

State of South Carolina

Court of Common Pleas

County of Oconee

Planetone Packaging, LLC)

)

Plaintiff,)

Transcript of Record

v.)

2023-CP-37-00232

)

American Pharma Machinery, LLC,)

and Dorothy Pierce)

Defendant.)

October 31, 2023

Walhalla, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

A P P E A R A N C E S:

Christopher B. Major, Esquire
Attorney for the Plaintiff

Dorothy Pierce
Appearing for the Defendant

Lisa Scott
Circuit Court Reporter

P R O C E E D I N G S

* * * * *

1
2
3 THE COURT: All right. *Planetone Packaging v.*
4 *American Pharma Machinery and Dorothy Pierce.*

5 (Parties approached.)

6 THE COURT: All right. This is scheduled first
7 as a motion to set aside default by American Pharma
8 Machinery. And then there is a motion for default
9 judgement filed by the plaintiff.

10 Is -- looking at your motions that you have,
11 sir, is that motion to set aside default on behalf
12 of Ms. Pierce and the corporation?

13 MR. MAJOR: That's my understanding, Your
14 Honor, based on conversations with her prior
15 counsel.

16 THE COURT: Okay. Well, Ms. Pierce, you
17 understand that you are not allowed to represent the
18 corporation in this courtroom, right?

19 MS. PIERCE: Yeah, I know.

20 THE COURT: Okay.

21 MS. PIERCE: That's why I wanted to ask for a
22 continuance ---

23 THE COURT: No.

24 MS. PIERCE: --- so I can hire an attorney.

25 THE COURT: No. That -- that -- you've been

1 advised many times and you understand that, so we're
2 going to go forward today with this hearing.

3 Okay. Now, your motion to set aside the
4 default as to you personally, I'll be glad to hear
5 from you.

6 MR. MAJOR: Your Honor, could I just briefly?
7 One procedural issue ---

8 THE COURT: Yeah.

9 MR. MAJOR: --- on the motion to set aside --
10 or excuse me -- the motion for default judgment. We
11 had staggered those so that -- my clients are based
12 in California and so they wouldn't have to travel
13 until the defendant's motions have been resolved.
14 So we had staggered them so that theirs were going
15 to be heard last month, and then we were going to
16 get ours set for hearing. When Judge Maddox gave
17 them the continuance last time, we had asked will
18 that also apply to our motion, and then they all got
19 dumped on the same hearing. So we just would like
20 to have our motion for default judgement set for
21 another calendar so we can arrange travel.

22 THE COURT: It's not going to happen. You
23 don't need to have your client here.

24 MR. MAJOR: Okay.

25 THE COURT: You -- you're -- you -- how many

1 times you been here on this kind of motion without
2 your client sitting next to you?

3 MR. MAJOR: Understood, Your Honor.

4 THE COURT: Okay. All due respect, it's time
5 to go.

6 MR. MAJOR: Okay.

7 THE COURT: Okay. So, Ms. Pierce?

8 MS. PIERCE: Yes, Your Honor.

9 THE COURT: I'll let you proceed on your motion
10 to set aside judgment as to yourself. Okay. There
11 you go. Thank you.

12 MS. PIERCE: Your Honor, I lost a friend of
13 mine in -- on May 2nd, and he was struck dead by his
14 buddy. He was a minister in Uganda. And because he
15 and I had a lot of activities going on, the project
16 was hurried up together.

17 I had to fly to Uganda. By the time they
18 stopped me, I was actually nearly on my way out to
19 Uganda. And while I was in Uganda, I decided to
20 mail a copy of my motion to dismiss to the Court and
21 I so mailed another copy to the defendant of my
22 motion to dismiss on June 1st.

23 Your Honor, I have sent every documentation
24 that is between the defendants and American Pharma
25 on behalf of the company. So they did business with

1 my company. So I am only here to say that they
2 should remain with the company, and I should be
3 dismissed from the lawsuit because I did business on
4 behalf of the company.

5 Secondly, we provided them with all the
6 remedies. That machine was ready to ship. I
7 offered them another alternative for it. The second
8 machine is -- the other one was delayed. I even
9 offered to make sure that if -- because they said
10 they needed the machine really fast, so I offered
11 them a second alternative that they should keep as
12 soon as the machine is arrived. So I didn't do
13 business with them directly, but with the company.
14 And I have presented the law that states that they
15 can't sue me because I am the owner of a limited
16 liability company. They have to deal with the
17 company directly, so I'm actually the wrong party in
18 this case.

