

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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DEC 21 2015

**APPEAL FROM Horry COUNTY  
Court of Common Pleas**

**S.C. Supreme Court**

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

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Unpublished Opinion No. 2015-UP-330 (S.C.Ct.App. filed July 1, 2015)

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

v.

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

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**APPENDIX**

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## CONTENTS

Unpublished Opinion No. 2015-UP-330 (filed July 1, 2015)

Petition for Rehearing

Order Denying Petition for Rehearing

Brief of Appellant

Brief of Respondent

Reply Brief

Record on Appeal

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**CERTIFICATE OF COUNSEL**

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The undersigned, as counsel for Petitioner, hereby certifies that this Appendix  
contains all of the documents required by Rule 242(e), SCAGR



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December 21, 2015

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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.

Appellate Case No. 2014-001033

---

Appeal From Horry County  
Benjamin H. Culbertson, Circuit Court Judge

---

Unpublished Opinion No. 2015-UP-330  
Submitted April 1, 2015 – Filed July 1, 2015

---

**REVERSED AND REMANDED**

---

Aimee Victoria-Ann Leary and Wendell Leon Hawkins,  
both of Wendell L. Hawkins, PA, of Greer, for  
Appellants.

William E. Booth, III, of Booth Law Firm, LLC, of West  
Columbia, for Respondents.

---

**PER CURIAM:** Reversed and remanded pursuant to Rule 220(b), SCACR, and the following authorities: *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 192, 463 S.E.2d 641, 643 (Ct. App. 1995) ("An action to pierce the corporate veil is one in equity."); *Dixon v. Dixon*, 362 S.C. 388, 400, 608 S.E.2d 849, 855 (2005) ("This [c]ourt has held that the statute of limitations does not apply to actions in equity.").<sup>1</sup>

**REVERSED AND REMANDED.**<sup>2</sup>

**SHORT, LOCKEMY, and McDONALD, JJ., concur.**

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<sup>1</sup> We do not read *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005), as creating a statute of limitations for actions to pierce the corporate veil.

<sup>2</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

---

Case No. 2014-CP-26-0008  
Appellate Case No. 2014-001033

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Bigford Enterprises, Inc., Bishop & Associates, Inc., d/b/a "Bishop Brick and  
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v.

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

---

PETITION FOR REHEARING EN BANC

Unpublished Opinion No. 2015-UP-330  
Submitted April 1, 2015 – Filed July 1, 2015

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RECEIVED  
JUL 16 2015  
SC Court of Appeals

Pursuant to Rule 221(a), SCACR, Respondents, D.C. Development, Inc. n/k/a D.C. Development & Construction, LLC By Way of Articles of Conversion and David Cox, submit this Petition for Rehearing *en banc* as to the points overlooked or misapprehended by this Court in its Unpublished Opinion No. 2015-UP-0330 filed on July 1, 2015, as follows:

**POINT 1:** As to the statement made in the Opinion that the general rule is that the Statute of Limitations does not apply to an action to pierce the corporate veil, the Court misapprehended or overlooked the fact that there is no South Carolina case directly on point. This is an issue of first impression and the Court should have considered in this case that the judgments sought to be imposed upon the individual stockholder (David Cox) resulted from the failure to pay an open account arrangement with Respondent D.C. Development & Construction, LLC (hereinafter "DC Development") as the general contractor. The time period during which DC Development purchased materials from these judgment holders for the construction of an apartment complex should be the time period to determine if the elements of a piercing case are proven. The action to pierce the corporate veil was filed more than three years after the default and the obtaining of the judgements distinguishing this case from the case of Dixon v. Dixon, 362 S.C. 388, 608 S.E.2d 849 (2005). Thus, the judgment holder is actually suing a second time for the failure to pay on the open account. The Statute of Limitations for an action on a contract is three years and this limitation must be applicable to an action to pierce the corporate veil.

