

possession and control of the land to the lessee” and “typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee.” *Id.* (citing W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on the Law of Torts* § 434 (5th ed. 1984)).

Pursuant to the terms of the lease between Saul and Wells Fargo, Saul relinquished possession and control of the Tenant Dedicated Parking Area to Wells Fargo for the duration of the lease term. Further, the Tenant Dedicated Parking Area is not considered a “common area” under the terms of the lease, and, therefore, Saul is under no affirmative obligation to effectuate maintenance and repairs to the Tenant Dedicated Parking Area.

During Wells Fargo’s tenancy at the subject property, Wells Fargo exercised exclusive control over the Tenant Dedicated Parking Area, including performing various items of maintenance and repair thereto without involvement of Saul. There is no evidence before this Court that Saul was notified by Wells Fargo of any needed maintenance or repairs to the Tenant Dedicated Parking Area, and Saul never voluntarily undertook a duty to inspect for hazardous conditions and make repairs for same. Accordingly, Saul cannot be held liable under South Carolina’s premises liability laws for property over which Saul had no control.

Accordingly, after careful consideration of the record, the Court finds that no genuine issue of material fact exists as to the question of Saul’s liability. By the terms of the parties’ lease agreement, Saul had no duty to maintain or inspect the Tenant Dedicated Parking Area, and therefore cannot be liable for the Plaintiff’s injuries. Plaintiff does not contest the facts as stated *supra* or the legal interpretation of the parties’ lease agreement. It appearing that further inquiry into the facts of the case is not necessary clarify the application of the law, and that there is no dispute as to evidentiary facts or as to the conclusions or inferences to be drawn from them, Saul’s Motion for Summary Judgment is heard and respectfully Granted.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Chief Administrative Judge
Fourteenth Judicial Circuit

March _____, 2020
Charleston, South Carolina
At Chambers



Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al
Case Number: 2018CP0702378
Type: Order/Summary Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2020-03-24 13:54:19 page 7 of 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	ORDER GRANTING
	)	DEFENDANT SAUL, LLC'S
vs.	)	MOTION FOR SUMMARY
	)	JUDGMENT
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION,	)	
	)	
Defendants.	)	

THIS MATTER is before the Court upon Defendant Saul, LLC's ("Saul") motion for summary judgment as to all claims asserted by Plaintiff Eddie B. Lewis, Jr. ("Plaintiff"). A hearing on Saul's motion was held on March 17, 2020 at the Beaufort County Courthouse, at which hearing counsel for Saul and Plaintiff were both present. After due deliberation and consideration of the evidence and arguments of counsel, judgment shall be entered in favor of Saul in accordance with the findings of fact and conclusions of law set forth below.

APPLICABLE LAW

I. Summary Judgment Standard

"Summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed." Etheredge v. Richland Sch. Dist. One, 534 S.E.2d 275, 277 (S.C. 2000); see Rule 56(c), SCRPC. "The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." Richardson v. The State Record Co., 499 S.E.2d 822, 824-25 (S.C. Ct. App. 1998). With respect to an issue upon which the nonmoving party bears the burden of proof,

this initial responsibility “may be discharged by ‘showing’—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party’s case.” *Id.* at 825.

“Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent’s case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings.” *Singleton v. Sherer*, 659 S.E.2d 196, 202 (S.C. Ct. App. 2008). Rather, in cases applying the preponderance of the evidence burden of proof, such as the instant case, the nonmoving party must submit a scintilla of evidence in order to withstand a motion for summary judgment. *See Hancock v. Mid-South Mgmt. Co.*, 673 S.E.2d 801, 803 (S.C. 2009). “A jury issue is created when there is material evidence tending to establish the issue in the mind of a reasonable juror.” *Jackson v. Bermuda Sands, Inc.*, 677 S.E.2d 612, 616 (S.C. Ct. App. 2009). “However, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury.” *Id.* “It is not sufficient that one create an inference which is not reasonable or an issue of fact that is not genuine.” *Thompkins v. Festival Centre Group, I*, 410 S.E.2d 593, 594 (S.C. Ct. App. 1991).

II. Premises Liability

In a negligence action, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligence act or omission; (3) the defendant’s breach was the actual and proximate cause of the plaintiff’s injury; and (4) the plaintiff suffered an injury or damages. *See, e.g., Sabb v. S.C. State Univ.*, 567 S.E.2d 231, 237 (S.C. 2002). “An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff.” *Platt v. CSX Transp., Inc.*, 697 S.E.2d 575, 577 (S.C. 2010). “Without a duty, there is no actionable negligence.” *Id.* “The existence of a duty owed is a

question of law for the courts.” Doe v. Greenville Cnty. Sch. Dist., 651 S.E.2d 305, 309 (S.C. 2007).

Premises liability is a theory of negligence that establishes the duty owed to someone injured on a landowner’s property as a result of conditions or activities on the land. Singleton v. Sherer, 659 S.E.2d 196, 204 (S.C. Ct. App. 2008). Under South Carolina premises liability law, an owner or occupier of property is the person having control, rather than ownership, of the premises. Dunbar v. Charleston & W. Carolina Ry. Co., 44 S.E.2d 314, 317 (S.C. 1947) (“As a general rule, liability for injuries caused by dangerous instrumentalities terminates with cessation of control thereover, and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question.”). “One who controls the use of the property has a duty of care not to harm others by its use.” Miller v. City of Camden, 494 S.E.2d 813, 815 (S.C. 1997). “Conversely, one who has no control owes no duty.” Id.

When land is occupied by a lessee pursuant to a lease, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 415 S.E.2d 796, 798 (S.C. 1992). “In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee” and “typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee.” Id. (citing W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on the Law of Torts* § 434 (5th ed. 1984)).

FINDINGS OF FACT

Based upon a review of the pleadings and considering the materials submitted in support of the motion for summary judgment, this Court makes the following findings of fact:

1. Saul is the owner of certain real property and improvements thereon located at 1011 Bay Street, Beaufort, South Carolina (the “subject property”). At all times relevant hereto,

5. On or about May 23, 2016, Plaintiff was a patron at the Wells Fargo bank located at the subject property. See Amend. Compl. at ¶ 9. While exiting the bank and walking through the Tenant Dedicated Parking Area, Plaintiff tripped and fell, sustaining various personal injuries (the “incident”). See id. at ¶ 11. As a result of the incident, Plaintiff filed the instant lawsuit against Saul and Wells Fargo sounding in traditional common law premises liability. Specifically as it relates to Saul, Plaintiff alleges that Saul had a duty “to warn invitees 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.” See Amend. Compl. at ¶ 12.

CONCLUSIONS OF LAW

This Court makes the following conclusions of law:

1. Pursuant to the terms of the lease between Saul and Wells Fargo, Saul relinquished possession and control of the Tenant Dedicated Parking Area to Wells Fargo for the duration of the lease term.

2. The Tenant Dedicated Parking Area is not considered a “common area” under the terms of the lease, and, therefore, Saul is under no affirmative obligation to effectuate maintenance and repairs to the Tenant Dedicated Parking Area.

3. During Wells Fargo’s tenancy at the subject property, Wells Fargo exercised exclusive control over the Tenant Dedicated Parking Area, including performing various items of maintenance and repair thereto without involvement of Saul.

4. There is no evidence before this Court that Saul was notified by Wells Fargo of any needed maintenance or repairs to the Tenant Dedicated Parking Area, and Saul never voluntarily undertook a duty to inspect for hazardous conditions and make repairs for same.

ORDER

NOW, THEREFORE, it is hereby ORDERED that Defendant Saul, LLC's motion for summary judgment be, and hereby is, GRANTED.

IT IS SO ORDERED.

The Honorable Deadra L. Jefferson
Presiding Judge, Fourteenth Judicial Circuit

Dated this ____ day of _____, 2020.

_____, South Carolina

From: Charles Blackburn <cblackburn@scarolina-law.com>

Sent: Thursday, March 26, 2020 11:44 AM

To: Tanya King <tanya@mossandkuhn.com>; Linda Smyth <Lsmyth@griffithfreeman.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>

Cc: Cory Fleming <cory@mossandkuhn.com>

Subject: Re: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and Wells Fargo

Thank you for your email Tanya. I appreciate your consideration given my taking over this case now that Laura Robinson has resigned and Mr. Templeton's client being dismissed from this action. Realistically, a mid to late May mediation would allow me to get this case postured for a mediation and my adjuster time to get ready for a mediation.

With this said, please provide dates to mediate this case from mid May forward.

I appreciate your consideration and look forward to working with you to resolve this claim.

Thank you.

Charles Blackburn

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From: Tanya King <tanya@mossandkuhn.com>
Sent: Thursday, March 26, 2020 11:28:02 AM
To: Linda Smyth <lsmyth@griffithfreeman.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; Charles Blackburn <cblackburn@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WELLS Fargo

Linda:

Please be advised that the above mediation that you are holding for April 2nd needs to be cancelled. Mr. Templeton will no longer be needing to be at the mediation (Order Granting Defendant's Saul, LLC's Motion for Summary Judgment was signed and filed on 3/24/2020) of this case and Mrs. Robinson is no longer with the firm who represents Wells Fargo. Wells Fargo is now represented by Charles Blackburn who I have cc'ed on this email.

With this being said, can you please possible send us some dates for mediation towards the end of April –first part of May so that Mr. Blackburn and Mr. Fleming's offices can get together on a date?

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373
843-379-3381 direct dial
843-379-1322 fax

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immediately notify us by telephone or by return e-mail, and **destroy** any copies (electronic, paper, or otherwise) that you may have of this communication.

From: Linda Smyth [<mailto:Lsmyth@griffithfreeman.com>]
Sent: Monday, March 02, 2020 5:16 PM
To: Tanya King; Morgan S. Templeton; Mitch Griffith
Cc: Cory Fleming; 'Laura Robinson'; jreese@scarolina-law.com; Linda Smyth
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WELls Fargo

Tanya –

This is to confirm that we are still holding April 2, 2020 for this mediation by Mitch Griffith.

Linda Smyth
 600 Monson Street (29902)
 PO Drawer 570
 Beaufort, SC 29901
 843-521-4242
 843-521-4247 (fax)
lsmyth@griffithfreeman.com

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From: Tanya King <tanya@mossandkuhn.com>
Sent: Monday, March 2, 2020 4:11 PM
To: Linda Smyth <Lsmyth@griffithfreeman.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>; jreese@scarolina-law.com
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WELls Fargo

Linda:

Please allow this email to confirm mediation for April 2 for the above matter. We are still waiting to confirm this date from Mrs. Robinson but we do not want to lose the date with Mr. Griffith.

Mrs. Robinson, please advise ASAP.

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373
843-379-3381 direct dial
843-379-1322 fax

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From: Linda Smyth [<mailto:lsmyth@griffithfreeman.com>]
Sent: Friday, February 21, 2020 2:56 PM
To: Tanya King; Morgan S. Templeton; Mitch Griffith
Cc: Cory Fleming; 'Laura Robinson'; Linda Smyth
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WELls Fargo

All –

We are holding April 2, 2020 on Mitch Griffith's calendar for this mediation.

Linda Smyth
600 Monson Street (29902)
PO Drawer 570
Beaufort, SC 29901
843-521-4242
843-521-4247 (fax)
lsmyth@griffithfreeman.com

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From: Tanya King <tanya@mossandkuhn.com>
Sent: Friday, February 21, 2020 2:45 PM
To: Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Linda Smyth <Lsmyth@griffithfreeman.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and Wells Fargo

Mr. Templeton:

I am waiting to hear on the availability of Mrs. Robinson for April 2, 2020. For all others, April 2, 2020 is good.

Mrs. Robinson,

Please advise is April 2, 2020 is good with your schedule.

