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June 12, 2013

Hon. Edgar W. Ennis, Jr.
Judge, Superior Court of Bibb County
601 Mulberry St., Suite 310
Macon, GA 31201

Re: *Lindsay D. Holliday v. Georgia Dept. of Transportation,*
Civil Action No. 12-CV-58472


Dear Judge Ennis:

Enclosed is a courtesy copy of R. J. Haynie & Associates, Inc.'s Motion to Intervene and Memorandum in Support, the original of which has been transmitted today to the Clerk for filing.

Thank you for your consideration of this matter.

Respectfully yours,

VAUGHN, WRIGHT & BOYER LLP


Frederick L. Wright

FLW:tbf
Enclosure
cc: Counsel of record

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

LINDSAY D. HOLLIDAY,

Plaintiff,

v.

GEORGIA DEPARTMENT OF
TRANSPORTATION,

Defendant.

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CIVIL ACTION

No. 12-CV-58472

R. J. HAYNIE & ASSOCIATES, INC.'S MOTION TO
INTERVENE AND MEMORANDUM IN SUPPORT

COMES NOW R. J. Haynie & Associates, Inc. ("Haynie"), pursuant to O.C.G.A. § 9-11-24, and moves for the entry of an order allowing Haynie to intervene as a defendant in the above-captioned action. In accordance with O.C.G.A. § 9-11-24(c), this motion is accompanied by a proposed Answer of R. J. Haynie & Associates, Inc., attached hereto as Exhibit "A," setting forth Haynie's defenses to the Plaintiff's claims.

As grounds for its motion, Haynie respectfully shows the Court that Haynie is entitled to intervene of right, pursuant to O.C.G.A. § 9-11-24(a)(2), because (1) Haynie claims an interest relating to the property or transaction which is the subject matter of this action, (2) Haynie is so situated that the disposition of the action may as a practical matter impair or impede Haynie's ability to protect that interest, and (3) Haynie's interest is not adequately represented by existing parties.

In the alternative, Haynie should be permitted to intervene, pursuant to O.C.G.A. § 9-11-24(b)(2), because (1) Haynie's defense and the main action have a question of law or fact in common, and (2) the intervention will not unduly delay or prejudice the adjudication of the rights of the original parties.

FACTUAL BACKGROUND

This case involves a Georgia Department of Transportation ("GDOT") road widening and realignment project in Bibb County commonly referred to as the Forest Hill Road project ("Project"). Among other things, the Plaintiff's complaint seeks a permanent injunction prohibiting GDOT from proceeding with the Project.

Haynie was the successful bidder to serve as the general contractor for the Project. In December 2012, Haynie was awarded an \$8.4 million contract to construct the Project for GDOT. Haynie subsequently entered into subcontract agreements with each of the following companies to perform portions of the work on the Project:

James Hightower Trucking, Macon, GA;

Reeves Construction, Macon, GA;

Middle Georgia Signs, Cochran, GA;

Paulk Landscaping, Cochran, GA;

Adams Grading, Bowdon, GA;

Al Lewis Construction, Marietta, GA;

Hitson Construction, Oxford, GA;

Ed Smith Construction, Marietta, GA;

Natural Enclosures, McDonough, GA;
Martin Robbins Fence Company, Snellville, GA;
Key Curbing, Conyers, GA;
HydroSpec, Ball Ground, GA;
B & D Enterprises, Sanford, FL;
Peek Pavement Marking, Columbus, GA;
Falcon Design, McDonough, GA;
Leon's Fence & Guardrail, Lobeco, SC; and
G C Electrical Solutions, Fayetteville, GA.

On or about February 1, 2013, GDOT issued to Haynie a Notice to Proceed on the Project. On March 22, 2013, the Court entered a temporary restraining order, and on May 13, 2013, the Court entered an order granting an interlocutory injunction. Those orders have prevented GDOT from allowing Haynie and its subcontractors to proceed with the work on the Project. Thus, the personnel and equipment assigned to the Project by Haynie are currently idle for the most part, which is causing Haynie to incur unanticipated expenses in connection with the Project.

