

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Heather Crespo)
)
Plaintiff)
)
vs)
)
Rhett Riviere, Josee Riviere, Chase)
Enterprises, LLC, and R.C. Riviere)
)
Properties, LLC)
)
Defendant)
)
_____)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

2022-CP-02-2323
2022-CP-02-2324

**Order Regarding Motion for Judgment
Notwithstanding the Verdict,
Or in the Alternative for a New Trial,
Or in the Alternative for a New Trial Nisi
Remittitur as to Josee Riviere**

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
Gabriel Crespo)
)
Plaintiff)
)
vs)
)
Rhett Riviere, Josee Riviere, Chase)
Enterprises, LLC, and R.C. Riviere)
)
Properties, LLC)
)
Defendant)
)
_____)

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SC Court of Appeals

This Court heard post trial motions regarding this case on November 13, 2024. Defendant Josee Riviere moved for Judgment not Withstanding the Verdict, New trial, and Remittitur.¹ Josee Riviere also filed several motions regarding discovery related to enforcement of the judgment.

¹ Co-defendnats post trial motions are discussed in a separate order.

I. Case History & Facts

Plaintiffs filed individual actions against Ms. Josee Riviere for the causes of action of negligence, unfair trade practices, and negligence per se.² Each plaintiff's complaint and allegations were identical and were consolidated by prior order. Defendant Josee Riviere moved repeatedly to have her case severed from that of her co-defendants. Following a trial of greater than one week, the jury found against Josee Riviere on the cause of action pursuant to the SC Unfair Trade Practices Act, S.C Code § 39-5-10, et seq.

The factual basis of this litigation involves the taking, editing, retention, and potential sharing of videos of plaintiffs while they rented a residence from defendants for three months in 2001. Plaintiffs were unaware of the videotaping until a separate law enforcement investigation revealed a computer file bearing their names saved on defendant Rhett Riviere's computer equipment. Plaintiffs became aware of the recordings in 2022. The videos show plaintiffs engaging in sexual acts in the bedroom and bathroom of the rental property in Aiken County, South Carolina.

Josee Riviere is the ex-wife of defendant Rhett Riviere and maintained a strong friendship with Rhett Riviere after their divorce. She testified fully at the trial, and several witnesses corroborated her good character upon questioning by her attorney. Defendant Rhett Riviere availed himself of protections pursuant to the Fifth Amendment of the United States Constitution. At the time of trial, his criminal charges of three counts of voyeurism were pending.

The evidence presented at trial showed that defendants regularly rented property in Aiken, South Carolina, to other members of the polo and equine community who visited the area. Defendant Rhett Riviere, individually or by and through the LLCs he owned and/or managed, rented property on a boat on the coast of South Carolina and other homes in Aiken. Cameras were located in the bedrooms and bathrooms of these abodes. The videos shown to the jury were limited to the videos of the plaintiffs, videos showing defendant Rhett Riviere adjusting video equipment, and a few additional videos of other subjects whose faces were blurred for identity protection. Nudity was included in the videos. Sexual acts were the subject of the videos of the plaintiffs.

Non-party witnesses testified that the evidence showed videos had been transferred from device to device, that the defendant Rhett Riviere had a drop box cloud or internet account available to him in 2021 and that at least two videos of the plaintiffs had been compiled from a VHS style recording into a digital file. There was testimony that the properties searched by law enforcement were listed on rental websites at one time.

As to damages, plaintiffs testified they paid a rental fee for the cottage, each have sought counseling services since discovery of the video tapes, and plaintiff Heather Crespo visited the emergency room following her deposition in this litigation for treatment for a potential heart

² Co-defendant Rhett Riviere defended against additional allegations of intentional infliction of emotional distress, and constructive fraud. The corporate defendants were named for negligence and unfair trade practices.

attack. Heather Crespo had a total cost of \$1,920.00 for her counseling sessions, as testified to at trial by her counselor and included in admitted exhibits. Gabriel Crespo had a total cost of \$125.00 for therapy as testified to at trial by his counselor and included in admitted exhibits.. Gabriel Crespo testified that the rental for the cottage was \$2,400.00. Gabriel Crespo is a well known polo player, having a successful career since his early days in 2001.

