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STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS FOR THE  
COUNTY OF LEXINGTON ) ELEVENTH JUDICIAL CIRCUIT

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Magnolia Key Homeowners )  
Association, Inc., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
Philip A. Coghlan, Leann Marie )  
Coghlan and Joseph Bindert, )  
 )  
Defendants. )

ORDER DISSOLVING LIS PENDENS

2012-CP-32-3498

Presiding Judge  
Attorney for Plaintiff  
Attorney for Defendant, Philip A. Coghlan  
Date of Hearing

Eugene C. Griffith, Jr.  
Robert W. Dibble, Jr.  
Spencer Andrew Syrett  
May 8, 2013

This matter came before the Court for a hearing on Defendant's Motion to dissolve a Lis Pendens filed on behalf of the Plaintiff. For the reasons set forth herein, the Court GRANTS the Motion.

Based up a review of the pleadings and the file in the case, the affidavits filed by the parties, written memoranda submitted by counsel and the arguments of counsel at the hearing, the Court makes the following findings of fact and conclusions of law:

1. Plaintiff is the Homeowners Association for Magnolia Key subdivision. Defendant Philip A. Coghlan is now the sole owner of a house and lot in the subdivision.
2. Plaintiff commenced this action on August 24, 2012, to restrain the Defendant from renting the lower portion of his residence. The Plaintiff claims that in doing so, Defendant has violated of the Restrictive Covenants. In the action, the Plaintiff also sought an award of attorney fees and costs as provided in the Restrictive Covenants.
3. Defendant alleges that Board of Directors of the Plaintiff gave him permission in 2010 and that the current Board is now estopped to change its interpretation of the

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Covenants.

4. In early 2013, the Plaintiff became aware that the Defendant had been transferred out of state by his employer and that the Defendant would be placing the property on the market.
5. On April 3, 2013, at 3:51 P.M., Plaintiff filed a Lis Pendens on the property. On April 17, 2013, Defendant filed his Motion to dissolve the Lis Pendens.
6. In the Lis Pendens, Plaintiff stated that was: "seeking, inter alia, the recovery of attorney fees and cost [sic]. This action may result in a lien upon the property described below." In its Memorandum opposing the motion, Plaintiff also argued that "any prospective purchaser should be made aware of this lawsuit because the final decision made here could well make it impossible for him or her to lease the lower level in-law suit in the home." It claimed that it filed the Lis Pendens to "put prospective purchasers of the home on notice of the lawsuit and to insure that a purchaser would be bound by the final outcome."
7. §15-11-10 prescribes when the filing of a Lis Pendens is appropriate. The statute specifically refers to "an action affecting title to real property." Actions in which Lis pendens are commonly filed include mortgage foreclosures, mechanics lien foreclosures, tax title actions and partition actions. In each of these actions, the party in the action either seeks sale of the property or to clear the interests claimed by adverse parties to the property.
8. The Plaintiff in this action does not seek the sale of the property nor does it seek to clear any claims made or liens on the property. The Plaintiff seeks only to restrain how the property is used. Title is not at issue in this action.
9. The Court also notes that the Plaintiff did not file the lis pendens when it filed the action. Obviously it felt no need to notify a prospective purchaser at that time. The action had been pending for eight months before the Plaintiff filed the lis pendens.
10. In an appeal considering a judgment for slander of title in filing a Lis Pendens, the Court of Appeals considered what would be a proper use of a Lis Pendens:

The lis pendens mechanism is not designed to aid either side in a dispute between private parties. Rather, lis pendens is

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designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, i.e., the fact of a suit involving property. Thus, it notifies potential purchasers that there is pending litigation that may affect their title to real property and that the purchaser will take subject to the judgment, without any substantive rights.

Since the filing of a lis pendens is an extraordinary privilege granted by statute, strict compliance with the statutory provisions is required.

