

**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,

REPLY BRIEF OF APPELLANTS

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Appellants received Respondents Initial Brief on November 17, 2014. Appellants timely filed this Reply Brief. 208(a)(3), SCACR.

ARGUMENTS

I. APPELLANTS APPEAL IS BASED UPON THE NOTION THAT A CAUSE OF ACTION TO PIERCE THE CORPORATE VEIL IS AN ACTION ROOTED IN EQUITY AND THEREFORE, S.C. CODE § 15-3-530 IS NOT AN APPLICABLE DEFENSE.

Respondents rely upon S.C. Code § 15-3-530 in their Initial Brief to conclude that Appellant's action to Pierce the Corporate Veil of Respondents is barred by the three (3) year statute of limitations provided therein. However, S.C. Code § 15-3-530 does not apply to actions in equity. S.C. Code § 15-3-530 "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). "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) (emphasis added).

II. THE HOLDING OF CAROLINA MARINE HANDLING, INC. v. LASCH, ET AL DOES NOT INVOLVE AN EQUITABLE CAUSE OF ACTION AND HAS NO LEGAL BEARING ON THE MATTERS BEFORE THE COURT.

Respondent argues that the holding of Carolina Marine Handling, Inc. v. Lasch implies that the Statute of Limitations would apply in an action to pierce the corporate veil, but Appellant would argue it provides no such holding or even dicta on the matter. Id. at 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005). Carolina Marine Handling, Inc. involves a tenant bringing a counterclaim against a subtenant for Breach of Contract for failure to pay rent as well as a third party action to Pierce the Corporate Veil of the

subtenant's sole owner. The court held that the lease at issue had been executed more than three (3) years prior to the date of the filing of the subtenant's Breach of Contract counterclaim therefore the Circuit Court's ruling to dismiss the subtenant's counterclaim was affirmed. The Court's analysis solely focuses on whether the lease was a sealed or a non-sealed instrument and which Statute of Limitations to apply. Upon finding that the lease document was in fact not sealed, the Court held that S.C. Code § 15-3-530 applied to the subtenant's Breach of Contract cause of action rather than S.C. Code § 15-3-520, which allows for a twenty (20) year statute of limitations for sealed instruments. The Court held as follows:

We find the presence of a standard attestation clause-such as, "IN WITNESS WHEREOF, the parties have hereunto set their hands and seals"-in an instrument which is neither sealed nor required to be sealed is insufficient, standing alone, to create a sealed instrument under section 19-1-160. We, therefore, find the parties to the December 1996, non-sealed contract did not intend to create a sealed instrument. Consequently, we find the claims of CSI barred by the general three-year statute of limitations under section 15-3-530. *Id.*, 363 S.C. 169, 177, 609 S.E.2d 548, 553 (Ct. App. 2005).

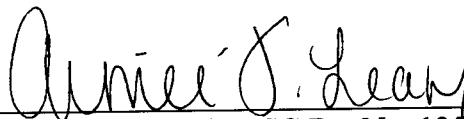
The appellant in Carolina Marine was attempting to Pierce the Corporate Veil pre-judgment. Therefore, as the underlying cause of action for Breach of Contract was dismissed by the Circuit Court, so was the action to Pierce the Corporate Veil of the subtenant's owner as it was based solely upon liability of the subtenant's counterclaim. As the counterclaim did not survive the three (3) year statute of limitations, the action to Pierce the Corporate Veil was meaningless.

Appellants in the present action are seeking to Pierce the Corporate Veil of Respondents post-judgment. Therefore, as outlined in Appellants' Initial Brief, Appellants assert that S.C. Code § 15-3-530 is inapplicable as an action to Pierce the Corporate Veil is an equitable action and not a Breach of Contract cause of action.

CONCLUSION

For the reasons set forth above and in Appellants' Initial Brief, the Order of the Master in Equity granting Respondent's Motion to Dismiss based upon a three (3) State of Limitations was in error and should have been denied. Therefore, Appellants pray that this Court reverse the ruling of the Master in Equity and remand the matter to the Master with direction to proceed with the action. 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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November 24, 2014

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Respondents,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Reply Brief of Appellants along with this Certificate of Service were served upon counsel on November 24, 2014 by First Class Mail as follows:

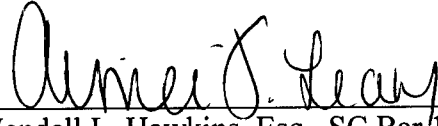
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A handwritten signature in cursive script, reading "Aimee V. Leary". The signature is written in black ink and is positioned above a horizontal line.

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