Each plaintiff gave detailed, emotional testimony as to the trauma caused by the acts of defendants. At trial, there was evidence and argument as to the “unknown” regarding the location of videos, the number of videos, the amount of copies and whether they were shared to a broader community. Plaintiffs each testified as to the reputational and emotional harm. Heather Crespo testified that her move from Aiken, South Carolina, was at least in part due to the damage from the discovery of the videos and the knowledge in the community that she and her former husband were videotaped. The testimony amounted to the acknowledgment of the gossip fodder presented to the community by the criminal investigation and discovery of their videos.³

Rhett Riviere was questioned by plaintiffs as to the acts of filming and savings recording, the intent of these acts, the sharing of videos, the storage of videos, the location and amount of assets held by him and/or the defendant corporations, the length of time he engaged in this behavior, and the formation and holdings of the corporations. He was also questioned regarding his ex-wife and her involvement. Defendant Rhett Riviere pled his Fifth Amendment protections throughout his questioning. No other officers or agents for the corporations testified.

Plaintiff Heather Crespo and Plaintiff Gabriel Crespo alleged that Josee Riviere was involved in the act and trade of renting certain property to them. In support of their allegations, each plaintiff testified that Ms. Josee Riviere was individually involved in the rental transaction by meeting them at the home and providing keys to the home. Heather Crespo testified that she saw Josee Riviere at the adjacent barn no less than weekly. Josee Riviere did not recall meeting with the Crespos to finalize the rental of the property. She was questioned about an investment property purchased by her several years later and any joint ventures between the defendants. Josee Riviere testified that she kept her finances separate. She also testified that she had no stake in or other involvement in the properties owned by Rhett Riviere. She acknowledged that since the initial law enforcement investigation in 2019, she expressed her support for Rhett Riviere publicly and that she continues to receive funds pursuant to her divorce decree.

Defendant Josee Riviere argues vehemently that there is no objective evidence of her involvement in any corporations formed and/or managed by defendant Rhett Riviere and that her conduct was as a gopher or wife rather than a partner or other stakeholder in a joint business venture. In addition, defendant Josee Riviere argues that the failure to sever the two actions for the purposes of trial resulted in prejudicial evidence against her. Defendant Josee Riviere asserts the court’s failure to instruct the jury that an adverse inference cannot be imputed to Josee Riviere upon Rhett Riviere’s invocation of the Fifth Amendment tainted the jury’s perception of her.

³ At the time of the cottage rental and taking of the videos, Gabriel Crespo and Heather Crespo were newly married. Since that time, the couple has divorced. They brought separate, individual actions against identical defendants.

She further argues that the court's interruption of her attorney in closing arguments tainted the jury against her and created an inference or implied statement by the court in opposition of Josee Riviere. Finally, defendant argues that the record was devoid of any tangible evidence to prove the cause of action of Unfair Trade Practices Act (UFTPA) such that the jury's verdict can only be the result of passion and/or confusion.

II. Court denies Josee Riviere's Motion Judgment Notwithstanding the Jury and New Trial.

After careful consideration and review of the case, the court denies defendant's motion for Judgment Notwithstanding the Jury and/or a New Trial for the following reasons. Chiefly, the jury's award itself indicates that the jury was not governed by passion or caprice. Several causes of action were submitted to the jury with request for specific findings and damages as to each cause of action. The jury found Josee Riviere liable on only one cause of action, UFTPA. This court will not reach into the province of the jury to determine exactly how that verdict was reached. The fact that the jury deliberated upon the evidence and distinguished between the defendants and causes of action is the most compelling evidence that the jury was dutiful in its decision making.

This verdict also is the most compelling evidence that the jury was not swayed by the court's rulings or guidance regarding closing arguments. Prior to closing arguments, the court delineated improper closing arguments and reminded counsel to stay within the bounds of the general rules of closing arguments as well as the specific rulings in this case. Furthermore, the court instructed the jury several times to not weigh any comments or rulings by the court for or against any party but merely the rulemaking of the court procedural process. The court was not loud, argumentative, or make improper comments upon defense counsel's behavior. For any admonitions against counsel as to improper statements made within hearing of the jury regarding the court or others, the jury was excused so as to not discuss this behavior in their presence and influence their decision making. When clear instructions as to allowable evidence were forgotten or ignored, the court took extended breaks to consider the matter properly and fully, without appearance of or any undue influence over the jury. The proof that the jury abided by those instructions is in the verdict itself. Defendant Josee Riviere was found liable for one cause of action only and for the lowest amount of damages awarded by this jury.

