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SC Court of Appeals

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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

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

APPELLANT'S REPLY BRIEF TO RESPONDENTS LUNAR SYSTEMS, LTD.
AND THOMAS J. LUSSIER

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ATTORNEYS FOR APPELLANT

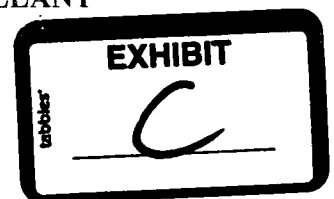


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REPLY ARGUMENT

I. ARP-I'S ABUSE OF PROCESS CLAIM AGAINST LUNAR AND LUSSIER IS BASED ON THEIR INTENTIONALLY CAUSING THE *LIS PENDENS* TO REMAIN ON ARP-I'S PROPERTY LONG AFTER THEIR CLAIMS WERE FULLY SETTLED.

The gravamen of ARP-I's abuse of process claim was that Lunar and Lussier allowed their *Amended Lis Pendens* to remain on ARP-I's property long after their claim had been settled. Therefore, the issue is not and has never been whether or not the initial filing of the *Lis Pendens* or *Amended Lis Pendens* was proper.

Lunar and Lussier state in their Brief that once "Lunar assigned its rights to the claims asserted in the Plaintiff's Complaint on December 20, 2007, Lunar had no further control of the claims or *Amended Lis Pendens* that was filed with the suit." This is legally incorrect. 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 of each county in which a notice was filed or recorded.") (Emphasis added) The proper course of conduct for Lunar and Lussier after their claims had been settled would have been for them to cancel the *Lis Pendens* and *Amended Lis Pendens* filed on ARP-I's property.

Lunar's and Lussier's failure to release the *Lis Pendens* and *Amended Lis Pendens*, coupled with the ample evidence in the record demonstrating Lunar's and Lussier's cooperation with ARP-II vis-à-vis the *Amended Lis Pendens*, strongly evidences both an ulterior purpose and a wilful act in the use of the process, thus supporting ARP-I's abuse of process claim. *E.g., Hainer v. Am. Med. Intern., Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). Given the foregoing, there is no evidence to

reasonably support the circuit court's denial of ARP-I's abuse of process claim against Lunar and Lussier.

II. ARP-I'S EVIDENCE REGARDING DAMAGES SUFFERED DUE TO LUNAR'S AND LUSSIER'S ABUSE OF PROCESS WAS NOT SPECULATIVE.

Lunar and Lussier have identified in their Brief one example of a foregone business opportunity deemed speculative by the circuit court in support of their claim that all of the damages asserted by ARP-I at trial were speculative. Putting aside for a moment the issue of whether this and other lost profit arguments were speculative, which ARP-I strongly denies, Lunar and Lussier and also the circuit court ignored evidence of other damages suffered by ARP-I.

Aside from lost profits, ARP-I introduced evidence on damages including 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) Each of these damages items are non-speculative and capable of precise measure, and supported by the testimony of Mr. Longman. Moreover, as set forth in greater detail in Appellant's Brief, all of these damages are recoverable in an abuse of process action where the tortfeasors' wrongful conduct prevented property from being sold and proximately caused the asset to ultimately be lost. *Addy v. Bolton*, 257 S.C. 28, 33, 183 S.E.2d 708, 709 (1971). Given the foregoing, there is no evidence to reasonably support the circuit court's finding that all of ARP-I's damages were speculative or conjectural.

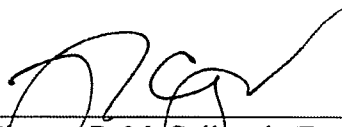
CONCLUSION

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 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.

March 21, 2014

Respectfully submitted,



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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 **Appellant's Reply Brief To Respondents Lunar Systems, Ltd. and Thomas J. Lussier** by mailing a copy of same by United States Mail, postage prepaid, to the following addresses:

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Alicia M. Benton
Paralegal

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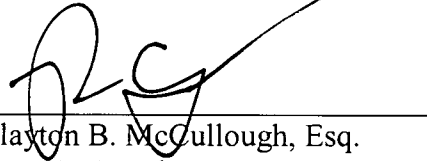
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August 4, 2014

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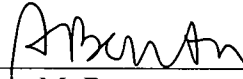
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