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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Master-in-Equity
The Honorable Dale E. Van Slambrook, Master In Equity

Appellate Case No.: 2022-001611

Steve Cumbee and Palmetto Kitchen & Remodeling, LLC,.....Appellant,

v.

Bernard Milligan,.....Respondent.

INITIAL BRIEF OF RESPONDENT BERNARD MILLIGAN

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STATEMENT OF THE CASE

This is an appeal of an award of treble damages and attorney's fees under the South Carolina Unfair Trade Practices Act arising out of renovation work performed by Appellants, Steve Cumbee and his company, Palmetto Kitchen and Remodeling, LLC, (collectively, "Cumbee") on a house owned by Respondent, Bernard Milligan. Cumbee filed a complaint against Milligan to foreclose his mechanic's lien, and for quasi-contract, collection, breach of contract, and conversion seeking amounts allegedly due for labor and materials furnished pursuant to his contract with Milligan. (Cumbee Complaint, Case No. 2018-CP-08-889, pp. 1-4.) Before Cumbee was able to serve his complaint, Milligan filed his own action against Cumbee seeking damages for breach of contract, breach of express and implied warranties, builder's negligence, negligent misrepresentation, fraud, constructive fraud, civil conspiracy, and unfair trade practices, arising out of Cumbee's work. Milligan subsequently amended his complaint to withdraw his constructive trust claim. (Milligan Amended Complaint, pp. 1-12.)

Milligan denied the substantive allegations of Cumbee's complaint. (Milligan Answer to Cumbee Complaint, pp. 1-7.) Cumbee denied Milligan's allegations and restated, as a counterclaim, essentially the same causes of action in his initial complaint. (Cumbee Answer and Counterclaim, pp. 1-11.) Milligan's answer denied the allegations of Cumbee's counterclaim. (Milligan's Answer to Cumbee Counterclaim, pp. 1-7.)

The cases were consolidated under case number 2018-CP-08-889. (Order of Cons., p. 1.) By consent, the action was then referred to the Honorable Dale E. Van Slambrook, Master-in-Equity for Berkeley County. (Consent Order of Reference, pp. 1-3.)

The case was tried without a jury on July 11, 2022. On August 15, 2022, the Master issued an order denying all of Cumbee's claims and granting judgment to Milligan on his cause of action

for violation of South Carolina's Unfair Trade Practices Act. (Order of Judgment, August 15, 2022, pp. 12-13.) The Master trebled Milligan's actual damages award of $34,250.00 to $102,750.00, ruling that Cumbee's practices and acts were deceptive and unfair and that Cumbee knowingly and willfully violated the Unfair Trade Practices Act. (Order of Judgment, p. 13.) The Master also awarded Milligan attorney's fees in the amount of $30,894.78. (Order of Judgment, p. 13.)

Cumbee moved for reconsideration, arguing that the Master erred in granting judgment under the Unfair Trade Practices Act because Milligan failed to prove that Cumbee's practices and acts were unfair or deceptive. (Motion for Reconsideration, p. 3.) Cumbee further argued that there was no evidence showing that his methods, practices, and acts has any impact on the public interest—i.e., that there was a potential for repetition of his actions. (Motion for Reconsideration, p. 4.) Milligan filed a response with specific references to testimony and exhibits supporting the Master's judgment. (Response to Motion for Reconsideration, pp. 1-7.) The Master heard oral arguments on October 20, 2022, and, the following day, the Master issued an order denying the motion. (Order denying reconsideration, p. 1.) On November 16, 2022, Cumbee filed a notice of appeal of the Master's order denying reconsideration.

