THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Master and Equity

Shannon M. Phillips, Master and Equity Judge

APPELLATE CASE NO.: 2022-001304

Kesha Petty, Appellant

v.

Cathy Biggerstaff, individually and as owner of B&B Amusement, Inc., and B&B Amusement, Inc., Respondent.

AMENDED FINAL BRIEF OF APPELLANT

Kesha Petty
553 Chastine Drive
Spartanburg, SC 29301
Appellant

April 1, 2024
Spartanburg, South Carolina

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PREFACE

In this Brief, the Appellant Petitioner Kesha Petty will be referred to as Plaintiff Petty. Respondents Cathy Biggerstaff and B&B Amusement, Inc. will be referred to as Defendants Biggerstaff and B&B.

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STATEMENT OF ISSUES ON APPEAL

I. Did the Trial Court err in finding that a contract/agreement existed between the parties?

II. Did the Trial Court err in finding that Cathy Biggerstaff and B&B Amusement were unjustly enriched by Plaintiff Petty and that Plaintiff Petty owed restitution to Defendant?

III. Did the Trial Court err in not declaring Cathy Biggerstaff personally liable?

STATEMENT OF CASE

This appeal arises from a dispute over the repayment of expenses the Appellant Plaintiff Kesha Petty spent in the repair and clean-up of a building owned by Respondent Cathy Biggerstaff and B&B Amusement, Inc, that she wanted to use for her event planning business. After Ms. Petty and Ms. Biggerstaff could not come to an agreement about the use of the building, Ms. Petty requested to be reimbursed for all the expenses she pre-paid to repair the building.

After Ms. Biggerstaff refused to reimburse Ms. Petty, on September 25, 2019, Ms. Petty sued Ms. Biggerstaff and B&B Amusement for Breach of Contract, Fraud, Unjust Enrichment, and Promissory Estoppel. On November 01, 2019, Defendants (Respondents) answered the Complaint and asserted counter claims for Eviction, Unjust Enrichment, and Trespassing.

On April 28, 2020, Defendants (Respondents) filed a Motion to Dismiss Plaintiff's (Appellant) action for Fraud and a Motion for Summary Judgment regarding the Plaintiff's causes of action for Breach of Contract, Fraud, and Promissory Estoppel. Defendants' (Respondents) motion was based on "(1) with regard to Plaintiff's (Appellant) claims for Breach of Contract, the fact that Plaintiff testified in her deposition that no contract was formed or existed; (2) with regard to Plaintiff's (Appellant) claims for Breach of Contract, that Plaintiff (Appellant) has not complied with the Statute of Frauds; (3) with regard to Plaintiff's (Appellant) claims for Fraud, that Plaintiff

(Appellant) has not pled or established the required elements of Fraud; (4) with regard to Plaintiff's (Appellant) claims for Promissory Estoppel, that Plaintiff (Appellant) has not established an unambiguous promise." On June 5, 2020, a hearing for the Defendants' (Respondents) motions was heard by the Honorable Mark Hayes in the Court of Common Pleas for Spartanburg County. Judge Hayes agreed with the Defendants (Respondents) pursuant to Rules 12(b)(6) and Rule 56 of the *South Carolina Rules of Civil Procedure* that "the statute of fraud clearly applies. This is a contract that involves real estate. Also, the potential contact at issue could not have been performed within 12 months. This Court cannot reasonably conclude that financing for the purchase of the property was going to be for a term of less than 12 months. Also, while the parties clearly were negotiating potential terms of the contract, no contract was ever signed, thus there was no meeting of the minds for purposes of an analysis under a breach of contract or promissory estoppel theory." Judge Hayes referred the case to the Court of Master and Equity for the remaining causes of action of unjust enrichment claims by both the Plaintiff (Appellant) and Defendants (Respondents).

On August 11, 2022, the case is heard in front of the Honorable Shannan M. Phillips, in the Court of Master and Equity (Trial Court) to determine the unjust enrichment claims of each party. The Trial Court ruled that the parties did have an agreement/contract and found that the Defendant (Respondent) was unjustly enriched by the Plaintiff (Appellant) and that the Plaintiff owes restitution to Defendants (Respondent) in the amount of $10, 265.80. The Trial Court further rules that Defendant Biggerstaff is not personally liable.

