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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Judge

Appellate Case Number 2023-000353

Civil Action Number 2018-CP-23-01643

Jason Tuck ..... Appellant,

v.

On the Mark Automotive Repair and Refinishing, LLC d/b/a On the Mark Automotive, LLC, Carolina's Best Auto Sales, LLC, Carolina's Best Finance, 828A St. Mark Road, LLC, Affordable Auto Finance, Inc., Southeastern Recovery and Towing, LLC, John D. Watts III (a/k/a John D. Watts), ... Respondents.

RESPONDENTS' FINAL BRIEF

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I. STATEMENT OF FACTS

In 2019, Appellant entered into an employment agreement with Respondent On-the-Mark Automotive Repair and Refinishing, LLC ("OTM") to serve as manager of OTM's automotive repair shop. The agreement had a three-year term with a guaranteed annual salary of $120,000. Prior to the expiration of that contract term, Appellant separated from employment. Appellant contended in the trial below that he was terminated without cause by a new shop manager hired by Mr. Watts. Mr. Watts denied this assertion and contended that Appellant voluntarily resigned over being demoted from shop manager.

The trial court bifurcated the proceedings. Appellant's claims for breach of contract were submitted to a jury for determination. The jury found for Appellant and awarded actual damages of $249,033 before the award of costs and attorneys' fees. (R. pp. 63-64). After the trial court awarded costs and attorneys' fees, the total judgment awarded was $301,092.00. (R. pp. 45-47).

In the non-jury proceedings on Appellant's claims for piercing the corporate veil and for application of the single-business-enterprise ("SBE") doctrine to the Respondent companies, the court heard live testimony from Appellant on these issues. The court permitted the parties to submit additional information bearing upon these issues by way of a *de bene esse* deposition of Mr. Watts and by way of additional information exchanged between the parties in discovery. After consideration of the submitted materials, the trial court issued its order refusing to pierce the veil of the corporate entities and refusing to collapse the corporate entities into a single-business enterprise. (R. pp. 1-41). After a denial of Appellant's motions for reconsideration pursuant to SCRCP 59 (e) and 52 (b), (R. pp. 42-44).

From the time that Appellant entered into the employment contract with OTM until the present date, Respondent Watts has owned a number business, some of which have active

operations in the automobile sales and financing arena, and one of which, Carolina's Best Finance Company, LLC ("CBF") is a lender in the title-loan arena. Southeastern Recovery and Towing, LLC ("Southeastern") is involved in the repossession and towing of vehicles, most of which are financed with one of Mr. Watts' other companies. Affordable Automobile Finance, Inc. ("AAF") is engaged in the sale of used automobiles. The 828A St. Mark's Road, LLC company is a real estate holding company that owns the premises at which OTM operates its business.[1]

It is undisputed that Appellant never was employed by any entity owned by Mr. Watts apart from OTM. Appellant seeks to recover his judgment against OTM from Mr. Watts' other companies, and from Mr. Watts personally, based purely upon the SBE doctrine and the doctrine of piercing of the corporate veil. In both instances, Appellant confronts a significant legal and factual burden which the trial court determined had not been met.

II. ARGUMENT

A. THIS COURT PROPERLY CONSIDERED ALL OF THE EVIDENCE REGARDING THE VARIOUS CORPORATE ENTITIES AND RULED APPROPRIATELY THAT THE FACTS DID NOT SUPPORT RELIEF PURSUANT TO THE SINGLE-BUSINESS ENTERPRISE DOCTRINE

1. The *Pertius* Standard

As the trial court noted in its order, in 2018, for the first time, our Supreme Court formally adopted the amalgamation doctrine, which it indicated more properly should be called the single business enterprise theory. In *Pertius v. Front Roe Restaurants, Inc*., 423 S.C.640, 817 S.E.2d 273 (2018), the court examined the jurisprudence of the fourteen of our sister states which have applied this theory and set forth with particularity the elements necessary to prove a

[1] Page four of Appellant's Initial Brief contains a chart that accurately identifies the Respondent companies.

single business enterprise. The *Pertius* court recognized that the corporate form is utilized by shareholders to limit liability and stated that "there is nothing remotely nefarious in doing so."

As the court further stated:

> Creation of affiliated corporations to limit liability while pursuing common goals lies firmly within the law and is commonplace. We have never held corporations liable for each other's obligations merely because of centralized control, mutual purposes, and shared finances. There must be evidence of abuse, or … injustice and inequity. By "injustice" and "inequity" we do not mean a subjective perception of unfairness by an individual judge or juror; rather these words are used … as shorthand reference for the kinds of abuse, specifically identified, that the corporate structure should not shield – fraud, evasion of existing obligations, circumvention of statutes, monopolization, criminal conduct, and the like. … Any other rule would seriously compromise what we have called a "bedrock principle of corporate law" – that a legitimate purpose for forming a corporation is to limit individual liability for the corporation's obligations.

Pertuis, 817 S.E.2d at 280 (citing *SSP Partners v. Gladstron Invs. (USA) Corp.*, 275 S.W. 3d 444, 445 (Tex. 2008)).

The *Pertius* court likened the equitable analysis for application of the single business enterprise doctrine to that of piercing the corporate veil, citing *Drury Development Corp v. Foundation Ins. Co.*, 380 S.C. 97, 668 S.E.2d 798 (2008). In *Drury*, the S.C. Supreme Court recognized the well-established S.C. law regarding piercing the corporate veil, in particular, that it is hard to do. Otherwise, there would be no reason to have corporate liability protection for shareholders. "In general, equitable principles govern the veil-piercing remedy, and 'it is settled authority that the doctrine of piercing the corporate veil is not to be applied without substantial reflection.'" *Drury*, 668 S.E.2d at 800 (citing *Sturkie v. Sifly*, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984)).

The court in *Pertius* also cited to the case of *Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (1984), which set forth the elements for successfully proving a case for veil piercing. The court applied a seven-factor test for determining whether the corporation was a mere alter ego for

the dominant shareholder.[2] Where those seven factors demonstrate an alter ego situation, the court's work is not complete. It then must consider whether it would be fundamentally unfair and would work a substantial injustice to observe the corporate status of the company. In *Pertius*, the Court cited *Sturkie* and incorporated the *Sturkie* analysis into the SBE doctrine.