STATEMENT OF FACTS

In mid-September of 2017, Cumbee and Milligan entered into a contract providing that Cumbee would perform substantial renovations to Milligan's house located at 306 S. Live Oak Drive in Moncks Corner, South Carolina. (Milligan Amend. Complt., Exh. A.) Milligan was renovating the house so that his son, who suffered from health issues, could live there. (T. Trscrpt. 18:8-15; 119:8-21.) The total contract price plus agreed changes amounted to $59,200. (T. Trscrpt. 60:20-61:1; Plaintiff's Exh. 3.) Upon execution of the contract, Milligan made a down

payment of $18,250. (T. Trscrpt. 19:20-25; Pltf.'s Exh 1.) Cumbee soon asked for and received additional funding, bringing the total amount paid by Milligan to $34,250.00. (T. Trscrpt. 60:7-11; Pltf.'s Exhibit 1)

In December of 2017, Cumbee again approached Milligan seeking additional funds. (T. Trscpt. 28:5-19.) Milligan balked at any further payment because Cumbee's work appeared poorly executed and incomplete. (T. Trscpt. 17:6-23.) The deck had been nailed to the rotten sill of the house rather than bolted; the new windows were cheap mobile home-style windows, were improperly installed, and one window was entirely missing; the bedroom addition was not dried-in and was situated on concrete blocks instead of continuous concrete footers; 2 x 4's had been used to frame the rafters rather than 2 x 6's as required by code; the roof was not level, the shingles were improperly installed; the new siding had been nailed improperly; there was significant mold/mildew in the closet area of the bedroom addition; untreated wood installed as facia was rotting; wiring in the bathrooms had been roughed-in but was incomplete, the plumbing was incomplete, and the vanity had not been secured; kitchen renovations were incomplete except for roughed-in wiring, no cabinets/countertops had been installed, and the drywall was incomplete; the subfloor was rotting and the flooring was uneven; re-wiring was generally incomplete throughout the structure; and no a/c unit had been installed. (T. Trscpt. 64:22-80-19; Order, p. 6, ¶ 20.) Cumbee testified that he stopped work because Milligan refused to make any further payments, and that he had no intention of continuing the project "until that was cleared up." (T. Trscpt. 37:20-38:2; 38:24-39:3.)

Milligan then contacted Chad Kelly, Chief Building Official for the Town of Moncks Corner, and asked him to inspect the property. (T. Trscpt. 16: 22-17:5.) Kelly met Milligan and Cumbee at the house. (T. Trscpt. 112: 22-23.) During the meeting, Cumbee informed Kelly that

he had a permit from Berkeley County to perform the renovations. (T. Trscpt. 112: 22-24.) Kelly advised Cumbee that the project was located in the Town of Moncks Corner and that he needed a permit from the Town to perform the work, not the County. (T. Trscpt. 112:22-113:1.) Cumbee did not, in fact, have a permit from the County. (T. Trscpt. 112:22-113:17.) Cumbee also told Kelly that he had a license to operate his company from Berkeley County. Kelly knew that was false because Berkeley County does not issue business licenses. (T. Trscpt. 113:18-114:5.)

Kelly stopped all work on the project because Cumbee had neither a permit to perform the work nor a business license. (T. Trscpt. 38:3-9) Kelly informed Cumbee that in order to re-start work on the project, he would need to purchase a business license and then submit plans for the work to the Town of Moncks Corner for approval and issuance of a building permit. (T. Trscpt. 113:1-5; 114:6-115:12.) Cumbee never submitted any plans to the Town for the work on the project and the work remains unpermitted. (T. Trscpt. 38:18-39:10; 114:6-23.)

On December 28, 2017, Cumbee executed a verified statement of account in support of a mechanics lien he filed against Milligan's property. (Pltf. Tr. Exh. 3.) According to that sworn statement "the true and just account due to Steve Cumbee, individually and as owner of Palmetto Kitchen & Remodeling, LLC, for labor and materials used and unpaid for" was $59,200.00, that he received payments amounting to only $31,250, and that the total amount due was $27,950. (Pltf. Tr. Exh. 3.)