STATEMENT OF FACTS

Around March 2019, a shooting took place at 1330 Southport Road in Spartanburg, South Carolina, which left the building vacant. Kesha Petty (Petty) sought to rent the property for an

event planning and event rental business. Through mutual friends, Petty contacted Cathy Biggerstaff (Biggerstaff), not B&B Amusement (B&B) to inquire about the use of the building and possibly the purchase of the building.

Shortly after contacting Ms. Biggerstaff, Ms. Petty was allowed to view the inside of the building. Upon her arrival, the building was atrocious with blood everywhere, holes in walls, trash, drugs laying around on the ground, ceiling tiles missing, plumbing issues, leak from the roof, A/C issues, and many more issues. There were pictures taken of the building to show all the damage to the building.

At the end of March, Biggerstaff reached out to Petty to see what she thought of the building. Petty told Biggerstaff it needs a lot of work and Biggerstaff agreed. Biggerstaff wanted to sit down and discuss options with Petty about the building. Shortly after that Biggerstaff and Petty met to talk about the repairs, and condition of the building. Further in this discussion, Biggerstaff asked Petty if she wanted to lease and/or buy the building. At the end of the conversation between Petty and Biggerstaff, Biggerstaff promised that they would get a deal worked out and assured Petty if work was going to be done, she would repay Petty, and at the end of the conversation Biggerstaff handed Petty the keys to the building so work could begin.

Through the month of April, the following took place; Petty was devoted to cleaning and restoring the building for Biggerstaff. Biggerstaff made multiple trips to the building, to see how the progress of the clean-up and repair was going. While Biggerstaff was stopping by, she would give her input as to what Petty may want to consider doing with the building in the future, but never told Petty to stop the progress of the repair and cleanup. With the renovation going, Petty and Biggerstaff met twice at Holdens Ranch and Hardees to talk about a lease agreement. No documents, no pen to paper, just conversation to see where each party was at. Near the end of

April, Petty discussed the roof leaking which Guy Roofing repaired, ceiling tiles which Petty replaced, sheetrock which Biggerstaff wrote a $600 check for, light fixtures which Petty replaced, walls, flooring, plumbing, and other works which Petty replaced. Biggerstaff at this time did let Petty know that she was thinking about selling the building when the repairs were completed and wanted to know if Petty was interested in just buying the building. Again, although no agreement or price for the building was given to Petty, Biggerstaff assured Petty an agreement would be reached and not to worry.

As of May, Biggerstaff and Petty started to float numbers on a purchase price which was from $140,000 to $150,000 which was depending on Petty's ability to finance. While this talk was continuing, Petty was sending photos of the building's progress to Biggerstaff and Biggerstaff herself was coming to the property to see the progress. At no time while these photos were being sent did Biggerstaff tell Petty to stop the work or demand Petty to leave the building or demand any payment from Petty. Instead, Biggerstaff is showing up encouraging Petty to continue with the renovations.

Sometime in the middle to the end of May, Biggerstaff and Petty both went to a finance company and were told that it would be thirty-six (36) months before Petty would be able to purchase the building, however Biggerstaff did not want to wait that long to sell the building.

Completion of the building was continuing during this time. At no time in March, April, May, or June was Petty ever removed from the property. At no time did B&B ever send a corporate letter demanding Petty stop work or leave the premises or ask for any rent from Petty. However, Biggerstaff through conversation was encouraging Petty. When Petty was talking about her ideas for expanding the use of the building, Biggerstaff told her "Crawl before she can walk". But that

was for ideas of expanding the business she wanted to open. Not to the actual work of the renovation.

Sometime between late June and early August, the parties finally sat down to talk about a lease contract for the building. The building renovations are finally complete at this time and Petty starts to form her business ideas. Total renovation expenses that Petty incurred were $12, 253.75, which she made known to Biggerstaff. During these talks after months of renovation and clean up, Petty makes the offer of $800 a month rent, liability insurance and utilities. Biggerstaff wanted $1,000 a month, property tax, utilities, and insurance. Biggerstaff presented a contract to Petty with a lot of hand marked corrections on the document listed as a "potential" contract. Multiple attempts happened to sign the contract; however, terms could never be reached between the parties and a contract was never signed and Biggerstaff went on to later sell the building. It was at this point, after negotiations fell through in early August and Petty asked for reimbursement for renovations, Biggerstaff demanded that Petty leave the premises and asked for the keys back. Prior to being asked to leave the property, Petty had some of her inventory in the building because the plan was to start a business. Petty never did conduct any business on the premises of 1330 Southport Rd, as she had originally thought would happen. No money was ever collected. No profit was ever made.

