

STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED
JUN 15 2018
SC 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 Number: 2017-001532)

BOUCHELLE INCORPORATED,

Appellant,

vs.

CHARLESTON WRECKING, INC. and MICHAEL C. GOLEMIS,

Respondents.

RECORD ON APPEAL

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Golemis

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FORM 4

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 : ☐ Plaintiff ☐ Defendant
or
☐ 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 Plaintiff has voluntarily withdrawn the claim of breach of contract.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 :

INFORMATION FOR THE JUDGMENT INDEX

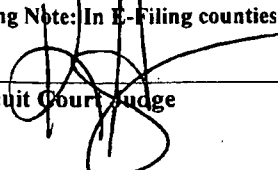
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2151
Judge Code

6/1/2017
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED,

CIVIL ACTION COVER SHEET

Plaintiff(s)

2015 -CP - 10

6615

vs.

CHARLESTON WRECKING, INC. and

MICHAEL C. GOLEMIS,

Defendant(s)

Submitted By: Karen DeJong, Esq.

SC Bar #:70699

Address: 940 Johnnie Dodds Blvd., Ste. 203, Mt. Pleasant, SC

Telephone #: 843-216-6161

Fax #: 843-216-1119

Other:

E-mail: karen@dejonglawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

5

NATURE OF ACTION (Check One Box Below)

Contracts		Torts - Professional Malpractice		Torts - Personal Injury		Real Property	
☐ X	Constructions (100)	☐	Dental Malpractice	☐	Conversion (310)	☐	Claim & Delivery (400)
☐	Debt Collection	☐	Legal Malpractice	☐	Motor Vehicle Accident	☐	Condemnation (410)
☐	General (130)	☐	Medical Malpractice	☐	Premises Liability (330)	☐	Foreclosure (420)
☐	Breach of Contract	☐	Previous Notice of Intent	☐	Products Liability (340)	☐	Mechanic's Lien (430)
☐	Fraud/Bad Faith	☐	Case #	☐	Personal Injury (350)	☐	Partition (440)
☐	(150)	☐	20 - NI -	☐		☐	
☐	Failure to Deliver/ Warranty (160)	☐	Notice/ File Med Mal (230)	☐	Wrongful Death (360)	☐	Possession (450)
☐		☐	Other (299)	☐	Assault/Battery (370)	☐	Building Code Violation (460)
☐	Employment	☐		☐	Slander/Libel (380)	☐	Other (499)
☐	Discrim (170)	☐		☐	Other (399)		
☐	Employment (180)						
☐	Other (199)						
Inmate Petitions		Administrative Law/Relief		Judgments/Settlements		Appeals	
☐	PCR (500)	☐	Reinstate Drv. License	☐	Death Settlement (700)	☐	Arbitration (900)
☐	Mandamus (520)	☐	Judicial Review (810)	☐	Foreign Judgment (710)	☐	Magistrate-Civil (910)
☐	Habeas Corpus	☐	Relief (820)	☐	Magistrate's Judgment	☐	Magistrate-Criminal
☐	Other (599)	☐	Permanent Injunction	☐	Minor Settlement (730)	☐	Municipal (930)
		☐	Forfeiture-Petition (840)	☐	Transcript Judgment (740)	☐	Probate Court (940)
		☐	Forfeiture—Consent	☐	Lis Pendens (750)	☐	SCDOT (950)
		☐	Other (899)	☐	Transfer of Structured Settlement	☐	Worker's Comp (960)
				☐	Payment Rights Application (760)	☐	Zoning Board (970)
						☐	Public Service Comm. (990)
				☐	Confession of Judgment (770)	☐	Employment Security Comm (991)
				☐	Petition for Workers Compensation Settlement Approval (780)	☐	Other (999)
				☐	Other (799)		
Special/Complex /Other							
☐	Environmental (600)	☐	Pharmaceuticals (630)				
☐	Automobile Arb. (610)	☐	Unfair Trade Practices (640)				
☐	Medical (620)	☐	Out-of State Depositions (650)				
☐	Other (699)	☐	Motion to Quash Subpoena in an Out-of-County Action (660)				
☐	Sexual Predator (510)	☐	Pre-Suit Discovery (670)				

Submitting Party Signature:

Date:

11/10/2018

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

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

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA,)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

BOUCHELLE INCORPORATED)

SUMMONS

Plaintiff,)

vs.)

FILE NO. 2015-CP-10-6615

CHARLESTON WRECKING, INC. and)
MICHAEL C. GOLEMIS)

Defendant.)

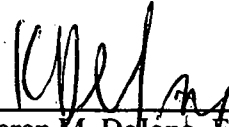
TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Mount Pleasant, South Carolina

Dated: November 10, 2015

Address:


Karen M. DeJong, Esq.

DeJong Law Firm, LLC

940 Johnnie Dodds Blvd., Ste. 203

Mount Pleasant, SC 29464

Attorney for Plaintiff

FILED

2015 DEC -8 AM 10:58

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

SCCA 401 (5/02)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

BOUCHELLE INCORPORATED,)
)
Plaintiff,)

CASE NO. 2015-CP-10-6615

vs.)

COMPLAINT
(Non-Jury)

CHARLESTON WRECKING, INC.,)
MICHAEL C. GOLEMIS,)
)
Defendants.)

FILED
2015 DEC -8 AM 10:58
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Plaintiff above named, complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

1. Plaintiff, Bouchelle Incorporated, is a corporation organized and existing under the laws of the State of South Carolina, with its' primary place of business located in the County of Charleston, and at all times relevant hereto said company was engaged in the reconstruction of commercial property, more specifically, property located at 7350 Industry Drive, North Charleston, South Carolina 29418.

2. Defendant, Charleston Wrecking, Inc., is a corporation organized and existing under the laws of the State of South Carolina, with its' primary place of business located in the County of Charleston, and at all times relevant hereto said company was hired by Plaintiff to demolish a section of a commercial building located at 7350 Industry Drive, North Charleston, South Carolina 29418.

3. Defendant, Michael C. Golemis, is a citizen and resident of Charleston County, South Carolina and is the sole owner of Defendant Charleston Wrecking, Inc..

4. The Court has jurisdiction over the parties and the subject matter of this action.

5. Plaintiff was hired by owners of 7350 Industry Drive, North Charleston, South Carolina to reconstruct the commercial building. Included in the agreement were the plans to demolish a rear building located behind the main building. Said buildings shared one wall.

6. Plaintiff entered into a contract with Defendants wherein Defendants would safely demolish the rear building, in accordance the parties's agreement, applicable building codes and industry standards.

7. Despite being verbally warned by Plaintiff and contrary to the terms of the parties' agreement, Defendants 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.

8. Plaintiff's reconstruction work was immediately halted while Plaintiff stabilized the shared wall and further work has been significantly delayed.

9. As a result of Defendants' actions, Plaintiff has been damaged and will be 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

(Negligence as to All Defendants)

10. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

11. At all times material hereto, Defendants, by and through their agents, servants and employees, undertook and was under a duty to demolish the rear building and to provide materials and services in accordance with the parties' agreement, applicable building codes and industry standards.

12. Defendants were negligent, grossly negligent, careless, reckless, willful and wanton in demolishing and supervising the demolition of said rear building, in accordance with applicable building codes and industry standards, all of which has directly and proximately caused defects and deficiencies in the commercial property, which will need to or have been corrected, repaired and/or replaced. Such negligence, gross negligence, carelessness, recklessness, willfulness and wantonness includes but are not limited to the following particulars, to wit:

- (a) In failing to exercise a duty of care in the demolition of the subject property;
- (b) In failing to adequately supervise the work and demolition of the subject property;
- (c) In failing to hire competent employees, subcontractors or specialty contractors;
- (d) In failing to adequately and competently supervise and/or train said employees, subcontractors or specialty contractors;
- (e) In demolishing the subject property in violation of applicable building codes, standard building practices, relevant product specifications and accepted demolition industry standards and practices;
- (f) In failing to properly demolish or supervise the rear building;
- (g) In other deficiencies and failures as will be proved at trial.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract as to All Defendants)

13. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

14. Plaintiff entered into a contract with Defendants for the demolition of the rear

building located at 7350 Industry Drive, North Charleston, South Carolina.

15. The contract provided that Defendants would demolish the rear building only and remove subsequent debris from the property location.

16. Defendants breached and/or willfully breached the contract by failing to demolish the rear building in the agreed upon manner. Instead, Defendants caused considerable structural damage to the shared wall and main building. Further, Defendants failed to remove any debris that was existing at that time.

17. As a direct and proximate result of Defendants' breach, Plaintiff has or will be required to expend great amounts of money to correct and repair the deficiencies and damages as set forth herein.

FOR A THIRD CAUSE OF ACTION

(Piercing Corporate Veil)

18. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

19. Defendant Golemis failed to adhere to corporate formalities as set forth in *Sturkie v. Sifly* 280 S.C. 453, 313 S.E.2d 316 (Ct. App.) and subsequent cases.

20. Defendant Golemis knew that his proposed plan to demolish the rear building was faulty and potentially destructive to the shared wall and the main building's structures.

Defendant Golemis was on the job site when Plaintiff communicated its' concerns.

Nevertheless, Defendant Golemis acted in a self-serving manner and in disregard of Plaintiff's concerns regarding the job site.

21. There will be an element of injustice or fundamental unfairness if the acts of Defendant Charleston Wrecking, Inc. be not regarded as the acts of Defendant Golemis.

22. As a result of Defendant Golemis's actions, Plaintiff has suffered and will continue to suffer damages.

FOR A FOURTH CAUSE OF ACTION
(Attorney Fees)

23. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

24. The Plaintiff is entitled to an award of its reasonable expenses, including reasonable attorney fees, incurred in connection with this action.

WHEREFORE, Plaintiff prays for judgment against the Defendants in an amount of actual, incidental and consequential damages to be determined by the trier of fact for the costs of this action, attorney fees, and for such other and further relief as this Court may deem just and proper.

DEJONG LAW FIRM, LLC

By: _____


Karen M. DeJong, Esq.
940 Johnnie Dodds Blvd., Ste. 203
Mount Pleasant, SC 29464
Tel. No. 843-216-6161
Fax No. 843-216-1119
Email: karen@dejonglawfirm.com
Attorney for Plaintiff

Mount Pleasant, SC
November 10, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE #: 2015-CP-10-6615

BOUCHELLE INCORPORATED,)
Plaintiff,)

v.)

CHARLESTON WRECKING, INC.,)
MICHAEL C. GOLEMIS,)
Defendants.)

ANSWER OF CHARLESTON WRECKING, INC.

FILED
2016 FEB -1 PM 2:56
JULIE J. ARMSTRONG
CLERK OF COURT

The Defendant Charleston Wrecking, Inc. would respectfully show as follows:

1. That it admits, on information and belief, the allegations of Paragraph 1 of the Complaint.
2. That it admits the allegations of Paragraph 2 of the Complaint.
3. That in answering the allegations of Paragraph 3 of the Complaint, it admits that Michael C. Golemis is a citizen and resident of Charleston County and in answering the balance of the allegations contained therein admits only that Mr. Golemis is a shareholder of Charleston Wrecking, Inc.
4. That in answering the allegations of Paragraph 4 of the Complaint, it admits only that the Court has jurisdiction over the parties and denies the balance of the allegations contained therein as the Plaintiff has failed to satisfy a condition precedent to the commencement of this action, established by the contract alleged.
5. That it admits only so much of the allegations of Paragraph 5 of the Complaint, on information and belief, that Bouchelle Incorporated was hired by the owners of 7350 Industry Drive, to reconstruct the commercial building and demands strict proof of the balance of the allegations contained therein.

6. That in answering the allegations of Paragraph 6 of the Complaint, it admits only that Defendant Charleston Wrecking, Inc. entered into a contract with Plaintiff for demolition services and demands strict proof of the balance of the allegations contained therein.

7. That it denies the allegations of Paragraphs 7, 8 and 9 of the Complaint.

8. That it is not required to admit or deny the allegations of Paragraphs 10, 13, 18 or 23 of the Complaint.

9. That in answering the allegations of Paragraph 11 of the Complaint, Defendant Charleston Wrecking, Inc. admits only that it entered into an agreement for demolition services, and denies the balance of the allegations contained therein.

10. That it denies the allegations of Paragraph 12 of the Complaint.

11. That in answering Paragraph 14 of the Complaint, it admits only that Charleston Wrecking, Inc. entered into a contract for demolition services concerning a building located at 7350 Industry Drive, North Charleston, South Carolina, and denies the balance of the allegations contained therein.

12. That in answering the allegations of Paragraph 15 of the Complaint, it admits only the existence of a contract between Plaintiff and Defendant Charleston Wrecking, Inc. and further states that the contract language speaks for itself.

13. That it denies the allegations of Paragraphs 16, 17, 19, 20, 21, 22 and 24 of the Complaint.

FOR A SECOND DEFENSE-
FAILURE TO SATISFY CONDITION PRECEDENT

14. That the Defendant Charleston Wrecking, Inc. reiterates each and every allegation hereinabove alleged as if repeated herein verbatim.

15. That the contract between Plaintiff and Charleston Wrecking, Inc. in paragraph 16.7 provides that mediation of disputes is a condition precedent to any form of binding dispute resolution including this action.

16. That the Plaintiff has failed to comply with paragraph 16.7 of the contract and this action should be dismissed.

FOR A THIRD DEFENSE-
WAIVER OF CONSEQUENTIAL DAMAGES

17. That the Defendant Charleston Wrecking, Inc. reiterates each and every allegation hereinabove alleged as if repeated herein verbatim.

18. That pursuant to paragraph 13 of the contract between the Plaintiff and Defendant Charleston Wrecking, Inc. the Plaintiff has waived consequential damages as described therein and any evidence of such damages should be excluded pursuant to said paragraph 13 of the contract.

FOR A FOURTH DEFENSE-
SETOFF

19. That the Defendant Charleston Wrecking, Inc. reiterates each and every allegation hereinabove alleged as if repeated herein verbatim.

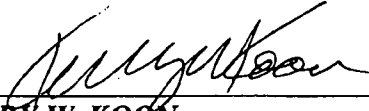
20. That there is due and owing to Charleston Wrecking, Inc. a substantial sum under its contract with Plaintiff for work completed by Charleston Wrecking, Inc.

21. Charleston Wrecking, Inc. is therefore entitled to a setoff in such amount as may be proven to the trier of fact.

WHEREFORE, the Defendant Charleston Wrecking, Inc. prays as follows:

- a) that this action be dismissed; and
- b) for set off of sums due Charleston Wrecking, Inc. as may be proven to the trier of fact; and

- c) for costs and reasonable attorney fees; and
- d) for such other and further relief as the Court may deem just and proper.



KERRY W. KOON

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

At Charleston, South Carolina
Feb 1, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BOUCHELLE INCORPORATED,)
)
Plaintiff,)
)
v.)
)
CHARLESTON WRECKING, INC.,)
MICHAEL C. GOLEMIS,)
)
Defendants.)
)
)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE #: 2015-CP-10-6615

ANSWER OF MICHAEL C. GOLEMIS

FILED
FEB - 1 PM 3:00
CLERK OF COURT
J. J. ARMSTRONG

The Defendant Michael C. Golemis would respectfully show as follows:

1. That he admits, on information and belief, the allegations of Paragraph 1 of the Complaint.
2. That he admits the allegations of Paragraph 2 of the Complaint.
3. That he admits so much of the allegations of Paragraph 3 of the Complaint as alleged that he is a citizen and resident of Charleston County and in answering the balance of the allegations admits only that he is a shareholder of Charleston Wrecking, Inc.
4. That in answering the allegations of Paragraph 4 of the Complaint, he admits only that the Court has jurisdiction over the parties and denies the balance of the allegations contained therein as the Plaintiff has failed to satisfy a condition precedent to the commencement of this action, established by the contract alleged with Charleston Wrecking, Inc..
5. That it admits only so much of the allegations of Paragraph 5 of the Complaint, on information and belief, that Bouchelle Incorporated was hired by the owners of 7350 Industry Drive, to reconstruct the commercial building and demands strict proof of the balance of the allegations contained therein.