At trial, Cumbee testified that his company spent in excess of $40,000 for work on the project. (T. Trscpt. 30:2-7) Cumbee submitted his company's heavily redacted bank statements as evidence of the amount he spent on the project. (Pltf. Tr. Exh. 4.) The statements include highlighted entries showing electronic payments to various retail outlets and checks to unidentified individuals. (Pltf. Tr. Exh. 4.) Cumbee's wife, Mary Ruth Cumbee, was responsible for keeping

the books for Palmetto Kitchens and Remodeling. (T. Trscpt. 141:1-4.) She was unable to identify the particular project or determine the nature of the materials allegedly purchased based on the highlighted entries. (T. Trscpt. 140:7-25.) The highlighted entries amount to $21,554.10. (Pltf. Tr. Exh. 4.)

Cumbee concedes that much of the work that was to be performed under his contract with Milligan was incomplete. (T. Trscpt. 25:7-28:6.) He testified that he was seeking payment only for "completed work." (T. Trscpt. 34:11-18.) According to Cumbee, "we came up with a number" showing that Milligan owed $13,900 for the completed work and then "we found another $3,000.00" payment from Milligan that had been "overlooked," reducing the completed work claim to $10,900.00. (T. Trscpt. 35:20-36:5.) Therefore, as clarified and confirmed by the Master at trial, the total value of the contract was $59,200, and the total value of work supposedly completed by Cumbee was $45,150—e.g., the $34,250 previously paid by Milligan on the project plus the $10,900 supposedly still owed. (T. Trscpt. 59:14-61:1.)

Cumbee testified that the work on the house was performed in a careful, diligent, workman-like manner and all completed work was "done to code." (T. Trscpt. 47:17-48:7.) Any work not to code was not complete. (T. Trscpt. 48:2-7.) When asked if any of the work needed to be taken out and redone, Cumbee responded: "Any of the work that is completed is completed. Any of the work that is not completed still need adjustments or modifications." (T. Trscpt. 54:25-55:5.) He later reiterated, "anything that is done that was done in a less than acceptable standard is not deemed complete and would be addressed on another issue on a punch list and/or on a walk-through." (T. Trscpt. 55:10-13.)

Cumbee had difficulty identifying the work on the project had been done to code:

> Mr. Williams, it is not as simple as that. It's a flow of work and procedure. For example, that nailing of a stud has a certain procedure that needs to go

> through [*sic*]. At the end of installing all studs, we will come back and inspect and readjust if necessary. What I'm stating is that that adjustment process had not been made to ensure that a code has been on anything that is not completed [*sic*]. To ensure the codes have been adhered to on anything that is not complete [*sic*].

(T. Trscpt. 48:12-21.) Cumbee clearly has no idea whether any of the work on the project was done to code and therefore "deemed complete" according to his definition. Indeed, because no plans had been submitted to the town for approval and because Cumbee failed to obtain a building permit, none of the work on the project was "done to code." Using Cumbee's circular logic, *all* of the work on the project was incomplete.

David Johnson and James Henson testified on behalf of Milligan and were qualified, without objection, as experts in the field of home construction and remodeling. (T. Trscpt. 63:21-64:1; 103:10-19.) Johnson concluded that Cumbee's work was not performed in a careful, diligent, and workmanlike manner, that most of the work on the house did not meet code, and was in fact so inferior that it had little to no value because most of it would have to be completely torn out and replaced.[1] (T. Trscpt. 81:2-85:21.) Henson confirmed that, based on his own inspection of the renovations, Johnson's testimony, report, and photos accurately reflected the deficient nature of Cumbee's work. (T. Trscpt. 106:19-110:13.)

Tony Wren[2] testified that in 2018 he entered into a contract with Cumbee to install kitchen cabinets and bathroom cabinets in the home he and his wife were building. (T. Trscpt. 129:19-130:4; Defense Exh. 2.) The total value of the contract was $11,780. (Defense Exhibit 2.) Wren made an initial payment of $5,890 to Cumbee. (T. Trscpt. 136:2-6; Defense Exh. 2.) In less than

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[1] Johnson's report on Cumbee's work and a series of pictures depicting the above defects were admitted into evidence without objection.

