STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Answer Jamahl Postell,	)	
Plaintiff,	)	Case No. 2022-CP-40-04419
v.	)	
Campus Advantage, Inc., and EMRES II South Carolina, LLC.,	)	**ORDER**
Defendants.	)	

This matter was tried before a jury in Richland County beginning September 16, 2024 and ending September 19, 2024. The Plaintiff alleged causes of action against Defendants Campus Advantage, Inc., and ERMRES II South Carolina, LLC (Defendants), for ouster, conversion, breach of contract, negligence and violations of the South Carolina Unfair Trade Practices Act (UTPA), all arising out of the unauthorized removal of personal property from an apartment that he rented from the Defendants. The Court directed a verdict for the Defendants on the ouster claim but allowed the remaining causes of action to go to the jury. [1] The jury returned a general verdict in favor of the Plaintiff on all submitted causes of action, awarding $230,000 in actual damages and $462,500.24 in punitive damages. The Court allowed the parties ten (10) days to submit posttrial motions. The Defendants filed a Motion for Judgement Notwithstanding the Verdict (JNOV) pursuant to Rule 50(b), SCRCP, and a Motion for New Trial Absolute, or, in the alternative, a New Trial Nisi Remittitur, pursuant to Rule 59, SCRCP. The Plaintiff's posttrial

[1] At the close of the Plaintiff's case in chief, the Defendants moved for a directed verdict on Plaintiff's cause of action under the UTPA. The Court denied the motion. After the completion of their case and the close of all evidence, Defendants moved for directed verdict on the breach of contract cause of action and renewed their motion on the UTPA cause of action. Plaintiff contends that the Defendants' failure to move for directed verdict on the breach of contract cause of action at the end of Plaintiff's case in chief precluded the motion for directed verdict on that claim at the close of evidence and also prevents Defendants' JNOV motion on that clam here. The Court will address the Defendants' JNOV motions on both the UTPA and breach of contract causes of action.

motions seek treble damages, attorneys' fees and costs under the UTPA, as well as interest pursuant to Rule 68(b), SCRCP. The parties filed memoranda in support of their respective motions and in opposition to the motions filed by the opposing party.

I. **Defendant's Motion for JNOV and New Trial Absolute, or, in the alternative, New Trial Nisi Remittitur**.

Rule 50(b), SCRCP, provides as follows:

> **Notwithstanding the Verdict**. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. A party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with his motion for a directed verdict; or if a verdict was not returned, such party may move for judgment in accordance with his motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If a verdict was returned the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

In *Sabb v South Carolina State University,* 350 S.C. 416, 236, 567 S.E.2d 231, 427 (2002), our Supreme Court observed the following:

> In ruling on directed verdict or JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 520 S.E.2d 142 (1999). The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt. *Id*. This Court will reverse the trial court only when there is no evidence to support the ruling below. *Id.* Further, a trial court's decision granting or denying a new trial will not be disturbed unless the decision is wholly unsupported by the evidence or the court's conclusions of law have been controlled by an error of law. *Id*. (emphasis added)

The Defendants assert that their motion for JNOV should be granted on the Plaintiff's UTPA and breach of contract causes of action. This Court must evaluate the Defendant's JNOV arguments under the standard announced in *Sabb*.

A. **Defendants' Motion for JNOV on the UTPA Cause of Action.**

"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 public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). Defendants assert that Plaintiff failed to identify an "unfair or deceptive" act during trial which could have supported the jury's verdict. The Court disagrees.

Wright defines an unfair or deceptive trade practice as "a practice which is offensive to public policy or which is immoral, unethical, or oppressive." *Id*. While the Defendants are correct that the Court instructed the jury that the Defendants' failure to reach a settlement with Plaintiff over the value of his missing personal property was not an unfair trade practice, as pointed out in Plaintiff's Memorandum in Response to Defendants' Post-trial Motions, there is other evidence in the Record to support the jury's determination that the Defendants committed unfair trade practices. "The trial court must deny the motions [JNOV] when the evidence yields more than one inference or its inference is in doubt." *Sabb*, 350 S.C. at 236, 567 S.E.2d at 427.

