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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Milton G. Kimpson, Circuit Court Judge

Appellate Case No. 2025-001220

Lower Court Case No. 2022-CP-40-04419

Ansel Jamahl Postell ....Respondent-Appellant,

v.

Campus Advantage, Inc. and EMRES II South Carolina, LLC
d/b/a The Rowan .... Appellants-Respondents.

INITIAL RESPONDENTS' BRIEF OF APPELLANTS-RESPONDENTS CAMPUS ADVANTAGE, INC. AND EMRES II SOUTH CAROLINA, LLC D/B/A THE ROWAN

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STATEMENT OF THE CASE

This appeal arises out of an excessive and unwarranted jury verdict for Respondent-Appellant Ansel Jamahl Postell ("Postell") against Appellants-Respondents Campus Advantage, Inc. and EMRES II South Carolina, LLC d/b/a The Rowan (collectively, "Defendants")[1] based on the disposal of Postell's personal property after his apartment unit was inadvertently listed as vacant during the yearly turnover of apartment units. Though Postell had renewed his lease for the upcoming term, his unit was emptied during the turnover, amounting to approximately $27,500.00 in loss of personal property. Somehow, $27,500.00 turned into a total judgment amount of $931,850.71.

Postell filed this lawsuit on August 26, 2022, alleging claims for unlawful ouster, conversion of chattels, a violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), breach of contract, and negligence. *See* Compl. Defendants answered the Complaint on September 28, 2022. *See* Defs.' Ans.

Ultimately, the case proceeded to a four-day jury trial on September 16, 17, 18, and 19, 2024, in Richland County, South Carolina in front of the Honorable Milton G. Kimpson. *See generally* Trial Tr. After the trial judge granted directed verdict for Defendants on Postell's claim of unlawful ouster, the jury returned a verdict in Postell's favor on his conversion of chattels, SCUTPA, breach of contract, and negligence claims. *See* Jury Verdict. Despite offering evidence of only $27,500.00 in economic damages, the jury awarded Postell

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[1] Emres II South Carolina, LLC d/b/a The Rowan ("The Rowan") was the property owner and landlord of the apartment complex known as The Rowan at 1051 Southern Drive, Columbia, South Carolina. Campus Advantage was the property management company for The Rowan. The Rowan and Campus Advantage will be referred to as "Defendants" throughout the briefing on their appeal and Postell's cross-appeal.

$230,000.00 in compensatory damages and $462,500.24 in punitive damages—nearly the exact number Postell's counsel blackboarded during his closing argument. *Id.*

On September 30, 2024, Postell filed a motion for treble damages, attorney's fees, and costs under SCUTPA. *See* Pl.'s Post Trial Mot. On October 10, 2024, Defendants opposed Postell's post-trial motion. *See* Defs.' Resp. in Opp. Without a hearing, the trial court issued a written order eight months later on May 20, 2025, granting in part Postell's motion for treble damages, attorney's fees, and costs under SCUTPA, trebling only the ascertainable loss of money or property Postell allegedly suffered—$27,500, which amounted to a total of $82,500.00 in treble damages—and deferring ruling on an award of attorney's fees until after further briefing and argument. *See* Post-Trial Order at 14–17.

Postell filed a motion to reconsider the treble damages award on May 30, 2025, *see* Pl.'s Mot. to Recons., and a memorandum in support of his request for attorney's fees and costs on June 2, 2025, *see* Pl.'s Memo. in Supp. The trial court held a hearing on Postell's outstanding motions on June 2, 2025. And, on June 10, 2025, the trial court granted in part Postell's motion for attorney's fees, awarding him thirty-three percent of the SCUTPA treble damages, which totaled $27,225.00. *See* Final J. Order. Postell then moved to reconsider the trial court's ruling on attorney's fees. *See* Pl.'s 2nd Mot. to Recons. The trial court denied both of Postell's motions to reconsider. *See* Order Den. Mot. to Recons.

On June 25, 2025, Postell cross-appealed the orders relating to treble damages, attorney's fees, and costs under SCUTPA. *See* Postell Notice of Appeal.