[2] Tony Wren's name is misspelled "Renn" in the transcript. (Defense Exh. 2.)

two weeks, Cumbee asked for an additional payment. Despite being unhappy with the quality of the work, Wren and his wife agreed to pay Cumbee another $3,000 so that he would continue working on the project. (T. Trscpt. 133:25-134:6; Defense Exh. 2.) The quality of the work did not improve—the cabinet doors were not square, the hinge screws had split the wood, the cabinet doors had gaps and did not shut properly. (T. Trscpt. 130:1 6-20.) When Cumbee again sought additional funds, Wren refused and was forced to hire another contractor to finish the work. (T. Trscpt. 137:19-138:19.) Cumbee's work was so deficient that the cabinets had to be torn out and replaced. (T. Trscpt. 138:24-139:5.) Wren subsequently learned that "pretty much anybody that had dealings with" Cumbee experienced the same routine—substandard, incomplete work and persistent demands for additional funds in order to continue working on the project. (T. Trscpt. 131:16-132:14.)

STANDARD OF REVIEW

In an action at law, on appeal of a case tried without a jury, the scope of review extends merely to the correction of errors of law; factual findings of the trial judge will not be disturbed on appeal unless a review of the record discloses that there is no evidence which reasonably supports the judge's findings. *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773 (1976). See *Crary v. Djebelli*, 329 S.C. 385, __, 496 S.E.2d 21, 23 (1997). The same standard applies to appellate review of a judgment by a master-in-equity on claims made under the South Carolina's Unfair Trade Practices Act. *Allen v. Pinnacle Healthcare Sys.*, 394 S.C. 268, 272, 715 S.E.2d 362, 364 (Ct. App. 2011); *Linda Mc Co. v. Shore*, 390 S.C. 543, 555, 703 S.E.2d 499, 505 (2010).

ARGUMENT

To recover in an action under the UTPA, the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s). *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 338, 732 S.E.2d 166, 174 (2012), citing *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). The court determines what is considered to be unfair and deceptive based on the facts of the case presented. *Young v. Century Lincoln-Mercury, Inc.,* 302 S.C. 320, 396 S.E. 105, at 108. (Ct. App. 1989). A deceptive act is any act which has a tendency to deceive. *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000). Even a truthful statement may be deceptive if it has a capacity or tendency to deceive. *Wogan v. Kunze*, 366 S.C. 583, __, 606, 623 S.E.2d 107, 120 (Ct. App. 2005) (citations omitted). An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive. *deBondt*, 342 S.C. 269, 536 S.E.2d 407.

An impact on the public interest may be shown if the acts or practices have the potential for repetition. *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004) (citing *Crary v. Djebelli,* 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998)). The potential for repetition may be established by (1) showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures created a potential for repetition of the unfair and deceptive acts. *See Wogan v. Kunze*, 366 S.C. 583, __ , 623 S.E.2d 107, 121, (2005). These two ways are not the only means for showing the potential for repetition or public impact, and each case must be evaluated on its own merits to determine what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA. Our

Supreme Court has made it clear that these are not the only means for showing potential repetition and that each case must be evaluated on its own merits. *Wright v. Craft*, *supra.*, 372 S.C. __, 640 S.E.2d 502. Indeed, as emphasized by our Supreme Court:

> We expressly reject any rigid, bright line test that delineates in minute detail exactly what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA test.

Daisy Outdoor Advertising v. Abbott, 322 S.C. 489, 496, 473 S.E.2d 47, 50 (1996).

I. THERE IS EVIDENCE WHICH REASONABLY SUPPORTS THE MASTER'S FINDING THAT CUMBEE'S UNFAIR AND DECEPTIVE ACTS AND PRACTICES HAD POTENTIAL FOR REPETITION.