The Plaintiff renewed his lease agreement with the Defendants on July 6, 2022. His mother thereafter paid six (6) months of rent in advance. Several days later, on July 25, 2022, during a complex-wide procedure known as "turnover", Defendants' employees, acting on move out instructions from their supervisors, entered Plaintiff's apartment and, treating the unit as if it had been vacated via lease termination or abandonment, removed Plaintiff's personal property and other belongings. According to the Defendants, the employees were supposed to only validate the apartment's occupancy status, but the employees instead went about "bagging and tagging" certain of Plaintiff's personal property and disposing of other items. Some of the "bagged and tagged" property ended up being taken home by one of the employees, while other property was placed in Defendants' storeroom, where it was subsequently damaged. Other items of Plaintiff's personal property were discarded.

There was ample evidence to support the jury's finding that an unfair or deceptive trade practice had been committed based on Defendants' actions in removing Plaintiff's personal property -- as if his lease had expired and Plaintiff had left his belongings or he had abandoned

his apartment -- in the situation where Plaintiff had actually renewed his lease and paid advance rent for this same apartment. [2]

In this regard, the Defendants' argument based upon the Landlord Tenant Act (Act) is not persuasive. The Defendants point to S.C. Code Ann. 27-40-730(d)-(f) to offer that a landlord may remove a tenant's property in certain cases and that here, the Defendants cannot be liable under the Act for the removal of Plaintiff's property unless they were grossly negligent:

> (d) When a dwelling unit has been abandoned or the rental agreement has come to an end and the tenant has removed a substantial portion of his property or voluntarily and permanently terminated his utilities and has left personal property in the dwelling unit or on the premises with a fair-market value of five hundred dollars or less, the landlord may enter the dwelling unit, using forcible entry if required, and dispose of the property.
> (e) When a dwelling unit has been abandoned or the rental agreement has come to an end and the tenant has left personal property in the dwelling unit or on the premises in the cases not covered by subsection (d) above, the landlord may have the property removed only pursuant to the provisions of Sections 27-37-10 to 27-37-150.
> (f) Where property is disposed of by the landlord pursuant to subsection (d) and the property was in excess of five hundred dollars, the landlord is not liable unless the landlord was grossly negligent.

Plaintiff valued his lost property at an amount greater than five hundred dollars. As such, pursuant to section 27-40-730(e), to comply with the provisions of the Act, the Defendants should have pursued remedies under sections 27-37-10 to 27-37-150, which pertain to ejectment.

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[2] The jury also had evidence that after Plaintiff renewed his lease, he received an email alerting him of the upcoming "turnover" and the need to be out of his apartment by July 25, 2022. Plaintiff's mother sent an email to Defendants on July 14, 2022 at 8:48 AM inquiring why Plaintiff had received this notice when he had renewed the lease for his apartment unit. On July 15, 2022 at 11:19 AM, the Defendants responded with the statement that "It was an email sent to everybody by default [and] he can disregard if he renewed."

On July 11, 2022, Plaintiff received an email from Katie Floyd, the Defendants' manager, which, although acknowledging that Plaintiff had renewed his lease, also contained information for students who were moving out of the apartment complex during the upcoming turnover. Plaintiff's mother sent Ms. Floyd an email on July 14, 2022 at 6:16 PM reminding her that Plaintiff had renewed his lease. Ms. Floyd responded to Plaintiff's mother that the email Plaintiff received "states that our records have you renewing your lease with us" and that the correspondence "details information that is important for all renewed residents to review."

Despite the Defendants' correspondence acknowledging that the Plaintiff's lease had been renewed and assuring Plaintiff that he could disregard the turn out messages, Plaintiff's apartment was turned-out during the July 25, 2022 moveout exercise.

