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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge  
Alison R. Lee, Circuit Court Judge

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JUN 22 2015

SC Court of Appeals

Case No. 2011-CP-40-4111  
APPELLATE CASE NO.: 2014-001799

Coastal Pi, LLC d/b/a Primarily Pi and James Bigby ..... Respondents.

vs.

Danville Business Advisors, LLC and Marion D. Turbeville. .... Defendants,

Of whom Marion D. Turbeville is ..... Appellant.

SUPPLEMENTAL RECORD ON APPEAL

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## JAMES BIGBY CROSS BY MR. DOUGALL

- 1 A. It was his partner, who I never once had any contact  
2 with whatsoever during the course of the project.
- 3 Q. So Mr. Turbeville himself individually never even  
4 signed this contract, did he?
- 5 A. Appears not.
- 6 Q. Okay. When Danville Business Advisors, through one of  
7 its partners, signed this contract, what did they put  
8 under the signature line? Doesn't that say as  
9 development manager and disbursement agent?
- 10 A. Yes.
- 11 Q. It doesn't say as construction manager, does it?
- 12 A. This does not.
- 13 Q. It doesn't say as architect, does it?
- 14 A. No.
- 15 Q. It doesn't say as general contractor, does it?
- 16 A. No.
- 17 Q. It's just as development manager and disbursement  
18 agent, correct?
- 19 A. That's correct.
- 20 Q. Let's go to Exhibit 14 that you just discussed?
- 21 A. Okay.
- 22 Q. Down towards the bottom of that list, you've got net OL  
23 June, July, correct?
- 24 A. That's correct?
- 25 Q. What does net OL June, July mean?

## BENJAMIN KELLY DIRECT BY MR. PEELE

- 1 Q. All right. Were you a party to this lease?
- 2 A. I am.
- 3 Q. All right. What is 15.15 mean to you?
- 4 A. That there's leasing agents involved in this  
5 transaction and they will be paid per a separate  
6 agreement within NAI Avant.
- 7 Q. And who were those leasing commissions split with in  
8 this transaction?
- 9 A. Danville Business Advisors and NAI Avant, LLC.
- 10 Q. And who is your employer?
- 11 A. NAI Avant, LLC.
- 12 Q. Okay. Is this normal in commercial real estate  
13 transactions?
- 14 A. Yes.
- 15 Q. All right. Based upon your personal knowledge, do you  
16 have any idea why Mr. Bigby is claiming he did not know  
17 about the real estate commissions?
- 18 A. Ask that question again.
- 19 Q. Based upon what you know, your personal knowledge, do  
20 you have any idea why Mr. Bigby is claiming he does not  
21 know about the real estate commissions?
- 22 A. No.
- 23 Q. Do you know -- all right. Let's go to page two of this  
24 lease. What is annual rent through lease year one  
25 through five?

1 anything, so.

2 MR. DOUGALL: I think we've tried to e-mail it.

3 MR. BRUNER: I thought I would have the ability to  
4 e-mail and I do not, but I can, certainly, get it to Your  
5 Honor or to your law clerk before 4:30.

6 THE COURT: I need to get it before 4:30,  
7 including -- and if there's a difference as to what's in a  
8 verdict form, I need to receive proposal on both of those  
9 and I will go from there.

10 MR. BRUNER: I think we've already agreed on the  
11 verdict form and tried to e-mail it, it just hasn't come  
12 through yet, but that's -- of course, that will be subject  
13 to whatever rulings Your Honor makes. We can get that to  
14 you as well.

15 THE COURT: Okay. All right. Then I'll see you  
16 all at 9:30 tomorrow morning. Please make sure that all the  
17 exhibits are here.

18 (The following proceedings were  
19 concluded for May 28, 2014.)

20 (The following proceedings were held on  
21 May 29, 2014.)

22 THE COURT: Good morning. I believe what I  
23 indicated yesterday was that I would send the unfair trade  
24 practices and the breach of contract to the jury as it  
25 relates to Danville as well as the breach of fiduciary duty.

