



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-10-6530

W. ASHLEY THEIM, as conservator of DEWAYNE A. WHITE

CHRISTOPHER A MALONEY AND 2667 SPRUILL AVENUE, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

FILED  
 2016 SEP 9 AM 10:56  
 JUDGE CHRISTOPHER MALONEY  
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: DEFENDANT 2667 SPRUILL AVENUE, LLC'S MOTION FOR SUMMARY JUDGMENT IS GRANTED. DEFENDANT 2667 SPRUILL AVENUE, LLC IS DISMISSED WITH PREJUDICE.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2141

Judge Code

7/14/2016  
Date



STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 W.ASHLEY THEIM, )  
 as conservator of )  
 DEWAYNE A. WHITE, )  
 Plaintiff, )  
 v. )  
 )  
 CHRISTOPHER A. MALONEY )  
 And 2667 SPRUILL AVENUE, LLC, )  
 Defendant(s). )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2014-CP-10-06530

**ORDER GRANTING  
 DEFENDANT 2667 SPRUILL  
 AVENUE, LLC'S MOTION FOR  
 SUMMARY JUDGMENT**

**FILED**  
 2016 SEP -9 AM 10:57  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

This matter came before me on June 2, 2016, for a hearing on Defendant 2667 Spruill Avenue, LLC's ("2667 Spruill") Motion for Summary Judgment. After hearing oral arguments and reviewing the case law, transcripts, and other evidence presented, I hereby rule that 2667 Spruill's Motion for Summary Judgment is GRANTED.

**FINDING OF FACTS**

Plaintiff filed this lawsuit against Codefendant 2667 Spruill Avenue, LLC, seeking damages arising out of a motor vehicle accident which occurred on or about January 1, 2013. Codefendant Christopher Maloney allegedly caused personal injury to the Plaintiff when he struck the Plaintiff with his vehicle. The Plaintiff's Third Amended Complaint alleges that the purported at-fault driver, Maloney, was using his truck for the purpose of his business, 2667 Spruill. The Plaintiff's Third Amended Complaint also alleges that Maloney was an agent acting on behalf of 2667 Spruill. The Plaintiff's Third Amended Complaint further alleges that 2667 Spruill negligently supervised Maloney.

2667 Spruill is a duly organized South Carolina corporation formed on June 13, 2006. Maloney is the sole member and the company has no employees. The sole purpose of 2667 Spruill is to own the property located at 2667 Spruill. The corporation does not have any employees.

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At the time of the subject accident on January 1, 2013, the Plaintiff was a trespasser on the subject property who, according to the Defendants, was in the process of attempting to steal personal property at the time of the subject incident. Codefendant Maloney was acting in his individual capacity, and not as an agent of Codefendant 2667 Spruill, when he drove his personal vehicle to the property to throw away household garbage when he subsequently saw and pursued the Plaintiff. Due to the fact that 2667 Spruill does nothing more than own the property of which Maloney is a member, Maloney was not acting in the course of the business when he entered the property. 2667 Spruill does not manage employees, produce goods, provide services, or do anything else in the furtherance of which Maloney could have been acting on the day of the accident.

At the hearing on 2667 Spruill's Motion for Summary Judgment, counsel for 2667 Spruill argued that 2667 Spruill cannot be liable for Negligent Supervision due to the fact that Codefendant Maloney is the sole owner and only member of 2667 Spruill. Counsel also argued that Defendant Maloney was not acting in any capacity on behalf of 2667 Spruill at the time of the accident with the Plaintiff. Further, counsel argued that no evidence had been presented to suggest that the corporate veil should be pierced in this case. As discussed below, I agree with each of these arguments and specifically find that: (1) 2667 Spruill Avenue cannot be liable for Negligent Supervision due to the fact that Codefendant Maloney is the sole owner and only member of 2667 Spruill; (2) Defendant Maloney was not acting in any capacity on behalf of 2667 Spruill Avenue, LLC at the time of the accident with the Plaintiff; and (3) no evidence had been presented to suggest that the corporate veil should be pierced in this case. As such, the Plaintiff's alter ego claim is without merit.

