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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
CIRCUIT COURT
Judge Martha Rivers

Case No. 2022CP0202323

Case No. 2022CP0202324

2025-000150

Heather Crespo

Respondent/ Appellant

v.

Rhett Riviere, Josee Riviere, Chase Enterprises, LLC,

Defendants

And R.C. Riviere Properties, LLC

And

Gabriel Crespo

Respondent/ Appellant

v.

Rhett Riviere, Josee Riviere, Chase Enterprises, LLC

Defendants

And R.C. Riviere Properties, LLC

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 APPELLANT BRIEF OF APPELLANT/ RESPONDENT JOSEE RIVIERE

February 23, 2026

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STATEMENT OF THE CASE

This appeal arises from a verdict entered against Josee Riviere for violation of the South Carolina Unfair Trade Practices Act (UTPA) and from the subsequent denial of Motions for Judgment Notwithstanding the Verdict (JNOV) and New Trial as well as the Orders trebling the damages and awarding fees and costs to the Plaintiffs.

The case was presided over by the Honorable Judge Martha Rivers and tried before a jury trial in the Court of Common Pleas in Aiken County, South Carolina. The trial commenced on October 16, 2024. The Verdict was entered on September 25, 2024, and the Order denying Motions for JNOV, and New Trial was entered on January 3, 2025.

PROCEDURAL HISTORY

The Plaintiff filed separate actions for damages on October 22, 2022. Josee Riviere filed her answers on November 14, 2022.

Each Plaintiff sought damages against Josee Riviere as follows:

First Cause of Action : Negligence and/or Gross Negligence (against All Defendants)

Second Cause of Action: Wrongful Intrusion into Private Affairs (Against Riviere)

Third Cause of Action: Intentional Infliction of Emotional Distress (Against Riviere)

Fourth Cause of Action: Constructive Fraud/ Misrepresentation

(Against Riviere and Josee Riviere)

Fifth Cause of Action: Negligence per se (Against Riviere and Josee Riviere}

Sixth Cause of Action: Violation of Unfair Trade Practices (Against All Defendants)

In her answers to the Complaints Josee Riviere asserted the following defenses:

First Defense: Failure to State a Cause of Action Second Defense: Denial of material allegations.

Third Defense: Denial of all allegations of wrongdoing Forth Defense: Statute of Limitations

Fifth, Sixth, Seventh, Ninth, Tenth, Eleventh, Twelfth, and Thirteen Defenses: Denial of individual paragraphs of the Complaint

Pretrial Motions for Summary Judgment filed by Josee Riviere were denied as were her motions in limine and her Motion for Severance.

The Plaintiffs cases were joined for purposes of the trial.

The case was tried before a Jury in Aiken, South Carolina during the period between September 16th and September 25th, 2024. The verdict was returned on September 24th.

The Jury found in favor of the Plaintiff against Josee Riviere on the Unfair Trade Practices Act Cause Of Action in the amount of \$500,000.00 actual damages for each Plaintiff. The Trial Judge found willful and knowing element pursuant to the UTPA for the purpose of trebling damages, and awarded attorneys' fees and Costs pursuant to the terms of the UTPA.

The Jury found in favor of Josee Riviere on all other causes of action.

Timely motions for JNOV and New Trial were filed, heard and for the most part denied by the Trial Judge; however, the Trial Judge did not issue a Rule Nisi Remittitur but instead entered an order reducing the jury verdicts as follows:

“...The jury awarded each plaintiff \$500,000.00 against each defendant for Unfair Trade Practices violations. The Verdict shall be amended to \$7,200.00 against each Defendant jointly and several.”

The Order denying the Motions for JNOV, and New trial was filed on January 27, 2025. On February 3, 2025, the Plaintiffs served Notices of Appeal as to the Order reducing the UTPA verdict. The Notice of Appeal was filed on February 5, 2025. Josee Riviere cross appealed as to that Order on February 5, 2025.

On March 14, 2025, the Court entered an Order awarding attorney's fee to the Plaintiffs in the total amount of \$132,322.42 and expenses in the amount of \$4,175.31. The award was divided between the Plaintiffs so that each received an award of \$68,248.878 for attorneys' fees and costs.

On March 14, 2025, after receiving notice of the filing of the Order awarding Fees and Costs, Josee Riviere filed a Notice of Appeal as to that Order.

FACTUAL BACKGROUND

Josee Riviere met Rhett Riviere in 1999 (Sept. 19 Transcript 99:13-14) (ROA. P 1636 L13-14) but did not start a relationship until January of 2000. (Sept. 19 Transcript 99:13 -100:1) (ROA. 1636 L3-1637 L1). They were married for 12 years. (Sept. 19 Transcript 100:13-18) (ROA. 1637 1:13-18). When the search warrants were served on Rhett Riviere, they had been divorced for 7 years (*Id.* at 20-24)

To the extent that any of Josee Riviere's communications with Rhett Riviere related to the videos that were discovered seven years after the divorce, Rhett Riviere denied to her that he had done anything wrong. (Sept. 19 Transcript 104:2-5) (ROA 164 1:2-5) .

Josee Riviere and Rhett Riviere initially had a difficult divorce, but became casual friends again in 2022. (Sept. 19 Transcript 103:4-11) (ROA 1640 L 4-11).

When Counsel for the Plaintiff suggested that Josee had tried to reconcile with Rhett in 2019, she testified as follows:

Q Okay. Well, isn't it true that during this timeline of 2019 , you were actually trying to reconcile with Rhett Riviere; is that right?

A No, sir, not at all. I had a boyfriend, and I had had one for quite a long time.

Q Isn't Deirdre Vaillancourt one of your best friends? A

She is.

Q So you would disagree with her when she said in 2019 , you were trying to reconcile?

MR. FEW [Speaker should have been identified as Mr. Harte, counsel for Defendant Josee Riviere]: Objection.

THE WITNESS: I don' t believe she said that – MR.

HARTE: Objection, Your Honor.

THE WITNESS: -- she was.

THE COURT: Hold on a second. Yes, sir, Mr. Harte?

MR. HARTE: The Witness Vaillancourt did not use the term "reconcile" in the context of a romantic reconciliation, and she explained that while she was on the stand. The question assumes facts that are not only not in evidence, but are contrary to the witness' s testimony.

THE COURT: I will let the jury determine their recollection. I think they are taking notes as well as to what a witness did or did not say. I'll allow the Plaintiff to continue.

(Sept. 19 Transcript 102:2-103:1). (ROA 163.9:2-1640 11). That exchange, while not specifically objected to in this Brief is indicative of the atmosphere which was created during the trial.

Josee and Rhett exchanged text messages after the divorce cooled, and they went to dinner on occasion as part of a larger group. (Sept. 19 Transcript 103:4). (ROA 1640: L 4-16)

When Josee Riviere learned that she was being sued, she was enraged and again Rhett Riviere denied that he had anything to do with it. Specifically, her testimony was as follows:

Q Ms. Riviere, and so maybe it was in 2022 ? Would that be a more recent year that you started trying to reconcile with Rhett Riviere?

A I have never tried to reconcile, as of today, with Rhett Riviere.

Q So is it fair to say in 2022 , you would go to dinner with Rhett Riviere? A

Maybe occasionally, with other people.

Q You would drink wine with Rhett Riviere? A

I wouldn't drink wine, no.

Q Are you aware that you produced text messages in this case? A Yes.

Q And those text messages, there are only 6 months' worth of text messages, but would you agree they were from November of '22 to April of '23 ?

A Yes, I would agree.

Q And would you agree that those are hundreds of texts messages? A

Probably, yes.

Q And they are every day, all day, during those 6 months? A

Well, I have texted other people as well.

Q And during all those text messages and all those conversations, all those dinners, all those meetings, you never asked him about the videos?

A Anything that I may have said with him about the videos, he firmly denied.

Q Okay. He would even send you dirty jokes on these text messages, wouldn't he, and you laughed?

A I don't recall.

...

Q But you testified in your disposition that you never asked Rhett Riviere about any videos; isn't that correct?

A I may have said that, but when I heard about them -- when I heard -- when I was being sued, I clearly stated loudly and vehemently that I was enraged and upset, and he denied that he had anything to do with it. And I had to -- we'd been friends just like that for -- and I didn't like to -- I wanted to believe him, I guess. That's all.

(Sept. 19 Transcript 103:4-105:10). (ROA 1640 L4-1642 L10) When the Crespo's rented the Cottage, Josee was a new bride having been married less than 9 months prior to Rhett renting the cottage

to the Plaintiffs in April of 2001. She was enjoying her new marriage and her horses. She was not managing anything but her own life, her horses and her marriage.

As for her being able to know what was going on in a one room, one bath converted storage shed turned into a “cottage,” the Court is respectfully invited to consider that the property owned by Rhett Riviere where the Cottage stood covers the size of a normal city block and has several structures including free standing horse stalls and barns. There is a riding area that is separated from the cottage with barns and other buildings between the riding area and the “cottage.”

Josee kept her horse on the property in 2001, and she saw Heather Crespo riding her horse as well. She and the Crespo’s were friendly, and she gave them a horse which she thought they could better train. (Sept. 19 Transcript 106:24-109:15). (ROA 1643 L24–1646 L15). That testimony established that Josee Riviere saw the Crespo’s and was friendly with them, but it did not establish that Josee was in the cottage at any time when the Crespo’s occupied the cottage, nor does it establish that she knew anything about hidden cameras. She does not even recall the events surrounding them entering into an agreement to rent the cottage, nor was she involved in any of Rhett Riviere’s rental properties. (Sept. 19 Transcript 110:13-122:7). (ROA 1647 L13–1659 L7)

Josee Riviere only knew about one personal computer that was used by Rhett Riviere. (Sept. 19 Transcript 123:13-16). (ROA 1660 L13–16) Sometime after the divorce and long after the Plaintiffs had moved out of the cottage, she was shown a camera that was used to capture trespassers. (Sept. 19 Transcript 123:17-124:6). (ROA 1660 L 17–1661 L6) She never saw any videos which contained anything other than a dog or normal activities. (Sept. 19 Transcript 124:17-125:7).(ROA 1661 L17–166 L27)

Josee Riviere's testimony on cross examination by Mr. Harte enabled her to establish that she had nothing to do with the rental of Rhett's houses and that she had the same relationship with the Crespo's as she had with other members of the Aiken Horse Community. She was not involved in the negotiations involving the Plaintiffs' lease; in fact, she had not been in the cottage before the Plaintiffs moved in.

Josee's testimony showed her to be a reserved private person who had been raised in Canada. She had no contact with or knowledge of Aiken until she came to Aiken in 1999. It would consume entirely too much space to include all of that testimony here, but the Court's attention is respectfully invited to pages 135 through page 158(ROA1672-1695) of the September 19 Transcript.

Because Josee Riviere's position is that there is no evidence to show that she knew anything about hidden cameras or videos or anything else that might support a finding of an unfair trade practice, it has been necessary to produce virtually the entire transcript of the trial to ensure that there would be no question of there being some piece of evidence anywhere to contradict what Josee told the Court in those 23 pages of testimony.

The Plaintiffs having no witnesses and no evidence to contradict Josee Riviere's testimony did exactly what Counsel for Josee Riviere warned that they would do when the motion for severance was argued. They introduced evidence that could not possibly be connected to Josee Riviere, including videos made on a boat she never frequented at times which to this day are unknown. They produced equipment which did not even exist when Josee was married to Josee Riviere, and they used Rhett Riviere's situation with a pending criminal case to deliberately use detailed and incriminating, leading

questions to obtain an exercise of his fifth amendment rights from Rhett Riviere on questions about Josee. That left Josee with no way to cross-examine Rhett, and when Josee asked the lower court to put an end to that conduct, the lower court did exactly the opposite and even refused to provide any guidance to the jury as to what they could and could not do with Rhett's assertion of his fifth amendment rights.

