

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. SUPREME COURT

CERTIFIED QUESTIONS FROM  
UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
Sherri A. Lydon, United States District Judge

Jean Watkins, as Personal Representative of the Estate of Mildred Watkins, .....Plaintiff,

v.

Countrywood Nursing Center, LLC, Sterling Healthcare, Inc., Guardian Resources, LLC, Robert  
W. Hagan, LaDonna Hagan, Chadwick S. Hagan, and Brooke Hagan McGee, .....Defendants.

Appellate Case No. 2025-001718

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REPLY BRIEF OF PLAINTIFF

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## ARGUMENT

### I. Reply to Defendants' Response to Certified Question #1

*In an action to pierce the corporate veil, can defendants who were not parties to the underlying suit defend against liability on the grounds that they were not liable for the underlying claims? In other words, does South Carolina follow the rule outlined in *Minton et al. v. Cavany*?*

Defendants err in claiming that due process entitles them to relitigate settled questions of underlying liability in this subsequent “piercing the veil” litigation, arguing that inability to do so “would in effect deny them their own day in court.” (Brief of Defendants at 9)

It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights.

Webster v. Clanton, 259 S.C. 387, 391, 192 S.E.2d 214, 216 (1972). Of course, the Defendants are in court with notice of the “piercing the veil” allegations, are being heard, and the trial court will only adjudicate the Defendants’ personal liability after consideration of the facts as applied to the two-pronged piercing analysis set forth within Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984) and its progeny. Thus, the Defendants are enjoying their due process rights.

The Defendants’ contention that this piercing the veil litigation is derivative of underlying liability litigation is unremarkable. “The main purpose of piercing the corporate veil is to prevent the likelihood of injustice or unfairness if the limited liability enjoyed by the corporate entity is sustained.” Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp., 374 S.C. 588, 599, 649 S.E.2d 135, 141 (Ct. App. 2007), citing Sturkie at 458-59, 313 S.E.2d at 318. Without liability (or potential liability), there would be no purpose to disregard the corporate entity. But this relationship in no way makes liability an element of proof of the piercing analysis, and Defendants offer no authority supporting such an assertion.

Nevertheless, Defendants contend that the reasoning of Minton v. Caveny, 56 Cal.2d 576, 15 Cal.Rptr. 641 (Cal. 1961) and its associated cases establishes “[t]he constitutional right to due process compelled the holding that the alleged alter egos could not be bound to the underlying judgment without having had the opportunity to litigate the underlying liability.” (Brief of Defendants at 11) A closer reading of this line of authority, however, reveals it to be an artifact of a procedural mechanism unique to the State of California (Cal. Civ. Proc. Code § 187) providing for post-judgment petitions for binding third parties to an existing judgment. Defendants note that Minton relied (in part) upon the case of Motores De Mexicali, S. A. v. Superior Ct. In & For Los Angeles Cnty., 51 Cal. 2d 172, 331 P.2d 1 (Cal. 1958). Motores describes the manner in which such an amendment affects the due process rights of previously unnamed parties.

Further, the same facts which serve to distinguish the cited cases also indicate that an amendment to the judgment here to include Resnick and the Cowans would constitute a denial of due process of law. That constitutional provision guarantees that any person against whom a claim is asserted in a judicial proceeding shall have the opportunity to be heard and to present his defenses. To **summarily add** Resnick and the Cowans to the judgment heretofore running only against Erbel, Inc., without allowing them to litigate any questions beyond their relation to the allegedly alter ego corporation would patently violate this constitutional safeguard.