19 THE COURT: Well, actually, I don't think
20 that's what that case holds, but I think that what
21 they said under the circumstances of that case, you
22 had to deal with as the corporation.

23 But the corp -- the cause of actions that are
24 being alleged by your client in the breach of
25 contract, which would be the business, correct?

1 MR. MAJOR: That's correct, Your Honor.

2 THE COURT: You have fraud on both parties,
3 constructive fraud on both parties, breach of
4 contract, fraudulent acts, unjust enrichment, unfair
5 trade practices, and piercing the corporate veil; is
6 that correct?

7 MR. MAJOR: That's correct, Your Honor.

8 THE COURT: Okay. Are you finished with what
9 you had to say as far as ---

10 MS. PIERCE: Yeah, so I was asking the Court to
11 set aside default judgment, and then I will -- I
12 request the Court to dismiss the case against me.

13 And, lastly, I would like to file a
14 counterclaim against them because they ---

15 THE COURT: That's not before the Court today.
16 Okay.

17 MS. PIERCE: All right.

18 THE COURT: First, let me go back to address
19 what you're saying. I read everything before y'all
20 got here, and the plaintiff in this case has
21 rightfully or wrongfully raised some question as to
22 authenticity of some documents that appear to have
23 come from Uganda. So anything that I rule today
24 will be without prejudice to the plaintiff to pursue
25 that. And if established that those are genuine, it

1 can be other sanctions that would be applied at that
2 point in time and I'm clarifying that.

3 According to what you have written, Ms. Pierce,
4 you were served. And then a few days later, you
5 went to Uganda because the death of your friend.
6 While you're in Uganda, you filed your motion to
7 dismiss. Upon your return to the United States, you
8 realized it had not been filed because they filed
9 their motion, so you immediately filed another
10 motion to dismiss.

11 MS. PIERCE: Yes.

12 THE COURT: Okay. That being the case, and you
13 agree that all of those are true? All that -- all I
14 just said is correct and true, correct?

15 MS. PIERCE: Yeah, that is what happened.

16 THE COURT: Okay. Well, the American Pharma
17 Machinery is in default because you cannot represent
18 them and you cannot file a motion to dismiss on
19 their behalf, so they are in default at this
20 juncture. Okay. Again, I need you to prepare an
21 order to that effect.

22 I'm not sophisticated enough to know whether or
23 not these documents filed by Ms. Pierce are true and
24 authentic or not authentic, but I will tell you if
25 what she did -- what she says in filing the motion

1 on her behalf, I think she took reasonable steps to
2 try to protect her interest if, in fact, that's been
3 established. I think the authenticity of exhibits
4 would be established one way or the other whether or
5 not those facts occurred.

6 MR. MAJOR: Your Honor, may I be heard just
7 briefly on that?

8 THE COURT: I'm going to let you be heard, but
9 it seems to me that's the case, that she -- her
10 motion to let her answer should be granted and let
11 her have her own -- have her day without prejudice
12 to you to seek to establish that these documents are
13 fraudulent or not authentic or somehow not what they
14 purport to be. In which event, you've been applying
15 for sanctions which would include striking of any
16 pleadings she may file.

17 Okay. Yes, sir. You may be heard.

18 MR. MAJOR: Thank you, Your Honor. May it
19 please the Court? If I failed to do it before,
20 Christopher Major from Haynsworth Sinkler Boyd for
21 plaintiff.

22 On the bigger picture, as we argued in our
23 brief that we filed when the motion to dismiss was
24 originally filed, it shouldn't matter as to whether
25 she did or did not file in Uganda because she

1 assumed the risk by using a non-sanctioned postal
2 system. She assumed the risk of non-delivery and we
3 cited case law to that effect.

4 There's South Carolina authority that -- that
5 service means delivery at an approved U.S. postal
6 system mailing. Her own motion to dismiss claimed
7 it was served U.S. service by mail. She's now told
8 the Court that that was a false representation in
9 her motion. As far as ---

10 THE COURT: I did not hear her say that, quite
11 frankly.

12 MR. MAJOR: In the -- well, in the -- her
13 position before the Court is that she mailed those
14 documents from Uganda. Well, if you look at the
15 document that she e-mailed me back in July, it says
16 on the certificate of the service, it's got a civic
17 address and it says deposited in U.S. mail,
18 certified mail. So her own motion represented to
19 the world that she served me through the U.S. mail,
20 which she's now said is not correct. So her own
21 motion contradicts what she's saying here to the
22 Court.

