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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED
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SC Court of Appeals

Appellate Case 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 TO SUBSTITUTE PARTY

Appellant American Star Development SC, LLC, pursuant to Rule 265(c) of the South Carolina Appellate Court Rules, hereby moves the Court to substitute American Star Development SC, LLC with American Star SPE-2, LLC as the real party in interest as the owner of the adjacent property in this action and to amend the case caption to reflect the substitution. This motion is made in order to clarify the true party in interest for the Court and the parties involved in the above-referenced case. In support of the Motion, American Star Development SC, LLC would show the Court as follows:

1. Rule 265(c) of the South Carolina Appellate Court Rules provides that if “substitution of a party for any reason other than death or incompetency, substitution shall be by motion to the appellate court” Rule 265(c), SCACR.

2. This appeal arises from a lawsuit in which Plaintiffs American Star Development SC, LLC, KKMC Investments, LLC, and 211, LLC asserted claims against the defendants to enforce rights under a purchase agreement for the sale of real property and to have an access road constructed to adjacent property owned by an affiliated entity, American Star SPE-2, LLC.

3. American Star Development SC, LLC was the initial party to the purchase agreement. Prior to selling the property, American Star Development SC, LLC assigned its rights and interests under the purchase agreement to its affiliated entities, KKMC Investments, LLC and 211, LLC.

4. When the underlying action commenced, counsel for Plaintiffs mistakenly believed that American Star Development SC, LLC owned the adjacent property when the property was actually owned by another affiliated entity, American Star SPE-2, LLC.

5. When the present appeal was filed, counsel for Plaintiffs unintentionally omitted KKMC Investments, LLC, and 211, LLC from the notice of appeal as the appellants.

6. To clarify the complex relationship between the parties and their respective rights and interests asserted in this litigation, American Star Development SC, LLC, KKMC Investments, LLC, and 211, LLC have now assigned and transferred to American Star SPE-2, LLC their interests in the claims asserted in this action and appeal and in the purchase and sale agreement, under the Assignment of Claims and Agreement, attached as Exhibit A.

7. After Respondent Pulte Home Corporation, n/k/a Pulte Home Company, LLC challenged Appellant's standing to pursue their claims, Plaintiffs American Star Development SC, LLC, KKMC Investments, LLC, and 211, LLC moved the circuit court for the substitution of Plaintiffs with American Star SPE-2, LLC pursuant to the Assignment of Claims and Agreement referenced above in Paragraph 6. The motion to substitute parties filed with the circuit court is attached as Exhibit B. The circuit court filed an order on July 8, 2019, granting the motion to substitute American Star SPE-2, LLC as the plaintiff for KKMC Investments, LLC and 211, LLC. A copy of the circuit court's order is attached as Exhibit C.

8. On July 16, 2019, American Star SPE-2, LLC filed an amended complaint, with it being the sole plaintiff in the case.

9. American Star SPE-2, LLC should be substituted as the appellant in this action because it is a real party in interest in the appeal and the substitution will promote a resolution on the merits and avoid an unnecessary procedural dismissal. *See Patton v. Miller*, 420 S.C. 471, 488, 804 S.E.2d 252, 260 (2017) (refusing to dismiss case because substitutional should be allowed to avoid "the unnecessary procedural dismissal of a lawsuit that should resolve on the merits").

WHEREFORE, for the reasons set forth above, American Star Development Group SC, LLC prays that the Court enter an order pursuant to Rule 265, SCACR, granting the Motion to substitute American Star SPE-2, LLC as Appellant herein in place of American Star Development SC, LLC and amend the caption accordingly.



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*Attorneys for Appellant American Star
Development SC, LLC*

July 24, 2019
Charleston, SC

EXHIBIT A

Assignment of Claims & Agreement

STATE OF SOUTH CAROLINA) ASSIGNMENT OF CLAIMS AND
) AGREEMENT
)
COUNTY OF CHARLESTON)

This Assignment of Claims and Agreement for Purchase and Sale (this "Agreement") is made and entered into as of this 27th day of February, 2019, by and between American Star Development SC, LLC ("American Star"), KKMC Investments, LLC ("KKMC"), and 211, LLC ("211"). (American Star, KKMC, and 211 are collectively referred to as "Assignors") and American Star SPE-2, LLC ("Assignee").

WITNESSETH:

WHEREAS, on February 25, 2015, American Star entered into an Agreement for Purchase and Sale (the "Purchase Agreement") with JWH Acquisitions, wherein American Star agreed to sell to JWH Acquisitions certain property located in the Town of Mount Pleasant, Charleston County, South Carolina, (the "Primus Property");

WHEREAS, Section 31(a) of the Purchase Agreement sets forth American Star's intent to purchase property adjacent to the Primus Property (the "ROFO Parcels"), including two parcels bearing TMS # 578-00-00-005 and # 578-00-00-006 (the "Adjacent Property");

WHEREAS, Section 31(b) of the Purchase Agreement provides in consideration for American Star granting JWH Acquisitions the right of first offer on the ROFO Parcels, JWH Acquisitions agrees to seek, design, and build a road through the Primus Property to provide vehicular and pedestrian access connecting the Primus Property to the Adjacent Property (the "Connection");

WHEREAS, Section 13(a) of the Purchase Agreement provides that if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension, the condemnation proceeds will be shared equally between JWH Acquisitions, or its successors, and American Star and that such arrangement is to be memorialized in a recorded instrument;

WHEREAS, KKMC and 211 later transferred the Adjacent Property to their affiliated company, Assignee, and Assignee currently owns the Adjacent Property;

WHEREAS, prior to the closing on the purchase of the Primus Property, JWH Acquisitions assigned its rights, obligations, and interest under the Purchase Agreement to JW Homes, LLC ("JWH"), and American Star assigned its rights, obligations, and interest under the Purchase Agreement to its affiliated entities, 211 and KKMC;

WHEREAS, on or about July 31, 2015, 211 and KKMC, as assignees of American Star under the Purchase Agreement, conveyed the Primus Property to JWH, as assignee of JWH Acquisitions under the Purchase Agreement;

WHEREAS, as contemplated by the Purchase Agreement, American Star contracted to purchase the ROFO Parcels, including the Adjacent Property, and prior to purchasing the ROFO Parcels, American Star assigned its contractual right to purchase the Adjacent Property to its affiliated companies, KKMC and 211, which purchased the Adjacent Property;

WHEREAS, PulteGroup, Inc. entered into an asset purchase agreement (the "APA"), whereby PulteGroup would acquire assets and liabilities of JWH, including the Primus Property and related liabilities and obligations, such as the obligations to share proceeds related to the condemnation of any portion of the Primus Property and to build the Connection;

