

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

David Tice)

Plaintiff,)

vs.)

Asset Preservation, LLC, et al.)

Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-10-0978

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Wm. Mark Koontz, Bar No. 68784
Address:
1058 E. Montague Ave. N. Charleston 29405
Phone: 8432254252 Fax _____
E-mail: mark@kmlawsc.com Other: _____

Defendant's Attorney:
Stephanie G. Brown, Bar No. 101213
Address:
145 King Street, Suite 300 Charleston 29401
Phone: 8433299500 Fax _____
E-mail:
Stephanie.Brown@WallTempleton.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 to Compel NCC Construction, Inc.

Estimated Time Needed: 30 min

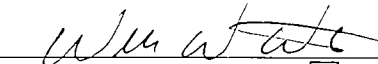
Court Reporter Needed: ☒ YES / ☐ NO

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

January 14, 2019

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ _____

☐ 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
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-0978

DAVID TICE,)
)
Plaintiff,)

vs.)

ASSET PRESERVATION, LLC AND)
DANIEL K. TOLLENS, INDIVIDUALLY,)
)
Defendants.)

ASSET PRESERVATION, LLC, AND)
DANIEL K. TOLLENS, INDIVIDUALLY,)
)
Third-Party Plaintiffs,)

vs.)

NCC CONSTRUCTION, LLC, ALLEN)
WOODWORKS, LLC, ENERGY ONE,)
LLC, AND ANTHONY JONES D/B/A)
ANTHONY JONES ELECTRIC,)
)
Third-Party Defendants.)

**NOTICE OF MOTION AND MOTION
TO COMPEL THIRD-PARTY
DEFENDANT NCC CONSTRUCTION,
INC.**

2019 JAN 14 PM 3:43
CLERK OF COURT
2019 JAN 14 PM 3:43

PLEASE TAKE NOTICE that Third-Party Plaintiffs Asset Preservation, LLC and Daniel K. Tollens will ten (10) days following the filing of this Notice of Motion and Motion or as soon thereafter as counsel may be heard, move, before the presiding judge of the Court of Common Pleas for the County of Charleston, South Carolina, for an Order in the above-captioned matter requiring Third-Party Defendant NCC Construction, Inc. ("NCC") to answer the Interrogatories and respond to the Requests for Production served upon NCC's counsel by mail on October 16, 2018, a copy of which is attached hereto as Exhibit "A." This Motion is being made pursuant to SCRCP 26, 33, 34, and 37.

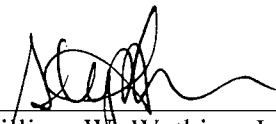
The undersigned counsel affirms that they have communicated with NCC's counsel (see attached Exhibit "B") and is informed and believes that the substance of the instant motion is opposed, as NCC has failed to produce the requested materials. Therefore, the undersigned has complied with SCRCP 11.

Third-Party Plaintiffs Asset Preservation, LLC and Daniel K. Tollens further move for all costs and attorneys' fees incurred as a result of this motion, and for such other relief as shall appear to this Court just and proper.

Dated this 14th day of January, 2019.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.



William W. Watkins, Jr.
Stephanie G. Brown
Post Office Box 1200
Charleston, South Carolina 29402
(843) 329-9500
Trey.Watkins@walltempleton.com
Stephanie.Brown@walltempleton.com
-and-

Jenny C. Honeycutt
Best Honeycutt, P.A.
Post Office Box 13466
Charleston, South Carolina 29422
(843)793-4744
jenny@besthoneycutt.com
***Attorneys for Asset Preservation, LLC and
Daniel K. Tollens, Individually***

2018 CP. 10.978


CERTIFICATE OF SERVICE

The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 14th day of January, 2019, she served **Third-Party Plaintiffs' Notice of Motion and Motion to Compel Third-Party Defendant NCC Construction, Inc.** via U.S. mail and electronic mail on counsel for NCC Construction, Inc. and via electronic mail on all other counsel at the address(es) below:

Wm Mark Koontz
C. Brandon Belger
Koontz Mlynarczyk, LLC
1058 East Montague Avenue
North Charleston, South Carolina 29405
mark@kmlawsc.com
brandon@kmlawsc.com
Attorneys for the Plaintiff

Douglas W. MacNeille
Ruth & MacNeille, P.A.
Post Office Drawer 5706
Hilton Head, South Carolina 29938
douglas@ruthandmacneille.com
Attorneys for Energy One America, LLC

Ian W. Freeman
Walker Gressette Freeman & Linton, LLC
Post Office Drawer 22167
Charleston, South Carolina 29413
Freeman@wgflaw.com
**Attorneys for NCC Construction, Inc. and
Anthony Jones d/b/a Anthony Jones Electric**


Sandra D. Schultz
Paralegal

2019 JAN 14 PM 3:43
CLERK OF COURT

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-10-0978

DAVID TICE,)
)
Plaintiff,)

vs.)

