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Piercing the Corporate Veil in Wilson v. Friedberg

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STUDENT WORKS

PIERCING THE CORPORATE VEIL IN *WILSON V. FRIEDBERG*

I. INTRODUCTION

Modern corporate law recognizes that a corporation is a legal entity whose debts and obligations are separate and distinct from those of its shareholders.[1] This separation, however, is not absolute, and a court may "disregard the entity when its separateness is used for illegitimate purposes."[2] Disregarding the corporate entity, or "piercing the corporate veil," is the judicially imposed exception to limited liability status. Judicial exercise of this doctrine strips the shareholder of limited liability and makes him responsible for corporate actions as if they were his own.[3] Traditionally, South Carolina courts have not pierced a corporate veil without substantial reflection and mature consideration.[4] However, in a recent case captioned as *Wilson v. Friedberg*,[5] the South Carolina Court of Appeals upheld a decision to pierce

1. *See* 18 C.J.S. *Corporations* § 2 (1990); 18 AM. JUR. 2D *Corporations* § 1 (1985). South Carolina codifies this separation by providing statutory limited liability for corporate shareholders. Unless the corporation's articles of incorporation specify that the corporation elects to opt out of this protection, shareholders cannot be held personally liable for corporate obligations absent voluntary assumption of liability through personal conduct. The statute provides in pertinent part:

> Unless otherwise provided in the articles of incorporation, a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that he may become personally liable by reason of his own acts or conduct.

S.C. CODE ANN. § 33-6-220(b) (Law. Co-op. 1990).

2. Robert B. Thompson, *Piercing the Corporate Veil: An Empirical Study*, 76 CORNELL L. REV. 1036, 1041 (1991).

3. *Id.* at 1036. The South Carolina Supreme Court recognized in *Parker Peanut Co. v. Felder*, 200 S.C. 203, 215, 20 S.E.2d 716, 720 (1942) that the corporate entity may be disregarded in "the proper case." The general rule is that the corporation will be held to be a legal entity until there is sufficient justification for applying the piercing doctrine. Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App. 1984) ("[W]hen the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons."). Though fraud is often one of the justifications for disregarding the corporate entity, it is not the only factor taken into consideration. DeWitt Truck Brokers v. W. Ray Flemming Fruit Co., 540 F.2d 681, 684 (4th Cir. 1976).

4. Sturkie, 280 S.C. at 457, 313 S.E.2d at 318; Baker v. Equitable Leasing Corp., 275 S.C. 359, 367, 271 S.E.2d 596, 600 (1980).

5. ___ S.C. ___, 473 S.E.2d 854 (Ct. App. 1996)

the veil of a corporate general partner (placing personal liability on the sole shareholder) despite a complete lack of substantiating evidence.[6]

II. BACKGROUND

The dispute in *Wilson* concerned investments in two limited partnerships. Four individuals, who later became the plaintiffs in the action, were the limited partners. A corporation, Royal Promotions, Inc., was the general partner. Richard H. Friedberg owned all of the stock of Royal Promotions. After both limited partnerships sustained losses in the ventures undertaken,[7] the limited partners requested income and expense records for both partnerships. Subsequently, when Royal Promotions failed to produce the requested documentation, the limited partners sued, alleging that Royal Promotions had mismanaged the partnerships, diverted partnership funds to other interests of the corporation and its shareholder, and failed to accurately account for production expenses. At trial, the master disregarded Royal Promotions as a corporate entity and ordered Friedberg to return a portion of the limited partners' capital contributions.[8]

Royal Promotions was held to be Friedberg's alter ego, a mere instrumentality for limiting the liability of his personal ventures.[9] Though the Court of

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6. *Id.*

7. *Wilson*, ___S.C. at ___, 473 S.E.2d at 855. The first arrangement required each limited partner to contribute $5,000.00 to the "Shag Musical Review L.P.," an original music review held in Charleston. After the production of the Shag Review, Royal Promotions reported to its investors that there was a net loss of $20,067.75, even after application of their $20,000.00 capital contribution. Each limited partner also invested $4,000.00 in a second production, "Fight Night Charleston No. 6 L.P.." After Fight Night, Royal Promotions reported a total loss of $12,164.00, again after offsetting the production costs against receipts and the $16,000.00 in initial capital. *Id.*

8. The master concluded that the actual total losses for Shag Review and Fight Night were $18,874.28 and $14,512.64 respectively. The master determined that the losses should be borne by the limited partners and the general partner in the same proportions as profits would have been shared. The limited partners therefore shared in $4,837.57 of the loss from Fight Night, entitling them to return of their capital contribution in the amount of $11,162.45. Likewise, they shared in $6,291.43 of the Shag Review loss, entitling them to a return of $13,708.57. *Id.* at 855-56.

