

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

APPELLATE Case No. 2013-002785

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SC Court of Appeals

Bobby Knight,

Appellants,

v.

Companion Property and Casualty
Insurance Company of South Carolina;
Robertson Hollingsworth & Flynn Law Firm with;
Paul R. Ryan, as an Individual & a Partner:

Respondent(s)

INITIAL BRIEF

Bobby Knight, Appellant
3940 Hottinger Avenue
North Charleston, SC 20405
(843) 735-0814

Counsel of Record:
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Statement of Issues on Appeal

15. Did the Circuit Court err its first step of its 3-step FORM 4 Order ruling agreed with the Respondents that Norman Robert "Bobby" Knight, as the captioned named plaintiff in this action, was not an attorney and thus could he not represent the Corporation the Respondents named Construction Group LLC and the Court below refusing two reconsiderations as this LLC is NOT a SC corporation; twice denying two (2) motions for reconsideration(s), which showed a history that the Appellant was, in fact, a SMLLC Sole Proprietorship, a single member LLC business entity otherwise the only one proper voice to bring any civil action against these named Respondents for among other causes including Recession in its entirety for the bond contract?
16. Did the Circuit Court err to accept second step FORM 4 ruling, the USDC Order presented by the Respondents was, on its face unenforceable in Charleston County, without the Appellant being given an opportunity at a trial of the facts to show the shortcomings in the creation of that USDC Order and Judgment – while the USDC too failed to recognize that the Appellant was a Sole Proprietor, as was plead in the party description of the Complaint, and not a corporation; there too in the USDC Charleston Division, the Appellant was denied the right to represent his own interests?
17. Did the USDC Charleston Division fail to comply with SC Revenue Ruling #98-11 to correctly identify Construction Group, LLC as a Sole Proprietorship since the federal order was being presented as evidence by the Respondent charging that the Appellant was a corporation?
18. The Court below suppressed the Appellant's Subpoena to FLETC Director, because the Court wrongfully declared that the Appellant was not an attorney in the action; a subpoena served to obtain an un-sanitized copy of a Federal Law Enforcement Training Center's criminal investigation dated February 17, 2011 (received by this Appellant from Glynco GA FLETC FOIA Officer); for when the Appellant received a sanitized copy (a confession stated to Officer Lt. Davis of stealing ~3000 pounds of scrap copper -- an incident reported by the Appellant from the USCG Contract by Atlantic Electric employees).

19. Did the Circuit Court err to accept third step FORM 4 ruling that any bond contract once indemnified by this individual Appellant was so absolute in case law - that even while the Appellant was engaging the Court of Common Pleas to Vacate the entire bond contract capable of showing at a trial of the facts, "that even a fool would not have placed his signature on the written agreement presented by attorneys after a deposition with it's shortcomings (a) like no subpoena was with personally delivery on a person; (b) taken without providing a free copy of the deposition to Bobby Knight, the Appellant, (c) like no USDC Mediation Order and Processes a prerequisites must in the USDC Local Rules; (d) like the lack of the payment of deposition witness fees and mileage twice; but while this Appellant to date has not been allowed to speak overall "with his day in any court" on behalf of his own business entity and future; being its sole proprietorship, the Appellant pleas giving a second use defense **Clean Hands Doctrine** *that after being denied an attachment;* created the USDC Order improperly in the first place defense; yet again being used against this Appellant in Common Pleas of State of SC, in the second place? A conundrum effect denying certain rights of a person.
20. Does the manner of taking of any deposition, that ultimately finds its way into the SC Court of Common Pleas, considerations become challengeable via a 'strict scrutiny' for violations of Substantive Due Process Rights and for non-payment of witness fees to such a degree invalidate the use of the poison fruit of that kangaroo deposition?
21. Does the taking of a deposition via R.30 assuming the entity is a corporation falter when the deposition should have been taken via R.45 when the entity is a sole proprietorship?
22. Does any ORDER against an non-existent SC corporate entity become moot and unenforceable instrument when confirmed the entity was not a corporation?

Statement of the Case

23. The SC Appeals Court ORDER granted permission to this Appellant file the INTIAL BRIEF and Designation of Matter within 30 days of May 14, 2014. The ORDER was received on May 17, 2014 and this pleading is timely with that instruction.

24. The Appellant, Norman Robert "Bobby" Knight owns the Sole Proprietorship named Construction Group LLC a South Carolina based business entity. IT is not a corporation as IT has been treated wrongfully and continuously by these specific Respondents since January 2012 is both Federal and this State Court litigation matters.
25. The Appellant filed a case in Charleston County Common Pleas against these Respondents for **Recission** of the bond contract indemnified by the Appellant, as an individual, for Construction Group LLC, a Sole Proprietorship, and for other related good causes of action. **See Complaint at ¶ No's 5 - 17.1.**
26. The case, **FILED August 5, 2013** was dismissed by Respondent's Motion (R.12) and a Subpoena by the Appellant was quashed based solely on the assertion that the Appellant's business Construction Group LLC was a corporation and that IT must be represented by an attorney only. William Runyon withdrew at USDC without a court order. See Carolina Truck Stop No.20. These SC Courts, including the USDC Court as well, wrongfully applied that stigma about Construction Group LLC as being a corporation and that the Appellant was not an attorney and could not represent IT's interests. The entity, is in fact, doing business as Construction Group LLC, has at all times pursuant to this matter and since IT's creation operated as a Sole Proprietorship; IT is identified by the SC Revenue Ruling #98-11 and recognized by The United States Treasury Tax Schedules; The United States Small Business & HUBzone Administration; and same for other exhibits presented to the Court below in the Appellant's Second Motion to Reconsider. (see Record on Appeal). The Respondents misused this "*Bobby Knight is not an Attorney*" defense to completely silence the Appellant from making a defense of **the Clean Hands Doctrine in USDC** and this venomous absolutism was wrongfully and blindly carried over into the **Court of Common Pleas in Charleston County** – the court below.
27. The Honorable Judge Frank Addy presided over all matters in this case. The Appellant timely appeals: (1) the quashing of IT's Subpoena to FLETC GLYNCO for the unsanitized copy of the criminal investigative report by Lt. Davis FLETC CHAS dated February; and (2) the FORM 4 ORDER granting the Respondents a R.12 Dismissal and (3) the two ORDERS that denied the Appellants two Motions for Reconsideration.

