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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

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Appellate Case No. 2020-001673

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Elisa Montgomery Edwards and Emily Cecile Edwards, .....Respondents,

v.

David C. Bryan, III, ..... Appellant.

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INITIAL BRIEF OF RESPONDENTS

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**COUNTERSTATEMENT OF ISSUES**

**I.**

**Did the trial court properly deny Appellant's post-trial motions when Respondents adduced evidence of all nine (9) elements of fraud at trial?**

**II.**

**Did the trial court properly deny Appellant's motions for a new trial because the jury's verdict was supported by evidence adduced at trial?**

## COUNTERSTATEMENT OF THE CASE

This is an appeal from the denial of Appellant's post-trial *Motion for Judgment Notwithstanding the Verdict* ("JNOV") or for a new trial, absolute or *nisi remittitur*. The jury returned a verdict in favor of Respondents for Five Hundred Thousand Dollars (\$500,000.00) actual damages and One Hundred Thousand Dollars (\$100,000.00) punitive damages for fraud. Appellant's post-trial motion was served on October 30, 2020, and denied by order of December 3, 2020. *Notice of Appeal* was filed and served on December 23, 2020.

Appellant's father died on January 9, 2009. (Tr. pg. 42 ln. 6-8). Appellant was the Personal Representative of his father's estate. (Tr. pg. 43 ln. 24 - pg. 25 ln. 2). The Decedent's *Will* created a trust for the benefit of his surviving wife and further provided that, upon her death, the trust corpus was to be distributed in equal shares to four (4) beneficiaries, with the Respondents named as two (2) of the trust beneficiaries. (Tr. pg. 45 ln. 8 - pg. 46 ln. 17). Appellant's mother (the Decedent's wife) died on October 22, 2009 (Tr. p. 46, ln. 22-24), approximately nine (9) months after her husband (Tr. pg. 126 ln. 8-10) while her husband's Estate was still pending in the Probate Court (Tr. p. 47, ln. 17-19).

On September 20, 2010, prior to the closing of his father's Estate, Appellant filed a signed "*Final Accounting*" in which he reported to the Probate Court that Four Hundred Sixty-eight Thousand Five Hundred Eighty-seven and 06/100 Dollars (\$468,587.06) had been disbursed "to Trust." (Tr. p. 51, ln. 21-23). The Estate of Appellant's father was closed by order dated November 9, 2011. (Tr. p. 51, ln. 21-23). Respondents did not challenge the closing of the Estate (Tr. p. 44, ln. 18-23).

Over the next few years, between November 2011 and "either 2014 or 2015", the

Appellant told his niece, Respondent Elisa Edwards, on multiple occasions that he had placed the trust funds in a Smith Barney account. (Transcript p. 58 ln. 15 – p. 59 ln. 6). In either 2014 or 2015, Appellant finally admitted that there was no money in the trust and nobody was to get anything. (Transcript p. 60 ln. 7-20).

Respondents filed suit on March 14, 2018, asserting four (4) causes of action: Fraud, Negligent Misrepresentation, Conversion and Negligence *Per Se*. Appellant filed a *Motion for Summary Judgment* on April 30, 2018, alleging that the applicable Statute of Limitations had expired. (R. pp. \_\_\_\_). On October 12, 2018, the trial judge denied Appellant’s motion by Form 4 order, ruling that the date of discovery by Respondents was a question of fact for the jury. (R. pp. \_\_\_\_). After discovery, Appellant filed a *Motion for Reconsideration* on March 27, 2019. (R. pp. \_\_\_\_). On March 28, 2019, Appellant also filed a *Motion for Summary Judgment*. On December 6, 2019, the trial judge issued an *Order Granting Partial Summary Judgment* which, by consent of counsel, dismissed Respondents’ Conversion and Negligence *Per Se* causes of action and re-affirmed the Court’s order of October 12, 2018, as to the Fraud and Negligent Misrepresentation causes of action. re was Prior to trial, the Circuit Court, with the consent of Respondents through counsel, granted summary judgment on the Conversion and Negligence *Per Se* causes of action. (R. pp. \_\_\_\_).