9. *Id.* at 856. The respondents had veil-piercing as a means of recourse because of the manner in which the investors structured the limited partnerships. Though the general partner is normally personally liable in a limited partnership, it has become standard practice for a limited partnership to use a corporation as its general partner so as to limit this personal liability. *See* Susan Pace Hamill, *The Limited Liability Company: A Catalyst Exposing the Corporate Identity Question*, 95 MICH. L. REV. 393, 410 (1996).

South Carolina, by adopting the Revised Uniform Limited Partnership Act, sanctions the use of this type of partnership by including corporations within its definition of "persons" who may qualify as general partners. *See* S.C. CODE ANN. § 33-42-20(11) (Law. Co-op. 1990). This structure provides limited liability for all parties while maintaining the preferred tax consequences allowed to partnerships.

Appeals reversed the master's allocation of losses, it upheld the disregard of the corporate entity and affirmed Friedberg's personal liability.

The majority opinion in *Wilson* applied the two-pronged test for veil-piercing set forth in *Sturkie v. Sifly*.[10] The first prong of the test requires the court to examine eight factors that analyze the shareholder's relationship to the corporation. The principal aim is to determine whether or not the shareholder properly respects the separate identities of corporation and shareholder.[11] The *Sturkie* court essentially adopted eight factors set forth in *DeWitt Truck Brokers v. W. Ray Flemming Fruit Co.*[12] to fashion this first prong inquiry:

(1) whether the corporation was grossly undercapitalized considering the particular corporation's purpose or undertaking;
(2) failure to observe corporate formalities;
(3) non-payment of dividends;
(4) the 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 or stockholders.[13]

The second prong from *Sturkie* questions whether continued recognition of the corporate entity will result in injustice or fundamental unfairness.[14] This

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10. 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). In *Sturkie*, the respondents were sole stockholders and officers of an incorporated furniture company. The corporation was undercapitalized, failed to adhere to corporate formalities, and carried a loss of $265,181.00 on its Profit and Loss Statement. Adding to the company's woes, an employee obtained a default judgment against the corporation for back wages and commissions. When faced with the arguments of a receiver attempting to satisfy the employee's judgment, the South Carolina Court of Appeals held that piercing was not justified because the receiver had failed to substantiate a claim of fundamental unfairness or injustice. *Id.* at 455-56, 313 S.E.2d at 317.

11. *See* Cumberland Wood Prods. v. Bennett, 308 S.C. 268, 271, 417 S.E.2d 617, 619 (Ct. App. 1992).

12. 540 F.2d 681 (4th Cir. 1976).

13. *Id.* at 685-87. To satisfy the first prong of the piercing test, the corporation must demonstrate a number of the above factors. Dumas v. Infosafe Corp., 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct. App. 1995).

14. *Sturkie*, 280 S.C. at 457-58, 313 S.E.2d at 319. The second prong of the test comes not only from *DeWitt* but also from *FDIC v. Sea Pines*, 692 F.2d 973 (4th Cir. 1982), *cert. denied*, 401 U.S. 928 (1983). In *Sea Pines*, the defendant parent corporation mortgaged its subsidiary's only unencumbered asset so as to receive a $250,000.00 loan from the plaintiff bank. Though the subsidiary was already grossly undercapitalized, the directors of the parent corporation used the loan to pay the debts of the parent corporation and credited only $8,000.00 of the loan proceeds to the subsidiary. In addition to the justification for piercing supplied by the corporation's undercapitalized status, the subsidiary shared a common board of directors with its

prong places the burden on the plaintiff to prove "(1) that the defendant was aware of the plaintiff's claim against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property."[15] Finally, South Carolina courts will only apply the two pronged veil-piercing test when equity requires protection of a third-party,[16] and because a claim to pierce is an equitable action, a reviewing court will be allowed to forge its own view of the facts in issue.[17]

