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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2022-CP-10-01312
EMMALISSA HUFF and DOROTHY	)	
HUFF,	)	
	)	<b>ORDER</b>
Plaintiffs,	)	
	)	<b>RECEIVED</b>
vs.	)	<b>Apr 22 2026</b>
	)	<b>SC Court of Appeals</b>
CAROLINA ONE REAL ESTATE,	)	
	)	
Defendant.	)	
_____	)	

This matter is before the Court upon Defendant Carolina One’s (“Carolina One”) motion to set off its judgment by amounts received by Plaintiffs from settlement with Defendant Four and One as well as the Hunter Reynolds Group (“the settling defendants”). For the reasons set forth below, Defendant Carolina One’s Motion for Set Off is granted in part and Carolina One is entitled to a set off amount of \$10,000 for negligent misrepresentation in light of the reasonable allocation in the provided settlement agreement.

**I. BACKGROUND**

This case involves Plaintiffs’ purchase of their home at 473 Mercantile Rd., McClellanville, SC. Shortly after closing on the property, Plaintiffs learned that Charleston County had placed a stop work order on the home due to an unpermitted renovation and addition done by the seller prior to Plaintiffs’ purchase. Charleston County required Plaintiffs to lift the house to meet current flood zone requirements as well as a myriad of other changes to the home before Plaintiffs could reside in it, all at great expense.

Plaintiffs filed suit on March 18, 2022 against their buyer’s agent (Carolina One) and the sellers’ agents (Four and One, LLC and the Hunter Reynolds Group) alleging the following causes

of action: (1) negligence; (2) negligent misrepresentation; (3) fraud; and (4) violations of the South Carolina Unfair Trade Practices Act (“SCUTPA”). Plaintiffs resolved their claims against the settling defendants for \$150,000 following a second mediation on February 4, 2025. The confidential settlement agreement memorializing that resolution includes the following allocation:

**Allocation.** Of the total \$150,000 paid on behalf of Defendants in settlement, the Parties agree that the settlement funds are being paid to partially compensate Plaintiffs for the following claims and damages in exchange for a full release, including the causes of action in the Complaint filed March 18, 2022. The Parties agree the settlement funds are allocated as follows for Plaintiffs claims and damages: (1) First Cause of Action (negligence) - \$10,000; (2) Second Cause of Action (negligent misrepresentation) - \$10,000; (3) Third Cause of Action (fraud) \$40,000; (4) Fourth Cause of Action (SC UTPA) \$40,000; and (5) litigation costs of Plaintiffs - \$50,000.

(Confidential Settlement Agreement, March 11, 2025, at b.1, marked as Court’s Exhibit 1). Plaintiffs and Carolina One could not reach a resolution, and the case proceeded to trial on November 17, 2026. The jury returned a verdict of \$297,679.00 against Carolina One on the negligence and negligent misrepresentation causes action on November 20, 2025.<sup>1</sup> The jury also awarded \$300,000 in punitive damages. On November 30, 2024, Carolina One timely filed post-trial motions, including the instant motion seeking to set off the entire amount of Plaintiffs’ settlement with the other defendants. The Court heard arguments on this motion on February 18, 2026.

## II. STANDARD

A non-settling defendant “is entitled to credit for the amount paid by another defendant who settles for the same cause of action.” *Rutland v. S.C. Dep’t of Transp.*, 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012); *see also Riley v. Ford Motor Co.*, 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015) (“The right to setoff has existed at common law in South Carolina for over 100 years.”).

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<sup>1</sup> Plaintiffs have since elected the negligent misrepresentation action as their remedy.

