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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Firewalker Hot Sauce Company, LLC,
Respondent,

v.

American Pharma Machinery, LLC, Dorothy Wells a/k/a Dorothy Alweny a/k/a Queen Dorothy Amolo a/k/a Dorothy Pierce, and the Estate of Doyle Elton Pierce,
Defendants,

Of which Dorothy Pierce is the Appellant.

Appellate Case No. 2026-000480

INITIAL BRIEF OF APPELLANT

Respectfully submitted this August 8, 2026

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2. Whether the circuit court abused its discretion by refusing to excuse Mrs. Pierce's eleven-day delay and entering default despite her prompt appearance, active participation, meritorious defenses, and the absence of demonstrated prejudice.
3. Whether the default against Mrs. Pierce must be vacated where she was an appearing defendant, received less than the notice required by Rule 55(b)(2), SCRCP, and had filed opposition despite the court's finding that "no objection" had been filed.
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5. Whether the circuit court's alter-ego determination was legally sufficient where the record and final Order did not establish the requirements for piercing APM's LLC veil under South Carolina law.
6. Whether SCUTPA liability and treble damages could be imposed upon Mrs. Pierce without findings that she personally committed, participated in, directed, or authorized conduct satisfying the statutory requirements for liability and trebling.
7. Whether fraud could independently support judgment against Mrs. Pierce absent a particularized pre-sale misrepresentation by her and findings establishing the elements of fraud against her individually.
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III. STATEMENT OF THE CASE

This appeal arises from a commercial dispute concerning a sachet-packing machine sold by American Pharma Machinery, LLC ("APM") to Firewalker Hot Sauce Company, LLC ("Firewalker"). The written quotation and invoice identified APM as the seller, and Firewalker paid APM the $16,000 purchase price. Mrs. Dorothy Pierce executed no personal contract or guaranty and received no payment individually. Firewalker nevertheless asserted contract, warranty, fraud, SCUTPA, and alter-ego claims against APM, Mrs. Pierce, and the Estate of Doyle Elton Pierce. Mr. Pierce had died before suit was filed and had no ownership interest in APM or contractual involvement in the transaction. (R. pp. –.)

After service of the Amended Complaint, Mrs. Pierce filed her individual Answer, Affirmative Defenses, Notice of Appearance, and sworn Affidavit eleven days after Firewalker's calculated response deadline. She thereafter personally appeared at the August 30, 2021 default hearing and opposed Firewalker's Motion for Default Judgment. The circuit court did not enter default but rescheduled the motion while related probate proceedings remained pending. The resulting multi-year delay was therefore attributable to the court-ordered abeyance, not to Mrs. Pierce's eleven-day filing delay. (R. pp. –.)

When the action resumed in 2025, Mrs. Pierce continued defending it. She filed amended pleadings, affirmative counterclaims against Firewalker and Franco Donohue, a Motion for Leave to Amend, and a written Memorandum opposing Firewalker's renewed default request, supported by sworn evidence. Firewalker moved to strike those pleadings. The circuit court recognized that the amended pleadings and related party issues required further consideration, but no subsequent order adjudicated Mrs. Pierce's affirmative claims, granted Firewalker's Motion to Strike, resolved the claims involving Donohue, or disposed of Firewalker's claims against the Estate. (R. pp. –.)

While Mrs. Pierce was in Uganda, she learned late Friday, October 24, 2025 that Firewalker's outstanding default motion would be argued the following Monday. She immediately requested participation by Zoom or telephone and, when that was denied, expressly asked the court to consider her already-filed opposition and supporting evidence. Nevertheless, the December 8 Order entered default against her upon the stated premise that "no objection has been filed by any opposing party," despite her Answer, prior personal appearance opposing default, written opposition, affidavits, and exhibits. Mrs. Pierce maintains that she was not served with that Order and did not know default had been entered against her personally. (R. pp. –.)

Mrs. Pierce states that she first actually learned on January 6, 2026 that a damages hearing would occur on January 8. From Uganda, she immediately requested a continuance and then expressly requested remote participation. She also submitted written opposition to damages and photographic evidence. The circuit court proceeded without her. Ashaley Boatwright appeared for APM only; he did not represent Mrs. Pierce. Firewalker presented damages evidence and supplemental attorney-fee materials while Mrs. Pierce had no opportunity to cross-examine its witness or contemporaneously object to the evidence offered against her. (R. pp. –.)

On February 3, 2026, the circuit court entered an $87,619.47 joint-and-several judgment against APM and Mrs. Pierce. The Order imposed APM's contractual and statutory liabilities upon Mrs. Pierce through alter ego, while Mrs. Pierce's affirmative claims, Firewalker's Motion to Strike, the claims involving Donohue, and Firewalker's claims against the Estate remained unresolved, and no Rule 54(b), SCRCP, certification was entered. Mrs. Pierce received notice of the February 3 Order on February 4 and timely filed her Notice of Appeal on February 27, 2026. She is the sole appellant and seeks relief only from the judgment entered against her personally. (R. pp. –.)

IV. STATEMENT OF FACTS

A. Nature and Scope of the Appeal

This appeal concerns the $87,619.47 judgment entered against Appellant Dorothy Pierce ("Mrs. Pierce") personally. Mrs. Pierce is the sole appellant and seeks no relief on behalf of American Pharma Machinery, LLC ("APM"). The challenged Order attributed the underlying contractual and statutory liability to APM and then imposed that liability upon Mrs. Pierce through an alter-ego conclusion. (R. pp. –.)

The written quotation and invoice identified APM as the seller and Firewalker Hot Sauce Company, LLC ("Firewalker") as the purchaser. Firewalker contracted with APM, made its two $8,000 payments to APM, and accepted delivery from APM. The record identifies no personal contract executed by Mrs. Pierce, personal guaranty, payment made to her individually, or written assumption by her of APM's contractual obligations. Firewalker itself later described the proposed liability of Mrs. Pierce as derivative rather than joint liability "in the traditional sense." (R. pp. –.)

The appeal also presents a threshold finality issue. On September 23, 2025, Mrs. Pierce filed an Amended Answer, Affirmative Defenses, Counterclaims, and Motion for Leave to Amend asserting affirmative claims against Firewalker and Franco Donohue personally. Firewalker moved to strike those pleadings. The October 17, 2025 Order recognized unresolved procedural issues concerning the amended pleadings, counterclaims, and Donohue. No subsequent order granted the Motion to Strike, denied leave to amend, dismissed or adjudicated the counterclaims, resolved Donohue's party status or the claims asserted against him, or adjudicated Firewalker's claims against the Estate of Doyle Elton Pierce. No Rule 54(b), SCRCP, certification was entered. (R. pp. –.)

B. The Written Transaction and Delivery

On May 22, 2020, APM issued a written quotation to Firewalker's principal, Francis "Franco" Donohue, for a sachet-packing machine. The quotation identified the equipment as model DXDY2-40II, described as a Gel/Cream Packing Machine with a forming mould and attachments for stirring, heating, and ink printing. It provided for shipment in a wooden case, a one-year warranty, and lifetime customer service. (R. pp. –.)

On June 10, 2020, APM issued Invoice No. 1139 to Donohue and Firewalker. The invoice again identified model DXDY2-40II, described as a Small Bag Liquid Sachet Packing Machine with a stirring device, heating hopper, and ink-printing device. Firewalker paid the $16,000 purchase price to APM in two $8,000 transfers. (R. pp. –.)

Although the quotation, invoice, and technical literature used commercial descriptions including gel, cream, paste, viscous liquid, and liquid sachet, they consistently identified the machine as model DXDY2-40II. The product literature listed sauce among the suitable products and identified a forty-milliliter filling range. The invoice described the customized machine as new and provided a twelve-month warranty. (R. pp. –.)

APM's written return policy required an eligible machine to be returned within thirty days, unused, in the condition received, in its original packaging, and after obtaining prior approval. Customized machines, machines damaged for reasons not attributable to APM, and machines returned more than thirty days after delivery were excluded. The warranty provided replacement parts for qualifying defects but excluded damage caused by customer negligence. (R. pp. –.)

Firewalker completed payment on August 3, 2020. On August 18, Mrs. Pierce transported the crated machine to Firewalker's commercial-kitchen facility at Blue Ridge Food Ventures in Candler, North Carolina. Her husband, Doyle Elton Pierce ("Mr. Pierce"), accompanied her and assisted with transportation. Mr. Pierce was not an owner, member, officer, employee, operator, or decision-maker of APM and held no ownership interest in APM or the transaction. (R. pp. –.)

Before arrival, Mrs. Pierce asked Donohue to have someone available to unload the machine, and Donohue confirmed that the facility had a forklift. A delivery photograph shows the substantial wooden crate upright outside the facility without obvious crushing, collapse, puncture, or other major exterior damage. After Firewalker unloaded and accepted the crate, APM no longer possessed or controlled the machine. Mrs. Pierce later stated under oath that the machine was new, secured to its pallet, protectively wrapped, and in excellent condition when delivered. (R. pp. –.)

C. Firewalker's Photographs and Post-Delivery Communications

Firewalker's own photographs document the machine at materially different stages after delivery. The earliest interior photographs show Firewalker personnel removing the wooden crate while the machine remains tightly enclosed in transparent protective wrapping and secured to its wooden pallet. The visible stainless-steel surfaces appear clean and reflective, without the scratches, residue, dents, and other physical marks shown in later photographs. (R. pp. –.)

