

STATE OF SOUTH CAROLINA
In The Court of Appeals

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SO Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Kristi L. Harrington, Circuit Court Judge
Case number: 2015-CP-10-06615
(Appellate Case Number: 2017-001532)

BOUCHELLE INCORPORATED,.....APPELLANT,

vs.

CHARLESTON WRECKING INC. and MICHAEL C. GOLEMIS.....RESPONDENTS.

MOTION TO EXCLUDE AND STRIKE & MOTION FOR EXTENSION OF TIME TO FILE
INITIAL BRIEF AND DESIGNATION OF MATTERS

NOW COMES Respondent Michael Golemis, by and through his undersigned counsel,
and Respondent Charleston Wrecking, Inc., by and through their undersigned counsel, who
jointly move as follows:

RELIEF REQUESTED

1. To exclude and strike from Appellant’s Designation of Matter to be included in the Record on Appeal items 4 and 7, which are the Deposition Transcripts of Appellant David Bouchelle and Respondent Michael C. Golemis. (Appellant’s Designation of Matter to be Included in Record on Appeal, attached as Exhibit 1).
2. To exclude and strike from Appellant’s Initial Brief all arguments referring to or alleged to be supported by the deposition testimony of Appellant David Bouchelle and Respondent Michael Golemis. (Exhibit 2, Appellant’s Initial Brief, p. 14).
3. To extend the time for Respondent to file their initial briefs and designate matters for inclusion in the Record on Appeal until the issues in this Motion are resolved.

ORDER UNDER APPEAL

Appellant Bouchelle Incorporated appeals the Order of the Trial Court filed June 8, 2017, which, among other determinations, granted Respondent Michael Golemis' Motion for Summary Judgment, "as Defendant (Appellant-Bouchelle) has demonstrated no genuine issue of material fact exists as to the claims made against him." (Order attached as Exhibit 3).

GROUND FOR MOTION

As set forth herein, Appellant's Initial Brief and Designation of Matters to be Included in the Record on Appeal contain arguments and references concerning deposition testimony of Appellant Bouchelle and Respondent Golemis that were not presented to the trial court.

The grounds for said motion are that the depositions were not presented to the lower court as mandated by Rule 210(c) SCACR, and therefore should not be included in the Record on Appeal. Further, as the Depositions of Bouchelle and Golemis were not submitted to the lower court for consideration in determining Respondents' Motions for Summary Judgment, excerpts from the depositions of Bouchelle and Golemis cannot be included in arguments in Appellant's Initial Brief.

At the hearing in this matter Appellant did not present the deposition excerpts of Bouchelle and Golemis to the Trial Court for consideration in opposing Respondents' Motions for Summary Judgment. (See, Transcript of Record of the May 17, 2017, hearing before the trial court attached as Exhibit 4; Affidavit of Kerry Koon, counsel for Respondent Charleston Wrecking Inc., with exhibits attached as Exhibit 5; and Affidavit of Michael Ellis, appearing as counsel for Respondent Michael Golemis attached as Exhibit 6).

Appellant did not file and serve a separate memorandum in opposition to Michael Golemis' Motion for Summary Judgment. (See, Transcript of Record, p. 10, lines 16-20). Appellant did not file and serve any affidavits which referred to or included the deposition excerpts as exhibits, in opposition to any of the Motions for Summary Judgment, not later than two days before the hearing as mandated by Rule 6(d), SCRPC. (See, Transcript of Record, p. 3, which notes, "No exhibits were offered or marked for identification.")

Appellant did not designate any deposition excerpts for use at trial as mandated by Rule 32(a)5, SCRPC. In South Carolina, "... because Rule 32(a)(5) SCRPC explicitly addresses the proper manner for admitting deposition excerpts, its requirements supersede other less specific rules regarding threshold requirements for using excerpts of deposition testimony." *State Farm v. Barrett and Kratzer*, 340 S.C. 1, 7, 530 S.E.2d 132 (Ct. App. 2000).

CONCLUSION

Appellant failed to comply with the threshold notice requirements for the use of deposition excerpts at trial as mandated by Rule 32(a)5, SCRPC. As the designated deposition excerpts were never presented to the trial court as mandated by Rule 210(c) SCACR, they should be stricken and excluded from the Record on Appeal, and from arguments in Appellant's initial brief.

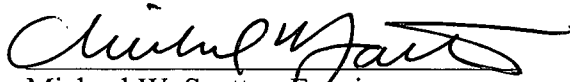
Respondents finally submit that it is in the interest of judicial economy for this Court to extend the time for Respondents to file their initial briefs and designate matter for inclusion in record on appeal until 30 days after the Court determines the above motion.

WHEREFORE Respondents Golemis and Respondent Charleston Wrecking, Inc., move that the deposition transcripts of Appellant David Bouchelle and Michael Golemis be excluded and stricken from Appellant's Designation of Matters to be Included in Record on Appeal, and

from arguments in Appellant's Initial Brief. Further, that the time for Respondents to file their Initial Briefs and to Designate Matters to be Included in the Record on Appeal be extended until 30 days after the Court determines this Motion, and for such other and further relief as is just and proper.

Respectfully Submitted,

QUERY SAUTTER FORSYTHE, LLC



Michael W. Sautter, Esquire

mikewsautter147@aol.com

SC Bar No.: 4944

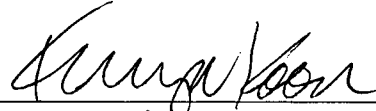
147 Wappoo Creek Drive, Suite 202

Charleston, SC 29412

Telephone: (843) 795-9500

Facsimile: (843) 762-1500

ATTORNEY FOR DEFENDANT GOLEMIS



Kerry Koon, Esquire

kerrykoon@hotmail.com

147 Wappoo Creek Drive, Suite 203

Charleston, SC 29412

ATTORNEY FOR RESPONDENT

CHARLESTON WRECKING, INC.

Dated: 11/29/17
Charleston, SC

OTHER COUNSEL OF RECORD:

Karen M. Dejong, Esquire
DeJong Law Firm, LLC
272 West Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464
Attorney for Appellant

Exhibit 1

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS
Hon. Kristi L. Harrington, Circuit Court Judge
Case No. 2015-CP-10-06615
(Appellate Case No. 2017-001532)

BOUCHELLE INCORPORATED,

Appellant,

vs.

CHARLESTON WRECKING, INC. and MICHAEL C. GOLEMIS,

Respondents.

**DESIGNATION OF MATTER TO BE INCLUDED
IN THE RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

1. Filed Civil Action Cover Sheet, Summons and Complaint dated December 8, 2015
2. Filed Answer of Charleston Wrecking, Inc. dated February 1, 2016
3. Filed Answer of Michael C. Golemis dated February 1, 2016
4. Deposition Transcript of David Bouchelle dated March 28, 2016
5. Filed Motion for Summary Judgment as to Defendant Michael C. Golemis dated January 9, 2017
6. Filed Affidavit of Michael C. Golemis dated January 9, 2017
7. Deposition Transcript of Michael C. Golemis dated February 28, 2017

8. Filed Charleston Wrecking, Inc.'s Motion for Summary Judgment dated March 31, 2017
9. Filed Charleston Wrecking, Inc. and Michael C. Golemis's Motion for Stay of Defendants dated March 31, 2017
10. Filed Bouchelle Incorporated's Opposition to Charleston Wrecking, Inc.'s Motion for Summary Judgment dated May 16, 2017
11. Filed Bouchelle Incorporated's Opposition to Charleston Wrecking, Inc. and Michael C. Golemis's Motion for Stay of Defendants dated May 16, 2017
12. Transcript of Record of Hearing before Hon. Kristi Lea Harrington held on May 17, 2017
13. Filed Order of Hon. Kristi Lea Harrington dated June 8, 2017

I CERTIFY THAT THIS DESIGNATION CONTAINS NO MATTER WHICH IS IRRELEVANT TO THIS APPEAL.

Dated: November 6, 2017



KAREN M. DEJONG, ESQ.
DeJong Law Firm, LLC
272 West Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464-5652
(843) 216-6161
(843) 216-1119 (Fax)
Attorney for Appellant

Other Counsel of Record:

Kerry W. Koon, Esq.
147 Wappoo Centre, Suite 203
Charleston, SC 29412
Tel. No. 843-795-7000
Attorney for Respondent Charleston Wrecking, Inc.

