

79456

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 04 2016

APPEAL FROM CHARLESTON COUNTY
The Honorable Kristi Lea Harrington, Circuit Court Judge

SC Court of Appeals

Case No. 2008-CP-10-0049
Appellate Case No. 2016-000185

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc., (from December 16, 2008 to present),..... Respondents,

v.

Fenwick Plantation Tarragon, LLC, a South Carolina Limited Liability Company f/k/a Fenwick Tarragon Apartments, LLC, a South Carolina Limited Liability Company, Charleston Tarragon Manager, LLC, a Delaware Limited Liability Company, Tarragon Development Corporation, a Nevada Corporation, Summit Contractor WSW Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development, Compliance & Inspectors, Inc., H2L Consulting Engineers, Twelve Oaks at Fenwick Property Owners Association, Inc., (from August 6, 2006 to December 15, 2008), Professional Plastering & Stucco, Inc., Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Compos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply, Inc., Marquez Construction, Inc., J.T. Walker Industries, Inc., J.T. Industries d/b/a General Aluminum Corporation and General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, Jamie Helman, individually, Scott Ferguson, individually, and Chris Cobbs, individually, and Federal Insurance Company, Maria Arias, Miquel Roales, APS Enterprises, Unlimited, Inc., HR Electric, A.M. Jacobs, Inc., Mikey Mason d/b/a Mason Contractors KMAC of the Carolinas, Inc., NEO Corporation and Nava Guzman Construction, Inc.,..... Respondents,

And Mt. Hawley Insurance Company.....the Appellant/Proposed Intervenor.

MOTION TO DISMISS

COME NOW the Respondents, by and through their undersigned attorneys, and, pursuant to Rule 267 of the South Carolina Appellate Court Rules, hereby move to dismiss the instant appeal. In support of this motion, Respondents state as follows:

SUMMARY OF ARGUMENT

Appellant appeals from an order of the trial court denying its motion to intervene in a case that has long since been ended. Ostensibly, Appellant is seeking to intervene for the purpose of collaterally attacking a default judgment entered against its insured. However, because the underlying case concluded long ago, and because the time to have filed a notice of appeal from the underlying judgment long ago passed, there is no “case or controversy” in which Appellant can intervene. Consequently, this appeal should be dismissed.

BACKGROUND

The timeline of the proceedings in this case are significant. This case was commenced on January 4, 2008, (the “2008 Case”) against several parties, including North Florida Framing, Inc. (“NFF”). Appellant is one of several insurance carriers for NFF.

Despite years of litigation, Appellant never participated in the defense of NFF in the 2008 Case. On May 9, 2011, the 2008 Case was called for trial. At the start of the trial, Respondents notified the trial court that a settlement had been reached with regard to *two* of NFF’s insurance carriers who had defended NFF in the litigation. (*Exhibit 1*, pp. 60-61)¹. Because Respondents were aware that Appellant was also a carrier for NFF, and because Appellant had not participated in the defense of NFF in the 2008 Case, the trial court was informed that Respondents did not release NFF from the case. (*Exhibit 1*,

¹ This portion of the transcript was presented to the trial court.

p. 64). Instead, Respondents limited its settlement to the two participating carriers and gave NFF a covenant not to execute. Further, because neither NFF nor Appellant appeared on the morning the trial began, Respondents moved to have NFF placed in default and to have the claims against NFF referred to the Charleston County Master-In-Equity for a damages hearing. (*Exhibit 1*, p. 61). Without objection the trial court orally granted Respondents Motion to entry of default against NFF and for referral to the mater. (*Exhibit 1*, p. 64). Thereafter, on August 9, 2011, the trial court issued a written order of default and reference to the Master-In-Equity. (*Exhibit 2*).

A damages hearing was held before the Master, and neither NFF nor Appellant appeared. Evidence was presented to the Master and a judgment awarding damages was entered against NFF on May 14, 2013. (*Exhibit 3*).

In sum, over the five years and five months in which this matter was pending against NFF, from 2008 to 2013, Appellant refused or otherwise declined to participate and defend NFF, its insured.

On March 26, 2015, the 2008 Case was fully and finally closed by the Charleston County Clerk of Court. (*Exhibit 4*).

Respondents, having been assigned NFF's bad faith claim against Appellant, initiated a suit for declaratory judgment against Appellant seeking to recover the May 14, 2013, default judgment obtained against NFF. On July 28, 2015 (more than four months after the 2008 Case was officially closed, nearly two years after the default judgment was entered against NFF, and more than seven years after the 2008 Case was commenced) Appellant attempted to intervene in the 2008 Case. This maneuver is improper and Appellant's appeal must be dismissed.

ARGUMENT

Appellant's appeal from the denial of its motion to intervene must be dismissed because there is simply no case in which to intervene. To the extent the motion to intervene is an effort by an insurer to attack the underlying judgment against in this matter, Appellant has waived such right.

Rule 24, SCRPC, provides for both "Intervention of Right," as well as "Permissive Intervention." However, regardless of the type used, Rule 24 expressly states that any intervention must occur "*in an action.*" See Rule 24(a) and Rule 24(b), SCRPC (emphasis added). A motion to intervene may be proper where it is (1) timely filed, (2) asserts an interest related to the transaction which is the subject matter of the action, (3) demonstrates that the moving party is in a position such that without intervention disposition of the case may impair or impede its ability to protect its interest, and (4) the moving party demonstrates that its interest is not adequately represented by other parties to the action. *Id.* See also *Dep't of Health & Env'tl. Control v. Columbia Organic Chem. Co.*, 310 S.C. 495, 498 (1993). However, it is unnecessary to address the merits of whether Appellant's motion to intervene was properly denied, because the fact remains that here there is simply no "action" in which to intervene.

When interpreting the rules of Civil Procedure, Courts should look to the plain language of the rule. See e.g. *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357 (2007) (relying on the plain language of Rule 56(c)). Rule 24 clearly sets forth that a party may intervene (when appropriate) "in an action." On its face, the plain language of this rule contemplates that there must be some pending case or controversy in which to intervene. Where, as here, the case has ended and all rights of appeal have expired, there

is no underlying case or controversy. The “action” against NFF concluded with the entry of a final judgment more than two years prior to Appellant’s motion to intervene. The entire 2008 Case was closed by the Clerk of Court more than 4 months prior to Appellant’s motion.