6. That in answering the allegations of Paragraph 6 of the Complaint, he denies that he individually entered into a contract with the Plaintiff.

7. That he denies the allegations of Paragraphs 7, 8, 9, 11 and 12 of the Complaint.

8. That he is not required to admit or deny the allegations of Paragraphs 10, 13, 18 or 23 of the Complaint.

9. That in answering the allegations of Paragraph 14 of the Complaint, he denies that he entered into a contract with Plaintiff individually.

10. That in answering the allegations of Paragraph 15 of the Complaint, he admits only so much of such allegations that Defendant Charleston Wrecking, Inc. entered into a contract for demolition services and denies the balance of the allegations thereof.

11. That he denies the allegations of Paragraphs 16, 17, 19, 20, 21, 22 and 24 of the Complaint.

FOR A SECOND DEFENSE-
FAILURE TO SATISFY CONDITION PRECEDENT

12. That the Defendant Golemis reiterates each and every allegation hereinabove alleged as if repeated herein verbatim.

13. That the contract between Plaintiff and Charleston Wrecking, Inc. in paragraph 16.7 provides that mediation of disputes is a condition precedent to any form of binding dispute resolution.

14. That the Plaintiff has failed to comply with paragraph 16.7 of the contract and to the extent that Plaintiff alleges that Defendant Golemis is bound by the contract, which is specifically denied, this action should be dismissed.

FOR A THIRD DEFENSE-

WAIVER OF CONSEQUENTIAL DAMAGES

15. That the Defendant Golemis reiterates each and every allegation hereinabove alleged as if repeated herein verbatim.

16. That pursuant to paragraph 13 of the contract between the Plaintiff and Defendant Charleston Wrecking, Inc. the Plaintiff has waived consequential damages as described therein and to the extent that Plaintiff alleges that Defendant Golemis is bound by the contract, which is specifically denied, such damages should be excluded pursuant to said paragraph 13 of the contract.

**FOR A FOURTH DEFENSE-
SETOFF**

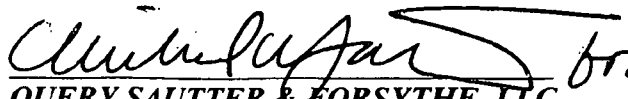
17. That the Defendant Golemis reiterates each and every allegation hereinabove alleged as if repeated herein verbatim.

18. That there is due and owing to Charleston Wrecking, Inc. a substantial sum under its contract with Plaintiff for work completed by Charleston Wrecking, Inc.

19. Charleston Wrecking, Inc. is therefore entitled to a setoff in such amount as may be proven to the trier of fact, and to the extent that Plaintiff alleges that Defendant Golemis is bound by the contract, which is specifically denied, such setoff is applicable to Defendant Golemis.

WHEREFORE, the Defendant Michael C. Golemis prays as follows:

- a) that this action be dismissed; and
- b) for setoff of sums due Charleston Wrecking, Inc. as may be proven to the trier of fact; and
- c) for costs and reasonable attorney fees; and
- d) for such other and further relief as the Court may deem just and proper.

 for OGQ

QUERY SAUTTER & FORSYTHE, LLC

147 Wappoo Creek Drive, Ste. 202

Charleston, SC 29412

(843) 795-9500

ATTORNEY FOR DEFENDANT

MICHAEL C. GOLEMIS

At Charleston, South Carolina

Feb. 1, 2016.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

BOUCHELLE INCORPORATED,)
)
Plaintiff,)
)
V)
)
CHARLESTON WRECKING, INC.,)
MICHAEL C. GOLEMIS,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE #: 2015-CP-10-6615

MOTION FOR SUMMARY JUDGMENT
AS TO DEFENDANT MICHAEL C. GOLEMIS

FILED
2017 JAN -9 PM 2:20
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE PLAINTIFF ABOVE NAMED:

PLEASE TAKE NOTICE that the Defendant Michael C. Golemis individually moves before this Honorable Court, at a date and time to be set by the Court after the expiration of ten (10) days from the date of service hereof, for an order granting Summary Judgment in his favor, pursuant to Rule 56, SCRCP, on the grounds that there is no genuine issue of fact or law as to Defendant Golemis. The specific grounds for this motion are as follows:

- a) Michael C. Golemis, individually was not a **party** to the subcontract entitled "Standard Short Form Agreement Between Constructor and Subcontractor" dated May 20, 2015, 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 this action;
- d) Michael C. Golemis was not present and in actual supervision of the work that allegedly caused the Plaintiff'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) Plaintiff's breached the terms of the agreement between Constructor and Subcontractor by failing to demand mediation prior to litigation as

required by the contract.

This motion is supported by the Affidavit of Michael C. Golemis filed herewith and the Defendant Charleston Wrecking, Inc.'s First Request for Admissions served upon Plaintiff on February 2, 2016 (Exhibit "A" hereto), and now deemed admitted.

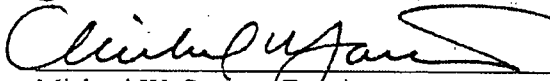
Further, Defendant Charleston Wrecking, Inc., was organized as a South Carolina Statutory Close Corporation on March 31, 2006, and remains in existence today. See, Articles of Incorporation for Charleston Wrecking, Inc., a Statutory Close Corporation, and Certificate of Existence of Mark Hammond, Secretary of State dated December 29, 2016. (attached).

Finally, pursuant to S.C.Code § 33-18-250 (attached), even if Plaintiff 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 Defendants deny, these allegations are not grounds for imposing personal liability on individual Defendant Michael Golemis.

WHEREFORE individual Defendant Michael Golemis, by and through his undersigned counsel moves that he be dismissed as a party Defendant to this action.

PLEASE BE PRESENT TO DEFEND IF SO MINDED!

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

At Charleston, South Carolina

This 5th day of Jan., 2017

EXHIBIT

A

Ex. "A"

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED,

Plaintiff,

v.

CHARLESTON WRECKING, INC.,

MICHAEL C. GOLEMIS,

Defendants.

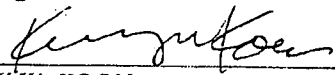
) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) CASE #: 2015-CP-10-6615

) DEFENDANT CHARLESTON
) WRECKING, INC.'S FIRST
) REQUEST FOR ADMISSIONS
) TO PLAINTIFF

TO THE PLAINTIFF ABOVE NAMED:

The Defendant Charleston Wrecking, Inc. hereby submits the following requests for admissions pursuant to Rule 36 of the South Carolina Rules of Civil Procedure to be separately admitted or denied within 30 days of the date of service hereof:

1. Do you admit that the copy of the contract attached hereto as Exhibit "A" is a true and accurate copy of the original?
2. Do you admit that Michael C. Golemis is not a party to the contract attached hereto as Exhibit "A"?
3. Do you admit that there exists no other contract between Plaintiff and Michael C. Golemis?
4. Do you admit that Plaintiff failed to demand mediation prior to filing this action pursuant to paragraph 16.7 of its contract with Charleston Wrecking, Inc.?


KERRY W. KOON

147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
(843) 795-7000
ATTORNEY FOR DEFENDANTS

At Charleston, South Carolina
This 21 day of Feb, 2016.

Ex. "A"



ConsensusDocs

ConsensusDocs® 751

STANDARD SHORT FORM AGREEMENT BETWEEN CONSTRUCTOR AND SUBCONTRACTOR

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ENDORSEMENT. This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. The organizations endorsing this document believe it represents a fair allocation of risk and responsibilities of all project participants.

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CONTENT SECURE ID: 4078C106-1D44

ConsensusDocs® 751

STANDARD SHORT FORM AGREEMENT BETWEEN CONSTRUCTOR AND SUBCONTRACTOR



This document is made available by:



Job No.: 150401

Account Code: []

This Agreement is made this 20 day of May, 2015, by and between

CONSTRUCTOR, Bouchelle Incorporated and

SUBCONTRACTOR, Charleston Wrecking Inc.

Tax identification No. (TIN) 20-4616867 Contractor License No. []

The Constructor and Subcontractor are collectively the "Parties." Notice to the Parties shall be given at the above addresses.

PROJECT: Atlantic Electric, LLC. Warehouse

OWNER: Cross County Investments, LLC.

DESIGN PROFESSIONAL: R.J.Denton Architecture

1. SUBCONTRACT WORK To the extent terms of the agreement between the Owner and Constructor (prime agreement) apply to the work of the Subcontractor, the Constructor assumes toward the Subcontractor all obligations, rights, duties, and redress that the Owner assumes toward the Constructor. In an identical way, the Subcontractor assumes toward the Constructor all obligations, rights, duties, and redress that the Constructor assumes toward the Owner and others under the prime agreement. In the



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CONTENT SECURE ID: 4078C106-1D44

event of conflicts or inconsistencies between provisions of this Agreement and the prime agreement, this Agreement shall govern. The Subcontractor shall perform the Subcontract Work under the general direction of the Constructor and shall cooperate with the Constructor so the Constructor may fulfill obligations to the Owner. The Subcontractor shall provide the Subcontract Work for the Project in accordance with the Progress Schedule to be prepared by the Constructor after consultation with the Subcontractor, and as it may change from time to time. The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work and shall be responsible for all permits, fees, licenses, assessments, inspections, testing, and taxes necessary to complete the Subcontract Work. The Subcontractor is to provide Building and Selective Demolition, as more fully described in Exhibit A.

2. SUBCONTRACT AMOUNT The Constructor agrees to pay the Subcontractor for satisfactory and timely performance and completion of the Subcontract Work: 86,135.00. Retainage shall be zero percent (0%); which is equal to the percentage retained from the Constructor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the prime agreement provides for reduction of retainage, the Subcontractor's retainage shall also be reduced when the Constructor's retainage of the Subcontract Work has been so reduced by the Owner.

3. EXHIBITS The following exhibits are made part of this Agreement:

EXHIBIT A: Subcontract Work, Attached Demolition Pricing Dated 5/20/15 pages.

EXHIBIT B: Subcontract Documents, , drawings, specifications, general, and other conditions issued by the Design Professional and dated 5/21/15, and addenda and other information.

EXHIBIT C: Progress Schedule, To be issued upon permitting pages.

EXHIBIT D: Alternates and Unit Prices, n/a pages.

EXHIBIT E: Temporary Services, By Constructor or Owner pages.

EXHIBIT F: Insurance Provisions,

Workers comp 1,000,000

Commercial General Liability As stated on Charleston Wrecking Inc Insurance Certificate dated 4/29/15.

4. ETHICS The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their subcontractors, agents, officers, employees, or others for whom they may be liable, to secure preferential treatment.

4.1. COMPLIANCE WITH LAWS The Subcontractor shall comply with all Laws at its own costs. The Subcontractor shall be liable to the Constructor for all loss, cost, or expense, attributable to any acts or omissions by the Subcontractor, its employees, subcontractors, and agents for failure to comply with Laws, including fines, penalties, or corrective measures.

5. SAFETY To protect persons and property, the Subcontractor shall establish a safety program implementing safety measures, policies, and standards conforming to (a) those required or recommended by governmental and quasi-governmental authorities having jurisdiction, and (b) requirements of this Agreement. The Subcontractor shall keep the Project site clean and free from debris resulting from the Subcontract Work.



6. **WARRANTIES** The Subcontractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. The Subcontractor further warrants that the Subcontract Work shall be free from material defects not intrinsic in the design or materials required in the Subcontract Documents. The Subcontractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by others, or abuse. The Subcontractor's warranties shall commence on the date of Substantial Completion of the Work or a designated portion.

7. TIME

7.1. Time is of the essence for both parties.

7.2. **SCHEDULE** In consultation with the Subcontractor, the Constructor shall prepare the schedule for performance of the Constructor's work (Progress Schedule) and shall revise and update such schedule, as necessary, as the Constructor's work progresses. The Subcontractor shall provide the Constructor with any scheduling information proposed by the Subcontractor for the Subcontract Work and shall revise and update as the Project progresses. The Constructor and Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor reasonably in advance of the required performance. Subject to the Subcontractor's rights under Article 8, the Constructor shall have the right to determine and, if necessary, change the time, order, and priority in which various portions of the Subcontract Work shall be performed and all other matters relative to the Subcontract Work.

8. **CHANGE ORDERS** When the Constructor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Subcontract Work which are within the general scope of this Agreement. Any adjustment in the Subcontract Amount or time of performance shall be authorized by a Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Constructor. A Change Order is a written instrument prepared by the Constructor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work. If commencement or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Change Order to the extent obtained by the Constructor, and the Progress Schedule shall be revised accordingly.

9. PAYMENT

9.1. **SCHEDULE OF VALUES** As a condition precedent to payment, the Subcontractor shall provide a schedule of values satisfactory to the Constructor not more than fifteen (15) days from the date of this Agreement. Attached Demolition Pricing Dated 5/20/15 will serve as schedule of values.

9.2. **PROGRESS AND FINAL PAYMENTS** Progress payments, less retainage, shall be made to the Subcontractor, for Subcontract Work satisfactorily performed, no later than seven (7) days after receipt by the Constructor of payment from the Owner for the Subcontract Work. Final payment of the balance due shall be made to the Subcontractor no later than seven (7) days after receipt by the Constructor of final payment from the Owner for the Subcontract Work. These payments are subject to receipt of such lien waivers, affidavits, warranties, guarantees, or other documentation required by this Agreement or the Constructor. If payment from the Owner for such Subcontract Work is not received by the Constructor, through no fault of the Subcontractor, the Constructor will make payment to the Subcontractor within a reasonable time for Subcontract Work satisfactorily performed.

9.3. **PAYMENTS WITHHELD** The Constructor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may



reasonably be necessary to protect the Constructor from loss or damage based upon the following to the extent that the Subcontractor is responsible: (a) failure to timely perform the Subcontract Work, (b) failure to properly pay its subcontractors or suppliers, (c) failure to promptly correct rejected, defective, or nonconforming Subcontract Work, or (d) uninsured third-party claims involving the Subcontractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Subcontractor furnishes the Constructor with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

9.4. PAYMENT DELAY If the Constructor has received payment from the Owner and, if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Constructor within seven (7) days after the date such payment is due, or if the Constructor has failed to pay the Subcontractor within a reasonable time for Subcontract Work satisfactorily performed, the Subcontractor, upon giving seven (7) days' written notice to the Constructor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and time of performance shall be adjusted by Change Order for the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup.

9.5. WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for warranties, or for nonconforming or defective work discovered after final payment.

9.6. OWNER'S ABILITY TO PAY AND LIEN INFORMATION

9.6.1. Unless expressly prohibited by the Subcontract Documents, the Constructor shall promptly provide, upon Subcontractor's request, (a) information regarding the Owner's financial ability to pay for the Work, and (b) notice of any material variation in the Owner's financial ability to pay. The Constructor, however, does not warrant the accuracy or completeness of information provided. The Subcontractor also is entitled to request through the Constructor any information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the recorded legal title.

9.6.2. If the Subcontractor does not receive the information referenced in subsection 9.6.1, the Subcontractor may request information from the Owner or Owner's lender.

10. INDEMNITY To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Constructor, the Constructor's other subcontractors, the Design Professional, the Owner, and their agents, consultants, and employees (the Indemnitees) from all claims for bodily injury and property damage other than to the Work itself that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs, and expenses, that arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Subcontractor, its subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Subcontractor shall be entitled to reimbursement of any defense cost paid above the Subcontractor's percentage of liability for the underlying claim to the extent attributable to the negligent acts or omissions of the Indemnitees.

11. INSURANCE

11.1. SUBCONTRACTOR'S INSURANCE Before commencing the Subcontract Work, and as a condition precedent to payment, the Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations



are by the Subcontractor, or any of its subcontractors or consultants, or anyone directly or indirectly employed by any of them, or for whose acts the Subcontractor may be liable.