The Defendants did not pursue ejectment remedies but instead, their employees acted as if section 12-37-730(d) applied which allows the landlord to enter an apartment and dispose of personal property valued at less than $500. However, section 27-40-730(d) was not applicable to Plaintiff inasmuch as this provision applies if "a dwelling unit has been abandoned, or the rental agreement has come to an end…" Here, the Plaintiff had previously renewed his lease meaning that his lease had not ended, and his apartment unit had not been abandoned. Finally, the Defendants' reference to subsection 27-40-730 (f)'s direction that "the landlord is not liable unless the landlord was grossly negligent" is similarly unpersuasive. As it relates to his claim under the UTPA, the Plaintiff was not seeking to hold Defendants liable for damages under the Act. Further, whether liable under the Act or not, Defendants failed to follow the Act's procedures. [3]

Defendants also offer that the employees who entered Plaintiff's apartment and removed his property were acting outside of the scope of their employment. Defendants' Motion states that "the jury could have considered four possibilities when contemplating the incident giving rise to Plaintiff's claims, to include that (1) that both Ashanti and Carlton were acting within the scope of employment, and (2) neither Ashanti nor Carlton were acting within the scope of employment…" Defendants then assert that that the evidence only leads to one conclusion, that Carlton was acting outside of the scope of his employment, and that if so, his actions cannot be imputed to Defendants. The Defendants, both in their Motion and in argument to the jury, further contended that Carlton's actions in taking the personal property removed from the apartment to his home were criminal.

For the purposes of this Motion, however, the Court must consider if there is any evidence or inference to support the jury's verdict. The Court finds that there is evidence from which the jury could have found that both employees were acting within the scope of their employment. As Defendants acknowledge, the" jury could have considered four possibilities" in this regard. Moreover, the two employees were following their employer's instructions by entering the Plaintiff's apartment given that Plaintiff's apartment was on the "move out" list. And, while the employees should have gotten specific verification from the Defendants' prior to beginning the trash out procedure, the failure to strictly comply with policy does not translate

[3] Given the award of punitive damages, it is likely that the jury would have determined that the Defendants met subsection 27-40-730 (f)'s gross negligence standard had that issue been submitted to it.

into the employees acting outside of the scope of their employment. Moreover, even if Carlton committed a crime when he took Plaintiff's property away from the apartment complex to his home – this behavior occurred later in the sequence of events and does not negate the evidence from which the jury could find that he was acting within the scope of his employment when he entered into the apartment at the Defendants' instructions and began the "bag and tag" removal of Plaintiff's property.

The Defendants' Motion does not challenge the remaining prongs of the UTPA – that "the unfair or deceptive act affected public interest" and that "the Plaintiff suffered damages." Nevertheless, the Court finds that there was sufficient evidence to satisfy these elements. See, *Burbach v. Investors Mgmt. Corp. Internat'l*, 326 S.C. 492, 484 S.E.2dv119 (Ct. App. 1997) (UTPA violation upheld in the context of a residential landlord/tenant matter.)

B. **Defendants' Motion for JNOV on the Breach of Contract Cause of Action**.

Defendants next offer that the Court should grant JNOV with regard to the Plaintiff's breach of contract claim because they assert the lease agreement, in particular, subparagraphs 11.2, Casualty Loss, and 14., Risk of Loss of Resident's Property, excludes Plaintiff's recovery from the Defendants for the loss of his personal property. The Court disagrees.

In pertinent part, subparagraph 11.2 provides

> Unless otherwise required by law, Owner is not liable to Residents or Residents' guests for personal injury, damages to or loss of personal property for any cause outside of Owner's control, including but not limited to: acts of God, fire, smoke, flood, rain, pipe leaks, ice, hail, snow, lightening, wind, earthquakes, theft, vandalism, or utility interruptions. (emphasis added)

Here, the loss of Plaintiff's personal property resulted from the actions of Defendants' employees, who were operating at Defendants' behest when they entered the Plaintiff's apartment and "bagged and tagged" his property. As such, Plaintiff's loss did not result from a "cause outside of Owner's control."

Defendant's lease subparagraph 14, Risk of Loss of Resident's Property, purports to be broader, stating "[r]esidents, shall bear the risk of loss of any and all of Resident's personal property whether located in the Leased premises, in garage/carport, designated storage areas or anywhere within the Residential Community." While the term "loss" is not defined, the

paragraph continues to provide that "[r]esidents agree not to hold Owner, its agents and/or employees liable in any manner for or on account of any loss or damages sustained by reason of the acts or omissions of third parties, or arising from any casualty." By implication, therefore, liability for loss or damages sustained by the acts or omissions of Defendant's employees is not excluded from potential liability.

