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Dec 18 2025

SC Court of Appeals

EXHIBIT 1

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
NOAH VEON, on behalf of himself and)
All others similarly situated,)
)
)
Plaintiff,)
)
vs.)
)
RICHARD JAMES SCHUELER, A/K/A)
"RICHARD HEART",)
)
)
Defendant.)
)
_____)

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT
C/A No.: 2022-CP-21-1980

ORDER

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This matter is before the court on the motion of Benjamin Dubard, a non-party, to intervene in this case as a defendant. Dubard seeks to file an answer contesting the allegations of the complaint which, thus far, have been admitted through the default of the Defendant. Dubard also seeks to intervene in this action to oppose the pending motion for class certification. For the reasons stated herein, the motion is denied.

FACTUAL AND PROCEDURAL BACKGROUND

This case, filed in September of 2022, focuses on a cryptocurrency known as "HEX". HEX is an ERC-20 "smart contract" that operates on the Ethereum blockchain. In layman's terms, HEX is a computer program that converts other digital assets such as Ether or "ETH" (the native currency of the Ethereum blockchain) into HEX tokens. The value of one HEX token peaked at approximately 50 cents per token in September of 2021. However, this value quickly plummeted, and, by June of 2023, one HEX token was worth less than one penny where it has remained since that time (it now trades at approximately 0.15 cents).

The Plaintiff, Noah Veon, purchased approximately \$1,800 of HEX near its peak value in September of 2021. He seeks the return of his investment, which is now worth less than six dollars.

Veon contends that HEX is an unregistered security and, under Section 5 of the Securities Act of 1933, the Defendant must compensate him for his losses. Veon also seeks the certification of a class of similarly situated HEX investors and the return of their losses.

THE DEFENDANT

The Defendant, Richard J. Schueler, has not answered the complaint in this matter and is in default. Schueler, an American thought to be residing in Finland, is a controversial figure and is currently listed as one of Europol’s “most wanted fugitives” for tax fraud “counted in the hundreds of millions of euros.”¹ While Schueler has not appeared in this matter, the Plaintiff alleges that the Defendant has been conducting a “shadow defense” through several law firms retained, first, by his mother, and now, by the proposed intervenor.

THE PROPOSED INTERVENOR

Benjamin Dubard is a South Carolina resident and is active in the cryptocurrency industry. Dubard first purchased HEX in 2020 and continues to hold the asset. According to his filings, Dubard first learned of this lawsuit shortly after it was filed in the Fall of 2022. On September 2, 2023, Dubard “retweeted” a five-page bulletin prepared by a HEX proponent operating under the pseudonym of “Mati ALLin” which described this lawsuit in detail including the name of the presiding judge, links to filed documents, and predictions of “next steps” in the litigation. Despite this detailed knowledge of the proceedings, Dubard did not move to intervene in this matter until June 24, 2024—the day before the scheduled hearing on class certification.

On June 18, 2024—six days prior to the filing of Dubard’s motion—“Mati ALLin” publicly tweeted his desire to raise \$100,000 of cryptocurrency to retain South Carolina counsel “to contribute to the Amicus brief for HEX in South Carolina.” “Mati ALLin” named the specific law

¹ See <https://eumostwanted.eu/#/schueler-richard-james> (last visited July 16, 2025).

firm and the attorney he sought to retain and provided a cryptocurrency “address” to which donations could be made. On June 19, 2024, “Mati ALLin” announced the funds had been raised. An analysis of the cryptocurrency “address” “Mati ALLin” revealed that the funds came from a single donation. The pseudonymous nature of cryptocurrency conceals the identity of that donor.

Dubard’s motion to intervene was soon thereafter filed by the exact lawyer and law firm referencing by “Mati ALLin” in his June 18, 2024 tweet. Plaintiff’s counsel served a notice of deposition upon Dubard including a subpoena duces tecum seeking, among other things, “all records of transfer of money to you by any other person pertaining to your motion to intervene.” Dubard moved to quash that deposition notice and subpoena. That motion remains pending.

CRYPTOCURRENCY SECURITIES LITIGATION

The present lawsuit is one of a large number of cryptocurrency securities class actions filed in the last decade. A non-exhaustive list of cryptocurrency class actions tracked by Stanford Law School indicates that at least 102 such cases have been filed since 2016.² At the heart of every securities class action is one fundamental question: is the investment in question a “security” under applicable law. In a 2017 advisory, the SEC made it clear that “the automation of certain functions through this (cryptocurrency) technology, ‘smart contracts,’ or computer code, does not remove conduct from the purview of the U.S. federal securities laws.”³ But the Commission was also careful to note that not all cryptocurrencies are necessarily securities.

Whether or not a particular transaction involves the offer and sale of a security—regardless of the terminology used—will depend on the

² <https://securities.stanford.edu/current-trends.html> (last visited July 16, 2025).

³ “Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO” at 2 <https://www.sec.gov/files/litigation/investreport/34-81207.pdf> (last visited July 16, 2025).

facts and circumstances, including the economic realities of the transaction.⁴

Thus, the analysis of whether a particular cryptocurrency is subject to federal or state securities laws is truly a case-by-case endeavor.