11.2. **MINIMUM LIMITS OF LIABILITY** The Subcontractor shall procure and maintain, with insurance companies licensed in the jurisdiction in which the Project is located and acceptable to the Constructor, which acceptance shall not be unreasonably withheld, at least the limits of liability as set forth in Exhibit F.

11.3. **NUMBER OF POLICIES** Commercial General Liability Insurance (CGL) and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

11.4. **CANCELLATION, RENEWAL, AND MODIFICATION** To the extent commercially available to the Subcontractor from its current insurance company, insurance policies required under subsection 11.2 shall contain a provision that the insurance company or its designee must give the Constructor written notice transmitted in paper or electronic format: (a) 30 days before coverage is nonrenewed by the insurance company and (b) within 10 business days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Subcontractor shall furnish the Constructor with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 11.2 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Subcontractor shall give Constructor prompt written notice upon actual or constructive knowledge of such condition.

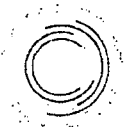
11.5. **CONTINUATION OF COVERAGE** The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one year after final payment to the Constructor. Prior to commencement of the Work, the Subcontractor shall furnish the Constructor with certificates evidencing the required coverages.

11.6. **PROPERTY INSURANCE** Upon written request of the Subcontractor, the Constructor shall provide the Subcontractor with a copy of the Builder's Risk Policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Constructor. The Constructor shall advise the Subcontractor if a Builder's Risk Policy of insurance is not in force.

11.6.1. If the Owner or Constructor has not purchased property insurance reasonably satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors, or subsubcontractors to the Subcontract Work. The cost of this insurance shall be charged to the Constructor in a Change Order.

11.6.2. If not covered under the Builder's Risk Policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for the Subcontract Work, including portions of the Subcontract Work stored off the site or in transit, when such portions of the Subcontract Work are to be included in an application for payment.

11.7. **WAIVER OF SUBROGATION** The Constructor and Subcontractor waive all rights against each other, the Owner, and the Design Professional, and any of their respective consultants, subcontractors, and subsubcontractors, agents, and employees, for damages caused by perils to the extent covered by the proceeds of the insurance provided in section 11.6, except such rights as they may have to the insurance proceeds and such rights as they may have for the Owner's failure to obtain and maintain any Project Builders Risk Coverage that the Owner may be obligated to provide. The Subcontractor shall require similar waivers from its subcontractors. If the policies of insurance



referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

11.8. CONSTRUCTOR'S LIABILITY INSURANCE The Constructor shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses, and expenses arising out of the Constructor's errors or omissions.

11.9. ADDITIONAL LIABILITY COVERAGE The Constructor xxx shall/ [] shall not require the Subcontractor to purchase and maintain liability coverage, primary to the Constructor's coverage under subsection 11.8.

11.9.1. If required by section 11.9, the additional liability coverage required of the Subcontractor shall be:

1. xxx **ADDITIONAL INSURED.** The Constructor shall be named as an additional insured on the Subcontractor's CGL specified, for operations and completed operations, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of the Subcontractor, or those acting on the Subcontractor's behalf, in the performance of the Subcontractor's Work for the Constructor at the Project site.
2. [] **OCP.** The Subcontractor shall provide an Owners' and Constructors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by the Constructor. Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by the Constructor directly or the costs may be reimbursed by the Constructor to the Subcontractor by increasing the Subcontract Amount to correspond to the actual cost required to purchase and maintain the additional liability coverage. Before commencing the Subcontract Work, the Subcontractor shall provide either a copy of the OCP policy or a certificate and endorsement evidencing that the Constructor has been named as an additional insured, as applicable.

12. BONDS Performance and Payment Bonds [] are/ xxx are not required of the Subcontractor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the Constructor. The Constructor's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond and of the Performance Bond shall each be in the full Subcontract Amount.

13. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for any (a) liquidated, consequential, or other damages that the Owner is entitled to recover against the Constructor under the prime agreement, and (b) losses covered by insurance required by the Subcontract Documents, the Constructor and Subcontractor mutually waive all claims against each other for consequential damages, including damages for loss of business, loss of financing related to the Project, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. Similarly, the Subcontractor shall obtain in another agreement from its subcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. The provisions of this section shall also apply to and survive termination of this Agreement.

14. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Subcontract Work shall be upon the Subcontractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.



15. NOTICE TO CURE AND TERMINATION

15.1. FAILURE OF PERFORMANCE Should the Subcontractor fail to satisfy contractual deficiencies or to commence and continue satisfactory correction of the default with diligence or promptness within three (3) business days from receipt of the Constructor's written notice, then the Constructor, without prejudice to any right or remedies, shall have the right to take whatever steps it deems necessary to correct deficiencies and charge the cost thereof to the Subcontractor, who shall be liable for such payment, including reasonable overhead, profit, and attorneys' fees. In the event of an emergency affecting safety of persons or property, the Constructor may proceed as above without notice, but the Constructor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

15.2. TERMINATION BY OWNER Should the Owner terminate the prime agreement or any part which includes Subcontract Work, the Constructor shall notify the Subcontractor in writing within three (3) business days of termination and, upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of the Constructor's instructions, and mitigate all costs. In the event of Owner termination, Constructor liability to the Subcontractor shall be limited to the extent of Constructor recovery on the Subcontractor's behalf under the prime agreement. The Constructor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Constructor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor. In the event the Owner terminates the Constructor for cause, through no fault of the Subcontractor, the Subcontractor shall be entitled to recover from the Constructor its reasonable costs arising from the termination of this Agreement, including reasonable overhead and profit on Work not performed.

15.3. TERMINATION BY CONSTRUCTOR If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) business days after written notification issued under section 15.1, then the Constructor may, in lieu of or in addition to section 15.1, issue a second written notification to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by the Constructor to the Subcontractor at the time the Subcontractor is terminated. The Constructor may furnish those materials or equipment or employ such workers or subcontractors as the Constructor deems necessary to maintain the orderly progress of the Constructor's work. All costs incurred by the Constructor in performing the Subcontract Work, including reasonable overhead, profit, and attorneys' fees, costs, and expenses, shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Constructor shall provide a detailed accounting of the costs to finish the Subcontract Work.

15.4. TERMINATION BY SUBCONTRACTOR If the Subcontract Work has been stopped for thirty (30) days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the Constructor seven (7) days' written notice. Upon such termination, the Subcontractor shall be entitled to recover from the Constructor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit, and attorneys' fees, costs, and expenses. However, if the Owner has not paid the Constructor for the satisfactory performance of Subcontract Work through no fault or neglect of the Constructor, and the Subcontractor terminates this Agreement under this article because it has not received corresponding progress payments, the Subcontractor shall be entitled to recover from the Constructor, within a reasonable period of time following termination, payment for all Subcontract



Work satisfactorily performed but not yet paid for, including reasonable overhead and profit. The Constructor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Constructor pursuing said damages and claims against the Owner, on the Subcontractor's behalf, as provided for by section 15.2.

16. DISPUTE MITIGATION AND RESOLUTION

16.1. CLAIMS RELATING TO CONSTRUCTOR The Subcontractor shall give the Constructor written notice of all claims within seven (7) days of the Subcontractor's knowledge of facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes, and other matters in question between the Constructor and Subcontractor shall be resolved in the manner provided in this Agreement.

16.2. DAMAGES If the prime agreement provides for liquidated or other damages for delay beyond the completion date set forth in this Agreement, and such damages are assessed, the Constructor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Constructor. Nothing in this Agreement shall be construed to limit the Subcontractor's liability to the Constructor for the Constructor's actual delay damages caused by the Subcontractor's delay.

16.2.1. CONSTRUCTOR CAUSED DELAY Nothing in this Agreement shall preclude the Subcontractor's recovery of delay damages caused by the Constructor.

16.3. WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If the Subcontractor continues to perform, the Constructor shall continue to make payments in accordance with this Agreement.

16.4. MULTIPARTY PROCEEDING The Parties agree, to the extent permitted by the prime agreement, that all Parties necessary to resolve a claim shall be Parties to the same dispute resolution proceeding. To the extent disputes between the Constructor and Subcontractor involve in whole or in part disputes between the Constructor and Owner, disputes between the Subcontractor and Constructor shall be decided by the same tribunal and in the same forum as disputes between the Constructor and Owner.

16.5. NO LIMITATION OF RIGHTS OR REMEDIES Nothing in ARTICLE 15 shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.

16.6. DISPUTE MITIGATION THROUGH DIRECT DISCUSSION If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussion. Within five (5) business days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussions and make a good faith effort to resolve such dispute.

16.7. MEDIATION Disputes between the Subcontractor and Constructor not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. The Parties shall select the mediator within fifteen (15) days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.



16.8. BINDING DISPUTE PROCESSES If neither direct discussions nor mediation successfully resolves the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

xxx ARBITRATION Unless the Parties mutually agree otherwise in writing, all claims, disputes and matters in question arising out of, or relating to, this Agreement shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An award entered in an arbitration proceeding shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

xxx LITIGATION Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

16.8.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

16.8.2. VENUE The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

16.8.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations.

16.8.4. An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

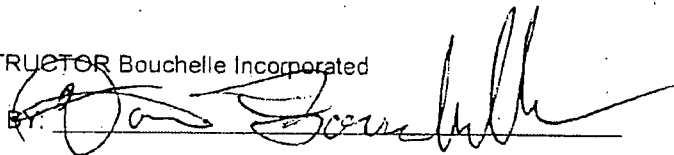
17. MISCELLANEOUS

17.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

17.2. ASSIGNMENT The Subcontractor shall not assign the whole or any part of the Subcontract Work or this Agreement without prior written approval of the Constructor.

17.3. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

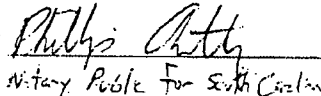
CONSTRUCTOR Bouchelle Incorporated



PRINT NAME: David Bouchelle

PRINT TITLE: President

ATTEST


Notary Public For South Carolina



ConsensusDocs® 751 - Short Form Agreement Between Constructor and Subcontractor - © 2011, Revised 2014. THIS DOCUMENT MAY HAVE BEEN MODIFIED. The ConsensusDocs technology platform creates a redline comparison to the standard language which the purchaser of this contract is authorized to share for review purposes. Consultation with legal and insurance counsel are strongly encouraged. You may only make copies of finalized documents for distribution to parties in direct connection with this contract. Any other uses are strictly prohibited.

CONTENT SECURE ID: 4078C106-1D44

NAME [] TITLE []

SUBCONTRACTOR: Charleston Wrecking Inc.

BY: _____

PRINT NAME: Michael Golemis

PRINT TITLE: President

ATTEST Phillip Antley

NAME Phillip Antley

TITLE Notary Public for South Carolina

Exp. 4/3/2018

END OF DOCUMENT.



Charleston Wrecking Inc. 5/20/15

DEMOLITION PRICING FOR 7350 CROSS COUNTY ROAD

1) Complete Demolition

- a) 2 Story Building
- b) 3 Story Building
- c) Saw Cutting @ transition point

TOTAL \$64,215.00

2) Selective Demolition 1- 2,336sf section

- a) Pre cast floor system
- b) Concrete Stairs
- c) Concrete Block Walls

TOTAL \$14,925.00

3) Selective Demolition 2- 2,336sf section

- a) Drywall
- b) Furring
- c) ATC System
- d) Ductwork
- e) Terrazzo

TOTAL \$ 3,195.00

4) Selective Demolition Warehouse

- a) Storefronts
- b) Terrazzo
- c) Brick infill
- d) Sheetrock
- e) ATC System

TOTAL \$ 3,800.00
\$86,135.00.00

Grand Total

Exclude: 1.Environmental
2. Shoring

3. Selective electrical demo-- #2 - 2,336 section and warehouse

Constructor (Bouchelle Inc.) or owner may wish to retain some items, such as, but not limited to, HVAC equipment. Constructor or owner will disconnect hvac units and recover refrigerant from hvac equipment prior to demo.

Charleston wrecking To haul away all debris, dispose of at a location and manner according to governing laws and ordinances, supply dumpsters for their respective work, keep site clean, final cleanup of site upon completion of their respective work.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE #: 2015-CP-10-6615

BOUCHELLE INCORPORATED,

Plaintiff,

v.

CHARLESTON WRECKING, INC.,
MICHAEL C. GOLEMIS,

Defendants.

AFFIDAVIT OF MICHAEL C. GOLEMIS

PERSONALLY, appeared before me, Michael C. Golemis who, first being duly sworn, deposes

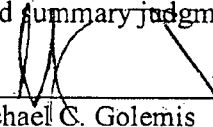
and says as follows:

1. That I am the President of Charleston Wrecking, Inc., a demolition contractor.
2. For the issues that are the subject of the complaint, Plaintiff contacted and contracted with Charleston Wrecking, Inc., which was an active South Carolina corporation.
3. This action concerns an incident which occurred on July 21, 2015, at a demolition job sub-contracted by Bouchelle Incorporated to Charleston Wrecking, Inc.
4. The location of the job was 7350 Cross County Road, North Charleston, South Carolina.
5. The incident involved damage to concrete wall panels allegedly due to an incomplete saw cut at the second story level.
6. Charleston Wrecking, Inc.'s work was done pursuant to a sub-contract entitled "Standard Short Form Agreement Between Constructor and Subcontractor" dated May 20, 2015 attached hereto as Exhibit "A."

FILED
2017 JAN -9 PM 2:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY

7. I was not individually a party to this contract nor did I have any other contractual relationship with Bouchelle Incorporated. I also refer to the First Request for Admissions numbers 1, 2, 3 served on Plaintiff by Charleston Wrecking's attorney on February 2, 2016.
8. At the time of the incident, I was not personally present, however, Charleston Wrecking, Inc. had personnel experienced in demolition on the job and being supervised by a licensed general contractor, Horace B. Thomas. Mr. Thomas, to my personal knowledge, has been a licensed general contractor for approximately forty (40) years and has worked in demolition for Charleston Wrecking, Inc. and its predecessor, Conco, Inc., for approximately the same length of time.
9. Also present on this was James Pressley who has participated in demolition work for Charleston Wrecking, Inc. for over 10 years. Both Mr. Thomas and Mr. Pressley were experienced in demolition and were knowledgeable in the process and procedures for the work they were assigned. Charleston Wrecking, Inc.'s reliance on those experienced persons was reasonable.
10. At the time Charleston Wrecking, Inc. entered into this subcontract, it was insured for general liability by a general liability insurance policy written by Seneca Insurance Company, policy number BAG1033883. A Certificate of Insurance for General Liability was provided to and accepted by Plaintiff. Seneca has denied coverage for the occurrence as alleged by Plaintiff in the Complaint.
11. At the time of the incident, Charleston Wrecking, Inc. had largely completed the demolition work for which an unpaid balance of \$50,140.00 remains due.
12. After the incident Charleston Wrecking, Inc. authorized contribution of the balance due it toward remedial work and demanded no further payment for its completed work.

13. Neither Charleston Wrecking, Inc. nor my self has committed any act which would make it inequitable or fundamentally unfair for Bouchelle Incorporated to look solely to Charleston Wrecking, Inc. for any recovery that may ultimately be determined as due. No act of fraud or other circumstance of inequity has been even alleged against me or Charleston Wrecking, Inc.
14. Further, Bouchelle Incorporated commenced this lawsuit without first demanding mediation as required by Section 16.7 of the Contract (See Request for Admissions #4 of February 2, 2016).
15. For the above reasons, I am requesting that I be dismissed as a Defendant in this action and that I, as well as Charleston Wrecking, Inc. be granted summary judgment.



Michael C. Golemis

SWORN to and subscribed before me
this 27 day of December, 2016.



