THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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SC Court of Appeals

Deadra L. Jefferson, Circuit Court Judge

Case No. 2005-CP-10-2434

Ashley River Properties II, LLC, as assignee of Lunar Systems, LTD and Ashley River Properties II, LLC................................Respondents

v.

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

Ashley River Properties One, LLC, Third-Party Plaintiffs...Appellant

v.

Lunar Systems, LTD and Thomas J. Lussier, Third-Party Defendants...Respondents

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STATEMENT OF ISSUES ON APPEAL

1. Did the Circuit Court err by denying Appellant Ashley River Properties I, LLC's abuse of process claims against Respondents Ashley River Properties II, LLC, Lunar Systems, LTD, and Thomas J. Lussier?

STATEMENT OF THE CASE

This is an appeal from the circuit court's denial of Appellant Ashley River Properties, I, LLC's ("ARP-I") abuse of process claims against Respondents Ashley River Properties II, LLC ("ARP-II"); Lunar Systems, LTD ("Lunar"); and Thomas J. Lussier ("Lussier").

This action was commenced on June 7, 2005 with an Amended *Lis Pendens*, Summons and Complaint being filed Lunar against ARP-II; ARP-I; and certain other parties not relevant to this Appeal. (Order, pp. 2-3) The lawsuit alleged the breach of a preconstruction real estate purchase contract, and sought a declaratory judgment that Lunar owned an interest in the real property owned by ARP-I and ARP-II or, in the alternative, that it had a security interest or equitable mortgage on the property securing the return of its $325,000.00. (Order, p. 4) The Amended *Lis Pendens* was filed on two parcels of real property in Charleston County, South Carolina one belonging to ARP-II and the other to ARP-I. (Order, p. 4)

On May 19, 2010, the Honorable Thomas L. Hughston, Jr. issued an order, which, among other things, granted ARP-I's Motion to Cancel the Amended Lis Pendens as to its property, granted ARP-I's Motion to Substitute ARP-II as the proper Plaintiff in the action, granted ARP-I leave to amend its Answer to add defenses and assert counterclaims against ARP-II and third-party claims against Lunar and Respondent Thomas J. Lussier ("Lussier"), Lunar's principal. (Order, pp. 2, 7)

A non-jury trial was held on January 23, 2013 before the Honorable Deadra L. Jefferson. (Order, p. 1) Among other things, the circuit court considered ARP-I's claims against ARP-II, Lunar, and Lussier for abuse of process as it relates to the improper filing

and retention of the Amended *Lis Pendens* on the ARP-I property. (Order, p. 2) By Order dated and filed on April 26, 2013, the circuit court denied each of ARP-I's abuse of process claims on the merits, having denied the motions for directed verdict at trial. (Order, pp. 1, 13) On May 9, 2013, ARP-I filed a Motion to Alter or Amend Judgment Under Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP") along with a memorandum of law in support of same. (Motion to Alter or Amend) By Order dated and filed on July 24, 2013, the circuit court denied ARP-I's Motion. (Order Denying Motion to Alter or Amend) Counsel for ARP-I received notice of this denial on August 9, 2013. (Notice of Entry of Judgment)

The Notice of Appeal was served on Counsel for ARP-II and Counsel for Lunar and Lussier on September 4, 2013. (Notice of Appeal) By Order of the Court of Appeals filed December 5, 2013, the deadline for ARP-I to file its Initial Brief was extended to January 13, 2014. (Extension Order)

STATEMENT OF THE FACTS

In December 2003, Kriti Ripley, LLC ("Kriti") and Emerald Investments, LLC ("Emerald") formed ARP-II to continue the development of a marina on the Ashley River in Charleston, South Carolina. Emerald and ARP-I are both wholly-owned by Stuart Longman ("Longman"). (Order, p. 3) The ARP-II operating agreement contains a broad agreement to arbitrate any dispute or controversy. (Order, p. 4)

On March 8, 2001, Lunar entered into a real estate purchase agreement with Emerald to purchase a condominium proposed to be built on property owned by ARP-II and ARP-I, paying $325,000.00 as an earnest money deposit. (Order, p.4) This condominium was never constructed. (Order, p. 4) On June 7, 2005, Lunar filed the

Amended *Lis Pendens* and lawsuit at issue in this Appeal seeking a declaratory judgment that Lunar owned an interest in the real property owned by ARP-II and ARP-I or, in the alternative, that it had a security interest or equitable mortgage on the property securing the return of its deposit. (Order, p. 4)