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## STANDARD OF REVIEW

Pursuant to Rule 56(c), SCRPC, Summary Judgment should be granted when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Gauld v. O’Shaughnessy Realty Co., 380 S.C. 548, 557, 671 S.E.2d 79, 84 (Ct. App. 2008) (citing Connor Holdings, LLC v. Cousins, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007)); Pye v. Estate of Fox, 369 S.C. 555, 633 S.E.2d 505 (2006); Bradley v. Doe, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007), cert. granted, June 12, 2008; see also Higgins v. Med. Univ. of S.C., 326 S.C. 592, 486 S.E.2d 269 (Ct. App. 1997) (a trial judge considering a motion for summary judgment must consider all documents and evidence within the record, including pleadings, depositions, answers to interrogatories, admissions on file, and affidavits). “The purpose of Summary Judgment is to expedite the disposition of cases which do not require the services of a fact finder.” Gauld at 558, 671 S.E.2d at 85. “The plain language of Rule 56(c), SCRPC, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party’s case and on which that party will bear the burden of proof at trial.” Id. at 559; 671 S.E.2d at 85; quoting Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct. App. 2001) (citing Carolina Alliance for Fair Employment v. S.C. Dep’t of Labor, Licensing, and Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 800 (Ct. App. 1999)); Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991). “A complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.” Id. Moreover, a party cannot rely upon mere allegations to overcome a motion for Summary Judgment; instead, a party must present admissible evidence which establishes that questions of material fact exist. Strickland v. Madden, 323 S.C. 63, 68, 448 S.E.2d 581, 584 (Ct. App. 1994).

## CONCLUSIONS OF LAW

I. **Defendant Maloney was not acting in any capacity on behalf of 2667 Spruill Avenue, LLC at the time of the collision with the Plaintiff**

As stated above, I conclude the evidence presented in this case, including the deposition testimony of Codefendant Maloney, shows that Maloney was not acting in any capacity on behalf of 2667 Spruill at the time of the subject accident. Maloney has testified and asserted that he was on the property on a personal errand. Further, due to the fact that 2667 Spruill does nothing more than own the property of which Maloney is a member, Maloney was not acting in the course of the business when he entered the property with his personal truck.

II. **Defendant 2667 Spruill Avenue cannot be liable for Negligent Supervision as Codefendant Maloney is the sole owner and only member of 2667 Spruill Avenue.**

As stated above, Maloney was not acting on behalf of 2667 Spruill. However, even assuming he was acting on behalf of 2667 Spruill, the Plaintiff's allegations of Negligent Supervision against 2667 Spruill must fail.

Initially, it should be noted that, as a trespasser, Plaintiff is owed no duty except the duty not to do him willful or wanton injury. Estate of Adair v. L-J, Inc., 372 S.C. 154, 160, 641 S.E.2d 63, 66 (Ct. App. 2007) (citing Nettles v. Your Ice Co., 191 S.C. 429, 436, 4 S.E.2d 797, 799 (1939) (holding a landowner "owes no duty to a trespasser . . . except to do him no willful or wanton injury.")).

South Carolina law states an **employer** may be liable for negligent supervision when: (1) his **employee** intentionally harms another when he is on the employer's premises, is on premises he is privileged to enter only as employee, or is using the employer's chattel; (2) the employer knows or has reason to know he has the ability to control the employee; and (3) the employer knows or has reason to know of the necessity and opportunity to exercise such control. Doe v.

Bishop of Charleston, 407 S.C. 128, 754 S.E.2d 494 (2014), reh'g denied (Mar. 6, 2014) (emphasis added). As recognized by the South Carolina Supreme Court, a negligent supervision claim fails if Codefendant Maloney is not an employee of Defendant 2667 Spruill. See Bank of New York v. Sumter Cty., 387 S.C. 147, 156, 691 S.E.2d 473, 478 (2010). There has been no evidence presented by the Plaintiff that Codefendant Maloney was an employee of Defendant 2667 Spruill. As such, the Plaintiff's negligent supervision claim must fail.

Additionally, logic suggests that Codefendant 2667 Spruill cannot be liable under a theory of Negligent Supervision as the only owner and member of the company cannot negligently supervise himself. Maloney testified that he is the sole member of 2667 Spruill and it does not have any other members. The sole purpose of 2667 Spruill is to own property. Based on the clear meaning of the law stated above, 2667 Spruill managing member(s) would need to exercise some type of control over the employee. Furthermore, for this theory of liability to apply there must be some sort of act or omission by Maloney that could have been controlled by 2667 Spruill Avenue while on its property. Simply stated, it is impossible for a single member company to knowingly exercise control over its sole member. While not binding precedent, the case of Kidder v. Lasaracina, No. CV106003902, 2012 WL 4466153, at \*6 (Conn. Super. Ct. Sept. 5, 2012) is instructive, which holds, in part, that where a defendant company that never had any employees, had a sole member, and whose only purpose was to hold property, the Plaintiff failed to present the court with any authority that would support the viability of a negligent supervision claim.

