THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Judge

Appellate Case No. 2025-001220

Ansel Jamahl Postell,..……...…….Respondent-Appellant,

v.

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

INITIAL RESPONDENT'S BRIEF OF RESPONDENT-APPELLANT ANSEL JAMAHL POSTELL

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STATEMENT OF THE CASE

Respondent-Appellant Ansell Jamahl Postell brought suit against Appellants-Respondents Campus Advantage, Inc. and EMRES II South Carolina, LLC d/b/a The Rowan ("the landlords"), alleging causes of action for ouster, conversion, breach of contract, negligence, and violations of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.*, all arising out of the destruction or loss of Postell's personal property as a result of the landlords' unauthorized removal of it from the apartment Postell rented from them. (R. pp. ___; order filed May 20, 2025, p. 1; summons and complaint.) The case was tried.

At the close of the plaintiff's case, the landlords moved for a directed verdict solely as to the unfair trade practices cause of action. (R. pp. ___; transcript of trial p. 179 ln. 25 through p. 180 ln. 4.) The landlords advanced two grounds for that motion: 1) that Postell had not identified exactly what unfair or deceptive act the landlords committed (and that mere negligence would not satisfy the element of proving an unfair trade practice occurred) (R. pp. ___; transcript of trial pp. 179-84) and 2) that the landlords' offending employees were not acting in the course and scope of their employment and that, thus, the landlords could not be held liable for their acts or omissions. (R. pp. ___; transcript of trial p. 184 ln. 4-14, p. 189 ln. 6-12, p. 197 ln. 8 through p. 198 ln. 14.)

At the close of all the evidence, the landlords made another directed verdict motion, seeking to broaden their motion to include other claims. (R. pp. ___; transcript of trial p. 317 ln. 16 through p. 343 ln. 20.)

The trial court granted the expanded motion for directed verdict on Postell's ouster claim but otherwise denied it. (R. pp. ___; transcript of trial p. 343 ln. 13-14, p. 353 ;ln. 10-11.) The landlords' sole request with regard to the verdict form to be submitted to the jurors

was that, if the jurors found a violation of the Unfair Trade Practices Act, they "be instructed to, on the verdict form, to articulate in writing the specific act they find was a violation of the law." (R. pp. ___; transcript of trial p. 359 ln. 24 through p. 360 ln. 9.) Other than that, the landlords voiced no objection to the verdict form, simply responding, when asked if there were such an objection, "I don't know" and that the landlords' counsel did not know how to address the issue of punitive damages. (R. pp. ___; transcript of trial p. 381 ln. 6-18.)

The jury returned a verdict for Postell on all causes of action submitted to the jury for factfinding. (R. pp. ___; order filed May 20, 2025, p. 1; verdict form.) While the verdict form provided for the jury to indicate its specific liability findings on each cause of action, it called for a general verdict on Postell's actual damages (i.e., not segregated by cause of action) and a general verdict for Postell's punitive damages. (R. pp. ___; verdict form.) The jury found for Postell on all causes of action that were submitted to the jury, and the jury returned a verdict of $230,000 actual damages and $462,500.24 in punitive damages. (R. pp. ___; verdict form.)

The parties each made post-trial motions. (R. pp. ___; plaintiff's post-trial motions for treble damages, etc.; defendants' post-trial motions.) The landlords' motions included one for judgment notwithstanding the verdict, also called a JNOV motion, as to the unfair trade practices cause of action and the breach of contract cause of action, for the trial court to reject the punitive damages award, for a new trial absolute as the result of the amount of the verdict, and for a new trial *nisi remittitur*. (R. pp. ___; defendants' post-trial motions.)

The trial court denied the landlords' post-trial motions, and this appeal by the landlords followed. (R. pp. ___; order filed May 20, 2025.)

STANDARD OF REVIEW

> When reviewing the trial court's ruling on a motion for a directed verdict or JNOV, this Court applies the same standard

> as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party. The trial court must deny a motion for a directed verdict or JNOV if the evidence yields more than one reasonable inference or its inference is in doubt. Moreover, a motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict. In deciding such motions, 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.