In applying the *Pertius* analysis, the S.C. Supreme Court in *Stoneledge at Lake Keowee Owners'Assoc., Inc. v. IMK Development Co., Inc, et. al.,* 435 S.C. 109, 866 S.E.2d 542 (2021) stated, "Like other methods of invading the corporate form, invocation of the single business enterprise theory should be reserved for drastic situations and is the rare exception, not the rule." 435 S.C. at 127, 866 S.E.2d at 551.

2**. OTM is Separate and Distinct from Affordable Auto Financing, Inc., and From Carolina's Best Financing, Inc.**

Appellant goes to great lengths to show the intertwined nature of the Respondent companies in order to establish alter ego. Shared bookkeeping and record-keeping services, shared employees, shared premises and the like all are cited repeatedly, as is use of company funds for personal expenses in the case of Carolina's Best Finance Company, LLC ("CBF"). Appellant did produce evidence of intertwining of the corporate entities. This fact cannot be denied. However, intertwining alone does not meet the test for veil-piercing or for SBE theory. Intertwining does not even meet the threshold seven-factor test prescribed in *Sturkie v. Sifly,* which requires evidence of insolvency and under capitalization, both of which are missing from the case before this Court.

[2] The elements are: 1. Whether the corporation is under-capitalized; 2. Siphoning off of funds by the dominant shareholder; 3. Failure to observe corporate formalities; 4. Failure to pay distributions; 5. Insolvency of the company; 6. Lack of corporate records; 7. Whether the company is a "mere façade" for the dominant shareholder.

It is tempting to become enmeshed in the vituperative rhetoric of Appellant's brief and to lose sight of the real issue in this case. As a threshold matter, this Court must determine if the corporate shell of OTM, the only company to employ the Appellant, is to be pierced and whether OTM should be collapsed with other Respondent companies. In considering this issue, the relationship between, for example, CBF and AAF is not relevant. Whether AAF necessarily complied with UCC requirements for commercial reasonableness when selling repossessed vehicles (it did), or whether AAF or CBF repossessed vehicles and had them sold for scrap, irrespective of how payment may have taken place, does not bear on the question of whether OTM, AAF, and CBF should be considered one company. OTM has never purchased, has never sold, has never financed, and has never scrapped a single automobile.

The nexus which Appellant seeks to establish between AAF, CBF, and OTM seems to derive from Appellant's assertion that OTM repaired vehicles repossessed by AAF and CBF and charged for those services when, purportedly, such repairs were not required or were not performed. The evidence of this alleged practice is thin. Two witnesses testified concerning it, Appellant and Darryl Smith.

Appellant testified that he was told by Mr. Watts to create estimates for needed repairs to repossessed vehicles. Appellant testified that he was told by Mr. Watts that Watts sometimes used these estimates to indicate that work was done to repossessed vehicle that actually was not done. Mr. Watts, presumably, used these estimates in an effort to drive up the amount of debt on repossessed vehicles sent to auction in order deprive consumers of equity in the vehicles. (R. p. 204, line 18 – p. 206, line 16).

Darryl Smith indicated that he witnessed an OTM employee "sabotage" a repossessed vehicle on instructions, supposedly, from another OTM employee named "Chase." According to

Mr. Smith, Chase stated to an unidentified person who supposedly sabotaged the vehicle that Mr. Watts had stated to Chase that Mr. Watts wanted to buy at auction, so he orchestrated the sabotage of the vehicle in order that other bidders would not buy it. All of this communication, supposedly, took place within the hearing of Smith. (R. p. 472, line 24 – p. 473, line 25). Appellant posits that the "Chase" referenced in Mr. Smith's testimony was Chase Hooper, the shop manager for OTM. Of course, Mr. Smith cannot make this identification. Nevertheless, this evidence is offered as supportive of an orchestrated scheme on the part of Mr. Watts to rob consumers of their equity in repossessed vehicles.

As to Appellant's testimony, there are two possible scenarios. The first is that this story is a fiction, as Mr. Watts testified was the case. (R. p. 299, lines 10-24). The second scenario is that the testimony is true. Appellant tries to distance himself from the conduct of Mr. Watts by testifying that he never created estimates for work that didn't need to be done, but he has testified that Mr. Watts did not actually perform the work but added the estimated amount to the debt on the vehicle on multiple occasions. (R. p. 204, line 19 – p. 206, line 17). If this testimony is to be believed, Appellant was aware of this scheme to rob innocent consumers, yet Appellant did not report this scheme to anyone until such time as Appellant decided to sue Respondents, which is convenient timing.

The testimony concerning this practice is far from the lead-pipe cinch that Appellant would suggest, but it is the only evidence which would supply the essential link that must be proven by the greater weight of the evidence to exist between OTM and the other companies for purposes for establishing alter ego and fundamental unfairness. The trial court did not err in finding this evidence insufficient to meet the heavy burden required for elimination of the Respondents' corporate status.

The other mechanism by which Appellant would tie OTM to other companies involves the use by OTM of the credit accounts of AAF, the used car company, and of CBF, the title loan company, to purchase auto parts used in repairs. Appellant testified that, prior to the formation of OTM, AAF had its own auto repair shop which employed Appellant. (R. p. 213, lines 14-18). Because OTM was a start-up company, it lacked a credit history sufficient to establish an account with auto parts houses which sold on credit. Since AAF and Carolina's Best Finance ("CBF") had established accounts with the auto parts suppliers, OTM used their accounts until it could establish its own, after which time OTM purchased parts on its own account. (R. p. 262, line 22 – p. 263, line 11; R. p. 491, lines 2 - 22).

Mr. Watts testified that CBF would pay Advance Auto monthly using an American Express card. OTM then would reimburse CBF for those charges. Those payments would be charted to OTM's general ledger at account number 5220 (parts purchases). The general ledger for OTM for 2017, the year of its initial operations, shows those payments to CBF's American Express Account. (R. p. 264, line 16 – p. 267, line 5; Defendant's Exhibit 2 – R. p. 782). Defendant's Exhibit 2 is an example of how those transactions were handled. It shows the parts invoices from the auto parts suppliers to either AAF or to CBF and the payment from the general ledger of OTM to those entities for reimbursement.

Eventually, OTM established its own credit account and purchased parts on that account. OTM paid pay those suppliers with an American Express card issued to OTM. Mr. Watts was the individual named on the OTM American Express account. (R. p. 375, lines 6 – 11). For this reason, the parts purchased on that card, when entered into the general ledger "Memo" line would show payment to, for example, "JOHN D. WATTS: Advance Auto Roanoke, VA" with the description of the payment in the being made by AMEX OTM." (R. pp. 712 - 716).

