Mother believed Son was not helping her as he promised. Mother testified that (1) Son only paid 1/3 of the property taxes on the property and that she had to pay the remaining 2/3 of the amount owed; (2) she had to hire someone to take care of the yard; (3) she paid for the insurance on the property, not Son; and (4) she had to pay someone to cut down two dead trees in the yard after Son refused to cut them down. Son disputes this testimony.

Son testified that in addition to paying the insurance and taxes on the house, he performed various tasks in the home, such as finding someone to fix the toilet. He also testified that he drove Mother to the grocery store and to the doctor's office. Mother claimed that she had to rely on Son for transportation because Son never returned her car after he took it to have the brakes checked. On the contrary, Son testified that Mother thought there was a problem with the brakes, so he drove it to his house in order to test them but did not find anything wrong with them. Son also testified that he does not believe that Mother is capable of driving safely.

Despite their rocky relationship, Mother decided to convey her home to Son. She later claimed that the only reason why she did so is because he convinced her that if she did not take the property out of her name, Medicaid would seize it if she failed to pay her medical expenses. Son claims that his half-sister gave Mother this idea and that he had nothing to do with the decision to take the property out of Mother's name. Son testified that he gave Mother the option to convey the property to him or to his half-sister, but he did not care who received title. Ultimately, Mother chose to give the property to Son.

After preparing the deed,[4] Son drove Mother to a pawnshop, where Mother signed the deed and the Lifetime Agreement. Mother remembered executing the deed and the Lifetime Agreement and testified that she knew what she was doing when she signed the deed.

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afraid Dove would "gain grandma's house, take it away from her, put her in a nursing home, sell it and get the money."

[4] According to Son, he prepared the deed and the Lifetime Agreement as Mother instructed.

containing information relating to the operations of BPS, Inc., including pricing, renewals and other information concerning customers of BPS, Inc."

In November of 2000, Carolina Benefit learned that various accounts in BPS's portfolio were leaving BPS. On November 22, 2000, Dickey signed a version of the Asset Purchase Agreement, making handwritten changes before signing it. Worthy was on vacation at that time. Upon his return, Worthy was informed that BPS's largest account would not be renewed for the coming year. Worthy refused to sign the agreement. Dickey averred that at that time Carolina Benefit had already "taken possession of the BPS assets, employed its employees and begun servicing its clients."

In December of 2000, BPS filed a lawsuit against Carolina Benefit and Worthy seeking injunctive relief and damages. The amended complaint alleged causes of action for breach of contract, breach of contract accompanied by fraudulent act, promissory estoppel, quantum meruit, violation of the Unfair Trade Practices Act, intentional interference with a contract, fraud, negligent misrepresentation, and fraud in the inducement. Carolina Benefit and Worthy answered and filed a counterclaim against BPS and a cross-claim against Dickey.

BPS sought an injunction to prevent Carolina Benefit

> from using the assets and name of BPS, Inc., from employing persons now or formerly employed by BPS, Inc., from contacting or otherwise doing business with any current or former client or customer of BPS, Inc., from utilizing any proprietary information, trade secret or other information obtained from BPS, Inc. in the course of its negotiations and purchase of assets from BPS, Inc., from entering into any contracts of any kind with clients, customers, employees or others now or formerly associated with Plaintiff . . . .

BPS filed various affidavits in support of the request for the temporary restraining order along with the complaint. A temporary restraining order was issued. Thereafter, a temporary injunction was ordered. The parties subsequently entered into a consent agreement in which Carolina Benefit

agreed not to use BPS's assets and name or to use proprietary information or trade secrets obtained from BPS or its employees in the course of its negotiations for the purchase of BPS's assets. By order of the circuit judge, the "Plaintiff shall maintain the disputed $100,000 earnest money deposit in an interest-bearing escrow account until further order of this Court."

Worthy moved to dismiss the action against him individually. He filed an affidavit in support of his motion, as well as excerpts from the depositions of Worthy and Dickey. The motion was heard before Judge Gary E. Clary on August 14, 2002. The trial court instructed counsel for Worthy to prepare a proposed order granting the motion to have Worthy dismissed as a defendant. The proposed order, mailed on August 27, 2002, noted: "Where matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56. See Rule 12(b), SCRCP."

