

**RECEIVED**

DEC 28 2016

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

---

**APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS**

2014-CP-23-03197

Letitia H. Verdin, Circuit Court Judge

---

Appellate Case No. 2016-001425

Natasha Turner

Respondent

v.

Michael T. Kellett and Carmen Kellett

Appellants

---

**INITIAL BRIEF OF THE RESPONDENT**

---

Joseph M. Plaxco (SC Bar No. 100975)  
Joseph M. Plaxco, LLC  
707 East North Street  
Greenville, South Carolina 29601  
(864) 240-9112  
(864) 232-7707 (facsimile)  
Attorney for Respondent

R. Frank Plaxco (SC Bar No. 4476)  
925 Cleveland Street, Unit 59  
Greenville, South Carolina 29601  
(864) 232-9828  
Attorney for Respondent

## TABLE OF CONTENTS AND CASES

### Table of Contents

Contents	Page(s)
Statement of Issues on Appeal	1
Statement of the Case	2
Argument	3
Question I	3
Question II	8
Question III	11
Question IV	12
Question V	14
Conclusion	15

### Table of Cases and Laws

#### Cases

<i>Crary v. Djebelli</i> 329 S.C. 385, 387; 496 S.E.2d 21, 23 (S.C. 1997)	3, 8
<i>Daisy Outdoor Advertising Co., Inc. v. Abbott</i> 322 S.C. 489, 473 S.E.2d 47 (S.C. 1996)	9, 10
<i>Genay v. Norris</i> 1 SC 3, 1 Bay 8 (1784)	13
<i>Lister v. Nations Bank of Delaware</i> 329 S.C. 133, 494 S.E.2d 449 (S.C. App., 1997)	13
<i>Mackela v. Bentley</i> 365 S.C. 44, 614 S.E.2d 648 (S.C. App., 2005)	13

*Townes Associates, Ltd. v. City of Greenville,*  
266 S.C. 81, 221 S.E.2d 773, 775 (S.C. 1976) 3, 10

**Statutes**

S.C. Code Ann. § 15-32-520(E) (1976) 13

S.C. Code Ann. § 15-37-10 (1976) 14

S.C. Code Ann. §§ 39-5-10 *et seq.* (1976) 1

S.C. Code Ann. § 39-5-20(a) (1976) 8

S.C. Code Ann. § 39-5-38(E) (1976) 14

S.C. Code Ann. § 39-5-140 (1976) 11

## STATEMENT OF ISSUES ON APPEAL

### APPELLANT'S ISSUES

- I. Did the Appellants breach their contract with the Respondent by failing to repair Respondent's car?
- II. Did the Appellants' acts constitute an unfair trade practice under the Act, Sections 39-5-10 *et seq*, Code of Laws of South Carolina?

### RESPONDENT'S ISSUES ON CROSS APPEAL

- III. Is a business committing an unfair trade practice liable for reasonable attorney fees under the South Carolina Unfair Trade Practices Act when such fees were sought in the complaint?
  - A. Were attorney fees sought in the complaint?
  - B. Are attorney fees limited to willful unfair trade practices; or do they apply to all violations, whether willful or not?
- IV. Is the Respondent entitled to punitive damages for willful conversion or for willful fraud and deceit?
- V. Is the Respondent entitled to costs?

## STATEMENT OF THE CASE

We accept the Appellants' Statement of the Case with a few corrections.

First, three answers were filed by the Kelletts, one in magistrate's court and two in the common pleas court:

Second, while Mrs. Kellett testified that Fincham was involved in an insurance fraud, there is no evidence that Ms. Turner was involved. (Trial Tr. 45:4 – 45:25, November 19, 2016; Tr. 105:16 - 105:20; R. \_\_\_\_.)

Third, the Kelletts are mistaken in saying Ms. Turner sued without first complaining that the car had not been repaired. (Compl. filed June 10, 2014, ¶ 12, ¶ 13; R. \_\_\_\_.) Also Ms. Turner testified that her calls to Buddy's Garage were not fruitful, as the telephone line had been disconnected. (Tr. 41:14 - 41:21; R. \_\_\_\_.)

