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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Martha M. Rivers, Circuit Court Judge

Appellate Case No. 2025-000150
Case No. 2022-CP-02-2323
Case No. 2022-CP-02-2324

Heather Crespo..Respondent/Appellant,

v.

Rhett Riviere, Josee Riviere, Chase Enterprises, LLC
and R.C. Riviere Properties, LLC.. Defendants,

AND

Gabriel Crespo ....Respondent/Appellant,

v.

Rhett Riviere, Josee Riviere, Chase Enterprises, LLC
and R.C. Riviere Properties, LLC,... Defendants,

Of which

Rhett Riviere, Chase Enterprises, LLC and
R.C. Riviere Properties, LLC, are the...............................Appellants/Respondents,

and

Josee Rivere is the ....Respondent/Appellant.

FINAL RESPONDENTS' BRIEF OF APPELLANTS/RESPONDENTS RHETT RIVEIRE, CHASE ENTERPRISES LLC AND R.C. RIVIERE PROPERTIES LLC TO FINAL BRIEF OF RESPONDENTS/APPELLANTS HEATHER AND GABRIEL CRESPO

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STATEMENT OF THE CASE

On October 10, 2022, Respondents Heather and Gabriel Crespo filed complaints in two separate actions alleging: Negligence and/or Gross Negligence (against all Appellants); Invasion of Privacy – Wrongful Intrusion into Private Affairs (against Appellant Rhett Riviere); Intentional Infliction of Emotional Distress (against Appellant Rhett Rivere); Constructive Fraud/Misrepresentation (against Appellants Rhett Rivere and Josee Rivere); Negligence Per Se (against Appellants Rhett Rivere and Josee Rivere); and Violation of the South Carolina Unfair Trade Practices Act (SCUPTA) (against all Appellants). **(R. pp. 94-123).**

On November 14, 2022, Appellants Rhett Rivere, Chase Enterprises, LLC of South Carolina, and R.C. Rivere Properties, LLC filed an Answer denying each and every allegation of the Complaint, except those specifically admitted, and asserting various defenses, including the statute of limitations, doctrine of laches, doctrine of waiver, failure to state a claim, and that Respondents' South Carolina Unfair Trade Practices Act claim is barred because Appellants' conduct did not adversely affect the public interest in this State. **(R. pp. 124-137).**

On September 12, 2024, the court granted Respondents' motion to consolidate the actions, and the consolidated case was tried before a jury from September 16, 2024, through September 25, 2024. On September 24, 2024, the jury returned a verdict in favor of Respondents Heather Crespo and Gabriel Crespo, awarding each actual damages in the amount of $11,000,000 against Rhett Rivere, $500,000 against Josee Riviere, $1,000,000 against Chase Enterprises, LLC, and $1,000,000 against R.C. Rivere Properties, LLC, for a total of $26 million in actual damages against these Appellants and $1 million in actual damages against Appellant Josee Riviere. On September 25, 2024, the jury awarded each Respondent $4,000,000 in punitive damages against Rhett Rivere, and $500,000 in punitive damages against each corporate defendant, for a total punitive damage award of $10 million. **(R. pp. 13-48).**

On October 4, 2024, Appellants Rhett Rivere, Chase Enterprises, LLC of South Carolina, and R.C. Rivere Properties, LLC moved for judgment notwithstanding the verdict (JNOV) pursuant to Rule 50(b), SCRCP on all causes of action. **(R. pp. 398-407).** Appellants also moved for a reduction in the punitive damages award pursuant to S.C. Code Ann. § 15-32-530. **(R. pp. 408-410).** Additionally, Appellants moved for a new trial absolute pursuant to Rule 59, SCRCP, on the grounds that the verdict was grossly excessive and inconsistent. In the alternative, they moved for a new trial nisi remittitur. **(R. pp. 411-417).** On October 10, 2024, Appellants filed a supplemental motion for a new trial and a motion for election of remedies, or, in the alternative, for a new trial, new trial nisi remitter, or to set aside the verdicts. **(R. pp. 471-485).**

On November 13, 2024, the court held a hearing on all pending post-trial motions. These included the motions for judgment notwithstanding the verdict, new trial nisi remittitur, reduction of punitive damages, and a motion to stay the execution of the judgment pending the ruling. The court also considered Respondents' petition for attorney's fees and Josee Rivere's separate motion for judgment notwithstanding the verdict, or in the alternative, a new trial nisi remittitur.

