The Supreme Court of South Carolina

Re: Amendments to Rule 3 and Rule 5, South Carolina Court-Annexed Alternative Dispute Resolution Rules

Appellate Case No. 2018-001828

ORDER

Pursuant to Article V, § 4 of the South Carolina Constitution, Rule 3 and Rule 5 of the South Carolina Court-Annexed Alternative Dispute Resolution Rules are amended as set forth in the attachment to this order. These amendments shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina

January 31, 2019

Rule 3, South Carolina Court-Annexed Alternative Dispute Resolution Rules, is amended to provide:

Rule 3
Actions Subject to ADR

(a) Mediation. All civil actions filed in the circuit court, all cases in which a Notice of Intent to File Suit is filed pursuant to the provisions of S.C. Code 15-79-125(A), and all contested issues in domestic relations actions filed in family court, except for cases set forth in Rule 3(b) or (c), are subject to court-ordered mediation under these rules. Except for exempt cases, in all civil actions filed in the circuit court and all contested issues in domestic relations actions filed in family court, the parties may agree, in lieu of mediation, to conduct an arbitration or early neutral evaluation under these rules. The parties may select their own neutral and may mediate, arbitrate or submit to early neutral evaluation at any time.

(b) Exceptions. ADR is not required for:

(1) special proceedings, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

(2) requests for temporary relief;

(3) appeals;

(4) post-conviction relief (PCR) matters;

(5) contempt of court proceedings;

(6) forfeiture proceedings brought by governmental entities;

(7) mortgage foreclosures;

(8) family court cases initiated by the South Carolina Department of Social Services; and

(9) cases that have been previously subjected to an ADR conference, unless otherwise required by this rule or by statute.

(c) Motion to Exempt from ADR. A party may file a motion to exempt a case from ADR for case specific reasons. For good cause, the Chief Judge for Administrative Purposes of the circuit may grant the motion. For example, it may be appropriate to completely exempt a case from the requirement of ADR where a party is unable to participate due to incarceration or physical condition.

(d) Motion to Refer Case to Mediation. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

Rule 5(e), South Carolina Court-Annexed Alternative Dispute Resolution Rules, is amended to provide:

(e) Motion to Defer. A party may file a motion to defer an ADR conference for case specific reasons. For good cause, the Chief Judge for Administrative Purposes of the circuit may grant the motion. For example, it may be appropriate to defer an ADR conference where a party is unable to participate due to incarceration or mental or physical condition.

The Supreme Court of South Carolina

Re: Amendments to Rule 4(c), South Carolina Court-Annexed Alternative Dispute Resolution Rules

Appellate Case No. 2018-002058

ORDER

Pursuant to Article V, § 4 of the South Carolina Constitution, Rule 4(c) of the South Carolina Court-Annexed Alternative Dispute Resolution Rules is amended as set forth in the attachment to this order. This amendment shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina

January 31, 2019

Rule 4(c), South Carolina Court-Annexed Alternative Dispute Resolution Rules, is amended to provide:

> **(c) Appointment of Mediator by Circuit Court.** In circuit court cases subject to ADR in which no Proof of ADR has been filed on the 210th day after the filing of the action, the Clerk of Court shall appoint a primary mediator and a secondary mediator from the current Roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed. A Notice of ADR appointing the mediators shall be issued upon a form approved by the Supreme Court or its designee. In the event of a conflict of interest with the primary mediator, the secondary mediator shall serve. In the event of a conflict of interest with the secondary mediator, and if the parties have not agreed to the selection of an alternative mediator, the plaintiff or the plaintiff's attorney shall immediately file with the Clerk of Court a written notice advising the court of this fact and requesting the appointment of two more mediators. In lieu of mediation, the parties may select non-binding arbitration or early neutral evaluation pursuant to these rules.
>
> In medical malpractice cases subject to pre-suit mediation as required by S.C. Code § 15-79-125(C), the Notice of Intent to File Suit shall be filed in accordance with procedures for filing a lis pendens and requires the same filing fee as provided for filing a lis pendens by S.C. Code § 8-21-310. The Notice of Intent to File Suit shall contain language directed to the defendant(s) that the dispute is subject to pre-suit mediation within 120 days. In cases where no Proof of ADR has been filed on the 75th day after the filing of the Notice of Intent to File Suit, the Clerk of Court shall appoint a primary mediator and a secondary mediator in the manner set forth in the paragraph above. Notwithstanding the clerk's appointments, the parties by agreement may choose a different mediator at any time.