Fourth, Ms. Turner signed no memorandum that all repairs were satisfactory when she picked up her car from Buddy's Garage. (Tr. 46:1 - 46:20; R. \_\_\_\_.)

Fifth, Ms. Turner's Notice and Motion For Amendment of Order sought an award of punitive damages alternative to the award of treble damages under the Unfair Trade Practices Act, in addition to separately stated findings of facts and conclusions of law, and an award of attorneys fees and costs (Pl.'s Notice and Motion for Amended of Order filed Jan. 7, 2016; R. \_\_\_\_.)

Finally, the Kelletts are mistaken in saying Ms. Turner's complaint did not seek attorney fees. In Paragraph 40 of her Complaint, Ms. Turner alleged she was entitled to attorney fees; and in Paragraph D of the relief prayer, she sought them. (Compl.; R. \_\_\_\_.)

## ARGUMENT

### I. Did the Appellants breach their contract with the Respondent by failing to repair Respondent's car?

With few exceptions, the trial court's Findings of Fact are unchallenged; and therefore set out the facts of the case, binding on all parties. "In an action at law, on appeal of a case tried without a jury ... factual findings of the trial judge will not be disturbed on appeal unless a review of the record discloses that there is no evidence which reasonably supports the judge's findings." *Crary v. Djebelli*, 329 S.C. 385, 387; 496 S.E.2d 21, 23 (1997) (citing *Townes Associates, Ltd. v. City of Greenville*, 266 S.C. 81, 221 S.E.2d 773, 775 (1976)).

Buddy's Garage was an unincorporated automobile repair business owned by the Kelletts as equal partners. (Tr. 129:17 – 129:23; R. \_\_\_\_.) Neither was active in the daily operation of the business, and their only employee, Mr. Fincham, was the manager, estimator, mechanic, body repairer and representative for the business. (Tr. 130:7 – 130:20; R. \_\_\_\_.) In the ordinary course of business, customers dealt solely with Fincham; and this was true in all respects in Ms. Turner's dealing with the business up to the time Mrs. Kellett contacted Ms. Turner and advised that repairs had been completed and her car was ready to be picked up. (Tr. 19:7 – 19:17; Tr. 163: 11 – 163: 14; Tr. 172: 5 – 173:1; Tr. 19:7 – 19:16; R. \_\_\_\_.)

On May 7, 2013, Ms. Turner took her car to Buddy's Garage for repairs resulting from an accident (Tr. 22:15 – 23:7; R. \_\_\_\_.) A few days later, Fincham told Ms. Turner that both bumpers and the transmission needed replacement. (Tr. 21:13 – 22:5; R. \_\_\_\_.) He showed her a work order (Pl.'s Ex. 1; R. \_\_\_\_), indicating that the cost would be \$3,867.69, and he advised that payment must be received before repairs were made. (Tr. 20:14 – 23:14; R. \_\_\_\_.) Ms.

Turner accepted the work order, and signed a statement on it that she did not know of any other repairs that were needed at that time. (Tr. 46:1 – 46:20; R. \_\_\_\_.) She borrowed the amount of her collision insurance deductible, \$2,500 (Tr. 23:3 – 23:11; R. \_\_\_\_); and Fincham requested from the insurer and received \$1,815.26, \$447.57 more than the amount of the work order. (Tr. 24:11 – 25:5; 25:12 - 25:17; R. \_\_\_\_.) Ms. Turner's payment was delivered seven days after receiving the work order. (Pl.'s Exhibit 2; R. \_\_\_\_.) both payments were deposited in Buddy's checking account, which was under the sole control of the Kelletts. (Tr. 174:6 – 175:9; Kellett Dep. 18:23 – 20:23, March 17, 2015; R. \_\_\_\_.) Fincham had no access to the bank account. (Id.; R. \_\_\_\_).