ARGUMENT AND CITATION OF AUTHORITIES

A. Haynie Is Entitled To Intervene Of Right Pursuant To O.C.G.A. § 9-11-24(a)(2).

Haynie seeks to intervene of right under O.C.G.A. § 9-11-24(a)(2), which provides as follows:

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action:

(2) When the applicant claims an interest relating to the property or transaction which is the subject matter 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.

Intervention as a matter of right is proper where: (1) the applicant has an interest relating to the property or transaction which is the subject matter of the action, (2) an impairment of the applicant's interest may result from an unfavorable disposition of the lawsuit to which intervention is sought, and (3) the applicant's interest is not represented adequately by the existing parties to the lawsuit. *Kubler v. Goerg*, 197 Ga.App. 667, 668, 399 S.E.2d 229, 230 (1990).

Since Haynie has entered into a contract with GDOT to construct the Project, Haynie clearly has an interest relating to the transaction which is the subject matter of this action. Thus, the first requirement for intervention of right is satisfied.

Haynie also meets the second requirement for intervention of right because Plaintiff seeks a permanent injunction to prevent GDOT from proceeding with the Project. If the action is resolved unfavorably to GDOT, then the anticipated economic benefit to Haynie from constructing the Project may be impaired.

Likewise, the third requirement is satisfied because Haynie's interest is not represented adequately by the existing parties. Haynie's interest obviously is not adequately represented by the Plaintiff. Nor is Haynie's interest adequately represented

by GDOT, because Haynie has given GDOT notice of a potential claim resulting from the suspension of its work. *See* Exhibit “B” attached hereto. The intervenor’s interest is not adequately represented by an existing party where the intervenor has a claim adverse to that party involving the subject matter of the pending suit. *Kubler v. Goerg*, 197 Ga.App. 667, 669-670, 399 S.E.2d 229, 231 (1990); *Southwest Georgia Production Credit Ass’n v. Wainwright*, 241 Ga. 355, 356-357, 245 S.E.2d 306, 307 (1978).

Haynie is entitled to intervene of right because it meets the three requirements of O.C.G.A. § 9-11-24(a)(2) and Haynie’s motion is timely. A motion to intervene filed prior to the entry of judgment generally is deemed timely. *See State of Georgia v. Bruce*, 231 Ga. 783, 786 (1974); *Payne v. Dundee Mills, Inc.*, 235 Ga.App. 514, 515 (1998).

Moreover, Haynie contends that it is an “indispensable party” to this case because Haynie “claims an interest relating to the subject of the action and is so situated that the disposition of the action in [Haynie’s] absence may ... [a]s a practical matter impair or impede [Haynie’s] ability to protect that interest” O.C.G.A. § 9-11-19(a)(2). Where an indispensable party is not named as a defendant but moves to intervene, the intervention should be allowed and the failure to do so amounts to an abuse of discretion. *Kubler v. Goerg*, 197 Ga.App. 667, 670, 399 S.E.2d 229, 231 (1990).

For all the foregoing reasons, Haynie’s motion to intervene of right should be granted.

B. In The Alternative, Haynie Should Be Permitted To Intervene Pursuant To O.C.G.A. § 9-11-24(b)(2).

Should the Court determine that Haynie is not entitled to intervene of right, then Haynie requests permission to intervene under O.C.G.A. § 9-11-24(b)(2), which provides as follows:

(b) *Permissive intervention.* Upon timely application anyone may be permitted to intervene in an action:

(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.

Haynie's intervention will not unduly delay or prejudice the adjudication of the rights of the original parties. Haynie has no intention or desire to delay this matter in any way. To the contrary, Haynie's obvious interest is in concluding the matter as soon as possible, and Haynie is prepared to proceed under the existing schedule established by the Court.

In addition, when considering whether to allow permissive intervention under O.C.G.A. § 9-11-24(b)(2), the court must consider not only whether the intervention would cause undue delay or prejudice, but also other relevant circumstances such as the degree to which the intervenor would be affected by the outcome in the underlying case. *Branch v. Maxwell*, 203 Ga.App. 553, 417 S.E.2d 176 (1992). Obviously, were the court to enjoin GDOT from proceeding with the Project, Haynie could be affected substantially.

