

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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APR 21 2017

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 MOTION TO ARGUE AGAINST PRECEDENT

TO: THE HONORABLE JUSTICES OF THE SUPREME COURT OF SOUTH CAROLINA

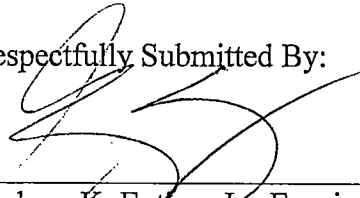
Appellant moves pursuant to Rule 217 SCRAP to argue against the precedent set forth in *Ex parte Government Employee's Insurance Company*, 373 S.C. 132, 135 (2007) (hereinafter *GEICO*), which holds that denials of motions to intervene as of right pursuant to SCRCP 24(a) are reviewable for abuse of discretion.

Most federal appellate courts consider intervention as of right to be primarily a question of law that is reviewed *de novo*. See *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” (citing cases)). Additionally, *GEICO* 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), a distinction 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).

Accordingly, Appellant moves to argue—against the precedent of *GEICO*—that denials of motions to intervene as of right should be reviewed *de novo*.

[signature on following page]

Respectfully Submitted By:



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ATTORNEY FOR APPELLANT

On this 19th day of April, 2017
Charleston, South Carolina

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

CASE NO. 2008-CP-10-0049

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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 & Inspections, Inc., H2L Consulting Engineers, Twelve Oaks T 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., as successor in interest to Manga 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 Roales, 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 Vava Guzman Construction Company, Inc., Defendants,

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

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Argue Against Precedence on all counsel of record for Respondents by depositing a copy in the United States Mail, Postage prepaid, on April 19, 2017, addressed to as follows:

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

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By 

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ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW

April 19, 2017

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

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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 Motion to Argue Against Precedent together with a Proof of Service in the above-referenced appeal. Please also find enclosed the \$25.00 motion fee. I would greatly appreciate your filing the original Motion and returning a file-stamped copy to me in the self-addressed, pre-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

ANDREW K. EPTING, JR., LLC

ATTORNEYS AT LAW

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