

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The 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.

RECEIVED
DEC 14 2017
SC Court of Appeals

**APPELLANT'S RETURN/OPPOSITION TO RESPONDENT'S
MOTION TO EXCLUDE AND STRIKE**

NOW COMES Appellant, Bouchelle Incorporated, by and through its' undersigned counsel, in return/opposition to Respondent's Motion to Exclude and Strike, as follows:

1. Respondents seek to have the Court order that Appellant's Designation of Matter and Initial Brief be altered by removing any reference to the deposition transcripts of Appellant Bouchelle Incorporated and Respondent Michael Golemis. Respondents allege that arguments and references concerning the deposition testimonies of Appellant Bouchelle Incorporated and Respondent Golemis were not presented to the

trial court as mandated by Rule 210(c) SCACR.

2. Appellant argues that arguments and references to the deposition testimonies of Appellant Bouchelle Incorporated and Respondent Golemis WERE presented to the trial Court in compliance with Rule 210(c) SCACR. See Affidavit of Karen M. DeJong attached hereto as **Exhibit 1**.
3. In Appellant's Opposition to Respondent Charleston Wrecking, Inc.'s Motion for Summary Judgment, Par. 6, deposition testimony was set forth as follows: "At Defendant Golemis's deposition on February 28, 2107, he acknowledged that he was on the roof at the time the damage occurred", see **Exhibit 2**.
4. In addition, at the May 17, 2017 hearing, Respondent's counsel argued and referred to Bouchelle Incorporated's deposition testimony in that Bouchelle Incorporated is a commercial and industrial general contractor, see Transcript of Hearing dated May 17, 2017, p. 18, ln 19 – 24 attached hereto as **Exhibit 3**. Further, Appellant's counsel argued and referred to Respondent Golemis's deposition testimony as follows: "The defendant has admitted liability for the most part. It's just a matter of damages. He claims he wasn't on the roof at the time the damage occurred with the wall.", see **Exhibit 3**, p. 22, ln 11 – 14. Finally, Appellant's counsel referred to the deposition testimony of Appellant Bouchelle Incorporated when she stated to the Court, "Under the negligence claim, he was warned on several occasions, including the day that the damage was done to the wall that shouldn't have been wrecked, that the procedure he had given to the employees was going to cause harm. And, in fact, despite not listening to what my witnesses and Plaintiff have said, he

went ahead and wrecked the wall and wrecked more than he should have.” See **Exhibit 3**, p. 29, ln 24 – p. 30, ln 8..

5. At no time during the hearing did Respondent Charleston Wrecking’s counsel or Respondent Golemis’s counsel object to the deposition testimonies being entered into the record.
6. Therefore, the deposition transcripts of Appellant and Respondent Golemis should be allowed to be filed with the Charleston County Clerk of Court, Alston v. Blue Ridge Transfer Co., 308 S.C. 292, 294-95, 417 S.E.2d 631, 632-33 (Ct. App. 1992), and these deposition transcripts should be included in the Designation of Matter to be Included in the Record on Appeal in this matter.

WHEREFORE, Appellant respectfully requests that Respondents’ Motion to Exclude and Strike the deposition transcripts of Appellant Bouchelle Incorporated and Respondent Golemis from Appellant’s Designation of Matters to be Included in Record on Appeal and Appellant’s Initial Brief be denied.

Dated: 12/13/2017
Mount Pleasant, SC

DEJONG LAW FIRM, LLC

By:  _____

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Michael W. Sautter, Esq.
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Tel. No. (843) 795-9500
Attorney for Respondent Michael C. Golemis

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

v.

CHARLESTON
WRECKING, INC. and
MICHAEL C. GOLEMIS,

Respondents.

RECEIVED

DEC 14 2017

SC Court of Appeals

**AFFIDAVIT OF APPELLANT'S COUNSEL IN SUPPORT OF
RETURN/OPPOSITION TO RESPONDENTS' MOTION TO EXCLUDE
AND STRIKE**

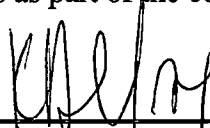
Personally appeared before me, Karen M. DeJong, who, first being duly sworn, deposes
and says as follows:

1. That I am the attorney for Appellant Bouchelle Incorporated in the above captioned matter. I represented Appellant Bouchelle Incorporated at the hearing held on May 17, 2017 on Respondent Charleston Wrecking, Inc. and Respondent Michael Golemis's Motions for Summary Judgment and Motions for Stay.
2. By Order dated June 1, 2017, and filed June 8, 2017, Respondent Charleston Wrecking, Inc's Motion for Summary Judgment was denied and its' Motion for Stay was granted. By the same Order, Respondent Michael Golemis's Motion for

Summary Judgment and Motion for Stay was granted.

