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 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.

BRIEF OF RESPONDENT

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August 6, 2019

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STATEMENT OF ISSUES ON APPEAL

I. Whether the circuit court was correct in cancelling the lis pendens when Appellant's Amended Complaint claimed Respondent breached an alleged contractual obligation to design and build a connection street and did not allege nor seek to establish an interest affecting title to real property or encumbering the real property?

II. Whether the circuit court was correct in cancelling the lis pendens when Appellant's Amended Complaint sought a declaratory judgment that Respondent had a contractual obligation to share with Plaintiff monetary proceeds from a possible future condemnation and did not allege nor seek to establish an interest affecting title to real property or encumbering the real property?

III. Whether the circuit court's order cancelling the lis pendens filed by Appellant should be affirmed on the additional affirming ground that the Amended Complaint alleges that in July 2015 Appellant assigned all rights under the agreement giving rise to its alleged claims to Plaintiffs 211, LLC and KKMC Investments, LLC that did not appeal the circuit court's order?

IV. Whether the circuit court's order cancelling the lis pendens filed by Appellant should be affirmed on the additional affirming ground that Appellant agreed in the agreement upon which it premises all its claims that the seller sold the real property "free and clear of all encumbrances or liens"?

STATEMENT OF THE CASE

Appellant, American Star Development SC, LLC ("American Star" or "Appellant"), filed a Summons and Complaint against Defendants on April 26, 2018. **(Compl., R. pp. 14-23)** On April 6, 2018, twenty days prior to filing the Summons and Complaint, American Star filed a Lis Pendens on real property owned by Respondent Pulte Home Corporation, n/k/a Pulte Home Company, LLC ("Respondent" or "Pulte"). **(Lis Pendens, R. pp. 9-13).** On May 1, 2018, Appellant amended its Complaint to add two Plaintiffs, KKMC Investments, LLC and 211, LLC. **(Am. Compl., R. pp. 52-61).** Plaintiffs filed an Amended Lis Pendens on Respondent's real property on June 13, 2018. **(Am. Lis Pendens, R. pp. 101-105).**

Respondent and PulteGroup, Inc. answered the Amended Complaint and asserted a counterclaim for abuse of process. **(Answer and Counterclaim, R. pp. 90-100).** In its Answer and Counterclaim, Pulte raised numerous affirmative defenses including equitable estoppel, waiver, statute of limitations, unclean hands, ripeness, ratification, and statute of frauds. **(Answer and Counterclaim, R. pp. 90-100).** JW Homes, LLC also answered the Amended Complaint asserting several affirmative defenses. **(Answer, R. pp. 112-119).**

Plaintiffs filed a Second Amended Lis Pendens on August 28, 2018. **(Second Am. Lis Pendens, R. pp. 120-122).**[1] The Lis Pendens purported to provide notice that the described "real estate [is] affected by" the action. **(Lis Pendens; Am. Lis Pendens; Second Am. Lis Pendens, R. pp. 9-13, 101-105, 120-122).** The second amended Lis Pendens listed 46 separate TMS parcels, almost all residential lots, in a new residential community owned, developed, and being marketed by Pulte, that were allegedly "affected" by the lawsuit. **(Second Am. Lis Pendens, R. pp. 120-**

[1] The Lis Pendens, Amended Lis Pendens, and Second Amended Lis Pendens are collectively referred to herein as the "Lis Pendens."

122). Neither the Amended Complaint nor the Lis Pendens asserts that *title* to any real property is affected by the lawsuit.

Respondent filed a Motion to Cancel the Lis Pendens on June 22, 2018, and an Amended Motion to Cancel Lis Pendens on September 17, 2018. **(Mot. to Cancel Lis Pendens, R. pp. 106-108; Am. Mot. To Cancel Lis Pendens, R. pp. 123-125).** The Honorable R. Lawton McIntosh, Circuit Judge, heard oral arguments on the motion on September 21, 2018, taking the matter under advisement. **(Tr. 9/21/18; R. p. 215, l. 23- p. 216, l. 14).** Judge McIntosh granted the motion in a Form 4 Order filed October 1, 2018, stating that his ruling would be in a more formal order. **(Form 4 Order, R. pp. 1-2).** On November 14, 2016, the Circuit Court issued a full written Order granting the Pulte Defendants' Amended Motion to Cancel Lis Pendens (the "Order"). **(Order, R. pp. 3-8).**

One of the Plaintiffs, American Star Development SC, LLC, filed a notice of appeal on December 20, 2018. The other Plaintiffs -- KKMC Investments, LLC and 211, LLC -- did not appeal the Order.

STATEMENT OF THE FACTS

I. Overview

This case involves a contractual dispute, not a land dispute.

Appellant asserts claims based on an Agreement for the Purchase and Sale of Real Estate that was entered by Appellant with JWH Acquisitions, LLC, on February 25, 2015 (the "Agreement") **(Ex A to Amended Complaint, R. pp. 62-84).** Appellant assigned its rights under the Agreement to Plaintiffs KKMC Investments, LLC and 211, LLC [2] before the closing. These

[2] In its brief Appellant asserts that its affiliated entities, Plaintiffs KKMC Investments, LLC and 211, LLC, recently assigned their rights and interests in the litigation and Agreement to an entity

two LLCs, not Appellant, then sold the real property to JW Homes, LLC, on July 31, 2015. **(Am. Compl. ¶ 17, R. p. 55)** ("On or about July 31, 2015, 211, LLC and KKMC Investments, LLC, as assignees of American Star under the Agreement, conveyed the Primus Property to JWH, as assignee of JWH Acquisitions under the Agreement."). According to the allegations of the Amended Complaint, Appellant owns property adjacent to the Primus Property. **(Am. Compl. ¶12, R. p. 54).**

Pulte now owns the real estate subject to the Agreement. Plaintiffs allege that Pulte expressly assumed certain obligations in the Agreement or, in the alternative, is the successor to JW Homes, LLC, under the Agreement. Plaintiffs contend that Pulte and JW Homes, LLC, breached an obligation in the Agreement to design and construct a road on the real property. Plaintiffs also seek a declaratory judgment that Pulte must honor a separate provision in the Agreement specifying that the net proceeds from any future condemnation of any portion of the real property be split 50/50 with the Plaintiffs.

