

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

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.,

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

RESPONDENTS' RETURN TO APPELLANT'S MOTION TO ARGUE AGAINST
PRECEDENT

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SC Court of Appeals

COME NOW Respondents, pursuant to Rule 240(e) of the South Carolina Appellate Court Rules, in Return to Appellant's Motion to Argue Against Precedent, and assert that the instant motion is unfounded, improper, and unnecessary, and it should be denied or dismissed for the reasons stated herein:

BACKGROUND & ARGUMENT

Appellant brought the above-captioned appeal in the South Carolina Court of Appeals on January 29, 2016, nearly three years after the final judgment in this matter was issued by the trial court against Appellant.¹

On April 7, 2017, roughly 14 months into the pendency of the instant appeal before the South Carolina Court of Appeals, Appellant filed a Motion to Transfer with this Court, seeking *inter alia* a transfer to this Court in order to argue against precedent. On April 13, 2017, Respondents filed a Return to Appellant's Motion to Transfer. This Court has yet to rule on Appellant's Motion to Transfer, nor has this Court requested oral argument on the same.

For the reasons stated below, the instant motion should be denied and/or dismissed.

1. Appellant's Motion to Argue Against Precedent is not ripe:

Pursuant to Rule 217, SCACR, a party need only request leave to argue against precedent in oral argument—not in its written briefs. *See* Rule 217, SCACR (“[p]ermission of the appellate court shall not be required to argue against precedent in the brief,” a motion to offer oral argument against precedent shall be made 15 days prior to the hearing).

In this case, the only matter pending before this Court is Appellant's Motion to Transfer the instant appeal. However, under Rule 240(h) no oral argument will be given on that motion unless specifically ordered by this Court—which has not occurred. *See* Rule 240(h), SCACR

¹ This action was commenced in 2008 and Appellant concedes it was on notice of the underlying action in 2009. (App. Br. 4-5). Appellant filed the subject motion to intervene roughly 4 years later on July 28, 2015.

("Unless otherwise ordered by the court, motions or petitions shall be decided without oral argument."). Thus, because no oral argument is scheduled to be heard by this Court, the need to file a motion to argue against precedent is not yet necessary. See Rule 217 (a party only needs leave of the court to argue against precedent in oral argument) (emphasis added).²

2. **Appellant's Motion to Argue Against Precedent is duplicative:**

Appellant has already put forth an argument that transfer to this Court is necessary in order to argue against precedent in its previous Motion to Transfer, and that argument is substantially identical to that contained in the instant motion. Consequently, the instant motion is superfluous and duplicative. Thus, Respondents hereby incorporate all arguments set forth in its Return to Appellant's Motion for Transfer previously filed with this Court as if fully set forth herein.

CONCLUSION

For the reasons set forth above, the instant motion should be denied and/or dismissed.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.



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² The same would hold true had Appellant filed the instant motion with the Court of Appeals.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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The Honorable Kristi Lea Harrington, Circuit Court Judge

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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 Vava Guzman Construction, Inc.,..... Respondents

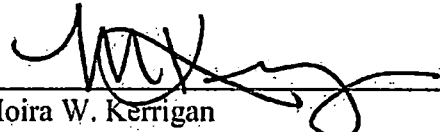
And Mt. Hawley Insurance Company.....is the Appellant/Proposed Intervenor.

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' Return to Appellant's Motion to Argue
Against Precedent to the following counsel of record:

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Michelle N. Endemann, Esquire
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Moira W. Kerrigan
Paralegal to Michael A. Timbes

April ~~21~~ 2017
Charleston, South Carolina

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April 27, 2017

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SC Court of Appeals

Via US Mail

The Honorable Daniel E. Shearouse
South Carolina Supreme Court
1231 Gervais St.
Columbia, South Carolina 29201

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

Dear Mr. Shearouse:

Please find enclosed the following the documents in connection with the above-referenced appeal:

- (1) an original and seven (7) copies of Respondents' Return to Appellant's Motion to Argue Against Precedent; and
- (2) an original and one copy of the Affidavit of Service.

I would appreciate it if you would please file these originals with the Court and return any extra file-stamped copies to me using the enclosed self-addressed, stamped envelope provided for your convenience. Your assistance is appreciated. Should you have any questions or concerns, please do not hesitate to contact us.

With warmest regards, I am

Very truly yours,


THURMOND KIRCHNER & TIMBES, P.A.

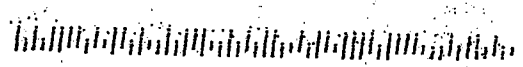


Moira Kerrigan
Paralegal to Michael A. Timbes

cc: The Honorable Jenny Abbott Kitchings
All Counsel of Record



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TO:

The Honorable Jenny Abbott Kitchings
 South Carolina Court of Appeals
 1220 Senate Street
 Columbia, South Carolina 29201

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