On August 30, before Judge Clary signed the order, BPS's attorney wrote to the court objecting to the conversion. Counsel for BPS argued that if the motion was to be treated as a motion for summary judgment, the entire depositions should be placed into the record. A complete copy of Dickey's deposition was attached to the letter.

Judge Clary did not reply to this letter, but directed that the letter from BPS's attorney and Dickey's deposition be "filed in the Court file." Counsel for Carolina Benefit and Worthy did not object. Nonetheless, Judge Clary signed the order as proposed on September 6, 2002. The order referenced the depositions of both Worthy and Dickey in setting forth the facts, but stated: "[BPS] failed to submit any affidavits so the facts before the Court are those as set forth by the Affidavits and Deposition excerpts provided by Defendant/Third-Party Plaintiff Worthy." The order granted Worthy's motion for summary judgment as to individual liability.

BPS filed a motion to alter or amend. In the interim, Judge Clary left the bench. The motion to alter or amend was heard before Judge Larry Patterson. Judge Patterson denied the motion.

We find the following relevant rule in 19 Am. Jur. 2d Corporations, 4, Liability for Torts:

> § 1382. Generally.
>
> A director or officer of a corporation does not incur personal liability for its torts merely by reason of his official character; he is not liable for torts committed by or for the corporation unless he has participated in the wrong. Accordingly, directors not parties to a wrongful act on the part of other directors are not liable therefor. If, however, a director or officer commits or participates in the commission of a tort, whether or not it is also by or for the corporation, he is liable to third persons injured thereby, and it does not matter what liability attaches to the corporation for the tort . . . .
>
> § 1383. Liability for acts of subordinate officers, agents, or employees.
>
> Ordinarily, a director is not liable for the tortious acts of officers, agents, or employees of the corporation, unless he participated therein or authorized the wrongful act. It is held that directors cannot be held liable for the acts of subordinate officers which they neither participated in nor sanctioned, and where they could not, in the exercise of ordinary and reasonable supervision, have detected the wrongdoing of such subordinate officers . . . .

In 19 C.J.S. Corporations § 845-Torts, the rule is stated in this way:

> "A director, officer, or agent is not liable for torts of the corporation or of other officers or agents merely because of his office. He is liable for torts in

> which he has participated or which he has authorized or directed."

Id. at 477-78, 272 S.E.2d at 644.

Nothing in the law shields Worthy from direct liability in tort for his own actions. See Rowe v. Hyatt, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996) ("An officer, director, or controlling person in a corporation is not, merely as a result of his or her status as such, personally liable for the torts of the corporation. To incur liability, the officer, director, or controlling person must ordinarily be shown to have in some way participated in or directed the tortious act."). Worthy is personally liable for any tortious acts he participated in or directed.

Additionally, Worthy is liable for unfair trade practices that he personally committed. "[I]n private actions under the UTPA, directors and officers are not liable for the corporation's unfair trade practices unless they personally commit, participate in, direct, or authorize the commission of a violation of the UTPA." Plowman v. Bagnal, 316 S.C. 283, 286, 450 S.E.2d 36, 38 (1994) (emphasis added); see also Donsco, Inc. v. Casper Corp., 587 F.2d 602 (3rd. Cir. 1978) (finding that corporate officer is individually liable for unfair competition in which he participates); Moy v. Schreiber Deed Sec. Co., 535 A.2d 1168 (Pa. Super. Ct. 1988) (stating that corporate president could be held individually liable under the participation theory for acts of unfair competition which he personally committed); Great Am. Homebuilders, Inc. v. Gerhart, 708 S.W.2d 8 (Tex. App. 1986) (determining that corporate officer who knowingly participates in deceptive trade practice may be held individually liable).

Similarly, the corporate veil does not protect Worthy from liability for his own actions. Section 33-6-220(b) (1999) of the South Carolina Code states: "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." (Emphasis added).