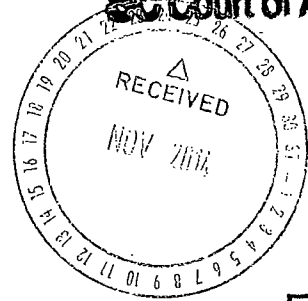


**RECEIVED**

NOV 25 2014

**SC Court of Appeals**



74295

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM THE RICHLAND COUNTY  
Court Of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge  
Alison Renee Lee, Circuit Court Judge

CASE ACTION NO.: 2011-CP-40-4111  
APPELLATE CASE NO.: 2014-001799

Coastal Pi, LLC d/b/a Primarily Pi and James Bigby ..... Respondents,

v.

Danville Business Advisors, LLC and Marion D. Turbeville ..... Defendants,

Of whom Marion D. Turbeville is ..... Appellant.

RESPONDENTS' MOTION TO DISMISS

Respondents Coastal Pi, LLC d/b/a Primarily Pi and James Bigby (collectively, "Respondents") hereby move this Court for an Order dismissing this appeal as to the Order denying Appellant's motion to dismiss and as to the jury verdict. The grounds for dismissal, discussed in more detail below, are that the Appellant stipulated to entry of judgment and, therefore, waived his right to appeal the Order denying his motion to dismiss and his right to appeal the jury verdict. For these reasons, the Court should dismiss this appeal as to those matters and limit this appeal to the Trial Court's Order awarding the Respondents treble damages, attorneys' fees and costs.

## PROCEDURAL HISTORY

On May 29, 2014, the jury returned a verdict for the Respondents on all causes of action against Danville Business Advisors, LLC (hereinafter, "Danville") and Marion D. Turbeville (hereinafter, "Appellant"). Against Danville, the jury awarded the Respondents actual damages in the amount of \$521,000 for breach of contract, breach of fiduciary duty and for violating of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10, *et seq.* ("SCUTPA"). Against Appellant, the jury awarded the Respondents actual damages in the amount of \$39,200 for breach of fiduciary duty and for violating the SCUTPA. (*See Jury Verdicts*, true and accurate copies of which are attached as Exhibits A and B.)

The only post-trial motion was a motion for election of remedies on behalf of Danville and Appellant. The Trial Court withheld entry of the verdicts until the election of remedies issue was decided. (*See Order on Jury Verdict May 29, 2014*, a true and accurate copy of which is attached as Exhibit C.) On June 6, 2014, the parties submitted a consent Order of Judgment which resolved the election of remedies issue. (*See Letter from Bruner to Court dated June 6, 2014, with consent order*, a true and accurate copy of which is attached as Exhibit D.) In the consent Order of Judgment, the parties stipulated to entry of judgment against Danville on a single cause of action, breach of fiduciary duty, in the amount of \$521,000, plus taxable costs of \$581.12. The parties also stipulated to entry of judgment against Appellant on the SCUTPA claim in the amount of \$39,200. *Id.* Pursuant to the consent order, the judgment against Appellant was subject only to the Trial Court's ruling on Respondents' motion for attorneys' fees and treble damages. *Id.* On July 25, 2014, the Trial Court signed the consent Order of Judgment

and the Clerk's Office filed it. (Order of Judgment filed July 25, 2014, a true and accurate copy of which is attached as Exhibit E.) On August 4, 2014, the Trial Court issued an Order granting the Respondents' Motion for Attorneys' Fees and Treble Damages, resulting in a total judgment against Turbeville in the amount of \$202,507.85. (Order dated August 4, 2014 and filed August 5, 2014, a true and accurate copy of which is attached as Exhibit F.)

In this appeal, Appellant seeks review of three things: (i) the Order issued by Judge Cooper denying his motion to dismiss issued prior to the Jury Verdict, (ii) the Jury Verdict against him, and (iii) the Order granting the Respondents' Motion for Attorneys' Fees and Treble Damages. (*See* Notice of Appeal.) In this Motion, Respondents seek dismissal of this appeal as to the first two matters.