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named American Star SPE-2, LLC. See App. Br. 2, n. 1. Appellant states that it has filed in the circuit court a Motion to Substitute American Star SPE-2, LLC, as the sole Plaintiff and tries to have this Court not only consider that motion as granted, even though it is still pending, but also to treat all the affiliated entities as appellants by calling them all American Star. See App. Br. 2, n. 1. ("[f]or the sake of clarity, 'American Star' is used to refer collectively to all entities and their assigns."). This blurring through a single name is completely improper. Each of the entities is legally separate. Appellant cannot bootstrap its position on appeal by treating this appeal as though it presents the rights of all these affiliated entities, including one that is not even a party, when American Star Development SC, LLC, is the sole appellant. Additionally, the Motion to Substitute Parties was not filed until March 5, 2019, six months after the hearing and almost three months after Appellant filed its Notice of Appeal. Appellant's reference to that motion should be disregarded and the motion should be excluded from the record on appeal. SCACR 210(c) ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."); SCACR 208(b)(4) ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.")' See also, SCACR 209 (b) (limiting the designation of matter to materials allowed under Rule 210 (c)). Further, the "rights" of the non-appellants are irrelevant to the claims, rights, and allegations of the sole Appellant that are the basis for this appeal.

The lower court granted the Motion to Cancel the Lis Pendens because the Amended Complaint asserts contract claims that do not affect an interest in real property. The sole Appellant, American Star Development of SC, LLC, contends it is entitled to file a lis pendens on Pulte's real property even though it assigned away its rights and interests in the Agreement before the 2015 closing and does not allege claims affecting an interest in real property.

II. Allegations of the Amended Complaint

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. **(Am. Compl., ¶ 11 & at Ex A, R. pp. 54, 63-84).** The Plaintiffs base their entire lawsuit on the provisions in this contract (previously referenced as the "Agreement").

According to the allegations 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 [Appellant herein] assigned its rights, obligations, and interest under the Agreement to 211, LLC and KKMC Investments, LLC***." **(Am. Compl, ¶ 16, R. p. 55)** (double emphasis added). J. W. Homes, LLC, as assignee of J. W. Acquisitions, LLC, then closed on the purchase of the Primus Property on July 31, 2015. **(Am. Compl, ¶ 17, R. p. 55).**

Six months later, J.W. Homes, LLC, sold the Primus Property to Pulte on January 14, 2016, as part of a larger asset sale from J.W. Homes, LLC to Pulte. **(Am. Compl, ¶¶ 18-20, R. p. 55).** The Amended Complaint asserts that Pulte assumed the obligations of the J.W. Acquisitions, LLC, and J.W. Homes, LLC, under the Agreement. **(Am. Compl. ¶ 21, R. p. 56).**

The Amended Complaint complains of two things based on the Agreement. Plaintiffs (i) allege Defendants breached a provision requiring the 'buyer" to design and construct a short street on the Primus Property and (ii) seek a declaration that Pulte is bound by a provision obligating the "buyer" to split net proceeds with Plaintiffs from a possible future condemnation of any part of the Primus Property for a road right-of-way.

As to the first contention, the Amended Complaint alleges Defendants breached Section 31 of the Agreement purporting to obligate the buyer to design and construct a short access street on the Primus Property, called the "Connection." The Connection is supposed to dead end at the property line of the adjoining property.

Paragraph 31(d) of the 2015 Agreement puts specific limitations on the timing of the availability of the Connection, requiring that the adjacent property must first be developed with normal paved residential streets prior to the buyer of the Primus Property being required to provide the Connection:

> [The Connection] may not be used for traffic related to construction and development of the [adjoining properties]. Buyer will have the right to block access through the Connection to the [adjoining properties] until the [adjoining properties] have paved streets that are being used by normal passenger traffic in connection with the purchase and sale of homes or in connection with normal residential use.
>
> **(Am. Compl. at Ex. A, ¶31(d), R. p. 77).**

The Amended Complaint alleges that Appellant owns the adjoining property but does not allege that the adjoining property has been developed. **(Am. Compl., ¶12, R. p. 54)**. The adjoining property is now mostly a large pond. **(Tr. 9/21/18, R. p. 197, l. 7-19)** ("American Star's property is 95 percent a lake. All of this outlined property that you see on the aerial, this dark that you see (pointing), is a lake, not high ground.); **Hr'g Demonstrative Ex., R. p. 218; (Tr. 9/21/18, R. p.**

209, l. 5-7) ("My clients intend to fill that lake as a non-jurisdictional wetland and develop it or sell it to a developer.").

With regard to the Connection claim, the Amended Complaint requests an order of specific performance requiring Pulte "to design, seek approval for, and construct the Connection or, alternatively, damages for the loss in value of the Adjacent Property." **(Am Compl, ¶ 35, R. pp. 57-58).** The Amended Complaint does ***not*** seek to establish or enforce an easement across the Primus Property; rather, Plaintiffs seek to enforce the alleged contractual obligation to design and construct the Connection or, in the alternative, to recover damages for the loss in value to its adjoining property if the Connection is not built. See **(Am. Compl, ¶35, R. pp. 57-58)**; **(Am. Compl., ¶ 42, R. p. 58)** ("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."); **(Am Compl., ¶ 54, R. p. 60)**. (" As a result of JWH's breach of Section 3l(b) of the Agreement, Plaintiffs are entitled to damages for the loss in value of the Adjacent Property."); **(Am. Compl., Prayer for Relief (a), R. p. 60)** (requesting "[t]hat 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; (ii) or, alternatively, award damages to American Star for the loss in value of the Adjacent Property either against PulteGroup, PHC, and/or JWH").

