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Feb 11 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Judge

Appellate Case Number 2023-000353

Civil Action Number 2018-CP-23-01643

Jason Tuck Appellant,

v.

On the Mark Automotive Repair and Refinishing, LLC d/b/a On the Mark Automotive, LLC, Carolina's Best Auto Sales, LLC, Carolina's Best Finance, 828A St. Mark Road, LLC, Affordable Auto Finance, Inc., Southeastern Recovery and towing, LLC, John D. Watts III (a/k/a John D. Watts), Respondents.

**Appellant's Motion to Reconsider
With Suggestion for En Banc Review**

Appellant moves, pursuant to Rules 221(a), SCACR, for reconsideration of this Court's per curiam Order filed January 28, 2026. The Grounds for this Motion are as follows:

A. Single Business Enterprise

1. **This Court overlooked facts in concluding that Tuck did not show abuse, fraud, or wrongdoing resulting from the recognition of corporate forms.**

This Court erroneously concluded that Tuck has “failed to specifically show abuse, fraud, or wrongdoing resulting from a recognition of the corporate forms of Corporate Respondents.” [Opinion at 2 ¶ 1]. The corporations were established and operated to perpetrate abuse, fraud, and wrongdoing. And multiple witnesses with first-hand knowledge have described the abuse, fraud, and wrongdoing.

Start with On the Mark (“OTM”). It operates a garage on land titled to 828A, LLC to which OTM pays no rent. [Tuck App. Br. 17-18; Tuck Reply at 10-11]. Nor does OTM manage its affairs as a legitimate business. Watts uses OTM to sabotage vehicles and fraudulently charge consumers to eliminate their equity. [Tuck App. Br. 5-7, 21-23]. He diverts OTM’s income to a personal account in his name and through bogus bookkeeping entries that Watts could never defend as legitimate business expenses. Watts also diverts OTM’s revenues to pay employees of other LLCs (e.g., the towing company Southeastern Recovery) to skirt the workers compensation law. [*Id.* at 28-31, 33-34]. Watts even created a set of new unlicensed PEOs solely to divert money from OTM and other entities and to commit more fraud. [*Id.* at 31-32].

But, of course, one cannot understand the scope of Watts’s wrongdoing by looking at just OTM because OTM was just one cog in the machine. Watts seamlessly used all the integrated entities and commingled their revenue. [*E.g., id.* at 37-41]. In reality, there were no separate entities, and that is the key issue. Watts created an integrated system of entities that defrauds consumers, employees, and the government in ways Watts could

never achieve through a single entity. Equity in South Carolina has never been invoked to protect such persons just because they filed a form with the Secretary of State.

- 2. The Court misapplied the law and overlooked facts by citing authority for the proposition that the trial court was in a superior position to assess credibility issues when there is no basis for discrediting the corroborating witnesses.**

This Court cited *Stoneledge at Lake Keowee Owners Assoc. v. IMK Dev. Co.*, 435 S.C. 109, 119 S.E.2d 542, 548 (2021) for the proposition that “the trial court sits in a better position to assess witness credibility.” [Opinion at 2 ¶ 1]. Such deference is unwarranted as the trial court did not evaluate live testimony on equitable relief. Neither Watts nor the witnesses who testified about his fraudulent conduct testified before the trial court during the non-jury equitable relief portion of the proceedings. [Appellant Br. 2, 19].

Further, the trial court did not explain any credibility findings. As previously noted, the trial court simply signed Respondents’ proposed order without any changes. [*Id.* at 2]. Neither the trial court nor this Court provided any legitimate basis for rejecting the irrefutable testimony from Tuck’s witnesses. [*Id.* at 24–28; Tuck Reply at 8-9]. Nor is there any question: (1) that the jury rejected all of Watts’s many misrepresentations; and (2) that Watts even recanted his own statements. [See Tuck App. Br. at 19-21, 24-26].

