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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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JAN 30 2019
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate No. 2018-002277

American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC..... Plaintiffs,

v.

PulteGroup, Inc.; Pulte Home Corporation, n/k/a Pulte Home Company, LLC; and JW Homes, LLC..... Defendants,

Of which American Star Development SC, LLC is the Appellant,

And Pulte Home Corporation, n/k/a Pulte Home Company, LLC is the Respondent.

**MOTION FOR EXPEDITED DISPOSITION OF RESPONDENT'S VERIFIED
PETITION FOR AN ORDER LIFTING THE AUTOMATIC STAY**

G. Trenholm Walker (SC Bar # 5777)
John P. Linton, Jr. (SC Bar # 79130)
Walker Gressette Freeman & Linton, LLC
P.O. Box 22167
Charleston, SC 29413
(843) 727-2200
Attorneys for Respondent

January 28, 2018
Charleston, South Carolina

On January 23, 2018 Respondent, Pulte Home Corporation, n/k/a Pulte Home Company, LLC (“Pulte” or “Respondent”), served and filed a verified petition pursuant to Rule 241(c)-(d) of the South Carolina Appellate Court Rules, for an order lifting the automatic stay (“the Petition”) of an Order entered by Judge R. Lawton McIntosh on November 16, 2018, (the “Order”) granting Pulte’s Motion to Cancel the Lis Pendens (2018-LP-10-336), as amended. By this Motion, Pulte requests that this Court expedite the determination of the Petition. As set forth in the Petition, the automatic stay has reinstated the lis pendens that was cancelled by the Order. The reinstatement of the lis pendens over the course of this appeal will moot the relief granted by the lower court in the Order and cause irreparable harm to Pulte. The granting of the Petition will not moot the issues associated with the appeal of the Order. Additionally, as part of expediting the decision on the Petition, Pulte requests the Court exercise its decision under Rule 240(e) to take into account the urgency of the relief sought in determining whether to grant any extensions for filing a Return to the Petition. See Rule 240(e), SCACR (stating that “[t]he court may in its discretion enlarge or limit the time for filing the return.”)

The lower court denied Pulte’s Motion to Lift the Automatic Stay in a Form 4 order filed on January 17, 2019. Pulte filed its Petition to Lift the Automatic Stay in this Court promptly thereafter. As explained in detail in the Petition, lifting the automatic stay will not moot the issues in Appellant’s appeal. However, failure to lift the automatic stay will moot the pre-judgment relief ordered by the lower court when it granted Pulte’s Motion to Cancel the Lis Pendens.

The automatic stay of the cancelation of the lis pendens triggered by appeal of the Order is causing significant irreparable harm to both Pulte and its customers. The lis pendens covers more than 40 residential lots, many of which have purchasers ready to close and move into new homes constructed by Pulte. The Petition is supported by the Affidavits of Pulte employees Mac Evans

and Matthew Raines, who explain in detail the urgency of the Petition and the harm being suffered by Pulte and its customers as a result of the lis pendens remaining in place during the appeal despite the adjudication of it as an unlawful filing that should be cancelled.

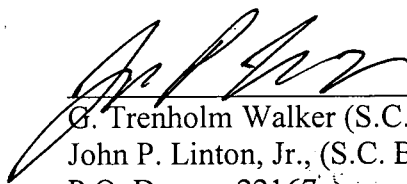
Evans explains that as of the date of his affidavit, sales that were scheduled to close have had to be postponed indefinitely causing significant irreparable harm to Pulte and the persons who have contracted to buy the new homes. Petition, at Ex. 16. The damage to Pulte and these buyers is compounding every month. Petition at Ex. 16, ¶ 8. The delay of the closings “jeopardizes each of these sales and could result in the complete loss of the revenue if the lis pendens is not lifted as soon as possible and the purchasers decide not to extend the closing dates specified in their contracts.” Petition at Ex. 16, ¶ 9. Moreover, “at least 21 serious prospects are no longer interested in purchasing when they learned of the indefinite delays to closing caused by the lis pendens.” Petition at Ex. 16, ¶ 10.

Additionally, most, if not all the purchasers, intend to use their new houses as their primary residences. Petition at Ex. 16, ¶ 12. Pulte’s inability to close on the sales in a timely manner because of the automatic stay of the order cancelling the lis pendens is highly disruptive of the housing commitments and plans of these purchasers who sometimes have to find interim housing.

Therefore, for these reasons and those stated in the Petition, Pulte respectfully requests the Court grant this Motion and consider the Petition on an expedited basis.

Respectfully submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



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ATTORNEYS FOR RESPONDENT,

PULTE HOME CORPORATION, n/k/a

PULTE HOME COMPANY, LLC

January 28, 2018

Charleston, South Carolina

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Of which American Star Development SC, LLC is the Appellant,

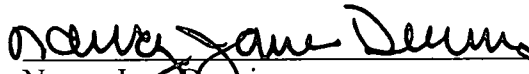
And Pulte Home Corporation, n/k/a Pulte Home Company, LLC is the Respondent.

PROOF OF SERVICE

I hereby certify that I have served a true copy of the foregoing **MOTION FOR EXPEDITED DISPOSITION OF RESPONDENT'S VERIFIED PETITION FOR AN ORDER LIFTING THE AUTOMATIC STAY** by delivering copies to the following counsel/parties, in accordance with the applicable Rules of Appellate Procedure, on **January 28, 2019**, by first class mail, postage prepaid, properly addressed to the following:

E. Brandon Gaskins, Esq.
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January 28, 2019

US MAIL [X] EMAIL []

Hon. Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: American Star Development v. PulteGroup, Inc.
Appellate Case No. 2018-002277

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Dear Ms. Kitchings:

Enclosed please find the original and six copies of Motion for Expedited Disposition of Respondent's Verified Petition for an Order Lifting the Automatic Stay, \$50 filing fee; and Proof of Service on opposing parties.

Yours very truly,

WALKER GRESSETTE FREEMAN & LINTON, LLC

A handwritten signature in cursive script, appearing to read 'Nancy Jane Dennis'.

Nancy Jane Dennis
Paralegal

Enclosures (As Stated)

c: E. Brandon Gaskins, Esq.
Charles R. Scarminach, Esq.
Susan M. Gaddy, Esq.

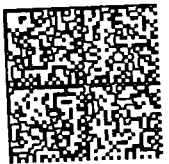
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Hon. Jenny Abbot Kitchings
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