The second provision in the Agreement at issue allegedly imposes an obligation on the buyer to split net proceeds with the seller from any future condemnation of a portion of the Primus Property for the right of way of an extension of Hungryneck Blvd n/k/a Billy Swails Parkway. **(Am. Compl., ¶¶ 43-49 & at, Ex. A, ¶ 13, R. pp. 58-59, 71).** In its third cause of action, Plaintiffs allege they "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." **(Am. Compl., ¶ 59, R. p. 21)**; see also, **(Am. Compl., Prayer for Relief (b), R. p. 60)** (requesting "[t]hat 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. . ."). The Amended Complaint does not allege that the referenced condemnation has occurred or is imminent.

The Agreement did not reserve to the seller any rights in the real estate sold; it required the seller to convey the Primus Property "free and clear of all liens and encumbrances except [the Permitted Exceptions.]" **(Am. Compl., Ex. A, ¶4(b)(i) and ¶8(a)(v), R. pp. 64, 67)**. [3] The Agreement did not reserve any liens, encumbrances, or easements in favor of the seller with respect to the alleged obligation to design and construct the Connection or the alleged obligation to split net condemnation proceeds in the future.

Pulte raised several factual and legal defenses in its Answer to the Amended Complaint including that American Star, not J. W. Homes, LLC, or Pulte, submitted the site plan for the Primus Property to the Town of Mount Pleasant without the Connection, the short street it now asserts Pulte has an obligation to construct.[4]

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[3] The "Permitted Exceptions" are defined as "those enumerated in Exhibit 'C'." **(Am. Compl., Ex. A, ¶4(b)(i), R. p. 64)**. Exhibit "C" to the Agreement was not part of the copy of the Agreement attached to the Amended Complaint, but American Star does not contend that the Connector or an interest in a portion of future condemnation proceeds was listed in the "Permitted Exceptions."

[4] The Agreement specifies that buyer "agrees this Connection will be depicted on Buyer's Sketch Plan for the Property (as distinguished from any Sketch Plan applicable to the [adjoining properties]) that is ultimately approved by the Town." **(Am. Compl., Ex. A,, ¶31(b), R. pp. 76-**

Pulte filed its Motion to Cancel Lis Pendens on June 22, 2018, and its Amended Motion to Cancel Lis Pendens on September 17, 2018. **(Mot. to Cancel Lis Pendens, R. pp. 106-108); (Am. Mot. to Cancel Lis Pendens, R. pp. 123-125)**. On November 14, 2016, the Circuit Court issued its full written order granting the Pulte Defendants' Amended Motion to Cancel Lis Pendens (the "Order"). **(Order, R. pp. 3-8).** American Star appealed that Order. The other plaintiffs - KMMC Investments, LLC and 211, LLC - chose not to appeal.

III. The Order

The Order canceled the Lis Pendens on the grounds there are no allegations in the Amended Complaint affecting an interest in real property nor concerning title to any of the 46 lots described in the Lis Pendens. See **(Order, R. pp. 5-6)** (citing S.C. Code § 15-11-10 (lis pendens only authorized in "an action *affecting the title* to real property.") and Carolina Park Associates, LLC v. Marino, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012) ("if the court finds that the lis pendens does not 'affect [ ] the title to real property' as required under § 15–11–10, the lis pendens is not authorized by the statute and the statute does not limit the court's power to cancel it.")). In the Order, the Court directed the Clerk of Court "to mark the Second Amended Lis Pendens filed August 28, 2018, the Amended Lis Pendens filed June 13, 2018, and the Lis Pendens filed April 6, 2018 (Court File No. 2018-LP-10-336), as cancelled and dissolved ten (10) days from the date of entry of this Order." **(Order, R. p. 8)**. The Order was entered on November 16, 2018, with the clerk of court giving written notice of the entry of the Order on November 20, 2018. **(Order, R. pp. 3-8).**

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77); yet, it was American Star that submitted the original subdivision site plan that did not include the Connection. **(Am. Compl., Ex. A, ¶11(b), R. p. 70)** ("Seller filed an application on February 18, 2015, seeking Final Rezoning of the Property for a Planned Unit Development seeking an allowed density of 73 single family units.").

STANDARD OF REVIEW

A lis pendens must be accompanied, within twenty days of filing, by a complaint alleging a cause of action affecting title to real property. See S.C. Code § 15-11-10 (lis pendens limited to "an action affecting the title to real property"); Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 30, 567 S.E.2d 881, 896 (Ct. App. 2002) (stating that a lis pendens ". . . is premised upon and must be filed in time [and] in conjunction with an underlying complaint involving an issue of property."); Carolina Park, at, 9, 732 S.E.2d at 880 (finding that once claim for constructive trust was dismissed, lis pendens was properly cancelled because the plaintiffs "have no claim affecting the title to real property and the lis pendens is not 'authorized by this chapter.'"); Theisen v. Theisen, 394 S.C. 434, 447, 716 S.E.2d 271, 277 (2011) (a lis pendens' "validity depends not only on the timeliness of its filing in relation to the underlying complaint, but on the validity of the complaint as well").

The South Carolina Supreme Court has explained that a circuit court has the power to cancel a lis pendens "if the court finds that the lis pendens does not 'affect[ ] the title to real property' as required under § 15–11–10. . ." Carolina Park at 9, 732 S.E.2d at 880. Only if the allegations of the Complaint are sufficient to support a lis pendens, should the lis pendens remain in place for the duration of the lawsuit. See id. and S.C. Code § 15-11-40 (providing for cancelation of a lis pendens when the underlying case is settled, discontinued, abated, or dismissed).

Respondent agrees with Appellant that the question of whether the Amended Complaint alleges a claim that meets the requirements to sustain a lis pendens on the 46 parcels under S.C. Code § 15-11-10 is a legal question subject to de novo review by this Court.