To the extent Appellant seeks to attack the final and unappealed default judgment entered against NFF on May 14, 2013 – nearly three years ago – Appellant waived any challenge to this judgment when it elected not to defend NFF. *See generally, Janasik v. Fairway Oaks Villas Horizontal Property Regime*, 307 S.C. 339, 344 (1992) (stating that a waiver is the voluntary and known relinquishment of a right when the party had actual or constructive knowledge of this right).

Appellant is simply attempting to re-litigate a matter that has long since been closed. Appellant had a full and fair opportunity to participate in the litigation during the more than five years the 2008 Case was being litigated, while an active case or controversy existed. Instead, Appellant declined to defend NFF, refused to participate in the litigation, and only now is attempting to upset a final judgment that is now nearly three years old. Appellant’s actions have no place in our legal system, which seeks to promote the final resolution of disputes. *See Elam v. S.C. DOT*, 361 S.C. 9, 19 (2004) (stating that the promotion of finality of judgments is a “well established” and “fundamental canon of our legal system”).

Appellant will have a full and fair opportunity in the separately pending declaratory judgment action commenced by Respondents to assert whatever arguments Appellant may have that it is not obligated to pay the default judgment entered against NFF. But, Appellant cannot seek to reopen and re-litigate a case that has fully and finally

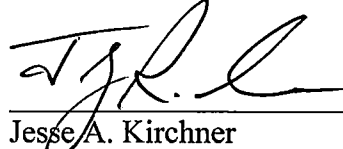
concluded. This is true in every case, but especially true on the facts now before the Court.

CONCLUSION

Because there is no active case or controversy in which Appellant may intervene, the current appeal from the trial court's denial of Appellant's motion to intervene should be dismissed.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



Jesse A. Kirchner
Michael A. Timbes
Thomas J. Rode
15 Middle Atlantic Wharf
Charleston, South Carolina 29401
jkirchner@tktylawfirm.com
mtimbess@tktylawfirm.com
trode@tktylawfirm.com

Justin O' Toole Lucey, Esquire
Justin O' Toole Lucey, P.A.
415 Mill Street
Mount Pleasant, South Carolina 29464
jlucey@lucey-law.com

W. Jefferson Leath, Jr., Esquire
Micheal S. Seekings, Esquire
Leath, Bouch & Seekings, LLP
92 Broad Street
Charleston, South Carolina 29401
jleath@leathbouchlaw.com
mseekings@leathbouchlaw.com

Phillip W. Segui, Jr., Esquire
Segui Law Firm, LLC
864 Lowcountry Boulevard, Suite A
Mt. Pleasant, South Carolina 29464
psegui@seguilawfirm.com

John T. Chakeris, Esquire
The Chakeris Law Firm
231 Calhoun Street
Charleston, South Carolina 29401
John@chakerislawfirm.com

Attorneys for Respondents

Exhibit 1

Transcript of trial on May 9, 2011.

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-10-0049

MARK F. TESENIAR and NAN M.)
TESENIAR, et al,)
PLAINTIFFS,)
VS.)
FENWICK PLANTATION TARRAGON,)
LLC, ET AL,)
DEFENDANTS.)

JURY TRIAL

VOLUME 1

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Monday, May 9, 2011, Commencing at 11:28 a.m.

SUSAN "MIA" PERRON, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

COPY

1 All right. And with that, are there other
2 pretrial motions?

3 MR. LEATH: That takes care of them.

4 THE COURT: Okay.

5 MR. LEATH: Thank you.

6 THE COURT: Mr. Lucey?

7 MR. LUCEY: Yes, ma'am.

8 There still are several settlement matters --

9 THE COURT: Right. I'm just trying to make sure
10 so that then those -- those of you who are not
11 involved in the putting the settlement on the record
12 can take this few moments and get ready for your
13 opening.

14 MR. LUCEY: Yes, ma'am.

15 One matter I have involves a part of a
16 settlement but it also involves a legal matter for the
17 Court so --

18 THE COURT: For this trial?

19 MR. LUCEY: Yes, ma'am.

20 THE COURT: I'll be happy to hear from you.

21 MR. LUCEY: Ma'am, the first one -- we reached a
22 settlement with North Florida Framing with the two
23 carriers that were insuring them and defending them in
24 this case. And we've reached a settlement with those
25 carriers and we've reached a covenant with North

1 Florida Framing.

2 We have agreed that the attorneys for those
3 carriers, Barnwell Whaley, being Randal Stoney and
4 Barbara Wagner, we have a consent order for them to be
5 relieved as counsel.

6 If I may approach the bench?

7 THE COURT: You may.

8 [Whereupon, Mr. Lucey proffers documents to the
9 Court]

10 THE COURT: All right. You may continue.

11 MR. LUCEY: Yes, ma'am.

12 With that, ma'am, North Florida Framing is
13 actually still in the case but they have a covenant.
14 They -- it is the call of the case. They're not here.
15 We ask the Court to place them in default. We have
16 one other defendant that's already in default and
17 there's a default hearing set in front of Judge
18 Scarborough in several weeks time. We would ask that
19 North Florida Framing be referred to that same default
20 hearing for a final resolution.

21 THE COURT: All right. Does anyone -- I'll be
22 happy to hear -- have any position?

23 Mr. Anderson?

24 MR. ANDERSON: As I understand it, he's
25 indicating that North Florida Framing is still part of

1 this trial, although they have -- he's trying to place
2 them in default; is that correct? We would --

3 THE COURT: Mr. Lucey?

4 MR. ANDERSON: Simply put, we would object to
5 that. Either -- we believe that they -- if they've
6 got a settlement, they've got a settlement.

7 MR. LUCEY: Mr. Anderson's client does not have
8 any claims pending against North Florida Framing and
9 it's my understanding is they do not have standing to
10 object to a default by North Florida Framing.

11 We are here at a scheduled trial. North Florida
12 Framing is not here to defend themselves and we would
13 ask that they be placed in default and that be
14 referred to the default hearing. Again, it's already
15 been referred to Judge Scarborough.