STANDARD OF REVIEW

Whether to award or deny attorney's fees, including those under SCUTPA, is to be reviewed for an abuse of discretion. *See Carolina Real Est. Holdings, LLC v. Brilin Elec., LLC*,

446 S.C. 376, 385, 919 S.E.2d 918, 922–23 (Ct. App. 2025) ("The decision to award or deny attorney fees and costs will not be disturbed on appeal absent an abuse of discretion." (quoting *Maybank v. BB&T Corp.*, 416 S.C. 541, 579–580, 787 S.E.2d 498, 518 (2016)). Though it is uncertain what standard applies to reviewing a trial court's decision on the *amount* of damages to be trebled under SCUTPA, it appears—Postell agrees—the Court also considers this decision for an abuse of discretion. *Cf. Rice v. Multimedia, Inc.*, 318 S.C. 95, 99, 456 S.E.2d 381, 384 (1995); *Zinn v. CFI Sales & Mktg.*, 415 S.C. 93, 114, 780 S.E.2d 611, 622 (Ct. App. 2015).

ARGUMENT

Postell argues the trial court erred in limiting the amount trebled and the amount of attorney's fees awarded to only the actual economic damages supported by the evidence. Postell is wrong. As an initial matter, and as explained in more detail in Defendants-Appellants' Initial Brief, Postell was not entitled to prevail under SCUTPA as a matter of law. Moreover, even if he were, he was not entitled to treble damages or attorney's fees. Those arguments are expressly incorporated herein. Accordingly, Postell's cross-appeal is moot.

Even so, should the Court affirm the trial court's decision to allow Postell's claim under SCUTPA and to award treble damages and attorney's fees at all, the trial court did not abuse its discretion in limiting the amount to be trebled and the amount of attorney's fees awarded.

I. The trial court correctly limited the amount of damages to be trebled.

The trial court was correct in limiting the amount of damages to be trebled for at least two reasons. *First*, SCUTPA permits trebling of only "ascertainable loss of money or property." As the only "ascertainable loss of money or property" demonstrated in this case was Postell's estimated loss of personal property in the amount of $27,500.00, the trial court properly found that amount was the most it could treble. *Second*, even if the trial court could have trebled other

damages under SCUTPA, Postell failed to demonstrate Defendants' alleged unfair and deceptive acts proximately caused those alleged damages.

A. SCUTPA permits the trebling of only "ascertainable loss of money or property."

Section 39-5-140(a) provides in part that:

> [a]ny person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages. If the court finds that the…practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained.

S.C. Code Ann. § 39-5-140(a). Thus, as the trial court noted, the language of the statute specifies the actual damages that may be trebled as those damages identified as an "ascertainable loss of money or property."

Here, to the extent Postell demonstrated a willful or knowing violation of SCUTPA, which Defendants deny, the only "ascertainable loss of money or property" was the estimated loss of personal property valued at $27,500.00. *See* Defs.' Ex. 15. While it is wholly unclear how the jury concluded Postell was entitled to an additional $202,500.00 in damages, at best, those damages are based on extremely scant evidence of noneconomic damages, like emotional distress. *See* Defendants-Appellants' Br. at 24–27.

Postell argues that the term "actual damages" is not defined by the earlier requirement of suffering "ascertainable loss of money or property." Rather, he argues the use of the term "actual damages" means any and all damages can be trebled, regardless of whether they are sufficient to establish a claim under SCUTPA. *See* Appellant Postell's Initial Br. at 7–9. Accordingly, Postell contends that even though emotional distress damages are not (and cannot

be) damages identified as an "ascertainable loss of money or property," they may be trebled. Tellingly, Postell fails to cite any legal authority to support this proposition. None does.

In fact, case law counsels against Postell's argument. In *Taylor v. Medenica*, the court considered an appeal from a jury verdict that the trial court reduced from $1,000,000.00 of actual damages under SCUTPA to $543,614.19. *See* 324 S.C. 200, 206, 479 S.E.2d 35, 38 (1996). The trial court found that reduction represented actual medical bills and family expenses related to the plaintiff's treatment. *Id.* On appeal, the supreme court found the deceptive practices under SCUTPA "did not cause [the plaintiff] to incur $543,614.10 in *ascertainable losses*." *Id.* at 220, 479 S.E.2d at 45 (emphasis added). The court then reduced the award even further, finding the plaintiff "incurred *ascertainable losses* of $36,242 as a result of [the defendant's] deceptive practices." *Id.* (emphasis added). Thus, a plaintiff is limited to recovery of only "ascertainable loss of money or property" under SCUTPA.

