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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.

BRIEF OF APPELLANT

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I. Statement of Issues on Appeal

1. Should the judgment be applied to some or all Corporate Respondents through the single business enterprise doctrine?
2. Should the judgment be applied to Defendant Watts through an alter ego/piercing of the On the Mark corporate veil?

II. Statement of the Case

Tuck commenced this action on March 19, 2018. The case proceeded to trial based on Tuck's Second Amended Complaint. (R. pp. 59-54).¹ Tuck pursued two claims before the jury: (1) Breach of contract against On the Mark Automotive Repair and Refinishing, LLC d/b/a On the Mark Automotive, LLC ("OTM"); and (2) South Carolina Payment of Wages Act ("wage payment claim") against OTM and John D. Watts III.

Judge Verdin presided over the jury trial that occurred on August 8-9, 2022. On August 9, the jury returned its verdict. As to breach of contract, the jury awarded Tuck \$248,389 against OTM. (R. p. 63). As to the wage payment claim, the jury awarded Tuck \$644 against OTM and Watts. (*Id.*) Judge Verdin granted Tuck's Motion for interest, costs, treble damages, and attorney fees. (R. pp. 45-56). The total judgment entered is \$301,092. (*Id.*)

This appeal arises from the non-jury proceedings that followed the jury trial. Tuck seeks relief from Watts on an alter ego theory/piercing and against the other corporate Respondents on a single business enterprise theory. Because both

¹ By agreement, Respondents' answers to the initial Amended Complaint were incorporated and they were not required to file a response to the Second Amended Complaint. (R. p. 49 (introductory paragraph)).

claims are in equity, the parties convened the non-jury portion of this case on August 10.²

At the beginning of the non-jury portion, the parties agreed that the Record would include: (1) any materials exchanged during discovery; and (2) additional live testimony of Tuck and Watts with additional exhibits introduced through additional testimony. The parties also agreed that they would then submit proposed findings of fact and conclusions of law on the issues to Judge Verdin. (R. p. 194 l. 4 – r.p. 195 line 5).

Tuck testified on August 10 as expected. After Watts took the stand, the parties ran into an issue about discovery and documents. The parties resolved the issue by agreeing that Respondents would provide additional documents and that Watts would sit for a *de bene esse* (“DBE”). (R. p. 237, line 1 – p. 240, line 23).

After the Watts DBE, each party submitted proposed findings of fact and conclusions of law (“PFFCL”) as agreed. (R. pp. 547-80; r. pp. 1189-1228 [Sealed]). On December 21, Judge Verdin issued the Order adopting the Respondents’ PFFCL. (R. pp. 1-40). On December 30, Tuck filed a Rule 52(b) and 59 Motion. (R. pp. 657-92). On February 6, 2023, Judge Verdin entered a Form 4 Order, denying Tuck’s Motion. (R. pp 42). On March 1, Tuck timely filed his Notice of Appeal.

² The styling of the Order as one denying Plaintiff’s Motion to Pierce the Corporate Veil is a bit of a misnomer in two respects. First, there was not a separate motion. Second, the trial court heard and decided two equitable issues: both alter ego/piercing and single business enterprise.

III. Facts

A. Background

In 2010, Jason Tuck went to work for John Watts as a mechanic. (R. p. 68 line 12 - r. p. 69 line 5). Watts later put Tuck over the shop, where he served until March 5, 2018. (R. p. 69 lines 8-17). Watts later drafted and presented Tuck with an employment contract. (R. p. 69 line 23 – r.p. 70 line 24; r. p. 72 line 25 – r. p. 73 line 6; r. pp. 175-78).

Tuck's employment ended on March 5, 2018. (R. p. 79 lines 1-3). Watts summoned Tuck to the car lot and told Tuck he had hired another manager. (R. p. 81 line 15 – r. p. 82 line 8). Tuck proceeded to the shop and the new manager fired him. (R. p. 83 line 20 – r. p. line 24). OTM never claimed cause for termination under the contract. Rather, the basic issue put to the jury was: Did Tuck quit, or was he fired?

B. Corporate Respondents

Defendant John D. Watts, III is a suspended attorney³ and the sole owner of the various corporate Respondents. (R. p. 527 lines 15-17 (OTM); r. p. 507 lines 14-16; r. p. 529 lines 20-24; r. p. 573 lines 17-21; r. p. 515 lines 18-22).

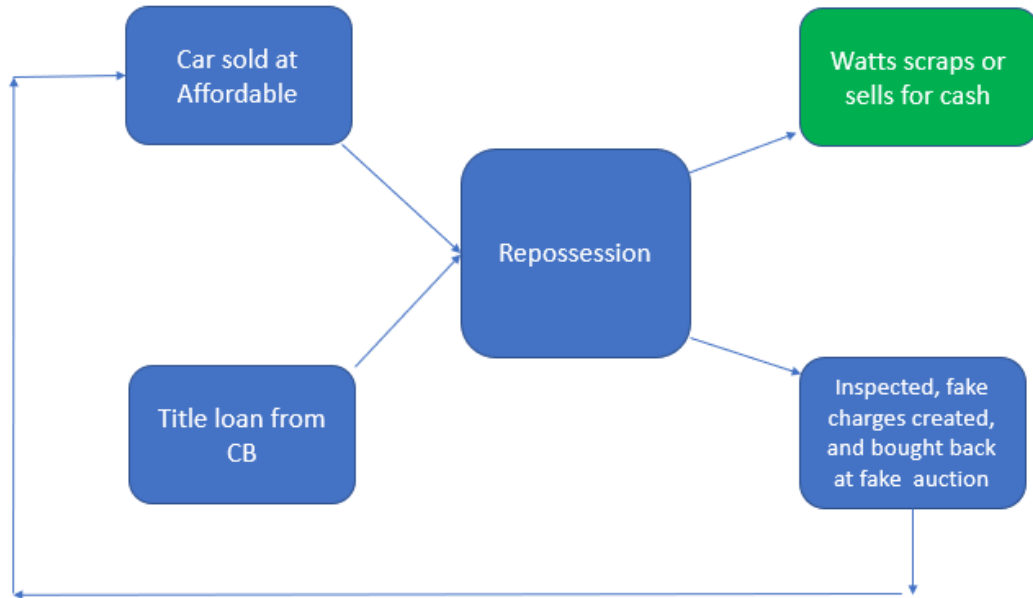
³ See <https://www.scbar.org/lawyers/directory/profile/8449>) Watts graduated from Mercer and later obtained a tax LLM from NYU. (R. p. 125 line 10 – r. p. 126 line 7). Watts practiced transactional law with an Anderson firm and with Nexsen Pruet. (R. p. 126 lines 8-25).

The corporate Respondents are as follows:

Name	Role
On the Mark Automotive Repair & Refinishing LLC d/b/a On the Mark Automotive, LLC (“OTM”)	The repair shop solely owned by Watts at which Plaintiff was directly employed. (R. p. 261 lines 14-17).
828A St. Mark Road, LLC (“828A”)	LLC solely owned by Watts in which title to the land and building that houses OTM is held. (R. p. 261 lines 2-9).
Southeastern Recovery and Towing, LLC (“Southeastern”)	Tow truck/repossession business solely owned by Watts that repossess vehicles financed by Affordable and CB. (R. p. 260 lines 14-19).
Affordable Auto Finance, Inc. (“Affordable”)	A “buy here, pay here” lot in Greer solely owned by Watts that also finances purchases. (R. p. 259 line - r. p. 260 line 4).
Carolina’s Best Finance (“CB”)	A title loan company solely owned by Watts that does business, among other places, in a location adjoining Affordable and Southeastern. (R. p. 260 lines 5-13; r. p. 459 lines 18-20; r. p. 505 line 17 – r. p. 506 line 13; r. p. 532).

C. Watts’s unlawful schemes

As detailed below, Watts unlawfully recycles used vehicles to be sold at Affordable, or sells them for cash, to deprive consumers of any right to redemption under South Carolina law. In sum, the scheme works as follows:



Watts also violates insurance laws by misrepresenting the companies for which individuals work. Meanwhile, Watts pockets cash from the operations of his companies and uses them to pay for his lavish personal lifestyle. Watts also puts every asset in a separate LLC while ignoring any corporate form or distinction between them. He now seeks to use the façade of those LLC to insulate himself and other entities with assets.

1. Watts cheats consumers and rigs the system

a. The recycling plan

Several witnesses have explained how Watts uses his various companies to sell, finance, repossess, strip the consumer’s equity, and re-sell the same vehicles repeatedly. For example, Watts uses Southeastern to repossess a vehicle financed by Carolina’s Best to have it worked on by OTM. Watts charges the new work by OTM against the consumer’s equity before Watts sends the vehicle to auction. Watts then repurchases the vehicle and puts it on Affordable’s lot. (See, e.g., r. p. 587-88 ¶ 14).