ASSET PRESERVATION, LLC AND)
DANIEL K. TOLLENS, INDIVIDUALLY,)
)
Defendants.)

**DEFENDANT ASSET
PRESERVATION, LLC'S FIRST
SET OF INTERROGATORIES
AND REQUESTS FOR
PRODUCTION TO THIRD-PARTY
DEFENDANTS**

ASSET PRESERVATION, LLC, AND)
DANIEL K. TOLLENS, INDIVIDUALLY,)
)
Third-Party Plaintiffs,)

vs.)

NCC CONSTRUCTION, LLC, ALLEN)
WOODWORKS, LLC, ENERGY ONE,)
LLC, AND ANTHONY JONES D/B/A)
ANTHONY JONES ELECTRIC,)
)
Third-Party Defendants.)

TO: ALL THIRD-PARTY DEFENDANTS AND THEIR COUNSEL:

Defendant/Counterclaimant/Third-Party Plaintiff Asset Preservation, LLC ("AP"), by and through its undersigned attorneys, hereby requires you to answer the interrogatories and requests for production hereinafter set forth within thirty (30) days after the service hereof, in accordance with Rules 33(b) and 34 of the South Carolina Rules of Civil Procedure. Further, pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure, these requests shall be deemed to continue from the time of service until the time of trial of this action so that information sought which comes

to the knowledge of the party or its representative or attorneys after original responses have been submitted shall be promptly transmitted to counsel for AP.

DEFINITIONS

- (a) “**Address**” means a full street address, including any unit number, and the city, state, and zip code.
- (b) “**Association**” means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.
- (c) “**Builder**” means any **person**—including without limitation an **owner**, developer, or subdivider—who is or was involved in the construction, development, design, marketing, conversion, or sale of the **subject property**.
- (d) “**Construction Claim**” means any allegation (other than a **Construction Defect Claim**) relating to residential, industrial, or commercial construction, including without limitation any allegations of fraud or deceit, that all or a part of the construction has been delayed, that more or less money is due, or that some legal or contractual obligation has been breached relating to the construction, turnover, or sale of the **subject property**.
- (e) “**Construction Defect Claims**” mean allegations that all or a part of some construction or design, including without limitation residential, industrial, conversion, or commercial construction, does not comply with the requirements of an applicable contract, design, plan, installation instruction, specification, statute, code, or standard or is otherwise defective or deficient, including any allegations of related property damage.
- (f) “**Contract**” means an oral, written, or implied agreement to provide equipment, supplies, materials, work, or services for construction as to the **subject property**, including without limitation change orders, work orders and purchase orders.
- (g) “**Contractor**” as used herein means any licensed or unlicensed **person** who contracts with a **builder** or **owner** to perform construction as to the **subject property** or to enter into a **contract** with a **subcontractor** or **design professional** as to such construction.
- (h) “**Design Professional**” means any licensed or unlicensed **person**, including without limitation any soils engineers, geotechnical engineers, civil engineers, structural engineers, landscape or environmental engineers, HVAC engineers, and architects and landscape architects who has provided any design or design services, including plans, specifications, or calculations for construction, to the **subject property**.
- (i) “**Document**” means any writing and includes the original or a copy of handwriting, typewriting, printing, Photostats, photographs, magnetically and electronically stored information, and every other means of recording on any tangible medium and in any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

- (j) **“Insurance Policy”** means any contract of insurance, whether primary, pro rata, fronting, umbrella, excess, or otherwise, issued by any admitted or nonadmitted insurer, including without limitation any policy or covering agreement issued by any insurance company, risk retention group, captive group, or joint powers authority.
- (k) **“Identify”** with regard to a person, means: provide full name, telephone number, last known address, and position at time referred to in the Interrogatories.
- (l) **“Identify”** with regard to documents, means: provide name and title of documents, date, author or recipient (or addressee of documents, location and identity of custodian of documents, summary of contents of document sufficient to identify it for purposes of a subpoena duces tecum. In lieu of identifying a document, you may, at your option, attach the document to the responses to these Interrogatories.
- (m) **“Owner”** means any **person** who owns or owned legal or equitable title to the **subject property**.
- (n) **“Person”** includes a natural person, firm, association, organization, general or limited or professional joint venture, partnership, business, trust, limited liability company, corporation, or public entity.
- (o) **“Pleading”** means the original or most recent amended version of any complaint, cross-complaint, and answer to same.
- (p) **“Product”** means any goods produced or manufactured by natural means or by hand or with tools, machinery, chemicals, or the like, and which is the subject of a **construction defect claim** in this action.
- (q) **“Subcontractor”** means any licensed or unlicensed **person** who entered into a **contract** with a **contractor** for any of the construction on the **subject property**.
- (r) **“Subject property”** means any real property that is the subject of the **construction defect claim** made in this action.
- (s) **“Supervising employee”** is an employee responsible for the supervision and direction of one or more employees involved in construction on the **subject property**. **Supervising employee** also includes the Responsible Managing Officer and Responsible Managing Employee for each **builder**, general **contractor**, and **subcontractor** involved in the **subject property**.
- (t) **“You”** (including the possessive **your**) and **anyone acting on your behalf** refers to you, your agents, your accountants, your investigators and their agents and employees, and anyone else acting on your behalf other than your nondisclosed expert consultants.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other documents in possession of the party that relate to the claim or defense in the case.
3. Set forth names and addresses of all insurance companies which have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy
4. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case. In connection with each expert witness so identified, state the expert's qualifications, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, and a summary of the grounds of each opinion.
5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements from such witnesses.
6. Set forth the legal status of your organization, its State and date of incorporation, its domicile and place of business, its principal officers, and its affiliates, successors, and subsidiaries from 2005 through the filing of the Complaint in this action, and the names of the employees who worked on the subject project.