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373

843-379-3381 direct dial
843-379-1322 fax

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From: Morgan S. Templeton [<mailto:Morgan.Templeton@WallTempleton.com>]
Sent: Friday, February 21, 2020 2:28 PM
To: 'Linda Smyth'; 'Mitch Griffith'; Tanya King
Cc: Cory Fleming; 'Laura Robinson'
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WELLS Fargo

Have we been able to confirm this mediation?

Morgan S. Templeton
Attorney

Telephone: (843) 329-9500
Facsimile: (843) 329-9501



Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402
www.WallTempleton.com

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From: Morgan S. Templeton
Sent: Tuesday, February 18, 2020 1:01 PM
To: Linda Smyth <lsmyth@griffithfreeman.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>;

Tanya King <tanya@mossandkuhn.com>

Cc: Cory Fleming <cory@mossandkuhn.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>

Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and Wells Fargo

Saul has no objection.

Morgan S. Templeton
Attorney

Telephone: (843) 329-9500

Facsimile: (843) 329-9501



Wall Templeton & Haldrup, P.A.

145 King Street, Suite 300 (29401)

Post Office Box 1200

Charleston, South Carolina 29402

www.WallTempleton.com

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From: Linda Smyth [<mailto:lsmyth@griffithfreeman.com>]

Sent: Tuesday, February 18, 2020 12:50 PM

To: Mitch Griffith <Mgriffith@griffithfreeman.com>; Tanya King <tanya@mossandkuhn.com>

Cc: Cory Fleming <cory@mossandkuhn.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>;

Linda Smyth <lsmyth@griffithfreeman.com>

Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and Wells Fargo

That is correct, April 2, 2020 is available.

Also, our conflict search revealed that Mary Sharp, who has since left our firm, represented a Wells Fargo entity in several cases, and also represented a defendant in a matter in which Wells Fargo Bank, NA was the Plaintiff. However, Mr. Griffith was not involved in any of those matters. The search also revealed that Mr. Griffith was involved in a matter in which a Wells Fargo entity was a Defendant. However, we closed our file on that matter in 2011, which is outside the limit of our retention of file records and therefore we do not have

any further information regarding that case. Mr. Griffith is not currently involved in any matter in which Wells Fargo is a party. This is meant for disclosure purposes only and is not an attempt by Mr. Griffith to avoid serving as your mediator.

We request that each party respond to this email, acknowledging this disclosure and advising if any party has an objection to Mr. Griffith serving as you mediator.

Please let us know if you have any questions.

Linda Smyth
600 Monson Street (29902)
PO Drawer 570
Beaufort, SC 29901
843-521-4242
843-521-4247 (fax)
lsmyth@griffithfreeman.com

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From: Mitch Griffith <Mgriffith@griffithfreeman.com>
Sent: Tuesday, February 18, 2020 12:28 PM
To: Tanya King <tanya@mossandkuhn.com>; Linda Smyth <lsmyth@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; morgan.templeton@walltempleton.com; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WELLS Fargo

Unless Linda corrects me I have 4/2 available. Mitch

E. Mitchell Griffith

From: Tanya King <tanya@mossandkuhn.com>
Sent: Tuesday, February 18, 2020 12:17 PM
To: Linda Smyth <lsmyth@griffithfreeman.com>
Cc: Mitch Griffith <Mgriffith@griffithfreeman.com>; Cory Fleming <cory@mossandkuhn.com>; morgan.templeton@walltempleton.com; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WELls Fargo

Linda:

Good afternoon. Would by chance Mr. Griffith have any of the four dates available for mediation: 3/25, 3/26, 3/30 and 4/2? Please advise as soon as possible.

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373
843-379-3381 direct dial
843-379-1322 fax

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Deposition of:
Eddie B Lewis , Jr.

November 14, 2019

In the Matter of:
Eddie B. Lewis Jr. Vs. Saul LLC, Et Al.

[A. William Roberts, Jr & Assoc.](#)

800-743-3376 | calendar-awr@veritext.com | www.veritext.com

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IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL DISTRICT
C.A. NO.: 2018-CP-07-02378

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

EDDIE B. LEWIS, JR.,)

)

)

Plaintiff,)

)

VS.)

)

)

SAUL, LLC and WELLS)

FARGO BANK NATIONAL)

ASSOCIATION,)

)

)

Defendants.)

DEPOSITION

OF

EDDIE B. LEWIS, JR.

NOVEMBER 14, 2019

at 9:49 a.m.

REPORTED BY: Marietta McElroy Hutsell, LCR #449

Page 2

1 The deposition of EDDIE B. LEWIS, JR. is
2 taken on this, the 14th day of November, 2019, on
3 behalf of the Defendants, pursuant to notice and
4 consent of counsel, beginning at approximately
5 9:49 a.m. in the offices of Alpha Reporting
6 Corporation, 236 Adams Avenue, Memphis, Tennessee.

7 This deposition is taken pursuant to the
8 terms and provisions of the South Carolina Rules of
9 Civil Procedure.

10 All forms and formalities, including the
11 signature of the witness, are waived, and all
12 objections except as to form are reserved to be
13 presented and disposed of at or before the hearing.

Page 3

A P P E A R A N C E S

FOR THE PLAINTIFF:

CORY H. FLEMING, ESQ.

MOSS, KUHN & FLEMING

1501 North Street

Beaufort, South Carolina 29901

cory@mossandkuhn.com

FOR THE DEFENDANT SAUL, LLC.:

MORGAN S. TEMPLETON, ESQ.

WALL, TEMPLETON & HALDRUP

145 King Street, Suite 300

Charleston, South Carolina 29401

(843) 329-9500

morgan.templeton@walltempleton.com

FOR THE DEFENDANT WELLS FARGO:

LAURA W. ROBINSON, ESQ.

VERNIS & BOWLING OF COLUMBIA

1401 Main Street, Suite 655

Columbia, South Carolina 29201

lrobinson@scarolina-law.com

I N D E X

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1 EDDIE B. LEWIS, JR.,
2 having been first duly sworn, was examined and
3 testified as follows:

4 EXAMINATION

5 BY MR. TEMPLETON:

6 Q. Please give me your full name.

7 A. Eddie B. Lewis, Jr.

8 Q. Mr. Lewis, nice to meet you. My name is
9 Morgan Templeton. I'm a lawyer from Charleston,
10 South Carolina. And I'm representing a company
11 called Saul, LLC in connection with the lawsuit that
12 you brought today.

13 Have you ever given a deposition
14 before?

15 A. No.

16 Q. So the rules in South Carolina apply, and
17 I'm required to give you those rules even though we
18 are in Memphis here today, okay?

19 A. Okay.

20 Q. So at any time I ask you a question that you
21 don't understand, stop me and tell me to say it
22 differently, and I'll ask it in a different way so
23 you and I are on the same page, okay?

24 A. Okay.

25 Q. If you don't tell me you did not understand

Page 6

1 one of my questions, I'm going to assume when I have
2 asked it, you understood it and whatever response
3 you give is a truthful one and that you understood
4 what I was asking. Is this fair?

5 A. That's fair.

6 Q. If you do have a question about any of my
7 questions, if you will direct the question to me as
8 opposed to your lawyer, I'll do my best to clarify
9 it, okay?

10 A. That's correct.

11 Q. And this happens in every deposition I have
12 ever taken. You and I are going to know exactly
13 what we are talking about. We are going to uh-huh,
14 we are going to huh-huh, we are going to shake and
15 shrug our shoulders. We are going to use our body
16 language just to communicate, and you and I are
17 going to know what's going on. But the court
18 reporter will not be able to. So we have to give a
19 yes, a no, a verbal explanation, okay?

20 A. Correct.

21 Q. Happens every time. So I may remind you,
22 you have to speak.

23 A. You might have to remind me.

24 Q. Fair enough.

25 And last but not least, if you

Page 7

1 need to take a break for any reason, just tell me
2 you would like to take a break, and I'll accommodate
3 you, okay?

4 A. I don't think so. I just went to the
5 bathroom so we are good.

6 Q. Very good. Where do you live?

7 A. Jackson, Tennessee.

8 Q. What is the address?

9 A. I just moved there two weeks ago. 66 Rebel
10 Road. See, I moved to Jackson about two months ago.
11 I made a mistake and rented a house on I-45. That's
12 the bypass to Jackson. Oh, god, you can't sleep at
13 night. So I bought a house two blocks over. And
14 it's a nice house. My sister found me the house and
15 pushed it through.

16 Q. And you moved to Jackson from Beaufort; is
17 that right?

18 A. Yes, sir, I did.

19 Q. How long did you live in Beaufort?

20 A. Since 1980.

21 Q. And what took you to Beaufort?

22 A. Well, the Marine Corps. I spent most of my
23 time in the Marine Corps at Beaufort.

24 Q. Thank you for your service.

25 A. I appreciate that.

Page 8

1 Q. When you finished your service, you retired
2 to Beaufort or chose to continue to live in
3 Beaufort; is that right?

4 A. I did.

5 Q. And what was your job in the Marine Corps?
6 What did you do?

7 A. I worked in supply.

8 Q. What was your period of service?

9 A. My period of service was actually right at
10 21 years. But in that 21 years, I got detached from
11 the Marine Corps and was deputized as a federal
12 marshal. And I flew with TVA for nearly four years
13 as a federal marshal on planes as a guard.

14 That's what I call it, a guard.
15 They have some kind of fancy word for it. It's
16 security something. But it was right after 9/11.
17 That's when I got detached from the Marine Corps. I
18 didn't have anything to do with the Marine Corps for
19 nearly four years. I was stationed in New York City
20 with a bunch of other --

21 What happened, they didn't have
22 enough security to go aboard the planes. So they
23 pulled a bunch of military off. You had to be an
24 expert in physical shot, an expert in rifle shot,
25 you had to be six foot tall. And I always told

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1 people you had to be good looking too, but I don't
2 think that had anything to do with it.

3 You had to have a clean record.
4 And after you saw about ten psychiatrists why you
5 want to volunteer for something you might get killed
6 at, I got deputized as a federal marshal.

7 Q. And you did that for a period of four years
8 following --

9 A. In between three and four years, right,
10 right after 9/11.

11 Q. So that would take you to somewhere in 2005;
12 is that right?

13 A. Yes, correct.

14 Q. And after 2005, did you fully retire?

15 A. Right.

16 Q. And why did you choose to move to --

17 A. I need to back up a little bit. That
18 federal marshal, that's including 1980. I retired
19 in 1981. That three or four years was included in
20 that time right there.

21 Q. So let me back up and make sure I
22 understand. What year did you enter the Marine
23 Corps?

24 A. 1956.

25 Q. And you served from 1956 until about 1980;

1 is that right?

2 A. 1976.

3 Q. In 1976 when you retired from the Marine
4 Corps, then you went to be a U.S. marshal?

5 A. No. That was in the time of the 20 years.
6 See, I got detached from the Marine Corps. They
7 just pulled me out of the Marine Corps, more or
8 less, and deputized me as federal marshal.

9 Q. And the four year period that you were a
10 U.S. marshal included some of the period of time
11 after 9/11?

12 A. Yes, sir, that's it.

13 Q. And when did you fully and completely retire
14 from any job?

15 A. I have never really retired from any job
16 because when I retired out of the Marine Corps, I
17 went to work for civil service, and I worked for
18 them for 13 years. And I combined my civil service
19 time and my Marine Corps time and I retired. I
20 retired out of no government work. Then I went into
21 business for myself as a contractor.

22 Q. And what year was that that you went to work
23 for yourself as a contractor?

24 A. If you add 13 years to 1980, it will be
25 about --

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1 Q. 1993?