Cumbee opens the substantive portion of his argument with a sweeping conclusion:

> In the instant matter, the Respondent failed to provide evidence proving that the alleged unfair and deceptive actions taken by Respondents had any impact on the public interest, that those actions were capable of repetition, or that the Appellants willfully or knowingly violated the SCUPTA.

App. Init. Brf., p. 6. Cumbee's analysis focuses solely on the testimony of Tony Wren. He finds it significant that Wren "was unaware if it was the Appellants that had actually performed the work on the project at his home." App. Init. Brf., p. 6. Yet Cumbee fails to explain why this fact, if true, is important to the issues on appeal. Cumbee offers no authority to support his apparent contention that he has no liability under the Unfair Trade Practices Act simply because he hired somebody else to help him with the work that Cumbee had been paid to perform and was responsible for under the contract.

Wren testified that he contracted with Steve Cumbee to install new kitchen and bathroom cabinets. (Tr. Trnscpt, 129:24-130:4; Def. Exh. 2.) Wren paid Cumbee to handle the project. (Tr. Trnscpt, 130:10-14.) The work that was performed under that contract was of very poor quality. (Tr. Trnscpt, 130:15-20.) Cumbee knew that Wren was dissatisfied with the quality of the work, but kept demanding additional funds to continue the project. (Tr. Trnscpt, 131:13-23.) Wren refused to make

any more payments to Cumbee and ultimately had to hire another contractor to finish the project. (Tr. Trnscpt, 131:9-12.) The cabinets installed were of such poor quality that they had to be torn out and destroyed. (Tr. Trnscpt, 138:1-139:5.)

It is "well settled that where a person holds himself out as specially qualified to perform work of a particular character, there is an implied warranty that the work which he undertakes shall be of proper workmanship and reasonable fitness for its intended use...." *Hill v. Polar Pantries*, 219 S.C. 263, 271, 64 S.E.2d 885, 888 (1951). A builder who undertakes to supervise the construction of a building has a duty to exercise reasonable care. *See Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, at 370, 725 S.E.2d 112, at 124 (Ct. App. 2012). Regardless of whether the work for Wren was performed by Cumbee, by his employee, or by some incompetent subcontractor, Cumbee failed to assure that the workmanship was proper and reasonably fit for its intended use. He likewise failed to exercise reasonable care in supervising the work. The fact somebody else might have been working for Cumbee on the job does not disprove that Cumbee's acts and practices had a potential for repetition or that he willfully or knowingly violated the Unfair Trade Practices Act.

Cumbee further argues that "Respondent set forth no evidence to show that the work [for Wren] was insufficient, inadequate, or otherwise parallel to Respondent's allegations." App. Init. Brf., pp. 6-7. On the contrary, as set forth above, Wren testified in detail about the worthless quality of the work, being pressured by Cumbee to make further payments to continue the project, and Cumbee's reputation in the community for shoddy work and sharp business practices. *See* pp. 6-7, 9, *supra.* As set forth above, Milligan likewise presented evidence of Cumbee's deficient work and being pressured to make further payments to keep Cumbee working on the project. *See* pp. 3-6, *supra.* Based on this evidence, the Master reasonably determined that the two projects involved sufficiently

similar acts or practices to show a potential for repetition. (Order, p. 12, ¶13.) *See, e.g., Daisy Outdoor Advertising Co. v. Abbot, supra,* 322 S.C. at 497, 473 S.E.2d at 51.

Cumbee grumbles that "even if Appellants had performed the work, and even if it was unsatisfactory, they were unable to complete, fix, finalize, or otherwise rectify any deficiency…" because Wren "stopped the job before it was able to be completed." App. Init. Brf., p. 7. The work stopped because Wren had already paid Cumbee $8,890 (over 75% of the contract price) and was unwilling to sink any more money into the defective work.[3] (Def. Exh. 2.) The cabinets had to be torn out and entirely replaced. (Tr. Trnscpt, 131:7-12.) There is absolutely no evidence that Cumbee was ready, willing, and able, to "complete, fix, finalize, or otherwise rectify any deficiency" in the work for the $2,890 remaining in Wren's contract. The fact that the work stopped while Wren looked for a capable replacement contractor to finish the job does nothing to disprove that Cumbee's acts and practices had a potential for repetition.