WHEREAS, pursuant to the APA, JWH conveyed the Primus Property to Pulte Home Corporation, n/k/a Pulte Home Company, LLC ("PHC");

WHEREAS, JWH, PHC, nor PulteGroup have sought, designed, or built the Connection, and PulteGroup and PHC have refused to honor the obligation to share condemnation proceeds as required under the Purchase Agreement;

WHEREAS, Assignors initiated an action in the Court of Common Pleas for Charleston County by filing a lis pendens, summons, and complaint naming PulteGroup, PHC, and JWH as defendants for claims relating to the Primus Property and the parties' rights, interests, and obligations under the Purchase Agreement, which action was assigned Civil Action No. 2018-CP-10-2175 (the "Legal Action");

WHEREAS, in the Legal Action, PHC has asserted a counterclaim against Assignors;

WHEREAS, Assignors and Assignee are affiliated entities and recognize that it is in their common interests to have one entity prosecute and defend the claims in the Legal Action;

NOW THEREFORE, for and in consideration of the payment of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignors and Assignee covenant and agree as follows:

1. **Recitals.** The Assignors and Assignee warrant that the foregoing recitals are true and correct and are an integral and material part of this Agreement, without which each would not have signed this Agreement.

2. **Transfer of Interests.** Assignors shall and do transfer and assign to Assignee, all of their rights, title, and interests in and to the Purchase Agreement. Assignors further shall and do transfer and assign to Assignee, all of their rights, title, and interests in and to any and all claims, counterclaims, actions, causes of action, lis pendens, appeals, defenses, demands, or offsets which Assignors have or may have against PulteGroup, PHC, JWH and their successors and assigns that arise out of or relate to the Legal Action, including those relating to the Connection, the Primus Property, and the Purchase Agreement. Assignors acknowledge and agree that Assignee is entitled to any and all recoveries and all amounts received from PulteGroup, PHC, JWH or their successors and assigns in connection with the Legal Action,

whether obtained through settlement, trial, or otherwise. Assignors further acknowledge and agree that Assignee shall have all control over the prosecution and defense strategy of the Legal Action and all claims, appeals, and defenses assigned hereunder, including without limitation, the right to decide upon the terms of any compromised resolution without approval from or prior consultation with Assignors; *provided, however, that* if requested by Assignee, Assignors shall cooperate with Assignee and provide such other and further documentation and/or witnesses as Assignee may request from time to time and which shall be necessary to prosecute the Claims.

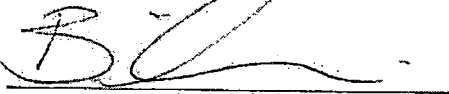
3. **Reinstatement.** Assignors and Assignee acknowledge that the parties will seek the dismissal and/or substitution of Assignors as parties in the Legal Action. If Assignors are not dismissed or substituted as plaintiffs in the Legal Action, then the transfer and assignment provided for in **Section 2** hereof shall be of no effect.

[SIGNATURES FOLLOW ON NEXT PAGE]

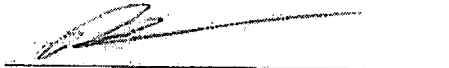
IN WITNESS WHEREOF, the parties hereto have caused this Assignment of Claims and Contract to be executed and delivered as of the date first above written.

ASSIGNORS:

AMERICAN STAR DEVELOPMENT SC, LLC

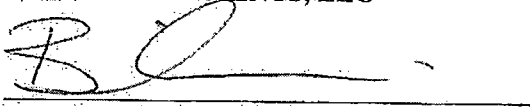


Name: Brian Harvin
Its: Member



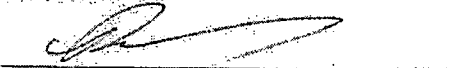
Name: Pierce Cauthen
Its: Member

KKMC INVESTMENTS, LLC



Name: Brian Harvin
Its: Sole Member

211, LLC

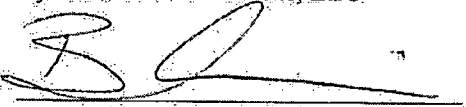


Name: Pierce Cauthen
Its: Sole Member

ASSIGNEE:

AMERICAN STAR SPE-2, LLC

By: KKMC Investments, LLC



Name: Brian Harvin
Its: Sole Member

By: 211, LLC



Name: Pierce Cauthen
Its: Sole Member

EXHIBIT B

**Motion to Substitute Parties filed with
Circuit Court**

FILED

2019 MAR -5 AM 11:44

SHARLENE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 AMERICAN STAR DEVELOPMENT SC,)
 LLC; KKMC INVESTMENTS, LLC; AND)
 211, LLC)
)
 Plaintiffs,)
)
 vs.)
)
 PULTEGROUP, INC.; PULTE HOME)
 CORPORATION, N/K/A PULTE HOME)
 COMPANY, LLC; AND JW HOMES,)
 LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO. 2018-CP-10-2175

**MOTION TO SUBSTITUTE PARTIES
 AND AMEND
 AMENDED COMPLAINT**

Pursuant to Rules 15(a) and (d) and 25(c) of the South Carolina Rules of Civil Procedure, Plaintiffs American Star Development, SC, LLC; KKMC Investments, LLC; and 211, LLC, move to substitute parties and to amend the complaint to include additional allegations based on transactions, occurrences, and events which have happened since the date of the pleading and to clarify the parties, claims, and requested relief. The grounds for this motion are as follows:

1. Under Rule 15(a), SCRCPP, a party may amend its pleading by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so requires and does not prejudice the other party. Rule 15 “strongly favors amendments and the court is encouraged to freely grant leave to amend.” *Parker v. Spartanburg Sanitary Sewer Dist.*, 362 S.C. 276, 286, 607 S.E.2d 711, 716 (Ct. App. 2005). “The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it. The party opposing the amendment has the burden of establishing prejudice.” *Id.*

2. Pursuant to Rule 15(d), the court may permit a party to “serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading to be supplemented, whether or not the original pleading is defective in its statement of a cause of action or defense.”

3. Rule 25(c), SCRCF, provides that “[i]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.”

4. Plaintiffs’ proposed Second Amended Complaint, attached as Exhibit 1, seeks to amend the previously filed Amended Complaint by (a) substituting Plaintiffs with American Star SPE-2, LLC as the real party in interest as the owner of the Adjacent Property (as defined in the Amended Complaint) and pursuant to the assignment and transfer of Plaintiffs’ interest in the claims asserted in this action and in the purchase and sale agreement for the Primus Property (as defined in the Amended Complaint) under the Assignment of Claims and Agreement, attached as Exhibit 2; (b) clarifying Plaintiffs’ relationship to American Star SPE-2, LLC; and (3) clarifying the relief sought in the causes of action.

