

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**SC Court of Appeals**

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas  
Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2022-000131  
Case Nos. 2020-CP-21-1297/1296

Walter Parker ...../Appellant,

v.

Florence Carpet & Tile, Inc., John Curl, and Mike Barker ...../Respondents,

AND

Allison Parker .....Appellant,

v.

Florence Carpet & Tile, Inc., John Curl, and Mike Barker ..... Respondents,

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**FINAL BRIEF OF APPELLANTS**

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J. Scott Kozacki  
Willcox, Buyck & Williams, PA  
SC Bar No. 64137  
PO Box 1909  
Florence, SC 29503-1909  
(843) 664-664-3364 - Tel  
(843) 662-1342 - Fax  
*Attorney for Appellants*

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## STATEMENT OF ISSUES ON APPEAL

1. Did the lower court err by granting summary judgment in favor of Mike Barker and John Curl with respect to Walter Parker's failure to pay wage claims?
2. Did the lower court err by granting summary judgment in favor of Mike Barker and John Curl with respect to Allison Parker's failure to pay wage claims?

## STATEMENT OF THE CASE(S)

### *A. As to Walter Parker.*

Walt Parker ("Plaintiff" and/or "Mr. Parker") was previously employed full-time at Florence Carpet & Tile, Inc. ("Florence Carpet & Tile, Inc.," "the company," and/or the "Corporation") as its President from in or about 2007, until his involuntary separation on or about July 26, 2019 (Complaint ¶ 10 R. 128; W. Parker Aff. ¶ 2 R. 199; Curl Depo. p 21 R. 184). During the course of his employment, Mr. Parker was never provided with written notice of the terms and conditions of his employment (Curl Depo. p. 22 R. 185; W. Parker Aff. ¶ 3 R. 189). However, all parties agreed that Mr. Parker was to be paid wages in the amount of \$75,000.00 per year, plus benefits (Complaint ¶ 11 R. 128; W. Parker Aff. ¶ 3 R. 199; Barker Depo. pp. 19-20 R. 195-196; Curl Depo. pp. 58 R. 187). In exchange therefor, Mr. Parker was in charge of the day-to-day operations of the company (W. Parker Aff. ¶ 4 R. 199; Curl Depo. pp. 22-23 R. 185-186).

At all times relevant hereto, Mr. Parker alleges that he dutifully and properly performed his job requirements for the company (W. Parker Aff. ¶ 4 R. 199; Barker Depo. pp. 19-20 R. 195-196; Curl Depo. pp. 58 R. 187). According to Mr. Parker, Florence Carpet & Tile, Inc., Mike Barker ("Defendant" and/or "Mr. Barker") and John Curl ("Defendant" and/or "Mr. Curl") have

not paid his rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$102,303.53 (Complaint ¶s 13, 15 R. 128; W. Parker Aff. ¶ 5 R. 200). Mr. Curl and Mr. Mike Barker were/are also allegedly agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused the damages (Complaint ¶ 8, 17 R. 127 - 128; W. Parker Aff. ¶ 8 R. 200; Curl Depo. p. 12-16 R. 177-181; Barker Depo. p. 6 R. 196). According to Mr. Curl, it was “fair to say” that he and Mr. Parker were not on “very good terms” (Curl Depo. p. 70 R. 192).

On or about May 4, 2019, and before the filing of this lawsuit, Mr. Barker admittedly reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$102,303.53.

(Ex. 1 – Barker Written Statement R. 159; W. Parker Aff. ¶ 7 R. 200; Curl Depo. p. 62-65 R. 188-191; Barker Depo. p. 25-26 R. 197-198).

Mr. Curl similarly admitted to having knowledge of Mr. Parker’s claim for unpaid compensation, prior to the filing of the instant lawsuit, but that no payment had been made (Curl Depo. pp. 63-64 R. 189-190). Mr. Barker and Mr. Curl were also allegedly aware of Mr. Parker’s claims for unpaid compensation, since he had previously filed claims for unpaid compensation with the South Carolina Department of Labor, Licensing, and Regulation (“SCLLR”) (Ex. 2 – SCLLR Documents R. 160-175; W. Parker Aff. ¶ 6 R. 200). Mr. Parker filed the underlying lawsuit for unpaid compensation on May 19, 2020.

In his Complaint, Mr. Parker alleged the following causes of action against the Defendants: (1) violation of the South Carolina Payment of Wages Act; (2) breach of contract; (3) breach of

the implied covenant of good faith and fair dealing; and (4) quantum meruit.<sup>1</sup> Florence Carpet & Tile, Inc., Mr. Barker, and Mr. Curl filed an Answer denying Mr. Parker's claims. Mr. Curl and Mr. Barker also moved for summary judgment in their favor.

On December 2, 2021, Circuit Court Judge Michael G. Nettles ("Judge Nettles") granted Mr. Curl and Mr. Barker's motions for summary judgment. Mr. Parker filed a motion to alter or amend judgment on December 9, 2021. Thereafter, Mr. Parker's motion to alter or amend judgment was denied by Judge Nettles on January 28, 2022. Mr. Parker also received notice of denial of his Motion to Amend the Order on January 28, 2022. On January 31, 2022, Mr. Parker timely and properly filed his notice of appeal. Likewise, opposing legal counsel was served with a copy of Mr. Parker's notice of appeal on January 31, 2022.

