THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Deadra L. Jefferson
Presiding Circuit Court Judge

Appellate Case No.: 2021-001170

Eddie B. Lewis. . . . . Respondent

v.

Saul, LLC and Wells Fargo Bank National Association, ...

Of Whom Saul, LLC is the Appellant and

Of Whom Wells Fargo Bank National Association is also the Respondent.

PETITION FOR WRIT OF CERTIORARI

Morgan S. Templeton, S.C. Bar 15456
David A. Nasrollahi, S.C. Bar 103242
Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300
Post Office Box 1200
Charleston, South Carolina 29402
Telephone: 843.329.9500
Facsimile: 843.329.9501

ATTORNEYS FOR PETITIONER SAUL, LLC

Other Counsel of Record:

H. Fred Kuhn, Jr.
Moss Kuhn & Fleming, PA
Post Office Box 507
Beaufort, South Carolina 29901-0507
Attorney for Respondent Eddie Lewis

Kristian M. Cross, S.C. Bar No. 76578
Vernis & Bowling of Columbia, LLC
2711 Middleburg Drive, Suite 216
Columbia, South Carolina 29204
Attorney for Respondent Wells Fargo Bank, NA

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CERTIFICATION OF COUNSEL

The undersigned hereby certifies that Appellant filed a petition for rehearing with the Court of Appeals and the Court of Appeals ruled on the petition with finality on June 9, 2022. (App. p. 1463).[1]

[1] Saul's appeal was dismissed by the Court of Appeals, prior to a Record being filed. Out of an abundance of caution, and in order to have a complete record, Saul has filed an Appendix (Volume 1 through 4) herewith this Petition for Certiorari. All documents provided in said Appendix were provided to the Court of Appeals in this matter.

QUESTION PRESENTED FOR REVIEW

I. Did the Court of Appeals err in dismissing this appeal, by overlooking this Court's opinion in *Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922)?

II. Did the Court of Appeals err in dismissing this matter pursuant to S.C. Code Ann. § 14-3-330 when this Court's opinion *Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922), is not abrogated by the same?

III. Did the Court of Appeals err in dismissing this matter when there was an appealable issue presented pursuant to this Court's opinion in *Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922)?

STATEMENT OF THE CASE

On or about May 23, 2016, Respondent, Eddie R. Lewis, (hereinafter "Respondent") entered the parking lot/premises located at 401 Port Republic Street, Beaufort, S.C. as a customer of Respondent Wells Fargo (hereinafter "Wells Fargo"). (App. p. 19). While exiting the parking lot, Lewis allegedly tripped and fell causing him injuries. (App. pp. 17-25). Appellant, Saul, LLC, (hereinafter "Saul") owns the premises located at 401 Port Republic Street, Beaufort, S.C. *Id.* Said property was leased by Saul to Wells Fargo, who exercised complete control and responsibility of the property pursuant to the terms of the Lease. (App. pp. 39-216). Respondent brings this action against Saul on the theory of negligence and premises liability. (App. pp. 17-25). Respondent alleges that Saul had a duty to "warn invites and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks" and breached its duty by "failing to maintain said premises in a reasonably safe condition for invitees and/or business visitors." *Id.* Wells Fargo has not asserted any direct claims against Saul. (App. pp. 26-31).

Saul moved for summary judgment ("Motion") as to the Respondent's Amended Complaint on January 20, 2020, based on the terms of the Lease. (App. pp. 32-223). Saul attached a full and complete copy of the Lease to this Motion as an exhibit. *Id.* On March 13, 2020, the Prior Counsel for Wells Fargo emailed Respondent's counsel and Saul requesting a continuance for the Motion because she was leaving her firm and that Charles Blackburn would be taking the case over. (App. pp. 322-325). In response, on the same day, Counsel for Saul informed then-Counsel for Wells Fargo that he could not consent to the request for continuance and wanted the motion heard because of the impending scheduled mediation and trial not before date. *Id.* On March 16, 2020, Charles G. Blackburn filed a Notice of Appearance on behalf of Wells Fargo. (App. p. 328). That same day, counsel for the Appellant, Morgan S. Templeton, received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020, in which he advised that he

would be appearing on behalf of Wells Fargo but would not be appearing at the hearing. (App. pp. 326-327). During this call, Mr. Blackburn informed the undersigned that he had read the Motion, that he did not believe he had a basis to oppose the Motion. *Id.*

On March 17, 2020, the Honorable Judge Deadra Jefferson (hereinafter "Trial Court") heard arguments on the Motion. Counsel for both the Respondent and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear***. (App. pp. 226-237). During the hearing, Respondent's Counsel informed the Trial Court that counsel for Wells Fargo informed Respondent's Counsel that he was not going to attend the hearing on the Motion. (App. pp. 474-484; *see also* App. p. 238-242). Wells Fargo received notice of the hearing and willfully elected and/or failed to file a Motion for Continuance or any Memoranda in Opposition. (App. pp. 226-237).