16 MS. MANN: Your Honor, I believe -- it comes
17 down to this. The nuts and bolts of it is whether
18 what -- what they're doing is, I assume, would be to
19 keep them in as name only so that they can have a
20 joint and several liability verdict and try to impugn
21 North Florida's Framing fault to both defendants,
22 which would severely prejudice us because we cannot
23 take up a defense with them at this point.

24 Do you see what I'm saying? They're going to
25 say that North -- our allegation has been that North

1 Florida Framing installed the windows where the water
2 is intruding. If they keep them as a defendant in the
3 case, they're going to be able to say that all the
4 defendants together are jointly and severally liable
5 for them. We can't -- and it's very difficult for us
6 to defend North Florida Framing's work when they're
7 not a party to this lawsuit and haven't been a
8 defendant before.

9 MR. LUCEY: If I may, Your Honor?

10 THE COURT: You may.

11 MR. LUCEY: Respectfully, I think counsel
12 misheard me.

13 We're not seeking to keep them in this trial.
14 We're asking for our default and we're asking that
15 they be referred to the default hearing that's already
16 been scheduled for the other default defendants, which
17 is the developer and the developer entities.

18 MS. MANN: Then no objection, Your Honor. As
19 long as they are not trying to keep them in for a
20 joint and several liability in this case, we have no
21 objection to that at all. I apologize, Your Honor.

22 THE COURT: All right. Well, where are they?
23 Where are they in the -- the attorneys were at the
24 pretrial, right -- conference; correct?

25 MR. LUCEY: Yes. Those attorneys have settled

1 for their carriers.

2 There is a third carrier that's refusing to
3 defend the insured, North Florida Framing. North
4 Florida has been given a covenant by the plaintiff, a
5 covenant not to execute, except as to the proceeds, if
6 any, that are procured from that recalcitrant third
7 carrier at some other date and time. In the present
8 context, North Florida Framing no longer has any
9 interest in this proceeding, nor do we have any
10 interest against them in this proceeding. And the two
11 active carriers that were defending have agreed to pay
12 us a substantial sum of money to settle the current
13 liability and get their attorneys out of the cases.

14 THE COURT: All right. Your order relieving
15 counsel has been -- consent order relieving counsel
16 has been signed.

17 MR. LUCEY: Thank you, ma'am.

18 THE COURT: Your request is granted. Do you
19 have an order or will a Form 4 be sufficient?

20 MR. LUCEY: Form 4 is sufficient, Your Honor.
21 Thank you.

22 THE COURT: All right. Anything before we put
23 the settlement? Other than the settlement, is that
24 the only remaining --

25 MR. TRAVIS: I'm Britt Travis, here for Young

1 Clement, for Nava Gooseman, and we've also reach a
2 settlement. I don't know if you wanted to hear it
3 before we put everything on the record, as well. We
4 were actually a third-party defendant from North
5 Florida Framing. We've reached a settlement with --
6 settle the terms with plaintiffs to pay them a
7 substantial amount of money and -- under terms of --
8 agreeing to that the defendant indemnifies us in this
9 trial. Since they're not in this trial, I don't think
10 that's -- it doesn't matter.

11 And then, also, as far -- there's a declaratory
12 judgment action regarding this case that the
13 plaintiffs have brought. They agreed to dismiss that
14 one, as well, and to keep this settlement contained
15 into this litigation.

16 There's also a North Carolina declaratory
17 judgment against my carrier and they've agreed not to
18 utilize this part of the consideration to settle --
19 these -- the same attorneys agree not to utilize this
20 as a portion of that litigation and that this
21 settlement would be contained in this lawsuit and it
22 would not be used against us later on.

23 MR. KIRCHNER: Your Honor, we've agreed with
24 those terms.

25 And I think if it's easy enough, I can read the

1 list of the settlements that we've agreed to, I can
2 read those into the record, if you would like.

3 THE COURT: All right. Please. Thank you.

4 MR. KIRCHNER: Your Honor, with APS Stucco, the
5 plaintiffs have settled for \$100,000. Magna Wall,
6 \$637,500, North Florida Framing, \$400,000 plus the
7 situations that Mr. Lucey mentioned, Albert Gooseman,
8 Mr. Travis' client, was \$137,500, and General
9 Aluminum, Mr. Cobbs's client, he mentioned that
10 before, \$12,500, for a total of \$1,287,500.

11 We've also reached a settlement with one of the
12 insurance carriers for Professional Plastering -- AIG,
13 formerly doing business as Audubon, that settlement is
14 for \$100,000, on the representation that that is an
15 actual exhaustion of their policy limits for I believe
16 the policy year of 2002 to 2003.

17 MS. MANN: Yes, Your Honor. That would be for a
18 complete exhaustion. Hypothetically, if there was a
19 little bit more money that had not been exhausted,
20 that would be offset so I assume that would also go to
21 the settlement.

22 And there are certain stipulations between
23 counsel which we don't need to put on the record. But
24 that will be for the exhaustion of the Chartis policy
25 period.

1 MR. KIRCHNER: That's correct, Your Honor.

2 THE COURT: All right.

3 MR. KIRCHNER: So that actually brings the total
4 up to \$1,387,500, assuming that there is not some
5 additional full dollars to actually exhaust their
6 policies.

7 THE COURT: All right. And where are your
8 clients? Is this --

9 MR. KIRCHNER: Mr. Jessup is here.

10 THE COURT: Mr. Chestner?

11 MR. KIRCHNER: Mr. Jessup. He's the board
12 president.

13 THE COURT: I'm sorry.

14 Mr. Jessup, you have indicated -- you've heard
15 what Mr. Kirchner has indicated to the Court as to the
16 nature of the settlements?

17 MR. JESSUP: Yes, Your Honor.

18 THE COURT: Have you been informed of all of the
19 settlements and the terms and conditions thereof?

20 MR. JESSUP: Yes, Your Honor.

21 THE COURT: Are you in agreement with --

22 MR. JESSUP: Yes --

23 THE COURT: -- those settlements?

24 MR. JESSUP: Yes, Your Honor.

25 THE COURT: Have you been satisfied with the

1 services of Mr. Kirchner?