B. As to Allison Parker.

Allison Parker ("Plaintiff" and/or "Mrs. Parker") was also employed by Florence Carpet & Tile, Inc. from on or about May 1, 2007, until her final separation from employment on or about August 13, 2019 (Complaint ¶ 10 R. 22; A. Parker Aff. ¶ 2 R. 99; Curl Depo. p. 30 R. 86; Barker Dep. p. 21 R. 91). During the course of her employment, Mrs. Parker was also never provided with written notice of the terms and conditions of her employment (Curl Depo. p. 22 - 23 R. 84-85; Barker Dep. p. 11 R. 89; A. Parker Aff. ¶ 3 R. 99). Mrs. Parker further claims that it was agreed that, while she was employed as an Inside Salesperson, she was to be paid wages in the amount of \$42,000 per year, plus a 2% commission on sales (Complaint ¶ 11 R. 22; A. Parker Aff. ¶ 3 R. 99).

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<sup>1</sup> Mr. Parker previously elected not to pursue causes of action against Defendants Barker and Curl for (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; and (3) quantum meruit. Thus, Mr. Parker agreed to voluntarily dismiss these claims against these Defendants.

At all times relevant hereto, Mrs. Parker alleges that she too dutifully and properly performed her job requirements for the company (A. Parker Aff. ¶ 4 R. 99; Barker Depo. p. 14 R. 90). Mrs. Parker also claims that Florence Carpet & Tile, Inc., Mr. Barker, and Mr. Curl have not paid her rightfully due and owing wages, compensation, commissions benefits, payments and/or other monies owed in an amount exceeding \$57,491.48 (Complaint ¶s 13, 15 R. 22; A. Parker Aff. ¶ 5 R. 100). Mr. Barker admittedly testified at deposition that he was unaware of any documentation indicating that the Plaintiff was not to receive the commissions alleged (Barker Depo. p. 33 R. 94). According to Mrs. Parker, Mr. Curl and Mr. Barker were/are also agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused her damages (Complaint ¶ 8, 17 R. 22; A. Parker Aff. ¶ 8 R. 100; Curl Depo. pp. 15-16 R. 80-81; Barker Depo. p. 6 R. 88). Mrs. Parker also claims that Mr. Barker and Mr. Curl were fully aware of the Ms. Parker's claims before the instant lawsuit was filed (A. Parker Aff. ¶ 6 R. 100).

On or about May 4, 2019, Mr. Barker also reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$57,461.48.

(Ex. 1 – Barker Written Statement R. 53; A. Parker Aff. ¶ 7 R. 100; Barker Depo. p. 30 R. 93).

According to Mrs. Parker, Florence Carpet & Tile, Inc., Mr. Barker, and Mr. Curl were aware of her claims for unpaid compensation prior to the filing of her lawsuit, since she too had previously filed claims for such with the South Carolina Department of Labor, Licensing, and Regulation (“SCLLR”) (Ex. 2 – SCLLR Documents R. 54-76; A. Parker Aff. ¶ 3 R. 100). Mrs. Parker filed her underlying lawsuit for unpaid compensation on May 19, 2020.

In her Complaint, Mrs. Parker alleged the following causes of action against these Defendants: (1) violation of the South Carolina Payment of Wages Act; (2) failure to pay commissions due pursuant to the Sales Representative Act; (3) breach of contract; (4) breach of the implied covenant of good faith and fair dealing; and (5) quantum meruit.<sup>2</sup> Florence Carpet & Tile, Inc., Mr. Barker, and Mr. Curl also filed an Answer denying the Mrs. Parker's claims. As well, Mr. Barker and Mr. Curl also filed motions for summary judgment.

On December 2, 2021, Judge Nettles similarly granted Mr. Curl and Mr. Barker's motions for summary judgment with respect to Mrs. Parker's claims for unpaid compensation. On December 9, 2021, Mrs. Parker also filed a motion to alter or amend that judgment. Thereafter, Mrs. Parker's motion to alter or amend judgment was similarly denied by Judge Nettles on January 28, 2022. Mrs. Parker received notice of denial of her Motion to Amend the Order on January 28, 2022. On January 31, 2022, Mrs. Parker also timely and properly filed her notice of appeal. Likewise, opposing legal counsel was served with a copy of her notice of appeal on January 31, 2022.

#### **STANDARD OF REVIEW**

Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Pallares v. Seinar, 407 S.C. 359, 756 S.E.2d 128 (2014).

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<sup>2</sup> Mrs. Parker also previously elected to no longer pursue causes of action against Mr. Barker and Mr. Curl for (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) quantum meruit; and (4) failure to pay commissions due pursuant to the Sales Representative Act.

In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. Brockbank v. Best Capital Corp., 341 S.C. 372, 534 S.E.2d 688 (2000). “An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRPC.” Id. at 379, 534 S.E.2d at 692.