Finally, this verdict also demonstrates the jury was not overborne by the co-defendant's use of his Fifth Amendment privilege. The jury was instructed that it may presume a negative inference by the use of that privilege in the civil trial. This court believes it would have been confusing to issue any additional instruction as to defendant Josee Riviere as the jury weighs the import of the evidence and the presentation of each witness. The jury was presented evidence that Ms. Josee Riviere met the plaintiffs at the rental home to hand them the keys, collect the rent and show them around. There was evidence that Ms. Josee Riviere was on the property site, although not inside the rental home, often and that she interacted with the plaintiffs during their residency. There was also evidence of potential bias by Josee Riviere, her continued friendship with her ex-husband, her potential financial interest in the rental properties, her financial interest in his financial condition since their divorce, and her proximity in locations to areas in which defendant Rhett Riviere stored cameras and computer equipment from the time of the recordings

until their discovery. This evidence was determined outside of the questioning of Rhett Riviere. All of this evidence was introduced by means other than the questioning of Rhett Riviere.

The court understands that there was limited evidence as to her involvement with her co-defendants finances, corporations, or other businesses. There was no direct evidence that she directly knew of the video recording and computer equipment in any of the properties. There was substantial evidence of her good character and that she and her now ex-husband, Rhett Riviere, remained friends up until the day of trial.

The court is not charged with weighing the evidence but determining if there is evidence upon which a reasonable jury could find Josee Riviere was involved in the renting of her husband's property in viewing the evidence in the light most favorable to the plaintiff.

In the case of Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (1998) the court upheld the granting of a JNOV motion in a whistleblower retaliation case. The Supreme Court found that the evidence did not support the verdict because there was no evidence the supervisor knew of the plaintiff's report of misconduct, i.e. his whistleblowing. There was extensive additional evidence of other reasons to fire the plaintiff. Because the timeline of the evidence did not support the verdict, the court set it aside.

In doing so, the court made clear that such motions should be "granted only if no reasonable jury could reach the challenged verdict." Id. at 568. (citing Crossley v. State Farm Mutual Auto. Ins. Co., 307 S.C. 354, 357, 415 S.E.2d 393, 395 (1992)). The issues presented are viewed in the light most favorable to the non-moving party. Jolly v. General Electric, 435 S.C. 607, 869 S.E.2d 819 (2021). The court must have a compelling reason to invade the jury's decision making as to damages. Todd v. Joyner, 385 S.C. 509, 685 S.E.2d 613 (Ct. App. 2008) (*aff'd as to other grounds appealed* 385 S.C. 421, 685 S.E. 2d 421 (2009)).

This court does not find compelling reasons to invade the jury's verdict. This jury could have discounted Ms. Riviere's testimony that she had no knowledge of the recordings and did not have any reason to suspect Mr. Riviere was recording persons in the rental properties. They further could have discounted that she kept all of her finances separate from him during their marriage and did not assist in renting the properties in a meaningful way. It is up to the jury to hear the testimony of Josee Riviere and determine if they find her credible. As she testified fully, the jury had the opportunity to do so.

III. Damages are limited pursuant to SCUFTP

Defendant Josee Riviere argues that the award is excessive and improper because the economic damages as presented in this case are \$2,400.00 to an entity that could not be named and counseling expenses for each plaintiff.⁴ JR rightly argues that the statute allows economic damages and the special and consequential damages that flow therefrom. S.C. Code Ann. § 39-5-140(a). Special damages are those damages that result from an act or omission but are not the

⁴ The cost of the rental for three months was \$2,400.00. Plaintiffs were married at the time of the rental and bore the expense jointly. Heather Crespo incurred counseling expenses of \$1,920.00 after discovery of the video. She also testified that after her deposition she suffered a panic attack and incurred expenses related to her emergency room visit. Gabriel Crespo incurred counseling expenses of \$125.00.

typical or normal damages cause by such act or omission. *Hackworth v. Greywood*, 385 SC 110 (2009). Special damages must be specifically pled to place a defendant on proper notice of the claim. *McNaughton v. Charleston Charter Sch. for Math & Sci., Inc.*, 411 S.C. 249, 261, 768 S.E.2d 389 (2015). Emotional distress, in general, is not compensable under the SCUFTPA. S.C. Code § 39-5-140(a).