ARGUMENT

The circuit court correctly cancelled the Lis Pendens. The Amended Complaint does not allege claims that affect the title to the real property. Nor does the Lis Pendens claim that title to the real property is affected by the lawsuit.

The filing of a lis pendens is an extraordinary privilege granted by statute. See South Carolina Nat'l Bank v. Cook, 291 S.C. 530, 532, 354 S.E.2d 562, 563 (1987) (finding a complaint filed more than twenty days after the filing of the lis pendens renders the lis pendens invalid); see also, Pond Place Partners, at 17, 567 S.E.2d at 889. Because the filing of a lis pendens is an extraordinary privilege, *strict* compliance with the statute is required. See id. In this case, the statutory requirements are not met because the allegations of the Amended Complaint do not claim that *title* to any real property is affected by the action.

South Carolina Code 15-11-10, only allows the filing of lis pendens in "an action **affecting *the title* to real property.**" (emphasis and double emphasis added). See S.C. Code §15-11-10; see also generally, Lebovitz v. Mudd, 293 S.C. 49, 54, 358 S.E.2d 698, 701 (1987) (holding a notice of lis pendens was properly filed because "[a]n action to set aside a fraudulent conveyance is one 'affecting title to real property'"). Our Supreme Court recognizes a circuit court's authority to cancel a lis pendens when the action does not affect the *title* to real property. See Carolina Park, at 9, 732 S.E.2d at 880 ("if the court finds that the lis pendens does not 'affect [ ] the title to real property' as required under § 15–11–10, the lis pendens is not authorized by the statute and the statute does not limit the court's power to cancel it.").

The Lis Pendens purports to provide notice to third parties that title to 46 parcels owned by Pulte are affected by the case. However, the allegations of the Amended Complaint do not

affect the title to those 46 parcels. Therefore, the filing of the Lis Pendens was improper and inconsistent with the purposes of the lis pendens statute:

> The lis pendens mechanism is not designed to aid either side in a dispute between private parties. Rather, lis pendens is designed primarily to protect unidentified third parties by alerting prospective purchasers of property as to what is already on public record, i.e., the fact of a suit involving property. Thus, it notifies potential purchasers that there is pending litigation that *may affect their title to real property* and that the purchaser will take subject to the judgment, without any substantive rights.

Pond Place Partners, at 17, 567 S.E.2d at 889 (emphasis added) (quoting 51 Am.Jur.2d Lis Pendens § 2 (2000)).

Appellant asserts there are two claims that justify its exercising the extraordinary privilege of filing a lis pendens: (i) its request for specific performance premised on its contention that the Agreement requires Pulte to design and build the Connection on a portion of the Primus Property, and (ii) its request for a declaratory judgment that the Agreement requires Pulte to pay the Plaintiffs a portion of the condemnation proceeds in the event that any portion of the Primus Property is condemned in the future for the extension of Hungryneck Boulevard n/k/a Billy Swails Parkway. As discussed in detail below, neither of these claims asserts an interest affecting *title* to real property and the circuit court correctly cancelled the lis pendens.

I. American Star's allegation that Pulte should be required to design and build the Connection on its own property is not an allegation affecting title to real property.

a. A claim seeking to require Pulte to design and construct a street on Pulte's real property or, in the alternative, to recover damages for alleged loss of value of the adjoining property if there is no street, does not affect title to real property.

American Star contends the Defendants breached a provision in the Agreement for the buyer to design and construct an access road on the Primus Property, described by American Star in the Amended Complaint as the "Connection." **(Am. Compl., ¶¶ 27-35 & at Ex. A, ¶31(b), (c),**

and (d), R. pp. 57-58, 76-77). Contrary to American Star's contention, its claim does not assert any interest affecting title to any of the 46 lots encumbered by the Lis Pendens.

This Court has recognized a limited number of circumstances where a lis pendens is proper, including the following: "actions attempting to set aside a fraudulent conveyance of real property," "actions to establish a constructive trust over real estate," "actions to quiet title," "actions to establish the existence of an easement," "actions to reform deeds to resolve a boundary dispute," certain "actions for specific performance"[5] seeking an order that a property be leased or sold to the plaintiff, and "actions for mortgage foreclosures." Pond Place Partners, at 17–18, 567 S.E.2d at 889–90 (citations omitted). The Amended Complaint does not allege any of the claims enumerated by this Court in Pond Place Partners. While Appellant asserts a claim for specific performance,

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[5] The Court in Pond Place Partners did not categorically hold that title to real property is affected in all actions wherein a party seeks specific performance. Such a reading of Pond Place Partners is flawed in that the remedy of specific performance is not limited to real property cases. See e.g. S.C. CODE § 36-2-716(1) (South Carolina's version of the Uniform Commercial Code providing that "[s]pecific performance may be decreed where the goods are unique or in other proper circumstances."). Additionally, it is worth noting that after including actions for specific performance in the list of categories of cases that are included among the ranks of cases that affect title to real property, the Court in Pond Place Partners cited three out-of-state cases, all of which involved cases where the plaintiff was seeking specific performance of a contract affecting title to real property, unlike this case. See Pond Place Partners, at 18, 567 S.E.2d at 890 (citing Panfel v. Boyd, 187 Ga. App. 639, 371 S.E.2d 222 (1988); Hauptman v. Edwards, Inc., 170 Mont. 310, 553 P.2d 975 (1976); and Wendy's of South Jersey v. Blanchard Mgmt. Corp. of N.J., 170 N.J.Super. 491, 406 A.2d 1337 (Ch.Div.1979)). All three decisions cited in Pond Place Partners included a claim for specific performance that involved ownership of real property and clearly affected title. See Panfel, at 646, 371 S.E.2d at 229 ("In the case sub judice, appellants requested specific performance of the contract requiring the property involved to be sold to them."); Hauptman, at 317, 553 P.2d at 979 (plaintiff sought specific performance of an option to lease 1600 acres and the court found that the filing of a lis pendens was privileged); Wendy's at 493, 406 A.2d at 1338 (in ". . . an action for the specific performance of an agreement to purchase real property" the court held the filing of a lis pendens was privileged).

that remedy, as alleged by Appellant, does not seek to compel a conveyance, establish an easement, establish or foreclose a lien, or assert any other interest in real property. It seeks the performance of a contract to construct an improvement or, in the alternative, damages if the improvement is not constructed.