Maybank v. BB&T Corp., 416 S.C. 541, 568-69, 787 S.E.2d 498, 512 (2016) (citations and citation-related punctuation omitted).

"The denial of a motion for a new trial absolute or a new trial nisi for excessiveness of the verdict is a matter within the sound discretion of the trial judge." Byrd v. McLeod Physician Assocs. II, 427 S.C. 407, 413, 831 S.E.2d 152, 154 (Ct. App. 2019). A trial court's "decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence, or the conclusions reached are controlled by error of law." Abel v. Lack's Beach Serv., 446 S.C. 434, 462–63, 920 S.E.2d 283, 298 (Ct. App. 2025).

"If there is a claim that an award of punitive damages violates due process, an appellate court examines the trial court's constitutional review *de novo*." Sea Island Food Grp., LLC v. Yaschik Dev. Co., 433 S.C. 278, 289, 857 S.E.2d 902, 907 (Ct. App. 2021).

ARGUMENT[1]

I. The majority of the landlords' arguments are not preserved for review.

The landlords make some interesting (though incorrect) arguments to this court, but a basic principle of appellate review – issue preservation – precludes consideration of most of them.

[1] In addition, to the extent Postell's briefs in his cross-appeal speak to the issues here, they and their arguments are incorporated herein by reference.

It is well settled that a party cannot prevail on appeal with an argument not preserved for review. E.g., Hatfield v. Hatfield, 327 S.C. 360, 367, 489 S.E.2d 212, 216 (Ct. App. 1997). The bulk of the landlords' arguments in this appeal are not preserved for review and, thus, are not susceptible of resulting in a reversal. E.g., id.

Let us first take the landlords' JNOV motion. To be eligible for the possibility of reversal by this court on the denial of a motion for judgment notwithstanding the verdict, the appealing party has to have made substantively the same motion, on the same grounds, as a directed verdict motion at the close of his opponent's case *and* at the close of his own case (*and* at the close of any rebuttal case). Rule 50, SCRCP; Stephens v. CSX Transp., Inc., 415 S.C. 182, 781 S.E.2d 534 (2015); RFT Mgmt. Co., L.L.C. v. Tinsley & Adams, L.L.P., 399 S.C. 322, 732 S.E.2d 166 (2012); Benton & Rhodes, Inc. v, Boden, 310 S.C. 400, 426 S.E.2d 823 (Ct. App. 1993). South Carolina courts strictly apply the rule that a judgment notwithstanding the verdict may not be granted unless the moving party moved for a directed verdict at the close of the opponent's case and at the close of all the evidence. See, e.g., Hendrix v. Eastern Distribution, Inc., 316 S.C. 34, 446 S.E.2d 440 (Ct. App. 1994), *aff'd in part, vacated in part*, 320 S.C. 218, 464 S.E.2d 112 (1995). A motion for judgment notwithstanding the verdict is a renewal of a directed verdict motion; as such, it cannot raise grounds beyond those that were raised in the directed verdict motion. Stroud v. Elliott, 316 S.C. 242, 449 S.E.2d 261 (Ct. App. 1994); Roland v. Palmetto Hills, 308 S.C. 283, 417 S.E.2d 626 (Ct. App. 1992).

At the close of the plaintiff's case, the landlords moved for a directed verdict only as to the unfair trade practices cause of action; indeed, the landlords expressly limited their motion only to that cause of action. (R. pp. ___; transcript of trial p. 179 ln. 25 through p. 180 ln. 4.)

The landlords advanced two grounds for that motion: failure to identify exactly what unfair or deceptive act the landlords committed, on the theory that negligence alone would not satisfy the element of proving an unfair trade practice occurred (R. pp. ___; transcript of trial pp. 179-84), and 2) that the landlords' employees were not acting in the course and scope of their employment, so the landlords could not be held liable for the employees' acts or omissions. (R. pp. ___; transcript of trial p. 184 ln. 4-14, p. 189 ln. 6-12, p. 197 ln. 8 through p. 198 ln. 14.)