As regards this issue, and throughout his brief, Appellant relies upon negative inference rather than upon affirmative evidence. Appellant would have this Court to infer from these entries that OTM was making payment directly to Mr. Watts, or to an American Express account for Watts' benefit, and, thereby, robbing the company of cash for Mr. Watts' benefit. Appellant offers as his only support for this inference Mr. Watts' testimony regarding these payments. Mr. Watts denied that any OTM funds ever paid personal expenses for him, for his wife, or for his family. (R. p. 316, lines 17 – 25). He testified that the ledger indicates that the payments are for parts, but he does testify that having a round number like $10,000 is odd. Mr. Watts testified that there was corruption to the company Quick Books during this period of time that may account for these numbers, but very candidly admitted that the company likely would not have charged as much to parts as the balance sheet for that year suggests. (R. p. 361, line 25 – p. 363, line 24; Plaintiff's Exhibit 11).

Appellant argues in his brief that Mr. Watts testimony is not credible, because, says Appellant, Watts has been demonstrated not to be credible in other areas of testimony. The general ledger entries themselves demonstrate nothing definitive about these payments. Appellant argues that this Court should reject Mr. Watts' explanation for the payments made for auto parts, because he isn't credible, and affirmatively infer that the general ledger entries demonstrate examples of Mr. Watts' "stealing" from the company. This kind of negative inference amounts to burden shifting, i.e. compelling Mr. Watts to prove that he did *not* misappropriate money. This argument should be rejected.

In his brief, Appellant argues that the standard for fundamental unfairness necessary for application of the SBE doctrine does not require proof of fraud. While technically correct, this is a distinction without a real difference. *Pertius* specifically states that the fundamental unfairness

necessary to negate a company's corporate status involves, "fraud, evasion of existing obligations, circumvention of statutes, monopolization, criminal conduct, and the like." *Pertuis,* 817 S.E.2d at 280 (citing *SSP Partners v. Gladstron Invs. (USA) Corp.*, 275 S.W. 3d 444, 445 (Tex. 2008)). The standard for fundamental unfairness in the veil-piercing arena is the same. See, *Sturkie v. Stifly, supra*).

Appellant's oblique evidence and attempts at negative inference fail to meet the substantial requirements for alter ego and fundamental unfairness necessary to support piercing the veil of OTM or of collapsing it into the other Respondent companies under an SBE theory.

3. OTM is Separate and Distinct from 828A St. Mark's Rd., LLC

Appellant submits that the relationship between OTM and 828A St. Mark Road, LLC ("828A"), is such that the single-business enterprise theory should apply to collapse the companies into one for purposes of collection by Appellant on his judgment against OTM. Appellant posits that the two companies essentially are indistinguishable, notwithstanding that OTM, at all times relevant to this action, was an automotive repair and refinishing business, of which Plaintiff was manager. 828A was a real estate property holding company. (R. p. 261, lines 2 – 4).

Appellant contends that OTM never paid rent to 828A but rather paid it directly to Mr. Watts, who was the sole member of 828A. Appellant argues that 828A basically had no operations, so the operations of OTM, which took place on the property owned by 828A, effectively were the operations of 828A. This analysis is legally and logically flawed.

In the first instance, the absence of active operations by a real-estate holding company is not unusual. In fact, it is typical. The atypical factor in the situation before the Court is that the holding company's sole member, Mr. Watts, received payment of rent directly rather than having

the rental payments pass through the holding company to Mr. Watts. The rental income for 828A is shown on Mr. Watts personal tax return on Schedule E. (R. pp. 880 – 883) (the trial court incorrectly indicated that it was Schedule C to the tax return that showed the rental income. In this respect, the Order should have been amended to reference the appropriate schedule). Appellant correctly asserts that no written lease existed between OTM and 828A or between OTM and Mr. Watts. However, the conclusion that Mr. Watts exploited this situation to siphon funds from OTM by way of rental is flawed. Had OTM paid rent to 828A, as Plaintiff contends should have occurred, as the sole member of 828A, Mr. Watts would have been entitled to a distribution of all profits. As 828A is a single-member limited liability company, its profits and losses would have been reflected on the same Schedule E to Mr. Watts' tax return that is in evidence. The money would have ended up in the same place. The 828A entity could have raised, or lowered, the rent charged to OTM. Only if Watts engaged in systematically raising the rent in order to line his pockets at the expense of OTM could there be consideration of the type of fundamental unfairness required by the single business enterprise doctrine. Such an analysis would be the same had OTM paid rent to 828A. There is no testimony or evidence that the rental charged to OTM was greater than a fair rental amount. The financial records for OTM show that the rent increased only once between 2018 and 2022 and was reduced for 2019 and 2020. (2018 - $61,303; 2019 - $60,000; 2020 - $60,000; 2021 - $72,000 (R. pp. 707 – 710).

Appellant also suggests that, because OTM, along with Mr. Watts, is a guarantor of a mortgage loan from United Community Bank to 828A, then it follows that OTM and 828A are indistinguishable. Appellant argues that this situation evidences fundamental unfairness, because OTM pays rent to Mr. Watts, rather than to 828A. But Appellant's own argument belies this point. Appellant states that Mr. Watts receives rent money, personally, from OTM, and then

uses it to pay down the note on the property which he personally guarantees. Appellant argues that this practice somehow unfairly enriches Mr. Watts at the expense of OTM, because Mr. Watts receives in rent more than is required to service only the interest on the debt. (See Appellant's Brief at pp. 18-20; p. 41).

The same result would occur if OTM paid rent to 828A which rental money 828A then used to pay down the mortgage. It is hard to understand how the same result from funds paid to Mr. Watts personally constitutes a scheme to unfairly pauperize OTM at the expense of its creditors. The argument that Mr. Watts unfairly enriches himself at the expense of OTM also is unsupported by the evidence. There is absolutely no evidence in the record to support the idea that the rent charged to OTM was above a fair market rate. No witness testified regarding this question. Appellant would have this Court to infer that the rental rate is unfair based upon the idea that, since Mr. Watts set the rate and received the payment, it must be an unfair rate. That argument is not evidence.

Additionally, as noted in the trial court's Order, Mr. Watts loaned and invested money into OTM during the relevant period between 2018 and 2022 as shown on the financial statements of OTM. (R. p. 28; Defendant's Exhibit 21, R. p. 1275). So, if Mr. Watts were draining the company of assets, as Plaintiff seems to indicate, he did so in order to provide himself the opportunity to put the money back into the company.

