

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BIGFORD ENTERPRISES, INC., BISHOP & ASSOCIATES, INC. d/b/a "BISHOP BRICK AND CONSTRUCTION," AND McBRIDE BUILDING SUPPLIES & HARDWARE, INC.

Plaintiff(s)

vs.

D.C. DEVELOPMENT, INC n/k/a D.C. DEVELOPMENT & CONSTRUCTION, LLC BY WAY OF ARTICLES OF CONVERSION AND DAVID COX

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

4
2013-CP-26-0008

14 JAN -2 PM 2:28
CLERK OF COURT

(Please Print)

Submitted By: Wendell L. Hawkins, PA
Wendell L. Hawkins, Esq.
Address: 103-C Regency Commons Dr Greer, SC 29650

SC Bar #: 13583
Telephone #: 864-848-9370
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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
 This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
 This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
 This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20 -CP- -, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Slander/Libel (300), Conversion (310), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)

- Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Consent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCDOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Comm (991), Other (999)

- Special/Complex /Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (510)

RECEIVED

AUG 26 2014

SC Court of Appeals

Submitting Party Signature: _____

Date: December 31, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

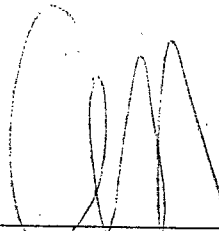
SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

You are further summoned and notified to apply for the appointment of a guardian ad litem to represent such infant(s) under fourteen years of age (said incompetent or insane) person within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff(s) herein.



Wendell L. Hawkins (S.C. Bar #: 13583)
Aimee V. Leary (S.C. Bar #: 100657)
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wlh@wlhawkinslawfirm.com
avl@wlhawkinslawfirm.com
Attorneys for Plaintiffs

Greer, South Carolina
December 11, 2013

2. That Plaintiff Bigford Enterprises, Inc. (hereinafter "Bigford") obtained judgment against the Defendant D.C. Development on August 8, 2005 in the amount of Seventy-Nine Thousand Sixty and 00/100 Dollars (\$79,060.00) with interest thereon at the statutory rate per month. Said confession was entered upon the indexes and records of the Clerk of Court of York County, South Carolina on December 21, 2011 in Judgment Roll No. 2011-CP-46-4761 which was, by way of transcript of judgment, entered upon the records of the Clerk of Court of Lancaster County, South Carolina in Judgment Roll 2012-CP-29-00688 on May 18, 2012 (collectively and singularly the "Judgment").

3. That on or about June 6, 2012 the Clerk of said Court of Lancaster County issued an execution against the property of Defendant D.C. Development in favor of Bigford which was delivered to the Sheriff of Lancaster County and which has been returned by the Sheriff marked "Null Bona" on or about July 16, 2012.

4. That Plaintiff Bishop & Associates, Inc d/b/a "Bishop Brick and Construction" (hereinafter "Bishop") obtained judgment against the Defendant D.C Development, Inc. on June 9, 2005 in the amount of One Hundred and Fifty Two Thousand Three Hundred and Seventy One 19/100 Dollars (\$152,371.19) with interest from December 18, 2003 at the statutory rate. Said confession was entered upon the indexes and records of the Clerk of Court of York County, South Carolina on June 9, 2005 in Judgment Roll No. J0109, Page 171 (Case Number 2004-CP-46-1673) which was, by way of transcript of judgment, entered upon the records of the Clerk of Court of Lancaster County, South Carolina in Judgment Roll 2012-CP-29-00689 on May 18, 2012 (collectively and singularly the "Judgment").

5. That on or about May 31, 2012 the Clerk of said Court of Lancaster County issued an execution against the property of Defendant D.C. Development in favor of Bishop which was delivered to the Sheriff of Lancaster County and which has been returned by the Sheriff marked "Null Bona" on or about July 16, 2012.

6. That Plaintiff McBride Building Supplies & Hardware, Inc. (hereinafter "McBride") obtained judgment against the Defendant D.C. Development on May 11, 2005 in the amount of Two Hundred and Fifty-Three Thousand Nine Hundred and Five 40/100 Dollars (\$253,905.40) plus interest thereon. Said confession was entered upon the indexes and records of the Clerk of Court of York County, South Carolina on December 21, 2011 Judgment Roll Book J0106, Page 88 (Case No. 2004-CP-46-0077) which was, by way of transcript of judgment, entered upon the records of the Clerk of Court of Lancaster County, South Carolina in Judgment Roll 2012-CP-29-00690 on May 18, 2012 (collectively and singularly the "Judgment").

7. That on or about May 31, 2012 the Clerk of said Court of Lancaster County issued an execution against the property of Defendant D.C. Development in favor of McBride which was delivered to the Sheriff of Lancaster County and which has been returned by the Sheriff marked "Null Bona" on or about July 16th, 2012.