Those are the only arguments about the decision not to grant a judgment notwithstanding the verdict that could *possibly* be preserved for this court to review. Stephens, 415 S.C. 182; RFT Mgmt., 399 S.C. 322; Benton & Rhodes, 310 S.C. 400. Arguments concerning the breach of contract cause of action are not eligible for review by this court; that verdict must stand. Stephens, 415 S.C. 182; RFT Mgmt., 399 S.C. 322; Benton & Rhodes, 310 S.C. 400. The landlords' arguments about the unfair trade practices cause of action are similarly unpreserved, except for the contentions that no unfair trade practice was identified by Postell and that the landlords cannot be liable because their employees were acting outside the scope of their employment. At the close of the plaintiff's case, the landlords did not seek a directed verdict about whether the acts subject of the unfair trade practices claim were committed willfully or knowingly. (R. pp. ____; transcript of trial pp. 179-98.) They did not at that required stage move for a directed verdict on the basis that there was no evidence of adverse impact on the public interest. (R. pp. ____; transcript of trial pp. 179-98.) They did not make at that stage a motion relating to the real or imagined prospect of double recovery. (R. pp. ____; transcript of trial pp. 179-98.)

Nor did the landlords' new trial motion mention anything about the specter of double recovery or the idea that punitive damages and treble damages may not both be had. (R. pp. ____; defendants' post-trial motions.) The first time that argument has been advanced to any court in this case is to this court, on appeal. It is well settled that an appellant cannot succeed on an argument on which the trial court was never given the chance to rule. E.g., Hatfield, 327 S.C. at 367.

The landlords argue in great detail about what they see as the problems with the jury's punitive damages verdict, but, again, these arguments find themselves before a court for the first time only now, in an appellant's brief. The entirety of the landlords' argument below about punitive damages was as follows:

> Punitive damages are warranted *only* when the defendant's conduct is willful, wanton, or in reckless disregard of the rights of others. See Cartee v. Lesley, 290 S.C. 333, 337, 350 S.E.2d 388, 390 (1986). The trial court must conduct a post-trial review of any punitive damages award to determine whether the award violates the defendant's right to due process. In such determination, the court considers eight factors:
>
> > (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) as noted in Haslip, "other factors" deemed appropriate.
>
> Gamble v. Stevenson, 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991) (citing Pac. Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 20 (1991)). Based on these eight factors, no evidence justifies an award of punitive damages in this case, much less a punitive damages award of $462,500.24. For these reasons, the Court should award a New Trial Absolute.

(R. pp. ___; defendants' post-trial motions pp. 12-13.)

The arguments about punitive damages the landlords now make over several pages are simply absent from the record below. (R. pp. ___; defendants' post-trial motions pp. 12-13.) they are not preserved for review. E.g., Hatfield, 327 S.C. at 367.

Most of what the landlords now argue to this court is not preserved for review. To grant reversal on any of the unpreserved arguments would be error. E.g., id. The appellants have failed to meet their burden to preserve them for review.

II. The landlords are not allowed to parse out the components of the jury's actual damages verdict.

Without objection by the landlords, the case was given to the jury with a verdict form that does not provide for separate actual damages findings per cause of action. (R. pp. ___; verdict form; transcript of trial p. 359 ln. 24 through p. 360 ln. 9; p. 381 ln. 6-18.)

The jury therefore rendered a general damages verdict that distinguishes only between actual and punitive damages and does not render separate awards for each of Plaintiffs' several causes of action. "Where at least one issue supports a jury's general verdict involving two or more issues, the verdict will not be reversed." Anderson v. S.C. Dept. of Pub, Transp., 317 S.C. 280, 454 S.E.2d 353, 354-55 (Ct. App. 1995), *aff'd*, 322 S.C. 417, 472 S.E.2d 417 (1996). As discussed above, except for the two specific arguments about the unfair trade practices cause of action that the landlords did preserve for review, there are no arguments actually put before this court about the verdict or its amount. The jury rendered its actual damages verdict on four causes of action. (R. pp. ___; verdict form.) As to two of them – conversion and negligence – the landlords do not even make any argument on appeal. (R. pp. ___; verdict form.)