III. ANALYSIS

A. Wilson*'s Scant Application of the Two-prong Test*

In *Wilson*, the court of appeals focused first on Royal Promotions' role as general partner in the limited partnerships. Royal Promotions did not have any permanent employees and hired only temporary employees for its various promotions. Friedberg owned all of Royal Promotions' stock and prepared the financial reports for the two limited partnerships. Many of Royal Promotions' events were held at the King Street Palace in Charleston, which was owned by Carolina Film South Corporation. Friedberg and his wife also owned 85 percent of the Carolina Film South's stock. Friedberg kept inadequate records of expenses, handled most of the Royal Promotions' transactions in cash, commingled funds from various other ventures, and failed to file tax returns for Royal Promotions in its two years of its existence. Very simply, the *Wilson* court relied on the foregoing facts to determine that the plaintiffs met

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parent. Ultimately, the Fourth Circuit held that the actions of the parent and the subsidiary were fundamentally unfair to the bank and indeed pierced the corporate veil. *Id.* at 973-75.

15. *Sturkie*, 280 S.C. at 459, 313 S.E.2d at 319. From these criteria, it appears that the plaintiff may only rely on corporate activities occurring after a claim accrues. Thus, this aspect of the fundamental unfairness test imposes a knowledge or intent requirement on the corporation at fault. From a policy standpoint, this standard creates a risk that the public will be without recourse in the event that an unsound corporation ceases its activity after a claim arises. *See* William H. Nicholson III, Note, *Piercing the Corporate Veil: "Fundamental Unfairness" Defined*, 37 S.C. L. REV. 23, 26-27 (1985).

16. Woodside v. Woodside, 290 S.C. 366, 370, 350 S.E.2d 407, 410 (Ct. App. 1986) (citing *Sturkie*, 280 S.C. at 453, 313 S.E.2d at 316).

17. Townes Assocs. Ltd. v. City of Greenville, 266 S.C. 81, 86 221 S.E.2d 773, 775 (1976); *see also Dumas*, 320 S.C. at 192, 463 S.E.2d at 643. Although the reviewing court definitively has this flexibility in an equitable action, the court in *DeWitt* pointed out that the veil piercing question is fundamentally an issue of fact; hence, its resolution is primarily the trial court's domain. A trial court's piercing decision will be deemed "presumptively correct" and "left undisturbed on appeal unless it is clearly erroneous." *DeWitt*, 540 F.2d at 684.

their burden of proof regarding the shareholder's relationship to the corporation and his failure to observe corporate formalities.[18]

As for the fundamental unfairness analysis, the court stated only that the evidence was sufficient to support the master's conclusion at the trial level. The court offered no analysis of its own, simply quoting the ruling of the master:

> This case is based on the fiduciary duty of the general partner to the limited partners. I find that Friedberg and Royal Promotions were one and the same for the operation of Fight Night [and Shag Musical Review] and there would be fundamental unfairness if the acts of the corporation not be regarded as the acts of Friedberg.[19]

In summary, the majority in *Wilson* failed to specify, with any degree of particularity, evidence that justified piercing Royal Promotions' corporate veil. In particular, the court failed to articulate which, if any, of the *DeWitt* factors applied to Royal Promotions and Mr. Friedberg. Instead, the Court found it sufficient to view "the record as a whole"[20] and uphold the lower court's decision to pierce.

B. Viewing the Record as a Whole

In fact, the record, viewed as a whole, does not clearly indicate that the plaintiffs sustained their burden of proof[21] for the first prong of the *Sturkie* analysis. This is the primary criticism of Judge Anderson's dissenting opinion.[22] The record does not indicate that the plaintiffs made any allegations of gross undercapitalization, non-payment of dividends, corporate insolvency or failure to observe corporate formalities.[23] Though the plaintiffs

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18. *Wilson*, ___ S.C.___, 473 S.E.2d at 856.

19. *Id.* at 856-57. South Carolina has codified this general partner's fiduciary duty:

> Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct or liquidation of the partnership or from any use by him of its property.

S.C. CODE ANN. § 33-41-540(1) (Law.Coop. 1990).

20. *Wilson*, ___ S.C. at ___, 473 S.E.2d at 856.

21. *See* Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct. App.1984).

22. *Wilson*, ___ S.C. ___, 473 S.E.2d at 858-860.

