

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
CASE NO. 2020-CP-46-02006

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 Holdings, Inc.,

Defendants.

ORDER GRANTING TRI POINTE
HOMES HOLDINGS, INC.'S MOTION
TO LIFT ANY STAY OF THE
COURT'S JANUARY 14, 2022 ORDER

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SC Court of Appeals

This matter is before the Court on a Motion filed by Defendant TRI Pointe Homes Holdings, Inc. ("TRI Pointe") To Lift Any Stay of this Court's January 14, 2022 Order. The Court held a hearing on the Motion on April 4, 2022. Present on behalf of TRI Pointe was Stephen M. Cox of Robinson Bradshaw & Hinson, P.A. Present on behalf of Plaintiffs were James Edward Bradley of Moore Bradley Myers Law Firm and James C. Adams, II and William O. Walker of Brooks, Pierce, McLendon, Humphrey & Leonard, LLP. Present on behalf of the Defendants other than TRI Pointe were John I. Mabe, Jr.; Andrew A. Mathias; and Konstantine P. Diamaduros of Nexsen Pruet, LLC.

After carefully considering the papers and pleadings of records in this action and the arguments of counsel, and for the reasons set forth below, the Court hereby grants TRI Pointe's Motion, lifts the stay of the January 14, 2022 Order, and, pursuant to that Order, cancels the *lis pendens* encumbering the Brooks Creek property.

I. STATEMENT OF UNDISPUTED FACTS

On January 14, 2022, this Court issued its order granting TRI Pointe partial summary judgment and cancelling the *lis pendens* that Plaintiffs had filed against Brooks Creek. The basis for that Order was that Plaintiffs' claim for specific performance of a contract for the sale of Brooks Creek was not cognizable, and, therefore, that the dispute between the parties was not "an action affecting the title to real property." S.C. Code § 15-11-10. In particular, this Court ruled that Plaintiffs' specific performance claim was not cognizable because: 1) Plaintiffs and the seller of the property ("Greenhawk") never agreed to material terms such as price, takedown schedule, or deposit for the sale of Brooks Creek; and 2) any alleged contract between Plaintiffs and Greenhawk for the sale of Brooks Creek had not been committed to writing and is thus barred by the Statute of Frauds.

Plaintiffs filed a Motion for Reconsideration on January 24, 2022, which was denied by this Court on February 15, 2022. Plaintiffs then filed a Notice of Appeal on March 11, 2022, which automatically stayed the application of the January 14, 2022 Order. TRI Pointe filed a Motion to Lift the Stay on March 15, 2022, arguing that a stay of the January 14, 2022 Order would render that Order moot. The Court agrees with TRI Pointe.

LAW AND ANALYSIS

As a general rule, 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. SCACR 241(a). SCACR 241(c) allows any party to seek an order lifting an automatic stay—the relief sought by TRI Pointe here. SCACR 241(c)(2) provides that a court reviewing a motion to lift an automatic stay should consider, among other things, whether the motion should be granted "to prevent a contested issue from becoming moot."

When a stay delays the ordered cancellation of a *lis pendens*, it is appropriate to lift the stay, pursuant to SCACR 241(c), to prevent the order from becoming moot. *Carolina Park Assocs., LLC v. Marino*, No. 2010-CP-10-6042, 2011 9369844, at *1 (S.C. Ct. Com. Pl. June 27, 2011). In *Carolina Park Associates*, the court initially entered an order cancelling a *lis pendens* on property owned by the defendant. *Id.* When the plaintiff appealed that order, the defendant moved to lift the automatic stay associated with the plaintiff’s appeal, arguing that the stay would render the court’s initial order moot. *Id.* The court agreed with the defendant, stating 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 CDM in developing its property.” *Id.* Indeed, even in appeals in which it was ultimately determined that the *lis pendens* should *not* have been cancelled, South Carolina courts have lifted the *lis pendens* during the pendency of the appeal. *See Lebovitz v. Mudd*, 293 S.E. 49, 52, 358 S.E.2d 698 (1987).

The logic of the *Carolina Park Associates* and *Lebovitz* courts is compelling here. The contested issue on appeal is whether there is a basis for the *lis pendens* to remain in place, thereby encumbering Defendants’ ability to market and develop Brooks Creek, even though this Court has already ruled that Plaintiffs are not entitled to a *lis pendens* on the property. By allowing a stay to remain on the ordered cancellation of the *lis pendens* at issue, this Court’s January 14, 2022 Order will be mooted because Plaintiffs will have received exactly what the Court has determined they are not entitled to—further hindrance of TRI Pointe’s development of Brooks Creek—for a period of time that will likely last years.

Plaintiffs correctly note that not every South Carolina court that has encountered this issue has determined that the automatic stay of the ordered cancellation of a *lis pendens* should be lifted. *See Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E.2d 881 (Ct. App. 2002).

However, in *Pond Place Partners*, the court declined to lift the stay “because there appear[ed] to be a legitimate dispute” as to the merits of the claim used to support the *lis pendens*. *Id.* at 11, 886. Here, no such “legitimate dispute” over Plaintiffs’ specific performance claim exists. To support that claim, Plaintiffs alleged in their Complaint that Eastwood Construction had a contract with Greenhawk to purchase Brooks Creek. Yet in discovery, Plaintiffs’ own representatives have repeatedly admitted, both in sworn deposition testimony and in numerous documents—that this “contract” never existed. Indeed, it has been nearly two years since the *lis pendens* was filed, and Plaintiffs have still failed to show that there is any evidence indicating that there is a legitimate dispute over whether they agreed to a contract to purchase Brooks Creek from Greenhawk or that any such agreement was reduced to a writing that satisfies the Statute of Frauds. In the meantime, the *lis pendens* has prevented TRI Pointe from marketing and developing its property. Because the *lis pendens* is groundless and continues to damage TRI Pointe by hindering the free development of Brooks Creek, TRI Pointe is entitled to relief from the automatic stay.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that TRI Pointe’s Motion To Lift Any Automatic Stay of this Court’s January 14, 2022 Order shall be, and the same is hereby, **GRANTED**. The *lis pendens* filed by Plaintiffs against the Brooks Creek tract in Case No. 2020-LP-46-0228 is hereby **CANCELLED**.

AND IT IS SO ORDERED.

The Honorable Daniel D. Hall
Judge of the Sixteenth Judicial Circuit



York Common Pleas

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

So Ordered

s/Daniel D. Hall 2753