Despite the relentless efforts of Appellant in its brief to stretch the allegations of its pleading, the Amended Complaint, plain and simple, does ***not*** seek to establish or enforce an easement across the Primus Property. It does not even mention the word "easement." Rather, Appellant seeks to enforce the alleged contractual obligation to design and construct the Connection or, in the alternative, to recover damages for the loss in value to its adjoining property if the Connection is not built. See **(Am. Compl, ¶ 35, R. pp. 57-58)** (requests an order of specific performance requiring Pulte "to design, seek approval for, and construct the Connection or, alternatively, damages for the loss in value of the Adjacent Property [owned by American Star]."); **(Am. Compl., ¶ 42, R. p. 58)** ("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."); **(Am Compl., ¶ 54, R. p. 60)**. (" As a result of JWH's breach of Section 3l(b) of the Agreement, Plaintiffs are entitled to damages for the loss in value of the Adjacent Property."); **(Am. Compl., Prayer for Relief (a), R. p. 60)** (requesting "[t]hat 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; (ii) or, alternatively, award damages to American Star for the loss in value of the Adjacent Property either against PulteGroup, PHC, and/or JWH").

Additionally, as this Court noted in Pond Place Partners, "an action 'affecting the title to real property' clearly allows the filing of a lis pendens by an interested party in order to protect

their ***ownership interest*** in the property subject to the litigation." Id. at 17, 567 S.E.2d at 889 (double emphasis added). Here, American Star has not alleged any ownership interest in the Primus Property.

American Star argues that this Court should liberally construe the lis pendens statute that our courts have repeatedly stated must be strictly construed. See App. Br. 8-9 (arguing that the statute providing for the filing lis pendens when the claim affects *title* to real property should be broadly interpreted to include any claim ". . . to establish rights and liabilities incidental to ownership of real property"). In urging this Court to ignore the directive to strictly interpret the lis pendens statute, Appellant cites to a single federal district court opinion and one section of *Corpus Juris Secundum* ("CJS"). Neither of these nonbinding authorities supports Appellant's argument that its request for an order requiring Pulte to build a road on its own property or, alternatively, for damages justifies the filing of a lis pendens.

In Finley v. Hughes, 106 F. Supp. 355 (E.D.S.C. 1952), cited by Appellant, United States District Court Judge Wyche found that the plaintiff's complaint asserting an "equitable lien" against certain real property was a claim "affecting title" to real property such that the filing of a lis pendens was not improper. Id. at 356 (a claim seeking to establish a constructive trust over real property allegedly purchased using funds held in trust for the plaintiff "is a claim which affects the title to the real property described in the complaint, and for this reason the motion for the cancellation of the lis pendens should be denied"). The district court in Finley, in applying the 1942 version of South Carolina's lis pendens statute[6], did not apply a relaxed view of whether the

[6] "Section 432, Code of Laws of South Carolina, 1942, provides that: 'In an action affecting the title to real property, the plaintiff, * * * may file with the clerk of each county in which the property is situated, a notice of the pendency of the action, * * *" Id. at 356.

claim affected title. Instead, the district court determined that because the claim sought an *equitable lien* on the property, title was affected. American Star has no basis for asserting an equitable lien and did not allege an equitable lien on any of the 46 parcels it encumbered with the Lis Pendens. Finley has no bearing on this appeal.

The secondary source cited by Appellant—54 C.J.S. Lis Pendens § 10 - is just as inapplicable. First, neither the South Carolina statute nor a single South Carolina case is referenced by the treatise. Moreover, the sentence quoted by Appellant states that in addition to questions of title and possessory interest, ". . . litigation that does not seek to change the ownership of land in any way but does involve a determination of certain rights and liabilities incident to ownership" may support the filing of a lis pendens. Id.

American Star takes this loose phrasing and runs with it even though the only two out-of-state cases cited by CJS for this generalization do not support the arguments American Star pitches on it. See Kerns v. Kerns, 53 P.3d 1157, 1158 (Colo. 2002) ("The constructive trust sought in the out-of-state action at issue in this case affects title to real property in Colorado. Accordingly, we now make the rule absolute."); Paulson v. Lee, 229 Mont. 164, 167, 745 P.2d 359, 360–61 (1987) (finding that an action to stop the construction, sale, or lease of a four-unit dwelling was sufficient to support the filing of a lis pendens where the lis pendens statute provided for a lis pendens in "In an action affecting the title or ***right of possession*** of real property" (citation omitted))(double emphasis added). The statute in Montana that allows the filing of a lis pendens is much broader

than the South Carolina statute and provides for a lis pendens where the action affects title or *possession* of real property.[7]

Even though its Amended Complaint does not seek to establish an easement, Appellant cites precedent that a lis pendens is proper in an action seeking to enforce an easement. See App. Br., 16-17. American Star boldly claims its Amended Complaint seeks to establish an easement despite the word not ever being mentioned in the pleading nor it making any allegations asserting an interest in the title to the real property. Further, if the seller wanted to reserve an easement, it could have done so, yet the Agreement attached to the Amended Complaint contains no such reservation. It likewise makes no mention of an easement.

