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.

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

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ARGUMENT

I. Defendants' arguments are preserved for this Court's review.

Rather than addressing the merits of Appellants Campus Advantage, Inc. and EMRES II South Carolina, LLC d/b/a The Rowen's (collectively, "Defendants") arguments, Respondent Ansel Jamahl Postell ("Postell") spends much of his brief trying to support his incorrect preservation argument. But it is Postell, not Defendants, who is confused about the applicable preservation rules.

To be sure, the cases he cites do not hold that a defendant must make a directed verdict after *both* the plaintiff's case *and* at the close of all the evidence. Those cases state only the latter: a directed verdict must be made at the close of "all" the evidence. *See Stephens v. CSX Transp., Inc.*, 415 S.C. 182, 195, 781 S.E.2d 534, 541 (2015) (contemplating that "the motion should be made after 'all' the evidence"); *RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P.*, 399 S.C. 322, 332, 732 S.E.2d 166, 171 (2012) (not mentioning a motion after the close of the plaintiff's case, and stating "[a]s noted above, a motion for JNOV must be based on the same grounds as those raised in a motion for a directed verdict motion made at the close of all the evidence"); *Hendrix v. E. Distrib.*, 316 S.C. 34, 37, 446 S.E.2d 440, 442 (Ct. App. 1994) ("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 all the evidence is a strict one." (citing *Smith v. Ridgeway Chemicals, Inc.*, 302 S.C. 303, 395 S.E.2d 742 (Ct. App. 1990))). The Rule does not require both either. *See* Rule 50(b), SCRCP ("Whenever a motion for a directed verdict made *at the close of all the evidence* is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion." (emphasis added)).

Defendants' arguments are preserved for this Court's review. Defendants sought a directed verdict on the breach of contract claim after the close of the evidence and in their motion for judgment notwithstanding the verdict ("JNOV").[1] (Tr. at 323:9–328:5). The circuit court denied both. Post-Trial Order at 6–7. As to the South Carolina Unfair Trade Practices Act ("SCUTPA") claim, Defendants sought a directed verdict on Postell's failure to establish an unfair or deceptive trade practice and failure to establish that any unfair or deceptive trade practice adversely affected the public interest. *See* Defs.' Appellants' Br. at 10–17; (Tr. at 179:25–191:24, 317:18–21, 335:10–343:16). Because "entry into [Postell's] apartment and treatment of [his] personal property as if it had been abandoned, when, in fact, [he] had renewed his lease and paid advance rent," Post-Trial Order at 15, is not an unfair trade practice that adversely affected the public interest, the jury's verdict as to this claim must be reversed.

Turning to Defendants' remaining SCUTPA arguments, those concern the post-trial court-awarded damages and fees, *see* Defs.' Appellants' Br. at 17–19, which could not have been raised in a motion for a directed verdict. Indeed, Postell himself did not request attorney's fees or treble damages until his post-trial motion. *See* Pl.'s Post Trial Mot. In response to Postell's motion, Defendants properly argued that any violation of SCUTPA was not willful or knowing. *See* S.C. Code Ann. § 39-5-140(a); *see also* Defs.' Resp. in Opp. at 3–5. The circuit court found (albeit incorrectly) that it was. The issue is preserved.

[1] As to the breach of contract claim, though Postell does not address the substance of Defendants' arguments, he does admit that "[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." Postell's Resp't Br. at 11 (quoting *B-L-S Const. Co., Inc. v. St. Stephen Knitwear, Inc.*, 276 S.C. 612, 614, 281 S.E.2d 129, 130 (1981)). Postell's lease agreement contemplated the possession, use, and enjoyment of Unit 3007A. Nothing else. There was no breach of contract here.

So too is Defendants' argument that Postell cannot get double recovery through an award of both punitive and treble damages. *See* Defs.' Appellants' Br. at 19–21. Postell's statement that "[t]he first time that argument has been advance to any court in this case is to this court, on appeal," Postell's Resp't Br. at 7, is false. Defendants' response to Postell's post-trial motion included an entire section dedicated to this issue. Defs.' Resp. in Opp. at 5–7 ("Trebling damages in this case would constitute a double recovery by Plaintiff."). Again, this was a post-trial issue raised in Postell's post-trial motion, so Defendants could not oppose the request until its response.