First Argument -

Pro Se Representation of Sole Proprietorship

Pro Se having been denied by Court below argument:

28. The Appellant and the USDC **true-Defendant**, Construction Group, LLC as the PROPER ENTITY known only as the Sole Proprietorship, a one owner S.C. SMLLC - Bobby Knight, being timely is seeking to **Appeal the Circuit Court** in the above captioned case as **Charleston County Court of Common Pleas (IT)** lacked a proper venue and jurisdiction **IT** required; **IT** lacks a subject matter jurisdiction over Bobby Knight while considering an entity Construction Group LLC was being *thrashed wrongly* because the Court was assuming this Appellant to be a SC corporation -- all the while, this Appellant and USDC **true-Defendant** was/is a Sole Proprietorship. Inadvertently, a USDC Court ruling(s) that Bobby Knight could not Intervene, that he could not speak except via an attorney limited and restrained in that he could not afford, and this civil action as was commenced and plead **IT violated** this Sole Proprietor (Bobby Knight) of his *due process and fair access* [FN 1,2,& 3] to these Court's proceedings for which he, while being gagged and held defenseless, as a Sole Proprietor, he has been and continues to be aggrieved by this State Court applying decisions unjustly to an assumed *non-existent corporation*.
29. At the Circuit hearing on page 10 line numbers 10 - 15; Mr. Manos, attorney for the Respondents stated; "... *It (Construction Group) needs to get a licensed attorney, because the corporation can't represent itself. It needs to let a licensed South Carolina attorney evaluate that claim, and then bring an appropriate reasonable complaint that is supported by law and fact so we can respond to it.*" ; and
30. Clearly, Mr. Manos's Respondents is now and has been very wrong all along with their legal theory thinking that Construction Group was a corporation and not the sole proprietorship it was.

30.1. Further, a simple check or question or discovery investigation by the Respondents would have taken the whole conversation in the correct direction of Sole Proprietorship for Construction Group, LLC.

31. Judge Addy's did not have any properly plead venue and jurisdiction over the USDC true-Defendant; this Appellant, by just merely calling IT a corporation because the Respondent has done the same error.

31.1. The complaint-claim was filed properly by the Appellant as the owner of the entity Construction Group LLC, which is properly known to the United States and acts as a Sole Proprietorship and a small business concern.

31.2. The bond contract with Companion et al was personally indemnified by this Appellant in January 2011 without any expansion that they could withhold facts and create an agreement that even a fool would not have signed.

31.3. The Appellant did not sign off when so presented a paper a few weeks later.

31.4. In fact, a person has more time to buy a used car than these gang of attorneys allowed about their "**trick tabulation**" of adding the value of the stolen copper to the amount of the original Miller ACT claim, again ; and

31.4.1. without proper permission of the USDC Judge to Amend Atlantic's Miller ACT Complaint-Claim for a greater amount and then by the so called "of giving the Appellant a \$13,000 credit for that dollar amount of the stolen copper." ; and

31.4.2. Where is the missing copper money to the benefit of the Appellant? It simply does not exist. All the statement terms to come is the first admission to the Appellant's ears or eyes that the copper was in fact unlawfully taken and documented by FLETC.

31.4.2.1. It was not until late April 2013 that the Appellant got the FOIA copy of the FLETC Criminal Investigation -- wherein those thieves admitted to their crime against the Appellant to Officer Davis on February 17, 2011.

31.4.2.2. Mr. Manos and his clients had that info and failed disclose it as any fiduciary duty would be obligated to have done in fairness dealings. After all Companion was in the bond contract with Construction Group, LLC and further - if IT did not investigate but only assumed about corporation or sole proprietorship, that fault is not the Appellants.

32. Construction Group LLC is a **business entity** widely accepted and recognized by (1) the United States Small Business Administration (SBA) as an 8a Concern and (2) a participant to the HUBZone (SBA) program; (3) the United States Treasury Department via the Internal Revenue Service which has always taxed Bobby Knight an Individual for Construction Group LLC, Sole Proprietor shown on all of it's Schedule C forms, while this entity has NEVER paid any corporate taxes and as a corporation, inasmuch, proof certain and undisputable, that the **true-Defendant** at USDC (the Appellant herein) matter never was and is not a corporate entity; AND (4) As a precedent, previously in 2003 --historically-- in the USDC Charleston Division this true-party, as Sole Proprietor filed as Plaintiff and was allowed to represent *pro se*. Construction Group LLC SMLLC filed a RICO civil action against Companion Property, the insurance company, and we together, **Stipulated a Dismissal** in January 2004. *See Appendix-Exhibits 1; 2; 3 & 4 respectfully attached hereto.*
33. This Court's Orders and Final Judgment was the **fruition** of misrepresentations; a grievous error; a putrid mistake; and a petard-of-injustice haphazardly executed by all the opposing attorneys via their courts-officers-parties-status and Electronic Filing Access to the Clerks convincing the USDC to treat Construction Group LLC entity as a corporation, when in fact; this **true-Defendant** was screaming to be heard about the stolen copper incidents as the Sole Proprietorship, which it is now and always has been since its formation in 2000.
34. As such, the USDC and the Court of Common Pleas, having never expressed any venue or jurisdiction over the **true-Defendant** as the Sole Proprietor, then there has never been a proper claim; a proper order or proper final judgment that is enforceable against Bobby Knight the Sole Proprietor of Construction Group LLC.
35. This Appeal MUST be changed to the favor of the Appellant "Bobby Knight" and his sole proprietorship company, Construction Group, LLC.