2 And, Mr. Kirchner, who else has Mr. Jessup been
3 dealing with?

4 MR. KIRCHNER: All of us, Your Honor: Mr.
5 Sequi, Mr. Chakeris, Mr. Leath, Mr. Lucey.

6 THE COURT: All right. Have you been satisfied
7 with the services of your counsel?

8 MR. JESSUP: Yes, Your Honor.

9 THE COURT: Any complaints about the way they've
10 handled this matter?

11 MR. JESSUP: No, Your Honor.

12 THE COURT: All right. Thank you.

13 MR. JESSUP: Thank you.

14 MR. KIRCHNER: Thank you, Your Honor.

15 THE COURT: All right. Anything further,
16 regarding the settlement, to be placed on the record?

17 MR. KIRCHNER: Nothing from the plaintiffs, Your
18 Honor --

19 THE COURT: All right. Anything from the
20 defendants, regarding the settlement, to be placed on
21 the record?

22 MS. MANN: No, Your Honor.

23 THE COURT: All right. Counsel, you may now
24 leave.

25 UNIDENTIFIED: Thank you, Your Honor.

1 THE COURT: All right.

2 MR. MCCANTS: Good afternoon, Your Honor. I'm
3 John McCants. I'll reintroduce myself. I'm counsel
4 for National Fire -- Insurance Company. We met
5 briefly the other day and I introduced one of -- I was
6 here on behalf of -- we were the insurer for
7 Professional Plastering for a one-year period. And I
8 had submitted samples or examples of special
9 interrogatories. I had suggested -- renew the
10 suggestion that the matter be taken up at an
11 appropriate time with the jury charge after the
12 evidence has been submitted.

13 THE COURT: All right. Thank you. We will
14 address that matter at the appropriate time.

15 All right. Gentlemen, anything else?

16 MR. KIRCHNER: Your Honor, the only other thing
17 is for our PowerPoint. If I may just have a few
18 moments just to hook up whatever it is I need to --

19 THE COURT: You may. I have over-anticipated
20 how long that we were going to be. So as soon as the
21 jury gets here. That will give us a few minutes. But
22 they're not supposed to be back until 2:30. Once they
23 all get here we'll get started, since we're a little
24 bit ahead, and we'll begin with opening statements.

25 And do we anticipate that Mr. Glick will be the

Exhibit 2

August 9, 2011 Order of Default and Reference to Master-In-
Equity

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 08-CP-10-0049

MARK F. TESENIAR and NAN M.)
TESENIAR, on behalf of themselves and)
others similarly situated, and TWELVE)
OAKS AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
December 16, 2008 to present),)

Plaintiffs,)

vs.)

ORDER OF DEFAULT AS TO DEFENDANT,
NORTH FLORIDA FRAMING, INC. AND
ORDER OF REFERENCE TO MASTER IN
EQUITY FOR DAMAGES HEARING

FENWICK PLANTATION TARRAGON,)
LLC, A SOUTH CAROLINA LIMITED)
LIABILITY COMPANY, f/k/a FENWICK)
TARRAGON APARTMENTS, LLC, A)
SOUTH CAROLINA LIMITED LIABILITY)
COMPANY, CHARLESTON)
TARRAGON MANAGER, LLC, A)
DELAWARE LIMITED LIABILITY)
COMPANY, TARRAGON)
DEVELOPMENT CORPORATION, A)
NEVADA CORPORATION, SUMMIT)
CONTRACTORS GROUP, INC.,)
SUMMIT CONTRACTORS, INC.,)
FUGLEBERG KOCH ARCHITECTS,)
INC., DEVELOPMENT, COMPLIANCE &)
INSPECTIONS, INC., H2L)
CONSULTING ENGINEERS, TWELVE)
OAK AT FENWICK PROPERTY)
OWNERS ASSOCIATION, INC., (from)
August 8, 2006 to December 15, 2008),)
PROFESSIONAL PLASTERING &)
STUCCO, INC., JOHNSON)
COMPANIES, INC., d/b/a JOHNSON)
ROOFING, INC., LOS CAMPOS, INC.,)
NORTH FLORIDA FRAMING, INC.,)
BEST MASONRY & TOOL SUPPLY,)
INC., as successor in interest to MANGA)
WALL, INC., ALL SOUTH VINYL)
PRODUCITS, INC., MARQUEZ)
CONSTRUCTION, INC., J.T. WALKER)
INDUSTRIES, INC., J.T. INDUSTRIES)
d/b/a GENERAL ALUMINUM)
CORPORATION, and GENERAL)
ALUMINUM COMPANY OF TEXAS, LP,)

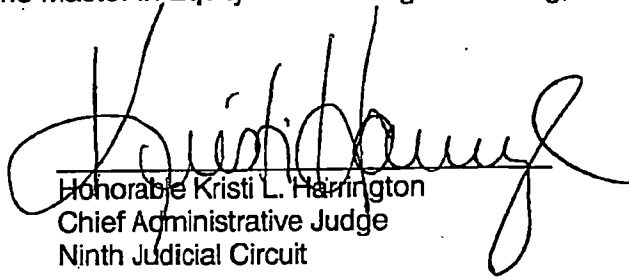
BY _____
JULIE J. ARMSTRONG
CLERK OF COURT
2011 AUG -9 AM 9:53

FILED

J.R. HOBBS CO.-ATLANTA, LLC f/k/a)
 JRH MERGER CO., LLC., JAMIE)
 HELMAN, individually, SCOTT)
 FERGUSON, individually, and CHRIS)
 COBBS, individually and FEDERAL)
 INSURANCE COMPANY, MARIA)
 ARIAS, MIQUEL ROSALES, APS)
 ENTERPRISES, UNLIMITED, INC., HR)
 ELECTRIC, A.M. JACOBS, INC.,)
 MICKEY MASON, d/b/a MASON)
 CONTRACTORS KMAC OF THE)
 CAROLINAS, INC., NEO)
 CORPORATION, and NAVA GUZMAN)
 CONSTRUCTION COMPANY, INC.,)
)
 Defendants.)

