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This opinion shall not "constitute precedent or be binding upon any court."  
Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3256-16T2

E & V CONSTRUCTION CO.,  
INC.,

Plaintiff-Appellant,

v.

DEEPER LIFE BIBLE CHURCH,  
DEEPER LIFE BIBLE CHURCH, INC.,  
WILLIAM KUMUYI, AKANNI ONI,  
VIOLET OBOH, SOJI FALAE, and  
EZEKIEL KOREDE,

Defendants-Respondents.

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DEEPER LIFE BIBLE CHURCH,  
INC.,

Third-Party Plaintiff/  
Respondent,

v.

ALIYU ABUBAKAR,

Third-Party Defendant/  
Appellant.

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ALIYU ABUBAKAR,

Fourth-Party Plaintiff/  
Appellant,

v.

DEEPER LIFE BIBLE CHURCH,

Fourth-Party Defendant/  
Respondent.

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Argued April 23, 2018 – Decided May 1, 2018

Before Judges Fasciale, Sumners and Moynihan.

On appeal from Superior Court of New Jersey,  
Law Division, Essex County, Docket No. L-7565-  
15.

Sidney Shaievitz argued the cause for  
appellants E & V Construction Co., Inc. and  
Aliyu Abubakar (Shaievitz & Berowitz,  
attorneys; Sidney Shaievitz, on the briefs).

John J. Petriello argued the cause for  
respondents (Ehrlich, Petriello, Gudin &  
Plaza, attorneys; John J. Petriello, on the  
brief).

PER CURIAM

E & V Construction Co., Inc. (E & V) appeals from an order denying its cross-motion for leave to file a second amended complaint; and E & V and Aliyu Abubakar appeal from an order dismissing their claims. We conclude that Deeper Life Bible Church, Inc. (Church, Inc.), and the individual defendants – members of Church, Inc. – had standing to file the motion to dismiss. The judge concluded correctly that E & V's failure to reinstate its revoked corporate charter precluded E & V from filing

this action, and that Abubakar – the president and shareholder of E & V – had no legal basis to seek money damages. We therefore affirm the orders.

E & V, a construction contractor, filed this complaint against Church, Inc., Deeper Life Bible Church (Bible Church), and the individual defendants. E & V alleged it contracted with Bible Church to build a church building, it performed the work, and Bible Church failed to pay the balance due. E & V sought final payment from Bible Church, Church, Inc., and the individual defendants.

Church, Inc. filed a counterclaim alleging E & V performed the work negligently. It filed a third-party complaint against Abubakar alleging he was personally responsible for damages caused by E & V's negligent workmanship. Abubakar then filed a counterclaim against Church, Inc., and he filed a fourth-party complaint against Bible Church.

In July 2005, E & V lost its corporate charter for failing to file tax returns and prepare quarterly withholding reports. Approximately two and a half years later – with a revoked certificate of incorporation – E & V improperly entered into the construction contract to build the church. Church, Inc. and the individual defendants argued the revocation of the charter precluded E & V from operating its business. They filed their

motion to dismiss the lawsuit, or in the alternative, to stay the lawsuit pending reinstatement of the charter. A different judge stayed the case for thirty days to allow the reinstatement, which never happened. The failure to reinstate led to the entry of the orders under review.

On appeal, E & V and Abubakar argue that (1) Church, Inc. lacked standing to file its counterclaim, third-party complaint, and motions to dismiss; (2) Abubakar had a legal basis to seek money damages; and (3) the individual defendants are responsible for Bible Church's debt.<sup>1</sup>

We conclude that the contention in the first point is without sufficient merit to warrant extensive discussion in a written opinion. R. 2:11-3(e)(1)(E). We add the following brief remarks. Church, Inc., as a party to this lawsuit, has the right to assert all reasonable defenses, including that the failure to reinstate the corporate charter precluded E & V from engaging in its usual business and prevented it from filing this lawsuit. And even if Church, Inc. was wrong in these contentions, which is not the

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<sup>1</sup> In his reply brief, Abubakar contends he did not violate N.J.S.A. 54:52-16 (making it a fourth-degree crime to "knowingly operate[] under a voided corporate charter"). Whether he committed a crime is not for this court to determine and, as a result, we will not address this contention.

case, the individual defendants could make the motion as parties to the lawsuit.