7. Provide a written narrative of the specific scope of work you were expected to complete at the subject project.
8. Provide a written narrative of the specific scope of materials you were expected to supply to the subject project.
9. State all dates, including first and last, that you:
 - (a) Performed work or supervision for or at the subject property; or
 - (b) Supplied materials for the subject property.
10. Did you issue any warranty for work performed or materials supplied on the subject property? If so, state:
 - (a) What the warranty covered; and
 - (b) The dates it was in effect.
11. Before performing your work at the project, did you communicate any objections to or requests for changes or modifications to any portion of the applicable plans, reports, or specifications used at the subject property? If so:
 - (a) Identify each plan, report, or specification that was the subject of the objection or request for change or modification;
 - (b) State the names, addresses, and telephone numbers of all persons to whom you communicated your objections or requests for change or modifications; and
 - (c) Describe the result, if any, of each of your objections or requests for changes or modifications.
12. Did you communicate any criticisms (including but not limited to sequencing problems) to any developer, design professional, contractor, subcontractor, or supplier on the project during construction? If so,
 - (a) State all criticisms and the dates they arose;
 - (b) State the name, address, telephone number, and job title of every person to whom you communicated your criticism; and
 - (c) Describe any resolution of issues you raised.

13. State whether any investigation of the Project at issue was made by you and if so, state the nature of the investigation; the agent making the investigation on your behalf; the date of the investigation; the findings, conclusions, and recommendations of the investigation; and identify all relevant documents.
14. Do you attribute any loss of or damage to subject property to the facts on which the construction claim or the construction defect claim is based? If so, for each subject property,
- (a) Identify the subject property;
 - (b) Describe the nature and location of the loss or damage to the subject property;
 - (c) State when you became aware of the loss or damage; and
 - (d) State the amount of damage you are claiming for each piece of subject property and how the amount was calculated.
15. For each problem or defect you contend exists in any subject property, describe in detail:
- (a) The nature of any problem or defect;
 - (b) The date you first became aware of such problem or defect;
 - (c) The actions taken by you, if any, in response to the problem or defect, including reporting it to any party in this litigation; and
 - (d) The response, if any, by any party in this litigation to your report of the problem or defect.
16. If you have repaired or attempted to repair any construction claim or construction defect claim you allege exists in any subject property owned by you, state:
- (a) A description of the problem or defect repaired or attempted to be repaired;
 - (b) A description of the repair or attempted repair;
 - (c) The date of the repair or attempted repair;
 - (d) The cost of the repair or attempted repair; and
 - (e) The name, address, and telephone number of the person who performed the repair or attempted repair.
17. Do you contend that any person other than you contributed to the existence of the construction claim or construction defect claim or the damages claimed by the plaintiff? If so:
- (a) State the name, address, and telephone number of each person who contributed;
 - (b) State all facts on which you base your contention;
 - (c) State the names, addresses, and telephone numbers of all persons who have knowledge of the facts; and

- (d) Identify all documents and other tangible things that support your contention and state the name, address, and telephone number of the person who has each document or thing.

18. Do you contend that any of the property damage claimed by plaintiff thus far in this case was not caused by the construction claim or construction defect claim? If so:

- (a) Identify each item of property damage;
- (b) State all facts on which you base your contention;
- (c) State the names, addresses, and telephone numbers of all persons who have knowledge of the facts; and
- (d) Identify all documents and other tangible things that support your contention and state the name, address, and telephone number of the person who has each document or thing.

19. Identify documents and any evidence including impeachment evidence and demonstrative evidence that may be used in the trial of this matter.