Another fraudulent tactic of Watts is to inflate his interest in vehicles with charges he never incurred. At times, Watts would have Tuck create an estimate for repair work on a repossessed vehicle. (R. p. 204 line 21 – r. p. 205 line 18). Watts later told Tuck that he used those estimates to falsely claim that he had more cost in the vehicles, which cheats consumers out of their equity. (R. p. 205 line 119 – r. p. 206 line 17).⁴

Even worse, the bidding at auction is rigged. Daryl Smith was a repo officer/tow truck driver for Watts. (R. p. 456 lines 6-10; r. p. 457 line 4 – r. p. 458 line 23). A former OTM manager (Chase) told Smith that OTM sabotaged vehicles because, for example, “John wants this truck for Affordable, so we’ve got to do what we can to make sure nobody else bids on it.” (R. p. 473 lines 8-14).

Smith personally observed the sabotage. (R. p. 469 line 8 – r. p. 471 line 1; r. p. 473 lines 15-22). Smith described how the manager and mechanic got underneath a vehicle to unplug things, to make lights come on, and to make the vehicle skip. (R. p. 470 line 21 – r. p. 471 line 10; r. p. 473 lines 18-22). The scheme worked, and Watts was able to repurchase the sabotaged vehicle. (R. p. 473 lines 23-25).

Watts also rigs the bidding. Watts typically used Whitey’s Auto Auction because Whitey’s would call Watts or one of his employees to tip them off on the highest bid. (R. p. 207 lines 1-18; r. p. 215 lines 7-15). Kelly Albanese worked for Affordable Auto and testified about rigged bidding. (R. p. 535 line 22 – r. p. 536

⁴ Watts also instructed employees not to repossess vehicles until the amount owed was too much for the consumer to pay. (R. p. 474 line 1 – r. p. 475 line 11).

line 13). Whitey's Auction would call and give Albanese a number at which Watts could buy an auctioned car. (R. p. 537 line 8 – r. p. 540 line 2; r. p. 540 lines 8-13; *id.* lines 19-20).

Smith estimated that Affordable Auto prevailed more than nine out of ten times. (Supp. r. p. 1430 lines 4-5). The result of Watts selling or financing, repossessing, and rigging the system is that he would get the same vehicles back to put on his lot at low to no cost. Tuck confirmed that he would see the same vehicle cycle through multiple times – sometimes four to five times. (R. p. 207 line 19 – r. p. 208 line 19).

b. Watts selling vehicles on the back lot with fake “bid sheets”

Aside from the rigged auctions, Watts would repossess a vehicle, have employees create “bid sheets” to create the false appearance of competitive bidding, and then sell the vehicle for cash. (Supp. r. p. 1433 line 18 – supp. r. p. 1435 line 20). When Watts sells vehicles this way, he does not let the owner/consumer know about the opportunity to bid if less than the debt. (R. p. 346 line 15 – r. p. 347 line 14).

2. Watts also pockets cash from scrapping customer's vehicles

Watts also falsified DMV paperwork and pocketed cash from his operations. Watts gave Smith a pile of pre-signed affidavits of ownership that were left blank. When Watts attests that he is the owner of the vehicle, there is no actual vehicle identified. (R. p. 354 line 22 – r. p. 355 line 14). Drivers, like Smith, would fill out the forms later and take vehicles to be scrapped at CRC Scrap Metals. (R. p. 465, line 18 – r. p. 466 line 2). The pre-signed Affidavits claim that Watts is the owner.

(R. p. 402-06). But Watts never personally owned any of the vehicles. (R. p. 531 lines 8-11).

Based on Watts's false affidavits, the checks from the scrap yard are made out personally to Watts. (R. p. 465 line 14 – r. p. 468 line 9; r. pp. 402-07; r. p. 541 line 20 – r. p. 543 line 1; r. p. 280 lines 19-22). Watts told Smith that he kept the cash as a “bonus” for himself. (R. p. 468 lines 10-16). Watts's conversion of the consumer's vehicle was (and perhaps still is) a common practice. (R. p. 468 line 17 – r. p. 469 line 2). Even Watts estimates that he has scrapped “hundreds” of vehicles through this process. (R. p. 281 lines 10-14).

Watts knows that he must sell vehicles in a commercially reasonable manner, but he admittedly does not do so with vehicles he decides to scrap. (R. p. 279 lines 21-24).⁵ Watts does not even offer the consumer the right to buy back their vehicle for what he can personally get from the scrap yard. (R. p. 373 lines 10-13).

⁵ To counter the claim that he pocketed cash, Watts points to bookkeeping of scrap that he started only *after* his pocketing of cash surfaced. Watts seeks to use general ledger information solely from 2020 and 2021 to show that he accounts for scrap on the books of CB and Affordable. Plaintiff procured and produced Smith's Affidavit in August 2019, and Smith worked only until January 2019. (R. pp. 584-85; r. p. 584 ¶¶ 1-2). Watts offers no evidence that he accounted for scrap on the records of CB or Affordable before Smith blew the whistle. (R. p. 348 line 22 – r. p. 349 line 2; r. p. 349 line 25 – r. p. 351 line 3). Watts also caved even on his 2020-21 books. When counsel for Plaintiff pointed out that many of his scrap entries show transactions from an “accounts payable” account in Watts's own name (r. p. 351 lines 16-20), Watts could not explain the discrepancy and, in true Watts fashion, he disavowed his own exhibits and blamed an employee for coding everything improperly (r. p. 351 line 21 – r. p. 352 line 17).

3. Watts cheats on insurance by paying Southeastern employees out of OTM.

Watts put Southeastern's repo truck drivers on the OTM payroll after a workers compensation claim by a Southeastern employee. (See R. p. 307 lines 1-13). Smith, Ryan Scott, Brian Gilstrap, and Ryan Frank were all paid by OTM, even though they performed no services for OTM. (R. p. 195 line 19 – r. p. 197 line 3; r. p. 197 lines 11-17; r. p. 458 line 24 – r. p. 459 line 4; r. p. 459 line 25 – r. p. 460 line 9; r. p. 460 line 22 – r. p. 464 line 22; r. pp. 476-77). Watts told Friedline and Tuck that he did this because he could not obtain insurance at Southeastern. (R. p. 494 line 23 – r. p. 495 line 2; r. p. 197 lines 4-10). Since 2016, Southeastern has operated with no employees on its payroll. (R. p. 330 lines 11-14; r. p. 338 lines 7-17). Watts admitted that the absence of employees on the Southeastern payroll was because of workers compensation. (R. p. 530 lines 17-18).⁶

D. Watts ignores corporate forms in several other ways

1. Watts pockets all rent: None of the entities – including OTM – pay rent to the actual owners of the property

Along with the properties housing the corporate Respondents, Watts owns many rental properties. Watts deposits the rent for all properties into a personal account. (R. p. 499 line 21 – r. p. 500 line 4). For example, OTM is in a building and on land legally owned by 828A, which Watts also owns outright. (R. p. 501 lines 14-23; r. p. 507 line 16). 828A is on the note for the property. (R. p. 804 [Sealed]). OTM does not, however, pay any rent to 828A St. Mark Road. Instead,

⁶ Today, Watts avoids any workers compensation (or payroll tax) issues with Southeastern by having his repo driver (the same job performed by W-2 employees) classified as an independent contractor. (R. p. 330 lines 16-22).

it pays rent directly to Watts, who pays the note. (R. p. 507 line 24 – r. p. 508 line 1; r. p. 528 lines 9-16; r. p. 509 lines 15-20). Both Affordable and CB also pay rent directly to Watts, rather than the LLC in which Watts placed title to the property. (R. p. 504 lines 18-22; r. p. 503 lines 7-24; r. p. 516 line 3 – r. p. 523 line 15; see r. p. 520 lines 10-12; r. p. 517 line 21 – r. p. 518 line 3; r. p. 519 lines 6-8).

As a further showing of how Watts intermingles companies and ignores their form, some pay no rent. Southeastern, for example, pays no rent. (R. p. 502 lines 22-24; r. p. 506 lines 14-16). Affordable also pays no rent on the storage facility owned by Watts where its repossessed vehicles are stored. (R. p. 510 line 20 – r. p. 511 line 18; r. p. 512 lines 11-12).

2. CB and OTM are the piggy banks for Watts's lavish personal spending

To support his opulent lifestyle, Watts pays his personal expenses from the CB business account by using company credit cards issued to CB and Affordable. Watts has never had a credit card issued in his name. (R. p. 308 lines 17-19; r. p. 382 lines 16-19; r. p. 352 line 15 – r. p. 354 line 1; r. p. 798 [Sealed]).