A reading of the entire transcript makes it very clear: Josee Riviere did not receive a fair trial. Once the prejudicial, inflammatory videos were played, the adverse inference stemming from Rhett Riviere's exercise of his fifth amendment rights was twisted against Josee Riviere and the Court unleashed the Plaintiffs, leaving the jury to deliberate without proper instructions. By that point, Saint Michael himself and a band of Angels could not have held the tide of injustice back. However, this Court is in a position to correct the injustice, and Josee Riviere has the audacity to hope that the result of this appeal will do just that.

OPENING STATEMENT

This appeal arises from a case tried in Aiken County in which the Defendants, Rhett Riviere and Josee Riviere, were accused of placing hidden cameras in a rental cottage occupied by the Plaintiffs. For clarity, the Appellant Josee Riviere will be referred to by her first and last name "Josee Riviere" and the Appellant "Rhett Riviere" will be referred by his first and last name "Rhett Riviere." The Appellant, Josee Riviere, believes that upon a thorough review of the Record on Appeal, it will be evident to the Appellate Court that there is no evidence that Josee Riviere did anything wrong or that she knew anything about any misconduct; There is simply no evidence that she had anything to

do with a hidden camera; and there is no evidence that she knew anything at all about a hidden camera.

From the outset, the trial court failed to protect Josee Riviere's right to a fair trial. The result was a finding of liability for Unfair Trade Practices which was totally inconsistent with the record and a grossly excessive verdict entered because the jury was improperly persuaded by sordid, prejudicial and highly inflammatory evidence.

The Trial Court ignored the absence of proof against Josee Riviere and refused to dismiss the case at each of the stages when the opportunity presented itself. Those rulings, coupled with the other errors cited in this brief, allowed the case, which was devoid of proof against Josee Riviere, to go to a jury.

The jury had been allowed to see highly inflammatory and prejudicial videos and other evidence, none of which was connected to Josee Riviere. The verdict, being unsupported by the record and being one which no reasonable jury could have reached is the result of caprice, passion or prejudice.

This brief has been structured to track the errors in the order they appear in the record; however, the heart of the matter is that there was no evidence that Josee Riviere participated in placing cameras in the rental cottage and there is no evidence that she knew or had any reason to suspect that cameras had been placed in the cottage. The trial judge allowed the Plaintiff to create an atmosphere replete with explicit images and testimony of highly inappropriate conduct, none of which was connected to Josee Riviere. At the end of the day, Josee Riviere could not possibly receive a fair trial.

Each of the errors cited in this brief standing alone justify reversal, but the most important error was the failure to recognize that there is no evidence that Josee Riviere did anything wrong and that there is no evidence that she knew anything about misconduct by anyone else.

USE OF CRIMINAL CASES IN THIS BRIEF

Throughout this brief, criminal cases are cited as authority for the arguments set forth in this Brief. As to the use of criminal cases in this brief, Josee Riviere submits the following:

Cases from criminal courts are relevant to evidentiary rulings in a civil lawsuit regarding the admission of evidence, particularly when the principles of evidence law, such as balancing probative value against prejudicial effects, are at issue. South Carolina courts apply the same evidentiary rules, including Rule 403 of the South Carolina Rules of Evidence (SCRE), to both civil and criminal cases, as confirmed by Rule 1101(b), SCRE, which states that the rules of evidence apply generally to civil and criminal proceedings. Rule 1101, SCRE.

Thus, while the context of criminal cases may differ, the evidentiary principles established in those cases can inform rulings in civil lawsuits, particularly when addressing the admissibility of potentially prejudicial video evidence under Rule 403, SCRE.

ARGUMENT

THE TRIAL COURT ERRED BY REFUSING TO GRANT JOSEE RIVIERE'S MOTIONS TO SEVER THE CASE AGAINST HER FROM THE CASE AGAINST RHETT RIVIERE THE ERROR BEING THAT THE REFUSAL TO SEVER DENIED JOSEE RIVIERE A FAIR TRIAL

Legal Principles

To support a motion to sever the defendant Josee Riviere from her codefendant Rhett Riviere in a civil case in South Carolina, the following factors apply:

First, a court faced with a motion to sever is required to determine whether severance would promote the convenience of the parties and witnesses, as well as judicial economy. For instance, in Powell v. Bank of Am., the court granted a severance motion by emphasizing the convenience of the parties and witnesses, judicial economy, and the independent nature of the claims involved. The court noted that the claims were separate and distinct, which justified severance. Powell v. Bank of Am., 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008).

Second, the court should consider whether the claims against the defendants are sufficiently distinct or independent. Cravens v. Lawrence, 181 S.C. 165, 186 S.E. 269 (1936).

Third, the court may assess whether the defendants are joint tortfeasors or whether their alleged actions are part of a concurrent chain of negligence. In Steele v. Atlantic C. L. R. Co., the court highlighted that severance might not be appropriate if the defendants are alleged to have acted jointly to cause a single injury. However, if the claims

involve separate acts of negligence or distinct injuries, severance may be more likely. Steele v. Atlantic C. L. R. Co., 95 S.C. 124, 78 S.E. 705 (1913).

Finally, under South Carolina procedural rules, the court may also consider whether severance would avoid prejudice to any party. Rule 19 of the South Carolina Rules of Civil Procedure provides guidance on determining whether a party is indispensable and whether proceeding without a party would result in prejudice.

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Rule 19(a), SCRCPP. In summary, factors such as the convenience of parties and witnesses, judicial economy, the independence of claims, the nature of the alleged conduct, and the potential for prejudice are critical in determining whether the case against Josee Riviere should have been severed from her codefendant Rhett Riviere.

A motion for severance is addressed to the sound discretion of the trial court, and its denial will not be disturbed on appeal absent an abuse of discretion. State v. Castineira, 341 S.C. 619, 535 S.E.2d 449 (Ct. App. 2000); State v. Spears, 393 S.C. 466, 713 S.E.2d 324 (2011). “An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law.” State v. Garrett, 350 S.C. 613, 619, 567 S.E.2d 523, 526 (Ct. App. 2002). “Severance is warranted when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the

jury from making a reliable judgment about a co-defendant's guilt.” Hughes v. State, 346 S.C. 554, 559, 552 S.E.2d 315, 317 (2001).

ARGUMENT

In this case, the trial court's denial of severance compromised, indeed destroyed, any chance that the jury could make a reliable decision about Josee Riviere's guilt. The denial of severance created a certainty of prejudice to Josee Riviere. The Plaintiffs introduced highly inflammatory videos, including those recorded after Josee and Rhett Riviere's divorce. None of the post-divorce videos were connected to Josee Riviere. The introduction of such evidence was certain to confuse the jury and unfairly associate Josee with Rhett's alleged misconduct. South Carolina courts have emphasized that a defendant is entitled to a trial free from bias and confusion, and severance should be granted when necessary to protect this right.

The introduction of unrelated and inflammatory evidence in a joint trial creates a substantial risk of prejudice, as it may lead the jury to convict based on emotion rather than evidence of the defendant's guilt. Courts have consistently held that severance should be granted when there is a serious risk that a joint trial would prevent the jury from making a reliable judgment about a co-defendant's guilt. State v. Stuckey, 347 S.C. 484, 497, 556 S.E.2d 403, 409 (Ct. App. 2001). Here, the inflammatory nature of the videos, combined with their lack of relevance to Josee's actions, likely prevented the jury from fairly evaluating her case. The trial court's failure to sever the cases allowed this prejudice to persist, warranting reversal on appeal.

The Plaintiffs' use of Rhett Riviere's invocation of the Fifth Amendment to draw adverse inferences against Josee Riviere further destroyed her right to a fair trial. While South Carolina has not directly considered whether a negative inference may be used against a co-defendant, South Carolina courts have recognized that a joint trial may violate a defendant's rights when a co-defendant's actions or statements are used to implicate the defendant without an opportunity for cross-examination. Spears, 393 S.C.

466, 713 S.E.2d 324. Furthermore, the United States Supreme Court has weighed in on a similar issue on the federal level and found such use of statements by a co-defendant to be inadmissible. In Bruton v. United States, the United States Supreme Court held that a co-defendant's confession implicating another defendant is inadmissible in a joint trial if the co-defendant does not testify, as it violates the defendant's right to confrontation. Bruton v. United States, 391 U.S. 123, 88 S. Ct. 1620 (1968).

Josee Riviere repeatedly asked for the cases to be severed. The fact that the refusal to sever was a reversible error became clear as the case progressed and the prejudice which the initial motion to sever predicted came to full light.

A key fact that shows the error was the plaintiff's use of Rhett Riviere's Fifth Amendment invocation to draw adverse inferences against Josee Riviere, effectively placing her in a position where she could not challenge the implications of his silence. This created not only a risk but a certainty of prejudice, as the jury's excessive verdict shows that the jury was acting irrationally, and it is highly probable that the jury inferred Josee's guilt based on Rhett's refusal to testify. The trial court's failure to sever the cases allowed this prejudice to taint the proceedings, denying Josee a fair trial.

The denial of severance resulted in prejudice requiring reversal because the Court was aware that there was a reasonable probability that the defendant would have obtained a more favorable result at a separate trial. State v. Cope, 405 S.C. 317, 340, 748 S.E.2d 194, 206 (2013)(citing Stucky, 347 S.C. at 497, 556 S.E.2d at 409).

In the instant case, the cumulative prejudice from the inflammatory videos and the use of Rhett Riviere's Fifth Amendment invocation more likely than not influenced the jury's verdict against Josee Riviere. A separate trial would have allowed Josee to present her defense without the undue influence of irrelevant and prejudicial evidence or the implications of Rhett's silence.

CONCLUSION

The trial court's denial of Josee Riviere's motions for severance constituted an abuse of discretion that denied her a fair trial. The introduction of inflammatory videos unrelated to her actions and the use of Rhett Riviere's Fifth Amendment invocation to prejudice Josee Riviere's case created bias and confusion, preventing the jury from making a reliable judgment about her guilt. Under South Carolina law, these errors warrant reversal of the trial court's decision and a new trial for Josee Riviere.

THE COURT ERRED BY ALLOWING THE PLAINTIFF TO ASK RHETT RIVIERE QUESTIONS INCRIMINATING JOSEE RIVIERE KNOWING THAT RHETT RIVIERE WOULD INVOKE HIS FIFTH AMENDMENT PRIVILEGE WITHOUT PROVIDING A CURATIVE INSTRUCTION, THEREBY PREJUDICING THE JURY AGAINST JOSEE RIVIERE AND DEPRIVING HER OF A FAIR TRIAL

The Trial Court, over counsel's objection, allowed the Plaintiffs' counsel to use Rhett Riviere's invocation of the Fifth Amendment privilege against self-incrimination to prejudice the jury against Josee Riviere. Furthermore, the trial court compounded this error by refusing to provide a curative instruction to the jury. These errors deprived Josee of her right to a fair trial and due process under South Carolina law.

As the record shows, the trial court allowed the Plaintiffs' counsel to ask detailed questions incriminating Josee Riviere, knowing that Rhett Riviere would invoke his Fifth Amendment privilege against self-incrimination.

Rhett Riviere's invocation of the Fifth Amendment was used in a manner that could only serve to improperly prejudice the jury against Josee Riviere. The trial court refused to provide a curative instruction to the jury, which would have clarified that no adverse inference could be drawn against Josee Riviere based on Rhett's invocation of the Fifth Amendment. The actions by the trial court deprived Josee Riviere of a fair trial and due process under South Carolina law.