5. Defendants will not be prejudiced by the proposed amendments and substitution because the parties are in the early stages of discovery and Defendants have the ability to conduct further discovery into these matters prior to trial if they so choose.

6. Pursuant to Rule 11, SCRCF, Plaintiffs’ counsel affirms that prior to filing this motion that I have communicated with Defendants’ counsel and attempted in good faith to resolve the matter contained in this motion.

7. For the foregoing reasons, Plaintiffs request that the Court grant Plaintiffs' motion to substitute parties, amend its pleading, and file the attached Second Amended Complaint.

Respectfully submitted,



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Attorneys for Plaintiffs

Charleston, SC
March 5, 2019

EXHIBIT 1

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	CIVIL ACTION NO. 2018-CP-10-2175
)	
AMERICAN STAR SPE-2, LLC;)	
)	
Plaintiffs,)	
)	
vs.)	
)	SECOND AMENDED COMPLAINT
PULTEGROUP, INC.; PULTE HOME)	
CORPORATION, N/K/A PULTE HOME)	
COMPANY, LLC; AND RP FALCON)	
PROPERTIES, LLC F/K/A JW HOMES,)	
LLC,)	
)	
Defendants.)	
)	
)	
)	

Plaintiff American Star SPE-2, LLC (“American Star”), complaining of Defendants PulteGroup, Inc. (“PulteGroup”); Pulte Home Corporation, n/k/a Pulte Home Company, LLC (“PHC”); and, alternatively, of Defendant RP Falcon Properties, LLC f/k/a JW Homes, LLC (“JWH”), alleges as follows:

INTRODUCTION

1. PulteGroup and PHC, as successors to JW Homes, LLC, have a contractual obligation to construct an access to road to American Star’s property, pursuant to a purchase and sale agreement entered into between American Star’s predecessor in interest and JW Homes. PulteGroup and PHC have refused to honor their obligation to construct the access road in breach of the agreement, thereby limiting American Star’s ability to develop its property and causing it to suffer millions of dollars in damages.

THE PARTIES

2. Plaintiff American Star is a South Carolina limited liability company with its principal place of business in Charleston County, South Carolina. The members of American Star SPE-2, LLC are KKMC Investments, LLC and 211, LLC. American Star is an affiliated entity of American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC.

3. Defendant PulteGroup is a corporation organized and existing under the laws of the State of Michigan. Upon information and belief, PulteGroup does business in Charleston County, South Carolina.

4. Defendant PHC is a limited liability company and subsidiary of Defendant PulteGroup, organized and existing under the laws of the State of Michigan. PHC does business and owns property in Charleston County, South Carolina.

5. Defendant JWH is a limited liability company organized and existing under the laws of the State of Delaware. JWH was conducting business and owned property in Charleston County, South Carolina, at the times relevant to this action.

VENUE AND JURISDICTION

6. Venue in this Court is proper pursuant to S.C. Code Ann. § 15-7-30.

7. This Court has subject matter jurisdiction over this action pursuant to S.C. Code Ann. § 15-53-20 and Article 5 of the South Carolina Constitution.

8. This Court has personal jurisdiction over the parties pursuant to S.C. Code Ann. §§ 36-2-802 and 36-2-803.

FACTS

9. On February 25, 2015, American Star Development SC, LLC and JWH Acquisitions entered into an Agreement for Purchase and Sale (the "Agreement") (attached as

Exhibit A), wherein American Star agreed to sell to JWH Acquisitions certain property located in the Town of Mount Pleasant, Charleston County, South Carolina, as described more particularly on Exhibit B (the "Primus Property").

10. Section 31(a) of the Agreement set forth American Star Development SC, LLC's intent to purchase property adjacent to the Primus Property (the "ROFO Parcels"), including two parcels bearing TMS # 578-00-00-005 and # 578-00-00-006 (the "Adjacent Property").

11. Pursuant to Section 31(a) of the Agreement, American Star Development SC, LLC granted JWH Acquisitions the right of first offer to negotiate to purchase the ROFO Parcels, including the Adjacent Property.

12. Pursuant to Section 31(b) of the Agreement and in consideration for American Star Development SC, LLC granting JWH Acquisitions the right of first offer on the ROFO Parcels, JWH Acquisitions agreed that an access road through the Primus Property would be designed and constructed under standards applicable to public roads to provide vehicular and pedestrian access to connect the Primus Property to the Adjacent Property (the "Connection"). JWH Acquisitions further agreed that the Connection would be depicted on the sketch plan ultimately approved by the Town of Mount Pleasant and that the Connection would be designed and constructed as a continuation of the access road serving the Primus Property to the point it touches the common boundary line between the Primus Property and the Adjacent Property.

13. The parties intended for the Connection to be dedicated to the Town of Mount Pleasant and serve as a public easement for ingress/egress into the Adjacent Property.

14. As contemplated by the Agreement, American Star Development SC, LLC contracted to purchase the ROFO Parcels, including the Adjacent Property. Prior to purchasing the ROFO Parcels, American Star Development SC, LLC assigned its contractual right to purchase the Adjacent Property to its affiliated companies, KKMC Investments, LLC and 211, LLC, which purchased the Adjacent Property. KKMC Investments, LLC and 211, LLC later transferred the Adjacent Property to their affiliated company, American Star. American Star is the current owner of the Adjacent Property.

15. Section 13(a) of the Agreement acknowledged that a portion of the Primus Property may be taken by eminent domain for the extension of Hungryneck Boulevard. That section provided that if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension, the condemnation proceeds will be shared equally between JWH Acquisitions, or its successors, and American Star Development SC, LLC. Section 13(a) further provides that American Star Development SC, LLC's interest in the condemnation proceeds is to be memorialized in a recorded instrument.

16. Subsequent to entering into the Agreement but before the closing on the purchase of the Primus Property, JWH Acquisitions assigned its rights, obligations, and interest under the Agreement to JWH, and American Star Development SC, LLC assigned its rights, obligations, and interest under the Agreement to its affiliated entities, 211, LLC and KKMC Investments, LLC.

17. On or about July 31, 2015, 211, LLC and KKMC Investments, LLC, as assignees of American Star Development SC, LLC under the Agreement, conveyed the Primus Property to JWH, as assignee of JWH Acquisitions under the Agreement.

18. American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC have assigned their rights, obligations, and interest under the Agreement to American Star.

