

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

Arthur J. Homan, Diane Homan, Mark A. Vanagel, Carolyn H. Vanagel, and John Doe 1 — individually and on behalf of others similarly situated,

Plaintiffs,

v.

B. C. & W., LLC; Fraser Construction, Inc.; Fraser Construction Company, LLC; Fraser Construction Services, LLC; Fraser Group, LP; Ceagull Investments, LLC; Pro Roofing Company; Pana Roofing, Inc. n/k/a Pana Sheet Metal Roof, LLC; Gale Contractor Services n/k/a Builder Services Group, Inc.; Colpan Construction, Inc.; Coastal Framing, Inc. n/k/a GWBCO, LLC; Triumph Framing Contractors, LLC; Marie C. Noriega d/b/a Best Siding, Inc.; Hurricane Construction, Inc. a/k/a Hurricane Builders; A.D.R. Siding Plus, Inc.; KMAC, Inc. d/b/a KMAC North Carolina; KMAC of the Carolinas, Inc.; Shaw Manufacturing's Wrought Iron Works, LLC; Southeast Rails, LLC; McCrary's, Inc.; Pro-Slab, Inc.; K Construction Company, Inc.; Horizon, Inc. n/k/a Horizon LLC; J.S. Construction Services, Inc.; Stone/Light, Inc.; Tillotson Plumbing Company, LLC; Third Eye Painting Co.; and John Doe 2,

Defendants.

Fraser Construction, Inc.,

Third Party Plaintiffs,

v.

Southern Specialties, Inc.; and AMPAM Miller Mechanical;

COURT OF COMMON PLEAS
FOUREENTH JUDICIAL CIRCUIT

C.A. No. 2015-CP-07-02232

**ORDER GRANTING LEAVE TO
FILE THIRD AMENDED
SUMMONS AND COMPLAINT**

RECEIVED
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SC Court of Appeals

Third Party Defendants.

Pro Slab, Inc.,

Third Party Plaintiffs,

v.

Antonio Guevara; East Coast Finishes,
Inc.; Enrique Lorenzo; Lazaro Morales
d/b/a Morales Concrete; and Modesto
Jiminez;

Third Party Defendants.

This matter came before the Court on Plaintiffs' Motion for Leave to File Third Amended Summons and Complaint. Rules 15(a) and 20, SCRCPC govern this particular motion to amend. I conducted a hearing of this motion on January 8, 2019. Upon careful consideration of memoranda submitted by the parties, oral arguments, and the relevant law, the Court grants Plaintiffs' motion.

BACKGROUND

Plaintiffs first filed this construction defect matter as a putative class action. Plaintiffs alleged that the class consisted of individuals or entities who own a townhouse unit at the Residences at Bluffton Villages. (2d Am Compl. ¶ 59). Plaintiffs allege that the Defendants defectively developed and constructed the Residences at Bluffton Villages. Plaintiffs moved for certification of their putative class in 2017. The Court entered an order denying that class certification on January 11, 2018. That order based the denial of class certification on grounds that the total quantity of 32 units/owners at the Residences at Bluffton Villages was insufficient to meet the numerosity requirement for maintaining a class action. Plaintiffs subsequently moved to alter or amend the order denying class certification. The Court entered an order denying that motion to alter or amend on April 19, 2018. Plaintiffs then moved for the Court, through Plaintiffs' counsel, to send the owners at the Residences at Bluffton Villages a notification informing them that the proposed class certification had been denied. The Court entered an order denying that class communication request on July 6, 2018. On December 6, 2018, Plaintiffs filed the present Motion for Leave to File Third Amended Summons and Complaint, seeking to add some of the former putative class members, who own

units at the Residences at Bluffton Villages, as direct plaintiffs in this matter. Multiple Defendants opposed this motion. Both the existing Plaintiffs and the proposed new plaintiffs consented to and sought the proposed amendment.

