STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-26-00620
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation,

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants.

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, AND EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

2016 APR 25 PM 4:09
CLERK OF COURT

ORDER
DISPOSING OF POST TRIAL MOTIONS

Attorney for A & E, Smith:	Frank H. DuRant
Attorney for Smith, EES and E. Smith & Sons:	J. Jackson Thomas
Attorney for the Defendants and Third Party Plaintiffs:	Kathryn M. Cook
Court Reporter:	Melissa M. Decker

Defendants move to reopen the hearing in this matter for the taking of testimony and presentation of evidence as to events effecting (sic) the subject matter of this accounting action and the relief sought relating to A&E Constructors and Consultants, Inc. (the Company). Specifically, two independent civil actions after the final hearing in this action have been filed against the Company and are presently pending. Defendants wish to reopen the hearing to take testimony concerning those two cases. Additionally, Defendants move for reconsideration of the final judgment. They now request that an independent forensic accountant be appointed and assert that one is required before a full and complete judicial accounting can be completed. However, Defendants never requested that an independent forensic accountant be appointed in this action until they filed their motion for reconsideration.

Except as stated below, Defendants' motions are denied.

This case has been quite frustrating, not only for the parties and the attorneys, but for the Court, as well. It is, at heart, an accounting action, involving a closely held construction corporation between two former close friends operating in a small community. The lawsuit was filed in 2009, when the foreclosure crisis was beginning to hit South Carolina, and particularly, Horry County, hard. The case was referred to this Court on July 23, 2009.

There were discovery issues between the parties almost immediately, and in October 2010, this Court held a pretrial hearing. All attorneys were present, and additionally, five certified public accountants who were involved in some matter also attended: Susan Brady, Bartlett Buie, Richard

Crumpler, Elizabeth Montgomery, and Bert Huggins.[1] Ms. Brady was presented as the Plaintiff's accounting expert witness. Defendants informed the Court that they intended to proceed to trial without an accounting expert. In fact, Defendants' attorney stated emphatically that no accountant was needed because the evidence was simply a matter of adding and subtracting, and certainly, "rocket science" was not involved. Even though five well-qualified certified accountants were present at the pre-trial conference, no attorney there requested that the Court appoint any of them, or, for that matter, any other accountant as an independent forensic accountant so that the Court could complete a full judicial accounting.

When the October 2010 pretrial conference occurred, Defendants had taken no depositions. The Court ordered that Defendants complete discovery by the end of January 2011 so that trial could begin in February 2011.

In this Court, the parties schedule their own hearings. By February 2011, this Court's trial schedule was overly burdened with foreclosure hearings, so it was almost impossible to schedule several consecutive, full days for trial. Two days of trial in this matter were held on February 15–16, 2011. In June, two and a half more days of trial, June 13–15, 2011, were held. Before several more consecutive full days were available, four months had passed. The trial resumed on October 11, 2011, and ran through October 13, 2011. The trial finished on August 27, 2012, through August 30, 2012. At some point during the trial, one of the attorneys became quite ill, and the trial had to be delayed.

At the end of the trial on August 30, 2012, because of the length of trial, and more specifically, because of the disjointed way the case was tried, this Court requested a Memoranda

[1] Three of the accountants had been called to the conference because they had worked for the firm that had prepared the Company's tax returns. Defendants' attorney had advised those accountants not to communicate with Plaintiff's attorneys concerning this matter, except through her office. That obviously put the Plaintiff's attorneys at a disadvantage. That issue was addressed by this Court's Pretrial Order.

of Law from the parties summarizing their positions. This Court received a Memoranda from the Plaintiff in September. By February of 2013, six months after the trial ended, Defendants had not sent a memorandum. (To date, Defendants have never sent one.) On March 23, 2015, this Court issued its final order.