The court must construe the statute in the ordinary and plain meaning. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002). SC §39-5-140 provides that the claimant but have suffered an “ascertainable loss of money or property” due to the deception or unfair method, act or practice. Viewing the language of the SCUFTPA and the progeny of cases pursuant to this act, the court finds that damages pursuant to that act are limited to the amount of the rental check.

Defense argues that this is improper as no evidence was presented to indicate the value of a rental that does not have secret video recording devices in the bathroom that are pointed at the shower and in the bedroom directed on to the bed for night viewing. The court finds the jury had sufficient information to determine if there was any value to such a rental for the purposes of the SCUFTPA. Two realtors testified in this trial and it is of such common knowledge that living quarters do not normally have cameras to record private intimacies and nudity that the court finds a sufficient basis for the value of the rental.

In the course of the trial, all parties agreed that the court was tasked with determining if any UFTPA violation was willful pursuant to the statute. At the conclusion of the trial, the court noted such finding on the judgment coversheet. Defense counsel now argues that this finding was improper because it was made after the conclusion of the trial and without argument or statement by counsel. Defendant asserts that she and her counsel left the courtroom during the punitive damages phase with the belief or assumption that no such ruling would be made and that not participating in the punitive damages phase of the trial prejudiced Josee Riviere as to the finding of willfulness pursuant to the SCUFTPA.

The court acknowledges that upon return of the verdict on liability and compensatory damages, defendant Josee Riviere and her attorney were excused from the court during the punitive damages phase as there was no verdict that would subject Josee Riviere to punitive damages. The introduction of evidence on behalf of Josee Riviere was at that point concluded. Defendant was not required to leave at any time. However, defendant Josee Riviere had no role in the punitive damages phase as she was not subject to a punitive damages award. Defendant Josee Riviere had been given ample opportunity to argue to the lack of evidence against Josee Riviere in multiple motions before and during the trial and before the jury in closing arguments. In fact, in these motions defendant has not raised a novel issue as to the evidence except that counsel was not allowed to argue it again before entry of the form judgment. Taking these arguments as a whole, the court finds that defendant’s presence at the punitive damages phase was not required and would not have resulted in a different verdict.

In light of the evidence presented at trial and based upon the verdict of the jury, the court finds that defendant Josee Riviere’s violation of the SCUFTPA is willful pursuant to the statute. S.C. §39-5-140(d) defines a willful violation as one which the offender knew or should have known was a violation. As the jury found that defendant Josee Riviere violated the statute with a

deceptive or unfair practice, this court finds that she should have known of this deception. The trial testimony was that the camera was placed at or near a door to a room referred to as defendant Rhett Riviere's office. Josee Riviere had full access to this property as indicated by her showing the property to the Crespos before rental and knowledge of the key to what was described as the cottage. Josee Riviere had knowledge of other properties owned by her husband. She bought investment property for herself and was somewhat versed in the rental market of Aiken County. Josee Riviere denied involvement in the companies or involvement that raised her level of liability from an errand girl/wife. This goes to the weight of the evidence and finding of facts, both of which are provinces of the jury that this court will not disturb.

Therefore, judgment shall be entered against Josee Riviere for the total sum of \$12,960.00, being three times, or treble, the \$2,400.00 rental cost and counseling fees as to Heather Crespo and \$7,575.00 as to Gabriel Crespo. Defendant's liability as to the damages is joint and several with Rhett Riviere. Plaintiffs may not recover the \$2,400.00 twice but each may recover the appropriate counseling fees individually.

The plaintiffs are also entitled to an award of attorney's fees and costs. The court did not examine the attorney's fees for reasonableness at this time and shall schedule an additional hearing to determine the appropriate amount of attorney's fees to include in this judgment. The judgment shall be amended on record after the court issues an award as to attorney's fees and costs.

IT IS SO ORDERED.

Hon. Martha M. Rivers

[Electronic Signature Page to Follow]



Aiken Common Pleas

Case Caption: Heather Crespo VS Rhett Riviere , defendant, et al

Case Number: 2022CP0202323

Type: Order/Form 4

IT IS SO ORDERED.

/s/ Hon. Martha M. Rivers (2788)