## ARGUMENT

### *A. As to Walter Parker.*

#### *1. Mr. Barker and Mr. Curl May be Held Individually Liable for Violations Under the South Carolina Payment of Wages Act.*

Initially, Mr. Parker asserts that genuine issues of material fact and applicable law existed, which precluded the entry of summary judgment in favor of both Mr. Barker and Mr. Curl on his claims for unpaid compensation. Accordingly, the underlying decision by the lower court granting summary judgment in favor of Mr. Barker and Mr. Curl relative to his claims of unpaid compensation was erroneous as a matter of law. For this reason, the lower court’s granting of summary judgment in favor of Mr. Curl and Mr. Barker should be reversed and these matters remanded to the circuit court for further proceedings.

Notably, Mr. Barker and Mr. Curl may be held individually liable for violations under the South Carolina Payment of Wages Act (“SCPWA” and/or “the Act”), S.C. Code Ann. § 41-10-10, *et. seq.*, contrary to the findings of the lower court. For this reason, summary judgment in favor of Mr. Barker and Mr. Curl was clearly erroneous.

Again, Mr. Parker asserted a claim under the South Carolina Payment of Wages Act (“SCPWA” and/or “the Act”), which created a cause of action against an employer by an employee for failure of the employer to pay wages as required under that Act. S.C. Code Ann. § 41-10-80(C).

Mr. Parker also claimed that Mr. Barker and Mr. Curl violated the Act by knowingly permitting violations and were individually liable as a result (Complaint ¶ 8, 17 R. 127-128; W. Parker Aff. ¶ 8 R. 200; Curl Depo. p. 12-16 R. 177-181; Barker Depo. p. 6 R. 196).

In this regard, the SCPWA undeniably provides that employers “shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular pay day which may not exceed thirty days.” S.C. Code Ann. § 41-10-50. The statute further provides as follows:

The Act, found in sections 41-10-10 to -110 of the South Carolina Code (Supp.2010), defines “employer” as “every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.”

S.C. Code Ann. § 41-10-10(1) (emphasis added).

Viewing the evidence in the light most favorable to Mr. Parker, as is legally required, both Mr. Curl and Mr. Barker undeniably fall within this statutory definition of “employer.” Any contrary conclusion by the lower court was also clearly erroneous as a matter of matter.

Significantly, both Mr. Barker and Mr. Curl testified during their depositions that they were/are officers of Florence Carpet & Tile, Inc. (Curl Depo. p. 12-16 R. 177-181; Barker Depo. p. 6 R. 196). Specifically, Mr. Curl testified that he currently holds the positions of President, Secretary, Treasurer, and Registered Agent for Florence Carpet & Tile, Inc. (Curl Depo. p. 12-16 R. 177-181). Mr. Curl further testified that he is also the 53% owner of Florence Carpet & Tile, Inc. (Curl Dep. p. 12 R. 177). According to Mr. Curl, he held the position of President of Florence Carpet & Tile, Inc., since Mr. Parker left the business (Curl Depo. 13 R. 178).

According to Mr. Curl, Mr. Barker also holds the corporate office of Vice-President of Florence Carpet & Tile, Inc. and has held that position since he was elected following Mr. Parker’s termination from employment. (Curl Depo. p. 16 R. 181). Mr. Barker similarly testified that he

currently holds the position of Vice-President of Florence Carpet & Tile, Inc. and had held that position within a month of Mr. Parker leaving the corporation (Barker Depo. p. 6 R. 196). Sworn affidavits of Mr. and Mrs. Parker further evidence that “Defendants Curl and Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused my damages.” (W. Parker Aff. ¶ 8 R. 200; A. Parker Aff. ¶ 8 R. 204).

On or about May 4, 2019, and before the filing of this lawsuit, Mike Barker also reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$102,303.53.

(Ex. 1 – Barker Written Statement R. 159; W. Parker Aff. ¶ 7 R. 200; Curl Depo. p. 62-65 R. 188-191; Barker Depo. p. 25-26 R. 197-198).

Defendant Curl further admits to having knowledge of Mr. Parker’s claim for unpaid compensation, prior to the filing of the instant lawsuit (Curl Depo. pp. 63-64 R. 189-190). Despite such, Mr. Barker, Mr. Curl, and Florence Carpet and Tile, Inc. still have not paid him his rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$102,303.53 (W. Parker Aff. ¶ 5 R. 200).

Viewing this evidence in the light most favorable to Mr. Parker, as is legally required, both Mr. Curl and Mr. Barker clearly fall within the statutory definition of “employer” and can be held individually liable for violations of the SCPWA. Consequently, the lower court’s conclusion that “there is no genuine issue of material fact that could give rise to Defendant Barker or Curl’s individual liability” was clearly erroneous (Judge Nettles W. Parker Order filed December 2, 2021 p. 4 R. 11). For the lower court to inexplicably conclude that “[t]here simply is no evidence to indicate that [Mr. Barker and Mr. Curl] violated the act” disregarded the aforesaid evidence of

record in its entirety (Judge Nettles W. Parker Order filed December 2, 2021 p. 4 R. 11), impermissibly weighed the evidence of record, applied the incorrect standard for summary judgment and was clearly erroneous. Therefore, summary judgment in favor of summary judgment in favor of Mr. Barker and Mr. Curl must be reversed.