UPON THE CALL of the case on May 9, 2011, after counsel for Defendant, North Florida Framing, Inc., had been granted leave to withdraw from the case, Plaintiffs called the Court's attention to Defendant, North Florida Framing, Inc.'s failure to appear for the trial of the case and moved for an Order of Default against Defendant, North Florida Framing, Inc., which was granted. Further, Plaintiffs moved for the claim and default against Defendant, North Florida Framing, Inc., be referred to the Master In Equity for a Damages Hearing, which was granted.

IT IS SO ORDERED!


 Honorable Kristi L. Harrington
 Chief Administrative Judge
 Ninth Judicial Circuit

August 3, 2011
 Charleston, South Carolina.

Exhibit 3

May 14, 2013, Default Judgment

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARK F. TESENIAR and NAN M. TESENIAR, on behalf of themselves and others similarly situated, and TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC., (from December 16, 2008 to present),

Plaintiffs,

vs.

FENWICK PLANTATION TARRAGON, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY F/K/A FENWICK TARRAGON APARTMENTS, LLC, A SOUTH CAROLINA LIMITED LIABILITY COMPANY, CHARLESTON TARRAGON MANAGER, LLC, A DELAWARE LIMITED LIABILITY COMPANY, TARRAGON DEVELOPMENT CORPORATION, A NEVADA CORPORATION, SUMMIT CONTRACTORS GROUP, INC., SUMMIT CONTRACTORS, INC., FUGLEBERG KOCH ARCHITECTS, INC., DEVELOPMENT, COMPLIANCE & INSPECTIONS, INC., H2L CONSULTING ENGINEERS, TWELVE OAKS AT FENWICK PROPERTY OWNERS ASSOCIATION, INC. (from August 8, 2006 to December 15, 2008), PROFESSIONAL PLASTERING & STUCCO, INC., JOHNSON COMPANIES, INC., D/B/A JOHNSON ROOFING, INC., LOS CAMPOS, INC., NORTH FLORIDA FRAMING, INC., BEST MASONRY & TOOL SUPPLY, L.P. AS SUCCESSOR IN INTEREST TO BEST MASONRY & TOOL SUPPLY, INC., AS SUCCESSOR IN INTEREST TO MAGNA WALL, INC., ALL SOUTH VINYL PRODUCTS, INC., MARQUEZ CONSTRUCTION, INC., J.T. WALKER INDUSTRIES, INC., J.T. INDUSTRIES D/B/A GENERAL ALUMINUM CORPORATION, AND GENERAL ALUMINUM COMPANY OF TEXAS, LP, J.R. HOBBS CO.-ATLANTA, LLC F/K/A JRH MERGER CO., LLC, JAMIE HELMAN, INDIVIDUALLY, SCOTT FERGUSON, INDIVIDUALLY, AND CHRIS COBBS, INDIVIDUALLY, AND FEDERAL INSURANCE COMPANY, MARIA ARIAS, MIQUEL ROSALES, APS ENTERPRISES UNLIMITED, INC., HR ELECTRIC, A.M. JACOBS, INC., MICKEY MASON D/B/A MASON CONTRACTORS, KMAC OF THE CAROLINAS, INC., AND NEO CORPORATION,

Defendants.

IN THE CIRCUIT COURT

CASE NO.: 2008-CP-10-0049

ORDER GRANTING JUDGMENT AGAINST NORTH FLORIDA FRAMING, INC.

FILED
2013 MAY 14 AM 10:28
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before me on May 14, 2013, for a Default Damages hearing pursuant to an Order of Default for North Florida Framing, Inc., and an Order of Reference for a Damages Hearing entered on August 9, 2011. Present at the hearing were counsel for Plaintiffs, Hunter Higglson, Esquire, and John T. Chakeris, Esquire. No one appeared on behalf of North Florida Framing, Inc.

The complaint in this matter alleges that North Florida Framing, Inc. was involved in constructing various elements at the Twelve Oaks at Fenwick Plantation community, which resulted in extensive construction deficiencies. As a result of these deficiencies, it is further alleged that North Florida Framing, Inc., was negligent with respect to the construction of the buildings at Twelve Oaks at Fenwick Plantation and that this negligence resulted in significant water intrusion and damage to the sheathing, structural framing members, and other building components which will require Plaintiffs to make extensive repairs.

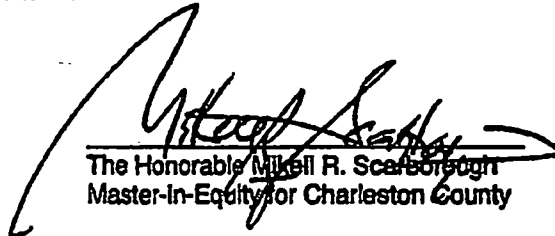
Plaintiffs have produced evidence of the need to repair the construction deficiencies which caused significant water intrusion and damage to the sheathing, structural framing members, and other building components, as well as a repair estimate. Plaintiffs' repair estimate has been produced by a qualified expert, Robert A. Gallagher, the President of Procon & Associates, Inc., and the estimate totals Fifteen Million Seven Hundred Forty Eight Thousand Two Hundred Twenty Five and 56/100 Dollars (\$15,748,225.56). Through the prepared testimony of Robert A. Gallagher, Plaintiffs have demonstrated that this repair estimate is necessitated by improper construction which has resulted in significant water intrusion and damage to the

MA

sheathing, structural framing members, and other building components for which North Florida Framing, Inc. is responsible for ~~the~~

Accordingly, it is ORDERED, ADJUDGED, AND DECREED that judgment be granted in favor of Plaintiffs against defaulting Defendant, North Florida Framing, Inc., jointly and severally, in the amount of Fifteen Million Seven Hundred Forty Eight Thousand Two Hundred Twenty Five and 56/100 Dollars (\$15,748,225.56), which represents repair costs associated with this matter.

IT IS SO ORDERED!



The Honorable Michael R. Scarborough
Master-in-Equity for Charleston County

Charleston, South Carolina
May 17, 2013

Summons and complaint of
within entitled cause received at
this office and service accepted
in accordance with law
this 2 day of Jan 2014

Raymond A. Famer

Director of Insurance
and Attorney to Accept Service
Columbia, SC

Exhibit 4

Copy of Clerk's Index indicating closure date of March 26,
2015.