2 A. 1993 or something like that.

3 Q. And how long did you work as a contractor?

4 A. Independent contractor, up until I got hurt,
5 more or less.

6 Q. Hurt when?

7 A. I can't think of the year I hurt my
8 shoulder. About three or four years ago. It's on
9 that paper when I hurt my shoulder. I don't know
10 what the date is.

11 Q. When you say hurt your shoulder, are you
12 talking about hurting your shoulder as a result of
13 the fall that this lawsuit is about?

14 A. Yes, sir. Because I couldn't use my arm.

15 Q. Before the fall that we are talking about in
16 this lawsuit -- and we'll get to all of that. But
17 before that, I want to walk through your employment
18 history.

19 You worked as a contractor from
20 1993 until you were hurt; is that right?

21 A. Right.

22 Q. And what was the name of your business?

23 A. Poor Boy Construction.

24 Q. And were you a general contractor or a
25 subcontractor?

1 A. Just a subcontractor. I wasn't a general
2 contractor, no.

3 Q. And as a contractor, did you have a license
4 in the state of South Carolina?

5 A. Correct.

6 Q. What was the license that you held?

7 A. It was a five thousand dollar license. They
8 call it a specialty license. You probably know
9 already. You can only do five thousand dollars
10 worth on your house, and that's it.

11 Most of them, a little bit, went
12 over it sometimes. But you couldn't hardly --
13 Beaufort has pretty stringent rules. They have good
14 inspectors to check that stuff out.

15 Q. Did you have any other employment other than
16 as a contractor between 1993 and the day that you
17 hurt your shoulder?

18 A. No, just independent contractor.

19 Q. When you retired from the Marine Corps, you
20 were honorably discharged, right?

21 A. Yes, sir.

22 Q. And you have no criminal history, never been
23 arrested for anything, right?

24 A. No.

25 Q. Have you ever been a plaintiff in a lawsuit

Page 13

1 before where you have had to sue somebody for money?

2 A. No.

3 Q. Has anybody ever sued you for money damages
4 as a defendant?

5 A. Yes.

6 Q. How many times have you been sued as a
7 defendant?

8 A. When I was a contractor, I had one person
9 that shot his hand with a nail gun putting a roof
10 on. He shot his hand with a nail gun. Actually,
11 workman's comp, they did all the legal work and
12 everything on it.

13 In South Carolina, we have some
14 good workman's comp people in Columbia. They had a
15 lady that worked with me the whole process of when
16 he shot his hand with a nail gun.

17 And I had one other boy who
18 picked up something one day and he said he hurt his
19 back. And he sued me, took out -- he didn't go to
20 trial or nothing like that. He took a settlement of
21 four thousand or something dollars. I don't know
22 what it was.

23 Q. But other than that instance where your
24 employee was hurt on the job, any other instances
25 where you have been sued?

1 A. No.

2 Q. Are you married?

3 A. My wife is deceased.

4 Q. I'm sorry to hear that. When did she pass?

5 A. Three years ago.

6 Q. Was she from South Carolina?

7 A. She was.

8 Q. Was she a Beaufort girl?

9 A. She was.

10 Q. What was her maiden name?

11 A. Campbell.

12 Q. Does your wife's family still reside in
13 Beaufort?

14 A. My brother-in-law does.

15 Q. What is your brother-in-law's name?

16 A. Donald Campbell.

17 Q. Any other last names other than Campbell of
18 people that live in Beaufort?

19 A. No.

20 Q. On your side of the family, do you have any
21 family by blood that live in Beaufort, South
22 Carolina?

23 A. In Beaufort, I have a son there.

24 Q. What's your son's name?

25 A. Keith. Keith Lewis.

1 Q. Is he married?

2 A. He is.

3 Q. And what is his wife's name?

4 A. Christy.

5 Q. Any other family by blood or marriage that
6 lives in Beaufort County, South Carolina, to the
7 best of your knowledge?

8 A. No, not now.

9 Q. What is your date of birth, sir?

10 A. 10/23/38.

11 Q. Before the incident where you hurt your
12 shoulder, had you ever been involved in any other
13 accidents?

14 A. Accident?

15 Q. Yes, sir. And I'm going to define accident
16 as whether you have been in a motor vehicle
17 accident, other falls where you fell down, or any
18 injuries that you sustained in the military through
19 your service?

20 A. You're talking about injury, right?

21 Q. Yes.

22 A. I got injured in Vietnam and I messed up my
23 back in Vietnam. I had to have a back operation
24 when I came back to the States. I had a back
25 operation in 1978, I think it was. And I had a back

1 operation in 1979 in North Carolina. That's all.

2 Q. And what was the injury that happened to
3 your back? What was wrong with your back that
4 caused the surgery?

5 A. I got hit with a piece of metal.

6 Q. Did you have a herniated disc or a broken
7 back?

8 A. On the last one, I got hit with a piece of
9 metal. I worked for a company named Air Free for
10 about nine months. I got hit with a piece of metal
11 in my back and busted three vertebrae.

12 And if you are going to ask
13 this, they operated and fixed those three, and they
14 fused it to the one that got hit in the military.
15 So I've got four fusions is what I've got. That's
16 all.

17 Q. Since 1979 and that back surgery and before
18 the fall that we are here about today, any motor
19 vehicle accidents where you sustained an injury?

20 A. No, not unless you count me being mad and
21 having somebody hit me. I didn't get hurt.

22 Q. Okay. Between 1979 and the day of this
23 fall, which I understand to have been in June of
24 2016; is that right?

25 A. Do what, now?

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1 Q. You fell down in June of 2016; is that
2 right?

3 A. Yes, I think that's what it was. I don't
4 remember the dates.

5 Q. So between June of 2016 and all the way back
6 to 1979, did you ever make a claim that somebody
7 caused you an injury to your body?

8 A. No. I'm 81 years old so I forget a few
9 things, but I don't think so.

10 Q. Right. So before this fall, I guess you
11 would have been -- at the time of the fall, you
12 would have been, what, 78 years old; is that right?

13 A. Yes.

14 Q. So when you were 78 years old looking back
15 at before this fall, how would you characterize your
16 health?

17 A. I have always been in good health. I
18 exercise every day. I didn't run every day. But
19 I'm in really good health. I have a great doctor in
20 Beaufort named Dr. Huff. He probably knows her.
21 And she's on my butt. If I gain two or three pounds
22 --

23 Q. She lets you know it?

24 A. She'll let me know.

25 Q. But no aches, no pains?

Page 18

1 A. You have pain every now and then. But
2 nothing to go to the hospital or nothing like that.

3 Q. Were you taking any medication on a regular
4 basis before this fall?

5 A. Before the fall, yes, I take a medication
6 for afib.

7 Q. Anything other than the medicine for your
8 afib?

9 A. I believe they have me on a light dose of
10 high blood pressure.

11 Q. And you said, was Dr. Huff your primary
12 physician?

13 A. Yes.

14 Q. The complaint -- I told you June. I was
15 wrong. According to your complaint, which is the
16 lawsuit that you filed, you fell on May 23rd, 2016.
17 Is that correct?

18 A. I don't know the dates. I can't give you
19 dates. I would have to look that up.

20 Q. Do you have any reason to believe that it's
21 not May 23rd, 2016?

22 A. No.

23 Q. And where were you when you fell, sir?

24 A. Beaufort.

25 Q. What property?

1 A. The bank.

2 Q. What bank?

3 A. You caught me at a momentary --

4 Q. Take your time.

5 MS. ROBINSON: It's not a trick question.

6 Was it Wells Fargo?

7 BY MR. TEMPLETON:

8 Q. Wells Fargo?

9 A. Wells Fargo. Thank you for telling me.

10 Q. On Bay Street?

11 A. Yes, right.

12 Q. Where were you at the Wells Fargo on Bay
13 Street when you fell?

14 A. I was outside.

15 Q. In the parking lot?

16 A. In the parking lot.

17 Q. Had you done bank business at Wells Fargo
18 before?

19 A. Many years.

20 Q. How many years would you estimate you have
21 been a customer of Wells Fargo?

22 A. I don't know.

23 Q. More than ten?

24 A. Yes.

25 Q. More than 20? And before it was Wells

Page 20

1 Fargo, it was Wachovia? And before it was Wachovia,
2 it was First Union?

3 A. I had Wachovia and then it went to Wells
4 Fargo.

5 Q. Okay. And you think it was more than 20
6 years you have been a customer of Wachovia and/or
7 Wells Fargo?

8 A. Yes, the whole time I was in Beaufort.

9 Q. The whole time?

10 A. The whole time.

11 Q. Do you remember how long Wells Fargo had
12 been at that location?

13 A. No.

14 Q. More than ten years?

15 A. When they bought out the other bank, that's
16 when I started doing business in Beaufort. It used
17 to be another place not in Beaufort. It was in
18 Beaufort but not that location.

19 Q. Are you able to estimate how long Wells
20 Fargo had been at that location?

21 A. I would say 15, 20 years, I guess.

22 Q. Are you able to estimate how many times you
23 went to the Wells Fargo at that location?

24 A. Probably at least once a week.

25 Q. Once a week for 15 years?

1 A. Probably.

2 Q. And when you did business at Wells Fargo,
3 did you go through the drive-thru or did you go in
4 or did you do both?

5 A. Most of the time I went inside.

6 Q. Was there any particular banker or teller
7 with whom you did business?

8 A. No.

9 Q. How would you get to the Wells Fargo Bank on
10 Bay Street?

11 A. Just right in the back there and park in the
12 parking lot.

13 Q. From where you lived in Beaufort, it was too
14 far to walk to the bank?

15 A. Oh, yes.

16 Q. That's what I was asking, if you drove or if
17 you walked.

18 A. I drove.

19 Q. In addition to the times when you went to
20 the bank for your business to do your business, did
21 you ever go to the bank as sort of a ride-along with
22 other folks going to do business there?

23 A. No, not that I recall.

24 Q. Did your wife also, when she was living, do
25 business with Wells Fargo?

1 A. Correct.

2 Q. Did you ride with her on occasion?

3 A. Yes. I'll take that back, yes.

4 Q. On occasion when you went with your wife to
5 the bank, would that have been in addition to the
6 times when you went by yourself once a week for 15
7 years?

8 A. Probably. She very seldom ever went with me
9 because usually when I went to the bank, it was just
10 for business and during the day. And when she went,
11 it would be late in the afternoon. Or if she went,
12 she went early in the morning usually.

13 Q. And you told me earlier that you drive to
14 the bank and you parked in the parking lot; is that
15 right?

16 A. Right.

17 Q. Is that what you always did? Was that your
18 habit?

19 A. That was my habit.

20 Q. When you parked, how would you get into the
21 bank?

22 A. I believe that's Bay Street. Basically you
23 turn right into the back where the parking is on the
24 side and the back of the bank.

25 Q. Is there one door to get into the building,

1 as far as you know, or is there more than one?

2 A. I always used one, and that's in the back.
3 That's the one most of the people used, the one in
4 the back. They have a front door, but you don't see
5 many people come in there.