Appellant relies heavily on Smith v. Miller & Smith at Fembrooke, LLC, 84 Va. Cir. 64 (Cir. Ct. Fairfax Cty. 2011), but this decision is far from being on point, even if we disregard it is a trial court opinion without precedential value. The plaintiff in that case did not seek an order of specific performance requiring the defendant to construct a road on the defendant's property. Instead, the plaintiff in Smith sought an order requiring the delivery and recording of a deed of trust *encumbering* the property and securing an obligation to construct a roadway. Id. Here, the Amended Complaint does not seek to impose a mortgage (South Carolina's equivalent of a deed of trust) on the Primus Property to *secure* the alleged obligation to construct the street. Instead, Appellant seeks an order requiring the design and construction of the street.

For these reasons, this Court should reject Appellant's arguments both to interpret the lis pendens statute liberally and to find its request for an order of specific performance for Pulte to

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[7] Compare Mont. Code Ann. § 70-19-102 (providing for a lis pendens "[i]n an action affecting the title *or right of possession* of real property" (italics added)) with S.C. Code §15-11-10 (limiting the filing of lis pendens to "an action affecting the *title* to real property." (italics added)).

design and construct the Connection affects an interest in real property. The Order cancelling the Lis Pendens based on the contractual provision to design and construct the Connection should be affirmed.

b. American Star does not allege that the conditions precedent in the 2015 Agreement that would give it an interest in the use of the Connection have occurred.

Regardless of whether American Star's causes of action related to the Connection affect an interest in real property, which they do not, the Amended Complaint does not allege the prerequisites to a right of use have occurred. Specifically, paragraph 31(d) of the Agreement puts limitations on the timing of the availability of the Connection, requiring that the adjacent property must be developed before any use of the Connection will be allowed. The adjoining property must have normal paved residential streets prior to the buyer of the Primus Property being required to provide the Connection:

> [The Connection] may not be used for traffic related to construction and development of the [adjoining properties]. Buyer will have the right to block access through the Connection to the [adjoining properties] until the [adjoining properties] have paved streets that are being used by normal passenger traffic in connection with the purchase and sale of homes or in connection with normal residential use.

(Am. Compl. at Ex. A, ¶31(d), R. p. 77).

For this reason, whatever right that the Agreement may have granted the seller with respect to the Connection may not be implemented until the adjoining property has "paved streets that are being used by normal passenger traffic in connection with the purchase and sale of homes." The Amended Complaint fails to allege the conditions precedent to this right of use and, therefore, fails to support a lis pendens based on any alleged right of use.

II. American Star's purported contractual right to share in future condemnation proceeds is not an interest affecting title to real property.

American Star also asserts that the Lis Pendens is proper because a provision in the Agreement allegedly imposes an obligation on the buyer to split net condemnation proceeds with the seller if there is a future condemnation of a portion of the Primus Property for the right of way of an extension of Hungryneck Blvd. **(Am. Compl., ¶¶ 43-49 & at, Ex. A, ¶ 13, R. pp. 58-59, 71).** This claim is pleaded as the third cause of action in the Amended Complaint. Plaintiffs allege they "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." **(Am. Compl., ¶ 49, R. p. 59)** (double emphasis added); see also, **(Am. Compl., Prayer for Relief (b), R. p. 60)**.

This declaratory cause of action does ***not*** seek to impose or claim an interest on or in the Primus Property nor does it affect title to the Primus Property. It asks only for a declaratory judgment as to the parties' respective contractual rights to the potential future proceeds from a yet-to-happen condemnation. **(Am. Compl., ¶ 49, R. p. 59)**. The Amended Complaint does not allege that the referenced condemnation has occurred or is imminent.

The circuit court correctly held American Star's right or interest, if any, in future condemnation proceeds concerns personal property, not an interest affecting title to real property. A purported right to the proceeds resulting from the disposition of real property is a contingent interest in personal property. Martin & Earle v. Maxwell et al., 86 S.C. 1, 67 S.E.2d 962, 964 (1910) ("Since under the will the trustee therein named was to sell the land and divide the proceeds of the sale after the death of the life beneficiary, the interest of F. B. Maxwell and the other children

of Mrs. Maxwell is a contingent interest, not in the land, but in the proceeds of the land, which is personalty."); Wood v. Reeves, 23 S.C. 382, 387 (1885) (interest in proceeds from future sale of real property cannot be mortgaged.).

Appellant does its best to try to distinguish Martin & Earle but ultimately fails to provide a basis for ignoring this determination of the Court. It asserts that the opinion's ruling that a contingent right to receive proceeds on the disposition of real property is personal is dicta. Appellant also argues the discussion should be ignored because the case did not involve a lis pendens. However, Appellant does not cite a single South Carolina case ruling that a contingent interest in the proceeds of the sale of real property is an interest affecting title, is an encumbrance, or even an interest in the property.

Appellant also asks this Court to ignore Caulk v. Orange County, 661 So. 2d 932, 934 (Fla. 5th Dist. App. 1995), one of the cases cited by the circuit court. See id. (holding a covenant purporting to reserve to a grantor a right to condemnation proceeds could not run with the land because "[t]he only thing the covenant in the instant case really 'touches" and "concerns" is the intangible personal property, namely cash, that may be paid by a condemnor."). Appellant points to J.H. Williams Oil Co., Inc. v. Harvey, 872 So. 2d 287, 289 (Fla. 2d Dist. App. 2004) in support of its argument that its purported claim to a share of future condemnation proceeds runs with the land.

In Williams Oil the Florida District Court of Appeals distinguished Caulk because the parties in Williams Oil actually encumbered the property with language in a recorded deed and recorded reservation agreement relating to future condemnation proceeds. See id. ("the language in the deeds and the reservation agreement at issue here clearly indicates that the parties intended to bind all successors and assigns and that the subsequent conveyance was subject to this

reservation."). Were that the case here - i.e., if American Star was asking the court to enforce language in a deed or a restrictive covenant that runs with the land—then this case would affect title to real property. However, that is not so. The deed to the Primus Property did not contain any such wording nor was any similar restrictive covenant recorded at the time of the conveyance.

