

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GREENVILLE )

IN THE COURT OF COMMON PLEAS

C.A. NO.: 2013-CP-23-1833

D&C Builders, Inc., )  
 )  
Plaintiff, )  
 )  
Vs. )  
 )  
Richard M. Buckley and )  
Wells Fargo National Association, )  
 )  
Defendants. )

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GREENVILLE CO. S.C.  
PAUL B. WICKERSHIMMER  
2013 JUN 19 P 8:42

AFFIDAVIT OF  
SCOTT DODENHOFF

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Richard M. Buckley, )  
 )  
Third-Party Plaintiff, )  
 )  
Vs. )  
 )  
Scott Dodenhoff, )  
 )  
Third-Party Defendant. )

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PERSONALLY appeared before me, Scott Dodenhoff who, being duly sworn, deposes and states:

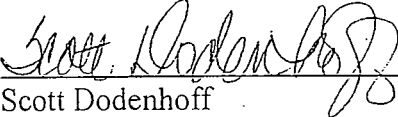
1. My name is Scott Dodenhoff and I am a citizen and resident of Greenville County, South Carolina.
2. I am a shareholder, director and Vice-President of the above named Plaintiff, D&C Builders, Inc. and am authorized to conduct business on behalf of the Company.
3. D&C Builders, Inc. objects to the attorney M. Stokely Holder and the law firm of Kenison, Dudley & Crawford, LLC representing the Defendant and Third-Party Plaintiff, Richard M. Buckley in this matter based on the following information in this Affidavit.
4. On July 1, 2011, I retained the law firm of Kenison, Dudley & Crawford, LLC to represent D&C Builders, Inc. with regard to an outstanding debt owed by TMKG, Inc. Attorneys John T. Crawford, Jr. and Townes Boyd Johnson were the attorneys from this firm that represented D&C Builders, Inc. in this matter.

5. The firm's representation of D&C Builders, Inc. against TMKG, Inc. involved filing a Summons & Complaint, a Reply to the Counterclaim asserted by TMKG, Inc., a Motion to Compel, a Motion for Summary Judgment, defending TMKG's Motion for Summary Judgment, two (2) Summary Judgment hearings and extensive settlement negotiations.
6. The case against TMKG, Inc. was finally settled and was dismissed on July 31, 2012.
7. I was the sole contact on behalf of D&C Builders, Inc. with Attorneys Crawford and/or Johnson during the entire representation by Kenison, Dudley & Crawford, LLC in this matter.
8. During this representation, I met with Attorneys Crawford and/or Johnson on multiple occasions at their office and engaged in extensive communications with them over the telephone and by e-mail.
9. As the matter against TMKG, Inc. involved a claim by D&C Builders, Inc. as a corporate entity, throughout the course of the representation, I provided information, some of which I believe to be confidential information not available to the public, to Attorneys Crawford and/or Johnson regarding the corporate structure of D&C Builders, Inc., including shareholders, directors, officers, as well as information about the ongoing operations of D&C Builders, Inc. and authorized representatives of D&C Builders, Inc..
10. As the matter against TMKG, Inc. specifically involved the collection of an outstanding debt as well as the additional legal fees being incurred in pursuit of that debt, the subject of the finances of D&C Builders, Inc. and the impact of the outcome of the case on those finances was a common topic of conversation between myself and the Attorneys Crawford and/or Johnson.
11. During those conversations with Attorneys Crawford and/or Johnson, I provided information which I believe to be confidential information, to Attorneys Crawford and/or Johnson about the finances of D&C Builders, Inc., the impact the outcome of the case would have on those finances as well as other existing ongoing projects unrelated to that case and the impact of those projects on the financial situation of D&C Builders, Inc.
12. In the course of this representation by Attorneys Crawford and/or Johnson, I provided them information, some of which I believe to be confidential information not available to the public, related to my authority as a representative of D&C Builders, Inc. as well as my actions as an authorized representative of D&C Builders, Inc. and my actions taken in that capacity regarding the existing case against TMKG, Inc. as well as other ongoing operations of D&C Builders, Inc. at that time.
13. The current case of D&C Builders, Inc. against Defendant Richard M. Buckley arises out of what was an ongoing operation of D&C Builders, Inc. during the representation by Attorneys Crawford and/or Johnson of D&C Builders, Inc. against TMKG, Inc.