Julie J. Armstrong
Charleston County Clerk of Court

Charleston County
Circuit Court Case Details
Public Index

[Charleston County Home Page](#)
[Clerk of Court Home Page](#)
[Magistrates Court](#)
[SC Judicial Home Page](#)
[Search Tips](#)
[Switch View](#)

Mark F Teseniar , plaintiff, et al VS Fenwick Plantation Tarragon Llc A Sc Limited Liability Co Et , defendant, et al

Case Number:	2008CP1000049	Court Agency:	Common Pleas	Filed Date:	01/04/2008
Case Type:	Common Pleas	Case Sub Type:	Special-Comp/Oth 699	File Type:	Non-Jury
Status:	Settled	Assigned Judge:	Harrington, Kristi-Lea		
Disposition:	Withdrawn or Settled by Parties	Disposition Date:	03/26/2015	Disposition Judge:	Clerk Of Court C P, G S, And Family Court
Original Source Doc:		Original Case #:		Restore Reason:	Reopen Case for Appeal
Judgment Number:	2008CP1000049	Court Roster:			

Case Parties Judgments Tax Map Information Associated Cases Actions Financials

Click the icon to show associated parties.

Name	Address	Race	Sex	Year Of Birth	Party Type	Party Status	Last Updated
<input checked="" type="checkbox"/> A M Jacobs Inc (no Longer Involved)					Defendant		12/21/2010
<input checked="" type="checkbox"/> Adams, Christopher M.	PO Box 12487 Columbia SC 29211				Defendant Attorney		08/27/2012
<input checked="" type="checkbox"/> All South Vinyl Products Inc (no Longer Involved)					Defendant		12/21/2010
<input checked="" type="checkbox"/> Anderson, Jonathan J.	PO Box 87 Charleston SC 29402				Attorney		02/11/2013
<input checked="" type="checkbox"/> Aps Enterprises Unlimited Inc Etc					Defendant		10/28/2014
<input checked="" type="checkbox"/> Arias, Maria					Defendant		02/25/2010
<input checked="" type="checkbox"/> Barnes, Robert Bryan	PO Box 100200 Columbia SC 292023200				Defendant Attorney		02/11/2013
<input checked="" type="checkbox"/> Best Masonry & Tool Supply Inc As Successor Etc					Defendant		01/12/2010
<input checked="" type="checkbox"/> Best Masonry & Tool Supply L P As Successor Etc					Defendant		04/20/2011
<input checked="" type="checkbox"/> Blackburn, Charles Grant	1701 Cherry Laurel Rd. Columbia SC 29204				Defendant Attorney		08/26/2014
<input checked="" type="checkbox"/> Bruorton, James Atkinson IV	PO Box 893 Charleston SC 29402				Defendant Attorney		08/27/2012
<input checked="" type="checkbox"/> C&N Stucco And Plastering Inc Etc					Defendant		05/21/2010
<input checked="" type="checkbox"/> Cannon, Kelley S.	PO Box 12009 Columbia SC 29211				Defendant Attorney		03/24/2014
<input checked="" type="checkbox"/> Chakeris, John T.	231 Calhoun St. Charleston SC 29401				Plaintiff Attorney		08/27/2012
Charleston Tarragon Manager Llc A Delaware Limited Liability					Defendant		06/16/2011
<input checked="" type="checkbox"/> Cheek, Ellen S.	127 Dunbar St., Ste. 200 Spartanburg SC 29306				Attorney		08/27/2012
<input checked="" type="checkbox"/> Cobb, David Starr	PO Box 22129 Charleston SC 294132129				Defendant Attorney		08/27/2012
<input checked="" type="checkbox"/> Cobbs, Chris (no Longer D M Painting Etc					Defendant		11/29/2010
<input checked="" type="checkbox"/> Daigle, Jason Alan	25 Calhoun Street Suite 400 Charleston SC 29401				Defendant Attorney		08/26/2014
<input checked="" type="checkbox"/> Development Compliance & Inspections Inc Etc					Defendant		01/12/2010
<input checked="" type="checkbox"/> Epting, Andrew K. Jr.	46 A State Street Charleston SC 29401				Attorney		07/28/2015
<input checked="" type="checkbox"/> Federal Insurance Company (no Longer Involved)					Defendant		12/21/2010
<input checked="" type="checkbox"/> Fenwick Plantation Tarragon Llc A Sc Limited Liability Co Et					Defendant		06/16/2011
<input checked="" type="checkbox"/> Fenwick Tarragon Apartments Llc A Sc Limited Liability Co Et					Defendant		06/16/2011
<input checked="" type="checkbox"/> Ferguson, Scott (no Longer Fugleberg Koch Architects Inc Etc					Defendant		11/29/2010
<input checked="" type="checkbox"/> Fugleberg Koch Architects Inc Etc					Defendant		12/21/2010
<input checked="" type="checkbox"/> General Aluminum Company Of Texas Lp Etc(Inactive)					Defendant		06/23/2011
<input checked="" type="checkbox"/> Gernal Aluminum Corporation Etc					Defendant		02/25/2010
<input checked="" type="checkbox"/> H2I Consulting Engineers Etc					Defendant		04/06/2011
<input checked="" type="checkbox"/> Halio, Andrew Steven	PO Box 747 Charleston SC 294020747				Defendant Attorney		03/24/2014