And as for the exorbitant and improper punitive damages award, the preservation proof is in the pudding. After Defendants challenged the punitive damages award in their post-trial motion, the circuit court specifically considered and conducted an analysis on the propriety of the punitive damages award over five pages. Post-Trial Order at 9–14. It just came to the wrong conclusion.

In any event, the critical question about preservation is whether an issue was raised to, and ruled on by, the circuit court. *See Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("[A]t a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge."). "[A] party is not required to use the exact name of a legal doctrine in order to preserve the issue." *Id.* at 466, 719 S.E.2d at 642. The issue need only "be sufficiently clear to bring into focus the precise nature of the alleged error so that it can be reasonably understood by the judge." *Id.* Here, each issue raised on appeal was no doubt raised to, understood by, and ruled on by the circuit court. Nothing else was required to preserve the issues for appeal.

II. Postell still cannot point to evidence establishing an unfair or deceptive trade practice that adversely affected the public interest.

Like below, Postell still cannot articulate what he contends was the purported unfair or deceptive trade practice. In fact, he cites no actual evidence from the record. *See* Postell's Resp't Br. at 9–12. That is because no evidence supports the claim. And no evidence establishes

Defendants "sent their employees to take" Postell's things, deceived Postell into believing he "had a valid lease," "lull[ed] him into believing his property was safe where he had left it," or "act[ed] like Postell had no right to possession." Postell's Resp't Br. at 11. Defendants did not do those things.[2] Postell's artful paraphrasing of the record is not supported by evidence.

Neither is his refrain about *Burbach v. Investors Management Corp. International*, 326 S.C. 492, 484 S.E.2d 119 (Ct. App. 1997). As explained in Defendants' Appellants' Brief, that case has nothing to do with this case except that it involved a residential lease. Defs.' Appellants' Br. at 13. At most, this case involves the accidental disposal of Postell's personal property. Such benign conduct is not "immoral, unethical, or oppressive." *State ex rel. Wilson v. Ortho-McNeil-Janssen Pharms., Inc.*, 414 S.C. 33, 56, 777 S.E.2d 176, 188 (2015).

Even if it were, it did not adversely affect the public interest. As predicted, Postell relies solely on Ashanti Young's unspecific one-word testimony that it was "correct" that there were "other instances of the system not being accurate such that tenants . . . had their stuff taken or misplaced or otherwise missing." Postell's Resp't Br. at 12–13 (quoting Tr. at 42:2–16). That is not enough. *See Carolina Real Est. Holdings, LLC v. Brilin Elec., LLC*, 446 S.C. 376, 388, 919 S.E.2d 918, 924 (Ct. App. 2025) (requiring "specific facts" of prior instances); *Turner v. Kellett*, 426 S.C. 42, 49, 824 S.E.2d 466, 469–70 (Ct. App. 2019) (requiring the "same kind of unfair act"

[2] Neither did Defendants "authorize" Carlton Brown "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." Postell's Resp't Br. at 14. In fact, Katie Floyd instructed the opposite. *See* Defs.' Appellants' Br. at 15–16 & 19. That said, Defendants have not raised any *respondeat superior* argument on appeal, so it is unclear why Postell spends three pages discussing it. Even so, Postell must admit that Brown taking Postell's property "for his own use," Postell's Resp't Br. at 15, falls outside the scope of one's employment. *See Kase v. Ebert*, 392 S.C. 57, 61, 707 S.E.2d 456, 458 (Ct. App. 2011) (when an employee "acts for some independent purpose of [his] own, wholly disconnected with the furtherance of [his employer's] business, [his] conduct falls outside the scope of [his] employment." (quoting *Crittenden v. Thompson-Walker Co.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986))).

occurred in the past). Because Postell essentially concedes no other evidence supports this element,[3] the Court should reverse.

III. The Court should not ignore that the only evidence of any actual damages was $27,500.00, so the jury's verdict of $230,000.00 in actual damages and $462,500.24 in punitive damages was wholly unsupported by the evidence and grossly excessive.

To be clear, Defendants ask the Court to reverse the entire jury verdict because the jury's verdict is "grossly . . . excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption or some other improper motives." *Howard v. Roberson*, 376 S.C. 143, 154, 654 S.E.2d 877, 883 (Ct. App. 2007). While Postell glosses over this argument, contending that Defendants are attempting to "parse out the components" of the actual damages award as to only the SCUTPA claim, Postell's Resp't Br. at 8 & 16, the Court should not.