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

The State of South Carolina



Office of Secretary of State Mark Hammond

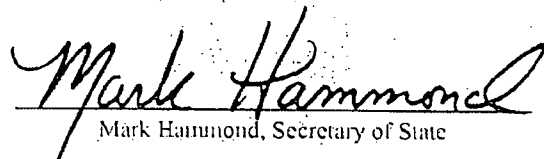
Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby Certify that:

CHARLESTON WRECKING, INC.,

a corporation duly organized under the laws of the State of South Carolina on March 31th, 2006, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed all reports due this office, paid all fees, taxes and penalties owed to the State, that the Secretary of State has not mailed notice to the corporation that it is subject to being dissolved by administrative action pursuant to S.C. Code Ann. §33-14-210, and that the corporation has not filed articles of dissolution as of the date hereof.

Given under my Hand and the Great Seal
of the State of South Carolina this 29th day
of December, 2016.


Mark Hammond, Secretary of State

Dec:29 2016
REFERENCE ID: 1612291452230


Mark Hammond
CLERK OF THE STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF INCORPORATION
FOR A
STATUTORY CLOSE CORPORATION

- 1 The name of the proposed corporation is **Charleston Wrecking, Inc.**
- 2 This corporation is a statutory close corporation, pursuant to Chapter 18, Title 33 of the 1976 South Carolina Code of Laws, as amended.
- 3 The initial registered office of the corporation is **1534 Hunley Ave., Charleston, South Carolina 29412** and the initial registered agent at such address is **Michael C. Golemis**

I hereby consent to the appointment as registered agent of the corporation



Signature of Agent

- 4 The corporation is authorized to issue shares of stock as follows. Complete (a) or (b), whichever is applicable
 - (a) xx The corporation is authorized to issue a single class of shares, and the total number of shares authorized is 1,000
 - (b) _____ The corporation is authorized to issue more than one class of shares

<u>Class of Shares</u>	<u>Authorized No. of Each Class</u>
_____	_____
_____	_____
_____	_____

If shares are divided into two or more classes or if any class of shares is divided into series within a class, the relative rights, preferences, and limitations of the shares of each class, and of each series within a class, are as follows not applicable

{00783311 }

1

060403-0042 FILED 03/31/2006
CHARLESTON WRECKING, INC
Filing Fee \$135.00 ORIG

Mark Hammond

South Carolina Secretary of State



Dec 29 2016

REFERENCE ID: 1612291452230

Mark Hammond
REGISTRAR OF THE STATE OF SOUTH CAROLINA

5 The existence of the corporation shall begin as of the filing date with the Secretary of State unless otherwise indicated (See Section 33-1-230(b) of the 1976 South Carolina Code of Laws, as amended)

6 Unless specified otherwise below, the transfer of shares of stock of the corporation shall be subject to the restrictions set out in Sections 33-18-110 through 33-18-130 of the 1976 South Carolina Code of Laws, as amended. Specify any variations in the statutory format in Sections 33-18-110 through 33-18-130

7 Unless otherwise specified below, the corporation shall have a board of directors (See Section 33-18-210 of the 1976 South Carolina Code of Laws, as amended)

[xx] This corporation elects not to have a board of directors

8 Check, if applicable:

[] This corporation elects to have the provisions of Sections 33-18-140 thru 33-18-170 of the 1976 South Carolina Code of Laws, as amended, which give the estate of a deceased shareholder the right to compel the corporation to purchase the deceased shareholder's shares, apply. Specify any variations in the statutory format in Sections 33-18-140 through 33-18-170

9 The optional provisions which the corporation elects to include in the articles of incorporation are as follows (See the applicable provisions of Sections 33-2-102, 33-18-330, 35-2-105, and 35-2-221 of the 1976 South Carolina Code of Laws, as amended)

10 The name and address and signature of each incorporator is as follows (only one is required)

Name and Address

Signature

Michael Golemis
1534 Hunley Ave
Charleston, SC 29412



CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Dec 29 2016

REFERENCE ID: 1612291452230

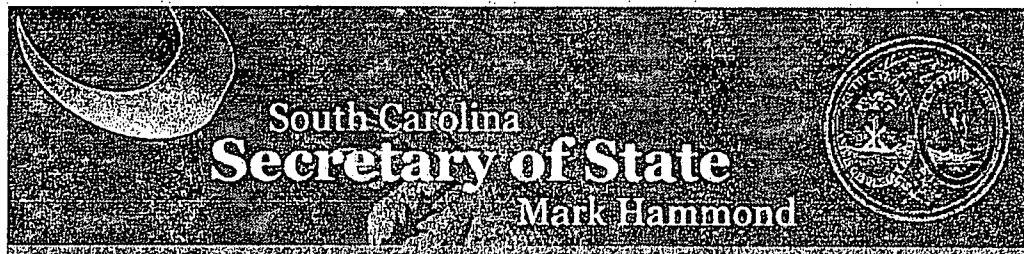
Mark Howard
Notary Public for South Carolina

I, Graeme F Phulp, an attorney licensed to practice in the State of South Carolina, certify that the corporation, to whose articles of incorporation this certificate is attached, has complied with the requirements of Chapter 2, Title 33 of the 1976 South Carolina Code of Laws, as amended, relating to the articles of incorporation

Date March 27, 2006

GF Phulp
Graeme F Phulp, Esq
Burst Moore Smythe McGee P A
5 Exchange Street
Charleston, South Carolina 29401
(843) 722-3400

{00783311 }

**CHARLESTON WRECKING, INC.**

Note: This online database was last updated on 12/19/2016 3:04:55 AM.

See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION	SOUTH CAROLINA
/ ORGANIZATION:	Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	MICHAEL C GOLEMIS
ADDRESS:	1534 HUNLEY AVE
CITY:	CHARLESTON
STATE:	SC
ZIP:	29412
SECOND ADDRESS:	
FILE DATE:	03/31/2006
EFFECTIVE DATE:	03/31/2006
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Incorporation	03/31/2006	STATUTORY CLOSE CORPORATION	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

STATUTORY CLOSE CORPORATION SUPP. § 33-18-250

Westlaw Topic No. 101.
C.J.S. Corporations §§ 475, 477 to 489.

Law Review and Journal Commentaries

Annual survey of South Carolina law: Corporate law. 46 SC L Rev 191 (Autumn 1994).

§ 33-18-250. Limited liability.

The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

HISTORY: 1988 Act No. 444, § 2.

OFFICIAL COMMENT

The purpose of this section is to eliminate the possible argument that the shareholders in a statutory close corporation are individually liable for the debts and torts of the business because the corporation did not follow the classical model of a corporation. Pursuant to sections 20, 21 and 33 (Sections 33-18-200, -210 and 330), a statutory close corporation may in effect function like a partnership, although legally the business is still a corporation. This section does not prevent a court from "piercing the corporate veil" of a statutory close corporation if the circumstances should justify imposing personal liability on the shareholders were the corporation not a statutory close corporation. It merely prevents a court from "piercing the corporate veil" because it is a statutory close corporation.

The section is derived from the California close corporation provisions:

SOUTH CAROLINA REPORTERS' COMMENTS

Although this section may be criticized as being self-serving, it is desirable because it reminds courts and lawyers that a closely held corporation should be respected as a separate entity even though it may have the managerial structure of a partnership.

No substantive changes in the Model Act text have been made.

DERIVATION: 1984 Model Act Statutory Close Corporation Supplement Section 25.

Cross References

Liability for pre-incorporation transactions, see § 33-2-104.
Elimination of board of directors, see § 33-18-210.
Dissolution at option of shareholder, see § 33-18-330.

Library References

Corporations ¶215.
Westlaw Topic No. 101.
C.J.S. Corporations §§ 414, 417, 425.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
BOUCHELLE INCORPORATED,)
Plaintiff,)
v.)
CHARLESTON WRECKING, INC.,)
MICHAEL C. GOLEMIS,)
Defendants.)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE #: 2015-CP-10-6615

MOTION FOR SUMMARY JUDGMENT OF
DEFENDANT CHARLESTON WRECKING, INC.

PLEASE TAKE NOTICE that the Defendant Charleston Wrecking, Inc. intends to move before the Honorable Court at a date and time to be set by the Court after the expiration of ten (10) days from the date of service hereof for an order granting summary judgment on the ground that there is no genuine issue of fact or law requiring a trial on the merits.

The grounds for this motion are as follows:

1. That the subcontract entitled "Standard Short Form Agreement Between Constructor and Subcontractor" dated May 20, 2015, between the Plaintiff and Defendant Charleston Wrecking, Inc. requires mediation prior to filing an action in court according to Paragraph 16.7 of such contract.

Bouchelle Incorporated failed to comply with this condition precedent prior to filing this action, see Defendant Charleston Wrecking, Inc.'s Requests for Admissions #4 served upon Plaintiff on February 2, 2016 (Exhibit "A" hereto), and now deemed admitted.

2. The subcontract contained the following language concerning insurance:

"11.6 Property Insurance. Upon written request of the Subcontractor, the Constructor shall provide the Subcontractor with a copy of the Builder's Risk Policy of insurance or any other property or equipment insurance in force for the project and procured by the Owner or Constructor. The Constructor shall advise the Subcontractor if a Builder's Risk Policy of insurance is in force..."

"11.7 Waiver of Subrogation. The Constructor and Subcontractor waive all rights against each other, the Owner, and the design professional, and any of their respective consultants, Subcontractors, and Sub-Subcontractors, agents and employees, for damages caused by perils to the extent covered by the proceeds of insurance provided in Section 11.6, except such rights as they may have to the insurance proceeds and such rights they may have for the Owner's failure to obtain and maintain any project Builder's Risk coverage that the Owner may be obligated to provide..."

The contract further provides:

"11.8 Constructor's Liability Insurance. The Constructor shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this agreement, including but without limitation, loss of use and claims, losses, and expenses arising out of the Constructor's errors or omissions."

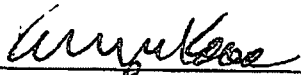
Bouchelle, Inc. had a commercial general liability insurance policy written through Canopus US Insurance, Inc. and has filed an action against it to recover its alleged losses. Canopus is defending by alleging that Bouchelle, Inc.'s application for insurance misrepresented its business as a carpentry business doing 80% residential and only 20% commercial when in fact Bouchelle, Inc. is primarily a commercial and industrial general contractor.

Bouchelle, Inc. therefore breached its contract with Charleston Wrecking, Inc. by failing to maintain the required insurance which, upon information and belief, would have covered any losses claimed against Charleston Wrecking, Inc. and Charleston Wrecking, Inc. should be granted summary judgement

This motion is supported by the Affidavit of Michael C. Golemis dated December 27, 2016 (Exhibit "A"), Defendant Charleston Wrecking, Inc.'s First Request for Admissions (Exhibit "B") served February 2, 2016, the subcontract (Exhibit "C"), the declination letter of Blair Claims Management as Third Party Administrator for Canopus US Insurance, Inc.

(Exhibit "D"), the Complaint of Bouchelle, Inc. in case number 2016-CP-10-4984 (Exhibit "E") and the Answer of Canopus US Insurance, Inc. (Exhibit "F") and such other documentation as may be timely served prior to the hearing.

PLEASE BE PRESENT TO DEFEND IF SO MINDED!


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

At Charleston, South Carolina
This 30th day of March, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE #: 2015-CP-10-6615

BOUCHELLE INCORPORATED,

Plaintiff,

v.

CHARLESTON WRECKING, INC.,
MICHAEL C. GOLEMIS,

Defendants.

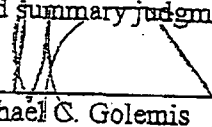
AFFIDAVIT OF MICHAEL C. GOLEMIS

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

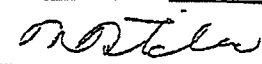
1. That I am the President of Charleston Wrecking, Inc., a demolition contractor.
2. For the issues that are the subject of the complaint, Plaintiff contacted and contracted with Charleston Wrecking, Inc., which was an active South Carolina corporation.
3. This action concerns an incident which occurred on July 21, 2015, at a demolition job sub-contracted by Bouchelle Incorporated to Charleston Wrecking, Inc.
4. The location of the job was 7350 Cross County Road, North Charleston, South Carolina.
5. The incident involved damage to concrete wall panels allegedly due to an incomplete saw cut at the second story level.
6. Charleston Wrecking, Inc.'s work was done pursuant to a sub-contract entitled "Standard Short Form Agreement Between Constructor and Subcontractor" dated May 20, 2015 attached hereto as Exhibit "A."

7. I was not individually a party to this contract nor did I have any other contractual relationship with Bouchelle Incorporated. I also refer to the First Request for Admissions numbers 1, 2, 3 served on Plaintiff by Charleston Wrecking's attorney on February 2, 2016.
8. At the time of the incident, I was not personally present, however, Charleston Wrecking, Inc. had personnel experienced in demolition on the job and being supervised by a licensed general contractor, Horace B. Thomas. Mr. Thomas, to my personal knowledge, has been a licensed general contractor for approximately forty (40) years and has worked in demolition for Charleston Wrecking, Inc. and its predecessor, Conco, Inc., for approximately the same length of time.
9. Also present on this was James Pressley who has participated in demolition work for Charleston Wrecking, Inc. for over 10 years. Both Mr. Thomas and Mr. Pressley were experienced in demolition and were knowledgeable in the process and procedures for the work they were assigned. Charleston Wrecking, Inc.'s reliance on those experienced persons was reasonable.
10. At the time Charleston Wrecking, Inc. entered into this subcontract, it was insured for general liability by a general liability insurance policy written by Seneca Insurance Company, policy number BAG1033883. A Certificate of Insurance for General Liability was provided to and accepted by Plaintiff. Seneca has denied coverage for the occurrence as alleged by Plaintiff in the Complaint.
11. At the time of the incident, Charleston Wrecking, Inc. had largely completed the demolition work for which an unpaid balance of \$50,140.00 remains due.
12. After the incident Charleston Wrecking, Inc. authorized contribution of the balance due it toward remedial work and demanded no further payment for its completed work.

13. Neither Charleston Wrecking, Inc. nor my self has committed any act which would make it inequitable or fundamentally unfair for Bouchelle Incorporated to look solely to Charleston Wrecking, Inc. for any recovery that may ultimately be determined as due. No act of fraud or other circumstance of inequity has been even alleged against me or Charleston Wrecking, Inc.
14. Further, Bouchelle Incorporated commenced this lawsuit without first demanding mediation as required by Section 16.7 of the Contract (See Request for Admissions #4 of February 2, 2016).
15. For the above reasons, I am requesting that I be dismissed as a Defendant in this action and that I, as well as Charleston Wrecking, Inc. be granted summary judgment.


Michael C. Golemis

SWORN to and subscribed before me
this 27 day of December, 2016.


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

Ex. "B"

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

BOUCHELLE INCORPORATED,)

Plaintiff,)

v.)

CHARLESTON WRECKING, INC.,)
MICHAEL C. GOLEMIS,)

Defendants.)

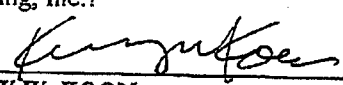
IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE #: 2015-CP-10-6615

DEFENDANT CHARLESTON
WRECKING, INC.'S FIRST
REQUEST FOR ADMISSIONS
TO PLAINTIFF

TO THE PLAINTIFF ABOVE NAMED:

The Defendant Charleston Wrecking, Inc. hereby submits the following requests for admissions pursuant to Rule 36 of the South Carolina Rules of Civil Procedure to be separately admitted or denied within 30 days of the date of service hereof:

1. Do you admit that the copy of the contract attached hereto as Exhibit "A" is a true and accurate copy of the original?
2. Do you admit that Michael C. Golemis is not a party to the contract attached hereto as Exhibit "A"?
3. Do you admit that there exists no other contract between Plaintiff and Michael C. Golemis?
4. Do you admit that Plaintiff failed to demand mediation prior to filing this action pursuant to paragraph 16.7 of its contract with Charleston Wrecking, Inc.?


KERRY W. KOON

147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
(843) 795-7000

ATTORNEY FOR DEFENDANTS

At Charleston, South Carolina

This 21 day of Feb, 2016.

