L. Bolton, and Farris. Advantage Capital's Verified Complaint against Farris alleges a claim for fraudulent transfer under A.R.S. §§ 44-1001 to -1010. Advantage Capital seeks damages and a judgment voiding Mr. and Mrs. Bolton's allegedly fraudulent transfer to Farris of the Windrose Drive Property.

On March 31, 2006, Advantage Capital recorded a Notice of Lis Pendens on the Windrose Drive Property. A.R.S. § 12-1191 authorizes the filing of a lis pendens notice "[i]n an action affecting title to real property." Advantage Capital has never had title to the property and is not seeking title to the Windrose Drive Property, but only seeks to void the transfer to Farris and collect damages from her.

Farris alleges that she lost a sale on the Windrose Drive Property on April 3, 2006 for \$1,150,000, because of the Notice of Lis Pendens filed by Advantage Capital. Farris subsequently filed this lawsuit seeking removal of the lis pendens and damages under A.R.S. § 33-420.

#### **ISSUE:**

Whether a fraudulent transfer action under A.R.S. § 44-1001 *et seq.*, which seeks to void the transfer of real property, is an action "affecting title to real property" within the meaning of the *lis pendens* statute, A.R.S. § 12-1191, where the action is brought by a creditor of the transferor to make the real property available for the collection of a debt or judgment.

#### **Definitions (adapted from *Black's Law Dictionary*):**

*Notice of Lis Pendens:* A notice filed for the purpose of warning all persons that the title to certain property is in litigation, and that, if they purchase the defendant's claim to the title, they are in danger of being bound by an adverse judgment.

*Fraudulent Transfer or Fraudulent Conveyance:* A transfer or conveyance of property, the object of which is to defraud a creditor, or hinder or delay him, or to put such property beyond his reach.

#### **Relevant Statutes:**

A.R.S. § 12-1191 provides, in pertinent part:

A. In an action affecting title to real property, the plaintiff at the time of filing the complaint, or thereafter, and the defendant at the time of filing his pleading when affirmative relief is claimed in such pleading, or thereafter, may file in the office of the recorder of the county in which the property is situated a notice of the pendency

of the action or defense. . . .

B. The recorder shall file the notice and record and index it in the names of the parties to the action, and thereafter a purchaser or encumbrancer of the property affected shall be held to have constructive notice of the pendency of the action and claims therein made. . . .

A.R.S. § 33-420 provides, in pertinent part:

A. A person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such a claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

B. The owner or beneficial title holder of the real property may bring an action pursuant to this section in the superior court in the county in which the real property is located for such relief as is required to immediately clear title to the real property as provided for in the rules of procedure for special actions. This special action may be brought based on the ground that the lien is forged, groundless, contains a material misstatement or false claim or is otherwise invalid. The owner or beneficial title holder may bring a separate special action to clear title to the real property or join such action with an action for damages as described in this section. In either case, the owner or beneficial title holder may recover reasonable attorney fees and costs of the action if he prevails.

\* \* \* [sections C – E omitted]

A.R.S. § 44-1007(A) provides, in pertinent part:

A. In an action for relief against a transfer or obligation under this article, a creditor, subject to the limitations in §§ 44-1008 and 44-1009, may obtain one or more of the following remedies:

\* \* \*

2. Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

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