

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Ninth Judicial Circuit

The Honorable Benjamin H. Culbertson

C.A. No. 2014-CP-26-0008

Bigford Enterprises, Inc., Bishop &
Associates, Inc. d/b/a "Bishop Brick and
Construction," and McBride Building
Supplies and Hardware, Inc.,

Appellants,

v.

D.C. Development, Inc. n/k/a D.C.
Development & Construction, LLC By
Way of Articles of Conversion and David
Cox

Respondents,

INITIAL BRIEF OF APPELLANTS

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR IN GRANTING RESPONDENTS' MOTION TO DISMISS APPELLANTS' COMPLAINT TO PIERCE THE CORPORATE VEIL ON THE BASIS OF THE THREE (3) YEAR STATUTE OF LIMITATIONS AS SET FORTH IN S.C CODE ANN. § 15-3-530 (1976) ?

STATEMENT OF THE CASE

On or about January 2, 2014, Appellants, Bigford Enterprises, Inc. ("Bigford"), Bishop & Associates, Inc. d/b/a "Bishop Brick and Construction" ("Bishop") and McBride Building Supplies and Hardware, Inc. ("McBride") (collectively hereinafter referred to as "Appellants") filed the present action in Horry County Circuit Court against Respondents, D.C. Development, Inc. n/k/a D.C. Development & Construction, LLC By Way of Articles of Conversion ("D.C.") and David Cox ("Cox") (hereinafter collectively referred to as "Respondents"). Each of the three Appellants hold judgments against Respondent, D.C.. Each of the judgments are confessions of judgment dated in the year 2005 which were obtained in actions filed in York County, South Carolina in the year 2004. The face amount of total combined judgment debt with interest as of May of 2012 was as follows: \$915,645.32 (Total); \$526,476.78 (McBride); \$134,540.40 (Bigford); and \$254,628.14 (Bishop). The Bishop and McBride confessions of judgment were entered upon the indexes and records of the Clerk of Court of York County, South Carolina in 2005. The Bigford judgment was entered upon the indexes and records of the Clerk of Court of York County, South Carolina in 2011. In May of 2012, all three (3) judgments were transcribed into Lancaster County, S.C. and entered upon the indexes and records of the Clerk of Court of Lancaster County, South Carolina. Lancaster County was the situs County of D.C.. Executions on all three (3) judgments were then

filed against D.C. and returned *nulla bona*. On or about February 20, 2013, the parties engaged in a Rule to Show Cause hearing in Lancaster County, South Carolina, wherein the Defendant, David Cox, was commanded to bring documentation for examination of the business records by Appellants' counsel. Appellant's examination of the business records lead Appellants to believe there was sufficient evidence to support an action to Pierce the Corporate Veil. (**Consent Order the Honorable Robert W. Davis, Special Referee**). As a result, Appellants filed the present action to Pierce the Corporate Veil in Horry County, South Carolina, the county of residence for Respondent David Cox.

Respondents filed an Answer and Motion to Dismiss Appellants' Complaint for Lack of Subject Matter Jurisdiction (SCRCP Rule 12(b)(1)), based on S.C. Code Ann. § 15-3-530 (1976) and for Failure to State Facts Sufficient to Constitute a Cause of Action (SCRCP, Rule 12(b)(6)) on or about February 14, 2014 (Respondent's Motion to Dismiss). A hearing on the Motion to Dismiss was held before the Honorable Benjamin H. Culbertson on or about April 21, 2014. After oral arguments were presented by the parties, Judge Culbertson granted Respondents' Motion to Dismiss and issued a SCRCP Form 4 Order dated April 22, 2014 which was entered by the Clerk of Court on April 24, 2014 (the "Order"). The Order states, "[t]he Motion to Dismiss Complaint by the defendant David Cox is GRANTED. The sole cause of action in this lawsuit is to pierce the corporate veil so that defendant David Cox is personally liable for the 2005 judgments against the corporate defendants. Although the plaintiffs' Complaint adequately alleges facts constituting a cause of action for piercing the corporate veil, the Summons and Complaint were not filed until 1/2/2014. The judgments were obtained by the plaintiffs in 2005. *Therefore, this action is barred by the 3-year statute of*

limitations." (emphasis added). (**Order Granting Motion to Dismiss, p. 2**). As such, the court's dismissal of the Appellant's Complaint was based solely on Respondent's argument that the action was barred by S.C. Code Ann. § 15-3-530 (1976). The Order was received by Defendant on May 2, 2014 and a Notice of Appeal was filed and served on May 6, 2014. (**Notice of Appeal**).