Ex. "A"



ConsensusDocs®

ConsensusDocs® 751

STANDARD SHORT FORM AGREEMENT BETWEEN CONSTRUCTOR AND SUBCONTRACTOR

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ENDORSEMENT. This document was developed through a collaborative effort of organizations representing a wide cross-section of the design and construction industry. The organizations endorsing this document believe it represents a fair allocation of risk and responsibilities of all project participants.

Endorsing organizations recognize that this document must be reviewed and adapted to meet specific needs and applicable laws. This document has important legal and insurance consequences, and it is not intended as a substitute for competent professional services and advice. Consultation with an attorney and an insurance or surety adviser is strongly encouraged. Federal, State and Local laws may vary with respect to the applicability or enforceability of specific provisions in this document. **CONSENSUSDOCS SPECIFICALLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASERS ASSUME ALL LIABILITY WITH RESPECT TO THE USE OF THIS DOCUMENT, AND CONSENSUSDOCS AND ANY OF THE ENDORSING ORGANIZATIONS SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM SUCH USE.** For additional information, please contact ConsensusDocs, 2300 Wilson Blvd, Suite 300, Arlington, VA 22201, 866-925-DOCS (3627), support@consensusdocs.org or www.ConsensusDocs.org.



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CONTENT SECURE ID: 4078C106-1D44

ConsensusDocs® 751

STANDARD SHORT FORM AGREEMENT BETWEEN CONSTRUCTOR AND SUBCONTRACTOR



ConsensusDocs

This document is proudly endorsed by:



Job No.: 150401

Account Code:

This Agreement is made this 20 day of May, 2015, by and between

CONSTRUCTOR, Bouchelle Incorporated and

SUBCONTRACTOR, Charleston Wrecking Inc.

Tax identification No. (TIN) 20-4616867 Contractor License No.

The Constructor and Subcontractor are collectively the "Parties." Notice to the Parties shall be given at the above addresses.

PROJECT: Atlantic Electric, LLC. Warehouse

OWNER: Cross County Investments, LLC.

DESIGN PROFESSIONAL: R.J.Denton Architecture

1. SUBCONTRACT WORK To the extent terms of the agreement between the Owner and Constructor (prime agreement) apply to the work of the Subcontractor, the Constructor assumes toward the Subcontractor all obligations, rights, duties, and redress that the Owner assumes toward the Constructor. In an identical way, the Subcontractor assumes toward the Constructor all obligations, rights, duties, and redress that the Constructor assumes toward the Owner and others under the prime agreement. In the



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CONTENT SECURE ID: 4078C106-1D44

event of conflicts or inconsistencies between provisions of this Agreement and the prime agreement, this Agreement shall govern. The Subcontractor shall perform the Subcontract Work under the general direction of the Constructor and shall cooperate with the Constructor so the Constructor may fulfill obligations to the Owner. The Subcontractor shall provide the Subcontract Work for the Project in accordance with the Progress Schedule to be prepared by the Constructor after consultation with the Subcontractor, and as it may change from time to time. The Subcontractor shall give timely notices to authorities pertaining to the Subcontract Work and shall be responsible for all permits, fees, licenses, assessments, inspections, testing, and taxes necessary to complete the Subcontract Work. The Subcontractor is to provide Building and Selective Demolition, as more fully described in Exhibit A.

2. **SUBCONTRACT AMOUNT** The Constructor agrees to pay the Subcontractor for satisfactory and timely performance and completion of the Subcontract Work: 86,135.00. Retainage shall be zero percent (0%), which is equal to the percentage retained from the Constructor's payment by the Owner for the Subcontract Work. If the Subcontract Work is satisfactory and the prime agreement provides for reduction of retainage, the Subcontractor's retainage shall also be reduced when the Constructor's retainage of the Subcontract Work has been so reduced by the Owner.

3. **EXHIBITS** The following exhibits are made part of this Agreement:

EXHIBIT A: Subcontract Work, Attached Demolition Pricing Dated 5/20/15 pages.

EXHIBIT B: Subcontract Documents, , drawings, specifications, general, and other conditions issued by the Design Professional and dated 5/21/15, and addenda and other information.

EXHIBIT C: Progress Schedule, To be issued upon permitting pages.

EXHIBIT D: Alternates and Unit Prices, n/a pages.

EXHIBIT E: Temporary Services, By Constructor or Owner pages.

EXHIBIT F: Insurance Provisions,

Workers comp 1,000,000

Commercial General Liability As stated on Charleston Wrecking Inc Insurance Certificate dated 4/29/15.

4. **ETHICS** The Parties shall perform their obligations with integrity, ensuring at a minimum that each: (a) avoids conflicts of interest and promptly discloses any to the other Party; and (b) warrants that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their subcontractors, agents, officers, employees, or others for whom they may be liable, to secure preferential treatment.

4.1. **COMPLIANCE WITH LAWS** The Subcontractor shall comply with all Laws at its own costs. The Subcontractor shall be liable to the Constructor for all loss, cost, or expense, attributable to any acts or omissions by the Subcontractor, its employees, subcontractors, and agents for failure to comply with Laws, including fines, penalties, or corrective measures.

5. **SAFETY** To protect persons and property, the Subcontractor shall establish a safety program implementing safety measures, policies, and standards conforming to (a) those required or recommended by governmental and quasi-governmental authorities having jurisdiction, and (b) requirements of this Agreement. The Subcontractor shall keep the Project site clean and free from debris resulting from the Subcontract Work.



6. **WARRANTIES** The Subcontractor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Subcontract Documents, and free from defective workmanship and materials. The Subcontractor further warrants that the Subcontract Work shall be free from material defects not intrinsic in the design or materials required in the Subcontract Documents. The Subcontractor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by others, or abuse. The Subcontractor's warranties shall commence on the date of Substantial Completion of the Work or a designated portion.

7. TIME

7.1. Time is of the essence for both parties.

7.2. **SCHEDULE** In consultation with the Subcontractor, the Constructor shall prepare the schedule for performance of the Constructor's work (Progress Schedule) and shall revise and update such schedule, as necessary, as the Constructor's work progresses. The Subcontractor shall provide the Constructor with any scheduling information proposed by the Subcontractor for the Subcontract Work and shall revise and update as the Project progresses. The Constructor and Subcontractor shall be bound by the Progress Schedule. The Progress Schedule and all subsequent changes and additional details shall be submitted to the Subcontractor reasonably in advance of the required performance. Subject to the Subcontractor's rights under Article 8, the Constructor shall have the right to determine and, if necessary, change the time, order, and priority in which various portions of the Subcontract Work shall be performed and all other matters relative to the Subcontract Work.

8. **CHANGE ORDERS** When the Constructor orders in writing, the Subcontractor, without nullifying this Agreement, shall make any and all changes in the Subcontract Work which are within the general scope of this Agreement. Any adjustment in the Subcontract Amount or time of performance shall be authorized by a Change Order. No adjustments shall be made for any changes performed by the Subcontractor that have not been ordered by the Constructor. A Change Order is a written instrument prepared by the Constructor and signed by the Subcontractor stating their agreement upon the change in the Subcontract Work. If commencement or progress of the Subcontract Work is delayed without the fault or responsibility of the Subcontractor, the time for the Subcontract Work shall be extended by Change Order to the extent obtained by the Constructor, and the Progress Schedule shall be revised accordingly.

9. PAYMENT

9.1. **SCHEDULE OF VALUES** As a condition precedent to payment, the Subcontractor shall provide a schedule of values satisfactory to the Constructor not more than fifteen (15) days from the date of this Agreement. Attached Demolition Pricing Dated 5/20/15 will serve as schedule of values

9.2. **PROGRESS AND FINAL PAYMENTS** Progress payments, less retainage, shall be made to the Subcontractor, for Subcontract Work satisfactorily performed, no later than seven (7) days after receipt by the Constructor of payment from the Owner for the Subcontract Work. Final payment of the balance due shall be made to the Subcontractor no later than seven (7) days after receipt by the Constructor of final payment from the Owner for the Subcontract Work. These payments are subject to receipt of such lien waivers, affidavits, warranties, guarantees, or other documentation required by this Agreement or the Constructor. If payment from the Owner for such Subcontract Work is not received by the Constructor, through no fault of the Subcontractor, the Constructor will make payment to the Subcontractor within a reasonable time for Subcontract Work satisfactorily performed.

9.3. **PAYMENTS WITHHELD** The Constructor may reject a Subcontractor payment application or nullify a previously approved Subcontractor payment application, in whole or in part, as may



reasonably be necessary to protect the Constructor from loss or damage based upon the following to the extent that the Subcontractor is responsible: (a) failure to timely perform the Subcontract Work, (b) failure to properly pay its subcontractors or suppliers, (c) failure to promptly correct rejected, defective, or nonconforming Subcontract Work, or (d) uninsured third-party claims involving the Subcontractor or reasonable evidence demonstrating that third-party claims are likely to be filed unless and until the Subcontractor furnishes the Constructor with adequate security in the form of a surety bond, letter of credit, or other collateral or commitment which are sufficient to discharge such claims if established.

9.4. PAYMENT DELAY If the Constructor has received payment from the Owner and, if for any reason not the fault of the Subcontractor, the Subcontractor does not receive a progress payment from the Constructor within seven (7) days after the date such payment is due, or if the Constructor has failed to pay the Subcontractor within a reasonable time for Subcontract Work satisfactorily performed, the Subcontractor, upon giving seven (7) days' written notice to the Constructor, and without prejudice to and in addition to any other legal remedies, may stop work until payment of the full amount owing to the Subcontractor has been received. The Subcontract Amount and time of performance shall be adjusted by Change Order for the amount of the Subcontractor's reasonable and verified cost of shutdown, delay, and startup.

9.5. WAIVER OF CLAIMS Final payment shall constitute a waiver of all claims by the Subcontractor relating to the Subcontract Work, but shall in no way relieve the Subcontractor of liability for warranties, or for nonconforming or defective work discovered after final payment.

9.6. OWNER'S ABILITY TO PAY AND LIEN INFORMATION

9.6.1. Unless expressly prohibited by the Subcontract Documents, the Constructor shall promptly provide, upon Subcontractor's request, (a) information regarding the Owner's financial ability to pay for the Work, and (b) notice of any material variation in the Owner's financial ability to pay. The Constructor, however, does not warrant the accuracy or completeness of information provided. The Subcontractor also is entitled to request through the Constructor any information necessary to give notice of or enforce mechanics lien rights and, where applicable, stop notices. This information shall include the Owner's interest in the real property on which the Project is located and the recorded legal title.

9.6.2. If the Subcontractor does not receive the information referenced in subsection 9.6.1, the Subcontractor may request information from the Owner or Owner's lender.

10. INDEMNITY To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Constructor, the Constructor's other subcontractors, the Design Professional, the Owner, and their agents, consultants, and employees (the Indemnitees) from all claims for bodily injury and property damage other than to the Work itself that may arise from the performance of the Subcontract Work, including reasonable attorneys' fees, costs, and expenses, that arise from the performance of the Work, but only to the extent caused by the negligent acts or omissions of the Subcontractor, its subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Subcontractor shall be entitled to reimbursement of any defense cost paid above the Subcontractor's percentage of liability for the underlying claim to the extent attributable to the negligent acts or omissions of the Indemnitees.

11. INSURANCE

11.1. SUBCONTRACTOR'S INSURANCE Before commencing the Subcontract Work, and as a condition precedent to payment, the Subcontractor shall purchase and maintain insurance that will protect it from the claims arising out of its operations under this Agreement, whether the operations



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are by the Subcontractor, or any of its subcontractors or consultants, or anyone directly or indirectly employed by any of them, or for whose acts the Subcontractor may be liable.

11.2. MINIMUM LIMITS OF LIABILITY The Subcontractor shall procure and maintain, with insurance companies licensed in the jurisdiction in which the Project is located and acceptable to the Constructor, which acceptance shall not be unreasonably withheld, at least the limits of liability as set forth in Exhibit F.

11.3. NUMBER OF POLICIES Commercial General Liability Insurance (CGL) and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy.

11.4. CANCELLATION, RENEWAL, AND MODIFICATION To the extent commercially available to the Subcontractor from its current insurance company, insurance policies required under subsection 11.2 shall contain a provision that the insurance company or its designee must give the Constructor written notice transmitted in paper or electronic format: (a) 30 days before coverage is nonrenewed by the insurance company and (b) within 10 business days after cancellation of coverage by the insurance company. Prior to commencing the Work and upon renewal or replacement of the insurance policies, the Subcontractor shall furnish the Constructor with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under subsection 11.2 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, the Subcontractor shall give Constructor prompt written notice upon actual or constructive knowledge of such condition.

11.5. CONTINUATION OF COVERAGE The Subcontractor shall continue to carry Completed Operations Liability Insurance for at least one year after final payment to the Constructor. Prior to commencement of the Work, the Subcontractor shall furnish the Constructor with certificates evidencing the required coverages.

11.6. PROPERTY INSURANCE Upon written request of the Subcontractor, the Constructor shall provide the Subcontractor with a copy of the Builder's Risk Policy of insurance or any other property or equipment insurance in force for the Project and procured by the Owner or Constructor. The Constructor shall advise the Subcontractor if a Builder's Risk Policy of insurance is not in force.

11.6.1. If the Owner or Constructor has not purchased property insurance reasonably satisfactory to the Subcontractor, the Subcontractor may procure such insurance as will protect the interests of the Subcontractor, its subcontractors, or subsubcontractors to the Subcontract Work. The cost of this insurance shall be charged to the Constructor in a Change Order.

11.6.2. If not covered under the Builder's Risk Policy of insurance or any other property or equipment insurance required by the Subcontract Documents, the Subcontractor shall procure and maintain at the Subcontractor's own expense property and equipment insurance for the Subcontract Work, including portions of the Subcontract Work stored off the site or in transit, when such portions of the Subcontract Work are to be included in an application for payment.

11.7. WAIVER OF SUBROGATION The Constructor and Subcontractor waive all rights against each other, the Owner, and the Design Professional, and any of their respective consultants, subcontractors, and subsubcontractors, agents, and employees, for damages caused by perils to the extent covered by the proceeds of the insurance provided in section 11.6, except such rights as they may have to the insurance proceeds and such rights as they may have for the Owner's failure to obtain and maintain any Project Builders Risk Coverage that the Owner may be obligated to provide. The Subcontractor shall require similar waivers from its subcontractors. If the policies of insurance



referred to in this article require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed.

11.8. CONSTRUCTOR'S LIABILITY INSURANCE The Constructor shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement, including without limitation, loss of use and claims, losses, and expenses arising out of the Constructor's errors or omissions.

11.9. ADDITIONAL LIABILITY COVERAGE The Constructor xxx shall/ [] shall not require the Subcontractor to purchase and maintain liability coverage, primary to the Constructor's coverage under subsection 11.8.

11.9.1. If required by section 11.9, the additional liability coverage required of the Subcontractor shall be:

1. xxx **ADDITIONAL INSURED.** The Constructor shall be named as an additional insured on the Subcontractor's CGL specified, for operations and completed operations, but only with respect to liability for bodily injury, property damage, or personal and advertising injury to the extent caused by the negligent acts or omissions of the Subcontractor, or those acting on the Subcontractor's behalf, in the performance of the Subcontractor's Work for the Constructor at the Project site.

2. [] **OCP.** The Subcontractor shall provide an Owners' and Constructors' Protective Liability Insurance ("OCP") policy with limits equal to the limits on CGL specified, or limits as otherwise required by the Constructor. Any documented additional cost in the form of a surcharge associated with procuring the additional liability coverage in accordance with this subsection shall be paid by the Constructor directly or the costs may be reimbursed by the Constructor to the Subcontractor by increasing the Subcontract Amount to correspond to the actual cost required to purchase and maintain the additional liability coverage. Before commencing the Subcontract Work, the Subcontractor shall provide either a copy of the OCP policy or a certificate and endorsement evidencing that the Constructor has been named as an additional insured, as applicable.

12. BONDS Performance and Payment Bonds [] are/ xxx are not required of the Subcontractor. Such bonds shall be issued by a surety admitted in the state in which the Project is located and must be acceptable to the Constructor. The Constructor's acceptance shall not be withheld without reasonable cause. The penal sum of the Payment Bond and of the Performance Bond shall each be in the full Subcontract Amount.

13. LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for any (a) liquidated, consequential, or other damages that the Owner is entitled to recover against the Constructor under the prime agreement, and (b) losses covered by insurance required by the Subcontract Documents, the Constructor and Subcontractor mutually waive all claims against each other for consequential damages, including damages for loss of business, loss of financing related to the Project, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. Similarly, the Subcontractor shall obtain in another agreement from its subcontractors mutual waivers of consequential damages that correspond to the Subcontractor's waiver of consequential damages herein. The provisions of this section shall also apply to and survive termination of this Agreement.

14. RISK OF LOSS Except to the extent a loss is covered by applicable insurance, risk of loss or damage to the Subcontract Work shall be upon the Subcontractor until the Date of Substantial Completion, unless otherwise agreed to by the Parties.

15. NOTICE TO CURE AND TERMINATION

15.1. **FAILURE OF PERFORMANCE** Should the Subcontractor fail to satisfy contractual deficiencies or to commence and continue satisfactory correction of the default with diligence or promptness within three (3) business days from receipt of the Constructor's written notice, then the Constructor, without prejudice to any right or remedies, shall have the right to take whatever steps it deems necessary to correct deficiencies and charge the cost thereof to the Subcontractor, who shall be liable for such payment, including reasonable overhead, profit, and attorneys' fees. In the event of an emergency affecting safety of persons or property, the Constructor may proceed as above without notice, but the Constructor shall give the Subcontractor notice promptly after the fact as a precondition of cost recovery.

15.2. **TERMINATION BY OWNER** Should the Owner terminate the prime agreement or any part which includes Subcontract Work, the Constructor shall notify the Subcontractor in writing within three (3) business days of termination and, upon written notification, this Agreement shall be terminated and the Subcontractor shall immediately stop the Subcontract Work, follow all of the Constructor's instructions, and mitigate all costs. In the event of Owner termination, Constructor liability to the Subcontractor shall be limited to the extent of Constructor recovery on the Subcontractor's behalf under the prime agreement. The Constructor agrees to cooperate with the Subcontractor, at the Subcontractor's expense, in the prosecution of any Subcontractor claim arising out of Owner termination and to permit the Subcontractor to prosecute the claim, in the name of the Constructor, for the use and benefit of the Subcontractor, or assign the claim to the Subcontractor. In the event the Owner terminates the Constructor for cause, through no fault of the Subcontractor, the Subcontractor shall be entitled to recover from the Constructor its reasonable costs arising from the termination of this Agreement, including reasonable overhead and profit on Work not performed.

15.3. **TERMINATION BY CONSTRUCTOR** If the Subcontractor fails to commence and satisfactorily continue correction of a default within three (3) business days after written notification issued under section 15.1, then the Constructor may, in lieu of or in addition to section 15.1, issue a second written notification to the Subcontractor and its surety, if any. Such notice shall state that if the Subcontractor fails to commence and continue correction of a default within seven (7) days of the written notification, the Agreement will be deemed terminated. A written notice of termination shall be issued by the Constructor to the Subcontractor at the time the Subcontractor is terminated. The Constructor may furnish those materials or equipment or employ such workers or subcontractors as the Constructor deems necessary to maintain the orderly progress of the Constructor's work. All costs incurred by the Constructor in performing the Subcontract Work, including reasonable overhead, profit, and attorneys' fees, costs, and expenses, shall be deducted from any monies due or to become due the Subcontractor. The Subcontractor shall be liable for payment of any amount by which such expense may exceed the unpaid balance of the Subcontract Amount. At the Subcontractor's request, the Constructor shall provide a detailed accounting of the costs to finish the Subcontract Work.

15.4. **TERMINATION BY SUBCONTRACTOR** If the Subcontract Work has been stopped for thirty (30) days because the Subcontractor has not received progress payments or has been abandoned or suspended for an unreasonable period of time not due to the fault or neglect of the Subcontractor, then the Subcontractor may terminate this Agreement upon giving the Constructor seven (7) days' written notice. Upon such termination, the Subcontractor shall be entitled to recover from the Constructor payment for all Subcontract Work satisfactorily performed but not yet paid for, including reasonable overhead, profit, and attorneys' fees, costs, and expenses. However, if the Owner has not paid the Constructor for the satisfactory performance of Subcontract Work through no fault or neglect of the Constructor, and the Subcontractor terminates this Agreement under this article because it has not received corresponding progress payments, the Subcontractor shall be entitled to recover from the Constructor, within a reasonable period of time following termination, payment for all Subcontract



Work satisfactorily performed but not yet paid for, including reasonable overhead and profit. The Constructor's liability for any other damages claimed by the Subcontractor under such circumstances shall be extinguished by the Constructor pursuing said damages and claims against the Owner, on the Subcontractor's behalf, as provided for by section 15.2.

16. DISPUTE MITIGATION AND RESOLUTION

16.1. CLAIMS RELATING TO CONSTRUCTOR The Subcontractor shall give the Constructor written notice of all claims within seven (7) days of the Subcontractor's knowledge of facts giving rise to the event for which claim is made; otherwise, such claims shall be deemed waived. All unresolved claims, disputes, and other matters in question between the Constructor and Subcontractor shall be resolved in the manner provided in this Agreement.

16.2. DAMAGES If the prime agreement provides for liquidated or other damages for delay beyond the completion date set forth in this Agreement, and such damages are assessed, the Constructor may assess a share of the damages against the Subcontractor in proportion to the Subcontractor's share of responsibility for the delay. However, the amount of such assessment shall not exceed the amount assessed against the Constructor. Nothing in this Agreement shall be construed to limit the Subcontractor's liability to the Constructor for the Constructor's actual delay damages caused by the Subcontractor's delay.

16.2.1. CONSTRUCTOR CAUSED DELAY Nothing in this Agreement shall preclude the Subcontractor's recovery of delay damages caused by the Constructor.

16.3. WORK CONTINUATION AND PAYMENT Unless otherwise agreed in writing, the Subcontractor shall continue the Subcontract Work and maintain the Progress Schedule during any dispute resolution proceedings. If the Subcontractor continues to perform, the Constructor shall continue to make payments in accordance with this Agreement.

16.4. MULTIPARTY PROCEEDING The Parties agree, to the extent permitted by the prime agreement, that all Parties necessary to resolve a claim shall be Parties to the same dispute resolution proceeding. To the extent disputes between the Constructor and Subcontractor involve in whole or in part disputes between the Constructor and Owner, disputes between the Subcontractor and Constructor shall be decided by the same tribunal and in the same forum as disputes between the Constructor and Owner.

16.5. NO LIMITATION OF RIGHTS OR REMEDIES Nothing in ARTICLE 15 shall limit any rights or remedies not expressly waived by the Subcontractor which the Subcontractor may have under lien laws or payment bonds.

16.6. DISPUTE MITIGATION THROUGH DIRECT DISCUSSION If a dispute arises out of or relates to this Agreement or its breach, the Parties shall endeavor to settle the dispute through direct discussion. Within five (5) business days, the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions, shall conduct direct discussions and make a good faith effort to resolve such dispute.

16.7. MEDIATION Disputes between the Subcontractor and Constructor not resolved by direct discussion shall be submitted to mediation pursuant to the Construction Industry Mediation Rules of the American Arbitration Association. The Parties shall select the mediator within fifteen (15) days of the request for mediation. Engaging in mediation is a condition precedent to any form of binding dispute resolution.



16.8. BINDING DISPUTE PROCESSES If neither direct discussions nor mediation successfully resolves the dispute, the Parties shall submit the matter to the binding dispute resolution procedure selected below:

xxx ARBITRATION Unless the Parties mutually agree otherwise in writing, all claims, disputes and matters in question arising out of, or relating to, this Agreement shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. An award entered in an arbitration proceeding shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

xxx LITIGATION Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

16.8.1. COSTS The costs of any binding dispute resolution procedures and reasonable attorneys' fees shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

16.8.2. VENUE The venue of any binding dispute resolution procedure shall be the location of the Project, unless the Parties agree on a mutually convenient location.

16.8.3. Neither Party may commence arbitration if the claim or cause of action would be barred by the applicable statute of limitations had the claim or cause of action been filed in a state or federal court. Receipt of a demand for arbitration by the person or entity administering the arbitration shall constitute the commencement of legal proceedings for the purposes of determining whether a claim or cause of action is barred by the applicable statute of limitations.

16.8.4. An award entered in an arbitration proceeding pursuant to this Agreement shall be final and binding upon the Parties, and judgment may be entered upon an award in any court having jurisdiction.

17. MISCELLANEOUS

17.1. EXTENT OF AGREEMENT Except as expressly provided, this Agreement is for the exclusive benefit of the Parties and not for the benefit of any third party. This Agreement represents the entire and integrated agreement between the Parties, and supersedes all prior negotiations, representations, or agreements, either written or oral.

17.2. ASSIGNMENT The Subcontractor shall not assign the whole or any part of the Subcontract Work or this Agreement without prior written approval of the Constructor.

17.3. JOINT DRAFTING The Parties expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate terms and to obtain assistance of counsel in reviewing terms prior to execution. This Agreement shall be construed neither against nor in favor of either Party, but shall be construed in a neutral manner.

CONSTRUCTOR Bouchelle Incorporated

PRINT NAME: David Bouchelle

PRINT TITLE: President

ATTEST

Notary Public For South Carolina

ConsensusDocs® 751 – Short Form Agreement Between Constructor and Subcontractor - © 2011, Revised 2014. THIS DOCUMENT MAY HAVE BEEN MODIFIED. The ConsensusDocs technology platform creates a redline comparison to the standard language which the purchaser of this contract is authorized to share for review purposes. Consultation with legal and insurance counsel are strongly encouraged. You may only make copies of finalized documents for distribution to parties in direct connection with this contract. Any other uses are strictly prohibited.
CONTENT SECURE ID: 4078C106-1D44



NAME [] TITLE []

SUBCONTRACTOR: Charleston Wrecking Inc.

BY: _____

PRINT NAME: Michael Golemis

PRINT TITLE: President

ATTEST Philip Antley

NAME Philip Antley

TITLE Notary Public for South Carolina

Exp. 4/3/2018

END OF DOCUMENT.



Charleston Wrecking Inc. 5/20/15

DEMOLITION PRICING FOR 7350 CROSS COUNTY ROAD

1) Complete Demolition

- a) 2 Story Building
- b) 3 Story Building
- c) Saw Cutting @ transition point

TOTAL \$64,215.00

2) Selective Demolition 1- 2,336sf section

- a) Pre cast floor system
- b) Concrete Stairs
- c) Concrete Block Walls

TOTAL \$14,925.00

3) Selective Demolition 2- 2,336sf section

- a) Drywall
- b) Furring
- c) ATC System
- d) Ductwork
- e) Terrazzo

TOTAL \$ 3,195.00

4) Selective Demolition Warehouse

- a) Storefronts
- b) Terrazzo
- c) Brick infill
- d) Sheetrock
- e) ATC System

TOTAL \$ 3,800.00
\$86,135.00.00

Grand Total

Exclude: 1.Environmental
2. Shoring

3. Selective electrical demo-- #2 - 2,336 section and warehouse

Constructor (Bouchelle Inc.) or owner may wish to retain some items, such as, but not limited to, HVAC equipment. Constructor or owner will disconnect hvac units and recover refrigerant from hvac equipment prior to demo.

Charleston wrecking To haul away all debris, dispose of at a location and manner according to governing laws and ordinances, supply dumpsters for their respective work, keep site clean, final cleanup of site upon completion of their respective work.



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Ex. "D"
COPY

September 15, 2015

VIA FIRST-CLASS MAIL & CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bouchelle, Inc.
1157 Island View Court
Mount Pleasant, SC 29465

Attention: David Bouchelle

RE: Insured : Bouchelle, Inc.
Date of Loss : July 14, 2015
Claimant : Cross County Investments, LLC

Policy No. : OUS009069353
Policy Period : August 11, 2014 - August 11, 2015
Our File No. : 47920 PKE

Dear Mr. Bouchelle:

We are Third Party Administrators for Canopus US Insurance, Inc. (hereinafter referred to as "Canopus US"), who provide insurance coverage to Bouchelle, Inc. (hereinafter "you" or "your").

Blair & Company has previously acknowledged receipt of notice of this claim. We have retained the independent adjusting firm of NCA Group investigate this claim on behalf of Canopus US and Blair & Company.

With respect to the pending cancellation of Policy OUS009069353, Canopus US does not intend for the cancellation to waive any right to void the past and / or present policies. Canopus US is reserving its rights to void the policies pending an investigation. Further, if the investigation indicates a right to voidance, each policy for which there was a material misrepresentation in the application done with an intent to deceive or defraud Canopus US will be void ab initio and Canopus US will return all premium for those policies, less supplementary payments and indemnity payments.

We are currently researching the existence of any coverages applicable to the subject allegations in the policy referenced above issued to you. Upon completion of our coverage

Western Regional Office • 28025 Smyth Drive, Suite 101 • Valencia • CA 91355
Eastern Regional Office • 3111 Springbank Lane, Suite C • Charlotte • NC 28226
Telephone 800.487.1263 • claims@blairandco.net • Facsimile 866.487.0476

Bouchelle, Inc. – Page 2
Insured: Bouchelle, Inc.
Our File No.: 47920 PKE
September 15, 2015

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investigation, we will advise you of the extent of the indemnity obligations under the above policy of insurance with Canopus US.

Canopus US is reserving its rights, but is not suggesting that the allegations set forth have any factual basis or legal merit. We recognize that the claim is unsubstantiated at this time; however, we are required to apply all of the allegations stated in the claim to the terms of this insurance contract for the purposes of the coverage analysis. This is a necessary part of the process. By establishing a claim file and conducting a coverage investigation into this matter Canopus US does not waive any of the rights or defenses available to it, including but not limited to those rights and defenses under the contract of insurance, nor does it expand the duties owed by Canopus US under the contract of insurance issued to you.

As there is the potential that the allegations raised by the claimant may constitute a claim under the policy, Canopus US will agree to continue its investigation of this matter under a full and complete reservation of all rights.

By agreeing to investigate this matter, Canopus US does not suggest or imply that any duties under the policy have been or will ever be triggered. Canopus US specifically reserves its rights to seek reimbursement of any costs or fees associated with noncovered claims or causes of action.

The position set forth in this letter is based on our investigation to date and the allegations involved in this claim. The following is a summary of our understanding of these facts and circumstances. Please advise us, in writing, if there are any misunderstandings or misstatements.

THE CLAIM

This is third-party property damage claim. The following is the information we have gathered as of this date regarding the facts of the claim.

You were retained by the claimant as the general contractor on a renovation project involving a vacant warehouse located at 7351 Industry Drive in North Charleston, SC. You hired a demolition contractor, Charleston Wrecking, to remove a portion of the building. During the demolition process, Charleston Wrecking damaged a wall of the building that was not to be demolished.

Charleston Wrecking reported this claim to their insurance carrier, Seneca Insurance. Seneca has not yet accepted liability or coverage for this loss.



Bouchelle, Inc. - Page 3
Insured: Bouchelle, Inc.
Our File No.: 47920 PKE
September 15, 2015

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THE POLICY

Policy Number OUS009069353 provides coverage for the period from August 11, 2014 to August 11, 2015, and contains commercial general liability coverage in the amount of \$2,000,000.00 General Aggregate, a \$1,000,000.00 Each Occurrence Limit, and a \$1,000,000.00 Products-Completed Operations limit, subject to a \$500.00 deductible.

The following classification is listed on the policy Declarations Page:

91342 - Carpentry

COVERAGE

We refer you to the Commercial General Liability Coverage Form CG 00 01 12 04, SECTION I - COVERAGES, which provides, in relevant part:

1. **Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
 - (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:



Bouchelle, Inc. – Page 4
Insured: Bouchelle, Inc.
Our File No.: 47920 PKE
September 15, 2015

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- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period....