#### ARGUMENT

This appeal should be dismissed as it relates to Judge Cooper's Order and to the Jury Verdict because Appellant waived any right to appeal those matters when he stipulated to entry of judgment. Consequently, the appeal should be limited to matters contained in the Order granting Respondents' Motion for Attorneys' Fees and Treble Damages.

"Waiver is a voluntary and intentional abandonment or relinquishment of a known right." Eason v. Eason, 384 S.C. 473, 480, 682 S.E.2d 804, 807 (2009). "Stated differently, waiver requires a party to have known of a right and known he was abandoning that right." Id. "Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver." Provident Life & Acc. Ins. Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994).

Under Rule 43(k), SCRCF, parties may make stipulations that become binding when reduced to a consent order and entered in the record. "A stipulation is an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys. Stipulations, of course, are binding upon those who make them." Kirkland v. Allcraft Steel Co., 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) (citations omitted).

The consent Order of Judgment, which the Trial Court signed and entered in the record, is binding on Appellant because it satisfies the requirements of Rule 43(k), SCRCF. That order clearly and unambiguously states that Appellant was consenting to entry of judgment against him individually on Respondents' SCUTPA claim in the amount of \$39,200, plus treble damages, attorneys' fees and costs as the Court deemed proper. Appellant cannot now claim the verdict against him was improper. See Kirkland, 329 S.C. at 393, 496 S.E.2d at 626 ("Stipulations, of course, are binding upon those who make them. Here, Third Party made a concession that it was responsible for satisfaction of Carrier's lien. This stipulation is therefore binding upon it, and it cannot now assert that it is not responsible for the lien. We affirm the circuit court on this issue."). Rather, Appellant waived any right to challenge the judgment against him.

Appellant's request that this Court review Judge Cooper's Order and the Jury Verdict is nothing more than an attempt to withdraw his consent to the Order of Judgment. At the time Appellant consented to the Order of Judgment, Appellant was well aware of his right to challenge the judgment entered against him in his individual capacity. He had already moved to dismiss the claims against him individually, his motion to dismiss had been denied, and he had witnessed the jury return a verdict against

him. Appellant was represented by counsel and, no doubt, was aware of his right to appeal the adverse rulings against him. However, as part of the resolution of the election of remedies motion, Appellant consented to entry of judgment on Respondents' SCUTPA claim, an act which stands in stark contrast to Appellant's subsequent decision to attack the judgment in this appeal. Therefore, Appellant's consent to the Order of Judgment is entirely inconsistent with his subsequent decision to appeal Judge Cooper's Order and the Jury Verdict. See Driver, 317 at 478, 451 S.E.2d at 928 ("Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver."). Appellant is bound by his consent to the Order of Judgment and has waived any right to attack the judgment in this appeal.

#### CONCLUSION

For these reasons, Appellant's appeal is improper as to Judge Cooper's Order denying his Motion to Dismiss and as to the Jury Verdict against him. Accordingly, Respondents move this Court for an Order dismissing this appeal as to those matters and limiting the appeal to matters contained in the Trial Court's Order granting Respondents' Motion for Attorneys' Fees and Treble Damages.



Henry P. Wall  
Benjamin C. Bruner  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, South Carolina 29260  
(P) 803-252-7693  
(F) 803-753-0060

*Attorneys for the Respondents*

November 24, 2014

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Coastal Pi, LLC d/b/a Primarily Pi and  
James Bigby,

Plaintiffs,

v.

Danville Business Advisors, LLC, and  
Marion D. Turbeville.