ARGUMENT

1. Improper Use of Rhett Riviere's Fifth Amendment Invocation

South Carolina courts have consistently held that neither party in a civil or criminal case may use a witness's invocation of the Fifth Amendment privilege to prejudice the

jury. State v. McGuire, 272 S.C. 547, 253 S.E.2d 103 (1979); State v. Gaskins, 284 S.C. 105, 326 S.E.2d 132 (1985). In this case, the trial court allowed the Plaintiff's counsel to ask detailed and incriminating questions about Josee Riviere, knowing that Rhett Riviere would invoke his Fifth Amendment privilege. This tactic improperly invited the jury to draw adverse inferences against Josee based on Rhett's silence. Such use of the Fifth Amendment privilege is inherently prejudicial and undermines the fairness of the trial.

2. Failure to Provide a Curative Instruction

South Carolina law imposes a duty on trial courts to provide jury instructions that accurately reflect the law and prevent prejudice. O'Neal v. Intermedical Hosp., 355 S.C. 499, 585 S.E.2d 526 (Ct. App. 2003). In McCourt by & Through McCourt v. Abernathy, the South Carolina Supreme Court held that a trial judge must give instructions which correctly state the current law applicable to the issues and evidence. 318 S.C. 301, 306, 457 S.E.2d 603, 606 (1995). A refusal to give such an instruction constitutes reversible error when the general instructions are insufficient to enable the jury to fully understand the law and the issues involved and prejudice results. Id.; Ross v. Paddy, 340 S.C. 428, 532 S.E.2d 612 (Ct. App. 2000). A refusal to give a requested jury charge constitutes reversible error if the refusal is both erroneous and prejudicial. State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008). The appellate court must consider the jury charge as a whole in light of the evidence and issues presented at trial to determine whether the refusal affected the outcome of the case. Stephens v. CSX Transp., Inc., 415 S.C. 182, 781 S.E.2d 534 (2015). Additionally, erroneous jury instructions are subject to harmless error analysis, and reversal is warranted only if the error contributed to the verdict. State v. Dent, 440 S.C. 449, 892 S.E.2d 294 (2023).

In this case, the trial court refused to provide a curative instruction clarifying that no adverse inference could be drawn against Josee Riviere based on Rhett's invocation of the Fifth Amendment. This refusal left the jury without proper guidance on how to interpret Rhett's silence, creating prejudice against Josee. The absence of a curative instruction deprived Josee of a fair trial by allowing the jury to draw improper and unsupported conclusions about her liability.

3. . Prejudice to Josee Riviere

To warrant reversal, the trial court's errors must not only be erroneous but also prejudicial. McCourt, 318 S.C. at 306, 457 S.E.2d at 606. In Sherer v. James, the South Carolina Court of Appeals held that refusal to give a properly requested instruction is reversible error if it results in prejudice to the appealing party. 286 S.C. 304, 308, 334 S.E.2d 283, 285 (Ct. App. 1985). Here, the trial court's errors were highly prejudicial, as they allowed the jury to consider Rhett's silence as evidence against Josee, despite the lack of any direct evidence linking her to the alleged misconduct. This prejudice was further exacerbated by the inflammatory nature of the evidence presented, including videos captured by Rhett, which had no connection to Josee.

Under South Carolina law, adverse inferences from the invocation of the Fifth Amendment privilege against self-incrimination are permissible in civil cases but must be carefully limited and applied only to the party invoking the privilege. In this case, Rhett Riviere invoked his Fifth Amendment right, while Josee Riviere testified fully and denied any misconduct or knowledge of misconduct by Rhett. Based on the principles governing adverse inferences, the following analysis applies:

- 1. Adverse Inference Against Rhett Riviere:** The jury may draw an adverse inference against Rhett Riviere based on his invocation of the Fifth Amendment privilege. This is consistent with the principle that adverse inferences are permissible in civil cases when a party refuses to testify in response to probative evidence offered against them. In re Canupp, 380 S.C. 611, 671 S.E.2d 614 (Ct. App. 2008)(citing Baxter v. Palmigiano, 425 U.S. 308, 96 S. Ct. 1551 (1976)). However, such an inference must be supported by independent corroborating evidence of the fact about which the witness refused to testify. Nationwide Life Ins. Co. v. Richards, 541 F.3d 903 (9th Cir. 2008). Additionally, the court must balance the probative value of the adverse inference against the risk of unfair prejudice under Rule 403 principles. Id.; Morin v. Innegrity, LLC, 424 S.C. 559, 577-78, 819 S.E.2d 131, 141 (Ct. App. 2018).
- 2. No Adverse Inference Against Josee Riviere:** Adverse inferences cannot be drawn against Josee Riviere based on Rhett's invocation of the Fifth Amendment. This is an issue of first impression in South Carolina; however, other jurisdictions have consistently held that an adverse inference applies only to the party invoking the privilege and cannot be imputed to a co-defendant who fully testifies. Griffith v. Griffith, 332 S.C. 630, 641-42, 506 S.E.2d 526, 532 (Ct. App. 1998)(citing Levy v. Levy, 53 A.D.2d 833, 385 N.Y.S.2d 314 (App. Div. 1976)). "[W]e have concerns over the appropriateness of drawing an inference adverse to a party based on another witness's invocation of the privilege against self-incrimination in a civil case." Id. "To grant an adverse inference against all defendants for one defendant's decision to invoke his Fifth Amendment right would be unjust and does not

advance the pursuit of truth.” Harris v. McCurtain Cty. Jail Tr., No. 22-cv-187-RAW-DES, 2025 U.S. Dist. LEXIS 37036 (E.D. Okla. Feb. 28, 2025). Josee’s full testimony, including her denial of misconduct and knowledge of Rhett’s alleged misconduct, precludes the application of any adverse inference against her. The court must ensure that the jury is instructed that any adverse inference drawn from Rhett’s invocation applies solely to him and not to Josee, which was not done by the lower court in this case.

3. **Limitation to Specific Questions:** Any adverse inference against Rhett must be limited to the specific questions to which he invoked the Fifth Amendment. The assertion of the privilege attaches only to the particular question being asked and the information sought by that question. Nationwide, 541 F.3d at 910. The court must carefully analyze the circumstances of each invocation to determine whether an adverse inference is appropriate. Id.
4. **Jury Instructions:** The court should provide clear instructions to the jury, emphasizing that any adverse inference drawn from Rhett’s invocation of the Fifth Amendment applies only to him and not to Josee, who testified fully. This ensures that the jury does not improperly attribute Rhett’s silence to Josee or draw unwarranted conclusions about her credibility or conduct.

Adverse inferences may be drawn against Rhett Riviere based on his invocation of the Fifth Amendment; however, no such inferences should be allowed against Josee Riviere, who testified fully.

CONCLUSION

The trial court's decision to allow the Plaintiff's counsel to use Rhett Riviere's Fifth Amendment invocation to prejudice the jury against Josee, combined with its refusal to provide a curative instruction, constitutes reversible error under South Carolina law. These errors deprived Josee of her right to a fair trial and due process. Without the very least a curative instruction, it is impossible for Josee Riviere to know to what extent the jury applied the adverse inference and whether they impermissibly applied it to her despite her testifying in full and answering all questions presented by all parties to this action. Accordingly, Josee Riviere respectfully requests that this Court reverse the trial court's judgment and remand the case for a new trial with appropriate safeguards to ensure fairness and compliance with the law.

THE TRIAL COURT ERRED BY ALLOWING THE PLAINTIFF TO INTRODUCE VIDEOS OF INDIVIDUALS OTHER THAN THE PLAINTIFFS TAKEN AT LOCATIONS OTHER THAN THE COTTAGE RENTED BY THE PLAINTIFFS AND TAKEN AT UNKNOWN DATES AND TIMES, THE ERROR BEING THAT THE PROBATIVE VALUE OF THE VIDEOS WAS OUTWEIGHTED BY THE PREJUDICE TO JOSEE RIVIERE:

In passing on this exception, the Court's attention is invited to the following facts. First, the videos depicted explicit sexual acts involving unidentified individuals. Secondly, the videos were recorded at locations other than the rental property rented by the Plaintiffs. Thirdly, the dates of the videos were uncertain and there was no proof that they were taken when Josee Riviere was married to Rhett Riviere. Finally, the Plaintiffs relied on the videos to convince the jury that Josee Riviere was engaged in an Unfair Trade Practice.

Introduction

The trial court erred in admitting videos of unidentified individuals engaging in explicit sexual acts at locations other than the rental property rented by the Plaintiffs and on dates that were uncertain. Under South Carolina law, evidence must be both relevant and not substantially outweighed by the danger of unfair prejudice to be admissible. Rule 403, SCRE. The admission of these videos violated the South Carolina Rules of Evidence, specifically Rules 401, 402, and 403, and improperly prejudiced the defendant, Josee Riviere.

The Videos Were Irrelevant to the Plaintiffs Claims

Under Rule 401 of the South Carolina Rules of Evidence, evidence is relevant if it has any tendency to make the existence of a fact of consequence more or less probable

than it would be without the evidence. Rule 401, SCRE; Limehouse v. Hulsey, 2011 S.C. App. LEXIS 36 (Ct. App. 2011). Rule 402 further provides that irrelevant evidence is inadmissible. Rule 402, SCRE; State v. White, 437 S.C. 490, 879 S.E.2d 21 (Ct. App. 2022). The videos in question, which depicted unidentified individuals engaging in explicit sexual acts at locations other than the rental property and on uncertain dates, do not meet this standard of relevance.

The Plaintiffs' claims presumably relate to the alleged placement of hidden cameras in the rental property they occupied. Evidence of explicit acts involving other individuals, at unrelated locations, and on uncertain dates, does not make it more or less probable that the defendants engaged in the alleged conduct at the Plaintiffs' rental property. The videos are entirely collateral to the issues in the case and fail to establish any fact of consequence. As such, their admission was improper under Rules 401 and 402, SCRE.

The Videos Were Unfairly Prejudicial and Should Have Been Excluded Under Rule 403

Even if the videos had some minimal relevance, their probative value was substantially outweighed by the danger of unfair prejudice, confusion of the issues, and misleading the jury, in violation of Rule 403 of the South Carolina Rules of Evidence. Rule 403 allows the exclusion of evidence if its probative value is substantially outweighed by the danger of unfair prejudice or confusion. Rule 403, SCRE; Mackenzie v. C&B Logging, 436 S.C. 122, 871 S.E.2d 185 (Ct. App. 2022).

The explicit nature of the videos, combined with their lack of connection to the Plaintiffs or the rental property, created a significant risk of unfair prejudice. Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one. State v. Williams, 430 S.C. 136, 844 S.E.2d 57 (2020). The graphic content of the videos inflamed the jury's emotions and distracted them from the central issues of the case. Moreover, the introduction of unrelated videos risked confusing the jury by injecting collateral issues into the trial, as the jury may have improperly inferred that the defendants engaged in similar conduct at the Plaintiffs rental property without presenting prejudicial evidence to support such a conclusion.

South Carolina courts have consistently held that evidence of other acts unrelated to the ones at issue in a case must be carefully scrutinized to avoid unfair prejudice. For example, in State v. Fletcher, the court emphasized that even relevant evidence must be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). Similarly, in State v. Gillian, the court reiterated that the determination of prejudice must be based on the entire record and that evidence is unfairly prejudicial if it suggests a decision on an improper emotional basis. The trial court's admission of the videos in this case violated these principles. State v. Gillian, 360 S.C. 433, 602 S.E.2d 62 (Ct. App. 2004).

The Admission of the Videos Was an Abuse of Discretion

South Carolina courts afford trial judges wide discretion in evidentiary rulings, but this discretion is not unlimited. A trial court's decision to admit evidence will be reversed if it constitutes an abuse of discretion resulting in prejudice to the opposing party. State v. Lee, 399 S.C. 521, 732 S.E.2d 225 (Ct. App. 2012). Here, the trial court abused its

discretion by admitting highly inflammatory and irrelevant videos that unfairly prejudiced the defendant. The videos had no direct connection to the plaintiffs' claims and served only to inflame the jury and distract them from the central issues of the case.