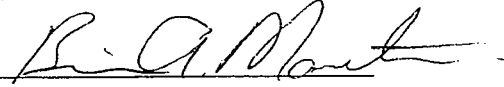
14. I began discussions on behalf of D&C Builders, Inc. with Defendant Richard M. Buckley and his son Matt Buckley in December of 2011 and entered into an agreement with Defendant Buckley on or about January 4, 2012 to renovate Defendant Buckley's home located at 105 Cammer Ave., Greenville, South Carolina.
15. Construction of the renovations took place between February 5, 2012 and November 16, 2012. The Summary Judgment hearings against TMKG, Inc. took place on March 12, 2012 and April 19, 2012. Extensive settlement discussions took place between April 19, 2012 and the case being dismissed on July 31, 2012.
16. A Certificate of Occupancy for the renovations at Defendant Buckley's home was obtained on July 31, 2012, the same day that the matter against TMKG, Inc. was finally dismissed.
17. While working on the project for Defendant Buckley and in the course of casual conversations with Defendant Buckley and/or his son, I discussed the circumstances of the ongoing litigation against TMKG, Inc. and that the firm of Kenison, Dudley & Crawford, LLC was representing D&C Builders, Inc. in that matter.
18. When Defendant Buckley failed to pay the balance due for the renovations and D&C Builders, Inc. was forced to file this foreclosure action, Defendant Buckley apparently sought out the firm of Kenison, Dudley & Crawford, LLC to represent him in this matter.
19. Kenison, Dudley & Crawford, LLC by Attorney M. Stokely Holder have apparently undertaken the representation of Defendant Buckley in this matter.
20. On behalf of Defendant Buckley, Attorney Holder filed a thirty-seven (37) page Answer, Counterclaims and Third-Party Claim that includes thirteen (13) defenses and eight (8) counterclaims against D&C Builders, Inc. including Breach of Contract, Negligence, Conversion, Fraud, Negligent Misrepresentation, Constructive Fraud, Slander of Title **and seeking a Declaratory Judgment:**
  - a. **That D&C Builders, Inc. "did not have a functioning corporate structure, was incapable of making independent decisions, and did not follow the corporate formalities applicable to a South Carolina corporation at all pertinent times herein."**
  - b. **That D&C Builders, Inc. "was insolvent prior to and/or during construction of the Project."**
  - c. **That D&C Builders, Inc. "was grossly undercapitalized prior to and during construction of the Project."**
  - d. **That I, Scott Dodenhoff, treated the debts and assets of D&C Builders, Inc. as my personal debts and assets.**
  - e. **That I, Scott Dodenhoff, have such control of D&C Builders, Inc. that I dominated the finances, policies and business practices such that D&C Builders, Inc. is operated as a façade for my own personal operations.**
  - f. **And that I, Scott Dodenhoff, used such control of D&C Builders, Inc. to commit fraud against Defendant Buckley.**

21. On behalf of Defendant Buckley, Attorney Holder has filed a Motion to Dismiss and has submitted Interrogatories to D&C Builders, Inc., seeking among other things information about the corporate structure of D&C Builders, Inc., information about the financial status of D&C Builders, Inc. during the project, and all jobs D&C Builders, Inc. has provided construction related services since January 1, 2011.
22. On behalf of Defendant Buckley, Attorney Holder has submitted Requests for Production of Documents to D&C Builders, Inc., seeking among other things documents showing the authority and authorization for individuals to act on behalf of D&C Builders, Inc., documents related to the corporate structure of D&C Builders, Inc., documents related to the financial status of D&C Builders, Inc. during the period of the project and bank account records of D&C Builders, Inc. during the project.
23. On behalf of Defendant Buckley, Attorney Holder has submitted Requests for Admission, requesting D&C Builders, Inc. admit, among other things, that D&C Builders, Inc. does not have proper accounting records related to this project and does not have appropriate tax records related to this project.
24. On behalf of Defendant Buckley, Attorney Holder has submitted similar Interrogatories, Requests for Production of Documents and Requests for Admission to me individually.
25. Based on the financial aspects of both cases, the financial implications on D&C Builders, Inc. of both cases, the issues involved and the fact that the circumstances of the current case was developing and likely discussed with Attorneys Crawford and/or Johnson during the prior case, I believe that these two matters are substantially related to each other.
26. Defendant Buckley's interests in the current case are certainly adverse to those of the Plaintiff D&C Builders, Inc.
27. It appears to me that Attorney Holder is using, intends to use, or may be able to use information, including confidential information, obtained or provided to Attorneys Crawford and/or Johnson in their prior representation of D&C Builders, Inc. against and to the disadvantage of D&C Builders, Inc. in furthering the current representation of Defendant Buckley.
28. It appears to be very likely that Attorney Holder and/or other attorneys at the firm of Kenison, Dudley & Crawford, LLC have already provided, will provide, or may provide information, including confidential information, obtained in the prior representation of D&C Builders, Inc. to Defendant Buckley in furtherance of their representation of Defendant Buckley in this matter.
29. D&C Builders, Inc. was not requested to consent to Kenison, Dudley & Crawford, LLC representing Defendant Buckley in this matter and does not consent.

30. I believe that Kenison, Dudley & Crawford, LLC has a material conflict of interest in representing Defendant Buckley in this matter based on information they did obtain or reasonably could have obtained in the prior representation of D&C Builders, Inc. against TMKG, Inc..
31. I do not believe the attorneys at Kenison, Dudley & Crawford, LLC can maintain the confidence of information provided to them in the prior representation of D&C Builders, Inc. and pursue the interests of Defendant Buckley at the same time without using information obtained in the prior representation to the disadvantage of D&C Builders, Inc.
32. I have not been asked to waive this conflict, nor do I agree to waive this conflict.

  
\_\_\_\_\_  
Scott Dodenhoff

**SWORN AND SUBSCRIBED** to me this 12<sup>th</sup> day of June, 2013.

  
\_\_\_\_\_  
Notary Public  
State of South Carolina  
County of Greenville  
My commission expires: 12/05/2015