The Supreme Court of South Carolina

Re: Amendments to Rule 13(a), South Carolina Rules of Criminal Procedure

Appellate Case No. 2017-001233

ORDER

Pursuant to Article V, § 4 of the South Carolina Constitution, Rule 13(a) of the South Carolina Rules of Criminal Procedure is amended as set forth in the attachment to this order. This amendment shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina

January 31, 2019

Rule 13(a), South Carolina Rules of Criminal Procedure, is amended to provide as follows:

RULE 13
SUBPOENAS

(a)(1) Issuance of Subpoenas. Upon the request of any party, the clerk of court shall issue subpoenas or subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. An attorney, as an officer of the court, may also issue and sign subpoenas or subpoenas duces tecum for any person or persons to attend as witnesses in any cause or matter in the General Sessions Court. The subpoena shall state the name of the court, the title of the action, and shall command each person to whom it is directed to attend and give testimony, or otherwise produce documentary evidence at a specified court proceeding. The subpoena shall also set forth the name of the party requesting the appearance of such witness and the name of counsel for the party, if any. The clerk of court or attorney issuing the subpoena shall utilize a court-approved subpoena form.

(2) Issuance of Subpoena for Personal or Confidential Information About a Victim. A subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

Note to 2019 Amendment:

The 2019 amendment provides that an attorney is also authorized to issue and sign a subpoena on behalf of a court in which that attorney is licensed to practice. The amendment also makes clear that subpoenas may only be issued to summon a witness to appear or present documentary evidence at a court proceeding. The rule allowing an attorney to issue and sign a subpoena does not apply to

any request for a subpoena for a witness located in another state, which is governed by the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings. See S.C. Code. Ann. §§ 19-9-10 et seq. (2014). New paragraph (a)(2) adopts a version of the federal rule intended to provide a protective mechanism when the defense subpoenas a third party to provide personal or confidential information about a victim. The amendment requires judicial approval before service of a subpoena seeking personal or confidential information about a victim from a third party.

The Supreme Court of South Carolina

Re: Amendments to Rule 33(b)(9), South Carolina Rules of Civil Procedure

Appellate Case No. 2018-000121

ORDER

Pursuant to Article V, § 4 of the South Carolina Constitution, Rule 33(b)(9) of the South Carolina Rules of Civil Procedure is amended as set forth in the attachment to this order. The amendment shall be submitted to the General Assembly as provided in Article V, § 4A of the South Carolina Constitution.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina

January 31, 2019

Rule 33(b)(9) of the South Carolina Rules of Civil Procedure is amended to provide:

(9) Limitations. In addition to the standard interrogatories authorized by this paragraph, the court may order additional interrogatories for good cause shown in any case. In all actions in which the amount in controversy is not less than $25,000, and in all actions for declaratory or injunctive relief, or actions before the family court, a party may serve additional interrogatories including more than one set of interrogatories upon any other party; but the total number of general interrogatories to any one party shall not exceed fifty questions including subparts, except by leave of court upon good cause shown.

Note to 2019 Amendment

The amendment to paragraph (b)(9) permits parties in actions before the family court to serve additional interrogatories when engaging in discovery under Rule 25 of the South Carolina Family Court Rules.

The Supreme Court of South Carolina

In the Matter of Gary Wriston Marshburn, Jr., Petitioner.

Appellate Case No. 2019-000097

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 18, 1997, Petitioner was admitted and enrolled as a member of the Bar of this State. Currently, Petitioner is an inactive member of the Bar in good standing.

Petitioner has now submitted a resignation from the South Carolina Bar pursuant to Rule 409 of the South Carolina Appellate Court Rules. The resignation is accepted.

Within twenty (20) days of the date of this order, Petitioner shall surrender the certificate of admission to the Clerk of this Court. If Petitioner cannot locate this certificate, Petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located.