B. Alter Ego/Piercing

- 1. This Court’s reliance on Section 33-44-303(b) is improper for several reasons.**

The Court cites S.C. Code Ann. § 33-44-303(B) (2006) (“Section 303(b)”) for the proposition that “On The Mark—the party Tuck obtained a judgment against—and three of the other five Corporate Respondents exist as LLCs. Those Corporate Respondents

formed as LLCs are statutorily exempt from liability arising from failure to follow corporate formalities.” [Opinion at 3 ¶ 2]. This reasoning is erroneous for several reasons.

a) Section 303(b) was never at issue

The Court’s reliance on Section 303(b) is inappropriate because Tuck has never had to deal with this assertion. The trial court never cited the statute. Nor did Respondents. As shown below, this reason does not appear in the Record such that Tuck could have known to address it.

b) Section 33-44-303(b) has no application

This Court seriously misapprehended the scope of Section 33-44-303(b) to create complete immunity. The statute states: "The failure of a[n LLC] to observe the usual company formalities or requirements **relating to the exercise of its company powers or management of its business** is not a ground for imposing personal liability on the members or managers for liabilities of the company." S.C. Code § 33-44-303(b) (emphasis added). This case has nothing to do with exercising the legitimate powers or management of an LLC.

The concept of company powers is explained earlier in the statute. S.C. Code § 33-44-112 (“Section 112”). It includes the transaction powers to sue and be sued, purchase and sell property, make contracts, lend and receive money, and to conduct business. S.C. Code § 33-44-112(b). None of this is at issue. The statute does not authorize or empower such entities to engage in wrongdoing. To the contrary, the statute provides discretion to “do any other act, **not inconsistent with law**, that furthers the business of the limited liability company.” *Id.* § 33-44-112(b)(12) (emphasis added).

In other words, Section 303(b) refers only to legitimate transactions and does not license raiding corporate coffers, stealing, skirting consumer laws, engaging in insurance

fraud, misleading, lying, and defrauding consumers. Those are actions “inconsistent with law.”

For a similar reason, this Court also erred in citing *Pertuis* for the proposition that S-corporations are permitted to disregard corporate formalities. [Opinion at 3 ¶ 2]. The *Pertuis* Court’s citations to other statutes governing only corporations is erroneous and inapplicable. The closed corporation statute cited in *Pertuis* has nothing to do with “Subchapter S” status. Subchapter S is a federal taxation issue,¹ and closed corporation and “Subchapter S” are not synonymous. See Shawn M. Flanagan, *Update on Piercing the Corporate Veil*, SC Lawyer, March 2019 26, 31. Further, the cited statute does not even relate to liability protections available to closed corporations under state law. This Court compounded the error by extending the error in *Pertuis* to LLCs that are not governed by the closed corporation statute.

2. There is unrefuted evidence that Watts raided OTM after Tuck’s claim.

This Court erred in finding that there is no evidence that Watts “acted in a self-serving manner to avoid paying the judgment.” [Opinion at 3 ¶ 2 (citing *Sturkie v. Sifly*, 280 S.C. 453, 459, 313 S.E.2d 316, 319 (Ct. App. 1984)]. This reasoning is an inaccurate statement of the law.

The *Sturkie* Court noted that the issue is awareness “of the plaintiff’s claim,” and not an ultimate judgment. *Sturkie*, 280 S.C. at 459, 313 S.E. 2d at 319. Watts knew what he had done to breach Tuck’s contract on March 5, 2018, and Tuck commenced this claim within weeks.

¹ <https://www.irs.gov/businesses/small-businesses-self-employed/s-corporations>.

Most of the evidence of Watts raiding OTM relates to Watts's wrongdoing after March 2018. For example,

- After Watts learned that his bookkeeper provided evidence in discovery that exposed Watts's improper credit card usage, Watts doctored the books to show bogus part purchases (to cover personal spending). [Tuck Br. Of App. 11-12]
- In 2021, while this case was pending below, Watts put more than two dollars of personal spending down as business expenses for every dollar of profit. [Id. at 10]
- In 2021 alone, there were 4548 improper credit card charges paid for by Watts's corporations. [Id. at 11].
- In 2020, there were 4075 personal charges on the corporate credit cards. [Id.].
- The testimony about Watts scrapping cars and pocketing the money occurred post-claim, with Watts relying on post-claim books from 2020 and 2021 to show that he had stopped the practice. In fact, this effort just exposed more evidence of Watts diverting corporate funds post-claim. [Id. at 8 & n. 5].
- Watts created an unlicensed PEO in his wife's name to charge OTM and other companies even though she performed no work. [Id. at 14-17].

