

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

CASE NO.: 2012-CP-42-3027

Deutsche Bank National Trust Company, as  
Trustee for Argent Securities Inc., Asset-Backed  
Pass-Through Certificates, Series 2004-W11  
Alleged Plaintiff(s)

MEMORANDUM IN SUPPORT OF  
MOVANT'S MOTION TO  
INTERVENE

vs.

Nunc pro tunc  
by Geary-Thomas: Dooly,  
Intervener /Movant

Geary Thomas Dooly, Eleanor S, Dooly and  
United States of America  
Alleged Defendants

Intervener/Movant, Geary-Thomas: Dooly, the natural person, hereinafter, Geary-Thomas Dooly, brings this MEMORANDUM IN SUPORT OF MOVANT'S MOTION TO INTERVENE

MEMORANDUM IN SUPPORT OF MOVANT'S MOTION TO INTERVINE

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SC Court of Appeals

FIRST:

South Carolina Rules of Civil Procedure # 19 JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION states:

(a) **Persons to Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff.

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This Rule 19(a) is the same as the Federal Rule. The principle behind this Rule is that whenever possible persons materially interested in the action should be joined so that they may be heard and a complete determination had. When this joinder is not possible, the case should be examined pragmatically and a choice made between proceeding without the particular interested party or dismissing the action. Dean Lightsey, in Code Pleading, notes that the number of cases in which there is truly an "indispensable party" in whose absence the court should not proceed are very rare. *Id.* at 109-110. The Rule provides for joining such a party as a defendant or involuntary plaintiff similar to Code § 15-5-40. Case law interpreting the Federal Rule makes it clear that the absence of a party does not automatically deprive the court of jurisdiction to resolve the interests of the parties before it. This changes some older state precedents which have held that such defects were jurisdictional. See Green v. Niver, 43 S.C. 359, 21 S.E. 263 (1894); Gooch v. Elliott, 120 S.C. 245, 113 S.E. 72 (1922).

**(b) Determination by Court Whenever Joinder Not Feasible.** If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

**Note:**

When a party described in Rule 19(a) cannot be joined, the court must decide whether to proceed with the case in that party's absence. This Rule 19(b) provides the practical factors for the court to consider in reaching its determination, and are not meant to be exclusive. Only if pragmatic considerations strongly indicate that it would be preferable to dismiss the action rather than proceed with the parties before it, should the court conclude that the absent party is truly "indispensable." Under Rule 12(h)(1) the lack of an "indispensable" party in this sense can be raised as late as the trial on the merits. However, if the purpose of the motion is to protect the movant from an apparently unfavorable situation, rather than to protect the absent party, the court may properly consider delay in making the motion as a reason against dismissing the action.

**(c) Pleading Reasons for Nonjoinder.** Any pleading asserting a cause of action for relief shall state the names, if known to the pleader, of any persons described in subdivision (a)(1)-(2) hereof who are not joined, and the reasons why they are not joined.

**(d) Exception of Class Actions.** This rule is subject to the provisions of Rule 23 in class actions.

**Note:**

This Rule 19(c) is substantially the same as the Federal Rule. Rule 19(d) simply refers to Rule 23 for joinders in class actions.

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**SECOND,**

**South Carolina Rules of Civil Procedure Rule 24 INTERVENTION** states:

**(a) Intervention of Right.** 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.

**Note:**

This is the same as Federal Rule 24(a). Intervention of right under this Rule is a counterpart to Rule 19(a) on joinder of persons needed for a just adjudication; where, upon motion of a party in an action, an absentee should be joined so that he may protect his interest which as a practical matter may be substantially impaired by the disposition of the action, he ought to have a right to intervene in the action on his own motion. The Rule expands intervention of right as provided by Code § 15-5-200, and Circuit Court Rule 22.

**(b) Permissive Intervention.** Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

**Note:**

This is the language of current Federal Rule 24(b) with one minor change to delete an unnecessary reference to federal law. It provides a needed procedure to permit intervention by parties who ought to be allowed to intervene, but have no direct right to intervene under Rule 24(a).

**(c) Procedure; Notice to State When Validity of Statute Questioned.** A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the ground therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of this State gives a right to intervene. When the constitutionality of a statute is drawn in question in any action in which the State or an officer, agency or employee thereof is not a party, the party shall also serve the motion on the Attorney General.

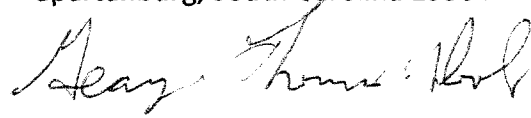
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This language is a modification of Federal Rule 24(c). The last two sentences, providing that the same procedure will be followed when a statute permits intervention, and for notice to the Attorney General when a statute is alleged to be unconstitutional, are modified slightly to make them applicable to State practice. Code § 15-33-80 gives the Attorney General a statutory right to intervene in declaratory judgment actions. The language of the Federal Rule on these matters is preferred because Rule 24(c) is procedural, and designed for notice to the Attorney General so that he may decide whether or not to intervene in any case challenging the constitutionality of a statute, while the present statute apparently applies only to declaratory judgment actions.

Date:

Geary-Thomas: Dooly, Intervener /Movant  
c/o Post Office Box 3326  
Spartanburg, South Carolina 29304



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**CERTIFICATE OF SERVICE**

I, Geary-Thomas: Dooly, do hereby certify, that I have read, and understand this filing, MEMORANDUM IN SUPPORT OF MOVANT'S MOTION TO INTERVENE, to be true, correct, and not misleading, to the best of My knowledge and belief, and that a true and correct copy is filed with the Clerk of the Captioned Court, and that a copy is served on the Alleged Plaintiff, by mailing a copy to alleged Counsel of Record, Nelson Mullins Riley & Scarborough LLC et al, and specifically to the attention of Sarah R. Anderson and Giles M Schanen of alleged Counsel of Record, Nelson Mullins Riley & Scarborough, LLC.

104 South Main Street -9th floor, Greenville, South Carolina 29601.

Geary-Thomas: Dooly, Intervener/Movant  
c/o Post Office Box 3326  
Spartanburg, South Carolina 29304

Date:

*Geary-Thomas: Dooly*

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Dooly  
South Carolina  
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