

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

PARK WEST DEVELOPMENT, INC., )  
ET AL )

Case No.: 2015-CP-10-02751

Plaintiff, )

**MOTION TO RESTORE CASE,  
INTERVENE, AND INJUNCTION**

TOWN OF MOUNT PLEASANT )

**RECEIVED**

JUL 18 2019

**SC Court of Appeals**

Defendants, )

PLEASE TAKE NOTICE, Alan Nix hereby submits this motion to have the above cited case restored to the general docket, allow Alan Nix to intervene in the case, and have an immediate injunction issued preventing any further activities as laid out in the Land Transfer, Density Reductions and Release Agreement dated 13 February 2019.

**I.**

**Background and Factual Summary**

On 13 May 2015, Plaintiff Park West Development, Inc., et. al filed suit against the Town of Mount Pleasant, the Mayor of the Town of Mount Pleasant and individually named the members of Town Counsel of Mount Pleasant, alleging various violations of their rights related to Parcel 12B located in the development known as Park West.

On 2 August 2017, the party's attorneys filed a Consent Scheduling Order which simply stated "This case shall be set for trial not before September 11, 2017."

On 5 September 2017, the mediator filed a mediation results filing stating that the mediation from 28 April 2017 was considered at an impasse.

On 2 November 2017, the party's attorneys filed a form motion with the Charleston County Clerk of Court, with an attached consent order, seeking to have the case referred to Special Referee John Breeden to act as a Master in Equity for the non jury matter.

On 2 November 2017, Chief Administrative Judge Jefferson signed the Consent order referring the case to Mr. Breeden.

As of 2 November 2017, the case status for the case on the Charleston County Clerk of Court's website shows the status as "ENDED".

On 22 June 2018, Mr. Breeden signed a consent order setting the date of the trial for on or after 13 August 2018.

In an order dated 8 March 2019, and filed 8 March 2019, based on a hearing "held at the North Myrtle Beach offices of Whetstone, Perkins and Fulda, LLC", Mr. Breeden signed an order adopting and confirming the "Land Donation, Density Reduction, and Release Agreement" which was executed on February 12, 2019."

There are no orders signed by Mr. Breeden listed on the Charleston County Clerk of Court's website between the consent amended scheduling order filed on 26 June 2018 and the Order dated 8 March 2019, despite what appears to be at least thirteen motions filed during that period, including one filed on 6 August 2018 where Plaintiffs were seeking to compel defendants to "serve complete responses to First Set of Interrogatories and Request for Production".

## II.

### Argument

INTERVENE: Alan Nix is currently involved in litigation with affiliates and associates of the Plaintiff in this case, as well as will be involved in additional litigation with affiliates and associates of the Plaintiff in this case in the future based on conduct by Plaintiff's affiliates and associates in managing the Development known as Park West.

The specific portion of the "Land Donation, Density Reduction, and Release Agreement" dated 12 or 13 February 2019 that includes the provision to "Reduction of 2,030 Units of

Available Density” has the substantial potential to create serious legal difficulties in legally pursuing the Plaintiff’s affiliates and associates in future litigation, since whether this provision was intended to do so or not, ultimately acts to take away the controlling interest of the development known as Park West and the associated Master Association, Park West Master Association, Inc. from the Plaintiff and its affiliates, associates, and superior entities such as the various LandTech Persons. In losing a controlling interest in the development known as Park West and the Park West Master Association, Inc. it is highly likely that the various LandTech Persons and their affiliates and associates will argue that they are no longer legally liable for damages which occurred after the date they no longer held a controlling interest in the development known as Park West and the corresponding Master Association.

Given the overview of the case listed above, clearly the parties would not be disadvantaged by having the case restored since many motions remain outstanding to be ruled on, and based on the facts asserted by the Plaintiff’s in the motion filed 6 August 2018, approximately seven days before a trial was scheduled to begin, the defendant’s Town of Mount Pleasant had not managed to “serve complete responses to First Set of Interrogatories and Request for Production” during the previous thirty eight (38) plus months.

Hence, based on Rule 24, the general status of the case / perplexing management of the case, and especially in light of the provision the parties chose to include in the “Land Donation, Density Reduction, and Release Agreement” that seriously affect intervenors and his family’s interest, as well as likely many more residents of the development known as Park West, the intervenor’s interest are clearly at much greater risk than any potential argument the parties could make in relationship to delay or prejudice to them.

INJUNCTION: If the Town of Mount Pleasant Town Counsel moves forward with their planned consent vote on the second reading of the R-12-19 at tonight’s Town Council meeting, the very prejudice and injury this motion seeks to avoid to intervenor will be realized and much more difficult to mitigate going forward.

Additionally, based on publicly available information, the Plaintiffs are more than three months in breach of the agreement with respect to the “Laurel Hill Parcel” and “Cario Parcel”, and more than two months in breach with regards to the “Conveyance of 350 Acres of Open Space Property”.