Helman, Jamie (no Longer			Defendant	11/29/2010
<input checked="" type="checkbox"/> Hollingsworth, Dunn Denson	177 Meeting St., Ste. 300 Charleston SC 29401		Defendant Attorney	08/27/2012
Hr Electric Etc			Defendant	03/26/2010
<input checked="" type="checkbox"/> Infinger, Marvin D.	PO Box 486 Charleston SC 29402		Defendant Attorney	08/27/2012
<input checked="" type="checkbox"/> R Hobbs Co Atlanta Llc (no Longer Involved)			Defendant	12/21/2010
J T Industries (no Longer Involved)			Defendant	02/25/2010
J T Walker Industries Inc (no Longer Involved)			Defendant	02/25/2010
<input checked="" type="checkbox"/> Johnson Companies Inc Etc(Inactive)			Defendant	05/24/2011
Johnson Roofing Inc Etc			Defendant	01/12/2010
Jones, Michal Cooper	PO Box 12009 Columbia SC 29211		Attorney	03/24/2014
<input checked="" type="checkbox"/> Jowers, M. Elizabeth	1304 Pembroke Drive Charleston SC 29407		Defendant Attorney	09/20/2013
<input checked="" type="checkbox"/> Jrh Merger Co Llc (no Longer Involved)			Defendant	12/21/2010
<input checked="" type="checkbox"/> Kendall, Everett Augustus II	PO Box 12129 Columbia SC 29211		Defendant Attorney	08/27/2012
<input checked="" type="checkbox"/> Kirchner, Jesse A.	15 Middle Atlantic Wharf Ste. 101 Charleston SC 29401		Plaintiff Attorney	08/27/2012
<input checked="" type="checkbox"/> Kmac Of The Carolinas Inc Etc			Defendant	03/26/2010
<input checked="" type="checkbox"/> Koenig, Robert			Plaintiff	10/27/2008
Ktd Consulting Engineers Inc Etc			Defendant	04/08/2010
Leath, W. Jefferson Jr.	PO Box 59 Charleston SC 29402		Attorney	02/11/2013
<input checked="" type="checkbox"/> Los Campos Inc (no Longer Involved)			Defendant	11/19/2010
<input checked="" type="checkbox"/> Lucey, Justin O'Toole	PO Box 806 Mt. Pleasant SC 29465		Plaintiff Attorney	03/24/2014
<input checked="" type="checkbox"/> Magna Wall Inc Etc			Defendant	01/12/2010
Mahon, Christy Elizabeth	PO Box 12129 Columbia SC 29211		Attorney	08/27/2012
<input checked="" type="checkbox"/> Marquez Construction Inc Etc			Defendant	01/12/2010
<input checked="" type="checkbox"/> Martin, Curtis Brent	PO Box 87 Charleston SC 29401		Defendant Attorney	02/11/2013
Martinez, Luis			Defendant	04/12/2010
Mason, Mickey			Defendant	03/26/2010
Mason Contractors Etc			Defendant	03/26/2010
<input checked="" type="checkbox"/> Maybank, Roy Pearce	PO Box 12579 Charleston SC 29422		Defendant Attorney	08/27/2012
McCants, John Lucius	PO Box 11803 (29211) 1330 Lady Street Suite 400 (29201) Columbia SC 29211		Attorney	12/22/2015
<input checked="" type="checkbox"/> Mims, Kevin W.	50 Immigration St., Ste. 200 Charleston SC 29403		Defendant Attorney	08/27/2012
National Fire & Marine Insurance Company			Other Party to Case	03/15/2011
<input checked="" type="checkbox"/> Nava Guzman Construction Inc Etc			Defendant	08/09/2010
Neo Corporation Etc			Defendant	03/26/2010
North Florida Framing Inc Etc			Defendant	05/21/2013
<input checked="" type="checkbox"/> O'Neal, John Blanton IV	PO Box 1508 Charleston SC 294021508		Defendant Attorney	08/27/2012
<input checked="" type="checkbox"/> Osborn, James Geoffrey Jr.	401 N. Main Street Suite 100 Greenville SC 29601		Defendant Attorney	03/24/2014
<input checked="" type="checkbox"/> Professional Plastering & Stucco Inc Etc(Inactive)			Defendant	11/09/2015
Rosales, Miquel			Defendant	02/25/2010
<input checked="" type="checkbox"/> Rothschild, Amy B.	Edgar A. Brown Building 1205 Pendleton Street, Suite 224 Columbia SC 29201		Defendant Attorney	04/10/2014
<input checked="" type="checkbox"/> Scott, William A.	775 St. Andrews Blvd. Charleston SC 29407		Defendant Attorney	01/23/2015
<input checked="" type="checkbox"/> Segui, Phillip Ward Jr.	864 Lowcountry Blvd., Ste A Mt. Pleasant SC 29464		Plaintiff Attorney	08/27/2012
<input checked="" type="checkbox"/> Smith, Bachman S. IV	134 Meeting St., 3Rd Floor Charleston SC 29401		Defendant Attorney	03/24/2014
Stoney, Randell C. Jr(Inactive)	Barnwell Whaley Patterson & Helms, Llc P.O. Drawer H Charleston SC 29402-0197		Defendant Attorney	05/20/2011
<input checked="" type="checkbox"/> Stubbs, Sidney Markey	PO Box 8057 Columbia SC 29202		Defendant Attorney	08/27/2012
Summit Contractors Group Inc (no Longer Involved)			Defendant	07/14/2009
Summit Contractors Inc (no Longer Involved)			Defendant	12/21/2010
Tarragon Corporation Etc			Defendant	01/12/2010
Tarragon Development Corporation A Nevada Corporation E			Defendant	01/12/2010
Tarragon Development Corporation A Nevada Corporation Et			Defendant	01/12/2010
Tarragon South Development Corporation Etc			Defendant	01/12/2010
<input checked="" type="checkbox"/> Teseniar, Mark F			Plaintiff	06/24/2015
			Plaintiff	01/12/2010

<input checked="" type="checkbox"/> Teseniar, Nan M						
<input checked="" type="checkbox"/> Travis, M. Brittain	2112 Telfair Way Charleston SC 29412				Defendant Attorney	03/24/2014
<input checked="" type="checkbox"/> Twelve Oaks At Fenwick Plantation Horizontal Property Regime					Plaintiff	10/27/2008
<input checked="" type="checkbox"/> Twelve Oaks At Fenwick Plantation Property Owners Assoc Etc					Plaintiff	12/21/2010
<input checked="" type="checkbox"/> Twelve Oaks At Fenwick Property Owners Association Inc Etal					Defendant	12/03/2010
<input checked="" type="checkbox"/> Twelve Oaks At Fenwick Property Owners Association Inc Etal					Plaintiff	01/12/2010
Twelve Oaks At Fenwick Property Owners Association Inc Etal					Defendant	12/03/2010
Villagomez Painting Inc Etc					Defendant	04/12/2010
<input checked="" type="checkbox"/> Wagner, Barbara J.(Inactive)	Barnwell Whaley Patterson & Helms, Llc P.O. Drawer H Charleston SC 29402-0197				Defendant Attorney	05/20/2011
<input checked="" type="checkbox"/> Waltz, Robert David	PO Box 908 Summerville SC 29486				Defendant Attorney	11/09/2015
<input checked="" type="checkbox"/> Wegener, Danielle Beck	PO Box 87 Charleston SC 29402				Defendant Attorney	02/11/2013
<input checked="" type="checkbox"/> Wilkes, Michael B.T.	127 Dunbar St., Ste. 200 Spartanburg SC 29306				Defendant Attorney	08/27/2012

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Kristi Lea Harrington, Circuit Court Judge

Case No. 2008-CP-10-0049
Appellate Case No. 2016-000185

RECEIVED

MAY 04 2016

SC Court of Appeals

Mark F. Teseniar and Nan M. Teseniar, on behalf of themselves and others similarly situated, and Twelve Oaks at Fenwick Property Owners Association, Inc., (from December 16, 2008 to present),.....Respondents,

v.