Michael W. Sautter, Esq.
Query Sautter Forsythe, LLC
147 Wappoo Creek, Suite 202
Charleston, SC 29412
Tel. No. 843-795-9500
Attorney for Respondent Michael C. Golemis

Exhibit 2

IN THE NINTH JUDICIAL CIRCUIT COURT
APPEAL FROM COURT OF COMMON PLEAS FOR CHARLESTON COUNTY

Case No. 2015-CP-10-6615
(Appellate Case No. -2017-001532)

BOUCHELLE INCORPORATED,

Appellant,

vs.

CHARLESTON WRECKING, INC. and
MICHAEL C. GOLEMIS,

Respondents.

APPELLANT'S INITIAL BRIEF

KAREN M. DEJONG, ESQ.
DeJong Law Firm, LLC
272 West Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464-5652
(843) 216-6161
(843) 216-1119 (Fax)
Attorney for Appellant

Other Counsel of Record:

Kerry W. Koon, Esq.
147 Wappoo Centre, Ste. 203
Charleston, SC 29412
Tel. No. 843-795-7000
Attorney for Respondent Charleston Wrecking, Inc.

Michael W. Sautter, Esq.
Query Sautter Forsythe, LLC

147 Wappoo Creek, Ste. 202
Charleston, SC 29412
Tel. No. (843) 795-9500
Attorney for Respondent Michael C. Golemis

TABLE OF CONTENTS

Table of Authorities	4
Statement of Issues on Appeal	5
Statement of the Case	6
Standard of Review.....	12
Arguments	
I. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT TO THE RESPONDENT MICHAEL C. GOLEMIS IN THE FACE OF EVIDENCE THAT THERE EXISTED GENUINE ISSUES AS TO MATERIAL FACTS IN THIS CASE?	12
II. DID THE TRIAL COURT ERR IN GRANTING RESPONDENTS' MOTION TO STAY AS TO DEFENDANTS IN THIS MATTER SO THAT A SEPARATE ACTION AGAINST RESPONDENTS' INSURANCE COMPANIES COULD BE DETERMINED FIRST?.....	14
Conclusion.....	15

TABLE OF AUTHORITIES

CASES

Quail Hill, LLC v. Cty. Of Richland, 387 S.C. 223, 692 S.E.2d 499, 505 (2010)

Talley v. John-Mansville Sales Corp., 285 S.C. 117, 119, 328 S.E.2d 621, 623 (1985)

City of Spartanburg v. Belk's Dep't Store of Clinton, 199 S.C. 458, 480, 20 S.E.2d 157, 167

Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999)

STATUTES

S. C. Code Section 33-18-250

OTHER AUTHORITIES

Rule 56, SCRCP

STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN GRANTING SUMMARY JUDGMENT AS TO THE RESPONDENT MICHAEL C. GOLEMIS IN THE FACE OF EVIDENCE THAT THERE EXISTED GENUINE ISSUES AS TO MATERIAL FACTS IN THIS MATTER?

II. DID THE TRIAL COURT ERR IN GRANTING RESPONDENTS' MOTION TO STAY AS TO DEFENDANTS IN THIS MATTER SO THAT A SEPARATE ACTION AGAINST RESPONDENTS' INSURANCE COMPANIES COULD BE DETERMINED FIRST?

STATEMENT OF THE CASE

On December 8, 2015, Appellant Bouchelle Incorporated, a general contracting company, filed a Summons and Complaint against the Respondent Charleston Wrecking, Inc. and its' owner, Respondent Michael Golemis for negligence, breach of contract, piercing the corporate veil and attorney fees. See Complaint, p. 1-5.

In the Complaint, Appellant alleged that it was hired by owners of 7350 Industry Drive, North Charleston, S.C. to reconstruct the commercial building. Included in the contract between the parties were plans to demolish a rear building located behind the main building. Said buildings shared one wall.

Appellant entered into a contract with Respondents wherein Respondents would demolish the rear building, in accordance with the parties' contract, applicable building codes and industry standards.

Despite Appellant's warnings to Respondent Golemis and contrary to their contract, on July 14, 2015, Respondent Golemis and his crew partially demolished the shared wall between the rear building and the main building, thereby causing severe structural damage to the shared wall and main building.

Appellant's reconstruction work was immediately halted while Appellant stabilized the shared wall and further work was significantly delayed. As a result of Respondents' actions, Appellant was damaged and was required to expend large sums of money to repair, correct and replace the shared wall and main building, along with other costs.

For a First Cause of Action, Appellant alleged Negligence as to all Respondents; in its' Second Cause of Action, Appellant alleged Breach of Contract as to all Respondents; as its' Third Cause of Action, Appellant alleged Piercing of the Corporate Veil and as its' Fourth Cause of Action, Appellant sought Attorney Fees and Costs.

On February 1, 2016, Respondent Charleston Wrecking, Inc. filed an Answer wherein it admitted that it had entered into a contract with Plaintiff for demolition services for property located at 7350 Industry Drive, North Charleston, S.C. but denied the remaining allegations of Appellant's Complaint. See Answer, p. 1-4.

Also in its' Answer, Respondent Charleston Wrecking, Inc. alleged as a Second Defense that the Paragraph 16.7 of the contract between Appellant and Respondent Charleston Wrecking, Inc. provided that mediation of disputes was a condition precedent to any form of binding dispute resolution including this action, and that Appellant failed to comply with Paragraph 16.7 of the contract so therefore, this action should be dismissed.

As a Third Defense, Respondent Charleston Wrecking, Inc. alleged that pursuant to Paragraph 13 of the contract between Appellant and Respondent Charleston Wrecking, Inc., Appellant waived consequential damages as described in Paragraph 13 of the contract and therefore, any evidence of such damages should be excluded.

Finally, as a Fourth Defense, Respondent Charleston Wrecking, Inc. alleged that there was a substantial sum due and owed to Respondent Charleston Wrecking, Inc. for work that was completed and that therefore, Respondent Charleston Wrecking, Inc. was entitled to a setoff in such amount as may be proven to the trier of fact.

On February 1, 2016, Respondent Michael C. Golemis filed an Answer wherein he

admitted that he was a shareholder of Respondent Charleston Wrecking, Inc. and that Appellant was hired by the owners of 7350 Industry Drive, North Charleston, SC to reconstruct the commercial building. Respondent Michael C. Golemis denied that he individually entered into a contract with Appellant, but that Respondent Charleston Wrecking, Inc. did enter into a contract for demolition services.

Also in its' Answer, Respondent Golemis alleged as a Second Defense that the Paragraph 16.7 of the contract between Appellant and Respondent Charleston Wrecking, Inc. provided that mediation of disputes was a condition precedent to any form of binding dispute resolution including this action, and that Appellant failed to comply with Paragraph 16.7 of the contract so therefore, this action should be dismissed.

As a Third Defense, Respondent Golemis alleged that pursuant to Paragraph 13 of the contract between Appellant and Respondent Charleston Wrecking, Inc., Appellant waived consequential damages as described in Paragraph 13 of the contract and therefore, any evidence of such damages should be excluded.

Finally, as a Fourth Defense, Respondent Golemis alleged that there was a substantial sum due and owed to Respondent Charleston Wrecking, Inc. for work that was completed and that therefore, Respondent Charleston Wrecking, Inc. was entitled to a setoff in such amount as may be proven to the trier of fact. Respondent Golemis also argued that to the extent that Respondent is bound by the contract, which was specifically denied, such setoff is applicable to Respondent Golemis.

On March 28, 2016, Appellant's sole owner, David Bouchelle, was deposed by the Respondents.