23 As to the issue of authenticity, I understand
24 completely what you're saying about not wanting to
25 make a -- you know, concerned about diving too

1 deeply into that, but I took the receipts that
2 Ms. Pierce provided and they have a tracking number
3 on them. And if I may approach?

4 THE COURT: Yes, sir. Would you give her a
5 copy of whatever you give to me?

6 MR. MAJOR: Absolutely. And I also provided a
7 copy of the receipts just to have them handy.

8 Your Honor, what we handed up are two copies of
9 the -- or copies of the two receipts that I was
10 e-mailed yesterday, and then I took the item number
11 in the middle there that starts "RR" for both and I
12 went to the Uganda Ministry web page. I went
13 through the postal service. There's a tracking
14 feature. I entered those numbers and you'll see the
15 printouts of those sheets where they indicate those
16 two items were mailed on October 11th of 2023 to the
17 United States.

18 One of them still hasn't been delivered, which
19 I'm presuming based on her e-mail is the one to me,
20 but there's no reference in here of any mailing in
21 June. They were mailed in October, this month, just
22 a few weeks ago. So that's the basis, Your Honor,
23 for -- for us saying that there are serious, serious
24 questions about the authenticity of these documents.
25 And we've believe that facially just from the

1 information she provided and the Uganda government
2 website, it's pretty obvious that they're not
3 authentic, Your Honor.

4 THE COURT: I don't need you to raise your
5 hand. I'm going to let you speak. Okay.

6 MS. PIERCE: Okay.

7 THE COURT: Two things, Mr. Major. You said
8 there is a case that says that if she assumed the
9 risk of using this service that has not been
10 recognized, that's no defense to being held in
11 default. Does that case actually say that? Tell
12 me about it.

13 MR. MAJOR: It's not a South Carolina case,
14 Your Honor. It's a tax court case where someone
15 tried to serve a tax protest via certified mail out
16 to an international address.

17 THE COURT: Is that based on federal rules?

18 MR. MAJOR: That based on the federal postal
19 regulations, that is not an authorized method of ---

20 THE COURT: But the federal rules of civil
21 procedure?

22 MR. MAJOR: Yes, Your Honor.

23 THE COURT: Okay.

24 MR. MAJOR: And then we've cited South Carolina
25 cases that say that service is affected by

1 depositing in the U.S. mail. And I think -- I think
2 we know why the mailbox rule is -- is in place is
3 because we have reliable mail systems that everyone
4 uses every day to serve process. And we know that
5 if you put it in there, it's probably going to be
6 delivered. When you go outside of that system, I
7 think you're at your own risk, Your Honor, and you
8 assume the risk of ---

9 THE COURT: Well, you know what? Let me do
10 this. I think I'm going to change gears on what I
11 was saying earlier because I think it's, quite
12 frankly, not necessarily fair to put the burden on
13 your client to establish authenticity, even though
14 I'd certainly leave you that road if that's the way
15 you want to pursue it.

16 It seems to me, Ms. Pierce, you've been -- I've
17 seen you appear in this courtroom many times and so
18 I know you know your way around it a little bit
19 because I've seen you and watched you. But if, in
20 fact, you did mail this from over in Uganda, it
21 seems to me that you did take the risk of -- assumed
22 the risk of it not getting here.

23 I would -- the question I have in my mind is
24 if, in fact, she mailed it on June 1st as it says on
25 this report, that it just was not until October that

1 it actually made it to be sent over, or is that a
2 whole different situation that you're talking about?
3 And I don't -- I don't know that you know or I know.

4 MR. MAJOR: And I also, the sender, according
5 to the receipts, is a Mr. Oscar Oshock (phonetic).
6 If I'm pronouncing that incorrectly, I apologize.
7 He's not here. So even the person who supposedly
8 sent it is not here to authenticate, so I don't know
9 how Ms. Pierce can do that either.