And Watts testified that, after all the accounting issues reviewed, neither Watts nor On The Mark will pay the judgment. [Tuck Reply Br. at 2]

3. This Court misapplied the law and misapprehended facts related to the fundamental unfairness analysis.

This Court misapprehended both the law and the facts in finding that "Tuck failed to show OTM acted in a self-serving manner to avoid paying the judgment." [Opinion at 3 ¶ 2]. *Sturkie* does not require proof that a motive of the wrongdoing is to avoid paying the judgment. *Sturkie* only suggests that the misconduct be "in disregard of the plaintiff's claim." *Sturkie*, 280 S.C. at 459, 313 S.E.2d at 319. And that is undeniable here.

Watts has continued to drain OTM of any ability to satisfy the judgment. While siphoning off OTM's revenues, Watts admits that he has no plans for himself or OTM to pay the judgment. [Tuck Reply Br. at 2].

This Court's decision that equity somehow creates immunity for those who continue to bilk a company is contrary to every maxim of equity. "[W]hen 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." *Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008) (quoting *Sturkie*, 280 S.C. at 457, 313 S.E.2d at 318). This Court's Opinion turns that notion on its head.

4. Respondents never argued that the purpose of the bad acts are to avoid paying a judgment.

This Court also erred in moving the goalposts again on Tuck. Respondents did not argue that Tuck cannot recover because wrongdoing preceded the breach of contract in March 2018. Nor did that appear to be the trial court's basis for denying relief.

5. Continued wrongdoing is enough to invoke equitable remedies.

This Court erroneously suggests that wrongdoing that precedes a claim is irrelevant in determining whether to invoke equitable remedies. [Opinion at 3 ¶ 2 (citing *Sturkie v. Sifly*, 280 S.C. 453, 459, 313 S.E.2d 316, 319 (Ct. App. 1984)]. The *Sturkie* Court never said that.

In *Adkins v. I'On Co.*, 439 S.C. 568, 889 S.E.2d 537 (2023), for example, the defendant developers created various entities that "furthered [their] ability[y] to refrain from doing that which they repeatedly" promised to do. *Id.* at 593, 889 S.E.2d at 550. The defendants in *Adkins* did exactly what Watts has done here. They formed various corporate entities for no legitimate purpose other than to erect a barrier to obtaining any relief. It did not matter in *Adkins* that the cause of action arose *after* the wrongdoing commenced. And it should not matter here.

Such a rule would simply reward wrongdoers for the very kind of scheming and planning that are Watts's hallmarks. In other words, the effect of this Court's ruling is that wrongdoers have carte blanche to engage in wrongdoing if they act fraudulently and inappropriately before creating a specific claim. No principle of equity countenances such a result. And as shown above, such a rule would not even apply here because, contrary to the Court's opinion, Watts made Tuck's judgment uncollectible *after* Tuck's claim arose.

The Court's analysis also conflates liability issues with issues of remedy. There is no requirement that the wrongdoing be the sine qua non of the harm for which the plaintiff seeks a remedy. Both the single business enterprise doctrine and piercing the corporate veil (the equitable remedy of alter ego) are equitable *remedies* that are sometimes not even raised prejudgment. *Drury Dev. Corp.*, 380 S.C. at 102, 668 S.E.2d at 801. In other words, there is no nexus requirement between issues of liability and equitable relief.

C. Request for en banc review.

Tuck respectfully requests that the whole Court rehear and review this matter. This is not a case of an entrepreneur innocently muddling the lines between legitimate businesses. Watts, a former attorney with a tax LLM, specifically set up integrated entities for no identifiable purpose other than to commit fraud while keeping all assets at bay. The Court of Appeals decision not only tolerates this in the name of equity, but it suggests that inapplicable statutes create an impenetrable wall.

Such a wall is inappropriate. This Court has done what Watts never did. It recognized corporate forms that Watts ignored daily. It has never been the law in South Carolina that one can misuse corporate forms to commit fraud and drain all income and

assets, as long as they file an LLC formation document. But that is the effect of the Court's Order.

Respectfully submitted this 11th day of February 2026.

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Mark Road, LLC, Affordable Auto Finance, Inc., Southeastern Recovery and towing,
LLC, John D. Watts III (a/k/a John D. Watts), Respondents.

Proof of Service

The Undersigned hereby certifies that on the date indicated below he served counsel for Respondent with a copy of Appellant's Motion to Reconsider with Suggestion En Banc by via e-mail to:

Bruce W. Bannister: BBanister@bannisterwyatt.com

Ryan Pasquini: RPasquini@bannisterwyatt.com

February 11, 2026.

s/ Brian P. Murphy

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