There is no satisfactory explanation for the additional \$447.57 charge. Mrs. Kellett claimed it was for storage because the car had been stored at Buddy's for such a long time pending payment and parts.. (Tr. 181:14 – 181:23; R. \_\_\_\_.) But, Ms. Turner was never told by the work order or otherwise that there would be a charge for storage and the time between the estimate and Ms. Turner's payments was only seven days. This would result in a *per diem* charge of \$63.94, a strange amount indeed.<sup>1</sup>

The work order provided for replacement of the transmission with a used one having 22,000 miles. (Pl.'s Ex. 1; R. \_\_\_\_.) On direct examination, Mrs. Kellett stated that these were the number of miles on a transmission Buddy's had or had located (Tr. 131:23 – 132:4; R. \_\_\_\_.) Necessarily this would mean that the transmission was at least located by the time of the work order, May 7, 2013. But on cross examination she said the transmission had been hard to locate,

---

<sup>1</sup> The notation of a storage charge was not on the work order when Ms. Turner agreed to it before payment. This is necessarily true because the notation is in Mrs. Kellett's handwriting and refers to fourteen days (Tr. 183:13 - 138:15.) No such time had passed when Ms. Turner reviewed and approved the estimate.

and that Fincham had finally found one in North Carolina after the Ms. Turner's car was delivered to Buddy's Garage. (180:1 – 180:12; R. \_\_\_\_.) There is no record of any payment by the Kelletts for a transmission. (Tr. 179:19 – 179:21; R. \_\_\_\_.)

After making payment, Ms. Turner inquired several times about the progress of repairs, and was told Buddy's was waiting for parts. (Tr. 25:21 -26:5; R. \_\_\_\_.) Finally, on July 15, 2013, Mrs. Kellett contacted Ms. Turner and advised the car was ready to be picked up. (Tr. 28:12 – 28:16; R. \_\_\_\_.) She went to Buddy's, met Mrs. Kellett and looked at the car. (Tr. 28:22 – 29:7; R. \_\_\_\_.) She saw that neither bumper had been replaced. (Id.) As to the front bumper, Ms. Turner was told that Fincham had taken the parts, and that she would have to pick them up from him. (Tr 28:17-28:21; R. \_\_\_\_.) Mrs. Kellett tendered a check for \$130.00 for an apparent refund for labor, \$32.50 less than Ms. Turner had paid for that labor. (Pl.'s Ex. 5; Pl.'s Ex. 1; R. \_\_\_\_.) As to the back bumper, Mrs. Kellett told her she was being too picky, and that it did not need to be replaced, though it had been included in the work order and had been paid for. (Trans. 35:11 – 35:23; Pl.'s Ex. 1; R. \_\_\_\_.) In claiming Ms. Turner was entitled only to a refund for installation of the front bumper, Mrs. Kellett represented that all other work had been properly performed. (Trans. 28:13 – 28:16; 76:14 – 76:22; R. \_\_\_\_.)

The discussion became heated, and Mrs. Kellett's language became abusive, to the point that Ms. Turner became apprehensive for her safety. (Tr. 37:25 – 38:9; 73:19 – 74:3; 74:13 – 75:3; R. \_\_\_\_.) Ms. Turner took the \$130.00 check to end the discussion, but never cashed it. (Tr. 37:12 – 37:14; Pl.'s Ex. 5; R. \_\_\_\_.)

After leaving Buddy's, Ms. Turner noticed that the transmission was not functioning normally. (Tr. 39:9 – 39:19; R. \_\_\_\_.) She had the car inspected by an expert, the witness

Stanstell, and learned the car still had its original transmission, unrepaired. (Tr. 40:1 – 40:7; 87:10 – 88:21; 91:18 – 91:25; R. \_\_\_\_.) The lower pan had been wiped clean, perhaps to make it appear it had been replaced. (Tr. 89:5 – 89:15; R. \_\_\_\_.)

When Ms. Turner brought suit in magistrate's court, the Kelleets answered, alleging that their employee, Fincham, and not they, had committed the wrongful acts. (Tr. 42:3 – 42:17; Pl.'s Ex. 6.; R. \_\_\_\_.) The magistrate's court case was dismissed without prejudice before trial, and suit was brought in common pleas court, alleging conversion, fraud and violation of the Unfair Trade Practices Act. (Compl. filed June 10, 2014; R. \_\_\_\_.) Punitive damages were sought on the conversion and fraud counts; treble damages and attorney fees were sought on the unfair trade practices count. (Id.) Costs provided by law were sought on all counts. (Id.)