In criminal cases, courts have addressed the admissibility of videos and other visual evidence by weighing their probative value against the risk of unfair prejudice. For example, in State v. Kelley, the court emphasized that evidence should be excluded if its probative value is outweighed by its prejudicial effect, and trial judges have considerable latitude in making such determinations. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995). Similarly, in State v. Jones, the court reiterated that the admissibility of evidence depends on whether its probative value outweighs its potential for unfair prejudice, even when the evidence is graphic or emotionally charged. State v. Jones, 440 S.C. 214, 891 S.E.2d 347 (2023).

These principles are equally applicable in civil cases. In Jamison v. Ford Motor Co., the South Carolina Court of Appeals applied Rule 403, SCRE, to exclude a video crash test because of its prejudicial effect, including the potential to confuse the jury, substantially outweighed its probative value. Jamison v. Ford Motor Co., 373 S.C. 248, 644 S.E.2d 755 (Ct. App. 2007). Likewise, in Clark v. Cantrell, the court excluded a computer-generated video simulation in a civil case, finding it inconsistent with other evidence and likely to mislead the jury. Clark v. Cantrell, 332 S.C. 433, 504 S.E.2d 605 (Ct. App. 1998).

The trial court erred in admitting videos of unidentified individuals engaging in explicit sexual acts at unrelated locations and on uncertain dates. The videos were irrelevant to the plaintiffs' claims under Rules 401 and 402 of the South Carolina Rules of

Evidence and were unfairly prejudicial under Rule 403. Their admission constituted an abuse of discretion and improperly prejudiced the defendant, Josee Riviere. For these reasons, the admission of the videos should be deemed erroneous, and the verdict should be reversed, or a new trial should be ordered.

THE TRIAL COURT ERRED IN DENYING JOSEE RIVIERE'S MOTION FOR INVOLUNTARY NONSUIT, THE ERROR BEING THAT VIEWED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF, THERE WAS NO EVIDENCE THAT JOSEE RIVIERE ENGAGED IN AN UNFAIR OR DECEPTIVE ACT NOR WAS THERE ANY EVIDENCE THAT JOSEE RIVIERE HAD KNOWLEDGE OF OR PARTICIPATED IN THE PLACEMENT OF HIDDEN CAMERAS.

The trial judge's denial of Josee Riviere's motion for an involuntary nonsuit constitutes reversible error. Under South Carolina law, a nonsuit is proper when there is no evidence to support an essential element of the plaintiff's cause of action. Christy v. Reid, 244 S.C. 27, 135 S.E.2d 319 (1964). In this case, the plaintiffs' claim against Josee Riviere is based on an alleged violation of the South Carolina Unfair Trade Practices Act (SCUTPA). To establish such a claim, the plaintiff must prove: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act. Proctor v. Whitlark & Whitlark, Inc., 414 S.C. 318, 778 S.E.2d 888 (2015).

The evidence presented by the plaintiff against Josee Riviere is insufficient to establish that she personally engaged in an unfair or deceptive act. The plaintiffs' evidence shows that Josee was present when the lease was signed, took a check from the tenant, provided a replacement key, and brought linens to the rental cottage. However,

these actions do not demonstrate that Josee personally committed, participated in, directed, authorized or knew anything about the placement of hidden cameras in the rental unit. South Carolina law requires personal involvement in the unfair trade practice to impose liability under SCUTPA. Plowman v. Bagnal, 316 S.C. 283, 450 S.E.2d 36 (1994); S.C. Code Ann. § 39-5-140. The South Carolina Supreme Court has held that individuals, including corporate officers, are not liable for unfair trade practices unless they personally commit, participate in, direct, or authorize the violation. Plowman, 316 S.C. 283, 450 S.E.2d 36 (1994).

There is no evidence that Josee had knowledge of the hidden cameras. She testified under oath and denied any such knowledge. The owner of the property, who placed the cameras, invoked his Fifth Amendment right against self-incrimination and refused to testify. Without evidence that Josee knew about or participated in the placement of the cameras, the plaintiffs failed to establish an essential element of the SCUTPA claim.

In reviewing a nonsuit motion, the court must view the evidence in the light most favorable to the nonmoving party. However, if the evidence is susceptible to only one reasonable inference, the question becomes one of law for the court. Christy, 244 S.C. 27, 135 S.E.2d 319 (1964). Here, the only reasonable inference from the evidence is that Josee did not engage in any unfair or deceptive act. Therefore, the trial judge erred in denying the motion for nonsuit, and the denial constitutes reversible error.

THE TRIAL COURT ERRED IN DENYING JOSEE RIVIERE'S MOTION FOR DIRECTED VERDICT AT THE CONCLUSION OF THE EVIDENTIARY PORTION OF THE TRIAL, THE ERROR BEING THAT VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFFS THERE WAS NO EVIDENCE THAT JOSEE RIVIERE ENGAGED IN AN UNFAIR OR DECEPTIVE ACT NOR WAS THERE ANY EVIDENCE THAT JOSEE RIVIERE HAD KNOWLEDGE OF OR PARTICIPATED IN THE PLACEMENT OF HIDDEN CAMERAS

The trial court's denial of the motion for directed verdict in the South Carolina Unfair Trade Practices Act (SCUTPA) case against Josee Riviere constitutes reversible error. The plaintiff failed to present sufficient evidence to establish the essential elements of a SCUTPA claim, and no reasonable jury could have found in favor of the plaintiffs based on the evidence presented.

No Evidence of an Unfair or Deceptive Act by Josee Riviere:

To recover under SCUTPA, the plaintiff must prove: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected the public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act. Proctor v. Whitlark & Whitlark, Inc., 414 S.C. 318, 778 S.E.2d 888 (2015); Maybank v. BB&T Corp., 416 S.C. 541, 787 S.E.2d 498 (2016). An act is considered "unfair" when it is offensive to public policy or is immoral, unethical, or oppressive, and "deceptive" when it has a tendency to deceive. Proctor, 414 S.C. 318, 778 S.E.2d 888 (2015),

The plaintiffs' evidence against Josee Riviere consisted of her presence during the lease signing, her acceptance of a check from the tenant, her provision of a replacement key, and her delivery of linens to the rental property. None of these actions constitute an unfair or deceptive act as defined under SCUTPA. Ben. Fin. I, Inc. v. Windham, 431 S.C.

256, 847 S.E.2d 793 (Ct. App. 2020); State ex rel. Wilson v. Ortho-Mcneil-Janssen Pharm., 414 S.C. 33, 777 S.E.2d 176 (2015). There is no evidence that Josee Riviere personally engaged in, directed, or authorized the placement of hidden cameras in the rental property. South Carolina law requires personal involvement in the unfair trade practice to impose liability under SCUTPA. Neeltec Enters. v. Long, 402 S.C. 524, 741 S.E.2d 767 (Ct. App. 2013); Plowman v. Bagnal, 316 S.C. 283, 450 S.E.2d 36 (1994),

No Evidence of Knowledge of the Hidden Cameras:

Josee Riviere testified under oath and denied any knowledge of the hidden cameras. The owner of the property, who allegedly placed the cameras, invoked his Fifth Amendment right against self-incrimination and refused to testify. The refusal to answer on 5th Amendment grounds can create an adverse inference against the party exercising that right.

In that regard, the U.S. Supreme Court has established that the Fifth Amendment does not forbid adverse inferences against parties in civil actions when they refuse to testify in response to probative evidence offered against them. However, this principle applies only to the party invoking the privilege and not to others. Courts have clarified that adverse inferences may be drawn against a party who invokes the Fifth Amendment in a civil case, but such inferences are not mandatory and must be based on the specific invocation of the privilege by that party. Walters v. Dale (In re Flint Water Cases), 53 F.4th 176 (6th Cir. 2022).

South Carolina law also aligns with this principle. Under S.C. Code Ann. § 63-15-368,-3360, courts may draw adverse inferences from a party's refusal to testify on the

grounds of self-incrimination, but these provisions explicitly apply to the party invoking the privilege and do not extend to other parties in the proceeding. S.C. Code Ann. § 63-15-368,-3360.

Failure to Demonstrate Public Interest Impact:

SCUTPA requires that the alleged unfair or deceptive act affect the public interest Maybank v. BB&T Corp., 416 S.C. 541, 787 S.E.2d 498 (2016). An impact on the public interest may be shown if the acts or practices have the potential for repetition, which can be demonstrated by showing similar actions occurred in the past or that the defendant's procedures create a potential for repetition. Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2006). The plaintiffs failed to present evidence that the alleged conduct by Josee Riviere had any impact on the public interest or demonstrated a potential for repetition.

The failure to prove an impact on the public interest is well supported by the facts of this case. Josee Riviere is not and never has been engaged in the business of renting properties. She did not manage properties for Rhett Riviere or anyone else. Her only connection to the claims made by the Plaintiff was that she was married to Rhett Riviere and was physically present when the lease was signed and, maybe she provided linen and did help when the tenant lost his key. She divorced Rhett Riviere years ago. The possibility of repetition is less than zero.

Standard for Directed Verdict:

In ruling on a motion for directed verdict, the trial court must view the evidence and all reasonable inferences in the light most favorable to the nonmoving party. Murphy v.

Jefferson Pilot Communs. Co., 364 S.C. 453, 613 S.E.2d 808 (Ct. App. 2005). However, when the evidence yields only one inference, a directed verdict in favor of the moving party is proper. Guffey v. Columbia/Colleton Reg'l Hosp., Inc., 364 S.C. 158, 612 S.E.2d 695 (2004). Here, the only reasonable inference from the evidence is that Josee Riviere did not engage in any unfair or deceptive act and had no knowledge of the hidden cameras. Therefore, the trial court erred in denying the motion for directed verdict.

CONCLUSION:

The trial court's denial of the motion for directed verdict was a reversible error because the plaintiff failed to present any evidence to establish the essential elements of a SCUTPA claim against Josee Riviere. Specifically, there was no evidence that Josee Riviere engaged in an unfair or deceptive act, had knowledge of the hidden cameras, or caused any public interest impact. Accordingly, the appellate court should reverse the trial court's decision and grant the motion for directed verdict.

THE TRIAL COURT ERRED IN DENYING JOSEE RIVIERE'S MOTION FOR JUDGMENT NONWITHSTANDING THE VERDICT, THE ERROR BEING THAT VIEWED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF, THERE WAS NO EVIDENCE FROM WHICH A REASONABLE JURY COULD CONCLUDE THAT JOSEE RIVIERE ENGAGED IN AN UNFAIR OR DECEPTIVE ACT NOR WAS THERE ANY EVIDENCE THAT JOSEE RIVIERE HAD KNOWLEDGE OF OR PARTICIPATED IN THE PLACEMENT OF HIDDEN CAMERAS

LEGAL STANDARDS

BURDEN OF PROOF FOR MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT

The burden of proof for a motion for judgment notwithstanding the verdict (JNOV) in South Carolina requires that the evidence and all reasonable inferences be viewed in the light most favorable to the nonmoving party. A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. Gastineau v. Murphy, 331 S.C. 565, 503 S.E.2d 712 (2008).

In deciding a motion for JNOV, the trial court must deny the motion if the evidence yields more than one reasonable inference or if the inferences are in doubt. The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict. Shupe v. Settle, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994). Additionally, neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence when ruling on such motions. Jamison v. Hilton, 413 S.C. 133, 775 S.E.2d 58 (Ct App. 2015).

The Plaintiffs contended that Josee Riviere was a “property manager.” That was an absurd argument. Josee Riviere was not employed as a property manager, she was not shown on the lease documents as property manager and during the time when the Plaintiffs rented the cottage, the only actions she took were to receive a check because she was on the property taking care of her horses. She was not there to collect rent, and it was the Plaintiffs who chose to give her the check for their convenience. She helped them because they locked their key inside the cottage. That was only an act of kindness. She may have delivered some clean linens, but none of that makes her a property manager.