For these reasons, Respondent asks the Court to rehear the case *en banc*.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'W. Booth III', written over a horizontal line.

July 16, 2015

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# The South Carolina Court of Appeals

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.

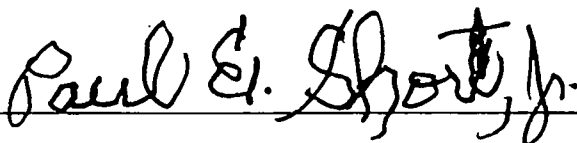
Appellate Case No. 2014-001033

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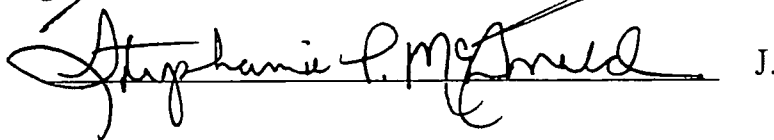
## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

  
\_\_\_\_\_ J.

Columbia, South Carolina

**FILED**

cc: Wendell Leon Hawkins, Esquire

November 19, 2015

William E. Booth, III, Esquire  
Aimee Victoria-Ann Leary, Esquire

**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,

---

**FINAL BRIEF OF APPELLANTS**

---

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Table of Contents

Table of Authorities ..... ii

Statement of Issues on Appeal ..... 1

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..... 1

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..... 3**

Conclusion ..... 4

## TABLE OF AUTHORITIES

### CASES

<u>Anderson v. Purvis</u> , 220 S.C. 259, 67 S.E.2d 80 (1951).....	4
<u>Dixon v. Dixon</u> , 362 S.C. 388, 608 S.E.2d 849 (S.C. 2005) .....	4
<u>Du Pont v Du Bos</u> , 52 SC 244, 29 SE 665 (1898) .....	3
<u>Fanning v Bogacki</u> , 111 SC 376, 98 SE 137 (1919) .....	3
<u>Hardee v. Lynch</u> , 212 S.C. 6, 46 S.E.2d 179 (1948).....	4
<u>Linda Mc Co., Inc. v. Shore</u> , 390 S.C. 543, 703 S.E.2d 499 (S.C. 2010) .....	4
<u>McKinnon v Summers</u> , 224 SC 331, 79 SE2d 146 (1953) .....	4
<u>Oskin v. Johnson</u> 400 S.C. 390, 397, 735 S.E.2d 459, 463 (S.C. 2012).....	3
<u>Parrott v Dickson</u> , 151 SC 114, 148 SE 704 (1929). .....	3
<u>Sturkie v. Sifly</u> , 280 S.C. 453313 S.E.2d 316, (S.C. Ct. App. 1984).....	3

### OTHER AUTHORITIES

SCRCP Rule 12(b)(1).....	2
SCRCP Rule 12(b)(6).....	2
S.C. Code § 15-3-530.....	2, 3, 4

## 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. 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. (R. pp. 4-17).

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. (R. pp. 48-51). 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. (R. pp. 2-3). 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). (R. p. 3). 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). (R. p. 3). 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. 453, 313 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. (R. p. 34-39).

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). Appellants raised these arguments at the motion hearing. (R. pp. 35-38).

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, Appellants pray the Court reverse the Order of the Circuit Court and remand for further proceedings.

Respectfully submitted,



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December 17, 2014

**STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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**APPEAL FROM HORRY COUNTY  
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**The Honorable Benjamin H. Culbertson**

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Bigford Enterprises, Inc., Bishop &  
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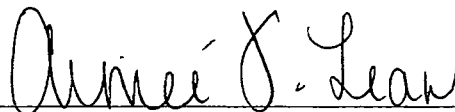
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**CERTIFICATE OF COUNSEL**

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The undersigned, Aimee V. Leary, certifies that this Final Brief of Appellants complies with Rule 211(b).