The law of this state does not permit the jury's actual damages verdict, rendered on four causes of action, to be reversed where it embraced causes of action that are either not subject of preserved arguments to this court or not subject of any appeal at all. Id.

Additionally, the landlords are not in a position to contend, as they do throughout their brief, that the actual damages caused by their unfair trade practices are only $27,500. The jury has determined what those damages are, and the jury determined that they are $230,000. (R. pp. ___; verdict form.) The court must give substantial deference to the jury's determination of damages. Rush v. Blanchard, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993) (citing Brabham v. S. Asphalt Haulers, Inc., 223 S.C. 421, 430, 76 S.E.2d 301, 306 (1953)); Harrison v. Bevilacqua, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003). This requirement of deference arises from the South Carolina Constitution, which provides that "the right of trial by jury shall be preserved inviolate." S.C. Const. art. I, § 14. Every party to a civil jury trial "is entitled to the constitutional privilege of the fair judgment of a jury" and a court must "not interfere with the verdict of a jury simply because it is greater [or less] than its own estimate." Brabham, 223 S.C. at 430.

The landlords ignore the sanctity and finality of the jury's verdict. Our court system does not. See id. The landlords cannot prevail in the face of the law. See id.

III. There is evidence of an act or acts in trade or commerce that were unfair and deceptive.

To prevail, a claimant under the Unfair Trade Practices Act must show: (1) the other party violated S.C. Code Ann. § 39-5-20 by engaging in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the claimant suffered damages as a result. Wright v. Craft, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006). Evidence supporting each element was adduced at the trial of this case.

The Unfair Trade Practices Act specifically defines by statute that, under the Act, "'[t]rade' and 'commerce' shall include the . . . distribution of *any services* and any property, tangible or intangible, . . . and *any* other article, commodity or *thing of value* wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this State." S.C. Code Ann. § 39-5-10(b) (emphasis added). "The statute's use of the words 'shall include' clearly suggests the legislature did not intend to limit 'trade' and 'commerce' to only the listed transactions." Baker v. Chavis, 306 S.C. 203, 208-09, 410 S.E.2d 600, 603 (Ct. App. 1991). "[T]he UTPA 'should be given a liberal construction.'" McTeer v. Provident Life and Accident Ins., 712 F. Supp. 512, 515 (D.S.C. 1989) (quoting Connolly v. People's Life Ins. Co., 294 S.C. 355, 359, 364 S.E.2d 475, 477 (Ct. App. 1988)).

The Unfair Trade Practices Act applies to lease situations. Indeed, this court's language quoted below appears to dispose of any argument that an Unfair Trade Practices Act violation could not have occurred here:

> The landlords also assert the UTPA does not apply to the breach of a private contract such as the one the Burbachs had with IMC. They argue the UTPA does not apply because the Burbachs' private relationship with IMC did not create a public interest. We disagree.
>
> Residential leases are things of value which directly affect the citizens of this state. The fact that our legislature has regulated the landlord-tenant relationship by enacting the SCRLTA supports this conclusion. See S.C. Code Ann. §§ 27–40–10 to 27–40–940 (1991 & Supp. 1996). While landlord-tenant relationships are frequently governed by contract, landlords have certain statutory duties, as do tenants. These duties protect the public interest in that they create a framework that governs landlord-tenant relationships regardless of the private arrangements parties have made between themselves.
>
> Moreover, the conduct of the landlords is capable of repetition. "[U]nfair or deceptive acts or practices in the conduct of trade or commerce have an impact upon the public interest if the acts

> or practices have the potential for repetition." Noack Enterprises, Inc. v. Country Corner Interiors of Hilton Head Island, Inc., 290 S.C. 475, 480, 351 S.E.2d 347, 350–51 (Ct.App.1986), *cert. dismissed,* 294 S.C. 235, 363 S.E.2d 688 (1987).