Petty filed suit in September after being asked to be removed from the property and being denied reimbursement for the renovations of the building. Petty returned the keys to Biggerstaff near the end of August. (See Transcript page 119).

At the time of the trial Petty was seeking reimbursement for the work she did in the building totaling $12,253.75. Biggerstaff was seeking back pay for rent, utilities, and property tax.

STANDARD OF REVIEW

The standard of review for this matter is a devo novo review of the evidence to determine the existence of reviewable clear error and abuse of discretion of the Lower Court Order.

ARGUMENT

I. **The Trial Court Erred in Finding that the parties had a contract/agreement as to any terms regarding the building at Southport Road.**

On June 05, 2020, Judge Mark Hayes ruled on Defendants' Motion to dismiss and Motion for Summary Judgment granting Defendants' motion that no contract existed between the parties. In fact, Judge Hayes ruled, pursuant to Rule 12(b)(6) and Rule 56 of the *South Carolina Rules of Civil Procedure*, although the parties were clearly negotiating the terms, there was "no meeting of the minds." In Defendants Memorandum in Support of the Motion, Defendants argue and state "It is well-settled in South Carolina that in order for there to be a binding contract between the parties, there must be a mutual manifestation of assent to the terms." Potomac Leasing Co. v. Otts Mkt., 292 S.C. 603, 606, 358 S.E2d 154, 156 (Ct. App.1987). "South Carolina common law requires that, in order to have a valid and enforceable contract, there must be a meeting of the minds between parties with regard to all essential and material terms of the agreement." Player v Chandler, 299 S.C. 101, 105, 382 S.E. 2d 891, 893 (1989) (emphasis added).

All of the evidence presented in the motion hearing proved that there was "**no meeting of the minds and that no terms were agreed to by the parties regarding rent, property taxes, insurance, or utilities**. The Trial Court ruled that some terms of an agreement were made but not all and proceeded to grant restitution on terms of an agreement that simply did not exist. It was improper for the Trial Court to even consider anything regarding a contract or agreement, or any terms of an agreement because these claims were already ruled on and dismissed

from the matter. Plaintiff did not appeal or file a motion to reconsider Judge Hayes ruling on a breach of contract or an agreement and therefore, there should have been no consideration from the Trial Court regarding any terms of the alleged agreement. The Trial Court erroneously concluded and disregarded the previous ruling on the matter of breach of contract and erred by overturning the breach of contract in ruling that an agreement of terms did exist between the parties and granted restitution based on terms that did not exist. Judge Hayes' Order from June 05, 2020, (*See Order June 05, 2020*) disposed of the claims of breach of contract and consequently those claims should not have proceeded to trial and even if they were mentioned in any of the testimony, should not have been considered in the Trial Court's findings. Thus, this created an inconsistent finding. No inconsistent verdicts can be rendered, as the court's concern is creating a possibility that a party will be prejudicated by different juries rendering inconsistent verdicts on the same issues. See Green v Duke Power Co., 305 N.C. 603, 608, 290 S.E.2d 593 (1982). The Trial Court clearly created an inconsistent verdict on the issue of breach of contract as the Trial Court clearly did not have jurisdiction to determine whether an agreement of terms was met between the parties.

II. **The Trial Court Erred in Finding that Cathy Biggerstaff and B&B Amusement was unjustly enriched by the Plaintiff and that the Plaintiff owed restitution to the Defendant.**

Quantum Meruit is an equitable doctrine allowing recovery for unjust enrichment. "Restitution is a remedy designed to prevent unjust enrichment." *See Stanley Smith & Sons v. Limestone College*, 283 S.C. 430, 434, 322 S.E.2d 474, 478 (Ct. App. 1984). To recover on a theory of unjust enrichment, "the plaintiff must show (1) that she conferred a non-gratuitous benefit on the defendant; (2) that the defendant realized some value from the benefit; and (3) that it would be inequitable for the defendant to retain the benefit without paying the plaintiff for its

value. *See Niggel Assoc., Inc. v. Polo's of North Myrtle Beach, Inc.*, 296 S.C. 530, 374 S.E.2d 507 (Ct. App. 1988).