On January 3, 2025, the court issued an order denying the motions for judgment notwithstanding the verdict, new trial, and new trial nisi remittitur. **(R. pp. 49-61).** The court found sufficient evidence supported the jury's verdicts, including evidence of property damage and other injuries to the Respondents. On the negligence per se claim based on the Realtor Protection Statute, the court held that it could not speculate on what might have occurred had the South Carolina Real Estate Commission investigated Appellant Rhett Rivere. As to the claim for intentional infliction of emotional distress, the court found a sufficient evidentiary basis to support the jury's verdict. However, with respect to the SCUTPA claim, the court found damages were limited to the amount of the rental payment—$2,400—and reduced the award accordingly. The Court also found that the

violation was willful and awarded treble damages totaling $12,960, including $7,575 to Gabriel Crespo. On the constructive fraud claim, the court held that damages must reflect the difference between the value as represented and as received. The court found the jury could reasonably assign a value of $0.00 without expert testimony and reduced the constructive fraud award to $2,400. The court also denied the motion to reduce punitive damages under S.C. Code Ann. §§ 15-32-510 and 15-32-530, finding that the jury's award did not exceed the statutory cap.

On October 4, 2024, the Crespos filed a Motion for Attorneys' Fees and Costs **(R. pp. 368-397)** seeking a combined total of $793,934.52 in fees and costs. The court held a hearing on the motion on January 21, 2025. On March 14, 2025, the circuit court awarded $132,322.42 in attorney's fees and $4,175.31 in costs pursuant to SCUPTA **(R. pp. 70-93).**

On January 27, 2025, Appellants Rhett Rivere, Chase Enterprises, LLC of South Carolina, and R.C. Rivere Properties, LLC filed a separate Notice of Appeal as to both Respondents Heather Crespo and Gabriel Crespo's judgments. **(R. pp. 653-682).** On February 3, 2005, Respondents/ Appellants Heather Crespo and Gabriel Crespo filed separate notices of appeals as to the lower Court's Orders reducing damages under the SCUTPA and the constructive fraud claims and from the Court's order reducing their attorneys' fees and costs claim.

FACTUAL STATEMENT

Appellants/Respondents hereby incorporate the factual statement set forth in their Appellants Brief filed herein.

ISSUES ON APPEAL

I. **Are non-economic loss and reputational damages recoverable under the SCUTPA when the statute expressly limits the damages to "ascertainable loss of money or property"**

II. **Did the circuit court err by unilaterally substituting its damages calculation for the jury's without granting a new trial or new trial nisi remittitur, even though its substantive SCUPTA analysis was correct?**

III. **Did the circuit court abuse its discretion in awarding attorneys' fees to Respondent/Appellant in a reduced amount, taking into account the disparity between the fees sought, and the results obtained, and allocating fees among the separate claims pursued by counsel**

STANDARD OF REVIEW

A. Statutory Interpretation of SCUPTA

Questions of statutory interpretation are questions of law, which are subject to *de novo* review and which we are free to decide without any deference to the court below. *State v. Alexander*, 424 S.C. 270, 274–75, 818 S.E.2d 455, 457 (2018).

B. Review of Attorneys' Fee Award

The calculation of an attorneys' fee award rests within the circuit court's discretion, and we will not disturb an award absent an abuse of discretion. *Brawley v. Richland Cnty.*, 445 S.C. 80, 94, 911 S.E.2d 156, 163 (Ct. App. 2025), *reh'g denied* (Jan. 28, 2025), *cert. denied* (June 3, 2025); *Horton v. Jasper Cnty. Sch. Dist.*, 423 S.C. 325, 330, 815 S.E.2d 442, 444 (2018).

ARGUMENTS

I. The circuit court correctly ruled that non-economic loss and reputational damages are not recoverable under the SCUTPA because the statute expressly limits damages to "ascertainable loss of money or property."

South Carolina's Unfair Trade Practices Act ("SCUTPA") only allows recovery for actual, ascertainable economic loss. The statute provides: "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 § 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages." S.C. Code Ann. § 39-5-140(a).

Consistent with this text, South Carolina courts have uniformly held that SCUTPA does not permit recovery of emotional distress, pain and suffering, or other non-economic damages. *Jones v. Ram Med., Inc.*, 807 F. Supp. 2d 501, 510 (D.S.C. 2011); *Green v. Momentum Motor Grp., LLC*, No. 0:17-cv-01499-CMC, 2017 WL 5593750, at *6 and 15 (D.S.C. Nov. 21, 2017) (holding that emotional-distress damages are not recoverable under SCUTPA). The "ascertainable loss of money or property" requirement is a gatekeeping element; "actual damages" under the statute must be measured within that pecuniary-loss framework.

Appellants/Respondents argue that "actual damages" under SCUTPA include reputational and emotional distress harms if proved with sufficient certainty. That reading ignores the statute's limiting language, which conditions any private right of action on an "ascertainable loss of money or property" and has been interpreted to bar non-economic damages. *See Jones*, 807 F. Supp. 2d at 510; *Green*, 2017 WL 5593750, at 6 and 15.

The statutory structure makes clear that the "actual damages" a plaintiff may recover must fit within the pecuniary-loss framework established by § 39-5-140(a). Respondents' authorities—such as *Global Prot. Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998); *Fields v. Yarborough Ford, Inc.*, 307 S.C. 207, 210-11, 414 S.E.2d 164, 166-67 (1992); and *Payne v. Holiday Towers Inc.*, 283 S.C. 210, 216, 321 S.E.2d 179, 182 (Ct. App. 1984)—either involved demonstrable economic losses or applied common-law measures of economic harm. None stands for the proposition that SCUTPA authorizes recovery for purely intangible harms divorced from a measurable monetary impact.

The circuit court correctly recognized this limitation in the post-trial ruling and concluded that only the rental cost ($2,400) and certain counseling fees were recoverable under SCUTPA. But the way it implemented that conclusion was procedurally improper.

II. The circuit court erred by unilaterally substituting its damages calculation for the jury's without granting a new trial or new trial nisi remittitur, even though its substantive SCUPTA analysis was correct

In its post-trial ruling the circuit court reversed its earlier ruling and correctly held that the proper measure of damages under the SCUTPA does not include non-economic and reputational damages. However, rather than granting Appellants/Respondents motion for new trial, or new trial nisi remittitur, the circuit court improperly replaced the jury's damages findings with its own factual determinations. This approach conflicts with long-settled law: "While the trial judge may not impose his will on a party by substituting his judgment for that of the jury, he may give the party an option in the way of additur or remittitur, or, in the alternative, a new trial." *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996); *see also S.C. State Highway Dep't v. Miller*, 237 S.C. 386, 394–95, 117 S.E.2d 561, 565 (1960). When the change is one of substance—as here—it cannot be imposed without offering the non-moving party the option of a new trial.

Here, the court did not apply a fixed statutory cap, which would have been a ministerial correction. Instead, it engaged in its own fact-finding, deciding the "reasonable" amounts of rental value and therapy costs to award. That is precisely the type of substantive modification that requires the procedural safeguard of a new trial nisi remittitur.

The statute defines what types of damages are recoverable; it does not grant the court authority to serve as a "thirteenth juror" and recalculate the amount. When a verdict contains non-recoverable elements, the court's remedy is to grant a new trial or new trial nisi remittitur—

allowing the prevailing party to choose whether to accept the reduction or retry the case. *See Vinson*, 324 S.C. at 405, 477 S.E.2d at 723.

Here, the court denied both parties' new trial and new trial nisi motions, found the verdicts "not excessive," and expressly stated there were "no compelling reasons" to invade the jury's province—then proceeded to do just that by imposing substitute amounts. This was a procedural violation regardless of whether the underlying damages theory was correct.

III. The same error applies to the constructive fraud awards.

For the constructive fraud claims, the circuit court acknowledged it "struggle[d] with the measure of damages" but nonetheless declared that $2,400 was the "appropriate figure." Even assuming the "difference in value" measure from *Sparrow v. Toyota of Florence, Inc.*, 302 S.C. 418, 422, 396 S.E.2d 645, 647 (Ct. App. 1990) applies, applying that measure to the evidence is a task for the jury, not the court. By substituting its own valuation, the court committed the same procedural error as on the SCUTPA claims.

IV. The circuit court did not abuse its discretion in awarding attorneys' fees to Respondent/Appellant in a reduced amount, taking into account the disparity between the fees sought, and the results obtained, and allocating fees among the separate claims pursued by counsel.

The South Carolina Court of Appeals recently explained that "a reasonable fee award must include only 'reasonably expended' hours and must be proportional to the degree of success obtained." *Brawley*, 445 S.C. at 80, 911 S.E.2d at 156. The Court in *Brawley*, citing *Hensely v. Eckerhart*, 461 US 424, 436 (1983) explained that the "most critical factor is the degree of success obtained." *Id.* at 96; 911 S.E.2d at 164.

Respondents/Appellants obtained a gross recovery of $20,535 for their UTPA claims. This award pales in comparison to the overall judgment of approximately $36 Million awarded for the non-statutory claims. In fact, the UTPA judgement represents less than approximately .05% of the

total judgment for all claims awarded to both Plaintiffs. To render the fee award proportional to the degree of success obtained in this litigation, counsel's fee petition should have been reduced by the same percentage, yet the circuit court reduced the fees and expenses to only 1/6 of the amount claimed

The circuit court's reduction of the attorneys' fees award was well within its discretion and properly applied the established legal standard requiring that attorneys' fees be reasonable. As this Court has consistently held, the award of attorneys' fees is left to the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *S.C. Dep't of Transp. v. Revels*, 411 S.C. 1, 8, 766 S.E.2d 700, 703 (2014).

The record demonstrates that Plaintiffs' counsel sought total fees of $793,934.52 and costs of $25,051.84—a figure that bears no reasonable relationship to the ultimate UTPA recovery. The most compelling factor supporting the circuit court's reduction is the stark disproportion between the requested fees and the actual UTPA damages awarded. After the court's proper reduction of the UTPA damages to their ascertainable monetary losses, Heather Crespo recovered $12,960.00 and Gabriel Crespo recovered $7,575.00 under the UTPA claim—the sole basis for the attorneys' fees award. The requested fees of $793,934.52 represent:

- Approximately 62 times Heather Crespo's UTPA award of $12,960.00
- Nearly 105 times Gabriel Crespo's UTPA award of $7,575.00

This disproportion is not merely substantial—it is extraordinary and unreasonable. The "beneficial result obtained" factor, which the circuit court acknowledged as one of the key considerations in fee determinations, militates strongly against awarding fees that so dramatically exceed the underlying recovery. While Plaintiffs achieved success on multiple claims, only the UTPA claim provides a statutory basis for attorneys' fees recovery.

Furthermore, Plaintiffs' counsel made no attempt to allocate their requested fees and costs among the six separate causes of action pleaded in this case. This failure left the circuit court without adequate information to determine what portion of counsel's time and effort was specifically devoted to the UTPA claim versus the five other claims that provided no basis for fee recovery.

It was incumbent upon Plaintiffs to produce an itemized affidavit of their fees that are related to UTPA and exclude fees and expenses incurred that are not related. *Taylor v. Nix*, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992). Petitioners by their own admission during the hearing held on January 21, 2025, conceded that they did not undertake any effort to exclude fees that are unrelated to the UTPA claim. In fact, counsel even argued that fees may be awarded under the UTPA for time spent on unrelated claims. **(R. p. 647).**

In addition, the fee petitions[1] lack sufficient detail from which Defendants, or this Court, can determine whether the work performed was related to the UTPA claims or the other five (5) causes of action for which Plaintiffs recovered in $13 Million in actual damages and $5 Million in punitive damages for each Plaintiff, totaling $36 Million.

For example, Mrs. Barbier has approximately 200 email review entries and Mr. Beasley has at least 150 similar entries. The email descriptions are the same, "review/receipt email correspondence," and each billed .1 hours (or 6 minutes) per email at an hourly rate of $750, totaling at least $26,000. There is no mention of the subject matter or purpose of these emails, who the email correspondence is with, what actions were taken in response or whether the emails pertained to these civil cases, the criminal cases pending against Riviere or other cases brought by these same attorneys on behalf of another client. **(R. p. 648).**

[1] Mr. Few did not provide an itemized statement of work with his fee petition.

Moreover, there is no representation that these time entries were recorded contemporaneously with the work claimed to have been performed. There are also strong indications that the attorneys copied each other's time entries. The following key patterns suggest this:

1. Identical Wording:
   - The phrase "review / receipt of email correspondence" is used verbatim by both attorneys
   - When specifying multiple emails, they use identical formatting (e.g., "review / receipt of 7 email correspondence")
   - Even unusual phrasings appear identically in both attorneys' entries
2. Matching Email Counts:
   - When noting multiple emails, they often cite the exact same number on the same day
   - For example, if one attorney bills for "7 email correspondence", the other often bills for exactly 7 emails too
3. Identical Time Increments:
   - Both consistently use 0.1 hours per email
   - When reviewing multiple emails, they use matching time calculations (e.g., 7 emails = 0.7 hours)
4. Synchronized Entries:
   - Many entries appear on the same days with identical descriptions
   - The pattern extends beyond just email reviews to other activities
5. Systematic Pattern:
   - The copying appears systematic throughout the billing period

- Even minor details in formatting and punctuation are replicated

This level of identical language and matching time entries across hundreds of billing entries strongly suggests that one attorney's time records were used as a template for the other's. Such identical billing patterns are highly unlikely to occur naturally, as different attorneys typically describe their activities in their own words and may track time differently. **(R. p. 649).**

As the circuit court correctly noted, "the plaintiffs were not able to break down the fees and costs by causes of action and all causes are based on the same nexus of fact." **(R. p. 77; R. p. 89)**. However, this factual overlap does not eliminate the legal requirement that attorneys' fees be tied to the statutory claim that authorizes their recovery. The burden was on Plaintiffs to provide sufficient detail to allow the court to make a reasonable allocation. *Taylor v. Nix*, 307 S.C. 551, 416 S.E.2d 622 (1992). While *Taylor* holds that no allocation is required when counsel admits services were unrelated to the statutory claim or when services are clearly beyond its scope, that exception does not apply where, as here, counsel seeks to recover the entirety of their fees based on success in one of six claims.

Far from being arbitrary, the circuit court's allocation of one-sixth of the requested fees to the UTPA claim was mathematically logical and conservative. With six causes of action pleaded, allocating one-sixth of the total fees to the UTPA claim represents an equal apportionment absent more specific guidance from counsel. This approach was particularly reasonable given:

1. The relative complexity of claims: While all claims arose from the same factual nucleus, the UTPA claim required specific proof of deceptive trade practices, ascertainable monetary losses, and willfulness—elements distinct from the tort claims.

2. The proportional recovery: The UTPA damages, even after trebling, represented a small fraction of the total judgment, making a proportional fee allocation appropriate.
3. Precedent supporting allocation: Courts regularly reduce fee awards where counsel fails to adequately allocate time between fee-generating and non-fee-generating claims. The circuit court's one-sixth allocation was more generous than many courts would allow in similar circumstances.

Plaintiffs mischaracterize the holding in *Taylor v. Nix*, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992). The Supreme Court specifically stated, "[t]he defendant's attorney argued fees related to the non-statutory cause of action should have been excluded. **We agree**." *Id.* (emphasis added). The Court further explained,

> However, precisely what fees were unrelated to the statutory action were not presented to the lower court. The defendants merely estimated $2,500 would be a reasonable sum for the prosecution of the claim under § 56–15–10, *et seq.* We hold this is not adequate. The breach of warranty and strict liability claims were related and intertwined with the statutory claim. The conduct of the breach of warranty was the same conduct which was deemed to be a violation of the statute. We hold when an action in which attorney fees are recoverable by statute is joined with alternative theories of recovery based on the same transaction, no allocation of attorney's services need be made except to the extent counsel admits that a portion of the services was totally unrelated to the statutory claim or it is shown that the services related to issues which were clearly beyond the scope of the statutory claim proceeding. *Accord, Heindel v. Southside Chrysler–Plymouth, Inc.,* 476 So.2d 266 (Fla. App. 1985). **This approach requires the party asserting the right to attorney fees to produce an itemized affidavit of their fees that they believe are related to the statutory claim. The opposing party then has the burden of showing which of the fees are clearly unrelated.**

Taylor, 307 S.C. at 557, 416 S.E.2d at 622(emphasis added).

Here, Plaintiffs' counsel admittedly did not make any effort to segregate time spent on other causes of action whatsoever as required under *Nix*, even though there was obviously time and expense incurred solely on the non-statutory claims. For example, both Plaintiffs sought

damages for emotional distress, and presented testimony from psychologists and friends to support their damages claims. Yet, emotional distress damages are not recoverable under the UTPA.

The circuit court carefully considered all relevant factors and made specific findings supporting its decision. The court acknowledged the case's complexity, the reasonable hourly rates, and the time invested by counsel. However, it properly recognized that the massive fee request could not be sustained when measured against the actual UTPA recovery. The resulting award of $132,322.42 still represents a substantial fee recovery that adequately compensates counsel for their work on the UTPA claim while maintaining proportionality to the damages recovered under that statute.

The circuit court did not abuse its discretion in reducing the attorneys' fees award. The reduction was necessitated by Plaintiffs' counsel's failure to allocate fees among claims and the unreasonable disproportion between the requested fees and the UTPA recovery. The one-sixth allocation was conservative, mathematically logical, and well-supported by the record. This Court should affirm the circuit court's attorneys' fees award.

CONCLUSION

The circuit court's substantive conclusion that SCUTPA damages are limited to economic losses was correct. But its unilateral recalculation of both the SCUTPA and constructive fraud awards, without offering Respondents/Appellants the choice of accepting the reduced amounts or retrying the case, was procedurally improper under South Carolina law and violated the constitutional right to a jury trial. Furthermore, the circuit court did not abuse its discretion by reducing the amount of attorneys' fees claimed based upon the court's the multi-factored analysis.

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