In their original common pleas answer, the Kelleets admitted Buddy's Garage had committed conversion and fraud. In Paragraph 26 of their answer, they alleged:

Defendant Finchem, acting as agent of the defense as part of his ongoing scheme of fraud, theft and deception perpetrated on the defendants, as well as a number of customers of Buddy's Garage, willfully and intentionally retained the funds deposited by the plaintiff knowing they rightfully belonged to the Plaintiff until the agreed work was done. Acting outside the scope of his employment, without the knowledge or consent of the defendants, Finchem did not perform the work as agreed and yet maintained said funds for himself.

(Tr. 173:6 – 173:17; Tr. 172:15 – 173:1; Answer, Counterclaim and Crossclaim, R. \_\_\_\_.)

Shortly following, the Kelleets employed another lawyer, and a general denial was alleged by Amended Answer.

Through all pre-trial proceedings and sworn testimony in the trial itself, the Kelleets have persisted in their claim that all repairs other than installation of the front bumper had been made; that they had done nothing wrong and owed Ms. Turner nothing. Now, more than three years

after the event and through the intervention of an honorable attorney they admit in their Brief that the work was not done and that they kept the money belonging to Ms. Turner. (They overlook that the work order also provided for replacement of the rear bumper. We assume this to be an oversight.)

The Kelletts apparently argue the Court should excuse intentional and willful conversion, fraud and deceit, and unfair trade practices because they now acknowledge that their representations to Ms. Turner were untrue.

They are too late. Three years have passed, during which they have continued to keep Ms. Turner's money; and during which she lost her car because she could not afford to pay a second time to have it fixed. She has had to employ attorneys and an expert, and incur the costs of litigation.

The Kelletts make a novel argument, but we submit they have earned no right to such charity.

The facts establish beyond any doubt that the Kelletts took Ms. Turner's money and failed to deliver, falsely claiming that they had, even to the extent of sworn testimony in deposition and trial. They falsely alleged that it was their employee, Fincham, who converted Ms. Turner's money, when they knew the conversion was by them alone. By their conduct, they knowingly committed unfair trade practices, which were of a character capable of repetition.

**II. Did the Appellants' acts constitute an unfair trade practice under the Act, Sections 39-5-10 et seq, Code of Laws of South Carolina?**

The trial court found, "The Defendants' conduct constituted unfair and deceptive acts in the automobile repair business, which were capable of repetition. This entitled the Plaintiff to treble damages under the Unfair Trade Practices Act, resulting in damages of \$10,567.86." (Am. Order filed June 7, 2016 ¶ 4, p. 6; R. \_\_\_\_.)

But the Kelleets argue that the acts committed were not capable of being repeated because Finchem was fired on July 13, 2013, and also because the Kelleets ended up closing Buddy's Garage after Ms. Turner retrieved her unfixed automobile there. (App.'s Brief, [page unmarked], [undated]; R. \_\_\_\_.) The Kelleets also assert that the acts committed were not capable of affecting the public interest since "[t]he failure of Buddy's Garage to replace a transmission and not install a front bumper involves only Natasha Turner and Buddy's Garage, a small automobile repair shop" and "no other members of the public [were] affected" (App.'s Brief, [page unmarked], [undated]; R. \_\_\_\_.)

The Kelleets construe the language of the Unfair Trade Practices Act (hereafter, "SCUTPA") far too narrowly. S.C. Code Ann. § 39-5-20(a) (1976) provides, "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful. ... Unfair or deceptive acts or practices have an impact upon the public interest if the acts or practices have the potential for repetition." *Crary v. Djebelli*, 329 S.C. 385, 387, 496 S.E.2d 21, 23 (1998). Generally, a plaintiff may prove potential repetition in two ways: (a) "by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence" and (b) "by showing the company's procedures

create a potential for repetition of the unfair and deceptive acts.” *Daisy Outdoor Advertising Co., Inc. v. Abbott*, 322 S.C. 489, 495; 473 S.E.2d 47, 5 (1996). However, these are not the only two means for showing potential for repetition. *Daisy*, 322 S.C. at 496-497, 473 S.E.2d at 51-53. The Supreme Court “expressly reject[s] any rigid, bright line test that delineates in minute detail expressly what a plaintiff must show to satisfy the potential for repetition/public impact prong of the UTPA test...Rather, each case must be evaluated on its own merits.” *Id.*