At trial, after the close of Respondents’ [plaintiffs’] case, Respondents elected to drop the Negligent Misrepresentation cause of action and proceed only on the Fraud cause of action. (Tr. pg. 176 ln. 1920; pg. 177 ln. 5-9). At the close of Defendant’s case, Appellant moved for a directed verdict which the trial judge denied. (Tr. pg. 220 ln.23 – pg. 221 ln. 2). The jury returned a verdict for Five Hundred Thousand Dollars (\$500,000.00) actual damages plus One Hundred Thousand Dollars (\$100,000.00) punitive damages for Fraud, as published by the Clerk of Court. (Transcript pg. 257 ln. 4–21).

On October 30, 2020, Appellant moved for Judgment Notwithstanding the Verdict, or, in the alternative, a motion for a new trial *nisi remittitur*. Respondents filed a memorandum opposing the motion. The trial judge denied the motion without oral argument on November 2, 2020. (R. pp. \_\_\_\_). This appeal followed.

## STANDARD OF REVIEW

**Judgment Notwithstanding the Verdict.** “It is within the discretion of the trial judge to grant or deny a motion for a new trial, and their discretion will not be disturbed on appeal unless their findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Howard v. Roberson, 376 S.C. 143, 149, 654 S.E. 2d 877, 880 (Ct. App. 2007). A motion for judgment notwithstanding the verdict under Rule 50(b), *SCRCP*, is simply a renewal of a motion for directed verdict. Wright v. Craft, 372 S.C. 1, 20, 640 S.E. 2d 486, 496 (Ct. App. 2006).

When a party makes a motion for directed verdict, he or she “must state the specific grounds relied upon therefor, and the trial court may grant the motion when the case presents only issues of law. Rule 50(a), *SCRCP*; RFT Mgmt. Co. v. Tinsley & Adams, L.L.P., 399 S.C. 322, 331, 732 S.E. 2d 166, 170 (2012). Only the grounds raised in the directed verdict motion may properly be reasserted in a motion for judgment notwithstanding the verdict. *Id.* at 170-71.

In deciding motions for judgment notwithstanding the verdict, the trial court does not have the authority to decide “credibility issues or to resolve conflicts in testimony or the evidence.” *Id.* at 171.

**New Trial.** Discretion in granting or denying a motion for a new trial rests with the trial judge, and his or her decision “will not be disturbed on appeal unless his [or her] findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. Howard, 376 S.C. 143, 149, 654 S.E. 2d 877, 880 (Ct. App. 2007). “A trial court may grant a new trial absolute on the ground that the verdict is excessive or inadequate.” Vinson v. Hartley, 324 S.C. 389, 404 477 S.E. 2d 715, 723 (Ct. App. 1996) (citing Rush v. Blanchard, 310 S.C. 375, 426 S.E. 2d 802 (1993). Granting a new trial absolute is appropriate only if the amount of the verdict is “grossly inadequate” or so excessive “as to shock the conscience”; it must clearly indicate that the figure reached was the result of “passion, caprice, prejudice, partiality, corruption[,] or some other motives.” Vinson at 723.

A motion for a new trial *nisi remittitur* is a request to reduce an excessive verdict. Vinson v. Hartley, 324 S.C. 389, 404 477 S.E. 2d 715, 723 (Ct. App. 1996) (citing Rush v. Blanchard, 310 S.C. 375, 426 S.E. 2d 802 (1993). “A motion for new trial *nisi remittitur* asks the trial court

in its discretion to reduce the verdict because it is merely excessive, although not motivated by considerations such as passion, caprice or prejudice.” controlled by an error of law or is not supported by the evidence. Orangeburg Sausage Co. v. Cincinnati Ins. Co., 316 S.C. 331, 345-46, 450 S.E. 2d 66, 74 (Ct. App. 1994). “The grant or denial of this motion is within the trial court’s discretion and its decision will not be reversed on appeal absent an abuse of discretion. Id. at 346, 450 S.E. 2d at 74.

## **ARGUMENT**

### **I. The trial court properly denied Appellant’s post-trial motion for a directed verdict because Respondents adduced evidence of all nine (9) elements of Fraud at trial.**

Respondents argued, and the jury clearly found, that Appellant had fraudulently misrepresented to Respondent Elisa Edwards for years that he had the money from the “trust” in a Smith Barney account for the benefit of both Respondents.

The references at trial to documents filed in the “Estate” case were adduced: (a) to clearly show the total amount that Appellant claimed he had disbursed to “the Trust” in his 2010 Probate accounting; (b) to clearly show the amount each quarter (25%) of the “Trust” was in 2010; and, (c) to impeach the credibility of the Appellant at trial. The vast majority of the Respondent’s testimony regarded the numerous representations made by Appellant over a number of years that he had the money for Respondents in a Smith Barney account. The jury clearly believed Respondent Elisa Edwards testimony over that of the Appellant.

Respondents showed by clear and convincing evidence that Appellant’s actions constituted Fraud under South Carolina law in the following nine (9) particulars:

**a. Appellant made a representation to Respondent Elisa Edwards on multiple occasions that he was holding trust funds for her benefit and the benefit of Respondent Emily Edwards.**

Respondent Elisa Edwards testified:

“Q. Okay. Now, you testified earlier that it took until, I believe you said, November of 2011 for the estate to close of your grandfather; is that right?

A. Right.

Q. Over two and a half years?

A. Correct.

Q. Okay. Now, during those two and a half years, did you have other discussions with your uncle about the trust?

A. Yes, I did. I talked to -- right after my grandfather died, he had money in a Smith Barney account and lots of property, rental properties. And I talked with my uncle about the estate. And David told me he was going to leave the money in Smith Barney because in 2009 -- the economy tanked in 2009 and the stock market crashed. He wanted to leave the money in the Smith Barney account to try to build it back up and earn more money before he ever disbursed the account. I told him -- I said, that's a great idea. Nobody was in need of money right away. And so he was going to keep the money in the Smith Barney account and allow it to grow before he disbursed the funds." (Tr. pg. 58, ln. 9 - pg. 59 ln. 6).

Respondent Elisa Edwards further testified:

"Q: Approximately how many times would you say your uncle told you there was money in the trust?

A. Every time we had a family gathering, I would just say how's our money doing, just jokingly, and he'd say it's doing fine." (Transcript p. 69 ln. 23 - pg. 70 ln. 2).

Respondent Elisa Edwards further testified:

"Q. Okay. And I want to make sure I understand. You said your uncle led you to believe that the money was in the trust?

A. He led me to believe the money was always there, would always be there for us.

Q. To the best of your recollection, how would he have lead [sic] you to believe that?

A. He told me so. He told me that the money is growing in a trust. He told me once the house on Bruce Road sold, then he would have the money in the trust available for us.

say Q. Okay. Before December of 2015 -- and I understand that's when you he told you there wasn't anything.

A. Right.

Q. What was the most recent time before that that you had discussed the trust and getting a distribution?

A: There are several times throughout those years that I would just check in with him and -- to find out about the trust. And he said the money was growing and the money was there.

Q. Okay. Did he tell you where the money was?

A. It was in a Smith Barney account. (Transcript p. 62 ln. - p. 63 ln. 7).

**b. Appellant's representations were false.**

Appellant finally admitted to Respondent Elisa Edwards that he had not set up a “trust” nor invested any funds for her or Respondent Emily Edwards:

“Q. Okay. So after the estate closed in November of 2011, did you have other conversations with your uncle about the trust?

A. I did. I asked him when he was going to disburse the funds on the trust. And my mother kept asking him and I kept asking him. And finally, one day, he says, there is no money in the trust and nobody gets anything.