FOR THE COURT

BY s/ Daniel E. Shearouse
CLERK

Columbia, South Carolina

February 1, 2019

The Supreme Court of South Carolina

In the Matter of Linda U. Feuss, Petitioner.

Appellate Case No. 2019-000099

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 9, 1981, Petitioner was admitted and enrolled as a member of the Bar of this State. Currently, Petitioner is an inactive member of the Bar in good standing.

Petitioner has now submitted a resignation from the South Carolina Bar pursuant to Rule 409 of the South Carolina Appellate Court Rules. The resignation is accepted.

Within twenty (20) days of the date of this order, Petitioner shall surrender the certificate of admission to the Clerk of this Court. If Petitioner cannot locate this certificate, Petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located.

FOR THE COURT

BYs/ Daniel E. Shearouse
CLERK

Columbia, South Carolina

February 1, 2019

The Supreme Court of South Carolina

In the Matter of John P. Maier, Petitioner.

Appellate Case No. 2019-000100

ORDER

The records in the office of the Clerk of the Supreme Court show that on March 10, 1998, Petitioner was admitted and enrolled as a member of the Bar of this State. Currently, Petitioner is an military member of the Bar in good standing.

Petitioner has now submitted a resignation from the South Carolina Bar pursuant to Rule 409 of the South Carolina Appellate Court Rules. The resignation is accepted.

Within twenty (20) days of the date of this order, Petitioner shall surrender the certificate of admission to the Clerk of this Court. If Petitioner cannot locate this certificate, Petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located.

FOR THE COURT

BY s/Daniel E. Shearouse
CLERK

Columbia, South Carolina

February 1, 2019

The Supreme Court of South Carolina

In the Matter of Graham Claybrook, Petitioner.

Appellate Case No. 2019-000144

ORDER

The records in the office of the Clerk of the Supreme Court show that on May 23, 2016, Petitioner was admitted and enrolled as a member of the Bar of this State. Currently, Petitioner is a regular member of the Bar in good standing.

Petitioner has now submitted a resignation from the South Carolina Bar pursuant to Rule 409 of the South Carolina Appellate Court Rules. The resignation is accepted.

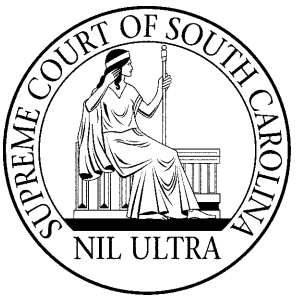
Within twenty (20) days of the date of this order, Petitioner shall surrender the certificate of admission to the Clerk of this Court. If Petitioner cannot locate this certificate, Petitioner shall provide the Clerk with an affidavit indicating this fact and indicating that the certificate will be immediately surrendered if it is subsequently located.

FOR THE COURT

BY s/Daniel E. Shearouse
CLERK

Columbia, South Carolina

February 4, 2019



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OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 6
February 6, 2019
Daniel E. Shearouse, Clerk
Columbia, South Carolina
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THE STATE OF SOUTH CAROLINA
In The Supreme Court

Innovative Waste Management Inc., Crest Energy Partners LP, Edward H. Girardeau, Plaintiffs,

Of Whom Innovative Waste Management, Inc. is the Respondent,

v.

Crest Energy Partners GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants,

Of Whom Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products LP, Henry Wuertz, and Edward H. Girardeau are the Petitioners.

Appellate Case No. 2018-001528

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Dorchester County
Maité Murphy, Circuit Court Judge

Opinion No. 27862
Submitted January 15, 2019 – Filed February 6, 2019

AFFIRMED AS MODIFIED

David B. Marvel, of Charleston, for Petitioners.

Frederick John Jekel, of Jekel-Doolittle, LLC, of Columbia; and William Michael Gruenloh, of Gruenloh Law Firm, of Charleston; for Respondent.

PER CURIAM: Petitioners seek a writ of certiorari to review the court of appeals' decision in *Innovative Waste Management, Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 815 S.E.2d 780 (Ct. App. 2018). We grant the petition, dispense with further briefing, and affirm the court of appeals' decision as modified.