This Court should not apply the single-business enterprise theory with respect to OTM and 828A.

4. **Southeastern Employees on OTM Payroll**

In 2019, Mr. Watts placed three or four employees of Respondent Southeastern Recovery and Towing, LLC ("Southeastern") onto the OTM payroll for a period of time. Mr. Watts

testified that he took this action to consolidate payrolls and to ease the administrative burden on Diana Friedline, an employee of CBF who provided bookkeeping, H.R., and some general administrative duties to the Respondent companies. (R. p. 300, lines 9 - 21).

Appellant argues that these employees did not work for OTM and that their payment by OTM was an attempt by Mr. Watts to avoid high workers' compensation insurance premiums, which, Appellant contends, amounts to insurance fraud. The evidence does not support Appellant's supposition, and the trial court properly ruled that it did not.

As regards the issue of the administrative burden of multiple payrolls, Ms. Friedline, herself, testified that she was "overwhelmed" by the workload placed on her as the bookkeeper for the various entities that she serviced in addition to CBF. (R. p. 480, line 2 – p. 481, line 2).

Appellant places a great deal of emphasis on Ms. Friedline's testimony to support his theory regarding the reason for consolidating the payrolls of Southeastern and OTM. However, her testimony on this point is equivocal at best.

Ms. Friedline did not know the purpose for Mr. Watts' placing of Southeastern Towing and Recovery, LLC on the payroll of OTM. The Court found that this evidence, or lack of evidence, of motive for this action demonstrated a lack of proof that the sharing of employees between Southeastern and OTM was for fraudulent or fundamentally unfair purposes. (R. pp. 17 - 19).

In her deposition, Ms. Friedline denied having any knowledge of why Mr. Watts undertook various business practices that she had carried out for years. In responding to questioning by Defense counsel, Ms. Friedline testified that she did not know why Mr. Watts put Southeastern employees on the OTM payroll. Specifically, Ms. Friedline testified as follows:

"Q: You don't know. What about the situation when the Southeastern repo drivers were being paid by On the Mark while they were performing services for Southeastern; do you know why that was done?
"A: That was Mr. Watts.
"Q: You don't know?
"A: No.

(R. p. 494, line 23 – p. 495, line 2).

Yet, when asked one leading question by Plaintiff's counsel on cross examination, Ms. Friedline then remembered that Mr. Watts had said that he moved employees from Southeastern to OTM to avoid workers' compensation expenses. (R. p. 494, line 23 – p. 495, line 2).

In its brief, Appellant states that Mr. Watts admitted that "the absence of employees on the Southeastern payroll was because of workers compensation." (Appellant's Brief, p. 9). Appellant mischaracterizes the testimony of Mr. Watts in his discovery deposition. Specifically, Plaintiff cites to R. p. 530, lines 17 - 19 in which Mr. Watts testified as to the reason why employees were taken from the Southeastern payroll to the OTM payroll and whether that move reduced the workers compensation rate for those employees. Those specific lines state:

"I remember thinking that that might be a reason why we did that." (R. p. 530, lines 17 - 19).

Appellant jumps on this testimony as being tantamount to a confession of insurance fraud and as being wholly inconsistent with Mr. Watts' *de bene esse* testimony that the move was done to simplify the internal payroll and bookkeeping process and to promote more efficient administration of those functions. However, the larger context of that statement reveals quite a different inference:

> "Q: Why was Ryan Scott put (sic) On the Mark Payroll?
> A: *It was just for efficiency*. I believe at the time there were only two people actually working for Southeastern, so we included the (sic) On the Mark payroll. We were able to – I believe one worker's comp policy covered all those employees. They were in a similar risk pool and somewhat similar type of services.

> Q: You actually reduced the workers' comp insurance rate by moving Mr. Scott from Southeastern Recovery to On the Mark, too, didn't you?
> MR. GRAHAM: Object to the form. You can answer.
> A: *I don't really remember. I remember thinking that that might be a reason why we did that. I really can't remember. It wasn't a very large amount of money either way. I just don't have a recollection.*"
> (R. p. 530, lines 4- 21) (emphasis supplied).

The Court appropriately found that the evidence insufficient to establish any fraudulent or fundamentally unfair motive behind employees moving between Mr. Watts' companies.[3]

The trial court's conclusion is further supported by the fact that, while the Southeastern employees were carried on the OTM payroll, Southeastern paid reimbursement to OTM for that employee expense. (R. p. 302, line 8 – p. 303, line 20).

5. **The sharing of common bookkeeping, payroll, and other support services does not support application of the single business enterprise theory.**

Plaintiff also would have this Court infer that Mr. Watts' companies constitute a single-business-enterprise as a result of the fact that Ms. Friedline provided H.R., payroll, and

[3] In his brief, Appellant states that the Court erred in relying on the District Court case of *Hoffeth v Janssen Pharm. Inc*, Civ. Action No. 3:17-cv-01560-MGL, 2020. In *Hoffeth* the court refused to adopt the single-enterprise-theory where employees of commonly-owned companies moved "seamlessly" between them. Plaintiff posits that *Hoffeth* is inapposite here, because the employees here, as characterized by Plaintiff, were employed by more than one company simultaneously, a fact which, Plaintiff speculates, but the *Hoffeth* court does not state, was absent in that case. *Hoffeth* involved a products liability claim by planitiff against Janssen Pharmaceuticals arising out of alleged injury to plaintiff by a drug manufactured by Janssen. The bulk of the case deals with motions for summary judgment on grounds unrelated to the single-business-enterprise rule. However, plaintiff in *Hoffeth* sought to recover from 2 wholly-owned subsidiary companies of Janssen. With regard to the first, JJRD, Plaintiff argued that it should be classified as a "manufacturer" of the alleged defective drug, because JJRD was involved with bringing the drug to market by sponsoring it and assisting Janssen with obtaining FDA approval for it. Plaintiff's theory against the second subsidiary, J&D, was pursuant to the single-business-enterprise doctrine. The court granted summary judgment to the subsidiaries finding that the JJRD subsidiary was not a manufacturer. Analyzing the single-business-enterprise doctrine as applied to J&D, the court discussed the seamless moving of employees from one "Janssen" company to another and found it insufficient to collapse Janssen and J&D.

bookkeeping services to multiple companies while being paid by one, CBF. This position is without support. The South Carolina courts repeatedly have found that this type of "intertwining" of businesses is not sufficient to constitute fundamental unfairness for purposes of the single-business-enterprise doctrine.