23. *Parker Peanut Co. v. Felder*, 200 S.C. 203, 20 S.E.2d 716 (1942) best exemplifies a failure to adhere to corporate formalities. In that case, the South Carolina Supreme Court upheld a disregard of the corporate entity because the defendant corporation failed to hold any stockholder's or director's meetings, failed to issue any stock certificates, failed to keep records of stock transactions or minutes, and indeed, kept no records of any of its transactions for a full 16 years after the corporate charter was issued. *Id.* at 217, 20 S.E.2d at 721-22.

charged that Friedberg commingled partnership funds with funds from other ventures,[24] they did not accuse Friedberg of actually siphoning funds for his own benefit—the distinction is quite significant. Furthermore, although the plaintiffs alleged that the general partner failed to provide income and expense records, they provided no indication as to the absence of other records distinctly corporate in nature, such as minutes of meetings, stock certificates or board resolutions. Again, the plaintiffs stress the impact of the record as a whole. The plaintiffs argue that there was a general non-functioning of other directors; however, the record indicates that Mary Feldman served as President of Royal Promotions and that she played a role in finalizing subscription agreements for the events and in reviewing the profits and losses with the limited partners.[25] The plaintiffs appear to have made a mere bald assertion that the corporation was a facade for Friedberg's operations. It seems that plaintiffs' arguments are the more facile. Indeed, mechanically pointing to the record as a whole should not be adequate to prove the first prong of the piercing test..

C. Viability of DeWitt*'s Eight Factors: Strict List or Guidepost?*

The *Wilson* opinion raises the question of whether the eight-factor analysis adopted in *Sturkie* is a checklist to be strictly applied or merely a list of considerations to guide a court as it assesses the relationship of the corporate shareholder to corporation. Though the primary dispute in *Sturkie* focused on fundamental unfairness, the court alluded to the first prong of the test as being a rather strict eight-factor analysis rather than an examination of the totality of the circumstances.[26] Veil-piercing cases after *Sturkie*, that focused more intently on the first prong of the test, have concentrated on specific instances of accord with the eight factors set forth in *DeWitt*.[27] The court's failure in *Wilson* to specify any evidence in alignment with the eight *DeWitt* factors suggests a lessening of the plaintiff's evidentiary burden and a shift toward a totality of the circumstances approach.

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24. *See* Record at 44. The attorney for the plaintiffs makes allegations of deficiencies in accounting, but he never alleges that Friedberg actually siphoned funds for his own benefit.

25. *See* Record at 217-19.

26. *Sturkie*, 280 S.C. at 458, 313 S.E.2d at 318 (Ct. App. 1984) (referring to proof of a "sufficient number of the eight factors to justify piercing the corporate veil.").

27. Only two South Carolina cases have actually analyzed the first prong of the test since *DeWitt*. In *Cumberland Wood Products v. Bennett*, the Court of Appeals articulated the evidence as it applies to the eight factor analysis, emphasizing that the disregard of the corporate entity must be supported by a significant number of the factors. 308 S.C. 268, 270-71, 417 S.E.2d 617, 618-19 (Ct. App. 1992). In *Dumas v. Infosafe Corp.*, the Court of Appeals also articulated the evidence according to the eight factors, rather than viewing the record as a whole. 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct. App. 1995).

D. Equating Fiduciary Status with a Duty of Fundamental Fairness

The court in *Wilson* also affirmed the trial court's finding that Friedberg's breach of fiduciary duty was tantamount to meeting the fundamental unfairness requirement announced as *Sturkie*'s second prong.[28] The essence of the fairness inquiry is to ensure that an individual is not allowed "to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell."[29] As mentioned previously, however, a plaintiff must prove fundamental unfairness by showing the defendant's awareness of plaintiff's claims and defendant's subsequent choice to disregard those claims in service of personal interests.[30] It is at least odd that the *Wilson* court did not explicitly address the knowledge and self-serving activity requirements set forth in *Sturkie*.[31]

The basis of the action was that Royal Promotions failed to respond to repeated requests for income and expense records.[32] Without question, the limited partners had a statutory right to request an accounting for the partnership's actions.[33] Moreover, Friedberg, being the party responsible for preparing all income and expense records and the party who handled the general accounting of the partnership, seems the obvious and proper recipient

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28. *Wilson*, ___ S.C.___, 473 S.E.2d at 856-57.

29. *Dumas*, 320 S.C. at 192-93, 463 S.E.2d at 644 (citing Multimedia Publ'g v. Mullins, 314 S.C. 551, 556, 431 S.E.2d 569, 573 (1993)).

30. *See supra* note 15 and accompanying text.