ANALYSIS OF THE MOTION TO INTERVENE

Dubard seeks to intervene in this lawsuit both as a matter of right under Rule 24(a), SCRPC and via permissive intervention under Rule 24(b), SCRPC. Each will be analyzed in turn.

I. Intervention of Right

Rule 24(a) provides for intervention of right in the following circumstances.

Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Dubard does not claim a statutory right to intervention, thus the analysis of his motion is confined to subsection Rule 24(a)(2). Two problems defeat Dubard's motion for intervention of right: first, the motion is untimely; and second, the interest he seeks to protect is insufficient to give rise to intervention.

a. Dubard's motion is untimely

South Carolina has adopted a four-part test for considering the timeliness of a motion to intervene.

(1) the time that has passed since the applicant knew or should have known of his or her interest in the suit; (2) the reason for the delay; (3) the stage to which the litigation has progressed; and (4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denial.

⁴ Id. at 17-18.

Davis v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991). “[F]ailure to satisfy any one of the four requirements precludes intervention.” Ex parte Reichlyn, 310 S.C. 495, 500, 427 S.E.2d 661, 664 (1993). As shown below, consideration of each of the four elements weigh against Mr. Dubard’s intervention in this state.

i. The time that has passed and the reason for the delay

Dubard admits that he “became aware that a lawsuit was filed against Richard Schueler related to HEX shortly after the litigation commenced in 2022.” (Motion to Intervene at 3) This case was filed on September 21, 2022. DuBard filed his motion to intervene on June 24, 2024. As a result, DuBard waited approximately 20 months before seeking to intervene in this case. This lengthy wait contrasts with that found permissible in Davis v. Jennis, where the Supreme Court noted the intervenor’s “motion was filed within one month of the [challenged] order.” Id. at 504, 405 S.E.2d at 603.

Nevertheless, Dubard insists that he “was unaware until the week of June 17, 2024, that Plaintiff sought a declaratory judgment that HEX is a security or that any procedure existed pursuant to which Dubard could become personally involved in the action.” But this claim is contradicted by Dubard’s retweeted bulletin of September 2, 2023, which detailed the following:

- “(The Plaintiff) claims to bring the case on behalf of all similarly situated HEX purchasers. But the case will not become a class action unless the Court allows this and approves (the Plaintiff) as a suitable class representative. If and until that happens, it is essentially an action by the one plaintiff.”
- “Claims: Claims for issuance of unregistered securities under federal and South Carolina securities laws. The plaintiff seeks money and various other action by the Court.”

Thus, Dubard was quite aware that this case had been filed as a putative class action and sought to invoke federal and state securities laws.

The factual record establishes that Dubard was aware of this lawsuit almost immediately upon its filing. The record further establishes that Dubard was aware of the details of the lawsuit within approximately one year of the suit's filing and was disseminating information about the lawsuit to his social media audience. Nevertheless, Dubard made no attempt to intervene until 20 months after the filing of the case.

ii. Stage of the proceedings

Significant proceedings have taken place in this case and the case is now nearly three years old. The Plaintiff has taken two depositions, both of which have required court intervention. Numerous motions have been filed seeking to prevent the Plaintiff from taking additional discovery, including one motion filed by Dubard, himself. The case has been appealed to both the Court of Appeals and South Carolina Supreme Court before being returned to the Circuit Court for adjudication. Dubard's filed his motion to intervene one day before Plaintiff was scheduled to argue his motion for class certification. Dubard immediately moved to continue the motion, which the Plaintiff opposed.

iii. Prejudice to original parties and applicant

Prejudice to the Plaintiff has already been self-evident as Dubard's motion has resulted in delaying this action for nearly one year. Should Dubard's motion be denied, however, he will not be prejudiced at all. Dubard is not subject to losing any sort of property interest should the Plaintiff win this case. In fact, Dubard may gain the right to recover the losses he has suffered at the hands of the Defendant. However, should Dubard wish to do so, he may always opt-out of any class action and leave his Due Process rights unimpacted.

Furthermore, it should be noted that Dubard's clear intent in moving to intervene is to prejudice the original parties to this case. The Defendant is in default, yet Dubard seeks to file an answer seeking to litigate the factual and legal allegations of the complaint. Dubard has also filed

a memorandum seeking to defeat class certification—not to promote it. For all of these reasons, Dubard’s motion is untimely, prejudicial, and must be denied.

b. Dubard’s interest is insufficient

“Intervention of right requires a direct, substantial, legally protectable interest in the proceedings.” Ex parte Reichlyn, 310 S.C. 495, 499, 427 S.E.2d 661, 664 (1993), citing State of Arizona v. Motorola, Inc., 139 F.R.D. 141, 144 (D.Ariz.1991). Dubard claims two interests justify his intervention.