In the *Pertius* decision, the Supreme Court reversed the Court of Appeals' finding of amalgamation of companies into a single enterprise despite the fact that the companies shared a common manager, moved money between the companies without documentation, and even, again without documentation, transferred between shareholders the ownership of a boat "in order to avoid liability and high insurance premiums." (*Pertius*, 817 S.E.2d at 281). [As additional support for the position that sharing employees to perform common duties for commonly-owned companies does not support fundamental unfairness pursuant to the single-business-enterprise theory, see, *inter alia, Stoneledge*, 866 S.E.2d at 549 (Corporate member of a separate LLC provided the LLC with bookkeeping services and housed sales personnel of LLC at the Corporate member's offices, permitted their use of the Corporate Member's email account, and oversaw the sales personnel's activities, all without running afoul of the single-enterprise-doctrine; see also, *Turtle Factory Corp. v. ECS Southeast, LLP, et. al.*, 2021 W.L. 2813612 (D.S.C. 2021) (corporate parent's providing of legal, Human Resource, Accounting, and IT service for subsidiaries held insufficient to establish a single-business-enterprise)].

The trial court properly ruled that sharing of administrative tasks between the Respondent companies does not constitute the type of fundamental unfairness required to set aside the corporate entities and to merge Respondent companies into a common enterprise for liability purposes.

. Although it does not apply to OTM, it is noteworthy that AAF paid a management fee to Carolina's Best Finance for the services provided. Mr. Watts' explanation for this fact was that the management services provided to OTM, an auto repair company, was not as significant as those provided to AAF, and its affiliate for financing of its auto sales, Automotive Capital Investments, LLC ("ACI"). AAF and ACI had to service the loans made to the vehicle purchasers, collect payments, and initiate repossession. OTM's greatest administrative burden is entering data for parts purchases into QuickBooks, a task that could be delegated. (R. p. 312, line 13 – p. 316, line 16; Respondent's Exhibits 15 & 16, R. pp. 815, 846).

All of this evidence further supports the idea that the consolidation of the Southeastern and OTM payrolls was for purposes of efficiency, and that that same concern for efficiency drove the decision to consolidate bookkeeping and support services for the Respondent companies.

As regards the "sharing" of employees, Appellant's final argument is that the Respondent companies should be combined into an SBE, because Mr. Watts, somehow, engaged in fundamental unfair conduct by the formation to two staffing companies who leased employees to Respondents. Here, and elsewhere throughout the brief, Appellant casts business practice that promote economy and efficiency as fraudulent or fundamentally unfair.

In 2019, Mr. Watts formed Automotive Services Employees ("ASE") and Financial Services Employees ("FSE"). Employees of these companies were leased to Respondent companies. (R. p. 304, lines 2 – 17; R. p. 305, lines 6 – 17; R. p. 329, lines 19 – 23). ASE and FSE, like all staffing companies, charge the customer employer more for the leased employees than ASE and FSE pay to the employees. This process is not nefarious. It is typical. But again,

Appellant suggests that this practice is suspicious would have the Court to infer that it constitutes fundamental unfairness.

Appellant contends that the use of ASE and FSE constitutes insurance fraud, because these companies, at their inception, had no history of workers' compensation claims and started with a clean slate, which translated into lower premiums than those paid by Respondent companies. Again, Appellant casts an action undertaken to reduce costs to his businesses as fraudulent conduct by Mr. Watts. Again, Mr. Watts is the only witness to testify regarding the reasons for his formation of these companies. He testified that creating a clean slate for workers compensation premiums was ONE reason that the companies were formed. But equally important was the efficiency fostered by allowing employees to be allocated to companies that need them in a business environment which is constantly changing. (R. p. 303, line 21 – p. 305, line 17). Appellant, who leans heavily on the testimony of former employees of Respondents who claim to have intimate knowledge of Mr. Watts' motives and operations, offers no testimony to refute the reasons testified to by Mr. Watts for the formation of ASE and FSE. There simply is no affirmative proof of any fraud on the part of the Respondents in the formation of these companies.[4]

[4] Appellant points to the licensing requirements for staffing companies which, Appellant contends, Respondents did not follow, as demonstrative of fraud. Mr. Watts testified that he had tasked an employee with complying with these licensing requirements and thought that they had been done. (R. p. 332, lines 12-19). Apparently, this licensing was not done. Appellant did not call that former employee to testify regarding whether they were tasked with this process. Appellant just couches Mr. Watts' explanation as incredible. We can agree to disagree about that point. The reality is that non-compliance with any licensing requirements is not the essential issue. If these companies were properly licensed, Appellant still would argue that their formation was for fraudulent purposes. The relevant inquiry revolves around why, not how, the businesses were formed, and on that issue, Appellant has failed to carry his burden of proof.

6. **The method of repossession and disposition of collateral by CBF and AAF does not give rise to application of the Single Business Enterprise doctrine.**

Without restating all facts as found in the Court's Order, the evidence reflects that Carolina's Best would loan money to consumers taking automobile titles as collateral. Affordable Auto would sell and finance vehicles taking a security interest in the vehicle title. If the borrower were to default, Carolina's Best or Affordable would repossess the vehicle, at times, would have it cleaned up or repaired by OTM, and then would either sell the vehicle to third-parties, send the vehicle to auction, or, if the vehicle were inoperable and incapable being repaired, would have the vehicle demolished and sold in exchange for the its value as scrap metal. (R. p. 268, line 15 – p. 270, line 23). These three methods for the disposition of collateral are examined below.

a. Private Sales to Third Parties

Plaintiff infers that something is fraudulent or fundamentally unfair about Affordable Auto's selling repossessed vehicles rather than sending them to auction. Article 9 of the Uniform Commercial Code establishes a statutory preference for private sales of repossessed collateral over public auction as the private sale, typically, would bring a higher sales price which would compensate the seller and would protect the borrower from deficiencies. This statutory preference is stated in the Court's Order. (See R. p. 13; see also S.C Code Section 36-9-610, Comment 2).

Mr. Watts testified that his experience is consistent with this statutory preference. As between vehicles being run at auction and sold by AAF in a private sale, the private sale would yield the higher price, which would be advantageous to the borrower/ purchaser of the vehicle. (R. p. 270, lines 9 - 12).

