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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

Charles B. Simmons, Jr., Master-in-Equity

Case No. 2012-CP-23-02887

Appellate Case No. 2020-001587

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA
CUSTOM CONVERTING, LLC, Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA
CUSTOM CONVERTING, LLC, Defendants,

vs.

CAROLINA CUSTOM CONVERTING, LLC,
..... Counterclaim Plaintiff,

vs.

DAVID WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH
WATER SYSTEMS, INC.,Counterclaim Defendants

OF WHICH CAROLINA CUSTOM CONVERTING, LLC, JOHN GANDIS, AND ANDREA
COMEAU-SHIRLEY are the.....Appellants

and

DAVID WILSON is the.....Respondent.

**BRIEF OF APPELLANT
CAROLINA CUSTOM CONVERTING, LLC**

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE LOWER COURT ERRED IN CONCLUDING THAT THE SUPRESEDEAS BOND DID NOT SUSPEND POST-JUDGMENT INTEREST.
2. WHETHER THE LOWER COURT ERRED IN CONCLUDING THAT THE SUPREME COURT'S DECISION TO MODIFY THE ORDER AND CHANGE THE JUDGMENT DEBTOR NEVERTHELESS STILL REQUIRED THE PAYMENT OF POST-JUDGMENT INTEREST FROM THE DATE OF THE ORIGINAL ORDER.
3. WHETHER THE LOWER COURT ERRED BY REVERSE PIERCING THE CORPORATE VEIL OF CCC BY IMPOSING ITS MEMBERS' LIABILITIES UPON THE COMPANY.
4. WHETHER THE LOWER COURT ERRED BY NOT SETTING THE DATE FOR ACCRUAL OF POST JUDGMENT INTEREST TO THE DATE OF THE MODIFIED OPINION AND CREATION OF A NEW JUDGMENT DEBTOR.

STATEMENT OF THE CASE

I. Formation of Carolina Custom Converting, LLC

In or around November 2007, Appellant John Gandis (“Gandis”) and Respondent David Wilson (“Wilson”) formed Carolina Custom Converting, LLC (“CCC”) as a manager-managed limited liability company registered in South Carolina with each owning a fifty percent (50%) membership interest. CCC is in the business of perforating and slitting film, and it is headquartered in Anderson, South Carolina. CCC operates as an intermediary to connect film suppliers with film customers, in an effort to provide customers with *custom converted* films. In 2008, Wilson and Gandis discussed expanding CCC’s scope of operations to a full-service film company. Gandis served as president of CCC and managed its operations, and Wilson served as vice president of CCC and led its sales.

Later in 2008, Gandis engaged Appellant Andrea Comeau-Shirley (“Shirley”), who is a certified public accountant licensed in Georgia, to provide CCC with advice regarding accounting and formation. In 2009, Wilson and Gandis each transferred a five percent (5%) interest to Shirley in exchange for her accounting services, which effectively converted Wilson’s and Gandis’ respective membership interests to forty-five percent (45%).

II. Restructuring of Carolina Custom Converting, LLC

Years later, beginning in early 2011, Wilson, Gandis, and Shirley began discussing various options for restructuring CCC. In or around September 2011, those conversations started to include the understandably difficult topic of whether Mr. Wilson would remain as a member (shareholder) of CCC. Wilson was considering his respective options and the members ultimately negotiated a deadline of January 7, 2012, for Wilson to state his future interest in CCC as that was the date that the proposed buy-sell agreement was set to expire. The members were unable to reach a decision, and with Gandis’ consent, Wilson began approaching potential buyers for CCC. During this time,

Wilson also discussed potential employment with a competitor of CCC, which he did not ultimately secure. On or around January 18, 2012, Wilson departed from CCC. Shortly thereafter, Wilson began working with a competitor of CCC, Neologic.