On or about January 9, 2017, Respondent Golemis filed a Motion for Summary Judgment. See Respondent Golemis's Motion for Summary Judgment, p. 1-24. The specific grounds for his Motion for Summary Judgment were as follows:

- a) Michael C. Golemis, individually was not a party to the subcontract between Bouchelle Incorporated and Charleston Wrecking, Inc.;
- b) No other contractual obligation existed between Michael C. Golemis and Bouchelle Incorporated;
- c) Michael C. Golemis did not personally perform the services (an alleged improper saw cut) that led to this action;
- d) Michael C. Golemis was not present and in actual supervision of the work that allegedly caused Bouchelle Incorporated's damages;
- e) Charleston Wrecking, Inc. had experienced personnel performing the work including supervision by a South Carolina licensed general contractor with extensive demolition experience;
- f) Bouchelle Incorporated's breached the terms of the agreement between Contractor and Subcontractor by failing to demand mediation prior to litigation as required by the contract.
- g) Charleston Wrecking, Inc. was organized as a statutory close corporation and that pursuant to S.C. Code Section 33-18-250, even if Bouchelle Incorporated were to show that Charleston Wrecking, Inc. failed to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers, or management of its' business and affairs, which Respondents denied, these allegations are not grounds for

imposing personal liability on individual Michael C. Golemis.

On February 28, 2017, Respondent Golemis was deposed by the Appellant.

On or about March 31, 2017, Respondent Charleston Wrecking, Inc. filed Motion for Summary Judgment. See Respondent Charleston Wrecking, Inc.'s Motion for Summary Judgment, p. 1-62.

On March 31, 2017, both Respondents filed a Motion to Stay based upon the fact that there was a separate action (Case No. 2016-CP-10-4984) wherein, based upon the same incident, Bouchelle Incorporated was suing its' contractor general liability insurance company (Canopus US Insurance, Inc.), Charleston Wrecking, Inc.'s insurance carrier (Seneca Specialty Insurance Co.) and Bouchelle Incorporated's insurance agent (The Brinson Agency and its' principal, John Brinson"). See Respondents' Motion for Stay as to Defendants, p. 1-3.

Respondents argued in their Motion to Stay that Bouchelle Incorporated could not recover from its' own insurance company and also from the Respondents. Respondents argued that the case against Respondents should be stayed until the outcome of the Appellant's case against the insurance companies is known and that to require this case to move forward until there was a determination of the Appellant's action against the insurers would burden the parties with unnecessary fees and costs and would be an unwise use of judicial time.

On May 16, 2017, Appellant filed Opposition to Respondent Charleston Wrecking, Inc.'s Motion for Summary Judgment in that Appellant disagreed with the facts set forth in Respondents' Motions for Summary Judgment. See Appellant's Opposition to Respondent Charleston Wrecking's Motion for Summary Judgment, p. 1-2.

On May 16, 2017, Appellant filed Opposition to Respondents' Motion for Stay on the

grounds that Appellant was entitled to have his day in court and proceed to trial against the Respondents; that there is no federal or state statute or court rule that denies Appellant his right to pursue liability and damages against someone who has breached a contract and/or committed malfeasance against Appellant; and that to stay this action pending resolution of the insurance company claims, was ludicrous and against public policy. See Appellant's Opposition to Respondents' Motion for Stay, p. 1-2.

On or about May 17, 2017, a hearing was held before Hon. Krisi Lea Harrington, Charleston County Court of Common Pleas, for purposes of hearing oral arguments from Respondents' on their Motions for Summary Judgment and Motions for Stay and for hearing oral argument from Appellant regarding its' Opposition to Respondents' Motions.

On June 8, 2017, an Order was filed with the Charleston County Court of Common Pleas wherein Judge Harrington ruled as follows:

1. "Respondent Charleston Wrecking, Inc.'s Motions for Summary Judgment filed 1/20/2017 and 3/31/2017 was denied as Respondent failed to demonstrate a genuine issue of material fact."
2. Respondent Golemis's Motion for Summary Judgment was granted, "as Respondent had demonstrated no genuine issue of material fact existed as to the claims made against him".
3. Respondent Charleston Wrecking, Inc.'s Motion for Stay was "granted".
4. Appellant had "voluntarily withdrawn the claim of breach of contract."

no further explanation, finding of facts or conclusions of law were set forth in the Order. See Order filed on June 8, 2017, p. 1-2.

This Appeal now follows.

STANDARD OF REVIEW

An appellate court reviews the granting of a summary judgment under the same standard applied by the trial court under Rule 56, SCRPC. Quail Hill, LLC v. Cty. Of Richland, 387 S.C. 223, 692 S.E.2d 499, 505 (2010).

Summary Judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law”.

The circuit court has discretion whether to grant a stay of a matter pending before the court. Talley v. John-Mansville Sales Corp., 285 S.C. 117, 119, 328 S.E.2d 621, 623 (1985); City of Spartanburg v. Belk’s Dep’t Store of Clinton, 199 S.C. 458, 480, 20 S.E.2d 157, 167 (1942). Accordingly, the appropriate standard of review is abuse of discretion. “An abuse of discretion arises where the circuit court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support.” Steinke v. South Carolina Dept. of Labor, Licensing and Regulation, 336 S.C. 373, 398, 520 S.E.2d 142, 155 (1999).

ARGUMENT

I. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT AS TO THE RESPONDENT MICHAEL C. GOLEMIS IN THE FACE OF EVIDENCE THAT THERE EXISTED GENUINE ISSUES AS TO MATERIAL FACTS IN THIS MATTER.

Respondent’s Golemis’s Motion for Summary Judgment was improperly granted. There existed genuine issues as to material facts in this case. Respondent Golemis’s counsel argued that

because Respondent Golemis's company was a statutory-closed corporation, that Respondent Golemis was protected by its' corporate veil from personal liability and therefore, there exists a corporate veil that shields Respondent Golemis from any individual liability. Court Transcript dated May 17, 2017, p. 15, line 12 to p. 18, line 6.

Respondent Golemis's counsel attached a copy of S.C. Code Section 33-18-250 as an Exhibit to his Motion. This statute is inapplicable in this case and not raised as a cause of action by Appellant or as a defense/counterclaim by Respondent Golemis. This statute was misleading in that under the Official Comment Section, it specifically states that "This section does not prevent a court from "piercing the corporate veil" of a statutory corporation if the circumstances should justify imposing personal liability on the shareholders were the corporation not a statutory close corporation." See Motion for Summary Judgment as to Defendant Michael C. Golemis, Unmarked Exhibit of a copy of S.C. Code Section 33-18-250, Official Comment, Court Transcript dated May 17, 2017, p. 18, line 7 – line 22 (wherein the Court stopped Appellant's counsel's analysis regarding that statute).

When questioned by the Court as to what the Appellant's allegations were as to Respondent Golemis's acting in his individual capacity, Appellant's counsel argued that under Appellant's negligence cause of action against Respondent Golemis, that there existed a factual dispute as to what happened on July 14, 2015. Court Transcript dated May 17, 2017, p. 14, line 21 to p. 15, line 1 and p. 18, line 22 to p. 19, line 8. In addition, Appellant notified the Court that Respondent Golemis could be found personally liable, even if Respondent's company, Respondent Charleston Wrecking, Inc., was statutory-closed corporation, under the Sturkie criteria that was set forth in Appellant's Complaint. Court Transcript dated May 17, 2017, p. 19,

line 12 to p. 20, line 16, p. 21, line 18 to p. 22, line 13

To further support the claim of negligence against Respondent Golemis, Appellant Bouchelle testified at his deposition that Respondent Golemis was up on the roof directing work when additional damage was caused by Respondents. Deposition Transcript of David Bouchelle dated March 28, 2016, p. 58, line 14 to p. 60, line 11. Respondent Golemis testified at his deposition that he was notified that there was an accident at the job site, that he appeared at the job site and told James (an employee) to stop and that it was too late. Respondent Golemis also testified that he climbed on top of the building and saw the damage, pushed one panel off the building and then shut everything down. Deposition Transcript of Michael C. Golemis dated February 28, 2017, p. 18, line 1 to p. 33, line 8.

Respondent Charleston Wrecking, Inc. also argued that the hearing that mediation did not take place as a contractual precondition, Court Transcript dated May 17, 2017, p. 9, line 19 to p. 10, line 8. Appellant set forth in its' Opposition to Defendant Charleston Wrecking, Inc.'s Motion for Summary Judgment that Appellant had tried on multiple occasions to schedule mediation, even prior to the lawsuit, but that Respondent did not respond. Certainly, Respondent had a duty to request mediation as a contractual precondition and it did not and still has not. Opposition to Defendant Charleston Wrecking, Inc.'s Motion for Summary Judgment, P. 1, Paragraph 1 to Paragraph 3.

