

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

PHILLIP JEFFERSON,

Plaintiff,

vs.

JAMES WHITE CONSTRUCTION, LLC, and
JAMES WHITE, individually,

Defendants.

2016-CP-10-4055

IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-10-04055

ORDER DENYING NON-PARTY
INSURERS' MOTIONS TO INTERVENE

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SC Court of Appeals

The matter came before the Court upon separate Motions to Intervene filed by insurance carriers Employers Mutual Casualty Company, Firemen's Insurance Company of Washington, D.C. and Frankenmuth Mutual Insurance Company ("Insurers"). These carriers are insurers for Defendants James White Construction, LLC and James White, individually ("Defendants") and seek to intervene in this action, pursuant to Rule 24, SCRPC, for the limited purpose of submitting special interrogatories and/or verdict questions to the jury related to the allocation of covered and non-covered damages during the upcoming trial. I heard the motion in open court on January 12, 2018 at which time all parties and non-party Insurers appeared through their attorneys. I have reviewed the file along with all submissions and applicable law and considered arguments of counsel as well. Based upon the record and applicable law, I deny Insurers' Motions to Intervene for the reasons explained below.

FACTS

This case concerns allegations that unsuitable quality fill dirt was delivered and deposited on Plaintiff's property located on Huro Road in Mount Pleasant, South Carolina. Plaintiff filed his Amended Complaint on August 31, 2016. Insurers insured Defendants under a series of

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CLERK OF COURT

policies applicable to Plaintiff's claims and hired counsel to represent Defendants under a reservation of rights at the onset of this litigation. On December 29, 2017 – almost 16 months after this action was commenced – Insurers filed the present motions, pursuant to Rule 24, SCRPC. This case is now set for a date certain trial beginning on June 18, 2018.

LAW

Rule 24(a), SCRPC, provides for intervention as of right (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties. Rule 24(b), SCRPC, allows permissive intervention when (1) a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. Rule 24(b), SCRPC.

"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, SCRPC." 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.

ANALYSIS

Since the South Carolina Supreme Court published its opinion in the case of Harleysville Grp. Ins. V. Heritage Communities, Inc., 420 S.C. 321, 803 S.E.2d 288 (2017), insurers have attempted to intervene in cases on the eve of trial for the purpose of submitting special interrogatories and/or verdict questions to the jury related to the allocation of covered and non-covered damages. However, the court's opinion in Harleysville opinion does not mandate that insurers have a right to intervene to ask special interrogatories or request special verdict forms.

In this matter, Insurers cannot meet the requirements for intervention under Rule 24, SCRPC. First, Insurers have not proffered a statutory right to intervene, conditional or otherwise. Second, Insurers do not have an interest in the property that is the subject of this action, located on Huro Road in Mount Pleasant, South Carolina, and Insurers do not have an interest in the underlying interactions between Plaintiff and Defendants that is the subject of this litigation. Insurers' interests arise solely out of their contracts of insurance with Defendants and those interests are not appropriate to be litigated or interjected into this action. Finally, if Insurers were to be permitted to intervene at this stage of the litigation then it would be to the detriment of Defendants, their insureds, as a result of an impermissible conflict of interest that would be created and the likelihood of confusing the jury.

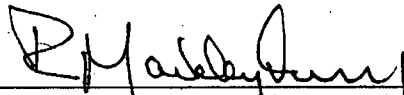
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ORDER

Accordingly, and based upon the foregoing, it is therefore

ORDERED, ADJUDGED AND DECREED that Non-Party Insurers Employers Mutual Casualty Company, Firemen's Insurance Company of Washington, D.C. and Frankenmuth Mutual Insurance Company's Motions to Intervene are Denied.

AND IT IS SO ORDERED.



The Honorable R. Markley Dennis, Jr.
Presiding Judge

May 16, 2018
Charleston, South Carolina

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