Futhermore: **the Supremacy Clause Article VI** reads.

The Constitution and the Laws of the United States which shall be made in Pursuance thereof, and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land.

And the Judges in every State shall be bound thereby, and any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

36. Sole Proprietorship May Proceed *Pro Se* in Federal & State Courts:

From *A. L. Enters. v. Sebron*, 2008 U.S. Dist. LEXIS 100391 (D. Utah Dec. 10, 2008):

Many cases have recognized that although an entity cannot appear *pro se*, an exception exists when an entity is a sole proprietorship, because "a sole proprietorship has no legal existence apart from its owner." [Footnote 3. *United States v. Fox*, 721 F.2d 32, 36 (2d Cir. 1983); *Latanzio v. Galen Institute, Inc.*, 481 F.3d 137, 140 (2d Cir. 2007).] Thus, many courts have held that "sole proprietorships may proceed *pro se* in federal court." [Footnote 4. *United Parcel Serv. v. The Net, Inc.*, 185 F.Supp.2d 274, 279-280 (E.D.N.Y. 2002); *Lowery v. Hoffman*, 188 F.R.D. 651, 653-54 (M.D.Ala. 1999).]

However, **a sensible exception exists when an entity is a sole proprietorship, because "a sole proprietorship has no legal existence apart from its owner."** *United States v. Fox*, 721 F.2d 32, 36 (2d Cir. 1983). Accordingly, many courts have held that "sole proprietorships may proceed *pro se* in federal court." *Kraebel v. N.Y. City Dep't of Hous. Pres. and Dev*, No. 90CIV4391 (CSH), 2002 WL 14364, at * 4 n. 5 (S.D.N.Y. Jan. 3, 2002); *United Parcel Serv. v. The Net, Inc.*, 185 F. Supp. 2d 274, 280 (E.D.N.Y. 2002) ("[T]he sole owner of [a sole proprietorship] can represent [his company] in federal court.").

37. Where any person, similarly situated like "Bobby Knight" here is so aggrieved by any court's orders; appears properly before any Court and asserts that a lack of venue and/or jurisdiction {subject matter} is from a federal question or to object to the presentation of any ORDER from another jurisdiction being used adversely against this Appellant; no statutes of limitations or time tolled or time barred can uphold or exist against him. Stated, **FRCP 12(h)(3)** any orders or judgments wrongfully aggrieving this Sole Proprietorship, the **true-Defendant in the USDC and the Appellant herein**, that were so founded as these previously entered into this case docket and are found to be weightless, unlawful and totally unenforceable

instruments against a non-party such as this sole proprietorship, must be dismissed in the best interest of justice.

37.1. The USDC Order presented to the Court below by the Respondents, is against a corporation and not the sole proprietorship, this Appellant.

38. This is the foundation and legal theory for the Court of Common Pleas to hear, at a trial of the facts, this Appellant's causes for **Recission** in it's entirety about the bond contract with these Respondents. The FORM 4 ORDER(s) from the Court below, Judge Addy, as written against Norman Robert "Bobby" Knight, the Appellant assuming Construction Group LLC to be a corporation are again unenforceable instruments against the Appellant, who is not a corporation in any such manner shape or form.

FRCP 12(h) WAIVING AND PRESERVING CERTAIN DEFENSES. 12(h); (3) *Lack of Subject-Matter Jurisdiction. If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.* { or ORDER *Emphasis added* }

39. WHEREFORE, an equitable, fair and for good causes of justice having been shown herein and since Bobby Knight is the Sole Proprietor, of whom endeavored to speak to this matter many times before and was denied this lawful appearance and jurist-voice and even for his being disallowed by the USDC Clerk Case Manager to file any pleadings as his speech to redress his grievances to the United States Justice System; and Bobby Knight truly being the Sole Proprietor of Construction Group LLC was never summoned that would have commenced¹ this claim against him by the United States of America, for and on behalf of Atlantic Electric LLC (not a S.C. sole proprietorship entity) by their attorney, William Scott, but who did error the same repeatedly along with Companion Property and Casualty Insurance via Paul Rahn

¹ South Carolina Constitution Article 1 Section 3. **Section 3: Privileges and Immunities; Due Process; Equal Protection of Laws** The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

- Esq., all *wrongfully orchestrated* in the name of the United States of America denying Bobby Knight of his U.S. Constitution Substantive Due Process Rights and Protections².
40. Resultantly, Bobby Knight as the Sole Proprietor has been litigated against him without his due processes of law³; and Construction Group LLC being '*not proved to be*' a corporation by SC Code or these Federal District Courts, but was '*assumed as such a corporate entity*' which was/is wholly the wrong type of entity to have been prosecuted as a corporation in the name of the United States of America.
41. Bobby Knight - **Sole Proprietor**, as victimized by the Respondents before this honorable United States District Court - Charleston Division for South Carolina appeals its uses in Common Pleas and appeals to **VACATE** all-any of the orders and the final judgment filed against this non-existent entity assumed to be a corporation when in fact it was/is a Sole Proprietorship owned by Bobby Knight - Construction Group LLC; has suffered and been injured and continues to be injured about this entire misapplication and is seeking for a USDC Dismissal Order for all the fair, the just and the good causes shown within this pleading and within the four (4) supporting exhibits affixed hereto.
- 41.1. **This "to be" a corporation or "not to be" a corporation (the sole proprietorship) is now the Primary Pivot Question of this Appeal to the South Carolina Court of Appeals; and**
- 41.2. **Bobby Knight** - Sole Proprietor, has not had it's day in any South Carolina Court to raise two absolute Declaratory Judgment and Affirmative Defenses. FRCP 12(h)(3) and 56(e)(4) supports the **Clean Hands Doctrine** and a Counter-Claim pursuant to the **False Claims ACT defenses**. See Appendix -- Exhibits:
- 41.3. Tax Schedule showing SOLE PROPRIETORSHIP for Construction Group; and

² In United States constitutional law, **substantive due process** (SDP) is a principle which allows federal courts to protect certain fundamental rights from government interference under the authority of the due process clauses of the Fifth and Fourteenth Amendments to the Constitution, which prohibit the federal and state governments, respectively, from depriving any person of "life, liberty, or property, without due process of law." That is, substantive due process demarcates the line between, on the one hand, acts by persons of a public or private nature that courts hold are subject to public regulations or legislation, and on the other hand, acts that courts place beyond the reach of governmental interference. Whether the Fifth and/or Fourteenth Amendments were intended to serve this function continues to be a matter of scholarly as well as judicial discussion and dissent.

