

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

---

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.

---

**APPELLANT'S RETURN  
TO RESPONDENT'S MOTION TO STRIKE PORTIONS OF APPELLANT'S INITIAL  
BRIEF, DESIGNATION OF MATTER, INITIAL REPLY BRIEF, AND AMENDED  
DESIGNATION OF MATTER**

---

E. Brandon Gaskins (S.C. Bar No. 72374)  
MOORE & VAN ALLEN PLLC  
78 Wentworth Street  
Charleston, SC 29401  
(843) 579-7038

*Attorney for Appellant*

**RECEIVED**  
JUL 29 2019  
SC Court of Appeals

Appellant American Star Development SC, LLC (“American Star”) submits this return to the Motion to Strike Portions of Appellant’s Initial Brief, Designation of Matter, Initial Reply Brief and Amended Designation of Matter filed by Respondent Pulte Home Corporation n/k/a Pulte Home Company (“Pulte”). According to Pulte, a motion to substitute parties and a third amended lis pendens filed with the lower court and arguments related to those filings should be excluded from the record on appeal and American Star’s briefs, respectively. Pulte’s motion should be denied because all matter to be included in the record was presented to the lower court in accordance with Rule 210(c), SCACR.

Rule 210(c), SCACR, provides that the record shall not “include matter which was not presented to the lower court or tribunal.” Yet the matters Pulte seeks to strike (i.e., the motion to substitute parties and third amended lis pendens) were presented to the lower court. Therefore, under the plain language of Rule 210(c), SCACR, those matters and the arguments which relate to those matters should not be stricken from the record or the briefs.

Pulte attempts to avoid the clear language of Rule 210(c), SCACR, by arguing that matter submitted to the lower court after the order on appeal cannot be included in the record. Nothing in Rule 210(c), SCACR, however, supports that argument, and Pulte cites no case law to support its position either.

In fact, Pulte’s argument is inconsistent with the appellate court rules and would lead to an absurd result if adopted. Rule 208(b)(1)(C), SCACR, provides that the appellant’s initial brief shall address not only “the date and nature of the order, judgment or decision appealed from” but also any “such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal or may throw light upon the questions involved in the appeal . . . .” It also requires the initial briefs to address “any changes made in the parties by death,

substitution, or otherwise.” Rule 208(b)(1)(C), SCACR. Because such proceedings affecting the appeal or changes to the parties may often occur after the appeal is filed, it would be absurd to require a party to address such proceedings or changes in the briefs, but not allow a party to include in the record relevant materials provided to the lower court about those proceedings or changes.

Here, the record should include the motion to substitute parties to further the interests of justice to the extent it considers Pulte’s argument that American Star lacks standing as an additional sustaining ground under Rule 220(c), SCACR. Because Pulte did not raise this argument to the lower court, the Court is under no obligation to consider it. As the South Carolina Supreme Court declared in *I’On, L.L.C. v. Town of Mt. Pleasant*:

While the current rules do not require the respondent to present an issue to the lower court in order to raise it as an additional sustaining ground, an appellate court is less likely to rely on such a ground when the respondent has failed to present it to the lower court. In such cases, the appellate court would likely perceive it as being unfair or unwise to resolve a case on a ground never mentioned by the respondent prior to appeal. Stated another way, the respondent may raise an additional sustaining ground that was not even presented to the lower court, but the appellate court is likely to ignore it.

338 S.C. 406, 421, 526 S.E.2d 716, 724 (2000).

Yet if the Court is inclined to consider Pulte’s standing argument, it is only just and fair to consider other pertinent proceedings relevant to the standing issue, including the motion to substitute parties, which has since been granted by the lower court after the filing of the briefs. As such, the motion to substitute parties made to the lower court “throws light” on the standing issue and addresses a change in the parties. Those matters are, therefore, relevant and should be addressed in the briefs under Rule 208(b)(1)(C), SCACR, and included in the record under Rule 210(c), SCACR. *See Adkins v. I’On Co., LLC*, 827 S.E.2d 348 (Ct. App. 2018) (stating that it would be unfair not to consider evidence at trial in reviewing previously denied motion).

Also, inclusion of the third amended lis pendens in the record and related arguments about how its filing has mooted one of the issues on appeal in the briefs will promote judicial economy. As explained in American Star's reply brief, information provided by the Town of Mount Pleasant after the appeal commenced mooted one of the issues on appeal, and American Star amended the lis pendens accordingly. Because this matter affects the appeal, the amended lis pendens was included in the record, and the mootness of the issue was raised in the reply brief.

Despite the issue being mooted, Pulte seeks to strike the matters related to mootness and have the Court opine on a controversy that no longer exists. This approach makes little sense. If, as Pulte posits, parties cannot raise subsequent developments that moot issues on appeal to the Court's attention, then the Court will be forced to waste time and resources addressing issues that have been resolved. To avoid this result in this case, the Court should maintain the matters related to the third lis pendens and dispose of the mooted issue rather than provide a substantive decision on an issue that will have no practical impact on the case below. *See Adkins v. I'On Co., LLC*, 827 S.E.2d 348 (Ct. App. 2018) (refusing to limit review to the record as it existed at the time the circuit court denied motion to dismiss).

In sum, Pulte's motion to strike should be denied. The matters that it seeks to strike are properly before the Court and should be included in the record because they were presented to the lower court in accordance with Rule 210(c), SCACR. Their inclusion will also promote the interests of justice and judicial economy. Therefore, American Star respectfully requests that the Court deny Pulte's motion to strike.



---

E. Brandon Gaskins (State Bar No. 73274)  
MOORE & VAN ALLEN PLLC  
78 Wentworth Street

P.O. Box 22828  
Charleston, South Carolina 29413-2828  
Telephone: (843) 579-7000  
[brandongaskins@mvalaw.com](mailto:brandongaskins@mvalaw.com)

July 26, 2019  
Charleston, SC

*Attorney for Appellant  
American Star Development SC, LLC*

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**  
JUL 29 2019  
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.

**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 *Appellant's Return to Respondent's Motion to Strike Portions of Appellant's Initial Brief, Designation of Matter, Initial Reply Brief, and Amended Designation of Matter* 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  
Charleston, SC 29401  
(843) 579-7038  
brandongaskins@mvalaw.com

*Attorneys for Appellant  
American Star Development SC, LLC*

July 26, 2019  
Charleston, South Carolina

**Moore & Van Allen**

July 26, 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 regard to the above-referenced matter, enclosed for filing please find an original and seven (7) copies of **Appellant's Return to Respondent's Motion to Strike Portions of Appellant's Initial Brief, Designation of Matter, Initial Reply Brief, and Amended Designation of Matter**, together with an original and one (1) copy of a **Proof of Service**.

Please file the originals and return a filed-stamped copy of each document 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

EBG/wss

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)

**RECEIVED**  
JUL 29 2019  
SC Court of Appeals

07/26/2019  
\$004.20  
045641128841

Moore & Van Allen

Moore & Van Allen PLLC  
78 Wainwright Street  
Post Office Box 22878  
Charleston, SC 29413-2828

RECEIVED  
JUL 29 2019  
SC Court of Appeals

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

8649 12164 01