On October 30, 2005, a New York arbitration proceeding involving ARP-II, Longman, Kriti and Emerald issued its award (the "2005 Award"). The 2005 Award identified wrongdoing by all parties, concluding, among other things, that "Kriti and ARP-II are entitled to indemnification from Emerald and Longman in the amount of $400,000.00 for all claims to date of third party vendors against ARP-II," but that "the resolution of all such claims to be at the expense of ARP-II." (Order, p. 5) Kriti and ARP-II petitioned the arbitrators to modify the award to, among other things, increase the indemnification award and to clarify the "identity of the third party vendees who have 'claims to date.'" (ARP-II's Request to Modify 2005 Arbitration Award) (Order, p. 5) This request was denied, and the 2005 Award was ultimately confirmed on February 15, 2008 and enrolled in Charleston County on April 29, 2008. (Arbitrator's Decision Denying ARP-II's Request to Modify) (Foreign Judgment Enrolled in South Carolina) (Order, pp. 5-6) This judgment included the aforementioned $400,000.00 indemnification amount for third-party claims. (Tr. 51:23-52:21)

The Amended *Lis Pendens* was removed from the ARP-II property on May 12, 2006, but was not removed from ARP-I's property at this time. (Order, p. 6)

Subsequently, ARP-II entered into a settlement agreement dated December 20, 2007 with Lunar, as contemplated by the 2005 Award. (December 20, 2007 Settlement Agreement, pp. 1-8) (Order, p. 6) Among other things, the settlement agreement

purported to assign Lunar's claim against ARP-I to ARP-II. (December 20, 2007 Settlement Agreement, pp. 1-8) (Order, p. 6) This came despite that fact that the 2005 Award required ARP-II to satisfy certain third-party claims, including Lunar's. (2005 Award, p. 5)[1] (Tr. 38:17-25) However, Lussier testified that the settlement agreement actually settled Lunar's claim against ARP-II. (Out of Order Testimony Tr. 6:25-7:1; 11:7-14) In any event, post-settlement, Lunar did not release the Amended *Lis Pendens* against ARP-I's property as it had done years earlier for the ARP-II property. (Out of Order Testimony Tr. 9:24-10:5; 15:19-17:23)

According to e-mails[2] exchanged between Davidson Williams, ARP-II's manager, and Lussier, the latter was aware that the 2005 Award required ARP-II to satisfy his claims. (Out of Order Testimony Tr. 13:4-10) (E-mail from Lussier to Williams dated May 25, 2007) Later that year, Lussier e-mailed Williams stating he intended to let the Amended *Lis Pendens* on the ARP-I property lapse. (Out of Order Testimony Tr. 14:1-10) (E-mail from Lussier to Williams dated December 20, 2007) Williams responded by stating that despite the language of the 2005 Award, he felt that Longman was liable for satisfaction of Lunar's claim and that by taking an assignment of Lunar's claim and leaving the Amended *Lis Pendens* on the ARP-I property, ARP-II would "gain[] some backstop protection and additional leverage with Longman." (Out of Order Testimony Tr. 14:11-15:18) (E-mail from Williams to Lussier dated December 20, 2007) Despite the language in the 2005 Award, as of December 20, 2007, Williams testified he did not believe ARP-II was responsible for paying Lunar's claim. (Tr. 47:13-16)

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[1] The 2005 Award also "question[ed] Kriti's conduct in encouraging some of these third parties to assert claims against ARP-II and not accept partial reimbursement of their deposits." (2005 Award, p. 5)

[2] This e-mail and the other e-mails cited herein were entered into evidence on January 22, 2013 during the out of order testimony of Thomas Lussier. (Out of Order Testimony Tr. 17:24-18)

Post-assignment, ARP-II realized that ARP-I never appeared in the lawsuit and proceeded to place ARP-I in default. (Tr. 58:6-22) (Order, p. 6) On May 23, 2008, ARP-II obtained a $526,945.17 default judgment against ARP-I. (Order, p. 6) Documents relative to the aforementioned default were served by ARP-II on Frank Guarino ("Guarino"), ARP-I's registered agent, but also an employee of ARP-II. (Tr. 57-10-59:12; Tr. 60:16-22) Longman, on behalf of ARP-I, never received any of these documents from Guarino. (Tr. 91:7-10) (Order, p. 6)

On August 12, 2008, ARP-I moved to set aside the default judgment, and this was granted on December 18, 2008 with the Honorable Thomas L. Hughson, Jr. finding, among other things, "excusable neglect" and "other good cause." (Order, pp. 3, 6) ARP-I subsequently filed its Answer on January 14, 2009, and a motion to cancel or release the Amended *Lis Pendens* on its property on July 29, 2009.

