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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough, Master-In-Equity

Case No. 2021-CP-10-3609
Appellate Case No. 2023-001334

Jason M. Aryeh, ...Respondent,

v.

Olivia R. Aryeh.....Appellant.

APPENDIX TO THE RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2021-CP-10-03609
	)	
Jason M. Aryeh,	)	
	)	
Plaintiff,	)	CONSENT ORDER OF
	)	REFERENCE
v.	)	
	)	
Olivia R. Aryeh,	)	
	)	
Defendant.	)	

This matter comes before me and with the consent of the parties to refer this case to the Master-In-Equity for Charleston County, South Carolina for further proceedings in this matter in accordance with Rule 53 of the South Carolina Rules of Civil Procedure.

It appearing that this matter is appropriate for reference and reference is by the consent of the parties,

IT IS THEREFORE ORDERED, that this case is within the scope of the Master's authority to address and shall be referred to Mikell R. Scarborough, Master-In-Equity for Charleston County, for all matters arising from or reasonably related to such action, including but not limited to, taking testimony; making findings of fact and conclusions of law; directing entry of final judgment in this action; and any appeal from the final judgment entered by the Master-In-Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

IT IS SO ORDERED!

_____, 2022
Charleston, South Carolina

The Honorable Jennifer B. McCoy
Chief Administrative Judge, Ninth Judicial Circuit

Aryeh v. Aryeh
Case No.: 2021-CP-10-03609
Consent Order of Reference

WE CONSENT:

HAYNSWORTH SINKLER BOYD, P.A.

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Charleston Common Pleas

Case Caption: Jason M Aryeh VS Olivia R Aryeh
Case Number: 2021CP1003609
Type: Order/Referred to Master or Special Referee

So Ordered

s/Jennifer B. McCoy #2764

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2021-CP-10-3609
	)	
Jason M. Aryeh,	)	
	)	ORDER
Plaintiff,	)	
	)	
v.	)	
	)	
Olivia R. Aryeh,	)	
	)	
Defendant.	)	

Introduction

At the status conference in this matter held on April 11, 2022, this Court scheduled a hearing for May 16, 2022 for the Court to decide the issue of whether a lis pendens filed by Defendant in South Carolina based on claims raised in litigation pending in Connecticut is valid under South Carolina law. At the status conference, Plaintiff made an oral motion to amend the Complaint in light of Defendant's statement that the lis pendens would likely be removed in light of a recent Connecticut family court order. The Court granted the motion.

On May 10, 2022, prior to Plaintiff filing its Amended Complaint, Defendant filed a Motion to Dismiss Plaintiff's original Complaint. On May 16, 2022, prior to the hearing, Plaintiff filed his Amended Complaint alleging that Defendant's filing and maintenance of a lis pendens in South Carolina concerning litigation in Connecticut was unauthorized and that Plaintiff is entitled to damages associated with the lis pendens, which remained in place for nearly a year before it was removed by Defendant.

For the reasons stated herein, the Court grants Defendant's Motion to Dismiss insofar as Plaintiff's request in its original Complaint for the Court to remove/cancel the lis pendens was

mooted by Defendant's cancellation of the lis pendens on April 12, 2022. That said, the operative complaint is the Amended Complaint, which presents a justiciable case or controversy stemming from the disputed issue of whether the lis pendens filed by Defendant was valid under South Carolina law and whether Plaintiff was damaged as a result.

Factual/Procedural Background

Defendant filed a divorce action against Mr. Aryeh in Connecticut with the Superior Court for the Judicial District of Stamford/Norwalk at Stamford (Case No. FST-FA-19-6043328-S) (the "Connecticut Divorce Action"). The Connecticut Divorce Action is still pending.

After filing the Connecticut Divorce Action, Defendant filed a lis pendens on May 5, 2021 and subsequently filed an Amended Lis Pendens on May 7, 2021 concerning 1651 Atlantic Ave., Sullivan's Island, South Carolina (the "Property") in the Charleston County Court of Common Pleas, Case No.: 2021-LP-10-0213 (collectively the "Lis Pendens"). The Lis Pendens purported to affect title to the Property. However, Defendant did not institute any litigation in South Carolina concerning the Property. The Lis Pendens only concerned the Connecticut Divorce Action.

On June 29, 2021, Plaintiff, through counsel, wrote counsel for Defendant to inform Defendant that Plaintiff believed the Lis Pendens was invalid and prohibited under South Carolina law and requested that Defendant withdraw the Lis Pendens. Defendant did not withdraw the Lis Pendens. As such, on August 5, 2021, Plaintiff filed the original Summons and Complaint requesting an expedited hearing under Rule 57, SCRCPP, to have the Court cancel and invalidate the Lis Pendens. After the instant case was filed against Defendant in August of 2021, Defendant continued to maintain the Lis Pendens. On April 11, 2022, the Court held a status conference and scheduled a hearing for May 16, 2022 to determine whether the Lis Pendens was valid. On April 12, 2022, after a Connecticut Court ordered Defendant to release the Lis Pendens, Defendant

cancelled the Lis Pendens. On May 16, 2022, Plaintiff filed an Amended Complaint seeking a declaration that the filing and maintenance of the Lis Pendens was unauthorized and alleging that he is entitled to damages under an abuse of process claim.

Legal Authority

I. A Justiciable Controversy Exists.

“When bringing an action under the Declaratory Judgment Act, ‘all that is required is that the plaintiff demonstrate a justiciable controversy.’” *Sloan v. Sch. Dist. of Greenville Cnty.*, 342 S.C. 515, 525, 537 S.E.2d 299, 304 (Ct. App. 2000). “A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.” *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995). “If there is no actual controversy, this Court will not decide moot or academic questions.” *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). “A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy.” *S.C. Pub. Int. Found. v. S.C. Dep’t of Transp.*, 412 S.C. 18, 26, 770 S.E.2d 399, 403 (Ct. App. 2015), *rev’d sub nom. S.C. Pub. Int. Found. v. S.C. Dep’t of Transportation*, 421 S.C. 110, 804 S.E.2d 854 (2017).

Here, Plaintiff filed an Amended Complaint and seeks a declaration that Defendant’s filing and nearly yearlong maintenance of the Lis Pendens was unauthorized and alleges that it is entitled to damages under an abuse of process claim. One essential component of Plaintiff’s abuse of process claim is that the defendant engaged in a willful act in the use of the process that is improper because it was unauthorized, as Plaintiff has alleged here. *See e.g.* Amended Compl., ¶¶ 55 and 70; *see also Hainer v. Am. Med. Int’l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997) (a required element of abuse of process is “[s]ome definite act . . . not authorized by the process.”).

While Plaintiff alleges that Defendant's filing of a Lis Pendens in South Carolina concerning litigation in another state was unauthorized, Defendant denies this and claims her filing was "appropriate and consistent with the spirit and purpose of a lis pendens." (*Defendants Mot. To Dismiss*, p. 5.). Because a controversy remains as to whether Defendant's filing and maintenance of the Lis Pendens for nearly a year was authorized, a justiciable controversy exists. *Graham*, 319 S.C. at 71, 459 S.E.2d at 845 ("A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party."); *see also, Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 563, 463 S.E.2d 90, 91 (1995) ("It asserts a definite legal right and since that right is denied by the defendant there exists a justiciable controversy justifying maintenance of an action for declaratory judgment.").

The disputed legal issue before the Court is whether a lis pendens filed in South Carolina regarding litigation pending in another state is valid under South Carolina law. Here, there is an actual controversy between the parties on this issue, and the Court's determination of this issue will have a legal effect on Plaintiff's abuse of process claims and claims for damages. There is nothing contingent or hypothetical about this action. Plaintiff now seeks a declaration that Defendant's filing and nearly yearlong maintenance of the Lis Pendens was unauthorized so that Plaintiff can proceed on its abuse of process claim for damages associated with the Lis Pendens. Defendant's position is that her filing and maintenance of the Lis Pendens was authorized. As such, an actual controversy exists between the parties sufficient to support a declaratory judgment

action.¹ Thus, Plaintiff's requested declaratory relief remains appropriate. This Court is also aware of our Supreme Court's guidance on declaratory judgment actions, which is that a "Court should liberally construe the Declaratory Judgment Act so as to accomplish its intended purpose of affording a speedy and inexpensive method of deciding legal disputes." *Thompson v. State*, 415 S.C. 560, 565, 785 S.E.2d 189, 191 (2016). As such, the Court finds that the disputed legal issue of whether the Lis Pendens was authorized is ripe for determination.

II. Defendant's Filing and Maintenance of the Lis Pendens was Not Authorized.

Because a justiciable controversy exists between the parties, the Court now addresses the disputed issue of whether Defendants' filing and maintenance of the Lis Pendens in South Carolina concerning litigation in another state was authorized under South Carolina law.

"[T]he filing of a lis pendens places a cloud on title which prevents the owner from freely disposing of the property." *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002). Accordingly, under South Carolina law, "the filing of a lis pendens is an extraordinary privilege granted by statute, [and] strict compliance with the statutory provisions is required." *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 8–9, 732 S.E.2d 876, 880 (2012).

"A lis pendens, which must be filed not more than twenty days before the filing of the complaint or at any time afterwards, is a derivative right, and its validity depends not only on the

¹ The cases cited by Defendant on mootness are distinguishable from the case at hand. For example, in *Sloan*, there was no actual controversy remaining for the court to determine because the plaintiff "concede[d] that [the defendant] has provided all documents requested pursuant to FOIA [and the defendant] has conceded that it is presently a public body as related to this litigation." *Sloan*, 369 S.C. at 26, 630 S.E.2d at 477–78. As such, in *Sloan*, there was no controversy between the parties and a judgment would have had no practical legal effect on the matter because defendant provided the documents and agreed with the plaintiff's position. Here, Plaintiff claims the Lis Pendens was unauthorized and seeks damages as a result, and Defendant claims it was authorized. As such, this case is distinguishable because a justiciable controversy exists, and Plaintiff's amended claims for declaratory relief remain appropriate for adjudication.

timeliness of its filing in relation to the underlying complaint, but on the validity of the complaint as well.” 14 S.C. Jur. Lis Pendens § 10; (citing S.C. Code Ann. § 15-11-10 & *Theisen v. Theisen*, 394 S.C. 434, 447, 716 S.E.2d 271, 277 (2011)). Specifically, the South Carolina statute provides:

In an action affecting the title to real property the plaintiff [] not more than twenty days before filing the complaint or at any time afterwards . . . may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the property in that county affected thereby.

S.C. Code Ann. § 15-11-10 (1976).

“A lis pendens ‘is premised upon and must be filed in time in conjunction with an underlying complaint involving an issue of property.’” *D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 559, 730 S.E.2d 340, 356 (Ct. App. 2012), *aff’d in part as modified, vacated in part*, 410 S.C. 319, 764 S.E.2d 701 (2014). “Lis pendens literally means a pending action; the doctrine derives from the jurisdiction and control which a court acquires over property involved in an action pending its continuance and until final judgment is entered.” *Permanent Fin. Corp. v. Taro*, 71 Md. App. 489, 493, 526 A.2d 611, 612 (1987) (cancelling a lis pendens pending in Maryland associated with an action pending in another state because “[a]lienation of Maryland real and leasehold property could be severely restricted by the mere filing of a lawsuit anywhere in the United States.”).

“[T]he doctrine of lis pendens is derived from notions of common-law and equity jurisprudence.” 51 Am. Jur. 2d *Lis Pendens*, § 5. The Court notes that “[a]t common law the doctrine of lis pendens had no efficacy outside the territorial jurisdiction of the court in which the action was pending.” *Ludvik v. James S. Jackson Co.*, 635 P.2d 1135, 1141 (Wyo. 1981) ((citing *Walker v. Houston*, 176 Ga. 878, 169 S.E. 107 (1933); *Carr v. Lewis Coal Co.*, 96 Mo. 149, 8 S.W. 907 (1888); *Flanagan v. Clark*, 156 Okl. 230, 11 P.2d 176 (1932); *Shelton v. Johnson*, 4 Sneed, 672, 70 Am.Dec. 265 (Tenn. 1857); *First Nat. Bank of Webster Springs v. McGraw*, 85 W.Va.

298, 101 S.E. 474 (1919) and holding that a “lis pendens had no efficacy outside the territorial jurisdiction of the court in which the action was pending” so as “to not hazard the rights of Wyoming property owners to the vagaries of judicial action in courts outside the State of Wyoming.”).²

Here, the Lis Pendens was filed in May of 2021 and remained in place for nearly a year. It is undisputed that no South Carolina action affecting title to the Property was ever filed. Indeed, the subject Lis Pendens referenced a pending divorce action filed in Connecticut.

The Court then considers whether the legislature in adopting the lis pendens statute, desired to expand the common-law doctrine of lis pendens by providing for extraterritorial application. The South Carolina statute provides:

In an action affecting the title to real property the plaintiff [] not more than twenty days before filing the complaint or at any time afterwards . . . may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the property in that county affected thereby.

² The overwhelming majority of state courts that have addressed this issue, including Georgia, Maryland, West Virginia, Wyoming, and even California, have held that a lis pendens may only be filed if the “action affecting title to real property” is pending within that state. *See e.g., Boca Petroco, Inc. v. Petroleum Realty II, LLC*, 285 Ga. 487, 491, 678 S.E.2d 330, 334 (2009) (holding that a lis pendens was invalid and may not be filed in Georgia to give notice of litigation pending outside of Georgia); *The Formula Inc. v. Superior Court*, 168 Cal.App.4th 1455, 1460, 86 Cal.Rptr.3d 341 (Cal.App. 3 Dist. 2008) (expunging a lis pendens because nothing in text or history of California lis pendens statutes indicates legislative intent to include litigation in the courts of another state within their ambit); *Permanent Financial Corp. v. Taro*, 71 Md.App. 489, 495, 526 A.2d 611 (Ct.Spec.App.1987) (the doctrine of lis pendens, as applied in Maryland, will operate against only real or leasehold property that is located in Maryland and is the subject of an action pending in Maryland); *Ludvik v. James S. Jackson Co.*, 635 P.2d 1135, 1141 (Wyo. 1981) (holding that a “lis pendens had no efficacy outside the territorial jurisdiction of the court in which the action was pending”); *First Nat. Bank v. McGraw*, 85 W. Va. 298, 101 S.E. 474, 475 (1919) (“The territorial scope of the rule lis pendens is coextensive with the jurisdiction of the court in which the suit is pending.”). In addition, the “two states listed in *Boca Petroco* as permitting notices of lis pendens to be filed for litigation outside the state have subsequently amended their statutory provisions to require the underlying litigation to be in a court within the state.” *Conrad v. Wilkinson*, 2017 ND 212, ¶ 18, 901 N.W.2d 348, 353 (2017).

S.C. Code Ann. § 15-11-10 (1976). Nothing in text or history of South Carolina’s lis pendens statute indicates a legislative intent to include litigation in the courts of another state within their ambit. Thus, the Court is persuaded that no such intention can be attributed to the legislature. The statute provides for the filing of a notice in the county in which the property is situated, and is designed to permit a notice of lis pendens within the State of South Carolina with respect to property located in the state in relation to an action brought in another county. S.C. Code Ann. § 15-11-10 (1976).

Additionally, “[t]he United States Supreme Court noted long ago that a court in one state does not have subject matter jurisdiction over real property in another state and cannot directly affect the title of property in another state.” *Boca Petroco, Inc. v. Petroleum Realty II, LLC*, 292 Ga. App. 833, 838, 666 S.E.2d 12, 15 (2008), *aff’d*, 285 Ga. 487, 678 S.E.2d 330 (2009) (citing *Fall v. Eastin*, 215 U.S. 1, 9–10, (1909); *see also Baker v. Gen. Motors Corp.*, 522 U.S. 222, 239(II)(B) (1998) (“one State’s judgment cannot automatically transfer title to land in another State”). This protects South Carolina property owners from the uncertainty that would arise if their properties could effectively be held hostage pending the resolution of litigation in another state. Permitting a lis pendens in South Carolina associated with the mere filing of a lawsuit anywhere in the United States would hazard the rights of South Carolina property owners to the vagaries of judicial action in courts outside the State of South Carolina and would severely restrict alienation of South Carolina real property.

Based on the foregoing the Court finds, consistent with the majority of other jurisdictions that have addressed this issue, that Defendant’s’ Lis Pendens filed in South Carolina was invalid and not authorized because no action affecting title to Property was filed in this state. The Court also finds that nothing in text or history of South Carolina’s lis pendens statute indicates a

legislative intent to include litigation in the courts of another state within its ambit. Because Defendant's Lis Pendens was not authorized, Plaintiff's action and claims for damages shall proceed on the merits.

IT IS ORDERED!

MIKELL R. SCARBOROUGH

_____, 2022
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Jason M Aryeh VS Olivia R Aryeh

Case Number: 2021CP1003609

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2021-CP-10-_____
	)	
Jason M. Aryeh,	)	
	)	
Plaintiff,	)	COMPLAINT
	)	
v.	)	Action for Expedited Declaratory Relief
	)	
Olivia R. Aryeh,	)	<i>(Expedited Hearing Requested</i>
	)	<i>Under Rule 57, SCRCP)</i>
Defendant.	)	
	)	

Plaintiff, Jason M. Aryeh (“Mr. Aryeh”), by and through his undersigned counsel, hereby complains of Defendant Olivia R. Aryeh (“Defendant”) and would respectfully show unto this honorable Court as follows:

INTRODUCTION

1. Plaintiff Jason Aryeh files this Complaint pursuant to Rule 57 of the South Carolina Rules of Civil Procedure, which allows the Court to “order a speedy hearing of an action for declaratory judgment.”¹ Rule 57, SCRCP. The facts underlying this action are undisputed, and the issue before the Court is solely a legal question ripe for determination. The sole issue before the Court is whether a lis pendens filed in South Carolina regarding litigation pending in another state is valid

¹ “This is the same language of Federal Rule 57.” Notes, Rule 57, SCRCP. Numerous courts have applied this rule to allow for expedited proceedings in declaratory judgment actions. *See, e.g., Donnely v. Mavar Shrimp & Oyster Co.*, 190 F.2d 409, 410 (5th Cir. 1951); *Tri-State Generation and Transmission Association, Inc. v. BNSF Railway Company*, 2008 WL 2465407 (D. Ariz. 2006); *John Nuveen & Co., Inc. v. New York City Housing Dev. Corp.*, 1986 WL 5780 (N.D.Ill. 1986); *Carter-Wallace, Inc. v. Ever-Dry Corp.*, 290 F. Supp. 735, 740 (S.D.N.Y. 1968). The Advisory Committee Notes for Rule 57 support the Rule’s use in such a fashion, recognizing that a declaratory judgment “is appropriate when it will ‘terminate the controversy’ giving rise on undisputed or relatively undisputed facts,” and noting that “the Rule operates frequently as a summary proceeding, justifying docketing the case for early hearing as on a motion.”

under South Carolina law. The facts are undisputed. It is undisputed that Defendant filed a Lis Pendens on May 5, 2021 and subsequently filed an Amended Lis Pendens on May 7, 2021 concerning 1651 Atlantic Ave., Sullivan's Island, South Carolina (the "Property") in the Charleston County Court of Common Pleas, Case No.: 2021-LP-10-0213 (collectively the "Lis Pendens"). It is also undisputed that no South Carolina action affecting title to the real Property has been filed by Defendant in South Carolina. Indeed, the subject Lis Pendens references a pending marital divorce action filed in Connecticut. Plaintiff, therefore respectfully requests that this Court hold an expedited hearing to determine whether the Lis Pendens filed by Defendant in South Carolina regarding litigation pending in Connecticut is valid under South Carolina law.

THE PARTIES

2. Mr. Aryeh is a citizen and resident of the State of Connecticut and owns real property in Charleston County, South Carolina, specifically the Property located at 1651 Atlantic Ave., Sullivan's Island, South Carolina.

3. Defendant is a citizen and resident of the State of Connecticut and claims an interest in the Property located at 1651 Atlantic Ave., Sullivan's Island, South Carolina. Defendant filed the subject Lis Pendens in the Charleston County Court of Common Pleas in South Carolina.

JURISDICTION AND VENUE

4. This court has personal jurisdiction over all parties and the rights of Mr. Aryeh and Defendant, and venue in this court is proper. Venue is proper in Charleston County as the most substantial part of the alleged acts and/or omissions giving rise to this Complaint occurred in Charleston County, South Carolina.

FACTS

5. Defendant filed a divorce action against Mr. Aryeh in Connecticut with the Superior Court for the Judicial District of Stamford/Norwalk at Stamford (Case No. FST-FA-19-6043328-S) (the "Connecticut Divorce Action").
6. The Connecticut Divorce Action is still pending.
7. After filing the Connecticut Divorce Action, Defendant filed a Lis Pendens on May 5, 2021 and subsequently filed an Amended Lis Pendens on May 7, 2021 concerning 1651 Atlantic Ave., Sullivan's Island, South Carolina in the Charleston County Court of Common Pleas, Case No.: 2021-LP-10-0213.
8. The Lis Pendens purports to affect title the real Property in South Carolina.
9. No South Carolina action affecting title to the subject real property has been filed.
10. Defendant has not instituted any litigation in South Carolina concerning the Property.
11. The Lis Pendens has no connection to any pending South Carolina litigation.
12. The Lis Pendens concerns the Connecticut Divorce Action.
13. The filing of the Lis Pendens serves as a cloud on the title of the Property.
14. The filing of the Lis Pendens prevented Mr. Aryeh from obtaining financing for the Property to conduct his regular business and has unnecessarily caused him to lose income.
15. On June 29, 2021, Mr. Aryeh, through counsel, wrote counsel for Defendant to inform Defendant that the Lis Pendens was invalid and prohibited under South Carolina law and requested that Defendant withdraw the Lis Pendens.
16. Defendant refused to withdraw the Lis Pendens.

17. An actual and justiciable controversy has arisen and exists as to whether the Lis Pendens filed by Defendant in South Carolina regarding litigation pending in Connecticut is valid under South Carolina law.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment/Attorneys' Fees)**

18. Mr. Aryeh restates and realleges each and every prior allegation above as if fully set forth herein.

19. The South Carolina Declaratory Judgment Act provides that this Court has the power to declare the rights, status and other legal relations whether or not further relief is or could be claimed. S.C. Code Ann § 15-53-20.

20. This lawsuit complies with the “basic purpose” of the South Carolina’s Declaratory Judgment Act, which is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations.” S.C. Code Ann. 15-53-130. “It is to be liberally construed and administered.” *Id.*

21. Due to the facts, conditions and circumstances set forth on this Complaint, an actual and justiciable controversy has arisen and exists as to whether the Lis Pendens filed by Defendant in South Carolina regarding litigation pending in Connecticut is valid under South Carolina law.

22. Under South Carolina law, “the filing of a lis pendens is an extraordinary privilege granted by statute, [and] strict compliance with the statutory provisions is required.” *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 8–9, 732 S.E.2d 876, 880 (2012).

23. “A lis pendens, which must be filed not more than twenty days before the filing of the complaint or at any time afterwards, is a derivative right, and its validity depends not only on the timeliness of its filing in relation to the underlying complaint, but on the validity of the complaint

as well.” 14 S.C. Jur. Lis Pendens § 10; (citing S.C. Code Ann. § 15-11-10 & *Theisen v. Theisen*, 394 S.C. 434, 447, 716 S.E.2d 271, 277 (2011)).

24. Specifically, the South Carolina statute provides:

In an action affecting the title to real property the plaintiff [] not more than twenty days before filing the complaint or at any time afterwards . . . may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the property in that county affected thereby.

S.C. Code Ann. § 15-11-10 (1976).

25. There is nothing in the present South Carolina statutory scheme regarding lis pendens to indicate a legislative intent to include litigation in the courts of other states within its reach.

26. Indeed, the overwhelming majority of state courts that have addressed this issue, including Georgia, Maryland, West Virginia, Wyoming, and even California, have held that a lis pendens may only be filed if the “action affecting title to real property” is pending within that state. *See e.g., Boca Petroco, Inc. v. Petroleum Realty II, LLC*, 285 Ga. 487, 491, 678 S.E.2d 330, 334 (2009)² (holding that a lis pendens was invalid and may not be filed in Georgia to give notice of litigation pending outside of Georgia); *The Formula Inc. v. Superior Court*, 168 Cal.App.4th 1455, 1460, 86 Cal.Rptr.3d 341 (Cal.App. 3 Dist. 2008) (expunging a lis pendens because nothing in text or history of California lis pendens statutes indicates legislative intent to include litigation in the courts of another state within their ambit); *Permanent Financial Corp. v. Taro*, 71 Md.App. 489, 495, 526 A.2d 611 (Ct.Spec.App.1987) (the doctrine of lis pendens, as applied in Maryland, will operate against only real or leasehold property that is located in Maryland and is the subject of an action pending in Maryland); *Ludvik v. James S. Jackson Co.*, 635 P.2d 1135, 1141 (Wyo. 1981)

² “We note that two states listed in *Boca Petroco* as permitting notices of lis pendens to be filed for litigation outside the state have subsequently amended their statutory provisions to require the underlying litigation to be in a court within the state. *Conrad v. Wilkinson*, 2017 ND 212, ¶ 18, 901 N.W.2d 348, 353 (2017).

(holding that a “lis pendens had no efficacy outside the territorial jurisdiction of the court in which the action was pending”); *First Nat. Bank v. McGraw*, 85 W. Va. 298, 101 S.E. 474, 475 (1919) (“The territorial scope of the rule lis pendens is coextensive with the jurisdiction of the court in which the suit is pending.”).

27. In addition to the overwhelming majority of courts that have addressed the issue, “[t]he United States Supreme Court noted long ago that a court in one state does not have subject matter jurisdiction over real property in another state and cannot directly affect the title of property in another state.” *Boca Petroco, Inc. v. Petroleum Realty II, LLC*, 292 Ga. App. 833, 838, 666 S.E.2d 12, 15 (2008), *aff’d*, 285 Ga. 487, 678 S.E.2d 330 (2009) (citing *Fall v. Eastin*, 215 U.S. 1, 9–10, (1909); see also *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 239(II)(B) (1998) (“one State’s judgment cannot automatically transfer title to land in another State”). Importantly, the South Carolina Supreme Court has also held that “the jurisdiction of a state is restricted to its own territorial limits.” *Drs. Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers’ Comp. Tr. Fund*, 371 S.C. 5, 8, 636 S.E.2d 862, 863 (2006). In the 1966 South Carolina Supreme Court decision on which *Doctors Hospital* relied, the court stated:

Thus, the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction. *A statute which purports to have such operation is invalid.*

Ex parte First Pa. Banking & Tr. Co., 148 S.E.2d 373, 374 (S.C. 1966) (quoting 50 Am. Jur. *Statutes* § 485) (emphasis added).