Significantly, in Dumas v. InfoSafe Corp., 320 S.C. 188, 195, 463 S.E.2d 641, 645 (Ct. App. 1995), this Court interpreted the SCPWA, and held that the legislature intended to impose individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the Act. Id. “To hold otherwise would require us to ignore the words ‘and any agent or officer of the above classes.’” Id. Indeed, “the South Carolina Payment of Wages Act is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld.” Id. at 194, 463 S.E.2d at 645; Allen v. Pinnacle Healthcare Sys., LLC, 715 S.E.2d 362, 364-65 (Ct. App. 2011). Other courts that have considered the issue of individual liability under the SCPWA have also similarly concluded that individuals, such as Mr. Barker and Mr. Curl, may be individually liable under the Act. *See eg.*, Wired Fox Techs., Inc. v. Estep, No. 15-331, 2017 WL 1135288, at \*19 (D.S.C. Mar. 27, 2017) (“The [SCPWA] was ‘intended to impose individual liability on agents and officers of a corporation who knowingly permit their corporation to violate the Act.’”) (quoting Dumas, 463 S.E.2d at 645); Cool v. Ramaci, 12-02323, 2014 WL 12616090, at \*3 (D.S.C. Dec. 9, 2014) (“Based on this definition, the South Carolina Court of Appeals has also held that the Act imposes ‘individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the Act.’ E.g., Allen v. Pinnacle Healthcare Sys., LLC, 715 S.E.2d 362, 365 (S.C. Ct. App. 2011)”).

Again, viewing the evidence in the light most favorable to Mr. Parker, as is legally required, Mr. Curl and Mr. Barker may be held individually liable as officers and/or agents of Defendant

Florence Carpet & Tile, Inc. Indeed, a reasonable jury could conclude that Mr. Curl and Mr. Barker undeniably were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused the Mr. Parker's damages (W. Parker Aff. ¶ 8 R. 200; Curl Depo. p. 12-16 R. 177-181; Barker Depo. p. 6 R. 196). Therefore, summary judgment in favor of Mr. Barker and Mr. Curl was clearly erroneous.

2. Multiple Factors Weigh in Favor of Disregarding the Corporate Entity.

Next, viewing the evidence in the light most favorable to Mr. Parker, as is legally required, multiple factors also weigh in favor of disregarding the corporate entity. For this reason, summary judgment in favor of Mr. Barker and Mr. Curl was also clearly erroneous.

South Carolina's test for piercing the corporate veil requires the court to find "a number," although not all, of the following factors weigh in favor of "disregard[ing] the corporate entity":

1. whether the corporation was grossly undercapitalized;
2. failure to observe corporate formalities;
3. non-payment of dividends;
4. insolvency of the debtor corporation at the time;
5. siphoning of funds of the corporation by the dominant stockholder;
6. non-functioning of other officers or directors;
7. absence of corporate records; and
8. the fact that the corporation was merely a facade for the operations of the dominant stockholder.

Dumas v. InfoSafe Corp., 320 S.C. 188, 463 S.E.2d 641, 644 (S.C. Ct. App. 1995). Similarly, Mr. Parker must further prove "an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of the [parent]." Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d

316, 318 (S.C. Ct. App. 1984). To demonstrate the presence fundamental unfairness, Mr. Parker may show that “(1) the defendant was aware of the plaintiff’s claims against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff’s claim in the property.” Dumas, 463 S.E.2d at 644. “However, for purposes of piercing the corporate veil, fundamental unfairness can exist in the absence of fraud, and may be proved by a lesser showing than reckless disregard.” Id.

In Dumas v. InfoSafe Corp., a key case establishing South Carolina’s veil-piercing criteria, this Court found sufficient evidence to pierce the corporate veil and find its sole shareholder open to liability because: (1) the corporation had been undercapitalized since its inception; (2) it failed to hold directors meetings and observe other corporate formalities; (3) it did not pay dividends; (4) it was insolvent and could not pay its employees’ wages; (5) the corporations funds were “regularly transferred to [the sole shareholder and his wife], allegedly for repayment of certain loans to the company”; (6) the shareholder, as the corporation’s president, made all the hiring decisions; and (7) the shareholder put about \$300,000 of his own money into the corporation and described his occupation as “entrepreneur.” Id. Under those facts, this Court concluded that the facts clearly demonstrated that the President, as sole shareholder of the corporation, had created the corporation to act as a shield for his own personal business dealings in order to protect himself from liability. Under virtually identical facts, piercing of the corporate veil is equally appropriate in this case.