Although Firewalker's Amended Complaint alleged that seven employees were scheduled to assist in opening the approximately 900-pound machine, the contemporaneous photographs depict one individual actively uncrating and repositioning it toward and partly beyond the edge of its pallet while it remained wrapped. Later photographs show the wrapping removed and Firewalker's own "FIREWALKER ORIGINAL HOT SAUCE" packaging material threaded through the machine's rollers and sealing components. Those later images also show scratches, scuffing, handling marks, white residue, and, still later in the sequence, dents and impact marks not apparent in the original uncrating photographs. (R. pp. –.)

Firewalker did not immediately report visible physical damage or claim that APM had delivered the wrong model. Its contemporaneous communications instead show operational inquiries concerning the machine throughout the weeks following delivery.

On August 27, Donohue inquired about the machine's "4 locking prong 220 power cable." On September 1, he specifically requested the "DXDY2-40ii instruction manual." Throughout September, Firewalker communicated with APM regarding film dimensions, packet sizes, and the lot-code or printing attachment purchased with the machine. On October 2, Donohue asked whether the unit used a "standard dryer style 3 prong angled 220 plug." (R. pp. –.)

Those communications preceded Donohue's October 10 statement that Firewalker intended to "unbox machine today and try it out," fifty-three days after taking possession. The October 10 timestamps show:

10:34 a.m. — Donohue stated that Firewalker was at the facility with rolls of film and intended to "unbox machine today and try it out," and requested technical assistance.

10:48 a.m. — Mrs. Pierce responded that installation support required twenty-four hours' advance scheduling and that APM did not provide Saturday support.

11:26 a.m. — Donohue replied, "No problem."

11:26 a.m. — In the same minute, Donohue then stated: “The machine is dented on every piece,” subsequently identifying alleged damage to the base, hopper, and stirring arm. (R. pp. –.)

Mrs. Pierce disputed that the machine could have remained unopened until October 10 given Firewalker’s preceding communications about its precise model number, electrical connection, film requirements, packet dimensions, and printing equipment. She also disputed that a heavily crated approximately 900-pound industrial machine could have been uncrated, unwrapped, and fully inspected instantaneously between the communications occurring at 11:26 a.m. (R. pp. –.)

On October 12, Firewalker asserted for the first time that it had received the wrong machine model. The dispute also involved packaging film that Firewalker had obtained through a third-party vendor. APM maintained that the selected film was incompatible with the machine’s back-sealing configuration. Mrs. Pierce relied upon the quotation, paid invoice, exact model designation, communications, and photographic sequence in disputing Firewalker’s wrong-model and delivery-damage allegations. (R. pp. –.)

APM maintained that the physical damage shown in the later photographs was consistent with post-delivery impact or mishandling. Because Firewalker had not returned the machine within the contractual return period and APM disputed that the damage was attributable to it, APM declined a refund or free replacement but offered replacement parts necessary to repair the machine at Firewalker’s expense. (R. pp. –.)

Firewalker never returned the machine. Donohue later testified generally that Firewalker had requested a return, replacement, or refund, but the record identifies no specific tender date, approved return authorization, delivery arrangement, offer to transfer possession and title, or refusal by APM of a concrete tender. Firewalker did not sell or scrap the machine; APM did not direct Firewalker to store it; and no court ordered its storage. Firewalker nevertheless sought recovery of the full $16,000 purchase price, consequential damages, storage charges, treble damages, attorney’s fees, and costs while retaining the machine. No valuation witness established that the retained machine had no value. (R. pp. –.)

<u>D. Firewalker’s Pleading and Mrs. Pierce’s Individual Defense</u>

Firewalker filed its Amended Complaint on February 24, 2021 and demanded a jury trial. Its contract count expressly alleged that Firewalker’s payments created a binding contract between

Firewalker and APM. The Complaint nevertheless asserted contract, warranty, fraud, and SCUTPA counts collectively against “Defendants” and sought to impose APM’s liability upon Mrs. Pierce and Mr. Pierce through alter ego. (R. pp. –.)

Firewalker also sued the Estate of Doyle Elton Pierce. Mr. Pierce had died on September 14, 2020, approximately five months before the Amended Complaint was filed. He was not an owner, member, officer, or employee of APM, was not a party to the contract, received no payment from Firewalker, executed no guaranty, and had no independent commercial relationship with Firewalker. (R. pp. –.)

The alter-ego count alleged generally that APM, Mrs. Pierce, and Mr. Pierce failed to observe corporate formalities, were undercapitalized “and/or” intermingled. The pleading identified no particular account, distribution, transfer, asset, corporate record, or use of APM property for Mrs. Pierce’s personal benefit. The fraud count attributed representations collectively to “Defendants” without identifying a particular pre-sale representation made by Mrs. Pierce, when she made it, or the circumstances of Firewalker’s reliance. The SCUTPA count likewise described the transaction collectively. (R. pp. –.)

The Amended Complaint was served March 12, 2021. Firewalker calculated Mrs. Pierce’s responsive-pleading deadline as April 12 and filed an Affidavit of Default on April 14.

Mrs. Pierce had never previously been sued and did not initially understand that the papers commenced a civil action requiring a response by a specific deadline. At that time, she was dealing with the recent death of her husband, administration of his Estate and related probate proceedings, serious emotional distress and documented depression, and the forced relocation of APM’s manufacturing operations following a warehouse break-in and removal of installed electrical equipment. She first appreciated the legal significance of the papers after Firewalker pursued default relief. (R. pp. –.)

Within nine days of receiving notice that Firewalker was seeking default—and only eleven days after the calculated response deadline—Mrs. Pierce filed and served her individual Notice of Appearance, Answer, Affirmative Defenses, and sworn Affidavit. Her affidavit addressed the model purchased, the machine’s condition at delivery, Firewalker’s delay in reporting damage, the film dispute, and her position that the physical damage occurred after Firewalker took possession. Her defenses included Firewalker's breach, failure to mitigate, and unjust enrichment. (R. pp. –.)

On August 30, 2021, Mrs. Pierce personally appeared before the circuit court and opposed Firewalker's Motion for Default Judgment. The circuit court did not enter default against her. It instead deferred the motion while related probate proceedings remained pending. (R. pp. –.)

The approximately four years that followed were therefore not attributable to Mrs. Pierce's eleven-day filing delay. Related Estate proceedings were pending in probate and on appeal, and the circuit court held the default proceedings in abeyance. During that period, the Probate Court heard Firewalker's creditor claim against the Estate and ultimately denied it. The record identifies no witness lost, evidence destroyed, document rendered unavailable, or other litigation prejudice caused by Mrs. Pierce's eleven-day delay. (R. pp. –.)

E. The Renewed Default Proceedings and Mrs. Pierce's Continued Participation

On July 3, 2025, before the October proceedings, Mrs. Pierce notified the circuit court that she expected to be in Uganda during the parliamentary-election period. She stated that she intended to continue defending the case, offered to participate by Zoom or telephone, and asked that no adverse action be imposed merely because of her physical absence. She remained in the United States through the September proceedings and departed on October 1. (R. pp. –.)

APM and Mrs. Pierce thereafter reached default through separate procedural paths. On September 30, the circuit court struck an Answer Mrs. Pierce had filed for APM because a nonlawyer could not represent the LLC and entered default against APM. APM retained attorney Ashaley Boatwright, and its motion for reconsideration was denied. Those rulings concerned APM; they did not adjudicate Mrs. Pierce's individual Answer or establish her personal liability for APM's obligations. (R. pp. –.)

Mrs. Pierce continued defending the action individually. On September 23, she filed an Amended Answer, Affirmative Defenses, Counterclaims, and Motion for Leave to Amend asserting affirmative claims against Firewalker and Franco Donohue. On September 25, she filed a separate Memorandum in Opposition to Firewalker's default request, supported by sworn affidavits and documentary exhibits explaining the eleven-day delay, presenting meritorious defenses, and requesting adjudication on the merits. (R. pp. –.)

On October 14, Firewalker moved to strike the amended pleadings and expressly renewed its July 15, 2021 Motion for Default Judgment against Mrs. Pierce. Firewalker also acknowledged that it had conducted no discovery with the remaining defendants and that, absent default, claims including fraud and veil piercing would require proof before a jury. (R. pp. –.)

The October 17 Order recognized unresolved procedural questions concerning Mrs. Pierce's amended pleadings, counterclaims, and claims involving Donohue. Yet no subsequent order granted Firewalker's Motion to Strike, denied leave to amend, dismissed the counterclaims, adjudicated them, or resolved Donohue's party status or the affirmative claims asserted against him. (R. pp. –.)

Firewalker's claims against the Estate likewise remained unresolved. Although Firewalker had asserted default against the Estate and separately pursued a creditor claim in probate, no order in this action dismissed the Estate or adjudicated Firewalker's claims against it. The December 8 and February 3 Orders granted relief only against APM and Mrs. Pierce. (R. pp. –.)

F. The December 8 Default Order

Mrs. Pierce was in Uganda when, at 9:19 p.m. on Friday, October 24, the judge's assistant instructed the parties to be prepared the following Monday to argue the outstanding default motion. Mrs. Pierce immediately requested permission to participate by Zoom or telephone. After remote participation was denied, she expressly asked the court to consider her already-filed Memorandum in Opposition, affidavits, exhibits, and other materials before ruling. (R. pp. –.)

Firewalker's October 14 filing had expressly renewed the July 15, 2021 default motion rather than replacing it. Mrs. Pierce's written opposition therefore remained directly responsive to the relief Firewalker continued to seek. (R. pp. –.)

