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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Ninth Judicial Circuit

The Honorable Benjamin H. Culbertson

RECEIVED

DEC 31 2014

SC Court of Appeals

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,

RECORD ON APPEAL

Wendell L. Hawkins, PA
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Attorney for Respondents

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Attorney for Respondents

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STATE OF SOUTH CAROLINA
 COUNTY OF HORRY
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-26-0008

Mon
 #14

Bigford Enterprises, Inc., et al.
 PLAINTIFF(S)

D C Development, Inc., et al.
 DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other
 NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
 HORRY COUNTY
 14 APR 24 PM 11:33

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Motion to Dismiss by defendant David Cox is GRANTED. (See page 2.)

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Benjamin H. Culbertson
 Benjamin H. Culbertson, Circuit Court Judge

2148
 Judge Code

April 22, 2014
 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Wendell Leon Hawkins

William E. Booth, III

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Susan "Mia" Perron

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Plaintiffs obtained foreign judgments against the corporate defendants in 2005. Plaintiffs now seek to pierce the corporate veil so that the defendant David Cox is personally liable for the 2005 judgments against the corporate defendants.

The 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 the 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.

COUNTY OF Horry

IN THE COURT OF COMMON PLEAS

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

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

4
2013-CP-26-0008

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

Defendant(s)

(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
Fax #: 864-848-9759
E-mail: wih@wlhawkinslawfirm.com

14 JAN -2 PM 2:28
CLERK OF COURT

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), Pierce Corporate Veil
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)

Submitting Party Signature: _____

Date: December 21, 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

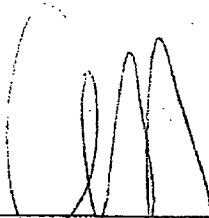
SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

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 2, 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;

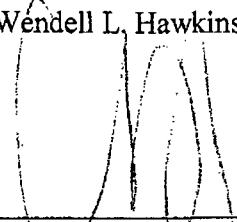
h. D.C. Development was merely a façade for the operations of David Cox;

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

Wendell L. Hawkins, P.A.



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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>
---	--

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.

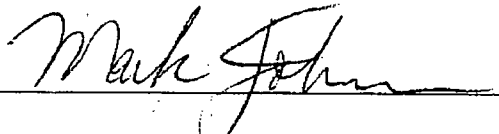
2. I am an owner of J & S Concrete in Lancaster, SC.

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.

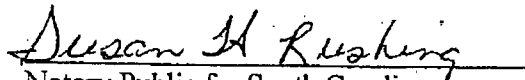
5. Our company was paid with checks from D.C. Development, Inc., but D.C. Development's account for these materials is still partially delinquent.

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

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CASE NO.: 2014-CP-26-0008

BIGFORD ENTERPRISES, INC., ET AL.,)
))
 PLAINTIFF,))
))
VS.))
))
D.C. DEVELOPMENT, INC., ET AL.,))
))
 DEFENDANT.))
_____)

MOTIONS HEARING

held before the Honorable Benjamin Culbertson
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Horry County Courthouse
Conway, South Carolina
on Monday, April 21, 2014, Commencing at 2:07 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE PLAINTIFF: Wendell L. Hawkins, Esquire
Attorney at Law
103-C Regency Commons Drive
Greer, South Carolina 29650

FOR THE DEFENDANT: William E. Booth, III, Esquire
Attorney at Law
3231 Sunset Boulevard, Suite A
West Columbia, South Carolina 29169

INDEX TO PROCEEDINGS

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PROCEEDINGS

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CERTIFICATE OF COURT REPORTER

30

EXHIBITS

[None]

FORM C-100 - LASER REPORTERS PAPER & MFG. CO. 800-626-6313

MIA PERRON, CVR-CM-M

-3-

PROCEEDINGS

1
2 THE COURT: This is the case of Bigford
3 Enterprises, Inc, and others, versus D.C. Development,
4 Inc., now known as D.C. Development and Construction,
5 LLC, by way of articles of conversion, and David Cox.
6 According to my roster, the matter is before the Court
7 on a motion to dismiss.

8 Please give the court reporter your name and who
9 you represent.

10 MR. BOOTH: May it please the Court.

11 I represent the moving party, David Cox. I'm
12 William Booth, from Columbia. Here's my card.

13 THE COURT: Thank you.

14 MR. HAWKINS: May it please the Court.

15 My name is Wendell Hawkins. I represent the
16 plaintiffs in this matter. And I'll hand my card up
17 to the court reporter.

18 THE COURT: All right. Thank you.

19 [Off the record momentarily]

20 THE COURT: Mr. Booth, this is your motion?

21 MR. BOOTH: Yes, sir. If you'll give me a
22 second. It won't take very long and I'll be --

23 MR. BOOTH: Judge, the only thing I ask: I sent
24 two memorandums to the Court, by e-mail, to your law
25 clerk.

Bigford vs. D.C. Development
Motions Hearing
April 21, 2014

1 THE COURT: Right. I got them. To be honest
2 with you, I have not had an opportunity to review them
3 other than just a brief scan, not to look at them in
4 depth or anything of that nature.