³ S.C. Constitution Article 1 Section 3 & U.S. Constitution Fifth & Fourteenth Amendments: Substantive Due Process principle.

- 41.4. SBA renewal as a HUBZone letter showing Bobby Knight - Sole Proprietor; &
- 41.5. USA System for Award Management Construction Group LLC profile "Entity Structure" Sole Proprietorship; and
- 41.6. The caption page and settlement page USDC precedent wherein Bobby Knight appeared against Companion Insurance company in the Charleston Division of the USDC as the Sole Proprietor in 2003 and 2004.
- 41.6.1. *No objections were made and what was once done has since been denied unjustly to this Sole Proprietor.*
- 41.6.2. *Companion was the Bond Company appearing via Paul Rahn as their Authorized Agent. He too was same to TRAVELERS as bond agents for Atlantic Electric. A Fiduciary Conflict unheard, too, as the Appellant was barred at the Court below from representing his sole proprietorship interests and causes of action.*

Second Argument -

Court below denied the strict scrutiny challenge of the Respondent's USDC Exhibit

42. The Appellant was not paid twice for witness fees & mileage for USDC R.30 deposition the Respondents used for their benefit at the Court below from the USDC order/judgment makes the deposition and any fruit of the deposition an incomplete due process of law?

ISSUE

Is a party to an action entitled to a witness fee and mileage for attending a deposition?

DISCUSSION

In Perry v. Minit Saver Food Stores, 255 S.C. 42, 177 S.E.2d 4 (1970), this Court answered the precise question before us. There, we held the word "witness," as used in Circuit Court Practice Rule 87, included a party such that the plaintiff was entitled to a witness fee and mileage. We stated, "[w]e are of the view that there is no ambiguity whatever in Rule 87 as to the meaning of the word 'witness' . . . and that the word 'witness' was intended to mean all witnesses whose depositions are taken pursuant to the rule, whether or not the witness, perchance, be a party. The word 'witness' is used at various other places in Rule 87 to denote all witnesses, including parties, without making

any distinction between witnesses who happen to be parties and those who are not.” 255 S.C. at 45, 177 S.E.2d at 5.

Circuit Court Rule 87 was repealed and replaced with Rule 30(a)(2), SCRCP, effective July 1, 1985. The pertinent provision of Rule 30(a)(2) provides, “[a] witness attending any deposition held pursuant to these rules shall receive for each day's attendance and for the time necessarily occupied in going to and returning from the same, \$25.00 per day, and mileage for going from and returning to his place of residence, in the same amounts as provided by law for official travel of state officers and employees.”

The Court of Appeals held that, because other sections of Rule 30(a)(2) differentiate between a witness and a party, the section pertaining to payment of a **witness** fee was just that, requiring payments only to witnesses, but not parties. The Court of Appeals noted that portions of Rule 30(a)(2) set forth certain limitations on depositions, to wit:

A witness (**excluding a party**) may be compelled to attend only in the county in which he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the court. The second paragraph states: ‘The deposition of any **party or witness** may only be taken one time in any case except by agreement of the parties through their counsel or by order of the court for good cause shown.

354 S.C. at 496-497, 581 S.E.2d at 849-850 (emphasis in original). Because the first paragraph of the rule deals with witnesses and excludes parties, and the second paragraph deals with **both** witnesses and parties, the Court of Appeals concluded that the third paragraph, dealing with payment of **witness** fees, applied only to witnesses and not to parties. Id. at 497, 581 S.E.2d at 850. This holding is in direct conflict with this Court’s opinion in Perry, holding that for purposes of the rule requiring payment of a witness fee, a party is a witness as well as a party.

Moreover, the Court of Appeals overlooked the fact that former Circuit Court Rule 87, upon which this Court relied in Perry, contained the **identical** provisions as Rule 30(a)(2). Rule 87(A) specifically stated that “[a] witness (excluding a party) may be compelled to attend only in the county in which he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of the Court.” The rule went on to state that, “[t]he deposition of any party or witness may only be taken one time in any case except by agreement of the parties through their counsel or by order of the Court for good cause shown.” We nonetheless held in Perry that a party witness is entitled to mileage and a witness fee. Accordingly, the Court of Appeals erred in holding Perry inapplicable to this case.

We hold a party to an action who is required to attend a deposition is entitled to a witness fee and mileage pursuant to Rule 30(A)(2). The Court of Appeals’ opinion is reversed.

REVERSED.

MOORE, A.C.J., PLEICONES, J., and Acting Justices Edward B. Cottingham and Donna S. Strom, concur.

....

Two (2) Citations from SC Revenue Ruling #98-11 B.Maybank, Director:

In 1997, Code §12-2-25(B) was added to clarify the tax treatment of single member limited liability companies.

(B) Single-member limited liability companies which are not taxed for South Carolina income tax purposes as a corporation...will be ignored for all South Carolina tax purposes.

Individual is Only LLC Member. If an individual is the only member of a single member LLC and the individual did not elect for federal purposes to have the LLC treated as a corporation, then it is treated as a sole proprietorship. The income from the LLC is reported on the single member's Form SC 1040 - South Carolina Individual Income Tax Return.

Third Argument -

Is it constitutional for a SMLLC to declare a Derivative Action standing if

IT is wrongfully declared a corporation vice a Sole Proprietorship?

