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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 in its own right, ..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.....

[Redacted box]

v.

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

[Redacted box]

APPELLANT'S FINAL REPLY BRIEF TO RESPONDENT ASHLEY RIVER
PROPERTIES II, LLC

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REPLY ARGUMENT

I. ARP-II KNEW ITS CLAIM AGAINST ARP-I AND LIS PENDENS ON ARP-I'S PROPERTY WAS IMPROPER BASED ON THE CLEAR FINDINGS OF THE 2005 ARBITRATION AWARD – NOT THE CIRCUIT COURT'S ULTIMATE DENIAL OF ARP-II'S CLAIMS AGAINST ARP-I.

The gravamen of ARP-I's abuse of process claim against ARP-II is that the latter allowed the *Amended Lis Pendens* to remain on ARP-I's property after ARP-II obtained a purported assignment of Lunar's claims even though the 2005 Arbitration Award found that ARP-II – and ARP-II alone – was required to settle all third-party claims at its expense including Lunar's. Therefore, the idea that ARP-II had a reasonable basis to maintain the *Amended Lis Pendens* on ARP-I's property has no basis in law or fact.

It its brief ARP-II states that it “has been steadfast in its position that ARP-I was primarily liable to Lunar and that ARP-I should ultimately be held responsible for Lunar's claim.” The problem with this is that it is in direct contravention of the 2005 Arbitration Award, which found that “the resolution of all such claims [including Lunar's] to be at the expense of ARP-II.” (R. p. 0006) The 2005 Arbitration Award also provided 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.” (R. p. 0006) Taken together, the 2005 Arbitration Award, which was confirmed several years prior to the *Amended Lis Pendens* being released, left no question whatsoever that ARP-II had no additional claims relating to third party vendors. Therefore, ARP-II's subrogation claim lacks any merit. As the circuit court rightly observed, ARP-II “merely received an assignment of a satisfied claim” that “fully settled Lunar's claim.” (R. p. 0009)

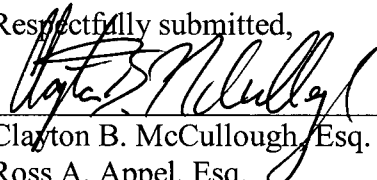
Given the foregoing, ARP-II's failure to abide by the 2005 Arbitration Award by obtaining a purported assignment of Lunar's claim and maintaining the *Amended Lis Pendens* on ARP-I's property constitutes an ulterior purpose and a wilful act in the use of the process, thus supporting ARP-I's abuse of process claim. *E.g., Hainer v. Am. Med. Intern., Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). Moreover, the evidence in the record and e-mail correspondence with Lunar and Lussier detail how the assignment and retention of the *Amended Lis Pendens* were designed "to obtain a collateral advantage, not properly involved in the proceeding itself." *Id.* at 136, 492 S.E.2d at 107. Given the foregoing, there is no evidence to reasonably support the circuit court's denial of ARP-I's abuse of process claim against ARP-II.

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 and order these causes of action remanded for a new trial consistent with this Court's guidance on the law of abuse of process.

May 1, 2014

Respectfully submitted,



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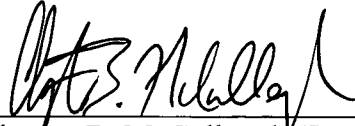
**Lunar Systems, LTD and Thomas J. Lussier, Third-
Party Defendants.....Respondents**

CERTIFICATE OF COUNSEL

Appellant hereby certifies that this Final Brief complies with Rule 211(b), SCAR, and the August 13, 2007 Order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Date Identifiers and Other Sensitive Information in Appellate Court Filings."

May 1, 2014

Respectfully submitted,



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

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 Final Reply Brief to Respondent Ashley River Properties II, LLC** by mailing a copy of same by United States Mail, postage prepaid, to the following addresses:

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May 8, 2014