28. Thus, under South Carolina law, even if the South Carolina legislature expressly stated its legislative intent to include litigation in the courts of other states within its reach under the South Carolina lis pendens statute, which it has not, it would be deemed invalid under South Carolina law.

29. Here, the Lis Pendens was filed in May of 2021, and no South Carolina action affecting title to the subject real Property has been filed.

30. Indeed, the subject Lis Pendens references a pending marital divorce action filed in Connecticut.

31. Mr. Aryeh is informed and believes that he is entitled to a decree from this Court declaring that:

(a) Consistent with the majority of other jurisdictions that have addressed this issue, the Lis Pendens filed in South Carolina is invalid because no South Carolina action affecting title to Property is pending in South Carolina;

(b) The Lis Pendens is invalid because nothing in text or history of South Carolina's lis pendens statute indicates a legislative intent to include litigation in the courts of another state within their ambit;

(c) The Lis Pendens is invalid because the jurisdiction of Connecticut is restricted to its own territorial limits until a judgment is issued and transcribed in South Carolina; and

(d) For the Lis Pendens to be valid, it must be the subject of an action pending in South Carolina (for example, an injunction³ action prohibiting the sale or transfer of the property).

32. Under the Declaratory Judgment Act a trial court may award costs in declaratory judgment actions as may seem equitable and just. S.C. Code Ann. § 15-53-100. Here, Mr. Aryeh is entitled to recover his costs under the Declaratory Judgment Act. Mr. Aryeh is also entitled to recover his attorney's fees. Indeed, Mr. Aryeh, through counsel, sought to resolve this matter pursuant to Rule 11 and provided all applicable law to Defendant. However, Defendant has refused to withdraw the Lis Pendens.

³ The reason an injunction has not been sought is because Defendant's claim to the Property is frivolous, and Defendant cannot prove a likelihood of success on the merits.

33. Therefore, upon a speedy hearing to be expedited in accordance with Rule 57 of the South Carolina Rules of Civil Procedure, Mr. Aryeh hereby requests a declaratory judgment be issued by the Court including all of the relief set for above.

WHEREFORE, having set forth his Complaint against Defendant, Mr. Aryeh respectfully requests that judgment be entered against Defendant for the relief outlined above, including costs and attorneys' fees.

HAYNSWORTH SINKLER BOYD, P.A.

s/ Stafford J. McQuillin III
David M. Swanson (SC Bar #5451)
Stafford J. McQuillin III (#78203)

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Charleston, SC 29402-0340
Ph. (843) 722-3366
dswanson@hsblawfirm.com
mmcquillin@hsblawfirm.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	CASE NO: 2021-CP-100-3609
	)	
JASON. M ARYEH,	)	ANSWER
	)	
Plaintiff,	)	
vs.	)	
	)	
OLIVIA R. ARYEH	)	
	)	
	)	

To: David Swanson, Esq. and Stafford McQuillin III, Esq., Attorneys for the Plaintiffs

Defendant Olivia R. Aryeh (“Defendant”), answering the Complaint filed against him by Plaintiff Jason M. Aryeh herein alleges:

INTRODUCTION

1. Defendant admits the allegations in Paragraph 1.
2. Defendant admits the allegations in Paragraph 2.

THE PARTIES

3. Defendant admits the allegations in Paragraph 3.

JURISDICTION AND VENUE

4. Defendant admits the allegations in Paragraph 4.

FACTS

5. Defendant admits the allegations in Paragraph 5.
6. Defendant admits the allegations in Paragraph 6 (emphasis added).
7. Defendant admits the allegations in Paragraph 7.
8. Defendant admits the allegations in Paragraph 8.

9. Defendant admits the allegations in Paragraph 9. Despite the underlying lawsuit originating in Connecticut, the underlying lawsuit is a pending divorce action where marital assets between the Plaintiff and Defendant have yet to be divided.
10. Defendant admits the allegations in Paragraph 10, but notes that the status does not require there be a South Carolina legal action.
11. Defendant admits the allegations in Paragraph 11.
12. Defendant admits the allegations in Paragraph 12.
13. Defendant admits the allegations in Paragraph 13. The Lis Pendens is being utilized as a “cloud on the title” until the conclusion of the Connecticut Divorce Action because such cloud is appropriate to protect the interests of Defendant until a marital dissolution has been formalized.
14. Defendant lacks the information to state whether the allegations in Paragraph 14 is true or false.
15. Defendant admits to receiving correspondence requesting the withdrawal of the Lis Pendens. Defendant denies the other allegations made in Paragraph 15.
16. Defendant admits the allegations in Paragraph 16.
17. Defendant denies the allegations set forth in Paragraph 17 in that a Lis Pendens in this case is consistent with the statutory requirement and rightly notifies the public that this property is subject to litigation. Such is proper until the final dissolution of the marriage and distribution of marital assets.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgement/ Attorneys’ Fees)

18. Defendant defers to Defendant’s responses addressed in Paragraphs 1-17.
19. Defendant admits the facts in Paragraph 19.

20. Defendant admits to the facts in Paragraph 20.
21. Defendant admits to the allegations in Paragraph 21.
22. Defendant deny Paragraph 22 in that a declaratory judgment is necessary in this matter as the plain reading of the statute has been satisfied in that a Lis Pendens is proper when the property is subject to an action. In this case, the action is a marital dispute that affects property ownership of this property.
23. Defendant notes that South Carolina courts have never ruled to limit “underlying complaint” addressed in S.C. Code Ann. § 15-11-10 to solely in-state actions. Nonetheless, Defendant admits to the allegations of Paragraph 23.
24. As stated above, Defendant alleges the Connecticut Divorce Action is “an action affecting title to real property” as the parties’ marital assets have not been divided by a Court Order. Nonetheless, Defendant admits to the allegations of Paragraph 24.
25. Upon information and belief, Defendant denies the allegations in Paragraph 25. The plain reading of the statute does not exclude litigation to this state but rather to litigation affecting the title to real property, which is the case here.
26. Defendant admits Paragraph 26 insofar as the existence of the cited cases, but denies that a majority of states were cited and/or have taken the Plaintiff’s position to bar lis pendens suits connected to an underlying, out-of-state complaint, particularly in the unique context of a marital dissolution and distribution of marital property.
27. Defendant admits the allegations in Paragraph 27 insofar as the existence of the case, but denies that this case law impacts the current situation where Defendant through her marriage has rights to this property.

28. Defendant denies the allegations in Paragraph 28. Moreover, pursuant to *Hursey v. Hursey*, 284 S.C. 323, 326 S.E.2d 178 (Ct. App. 1985) “at least two remedies to protect against or prevent dissipation of marital property pending divorce are available to a non-titled spouse. Pursuant to South Carolina Code Section 15–11–10 (1976), the non-titled spouse may file a notice of lis pendens, or may seek a temporary injunction based on Section 15–55–20(1).”
29. Defendant admits the allegations in Paragraph 29.
30. Defendant admits the allegations in Paragraph 30.
31. Defendant denies the allegations in Paragraph 31.
32. Defendant denies the allegations in Paragraph 32.
33. Defendant denies the allegations in Paragraph 33.

FURTHER ANSWERING AND AS AN
AFFIRMATIVE DEFENSE
(Reliance on Other Defenses)

34. The Defendants hereby adopt and crave reference to any applicable facts as pled by any party to this action, and any and all such applicable facts as may be presented by and through the discovery of this matter. The Defendants re-allege the factual allegations contained hereinabove of this Answer and incorporate the same herein as if repeated verbatim.
35. The Defendants hereby give notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserves the right to amend their Answer to assert any such defenses.

FURTHER ANSWERING AND AS AN

AFFIRMATIVE DEFENSE
(Violation of Constitutional Guarantees)

36. The Defendants hereby adopt and crave reference to any applicable facts as pled by any party to this action, and any and all such applicable facts as may be presented by and through the discovery of this matter. The Defendants re-allege the factual allegations contained hereinabove of this Answer and incorporate the same herein as if repeated verbatim.
37. That the Plaintiff, to the extent that she seeks punitive or exemplary damages, if any, is in violation of the rights of the Defendants under the United States Constitution and the Constitution of the State of South Carolina and, therefore, fails to state a cause of action upon which either punitive or exemplary damages may be awarded.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to State a Claim – Rule 12(b)(6))

38. The Defendants hereby adopt and crave reference to any applicable facts as pled by any party to this action, and any and all such applicable facts as may be presented by and through the discovery of this matter. The Defendants re-allege the factual allegations contained hereinabove of this Answer and incorporate the same herein as if repeated verbatim.
39. Some or all of the Plaintiff's causes of action fail to state a claim against the Defendant upon which relief can be granted, and, therefore, must be dismissed pursuant to Rule 12(b)(6), SCRCp.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Lack of Standing)

40. The Defendants hereby adopt and crave reference to any applicable facts as pled by any party to this action, and any and all such applicable facts as may be presented by and through the discovery of this matter. The Defendants re-allege the factual allegations contained hereinabove of this Answer and incorporate the same herein as if repeated verbatim.

41. Plaintiff lacks standing to assert one or more of the claims alleged in the Complaint, which claims must, therefore, be dismissed.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Estoppel)

42. The Defendants hereby adopt and crave reference to any applicable facts as pled by any party to this action, and any and all such applicable facts as may be presented by and through the discovery of this matter. The Defendants re-allege the factual allegations contained hereinabove of this Answer and incorporate the same herein as if repeated verbatim.

43. Plaintiff is equitably estopped from recovering under some or all of the claims alleged in the Complaint.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendants pray for trial by jury and that the Plaintiff's Complaint be dismissed, together with costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

Henderson & Henderson, LLC

s/ Wesley Henderson, Esq
George Fowler, Esq

6 Charlotte Street
Charleston, SC 29403
Phone: (843) 212-3188

Attorneys for the Defendant

Charleston, South Carolina
8th day of September 2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2021-CP-10-3609
	)	
Jason M. Aryeh,	)	
	)	
Plaintiff,	)	AMENDED COMPLAINT
	)	
v.	)	Action for Expedited Declaratory Relief
	)	and Damages
Olivia R. Aryeh,	)	
	)	<i>(Expedited Hearing Scheduled</i>
	)	<i>for May 16, 2022)</i>
Defendant.	)	

Plaintiff, Jason M. Aryeh (“Mr. Aryeh”), by and through his undersigned counsel, hereby files this Amended Complaint pursuant to the Court’s oral ruling at the status conference on April 11, 2022 permitting Plaintiff to amend his Complaint to, among other things, assert claims for damages against Defendant. Plaintiff complains of Defendant Olivia R. Aryeh (“Defendant”) and would respectfully show unto this honorable Court as follows:

INTRODUCTION

1. Plaintiff Jason Aryeh files this Amended Complaint, in part, pursuant to Rule 57 of the South Carolina Rules of Civil Procedure, which allows the Court to “order a speedy hearing of an action for declaratory judgment.”¹ Rule 57, SCRCP. As discussed herein, Plaintiff also seeks

¹ “This is the same language of Federal Rule 57.” Notes, Rule 57, SCRCP. Numerous courts have applied this rule to allow for expedited proceedings in declaratory judgment actions. *See, e.g., Donnelly v. Mavar Shrimp & Oyster Co.*, 190 F.2d 409, 410 (5th Cir. 1951); *Tri-State Generation and Transmission Association, Inc. v. BNSF Railway Company*, 2008 WL 2465407 (D. Ariz. 2006); *John Nuveen & Co., Inc. v. New York City Housing Dev. Corp.*, 1986 WL 5780 (N.D.Ill. 1986); *Carter-Wallace, Inc. v. Ever-Dry Corp.*, 290 F. Supp. 735, 740 (S.D.N.Y. 1968). The Advisory Committee Notes for Rule 57 support the Rule’s use in such a fashion, recognizing that a declaratory judgment “is appropriate when it will ‘terminate the controversy’ giving rise on undisputed or relatively undisputed facts,” and noting that “the Rule operates frequently as a summary proceeding, justifying docketing the case for early hearing as on a motion.”

damages associated with the unlawful lis pendens and cloud Defendant placed on Plaintiff's title for nearly a year. Due to Plaintiff's amended claims for damages associated with the lis pendens, a justiciable controversy exists as to whether a lis pendens filed in South Carolina regarding litigation pending in another state is valid under South Carolina law. Thus, the requested declaratory relief remains appropriate.

2. On April 11, 2022, the Court held a status conference and scheduled a hearing for May 16, 2022 at 11:00 a.m. for the Court to decide the issue of whether a lis pendens filed in South Carolina regarding litigation pending in another state is valid under South Carolina law.

3. The facts underlying this legal issue are undisputed and ripe for determination. Specifically, the legal issue before the Court is whether a lis pendens filed in South Carolina regarding litigation pending in another state is valid under South Carolina law. It is undisputed that Defendant filed a Lis Pendens on May 5, 2021 and subsequently filed an Amended Lis Pendens on May 7, 2021 concerning 1651 Atlantic Ave., Sullivan's Island, South Carolina (the "Property") in the Charleston County Court of Common Pleas, Case No.: 2021-LP-10-0213 (collectively the "Lis Pendens"). It is also undisputed that no South Carolina action affecting title to the real Property was ever filed by Defendant in South Carolina. Indeed, the subject Lis Pendens referenced a pending marital divorce action filed in Connecticut. Despite repeated demands from Plaintiff and his counsel to remove the Lis Pendens, Plaintiff did not cancel the Lis Pendens until nearly a year later on April 12, 2022.

4. As discussed herein, Plaintiff was damaged by Defendants unlawful filing of the Lis Pendens and seeks damages associated with the cloud Defendant placed on Plaintiff's title for nearly a year.

THE PARTIES

5. Mr. Aryeh is a citizen and resident of the State of Connecticut and owns real property in Charleston County, South Carolina, specifically the Property located at 1651 Atlantic Ave., Sullivan's Island, South Carolina.

6. Defendant is a citizen and resident of the State of Connecticut and claims an interest in the Property located at 1651 Atlantic Ave., Sullivan's Island, South Carolina. Defendant filed the subject Lis Pendens in the Charleston County Court of Common Pleas in South Carolina.

JURISDICTION AND VENUE

7. This court has personal jurisdiction over all parties and the rights of Mr. Aryeh and Defendant, and venue in this court is proper. Venue is proper in Charleston County as the most substantial part of the alleged acts and/or omissions giving rise to this Complaint occurred in Charleston County, South Carolina.

FACTS

8. Defendant filed a divorce action against Mr. Aryeh in Connecticut with the Superior Court for the Judicial District of Stamford/Norwalk at Stamford (Case No. FST-FA-19-6043328-S) (the "Connecticut Divorce Action").

9. The Connecticut Divorce Action is still pending.

10. After filing the Connecticut Divorce Action, Defendant filed a Lis Pendens on May 5, 2021 and subsequently filed an Amended Lis Pendens on May 7, 2021 concerning 1651 Atlantic Ave., Sullivan's Island, South Carolina in the Charleston County Court of Common Pleas, Case No.: 2021-LP-10-0213.

11. The Lis Pendens purported to affect title to the Property in South Carolina.

12. Defendant did not file any action affecting title to the subject real property in South Carolina.

13. Defendant did not institute any litigation in South Carolina concerning the Property.

14. The Lis Pendens had no connection to any pending South Carolina litigation.

15. The Lis Pendens concerned the Connecticut Divorce Action.

16. On June 29, 2021, Mr. Aryeh, through counsel, wrote counsel for Defendant to inform Defendant that the Lis Pendens was invalid and prohibited under South Carolina law and requested that Defendant withdraw the Lis Pendens.

17. Plaintiff and his counsel made several follow ups and additional requests that Defendant withdraw the Lis Pendens.

18. Even after the instant case was filed against Defendant in August of 2021, Defendant willfully refused to withdraw and continued to maintain the Lis Pendens.

19. Despite these requests and this lawsuit, Defendant refused to withdraw the Lis Pendens and willfully allowed it to remain as a cloud on the title to Plaintiff's Property from May 5, 2021 until April 12, 2022 – nearly a year.

20. On April 12, 2022, after a Connecticut Court ordered Defendant to release the Lis Pendens and after the Lis Pendens had been pending for more than a year, Defendant finally cancelled the Lis Pendens.

21. The filing of the Lis Pendens served as a cloud on the title of the Property from May 5, 2021 until April 12, 2022.

22. Defendant's filing and continuation of the Lis Pendens placed a cloud on Plaintiff's title, which prevented Plaintiff from freely disposing of the Property from May 5, 2021 until April 12, 2022.

23. The Property located at 1651 Atlantic Ave., Sullivan's Island, South Carolina was purchased by Plaintiff as an investment property via a 1031 exchange. The proceeds used in the 1031 exchange were from the sale of a property that Defendant had previously quit claim deeded to Plaintiff in California. Plaintiff was the sole owner of the California property used to make the 1031 exchange. Residential real estate development has been one of Plaintiff's businesses since the 1990s. Thus, Defendant knowingly interfered with Plaintiff's business when she filed the improper Lis Pendens. Specifically, as a result of the Lis Pendens, Plaintiff has not been able to develop the Property, which has led to unnecessary carrying costs, a mortgage at 7% instead of 2.5%, much higher construction material expenses, attorneys' fees, and missing the great real estate sellers' market, as it will now take Plaintiff a full year to build the intended new home.

24. From May 5, 2021 until April 12, 2022, Defendant's filing and continuation of the Lis Pendens caused harm to Mr. Aryeh and, among other damages as alleged herein, prevented Mr. Aryeh from obtaining financing for the Property to conduct his regular business, resulted in Plaintiff losing income, caused Plaintiff to incur carrying costs he otherwise would have avoided but for the Lis Pendens, and caused Plaintiff to incur increased interest rates, attorneys' fees, and lost profits.

25. For example, in July and August of 2021, Plaintiff applied for a mortgage with Wells Fargo and could have obtained a 2.5% interest rate. However, as depicted in the email below, Wells Fargo was not able to provide financing to Plaintiff due to Defendant's bad faith and willful refusal to withdraw the Lis Pendens:

From: marylan.johnson@wellsfargo.com
 Date: July 28, 2021 at 7:41:33 PM EDT
 To: jason@jalaa.com
 Subject: Wells Fargo Private Mortgage Banking // Follow up

Hi Jason

As per our conversation this afternoon,

Wells Fargo Home Mortgage is not able to provide financing at this time for the property at "1651 Atlantic Ave, Sullivan's Island SC 29482".

Once the Notice of Lis Pendens has been resolved and released from the property please feel free to contact me to revisit about financing at that time.

Thank you so much for allowing me the opportunity to assist you.

Sincerely,

Marylan Johnson
 Private Mortgage Banker
 NMLSR ID 408732
 Wells Fargo Home Mortgage | 2195 E. River Rd | Tucson , AZ 85718
 *** 619.228.2222 ***

26. After Defendant finally removed the Lis Pendens in April of 2022, nearly a year after its filing, Plaintiff was able to obtain financing; however, Plaintiff's interest rate on his mortgage is now at 7%, not the 2.5% that he could have taken advantage of in July and August of 2021 if the Defendant would have removed the unauthorized Lis Pendens.

27. As evidenced above, Defendant's bad faith and willful refusal to withdraw the Lis Pendens proximately caused damage to Plaintiff in the form of additional interest payments, bank fees, legal fees, interference with Plaintiff's normal course of business (real estate development), time/focus away from his other business ventures, and other monetary and personal stresses.

28. While the Lis Pendens has been cancelled, due to Plaintiff's claims for damages associated with the Lis Pendens, an actual and justiciable controversy exists as to whether the Lis Pendens filed by Defendant in South Carolina regarding litigation pending in Connecticut is valid under South Carolina law.

29. Defendant's bad faith actions are not just limited to South Carolina. Thirty months after Defendant's Connecticut Divorce filing, Defendant also took out an improper lis pendens on Plaintiff's Greenwich Connecticut home, which he purchased 17 years before meeting Defendant

and which home is owned solely by Plaintiff, while never claiming an interest in the home in the divorce filing. This is illegal in Connecticut. Defendant willfully took these bad faith actions primarily for ulterior purposes, including, among other things, to restrict Plaintiff from raising capital to defend himself and fund his legal expenses due to Defendant and her family's (completely frivolous) legal actions against Plaintiff in three states.

30. Plaintiff has been attempting to relocate to South Carolina to conduct business, which Defendant is trying to improperly prevent through the courts. This is despite the fact that: a) Plaintiff has been offered a job as a co-general partner of a venture-capital fund located in Charleston; and b) Plaintiff has had primary custody of his 2 children, and the court assigned custody evaluator has recommended to the court that Plaintiff be given permanent primary custody and be allowed to relocate to Charleston.

31. Upon information and belief, Defendant and her father, Jamshid R Damavandi, conspired against Plaintiff; however, Defendant and her counsel have refused to respond to discovery seeking to obtain facts supporting a conspiracy claim, which when produced, will likely necessitate an amendment to this Complaint to assert additional claims for civil conspiracy, among other claims.

**FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment/Attorneys' Fees)**

32. Mr. Aryeh restates and realleges each and every prior allegation above as if fully set forth herein.

33. The South Carolina Declaratory Judgment Act provides that this Court has the power to declare the rights, status and other legal relations whether or not further relief is or could be claimed. S.C. Code Ann § 15-53-20.

34. This lawsuit complies with the "basic purpose" of the South Carolina's Declaratory Judgment Act, which is "to settle and to afford relief from uncertainty and insecurity with respect

to rights, status and other legal relations.” S.C. Code Ann. 15-53-130. “It is to be liberally construed and administered.” *Id.*

35. Due to the facts, conditions and circumstances set forth in this Complaint, including Plaintiff’s claims for damages, an actual and justiciable controversy exists as to whether the Lis Pendens filed by Defendant in South Carolina regarding litigation pending in Connecticut is valid under South Carolina law.

36. “[T]he filing of a lis pendens places a cloud on title which prevents the owner from freely disposing of the property.” *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002).

37. As such, under South Carolina law, “the filing of a lis pendens is an extraordinary privilege granted by statute, [and] strict compliance with the statutory provisions is required.” *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 8–9, 732 S.E.2d 876, 880 (2012).

38. “A lis pendens, which must be filed not more than twenty days before the filing of the complaint or at any time afterwards, is a derivative right, and its validity depends not only on the timeliness of its filing in relation to the underlying complaint, but on the validity of the complaint as well.” 14 S.C. Jur. Lis Pendens § 10; (citing S.C. Code Ann. § 15-11-10 & *Theisen v. Theisen*, 394 S.C. 434, 447, 716 S.E.2d 271, 277 (2011)).

39. Specifically, the South Carolina statute provides:

In an action affecting the title to real property the plaintiff [] not more than twenty days before filing the complaint or at any time afterwards . . . may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the property in that county affected thereby.

S.C. Code Ann. § 15-11-10 (1976).

40. “A lis pendens ‘is premised upon and must be filed in time in conjunction with an underlying complaint involving an issue of property.’” *D.R. Horton, Inc. v. Wescott Land Co.*,

LLC, 398 S.C. 528, 559, 730 S.E.2d 340, 356 (Ct. App. 2012), *aff'd in part as modified, vacated in part*, 410 S.C. 319, 764 S.E.2d 701 (2014).

41. “Lis pendens literally means a pending action; the doctrine derives from the jurisdiction and control which a court acquires over property involved in an action pending its continuance and until final judgment is entered.” *Permanent Fin. Corp. v. Taro*, 71 Md. App. 489, 493, 526 A.2d 611, 612 (1987) (cancelling a lis pendens pending in Maryland associated with an action pending in another state because “[a]lienation of Maryland real and leasehold property could be severely restricted by the mere filing of a lawsuit anywhere in the United States.”).

42. “At common law the doctrine of lis pendens had no efficacy outside the territorial jurisdiction of the court in which the action was pending.” *Ludvik v. James S. Jackson Co.*, 635 P.2d 1135, 1141 (Wyo. 1981) (holding that a “lis pendens had no efficacy outside the territorial jurisdiction of the court in which the action was pending” so as “to not hazard the rights of Wyoming property owners to the vagaries of judicial action in courts outside the State of Wyoming.”).

43. There is nothing in the present South Carolina statutory scheme regarding lis pendens to indicate a legislative intent to include litigation in the courts of other states within its reach.

44. Indeed, the overwhelming majority of state courts that have addressed this issue, including Georgia, Maryland, West Virginia, Wyoming, and even California, have held that a lis pendens may only be filed if the “action affecting title to real property” is pending within that state. *See e.g., Boca Petroco, Inc. v. Petroleum Realty II, LLC*, 285 Ga. 487, 491, 678 S.E.2d 330, 334 (2009)² (holding that a lis pendens was invalid and may not be filed in Georgia to give notice of

² “We note that two states listed in *Boca Petroco* as permitting notices of lis pendens to be filed for litigation outside the state have subsequently amended their statutory provisions to require the

litigation pending outside of Georgia); *The Formula Inc. v. Superior Court*, 168 Cal.App.4th 1455, 1460, 86 Cal.Rptr.3d 341 (Cal.App. 3 Dist. 2008) (expunging a lis pendens because nothing in text or history of California lis pendens statutes indicates legislative intent to include litigation in the courts of another state within their ambit); *Permanent Financial Corp. v. Taro*, 71 Md.App. 489, 495, 526 A.2d 611 (Ct.Spec.App.1987) (the doctrine of lis pendens, as applied in Maryland, will operate against only real or leasehold property that is located in Maryland and is the subject of an action pending in Maryland); *Ludvik v. James S. Jackson Co.*, 635 P.2d 1135, 1141 (Wyo. 1981) (holding that a “lis pendens had no efficacy outside the territorial jurisdiction of the court in which the action was pending”); *First Nat. Bank v. McGraw*, 85 W. Va. 298, 101 S.E. 474, 475 (1919) (“The territorial scope of the rule lis pendens is coextensive with the jurisdiction of the court in which the suit is pending.”).

45. In addition to the overwhelming majority of courts that have addressed the issue, “[t]he United States Supreme Court noted long ago that a court in one state does not have subject matter jurisdiction over real property in another state and cannot directly affect the title of property in another state.” *Boca Petroco, Inc. v. Petroleum Realty II, LLC*, 292 Ga. App. 833, 838, 666 S.E.2d 12, 15 (2008), *aff’d*, 285 Ga. 487, 678 S.E.2d 330 (2009) (citing *Fall v. Eastin*, 215 U.S. 1, 9–10, (1909); see also *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 239(II)(B) (1998) (“one State’s judgment cannot automatically transfer title to land in another State”). Importantly, the South Carolina Supreme Court has also held that “the jurisdiction of a state is restricted to its own territorial limits.” *Drs. Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers’ Comp. Tr. Fund*,

underlying litigation to be in a court within the state. *Conrad v. Wilkinson*, 2017 ND 212, ¶ 18, 901 N.W.2d 348, 353 (2017).