Appellant's 1ST MOTION TO RECONSIDER at the Court below:

43. The Appellant moved the Court below to RECONSIDER & AMEND it's Form ORDER of DISMISSAL dated 18 October 2013 in this matter as follows.

44. Judge Addy, was asked to reconsider and amend the FORM 4 Order addressing three levels ruling; (1) Plaintiff lacked Standing, (2) Res Judicata of USDC and (3) Tort Protection(s) for the Suretyship; In the alternative, the Plaintiff requests for the Court to **apply instead;**

R. 17(b) with 23(b)(1) and with SC Code §33-44-1101 et seq. Right of action because Construction Group LLC⁴, furthermore "lacks the power to act" due to the 'shutdown' of

⁴ Title 12 - Taxation SECTION 12-2-25. Definitions pertaining to limited liability companies; single-member limited liability companies.

(B) For South Carolina tax purposes:

(1) a single-member limited liability company, which is not taxed for South Carolina income tax purposes as a corporation, is not regarded as an entity separate from its owner;

business caused by the very judgment this case sought a rescission about; and because Plaintiff Bobby Knight⁵ has a proper standing Right of Action; otherwise due to a SC State Statute which states:

TITLE 33 - ARTICLE 11.
DERIVATIVE ACTIONS

SECTION 33-44-1101. Right of action.

A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to do so have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

45. Bobby Knight should have been entitled to plea his State Court case for the following good and just reasons:

45.1. Bobby Knight inherited the "bad faith behavior" Judgment by USDC Judge Gergel from these Respondents that my State Court Complaint termed them wholly, as the Suretyship.

45.2. The Complaint captioned above was filed in Charleston County which is where the Judgment is filed and where [it] does instant harm and injury to Bobby Knight.

45.2.1. Charleston County is where [it] would have to be enforced against Bobby Knight, only as the personal guarantor of the bond in question.

45.3. The Complaint, too, was for a **Rescission Order** and for Bobby Knight **to be made whole**. Whether or not the Suretyship has to pay any monetary or punitive damage award is to the R.12 Defenses and these alone must not prevent or obscure State Court access to a finding for a **Rescission Order** from being Awarded in this individual Plaintiff's – Appellant's behalf.

45.3.1. USDC Judgment enforcements belongs to the Charleston County Courts, SC.

45.4. The rescission of the bond contract entirety and its payout is inherently intrinsic and [it] is in the best interest of justice and is a fair and just award to remove the USDC

⁵ Title 33 - ARTICLE 2.

ORGANIZATION

SECTION 33-44-201. Limited liability company as legal entity.

Except as provided in Section 12-2-25 for single-member limited liability companies, a limited liability company is a legal entity distinct from its members.

HISTORY: 1996 Act No. 343, Section 2; 1997 Act No. 91, Section 2.

Judgment from Charleston County Records as a failure by the Suretyship to apply the **Clean Hands Doctrine**; as it can easily be proven that the said instrument was obtained with a “bad faith behavior effort” harming this single-member Plaintiff (then) & the Appellant (now).

45.4.1. The Respondents dirty hands negates the so called consent agreement R.30(j) and the bonds contract-agreement indemnification as the Respondents did not disclose that they would/could be the Authorized Agents for both Companion Suretyship and Travelers Bonds for the same contract for the same disputes WHEN these agreements were initiated. Bobby Knight learned of this conflict after the fact.

46. Bobby Knight must take this derivative action for a rescission of the results of the asserted unprotected misconducts of and by these Respondents.

46.1. This individual standing is compliant with SCRCRCP R.23(b)(1). in our SC State Court and is more adaptable in the FRCP 23⁶ as well.

46.2. The Plaintiff's (then) Appellant (now) protections against ‘bad behavior’ of the Suretyship should not have extended beyond and into the ‘bad behavior and bias’ that existed between Travelers and Atlantic Electric and Respondent Paul Rahn as he was the Authorized Agent for both the bonds held on the one US Coast Guard contract. Travelers and Atlantic Electric are/were the parties at the Federal court.

46.3. These bonding contracts are SC State contract law, it is not a Miller ACT Law USDC jurisdiction. This **Complaint** is FILED is with a proper jurisdiction and venue.

47. A **Rescission ORDER**, as is sought by Bobby Knight, is not the seeking a "tort" finding by a State court. It is an Equity Claim arguing the vitality of any agreements or those enforcements.

47.1. Thus, Materclean, Inc v Star, Ins. (SIC) Mastercraft(?) should not have attached when the neglect was seeded as a failure to disclose the dual-bonding as Authorized Agent relationships by the Respondents. This is an obvious misconduct with in “any reasonable man's legal due process expectations.”

47.2. The Appellant cannot be reasonably be expected to be subjected to this kind of conflict, where one agent person and one agent person alone speaks for two entities

⁶ This Rule 23(b)(1) is the language of present Federal Rule 23.1.... The {FRCP} Rule simply provides more specific guidance for the procedure.

(clients) in the same legal conflict. This was the reason the USDC attorneys plan was to ignore the stolen copper issue altogether. A *civil conspiracy* in and of itself.

47.3. There is a distinct difference between that which is a Plaintiffs right to seek Rescission and any Respondent's prerequisite-defenses to torts.

47.3.1. Fraud is a tort to a person; however 'fraud upon the court' and 'fraudulent inducement' at a R.30(j) Deposition is a crime and misconduct; and

47.3.1.1. The Plaintiff does not hold the **Private Right of Action** for the crimes and misconduct -- like stealing of copper and obstruction of justice about the arrest for stealing copper and for Atlantic Electric's using government cranes and personnel for their personal enrichment-- as was done by Atlantic Electric and others employed by the Coast Guard. This belongs to the Courts.

