

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Law Offices of William A.
Green, Plaintiff,

v.

Roper St. Francis Healthcare
and Dominique Smalls, Defendants,
Of whom, Roper St. Francis
Healthcare is, Respondent,
and Dominique Smalls, is Appellant.

Appeal From Charleston County
Roger M. Young, Circuit Court Judge

Memorandum Opinion No. 2012-MO-018
Heard April 17, 2012 – Filed May 30, 2012

AFFIRMED

Desa Ballard and Stephanie Weissenstein, of Ballard
Watson Weissenstein, of West Columbia, for
Appellant.

Stephen L. Brown, Joseph J. Tierney, Jr., Robert B. Hawk, and Russell G. Hines, of Young Clement Rivers, of Charleston, for Respondent.

PER CURIAM: We affirm pursuant to Rule 220(b)(1), SCACR and the following authorities:

As to Issue I (UTPA Claim), we conclude the trial court properly found there is no genuine issue of material fact regarding Appellant's allegation that Respondent has committed an unfair trade practice, and we hold summary judgment was warranted as a matter of law on the UTPA claim. Specifically, Appellant failed to set forth genuine issues of material fact demonstrating a public policy violation by Respondent and the existence of ascertainable damages. *See Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 465 S.E.2d 84 (1995) (holding the trial court did not err in finding the plaintiff failed to present any evidence that the defendant committed an unfair or deceptive act and in granting a directed verdict to the defendant on the plaintiff's UTPA claim); *LaMotte v. Punch Line of Columbia, Inc.*, 296 S.C. 66, 370 S.E.2d 711 (1988) (upholding the trial court's grant of summary judgment on a claim for violation of the UTPA where there was no genuine issue of material fact as to whether the defendants engaged in unfair acts that affected a public interest); *see also Havird Oil Co. v. Marathon Oil Co.*, 149 F.3d 283 (4th Cir. 1998) (relying upon the *Adams* decision and finding the plaintiff's UTPA claim failed where there was no evidence of an unfair act); *Wogan v. Kunze*, 366 S.C. 583, 623 S.E.2d 107 (Ct. App. 2005) (holding a plaintiff may not change the theory of recovery, and that an issue must first be raised to and ruled upon by the trial court to be subject to appellate review).

As to Issue II (Motion to Compel), counsel for Appellant indicated at oral argument that this issue was being waived based on the propriety of the trial court's ruling, and we agree the issue lacks merit.

AFFIRMED.

**TOAL, C.J., PLEICONES, BEATTY, KITTREDGE and HEARN,
JJ., concur.**