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 REPLY BRIEF OF RESPONDENT-APPELLANT ANSEL JAMAHL POSTELL

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STATEMENT OF ISSUES

I. **Did the circuit court err reversibly by limiting the amount trebled under the Unfair Trade Practices Act to $27,500 when the jury's verdict found that Appellant had sustained $230,000 in actual damages?**

II. **Did the circuit court err reversibly by limiting the amount of Appellant's attorneys' fees awarded under the Unfair Trade Practices Act to a third of the trebled amount only, a decision it made under the belief that such limitation was what the law required?**

ARGUMENT IN REPLY

I. As did the trial judge, the landlords have misread the statute.

Appellants-Respondents Campus Advantage, Inc. and EMRES II South Carolina, LLC d/b/a The Rowan ("the landlords") have misread S.C. Code Ann. § 39-5-140(a) in the same way the lower court did, which Respondent-Appellant Ansell Jamahl Postell has pointed out is not what the statute says. The landlords contend that the trial judge was right to rule that the only damages recoverable in a suit under the Unfair Trade Practices Act are losses of money or property.

A look at the words of the statute defeats that argument. The words of S.C. Code Ann. § 39-5-140(a) are as follows:

> 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 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 use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times *the actual damages sustained* and may provide such other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

Id. (emphasis added).

In its plain language, without ambiguity, S.C. Code Ann. § 39-5-140(a) provides for the recovery of the actual damages sustained by a person who suffers an ascertainable loss of money or property as the result of an unfair trade practice. Words limiting the damages recoverable to only the value of the lost money or property are absent. Id. If an unfair trade

practice causes a plaintiff to have a monetary or property loss, he can recover all his actual damages, including that loss, of course, but also including whatever other actual damages (e.g., mental suffering, lost future profits or earnings, bodily injury) are proximately caused by the unfair trade practice. Id.

This text-grounded reading of the statute makes more sense than the landlords' and the trial judge's interpretation. Imagine a situation in which a vaccine manufacturer is sued under the Unfair Trade Practices Act for selling tainted vaccines that contain dangerous bacteria, which caused the plaintiff to become physically ill (in addition to the plaintiff having paid for a vaccine that actually harmed him). The ascertainable loss of money or property the plaintiff had is only the cost of the vaccine. May he not recover for the cost of his medical care, the pain in his body, the suffering in his mind? Those actual damages were proximately caused by the unfair trade practice.

The landlords' and the lower court's interpretation would bar recovery of all those damages except the cost of the vaccine. The actual words of S.C. Code Ann. § 39-5-140(a), however, provide in plain terms for the recovery of that plaintiff's actual damages, all of them, without limiting the actual damages recoverable to only the lost money paid for the vaccine.

"It is well settled that the words of a statute will be given their plain and ordinary meaning." Rice v. Multimedia, Inc., 318 S.C. 95, 98, 456 S.E.2d 381 (1995). Postell asks this court to rule according to this well settled principle of law.

II. The landlords have also misread the cases.

In addition to their strained interpretation of the plain language of S.C. Code Ann. § 39-5-140(a), the landlords also misconstrue the content and import of court decisions.

The landlords first claim that our state Supreme Court's first Taylor v. Medenica decision, 324 S.C. 200, 479 S.E.2d 35 (1996), supports the trial judge's interpretation of the statute. The landlords imply the Court in Taylor limited recovery to the ascertainable loss of money or property on the basis of S.C. Code Ann. § 39-5-140(a).

That is not what the case says. Here is what the first Taylor opinion actually states on this matter:

> CIBL argues Mrs. Taylor incurred no ascertainable loss as a result of its actions and, therefore, she was not entitled to any recovery under the UTPA. Specifically, CIBL contends there is no evidence its alleged performance of and billing for worthless tests proximately caused Mrs. Taylor's injuries and corresponding actual damages of $543,614.10, which includes $489,379.72 in medical bills from Dr. Medenica and $54,234.47 in personal expenses incurred by the Taylors as a result of Dr. Medenica's treatment. At oral argument, CIBL agreed, at most, Mrs. Taylor's ascertainable losses under the UTPA were $36,232, which was CIBL's bill for its laboratory tests.
>
> Under the UTPA "[a]ny person who suffers any ascertainable loss of money ... as a result of the use or employment by another person of an unfair or deceptive method, act or practice ... may bring an action individually, but not in a representative capacity, to recover actual damages." S.C.Code Ann. § 39–5–140(a). Actual damages include special or consequential damages which are the natural and proximate result of the deceptive conduct. Fields v. Yarborough Ford, Inc., 307 S.C. 207, 414 S.E.2d 164 (1992).
>
> While there is evidence CIBL conducted frequent, unnecessary, and, at times, worthless tests, there is no evidence which suggests CIBL should have foreseen Dr. Medenica would have relied on these tests to provide negligent medical care of Mrs. Taylor. Accordingly, we conclude CIBL's conduct did not cause Mrs. Taylor to incur $543,614.10 in ascertainable losses. Nonetheless, we find Mrs. Taylor incurred ascertainable losses of $36,242 as a result of CIBL's deceptive practices and she is entitled to recover those losses from the laboratory.

Taylor, 324 S.C. at 219-20.

The Court reduced the damages awarded to Taylor because they included damages that the record did not show were proximately caused by the defendant's unfair trade practices, since "there is no evidence which suggests CIBL should have foreseen Dr. Medenica would have relied on these tests to provide negligent medical care of Mrs. Taylor." Id. No discussion of limitation to money or property loss was discussed, much less settled upon by the state's highest court. Id. Indeed, immediately after noting the language of S.C. Code Ann. § 39-5-140(a), the Court, rather than limiting damages recovery to money or property loss, noted that the recoverable damages are not so limited: "Actual damages include special or consequential damages which are the natural and proximate result of the deceptive conduct." Taylor, 324 S.C. at 219.