19. On or about December 15, 2015, PulteGroup entered into an asset purchase agreement (the "APA"), whereby PulteGroup would acquire substantially all of the assets of JWH and its affiliates and subsidiaries (the "Acquisition"). The Primus Property was one of the assets of JWH to be acquired by PulteGroup in the Acquisition pursuant to the APA.

20. Pursuant to Section 2.3 of the APA, PulteGroup agreed to assume and discharge certain liabilities and obligations of JWH. JWH's obligations under the Agreement, including the obligation to design and construct the Connection and to share condemnation proceeds, were liabilities and/or obligations assumed by PulteGroup pursuant to the APA.

21. On or about January 14, 2016, PulteGroup acquired substantially all of JWH's assets pursuant to the APA. Also, on or about January 14, 2016, JWH conveyed the Primus Property to PHC. Upon information and belief, the conveyance of the Primus Property to PHC was pursuant to Section 4.2 of the APA, which required JWH to execute and deliver special warranty deeds for the acquired properties to PulteGroup or affiliates of PulteGroup, including PHC.

22. As a result of the agreements made in the APA and the related transactions conveying the Primus Property to PHC, PulteGroup and PHC expressly agreed to assume responsibility for JWH's obligations under the Agreement, including the obligations to design and construct the Connection and to share condemnation proceeds.

23. In addition to expressly assuming JWH's liabilities and obligations pursuant to the APA, PulteGroup assumed liability for JWH's obligations under the Agreement, including

the obligations to design and construct the Connection and to share condemnation proceeds, because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

24. JWH, PHC, and/or PulteGroup obtained approval from the Town of Mount Pleasant to begin residential development of the Primus Property. However, the sketch plans and plats for the development, as approved by the Town of Mount Pleasant, lack any design or depiction of the Connection.

25. American Star, through its principals, affiliated entities and counsel, have made repeated demands for PHC and PulteGroup to design, seek approval for, and construct the Connection, but PHC and PulteGroup have refused American Star's demands.

26. PHC's and PulteGroup's refusal to design, seek approval for, and construct the Connection is a breach of the Agreement.

27. As a result of PHC's and PulteGroup's breach of the Agreement, American Star has been damaged by the diminution in value of the Adjacent Property resulting from lack of access to the Adjacent Property from the Primus Property and the consequent limitations on the development and use of the Adjacent Property.

FIRST CAUSE OF ACTION
(Breach of Contract as against PulteGroup and PHC)

28. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

29. PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement because they expressly assumed such obligations under the APA.

30. PulteGroup is also a successor to JWH with respect to JWH's obligations under the Agreement because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

31. The Agreement constitutes a valid and binding contract between Plaintiffs and PulteGroup and PHC, by virtue of their status as successors to JWH Acquisitions and JWH.

32. Section 31(b) of the Agreement requires PulteGroup and PHC, as successors to JWH, to design, seek approval for, and construct the Connection.

33. American Star, through its predecessors in interest, has performed its obligations under the Agreement, and American Star remain able and willing to perform their obligations under the Agreement.

34. PulteGroup and PHC have breached Section 31(b) of the Agreement by failing to design, seek approval for, and construct the Connection.

35. As a result of PulteGroup's and PHC's breach of Section 31(b) of the Agreement, American Star lacks sufficient access to develop the Adjacent Property, which has diminished the value of the Adjacent Property.

36. As a result of PulteGroup's and PHC's breach of Section 31(b) of the Agreement, American Star is entitled to specific performance requiring PulteGroup and/or PHC to design, seek approval for, and construct the Connection, which shall serve as a public easement providing access to the Adjacent Property, or alternatively, damages for the loss in value of the Adjacent Property.

SECOND CAUSE OF ACTION
(Equitable Estoppel against PHC)

37. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

38. PHC, through its conduct and silence, made the false representation after it acquired the Primus Property that it would design, seek approval for, and construct the Connection.

39. PHC made the false representation that it would design, seek approval for, and construct the Connection with the intention or expectation that Plaintiffs would rely upon such representation.

40. PHC knew that it had no intention of designing, seeking approval for, and constructing the Connection.

41. American Star, through its predecessors in interest, lacked knowledge and the means of knowledge that PHC had no intention of designing, seeking approval for, and constructing the Connection.

42. American Star, through its predecessors in interest, relied on PHC's false representations to its prejudice.

43. As a result, PHC should be estopped from denying its obligation to design, seek approval for, and construct the Connection, and it should be ordered to fulfil such obligation.

THIRD CAUSE OF ACTION
(Declaratory Judgment against PulteGroup and PHC)

44. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

45. PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement because they expressly assumed such obligations under the APA.

46. PulteGroup is also a successor to JWH with respect to JWH's obligations under the Agreement because the circumstances surrounding the Acquisition warrant a finding of a consolidation or merger of PulteGroup and JWH.

47. The Agreement constitutes a valid and binding contract between American Star, by virtue of its status of assignee of American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC; and PulteGroup and PHC, by virtue of their status as successors to JWH Acquisitions and JWH.

48. Section 13(a) of the Agreement requires PulteGroup and PHC, as successors to JWH, to share with Plaintiffs the proceeds if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension and to record that obligation in an instrument.

49. PulteGroup and PHC deny they are successors to JWH with respect to JWH's obligations under the Agreement, thereby denying the obligations to share the proceeds from any subsequent condemnation and to record an instrument memorializing such obligation.

50. Plaintiffs are entitled to a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share the proceeds from any subsequent condemnation of the Primus Property or any portion thereof and that such obligation shall be memorialized in a recorded instrument.

Plaintiffs are further entitled to a declaratory judgment that the obligation to share condemnation proceeds run with the property and is binding upon and assumed by subsequent purchasers of subdivided lots in the Primus Property, including any property owners' association created by PulteGroup and/or PHC in connection with the development of the Primus Property.

FOURTH CAUSE OF ACTION
(Alternatively, Breach of Contract against JWH)

51. Plaintiffs reassert and reallege the allegations contained in the above paragraphs.

52. In the event that PulteGroup and/or PHC are not successors to JWH with respect to JWH's obligations under the Agreement, then, alternatively, JWH had an obligation to design, seek approval for, and construct the Connection prior to conveying the Primus Property to PHC pursuant to Section 31(b) of the Agreement.

53. JWH breached Section 31(b) of the Agreement by failing to design, seek approval for, and construct the Connection.

54. As a result of JWH's breach of Section 31(b) of the Agreement, American Star lacks sufficient access to develop the Adjacent Property, which has diminished the value of the Adjacent Property.