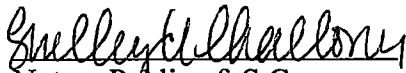
3. In Appellant's Opposition to Respondents' Motions for Summary Judgment (attached), Appellant included deposition testimony of Respondent Golemis.
4. At the May 17, 2017 hearing, further deposition testimony was offered as part of the oral arguments of Appellant (attached). At no time prior or during the hearing did Respondents' counsel object to the inclusion of the Appellant and Respondent Golemis's deposition testimonies as part of the court record.

December 13, 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

Sworn to before me this
13 day of December, 2017.



Notary Public of S.C.

My Commission Expires: 8/23/2020

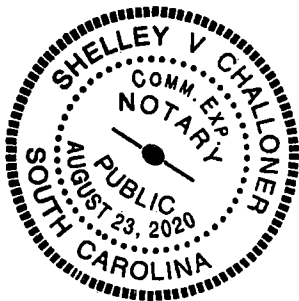


EXHIBIT 2

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
RY
L

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:

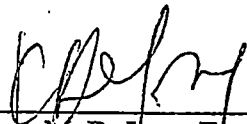
1. With regard to Defendant Charleston Wrecking's argument that this lawsuit should be stayed pending a resolution in a lawsuit brought by Plaintiff against his insurance company, Canopus US Insurance, Inc., and Defendant's insurance company, Seneca Speciality Insurance Co., Plaintiff has a constitutional 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:



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.

EXHIBIT 3

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 * * * * *

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13 B E F O R E:

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The Honorable Kristi Harrington

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Denise J. Lauder, RPR

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Ninth Judicial Circuit

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A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

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REPRESENTING THE DEFENDANT

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(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.

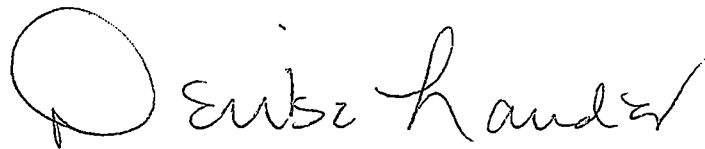
24 THE COURT: I will take the matter
25 under advisement. You will have my ruling by close

1 CERTIFICATE OF REPORTER
2

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

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

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

15
16 

17
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017
23
24
25

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
 JUNE J. ARMSSTRONG
 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 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.

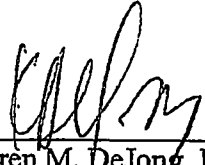
5. Further, in Defendant Michael Golemis's attached Affidavit, Exhibit A, Defendant Golemis states in Paragraph #6, that he was not present at the time of the incident which is the basis of this lawsuit.
6. At Defendant Golemis's deposition on February 28, 2017, he acknowledged that he was on the roof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

v.

CHARLESTON
WRECKING, INC. and
MICHAEL C. GOLEMIS,

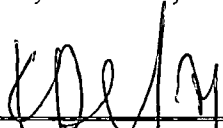
Respondents.

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SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Appellant's Return/Opposition to Respondent's Motion to Exclude and Strike to the 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 December 13, 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).

December 13, 2017



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(843) 216-6161
Attorney for Appellant

Other Counsel of Record:
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Charleston, SC 29412
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Attorney for Respondent Charleston Wrecking, Inc.

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

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karen@dejonglawfirm.com

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Fax: (843) 216-1119

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December 13, 2017

Honorable Jenny Abbott Kitchings
S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

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DEC 14 2017

Re: **Bouchelle Incorporated v. Charleston Wrecking, Inc., et al.**
Appellate Case No. 2017-001532

SC Court of Appeals

Dear Hon. Kitchings:

Enclosed please find an original and six (6) copies of Appellant's Return/Opposition to Respondents' Motion to Exclude and Strike certain portions of the Appellant's Designation of Matters together with supporting Affidavit, Exhibits and Proof of Service.

Thank you.

Very truly yours,



Karen M. DeJong, Esq.

KMD:abc
Enclosure

cc: Kerry W. Koon, Esq.
Michael W. Sautter, Esq.

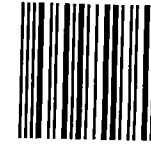
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