Accordingly, Haynie should be permitted to intervene in this case even if the Court concludes that Haynie is not entitled to intervene of right.

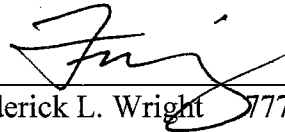
CONCLUSION

On the basis of the foregoing discussion and authorities, Haynie respectfully requests that its motion be granted and that the Court enter an order allowing Haynie to intervene in this action as a defendant and to file and serve the pleading attached hereto as Exhibit "A."

This 12th day of June, 2013.

Respectfully submitted,

VAUGHN, WRIGHT & BOYER LLP



Frederick L. Wright 777825

1205 Johnson Ferry Rd., STE 136-448
Marietta, GA 30068
(770) 402-5434
(770) 234-6944 Fax

Attorneys for Intervenor,
R. J. Haynie & Associates, Inc.

IN THE SUPERIOR COURT OF BIBB COUNTY
STATE OF GEORGIA

LINDSAY D. HOLLIDAY,

Plaintiff,

v.

GEORGIA DEPARTMENT OF
TRANSPORTATION,

Defendant.

R. J. HAYNIE & ASSOCIATES, INC.,

Intervenor-Defendant.

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CIVIL ACTION

No. 12-CV-58472

ANSWER OF R. J. HAYNIE & ASSOCIATES, INC.

COME NOW Intervenor-Defendant, R. J. Haynie & Associates, Inc. ("Haynie"), and for its Answer to the Plaintiff's Complaint for Injunction and Temporary Restraining Order ("Complaint") respectfully state as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

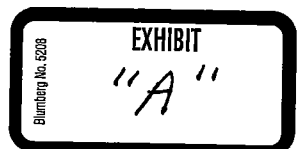
Plaintiff lacks standing to assert some or all of Plaintiff's claims.

THIRD DEFENSE

The Court lacks subject matter jurisdiction over some or all of Plaintiff's claims.

FOURTH DEFENSE

Some or all of Plaintiff's claims for equitable relief are barred by laches.



FIFTH DEFENSE

Plaintiff is not entitled to equitable relief because Plaintiff would have an adequate remedy at law if Plaintiff's claims were meritorious, which Haynie denies.

SIXTH DEFENSE

Some or all of Plaintiff's claims for relief are barred by waiver and/or estoppel.

SEVENTH DEFENSE

Each and every allegation in the Complaint that is not specifically and expressly admitted herein is denied.

EIGHTH DEFENSE

Subject to and without waiving any of the foregoing defenses, Haynie responds to the allegations in the numbered paragraphs of the Complaint as follows:

1. In response to Paragraph 1 of the Complaint, Haynie admits that Defendant Georgia Department of Transportation ("GDOT") is an agency of the State of Georgia and denies that the Complaint alleges facts that would subject GDOT to the jurisdiction of this Court.

2. In response to Paragraph 2 of the Complaint, Haynie denies that Plaintiff will be irreparably and/or immediately harmed by the referenced tree cutting or by any other circumstances if the Forest Hill Road project ("Project") proceeds as planned. Haynie denies that the Project will result in an unsafe road. Haynie is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning actions of unidentified persons associated with the Macon-Bibb Tree Commission,

concerns of unidentified "Soil and Conservation officials," and opinions of unidentified "Macon Telegraph editors." Haynie denies all remaining allegations in Paragraph 2 of the Complaint.

3. Haynie denies the allegations in Paragraph 3 of the Complaint.

4. In response to Paragraph 4 of the Complaint, Haynie admits that several documents are attached to the Complaint and that the documents appear to be emails. Haynie is without knowledge or information sufficient to form a belief as to the authenticity of those documents. Haynie states that each such document speaks for itself and is the best evidence of its contents. Any and all allegations in Paragraph 4 of the Complaint that are inconsistent with the contents of those documents are denied.