Defendants.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2011-CP-40-04111

VERDICT

1. On the Plaintiffs' breach of contract claim against Danville Business Advisors, LLC, we, the jury, unanimously find in favor of:

Plaintiffs  Defendant

On the Plaintiffs' breach of fiduciary duty claim against Danville Business Advisors, LLC, we, the jury, unanimously find in favor of:

Plaintiffs  Defendant

**IF YOU FIND FOR THE PLAINTIFFS ON ANY OF THE TWO CLAIMS ABOVE, GO TO QUESTION 2.**

**IF YOU FIND FOR THE DEFENDANT ON ALL OF THE ABOVE CLAIMS, GO TO QUESTION 3.**

2. We, the jury, unanimously award to the Plaintiffs against Danville Business Advisors, LLC the amount of:

\$ 521,000<sup>00</sup> (\$ 521,000<sup>00</sup>)  
Actual Damages

Five hundred, twenty-one thousand dollars

**GO TO QUESTION 3.**

1  
**EXHIBIT A**

3. On the Unfair Trade Practices claim against Defendant, Danville Business Advisors, LLC, we, the jury, unanimously find for:

✓ **PLAINTIFFS**

Five hundred twenty one - (\$ 521,000)<sup>00</sup>  
Actual Damages  
thousand dollars

       **DEFENDANT** Danville Business Advisors, LLC.

Rydia M. Jamison  
Foreperson

Date: 5/29/14

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS )  
FIFTH JUDICIAL CIRCUIT )

Coastal Pi, LLC d/b/a Primarily Pi and )  
James Bigby, )

Civil Action No.: 2011-CP-40-04111 )

Plaintiffs, )

**VERDICT**

v. )

Danville Business Advisors, LLC, and )  
Marion D. Turbeville, )

Defendants. )

1. On the Breach of Fiduciary Duty claim against Defendant Marion Turbeville, we, the jury, unanimously find in favor of:

The PLAINTIFFS

\$ 39,200.<sup>00</sup>

Actual damages

(\$ 39,200.<sup>00</sup>)

The DEFENDANT Marion Turbeville

2. On the Unfair Trade Practices claim against Defendant Marion Turbeville, we, the jury, unanimously find in favor of:

The PLAINTIFFS

\$ 39,200.<sup>00</sup>

Actual damages

(\$ 39,200.<sup>00</sup>)

Thirty-nine thousand, <sup>two hundred</sup> ~~twenty~~ dollars

The DEFENDANT Marion Turbeville

Alicia M. Jamison  
Foreperson

Date: 5/29/14

**EXHIBIT B**

STATE OF SOUTH CAROLINA  
COUNTY OF  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO 2011 CP-40-04111

Coastal Pi LLC, et al.

Danville Business Advisors, LLC

Marion Turbeville  
DEFENDANT(S)

PLAINTIFF(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: Plaintiff to file motions/memoranda relating to election of remedies within 10 days (June 9). Jury verdict for

This order  ends  does not end the case.  
Additional Information for the Clerk:

ORDER INFORMATION

10 days (June 9). Jury verdict for plaintiff held until election of remedies issues decided.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

*Al Greenlee*

Judge Code

Date

*5/29/2014*

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

*Benjamin C. Bruner*

*Robert McInair Peele III*  
*Thomas Dougall*

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

**Court Reporter:**

**BRUNER, POWELL, WALL & MULLINS, LLC**

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-753-0060

[WWW.BRUNERPOWELL.COM](http://WWW.BRUNERPOWELL.COM)

JAMES L. BRUNER, P.A.  
WARREN C. POWELL, JR., P.A.\*  
HENRY P. WALL  
E. WADE MULLINS, III, P.A.  
BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.  
JOEY R. FLOYD, P.A.  
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER  
MATTHEW H. STABLER

\* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: [BBRUNER@brunerpowell.com](mailto:BBRUNER@brunerpowell.com)

June 6, 2014

**VIA HAND DELIVERY**

The Honorable Alison Renee Lee

1701 Main St., Room 324

Columbia, SC 29202-0192

**RE: *Coastal Pi, LLC, et al. v. Danville Business Advisors, LLC, et al.***

**Case No.: 2011-CP-40-4111**

**BPWM File No.: 9-2182.100**

Dear Judge Lee:

I am pleased to report that the parties have resolved the Defendants' Motion for Election of Remedies made last week and have agreed to entry of judgment as set forth in the attached proposed Order of Judgment. Also enclosed for Your Honor's consideration is a copy of the Plaintiffs' Motion for Attorneys' Fees and Treble Damages which I am filing today, as well as the memorandum and affidavit in support thereof and a proposed order.

