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SC Court of Appeals

ELECTRONICALLY FILED - 2025 Jun 10 2:45 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4004419

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Ansel Jamahl Postell,)

Plaintiff,)

v.)

Campus Advantage, Inc., and EMRES II)
South Carolina, LLC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 2022-CP-40-04419

ORDER ON ATTORNEY’S FEES AND COSTS AND FINAL JUDGMENT AMOUNT

This matter was tried before a jury in Richland County on Plaintiff’s allegations against Defendants of ouster, conversion, breach of contract, negligence and violations of the South Carolina Unfair Trade Practices Act (UTPA). All causes of action, except for ouster, were submitted to the jury and the jury returned a verdict against the Defendants on conversion, breach of contract, negligence and the UTPA, awarding \$230,000 in actual damages and \$462,500.24 in punitive damages for a total damage award of \$692,500.24. A general verdict form was used by the jury that did not require it to specify the damages assigned to any particular cause of action.

Both the Defendants and the Plaintiff filed posttrial motions which the Court ruled upon by Order dated May 20, 2025(Order). The Order denied Defendants’ posttrial motions and granted, in part, Plaintiff’s Posttrial Motion for Treble Damages, Attorneys Fees, Costs and Interest. The Court trebled the damages it determined were appropriate under the UTPA. A ruling on attorney’s fees and costs (collectively “attorney’s fees”) was deferred until the Court could convene a hearing to determine a reasonable award under the prevailing standards. See, Jackson v. Speed 326 S.C. 289, 486 S.E.2d 750 (1997). ; *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993). The Order also granted Plaintiff interest under Rule 68(b), SCRPC.

ATTORNEY'S FEES AND COSTS UNDER THE UTPA

The parties appeared before the Court on June 2, 2025, to present arguments on attorney's fees. The Plaintiff was represented by Todd R. Lyle, Esq. The Defendants were represented by Timothy S. VanDenBerg, Esq., and Michael Trask, Esq.

In his posttrial motion, Plaintiff sought to treble the UTPA damages pursuant to S.C. Code Ann. §39-5-140(a). After careful evaluation, the Court determined that only Plaintiff's actual economic losses of \$27,500 fit within the UTPA's phrase "actual damages" for the purposes of a treble damages award. Thus, the Court trebled Plaintiff's \$27,500 property loss to \$82,500.00.¹

Plaintiff's posttrial motion sought attorney's fees under the UTPA. In pertinent part, § 39-5-140(a) provides that "[u]pon the finding by the court of a violation of this article [Article 1, UTPA], the court shall award to the person bringing such action under this section reasonable attorney's fees and costs."

The Court believes it must base the eventual attorney fee award under §39-5-140(a) on the trebled damage award of \$82,500.00. Plaintiff disputes this, asserting instead that the fee award should be based on the entire jury verdict of \$692,500.24. While there is some appeal to this argument when considering the purpose of the UTPA and the fact that here, the jury rendered a general verdict, the Court believes that basing the fee award on the entire jury verdict which found Defendants liable for causes of action other than the UTPA is inconsistent with the statutory mandate that fees and costs are appropriate where a court has found a violation of "this article." On its face, the operative language of §39-5-140(a) directs that attorney's fees and costs are to be awarded to the person "bringing an action under this section" (emphasis added).² The

¹ On May 30, 2025, Plaintiff filed a Motion for Reconsideration on the treble damages issue which will be addressed in a separate order.

² The first sentence of §39-5-140(a) emphasizes that the phrase "this section" is limited to violations of the UTPA:

"Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages."

Court, therefore, awards attorney's fees to Plaintiff on the UTPA cause action of thirty-three (33%) percent of the trebled damage amount, which results in a fee award of \$27,225.00 .³ The Court further awards 33% of the total cost amount of \$6,996.81, for costs related to the UTPA violation equaling \$2,308.95. In doing so, the Court emphasizes that its fee award is solely for Plaintiff's UTPA claim as the motion before it is limited to attorney's fees under the UTPA.⁴

Under *Portrait Homes-S.C., LLC v. Pa. Nat'l Mut. Cas. Ins. Co.*, 442 S.C. 515, 594, 900 S.E.2d 245, 288 (Ct. App. 2023), a court should consider the following factors to determine a reasonable attorney's fee: "1) nature, extent, and difficulty of the legal services rendered; 2) time and labor devoted to the case; 3) professional standing of counsel; 4) contingency of compensation; 5) fee customarily charged in the locality for similar services; and 6) beneficial results obtained."