During the hearing on March 17, 2020, counsel for the Respondent informed the Trial Court that he believed the determination of the Motion would be important to the absent Wells Fargo, despite its absence. (App. pp. 475-477). The Trial Court questioned Respondent's Counsel whether he conceded to Saul's motion or whether it needed to be continued. (App. pp. 482-483). In direct response to this question, Respondent's counsel conceded that Saul's Motion was supported by the law and by the facts. *Id*. Specially, the hearing transcript evidences the following colloquy between the Trial Court and Respondent's Counsel:

> **THE COURT**: Well, you haven't filed anything. And you can't have it both ways. Either you concede the motion or it needs to be continued. But I am not going to straddle that line with you.
>
> **MR. FLEMING**: I understand. Well, I concede then, Your Honor. I concede that Saul is -- that their position, I believe, is most supported by the law and by the facts as we have gathered throughout this litigation.

> **THE COURT**: Based on that concession, Mr. Dodds, if you will prepare an order for the Court granting the summary judgment.

Id.

Based on the Respondent's concession, the Trial Court granted Saul's Motion. *Id*.; (*see also* App. pp. 2-8). On March 18, 2020, Saul submitted its proposed Order to the Trial Court, which a Notice of Electronic file was sent to all parties of record as instructed by the Court. (App. pp. 329-334).

On March 24, 2020, the Trial Court, after careful consideration of the record and proposed Order, granted Saul's Motion. (App. pp. 2-8). The Trial Court made approximately 15 changes to the Proposed Order before signing it. *Id*.[2] Neither the Respondent nor Wells Fargo filed a Rule 59(e) Motion. (App. p. 226-237). Wells Fargo did not appeal the Trial Court's Order. *Id*. On March 26, 2020, counsel for Wells Fargo sent an email evidencing his knowledge of Saul's dismissal from this matter. (App. p. 341).

On March 19, 2021, almost a year to the date of the entry of the Trial Court's Order, Wells Fargo first challenged the Trial Court's Order pursuant to Rules 60(b)(2) and (b)(3), SCRCP.

[2] A side-by-side review of Saul's Proposed Order and the Trial Court's Order highlights the edits and revisions made by the Trial Court prior to entering the Order. The Trial Court made a total of fifteen (15) changes/revisions to Saul's Proposed Order. Theses revisions included the following: 1) a Header was added, which included six additional lines; 2) The opening paragraph was completely changed; 3) a Footnote was added; 4) the words "**Applicable Law"** were struck; 5) The **Finding of Facts** section was moved to the front of the Order; 6) The first line of the Find of Facts section of the Proposed Order was struck; 7) the numbering of the paragraphs in the **Findings of Facts** section were struck; 8) throughout the Order the introductory signals were struck by the Trial Court; 8) the words "This Court makes the following conclusions of law" were struck; 9) The applicable legal standards sections were moved under the **Conclusions of Law**; 10) the numbering of the paragraphs in the **Conclusions of Law** section was struck; 11) The Summary Judgment Standard was completely revised which consisted of two paragraphs; 12) Additions to the citations under the Premises Liability Standard, which consisted of seven additions of the South Carolina Reporter citations; 13) A clerical edit was made on page 5 of the Order, which consisted in the addition of the word "Further;" 14) A conclusory sentence and paragraph was added which accounted for five additional sentences; and 15) the **Order** section was struck by the Court.