6 Q. On the day that you were there when you
7 fell, who was with you, if anyone?

8 A. My granddaughter and my great grandchild.

9 Q. How old is your great grandchild?

10 A. He was a baby then.

11 Q. Still pretty young today?

12 A. Right, she just turned six years old last
13 week.

14 Q. And your granddaughter is here with you
15 today; is that right?

16 A. Yes, sir, she is.

17 Q. Frances Nelson?

18 A. Yes, sir.

19 Q. So Ms. Nelson was with you on the day that
20 you fell?

21 A. Correct.

22 Q. And what was your purpose for going to the
23 bank that day?

24 A. I guess just doing regular business, turning
25 some money in or something like that. I'm not sure.

Page 24

1 Q. Deposit or withdrawal?

2 A. Deposit or withdrawal, yes.

3 Q. Did you do business with the bank before you
4 fell or did you fall before you went into the bank?

5 A. I did business first and I fell when I came
6 out.

7 Q. So you fell on the way back to the car?

8 A. Correct.

9 Q. Do you remember where you had been that day,
10 what you had been doing or anything like that?

11 A. Not that long ago. Probably just working.

12 Q. And that was working for Poor Boy
13 Construction at the time?

14 A. Correct.

15 Q. Did your granddaughter work as well for Poor
16 Boy?

17 A. No.

18 Q. Why was it that she was driving you to the
19 bank that day?

20 A. She rides with me a lot of times just to get
21 out of the house and everything.

22 Q. Were y'all living together at the time?

23 A. She was living with me.

24 Q. And the day that you fell, was she driving
25 you or were you driving her?

Page 25

1 A. I was driving. She doesn't have a license.

2 Q. And what vehicle were you in?

3 A. It was a Chevrolet truck.

4 Q. Silverado?

5 A. I don't know what kind it was. It was just
6 a Chevrolet truck. I don't think it was a
7 Silverado, but it was a Chevrolet truck.

8 Q. Do you remember what your plan was in terms
9 of where you were going to go after you did banking
10 business that day?

11 A. No, I don't, not that far.

12 Q. Do you remember what time of day it was that
13 you fell?

14 A. In the afternoon.

15 Q. Do you remember if it was sunny out or
16 cloudy?

17 A. I don't really remember that, not that long
18 ago.

19 Q. Do you remember if it had rained?

20 A. It would be hard to tell that because they
21 have a bunch of trees anyway.

22 Q. Do you remember if it had rained?

23 A. No.

24 Q. Do you remember if the concrete was wet or
25 dry?

1 A. It was dry.

2 Q. When you went in to do business at the bank,
3 did your granddaughter stay in the car or did she go
4 with you?

5 A. She did, she stayed in the car because she
6 had the baby with her.

7 Q. And when you got out of the car to go do
8 business, do you remember what path you took to get
9 to the bank?

10 A. I can show you.

11 Q. And you have brought with you today a
12 schematic of the parking area; is that right?

13 A. He furnished me the schematic.

14 Q. May I see that for a moment?

15 A. Yes, sir.

16 MR. TEMPLETON: I am going to mark as
17 Exhibit 1 the schematic that you brought today or
18 that was provided to you today.

19 (WHEREUPON, THE ABOVE-MENTIONED DOCUMENT WAS
20 MARKED EXHIBIT NO. 1 TO THE TESTIMONY OF THE
21 WITNESS AND IS ATTACHED HERETO.)

22 BY MR. TEMPLETON:

23 Q. Do you recognize the schematic?

24 A. Right.

25 Q. Do you recognize that?

1 A. Correct.

2 Q. What is it?

3 A. It's a schematic of the bank, and this is
4 the right area.

5 Q. Are you able to mark on that exhibit where
6 you parked your car?

7 A. Yes. See, this was a tree right here.

8 Q. You are pointing to the highlighted area
9 that says planter?

10 A. Yes, somebody put a little green or
11 something on there. There's a tree and there's a
12 sidewalk around it. And I parked right over here.

13 Q. Do this for me -- we're going to do this one
14 step at a time -- put an X in the parking spot where
15 you believe you parked on the day you fell.

16 A. It was either here or here. We are going to
17 put it right here. It could be either one. I'll
18 put two X's.

19 Q. Draw a circle around those two X's. I'm
20 going to ask you a bunch of questions just so the
21 record is clean when we go back and read it.

22 A. That's fine.

23 Q. So on Exhibit 1, you have marked two X's in
24 two parking spots and drawn a circle around them as
25 to the area where you believe you parked on the day

1 you fell; is that right?

2 A. Correct.

3 Q. And so when you got out of the car to go do
4 your business in the bank, point for me which way
5 you walked.

6 A. This way, on that side right here, go in the
7 back right here.

8 Q. Let's use a blue pen and make a nice heavy
9 line on the path.

10 A. That's where I went. It's a little
11 different coming back.

12 Q. We are going to use Ms. Robinson's red pen
13 to mark the path that you walked back.

14 A. I come out of the bank, I went around this
15 way, and I was going to go over to the vehicle.

16 Q. And do you know the area where you fell?

17 A. Yes, in this area right here on this side of
18 the truck.

19 Q. Make a red star where you think you fell.

20 A. Okay.

21 Q. So for the record, you have marked a blue
22 line towards the door of the bank, which signifies
23 the pathway that you took going into the bank; is
24 that right?

25 A. Correct.

1 Q. And then you have marked with a red line
2 going back from the door of the bank back towards
3 the parking spot the path where you believe you took
4 going back to the car; is that right?

5 A. Correct.

6 Q. And the X that is in red next to the little
7 highlighted planter area is where you believe you
8 fell; is that right?

9 A. Yes.

10 Q. The X where you've marked, was there a car
11 in the parking spot that is next to the planter area
12 or was it --

13 A. There were cars in all these parking spots.

14 Q. So there were three cars all the way in
15 between the two planters; is that right?

16 A. Yes.

17 Q. So when the car that was in the parking spot
18 closest to the planter that is highlighted, did you
19 walk on the side of the car closest to the planter
20 or in between the two cars that were parked?

21 A. I walked on the sidewalk close to the
22 planter.

23 Q. You walked on the sidewalk close to the
24 planter?

25 A. Right, because there's cars parked there and

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1 you can't do anything except walk on the sidewalk.

2 MR. TEMPLETON: I am going to mark -- I'm
3 showing you what's marked Exhibit No. 2, which is
4 what I understand to be a photograph of the sidewalk
5 around that planter.

6 (WHEREUPON, THE ABOVE-MENTIONED DOCUMENT WAS
7 MARKED EXHIBIT NO. 2 TO THE TESTIMONY OF THE
8 WITNESS AND IS ATTACHED HERETO.)

9 BY MR. TEMPLETON:

10 Q. Do you recognize that photograph?

11 A. If you will explain this a little bit. Now,
12 this is a parking spot right here, right?

13 Q. I believe that to be --

14 A. Because that's a car wheel right there.

15 Q. Yeah, that's a car wheel.

16 A. And this is the sidewalk. So this is the
17 sidewalk that I came out of the bank going out.

18 Q. Does this picture that's marked as Exhibit 2
19 fairly and accurately depict the area where you
20 fell?

21 A. Yes. It's just a plain sidewalk.

22 Q. And had you ever walked on that sidewalk
23 before?

24 A. Usually I don't. If you look at this paper
25 here --

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1 Q. You're referring back to Exhibit 1.

2 A. Back to Exhibit 1.

3 If I'm parking over here, I
4 don't usually go out of my way to go around this
5 way. I usually go a straight line. See, I
6 usually -- this day I didn't. I usually park in
7 these parking spots up here because it's so easy to
8 get out. You just crank the truck, back up 6 or 7
9 foot and drive right out on the street.

10 All these got all the cars
11 to contend with. But this day I parked here because
12 there was a bunch of cars in here. So I parked over
13 here, I walked straight from here into the bank.
14 And when I come out, I took the straight line this
15 way. I couldn't come this way because the guard was
16 standing there talking to someone.

17 Q. When you say the guard, what are you talking
18 about?

19 A. See, Beaufort is a retirement place, resorts
20 all around through there. And they have a lot of
21 visitors. And they do just like they do at Memphis,
22 I'm sure they do the same thing. They come here to
23 visit. And if there's a parking place, I'm going to
24 park there if there's nobody there.

25 But the bank is limited to

1 their parking spots. So they don't let people do
2 that. If you come there and you're not on business,
3 you can't park there. If you are on business, you
4 can park anywhere you want to there.

5 Q. So when you say security guard, you believe
6 this was a bank security guard?

7 A. Yes, they hire security all the time. They
8 have a security man there at all times.

9 Q. He was talking to just another customer or
10 some other person?

11 A. He was talking to somebody. I don't know
12 what it was. Probably a customer.

13 Q. Did you speak with the security officer at
14 any point in time while you were there the day you
15 fell?

16 A. The only time I spoke to him is when I went
17 in and said, hey, how you doing, and walked on in.

18 Q. The condition that's shown in Exhibit No. 2,
19 before the day you fell, had you ever noticed that
20 condition before?

21 A. I never had no reason to because I didn't
22 ever walk that way.

23 Q. You don't believe you ever walked that
24 pathway before?

25 A. I probably could have, but I don't remember

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1 if I did. I don't think I did. Like I said, why
2 would I? Because that would be out of my way if I'm
3 parked here and go in a straight line this way. If
4 I'm parked here, I'm going a straight line that way.

5 Q. When you are pointing to the places where
6 you usually parked, you put a couple of dots, red
7 dots?

8 A. Yeah, these are parking spots up here. All
9 these are parking spots here and here.

10 Q. And in order to come from these parking
11 spots where you usually would park and making a
12 straight line over to this sidewalk, you would walk
13 by --

14 A. I would just come straight down this way,
15 get on the sidewalk and run on in the bank.

16 Q. Let me finish my question.

17 A. Oh, I'm sorry.

18 Q. I should have told you this rule too because
19 this happens too. A lot of times you are going to
20 know the answer to my question before I spit it out.
21 But let me finish spitting it out so we are not
22 talking over each other.

23 A. All right.

24 Q. So from these places that you have marked on
25 Exhibit 1 with the red dots where you usually park,

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1 when you would walk from that spot to the bank, you
2 would walk by the area where you fell, correct?

3 A. On the opposite side of the tree.

4 Q. Sure, on the opposite side of the tree, but
5 you walked by that area, correct?

6 A. Yes.

7 Q. Would there have been, to the best of your
8 memory, anything obstructing your ability to see the
9 sidewalk that's marked as Exhibit No. 2 when you
10 would walk by it?

11 A. I don't know why you would do that. You
12 would have to walk on that side and have to stop and
13 look down the sidewalk. You wouldn't want to do
14 that.

15 Q. Whether you would or whether you wouldn't,
16 would there have been anything that would have
17 blocked your ability to see it?

18 A. Blocked my ability to see it?

19 Q. Yes.

20 A. Well, if somebody was standing there, I
21 couldn't see down the sidewalk, if that's what you
22 are asking.

23 Q. If there wasn't somebody standing there,
24 would there have been anything else otherwise to
25 block your ability to see that sidewalk?

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1 A. No, I don't think so.

2 Q. And what is it that you believe caused you
3 to fall that day?

4 A. I have no idea. I'm just going by what the
5 guard said. I tripped on something. I probably
6 did. There's nothing to trip on there on this
7 sidewalk except -- you've got the paper where it's
8 raised up or separated. So that would be the only
9 place I would know.

10 Q. What kind of shoes were you wearing that
11 day?

12 A. Regular work shoes.

13 Q. Boots, work boots?

14 A. I don't wear a boot. I wear a work shoe. I
15 don't have them on. But it's just like these here.
16 Like he's got on here, cut off right here.

17 Q. I can't see that far. But like Docksider
18 shoes?

19 A. Yes, like Docksiders.

20 Q. But you don't remember exactly what you
21 tripped on; is that fair to say?

22 A. That's fair.

23 (WHEREUPON, THERE WAS A BRIEF BREAK AND THE
24 PROCEEDINGS CONTINUED AS FOLLOWS:)

25 BY MR. TEMPLETON:

1 Q. Mr. Lewis, when you fell, what do you
2 remember your body coming in contact with first?

3 A. The only thing I remember, I tripped on
4 something, and I put my hand out. I don't even
5 remember my hands hitting the ground. It kind of
6 dazed me because when I come -- it didn't really
7 knock me out. It just dazed me a little bit.
8 Somebody had their hand on my back and said, you
9 can't get up, because I was trying to get up.