Id. at 176, 331 P.2d at 3 (internal citations omitted)(emphasis added).<sup>1</sup> Much more recent analysis of Motores emphasizes that it “held that when plaintiffs ‘*summarily* add’ individuals to a

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<sup>1</sup> The other cases cited by Minton v. Caveny also stem from litigation surrounding Cal. Civ. Proc. Code § 187. See Thomson v. L. C. Roney & Co., 112 Cal. App. 2d 420, 246 P.2d 101 (Cal. 1952), Mirabito v. San Francisco Dairy Co., 8 Cal. App. 2d 54, 47 P.2d 530 (Cal. 1935). The language of Minton v. Caveny is unclear as to whether it also concerned a Section 187 post-judgment amendment, though it does contain language referring to a “present action” suggesting that is a possibility.

previously entered default judgment against a corporation, those individuals are denied due process.” Lopez v. Escamilla, 79 Cal. App. 5th 646, 652, 295 Cal. Rptr. 3d 63, 68 (Cal. App. 2022)(emphasis in original). Lopez declined to extend the Motores line of authority to piercing the veil actions filed subsequent to an initial judgment.

Unlike the facts in Motores, Lopez did not move to summarily add Escamilla to the judgment. Also, unlike Motores, this case involves the beginning of a civil action, not a post judgment summary proceeding. Escamilla will have the opportunity to answer the complaint, engage in discovery, and file pre-trial motions. Lopez must meet her burden of proof to support her theory of alter ego liability claims.

Id. at 652, 295 Cal. Rptr. 3d at 68. Lopez’s analysis applies neatly to the factual and procedural posture of the Plaintiff’s case. Thus, to the extent that Minton may have applied the Motores line of authority to full-blown piercing litigation, Lopez suggests California courts no longer observe that ruling.

The additional foreign authority Defendants set forth offers little help to their position. Defendants point to Dunbar v. Finegold, 501 P.2d 144 (Colo. App. 1972), as being “particularly instructive.” As Defendants admit, however, the Dunbar plaintiff made no attempt to pierce the corporate veil but directly sued Finegold in tort as an officer of the offending corporation with “no evidence that Shirley Finegold participated in [the tortious activity].” Id. at 146. For this reason, the Court held Finegold faced no liability because “her personal liability does not arise merely by virtue of her office but must be the result of her own tortious conduct.” Dunbar v. Finegold, 501 P.2d 144, 146 (Colo. App. 1972). Dunbar conducted no piercing analysis at all. North Atlantic Distribution, Inc. v. Teamsters Local Union No. 430, 497 F. Supp.2d 315 (D.R.I. 2007) and Bates Mktg. Assocs., Inc. v. Lloyd’s Elecs., Inc., 190 N.J. Super. 502 (App. Div. 1983) both lean on the Minton/Motores line of authority but fail to recognize its limited applicability. Finally,

Restatement (Second) of Judgments § 59(5) appears to have had very little adoption or even reference beyond these few cases.

Finally, Defendants state the Plaintiff “improperly assert[ed] an unresolved fact in dispute” in stating “[s]uch Defendants—whether previously named or not—have demonstrated notice of the prior litigation...”. (Brief of Plaintiff at 5) This is a mistaken reading of Plaintiff’s brief, which was referring to any generic defendant that would satisfy the “fundamental unfairness” prong of the Sturkie test. On the same page, Plaintiff’s brief notes that “the parties dispute the varying degrees of ownership and/or control each Individual Defendant possessed...”. (Brief of Plaintiff at 5) But should discovery reveal that one or more Individual Defendants “was aware of the plaintiff’s claim against the corporation, and ... acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff’s claim in the property,” Sturkie at 459, 313 S.E.2d at 319, would not fall within Minton’s description of a subsequent defendant who neither a party to the underlying litigation nor in control of the litigation. Minton at 581. Thus Minton’s due process concerns are subsumed within the Sturkie test and there is no cause to permit relitigating of underlying liability.

## **II. Reply to Defendants’ Response to Certified Question #2**

*Does the answer change where the underlying judgment resulted from default or from sanctions striking the corporate defendant’s answer?*

Plaintiff reiterates that, because the question of underlying liability is irrelevant to a stand-alone piercing the veil action, questions of collateral estoppel on underlying liability findings do not arise in this case. As a result, the Court need not reach Certified Question #2.