5 MR. BOOTH: Okay. Your Honor, I plan to
6 reference some cases. Some are in my memo, some are
7 not, so I brought a list for the court reporter and
8 for the law clerk.

9 THE COURT: All right.

10 [Whereupon, Mr. Booth proffers documents to the
11 court reporter and the law clerk]

12 MR. BOOTH: Thank you. Your Honor, if I may,
13 I'll use this podium --

14 THE COURT: All right.

15 MR. BOOTH: -- to present.

16 Your Honor, this is a motion that you mentioned
17 that I filed. I believe the filing date was back in
18 early February. And, yes, we're asking on a 12(b)6, a
19 motion to dismiss the part of the complaint against an
20 individual, David Cox.

21 The case itself against Mr. Cox is a piercing
22 the corporate veil case and it's a piercing of the
23 veil in regards to three judgments that were obtained
24 against a corporate entity named D.C. Development,
25 Inc.

Bigford vs. D.C. Development
Motions Hearing
April 21, 2014

1 Now, in this case, I put on this board the dates
2 each judgment was obtained and you'll see that '05 is
3 when all three were obtained. Now, they were all
4 obtained in connection with a construction project
5 where D.C., again, the corporate entity, was the
6 general contractor. And the particular project was
7 called Glenwood Falls Apartments in the Fort Mill
8 area. So with that background we believe, based on
9 what I argue, that the motion against Mr. Cox to
10 pierce the corporate veil is not timely, time-barred
11 by the three-year statute of limitations.

12 Now, based upon my research and thinking about
13 piercing the corporate veil, you've really got three
14 opportunities as a plaintiff to file such an action:
15 an action to pierce, common law cause of action,
16 equitable. And based on our case law, it can be done
17 at three different times. You can do it at the same
18 time you file what I call your liability case against
19 the corporation, as far as liability. You can file it
20 then and you can name as one of your defendants the
21 actual individual that you believe is liable under
22 piercing the corporate veil. We've had that in our
23 law for several years.

24 Secondly, you can do it, the best I can tell
25 from reading the cases, is on a motion. In other

Bigford vs. D.C. Development
Motions Hearing
April 21, 2014

1 words, you get a verdict against the corporate
2 defendant. There being several cases involving bar
3 owners who somebody killed somebody in an accident
4 after they had been drinking at the bar, so piercing
5 was done by motion in a bifurcated type hearing.

6 Now, the third way is post judgment. And that's
7 what we have here. A piercing case can be filed post
8 judgment. In other words, not at the time that the
9 original case was filed but as post judgment. And
10 then our cases that we have, we have a footnote that
11 talks about it's okay in South Carolina, if you're
12 going to do it post judgment you don't have to name
13 the individual defendant when you first file your
14 case. In other words, you don't have to add that
15 party at the same time. That's your option. Even
16 though some cases have that.

17 Now, like I said, it's a common law cause of
18 action. It's equitable. So even though in this case
19 plaintiffs have asked for a jury trial, they do not
20 have a right to a jury trial because it's equitable.
21 It's equitable because the standard for piercing is
22 very much an equitable type analysis by a judge. You
23 look at certain factors about how the corporation
24 functioned and then you also look at whether some sort
25 of fraud or unfairness has been -- happened with

Bigford vs. D.C. Development
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1 respect to the corporate shield.

2 Now, we also know that a judgment like these
3 judgments have ten years of life. Not really a
4 statute of limitations, it's just ten years of life.
5 And there have been many attempts for people to toll
6 that ten years to get more time to try to collect on
7 their judgment.

8 As far as collecting on a judgment against a
9 corporate defendant like here, there are many things
10 that a plaintiff may do, the judgment holder.
11 Obviously, they're going to do supplemental
12 proceedings. It's also a lien against any real
13 estate, for example, that the corporate defendant
14 would own. And through supplemental proceedings, and
15 also through any other means, there can be attempts to
16 take assets, find assets, that belong to the corporate
17 entity to satisfy the judgment. So that's the
18 procedure when you have a judgment. You've got ten
19 years of life.

20 Now, what we have here is, of course, many
21 years, almost nine, not quite nine years -- the case
22 was actually -- this case was actually filed the first
23 part of January. So you look at these dates, nineteen
24 -- excuse me -- 2005, I mean, we're talking over eight
25 years, almost nine years, since the judgments were

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obtained.

Now, the three-year statute of limitations that I'm arguing should time-bar the piercing case that they just filed here in Horry County the first part of this year.