III. Procedural History

On April 12, 2012, Wilson filed a complaint in the Greenville County Court of Common Pleas against Gandis and Shirley. On July 3, 2012, Gandis and Shirley answered the complaint and filed counterclaims. Wilson then filed an amended complaint on October 10, 2012, alleging dissolution, breach of fiduciary duty, disassociation, and conversion, and Gandis and Shirley filed an answer and counterclaims to the amended complaint on October 26, 2012. On September 20, 2013, Wilson filed a second amended complaint against Gandis, Shirley, and CCC. On April 16, 2013, this case was designated as a complex case and assigned to the Honorable D. Garrison Hill. The case was tried over five days as a bench trial. The trial court found for Wilson on the dissolution claim and against Gandis and Shirley as to their counterclaims. The end result of the Court's decision was that Gandis and Shirley were jointly and severally liable to purchase Wilson's 45% membership interest in CCC for \$347,863.23. Wilson submitted a proposed order as requested, and on January 9, 2015, the circuit court entered its order (the "Buy-Out Order"; R.p. 1). Thereafter, CCC, Gandis, and Shirley filed a Rule 59(e) motion for a new trial or reconsideration. Upon denial of the motion, CCC, Gandis, and Shirley appealed.

While the appeal was pending, Mr. Wilson began efforts to enforce the Buy-Out Order. As a result of Mr. Wilson's efforts, a hearing was held before the Honorable D. Garrison Hill regarding the impact of the appeal on enforceability of the Buy-Out Order. As a result of the hearing, the court entered an order requiring CCC, Gandis, and Shirley to secure a supersedeas

bond in order to obtain a stay of execution of the Buy-Out Order. The court entered that order on July 22, 2015 (the “Bond Order”; R.p. 22).

The Bond Order required CCC to be a party to the forthcoming supersedeas bond even though it had no liability under the Buy-Out Order. The Court noted that, “Gandis and []Shirley have appealed, and argue that any obligation to pay Plaintiff for his membership share properly belongs to Defendant CCC. . . . In addition . . . , requiring CCC to post bond protects Plaintiff should an appellate court decide that the obligation to pay Plaintiff for his membership interest rests with CCC, and the company—of which he is still a member, yet from whose affairs he is excluded—becomes insolvent or otherwise unable to pay the judgment should it be affirmed.” (Bond Order, R.p. 23).

In an unpublished opinion, the court of appeals affirmed the trial court order. *Wilson v. Gandis*, Op. No. 2018-UP-078 (S.C. Ct. App., filed Feb. 7, 2018, R.p. 47). On November 9, 2018, the Supreme Court granted Gandis, Shirley, and CCC’s separate petitions for a writ of certiorari to review the court of appeals’ decision.

The Supreme Court heard, relevant here, the following issue on appeal: Whether the trial court erred in ordering Gandis and Shirley to personally buy Wilson’s distributional interest in CCC, as opposed to CCC.

On June 3, 2020, the Supreme Court handed down an opinion that modified the Buy-Out Order and remanded the case to the lower court. Importantly, the Supreme Court stated:

[W]e modify the trial court’s order requiring Gandis and Shirley to individually purchase Wilson’s interest, and we remand this case to the trial court for proceedings consistent with the following instructions. We first order CCC to purchase Wilson’s interest in CCC, and Gandis and Shirley shall be obligated to purchase Wilson’s interest only if CCC does not comply with our order that it do so.

(Supreme Court Opinion No. 27980, R.p. 69)

On September 21, 2020, a hearing was held before the Honorable Alex Kinlaw, Jr., of the Greenville County Court of Common Pleas on CCC's Motion for Remand Status Conference and Ruling Regarding the Time to Complete Purchase of Distributional Interest and Wilson's Motion to Execute on Supersedeas Bond. (Transcript Sept. 21, 2020, R.p. 114). At the hearing, CCC requested the Court to allow for a structured buy-out procedure comprised of a down payment in the \$200,000 range, followed by monthly payments drawing interest at 4%. Following the hearing, the court entered an order requiring CCC to make a \$250,000 payment towards the total purchase price (\$347,863.23) of Wilson's distributional interest in the company and permitted Wilson to seek the remaining balance from the supersedeas bond. Further, the court referred the case to the Master-in-Equity to conduct supplemental proceedings to determine whether post-judgment interest should be awarded.