With my highest regards, I remain,

Very truly yours,



Benjamin C. Bruner

BCB/gh  
Enclosures

cc: Thomas Dougall, Esquire  
Robert M. Peele, III, Esquire  
Mr. James Bigby

**EXHIBIT D**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and )  
James Bigby, )  
 )  
Plaintiff, )

Civil Action No. 2011-CP-40-4111

vs. )

**ORDER OF JUDGMENT**

Danville Business Advisors, LLC and )  
Marion D. Turbeville, )  
 )  
Defendants. )

---

THIS MATTER is before the Court by way of a Motion for Election of Remedies by the Defendants, Danville Business Advisors, LLC and Marion D. Turbeville ("Defendants"), made on May 29, 2014 upon discharge of the jury, which returned verdicts against both Defendants.

IT APPEARING that the jury returned verdicts against the Defendants on all of the Plaintiffs' causes of action;

IT FURTHER APPEARING that the Defendants moved for the Plaintiffs to elect their remedies;

IT FURTHER APPEARING that the parties have negotiated and resolved the issues raised by the Defendants' Motion; and

IT FURTHER APPEARING that the parties consent to entry of judgment as set forth below;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered against Danville Business Advisors, LLC on the Plaintiffs' breach of fiduciary duty claim in the amount of \$521,000, plus taxable costs under Rule 54, SCRCP, in the amount of \$581.12, for a

total judgment in favor of the Plaintiffs against Danville Business Advisors, LLC in the amount of \$521,581.12.

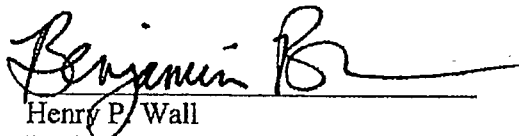
IT IS FURTHER ORDERED that judgment be entered against Marion Turbeville on the Plaintiffs' claim for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to 550, in the amount of \$39,200 actual damages, plus any and all treble damages, attorneys' fees and costs as this Court may deem proper under S.C. Code Ann. § 39-5-140 after considering Plaintiffs' Motion for Attorneys' Fees and Treble Damages.<sup>1</sup>

AND IT IS SO ORDERED.

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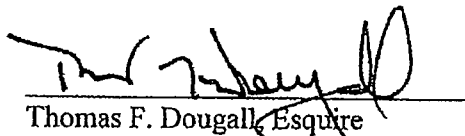
Alison Renee Lee  
Presiding Judge, Fifth Judicial Circuit

WE CONSENT:



---

Henry P. Wall  
Benjamin C. Bruner  
Matthew H. Stabler  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260  
803-252-7693  
*Attorneys for Plaintiffs*



---

Thomas F. Dougall, Esquire  
William A. Collins, Esquire  
Robert M. Peele, III, Esquire  
Dougall & Collins  
1700 Woodcreek Farms Road  
Elgin, South Carolina 29045  
803-865-8858  
*Attorneys for the Defendants*

---

<sup>1</sup> Upon Defendants' Motion for Election of Remedies, Plaintiffs requested ten (10) days to file their response and, in addition, asked this Court to indicate whether it would award treble damages and attorney's fees under the South Carolina Unfair Trade Practices Act. I therefore find it proper to consider Plaintiffs' Motion for Attorneys' Fees and Treble Damages upon entry of this Order.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and )  
James Bigby, )  
 )  
Plaintiff, )

Civil Action No. 2011-CP-40-4111

vs. )

Danville Business Advisors, LLC and )  
Marion D. Turbeville, )  
 )  
Defendants. )

ORDER OF JUDGMENT

RICHLAND COUNTY  
FILED  
2014 JUL 25 AM 11:43  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

THIS MATTER is before the Court by way of a Motion for Election of Remedies by the Defendants, Danville Business Advisors, LLC and Marion D. Turbeville ("Defendants"), made on May 29, 2014 upon discharge of the jury, which returned verdicts against both Defendants.