Wendell L. Hawkins, PA



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December 17, 2014  
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**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

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APPEAL FROM HORRY COUNTY  
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---

**FINAL BRIEF OF RESPONDENTS**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	2
STATEMENT OF ISSUES ON APPEAL.....	3
ARGUMENT .....	4
I. The Circuit Court did not 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. § 15-3-520 (1976)...	4
CONCLUSION.....	9
CERTIFICATE OF COUNSEL .....	10

**TABLE OF AUTHORITIES**

**South Carolina Cases**

Carolina Marine Handling, Inc. vs Lasch, et al., 363 S.C. 169, 609 S.E.2d 548 (Ct.App. 2005)..... 7, 8

Drury Development Corp. v. Foundation Ins. Co., 380 S.C. 97, 668 S.E.2d 798 (2008)..... 5

DuPont v. DuBos, 52 S.C. 244, 29 S.E. 665 (1898)..... 6

Fanning v. Bogacki, 111 S.C. 376, 98 S.E. 137 (1919)..... 6

Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010)..... 6

McKinnon v. Summers, 224 S.C. 331, 79 S.E.2d 146 (1953)..... 6

Parrott v. Dickson, 151 S.C. 114, 148 S.E.704 (1929)..... 6

**Statutes**

S.C. Code § 15-39-30..... 5

S.C. Code §15-3-530..... 5

S.C.Code Ann. §15-2-530 (1976) ..... 3, 4

## 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. §15-2-530 (1976)?

## ARGUMENT

I. **The Circuit Court did not 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. § 15-3-520 (1976).**

Plaintiffs in this action seek to hold Cox personally liable on the Judgments referred to in Paragraph 2 of the Complaint (Bigford Judgment), in Paragraph 4 of the Complaint (Bishop Judgment), and in Paragraph 6 of the Complaint (McBride Judgment). (R. p. 10; R. p. 11). For each Judgment, the date obtained is more than three years from the date of the filing of the instant action.

As background, all the judgments were obtained against D.C. Development, Inc., and the following chart shows the dates each judgment was obtained:

JUDGMENT HOLDER	AMOUNT OF ORIGINAL JUDGMENT	DATE JUDGMENT OBTAINED
Bigford	\$79,060	August 8, 2005
Bishop	\$152,372	June 9, 2005
McBride	\$253,906	May 11, 2005

(R. pp. 9-17).

The underlying debt for each judgment was the failure to pay an open account arrangement with D.C. Development as the general contractor for the purchase of supplies and materials sold by each judgment holder in connection with a construction project. The construction project was an apartment complex

known as Glenwood Falls located in the Fort Mill area of York County. (R. p. 23 lines 1-8).

But the instant action is a new action on the same debt that is separate and distinct from the underlying action in which the judgment was obtained. An action to pierce the corporate veil is deemed an independent action separate and distinct from the action against the corporate entity for an obligation entered into with the corporate entity for which a judgment is sought. Drury Development Corp. v. Foundation Ins. Co., 380 S.C. 97, 668 S.E.2d 798 (2008) (“ . . . [w]e set forth the general rule that a judgment against a corporation is not a prerequisite to an alter ego claim.”)

The procedure by which the owner of a judgment may obtain a new judgment for the amount owing thereon is by an independent action on the prior judgment, which independent civil action must be commenced and prosecuted as in the case of any other civil action brought to recover judgment on a debt. The main purpose of any action on a judgment is to obtain a new judgment which would facilitate the ultimate goal of securing the satisfaction of the original cause of action. The time period for enforcing the original judgment found in S.C. Code § 15-39-30 cannot be used to extend the applicable statute of limitations for the original debt. The applicable statute of limitations is set forth in S.C. Code §15-3-530, and provides that [a]n action upon a contract, obligation, or liability, express or implied,” must be filed within three years. As stated by the Supreme Court:

Section 15-39-30 is not a statute of limitation, but it is clearly a statute of repose. There is a significant difference between the two. A statute of limitation is an affirmative defense that allows a party to avoid suit. A statute of limitation has no effect on the validity of the

claim; it only effects the claim's enforcement. In contrast, a statute of repose is not a claim-avoidance mechanism. Instead, a statute of repose extinguishes the claim, in this case the judgment.