II. THE TRIAL COURT ERRED IN STAYING THIS MATTER SO THAT A SEPARATE ACTION AGAINST RESPONDENTS' INSURANCE COMPANIES COULD BE DETERMINED FIRST.

Respondents Charleston Wrecking, Inc. and Golemis's Motion to Stay as to Defendants was improperly granted. The Court gives no explanation as to the reason why the

Motion to Stay is granted. Respondent Charleston Wrecking, Inc. argued that their Motion to Stay is that “a resolution of that separate action will determine whether or not Bouchelle not only has coverage, but really, more importantly, whether Bouchelle, Incorporated misrepresented its -- - nature of its company on its insurance application”, Court Transcript dated May 17, 2017, p. 8, line 1 to p. 9, line 3.

Due to the fact that the Court did not explain its’ decision to grant the Respondents’ Motion to Stay, it is very difficult to argue that an abuse of discretion arose where the Court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support.

Nevertheless, Appellant will argue that Respondents’ allegations are without merit and Respondents have offered no evidence, statute, case law or court rule to substantiate its’ claim that its’ Motion to Stay be granted until the insurance lawsuit is resolved.


Due to this fact, the Appellant argued at the hearing and in its’ Opposition to Defendant Charleston Wrecking, Inc.’s Motion for Stay of Defendants, that Appellant has a right to pursue an action against a tortfeasor without it being mandatory to wait until an insurance lawsuit is resolved first. Opposition to Defendant Charleston Wrecking, Inc.’s Motion for Stay of Defendants and Court Hearing Transcript dated May 17, 2017, p. 10, line 22 to p. 12, line 13.

CONCLUSION

For the reasons stated, this Court should reverse or overruled the trial court’s decision, as its’ granting Respondent Golemis’s Motion for Summary Judgment and its’ granting Respondents’ Motion to Stay as to the Defendants.

November 6, 2017

Respectfully submitted,



Karen M. DeJong
DeJong Law Firm, LLC
272 West Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464
(843) 216-6161
(843) 216-1119 (Fax)
Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS
Hon. Kristi L. Harrington, Circuit Court Judge
Case No. 2015-CP-10-06615
(Appellate Case No. 2017-001532)

BOUCHELLE INCORPORATED,

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v.

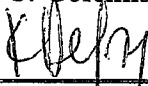
CHARLESTON
WRECKING, INC. and
MICHAEL C. GOLEMIS,

Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief and the Designation of Matter to be Included on the Record on Appeal, with names, mailing addresses and telephone numbers of all attorneys of record, in compliance with Rule 203, SCACR, on Respondents Charleston Wrecking, Inc. and Michael C. Golemis by depositing a copy of it in the United States Mail, postage prepaid, on November 6, 2017, addressed to their attorneys of record, Kerry W. Koon, 147 Wappoo Centre, Suite 203, Charleston, SC 29412 (for Respondent Charleston Wrecking, Inc.) and Michael W. Sautter of Query Sautter Forsythe, LLC, 147 Wappoo Creek, Suite 202, Charleston, SC 29412 (for Respondent Michael C. Golemis).

November 6, 2017



Karen M. DeJong
DeJong Law Firm, LLC
272 West Coleman Blvd., Ste. 200
Mount Pleasant, South Carolina 29464-5652
(843) 216-6161
Attorney for Appellant

Other Counsel of Record:
Kerry W. Koon
147 Wappoo Centre, Suite 203

Charleston, SC 29412
Tel. No. (843) 795-7000
Attorney for Respondent Charleston Wrecking, Inc.

Michael W. Sautter
Query Sautter Forsythe, LLC
147 Wappoo Creek, Suite 202
Charleston, SC 29412
Tel. No. 843-795-9500
Attorney for Michael C. Golemis

Exhibit 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 - CP-10-6615

Bouchelle Incorporated

Charleston Wrecking, Inc, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	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.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Defendant Charleston Wrecking's Motions for Summary Judgment, filed 1/10/17 and 3/31/17, is denied, as Defendant has failed to demonstrate a lack of a genuine issue of material fact. Defendant Michael Golemis's Motion for Summary Judgment is granted, as Defendant has demonstrated no genuine issue of material fact exists as to the claims made against him. Defendant's Motion for Stay, filed 3/31/17, is granted. Plaintiff has voluntarily withdrawn the claim of breach of contract.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

JULIE J. ARMSTRONG
 CLERK OF COURT
 2017 JUN -8 PM 12:00

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)
		\$
		\$
		\$
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

Exhibit 4

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BERKELEY) CASE NO. 2015-CP-08-6615

3
4 BOUCHELLE,)
INCORPORATED,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 CHARLESTON WRECKING,) Date: May 17, 2017
INCORPORATED,)
8
9 Defendant.

10 * * * * *

11

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B E F O R E:

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The Honorable Kristi Harrington

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Denise J. Lauder, RPR

23

Ninth Judicial Circuit

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A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

KAREN M. DEJONG, ESQUIRE
DeJong Law Firm, LLC
272 West Coleman Boulevard, Suite 200
Mount Pleasant, SC 29464

REPRESENTING THE DEFENDANT, MICHAEL GOLEMIS:

MICHAEL ELLIS, ESQUIRE
Query, Sautter & Associates
147 Wappoo Creek Dr., Suite 202
Charleston, SC 29412

REPRESENTING THE DEFENDANT

CHARLESTON WRECKING, INCORPORATED:
KERRY W. KOON, ESQUIRE
147 Wappoo Creek Dr., Suite 203
Charleston, SC 29412

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INDEX

	Page No.
Proceedings.....	4
REPORTER'S CERTIFICATE.....	23

INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were had May
2 17, 2017, Court of Common Pleas, Berkeley County,
3 11:17 a.m.)

4 THE CLERK: Your Honor, the next case
5 is 2015-6615, Bouchelle Incorporated v. Charleston
6 Wrecking.

7 THE COURT: Counsel, if you would state
8 your name for the record and who you represent.

9 MS. DEJONG: Karen DeJong on behalf of
10 the Plaintiff, Bouchelle Incorporated.

11 MR. ELLIS: Michael Ellis filling in
12 for Michael Sautter, Query, Sautter & Associates,
13 representing the individual Defendant Michael
14 Golemis.

15 MR. KOON: Kerry Koon representing the
16 Defendant Charleston Wrecking, Incorporated.

17 THE COURT: Okay. And, Mr. Ellis,
18 what's before me here today?

19 MR. ELLIS: May it please the Court,
20 Your Honor? And I'm filling in one time for
21 Mr. Sautter on this case, but Mr. Koon --

22 THE COURT: Are you prepared to go
23 forward at this time?

24 MR. ELLIS: Yes, Your Honor.

25 THE COURT: I show that you have filed

1 a motion for summary judgment on behalf of your
2 client; is that correct?

3 MR. ELLIS: That's correct, Your Honor.

4 THE COURT: And which defendant has
5 filed a motion to stay?

6 MR. KOON: Charleston Wrecking,
7 Incorporated. We also have a motion for summary
8 motion.

9 THE COURT: You also have a motion for
10 summary judgment. And, Ms. DeJong, do you have any
11 motions pending?

12 MS. DEJONG: No, I do not.

13 THE COURT: You're prepared on all of
14 the motions by the defendant?

15 MS. DEJONG: Yes, ma'am.

16 THE COURT: All right. Who wishes to
17 go forward first? Mr. Koon.

18 MR. KOON: I've been in the case longer
19 so I can probably give you the lay of the land.
20 And then I will invite Mr. Ellis to make his
21 argument --

22 THE COURT: Tell me about the motion to
23 stay. What is that?

24 MR. KOON: Your Honor, in the course of
25 discovery -- this is a construction dispute where

1 it's alleged that Charleston Wrecking, who is a
2 demolition contractor, subcontracted to Bouchelle,
3 Incorporated, the general contractor, committed an
4 act of negligence and/or breach of contract by
5 making an improper saw cut resulting in a piece of
6 wall coming down and damaging a piece of wall that
7 wasn't supposed to come down. It's more
8 complicated than that, but that tells you what the
9 case is about.