8. That D.C Development, Inc. filed Articles of Conversion with the Secretary of State of South Carolina on May 22, 2006 converting D.C Development, Inc. to D.C. Development & Construction, LLC in an erroneous belief that such conversion would shield D.C. Development & Construction, LLC from liability on the debts and obligations of D.C. Development, Inc. (both D.C. Development & Construction, LLC and D.C. Development, Inc. are collectively referred to as "D.C."). Plaintiffs are informed

and believe that pursuant to the holdings of Brown v. American Ry. Express Co., 128 S.C. 428, 123 S.E. 97(1924), Nationwide Mutual Insurance Co., Inc. v. Eagle Windows & Doors, Inc. 394 S.C 54, 714 S.E. 2d 322 (S.C. 2011) and S.C. Code of Laws § 33-11-112, the surviving D.C. Development & Construction, LLC is liable to the Plaintiffs to satisfy the judgment debts of Plaintiffs.

9. Jurisdiction and Venue are proper in this Court due to the above allegations.

**FOR A FIRST CAUSE OF ACTION
(Pierce the Corporate Veil)**

10. The Plaintiffs reiterate, incorporate and restate the pervious assertions of their Complaint to the extent not inconsistent herewith.

11. This action is brought pursuant to the Uniform Declaratory Judgment Act S.C. Code of Laws §15-53-10 to declare that the corporate entity of D.C. shall be disregarded and liability shall be imposed upon David Cox or any other shareholder found to have acted in concert with David Cox.

12. Plaintiffs are informed and believe that David Cox (hereinafter "Cox") failed to observe the corporate formalities of D.C. Development which, upon information and belief, Cox is the member, manager and/or principal for.

13. Plaintiffs are informed and believe that Cox may be held personally liable for the debts of D.C. Development under S.C. Code of Laws § 33-14-420.

14. Plaintiffs are informed and believe that the said Cox may be held personally liable for the debts of D.C. Development under an alter ego theory which would allow Plaintiffs to pierce the corporate veil of D.C. Development for the following reasons to wit:

a. D.C. Development was at all times grossly undercapitalized;

b. D.C. Development failed to observe corporate formalities;

c. D.C. Development never paid dividends;

d. D.C. Development was virtually insolvent at the time of its dealings with Plaintiffs;

e. David Cox as the dominant if not sole member/manager and/or principal, has siphoned all funds and assets of the entity;

f. There are no other functioning members or managers other than David Cox;

g. There are little to no corporate records of the Limited Liability Company;

h. D.C. Development was merely a façade for the operations of David Cox;

i. Plaintiffs would suffer injustice or fundamental unfairness if the acts of the LLC be not regarded as the acts of the individual or individuals which are the members, managers, principals and beneficiaries of D.C. Development;

j. Any failure of the court to allow the piecing of the corporate veil would allow David Cox or other members/managers to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell; and

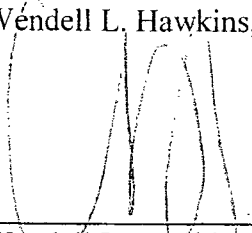
k. That David Cox has engaged in fraud and has violated each of the above enumerated elements as evidenced in the affidavit of Mark Johnson which is attached hereto as “**Exhibit A**” by billing personal jobs to D.C. Development and paying for construction materials out of D.C. Development’s funds for a personal benefit and

expensing those benefits to jobs of the Defendant corporation thereby defrauding the Internal Revenue Service, a branch of the United States Treasury along with other individuals and entities dealing with D.C. Development and Cox.

WHEREFORE, the Plaintiffs, having filed this Complaint against Defendants would pray as follows, to wit:

1. That the Court protect the interest of the Plaintiffs in this matter consistent with the pleadings herein;
2. A judgment declaring that the corporate entity of D.C. Development shall be disregarded thereby imposing personal liability upon David Cox or any other shareholder found to have acted in concert with David Cox, a preliminary order of discovery, and conversion of the judgment against David Cox as an additional Defendant responsible for the satisfaction of Plaintiffs' judgment debt;
3. The appointment of a receiver for the purpose of discovering assets and a restraining order which requires Defendants to account for assets disposed by them or any entities in which they have an interest;
4. A jury trial; and
5. For such other relief as the Court deems just and equitable.

Wendell L. Hawkins, P.A.



