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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court of South Carolina

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas
The Honorable Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2016-000185
Case No. 2008-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),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.,Defendants,

And Mt. Hawley Insurance Company,.....Appellant/Intervenor.

MOTION TO TRANSFER

Appellant/Intervenor Mt. Hawley Insurance Company (“Mt. Hawley”) moves pursuant to Rule 204(b), SCACR for an order transferring this appeal to the Supreme Court of South Carolina. At issue in this appeal is Mt. Hawley’s Motion to Intervene and for Relief from Judgments; this motion was denied by the Circuit Court Judge Kristi Leigh Harrington on January 15, 2016. This case has been fully briefed and the record on appeal filed on January 30, 2017. This motion to transfer is made on the grounds discussed below.

1. To Argue Against Precedent

In *Ex parte Government Employee’s Insurance Company*, 373 S.C. 132, 135 (2007), the South Carolina Supreme Court held that an appeal from a denial of a motion to intervene is reviewed for an abuse of discretion. The Court in *Ex parte Government Employee’s* does not address whether the standard of review should be different for a motion to intervene as a matter of right under SCRCP 24(a) than for a motion for permissive intervention under SCRCP 24(b). The distinction is recognized in the Federal system. See *Int’l Paper Co. v. Town of Jay*, 887 F.2d 338, 344 (1st Cir. 1989) (different standard of review between as of right and permissive intervention); *United States v. Hooker Chems. & Plastics Corp.*, 749 F.2d 968, 990–91 (2d Cir. 1984) (noting distinction); *Harris v. Pernsley*, 820 F.2d 592, 597 (3d Cir. 1987) (review with regard to intervention as of right is “more stringent”), *cert. denied*, 484 U.S. 947, (1987); see also *In re Marriage of Gonzalez*, 1 P.3d 1074, 1077 n.2 (Utah 2000) (“the majority of federal appeals courts follow a de novo standard review when intervention as of right is involved.”)

In the first instance, the question of whether *Ex parte Government Employee’s* is precedent in this case can only be decided by the South Carolina Supreme Court. If *Ex parte Government Employee’s* is precedent, then only the South Carolina Supreme Court could change it.

2. Administrative Order of the Supreme Court of South Carolina 2006-07-26-0

Resolution of this appeal requires judicial interpretation of an administrative order of the South Carolina Supreme Court (2006-07-26-0) (“the Administrative Order”).

This matter was designated complex by Chief Administrative Judge R. Markley Dennis on September 10, 2010 pursuant to the Administrative Order, and exclusive jurisdiction was vested in Judge Roger Young. *See* Complex Case Designation Order at 2, Sept. 10, 2010 (attached as *Exhibit A*). Thereafter, and despite the exclusive jurisdiction vested in Judge Young, the trial and post-trial motions, including the entry of default (the subject of this appeal), were presided over by Judge Kristi Leigh Harrington; a monetary judgment of \$15,748,255.56 based on this default was entered by the Master In Equity. The Appellant’s Motion to Intervene and for Relief From Judgments was heard and denied by Judge Harrington, even though Appellant argued Judge Harrington could not hear the motion as she lacked jurisdiction because (i) exclusive jurisdiction was vested in Judge Young and (ii) the case had been terminated as to the judgment debtor (Mt. Hawley’s insured) prior to the entry of default. This argument is fully articulated in Appellant’s Brief, pages 20–39 (*attached as Exhibit B*).

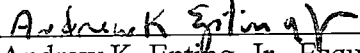
This appeal requires consideration of the intent of the South Carolina Supreme Court in issuing its Administrative Order and the interpretation of that order; for this reason, this appeal should be transferred to the Supreme Court.

3. Remedy Sought

Mt. Hawley asks that this Motion be granted and a transfer order be entered.

Respectfully submitted,

April 7, 2017



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April 7, 2017

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SC Court of Appeals

The Honorable Daniel E. Shearouse
Clerk of South Carolina Supreme Court
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RE: Mark F. Teseniar et al. v. Fenwick Plantation et al.
Appellate Case No.: **2016-000185**

Dear Mr. Shearouse:

Enclosed for filing please find the original and seven copies of the Motion to Transfer together with our firm's check in the amount of \$25.00 in the above-referenced appeal. I would greatly appreciate your filing the original and returning a file-stamped copy of the Motion to me in the self-addressed, stamped envelope. Thank you in advance.

With kindest regards,

ANDREW K. EPTING, JR., LLC

s/Drew

Andrew K. Epting, Jr.

AKE, Jr./agg

Enclosures – as stated

cc: The Honorable Jenny Abbott Kitchings
Phillip W. Segui, Jr., Esquire
Jefferson Leath, Esquire
Jesse Kirchner, Esquire
Justin Lucey, Esquire
John Chakeris, Esquire

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Honorable Jenny Abbott Kitchings
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