(App. pp. 224-225). Wells Fargo's five paragraph Motion to Set Aside presented vague claims of "misrepresentation" and "newly discovered evidence;" however, it was devoid of any specific evidence, facts, or exhibits that supported these claims. *Id.* Further, Wells Fargo's Motion to Set Aside failed to cite to a single case in support of its arguments. *See id.* On March 31, 2021, Saul filed its Memorandum in Opposition to Wells Fargo's Motion to Set Aside (hereinafter "Saul's Memorandum in Opposition"), which made the following arguments: that Wells Fargo's Motion to Set Aside violated Rule 7(b), SCRCP; lacked standing; Wells Fargo waived its rights to make arguments; the motion was a veiled Rule 59, SCRCP, motion; and the parole evidence rule barred any newly discovered evidence in interpreting a lease. (App. pp. 226-237).

On July 2, 2021, Respondent submitted his Memorandum in Response to Wells Fargo's Motion to Set Aside, which highlighted Wells Fargo's counsel's failure to participate in the litigation of this matter. (App. pp. 238-264). Further, Respondent's Memorandum exemplified that at the time of its filing: Wells Fargo had not identified which arguments constituted misrepresentation, presented any affidavits or other filings supporting their Motion to Set Aside. *Id.* Thus, Wells Fargo had placed the Respondent in a position of being unable to address Wells Fargo's assertions made in the Motion to Set Aside. *Id.*

On July 6, 2021, for the first time, Wells Fargo finally submitted its Memorandum in Support of its Motion to Set Aside, with exhibits. (App. pp. 265- 300). Three days later, pursuant to the Trial Court's direction, three days later, Saul submitted its Reply Memorandum to Wells Fargo's Memorandum of Law in Support (hereinafter "Saul's Reply Memo."). (App. pp. 301-470). Saul's Reply set out arguments that Wells Fargo's Memorandum of Law was full of errors, misstatements, and incorrect statements; that the Memorandum did not overcome the difficult standards under Rule 60, SCRCP because it lacked newly discovered evidence; that Wells Fargo

has no evidence of fraud upon the court; and that Wells Fargo has attempted to shift the burden of proof which deprived Saul of its due process rights. *Id.*

Despite the Respondent and Saul's arguments and the record being unequivocally one sided, on September 21, 2021, the Trial Court granted Respondent Wells Fargo's Motion to Set Aside pursuant to Rule 60, SCRCP. (App. pp. 9-16). The Trial Court's Order misstates the following: 1) that Wells Fargo was not afforded an opportunity to be heard, which for the reasons set out above and below is erroneous; 2) it was represented to the Trial Court at the hearing that Wells Fargo was not a necessary party, when the hearing transcript clearly establishes otherwise (App. pp. 473- 483); and 3) the Trial Court made fifteen (15) edits to the proposed Order, which counsel for Wells Fargo had notice of and made no edits or objections.

On October 14, 2021, Saul filed this timely appeal with the South Carolina Court of Appeals. (App. pp. 471-472). On November 12, 2021, Saul filed its Initial Brief which set forth this appeal based on the argument that the Trial Court abused its discretion by granting Wells Fargo's Motion to Set Aside Judgement when the record establishes that the Respondent conceded Saul's Motion for Summary Judgment and Wells Fargo waived any arguments to the same. (App. pp. 485-518). The Court of Appeals sent a letter on November 29, 2021, raising the issue of whether Saul had a right of immediate appeal and requesting a memorandum of law in support of Saul's position. (App. pp. 598-599).

Subsequently, on November 30, 2022, Respondent filed a motion to dismiss appeal. (App. pp. 600-678). On January 28, 2022, the Court of Appeals granted the Respondent's motion to dismiss finding that the Trial Court's Order was not immediately appealable pursuant to S.C. Code Ann. § 14-3-330; *Pioneer Associates, Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 387 S.E.2d 711 (Ct. App. 1989). (App. p. 717). Saul timely filed a petition for rehearing on February 10, 2022.

(App. pp. 718-729). The petition was denied by the Court of Appeals on June 9, 2022. (App. pp. 758-759). This petition for certiorari follows.

ARGUMENT

I. THE COURT OF APPEALS ERRED IN DISMISSING THIS APPEAL AS THIS COURT'S HOLDING IN WINSLOW BROS. & SMITH CO. V. GOSSETT, 120 S.C. 164, 112 S.E. 825 (1922) GAVE AUTHORITY TO APPEAL THIS NARROW TYPE OF MATTER

The Court of Appeals' decision dismissing this appeal is in conflict with the decision of *Winslow Brothers & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922). This Court held in *Winslow Bros.* that an appeal from an order vacating a judgment is not appealable unless there was an erroneous exercise of discretion on the part of the circuit court. *Id*. Saul has appealed the Trial Court's Order vacating its Order for Summary Judgment because there was an erroneous exercise of discretion on the part of the circuit court judge pursuant to the holding of *Winslow Bros. Id*. Abuse of discretion means that the ruling of the trial court was without reasonable factual support, which resulted in prejudice to the rights of the appellant, and therefore, in the circumstances, *amounted to error of law*. *See Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961) (emphasis added).