Therefore, the judge correctly considered the question of whether E & V had authority — as a corporation with a revoked charter — to enter into the construction contract and then later file this complaint. The New Jersey State Treasurer has the authority to revoke a certificate of incorporation under certain circumstances. N.J.S.A. 14A:4-5(5) governs the revocation and states in part that

[i]n the event a domestic corporation fails to file an annual report for two consecutive years with the State Treasurer, then, . . . the State Treasurer may issue a proclamation declaring that the certificate of incorporation of the corporation has been revoked and that all powers conferred by law upon it shall thereafter be inoperative and void.

[Emphasis added.]

The consequence of that revocation is severe, but the corporation may seek reinstatement of the revocation upon

(a) payment by the corporation of all fees due to the State Treasurer . . . ; and (b) certification of the Director of the Division of Taxation that no cause exists for revocation of the corporation's certificate of incorporation or certificate of authority.

[N.J.S.A. 14A:4-5(7).]

As a result, the corporation may continue its powers and resume its business so long as it complies with the conditions of reinstatement.

In response to the motion to dismiss, Abubakar certified that he was "diligently working" to restore the corporate charter by preparing "delinquent corporate income tax returns and quarterly employer withholding reports," and that he was "working with [his] accountant to prepare and file the missing tax returns and quarterly reports." But E & V failed to comply with N.J.S.A. 14A:4-5(7). So we agree with the judge that E & V was without the legal basis to file this lawsuit until it reinstated its charter.<sup>2</sup> Of course, reinstatement generally relates back to the date of the revocation of the certificate of incorporation. Ibid. It is undisputed that the charter remains revoked.

Understanding that E & V was unable to conduct business, it sought leave to file a second amended complaint to designate Abubakar "d/b/a E & V Construction Co., Inc." as a new plaintiff.

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<sup>2</sup> We note that a dissolved corporate status – which did not happen here – occurs if the Secretary of State revokes a certificate of incorporation for nonpayment of taxes or for failure to file annual reports. N.J.S.A. 14A:12-1(1)(g). New Jersey imposes substantial restrictions on what a dissolved corporation can do. "[A] dissolved corporation shall continue its corporate existence but shall carry on no business except for the purpose of winding up its affairs . . . ." N.J.S.A. 14A:12-9(1). For argument's sake, E & V did not wind up its affairs, but continued its business by engaging in the construction contract.

In support of that motion, E & V's counsel certified that E & V's certificate of incorporation had been suspended and that "reinstatement proceedings [of the corporate charter were] pending." He explained that E & V made the motion to "reconcile" plaintiff's name with N.J.S.A. 14A:4-5(5).

The construction contract identifies E & V as the contracting party. Abubakar is not a party to the contract. So his contention that he signed the contract in his individual capacity is without merit. Abubakar's recourse should have been to reinstate E & V's corporate charter, rather than designate "Abubakar d/b/a E & V Construction Co., Inc." as a new plaintiff. As counsel's certification implies, E & V filed its motion to assert a second amended complaint in response to Church, Inc.'s third-party complaint against Abubakar. The sequence of the pleadings corroborates this fact: E & V listed itself as a plaintiff in the complaint, E & V remained the only plaintiff in the amended complaint, and it was not until Church, Inc. filed its third-party complaint that E & V sought to file the second amended complaint.


Finally, E & V and Abubakar contend that the individual defendants are liable because Bible Church, not Church, Inc., entered into the construction contract. They assert that the individuals are personally liable because they are not members of an incorporated entity. Consequently, for the reasons previously

expressed regarding E & V and Abubakar's inability to recover damages for the construction contract, we conclude that there is no individual liability exposure.

After conducting oral argument, and reviewing the record and the briefs, we conclude that any remaining contentions by E & V and Abubakar are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION