

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 REPLY TO RESPONDENT'S RETURN
TO APPELLANT'S MOTION TO SUBSTITUTE PARTY**

E. Brandon Gaskins (S.C. Bar No. 72374)
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Attorney for Appellant

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Pursuant to Rule 240(f) of the South Carolina Appellate Court Rules, Appellant American Star Development SC, LLC (“American Star”) submits this Reply to Respondent’s Return to Appellant’s Motion to Substitute Party. As explained below, substitution should be permitted to allow for a ruling on the merits and promote judicial economy.

ARGUMENT

In its continuing attempt to avoid a ruling on the merits, Respondent mistakenly claims that substitution should not be permitted because American Star did not assign anything to American Star SPE-2, LLC. However, American Star assigned to American Star SPE-2, LLC all of its rights and interests to this appeal. (App. Mot. Substitute, Ex. A – Assignment of Claims and Agreement ¶ 2.) Accordingly, the substitution should be permitted because American Star SPE-2 is American Star’s successor in interest to the appeal.

To the extent that Respondent argues that American Star cannot assign rights to the appeal because it lacks standing, Respondent ignores the fact that American Star was named as the plaintiff in this action as the purported owner of the adjacent property to be served by the access road in dispute. Although American Star SPE-2, a special purpose entity created by American Star’s members, actual owns the adjacent property, the belief that American Star was the owner was an honest and unintentional mistake. The motion to substitute seeks to correct that mistake, and substitution should be permitted to avoid an “unnecessary procedural dismissal of a lawsuit the court should resolve on the merits.” *See Patton v. Miller*, 420 S.C. 471, 488, 804 S.E.2d 252, 261 (2017) (noting that substitution of a party should be permitted when there has been an honest mistake).

Respondent’s opposition to the substitution is nothing more than an attempt to prevail on a technicality rather than the merits, and it will not be prejudiced by the substitution. The parties

have fully briefed the issues on appeal, and the substitution of American Star does not raise any new issues. Although Respondent claims that the substitution will prejudice Respondent by effectively mooting its standing argument, which was not raised below, this is not the type of prejudice that would justify denial of substitution. *See id.* at 491, 804 S.E.2d at 262 (ruling that substitution of party was not prejudicial solely because the defendant was forced to defend the merits of a valid claim).

It is fundamentally unfair and disingenuous for Respondent to claim prejudice when it failed to raise American Star's alleged lack of standing to the trial court. If Respondent had raised the issue below, the substitution and amendment of the complaint could have been easily effected to resolve all issues of standing prior to any appeal. Yet Respondent waited until the appeal to raise the standing issue, and it now seeks to limit American Star's ability to address the issue. This type of gamesmanship should be rejected.

Last, the interest of judicial economy supports substitution of American Star. If the Court rejects the motion to substitute and dismisses the appeal because of a technical deficiency, American Star SPE-2 will refile the lis pendens. The parties can then follow the same procedural steps to get back to this Court for a ruling on the merits. Thus, denying the motion to substitute will only delay the resolution of the issue on appeal, while requiring the parties and the courts to waste significant resources and time.

CONCLUSION

Based on the foregoing, American Star respectfully requests that the Court grant the motion the Motion to Substitute Party.

Respectfully submitted,

E. Brandon Gaskins

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August 12, 2019
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Attorney for Appellant

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

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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 Reply to Respondent's Return to Appellant's Motion to Substitute Party* by depositing the same in the United States Mail with adequate postage affixed thereon to ensure delivery, addressed as follows:

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John P. Linton, Jr., Esquire
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VIA U.S. MAIL

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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 Reply to Respondent's Return to Appellant's Motion to Substitute Party**, 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)

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