371 S.C. 5, 8, 636 S.E.2d 862, 863 (2006). In the 1966 South Carolina Supreme Court decision on which *Doctors Hospital* relied, the court stated:

Thus, the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction. *A statute which purports to have such operation is invalid.*

Ex parte First Pa. Banking & Tr. Co., 148 S.E.2d 373, 374 (S.C. 1966) (quoting 50 Am. Jur. Statutes § 485) (emphasis added).

46. Thus, under South Carolina law, even if the South Carolina legislature expressly stated its legislative intent to include litigation in the courts of other states within its reach under the South Carolina lis pendens statute, which it has not, it would be deemed invalid under South Carolina law.

47. Here, the Lis Pendens was filed in May of 2021 and remained in place for nearly a year.

48. No South Carolina action affecting title to the subject real Property was filed.

49. Indeed, the subject Lis Pendens referenced a pending marital divorce action filed in Connecticut.

50. Mr. Aryeh is informed and believes that he is entitled to a decree from this Court declaring that:

(a) Consistent with the majority of other jurisdictions that have addressed this issue, the Lis Pendens filed in South Carolina was invalid because no South Carolina action affecting title to Property was filed in South Carolina;

(b) The Lis Pendens was invalid because nothing in text or history of South Carolina's lis pendens statute indicates a legislative intent to include litigation in the courts of another state within their ambit;

(c) The Lis Pendens was invalid because the jurisdiction of Connecticut is restricted to its own territorial limits until a judgment is issued and transcribed in South Carolina; and

(d) For the Lis Pendens to be valid, it had to be the subject of an action pending in South Carolina (for example, an injunction³ action prohibiting the sale or transfer of the property).

51. Under the Declaratory Judgment Act a trial court may award costs in declaratory judgment actions as may seem equitable and just. S.C. Code Ann. § 15–53–100. Here, Mr. Aryeh is entitled to recover his costs under the Declaratory Judgment Act. Mr. Aryeh is also entitled to recover his attorney’s fees. Indeed, Mr. Aryeh, through counsel, sought to resolve this matter pursuant to Rule 11 and provided all applicable law to Defendant. However, Defendant refused to withdraw the Lis Pendens for nearly a year.

52. Therefore, upon a speedy hearing to be expedited in accordance with Rule 57 of the South Carolina Rules of Civil Procedure, Mr. Aryeh hereby requests a declaratory judgment be issued by the Court including all of the relief set for above.

**FOR A SECOND CAUSE OF ACTION
(Abuse of Process)**

53. Mr. Aryeh restates and realleges each and every prior allegation above as if fully set forth herein and not inconsistent with an abuse of process claim.

54. South Carolina’s Appellate Courts have held that the filing of a lis pendens for an ulterior purpose is actionable under an abuse of process claim. *See e.g., Broadmoor Apartments of Charleston v. Horwitz*, 306 S.C. 482, 413 S.E.2d 9 (1991) (affirming a jury award of \$750,000 in connection with an abuse of process claim where the defendant “willfully abused process by

³ Defendant had other valid legal options available to her, but she did not pursue those. By way of example, Defendant could have attempted to obtain an order in the Connecticut Divorce Action preventing Plaintiff from disposing of any marital property and then filed an action to transcribe the judgment in South Carolina consistent with a Connecticut Court’s Order. However, in actuality, Defendant’s claim to the Property was/is entirely frivolous, and Defendant could not have obtained that relief, which is why Defendant ultimately elected to file the unauthorized Lis Pendens.

filing a lis pendens”); *see also Food Lion, Inc. v. United Food & Com. Workers Int'l Union*, 351 S.C. 65, 81, 567 S.E.2d 251, 259 (Ct. App. 2002) (“In *Broadmoor*, our supreme court found sufficient evidence from which the jury could infer that the corporation and its president willfully abused the process by filing a lis pendens for the ulterior purpose of preventing a sale to third parties in hopes of obtaining financial backing to purchase the property at an advantageous price.”).

55. As set forth herein, Defendant’s willful filing and continuation of the Lis Pendens in South Carolina concerning litigation pending in Connecticut was not authorized and improper.

56. Defendant’s filing of the Lis Pendens was a willful act in the use of the process not proper in the conduct of the proceeding.

57. Indeed, shortly after the Lis Pendens was filed, Plaintiff, through his counsel, provided Defendant with the case law cited herein and requested that the Lis Pendens be cancelled.

58. Defendant’s nearly yearlong refusal to cancel the Lis Pendens, despite Plaintiff’s repeated requests and information demonstrating the Lis Pendens was unlawful, was a willful act in the use of the process not proper in the conduct of the proceeding.

59. Indeed, it was not after (1) this lawsuit had been pending for more than six months; and (2) after a Connecticut Court ordered Defendant to release the Lis Pendens that Defendant finally cancelled the Lis Pendens, which served as a cloud on Plaintiff’s title for nearly a year.

60. Defendant’s continuation of the Lis Pendens for nearly a year was a willful act in the use of the process not proper in the conduct of the proceeding.

61. Defendant willfully filed and allowed the unauthorized Lis Pendens to remain filed for nearly a year for an improper, ulterior purpose to obtain illegitimate collateral objectives in the Connecticut Divorce Action and to cause Plaintiff financial pain and stress.

62. Instead of requesting an order from the Connecticut judge preventing the sale of the Property, which would not have occurred because Defendant has no valid claim to the Property, Plaintiff willfully and improperly filed the Lis Pendens for an improper, ulterior purpose.

63. Defendant improperly utilized the Lis Pendens as a form of coercion to obtain collateral advantages, not properly involved in the proceeding itself, specifically and among other things, to cause financial trouble to Plaintiff, to improperly obtain leverage against Plaintiff to force the payment of money from Plaintiff to Defendant, to prevent Plaintiff from selling, financing or improving the Property, to interfere with Plaintiff's normal course of business (real estate development), and to prevent Plaintiff from relocating to South Carolina to conduct business.

64. Specifically, on several occasions, Defendant and her agents have attempted to wrongfully extort Plaintiff by demanding cash from Plaintiff in exchange for Defendant's removal of the Lis Pendens.

65. Defendant's primary purpose of filing and maintaining the unauthorized Lis Pendens was to obtain the illegitimate collateral advantages alleged herein.

66. Defendant willfully took these unauthorized actions with improper, ulterior purposes, including, among other things, to restrict Plaintiff from raising capital to defend himself and fund his legal expenses due to Defendant and her family's (completely frivolous) legal actions against Plaintiff in three states.

67. Defendant's willful actions constituted a perversion of a legal procedure for a purpose not intended by the procedure.

68. Defendant misused the Lis Pendens judicial process for an end other than that which it was designed to accomplish.

69. Defendant's filing and continuation of the Lis Pendens was willful and aimed at an object not legitimate in the use of the process.

70. Defendant's willful filing and continuation of the Lis Pendens was (1) not authorized under the statute; and (2) was aimed at illegitimate collateral objectives as set forth herein.

71. Defendant's bad faith and willful filing of the Lis Pendens, refusal to withdraw the Lis Pendens, and continuation of the Lis Pendens proximately caused damage to Plaintiff in the form of additional interest payments, bank fees, legal fees, interference with Plaintiff's normal course of business (real estate development), time/focus away from his other business ventures, and other monetary and personal stresses to be proven at trial.

72. Defendant's actions proximately caused damage to Plaintiff, which Plaintiff is entitled to recover against Defendant, including but not limited to, actual damages, lost profits, punitive damages, consequential damages, costs, and attorneys' fees.

WHEREFORE, having set forth his Complaint against Defendant, Mr. Aryeh respectfully requests that judgment be entered against Defendant for the relief outlined above, including costs and attorneys' fees.

HAYNSWORTH SINKLER BOYD, P.A.

s/ Stafford J. McQuillin III
David M. Swanson (SC Bar #5451)
Stafford J. McQuillin III (#78203)

P.O. Box 340
Charleston, SC 29402-0340
Ph. (843) 722-3366
dswanson@hsblawfirm.com
mmcquillin@hsblawfirm.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2021-LP-10-_____
OLIVIA ARYEH,	)	
	)	
	)	<i>Lis Pendens</i>
v.	)	
JASON ARYEH,	)	
	)	
	)	
	)	

NOTICE IS HEREBY GIVEN that the above-named Plaintiff has a divorce action pending against the above-named Defendant affecting the title to real property located in Charleston County. The action was commenced in Superior Court, State of Connecticut, Judicial District of Stamford/Norwalk, Stamford CT bearing Docket No.: FST-FA-19-6043328-S. The address of the court is 123 Hoyt Street, Stamford, CT 06905. The attorney for the Plaintiff in the referenced action is Carolyn C. Swiggart, Esq., 165 West Palm Avenue, Greenwich, CT 06830, Tel. 203-661-0459, Fax. 203-724-2271. The premises affected by the action were at the time filing of this *Lis Pendens* described as follows, to-wit:

All that certain piece, parcel or lot of land, together with the building and improvements thereon, situate, lying and being on Sullivan's Island, in the County of Charleston, State of South Carolina, and shown and delineated as Lot No. 6, Area E, on a Plat entitled, "Subdivision of Fort Moultrie, Sullivan's Island, Charleston County, S.C." dated December 27, 1961, prepared by J. O'Hear Sanders, Jr., Surveyor, and recorded in the ROD Office for Charleston County, SC in Plat Book H, at Page 112; and Butting, Bounding and Measuring, according to the aforesaid Plat, as follows, to wit: North, Atlantic Avenue, ninety (90') feet; East, on Lot 7, Area E, two hundred forty-two (242') feet; South, on the Front Beach, property of the Township of Sullivan's Island, ninety and three-tenths (90.3') feet; and West, on a ten foot (10') Walk leading from Atlantic Avenue to the Front Beach, two hundred thirty-one (231') feet.

TMS No.: 523-12-00-006

May 5, 2021
Date

s/Carl B. Hubbard
Carl B. Hubbard
2201 Middle Street, Box 15
Sullivan's Island, SC 29482
(843) 814-3481
chublaw@comcast.net
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2021-LP-10-00213
OLIVIA ARYEH,	)	
	)	
Plaintiff,	)	
v.	)	<i>Amended Lis Pendens</i>
JASON ARYEH,	)	(to correct scrivener's error)
Defendant.	)	
	)	

NOTICE IS HEREBY GIVEN that the above-named Plaintiff has a divorce action pending against the above-named Defendant affecting the title to real property located in Charleston County. The action was commenced in Superior Court, State of Connecticut, Judicial District of Stamford/Norwalk, Stamford CT bearing Docket No.: FST-FA-19-6043328-S. The address of the court is 123 Hoyt Street, Stamford, CT 06905. The attorney for the Plaintiff in the referenced action is **Carolyn C. Swiggart, Esq., 165 West Putnam Avenue, Greenwich, CT 06830**, Tel. 203-661-0459, Fax. 203-724-2271. The premises affected by the action were at the time filing of this *Lis Pendens* described as follows, to-wit:

All that certain piece, parcel or lot of land, together with the building and improvements thereon, situate, lying and being on Sullivan's Island, in the County of Charleston, State of South Carolina, and shown and delineated as Lot No. 6, Area E, on a Plat entitled, "Subdivision of Fort Moultrie, Sullivan's Island, Charleston County, S.C." dated December 27, 1961, prepared by J. O'Hear Sanders, Jr., Surveyor, and recorded in the ROD Office for Charleston County, SC in Plat Book H, at Page 112; and Butting, Bounding and Measuring, according to the aforesaid Plat, as follows, to wit: North, Atlantic Avenue, ninety (90') feet; East, on Lot 7, Area E, two hundred forty-two (242') feet; South, on the Front Beach, property of the Township of Sullivan's Island, ninety and three-tenths (90.3') feet; and West, on a ten foot (10') Walk leading from Atlantic Avenue to the Front Beach, two hundred thirty-one (231') feet.

TMS No.: 523-12-00-006

May 7, 2021
Date

s/Carl B. Hubbard
Carl B. Hubbard
2201 Middle Street, Box 15
Sullivan's Island, SC 29482
(843) 814-3481
chublaw@comcast.net
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	CASE NO: 2021-CP-100-3609
	)	
JASON. M ARYEH,	)	
	)	CANCELLATION AND
	)	RELEASE LIS PENDENS
Plaintiff,	)	
vs.	)	
	)	
OLIVIA R. ARYEH	)	
	)	
	)	

NOTICE IS HEREBY GIVEN THAT the undersigned, on behalf of Olivia R. Aryeh, previously filed a Lis Pendens on TMS No. 523-12-00-006 on May 5, 2021, involving real property described therein located at 1651 Atlantic Avenue, Sullivan's Island, South Carolina 29482. Now, pursuant to SC Code 15-11-40, the undersigned on behalf of Olivia Aryeh, hereby releases and cancels and gives notice of release and cancellation on the previously filed Lis Pendens on TMS No. 523-12-00-006.

Henderson & Henderson, LLC

s // Wesley E. Henderson

Wesley E. Henderson
 SC Bar No. 78665
 6 Charlotte Street
 Charleston, SC 29403
 Phone: (843) 212-3188

Attorney for the Oliva Aryeh

Charleston, South Carolina
 12th day of April, 2022

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2021-CP-10-03609
	)	
Jason M. Aryeh,	)	
	)	
Plaintiff,	)	CONSENT MOTION FOR
	)	REFERENCE TO MASTER-IN-EQUITY
v.	)	
	)	
Olivia R. Aryeh,	)	
	)	
Defendant.	)	
	)	

PLEASE TAKE NOTICE THAT Plaintiff Jason M. Aryeh, with the consent of Defendant, through his undersigned attorneys, moves the Court for an order referring this case to the Master-In-Equity for Charleston County pursuant to Rules 53 of the South Carolina Rules of Civil Procedure.

Rule 53 provides that a “circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case” to the Master-In-Equity. The Notes to Rule 53, SCRCF, state “[r]eferences [are] absolutely necessary in State Courts, particularly to handle a large volume of State litigation such as foreclosures, partitions, and other equity matters.”

Plaintiff’s Complaint seeks a court-ordered declaration regarding a strictly legal issue concerning the validity of a lis pendens filed by Defendant. This type of case is well-suited for the Master-In-Equity.

SIGNATURES ON FOLLOWING PAGE

HAYNSWORTH SINKLER BOYD, P.A.

s/ Stafford J. McQuillin III

David M. Swanson (SC Bar #5451)

Stafford J. McQuillin III (Bar No. 78203)

P.O. Box 340

Charleston, SC 29402

Ph. (843) 722-3366

DSwanson@HSBlawfirm.com

MMcQuillin@HSBlawfirm.com

Attorneys for Jason M. Aryeh

WE CONSENT:

HENDERSON & HENDERSON

s/ Wesley Henderson

6 Charlotte St.

Charleston, SC 29403

843-212-3188

Attorneys for Defendant

November 1, 2021

HSB 6983308 v.1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2021-CP-10-3609

JASON M. ARYEH,	)	
-----------------	---	--

Plaintiff,	)	
------------	---	--

	)	MOTION TO DISMISS
--	---	--------------------------

vs.	)	
-----	---	--

OLIVIA R. ARYEH,	)	
------------------	---	--

Defendant.	)	
------------	---	--

TO: STAFFORD J. MCQUILLIN, III, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that Olivia R. Aryeh (the "Defendant") by and through her undersigned attorneys, will move before the presiding judge of the Court of Common Pleas for Charleston County on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order: (1) dismissing the suit in its entirety as the relief requested by Jason M. Aryeh (the "Plaintiff") has been provided through the removal of the lis pendens in dispute and the issue no longer exists; or (2) dismissing Plaintiff's claims against this Defendant pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

Counsel respectfully submits this motion and will follow it as soon as possible with a Memorandum in Support of this motion.

WHEREFORE, Defendant hereby prays the Court for the following relief:

1. That Defendant's motion to dismiss be granted;
2. That Plaintiff's Complaint and all causes of action therein be dismissed with prejudice in their entirety; and

3. For such other and different relief as the Court may allow.

HENDERSON & HENDERSON, LLC

s // Wesley E. Henderson
Wesley E. Henderson
SC Bar No. 78665
6 Charlotte Street
Charleston, SC 29403
Phone: (843) 212-3188
Attorney for the Oliva Aryeh

May 10, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2021-CP-10-3609
JASON M. ARYEH,	)	
	)	
Plaintiff,	)	MEMORANDUM ON
	)	ATTORNEYS FEES
vs.	)	
	)	
OLIVIA R. ARYEH,	)	
	)	
Defendant.	)	
_____	)	

On April 21, 2022, the Defendant, through her counsel, cancelled and released the lis pendens on 1651 Atlantic Avenue, Sullivans Island. Having been released, Plaintiff need not incur additional attorneys fees to remove the lis pendens. Instead, Plaintiff incurred substantial legal fees after the release in an effort to prosecute a damages claim. Defendant contends that attorneys fees after the release were unnecessary, and Plaintiff should not be awarded attorneys fees following April 21, 2022.

Additionally, Defendant contends that Plaintiff's fees are excessive in light of Defendant's fee of less than sixty-thousand dollars.

WHEREFORE, Defendant hereby prays the Court for the following relief:

1. That Plaintiff's attorneys fees be awarded through April 21, 2022 but no attorneys fees thereafter.

[Signature Page Follows]

Respectfully Submitted,

HENDERSON & HENDERSON, LLC

/s/ Wesley E. Henderson

Wesley E. Henderson, SC Bar No. 78665

6 Charlotte Street

Charleston, SC 29403

Phone: (843) 212-3188

Attorney for the Oliva Aryeh

July 17, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2021-CP-10-03609

Jason M. Aryeh,

Plaintiff,

vs.

Olivia R. Aryeh,

Defendant.

**ATTORNEY FEES AND
COSTS AFFIDAVIT**

Personally appeared before me, Stafford J. McQuillin III of Haynsworth Sinkler Boyd, P.A., who being duly sworn, testifies as follows:

1. I am submitting this affidavit pursuant to the Court's Final Order dated June 21, 2021.

2. I am a litigation shareholder with Haynsworth Sinkler Boyd, P.A. ("HSB") and the primary attorney for Jason Aryeh ("Client") in this litigation. My associate Elliot Condon worked closely on this representation, along with our paralegals. Other lawyers were brought in as needed given their area of practice. For example, David Swanson assisted with real estate issues and Sarah Spruill assisted with appellate issues. All timekeepers kept contemporaneous time records for purposes of our representation in this matter, which were invoiced monthly to the Client.

3. I graduated from the University of South Carolina School of Law in 2009 and have been an active civil litigator in private practice for more than thirteen years. My practice for approximately the last ten years has been primarily complicated business and real estate litigation. Some of the work I handle includes real estate disputes, LLC member disputes, government litigation, and probate cases. My hourly rate on this matter was \$400; however, we provided a discount to the client, and my discounted hourly rate in 2021 was \$350, in 2022 \$385, and in 2023 \$400. I believe my hourly rates for this Client to be reasonable in view of my experience. In fact, the hourly rate I had in place for Jason Aryeh was discounted for two years and at the lower end of my current standard range.

4. My associate Elliot Condon graduated *summa cum laude* from the University of South Carolina School of Law in 2018. While in law school, Elliot served as a legal research assistant to a professor and the Executive Articles Editor of the *South Carolina Law Review*. In addition, she was a peer mentor, an academic tutor, a member of Phi Delta Phi Honors Society, and was the Recipient of the Dean's Medallion for graduating first in her law school class. Elliot was a summer law clerk for HSB during law school. After clerking for U.S. District Court Judge

Joseph F. Anderson, Jr., Elliot joined HSB as a litigator. Elliot's practice is devoted to civil litigation and she assists me with real estate litigation matters. Elliot's hourly rate was \$250. I believe her hourly rate to be reasonable in view of her experience.

5. This complex real estate dispute has been ongoing for over three years, and HSB was retained by the client in June of 2021. Some of the tasks involved in this matter include: researching the novel legal issues involved, numerous motions and legal briefing to the Court, multiple hearings and a trial, depositions, and written discovery.

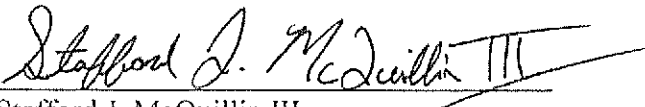
6. The attorneys' fees from June 14, 2021 through June 29, 2023 invoiced by my law firm to the Client total \$116,076.50. The associated expenses from the same date total \$2,612.23. HSB last billed the Client on June 9, 2023. Since then, HSB has incurred an additional \$1,703.00 in legal fees, which have not yet been billed. Once paid by the Client, these unbilled fees will bring the total legal fees and expenses for this three-year litigation to \$120,391.73. The Client is current on payment of his invoices for legal services from HSB.

7. My hours on this litigation, which spanned over a three-year period, total 222.3 hours. Elliot Condon's hours totaled 98.30 hours. The other lawyers that assisted on this matter each had less than 5.0 hours, and paralegal/staff time was 15.3 hours.

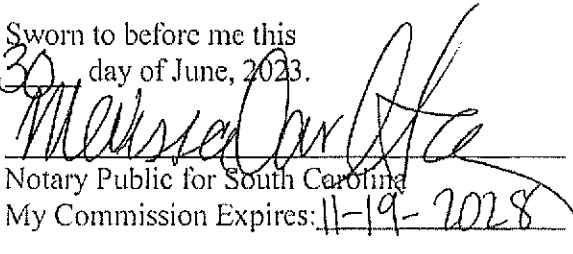
8. Additional litigation expenses and costs were paid directly by the Client and include expert fees for retaining a Connecticut lawyer as an expert to provide an affidavit, which was filed with the court, concerning Connecticut law on lis pendens as the Court requested the parties provide briefing on this issue following the trial. The Client paid expert fees in the amount of \$6,500. He also incurred travel expenses in the amount of \$178.00 for his outbound flight from Charleston to Connecticut for the trial.

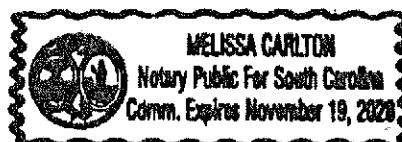
9. Based on the foregoing, I am informed and believe that the sum of \$127,069.73 represents a reasonable amount of attorney's fees and costs concerning this complex real estate litigation that spanned over a three-year period.

Further Affiant Sayeth Naught.


Stafford J. McQuillin III

Sworn to before me this
30 day of June, 2023.


Notary Public for South Carolina
My Commission Expires: 11-19-2028



1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO.: 2021-CP-10-03609
4

5 Jason M. Aryeh,)

6)
7 Plaintiff,)
8)

9 vs.)
10)

11 Olivia R. Aryeh,)

12)
13 Defendant.)
14
15
16

17 Hearing before the Honorable Mikell R.
18 Scarborough, reported by Josie Allen Boehm, Registered
19 Professional Reporter and Notary Public, at 100 Broad
20 Street, Courtroom 2A, Charleston, South Carolina, May
21 16th, 2022 commencing at 10:55 a.m.
22
23
24
25

APPEARANCES

For the Plaintiff:

Stafford John McQuillin III, Attorney at Law

Haynsworth Sinkler Boyd, PA

P.O. Box 340

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mmcquillin@hsblawfirm.com

(843) 724-1120

For the Defendant:

Wesley E. Henderson, Attorney at Law

6 Charlotte Street

Charleston, SC 29403

wesley@hhlawsc.com

(843) 212-3188

1 THE COURT: So we're ready to go on the
2 record. This is Aryeh -- how do you pronounce it?

3 MR. MCQUILLIN: I say "Aryeh."

4 THE COURT: Okay. Jason Aryeh vs. Olivia
5 Aryeh. Case number 2021-CP-10-3609. And I have
6 before the Court the defendant's motion to dismiss
7 filed May the 10th and a memo in support filed on May
8 13. Today is May 16, so that was filed I guess Friday
9 afternoon.

10 And this follows a status conference we held
11 in April, April the 11th. And following that status
12 conference, the defendant, Olivia Aryeh, had the lis
13 pendens removed and canceled; is that correct,
14 Mr. Henderson?

15 MR. HENDERSON: Yes, Your Honor.

16 THE COURT: So I have that issue before me,
17 and then I received this morning Mr. McQuillin's
18 motion. I don't know if it's a motion to amend or
19 proposed amended complaint.

20 I'm not sure which it is. Which is it at
21 this point in time?

22 MR. MCQUILLIN: Your Honor, at the April 11th
23 status conference, I made an oral motion to amend,
24 which Your Honor granted. Because there was
25 discussion about the lis pendens being canceled

1 following the hearing, and I specifically remember
2 saying I probably need to amend to make sure the issue
3 is ripe.

4 So that's what I have now done. We have
5 filed the amended pleading pursuant to the oral ruling
6 by this Court at the status conference.

7 THE COURT: Has that amended complaint been
8 filed at this point in time?

9 MR. MCQUILLIN: It has. It was filed this
10 morning at 7:10 a.m.

11 THE COURT: Okay. It's just not on the
12 record?

13 MR. MCQUILLIN: Yeah, I don't have a copy.

14 THE COURT: Because it would seem to me that
15 the motion to dismiss would be ripe because the lis
16 pendens has now been removed and therefore the
17 matter -- the original matter before the Court is
18 moot, correct?

19 I got to get my ripeness and mootness correct
20 here. Now you're seeking to perpetuate the litigation
21 by moving to amend the complaint, which I do recall
22 you asking, and I believe I did grant the opportunity
23 for you then to allege -- essentially you've got a DJ
24 action going alleging damages, as well as an abuse of
25 process claim.

1 MR. MCQUILLIN: That's correct, Your Honor.

2 THE COURT: All right. So Mr. Henderson, let
3 me first turn to you and make sure I'm understanding
4 your motion to dismiss and why it should be dismissed,
5 and then we'll talk about how we proceed from there.

6 MR. HENDERSON: Thank you, Your Honor. As
7 you know, this is a complicated history before we come
8 into this lis pendens --

9 THE COURT: Well, it's a divorce action.

10 MR. HENDERSON: -- a divorce action. I think
11 relevant to that, some alimony was not being paid to
12 my client so they exercised this lis pendens.