Burbach v. Investors Mgmt. Corp. Internat'l, 326 S.C. 492, 484 S.E.2d 119 (Ct. App. 1997).

Here, the landlords knew that Postell had a valid lease for his unit but, despite that knowledge, sent their employees to take his things and throw everything other than electronics away. Their procedures were insufficient to prevent something like the trashing of a tenant's property from happening – thus making it capable of repetition – and are what caused it to happen in this case. As the landlords even discuss in their brief, improper trash-outs had happened before, and that is evidence that the landlords' policies and procedures were insufficient to guard against that happening.

The landlords' representations that Postell had a valid lease were deceptive, lulling him into believing his property was safe where he had left it. The very nature of a lease is that it confers on the tenant possession, free from the intrusion of the landlord. "[T]he essential elements of a binding lease agreement were said to be the grant of possession and exclusive use and enjoyment of the property, definite consideration or rent, and a certain term." B-L-S Const. Co., Inc. v. St. Stephen Knitwear, Inc., 276 S.C. 612, 614, 281 S.E.2d 129, 130 (1981). The landlords' actions – entering into a renewal of the lease with Postell and then acting like Postell had no right to possession, entering his rented space, and throwing his things away – were certainly unfair. Those actions were immoral, unethical, and oppressive, see Gentry v. Yonce, 337 S.C. 1, 522 S.E.2d 137 (1999); the landlords, in possession of all the information that showed that they had no right to do what they did, both went back on their word and also

essentially stole Postell's things.[2] The landlords' actions caused Postell damages that include an ascertainable loss of money or property; in addition to the significant mental suffering they caused him, they caused the loss to Postell of his personal property he had lawfully stored in the apartment he was leasing from the landlords.

The landlords' conduct was also willful for purposes of the Unfair Trade Practices Act. The Act, in S.C. Code Ann. § 39-5-140, provides for a private right of action for damages and provides that "[f]or the purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that his conduct was a violation of Section 39-5-20[,]" i.e., an unfair or deceptive act in trade or commerce. The landlords noted to the trial court in their post-trial motion, indeed repeatedly, what the landlords should have known to do instead of what they did. (R. pp. ___; defendants' post-trial motions.)

The landlords' immoral, unethical, and oppressive trade practices, which allowed for repeated improper and unlawful trash-outs of the belongings of paying tenants, also affected people other than Postell. Unfortunately for the public, this conduct was not a one-off but was repeated with other tenants (thus demonstrating its capability of repetition), as discussed throughout the trial. The following excerpt from the cross-examination of the landlords' employee Ashanti Young illustrates this impact on the public interest:

> Q: Let me ask you this . . . do you recall in your time at Campus Advantage there being other instances of the system not being accurate . . . and . . .
>
> A: Correct.

[2] The landlords make much about Postell's testimony on the stand about what he thought was unfair about their actions. Postell himself does not *need* to understand what satisfies which elements of his causes of action. That is what he has a lawyer for. The question is whether evidence of this unfairness exists in the trial record, not whether the natural person who was the plaintiff understood at trial what constitutes it.

> Q: OK. Do you recall other instances of the system not being accurate such that tenants, like Mr. Postell, had their stuff taken or misplaced or otherwise missing?
>
> A: Correct.
>
> Q: That happened while you were at Campus Advantage?
>
> A: Correct.
>
> Q: While you were working for Campus Advantage at the Rowan Apartments?
>
> A: Correct.
>
> Q: And it happened multiple times?
>
> A: Correct.

(R. pp. ___; transcript of trial – Young testimony).