Wendell L. Hawkins, Esq. (S.C. ID# 13583)

Aimee V. Leary, Esq. (I.D.# 100657)

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848-9370 (p) 848-9759 (f)

Attorneys for Plaintiffs

December 4, 2013
Greer, South Carolina

Exhibit A

<p>STATE OF SOUTH CAROLINA</p> <p>COUNTY OF YORK</p> <p>BISHOP & ASSOCIATES, INC. d/b/a "BISHOP BRICK AND CONSTRUCTION".</p> <p>PETITIONER(s),</p> <p>vs.</p> <p>D.C. DEVELOPMENT, INC n/k/a D.C. DEVELOPMENT & CONSTRUCTION, LLC BY WAY OF ARTICLES OF CONVERSION; GLENWOOD FALLS, LP; AND STEARNS BANK NATIONAL ASSOCIATION</p> <p>RESPONDENT(S)</p>	<p>IN THE COURT OF COMMON PLEAS</p> <p>SIXTEENTH JUDICIAL CIRCUIT</p> <p>Civil Action No. 2004-CP-46-1673</p> <p>AFFIDAVIT OF MARK JOHNSON</p>
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1. I am over the age of eighteen and I am competent to make this statement.

If called upon to testify, I have personal knowledge of the facts of the above captioned matter and would testify to the following.

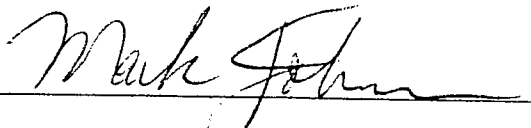
2. I am an owner of J & S Concrete in Lancaster, SC.

3. On or about October and November of 2003, David Cox who was personally known to me as the principal officer of D.C. Development, Inc. ordered concrete, block, mortar, sand and other aggregate materials under the name of D.C. Development, Inc. and under the Job Identification of "Glenwood Falls." Attached hereto is Exhibits 1, 2 and 3 which are the order tickets/invoices for the deliveries. David Cox then instructed me and our dispatch, however, to delivery the materials to 585 Living Waters Dr. Great Falls, SC which was not the Job Identification location.

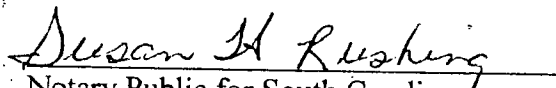
4. 585 Living Waters Dr. Great Falls, SC is his home on Lake Wateree and was not related to the job he told me to bill the materials to.

5. Our company was paid with checks from D.C. Development, Inc., but D.C. Development's account for these materials is still partially delinquent.

FURTHER AFFIANT SAYETH NOT.


Mark Johnson, J & S Concrete

SWORN to and acknowledged before me, by Mark Johnson this
3rd day of October 2012.


Notary Public for South Carolina
My Commission Expires: 1-14-2020

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Susan S. Miranda, Esq.
Willie J. Peters, III, Esq.

Wendell L. Hawkins, PA
Attorneys at Law

August 22, 2014

Via U.S. Mail & Electronic Delivery

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Mrs. Susan "Mia" Perron
P.O. Box 31865
Charleston, SC 29550
email: sperron@scs courts.org

RE: Bigford Enterprises, Inc. et al. v. D.C. Development, Inc. et al.
C/A No. 2014-CP-26-0008
Request for Transcript
Appellate Case Number: 2014-001033

Dear Mrs. Perron:

I initially wrote you around May 5th, 2014 requesting the transcript in the above matter. You replied by letter dated May 23, 2014 and I sent your check on June 14, 2014 as requested. The check cleared my bank on July 3, 2014. Arguably, you may rightfully have until September 3d, 2014 to deliver the transcript. I am personally not all that worried about it, but the Court has corresponded with me concerning the issue and this letter is sent such that if you need an extension, I am notifying you and the Court that I have no objection. I am also allowing this letter to serve as notice to the Office of Court Administration that I have not received the transcript as of this date. I look forward to receiving the transcript soon.

Very truly yours,

Wendell L. Hawkins, Esq.

cc: William E. Booth, III, Esq.
3231 Sunset Blvd., Ste. A
West Columbia, SC 29169
Attorney for Respondent

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629

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AUG 26 2014

SC Court of Appeals

Columbia, SC 29211

South Carolina Office of Court Administration
1015 Sumter Street, Suite 201
Columbia, SC 29201

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Susan S. Miranda, Esq.
Willie J. Peters, III, Esq.

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August 22, 2014

Via U.S. Mail

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Wendell L. Hawkins, Esq.
Aimee v. Leary, Esq.
Writer's Reply Address
Phone Extension - 211
wlh@wlhawkinslawfirm.com

The Honorable Jenny Abbott Kitchings
Clerk of Court
S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Bigford Enterprises, Inc. et al. v. D.C. Development, Inc. et al.
C/A No. 2014-CP-26-0008
Request for Transcript
Appellate Case Number: 2014-001033

Dear Mrs. Kitchings:

Please find herewith a copy of the filed summons and complaint as requested. I have also included a copy of our follow up letter regarding the transcript which has also been sent to the Office of Court Administration.

Very truly yours,


Wendell L. Hawkins, Esq.

cc: William E. Booth, III, Esq.
3231 Sunset Blvd., Ste. A
West Columbia, SC 29169
Attorney for Respondent

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AUG 26 2014

SC Court of Appeals



Wendell L. Hawkins, P.A.

Attorneys at Law

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