On October 19, 2020, CCC filed a Rule 59(e), SCRCPC Motion to Reconsider or Amend. CCC's Rule 59(e) motion challenged, relevant here, the appropriateness of referring resolution of the post-judgment interest claim to the Master-in-Equity for supplemental proceedings. CCC did not seek to amend the decision to have the Master-in-Equity determine whether post-judgment interest was payable. Instead, CCC sought amendment of the characterization that the inquiry would be conducted as a supplemental proceeding.

On or about November 1, 2020, Mr. Wilson was paid \$347,863.23 for his membership interest in CCC.

The court denied CCC's Rule 59(e) Motion, and CCC filed a Notice of Appeal appealing the order on December 1, 2020. That appellate proceeding was stayed pending the proceedings before the Master-in-Equity to resolve the post-judgment interest claim. On April 13, 2021, a

hearing was held before the Honorable Charles B. Simmons, Jr., Master-in-Equity of Greenville County to determine whether post-judgment interest was collectable on the Order entered January 9, 2015—the Buy-Out Order. (Transcript Apr. 13, 2021, R.p. 148).

Judge Simmons later entered an order on May 4, 2021, finding that post-judgment interest accrued on the Buy-Out Order from January 9, 2015, in the amount of \$208,930.15. CCC then filed a Rule 59(e) Motion to Alter or Amend the court’s order dated May 4, 2021, and Defendants Gandis and Shirley filed a Supplemental Rule 59(e) Motion to Alter or Amend on June 10, 2021. A hearing was held before Judge Simmons on Defendants’ Rule 59(e) Motions on June 8, 2021, and on June 17, 2021, Judge Simmons entered an order denying the motions. (Transcript June 8, 2021, R.p. 166). On July 15, 2021, Appellants CCC, Gandis, and Shirley filed a Notice of Appeal from: (1) the May 4, 2021 order, and (2) the June 17, 2021 order denying the Rule 59(e) Motions.

On June 18, 2021, Judge Simmons entered a consent order providing that CCC would create an account in its name and transfer \$210,650.89 into the Fidelity Total Bond Fund (“Bond Fund”). (June 18, 2021 Order, R.p. 41). Pursuant to the consent order, CCC and Wilson agreed that if CCC prevailed in the appeal, then it would be entitled to the Bond Fund. However, if Wilson prevailed on appeal, then he would be entitled to the Bond Fund. Significantly, the parties agreed that the Bond Fund would serve as the sole source of any further recovery in this dispute.

STANDARD OF REVIEW

The central question before the Court is whether Wilson is owed post-judgment interest on the Buy-Out Order under S.C. Code Ann. § 34-31-20. The South Carolina Supreme Court has repeatedly held that questions of statutory interpretation are questions of law subject to de novo review and for which the Court is free to decide without any deference to the court below. *See, e.g., Hueble v. S.C. Dep’t of Natural Res.*, 416 S.C. 220, 228, 785 S.E.2d, 461 (2016); *Catawba Indian Nation v. State*, 407 S.C. 526, 536, 756 S.E.2d 900 (2014) (quoting *Town of Summerville*

v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (“Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.”)).

ARGUMENTS

1. NO POST-JUDGMENT INTEREST ACCRUED BECAUSE CCC SECURED AND POSTED A SUPERSEDEAS BOND FOR THE JANUARY 9, 2015 ORDER

A. The Bond Order and Supersedeas Bond Stayed the Execution of Judgment and Accrual of Post-Judgment Interest.

When the Circuit Court entered the Bond Order and CCC complied with the same by posting a supersedeas bond, the Buy-Out Order was stayed and no post-judgment interest ever accrued. The lower court disagreed with this position. It stated that, “[t]he substance of the argument is that by posting an appeal bond, interest on a judgment no longer accrues. An appeal bond suspends enforcement of a judgment but does not, in the court’s opinion, suspend accruing of statutory interest.” (June 17, 2021 Order, R.p. 39). The Court’s order is wrong.