The 42-page Order was filed on March 24, 2015. On March 25, 2015, the Court's law clerk scanned and emailed the Order to all counsel of record. Plaintiff's counsel also mailed a copy of the Order to Defendants on March 25, 2015. On that same date, the Court issued a *nunc pro tunc* order, correcting the amount of prejudgment interest and adding a defendant's name to the Form 4 only (it already was in the final order). On March 27, 2015, the Plaintiff's attorney mailed the *nunc pro tunc* order and the Form 4 to all attorneys of record.

Subsequently, Defendants' counsel realized that she had not received Page 37 of the Order. Instead of obtaining the missing page from the clerk's file, she requested it from the trial judge. The judge's office thereafter emailed the missing page to all attorneys. Defendants' attorney then moved for reconsideration, serving and filing the motion on April 20, 2015. Plaintiff contends the motion comes too late. I agree.

Both Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure (SCRCP) require that any motions thereunder be made no later than ten days after "receipt of written notice of the entry of the order." *See also, Diamond Jewelers of Spartanburg, Inc. v. Naegele*, 290 S.C. 260, 260-62, 349 S.E.2d 888, 888 (1985). Essentially, there are two ways notice of entry of the order can be given under Rule 77(d) of the SCRCP. Clerks of court can serve notice of the entry, or a party may serve notice in any fashion authorized by Rule 5 of the SCRCP. In this case, Plaintiff's attorney served notice of entry of the order on March 27, 2015, at the latest, when he served a copy of the *nunc pro tunc* order and the Form 4. Computing ten days from March 27,

2015, and adding five days for mailing [Rule 6(e), SCRCP], and then allowing the period to run until Monday because the last day fell on a Saturday, the last day for Defendants to file their Motion for Reconsideration pursuant to Rules 52(b) and 59(e) was Monday, April 13, 2015. Defendants failed to file their post-trial motion until April 20, 2015, a week too late. Their only excuse was that they were waiting on the **Court** to send them Page 37 of the Order before their ten days began to run.

Even though I have determined that the motion for reconsideration was too late, I conclude that the issue is best left for our appellate courts because of the Order's missing page, Page 37, and its effect on the finality of the Order. Accordingly, I will address the motion as if it were timely and leave for the appellate court to determine the timeliness of the motion. As previously stated, I deny the motion, except as stated below.

1. I grant Defendants' motion in regard to the grounds of piercing the corporate veil.

Instead, I find that the Defendants should be held liable under an amalgamation of interest or blurred identity theory. The test to determine whether a corporate veil should be pierced is applied rather strictly. *See Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). It consists of two prongs, with the first prong requiring eight factors. The second part requires that there be an element of injustice or fundamental unfairness if the veil not be pierced.

Arthur Vereen blurred the identity of his various entities. They shared the same office, employees, construction jobs, and shareholders. Mr. Vereen paid debts for one entity out of another entity's checking account. Mr. Vereen also deposited into one entity's checking account funds belonging to another entity. This created an accounting nightmare. It also was the basis for this lawsuit: Ellis Smith was a shareholder only in A&E Constructors and Consultants, Inc. and

not in any of the Defendant corporations. I conclude that Mr. Vereen used the various entities as an extension of himself to pay whatever debts he needed to pay, whether they were personal, family, or any of his corporations' debts. This was a classic amalgamation theory case. *See Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 344 S.E.23 869 (Ct. App. 1986).

2. I grant Defendants' motion as to judicial dissolution. Both the Plaintiff and the Defendants demanded judicial dissolution. I previously did not grant judicial dissolution because neither side addressed that during the trial. They did not suggest how winding up should occur or whether a receiver should be appointed, or, for that matter, whether an accountant should be appointed to review the corporate records. Nevertheless, I conclude that the parties should follow S.C. Code Ann. §§ 33-14-106 through 107 as to how to deal with claimants of a dissolved corporation. If any other issues arise, the parties may request an additional hearing.

AND IT IS SO ORDERED!

CYNTHIA GRAHAM HOWE
Master In Equity for Horry County

Conway, South Carolina
April 25 2016