“Despite a defendant's entitlement to setoff, whether at common law or under section 15-38-50, any ‘reduction in the judgment must be from a settlement for the same cause of action.’” *Riley*, 414 S.C. at 196, 777 S.E.2d at 830 (quoting *Hawkins v. Pathology Assocs. of Greenville, P.A.*, 330 S.C. 92, 113, 498 S.E.2d 395, 407 (Ct. App.1998)). “Thus, where a settlement involves more than one claim, the allocation of settlement proceeds between various causes of action impacts the amount a non [] settling defendant may be entitled to offset.” *Id.* “[P]laintiffs who settle with defendants gain control and leverage in relation to nonsettling defendants—control that is often reflected in the plaintiff's ability to apportion settlement proceeds in a manner most advantageous to it.” *Edwards v. Scapa Waycross, Inc.*, 437 S.C. 396, 424, 878 S.E.2d 696, 711 (Ct. App. 2022) (citing *Riley*, 414 S.C. at 197, 777 S.E.2d at 831). Our Supreme Court has further noted:

Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of [settling] parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.

*Riley*, 414 S.C. at 197, 777 S.E.2d at 831 (quoting *Lard v. AM/FM Ohio, Inc.*, 901 N.E.2d 1006, 1018 (2009)). An “internal allocation of settlement proceeds is acceptable if the allocation is reasonable.” *Palmetto Pointe at Peas Island Condo. Prop. Owners Ass'n, Inc. v. Island Pointe, LLC*, 445 S.C. 543, 552, 915 S.E.2d 501, 506 (2025). “A reasonable allocation is one that fairly approximates the value the settling defendants paid in exchange for a release of each of the several claims.” *Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 532, 905 S.E.2d 380, 391 (2024).

### III. DISCUSSION

In this case, Plaintiffs’ confidential agreement with the settling defendants provides a reasonable allocation of settlement proceeds based on the distinct conduct of those defendants and

the causes of action involved. The lion's share of the allocation (\$80,000) is applied to the fraud<sup>2</sup> and SCUTPA causes of action. This allocation is reasonable considering the facts of the case and settling defendants' proximity to the seller. It also aligns with Carolina One's arguments expressed at trial and elicited in testimony regarding the likely fraudulent conduct of the seller and complicity of the seller's agent. The \$50,000 in litigation costs reasonably encompass the costs and attorneys' fees related to this settlement as well as the SCUTPA claim.<sup>3</sup> Plaintiffs and the settling defendants allocated \$10,000 to the negligent misrepresentation cause of action, and this amount represents the total set off available for the judgment against Carolina One.<sup>4</sup>

Carolina One has asserted it is entitled to a set off the entire amount of the prior settlement in this case because it involves only "one property, one real estate transaction, all with the same set of damages, the same injury to the Plaintiffs to repair the Subject Property." (Mot. for Set Off, at 5). Accordingly, Carolina One argues the allocation of the settlement would result in a double recovery for the Plaintiffs. The Court disagrees. While this case involved one property and one real estate transaction, it also included a myriad of conduct by different actors, multiple causes of action, and distinct sets of damages. The seller's agent's conduct (on behalf of the settling defendants) in failing to recognize the seller's nondisclosure (at best), or his complicity in the nondisclosure (at worst) is distinctly different from Carolina One's breach of its fiduciary duty owed to Plaintiffs.

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<sup>2</sup> Plaintiffs dismissed their fraud cause of action against Carolina One at the outset of trial.

<sup>3</sup> "Upon the finding by the Court of the violation of [the UTPA], 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.

<sup>4</sup> The agreement also allocated \$10,000 to the negligence cause of action, but Plaintiffs have not elected that remedy in this case.

Such conduct can also result in distinctly different damage caused by Carolina One versus the settling defendants. In a trial against the settling defendants, Plaintiffs very well could have presented other damages for the jury's consideration. Just because Plaintiffs presented certain damages at the trial of their case against Carolina One does not mean that Plaintiffs did not suffer other damages or could not have asserted additional damages against the settling defendants. Trial strategy often impacts how a case is presented and what damages a plaintiff might present for a jury to consider and award, and that strategy can often depend on the conduct of the defendants standing trial. The Court rejects Carolina One's premise that Plaintiffs presented at trial and were awarded the totality of their damages relating to the transaction and conduct of the settling defendants.