Here, viewing the evidence in the light most favorable to Mr. Parker, as is legally required, the evidence reflects that Florence Carpet and Tile, Inc. had been grossly undercapitalized since its inception (W. Parker Aff. ¶ 9 R. 200; A. Parker Aff. ¶ 9 R. 204; Shelton Aff. ¶ 7 R. 208). In fact, the company has never been provided with sufficient capital to achieve the desired results of significant profitability (W. Parker Aff. ¶ 10 R. 200; A. Parker Aff. ¶ 10 R. 204; Shelton Aff. ¶ 8

R. 208). Mr. Curl also refused to infuse sufficient monies into the company, despite their being severely needed for employees, merchandise, customer orders, vendors, repairs, building improvements and other business necessities (W. Parker Aff. ¶ 11 R. 200; A. Parker Aff. ¶ 11 R. 204; Shelton Aff. ¶ 9 R. 208). The company often did not generate the profit that was expected (W. Parker Aff. ¶ 11 R. 200; A. Parker Aff. ¶ 11 R. 204; Shelton Aff. ¶ 9 R. 208). Director's meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation (W. Parker Aff. ¶ 12 R. 200; A. Parker Aff. ¶ 12 R. 204; Shelton Aff. ¶ 10 R. 208). The company did not regularly hold scheduled meetings, hold special meetings, keep accurate records,<sup>3</sup> exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation's name (W. Parker Aff. ¶ 12 R. 200; A. Parker Aff. ¶ 12 R. 204; Shelton Aff. ¶ 10 R. 208). In fact, employees were required to purchase items using their own monies and/or credit cards to keep the business operating (W. Parker Aff. ¶ 13 R. 200; A. Parker Aff. ¶ 13 R. 204; Shelton Aff. ¶ 12 R. 208). The company would often not be able to pay employee wages on time (W. Parker Aff. ¶ 13 R. 200; A. Parker Aff. ¶ 13 R. 204; Shelton Aff. ¶ 12 R. 208). Mr. Curl also admitted that although, he was the majority shareholder of the company during the relevant time period, he also was the owner/operator of other business, including Curl Properties, LLC, the lessor of the company's business property (Curl Depo. pp. 12-13 R. 177-178). Corporate funds were often siphoned by Mr. Curl and Mr. Barker to pay rent to Curl Properties, LLC and/or to Mr. Curl,

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<sup>3</sup> For example, despite being the President, majority shareholder, Secretary and Treasurer of the company, Defendant Curl admittedly did not know where payroll records were located at, did not know whether they were produced to opposing legal counsel, the format in which they were maintained and/or for how long they had even been maintained. (Curl Depo. pp. 13, 15-16, 18-19 R. 178, 180-183); see also, S.C. Code § 41-10-30(C) (mandating that "[e]very employer shall keep records of names and addresses of all employees and of wages paid each payday and deductions made for three years).

even before employee wages (W. Parker Aff. ¶ 14 R. 200; A. Parker Aff. ¶ 14 R. 204).

Consequently, viewing this evidence in the light most favorable to Mr. Parker, as is legally required, it would also be “fundamentally unfair” to not hold Mr. Barker and Mr. Curl liable in this case. In particular, viewing the evidence in the light most favorable to Mr. Parker, as is legally required, the record reflects that Defendants Curl and Barker were aware of the Plaintiff’s claims prior to the filing of this lawsuit (Ex. 1 – Barker Written Statement R. 159; W. Parker Aff. ¶ 6 R. 200; Curl Depo. p. 62-65 R. 188-191; Barker Depo. p. 25-26 R. 197-198). Again, before the filing of this lawsuit, Defendant Mike Barker admittedly reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$102,303.53.

(Ex. 1 – Barker Written Statement R. 159; W. Parker Aff. ¶ 7 R. 200; Curl Depo. p. 62-65 R. 188-191; Barker Depo. p. 25-26 R. 197-198).

Mr. Curl also further admits to having knowledge of Mr. Parker’s claim for unpaid compensation, prior to the filing of the instant lawsuit (Curl Depo. pp. 63-64 R. 189-190). Likewise, it is equally clear that the Mr. Barker and Mr. Curl acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff’s claim in the property” by refusing to pay the compensation due and owing. Dumas, 463 S.E.2d at 644. For instance, Mr. Barker and Mr. Curl undeniably continued to prioritize and/or receive salary, profits and/or rents from the corporation, despite wages and compensation being owed to company employees.

Again, viewing these facts in the light most favorable to the Plaintiff, as is legally required, genuine issues of material fact exist as to whether the corporate veil may be pierced. For this reason, summary judgment in favor of Mr. Barker and Mr. Curl was also clearly erroneous.

*B. As to Allison Parker.*

*1. Mr. Barker and Mr. Curl May be Held Individually Liable for Violations Under the South Carolina Payment of Wages Act.*

Mrs. Parker also asserts that genuine issues of material fact and applicable law existed which precluded the entry of summary judgment in favor of both Mr. Barker and Mr. Curl on her claims for unpaid compensation. Accordingly, the underlying decision by the lower court granting summary judgment in favor of Mr. Barker and Mr. Curl were also erroneous as a matter of law. Consequently, the lower court's granting of summary judgment in favor of Mr. Curl and Mr. Barker relative to Mrs. Parker's claims for unpaid compensation should also be reversed.

Again, Defendants Barker and Curl may be held individually liable for violations under the South Carolina Payment of Wages Act ("SCPWA"), S.C. Code Ann. § 41-10-10, *et. seq.* Mrs. Parker further claims that Mr. Barker and Mr. Curl violated the Act by knowingly permitting violations and were individually liable as a result. Mrs. Parker too has asserted a claim under the SCPWA, which creates a cause of action against an employer by an employee for failure of the employer to pay wages as required under that Act. S.C. Code Ann. § 41-10-80(C). Mrs. Parker further claims that Mr. Barker and Mr. Curl violated this Act by knowingly permitting violations and were individually liable as a result (See eg., Complaint ¶s 12-17 R. 22; A. Parker Aff. ¶ 8 R. 100).