Now, my argument that I put in my memorandum, my two memorandums that I submitted, my main one on Friday and I submitted a supplemental, basically say that the piercing is a separate cause of action that's an independent cause of action and, therefore, it has its own I guess standing as far as the case against the defendants so the statute of limitations would apply. So it's been more than three years since a judgment was obtained. And you want it pierced, you've got to do it within three years after you get your judgment even though the judgment itself, you could execute on it and try to collect it for ten years, the piercing is a brand new action against, in this case, the sole shareholder, Mr. Cox.

So when you look at it that way, then the three years apply. The only case I could find in South Carolina was the Carolina Marine case. I cited that in my second memorandum. Carolina Marine. And in Carolina Marine, we have a footnote and had some discussion because in there there was a cross-claim

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1 filed against another entity and that entity's sole
2 shareholder, Mr. Stendner, S-T-E-N-D-N-E-R, I believe
3 is how you pronounce his name. That was filed after
4 the three years of trying to get just a judgment
5 against the original corporate entity. So you have a
6 problem with the three-year with respect to the
7 corporate entity and then you also, at the same time,
8 sue the sole shareholder.

9 What Judge Kettridge said in the footnote, and
10 also elsewhere in the case, was that in this case the
11 shareholder's case was dismissed based upon the three
12 years having expired. The problem is it's not quite
13 on point, not like I would like it, because they
14 couldn't get liability against the original corporate
15 defendant, the original person that signed the lease
16 -- this was like a lease case -- that they were
17 outside the three years. They tried to use the sealed
18 instruments argument that in this case the lease was a
19 good instrument so -- it's either ten or twenty. I
20 think it's twenty years under sealed instruments. The
21 Court said, no, the intent wasn't that the parties
22 thought this was a sealed instrument. But that meant
23 that the three-year statute of limitations applied and
24 therefore the case against the original lessee in this
25 case was dismissed and then also the -- in this case,

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1 the sole shareholder. So we think that case has
2 language in it to indicate that that piercing the
3 corporate veil does have its own requirement that it
4 be brought within the statute of limitations of three
5 years.

6 Now, there are a couple of arguments that were
7 made. I don't know. Again, you said you hadn't read
8 my memorandum, so you may have read Mr. Hawkins'
9 memorandum. He filed his several months ago. And I
10 just read it today. It barely did get to me. But
11 that's okay. He does two things in his memo. First
12 of all he says the statute of limitations, the Statute
13 doesn't apply to equitable cases. And I disagree with
14 that. The cases he cited, I have not read them
15 because I did not see this until today. Yes, an
16 equitable cause of action, again, in this case
17 piercing the corporate veil, certainly the statute of
18 limitations would apply even though it's not a jury
19 trial type case like for damages or that sort of
20 thing. The second thing is he says -- I think what
21 he's saying is that there's more to be found or more
22 to be discovered so it shouldn't be granted. And he
23 kind of uses the summary judgment cases where you do a
24 summary judgment case and the Court thinks that
25 there's -- either hasn't been enough time to deal with

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1 discovery or additional discovery might help.
2 Sometimes they'll dismiss a summary judgment motion
3 not necessarily on the merits but just to allow the
4 parties more time. So I don't think that's applicable
5 to our situation. Our motion to dismiss, while it has
6 to be based on the pleadings, has to be based on the
7 complaint.

8 Everything that I have on this board is out of
9 the complaint. The complaint puts the dates of the
10 judgment, applies them to the three plaintiffs,
11 Bigford, Bishop and McBride, gives you the dates. So
12 I think that's enough for a judge to look at the
13 12(b)(6) motion and say there's sufficient information
14 there to show that it's beyond the three years.
15 12(b)(6)s can certainly be based upon the statute of
16 limitations. I think there's enough there because he
17 puts in there when they were obtained. There's no
18 dispute about that. Those dates are -- no dispute
19 about them. So I think they're sufficient. It is --
20 the Court can go ahead and make that ruling today.

21 Now, my second motion is more like Rule 8. If
22 you were to deny the motion to dismiss under statute
23 of limitations, then I ask the Court to consider my
24 second motion, a Rule 8 motion. Now, what the
25 complaint has in it, Judge -- and he basically said

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1 everything's on information and belief. And he just
2 went to Sturkie, the Sturkie case, for example, and
3 just listed all the elements, one, two, three, four,
4 five, everything based on the information and belief.

5 Now, I don't think that's a sufficient
6 particularity of the pleading of the facts to say
7 information and belief for all your elements of
8 piercing the corporate veil. He ought to allege that
9 this is what I know, this is what I have firsthand
10 knowledge. But information and belief, I don't think
11 this applies.

