

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTEENTH JUDICIAL  
) CIRCUIT

Harbour Cove Condominium  
Association, et al.,

) Civil Action No.: 2014-CP-26-7634

Plaintiffs,

) ORDER DENYING MOTION OF  
) INSURERS FOR LIMITED  
) INTERVENTION

v.

Centex Homes, et al.,

Defendants.

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OCT 31 2017

SC Court of Appeals

This matter is before me upon separate Motions for Limited Intervention filed by multiple insurance carriers for insureds who are defendants in this action made pursuant to Rule 24 of the South Carolina Rules of Civil Procedure.

The present action is a complex construction defect case. In its Complaint, Plaintiff alleges causes of action for negligence, gross negligence and breach of warranty against each of the above-named Defendants for damages caused by its negligent and defective work.

The Insurers each seek to intervene for the "limited purpose of submitting and participating in the preparation of jury instructions, special interrogatories, and/or a special verdict form for submission to the jury.

The insurers contend that allowing intervention is essential for ensuring jury charges on issues such as, but not limited to, the following:

- (1) definition of progressive damages;
- (2) how to determine the cost of repairing defective workmanship originally performed by each individual subcontractor;

(3) how to determine the cost of repairing damage to other parts of the buildings that result from the defective workmanship of the subcontractor; and

(4) proof requirements by the parties seeking damages such that they must show, before recovery is available, (a) defective work of the subcontractor and (b) damage to other parts of the buildings proximately caused by the defective work of the subcontractor.

In addition to jury charges, the moving parties seeks to be permitted to request certain special interrogatories such as, but not limited to, the following:

(1) line item for the cost of removing and replacing the work of their respective insured(s);

(2) cost of removing and replacing portions of the building damaged by the work of their respective insured(s); and

(3) the date on which the progressive damage started and ended.

This matter has been pending for three (3) years and a date certain trial is scheduled for October 16, 2017.

#### DISCUSSION OF THE LAW

"The granting of intervention is wholly discretionary with the trial court and will be reversed only for abuse of discretion." Sauner v. Public Service Authority, 354 S.C. 397, 411, 581 S.E.2d 161, 169 (2003) (citing South Carolina Tax Commission v. Union Co. Treasurer, 295 S.C. 257, 260, 368 S.E.2d 72, 74 (Ct. App. 1988)). The court should consider the practical implications of a decision allowing intervention. Ex parte Government Employee's Ins. Co. (GEICO), v. Goethe, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007) (affirming the family court's denial of an insurer's motion to intervene). "However, a party must have standing to intervene in an action pursuant to Rule 24, SCRCF." Id. A party has standing if the party has a personal stake in the

subject matter of a lawsuit and is a "real party in interest." Id. "A real party in interest ... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action." Id.

**BACKGROUND**

Each of the Insurers stated that they did not wish to intervene in this case as parties to the action, and specifically argued that the issue of insurance should not be permitted within the trial nor should the presence of the intervening parties be disclosed to the jury.

After careful consideration of the applicable law, arguments of counsel, the relevant pleadings, and the memoranda and other submissions of the parties, the Court hereby finds as follows:

1. The Insurers lack the necessary standing to intervene and do not meet the requirements for intervention under Rule 24 of the South Carolina Rules of Civil Procedure ("SCRCP"). As our Supreme Court has held, "intervention is only appropriate where the party seeking intervention has 'a real proprietary interest in the subject matter of the proceedings;' an interest which is merely 'peripheral and not the real interest at stake' will not warrant intervention." Ex parte Gov't Employee's Ins. Co. (GEICO) v. Goethe, 373 S.C. 132, 139, 644 S.E.2d 699, 703 (2007) (quoting Bailey v. Bailey, 312 S.C. 454, 441 S.E.2d 325 (1994)) (in GEICO, the court affirmed the family court's denial of insurer's motion to intervene). The Insurers do not have an interest in the property that is the subject of this action, the Harbour Cove Condominium project. The Insurers do not have an interest in the underlying transaction that is the subject of this litigation, namely the development and construction of the Harbour Cove Condominium project. Each of the Insurers' interest arises solely out of its contract of insurance with its insured and those interests are not

appropriate to be litigated or interjected into this construction defect action. Intervention is not appropriate simply because a non-party only has a monetary interest in the outcome of the case.

