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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-2023
Case No. 2022-CP-2024

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 Riviere is the

Respondent/Appellant.

Final Brief of Respondents/Appellants Heather Crespo and Gabriel Crespo

Deborah B. Barbier, S.C. Bar No. 6920
DEBORAH B. BARBIER, LLC
1811 Pickens Street
Columbia, South Carolina 29201
Phone: (803) 445-1032
Email: dbb@deborahbarbier.com

Wesley D. Few, S.C. Bar. No. 15565
WESLEY D. FEW, LLC
Post Office Box 9398
Greenville, South Carolina 29605
(864) 527-5906 | wes@wesleyfew.com

Ryan L. Beasley, S.C. Bar No. 68307
RYAN L. BEASLEY, ATTORNEY AT LAW,
P.A.
416 East North Street
Greenville, South Carolina 29601
Phone: (864) 679-7777
Email: rlb@ryanbeasleylaw.com

Attorneys for Respondents/Appellants Heather
Crespo and Gabriel Crespo

Feb. 9, 2026
Greenville, South Carolina

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STATEMENT OF ISSUES ON APPEAL

- I. Did the circuit court err in reducing the verdicts on the UTPA and constructive fraud claims where:
 - (i) The circuit court determined the damages for the UTPA and constructive fraud claims based on its own view of the evidence;
 - (ii) There was not a statute setting a maximum amount of damages recoverable;
 - (iii) The circuit court did not state compelling reasons for invading the jury's province nor give the non-moving parties the choice between accepting the reduced damages and a new trial?

- II. Did the circuit court err in reducing the award of attorneys' fees and costs to 1/6 of the requested amount where:
 - (i) The circuit court determined that the attorneys' requested hours and rates were reasonable; and
 - (ii) The circuit court determined that all of the claims were inextricably intertwined and based on the same nexus of facts?

STATEMENT OF THE CASE

This is an appeal from consolidated actions arising from an egregious invasion of privacy by Appellant/Respondents Rhett Riviere, Chase Enterprises, LLC, and R.C. Riviere Properties, LLC, (collectively referred to herein as the “Rhett Riviere Defendants”) and Respondent / Appellant Josee Riviere (“Josee Riviere”). On October 10, 2022, Respondents / Appellants Heather Crespo and Gabriel Crespo (collectively referred to herein as the “Plaintiffs” or “Crespos”) filed separate actions against the Rhett Riviere Defendants and Josee Riviere, shortly after discovering that they had been surreptitiously recorded by a camera that had been positioned to capture images in the bedroom and bathroom of the house they had rented from the Rivières in Aiken, South Carolina, in 2001. (R. pp. 96-123, Compls. filed Oct. 2022, ¶¶ 19, 30). The video contained explicit images of the Crespos, including them in their private bathroom and engaging in sexual activity, in what they thought was the privacy of the rental property. (R. p. 1121, lines 17-22). The video was located on Rhett Riviere’s desktop computer and was titled “Heather and Gabriel.” (R. p. 1121, lines 11-13; R. p. 1280, lines 2-6; R. p. 1281, lines 4-6). SLED Agent David Britton Dove testified that the video had been placed on the hard drive of the desktop computer in 2007 and moved to an external hard drive in 2012. (R. p.1281, line 4-22; R. p. 1282, line 6 – p. 1283, line 5).

In 2001, the Crespos had recently married and were traveling the polo circuit where Gabriel was a well-known polo player. (R. p. 1794, lines 23- 25; R. p. 1799, lines 1-3; 11-17; R. p. 1800, line 24 – p. 1801, line 4). The Crespo’s were introduced to the Riviere’s by mutual friends, Lito and Gina Salatino. Gabriel Crespo had known Lito Salatino for years, as they were each from Argentina. At that time, Rhett Riviere and Josee Riviere were also married and living in Aiken County, and they rented a house to the Crespos for several months during the polo season that year. (R. p. 1801, lines 14-18; R. p. 1802, lines:8-10). After 12 years of marriage, the

Rivieres divorced in 2012, but remained close communicating daily. (R. p. 1637, lines 13-15; R. p. 1659, lines 18-25; R. p. 1676, lines 16-18; R. p. 1692, lines 21-23).

In late 2019, Rhett Riviere's ex-fiancé, Katherine Thomas, found two SDs card containing videos and images of people undressing or nude in the bedrooms and bathrooms of the Riviere's rental properties. (R. p. 1034, lines 23-24; R. pp. 99 and 114 ¶ 25). Ms. Thomas contacted law enforcement, and the South Carolina Law Enforcement Division ("SLED") began an investigation. (R. 1032, lines 12-17; R. p. 1034, lines 10-13). Pursuant to search warrants, SLED agents searched the SD cards and three houses owned by the Rhett Riviere Defendants, including Rhett Riviere's personal residence and rental properties, eventually leading to the discovery of numerous recording devices and thousands of video recordings spanning a twenty-year period. (R. p. 1034, lines 10-24; p.1037, lines 3-6; p. 1054, lines 19-21; p. 1082, lines 21-25; p. 1083, lines 21-25; p.1084, lines 15-22; p. 1102, lines 5-13; p. 1136, lines 21-25; p. 1192, line 23-p. 1193, lines 2). SLED Agent James Clinton Busbee described many of the different images and videos as showing people engaged in sexual activities, undressing, showering, and going to the bathroom. (R. p. 1120, lines 10-19; p. 1121, lines 5-10).

Rhett Riviere was arrested on July 29, 2022, and charged with two counts of "Voyeurism," in violation of S.C. Code Ann. § 16-17-470. (R. pp. 2658- 2659, Criminal Case Nos. 2022-A-0210700181 and -182) as a result of the videotaping of Heather and Gabriel Crespo. Rhett Riviere had earlier been arrested and charged with "Voyeurism," on June 3, 2021, related to the events as alleged by another victim that stayed in an Airbnb house owned by Riviere/Chase Enterprises, LLC of South Carolina ("Chase"). (R. pp. 2658-2659, Criminal Case No. 2021-A-02-10700228; and R. 2668, Civil Case No. 2021-CP-02-00889). Rhett Riviere settled all claims brought against him in the 2021-CP-0200889 lawsuit in 2022. Rhett Riviere was also sued based on similar voyeuristic activities in Case Nos. 2020-CP-02-01616 and 2021-

CP-02-00333, each of which has since been settled, and dismissed, respectively, in June and October of 2021. To date, however, the criminal charges against Rhett Riviere remain pending. (R. p. 2658-2663, Docket of Criminal Case Nos. 2022-A-02-10700181 and -182; and 2021-A-02-10700228).