However, even if she were a property manager, she would not by that fact alone be liable for what someone else did without her knowledge.

In South Carolina, a property manager is generally not liable for actions taken by the property owner, such as placing a secret camera in a rented property, unless the property manager had actual knowledge or reason to know about the cameras. According to S.C. Code Ann. § 27-50-70, liability for false, incomplete, or misleading information in a disclosure form requires that the real estate licensee knew or had reasonable cause to suspect the information was false, incomplete, or misleading. S.C. Code Ann. § 27-50-70; Chastain v. Hiltabidle, 381 S.C. 508, 673 S.E.2d 826 (Ct. App. 2009). This principle can be extended to other situations where knowledge or reasonable cause to suspect is a key factor in determining liability.

Additionally, § 27-40-450 states that a manager of the premises is relieved of liability under the rental agreement and related statutes as to events occurring after written notice to the tenant of the termination of their management. S.C. Code Ann. § 27-40-450. This implies that liability is closely tied to the manager's active role and knowledge of the property conditions during their management period.

Therefore, without proof Josee Riviere knew or had reason to know about the secret cameras, she cannot be held liable for the owner's actions under South Carolina law even if she were a property manager, sales agent or another form of agent.

Viewing the record in the light most favorable to the plaintiffs there is no evidence upon which to base a verdict against Josee riviere for an unfair trade practice.

Significantly, there was no evidence to show that Josee Riviere had ever been in the cottage at all prior to the time when the lease was signed by the Plaintiff, During the time when the Plaintiffs were living in the cottage, Josee Riviere never entered the

cottage. Josee had been married to Rhett Riviere for less than a year. She had been in Aiken for less than 2 years.

Rhett Riviere gave the Plaintiff a lease and then left the meeting. Neither the Plaintiff nor Rhett Riviere discussed the terms of the lease with Josee Riviere, there was no conversation about the lease with Josee Riviere before Crespo signed the lease and handed it to Josee. According to the testimony, Josee Riviere gave the lease to Rhett Riviere.

Nothing in the record supports the finding that Josee made any representations about the cottage or anything else related to the decision made by Gabriel Crespo to lease the cottage.

Viewing the evidence in the light most favorable to the Plaintiff does not mean that the Plaintiff is entitled to invent evidence. There is simply no evidence whatsoever that Josee Riviere said or did anything to induce the Plaintiff to execute the lease. In order for there to be an unfair trade practice the accused person must do or say something. Absent an act by the accused, there cannot be a “practice” and that is what is required to establish that Josee Riviere did anything to induce the Plaintiffs to rent the cottage.

But even assuming that the Plaintiffs unsubstantiated statement that Josee Riviere was “heavily involved in the leasing process” were supported by the evidence, that does not mean that she is liable. For her to be liable for an unfair trade practice, she has to say something or do something, and she has to know that what she is saying or doing is misleading or false. That is where the Plaintiffs fail. There is no evidence that Josee said anything that could be considered influential in the rental decision. There is also

absolutely no evidence that she knew or should have known that secret cameras were or would be in the cottage.

As noted below, the Plaintiffs propose that the court look at events that took place years after the Plaintiffs were in the cottage and conclude from those future events that Josee should have known in 2000 things that had not yet occurred and she had to know that this evidence drawn from future events meant that the Plaintiffs were at risk. No one can know what may happen in the future and using future events as a basis for the argument that Josee Riviere should have known about them before they happened is simply absurd.

The fact that the jury entered a verdict even in part based on future events is further evidence that the jury's verdict was the result of passion, prejudice and caprice.

The use of future events to prove knowledge at a time in the past has never been adopted by any court in any state in the Union. And, because it is so absurd, one can only conclude that the Jury was so inflamed and angered by the videos and by the showing of things seized years after the cottage was rented that their ability to reach a legitimate verdict no longer existed.

During the 3 months while the Plaintiffs were living in the cottage, Josee Riviere helped them once by going to the house where she and Rhett were living to get a key to open the cottage door because the Plaintiff had misplaced his key. Josee did not enter the cottage then nor did she enter the cottage at any time while the Plaintiffs were living there. Since she had not been in the cottage before the Plaintiffs moved in and never

went in while they were there is no possibility that Josee knew anything about what may or may not have been in the cottage,

In their response to the Motion for Summary Judgment, the Plaintiffs made the following statement which sums up their position throughout the trial quite well:

Josee Riviere was heavily involved in the leasing and managing of the rental property. She showed Plaintiff the rental property prior to them signing a lease. She accepted the signed lease from Plaintiffs and took the rental check for the entire rental period from Plaintiffs. She provided the Plaintiffs with keys to the rental property. She gave Plaintiffs' access to the rental when they accidentally locked themselves out. These are the actions of a property manager.

Plaintiffs misstate the evidence, but even if Josee Riviere was a property manager as the Plaintiffs argue, that is not proof of liability. There must be evidence that Josee Riviere either participated in or aided in the commission of the misconduct or knew that it was happening. There is no such evidence.

The crucial element of knowledge is missing from the case and without evidence that Josee knew or should have known that a risk of secret filming existed, she cannot be held liable. Her involvement in the leasing and the management of the rental unit will not support a finding of unfair practice unless the Plaintiff proved that Josee Riviere knew or should have known at the time of the negotiations and rental that the Plaintiffs faced a threat. That evidence is not in the record because it simply does not exist.

The fact that Josee Riviere performed one or two minor acts which might, using a very active imagination, create the impression that she did something that a property manager might do will not support the conclusion that she had any knowledge that cameras had been placed in the cottage. In fact, the Plaintiff Gabriel Crespo testified under oath that there is no evidence that Josee Riviere knew anything at all about the

cameras. The Plaintiff says without evidentiary support that “Josee Riviere was heavily involved in the leasing and managing of the rental property.” The truth is that Josee Riviere standing nearby while the Plaintiff and Rhett Riviere exchanged information and agreed on the terms of the lease simply cannot possibly support a conclusion that Josee Riviere was heavily involved in the leasing of the cottage.

The Plaintiffs contend that there is circumstantial evidence which supports the verdict, but there is no evidence in the record to support that conclusion. First, there is no direct evidence that Josee Riviere ever knew anything about secret cameras or videos. The record does not provide any basis for concluding that this fact establishes a reason why Josee Riviere, at the time when the Plaintiff’s rented the cottage, should have known about the cameras. The fact that her husband allegedly did something or the fact that something happened after she was married to Rhett Riviere is not proof that Josee Riviere had to know what was happening.

The verdict was not the product of reasonable deliberation by a rational jury. It is the product of passion brought about by the showing of inflammatory videos and image.

The Plaintiffs also relied on events which did not occur until years after the Plaintiffs had moved out of the cottage as a basis for liability on the part of Josee Riviere. Those events did not occur in the cottage. The evidence seized by SLED was not found in the cottage and none of it was shown to have ever been in the cottage. There is no evidence that any of the video and computer objects seized by SLED even existed when the Plaintiffs lived in the cottage. Viewing the evidence in the light most favorable to the Plaintiffs does not mean that the Plaintiffs are entitled to use equipment seized, created,

purchased and invented long after Josee Riviere divorced Rhett Riviere as proof that Josee Riviere knew about the equipment before it was even invented or available.

The Plaintiff's theory of liability on the part of Josee Riviere is based in part on the fact that Josee Riviere kept her horse in one of the barns on the property and frequently rode her horse on the property. Again, giving the Plaintiff the benefit of every possible favorable interpretation, the Plaintiffs' case yet again falls short because the mere fact that Josee Riviere had access to the acreage that was not part of the rental property, performed some acts that might be performed by a property manager, and was frequently on another part of the property that did not include the cottage does not establish knowledge of secret cameras hidden in the unit. South Carolina law requires knowledge, not pure speculation.

Additionally, S.C. Code Ann. § 27-40-530 outlines the conditions under which a landlord or their agent may enter a dwelling unit, emphasizing that such access must be reasonable and not abused. S.C. Code Ann. § 27-40-530. This statute does not imply that mere access or presence equates to knowledge of illegal activities such as the installation of secret cameras.

There are other reasons in the record to reject the argument that circumstantial evidence supports the verdict.

First, the Plaintiffs who spent every day and night in the cottage for three months did not know about the cameras and, according to their testimony, did not have any reason to think that they might be present. How then can Josee Riviere be charged with knowledge of the cameras when she never entered the cottage before the Plaintiffs

moved in, did not do so while they were there and was outside well away from the cottage riding horses and maintaining the barn where her horses were stabled.

Secondly, Katherine Thomas lived with Rhett Riviere for years during the time when the seized equipment and cameras would have been in Rhett's possession. She did not know anything about videos or the equipment during those years. Only a chance finding of SIM cards put her onto the situation. If the videos and equipment could be kept secret from a live-in partner for years, what evidence is there that Josee Riviere would know about Rhett's conduct especially when all of the evidence upon which the Plaintiffs rely did not even exist when the cottage was rented?

A defendant who is not engaged in a common purpose and does not know that a co-defendant is engaged in voyeurism cannot be held civilly for an Unfair Trade Practice when the record does not contain any evidence that she engaged in any activities that could be considered a "practice."

In South Carolina, for a defendant to be held liable under the doctrine of joint enterprise, there must be a common purpose and a community of interest in the object of the enterprise, along with an equal right to direct and control the conduct of each other with respect to that enterprise. Ray v. Simon, 245 S.C. 346, 140 S.E.2d 575 (1965). If the defendant did not share a common purpose with the co-defendant or have control over the co-defendant's actions, the doctrine of joint enterprise would not apply.

Additionally, South Carolina law does not impose a general duty to control the conduct of another or to warn a third person or potential victim of danger unless specific exceptions apply, such as a special relationship to the victim or the injurer, a voluntary

undertaking of duty, or a statutory duty. Johnson v. Jackson, 401 S.C. 152, 735 S.E.2d 664 (Ct. App. 2012). In the absence of such a duty, there is no actionable negligence.

Therefore, because there is no evidence that Josee Riviere had a common purpose with Rhett Riviere and did not have a duty to control the co-defendant's actions, they cannot be held civilly liable the actions which Rhett Riviere might have committed.

Josee Riviere cannot be held liable for an unfair trade practice because she did not have a duty to warn and did not know that there was a threat. Under South Carolina law, liability for unfair trade practices under the Unfair Trade Practices Act (UTPA) requires that the defendant personally commit, participate in, direct, or authorize the commission of a violation of the UTPA. BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005).

In the case of Plowman v. Bagnal, the South Carolina Supreme Court held that corporate officers were not liable for the corporation's unfair trade practices because they did not personally commit, participate in, direct, or authorize the commission of a violation of the UTPA. Plowman, 316 S.C. 283. Similarly, in BPS, Inc. v. Worthy, it was reiterated that directors and officers are not liable for the corporation's unfair trade practices unless they personally commit, participate in, direct, or authorize the commission of a violation. BPS, Inc., 362 S.C. 319.

There is also no evidence that Rhett Riviere was Josee Riviere's agent or that she was his agent and none that she could control Rhett Riviere and finally none that she knew anything that would give her a reason to know that a threat existed/

She did not participate in the misconduct, she did not authorize the misconduct, she did not know that the misconduct might occur, she had no reason to believe that the Plaintiffs were the targets of a threat, and she could not control Rhett Riviere.

Therefore, without personal involvement or authorization of the unfair trade practice, the defendant cannot be held liable under the UTPA in South Carolina.

CONCLUSION

The verdict should be reversed, or a new trial absolute should be ordered.