12 And what's even more interesting -- and in his
13 memo -- again, I just saw it today -- he actually
14 attaches the court order from Lancaster County that
15 was filed May of 2013. And that was a supplemental
16 case that went to a special referee to -- again, just
17 against the corporation. Mr. Cox's name is not on
18 this. And he says that -- this is what -- this is a
19 memorandum. I would strongly object if you consider
20 this, because it's statements of his that he says he
21 went through twenty boxes of materials that were
22 supplied at that hearing and that, therefore, since
23 he's been through twenty boxes of looking at the
24 materials or I guess piercing the corporate veil -- I
25 assume that's what he's talking about -- even though

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1 it's supplemental, you could be looking through boxes
2 to see what assets are there to apply to the judgment.
3 But he says he's looked through twenty boxes and,
4 therefore, he ought to know there's a piercing case.
5 He ought to know that all of the elements are there,
6 even though he says informed and belief. So I find
7 that difficult to accept when you talk about pledging
8 a piercing case. I think you need to have more than
9 just on information and belief.

10 So we think under Rule 8 -- even if you do not
11 dismiss for statute of limitations, we think under
12 Rule 8 the complaint should be dismissed and require
13 him to re-allege or put in there the actual things
14 that he knows about.

15 So, Judge, those are my arguments. Any
16 questions or concerns?

17 THE COURT: No. I mean, I see in the pleadings
18 where even though the judgments were obtained in 2005,
19 some of them were not indexed until 2011 and 2012.

20 MR. BOOTH: Right.

21 THE COURT: Does that make a difference?

22 MR. BOOTH: No, Your Honor. It's two out of --
23 one of them was -- one of them was filed back -- the
24 filing date of the judgment. And to me when we're
25 talking about piercing, it's for when the judgment was

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1 obtained. That's what we're arguing, that the
2 judgment was obtained. We know that. But the fact
3 that they delayed filing them, I guess to start their
4 collection proceedings, should not make any difference
5 on giving them three years from the filing date, which
6 would be from the date obtained. That's when the
7 actual document is saying, I confess judgment or you
8 have an order granting you the judgment.

9 THE COURT: But I guess my question was --
10 because I know sometimes here parties will settle
11 cases and say he's going to confess judgment in the
12 amount of x amount of dollars but if he pays y amount
13 by a certain date, we won't file a confession of
14 judgment, if he doesn't pay y amount by this certain
15 date then we file this confession of judgment or
16 judgment for the -- usually, it's the full amount
17 we're asking for or something like that. So there's
18 some type of negotiation or compromise.

19 Another reason I bring that up is because there
20 is -- it appears to be a six- to seven-year delay
21 between the payment of the judgment and the filing.

22 MR. BOOTH: You know, again, this is -- it's not
23 alleged that they delayed filing for any reason. I
24 personally would say to the Court that, no, there was
25 no delay because of any sort of payment plan or any

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1 sort of release for that reason.

2 Again, this was -- when you look at the two
3 of -- the two that were filed many years later, it was
4 in 2012. I think you had looked at it. So, again, if
5 you'll look at the date here. So we still think the
6 date of the judgment controls when the statute of
7 limitations --

8 And even though -- I think the breach itself,
9 when it occurs, that's sort of when you have your
10 cause of action. You could argue that's when the
11 piercing starts because you know the person has
12 breached. But I think using the date of the judgment
13 fits fine, because, again, it's been quite a few years
14 and we think that should be time-barred, this case.

15 THE COURT: And I haven't researched it. Is
16 there any case law out there, that you can find, that
17 says when the statute of limitations begins to run on
18 a piercing the corporate veil cause of action?

19 MR. BOOTH: Only the Carolina Marine case.

20 THE COURT: That's the only one?

21 MR. BOOTH: Which was decided in 2005. And I'm
22 sure you can download a copy, but I did print out one.

23 THE COURT: And this is the one that you were
24 arguing about?

25 MR. BOOTH: Yes.

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1 [Whereupon, Mr. Booth proffers documents to the
2 Court]

3 MR. BOOTH: Judge Kittridge's decision in '05.

4 THE COURT: Right.

5 MR. BOOTH: And that's -- if you look at a
6 couple of things -- the case itself is original
7 landlord sues original lessee, original lessee sues
8 sub lessee, and there's some property at the shipyard
9 in Charleston. So the sub lessee that was sued, that
10 sub lessee is called Carolina Marine Handling and
11 Mr. Stendner was the sole stockholder. And as I said,
12 if you get over to the last page, 6, it talks about
13 that case was piercing. And then if you go up to
14 where footnote 6 was put, you'll see where Judge
15 Kettridge discusses the discovery rule in relation to
16 the statute of limitations and says that the way this
17 case -- the way this case came up, the dismissal was
18 affirmed for both parties, both the sub lessee and
19 against Stendner, for statute of limitations. Both of
20 them were dismissed for that reason. That's as best I
21 could find. I could not find a case that directly
22 dealt with a piercing case filed more than three
23 years.

24 If you look at the piercing cases, you've got
25 one case that was filed about two years after the

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1 original judgment. All the others were either at the
2 same time the original case was filed or based upon a
3 motion like for a bifurcated hearing.

4 So if you just look at the dates in the cases, I
5 could not find any one that was filed more than three
6 years later. The only one I could find, which I think
7 was the Sturkie case, was filed two years after the
8 cause of action arose. So they were within three
9 years.

10 So the answer to your question is, no, not
11 directly on point. Carolina Marine definitely talks
12 about the issue. I just -- I don't think it's
13 directly enough to say it's already been decided.

14 THE COURT: All right. Thank you.

15 All right. Mr. Hawkins?

16 MR. HAWKINS: Thank you, Your Honor. May it
17 please the Court?

18 THE COURT: Yes.

19 MR. HAWKINS: First of all, Your Honor, on the
20 Carolina Marine case, I think all the case stands for
21 is the fact that there's a third party complainant
22 that had knowledge of the facts and circumstances
23 against the defendant that would start the statute of
24 limitations to run. I think that is the standard, is
25 when a party either knew or should have known of the

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1 facts and circumstances giving rise to a cause of
2 action. I believe that's the proper time that a
3 statute of limitations begins to run under any
4 statute.

5 What the plaintiff in Carolina Marine tried to
6 do is say, well, this instrument was given under seal
7 so I'm going forward on the twenty-year statute of
8 limitations and it's about that simple. And the Court
9 said, no, it's not an instrument under seal, the
10 testimony shows that the parties did not intend for it
11 to be under seal, therefore, you had knowledge of the
12 actions that gave rise to your cause of action on this
13 particular date, you didn't file within the three
14 years, and you're out. I don't think there's anything
15 about piercing the corporate veil.

16 I agree with Mr. Booth in that there are
17 basically three ways that you can initiate an action
18 to pierce the corporate veil. I think that the case
19 law is very clear that you can do it either in your
20 initial lawsuit, it's a possibility you can do it by
21 motion after the lawsuit if the Court retains
22 jurisdiction for that matter, and then you can do it
23 post judgment. I think those are -- that those are
24 the proper criteria for beginning an action to
25 piercing the corporate veil.

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1 First of all, I would say, Your Honor, that the
2 way Mr. Booth's motion is guised is under some sort of
3 lack of jurisdiction, number one. And typically that
4 comes about in three ways. And that was recently
5 discussed in the In Re Hover, In Re The Estate of I
6 think it's Hover, which is 754 S.E.2nd page 75. And
7 basically what the case stands for there is that the
8 Court goes through analysis of the three types of
9 jurisdiction, one being personal jurisdiction, subject
10 matter, and then matters that the Court doesn't have
11 the right to entertain, which would be those of a
12 statute of limitations which is basically an
13 affirmative defense. The argument could be that it
14 robs the Court of jurisdiction. However, the Court is
15 going to have to take some evidence to see that. It's
16 not one of those 12(b)(1) actions that you just
17 dismiss.

18 The threshold issue, Your Honor, is does the
19 three-year statute of limitations apply to an ethical
20 action. And as set forth in our brief, Your Honor,
21 which I'll be glad to have -- let Mr. Booth file a
22 counter-brief, if he wishes.

23 But based on our law, Your Honor, if you
24 actually go to the statute -- three-year statute of
25 limitations that Mr. Booth relies on and you go down

1 into the annotations, the first annotation there is a
2 case that says that -- not a footnote. The first
3 annotation it says: this statute of limitations does
4 not apply to equitable actions. There's no doubt that
5 piercing the corporate veil is an equitable action.
6 And the case law, as stated in the first paragraph of
7 our brief, an action to pierce a corporate veil under
8 an alter-ego theory lies in equity. That's Oskin v.
9 Johnson, 735 S.E.2nd 459. That particular note says
10 that South Carolina Code of Laws 15-3-350 applies only
11 to actions at law and has no application to suits in
12 equity, Your Honor. And that's Ferret v. Dixon, 148
13 S.E.2nd 704, Fanning v. Coquackie [phonetic] -- that's
14 a 1919 case -- Dupont v. DuBois and McKenney vs.
15 Summers, which is a 1953 case.

16 It's well settled in this state, Your Honor,
17 that that statute of limitations does not apply to
18 equitable actions. And to go into the lack of
19 jurisdiction, the Court has to get over that one
20 threshold, which I think is fatal to Mr. Booth's
21 argument.

22 Secondly, Your Honor, with respect to the
23 12(b)(6) under Rule 8, that the -- you know, our
24 complaint is not state-fact sufficient to basically
25 tell him what he's dealing with, it is -- we've pled

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1 the elements, Your Honor. There is an affidavit
2 that's attached to our complaint, of a particular
3 person who supplied materials in this job, that says
4 Mr. Cox had materials delivered to a personal
5 residence to build a house out at the river and billed
6 them back to this corporation.

