

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

JANUARY TERM 2012

JOANNA M. BLYTHE AND JAMES T. BLYTHE, JR.,

Petitioners,

v.

Case No. 5D12-465

ATLAS INDUSTRIAL ENTERPRISES, INC.,

Respondent.

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Opinion filed June 1, 2012

Petition for Certiorari Review of Orders from the
Circuit Court for Volusia County,
Richard S. Graham, Judge.

Kathryn D. Weston of Cobb Cole, Daytona
Beach, for Petitioners.

No Appearance for Respondent.

PER CURIAM.

Petitioners seek certiorari review of an order requiring them to post a bond in the amount of \$747,143 “so long as the lis pendens filed by and on their behalf remains valid and enforceable as to Respondent’s properties identified therein,” as well as a subsequent order discharging the lis pendens as to one of the parcels at issue.

We conclude that the trial court departed from the essential requirements of law by failing to hold an evidentiary hearing prior to entering the aforesaid orders. See *Suarez v. KMD Constr., Inc.*, 965 So. 2d 184 (Fla. 5th DCA 2007) (trial court required to control or discharge notice of lis pendens by considering at evidentiary hearing whether

lis pendens should remain in place and, if so, amount of bond required); *Licea v. Anllo*, 691 So. 2d 29 (Fla. 3d DCA 1997) (before setting amounts of lis pendens bond, trial court is to afford parties evidentiary hearing on issues of whether property-holder would likely incur damage if lis pendens was unjustified, and, if so, amount of such loss); see also *Mitchell v. Metro. at Lake Eola, LLC*, 947 So. 2d 1263 (Fla. 5th DCA 2007) (burden is on party seeking lis pendens bond to demonstrate by evidence amount of potential damage it might suffer if later determined notice of lis pendens was unjustified).

PETITION GRANTED; ORDERS DATED JANUARY 6, 2012 AND JANUARY 13, 2012 QUASHED.

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