47.3.1.2. The Plaintiff is the victim seeking a 'redress' in his civil action as he has been injured by the USDC Courts' R.30 manipulations [that should have been R.45] for this Appellant's status as a Sole Proprietorship entity. It is ascertainable beyond that the USDC Order/Judgment presented by the Respondents can not exist not withstanding the false USDC Local Rule mediation breach and lack of the payment of witness fees and milage (twice) by Respondents Authorized Agents Paul Rhan and his partnership and his clients, whom assert a privilege not otherwise duly earned by the shortcomings of Atty William Scott for Atlantic Electric in the Little Tucker Miller ACT claim judgement presented as Res Judicata in this matter.

47.4. The **Complaint** groups the Respondents and names them as the Suretyship.

47.5. The Suretyship has/had an Authorized Agent relationship with Companion Surety for Construction Group LLC **AND** with Traveler's Surety who held/holds the bond for Atlantic Electric in the USDC Miller ACT matter for which the Court Order speaks about **Res Judicata**. This is a conflict. The Complaint makes a Demand too, of this for one is plead too, as for a relief from the Ethical Neglect of the Suretyship about the Res Judicata assertions.

47.6. The Plaintiff-Appellant, 'Bobby' Knight, as a party in 2013-CP-10-04560 was/is authorized by **Code § 33-44-1102**; a Proper plaintiff, because Construction Group LLC furthermore even if a corporation then "lacked the power to act". This is a must take

derivative action for a Rescission of the results take in the Court below and of the asserted protected-misconduct in Charleston County South Carolina of the Respondents. The Respondents are not protected for their misconduct against the Appellant by way their bias with preventing a claim while protecting the Travelers bond from being claimed against their more prestigious clients, who “admittedly stole the copper and breached that Appellant’s bonded contract” with the United States Coast Guard resulting in a series of failures and shortcomings about the **Clean Hands Doctrine and the Miller ACT Claim**.

47.6.1. {Emphasis added} In other words, the Respondents assertions all along have been that the Appellant cannot tell about the theft of copper and other breaches because only an attorney can speak to the South Carolina Court(s) in his behalf. This effort was wrong and malicious and it prejudiced the Appellant and was a collusion to be deemed as a corporation and to not be properly deemed as the sole-proprietorship that Construction Group LLC is and has functioned as since 2000.

47.7. The Respondents bonding contract with the Appellant began before the USDC Miller ACT Claim and continues long after - until the Rescission Defense is adjudicated by Bobby Knight. This bonding contractual relationship is more a State jurisdiction and venue than a federal question. The Complaint is proper by the Appellant in the Court below.

47.8. WHEREFORE The Appellant asked for a reconsideration of the dismissal with a renewed application of **R.17(b) and R.23(b)(1)** since Bobby Knight was the sole-proprietor and was the only single-member of Construction Group LLC; which "**lacks or lacked the power to act**" as an **§33-44-201 Entity** and, Norman Robert “Bobby” Knight acted in and on his own behalf in the filing of Knight v Companion et al matter now on this Appeal . A substantive basic right which does exist for the Appellant as is allowed by ALL the Court's Rules and Statutes and Precedents with this proper jurisdiction and venue in South Carolina and the United States of America; and by:

R.17(b); R.23(b)(1) and SC Code § 33-44-1102. Proper plaintiff.

And 28 U.S.C. 1654 et seq. Definitions - Party.

Fourth Argument -

The Appellant Pro Se and the Respondent-Companion have a USDC precedent case.

Appellant's 2ND MOTION TO RECONSIDER at the Court below:

47.9. The Plaintiff above captioned moves for this Court for a **SECOND RECONSIDERATION & TO AMEND** it's Form 4 ORDER of DISMISSAL dated FILED 18 October 2013; and the FIRST Motion to RECONSIDER & AMEND dated FILED 13 November 2013 in this matter as follows.

47.10. **HISTORY & STATUS:**

47.10.1.1. The FORM 4 ORDER FILED 13 November 2013 in Knigh t v Companion et al 2013-cv-10-04560 is attached hereto for reference with its NOTICE of ENTRY which was received by mail from Clerk's office on Thursday, 21 November 2013.

47.10.1.2. The Plaintiff asked that the Honorable Court below review and reconsider this new issue and case law about I[t's] dismissal and denial decisions with the respective Orders filed and since the hearing and order of 18 October 2013.

47.10.1.3. This recent State Court lawsuit came seeking a complete Rescission of an insurance/bond contract, in part for misrepresentations and a good faith failure to disclose.

47.10.1.4. The Court below did not hold a 2nd hearing for the FIRST Motion for Reconsideration & Amend as on the face it must have appeared that were no possible direction changes in the 18 October 2013 FILED three part dismissal-explanation that could have been had in favor of the Appellant. That which was part of the *pro se* plan at hearing presentation follows below.

47.10.1.5. The Appellant, since there was not a 2nd hearing granted, respectfully asked for the Court to review and consider the Plaintiff's-Appellant and Defendant's-Respondent's two USDC documents from 2003-2004 that clearly alter the conditions "**of standing**" and "**of appearance**" by Construction Group LLC with Bobby Knight as the sole-proprietor *pro se* is the precedent of behavior

between these same parties. (as a SMLLC). It appears that these parties or Court below had presented what did not exist which is "no valid case citations that a Derivative Action brought by a sole-proprietor [SMLLC] against a third party" could not be procedurally successful for claims when the LLC shows it had been made defunct by the alleged actions of any Respondents. **In the alternative**, this Plaintiff *pro se* has a shown as a precedent between these very same parties for a reconsideration and amendment about this matter pro se filed. Norman Robert "Bobby" Knight is the **"successor in interest" when Construction Group LLC is unable to function no matter what kind of business entity is assumed to exist.**

47.10.1.6. The Form 4 ORDER signed by Judge Addy on November 5, 2013 and FILED November 15, 2013 and received via the internet by the Plaintiff on November 22, 2013 by the Plaintiff having received by mail the Clerk's NOTICE of ENTRY on November 21, 2013, is attached hereto.