The Kelleths would argue that the Act only applies to large businesses. But there is no basis for their argument. Despite the size of Buddy’s Garage and the number of its employees and customers, it is clear from the record that the conduct complained of affected the public interest, and was thus capable of potential repetition. The test is not whether the plaintiff can prove repetitive acts of bad conduct; it is whether the conduct is of a type that there is a potential for repetition. *Id.* It is hard to imagine a clearer example of an unfair trade practice than taking money to make repairs, and then not only failing to make them, but claiming, even through the trial of the case three years later, that they had been made.

In fact, the Kellett’s culpability for unfair trade practices does not depend only on the *potential* for repetition. Ironically, the Kelleths themselves establish *actual* repetition. In their brief in this Court, the Kelleths say their employee, Finchem, was involved in a fraudulent scam, one that they were aware of. (App.’s Brief, [page unmarked], [undated]; R.\_\_\_\_.) In the magistrate’s court, the Kelleths admitted liability in their answer, but not to the full amount, because “they were taking action against [Finchem] for fraud.” (Tr. 42:3 - 42:17; Pl.’s Ex. 6; R.\_\_\_\_.) After the case was removed to common pleas and the Kelleths filed their answer there, they alleged Finchem, acting as “agent of the Defendants, and as part of his ongoing scheme of

fraud, theft, and deception perpetrated ... on a number of customers of Buddy's Garage, willfully and intentionally retained the funds deposited by the plaintiff knowing that they rightfully belonged to the Plaintiff until the work was done." (Tr. 173:6 – 173:17; Tr. 172:15 – 173:1; Answer, Counterclaim, and Crossclaim; R. \_\_\_\_.)

Ms. Kellett also testified as to her knowledge of Finchem's scheme; that Finchem was engaged in a scam in which he claimed to have reported to the authorities two cars left for repairs at Buddy's Garage were stolen, when in fact they were not. (Tr. 138:4 - 139:15; R. \_\_\_\_.) She also testified that she fired Finchem upon learning that he was involved in a scheme ordering parts that were paid for by Buddy's Garage, but not provided to customers. (Tr. 161:3 - 161:7; R. \_\_\_\_.)

She testified, "[i]n other cases, [she had] become aware that Mike Finchem was getting parts and not putting them in cars," the exact same scheme concerning the repairs for Ms. Turner. (Tr. 195:7 – 195:13; R. \_\_\_\_.)

The evidence here meets the standard set for proving potential repetition in *Daisy*, supra and *Townes*, supra. There is ample evidence supporting the lower court's finding and conclusion that the Defendants' conduct had the potential for repetition, and that in fact it had been repeated, such that it affected the public and was thus in violation of the SCUTPA.

The lower trial court's of an award under SCUTPA should be affirmed.

**III. Is a business committing an unfair trade practice liable for reasonable attorney fees under the South Carolina Unfair Trade Practices Act when such fees were sought in the complaint?**

There are two facets to this specific question. First, was the lower court correct in denying attorney fees based on a finding that they had not be sought in the complaint? Second, are attorney fees awarded only for willful violations of the Unfair Trade Practices Act?

First, the lower court was plainly mistaken in finding the complaint did not seek attorney fees. The complaint, in paragraph 40, alleges that Ms. Turner is entitled to attorney fees, and section D of the prayer seeks them. (Compl.; R. \_\_\_\_.)

Aside from the sufficiency of the complaint, S.C. Code Ann. § 39-5-140 (1976) provides, “Upon the finding by the court of a violation [of the Unfair Trade Practices Act] the court *shall* award...reasonable attorney fees and costs.” (emphasis added.) The point is that the mandate for attorney fees in an unfair trade practices case does not require any allegation of entitlement in the complaint.