THE JUDGE ERRED BY FAILING TO GRANT JOSEE RIVIERE A NEW TRIAL ABSOLUTE AS TO THE UNFAIR TRADE PRACTICES CAUSE OF ACTION THE ERROR BEING THAT THE VERDICT WAS GROSSLY EXCESSIVE

The trial judge cannot unilaterally reduce the verdict without issuing a Rule Nisi Remittitur. If the judge deems the verdict excessive but not grossly so, they may grant a new trial nisi remittitur, giving the plaintiff the option to remit a portion of the verdict or face a new trial. However, if the plaintiff refuses to remit, the defendant is entitled to a new trial. This approach ensures the judge does not invade the jury's province, as the plaintiff has the legal right to have damages determined by a jury. Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984).

However, the verdict in this case is not merely excessive, it is grossly excessive.

If the verdict is deemed "grossly excessive," indicating it was influenced by passion, caprice, or prejudice, the trial judge must grant a new trial absolute rather than a new trial nisi remittitur. A grossly excessive verdict is considered inherently unlawful, and no part of it may stand. Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct. App. 1999). The jury's determination of damages is entitled to substantial deference, and the

trial court's decision to grant or deny a new trial is reviewed for abuse of discretion. Welch v. Epstein, 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000).

In this case, the trial judge must evaluate whether the \$500,000 award is merely excessive or grossly excessive. If it is merely excessive, the judge should have issued a new trial nisi remittitur. Since it was grossly excessive, the judge should have granted a new trial absolute. Id.; Elliott v. Black River Electric Cooperative, 233 S.C. 233, 104 S.E.2d 357 (1958).

CONCLUSION

The appellate Court should reverse the trial Judge and vacate the verdict in its entirety, or the Appellate Court should order a new trial absolute on the unfair trade practice cause of action.

THE TRIAL COURT ERRED BY DENYING JOSEE RIVIERE'S MOTION FOR DIRECTED VERDICT AND MOTION FOR JUDGEMENT NOTWITHSTANDING THE VERDICT, THE ERROR BEING THAT THERE IS NO DIRECT EVIDENCE THAT JOSEE PERSONALLY ENGAGED IN OR AUTHORIZED THE PLACEMENT OF THE SECRET CAMERAS AND THE CIRCUMSTANTIAL EVIDENCE VIEWED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF DOES NOT CONTAIN EVIDENCE WHICH SHOULD LEAD A REASONABLE JURY TO CONCLUDE THAT JOSEE RIVIERE KNEW ABOUT OR WAS INVOLVED IN THE ALLEGED UNFAIR OR DECEPTIVE ACT

While Josee Riviere disagrees with key elements of the following statement of facts, this statement contains all of the circumstances relied on by the Plaintiffs. For the purpose of this section of this brief, they will be assumed to be established in the record.

Josee Riviere was married to Rhett Riviere at the time the alleged conduct occurred. Rhett owned a rental property where the Plaintiffs claim secret cameras were placed, capturing explicit sexual acts. The Plaintiffs leased the property from Rhett. Josee acted as Rhett's real estate agent and assisted with property management tasks, including helping the Plaintiffs when they lost their key, delivering a rent check to Rhett, riding horses on the property, and bringing clean linens to the Plaintiffs once. There is no direct evidence that Josee knew about or participated in the placement of the cameras. The Plaintiffs argue that the circumstances, including Josee's marital relationship with Rhett and her involvement as Rhett's agent and as a property manager, establish her liability under SCUTPA.

Legal Standards/Rules

The UTPA declares unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce to be unlawful. S.C. Code Ann. § 39-5-20(a) (1985). "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) (1985).

An unfair trade practice has been defined as a practice which is offensive to public policy, or which is immoral, unethical, or oppressive. Young v. Century Lincoln-Mercury, Inc., 302 S.C. 320, 396 S.E.2d 105 (Ct. App. 1989), aff'd in part, rev'd in part on other grounds, 309 S.C. 263, 422 S.E.2d 103 (1992). A deceptive practice is one which has a tendency to deceive. *Id.* "Even a truthful statement may be deceptive if it has a capacity or tendency to deceive." *Id.* at 326, 396 S.E.2d at 108.

Whether an act or practice is unfair or deceptive within the meaning of the UTPA depends upon the surrounding facts and the impact of the transaction on the marketplace. *Id.* "The [UTPA] should not be construed to increase a plaintiff's burden of proving liability since its purpose is to give additional protection to victims of unfair trade practices, not to make a case harder to

prove than it would be under common law principles." Id. at 326, 396 S.E.2d at 108.

To be actionable under the UTPA, the unfair or deceptive act or practice must have an impact upon the public interest. Haley Nursery Co. v. Forrest, 298 S.C. 520, 381 S.E.2d 906 (1989). "An unfair or deceptive act or practice has an impact upon the public interest if the act or practice has the potential for repetition." Id. at 524, 381 S.E.2d at 908.

There are two general ways to demonstrate the potential for repetition: (1) by showing the same kind of actions occurred in the past, thus making it likely the actions will continue absent some deterrence, or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. Crary v. Djebelli, 329 S.C. 385, 496 S.E.2d 21 (1998). These are not the only means of showing the potential for repetition, however, and each case must be evaluated on its own merits. Daisy Outdoor Adver. Co. v. Abbott, 322 S.C. 489, 497, 473 S.E.2d 47, 51 (1996).

deBondt v. Carlton Motorcars, Inc., 342 S.C. 254, 269-70, 536 S.E.2d 399, 407 (Ct.

App. 2000).

ARGUMENT

To determine whether Josee Riviere can be held liable under SCUTPA, the following elements must be analyzed:

Unfair or Deceptive Act in Trade or Commerce

There is no evidence that Josee personally engaged in or authorized the placement of the secret cameras. Her actions, such as assisting with lost keys, delivering rent checks, and providing clean linens, are consistent with routine property management tasks and do not inherently suggest knowledge of or involvement in the alleged unfair or deceptive act. SCUTPA liability requires direct participation in or authorization of the wrongful conduct, which is absent here.

Public Interest Requirement

For an act to affect the public interest under SCUTPA, it must have the potential for repetition. The Plaintiffs have not provided evidence that Josee's actions, even if they were connected to the alleged conduct, have the potential to impact the public interest or be repeated in other transactions. Without such evidence, the public interest requirement is not satisfied.

Monetary or Property Loss

While the Plaintiffs allege harm resulting from the secret cameras. However, there is no direct or circumstantial evidence that Josee Riviere participated in an unfair trade practice or knew anything about an unfair trade practice, therefore there is no evidence linking Josee's actions to the Plaintiff's monetary or property loss. SCUTPA requires a causal connection between the defendant's conduct and the plaintiff's harm, which is not established in this case.

Scope of Liability

SCUTPA does not impose liability based solely on a marital relationship or general association with the person who committed the wrongful act. Josee's marital relationship with Rhett and her limited involvement in property management do not, by themselves, establish her liability under SCUTPA.

Effect of Marriage

the existence of a marital relationship alone does not legally establish that Josee Riviere knew her husband, Rhett Riviere, was placing hidden cameras in a rental cottage. While jurors might consider the intimate and confidential nature of a marital relationship as a factor, it does not automatically imply knowledge of a spouse's illegal actions.

In Hinson v. Roof, the South Carolina Supreme Court noted that the marital relationship itself does not inherently indicate that one spouse is aware of or involved in the other's actions. However, the court acknowledged that the intimate and confidential nature of the relationship could be a circumstance for consideration. In that case, the wife's knowledge of her husband's actions was inferred from specific evidence, such as her presence at the sawmill, her silence, and her receipt of proceeds from the sale of lumber. These facts provided a basis for the jury to conclude that she had knowledge of her husband's dealings, but the marital relationship alone was not sufficient to establish such knowledge. Hinson v. Roof, 128 S.C. 470, 122 S.E. 488 (2000).

The Court and jury should have taken into consideration the fact that at the time when the Plaintiffs claim an unfair trade practice took place, Josee Riviere was a new bride, she was very involved with her horses not only as a rider but also as the person who did the work cleaning and maintaining the stable and the stalls. The evidence showed that Josee was a very private person. She testified that her husband did not allow her to be involved in his activities. He kept a Boat in Charleston that she had nothing to do with. In conclusion, while the court and jurors may consider the marital relationship as a factor, it is not sufficient on its own to establish that Josee Riviere knew about her husband's placement of hidden cameras. Additional evidence or circumstances demonstrating her knowledge would be required to support such a conclusion. There is no such evidence.

The Trial Court should have dismissed the case at several stages and when the jury produced an absolutely incomprehensible grossly excessive verdict which no reasonable jury would have produced except for that jury having been inflamed, confused

and prejudiced by the very explicit videos and evidence most of which related to a time when Josee was no longer married to Rhett, the Trial Judge should have entered a Judgment for Josee Riviere notwithstanding the verdict or she should have granted a new trial absolute.

CONCLUSION

Even based on a view of the evidence that is most favorable to the Plaintiff and the legal standards under SCUTPA, Josee Riviere not liable for the alleged placement of secret cameras in the rental property. There is no evidence that she engaged in, authorized, or had knowledge of the alleged unfair or deceptive act. The circumstances described are insufficient to establish liability under SCUTPA.

THE TRIAL COURT ERRED BY INSTRUCTING THE ATTORNEY FOR JOSEE RIVIERE THAT HE COULD NOT ARGUE THAT THE INVOCATION OF THE FIFTH AMENDMENT BY RHETT RIVIERE COULD NOT BE USED TO INFER GUILT ON THE PART OF JOSEE RIVIERE, THE ERROR BEING THAT THE ARGUMENT WAS A FAIR COMMENT ON THE EVIDENCE THAT HAD BEEN HEARD BY THE JURY AND THE INABILITY TO ARGUE THAT POINT DENIED JOSEE RIVIERE A FAIR TRIAL.

The instruction prohibiting Josee Riviere's attorney from commenting to the jury that the Fifth Amendment invocation by Rhett Riviere could not be used to infer guilt against Josee Riviere is a reversible error. When a judge refuses to allow an attorney to argue that a witness's invocation of the Fifth Amendment privilege cannot be used to infer guilt against another defendant and also refuses to instruct the jury on this principle Josee Riviere is deprived of a fair trial.

The court should not have prohibited counsel for Josee Riviere from arguing that Rhett Riviere's invocation of the Fifth Amendment privilege cannot be used against Josee. The Fifth Amendment privilege against self-incrimination is personal and cannot be used to infer guilt or liability against another party, as established in multiple precedents. The U.S. Supreme Court has consistently held that the invocation of the Fifth Amendment by one party cannot be used as evidence against another party, as it would violate the principle that the privilege is personal and not transferable. U.S. Const. Amend. 5.

Given the lack of direct evidence of conspiracy or cooperation between Rhett and Josee Riviere, and the insufficient circumstantial evidence to establish joint action or knowledge of alleged misconduct, prohibiting the comment that the invocation of a fifth amendment right by Rhett Riviere could not be used to infer guilt by Josee Riviere unfairly prejudiced Josee Riviere. The refusal to provide such an instruction or to allow comment on this principle undermines the fairness of the trial and violates constitutional protections, making it a reversible error

The trial judge's sua sponte interruptions of counsel for Josee Riviere could be deemed prejudicial if they improperly influenced the jury or deprived her of a fair trial. South Carolina case law establishes that a trial judge must refrain from comments or actions that indicate bias, suggest an opinion on the evidence, or otherwise interfere with the defendant's right to a fair trial. For example, in *State v. Campbell*, 297 S.C. 24, the South Carolina Supreme Court reversed a conviction because the trial judge's interruptions and comments were found to be improper and prejudicial. The judge's remarks in that case suggested his opinion on the defendant's guilt, which influenced the jury and deprived the defendant of a fair trial. *State v. Campbell*, 297 S.C. 24.