Plaintiff's memorandum in opposition sets forth a similar argument, pointing out that Defendants' lease agreement lacks the explicit exculpatory language needed to shield Defendants from liability for their own wrongful acts. Inasmuch as the Court has interpreted the lease agreement to allow Plaintiff's claims, the Court agrees with this proposition.

The Defendants also complain about the Court's pretrial ruling excluding evidence that Plaintiff failed to obtain renter's insurance to cover loss/damage to his personal property. The Court was concerned that the introduction of information about insurance would create the potential for jury confusion. The insurance at issue was not liability insurance so the probative value of such evidence had to be weighed against the potential for prejudice and jury confusion. See, *Wright v. Heister Const. Co*., 389 S.C. 504, 514, 698 S.E.2d 822, 828 (Ct. App. 2010) ("Because this evidence [property insurance] is not expressly excluded by Rule 411, 'we must determine whether the probative value of the evidence is substantially outweighed by the prejudicial effect and potential for confusing the jury.'") There was certainly a danger of prejudice flowing from this information -- whether the Plaintiff had property insurance did not impact the issue of Defendants' liability for removing Plaintiff's property. Although a better explanation should have been provided, the Court stands by its ruling to exclude this evidence.

C. **Defendants' Motion for New Trial Absolute**.

In *Chapman v. Upstate RV and Marine*, 364 S.C. 82, 610 S.E.2d 852 (Ct. App. 2005), the South Carolia Court of Appeals observed that a trial judge must grant a new trial absolute "if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." (quoting *Vinson v. Hartley*, 324 S.C. 389, 404-405, 477 S.E.2d 715, 723(Ct. App. 1996)). *Chapman* cautioned, however, that "substantial deference should be given to a jury's determination of damages." *Id*. The Defendants cite three (3) grounds for a New Trial Absolute:

1. **Misconduct of Counsel**.

The Defendants offer a list of behaviors attributed to Plaintiff's counsel during opening and closing arguments, examination of witnesses and in general trial conduct which they assert was prejudicial and warrants a new trial. After carefully considering the Defendants' allegations, the Court believes that Plaintiff's counsel served as a zealous advocate for his client but did not engage in behavior that compels the grant of a new trial. In *Scoggins v. McClellion*, 321 S.C. 264, 269, 468 S.E.2d 12, 15 (Ct.App.1996), the court observed that "[t]he tests for granting a new trial on the basis of improper closing argument by opposing counsel is whether the complaining party was prejudiced to the extent that he or she was denied a fair trial." While *Coggins* specially referenced conduct during closing argument, this same principle should also apply to the Defendants' complaints about other portions of the trial. The Court finds that the challenged behaviors did not deny Defendants a fair trial.

2. **Damages the Jury Awarded are Inconsistent with the Evidence**.

Defendants assert that the jury's damage award was not supported by the evidence at trial. The Court has carefully weighed this matter and must deny the request for a New Trial Absolute on this basis. There was sufficient evidence to support the jury's award of both actual and punitive damages. As such, the Court declines to invade the province of the jury.

The jury awarded the Plaintiff actual damages of $230,000. Actual damages may be made up of economic damages and noneconomic damages. See, *Mellon v. Lane*, 377 S.C. 261, 288-289, 659 S.E.2d 236, 250 (Ct. App. 2008) (Trial court award of actual damages, including medical expenses, emotional distress and pain and suffering, upheld on appeal.) In terms of economic losses, the Plaintiff created a spreadsheet listing the items that were removed from his apartment. The total value Plaintiff assigned to this property was $27,000. Defendants challenge the accuracy of this value, pointing out that Plaintiff referred to this figure as an "estimate." Moreover, Defendants assert that Plaintiff's method of assigning values to the listed items of personal property – using "Google" -- was unreliable. Nevertheless, the jury evaluated this evidence and considered the witnesses' testimony on direct and significantly, on cross examination where these same challenges were raised, but found that Plaintiff had at least $27,500 in economic damages.