Q. There's no trust?

A. He said there was no money in the trust; no trust.” (Transcript pg. 60 ln. 7-17).

This Respondent also testified:

Q. Ultimately, did you find out those representations about the trust were false?

A. I did, yes.” (Transcript pg. 71 ln. 18-20).

**c. Appellant’s representations were material.**

Respondent Elisa Edwards testified:

“Q. Were his misrepresentations material? Did it matter?

A. It mattered to me. Yes.

Q. How did it matter?

A. Well, financially, that was money I was going to depend on, and also my daughter as well.” (Transcript pg. 71 ln. 21 – pg. 72 ln. 1).

This Respondent further testified:

“Q. How did your plans change when you found out that there was no money and that wasn't true?

A. Well, it made a big difference in where my daughter chose to go to school; it made a big difference in me in lots of ways. But, yes, primarily for my daughter, her choices in school.” (Transcript pg. 72 ln. 5–10).

**d. Appellant knew of the falsity of his representations.**

Respondent Elisa Edwards testified:

“Q. Okay. Do you believe, as we sit here today, that he knew that those were false representations?

A. Yes. They were all false representations.

Q. Do you believe your uncle intentionally lied to you about the trust?

A. Yes, I do.

Q. Why do you believe he lied?

A. He wanted to keep all the money for himself.” (Transcript pg. 72 ln. 17–24).

e. **Appellant intended for his representations to be acted upon by Respondents.**

Respondent Elisa Edwards testified:

“Q. Do you believe your uncle intended for you and your daughter to rely on those misrepresentations?

A. I think he did until, you know, I discovered the truth.

Q. Do you believe he was trying to hide the truth for a period of time?

A. I believe he was trying to hide the truth for a period of time, yes, I do.” (Transcript pg. 72 ln. 25 – pg. 73 ln. 7).

f. **Respondents were ignorant of the falsity of Appellant’s representations.**

Respondent Elisa Edwards testified:

“Q. When he was telling you about the trust during the four years to December of 2014, did you believe what he told you was true?

A. I did believe everything he said.

Q. Did you have any reason to think his representations were false?

A. No, I did not. He was my uncle and I trusted him.” (Transcript pg. 73 ln. 8-15).

g. **Respondents relied on the truth of Appellant’s representations.**

Respondent Elisa Edwards testified:

“Q. Okay. So after the estate closed in November of 2011, did you have other conversations with your uncle about the trust?

A. I did. I asked him when he was going to disburse the funds on the trust. And my mother kept asking him and I kept asking him. And finally, one day, he says, there is no money in the trust and nobody gets anything.

Q. There's no trust?

A. He said there was no money in the trust; no trust.

Q. Do you know approximately when that was that he finally told you that?

A. It was either in 2014, '15. And that prompted me to come down to the courthouse and pull all the documents because, as far as I knew and as far as I thought, the money was being held safely in the trust, growing, and would be disbursed whenever we were ready for the money.” (Transcript pg. 60 ln. 7-25);

**h. Respondents had a right to rely on Appellant’s representations.**

Respondent Elisa Edwards testified:

“Q. Did you have any reason to think his representations were false?

A. No, I did not. He was my uncle and I trusted him.

Q. Do you believe that your uncle had a duty to tell you the truth about that?

A. As personal representative, he did have a duty to tell me the truth.

Q. Do you believe he had a duty as your uncle?

A. He had a duty as my uncle, yes.

Q. Was your reliance upon what he said more because he was the personal representative or more because he was family?

A. More because he was family.” (Transcript pg. 73 ln. 12-25).

**i. Respondents were consequently and proximately damaged by Appellant’s false representations.**

Respondent Elisa Edwards testified:

“Q. All right. After you found out in December of 2015 that there was no trust and there was no money, what did you do?

A. I sent a letter to David [Appellant]. I tried to call him and texted him and said please give me an accounting of the trust. I sent him a letter and had no response from him whatsoever.

Q. Okay. What would you have done with a distribution from the trust? I would have probably invested the money. My portion, I would have invested.” (Tr. pg. 64 ln. 17 – pg. 65 ln. 2).

Respondent Elisa Edwards also testified as to the damages consequently and proximately caused by Appellant:

“Q. Okay. Now, have you been damaged by what you have stated under oath to be the misrepresentations by your uncle about the trust?

A. Well, financially, that was money that I planned on using for retirement. And I never received it and I will never receive it, I guess.” (Transcript pg. 74 ln. 13-18).

Respondent Elisa Edwards then testified that she calculated what each portion of the “trust” was at the time the Appellant stated its value in September 2020:

“Q. And I have just a little chart here I'll refer to myself. Did you get together these numbers?

A. I did.

Q. So if you take \$468,587 -- we'll forget about the six cents -- divide that by four, you calculated that that was \$117,146?

A. Correct.

Q. Okay. And that was the amount that Mr. Bryan said had been disbursed in 2010, correct?

A. Correct, into the trust. Yes.” (Transcript pg. 75 ln. 13-22).

This Respondent testified that she had calculated what Respondents had been deprived of as a consequence of Appellant’s misrepresentations and failure to disburse the proceeds of the “trust”:

“Q. Let me ask you this: You stated earlier that you had been keeping an eye on the stock market. From what you understand from information you receive, how has the stock market done in the last ten years?

A. In the last ten years -- my personal investments have done very well in the last ten years.

Q. Have they gone up an average amount every year?

A. I've got some aggressive investments that have done, like, 20 percent over the past ten years. But anywhere between 10 and 20 percent; they've done very well.

Q. Would you have any reason to think the Smith Barney stock account wouldn't do as well?

A. No.

Q. Okay. Did you yourself sit down and calculate taking a share and having it appreciate by ten percent every year for the last ten years?

A. Yes, I did.

Q. What would each share be worth if that had occurred? If it had been in there accruing at just ten percent, what would that be worth today?

A. If I took \$117,000 and compound interest at ten percent, it would be worth a little over \$300,000 today.

Q. Okay. And we're talking about two shares, aren't we?  
A. Right; my share and my daughter's share.  
Q. So if we had it till today, what would both of your shares approximately be worth?  
A. Both shares would be a little over \$600,000.  
Q. And you don't have that money, do you?  
A. No, sir, I do not.” (Transcript pg. 76 ln. 9–24).

All nine (9) required elements of Fraud were brought before the jury by sworn testimony. At the end of Respondents’ case in chief, outside the presence of the jury, counsel argued Appellant’s motion for directed verdict as to Negligent Misrepresentation. The following exchange took place on the record:

All of the “MR. HEMLEPP [Appellant’s trial counsel]: Your Honor, I would move for a directed verdict on the negligent entrustment testimony –  
THE COURT: You mean –  
MR. HEMLEPP: I mean negligent misrepresentation. All of the testimony from the plaintiff was that the defendant knew he was telling the truth; that this was an unintentional act; that there was no negligence about it. The defendant denies making the statement at all. I don't think there's any evidence of negligence.  
THE COURT: Well –  
MR. BELDING [Respondents’ trial counsel]: Your Honor, I'd leave it up to the Court. But [to opposing counsel] are you going to make a directed verdict motion on fraud, too?  
MR. HEMLEPP: Actually, I'm not.  
MR. BELDING: Okay.  
MR. HEMLEPP: I'm –  
MR. BELDING: You know what? I'm happy to let this go. I'll elect my remedy.  
THE COURT: That's what it -- it sounds like –  
MR. BELDING: I'll elect my remedy and go with fraud.  
MR. HEMLEPP: Well, I think they did.  
THE COURT: Well, I think the testimony I heard certainly –  
MR. BELDING: Supported the fraud allegation.

THE COURT: **Or you at least provided enough evidence for the elements.** [Emphasis added].  
MR. BELDING: Right. Okay.  
MR. HEMLEPP: Correct.

THE COURT: What the jury will decide is not -- and it sounds to me like you'll stipulate and you'll go forward on fraud and not negligent misrepresentation.

MR. BELDING: I so stipulate on behalf of the plaintiffs, Your Honor.

THE COURT: All right. Does that make sense to you then? All right." (Transcript pg. 176 ln. 19 - pg. 177 ln. 11).

The trial judge stated on the record that the Respondents would proceed only on the Fraud cause of action and that the Respondents had "provided enough evidence for the elements." Defense counsel made no contemporaneous objection to the Court's finding that the elements of Fraud had been adduced.

After returning from lunch recess, Appellant's trial counsel made the following motion:

"MR. HEMLEPP: Your Honor, the defense would move for directed verdict on the cause of action for fraud in this case. There's been a failure of evidence by the plaintiff to put forth to -- for the jury to the standard of clear and convincing that a fraud occurred. It was denied by the defendant. I'd move for a directed verdict.

THE COURT: Okay.

MR. BELDING: Thank you, Your Honor. May it please the Court? I very carefully went through every element of fraud that is required by the State of South Carolina. In the plaintiff, Ms. Elisa Edwards', testimony as to representation, falsity, reliance, materiality, everything was in there and she answered it all. And I would say that it's a jury question for them to take up.

THE COURT: Okay. Well, based on where we are now, we can -- you want me to hold the ruling in abeyance?

MR. HEMLEPP: Yeah. (Transcript pg. 179 ln. 17 - pg. 180 ln. 12).

At the close of all the evidence, the trial judge asked for any motions, and the following exchange took place on the record:

"THE COURT: Okay. Any motions?

MR. HEMLEPP: Yes, Your Honor. I would renew my motion that I made prior to us reconvening for the Court.

THE COURT: All right. Your motion -- and you assert your previous grounds. I'll deny the motion." (Transcript pg. 220 ln. 22 - pg. 221 ln. 2).

In Mutual Savings and Loan Ass'n. v. McKenzie, 274 S.C. 630,632, 266 S.E. 2d 423 (1980), the S.C. Supreme Court stated: "Generally, the injured party in a fraud and deceit action is entitled to recover such damages as will compensate him for his pecuniary loss and place him in the same position he occupied before being defrauded. However, only damages which are the natural and proximate consequence of the fraudulent misrepresentations of the defendant and can be clearly defined and ascertained are recoverable." Gilbert v. Mid-South Machinery Co., Inc., 267 S.C. 211, 223, 227 S.E. 2d 189, 194 (1976) (internal citation omitted).

The only grounds Appellant's trial counsel put forth in support of a motion for directed verdict was that he didn't think the Respondent's evidence was "clear and convincing" and that the evidence was "...denied by the defendant" [Appellant]. Motions for directed verdict must be based on specific grounds. That the testimony from the parties may conflict is not a proper ground for this motion. RFT Mgmt. Co. v. Tinsley & Adams, L.L.P., 399 S.C. 322, 331, 732 S.E. 2d 166, 171 (2012). The trial court may grant this motion when the case presents only issues of law. Id. at 170. The grounds stated do not show that the trial judge's decision to deny the motion was "wholly unsupported by the evidence or the conclusions reached are controlled by error of law".

**II. The trial court properly denied Respondent's motions for a new trial because the decision was supported by evidence adduced at trial.**

The trial court's decision to deny both of Appellant's post-trial motions - for new trial absolute and/or new trial *nisi remittitur* - were each supported by evidence adduced at trial.

Appellant submits in its *Initial Brief* that the "...jury gave Respondents a verdict on a theory or theories they expressly were not pursuing or which had been dismissed with prejudice." This is just factually incorrect. It is clear in the *Trial Transcript* that the Respondents elected to go to the jury on a single cause of action – fraud. The trial court denied Appellant’s post-trial motion for a new trial because it found that the Appellants had adduced evidence at trial that addressed the required elements of fraud.