The circuit court nevertheless entered default against Mrs. Pierce on December 8, 2025. By then, she had filed an Answer, Affirmative Defenses, sworn Affidavit, amended pleadings, Counterclaims, and a written Memorandum specifically opposing default; she had personally appeared and opposed default in 2021; and she had expressly asked the court to consider her opposition when remote participation was denied. (R. pp. –.)

The December 8 Order nevertheless stated that: “no objection has been filed by any opposing party.” (R. pp. –.)

The Order did not address the eleven-day length of Mrs. Pierce’s original delay, her explanation for it, the absence of identified prejudice, her years of participation, or her filed opposition and supporting evidence. (R. pp. –.)

Mrs. Pierce maintains that she was not served with the December 8 Order and did not know that default had been entered against her personally. (R. pp. –.)

G. The January 8 Damages Hearing

Firewalker filed a December 23, 2025 Notice of the January 8 damages hearing with a certificate stating that the notice was mailed to Mrs. Pierce’s South Carolina address. Mrs. Pierce, who remained in Uganda, states that she did not actually learn that the damages hearing would occur until January 6. She immediately contacted the circuit court and requested a continuance. On January 8, she expressly asked: “Can I at least be allowed to appear remotely?” (R. pp. –.)

Before the hearing, Mrs. Pierce also submitted a written Brief in Opposition to Damages and photographic evidence. The January 9 Form 4 later stated that the court reviewed and considered those materials. (R. pp. –.)

The circuit court nevertheless denied the continuance and proceeded without Mrs. Pierce. Bryan P. Kelley appeared for Firewalker. Ashaley Boatwright appeared and expressly identified himself as counsel for APM only; he did not represent Mrs. Pierce. (R. pp. –.)

Donohue testified that the invoice came from APM and that Firewalker paid its two $8,000 transfers to APM. Firewalker’s counsel likewise told the court that “the testimony that you’ve heard today all relates to a transaction between FIREWALKER and American Pharma.” Firewalker relied upon the default and alter-ego allegations to seek imposition of APM’s liability upon Mrs. Pierce. (R. pp. –.)

The hearing contained no independent testimony or documentary evidence concerning APM’s capitalization, solvency, separate accounts, corporate records, distributions, commingling, siphoning, asset transfers, personal use of company funds, or fundamental unfairness. Donohue identified one specific statement attributed to Mrs. Pierce—that Firewalker had damaged the machine and would receive no refund—but placed that statement after the sale and after the dispute had arisen. (R. pp. –.)

Firewalker sought $16,000 for the machine, $945 for packaging film, $2,196.87 in payroll, produce, and facility expenses, $75 per month in storage, lost profits, attorney's fees, and costs. Boatwright disputed lost profits, mitigation, foreseeability, storage, and consequential damages on behalf of APM. Donohue acknowledged that Firewalker retained possession of the machine, that APM did not direct Firewalker to store it, that no court ordered its storage, and that Firewalker had not attempted to sell or scrap it. No valuation testimony established that the retained machine had no value. (R. pp. –.)

Firewalker also presented a supplemental attorney-fee affidavit and redacted billing invoices during the hearing. Those materials had not been provided to Mrs. Pierce before the hearing. Boatwright stated that APM had no objection, but he represented APM alone. Mrs. Pierce therefore had no opportunity to cross-examine Donohue herself, contemporaneously object to Firewalker's damages evidence, or challenge the supplemental fee submission. (R. pp. –.)

H. The January 9 and February 3 Orders

On January 9, 2026, the circuit court entered a Form 4 memorializing its damages rulings. It rejected Firewalker's lost-profits claim, fixed the remaining categories and amounts of damages, directed trebling under SCUTPA, awarded attorney's fees, and instructed Firewalker's counsel to prepare a detailed formal order.

Significantly, the January 9 Form 4 expressly stated that the Order "does not end the case." (R. pp. –.)

On February 3, 2026, the circuit court entered its formal Order for Damages Default Judgment. The accompanying Form 4 changed the designation and stated that the Order "ends" the case. (R. pp. –.)

The February 3 Order found that Firewalker paid APM $16,000, awarded the purchase price because of APM's breach, attributed the foreseeability of the consequential expenses to APM, and found that APM willfully and knowingly violated SCUTPA. (R. pp. –.)

The court calculated actual damages of $23,791.87: $16,000 for the machine, $945 for film, $2,196.87 for payroll and facility expenses, and $4,650 for storage. It trebled that amount to $71,375.61 and added $16,243.86 in attorney's fees and costs, producing a total judgment of $87,619.47**.** (R. pp. –.)

The Order did not find that Mrs. Pierce personally entered Firewalker's contract, signed a guaranty, received the purchase money, made an identified pre-sale misrepresentation, personally committed the unfair or deceptive conduct upon which trebling rested, caused a particular category of damages, or diverted or misused APM's assets. Instead, the entire liability was imposed upon her through the conclusion: "As set forth in the Complaint, Defendants American Pharma and Pierce are alter egos of one another, and that any liability of American Pharma is therefore imputed to Pierce." (R. pp. –.)

The Order made no findings concerning APM's capitalization, solvency, corporate records, separate accounts, distributions, commingling, siphoning, asset transfers, or whether recognition of APM's separate legal existence would produce fundamental unfairness.

Nor did anything between the January 9 and February 3 Orders adjudicate Mrs. Pierce's affirmative claims, grant Firewalker's pending Motion to Strike, resolve the affirmative claims against Franco Donohue or his party status, adjudicate Firewalker's claims against the Estate, or supply a Rule 54(b) certification. (R. pp. –.)

Mrs. Pierce received notice of the February 3 Order on February 4, 2026 and timely filed her Notice of Appeal on February 27. She is the sole appellant and seeks review only of the judgment entered against her personally. She seeks no relief on behalf of APM. (R. pp. –.)

<u>I. Preferential Docket Scheduling and Systematic Omission of Appellant's Counterclaims and Motions</u>

Throughout the litigation, the circuit court established a pattern of selectively scheduling and adjudicating motions filed by Firewalker while ignoring and failing to schedule hearings on motions filed by Mrs. Pierce. On September 23, 2025, Mrs. Pierce filed her Amended Answer, Affirmative Defenses, Counterclaims, Motion for Leave to Amend, and sought to join Franco Donohue as a defendant. Rather than placing Mrs. Pierce's counterclaims or affirmative motions on the court's calendar, the court fast-tracked Firewalker's subsequently filed motions—

including Firewalker’s October 14, 2025 Motion to Strike and renewed Motion for Default—setting them for expedited hearings.

Similarly, while the court convened hearings on Firewalker's motions for default and damages on October 27, 2025, and January 8, 2026, it never issued a notice of hearing, scheduled oral argument, or entered an order adjudicating Mrs. Pierce’s eleven (11) affirmative counterclaims or her pending Motion to Dismiss the claims against the Estate. By granting preferential scheduling access exclusively to the corporate Plaintiff’s filings while leaving the self-represented defendant’s substantive counterclaims in indefinite limbo, the court denied Mrs. Pierce an equal and meaningful opportunity to be heard

V. ARGUMENT

This appeal presents a threshold question of finality because the February 3, 2026 Order did not dispose of all claims and parties and contained no Rule 54(b), SCRCP, certification. If the judgment against Mrs. Pierce is presently reviewable, it independently requires reversal or vacatur for the procedural and substantive errors addressed below.

I. THE CIRCUIT COURT ERRED IN TREATING THE FEBRUARY 3, 2026 ORDER AS A FINAL JUDGMENT TERMINATING THE ACTION WHERE MRS. PIERCE'S AFFIRMATIVE COUNTERCLAIMS, FIREWALKER'S MOTION TO STRIKE, CLAIMS ASSERTED AGAINST FRANCO DONOHUE, AND FIREWALKER'S CLAIMS AGAINST THE ESTATE REMAINED UNRESOLVED, AND NO RULE 54(b) CERTIFICATION WAS ENTERED.

Standard of Review

Whether an order is final and appealable presents a question of law reviewed *de novo*. *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 571, 698 S.E.2d 856, 858 (Ct. App. 2010). Appellate jurisdiction may be examined *ex mero motu*. Interpretation and application of Rules 13, 15, and 54, SCRCP, likewise present questions of law.

<u>A. Rule 54(b) prohibited the circuit court from treating an adjudication of fewer than all claims and parties as terminating the action without the required certification.</u>

South Carolina appellate jurisdiction ordinarily extends only to final judgments. S.C. Code Ann. § 14-3-330(1). Rule 54(b), SCRCP, expressly governs actions involving multiple claims or parties, including counterclaims. An order adjudicating fewer than all claims or the rights and liabilities of fewer than all parties does not terminate the action unless the circuit court expressly determines that there is no just reason for delay and expressly directs entry of judgment.

Any Rule 54(b) certification must be made in a "definite and unmistakable manner." *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 466, 570 S.E.2d 197, 200 (Ct. App. 2002). An unresolved claim does not disappear merely because judgment has been entered on another claim. *Holroyd v. Requa*, 361 S.C. 43, 53–54, 603 S.E.2d 417, 422 (Ct. App. 2004); *Ashenfelder*, 389 S.C. at 571, 698 S.E.2d at 858.

Accordingly, default upon Firewalker's claims against Mrs. Pierce did not itself adjudicate Mrs. Pierce's separate affirmative claims. Those claims required a judicial disposition. (R. pp. –.)

B. Mrs. Pierce filed substantive affirmative claims against Firewalker and Franco Donohue that were never adjudicated.

On September 23, 2025, Mrs. Pierce filed an Amended Answer, Affirmative Defenses, Counterclaims, and Motion for Leave to Amend. The pleading was accepted into the circuit-court record and identified Mrs. Pierce as "Defendant and Counter-Plaintiff" and Firewalker and Franco Donohue as "Counter-Defendants." (R. pp. –.)