In this matter, Respondent's counsel conceded, on the record, that Saul's Motion was supported by the law and by the facts of this case. (App. pp. 482-483). Specially, the hearing transcript evidences the following colloquy between the Trial Court and Respondent's Counsel:

> **THE COURT**: Well, you haven't filed anything. And you can't have it both ways. Either you concede the motion or it needs to be continued. But I am not going to straddle that line with you.
>
> **MR. FLEMING**: I understand. Well, I concede then, Your Honor. I concede that Saul is -- that their position, I believe, is most supported by the law and by the facts as we have gathered throughout this litigation.

> **THE COURT**: Based on that concession, Mr. Dodds, if you will prepare an order for the Court granting the summary judgment.

Id.

The Trial Court granted Saul's Motion based on the Respondent's concession. *Id.*; (*see also* App. pp. 2-8). Respondent is the only party that has asserted claims against Saul. (App. pp. 17-25). Additionally, the record clearly establishes that despite having every opportunity to argue against the Motion, Wells Fargo did nothing. (App. pp. 301-470). Despite the record indicating these two facts, the Trial Court granted Wells Fargo's Motion to Set Aside based on assertions that is nowhere to be found in the record, which amounts to an error of law. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825, *see also Bridges*, 293 S.C. 37, 121 S.E.2d 300. As such, Saul appealed the Trial Court's Order vacating its Order for Summary Judgment because there was an erroneous exercise of discretion on the part of the circuit court judge pursuant to the holding of *Winslow Bros. See Id.*

Despite the aforementioned basis for the appeal, the Court of Appeals granted Respondent's motion to dismiss based on the decision that this matter is not immediately appealable pursuant to S.C. Code Ann. § 14-3-330; *Pioneer Associates, Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 387 S.E.2d 711 (Ct. App. 1989). This conclusion ignores the holding of *Winslow Bros.* and conflicts with S.C. Const. art V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeal as precedents.").

Respectfully, the Court of Appeals lacks the authority to rule against prior published precedent from the Supreme Court but is instead bound by the decisions of the Supreme Court, including *Winslow Bros. See* S.C. Const. art V, § 9; *see also Campbell v. Robinson*, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating the Court of Appeals may not overrule Supreme

Court precedent). Therefore, the Court of Appeals is bound by the precedent in *Winslow Bros*., which holds that an order vacating a judgment is appealable if there is an erroneous exercise of discretion on the part of the circuit court, and its decision to dismiss this appeal was respectfully an error and should be reversed. *See Winslow Bros*., 120 S.C. 164, 112 S.E. 825. For the Court of Appeals' decision to stand, which departs from established Supreme Court precedent, it would be necessary for this Court to either reverse the Court of Appeals or overrule the sound reasoning of *Winslow Bros*. *See Id*.

Accordingly, Saul respectfully requests the Court grant its petition for certiorari on this basis.

II. SAUL MAY IMMEDIATELY APPEAL THE TRIAL COURT'S ORDER VACATING AN ORDER GRANTING SUMMARY JUDGMENT PURSUANT TO AUTHORITY FROM THE SOUTH CAROLINA SUPREME COURT AND S.C. CODE ANN. § 14-3-330

As referenced above, Saul has appealed this matter pursuant to this Court's holding in *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825. However, in its opinion, the Court of Appeals held that the underlying order on appeal is not immediately appealable pursuant to S.C. Code Ann. § 14-3-330. (App. p. 717). Saul avers that a plain reading of S.C. Code. Ann. § 14-3-330 with the holding in *Winslow Bros*. establishes that this narrow type of case is in fact immediately appealable. S.C. Code Ann. § 14-3-330 provides as follows:

> ***The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases***, and shall review upon appeal:
>
> > (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
>
> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

(emphasis added).