10 During the discourse of -- the course
11 of discovery, we learned that there was an -- an
12 action pending whereby Bouchelle, Incorporated
13 filed a separate action against their own insurance
14 company and Charleston Wrecking's insurance
15 company, as well as their own insurance agent
16 alleging that there was coverage for this incident.

17 That action is still pending, and I
18 think you have some motions on your schedule for
19 later in the week. The reason that it's important
20 to this case is that in the contract between
21 Bouchelle, Incorporated, as the general contractor,
22 and Charleston Wrecking, Incorporated, as the
23 subcontractor, it is required that the general
24 contractor maintain liability insurance for
25 protection against claims arising out of the

1 subcontract.

2 It's also stated in the contract that
3 as to insurance covering property, and we would say
4 that that includes a general liability policy which
5 has a property damage component, that the parties
6 waive any claims that are covered by insurance
7 against each other. So those are in the contract.

8 Now, we discovered and we attached to
9 our motion to stay -- actually, I think it's
10 attached to our motion for summary judgment, but it
11 applies equally to the motion to stay, that in the
12 action that Bouchelle, Incorporated is maintaining
13 against its own insurance company for coverage that
14 is required of it in our contract, that the
15 insurance company is defending the action by
16 alleging that Bouchelle, Incorporated
17 misrepresented on its application the nature of its
18 business.

19 The application states that it's a
20 carpentry business doing 80 percent residential and
21 20 percent commercial when, in fact, and I don't
22 think this could be disputed, it's admitted in
23 discovery, Bouchelle, Incorporated is a commercial
24 and industrial general contractor. And this was a
25 commercial job.

1 So our motion to stay is that the
2 resolution of that separate action will determine
3 whether or not Bouchelle not only has coverage, but
4 really more importantly, whether Bouchelle,
5 Incorporated misrepresented its -- the nature of
6 its company on its insurance application.

7 If he did that, that would implicate an
8 element of bad faith which certainly would be a
9 breach of the contract between our client, which
10 required the provision of commercial general
11 liability insurance. So that's the nature of the
12 action for the motion for stay.

13 Obviously, we'll spend lots of money on
14 attorney's fees and other issues to fight an action
15 that may not need to be fought because -- since
16 this is a requirement of the contract, Mr. -- or
17 Bouchelle, Incorporated couldn't recover twice from
18 its own insurance company, whether there would be a
19 subsequent accident or subrogated, who knows, but
20 that's not before the Court.

21 So we think it's a matter of judicial
22 economy, as well as fairness to Charleston Wrecking
23 to determine the issue of coverage, but not just
24 coverage. It's not a technical denial of coverage.
25 It's a denial saying, you told us you were a

1 residential carpenter, not a commercial general
2 contractor, and that would be a very significant
3 issue. And I will address the summary judgment
4 motion at whatever time you would like.

5 THE COURT: Happy to hear from you.

6 MR. KOON: Basically, the allegations
7 are the same as far as Charleston Wrecking's
8 summary judgment motion in that, if there has been
9 a breach of contract, as there appears to be
10 because of the allegations of the misrepresentation
11 of the -- of the insurance application, and we've
12 attached the insurance company's denial letter
13 which makes it very clear that that's why they're
14 denying coverage, that that would be grounds for
15 summary judgment in the breach of the contract by
16 the general; but if Your Honor doesn't grant that
17 motion, then we would ask Your Honor to stay the
18 action until the insurance case is decided.

19 Additionally, we did put in our motion
20 that there was a contractual precondition that
21 mediation occur before the filing of the suit.
22 That didn't happen. And I need to certainly make
23 the Court aware that we have a scheduling order
24 that does require mediation; but, nevertheless,
25 that was a precondition to filing a lawsuit.

1 That was in the control of the
2 Plaintiff, and the Plaintiff chose to file this
3 lawsuit without mediation, and we think that's a
4 violation of the condition present as well upon
5 which Your Honor could grant summary judgment and
6 then we could mediate, the lawsuit with the
7 insurance company could be settled, and then they
8 can choose to do what they choose to do.

9 Thank you, Your Honor.

10 THE COURT: Okay. Mr. Ellis, is your
11 motion different? Do you wish --

12 MR. ELLIS: Yes, Your Honor.

13 THE COURT: Ms. DeJong, let me hear
14 your response to the motion to stay and motion for
15 summary judgment.

16 MS. DEJONG: Yes, Your Honor. Do you
17 have the opposition that I filed for the motion
18 against the motion for summary judgment of
19 Charleston Wrecking and my opposition to Charleston
20 Wrecking's motion to stay? Do you have a copy?

21 THE COURT: Yes, I do.

22 MS. DEJONG: With regards to the
23 defendant's motion to stay this proceeding at the
24 time, there's factual issues obviously involved
25 with whether or not my client knew that he did not

1 have sufficient commercial liability insurance at
2 the time he signed the contract with defendant.

3 The reason why we filed a lawsuit
4 against the insurance company a year later was not
5 because we believed that the defendant is absolved
6 of all negligence, but because the defendant's
7 attorney did not file a lawsuit against the
8 insurance company.

9 I felt I had no choice. My goal and my
10 Plaintiff's goal has always been to go proceed with
11 this pending lawsuit. The defendant has admitted
12 liability for the most part. It's just a matter of
13 damages. He claims he wasn't on the roof at the
14 time the damage occurred with the wall. We have
15 witnesses -- I have witnesses saying he was. So
16 with regard to summary judgment, that's a genuine
17 issue as to material fact.

18 And let me just keep going with the
19 stay. Again, this lawsuit with Canopus and Seneca
20 has to do with whether or not my client was aware
21 that he did not have sufficient coverage at the
22 time of the incident, and that's something that
23 needs to be proved later on.

24 There is no court rule or any state
25 statute, that I'm aware of, that makes -- that

1 stops a plaintiff from proceeding in a civil matter
2 pending the result of an insurance company lawsuit.
3 Because that would take years and that's not --
4 that's not the spirit of the law.

5 I think that would go against public
6 policy if we had to stop everything right now in
7 our tracks and hope and pray that the insurance
8 company is going to change their mind, and I've got
9 a 50/50 chance they're going to pay out in three
10 years from now.

11 He hasn't cited any case law either to
12 support his position that he has any authority to
13 request a stay.

14 THE COURT: Okay. Let me hear from you
15 as to the summary judgment.

16 MS. DEJONG: In regards to the summary
17 judgment, let's see, I'm not quite sure -- I mean,
18 he puts in his summary judgment motion something
19 about breach of contract with regard to insurance.
20 I filed a lawsuit also with a negligence claim. So
21 I filed a breach of contract, but I'm primarily
22 going for negligence more so than breach of
23 contract.

24 If we want to dismiss breach of
25 contract, I'm fine with that. There goes the

1 insurance complaint that he has.

2 THE COURT: Mr. Koon.

3 MR. KOON: Your Honor, the duties which
4 would have to be proven for a negligence case are
5 the duties of the contract. So I can't stop her, I
6 guess, from dismissing a contract claim if she
7 wants to, but you get right back in the same boat,
8 because the only connection that these folks have
9 is the obligations of the contract, which would
10 establish whatever duties she would allege were
11 violated under the -- under a negligence claim.

12 And I think that --

13 THE COURT: Have you-all talked about
14 this case before, it could be complied with Rule
15 11?

16 MS. DEJONG: Yeah, we have.

17 MR. KOON: I think we have, Your Honor.
18 But what I also wanted to say, there is no factual
19 allegation included in these responses. We don't
20 have any deposition testimony excerpts noted, we
21 don't have any affidavits. That maybe goes more to
22 Mr. Ellis's client's motion than to my motion,
23 because my motion is based on the contract and the
24 contract is in evidence.

25 But as far as the stay goes, I think

1 the Court certainly has the inherent ability to
2 recognize the judicial economy and expense to the
3 parties would be served by having the two cases on
4 a parallel track and allowing the issues to be
5 decided by the insurance case.