The pleading asserted affirmative claims against Firewalker and Donohue individually, including fraudulent misrepresentation and concealment, defamation, SCUTPA violations, negligent misrepresentation, negligence and gross negligence, conversion, abuse of process, injurious falsehood, tortious interference, and civil conspiracy. It also asserted alternative contractual and equitable claims if APM's separate legal existence were disregarded and sought compensatory, punitive, statutory, equitable, and declaratory relief. (R. pp. –.)

The claims against Donohue were not merely an informal request to add him. Mrs. Pierce alleged that he personally participated in the conduct underlying the dispute, including the handling and operation of the machine and the subsequent assertions concerning its condition. She also alleged that Firewalker's own photographs showed materially different conditions before and after the machine had been in Firewalker's and Donohue's possession. (R. pp. –.)

These were substantive claims for affirmative relief requiring judicial disposition.

C. Firewalker moved to strike those claims, but the circuit court never ruled on the motion or the claims themselves.

Firewalker responded to Mrs. Pierce's amended pleading by filing a formal Motion to Strike. The October 17, 2025 Order acknowledged that motion and the procedural issues concerning Mrs. Pierce's amended pleadings and claims involving Donohue. (R. pp. –.)

No subsequent order identified in the record granted the Motion to Strike, denied leave to amend, struck or dismissed the counterclaims, adjudicated them on the merits, or disposed of the affirmative claims against Donohue.

The December 8 default adjudicated Firewalker's claims against APM and Mrs. Pierce; it did not adjudicate Mrs. Pierce's affirmative claims. The January 9 Form 4 and February 3 Order likewise resolved Firewalker's damages against APM and Mrs. Pierce without ruling on Mrs. Pierce's counterclaims or Firewalker's Motion to Strike. (R. pp. –.)

Whether default ultimately affects the merits of a particular counterclaim is different from whether the circuit court actually adjudicated that claim. Nothing in these orders states that Mrs. Pierce's affirmative claims were dismissed, stricken, or adjudicated. (R. pp. –.)

D. Firewalker's claims against the Estate also remained unresolved.

Firewalker's Amended Complaint named the Estate of Doyle Elton Pierce as a co-defendant. Although Firewalker separately pursued a creditor claim in probate and that claim was denied, no order in this circuit-court action dismissed the Estate or adjudicated Firewalker's claims against it. (R. pp. –.)

Neither the December 8 nor February 3 Order entered judgment against the Estate. At the January 8 damages hearing, the circuit court itself observed that "there's an estate that's also listed as a defendant," and Firewalker's counsel expressly clarified that "today's motion is only against American Pharma and Ms. Pierce." (R.pp____).

Thus, Firewalker itself limited the damages proceeding to APM and Mrs. Pierce and did not obtain adjudication of its claims against the Estate.

E. The January Form 4 stated that the damages ruling did not end the case; the February Form 4 reversed that designation without any intervening adjudication.

After the January 8 damages hearing, the circuit court determined the categories and amounts of damages against APM and Mrs. Pierce, rejected lost profits, directed trebling under SCUTPA, awarded attorney's fees, and instructed Firewalker's counsel to prepare the detailed order.

The January 9 Form 4 nevertheless expressly stated that the Order **"does not end the case."** (R. pp. –.)

The February 3 Order then formalized those damages and imposed $87,619.47 in joint-and-several liability against APM and Mrs. Pierce. Its accompanying Form 4 changed the designation to **“ends”** the case. (R. pp. –.)

Nothing identified in the record between those two rulings explains that change. During that interval, the court did not adjudicate Mrs. Pierce’s counterclaims, grant Firewalker’s Motion to Strike, dispose of the claims against Donohue, dismiss or adjudicate the Estate claims, or enter a Rule 54(b) certification.

A Form 4 checkmark stating that an order “ends” the case cannot itself adjudicate claims omitted from the underlying judgment.

F. No Rule 54(b) certification supplied the missing finality.

Rule 54(b) provided a mechanism for entering final judgment as to fewer than all claims or parties, but only upon an express determination that there was “no just reason for delay” and an express direction for entry of judgment.

Neither appears in the February 3 Order, and no separate Rule 54(b) certification appears in the record. The Form 4 designation cannot substitute for those requirements.

Accordingly, the circuit court erred in treating the February 3, 2026 Order as terminating the entire action when Mrs. Pierce’s affirmative claims, Firewalker’s Motion to Strike, the claims asserted against Franco Donohue, and Firewalker’s claims against the Estate remained unresolved. (R. pp. –.)

The matter should be remanded for adjudication of those unresolved claims and party issues. To the extent this Court determines that the February 3 judgment against Mrs. Pierce is presently reviewable notwithstanding those unresolved matters, it should address the independent grounds for reversal and vacatur set forth below.

II. THE CIRCUIT COURT ABUSED ITS DISCRETION BY REFUSING TO EXCUSE MRS. PIERCE'S ELEVEN-DAY DELAY AND ENTERING DEFAULT DESPITE HER PROMPT APPEARANCE, MERITORIOUS DEFENSES, YEARS OF ACTIVE PARTICIPATION, AND THE ABSENCE OF PREJUDICE.

Standard of Review

The decision whether to set aside an entry of default is reviewed for abuse of discretion. Sundown Operating Co. v. Intedge Industries, Inc., 383 S.C. 601, 606–08, 681 S.E.2d 885, 888 (2009). An abuse of discretion occurs where the ruling rests upon an error of law or lacks evidentiary support. Rule 55(c), SCRCP, permits an entry of default to be set aside for "good cause," while Rule 6(b), SCRCP, authorizes enlargement after expiration of a filing period upon the showing required by that Rule. Where liability has been determined by default but unliquidated damages remain unresolved, the ruling remains an entry of default rather than a final default judgment for purposes of Rule 55(c) and Rule 60(b). 5Star Life Insurance Co. v. Peek Performance, Inc., 434 S.C. 334, 863 S.E.2d 468 (Ct. App. 2021).

<u>A. Mrs. Pierce's delay was eleven days—not four years.</u>

Firewalker calculated Mrs. Pierce's response deadline as April 12, 2021. She filed her individual Answer on April 23—eleven days later. (R. pp. –.)

The approximately four years that followed resulted from the circuit court's decision to hold the default proceedings in abeyance during the related probate proceedings and appeal. Mrs. Pierce personally appeared on August 30, 2021 and opposed Firewalker's default motion, which the court deferred rather than granted. (R. pp. –.)

Firewalker's counsel later confirmed that the original judge had "held the motion in abeyance during the pendency of an appellate matter" and that the case remained stagnant while that matter was pending. (R. pp. –)

Thus, the delay attributable to Mrs. Pierce was eleven days; the subsequent years resulted from the court-ordered abeyance.

B. Mrs. Pierce gave a specific, non-willful explanation and acted promptly.

Mrs. Pierce had never before been sued and did not initially understand that the served papers commenced a civil action requiring a response by a specific deadline. At the time, she was dealing with the recent death of her husband, administration of his Estate and related probate proceedings, APM's forced relocation following the warehouse break-in and removal of installed electrical equipment, and documented depression. (R. pp. –.)

She first understood the legal significance of the papers after learning that Firewalker was pursuing default. Within nine days of that notice—and only eleven days after the calculated deadline, she filed her Notice of Appearance, Answer, Affirmative Defenses, and sworn Affidavit. (R. pp. –.)

She thereafter personally appeared and opposed default. That conduct is inconsistent with willful disregard or abandonment of the action.

C. The Rule 55(c) good-cause factors favored adjudication on the merits.

Under *Sundown* and *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct. App. 1989), the court considers the explanation for default, the timing of the request for relief, the existence of a meritorious defense, and prejudice to the opposing party. Rule 55(c)'s "good cause" standard is materially more liberal than the standard governing relief from a final default judgment. *Wham*, 298 S.C. at 465, 381 S.E.2d at 501–02. Under *5Star Life*, that more liberal standard remained applicable while damages were unresolved.

Mrs. Pierce presented substantial defenses. The written contract identified APM, not Mrs. Pierce—as seller, and Firewalker paid APM. (R. pp. –.) Firewalker's photographs showed the machine protectively wrapped during uncrating and later showed Firewalker's packaging material installed in the machine together with scratches, residue, and other physical damage not visible in the earlier photographs. (R. pp. –.) Firewalker retained the machine, and no valuation witness established that it had zero value. (R. pp. –.)

The January 8 testimony further confirmed that those defenses were substantial. Donohue acknowledged that the machine remained in Firewalker's warehouse between delivery and the reported damage, that APM did not direct Firewalker to store it, that no court ordered storage, and that Firewalker never attempted to sell or scrap it. (R. pp. –.)

Firewalker, meanwhile, identified no lost witness, destroyed evidence, foreclosed discovery, or other prejudice caused by the eleven-day delay. (R. pp. –.)

The relevant good-cause factors therefore favored resolution on the merits.

D. The December 8 Order rested upon a factual premise contradicted by the record.

Rather than demonstrating that the foregoing circumstances were weighed, the December 8 Order stated that: "no objection has been filed by any opposing party." (R. pp. –.)

That statement was contrary to the record. Mrs. Pierce had filed an Answer, sworn Affidavit, and written Memorandum specifically opposing default, supported by affidavits and exhibits. She had also personally appeared at the August 30, 2021 hearing and opposed the same default motion. (R. pp. –.)