However, not all interruptions by a trial judge are deemed prejudicial. In *State v.*

Mitchell, the court found that while some of the trial judge's comments were unnecessary, they did not result in legal prejudice to the defendant when viewed in the context of the entire trial. State v. Mitchell, 261 S.C. 452, 200 S.E.2d 448 (1973).

The right to a fair trial is protected under both the U.S. Constitution and the South Carolina Constitution. A fair trial requires that the trial judge maintain neutrality and avoid conduct that could impair the fairness of the proceedings. In State v. Stewart, the court emphasized that a fair trial does not require perfection but does require that the defendant's fate be determined through calm and informed judgment, free from extraneous influences. State v. Stewart, 278 S.C. 296, 295 S.E.2d 627 (1982).

Furthermore, Canon 3 of the South Carolina Code of Judicial Conduct mandates that judges perform their duties impartially and without bias, as any appearance of bias can impair the fairness of the proceedings. Canon 3, CJC, Rule 501, SCACR.

The interruptions suggested bias, influenced the jury and interfered with the defense's ability to present its case, the interruptions were prejudicial and a violation of Josee's right to a fair trial.

First Sua Sponte Interruption

On page 2154 and 2155, of the ROA3 counsel for Josee Riviere was interrupted by the Court as follows: Mr. Harte: Now, what a person might do is not evidence.

What a person might know is not proof of responsibility. Pure conjecture. The plaintiff is not entitled to a verdict based on what the lawyer says somebody might do or what somebody could do.

They have to prove what the person actually did. It's not enough to say, for example, that Josee was his wife and, therefore, she must know everything that her husband did. There has to be proof of that.

Otherwise, it's just pure speculation. I mentioned when we started that it is -- this case has actually got some serious risks involved. Cases -- cases are important. They set precedent.

I'm married to somebody. I'm going about my daily affairs, I've got my activities that I do. I try to play sports. I'm getting a little bit older now, so I don't fall as good as I used to, so I don't ride. I don't bounce anymore. But I'm not thinking very minute of every day about what my spouse is doing.

THE COURT: Mr. Harte, let's move the argument along from what you --

MR. HARTE: I am. Thank you, Your Honor.

THE COURT: -- from your personal perspective.

Argument: This sua sponte interruption might standing alone not be improper, but taken together with the other six interruptions, this interruption is improper.

Multiple sua sponte interruptions during a trial can collectively constitute prejudicial error, even if each individual interruption might be proper on its own. South Carolina courts have recognized the cumulative error doctrine, which provides relief when the combined effect of multiple errors, though individually insufficient to warrant reversal, deprives a party of a fair trial.

In *State v. Freeman*, the South Carolina Court of Appeals found that the cumulative effect of numerous unsolicited comments by the trial judge, combined with limitations on cross-examination, unduly prejudiced the defendant. Although no single error was sufficient to warrant a new trial, the aggregation of these errors necessitated

reversal and a new trial. State v. Freeman, 319 S.C. 110, 1995 S.C. App. LEXIS 100 (Ct. App. 1995).

Second Interruption

On page 2106 of the ROA, the Court sua sponte interrupted counsel for Josee Riviere as follows:

Mr. HARTE Now , you watched her on the witness stand. She answered every question She did not attempt to take the Fifth Amendment on anything like that. Rhett Riviere took the Fifth Amendment. It's his constitutional right to do that. The Judge will tell you, I believe, that that applies to him, to him. Now, you will -- you watched her on the stand. Did she appear devious, did she appear to be lying, did she try to evade the questions? And I heard -- I heard the lawyer - - in fact, the first time I've ever heard that done. When you are going to accuse a witness, when you're going to stand before a jury and say this witness lied --

THE COURT: Mr. Harte, I don't -- I don't think the jury needs a lesson in that part.

Argument This interruption was unjustified because counsel's comments were appropriate because counsel is permitted to respond to comments made by opposing counsel. This interruption impugns the credibility of counsel and the Defendant herself. Preventing counsel from defending his client's credibility exposes a prejudice against the Defendant which the jury cannot have missed. The comment also endorses opposing counsel's attack on the Defendant.

South Carolina courts have emphasized that a trial judge must act with absolute impartiality and avoid comments or actions that could impugn the credibility of counsel or influence the jury's perception of the case. For instance, in State v. Cooper, 334 S.C. 540, the South Carolina Supreme Court found reversible error where a judge's remarks diminished the credibility of defense counsel in the eyes of the jury, violating the requirement of judicial impartiality. State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999).

Third Interruption

On page 2165 of the ROA Court interrupted counsel as follows

MR. HARTE But let me say something. It was said to you that in this trial, Heather and Gabriel have been re- victimized. Well, let' s see. As I recall, I did not ask Heather Crespo a single question, not one. As I recall, I only asked Gabriel two questions, and when I walked away, Gabriel said to me very graciously, Mr. Harte, it' s good to see you. And I said, yes, Gabriel, I wish it were under other circumstances. Re- victimized? She accused me of doing that? When people start doing that, when they try to focus on something that the lawyers are doing, and they want to draw your attention to that, and particularly if it isn't true, then you've got to start thinking about everything else they're telling you.

THE COURT: Mr. Harte, let' s move away from talking about other lawyers. MR.

HARTE: That' s fine. THE COURT: Thank you, sir.

MR. HARTE: But I do want to point out that the plaintiff talked about lawyers victimizing the Crespo's. That' s what I' m talking about. They brought it up. I don' t think the evidence supports it.

ARGUMENT:

The Trial Judge's third interruption undermined the defense's response to the plaintiff's accusations. The Court appears to be endorsing Plaintiff's accusation of re-victimization. This interruption prejudiced the defense by limiting its ability to address critical issues raised during the trial and during the Plaintiff's closing argument .

Fourth Interruption

At page 2170 of the ROA, the Court interrupted counsel as follows.

MR HARTE I don' t really know why they put her on the stand. I really don' t. There was not one thing Josee Riviere said that helped their case. Not one thing. But they put her on the stand. Oh, and by the way, what -- I' m just amazed. Gina Salatino was contacted because they named her on the witness list. And now, they say they' re surprised at what she' s going to say. What the heck? Who puts a name on a witness list that you haven' t talked to?

THE COURT: Mr. Harte, let' s refrain from talking about other --

MR. HARTE: Thank you, Your Honor.

THE COURT: -- attorneys' cases.

MR. HARTE: No, it's just important, Your Honor, but I'll move on. THE

COURT: Thank you.

ARGUMENT: The judge's sua sponte Fourth interruption of defense counsel during closing arguments, directing counsel to "refrain from talking about other attorneys' cases," combined with the other six interruptions was improper and prejudicial to Josee Riviere's case... South Carolina case law emphasizes that a trial judge's comments or interruptions during closing arguments must not prejudice the defendant or inject the judge's opinion into the proceedings

The court's fourth interruption prevented Defense counsel from responding to the Plaintiff's attack on a Defense witness whose testimony was important to the case.

Fifth Interruption

At page 2170 of the ROA, the Court uninterrupted counsel as follows.

MR. HARTE: I don't want you to be afraid to make your judgment on the facts. The fact that the lawyers who are asking you to give \$ 36 million --

THE COURT: Mr. Harte, let's refrain from referring to lawyers. This is a case brought by the Crespo's against your client.

MR. HARTE: Your Honor, I thank you, Your Honor. THE

COURT: That's what you need to concentrate on.

ARGUMENT: The Judge's Fifth Interruption taken in conjunction with the six other interruption and the record as a whole establishes the fact that judge's interruption and instruction was improper, and prejudicial to Josee Riviere's case Viewed in the broader context of the trial and the other interruptions, the fifth interruption and instruction deprived the defense of a fair trial. Josee Riviere encourages the

Appellate Court to review the entire record to determine if the judge's actions constituted an abuse of discretion or unfairly influenced the jury's decision. State v. Hutto, 252 S.C.

36, 165 S.E.2d 72 (1968). That review will show that these interruptions were an abuse of discretion and support a reversal or new trial.

Sixth Interruption

On page 2174 of the ROA the court interrupted counsel as follows:

Mr. Harte : Be careful of lawyers who use the word " they" when, in fact, the facts do not place " they" in the picture. They said that we wanted to ignore the facts. No, not at all. I want you to look at the facts, the facts, like Jack Webb in Dragnet used to say. Just the facts, ma' am. I'm not afraid of the facts. Josee is not afraid of the facts. Josee is not afraid of the truth. I am afraid of Mischaracterization of the truth The said that the defendants said Gabriele and Heather should have investigated something. I did not say that. I didn't say that. I will say that if you find something suspicious, ok you might. Mr. Mccullouch covered that. An attorney is allowed a lot of freedom in making an argument to the jury, but juries don't have that freedom. Lawyers can speculate, juries can't. One other thing about what the Plaintiffs' attorneys are trying to do is to get you to shift the burden to Josee. That's not the way it works.

THE COURT: Mr. Harte --

MR. HARTE: The burden remains on the plaintiffs throughout. THE

COURT :Thank You

ARGUMENT: The argument made by counsel in this case is not improper.

Defense counsel's statements about the use of the word "they," references to facts, and claims regarding the burden of proof are within the scope of permissible advocacy and were based on the Attorney's view of the evidence. Attorneys are allowed significant freedom in making arguments to the jury, and novel or zealous arguments are not to be inhibited unless they are clearly frivolous, abusive, or disruptive. The South Carolina Supreme Court has emphasized that trial judges should not rebuke or interrupt counsel

unless there is a clear basis to believe the argument is being made in bad faith or is otherwise improper.

Seventh Interruption

At page 2176 of the ROA the Court interrupted counsel as follows:

MR HARTE Look, don't hold Josee responsible for what I did. And I don't hold Gabriel responsible for what I've seen done to Josee. Gabriel Crespo is a brave, honest man. He is a good man and a good father, and I said that when I started with this case, and I say it again. Here's what stands out for me about Gabriel: a couple of things. First of all, I -- I -- I understand, I do understand why he chose not to be John Doe. It really struck me straightaway. It's the answer a gentleman would give. I'm not John Doe. I don't criticize him one bit for standing up as he did. I wish he hadn't had to do it. I'd give anything. Josee would give anything. Here's the other thing I really admire about him. One of the two questions I asked him was --

THE COURT: Mr. Harte, let's move on from your personal opinion on the case, please. MR.

HARTE: -- I'm not going to ask a personal opinion.

THE COURT: Well, when you say -- MR.

HARTE: Thank you, Your Honor.

THE COURT: -- that "I admire," I think that

MR. HARTE: I apologize, Your Honor. I won't retract it --

THE COURT: Thank you. Let's --

MR. HARTE: -- but I will apologize for it.

THE COURT: -- I understand. Let's restrict it to the evidence and your argument on the evidence --

MR. HARTE: Thank you, Your Honor. And I appreciate -- THE

COURT: -- as the jury finds it.

MR. HARTE: -- you calling my attention to that. I will try. THE

COURT: Thank you, sir.

the absolute most about -- well, let me say it differently. THE

COURT: Thank you, sir.

Argument: This exchange standing alone would not necessarily be improper; however, taken together with the other six interruptions and given the fact that the argument which the Court address was not a serious breach of the rules, this interruption taken together with the other six was improper and prejudicial rendering it impossible for Josee Riviere to receive a fair trial.

CONCLUSION

Under South Carolina law, repeated interruptions by the court during counsel's closing argument, when not justified by serious misconduct or improper argument, are generally considered improper and may be deemed prejudicial.

The cases cited herein collectively demonstrate that unjustified interruptions during closing arguments can be prejudicial under South Carolina law, as they may interfere with the defendant's right to a fair trial and the jury's ability to consider the arguments without undue influence.

The cumulative effect of multiple interruptions by a court during trial proceedings, including the seventh interruption, may rise to the level of prejudicial error if it adversely affects a party's right to a fair trial.