10 THE COURT: Well, I'm going to leave the
11 burden -- here's what I'm going to do in this case.

12 MS. PIERCE: Can I ---

13 THE COURT: First -- I'm going to let you
14 speak. I'm going to find that American Pharma
15 Machinery, LLC, they're in default. It's done.
16 It's clearly -- even if you take the facts as
17 alleged by Ms. Pierce as being true, they would
18 still be in default because she can't represent the
19 corporation.

20 Now, I've stopped you from speaking. I'm going
21 to allow you to have a few words in response.

22 MS. PIERCE: Your Honor, postal in Uganda is
23 actually a subsidiary of the U.S. postal mail.

24 THE COURT: Ma'am?

25 MS. PIERCE: Postal in Uganda is a partner of

1 the U.S. postal mail.

2 THE COURT: I don't know that.

3 MS. PIERCE: The United States postal mail
4 still is on the government mail subsidiary across
5 the country -- across the world. So postal
6 Uganda -- this package was mailed on this day by my
7 personal assistant, and then it was returned. And
8 then they actually called personal assistant, and I
9 advised them just to mail it. Send it back. So the
10 package was mailed, it was undeliverable, and then
11 it was returned.

12 Now, if he can find the tracking, just -- just
13 call the postal services in Uganda. This is their
14 document. They will validate the document. If they
15 need a verification and receipt of it from the
16 person that sent it from the postal services, I will
17 provide that.

18 THE COURT: No. Here's what I'm going to do.
19 Instead of him proving it, I'm going to let you
20 prove it.

21 MS. PIERCE: Yes.

22 THE COURT: You are in default by -- by all
23 means, you know, from what's happened in this case.
24 So I'm going to let you establish that, in fact,
25 these are legitimate and what you said happened

1 happened.

2 MS. PIERCE: Yes.

3 THE COURT: All right. So here's what I'm
4 going to do. I think it's appropriate that I'm
5 going to find that you're in default now. And, in
6 fact, you will have a right to establish that you're
7 not in default by showing that you did exactly what
8 was done in -- in your allegations that on June 1st
9 you mailed this.

10 I'm not ready to find that that's not
11 reasonable under the circumstances and then hold her
12 in default. If she establishes that this is what
13 happened as she alleges, so the burden's on her,
14 then she will not be in default and be allowed to
15 respond. If she is not able to do that, she's
16 already in default. Then we'll just have a damages
17 hearing. Okay.

18 MS. PIERCE: Okay.

19 THE COURT: Now, the damages against American
20 Pharma will be established at some later date.
21 They're in default. That goes without saying.

22 Okay. Anything further from the plaintiff on
23 this matter?

24 MR. MAJOR: Only on the default judgment
25 motion. I think I understood Your Honor that we're

1 going to deal with the damages as to American Pharma
2 at a later date?

3 THE COURT: Yeah.

4 MR. MAJOR: So that would be nothing further
5 then, Your Honor.

6 THE COURT: Okay. And I'm going to ask that
7 you prepare me an order and that you find that even
8 if what Ms. Pierce is true, and I have no doubt that
9 it's not, that she could not file anything on behalf
10 of American Pharma, LLC; therefore, the corporation
11 is in default.

12 I'm going to find that she, at this juncture,
13 has to establish this authenticity and validity of
14 the documents that she claims them to be and then
15 the time frames that she said that those acts were
16 performed -- the work performed at that time. If
17 she can, then she will not be in default. It'll
18 require another hearing for us to make that call.
19 If she can't, then she is in default.

20 MR. MAJOR: Understood, Your Honor.

21 THE COURT: So I would think probably -- I'm
22 going to leave it up to you, Mr. Major. If you want
23 to go forward with the hearing of this corporation,
24 that's up to you. If you want to wait until I do it
25 altogether, that's up to you.

1 MR. MAJOR: I'd rather do it altogether, Your
2 Honor.

3 THE COURT: I figured you probably would. All
4 right. Anything further from the plaintiff?

5 MR. MAJOR: Nothing further, Your Honor.

6 THE COURT: And you know you got to send her a
7 copy of the order before you send it to me?

8 MR. MAJOR: Yes, Your Honor.

9 THE COURT: Ms. Pierce, is there anything
10 further?

11 MS. PIERCE: Oh, no, sir. When I have the
12 proof, do I send it to the Court and to him?

13 THE COURT: You guys will schedule that. And
14 y'all deal with each other and then we'll -- when
15 y'all are ready, we'll have a hearing on it. It
16 doesn't have to be me. It can be any circuit court
17 judge. I'm glad to hear it or -- or somebody else.
18 Okay.