In arguing that the alleged contingent personal right to condemnation proceeds is sufficient to support the filing of the Lis Pendens, Appellant cites to paragraph 13(a) of the Agreement, but this section does not support Appellant's argument. This section states that "[t]he parties shall memorialize Seller's interest in the condemnation proceeds by means of a recordable instrument, the form of which is to be agreed upon during the Buyer's Inspection Period, and such instrument shall be signed by the parties and recorded at the Closing." See **(Am. Compl., Ex. A ¶13 (a), R. p. 71)**. For some unexplained reason the seller did not seek or insist upon such a recordable interest that *was to be signed and recorded at closing*, but instead now seeks to unilaterally impose one four years after closing against a subsequent buyer.

Appellant incorrectly argues that the alleged personal interest in condemnation proceeds is somehow converted to an interest affecting title by this provision of the Agreement. Appellant's argument that this sentence converts the alleged personal interest into an interest running with the land should be rejected for multiple reasons.

First, Appellant's own allegations are inconsistent with its argument on appeal. In the Amended Complaint, Appellant does not allege that the language of paragraph 13(a) creates an interest affecting title to real property. The Amended Complaint does not seek an order requiring the recording of any document or a judgment that its alleged interest in possible future condemnation proceeds must be memorized by a recorded document. In fact, because the language of the Agreement stated that the recording would happen "at Closing," which occurred on or about

July 31, 2015, the contract language cannot be effectuated by a lawsuit years after the closing. See **(Am. Compl. ¶17, R. p. 55)** (alleging closing took place on or about July 31, 2015).

American Star calls upon West v. Newberry Elec. Co-op., 357 S.C. 537, 543, 593 S.E.2d 500, 503 (Ct. App. 2004) to lend help to its argument an alleged personal interest in possible future condemnation proceeds is somehow converted to an interest in land because section 13(a) of the Agreement allowed the parties to memorialize the agreement to split proceeds by a recorded document. In West, this Court found that a *written easement* that contained several restrictive covenants and indicated it was binding on the successors and assigns forever, was a covenant running with the land even though the instrument had not been properly recorded. Unlike this case, West involved an *easement*. Further, the wording the parties used in the easement showed the parties intended that the covenant run with the land and that it touched and concerned the land[8]:

> **The very language of the 1955 easement reveals it to be a restrictive covenant that runs with the land.** In the agreement, NEC promises to relocate the power line should the property ever "be developed." **That agreement applies to the land.** While the agreement does not specify whether this promise was to be honored only with respect to the Matthews, **it does envision the future of the land** and thus applies to the Wests.
>
> Moreover, **the restrictive covenants in the 1955 easement touch and concern the subject property**. The Matthews insisted upon several **conditions in order to maintain the safety and value of the property**. The subject of the covenants is a power line connected to and crossing over the land. **Adherence to the covenants by NEC directly affects the nature and value of the easement** to both NEC and the Wests. The covenants in the easement also **restrict the manner in which NEC can use the easement**. The exact location of the easement on the property is not described in the easement, but its possible relocation is contemplated. ***The covenants were obviously intended to touch and concern the subject property***.

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[8] A restrictive covenant runs with the land, and is thus enforceable by a successor-in-title, if the covenanting parties intended that the covenant run with the land, and the covenant touches and concerns the land. Houck v. Rivers, 316 S.C. 414, 450 S.E.2d 106 (Ct. App.1994); Charping v. J.P. Scurry & Co., 296 S.C. 312, 372 S.E.2d 120 (Ct.App.1988) (citing Epting v. Lexington Water Power Co., 177 S.C. 308, 181 S.E. 66 (1935), and Cheves v. City Council, 140 S.C. 423, 138 S.E. 867 (1927)).

> While the language of the easement does not expressly state the covenants were intended to touch and concern the subject property, that is clearly implied.

Id. at 542–43, 593 S.E.2d at 503 (internal citations omitted) (emphasis and double emphasis added).

As discussed in detail above, the right to condemnation proceeds is a personal right, which does not touch and concern land. The alleged right to share in condemnation proceeds does not restrict the use of land or restrict the nature and value of any easement. Contrary to the argument it makes in its brief, the Amended Complaint does not even allege that the alleged contractual right to share condemnation proceeds touches and concerns the land.

American Star also asserts that ". . . an action to establish rights and liabilities as to the disposition of real property and the resulting proceeds involves a determination of rights and liabilities incident to ownership and, therefore, affects title to real property." App. Br., 9. American Star mischaracterizes its claim by referring to it as an action to establish rights and liabilities as to the *disposition* of real property. There is no claim in this case seeking to control the disposition of the Primus Property. Indeed, its claim anticipates a possible future disposition—condemnation—that it does not contest. Its declaratory judgment involves an alleged dispute over the disposition of the proceeds, not over the disposition of the land.

American Star's arguments that its claims interfere with the right to sell the Primus Property and therefore affect an interest in real property are also misplaced. American Star relies on two cases and a CJS section stating that ownership of property includes the right to sell. Id. (citing Painter v. Town of Forest Acres, 231 S.C. 56, 60, 97 S.E.2d 71, 73 (1957); Huguenot Mills v. Jempson & Co., 68 S.C. 363, 365, 47 S.E. 687 (1904); 73 C.J.S. Property § 48). These authorities are inapposite.

American Star has not asserted an ownership right to sell the Primus Property. American Star has merely asserted a contractual right to receive a share of proceeds from any condemnation of certain property. Were any of these parcels condemned, American Star would not be considered a condemnee or landowner, and thus the disposition of the property would not involve American Star. See S.C. Code §28-2-30 (6) & (12) ("'Condemnee' means a person or other entity who has a record interest in or holds actual possession of property that is the subject of a condemnation action" . . . "'Landowner' means one or more condemnees having a record fee simple interest in the property condemned or any part thereof, as distinguished from condemnees who possess a lien or other nonownership interest in the property; where there are more than one, the term means the condemnees collectively, unless expressly provided otherwise.").