Posting a supersedeas bond stays both the enforcement of the judgment and the accrual of any post-judgment interest. A supersedeas bond is a guarantee on payment. After CCC complied with the Bond Order, Wilson was guaranteed that if he succeeded in the defense of the Buy-Out Order, he would receive payment in full. Wilson had a guarantee because the bond company requires a party to pledge sufficient collateral to satisfy the judgment amount. *See, e.g., Van Romer v. Interstate Prods.*, 2010 U.S. Dist. LEXIS 49457, at *8 (D.S.C. 2010) (the court declined to issue a stay of judgment pending appeal without a full supersedeas bond, which would have required the defendant to provide collateral to cover the full amount of the bond).

Money judgments are not stayed during an appeal. Rule 241(b)(1), SCACR. But with the guarantee of a supersedeas bond, money judgments can be, and are, suspended during an appeal.

Rule 241(c)(1)-(2), SCACR. That is what the Bond Order did. Under Rule 241(c)(1), the “effect of the granting of a supersedeas is to suspend or stay the matters decided in the order.”

South Carolina Code Section 18-9-130 operates in concert with Rule 241, SCACR. It provides that “[i]f the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, the amount of the bond or other surety may not exceed the amount of the judgment.” S.C. Code Ann. §18-9-130(A)(1) (emphasis added).

It is well established that, “a judgment debtor may stop the running of interest by paying the amount of the judgment into court during the pendency of an appeal.” *Sears v. Fowler*, 293 S.C. 43, 44 n.1, 358 S.E.2d 574, 575 n.1 (1987); *see also* Rule 67, SCRCPP. Similarly, the General Assembly has decided that a supersedeas bond should operate in the same manner by providing that a supersedeas bond cannot include post-judgment interest.¹ S.C. Code Ann. §18-9-130(A)(1) (noting bond amount “may not exceed the amount of the judgment”). This rule of law makes sense because a supersedeas bond is the equivalent of paying a judgment into court: the money is guaranteed; the judgment will be collected following a successful appeal.

The Bond Order, and the subsequent posting of a supersedeas bond, stayed both the execution of the judgment and running of post-judgment interest.

B. Posting a Supersedeas Bond Defeats Mr. Wilson’s Argument for Post-Judgment Interest.

During the lower court proceedings, Mr. Wilson argued that CCC’s retention and use of its capital supported an award of post-judgment interest. This argument, apparently credited by the

¹ The General Assembly has endeavored to change this rule of law in the past but has failed to do so. During the 2005-06 legislative session, both the Senate (S. 971) and the House (H. 4363), considered pre-filed legislation to amend section 18-9-130 to allow for a court to include interest in the amount of a supersedeas bond. The legislation failed.

lower court, is in direct conflict with how a supersedeas bond operates. During the post-judgment interest hearing on June 8, 2021, counsel for Respondent Wilson argued that *Sears v. Fowler* stands for the proposition that, “a judgment [debtor] is required to pay interest on his debt as compensation for – against further retention and use of the judgment creditor’s money.” (Transcript June 8, 2021 at 5, 8, R.p. 170).

The portion of the *Sears* case to which Respondent referred states, “[A judgment debtor is] required to pay interest on his debt as compensation for his further retention and use of the judgment creditor’s money.” *Sears*, 293 S.C. at 45-46, 358 S.E.2d at 575. The Supreme Court cited that portion of the Missouri Court of Appeals case to illustrate that a particular purpose of awarding post-judgment interest is to penalize nonpayment of a judgment by a judgment debtor. This argument does not apply in the present situation because CCC has neither retained nor used its capital during the pendency of the appellate proceedings. Pursuant to the Bond Order, CCC was required to post a supersedeas bond in the amount of \$347,863.23 to guarantee the purchase of Wilson’s distributional interest. As noted, posting the supersedeas bond required CCC to provide collateral to cover the full amount of the bond. CCC did not retain and use Mr. Wilson’s money for its own purposes. Accordingly, for this additional reason, no post-judgment interest accrued.

2. THE LOWER COURT ERRED IN CONCLUDING THAT MR. WILSON IS ENTITLED TO POST-JUDGMENT INTEREST BECAUSE THE SUPREME COURT CHANGED THE JUDGMENT DEBTOR

A. The Lower Court Erred in Concluding That Wilson Was Entitled to Post-Judgment Interest on the January 9, 2015 Order Because This Conclusion Does Not Align With the Statutory Purpose of Imposing Post-Judgment Interest.