We have no quarrel with the court of appeals' holding that the Form 4 order of dismissal signed by the clerk of court was void, and the circuit court erred by failing to restore the case to the docket once the settlement fell through. However, in its discussion of Rule 41(a), SCRCP, the court of appeals included the following observation:

> Given the stage of IWM's case, it could have been voluntarily dismissed only by a stipulation of dismissal signed by all parties. Rule 41(a)(1), SCRCP. Consequently, even if, after notice and hearing, a circuit judge had signed the Form 4 purportedly ending the case pursuant to Rule 41(a), it would have been error.

Innovative Waste Mgmt., 423 S.C. at 614, 815 S.E.2d at 781-82. We conclude this is an incorrect statement of the law insofar as Rule 41(a) and the procedural posture of this case are concerned. It is true that one of the ways this action could have been dismissed was by stipulation of dismissal signed by all parties who had appeared in the action. Rule 41(a)(1)(B). However, that was not the only way, as Rule 41(a)(2) would have allowed the circuit court to dismiss this action "upon such terms and conditions as the court deems proper." Rule 41(a)(2), SCRCP. Therefore, the application of Rule 41(a) to the procedural posture of this case is correctly stated as follows:

> Given the stage of IWM's case, the dismissal referenced in the email communication to the circuit court and clerk of

> court and in the ADR report could not have been finalized under Rule 41(a) except in one of two ways. First, under Rule 41(a)(1)(B), the case could have been dismissed by a stipulation of dismissal signed by all parties who had appeared in the action. Second, pursuant to Rule 41(a)(2), the action could have been dismissed "at the plaintiff's instance . . . upon order of the court and upon such terms and conditions as the court deems proper." Rule 41(a)(2), SCRCP. If the dismissal had been entered in either of these two ways, the judgment would have been voidable, not void. However, neither scenario contemplated by Rule 41(a) occurred.

Trial courts frequently use the second option to maintain an accurate and current docket. When a party notifies the court a case has settled, a Rule 41(a)(2) order of dismissal may be entered to take the case off the docket while the parties consummate the settlement. In our Federal Courts this is referred to as a "*Rubin*" order.[1] If the settlement falls through, the court may either restore the case to the docket, or if asked, consider whether to enforce the settlement.

We agree the Form 4 order of dismissal signed by the clerk of court was void, the circuit court erred by not restoring the case to the roster, and the court of appeals correctly vacated the order. Accordingly, we affirm the court of appeals' opinion as modified.

AFFIRMED AS MODIFIED.

BEATTY, C.J., KITTREDGE, HEARN, FEW and JAMES, JJ., concur.

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[1] The name "*Rubin*" order apparently comes from *In re Corrugated Container Antitrust Litigation*, 752 F.2d 137 (5th Cir. 1985), an opinion written by the late Honorable Alvin Rubin. In the opinion, the Fifth Circuit held that when a settlement is incorporated into a court order, "The court retained jurisdiction . . . 'for the purpose of effectuating the settlement.'" 752 F.2d at 141.

The Supreme Court of South Carolina

In the Matter of John William Harte, Jr., Petitioner

Appellate Case No. 2016-002195

ORDER

By opinion dated October 10, 2011, this Court disbarred petitioner from the practice of law, retroactive to the date of his interim suspension.[1] *In re Harte*, 395 S.C. 144, 716 S.E.2d 918 (2011). Petitioner filed a petition for reinstatement pursuant to Rule 33 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413 of the South Carolina Appellate Court Rules. After referral to the Committee on Character and Fitness (the Committee), the Committee has filed a report and recommendation recommending the Court reinstate petitioner to the practice of law.

We grant the petition for reinstatement upon the conditions that petitioner (1) continue making restitution payments; and (2) report quarterly his compliance with his restitution obligation to the Commission on Lawyer Conduct.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
February 1, 2019

[1] Petitioner was placed on interim suspension on September 22, 2009. *In re Harte*, 385 S.C. 229, 683 S.E.2d 799 (2009).

The Supreme Court of South Carolina

In the Matter of John F. Martin, Respondent.

Appellate Case No. 2018-001518

ORDER

Respondent has submitted a Motion to Resign in Lieu of Discipline pursuant to Rule 35, RLDE, Rule 413, SCACR. In light of Respondent's serious misconduct which demonstrates an unfitness to practice law, we grant the Motion to Resign in Lieu of Discipline. In accordance with the provisions of Rule 35, RLDE, Respondent "acknowledges that disciplinary counsel can prove" the allegations of misconduct. Moreover, Rule 35 provides Respondent's resignation shall be *permanent*, and he will never be eligible to apply, and will not be considered, for admission or reinstatement to the practice of law or for any limited practice of law in South Carolina.