Appellant also submits in its *Initial Brief* that the trial court erred in failing to grant its motion for a new trial because "...the record is susceptible only of a reading that the jury gave Respondents a verdict for damages that could only flow from acts for which Respondents expressly were not suing Appellant." This is also factually incorrect. Again, it is clear that the Respondents elected to go to the jury on the single cause of action for fraud. Respondent Elisa Edwards testified in detail about the Appellant’s misrepresentations over a number of years about the "trust." Respondents asserted that Appellant had committed fraud and the jury returned a verdict for fraud. The trial court denied Appellant’s post-trial motion for a new trial because it found that the Appellants had adduced evidence at trial that addressed the required elements of fraud, a cause of action it sued Appellant for in the *Complaint* and by express election at trial, without objection.

Additionally, Appellant argues that "[t]here is no evidence of damages caused by the fraud plaintiffs claimed the defendant committed." Respondent Elisa Edwards testified in detail about: (a) what the amount of money in the "trust" was in September 2020; (b) the exact amount of money (distribution) each of the Respondents would have received in 2020 if it had been distributed in the manner Appellant told the Probate Court he had already done; (c) that she

would have invested the distribution as Appellant told her he had done; and, (d) what the current value of the invested money would have been at the date of trial according to her investment experience. (Transcript pg. 75 ln. 7-22 – pg. 77 ln. 7-24). She also testified that, due to Appellant's fraudulent misrepresentations, Respondents were never given the money Appellant claimed he had invested for them with Smith Barney.

The Respondents' evidence was clear and convincing that the total Respondents' invested funds, denied to them by Appellant, would have been worth Six Hundred Thousand Dollars (\$600,000.00) at a "lowball" rate of interest. The jury found actual damages of Five Hundred Thousand Dollars (\$500,000.00), well under the sworn testimony adduced at trial.

On appellate review of an action at law tried by a jury, the jury's findings of fact will not be disturbed unless the reviewing tribunal determines that no evidence in the record supports the jury's conclusion. Townes Associates Limited v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976). "Compelling reasons' must be given to justify the trial court invading the jury's province in this manner." Riley v. Ford Motor Co., 414 S.C. 185, 193, 777 S.E.2d 824, 829 (2015) (quoting Bailey v. Peacock, 318 S.C. 13, 14, 455 S.E.2d 690, 691(1995)). "The trial judge, who heard the evidence and is more familiar with the evidentiary atmosphere at trial, possesses a better informed view of the damages than this court." Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 600, 493 S.E.2d 875, 883 (Ct. App. 1997). "Accordingly, great deference is given to the trial judge." Vinson v. Hartley, 324 S.C. 389, 406, 477 S.E.2d 715, 723 (Ct. App. 1996).

In addition, the trial court properly charged the jury about Respondents' burden of proof (Transcript pg. 247 ln. 5–23; pg. 248 ln. 12-22). The trial court also properly charged the jury about the required elements of fraud (Transcript pg. 248 ln. 12 – pg. 250 ln. 23). The trial court

also properly charged the jury about the measure of damages for fraud (Tr. pg. 250 ln. 24 – pg. 251 ln. 12), as well as the standard for an award of punitive damages for fraud (Transcript pg. 251 ln. 13 – pg. 252 ln. 12). Finally, the trial court properly charged the jury that it was the sole and exclusive judge of the facts and that it was their job to determine the credibility or believability of the witnesses that had testified in the case. (Transcript pg. 245 ln. 14 – pg. 246 ln. 5). Therefore, this Court should affirm the denial of Appellant’s motions.

**CONCLUSION**

For the foregoing reasons, Respondents ask the Court to affirm the denial of Appellant’s motions and the jury verdict in this case.

Respectfully submitted,

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April 14, 2022

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

\_\_\_\_\_  
APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

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**SC Court of Appeals**

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Appellate Case No. 2020-001673

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Elisa Montgomery Edwards and Emily Cecile Edwards, .....Respondents,

v.

David C. Bryan, III, ..... Appellant.

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PROOF OF SERVICE

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I hereby certify that I have swerved the foregoing *Initial Brief of Respondents* on the date below given by emailing same to Counsel for the Appellant at the address below:

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April 14, 2022