Supreme Court precedent supports, rather than undermines, Postell's common-sense, plain-language reading of S.C. Code Ann. § 39-5-140(a). Taylor, 324 S.C. at 219.

In a bid to convince this court that their interpretation of S.C. Code Ann. § 39-5-140(a) is something like settled law, the landlords also cite unpublished federal district court opinions. "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), SCACR. To treat unpublished opinions as authority is error, usually reversible error. See Hodge v. UniHealth Post-Acute Care of Bamberg, LLC, 422 S.C. 544, 554-56, 813 S.E.2d 292, 297-99 (Ct. App. 2018); Higgins v. Med. Univ. of S.C., 326 S.C. 592, 601, 486 S.E.2d 269, 273 (Ct. App. 1997). Further, federal district court opinions, even when published, are not precedent in South Carolina state courts. Blyth v. Marcus, 335 S.C. 363, 368 n. 3, 517 S.E.2d 433 (1999) (South Carolina federal district court decision "[o]f course . . . is not binding on this Court").

On a different point, the landlords cite Maybank v. BB&T Corp., 416 S.C. 541, 787 S.E.2d 498 (2016), for the proposition that the trial judge's reduction of the attorney's fees to be awarded was both permissible and warranted. A look at Maybank reveals that is not what that opinion stands for. The cited language from the Maybank opinion reads as follows:

> We find all of Maybank's claims shared the same common facts and required combined efforts throughout the litigation process. The 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 UTPA. We find this to be a reasonable estimation.

Id. at 580.

That is no repudiation or even criticism of Taylor v. Nix, 307 S.C. 551, 416 S.E.2d 619 (1992). What the landlords cite from Maybank is a far cry from support for the trial judge's reading of the law – that he was only permitted to treble a part of the actual damages the jury determined were proximately caused by the landlords' unfair trade practices and that he was only permitted to base the amount of attorneys' fees to award on that limited part of the damages. (R. pp. ___; order filed May 20, 2025, p. 16; order filed June 10, 2025, pp. 2-3, 4.)

Precedent to support the trial judge's interpretation of S.C. Code Ann. § 39-5-140(a) is absent.

III. The abuse of discretion is plain: the trial judge's rulings on trebling and attorneys' fees are controlled by an error of law.

The landlords contend Postell has failed to show an abuse of discretion in the lower court's rulings on the amount to be trebled and the attorneys' fees recoverable. It is not so.

Our state Supreme Court has held that "no court is entitled to the deference associated with the discretion standard of review until that court has earned deference by fulfilling the responsibility of exercising its discretion according to law." Morris v. BB&T Corp., 438 S.C.

582, 885 S.E.2d 394 (2023). This court has observed that "[t]he American tradition of rule of law has recognized from its earliest days that a motion to a court's discretion is a motion, not to its inclination, but to its judgment; and its judgment is to be guided by sound legal principles." Jordan v. Hartford Fin. Grp., Inc., 435 S.C. 501, 505, 868 S.E.2d 400, 402 (Ct. App. 2021). Our Supreme Court has also provided precedent that helps tell us when an abuse of discretion has occurred, including that "[a]n abuse of discretion occurs when the conclusions of the trial court are . . . controlled by an error of law[.]" In re: Care and Treatment of Miller, 393 S.C. 248, 256, 713 S.E.2d 253, 257 (2011).

Here, the circuit court did not "fulfill[] the responsibility of exercising its discretion according to law." Morris, 438 S.C. at 582. The circuit court's judgment was not "guided by sound legal principles." Jordan, 435 S.C. at 505. Instead, these rulings were controlled by errors of law: the misreading of S.C. Code Ann. § 39-5-140(a) and the imposition of a limit on attorney's fee recovery that is at odds with precedent. Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 57, 691 S.E.2d 135, 153 (2010); Taylor v. Medenica, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (1998) (second Taylor opinion); Taylor v. Nix, 307 S.C. at 557.

The law of this state, per the General Assembly, is that the damages to be trebled under S.C. Code Ann. § 39-5-140(a) are the successful plaintiff's actual damages, not a part of them. The law of this state on statutory attorneys' fee recovery, per our Supreme Court, as follows:

> We hold when an action in which attorney fees are recoverable by statute is joined with alternative theories of recovery based on the same transaction, no allocation of attorney's services need be made except to the extent counsel admits that a portion of the services was totally unrelated to the statutory claim or it is shown that the services related to issues which were clearly beyond the scope of the statutory claim proceeding.

Taylor v. Nix, 307 S.C. at 557. The trial judge declined to follow this controlling law. (R. pp. ___; order filed May 20, 2025, p. 16; order filed June 10, 2025, pp. 2-3, 4.) That was an abuse of discretion and is reversible error.

CONCLUSION

The landlords arguments are contradicted by both statutory language and the words and reasoning of reported appellate decisions in this state, including by our Supreme Court. This court should reverse the improper trebling, treble the actual damages the jury awarded, as S.C. Code Ann. § 39-5-140(a) requires, and modify the judgment to reflect that proper trebling. This court should reverse the improper limitation of the attorney's fee award, either modifying it to change it to $384,166.75 or remanding for a new hearing to determine the reasonable fees to be awarded.

Respectfully submitted,

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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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