The lower court erred in concluding that Respondent Wilson was entitled to post-judgment interest on the Buy-Out Order because this result does not align with the purpose of the post-judgment interest statute. As the Supreme Court has recognized, “the purpose of post-judgment

interest is to penalize nonpayment of a judgment by a judgment debtor.” *Sears*, 293 S.C. at 45. Further, a judgment debtor is a “person against whom a money judgment has been entered but not yet satisfied.” Black’s Law Dictionary, 861 (8th ed. 2004). The Supreme Court opinion created a new judgment debtor when it substantively modified the Court of Appeals’ opinion to institute CCC as the judgment debtor in the first instance. Counsel for Respondent Wilson acknowledged this in the lower court, “there certainly is a new individual or new entity who is responsible for the judgment, so perhaps, yes, there is a new judgment debtor. . . . [Based on the June 2020 Supreme Court opinion] [t]he judgment debtor was CCC.” (Transcript April 13, 2021 p. 6, 11, R.p. 153).

Following the Supreme Court decision, there is not a non-compliant individual or entity to penalize for nonpayment of a debt. CCC became the judgment debtor on June 3, 2020 and it timely paid the debt. Gandis and Shirley appealed the Buy-Out Order, in part, because they believed that the lower court committed legal error by imposing individual and joint and several liability for Wilson’s buy-out. The Supreme Court vindicated their legal position when they modified the Buy-Out Order and instituted CCC as the judgment debtor in the first instance. Thus, ordering CCC to now pay post-judgment interest on the Buy-Out Order that was against different judgment debtors does not serve any purpose of awarding post-judgment interest. A penalty cannot exist if there was no prior obligation of a judgment debtor to comply. Therefore, the lower court’s conclusion that Wilson is entitled to post-judgment interest from CCC on the Buy-Out Order does not serve the purpose of imposing post-judgment interest.

a. Calhoun Did Not Establish a “Bright Line” Test Applicable to the Unique Facts in the Present Case.

The lower court incorrectly relied on *Calhoun* to find that post-judgment interest was appropriate following the modified opinion. In *Calhoun*, the Supreme Court reviewed the narrow issue of “whether [petitioner] is entitled to post-judgment interest on the equitable distribution

award.” *Calhoun v. Calhoun*, 339 S.C. 96, 99, 529 S.E.2d 14, 3 (2000). The petitioner and respondent in *Calhoun* were in a divorce and the monetary amount at issue was an equitable distribution award, or the awarding of marital property and assets. *See id.* at 5-6. That case involved only two individuals, such that there was no question as to who constituted the judgment debtor.

The Supreme Court recognized that, “when a money judgment is finalized . . . the interest on that amount, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.” *Id.* at 12. Thus, the Supreme Court did not answer, let alone address, the applicable question in the present case, which is ***what is the date that post-judgment interest accrues from when a new judgment names a new judgment debtor?*** The *Calhoun* case does not address the issue of a novel judgment that turns on the identification of a new judgment debtor, rather it only involves the modification of a judgment amount that impacts the same judgment debtor throughout. Therefore, the case does not create a bright line test or rule that should apply to the unique facts addressed here.

B. The Lower Court Erred in Concluding That Wilson Was Entitled to Post-Judgment Interest on the January 9, 2015 Order Because the Judgment Was Not Entered Against CCC Until June 26, 2020.

The lower court erred in concluding that Wilson was entitled to post-judgment interest on the Buy-Out Order when it failed to apply the undisputed facts to the language of the statute. “[T]his [issue] is purely one of statutory interpretation, dependent only on how the undisputed facts apply to the statute.” *Commissioner of Public Work of the City of Lauren v. The City of Fountain Inn*, 428 S.C. 209, 218 n.4, 833 S.E.2d 834, 838 n.4 (2019). “Questions of statutory interpretation are questions of law.” *Id.* at 218 n.4., 833 S.E.2d at 838 n.4.