Further, the Court's review of the Record indicates that there was abundant evidence though the testimony of the Plaintiff and his mother to support the jury's finding that Plaintiff suffered non-economic damages such as mental suffering as a direct result of this incident. [4] The Court's charge on this issue informed the jury that "mental suffering, apprehension, shock, fright, emotional upset, humiliation, and anxiety, either present or expected in the future, can be properly considered as an element of damages." Significantly, the jury instruction continued to state that "the amount of damages for mental suffering cannot be exactly measured."

The Court denies the Defendants' motion for new trial absolute on the asserted grounds. The jury's actual damages award, made up of an evaluation of Plaintiff's economic and non-economic damages, was not so large or excessive as to indicate that it was the result of caprice, prejudice, partiality, corruption or some other improper motive. There is sufficient evidence in the Record from which the jury could have determined that Plaintiff suffered in excess of $200,000 in noneconomic damages. Furthermore, for the purposes of punitive damages, the Court finds that Plaintiff satisfied the clear and convincing evidence standard of proof to show that the Defendants' conduct in this matter was wanton, willful or in reckless disregard of Plaintiff's rights.

3. **Punitive Damages**.

Pursuant to *Gamble v. Stevenson*, 305 S.C. 104, 111-112, the Court must evaluate eight factors to determine whether a punitive damage award violates the defendant's right to due process:

(1) The Defendants' degree of culpability.

Based on its review, the Court finds that Defendants exhibited a high degree of culpability. The Defendants are in the business of renting apartments to area college students, who are living in the locale temporarily during school terms, instead of permanently. There are over 1000 student housing beds or units in Defendants' housing complex where Plaintiff lived. Moreover,

[4] Although Plaintiff failed to introduce out-of-pocket bills/expenses associated with counseling, and/or mental health treatment, it significant that the jury had the opportunity to evaluate the Plaintiff's credibility as he testified about the impact this incident has had on him. The Plaintiff was a young college student living in city with no family support other than regular communications with his mother who was located in Georgia. As an Honors Student, Plaintiff not only testified about the shock he felt at the time of discovery but also about the effects this incident had on his academic pursuits.

Defendants operate student housing in over 20 states other than South Carolina with over 40 properties. Defendants' business model caters to students moving in and out of apartment complexes and as such, it is not unreasonable to expect a certain level of efficiency in dealing with students. [5] Plaintiff's injury was the result of Defendants' failures during the conduct of a periodic "turnout" exercise. The Plaintiff's apartment should not, however, have been the subject to "turnout" – as acknowledged by the Defendants, Plaintiff had renewed his lease and he had also paid six (6) months rent in advance so that the Defendants would hold the apartment until he returned to Columbia. Plaintiff's apartment should not have been on the moveout list given to its employees conducting the exercise. Further, the evidence showed that Defendants' agents, upon arriving at Plaintiff's apartment and discovering his personal property, did not take sufficient action to verify whether the move out list was correct but instead proceeded to trash out the apartment. The jury considered these actions to be sufficiently culpable to award punitive damages. The Court agrees and characterizes Defendants' degree of culpability as high.

(2) Duration of the Conduct.

Here the Defendants' conduct regarding Plaintiff's lost property lasted over a span of several days. Defendants emptied Plaintiffs apartment on move out day – there was no subsequent review of their actions and no discovery of the error until Plaintiff returned to Columbia on August 5, 2022 and advised the Defendants of the loss. To the Defendants' credit, Plaintiff was taken to a local store almost immediately to replace necessities but the procedure for Plaintiff to obtain reimbursement for his personal property was more arduous, requiring Plaintiff and his mother first to create a spreadsheet of lost property with assigned values followed by the demand that Plaintiff produce receipts for property, some of which had been purchased many months earlier. Of course, compensation for that same property was still at issue during the trial in September 2024. The Court believes the duration element mitigates toward upholding the punitive damages award.

(3) Defendant's awareness or concealment.