The Court also finds that Plaintiffs presented and sought damages for which the jury did not award Plaintiffs a recovery. Plaintiffs explicitly addressed and asked for damages for loss of enjoyment and use. While the jury awarded actual and tangible loss of use damages such as the cost of other living arrangements, the jury declined to award a monetary value to the intangible loss of use damages such as the disappointment and distress of being prevented from living in and enjoying one's home, living apart from one's spouse, and having to use buckets for a restroom. Carolina One argues that the jury awarded Plaintiffs their damages "to the last penny," but other loss of use and enjoyment damages were presented for the jury's consideration and could have been awarded.

The damages that were not awarded are clearly separate and distinct from those the jury found Carolina One liable. The damages that were not awarded at the trial against Carolina One were recoverable through fraud and SCUPTA causes of action. "Actual damages under the UTPA include special or consequential damages that are a natural and proximate result of deceptive

conduct.” *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 159, 503 S.E.2d 483, 488 (Ct. App.1998) (citing *Taylor v. Medenica*, 324 S.C. 200, 479 S.E.2d 35 (1996)). Moreover, the UTPA also provides treble damages upon a finding of a willful violation of the Act, S.C. Code Ann. § 39–5–140(a) (Supp. 2014). Consequential and punitive damages are available in common-law fraud actions. See *Hughes on behalf of Est. of Hughes v. Bank of Am. Nat'l Ass'n*, 442 S.C. 113, 127, 898 S.E.2d 102, 109 (2024) (quoting *Faircloth v. Finesod*, 938 F.2d 513, 517 (4th Cir. 1991) (footnote omitted)).<sup>5</sup>

The defendants’ relative conduct and the damages are distinct from the causes of action for which the jury rendered its verdict against Carolina One and the actual damages it awarded. Therefore, the jury’s award is not a double-recovery and the allocation “fairly approximates the value the settling defendants paid in exchange for a release of each of the several claims.” *Jolly v. Fisher Controls Int’l, LLC*, 443 S.C. 511, 532, 905 S.E.2d 380, 391 (2024). Carolina One is not entitled to a set off more than the \$10,000 allocated against the settling defendants for the negligent misrepresentation claim.

#### IV. CONCLUSION

For the foregoing reasons it is hereby **ORDERED** that Defendant Carolina One’s Motion

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<sup>5</sup> Of important note, punitive damages are tied to an individual defendant’s specific, individual conduct, and therefore are not available for set off. *Green v. McGee*, 446 S.C. 343, 354, 919 S.E.2d 903, 908 (2025). Punitive damages are also intended to punish the defendant, not compensate the injured party for any actual damages. See *Harleysville Grp. Ins. v. Heritage Cmty., Inc.*, 420 S.C. 321, 353, 803 S.E.2d 288, 306 (2017) (explaining the goal of actual damages is to restore the injured party to the same position he or she was in before the wrongful injury occurred, while punitive damages relate not to the plaintiff, but rather to the defendant’s conduct); *Clark v. Cantrell*, 339 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000) (stating that in addition to serving as punishment to the wrongdoer and to deter the wrongdoer and others from engaging in similar conduct, “[p]unitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party.”). For these reasons, the Court finds the punitive damages should not be included in any set off.

for Set Off is **GRANTED IN PART** and Defendant Carolina One is entitled to a total set off amount of \$10,000 for the actual damages awarded to Plaintiffs for negligent misrepresentation. Accordingly, the actual damages award to Plaintiffs on the negligent misrepresentation claim is reduced from \$297,679 to \$287,679. The punitive damages award of \$300,000 remains unchanged.



Charleston Common Pleas

**Case Caption:** Emmalissa Huff , plaintiff, et al VS Keller Williams Realty Mount Pleasant , defendant, et al  
**Case Number:** 2022CP1001312  
**Type:** Order/Other

So Ordered

s/Jennifer B. McCoy #2764