31. 280 S.C. at 459, 313 S.E.2d at 319.

32. *Wilson*, ___S.C. at ___, 473 S.E.2d at 855. For litigation purposes, the court of appeals has held that an unwillingness or an inability to provide documentation of the corporation's status or its compliance with the eight-factor analysis creates a strong inference that the corporation does not observe formalities. *See Ball*, 314 S.C. at 277, 442 S.E.2d at 623. In *Ball*, the plaintiffs were independent truckers that had contracted with the defendant truck brokerage business for transport of shipments to various destinations. After discovering documentation that led them to suspect that they were being underpaid, the plaintiffs brought an action to collect on the shipments for which they had been underpaid. At the trial level, the referee held Canadian American Express (Can-Am) personally liable for the debt. The Court of Appeals affirmed the imposition of personal liability because Can-Am failed to produce corporate records, despite repeated discovery requests. Though the court did not declare a presumption in favor of the plaintiffs where the defendants fail to produce such records, it stated that such absence of record creates a strong inference of failure to adhere to corporate formalities. *Id.* at 274-77, 442 S.E.2d at 622-23.

33. The statute codifying this right provides as follows:

> Any partner shall have the right to a formal account as to partnership affairs:
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> (1) If he is wrongfully excluded from the partnership business or possession of its property by his copartners;
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> (2) If the right exists under the terms of any agreement;
>
> (3) As provided by § 33-41-540; or
>
> (4) Whenever other circumstances render it just and reasonable.

S.C. CODE ANN. § 33-41-550 (Law. Co-op. 1990).

of such a request.[34] From the record it is clear (perhaps explaining the court's glossing over the issue) that Friedberg was aware of the limited partners desire for an accounting.[35]

Yet, there remains no clear explanation as to why the court skipped past a self-serving activity analysis. The South Carolina Supreme Court has stated that "where a partner charged with the duty to keep a record of partnership transactions fails to do so and is unable to account for them, every presumption will be made against him."[36] The *Wilson* case represents the first opportunity the Court has had to consider a suit by a limited partner that argues for piercing the veil of a corporate general partner.[37] Though non-disclosure of records may not appear sufficiently egregious to warrant a finding of fundamental unfairness (especially the self-serving element) the court may have applied a more stringent standard because it perceived a larger duty is owed between partners in a partnership.[38]

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34. *See* Record at 287. Friedberg, however, maintained throughout the action that he did not *intend* to take on any personally liability by his actions. *See* Record at 285 and 344. This contention is in direct contrast to the facts of *DeWitt*, in which the appellant-defendant, upon being reminded by the plaintiff of his debt, pledged to personally pay the charges if the corporation failed to do so. DeWitt Truck Brokers v. W. Ray Flemming Fruit Co., 540 F.2d 681, 689 (4th Cir. 1976).

35. *See* Record at 344.

36. Lawson v. Rogers, 312 S.C. 492, 499, 435 S.E.2d 853, 857 (1993).

37. There does not appear to be another South Carolina case where a limited partner has brought a veil-piercing action against a general partner, but there have been such cases in other jurisdictions. *See, e.g.*, Baird Ward Printing Co. v. Great Recipes Publ'g Ass'n, 811 F.2d 305 (6th Cir. 1987) (refusing to find individual shareholder personally liable where he notified creditor that he was substituting his newly formed corporation as the general partner in a limited partnership so as to limit his personal liability); *In re* County Green Ltd. Partnership, 604 F.2d 289 (4th Cir. 1979) (refusing to allow mechanics lien holders to pierce the corporate veil of bankrupt general partner where the decision of the bankruptcy court was found to be reasonable and supported by the record); Pearl v. Shore, 95 Cal. Rptr. 157 (Ct. App. 1971) (finding limited partner not entitled to recover from corporate general partner where there was no showing of bad faith on the part of the corporate shareholder, where the corporate difficulties were found to be the result of mismanagement rather than undercapitalization, and where shareholder had nothing to do with the day to day operation of the corporate general partner); Delaney v. Fidelity Lease Ltd., 526 S.W.2d 543 (Tex. 1975) (holding limited partner that takes part in the control or management of a general partner cannot evade liability where the corporate general partner's identity is disregarded); Frigidaire Sales Corp. v. Union Properties, Inc., 562 P.2d 244 (Wash. 1977) (en banc) (ruling that because the parties agreed that the limited partners refrained from acting in any personal capacity, and because their personal affairs were kept separate from the corporation's, the corporate identity should be respected).