For 2021, for example, Watts ran more than two dollars of personal expenses through the account for every dollar of profit. (R. p. 381 lines 9-12; r. pp. 846 [Sealed]; r. pp. 743-81 [Sealed]).⁷

⁷ Watts falsely claimed that this is legitimate because he charges the amount against retained earnings, and he claims he bears tax consequences for having the company pay for the personal charges. (R. p. 381 line 13 – r. p. 382 line 8; r. p. 310 lines 9-12). But Watts does not report this as income, as evidenced by his 2018 tax returns, which bases his income solely on the profit of the company without any 1099 income from CB identified. (R. pp. 871-905 [Sealed]).

The sheer number of accounting entries necessary to record all of Watts's personal spending is staggering. For example, There are over 4548 credit card entries for personal expenses in just 2021 (over twelve for every calendar day). (R. pp. 905-86 [Sealed]). The personal spending of Watts's wife alone amounts to *thousands* of entries during the year. (R. pp. 987-1028 [Sealed]). 2020 shows similar spending and accounting entries with personal credit card charges accounting for 4356 lines of entries on the books of CB. (R. pp. 1029-1102 [Sealed]).

After Friedline exposed the personal use of business accounts,⁸ Watts used other schemes to characterize personal expenditures as business expenses. His use of the automotive parts account for OTM is the most obvious. OTM Account 4075 is the parts income account, which shows what OTM charges for the parts it

⁸ After Watts' bookkeeping was exposed in this litigation, CB started to dissect the company credit card bills to itemize thousands of personal expenditures. But Watts does not pay or reimburse CB for any of this work. (Supp. r. p. 1439 lines 2-5; see r. p. 311 lines 3-6; *id.* line 23 – r. p. 312 line 1; r. p. 312 lines 9-12). It all is simply absorbed as “business expenses.” Watts's belated reliance on 2022 financial reports to show that he accounted for his massive personal spending highlights another problem for him. Diana Friedline exposed the use of company accounts to pay for personal extravagances in August 2019. (See R. pp. 586-91). Every record relied on by Watts was created well after Defendants learned about the Smith and Friedline affidavits. (R. p. 535 line 22 – supp. r. p. 1437 line 10).

Watts's 2018 records, for example, do not contain detail of the personal expenses, and not one credit card entry or mention of his wife. (R. p. 356 lines 1-4; see r. pp. 704-06 [Sealed]). When confronted, Watts stammered and claimed that he “handled it differently in 2018,” he but cannot say where in his records the personal charges are accounted for before Smith and Friedline blew the whistle. (R. p. 356 lines 1-11).

buys from places like Advanced Auto. (R. p. 361 lines 2-9; R. pp. 798 [Sealed]). Account 5520 is the cost of goods sold (“COGS”) account, which is what Watts paid for the same parts. The supposed COGS far exceed the income for the same parts (after markup). (R. p. 361 lines 10-19). And the general ledger shows no supplier listed for most of the entries under COGS, which means there is no ability to say what the amounts represent. (R. pp. 712-16 [Sealed]; r. p. 361 line 25 – r. p. 363 line 24). When confronted with the records, Watts argued that there must have been “corruption” of the files because, as he freely admits, “we didn’t spend \$[the amount shown] [on] parts.” (R. p. 363 lines 9-12; r. p. 374 lines 3-16). When confronted further with the fact that entries in this account contain Watts’s name, Watts also feigned confusion. (R. p. 374 lines 17-24).

3. Watts uses common management to run his enterprise

Watts and others manage the various operations from a “home office” in Greer. (R. p. 221 lines 12-16). Diana Friedline, for example, was the overall corporate controller, who “controlled all the businesses,” along with Alice Chronister. (R. p. 586 ¶¶ 2-3; r. p. 203 line 9 – r. p. 204 line 8). Friedline not only performed work for various companies, including OTM, but she also did Watts’s personal financial work, paid his personal bills out of business accounts, and did work for other Watts personal real estate investments while on the CB payroll. (R. p. 586 ¶¶ 5-7; r. p. 485 line 18 – r. p. 488 line 7).

Friedline and others on the CB payroll worked on accounting, costing of vehicles and payroll for Affordable. (R. p. 482 line 18 – r. p. 484 line 21). Friedline also did bank reconciliations for the different entities, and she handled their licensing and insurance. (R. p. 489 line 8 – r. p. 490 line 4; r. pp. 586-87 ¶¶ 5, 8).

Friedline only spent about half of her time working for CB, which putatively employed her. (R. p. 485 line 1-4). Chronister, meanwhile, performed human resource functions for all the companies. (R. p. 546 lines 11-17).

Most of Watts's companies, including OTM, have never paid any management fee or compensated CB for the bookkeeping and human resource management services. Watts argues that any bookkeeping work done for these companies was "not terribly significant." (R. p. 316 lines 6-16). But that assertion also fell apart upon review of Watts's financials.⁹

4. Other operating companies paid employees

Watts's practice of having employees work for various Defendants is not limited to the issue with Southeastern. (R. p. 305 lines 18-25). Watts admitted, for example, that Affordable employees also were put on the OTM payroll. (R. p. 306 lines 2-16). Friedline also explained that Watts would move employees around to different companies and that employees would work for more than one company at a time. (R. p. 587 ¶¶ 12-13). Albanese added that, although she worked for Affordable, Watts paid her through CB. (R. p. 544 line 23 – r. p. 545 line 3).

⁹ Friedline did cost accounting on every part bought by OTM, and Watts does not refute her claim. (R. p. 359 line 21 – r. p. 360 line 16; r. pp. 590). In 2018 alone, the number of accounting entries for OTM consists of **8,900 lines**. (R. pp. 704-06 [Sealed]; r. p. 356 line 25 – r. p. 359 line 4). Likewise, in 2019, the general ledger for OTM consists of over 6000 independent entries. (R. pp. 1103-08 [Sealed]).

5. OTM used accounts belonging to other Defendants

OTM purchased supplies and parts at companies such as Advanced Auto, Dick Brooks, and LKQ through accounts held by Carolina's Best and Affordable Auto. To illustrate how Watts blurs the lines, he set up accounts in names like "Carolina's Best doing business as On the Mark Automotive" and listed the OTM address for the other entities. (R. p. 71 line 18 – r. p. 75 line 23; r. pp. 246-54; r. pp. 587 ¶¶ 10-11).

There was no relationship between the company charged for parts and the entity that owned or repossessed that vehicle. For example, Watts would have parts charged to Carolina's Best's account even if Carolina's Best had no interest in the vehicle. (R. p. 202 line 9 – r. p. 203 line 8).¹⁰

E. Watts starts other types of companies to facilitate co-mingling and to skirt other laws

After Plaintiff filed this case, Watts started two more companies and moved all employees from every corporate Respondent onto their payrolls. In 2019,

¹⁰ Watts introduced selected documents to argue that he accounts for when one company is buying parts on another company's account benefiting a third company owned solely by Watts. Watts conceded, however, that the documents that he pieced together do not actually show which of his companies (i.e., Affordable or CB) owned the vehicle for which parts were charged to the CB account. (R. p. 321 line 18 – r. p. 323 line 9; r. pp. 383-98; r. p. 782 [Sealed]).

Watts also testified that OTM later used its own accounts and was not invoiced by suppliers. (R. p. 263 lines 7-11). But Defendants offered no documents to prove it. Finally, Watts also offered another document to explain OTM's use of CB's AMEX card. (R. p. 265 line 23 – r. p. 266 line 23; r. pp. 783 [Sealed]). Watts claims that line 5330 shows OTM paying the AMEX for an Advanced Auto charge. (R. p. 267 lines 12-15). But the general ledger entry does not show OTM making the payment or that Affordable charged OTM for payment it made. (R. p. 323 line 10 – r. p. 324 line 20). Nothing shows that this was a vehicle owned by Affordable. (R. p. 324 line 25 – r. p. 325 line 3).

Watts created Financial Services Employees (“FSE”) and Automotive Services Employees (“ASE”). (R. p. 304 lines 2-6). These entities “lease” employees only to the companies Watts owns. (*Id.* lines 12-17; r. p. 328 lines 14-17; r. p. 331 lines 3-10). Watts claims that he created FSE and ASE to enable employees to work for multiple operating companies. (R. p. 305 lines 6-17; r. p. 329 lines 19-23].