This means that noneconomic damages—like emotional distress—that cannot be ascertained are not recoverable under SCUTPA. Other cases are in accord. *See Howell v. Oracle Am. Inc.*, No. 6:24-cv-05560-JDA-WSB, 2025 U.S. Dist. LEXIS 179349, at *17–18 (D.S.C. 2025) (finding emotional distress and anxiety, risk of exploitation, increased risk of theft or fraud, and lost time were not "ascertainable" losses the plaintiff could recover under SCUTPA); *Green v. Momentum Motor Grp., LLC*, No. 0:17-cv-01449-CMC, 2017 U.S. Dist. LEXIS 192148, at *20–21 (D.S.C 2017) (after noting that it was "[u]nable to locate any South Carolina decision allowing emotional distress damages for a SCUTPA violation," finding SCUPTA's "threshold requirement for an 'ascertainable loss of money or property'" meant emotional distress damages were not recoverable under SCUTPA). Nor can they be trebled.

Contrary to Postell's argument, *Payne v. Holiday Towers, Inc.*, supports the trial court's decision to treble only Postell's loss of personal property. *See* 283 S.C. 210, 321 S.E.2d 179 (Ct. App. 1984). In *Payne*, this Court found that "actual damages" "means common law damages, *or the difference in value between that with which the plaintiff parted and that which he received*." *Id.* at 216, 321 S.E.2d at 182 (emphasis added). Here, it is undisputed that, at most, Postell "parted" with only $27,500.00 in personal property. Ascertainable actual damages must be limited to that sum. So must any treble damages award.

Accordingly, the only damages a court is permitted to treble are the "ascertainable loss of money or property" that are necessary to state a claim under SCUTPA. Here, at most, that would be $27,500.00, which is what the trial court trebled. *See* Post-Trial Order at 16. If Postell is permitted to treble any damages, which Defendants dispute, the trial court properly limited the damages to be trebled to this amount.

B. Defendants did not proximately cause any damages beyond the mere loss of personal property.

Even assuming damages beyond an "ascertainable loss of money or property" could be trebled, any damages to be trebled must have been proximately caused by the allegedly willful or knowing unfair or deceptive trade act or practice. *See Collins Holding Corp. v. Defibaugh*, 373 S.C. 446, 451, 646 S.E.2d 147, 150 (Ct. App. 2007) ("The UTPA only creates causes of action in those suffering a loss *as a result of* a deceptive act." (emphasis in original)); *Carolina Real Est. Holdings*, 446 S.C. at 387, 919 S.E.2d at 924 (the failure to offer any evidence that damages suffered were "a loss as a result" of the allegedly fraudulent acts, precluded a finding of actual damages, and thus, a claim under SCUTPA).

As developed more fully in Defendants-Appellants' Brief, it is entirely unclear what Postell contends was the willful or knowing unfair or deceptive act or practice. *See* Defendants-

Appellants' Initial Br. at 10–13 & 17–19. Even if the trial court were correct that the removal of Postell's personal property was a violation of SCUTPA, which Defendants deny, the only damages arising from that conduct was property loss in the amount of $27,500.00. This is the amount the trial court trebled. Postell presented no other sufficient evidence of any additional damages allegedly caused by the mere removal of his personal property.

Postell based all his damages beyond the estimated $27,500.00 in lost personal property on unsubstantiated assertions of counseling. *See* Tr. at 118:9–19 ("Q. How did this make you feel? A. Honestly, I don't really know. I wouldn't say I'm the most emotional person in the world, but, like, it was the start of my junior year of college. It was something I was looking forward to in some sense. Q. Did this derail that? A. Yes. Q. Did you have to seek any mental health counseling? A. Yes. Q. Is that behind you now? A. Yes."). Postell did not introduce a single medical bill or expert testimony connecting the disposal of personal property to any emotional damages, let alone to $202,500.00 worth of emotional damages. In fact, Postell admitted that he thought the loss of his property was a misunderstanding. *See* Tr. at 111:4–13.

Moreover, immediately after Postell notified them of the issue, staff at The Rowan accompanied Postell to Target to purchase hundreds of dollars in essential items—bedding, linens, toiletries, among other items—to start replacing or compensating him for his lost property. *See* Tr. at 105:24–106:1, 112:20–25; Defs.' Ex. 6. Further, that same night, the employee who improperly kept some of Postell's property, returned his property to him. *See* Tr. at 230:23–231:10; *see also* Pl.'s Exs. 13 & 14, Defs.'s Ex. 17.