7 It's also uncontradicted that we have tried to
8 collect from D.C. Development. And the way that kind
9 of went, Your Honor, is Mr. Booth and Mr. Cox, myself,
10 and one of my plaintiffs all met up in I think it was
11 Chester County in front of a special referee. We
12 tried to get their documents beforehand. And Mr. Cox
13 brought in twenty boxes of just junk. Well, we've
14 pulled some things out of those boxes, Your Honor,
15 that believe -- that would lead us to believe that
16 Mr. Cox has basically commingled, you know, these
17 accounts, used checking accounts and corporate
18 accounts, to pay for things for his family. It's not
19 specifically alleged in here exactly what we have,
20 Your Honor, other than this particular affidavit of
21 Mark Johnson. But the provisions of Rule 8 don't
22 necessarily say that we have to say exactly what we
23 have. And it's still subject to discovery, Your
24 Honor.

25 And I might point out that we've asked Mr. Cox

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1 and his counsel for bank records, tax returns of the
2 company, cancelled checks, and they don't have them.
3 So the absence of the things alone can give rise to
4 the fact that there is a cause of action. And each of
5 those elements, we can -- we believe that we can prove
6 a sufficient amount of those elements to pierce the
7 corporate veil, present that to the Court, and that's
8 enough for the Court. We think we can do that.

9 I'll also say, Your Honor, as to maybe one or
10 two of these judgments, they were held. I don't
11 necessarily think that they were held for the purposes
12 of negotiations. I think it was just pure negligence
13 on the other part of the other attorneys. However, I
14 believe it's the Citi Financial case where it says you
15 can hold that judgment as long as you want to. In
16 fact, in that particular case, Citi Financial held a
17 judgment against a person in North Carolina. The
18 person moved to South Carolina and Citi Financial,
19 even though their statute had run in North Carolina,
20 filed that again in North Carolina. And the Court
21 said, well, they've got ten years from the filing of
22 that judgment to enforce it, even though the judgment
23 was rendered, you know, fifteen years ago in North
24 Carolina. And that's good case law. Kind of through
25 the abstractors in the real estate world into a tissy

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1 on what you're going to -- what to rely on on the
2 index as to whether it's the filing date of the
3 judgment or the actual indexing date. But the case
4 law did stand for the proposition that it is the
5 indexing date in this case.

6 With respect to any, you know, right of ours to
7 a jury trial, Your Honor, Mr. Booth can make his
8 motion to have it referred to the master in equity.
9 It is an equitable action. I give him that. And
10 perhaps if we ask for a jury trial, then, you know,
11 maybe we don't deserve it. But, you know, that's not
12 necessarily the issue at hand in front of the Court
13 today.

14 THE COURT: Well, let me ask. It's your
15 position, then, that an action to pierce a corporate
16 veil has no statute of limitations to it?

17 MR. HAWKINS: That is correct, Your Honor. It
18 is an action in equity. And, in fact --

19 THE COURT: Well, what did Judge Kittridge mean
20 in his footnote in this Carolina Marine case? The
21 claim of CSI against Fender is one to pierce the
22 corporate veil. We recognize that an attempt to
23 pierce the corporate veil often occurs post judgment
24 and the issue comes to us in somewhat an unusual
25 posture. Our summary disposition of this issue, the

1 attempted application of the discovery rule to toll
2 the commencement of the statute of limitations.

3 So here he's saying, you know, even though we're
4 not siding with them, he's referencing that their
5 argument that they're almost -- that there is a
6 statute of limitations, that they just don't think it
7 was tolled.

8 MR. HAWKINS: I just got the case, just like he
9 did. And to the extent Your Honor finds that
10 persuasive, I would just ask for ten days to file some
11 sort of counter-brief to whatever that proposition is.
12 I don't think that's -- it's a footnote, and I
13 understand that for what it's worth, but I think the
14 other case law that we have is very clear that he's
15 trying to toll our action on a three-year statute of
16 limitations and the -- we've got case law on point
17 that says this statute does not apply to equitable
18 actions.

19 THE COURT: And that's what I need. What is it
20 that you're relying on that says statute of
21 limitations does not apply to any equity action?

22 MR. HAWKINS: I'll hand up another copy of my
23 brief, if Your Honor wants it. It's got all the case
24 law --

25 THE COURT: It's in the brief?

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1 MR. HAWKINS: Yes, sir.

2 THE COURT: Okay. All right.

3 MR. HAWKINS: I mean, it's very clear.

4 THE COURT: And the case that is cited, I mean,
5 what kind of equitable action was that?

6 MR. HAWKINS: I don't know, Your Honor. There
7 are so many cases --

8 THE COURT: But, I mean, they say mortgage
9 foreclosures are in equity, but they have a statute of
10 limitations.

11 MR. HAWKINS: I don't think they do, Your Honor.
12 Well, I mean, if they're adopted under seal there's a
13 twenty-year statute of limitations. In fact, you
14 know, after the due date of a mortgage, there's a
15 statute that says twenty years after the due date of a
16 mortgage you can't enforce it.