The Defendants should not have listed Plaintiff 's apartment on the "move out" list. This Court believes that the Defendants should have been aware of the error prior to Plaintiff's return

[5] Plaintiff introduced Defendants' eighty-three (83) page "Turnover Procedures" manual containing policies and guidance for the conduct of "moveout." In addition, Defendants held a meeting for staff personnel to discuss details of the moveout before the operation began in Plaintiff's complex.

to the apartment had there been an adequate review process. Nevertheless, it appears that the Defendants' management personnel had no actual knowledge of the improper trash out until being notified by the Plaintiff. Once Defendants became aware of the issue, efforts were undertaken to provide some relief to the Plaintiff, although the jury may very well have believed that under the circumstances, the demand for Plaintiff to provide receipts for items purchased in the past was unreasonable.

(4) The existence of similar past conduct.

While disputed by the Defendants, there was evidence in the Record through the testimony of Ashanti Young, one of the Defendants' employees who entered Plaintiff's apartment during the "move out", that other tenants' personal property had been improperly removed on previous occasions similar to that of the Plaintiff. [6]

(5) Likelihood the award will deter the defendant or others from engaging in like conduct.

The Defendants are in the business of renting housing to students and they routinely conduct "move out" exercises on a large scale. It is reasonable to conclude that that the punitive damages award here will have a deterrent effect on the Defendants' conduct of those exercises, at minimum, establishing checks and balances to ensure turnout records are accurate. Moreover, as there are other apartment complexes in the business of renting apartments to students, publicity related to Plaintiff's punitive damages award will promote efforts to avoid such liability.

(6) Whether the award is reasonably related to the harm likely to result from such conduct;

The Court finds that the punitive damage award here is reasonably related to the harm caused by the conduct. The jury found actual damages of $230,000. As stated earlier, this award is made up of economic as well as non-economic damages such as mental suffering. The Defendants' customers are young college students- some of whom, like the Plaintiff, are living away from their homes without natural support groups. It is likely (and foreseeable) that some degree of mental suffering, in addition to the property damages, would result from the Defendants' conduct. The Court finds that the punitive damage award is reasonably related to that harm.

(7) Defendant's ability to pay;

Based on the evidence, the Court concludes that the Defendants have the ability to pay the punitive award here. There are over 1000 student beds in Plaintiff's complex, all generating

[6] Plaintiff's memorandum in opposition contained an except from Ms. Young's testimony on this point.

rent. Moreover, these Defendants have over 40 student housing assets spread over more than 20 other states.

(8) Other factors deemed appropriate – whether the award is excessive.

Given the evidence, the Court does not find that the amount of the punitive damage award to be excessive.

A reviewing trial court need not make findings on all of the *Gamble* factors in order to uphold an award of punitive damages. *Solanki v. Wal-Mart Store No. 2806*, 410 S.C. 229, 240, 763 S.E. 615, 620 (Ct. App. 2014) Here, the Court finds that *Gamble* factors (1), (2), (4), (5), (6), (7) and (8) support upholding the jury's punitive damage award.

In *Mitchell v Fortis Ins. Co*., 385 S.C. 570 686 S.E.2d 176 (2009), our Supreme Court articulated a revision to the punitive damage award evaluation, incorporating the principles set out in *BMW of North America v. Gore*, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996):

> We now hold that *Gamble* remains relevant to the post-judgment due process analysis, but only insofar as it adds substance to the *Gore* guideposts. With these considerations in mind, we articulate the following test for our courts in conducting a post-judgment review of punitive damages awards.

Mitchell, 385 S.C. at 587, 686 S.E.2d at 185.

The *Mitchell* factors are 1) The degree of reprehensibility of the defendant's conduct; 2) the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award – also referred to as the ratio between actual damages and punitive damages; and 3) comparative penalty awards. *Id.*, 385 S.C. at 587-588, 686 S.E.2d at 185-186. The *Gamble* factors may inform and provide substance to the evaluation under *Mitchell*. *Id.*

The Court has already determined that the Defendants' conduct has a high degree of culpability under *Gamble* and finds that the conduct satisfies a sufficient degree of reprehensibility under *Mitchell* to warrant the punitive damage award. The Court notes that the Defendants' conduct caused both economic harm to the Plaintiff in terms of property damage, but also physical harm in mental suffering.