Linda Mc Co., Inc. v. Shore, 390 S.C. 543, 703 S.E.2d 499 (2010)

Where the Statute of Limitations is properly pleaded, and all the facts with reference to it are admitted, the question of whether it constitutes a bar becomes a matter of law. In determining whether a cause of action is barred by the Statute of Limitations, courts must determine the applicable limitations period and the date of the accrual of the action. The applicable Statute of Limitations for breach of contract actions is three years. The limitations period begins to run when the claim occurs, and in a breach of contract action, the claim generally accrues upon breach. While the date of the breach is not pled or known at this time, the date of the judgment would logically be after such breach. In this case, the judgment dates are more than three years before the filing of this action.

Appellants make one argument saying the Statute of Limitations never applies if the underlying action is an equitable action. But none of the cases relied upon by Appellants involve an action to pierce the corporate veil. In Parrott v. Dickson, 151 S.C. 114, 148 S.E.704 (1929), the case involved a partition sale and the issuance of a rule to show cause for the purchaser at the sale to pay the balance of the bid. In Fanning v. Bogacki, 111 S.C. 376, 98 S.E. 137 (1919), the action involved enforcement of an oral agreement for the reconveyance of property purchased at a partition sale. In DuPont v. DuBos, 52 S.C. 244, 29 S.E. 665 (1898), the action was based upon fraud in the conveyance of property by a deed. In McKinnon v. Summers, 224 S.C. 331, 79 S.E.2d 146 (1953), the action

involved setting aside certain deeds on the ground of forgery and to recover possession of the property.

But there is a South Carolina case that implies that the Statute of Limitations does apply in a piercing the corporate veil action. In Carolina Marine Handling, Inc. vs Lasch, et al., 363 S.C. 169, 609 S.E.2d 548 (Ct.App. 2005), a third-party action was filed in connection with the lease of property on the former Charleston Naval Base Shipyard. The third-party complaint was filed against a sub-lessee and its sole owner – Herbert R. Stender. While the original action by the landlord against the original lessee was filed within three years from the date of the breach or failure to pay under the lease, the third-party claim against the sub-lessee and Stender were filed more than three years after the breach.

The third-party plaintiff did not argue that the cross-claim was timely, but the third-party plaintiff argued that the subject lease was a sealed document and that the Statute of Limitations was twenty years instead of three years. Both the Circuit Court and the Court of Appeals found that the parties to the lease did not intend the lease to be under seal. The Court of Appeals affirmed the Circuit Court's decision to dismiss the third-party claim under the general three-year Statute of Limitations.

The third-party claim against Stender was also dismissed based on the general three-year statute of limitations. The Court stated:

"Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct.App.1996). The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and

achieve finality in litigation. See Webb v. Greenwood County, 229 S.C. 267, 276, 92 S.E.2d 688, 691 (1956); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 231, 599 S.E.2d 462, 464 (Ct.App.2004). Significantly, "[s]tatutes of limitations provide potential defendants with [363 S.C. 176] certainty that after a set period of time, they will not be hailed [sic] into court to defend time-barred claims." In re Elkay Indus., Inc., 167 B.R. 404, 408 (D.S.C.1994). "Moreover, limitations periods discourage plaintiffs from sitting on their rights." Id. at 408-09. Statutes of limitations are, indeed, fundamental to our judicial system.

Id. at.552.

While not directly on point, the Court of Appeals decision states that an attempt to pierce the corporate veil is often post-judgment, and implies that the general statute of limitations would apply to prevent an action beyond three years.