On October 10, 2022, the Crespos filed separate complaints alleging six (6) claims against Rhett Riviere Defendants and Josee Riviere: (1) negligence and/or gross negligence, (2) invasion of privacy by wrongful intrusion into private affairs, (3) intentional infliction of emotional distress, (4) constructive fraud/misrepresentation, and (5) negligence per se, and (vi) S.C. Unfair Trade Practices Act (“UTPA”) violations, S.C. Code Ann. § 39-5-10 et seq. (R. pp. 96-123, Compls. generally and ¶¶ 46-100). On September 12, 2024, with the parties’ consent, the Court consolidated these cases for trial as both cases arose out of the same facts, raised the same claims, and shared common parties and witnesses. (R. p. 7-12, Sept. 12, 2024 Order granting Pls.’ Motions to Consolidate).

On August 15, 2022, the circuit court set a trial date of September 16, 2024. (R. pp. 1-6, Aug. 15, 2024 Order granting Pl.’s Mot. for a Continuance and Date Certain Trial), and the case was called for trial on September 16, 2024. Pursuant to Defendants’ election to bifurcate the trial, as provided in S.C. Code Ann. § 15-32-520, the trial was conducted in two phases – the initial one for a determination of liability and the second phase for a determination of punitive damages. *See* R. 2699, Sept. 15, 2024 Letter from Jim Griffin; R. p. 891, lines 6-7.

At trial, Rhett Riviere invoked his Fifth Amendment right as to every question. After seven days of testimony and arguments, the jury returned a verdict in favor of Plaintiffs and awarded actual damages. (R. pp. 13-22, Sept. 24, 2024 Verdict Forms). The punitive damages phase then began, and, following another day of testimony and argument, the jury awarded punitive damages to Plaintiffs. (R. pp. 23-48, Sept. 25, 2024 Punitive Damages Verdict Forms).

Specifically, for each Plaintiff, the jury awarded \$500,000 in actual damages and \$500,000 in punitive damages for the negligence claim against each of the Rhett Riviere Defendants. (R. pp. 25-26, 38-39, Sept. 24, 2024 Verdict Forms and R. pp. 33-34, 46-47, Sept. 25, 2024 Punitive Damages Verdict Forms). The jury awarded \$1,500,000 in actual damages and \$1,500,000 in punitive damages for the negligence per se claim against Rhett Riviere. (R. pp. 27-28, 33-34, 40-41, 46-47). The jury awarded \$3,000,000 in actual damages and \$1,00,000 in punitive damages for the international infliction of emotional distress claim against Rhett Riviere. (R. pp. 28, 34, 41, 47). The jury awarded \$5,000,000 in actual damages and \$2,000,000 in punitive damages for the invasion of privacy claim against Rhett Riviere. (R. pp. 29, 34, 42, 47). The jury awarded \$500,000 in actual damages and \$500,000 in punitive damages for the constructive fraud claim against Rhett Riviere. (R. pp. 29, 34, 42, 47-48). Finally, the jury awarded \$500,000 in actual damages for the UTPA claims against each of the Defendants. (R. pp. 26-27; 39-40, Sept. 24, 2024 Verdict Forms).

As to the SCUTPA clam, the circuit court made a finding of willfulness and trebled the amount of the damages for each plaintiff under this claim to \$1,5000,000 against each defendant and awarded attorneys' fees and costs to the Crespos with the amount to be determined at a later date. (R. pp. 23, 33, Sept. 25, 2024 Form 4 Order). Thus, in total, the jury returned a verdict for the Crepos, awarding each plaintiff \$11,000,000.00 against Rhett Riviere, \$1,000,000,00 against Chase Enterprises, LLC, and \$1,000,000.00 against R.C. Riviere Properties, LLC. Additionally, the jury awarded each plaintiff punitive damages of \$4,000,000 against Rhett Riviere and \$500,000 against each Chase Enterprises, LLC and R.C. Riviere Properties, LLC.

The Rhett Riviere Defendants filed several post-trial motions:

- 1) Motion for Judgment Notwithstanding the Verdict (“JNOV”);
- 2) Motion for New Trial, or on the Alternative for New Trial Nisi Remittitur;

- 3) Motion to Reduce Punitive Damages Pursuant to S.C. Code Ann. 15-1-32-530.
- 4) Supplemental Motion for Election of Remedies, New Trial, New Trial Nisi Remittitur, or to Set Aside Verdicts; and

- 5) Motion for a Reduction of Damages in Accordance with the South Carolina Unfair Trade Practices Act and Constructive Fraud.

(R. pp. 411-17; R. 408- 10; R. pp. 479-85). Josee Riviere also filed separate post-trial motions:

- 1) Motion for JNOV, or in the Alternative for a New Trial, or in the Alternative for a New Trial Nisi Remittitur;
- 2) Supplemental Mot. for JNOV, or in the Alternative for a New Trial, or in the Alternative for a New Trial Nisi Remittitur;¹ and
- 3) Amended Memorandum in Support of Motion for JNOV.²

(R. p. 418-43, Def. Josee Riviere’s Mot. for JNOV, or in the Alternative for a New Trial, or in the Alternative for a New Trial Nisi Remittitur; R. pp. 464-65, Def. Josee Riviere’s Supp. Mot. for JNOV, or in the Alternative for a New Trial, or in the Alternative for a New Trial Nisi Remittitur; R. pp. 555-600, Def. Josee Riviere ‘s Am. Mem. in Supp. of Motion for JNOV).

After the motions were fully briefed, the circuit court held a hearing on these post-trial motions on November 13, 2024. (R. pp. 2503-2613). Thereafter, on January 4, 2025, the circuit court entered separate orders denying the post-trial motions with one addressing the Rhett Riviere Defendants’ posttrial motions and the other addressing Josee Riviere’s post-trial motions. (R. pp. 49-69, Jan. 3, 2025 Orders).³

¹ Although this motion’s caption included both cases, it was filed only in Gabriel Crespos’ action, Case No. 2022-CP-20-2324.

² While it appears that memorandum was filed twice on November 12, 2024, the first filing was incomplete and included only 21 pages of the 30-page memorandum. *See* R. p. 2508, lines 4-7, Nov. 13, 2024 Hearing Tr. 6:4-7.

³ The Orders were entered into both cases. However, the January 3, 2025 Order was not entered in Gabriel Crespos’ case, Case No. 2022-CP-20-2324, until January 27, 2025.