55. As a result of JWH's breach of Section 31(b) of the Agreement, American Star is entitled to damages for the loss in value of the Adjacent Property.

WHEREFORE, Plaintiffs pray as follows:

- a. That this Court enter judgment (i) against PulteGroup and/or PHC and grant specific performance requiring PulteGroup and/or PHC to design, seek approval for, and construct the Connection, which shall serve as a public easement providing access to the Adjacent Property; (ii) or, alternatively, award damages to American Star for the loss in value of the Adjacent Property either against PulteGroup, PHC, and/or JWH;
- b. That this Court enter a declaratory judgment that PulteGroup and PHC are successors to JWH with respect to JWH's obligations under the Agreement and, therefore, have an obligation to share with Plaintiffs the proceeds from any subsequent condemnation of the Primus Property or any portion thereof and that the obligation to share condemnation

proceeds run with the property and is binding upon and assumed by subsequent purchasers of subdivided lots in the Primus Property, including any property owners' association created by PulteGroup and/or PHC in connection with the development of the Primus Property; and that such declaratory order be recorded with the Charleston County Register of Deeds; and/or

- c. An award of all other appropriate relief as is just and proper under the circumstances.

CHARLESTON, SC

_____, 2019

E. Brandon Gaskins (State Bar No. 73274)
Charles Scarminach (State Bar No. 101582)
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charlesscarminach@mvalaw.com
ATTORNEYS FOR PLAINTIFFS

EXHIBIT 2

STATE OF SOUTH CAROLINA) ASSIGNMENT OF CLAIMS AND
) AGREEMENT
)
COUNTY OF CHARLESTON)

This Assignment of Claims and Agreement for Purchase and Sale (this "Agreement") is made and entered into as of this 27th day of February, 2019, by and between American Star Development SC, LLC ("American Star"), KKMC Investments, LLC ("KKMC"), and 211, LLC ("211"). (American Star, KKMC, and 211 are collectively referred to as "Assignors") and American Star SPE-2, LLC ("Assignee").

WITNESSETH:

WHEREAS, on February 25, 2015, American Star entered into an Agreement for Purchase and Sale (the "Purchase Agreement") with JWH Acquisitions, wherein American Star agreed to sell to JWH Acquisitions certain property located in the Town of Mount Pleasant, Charleston County, South Carolina, (the "Primus Property");

WHEREAS, Section 31(a) of the Purchase Agreement sets forth American Star's intent to purchase property adjacent to the Primus Property (the "ROFO Parcels"), including two parcels bearing TMS # 578-00-00-005 and # 578-00-00-006 (the "Adjacent Property");

WHEREAS, Section 31(b) of the Purchase Agreement provides in consideration for American Star granting JWH Acquisitions the right of first offer on the ROFO Parcels, JWH Acquisitions agrees to seek, design, and build a road through the Primus Property to provide vehicular and pedestrian access connecting the Primus Property to the Adjacent Property (the "Connection");

WHEREAS, Section 13(a) of the Purchase Agreement provides that if a portion of the Primus Property is condemned to complete the Hungryneck Boulevard extension, the condemnation proceeds will be shared equally between JWH Acquisitions, or its successors, and American Star and that such arrangement is to be memorialized in a recorded instrument;

WHEREAS, KKMC and 211 later transferred the Adjacent Property to their affiliated company, Assignee, and Assignee currently owns the Adjacent Property;

WHEREAS, prior to the closing on the purchase of the Primus Property, JWH Acquisitions assigned its rights, obligations, and interest under the Purchase Agreement to JW Homes, LLC ("JWH"), and American Star assigned its rights, obligations, and interest under the Purchase Agreement to its affiliated entities, 211 and KKMC;

WHEREAS, on or about July 31, 2015, 211 and KKMC, as assignees of American Star under the Purchase Agreement, conveyed the Primus Property to JWH, as assignee of JWH Acquisitions under the Purchase Agreement;

WHEREAS, as contemplated by the Purchase Agreement, American Star contracted to purchase the ROFO Parcels, including the Adjacent Property, and prior to purchasing the ROFO Parcels, American Star assigned its contractual right to purchase the Adjacent Property to its affiliated companies, KKMC and 211, which purchased the Adjacent Property;

WHEREAS, PulteGroup, Inc. entered into an asset purchase agreement (the "APA"), whereby PulteGroup would acquire assets and liabilities of JWH, including the Primus Property and related liabilities and obligations, such as the obligations to share proceeds related to the condemnation of any portion of the Primus Property and to build the Connection;

WHEREAS, pursuant to the APA, JWH conveyed the Primus Property to Pulte Home Corporation, n/k/a Pulte Home Company, LLC ("PHC");

WHEREAS, JWH, PHC, nor PulteGroup have sought, designed, or built the Connection, and PulteGroup and PHC have refused to honor the obligation to share condemnation proceeds as required under the Purchase Agreement;

WHEREAS, Assignors initiated an action in the Court of Common Pleas for Charleston County by filing a lis pendens, summons, and complaint naming PulteGroup, PHC, and JWH as defendants for claims relating to the Primus Property and the parties' rights, interests, and obligations under the Purchase Agreement, which action was assigned Civil Action No. 2018-CP-10-2175 (the "Legal Action");

WHEREAS, in the Legal Action, PHC has asserted a counterclaim against Assignors;

WHEREAS, Assignors and Assignee are affiliated entities and recognize that it is in their common interests to have one entity prosecute and defend the claims in the Legal Action;

NOW THEREFORE, for and in consideration of the payment of the sum of Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignors and Assignee covenant and agree as follows:

1. **Recitals**. The Assignors and Assignee warrant that the foregoing recitals are true and correct and are an integral and material part of this Agreement, without which each would not have signed this Agreement.

2. **Transfer of Interests**. Assignors shall and do transfer and assign to Assignee, all of their rights, title, and interests in and to the Purchase Agreement. Assignors further shall and do transfer and assign to Assignee, all of their rights, title, and interests in and to any and all claims, counterclaims, actions, causes of action, lis pendens, appeals, defenses, demands, or offsets which Assignors have or may have against PulteGroup, PHC, JWH and their successors and assigns that arise out of or relate to the Legal Action, including those relating to the Connection, the Primus Property, and the Purchase Agreement. Assignors acknowledge and agree that Assignee is entitled to any and all recoveries and all amounts received from PulteGroup, PHC, JWH or their successors and assigns in connection with the Legal Action,

whether obtained through settlement, trial, or otherwise. Assignors further acknowledge and agree that Assignee shall have all control over the prosecution and defense strategy of the Legal Action and all claims, appeals, and defenses assigned hereunder, including without limitation, the right to decide upon the terms of any compromised resolution without approval from or prior consultation with Assignors; *provided, however, that* if requested by Assignee, Assignors shall cooperate with Assignee and provide such other and further documentation and/or witnesses as Assignee may request from time to time and which shall be necessary to prosecute the Claims.