17 THE COURT: That's right. And it's a statute of
18 limitations but a mortgage foreclosure is an action in
19 equity.

20 MR. HAWKINS: I understand.

21 THE COURT: All right. Anything further?

22 MR. HAWKINS: No, Your Honor.

23 THE COURT: Anything in reply?

24 MR. BOOTH: Just, Your Honor, on that last
25 issue, I think you're talking about it now. I didn't

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1 have a chance -- I couldn't get online. I've looked
2 at the Oskin v. Johnson case, which he cites in his
3 memo, to say that the statute of limitations doesn't
4 apply with equitable actions. I've read Oskin -- I've
5 read it while I was sitting here -- and I made some
6 notes. And, first of all, I don't see the statute of
7 limitations fall on that case at all, number one.
8 Number two, it's assignment of note and mortgage. The
9 question was did it violate the South Carolina
10 Fraudulent Conveyance Statute. And apparently there
11 was a payment made that I guess they argued they had
12 paid it off. But I don't see anything in here
13 mentioning the statute of limitations. So I would
14 argue, like I did before, that it does apply to this
15 cause of action, piercing the corporate veil.

16 The other thing, the information that Mr.
17 Hawkins gave you about what's been going on and what
18 he can tell you about, first of all, in a 12(b)(6),
19 12(b)(1) motion, those are not really involved in this
20 case. He doesn't have anything to submit.

21 The only thing I brought into the record that's
22 not from the complaint, I brought in one of the
23 complaints filed by I believe Bishop. And I don't
24 think there's any contest that the case -- these
25 judgments were obtained as a result of an apartment

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1 project up in Fort Mill called Glenwood Falls. And I
2 think we both agree with that. I just thought that --

3 THE COURT: Let me ask you something. Why is
4 the case pending in Horry County?

5 MR. BOOTH: That's where Mr. Cox lives.

6 THE COURT: Okay.

7 MR. BOOTH: He lives here.

8 THE COURT: So he lives in Horry County.

9 MR. BOOTH: He's a resident of Horry.

10 THE COURT: All right.

11 MR. BOOTH: So that's the only thing I was going
12 to add. I think the information he's provided
13 shouldn't be considered. But even if it is
14 considered, we think the three years has been passed
15 for about eight years. And so we would ask that the
16 piercing case be dismissed under the three year or
17 have it dismissed because the allegations do not state
18 a cause of action because of the way they did it with
19 informed and believes.

20 So that's it, Judge. Thank you for your time.

21 MR. HAWKINS: One thing I would like to also
22 mention, Your Honor.

23 There's a recent -- there's recent case law in
24 development and collection law where the Court said
25 you've got ten years to enforce this action; once you

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1 begin to enforce this action, you are in your Active
2 Energy period.

3 So if I start to collect my action, whether it
4 be through supplemental proceedings or through the
5 piercing of the corporate veil, if I start that within
6 the ten years, the Court said that's the Active Energy
7 case. And --

8 THE COURT: Well, and I understand that. But
9 there's a difference between collection to enforce a
10 judgment and a separate cause of action. I mean, you
11 agree that piercing the corporate veil is a separate
12 cause of action?

13 MR. HAWKINS: Yes, it is, Your Honor.

14 THE COURT: All right. Well, I'm going to take
15 this under advisement. I don't know. I need to read
16 the case laws and see what they say. I'll let you
17 know. All right. Thank you.

18 [HEARING CONCLUDES AT 2:40 P.M.]

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing before the Honorable Benjamin Culbertson, on Monday, April 21, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 13th day of July, 2013.

Mia Perron

Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO. 2014-CP-26-0008

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

Plaintiffs,

vs.

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

Defendants.

NOTICE OF MOTION
AND
MOTION OF DAVID COX
TO DISMISS
(Rules 12(b)(1) and 12(b)(6))

TO: Bigford Enterprises, Inc., Bishop & Associates, Inc. d/b/a "Bishop Brick and Construction", and McBride Building Supplies & Hardware, Inc.
c/o Wendell L. Hawkins, Esquire
Wendell L. Hawkins, P.A.
103-C Regency Commons Dr.
Greer, SC 29650

YOU WILL PLEASE TAKE NOTICE that ten (10) days from the filing of this Motion, or as soon thereafter as may be heard, Defendant, David Cox, will move before this Court pursuant to Rules 12(b)(1) and (6), SCRCP, for an order dismissing the Complaint on the grounds that the Court lacks jurisdiction of the subject matter, and on the grounds that the Complaint fails to state facts sufficient to constitute a cause of action.

This Court lacks jurisdiction because the Plaintiffs filed their claims beyond the applicable Statutes of Limitations.