Despite denying the post-trial motions, the circuit court determined that the damages for the Crespos' UTPA claim against both the Rhett Riviere Defendants and Josee Riviere were limited to "ascertainable loss of money or property." (R. p. 55, Jan. 3, 2025 Order as to the Rhett Riviere Defs. at 7; R. p. 67, Jan. 3, 2025 Order as to Josee Riviere at 6). The court then specifically limited damages on the UTPA claim to the amount paid for the rental and counseling costs. (R. pp. 55-56, Jan. 3, 2025 Order as to the Rhett Riviere Defs. at 7-8; R. pp. 66-67, Jan. 3, 2025 Order as to Def. Josee Riviere at 5-6). The circuit court determined that the rental amount was \$2,400 and Heather Crespo incurred \$1,920 for counseling sessions and Gabriel incurred \$125. (R. p.50, Jan. 3, 2025 Order as to the Rhett Riviere Defs. at 2; R. p. 64, Jan. 3, 2025 Order as to Josee Riviere at 3). Thus, the circuit court reduced the damages on the UTPA claim to \$12,960.00 for Heather Crespo and to \$7,575.00 for Gabriel Crespo. (R. p. 56, Jan. 3, 2025 Order as to the Rhett Riviere Defs. at 8; R. p. 68, Jan. 3, 2025 Order as to Josee Riviere at 7). After specifically reiterating its finding that the UTPA violation was willful, the circuit court then trebled the now reduced UTPA damages. (R. p. 56, Jan. 3, 2025 Order as to the Rhett Riviere Defs. at 8; R. pp. 68-69, Jan. 3, 2025 Order Josee Riviere at 6-7). The court also again held that the Crespos were entitled attorneys' fees and costs with the amount to be determined after a hearing. *Id.*

The circuit court also determined that the measure of damages for the constructive fraud claim against the Rhett Riviere Defendants was the bargained for value of the rental (\$2,400) versus what the value of the rental that was actually received (\$0). (R. p. 56, Jan. 3, 2025 Order as to the Rhett Riviere Defs. at 8). Accordingly, the circuit court reduced the damages on this claim to \$2,400. *Id.* at 9.

On January 27, 2025, the Riviere Defendants filed Notices of Appeal from the January 3,

2025 Orders denying the post-trial motions. (R. pp. 653-82, Rhett Riviere Defs.' Jan. 27, 2025 NOA). On February 3, 2025, the Crespos cross-appealed the January 3, 2025 Order filing Notices of Appeal. (R. pp. 2719- 2808, Pls.' Feb. 3, 2025 NOA). Josee Riviere filed Notices of Appeal as to the Order on the post-trial motions on February 5 and 6, 2025. (R. pp. 683-87, Def. Josee Riviere's Feb. 5, 2025 and Feb. 6, 2025 NOA).

On October 4, 2024, the Crepos also filed a Motion for Attorney Fees and Costs supported by affidavits. (R. pp. 369-97, Pls.' Memo. for Attys.' Fees and Costs). A hearing was scheduled for January 21, 2015. Josee Riviere filed responses in opposition to the motion. (R. pp. 601-06, Brief on Behalf of Josee Riviere as to Pls.' Request for Fees). On the morning of the hearing, the Rhett Riviere Defendants emailed a copy of a recent case, *Brawley v. Richland County*, 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2025), to the circuit court for its consideration without any accompanying argument. (R. p. 2699, Jan. 21, 2025 Email from Jim Griffin to Judge Rivers). During the hearing, Crespos' counsel pointed out that the Rhett Riviere Defendants had not filed any memorandum opposing the fees and costs. (R. p. 2638, line19 – p. 2639).

At the end of the hearing, the circuit court gave the parties until January 28, 2025, to file "anything additional." (R. p. 42, lines 4-8). The Crespos filed a Supplemental Memo in Support of Attorneys' Fees and Costs and Amended Affidavits to address arguments made at the hearing and to include post-trial fees and costs. (R. pp. 607-44, Pls.' Supp. Memo in Support of Attorneys' Fees and Costs and Am. Affs.) The Rhett Riviere Defendants filed a Memorandum in Opposition to Petition for Attorney fees and Costs. (R. pp. 645-652, Rhett Riviere Defs.' Mem. in Opp. to Pet. for Attorneys' Fees & Costs).

On March 14, 2025, the circuit court partially awarded attorney's fees and costs pursuant to South Carolina UTPA. (R. pp. 70-93, Mar. 14, 2025 Order re: Attys.' Fees & Lit. Costs pursuant to UTPA). The circuit court reduced the fees awarded to 1/6 of the amount requested

based upon the UTPA being one of six claims brought by the Crespos. (R. pp. 77, 89, Mar. 14, 2025 Order at 8). On March 27, 2025, Josee Riviere filed a Notice of Appeal of the March 14, 2025 Order regarding attorneys' fees and costs. (R. pp. 683-718, Def. Josee Riviere's Mar. 27, 2025 NOA). On April 3, 2025, the Rhett Riviere Defendants also filed Notice of Appeal from the March 14, 2025 Order. (R., p. 2809). On April 4, 2025, the Crespos cross-appealed filing their Notice of Appeal of the March 14, 2025 Order. (R. pp. 719-30, Pls.' Apr. 4, 2025 NOA).

STANDARD OF REVIEW

JNOV

“When reviewing the trial court’s ruling on a motion for directed verdict or a JNOV, this Court must employ the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” *RFT Mgmt. Co. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 331–32, 732 S.E.2d 166, 171 (2012). The Court will “reverse only when there is no evidence to support the ruling or when the ruling is governed by an error of law.” *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 42, 691 S.E.2d 135, 145 (2010).

New Trial Absolute

“The grant or denial of new trial motions rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law.” *Vinson v. Hartley*, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996). A jury verdict should be upheld when it is possible to do so and carry into effect the jury’s clear intention. *Johnson v. Parker*, 279 S.C. 132, 303 S.E.2d 95 (1983).

A new trial absolute is warranted when the verdict is so excessive that it clearly indicates the amount was the result of passion, caprice, prejudice, partiality, corruption or some other improper motive. *Cock-N-Bull Steak House v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996); *see also Jolly v. Fisher Controls Int’l LLC*, 905 S.E.2d 380, 386 (2024) (citing Harry M. Lightsey & James F. Flanagan, *South Carolina Civil Procedure* (2nd ed. 1985) (explaining the “grossly inadequate or excessive” standard is met where “the result [of trial is] so unusual that the Court must infer that the jury’s deliberations were improperly affected and cast doubt not only on the amount of damages returned but also on the determination of liability”)).

New Trial Nisi Remittitur

A trial court has the authority to grant a new trial nisi remittitur when it finds the amount of the verdict to be “merely” excessive. *See Jolly*, 905 S.E.2d at 386 (citing *O’Neal v. Bowles*, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993) (holding that “[t]he trial judge alone has the power to grant a new trial nisi when [s]he finds the amount of the verdict to be merely inadequate or excessive.”)). “It is only when the trial court deems the verdict [] excessive—but not grossly so—that the trial court has the authority to grant a new trial nisi.” *Id.* at 387.

The trial court must justify its ruling by giving “compelling reasons” for invading the jury’s province. *See, e.g., Riley v. Ford Motor Co.*, 414 S.C. 185, 193, 777 S.E.2d 824, 829 (2015) (quoting *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 691 (1995)). “[C]ompelling reasons must be stated in the order as to why it was necessary to invade the jury’s province in this manner.” *Haskins v. Fairfield Electric Co-op.*, 283 S.C. 229, 236, 321 S.E.2d 185, 190 (Ct. App. 1984).