Appellant posits that Respondents used false "bid sheets" to indicate that false bidding took place on repossessed vehicles sold by Affordable Auto in private sales. Respondents dispute that false bids were used. However, even were Appellant correct, sales by Affordable Auto to third parties, by definition, would represent fair market value sales, because a willing buyer and a willing seller would be buying and selling for an agreed price with neither party being under compulsion to enter the transaction. [See, e.g., *Reid v. Reid*, 280 S.C. 36, 312 S.E.2d 724 (Ct. App. 1984)]. Legally, as a creditor, Affordable Auto could not buy back its repossessed vehicles from itself in a private sale. Such a purchase only could occur at auction pursuant to Article 9 of the UCC. However, Affordable did not purchase its repossessed vehicles or those of Carolina's Best in private sales. The record is devoid of evidence to indicate any such sales. So bidding was not a legal requirement for Affordable to sell repossessed vehicles, so long as the sale met the requirements of commercial reasonableness pursuant to Article 9.

Mr. Watts indicated that Affordable kept some repossessed vehicles in need of repair but which it was not financially advantageous for Affordable to repair. These vehicles were sold "As Is" for cash, typically to mechanics or to buyers willing to work on the vehicles. Mr. Watts testified that bids would be taken for these vehicles and that the highest would be accepted. Mr. Watts' testified that these vehicles were not roadworthy, which, according to Mr. Watts, is why they were not sent to auction. (R. p. 346, line 18 – p. 347, line 7).

Even if the Court were inclined to accept Appellant's version of the facts over that of Mr. Watts with regard to this bidding process, it is important to note two critical facts. First, as stated above, if AAF repossessed vehicles and resold them in a private sale, that process is not violative of any legal requirement for disposition of repossessed vehicles, with or without bidding. Second, there is no testimony that OTM was involved in this process. Even if this Court were to

determine that the sales by CBF or AAF were in some way, unfair to the consumer, all of which is denied, the necessary nexus with OTM required for application of the single-business enterprise doctrine is missing. These vehicles were sold AS IS for cash because they were **not** repaired by OTM prior to sale. (R. p. 346, line 24 – p. 347, line 3).

b. Auction of Repossessed Vehicle

In attacking the Respondents' auction process for disposing of repossessed collateral, Appellant employs a classic tactic. Appellant parses Mr. Watts testimony, removes it from context, and then used it to construct a straw man that Appellant proceeds to knock down.

According to Appellant, Respondent companies never issued a single refund to a vehicle purchaser who had defaulted and had their vehicle repossessed. Mr. Watts candidly testified that refunds typically were not paid, because in most instances, defaults resulting in repossession took place during the early months of repayment when payments amount consist mostly of interest. (R. p. 269, line 9 – p. 270, line 12). However, Mr. Watts testified that reimbursements were paid. (R. p. 348, lines 14 – 17).

Appellant mischaracterizes Mr. Watts' testimony regarding repairs made by OTM to repossessed vehicles prior to their being sent to auction. Appellant claims that Mr. Watts admitted that the purpose of sending vehicles to OTM prior to sending them to auction was to "give him an advantage over others at auction because he has more information about the vehicle's condition than other bidders." What Mr. Watts actually said is that AAF prefers to bid on vehicles that have been sent to the auction by CBF, because AAF has more information about those vehicles than about vehicles sent by other sellers to the auction. (R. p. 272, lines 8-16). Such would be the case whether or not the vehicle had been repaired by OTM prior to auction, yet Appellant would have this Court to infer some nefarious intent to AAF's preference for

bidding on vehicle concerning which it had more knowledge than other purchaser. The same would hold true for all dealers sending vehicles to auction. They necessarily would have more information about the vehicles sent to auction than someone with no prior knowledge of the vehicle.

Next, Appellant argues that CBF sent vehicles to auction classified as "red light," rather than as "yellow" or "green" light, which, Appellant contends, reduces the sales price for those vehicles. Appellant states that Mr. Watts admitted that vehicles sent to auction by CBF were classified "red light" when they could have just as easily been classified "yellow" or "green." Mr. Watts' testimony actually was that repossessed vehicles typically were auctioned under the "red light" classification. He did not say that they just as easily could be classified differently. He testified that he did not know whether the auction houses permitted repossessed vehicles to be auctioned under a different classification. He testified that, in his experience, vehicles repossessed by title loan companies like CBF were sold under the "red light" classification, and he classified CBF's vehicles accordingly. (R. p. 272, line 17 – p. 273, line 13).[5]

[5] Mr. Watts actually testified as follow:

"Q: Okay. And typically, what light is on, and what are the circumstances?
"A: Well, in the case of Carolina's Best it's - - their vehicles are run red light.
"Q: What does that mean?
"A: That means there is no representation as to the quality. It's an "AS-IS" term and sale.
"Q: Is that true only for Carolina's Best vehicles, or is it true for other vehicles run at auction?
Mr. Murphy: Objection. Foundation.
Witness: "Other vehicles, the individual or entity running the vehicle, would elect which light to put it under. In the case of title owned vehicles, they're always run red."

Though not corrected, the last line actually should read, "In the case of title *loan* vehicles, they're always run red." "Title owned" vehicles would not make sense, as title is what confers ownership to vehicles.

With the exception of testimony by Plaintiff that, on a few occasions, he had attended automobile auctions but had not bid on vehicles, Defendant Watts was the only witness who testified regarding the auction process as it applies to repossessed cars. Mr. Watts testified that he and his companies, on occasion, attended auctions and bid on cars that were repossessed by Carolina's Best and Affordable Auto. He testified that his companies also bid on other vehicles. In certain circumstances, Mr. Watts would be contacted after the bidding at the public auction closed and given the option by the auctioneer to submit a higher bid than that bid at auction, a process that would result in a higher resale price than that obtained at auction. Mr. Watts described this process as an "IF Bid" process (i.e. the seller would be asked "if" it would accept the bid offered at auction). (R. p. 273, lines 15 – 18).

Appellant suggests that this "IF Bid" process essentially amounts to a universal trump card that Respondents could play to insure that they always got back the vehicles sent to auction while depriving the consumer equity in the vehicle. Appellant's argument is that the vehicle is offered for bid at auction. The high bid is received and the bidding ends. The auction house then contacts the seller, in this instance, CBF (Mr. Watts). Mr. Watts is offered the opportunity to accept the bid or to offer a higher bid. Appellant contends that, by not being present and presenting this bid at the auction, Respondents always get the final word without other bidders having the opportunity to bid the price up to a higher level, which would be of benefit to the debtor on the vehicle. Appellant's analysis of the facts surrounding the "IF Bid" process is flawed.