- “Dubard seeks to ensure that Plaintiff’s expansive view of the federal and state securities laws does not improperly interfere with the rights, financial interests, and legal activities of HEX owners like himself.” (Motion at 2)
- “Dubard asserts that a determination by the Court that HEX is a security would adversely impact the value of his financial position in HEX tokens.” (Motion at 2)
- “Dubard is a member of the class that Plaintiff seeks to represent.” (Motion at 4)

Neither interest is sufficient to give rise to intervention of right.

First, Dubard’s objection to “Plaintiff’s expansive view of the federal and state securities laws,” such an objection is not a protectible interest. South Carolina courts reject motions to intervene when the “main reason for seeking intervention is to affect any legal precedent that may result from the case. This alone is an insufficient basis for intervention.” S.C. Tax Comm’n v. Union Cnty. Treasurer, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988), citing 3B J. Moore, Moore’s Federal Practice Section 24.07[2] (2d ed. 1987).

Second, Dubard’s concern of an “adverse impact” on the value of his HEX portfolio is also insufficient to give rise to intervention. Similar concerns exist throughout corporate litigation. But the Fourth Circuit has rejected the notion that stockholders’ interest in the outcome of litigation allows for intervention.

In a sense, every company's stockholders, bondholders, directors and employees have a stake in the outcome of any litigation involving the company, but this alone is insufficient to imbue them with the degree of 'interest' required for Rule 24(a) intervention.

Gould v. Alleco, Inc., 883 F.2d 281, 285 (4th Cir. 1989). Indeed, Dubard's interest in how this case may impact the value of his HEX tokens is no different than that of any other HEX investor. The court notes that no South Carolina reported case has held that the possibility or even probability of an indirect economic effect, such as what Dubard argues, is sufficient for intervention. The burden, rather, is on Dubard to establish that he "will suffer an individualized injury; a mere interest in a problem is not enough." Hill v. S.C. Dept. of Health & Environ. Control, 389 S.C. 1, 23 n. 12, 698 S.E.2d 612, 624 n. 12 (2010). Dubard has not shown that he will suffer an individualized injury if intervention is not granted.

Third, Dubard's status as a putative class member does not give him a right of intervention unless "its interest is inadequately represented by other parties." In re Horry Cnty. State Bank, 361 S.C. 503, 508, 604 S.E.2d 723, 725 (Ct. App. 2004). Dubard does not contend that the Plaintiff is inadequately representing his interests under the Securities Act of 1933. Instead, despite the fact that Dubard may be entitled to significant compensation should the Plaintiff be successful in his case, Dubard wishes to argue *against* his interests by insisting the law does not apply. Dubard has shown no authority that permits an intervenor to assume a position contrary to his financial well-being in order to create the specter of "inadequate representation."

Finally, the Court notes that evidence suggests Dubard has worked in concert with a third party to fund and file his appearance as an intervenor. This evidence—which has not been contradicted by Dubard—suggests that it is another person's interest that Dubard seeks to promote. Plaintiff's counsel suggest the likely "benefactor" is the Defendant, who is otherwise declining to participate publicly in this litigation. The Court makes no ruling on that point but does note that

the purpose of intervention is to protect the interest of the intervenor, not the interest of some unknown person or entity on whose behalf the intervenor is action.

DuBard has not established what he must in order to show a right to intervene. Id.; Ex parte Reichlyn, 310 S.C. at 499.

II. Permissive Intervention

DuBard may not employ the more permissive standard of Rule 24(b) to intervene.

An intervenor seeking permissive intervention must: (1) establish timely application; (2) assert a claim or defense that has a question of law or fact in common with the underlying action; and (3) prove his participation in the underlying action will not delay or prejudice the adjudication of the rights of the original parties.

Ex parte Builders Mut. Ins. Co., 431 S.C. 93, 101, 847 S.E.2d 87, 91 (2020). As shown above, DuBard's motion to intervene was both untimely and prejudicial to the adjudication of the rights of the actual parties to this case. In addition, he lacks claims or defenses that have questions of law or fact in common with those of this case.

Accusations of wrongdoing in this case have been limited to Defendant Richard Schueler.

The typical situation for which the Rule was designed is one where the prospective intervenor might institute or be called upon to defend a separate proceeding that would substantially duplicate the one in question. With this analogy to permissive joinder, it seems clear the better rule is that permissive intervention should be allowed only where the prospective intervenor has a cause of action or defense it could bring or assert.

S.C. Tax Comm'n v. Union Cnty. Treasurer, 295 S.C. 257, 263, 368 S.E.2d 72, 75–76 (Ct. App. 1988). Not having been accused of wrongdoing, Dubard has no defenses to assert. Furthermore, his proposed answer asserts no counterclaims or crossclaims. Thus, permissive intervention provides no avenue for Dubard to participate in this case.

CONCLUSION

For the reasons stated above, Benjamin Dubard's motion to intervene is denied.

Michael G. Nettles
Presiding Judge



Florence Common Pleas

Case Caption: John Doe , plaintiff, et al VS Richard James Schueler , defendant, et al

Case Number: 2022CP2101980

Type: Order/Intervene

So Ordered

s/ The Honorable Michael G. Nettles #2140