Firewalker's October 14, 2025 filing renewed the previously pending July 15, 2021 default motion. Mrs. Pierce's opposition was therefore already before the circuit court when it stated that no opposing party had filed an objection. (R. pp. –.)

That error was material. Mrs. Pierce's participation and opposition bore directly upon whether her conduct reflected abandonment, whether she possessed meritorious defenses, and whether good cause existed to excuse an eleven-day delay.

A discretionary ruling resting upon a materially incorrect factual premise cannot constitute a proper exercise of discretion. Because Mrs. Pierce promptly appeared, supplied a specific nonwillful explanation, presented substantial defenses, actively participated in the litigation, and caused no demonstrated prejudice through her eleven-day delay, the default against her should be reversed.

III. THE DECEMBER 8 DEFAULT ORDER MUST BE VACATED BECAUSE THE PROCEDURE USED TO ENTER DEFAULT AGAINST AN APPEARING DEFENDANT DID NOT SATISFY RULE 55(b)(2) OR THE NOTICE REQUIREMENTS APPLICABLE TO AN APPEARING PARTY.

Standard of Review

Whether the procedure used to enter default complied with Rule 55(b)(2), SCRCP, presents a question of law reviewed de novo. To the extent relief from the entry of default is at issue, the ruling is reviewed for abuse of discretion. Sundown Operating Co. v. Intedge Industries, Inc., 383 S.C. 601, 606–08, 681 S.E.2d 885, 888 (2009).

<u>A. Mrs. Pierce was an appearing defendant entitled to Rule 55(b)(2) notice.</u>

A late answer may constitute an appearance for purposes of Rule 55(b)(2). *Stark Truss Co. v. Superior Construction Corp.*, 360 S.C. 503, 602 S.E.2d 99 (Ct. App. 2004).

Mrs. Pierce did substantially more. She filed a Notice of Appearance, Answer, Affirmative Defenses, and sworn Affidavit; personally appeared at the August 30, 2021 hearing and opposed default; and later filed a written Memorandum specifically opposing default. (R. pp. –.)

She was therefore an appearing defendant entitled to Rule 55(b)(2)'s notice protections.

<u>B. The Friday-night notice for a Monday default hearing did not provide the required notice period.</u>

At 9:19 p.m. on Friday, October 24, 2025, the judge's assistant advised: "On Monday please be prepared to argue the Motion for Default that is currently outstanding." (R. pp. –.)

That was the communication specifically advising Mrs. Pierce that the outstanding default motion would be argued on Monday, October 27. (R. pp. –.)

Rule 55(b)(2) requires written notice at least three days before the hearing, and Rule 6(a), SCRCP, governs computation of that period. Under *Stark Truss*, those protections apply despite an untimely responsive pleading once the defendant has appeared.

Notice sent at 9:19 p.m. Friday for a Monday hearing did not provide the prescribed period.

C. Mrs. Pierce immediately attempted to participate, yet default was entered as though she had filed no opposition.

Mrs. Pierce promptly requested permission to participate by Zoom or telephone. When that request was denied, she specifically asked the circuit court to consider her already-filed Memorandum, affidavits, exhibits, and opposition. (R. pp. –.)

The December 8 Order nevertheless stated: “no objection has been filed by any opposing party.” (R. pp. –.)

As discussed in Argument II, that statement was contrary to the record. Its significance here is that Mrs. Pierce received inadequate notice, immediately attempted to participate, expressly directed the court to her filed opposition, and nevertheless suffered default as though no opposition existed.

D. APM’s attorney could not satisfy Mrs. Pierce’s individual notice rights.

Ashaley Boatwright represented APM only. APM’s participation could not substitute for notice to Mrs. Pierce individually or waive rights belonging to her.

The record later confirmed that distinction: at the January 8 hearing, Boatwright identified himself as representing “the defendant, American Pharma Machinery, LLC,” and the court understood that he represented the entity alone. (R. pp. –.)

That principle is consistent with *McCall v. IKON Office Solutions, Inc.*, 363 S.C. 646, 611 S.E.2d 315 (Ct. App. 2005), recognizing the importance of notice to the defendant whose rights are affected by the default proceeding.

Mrs. Pierce had appeared and was entitled to Rule 55(b)(2) notice. The specific notice that default would be argued on October 27 was not transmitted until late Friday night, she immediately attempted to participate, and APM counsel’s presence could not cure the deficiency as to her individually.

The December 8 default against Mrs. Pierce should therefore be vacated.

IV. APM'S CONTRACTUAL, WARRANTY, AND UCC OBLIGATIONS COULD NOT BE IMPOSED UPON MRS. PIERCE PERSONALLY.

Standard of Review

Whether Mrs. Pierce may be held personally liable for obligations arising from APM's contract presents a question of law reviewed de novo. Questions concerning the legal effect of a contract and South Carolina's LLC liability statute are likewise reviewed de novo. See Thomas v. Delta Enterprises, Inc., 302 S.C. 351, 396 S.E.2d 122 (Ct. App. 1990); S.C. Code Ann. § 33-44-303(a).

Firewalker's own evidence established that APM—not Mrs. Pierce—was the contracting party. The quotation and invoice came from APM; Firewalker made two $8,000 payments to APM; and Firewalker's contract claim alleged a contract between Firewalker and APM. (R. pp. –.) Firewalker's counsel likewise told the court that "the testimony that you've heard today all relates to a transaction between FIREWALKER and American Pharma." (R. pp. –.)

Donohue confirmed that the invoice came from APM and that the $16,000 purchase price was paid to APM. (R. pp. –.) Mrs. Pierce signed no personal guaranty, personally received no payment, and assumed no written contractual obligation. (R. pp. –.)

An agent acting for a disclosed principal ordinarily is not personally liable on the principal's contract. *Thomas*, 302 S.C. 351, 396 S.E.2d 122. Section 33-44-303(a) likewise provides that an LLC's debts, obligations, and liabilities are those of the company and are not imposed upon a member or manager solely because of that status.

Accordingly, APM's contractual, warranty, and UCC obligations could be imposed upon Mrs. Pierce only through a legally sufficient independent basis for personal liability.

The February 3 Order identified APM as the contracting party, found that APM breached the contract, and then stated that because APM and Mrs. Pierce were alter egos, "any liability of American Pharma is therefore imputed to Pierce." (R. pp. –.) It did not find that Mrs. Pierce personally contracted with Firewalker, guaranteed APM's obligations, or otherwise assumed them. (R. pp. –.)

As addressed in Argument V, the alter-ego determination did not satisfy the requirements for disregarding APM’s separate legal existence. Without that independent basis, APM’s contractual, warranty, and UCC liabilities could not be imposed upon Mrs. Pierce personally.

The personal judgment against Mrs. Pierce cannot be sustained on those theories.

V. FIREWALKER DID NOT PLEAD, PROVE, OR OBTAIN THE FINDINGS NECESSARY TO PIERCE APM'S LLC VEIL.

Standard of Review

Veil piercing is an equitable remedy. In an equitable action tried by the court, the appellate court may find facts according to its own view of the preponderance of the evidence, while giving due deference to credibility findings. The governing legal requirements are set forth in Sturkie v. Sifly, 280 S.C. 453, 457–58, 313 S.E.2d 316, 318–19 (Ct. App. 1984), and Drury Development Corp. v. Foundation Insurance Co., 380 S.C. 97, 102–03, 668 S.E.2d 798, 801–02 (2008).

South Carolina treats veil piercing as an exceptional remedy, and the party seeking it bears the burden of satisfying both prongs of the *Sturkie* analysis: circumstances justifying disregard of the entity’s separate existence and a separate showing that recognizing that existence would produce injustice or fundamental unfairness. *Drury*, 380 S.C. at 102–03, 668 S.E.2d at 801–02; *Mid-South Management Co. v. Sherwood Development Corp.*, 374 S.C. 588, 649 S.E.2d 135 (Ct. App. 2007).

Section 33-44-303(b), S.C. Code Ann., further provides that failure to observe ordinary organizational formalities is not, standing alone, a basis for imposing personal liability upon an LLC member or manager.

Firewalker alleged generally that APM failed to observe formalities, was undercapitalized “and/or” intermingled funds. It identified no particular account, transfer, distribution, diverted asset, personal expenditure, capitalization amount, or other specific misuse of APM. (R. pp. –.)

Nor did Firewalker present independent veil-piercing evidence at the damages hearing concerning APM’s capitalization, solvency, accounts, records, distributions, commingling, siphoning, transfers, or personal use of company funds. (R. pp. –.) Firewalker instead relied upon default to establish its alter-ego allegations. (R. pp. –.)

The February 3 Order disposed of the issue in one sentence:

“As set forth in the Complaint, Defendants American Pharma and Pierce are alter egos of one another, and that any liability of American Pharma is therefore imputed to Pierce.” (R. pp. –.)

The Order made no findings addressing the *Sturkie* factors and no finding explaining why recognition of APM’s separate legal existence would produce injustice or fundamental unfairness. (R. pp. –.)

The January 9 Form 4 likewise stated that because default had been entered, “all causes of action in Plaintiff's Complaint are deemed true and accurate” and Mrs. Pierce therefore “is deemed an alter ego” of APM. (R. pp. –.)

But default may establish well-pleaded factual allegations; it does not determine whether those allegations legally satisfy the equitable requirements for disregarding a separate LLC. *Drury* still required application of the veil-piercing standard, including the independent fundamental-unfairness inquiry.

Because alter ego was the mechanism by which APM’s entire $87,619.47 liability was imposed upon Mrs. Pierce personally, the legally insufficient veil-piercing determination requires vacatur of the personal judgment.