In this regard, the SCPWA provides that employers "shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular pay day which may not exceed thirty days." S.C. Code Ann. § 41-10-50. The statute further provides as follows:

The Act, found in sections 41-10-10 to -110 of the South Carolina Code (Supp.2010), defines "employer" as "every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State."

S.C. Code Ann. § 41-10-10(1) (emphasis added).

Again, viewing the evidence of record in the light most favorable to Mr. Parker, as is legally required, both Mr. Curl and Mr. Barker undeniably fall within this statutory definition of “employer.” Any contrary conclusion by the lower court was clearly erroneous.

Significantly, both Mr. Barker and Mr. Curl testified during their depositions that they were/are officers of Florence Carpet & Tile, Inc. (Curl Depo. p. 12-16 R. 78-81; Barker Depo. p. 6 R. 88). Specifically, Mr. Curl testified that he currently holds the positions of President, Secretary, Treasurer and Registered Agent for Florence Carpet & Tile, Inc. (Curl Depo. p. 12-16 R. 78-81). Mr. Curl further testified that he is also the 53% owner of Florence Carpet & Tile, Inc. (Curl Dep. p. 12 R. 78). According to Mr. Curl, he has also held the position of President of Florence Carpet & Tile, Inc. since Mr. Parker left the business (Curl Depo. 13 R. 79).

According to Mr. Curl, Mr. Barker holds the corporate office of Vice-President of Florence Carpet & Tile, Inc. and has held that position since he was elected subsequent to Mr. Parker’s termination from employment with Florence Carpet & Tile, Inc. (Curl Depo. p. 16 R. 81). Mr. Barker also testified that he currently holds the position of Vice-President of Florence Carpet & Tile, Inc. and had held that position within a month of Mr. Parker leaving the corporation (Barker Depo. p. 6 R. 88). Sworn affidavits of Mr. and Mrs. Parker further evidence that “Defendants Curl and Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused my damages.” (W. Parker Aff. ¶ 8 R. 96; A. Parker Aff. ¶ 8 R. 100).

On or about May 4, 2019, and before the filing of this lawsuit, Defendant Mike Barker also reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$57,461.48.

(Ex. 1 – Barker Written Statement R. 53; A. Parker Aff. ¶ 7 R. 100; Barker Depo. p. 30 R.93).

Similarly, Defendants were also unaware of Mrs. Parker’s claims for unpaid compensation, since she and Mr. Parker had previously filed claims for unpaid compensation with the South Carolina Department of Labor, Licensing, and Regulation (“SCLLR”) (Ex. 2 – SCLLR Documents R. 54-76; A. Parker Aff. ¶ 3 R. 100). Despite such, Mr. Barker, Mr. Curl, and Florence Carpet and Tile, Inc. still have not paid her his rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$57,461.48. (A. Parker Aff. ¶ 5 R. 100).

Viewing this evidence in the light most favorable to Mr. Parker, as is legally required, both Mr. Curl and Mr. Barker clearly fall within this statutory definition of “employer” and can be held individually liable for violations of the SCPWA. Consequently, the lower court’s conclusion that “there is no genuine issue of material fact that could give rise to Defendant Barker or Curl’s individual liability” was clearly erroneous (Judge Nettles W. Parker Order filed December 2, 2021 p. 4 R. 4). For the lower court to inexplicably conclude that “[t]here simply is no evidence to indicate that [Mr. Barker and Mr. Curl] violated the act” disregarded the aforesaid evidence of record in its entirety (Judge Nettles W. Parker Order filed December 2, 2021 p. 4 R.4), impermissibly weighed the evidence of record, applied the incorrect standard for summary judgment, and was clearly erroneous. Therefore, summary judgment in favor of summary judgment in favor of Mr. Barker and Mr. Curl must be reversed.

Again, in Dumas v. InfoSafe Corp., 320 S.C. 188, 195, 463 S.E.2d 641, 645 (Ct. App. 1995), this Court previously held that the legislature intended to impose individual liability on

agents or officers of a corporation who knowingly permit their corporation to violate the Act. Id. “To hold otherwise would require us to ignore the words ‘and any agent or officer of the above classes.’ “ Id. Indeed, “[T]he South Carolina Payment of Wages Act is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld.” Id. at 194, 463 S.E.2d at 645; Allen v. Pinnacle Healthcare Sys., LLC, 715 S.E.2d 362, 364-65 (Ct. App. 2011). Other courts that have considered the issue of individual liability under the SCPWA have also similarly concluded that individuals, such as Mr. Barker and Mr. Curl, may be individually liable under the Act. *See eg.*, Wired Fox Techs., Inc. v. Estep, No. 15-331, 2017 WL 1135288, at \*19 (D.S.C. Mar. 27, 2017) (“The [SCPWA] was ‘intended to impose individual liability on agents and officers of a corporation who knowingly permit their corporation to violate the Act.’”) (quoting Dumas, 463 S.E.2d at 645); Cool v. Ramaci, 12-02323, 2014 WL 12616090, at \*3 (D.S.C. Dec. 9, 2014) (“Based on this definition, the South Carolina Court of Appeals has also held that the Act imposes ‘individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the Act.’ *E.g.*, Allen v. Pinnacle Healthcare Sys., LLC, 715 S.E.2d 362, 365 (S.C. Ct. App. 2011)”).