Williams revealed to Lussier that one of the reasons for needing the assignment and maintaining the Amended *Lis Pendens* on ARP-I's property was that, conceivably, the 2005 Award would not be confirmed or otherwise modified. (E-mail from Lussier to Williams dated December 20, 2007) However, even after the 2005 Award was confirmed by a New York court on February 15, 2008 and ARP-II's request to modify the award were denied, ARP-II still failed to remove the Amended *Lis Pendens*. (Tr. 51:5-22; 94:21-95:20) Specifically, Williams testified that it was released only "[in] 2010; somewhere. Whatever." (Tr. 51:18) On May 19, 2010, Judge Hughson issued an order, which, among other things, granted ARP-I's Motion to Cancel the Amended *Lis Pendens*. The Amended *Lis Pendens* was formally removed on June 11, 2010.

The Amended *Lis Pendens* remained on the ARP-I property for two years, three months, and twenty six days (846 days total) after the 2005 Award was confirmed, thus damaging ARP-I. Principally, the property was unable to be sold during that time period despite their being several offers on it from national firms. (Tr. 99:21-102:22) Making matters worse, the 2008-2010 timeframe was the worst time to have the property frozen because given the state of the real estate market, a sale was necessary to save ARP-I's investment. (Tr. 102:23-103:21) Once the Amended *Lis Pendens* was released by court order in mid-2010 it was too late, and, according to Longman, the "window of opportunity" had closed. (Tr. 105:16-106:7) Ultimately, the ARP-I property was deeded to the bank in lieu of foreclosure due to the inability to market or develop as a result of the Amended *Lis Pendens*. (Tr. 104: 5-13) (Order, p. 7)

By Order dated and filed on April 26, 2013 (the "Order"), the circuit court denied ARP-I's abuse of process claims against ARP-II, Lunar, and Lussier as well as ARP-II's claims against ARP-I as assignee of Lunar and under the indemnification agreement. Among other things, the Order found that the Amended *Lis Pendens* was proper when initially filed and ARP-II's retention of the Amended *Lis Pendens* on the ARP-I property after being assigned Lunar's claims was not for any ulterior purpose; therefore, "[ARP-I] failed to prove the necessary elements to recover on its abuse of process claim." (Order, pp. 12-13)

On May 9, 2013, ARP-I filed a Motion to Alter or Amend Judgment Under Rule 59(e) of the South Carolina Rules of Civil Procedure ("SCRCP") along with a memorandum of law in support of same (the "Motion to Amend"). The Motion to Amend contends that ARP-I satisfied the elements of abuse of process as to ARP-II,

Lunar, and Lussier and that ARP-I's alleged damages are capable of ascertainment with a reasonable degree of certainty. By Order dated and filed on July 24, 2013, the circuit court denied the Motion to Amend (the "Order Denying Motion to Amend").

ARGUMENT

I. THE CIRCUIT COURT ERRED BY DENYING ARP-I'S ABUSE OF PROCESS CLAIMS AGAINST ARP-II, LUNAR, AND LUSSIER.

A. ARP-I satisfied the elements of abuse of process.

The Order properly states that law on abuse of process, (Order, p. 10-11), but the Order did not appropriately apply that law to the facts of this case. All the facts in the record point to ARP-II's, Lunar's, and Lussier's ulterior purposes and willful acts in furtherance thereof regarding the Amended *Lis Pendens*.

An action in tort is generally an action of law, unless equitable relief is sought, *Culler v. Blue Ridge Elec. Coop., Inc.*, 309 S.C. 243, 422 S.E.2d 91 (1992), which is not the case here because ARP-I's claims for abuse of process prayed for money damages. Therefore, the standard of review applicable to this case is whether the record reveals no evidence to reasonably support the judge's findings of fact in its non-jury trial. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976).

"The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the conduct of the proceeding." *Hainer v. Am. Med. Intern., Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997) (citing *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 153 S.E.2d 693 (1967)). The abuse of process tort provides a remedy for one damaged by another's perversion of a legal procedure for a purpose not intended by the procedure. *Food Lion, Inc. v. United Food Commercial Workers Int'l Union*, 351 S.C. 65, 69, 567 S.E.2d 251, 253 (Ct. App. 2002). "The

improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself." *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. at 136, 492 S.E.2d 103 at 107. "Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required." *Id.*

The filing of a *Lis Pendens* is absolutely privileged in a slander of title action, but no such privilege exists with respect to abuse of process. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 31, 567 S.E.2d 881, 897 (Ct. App. 2002) ("The jurisdictions are in agreement that the proper action against a maliciously filed *lis pendens* is under abuse of process or malicious prosecution."). Additionally, "[t]he *lis pendens* mechanism is not designed to aid either side in a dispute between private parties. Rather, *lis pendens* is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, *i.e.*, the fact of a suit involving property." *Id.* at 17, 567 S.E.2d at 889.

The facts adduced at trial, and the findings in the Order itself, demonstrate the existence of both ulterior purposes and willful and improper acts on the part of ARP-II, Lunar, and Lussier. As such, there is no evidence in the record to support the court's denial of ARP-I's claims for abuse of process.

Even assuming, as the circuit court found, that Lunar "was within its rights to file the *lis pendens* initially," (Order, p. 11), by the terms of the Order itself, the 2005 Award found that ARP-II, *not ARP-I*, was required to resolve Lunar's claim "at the expense of ARP-II.". (Order, pp. 4-5). Therefore, per the 2005 Award, Lunar had no claim against ARP-I and the Amended *Lis Pendens* should have been removed. Moreover, the Order found that Lunar's claims against ARP-I were completely satisfied on December 20,

2007 and the purported assignment from Lunar to ARP-II was of no legal effect because ARP-II "merely received an assignment of a satisfied claim" that "fully settled Lunar's claim." (Order, p. 8)

At the absolute latest, the Amended *Lis Pendens* should have been removed once the 2005 Award was confirmed on February 15, 2008. *See* S.C. Code Ann. § 15-11-40 ("The *lis pendens* notice, however, may be cancelled without a court order by the person who filed the notice any time after the action has been settled, discontinued, abated, or dismissed by a court of law by the submission of a written notice of cancellation to the clerk of court . . . ."). Unfortunately for ARP-I, however, ARP-II, Lunar and Lussier actively and willfully maintained the Amended *Lis Pendens* on ARP-I's property for two years, three months, and twenty six days (846 days total) after all doubt had been removed in Williams' mind that ARP-II alone was liable for payment of Lunar's claim and ARP-II had its indemnification award against Emerald and Longman. During this lengthy time period that coincided with the real estate market's collapse, ARP-I was prohibited from developing or marketing its property. (Tr. 102:23 – 103:21) According to Longman, "we were stuck." (Tr. 103.21)

The record demonstrates that ARP-II, Lunar, and Lussier each had an ulterior purpose for willfully leaving the Amended *Lis Pendens* on ARP-I's property.

Lussier testified that after the settlement agreement was executed on December 20, 2007, thus resolving its claim against ARP-II, he did not stop to consider whether it was appropriate for Lunar to leave the Amended *Lis Pendens* on ARP-I's property even though it bore negative consequences for ARP-I. (Out of Order Testimony Tr. 16:19-17:20). Despite having brought the original claim against ARP-II and having said claim

satisfied, Lussier testified that "I didn't realize it was my responsibility to remove that *lis pendens*." (Out of Order Testimony Tr. 17:16-17) This demonstrates an ulterior purpose and willful act.

E-mail communications between ARP-II and Lunar/Lussier sheds light on the ulterior purposes and willful acts of the later. Lussier was well aware of the 2005 Award. On May 25, 2007, Lussier e-mailed Williams (ARP-II's manager) an acknowledgement that "your arbitration agreement seems to name ARP-2 as responsible." (May 25, 2007 E-mail from Lussier to Williams). Taking these communications together, it is clear that Lussier cooperated with Williams and ARP-II by wilfully keeping the Amended *Lis Pendens* in place for ARP-II's benefit even though the claim had been adjudicated to be a responsibility of ARP-II – not ARP-I. This constitutes an ulterior purpose because Lunar and Lussier knew they no longer had a claim against ARP-I , and the Amended *Lis Pendens* was, therefore, not to apprise third-parties of Lunar's pending claim, *i.e.* the lawful purpose, but to serve ARP-II's strategic interests against ARP-I and its principal, Longman.