Additionally, if the trial court grants a new trial nisi remittitur, it is then required to give the non-moving party the choice between the nisi damages amount and a new trial. *Anderson v. Aetna Cas. & Sur. Co.*, 175 S.C. 254, 281, 178 S.E. 819, 829 (1934) (citations omitted)

(“Although the court may amend a verdict, the amendment must be accompanied with an option of a new trial nisi to the party against whom amendment militates.”); *Graham v. Whitaker*, 282 S.C. 393, 402, 321 S.E.2d 40, 45 (1984) (“The option must be given.”). Because of a party’s right “to have the amount of damages determined by a jury,” it is error to alter “the amount of the verdict without allowing the [non-moving party] the option of a new trial nisi.” *Gwathmey v. Foor Hotel Co.*, 121 S.C. 237, 242, 113 S.E. 688, 689 (1922).

Attorney’s Fees

The decision to award or deny attorneys’ fees and costs will not be disturbed on appeal 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). “An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” *Kiriakides v. Sch. Dist. of Greenville Cty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009) (citation omitted). “Similarly, the specific amount of attorney[’s] fees awarded pursuant to a statute authorizing reasonable attorney[’s] fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion.” *Id.* (quoting *Layman v. State*, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008)). “However, where the issue of the amount of attorney[’s] fees awarded depends on the [c]ourt’s interpretation of ‘reasonable’ attorney[’s] fees as contained in the [statute], the interpretation of the statute is a question of law that the [c]ourt reviews de novo.” *TCC of Charleston, Inc. v. Concord & Cumberland, LLC*, No. 2021-000272, 2025 WL 850758, at *6 (S.C. Ct. App. Mar. 19, 2025) (citing *Revels*, 411 S.C. at 8, 766 S.E.2d at 704).

ARGUMENT

I. The circuit court erred in reducing the damages awarded by the jury for the UTPA and constructive fraud claims.

The circuit court denied both the Rhett Riviere Defendants and Josee Riviere's Motions for JNOV, New Trial Absolute, and New Trial Nisi Remittitur. (R. p. 52-55, 57 Jan. 3, 2025 Order on Post-Trial Mots. as to the Rhett Riviere Defs. at 4-7, 9; and R. pp. 65-66, Jan. 3, 2025 Order on Post-Trial Mots. as to Josee Riviere at 4-5). The circuit court specifically determined that, given the egregious nature of Defendants' conduct, the verdicts were not excessive and did not warrant reduction "other than the reduction required pursuant to the SC Unfair Trade Practices Act and the appropriate measure of damages for constructive fraud." (R. pp. 57-58, Order on Post-Trial Mot. as to Rhett Riviere Defs. at 9-10).

The circuit court determined stated that the UTPA limits damages to the "ascertainable loss of money or property" caused by the deception or unfair act. (R. pp. 55, 67). Assessing the evidence, the circuit court determined that the verdicts on the UTPA claims should be the rental cost (\$2,400) and the counseling fees each of the Crespos' incurred – \$1,920 for Heather Crespo and \$125.00 for Gabriel Crespo. (R. pp. 55-56, Jan. 3, 2025 Order on Post-Trial Mots. as to the Rhett Riviere Defs. at 7-8; R pp. 65-66, Jan. 3, 2025 Order on Post-Trial Mots. as to Josee Riviere at 4-5). The Court then trebled these reduced damages for the UTPA claims finding that the verdicts should be \$12,960.00 for Heather Crespo and \$7,575.00 for Gabriel Crespo. *Id.* Likewise for the same reasons, the circuit court also reduced the verdicts against the Rhett Riviere Defendants on the constructive fraud claims to the rental cost, or \$2,400. (R. pp. 55-58, Jan. 3, 2025 Order on Post-Trial Mots. as to the Rhett Riviere Defs. at 7-9).

The circuit court specifically denied the Defendants' JNOV and New Trial Nisi Motions, stating that it did "not find compelling reasons to invade the jury's verdict" (R. p. 66, Order on Post-Trial Mot. as to Josee Riviere at 5) and the verdicts were not excessive (R. p. 57, January 3, 2025 Order on Post-Trial Mots. as to the Rhett Riviere Defs. at 9), but then, it did exactly that;

invading the jury's province and reducing damages awarded based on its own view of the evidence.

A. After finding that the verdicts were not excessive, the circuit court erred by finding a reduction was required and reducing the damages for the UTPA and constructive fraud claims based on its own view of the evidence.

As part of their JNOV motions, the Rhett Riviere Defendants and Josee Riviere argued that the Crespos had failed to present evidence of *any* cognizable damages under the UTPA claim and the Rhett Riviere Defendants also contended that the Crespos had failed to present evidence of *any* cognizable damages for the constructive fraud claim. (R. pp. 404-05, Rhett Riviere's Motion for JNOV at 7- 8; R. p. 418, Josee Riviere's Mot. for JNOV at 1; R. p. 464, Josee Riviere's Supp. Mot. for JNOV at 1; R. pp. 556-58, Josee Riviere's Am. Mem in Supp. of JNOV Mot. at 2-4). The Crespos argued that there was evidence of damages, including the value of the rental that was diminished and the Crespos' counseling bills and that special and consequential damages which includes damage to reputation. (R. pp. 513-14, Pls.' Resp. Opp. Rhett Riviere Defs.' Mot. for JNOV at 13-14; R. pp. 494-95, Pls.' Resp. Opp. Josee Riviere's Mot. for JNOV at 9-10; R. p. 2511, lines 7-9; p. 2513, lines 18-23, Nov. 13, 2024 Hearing Tr. 9:7-9; 11:18-23).

It is well-established that a "jury's determination of damages . . . is entitled to substantial deference" and that a reduction in the amount of damages awarded by a jury is only proper under certain circumstances because it is an invasion into the jury's province. *Harrison v. Bevilacqua*, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003). "Compelling reasons . . . must be given to justify invading the jury's province in this manner." *Bailey v. Peacock*, 318 S.C. 13, 14, 455 S.E.2d 690, 692 (1995) (citation omitted). A trial court's "mere disagreement" with the amount of a verdict cannot serve as a compelling reason. *See Riley v. Ford Motor Co.*, 414 S.C. 185, 777 S.E.2d 824, 827 (2015) (discussing motion for new trial nisi additur).

The circuit court's decision to reduce the damages for the UTPA and constructive fraud claims conflicts with this Court's precedent requiring trial court to (1) provide "compelling reasons" to invade the province of the jury with respect to damages determinations and (2) support that decision with unassailable evidence that the jury disregarded the facts to reach a grossly excessive award. *See Riley*, 414 S.C. at 192, 777 S.E.2d at 828. The trial court relied on its own assessment of how the jury determined different damages. The question of whether the amount of the verdict is supported by the evidence is one to be raised in a new trial or new trial nisi motion. *See Dowd v. Imperial Chrysler Plymouth, Inc.*, 298 S.C. 439, 442, 381 S.E.2d 212, 214 (Ct. App. 1989).