VI. FIREWALKER DID NOT ESTABLISH AN INDEPENDENT SCUTPA VIOLATION BY MRS. PIERCE, AND TREBLE DAMAGES COULD NOT BE IMPUTED TO HER MERELY BECAUSE OF APM'S CONDUCT.

Standard of Review

Interpretation and application of SCUTPA present questions of law reviewed *de novo*. Whether the statutory requirements for liability and treble damages are satisfied is likewise subject to appellate review. See S.C. Code Ann. §§ 39-5-20, 39-5-140.

Sections 39-5-20 and 39-5-140 require an unfair or deceptive act in trade or commerce, an ascertainable loss caused by that conduct, and an adverse impact upon the public interest, which may be shown through a potential for repetition. *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379–80, 595 S.E.2d 461, 466–67 (2004). Treble damages further require a willful or knowing violation. § 39-5-140(a).

Personal liability must rest upon conduct attributable to the individual, not corporate status alone. *BPS, Inc. v. Worthy*, 362 S.C. 319, 327–28, 608 S.E.2d 155, 160 (Ct. App. 2005).

Firewalker's SCUTPA count instead grouped the "Defendants" together. It identified no deceptive advertisement personally created by Mrs. Pierce, payment personally received by her, false pre-sale representation personally made by her, or specific deceptive conduct by her causing Firewalker's loss**.** (R. pp. –.)

The February 3 Order likewise made no individualized SCUTPA findings against Mrs. Pierce. Paragraph 9 expressly found that "American Pharma willfully and knowingly employed unfair and deceptive methods, acts and practices against Firewalker." Paragraph 12 then imputed "any liability of American Pharma" to Mrs. Pierce through alter ego**.** (R. pp. –.)

The Order did not separately find that Mrs. Pierce personally committed, participated in, directed, or authorized a willful unfair or deceptive practice, caused an ascertainable loss through such conduct, or engaged in conduct satisfying SCUTPA's public-impact requirement.

As shown in Argument V, the deficient alter-ego determination cannot substitute for the missing individualized basis for personal liability.

Nor does APM's alleged contractual breach itself supply that basis. A contractual breach—even an intentional one—does not, without more, constitute a SCUTPA violation. *Ardis v. Cox*, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993). The February 3 Order expressly attributed the underlying contractual breach to APM.

Accordingly, the SCUTPA liability and treble damages imposed upon Mrs. Pierce should be vacated. Because the attorney-fee award against her derives from that SCUTPA judgment, its statutory basis likewise fails, apart from the additional fee defects addressed in Argument IX.

VII. FIREWALKER'S COLLECTIVE FRAUD ALLEGATIONS DID NOT ESTABLISH FRAUD AGAINST MRS. PIERCE INDIVIDUALLY.

Standard of Review

Fraud is an action at law. In an action at law tried without a jury, factual findings will not be disturbed if reasonably supported by the evidence, while questions of law are reviewed de novo. Whether pleaded facts satisfy the elements of fraud and Rule 9(b), SCRCP, presents a legal question. Schnellmann v. Roettger, 373 S.C. 379, 382, 645 S.E.2d 239, 241 (2007).

Fraud requires clear, cogent, and convincing proof of: (1) a representation; (2) falsity; (3) materiality; (4) knowledge of falsity or reckless disregard; (5) intent that the representation be acted upon; (6) ignorance of falsity; (7) reliance; (8) the right to rely; and (9) consequent and proximate injury. *Schnellmann*, 373 S.C. at 382, 645 S.E.2d at 241. Rule 9(b) additionally requires fraud to be pleaded with particularity.

Firewalker's fraud count attributed representations collectively to "Defendants." It did not identify what Mrs. Pierce personally represented before the sale, when she made the representation, why it was false, what she knew, or how Firewalker relied upon it. (R. pp. –.)

Donohue's testimony identified only one specific statement by Mrs. Pierce: after the dispute arose, she allegedly stated that Firewalker had damaged the machine and would receive no refund. (R. pp. –.)

Donohue placed that statement on October 10—after Firewalker had already purchased and received the machine and, according to Firewalker, opened it, observed the alleged damage, and complained to APM. (R. pp. –.)

That post-purchase statement could not have induced Firewalker to pay the $16,000 and therefore could not supply the reliance and causation necessary for fraud in the underlying purchase.

The February 3 Order made no individualized findings of falsity, knowledge, intent, reliance, right to rely, causation, or injury against Mrs. Pierce. (R. pp. –.) The January 9 Form 4 instead treated fraud as established because the causes of action were deemed true by default.

But default does not convert collective or conclusory allegations into particularized facts satisfying each element of fraud against an individual defendant. The pleaded and established facts still had to support the legal elements of the claim against Mrs. Pierce.

They did not. Fraud therefore supplies no independent basis for the personal judgment against her.

VIII. THE DAMAGES AWARD APPLIED NO COHERENT UCC REMEDY AND AWARDED THE FULL PURCHASE PRICE WHILE FIREWALKER RETAINED THE MACHINE.

Standard of Review

Interpretation and application of Article 2 of the Uniform Commercial Code and the proper measure of damages present questions of law reviewed de novo. Factual findings supporting the amount of damages are reviewed under the standard applicable to an action at law tried without a jury. See S.C. Code Ann. §§ 36-2-602, 36-2-606, 36-2-608, 36-2-711, 36-2-714, and 36-2-715.

The UCC distinguishes rejection, acceptance, and revocation. Rejection must be timely and seasonably communicated, § 36-2-602; acceptance may result from failure effectively to reject or conduct inconsistent with the seller's ownership, §§ 36-2-606, -607; and revocation requires satisfaction of § 36-2-608.

The remedy depends upon that statutory posture. Section 36-2-711 permits recovery following nondelivery, rightful rejection, or justified revocation. If a buyer accepts and retains the goods, § 36-2-714 ordinarily measures warranty damages by the difference between their value as accepted and their value as warranted, with recoverable incidental and consequential damages governed by § 36-2-715. See *Hitachi Electronic Devices (USA), Inc. v. Platinum Technologies, Inc.*, 366 S.C. 163, 621 S.E.2d 38 (2005).

Firewalker did not return the machine within APM's thirty-day return period and retained it throughout the litigation. (R. pp. –.) The record identifies no completed tender, approved return arrangement, or refusal by APM of a concrete tender. (R. pp. –.)

At the January 8 hearing, Donohue testified that the machine was "still sitting in our warehouse right now." (R. pp. –.) He further admitted that APM never required Firewalker to store it, no court ordered its storage, and Firewalker never attempted to sell or scrap it. (R. pp. –.)

Nevertheless, the court awarded Firewalker the entire $16,000 purchase price while Firewalker retained the machine**.** (R. pp. –.)

If Firewalker accepted and retained the machine, § 36-2-714 required consideration of its value as accepted. No valuation witness testified that the machine had zero value, and the February 3 Order assigned it no value. Instead, the court awarded the full purchase price "due to American Pharma's breach of the contract" without determining rejection, revocation, tender, return, or retained value. (R. pp. –.)

Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010), does not cure that deficiency. *Austin* involved repeated concrete attempts to tender the goods back and evidence supporting a finding that the retained goods had no value. Here, the record identifies neither a completed tender nor evidence valuing the machine at zero. *Austin* therefore illustrates the missing findings rather than authorizing the award.

The consequential damages present a related defect. Section 36-2-715 limits recovery to incidental and consequential losses satisfying the statutory requirements governing causation, foreseeability, reasonableness, and avoidability.

The court awarded film expenses, payroll/facility expenses, and sixty-two months of storage without separately addressing those requirements. (R. pp. –.) APM specifically contested mitigation and the necessity and foreseeability of those expenses, including continued storage. (R. pp. –.)

The court nevertheless awarded $4,650 in storage costs despite Donohue's admission that neither APM nor the court required Firewalker to store the machine. (R. pp. –.)

Because the judgment awarded the full purchase price without identifying the governing UCC remedy or accounting for the retained machine's value, and awarded consequential damages without the required statutory analysis, the damages award should be vacated.

IX. THE $16,243.86 ATTORNEY-FEE AWARD AGAINST MRS. PIERCE LACKED BOTH A VALID PERSONAL STATUTORY BASIS AND THE REQUIRED ADVERSARIAL AND REASONABLENESS DETERMINATION.

Standard of Review

An attorney-fee award is reviewed for abuse of discretion. The circuit court must apply the governing factors and make findings sufficient for meaningful appellate review. Jackson v. Speed, 326 S.C. 289, 486 S.E.2d 750 (1997); Rowell v. Whisnant, 360 S.C. 181, 600 S.E.2d 96 (Ct. App. 2004). Whether a statutory basis exists to impose fees upon Mrs. Pierce personally presents a question of law reviewed de novo.

Under § 39-5-140(a), attorney-fee entitlement follows a successful private SCUTPA claim. As shown in Argument VI, Firewalker did not establish an independent SCUTPA violation by Mrs. Pierce. If the personal SCUTPA judgment fails, the statutory basis for imposing Firewalker's fees upon her fails with it.

Even if statutory entitlement existed, the amount required a reasoned determination. *Jackson* requires consideration of the nature and difficulty of the services, time devoted, professional standing, contingency of compensation, customary fee, and beneficial results obtained. *Rowell* requires sufficient evidence and findings to permit meaningful appellate review.

Firewalker presented a supplemental fee affidavit and redacted invoices during the January 8 hearing while Mrs. Pierce was absent. (R. pp. –.) She therefore had no contemporaneous opportunity to examine the billing records, object to particular entries, challenge allocation, or question the fee submission.

