

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Eastwood Construction Partners, LLC, and
Eastwood Development Corporation,

Plaintiffs,

v.

GHD Brooks Creek, a North Carolina
Limited Liability Company, and AF-Brooks
Creek, LLC, a North Carolina Limited
Liability Company, GHD River Falls, a
North Carolina Limited Liability Company,
and AF-River Falls, LLC, a North Carolina
Limited Liability Company, Greenhawk
Corporation, Inc., and TRI Pointe Homes,
Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

C/A No. 2020-CP-46-02006

ORDER

RECEIVED

Apr 18 2022

SC Court of Appeals

This matter came before the Court on April 4, 2022, upon Defendants GHD-Brooks Creek, LLC, AF-Brooks Creek, LLC, GHD-River Falls, LLC, AF-River Falls, LLC, and GreenHawk Corporation, Inc.'s ("GreenHawk") (collectively, "GreenHawk Defendants") Verified Motion to Lift Any Automatic Stay of the Court's February 15, 2022 Order or, in the Alternative, to Require Plaintiffs to Post a Bond ("Motion"). Present at the virtual hearing were John I. Mabe, Andrew A. Mathias, and Konstantine P. Diamaduros for GreenHawk Defendants, Stephen M. Cox for Co-Defendant TRI-Pointe Homes, Inc. ("TRI-Pointe"),¹ and James C. Adams, II, William O. Walker, IV, and James Edward Bradley for Plaintiffs Eastwood Construction Partners, LLC and Eastwood Development Corporation (collectively "Eastwood").

¹ TRI-Pointe also filed a substantially similar motion, which the Court will address in a separate Order.

FACTUAL BACKGROUND

The facts relevant to this Motion are as follows:

On February 15, 2022, this Court issued its Order granting GreenHawk Defendants partial summary judgment and cancelling the two Lis Pendens² Eastwood had filed against Brooks Creek and River Falls subdivisions. The primary basis for the Order was that Eastwood's claims for specific performance as to Brooks Creek and River Falls subdivisions failed because no enforceable contract existed between the Parties whereby Eastwood would purchase Brooks Creek or River Falls from GreenHawk Defendants. In support of this ruling, this Court relied primarily on the following: (1) the Parties never executed a written contract for Brooks Creek or River Falls that would satisfy the Statute of Frauds; (2) various Eastwood representatives repeatedly acknowledged or admitted that there was no contract, or that Eastwood needed a contract, with respect to the sale of Brooks Creek and River Falls; (3) various Eastwood representatives also acknowledged or admitted in discovery that the Parties never agreed to material terms for the sale of Brooks Creek or River Falls, such as price, takedown schedule, or a deposit amount; and (4) the evidence did not support Eastwood's allegations that Eastwood and GreenHawk were partners or joint venturers. Furthermore, this Court held that because Eastwood's claims for specific performance failed, the dispute between the Parties was no longer "an action affecting the title to real property," which necessitated the cancellation of the Lis Pendens. S.C. Code Ann. § 15-11-10; *see also Carolina Park Assocs., LLC v. Marino*, 400 S.C. 1, 9, 732 S.E.2d 876, 880 (2012).

Eastwood filed a Motion for Reconsideration on February 18, 2022, which the Court denied on March 8, 2022. Eastwood then filed a Notice of Appeal on March 11, 2022. Shortly thereafter,

² Unless otherwise specified, "Lis Pendens" as used herein is a collective reference to Lis Pendens Nos. 2020-LP-46-00228 and 2020-LP-46-00229.

on March 18, 2022, GreenHawk Defendants filed the instant Verified Motion, and Eastwood filed a memorandum in opposition on March 31, 2022. Oral argument was held on April 4, 2022. As such, this matter is ripe for determination.

CONCLUSIONS OF LAW

Based upon GreenHawk Defendants' Motion and the arguments of counsel, I make the following conclusions of law:

The general rule is that an appeal of a lower court order automatically stays the application of the order for the duration of the appeal, unless the stay is lifted by order of the lower court. SCACR 241(a). As such, notwithstanding this Court's February 15, 2022 Order dismissing Eastwood's claims for specific performance and cancelling the Lis Pendens, unless the stay is lifted, Eastwood's subsequent Notice of Appeal will allow the cloud on the titles to the Brooks Creek and River Falls properties to remain in place.

Under SCACR 241(c), any party may seek an order lifting an automatic stay. When a stay delays the ordered cancellation of a *lis pendens*, the stay should be lifted to prevent the order from becoming moot. *See* SCACR 241(c)(2) ("In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot."); *see also Carolina Park Assocs., LLC v. Marino*, No. 2010-CP-10-6042, 2011 9369844, at *1 (S.C. Ct. Com. Pl. June 27, 2011) (recognizing the same).

Carolina Park Associates is particularly instructive on this issue. There, after the court entered an order cancelling a *lis pendens* on property owned by the defendant, the plaintiff appealed the order and the defendant moved to lift the automatic stay associated with the appeal,

arguing that the stay would render the court’s initial order moot. *Id.* The court agreed, holding that by imposing a stay, “Plaintiffs will have received exactly what they are not entitled to, namely a *lis pendens* during the course of this litigation that would hinder Defendant . . . in developing its property.” *Id.*

The court’s reasoning in *Carolina Park Associates* applies with equal force here. The contested issue on appeal is whether there exists a basis for the Lis Pendens to remain in place—namely, contracts giving Eastwood the right to purchase Brooks Creek and River Falls. This Court already carefully considered an extensive record on this issue, and that record was so one-sided that the Court was compelled to grant summary judgment on the issue. It is abundantly clear to the Court that Eastwood has no basis to continue delaying the sales GreenHawk is trying to effectuate with TRI-Pointe (as to Brooks Creek) and with non-party Taylor-Morrison (as to River Falls). Yet, by allowing the stay on the cancellation of the Lis Pendens to remain in place, this Court’s February 15, 2022 Order will be mooted because Eastwood will have received exactly what they are not entitled to—further hindrance of GreenHawk’s ability to sell River Falls and Brooks Creek for a period of time that could last several more years. Accordingly, because a stay would moot this Court’s February 15, 2022 Order, it must be lifted. SCACR 241(c)(2).

With respect to Eastwood’s argument that their claim of a right to purchase the subdivision lots will be mooted by sales to third parties, the Court has carefully considered the argument and finds it unavailing. Eastwood is in the business of buying residential real estate lots and building houses for sale into the residential real estate market. In effect, Eastwood does not lose the opportunity to invest in other residential lots. However, the stay prevents the GreenHawk Defendants from recovering their investment from the Brooks Creek and River Falls projects and reinvesting the proceeds in a favorable real estate market.

CONCLUSION

GreenHawk Defendants should be permitted to move forward with the sale of River Falls and Brooks Creek without a cloud remaining on the titles to the properties. Therefore, based on the foregoing, GreenHawk Defendants' Motion is **GRANTED**, and the automatic stay associated with Eastwood's appeal is hereby lifted effective immediately. The Court further directs the York County Clerk of Court to cancel Lis Pendens Nos. 2020-LP-46-00228 and 2020-LP-46-00229.

IT IS SO ORDERED.

April __, 2022

Daniel D. Hall
Presiding Judge, York County



York Common Pleas

Case Caption: Eastwood Construction Partners, Llc , plaintiff, et al VS Ghd Brooks
Creek , defendant, et al
Case Number: 2020CP4602006
Type: Order/Lift Automatic Stay

So Ordered

s/Daniel D. Hall 2753