The ratio between actual damages to punitive damages is slightly above two (2.01). This is an acceptable ratio. In *Austin v. Stokes Craven Holding Corporation*, 387 S.C. 22, 53-54, 691 S.E.2d 135, 151 (2010), the Court upheld a punitive damage ratio of 8.21, noting that it was "a single digit ratio." Further, the *Austin* Court indicated that "in determining the reasonableness of

the ratio we may consider: the likelihood that that the award will deter the defendant from like conduct; whether the award is reasonably related to the harm likely to result from such conduct; and the defendant's ability to pay." *Id*., 387 S.C. at 53, 691 S.E.2d at 151. Limiting the deterrence factor only to the conduct of the Defendants, the Court stands by its earlier discussion of these factors and finds that they support the punitive award here.

Finally, the Court believes that the comparative penalty award prong of the *Mitchell* test is also met. *Mitchell* describes the factors to be considered for this prong as:

> [T]he court should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. When identifying "comparable cases" a court may consider: the type of harm suffered by the plaintiff or plaintiffs; the reprehensibility of the defendant's conduct; the ratio of actual or potential harm to the punitive damages award; the size of the award; and any other factors the court may deem relevant.

Mitchell, 385 S.C. at 588, 686 S.E.2d at 186.

In the *Burbach v. Investors Management Corporation* case cited earlier, the court upheld a jury award of $32,000 punitive damages in a conversion case where the amount converted by the landlord was a $350.00 security deposit. *Burbach*, 326 S.C. at 499, 484 S.E.2d at 121. This represented a ratio of 91.4. in punitive damages to actual damages. In the present case, Plaintiff's ratio of punitive damages to actual damages is slightly over 2. Under *Mitchell*, the Court may look to the type of harm suffered by the Plaintiff to identify comparable cases. The Plaintiff's harm consisted not only of personal property but mental suffering. On a mental suffering award of $200,000, a punitive damage award of $460,000 is not excessive. [7]

A weighing of the *Mitchell* factors yields the conclusion that the punitive damage award here is not violative of due process or any other constitutional limitations.

D. **The 13th Juror Doctrine**.

Under the 13th Juror Doctrine, the trial court has the authority to grant a New Trial Absolute when it believes the evidence does not justify the verdict. See, *S.C. Highway Dep't* v. T*ownsend*, 263 S.C. 253, 285, 217 S.E.2d 778, 781 (1975). Here. As discussed earlier, the Court believes the evidence justifies the verdict. Defendants continue to assert that there was no

[7] There do not appear to be statutory penalties applicable to the situation here

evidence upon which the jury could reasonably find that their employee, Carlton, was acting within the scope of his employment when he took Plaintiff's property from the apartment complex to his own home. The Defendants articulated this same argument at trial. To the extent the jury determined that Carlton was acting within the scope of his duties when he took the property to his home, there is evidence to support that decision. What Defendants seem to overlook is that the jury's verdict reflects the Defendants' improper inclusion of Plaintiff's apartment on the "move out" list when he had already renewed the lease for his apartment and had already paid the rent in advance. This action initiated a sequence of events that lead to Defendants' agents entering Plaintiff's apartment at Defendants' instructions and "bagging and tagging" Plaintiff's personal property. The Defendants' agent took some of Plaintiff's personal property home but then returned the property; other of Plaintiff's property was placed in storage where it was damaged and some property was simply discarded. Ultimately, the jury determined that Plaintiff was deprived of his personal property by the actions of the Defendants and their agents.

E. **The Court denies Defendants' Motion for New Trial Nisi Remittitur**

Alternatively, the Defendants assert that this Court should reduce the jury's verdict because it is excessive. Defendants continue to assert that the evidence does not warrant the damages awarded. The Court disagrees.

"If the trial court determines that the verdict is 'merely excessive,' the court has the power to reduce the verdict by granting a new trial nisi remittitur." *Mills v. South Carolina State Ports Authority*, 435 S.C. 213, 226, 865 S.E.2d 910, 916. However, there must be "'compelling reasons" to warrant invading the jury's province by granting a new trial nisi." *Id.* The Court finds that such compelling reasons do not exist and thus declines the action Defendants request.

II. Plaintiff's Posttrial Motions for Treble Damages, Attorney's Fees and Costs and Pre-Judgment Interest.

A. **Treble Damages**.

Plaintiff seeks to treble its actual damages for Defendants' Violation of the UTPA pursuant to S.C. Code Ann. 39-5-140, which states in pertinent part:

(a) 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. 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.

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(d) For the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20.

(emphasis added) [8]

As an initial matter, this Court has already recognized that the jury, based on the evidence, could have found an unfair or deceptive act in violation of the UTPA based on the Defendants' entry into Plaintiff's apartment and treatment of Plaintiff's personal property as if it had been abandoned, when, in fact, Plaintiff had renewed his lease and paid advance rent. Further, the Defendants had acknowledged that Plaintiff had renewed his lease and made assurances to the Plaintiff prior to their agents entering the apartment and "bagging and tagging" his property. Under SC Code Ann. 39-5-140(d), "a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20." The Court earlier observed that the Defendants' business model is to rent apartment units to college students. The Court finds that Defendants' actions were in violation of the UTPA and that Defendants "should have known" that by removing Plaintiff's personal property after he had renewed his lease as if he had instead terminated his lease or abandoned his apartment would

[8] SC Code Ann. § 39-5-20, Unfair methods of competition and unfair or deceptive acts or practices unlawful; application of federal act, reads:

(a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.
(b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to Section 5(a) (1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

constitute an unfair or deceptive practice in violation of UTPA. Accordingly, the Court finds that Defendants' violation of UTPA was willful and knowing within the meaning of section 39-5-140. Accordingly, the UTPA provides that the Court must grant trebled damages.

This does not, however, translate into a finding that the entire actual damages award of $230,000 should be trebled. Recovery under S.C. Code Ann. 39-5-140(a) is available to a 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…" (emphasis added). On its face, therefore, the plain language of this statutory provision limits recovery thereunder to the value of lost "money or property. "This is the same as economic damage. See generally, *Payne v. Holiday Towers, Inc*., 283 S.C. 210, 321 S.E.2d 179 (Ct. App. 1984).

The Court has earlier alluded to the its belief that Plaintiff's economic damages were at least $27,500, the value of his lost personal property listed on the spreadsheet he produced for Defendants. Accordingly, upon its finding that Defendants violation of the UTPA was willful within the meaning of 39-5-140, the Court trebles the sum of $27,500 to $82,500.00.

B. **Attorney's Fees and Costs**.

Plaintiff's attorney, Todd Lyles, Esquire, has submitted an Affidavit of Attorney's fees seeking attorney's fees and costs under S.C. Code Ann. 39-5-140(a) ("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."). Plaintiff, anticipating that the Court would treble the jury's actual damage award, offers that he is entitled to an attorney's fee award of $384,166.75 and costs of $6,996.81. The Defendants oppose this amount and ask for a hearing on this issue. While the Court believes that Plaintiff is entitled to an award of attorney's fees under the UTPA, given the needed evaluation under *Jackson v. Speed*, 326 S.C. 2898, 486 S.E.2d 750 (1997), the Court defers ruling on attorney's fees until the parties have an opportunity to appear.

C. **Interest Pursuant to Rule 68(b), SCRCP**.

Plaintiff further seeks interest pursuant to Rule 68(b), SCRCP. Without more, the Plaintiff is entitled to this relief inasmuch as his August 26, 2022 Offer of Judgement in the amount of $75,000 was rejected by the Defendants and he obtained a jury verdict more

favorable than the Offer of Judgement. The Plaintiff is thus entitled to interest at the rate of 8% based upon the amount of the verdict from the amount of the award to the entry of judgment.

BASED ON THE FOREGOING, the Defendants' Motions for JNOV, New Trial Absolute and New Trial Remittitur Nisi are DENIED. Plaintiff's Motion for Treble Damages under the UTPA is GRANTED, subject to the limitations outlined herein and Plaintiff's Motion For Interest pursuant to Rule 68 is GRANTED. The Court defers ruling on Plaintiff's Motion for Attorneys Fees and Costs until the parties have an opportunity to appear.

AND IT IS SO ORDERED.

_____
Honorable Milton G. Kimpson

_____, 2025

Richland Common Pleas

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

Case Number: 2022CP4004419

Type: Order/Other

IT IS SO ORDERED.

s/Milton G. Kimpson 2783