Reference is made to **SECTION I – COVERAGES**, Part 2. Exclusions, which provides, in relevant part:

2. Exclusions

This insurance does not apply to:

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. . . .

* * *

j. Damage To Property

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

* * *

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products- completed operations hazard".

i. Damage To Your Work



Bouchelle, Inc. – Page 5
Insured: Bouchelle, Inc.
Our File No.: 47920 PKE
September 15, 2015

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"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

* * *

We now refer you to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**, which provides, in relevant part:

* * *

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations that you made to us; and
- c. We have issued this policy in reliance upon your representations.

* * *

Key terms are defined within **SECTION V - DEFINITIONS**:

SECTION V – DEFINITIONS

* * *

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

* * *

16. "Products-completed operations hazard":



- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
- (1) Products that are still in your physical possession; or
 - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

* * *

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and



Bouchelle, Inc. – Page 7
Insured: Bouchelle, Inc.
Our File No.: 47920 PKE
September 15, 2015

CLAIMS MANAGEMENT
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- (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
 - (2) The providing of or failure to provide warnings or instructions.

ENDORSEMENTS

We refer you to the following Endorsements found on Policy Form ART-GL-01 (09/07):

EXCLUSION – CLASSIFICATION LIMITATION

The following exclusion is added to COVERAGES A, B AND C (Section D):

This insurance does not apply to "bodily injury", "Property damage", "advertising injury", "personal injury" or medical payments for operations which are not classified or shown on the Commercial General Liability Coverage Declarations, its endorsements or supplements.

* * *

We refer you to Endorsement CG 21 39 10 93, which provides:

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"Insured contract" means:



Bouchelle, Inc. – Page 8
Insured: Bouchelle, Inc.
Our File No.: 47920 PKE
September 15, 2015

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- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement.

* * *

ANALYSIS

According to the information we have at this time, you were acting as the general contractor for this project. The application dated August 27, 2014 states your operations are limited to "carpentry" as an artisan contractor performing 80% Residential Remodeling and 20% Commercial work. The application further indicates you do not subcontract any work.

It is unclear at this time if the Classification Limitation endorsement would apply to preclude coverage for this loss.

It is unclear whether there has been a material misrepresentation in the application that would entitle Canopus US to void one or more of the policies issued to Bouchelle, Inc.

It is unclear if the "your work" exclusions as outlined above would apply to preclude coverage.

GENERAL RESERVATION OF RIGHTS

This is not a complete listing of all potential exclusions or limiting provisions in the policy that may be relevant. Canopus US is specifically reserving its rights to assert all applicable exclusions, policy reservations or defenses at law which may be appropriate as such pertains to this claim.



Bouchelle, Inc. - Page 9
Insured: Bouchelle, Inc.
Our File No.: 47920 PKE
September 15, 2015

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By agreeing to continue their investigation of this claim, Canopus US is not admitting that any legal duty to defend or indemnify exists or ever existed. Canopus US continues to investigate under a full reservation of rights which includes, but is not limited to each of the following:

1. Canopus US' investigation does not waive or change the policy's terms. Canopus US reserves the right to deny coverage for defense or indemnity at any time.
2. Canopus US' investigation does not waive their right to dispute issues of coverage, nor does Canopus US' investigation require them to make any settlement offers or satisfy any judgments on your behalf for claims not covered by the policy.
3. The right to have a court determine whether or not Canopus US is, or ever was, obligated to you in this action, or to otherwise establish its respective rights, except as acknowledged in this letter.
4. Canopus US reserves the right to withdraw their involvement, should the claim against you not present a claim potentially covered under the policy.
5. Canopus US reserves the right to recover any costs for defending a non-covered claim.

Please do not interpret this letter to constitute a waiver of any rights Canopus US may have to assert under other exclusions or policy language should additional facts come to light. Nor is it a waiver of any of your rights under the policy.

CONCLUSION

Canopus US wishes to advise you that Canopus US intends to continue its investigation of the claims made. Subsequent inquiry may reveal additional facts bearing on the coverage available. If you are aware of any facts which you believe should be considered in conducting this inquiry, we would appreciate you bringing them to our attention at your earliest convenience.

We would like to remind you at this time of your obligation to fully and completely cooperate with Canopus US' claim representatives, Blair & Company, and any independent adjuster retained to investigate this claim on behalf of Canopus US and Blair



Bouchelle, Inc. - Page 10

Insured: Bouchelle, Inc.

Our File No.: 47920 PKE

September 15, 2015

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& Company, as well as your obligation to keep us fully informed and apprised of developments as this matter proceeds.

The wording, punctuation and form expressed in the referenced policy of insurance take precedence over this or any other letter we prepare where excerpts from the policy are quoted. Please refer to your policy and applicable endorsements. This letter is not meant to change any wording or meaning in the policy of insurance issued by Canopus US.

Should Canopus US pays any monies by way of indemnity on this claim, you should be aware that this liability coverage carries a deductible of \$500.00 per claimant. The deductible amounts as set forth under your policy include all legal and loss adjustment expenses. Once Canopus US issues payment as indemnity or to any expense regarding this claim to which the deductible applies, this deductible will become due and payable at that time.

Should you disagree with any position taken by Canopus US, we respectfully request that you immediately provide our office with the basis for your position, in writing.

If you have any questions or wish to bring any other facts or circumstances concerning this matter to our attention, please do not hesitate to contact us.

Very truly yours,

Pam Keim

Pam Keim
Blair & Company
Eastern Regional Office
800.487.1263, ext. 213
pam.keim@blairandco.net
PKE:rh

cc: The Brinson Agency
759 Folly Road, Unit C
Charleston, SC 29412

cc: DeJong Law Firm
940 Johnnie Dodds Blvd, Suite 203
Mt. Pleasant, SC 29464
Attn: Karen DeJong, Esquire



Ex. "E"

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
BOUCHELLE INCORPORATED,)
Plaintiff(s))
vs.)
CANOPIUS US INSURANCE, INC.,)
SENECA SPECIALTY INS. CO., THE)
BRINSON AGENCY, and JOHN)
BRINSON,)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 - CP - 10 - 4984

FILED
2016 SEP 20 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT

(Please Print)
Submitted By: Karen M. DeJong
Address: DeJong Law Firm, LLC
272 West Coleman Blvd., Ste. 200
Mount Pleasant, SC 29464-5652

SC Bar #: 0070699
Telephone #: (843) 216-6161
Fax #: (843) 216-1119
Other:
E-mail: karen@dejonglawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check one box below)

- ☐ JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION
(Check One Box Below)

- Contracts
☐ Construction (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Wrongful Breach (140)
☐ Other (199)

- Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other Malpractice (299)

- Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Other (399)

- Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Other (499)

- Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)**
☐ Other (799)

- Administrative Law/Relief
☐ Driver License Reinstatement (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

- Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Other (999)

- Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)

** Check only if Summons & Complaint to follow in 20 days

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et seq.

***FOR MANDATED ADR COUNTIES ONLY**

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

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

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED,

Plaintiff,

v.

CANOPIUS US INSURANCE, INC., SENECA
SPECIALTY INS. CO., THE BRINSON AGENCY and
JOHN BRINSON,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-10- 4984

SUMMONS
(Non-Jury Trial)

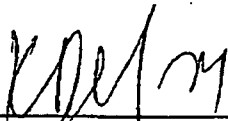
FILED
2016 SEP 20 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers, DeJong Law Firm, LLC, at their offices at 272 West Coleman Blvd., Suite 200, Mount Pleasant, SC 29464-5652, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER, that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

DEJONG LAW FIRM LLC



Karen M. DeJong
272 West Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464-5652
843-216-6161
ATTORNEY FOR PLAINTIFF

Mt. Pleasant, SC
September 20, 2016

* Florence, Horry, Lexington, Richland, Greenville, and Anderson

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED,

Plaintiff,

vs.

CANOPIUS US INSURANCE, INC.,
SENECA SPECIALTY INS. CO.,
THE BRINSON AGENCY,
and JOHN BRINSON,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2016-CP-10- 4984

COMPLAINT

Declaratory Judgment Action

FILED
2016 SEP 20 PM 2:40
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiff above named, complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

1. Plaintiff, Bouchelle Incorporated is a corporation organized and existing under the laws of the State of South Carolina, with its' primary place of business located in the County of Charleston, and at all times relevant hereto said company was engaged in construction activity for commercial property, more specifically, property located at 7350 Industry Drive, North Charleston, South Carolina 29418.

2. Defendant Canopius US Insurance Inc. (hereinafter "Canopius") is a corporation organized and existing pursuant to the laws of a State other than South Carolina, with its principal place of business at 1450 East American Lane, Suite 1775, Schaumburg, IL 60173. Defendant Canopius is in the business of providing insurance to individuals and companies and was at all times relevant hereto doing business in Charleston County, South Carolina.

3. Defendant Seneca Specialty Ins. Co. (hereinafter "Seneca") is a corporation organized and existing pursuant to the laws of a State other than South Carolina, with its

principal place of business at 160 Water Street, New York, New York 10038-4922. Defendant Seneca is in the business of providing insurance to individuals and companies and was at all times relevant hereto doing business in Charleston County, South Carolina.

4. Defendant The Brinson Agency (hereinafter "Agency") is a sole proprietorship with its' principal place of business located at 759 Folly Road, Unit C, Charleston, Charleston County, South Carolina 29412.

5. Defendant John Brinson (hereinafter "Brinson") is the owner of The Brinson Agency and agent of The Brinson Agency with his residence located in Charleston County, South Carolina.

6. The Court has jurisdiction over the parties and the subject matter of this action.

7. Plaintiff purchased a commercial liability policy, bearing policy number OUS009069353, from Defendant Canopus effective August 11, 2014 to August 11, 2015. The policy constituted a contract of insurance between the Plaintiff and Defendant Canopus.

8. Plaintiff's subcontractor, Charleston Wrecking, Inc., purchased a commercial liability policy, bearing policy Number BAG1033883, from Defendant Seneca effective from November 11, 2014 to November 11, 2015. The policy constituted a contract of insurance between Charleston Wrecking, Inc. and Seneca.

9. The Seneca policy also provided coverage for the commercial property located at 7350 Industry Drive, North Charleston, South Carolina 29418 with Plaintiff being listed as the Certificate Holder of the policy.

10. On or about July 14, 2015, Plaintiff's subcontractor, Charleston Wrecking, Inc. was performing scheduled demolition work to a portion of the project, when sections of the

structure being demolished fell and caused damage, including but not limited to, a wall of a pre-existing building that was not part of the scheduled demolition.

11. The demolition work being performed as aforesaid also resulted in damage, including but not limited to, the supporting structure of the wall of the pre-existing building described in the preceding paragraph.

12. The damage, including but not limited to, the wall of the pre-existing building which was not part of the scope of the scheduled demolition, as described in the preceding two paragraphs, constitutes accidental loss or damage which is a covered loss under the policy.

13. On or about August 12, 2015, Plaintiff presented a claim under its' policy with Defendant Canopus for damages to the pre-existing building as aforesaid.

14. On or about November 15, 2015, Defendant Canopus rejected Plaintiff's claim for reimbursement under the contract of insurance based upon its' conclusion that Plaintiff was not covered by insurance for "general contractor" services but was instead covered by insurance for "carpentry" services. Since Plaintiff was acting as a general contractor on the job site, Defendant Canopus denied coverage for the accident.

15. Upon information and belief, Defendant Seneca has rejected Charleston Wrecking, Inc.'s claim for reimbursement under the contract of insurance, though the reason why has not been disclosed.

16. Plaintiff entered into an agreement with Defendant The Brinson Agency to obtain and maintain general commercial liability insurance for his general contractor's company.

17. After the accident on or about July 14, 2015, when Plaintiff reported the accident to his insurance agent, Defendant Brinson, owner of Defendant Agency, Defendant Brinson

disclosed to Plaintiff that Plaintiff did not have general contractor's liability insurance. Instead, Plaintiff's insurance policy with Defendant Canopus was for carpentry services.

18. At no time did Plaintiff authorize Defendant Brinson and Defendant Agency to notify Defendant Canopus that his commercial liability policy was to be for carpentry services and not general contractor services.

19. As a result of Defendants' actions, Plaintiff has been damaged and will be required to expend large sums of money to repair, correct and replace the damage, along with other costs.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

20. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

21. The Defendants' denial of the Plaintiff's claim under the policies constitutes a breach of the contract between the parties, in that the losses described as aforesaid constituted covered losses under the terms and conditions of the policies.

22. Plaintiff has suffered great financial harm and detriment as a direct result of Defendants' breach of the contracts and failure to pay for Plaintiff's covered losses.

FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment)

23. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

24. This action is brought pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code Section 15-53-10, et seq. for a declaration of the rights, status and other legal

obligations of the parties under the policies issued by Defendants to the Plaintiff, its' subcontractors, and the building owner.

25. Plaintiff is entitled to and requests that the Court issue the following declarations relating to its rights under the policies:

a. That the damages and losses sustained by Plaintiff constituted covered losses under the policies and that the Plaintiff is entitled to compensation for the same pursuant to the terms and conditions of those policies.

b. That the description of the damage provided by Plaintiff to Defendant Canopus accurately described the scope and nature of the project.

FOR A THIRD CAUSE OF ACTION

(Statutory Attorney's Fees)

26. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

27. Defendants have without reasonable cause or basis refused to pay Plaintiff the benefits owed under the policies for the covered losses.

28. Demand has been made by the policy holders and over 90 days have lapsed since Defendants' refusal to pay benefits.

29. Plaintiff is informed and believes that pursuant to S.C. Code Section 38-59-40 Plaintiff is entitled to all reasonable attorneys' fees and costs for pursuing this action against Defendants.

FOR A FOURTH CAUSE OF ACTION

(Breach of Contract)

30. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

31. Defendants Brinson and Agency provided commercial liability insurance, through Defendant Canopus, to Plaintiff.

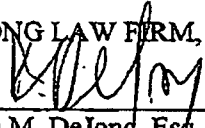
32. Defendants Brinson and Agency was Plaintiff's agent for several years and Defendants Brinson and Agency were fully aware that Plaintiff conducted its' business as a general contractor.

33. Defendants Brinson and Agency breached their contract with Plaintiff by failing to obtain general commercial liability insurance for Plaintiff under the correct category of general contractor, thereby causing Plaintiff to be denied coverage for the accident by Defendant Canopus.

34. Instead, Defendant Brinson applied and re-applied yearly, on behalf of Plaintiff, for general commercial liability insurance for carpentry services, without Plaintiff's knowledge or consent.

WHEREFORE, Plaintiff prays that the Court award it declaratory relief as set forth in this Complaint, for actual, compensatory, consequential and punitive damages against the Defendants, for its attorney's fees and costs of this action, for pre-judgment interest, and for such other and further relief as this Court may deem just and proper.

DEJONG LAW FIRM, LLC

By: 

Karen M. DeJong, Esq.
272 West Coleman Blvd., Ste. 200

Mount Pleasant, SC
9/20, 2016

Mount Pleasant, SC 29464-5652
Tel. No. 843-216-6161
Fax No. 843-216-1119
Email: karen@dejonglawfirm.com
Attorney for Plaintiff

Ex. "F"

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bouchelle Inc.,

Plaintiff,

vs.

Canopius US Insurance, Inc.; Seneca
Specialty Ins. Co.; The Brinson Agency and
John Brinson,

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-10-4984

CANOPIUS US INSURANCE, INC.
ANSWER

2017 JAN -9 PM 2:26
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Defendant Canopius US Insurance, Inc. ("Canopius US") answers the Complaint of Plaintiff Bouchelle, Inc. by denying each and every allegation not specifically admitted herein and demanding strict proof thereof. Canopius US further responds to the Complaint as follows:

FOR A FIRST DEFENSE

1. Responding to Paragraph 1, Canopius US lacks sufficient information to form a belief as to the truth of the allegations therein and, therefore, denies the same.
2. Paragraph 2 is admitted.
3. Responding to Paragraphs 3 through 5, Canopius US lacks sufficient information to form a belief as the truth of the allegations therein and, therefore, denies the same.
4. Paragraph 6 is a conclusion of law which does not require a response from Canopius US.
5. Paragraph 7 is admitted.
6. Responding to Paragraph 8, through 11, Canopius US lacks sufficient information to form a belief as the truth of the allegations therein and, therefore denies the same.
7. Paragraph 12 is denied.