The only witness other than Mr. Watts who testified regarding the "IF Bid" process was Kelly Albanese, a former employee of CBF. Ms. Albanese testified that, while employed with CBF, she occasionally would receive telephone calls from that auction house asking if Mr. Watts

would accept the bid offered at auction. Ms. Albanese has no personal knowledge of how auto auctions operate, and she admitted as much. (R. p. 540, lines 3-13). She simply would relay the information along to Mr. Watts. She really did not know the significance of the information. (R. p. 538, line 15 – p. 539, line 1).

Mr. Watts testified that he would receive phone calls from the auction house asking if he accepted the bid at auction. If he did not, he would bid a price higher than that received at the auction. At that point, the auctioneer would offer the high bidder at auction an opportunity to better Respondents' bid. Mr. Watts testified that, on some occasions, he would offer a bid higher than that bid at auction, in which case Respondents would receive the vehicle. On other occasions, he would be outbid by another purchaser from the auction and would not receive the vehicle. (R. p. 277, lines 18-24).

Where Mr. Watts presented bids outside of the live auction but did not receive the vehicles, he could not have benefitted to the detriment of any borrower. Neither could he have held a universal "trump card" that would allow him always to have the final word on auction sales as Plaintiff contends. The IF-Bid process does not represent "cheating customers out of their equity" as Plaintiff asserts.

The trial court's order as respects the disposition of repossessed automobiles by sale should be affirmed.

c. Demolition of Repossessed Vehicles for Scrap Value

Without revisiting all of the Court's rulings related to Defendants' practice of having inoperable vehicles demolished and sold for the value of their metal as scrap, it should be noted that, again, Mr. Watts is the only witness who testifies regarding the decision to scrap vehicles as opposed to selling them. He testified that, where vehicles could not be repaired effectively, they

would be scrapped. (R. p. 279, line 21 – 280, line 18). No one else, not Plaintiff, not Ms. Friedline, not Ms. Albenese, and not Mr. Smith, testified that any vehicle that was taken to be demolished should have been disposed of in some other manner. So the notion that consumers somehow were cheated by inoperable vehicles being demolished is without evidentiary support.

Plaintiff argues instead that Defendants' process for disposing of scrapped vehicles works fundamental unfairness to consumers in some other manner. In this instance, Plaintiff contends that Mr. Watts ignored corporate formalities and had payment for scrapped vehicles made to him personally. Plaintiff would infer from this process that Mr. Watts was robbing the Defendant companies of the proceeds from these sales for his own personal benefit.

Plaintiff's principal witness regarding demolished vehicles is Darryl Smith, a former driver for Southeastern. Mr. Smith testified that he delivered vehicles to the CRS Scrap Yard for demolition. Mr. Smith would receive checks from CRS made payable to Mr. Watts personally. (R. p. 465, line 17 – p. 476, line 2). In its brief, Appellant attributes to Mr. Smith testimony that Mr. Watts took these payments as a "bonus" to himself. What Mr. Smith actually said is more equivocal:

> "Q: Did Mr. Watts ever make a comment to you about why he had the money directed to him rather than to the company?
> "A: He did. But I - - I kind of can't remember. It's like it's a bonus, something like a bonus or something that is coming to him. That's why he had them made out personally to him." (R. p. 468, lines 10 – 16).

Mr. Watts also described the process by which vehicles would be sent to the scrap dealer. Inoperable vehicles repossessed by both CBF and AAF would be sent to the scrap yard, often simultaneously. Mr. Watts would provide to the tow driver transporting the vehicles several Affidavits of Ownership required by law for the vehicles being demolished. Because several vehicles from both companies were transported simultaneously, the VIN numbers for each

separate vehicle would not be filled in on the Affidavit of Ownership. Those numbers would be filled in by the scrap-yard owner who would provide to the tow driver checks payable to Mr. Watts personally. This testimony is consistent with that of Mr. Smith.

The scrap yard did not allocate the price paid between each vehicle scrapped. Mr. Watts would deposit the funds into his personal account, allocate the proper amounts to the AAF and to CBF, and then would write a personal check back to the correct company. Those funds would be deposited into the company accounts and entered into the company general ledger under the Bad Debt Recovery account. (R. p. 282, line 10 – p. 299, line 9).[6]

The general ledgers of both Carolina's Best and Affordable Auto support Mr. Watts' testimony and show deposits from his personal accounts into their respective Bad Debt Recovery accounts. There is no documentary evidence that Mr. Watts kept these funds personally.

Plaintiff then falls back to the argument that the above-described process did not occur in fiscal years 2018 and 2019 as the ledgers for the two companies do not show deposits from Mr. Watts to those companies for those years. Plaintiff would have the Court to infer that records for these two years indicate a siphoning of funds by Mr. Watts from the sales of scrapped vehicles. However, the Plaintiff, who bears the burden of proof in this action, does not offer documentary evidence that money from scrapped vehicles was paid to Mr. Watts in 2018 and 2019. The Appellant would just have this Court to infer this purported siphoning of funds by Mr. Watts. Drawing such an inference, however, would be inaccurate and inappropriate.

Mr.Watts explains the reason for not receiving reimbursement payments for scrapped vehicles during 2018 and 2019. He testified that, when the price that AAF and CBF would

[6] The colloquy in the deposition surrounding this issue is cumbersome due to the difficulty on the part of counsel at the deposition in reading electronic versions of the general ledgers for the two companies and comparing those to printed excerpts offered as Exhibits 9 and 10.

receive for scrapped vehicles declined due to declining commodity prices for metal, inoperable cars would be sold for the value of their parts. (R. p. 376, line 10 – p. 379, line 17; Defendant's Exhibit 8 – R. p. 708). This decline occurred in 2018 and 2019. Defendant' Exhibit 8 to the Watts *de bene esse* deposition is the Carolina's Best general ledger for 2016, 2017, and 2018. Exhibit 8 shows numerous entries for scrap payments from CRS in 2016 and 2017. The entries cease in 2018. This documentary evidence supports Mr. Watts' testimony that, prior to a decline in commodity prices for metal in 2018, Respondents sent vehicles for demolition, but, after the drop in price, this practice ceased until prices increased again in 2020. This testimony is the only testimony in the record regarding why deposits for scrapped vehicles were not entered for 2018 and 2019. Mr. Smith did not specify the years during which he delivered checks to Mr. Watts from the CRS scrap facility, so there is no evidence of payments to Mr. Watts for scrap in the 2018 and 2019 timeframe.

