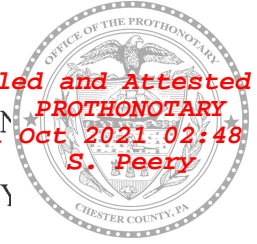


Filed and Attested by
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21 Oct 2021 02:48 PM
S. Peery



MICHAEL C. HEIN

: IN THE COURT OF COMMON

V.

: CHESTER COUNTY, PENNSY

LIONGATE HOMEOWNERS
ASSOCIATION, INC., et al.

: NO. 2021-01939-CT

Neil M. Hilkert, Esquire and Lida L. Bonner, Esquire, Attorneys for Plaintiff
John H. Kiefel, Esquire and Thomas J. Zimmerman, Esquire, Attorneys for Defendants

ORDER

AND NOW, this 21st day of October, 2021, upon consideration of

Defendant, Liongate Homeowners Association, Inc.'s Petition to Remove *Lis Pendens*
and for Emergency Relief, and any response thereto, and after conducting oral argument
on the Petition¹, it is hereby ORDERED and DECREED that the Petition is DENIED
without prejudice.²

BY THE COURT:



William P. Mahon, J.

¹ No additional evidence was presented in Court on October 18, 2021 pursuant to the Court's Order of June 3, 2021.

² It was agreed at oral argument that the "Farmhouse" property is owned by the Liongate Homeowners Association, Inc. ("Assn.") The main point of contention between the Plaintiff and Defendants is whether the Farmhouse is owned as a common area, common facility or open space (collectively "common facility") or as a "controlled facility" in fee simple. It is unclear from the argument presented before the Court, and when considering the Uniform Planned Community Act and the filings herein, whether the Farmhouse property was an individual Assn. "unit" prior to the March 2, 2021 Assn. Declaration Amendment. (See Pa.C.S.A. §5205(4),(5),(6),(9) and §5103 [definitions of unit controlled facility and common facility]). Therefore, Plaintiff is challenging the sale of the subdivided Farmhouse property without an appropriate vote by the members of the Assn. averring: (1) that the Farmhouse property is owned by the Assn. as a common facility which requires a vote of the Assn. unit members; and (2) without this vote, the Assn. Board of Directors action in approving the sale is *ultra vires*.

Defendants' petition seeks the removal of the *lis pendens* filed by Plaintiff. In considering Defendants' request, common law requires the court to ascertain whether the property title is at issue in the

pending litigation and secondly, what equities must be balanced in determining whether the *lis pendens* is harsh or arbitrary and whether the cancellation of the *lis pendens* would result in prejudice to Plaintiff. *See In Re: Foremost Industries, Inc.*, 156 A.3d 318 (Pa. Super. 2017). *See also Barak v. Karolizki*, 196 A.3d 2018 (Pa. Super. 2018). The ownership status of the Farmhouse property is at issue and specifically, whether the Farmhouse property is owned by the Assn. as a common facility or a controlled facility. Therefore, title to the Farmhouse property is at issue.

The continuation of this *lis pendens* will not prevent the sale of the Farmhouse property since the sales agreement is for a cash sale. Therefore, permitting the *lis pendens* to remain is not harsh or arbitrary and will not prevent the sale. Striking the *lis pendens* would result in prejudice to Plaintiff. As represented by counsel for the Assn., the striking of the *lis pendens* would insure the consummation of the sale of the Farmhouse property to a non-profit organization under the non-profit law. Therefore, whatever ownership transfer rights that Plaintiff has in the Farmhouse property as a unit owner would forever be extinguished by the striking of the *lis pendens* and subsequent sale. When considering the equities in this situation, the court enters this Order.

The court would reconsider a request to strike the *lis pendens* after the Assn. Board permits an appropriate vote by the Assn. unit members to approve the sale of the Farmhouse property as if it were a common facility of the Assn. To rule otherwise would require this court to now determine the ultimate issue requested by Plaintiff in Count V of the Complaint which seeks declaratory relief that challenges the Assn. Board's authority to sell a common facility without unit members approval.



Type: ORDER
Case Number: 2021-01939-CT
Case Title: HEIN, MICHAEL C VS. LIONGATE HOMEOWNER'S ASSOCIATION, INC. et al

So Ordered

/s/ William Mahon

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