19 MS. PIERCE: Okay. Thank you, Your Honor.

20 MR. MAJOR: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (Parties were dismissed.)

23 THE COURT: Ms. Pierce, I am sorry. You have a
24 motion to dismiss, and I was going to send you home
25 and not have a chance to argue it. Okay.

1 MS. PIERCE: Your Honor, what did you say
2 again?

3 THE COURT: Your motion to dismiss that you
4 said earlier I think, but it's basically, if I
5 recall, it's based on the case that is about the
6 LLCs. And your -- your position, as I understand
7 it, is I am single member LLC. As such, my tortious
8 conduct as a member of the LLC can't hold me
9 personally liable. Only the corporation can be held
10 liable; is that right?

11 MS. PIERCE: That's right.

12 THE COURT: Anything other than that?

13 MS. PIERCE: That is really just the case. I
14 did all the business on behalf of the company. All
15 the e-mails, all the contracts were on behalf of the
16 company. I did everything but the remedy.

17 THE COURT: Well, let me say this: Breach of
18 contract case is against the corporation only, so
19 that's not subject to your motion.

20 As to the fraud, constructive fraud and breach
21 of contract, fraudulent acts, I will deny your
22 motion. I don't think that the act would prevent
23 you being responsible for fraudulent conduct as an
24 individual.

25 Unjust enrichment, I don't see.

1 Unfair trade practice is only against the
2 business, right?

3 MR. MAJOR: Yes, Your Honor.

4 THE COURT: And pierce the corporate veil is
5 piercing the corporate veil.

6 Unjust enrichment stays, and it'll be -- it
7 would go against them. I think that that would not
8 shield you either as a single member LLC.

9 So the four causes of action -- fraud,
10 constructive fraud, breach of contract, fraudulent
11 act, unjust enrichments -- would not, in my
12 judgment, be nullified because it is a single member
13 LLC.

14 I will note for the record, however, that the
15 case law seems to still be outstanding on that. I
16 haven't heard -- I'm not aware of a case that has
17 found the answer. Are you aware of one, Mr. Major?

18 MR. MAJOR: No, Your Honor. My understanding
19 is -- as I read the cases is, a member can't be
20 vicariously liable just by virtue of being a member,
21 but they're still liable for their own personal,
22 especially intentional torts.

23 THE COURT: Well, it seems, yeah. I think
24 that's probably right. Anyway, all said and done,
25 I'm denying your motion. Okay. So I'm going to ask

1 you to include that in your order.

2 And now I think we have concluded. Any other
3 business at this juncture, Ms. -- Ms. Pierce?

4 MS. PIERCE: No.

5 THE COURT: Okay.

6 MS. PIERCE: And I can't say anything related
7 to ---

8 THE COURT: I mean, certainly, I'm going to let
9 you argue. I thought I let you argue it already,
10 but I'll be glad to hear if you want to -- I didn't
11 give you a whole lot of ---

12 MS. PIERCE: So, Your Honor, when they made a
13 payment for the machine, I went ahead and actually
14 used the money to produce the machine. And I have
15 the machine available, but they do not want the
16 machine anymore. The machine -- the money they
17 paid, I didn't use it. The money they paid was used
18 to make the machine for them. So how would unjust
19 enrichment even be on me and yet I didn't use the
20 machine. And the machine is still available.

21 THE COURT: Well, that's something that will be
22 argued at a trial and not in a motion.

23 MS. PIERCE: Okay. All right.

24 THE COURT: And it may be you're right with
25 that. At a motion, it's just not -- it's not the

1 time to have that done. Okay.

2 MS. PIERCE: Okay.

3 THE COURT: All right. Anything further,
4 Ms. Pierce?

5 MS. PIERCE: Not now.

6 THE COURT: Anything further, Mr. Major?

7 MR. MAJOR: No, Your Honor.

8 THE COURT: All right. That will conclude this
9 hearing. If you'll get that order and send it to
10 her first.

11 MR. MAJOR: Absolutely. Thank you, Your Honor.

12 THE COURT: All right. Thank you so much.

13 (The proceedings concluded at 3:19 p.m.)

14 - - -

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Oconee County, South Carolina, on the 31st day of October, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 13, 2024

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter