

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Natasha Turner, Respondent/Appellant

v.

Michael T. Kellett and Carmen Kellett, Appellants/Respondents

Appellate Case No. 2016-001425

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

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SC Court of Appeals

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

In its opinion of February 6, 2019, the Court reversed the trial court's award of treble damages under the Unfair Trade Practices Act ("the Act"), holding, "No evidence in the record suggests the Kelletts had a history of unfair billing practices or procedures making it likely the unfair billing practices would continue."

But the Kelletts themselves admitted as much, that their agent, as a part of a "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 the rightfully belonged to the Plaintiff until the agreed work was done.” (Emphasis added; Kelletts’ Second Answer, R. 18, ¶ 26)

Thus, the Kelletts admitted in their own pleadings that, like Natasha Turner, other customers were defrauded by paying for parts not installed. Mrs. Kellett was examined at length about the admission (R. 209. Line 14 to R.212 Line 12). Nowhere did she retract or deny the truth of the statement that other customers were so damaged or were not the victims of “fraud, theft and deception.” Her only claim was that the Kelletts were not responsible, because the payments of Turner and other customers had been kept by the employee and not them.¹ But she was incorrect. The payments went into the Kelletts’ bank account, over which their employee had no control.²

In the final analysis, though, regardless of the money trail, the fact is that Ms. Turner “as well as a number of other customers” - were damaged by the “same kind of actions.” with resulting liability under the Act. See *Wright v. Craft*, 372 S.C. 1 at 30, 640 S.E.2d 486 at 502 (2006).

¹ “Q: — he didn’t get the funds, did he?

A: Yes, sir. He did.” (Mrs Kellett’s testimony, R. 210, lines 22 - 24)

² “Q: And you received the check and you put it in [the garage] account at the bank, didn’t you?

A: Yes

Q: And Fincham didn’t have check writing authority on that account, did he?

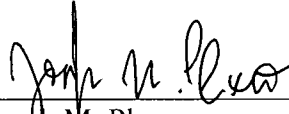
A: He did not have check writing authority.

Q: So that money was put in your account, under your control and not under Fincham’s control, right?

A: Yes” (Mrs. Kellett’s testimony, R. 211, Lines 10 - 21

If the Court concludes that its opinion of February 6, 2019 should be modified to affirm the award of treble damages under the UTPA, then we submit Ms. Turner is entitled to attorney fees as mandated by the Act, S.C. Code Ann. § 39-5-140.

RESPECTFULLY SUBMITTED.



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February 20, 2019