Here, although the Defendants filed motions for JNOV and new trial absolute or, alternatively, for new trial nisi remittitur and raised their argument that the verdicts were not supported by the evidence, the circuit court denied these motions. Thus, the circuit court did not set forth compelling reasons to invade the jury's province nor did it support its decision with unassailable evidence that the jury disregarded facts to reach a grossly excessive award. In fact, having specifically found that the damages were not excessive and denying the JNOV and Motions for New Trial and New Trial Nisi Remittitur, the circuit court should not have invaded the jury's province and reduced the damages on the UTPA and constructive fraud claims based on its own view of the evidence and calculations of damages. Moreover, as there was evidence supporting the verdicts as to each of these claims, the trial court erred in reducing the verdict amounts.

i. UTPA claim

The UTPA declares unlawful the employment of "unfair or deceptive acts or practices in the conduct of any trade or commerce . . ." S.C. Code Ann. § 39-5-20(a). The UTPA creates a private right of action in favor of "[a]ny 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).

Despite acknowledging that both Plaintiffs testified as to reputational injury, (R. p. 52 n.3, Jan. 3, 2025 Order on Post-Trial Mot. as to the Rhett Riviere Defs. at 4 n.3; R. p. 64, Jan. 3, 2025 Order on Post-Trial Mot. as to Josee Riviere at 3), the circuit court did not consider any special or consequential damages, which includes reputational injury, in its analysis and calculation of what it believed the jury’s verdict should have been. Instead, the circuit court reviewed the language of the UTPA which creates a private right of action in favor of “[a]ny person who suffers any ascertainable loss of money or property, real or personal” and determined that damages pursuant to the UTPA are limited to “ascertainable losses of money or property.” Accordingly, the circuit court limited the damages in this case to the amount of the rental cost and the counseling fees of the Crespos. (R. pp. 55-56, Jan. 3, 2025 Order on Post-Trial Mot. as to the Rhett Riviere Defs. at 7-8; and R. pp. 66-67, Jan. 3, 2025 Order on Post-Trial Mot. as to Josee Riviere at 5-6).

Importantly, the UTPA does not state that a party may recover damages for only “ascertainable loss of money or property.” Rather, it provides a party must suffer an ascertainable loss of money or property to bring an action and limits damages to “actual damages.” There are no statutory limitations to the “actual damages” and nothing in the UTPA ties the damages allowed, *i.e.*, “actual damages,” to the “ascertainable loss of money or property.” As Plaintiffs argued below, the UTPA states that a plaintiff has to have an ascertainable loss of money or property to bring an action for damages under the UTPA, but the damages are only limited to actual damages, not ascertainable money and property losses, which courts have held

encompasses consequential and special damages including reputational injury. (R. p. 2545, lines 2-11, Nov. 13, 2024 Hearing Tr. 43:2-11). If the legislature had intended to exclude consequential or other elements of common law actual damages, it could easily have modified the phrase “actual damages,” or written the exemption to so state clearly and plainly. It did not do so.

“Recoverable damages include compensation for all injury to plaintiffs[‘] property or business which is the natural and probable consequence of defendant’s wrong.” *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 159, 503 S.E.2d 483, 488 (Ct. App. 1998). Additionally, “[a]ctual damages under the UTPA include special or consequential damages that are a natural and proximate result of deceptive conduct.” *Id.* (citing *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35; see also *Fields v. Yarborough Ford, Inc.*, 307 S.C. 207, 414 S.E.2d 164 (1992). “[R]eputational injury, if proved with sufficient certainty, is a recoverable loss.” *Id.* Finally, a court may award “other relief as it deems necessary and proper” for willful or knowing SCUTPA violations. S.C. Code Ann. § 39-5-140(a).

The Court of Appeals has equated “actual damages” under the UTPA with “compensatory damages” or common law damages. “ ‘Actual damages’ or ‘compensatory damages’ are damages in satisfaction of, or in recompense for, loss or injury sustained.” *Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 216, 321 S.E.2d 179, 182 (Ct. App. 1984) (citing *Laird v. Nationwide Insurance Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964)). In *Payne*, the Court of Appeals specifically held that “[w]here an action lies for deception in the sale of real property, actual damages at common law may be measured by the difference between the purchase price of the property and its fair market value.” *Id.* (emphasis added) (citation omitted). The Court continued stating that “[a]lthough the Act does not define the term “actual damages,” we hold that the term means common law damages, or the difference in value between that with which the plaintiff parted and that which he received.” *Id.* Clearly, the Court was applying the term “actual damage” under the UTPA

when the action is one involving the sale of real property. The Court was not addressing whether other actual damages are recoverable.

As the circuit court noted, “Plaintiffs each testified as to the reputational and emotional harm the acts of defendants caused,” and that “Heather Crespo testified that her move from Aiken, South Carolina, was at least in part due to the damages from the discovery of the videos and the knowledge in the community that she and her former husband were videotaped.” (R. pp. 50-51, Jan. 3, 2025 Order as to the Rhett Riviere Defs.’ Mots. at 2-3). Further, the court noted that it was “not considering a separate injury for specific misappropriation of images or likeness **beyond what was presented at trial.**” (R. p. 52 n. 3, Jan. 3, 2025 Order as to the Rhett Riviere Defs. at 4 n.3) (emphasis added). Yet, the circuit court did not consider any damages for the Plaintiffs’ reputational injury.

In *Dowd v. Imperial Chrysler Plymouth*, a car buyer, Mrs. Dowd, was told that the car she purchased was a fleet car rather than a dealer rental car. 298 S.C. at 441, 381 S.E.2d at 213. She immediately began to have trouble with the car and brought an action against the dealership alleging fraud and UTPA claims. *Id.* The jury returned a verdict of \$1,500 for Mrs. Dowd on the UTPA claim. 298 S.C. at 442, 381 S.E.2d at 214. The dealership argued on appeal that the amount of the verdict was not supported by the evidence and, at most, the amount of damages shown was \$97.00. *Id.* The court held that the issue was not preserved on appeal because the dealership had not moved for a new trial or new trial nisi before the trial judge. The Court of Appeals also held that “[i]n any event, we conclude that the evidence does support the verdict in the amount of \$1,500.” *Id.*

Here, the evidence supports the jury’s verdicts and the circuit court erred in reducing them. Despite acknowledging in its own finding that both Plaintiffs testified as to reputational injury, (R. p. 52 n. 3, Jan. 3, 2025 Order on Post-Trial Mots. as to the Rhett Riviere Defs. at 4

n.3; R. p. 64, Jan. 3, 2025 Order on Post-Trial Mots. as to Josee Riviere at 3), the circuit court erred in failing to consider any special or consequential damages, which includes reputational injury.

ii. Constructive Fraud Claim

Similarly to the damages for the UTPA claim, the circuit court stated that a constructive fraud claim is limited to the difference in valuation of the product or item as bargained for.” (R. p. 56, Jan. 3 Order as to the Rhett Riviere Defs. at 8) (citing *Sparrow v. Toyota of Florence, Inc.*, 302 S.C. 418, 422, 396 S.E.2d 645, 647 (Ct. App. 1990)). The circuit court stated it “struggle[d] with the measure of damages in this context,” but determined that it was “reasonable for a jury to find that the value is \$0.00 without specialized comparable evidence or testimony. *Id.* The circuit court then reduced the damages for the constructive fraud claim to \$2,400.00, jointly and severally. (R. p. 57).