The Defendants in closing at the trial relied upon the following two examples: First Defendants used, *Player v. Chandler*, which is based on a lease property. *See Player v. Chandler*, 299 S.C. 101, 382 S.E.2d 891 (1989). **An actual contract**. In *Player*, "the plaintiffs leased property from the defendant, and built a restaurant on the property." *Id.* "The lease contemplated improvements to the premise and established that plaintiffs could enjoy the use of the improvements during the term of the lease." *Id.* "Three weeks later, defendant told plaintiffs they would not extend the lease." *Id.* "The plaintiffs claimed that defendant was unjustly enriched by refusing to extend the lease." *Id.* "The Court disagreed and found the plaintiffs would be able to enjoy their improvements for the term of the existing lease and that any retention of benefit by the defendant was a result of the initial terms of the lease." *Id.*

Second, Defendants used Sauner *vs. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (S.C. 2003), a case is very similar to *Player*. The parties had a **signed lease agreement** "which provided that all improvements to the leased property would become the property of Santee Cooper upon termination of the lease." *Id* at 401. The "lease allowed the plaintiff to enjoy the improvements they made for many years." *Id.* at 403. "Therefore, we find no support for plaintiffs claim for unjust enrichment." *Id.* at 410.

As to the first element, Petty did confer a benefit to Biggerstaff. The pictures show when Petty was given the keys to the building, the place was a crime screen. The building was atrocious, trashed, bloody, holes in the walls, pipe issues, and leaky roof. After four long months of cleaning, fixing the holes, pipes, roof, and repainting, the place looked like it was new. That benefit of cleaning and fixing was a benefit to Biggerstaff. This was not a gift to Biggerstaff from Petty. Of

all the communications, not one time was Petty saying this was a gift and/or even more importantly none of the evidence shows that Biggerstaff told Petty to stop cleaning, repairing or restoring the building. Instead, Biggerstaff continued to show up at the property and encouraged Petty on the clean-up, even wrote a check for some supplies to Petty. Biggerstaff was aware of this non-gratuitous benefit because she testified, **she was going to pay Petty for the service rendered on the building. Biggerstaff further testified that she regularly paid other people to do work around the building, so she was aware of the cost of labor.** (See Transcript pages 137, 158,159,161, 162, 163)

As to the second element, Biggerstaff did realize the benefit. Biggerstaff testified that she intended to pay money for supplies, showed up on the property, was given pictures via text messages of the improvements and had no communication to ever stop renovating the building. Additionally, Biggerstaff contacted a real estate agent to take pictures and appraise the building to be put on the market **after** Petty had completed the renovation and ultimately that agent did sell the building with the improvements made by Petty. It wasn't until all improvements were finished when Biggerstaff asked for Petty to be removed from the property. Therefore, Biggerstaff realized the benefit, if she wanted to, she could have stopped Petty, but never did until after the completion of all work was done. (See Transcript pages, 20, 21, 23, 161-163).

As to the third element, Biggerstaff's retention of the benefit under the conditions would make it unjust for her not to pay Petty for the value of the work that she put into the building. Petty renovated the entire building from painting, putting up sheet rock, new ceiling tiles, floors, new lights and much more. There was never a time Biggerstaff filed for an eviction prior to the lawsuit (noted Biggerstaff filed trespass and eviction in counterclaim), wrote a letter from her corporate company B&B Amusement for Petty to stop fixing up the building, nothing until after the

completion of the building. At that time, Biggerstaff reaped the benefits of the renovations and then told Petty to leave the building and turn over the keys. Therefore, it would be unjust for Biggerstaff not to pay for the value of the work Petty did.

Both parties stated that Petty never got to enjoy the building for the purpose she wanted to, which was to have an event business. (Transcript pages 44, 47, 138) Unlike both *Player and Sauner*, those parties had a signed lease agreement, terms which explained improvements to the property where those parties got to enjoy their renovation. Not Petty in this case. Petty was thrown out before she could enjoy the property. (See Transcript page 162) Therefore, Biggerstaff owes Petty for the work completed including but not limited to labor, equipment, repairs, supplies, and fixtures to a total of $12,253.27. It was noted in the beginning of the trial that both parties stipulated the authenticity of the receipts for supplies and labor that the Plaintiff produced. (Transcript pages 5, 6). The Trial Court erred in dismissing the validity of those receipts and not including them because they were "not collaborated." There was no need to "collaborate" the receipts since both parties agreed.

