

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

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SC Court of Appeals

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.

APPELLANT’S REPLY IN SUPPORT OF ITS MOTION TO TRANSFER

In moving to transfer to the Supreme Court, Appellant/Intervenor Mt. Hawley Insurance Company (“Mt. Hawley”) sought to hasten finality, not delay it, and to do so with efficient use of resources.

Respondents’ arguments mischaracterize Appellant’s position and do so in terms such as (i) Appellant is “hoisted by its own petard,” Respondents’ Return at 3, (ii) Appellant’s arguments are “fatally flawed, and the fatal blows are self-inflicted,” *id.*, and (iii) referring to “the circular logic of Appellant’s argument.” *Id.* at 4. Appellant focuses herein on the narrow issues before this Court on Appellant’s Motion to Transfer.

I. The Standard of Review

The case of *Ex parte Government Employee’s Insurance Company (GEICO)*, 373 S.C. 132, 135 (2007) stands for the proposition that denial of Rule 24 motions to intervene are decided for abuse of discretion, but the Supreme Court did not draw a distinction, as federal courts have, between intervention as of right and permissive intervention. The first question for decision is whether *GEICO* is precedent, a question which, if decided by the Supreme Court, provides finality as to the standard of review. Assuming the case is heard by the Court of Appeals who decides it is precedent, then the parties are back to this very place confronted with further appeal. Yes, the Court of Appeals could distinguish *GEICO* and hold that it is not precedent and then address the applicable standard of review. A better use of this Court’s time and resources, though, is for the Supreme Court to decide this issue in the first instance.

II. Supreme Court Administrative Order Regarding Complex Case Designations

Respondents advance that, when exclusive jurisdiction has been vested in one judge pursuant to this Court’s Administrative Order, the Administrative Order allows a different judge to handle all issues in that case so long as that different judge is at the time of acting also the

Chief Administrative Judge. While this appears more of a merits argument, if the Respondents' argument has any relevance to the instant Motion to Transfer, that relevance is that there are multiple interpretations of a Supreme Court Order and logically the Supreme Court should decide these issues.

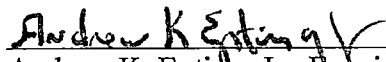
Appellant notes that Respondents' argument that Appellant has no standing to dispute jurisdiction is likewise a merits arguments outside the scope of this Transfer Motion. Respondents' Return at 4-5. This merits argument was addressed in Appellant's brief at pages 20-24 and 40-44, and in Respondents' brief at pages 22-31. Moreover, this argument leads to the result that an appellant whose motion to intervene is denied is not permitted to appeal because it would lack standing on account of the denial of its motion to intervene.

III. Rule 204(b)

Mt. Hawley's Motion to Transfer is based in part on its intent to argue against precedent (Rule 217 SCACR).¹ Further, the proper interpretation of the Supreme Court's Administrative Order *is* of "major importance," satisfying Rule 204(b). Even Respondents concede that "questions regarding the appropriate appellate standard of review and interpretation of certain Supreme Court Orders are important." Respondents' Return at 2.

Respectfully submitted,

April 18, 2017



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¹ Appellants are preparing such a motion which will be filed without delay.

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

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

Kristi Lea Harrington, Circuit Court Judge

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v.

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

PROOF OF SERVICE

I certify that I have served the Appellant's Reply in Support of its Motion to Transfer on all counsel of record for Respondents by depositing a copy in the United States Mail, Postage prepaid, on April 18, 2017, addressed to as follows:

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Michael A. Timbes
Thomas J. Rode

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and have served a copy on the following counsel for Respondent by email, addressed as follows:

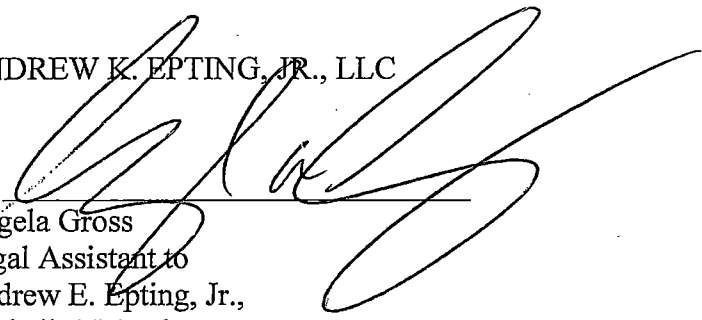
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Attorneys For Appellant / Intervenor

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ATTORNEYS AT LAW

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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 Appellant's Reply In Support of its Motion to Transfer together with a Proof of Service in the above-referenced appeal. I would greatly appreciate your filing the original and returning a file-stamped copy of the Reply 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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