APM's attorney stated that APM had no objection, but, as established in Argument III, he represented APM alone. (R. pp. –.) His position could not waive Mrs. Pierce's individual objections.

Nevertheless, paragraph 11 of the February 3 Order states that "[t]he reasonableness of these costs and fees is uncontested by Defendants." (R. pp. –.) As applied to Mrs. Pierce, that finding improperly treated APM counsel's position as her waiver.

To the extent Firewalker relies upon Rule 55(b)(3), SCRCP, the record must still establish the required motion, affidavit, notice, service, and applicable time periods as to Mrs. Pierce individually. The Rule does not eliminate the required reasonableness determination.

The Order also failed to explain why the entire $16,243.86 including work involving APM, the Estate, probate-related proceedings, default disputes, the Motion to Strike, and alter-ego issues was properly chargeable to Mrs. Pierce personally. (R. pp. –.)

Accordingly, because the fee award lacked an independent statutory basis against Mrs. Pierce, was treated as uncontested when she had no opportunity to challenge the supplemental submission, and lacked adequate findings concerning reasonableness and allocation, the $16,243.86 attorney-fee award should be vacated.

X. THE DAMAGES, TREBLING, AND ATTORNEY-FEE AWARDS MUST BE VACATED BECAUSE MRS. PIERCE WAS DENIED THE PARTICIPATION SOUTH CAROLINA LAW PRESERVES FOR A DEFAULTING DEFENDANT AT AN UNLIQUIDATED-DAMAGES HEARING.

Standard of Review

Whether a defaulting defendant received the notice and participation rights preserved at an unliquidated-damages hearing presents a question of law reviewed de novo. Default does not admit unliquidated damages, and the defendant retains limited rights to cross-examine witnesses and object to damages evidence. Solley v. Navy Federal Credit Union, Inc., 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012); Limehouse v. Hulsey, 404 S.C. 93, 107–09, 744 S.E.2d 566, 573–74 (2013).

<u>A. Mrs. Pierce learned of the damages hearing only two days beforehand and immediately sought to participate.</u>

Mrs. Pierce had not been served with the December 8 Order entering default against her and did not know that a damages hearing had been scheduled for January 8. She first learned of the hearing on January 6 through APM counsel's office. (R. pp. –.)

From Uganda, she immediately contacted the court, requested a continuance, and explained that international travel was impracticable on two days' notice. When told that the continuance request would be addressed at the hearing, she asked on January 8: "Can I at least be allowed to appear remotely?" (R. pp. –.)

The court did not grant remote participation and proceeded in her absence. (R. pp. –.) The record therefore shows immediate efforts to participate—not abandonment of the proceeding.

B. Default did not eliminate Mrs. Pierce's right to participate in determining unliquidated damages.

Default does not admit unliquidated damages. *Solley*, 397 S.C. at 203, 723 S.E.2d at 603. In *Limehouse*, the Supreme Court confirmed that a defaulting defendant retains the right at the damages proceeding to cross-examine the plaintiff's witnesses and object to the plaintiff's evidence. 404 S.C. at 107–09, 744 S.E.2d at 573–74.

Rule 5(a), SCRCP, likewise preserves notice concerning proceedings to determine unliquidated damages notwithstanding default. *McCall v. IKON Office Solutions, Inc.*, 363 S.C. 646, 611 S.E.2d 315 (Ct. App. 2005), further demonstrates that inadequate notice of a post-default damages proceeding may require a new damages hearing.

Mrs. Pierce therefore need not establish a right to reopen liability. Even if default remained effective, she retained the narrower rights to meaningful notice, cross-examination, and objection to Firewalker's damages evidence.

C. Her written submission did not substitute for the live participation preserved by *Limehouse*.

At 6:46 a.m. on January 8, Mrs. Pierce transmitted a Brief in Opposition to Damages and photographic evidence. (R. pp. –.) The January 9 Form 4 states that the court reviewed and considered those materials. (R. pp. –.)

Although the January 9 Form 4 later stated that the court reviewed and considered the documents Mrs. Pierce filed that day, that subsequent paper review did not afford her the opportunity to cross-examine Firewalker's witness or object contemporaneously to the evidence and fee materials. Those are the limited rights that survive default under Limehouse.

But written review did not permit Mrs. Pierce to hear Donohue's testimony, cross-examine him, object when Firewalker's exhibits were offered, or challenge the supplemental attorney-fee materials introduced during the hearing.

Those are precisely the limited adversarial rights that survive default under *Limehouse*.

D. The denial of participation caused concrete prejudice.

Donohue testified concerning the machine's condition, timing, use, storage, film and payroll expenses, mitigation, and retained value. (R. pp. –.) APM's counsel cross-examined him and obtained admissions relevant to damages, including that Firewalker retained the machine, never attempted to sell or scrap it, and stored it without direction from APM or the court. (R. pp. –.)

Mrs. Pierce had no opportunity to conduct her own cross-examination or object to Firewalker's damages evidence. She likewise could not object when Firewalker introduced its supplemental attorney-fee affidavit and redacted invoices**. (R. pp. –.)**

Accordingly, at minimum, the damages, trebling, attorney-fee, and resulting monetary awards should be vacated and the matter remanded for a new damages hearing at which Mrs. Pierce may cross-examine Firewalker's witnesses and object to its damages and fee evidence.

XI. THE CIRCUIT COURT ABUSED ITS DISCRETION IN DENYING A CONTINUANCE AND PROCEEDING WITHOUT ADDRESSING MRS. PIERCE'S ALTERNATIVE REQUEST TO APPEAR REMOTELY.

Standard of Review

A ruling on a motion for continuance is reviewed for abuse of discretion. Rule 40(i)(1), SCRCP. An abuse of discretion occurs when the ruling rests upon an error of law or a materially unsupported factual premise. Rule 40(i)(1) permits a continuance for good and sufficient cause. The record shows that Mrs. Pierce consistently sought to participate rather than abandon the litigation.

On July 3, 2025, she notified the court that she expected to be in Uganda during the parliamentary-election period, stated her intent to continue defending the action, and offered to participate by Zoom or telephone. (R. pp. –.) She remained in the United States through the September 25 proceedings and departed October 1 after receiving no trial notice. (R. pp. –.) When she later learned that default would be argued on October 27, she again promptly requested remote participation. (R. pp. –.)

The same issue arose at damages. As established in Argument X, Mrs. Pierce was not served with the December 8 default Order and first learned on January 6 that a damages hearing was scheduled for January 8. She immediately requested a continuance and, when that relief was not granted beforehand, expressly asked on January 8: "Can I at least be allowed to appear remotely?" (R. pp. –.)

The court nevertheless proceeded without her and denied the continuance on the stated premise that Mrs. Pierce had known of the hearing but "made no flight plans" to attend. (R. pp. –.)

That premise failed to address her assertion that she first learned of the hearing only two days beforehand while in Uganda. It also did not resolve her alternative request to participate remotely.

The error was consequential. The court proceeded to receive sworn testimony, documentary exhibits, and a supplemental attorney-fee submission before entering an $87,619.47 judgment against Mrs. Pierce personally. (R. pp. –.)

Under these circumstances, denial of the continuance on a materially incomplete factual premise, coupled with the failure to address the alternative request for remote participation, was an abuse of discretion. At minimum, the damages judgment should be vacated and remanded for a proceeding at which Mrs. Pierce has a meaningful opportunity to participate.

XII. THE CIRCUIT COURT ERRED IN TREATING AN EMAIL TRANSMISSION AS SUFFICIENT NOTICE OF THE OCTOBER 2025 TRIAL WITHOUT ESTABLISHING SERVICE IN THE MANNER REQUIRED FOR A PRO SE PARTY.

Standard of Review

Whether service complied with Rule 5, SCRCP, and the electronic-service provisions applicable to a pro se litigant presents a question of law reviewed de novo. The legal sufficiency of service *depends upon compliance with the governing rules, not merely proof that an email was transmitted.*

The circuit court's Form 4 found that notice placing the case on the October 2025 jury roster was transmitted to Mrs. Pierce by email on September 26. (R. pp. –.) The Form 4 identifies no mailing or other method of service. Mrs. Pierce was proceeding pro se and maintains that she had not consented to electronic service. (R. pp. –.)

Rule 5, SCRCP, governs service after commencement of an action. Accordingly, proof that an email was sent is not necessarily proof that legally sufficient service occurred; the method used must satisfy Rule 5 and the applicable electronic-service requirements.

That distinction matters because the September 26 email became the basis for treating Mrs. Pierce's October absence as a knowing failure to appear after proper notice.

The record also distinguishes the general trial-roster communication from notice that default would actually be argued. On October 24 at 9:19 p.m., the judge's assistant separately instructed the parties to "be prepared" the following Monday to argue the outstanding default motion. (R. pp. –.) As addressed in Argument III, that separate communication is the notice relevant to Rule 55(b)(2)'s three-day requirement.

Thus, placement on a trial roster by email could not itself establish either valid service upon a pro se litigant or the separate notice required before default was heard.

If the September 26 email did not constitute service authorized by Rule 5 and the applicable electronic-service rules, the circuit court could not treat its transmission as proof that Mrs. Pierce received legally sufficient notice of the October proceeding. The resulting adverse action therefore cannot be sustained on the premise that she knowingly failed to attend a properly noticed proceeding.

XIII. THE DAMAGES JUDGMENT CANNOT STAND WHERE FIREWALKER'S OWN PHOTOGRAPHIC AND CONTEMPORANEOUS EVIDENCE CREATED AN UNRESOLVED DISPUTE AS TO WHETHER THE MACHINE WAS DAMAGED AFTER DELIVERY WHILE IN FIREWALKER'S POSSESSION.