Importantly, viewing the evidence in the light most favorable to Mrs. Parker, as is legally required, Mr. Curl and Mr. Barker may be held individually liable as officers and/or agents of Florence Carpet & Tile, Inc. Indeed, a reasonable jury could also conclude that Mr. Curl and Mr. Barker undeniably were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused the Plaintiff’s damages (A. Parker Aff. ¶ 8 R. 100; Curl Depo. p. 12-16 R. 78-81; Barker Depo. p. 6 R. 88). Any conclusion to the contrary by the lower court was clearly erroneous and must be reversed.

2. Multiple Factors Weigh in Favor of Disregarding the Corporate Entity.

Viewing the evidence in the light most favorable to Mrs. Parker, as is legally required, multiple factors also undeniably weigh in favor of disregarding the corporate entity. Any decision to the contrary was erroneous as a matter of law. For this reason, summary judgment in favor of Mr. Barker and Mr. Curl with respect to Mrs. Parker's failure to pay wage claims was also clearly erroneous.

Again, South Carolina's test for piercing the corporate veil requires the court to find "a number," although not all, of the following factors weigh in favor of "disregard[ing] the corporate entity":

1. whether the corporation was grossly undercapitalized;
2. failure to observe corporate formalities;
3. non-payment of dividends;
4. insolvency of the debtor corporation at the time;
5. siphoning of funds of the corporation by the dominant stockholder;
6. non-functioning of other officers or directors;
7. absence of corporate records; and
8. the fact that the corporation was merely a facade for the operations of the dominant stockholder.

Dumas v. InfoSafe Corp., 320 S.C. 188, 463 S.E.2d 641, 644 (S.C. Ct. App. 1995). Similarly, Mrs. Parker must also further prove "an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of the [parent]." Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316, 318 (S.C. Ct. App. 1984). To demonstrate the presence fundamental unfairness, Mrs. Parker may show that "(1) the defendant was aware of the plaintiff's claims against the corporation, and

(2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property." Dumas, 463 S.E.2d at 644. "However, for purposes of piercing the corporate veil, fundamental unfairness can exist in the absence of fraud, and may be proved by a lesser showing than reckless disregard." Id.

Once again, in Dumas v. InfoSafe Corp., a key case establishing South Carolina's veil-piercing criteria, this Court found sufficient evidence to pierce the corporate veil and find its sole shareholder open to liability because: (1) the corporation had been undercapitalized since its inception; (2) it failed to hold directors meetings and observe other corporate formalities; (3) it did not pay dividends; (4) it was insolvent and could not pay its employees' wages; (5) the corporations funds were "regularly transferred to [the sole shareholder and his wife], allegedly for repayment of certain loans to the company"; (6) the shareholder, as the corporation's president, made all the hiring decisions; and (7) the shareholder put about \$300,000 of his own money into the corporation and described his occupation as "entrepreneur." Id. Under those facts, this Court concluded that the facts clearly demonstrated that the President, as sole shareholder of the corporation, had created the corporation to act as a shield for his own personal business dealings in order to protect himself from liability. Under virtually identical facts, piercing of the corporate veil is also appropriate in this case.

Here, viewing the evidence in the light most favorable to Mrs. Parker, the evidence reflects that Florence Carpet and Tile, Inc. had been grossly undercapitalized since its inception (W. Parker Aff. ¶ 9 R. 96; A. Parker Aff. ¶ 9 R. 100; Shelton Aff. ¶ 7 R. 104). In fact, the company has never been provided with sufficient capital to achieve the desired results of significant profitability (W. Parker Aff. ¶ 10 R. 96; A. Parker Aff. ¶ 10 R. 100; Shelton Aff. ¶ 8 R. 104). Mr. Curl also refused to infuse sufficient monies into the company, despite their being severely needed for employees,

merchandise, customer orders, vendors, repairs, building improvements and other business necessities (W. Parker Aff. ¶ 11 R. 96; A. Parker Aff. ¶ 11 R. 100; Shelton Aff. ¶ 9 R. 104). The company often did not generate the profit that was expected (W. Parker Aff. ¶ 11 R. 96; A. Parker Aff. ¶ 11 R. 100; Shelton Aff. ¶ 9 R.104). Director's meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation (W. Parker Aff. ¶ 12 R. 96; A. Parker Aff. ¶ 12 R. 100; Shelton Aff. ¶ 10 R. 104). The company also did not regularly hold scheduled meetings, hold special meetings, keep accurate records,<sup>4</sup> exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation's name (W. Parker Aff. ¶ 12 R. 96; A. Parker Aff. ¶ 12 R. 100; Shelton Aff. ¶ 10 R. 104). In fact, employees were required to purchase items using their own monies and/or credit cards to keep the business operating (W. Parker Aff. ¶ 13 R. 96; A. Parker Aff. ¶ 13 R. 100; Shelton Aff. ¶ 12 R. 104). The company also would often not be able to pay employee wages on time (W. Parker Aff. ¶ 13 R. 96; A. Parker Aff. ¶ 13 R. 100; Shelton Aff. ¶ 12 R. 104). Mr. Curl admitted that although, he was the majority shareholder of the company during the relevant time period, he also was the owner/operator of other business, including Curl Properties, LLC, the lessor of the company's business property (Curl Depo. pp. 12-13 R. 78-79). Corporate funds were often siphoned by Mr. Curl and Mr. Barker to first to pay rent to Curl Properties, LLC and/or to Mr. Curl, even before employee wages (W. Parker Aff. ¶ 14 R. 96; A. Parker Aff. ¶ 14 R. 100).

