

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 23-089

Judge:

Complainant:

ORDER

April 20, 2023

The Complainant alleged a superior court judge failed to follow the law when she decided and denied a request for injunctive relief in a civil case.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission members Denise K. Aguilar and Michael J. Brown did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on April 20, 2023.

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Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2023-089

COMPLAINT AGAINST A JUDGE

Name: Judge's Name:

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

A Verified Complaint in a SPECIAL ACTION and An Application for an Order to Show Cause (to expunge an invalid lis pendens recorded by the Defendants) were filed in Superior Court in _____ The recorded lis pendens has destroyed my family's (and my children's) finances due to the fact that buyers walked away from the sale of my property.

On _____, there was a remote hearing in which Judge _____ apologized to the Defendants for having to hold a hearing on the matter(Why the apology?).

The hearing was scheduled for, and took place on _____ Judge _____ reserved her decision at the time and made an "Under Advisement" Ruling.

The under advisement (decision?) made by Judge _____ on _____ was that the Defendants were allowed to record the lis pendens against my property because the Defendants had made a claim in the underlying case requesting "forfeiture" of my Interest in a shared well. **FORFEITURE IS A CLAIM WHICH CAN ONLY BE BROUGHT BY THE STATE, UNDER TITLE 13.**

DUE TO THIS FACT, On _____, I filed a Motion to Alter, Amend, or Correct the _____ decision because of **OVERSIGHT, OMISSION, OR ERROR.** (Further, claims for forfeiture can only be brought after a Criminal Conviction. **NO CRIME WAS EVER COMMITTED or ALLEGED**). Judge _____ misused criminal forfeiture laws against me: **IT IS NOT** appropriate, for the Judge in this civil procedure to uphold an invalid lis pendens recorded on my property; to hold it hostage for my neighbors who do not have any rights to my property. This is a gross violation of law and my constitutional right to be informed of, charged, or even be accused of a crime.

On _____, Judge _____ issued a Minute Entry stating that she had not issued a "Judgement" and for this reason, **SHE CONSIDERED** my Motion to Alter, Amend, or Correct as a Motion for Reconsideration, and then denied it without any explanation as to why.

On _____, I filed a Notice of Objection to both the ruling of _____ and the _____ Minute Entry, stating plainly that the **JUDGE HAD NOT FOLLOWED THE RULES OF THE COURT.**

_____ : Judge _____ issued another Minute Entry claiming to have received the Notice of Objection. **SHE STATED THT THE COURT WILL TAKE NO ACTION,** even though in Special Actions, by rule, she is required to issue a Judgement.

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JUDICIAL MISCONDUCT: MALFEASANCE

1. The Rules for Special Actions (Rule 6) Require that a Judgement be entered. Judge clearly stated in her Minute Entry that she did not issue a "Judgement"

2. When a party (Me) files a Motion to Amend, Alter, or Correct, that is what it is. Rule 60 states that The Court MUST correct decisions which are erroneous. Rule 54(b) states that the decision of is not final because not all claims were adjudicated.

AS A RESULT OF THE JUDGE'S ACTIONS AND INACTIONS, THE INVALID LIS PENDENS REMAINS IN PLACE AND MY FINANCIAL INTERESTS ARE NEGATIVELY IMPACTED.

Attached to this complaint are the Judicial under advisement ruling, Judge Minute Entries, the Motion to Amend, Alter, or Correct, and the Notice of Objection.

For the reasons above, I request Judge to be removed from the bench, because she is in my opinion, unfit for the position entrusted to her. Judge has no regard for our most basic laws and rights of individuals, which includes contitutional rights. She applies criminal forfeiture laws to individuals to deprive them of their assets and bring devastation to families with children in civil cases, which can only be brought by the state, and not by individuals. A simple google search revelas that there are extremely serious concerns about Judge in the community with pages and pages of complaints similar to mine against this despicable so-called judge. I think a qualified and independant review panel should be set up by the state or the county to review her cases with the purpose of compensating her victims.

COURT OF ARIZONA
COUNTY

CLERK OF THE COURT

HONORABLE

Deputy

v.

UNDER ADVISEMENT RULING

Pending before the Court is Plaintiff's Verified Complaint for Special Action/Injunctive Relief and Application for Order to Show Cause, both filed . Plaintiff filed this case pursuant to A.R.S. § 33-420 and sought all relief permitted by that statute. The Court has considered the parties' filings, as well as the evidence that was admitted at the evidentiary hearing held on . The Court has further considered the parties' arguments, the

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statutory framework, as well as relevant case law. The Court therefore enters the following findings of fact, conclusions of law, and ruling:

The parties in this case own parcels of land that are part of a well agreement and right-of-way easement. Plaintiff is the named defendant in (the “underlying case”), and Defendants in this case (and) are the plaintiffs in that case. Defendants filed the underlying case in justice court in , and the case was transferred to County Superior Court in . After a minute entry issued by the judge in the underlying case, Defendant recorded a Notice of Lis Pendens regarding the underlying case. The recordation occurred in Plaintiff then initiated this lawsuit. This case was originally assigned to the same Division assigned to the underlying case, but it was transferred to undersigned upon the filing of a notice of change of judge as of right.