Standard of Review

In an action at law tried without a jury, factual findings concerning damages and causation will not be disturbed if reasonably supported by the evidence, while the legal measure of damages is reviewed de novo. Because default does not admit unliquidated damages, Firewalker remained required to establish its recoverable losses. Solley v. Navy Federal Credit Union, Inc., 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012).

A. Firewalker's own photographs depict materially different conditions before and after delivery and handling.

Firewalker sought damages on the premise that the machine arrived damaged. Its own photographs, however, created a substantial dispute concerning when that damage occurred.

The earliest photographs show Firewalker personnel uncrating the machine while it remained protectively wrapped and secured to its pallet. The visible stainless-steel surfaces appear clean and do not display the scratches, residue, dents, and other marks shown in later photographs. (R. pp. –.)

The later photographs depict the protective wrapping removed, Firewalker-branded packaging material threaded through the machine, and scratches, scuffing, residue, dents, and other physical marks not visible in the earlier photographs. (R. pp. –.)

Firewalker's own photographic evidence therefore documented a material change in the machine's condition after delivery and possession, requiring a determination of when and how the complained-of damage occurred.

B. Firewalker's testimony and contemporaneous communications reinforced the causation dispute.

Donohue acknowledged that the Complaint identified approximately August 18, 2020 as the delivery date and testified that the machine was not opened until October 10, after sitting in Firewalker's warehouse. (R. pp. –.)

During the intervening weeks, Donohue communicated with APM concerning the model number, 220-volt connection, film dimensions, packet dimensions, and printing attachment without reporting visible physical damage. (R. pp. –.)

On October 10, Donohue stated that Firewalker intended to "unbox machine today and try it out." (R. pp. –.) Yet Firewalker's photographs show its personnel uncrating a clean, wrapped machine and later show its branded packaging material threaded through equipment displaying materially different physical conditions. (R. pp. –.)

These photographs, communications, and Donohue's testimony created a factual dispute concerning Firewalker's handling and use of the machine before the later damage was reported.

C. Default did not establish causation of the unliquidated damages awarded.

The December 8 default Order did not determine when the dents or other physical damage occurred, whether Firewalker operated or tested the machine before reporting that damage, or whether the losses ultimately claimed were caused by the condition attributable to APM. (R. pp. –.)

Default did not eliminate that inquiry. *Solley* holds that unliquidated damages remain to be established notwithstanding default.

Mrs. Pierce submitted the photographic evidence and written opposition before the January 8 hearing. The January 9 Form 4 states that the court reviewed and considered those materials. (R. pp. –.) But, as addressed in Argument X, written review did not permit Mrs. Pierce to cross-examine Donohue concerning the conflicts between his testimony, the photographs, and the contemporaneous communications.

The February 3 Order nevertheless awarded the full purchase price and consequential damages without resolving those causation conflicts. (R. pp. –.)

D. The unresolved causation dispute independently undermines the damages judgment.

This Court need not determine who physically damaged the machine. The defect is that Firewalker received damages premised upon APM's responsibility for the machine's condition without resolution of Firewalker's own evidence showing materially different conditions before and after the machine entered its possession and control.

The separate UCC defects concerning Firewalker's retention of the machine, its lack of tender, retained value, storage, and mitigation are addressed in Argument VIII. The narrower point here is causation: Firewalker still had to establish that the losses awarded resulted from the condition attributable to APM rather than post-delivery handling or use.

Because Firewalker's own photographs, testimony, and contemporaneous communications created a material unresolved dispute on that question, the damages judgment cannot stand.

XIV. THE CIRCUIT COURT DENIED MRS. PIERCE DUE PROCESS AND EQUAL PROTECTION BY ADJUDICATING FIREWALKER'S REQUESTS WHILE FAILING TO HEAR OR RESOLVE MRS. PIERCE'S PENDING AFFIRMATIVE CLAIMS AND MOTIONS.

Standard of Review

Whether a trial court's procedures violate Due Process or Equal Protection under Article I, Section 3 of the South Carolina Constitution and the Fourteenth Amendment presents a question of law reviewed de novo. State v. Jenkins, 412 S.C. 643, 650, 773 S.E.2d 906, 909 (2015); S.C. Dep't of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 734 (2002).

A. Due process requires a meaningful opportunity to have a litigant's claims heard.

Due process requires a meaningful opportunity to be heard. Equal protection likewise prohibits materially unequal treatment of similarly situated litigants without a constitutionally sufficient basis. *Wilson*, 352 S.C. at 452, 574 S.E.2d at 734.

Mrs. Pierce does not contend that every motion must be heard on an identical timetable. Her claim is that the circuit court repeatedly heard and adjudicated Firewalker's requests while never scheduling or adjudicating her affirmative claims arising from the same transaction.

B. Firewalker's requests were heard while Mrs. Pierce's affirmative claims remained unscheduled and unresolved.

On September 23, 2025, Mrs. Pierce filed her Amended Answer, Affirmative Defenses, Counterclaims, and related requests for relief, including affirmative claims against Firewalker and Franco Donohue. She also sought dismissal of Firewalker's claims against the Estate. (R. pp. –.)

As established in Argument I, those filings asserted eleven substantive causes of action and requested affirmative monetary and equitable relief. Yet the circuit court never scheduled a hearing or entered an order adjudicating those claims.

Firewalker's requests proceeded differently. Its default motion was heard, its Motion to Strike was addressed procedurally, and its damages request received a live evidentiary hearing culminating in an $87,619.47 judgment against Mrs. Pierce. (R. pp. –.)

The October 17, 2025 Order itself recognized unresolved issues concerning Mrs. Pierce's amended pleadings and claims involving Donohue. (R. pp. –.) Those matters nevertheless remained undecided while the court proceeded with Firewalker's default and damages requests.

C. Entering final judgment for Firewalker while leaving Mrs. Pierce's affirmative claims unheard denied her a meaningful opportunity for judicial resolution.

The constitutional problem is not merely that Mrs. Pierce's claims remained pending longer than Firewalker's. The court proceeded to adjudicate Firewalker's claims, conduct a damages hearing, and enter a substantial personal judgment while never affording Mrs. Pierce a hearing or ruling on her affirmative claims arising from the same underlying transaction.

As shown in Argument I, those claims did not disappear merely because Firewalker obtained default on its own causes of action. They remained matters requiring judicial disposition.

By affording Firewalker hearings and adjudication while leaving Mrs. Pierce's affirmative claims entirely unheard and unresolved, the circuit court denied Mrs. Pierce a meaningful opportunity to obtain judicial determination of her claims and subjected the opposing parties' requests for relief to materially unequal procedural treatment.

The resulting judgment should therefore be vacated, or at minimum the matter remanded for adjudication of Mrs. Pierce's unresolved affirmative claims and motions.

VI. CONCLUSION

The February 3, 2026 Order cannot stand as a final judgment terminating this action. Mrs. Pierce's affirmative claims against Firewalker and Franco Donohue, Firewalker's Motion to Strike, the unresolved question of Donohue's party status, and Firewalker's claims against the Estate remained undecided, and no Rule 54(b) certification was entered. The January 9 Form 4 itself confirmed that the damages ruling **"does not end the case."** Nothing was adjudicated between that ruling and the February 3 designation that the case had ended.

To the extent the judgment against Mrs. Pierce is presently reviewable, it cannot stand. Mrs. Pierce appeared, answered, opposed default, presented substantial defenses, and continued participating, yet default was entered on the demonstrably incorrect premise that **"no objection has been filed."** She was later denied the opportunity to cross-examine Firewalker's witness or object to the damages and supplemental fee evidence used to impose an $87,619.47 personal judgment.

The substantive judgment is independently defective. Firewalker's own evidence established that the transaction was with APM, while the court imposed APM's liabilities upon Mrs. Pierce through an alter-ego conclusion unsupported by the findings required under South Carolina law. The court made no independent findings establishing fraud or SCUTPA liability against Mrs. Pierce, and the damages award granted the full purchase price while Firewalker retained the machine despite unresolved issues concerning retained value, causation, storage, and mitigation.

For these reasons, the judgment against Mrs. Pierce should be reversed or vacated and the unresolved claims remanded for adjudication.

VII. PRAYER FOR RELIEF

WHEREFORE, Appellant Dorothy Pierce respectfully requests that this Court:

1. Reverse and vacate the December 8, 2025 Order entering default against Mrs. Pierce;
2. Reverse and vacate the February 3, 2026 Order for Damages Default Judgment and the entire $87,619.47 joint-and-several judgment entered against Mrs. Pierce personally;
3. Hold that the circuit court erred by adjudicating Firewalker's claims to final judgment while leaving Mrs. Pierce's timely filed Counterclaims, Motion for Leave to Amend, and claims involving Franco Donohue unaddressed and unheard;
4. Hold that Mrs. Pierce is not personally liable for APM's contractual, warranty, UCC, or SCUTPA obligations under an alter-ego theory;
5. Remand this action to the Circuit Court with instructions to reinstate Mrs. Pierce's Answer, schedule and conduct a full hearing on the merits of Mrs. Pierce's Counterclaims and Third-Party Claims against Firewalker Hot Sauce Company, LLC and Franco Donohue, and allow Mrs. Pierce to defend against Firewalker's claims on the merits;
6. Order that, on remand, the circuit court permit Mrs. Pierce to appear and participate remotely (via Zoom, Microsoft Teams, or telephone) in all future hearings and proceedings; and
7. Grant such other and further relief as this Court deems just and proper..

Respectfully submitted this August 8, 2026

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