Pond Place Partners v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002)

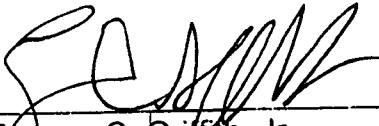
11. The Court finds that none of the justifications argued by the Plaintiff at the hearing or in its Memorandum justify the filing of the Lis Pendens. Based on the timing of the filing and the reason for filing stated in the Lis Pendens, one could conclude that the Plaintiff was motivated, at least in part, by the intent to force the Defendant to settle the case. This is clearly an improper use of the lis pendens.
12. The right to seek attorney fees does not justify filing a Lis Pendens. If the Plaintiff's position were to be sustained, the filing of a lis pendens would become a routine filing in every action seeking an award of money damages or attorney fees.
13. The Court therefore finds that the Lis Pendens should be dissolved.
14. In his motion, the Defendant also sought to supplement his Answer and Counterclaim to add a Counterclaim for Slander of Title. At the hearing, the attorney for the Defendant conceded that the decision in Pond Place makes the filing of a Lis Pendens absolutely privileged and not actionable. He amended his motion to seek permission to file a Counterclaim for abuse of process, malicious prosecution and tortious interference with contract. The jurisdictions are in agreement that the proper action against a maliciously filed lis pendens is under abuse of process or malicious prosecution: Pond Place Partners v. Poole, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002)
15. The Court finds the motion as amended should be granted.

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IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. The Lis Pendens filed April 3, 2013, as 2013-LP-32-0414 is hereby Dissolved.
2. The Defendant is granted permission to file a supplemented Amended Answer and Counterclaim alleging Causes of Action for Abuse or Process, Malicious Prosecution and Tortious interference with contract.

AND IT IS SO ORDERED.

  
\_\_\_\_\_  
Eugene C. Griffith, Jr.  
Presiding Judge of the Court of Common Pleas  
for the Eleventh Judicial Circuit

June 30<sup>th</sup>, 2013  
July

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON, SC )

IN THE COURT OF COMMON PLEAS FOR THE  
ELEVENTH JUDICIAL CIRCUIT

**ORIGINAL**

Magnolia Key Homeowners -3 ) 1037  
Association, Inc., )

Plaintiff, )  
 )  
LEXINGTON, SC )

vs. )

**JUDGMENT IN A CIVIL COURT CASE**

Philip A. Coghlan, Leann Marie )  
Coghlan and Joseph Bindert, )

2012-CP-32-3498

Defendants. )

Submitted by: Spencer Andrew Syrett	Attorney for <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant
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**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT. This action came before the court for a jury trial. the issues have been tried and a verdict rendered.
- DECISION BY THE COURT. The action came to trial or hearing before the Court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED  Rule 12(b), SCRPC  Rule 41(a), SCRPC (Vol. Non-suit)  
 Rule 43(k), SCRPC (settlement)  Other
- ACTION STRICKEN  Rule 40(j), SCRPC  Bankruptcy  
 Binding Arbitration, subject to right to restore to confirm, vacate or modify arbitration award  
 Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT  
 Affirmed  Reversed  Remanded  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (Formal Order to follow)  
 Statement of Judgment by Court

**ORDER INFORMATION**

This Order  ends  does not end the case.

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment to enroll, indicate N/A in one of the boxes below		
Judgment in favor of	Judgment Against	Judgment amount to be enrolled
If applicable, describe the property, including tax map information and address, referenced in the Order		

The judgment information above has been provided by the submitting party. disputes concerning the amount contained in this form may be addressed by way of motion pursuant to South Carolina Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the Judge may be provided to the Clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

J. C. Alford  
Circuit Court Judge

2154  
Judge Code

7-3-13  
Date  
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**FOR CLERK OF COURT OFFICE USE ONLY**

This Judgment was entered on ALA, 2013, and a copy mailed first class mail or placed in the appropriate attorney's box on 5 JULY, 2013, to the attorneys of record or to parties (when appearing pro se) as follows:

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DOWD NICHOLS

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BINDER  
MC DOUGALL  
Clerk of Court

Court Reporter:  
  
\_\_\_\_\_

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the Court. The issues have been tried or heard and decision rendered.