The holding in *Winslow Bros.* is that an order granting a motion vacating a judgment is only appealable if there was *an erroneous exercise of discretion on the part of his honor*, the circuit court judge. 120 S.C. 164, 112 S.E. 825 (emphasis added). Abuse of discretion means that the ruling of the trial court was without reasonable factual support, which resulted in prejudice to the rights of the appellant, and therefore, in the circumstances, *amounted to error of law*. *See Bridges v. Wyandotte Worsted Co*., 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961) (emphasis added). An error of law is the same as an erroneous exercise of discretion which is not based on reasonable factual support. *See gen. Id*. The South Carolina General Assembly expressly included appellate jurisdiction for the correction of errors of law. *See* S.C. Code Ann. § 14-3-330. Therefore, the holding of *Winslow Bros*. is indeed still the law of South Carolina, and this matter is immediately appealable.

Nevertheless, when making decisions on issues of appealability of matters under S.C. Code § 14-3-330, South Carolina Courts have consistently and carefully crafted their holdings to include qualifying language like “generally” and “primarily” which evidences that appeals may arise

outside of categories set forth in the statutes governing appellate jurisdiction.[3] For example: an order *generally* must fall into one of the several categories set forth in the statute governing appellate jurisdiction in order to be immediately appealable. *See State v. Wilson*, 387 S.C. 597, 693 S.E.2d 923 (2010) (emphasis added). Determination of whether a party may immediately appeal an order issued before or during trial is governed *primarily* by statute. *See Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008) (emphasis added). The question of whether an order is immediately appealable is determined on a case-by-case bases. *See Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019). For example, the *Pocisk* court even acknowledged that the Appellate Court has considered appeals from the granting of Rule 60(b) relief. *See e.g. Johnson v. Johnson*, 310 S.C. 44, 425 S.E.2d 46 (Ct. App. 1992); *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

This matter is analogous to the facts found in *Mitchell Supply Co.*, which held that the trial court abused its discretion in vacating a judgment when the neglect relied on by the Respondents was their attorney's failure to properly review pleadings delivered to him. 297 S.C. 160, 375 S.E.2d 321. As shown above, the record establishes that Respondent's counsel conceded that Saul's Motion was supported by the law and by the facts. (App. pp. 482-483). Respondent is the only party that has claims asserted against Saul. (App. pp. 17-31). Further, it is evidenced that counsel for Wells Fargo failed to make any argument on the Motion at the appropriate time. (App. pp. 226-237). The Trial Court's Order setting aside judgment is without any factual support. (App.

[3] Saul acknowledges the holding in *North Carolina Federal Sav. And Loan Ass'n v. Twin States Development Corp.*, 289 S.C.480, 347 S.E.2d 97 (1986). (holding an appeal pursuant to Rule 72, SCRCP, does not authorize an immediate appeal of a trial court's order). However, the holding in *North Carolina Federal Sav.* dealt entirely with an appeal based on Rule 72, SCRCP, which explicitly finds that the rules shall not be construed to extend or limit the jurisdiction of any court of this state. *Id.*, (citing Rule 82(a), SCRCP). This appeal arises pursuant to the South Carolina Supreme Court's holding in *Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922) (holding that an order granting a motion vacating a judgment is only appealable if there was *an erroneous exercise of discretion on the part of his honor*, the circuit court judge.). (emphasis added).

pp. 473-484). Therefore, this matter arises from an erroneous exercise of discretion by the Trial Court when the record establishes that the Respondent conceded on the record that Saul's Motion for Summary Judgment was supported by the law and facts of this case and Counsel for Wells Fargo failed to make any arguments to the same. *See Winslow Bros*., 120 S.C. 164, 112 S.E. 825.

This matter is immediately appealable as the Trial Court's ruling that there was a basis to grant a motion to set aside which is based on Counsel for Wells Fargo's failure and neglect to argue at the appropriate time that resulted in an abuse of discretion which is appealable pursuant to *Winslow Bros*., 120 S.C. 164, 112 S.E. 825; *see gen. Mitchell Supply Co*., 297 S.C. 160, 375 S.E.2d 321 (holding in which the court of appeals considered an appeal from the granting of Rule 60(b) relief). Therefore, Saul's basis for appealing this matter pursuant to the holding in *Winslow Bros*. is consistent with S.C. Code Ann. § 14-3-330, and the Court of Appeal's decision to dismiss this matter pursuant to S.C. Code Ann. § 14-3-330 was made in error and should be reversed.