Fenwick Plantation Tarragon, LLC, a South Carolina Limited Liability Company f/k/a Fenwick Tarragon Apartments, LLC, a South Carolina Limited Liability Company, Charleston Tarragon Manager, LLC, a Delaware Limited Liability Company, Tarragon Development Corporation, a Nevada Corporation, Summit Contractor WSW Group, Inc., Summit Contractors, Inc., Fugleberg Koch Architects, Inc., Development, Compliance & Inspectors, Inc., H2L Consulting Engineers, Twelve Oaks at Fenwick Property Owners Association, Inc., (from August 6, 2006 to December 15, 2008), Professional Plastering & Stucco, Inc., Johnson Companies, Inc. d/b/a Johnson Roofing, Inc., Los Compos, Inc., North Florida Framing, Inc., Best Masonry & Tool Supply, Inc., Marquez Construction, Inc., J.T. Walker Industries, Inc., J.T. Industries d/b/a General Aluminum Corporation and General Aluminum Company of Texas, LP, J.R. Hobbs Co.-Atlanta, LLC f/k/a JRH Merger Co., LLC, Jamie Helman, individually, Scott Ferguson, individually, and Chris Cobbs, individually, and Federal Insurance Company, Maria Arias, Miquel Roales, APS Enterprises, Unlimited, Inc., HR Electric, A.M. Jacobs, Inc., Mikey Mason d/b/a Mason Contractors KMAC of the Carolinas, Inc., NEO Corporation and Nava Guzman Construction, Inc.,.....Respondents


And Mt. Hawley Insurance Company.....is the Appellant/Proposed Intervenor.

AFFIDAVIT OF SERVICE

I, Moira W. Kerrigan, an employee of Thurmond Kirchner & Timbes, P.A., attorneys for Respondents, do hereby certify that I have on this date, delivered via U.S.

Mail, a true and correct copy of the Respondents' Motion to Dismiss to the following
counsel of record:

Andrew K. Epting, Jr., Esquire
Michelle N. Endemann, Esquire
Law Offices of Andrew Epting, LLC
46-A State St.
Charleston, South Carolina 29401
ake@epting-law.com
mne@epting-law.com



Moira W. Kerrigan
Paralegal to Michael A. Timbes

May 2, 2016
Charleston, South Carolina

THURMOND KIRCHNER & TIMBES, P.A.
ATTORNEYS & COUNSELORS AT LAW

15 MIDDLE ATLANTIC WHARF
CHARLESTON, SOUTH CAROLINA 29401

Paul R. Thurmond
Jesse A. Kirchner
Michael A. Timbes *
Christopher P. Deters
David L. Barnes, Jr.
Thomas J. Rode
Christopher C. Romeo **
Matthew S. Byzet

* Also admitted in Georgia
** Also admitted in North Carolina

RECEIVED

MAY 04 2016

SC Court of Appeals

Phone: 843-937-8000
Fax: 843-937-4200
www.tktylawfirm.com

May 2, 2016

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: **Case Tracking No. 2016-000185**
Mark Teseniar v. Fenwick Plantation

Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of Respondents Motion to Dismiss and Affidavit of Service as well as this firm's check in the amount of \$25.00 in satisfaction of the filing fee in connection with the above-referenced appeal. Kindly file these papers with the Court and return a file-stamped copy to me in the self-addressed, stamped envelope provided for your convenience.

Your assistance with this matter is.

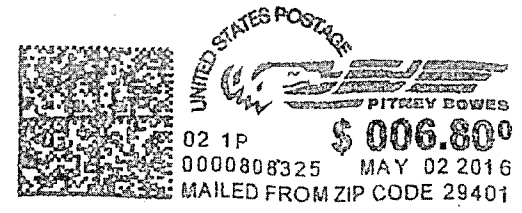
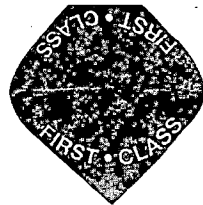
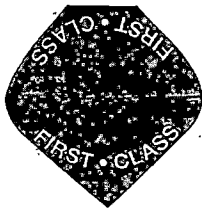
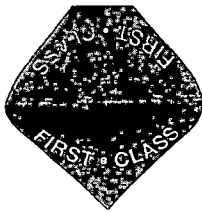
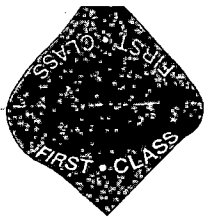
With kind regards, I am

Very truly yours,

THURMOND KIRCHNER & TIMBES, PA


Moira Kerrigan
Paralegal to Michael A. Timbes

cc: Andrew K. Epting, Jr., Esquire (w/ enclosure)
Michelle N. Endemann, Esquire (w/ enclosure)
Jesse Kirchner, Esquire (w/ enclosure)
W. Jefferson Leath, Jr., Esquire (w/ enclosure)
Justin O. Lucey, Esquire (w/ enclosure)
Phillip W. Segui, Jr., Esquire (w/ enclosure)
John Chakeris, Esquire (w/ enclosure)



First Class Mail

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
ATTORNEYS & COUNSELORS AT LAW

15 MIDDLE ATLANTIC WHARF, SUITE 101
CHARLESTON, SOUTH CAROLINA 29401

TO:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

MAY 04 2016

SC Court of Appeals