1 I've had the opportunity to review case law  
2 relating to whether the Defendant, Marion Turbeville, those  
3 claims, at least, as it relates to the breach of fiduciary  
4 duty and the unfair trade practices could be submitted to  
5 the jury for his personal liability. And I've read those  
6 cases. And based upon the information that I have read  
7 arising out of BPS, Incorporated v. Worthy, and -- I find  
8 that if there's evidence that the Defendant individually  
9 directed or participated in or engaged in conduct that would  
10 create a tort, whether it's unfair trade practices or breach  
11 of fiduciary duty, then he can be held individually liable.

12 I understand that there was some discussion as to  
13 liability under the limited liability corporate statutes and  
14 there's been -- there was some discussion about the Jade  
15 Street cases. I noticed that in the 2012 case, the -- the  
16 Supreme Court made the decision that a member was not  
17 shielded under the limited liability act. In the rehearing,  
18 which is a 2013 case, the Supreme Court specifically did not  
19 address that issue and went so far as to state that although  
20 the case poses a novel question of whether the uniform  
21 limited liability act shields an LLC member from personal  
22 liability from his own torts, we save that discussion for  
23 another day. And that specific case found specifically that  
24 there was no duty on the part of an individual and thus, did  
25 not even reach the question as to whether or not there was

1 personal liability under the act.

2 I don't find that either case, either the 2012 or  
3 the 2013 case is an additional sustaining ground for making  
4 such a ruling. Despite the fact that he may be a member  
5 under the limited liability company, I think the case law  
6 is, certainly, clear as it relates to the breach of  
7 fiduciary duty. And as to the unfair trade practices that a  
8 person who is an officer or director -- and I understand  
9 that the case law says corporation, but its officers,  
10 directors can be liable for their own specific acts under  
11 the unfair trade practices and under the -- and for breach  
12 of fiduciary duty. And I find that, certainly, would apply  
13 in this particular circumstance.

14 There appears to still be some question and some  
15 discussion as to whether or not there would be occasion for  
16 specific liability under the LLC the LLC provisions. I did  
17 look at Judge Cooper's order in which he found basis to  
18 follow the rationale that was set forth by the Supreme Court  
19 in the 2012 Jade Street case, finding that it was not the  
20 legislative intent to exclude or shield an individual from  
21 personal liability for torts that were specifically  
22 committed even in light of the statutory frame work. And so  
23 I'm leaving that as the law of the case and as it relates to  
24 his order in the motion to dismiss the claim. I'm not going  
25 to be inconsistent in going forward at this particular

1 point. I think that there's evidence in the record for  
2 which the jury could make the decision as to whether or not  
3 the Defendant acted -- committed unfair trade practices  
4 and/or committed breach of fiduciary duty, so I'm going to  
5 allow it to go to the jury.

6 As it relates to the negligence claims as to both,  
7 the corporation and as to Mr. Turbeville individually, I  
8 received the information that you sent to me this morning.  
9 I had the opportunity to read the cases. Frankly, the cases  
10 did not change my opinion from what I reached -- the  
11 conclusion I reached last night, but I did look at them and  
12 read them again. I do find that the economic loss rule  
13 would apply in this particular case. The duties that are  
14 alleged to be -- by the Defendants in this case arise purely  
15 out of the contract. In other words, in absence of the  
16 contract, there would be no duties. And for that reason, I  
17 find that, therefore, there can be no negligence.

18 I understand that the Plaintiff is asserting a  
19 claim that because of the special relationship between the  
20 parties that there should be some duties. And I think  
21 that -- and I'm assuming that the Plaintiffs are trying to  
22 rely upon the fact that the expert's testimony that they  
23 were engaging in conduct that was a construction management  
24 for which they needed a license. I don't think that the  
25 special relationship as the Plaintiff asserts that's created

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**PROOF OF SERVICE**

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I, Robert M. Peele, III, an attorney of Dougall & Collins, attorney for Appellant, Marion D. Turbeville do hereby certify that on the 22<sup>nd</sup> day of June 2015, I served the **Supplemental Record on Appeal** upon counsel of record by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

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June 22, 2015

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CERTIFICATION OF COUNSEL

I, Robert M. Peele, III, an attorney of Dougall & Collins, attorney for Appellant, Marion D. Turbeville do hereby certify that the Supplemental Record on Appeal contains all material proposed to be included by all parties to this action and not any other material.



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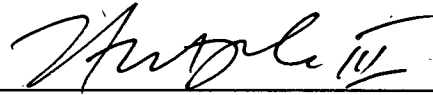
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