

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appellate No. 2018-002277

RECEIVED
FEB 28 2019
SC Court of Appeals

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.

**RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR SECOND
EXTENSION OF TIME TO FILE AN INITIAL BRIEF AND DESIGNATION OF
MATTER.**

G. Trenholm Walker (SC Bar # 5777)
John P. Linton, Jr. (SC Bar # 79130)
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(843) 727-2200
Attorneys for Respondent

February 28, 2019
Charleston, South Carolina

Respondent, Pulte Home Corporation, n/k/a Pulte Home Company, LLC (“Pulte” or “Respondent”), respectfully submits this Return to Appellant’s Motion for a Second Extension of Time to File an Initial Brief and Designation of Matter (the “Motion”). As explained herein, the Court should deny the request for additional time. Alternatively, the Court should limit any extension to ten (10) days.

ARGUMENT

Appellant’s motion requests a second 30-day extension of time to file its initial brief and designation of matter. Appellant did not consult Respondent prior to filing the second extension request. Respondent opposes the request because of the mounting harm to Respondent caused by the duration of the appeal and because there has been no showing of good cause for another 30-day extension.

Counsel for Respondent would typically accommodate an extension request. However, the instant request is excessive under the circumstances and will have the effect of unnecessarily delaying the disposition of the appeal. In its Verified Petition to Lift the Automatic Stay Respondent extensively briefed and supported by affidavits the increasing harm to it and the purchasers of its homes caused by the automatic stay of the Order cancelling the lis pendens on the 46 lots and homes being developed by Respondent. See (Verified Pet. to Lift Automatic Stay). Through the automatic stay, Appellant has effectively obtained injunctive relief against Respondent’s project through the reinstatement of the lis pendens that was dismissed by the lower court, simply by filing a notice of appeal. Because this Court decided to deny the Petition and allow the automatic stay to remain in place for the duration of the appeal, time remains of the essence. See (Order filed February 15, 2019).

Appellant filed its request for an additional 30-day extension to file an initial brief and designation of matter following the Court's decision not to lift the automatic stay and to leave the lis pendens in place. Even though the Court denied Respondent's request, the affidavits filed by Respondent demonstrate the ongoing harm through the reinstatement of the lis pendens the lower court cancelled. Respondent submits that in making the decision whether to grant Appellant's latest request for an extension, this Court should take into account the harm that increases over time.¹

In addition, there is also no legitimate basis stated in the Motion for granting the second extension request. According to its Motion, Appellant needs an additional 30 days "due to Appellant's counsel's existing work demands and previously scheduled out-of-state travel, which will result in Appellant's counsel being out of the office several days immediately prior to the existing deadline." The Motion does not explain the reasons why the Appellant's counsel was unable to prepare the brief over the last 60 days. The existing deadline of March 6, 2019, provided Appellant more than 70 days to draft a brief and designation of matter from the filing of the notice of appeal.

Respondent submits this Court should also consider that this appeal presents a simple issue based on a record that is minimal. The appeal is from a ruling on a motion to cancel lis pendens based on the allegations of the Amended Complaint. There was no evidentiary hearing. There is no lengthy trial transcript. The question on appeal is whether the Amended Complaint affects an interest in title to Respondent's real property. This is same legal question the parties briefed to the

¹ Upon the conclusion of the briefing of this matter, Respondent anticipates moving for expedite disposition of the appeal.

circuit court. The 70 plus days already afforded is more than sufficient to prepare a brief to this Court on the identical issue.

In Appellant's first request for a 30 day extension, Appellant stated that ". . . Appellant's counsel's existing work demands and previously scheduled work commitments will make it difficult for Appellant's counsel to analyze and designate the matters to be included in the record, fully research the legal issues involved in this matter, and prepare and file the Appellant's Initial Brief and Designation of Matter to be Included in the Record on Appeal under the existing deadline." (**App. Mot. For Extension dated January 25, 2019**). In fact, there is no trial record to be analyzed. Little analysis is needed to determine what should be included in the Record on Appeal where Respondent's motion was based on the pleadings. The legal issue is the same in this Court as was briefed to the circuit court. The current request is nothing more than the second verse of the same song. (**App. Mot. For Extension dated February 21, 2019**) (asserting the extension ". . . is appropriate due to Appellant's counsel's existing work demands and previously scheduled out-of-state travel, which will result in Appellant's counsel being out of the office several days immediately prior to the existing deadline.").

Appellant has not provided an affidavit in support of the second request or attempted to explain the reasons for not already preparing the brief. The only new detail in the pending request is a reference to "previously scheduled" travel that will take counsel for Appellant out of the office close to the already extended deadline. Appellant does not state whether this upcoming travel was planned before the last extension was requested or scheduled afterwards. If it was planned before the first extension, Appellant's counsel had ample time to prepare the brief and avoid any conflict with the travel. If it was planned after the first extension, then it was planned with knowledge of

the extended deadline of March 6. Either way, allowance for the brief travel that was “previously scheduled” does not justify the leap to a second 30-day extension.

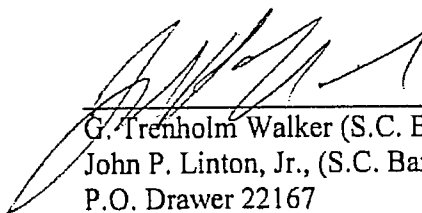
Simply put, Respondent has not made a showing of good cause to justify the second thirty-day extension on the same grounds as the first motion for extension.

CONCLUSION

Therefore, for the reasons described herein, the Motion for a Second Extension should be denied, or, if granted, should be for no more than ten (10) days.

Respectfully submitted,

WALKER GRESSETTE FREEMAN & LINTON, LLC



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PULTE HOME COMPANY, LLC

February 28, 2019

Charleston, South Carolina

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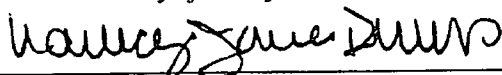
PROOF OF SERVICE

I hereby certify that I have served a true copy of the foregoing **RESPONDENT'S RETURN TO APPELLANT'S MOTION FOR SECOND EXTENSION OF TIME** by delivering copies to the following counsel/parties, in accordance with the applicable Rules of Appellate Procedure, on **February 28, 2019**, by first class mail, postage prepaid, properly addressed to the following:

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February 28, 2019

Federal Express Overnight and Facsimile

Hon. Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

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

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Respondent's Return to Appellant's Motion for Second Extension of Time with Proof of Service.

Yours very truly,

WALKER GRESSETTE FREEMAN & LINTON, LLC

A handwritten signature in cursive script that reads "Nancy Jane Dennis".

Nancy Jane Dennis
Paralegal

Enclosures (As Stated)

c: E. Brandon Gaskins, Esq. (Email and US Mail)
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FAX TRANSMITTAL

TO: Hon. Jenny A. Kitchings
FAX NO. (803) 734-1839
FROM: Nancy Jane Dennis on behalf of G. Trenholm Walker
DATE: February 28, 2019
NUMBER OF PAGES (Including this Cover Sheet): 8

MESSAGE:

The original is in the mail to you today.

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SC Court of Appeals

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