For this reason, Saul respectfully requests the Court grant its petition for certiorari on this basis.

III. THIS COURT'S HOLDING IN *WINSLOW BROS.* CREATES AN APPEALABLE ISSUE AND SAUL MAY IMMEDIATELY APPEAL THE SAME

Saul has appealed this matter pursuant to the holding in *Winslow Bros.* that an order granting a motion vacating a judgment is immediately appealable if there was an erroneous exercise of discretion on the part of the circuit court. 120 S.C. 164, 112 S.E. 825. The holding in *Winslow Bros*., explicitly creates an immediately appealable issue that is reviewable by the Court of Appeals.

Our appellate courts have held that an order that is not directly appealable will be considered if there is an appealable issue before the court. *See Briggs v. Richardson*, 273 S.C.

376, 256 S.E.2d 544 (1979); *see also Cox v. Woodman of World Ins.*, 347 S.C. 460, 469, 556 S.E. 2d 397, 402 (Ct. App. 2001); *Pruitt v. Bowers*, 330 S.C. 483, 499 S.E. 2d 250 (Ct. App. 1998). Specifically, our appellate courts have made a practice of accepting appeals of denials of interlocutory orders not ordinarily immediately appealable when these appeals are companion to issues that are reviewable. *See Hedgepath v. American Tel. & Tel. Co.*, 348 S.C. 340, 363, 559 S.E.2d 327, 340 (Ct. App. 2001).

The Court of Appeals erred in dismissing this appeal as there was an appealable issue presented pursuant to the holding in *Winslow Bros.* which created a narrow appealable issue: i.e. an order granting a motion vacating a judgment is appealable if there was an erroneous exercise of discretion by the circuit court. 120 S.C. 164, 112 S.E. 825; *see also Bridges*, 239 S.C. 37, 121 S.E.2d 300 (holding that abuse of discretion means that the ruling of the trial court was without reasonable factual support, which resulted in prejudice to the rights of the appellant, and therefore, amounted to error of law). This narrow appealable issue created by *Winslow Bros.*, is the basis for this appeal. *Id*. In this matter, the Trial Court's Order erroneously claims that Wells Fargo was not afforded an opportunity to be heard, when the record establishes the exact opposite (App. pp. 301-470), and it was represented to the Trial Court at the hearing that Wells Fargo was not a necessary party, when the hearing transcript explicitly establishes otherwise (App. pp. 473- 483). Further, Respondent, the only party with claims against Saul, conceded on the record that Saul's Motion was supported by the law and facts of this case. (App. pp. 482-483).[4] As such, the Trial

[4] It has long been the case that parties to a suit are bound by admissions, made by their attorneys of record in open court. *See Shelton v. Bressant*, 312 S.C. 183, 184, 439 S.E. 2d 833, 834 (1993) (holding that "[a]cts of an attorney are directly attributable to and binding upon a client"); *Smith v. Pearson*, 210 S.C. 524, 530, 43 S.E.2d 479, 481 (1947) (finding appellants bound by statement made by counsel at the outset of hearing); *Hall v. Benefit Ass'n of Ry. Employees*, 164 S.C. 80, 83, 161 S.E. 867, 868 (1932) (holding that "[t]he parties to a suit are bound by admissions, made by their attorneys of record, in open court, or elsewhere, touching matters looking to the progress of the trial").

Court's Order is unsupported by any factual basis which has created an appealable issue in this matter.

Saul has appealed the Trial Court's Order on the basis that it was an erroneous exercise of discretion pursuant to *Winslow Bros.* It was an error of law to dismiss this appeal when there was an appealable issue before the Court of Appeals pursuant to this Court's holding in *Winslow Bros.* For this reason, Saul respectfully requests this Court grant its petition for certiorari on this basis.

CONCLUSION

WHEREFORE, for all of the aforementioned reasons, Appellant Saul respectfully requests this Court issue a writ of certiorari to reverse the decision of the Court of Appeals and determine that the issues presented therein are immediately appealable.

Dated this 8th day of July, 2022.

Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

By: s/Morgan S. Templeton

Morgan S. Templeton, S.C. Bar 15456
David A. Nasrollahi, S.C. Bar 103242
145 King Street
Post Office Box 1200
Charleston, South Carolina 29402
Telephone: 843.329.9500
Facsimile: 843.329.9501
Attorneys for Appellant Saul, LLC