Furthermore, with regards to the “Conveyance of 350 Acres of Open Space Property” provision, it appears as if several issues likely exist that require proper review. First, based on the plain language of the “Agreement”, it is not clear how a governmental entity, the Town of Mount Pleasant, could “negotiate the transfer of all remaining property in Park West, consisting of approximately three hundred and fifty (350) acres from Park West Development to Park West Master Association to be preserved as open space”. Likewise, and of even more concern, given the parties and their attorneys must have known at the time they signed this “Agreement”, that Park West Development Inc.’s parent corporations, the various LandTech Persons, controlled Park West Master Association, Inc. and clearly all parties had to know that based on the “Eighth Amendment to Declaration of Covenants, Conditions and Restrictions for Park West Master Association, filed by Harvey and Vallini, LLC on 3 Jan 2017, Charleston County ROD, Book 0607, Page 514, that the Town of Mount Pleasant, Charleston County, Charleston County School District, Mount Pleasant Waterworks, Charleston County Park and Recreation Commission, etc. were, going forward, “exempt from payment under this Declaration of any and all assessments, including regular and special assessments, and Working Capital Assessments. Such exempt property shall be excluded from the calculation of Assessment Shares under Section 6.1.4.” So, not only was a public entity apparently attempting to negotiate for the benefit of a private entity, controlled by their opposing parties in a lawsuit, to settle the same lawsuit, they were attempting to do so knowing the private entity they were negotiating in favor of was controlled by their opposing legal party and they were conveniently immune from any of the financial impacts of the transaction based on an interesting arrangement from two years earlier.

Additionally, it is highly questionable whether Park West Development had or has the rights to 2,030 units of density to assign away as well as it is worth nothing that the “Cario Parcel” and the “Laurel Hill Parcel” apparently have no relation to Parcel 12B that was the primary issue in the litigation, and the 350 acres of Open Space that the Agreement gives the appearance of being valuable, is actually the residual property of TMS 540-00-00-056, which is zoned as Agriculture with a value of less than \$50,000 on the Charleston County Auditor’s site, and is composed of left over slivers of property here and there and unbuildable wetlands.

Even though Mr. Breeden signed the order dated 8 March 2019 confirming the settlement, it appears as if the hearing that apparently occurred that day did not convey such information, did not convey such information well, or Mr. Breeden did not properly take such

information into account when he apparently found it proper to adopt and confirm the "Land Donation, Density Reduction, and Release Agreement executed on February 12, 2019.

I have made a substantial good faith effort working with both parties / party's' attorneys since 20 May 2019 to avoid having to take this action. The conduct by both parties / party's attorneys strongly suggests the requests made in this motion are necessary, since their apparent goals are counter to mine, and in some cases, potentially problematic in other regards. Also, given the public information available about this Agreement, it does not appear it was entered into in good faith by all parties and may not be enforceable for several of the reasons raised in this motion, as well as others that may be raised at or before a hearing.

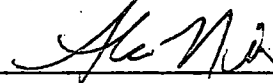
WHEREFORE, Defendant, respectfully requests the Court to:

1. Restore case 2015-CP-10-02751 to the general docket.
2. Grant Alan Nix the right to intervene.
3. Enter an immediate injunction against the parties to prevent any further actions under the Agreement, including but not limited to, reducing the units contemplated by Mt. Pleasant R-12-19.
4. Set aside agreement between the parties dated 13 February 2019
5. Rescind order transferring case to a Special Referee and restore case to status it was in on 2 November 2017. (The time it was ended in the Charleston County Court System).
6. Any and all other and further relief as the Court deems just, prudent, and proper.

The defendant reserves the right to supplement this motion with additional evidence, supporting exhibits and written and oral arguments at or before any scheduled hearings related to this matter.

July 9, 2019

Respectfully submitted,



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STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 PARK WEST DEVELOPMENT, INC. ET. )  
 AL, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 TOWN OF MOUNT PLEASANT, )  
 )  
 Defendants. )

IN THE COURT OF COMMON PLEAS  
 THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2015-CP-10-02751

**RECEIVED**  
 JUL 12 2019  
 SC Court of Appeals  
 BY  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 2019 JUL -9 PM 5:00

FILED

The undersigned hereby certifies that on the 9<sup>th</sup> day of July 2019, a copy of the motion to restore, intervene, injunction, set aside agreement, return to public court, etc. for this case was served was served upon all parties and/or their respective counsel of record via USPS and email and/or hand delivery as follows:

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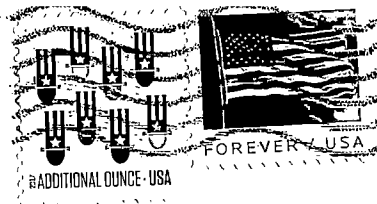
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CHARLESTON SC 294

10 JUL 2019 FRI 11



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JUL 12 2019

SC Court of Appeals

JUDGE LOCKEMY

SC COURT OF APPEALS

1220 SENATE ST.

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29201-376999