Respectfully, the role of the circuit court is not to struggle with the measure of damages, as that is for the jury to determine. The circuit court invaded the jury’s province and erred in reducing the verdict on the constructive fraud claim. Having specifically found that the damages were not excessive and denying the JNOV and Motions for New Trial and New Trial Nisi Remittitur, the circuit court erred by reducing the damages on the constructive fraud claim based on its own view of the evidence and calculations of damages.

B. There was not a statute setting the maximum amount of damages recoverable for the UTPA and constructive fraud claims which would allow for the circuit court to invade the jury’s province and reduce the damages awarded.

The reductions the circuit court imposed in this case are different than when there is a statutory cap on the amount of damages. There are some instances when a trial court is to reduce a verdict to a statutory amount, for example where there are statutory maximums which limit the

amount that can be recovered. *See* S.C. Code Ann. § 15-78-120 (providing for limitations on liability for claims brought pursuant to the S.C. Torts Claim Act); *see also* S.C. Code Ann. § 1532-530 (providing limits for punitive awards and directing that “the trial court shall reduce the award and enter judgment for punitive damages in the maximum allowed by this subsection”). Importantly, when there is an applicable statutory limit on liability, the trial court does not review the evidence to determine if it supports the verdict. Instead, the court merely looks at the verdict amount and if it is higher than an applicable statutory cap, the amount is reduced without regard to the evidence that the jury could have considered in reaching its verdict.

Here, however, there is no statutory maximum applicable to the damages for the claims in this case.⁴ Absent an applicable statutory maximum, the trial court should not reduce the verdict outside of granting a new trial absolute or new trial nisi remittitur. Because the circuit court believed the evidence did not support the amount of the verdict, it could have granted a new trial nisi. However, the circuit court specifically denied the new trial nisi remittitur motion. The circuit court should not, and could not, simply reduce the amount of the verdict. In doing so, the circuit court improperly invaded the jury’s province.

C. The circuit court did not state any compelling reasons to invade the jury’s province nor did it give the non-moving parties the choice between accepting the reduced damages and a new trial.

The circuit court, arguably, effectively granted Defendants a new trial nisi on the UTPA and Constructive Fraud claims without making the proper findings and without following the proper procedure. There is no other mechanism for the circuit court to reduce the verdicts. The circuit court’s decision to reduce the damages for the UTPA and constructive fraud claims conflicts with this Court’s precedents requiring trial court to (1) provide “compelling reasons” to

⁴ The Crespos are not referring to the punitive damages award.

invade the province of the jury with respect to damages determinations and (2) support that decision with unassailable evidence that the jury disregarded the facts to reach a grossly excessive award. *See Riley*, 414 S.C. at 192, 777 S.E.2d at 828. The principle underlying a new trial nisi remittitur or additur is that the circuit court “may not impose a substitute for the jury verdict on an unwilling plaintiff” or defendant, and thus, the court may give to the opposing party a new trial unless the plaintiff agrees to remit a part of the verdict or the defendant agrees to add a sum to the verdict. *See Graham v. Whitaker*, 282 S.C. 393, 401, 321 S.E.2d 40, 45 (1984) (“[J]udges have the authority to grant to a defendant a new trial nisi remittitur. In such cases, the judge may not impose a substitute for the jury verdict on an unwilling plaintiff. He may give to the defendant the right to a new trial unless the plaintiff agrees to remit a portion of the verdict.”); *see also Jolly* 905 S.C. at 388 (citing *Graham*, 282 S.C. at 402, 321 S.E.2d at 45) (“The option must be given.”). “Because of a party’s right ‘to have the amount of damages determined by a jury,’ it is error to alter ‘the amount of the verdict without allowing the [nonmoving party] the option of a new trial nisi.’” *Jolly*, 905 S.E.2d at 388 (citing *Gwathmey v. Foor Hotel Co.*, 121 S.C. 237, 242, 113 S.E. 688, 689 (1922)).

Here, the circuit court did not find the verdict was grossly excessive nor provide compelling reasons to invade the jury’s province. In fact, the circuit court stated the opposite - that the verdict was not excessive there were no reasons to invade the jury’s province but yet it still reduced the verdict relying on a speculative assessment of how the jury determined different damages. The circuit court also failed to give Plaintiffs the option to accept the reduced verdicts or elect to have a new trial. Accordingly, the circuit court erred in reducing the verdicts.⁵

⁵ Plaintiffs note that recently the Court held that “[a]ny party aggrieved by an order granting a new trial nisi may choose to accept the increased or reduced amount—the nisi amount—without filing

II. The circuit court erred in awarding only 1/6 of the requested attorneys' fees and costs based upon the UTPA claim being one of six claims despite having determined that all of the claims are intertwined and based on the same facts and circumstances.

“The law is clear in South Carolina that attorney fees are recoverable when authorized by contract or statute.” *Charleston Lumber Co. v. Miller Housing Corp.*, 318 S.C. 471, 483, 458 S.E.2d 431, 438 (Ct. App. 1995). The Crespos moved for attorneys’ fees and costs based on their prevailing on the claim brought pursuant to the UTPA. *See* S.C. Code Ann. § 39-5-140) (providing that “[u]pon 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.”) (emphasis added). “Allowing plaintiffs who successfully pursue an action under the UTPA to recover their attorney’s fees encourages individuals to pursue litigation to protect the public interest. Similarly, requiring unsuccessful defendants to pay the plaintiff’s attorney’s fee discourages tradesmen from engaging in unfair methods of competition and unfair or deceptive acts in the conduct of trade or commerce, thereby also enforcing the purpose of the UTPA.” *Taylor by Taylor v. Medenica*, 331 S.C. 575, 579, 503 S.E.2d 458, 460 (1998).