On June 6, 2020, the Supreme Court did not affirm the Court of Appeals’ judgment, instead it explicitly stated, “[w]e modify the court of appeals’ oppression holding and hold CCC is first obligated to purchase Wilson’s interest in CCC.” (Supreme Court Opinion No. 27980, R.p. 75).

Thus, for the first time beginning on June 26, 2020, a judgment was entered against CCC and CCC was named the judgment debtor as to Wilson’s distributional interest in the business.

The text of the statute at issue is as follows, “[a] money decree or *judgment* of a court enrolled or *entered* must draw interest according to law.” S.C. Code Ann. § 34-31-20. (emphasis added). The Supreme Court’s decision created a new judgment and a new judgment debtor. As a result, CCC had no legal obligation to pay post-judgment interest until the new judgment was entered following the remittitur. Nevertheless, the lower court ruled that CCC was obligated to pay all post-judgment interest that had accrued from the entry of the Buy-Out Order on January 9, 2015, until the buy-out occurred following remittitur.

The lower court apparently substituted its own sense of fairness to obtain a result it deemed correct. In its order, the Court justified hanging the post-judgment interest that accrued during the appeal and was vacated along with the individual liability of Gandis and Shirley as follows:

[A]lthough the decision makes CCC primarily liable for payment of the money judgment, Gandis and Shirley remain obligated in the event that the judgment is not paid within a reasonable time. Moreover, the fact that Gandis and Shirley are the majority owners of CCC, and the individuals who made the decisions leading to the trial court’s order, there is no undue prejudice by allowing the statutory interest. In fact, to hold otherwise would be to allow a windfall to the at-fault and appealing parties.

(May 4, 2021 Order, R.p. 36). The language used by the Court indicated that it improperly considered extraneous facts when deciding the legal issue. As a result, the Court committed legal error by failing to correctly apply the undisputed facts to the language of the unambiguous statute.

3. THE LOWER COURT ERRED BY REVERSE PIERCING THE CORPORATE VEIL WHEN IT ORDERED CCC TO PAY FOR THE POST-JUDGMENT INTEREST THAT ACCRUED WHILE THE JUDGMENT WAS AGAINST GANDIS AND SHIRLEY

While the Buy-Out Order was under appeal, and assuming only for arguments sake that the supersedeas bond did not prevent post-judgment interest from accruing, post-judgment interest

would have accrued in favor of Mr. Wilson. During the appeal, the judgment debtors were Gandis and Shirley. Rather than give the appropriate weight to the Supreme Court's modified opinion that changed the judgment debtor and find that any accrued interest was vacated, the lower court transferred the accrued interest to CCC. This decision was legal error.

The lower court erred by reverse piercing the corporate veil when it ordered CCC to pay post-judgment interest for an order against Gandis and Shirley that was abrogated by the Supreme Court's modified opinion. According to the Fourth Circuit Court of Appeals, "reverse veil piercing attaches liability to the entity for a judgment against the individuals who hold an ownership interest in that entity." *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 385-86 (4th Cir. 2018). In the May 4, 2021 Order, the Court stated, "the fact that Gandis and Shirley are the majority owners of CCC and the individuals who made the decisions leading to the trial court's [Buy-Out Order], there is no undue prejudice by allowing the statutory interest." (Order, R.p. 36). Notwithstanding the fact that neither Gandis nor Shirley were majority members, as Gandis owned 45% and Shirley owned 10%, in so stating, the lower court concluded that CCC remained liable for the prior, vacated, obligations of its members as though it was the alter-ego of the members.

South Carolina courts have long held that, "[t]he equitable doctrine of piercing the corporate veil is not to be applied without substantial reflection and the party seeking to have the corporate identity disregarded has the burden of proving the doctrine should be applied." *Wilson v. Friedberg*, 323 S.C. 248, 251, 473 S.E.2d 854 (Ct. App. 1996); *see also Mid-South Management Co. v. Sherwood Development Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct. App. 2007); *Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). As a general rule, South Carolina courts view companies as legal entities until sufficient reason to disregard the corporate entity occurs. *See id.* Further, courts "have developed a two-prong test to be used in determining whether

the corporate entity should be disregarded. The first prong of the test looks to the observance of corporate formalities by the dominant shareholder and consists of the following factors: (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 corporate funds by the dominant stockholder; (6) non-functioning of other officers or directors; (7) absence of corporate records; and (8) the fact that the corporation was merely a facade for the operations of the dominant stockholder. . . . The second prong of the test requires that there be an element of injustice or fundamental unfairness if the acts of the corporation are not regarded as the acts of the individual.” *Wilson*, 323 S.C. at 252.