The Trial court erroneously ruled that Plaintiff did in fact have a benefit from the Defendant. All of the evidence in this matter showed that the Plaintiff was at no time enriched by the Defendant. In fact, all the evidence points to the opposite. The Trial Court disregarded all the physical evidence presented which showed at no time did the Plaintiff gain anything from what transpired between the parties, but instead lost. (See Plaintiff's Trial Exhibits 1,2,3,4,5,6, 9)

The Defendant claimed unjust enrichment for unpaid rent, property tax, utilities. The Defendant testified that the parties came to **an agreement** as to the amount for rent, property taxes, and utilities. However, these claims are based on an agreement that did not exist per the Honorable Judge Mark Hayes, who ruled "the parties were clearly negotiating potential terms of a contract,

no contract was ever signed, thus was no meeting of the minds." It is important to note that it was the Defendants that filed the motion to dismiss that an agreement existed between the parties and then during the trial stated they did have an agreement as to certain terms. So, it is confusing as to why Defense counsel would use examples of signed contracts for their claim of unjust enrichment. It is even more confusing as to why the Trial Court allowed and concluded that such claims existed when it was already ruled that they did not. This is a clear error of the Trial Court.

Just for sake of argument, let's assume the first element is not met by the Plaintiff, which is denied and only admitted for the sake of argument on this point, but what benefit did the Defendant confer onto the Plaintiff? Petty used her credit cards to pay for the supplies and renovations that were done to the building. She also paid other people to come and help her. (See Transcript pages 23, 25 ,26). She wanted to use the building for a business which she never did, therefore, the Trial Court is just wrong in stating that Petty was enriched in any way by the Defendants. Biggerstaff allowed Petty to clean and renovate the building without ever stopping or compensating petty. Biggerstaff received a whole building renovated and no benefit was ever conferred onto Plaintiff. Therefore, Biggerstaff has failed to meet the first element of unjust enrichment and the Trial Court clearly erred in concluding that she did.

As to the second and third elements, Biggerstaff failed as a matter of law. Since Biggerstaff conferred no benefit on Petty, Petty could not have realized any value from the non-existent benefit. Therefore, Biggerstaff again fails on her claims of unjust enrichment and the Trial Court erred in concluding that she did.

For the sake of argument, even if the Trial Court did not err in ruling that Petty did confer a benefit from Biggerstaff, which is denied and admitted solely for the purpose of this argument point and no other, the Trial Court did err in its **calculations of any money owed of Petty as the**

time frame that Petty had access to the building. Biggerstaff testified and conceded that Petty turned in the keys sometime in August, (See Transcript pages 162, 163) therefore, Petty did not have any access to the building after August and as such the Trial Court erred in ruling that she had access up until November. Therefore, the Trial Court's calculations on the matter are just wrong.

The Trial Court completely ignored all the evidence in this matter. Further, the Trial Court decision of restitution was based on information that was already dismissed. The only solid evidence in this matter is the expenses of Petty. Biggerstaff went on to sell the building thus receiving all the benefit without meeting any of the requirements for unjust enrichment. The Trial Court clearly abused its discretion in this matter.

III. The Trial Court Erred in not declaring Cathy Biggerstaff personally liable.

During the trial, Defense made a motion for Summary Judgment on the issue that Plaintiff did not raise the issue of piercing the corporate veil. That motion was granted, and the Trial Court erred by granting that Cathy Biggerstaff is not personally liable in this matter.

Looking more closely at the issue of piercing the corporate veil. "If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons." *See Sturkie v. Sifly*, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (S.C. App. 1984). "The party seeking to have the corporate identity disregarded has the burden of proving that the doctrine should be applied." *Id.* Piercing the corporate veil is a two-prong test "(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." *See Pertuis vs. Front Roe Rests. Inc.,* 423 SC 640, 655, 817 S.E.2d 273, 281 (SC 2018).

As to the first prong, "the failure to observe corporate formalities: (1) whether the corporation was grossly undercapitalized; (2) failure to observe corporate formalities; (3) non-payment of dividends; (4) insolvency of the debtor corporation at the time; (5) siphoning of funds of the corporation by the dominant stockholder; (6) non-functioning of other officers or directors; (7) absence of corporate records; and (8) the fact that the corporation was merely a façade for the operations of the dominant stockholder." See Bishop v. S.C. Human Affairs Comm'n (South Carolina Administrative Law Court, 2019) "The conclusion to disregard the corporate entity must involve a number of the eight factors but need not involve them all." *Mid-South Mgt. Co. Inc.*, 374 S.C. 588, 598, 649 S.E.2d 135, 141(S.C. App. 2007).