10 I said -- I do remember this. I
11 said, I have to go, I have to meet somebody. And
12 this lady said, you cannot move, EMS is on their way
13 now. By the time she said that, they pulled in the
14 parking lot.

15 The only thing I remember, EMS,
16 one of the guys come over there to check my blood
17 pressure. Well, she had already checked my blood
18 pressure. Somebody said she was an off-duty nurse.
19 And she checked my blood pressure. She's the one
20 that had her hand on my back.

21 He came over and checked my
22 blood pressure and said something to me, I don't
23 know what he said, and said something to the other
24 guy. They jerked the bag out of the back of the
25 truck and slapped a mask on my face. And I don't

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1 remember anything until I come to at the hospital.

2 Q. So you don't remember speaking with anybody
3 or saying anything at the scene?

4 A. No, I know I didn't because I don't remember
5 anything.

6 Q. Do you know if your granddaughter saw you
7 fall?

8 A. Well, she said she did, and she's going to
9 be telling you in a few minutes what she saw.

10 Q. What has she reported to you that she saw?

11 A. I guess when I got out of the hospital, she
12 knew -- you fell down. What happened? She wouldn't
13 know what happened anyway. She knew I fell.

14 Q. But has she reported to you that she
15 actually saw you trip and fall and saw the sequence
16 of the trip and the fall or just that she saw the
17 aftermath of your fall?

18 A. You are probably going to have to talk to
19 her. I understand she ran over to see what
20 happened. She had been trying to tend to my great
21 granddaughter in the truck.

22 The guard said -- she saw me
23 immediately on the ground. And the guard said --
24 she said, what happened? He said, I don't know, he
25 tripped on something. And about that time, EMS was

1 getting me up off the floor.

2 Q. Other than the security guard and the EMS
3 and your granddaughter, do you remember there being
4 any other people around?

5 A. The other one I know of -- well, there was a
6 whole crowd of people out there. The lady out of
7 the bank, she was there, one of the ladies out of
8 the bank. She come out and said something to my
9 granddaughter. I believe she asked my granddaughter
10 what happened. She said, what happened to
11 Mr. Lewis, is he okay?

12 I'm not exactly sure what
13 she told them, but she said the nurse already said
14 EMS is on the way.

15 Q. Do you remember who you did business with at
16 the bank that day?

17 A. No. Unless you are getting some specialized
18 business done, you deal with the tellers.

19 Q. And the next thing you remember after the
20 EMS arriving was waking up in the hospital; is that
21 right?

22 A. Right.

23 Q. And which hospital did they take you to?

24 A. Beaufort Memorial Emergency.

25 Q. Did they keep you at the hospital?

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1 A. No. They let me go that night about -- it
2 was way up in the night. I would say 11:00 or 12
3 o'clock. They didn't keep me. They were going to
4 keep me, and the doctor said, I'm going to wait a
5 little bit and see how you do. And he finally said,
6 I'm going to let you go home.

7 Q. And when he let you go, did he tell you what
8 injuries you had sustained as a result of the fall?

9 A. I don't remember all that stuff. This is a
10 long time ago. They talk to you about a lot of
11 stuff, how your feet are feeling, how your legs are
12 feeling, how your back is feeling.

13 I do know he checked my
14 face. The only thing was -- he said my face was
15 real red. I think that's where I hit the concrete.
16 That's the only thing I can figure.

17 Q. I should have asked you this: When you were
18 coming out of the bank, were you carrying anything?
19 Did you have anything in your hands?

20 A. No.

21 Q. Do you have a smart phone or anything like
22 that? Cell phone?

23 A. Yes, flip phone.

24 Q. You have a flip phone, not a smart phone?

25 A. Yeah.

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1 Q. You told me earlier that you hurt your
2 shoulder. Is that what you ended up hurting in this
3 fall, is your shoulder?

4 A. Shoulder, yes.

5 Q. Ended up having rotator cuff surgery; is
6 that right?

7 A. Had to do it twice.

8 Q. Any other injuries as a result of this fall
9 other than the injury to your shoulder?

10 A. No, not that I know of.

11 Q. Nothing that you know of that you are
12 claiming in this lawsuit; is that fair?

13 A. Unless my lawyer has added something in
14 there.

15 Q. To the best of your knowledge, Mr. Lewis, no
16 other injuries that you are claiming other than the
17 shoulder; is that right?

18 A. Correct.

19 Q. I know you told me that you were working as
20 a contractor. Are you making a lost wage claim in
21 this lawsuit?

22 A. Am I making what?

23 Q. Are you claiming that you lost money, your
24 wages, your inability to make money as a result of
25 the fall?

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1 A. I don't know. I guess we are going to make
2 a lost wage because I was working when I got hurt.

3 Q. How much money were you making a year as a
4 contractor in 2016?

5 A. I don't know. I have a tax woman and she
6 does my taxes. She keeps it as low as she can. I
7 hope you understand what I'm talking about.

8 Q. I do.

9 A. She keeps my taxes as low as she can. A lot
10 of stuff you can't keep -- if you are doing a roof
11 job for somebody, which I did a lot of roofs, that
12 had to go on taxes. Ain't no doubt about that.
13 Stuff like that. I did stuff for people, a little
14 cash here and a little cash there.

15 Q. Are you able to estimate how much money you
16 were making in 2015, 2016 time frame?

17 A. Do what, now?

18 Q. How much money would you estimate you were
19 earning in 2015 and 2016 as an independent
20 contractor?

21 A. How much did I earn?

22 Q. Yes, sir.

23 A. Altogether?

24 Q. Yes, sir.

25 A. I made a lot of money. I earned enough to

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1 pay for a house and a vehicle and stuff. I'm going
2 to be real frank right here with you. I made a lot
3 of money. I spent a lot of money.

4 My wife is dead and gone. I had
5 the best woman in Beaufort, South Carolina. But she
6 gave my grandson a lot of money that I had made. So
7 I can't tell you exactly how much I made.

8 I can tell you I made a lot of
9 money because I worked one time -- for two years I
10 was permanent on the base with a painting
11 contractor. I had six painters working for me. So
12 I made a lot of money up there.

13 But when my grandson got on
14 drugs, it was gone. We are all talking here, and
15 I'm telling you the truth. So you will probably
16 find out later on anyway. He's not on drugs now.
17 But at one time he was on drugs real bad. And he
18 spent piles of money.

19 Q. Well, whatever money you made, you would
20 have reported to the government; is that fair?

21 A. Do what?

22 Q. Whatever money you made, would you have
23 reported that to the government in your taxes?

24 A. Yes. On the base, you have to report every
25 bit of that.

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1 Q. And you filed your taxes every year, right?

2 A. Right.

3 Q. So whatever those taxes show as your income,
4 you would agree that that was the truth in terms of
5 what you made, right?

6 A. I never question her. She's a good woman.

7 Q. After the fall and as we sit here today,
8 have you had any other accidents where you have
9 either been in a motor vehicle accident or fallen
10 down or sustained any trauma to your body?

11 A. No.

12 Q. Are you still getting treatment for your
13 shoulder or are the doctors finished with the
14 treatment to your shoulder?

15 A. The doctor is finished with it, as far as I
16 know.

17 Q. And how does it feel, as we sit here today?

18 A. I still have some problems because you can't
19 -- like when you have a rotator cuff, you can't
20 raise your arm all the way straight.

21 You have to visualize, I always
22 drove with my left hand, almost, kind of like this
23 on a steering wheel, with my seat all the way back.
24 That's the way I like to drive. I can't do that no
25 more. You can't go driving with your arm straight

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1 out like that no more. You can a short distance but
2 not -- like coming from Jackson to Memphis, there's
3 no way. That's the only thing I can tell you about
4 injuries. I can't think of anything, really.

5 Q. Anything other than having your arm out for
6 driving? Is there anything else?

7 A. You are limited. You can't do your arm
8 straight up. You can't use your arm -- like if I
9 wanted to go back in the contract business, I can't
10 use a skill saw. I'm left-handed. I can't use a
11 skill saw like I used to.

12 You can't use a hammer, you
13 can't use an automatic nailer like you used to.
14 Many things like that that you use nothing but your
15 left arm on.

16 Q. Anything else that you cannot do today that
17 you could do before this fall?

18 A. I don't know anything I was limited to do
19 before the fall in construction because -- I don't
20 know of anything that was limited to me before the
21 fall.

22 Q. Your business, Poor Boy Construction, was it
23 a South Carolina company?

24 A. South Carolina company.

25 Q. Is it still registered with the State today?

1 A. No.

2 Q. When did you close the doors?

3 A. About two years ago.

4 Q. And you filed the paperwork with the
5 Secretary of State to shut it down?

6 A. I called them and they said I didn't have to
7 do anything. I just couldn't renew my license. My
8 five thousand dollar specialty license, I couldn't
9 renew that.

10 Q. Was Poor Boy Construction an LLC or was it a
11 company Inc.?

12 A. No, it wasn't an LLC. Do what, now?

13 Q. There's different corporate designations.

14 A. No, it was just regular Poor Boy
15 Construction. I didn't have LLC or all them letters
16 out there. I didn't have all that on it. I had
17 insurance and everything, but that was it.

18 MR. TEMPLETON: Let me show you -- we'll go
19 back to photoville.

20 (WHEREUPON, THE ABOVE-MENTIONED DOCUMENT WAS
21 MARKED EXHIBIT NO. 3 TO THE TESTIMONY OF THE
22 WITNESS AND IS ATTACHED HERETO.)

23 BY MR. TEMPLETON:

24 Q. I'll show you what we marked as Exhibit
25 No.3. Do you recognize that area?

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1 A. Yes.

2 Q. What is that area?

3 A. That's the side where the parking lot is at.
4 The ATM machine is back over in the back. That's
5 the step right there at the end. It shows the tree
6 where the sidewalk is.

7 Q. If I'm looking at the -- do you see where
8 that station wagon or that car is?

9 A. Right.

10 Q. The area where you fell is to the left of
11 that car, correct?

12 A. No, it's the next tree over.

13 Q. That's what I'm talking about.

14 A. Yes, this tree.

15 Q. Is the tree on the far left-hand side of the
16 piece of paper, not the one on the right?

17 A. Right.

18 Q. Now, if we are looking at that tree that's
19 on the left-hand side of the piece of paper, did you
20 fall on the left or the right of the tree?

21 A. If you're looking at the paper, it would be
22 the right side.

23 Q. And at the time that you fell, you believe
24 there was a car parked in the parking spot next to
25 the tree on the left side of the paper?

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1 A. All these parking spots over here was full
2 of cars. That's the reason I had parked back over
3 here.

4 Q. After the fall, did you ever go back to this
5 bank?

6 A. Yes.

7 Q. How many times did you go back to the bank?

8 A. Until I moved to Jackson. I just closed my
9 account out.

10 Q. How long after the fall was it before you
11 went back to the bank?

12 A. Probably the next week.

13 Q. When you went back to the bank that first
14 time after the fall, did you speak with anybody
15 about the fall?

16 A. Now, you might try to trip me up on this,
17 but I'm going to tell you this. I didn't say
18 anything then. A month or so down the road, I was
19 in the bank and I said, when are you going to fix
20 the place out there? Nobody said anything. That
21 was it. It was just -- everybody was all joking
22 around talking.

23 Q. So my question is, when you went back to the
24 bank the first time after the fall, did anybody
25 speak to you about the fall?

1 A. No, sir.

2 Q. And did you speak to anyone at the bank
3 about the fall?

4 A. No.

5 Q. But you told me that about a month or so
6 after the fall, you were joking about --

7 A. Yeah, I just come in and I said something
8 about, y'all haven't fixed -- are y'all working on
9 the back out here in the parking lot? The reason I
10 asked that, if you looked at it, somebody had come
11 here and they put -- they took a red spray can and
12 sprayed there, and it came all the way across here.
13 I thought they sprayed that fixing to take that
14 sidewalk up. I understand now it's not. They said
15 that was for a cable that was going across the
16 parking lot.