Plaintiff Bigford Enterprises, Inc. obtained its judgment against DC Development, Inc. on August 8, 2005; Plaintiff Bishop & Associates, Inc., d/b/a Bishop Brick and

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Construction obtained its judgment against DC Development, Inc. on June 5, 2005; and Plaintiff McBride Building Supplies & Hardware, Inc. obtained its judgment against DC Development, Inc. on May 11, 2005. (All three Plaintiffs may be referred to hereinafter as the "Judgment Holders")

The cause of action of piercing the corporate veil is an action that must be filed within three years of the date that the judgment was obtained against the corporate entity. S.C. Code §15-3-530(1976) provides in part as follows:

Within three years: (1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520 . . .

In the instant case, each of the Plaintiffs obtained judgments more than three years from the filing date of the Complaint.

Furthermore, this Court should dismiss the Complaint because it fails to allege sufficient facts upon which relief can be granted. Rule 8, SCRPC, requires that the complaint contain a "short and plain statement of the facts showing that the pleader is entitled to relief".

The only relevant facts alleged in the Complaint concerning the claims of the Judgment Holders to disregard the corporate entity and pierce the corporate veil is that Defendant David Cox is an officer, principal, director, shareholder, owner and/or agent of DC Development, Inc. The remainder of the Complaint contains allegations predicated only on "information and belief." Judgment holders assert that based upon information and belief that Defendant Cox failed to observe corporate formalities, used corporate property for personal expenses, left DC Development grossly undercapitalized, and used DC Development as a "alter ego". These affirmations are merely a formulaic recitation of the elements of a cause of action for piercing the

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corporate veil. Reliance by Judgment Holders on information and belief cannot transform legal conclusions into plausible factual allegations.

These allegations fail to state a claim against Defendant Cox upon which relief can be granted and therefore the Complaint must be dismissed. Judgment Holders have provided little or nothing in the way of factual allegations to support their contention that liability should be imposed on Defendant Cox by piercing the corporate veil or applying the alter ego theory. In fact, the allegations in the Complaint consist of nothing more than a list of factors identified in Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct.App. 1984), and Multimedia Pub. Of S.C., Inc. v. Mullins, 314 S.C. 551, 431 S.E.2d 569 (1993), based on Judgment Holders' information and belief.

The factual allegations of a complaint must be enough to raise a right to relief above the speculative level and the complaining party must offer more than labels and conclusions. Therefore, the Complaint should be dismissed under Rule 12(b)(6).

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2/14/14

Thus, this Defendant requests that the Court dismiss the Complaint.

BOOTH LAW FIRM, LLC



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West Columbia, South Carolina
February 14, 2014

COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

CIVIL ACTION NO. 2014-CP-26-0008

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

Plaintiff,

CERTIFICATE OF SERVICE

vs.

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

Defendants.

I, William E. Booth III of Booth Law Firm, LLC, do hereby certify that I have served the following named individual(s) with a copy of the pleading(s) indicated below by the method and on the date indicated below:

INDIVIDUALS SERVED:
VIA US FIRST CLASS MAIL WITH SUFFICIENT POSTAGE AFFIXED THERETO
Wendell L. Hawkins, Esquire
Wendell L. Hawkins, P.A.
103-C Regency Commons Dr.
Greer, SC 29650

Pleading	Date of Service
Notice of Motion and Motion of David Cox to Dismiss	February 14, 2014


William E. Booth III

West Columbia, South Carolina
February 14, 2014

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,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

Wendell L. Hawkins, PA



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Aimee V. Leary, Esq., SC Bar 100657
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Greer, South Carolina
December 15, 2014

**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

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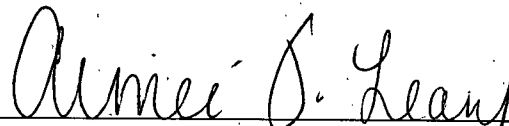
D.C. Development, Inc. n/k/a D.C.
Development & Construction, LLC By
Way of Articles of Conversion and David
Cox

Respondents,

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Record on Appeal complies with
Supreme Court Order dated August 13, 2007, regarding personal identifiers and sensitive
information.

Wendell L. Hawkins, PA



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**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

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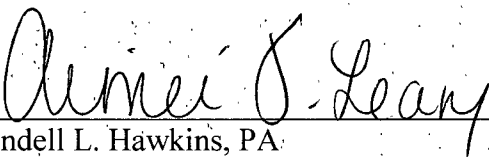
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Development & Construction, LLC By
Way of Articles of Conversion and David
Cox

Respondents,

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Record on Appeal with this Certificate of Service were served upon counsel on December 15, 2014 by First Class Mail as follows:

William E. Booth, III, Esq.
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December 15, 2014

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

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SC Court of Appeals

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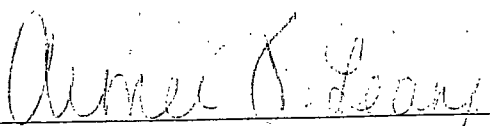
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