ARP-II demonstrated its ulterior purposes by utilizing its purported assignment from Lunar to obtain, through underhanded means, a substantial default judgment against ARP-I to accompany the Amended *Lis Pendens*. ARP-II served its default paperwork and supporting affidavits on Guarino, ARP-I's registered agent, who just so happened to be ARP-II's broker for marina sales and employee. (Tr. 57-10-59:12; Tr. 60:16-22) The pressure tactics and ulterior purposes are revealed in an email where Williams insinuated to Guarino that if he did not cooperate in the default process, he would consider shopping national brokers to replace him. (Tr. 64:6-65:3) These actions shed light on ARP-II and

Williams' ulterior purposes with regards to the Amended *Lis Pendens*, because both were designed to obtain increased and unnecessary leverage and pressure on ARP-I and Longman. ARP-II already had a judgment, which included the $400,000.00 indemnification award for third-party claims, against Longman. (Tr. 81:7-20)

ARP-II's ulterior purpose is also evidenced by emails with Lunar and Lussier. Most notably, Williams emailed Lussier the following on December 20, 2007, which was around the same time of the settlement agreement and purported claim assignment:

> As you know, ***we do not believe we are responsible for the payment of your claim. We believe Longman is.*** By paying off this claim, I am taking the risk that I can recover this payment from Longman, or otherwise resolve the matter in the course of my continuing disputes with him over his conduct in this sorry affair. The arbitration awards still have not been confirmed by the NY Court. If they are overturned, this whole thing becomes a mess again, and you are stuck in the middle of it if we have not settled. ***I can't take this risk without [] gaining some backstop protection and additional leverage with Longman in the form of an assignment. This is why I am asking for the assignment of claim.***

(December 20, 2007 E-mail from Williams to Lussier) (emphasis added). Taken together with Lussier's previous cooperation and the efforts to secure the default judgment, it is clear that the Amended *Lis Pendens* was being kept in place in order to obtain "backstop protection and additional leverage with Longman." This was the case even though the 2005 Award, which had found ARP-I was not liable to Lunar, was decided back in October 30, 2005 and subsequently confirmed in 2008.

Despite the confirmation, which should have removed all doubt in Williams' mind per the above-mentioned e-mail, ARP-II failed to remove the Amended *Lis Pendens* for another two years, three months, and twenty six days (846 days total) and did so only as mandated by court order. This, as will be discussed below, materially and significantly damaged ARP-I.

Critically, there is no evidence in the record that ARP-II, Lunar, and Lussier maintained the Amended *Lis Pendens* on ARP-I's property for any valid reason during the above mentioned two years, three months, and twenty six days (846 days total). Rather, all of the evidence in the record demonstrates that these parties wilfully employed the Amended *Lis Pendens* for ulterior purposes, that is, as leverage against Emerald and Longman.

The lawful purpose of a *Lis Pendens* is not to gain leverage against a non-party (Emerald and Longman) for matters collateral to and separate from the grounds for filing it in the first place (Lunar's claim against ARP-II), but this accurately reflects the ulterior purpose and willful conduct pursued by ARP-II, Lunar, and Lussier. *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 17, 567 S.E.2d 881, 889 (Ct. App. 2002) ("[t]he *lis pendens* mechanism is not designed to aid either side in a dispute between private parties. Rather, *lis pendens* is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, *i.e.*, the fact of a suit involving property."); *Hewitt v. Rice*, 154 P.3d 408, 412-13 (Colo. 2007) ("A lis pendens has serious consequences because '[o]nce a lis pendens is filed, it renders title unmarketable and therefore effectively prevents the property's transfer until the litigation is resolved or the lis pendens is expunged.").

The evidence in the record all points to ARP-II, Lunar and Lussier's ulterior purposes, coordination, and willful failure to release the Amended *Lis Pendens*. Case law clearly provides that a *lis pendens* may not be used in the absence of a valid claim and may not be used to gain additional backstop and leverage against a non-party in separate disputes between the parties. Nevertheless, given the foregoing, this is precisely what

ARP-II, Lunar, and Lussier used the Amended *Lis Pendens* to achieve. Therefore, the circuit court erred by denying ARP-I's abuse of process claims, and these denials should be reversed and remanded.