6 And, remember, I'm not saying that her
7 -- her problem is she sued our insurance company --

8 THE COURT: Do you not want me to hear
9 your motion for summary judgment?

10 MR. KOON: I do want you to hear it,
11 Your Honor, but I'm saying that if you don't -- if
12 you end up not granting that, then I would ask you
13 to grant the stay.

14 THE COURT: Okay.

15 MR. KOON: And the issue that she's
16 raising about who was on top of the wall and who
17 wasn't, that's really Mr. Golemis's personal issue,
18 but I would point out that there is no affidavit
19 opposing Mr. Golemis --

20 THE COURT: Let me hear from --

21 MS. DEJONG: I've made the negligence
22 claim. Mr. Golemis is the owner of Charleston
23 Wrecking. He is part and parcel of what happened
24 that day. Obviously, we've had dispute regarding
25 the facts of that day, that's why summary judgment

1 should be denied.

2 With regards to the mediation
3 requirements in the contract, I have tried prior to
4 filing the lawsuit arranging for mediation with
5 Mr. Koon. Even up until today, I've been trying to
6 schedule mediation on this case. So I don't think
7 that's a valid reason to dismiss this matter in
8 summary judgment.

9 THE COURT: Mr. Ellis.

10 MR. ELLIS: And, Your Honor, I have
11 nothing to say as far as Mr. Koon --

12 THE COURT: I just want to hear from
13 you on your motion.

14 MR. ELLIS: Thank you, Your Honor.
15 Okay. May it please the Court?

16 THE COURT: Yes, sir.

17 MR. ELLIS: Your Honor, Mr. Golemis has
18 filed this motion for 56 -- Rule 56, motion for
19 summary judgment based upon their being no material
20 question of fact that there does exist a corporate
21 veil that shields Mr. Golemis from any individual
22 liability. He is entitled as a matter of law to be
23 dismissed from this action.

24 The contract that Mr. Koon referred to
25 earlier is a contract between Bouchelle,

1 Incorporated and Charleston Wrecking, Incorporated.
2 It was entered into on or about May 20, 2015. It
3 was a contract for Charleston Wrecking, Inc. to
4 provide demolition services for Bouchelle,
5 Incorporated at the plaintiff's construction site.

6 That contract was signed by David
7 Bouchelle as president of Bouchelle, Inc., and it
8 was signed by my client, Michael Golemis, as
9 president of Charleston Wrecking, Inc. And, Your
10 Honor, before I go further, you do have a copy of
11 our motion with all the exhibits attached.

12 THE COURT: I do.

13 MR. ELLIS: Charleston Wrecking,
14 Incorporated is a statutory closed corporation. It
15 came into existence with filings of the Secretary
16 of State on March 31, 2006. A copy of those
17 filings is attached to our motion. The corporation
18 has been in existence and in good standing since
19 that March 31st, 2006 time.

20 It was in good standing and an active
21 corporation when it entered into this contract with
22 Plaintiff, and it is in good standing and still an
23 active corporation today.

24 Charleston Wrecking, Incorporated did
25 serve Requests for Admission upon Plaintiff on or

1 about February 21, 2016, and no responses were ever
2 made to those Requests for Admission; and they are
3 being admitted.

4 And one of those admissions is that
5 Michael Golemis was not a party to the contract
6 between Bouchelle, Incorporated and Charleston
7 Wrecking, Incorporated.

8 Another admission by the Plaintiff was
9 that no other contract naming Mr. Golemis
10 individually was ever entered into with the
11 Plaintiff. Also, attached to our motion is an
12 affidavit by Mr. Golemis. In his sworn statement,
13 he does say it was the corporation that was the
14 contracting party, and it was an active corporation
15 at the time of entering into the contract and is
16 still an active corporation today. Mr. Golemis in
17 his sworn statement says he's not an individual
18 party to this contract.

19 Now, also attached to our motion is a
20 copy of the South Carolina Code 33-18-250, which
21 does give shareholders of a closed corporation a
22 protection of a corporate veil from personal
23 liability. Mr. Golemis never did any personal acts
24 that were outside the scope of his acting on behalf
25 of the corporation.

1 There is no question of material fact
2 that there indeed was a corporate veil at the time
3 of entering into the contract. Mr. Golemis is
4 protected by that corporate veil and, as a matter
5 of law, he's entitled to be dismissed from all
6 actions of the Plaintiff's claims.

7 MS. DEJONG: Your Honor, the statute
8 cited by the Defendant and what he quotes from is
9 on -- are not on point with the argument he's
10 making. He's citing the -- it's an exhibit he
11 attached to his motion. It looks like South
12 Carolina Code 33-18-250.

13 And if you read it, it says that
14 failure of a statutory close corporation to observe
15 the usual corporate formalities or requirements
16 relating to the exercise of its powers of managing
17 it is not grounds for imposing personal liability
18 upon the shareholders.

19 From all of the work I've done with
20 corporations, that would mean failure to call an
21 annual meeting --

22 THE COURT: What are you alleging that
23 he did in his individual capacity?

24 MS. DEJONG: Under the negligence
25 claim, he was warned on several occasions,

1 including the day that the damage was done to the
2 wall that shouldn't have been wrecked, that the
3 procedure he had given to the employees was going
4 to cause harm.

5 And, in fact, despite not listening to
6 what my witnesses and Plaintiff have said, he went
7 ahead and wrecked the wall and wrecked more than he
8 should have. It's about \$260,000 worth of damage.

9 THE COURT: He was employed and working
10 in his capacity at Charleston Wrecking at the time,
11 correct?

12 MS. DEJONG: Yes, but he's a sole owner
13 and a sole owner can be found personally liable in
14 the event -- I put that in my complaint under the
15 Sturkie case, but if there's gross negligence, then
16 the owner can be found at fault --

17 THE COURT: So I need to hear those
18 factors then.

19 MS. DEJONG: Say again.

20 THE COURT: I need to hear those
21 factors.

22 MS. DEJONG: They're in the complaint,
23 and I would gladly read them to you. May I have a
24 copy of that?

25 MR. ELLIS: Yes.

1 MS. DEJONG: At the last hearing I also
2 put it on the record what those factors were in
3 Sturkie.

4 THE COURT: When was the last hearing,
5 Mr. Ellis? I'm sorry, you probably don't know.

6 Mr. Koon?

7 MR. KOON: I can probably fill you in.
8 These matters came before Judge Young two or three
9 months ago. In the middle of the argument --

10 THE COURT: In what fashion?

11 MR. KOON: Motion for summary judgment
12 on behalf of Charleston Wrecking and on behalf of
13 Golemis, but Judge Young didn't rule because it was
14 developed that we still had a deposition pending.
15 And he said, I'm not going to rule on it until
16 that's done.

17 THE COURT: Why aren't you in front of
18 him?

19 MR. KOON: Because there was no ruling.
20 He didn't retain jurisdiction of the case.

21 THE COURT: Okay.

22 MR. KOON: I think the clerk's record
23 would show that it was -- just ended up as a
24 non-issue, a non-ruling.

25 THE COURT: Okay.

1 MR. KOON: So these issues were -- were
2 begun to be raised and were argued again, but I
3 have to point out, Your Honor, the allegations of
4 the complaint just aren't enough. There is no
5 opposing affidavit, there's no --

6 THE COURT: I think this is Mr. Ellis's
7 motion.

8 MR. KOON: I do understand that --

9 THE COURT: Thank you.

10 MR. KOON: -- but it applies to both
11 motions I think.

12 MS. DEJONG: There may not be an
13 affidavit by his testimony today that there are
14 genuine issues of material facts as to this matter.

15 THE COURT: So are you now a witness?

16 MS. DEJONG: No, I'm not a witness. I
17 have witnesses and I have the Plaintiff.

18 THE COURT: All right. Anything else
19 I need to know? I have a copy of the complaint.

20 MS. DEJONG: That would be the third
21 cause of action would be the Sturkie criteria.

22 THE COURT: Thank you.

23 And, Mr. Ellis.

24 MR. ELLIS: And, Your Honor, one of the
25 facts that is before the Court today is through Mr.

1 Golemis's affidavit, is that in paragraph 9 he does
2 say he was not personally present at the time of
3 the alleged incident giving rise to this action;
4 however, there were people present that he fully
5 trusted to act on the best behalf of Charleston,
6 Wrecking, Inc.

