

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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APPEAL FROM BERKELEY COUNTY

MAR 22 2023

Master In Equity

SC Court of Appeals

The Honorable Dale E. Van Slambrook, Master In Equity

Appellate Case No.: 2022-001611

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

v.

Bernard Milligan.....Respondent.

FINAL REPLY BRIEF OF APPELLANTS

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STATEMENT OF ISSUE ON APPEAL

- I. WHETHER THE COURT ERRED IN AWARDING TREBLE DAMAGES AND ATTORNEY'S FEES AND COSTS WHERE THERE WAS NO EVIDENCE PRESENTED TO SHOW THAT APPELLANTS' VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT WAS WILLFUL OR KNOWING

ARGUMENT

The Appellants continue to rely on their Initial Brief and the arguments contained therein. In particular, Appellants would briefly reiterate that because there was no evidence presented at trial showing that Appellants willfully or knowingly violated the South Carolina Unfair Trade Practices Act, the Court erred in granting treble damages and attorney's fees and costs.

- I. **WHETHER THE COURT ERRED IN AWARDING TREBLE DAMAGES AND ATTORNEY'S FEES AND COSTS WHERE THERE WAS NO EVIDENCE PRESENTED TO SHOW THAT APPELLANTS' VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT WAS WILLFUL OR KNOWING**

Throughout Respondent's Initial Brief, counsel continuously argues that Appellants provide no support that they have no liability under the Unfair Trade Practices Act, however, that is not the argument raised by the Appellants. Instead, Appellants argue that *the Respondent failed to present any evidence that would justify granting treble damages and attorney's fees and costs*. S.C. Code Section 39-5-140(a) states that "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." In other words, the Court is not authorized to grant treble damages and attorney's fees and costs unless there is sufficient evidence to show that the purported SCUTPA violation was "*willful or knowing*."

The Respondent then asserts that Appellants' arguments are conclusory with no factual support. This argument is wholly without merit, as Appellants' brief is detailed, specific, and even includes testimony excerpts taken directly from the trial transcript. Further, a lack of evidence speaks for itself. There is no conceivable way for the Appellants to more closely identify "no evidence." That conclusion can only be reached by examination of the record in its entirety.

CONCLUSION

The Appellants respectfully submit that because there was no evidence showing that the Appellants willfully or knowingly violated the South Carolina Unfair Trade Practices Act, the trial court erred in granting the Respondent treble damages and attorney's fees and costs. The order of the trial court should therefore be reversed.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appellants' Final Reply Brief complies with S.C.A.C.R. 211 in that this Final Reply Brief is identical to Appellants' Initial Reply Brief with the exception of record citations, typographical errors and misspellings.

March 22, 2023.


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