Based on the foregoing, summary judgment is granted in favor of 2667 Spruill on Plaintiff's sole claim against it for Negligent Supervision due to the fact that it does not apply in the context of this case and Plaintiff has failed to satisfy the requisite elements of such a cause of

action. In particular, the Plaintiff has failed to present evidence that Codefendant Maloney is an employee of 2667 Spruill Avenue that was supervised by the company.

**III. The Plaintiff's alter ego theory is without merit and insufficient evidence was presented by the Plaintiff to support piercing the corporate veil**

It is generally recognized that a corporation is an entity that is separate and distinct from, and its debts are not the individual debts of, its officers and stockholders. Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp., 374 S.C. 588, 597-98, 649 S.E.2d 135, 140-41 (Ct. App. 2007); citing Hunting v. Elders, 359 S.C. 217, 223, 597 S.E.2d 803, 806 (Ct. App. 2004) (internal citations omitted). Although the corporate entity may be disregarded in some situations, piercing the corporate veil is not a doctrine to be applied without substantial reflection. Id. (citing Baker v. Equitable Leasing Corp., 275 S.C. 359, 367, 271 S.E.2d 596, 600 (1980) ('piercing the corporate veil' is not a doctrine to be applied without substantial reflection.)). Courts are generally reluctant to disregard the corporate entity; if any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when 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. Id. (citing Sturkie v. Sifly, 280 S.C. 453, 456-57, 313 S.E.2d 316, 318 (Ct. App. 1984)). Thus, courts generally disregard the corporate entity only where equity requires piercing the corporate veil to assist a third party. Id. (citing Woodside v. Woodside, 290 S.C. 366, 370, 350 S.E.2d 407, 410 (Ct. App. 1986) ("The corporate form may be disregarded only where equity requires the action to assist a third party.")).

The burden of proof is on the party asserting that the corporate veil should be pierced. Id. Our courts have outlined a two-prong test to determine whether a corporate veil should be pierced. The first part of the test requires an eight-factor analysis and looks to observance of the corporate formalities by the dominant shareholders. Id. (citing Sturkie, 280 S.C. at 457-58, 313 S.E.2d at

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318). “The second part requires that there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of the individuals.” Id.

In determining whether the corporate formalities were observed under the first prong of the Sturkie test, the courts consider eight factors: (1) whether the corporation was grossly undercapitalized; (2) failure to observe corporate formalities; (3) non-payment of dividends; (4) insolvency of the debtor corporation at the time; (5) siphoning of funds of the corporation by the dominant stockholder; (6) non-functioning of other officers or directors; (7) absence of corporate records; and (8) the fact that the corporation was merely a facade for the operations of the dominant stockholder. Id. (citing Dumas, 320 S.C. at 192, 463 S.E.2d at 644).

“The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all.” Id. (quoting Dumas, supra). Under the second prong of the Sturkie test, the party seeking to pierce the corporate veil must prove injustice or fundamental unfairness if the corporate veil is not pierced. Id. (citing Multimedia Publ'g of S.C., Inc. v. Mullins, 314 S.C. 551, 553, 431 S.E.2d 569, 571 (1993)). “The essence of the fairness test is simply that an individual businessman cannot be allowed to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell.” Id. (quoting Multimedia Publ'g of S.C., Inc. at 556, 431 S.E.2d at 573).

Based on the evidence presented, I conclude that the Plaintiff has not presented any evidence whatsoever to support any of the 8 factors under the first prong of the Sturkie test and has likewise not presented any evidence to satisfy the second prong of the Sturkie test. Based on the foregoing, I conclude there is no evidence to support Plaintiff's alter ego argument and/or to support piercing the corporate veil in this matter.

**CONCLUSION**

For the reasons set forth above, I hereby conclude and rule that 2667 Spruill Avenue, LLC is entitled to summary judgment, as there is as there is no evidence to support the theory of Negligent Supervision or any other theory of liability on behalf of 2667 Spruill. Therefore, the Defendant 2667 Spruill Avenue, LLC's Motion for Summary Judgment is HEREBY GRANTED and this case against 2667 Spruill Avenue, LLC is DISMISSED WITH PREJUDICE. The case shall remain active against Codefendant Christopher A. Maloney only.

IT IS SO ORDERED.

By: 

The Honorable Thomas A. Russo  
Presiding Judge

Date: 7/14/16

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