Watts’s strategy highlights the intertwined nature of the companies and shows more unlawful conduct. South Carolina strictly regulates Staff leasing. S.C. Code § 40-68-10 et seq. (“PEO Act”).¹¹ It is unlawful in South Carolina to operate such a company without a license from the South Carolina Department of Consumer Affairs. *Id.* § 40-68-30(A).¹² Of course, Watts did not comply with any

¹¹ Watts’s own description of FSE and ASE show that they are providing “professional employer services.”

“Professional employer services” means an arrangement by which employees of a licensee are assigned to work at a client company and in which employment responsibilities are shared by the licensee and the client company. The employee’s assignment is intended to be of a long-term or continuing nature, rather than temporary or seasonal in nature, and a majority of the work force at a client company worksite or a specialized group within that work force consists of assigned employees of the licensee. Professional employer services does not include temporary employees.

Id. § 40-68-10.

¹² Controlling persons must have experience in PEO’s, background checks are required, there are continuing education requirements, there are licensing fees and annual financial reporting requirements, and strict notice requirements. *Id.* § 40-68-40 (A), (B); *id.* § 40-68-45; *id.* § 40-68-50; *id.* § 40-68-60. True to character, however, Watts claims that he thought that FSE and ASEs are licensed based on an instruction he claims to have given an employee years ago. (R. p. 331line 25 – r. p. 332 line 9).

of this; neither FSE nor ASE is licensed. (R. pp. 592-628 (also available at <https://consumer.sc.gov/licensee-lookup>)).

ASE and FSE are simply another method by which Watts drains profits from his operating companies, such as OTM and the other Defendants. Watts owns 100% of ASE. (R. p. 325 line 25 – r. p. 326 line 2; r. p. 326 lines 16-18). Watts has ASE, for example, charge the operating companies more than the payroll to generate a profit for ASE. (R. p. 327 line 6 – r. p. 328 line 5). Watts puts the OTM employees and some Affordable employees on that payroll. (R. p. 326 lines 20-22).

Watts divides the employees between the ASE and FSE payrolls depending on whether they work at a desk. (R. p. 328 line 20 – r.p. 329 line 10). Watts's use of FSE and ASE represents basic workers compensation fraud. Watts testified that, years ago, he had a large workers compensation claim with a Southeastern employee, and he learned that worker compensation experience ratings are "imputed" to commonly owned entities. (R. p. 307 lines 1-13).

In a transparent effort to avoid imputed liability, Watts formed FSE at the same time as ASE, but he put FSE in his wife's name. (R. p. 326 lines 11-15; r. p. 330 line 23 – r.p. 331 line 2).¹³ Watts's wife has never done any work for FSE. (R. p. 331 lines 18-24). Watts admits that putting the staff leasing company under his wife's name was done for workers' compensation purposes, to "give[] it a fresh start." (R. p. 525 line 21 – r. p. 526 line 2).

¹³ FSE ostensibly exists at Watts's office, but, of course, it pays no rent. (R. p. 331 lines 11-17).

Watts games the system by (1) claiming that employees of the same operating entity work for different companies based on whether they do desk jobs; and (2) by disclaiming an interest in FSE. By doing so, Watts transparently misrepresents insurance experience factors, including revenue and the nature of operations used to determine workers compensation insurance rates. (See R. pp. 646-50).

F. 828A is indistinguishable from OTM

The starkest example of the lack of any separation of the parties is the land on which OTM sits. OTM is the only operating entity that uses property titled to 828A. (R. p. 507 lines 19-23). Because 828A has no actual operations or business, Watts, CB, and OTM guaranteed the note on 828A. (R. p. 365 lines 3-5; *id.* lines 14-17; r. p. 366 lines 3-6; r. pp. 723-28 [Sealed]).

OTM is not really a “tenant” of 828A because OTM pays no rent to 828A. Rather, it pays rent directly to Watts. (*Supra* § III(F); r. p. 507 line 24 – r. p. 508 line 1; r. p. 370 lines 4-5; *see supra* Section III(D)(1)). And because 828A receives no rent, it does not pay down the note that Watts, OTM, and CB guaranteed. Watts pays the note out of his personal account. (R. p. 373 lines 21-23). There is no lease for OTM. (R. p. 370 lines 4-5).

828A is a perfect example of how Watts increases his net worth while raiding the companies he then tries to hide behind. While operating companies like OTM show rather meager profits year each year (*e.g.*, r. pp. 710-11 [Sealed]), Watts has increased his net worth by simply increasing the amount of rent that OTM pays to him personally, which he then uses to pay extra down extra principal

on the 828A fixed rate note from his personal account. (R. p. 367 line 1 – r. p. 369 line 2; r. pp. 729-32 [Sealed]).

828A does not have a bank account. (R. p. 507 lines 17-18; r. p. 368 lines 13-18). 828A has no assets other than the land and building used by OTM, and possibly fixtures OTM installed, as Watts claims not to know which entity purchased them. (R. p. 371 line 23 – r. p. 373 line 3; see r. pp. 733-42 [Sealed]). In short, 828A exists only on paper.

Watts put the most valuable physical asset under the name of 828A, then generates “rental” income from OTM, which he puts in a personal account, and then uses those personal funds to pay the 828A note. Watts nonetheless uses the veneer of a corporate filing to avoid all liability from his operations.

G. Watts’ pillaging of the corporations leaves him rich and Tuck without a remedy

The above schemes have made Watts rich beyond most people’s imagination. (See r. pp. 717 [Sealed]; r. p. 364 line 24 – supp. r. p. 1438 line 3; r. p. 370 line 21 – r. p. 371 line 1). While this suspended attorney amasses incredible wealth, he has insulated himself from his wrongdoing. If entities such as 828A are not subject to the judgment, Watts will never pay anything on the judgment, just as cheated consumers never recover their equity. OTM cannot pay the judgment, and Watts has taken no steps to enable it to do so. (R. p. 371 lines 17-22).

IV. Standard of Review

In actions at equity, tried before a judge alone, this Court may make its own findings based on its view of the evidence. *Walker v. Brooks*, 414 S.C. 343, 347, 778 S.E.2d 477, 479 (2015) (citing *Townes Assocs., Ltd. v. Greenville*, 266 S.C.

81, 86, 221 S.E.2d 773, 775 (1976)). A trial court's findings on both alter ego and SBE are subject to de novo review. *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co., LLC*, 435 S.C. 109, 119, 866 S.E.2d 542, 548 (2021).

V. Argument

A. This Court need not defer to any of the trial court's findings

Although *Stoneledge* correctly recognizes the trial court's usual ability to assess witness testimony, this is not a typical situation. Defendant Watts never testified in person about the issues on appeal. Nor did Tuck's witnesses that the trial court discredited.¹⁴ This Court is in the same position as the trial court in assessing credibility issues. Thus, this Court should not defer to the trial court on any issue.

B. The trial court erred in many of its findings of fact

1. This Court should consider Watts's many lies, which the trial court never addressed

Because this Court may reach its own assessment, it should consider Watts's demonstrated lack of credibility. Watts tripped over himself repeatedly trying to explain away bad evidence. On the key issue of whether Tuck quit or was fired, Watts attempted to avoid liability with stories that caused him to be impeached several times. Nobody testified for Watts, and he admittedly was not present when the new manager fired Tuck. So Watts concocted the story that Tuck admitted to quitting. The problem for Watts is that this contradicted his prior

¹⁴ Watts has no supporting witnesses.

deposition testimony. (*Compare* r. p. 116 lines 7 – 21 *with* r. p. 121 line 14 – r. p. 124 line 3).

Watts impeached himself again when faced with the fact that the only written communication between Watts and Tuck supported Tuck. Watts tried to claim that he did not respond to Tuck's contemporaneous assertion that the manager fired Tuck because Tuck told Watts that Tuck was getting a lawyer. But that also contradicted prior testimony. (R. p. 148 line 12 - r. p. 156 line 2).

Watts even lied to the jury about whether he countersued Tuck for breach of contract. (R. p. 130 line 1 – r. p. 131 line 7). Watts also tried to say that Tuck was free to quit, contradicting the pleadings. (*Compare* r. p. 128 lines 11-19 *with* r. p. 131 lines 8-23).

Watts even changed his story from one question to the next. When questioned about the absence of terms allowing an employee to quit, Watts testified that quitting for "good cause" was a standard contractual term. Apparently realizing that this hurt his assertion that Tuck could quit, Watts immediately reversed course and testified that he did not include a "good cause" provision in Tuck's contract because it's not a standard term. (R. p. 128 line 23 – r. p. 129 line 8).

Watts also tried to deceive the jury about his reason for demoting Tuck, claiming that "shop hours declined a fair amount" after Tuck signed the contract. (R. p. 109 lines 4-7). The truth is they increased significantly over time and reached a high the week before Watts demoted Tuck and the manager fired him. (R. p. 132 line 3 – r. p. 142 line 25).