48. **NEW (HISTORICAL) FACTS & SUMMARY: Law and Analysis.** There are two (2) additional documents the Plaintiff presents, for the Court to review and consider, attached hereto. They are:

48.1. ... page 1 of 13 of USDC Dkt Entry No. 1; and, page 1 of 1 of USDC Dkt Entry No. 19 in a **USDC Civil Action No. 2: 03-3165 18AJ FILED OCT 6 2003** & amicably jointly FRCP 40 settled FILED JAN 22, 2004.

The Plaintiff was basically informed at the 16 OCT 2013 hearing by Judge Addy, that his State civil action was to be denied for three reasons. First, as to a Plaintiff's lack of standing; and third, a corporation cannot be represented by a *pro se*. [MasterCraft or Clean?] The "whole dispute" alleged in the State Court Complaint was not settled at USDC Miller ACT to apply a Res Judicata barr (this was the second reason by Judge Addy to dismiss).

48.2. The litigation history between these parities is contrary to the case precedents plead by the Defendants (then) Respondents (now) in 2013 and as the previous USDC litigation between these exact same parties in 2003 shows from just over 9 years ago. The two pages from that USDC civil action are contrary to the Circuit Court's **barr** today and it names the Plaintiff(then) & Appellant(herein) identified in the 2003 USDC

matter is the same Plaintiff, Bobby Knight, to the matter before Judge Addy's Court today:

48.3. **2nd Motion for Reconsideration Exhibits:** Items No.s 1(a); 1(b); &

2 page excerpts:

First page @USDC Dkt Entry No. 1

Item No.1(a): ... in paragraph No. 1. It states exactly as follows:
Bobby Knight, Plaintiff, 3940 Hottinger Avenue, North Charleston, South Carolina, 29405. Owner of a Small Business Administration certified HUBZone entity and sole-proprietor of his small business dba/ Construction Group LLC.

Item No. 1(b): Page 1... in paragraph No. 2. It states exactly as follows:

“Companion Property and Casualty Group (an insurance company), Defendants,”..

Second page @USDC Dkt Entry No. 19

Item No.2. this civil action ended with a FRCP 41(a)(1) **Joint Stipulation**, after the Plaintiff and attorneys met, discussed and negotiated and agreed (1) to refund the Plaintiff his companies money; and, (2) to correct and release the Plaintiff's company, Construction Group LLC, from their computer network audit lock held in the national insurance data banks located in Boca Raton, Florida.

48.4. These USDC docketed exhibits show clearly that the Plaintiff(then) and Appellant (now) has successfully previously appeared *pro se* in the USDC District of South Carolina against the very same Defendant (then) Respondents (now w. different attorneys) and without objection for being *pro se* up to a mutual compromise about our business's differences.

48.5. This newly presented and easily verifiable case law is a just, fair and good cause to request a **second reconsideration of the Form 4 ORDER series FILED since OCT 18 2013 by Judge Addy's State Court**; and for the Circuit Court to **GRANT** the Plaintiff (then) & Appellant (now) an **Equal Opportunity Court Access** to resolve this most recent series of disputes in the civil action known as Charleston County Court of Common Pleas, civil action No. 2013-CP-10-04560, Knight v. Companion Property et al.

48.6. WHEREFORE: A **Case Law Doctrine Argument**, especially when between these two identical parties in Charleston County Court of Common Pleas No. 2013-CP-10-04560 Knight v Companion Property et al was contrary when compared to the United States District Court -- Charleston South Carolina No. 2 03 3165 18AJ Knight v

Companion Property et al must be given an equal weight of consideration and a strict interpretation of the precedent set in the 2003 USDC Complaint. I[t] was filed *pro se* for the same Plaintiff's (then) company's losses and injury; and, with a FRCP 40 compromise (settlement) that was achieved to the satisfaction of all parties.

48.6.1. That which was an applicable insurance dispute in January 2004 is a rationale resolves for October 2013 civil action, and likewise for a SMLLC like Construction Group, LLC. {see the 2003 USDC Dkt Entry(s) 1 & 19}

Conclusion

49. The Appellant has shown that he filed his civil action in a timely manner in the Charleston County Court of Common Pleas against the Respondents. It was an error for the Court below to assume automatically from the Respondents assertions and to deny the Appellant's two Motions for Reconsideration. The Appellant has shown by clear and convincing proof that he can and should be allowed to perform *Pro Se* as the Sole Proprietor of Construction Group LLC. That the Appellant did so successfully against these same group of Respondents even that they have new attorneys 9+ years later than the attorneys used in the USDC Charleston Division in 2003-2004. The Appellant properly can represent himself as and his sole proprietorship business entity in any court proceeding in America. This appeal is that in this instant case and the USDC Court at Charleston Division, the Appellant was denied appearing Pro Se for himself and his Sole Proprietorship, Construction Group LLC; thereby wrongfully setting off the string of reasons referred to as the Court below's second and third rationale used by the Court below to wrongfully dismiss R.12 the Complaint.; and
50. The Appellant was blindsided like a trial ambush, being given the Respondents folder of exhibits and arguments Memorandum after the hearing started in October 18, 2013 began asserting by the Respondents, a claim of Res Judicata about the USDC Order against the corporation that wrongfully names Construction Group, LLC while the same Appellant was wrongfully prevented from appearing Pro Se to intervene at USDC and block the use of the Miller ACT Claim via the Clean Hands Doctrine – while it can be shown the attorneys in that USDC matter withheld from the Court the 'stolen copper' hoping and agreeing among