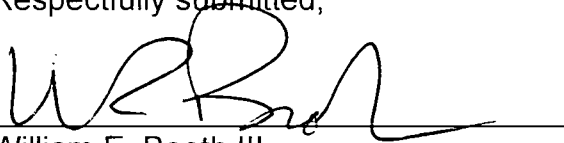
In footnote 6, the Court discusses the discovery rule in relation to the Statute of Limitations and says that the way this case came up, the dismissal was affirmed for both parties, both the sublessee and against Stender, as being barred by the Statutes of Limitation.

The basis for a piercing the corporate veil action should be the time period the debtor was operating and the creditor was providing materials or labor in a construction contract. The focus should be the time period during which the debt arose up to the breach of contract caused by nonperformance. A creditor should be barred under the Statute of Limitations after three years from the date of breach and nonpayment.

## CONCLUSION

In conclusion, this Court should affirm the lower court's granting of the Motion to Dismiss.

Respectfully submitted,



January 5, 2015

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SC Bar No. 771

Attorney for Respondents

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

---

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

---

Case No. 2014-CP-26-0008  
Appellate Case No. 2014-001033

---

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.

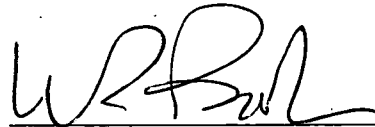
---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that the Brief of Respondents complies with Rule  
211(b), SCACR.

January 5, 2015



---

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Attorney for Respondents

**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,

---

**FINAL REPLY BRIEF OF APPELLANTS**

---

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Aimee V. Leary, Esq.  
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Table of Contents

Table of Authorities ..... ii

Argument

I. APPEALLANTS 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 ..... 1

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 ..... 1

Conclusion ..... 3

**TABLE OF AUTHORITIES**

**CASES**

Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005)..... 1,2

Du Pont v Du Bos, 52 SC 244, 29 SE 665 (1898) ..... 1

Fanning v Bogacki, 111 SC 376, 98 SE 137 (1919) ..... 1

McKinnon v Summers, 224 SC 331, 79 SE2d 146 (1953) ..... 1

Oskin v. Johnson 400 S.C. 390, 397, 735 S.E.2d 459, 463 (S.C. 2012)..... 1

Parrott v Dickson, 151 SC 114, 148 SE 704 (1929). ..... 1

**OTHER AUTHORITIES**

S.C. Code § 15-3-530..... 2

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).

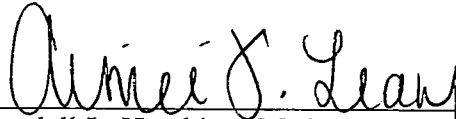
The appellant in Carolina Marine was attempting to Pierce the Corporate Veil pre-judgment. Therefore, as the underlying cause of action for Breach of Contract was dismissed by the Circuit Court, so was the action to Pierce the Corporate Veil of the subtenant's owner as it was based solely upon liability 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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Greer, South Carolina  
December 17, 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,

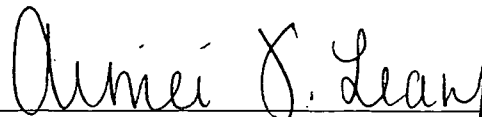
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CERTIFICATE OF COUNSEL

---

The undersigned, Aimee V. Leary, certifies that this Final Reply Brief of Appellant complies with Rule 211(b).

Wendell L. Hawkins, PA



---

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Attorneys for the Appellants

December 17, 2014  
Greer, South Carolina

**STATE OF SOUTH CAROLINA  
In the Court of Appeals**

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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**

---

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**INDEX**

**I. ORDERS**

Order Granting Motion to Dismiss (dated April 22, 2014) .....2

**II. PLEADINGS**

Complaint (dated December 31, 2013) .....4

**III. TRANSCRIPT**

Transcript of Testimony (April 21, 2014 Hearing) .....18

**IV. MOTIONS**

Notice of Motion and Motion of David Cox to Dismiss (dated February 14, 2014) .....48

**V. CERTIFICATE OF COUNSEL**

**VI. CERTIFICATE OF COMPLIANCE**

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

Max  
 #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 10:33 AM  
 CLERK OF COURT

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 I.**

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.