13 THE COURT: What kind of money was not being
14 paid?

15 MR. HENDERSON: Alimony and --

16 THE COURT: Okay. Pretty substantial amount,
17 as I recall.

18 MR. HENDERSON: I think at the time, it was
19 something around 18,000. But then the Court ordered,
20 relevant to this lis pendens, 409,000.

21 But at the moment, she was being shorted you
22 know full amount of money. So looked at opportunities
23 to protect her interests, you know.

24 We see that a Court in Connecticut has
25 personal jurisdiction evidenced by the order they

1 exercised and everyone complied with.

2 So we utilized -- or the counsel before me
3 utilized the lis pendens to try to protect that asset.

4 We see the money is not coming in as its
5 supposed to. Identified the assets. I think they
6 have rights to some marital property, so go and
7 exercise that to make sure the money doesn't
8 disappear.

9 I think that's proved to be a useful thing
10 that will happen. Later on, the Court asked us to
11 remove it in Connecticut, so we complied right after
12 the status conference.

13 And my understanding is that your client sent
14 money to I guess my client's divorce attorney; is that
15 right?

16 So now that we have removed the lis pendens,
17 we think the underlying issue is no longer needed to
18 be ruled upon, so we're asking that it be dismissed.

19 THE COURT: Okay. All right. So I seem to
20 recall seeing the family court order ordering that the
21 defendant, in this case, Mrs. Aryeh, remove the lis
22 pendens.

23 And that was done, which moots the lis
24 pendens issue, but it also called for him to make
25 payments of 400-something thousand dollars. And best

1 we know, that was done as well. Is that correct?

2 MR. HENDERSON: Yes, Your Honor.

3 THE COURT: So that gets you back into the
4 family court of Connecticut, does it not?

5 MR. HENDERSON: We have a copy of that order
6 if you need it.

7 THE COURT: Yeah, I'd like to see it, if you
8 would just so I'm clear.

9 MR. HENDERSON: Thank you, Your Honor.

10 THE COURT: Thank you. Okay. And this order
11 was entered up there in Stamford, Connecticut.

12 MR. HENDERSON: That's my understanding.
13 This is a copy that I was sent from the divorce lawyer
14 up there saying it was.

15 THE COURT: I'm guessing it was entered on
16 March 31st. But basically the parties agreed that
17 409,000 of payments from defendant -- and the parties
18 are reversed where the wife is the plaintiff -- of the
19 defendant, Mr. Aryeh, to Mrs. Aryeh for attorney's
20 fees and alimony arrearage have been ordered by the
21 court and not paid. Plaintiff, Mrs. Aryeh, filed a
22 lis pendens against the property.

23 And it says he could not mortgage the
24 property and pay the amount -- he could mortgage the
25 property and pay the amount if the lis pendens was

1 released. He would pay it within two weeks.

2 Plaintiff agreed to release lis pendens in exchange
3 for the 409. The defendant will pay the plaintiff the
4 409,000 no later than April 14, 2022.

5 I'm assuming that was done in exchange for
6 the release of lis pendens, which was released on the
7 12th of April as the record suggests. The Court said
8 it would not limit the amount of the mortgage but the
9 defendant was not to use any mortgage proceeds without
10 permission of the Court except for the \$409,000
11 described herein.

12 So do you know -- did he take out a mortgage
13 on the property at this point in time?

14 MR. MCQUILLIN: He did, Your Honor. And he
15 applied for one when the lis pendens was in place back
16 in August after we had asked that it be removed.

17 And as we have alleged in our amended
18 complaint, at that point in time, he would have been
19 able to obtain a 2.5 interest rate had the lis pendens
20 been removed when we requested it be removed.

21 THE COURT: Okay.

22 MR. MCQUILLIN: His interest now is 7 percent
23 on that mortgage, which is part of that damages claim.

24 THE COURT: Is that the mortgage he got then?

25 MR. MCQUILLIN: Yes, Your Honor. Once the

1 lis pendens was finally removed, he was finally able
2 to get financing.

3 THE COURT: Okay. So that happened pretty
4 quickly.

5 MR. MCQUILLIN: Very quickly thanks to the
6 work of David Swanson.

7 THE COURT: So that's what you seek to do is
8 to perpetuate this litigation by going for attorney's
9 fees and costs incurred in compliance there with?

10 Why wouldn't the family court have the right
11 to pursue that issue in Connecticut? Let me play
12 devil's advocate with you for a second.

13 MR. MCQUILLIN: Your Honor, one, this is a
14 South Carolina property. And the lis pendens was
15 filed here in South Carolina. And the Connecticut
16 judge, my understanding, at that hearing said, look,
17 I'm not going to order you to withdraw that lis
18 pendens.

19 And then ultimately she agreed to do it if
20 the Court ordered our client to pay the funds, which
21 is sort of what the order suggests. So I don't know
22 that the Connecticut court necessarily has
23 jurisdiction to opine on South Carolina law.

24 The reason there is still a justiciable
25 controversy, which is what's required in a declaratory

1 judgment action, is that originally our complaint just
2 dealt with the DJ claim and it was a simple issue
3 whether a lis pendens filed in South Carolina
4 regarding litigation pending in other state is valid.
5 That was the sole issue while it was still pending
6 here.

7 That has now been withdrawn, and we have
8 asserted claims for abuse of process. And in order
9 for us to get a ruling on the abuse of process claim,
10 that issue has to be determined because the filing had
11 to have been unauthorized, had to be a perversion of a
12 legal process or an abuse of process.

13 And we're seeking monetary damages. So
14 before we're able to proceed under that claim, that
15 issue is still ripe for determination and needs to be
16 determined one way or the other.

17 And I think if you ruled against us on that
18 and find that a lis pendens from another state can be
19 filed in South Carolina then the litigation goes away.

20 But if you rule that it was invalidly filed
21 or not authorized under that statute then the
22 litigation proceeds.

23 THE COURT: And in your memoranda, you talked
24 at some length about the invalidity of lis pendens
25 being filed in states in which the property is not

1 subject to the litigation. I think I said that
2 correctly.

3 This property is apparently not the marital
4 home. It was acquired at some point in time during
5 the marriage I'm assuming but was not the marital
6 home, and it was titled solely in the name of your
7 client as I recall.

8 MR. MCQUILLIN: That's correct, Your Honor.
9 So the property located at 1651 Atlantic Avenue on
10 Sullivan's Island was purchased by my client as an
11 investment property via 1031 Exchange.

12 The proceeds used in the exchange were from
13 the sale of a property that defendant, Mrs. Aryeh, had
14 quitclaimed to my client in Malibu, California.
15 Plaintiff was the sole owner of that property and put
16 the funds into the property.

17 My client, since the '90s, one of his
18 businesses is real estate development. He buys
19 properties, takes out a mortgage on them, upfits them
20 and then turns around and sells them.

21 And because this lis pendens was pending for
22 nearly a year, he wasn't able to do that during that
23 time.

24 And we have attached an image of an e-mail on
25 our complaint where Wells Fargo said we can't finance

1 your property as long as that lis pendens is out
2 there.

3 I don't want to get too much into the details
4 of the divorce, but the whole divorce centers on
5 prenuptial agreement.

6 THE COURT: Okay.

7 MR. MCQUILLIN: And Connecticut is weird in
8 that you have to try the case until they make a
9 determination. So I think my client paid like \$1.1
10 million in funds to Mrs. Aryeh throughout litigation,
11 alimony, attorneys fees, all that.

12 But ultimately, she may have to give that
13 back if the post-nuptial agreement is determined to be
14 valid.

15 Connecticut does it weird. They don't say,
16 yeah, you got a contract. You don't have to pay
17 anything.

18 You've got to go through the whole case and
19 then they make that determination is my understanding.

20 THE COURT: So we're talking about litigation
21 that should go on for years and years?

22 MR. MCQUILLIN: The case was filed in 2019.
23 The Connecticut case is still going, which is one of
24 the reasons a lot of states have said that lis pendens
25 involving litigation in one state aren't valid if

1 they're filed in another state.

2 The Wisconsin Supreme Court said lis pendens
3 has no outside efficacy outside the territorial
4 jurisdiction of the court in which the action was
5 pending so as not to hazard the rights of Wyoming
6 property owners to the vagaries of judicial action in
7 courts outside the state.

8 And Maryland, the Supreme Court in Maryland
9 also said: Alienation of Maryland real estate lessor
10 property could be severely restricted by the mere
11 filing of a lawsuit anywhere in the United States.

12 So that's sort of the policy reason why the
13 majority of Courts in the country said you can't file
14 a lis pendens here if you don't have action -- with an
15 action in another state.

16 There are two states that I'm aware of that
17 Courts have allowed the filing of the lis pendens;
18 that's Colorado and Utah.

19 And the year after those Courts issued their
20 decisions, their legislature amended the statutes. So
21 I'm not aware of any states currently that permit the
22 filing of a lis pendens. There may be some, but the
23 two that were discussed in the Georgia case, they
24 dropped a footnote in that case and essentially said
25 those two states, the legislature changed the law

1 there.

2 THE COURT: Was it the Pond Place case or the
3 one over here used to --

4 MR. MCQUILLIN: Carolina Park.

5 THE COURT: One of them said that the filing
6 of the lis pendens was -- I assumed so long that it
7 was valid, it was protected. In other words, it was
8 not a slander of title. There used to be a big
9 question about slander of title issues.

10 How do we distinguish that here?

11 MR. MCQUILLIN: So there are a lot of cases
12 that say a validly-filed lis pendens does not
13 constitute slander of title. In the D.R. Horton case,
14 which I have cited in our complaint, the Court -- let
15 me find that cite for you. *D.R. Horton vs. Westcott*
16 *Land Co.*

17 So when it went to the Court of Appeals, they
18 talked a lot about lis pendens, et cetera. But when
19 it went to the Supreme Court, the Supreme Court said,
20 look, we did not reach, and the Court of Appeals
21 should not have reached, the novel issue of whether a
22 lis pendens that was not valid can give rise to the
23 slander of title claim.

24 They acknowledge that that issue has not been
25 decided in South Carolina and that's a novel issue in

1 the D.R. Horton case.

2 And so that issue has not been fully and
3 finally decided by the Court. Again, that's another
4 novel issue in this case.

5 THE COURT: Okay. All right. Separate and
6 distinct from quest of damages?

7 MR. MCQUILLIN: Correct.

8 THE COURT: All right. Mr. Henderson, what
9 do you say about that?

10 MR. HENDERSON: Yes, Your Honor.

11 Well-researched lawyer that I'm up against.

12 What I would say is we would be happy to
13 litigate this if the issue were still ongoing. It is
14 not. And this happens a lot in legal cases. You
15 never know what's going to happen. Situations change.

16 It is no longer such that we need a Court to
17 rule on it. And, you know, just to add to the good
18 faith element for my client is that, you know, what
19 we're showing to defend our actions are the personal
20 jurisdiction of the Court, which I think was exercised
21 in Connecticut.

22 How it actually played out, it doesn't take a
23 huge leap to show that we weren't able to get money,
24 and all of a sudden this property made it available to
25 us.

1 And also, we're just citing the statute. You
2 can see there's cases and cases from other states,
3 which shows it's a novel issue. I think it shows my
4 client was acting in good faith to utilize what was
5 available to her to protect, you know, her interests
6 in the property.

7 THE COURT: All right. So I don't think
8 there's any question but that the issue of the lis
9 pendens having been filed is now moot.

10 What they contend is that they have been
11 damaged as a result of the time it was -- by my
12 calculations, 11 months and 7 days, so almost 12
13 months.

14 MR. HENDERSON: To that, I can say we did
15 submit a letter to them that we removed the lis
16 pendens in exchange for them setting what we
17 identified as 50 percent of the value based on nothing
18 more than I think Zillow.

19 So we said we would remove the lis pendens if
20 you set aside \$750,000. That was done on December
21 1st.

22 After December 1st, I personally purchased a
23 home, and the rate was 3 percent, not 7 percent. I'm
24 also surprised to see 7 percent.

25 I think they're about 5 percent, something

1 like that. We also don't know what the request was
2 that he got denied for, how much was he asking for,
3 could he have gotten done but elected not to do it.

4 So I think we offered an avenue out on
5 December 1st. I think my clients exercised their
6 rights, and it's their position.

7 THE COURT: It was filed in May. There was
8 some demands I think you said in maybe the summertime
9 of last year to remove that.

10 MR. MCQUILLIN: Yes, Your Honor. So the lis
11 pendens was filed in May. And on July 29th, we
12 wrote -- and Mr. Henderson wasn't involved in the lis
13 pendens. We got hired after the fact.

14 THE COURT: And we're happy to have him here.

15 MR. MCQUILLIN: Exactly right. But we wrote
16 a letter on the 29th to the prior lawyer and the
17 divorce lawyer in Connecticut for Mrs. Aryeh and laid
18 out all these cases and said, look, we're writing
19 pursuant to Rule 11 asking you remove this. Our
20 client sustained damages. He's going to continue to
21 sustain them as long as it's in place. Please remove
22 it.

23 They said they weren't going to remove it.
24 We made several follow-ups. There was this discussion
25 about, look, pay us some money, and we'll withdraw the

1 lis pendens.

2 But, Your Honor, that's really the basis of
3 our claim is that's a perversion of a legal process.
4 A lis pendens is designed to put third-party
5 purchasers on notice that there's litigation involving
6 the property, not to try to extort somebody to pay you
7 money or set aside funds to pay them in another piece
8 of litigation.

9 THE COURT: And that issue is capable of
10 repetition, is it not?

11 MR. MCQUILLIN: It is, Your Honor. It
12 actually happened. The lis pendens was filed by
13 Mrs. Aryeh in Connecticut, too, involving a property
14 that my client owned 17 years before he met her and
15 was solely in his name.

16 This isn't the first time this has happened.
17 She's instituted litigation all over the country
18 against him, California, Connecticut, South Carolina.
19 Well, not litigation here, but a lis pendens here.

20 But ultimately, we wrote -- we talked about
21 it, tried to get it removed. I followed up with the
22 lawyer a couple of times. He said, no, the
23 Connecticut lawyer is not going to let us withdraw it.

24 We filed the lawsuit in August. Lis pendens
25 still isn't removed. Included all the case law. The

1 case law from this complaint is very similar to what
2 was in our original complaint.

3 Sat there for a while. They did reach out to
4 us in December. Wanted us to set aside money in order
5 for them to withdraw, which my client wasn't willing
6 to do.

7 And ultimately, it wasn't until after the
8 Connecticut Court ordered that it be removed in
9 exchange for my client paying some money that it was
10 finally removed.

11 But at that point in time, my client hadn't
12 been able to do anything with the property. His
13 interest rate ran up. He's incurred additional
14 carrying costs associated with the property, material
15 costs have gone up.

16 And, frankly, the sellers market isn't as
17 good as it was at the time. And he's had to incur a
18 bunch of attorney's fees litigating this thing up to
19 this point.

20 THE COURT: Appeared to me from the order
21 that was handed up to me that they came to some
22 agreement here, right? That's essentially what they
23 ended up doing? Parties agree that 409 is due and
24 therefore remove the lis pendens and pay the money.

25 You can take that \$750,000 if you want but

1 you're only going to be able to use 409,000 of however
2 much money they took out.

3 MR. MCQUILLIN: The proper way to deal
4 with -- setting aside all arguments, prenup and
5 everything else. But if this property was truly
6 involved in the Connecticut litigation, she believed
7 she had a claim for it, the normal process to do that
8 is the Connecticut Court would issue an order. That
9 order would be transcribed here, and they would move
10 for an junction.

11 But she can't just file a lis pendens in any
12 state where somebody owns property in marital
13 litigation. Otherwise, that would tie up properties
14 all over the country inevitably until that Court
15 ultimately rules on the issue.

16 This case is a perfect example because this
17 was filed in 2019. The divorce action is still going.
18 And, you know, thankfully the lis pendens has been
19 removed.

20 But at the end of the day, our original
21 request to have the Court cancel the lis pendens or
22 remove the lis pendens, that has been mooted. We
23 acknowledge that. We're not asking for that anymore.

24 What we're now asking for is because our
25 damages claim is contingent on that, because we have

1 asserted the claim for damages, the issue of whether
2 this lis pendens was valid or not is still at play.

3 If it is valid, we can't go after him for
4 recovered damages. If it isn't valid then we can.

5 So you can see we tweaked our DJ request to
6 ask the Court to declare that consistent with the
7 majority of other jurisdictions that have addressed
8 this issue, the lis pendens filed in South Carolina
9 was invalid because no South Carolina action effecting
10 title to the property was filed in South Carolina.

11 THE COURT: Was ever filed, right?

12 MR. MCQUILLIN: Nothing was ever filed in
13 South Carolina. The lis pendens was invalid because
14 nothing in the text or history of the lis pendens
15 statute indicates a legislative intent to include the
16 litigation in Courts of another state.

17 That's the language used in a lot of these
18 other cases, including our neighboring state, Georgia,
19 but even California has held that the lis pendens
20 involving litigation in another state is invalid.

21 So that's what we're asking is that for the
22 lis pendens to be valid, it had to have been subject
23 to an action pending in South Carolina.

24 And if you read the statute, it makes sense.
25 They talk about the action has to be filed, using the

1 word "county" a bunch implying -- I think that was in
2 Georgia. Looked at how many times they used the words
3 "county" and determined look, this makes sense. There
4 has to be an action filed here.

5 But we've cited cases from a bunch of
6 different states in our complaint including --

7 THE COURT: And you're saying the D.R. Horton
8 case, that this was an untested issue, novel issue?

9 MR. MCQUILLIN: D.R. Horton said whether you
10 can bring slander of title claim with respect to a lis
11 pendens is a novel issue if the lis pendens is
12 invalid.

13 Some good language from that D.R. Horton case
14 that we cited in here is that a lis pendens is
15 premised on and must be filed in time in conjunction
16 with an underlying complaint involving an issue of
17 property.

18 And then this Wyoming case says common law,
19 the doctrine of lis pendens, had no efficacy outside
20 the territorial jurisdiction of the court in which the
21 action was pending.

22 So that's essentially what happened is
23 there's always been this common law doctrine of lis
24 pendens, which in Latin means to put on notice.

25 And the States ultimately put that into their

1 statutory scheme, but there's nothing in the statute
2 that evidences an intent by the legislature to change
3 what the common law was by way of a statute. And
4 that's what a lot of these cases in other
5 jurisdictions say.

6 But we've cited in our brief cases from
7 Georgia, Maryland, West Virginia, Wyoming, and even
8 California that have all directly addressed this issue
9 and held that a lis pendens involving litigation in
10 another state is not valid, and there has to be some
11 piece of litigation or action pending in that state.

12 THE COURT: Okay. And so back to the issue.
13 The original issue before the Court, that issue is
14 moot.

15 Your argument is this has morphed into
16 something else, we're entitled to pursue that, as a
17 novel issue to pursue whether or not we're entitled to
18 damages as a result of what's happened in the facts of
19 this case. Is that right?

20 MR. MCQUILLIN: That's correct. I will say
21 it is not a novel issue that a lis pendens can give
22 rise to an abuse of process claim, and we've cited a
23 case in our brief on that.

24 For example, they said a lis pendens filed to
25 prevent the sale of property can constitute an abuse

1 of process.

2 A lis pendens is designed to put people on
3 notice. It's not designed to prevent a sale or
4 designed for somebody to use it to obtain funds or
5 money.

6 But in order for us to proceed on that, we
7 have to establish that it was an unauthorized filing
8 or that the lis pendens was invalid.

9 That's an essential element of the abuse of
10 process claim. So the issue of whether it was valid
11 or not is not moot and there's still a justiciable
12 controversy aspect in light of our claim for damages.

13 And I will point out, too, there's this newer
14 case that Your Honor is probably familiar with. Sky
15 Dive case out of Myrtle Beach. It's a 2019 case, and
16 Tommy Goldstein has cited that case to me a bunch.

17 But when the case gets dismissed, the Court
18 has to give the other side an opportunity to amend,
19 which Your Honor did, and we have amended at this
20 point.

21 THE COURT: Right.

22 MR. MCQUILLIN: And so, again, we've got a
23 justiciable controversy. The issue is still at play
24 whether it was valid or not. If it was valid, we
25 wouldn't have a claim for damages. If it wasn't

1 valid, then we can allege an abuse of process claim.

2 THE COURT: All right. I want to take it
3 under advisement. I want to read a couple of these
4 cases. I just got it this morning, so that's why I
5 was reading when y'all came in here.

6 I am inclined to -- I'm going to grant the
7 motion to dismiss as it relates to the lis pendens;
8 however, I think I have already granted the motion to
9 amend. And so I do think that's the significance of
10 the Sky Dive case.

11 So the original complaint was nothing but the
12 complaining about the lis pendens, right?

13 MR. MCQUILLIN: That's correct. And we're
14 essentially asking, Your Honor, to order that it be
15 canceled or withdrawn and hold that it is invalid.

16 And now we're asking the Court just to
17 declare whether or not it's valid or not so we can
18 proceed on our damages claim.

19 THE COURT: All right. I'm going to ask that
20 you prepare me an order along those lines. I'm going
21 to read the cases and make sure I'm comfortable with
22 doing that, Mr. Henderson, before I grant that.

23 I'm inclined to allow them to move forward,
24 but I just want to read those cases and get myself
25 back up to snuff on it. Okay?

1 MR. HENDERSON: Yes, Your Honor.

2 THE COURT: Good. Good to see y'all.

3 MR. MCQUILLIN: Just to clarify, you're going
4 to grant the motion to dismiss as to removing the lis
5 pendens. You're --

6 THE COURT: That's the moot issue, right?

7 MR. MCQUILLIN: That's the moot issue. But
8 you're taking it under advisement as to whether or
9 not -- even if it's valid or not, you will issue an
10 order on that, too, from this hearing?

11 THE COURT: I will. Whether or not you go
12 forward on that, right?

13 MR. MCQUILLIN: Yes, sir.

14 THE COURT: You asked for some sort of
15 expedited relief under Rule 57, I'm assuming they're
16 going to want to take some discovery in case I do
17 allow that because he wants to know why it went from
18 2.5 percent to 7 percent when the feds have only
19 raised the rates .75 percent.

20 MR. MCQUILLIN: On the issue of the damages,
21 absolutely we've got to do discovery. But as to the
22 validity of the lis pendens, it's strictly a legal
23 issue. No facts are disputed there. We're in
24 agreement when it was filed, what it was filed for.

25 My understanding, at the status conference,

1 was this hearing was to determine whether or not the
2 lis pendens was valid or not.

3 THE COURT: Okay. Just to focus on that
4 question in and of itself. That's a different
5 question as to whether or not that constitutes abuse
6 of process, but the validity of the filing is what's
7 before the Court.

8 MR. MCQUILLIN: That's what we're requesting
9 a ruling on, is was the filing of a lis pendens
10 involving litigation in another state valid in South
11 Carolina.

12 Once Your Honor issues a ruling on that,
13 we'll either proceed with discovery on the abuse of
14 process claim and damages. Particularly want to know
15 what were your fees, why is the rate what it is, et
16 cetera.

17 THE COURT: Okay.

18 MR. MCQUILLIN: And that will essentially be
19 the issue we'll be litigating.

20 THE COURT: Let me tell you why I was focused
21 on that question. You had done a good job in your
22 memo of discussing these cases where they had mooted
23 the issue, which is what we have here. But that issue
24 was a little bit different than what we've got here in
25 terms of there were four cases cited at the bottom of

1 page 4.

2 Issue was moot as to whether or not something
3 was a public body and they complied with it. So,
4 boom, that's gone.

5 Here, you've got a finding of -- and then
6 *Williams vs. Weaver, Thomas vs. SLED*, all those cases
7 that you cited in there.

8 But this one is a little bit different in
9 that the Court issued -- ultimately the Court in
10 Connecticut issued its order, which is what led to the
11 mootness of the *lis pendens*, but did not address the
12 question of the validity of the *lis pendens*.

13 MR. MCQUILLIN: And, in fact, would not do
14 that. We're not saying, look, this *lis pendens* needs
15 to be removed. We're saying, look, this *lis pendens*
16 was pending for nearly a year. And if it was
17 unauthorized or invalid, we're entitled to damages.

18 The issue of whether it was valid or not
19 ought to be decided sooner rather than later under
20 Rule 57.

21 THE COURT: Okay. Very good. Thanks.

22 MR. MCQUILLIN: Thank you, Your Honor.

23 (Off the record at 11:36 a.m. on May 16th,
24 2022.)

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 14th DAY OF MARCH 2023.

16 _____
17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
19
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3 CASE NO. 2021-CP-10-3609
4

5 Jason M. Aryeh,

)

)

7 Plaintiff,

)

) Trial

9 vs.

) March 29th,

10) 2023

11 Olivia R. Aryeh,

)

12)

13 Defendant.

)

14
15
16 Trial held before the Honorable Mikell R.
17 Scarborough, reported by Josie Allen Boehm, Registered
18 Professional Reporter and Notary Public, at 100 Broad
19 Street, Courtroom 2A, Charleston, South Carolina,
20 March 29th, 2023.
21
22
23
24
25

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1 THE COURT: Okay. So this morning, we've got
2 this case captioned Jason Aryeh versus Olivia Aryeh.
3 Case number is 2021-CP-10-3609. Got Mr. McQuillin
4 here for the plaintiff along with co-counsel
5 Ms. Elliot Condon, and Mr. Wes Henderson is present
6 for Ms. Aryeh.

7 I know we have had some matters back and
8 forth. This is the last case scheduled on my two-week
9 trial calendar, so I've been busy trying cases the
10 last couple of weeks. I don't always have to do that,
11 but I have this week for some reason.

12 But anyway, we've got it scheduled for trial.
13 The Court had previously issued its order on the
14 declaratory judgment action finding that the lis
15 pendens was invalid. That was issued June 1 of last
16 year, and that was done pursuant to the amended
17 summons and complaint.

18 That then left the cause of action for abuse
19 of process as I understand it before the Court, and
20 that's what I assume we were here to try.

21 Since that time, I received the answer to the
22 amended complaint. That was just filed last week by
23 Mr. Henderson, so I want to ask about that. The
24 amended complaint was filed May of last year, and then
25 I received I think it was just last week a motion for

1 sanctions pursuant to Rule 37, and that was for
2 Mrs. Aryeh's failure to appear at a deposition
3 scheduled Friday, but I got record that a motion that
4 there was a deposition scheduled this morning. Has
5 that taken place, then?

6 MR. MCQUILLIN: Yes, we deposed her this
7 morning, Your Honor.

8 THE COURT: All right. So does that take
9 care of the issue for sanctions in that regard in so
10 far as the deposition's taken? There may still be an
11 issue about costs and fees incurred and setting up for
12 the prior deposition, which I understood was set by
13 agreement but didn't happen.