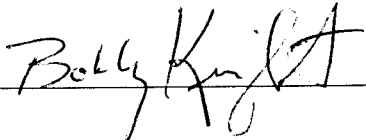
themselves and Atlantic Electric not to speak about that copper issue at all... and that at a R.30 deposition that is burdened with its own Substantive Due Process violations about that depositions creation and misuses. Respondent's Authorized Agent for Companion (and Travelers for Atlantic Electric) Paul Rhan is and was not a USDC Certified Mediator; nor did he obtain the required USDC Order to perform a mediation; or to follow the Local Rules of the USDC; nor did the deposition provide the Appellant with a free copy of his deposition and the thirty day review period. (they asked for a \$1000 deposit). The USDC Ruben Order and the Final Judgment against the non-existent corporate entity they named as Construction Group, LLC was the poisoned fruit they misused while circumventing the Appellant's protections set forth in **Perry v. Minit Saver Food Stores**, 255 S.C. 42, 177 S.E.2d 4 (1970). The statement by the Appellant that said "yes" on that record, even it could be used as it was not paid for by the deponents and the Respondents... resulted in a Written Agreement that "any fool would not have signed." ; AND

51. **The South Carolina Supreme Court** holds the absolute, sole and exclusive authority over ALL Courts in this State as IT controls all Judges, Attorneys and such representation and behavior of these Officers of the Courts; and resultantly;
52. Over all judgments that come into South Carolina through the Charleston County Courts from any other jurisdictions which are subject to "**a strict scrutiny**" before any "use or enforcement" against any citizen of the State of South Carolina. The Appellant asserts that his right was denied by virtue of not being allowed to proceed *pro se*; that then causing the Appellant to not be allowed to argue to the Court below about the FLETC Motion to Quash the Subpoena because he was not an attorney and denied the Subpoena which was rightfully issued and correctly delivered giving the un-sanitized copy of the FLETC Criminal Investigation Report dtd February 17, 2011. A document that was available to the Respondents since 2011, but not this Appellant, and was withheld at the times pertinent to this dispute (having received a redacted FOIA copy in April 26, 2013; and
53. And that the Appellant, has every right to seek a Recission of its name on any contract for the good and just reasons so stated in the ***Complaint at ¶ No's 5 – 17.1.***; and

THEREFORE: It is a just, fair and for a good causes shown to reinstate *Knight vs. Companion Property et al.* 2013-CP-10-04560 as it did not require the Appellant (*Pro Se*) to be an attorney to file this action as an individual natural person. (28 U.S.C. § 1654). The Appeal should be

granted and the Order(s) of Judge Frank Addy MUST be VACATED allowing the civil action to proceed.

Respectfully submitted this 10th day of June 2014.

BY: _____

Bobby Knight, Appellant
3940 Hottinger Avenue
North Charleston, SC 20405
(843) 735-0814

Counsel of Record:
Theodore Manos
% Robertson Hollingsworth & Flynn Law Firm
177 Meeting Street, Ste 300
Charleston, SC 20401
Attorney for Respondents
(843) 723-6470

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

APPELLATE Case No. 2013-002785

Bobby Knight,

Appellants,

v.

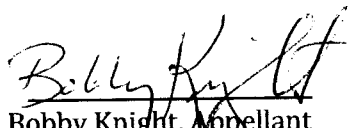
Companion Property and Casualty
Insurance Company of South Carolina;
Robertson Hollingsworth & Flynn Law Firm with;
Paul R. Ryan, as an Individual & a Partner:

Respondent(s)

CERTIFICATE RULE 209(c)

Bobby Knight, *pro se*, I certify that this **Designation of Matter** contains no matter which is irrelevant to the appeal.

Respectfully submitted this 10th day of June 2014.


Bobby Knight, Appellant
3940 Hottinger Avenue
North Charleston, SC 20405
(843) 735-0814

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SOUTH CAROLINA
COURT OF APPEALS

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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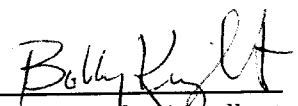
Companion Property and Casualty
Insurance Company of South Carolina;
Robertson Hollingsworth & Flynn Law Firm with;
Paul R. Ryan, as an Individual & a Partner:

Respondent(s)

PROOF OF SERVICE

Bobby Knight, *pro se*, I certify that I have served **INITIAL BRIEF AND Designation of Matter** to Theodore Manos, Attorney for the Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on June __, 2014, addressed to their attorney of record: Theodore Manos, % Robertson Hollingsworth & Flynn Law Firm, 177 Meeting Street, Ste 300, Charleston, SC 20401, (843) 723-6470.

Respectfully submitted this 10th day of June 2014.


Bobby Knight, Appellant
3940 Hottinger Avenue
North Charleston, SC 20405
(843) 735-0814

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SC Court of Appeals

June 10, 2014

Honorable V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
%Jenny Abbott Kitchings, Clerk
Post Office Box 11629
Columbia, South Carolina, 29211

RE: Appellant's INITIAL BRIEF; Designation of Matter Certification & Designation of Matter

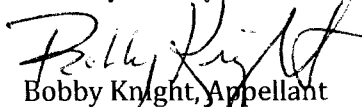
Subject: APPELLATE Case No. 2013-002785 Knight v. Companion Property, et al.

Dear Ms. Allen, Dep. Clerk of South Carolina Appeals Court,

Please find enclosed one (1) original w signature.

I have included a S.A.S.E. and for one (1) copy as a return to me after being stamped as FILED by your office.

Thank you for your assistance in this matter.


Bobby Knight, Appellant
3940 Hottinger Avenue
North Charleston, SC 20405
(843) 735-0814

RECEIVED
JUN 11 2014
SC Court of Appeals

Enclosures:

(1 original)

Honorable V Claire Allen, Deputy Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211-1629

(1 copy)

For return to the Appellant after filing in the SASE.

Cc/ Theodore Manos for Respondents.
% Robertson Hollingsworth & Flynn Law Firm
177 Meeting Street, Ste 300
Charleston, SC 20401

PRIORITY MAIL

Bobby Knight, Appellant
3940 Hottinger Avenue
North Charleston, SC 20405

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Honorable V. Claire Allen, Deputy Clerk
South Carolina Court of Appeals
%Jenny Abbott Kitchings, Clerk
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