At this time and junction, we can go through the 8 factors. Factor 1- no mention that B&B was undercapitalized. It was a business on selling and leasing properties. Factor 2 – no mention of any corporate formalities. This is a single shareholder. No other person is involved in B&B. Factor 3 – no payment of dividends. Biggerstaff only talked about getting a salary of $1,000 a month to live off. (See Transcript page 168) Factor 4 – No mention of this whatsoever. Factor 5 – Biggerstaff gets paid via B&B and all other money stays in an account. (Transcript page-168) Biggerstaff referred to an accountant, but no documents were provided to prove this. (Transcript page168) Factor 6 – Biggerstaff is the only officer and shareholder. Biggerstaff is the only acting agent as well. Factor 7 – no corporate records. Just that Biggerstaff is the registered agent. Biggerstaff acts on B&B behalf on all accounts.

Factor 8 – this is the one that Biggerstaff did admit to. Biggerstaff is the only shareholder which was told to the court. (See Transcript page 168) Further, one cell phone number in which

Biggerstaff answer as "Hello", not the name of B&B. (See Transcript pages 146-149) No email address that states B&B was used in communication with Petty. No text message used to state this was B&B. Nothing was used in the whole breakdown of communication with Petty as B&B. Biggerstaff has an address, but B&B uses a PO BOX, no physical address. Everything that was signed was under Biggerstaff even if it stated B&B. When it states B&B on items, it lists Biggerstaff under the corporation.

As to the second prong, an element of injustice or fundamental unfairness if the "corporation's acts are "not regarded as the acts of" its principals. "The essence of the fairness test is simply that an individual businessman cannot be allowed to hide from the normal consequences of carefree entrepreneur by doing so through a corporate shell." *Id.* at 556. Given the facts of this case, it would be fundamentally unfair to allow Biggerstaff to insulate herself from liability because of a corporate shell. Even if Biggerstaff could somehow escape liability as an agent of B&B, she is still an alter-ego of B&B, and the corporate veil must be pierced. Therefore, Biggerstaff must be held liable personally for the $12,253. 27 in restitution to Petty and the Trial Court erred in concluding she did not.

It is by a preponderance of the evidence that Petty showed and proved her claim of unjust enrichment. Petty conferred a non-gratuitous benefit onto Biggerstaff, Biggerstaff realized the value by her on admissions, (See Transcript pages 166-167) and it would be unjust for Biggerstaff to retain that benefit without compensating Petty. Without terms to a contract, Biggerstaff failed to meet her burden for her claim of unjust enrichment. The contract and terms of the contract were previously ruled by a Judge that they did not exist. Due to no agreement of terms, Biggerstaff could not get over the first hurdle of the benefit conferred to Petty. There was none. Therefore, her claim for unjust enrichment fails.

Lastly, by a preponderance of the evidence Petty did show that Biggerstaff did act recklessly in the process that was outside of the scope of B&B and the corporate veil is pieced. Biggerstaff acted as herself. Yes, the Defense wants to show the utilities, check, building was under B&B. That is not the issue. The issue was that Biggerstaff acted outside of B&B during this process. Biggerstaff never mentioned she was acting as B&B. For someone who has being doing business for over 30 years would know better. (See Transcript page 167) Biggerstaff took advantage of Petty in this process. Biggerstaff went beyond the normal scope of an agent of B&B. Biggerstaff went to the finance company, gave ideas of how the building could be used by Petty, how to renovate, continued to encourage continued work by Petty and would show up often during the process of the renovation. It took four (4) months for Biggerstaff to sit down and try to draw up a contract **after** the renovation was completed and when her terms were not met, she pulled the rug from under Petty without any compensation. Given the facts of this case, it would be fundamentally unfair to allow Biggerstaff to isolate herself from liability because of a corporate shell. Even if Biggerstaff could somehow escape liability as an agent of B&B, she is still an alter-ego of B&B, and the corporate veil must be pierced. Therefore, Biggerstaff must be held liable personally for the reimbursement of the renovations done by Petty.

CONCLUSION

For the foregoing reasons, the Trial Court Order granting unjust enrichment and restitution in favor of Respondents Cathy Biggerstaff and B&B Amusement, Inc. and against the Appellant Kesha Petty must be reversed.

Respectfully Submitted,

Kesha Petty Edwards

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April 1, 2024
Spartanburg, South Carolina