

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CHRISTOPHER T. CAROLLO AND
SHADOW SOLUTIONS OPERATIONAL
TRAINING GROUP, LLC,

Petitioners,

v.

Case No. 5D19-2484

BRIAN HENDERSON, DERIVATIVELY
ON BEHALF OF SHADOW SOLUTIONS
OPERATIONAL TRAINING GROUP, LLC,

Respondent.

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Opinion filed February 21, 2020

Petition for Certiorari Review of Order
from the Circuit Court for Hernando County,
Donald E. Scaglione, Judge.

Joseph M. Mason, Jr., of McGee & Mason,
P.A., Brooksville, for Petitioners.

Eric S. Koenig, of Trenam, Kemker, Scharf,
Barkin, Frye, O'Neill & Mullis, P.A., Tampa,
for Respondent.

PER CURIAM.

Christopher T. Carollo seeks certiorari review of the trial court's order denying his motion to discharge a lis pendens. Because Mr. Carollo was entitled to a hearing, we grant the petition and quash the order.

Brian Henderson and Mr. Carollo are members and managers of Shadow Solutions Operational Training Group (SSOTG), which was formed to purchase real property, excavate it for limestone and then (hopefully) sell the real property for a profit. To that end, SSOTG allegedly identified a specific parcel of real property for purchase. However, Mr. Carollo purchased the property individually, and not on behalf of SSOTG, despite allegedly using SSOTG funds for the down payment. When Mr. Henderson became aware of Mr. Carollo's purchase, he filed a declaratory judgment action and a lis pendens.

Mr. Carollo moved to discharge the lis pendens or set a lis pendens bond. The motion asserted that the lis pendens was not founded on a recorded instrument or a chapter 713 lien and requested an evidentiary hearing. Without conducting a hearing, the trial court denied the motion to discharge the lis pendens or set a bond in an unelaborated order. Mr. Carollo contends that he was entitled to an evidentiary hearing on his motion. We agree.

Certiorari review is available to review a trial court's order denying a motion to dissolve a notice of lis pendens. Suarez v. KMD Constr. Inc., 965 So. 2d 184, 186 (Fla. 5th DCA 2007). Unless the initial pleading shows an action is founded on a duly recorded instrument or a chapter 713 lien concerning the real property described in the lis pendens, the court has the power to control the notice of lis pendens by discharging it or by requiring the party who filed the lis pendens to post a bond. § 48.23(3), Fla. Stat. (2019); see Fischer v. Fischer, 873 So. 2d 534, 535-36 (Fla. 4th DCA 2004); Avalon Assocs. of Del. v. Avalon Park Assocs., 760 So. 2d 1132, 1134 (Fla. 5th DCA 2000). This is because a lis pendens places a cloud on the title that did not previously exist, if not based on a

recorded instrument or a chapter 713 lien. See DeGuzman v. Balsini, 930 So. 2d 752, 754 (Fla. 5th DCA 2006).

This Court has previously held that an evidentiary hearing is required on a motion to discharge a lis pendens when the plaintiff's action, as here, is not founded on a duly recorded instrument or a chapter 713 lien, but instead alleges a nexus to the affected real property. Chiusolo v. Kennedy, 589 So. 2d 420 (Fla. 5th DCA 1991), approved in part, quashed in part on other grounds, 614 So. 2d 491 (Fla. 1993). At the hearing, the proponent of the lis pendens has the burden of establishing a fair nexus between the claim on the property and the dispute embodied in the lawsuit. Chiusolo, 614 So. 2d at 492; Nu-Vision, LLC v. Corp. Convenience, Inc., 965 So. 2d 232, 234 (Fla. 5th DCA 2007).

CERTIORARI GRANTED; ORDER QUASHED.

EVANDER, C.J., ORFINGER and EDWARDS, JJ., concur.