

IN THE SUPREME COURT OF THE STATE OF NEVADA

LASALLE BANK NATIONAL
ASSOCIATION,
Appellant/Cross-Respondent,
vs.
HAMMER FAMILY 1994 TRUST AND
BILL C. HAMMER, TRUSTEE; AND
BILL C. HAMMER, INDIVIDUALLY,
Respondents/Cross-Appellants.

No. 59420

FILED

MAR 26 2015

TRACIE K. LINDSEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

LaSalle Bank National Association appeals, and Hammer Family 1994 Trust and Bill C. Hammer, as trustee and individually, (collectively referred to as Hammer) cross-appeal, from the district court's judgment that granted Hammer various types of relief. Eighth Judicial District Court, Clark County; Charles M. McGee, Senior Judge.

This case began as a lawsuit by Hammer against his neighbors, Armin and Geraldine Van Damme, mainly concerning the Van Dammes' building of a water and rock fixture that crossed onto Hammer's property to attach to part of Hammer's perimeter wall. Hammer alleged trespass, quiet title, slander of title, and battery, and requested injunctive relief. Upon filing suit, Hammer recorded a lis pendens against the Van Dammes' property.

LaSalle, who had acquired a note and deed of trust as to the Van Damme property during the litigation, moved to intervene, which the district court allowed. But the district court denied LaSalle's motion to set aside the lis pendens. After a bench trial, the district court entered

judgment in Hammer's favor, awarding compensatory and punitive damages, attorney fees, costs, and a mandatory injunction. The district court also granted a lien against the Van Damme property that it deemed superior to all other interests for certain of the damages and attorney fees awarded.

The parties assert numerous errors, but resolution of two issues resolves this appeal as between LaSalle and Hammer: whether the district court erred in allowing LaSalle to intervene, and whether the district court erred in refusing to set aside the lis pendens. As to the first, Hammer argues that the district court erred in allowing LaSalle to intervene as of right under NRCP 24(a)(2), a decision that we review for an abuse of discretion. *Am. Home Assur. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1238, 147 P.3d 1120, 1126 (2006); *Cleland v. Eighth Judicial Dist. Court*, 92 Nev. 454, 456, 552 P.2d 488, 490 (1976). Below, Hammer argued that allowing LaSalle to intervene at such a late date in the litigation and so close to trial was prejudicial. But, though Hammer filed the lis pendens in 2004 and LaSalle did not move to intervene until 2008, LaSalle's delay is explained by the fact that it did not obtain an interest in the Van Damme property until July 2008. Furthermore, Hammer fails to show prejudice where only two months prior to LaSalle's intervention Hammer had sought to amend his complaint to add LaSalle's predecessor. The district court thus did not abuse its discretion in allowing LaSalle to intervene and challenge the lis pendens. 51 Am. Jur. 2d *Lis Pendens* § 75 (2011) (courts may permit intervention of a person who acquires an interest in a property during the pendency of an action regarding that property).

This leads us to the next issue, whether Hammer properly recorded the lis pendens against the Van Dammes' property. In an "action . . . affecting the title or possession of real property, the plaintiff, at the time of filing the complaint, and the defendant, at the time of filing his or her answer, if affirmative relief is claimed in the answer, shall record" a notice of the pendency of the action, or a "lis pendens." NRS 14.010(1). The lis pendens' purpose is to provide constructive notice to a purchaser or encumbrancer of the affected property that the title to the property is disputed. *Coury v. Tran*, 111 Nev. 652, 655, 895 P.2d 650, 652 (1995). But a "lis pendens is not available to merely enforce a personal or money judgment. There must be some claim of entitlement to the real property affected by the lis pendens" *Levinson v. Eighth Judicial Dist. Court*, 109 Nev. 747, 752, 857 P.2d 18, 21 (1993); *Weddell v. H2O, Inc.*, 128 Nev. ___, ___, 271 P.3d 743, 751 (2012) (noting that it is "fundamental to the filing and recordation of a lis pendens that the action involve some legal interest in the challenged real property") (internal quotation omitted).

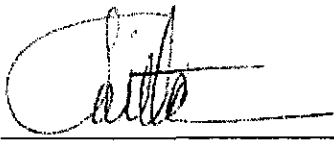
Here, however, Hammer's title and possessory claims centered only on Hammer's own property. Hammer sought the removal of and damages for the Van Dammes' encroachment and a declaration "to prohibit the Defendants from asserting any claim or right to the Hammer Property." In other words, Hammer's claims pertained only to Hammer's portion of the gap that ran between the Hammer and Van Damme properties' fences, onto which the Van Dammes' encroachment intruded. The Van Dammes' vague counterclaim that a "justiciable controversy regarding the real property of the parties exists" does not change the fact that Hammer, who had the burden to prove the propriety of his lis pendens, NRS 14.015, did not allege any claims that affected the title or


possession of the Van Damme property, or present any evidence at any stage in the proceedings to demonstrate that the controversy surrounded a title or possessory dispute as to the Van Damme property. And although Hammer's claims related to the Van Dammes' encroachment, this is not enough to support recording of a lis pendens against the Van Damme property. See *Weddell*, 128 Nev. at ___, 271 P.3d at 751 (“[A]n action for money only, even if it relates in some way to specific real property, will not support a lis pendens.”) (emphasis omitted); see also *Braunston v. Anchorage Woods, Inc.*, 178 N.E.2d 717, 718-19 (N.Y. 1961) (holding that plaintiff's lis pendens on defendant-neighbor's property was improper where the complaint alleged that the defendant-neighbor had created a nuisance to the plaintiff's land by collecting and dumping surface water on it, and that an “action to abate a nuisance is not one affecting the title to, or the possession, use or enjoyment of real property”); *Gregdon Corp. v. Fierro*, 134 N.Y.S.2d 128, 129 (Sup. Ct. 1954) (holding that the complaint failed to state a cause of action affecting real property to support a lis pendens on the defendant-neighbor's property when the allegations were that the defendant-neighbor's perimeter wall encroached on the plaintiff's premises and the plaintiff sought an injunction to compel the removal of the encroachment).

The district court thus erred by denying LaSalle's motion to set aside the lis pendens. And without the lis pendens, there is no basis for encumbering the Van Damme property as against LaSalle, whose interest attached before Hammer's right to have the Van Dammes remove the encroachment was established. So, the portion of the judgment granting Hammer a lien against the Van Damme property that is enforceable as to LaSalle must be reversed. Additionally, as LaSalle only

came into this matter as an intervening holder of a security interest in the Van Damme property, the obligations imposed by the judgment, including removal of a portion of the water and rock fixture that encroached upon Hammer's property, are not enforceable as against LaSalle; rather, the obligations are personal to the Van Dammes. *Levinson*, 109 Nev. at 752, 857 P.2d at 21. The judgment as to LaSalle thus also must be reversed, and the matter remanded to the district court. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Saitta


_____, J.
Gibbons


_____, J.
Pickering

cc: Chief Judge, The Eighth Judicial District Court
Carolyn Worrell, Settlement Judge
Fidelity National Law Group
Dziminski & Associates
Law Offices of John Benedict
Eighth District Court Clerk