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▶ PROPERLY RECORDED LIS PENDENS MAY HAVE NO LEGAL EFFECT UNTIL INDEXED

A properly recorded lis pendens may have no legal effect against a subsequent buyer until it is indexed by the recorder's office. That was the decision of the Court of Appeal in the recent case of *Dyer v. Martinez* (2007 WL 549108) decided on February 23, 2007.

On June 9, 2003, Kristina Dyer entered into an agreement to buy a home in Mission Viejo. About a month later, the sellers instructed escrow to cancel because Kristina purportedly failed to obtain a loan and timely close escrow. Over a year later, the sellers listed their property for sale again, and entered into a contract to sell to a new buyer named Exon Martinez. Kristina, however, claimed she was "ready, willing, and able" to perform on her contract. On September 9, 2004, Kristina sued the sellers for specific performance and filed a lis pendens against the property.

A lis pendens is a notice of a pending lawsuit that, upon proper recordation, informs subsequent buyers and lenders of a piece of real property that their acquisition of interest will be subject to the outcome of the lawsuit. A buyer suing a seller for specific performance will record a lis pendens to dissuade the seller from transferring or encumbering the property before the lawsuit is resolved.

In this case, Kristina recorded the lis pendens on September 9, 2004. However, due to a delay at the recorder's office, the lis pendens was not indexed in the seller's name until September 14, 2004. During the interim, on September 10, 2004, the sellers closed escrow with Exon.

Kristina added Exon to her lawsuit seeking to quiet his title to the property. She argued that, even though Exon had no actual notice of Kristina's lawsuit, he received constructive notice when she recorded the lis pendens under section 405.24 of the California Code of Civil Procedure.

The court disagreed. The court pointed out that section 405.24 must be read in harmony with another statute. Under section 1213 of the California Civil Code, constructive notice requires an instrument to be recorded "as prescribed by law." In the court's opinion, the law in California for over a century has been that a recorded document provides no notice unless it can be located by title search. Otherwise, a buyer in good faith who has conducted a diligent search would be charged with knowledge of documents no one can find. The court therefore awarded the property to Exon.

For more information, C.A.R.'s Legal Department publishes a legal article entitled [Lis Pendens](#) available at <http://qa.car.org>. C.A.R.'s Legal Department also provides other legal articles covering a wide range of topics of interest. Here are some of our new or newly revised legal articles available through *C.A.R. Online*:

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