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: wlh@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.

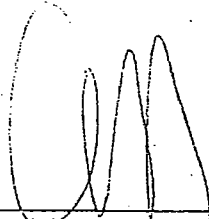
**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> 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.



---

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

Greer, South Carolina  
December 21, 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 16<sup>th</sup>, 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.

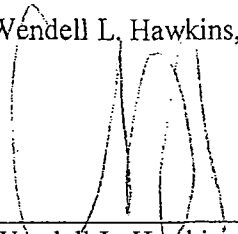
12. Plaintiffs are informed and believe that David Cox (hereinafter "Cox") failed to observe the corporate formalities of D.C. Development which, upon information and belief, Cox is the member, manager and/or principal for.

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.



---

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

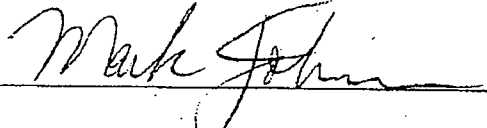
2. I am an owner of J & S Concrete in Lancaster, SC.

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.

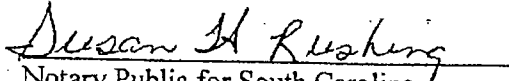
5. Our company was paid with checks from D.C. Development, Inc., but D.C. Development's account for these materials is still partially delinquent.

FURTHER AFFIANT SAYETH NOT.



Mark Johnson, J & S Concrete

SWORN to and acknowledged before me, by Mark Johnson this  
3<sup>rd</sup> 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

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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

	PAGE
PROCEEDINGS	4
CERTIFICATE OF COURT REPORTER	30

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EXHIBITS

[None]

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.

MIA PERRON, CVR-CM-M

-4-

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.

MIA PERRON, CVR-CM-M

-5-

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

MIA PERRON, CVR-CM-M

-7-

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

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

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

1           obtained.

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

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

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

MIA PERRON, CVR-CM-M

-9-

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,

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

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

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

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

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

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

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

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

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

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

MIA PERRON, CVR-CM-M

-15-

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.

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

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

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

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

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

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

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

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

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

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

MIA PERRON, CVR-CM-M

-23-

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

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

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

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?

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

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

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

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

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

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

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

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.]

19  
20  
21  
22  
23  
24  
25

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

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

--30--

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.

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

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

Defendants.

**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

*WB*  
2/14/14

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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".

WB  
2/14/14

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

COPY

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. Sifyl, 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).

WAB  
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.,

CERTIFICATE OF SERVICE

Plaintiff,

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

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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,

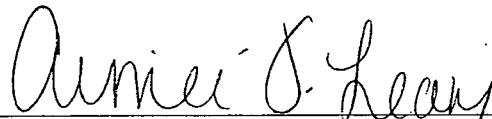
---

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



Wendell L. Hawkins, Esq., SC Bar 13783  
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Attorneys for the Appellant

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

---

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,

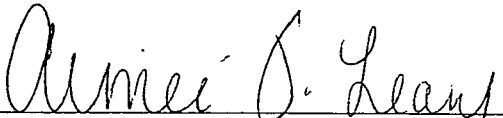
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**CERTIFICATE OF COMPLIANCE**

---

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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Bigford Enterprises, Inc., Bishop &  
Associates, Inc. d/b/a "Bishop Brick and  
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Appellants,

v.

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

Respondents,

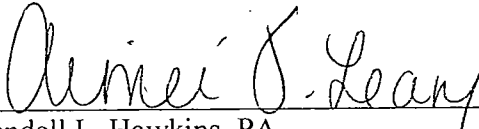
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CERTIFICATE OF SERVICE

---

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.  
3231 Sunset Blvd., Ste. A  
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December 15, 2014