Though the landlords interestingly contend that "correct" is not exactly the same as "yes," it is plain from this testimony that "correct" was an affirmative response to these questions. What happened to Postell had happened before. The question here is whether Postell made the minimum showing to allow this cause of action to go to the jury. He at least met that minimum requirement. "An unfair or deceptive act or practice has an impact upon the public interest if the act or practice has the potential for repetition." Haley Nursery Co. v. Forrest, 298 S.C. 520, 524, 381 S.E.2d 906, 908 (1989). 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). Those are not the only ways to show the potential for repetition, 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).

Postell showed that similar improper trash-outs had happened before and that the landlords had not changed the way they do business in this regard. He made the minimum showing (and more) needed to allow the question of whether the landlords engaged in an unfair trade practice to go to the jury. The trial court committed no error in letting this cause of action go to the jury.

IV. The landlords do not get off the hook just because their employees did the throwing out.

The landlords continue to argue that they did not commit an unfair trade practice because the property destruction was done by an employee acting other than as instructed. As they did in their post-trial motion below, the landlords illustrate their misunderstanding of the law of *respondeat superior*.

Our Supreme Court, in a decision that remains good law on this point since it was rendered in 1871, put it well, as follows:

> It would be a difficult undertaking to adduce a single case where the master was not held bound for the tortious acts of his servant, done in the course of his employment. That it was not authorized, or even if it had been forbidden, does not affect the right of redress against the master by a party injured by the unauthorized or forbidden act, for the consequence to the third party is the same, and is to be attributed to the fact that the master has placed the servant in a position where he may do unauthorized acts. On what principle of fairness could it be contended that either the error or folly of employing an incompetent or careless servant, should bring damage to a stranger, while the master, who put him in a position where he might commit the wrong, should be free from all obligation to respond to the injury? The appointment of such improper person by the master induced the wrong, and if it was committed in the course of his employment, that is, while the relation of master and servant actually existed in the particular service in the discharge of which the servant was engaged, the master is held to answer. He cannot be excused because he did not know of it or disapproved of it, or even had forbidden it, for, notwithstanding his conviction of the impropriety of the act, as

> shown by his forbidding it, he nevertheless was so careless and negligent, in the selection of his agent, as to subject the public to the chance of its infliction.
>
> To confine the liability of the master only to such acts of his servant, in the course of his employment, as he may have authorized, would give to an irresponsible agent a license to commit torts against the persons of those who, by the nature of his employment, must be brought in contact with him, without any reasonable prospect of pecuniary redress, and would materially affect the subornation of the servant so necessary to the maintenance of the superior condition which the master holds in relation to him. When the community deal with a corporation of the character of this defendant, with diversified departments, and various branches of business incident to the general purpose of its organization, "public policy and convenience" require that they should be responsible for the acts of commission or omission by their agents while in the course of their employment.

Redding v. S.C. R. Co., 3 S.C. 1, 6-7 (1871). "The 'course of the employment,' in the sense in which it is used in regard to the duties imposed by the particular service, is not to be understood as restricted and confined to the prescribed duties set apart for the performance of the servant." Id. at 7.

These legal principles have held up since 1871. In 1986, this court observed that

> under the doctrine of *respondeat superior,* the principal is liable in addition to the agent, not by reason of his consent to be liable, but by operation of law. This is most plainly illustrated in those cases where the agent acts against the express instructions of his principal, but within the scope of his employment: the principal is still liable.

S.C. Ins. Co. v. James C. Green & Co., 290 S.C. 171, 348 S.E.2d 617 (Ct. App. 1986).

Here, Carlton, who threw Postell's things away, was authorized by the landlords to take Postell's things out of Postell's apartment at a time when the landlords knew Postell had a right to keep his things in the apartment. Carlton was acting within the course and scope of his employment when he took Postell's property for his own use, because he was employed by the

landlords to take Postell's property out of Postell's possession. It is not at all true, much less clear, that "[t]he evidence, however, leads to only one conclusion: Carlton was acting well outside the scope of employment." (R. pp. ____; Def. Mot. for JNOV or New Trial p. 6.) The only evidence adduced on this point was to the effect that he *was* acting within the course and scope of his employment.