17 Q. When you say "they said," who is the they?

18 A. I think I was talking to one of the guards
19 on that. I didn't ask about the spray thing. I
20 thought it was -- I don't know who I asked about
21 the -- probably the guard. That's the one that
22 stays out there all the time. It was a lady this
23 time because the man had been -- he changed and went
24 somewhere else.

25 Q. The guard that was out there, was it the

1 same guard every time when you were going to visit
2 the bank?

3 A. The same guard all the time?

4 Q. Yes.

5 A. No. He worked for a company, and they
6 might -- they might furnish the guards for the bank
7 here for six months and switch them over to another
8 place. And another one will come here.

9 Q. After the fall when you went back to the
10 bank, did anybody ever come to you and tell you, I
11 saw the fall, I saw what happened? Has anybody told
12 you that they saw what happened?

13 A. The only thing anybody has said to me was
14 when I went in there and had my shoulder wrapped all
15 up from the operation in a sling, they said, what's
16 going on? I said, I fell down and had to have a
17 shoulder operation. I did not even get in a
18 conversation with them. It's not that I didn't want
19 to. It's just that we didn't.

20 Q. Mr. Lewis, the owner of Saul, LLC is a lady
21 by the name of Esther Hartnett. Do you know
22 Ms. Hartnett?

23 A. No.

24 Q. Have you ever spoken with anybody that held
25 themselves out as Ms. Hartnett?

1 A. No.

2 Q. Esther Shaver was her maiden name, I
3 believe. You never talked to somebody named Esther
4 Shaver?

5 A. Not that I know of, no.

6 Q. Mr. Lewis, are you continuing to have to
7 take any medications or drugs for your shoulder?

8 A. No, not though really, not doctor
9 prescribed. You asked about medication. Not doctor
10 described, but I take a Tylenol every now and then
11 when my shoulder hurts.

12 Q. And by medicines, I was asking about a
13 prescribed medicine.

14 A. No.

15 Q. On the day of the fall, had you taken any
16 medicines that day?

17 A. No.

18 Q. Had you had anything to drink that day,
19 alcoholic beverages or anything?

20 A. No.

21 Q. And you are not on disability right now,
22 correct?

23 A. I'm a hundred percent disabled.

24 Q. And who has diagnosed you or held you as a
25 hundred percent disabled?

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1 A. I beg your pardon?

2 Q. Who has --

3 A. The government.

4 Q. When did that happen?

5 A. I've been a hundred percent disabled
6 probably four or five years ago. See, I have been
7 on disability -- if you want to shake it out -- for
8 many years on account of my back, on account of my
9 operation. But they only raised it to 100 percent
10 about a couple of three years ago.

11 Wait a minute, let me back up
12 here. Probably around four years, five years,
13 something like that.

14 Q. Before the fall?

15 A. It wasn't very long before the fall.

16 Q. But it was before the fall?

17 A. Yes.

18 MR. TEMPLETON: Mr. Lewis, I think I have
19 asked all the questions I want to ask of you right
20 now. Ms. Robinson may have some questions for you.
21 But I think I asked what I needed to ask. Thank you
22 very much, sir.

23 THE WITNESS: You are quite welcomed.

24 EXAMINATION

25 BY MS. ROBINSON:

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1 Q. Mr. Lewis, I'm Laura Robinson. And I'm
2 representing Wells Fargo, the bank, in this case.

3 I have asked the court reporting
4 firm to print some more pictures. I would like to
5 make sure I understand your path from your parking
6 space to the bank and then back.

7 I saw that you drew on the
8 schematic. It's so small that I would like to be
9 able to use bigger pictures so that you can really
10 help me understand where it is you fell. So we are
11 going to get that once they bring us the pictures.

12 I want to also follow up with
13 you about interactions with people at the bank. I
14 think you said that when you would go to the bank,
15 you would see any number of tellers?

16 A. Yes.

17 Q. Depending on the day?

18 A. Random.

19 Q. Did you ever have a personal friendship with
20 anybody that worked there?

21 A. No.

22 Q. Did you know any of the tellers by name?

23 A. No, not in the last four or five years.
24 Years ago when the Wells Fargo had opened, I knew a
25 couple, but not no more.

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1 Q. When you fell that day, did you know anybody
2 then by name?

3 A. No.

4 Q. When you went into the bank, do you remember
5 if there were other customers there?

6 A. No. There usually is.

7 Q. Do you think you had been working before you
8 went to either deposit or check or withdraw a check?

9 A. I don't remember that, to tell you the
10 truth. I probably hadn't been working because it
11 happened probably -- you probably got the date and
12 time. I think it happened in the middle of the
13 afternoon. When I used to work, I worked late. So
14 I probably wasn't even working that day.

15 Q. You had mentioned that your granddaughter
16 had had a baby and the baby was very young on that
17 day?

18 A. Yes.

19 Q. During that time period when your great
20 granddaughter was young, were you staying home with
21 your granddaughter and the baby?

22 A. No.

23 Q. Do you think you were working, in general,
24 during that time?

25 A. I wasn't staying home with the baby or

1 anything like that, not taking care of it.

2 Q. So if you weren't staying at home taking
3 care of the baby and you weren't working, what do
4 you think you were doing during the day?

5 A. I could have been visiting a couple of
6 friends or something like that. I might have had
7 some business to take care of. I don't know.

8 Q. So if I understood you right a minute ago, I
9 think you said you think maybe two years ago is when
10 you called the South Carolina Secretary of State or
11 somebody to ask did you need to do anything to shut
12 down Poor Boy Construction?

13 A. If I had my billfold, I had my old thing in
14 there. I was going to find out about renewing it or
15 what. Of course I was going to renew it in case I
16 went back to work. It hadn't been renewed probably
17 in a year or so because you have to renew them every
18 so often. I had to pay -- I believe they told me it
19 cost 25 dollars or something like that. That's all.
20 I didn't do it.

21 Q. So when you were looking through your
22 billfold, how many years do you think it had been
23 since you had last worked?

24 A. I can't tell you that. I don't know.

25 Q. So when you fell in May of 2016, do you

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1 think you had been working in that year before you
2 fell?

3 A. What month was it?

4 Q. I believe you fell in May, on May 23rd,
5 2016, which is a Monday. Do you think in January,
6 February --

7 A. I probably had been working. I don't know
8 what I had been doing, not this far back.

9 Q. It's been a long time. I'm with you on the
10 memory issues.

11 So what I'm trying to figure
12 out, though, in the lawsuit, your awesome lawyer
13 wrote the paper that's the complaint that starts the
14 case. And then we ask each other questions. The
15 lawyers ask each other written questions.

16 And one of the questions was
17 whether you were going to be claiming lost wages.
18 And generally when you make that claim, it's because
19 you had been working when you got hurt, and then
20 because you got hurt, you couldn't work anymore.

21 I think I heard you say to
22 Mr. Templeton that, yes, you would be making a claim
23 for lost wages. But in the answers that your lawyer
24 wrote, he said you weren't. So I'm trying to find
25 out from you, do you think you had been working

1 around the time when you fell?

2 A. That's a long time back to think about. I
3 don't think so. I just can't remember that. I know
4 I didn't get any permits from Beaufort because all
5 your jobs, you have to get a permit. They check
6 your codes, so you better have that permit. So I
7 don't think so.

8 Q. Let me see if this helps. I heard you
9 describe doing some work on the base, right?

10 A. Yes.

11 Q. You were doing painting?

12 A. This is before the accident, though.

13 Q. So how long do you think you had finished
14 the painting work on the base before you fell at the
15 bank? Years?

16 A. Well, let's put it this way: My painting
17 supervisor, he died a year and a half ago. He
18 worked for me for five years, four or five years.
19 And we hadn't done any painting in a long time
20 because he had been completely retired before he got
21 sick and died. He died about a year and a half,
22 close to two years ago. So it had been a good
23 while.

24 Q. Did you do any work after the painting
25 contract work stopped at the base?

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1 A. Yes, I did roofing, stuff like that.

2 Q. How long do you think you did roofing type
3 work?

4 A. Well, I did the roofing -- if we weren't
5 working at Paris Island or something like that or if
6 we had quit over there, if we didn't have anything
7 else, we would do roofing work.

8 Q. And you owned the company, right?

9 A. Yes. Well, actually it was in my wife's
10 name.

11 Q. Did y'all have employees -- I think you said
12 maybe six people worked for you?

13 A. Yes, we had about six people.

14 Q. After the Paris Island work, did you still
15 have employees?

16 A. Yes. We didn't have six, though. We had
17 about three. Matter of fact, one of the guys, he
18 shot his hand with a nail gun. He wasn't even
19 painting up there at the time. He went to work for
20 me. Then he tried to figure out how to get some
21 money so he shot his hand with a nail gun. Can you
22 believe that?

23 I had a super worker's comp lady
24 and I hired a lawyer. And they went back and
25 checked everything. They had two places where he

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1 filed workman's comp in Florida, two in Virginia,
2 and he was fixing to file another one in Beaufort
3 when he shot his hand with a nail gun.

4 Q. I'm going to switch gears for a minute.

5 MR. FLEMING: Let me say something quickly.
6 This clearly responded that we weren't making a wage
7 claim. I believed we weren't making a wage claim.
8 If we are, I will get the appropriate documents to
9 say yes or no. And then I will be more than happy
10 to allow y'all to ask him again questions about
11 that.

12 But I think we are at a
13 point where we are not going to get much
14 information. And maybe we will never have to. But
15 I can get some documents and things like that with
16 some other people's help that might clear that up.

17 MS. ROBINSON: That's perfect.

18 MR. TEMPLETON: Fine with me.

19 MS. ROBINSON: And that saves you from
20 having to answer any more questions about that for
21 now.

22 BY MS. ROBINSON:

23 Q. I also want to ask you about your damages
24 that are not about lost wages. What I heard you
25 say -- and I want you to correct me if I misheard or

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1 misunderstood -- you are still having trouble with
2 your shoulder, and the ways that you can think of
3 right now that it comes up, for example, trying to
4 drive with your left arm straight out. You can't do
5 that anymore.

6 Do you have daily pain of any
7 sort?

8 A. Not daily.

9 Q. In the papers that your lawyer filed, he
10 talked about emotional distress, the embarrassment
11 aspect of you having fallen. Are you -- if we had
12 to go try this case to a jury, are you going to tell
13 the jury that you have suffered mental injury?

14 A. Let's rephrase this a little bit. I
15 understand what you are asking. But it was just
16 like, all my friends was in construction. They will
17 call me, what are you doing today? I'm not doing
18 anything. Well, why aren't you doing anything?
19 Well, I hurt my shoulder last year or two years ago,
20 and I can't hardly do anything. You are just
21 fibbing.

22 It's crap like that. And that's
23 got to work on your mind a little butt. Because you
24 want to tell them, when somebody calls you, you
25 don't want to tell them that you're sitting on your

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1 ass at home all the time. I want to be able to tell
2 them I'm out doing something, even if it's just
3 exercising or something minor.

4 Before we moved up here, my
5 little great grandson, I wore out a stroller pushing
6 him. Everybody would say, what are you doing today?
7 Man, I'm working on that stroller again today
8 pushing the kid. So that's the only thing I can
9 tell you.

10 It's just like you as a lawyer,
11 you're going to quit being a lawyer and tell
12 everybody, well, I ain't doing a damn thing but
13 sitting here watching a football game? They're
14 great if you are young and like football, like these
15 guys. But when you get older, you are not going to
16 be doing that.