5. Haynie denies each and every allegation in the Complaint that is not expressly and specifically admitted in this Answer.

WHEREFORE, Intervenor-Defendant, R. J. Haynie & Associates, Inc., respectfully prays:

(a) that Plaintiff take nothing on its Complaint, and that judgment be entered in favor of Defendants dismissing all claims asserted by Plaintiff against Defendants in this action;

(b) that the costs of this action be taxed to Plaintiff; and

(c) that the Court grant to Defendants such other and further relief that the Court deems equitable, just, and proper.

This ____ day of _____, 2013.

Respectfully submitted,

VAUGHN, WRIGHT & BOYER LLP

Frederick L. Wright 777825

1205 Johnson Ferry Rd., STE 136-448
Marietta, GA 30068
(770) 402-5434
(770) 234-6944 Fax

Attorneys for Intervenor-Defendant,
R. J. Haynie & Associates, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing ANSWER OF R. J. HAYNIE & ASSOCIATES, INC. on all other parties by depositing a copy thereof in the U.S. Mail with adequate first-class postage for delivery to the following:

Robert J. Waddell, Jr., Esq.
McGuire Woods LLP
Suite 2100, Promenade
1230 Peachtree Street, NE
Atlanta, GA 30309

Mary Jo Volkert
Senior Assistant Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334

M. Devlin Cooper, Esq.
Sell & Melton LLP
577 Mulberry Street, 14th Floor
PO Box 229
Macon, GA 31202-0229

This ____ day of _____, 2013.

Frederick L. Wright 777825

Vaughn, Wright & Boyer LLP
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(770) 402-5434

R. J. HAYNIE & ASSOCIATES, INC.
ELECTRICAL CONTRACTORS

P.O. BOX 1767
FOREST PARK, GEORGIA 30298-1767
TELEPHONE 404-361-0672
FAX 404-366-9750

March 25, 2013

Mr. Kraig Collins
Georgia Department of Transportation
4499 Riverside Drive
Macon, Georgia 30298-1767

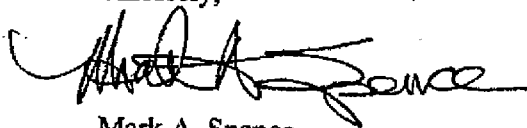
RE: BRMLB-3213-00(005) & STP00-3213-00(003)
Notice of Potential Claim

Dear Mr. Collins:

I am in receipt of your letter of March 21, 2013 stating there has been a Temporary Injunction Order (TIO) placed on any land disturbing activity on the project for the next thirty days.

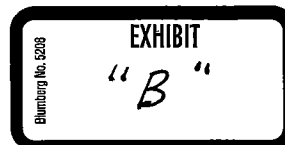
Please let this letter serve as notice of a Potential Claim for the above referenced project due to there already being a Notice to Proceed issued on the project. Crews were scheduled to start working this week including clearing & grubbing; sewer installation, and wall installation. Material Escalation clauses are linked to the original completion date as is the Asphalt and Fuel Indexing. Traffic control has been placed throughout the project and will also have to be maintained during this TIO.

Sincerely,



Mark A. Spence

Enclosures:
C: Danny E. Miller Jr.



CERTIFICATE OF SERVICE

I hereby certify that I have this date served the foregoing R. J. HAYNIE & ASSOCIATES, INC.'S MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT on all other parties by depositing a copy thereof in the U.S. Mail with adequate first-class postage for delivery to the following:

Robert J. Waddell, Jr., Esq.
McGuire Woods LLP
Suite 2100, Promenade
1230 Peachtree Street, NE
Atlanta, GA 30309

Mary Jo Volkert
Senior Assistant Attorney General
40 Capitol Square, SW
Atlanta, Georgia 30334

M. Devlin Cooper, Esq.
Sell & Melton LLP
577 Mulberry Street, 14th Floor
PO Box 229
Macon, GA 31202-0229

This 12th day of June, 2013.



Frederick L. Wright 777825

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