IT APPEARING that the jury returned verdicts against the Defendants on all of the Plaintiffs' causes of action;

IT FURTHER APPEARING that the Defendants moved for the Plaintiffs to elect their remedies;

IT FURTHER APPEARING that the parties have negotiated and resolved the issues raised by the Defendants' Motion; and

IT FURTHER APPEARING that the parties consent to entry of judgment as set forth below;

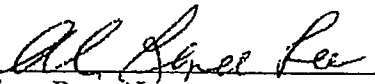
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that judgment be entered against Danville Business Advisors, LLC on the Plaintiffs' breach of fiduciary duty claim in the amount of \$521,000, plus taxable costs under Rule 54, SCRCP, in the amount of \$581.12, for a

EXHIBIT E

total judgment in favor of the Plaintiffs against Danville Business Advisors, LLC in the amount of \$521,581.12.


IT IS FURTHER ORDERED that judgment be entered against Marion Turbeville<sup>3</sup> on the Plaintiffs' claim for violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to 550, in the amount of \$39,200 actual damages, plus any and all treble damages, attorneys' fees and costs as this Court may ~~deem proper~~ <sup>award</sup> under S.C. Code Ann. § 39-5-140 after considering Plaintiffs' Motion for Attorneys' Fees and Treble Damages.<sup>1</sup> *and by separate order.*


AND IT IS SO ORDERED.

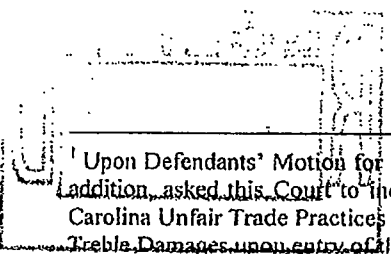
  
Alison Renee Lee  
Presiding Judge, Fifth Judicial Circuit

*July 25, 2014*

WE CONSENT:

  
Henry P. Wall  
Benjamin C. Bruner  
Matthew H. Stabler  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, SC 29260  
803-252-7693  
*Attorneys for Plaintiffs*

  
Thomas F. Dougall, Esquire  
William A. Collins, Esquire  
Robert M. Peele, III, Esquire  
Dougall & Collins  
1700 Woodcreek Farms Road  
Elgin, South Carolina 29045  
803-865-8858  
*Attorneys for the Defendants*

  
<sup>1</sup> Upon Defendants' Motion for Election of Remedies, Plaintiffs requested ten (10) days to file their response and, in addition, asked this Court to indicate whether it would award treble damages and attorney's fees under the South Carolina Unfair Trade Practices Act. I therefore find it proper to consider Plaintiffs' Motion for Attorneys' Fees and Treble Damages upon entry of this Order.

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Coastal Pi, LLC d/b/a Primarily Pi and )  
James Bigby, )

Civil Action No. 2011-CP-40-4111

Plaintiff, )

**ORDER**

vs. )

Danville Business Advisors, LLC and )  
Marion D. Turbeville, )

Defendants. )

2014 AUG -5 PM 12:23  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

This matter is before the Court upon motion by the Plaintiffs, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby (hereinafter, "Plaintiffs"), for attorneys' fees and for treble damages against Defendant Marion Turbeville pursuant to the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 to 550 ("UTPA"). Having carefully considered the submissions of the parties, Plaintiffs' motion is **GRANTED**.