Finally, this Court should consider that Watts changed his sworn testimony about his counterclaim for which he had no proof. The jury rejected OTM's counterclaim that Tuck stole parts. After 4 ½ years of litigation, Watts offered no proof of Tuck stealing anything, and he again changed his sworn testimony. (R. p. 91 line 2 – r. p. 97 line 12; r. pp. 175-90; r. p. 163 line 16 – r. p. 170 line 18).

In contrast, Defendants never laid a glove on Tuck, his supporting witnesses at trial, or his different corroborating witnesses for the non-jury proceedings. It is not hard to understand how the jury discredited Watts and resolved all central issues in favor of Tuck. It is hard, however, to understand why the trial court chose not to address Watts's lack of credibility.

2. Findings on fraudulent charges and suppressing market value

The trial court improperly adopted Defendants' characterizations as to Tuck's testimony about Watts' practice of inflating bills for services not performed by OTM to rob consumers of their equity. (R. pp. 7-8; *see supra* § III(C)(1)(a)). The trial court then rejected Plaintiff's testimony solely because Watts denied it. (R. p. 8). This was error for several reasons.

Watts's manager admitted that Watts ordered the sabotage of consumers' vehicles. (*Supra* § III(C)(1)(a)). Darryl Smith personally observed and testified to one such incident. (*Id.*)

Watts bases his denials on a fantastic story that Watts was trying to benefit the consumer. As an attorney, Watts understands that "if [a vehicle] is sold for more than the debt balance then the consumer would be entitled to a refund." (R. p. 269 lines 19-23; r. p. 278 line 22 – r. p. 279 line 4). *See* S.C. Code § 37-5-103 (1) (requiring that creditors seek to obtain full value of repossessed good by

disposing of them “in good faith and in a commercially reasonable manner.”) Watts conceded that, when OTM works on a repossessed CB or Affordable car, OTM charges for the work *before* Watts sends the vehicle to auction. (R. p. 334 lines 7-14).

Watts admitted that OTM adding charges increases the amount the consumer owes and reduces their equity. Watts argues, however, that these charges increase the vehicle's value, which benefits the consumer from whom he repossessed the vehicle. (R. p. 334 line 15 – r. p. 335 line 22). Watts conceded, however, that whether work performed on a vehicle post-repossession increases its value is total speculation. (R. p. 335 line 23 – r. p. 336 line 4). But let's cut to the chase: Additional mechanical work *never* benefited a consumer because Watts *never* issued a single refund to a consumer. (R. p. 347 lines 19-22).

Watts also admits that the purpose of sending vehicles to OTM, rather than directly to auction, is to give him an advantage over others at auction because he has more information about the vehicle's condition than other bidders. (R. p. 272 lines 11-16). But Watts intentionally depresses the value of a vehicle that he inspected and found profitable to repurchase. Vehicles are auctioned under conditions of “green light” (most protections), “yellow light (some protection), or “red light” (as is, no protection). (R. p. 272 line 17 – r. p. 273 line 4; r. p. 336 line 8 – r. p. 337 line 7). Red light signals the greatest risk and thereby reduces market value. (R. p. 337 lines 11-25). Watts acknowledged that he could offer a vehicle with more protections to increase its market value at auction. (R. p. 338 lines 16-20). But that would benefit the consumer and reduce Watts's profit margin

because he buys “most” of the vehicles back and puts them on the Affordable lot.¹⁵ (R. p. 339 line 8; r. p. 271 lines 21-25).

3. The “if bid” fraud

The trial court also erroneously adopted Watts’s discredited efforts to explain how he gets bidding rights not offered to anyone else. (R. pp. 8-9). Although the trial court discounted Plaintiff’s testimony from the hearing, the statements attributed to Watts by Tuck are unimpeached. (R. p. 207 lines 1-18; r. p. 215 lines 7-15). Yes, Watts baldly denies making them. (R. p. 9). But the statements Tuck attributes to Watts are undeniably true.

Watts’s attempt to explain his cozy relationship with the auction house backfired and obliterated the façade of separate corporate entities. Watts just tried to explain away fraud with more fraud. Watts testified that the process of him getting calls to outbid the highest bidder is an accepted “if bid practice,” in which the **seller** is allowed to secretly top bids at auction. Watts first claimed that, under his arrangement with the auction houses, the auctioneer records the highest bid at auction and then secretly lets the **seller** decide to outbid slightly. (R. p. 273 line 15 – r. p. 274 line 10). Watts’s narrative carried the seeds of its own destruction.

Watts testified, for example, that the auction house would contact him and provide the opportunity to trump any bid for vehicles repossessed by CB. (R. p. 274 lines 6-10; *id.* lines 17-23). But CB is *never* a buyer at auction; it only sells.

¹⁵ Watts’s lack of credibility is further established by his continued jockeying and word games on the issue of his recycling scheme. Watts testified that he only buys “some” of the vehicles he sends to auction, and he would not agree that he buys back “most” of them. Eventually, he then admitted that it is more than half (but somehow not “most”). (R. p. 338 line 21 – r. p. 339 line 8).

(R. p. 341 lines 11-21). What Watts is really doing is having *Affordable* exercise the supposed and undocumented “if bid” rights of *CB*. (R. p. 341 line 22 – r. p. 343 line 16; r. p. 344 lines 10-12; r. p. 400).

Watts’s claim about there being an arrangement, however, is unsubstantiated. There is no document showing vehicles being auction under an “if bid” agreement because, according to Watts, “everything is verbal.” (R. p. 339 line 24 – r. p. 340 line 6; r. p. 340 lines 16-23).

Nobody tells the bidders that Watts is getting a secret call from the auction. (R. p. 340 line 24 – r. p. 341 line 10).¹⁶ The behind-the-scenes informal arrangement that Watts claims deprives bidders of an opportunity to bid up the vehicle. While higher bids would benefit the consumer, it would be bad for Watts’s ability to re-claim the vehicle so he can sell again through *Affordable* at the best margin.

4. Findings on Kelly Albanese’s testimony

The trial court also found that Kelly Albanese’s testimony is “speculative and unpersuasive.” (R. pp. 9-10). Yet Albanese’s testimony turned out to be unassailable. Albanese testified about the rigged bidding, the scrapping of vehicles, how she worked for *Affordable* while Watts paid her from *Carolina’s Best*, and how Watts uses a common human resource function. (*Supra* §§ III(C)(1), III(C)(2), III(D)(3), III (D)(4)). None of that is contestable.

¹⁶ In other words, the consumer, or another buyer might well be willing to pay more, but he or she is only going to pay what it takes to best the others present at the auction.

5. Findings on Diana Friedline's testimony

The trial court erred in parroting Defendants' characterization of Diana Friedline's testimony based on the mere testimony of the oft-discredited Watts. (R. pp. 10-11). Friedline kept the books and worked for all of Defendant Watts's companies. There is no basis for the trial court to discredit Watts's bookkeeper.

6. Findings on Darryl Smith's testimony

The trial court also erred in discounting the unrefuted testimony of Darryl Smith, yet another third party who provided first-hand accounts as to how Watts cheats and steals. (R. pp. 11-13). The trial court cited Smith's testimony for the proposition that Smith "testified that he did not watch what the mechanic was doing to" the vehicle. [Dec. 21 Order at 11]. That is not accurate. Smith testified: "I watched them go underneath and I watched the lights come on inside the truck, and other little things. You know, they were doing whatever they could, and when they was done, it was skipping really bad." (R. p. 473 lines 18-22).

The trial court also erred in discounting Smith's testimony because the manager who made the statements "is not identified," and that his "job titles or duties" are not identified. (R. pp. 11, 12). That also is not accurate. Smith identified the individual's first name as "Chase" and his job title as manager of OTM. (R. p. 473 lines 7, 9. Watts identified "Chase Hooper" as the OTM manager who succeeded the manager that fired Plaintiff. (R. p. 498, lines 9-17).

The trial court's determination that Smith's testimony is inadmissible because Watts did not authorize the manager to admit to the fraud is clear error. What OTM's manager said is not hearsay. Rule 801(d)(2), SCRE. The statement

made by the manager during clear wrongdoing falls easily within the last four of the five situations covered by the exclusion for hearsay definition.

For purposes of 801(d)(2)(D), for example, the issue is not whether Watts authorized the statement. Wrongdoers seldom authorize damning admissions. The only issue is whether the person spoke within the scope of their duties. *E.E.O.C. v. Watergate at Landmark Condo.*, 24 F.3d 635, 688-39 (4th Cir. 1994); *Cline v. Roadway Exp., Inc.*, 689 F.2d 481, 488 (4th Cir. 1982); see *S.C. Dep't of Revenue v. Meenaxi, Inc.*, 417 S.C. 639, 655-56, 790 S.E.2d 792, 800 (Ct. App. 2016).