American Star asserts that it is seeking a declaratory judgment that the Agreement requires the owner of the Primus Property to share condemnation proceeds with Plaintiffs is an action concerning an encumbrance affecting title. In so arguing, American Star states "because American Star's action seeks to establish an encumbrance on the Primus Property through its claim to future condemnation proceeds, it affects title to the Primus Property and meets the statutory requirements" of the lis pendens statute. See App. Br., 10-11.

However, again, the Amended Complaint includes no such claim. There is no cause of action seeking to establish an "encumbrance." Instead, the Amended Complaint seeks declaratory judgment as to the meaning of a contract provision requiring Pulte to share any future condemnation proceeds. See **(Am. Compl., ¶ 49, R. p. 59)** (Plaintiffs allege they "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."); **(Am. Compl., Prayer**

for Relief (b), R. p. 60) (requesting "[t]hat 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. . .").

Because Appellant's claim for a share of any future condemnation proceeds is a claim to share personal property, not real property, and does not affect the disposition in a possible future condemnation nor seek to impose an encumbrance on the real property, the claim does not affect title to any real property. The circuit court's cancelation of the Lis Pendens on the ground the declaratory judgment over the contractual provision addressing condemnation proceeds does not affect an interest in real property should be affirmed.

III. The circuit court should be affirmed on the additional affirming ground that American Star's Lis Pendens was properly cancelled because American Star assigned any right it had under the 2015 Agreement to 211, LLC and KKMC Investments, LLC in July 2015, neither of which are appellants.

This Court may affirm the circuit court on additional arguments that were not the stated basis for the circuit court's decision, provided the basis for the argument appears in the record. See generally, I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("The appellate court may review respondent's additional reasons and, if convinced it is proper and fair to do so, rely on them or any other reason appearing in the record to affirm the lower court's judgment."); SCACR 220(c) ("The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal."). As explained herein, there are additional sustaining grounds upon which this Court could affirm the circuit court.

The Amended Complaint alleges that "subsequent to entering into the [2015] Agreement but before the closing on the purchase of the Primus Property, ... ***American Star assigned its***

***rights, obligations, and interest under the [2015] Agreement to 211, LLC and KKMC Investments, LLC.*"** **(Am. Compl, ¶ 16, R. p. 55)** (double emphasis added). Generally, "parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise." Gary v. Lowcountry Med. Transport, Inc., 424 S.C. 18, 22, 817 S.E.2d 291, 293–94, (Ct. App. 2018), *reh'g denied* (Aug. 16, 2018), *cert. denied* (Jan. 10, 2019) (quoting Postal v. Mann, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App. 1992)).

In this appeal, American Star purports to take a position contradictory to that taken in its pleadings. Specifically, American Star asserts that the Lis Pendens should not have been cancelled because it seeks an adjudication affecting title. Both alleged interests—the interest in possible future condemnation proceeds and the interest in Pulte building a connection road on its own property—arise from the Agreement. By its own pleadings, American Star has no rights or interests under the Agreement. "The purpose of an assignment is to divest the assignor of a right. Thus, once a valid and unqualified assignment is made, all interests and rights of the assignor are transferred to the assignee..." 6 Am Jur 2d Assignments § 122. Therefore, even if this Court determined that the claims discussed above affected title to real property, even though they do not, the Court should still affirm the circuit court because the only appellant assigned any rights under the Agreement to the other two entities four years ago.

IV. The circuit court should be affirmed on the additional affirming ground that the Lis Pendens was properly cancelled because Appellant cannot assert an interest in the real property as a matter of law. The Agreement that is the basis for Appellant's claims specifies the seller conveyed the Primus Property free and clear of encumbrances and liens.

All of Appellant's claims in this lawsuit arise out of the Agreement. The Agreement did not reserve to the seller any rights in the real estate sold; it required the seller to convey the Primus Property "free and clear of all liens and encumbrances except the Permitted Exceptions." **(Am.**

Compl., Ex. A, ¶4(b)(i) and ¶8(a)(v), R. pp. 64, 67). [9] The Agreement did not reserve any liens, encumbrances, or easements in favor of the seller with respect to the alleged obligation to design and construct the Connection or the alleged obligation to split net condemnation proceeds in the future. Because the Agreement upon which American Star bases its claims specifically provided that the Primus Property was to be conveyed free and clear of all liens and encumbrances, American Star cannot now claim that Agreement gives it rights that are an interest affecting title to real property. See generally, Pearson v. Hilton Head Hosp., 400 S.C. 281, 295, 733 S.E.2d 597, 604 (Ct. App. 2012) (("[A] party may not 'rely on the contract when it works to its advantage and repudiate it when it works to its disadvantage.'") (citations omitted)). Therefore, the Court should affirm the circuit court on the additional sustaining ground that the Agreement required the Primus Property to be conveyed free and clear of any interest affecting title to real property, which necessarily excludes any later alleged interest in or encumbrance on the Primus Property based on the Agreement.

CONCLUSION

For the reasons discussed above, the Order of the circuit court cancelling the Lis Pendens should be affirmed.

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[9] The "Permitted Exceptions" are defined as "those enumerated in Exhibit 'C'." **(Am. Compl., Ex A, ¶4(b)(i), R. p. 64)**. Exhibit "C" to the 2015 Agreement was not part of the copy of the 2015 Agreement attached to the Amended Complaint, but American Star does not contend that the Connector or an interest in a portion of future condemnation proceeds was listed in the "Permitted Exceptions."

Respectfully submitted,

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PULTE HOME COMPANY, LLC

August 6, 2019
Charleston, South Carolina

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 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.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of Respondent complies with Rule 211 (b), SCACR.

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August 6, 2019
Charleston, South Carolina