8. Responding to Paragraph 13, Canopus US admits only that on or about August 12, 2015, Plaintiff reported a claim to Canopus US for damage to a building. Canopus US denies characterizations as to the nature of the damage, including whether any damage is covered by the Canopus US policy issued to Plaintiff.

9. Responding to Paragraph 14, Canopus US admits only that on or about November 12, 2015, it issued a letter to Plaintiff denying coverage for this claim, although not for the grounds as narrowly described as set forth by Plaintiff. Canopus US refers to the November 12, 2015, letter for terms thereof.

10. Responding to Paragraphs 15 through 19, Canopus US lacks sufficient information to form a belief as the truth of the allegations therein and, therefore denies the same.

11. Responding to Paragraph 20, Canopus US restates its responses to Paragraphs 1 through 19, as if fully set forth herein.

12. Paragraphs 21 and 22 are denied.

13. Responding to Paragraph 23, Canopus US restates its responses to Paragraphs 1 through 22, as if fully set forth herein.

14. Paragraph 24 is a conclusion of law which does not require a response from Canopus US.

15. Responding to Paragraph 25, Canopus US denies that Plaintiff is entitled to a declaration that Plaintiff's alleged damages and losses are covered by Canopus US policy, or that, "the description of the damage provided by Plaintiff to Canopus US accurately describe the scope and nature of the project."

16. Responding to Paragraph 26, Canopus US restates its responses to Paragraphs 1 through 25, as if fully set forth herein.

17. Paragraph 27 is denied.

18. Responding to Paragraph 28, Canopus US admits that Plaintiff sought insurance coverage for the described loss, and over 90 days has lapsed since that demand.

19. Paragraph 29 is denied.

20. Responding to Paragraph 30, Canopus US restates its responses to Paragraphs 1 through 29, as if fully set forth herein.

21. Paragraphs 31 through 34 are not directed at Canopus US. To the extent a response is required, Canopus US lacks sufficient information to form a belief as to the truth of the allegations therein.

22. Canopus US denies that Plaintiff is entitled to the relief sought in the unnumbered WHEREFORE clause of Plaintiff's Complaint.

FOR A SECOND DEFENSE

23. Plaintiff's Complaint fails to state a claim for relief upon which relief may be granted and, therefore, should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

24. To the extent that that Plaintiff failed to mitigate its alleged damages, any recovery herein must be reduced to the extent such damages were not mitigated.

FOR A FOURTH DEFENSE

25. Plaintiff's claims may be barred, in whole or in part, by the doctrines of waiver, estoppel, unclean hands and laches.

FOR A FIFTH DEFENSE

26. To the extent that Plaintiff engaged in certain conduct and activities, including but not limited to payment of fees, costs and expenses that are not related to the defense of claims covered by the insurance policy issued by Canopus US, and/or made certain omissions, with respect to the contracts, incidents and other subject matter of this litigation for which Plaintiff may be liable to Canopus US, Canopus US is entitled to a setoff, nullifying damages that may ultimately be awarded to Plaintiff, if any.

FOR A SIXTH DEFENSE

27. To the extent that Plaintiff and/or the purported named insureds under the policy issued by Canopus US failed to cooperate with Canopus US, such failure to cooperate bars, or reduces the value of, Plaintiff's purported claims against Canopus US.

FOR A SEVENTH DEFENSE

28. Plaintiff's claims are barred to the extent that the provisions, terms, declarations, conditions, limitations, endorsements, conditions and exclusions of the policies issued by Canopus US provide that Plaintiff and/or the purported named insureds under the policies issued by Canopus US have no right to recover from Canopus US for the allegations, claims, damages and other matters asserted in the Complaint. This includes, but is not limited to, the fact that Plaintiff was working as a general contractor on this project. However, Plaintiff applied for coverage as a carpenter, and the coverage afforded by the Canopus US policy does not apply to "Property damage" for operations which are not classified or shown on the Commercial General Liability Coverage Declarations, its endorsements are supplements. Plaintiff is classified only as Carpentry.

FOR AN EIGHTH DEFENSE

29. To the extent that Plaintiff's alleged claim(s) are covered by the policies issued by Canopus US, the policy only provides coverage up to the applicable policy limits of liability.

FOR A NINTH DEFENSE

30. To the extent that Plaintiff's alleged claim(s) are covered by the policies issued by Canopus US, the policies issued by Canopus US provide no coverage to the extent the applicable deductibles or self-insured retentions have not been properly paid.

FOR A TENTH DEFENSE

31. Plaintiff's claims are barred to the extent they arise out of voluntary payments by Plaintiff and/or the purported named insureds, without the consent of Canopus US.

FOR AN ELEVENTH DEFENSE

32. Plaintiff's claims are barred to the extent that Plaintiff seeks reimbursement of any costs, attorneys' fees and expenses that are unreasonable, excessive or otherwise beyond what Plaintiff actually was obligated to pay.

FOR A TWELFTH DEFENSE

33. Plaintiff's claims are barred, to the extent that other insurance provides a defense and/or indemnity to Plaintiff for any and all claims against them.

FOR A THIRTEENTH DEFENSE

34. To the extent Plaintiff does not qualify as an insured, including but not limited to an additional insured, under any policy issued by Canopus US, Canopus US has no duty to defend or indemnify Plaintiff relative to the underlying actions alleged in the Complaint.

FOR A FOURTEENTH DEFENSE

35. Plaintiff's claim is barred as Plaintiff made material misrepresentations in the application for the Canopus US policy.

FOR A FIFTEENTH DEFENSE

36. Plaintiff's claims are barred to the extent that the alleged damages or injuries for which recovery is sought against Plaintiff in the underlying actions do not arise from or constitute an "occurrence" as defined in the policies issued by Canopus US.

FOR A SIXTEENTH DEFENSE

37. Plaintiff's claims are barred to the extent that any alleged damages or injuries for which recovery is sought against Plaintiff in the underlying actions were not caused by an accident, or otherwise were expected or intended.

FOR A SEVENTEENTH DEFENSE

38. Plaintiff's claims are barred to the extent that Plaintiff was not required to pay any sums as "damages," as set forth in the policies issued by Canopus US.

FOR AN EIGHTEENTH DEFENSE

39. Plaintiff's claims are barred to the extent that the alleged damages or injuries for which recovery is sought against Plaintiff do not constitute "property damage," "bodily injury" or "personal injury" as set forth in the policies issued by Canopus US.

FOR A NINETEENTH DEFENSE

40. Canopus US pleads any and all other defenses that may be applicable and provided for by Rules 8 and 12 of the South Carolina Rules of Civil Procedure, by statute, by regulation, or by common law, as if set forth here verbatim.

FOR A TWENTY-FIRST DEFENSE

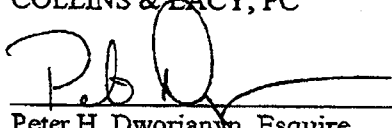
41. Canopus US hereby gives notice that it intends to and hereby asserts any other applicable affirmative defenses as may be asserted by other defendants in this action, to the extent such defenses are not inconsistent with the defenses in this Answer, and Canopus US intends to and hereby asserts any other affirmative defenses as may become available or appear during the course of discovery and Canopus US reserves the right to amend the Answer to assert any such additional defenses, if necessary.

WHEREFORE, having fully answered the Complaint, Canopus US prays as follows:

1. That the claims in Plaintiff's Complaint as to Canopus US be dismissed with prejudice;
2. That Canopus US be awarded its reasonable attorneys' fees and costs in defending this action; and
3. That Canopus US be awarded such other and further legal and equitable relief as this Honorable Court deems just and proper.

Respectfully submitted,

COLLINS & LACY, PC

By: 

Peter H. Dworjany, Esquire
pdworjany@collinsandlacy.com
1330 Lady Street, 6th Floor (29201)
Post Office Box 12487
Columbia, SC 29211
803.256.2660
803.771.4484 (Fax)

ATTORNEYS FOR CANOPIUS US
INSURANCE, INC.

January 5, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED

Plaintiff,

vs.

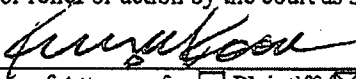
CHARLESTON WRECKING, INC. &
MICHAEL C. GOLEMIS

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-6615

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Karen M. DeJong</u> Bar No. _____ Address: <u>252 West Coleman Blvd., Ste.200</u> <u>Mt. Pleasant, SC 29464</u> Phone: <u>803.929.1484</u> Fax _____ E-mail: <u>Karen@dejonglawfirm.com</u> Other: _____		Defendant's Attorney: <u>Kerry W. Koon, Esq.</u> , Bar No. <u>3605</u> Address: <u>147 Wappoo Creek Drive, Ste. 203</u> <u>Charleston, SC 29412</u> Phone: <u>843.795.7000</u> Fax <u>843.762.5276</u> E-mail: <u>kerrykoon@hotmail.com</u> Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: <u>MOTION FOR STAY</u> Estimated Time Needed: <u>15 MINS</u> Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☐ Plaintiff / ☒ Defendant		<u>3/30/2017</u> Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE #: 2015-CP-10-6615

BOUCHELLE INCORPORATED,

Plaintiff,

v.

CHARLESTON WRECKING, INC.,
MICHAEL C. GOLEMIS,

Defendants.

MOTION FOR STAY OF DEFENDANTS

2017 MAR 31 PM 1:39
JULIE J. GIBSON
CLERK OF COURT
BY _____

BACKGROUND

This is an action commenced by Bouchelle, Inc. against Charleston Wrecking, Inc. and Michael C. Golemis alleging damages as a result of an accident occurring on a construction site on July 14, 2015, in which a portion of a wall being demolished by Charleston Wrecking, Inc. allegedly caused unintended damage. The Plaintiff has sued not only Charleston Wrecking, Inc. and Michael C. Golemis but, in a separate action (case number 2016-CP-10-4984) its own contractor general liability insurance company, Canopus US Insurance, Inc. (hereinafter "Canopus"), Charleston Wrecking, Inc.'s insurance carrier, Seneca Specialty Insurance Co. and Bouchelle, Inc.'s insurance agent, the Brinson Agency and its principal John Brinson.

Canopus has defended the action against it in case number 2016-CP-10-4984, by alleging that Bouchelle, Inc. was untruthful in its application for insurance representing its itself, not as a general contractor, but as only providing carpentry services with 80% residential remodeling and 20% commercial remodeling.

Contractor general liability insurance is required of Bouchelle, Inc. per the subcontract.

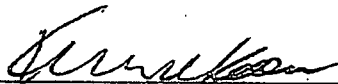
Of course, Bouchelle, Inc. cannot recover from its own insurance company and also from Defendants herein.

This case should be stayed until the outcome of the Plaintiff's case against Canopus, et al. is known. To the extent that Plaintiff recovers against its carrier or the other parties in case number 2016-CP-10-4984, it cannot recover against these Defendants. If, on the other hand, the Plaintiff fails to recover in that case because it misrepresented the nature of its business in the application for insurance, it would have breached its contract with Charleston Wrecking, Inc. and should be prevented from recovery.

To require this case to move forward until there is a determination of the Plaintiff's action against the insurers would burden the parties with unnecessary fees and costs and would be an unwise use of judicial time.

For the above reasons, the Defendant Charleston Wrecking, Inc. moves that this action be stayed until a final determination in Bouchelle, Inc. v. Canopus US Insurance, Inc., et al., case number 2016-CP-10-4984.

PLEASE BE PRESENT TO DEFEND IF SO MINDED!



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

At Charleston, South Carolina
This 30th day of March, 2017.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED

Plaintiff,

vs.

CHARLESTON WRECKING, INC. &
MICHAEL C. GOLEMIS

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-6615

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Karen M. DeJong Bar No. _____

Address:

252 West Coleman Blvd., Ste. 200

Mt. Pleasant, SC 29464

Phone: 803.929.1484 Fax _____

E-mail: Karen@dejonglawfirm.com Other: _____

Defendant's Attorney:

Kerry W. Koon, Esq., Bar No. 3605

Address:

147 Wappoo Creek Drive, Ste. 203

Charleston, SC 29412

Phone: 843.795.7000 Fax 843.762.5276

E-mail: kerrykoon@hotmail.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT CHARLESTON WRECKING, INC.

Estimated Time Needed: 15 MINS

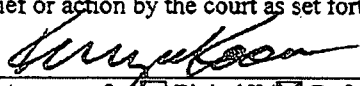
Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

3/30/2017

Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

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 1:33
JULIE J. ARMSTRONG
CLERK OF COURT

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.

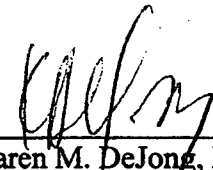
5. Further, in Defendant Michael Golemis's attached Affidavit, Exhibit A, Defendant Golemis states in Paragraph #6, that he was not present at the time of the incident which is the basis of this lawsuit.
6. At Defendant Golemis's deposition on February 28, 2017, he acknowledged that he was on the roof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

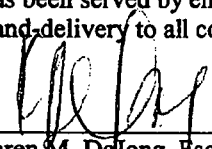
By:



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 1:33
JULIE J. ARMSTRONG
CLERK OF COURT

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:

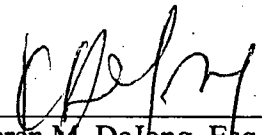
1. With regard to Defendant Charleston Wrecking's argument that this lawsuit should be stayed pending a resolution in a lawsuit brought by Plaintiff against his insurance company, Canopus US Insurance, Inc., and Defendant's insurance company, Seneca Speciality Insurance Co., Plaintiff has a constitutional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

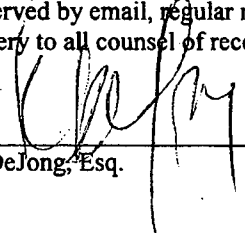
By:



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.

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 Defendant.
 9

10 * * * * *

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12

B E F O R E:

13

The Honorable Kristi Harrington

14

15

16

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19

20 * * * * *

21

22

Denise J. Lauder, RPR

23

Ninth Judicial Circuit

24

25

1 A P P E A R A N C E S

2

3 REPRESENTING THE PLAINTIFF:

4 KAREN M. DEJONG, ESQUIRE

5 DeJong Law Firm, LLC

6 272 West Coleman Boulevard, Suite 200

7 Mount Pleasant, SC 29464

8

9 REPRESENTING THE DEFENDANT, MICHAEL GOLEMIS:

10 MICHAEL ELLIS, ESQUIRE

11 Query, Sautter & Associates

12 147 Wappoo Creek Dr., Suite 202

13 Charleston, SC 29412

14

15 REPRESENTING THE DEFENDANT

16 CHARLESTON WRECKING, INCORPORATED:

17 KERRY W. KOON, ESQUIRE

18 147 Wappoo Creek Dr., Suite 203

19 Charleston, SC 29412

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(No exhibits were offered or
marked for identification.)

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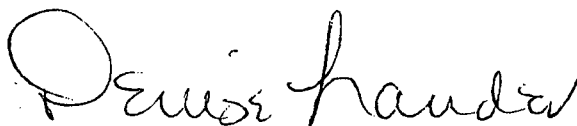
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I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

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

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



Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

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 Number: 2017-001532)

RECEIVED
JUN 15 2018
SC Court of Appeals

BOUCHELLE INCORPORATED,

Appellant,

vs.

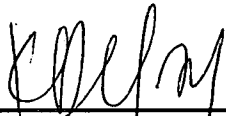
CHARLESTON WRECKING, INC. and MICHAEL C. GOLEMIS,

Respondents.

CERTIFICATE OF APPELLANT

I certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

June 6, 2018



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