17 Q. I understand. You mentioned exercise
18 earlier. Are you still exercising every day?

19 A. I do.

20 Q. What do you do for exercise?

21 A. I just came off an exercise program. I have
22 been exercising for my legs, is what I have been
23 doing. I have to do a certain type of raise legs, I
24 have to raise my back. Dumbest thing I ever heard
25 of in my life, I have to put a pillow in between my

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1 knees and squeeze my knees 20 times and do something
2 else and go back and do that 20 more times.

3 And I can't figure out what in
4 the hell that does. But that's what they had me
5 doing. They had me doing the weight thing, the
6 weight on a pulley. And you pull it all the way
7 down to your feet and back up 30 times. Then you do
8 something else and do it again. It takes you about
9 an hour to do the whole exercise. I'm not doing
10 them now.

11 The only thing I'm doing at home
12 now is home exercise. I don't have a big weight
13 machine like they have got. It's just leg raises
14 and stuff like that and try to walk. That's about
15 it.

16 Q. So when you were describing the exercises --
17 and it sounds like maybe you were in a gym or some
18 sort of rehabilitation place?

19 A. Yes.

20 Q. Was that in Beaufort or is that also in
21 Tennessee?

22 A. It was here in Jackson, Tennessee.

23 Q. So was it part of a health program? Why
24 were you doing that?

25 A. My legs got to where I couldn't hardly walk.

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1 So I went to see the doctor, and they sent me to a
2 neurosurgeon. She sent me to another doctor and
3 they did an MRI. And they did an MRI on my back.
4 She made a determination that I had arthritis in my
5 back. She said she understood that, most old people
6 do have arthritis.

7 But she said what she thought
8 was bothering me, if you put the vertebrae together,
9 it's like two washers together fitting flat, and one
10 of them moves a little bit, she said that's what it
11 looks like in the MRI, that one of the vertebrae
12 moved over time and pinched a nerve off. That's the
13 reason I had to do the exercise and all that stuff.

14 And it's getting better. It's
15 really getting a lot better. I can't walk as much
16 as I did. That's the only thing I can tell you.

17 And she said this -- I asked
18 her, I said, what would cause that? She said, many
19 things can cause it. It's usually from a fall. I
20 have not called and told them to add that to the
21 lawsuit or anything like that. I guess you can fall
22 any time.

23 Q. If you remember, what is the name of the
24 neurosurgeon that you were working with here in
25 Tennessee?

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1 A. I'll give you her name. I have a card from
2 where they sent me to the MRI. It's going to take a
3 minute if you want to ask another question.

4 Q. I don't want to put words in your mouth.
5 But my understanding is that you left Beaufort and
6 came to Tennessee to be closer to your sister?

7 A. See, I have five brothers and sisters here
8 in Jackson. My two older sisters, both of them has
9 dementia, and one of them has it real bad. She's on
10 the stage of what you call Alzheimer's real bad.

11 One of them, she's 87 years old.
12 She had dementia disease. The one that's 87, she's
13 a retired school teacher, and she takes it in
14 stride. She knows she's got it. She's going to get
15 Alzheimer's, and she'll tell you in a minute. She
16 said, look, we'll talk, but I'll miss a word. Just
17 don't bother and keep on talking. She's been that
18 way for a year. She hasn't gotten any worse.

19 The biggest reason I moved back
20 up here -- well, one of the reasons is, I haven't
21 been around them for years, and I would like to be
22 around them before they pass on or I pass on.

23 Q. It sounds like back in Beaufort, your son is
24 there, but that was the only family that you were
25 leaving behind in Beaufort?

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1 A. I have a wife and son that's buried there.

2 Now, this is my primary doctor
3 here. That doctor there, she's the specialist.
4 She's the one that sent me to have the MRI done.

5 Q. So you have been nice enough to hand me two
6 cards. The first one --

7 A. That's the one that sent me for MRI.

8 Q. I'm going to read it out for the record.
9 West Tennessee Neuroscience and Spine Center. And
10 it looks like Brandy Bartholomew. It says APN after
11 her name. Neurosurgery.

12 So Dr. Bartholomew is the one
13 who had the MRI done?

14 A. Yes.

15 Q. And then the second card is from a family
16 medicine place called the Jackson Clinic. And the
17 doctor's name is David L. Garey?

18 A. Right.

19 Q. So currently, you are seeing Dr. Garey as a
20 primary doctor?

21 A. And he sent me to her.

22 Q. And Dr. Garey referred you to Bartholomew?

23 A. Correct.

24 Q. Do you believe that the treatment that you
25 are receiving from either of these doctors is

1 related to the fall in Beaufort in 2016?

2 A. I don't know. To be honest with you, I
3 don't know. I can't say yes or no. The only thing
4 I can tell you is we haven't filed a lawsuit on it.
5 You understand what I'm saying? I'm not trying to
6 be funny.

7 Q. I understand.

8 A. I can't say yes or no.

9 Q. You're not a doctor, you're not a lawyer,
10 right?

11 A. Right.

12 Q. I'm just asking what you thought, and it's
13 fine for you not to know. It's totally fine.

14 I believe that you explained to
15 me about the embarrassment, if you will, that you
16 felt about not being able to work and explaining to
17 your friends why.

18 Are there any other categories
19 of damages or injuries that you would tell the jury
20 that you have suffered as a result of this accident?

21 A. The only thing, if I was standing in front
22 of a jury right now and I wanted to be honest with
23 them, I would tell them, look, I would be lying to
24 you if I told you I can do everything I used to do.
25 I can't.

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1 I can't use a skill saw like I
2 used to. I can use it some but not like I used to
3 because I'm left-handed. And it's pretty hard after
4 you get this old to train your arm and go from left
5 to right. And using a hammer, and all that, an
6 automatic nailer, I use this way.

7 You just have to do a lot of
8 stuff. You have to think about what the hell you
9 are fixing to do because you can't use your left arm
10 all the time. I'm just saying there's a lot of
11 stuff you just can't do.

12 Q. Okay. Going to shift gears with you
13 hopefully for the last time.

14 What do you think Wells Fargo
15 did wrong that has anything to do with your fall?

16 A. My personal opinion, if you have ever been
17 to Beaufort -- let me tell you how Beaufort works.
18 The City of Beaufort, they have an inspector. He
19 goes around the whole city.

20 And if he finds a place, sort of
21 like this space right here, he'll put a red or
22 yellow tape over it until they fix it. And they
23 will fix it because Beaufort has a good record of
24 fixing a lot of stuff.

25 So I just really think when I

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1 fell, they knew they had a problem. They should
2 have fixed the damn thing then. And I have been
3 there many times after that. And I have looked over
4 at that thing and I said, by god, they haven't fixed
5 it yet.

6 It's just asking for somebody
7 else to get hurt. I'm fortunate. I fell and didn't
8 get hurt that bad. What if some old lady fell
9 through there or some old guy fell. He might not be
10 able to put his hands up like I did.

11 And I'm not saying that's what
12 stopped me from getting hurt real bad. I think it
13 did. I think if I hadn't been able to put my hands
14 out, my whole force would have hit the ground, and I
15 would have had a lot more problems, but I didn't.
16 But that's the only thing I can tell you.

17 (WHEREUPON, THERE WAS A BRIEF BREAK AND THE
18 PROCEEDINGS CONTINUED AS FOLLOWS:)

19 BY MS. ROBINSON:

20 Q. We're going to go back on the record, and I
21 want to ask you about what you were just telling me.

22 Do you, as you sit here, have an
23 understanding of who owned the building and the
24 parking lot and the sidewalk?

25 A. My understanding was Wells Fargo owned it.

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1 That's their bank. I had the misconception -- I
2 thought Wells Fargo, with as much money as they
3 have, they would have bought the building and that
4 was their bank.

5 But it's not. They have it rented.
6 It's like my brother said, he's been in business for
7 many years, he said, most of these big companies,
8 they don't own all those buildings, they rent
9 everything. It makes sense for them to rent stuff.
10 They don't want to buy all that stuff.

11 But I really think that somebody
12 at Wells Fargo knew that this was messed up. They
13 had to. They had to park in the parking lot just
14 like me. Surely they could walk over all that stuff
15 and see it messed up. I'm not saying they did. But
16 I believe down the line, some person in that bank
17 turned it in and said, look, we have a bad problem
18 outside, and somebody didn't follow up on it.
19 That's my opinion. And it might not be anyone
20 else's. But it's my opinion.

21 Q. And is your opinion, now that you know that
22 Wells Fargo doesn't own the building or the parking
23 lot or the sidewalk, would your opinion change as to
24 who should be responsible for maintaining that area?

25 A. No, I wouldn't have no opinion on that. It

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1 needs to be done.

2 MS. ROBINSON: Okay. So the nice people at
3 this court reporting office printed some pictures
4 that I took of the building and the parking lot. If
5 we could, I'm just going to mark it as a group as
6 Exhibit 4.

7 (WHEREUPON, THE ABOVE-MENTIONED DOCUMENT WAS
8 MARKED EXHIBIT NO. 4 TO THE TESTIMONY OF THE
9 WITNESS AND IS ATTACHED HERETO.)

10 BY MS. ROBINSON:

11 Q. So I'm going to hand you this stack of
12 pictures. And I will represent to everybody that
13 it's -- these are a series that I myself took when I
14 went to Beaufort one day and the bank was closed.

15 I tried to put them in an order
16 that would help you kind of walk through the parking
17 lot to the best of how you remember it and how I
18 believe you testified to where you were in the
19 parking lot.

20 I want you to look through all
21 the pictures so that you think tell me that it is
22 what you remember.

23 A. And you don't need to know that I was coming
24 out of the bank, do you?

25 Q. We do want to know that, yes. We wanted to

1 hear from you as you drew on this picture.

2 A. That doesn't have nothing to do with
3 nothing. That's the steps coming out of the bank.
4 That definitely does. That's kind of iffy there.
5 That doesn't have anything to do with it. This is
6 the same thing as this. This shows the tree right
7 there.

8 Q. I want you to look through all of them and
9 then I'll ask you questions about them. It's fine
10 to put them in the piles you are doing now.

11 A. I guess all of them have a little something
12 to do with it. What do you want to start with?

13 Q. So let's start with this. Right now you are
14 holding a stack of pictures from Exhibit 4 that, as
15 you look through them, you believe have something to
16 do with where you fell?

17 A. Yes.

18 Q. You also made a stack of pictures that, as
19 you look through them, you didn't understand
20 necessarily what they had to do with where you fell?

21 A. Correct.

22 Q. So I'm going to start with the ones that you
23 don't quite get why I put them in here.

24 And for everybody's convenience,
25 I'm just going to put some numbers on these so we

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1 know what we are talking about. So within Exhibit
2 4, I'm marking in green a No. 1.

3 Can you tell us what's in this
4 picture?

5 A. It shows a picture of the bank, the back of
6 the bank.

7 Q. Is the door that you went in and out of in
8 this picture?

9 A. Yes.

10 Q. So is it fair to say this is the door you
11 described most people go in and out of?

12 A. Correct.

13 Q. I'm putting a 2 on the next page. Can you
14 tell us what this picture is?

15 A. From the parking lot showing the bank.
16 That's all that is.

17 Q. Do you see the tree and the planter area
18 that we have been talking about in this picture?

19 A. It's the same as this one right here.

20 Q. Okay. I'm marking a 3 on this picture.
21 This one has a lot of shadows. I'm not a good
22 photographer. So I couldn't figure out how to take
23 the shadows out.

24 But can you identify what that
25 is?

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1 A. It more or less shows the same thing as that
2 picture except this one has a car in it, and it
3 shows the tree where I fell.

4 Q. And then right behind that is the one I put
5 a No. 4 on.

6 A. That's the tree where I fell right there.

7 Q. If you will hand that back to me. I'm going
8 to put those four here.

9 What I want us to do in looking
10 through those pictures is have an understanding of
11 the path that you took from your truck into the
12 bank, which you drew on the schematic. Can you put
13 together a series of pictures that shows your path?