Within fifteen (15) days of the date of this order, Respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, and shall also surrender his Certificate of Admission to Practice Law to the Clerk of Court.

s/ Donald W. Beatty C.J.

s/ John W. Kittredge J.

s/ Kaye G. Hearn J.

s/ John Cannon Few J.

s/ George C. James, Jr. J.

Columbia, South Carolina
February 1, 2019

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

Opinion No. 5623
Heard November 7, 2018 – Filed February 6, 2019

REVERSED AND REMANDED

Clifford F. Gaddy, Jr., of Greenville, for Appellants/Respondents.

R. Frank Plaxco and Joseph Mackay Plaxco, both of Greenville, for Respondent/Appellant.

THOMAS, J.: Michael and Carmen Kellett (collectively, the Kelletts) appeal a trial court order finding they violated the South Carolina Unfair Trade Practices Act[1] (the Act). On appeal, the Kelletts argue the trial court erred in finding they violated the Act because the unfair or deceptive act at issue was not capable of

[1] S.C. Code Ann. §§ 39-5-10 through -180 (1985 & Supp. 2018).

repetition and therefore did not affect the public interest. In a cross-appeal, Natasha Turner argues the trial court properly found she prevailed under the Act but erred in finding she was not entitled to (1) attorney's fees, (2) punitive damages, and (3) costs. We reverse and remand.

FACTS/PROCEDURAL HISTORY

In June 2014, Turner commenced the underlying suit against the Kelletts, alleging they owned and operated an auto repair business known as Buddy's Garage in Greenville. The complaint alleged Turner took her vehicle, a 2006 Mitsubishi Lancer, to Buddy's Garage for repairs and paid in advance for the services, but despite assurances from the Kelletts and their agents, the repairs were never completed and Turner was not refunded. Turner brought causes of action for conversion, fraud, misrepresentation, violation of the Act, and breach of contract. In November 2015, the case proceeded to a bench trial.

Turner testified she took her vehicle to Buddy's Garage in May 2013 because she was involved in a hit-and-run collision. Turner explained she dealt exclusively with Michael Finchem, the mechanic at Buddy's Garage. She stated Finchem gave her an estimate in the amount of $3,867.89 for repairs to the transmission, front bumper, and rear bumper. She paid $2,500 up front, and her automobile insurer tendered a check for $1,815.26 to cover the remainder.

Turner eventually picked up her vehicle from Buddy's Garage in July 2013. When she picked up the vehicle, she observed the front bumper was "not there" and the rear bumper had not been repaired. Carmen Kellett reimbursed her with a check for $130 for the front bumper only; Turner accepted the check but never deposited it. When Turner drove her vehicle out of Buddy's Garage, she noticed "noises coming from the engine." She took the vehicle to a second garage for further inspection and discovered the transmission had not been repaired or replaced. She attempted to call Buddy's Garage to discuss the transmission issues, but the phone number was disconnected.

Turner also testified about her boyfriend Matthew Smith's involvement with Buddy's Garage. She explained Smith took his vehicle, a Pontiac Grand Am, to Buddy's Garage because "he was having some problems with his tires." Smith could not afford the estimated repairs, "so he took the car home" several days later.

Finchem reported the Pontiac as stolen; the report was later dismissed as unfounded.

Carmen Kellett testified she and her husband Michael jointly owned Buddy's Garage. Finchem, their sole employee, ran the day-to-day operations. She stated the repair cost for Turner's vehicle was $3,867.89, and she received two checks from Turner totaling approximately $4,315. She explained the $3,867.89 quote did not cover additional costs such as storage fees and a "paint kit." Sometime in July 2013, Carmen learned Finchem ordered parts for Smith's vehicle but did not install them. She believed Finchem was defrauding Buddy's Garage by using its operating accounts to buy parts but installing them for customers at his home for cash. Thereafter, Carmen fired Finchem, permanently closed down Buddy's Garage, and told Turner to pick up her vehicle.