7 I believe the facts before the Court
8 today speak for themselves. There was a corporate
9 entity in existence of entering the contract. All
10 actions in performance of that contract were taken
11 on behalf of that corporate entity. There is no
12 factual issue as to piercing the corporate veil
13 that is before the Court today.

14 THE COURT: Okay. What is your
15 position as to the stay?

16 MR. ELLIS: We would prefer to --

17 THE COURT: Assuming you're still in
18 the case.

19 MR. ELLIS: Assuming we're still in the
20 case, we have no objection to a stay.

21 THE COURT: All right. Anything
22 further, Mr. Koon?

23 MR. KOON: No, Your Honor.

24 THE COURT: I will take the matter
25 under advisement. You will have my ruling by close

1 of business Friday. Thank you.

2 (These proceedings were concluded at
3 11:41 a.m.)

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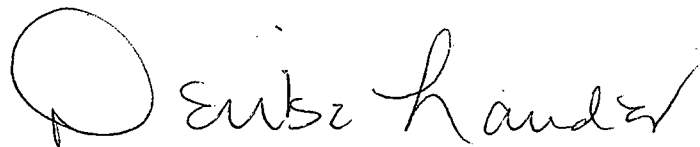
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3 CERTIFICATE OF REPORTER

4 I, Carol Denise Lauder, Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby certify
7 that the foregoing transcript is a true, accurate,
8 and complete record.

9 I further certify that I am neither related
10 to nor counsel for any party to the cause pending
11 or interested in the events thereof.

12 Witness my hand, I have hereunto affixed my
13 official seal this 27th day of August, 2017 at
14 Charleston, Charleston County, South Carolina.

15
16
17 

18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017
23
24
25

Exhibit 5

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Hon. Kristi L. Harrington, Circuit Court Judge
Case No. 2015-CP-10-06615

(Appellate Case No. 2017-001532)

BOUCHELLE INCORPORATED,

Appellant,

vs.

CHARLESTON WRECKING, INC. and MICHAEL C. GOLEMIS

Respondents.

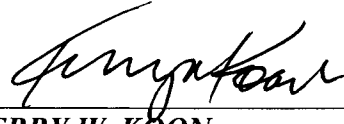
***AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION TO EXCLUDE AND STRIKE &
MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF AND
DESIGNATION OF MATTERS***

PERSONALLY, appeared before me, Kerry W. Koon, who, first being duly sworn, deposes and says as follows:

That I am attorney for Charleston Wrecking, Inc. in the above captioned action. I represented Charleston Wrecking, Inc. at the hearing of May 17, 2017, on Charleston Wrecking, Inc.'s motion for summary judgment and motion to stay. By Order dated June 1, 2017, and filed June 8, 2017, Charleston Wrecking, Inc.'s motion for summary judgment was denied and its motion for stay was granted. By that same order, Michael C. Golemis' motion for summary judgment was granted.

Although it filed Opposition to the Charleston Wrecking, Inc.'s motions (attached), Appellant did not serve the undersigned with any notice of deposition excerpts to be presented to

the Court nor any affidavits supporting Appellant's opposition to the motions. The record demonstrates that Appellant did not submit to the trial court, any affidavits, depositions, or deposition excerpts at or prior to the hearing of May 17, 2017.



KERRY W. KOON
147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
(843) 795-7000
ATTORNEY FOR RESPONDENT CHARLESTON WRECKING, INC.

SWORN to and subscribed before me
this 29 day of November, 2017.



Notary Public for South Carolina
My Commission Expires: 5/22/2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 BOUCHELLE INCORPORATED,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLESTON WRECKING, INC.,)
 And MICHAEL C. GOLEMIS,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 IN THE NINTH JUDICIAL CIRCUIT
 CASE NO. 2015-CP-10-6615

**OPPOSITION TO
 DEFENDANT CHARLESTON
 WRECKING, INC.'S MOTION FOR
 SUMMARY JUDGMENT**

FILED
 2017 MAY 16 PM 1:32
 JULIE J. ARMSTRONG
 CLERK OF COURT
 RY

Now comes Plaintiff, BOUCHELLE INCORPORATED, by and through its' undersigned counsel, in opposition to Defendant Charleston Wrecking, Inc.'s Motion for Summary Judgment, and hereby responds as follows:

1. With regard to Defendant Charleston Wrecking's argument that mediation was a condition precedent prior to the filing of this action, Defendant's counsel was aware that there was a dispute as early as September 23, 2015, between phone calls of Kerry Koon, Esq., attorney for Defendant, and Karen M. DeJong Esq., attorney for Plaintiff.
2. At no time did Mr. Koon seek to enforce the mediation requirement prior to the lawsuit being filed on December 8, 2015. Thereafter, Defendant has not requested mediation throughout the duration of this matter.
3. Since depositions have been concluded, Plaintiff's attorney has tried on at least two separate occasions to schedule mediation. No response has been forthcoming from the Defendant's attorney.
4. With regard to Defendant's allegations that Plaintiff breached its contract with

Defendant Charleston Wrecking because Plaintiff did not have adequate commercial liability insurance, this argument was not set forth in Defendant's pleadings and there is a factual dispute regarding the insurance coverage and this lawsuit.

5. Further, in Defendant Michael Golemis's attached Affidavit, Exhibit A, Defendant Golemis states in Paragraph #6, that he was not present at the time of the incident which is the basis of this lawsuit.
6. At Defendant Golemis's deposition on February 28, 2017, he acknowledged that he was on the roof at the time the damage occurred.

THEREFORE, based upon the foregoing, Plaintiff respectfully requests that Defendant Charleston Wrecking, Inc.'s Motion for Summary Judgment be denied. There exists genuine issues of fact in this matter and Plaintiff is and has always been ready and willing to participate in mediation.

Dated: May 16, 2017

DEJONG LAW FIRM, LLC

By: 

Karen M. DeJong, Esq.
272 West Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464-5652
Tel. No. 843-216-6161
karen@dejonglawfirm.com

Certificate of Service:

I hereby certified that a copy of this pleading
Has been served by email, regular mail and
Hand-delivery to all counsel of record.



Karen M. DeJong, Esq.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 BOUCHELLE INCORPORATED,)
)
 Plaintiff,)
)
 vs.)
)
 CHARLESTON WRECKING, INC.,)
 And MICHAEL C. GOLEMIS,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 IN THE NINTH JUDICIAL CIRCUIT
 CASE NO. 2015-CP-10-6615

**OPPOSITION TO
 DEFENDANT CHARLESTON
 WRECKING, INC.'S MOTION FOR
 STAY OF DEFENDANTS**

FILED
 2017 MAY 16 PM 1:32
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

Now comes Plaintiff, BOUCHELLE INCORPORATED, by and through its' undersigned counsel, in opposition to Defendant Charleston Wrecking, Inc.'s Motion for Stay of Defendants, and hereby responds as follows:

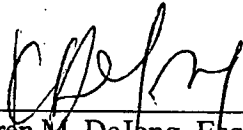
1. With regard to Defendant Charleston Wrecking's argument that this lawsuit should be stayed pending a resolution in a lawsuit brought by Plaintiff against his insurance company, Canopus US Insurance, Inc., and Defendant's insurance company, Seneca Speciality Insurance Co., Plaintiff has a constitutional right to have his day in court and proceed to trial against the Defendants.
2. There is no federal or state statute or court rule that denies Plaintiff his right to pursue liability and damages against a someone who has breached a contract and/or committed malfeasance against a Plaintiff.
3. For Defendant to state that this action be stayed pending resolution of the insurance company claims, is ludicrous and against public policy.

THEREFORE, based upon the foregoing, Plaintiff respectfully requests that Defendant Charleston Wrecking, Inc.'s Motion for Stay of Defendants be denied.