REQUESTS FOR PRODUCTION


1. All documents identified in response to interrogatories.
2. All construction records and files relating to the subject property, including all documents in your job file, and those received from any other party.
3. All photographs and videotapes of the subject property.
4. All documents or materials related to any consultants or expert's reports, analysis, or tests of any of the premises in this action, specifically, any documents or materials relating to any alleged damage to the subject property.
5. All notes, memoranda, correspondence or other document(s) relating to the date upon which any alleged defects were discovered and by whom they was discovered.
6. All documents related to any test or study containing a summary or evaluation of any problems, difficulties, construction claims, and/or construction defect claims relating to the subject property.

7. Any and all documents, records, photographs, objects, or other materials of any nature whatsoever which you have obtained in response to subpoenas and/or FOIA requests you have served on any person, entity, or organization in this case.
8. Copy of all certificates, permits and inspections issued relating to the construction of the subject property.
9. Each and every document which you intend to introduce at the trial of this case.
10. Copies of all settlements reached between the parties to this litigation.
11. Copies of any insurance policy identified in your answers to AP's interrogatories.
12. All documents, statements, reports, summaries, letters, memoranda, or other information provided to, reviewed or prepared by any expert witness or investigator retained or consulted by you in connection with this matter, whether or not you intend to call the expert or investigator as a witness.
13. A current curriculum vitae for all expert witnesses retained or consulted to testify in this matter, as well as a copy of all articles or publications written by said expert(s).
14. Copies of the results of any inspections, investigations, testing, and/or other analysis performed on the subject property with respect to any alleged problems, defects, or code violations.
15. Any and all documents reflecting or referring to the scope of work you were expected to complete at the project.
16. Any and all documents reflecting or referring to the goods, materials, or products you were expected to supply at the project.
17. Copy of your entire project file for the subject project.

Dated this 16th day of October, 2018.

Respectfully submitted,

WALL TEMPLETON & HALDRUP, P.A.



William W. Watkins, Jr.

John J. Dodds, IV

Post Office Box 1200

Charleston, South Carolina 29402

(843) 329-9500

Trey.Watkins@walltempleton.com

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-and-

Jenny C. Honeycutt

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Post Office Box 13466

Charleston, South Carolina 29422

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jenny@besthoneycutt.com

*Attorneys for Asset Preservation, LLC and
Daniel K. Tollens*

CERTIFICATE OF SERVICE

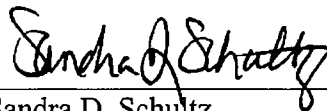
The undersigned employee of WALL TEMPLETON & HALDRUP, P.A. hereby certifies that on this 16th day of October, 2018, she served a copy of **Asset Preservation, LLC and Daniel K. Tollens' First Interrogatories and Requests for Production to Third-Party Defendants** via U.S. mail upon counsel for Third-Party Defendants and via electronic mail upon all other counsel at the address(es) below.

ADDRESS(ES)

Wm. Mark Koontz
C. Brandon Belger
Koontz Mlynarczyk, LLC
1058 East Montague Avenue
North Charleston, South Carolina 29405
mark@kmlawsc.com
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Attorneys for the Plaintiff

Douglas W. MacNeille
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Attorney for Energy One America, LLC

Ian W. Freeman
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Post Office Drawer 22167
Charleston, South Carolina 29413-2216
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**Attorneys for NCC Construction, Inc. and
Anthony Jones d/b/a Anthony Jones Electric**



Sandra D. Schultz
Paralegal

EXHIBIT B



Wall Templeton
ATTORNEYS

William W. Watkins, Jr.
Trey.Watkins@WallTempleton.com
Telephone: 843.329.9500 Ext. 211
Facsimile: 843.329.9501

December 18, 2018

Via U.S. Mail and Electronic Mail:

Ian W. Freeman
Walker Gressette Freeman & Linton, LLC
Post Office Drawer 22167
Charleston, South Carolina 29413-2216

Re: *David Tice v. Asset Preservation, LLC, et al.*
Case No.: 2018-CP-10-00978
Insured: Asset Preservation, LLC and Daniel K. Tollens
Claim No.: 10096161

Dear Ian:

As you are aware, we served written discovery requests on the NCC Construction, Inc. and Anthony Jones d/b/a Anthony Jones Electric on or about October 16, 2018. To date, we have not received responses to these discovery requests. Please allow this letter to serve as a courtesy extension of ten (10) days in which to respond to the outstanding discovery requests. If you need additional time beyond that which is afforded by this courtesy letter, please let me know. Otherwise, this letter is sent in satisfaction of SCRCP 11.

If you have any questions, please do not hesitate to contact me.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

William W. Watkins, Jr.

WWW,Jr./sds

cc: Stephanie G. Brown