Considering Postell's evidence of damages caused by any alleged willful or knowing unfair or deceptive act or practice, at most, consisted of $27,500.00, the trial court did not abuse its discretion in limiting the amount trebled to $27,500.00, totaling $82,500.00.

II. The trial court correctly limited the attorney's fees awarded.

Postell concedes that, if the trial court was correct in the amount it trebled, "the result reached on the attorney's fee award would have been correct." *See* Appellant Postell's Br. at 12. As such, if the Court determines the trial court's decision on what could be trebled (if any amount could have been trebled) was correct, it is undisputed the amount awarded in attorney's fees was also correct.

At any rate, section 39-5-140(a) provides, in relevant part, that "[u]pon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs." S.C. Code Ann. § 39-5-140(a). The trial court correctly noted "this article" means that an award of attorney's fees must be connected to the SCUTPA claim. *See* Final J. Order. at 2–3; *see also Maybank*, 416 S.C. at 580, 787 S.E.2d at 518 (affirming the amount of attorney's fees awarded after noting that, even though all the claims "shared the same common facts and required combined efforts throughout the litigation process," a reduction of fees "accounts for a distinction in the claims and the time allotted to defend claims unrelated to the [SC]UTPA"); *Taylor by Taylor v. Medenica*, 331 S.C. 575, 580, 503 S.E.2d 458, 461 (continuously explaining the award of attorney's fees as related to "the $ 108,726 recovered under the [SC]UTPA").

Postell incorrectly suggests the trial court was not permitted to reduce the award of reasonable attorney's fees to account for the assertion of multiple claims under *Taylor v. Nix*, 307 S.C. 551, 416 S.E.2d 619 (1992), *Taylor by Taylor*, 331 S.C. 575, 503 S.E.2d 458, and possibly other cases. However, *Maybank*—a supreme court decision under SCUTPA far more recent than *Nix* and *Taylor by Taylor* and the other cases Postell cites—makes clear that a reduction due to the presence of other claims is not only permissible, but warranted. *See* 416

S.C. at 580, 787 S.E.2d at 518 (affirming "[t]he trial court's reduction of fees by twenty percent accounts for a distinction in the claims and the time allotted to defend claims unrelated to the [SC]UTPA"); *see also Haley Nursery Co. v. Forrest*, 298 S.C. 520, 524, 381 S.E.2d 906, 909 (1989) (affirming under SCUTPA the trial court's award of "less than half" of the "requested amount, reflecting a reduction for time allotted to defense of the collection action").

Here, to the extent attorney's fees may be awarded to begin with, the trial court considered the factors identified in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997), and correctly determined the "reasonable" amount of attorney's fees to be awarded, which were the "reasonable" fees incurred to demonstrate an alleged violation of SCUTPA. *See* Final J. Order at 2–4. Postell seems to agree. *See* Appellant Postell's Br. at 15 ("The trial judge evaluated the six factors and found Postell's request for attorney's fees of one third of the amount recovered under S.C. Code Ann. § 39-5-140(a) to be reasonable after assessment of those six factors.").

Yet, Postell points to no facts, evidence, or legal authority demonstrating the trial court's determination—based on what he concedes is the appropriate analysis—was an impermissible abuse of discretion. *See Taylor by Taylor*, 331 S.C. at 580, 503 S.E.2d at 461 ("On appeal, an award for attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor [in *Jackson v. Speed.*]"); *Charleston Lumber Co. v. Miller Hous. Corp.*, 318 S.C. 471, 483, 458 S.E.2d 431, 438 (Ct. App. 1995) (when reasonable attorney fees are allowed "without specifying a rate or amount, the amount of the fees to be awarded is left to the discretion of the court"). No abuse of discretion occurred, and the Court should reject Postell's invitation to remand for a new hearing on attorney's fees or modify the attorney's fee award itself by increasing the award to cover damages not even attributable to the SCUTPA claim.

CONCLUSION

For the reasons raised in Defendants-Appellants Initial Brief, the Court should reverse the trial court's grant of treble damages and attorney's fees in its entirety. If, however, the Court finds treble damages, reasonable attorney's fees, and costs proper under SCUTPA, the Court should affirm the amounts the trial court's award.

Respectfully submitted,

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