The trial judge committed no error in allowing the unfair trade practices cause of action to go to the jury.

V. The record and the landlords' argument does not reach the high bar needed to reverse the denial of a motion for a new trial absolute.

As dovetails with the briefing in Postell's cross-appeal, Postell points out that the majority of the landlords' argument about ostensibly excessive damages is based on a misreading of the statute that provides for what is recoverable in an unfair trade practices claim. By the words of that statute, what is recoverable are "actual damages" without a further limitation on the type of those damages. S.C. Code Ann. § 39-5-140(a). Postell refers the court to his appellant's brief in his cross-appeal for an in-depth discussion of this, with citations to South Carolina Supreme Court precedent stating that the actual damages recoverable on an unfair trade practices claim include the kinds of actual damages typically recoverable.

A trial court's ruling denying a motion for a new trial with regard to damages, whether a new trial absolute or only *nisi remittitur*, "will not be disturbed on appeal unless its findings are wholly unsupported by the evidence, or the conclusions reached are controlled by error of law." Abel, 446 S.C. at 462–63. Here, on this record, the landlords do not clear this very high bar.

The landlords complain about the jury not giving the right *weight* to estimates of property loss, but they do not complain that there was no evidence of such loss. The landlords

complain about the jury assigning too much *weight* to emotional damage testimony, but what they quote in their own brief shows that there is such evidence in the record. Indeed, there was testimony about the quite significant psychological blow that the unexpected taking of Postell's things – for a college student, essentially everything he owned – dealt to Postell.

It appears that Postell and his attorney were able to convey to the jurors the depth of the harm caused by the landlords' callous disregard of Postell's rights. That the landlords failed to recognize what was apparent to the jury does not mean that there is an absence of evidence to support the jury's verdict.

The landlords try to argue around the evidence that is in the record, but they cannot escape that they simply think the jury's verdict is too high. That the landlords think the jury's valuation is high does not mean there was an error entitling them to a new trial of any sort. Id. The law of South Carolina is that "the trial judge should grant a new trial based on excessiveness of the verdict only if the amount is not merely different from that which he would have awarded, but is so grossly excessive so as to the conscience of the court and clearly indicates the figure was the result of caprice, passion, prejudice, partiality, or other improper motives." Wall v. Suits, 318 S.C. 377, 458 S.E.2d 43, 46-47 (Ct. App. 1995). The landlords do not clear this high bar. The purpose of a new trial motion is not to punish the plaintiff for doing well.

The landlords have failed to make the exacting showing required to obtain reversal where a motion for a new trial absolute has been denied.

VI. The record and the landlords' argument does not reach the high bar needed to reverse the denial of a motion for a new trial *nisi remittitur*.

"The denial of a motion for a new trial nisi is within the trial court's discretion and will not be reversed on appeal absent an abuse of discretion." James v. Horace Mann Ins. Co., 371

S.C. 187, 193, 638 S.E.2d 667, 670 (2006). "An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions." In re: Care and Treatment of Miller, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011).

As discussed above, there are facts that support Judge Kimpson's denial of the landlords' *nisi* motion. The landlords have not demonstrated that his ruling was the product of an error of law. Indeed, Judge Kimpson got the result on the landlords' post-trial motions right even though he was operating under a mistaken belief that S.C. Code Ann. § 39-5-140(a) limits what actual damages are recoverable.

The landlords have not cleared the high bar to obtain reversal here.

CONCLUSION

Judge Kimpson was correct to deny the landlords' post-trial motions. The landlords' arguments and the record fall short of what the landlords must show to prevail in this appeal.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Judge

Appellate Case No. 2025-001220

Ansel Jamahl Postell,..……...…….Respondent-Appellant,

v.

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

PROOF OF SERVICE

I certify that I have served the foregoing initial brief on the date given below by emailing it to opposing counsel at the address(es) noted below.

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