Even if the statement is hearsay, an exception nonetheless applies. The manager is admitting to fraudulent conduct. Rule 804(b)(3), SCRE.¹⁷

7. Findings on John Watts' testimony

The trial court erred by adopting the corporate Respondents' self-serving characterization of Watts's uncorroborated and conflicting testimony. (R. pp. 13-16). A prime example is the attempt to explain the scrapping of vehicles and pocketing of money as "rare cases." (R. p. 13). Even Watts admitted that he had scrapped hundreds of vehicles through this process. (*Supra* § III(C)(2)).

The trial court also cited Watts's incompetent testimony about the makeup of buyers at auction. (R. p. 14). Whether Watts secretly outbid other dealers or individuals, however, is irrelevant. Watts gamed the system to the consumer's

¹⁷ The trial court lacked any basis to speculate away corroborated testimony. The trial court speculated that Watts would never say something that would indicate wrongdoing. (R. p. 12]). The Record is replete of examples of him doing so when he didn't realize that so many employees would repeat his statements.

detriment, ignoring any corporate distinctions between companies like Carolina's Best and Affordable.

Respectfully, the trial court missed the point completely in accepting Corporate Respondents' claim that having information about the vehicles he sent to auction was a benefit. (R. p. 14). It was for Watts, but he used this advantage to the detriment of consumers and the market.

Knowing that a vehicle was in good shape gave Watts an unfair advantage when he listed it as "red light," which signaled the lowest degree of protection and suppresses value. (*Supra* § V(B)(2)). Knowing that a vehicle is marketable also gives Watts a great advantage when he sabotages it to make it appear less valuable. (*Id.*). Watts's fraud never benefited the consumer, whom Watts cheated out of any equity. Again, Watts never refunded **any** consumer their equity. (*Id.*).

The trial court also adopted Watts's uncorroborated "if bid" story, which only proved additional fraud. (R. p. 14). The trial court ignored that Watts claims to hold the "if bid" right when he was not the owner of any car. By Watts's account, he ignored the corporate form and had one entity buy vehicles auctioned by another. (*Supra* § V(B)(3)).

The trial court's finding that Plaintiff failed to provide an "expert witness" as to what is commercially reasonable also is erroneous. (R. p. 15). "[E]xpert testimony on issues of law is inadmissible." *Dawkins v. Fields*, 354 S.C. 58, 66, 580 S.E.2d 433, 437 (2003). Several independent fact witnesses have established fraud on the market and the cheating of consumers who **never** receive their equity.

The trial court compounded error by effectively designating and qualifying Watts as an expert sua sponte. (R. p. 15 (“The only ‘expert’ testimony offered by any party with personal knowledge . . . was that of Mr. Watts . . .”). Corporate Respondents never identified or qualified Watts as an expert.

The trial court also erred in accepting Watts’ (apparent “expert”) testimony about the operations of Whitey’s Auction and documents produced by Whitey’s about which Watts has no personal knowledge. (R. p. 15; see r. pp. 655-56). Plaintiff timely objected to this testimony as it lacks foundation. (R. p. 275 line 16). Neither Watts nor anyone he employed created the document about which he testified. (R. p. 276 lines 3-6).

Watts even recanted his testimony about the document. Watts admitted that the document does not show any bidding by Affordable, he does not know what vehicle it shows, and he cannot say what happened in the situation identified in the document. (R. p. 344 line 18 – r. p. 346 line 1). Watts cannot provide any competent testimony about the transaction. He certainly cannot provide expert testimony about it. The document is inadmissible.

8. Findings on common employees

a. OTM employed Southeastern employees

The trial court improperly discounted as a “theory” the unassailable fact that OTM paid Southeastern employees. (R. p. 16). It found no dispute that “three to four employees” were “for a time employed by OTM.” (R. p. 17). Whether it is “three to four” employees is not the point. Even by Defendants’ account, it is *all* Southeastern employees. (See r. p. 37 (“At its height it had as many as four employees”). And it was not “for a time.” It has been at all relevant times.

The trial court further erred by citing *Stoneledge* for the proposition that having common employees “is not fatal for purposes of single business enterprise analysis.” (R. p. 17). *Stoneledge* does not say that. Nor does it mention common/shared employees or employees of one entity being on another company’s payroll.¹⁸

The trial court then cites Plaintiff’s testimony that Watts told Plaintiff that he put Southeastern employees on the OTM payroll because he could not get them on insurance. (R. p. 17). The trial court rejected this testimony, even though both Friedline and Watts himself corroborated it.

The trial court erred in citing Friedline’s testimony for the proposition that she did not know why Watts put Southeastern employees on the OTM payroll. Tuck never sought to introduce such testimony through Friedline. Friedline cannot testify first-hand about Watts’s motives, and Tuck never sought such testimony from her. It was Respondents’ lawyer that asked the question. (R. p. 17 (citing r. pp. 492-93; see supp. r. p. 1432). But Friedline can (and did) repeat Watts’s candid admissions that he did it to avoid workers compensation premiums. (R. p. 494 line 23 – r. p. 495 line 1; see *supra* § III(C)(3)).

¹⁸ In *Stoneledge*, two entities (“IK” and “Marik”) formed IMK to develop a project. *Stoneledge at Lake Keowee Owners’ Ass’n v. IMK Dev. Co., LLC*, 435 S.C. 109, 115, 866 S.E.2d 542, 545 (2021). The closest the decision comes is noting that one entity shared space and email with another. The managing member for IK testified that “a couple of the salespeople for IMK were not employees of IK but were housed in IK’s offices and used IK’s email.” *Stoneledge*, 435 S.C. 109, 122-23, 866 S.E.2d 542, 549 (2021). That is the only use of “employees” in the decision. *Stoneledge* did involve common ownership, but that is not a material disputed issue.

When Watts was asked if he put the Southeastern employees on the OTM payroll because of workers compensation, he testified: “I remember thinking that that might be a reason why we did that.” (R. p. 530 lines 17-18; *see supra* § III(C)(3)).¹⁹

Likewise, the trial court erroneously accepted Respondents’ argument that Southeastern did not rid itself of payroll to save on workers compensation insurance because it had no such insurance. (R. p. 18). Again, that was the point.

The trial court also erred in finding that *Stoneledge* and *Pertuis*²⁰ sanction “the consolidation of payrolls for purposes of efficiency.” (R. pp. 18-19). Neither *Stoneledge* nor *Pertuis* supports such a conclusion.

The trial court also adopted Respondents’ false construct by citing *Stoneledge* and *Pertuis* to infuse the intertwined prong with a requirement of “fraud or quasi-criminal fundamental unfairness.” (R. p. 19). Tuck need not make such a showing under the first prong of the *Pertuis* test. Even the second prong of the test is much broader. It includes any “bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.” *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 281. While fraud pervades Watts’s enterprise, a showing of fraud is not required.

¹⁹ Watts later changed his testimony and claimed that having employees on one payroll was more “efficient.” (R. p. 18). There is no “efficiency” exception to *Pertuis* and the SBE theory.

²⁰ *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 644, 817 S.E.2d 273, 274 (2018).

For the same reason, the trial court's conclusion that it may not "invade the corporate form of OTM and of Southeastern based solely upon this consolidation of payrolls," improperly adopts Respondents' straw man argument. (R. p. 19). Plaintiff's arguments about SBE were never limited "solely" to the joint payroll issue.

b. Staffing companies

In a footnote, the trial court erroneously adopted Respondents' spin about Watts's use of unlawful staffing companies. (R. p. 19 n. 3; *see supra* § III(E)). The trial court was wrong to conclude that Tuck's sole purpose in relying on Watts' PEO companies was to show unlawful skirting of workers compensation laws. (*Id.*) While Tuck's showing does accomplish that, Watts' actions also show the intertwined nature of his various companies, which should be indisputable by now. (R. p. 567 ¶ 86 ("To highlight how intertwined and interdependent Defendants have become, Watts claims that he created FSE and ASE to efficiently enable employees to work for more than one operating company.") The staffing companies, for example, pay no rent, and Watts uses them to profit personally while further draining OTM and others. (*Supra* § III(E)).

The trial court seriously erred in finding that the PEO law does not apply because it excludes "temporary employees." (R. p. 19 n. 3). There is **no** evidence of any temporary employees. *See* S.C. Code § 40-68-10(9). Watts testified that "the employees of my operating companies became employed by those two entities." (R. p. 304 lines 4-6). He also testified, for example, that he put **all** Carolina's Best and Affordable employees on the Financial Services Employees

payroll. (R. p. 525 lines 10-13; r. p. 514 lines 9-12 (noting that Automotive Service Employees primarily leases employees to OTM).

