

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM Horry County
Court of Common Pleas

The Honorable Clifton B. Newman, Circuit Court Judge

Case No. 2014-CP-26-7634

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OCT 17 2017
SC Court of Appeals

Hartford Fire Insurance Company, Hartford Casualty Insurance Company, Selective Insurance Company of South Carolina, Harleysville Insurance Company, American Empire Surplus Lines Insurance Company, Bitco General Insurance Corporation, Clarendon National Insurance Company as Successor by Merger to Clarendon America Insurance Company, and National Fire & Marine Insurance Company.....Appellants,

v.

The Harbour Cove Condominium Association, Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction Co., Inc., Centex-Rodgers, Inc., Balfour Beatty Construction, LLC f/k/a Centex Construction, LLC, Right Way Construction, Inc., Right Way Group, Inc., RWG, Inc., RWGR, Inc., South Carolina State Plastering, LLC, Georgia State Plastering, LLC, Florida State Plastering, LLC, Coastal Drywall, Inc., d/b/a Coastal Plaster Systems, Lundy Dowell d/b/a Coastal Plaster Systems, Martin Masonry, Inc., Roof Doctor of the Carolinas, Inc., Richard Blackwell d/b/a Synthetic Designs, Ferst Plastering, Inc., a/k/a Ferst Exteriors, Inc., Coastal Tinting, Inc., BR Brick & Masonry, Inc., Model Home Interiors, Inc., Gary Hunnell d/b/a Grand Strand Roofing, Steven Bosch d/b/a The Roofer Man, Frank Harris d/b/a Frank Harris Construction, Carl Williamson d/b/a Williamson Construction & Waterproofing, Stock Building Supply, LLC f/k/a Stock Building Supply, Inc., and Morningstar Consultants, Inc.,Respondents,

MOTION TO DISMISS APPEAL

COMES NOW the above-named Respondent Harbour Cove Condominium Association (hereinafter “Respondent Harbour Cove”), by and through its undersigned counsel, and herewith moves this Court for an Order dismissing the appeal filed by Appellants Hartford Fire Insurance Company and Hartford Casualty Insurance Company (hereinafter collectively “Appellant Hartford”).

BACKGROUND

This appeal arises from a construction defect case commenced by Respondent Harbour Cove against various defendants. Appellant Hartford is an insurer of defendant Coastal Plaster Systems, Inc. Appellant Hartford filed a Motion to Intervene in the underlying action on August 7, 2017. By Order entered October 13, 2017, the Court ruled that Appellant Hartford’s Motion to Intervene was denied. Appellant Hartford filed its Notice of Appeal immediately thereafter. This action was set for trial to begin on October 16, 2017.

To better understand the improper nature of Appellant’s appeal, it is important at the outset to note certain indisputable facts. Prior to trial, Appellant filed a written motion requesting a special verdict form or special interrogatories. However, Appellant is not a party to the litigation. Respondent Harbour Cove asserted no claims whatsoever against Appellant, and Appellant does not appear as a party in the caption of its own motion from which this appeal arises. This appeal follows.

LAW AND ANALYSIS

The South Carolina Court of Appeals may only entertain appeals of final orders. S.C. Code Ann. § 14-3-330 (1991). If there is some further act of the court which must be done in order to determine the rights of the parties, an order is interlocutory. *Mid-State*

Distripts. V. Century Imps., 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993) (citing *Adickes v. Allison & Bratton*, 21 S.C. 245 (1884)) (a ruling on a Motion to Dismiss under Rule 12(b)(2) has no real finality because it leaves open issues for trial and is interlocutory and therefore not appealable). An order that determines issues of law while leaving open questions of fact is not a final order. *Bone v. United States Food Serv.*, 399 S.C. 566, 733 S.E.2d 200 (2012) (citing *Good v. Hartford Accident and Indemnity Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942)) (an order containing provisions where the court remanded a matter for further proceedings was not a final order and not appealable). Specifically, the South Carolina Supreme Court has analyzed the issue of whether an appeal of a ruling on a Motion to Intervene was permissible, and concluded it was an improper interlocutory appeal. *Dorn v. Cohen*, 418 S.C. 126, 139, 791 S.E.2d 313, 319-20 (*See Duncan v. Gov't Emps. Ins. Co.*, 331 S.C. 484, 485, 449, S.E.2d 580, 580 (1994).) (holding an appeal from an order of the circuit court granting a guardian ad litem's motion to intervene was interlocutory and was therefore not immediately appealable).

The Court's ruling on Appellant's Motion to Intervene is not an appealable final order as the entirety of the trial on the facts of the case has yet to commence and several factual issues remain. Respondent, the Harbour Cove Condominium Association, and its residents have been waiting since 2014 to bring this case to a resolution, which may be jeopardized with Appellant's attempts to appeal a decision by the Court that is interlocutory and not appealable.

On these grounds, the Court's denial of Appellant's Motion is not a final judgment as to all the claims or parties and furthermore, is not an immediately appealable interlocutory order.

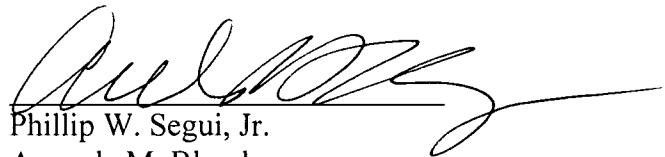
As applied to this case, the foregoing authorities are clear and unambiguous in their message: The Court of Appeals does not have jurisdiction to hear this interlocutory appeal.

As such, Appellant's appeal must be dismissed.

CONCLUSION

In light of the arguments and authorities set forth herein, Respondent Harbour Cove respectfully requests an Order of this Honorable Court dismissing Appellant Hartford's appeal in its entirety.

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October 16, 2017
Mount Pleasant, South Carolina

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I hereby certify that I have this day served counsel for the opposing party(s) with a copy of the within and foregoing pleading by *electronic mail* properly addressed to the following, to insure proper delivery to the following:

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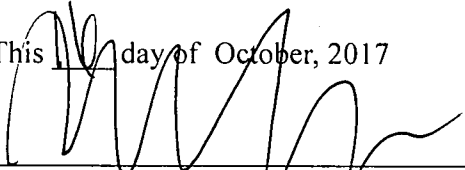
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This 11 day of October, 2017

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October 16, 2017

Via Federal Express

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RE: The Harbour Cove Condominium Association v. Centex Homes, a Nevada General Partnership, et al.
Case No.: 2014-CP-26-7634

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of Respondent Harbour Cove Condominium Association's Motion to Dismiss Appeal of Hartford Fire Insurance Company and Hartford Casualty Insurance Company, as well as this firm's check in the amount of \$25.00 for the applicable filing fee. If you would, please file this motion with the Court and return a file-stamped copy thereof to my office in the enclosed self-addressed, stamped envelope.

Should you have any questions or require any additional information, please do not hesitate to contact me.

Sincerely,



Amanda M. Blundy

AMB/ay
Enclosures

cc: John T. Chakeris, Esquire (w/enclosure) - via electronic mail only
Shaun W. Cranford, Esquire (w/enclosure) - via electronic mail only
All Counsel of Record (w/enclosure) - via electronic mail only