14 And then sometime yesterday, I got the notice
15 that y'all -- that she was in town and y'all were
16 going to take the deposition. So that's been done?

17 MR. MCQUILLIN: Yes, Your Honor. Just fees
18 and costs would be the only issue.

19 THE COURT: Okay. Well, let's take that up
20 later. Mr. Henderson, I got your response to that as
21 well, which included seeking to strike the answer,
22 which I'm not inclined to do, but I do need to hear
23 about y'all's position whether or not it was timely.
24 I've gotten no mention or affidavits of default.
25 Y'all just ready to proceed?

1 MR. MCQUILLIN: Yes, Your Honor.

2 THE COURT: Okay. Mr. Henderson?

3 MR. HENDERSON: Yes, Your Honor.

4 THE COURT: Okay. Any other matters we need
5 to take up before we start?

6 MR. MCQUILLIN: Judge, there was a motion in
7 limine filed late yesterday evening I think to exclude
8 documents or I think related to our damages by
9 Mr. Henderson.

10 THE COURT: Okay.

11 MR. MCQUILLIN: I'll point out that at the
12 May 2022 hearing after Your Honor heard us on the
13 declaratory judgement action and lis pendens, you said
14 I -- on the record, you said I assume y'all are going
15 to engage in discovery on the damages issue, et
16 cetera.

17 We had a roster meter at the beginning of the
18 month where the case was set for trial, and a week
19 ago, we got requests for production for the first time
20 in this case, which are not due and we were in the
21 midst of trial prep.

22 So his argument is that we haven't responded
23 to those requests for production, therefore he wants
24 to exclude our evidence.

25 We view this simply as another attempt to try

1 to delay the trial. It's the same thing as Ms. Aryeh
2 not showing up for a deposition. We're ready to
3 proceed, and we think that it would be unfair to
4 exclude the evidence given the eleventh hour of these
5 requests for production.

6 THE COURT: Okay. Mr. Henderson?

7 MR. HENDERSON: Yes, Your Honor. As you
8 remember, we had the motion to withdraw as counsel.
9 So around December when this got scheduled, my client
10 hadn't been paid at the time. I'm here representing
11 as far as I can.

12 But at that time, we had informed her we
13 couldn't represent her if we weren't getting paid. So
14 we had been working to remove ourselves as counsel.
15 We had things signed around January and filed with
16 this Court in early February, and then there was a
17 status hearing. And to my naivety, expected to be
18 withdrawn. And then when it didn't happen, we've been
19 doing everything we can to get that done.

20 We still think it's prejudicial. This case
21 has been going on since 2021. I haven't received a
22 demand. I didn't know what they're seeking until
23 Monday's deposition, Mr. Aryeh was telling me the
24 damages.

25 I haven't had the opportunity to look at

1 damages. To the extent you will let them in, I'd
2 still like the opportunity even within this week to
3 prepare a written response to things in this box that
4 I still have not seen.

5 I have seen a handful of construction plans.
6 So I would just like the opportunity so my client is
7 not prejudiced to be able to thoroughly review these
8 and provide a response if you do let them in.

9 THE COURT: All right. Well, I generally --
10 I would be glad to hear from you, Mr. McQuillin.

11 MR. MCQUILLIN: I will point out all of the
12 damages that we're seeking today were discussed in
13 detail and were asked about in Mr. Aryeh's deposition
14 when he deposed him.

15 THE COURT: And that was on Monday?

16 MR. MCQUILLIN: Yes, Your Honor. It could
17 have been available before then. As he indicated,
18 this case has been pending since 2021, and it wasn't
19 until a week ago that we were served with the first
20 discovery request.

21 THE COURT: Okay. Yeah. Well, we had both
22 party's deposition taken this week, so we'll see how
23 fast these lawyers think on their feet.

24 I'm an old state court prosecutor. We used
25 to try cases at the wing of a hat. I realize having

1 reviewed the motion for sanctions and the response to
2 that, at least in civil cases, we're not -- you're
3 supposed to have discovery and then engage in a
4 discovery so that trial is not a, as I like to call
5 it, a got-ya. I got proof; they don't have proof.

6 So usually a little forgiving in that regard,
7 but I think the issues here are fairly narrow.
8 There's a unique issue in the lis pendens because I
9 don't think there's any case law on that whether or
10 not this state allows for that.

11 So my thought is that y'all got something if
12 you need to take it up on appeal, you can do it.
13 There's a pretty good record of that. Y'all did an
14 excellent job with the briefs on that and proposed
15 orders, and I thought that was well done.

16 I don't see a lot of abuse of process claims,
17 and so I'm interested to see how that goes. I do see
18 a lot of civil conspiracy claims that fizzle out over
19 time, but abuse of process is not what I normally see.

20 But in this particular case due to the fact
21 that the Court's prior ruling, I think that issue is
22 ripe for determination today. So I think we should
23 move forward with that.

24 I had not seen the motion in limine. If
25 y'all just filed it last night, I hadn't reviewed it.

1 It's my fairly normal practice to not grant those in
2 any event, but at such time as the evidence is
3 offered, I would expect to have an objection, and
4 we'll talk about it at that point in time. Okay?

5 MR. HENDERSON: Thank you, Your Honor.

6 THE COURT: So with that, y'all ready to
7 proceed?

8 MR. MCQUILLIN: Yes, Your Honor.

9 THE COURT: All right. Mr. McQuillin?

10 MR. MCQUILLIN: Very brief opening, Judge.
11 So as Your Honor pointed out, you've decided the tough
12 novel issue in this case which is whether a lis
13 pendens filed in South Carolina concerning litigation
14 in another state is valid. That's the tough issue.

15 What we're here about today is two issues.
16 One is you ruled in our favor on the Declaratory
17 Judgement Act. That statute does allow for recovery
18 of attorney's fees, and we're proceeding under our
19 abuse of process claim.

20 And I'm going to give you a quote which I
21 think really sums up this case from a South Carolina
22 Supreme Court case.

23 This is the Pallares v. Seinar case. The
24 cite is 407 S.C. 359. And what the Supreme Court says
25 is the tort of abuse of process is intended to

1 compensate a party from harm resulting from another
2 party's misuse of the legal system. And that's
3 exactly what we're here about today.

4 And in our amended complaint, Judge, we cited
5 several cases where verdicts and awards have been
6 granted by courts on an abuse of process claim
7 associated with the filing of a lis pendens. So
8 that's not a novel issue like the first one that came
9 up in this case.

10 This is a well-established simple issue. So
11 I know Your Honor said you don't hear a lot of abuse
12 of process claims, so I'm going to give you another
13 quote from the Seinar case.

14 It says: The tort centers on events
15 occurring outside the process. The improper purpose
16 usually takes the form of coercion to obtain a
17 collateral advantage not properly involved in the
18 proceeding itself, such as the surrender of property
19 or the payment of money by the use of process as a
20 threat or club.

21 And, again, this Court has already ruled that
22 the lis pendens here was improper and not authorized.
23 And the Court has already heard testimony at the prior
24 hearing in this matter in March that the lis pendens
25 was used as coercion to obtain a collateral advantage

1 in the family court case to obtain a payment.

2 At the May 16th, 2022 hearing, Mrs. Aryeh's
3 lawyer said to the Court: As you know, this is a
4 complicated history before we come to the lis pendens
5 of divorce action. I think relevant to that, some
6 alimony was not being paid to my client so they
7 exercised the lis pendens.

8 And Mrs. Aryeh testified consistent with that
9 this morning in her deposition. At the hearing,
10 Mr. Henderson also mentioned a letter he sent on
11 behalf of his client indicating the defendant would
12 agree to remove the lis pendens in exchange for a
13 payment of \$750,000, and, finally, defendant even
14 stipulated in the divorce that she agreed to remove
15 the lis pendens in exchange for a payment of \$409,000.

16 So is a lis pendens used to obtain a
17 collateral advantage in a divorce action or to obtain
18 payment? No.

19 The South Carolina Supreme Court -- excuse
20 me, the Court of Appeals in a 2019 case, Gocy v.
21 Somerset Point at Ladys Island Homeowners Association,
22 Inc., 426 S.C. 540, Court of Appeals said this, and
23 this is important: The lis pendens mechanism is not
24 designed to aid either party -- or is not designed to
25 aid either side in a dispute between private parties.

1 That's not what it's designed for. Rather, the notice
2 of lis pendens is designed to protect unidentified
3 third parties by alerting prospective purchasers of
4 the property as to what is already on public record.

5 That is the fact of a suit involving
6 property. There was no lawsuit filed involving this
7 property in South Carolina, Judge. Thus, it notified
8 potential purchasers that there's pending litigation
9 that may affect their title to real estate and the
10 purchaser will take subject to the judgement without
11 any substantive rights.

12 Judge, there are a lot of undisputed facts in
13 this case. It's undisputed that Mrs. Aryeh filed the
14 lis pendens in May of 2021. It's undisputed that it
15 was invalid now that the Court has ruled. It is
16 undisputed that she utilized it to demand and
17 ultimately obtain payment from our client.

18 The real issue here today and the issue that
19 the we are primarily presenting before the Court, the
20 real remaining issue for Your Honor, is damages.

21 And you will hear testimony today that as a
22 result of defendant's misuse of legal process, our
23 client lost substantial sums of money in terms of
24 increased interest rates.

25 We all know interest rates have increased

1 between now and 2021. We all know that construction
2 costs have increased. He sustained damages in the
3 form of increased construction costs. Our client
4 sustained damages in the form of lost profits, in the
5 form of carrying costs, unnecessary carrying costs,
6 and attorney's fees.

7 And that's the remaining issue under the
8 declaratory judgment action is we're seeking
9 attorney's fees under that statute.

10 Our client has also suffered stress and
11 reputational harm from the lis pendens, and you will
12 hear testimony and see evidence today that defendant's
13 refusal to remove the lis pendens and nearly yearlong
14 maintenance of the lis pendens was willful.

15 And if Your Honor looks at what we allege in
16 paragraph 18 of our complaint in defendant's answer,
17 you will see they admitted that her refusal and
18 maintenance of the lis pendens was in fact willful.
19 And as such, we will be asking for the Court to
20 consider punitive damages in this case. Thank you.

21 THE COURT: Before you sit down, let me ask
22 you. I just want to put this on the record. The Pond
23 Place Partners case talks about filing lis pendens
24 being privileged. I want to hear why that's not the
25 case in this instance.

1 MR. MCQUILLIN: That's a very good question.
2 We touched on this briefly in the last hearing. In
3 Pond Place, I believe the issue in that case was the
4 issue of whether you can maintain a slander of title
5 claim with respect to a lis pendens.

6 In a more recent case, the D.R. Horton case
7 that we talked about at the last hearing where Court
8 of Appeals basically said, look, filing of a lis
9 pendens is privileged and therefore you can't maintain
10 a slander of title action. When that case went up to
11 the South Carolina Supreme Court, the Supreme Court
12 said, no, no, no, they went too far.

13 The issue of whether an invalid lis pendens
14 can give rise to a slander of title claim has not been
15 addressed by the Court, and the Court of Appeals
16 should not have ruled on that signaling that
17 potentially a lis pendens could give rise to a slander
18 of title claim.

19 Now, to be clear, we have not sued for
20 slander of title in this case. We have sued under an
21 abuse of process theory. There are at least two cases
22 we cite in our amended complaint where our Courts have
23 held if somebody files an invalid unauthorized lis
24 pendens and misuses the legal process, they're liable
25 for damages in the context of a lis pendens.

1 So that's not a novel issue. That's a
2 well-established issue you can sue somebody for abuse
3 of process --

4 THE COURT: Okay. I just wanted to make sure
5 that got covered. Mr. Henderson, glad to hear from
6 you.

7 MR. HENDERSON: Your Honor, thank you. As
8 you can tell from my motions, I'm brief as well. I'm
9 going to take first abuse of process on and then we'll
10 talk about damages, if any, and why we don't think
11 they are any.

12 The abuse of process, when we did the memos
13 in the validity of the lis pendens, we were citing law
14 outside the state of South Carolina. It's a novel
15 issue. I think we can all agree on that. It is not
16 as if this lis pendens was filed where it was clear
17 under case law or statute that you couldn't file with
18 a divorce action in another state.

19 We don't think it's an egregious action. We
20 take on, in fact -- Mr. McQuillin was talking about
21 the money. It's a divorce action. We believe it's a
22 marital asset. There were court orders he's not
23 allowed to do -- encumber assets. And so she was not
24 being paid alimony at the time. Her counsel in the
25 Connecticut divorce court said what other option do we

1 have other than to secure the assets.

2 So money and alimony is inherent of any
3 divorce, and it's consistent with filing a lis pendens
4 to say, hey, we think this is still subject to a
5 divorce that is still ongoing to this day. I still
6 don't think he be able to dispose of marital assets.

7 So I think it's consistent saying, hey, we
8 will put money in escrow and release it. To me, that
9 is problem solving, trying to avoid having to spend
10 attorney's fees to be here to say you want this off,
11 we need money secured, we think we have a case to it.

12 We could have negotiated an escrow, and
13 that's why that money was, you know, offered there. I
14 think it's consistent with a lis pendens. For her,
15 she wants the property to be valuable. The more
16 valuable, the more better in the divorce.

17 So we're just trying to make sure that the
18 world is on notice she believes she has an interest in
19 the property, and property's interest is financial.
20 It is not as if it was filed to run away a buyer.

21 We're not aware of any buyers or any
22 transactions. It was trying to make sure he didn't
23 take out a bunch of money and disappears.

24 THE COURT: Is it your position that the
25 purpose of filing the lis pendens was to notify third

1 parties, or was it to protect her potential interest
2 in the property?

3 MR. HENDERSON: I think both of those. The
4 third parties being banks giving money. You know, if
5 you take out a 2.6 million dollar house -- you take
6 out a 2 million dollar loan from Wells Fargo, then,
7 you know, the house is no longer there.

8 So I do think it's important to protect what
9 the court order in Connecticut said he wasn't allowed
10 to encumber assets anyway, so ensuring that was done.
11 I think it's both of those.

12 THE COURT: I want you to touch on your
13 equitable estoppel argument that you raised in your
14 answer. I didn't fully understand that.

15 And answer this question. Are the parties
16 divorced today and they're still fighting over the
17 property, or are they still not divorced and still
18 fighting over the divorce and the property?

19 MR. HENDERSON: They are still fighting over
20 the divorce. I believe that is pending. There is not
21 a finalized divorce. There's not a finalized alimony.
22 There's not a finalized anything. So it's still all
23 ongoing. I do think that's imminent, like within
24 today --

25 THE COURT: Have they tried the case?

1 MR. HENDERSON: Case has been tried as of
2 January. So we're waiting --

3 THE COURT: I'm assuming it was filed based
4 on the case number back in 2019.

5 MR. HENDERSON: Yes, Your Honor.

6 THE COURT: They don't move as quick up there
7 as we do down here.

8 MR. HENDERSON: So the equitable estoppel.
9 So there's two Connecticut orders that I'll bring as
10 evidence today. There's an automatic order for all
11 divorces that says you cannot sell property without a
12 witness unless you're in, you know, the course of your
13 business, and we'll read that language.

14 And then there's another one that says you
15 can't encumber any of your assets. So he's estopped
16 from doing any of this. There's no harm because he's
17 not allowed to take out interest rates until this is
18 over.

19 So if the interest rate -- so there was one
20 interest rate height during the time of the lis
21 pendens, and it was a quarter. He's not allowed to do
22 it until the divorce is done anyway. So we think this
23 order, and there was another order which utilized this
24 house to get \$409,000. Part of, you know, I think a
25 week or two weeks before the release of the lis

1 pendens that said take the \$409,000 out of the house.
2 You can take as much money as you want out but you
3 can't use the proceeds for anything other than this
4 409,000.

5 So it shows the divorce court saying you
6 can't go renovate houses. You can't -- it's not
7 what -- this asset needs to be protected.

8 So we think he was estopped from doing any of
9 it to begin with, therefore, there are no damages
10 because if he's following these orders then wouldn't
11 be allowed or permitted to do it anyway.

12 THE COURT: And yet eventually the
13 Connecticut Court ruled that the lis pendens should be
14 lifted, did it not?

15 MR. HENDERSON: Lifted with the exception he
16 couldn't use the proceeds for any reason other than
17 the \$409,000 of alimony that he was required to pay.

18 So he could go take out -- and I will let him
19 tell you -- a million and a half dollar -- he took out
20 an original mortgage and then a second mortgage for a
21 better rate at a million and a half dollars.

22 My understanding is he's not allowed to use
23 anything above that \$409,000. So, in effect, he can't
24 do the flipping that we are going to hear about.

25 THE COURT: So you've got those three court

1 orders that you're going to put in the record?

2 MR. HENDERSON: Two different sections from
3 the automatic orders and then the one.

4 THE COURT: Okay.

5 MR. HENDERSON: On the damages, I mentioned
6 earlier I haven't seen until last night these
7 construction costs.

8 We don't deny that, you know, rates have gone
9 up. But it's wildly speculative to think in
10 Sullivan's Island you're turning a house around in one
11 year. And he testified he was going to make 5 million
12 dollars on it in a year.

13 I just bought a house that took me a year to
14 get new wallpaper and to get a new countertop. He
15 would still be building that house. I don't think
16 that's a leap of faith.

17 I think it's aggressive to think that it
18 would be anywhere close to being sold. So I think
19 there are no damages here other than us having to be
20 here and fight over something we shouldn't be that's
21 largely concocted.

22 To the extent they are, I think they're
23 speculative or a delay. You know, he filed -- and we
24 have an e-mail in July. So after we filed the lis
25 pendens and around May, there was an e-mail from Wells

1 Fargo pulling his mortgage application.

2 So from July until the order of March when it
3 was relieved, it was like an eight or nine month
4 period. It is a delay. This is not a buyer at the
5 table that we filed a lis pendens to run them off.
6 That is not what happened here.

7 THE COURT: Okay. Thank you, Mr. Henderson.

8 All right. Just so you know, we're going to
9 run until about noon. I've got a lunch appointment I
10 have to go to, and it's probably going to be closer to
11 1:30 before we restart. Just to give y'all some
12 planning.

13 MR. HENDERSON: Your Honor, what time do we
14 adjourn for the evening?

15 THE COURT: I think we're working until about
16 6:00 tonight. I'm hoping to get done today.

17 MR. HENDERSON: Thank you, Your Honor.

18 THE COURT: All right. Ms. Condon?

19 MS. CONDON: Thank you, Your Honor. We'd
20 like to call Mr. St. Pierre to the witness stand.

21 MR. HENDERSON: Your Honor, I'm going to
22 renew that objection from earlier.

23 THE COURT: Well, let me hear what he's about
24 to talk about.

25 Watch your step up there. If you would, sir,

1 raise your right hand.

2 (GREGORY ST. PIERRE, having been duly sworn
3 to tell the truth, the whole truth, and nothing but
4 the truth, was examined and testified as follows:)

5 THE COURT: Thank you, sir. Give me your
6 full name and address for the record, please.

7 WITNESS: Gregory St. Pierre, [REDACTED]
8 [REDACTED]

9 THE COURT: Thank you, sir.

10 DIRECT EXAMINATION

11 BY MS. CONDON:

12 Q. Mr. St. Pierre, where are you from?

13 A. Mt. Pleasant, South Carolina.

14 Q. Can you give the Court a little background on
15 your education and what you do for work?

16 A. Well, barely made it out of Wando High
17 School. And I happened to -- and from there, I knew a
18 guy I played volleyball with. He lived and worked on
19 Sullivan's Island. I fell right into what we still do
20 today. So the week after I graduated high school, I
21 started swinging a hammer for him and just loved it
22 and have been doing that this June will be 27 years.

23 Q. Okay. Do you have your own company now?

24 A. Yeah. I've had my company almost 22 years.

25 Q. Okay. And what's the name of your company?

1 A. St. Pierre Construction.

2 Q. And what kind of work does St. Pierre
3 Construction do?

4 A. All residential, all high-end custom work. I
5 kind of got lucky. Most of our jobsites are front
6 beach or marsh front on the island. So majority of
7 our work is renovation and reconstruction, so probably
8 80 percent of Sullivan's Island.

9 I was a carpenter for a long time wearing a tool
10 belt and did work for other builders on Sullivan's and
11 Mt. Pleasant. So when we transitioned to doing
12 contracting, I got lucky to already be in that niche
13 for such a long time, so that's just where I have been
14 for my career.

15 Q. Okay.

16 THE COURT: Who did you work with originally?

17 WITNESS: Wolfe Construction.

18 Q. Okay. Is St. Pierre Construction a member of
19 any professional associations?

20 A. Yes. We're a member of the GuildQuality and
21 National Association of Home Builders and the
22 Charleston Association of Home Builders.

23 Q. So you have been involved with new
24 construction on Sullivan's Island?

25 A. Yes. Lots of new construction, renovations,

1 historical, tons of -- a wide variety. Because when I
2 worked for Joel, we did everything from digging
3 footings to framing to drywall to trim, everything.

4 So we just pretty much always maintained a fairly
5 decent balance. Whatever comes our way, we take.
6 New, old, doesn't really matter.

7 Q. Okay. Have you been involved with any new
8 construction or renovations on Sullivan's Island in
9 the last three years?

10 A. I have five jobs currently on Sullivan's
11 Island. We normally complete two or three jobs per
12 year on Sullivan's. They vary from new construction
13 to renovations.

14 A lot of times, they will be like this project
15 where it's a full gut, just tearing it down to the
16 framing. So it basically ends up like new
17 construction, even though there are renovations or
18 additions.

19 Q. Okay. And before you get started with those
20 renovations or new construction, do you typically
21 provide a construction proposal to the client or how
22 does that work?

23 A. Almost always. We're, again, fortunate
24 enough with my experience as a carpenter, we have been
25 asked to do that for a long time, even when we were

1 working for other builder.

2 We would get plans on a napkin and say what do
3 you think your portions are going to cost? The
4 framing, the trim, whatever.

5 So doing that long before I even was contracting
6 for myself. And to this day, we still use it as a
7 valuable tool, not only for ourselves, but for our
8 clients to identify what the potential costs can be
9 before they get the plans.

10 By the time the preliminary plans come out, they
11 have three to six months of planning, structural
12 engineering, et cetera. So we try to identify what
13 those costs will be early before they finalize the
14 design.

15 Because in this type of project, it could be
16 hundreds of thousands of dollars. So we'll put
17 together the overall proposal, which is broken out,
18 and then sometimes we're asked to identify what
19 certain things might cost so they can kind of pick and
20 choose if you will as to what they may decide to move
21 forward with.

22 Q. Okay. And you mentioned the property in this
23 case earlier. Can you tell me about the property on
24 Sullivan's Island related to Mr. Aryeh?

25 A. Yes. So we were -- you know, we do a lot of

1 work with Beau Clowney's office, the architect. And
2 so we were brought in early, and I met Mr. Aryeh about
3 two years ago. I think it was March of '21. The
4 plans were basically to essentially gut what was there
5 and renovate the existing structure.

6 Q. Okay. And do you have testimony to offer
7 that would be helpful in understanding the proposed
8 construction costs of the home on Atlantic Avenue?

9 A. Yes. We were asked to put together a
10 proposal at that time to identify -- their plans were,
11 you know, look to the naked eye, they'll look like
12 they're finished plans, but they're not.

13 So we were given those preliminary plans early on
14 to -- basically the scope of work is very well-
15 defined. We just didn't have certain things like
16 electrical plan and structural. But the big picture
17 is there and gives us enough information to put
18 together a budget.

19 MS. CONDON: Your Honor, I'd like to move to
20 qualify Mr. St. Pierre as an expert in residential
21 construction and residential construction costs
22 associated with the building renovations.

23 MR. HENDERSON: I don't object to him being
24 an expert, just the objection as to the testimony.

25 THE COURT: Okay. So qualified.

1 MS. CONDON: Your Honor, may I approach with
2 Plaintiff's Exhibit 1? This is the architectural
3 plans.

4 THE COURT: You may. Watch your step over
5 there.

6 (PLAINTIFF EXHIBIT NUMBER 1 WAS ADMITTED INTO
7 EVIDENCE.)

8 Q. Can you please identify for me what this
9 document is?

10 A. Yes. These are the plans provided by the
11 architects.

12 Q. Are you familiar with this document?

13 A. Yes, ma'am.

14 Q. Okay. And you referenced the Beau Clowney
15 plans earlier. Are these the plans that you used in
16 creating your construction proposal for the home on
17 Atlantic Avenue?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. CONDON: Your Honor, we'd move to admit
21 Plaintiff's Exhibit 1 into evidence.

22 MR. HENDERSON: Same objection. I'll be
23 renewing the proceeding on Monday as requested. They
24 did provide this last night at 6 o'clock or something,
25 so I have had a chance to review them, but we still --

1 THE COURT: If I'm not mistaken, I saw them
2 attached to some document filed -- was it recently or
3 a while back? I've seen some plans somewhere.

4 MR. HENDERSON: My first time seeing them was
5 last night. Y'all correct me if I overlooked them.

6 MR. MCQUILLIN: I'm not sure, Judge. We've
7 made so many filings in the case.

8 THE COURT: I'm going to allow it. Go ahead.

9 Q. We've been talking a little bit about the
10 proposal you created. What's the date on these
11 architect plans?

12 A. Looks like February of 2001 on what I have
13 here.

14 THE COURT: 2021 maybe?

15 A. But that's tiny.

16 Q. I think it says February 10, 2021.

17 A. I think you're right.

18 Q. And you said you created a construction
19 proposal for Mr. Aryeh?

20 A. That's correct.

21 MS. CONDON: Okay. Your Honor, may I
22 approach with three exhibits to hand Mr. St. Pierre?

23 THE COURT: You may.

24 A. These are basically -- obviously the initial
25 proposal that we were asked to put together and then

1 another proposal that we were asked to put together
2 the following year, and then recently, you know, what
3 today's costs would be.

4 Q. Okay. Let's talk about -- let's look first
5 at this construction proposal that's marked as Exhibit
6 2. It's dated April 16, 2021. You created this
7 construction proposal?

8 A. Yes, ma'am.

9 Q. When you created this proposal, did you have
10 those Clowney plans that you have up there?

11 A. Yes, the same plans, yes.

12 Q. Okay. Can you tell me a little bit about
13 this proposal? Kind of describe what was asked to be
14 done.

15 A. So basically, you know, essentially a full
16 gut of the interior, taking everything down to the
17 framing, replacing all windows and doors, taking out
18 walls, et cetera.