Without question, the court’s recital was simply an oversight. But it must be corrected.

Second, attorney fees are not limited to willful violations of the Act, but must be awarded for all violations, whether willful or not.

Though not separately designated, paragraph (a) of S.C. Code Ann. § 39-5-140 actually has three distinct parts. First, an injured party is entitled to actual damages for a violation of the Act. “Any person...who suffers...loss...as a result of [an unfair trade practice] may bring an action ...to recover actual damages.” Second, treble damages apply if the violation was intentional: “If the...[act] was a willful or knowing violation of [the Act] the court shall award

three times the actual damages....” Third, attorney fees and costs must be awarded in all cases for violation of the Act, not just those involving willful or knowing conduct: “Upon...a violation of...the Act... the court shall award...reasonable attorney’s fees and costs.”

The lower court has found that the Kelletts knowingly committed unfair trade practices, and we believe that finding will be sustained. But their intention is not relevant to the issue of attorney fees. Whether they intended to or not, Ms. Turner was the victim of an unfair trade practice and is entitled to reasonable fees.

#### **IV. Is the Respondent entitled to punitive damages?**

In addition to the unfair trade practice count the Respondent also sought punitive damages for the Appellants’ willful conversion of the money she paid (Compl. ¶ 18; R. \_\_\_\_), and also for the fraud and deceit practiced by the Appellants (Compl. ¶ 28, ¶ 35; R. \_\_\_\_.)

The facts plainly support punitive damages. The lower court found that the Kelletts intentionally and willfully converted Ms. Turner’s money. (Am. Order ¶ 6, p. 4 ; R. \_\_\_\_.) The evidence supporting the finding is clear and convincing and the Kelletts do not challenge it. Indeed, they admit conversion and fraud, claiming it was by their employee and not them.<sup>2</sup>

But it was they, not their employee, who “willfully and intentionally retained” Ms. Turner’s funds. They have persisted in the conversion for more than three years.

---

<sup>2</sup> In ¶ 26 of their first answer in common pleas court, they say Finchem “willfully and intentionally retained” Ms. Turner’s funds, “knowing they rightfully belonged to the plaintiff until the agreed work was done” and that “Finchem did not perform the work as agreed and yet maintained said funds for himself.” (Tr. 173:6 – 173:17; Tr. 172:15 – 173:1; Answer, Counterclaim and Crossclaim, R. \_\_\_\_.)

The lower court also found that the Kelletts were guilty of all the elements of common law fraud and deceit. (Am. Order ¶ 3, p. 6 ; R.\_\_\_\_.) Again, the evidence fully supporting the finding is clear and convincing; and the Kelletts have not excepted.

It follows that the standards for a punitive damage award have been met.

Punitive damages have long been accepted in this state. In fact, South Carolina was the first of the American states to authorize them. In *Genay v. Norris*, 1 SC 3, 1 Bay 8 (1784), the Court awarded "vindictive" damages for an intentional attempt to injure.

Punitive damages are allowed in both conversion and fraud and deceit cases. In *Mackela v. Bentley*, 365 S.C. 44, 614 S.E.2d 648, 651 (2005), the Court said, "Punitive damages are recoverable in conversion cases if the defendant's acts have been willful, reckless, and/or committed with conscious indifference to the rights of others." The Court enumerated several factors to be considered in determining the propriety of punitive damages. These include the defendant's degree of culpability, the duration of the conduct, the defendant's awareness or concealment, the likelihood the award will deter others, and whether the award is reasonably related to the harm likely to result from the conduct. *Id.* Substantially the same standards are contained in S.C. Code Ann. § 15-32-520(e) (1976).

More recently, a punitive damage award of 26 times the actual damages was affirmed by this Court. In *Lister v. NationsBank of Delaware N.A.*, 329 S.C. 133, 494 S.E.2d 449 (S.C. App., 1997), a car rental company made an unauthorized charge against the plaintiff's credit card for damage to a car. The Court affirmed a punitive award of \$200,000 in addition to actual damages of \$7,700, saying,

Although there is no evidence in the record of similar past conduct, the punitive damages award should strongly deter future conduct by [the defendant] *and others*. The award is reasonably related to the harm likely to result from this conduct.... The need for protection and deterrence is heightened by the enormous difficulties the Listers experienced in dealing with [the defendant's agent].