RULE 20(a), SCRCP

In the present motion, Plaintiffs seek to add six new co-plaintiffs, who together own nine different units at the Residences at Bluffton Villages. All nine units are separate and distinct from the units owned by the original named Plaintiffs to this action; however, all nine units and all six new co-plaintiffs were alleged to be included in this lawsuit from the outset, by way of class action allegations. This Court dismissed those putative class action allegations from this lawsuit. That dismissal, however, did not prevent these owners from rejoining this litigation under the proper procedural posture. That proper procedural posture would be permissive joinder under Rule 20(a), SCRCP.

Rule 20(a) states that “all persons may join in one action as plaintiffs if they **assert** any right to relief ... arising out of the same transaction, occurrence, **or** series of transactions or occurrences and if **any** question of law **or** fact common to all these persons will arise in this action” (emphasis supplied). Here, the Plaintiffs submitted a proposed Third Amended Summons and Complaint. It included a “Permissive Joinder Allegations” section. The Court finds that the allegations in the proposed Third Amended Summons and Complaint properly give rise to the joined seeking of relief under one action pursuant to Rule 20(a), SCRCP.

RULE 15(a), SCRCP

Defendants argue that Rule 15(a) applies to the addition of new defendants but does not apply to the addition of new plaintiffs. In support of this proposition, Defendants cite *Valentine v. James Davis, Paul Davis Sys. of Columbia*, 319 S.C. 169, 172, 460 S.E.2d 218, 219 (Ct. App. 1995). The party seeking to amend in *Valentine* was not an existing plaintiff to that action and wanted to assert facts arising from completely different transactions and occurrences. *Id.* The Court noted that the new claims that the new would-be plaintiff sought to add did not meet the joinder requirements of Rule 20(a), SCRCP. *Id.* The Court also held that SCRCP 15(a) did not apply to those facts. *Id.*

The Supreme Court of South Carolina has since clarified *Valentine*, stating that although the reasoning in *Valentine* is sound, it stands for the proposition that a *new*

plaintiff cannot use Rule 15 to enter a *new* claim into an existing matter. *Patton v. Miller, et al.*, 804 S.E.2d 252 (S.C. 2017). The *Patton* Court followed that logic to hold that Rule 15(a) allows an existing plaintiff to amend her pleading so that her existing claims can then be brought by a new plaintiff, the proper “real party in interest.” *Id.*

The facts of this case more closely resemble *Patton* than *Valentine*. This motion was filed by the existing Plaintiffs and was not sought solely by a party seeking to intervene and alter another party’s pleading, like the appellant before the Court in *Valentine*. The claims that the new plaintiffs seek to assert have already been pled in this case—the only difference is the preface of class action allegations is to be modified to become a preface of permissive joinder allegations. In the proposed Third Amended Summons and Complaint, some of the same old claims that were dismissed for not being asserted by the real party in interest will now to be asserted by the proper real parties in interest. Additionally, as noted above, the proposed new plaintiffs seek to assert claims that meet the joinder requirements of Rule 20(a). These facts distinguish the present case from *Valentine* and render *Patton* to be the more prudent controlling authority.

Thus, SCR 15(a) does apply. It provides that amendments shall be freely granted absent a showing of prejudice to other parties. Defendants failed to show that this amendment will prejudice them. There is no existing scheduling order controlling this action, and Defendants are free to seek one to curtail prejudice and surprise resulting from this amendment.

Finally, Defendants argued that the substantive merits of the allegations in the proposed Third Amended Summons and Complaint were so deficient as to make the proposed amendment futile. The Court refrains from ruling on the substantive merits of the claims included in the proposed Third Amended Summons and Complaint, other than to hold that they are not so apparently futile as to bar the filing of that pleading.

CONCLUSION

For the foregoing reasons, Plaintiffs are hereby granted leave to file the proposed Third Amended Summons and Complaint.

The Honorable Eugene C. Griffith, Jr.



Beaufort Common Pleas

Case Caption: Arthur J Homan , plaintiff, et al VS BC&W LLC , defendant, et al
Case Number: 2015CP0702232
Type: Order/Leave to Amend

It is so ordered

Eugene C. Griffith, Jr. 2154