



Using a Lis Pendens to Control “Divorce Terrorists”

By Christopher R. Bruce

By now, most readers of this article have seen or heard of the criminal investigation reality show “48 Hours”. The premise of the show is that what happens in the first 48 hours of a homicide investigation is critical to finding the killer. If investigators don’t work hard to handle matters correctly in the first 48 hours, finding and bringing the killer to justice may never happen. Although divorce is not a homicide (some may disagree), the “48 Hours” theme is more applicable to divorce cases than most may think.

If a practitioner does not handle matters correctly in the beginning of a divorce case, “divorce terrorist”¹ spouses will take action to move and hide assets after being served with a divorce petition. Once significant assets have been secreted (which can happen immediately thanks to smartphones) it is an expensive uphill battle to “find the money”. Further, a divorce terrorist’s go-to act of cutting off financial support after draining marital bank accounts causes many financially dependent spouses to accept grossly inadequate divorce settlements. They do so based on constant threats from their divorce terrorist spouses (who often subjected them to emotional abuse during the marriage). The threat that “*the assets will never be found and you will not be able to support yourself or the children if you do not settle now*” really happens. Worse yet, it works.

Practitioners can control divorce terrorists and create an incentive for timely settlement through the proper use of a *lis pendens*. For minimal filing and process server fees and a little extra work upfront a *lis pendens* allows practitioners to preserve (freeze) bank accounts at the initiation of a divorce lawsuit. Common sense dictates it is more difficult for divorce terrorists to cause trouble when they cannot “take the money”. When the divorce terrorist is neutralized, practitioners have a greater probability of efficiently negotiating a timely and fair settlement for their financially dependent clients.

Legal Background

Florida Statute §48.23 provides the legal authority for a *lis pendens*. §48.23(1) explains that a state or federal lawsuit operates as a *lis pendens* on any real or personal property affected by the lawsuit “only if a notice of *lis pendens* is recorded in the official records of the county where the property is located”. The *lis pendens* is authorized in a divorce case by virtue of marital assets (regardless of title) being subject to equitable distribution upon divorce. Florida appellate courts have approved of the use of *lis pendens* to preserve property in divorce cases. See, e.g., *Bardino v. Bardino*, 670 So. 2d 183 (Fla. 3d DCA 1996).

Practice Tip: A common misconception is that a *lis pendens* only applies to real estate. §48.23 clearly states a *lis pendens* applies to personal property, which includes bank accounts.

Process & Procedure

Controlling a divorce terrorist with a *lis pendens* requires the practitioner to make sure proper notice is issued to financial institutions before the terrorist is tipped off to a pending divorce.

Keeping clients quiet about the forthcoming divorce and using the procedure below helps prevent divorce terrorists from moving assets at the initiation of a divorce case:

Step #1: File *lis pendens* with divorce petition.

Step #2: Obtain certified copy of filed *lis pendens* and record with Clerk of Court.

Step #3: Serve local bank branch with copy of *lis pendens* and a cover letter requesting the bank to freeze the relevant accounts. It is also a good idea to then fax a copy of *lis pendens* and a return of service to the bank’s legal department.

Step #4: (Preferably) Obtain confirmation from the bank that the accounts are frozen.

Step #5: Serve the divorce petition.

Bottom Line

Filing a *lis pendens* is a simple method for practitioners to preserve marital assets at the initiation of a divorce case. Nearly all financial institutions will honor a *lis pendens* and initially freeze financial accounts. Although there is some work involved, the *lis pendens* procedures are much less burdensome and costly than filing for injunctive relief. Taking this step can be imperative to negotiating adequate settlements for a client who is financially dependent and has a history of being subjected to threats and emotional abuse from their spouse. When the accounts are frozen the playing field is leveled and the divorce terrorist’s intimidation campaign is significantly disarmed.

FN1: A “**divorce terrorist**” is a nefarious individual, usually a narcissist, who, amongst other sinister traits, hides/misrepresents their income or assets to enhance efforts meant to intimidate their spouse into taking an unfair financial settlement. Other words unfit for print are commonly used to describe these individuals.

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