2. The Insurers can satisfactorily protect any purported interests they may have in a separate declaratory judgment action, including the declaratory judgment action that is currently pending. Furthermore, addressing coverage issues in this action is likely to create inconsistent results pending the judicial determinations and outcomes in the Declaratory Judgment Action.

3. The South Carolina Supreme Court's recent decision in Harleysville Grp. Ins. v. Heritage Communities, Inc., 420 S.C. 321, 803 S.E.2d 288 (2017) does not mandate that the Insurers have a right to intervene to ask special interrogatories or request special verdict forms.

4. In order to avoid impermissible conflict determining coverage issues, this state requires a separate action. See Sims v. Nationwide Mut. Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965). I find that the deep injection of insurance coverage issues into this construction defect action would place counsel defending an insured in an irreconcilable conflict created by the diametrically opposed goals where, on the one hand, counsel must try to minimize its insured's liability by showing lack of consequential damages and, on the other hand, counsel would likely be faced with the necessity of proving consequential damages in order to trigger and maximize coverage for its insured.

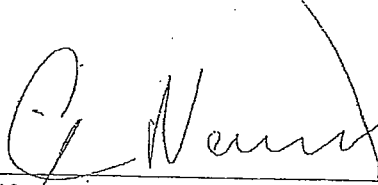
5. I find that the special interrogatories and/or special verdict forms requested by the Insurers will likely be confusing to the jury and may unfairly prejudice the parties participating in the trial due to the interjection of extraneous insurance coverage issues into an already complex construction defect case, particularly given that there may not be any evidence in the record to support the special interrogatories and/or special verdict forms.

*cn*

Based on the foregoing the Motions to Intervene is Denied.

**AND IT IS SO ORDERED.**

October 12 2017



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Clifton Newman  
Presiding Judge

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# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
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October 20, 2017

Mr. Robert Curt Calamari, Esquire  
PO Box 3939  
Myrtle Beach SC 29578

Re: Ex Parte: Selective Insurance Company v. In re: The Harbour Cove  
Condominium Association  
Appellate Case No. 2017-002155

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal may be dismissed:

- The document does not show that a copy the notice of appeal was provided to all opposing party(ies)/counsel.
- The order(s) and/or judgment(s) challenged on appeal provided do not contain the correct caption. You must provide a copy of the order containing the correct caption.
- ✓ The order(s) and/or judgment(s) challenged on appeal provided do not contain the file stamp from the Clerk of Court of Horry County.

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Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Thomas C. Hildebrand, Jr., Esquire  
Frederick Elliott Quinn, IV, Esquire  
Barbara J. Wagner, Esquire  
Jonathan J. Anderson, Esquire  
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October 30, 2017

The Honorable Jenny Abbot Kitchings  
Clerk of Court  
SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

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RE: The Harbour Cove Condominium Association v. Centex Homes, a Nevada General Partnership, et al.  
Civil Action No.: 2014-CP-26-07634  
Appellate Case No.: ~~2017-002155~~ 2017-002146  
NMRS File No.: 32161.01512

Dear Ms. Kitchings:

Per the court's instructions regarding deficiencies in Selective Insurance Company of South Carolina's Notice of Appeal filed with the court on October 13, 2017, I am enclosing a copy of the file stamped Order Denying Motion of Insurers for Limited Intervention signed by Judge Clifton Newman and filed on October 13, 2017.

Please contact me should you have any questions or need more information.

Very truly yours,

Robert C. Calamari

RCC:dp

Enclosure

cc: All Counsel of Record (via email only w/enclosure)

 **NELSON MULLINS**

NELSON MULLINS RILEY & SCARBOROUGH LLP  
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