

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Clifton Newman, Circuit Court Judge

Trial Court Case No. 2014CP2606573
Trial Court Case No. 2014CP2607634
Appellate Case No. 2017-02146

RECEIVED
DEC 19 2017
SC Court of Appeals

In Re Motions to Intervene in:

The Harbour Cove Condominium Association, Plaintiff,

v.

Centex Homes, a Nevada General Partnership, Centex Construction Company, Inc., Centex Construction, LLC, Centex-Rooney Construction Co., Inc., Centex-Rodgers, 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.,

Defendants,

and

Beach Villas at Ocean Keys Property Owners Association, Inc., Plaintiff,

v.

Ocean Keys Development, LLC, Keye Construction Co., Inc., Russell P. Baltzer, First Exteriors, LLC, CareFree Exteriors Inc., Coastal Stucco, Inc., Richard H. Construction, LLC a/k/a Ricardo Hernandez d/b/a Richard Framing Con., Inc., Builders FirstSource-Southeast

Group, LLC, Steel Homes International, Inc., Renaissance Steel Installation, LLC n/k/a Renaissance Steel, LLC, Benchmark Steel Service, LLC and Dietrich Building Systems n/k/a Clark Western Dietrich Building Systems, LLC, Defendants,

AND

Ocean Keys Development, LLC and Key Construction Co., Inc., Third-Party Plaintiffs,
v.

Renaissance Steel Installation, LLC f/k/a Renaissance Steel, LLC n/k/a Innovative Steel Technologies, Benchmark Steel Erectors, and Total Construction, LLC, Third-Party Defendants.

Of whom Hartford Fire Insurance Company, Hartford Casualty Insurance Company, Hartford Underwriters Insurance Company, Clarendon National Insurance Company as successor in interest to Clarendon America Insurance Company, National Fire & Marine Insurance Company, Bitco General Insurance Corporation, Selective Insurance Company of South Carolina, Nationwide Mutual Insurance Company f/k/a Harleysville Insurance Company, Canopus US Insurance, Inc., American Empire Surplus Lines Insurance Company are the Appellants,

AND

The Harbour Cove Condominium Association, Beach Villas at Ocean Keys Property Owners Association, Inc., Ocean Keys Development, LLC, Key Construction Co., Inc., and Russell P. Baltzer are the Respondents.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Respondent Beach Villas at Ocean Keys Property Owners Association, Inc. respectfully submits this Memorandum in Support of its Motion to Dismiss Appellant Hartford's Notice of Appeal filed on October 13, 2017, Appellant Canopus' Notice of Appeal filed on October 27, 2017 and Appellant Selective's Notice of Appeal filed on or about October 30, 2017.

BACKGROUND

This appeal arises from a complex construction defects case filed by Respondent Beach Villas which alleges causes of action for negligence/gross negligence and breach of warranties for damages caused by the negligent and defective work performed by the developer, architect, general contractor and subcontractors on the Beach Villas Condominium Project. Appellant Hartford is an insurer of subcontractor Defendant First Exteriors, LLC. Appellant Canopus is an insurer of subcontractor Richard H. Construction, LLC. Appellant Selective is an insurer of subcontractors Carefree Exteriors, LLC and Coastal Stucco, Inc. This matter was scheduled for trial to begin on October 16, 2017. After two years of ongoing discovery in the underlying case, Selective filed its Motion for Limited Intervention on July 25, 2017. On September 8, 2017, Canopus filed its Motion for Limited Intervention, and on September 18, 2017, Hartford filed its Motion for Limited Intervention.

Appellant Insurers Hartford, Canopus and Selective filed their Motions For Limited Intervention with the Lower Court specifically for the purpose of submitting Special Interrogatories, Jury Instructions and/or Verdict Form(s) as well as to participate “behind the scenes” and without the jury’s knowledge of their participation in the trial. The Insurers did not make a motion to intervene to become parties to the action and specifically communicated to the Lower Court that they did not want to become parties to the action. At the outset of the hearing in this matter in the Lower Court on September 28, 2017, counsel for Respondent Beach Villas agreed to allow the Insurers to fully intervene as named parties in the case and to allow counsel for the Insurers to participate in the actual trial, including the questioning of witnesses and making of arguments to the jury. Appellant Insurers Hartford, Canopus and Selective each took a clear position that they did not wish to intervene in this case as parties to the action.

On October 12, 2017, the Court of Common Pleas denied Appellant Insurers requests to

submit special interrogatories, jury instructions and verdict forms and to participate in the trial as “unnamed” entities and non-parties. On October 13, 2017, non-party Hartford filed a Notice of Appeal from the trial court’s order. On October 30, 2017 non-party Canopus filed its Notice of Appeal, and on October 30, 2017 non-party insurer Selective filed its Notice of Appeal. Because the Appellant Insurers are not parties to the action, under Rule 201(b), they cannot appeal from any matter arising from the underlying trial, and Respondent Beach Villas moves this Court for an order dismissing these Notices of Appeal. SCACR 201.