Postell does not meaningfully dispute, because he can't, that the only actual evidence of any damages—whether SCUPTA or not—was $27,500.00 in the estimated loss of personal property. *See* Defs.' Appellants' Br. at 24–27; Defs.' Exhibit 15. "The crucial question here is whether the amount of the verdict falls within the range of damages testified to below." *Higgins Constr. Co. v. S. Bell Tel. & Tel. Co.*, 276 S.C. 663, 666, 281 S.E.2d 469, 470 (1981). But no other evidence justifies the remaining $202,500.00 of the jury's award of actual damages. *See Stroud v. Elliott*, 316 S.C. 242, 244, 449 S.E.2d 261, 262 (Ct. App. 1994) (reversing actual damages award as grossly excessive when "the only evidence before the jury concerning the damages caused by the alleged trespass was" testimony that the damage "totaled $ 33,910" because "[t]here [was] no

[3] Tellingly, Postell cites no evidence for the proposition that he showed "similar improper trash-outs had happened before" or that Defendants "had not changed the way they do business in this regard." Postell's Resp't Br. at 14. Indeed, as to the latter, the evidence establishes the opposite. *See* Defs.' Appellants' Br. at 15–16 & 19.

evidence whatsoever to support the other $ 25,100 that comprises approximately 43 per cent of the jury's award of actual damages"). Because the entire verdict must have been the result of an improper motive, the entire verdict fails. Defendants are not parsing anything.

Nor are Defendants "complain[ing] about the jury assigning too much *weight* to emotional damage testimony." Postell's Resp't Br. at 8. Postell does not cite a single line of testimony that Defendants conduct created a "quite significant psychological blow." *Id.* The fact of the matter is there was no such testimony. Neither Postell nor the circuit court cite any.[4] Rather, the jury's verdict—$230,000.00 in actual damages, Jury Verdict—had to be the result of some other improper motive. So too did the jury's award of $462,500.24 in punitive damages. Jury Verdict. On that issue, tellingly, Postell does not try to grapple with Defendants' arguments about or even justify the improper and excessive punitive damages award. Even if a punitive damages award was appropriate in this case (it isn't) and not grossly excessive (it is), the Court should vacate it because the actual damages award is grossly excessive. *See Stroud*, 316 S.C. at 245, 449 S.E.2d at 262 ("Our reversal of the actual damages award requires us to vacate the punitive damages award as well."); *see also Carrigg v. Blue*, 283 S.C. 494, 500, 323 S.E.2d 787, 790 (Ct. App. 1984) ("Since the verdict for actual damages cannot stand, the verdict for punitive damages also falls.").

In sum, the evidence does not support the jury's grossly excessive award of actual and punitive damages. A new trial absolute is required here. *Howard*, 376 S.C. at 154, 654 S.E.2d at 883. The thirteenth juror doctrine counsels in favor of one too. *See Folkens v. Hunt*, 300 S.C.

[4] As to the *nisi remittitur* abuse of discretion standard, more was required of the circuit court for the Court to find it actually exercised its discretion. *Cf. Riley v. Ford Motor Co.*, 414 S.C. 185, 194, 777 S.E.2d 824, 829 (2015) (declining to find an abuse of discretion when "the trial judge gave a thorough recitation of the 'uncontested, and emotionally compelling' evidence, including testimony and supporting exhibits that demonstrated both the pecuniary losses suffered by the [decedent's] family and also the noneconomic compensable elements of loss that are recoverable in a wrongful death action").

251, 254, 387 S.E.2d 265, 267 (1990). And, at the very least, the jury's verdict was excessive such that the circuit court should have granted Defendants' motion for a new trial *nisi remittitur*. *See Jolly v. Fisher Controls Int'l, LLC*, 443 S.C. 511, 523, 905 S.E.2d 380, 387 (2024). Under any of these legal doctrines, the Court should reverse and order a new trial or reduce the excessive verdict.

CONCLUSION

For the reasons above and those raised in Defendants' Appellants' Brief and Defendants' Respondents' Brief on Postell's Cross Appeal, the Court should reverse the trial court's denial of Campus Advantage and The Rowan's directed verdict motions and post-trial motions and should vacate or reverse the jury's verdict and judgment. At the very least, the Court should reverse and reduce the verdict.

(Signature Page Follows)

Respectfully submitted,

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May 18, 2026