The trial court also erred in finding that Watts does not transfer long-term employees between his companies. (R. p. 19 n. 3). There is no Record support for that finding either.

9. The trial court misconstrued Plaintiff's showing as to key issues

a. The mis-framing of the commingling of funds issue

The trial court misconstrued Tuck's theories and failed to address his evidence. For example, the trial court captioned Section 1(I)(b) of the Order as "Defendant Watts did not improperly commingle[] funds and assets of the various companies for his personal benefit by putting employees of Defendant Southeastern Recovery on the payroll of Defendant On-the-Mark." (R. p. 16).²¹ The trial court adopted Defendants' improper framing of the issue: "Defendants did not carry out a fraudulent enterprise through common control, centralized management of accounting, commingling of employees, undocumented transfer of funds, and unilateral determination by Defendant Watts of which companies incurred costs and received income." (R. p 19). Tuck never used that term, and he need not show a "fraudulent enterprise" under the SBE doctrine. Again, the trial court adopted a false hurdle.

²¹ Plaintiff never relied primarily on the employment of Southeastern employees by OTM as evidence of the commingling of funds. (See r. pp. 557-59 (§ II(B) 3); r. pp. 560-64 (§, II(C)(1), (2)); r. pp. 566-67 (§ II(C)(5)).

b. The use of company accounts

The trial court further erred in accepting the uncorroborated testimony of Watts about his claims to have created accounts *after* witnesses exposed his wrongdoing. (R. p. 20). There is no evidence of OTM accounts that Watts later created, which would be easy to show. Watts made up a new story *after* trial and offered nothing to prove it.

The trial court's citation to OTM's journal does not support the proposition that OTM paid for parts purchased on other companies' accounts. (R. p. 21). The OTM journal only shows that OTM paid American Express bills. That's all. The referenced records have nothing to do with the relevant accounts. (See, e.g., r. pp. 246-54). Respondents did not show that anyone charged *relevant* purchases to an Affordable credit card. But if that happened, it would only more evidence of commingling because OTM was using accounts that Watts created in the name of Carolina's Best. In other words, Watts now appears to argue that OTM bought parts on a Carolina's Best account that he paid for with an Affordable credit card. Watts's best-case scenario just shows more interrelatedness and ignoring of the corporate forms.

The referenced OTM journal does not show what those charges represent, which is important given Watts's penchant to charge personal expenses on company credit cards. (*Supra* § III(D)(2)). Nor does the exhibit offer a payables obligation related to parts being satisfied. One company paid another company's credit card bill. That is all Respondents showed. The trial court adopted a detailed narrative of how the OTM journal proves that the payments were for parts. But there is nothing to support that finding.

Finally, the trial court found that using other companies' accounts "represent[s] an intertwining of the companies" but that "intertwining alone is insufficient to set aside the corporate form." (R. pp. 21, 22). But Tuck never relied on this evidence alone. The trial court parsed evidence piece-by-piece, claiming that each thing alone does not meet Tuck's burden. That is an improper way to evaluate evidence. *Dargan v. McSween*, 33 S.C. 324, 335, 11 S.E. 1077, 1080 (1890) (in an action at equity, the court must look at the evidence "as a whole").

c. Common employees

The interchange of employees is not limited to "back-office employees," as stated in the Order. (R. p. 22). Corporate controllers and human resource managers are hardly "back-office employees." They are key centralized managers who worked from the home office. (*Supra* § III(C)(3)).

Watts did testify that it made "economic sense" to have one person handling the bookkeeping for all the companies. (R. p. 23). But there is no "economic sense" exception to the SBE doctrine. Almost all efforts to ignore corporate forms are likely based on a notion of "economic sense," as are most efforts to cheat others.

The trial court further erred in relying on *Hoffeth v. Janssen Pharmaceuticals* for the proposition that sharing employees between closely held companies does not evidence the intertwining of operations. (R. pp. 24 - 25 (citing *Hofferth v. Janssen Pharm., Inc.*, Civ. Action No. 3:17-cv-01560-MGL, 2020 U.S. Dist. LEXIS 56126 (D.S.C. Mar. 31, 2020))). *Hoffeth* has nothing to do with the intertwined prong of *Pertuis*. Nor is there any discussion of the importance of

common employees and managers.²² In fact, the *Hofferth* Court found that the employees of the other entities were not involved in the manufacturing or supply of the drug at issue.

The trial court further parsed evidence by stating that, “[w]ithout more, the evidence that Carolina’s Best performed . . . accounting functions for Mr. Watts’ other companies is insufficient . . .” (R. p. 24). Again, there is far more than that. Repeating that each piece of evidence in isolation does not satisfy the standard for application of the SBE doctrine fails to view all the evidence as a whole. *Dargan*, 33 S.C. at 335, 11 S.E. at 1080.

Finally, the trial court concluded improperly that, while the limited evidence reviewed shows that the companies “may be intertwined in terms of shared employees and intercompany transfers . . .[,] the record does not contain evidence of the kind of fraud or abuse necessary to ignore corporate identities . . .” (R. p. 25). But the trial court did not address the evidence of the second prong of *Pertuis*.

C. Single Business Enterprise: Corporate Respondents

“The single business enterprise theory exists as an equitable remedy for plaintiffs whenever they have been wronged by business entities with blurred identities.” *Stoneledge*, 435 S.C. at 126, 866 S.E.2d at 551-52; *Pertuis*, 423 S.C. 640 at 655, 817 S.E.2d at 281 (“As with other methods of piercing the corporate

²² *Hofferth* depends solely on the second prong of *Pertuis*. There is a reference to the plaintiff relying on the fact that employees moved from one company to another seamlessly. *Hofferth*, 2020 U.S. Dist. LEXIS 56126, at *27. But that is not the issue here. The issue here is employees working for more than one company at a time as evidence of intertwined operations.

form that have previously been recognized in South Carolina, equitable principles govern the application of the single business enterprise remedy, and this doctrine ‘is not to be applied without substantial reflection.’”) (quoting *Drury Dev. Corp.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008)).

[W]here multiple corporations have unified their business operations and resources to achieve a common business purpose and where adherence to the fiction of separate corporate identities would defeat justice, courts have refused to recognize the corporations’ separateness, instead regarding them as a single enterprise-in-fact, to the extent the specific facts of a particular situation warrant.

Pertuis, 423 S.C. at 653, 817 S.E.2d at 279, *quoted in Stoneledge*, 435 S.C. at 121, 866 S.E.2d at 549.

The *Pertuis* Court then clarified the standard for imputing liability among various corporate entities:

We formally recognize today this single business enterprise theory, and in doing so, we acknowledge that corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that. For this reason, the single business enterprise theory requires a showing of more than the various entities’ operations are intertwined. Combining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.

Pertuis, 423 S.C. at 655, 817 S.E.2d at 280. In short, *Pertuis* establishes two basic elements:

[A] party seeking to impose the existence of a single business enterprise must show both (1) the intertwining of the operations of the entities and (2) evidence of “bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.”

Stoneledge, 435 S.C. at 125, 866 S.E.2d at 551 (quoting *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 280-81).

The standard for single business enterprise is less onerous than *Sturkie* piercing in one important regard. It “does not require a showing of the corporate defendants’ failure to observe corporate formalities. *Walbeck v. I’On Co., LLC*, 426 S.C. 494, 528, 827 S.E.2d 348, 366 (Ct. App. 2018).

1. 828A St. Mark Road

a. The intertwined prong of *Pertuis*

The trial court provided no analysis of how the law of SBE applies to 828A St. Mark Road, except for a short passage in footnote 10, which relates to piercing and not to SBE. The trial court seriously erred in concluding that “There is no evidence of any intertwining of operations between 828A St. Mark[] Road and the other defendants” (R. p. 37 n. 10).²³

828A is the closest related entity to OTM in that they are indistinguishable. (*Supra* §§ III(D)(1), III(F)). It also is commonly managed, as are the other entities. (*Supra* § III(D)(3)). If OTM and 828A are not intertwined, then what could intertwined possibly mean?

There is no sworn testimony to support the trial court’s footnote assertions about how Defendants claim that Watts recognizes income. (R. p. 37 n. 10). Nor does the cited tax return support the trial court’s finding. The trial court cited “Schedule C” to the 2019 tax return for Watts and his wife. (*Id.*) That schedule shows nothing about rental for 828A St. Mark Road. (R. pp. 1352-54 [Sealed]).

²³ The trial court’s statement that Watts claims he ultimately reports income personally has nothing to do with whether the entities are intertwined under *Pertuis*. (R. p. 37 n. 10).