ANALYSIS

Rule 201(b), SCACR provides that: “Only a party aggrieved by an order, judgment, sentence or decision may appeal.” This language has been enforced in the cases of *Ex Parte Condon*, 354 S.C. 634, 642, 583 S.E.2d 430, 434(2003)(“The Attorney General is required, like everyone else, to formally intervene and become a named party before he can file an appeal”); *In Re: South Carolina Department of Motor Vehicles*, 390 S.C. 457, 702 S.E.2d 568 (2010) (“A well known rule of the appellate procedure is that only an aggrieved party may appeal.”); *See also Teseniar v. National Fire & Marine Ins. Co.* (S.C. Ct. App. Order dated April 9, 2014) dismissing the Notice of Appeal filed by National Fire & Marine Ins. Co. because National Fire was not a party to the action). As a non-party to the action, Appellants cannot appeal the Order denying their requests for special interrogatories, jury instructions and/or verdict forms. *See* SCACR 201, SCACR 241, SCRCF 24.

Because the Appellant Insurers did not request to intervene as named parties, the denial of the motion to intervene to submit special interrogatories, jury instructions, and verdict forms is not a final issue as they can file declaratory judgment actions to resolve coverage related issues. If the Appellants had asked the Lower Court to intervene as a party and if the Lower Court had

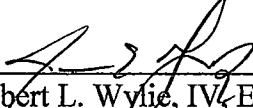
denied Appellants the ability to become a Party, then the issue would be immediately appealable and a discussion as to the merits, standing, and substantive rights would be at issue. As it stands currently, Appellant Insurers are not parties to the action and cannot file a Notice of Appeal under SCACR 201.

CONCLUSION

Because Appellant Insurers are not parties to the action and have not even requested to become parties to the action, they are barred from filing a Notice of Appeal pursuant to SCARP 201. As such, Respondent respectfully requests this Court to dismiss the Notices of Appeal filed by Appellant Insurer Hartford, Appellant Insurer Canopus and Appellant Insurer Selective.

Respectfully Submitted,

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VILLAS AT OCEAN KEYES PROPERTY
OWNERS ASSOCIATION, INC.**

Myrtle Beach, South Carolina
December 13, 2017

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Defendants,

and

Beach Villas at Ocean Keys Property Owners Association, Inc., Plaintiff,

v.

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Renaissance Steel, LLC, Benchmark Steel Service, LLC and Dietrich Building Systems n/k/a Clark Western Dietrich Building Systems, LLC, Defendants,

AND

Ocean Keyes Development, LLC and Keye Construction Co., Inc., Third-Party Plaintiffs,
v.

Renaissance Steel Installation, LLC f/k/a Renaissance Steel, LLC n/k/a Innovative Steel Technologies, Benchmark Steel Erectors, and Total Construction, LLC, Third-Party Defendants.

Of whom Hartford Fire Insurance Company, Hartford Casualty Insurance Company, Hartford Underwriters Insurance Company, Clarendon National Insurance Company as successor in interest to Clarendon America Insurance Company, National Fire & Marine Insurance Company, Bitco General Insurance Corporation, Selective Insurance Company of South Carolina, Nationwide Mutual Insurance Company f/k/a Harleysville Insurance Company, Canopus US Insurance, Inc., American Empire Surplus Lines Insurance Company are the Appellants,

AND

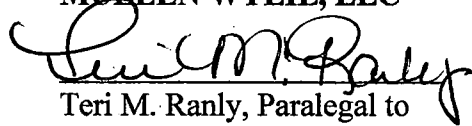
The Harbour Cove Condominium Association, Beach Villas at Ocean Keyes Property Owners Association, Inc., Ocean Keyes Development, LLC, Keye Construction Co., Inc., and Russell P. Baltzer are the Respondents.

CERTIFICATE OF SERVICE

I certify that I have served the Motion For Reconsideration and Memorandum in Support of Motion For Reconsideration to all appellants United States Mail, postage prepaid on December 13, 2017, and addressed to their attorney of record; Mark S. Barrow, Esquire; Christy E. Mahon, Esquire; Sweeny, Wingate & Barrow, PA; Post Office Box 12129; Columbia, South Carolina 29211; Attorney for Appellant Hartford Fire Insurance Company, etc.; Peter H. Dworjanyn, Esquire; Kelsey J. Brudvig, Esquire; Collins & Lacy, PC; Post Office Box 12487; Columbia,

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Myrtle Beach, South Carolina
December 13, 2017

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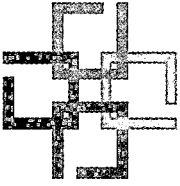
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SC Court of Appeals

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RE: In Re: Hartford Fire Insurance Company, Hartford Casualty Insurance Company, Hartford Underwriters Insurance Company, Clarendon National Insurance Company, National Fire & Marine Insurance Company, Bitco General Insurance Corporation, Selective Insurance Company, Selective Insurance Company of South Carolina, and Nationwide Mutual Insurance Company

Harbour Cove vs. Centex vs. Hartford

Case No.: 2014-CP-26-7634

Beach Villas vs. Ocean Keyes Development

Case No.: 2014-CP-26-6573

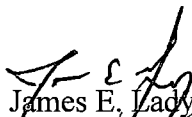
Appellate Case No. 2017-002146

Dear Shelby:

Enclosed please find for filing the original and six (6) copies of Beach Villas Motion to Dismiss, the original and six (6) copies of the Memorandum in Support of Motion to Dismiss, the original and six (6) copies of the Certificate of Service for the Motion to Dismiss and Memorandum in Support on the Appellants and all other counsel of record and check number 1399 in the amount of \$25.00 for the Motion Filing Fee.

Thank you in advance for your help with this matter

Sincerely,



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LETTER TO CLERK OF COURT FOR S.C. COURT OF APPEALS

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