Cumbee's arguments demonstrate a fundamental misunderstanding of Milligan's Unfair Trade Practices claim. Milligan is not seeking damages under South Carolina Code § 39-5-20 merely because Cumbee's work was deficient. Milligan sought damages under the Act based on Cumbee's lies about the work and his practice of demanding further payment, despite his substandard work, in order for him to keep working on the project. As a result of Cumbee's deceptive and unfair acts and practices, Milligan and Wren faced the same dilemma: abandon the sums they had already poured in the project—or continue to pay Cumbee in the hope that he would somehow complete the project *and* remedy all of the defective work with the limited funds remaining in the contract. The evidence clearly showed that Cumbee engaged in a pattern of deceptive and unfair acts and practices with a

[3] Had Milligan paid the $10,900 that Cumbee testified he was owed for supposedly "completed" work, Milligan's payments on the project also would have exceeded 75% of the total contract price—for a project that was nowhere close to completion.

potential for repetition. *See, e.g., Daisy Outdoor Advertising, supra,* 332 S.C. 493-497, 473 S.E.2d 49-52; *See also Crary v. Djebelli, supra,* 329 S.C. 385, 388-389, 496 S.E.2d 21, 23 (Alleged acts or practices have the potential for repetition where defendant had opportunity to and had entered into similar conduct to that alleged in complaint.)

In his motion for reconsideration, Cumbee makes the laughable claim that he "did not engage in any actions that would rise to the level of being unfair or deceptive." (Mot. For Recon., p. 3.) He further proclaims that his "actions taken on the project were those of standard practice for residential renovations." (Mot. For Recon., p. 3.) Cumbee's attorney reiterated the claim during the hearing: "The actions that were taken by Mr. Cumbee were a standard practice for those that practice in residential renovations." (Mot. For Recon. Trscpt., 5:4-6.) Cumbee never presented any evidence to show that his acts and practices were "standard practice for residential renovations." Nor was there any evidence that Cumbee's actions and practices were somehow isolated or unique and unlikely to be repeated. However, the acts and practices that the Master found to be deceptive and unfair were, according to Cumbee, *his* standard practice.[4] Cumbee admits that his operating procedures and business practices had a potential for repetition.

II. THERE IS EVIDENCE WHICH REASONABLY SUPPORTS THE MASTER'S FINDING THAT CUMBEE'S EMPLOYMENT OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES AMOUNTED TO A WILLFUL OR KNOWING VIOLATION OF THE UNFAIR TRADE PRACTICES ACT.

Cumbee fails to offer any arguments or authorities in support of his conclusory claim that there is no evidence that his actions and practices were willful or knowing to support the Master's award of treble damages and attorney's fees under the Unfair Trade Practices Act. App. Init. Brief,

[4] As the Master observed during the hearing on Cumbee's motion for reconsideration: "He said he was doing it according to his normal practice, which is almost frightening if it is his normal practice." (Mot. for Recon. Trnscpt., p. 11:20-22.)

p. 6. An issue is deemed abandoned on appeal and therefore not presented for review if it is argued in a short, conclusory manner without supporting authority. *Fields v. Melrose Ltd. Partnership*, 312 S.C. 102, 106, fn.3, 439 S.E.2d 283, 285, fn.3 (Ct. App. 1993). Further, an appellant may not use his reply brief to argue issues not argued in his brief in chief. *Id.* The Court therefore should reject any further briefing or argument on this issue.