Dated: May 16, 2017

DEJONG LAW FIRM, LLC

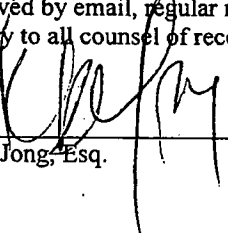
By:



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Tel. No. 843-216-6161
karen@dejonglawfirm.com

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Hand-delivery to all counsel of record.



Karen M. DeJong, Esq.

Exhibit 6

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Hon. Kristi L. Harrington, Circuit Court Judge
Case No. 2015-CP-10-06615

(Appellate Case No. 2017-001532)

RECEIVED
DEC 01 2017
SC Court of Appeals

BOUCHELLE INCORPORATED,

Appellant,

vs.

CHARLESTON WRECKING, INC. and MICHAEL C. GOLEMIS


Respondents.

***AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION TO EXCLUDE AND STRIKE &
MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF AND
DESIGNATION OF MATTERS***

PERSONALLY, appeared before me, Michael Ellis who, first being duly sworn, deposes and says as follows:


1. That I am an associate attorney at Query Sautter & Associates, LLC.
2. That on March 17, 2017 I served as substitution counsel in place of the attorney of record, Michael W. Sautter, Esquire, also of Query Sautter & Associates, LLC on behalf of the individual Defendant, Michael C. Golemis.
3. Prior to the March 17, 2017 Motion for Summary Judgment, Query Sautter & Associates, LLC was not served with any designation of deposition excerpts.

4. At the March 17, 2017 Motion for Summary Judgment, Plaintiff did not introduce any deposition excerpts for the trial court's consideration as evidenced by the trial transcript attached to the affidavit of counsel for Charleston Wrecking, Inc.
5. It is my belief that the depositions of David Bouchelle and Michael Golemis were not part of the trial court record and should therefore be struck from the record on appeal and any reference to same should be struck from the Appellant's Brief.



Michael Ellis

SWORN to and subscribed before me
this 29 day of NOVEMBER, 2017.



Notary Public for South Carolina
My Commission Expires: 5/22/2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Hon. Kristi L. Harrington, Circuit Court Judge
Case No. 2015-CP-10-06615

(Appellate Case No. 2017-001532)

BOUCHELLE INCORPORATED,

Appellant,

vs.

CHARLESTON WRECKING, INC. and MICHAEL C. GOLEMIS

Respondents.

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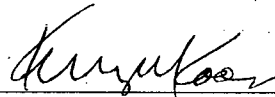
DEC 01 2017

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served Respondents' Motion to Exclude and Strike & Motion for Extension of Time to File Initial Brief and Designation of Matters together with exhibits and supporting affidavits, on Karen M. DeJong, Esq., by depositing a copy of the same in the United States Mail, postage prepaid, on November 30, 2017, addressed to 272 West Coleman Blvd., Ste. 200, Mt. Pleasant, SC 29464.

November 30, 2017



KERRY W. KOON

147 Wappoo Creek Drive, Ste. 203

Charleston, SC 29412

(843) 795-7000

ATTORNEY FOR RESPONDENT CHARLESTON WRECKING, INC.

Telephone:

Bus: (843) 795-7000

Fax: (843) 762-5276

KERRY W. KOON
Attorney at Law
147 Wappoo Creek Drive
Wappoo Centre, Suite 203
Charleston, South Carolina 29412

November 30, 2017

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SC Court of Appeals

VIA FEDEX #8100 3202 5491
Jenny Kitchings, Clerk of Court
Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: *Bouchelle Incorporated v. Charleston Wrecking, Inc. and Michael C. Golemis*
Appellate Case #: 2017-001532

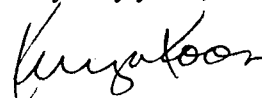
Dear Ms. Kitchings,

Please find enclosed an original and six (6) copies of Respondents' joint motion to exclude and strike certain portions of the Appellant's designation of matters together with exhibits, supporting affidavits and Proof of Service of the same for filing in the above referenced matter. Also enclosed is my check for the required fee.

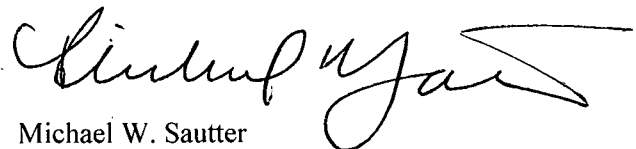
Please note as part of our motion, Respondents are requesting that the time to file the Respondent's Initial Brief be extended until the issues concerning the record on appeal are resolved.

With kindest personal regards, I am

Very truly yours,



Kerry W. Koon



Michael W. Sautter

KWK:mm
Enclosures

cc: Karen M. DeJong, Esq.

FedEx.
TRK#
0215 8100 3202 5491

FRI - 01 DEC AA
STANDARD OVERNIGHT

28 USCA

29201
SC-US
CAE



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FedEx Express Package
US Airbill

FedEx
Tracking
Number

8100 3202 5491

Form
ID No.

0215

Recipient's Copy

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fedex.com 1800.GoFedEx 1800.463.3339

06077043

1 From [REDACTED]
Date 11/30/17
Sender's Name [REDACTED] Phone 843 795-7000
Company KOON, KERRY W, ATTORNEY
Address 147 WAPPOO CREEK DR STE 203
City CHARLESTON State SC ZIP 29412-2111

2 Your Internal Billing Reference GOLEMIS + CHAS. WRECKING

3 To Recipient's Name JENNY KITCHINGS,
CLERK OF COURT
Company S.C. COURT OF APPEALS
Address 1220 SENATE ST.
City COLUMBIA State SC ZIP 29201

RECEIVED

DEC 01 2017

Hold Weigh
FedEx location address
REQUIRED. NOT available for
FedEx First Overnight.
Hold Signature
REQUIRED. Available ONLY for
FedEx Priority Overnight and
FedEx 2Day to select locations.

4 Express Package Service *To most locations. Packages up to 150 lbs.
For packages over 150 lbs., use the
FedEx Express Freight US Airbill.

Next Business Day	2 or 3 Business Days
<input type="checkbox"/> FedEx First Overnight Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless Saturday Delivery is selected.	<input type="checkbox"/> FedEx 2Day A.M. Second business morning. Saturday Delivery NOT available.
<input type="checkbox"/> FedEx Priority Overnight Next business morning.* Friday shipments will be delivered on Monday unless Saturday Delivery is selected.	<input type="checkbox"/> FedEx 2Day Second business afternoon.* Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.
<input checked="" type="checkbox"/> FedEx Standard Overnight Next business afternoon.* Saturday Delivery NOT available.	<input type="checkbox"/> FedEx Express Saver Third business day. Saturday Delivery NOT available.

5 Packaging *Declared value limit \$500.

<input type="checkbox"/> FedEx Envelope*	<input checked="" type="checkbox"/> FedEx Pak*	<input type="checkbox"/> FedEx Box	<input type="checkbox"/> FedEx Tube	<input type="checkbox"/> Other
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6 Special Handling and Delivery Signature Options Fees may apply. See the FedEx Service Guide.

<input type="checkbox"/> Signature Required Package may be left without signature for delivery.	<input type="checkbox"/> Direct Signature Someone at recipient's address may sign for delivery.	<input type="checkbox"/> Indirect Signature If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only.
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Does this shipment contain dangerous goods?
One box must be checked.

<input type="checkbox"/> No Signature Required Package may be left without signature for delivery.	<input type="checkbox"/> Restricted Declaration	<input type="checkbox"/> Yes Shipper's Declaration not required.	<input type="checkbox"/> Dry Ice Dry Ice, 9 UN 1845	<input type="checkbox"/> Cargo Aircraft Only
--	---	---	--	--

Restrictions apply for dangerous goods. — see the current FedEx Service Guide.

7 Payment Bill to:

<input checked="" type="checkbox"/> Sender Act. No. in Section 1 will be billed.	<input type="checkbox"/> Recipient	<input type="checkbox"/> Third Party	<input type="checkbox"/> Credit Card	<input type="checkbox"/> Cash/Check
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Enter FedEx Acct. No. or Credit Card No. below. Obtain recip. Acct. No.

Total Packages Total Weight [REDACTED] Card Auth. [REDACTED]



8100 3202 5491

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