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<sup>4</sup> For example, despite being the President, majority shareholder, Secretary and Treasurer of the company, Defendant Curl admittedly did not know where payroll records were located at, did not know whether they were produced to opposing legal counsel, the format in which they were maintained and/or for how long they had even been maintained. (Curl Depo. pp. 13, 15-16, 18-19 R. 79-83); see also, S.C. Code § 41-10-30(C) (mandating that "[e]very employer shall keep records of names and addresses of all employees and of wages paid each payday and deductions made for three years).

Viewing this evidence in the light most favorable to Mrs. Parker, as is legally required, it would also be “fundamentally unfair” to also not hold Mr. Barker and Mr. Curl liable to her. In particular, viewing the evidence in the light most favorable to Mrs. Parker, Defendants Curl and Barker were aware of the Plaintiff’s claims prior to the filing of this lawsuit. Again, before the filing of this lawsuit, Defendant Mike Barker admittedly reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$57,491.48.

(Ex. 1 – Barker Written Statement R. 53; A. Parker Aff. ¶ 7 R. 100; Barker Depo. p. 30 R. 93).

Similarly, viewing the evidence in the light most favorable to Mrs. Parker, as is legally required, Mr. Barker and Mr. Curl were also aware of Mrs. Parker’s claims for unpaid compensation, since she had previously filed claims for unpaid compensation with the South Carolina Department of Labor, Licensing and Regulation (Ex. 2 – SCLLR Documents R. 54-76; A. Parker Aff. ¶ 6 R. 100).

Hence, viewing the evidence in the light most favorable to Mrs. Parker, as is legally required, Mr. Barker and Mr. Curl also acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff’s claim in the property.” Dumas, 463 S.E.2d at 644. Mr. Barker and Mr. Curl also continue to prioritize and/or receive salary, profits and/or rents from the Defendant corporation, despite wages and compensation being owed to company employees. For this reason, it also is fundamentally unfair to not hold Mr. Barker and Mr. Curl liable to Mrs. Parker on her claims of unpaid compensation.

In sum, viewing these facts in the light most favorable to Mrs. Parker, as is legally required,

genuine issues of material fact exist as to whether the corporate veil may be pierced. For this reason, summary judgment in favor of Mr. Barker and Mr. Curl was also clearly erroneous.

### CONCLUSION

As set forth above, summary judgment was inappropriately granted by the lower court in favor of Mr. Curl and Mr. Barker relative to Mr. and Mrs. Parker's failure to pay wage claims. Indeed, genuine issues of material fact existed which precluded the entry of summary judgment in favor of Mr. Curl and Mr. Barker on those claims. As well, a reasonable jury could conclude that Mr. Curl and Mr. Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused the Mr. and Mrs. Parker's damages. Accordingly, the lower court's granting of summary judgment in favor of Mr. Curl and Mr. Barker should be reversed and these matters remanded to the circuit court for further proceedings consistent with this inevitable conclusion.

Respectfully Submitted,

WILLCOX, BUYCK & WILLIAMS, P.A.

By: s/ J. Scott Kozacki  
J. Scott Kozacki  
SC Bar No. 64137  
PO Box 1909  
Florence SC 29503-1909  
(843) 662-3258 Telephone  
(843) 662-1342 Facsimile  
Email: [skozacki@willcoxlaw.com](mailto:skozacki@willcoxlaw.com)  
ATTORNEY FOR APPELLANTS

September 20, 2022  
Florence, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas  
Michael G. Nettles, Circuit Court Judge

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**SC Court of Appeals**

Appellate Case No. 2022-000131  
Case Nos. 2020-CP-21-1297/1296

Walter Parker .....Appellant,

v.

Florence Carpet & Tile, Inc., John Curl, and Mike Barker ..... Respondents,

AND

Allison Parker .....Appellant,

v.

Florence Carpet & Tile, Inc., John Curl, and Mike Barker ..... Respondents.

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that the Appellant's Final Brief complies with Rule 211  
SCACR.

By: s/ J. Scott Kozacki  
J. Scott Kozacki  
WILLCOX, BUYCK & WILLIAMS, P.A.  
SC Bar No. 64137  
PO Box 1909  
Florence, SC 29503-1909  
(843) 664-664-3364 - Tel  
(843) 662-1342 - Fax  
*Attorney for Appellants*

September 20, 2022