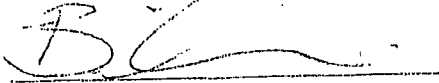
3. **Reinstatement.** Assignors and Assignee acknowledge that the parties will seek the dismissal and/or substitution of Assignors as parties in the Legal Action. If Assignors are not dismissed or substituted as plaintiffs in the Legal Action, then the transfer and assignment provided for in **Section 2** hereof shall be of no effect.

[SIGNATURES FOLLOW ON NEXT PAGE]

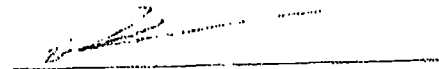
IN WITNESS WHEREOF, the parties hereto have caused this Assignment of Claims and Contract to be executed and delivered as of the date first above written.

ASSIGNORS:

AMERICAN STAR DEVELOPMENT SC, LLC

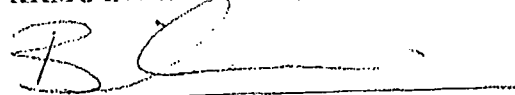


Name: Brian Harvin
Its: Member



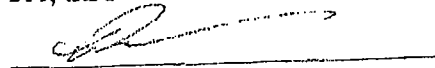
Name: Pierce Cauthen
Its: Member

KKMC INVESTMENTS, LLC



Name: Brian Harvin
Its: Sole Member

211, LLC

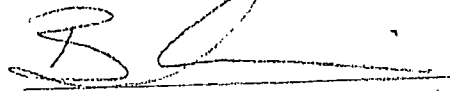


Name: Pierce Cauthen
Its: Sole Member

ASSIGNEE:

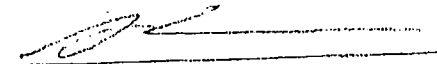
AMERICAN STAR SPE-2, LLC

By: KKMC Investments, LLC



Name: Brian Harvin
Its: Sole Member

By: 211, LLC



Name: Pierce Cauthen
Its: Sole Member

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AMERICAN STAR DEVELOPMENT SC,
LLC; KKMC INVESTMENTS, LLC; AND
211, LLC

Plaintiffs,

vs.

PULTEGROUP, INC.; PULTE HOME
CORPORATION, N/K/A PULTE HOME
COMPANY, LLC; AND JW HOMES, LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS

) CIVIL ACTION NO. 2018-CP-10-2175

CERTIFICATE OF SERVICE

FILED
2019 MAR -5 AM 11:45
JULIE ARMSTRONG
CLERK OF COURT

The undersigned hereby certifies that on this date he/she caused a true and correct copy of the foregoing Motion to Amend Amended Complaint to be served on the parties identified below via electronic mail and/or regular U.S. Mail, postage prepaid, addressed to the following:

G. Trenholm Walker, Esquire
John P. Linton, Jr., Esquire
Walker, Gressette, Freeman & Linton, LLC
P.O. Box 22167
Charleston, SC 29413-2167

Susan M. Gaddy, Esquire
The Gaddy Law Firm, LLC
1156 Bowman Road, Suite 200
Mt. Pleasant, SC 29464

Mark V. Hanrahan, Esquire
Michele Lee Stumpe, Esquire
Taylor English Duma LLP
1600 Parkwood Circle, Suite 200
Atlanta, GA 30339

Wendy Stockhausen
Wendy Stockhausen

March 5, 2019
Charleston, SC

EXHIBIT C

**Circuit Court's Order
Granting Motion to Substitute
filed July 8, 2019**

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Civil Action No.: 2018-CP-10-2175

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.

ORDER
ON PLAINTIFFS' MOTION TO
SUBSTITUTE PARTIES AND
AMEND AMENDED COMPLAINT

FILED
19 JUL -8 PM 3:25
CLERK OF COURT

This matter came before the Court on May 28, 2019, on Plaintiffs American Star Development SC, LLC's ("American Star"), KKMC Investments, LLC's and 211, LLC's (collectively, "Plaintiffs") Motion to Substitute and Amend Amended Complaint. Plaintiffs filed their Motion on March 5, 2019, more than a month after Defendants Pulte Home Corporation, n/k/a Pulte Home Company and PulteGroup, Inc. filed their Motion for Summary Judgment. E. Brandon Gaskins appeared on behalf of Plaintiffs, G. Trenholm Walker and John P. Linton, Jr. appeared on behalf of Defendants Pulte Home Corporation, n/k/a Pulte Home Company and PulteGroup, Inc. (collectively, "Pulte"), and John A. Massalon appeared on behalf of Defendant JW Homes, LLC. For the reasons explained herein, the Court GRANTS the Motion in part and DENIES the motion in part.

BACKGROUND

American Star filed a Summons and Complaint against the Defendants on April 26, 2018, and an Amended Complaint (adding the two additional Plaintiffs) on May 1, 2018. Plaintiffs allege

that “[o]n February 25, 2015, American Star and JWH Acquisitions entered into an Agreement for Purchase and Sale . . . wherein American Star agreed to sell to JWH Acquisitions” the “Primus Property” located in Mt. Pleasant South Carolina, for \$8,332,000. The Plaintiffs base their entire lawsuit on the terms of this contract (the “2015 Agreement”).

According to the allegations of Paragraph 16 of the Amended Complaint, “[s]ubsequent to entering into the Agreement but before the closing on the purchase of the Primus Property, JWH Acquisitions assigned its rights, obligations, and interest under the Agreement to JWH, and American Star assigned its rights, obligations, and interest under the Agreement to 211, LLC and KKMC Investments, LLC.”

The Amended Complaint further alleges that JW Homes, LLC, as assignee of JWH Acquisitions, LLC, closed on the purchase of the Primus Property on July 31, 2015. According to the allegations of the Amended Complaint, six months later, JW Homes, LLC, sold the Primus Property to Pulte Home on January 14, 2016, as part of a larger asset sale. The Amended Complaint asserts that Pulte assumed the obligations of the JWH Acquisitions, LLC, and JW Homes, LLC, under the 2015 Agreement.

Plaintiffs seek to amend to substitute American Star SPE-2, LLC as the sole Plaintiff. According to the Affidavit of Matthew Raines submitted in support of Pulte’s Motion for Summary Judgment and the deed attached thereto, as well as Affidavit of Brian Harvin submitted in opposition to Pulte’s Motion for Summary Judgment, American Star SPE-2, LLC is the owner of the property adjacent to the Primus Property. The Affidavit of Harvin also establishes that American Star never owned the adjacent property and “assigned its contractual right to purchase the Adjacent Property to its affiliated companies, KKMC Investments, LLC and 211, LLC, which purchased the Adjacent Property.” Affidavit of Harvin, ¶ 8.

Plaintiffs accompanied their Motion with an “Assignment of Claims and Agreement” entered February 27, 2019 (the “2019 Assignment”). In the 2019 Assignment all three Plaintiffs purport to assign to American Star SPE-2, LLC, their rights under the 2015 Agreement as well as “all of their rights, title, and interests in and to any and all claims, counterclaims, actions, causes of action, lis pendens, appeals, defenses, demands, or offsets which Assignors have or may have against PulteGroup, PHC, JWH and their successors and assigns that arise out of or relate to the Legal Action [this lawsuit], including those relating to the Connection, the Primus Property, and the Purchase Agreement.”

In addition to seeking to substitute American Star SPE 2, LLC, as the sole Plaintiff, the existing Plaintiffs also seek to amend the allegations of the Amended Complaint “clarifying the relief sought in the causes of action.” The proposed Second Amended Complaint attached to Plaintiff’s Motion makes substantive changes that include seeking additional relief that was not part of the Amended Complaint.

APPLICABLE LEGAL STANDARD

Under Rule 15(a), SCRCP, “. . . a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party.” Rule 15 (d), SCRCP, addresses “Supplemental Pleadings” as follows:

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented, whether or not the original pleading is defective in its statement of a cause of action or defense. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

The event that gives rise to the request for substitution of parties happened after the Amended Complaint was filed. Even though a supplemental pleading is technically different from a motion to amend the pleadings, the standard for granting or denying these motions is the same. See Tanner v. Florence County Treasurer, 336 S.C. 552, 521 S.E.2d 153 (S.C. 1999).

“Rule 15 prejudice is some result flowing from the amendment that puts the non-moving party at a disadvantage in defending the merits, which disadvantage the party would not have faced if the amended claim had been included in the original pleading or a timely motion to amend.” Patton v. Miller, 420 S.C. 471, 491–92, 804 S.E.2d 252, 262–63 (2017), *reh'g denied* (Sept. 27, 2017) (citing Lee v. Bunch, 373 S.C. 654, 661, 647 S.E.2d 197, 201 (2007) (“The prejudice that would warrant denial of a motion to amend the pleadings is a lack of notice that a new issue is to be tried and a lack of opportunity to refute it.” (citing Collins Entm't, Inc. v. White, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Ct. App. 2005))); Holland ex rel. Knox v. Morbark, Inc., 407 S.C. 227, 235-36, 754 S.E.2d 714, 719 (Ct. App. 2014) (affirming the denial of a proposed amendment after the conclusion of discovery and the case had been placed on the trial roster because it would cause significant delay and impose substantial additional discovery costs that would not have been necessary if the plaintiff had timely made the motion to amend)).

Rule 25(c), SCRCP provides that “[i]n case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. . .”

DISCUSSION

After reviewing the Motion and Proposed Second Amended Complaint, the Court grants the Motion to Substitute American Star SPE-2, LLC as the sole Plaintiff in substitution for KKMC Investments, LLC and 211, LLC. The Court denies the Motion to Substitute as to Plaintiff

American Star. By separate order, the Court has granted Pulte's Motion for Summary Judgment on the claims for American Star for lack of standing; therefore, American Star is no longer a Plaintiff.

However, all three current Plaintiffs shall remain parties to the case as Counterclaim Defendants in the event that Pulte reasserts its counterclaim against them in its answer to the Second Amended Complaint. Since American Star SPE-2, LLC is stepping into the shoes of KKMC Investments, LLC and 211, LLC, it too may be a Counterclaim Defendant in addition to being the sole Plaintiff. "As a matter of law, an assignor remains liable to the obligor for the assignee's defective performance, just as he would be liable for his own defective performance." Orange Bowl Corp. v. Warren, 300 S.C. 47, 50, 386 S.E.2d 293, 295 (Ct. App. 1989). Furthermore, "[i]n South Carolina, it is well established that an 'assignee ... stands in the shoes of its assignor ...'" Singletary v. Aetna Cas. & Sur. Co., 316 S.C. 199, 201, 447 S.E.2d 869, 870 (Ct. App. 1994).

The Court also grants the motions with respect to amending the Amended Complaint to include allegations concerning the alleged assignment of interests and claims to American Star SPE 2, LLC, that establishes it as the real party in interest with respect to the claims now being asserted by Plaintiffs KKMC Investments, LLC and 211, LLC.

In addition to seeking to amend the Amended Complaint to add allegations concerning the assignment of right to the proposed American Star SPE-2, LLC, Plaintiffs seek to "clarify" the relief sought in the complaint by adding allegations seeking an easement and allegations requesting the Court order the recording of a document confirming the alleged right to share in possible future condemnation proceeds. Pulte has argued that it would be prejudiced by the addition of these new claims for relief.

Plaintiffs filed a Lis Pendens, Amended Lis Pendens, and Second Amended Lis Pendens on 46 separate lots owned by Pulte (collectively, the "Lis Pendens"). Pulte moved to cancel the Lis Pendens. Judge McIntosh granted the motion and issued an order cancelling the Lis Pendens on November 14, 2018, filed on November 16, 2018. In cancelling the Lis Pendens, Judge McIntosh ruled that the Lis Pendens was improper because the allegations of the Amended Complaint did not affect title to real property, in part because the Plaintiffs did not seek to establish an easement:

Plaintiffs argue that the lis pendens is proper because their claims are "essentially" claims to establish the existence of an easement, enforce an encumbrance, and/or establish an equitable interest in real property.

However, as discussed above, the allegations of the Amended Complaint do not assert any such claims, even when considering all the relevant terms of the Agreement attached to the Amended Complaint as Exhibit A. Additionally, the prayer seeks the following relief, making no mention of enforcing an easement or encumbrance or establishing an equitable interest in the Property or the lots subjected to the Second Amended Lis Pendens:...

Order filed November 16, 2018, p. 4. Judge McIntosh also ruled that American Star's claim for a declaratory judgment that it is entitled to a share of any possible future condemnation proceeds was a contractual claim, rather than a claim affecting title to real property. See Order filed November 16, 2018, p. 5.

American Star appealed this order to the South Carolina Court of Appeals. The initial briefs of the Appellant American Star and Pulte have been filed with the Court of Appeals based on Judge McIntosh's Order and the allegations of the Amended Complaint at the time of the ruling.

Pulte asserts it will be prejudiced by adding these new claims¹ because it has already litigated the issue of whether the Amended Complaint affects title to real property, obtained a favorable ruling, and spent considerable time and incurred considerable fees both in obtaining the Order and responding to the appeal. For purposes of the Order on appeal, the proposed amendments to assert claims to establish an easement and record a document confirming the alleged right to share in possible future condemnation proceeds come after the previous ruling of the Court on the issue of the propriety of the Lis Pendens.

The parties recognized in their arguments at the hearing that it is now undisputed that the Town of Mount Pleasant has settled on three alternatives for the location of the right-of-way of the future Billy Swails Parkway, none of which crosses any of the residential lots. Additionally, since the hearing, the parties have informed the Court (i) that Plaintiffs have filed a Third Amended Lis Pendens that does not seek to encumber any of the residential lots and (ii) that Plaintiffs have taken the position in their Reply Brief on the appeal that the question of the validity of the lis pendens with respect to the declaratory judgment on Plaintiffs' alleged right to condemnation proceeds is moot because of the three remaining alternatives for the future right of way.

Our Court of Appeals has stated the test for allowing an amendment as follows:

Motions to amend pleadings to conform to proof may be made upon motion of any party at any time, even after judgment, and are within the sound discretion of the trial judge. See Rule 15(b), SCRCP. Ordinarily, amendments to conform to proof should be liberally allowed. However, if late amendment of the pleadings would cause prejudice to the opposing party, the court should either deny the amendment or grant a continuance reasonably necessary to allow the opposing party to meet the amendment. Prejudice occurs when the amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action.

¹ Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 17-18, 567 S.E.2d 881, 889-90 (Ct. App. 2002) (noting that actions to establish the existence of an easement affect title to real property and other types of actions affecting title to real property).

Ball v. Canadian Am. Exp. Co., Inc., 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994)
(internal citations omitted).

Pulte argues these new requests for relief would prejudice it after having extensively litigated the question of the validity of the lis pendens before this Court and before the Court of Appeals. The Court agrees that the addition of the claim of an easement would prejudice Pulte's appeal and denies the request to assert this new claim. On the other hand, the Court will allow the amendment seeking an order requiring the recording of a document confirming the alleged right to share in possible future condemnation proceeds provided the real property subject to the instrument must be within the right-of-way of the three remaining alternatives and not include any of the residential lots.

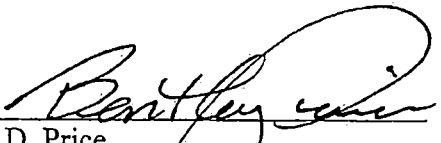
CONCLUSION

Therefore, for the reasons explained above, the Motion to Substitute is GRANTED as to the substitution of American Star SPE 2, LLC as Plaintiff for Plaintiffs KKMC Investments, LLC and 211, LLC, but not for Plaintiff American Star Development SC, LLC, and that all three Plaintiffs may remain as parties as Counterclaim Defendants;

It is further Ordered that the Motion to Amend the Amended Complaint is GRANTED, except that the substitute Plaintiff shall not be allowed to assert a claim for an easement and that the claim to record an instrument giving notice of the alleged right to share condemnation proceeds shall be limited to the real property within the right-of-way of the three remaining alternatives for the future Billy Swails Boulevard and does not include any of the residential lots.

AND IT IS SO ORDERED!

July 9th, 2019
Charleston, South Carolina


Bentley D. Price
South Carolina Circuit Court Judge

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2018-002277

RECEIVED
JUL 25 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.

PROOF OF SERVICE

This is to certify that I have this day served counsel for the Respondent in the foregoing matter with a copy of the foregoing *Motion to Substitute Party* by depositing the same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

G. Trenholm Walker, Esquire
John P. Linton, Jr., Esquire
Walker Gressette Freeman & Linton, LLC
P.O. Box 22167
Charleston, SC 29413-2167

*Attorneys for PulteGroup, Inc., and
Pulte Home Corporation n/k/a Pulte Home Company, LLC*

John A. Massalon, Esquire
Wills Massalon & Allen, LLC
Post Office Box 859
Charleston, SC 29402

-and-

Mark V. Hanrahan, Esquire
Taylor English Duma LLP
1600 Parkwood Circle, Suite 200
Atlanta, GA 30339

Attorneys for JW Homes, LLC



E. Brandon Gaskins (S.C. Bar No. 72374)
MOORE & VAN ALLEN PLLC
78 Wentworth Street
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(843) 579-7038
brandongaskins@mvalaw.com

*Attorneys for Appellant
American Star Development SC, LLC*

July 24, 2019
Charleston, South Carolina

Moore & Van Allen

July 24, 2019

E. Brandon Gaskins
Attorney at Law

T 843 579 7038
F 843 579 8738
brandongaskins@mvalaw.com

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Post Office Box 11629
Columbia, SC 29211

Moore & Van Allen PLLC

78 Wentworth St.
Charleston, SC 29401-1428

Mailing Address:
Post Office Box 22828
Charleston, SC 29413-2828

Re: *American Star Development SC, LLC; KKMC Investments, LLC; and 211, LLC vs. PulteGroup, Inc.; Pulte Home Corporation, n/k/a Pulte Home Company, LLC; and JW Homes, LLC*
Appellate Case No.: 2018-002277
Lower Court Case No.: 2018-CP-10-2175
Our File No.: 042460.01

Dear Ms. Kitchings:

With respect to the above-referenced matter Enclosed for filing please find an original and seven (7) copies of Appellant’s Motion to Substitute Party, with exhibits and Proof of Service. Our firm check no. 35784 in the amount of \$50.00 is also enclosed for payment of the requisite filing fee.

Please file the original and return a filed-stamped copy to our office in the self-addressed stamped envelope provided.

Thank you for your assistance with this matter.

Sincerely,

MOORE & VAN ALLEN PLLC

E. Brandon Gaskins
E. Brandon Gaskins

RECEIVED

JUL 25 2019

SC Court of Appeals

EBG/meh

Enclosures: as stated.

cc: G. Trenholm Walker, Esquire (w/enclosure)
John P. Linton, Jr., Esquire (w/enclosure)
John A. Massalon, Esquire (w/enclosure)
Mark V. Hanrahan, Esquire (w/enclosure)

Charlotte, NC
Charleston, SC

NEOPOST

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USPS POSTAGE \$008.75⁰⁰



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041M11288443

Moore&VanAllen

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JUL 25 2019

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
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1220 Senate Street
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Columbia, SC 29211

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