19 And then, you know, from there, we were supposed
20 to, you know, have the plans developed further and be
21 moving forward later that year, but these are pretty
22 close to what we were planning on doing.

23 Q. Okay. And on the first page here at the top,
24 it says total estimated proposed price. That's 2.15?

25 A. Yep.

1 Q. So is that the proposed price for the
2 renovation you just described?

3 A. That's correct.

4 Q. Okay. And that would have been the costs as
5 it was proposed in April of 2021?

6 A. Yes, ma'am.

7 Q. Okay. And does that proposed price of
8 roughly 2.1, is that to a reasonable degree of
9 certainty what it would have cost to move forward with
10 this renovation had they gone forward in April of '21?

11 A. Yes, that's correct.

12 MS. CONDON: Your Honor, I would move to
13 enter Exhibit 2 into evidence, the construction
14 proposal in April of '21.

15 THE COURT: Over objection?

16 MR. HENDERSON: Yeah, objection for the
17 record.

18 THE COURT: Objection noted. And I'll
19 just -- it's a continuing objection as to these
20 documents. I'll put that on the record.

21 I'm going to allow it. That's Exhibit 2.

22 (PLAINTIFF'S EXHIBIT NUMBER 2 WAS ADMITTED
23 INTO EVIDENCE.)

24 Q. This construction proposal in April of 2021,
25 how long would it have taken your construction company

1 to complete this renovation? Let's say they started
2 in July of 2021, just a few months after. How long
3 would it have taken?

4 A. About 12 months at that time.

5 Q. Okay. And did you go forward with this April
6 2021 proposal?

7 A. No, we did not. Mr. Aryeh reached out to me
8 several months later and let me know there was going
9 to be a delay in the project because of the issues
10 they were having.

11 Q. Okay. Did he tell you anything about the
12 issues?

13 A. A little. I had to look the word up to be
14 honest because I didn't know what a lis pendens was.
15 Little bit of an educational process. I understood he
16 was in a, you know, in a difficult situation there.
17 And so we basically just put everything on pause for a
18 while.

19 Q. Okay. And if you'll look at what's marked as
20 Exhibit 3, that's just another construction proposal.
21 It's dated July 15, 2022. What does this show?

22 (PLAINTIFF EXHIBIT NUMBER 3 WAS ADMITTED INTO
23 EVIDENCE.)

24 A. So it's basically priced on the exact same
25 scope of work except for -- you know, with COVID,

1 majority of people have heard about things like lumber
2 because that's the hot button item. But in the
3 construction industry, it has just gone haywire since
4 then.

5 It's still crazy today, but from '21 to '22 was
6 insane. Like the amount of the price increase for
7 windows, doors, and appliances. But it's across the
8 board from insulation for duct work, PVC, piping, HVAC
9 equipment. I mean, it's literally every single line
10 item across the board other than your cleaning lady
11 might be around the same price.

12 Any materials in labor just skyrocketed. So
13 that's why these numbers are so much bigger than the
14 first time around.

15 Q. So comparing Exhibit 2, the April 2021
16 proposal, and this July 2022 proposal, is the only
17 difference in these two the price?

18 A. Yeah, that's correct. About 740-something-
19 thousand.

20 Q. Okay. So the renovations that were going to
21 be done on the property were identical?

22 A. That's correct.

23 Q. Okay. If you did go forward hypothetically
24 in July of '22, would the timeframe have changed at
25 all? I know you mentioned it would have taken about

1 12 months in April.

2 A. Probably be in the 14-, 15-month range at
3 that point, mainly just because everything is
4 unreliable.

5 So the lead times we were given for windows,
6 doors, appliances across the board are just extremely
7 unreliable, which threw a wrench in everyone's
8 schedule, not just for the jobs, but all of our key
9 subs.

10 We had to schedule our jobs as well as possible
11 but they have so many other builders they work for, so
12 it's just a huge domino effect where they're hitting
13 snags on every job. Basically very difficult for them
14 to complete one job and move on to yours.

15 So nowadays, we're having to price -- having to
16 schedule them even further. Like at this point, it
17 would be close to a 18-month job, and that's how far
18 we're spreading our schedules to make sure we can hit
19 our dates.

20 And it's just become very, very difficult to
21 schedule since -- before we originally met.

22 Q. And I know you heard Mr. Henderson mention
23 it's taken him a while to get wallpaper. Is that fair
24 to say it's an industry wide issue in construction
25 with the delay in recent years?

1 A. Absolutely.

2 Q. Okay. If you'll take a look at Plaintiff's
3 Exhibit 4, which is a third construction proposal,
4 this is dated March 10, 2023.

5 What's the difference between this proposal and
6 the two we just looked at, the first one being April
7 2021 and the second one July of 2022?

8 A. The scope of work is exactly the same. It's
9 just price. We use a construction software called
10 Plan Swift for all of our take-offs.

11 So like from the original proposal to the second
12 and to the third, we don't use just square foot
13 numbers because those are useless.

14 So we basically use the Plan Swift software to do
15 take-offs of how many studs we need, drywall, square
16 footage for countertops, et cetera.

17 So all of that data is there, and it's real
18 simple to see. And we also have another spreadsheet
19 with all of our past projects, ongoing projects, et
20 cetera. So it's very easy to identify exactly what
21 we're paying for certain things at any given time.

22 And that's, you know, long before Jason. We've
23 been doing it that way to help identify these costs
24 for any potential clients that come along.

25 So, again, the numbers -- like I said, a lot of

1 people discuss square foot numbers. Those are a joke
2 to me. The detailed take-offs is why our proposal is
3 very open book. It allows us to be more accurate than
4 just going 400 dollars a square foot or whatever.

5 So we're able to use that same information. I
6 could probably forecast what it will cost you next
7 year just based on the trend of how things are going.

8 Q. Okay. And just glancing back at Exhibit 3,
9 which was the July 2022 proposal, does that accurately
10 represent to a reasonable degree of certainty what it
11 would have cost if you had went forward with the
12 renovations in July of '22?

13 A. Yes, ma'am.

14 Q. And same question for Exhibit 4, the March
15 10, 2023 proposal, does that show what it would have
16 cost to go forward with the renovations if you started
17 this month?

18 A. Yes, ma'am.

19 Q. And I know you touched on this briefly when
20 you were talking about construction proposals, but
21 what do you do -- just explain what do you do to
22 create one of these? And more specifically, in this
23 context for the home on Atlantic Avenue, what did you
24 look at and how did you create these?

25 A. So we take the PDF file and drop it into our

1 Plan Swift software and you just go around and click,
2 click, click and you get your linear footages for
3 everything. Linear footages, square footages.

4 So instead of saying it's a 4,000 square foot
5 home and it's going to cost \$400 a square foot -- that
6 is only so accurate if you're doing like cookie cutter
7 homes. So we use that software to literally break
8 down how many square feet, linear feet, everything,
9 every single product.

10 And we have historical data to back up. Like
11 drywall is \$2 a square foot or roof metal is this or
12 that, you know, so it's easy.

13 Once we have done that, take-off is very easy to
14 identify if you want to use shingles or metal because
15 the hard work is already done.

16 That's what we do early on. We're asked to do
17 that quite often by Beau Clowney's office or other
18 architects, other owners.

19 It's just something we're kind of -- we're not
20 the only ones that do it, but the way we do is
21 different because we break it down in so much detail.

22 Like when I was asked to do it years ago for
23 other builders, it was a lot more general. And then
24 they would get to the table and the job would be
25 hundreds of thousands of dollars difference.

1 So that's why we kind of use the Plan Swift.
2 It's extremely accurate as long as -- I know what my
3 plumber charges me, so once I get my own take-off, I
4 can just pluck those numbers and spit out the data
5 basically.

6 Q. Okay. And, hypothetically, if the renovation
7 did go forward, let's say you started tomorrow on this
8 home, how long would it take?

9 A. I would schedule it for 18 months now just
10 because I don't like to over promise and under
11 deliver. I want to make sure I can get it at the
12 right time.

13 I put cushion in my schedule to make sure, but
14 that's the trend of what everyone -- four or five
15 years ago, everyone would say 12 months. Those days
16 are long gone now on this size project.

17 There's a possibility of getting it done in 16
18 months, but that would be tight. So if I was asked by
19 a client, I would schedule it for 18 months.

20 MS. CONDON: Your Honor, I'd like to enter
21 Exhibit 4, the last May 2023 construction proposal in
22 evidence.

23 THE COURT: March 10, '23? Number 4?

24 MR. HENDERSON: Same objection.

25 THE COURT: Okay. Over objection. Very

1 good.

2 (PLAINTIFF EXHIBIT NUMBER 4 WAS ADMITTED INTO
3 EVIDENCE.)

4 Q. Looking at all three of those proposals that
5 you created, is it fair to say the only difference is
6 the price and then the timeline of how long it would
7 take to complete the renovations?

8 A. That's correct.

9 Q. So the work is identical in all three of
10 them?

11 A. Yes, ma'am.

12 Q. Okay. And so comparing the April 16, 2021
13 proposal with the July 2022, what is the roughly --
14 what's the difference in the total proposed price?

15 A. \$740,255 looks like.

16 Q. Okay. What about the difference in April
17 2021 and March 2023?

18 A. Looks like only -- that's not near as much.
19 122,000 or so.

20 Q. And are those opinions to a reasonable degree
21 of certainty?

22 A. Yes. The majority of the jump that we see
23 with COVID -- like just to give you an idea, each
24 window and door manufacturer annually for -- since I
25 have been in construction only has one annual price

1 increase. They had several at the end of 2020, and
2 then in '21, there were five increases of 6 to 7
3 percent apiece.

4 So that's just like windows just to give you an
5 idea of one thing that has skyrocketed, and that seems
6 to be across the board with lots of different
7 products.

8 Q. When you initially provided Mr. Aryeh with
9 the proposal in April of 2021, did you have an
10 understanding that he planned to move forward?

11 A. Yes, ma'am.

12 Q. Okay. That's all I have for you. Please
13 answer any questions Mr. Henderson may have

14 CROSS EXAMINATION

15 BY MR. HENDERSON:

16 Q. Was your name Greg?

17 A. Yes, sir.

18 Q. Thank you for being here today, Greg. I know
19 it's not any fun today. I'm going to ask you about
20 some of these numbers. I understand there's a tough
21 market going here. I just want to make sure I
22 understand that and have you unpack a little bit of
23 that.

24 Have you got any competitors in the industry or
25 commonly work in the business against?

1 A. Of course.

2 Q. Can you name some of them?

3 A. I'd say my biggest competitors are Sheppard
4 Construction, Aaron Sawyer, Phillip Smith are the top
5 three that we go up against.

6 Q. Okay. You know, I have seen your work. I
7 know you're a high-end builder. Is that fair to
8 reference you --

9 A. Yes, sir.

10 Q. -- as a compliment? Are these other three in
11 that same tier of what you would call high-end luxury?

12 A. I would say so.

13 Q. Is that how it's phrased?

14 A. I don't know.

15 Q. You just try to do the best work you can?

16 A. I don't put a title to it.

17 Q. You referenced you have two to three jobs per
18 year?

19 A. That we close out. Right now, I have five
20 jobs on Sullivan's. They're all -- you know, the
21 smallest one I have is half a million, and that's a
22 six-month job. But most of our jobs are all in the 2
23 to 5 million range.

24 And they -- nowadays, they're 16, 18 months out.
25 So close out two to three a year, but right now five

1 active jobs.

2 Q. Very good. All right. You mentioned earlier
3 that these Beau Clowney plans are preliminary. Do you
4 get something else from Clowney's office or another
5 architect before you go forward?

6 A. Well, it depends on -- I think they had like
7 three tiers of plans. So if we're doing like a brand
8 new construction home, we might get more details,
9 sometimes we get less details than this.

10 It really just depends on what tier they select.
11 They have A, B, and C as far as what you want to pay
12 for plans. But, yes, this is very custom, you know,
13 to what we would see.

14 The only thing different would be we would get a
15 little more information as far as calling out the
16 actual size of the window.

17 When I do mine, I can scale it three feet by five
18 and I have data to tell me what a three-by-five window
19 costs. So the reason that they lean on us for that is
20 because they know I don't need every tiny detail at
21 that point.

22 So I say preliminary, but, again, I get what you
23 would call final plans from other architects that have
24 a lot less detail than this.

25 Q. Okay.

1 A. We're asked to price these things from napkin
2 type drawings to very extensive drawings. And I call
3 these preliminary only because they're getting ready
4 for the electrical plan and structural, et cetera.
5 But we always make assumptions for these things
6 because I know what my electrician charges me on these
7 jobs, so it's pretty easy for us to kind of identify
8 those costs.

9 Q. Do you get anything else before you start
10 building?

11 A. Yes. We would get the final set of plans,
12 which would include your electrical plans and
13 structural plans, things like that.

14 Q. Did you ever receive those final plans?

15 A. No, we have not.

16 Q. Okay. Do you know if those final plans were
17 ordered?

18 A. I do not know that to be honest.

19 Q. And, forgive me, I don't know a ton about
20 building houses other than moving in one that needed
21 light renovation, but it has referenced to stamped
22 engineer plans.

23 Explain the process where we go from this plan to
24 getting engineered plans.

25 A. It's a requirement. So the only thing that

1 an engineer would do on a project is identify, you
2 know, beam sizes for window and door openings, taking
3 out walls, et cetera.

4 So, yeah, a structural engineer has to stamp the
5 plans before we can submit for permit.

6 Q. So tell me about the permitting process, what
7 you have to take, who you have to go to on Sullivan's
8 Island.

9 And, first, have you done a full rebuild on
10 Sullivan's Island?

11 A. Plenty.

12 Q. So you have experience with having gone
13 through this? I'm sure it's a joyous procedure.
14 Could you just explain what that journey looks like?

15 A. It's really not that bad. Again, it takes --
16 from our first round of pricing, they would take a few
17 more months to finalize any small details that didn't
18 get to us. And then structural engineering takes a
19 month or so and then we submit for permit.

20 Q. Was this ready to be submitted for permits?

21 A. Not without structural plans, it's not.

22 Q. Okay. And how long can it take or how long
23 has it taken your clients in the past to go from
24 preliminary plans to getting the engineer's plans?

25 A. So I'm not really in the loop all the time.

1 Really just depends. By the time they get to me, they
2 have already engaged the engineer. I'm not privy to
3 that information.

4 I would say where these plans were, it could take
5 two to three months before we're ready. And when I
6 discussed with Mr. Aryeh after our budget meeting and
7 he basically gave me the verbal green light that we
8 were going to be working together, I just assumed, you
9 know, around three months or so later we would have
10 everything we need to move forward.

11 Q. You mean to submit permits?

12 A. That's correct.

13 Q. Okay. And I'd like to ask you about some of
14 your permitting time in the past on Sullivan's Island.

15 A. Takes about six weeks.

16 Q. Have you ever had it take longer?

17 A. Eight weeks is the maximum and that's
18 normally only when there are things contested or the
19 plans are not correct.

20 So if they're missing something or if there's an
21 issue that they catch in the review process, but I
22 have never had it take more than eight weeks.

23 Q. Okay. And explain to me what are they
24 looking for when you say catching things?

25 A. Well, they want to make sure the plans you're

1 submitting are what has been previously approved by
2 the review board. If not, they want to make sure
3 there aren't any setback issues.

4 Sullivan's Island is huge. It sits under water
5 quite a bit, so drainage can be an issue. So if the
6 plans do not reflect the amount of impervious coverage
7 on the property, they might make them add some notes.
8 Ticky-tack small stuff.

9 And that's normally what -- how it can get drug
10 out if the architects are missing something that
11 should be on the plan. But normally even we'll get
12 those notes back, and I have never had one take more
13 than eight weeks.

14 Q. And you mentioned the Board of Architectural
15 Review. Is there one on Sullivan's Island?

16 A. Yes.

17 Q. Do they approve all plans?

18 A. Not all plans.

19 Q. When would they approve the plans?

20 A. Any new construction project over 4,000
21 square feet and then if they're asking for any
22 variances of any kind, like any setback issues, height
23 issues, and then if there were -- if it was a
24 historical project then they really dive in to make
25 sure that you're not doing something they don't want

1 you to do to the outside of the home.

2 Q. Okay. Do we have a square footage for this
3 project?

4 A. I don't have it in front of me. I don't
5 think it's on here.

6 No, I don't. But if I had to -- I think it's
7 around 4,000 square feet or so. It's quite often not
8 listed on these preliminary plans. So when we do our
9 take-offs, that's when we'll get our square footage
10 total. I don't have that in front of me.

11 Q. Okay. So may or may not have been relevant
12 for the Board of Architectural Review on the 4,000
13 square foot?

14 A. Yeah, I don't think this one qualified.
15 Again, nonhistoric. It's basically a fairly simple
16 renovation as far as -- I mean, touching every square
17 inch but it's not like we're trying to reinvent the
18 wheel here and slap up some ugly monstrosity. So
19 that's normally what we're going off of.

20 Q. Okay. So is the 4,000 like an automatic?

21 A. Right. So for new construction --

22 Q. I'm not trying to --

23 A. For new construction, if your house is under
24 4,000 square feet, you don't have to go to DRB. So
25 keep it there for that reason.

1 Q. If I'm looking at an estimated cost on
2 Exhibit 2 to demo and build new, would that be
3 considered new construction? Am I understanding
4 that's tearing the house down and rebuilding it?

5 A. At the time, yes, sir.

6 Q. Okay. And so that would be new construction?

7 A. Yes. At the time, there was not that big of
8 a delta between the two. Nowadays, again, it just
9 depends. At the time, it was about a \$150,000
10 difference if we're going to tear it down.

11 Q. Okay. Had Mr. Aryeh paid you any money yet
12 to do the construction?

13 A. No, sir.

14 Q. Were you paid to do Exhibit 3 or 4?

15 A. No, sir.

16 Q. Were you paid to be here today?

17 A. No, sir.

18 Q. Did you know there was litigation when you
19 prepared Exhibit 3?

20 A. Which one is 3?

21 Q. I can do the July 15. I'm only going to look
22 at 2 and 3.

23 A. Yeah. So I knew -- yes. He had told me
24 about the lis pendens and I knew that basically they
25 were -- I was asked to price it, you know, what it was

1 going to cost a year-plus later.

2 Q. Okay. For the purpose of litigation?

3 A. Well, I was just asked to put together
4 pricing. It doesn't matter to me if there's
5 litigation or not.

6 Q. Fair enough. All right. I do have some
7 questions.

8 Do you remember -- you mentioned you had to do a
9 lis pendens research. I think me and these other
10 counsel have done the same.

11 When was that when he asked you and informed you
12 of the lis pendens?

13 A. I think it was summertime or so. You know,
14 few months after, so summertime. Summer or fall of
15 '21 I believe. I can't remember exactly.

16 Q. Had you been -- had you done any work on this
17 prior to that?

18 A. Just the first round of pricing.

19 Q. So when you heard about the lis pendens in
20 the summer of 2021, you had only provided an estimate?

21 A. That's correct.

22 Q. Okay. The April 16th?

23 A. Yes.

24 Q. All right. I'm going to go in a more
25 comfortable area, which is pricing. I understand you

1 do the pricing for your company?

2 A. For the most part, yes.

3 Q. All right. So I'm going to be comparing
4 Exhibit 2 and 3, which is April 16 and July 15.

5 A. Okay.

6 Q. Okay. Trying to understand some of these. I
7 saw these last night. Might take me just a minute.

8 So there's some things that have doubled in
9 price, some things that have stayed the same, and some
10 things that are new. And I just want to understand
11 your perspective.

12 So the fireplace surround went from 2,500 to
13 6,800.

14 A. Where are you?

15 Q. I'm sorry. I'm under client and designer
16 allowances, and I'm not going to go through every
17 single one of these.

18 I just want to talk through how your system works
19 and understand a few of them, so everybody relax.

20 So I'm just going to go through some of these on
21 this front one. You mentioned you plug them into a
22 system. Some of these are doubled, some stayed the
23 same.

24 Help me understand how you arrive at these that
25 are doubled. Is that a system that does that?

1 A. The Plan Swift software does the take-off.
2 Well, we do it. So we get all the quantities but then
3 we have a separate spreadsheet that tracks all of our
4 past jobs, ongoing jobs, et cetera so that we can
5 easily identify what we're paying for those things at
6 that time.

7 So that's where -- the number of fireplaces or
8 the linear footage of cabinetry didn't change. The
9 only thing that changed was what the average of what
10 we were paying on our current jobs at that time.

11 Q. Were you given any new requests for this one,
12 like new specifications?

13 A. No.

14 Q. So on -- I guess under the equipment on the
15 last two pages -- and I could be overlooking this.
16 There's a new fireplace under equipment. It was 0 in
17 the first one, and in the second one, the July one is
18 \$6,000. This is under appliances.

19 A. Under appliances, you said?

20 Q. I'm sorry, under equipment. It says
21 appliances right above it. So this is, I don't know,
22 12 lines from the very end.

23 A. Okay. Fireplaces. Yeah, so I'm not sure if
24 we missed one. I mean, if you look at these plans, as
25 you know, like I said, being preliminary a lot of

1 times -- let me give you an example.

2 The reason -- like these plans don't even have
3 any square foot totals on them. They don't have any
4 dimensions. So we use our software to do that, right,
5 but it also doesn't identify like the size of the
6 window, whether or not we are touching the fireplace
7 or not touching the fireplace.

8 So it looks like -- testing my memory for a
9 couple of years. But it looks like we may have missed
10 it first go around and then the plugging -- \$6,000 is
11 about what we're paying for a wood-burning fireplace
12 now. So I think it's just not identified on here.

13 Q. Is it possible that that was a new request?

14 A. No.

15 Q. So you would be taking the same plans and
16 then would convert it using your system?

17 A. That's correct.

18 Q. Okay. Going back, there's a supervision
19 clause here that jumps in. So explain that one to me
20 on the second one, \$76,000.

21 A. So for last couple of years, I have now -- so
22 graduated high school, moving, working for my buddy
23 Bill Wolfe who I love like family, but he's not the
24 most organized person. I never had the benefit of
25 working for another organized builder.

1 So, you know, grew up just in carpentry, did that
2 for a long time, and then started taking on our own
3 projects.

4 And what you find in just about any field, you
5 figure out where you're losing money or what you need
6 to add in, et cetera, not just for hard costs but also
7 find that if you only put a certain percentage in for
8 profit overhead and you didn't make as much as you
9 wanted, you obviously adjust those things as you move
10 forward.

11 So I am part of a builders group, which I was
12 introduced to, of 15 different builders from all over
13 the country. And we meet a couple of times a year,
14 and one of the best things that ever happened for my
15 company was being part of that group because you sit
16 together like at a round table and discuss the
17 pitfalls and financials, and you just air your dirty
18 laundry.

19 Basically one thing that I discovered was a lot
20 of my peers in that group were including supervision
21 as a hard cost, essentially just like a window,
22 because a lot of people do cost-plus jobs.

23 We still do fixed price. But the reason it's in
24 that proposal as opposed to the first one is because I
25 was not doing supervision at the time.

1 But if you asked me -- obviously come later after
2 going through a handful of jobs and learning I don't
3 have as much money as I need to, that's why from the
4 beginning part of '22 is when -- sorry. Beginning
5 part of '22 is when we started implementing it for all
6 of our jobs.

7 Q. Thank you for explaining. And you mentioned
8 you're not cost plus. So on the back half here, you
9 know, obviously \$202,000 between the April and the
10 July one on company overhead and profit. Help me
11 understand what goes into that number.

12 A. So it is based somewhat based on the
13 complexity, but it's also based on how long we're
14 going to be there.

15 So I typically try not to punish my clients for
16 spending more money, for example, on an expensive
17 stove.

18 I just look at it like this job is going to be 12
19 months. And just like the supervision, you know, you
20 try to like fine-tune that number. Like what do I
21 need for one of my project managers to manage that
22 project for X number of months?

23 And so we have come up with a formula that helps
24 us to identify what we need as a company for each
25 month that we're going to be on a job.

1 We'll start with a percentage in mind, but we
2 build -- like before we finalize it, we build the
3 schedule out and then that kind of helps us finalize
4 what's going into profit and overhead.

5 Q. Sounds like you have improved your business
6 side of estimating over the past several years?

7 A. Well, just being able to identify. So in
8 carpentry and, you know, without the benefit of having
9 somebody else, you learn on the job and you learn how
10 to do things and how not to do things.

11 And I will also say that in my 27 -- almost 27
12 years in June, the first 21, 22 were all
13 subcontracting for other builders.

14 So when I first started, like if you asked me to
15 build this house for you five, six years ago, I would
16 build it for a lot cheaper because I was trying to get
17 my foot in doors and establish myself.

18 So obviously just like any business, once that
19 happens and I have got more and more work coming in
20 then I can afford to push my percentages a little bit
21 more to make my company more profitable whereas for
22 years, my company was not so profitable.

23 Q. I understand that. I started my own business
24 as well.

25 So for the past year, you feel like you've been

1 able to charge more because you're more in demand?

2 A. Well, I wouldn't say in demand. Just
3 understanding of where -- you know, what we need. I
4 mean, if you go a couple years in a row without making
5 any money, you start focusing real quick.

6 Q. Is there any other builders you think that
7 could build this house?

8 A. Plenty.

9 Q. And they could build it for less?

10 A. Depends on what type builder you get. You
11 pick one of the three I mentioned, then no. We would
12 be neck and neck.

13 If you pick some yahoo who doesn't know which end
14 of the hammer to hold, yeah, he might shave a half
15 million dollars off of it. If you pick any competitor
16 that I would consider a good builder, we price against
17 them all the time.

18 I do not price against people who I do not
19 consider to be a very good opponent, if you will,
20 because they just -- for one reason or another not
21 going to provide the same quality and materials we do.
22 And that's why we have a reputation with this
23 particular architect and others because we're -- we
24 don't hide stuff. We don't cut corners. It's just,
25 you know, our reputation is very important.

1 Q. Would you think in April of '21 you were neck
2 and neck with those same builders?

3 A. Sure.

4 Q. So my last question. So between April and
5 July 2022, price and inflation went up about 11
6 percent. Your quote went up 41 percent. I find that
7 a little --

8 A. Well, what inflation number are you using,
9 like a national average?

10 Q. Yeah.

11 A. That's useless.

12 Q. You think that is consistent? You think
13 every builder went up 41 percent?

14 A. Yeah, easily. Again, just on like windows
15 and doors alone. I mean, so it's something we run
16 across all the time. I don't care if it's a \$200,000
17 job or a 2 million dollar job. The cost of what a
18 window is today compared to then is ridiculous.