On cross-examination, Carmen testified she did not regularly interact with customers and assumed Finchem kept Turner informed about the repairs to her vehicle. She admitted she received two checks from Turner and put them in Buddy's Garage's operating account, which Finchem did not have access to. She explained she refunded Turner $130 for labor costs because the front bumper was not installed. However, she did not refund Turner for the transmission, paint kit, or rear bumper.

The trial court found in favor of Turner on her claims of conversion, fraud, misrepresentation, and violation of the Act.[2] The trial court awarded Turner treble damages in the total amount of $10,567.86 but denied her requests for attorney's fees, costs, and punitive damages. These appeals followed.

THE KELLETTS' APPEAL

"A claim under the [Act] is an action at law." *Jefferies v. Phillips*, 316 S.C. 523, 527, 451 S.E.2d 21, 22 (Ct. App. 1994). "Therefore, this court will correct any error of law, but we must affirm the [trial court's] factual findings unless there is no evidence that reasonably supports those findings." *Id.* at 527, 451 S.E.2d at 22–23.

[2] The record is unclear as to why the trial court did not rule on Turner's breach of contract claim.

The Act provides, "Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." S.C. Code Ann. § 39-5-20(a) (1985). "To recover in an action under the [Act], the plaintiff must show: (1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." *Wright v. Craft*, 372 S.C. 1, 23, 640 S.E.2d 486, 498 (Ct. App. 2006).

The Kelletts concede on appeal they committed an unfair trade practice within the scope of the Act by charging Turner for auto repairs that were never performed. *Wogan v. Kunze*, 366 S.C. 583, 606, 623 S.E.2d 107, 120 (Ct. App. 2005) ("An unfair trade practice has been defined as a practice which is offensive to public policy or which is immoral, unethical, or oppressive." (quoting *deBondt v. Carlton Motorcars, Inc.*, 342 S.C. 254, 269, 536 S.E.2d 399, 407 (Ct. App. 2000))); *Barnes v. Jones Chevrolet Co.*, 292 S.C. 607, 613, 358 S.E.2d 156, 159 (finding padding bills for auto repair is an unfair trade practice). Thus, we turn to the Act's public interest prong.

"To be actionable under the [Act], an unfair or deceptive act or practice must have an impact upon the public interest." *Wright*, 372 S.C. at 29, 640 S.E.2d at 501. "An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the [A]ct's embrace . . . ." *Novack Enters., Inc. v. Cty. Corner Interiors, Inc.*, 290 S.C. 475, 479, 351 S.E.2d 347, 349–50 (Ct. App. 1986). "An impact on the public interest may be shown if the acts or practices have the potential for repetition." *Singleton v. Stokes Motors, Inc.*, 358 S.C. 369, 379, 595 S.E.2d 461, 466 (2004).

> The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts.

Wright, 372 S.C. at 30, 640 S.E.2d at 502. "These two ways are not the only means for showing the potential for repetition or public impact, and each case must

be evaluated on its own merits to determine what a plaintiff must show to satisfy the potential for repetition/public impact prong of the [Act]." *Id.* "Nevertheless, a plaintiff proves an adverse effect on public interests if he proves facts that demonstrate the potential for repetition." *Id.*

The Kelletts argue their unfair acts had no impact upon the public interest because they were incapable of repetition. Specifically, the Kelletts assert Turner presented no evidence showing similar conduct had occurred in the past, and Carmen fired Finchem and permanently closed Buddy's Garage after dealing with Turner, thereby precluding any future repetition. We agree.

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. *See id.* at 30, 640 S.E.2d at 502 ("The potential for repetition may be demonstrated in either of two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts."). The only evidence of previous deceitful acts concerned an alleged scheme between Finchem and Smith to defraud Buddy's Garage. As previously stated, Turner testified Smith took his vehicle to Buddy's Garage for repairs but later retrieved it because he could not afford the estimate. Carmen, however, believed Finchem and Smith plotted to order parts for Smith's car using funds from Buddy's Garage, falsely report the car as stolen, and then have Finchem install the parts at his home for cash. Although this testimony raises concern that Finchem was engaged in nefarious conduct, the alleged scheme sought to defraud the Kelletts rather than their customers. As such, it does not evidence a history of the *same kind* of unfair act—padding auto repair bills—occurred in the past and was likely to continue in the future without deterrence. *See id.*