ARGUMENT

A. Appellants Are Not Barred By The Three (3) Year Statute of Limitations In Bringing An Action To Pierce The Corporate Veil of Respondent D.C. as An Action To Pierce The Corporate Veil Is Rooted In Equity And Is Not Subject To The Statute Of Limitations.

Appellant's Complaint was dismissed based solely on Respondent's argument that the action was barred by S.C. Code Ann. § 15-3-530 (1976). (**Order of Honorable Culbertson, p. 2**). The Circuit Court should have denied Respondents' Motion to Dismiss based on the Statute of Limitations of S.C. Code Ann. § 15-3-530 (1976) (the "Statute") because an action to pierce the corporate veil is an action in equity and the statute only bars legal claims. "An action to pierce the corporate veil under an alter-ego theory lies in *equity*." Oskin v. Johnson 400 S.C. 390, 397, 735 S.E.2d 459, 463 (S.C. 2012). "Relief requested on the basis of disregard of the corporate entity is generally regarded as *equitable in nature*, the doctrine of "piercing the corporate veil" itself being one of equity." Sturkie v. Sifly, 280 S.C. 453313 S.E.2d 316, (S.C. Ct. App. 1984), citing Fletcher, Cyc. Corp. Section 41.25 (Supp.1983) (collecting cases citing this principle). (*emphasis added*). Further, Respondent admitted in his argument at the motion hearing that an action to pierce the corporate veil was equitable in nature. (Transcript p. 7, ¶17-22).

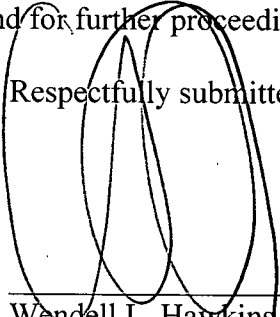
S.C. Code Ann. § 15-3-530 (1976) [former Code 1962 § 10-143] applies only to actions at law and has no application to suits in equity. Parrott v Dickson, 151 SC 114, 148 SE 704 (1929). Fanning v Bogacki, 111 SC 376, 98 SE 137 (1919). Du Pont v Du Bos, 52 SC 244, 29 SE 665 (1898). McKinnon v Summers, 224 SC 331, 79 SE2d 146 (1953). Further, our Supreme Court has held that the statute of limitations does not apply to actions in equity. See Anderson v. Purvis, 211 S.C. 255, 44 S.E.2d 611 (1947); Anderson v. Purvis, 220 S.C. 259, 67 S.E.2d 80 (1951) (holding that the Court's power to do equity transcends the limitations of the statute of limitations), Cited in Dixon v. Dixon, 362 S.C. 388, 608 S.E.2d 849 (S.C. 2005). Appellant raised these arguments at the motion hearing. (Transcript p. 20 ¶ 18 - p. 21 ¶ 21).

Because Appellant's sole cause of action was equitable in nature, it was improper for the court to dismiss the action based on S.C. Code Ann. § 15-3-530 (1976) which can only bar legal claims.

CONCLUSION

Based on the preceding facts and argument, Appellant prays the Court reverse the Order of the Circuit Court and remand for further proceedings.

Respectfully submitted,



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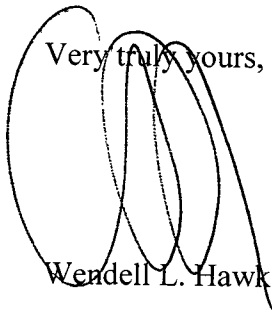
RE: Bigford Enterprises, Inc. et al. v. D.C. Development, Inc. et al.
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Dear Mrs. Kitchings:

Please find enclosed the original **Initial Brief of Appellants, Designation of Matter** along with a Certificate of Service for the above referenced case. By way of this correspondence I am serving opposing counsel, William E. Booth, III, Esq., with a copy of these documents.

With kind regards I remain,

Very truly yours,



Wendell L. Hawkins, Esq.

Enclosures

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