Mr. Wilson never moved the Court to entertain a veil piercing claim. Moreover, Mr. Wilson never introduced any evidence that would support a veil piercing claim. The lower court simply did so apparently based upon its own sense of what a just result should look like. CCC should not have been saddled with the members’ liabilities for post-judgment interest (which were abrogated by the Supreme Court). The lower court’s post-judgment order, and its reasoning within, were clearly in error. CCC requests that this Court find that CCC is not obligated to pay post-judgment interest.

4. NO POST-JUDGMENT INTEREST ACCRUED AFTER THE SUPREME COURT HANDED DOWN THE MODIFIED OPINION

The Supreme Court’s modified opinion held that CCC must purchase Wilson’s membership interests within a reasonable time. The modified opinion provided that, “CCC is first obligated to purchase Wilson’s interest in CCC. If CCC does not complete the purchase *within a reasonable time* after the remittitur is sent to the lower court . . .” (Supreme Court Opinion No. 27980, R.p. 75) (emphasis added). Following the remittitur, CCC instructed the company that

issued the supersedeas bond to pay the judgment. As a result, CCC complied with its obligation to purchase Wilson's membership interest within a reasonable time.

CCC caused Wilson to receive payment for his interest on or about November 1, 2020. The lapse of approximately four months between the remittitur and the purchase was based upon CCC's request to the circuit court to implement a structured buy-out. CCC made this good faith request based upon the Supreme Court's modified opinion. (Motion for Remand Status Conference, R.p. 76). CCC filed the motion for a remand status conference on July 13, 2020. (Motion for Remand Status Conference, R.p. 76). The status conference was held on September 21, 2020. The Court denied CCC's request for a structured buy-out. Thereafter, CCC instructed the bond company to make the full payment to Wilson. Again, the payment was made on or about November 1, 2020. Considering the timeline of events that occurred between the remittitur and the payment in full, CCC submits that it complied with its obligation to purchase Wilson's membership interest within a reasonable time.

For the sake of argument, if this Court finds that post-judgment interest should be awarded, then CCC submits that post-judgment interest should only be awarded from entry of the modified opinion on June 26, 2020, until payment was made on or about November 1, 2020. The judgment referred to by Section 34-31-20, as explained above, is the Supreme Court judgment that was entered by the Greenville County Clerk of Court on June 26, 2020. (*See* June 22, 2020 *Remittitur*, filing stamp on p.1). The Supreme Court issued the remittitur directly to the Greenville County Clerk of Court and stated, "[a] copy of the **judgment** of this Court . . . is enclosed." *Id.* (emphasis added). Thus, the operative date for the purpose of any post-judgment interest referenced under Section 34-31-20 is the date the Supreme Court judgment was entered by the Greenville County Clerk of Court: June 26, 2020.

CONCLUSION

For all the reasons stated herein, CCC respectfully requests that this Court find that Wilson is not entitled to post-judgment interest.

Dated: February 1, 2022

Respectfully submitted,

s/ Burl F. Williams

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Case No. 2012-CP-23-02887

Appellate Case No. 2020-001587

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA
CUSTOM CONVERTING, LLC, Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA
CUSTOM CONVERTING, LLC, Defendants,

vs.

CAROLINA CUSTOM CONVERTING, LLC,.....Counterclaim Plaintiff,

vs.

DAVID WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH
WATER SYSTEMS, INC.,Counterclaim Defendants

OF WHICH CAROLINA CUSTOM CONVERTING, LLC, JOHN GANDIS, AND ANDREA
COMEAU-SHIRLEY are the Appellants

and

DAVID WILSON is the.....Respondent.

RULE 211(b) SCACR CERTIFICATION

The undersigned certifies that the final briefs comply with the requirements of Rule 211(b)
SCACR.

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