19 I don't have any control over those things, but
20 appears to be some price gouging going on. So things
21 have skyrocketed.

22 Again, 11 percent, I don't know what that
23 entails. I just know what we pay for certain things.

24 MR. HENDERSON: Okay. I appreciate you
25 answering my questions. I think that's probably it

1 for us.

2 Greg, thank you for your time. They may have
3 a few more questions. I appreciate it.

4 WITNESS: No problem.

5 THE COURT: Any redirect? I got a couple of
6 questions for you. I just want to make sure I
7 followed your testimony.

8 These plans as drawn are not yet ready for
9 construction, but this is the basic starting point for
10 you to give cost estimates?

11 WITNESS: That's correct.

12 THE COURT: Okay. And then back to costs,
13 the original -- I'm going to look at these documents
14 so I'm clear.

15 The original cost estimate was the April 16,
16 '21, correct, what's marked as Plaintiff's Exhibit 2?

17 And those two prices, one is renovation and
18 then the higher number is tear-down and redo?

19 WITNESS: Yes, sir.

20 THE COURT: Is that right?

21 WITNESS: Yes, sir.

22 THE COURT: Okay. And so then the
23 itemization in the back is going to get to the
24 renovation costs on that document?

25 WITNESS: Yes, sir.

1 THE COURT: Okay. Then turn to Number 3, and
2 is that cost at the bottom of page 1, that's your
3 renovation cost?

4 WITNESS: Yes, sir.

5 THE COURT: As of July 15 of '22?

6 WITNESS: Yes, sir.

7 THE COURT: So we're now --

8 WITNESS: It's about 740 grand or so.

9 THE COURT: Right. Okay. And that's when
10 you saw -- COVID started in '20. When did you start
11 to see prices go through the roof?

12 WITNESS: End of '20 some, and then '21 went
13 haywire.

14 THE COURT: Yeah.

15 WITNESS: Okay. And then '22, not great but
16 not -- thankfully the bleeding stopped a little.

17 THE COURT: In '22?

18 WITNESS: Yes. There's still stuff that's
19 much more expensive. A lot of numbers are never going
20 to come back down. But the bulk of what we saw jump
21 was in the first year.

22 THE COURT: In '21?

23 WITNESS: Yes, sir.

24 THE COURT: If the plans were in April, you
25 wouldn't have started construction until the summer of

1 '21?

2 WITNESS: That's correct.

3 THE COURT: That's when you really started
4 seeing those costs. I know because I built something.

5 WITNESS: It was -- we weren't getting
6 notifications. We keep going back to windows. But
7 I'd have a handful of jobs out to bid and the guys are
8 freaking out calling that they're about to jump, you
9 know. So tiger by the tail basically. There's really
10 no control over what was going to jump and when and
11 how quickly.

12 And the number of price increases, again,
13 were 5 in '21 for like Marvin and Anderson, which is
14 like a top two window manufacturer.

15 So, yeah, it was just like wild, wild west
16 almost. You couldn't keep up.

17 THE COURT: If you're going off of fixed
18 price contract, how did you deal with that in your
19 construction projects that were going on at that time?

20 WITNESS: We have a 3 percent escalation
21 clause in our contracts. So if there's a hurricane in
22 the Gulf and plywood shoots to \$50, I'm covered. I
23 can't eat that.

24 But we have to justify it. So basically what
25 I'll do is I'll -- if I price something like this

1 preliminarily and then a few months go by, I used
2 to -- all my numbers used to be close until COVID.

3 So now what we do even though we are fixed
4 price is we double check everything prior to. Even if
5 I signed a contract at that time, say months prior,
6 before we break ground, I double check all numbers
7 again.

8 Some go down and some go up. I have a
9 project on Sullivan's right now that we started last
10 year. And in December -- we priced it in December of
11 '21 and three months later right before we're about to
12 start, we revised lumber again and lumber had jumped
13 \$90,000 between framing and exterior. And three weeks
14 later, it dropped \$20,000.

15 So we basically kind of have to keep an eye
16 on those things to inform our client. Like I can't
17 frame the whole house and then say framing jumped 50
18 or whatever. I have to identify those before.

19 But we have to -- like I have to keep our ear
20 to the ground very closely to make sure we don't get
21 caught with our pants down. There's still to this day
22 so many things that are jumping without anyone telling
23 you. It's easier now, but that first year was brutal.

24 THE COURT: You set the price but it's
25 subject to change just by the whim of the market,

1 right?

2 WITNESS: That's correct.

3 THE COURT: Because you're not ordering all
4 the materials at the very beginning of the project?

5 WITNESS: No. Like we used -- our lumber
6 yard would lock us in right -- lock me in even though
7 it's a year-plus long project. Every stick of lumber
8 would be locked in at a price.

9 THE COURT: Those days are gone, right?

10 WITNESS: Long gone.

11 THE COURT: Because they can't eat the price,
12 either?

13 WITNESS: Right.

14 THE COURT: So let's turn to Number 3, then.
15 And the number there at the bottom is the renovation
16 cost; is that right?

17 WITNESS: On Number 3, yes, sir. 2.89.

18 THE COURT: Goes from 2.15 to 2.89. And then
19 over on page 2, the estimated cost, the 3.25, does
20 that stay the same or do you not mess with that?

21 WITNESS: From '21 to '22, it jumped. I
22 didn't mess with it for the most recent because I
23 didn't want to get back into -- I only had the data in
24 there for like the renovation.

25 THE COURT: I noticed it didn't change with

1 Number 4, either.

2 WITNESS: So I didn't mess with those new
3 construction costs recently.

4 THE COURT: Just the renovation costs?

5 WITNESS: That's correct.

6 THE COURT: And then the most recent is the
7 March 10, '23?

8 WITNESS: Yes, sir.

9 THE COURT: And that's, again, the renovation
10 costs, right?

11 WITNESS: Yes, sir.

12 THE COURT: Okay. All right. Make sure I'm
13 following that.

14 And then the other problem you're having now
15 compared to prior to COVID was just the unreliable
16 delivery times on --

17 WITNESS: -- everything.

18 THE COURT: -- getting stuff. Whether it's
19 lumber, windows, doors --

20 WITNESS: Everything across the board. I
21 could get just about any tile you wanted in less than
22 two weeks. And now some are 10, 12, 16.

23 So if a client gets behind on their selection
24 and we give them dates that certain things are due,
25 and just like homework, they're doing it on the way to

1 school. Here, we picked all our tile. Well, you're
2 late because now I can't get that. The one you picked
3 is eight weeks or whatever. So that still seems to be
4 haywire to this day.

5 THE COURT: Okay. That's been my experience.

6 WITNESS: It's been tough to keep control on
7 it.

8 THE COURT: Okay. Any follow-up of my
9 questions, Ms. Condon?

10 MS. CONDON: I just have one.

11 REDIRECT EXAMINATION

12 BY MS. CONDON:

13 Q. If you -- hypothetically, if you would have
14 started construction in the summer of 2021, to a
15 reasonable degree of certainty -- excuse me.

16 If you started construction in the summer of
17 2022, would the cost have been higher than starting in
18 summer of '21?

19 A. Absolutely, yeah. I mean, basically \$740,000
20 or so.

21 MS. CONDON: Thank you.

22 THE COURT: Anything? All right. Very good.
23 Thank you very much. Just leave that stuff there for
24 now.

25 Can he be excused to go make a living? All

1 right. Good. Thank you.

2 MR. MCQUILLIN: Your Honor, at this time, we
3 call Brook Griffin to the stand.

4 THE COURT: All right. Ms. Griffin. Good
5 morning. Ms. Griffin, if you would raise your right
6 hand.

7 (BROOK GRIFFIN, having been duly sworn to
8 tell the truth, the whole truth, and nothing but the
9 truth, was examined and testified as follows:)

10 THE COURT: Thank you, ma'am. Please give
11 me your full name and address.

12 WITNESS: My full name is Catherine Holbrook
13 Griffin. I go by Brook. And my address is [REDACTED]
14 [REDACTED]

15 THE COURT: James Island. Got it. Thank
16 you.

17 DIRECT EXAMINATION

18 BY MR. MCQUILLIN:

19 Q. Ms. Griffin, where are you from?

20 A. Clinton, South Carolina.

21 Q. All right. Where is your husband from?

22 A. Charleston.

23 Q. All right. Where did you attend college?

24 A. The College of Charleston.

25 Q. Okay. Where do you currently work?

1 A. For the Casina Group.

2 Q. What is your title at the Casina Group?

3 A. Realtor.

4 Q. All right. While working at the Casina
5 Group, were you involved in the purchase and sale of
6 the property that we are here to talk about today,
7 1651 Atlantic Avenue on Sullivan's Island?

8 A. Yes.

9 Q. And what was your role in that transaction?

10 A. I represented the buyer, Jason.

11 Q. Okay. What was the total purchase price for
12 1651 Atlantic Avenue in 2021?

13 A. 2.6 million.

14 Q. And can you give us the circumstances
15 surrounding that deal? Was it a good deal? Was it a
16 bad deal?

17 A. Yeah, it was a great deal for Jason. The
18 seller was in a situation that she needed to sell
19 quickly, and so we -- the pricing was good.

20 Q. All right. How long have you been a licensed
21 realtor?

22 A. I have had a license since 2012.

23 Q. Okay. Can you explain for Judge Scarborough
24 your duties as a realtor at the Casina Group?

25 A. I work with buyers and sellers. I analyze

1 market data. I do properly analyzation of steady
2 market trends and inform my buyers and sellers to make
3 sure they get good, fair pricing on all their sales,
4 and I work with them through the process of selling a
5 home.

6 Q. All right. When determining a fair market
7 value for a house, what sort of market data do you
8 utilize and have available to you at the Casina Group?

9 A. So we have a couple of different things. So
10 I work with the MLS, Multiple Listing System, which is
11 available to all realtors.

12 But at the Casina Group, we also have internal
13 data, and we work with a CRM, which is a customer
14 relationship management system, called Boomtown. And
15 we were the first company to work with that system.

16 We were the only company up until recently that
17 was able to use that in the Charleston area and
18 surrounding areas, so our internal database is very
19 large.

20 THE COURT: Is that proprietary?

21 WITNESS: It was.

22 Q. Is it fair to say that the Casina Group has
23 one of the largest databases compared to other local
24 realty companies?

25 A. Yes, absolutely.

1 Q. In addition to the Casina Group having one of
2 the largest and most robust databases on market data,
3 where did the Casina Group rank last year in 2022 in
4 terms of closed sales on Sullivan's Island?

5 A. We were the number one firm on Sullivan's,
6 and we sold over -- closed over 41 million in sales.

7 Q. Just on Sullivan's?

8 A. Just on Sullivan's.

9 Q. Are you a member of any professional
10 organizations?

11 A. I'm a member of the National Realtor
12 Association and the Charleston Trident Realtor
13 Association.

14 Q. What honors and awards have you received as a
15 realtor?

16 A. I received a realtor of distinction and the
17 real trends professional best realtors award.

18 Q. Okay. Prior to the Casina Group, where were
19 you employed?

20 A. WECCO Development, which is a development
21 company owned by William Cogswell.

22 Q. What is -- in terms of development obviously,
23 but what type of development company is WECCO?

24 A. We did construction, so we did the Cigar
25 Factory and Garco in Charleston, several projects in

1 Savannah.

2 Q. What was your title at WECCO Development
3 Company?

4 A. The director of sales and marketing.

5 Q. And how long were you employed?

6 A. 14 years.

7 Q. All right. So fair to say that over the last
8 17 years, you have been involved in real estate in the
9 Charleston market?

10 A. Yes, heavily.

11 Q. Okay. Can you explain to the Court generally
12 what you did in this case?

13 A. So I analyzed market data from the summer of
14 2021 and summer of 2022 and put together comps with --
15 using the MLS, which analyzes every sale in detail, as
16 well as our internal system.

17 Q. And as I understand it, what you were trying
18 to figure out was what the property would have sold
19 for as-is without renovations in the summer of 2021
20 and then as-renovated in the summer of 2022?

21 A. Right. And I provided those numbers. Which
22 in the summer of 2021, it -- based on my data --

23 Q. Well, let me qualify you as an expert before
24 you start giving opinions.

25 After you completed your analysis, did you arrive

1 at conclusions regarding the sales price range for the
2 subject property in the summer of 2021 as-is and in
3 the summer of 2022 as-renovated?

4 A. Yes.

5 Q. All right. If you could, please, outline the
6 specific facts and data that you relied on in coming
7 to your conclusions.

8 A. So I used our internal system as well as the
9 MLS system.

10 Q. Did you look at comps?

11 A. Yes, and price per square foot and median
12 sales price.

13 Q. And market trends?

14 A. Yes.

15 Q. Did you look at the median home price on
16 Sullivan's Island?

17 A. Yes.

18 Q. Okay. And the information data you relied on
19 came from the Casina Group's robust database?

20 A. Yes.

21 Q. All right. What else other than your
22 database did you review? Did you look at for example
23 the evidence in front of you from the Clowney plans
24 and the renovations?

25 A. Yes. So I reviewed all of those plans. I

1 also reviewed previous projects that Jason has done.

2 Q. Okay. How would you describe the previous
3 projects where Jason has purchased a property and
4 renovated and sold it?

5 A. Stunning. Super high-end, luxury projects.

6 Q. Okay. In terms of the comps you examined in
7 this case, were you familiar with those comps?

8 A. Yes. I have been in the majority of those
9 homes through either hosting open houses, going to
10 open houses, or previewing and showing other clients.

11 Q. All right. When coming to your conclusions
12 in this case, did you rely on specific principals or
13 methods that are widely used in the real estate field?

14 A. Yes.

15 Q. Do you believe your testimony will be helpful
16 in assisting the Court in understanding the real
17 estate market and values of the subject property as of
18 the summer of 2021 and summer of 2022?

19 A. Yes.

20 MR. MCQUILLIN: Your Honor, at this time, I
21 tender this witness as an expert in the field of
22 residential real estate sales and valuation of the
23 Charleston real estate market.

24 MR. HENDERSON: Your Honor, I have no problem
25 in terms of the real estate sales, but in terms of

1 valuation, I don't hear any additional training in
2 valuing, future hypothetical property that may or may
3 not be developed and renovated. So we object on that
4 ground, and then we also renew our objection for
5 seeing new information that we haven't seen prior to
6 trial.

7 THE COURT: She's not -- you're not offering
8 her as an appraiser; is that right?

9 MR. MCQUILLIN: Correct. Judge, I will point
10 to two cases. One is the Seaboard Coast Line vs.
11 Harrleson, 262 S.C. 43. The Supreme Court found that
12 realtor's testimony as to value of damages was
13 admissible. That's a 1974 case.

14 There was also a case of Nelson vs. Nelson,
15 2019 case. Court of Appeals case where the Court --
16 the wife also presented an expert realtor who
17 testified the property had a value between 925 and 955
18 thousand dollars.

19 So our courts have recognized that realtors
20 can provide testimony as to a property's value and
21 damages.

22 We're not qualifying her as an expert, but we
23 would ask that she be qualified in the field of real
24 estate valuation. That's what she does day in and day
25 out.

1 MR. HENDERSON: We wouldn't object to the
2 valuation of the house as-is, but future valuations on
3 whether it would have been renovated under these
4 hypotheticals, I'm going to object to that.

5 MR. MCQUILLIN: Her valuation isn't future,
6 though, because she's looking at it retrospectively
7 and looking at comps that sold in the summer of 2022
8 to come up with value determination.

9 THE COURT: So here's what I made notes of,
10 and I think she can discuss market based on a market
11 data research, what range of value she would place on
12 the property. I think she can do that.

13 I'm interested -- you presented she's going
14 to testify to as-is in '21 and as-renovated in '22.
15 I'm going to be interested in as-is in '21 and
16 as-renovated in '22. Okay? I don't know if she's got
17 that, but that's what I would be interested in. I
18 want to compare apples and apples and oranges and
19 oranges. So I'm going to allow it on that basis.

20 MR. MCQUILLIN: Thank you, Judge.

21 Q. Before we get into your opinions, what effect
22 does it have on your real estate clients when a lis
23 pendens is filed on their property?

24 A. Well, it's damaging to their reputation, and
25 it puts a stigma on the property. I had calls

1 immediately when this one was filed.

2 Q. Okay.

3 A. It points often to financial issues and
4 foreclosure.

5 MR. MCQUILLIN: May I approach?

6 THE COURT: Sure.

7 Q. I'm going to hand you what's been premarked
8 as Plaintiff's Exhibit 5.

9 Can you please identify the documents in
10 Plaintiff's Exhibit 5?

11 A. Yes. I put together these documents with the
12 multiple listing system showing a month supply of
13 homes for sale, priced per square foot, and the median
14 sales price.

15 Q. All right. And is this data that you relied
16 on to come to your conclusions in this matter?

17 A. Yes.

18 Q. What did this data tell you about the real
19 estate market on Sullivan's Island during the summer
20 of 2021 and the summer of 2022?

21 A. That prices were skyrocketing out there.

22 Q. All right.

23 A. There was also a low supply of inventory,
24 which also increases prices.

25 Q. Okay. What did the market do beginning in

1 2023 or late 2022?

2 A. We have seen a decrease in prices out there.
3 A lot of that is due to increase in inventory and then
4 also the increasing -- the continuing increase in
5 interest rates.

6 Q. Is it fair to say there was a strong decline
7 in the market now compared to in the summer of '22?

8 A. Yes.

9 MR. MCQUILLIN: Okay. Your Honor, at this
10 time, we move to have that exhibit entered into
11 evidence.

12 MR. HENDERSON: Object for the reason
13 presented previously. I haven't seen this information
14 until --

15 THE COURT: Because I'm not sure I understand
16 how you got where you got to, can you take me through
17 the document before I let it in? I'm not sure I
18 understand it.

19 MR. MCQUILLIN: This is a portion of the data
20 that she relied on.

21 Q. Can you sort of walk through what you looked
22 at?

23 THE COURT: We're on a three-page document
24 marked Plaintiff's Exhibit 5.

25 A. So the first one is a month's supply of homes

1 for sale. I looked at data at the bottom from 2020 up
2 to like really January of 2023.

3 THE COURT: Your left axis starts a 5.0.
4 That's five months of supply?

5 WITNESS: No, this is the years. So you're
6 looking at three years for 2021 and --

7 THE COURT: You're in the bottom. I am up
8 here, left margin.

9 WITNESS: Yes.

10 THE COURT: Is that a five-month supply?

11 WITNESS: Correct.

12 THE COURT: Okay. And then the height is
13 something over six months of supply and that's
14 basically at the end of the '22, right?

15 WITNESS: Correct.

16 THE COURT: All right. And the low is
17 sometime maybe spring of '22?

18 WITNESS: Well, yeah, more like -- yeah, the
19 end of -- no, this would be -- yeah, spring of '22.

20 THE COURT: Okay.

21 WITNESS: It kind of condenses that. It
22 looks shorter than it is.

23 THE COURT: It's a three-year period?

24 WITNESS: Correct.

25 THE COURT: This is a graph, and it's moving

1 up and down like all graphs do. And it bottoms out in
2 I'd say maybe March, April of '22?

3 WITNESS: Uh-huh.

4 THE COURT: And then this huge demand and
5 goes the other way. Actually, it's the opposite of
6 demand. It goes up when there's more supply, right?

7 WITNESS: Right.

8 THE COURT: Let's flip to page 2 and tell me
9 what that says.

10 WITNESS: So this is price per square foot,
11 and this is the same period, three-year period, so
12 same timeframe. And this is only for Sullivan's
13 Island.

14 THE COURT: It's its own market, is it not?

15 WITNESS: Right.

16 THE COURT: So starting the low of 750 is
17 maybe in the spring of '21?

18 WITNESS: Correct.

19 THE COURT: And then it zooms up to over 1750
20 a foot in maybe the summer of '21?

21 WITNESS: Correct. We saw a big -- you know,
22 after COVID, the real estate market in that 2021 went
23 crazy.

24 THE COURT: Yep. And that's when
25 construction costs went through the roof.

1 And then finally page 3.

2 WITNESS: Yep. And this is for median sales
3 price.

4 THE COURT: Okay. It's a huge jag between
5 sometime in the summer. Is that maybe -- would that
6 be a month or couple of months or something? What's
7 going on in summer of '21?

8 WITNESS: It's usually the summers that
9 are -- you know, just people have beach on the brain.

10 THE COURT: Okay. And those median -- well,
11 could have been one or two sales, too, right?

12 WITNESS: Correct.

13 THE COURT: In this kind of market, could
14 have been one or two sales.

15 So, again, median starting around 4 million
16 in January of '19. It hits maybe close to 11 million
17 in the late summer, maybe early fall of '21, and now
18 we're seeing it bottom off into -- does this get you
19 to '23, the graph?

20 WITNESS: This gets you right at '23 I guess,
21 the beginning of '23.

22 THE COURT: Okay. Okay. Dropped off as
23 interest rates climbed?

24 WITNESS: Exactly.

25 THE COURT: All right.

1 WITNESS: And I looked at the -- so this is
2 like very comparable to the Atlantic Avenue with the
3 four bedrooms. So that's all very -- I'm not looking
4 at everything out there. So it would be four-plus, so
5 I'm not looking at the little tiny cottages.

6 THE COURT: So your data input would be what?
7 What was the criteria you were looking at?

8 WITNESS: So it's anything over -- so 4
9 bedrooms or more traditional, 3.4 or more and 2500
10 square feet or more.

11 THE COURT: Okay. Got you. Thank you. All
12 right. I'll allow it over objection. That's fine.

13 (PLAINTIFF EXHIBIT NUMBER 5 WAS ADMITTED INTO
14 EVIDENCE.)

15 Q. I may pause when she's writing stuff down.
16 I'm not interfering.

17 I have handed you what's been marked as
18 Plaintiff's Exhibit Number 6. Will you please
19 identify those documents for me?

20 A. Yeah, these are properties that I pulled, so
21 comps for -- if the house -- if Atlantic Avenue had
22 been put on the market as-is in the summer of 2021.

23 Q. Please walk the Court through each of these
24 comps pointing out when the properties were sold, for
25 how much, and how they compared to Mr. Aryeh's

1 property.

2 A. Yes. So the first one is 1750 Ion Avenue,
3 which sold in the end of June in 2021 and sold for 3.
4 -- or, no. It was listed for 3.9. It sold for 4
5 million.

6 And just compare -- Jason's property is really
7 hard to compare to this because of his location is I
8 would say far superior. It's on front beach with a
9 lot of privacy and backs up to the maritime forest and
10 also in the middle of the island where pretty much
11 everybody wants to be because of the privacy there.
12 You're close to downtown Sullivan's but not with all
13 the kind of craziness that happens when it gets warm
14 outside and mainly the privacy and the location with
15 the beach right there. Like he doesn't have anybody
16 in his backyard.

17 THE COURT: Except the maritime forest.

18 WITNESS: Except the maritime forest.

19 THE COURT: That's been a source of great
20 consternation.

21 A. The second one is --

22 Q. Before you go to the second one, so you would
23 describe Jason's property as superior to this property
24 in terms of its location on the island?

25 A. Yes, no question. This one is in the middle

1 of the island surrounded by houses.

2 THE COURT: Is this one of the officer's
3 quarters houses?

4 WITNESS: Yes.

5 A. The second one is 2107 Middle Street. Again,
6 this one was listed at 4.5 and sold for 4.35. And it
7 sold in June of 2021. June 17th, 2021. This is on
8 the main street in Sullivan's.

9 This one is probably most comparable to finishes
10 wise as Jason's. Again, location is super busy area.
11 No trees, no privacy, and you're on that main strip.

12 Q. And when was that property sold?

13 A. That sold June 17th, 2021.

14 Q. All right. What about your third copy?

15 A. The third is Atlantic Avenue. This is on the
16 same street of -- farther down. Again, not as -- just
17 the location, Atlantic does -- it kind of -- where his
18 is just in a whole different area of Atlantic, just
19 kind of how the island is.

20 So, again, you're in a busy area with this.
21 Finishes on this one are a little higher end than what
22 would be as-is as Jason's now with no renovations.
23 But sold for 4.7 in August of '21.

24 MR. MCQUILLIN: Okay. Your Honor, at this
25 time, we move to have these comps admitted into

1 evidence as relates to 2021.

2 MR. HENDERSON: Same objection.

3 THE COURT: I'm going to allow it. Go ahead.

4 (PLAINTIFF EXHIBIT NUMBER 6 WAS ADMITTED INTO
5 EVIDENCE.)

6 Q. Ms. Griffin, based on your experience, all of
7 the information, data, and comps you have analyzed,
8 what would the subject property have sold for as-is
9 meaning without any renovations in the summer of 2021?

10 A. So I did a range from between 4 and 5
11 million.

12 Q. Okay. And is that opinion to a reasonable
13 degree of certainty?

14 A. Yes.

15 Q. All right. When a property is listed for
16 several million dollars, what is the typical
17 commissions and closings costs on a multimillion
18 dollar property?

19 A. In most cases on multi-million dollar
20 properties, an agent will reduce their commissions.
21 So a typical commission is 6 percent, and most agents
22 that are what we see now is usually around 5 percent
23 with -- and then taking into effect that there's one
24 percent for closing costs. So a total with
25 commissions and closing costs would be 6 percent.

1 Q. And is that a fairly conservative number?

2 A. Yes.

3 Q. So just by way of example, if a property sold
4 for 10 million dollars, what would be the customary
5 and typical commissions and closing costs?

6 A. 6 percent, or 600,000.

7 Q. Okay. Now, you have heard Greg St. Pierre
8 testify. When would Jason Aryeh's proposed
9 renovations have been completed?

10 A. In the summer of '22.

11 Q. Okay. Have you also looked at comps on
12 Sullivan's Island in the summer of '22?

13 A. Yes.

14 Q. Okay. And, again, you have reviewed the
15 renovations and architectural plans and talked with
16 Greg about the renovations and Jason?

17 A. Yes.

18 Q. And you have also looked at other properties
19 that Jason has done to see the quality of work he
20 does?

21 A. Yes, I'm familiar.

22 Q. Can you please identify these documents for
23 the Court?

24 A. Yeah, so I did the same thing here but for
25 the summer of 2022 as a renovated home. And the first

1 one, 841 Middle Street, the way Sullivan's is
2 situated, Middle sort of comes onto the water front
3 towards the end of the island.

4 And this one sold in July of 2022 for 10.4
5 million. I pulled this as a comp based on the
6 renovation plans and also knowing what his previous
7 projects have looked like and know the high-end
8 finishes that he uses.

9 2108 Pettigrew Street, and this one closed in
10 August of 2022. Listed for 7.75 and sold for 7.