"The purpose of the UTPA is to discourage unfair methods of competition and unfair or deceptive acts in the conduct of any trade or commerce." Taylor v. Medenica, 331 S.C. 575, 579, 503 S.E.2d 458, 460 (1998) (citing S.C. Code Ann. § 39-5-20). In furtherance of its purpose, the UTPA allows a private party to bring a cause action, collect his attorneys' fees if he is successful and, under certain circumstances, collect three times his actual damages. S.C. Code Ann. § 39-5-140(a). Plaintiffs are entitled to recover reasonable attorneys' fee and costs because they prevailed on their claim against Mr. Turbeville for violation of the UTPA. See S.C. Code Ann. § 39-5-140(a). This lawsuit involved both construction defects and unfair trade practices. Plaintiffs prosecuted their claims for months before they discovered and began to unravel the Defendants' practice of taking undisclosed "finder's fees" from contractors. In addition, the Plaintiffs' investigation into the ultimate cause of the construction defects and Plaintiffs' losses—the Defendants' conduct—required a substantial amount of work. All of the attorneys who have appeared on behalf of the Plaintiffs are in good standing and devote their practice to civil litigation. Plaintiffs' counsel has obtained a beneficial result because the jury found in the Plaintiffs' favor on all causes of action. Finally, the hourly rates for the services rendered are in conformity with hourly

**EXHIBIT F**

rates for this work. Furthermore, Plaintiffs identified Dr. Perry Woodside and Jeffrey Hass as experts when Danville Business Advisors, LLC and Mr. Turbeville were the only remaining parties in the case and it was apparent the case would not be settled. The amount of attorneys' fees and costs submitted by Plaintiffs included costs and fees attributable to other defendants not relating to the issues asserted against Marion Turbeville. Therefore, those costs and fees are not included in the amount awarded to Plaintiffs arising out of the unfair trade practices claims against Turbeville. Having carefully considered the submissions of the parties in light of the six factors enumerated in Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997), Plaintiffs entitled to recover reasonable attorneys' fees in the amount of \$64,418 and costs in the amount of \$20,489.85 for a total of \$84,907.85.

The facts and circumstances of this case warrant an award of treble damages under the UTPA. Such an award is appropriate when a defendant engages in conduct that he knew or should have known violated the UTPA. S.C. Code Ann. § 39-5-140(a), (d). "The statutory definition of willful has been construed by our Court of Appeals to mean: 'if, in the exercise of due diligence, a person of ordinary prudence engaged in trade or commerce could have ascertained that his conduct violates the Act, then such conduct is willful.'" Haley Nursery Co., Inc. v. Forrest, 298 S.C. 520, 525, 381 S.E.2d 906, 909 (1989) (quoting State v. Nest Egg Soc. Today, Inc., 290 S.C. 124, 348 S.E.2d 381 (Ct. App. 1986)).

In this case, this Court finds no evidence in the record that the Defendants' practice of negotiating for commissions at their clients' expense without disclosing those payments to the clients is a common, accepted practice. Although Mr. Turbeville continued to claim that the secret commissions were part of Danville's business model, he could not name one other business that engages in the same practice or employs the same business model. At no time did the Defendant present any evidence that it is common practice to negotiate and collect these payments without telling their clients. Nor did the Defendant present any testimony that the Plaintiffs or any of their other clients knew about the secret finder's fees and commissions.

Mr. Turbeville testified unapologetically that he would negotiate for commissions and finder's fees - in addition to what his clients paid him - and these payments increased the cost to his clients and that Mr. Turbeville would disclose those payments to clients only if they asked. Mr. Turbeville's testimony at trial simply proved Danville had a practice of negotiating for and concealing commissions that had a direct and adverse impact on their clients. Any person of


end #2

ordinary prudence engaged in trade or commerce could have ascertained that such a deceptive and unfair business model violated the UTPA. See Haley Nursery, 298 S.C. at 525, 381 S.E.2d at 909. Mr. Turbeville's testimony also proved without question that he personally participated in, directed or authorized that Danville's unfair and deceptive practice. See BPS, Inc. v. Worthy, 362 S.C. 319, 328-29, 608 S.E.2d 155, 160-61 (Ct. App. 2005). I therefore find Mr. Turbeville knew or should have known his wrongful conduct violated the UTPA. As a result, this Court finds it proper to grant the Plaintiffs' motion and award Plaintiffs damages in the amount of \$117,600, or three times the actual damages the jury awarded.