Addressing the merits, Section 39-5-140(a) of the South Carolina Code of Laws provides:

> .... If the court finds that the use or employment of the unfair or deceptive method, act, or practice, was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

S.C. Code of Laws Anno. § 39-5-140(a). A willful violation occurs "when the party committing the violation knew or should have known that his conduct was a violation of [the UTPA]." S.C. Code of Laws § 39–5–140(d). Thus, if a person of ordinary prudence who was engaged in trade or commerce could have ascertained that his conduct violated the UTPA, such conduct is willful within the meaning of the statute. *Wright v. Craft* , 372 S.C. 1, 23–24, 640 S.E.2d 486, 498 (Ct. App. 2006); *Maybank v. BB&T Corp.*, 416 S.C. 541, 578, 787 S.E.2d 498, 517 (2016).

The evidence reasonably shows that a person of ordinary prudence engaged in the trade of residential renovation could have ascertained that his acts and practices violated the Unfair Trade Practices Act. Cumbee knew or should have known that performing the unpermitted, substandard work while persistently demanding further payments to stay on the job was both deceptive and unfair—because there never would be enough funds left in the contract to fully and properly complete the project. His lies to Milligan and the Chief Building Officer, Chad Kelly, about his non-existing building permit and fictional business license demonstrate a guilty conscience. He

knew that his conduct was wrongful and was attempting to conceal his malfeasance. Cumbee's verified statement of account claiming he was owed $27,950 for labor and materials supplied on the project was categorically false and disproved by his own testimony at trial. (Plaintiff's Exh. 3; Tr. Trnscpt, 55:21-56:7.) Apparently, Cumbee cannot keep up with his own falsehoods: After testifying at trial that Milligan owed him $10,900 for supposedly completed work, Cumbee argued in his motion for reconsideration that Milligan owed $7,900. (Mot for Recon. p. 2.)

There is ample evidence to support the Master's determination that Cumbee's employment of deceptive and unfair acts and practices amounted to a willful or knowing violation of the Unfair Trade Practices Act. Accordingly, the Court should affirm the Master's award of treble damages.

On a final note, it appears that Cumbee also challenges the Master's award of attorney's fees to Milligan as part of his claim that there is no evidence to support the finding that Cumbee's deceptive and unfair acts and practices were willful or knowing violations of S.C. Code of Laws § 39-5-20. App. Brf., p. 6. Again, Cumbee argues this claim in a short, conclusory manner without supporting authority and it therefore should be deemed abandoned. *Fields* 312 S.C. 106, fn.3, 439 S.E.2d 285, fn.3.

In any event, Cumbee mis-reads the statue. Section 39-5-140(a) provides:

> Upon the finding by the court of a violation of this article, the court shall award to the persons bringing such action under this section reasonable attorney's fees and costs.

S.C. Code of Laws § 39-5-140(a). "This article" refers to Article 1, "General Provisions," of Chapter 5, "Unfair Trade Practices," of Title 39, "Trade and Commerce." Article 1 is to be cited as the "South Carolina Unfair Trade Practices Act." S.C. Code of Laws § 39-5-10. Accordingly, upon *any* finding of a violation of the Unfair Trade Practices Act brought under section 39-5-140, an award of reasonable attorneys fees is mandatory. By its terms, section 39-5-140(a) does not

require that the court first determine that the use of deceptive or unfair acts or practices was a willful or knowing violation of section 39-5-20. Such a finding is required only for awarding of treble damages. *See* S.C. Code of Laws, § 39-5-140(a). As discussed in Section I, *supra*, there is evidence that reasonably supports the Master's finding that Cumbee's deceptive and unfair acts and practices impacted the public interest because of their potential for repetition and thereby violated section 39-5-20 of South Carolina's Unfair Trade Practices Act. Based on that finding, the Master properly awarded Milligan reasonable attorney's fees and costs.

CONCLUSION

For the reasons stated above, Respondent Bernard Milligan respectfully requests that the Court reject Appellants' claims in this appeal and affirm the Master's judgment. Alternatively, pursuant to Rule 220(c), SCACR, Respondent Milligan asks that the Court to affirm the Master's ruling on any other ground appearing on the record.

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Dated: January 26, 2023