11 Q. Okay. How does Mr. Aryeh's property compare
12 in terms of location and finishes and that sort of
13 thing with comp number 2 that sold for 7 million
14 dollars?

15 A. Based on what I have reviewed, as far as
16 finishes in the plans for renovations, it would have
17 been higher, like more luxury renovations than what
18 Pettigrew has. And then also location wise is huge
19 for this not being, you know, beach front.

20 Q. Okay. So Jason's property in terms of comp
21 number 2 is superior in terms of location and the
22 high-end luxury renovations prior to the renovations
23 he completed?

24 A. Correct.

25 Q. Comp number 1 in terms of location and

1 finishes is fairly similar?

2 A. Right.

3 MR. MCQUILLIN: Okay. Your Honor, at this
4 time we move to have Plaintiff's Exhibit Number 7
5 admitted into evidence.

6 THE COURT: Mr. Henderson?

7 MR. HENDERSON: Object for the same reasons
8 having not seen this and been provided in request.

9 THE COURT: Were these your sales or the
10 reason your name appears at the bottom is because you
11 printed these off?

12 WITNESS: Because I pulled it. These are --
13 it says list office, which is right above the sold
14 price at the bottom.

15 Do you see my name? The sold price info
16 right above that, and then right above that is the
17 listing.

18 THE COURT: Okay. Listed with whomever. Got
19 you. Neither of these comport with the median sales
20 price, are they? These are not medians for that
21 market, is it?

22 WITNESS: No. I pulled these as comps based
23 on the renovations of his home.

24 THE COURT: All right. I'll allow it. Go
25 ahead.

1 (PLAINTIFF EXHIBIT NUMBER 7 WAS ADMITTED INTO
2 EVIDENCE.)

3 MR. MCQUILLIN: Thank you, Judge.

4 Q. Based on your experience and all of the
5 information, data, and comps you have analyzed, what
6 would the subject property have sold for as renovated
7 in the summer of 2022?

8 THE COURT: I don't think you can testify to
9 that. I just don't think she can give an opinion on
10 that. Okay? I just don't think she can.

11 MR. MCQUILLIN: Your Honor, she's testified
12 she looked at specific comps comparable to this
13 property --

14 THE COURT: I'm going to let you put it into
15 evidence but I --

16 MR. MCQUILLIN: I understand.

17 Q. So based on your experience and all the
18 information, data, and comps you analyzed, what would
19 the subject property have sold for as renovated in
20 '22?

21 A. I did a range for this as well. Between 9
22 and 10 million.

23 Q. And that range of 9 and 10 million, what is
24 that based on in terms of -- obviously the data and
25 everything else, but why do you think Jason's property

1 is more comparable to comp number 1 in Exhibit 7 that
2 sold for 10.4 million as opposed to Pettigrew Street?

3 A. Based on review of previous projects and the
4 renovations.

5 Q. Okay. So you believe the subject property if
6 it was renovated would have sold in the summer of '22
7 for a range of 9 to 10 million dollars; is that
8 opinion to a reasonable degree of certainty?

9 A. Yes.

10 Q. Thank you. Please answer any questions
11 Mr. Henderson may have.

12 CROSS EXAMINATION

13 BY MR. HENDERSON:

14 Q. All right. Thank you. I'm going to look at
15 Plaintiff's Exhibit 7.

16 A. Okay.

17 Q. Can you read out on that first page, the
18 square footage there?

19 A. 5655.

20 Q. Okay. And do you remember about how much
21 St. Pierre said the house was, or have you reviewed --

22 A. Yeah, it's a little under 4,000.

23 Q. Okay. Could you take a look at the next one.
24 2108 Pettigrew?

25 A. Uh-huh.

1 Q. How many square feet is that?

2 A. 4351.

3 Q. Okay. And do you recall him saying that over
4 4,000 would require the Board of Architectural Review?

5 A. Only for new homes.

6 Q. Okay. And how do you know Mr. Aryeh?

7 A. I was his real estate agent.

8 Q. And how did you come to meet him?

9 A. Through a friend of mine.

10 Q. Who was that friend?

11 A. Emmi.

12 Q. And is Emmi in a relationship with Mr. Aryeh?

13 A. Yes.

14 Q. What kind of relationship?

15 A. His fiance.

16 Q. Do they have a child together?

17 A. Yes.

18 Q. How long have you been friends with Emmi?

19 A. I knew her prior when I worked for WECCO in a
20 business -- I did not know her as a friend that way,
21 and then we -- I guess in the summer of -- or before
22 the summer of -- right when -- I don't know. Like two
23 years ago, we were friends, like became friends.

24 Q. How long have you known her name?

25 A. Like five years, six years.

1 Q. Closer friends for about --

2 A. I wouldn't say that we're super close
3 friends.

4 Q. -- for how long?

5 A. About two years.

6 MR. HENDERSON: Okay. That's all I have,
7 Your Honor.

8 THE COURT: All right. Anything further?

9 MR. MCQUILLIN: No, Your Honor. I think it's
10 a good time to break for lunch.

11 THE COURT: Ms. Griffin, thank you very much.
12 You may stay or you may go. You probably got work to
13 do.

14 Let's go ahead and take a break for lunch.
15 Let's try to get back about 1:45. 1:45. I just need
16 two hours for this meeting. Thank y'all very much.

17 (Recess from 11:51 a.m. to 2:05 p.m.)

18 THE COURT: Back on the record.

19 MR. MCQUILLIN: Your Honor, at this time, we
20 call Olivia Aryeh to the stand.

21 THE COURT: Mrs. Aryeh, come on around.
22 Watch your step.

23 (OLIVIA ARYEH, having been duly sworn to tell
24 the truth, the whole truth, and nothing but the truth,
25 was examined and testified as follows:)

1 right?

2 WITNESS: Yes. If I can.

3 THE COURT: I think that's all the questions
4 I have for Mr. Arych.

5 Mr. Aryeh, you may step down, sir. Thank you
6 very much.

7 All right. Mr. McQuillin, anything further
8 from the plaintiff?

9 MR. MCQUILLIN: We'd like to move for a
10 directed verdict. Your Honor has already ruled the
11 lis pendens was improper and not authorized, and I
12 don't think there's any evidence to the contrary on
13 the issue that this lis pendens was in fact designed
14 to aid a party in the dispute, which the Court says
15 the lis pendens is not designed to aid either party in
16 dispute.

17 We have what Your Honor has heard on this
18 issue, on the issue of the lis pendens based on Mrs.
19 Aryeh's own testimony. She testified had Jason paid
20 you \$750,000, you would have agreed to remove the lis
21 pendens, and she in fact did agree to remove the lis
22 pendens when she was paid \$409,000.

23 She also testified had Jason followed court
24 orders, I would have removed the lis pendens. Had he
25 just done what the Court asked and paid his alimony,

1 then I would have removed the lis pendens. That's her
2 testimony.

3 She also testified because court orders --
4 had court orders been followed, there would have been
5 no reason for the lis pendens. And then she agreed
6 that after Jason paid her the 409,000, she agreed to
7 remove it and believed there was no reason for the lis
8 pendens.

9 And, Your Honor, going back to this Somerset
10 case, it says the lis pendens mechanism is not
11 designed to aid either side in a dispute between
12 private parties, rather the notice of a lis pendens is
13 designed primarily to protect unidentified third
14 parties by alerting perspective purchasers of property
15 as to what is already on public record.

16 That is the fact of a suit involving
17 property, and we know that there was no lawsuit filed
18 in South Carolina concerning this property.

19 And there's one word that hasn't been
20 mentioned in this courtroom all day today, and that is
21 third parties. And a lis pendens is Latin, and it
22 means to put on notice, and it's to put third parties
23 on notice.

24 It is not used as leverage to coerce somebody
25 in your divorce to pay you so that you can write

1 settlement demands to the other party and demand
2 \$750,000. Those facts are undisputed. That occurred.
3 And it's even in the parties' stipulation.

4 And so we would move for a directed verdict
5 on the liability issue of the lis pendens. And I will
6 say, again, the torte of abuse of process -- excuse
7 me, the liability aspect of abuse of process is
8 intended to compensate a party for harm resulting from
9 another party's misuse of a legal system.

10 The Broadmoor Apartments case which we cited
11 in our amended pleadings specifically allows for, and
12 a verdict was issued, on an abuse of process claim for
13 an improper lis pendens.

14 And it says the purpose itself, though
15 ulterior, need not be illegitimate, rather the abuse
16 occurs when process is accomplished -- excuse me, when
17 the purpose is accomplished by using the process in a
18 manner in which it is not intended to be used.

19 That's the Food Lion case, 351 S.C. 65. The
20 important point there is in that case, the Court
21 distinguishes between malicious prosecution which
22 requires an element of malice or anger.

23 Abuse of process does not require that. In
24 fact, it says that the element of the willfulness of
25 ulterior motive -- this is, again, the Food Lion case.

1 Thus, the element comprises three components. A
2 willful or overt act. We already have in the answer
3 that she's admitted that she willfully refused to
4 remove it. We also have that she willfully demanded
5 payment in exchange for removing the lis pendens.

6 In the use of process, it's undisputed that a
7 lis pendens is involved in a legal process. And that
8 it's improper because of either, A, it's unauthorized,
9 which the Court has already ruled on or, B, aimed at
10 an illegitimate collateral objective.

11 You have heard tons of testimony on that
12 today that this was in order to gain leverage in the
13 family court case, to obtain a payment of alimony.
14 But that element is it's either unauthorized or aimed
15 at an illegitimate collateral objective.

16 Here, we have proven both elements. We have
17 already established that it's not authorized, and
18 there's a bunch of evidence in the record that's
19 undisputed that there was a collateral objective in
20 the family court case.

21 So, Your Honor, we would ask respectfully
22 that you issue a directed verdict on the liability
23 elements of abuse of process and decide the issue of
24 damages.

25 THE COURT: All right. Thank you,

1 Mr. McQuilllin.

2 Mr. Henderson?

3 MR. HENDERSON: Your Honor, I'm going to make
4 the same motion for directed verdict in favor of the
5 defendants. Just because it was ruled invalid doesn't
6 make it an automatic abuse of process.

7 Obviously, you know, they cited these letters
8 offering to put money aside. You'll notice in the
9 letters, it says: We can agree on terms of escrow.
10 This wasn't like a side deal, like, hey, pay me this
11 money and lift it. It was securing the marital asset.
12 A perfectly legitimate thing to happen in a divorce
13 when you do see the court orders -- we don't know if
14 this is in his business or not. She doesn't know
15 about 1031s.

16 Her advice of counsel says let's file this
17 lis pendens to protect your marital asset, and she
18 follows through with that. And I do think it's
19 important that it was offered to put in escrow in that
20 e-mail from my office because there was willingness to
21 negotiate.

22 We're not trying to get paid money to relieve
23 it. We're trying to secure that marital asset so that
24 the third party, being Wells Fargo who it went to, it
25 doesn't go from being worth 2.6 million dollars to

1 \$900,000 in the 1.5 mortgage.

2 THE COURT: So you distinguish that as
3 opposed to illegitimate collateral objective, you're
4 saying it's a legitimate collateral objective; is that
5 your argument?

6 MR. HENDERSON: Well, I'm saying it is
7 securing her marital asset, and I think that's a
8 legitimate thing to reach out and to put Wells Fargo
9 on notice so that all the assets don't go poof to a
10 divorce that still has not finished.

11 THE COURT: And your argument that it's a
12 marital asset is what?

13 MR. HENDERSON: It was purchased from the
14 marital home and it's an equitable division state. So
15 the property -- doesn't matter if it's in one name or
16 not. So that's for the Court to rule on in
17 Connecticut. It hasn't even finished yet.

18 THE COURT: Didn't they put in the deed where
19 she conveyed her interest in it to him saying she had
20 no interest in the property?

21 MR. HENDERSON: That's the difference in the
22 equitable division. Even if it's in his name, my
23 understanding is that you still look at the whole of
24 the property, whether it's -- whoever's name it's in
25 and then divide it fairly.

1 So we see it as property that was owned, yes,
2 by him, rather stipulation [sic], but it's still
3 relevant to the divorce.

4 THE COURT: If you're doing equitable
5 division, right?

6 MR. HENDERSON: Correct.

7 THE COURT: They lived in a community
8 property state but not at the time of their divorce.
9 I don't know what Connecticut is.

10 MR. HENDERSON: My understanding is
11 Connecticut is equitable division.

12 THE COURT: That's my guess, but I don't
13 know. Mr. Aryeh says I got a post nuptial agreement.
14 Okay. Interesting.

15 MR. HENDERSON: So we'll make that motion for
16 Your Honor to consider.

17 MR. MCQUILLIN: Your Honor, the whole marital
18 asset idea . . . one is a lis pendens is designed to
19 put third-party purchasers on notice. It's not
20 designed to protect marital assets, number one.

21 Number two, you have heard testimony from
22 Mrs. Aryeh that she didn't think Jason was going to
23 sell it. She thought he was going to live in it and
24 then -- and so you can't have your cake and eat it,
25 too, and say, well, I was worried he was going to sell

1 it but I never thought he was going to sell it and he
2 was never going to renovate it.

3 Number two, the proof is in the pudding.
4 Look at her stipulation. Look what she agreed to. If
5 she filed this lis pendens to put third-party
6 purchasers on notice, why did she remove it when he
7 agreed to pay her \$409,000?

8 Her purpose in filing this is in these
9 stipulations. I'll remove it if you agree to pay me.
10 That's what was in the demand letter she sent to us.
11 That's what her own lawyer demanded from our client
12 after her deposition. That evidence is undisputed.

13 THE COURT: All right. I'm not going to do
14 it right now, but I'm inclined to grant the
15 plaintiff's motion. The two issues that I want
16 covered before I do that -- I may just wait.

17 One is the advice of counsel defense that
18 she's raised or domestic lawyers raised that issue,
19 and the other would be -- we've talked about states
20 that do allow for the filing of lis pendens in other
21 states in the prior order. Just see if y'all can find
22 any Connecticut law about that.

23 It could have been that the Connecticut
24 lawyer said this is something we can do, and they did
25 it here. You can't do it here in my opinion. Y'all

1 get to take that issue up. See if I am right or
2 wrong. Okay? Hate to say that to you but that's just
3 more attorney's fees, but that's the issue that's
4 pending. Okay?

5 MR. HENDERSON: Do I understand that I can
6 also provide a memo to you on that?

7 THE COURT: Absolutely.

8 MR. HENDERSON: When would you like that?

9 THE COURT: Next ten days. Okay?

10 MR. MCQUILLIN: So, Your Honor, just so I
11 understand, you want to know --

12 THE COURT: I want to know whether or not
13 that provides them with some sort of -- I don't think
14 there's any question that you've met the first two
15 terms of abuse of process, an overt act and use of
16 process.

17 Next question becomes was it unauthorized.
18 Okay? That raises the question in my mind whether or
19 not advice of counsel provides her with a defense to
20 that. Okay?

21 And then the other one is the illegitimate
22 collateral objective. And Mr. Henderson argues it's a
23 legitimate collateral objective. So let's cover that.
24 All right?

25 MR. MCQUILLIN: Advice of counsel that

1 provides a defense and whether Connecticut law allows
2 you to provide a lis pendens, just brief those two
3 issues?

4 THE COURT: Yeah. Just on that issue. Okay?
5 And then plaintiff has rested.

6 MR. MCQUILLIN: Do you want us to do closing?
7 We're fine waiving it and just briefing those issues.

8 THE COURT: I'm going to ask Mr. Henderson if
9 he's got anything else he wants to put in the record.

10 MR. HENDERSON: We have no witnesses, Your
11 Honor.

12 THE COURT: Very good. We've heard enough.
13 I don't even need closing arguments. Do you want to
14 make them? I'll do them.

15 MR. MCQUILLIN: I'm fine. I think the record
16 is clear and established and we'll brief the issue of
17 the advice of counsel and also the issue of whether
18 Connecticut law allows you to file -- whether you're
19 allowed to file a lis pendens in Connecticut
20 concerning litigation in other state.

21 THE COURT: That would be great. That's the
22 only legal issue I see hanging out there.

23 MR. HENDERSON: Your Honor, this morning I
24 asked to have an opportunity to respond to some of the
25 damages allegations. Is there a mechanism you'd allow

1 me to brief after having reviewed these?

2 THE COURT: If you would like to submit some
3 memorandum in opposition, you can do that, yeah. Just
4 making points you'd like to make.

5 I'll give you 15 days on that, and I would
6 give them another week or something to respond.

7 Y'all can do that by way of affidavit,
8 memoranda, whatever you want to do in that regard.

9 The other thing I would be interested in is
10 to find out if the family court in Connecticut
11 actually issues their decree. Y'all let me know what
12 that is. And I would like to see whatever those
13 appellate records were. I don't know how involved
14 those things were. I'm not sure what the issue was
15 that went on appeal, but I'd like to see them.

16 MR. HENDERSON: Yes, sir, Your Honor.

17 THE COURT: For the parties, for y'all, I
18 want to thank you for being civil to one another in
19 the courtroom. I know it's hard. Okay? I know
20 you've been down a long road.

21 Mr. Aryeh, I had my own litigation that went
22 on for years and years and years. It just wears on
23 you after a while. I understand that.

24 It's not fun for anybody to have to go
25 through this process. I'm fully aware of that. Y'all

1 have excellent lawyers that have done a great job for
2 you. I think you should be thankful for that.
3 They've done a good job.

4 My job is not to award somebody and punish
5 somebody else. It's just to make a decision based on
6 what I understand the law to be. I also realize that
7 every case that comes in front of me is the most
8 important one for the litigants and the lawyers in
9 that case, and so I give it that consideration as
10 well.

11 It is my usual practice to, if I don't rule
12 from the bench, to request proposed orders from the
13 parties within 30 days and then I give y'all 30 days
14 from then. I'm doing something a little bit different
15 here. I'm narrowing the focus down to really one or
16 two legal issues based upon the stuff I have seen here
17 today that I need to check off in my mind to get this
18 thing clear.

19 And what I intend to do is within ten days of
20 y'all getting me the stuff I've asked for, which is
21 going to be roughly 30 days out, I'm going to give you
22 a holler and tell you how I think I'm going to rule.
23 And then I'm going to probably ask for proposed orders
24 at that time, but I'll have a really good grasp of
25 what I think my numbers are and where I think I'm

1 going to be at that point in time just so you have
2 some heads up on that. Okay?

3 Anything further from the plaintiff?

4 MR. MCQUILLIN: No, Your Honor.

5 THE COURT: All right. Anything from the
6 defense?

7 MR. HENDERSON: No, Your Honor. Thank you
8 for your time today.

9 THE COURT: Thank you very much. Okay. All
10 right. Hopefully we won't see each other again in the
11 courtroom. But if we do, I look forward to that.
12 Thank you.

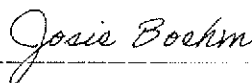
13 (Off the record at 5:29 p.m. on March 29th,
14 2023.)
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25

1 COURT REPORTER'S CERTIFICATE

2
3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 15th DAY OF NOVEMBER 2024.

16 

17 JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
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21
22
23
24
25

Placeholder

Pages 187 through 199
submitted under seal

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VIA EMAIL AND U.S. MAIL

June 29, 2021

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RE: Removal of Invalid *Lis Pendens*—[REDACTED] Sullivan's Island, SC – TMS No. 523-12-00-006; Case No.: 2021-LP-10-0213

Dear Ms. Swiggart and Mr. Hubbard:

Please be advised that this firm represents Jason Aryeh in regards to the *Lis Pendens* (2021-LP-10-0213) filed on behalf of your client, Olivia Aryeh, on May 5, 2021 in the Charleston County Court of Common Pleas in South Carolina. As discussed herein, the above referenced *Lis Pendens* was wrongfully filed because it has no connection to any pending South Carolina action and is one of a series of bad faith and wrongful filings¹ made by Olivia Aryeh as part of her vexatious litigation campaign against her husband, Jason Aryeh. As such, **pursuant to Rule 11 SCRPC, we are hereby requesting that you voluntarily withdraw the *Lis Pendens* on or before July 6, 2021.**

Under South Carolina law, "the filing of a *lis pendens* is an extraordinary privilege granted by statute, [and] strict compliance with the statutory provisions is required." *Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 8–9, 732 S.E.2d 876, 880 (2012). "A *lis pendens*, which must be filed not more than twenty days before the filing of the complaint or at any time afterwards, is a derivative right, and its validity depends not only on the timeliness of its filing in relation to the underlying complaint, but on the validity of the complaint as well." 14 S.C. Jur. *Lis Pendens* § 10; (citing S.C. Code Ann. § 15-

¹ Gary Cohen, our client's Connecticut lawyer, has requested that Ms. Swiggart place her malpractice carrier on notice of potential claims related to the filing of the *Lis Pendens*.



HAYNSWORTH SINKLER BOYD

June 29, 2021

Page 2

11-10 & *Theisen v. Theisen*, 394 S.C. 434, 447, 716 S.E.2d 271, 277 (2011)). Specifically, the South Carolina statute provides:

In an action affecting the title to real property the plaintiff [] not more than twenty days before filing the complaint or at any time afterwards . . . may file with the clerk of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and the description of the property in that county affected thereby.

S.C. Code Ann. § 15-11-10 (1976).

There is nothing in the present South Carolina statutory scheme regarding lis pendens to indicate a legislative intent to include litigation in the courts of other states within its reach. Indeed, the overwhelming majority of state courts that have addressed this issue, including Georgia, Maryland, West Virginia, Wyoming, and even California, have held that a lis pendens may only be filed if the “action affecting title to real property” is pending within that state. *See e.g., Boca Petroco, Inc. v. Petroleum Realty II, LLC*, 285 Ga. 487, 491, 678 S.E.2d 330, 334 (2009)² (holding that a lis pendens was invalid and may not be filed in Georgia to give notice of litigation pending outside of Georgia); *The Formula Inc. v. Superior Court*, 168 Cal.App.4th 1455, 1460, 86 Cal.Rptr.3d 341 (Cal.App. 3 Dist. 2008) (expunging a lis pendens because nothing in text or history of California lis pendens statutes indicates legislative intent to include litigation in the courts of another state within their ambit); *Permanent Financial Corp. v. Taro*, 71 Md.App. 489, 495, 526 A.2d 611 (Ct.Spec.App.1987) (the doctrine of lis pendens, as applied in Maryland, will operate against only real or leasehold property that is located in Maryland and is the subject of an action pending in Maryland); *Ludvik v. James S. Jackson Co.*, 635 P.2d 1135, 1141 (Wyo. 1981) (holding that a “lis pendens had no efficacy outside the territorial jurisdiction of the court in which the action was pending”); *First Nat. Bank v. McGraw*, 85 W. Va. 298, 101 S.E. 474, 475 (1919) (“The territorial scope of the rule lis pendens is coextensive with the jurisdiction of the court in which the suit is pending.”).

In addition to the overwhelming majority of courts that have addressed the issue, “[t]he United States Supreme Court noted long ago that a court in one state does not have subject matter jurisdiction over real property in another state and cannot directly affect the title of property in another state.” *Boca Petroco, Inc. v. Petroleum Realty II, LLC*, 292 Ga. App. 833, 838, 666 S.E.2d 12, 15 (2008), *aff’d*, 285 Ga. 487, 678 S.E.2d 330 (2009) (citing *Fall v. Eastin*, 215 U.S. 1, 9–10, (1909); see also *Baker v.*

² “We note that two states listed in *Boca Petroco* as permitting notices of lis pendens to be filed for litigation outside the state have subsequently amended their statutory provisions to require the underlying litigation to be in a court within the state. *Conrad v. Wilkinson*, 2017 ND 212, ¶ 18, 901 N.W.2d 348, 353 (2017).

HAYNSWORTH SINKLER BOYD

June 29, 2021

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Gen. Motors Corp., 522 U.S. 222, 239(II)(B) (1998) (“one State’s judgment cannot automatically transfer title to land in another State”). Importantly, the South Carolina Supreme Court has also held that “the jurisdiction of a state is restricted to its own territorial limits.” *Drs. Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers’ Comp. Tr. Fund*, 371 S.C. 5, 8, 636 S.E.2d 862, 863 (2006). In the 1966 South Carolina Supreme Court decision on which *Doctors Hospital* relied, the court stated:

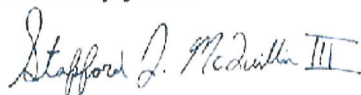
Thus, the general rule is that no state or nation can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction. *A statute which purports to have such operation is invalid.*

Ex parte First Pa. Banking & Tr. Co., 148 S.E.2d 373, 374 (S.C. 1966) (quoting 50 Am. Jur. Statutes § 485) (emphasis added). Thus, under South Carolina law, even if the South Carolina legislature expressly stated its legislative intent to include litigation in the courts of other states within its reach under the South Carolina *lis pendens* statute, which it has not, it would be deemed invalid under South Carolina law.

Here, the *Lis Pendens* was filed on May 5, 2021, and no South Carolina action affecting title to the subject real property has been filed. Indeed, the subject *Lis Pendens* references a pending marital divorce action filed in Connecticut. Thus, the *Lis Pendens* is invalid under South Carolina law, and we are hereby requesting that you voluntarily withdraw it on or before July 6, 2021. In the event the *Lis Pendens* is not voluntarily withdrawn, we will bring an action to have the *Lis Pendens* set aside and institute a suit for abuse of process and malicious prosecution.³ We hope you will not force us down that path.

Please feel free to call me if you would like to discuss or have any questions.

Sincerely yours,



Stafford J. McQuillin III

cc: Gary I. Cohen, Esq. (gary@giclaw.com)

³ The filing of the *Lis Pendens* has and will prevent our client from conducting his regular business and has unnecessarily caused him to lose income.



December 1, 2021

VIA EMAIL

Stafford J. McQuillin, III, Esquire
Haynsworth Sinkler Boyd
mmequillin@hsblawfirm.com

Re: Aryeh v. Aryeh
Case No. 2021-CP-10-3609

Dear Mac:

I hope this correspondence finds you well and thank you for your letter dated November 5, 2021. I have spoken with my client and she is agreeable to removing the Lis Pendens but only if your client agrees to place \$750,000.00 in escrow with Carolyn Swiggart, Esquire.

If that is agreeable, we can work on an escrow agreement as to the terms of the usage for the funds.

I look forward to hearing from you.

With best regards,

HENDERSON & HENDERSON, LLC

s / Wesley E. Henderson
Wesley E. Henderson
wesley@hhlawsc.com



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Exhibit 4

Placeholder

Pages 204 through 244
submitted under seal