Moreover, Carmen fired Finchem in July 2013 based on her belief he was defrauding Buddy's Garage. Immediately thereafter, Carmen permanently closed Buddy's Garage and told Turner to pick up her vehicle; Turner was Buddy's Garage's final customer. As a result of these actions, there was no potential for either Finchem or the Kelletts to further engage in unfair business practices through Buddy's Garage. *Id.* (providing the potential for repetition may be demonstrated by showing the company's procedures create a potential for repetition of the unfair and deceptive acts).

Based on the foregoing, we find Turner failed to meet the public interest prong of the Act. *Novack Enters.*, 290 S.C. at 479, 351 S.E.2d at 349–50 ("An unfair or deceptive act or practice that affects only the parties to a trade or a commercial transaction is beyond the [A]ct's embrace . . . ."). Accordingly, we reverse the trial court's findings under the Act.

TURNER'S CROSS-APPEAL

Turner argues the trial court erred in failing to award her attorney's fees, which she requested in her complaint and the Act specifically provides. *See* § 39-5-140(a) ("Upon the finding by the court of a violation of [the Act], the court shall award to the person bringing such action under this section reasonable attorney's fees and costs."). Because we reverse the trial court's findings on the Act, we decline to address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not address remaining issues when the disposition of a prior issue is dispositive).

Turner also argues the trial court erred in denying her punitive damages and costs. The trial court's order found in favor of Turner on the issues of conversion, fraud, and misrepresentation. The Kelletts do not contest these findings, making them the law of the case. *See Buckner v. Preferred Mut. Ins. Co.*, 255 S .C. 159, 160–61, 177 S.E.2d 544, 544 (1970) (holding an unappealed ruling, right or wrong, is the law of the case). The trial court did not, however, rule on the breach of contract claim. The Kelletts now concede the evidence at trial showed they breached a contract with Turner and assert she is entitled to limited damages under a breach of contract theory. Because the trial court did not rule on the breach of contract claim and neither party filed a Rule 59(e), SCRCP, motion seeking a final judgment on the issue, it is not preserved for appellate review. *See I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (holding where an issue is raised to but not ruled on by the trial court, the party must file a motion to alter or amend the judgment to preserve the issue for appellate review).

"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." *Mackela v. Bentley*, 365 S.C. 44, 49, 614 S.E.2d 648, 651 (Ct. App. 2005). Punitive damages are similarly recoverable in fraud cases. *Harold Tyner*

Dev. Builders, Inc. v. Firstmark Dev. Corp., 311 S.C. 447, 453, 429 S.E.2d 819, 823 (Ct. App. 1993); *Elders v. Parker*, 286 S.C. 228, 234–35, 332 S.E.2d 563, 567 (Ct. App. 1985) (holding even though the jury returned a general verdict in an action for breach of contract and fraud, the plaintiff was held entitled to punitive damages where the evidence supported a finding of fraud). In its discretion considering punitive damages, the trial court must consider the following factors:

> (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) . . . "other factors" deemed appropriate.

Gamble v. Stevenson, 305 S.C. 104, 111–12, 406 S.E.2d 350, 354 (1991).

The trial court denied Turner's request for punitive damages and indicated it would not award both punitive and treble damages; however, the trial court did not address any of the eight *Gamble* factors. The Kelletts do not contest the trial court's findings of fraud, conversion, and misrepresentation, for which punitive damages are allowable. *See Mackela*, 365 S.C. at 49, 614 S.E.2d at 651; *Harold Tyner Dev. Builders*, 311 S.C. at 453, 429 S.E.2d at 823. We remand each of these causes of action to the trial court to make appropriate findings as to the proper measure of damages. We further instruct the trial court to award Turner her costs as the prevailing party. *See* § 15-37-10 (2005) ("In every civil action commenced or prosecuted in the courts of record in this State, except cases in chancery, the attorneys for the plaintiff or defendant shall be entitled to recover costs and disbursements of the adverse party . . . .").

Accordingly, the decision of the trial court is

REVERSED AND REMANDED.

LOCKEMY, C.J., and GEATHERS, J., concur.