**IT IS THEREFORE ORDERED:**

1. that Plaintiff's Motion for Attorney's Fees and for Treble Damages is **GRANTED;**
2. that Plaintiffs' is awarded Attorney's Fees and Costs in the amount of \$84,907.85;
3. that Plaintiff is awarded three times the actual damages awarded by the jury (\$39,200) for a total award of actual damages in the amount of \$117,600;
4. that judgment entered against Defendant Marion Turbeville for a total in the amount of \$202,507.85.

**AND IT IS SO ORDERED.**

  
ALISON RENEE LEE  
Presiding Judge, Fifth Judicial Circuit

August 4, 2014  
Columbia, South Carolina

*arf*  
#3

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

RECEIVED

NOV 25 2014

SC Court of Appeals

---

APPEAL FROM THE RICHLAND COUNTY  
Court Of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge  
Alison Renee Lee, Circuit Court Judge

---

CIVIL ACTION NO.: 2011-CP-40-4111  
APPELLATE CASE NO.: 2014-001799

---

Coastal Pi, LLC d/b/a Primarily Pi and James Bigby..... Respondents.

vs.

Danville Business Advisors, LLC and Marion D. Turbeville.....Defendants

Of Whom Marion D. Turbeville is .....Appellant,

---

**PROOF OF SERVICE**

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I, Bridget S. Steele, a Legal Assistant of Bruner, Powell, Wall & Mullins, LLC, attorneys for Respondents, Coastal Pi, LLC d/b/a Primarily Pi and James Bigby do hereby certify that on the 24<sup>th</sup> day of November 2014, I served the **Respondents' Motion to Dismiss** upon opposing counsel by depositing copy of the same in the U.S. Mail, postage prepaid, and addressed as follows:

R. Charles Richards, Esq.  
Richards Law Firm, LLC  
1622 Sunset Boulevard  
West Columbia, SC 29169  
*Attorney for Marion D. Turbeville*



*Bridget Steele*

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**RECEIVED**

NOV 25 2014

**SC Court of Appeals**

November 25, 2014

Jenny Abbott Kitchings  
Clerk, Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: Coastal Pi, LLC d/b/a Primarily Pi and James Bigby v. Danville Business  
Advisors, LLC and Marion D. Turbeville  
Appellate Case No.: 2014-001799

Dear Ms. Kitchings:

Please accept this correspondence as a request for a twenty-one (21) day extension of time to file and serve Appellant's Return to Respondents' Motion to Dismiss. Appellant's counsel received Respondents' Motion to Dismiss, a copy of which is enclosed, this morning (November 25, 2014). Appellant requests the deadline to respond be extended from December 4, 2014 to December 25, 2014.

The grounds for this request are that our firm will be shut down for the Thanksgiving holiday from Wednesday, November 26 until Monday, December 1. Further, Appellant's counsel will be out of town for a CLE seminar on Thursday, December 4 until Monday, December 8, giving Appellant's counsel only three (3) days in which to prepare and file a Return under the current deadline.

I enclosed my firm's check in the amount of \$25.00 representing the filing fee for this extension request.

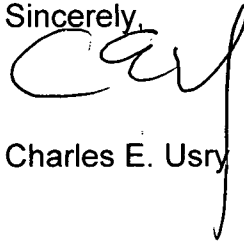
I consulted with Benjamin C. Bruner, attorney for Respondents. Mr. Bruner was apparently unable to obtain consent from his clients prior to our submission of this request for an extension due to time constraints and the fact that we received the instant motion two days before Thanksgiving.

09-11-2014

24/11/2014

If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Usry". The signature is written in a cursive style with a long vertical stroke extending downwards from the end.

Charles E. Usry

/jb  
Encls.

cc: Bruner, Powell, Wall & Mullins, LLC, Attorneys for Respondents  
Dougall & Collins, Attorneys for Defendant, Danville Business Advisers