The Court's Order regarding disposition of vehicles and any inferences to be drawn therefrom should not be modified.[7]

B. THE TRIAL COURT PROPERLY FOUND THAT APPELLANT FAILED TO PROVE THE FUNDAMENTAL UNFAIRNESS REQUIRED BY SOUTH CAROLINA LAW TO PIERCE THE CORPORATE VEIL.

As stated above in Section I. B., the South Carolina Supreme Court, in the case of *Sturkie v. Sifly*, set forth a two-prong analysis for piercing of the corporate veil. The first prong analyzes whether the company is a mere façade for the owner who is the company's alter ego. The Court set forth seven factors to be analyzed in this regard. The second prong analyzes whether

[7] In his brief, Appellant accuses the trial court of mis-framing the issue regarding the repossession and disposition of collateral by Respondents. The framing of that issue, on page 7 of the trial court's order, is a direct quote from paragraph 4 of Appellant's Second Amended Complaint.

recognizing the corporate status of the company would be fundamentally unfair to the complaining party. (See Section I. B, infra).

Without question, the record demonstrates significant intertwining of Respondent companies. As argued above regarding the SBE doctrine, this intertwining is insufficient to consolidate the Respondent companies into one for purposes of SBE liability. Assuming, without conceding, that this intertwining were sufficient to satisfy the first prong of the *Sturkie* analysis, the second prong is missing.

In the argument set forth in Appellant's brief, Appellant does not reference any new evidence in support of his veil-piercing claim. He relies on the same evidence used to support the claim for application of the SBE doctrine, which has been analyzed above. The same fundamental unfairness required for application of the SBE doctrine is a prerequisite to imposing liability on a corporate owner pursuant to a veil-piercing theory. Since Appellant's arguments have been addressed above, those arguments will not be restated.

Appellant does emphasize one particular matter as it relates to veil-piercing, the use by Mr. Watts and his wife of the CBF credit card. In the first instance, CBF is not the judgment debtor in this action. OTM is. Again, Appellant would have the Court conflate the alleged acts of one company for that of another where no nexus exists between the two acts complained of. No personal credit card purchases were made on any card account belonging to OTM. So the analysis of the personal credit card purchases on CBF accounts is not determinative of piercing the corporate veil of OTM, the actual judgment creditor.

Second, even if some nexus could be demonstrated between OTM and CBF, the Appellant has not demonstrated that the personal purchases on the CBF credit card account support a finding of fundamental unfairness.

Mr. Watts testified, and the records demonstrate, that the personal credit card expenses incurred by him or by his wife were treated by CBF as distributions to Mr. Watts, were carried on the company books as such, were not expensed to the company, and were taxed to Mr. Watts. (R. p. 308, line 17 – p. 310, line 12). Nothing clandestine, covert, or nefarious was involved in these transactions. It may have been imprudent business practice to handle these expenses in this way, but it isn't fraudulent.

Additionally, Mr. Watts testified, and the company financial records demonstrate, that all of the Respondent companies retained positive capital accounts at all times relevant to this action. (R. p. 317, line 20 – p. 320, line 19; Defendants' Exhibit 17 – R. p. 726).[8]

The veneer of alter ego is present in this matter, but the evidence of fundamental unfairness required to pierce the corporate veil is missing.

The trial court's refusal to pierce the corporate veil of Respondent companies and to impose personal liability on Mr. Watts should be affirmed.

III. CONCLUSION

The Appellant would have this Court reverse the trial court and ignore the substantial body of law surrounding the issues of veil-piercing and SBE doctrine to allow Appellant to collect a judgment obtained in a dispute between Appellant and Respondent OTM, the auto repair shop that employed Appellant, against other Respondent companies. While Appellant goes to great lengths to infer that the Respondent companies move employees, money, and property between themselves, there is no evidence that the Appellant ever performed services for, or was ever paid by, any company apart from OTM, the judgment debtor.

[8] Mr. Watts did testify that there was a decline in the equity in CBF in 2021 due to declining loan volume, but the company still maintained a positive capital balance. (R. p. 319, lines 7 - 12; Exhibit 17 – R. p. 726).

The challenge in this case is to remain focused on the relevant issues in the midst of Appellant's showering of vitriol at Mr. Watts, most of which is unrelated to the operations of OTM. Throughout the brief, Appellant casts aspersions upon the credibility of Mr. Watts' testimony. That tactic, in and of itself, is fair enough, though it is inaccurate. However, the real flaw in the Appellant's logic comes from his attempts to construct upon this platform of credibility, or lack thereof, an edifice of conjecture. An example is the argument by Appellant that Mr. Watts drained OTM of capital by making payments to himself which were disguised as auto parts purchases. The general ledger entries regarding auto parts purchases, at best, are equivocal. In and of themselves, they prove nothing. Appellant offers no explanation of these general ledger entries. The only witness to testify about them was Mr. Watts who testified that the entries reflect money spent to buy auto parts, but that the figures appear higher than he would expect. However, Mr. Watts testified that OTM never paid him any money outside of the ordinary course of business.

The Appellant argues that Watts' testimony on this matter is not credible, because, claims Appellant, Mr. Watts has used a company credit card held by CBF to make personal purchases and has lied about other things. So, the Court should brand Mr. Watts a liar and infer from the equivocal entries in Quick Books that Watts was stealing from OTM, because Watts must be lying when he claims that he wasn't stealing. This false syllogism is clever, but it ignores the fact that Appellant has the burden of proving his case by the greater weight of the evidence. Appellant is charged with coming forward with affirmative evidence that Mr. Watts misappropriated funds from OTM, and shifting the burden to Mr. Watts to prove that he did not misappropriate funds is inappropriate and unpersuasive. Throughout the brief, this tactic is repeated.

All told, Appellant's arguments are one big attempt to offer evidence of alleged bad acts to prove character and then arguing that Mr. Watts must have been acting in conformity with that character in operating these companies. That tactic is not consistent with the rationale underlying the Rules of Evidence and is not sufficient to carry the substantial burden of proving fundamental unfairness as required by the SBE doctrine and veil-piercing theory.

The trial court's refusal to apply the single-business enterprise doctrine and to pierce the corporate veil of Respondent companies should be affirmed.

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