In this case, Plaintiff challenges the Notice of Lis Pendens that was filed under A.R.S. § 33-420. Before considering that statute, however, the Court considers A.R.S. § 12-1191, Arizona’s *lis pendens* statute. A.R.S. § 12-1191(A) provides in pertinent part:

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 the defendant’s 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.

The *lis pendens* statute is designed to give notice of claims to those with an interest in real property whose interest may be affected by the outcome of the litigation. *Evergreen West, Inc. v. Boyd*, 167 Ariz. 614, 620 (App. 1991). “In order to prevail in a statutory special action to remove a lis pendens, the plaintiff must establish that the defendant 1) has caused to be recorded a document, 2) in which he claims an interest in, or a lien or encumbrance against, real property, 3) which is forged, groundless, contains a material misstatement or false claim or is otherwise invalid.” *Id.* at 619.

“The crucial question, in determining the propriety of a *lis pendens*, is whether the underlying action ‘affect[s] title to real property.’” *Farris v. Advantage Capital Corp.*, 217 Ariz. 1, 2 (2007). “[A] *lis pendens* is not a tool for a litigant to secure a potential money judgment by tying up a debtor’s real property.” *Id.* at 3. Thus, in an action on a debt where no relief concerning the title to real property is sought, a *lis pendens* is not appropriate. *See id.* (citing *Mammoth Cave Prod. Credit Ass’n v. Gross*, 141 Ariz. 389, 392 (App. 1984)).

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COUNTY

However, the statute is not limited to actions directly affecting a fee simple title to real property. *Coventry Homes, Inc. v. Scottscom P'ship*, 155 Ariz. 215, 218 (App. 1987). For example, an action to impose an equitable lien on real property is an action affecting title to property. *Coventry Homes*, 155 Ariz. at 218. But merely asking the Court to impose a lien on real property is not enough to make an action one that affects title to real property; rather, there must be some basis to conclude that a lien would be imposed on the property. *See Santa Fe Ridge Homeowners Ass'n*, 219 Ariz. at 397 (citing *id.* at 218-19).

"[A] lawsuit affects a right incident to title if any judgment would expand, restrict, or burden a property owner's rights as bestowed by virtue of that title." *Santa Fe Ridge Homeowners Ass'n v. Bartschi*, 219 Ariz. 391, 396 (App. 2008) (citing *Hatch Cos. Contracting, Inc. v. Ariz. Bank*, 170 Ariz. 553, 558 (App. 1991)). The trial court need only find "some basis" for concluding that the action affects title to real property. *Evergreen*, 167 Ariz. at 620.

Like some the cases discussed above, the underlying case () includes a breach of contract claim and seeks monetary damages, and it seeks to place a lien on Plaintiff's property. Unlike in the cases discussed above, however, the underlying matter seeks forfeiture of the property's important water rights. Specifically, the underlying matter seeks "forfeiture of [Plaintiff's] interest in the shared Well," with Plaintiff's "line to the Well ... to be permanently capped." Ex. 14 (Amended Complaint in). The interest in the shared well derives from the well agreement and easement that is attached to Plaintiff's property. The right to the well, which supplies water to the property, is a right incident to title in the property. Any judgment in the underlying matter "would expand, restrict, or burden a property owner's rights as bestowed by virtue of" title in the property currently owned by Plaintiff. *See Santa Fe Ridge Homeowners Ass'n*, 219 Ariz. at 396. Thus, this case is distinguishable from *Farris* and *Mammoth Cave*; had Defendants only sought a money judgment in the underlying case, those cases would be directly on point. But Defendants did not only seek a money judgment. They sought to terminate the interest in the well that runs with Plaintiff's land.¹ And again, the Court returns to the purpose of a *lis pendens* – to give constructive notice to interested parties of litigation that may affect title to the property. *See* A.R.S. § 12-1191(B); *Farris*, 217 Ariz. at 1.

After carefully considering the facts of this case and the applicable law, the Court concludes that the underlying action () is an action "affecting title." The Court therefore continues with the analysis under A.R.S. § 33-420.

First, A.R.S. § 33-420(A) provides:

¹ Per the operative Covenants, Conditions and Restrictions in this case, easements run with Plaintiff's property.

Only
the
State
HB2810

**THE COMMISSION'S POLICY IS
TO POST ONLY THE FIRST FIVE
PAGES OF ANY DISMISSED
COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**