Plaintiff's evidence on this issue consisted of affidavits from Mr. Lyle and two other lawyers familiar with the case, attesting to the complexity of the case. Moreover, as the trial judge, the Court recognizes that this case presented substantive and challenging legal and factual issues for trial. The need to prove the elements of the UTPA cause of action created a higher degree of difficulty in this case. The Court finds that the first factor of *Portrait Homes* -- "nature, extent, and difficulty of the legal services rendered" -- supports the attorney's fee award. The second *Portrait Homes* factor -- time and labor devoted to the case -- also supports the fee award. Although Mr. Lyle's affidavit does not give a total number of hours spent on the case, it does give an overview of case investigation and development, including extensive discovery conducted. The Record further reflects extensive pretrial litigation, and the result indicates a great amount of trial preparation. As it relates to *Portrait Homes* factor (3) -- professional

³ Mr. Lyle's motion for UTPA attorney's fees requested fees based on a 33% rate.

⁴ More plainly, this award under the UTPA is wholly unrelated to any attorney's fee and cost agreement contained in the contract between the Plaintiff and his attorney.

standing of counsel - Mr. Lyle enjoys an excellent reputation as being a zealous advocate for his injury clients which supports the attorney's fee award. For the purposes of this case, factors (4) and (5) are interrelated. Factor (4) addresses the contingency of compensation. Mr. Lyle took this case on a contingency fee basis, meaning his law firm bore the economic risk of an adverse verdict for the Defendants. If there had not been a verdict for the Plaintiff, there would be no compensation. This factor supports the award of attorney's fees under the UTPA. Factor (5) considers the fee customarily charged in the locality for similar services. The Court believes that cases asserting UTPA violations are customarily pursued on contingency fee arrangements. Further, the 33% fee awarded is most probably less than the usual rate charged for cases taken to trial. Finally, factor (6), beneficial results obtained, is met here as evidenced by the jury's decision that the Defendants committed UTPA violations.

The Court finds that an attorney's fee award of \$27,225.00 and \$2,308.95 for costs under the UTPA is amply supported under the prevailing standards and the Court awards the same.

FINAL JUDGMENT AMOUNT

Accordingly, the Court awards the following damages to Plaintiff, Ansel Jamal Postell, against the Defendants, Campus Advantage, Inc., and EMRES II South Carolina, LLC., jointly and severally:

Economic damages:	\$ 202,500.00
Economic damages (trebled under UTPA)	\$ 82,500.00
Punitive Damages	\$ 462,500.24
 Total	 \$ <u>747,500.24</u>
 Atty Fee (UTPA)	 \$ 27,225.00
 Costs (UTPA)	 \$ 2,308.95

Rule 68, SCRCF interest to 6/10/25 \$ 154,816.52

Total Judgment Amount \$ 931,850.71

THEREFORE, Plaintiff shall have judgment against the Defendants, jointly and severally, in the total amount of Nine Hundred Thirty-one Thousand Eight Hundred Fifty and 71/100 (\$931,850.71) Dollars.

AND IT IS SO ORDERED.

Honorable Milton G. Kimpson
Fifth Judicial Circuit

Columbia, South Carolina

_____, 2025

(Electronic Signature Page Follows)

Ansel Jamal Postell

Campus Advantage, Inc., and EMRES II South
 Carolina, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Plaintiff	Campus Advantage	\$ 931,850.71
Plaintiff	EMRES II South Carolina	\$ 931,850.71
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:



Richland Common Pleas

Case Caption: Ansel Jamahl Postell vs Campus Advantage Inc , defendant, et al

Case Number: 2022CP4004419

Type: Order/Judgment and Form 4

IT IS SO ORDERED.

s/Milton G. Kimpson 2783