

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )  
 )

IN THE COURT OF COMMON PLEAS  
IN THE NINTH JUDICIAL CIRCUIT  
C/A NO.: 2005-CP-10-2434

Ashley River Properties II, LLC, as  
assignee of Lunar Systems, LTD and  
Ashley River Properties II, LLC, in its  
own right, )

Plaintiffs, )

vs. )

Ashley River Properties One, LLC )  
successor in the interest to Ripley )  
Light Yacht Club, LLC and Ripley Light )  
Development, LLC, )

Defendants. )

\_\_\_\_\_  
Ashley River Properties One, LLC )  
Third-Party Plaintiff, )

vs. )

Lunar Systems, LTD and Thomas J. )  
Lussier, )

Third-Party Defendants. )  
\_\_\_\_\_

**ORDER DENYING DEFENDANT  
AND THIRD-PARTY PLAINTIFF  
ASHLEY RIVER PROPERTIES ONE,  
LLC'S MOTION TO ALTER OR  
AMEND**

2013 JUL 24 PM 4:27  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

**FILED**

Presiding Judge:  
Date of Trial:  
Court Reporter:  
Plaintiff's counsel:  
Defendant's counsel:  
Third-Party Defendant's counsel:

Hon. Deadra L. Jefferson  
January 23, 2013  
Joyce Rueger  
William C. Cleveland, Esq.  
Clayton B. McCullough, Esq.  
Frank M. Cisa, Esq.

THIS MATTER is before the Court on Defendant and Third-Party Plaintiff Ashley River  
Properties One, LLC's Motion to Alter or Amend pursuant to Rule 59(e), SCRPC. The case

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initially came before the Court on January 23, 2013, for a non-jury trial on ARP-II's claim against ARP-I as assignee of Lunar and independently for indemnification and ARP-I's claims against ARP-II, Lunar, and Thomas J. Lussier for abuse of process. At the conclusion of the trial, the Court took the matter under advisement. On April 26, 2013, this Court issued an Order denying ARP-II's indemnity claims against ARP-I, denying ARP-I's abuse of process counterclaim against ARP-II, and denying ARP-I's third-party claim for abuse of process against Lunar and Lussier. The Defendant and Third-Party Plaintiff, Ashley River Properties One, LLC's Motion to Alter or Amend was filed May 9, 2013, and received by the Court on May 13, 2013. Plaintiff Ashley River Properties II, LLC's Memorandum in Opposition to the Motion to Alter or Amend was filed May 23, 2013 and received by the Court on May 23, 2013, and the Defendants Lunar Systems, LTD and Thomas J. Lussier's Memorandum in Opposition to the Motion to Alter or Amend was filed May 28, 2013 received by the Court on May 24, 2013.

#### STANDARD OF REVIEW

“The purpose of Rule 59(e), SCRCP, to alter or amend the judgment, is to request the trial judge to ‘reconsider matters properly encompassed in a decision on the merits.’” Pye v. Estate of Fox, 369 S.C. 555, 565, 633 S.E.2d 505, 510 (2006) (quoting Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992)). The Supreme Court has clarified the two situations in which a Rule 59(e) motion is appropriate. “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). Additionally, “[a] party cannot use a motion to reconsider to present an issue he

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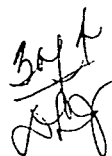
could have raised prior to judgment but did not." Anderson Mem'l Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E.2d 268 (1993)).

### ANALYSIS

Plaintiff contends the Court's Order erred in two ways: a) by finding that "ARP-I did not satisfy the elements of abuse of process, and b) that ARP-I failed to prove damages with specificity regarding the abuse of process claim." The Court will address each argument in the order raised by ARP-I.

First, ARP-I argues the Order erred by finding ARP-I did not prove the elements of abuse of process. ARP-I contends, as it did at trial, that ARP-II's continuation of the *lis pendens* on ARP-I's property constituted an ulterior purpose and "willful act in the use of the process not proper in the regular course of the proceeding." Whitfield Constr. Co. v. Bank of Tokyo Trust Co., 338 S.C. 207, 223, 525 S.E.2d 888, 897 (Ct. App. 1999). As case law illustrates, the filing of a *lis pendens* does not alone constitute an abuse of process, even if done with an ulterior motive to tie up the property. D.R. Horton, Inc. v. Westcott Land Co., Inc., 398 S.C. 528, 550, 730 S.E.2d 340, 351 (Ct. App. 2012). The facts are uncontested that ARP-II has not been paid its judgment, and as the Court's Order states, the continuation of the *lis pendens* was done for the purpose of being indemnified. ARP-II's actions do not constitute an abuse of process.

Finally, ARP-I argues the Order erred by finding ARP-I did not prove damages with specificity as to its abuse of process claim. As this Court has already denied ARP-I's abuse of process counterclaim against ARP-II and denied ARP-I's third-party claim for abuse of process against Lunar and Lussier, an extended discussion on damages is not necessary. Even if ARP-I's damages rose beyond mere speculation, because it failed to show that ARP-II, Lunar, and

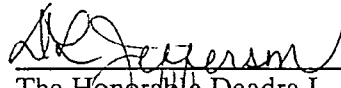
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Lussier engaged in willful acts not authorized in the use of the process, no damages are recoverable.

CONCLUSION

Having considered the Third-Party Plaintiff and Defendant's Motion, the Plaintiff's Memorandum in Opposition thereto, the Third-Party Defendants' Memorandum in Opposition thereto, as well as the various interests balanced by the Court at the time of the ruling, the Motion to Alter or Amend is hereby DENIED.<sup>1</sup>

IT IS SO ORDERED.



The Honorable Deadra L. Jefferson  
Presiding Judge, Ninth Judicial Circuit

July 24, 2013  
Charleston, South Carolina

TEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P. & G.S.

By   
DEPUTY CLERK

<sup>1</sup> This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRPC; Pollard v. County of Florence, 314 S.C. 397, 444 S.E.2d 534 (Ct. App. 1994).

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