(*Id.* at 150-151, 458-459) (emphasis added).

An award under the Unfair Trade Practices Act does not preclude punitive damages. S.C. Code Ann. § 39-5-38(E) (1976) provides, "The penalties and remedies provided in this act are cumulative of and in addition to other provisions of law."

In our case, the lower court did not address the issue of punitive damages, apparently considering that the treble damages award was sufficient punishment. Perhaps so, subject to the qualification that, if the treble damage award is not sustained, then we are surely entitled to punitive damages. For that reason, in our Rule 52 motion, as well as the brief in support of the motion, we sought an amendment to provide punitive damages as an alternative to treble damages under SCUPTA. (Pl.'s Notice and Motion for Amended of Order filed Jan. 7, 2016 ; R. \_\_\_\_.) In short, we are not asking for two bites of the apple; but we are asking for one full bite.

**V. As the prevailing party, Ms. Turner was entitled to costs.**

The lower court's order denies costs. "Plaintiff is not entitled to costs otherwise allowed by law." (Am. Order, ¶ 13, p. 5; R. \_\_\_\_.)

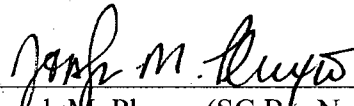
But S.C. Code Ann. § 15-37-10 (1976) provides, "In every civil action...except cases in chancery...such costs [shall] be allowed *as of course*...against the losing party. In cases in chancery the same rule as to costs shall prevail unless otherwise ordered by the court." (emphasis added.) This is a case at law, and the lower court did not have reason or discretion to deny costs.

The denial of costs was probably inadvertent. But whether deliberate or inadvertent, the error should be reversed.

### CONCLUSION

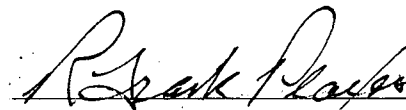
We respectfully submit the lower court's order should be modified (1) to allow attorney fees in an amount to be determined; (2) to allow costs provided by law; and (3) to award punitive damages in an appropriate amount alternative to the award of treble damages. We also respectfully submit that the trial court's award of treble damages under the South Carolina Unfair Trade Practices Act should be affirmed.

Respectfully submitted:



Joseph M. Plaxco (SC Bar No. 100975)  
Joseph M. Plaxco, LLC  
707 East North Street  
Greenville, South Carolina 29601  
(864) 240-9112

- and -



R. Frank Plaxco (SC Bar No. 4476)  
925 Cleveland Street; Unit 59  
Greenville, South Carolina 29601  
(864) 232-9828

December 21, 2016

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

DEC 28 2016

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
COURT OF COMMON PLEAS

2014-CP-23-03197

Letitia H. Verdin, Circuit Court Judge

Appellate Case No. 2016-001425

Natasha Turner

Respondent

v.

Michael T. Kellett and Carmen Kellett

Appellants

---

**PROOF OF SERVICE BY MAIL**

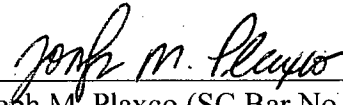
---

I hereby certify that on the 21st day of December, 2016, I served a copy of the Respondent's Designation of Matter to be Included in the Record on Appeal and Initial Brief on the Appellants, Michael T. Kellett and Carmen Kellett, by mailing it to their attorney of record, Clifford F. Gaddy, Jr., by depositing it in the U.S. mail, in an envelope with sufficient postage affixed, addressed as follows:

Clifford F. Gaddy, Jr.  
408 N. Church St., Suite B  
Greenville, SC 29601

I do further certify that on December 21, 2016, I placed a copy of the Respondent's Designation of Matter to be Included in Record of Appeal and the Respondent's Initial Brief in the U.S. mail, with sufficient postage addressed to:

Hon. Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211



---

Joseph M. Plaxco (SC Bar No. 100975)  
707 East North Street  
Greenville, South Carolina 29601  
(864) 240-9112 (telephone)