Josee Riviere respectfully submits that the cumulative effect of the sua sponte interruptions and instructions, none of which were justified by the argument being made by the attorney for Josee Riviere adversely affect Josee Riviere's right to a fair trial and even if one or two of the interruptions might be considered acceptable, the cumulative of these seven interruptions amounted to more than a mere error and the impact of the

interruptions and instructions resulted in legal prejudice justifying reversal or a new trial absolute.

THE TRIAL COURT ERRED BY FINDING, WITHOUT EXPLANATION, THAT JOSEE RIVIERE WILFULLY ENGAGED IN AN UNFAIR TRADE PRACTICE JUSTIFYING A TREBLING OF THE DAMAGES THE ERROR BEING THAT THERE WAS NO EVIDENCE OF WILLFUL CONDUCT BY JOSEE RIVIERE:

Under South Carolina law, a finding of willfulness requires evidence that the defendant knew or should have known their conduct violated the law. The trial courts failure to provide an explanation or factual findings to support its conclusion of willfulness renders its decision legally unsustainable.

Legal Standard for Willfulness Under SCUTPA

SCUTPA prohibits unfair or deceptive acts or practices in the conduct of trade or commerce and provides for treble damages if the violation is found to be willful or knowing. S.C. Code Ann. § 39-5-20; S.C. Code Ann. § 39-5-140. A willful violation occurs when the party committing the violation knew or should have known that their conduct was a violation of SCUTPA. S.C. Code Ann. § 39-5-140. This standard requires evidence of the defendants knowledge or constructive knowledge of the unlawful nature of their actions.

The Trial Courts Finding of Willfulness Lacks Evidentiary Support

The trial courts finding of willfulness against Josee Riviere is reversible error because it is unsupported by evidence or explanation. South Carolina courts have consistently held that factual findings in SCUTPA cases must be supported by evidence as evidenced by the cases cited elsewhere in this brief.

V. CONCLUSION

The trial courts finding that Josee Riviere willfully engaged in an unfair trade practice under SCUTPA is reversible error because it is unsupported by evidence and lacks the necessary explanation or factual findings. Under South Carolina law, a finding of willfulness requires evidence that the defendant knew or should have known their conduct violated the law. The trial courts failure to provide an explanation or factual findings renders its decision legally unsustainable and warrants reversal.

For these reasons, the appellate court should reverse the trial courts finding of willfulness against Josee Riviere.

THE COURT ERRED BY FINDING WITHOUT EXPLANATION THAT JOSEE RIVIERE ENGAGED IN A WILLFUL UNFAIR TRADE PRACTICE THE ERROR BEING THAT THE FAILURE TO PROVIDE AN EXPLANATION DEPRIVES JOSEE RIVIERE OF MEANINGFUL APPELLATE REVIEW

The trial courts failure to explain its finding of willfulness constitutes reversible error because it prevents meaningful appellate review. South Carolina courts require trial courts to make sufficient findings of fact to enable appellate review, particularly in cases involving civil penalties under SCUTPA. Without an explanation or factual findings, the appellate court cannot assess whether the trial court properly applied the legal standard for willfulness under SCUTPA. This lack of explanation is especially problematic given that willfulness under SCUTPA requires evidence of knowledge or constructive knowledge, which the trial court did not address. S.C. Code Ann. § 39-5-140.

Here, the trial court failed to provide any factual findings or explanation to support its conclusion that Riviere acted willfully, leaving the appellate court unable to determine whether the decision was based on sufficient evidence.

THE TRIAL COURT ERRED IN AWARDING FEES TO THE ATTORNEYS FOR THE PLAINTIFF, THE ERROR BEING THAT THE COURT FAILED TO CONSIDER THE FACT THAT JOSEE RIVIERE PREVAILED ON THREE OF THE FOUR CAUSES OF ACTION BROUGHT AGAINST HER

The trial courts failure to consider Josee Riviere’s successful defense against three of the four causes of action in awarding attorney’s fees to the Plaintiff constitutes reversible error under South Carolina law. The determination of reasonable attorney’s fees must account for the degree of success obtained by the prevailing party, and the trial courts omission of this critical factor undermines the validity of the award. Camburn v. Smith, 355 S.C. 574, 586 S.E.2d 565 (2003).

The Degree of Success Obtained is a Critical Factor in Awarding Attorney’s Fees South Carolina courts have consistently held that the degree of success obtained by the prevailing party is a critical factor in determining reasonable attorney’s fees. In cases where a plaintiff prevails on only some claims, courts must evaluate whether the plaintiffs success justifies the fees awarded. Specifically, courts must address two questions: (1) whether the unsuccessful claims are unrelated to the successful claims, and (2) whether the plaintiff achieved a level of success that justifies the hours expended. The most critical factor is the degree of success obtained. Brawley v. Richland Cnty., 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2024),

In this case, the Plaintiff succeeded on only one of four causes of action, while Riviere successfully defended against the remaining three. The trial courts failure to consider this limited success in awarding attorney's fees is inconsistent with South Carolina precedent, which requires courts to assess the proportionality of the fees to the results achieved.

Partial Success Warrants a Reduction in Attorney's Fees

South Carolina law recognizes that when a party prevails only partially, the award of attorney's fees should reflect the limited success. Courts have emphasized that the time and labor devoted to unsuccessful claims should not, in equity, be charged against the opposing party who prevailed on those issues. In such cases, only in rare instances should the fee approach or exceed the verdict amount. Prevatte v. Asbury Arms, 302 S.C. 413.

Here, the Plaintiffs limited success on one claim does not justify an award of attorney's fees that fails to account for Rivieres successful defense against the majority of the claims. The trial court's failure to reduce the fees accordingly constitutes an abuse of discretion.

The Need for Allocation of Fees

When multiple causes of action are involved, and only some are successful, South Carolina courts require an allocation of attorney's fees unless the claims are so intertwined that separating them is impractical. The party seeking fees must produce an itemized affidavit of fees related to the successful statutory claim, and the opposing

party bears the burden of showing which fees are unrelated. Taylor v. Nix, 307 S.C. 551; Austin v. Stokes-Craven Holding Corp., 387 S.C. 22.

In this case, the trial court did not allocate fees to reflect the Plaintiffs limited success. Without such an allocation, the award of attorney's fees is inherently flawed and warrants reversal.

Reversible Error for Failure to Consider Beneficial Results

South Carolina courts have held that an award of attorney's fees must be reversed when the substantive results achieved by counsel are reversed or when the trial court fails to properly consider the beneficial results obtained Callawassie Island Members Club, Inc. v. Martin, 437 S.C. 148. The trial courts failure to consider Rivières successful defense against three claims undermines the validity of the award and constitutes reversible error.

CONCLUSION

The trial courts failure to consider Josee Rivières successful defense against three of four causes of action in awarding attorney's fees to the Plaintiff is reversible error under South Carolina law. The degree of success obtained is a critical factor in determining reasonable attorney's fees, and the trial courts omission of this factor constitutes an abuse of discretion. This Court should reverse the award of attorney's fees

THE COURT ERRED BY COMMITTING MULTIPLE ERRORS THE CUMMULATIVE EFFECT OF WHICH DEPRIVED JOSEE RIVIERE OF A FAIR TRIAL AND RESULTED IN AN EXCESSIVE VERDICT

Under South Carolina law, a verdict that is so grossly excessive as to shock the conscience of the court and indicate it was the result of passion, prejudice, or other improper considerations must be set aside. Cock-N-Bull Steak House v. Generali Ins. Co., 321 S.C. 1, South Carolina Farm Bur. Mut. Ins. Co. v. Love Chevrolet, Inc., 324 S.C. 149. Furthermore, the cumulative error doctrine provides relief when the combined effect of multiple errors deprives a party of a fair trial. State v. Johnson, 334 S.C. 78, State v. Daise, 421 S.C. 442. The appellant respectfully submits that the verdict in this case meets these criteria and warrants a new trial absolute.

I. The Cumulative Effect of Errors Deprived the Appellant of a Fair Trial

The cumulative error doctrine in South Carolina allows for reversal when a combination of errors, though individually insufficient, collectively prevents a party from receiving a fair trial and affects the trial's outcome. State v. Beekman, 405 S.C. 225, State v. Daise, 421 S.C. 442. In State v. Beekman, the court held that an appellant must demonstrate not only the existence of errors but also that these errors adversely affected their right to a fair trial State v. Gleaton, 444 S.C. 394. While the doctrine is more commonly applied in criminal cases, its principles are equally relevant in civil cases where the fairness of the trial is compromised.

Although South Carolina courts have not frequently reversed civil verdicts based on cumulative errors, the principle remains valid. In State v. Freeman, the court recognized that the cumulative effect of errors could warrant a new trial, even if no

single error independently justifies reversal Wells v. Halyard, 341 S.C. 234. Here, the appellant asserts that the trial court's errors, when viewed collectively, created an environment of prejudice that influenced the jury's decision-making process, resulting in an excessive verdict.

II. The Verdict is Grossly Excessive and Shocks the Conscience of the Court

South Carolina law provides that a verdict must be set aside if it is so grossly excessive that it shocks the conscience of the court and clearly indicates it was the result of caprice, passion, prejudice, or other improper motives. Green v. Fritz, 356 S.C. 566, Evans v. Taylor Made Sandwich Co., 337 S.C. 95. In Caldwell v. K-Mart Corp., the court emphasized that such a verdict is inherently vicious and cannot stand Keene v. CNA Holdings, LLC, 426 S.C. 357. Similarly, in Knoke v. South Carolina Department of Parks, Recreation & Tourism, the court held that a new trial absolute is warranted when the verdict is grossly excessive and clearly influenced by improper considerations Murray v. Bank of Am., N.A., 354 S.C. 337, Evans v. Taylor Made Sandwich Co., 337 S.C. 95, .

The jury's determination of damages is entitled to substantial deference; however, this deference is not absolute. In Riley v. Ford Motor Co., the court distinguished between verdicts that are merely liberal and those that are so disproportionate to the injuries as to indicate improper influences Nestler v. Fields, 426S.C. 34. The latter requires the court to intervene and set aside the verdict. Here, the appellant contends that the verdict is not only excessive but also shockingly disproportionate to the evidence presented, demonstrating that the jury was influenced by passion or prejudice. Small v. Springs Industries, Inc., 292 S.C. 481, Roche v. Young Bros., 332 S.C. 75.

III. The Verdict Does Not Bear a Reasonable Relationship to the Evidence

A verdict must bear a reasonable relationship to the character and extent of the injuries sustained. Smoak v. Seaboard Coast Line R.R. Co., 259 S.C. 632, Baughman v. South Carolina Ins. Co., 249 S.C. 106. In Watson v. Wilkinson Trucking Co., the court held that a verdict supported by a rational view of the evidence and reasonably related to the injuries is not excessive Keene v. CNA Holdings, LLC, 426 S.C. 357. However, when the amount awarded is so disproportionate to the injuries as to indicate it was not based on reason or evidence, the verdict must be set aside. Small v. Springs Industries, Inc., 292 S.C. 481, Curtis v. Blake, 392 S.C. 494. The appellant asserts that the verdict in this case fails to meet this standard and reflects the jury's improper motivations rather than a fair assessment of the evidence.

CONCLUSION

The cumulative effect of the court's errors during trial deprived the appellant of a fair trial and resulted in a grossly excessive verdict. The verdict shocks the conscience of the court and clearly indicates it was the result of passion, prejudice, or other improper considerations. Evans v. Taylor Made Sandwich Co., 337 S.C. 95, Murray v. Bank of Am., N.A., 354 S.C. 337. Under South Carolina law, the trial court and appellate court have a duty to set aside such a verdict and grant a new trial absolute.

Respectfully Submitted

s/ John W. Harte
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