38. Several South Carolina cases address the relationship between partners. *See* Lawson v. Rogers, 312 S.C. 492, 499, 435 S.E.2d 853, 857 (1993) ("The relationship of a partnership is fiduciary in character and imposes on the members the obligation of refraining from taking any advantage of one another by the slightest misrepresentation or concealment."); Few v. Few, 239 S.C. 321, 336, 122 S.E.2d 829, 836 (1961) (stating that partners have a fiduciary relationship characterized by mutual trust and confidence, requiring loyalty, good faith and fair dealing);

Wilson also represents the most recent in a line of cases featuring an individual as the target shareholder-defendant. Since *Sturkie*, the vast majority of cases have been aimed at an individual, dominant shareholder.[39] This is unusual and may serve to skew South Carolina jurisprudence in this area. When a parent corporation is the defendant in a piercing case, the impersonal corporate entity stands to be held liable, and the corporation's wealth is at risk. In contrast, when the defendant-shareholder is an individual, the potential for ruinous personal liability, extending well beyond business assets, is at stake. Courts might understandably be more willing to disregard the corporate entity where a corporation is the defendant rather than an individual.[40] *Wilson*, for better or worse, strays from this impassioned conclusion.

IV. CONCLUSION

The ruling of the court of appeals in *Wilson* represents a disregard of legal, statutorily granted rights.[41] A court should only disregard these rights when its ruling is justifiable on a strong, equitable basis.[42] It is this aspect of *Wilson* that makes the lack of specific evidence somewhat disturbing. Leading authorities make it clear that one can incorporate for the *very purpose* of limiting personal liability.[43] Disregarding this protection should be based

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Anthony v. Padmar, Inc., 320 S.C. 436, 450,465 S.E.2d 745, 753 (Ct. App. 1995) ("By virtue of the general partners' position, the limited partner must rely upon the general partners' scrupulous performance of their duty to inform and represent the limited partners to the best of their abilities.").

39. *See Multimedia Publ'g*, 314 S.C. at 551, 431 S.E.2d at 569 (detailing a newspaper's action for breach of contract brought against an individual director and majority shareholder of incorporated grocery store); Cumberland Wood Prods. v. Bennett, 308 S.C. 268, 417 S.E.2d 617 (Ct. App. 1992) (resolving a wood supplier's suit against an individual, majority shareholder for breach of contract); Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984) (action against two sole shareholders).

Of the post-*Sturkie* cases listing a corporation as the defendant, all except one have sought to impose personal liability on one or two individuals. *See* Dumas v. Infosafe Corp., 320 S.C. 188, 463 S.E.2d 641 (Ct. App. 1995) (seeking to impose personal liability on corporation's president and sole shareholder); Ball v. Canadian Am. Express Co., 314 S.C. 272, 442 S.E.2d 620 (Ct. App. 1994) (seeking to impose personal liability on the two individuals serving as sole owners and operators of the corporation).

Only one modern South Carolina case deviates from this trend. *Peoples Federal Savings & Loan Ass'n v. Myrtle Beach Golf & Yacht Club*, 310 S.C. 132, 425 S.E.2d 764 (Ct. App. 1992) involved a counterclaim where a junior mortgagee sought to pierce the corporate veil of a wholly owned subsidiary to hold liable its sole shareholder, a savings and loan company.

40. *See* Robert W. Hamilton, *The Corporate Entity*, 49 TEX. L. REV. 979, 992 (1971).

41. *See supra* note 1.

42. *See supra* text accompanying notes 3-4; *see also Sturkie*, 280 S.C. at 457, 313 S.E.2d at 318.

43. Matter of Kaiser, 791 F.2d 73, 75 (7th Cir. 1986) (Posner, J.) ("The principle of limited

on well-articulated evidence that justifies stripping the shareholder of his rights—the sort of well articulated evidence that was conspicuously absent in *Wilson*.

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liability, whereby a corporation's creditors cannot reach the personal assets of the shareholder . . . is important to our capitalist system. It enables people to invest in business without hazarding their entire wealth on the venture."); Bartle v. Home Owners Coop., Inc. 127 N.E.2d 832, 833 (N.Y. 1955) (Froessel, J.) ("The law permits the incorporation of a business for the very purpose of escaping personal liability.").