



DIVISION ONE  
FILED: 12/17/09  
PHILIP G. URRY, CLERK  
BY: DN

IN THE  
**Court of Appeals**  
STATE OF ARIZONA  
DIVISION ONE

CHARLES T. DAVIS, )  
 ) No. 1 CA-SA 09-0148  
 )  
 )  
 ) Petitioner, ) DEPARTMENT D  
 )  
 )  
 ) v. ) Maricopa County  
 ) Superior Court  
 )  
 ) THE HONORABLE RICHARD NOTHWEHR, ) No. CV2003-015063  
 )  
 ) Commissioner of the SUPERIOR )  
 ) COURT OF THE STATE OF ARIZONA, )  
 ) in and for the County of )  
 ) MARICOPA, )  
 )  
 ) Respondent Commissioner, )  
 )  
 )  
 ) TINA M. PLACOURAKIS, )  
 )  
 )  
 ) Real Party in Interest. )  
 )  
 \_\_\_\_\_ )

**DECISION ORDER**

**JURISDICTION ACCEPTED; RELIEF GRANTED**

Pending under advisement before the court (Judges Peter B. Swann, Margaret H. Downie, and John C. Gemmill) is Charles T. Davis's petition for special action. After consideration of the petition, the response filed by Tina M. Placourakis, the reply, the appendices filed by the parties, and the legal issues presented, the court has determined that it will exercise its discretionary special action jurisdiction and grant limited relief in this matter as follows.

**IT IS ORDERED** that the court accepts special action jurisdiction in this matter.

**IT IS FURTHER ORDERED** vacating Respondent Commissioner Nothwehr's minute entry order filed June 29, 2009 (dated June 24,

2009) and remanding this matter to the superior court for further proceedings consistent with this order.

**IT IS FURTHER ORDERED** dissolving the interlocutory stay of proceedings entered by this court on July 15, 2009.

Two important principles are applicable here. First, we agree with Ms. Placourakis that the doctrine of *lis pendens* is subject to equitable principles as established by the Arizona Supreme Court in *Kelly v. Perry*, 111 Ariz. 382, 531 P.2d 139 (1975). In accordance with *Kelly*, the superior court has the power to quash a *lis pendens* on equitable grounds. *Id.* at 383-84, 531 P.2d at 140-41.

Second, we agree with Mr. Davis that a *lis pendens* may continue in effect during an appeal, without the necessity of a supersedeas bond, in accordance with Arizona Revised Statutes section 12-1191. There is no requirement in § 12-1191 or otherwise in Arizona law that a supersedeas bond be filed in order for an appropriate *lis pendens* to be effective to give notice of the claimed interest in the property during the pendency of an appeal.

Our decision vacating the superior court's order is without prejudice to the entry of a further order by the superior court that is consistent with the principles set forth herein.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN C. GEMMILL, Judge