B. ARP-I established damages that are capable of ascertainment with a reasonable degree of certainty

At trial, ARP-I offered evidence concerning damages caused by ARP-II's, Lunar's and Lussier's ulterior purposes and willful failure to remove the Amended *Lis Pendens* from its property, at a minimum, for two years, three months, and twenty six days (846 days total). However, the court found these claims to be "at best speculative" and insufficient to establish a claim for abuse of process. (Order, p. 12) This finding is without any support in the record.

Longman, a veteran real estate developer, testified to damages caused by the above-described improper use of the Amended *Lis Pendens* in the amount of $3.6 million by reference to a spreadsheet of incurred costs aiding his testimony. (Tr. 106:8-12) These damages included loss of equity, site design and engineering fees, legal fees, and certain carrying costs on the property (taxes and interest payments). (Tr. 106:13-108:5) ARP-I also testified as to lost profits. (Tr. 103:2-9; 108:6-19) The Amended *Lis Pendens* prevented the property from being sold, even though several offers were received, and the ultimate deed-in-lieu of foreclosure caused Emerald to lose its entire investment in the venture.

The site design and engineering fees constitute actual and/or special damages because ARP-I had made these investments into the property, the Amended *Lis Pendens* prohibited further improvement and sale of the property, and these investments were ultimately lost once the bank took the property back. The e-mail exchanges recounted

above, representing the bulk of the documentary evidence adduced at trial, demonstrate that the ARP-II, Lunar, and Lussier each understood the impact the Amended *Lis Pendens* had on ARP-I's development plans. For example, this is why ARP-II characterized the Amended *Lis Pendens* as "backstop protection and additional leverage" against Longman. (E-mail from Williams to Lussier dated December 20, 2007)

The Supreme Court of South Carolina recognized the principle that when the defendant's tortious conduct has caused the plaintiff to become involved in litigation with others or placed him in such relation with others as makes it necessary to incur expense to protect his interest, such costs and expenses, *including attorneys' fees*, should be treated as the legal consequences of the original wrongful act and may be recovered as damages. *Addy v. Bolton*, 257 S.C. 28, 33, 183 S.E.2d 708, 709 (1971). The legal fees were expended by ARP-I in order to have the Amended *Lis Pendens* released, which, as argued above, was illegally maintained on the ARP-I property for years and which ARP-II, Lunar and Lussier vigorously defended and refused to release – despite demands by ARP-I to do so.

The taxes and interest payments are included as damages because these costs were born by ARP-I during the period in time where the Amended *Lis Pendens* rendered the property undevelopable and essentially useless. Finally, the lost profits are in connection with ARP-I's inability to sell the property due to the Amended *Lis Pendens*. As with the site development and engineering costs, these damages also constitute actual and/or speculative damages because they are causally linked to the improper use of the Amended *Lis Pendens* and capable of ascertainment with a reasonable degree of certainty.

The damages presented at trial are concrete and causally connected to ARP-II's, Lunar's, and Lussier's willful misuse of the *lis pendens* mechanism. As a result, the court's finding that the damages figures are "speculative" has no basis in fact and the record and should be reversed and remanded.

CONCLUSION

Given the foregoing, ARP-I respectfully requests that this Court reverse the circuit court's denial of ARP-I's abuse of process claims against ARP-II, Lunar, and Lussier and order these causes of action remanded for a new trial consistent with this Court's guidance on the law of abuse of process.

January 13, 2014

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

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Case No. 2005-CP-10-2434

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v.

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

Ashley River Properties One, LLC, Third-Party Plaintiffs..Appellant

v.

Lunar Systems, LTD and Thomas J. Lussier, Third-Party Defendants...Respondents

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PROOF OF SERVICE

I, the undersigned Paralegal of the law firm of McCullough Khan, LLC, attorneys for Appellant, do hereby certify that I have served all counsel in this action with a copy of the **Initial Brief of Appellant** by mailing a copy of same by United States Mail, postage prepaid, to the following addresses:

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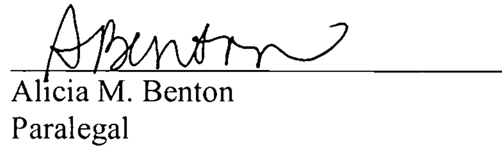

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January 13th, 2014