Schedule E is for rental income. It shows that Watts personally claimed received rent from OTM. (R. p. 1351 [Sealed]). That's the point. Plaintiff need not show tax fraud as to 828A St. Mark Road. Plaintiff need only show that 828A St. Mark Road is intertwined, which is inarguable.

Although Plaintiff need not show problems with Watts's income reporting, he can. For the year cited by Defendants, Watts reported less income for rent for 828A St. Mark Road than OTM paid Watts. (*Compare* r. p. 1351 [Sealed] *with* r. p. 1426 line 44 [Sealed]). Again, nothing adds up with Watts's accounting.

b. The evidence of “bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions” prong of *Pertuis*

The December 21 Order also does not address Plaintiff's showing as to the second prong of *Pertuis*. (*Supra* § III(F)). For example, the trial court did not address Plaintiff's showing that Watts diverts more money from OTM than required to accelerate loan payments to his benefit and to the detriment of OTM and 828A St. Mark Road. (*Id.*).

2. Southeastern

a. The intertwined prong of *Pertuis*

The trial court's Order also fails to analyze the intertwined nature of Southeastern and OTM. Southeastern is not a separate entity in operation. Watts pays Southeastern employees through OTM since a 2016 workers compensation claim, and Southeastern pays no rent on the property it shares with Affordable. (*See Supra* §§ III(C)(3) III(D)(1), III(D)(3)-(4)).

b. The evidence of “bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions” prong of *Pertuis*

The trial court’s Order also does not address Plaintiff’s showing as to the second prong of *Pertuis*. Watts uses Southeastern to reclaim the vehicles and to ferry them through the bogus auction process in a way that would likely set off alarm bells at an independent company. Watts also uses Southeastern to have the vehicles taken to OTM for sabotage. Again, Watts could never risk having an independent repossession driver observe this as Smith did. (*Supra* §§ III(C)(1)(a), III(C)(4)). The evidence of Watts’s intertwining of Southeastern and OTM shows bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of their legal distinctions.

3. Carolina’s Best

a. The intertwined prong of *Pertuis*

The trial court failed to analyze the intertwined nature of CB and OTM. CB is the keystone to the management of Watts’s entire enterprise. CB performed all management (*e.g.*, accounting, human resource, and record-keeping) at no charge to companies like OTM. (*Supra* § III(D)(3)). Further, the CB cash flow and assets were necessary to secure financing for 828A, which Watts needed to operate OTM. CB has been essentially the “piggy bank” that freely transferred money to entities like OTM. (*Supra* §§ III(C)(2)-(5), III(D)(5)).

b. The evidence of “bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions” prong of *Pertuis*

The December 21 Order does not address Plaintiff’s showing as to the second prong of *Pertuis*. CB also is essential to Watts’s schemes to defraud

because CB's repossession of vehicles through Southeastern provides a fresh source of vehicles that Watts can inspect, sabotage, and win back at the rigged auctions. CB used OTM directly to sabotage vehicles brought to it by Southeastern to deprive consumers of their equity and to inspect vehicles so they can be bought at a favorable price by Affordable based on Watts's practice of always listing them as the riskiest of purchases ("red light"). CB also is a source of vehicles that Watts has sold vehicles off the back lot with false "bid sheets," and that he has sent to scrap so he could pocket the money personally as a "bonus" to himself. (*Supra* §§ III(C)(1)(a)-(2)).

CB is also the essential source of vehicles that Watts scraps or sells off the back lot for cash without any notice to the consumer. (*Supra* §§ III(C)(1)(b) – III(C)(2)).

Watts's claim that Affordable exercises so-called "if bid" rights of CB is just more evidence of efforts to defraud CB consumers. A title loan company like CB does not buy vehicles. But consumers dealing with CB still lose their equity because of Watts and Affordable.

4. Affordable Auto

a. The intertwined prong of Pertuis

The trial court did not analyze the intertwined nature of Affordable and OTM. Without Affordable as the seller, financier, repossessing entity, buyer, and reseller of the vehicles – all of which is managed by personnel at CB – there is no recycling operation. (*Supra* § III(C)(1)). Affordable cannot achieve its objective without OTM's ability to inspect, to create estimates that deprive consumers of their equity,

and to sabotage vehicles so that Affordable can buy them back and re-sell for a profit. Affordable is sufficiently intertwined with the operations of OTM.

b. The evidence of “bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions” prong of *Pertuis*

The trial court also did not analyze the second prong of *Pertuis* as to Affordable. To enjoy the advantage of inspecting, sabotaging, and buying cheap vehicles, Watts needs an outlet to sell them at a profit. In the recycling scheme, Affordable is both a seller (to consumers) and buyer (through auction). (*Supra* § III(C)(1)). It also is the location where Watts sells vehicles based on bogus bid sheets without any communication with the consumer. (*Supra* §§ III(C)(1)(a), III (C)(2)).

D. Alter ego and piercing the corporate veil: Defendant Watts

Liability for the jury’s breach of contract verdict should be attributed directly to Watts as an alter ego under a veil piercing theory. The *Sturkie* requirements for holding a corporation’s principals personally liable for the corporation’s wrongdoing are (1) the failure to observe corporate formalities and (2) “an element of injustice or fundamental unfairness if the” corporation’s acts are “not regarded as the acts of” its principals.²⁴ *Walbeck v. I’On Co., LLC*, 426 S.C. 494, 528, 827 S.E.2d 348, 365-66 (Ct. App. 2018) (citing *Mid-South Mgmt. Co. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597-98, 649 S.E.2d 135, 140-41 (Ct. App. 2007) (explaining *Sturkie*’s

²⁴ “[A]lter ego” describes a theory of procedural relief, [while] ‘piercing the corporate veil’ refers to the relief itself.” *Drury Dev. Corp.*, 380 S.C. at 101 n.1, 668 S.E.2d at 800 n. 1.

“two-prong[ed] test to determine whether a corporate veil should be pierced”)); see *Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984).

1. First prong: failure to observe corporate formalities

This Record abounds in examples of Watts ignoring the corporate formalities when it suits his interest. While Watts puts property in separate LLC’s, businesses like OTM pay rent directly to Watts. Meanwhile, Watts lives high on the hog out of the CB business account, and charges more than twelve personal charges *per day* to corporate credit cards, which he does not declare as income.²⁵ (*Supra* § III(D)(2)).

Watts pays the notes for the various LLC’s from a personal account. Watts uses the various entities, including OTM, to fraudulently deprive consumers of the equity he should have refunded. This includes charging them for work never performed. See *Turner v. Kellett*, 426 S.C. 42, 48, 824 S.E.2d 466, 469 (Ct. App. 2019) (charging consumer for services not performed is an unfair trade practice).

As further shown above, Watts rigs auctions and, even while claiming that CB has certain unwritten rights under a “verbal” agreement, Watts personally exercises that supposed right to benefit Affordable. (*Supra* § V(B)(3)). Watts pocketed cash from the sale of vehicles repossessed by CB and Affordable (until one of the drivers revealed the practice in this litigation). (*Supra* § III(C)(1)(b), III(C)(2)). Employees on the payroll of one of Defendants have regularly worked

²⁵ Since Watts was exposed in this litigation, CB employees reportedly now record this, but Watts does not reimburse the corporation for the many thousands of entries they created since the records exposed his personal spending from corporate accounts.

for other Defendants. (*Supra* § III(D)(4)). Watts started two new unlawful entities (FSE and ASE) to commingle all of the employees for the various LLC's, and he put one under his wife's name to game the workers compensation system. (*Supra* § III(E)). OTM used accounts of Affordable and CB to purchase parts even when the vehicle at issue was not necessarily owned by the entity to which the charges were invoiced. (*Supra* § III(D)(5)). Watts's various entities, including Defendants, were commonly managed by CB, and OTM did not pay any management fee or other compensation to CB for the significant amount of services it has provided. (*Supra* § III(D)(3)).

2. Second prong: fundamental unfairness

Watts ignores corporate forms when it is in his interest and then seeks to hide behind them to avoid the consequences of his own wrongdoing. Watts will not pay unless equity intervenes. (*Supra* § III(G)). Watts also bleeds the LLC's with personal spending and markups charged by other LLC's he solely owns, resulting in Watts creating a massive net worth while leaving nothing in the actual Defendants from which Tuck will be able to recover what the jury and court determined he is rightfully owed. It would be unjust and unfair to not attribute OTM's actions to Watts. It was all Watts – and nobody else.

VI. Conclusion

For these reasons, OTM's liability should be attributed to 828A, Southeastern, CB, and Affordable. OTM's liability for contract damages also should be attributed to Watts.

Respectfully submitted this 22nd day of November 2023.

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