Should the Court reach the question, however, Defendants err in arguing that no distinction exists between a Rule 37 sanctions default judgment and a Rule 55 “failure to defend” default

judgment on the question of whether the merits of the underlying lawsuit were “actually litigated.”<sup>2</sup> The observation that “[t]he sanction of striking an entire pleading has the same effect as a default judgment” (Brief of Defendants at 18) is unremarkable. There is no dispute that the end result of striking an answer—the admission of the factual allegations of the complaint—is identical to that of a default judgment obtained through a failure to answer. The paths by which that end result is reached in each scenario, however, are quite different. “Courts assessing the preclusive effect of prior judgments have ‘distinguish[ed] between ‘true’ default judgments where the defendant failed to answer the complaint from ‘penalty’ default judgments after a [d]efendant had filed an answer.’” In re Dardinger, 566 B.R. 481, 496–97 (Bankr. S.D. Ohio 2017), citing Trentadue v. Zimmerman (In re Zimmerman), No. 15–3093, 2016 WL 929264, at \*5 (Bankr. N.D. Ohio Mar. 10, 2016); In re Bursack, 65 F.3d 51, 54 (6th Cir. 1995)(differentiating a “true default judgment” from a situation in which the defendant had, among other things, filed an answer and participated in discovery but failed to appear at trial and holding that, in the latter situation, the issues were actually litigated under applicable state law); Anderson v. Fisher (In re Anderson), 520 B.R. 89, 95 (6th Cir. BAP 2014) (drawing a parallel to Bursack and affirming bankruptcy court's decision to give preclusive effect to penalty default judgment under applicable state law); Wolstein v. Docteroff (In re Docteroff), 133 F.3d 210, 215 (3d Cir. 1997) (“This is not a typical default judgment where a

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<sup>2</sup> Much of the authority offered by the Defendants is inapposite. Bertucelli v. Carreras, 467 F.2d 214 (9<sup>th</sup> Cir. 1972) does not compare Rule 37 sanctions orders and Rule 55 default judgments at all but rather compares striking orders under Rules 11 and 12 of the Federal Rules of Civil Procedure. Likewise, Skolnick v. Hallett, 350 F.2d 861 (7<sup>th</sup> Cir. 1965) does not attempt to equate Rule 37 orders to Rule 55 orders but merely affirms a trial courts dismissal of a complaint pursuant to Fed. R. Civ. 12(f) for being “replete with scurrilous, offensive and objectionable allegations...”. Id. at 862. In re Shepard, 2010 WL 98983 (Bankr. D. Md. Jan. 7, 2010), examines the practical effect of an order striking a “notice of objection” under the Bankruptcy Code which the Court appears to equate with “an order striking a pleading [which] has the same effect as an order of dismissal.” Id. at \*3.

defendant neglects or elects not to participate in any manner .... To the contrary, for several months, [the defendant] participated extensively in the lawsuit.”); Gober v. Terra + Corp. (In re Gober), 100 F.3d 1195, 1204–05 (5th Cir. 1996) (distinguishing the defendant's post-answer default from a no-answer default and noting that the defendant “had the right to participate in the damages hearing and contest the extent of his culpability, even though he could not contest liability *per se*”); Bush v. Balfour Beatty Bahamas, Ltd. (In re Bush), 62 F.3d 1319, 1324 (11th Cir. 1995) (declining to give the defendant “a second bite at the apple” after default was entered against him for obstructive conduct).

In this case, the corporate defendants contested underlying liability for years and were only prevented from continuing to do so after being found culpable for severe discovery abuse. As a result, the questions of liability were “actually litigated” in the underlying action for the purposes of collateral estoppel.

### CONCLUSION

Defendants conclude their brief by insisting that they “should not be precluded from defending themselves in a subsequent proceeding attempting to attach an underlying liability against them.” (Brief of Defendants at 20) Defendants have every right to defend themselves against the allegations of this case—but only the allegations of this case. Defendants do not have the right to relitigate the questions of underlying corporate liability that previously have been resolved.

Respectfully submitted,

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