The Crespos initially sought a combined \$793,934.52 in attorneys’ fees and \$25,051.84 in costs. On January 28, 2025, the Crespos filed an Amended Affidavit regarding the hours spent on posttrial matters seeking an additional \$157,331.25 in attorney’s fees for 2332.85 hours. The circuit court did not address the amended affidavit in its Order other than to note that the attorneys’ fees were exclusive of post-trial time. (R. p. 73, Mar. 14, 2025 Order on Attorneys’

an appeal, or if the party does appeal and the appellate court affirms, the party may elect a new trial on remand from that decision.” *Jolly*, 905 S.E.2d at 390. If the court determines that the circuit court in essence granted Defendants a new trial nisi remittitur, and affirms the circuit courts’ decision, Plaintiffs should be allowed on remand to elect between acceptance of the reduced verdict amounts or a new trial.

Fees and Costs at 4). The circuit court awarded \$132,322.42 or 1/6 of the requested fees, which it divided equally between the plaintiffs. (R. p. 77). In other words, the circuit court reduced the fees sought by 83.33%.

The South Carolina Supreme Court has observed that “UTPA actions [are] one of the most difficult types of cases to try.” *Taylor v. Medenica*, 331 S.C. at 580, 503 S.E.2d at 461 (affirming attorney’s fees of \$500,000.00 in a SCUTPA claim that resulted in a damages award of \$108,726.00). The UTPA claim here, *arguably*, required the greatest amount of proof from the discovery conducted. Plaintiffs were required to show the deceptive rental enterprise was capable of repetition, which was done by showing rentals with secret cameras in at least the following places: (i) cottage Crespos rented at 785 Grace property in 2001, (ii) 115 Third Avenue, SW, Aiken, South Carolina, where Juliane Foster (2021-CP-02-00889) and Michele Jain (2021-CP-02-00333), and others were recorded in 2019, (iii) cottage the Minor Girls rented at the 785 Grace property in 2019 (2020-CP-02-01616), and (iv) on Riviere’s boat, from which numerous unclothed people were shown to the jury at trial, and for which there was testimony it was also rented by Riviere in the 2018-2019 time period.

In its Order, reviewing the requested amount, the circuit court acknowledged the difficulties of the instant cases, particularly in regard to the UTPA claim noting, among other things, that this case involved a 20-year old event and thus presented discovery issues in regard to potential witnesses and records and the challenges presented by Rhett Riviere’s invocation of the right to remain silent. (R. p. 74, Mar. 14, 2025 Order at 5). The circuit court also noted that Josee Riviere presented a vigorous defense and substantially changed her position at trial. (R. pp. 74-75, Mar. 14, 2025 Order at 5-6).

In considering the factors for determining a reasonable attorney’s fee award, the circuit court specifically found that the time expended was reasonable for a difficult case litigated over

two years; the attorneys had achieved a beneficial result; and the hourly rate was reasonable for attorneys with the same level of experience and stature. (R. pp. 75-76, Mar. 14, 2025 Order at 6-7). The circuit court decided all of these factors in the Crespos' favor. The circuit court then stated that its "only pause" was that the fees were not broken down by causes of action and the disparity between the verdict on the UTPA claims and the fees sought. (R. p. 77, Mar. 14, 2025 Order at 8). However, she also acknowledged that "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." *Id.* The circuit court then determined that an award of fees of one-sixth of the requested amount was "reasonable and fair." (R. p. 77, Mar. 14, 2025 Order at 8).

The circuit court did not reduce the attorneys' requested hourly rate or on the amount of hours. Instead, the circuit court reduced the amount of the requested fees by five-sixths or 83.33% based on the number of claims the Crespos brought "[b]ecause 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. 76, Mar. 14, 2025 Order at 7). This was clearly erroneous. *See Austin v. StokesCraven Holding Corp.*, 387 S.C. 22, 57, 691 S.E.2d 135, 153 (2010) (holding "it would be difficult to dissect . . . counsel's fee affidavit to ascertain how much time was spent on this particular claim given the violation of the Act was based on the same facts and circumstances underlying his claims for fraud and constructive fraud"); *see also Maybank v. BB&T Corp.*, 416 S.C. 541, 580, 787 S.E.2d 498, 518 (2016) (holding that a 20% reduction was reasonable where plaintiff prevailed on five of his eleven claims).

At the hearing, the Rhett Riviere Defendants conceded that the Crespos are entitled to a modest measure of attorneys' fees, but argued that that they should have to allocate between the Defendants as well as the multiple causes of action. (R. p. 2626, lines 11-21, Jan. 21, 2025 Hearing Tr. 13:11-21). They argued that the UTPA claim was the "tail that wagged the dog" and

the other claims are what rendered the verdicts. (R. p. 2622, lines 15-19, p. 2623, lines 5-9, Jan. 21, 2025 Hearing Tr. 9:15-19; 10:5-9). The Rhett Riviere Defendants did not file anything in opposition despite the Motion for Attorneys' Fees and Costs having been filed months earlier. (R. p. 2638, line 19 – p. 26; p. line 1; p. 2641, lines 5-8, Jan. 21, 2025 Hearing Tr. 25:19-26:1; 28:5-8). The morning of the hearing, the Rhett Riviere Defendants sent the Court an email asking it to consider the decision in *Brawley v. Richland County*, 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2025), without any argument. Prevailing at trial in a UTPA claim is unusual. The purpose of the statute is to discourage and punish such wrongdoers, therefore, liberally construing what constitutes a reasonable fee is the proper means of analysis and application, not reduction which punishes Plaintiffs for the successes on several other claims.

At the hearing, the Rhett Riviere Defendants cited *Taylor v. Nix*, 307 S.C. 551, 416 S.E.2d 622 (1992). (R. p. 2652, lines 17-19, Jan. 21, 2025 Hearing Tr. 39:17-19). They argued that in *Taylor v. Nix*, the court held that the party asserting the right to attorney's fees must produce an itemized affidavit of their fees that they believe are related to the statutory claim and then the opposing party has the burden of showing which of the fees are clearly unrelated. (R. p. 2652, line 24 - p. 2653, line 9, Jan. 21, 2025 Hearing Tr. 39:24-40:9). They summarized their argument as the Crespos had made no effort to allocate the fees amongst the claims and the descriptions of the fees were insufficient and, as a result, they could not decipher what time and effort were limited to the statutory UTPA claim. (R. p. 2653, lines 15-18, Jan. 21, 2025 Hearing Tr. 40:15-18).

The Rhett Rivier Defendants misconstrue the holding in *Taylor v. Nix*. In interpreting the attorneys' fee provisions in S.C. Code Ann. § 56-15-110, the Court stated:

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.

307 S.C. 551, 416 S.E.2d 622 (citation omitted).⁶ Here, counsel has not admitted that any of their services are totally unrelated to the UTPA claim because, as the circuit court determined, all of the claims are intricately intertwined making this impossible. Further, Defendants have not met their burden of showing the requested fees are clearly beyond the scope of the UTPA claim proceeding. Thus, pursuant to *Taylor*, and allocation of the attorneys' services to the UTPA claim is not required.

More recently, in *Encore Tech. Group, LLC v. Trask*, the Court of Appeals specifically held that the circuit court is not required to reduce the award of attorneys' fees and did not err in awarding all of plaintiff's attorneys' fees and costs. 436 S.C. 289, 307-08, 871 S.E.2d 608 (Ct. App. 2021) (citing *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 493, 427 S.E.2d 659, 660 (1993) ("When there is a contract, the award of attorney's fees is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown."). The defendants in *Encore* argued that the circuit court erred in awarding the plaintiff all of its fees and expenses and failing to consider only three of the eight causes of action provided for attorneys' fees and that overall the plaintiff only prevailed on six claims.

⁶ In *O'Shields v. Columbia Automobiles, LLC*, the Court held that when evidence in the record supports a finding that claims arose from a common nucleus of operative facts, attempting to separate the fees may be unrealistic. 435 S.C. 319, 335, 867 S.E.2d 446, 455 (2021) (applying North Carolina law). "In some cases, apportioning attorney's fees between claims made by the plaintiff is appropriate. However, where all of plaintiff's claims arise from the same nucleus of operative facts and each claim [is] 'inextricably interwoven' with the other claims, apportionment of fees is unnecessary." *Id.*

The Rhett Riviere Defendants also argued below that the Crespos “pressed forward with a civil trial” and “could have easily waited until the conclusion of the criminal case before proceeding, and depending on the outcome could have eliminated the need for a civil trial altogether.” (R. p. 647, Rhett Riviere Defs.’ Mem. in Opp. to Pls.’ Pet. for Attys. Fees at 3). Nothing could be farther from the truth – as the criminal charges relating to the Crespos were first brought in July of 2022 and still remain pending as of the date of this filing, *State v. Rhett Riviere*, Case No. 2022-A02-10700181 and ‘182, and earlier criminal charges relating to other victims have been pending since June 2021, *State v. Rhett Riviere*, Case No. 2021-A02-10700228. Moreover, a criminal trial would not compensate the Crespos for the Defendants’ egregious conduct. The Crespos are entitled to pursue their claims in civil litigation and waiting would have risked a statute of limitations issue.⁷

Finally, the Rhett Riviere anticipated Defendants’ reliance on *Brawley* is misplaced. In *Brawley*, the Court reversed and remanded only because the circuit court failed to include sufficient findings as to how it determined the reduction and fee award. 445 S.C. 80, 911 S.E.2d 156 (explaining that the law requires trial court to “adequately explain [the award] with specific findings,” or “else the fee award will constitute an abuse of discretion warranting reversal”). Moreover, a reduction in attorney fees awarded pursuant to the FOIA may have been warranted in *Brawley* based on the FOIA’s statutory language. The FOIA provides in pertinent part:

(b) If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney’s fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney’s fees or an appropriate portion of those attorney’s fees.

⁷ As it stood, at trial, the Rhett Riviere Defendants vigorously argued the statute of limitations as a bar - faulting Plaintiff for not raising their claims earlier.

S.C. Code Ann. § 30-4-100(b) (emphasis added). In contrast, the UTPA provides: “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.” S.C. Code Ann. § 39-5-140 (emphasis added). The FOIA limits fees and costs to those “litigation specific to the [FOIA] request.” Fees awarded under the UTPA are not subject to that limitation. If the General Assembly had wanted to limit the fees awarded under the UTPA only to those fees specific to that claim, it could have as it did in the FOIA attorney fee provision.

As the circuit court acknowledged throughout this case, the Crespos’ claims are based on the same facts and circumstances and are intertwined with the other claims making it difficult to dissect the UTPA claim.⁸ However, despite this, the circuit court arbitrarily attributed \$132,322.42 or one-sixth of the requested fees, to the UTPA cause of action. (R. p. 77, Mar. 14, 2025 Order at 8). Given the UTPA violation was based on the same facts and circumstance as the other claims and shared common witnesses, Plaintiffs would have incurred substantially the same attorneys’ fees and costs had they brought only the UTPA claim. It would be extremely difficult to ascertain how much time was spent on each claim, and awarding Plaintiffs only 1/6 of their requested fees and costs does not reflect the amount of time spent litigating the UTPA claim.

Additionally, as the circuit court noted the defendants made litigating this matter difficult with, among other things, Rhett Riviere’s invocation of this Fifth Amendment right to remain silent and Josee Riviere’s vigorous defense borne out by the numerous motions filed which required

⁸ The circuit court also consolidated these cases for trial as both cases arose out of the same facts, raised the same claims, and shared common parties and witnesses. (R. pp. 10-11, Sept. 12, 2024 Order granting Pls.’ Motions to Consolidate).

responses and many hearings. (*See* R. pp. 2658-2663, Docket from Second Judicial Circuit Public Index).

Here, Plaintiffs' claims are based on the same facts, witnesses, and circumstances and they are intertwined with the other claims making it impossible to parse out fees for the UTPA claim. Further, because the claims are inextricably intertwined, counsel has not admitted that any of their services are totally unrelated to the UTPA claim and Defendants have not met their burden of showing the requested fees are clearly beyond the scope of the UTPA claim proceeding. Thus, the circuit court should not have made an allocation of 1/6 of the amount requested for the UTPA claim. *Taylor v. Nix*, 307 S.C. 551, 416 S.E.2d 622. Moreover, the circuit court erred by arbitrarily reducing the attorneys' fees and costs award by 5/6 or over 83% when the UTPA was determined to be a particularly difficult claim. Accordingly, the Court should reverse the circuit court's decision to reduce the award of attorneys' fees and costs.

CONCLUSION

The Circuit Court erred by invading the jury's province when it reduced the damages under the UTPA and constructive fraud claims over without stating compelling reasons to do so and in awarding only 1/6 of the requested attorneys' fees and costs when the claims were inextricably intertwined. Accordingly, the Circuit Court's post-trial orders should be reversed or modified to reinstate the jury's verdicts on damages for the UTPA and constructive fraud claims and award the Crespos the requested attorneys' fees and costs.

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Respectfully submitted,

/s/ Deborah B. Barbier
Deborah B. Barbier, S.C. Bar No. 6920

DEBORAH B. BARBIER, LLC
1811 Pickens Street
Columbia, South Carolina 29201
Phone: (803) 445-1032
Email: dbb@deborahbarbier.com

/s/Wes Few
Wesley D. Few, S.C. Bar. No. 15565
WESLEY D. FEW, LLC
Post Office Box 9398
Greenville, South Carolina 29605
(864) 527-5906 | wes@wesleyfew.com

Ryan L. Beasley, S.C. Bar No. 68307
RYAN L. BEASLEY, ATTORNEY AT LAW, P.A.
416 East North Street
Greenville, South Carolina 29601
Phone: (864) 679-7777
Email: rlb@ryanbeasleylaw.com

Attorneys for Respondents/Appellants Heather
Crespo and Gabriel Crespo

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