14 A. This is not very clear, but it appears to be
15 this is where I fell, that tree is where I fell.
16 This is coming out of the bank right there. Then
17 you have four or five parking spaces, then you have
18 a tree, then cars on the other side.

19 Q. Mr. Lewis, what I would like to do is take
20 back those pictures. And I'm going to show you what
21 I think you described and then ask you to tell me if
22 I'm correct, okay?

23 I'm going to use one of the ones
24 that you didn't necessarily like.

25 A. There's no use in asking my granddaughter

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1 about any of that because she doesn't even go in the
2 bank.

3 Q. Okay. I will not ask her.

4 And I apologize in advance to
5 the court reporter. This might get confusing.

6 So the first picture in Exhibit
7 4 -- you correct me if I'm mistaken -- but that
8 shows the back door of the bank that you and others
9 would go in and out of?

10 A. Right.

11 Q. Would you agree with me that the point of
12 view from where I took the picture, I am standing in
13 the parking lot facing the back of the bank?

14 A. Yes.

15 Q. The second picture, you can still see the
16 back door to the bank?

17 A. Right.

18 Q. And if I understood how you went in and out,
19 it would have been up this sidewalk -- did you go up
20 those stairs?

21 A. Correct.

22 Q. Up the stairs into the door?

23 A. Correct.

24 Q. And then as you left, leaving the door, down
25 the stairs, coming back down the sidewalk?

1 A. Correct.

2 Q. And this is a little closer view. But this
3 is the stairs going down onto the sidewalk. And now
4 we can see the parking lot too?

5 A. Correct.

6 Q. Again, this is the path both going in and
7 out; is that correct?

8 A. Yes.

9 Q. So now we are looking at a picture that has
10 the sidewalk that runs parallel to the side of the
11 bank; is that correct?

12 A. Yes.

13 Q. So this is the part of the sidewalk that is
14 parallel to the side of the bank; is that correct?
15 And if you want to back it up and put it against the
16 other ones, you can see how they go together.

17 A. Yes, that's it because you come in this way
18 and park there. That's next to them. The highway
19 is over there.

20 Q. Yes, sir. So as we are looking at this
21 picture, which is the fourth one in the series, the
22 driveway is where Charles Street is back here. I'm
23 pointing to the right of the picture. And the
24 driveway comes in toward the left. And if you kept
25 going, the side of the bank was over there?

1 A. Correct.

2 Q. So looking at this picture, the sidewalk
3 where the car faces, did you walk on that sidewalk
4 on the day you fell?

5 A. Yes, I would have to walk on that sidewalk.

6 Q. The only other option would have been if you
7 were walking in the parking lot?

8 A. No, you can't walk in the parking lot.

9 Q. And if I understood, there are three parking
10 spaces between this planter that has a tree and that
11 planter with that tree?

12 A. Right.

13 Q. Is that what you remember?

14 A. Yes.

15 Q. And if I understood you right, there were
16 cars in all three of those spaces?

17 A. Right.

18 Q. So, again, you would have been walking on
19 the sidewalk, and there would have been three cars
20 parked facing the sidewalk?

21 A. Correct.

22 Q. When you turned to go back to your car, your
23 truck, which is on the other side of the parking
24 lot; is that right?

25 A. It's right here. The truck was over here.

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1 Q. Yes, sir. So let's go to the next page. So
2 it's the fifth picture in the series.

3 A. There we go. See, that and this goes right
4 here. That's the tree right there. And that's
5 where you park right over here.

6 Q. So let me make sure I'm understanding and
7 for the court reporter. On the fifth picture in the
8 series, the picture is taken from the perspective of
9 standing on the sidewalk looking toward the street.
10 Would you agree with me?

11 A. Yes.

12 Q. And I think you said your truck was parked
13 somewhere along that line?

14 A. Right here.

15 Q. So as we look at the fifth picture in the
16 series, we see a white Ford Explorer and also a
17 white sedan in the picture; is that right?

18 A. Yes.

19 Q. And you believe your truck was parked
20 somewhere in one of those spaces either where the
21 two cars that are on there are or are in between?

22 A. It was parked up towards this end somewhere.

23 Q. And your car was facing the street?

24 A. Correct. Facing the bank.

25 Q. You had backed into your space?

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1 A. I guess it was facing the bank. I'm not
2 sure.

3 Q. Well, that's one of the questions I'm hoping
4 you can help us with is, if your granddaughter saw
5 you fall, was the truck facing the street or had you
6 backed into the space and it was facing the parking
7 lot?

8 A. That, I can not answer because I usually try
9 to park up here. So if I pulled up there, I would
10 have backed into that parking spot.

11 Q. Once when we leave here today, all we are
12 going to have is a piece of paper that has the words
13 typed out. So it's hard to connect descriptions of
14 locations with words.

15 If I understood you just now,
16 where you usually would park, would it be in those
17 three spaces that are in this fourth picture on
18 Exhibit 4?

19 A. No, because the bank is right here. This is
20 right next to the bank and the bank is over here. I
21 hardly ever park here. I park on this side of the
22 parking lot, like right here.

23 What we are looking at right
24 here, we're looking at this right here. I usually
25 park over here or right here. But what we are

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1 looking at, you said next to the tree. It's not
2 next to the tree. It's next to the bank. That's it
3 right there.

4 Q. So let me make sure we are understanding the
5 same thing. This picture, which is the fifth in the
6 series of Exhibit 4, these spaces where the Ford
7 Explorer and the white sedan are facing, where do
8 you think that is on this Exhibit 1?

9 A. Right there. One, two, three, four.

10 Q. Do you see what's marked as an egress where
11 you can go out of the parking lot onto Charles
12 Street to the right of the white sedan?

13 A. Yes, you can see it right here.

14 Q. And as you look at this picture, do you
15 understand that there's a driveway to the left of
16 this where there's a Wells Fargo sign in the bushes,
17 if you will?

18 A. Driveway to the left?

19 Q. Of this. So if you put these together,
20 there's a driveway that goes to the ATM?

21 A. Yes, that's the main driveway.

22 Q. So where did you normally park, as you look
23 at these pictures?

24 A. Right here or right here. You don't have a
25 picture of that. See the parking spot here?

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1 MR. FLEMING: There is a picture in there.

2 BY MS. ROBINSON:

3 Q. Would it be those spaces?

4 A. No, that's next to the bank. Where I
5 usually park is up here, right here. You don't have
6 a picture of that.

7 Q. It's right there, sir.

8 A. Well, yeah, you do. There's a car parked
9 there.

10 Q. Yes, sir.

11 A. That's these spots right here. That's these
12 spots right here.

13 Q. So we'll call this 7. This is going to be
14 picture 7 in this exhibit.

15 As we look at this picture,
16 would you agree with me that if you went through the
17 space between the white building on the left and the
18 brick building on the right, that there's a pathway
19 to go to the front of the bank?

20 A. Right.

21 Q. So if you usually parked by the white
22 building, did you usually go into the front part of
23 the bank?

24 A. No, go in the back part. That's where
25 everybody goes. Very few people come to the front

1 part because if they do, they have to park here and
2 walk all the way around to the front.

3 I understand what you are
4 saying. If I parked here, it would be pretty simple
5 just to get out of my vehicle and walk over to the
6 front and go in. But most people go in the back.

7 Q. So on your normal occasion, you would park
8 by the white building and then walk a little bit in
9 the parking lot and get on this sidewalk?

10 A. No, I just walk right across the parking
11 lot, get on the steps, come down here, get on the
12 sidewalk and go in the bank.

13 Q. Would you agree with me that this is a
14 closer picture -- the sixth picture is a closer up
15 picture of the seventh? If you normally parked
16 where you would by the white building --

17 A. Let me tell you something. You just asked
18 me where I get out of my car and get on the
19 sidewalk. And there is no sidewalk here.

20 Q. And that's what I wanted to make sure that
21 we are understanding. So the sidewalk starts where
22 that planter is?

23 A. Right.

24 Q. So your normal practice would be to walk in
25 the parking lot until you got to the sidewalk?

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1 A. Just walk right on toward here and get on
2 the sidewalk right here by the planter and go right
3 on in the bank.

4 Q. So on the day of your accident, when you
5 would have left your parking space on the Charles
6 Street side of the parking lot, when you came to go
7 in the bank, do you think you came up on this
8 sidewalk?

9 A. I doubt it because, look, here's the planter
10 over here. Here's the parking spots here; one, two,
11 three, four. If I planned on parking by the planter
12 on this side, I would have parked down there and
13 went straight across. If I parked up here, I'm
14 going to go at an angle and get on the sidewalk
15 right there. Do you understand what I'm talking
16 about?

17 Q. I think so.

18 A. That's the only thing I can tell you.

19 Q. So best of your recollection, you would have
20 walked from that there onto this --

21 A. No. I just showed you --

22 MR. FLEMING: I'm going to object to the
23 form of the question because that's not what he
24 said.

25 THE WITNESS: I wouldn't get on this

1 sidewalk. I would walk on the angle and come right
2 across and down the sidewalk by the planters and
3 walk into the bank.

4 BY MS. ROBINSON:

5 Q. So somehow we are misunderstanding each
6 other.

7 A. You keep saying this sidewalk. That has
8 nothing to do with me getting out of the vehicle and
9 getting on the sidewalk. I did not get on this
10 sidewalk. I came from my vehicle at the angle,
11 right across here, and got on the sidewalk, walked
12 passed those cars right here and went on in the
13 bank.

14 Q. Are you saying that you got straight on to
15 this sidewalk?

16 A. Yes, came out on the parking lot right here
17 and got on the sidewalk and walked on in. I could
18 have got on this sidewalk right here and walked in
19 but I don't think so. If I parked here, I would
20 have already been in the parking lot. I would have
21 walked right across the parking lot and got on the
22 sidewalk right here and walked on in the bank.

23 Q. Okay. So let's focus on when you left. Do
24 you remember walking on the sidewalk that parallels
25 the side of the building?

1 A. I do. I came out of the bank, walked on
2 this sidewalk right over here, the guard and
3 somebody was on this sidewalk talking. And I just
4 turned and walked down this sidewalk.

5 Q. Does this help? This is the one where the
6 black car is on the far right of the three parking
7 spaces.

8 A. This is the sidewalk I came down where I
9 fell right here.

10 Q. Yes, sir.

11 A. On the other side, the bank guard, security,
12 he was on the other side talking to somebody. So I
13 didn't want to ask him to move. So I just walked
14 down this side right here. I very seldom went down
15 this side here. I can't even remember a time I went
16 down there.

17 But anyway, it's not because
18 it's busted up or anything. It's because it would
19 be out of my line of coming. If I come out of the
20 bank and walk down the sidewalk right here, why
21 would I walk past the planter and ask him to move so
22 I can get to my car? If there's a sidewalk over
23 here, I walked right down the sidewalk and walked
24 down the sidewalk and go to my vehicle.

25 Q. On this schematic that you are holding,

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1 Exhibit 1, do you see the highlighted area that says
2 planter?

3 A. Yes.

4 Q. Do you understand that that is the planter
5 right here in this picture?

6 A. Yes, I understand that.

7 Q. So in the sidewalk that we are describing,
8 would you agree that there is an oval-shaped
9 sidewalk surrounding the planter?

10 A. Yes, I do.

11 Q. So the inside side of that planter would be
12 next to the cars that were parked there, correct?

13 A. That day, yes.

14 Q. The other side of the planter where there
15 are no cars parked in this picture is where I think
16 you are saying the security person was?

17 A. The security guy and the other guy was
18 talking.

19 Q. So as we look at the planter area, you
20 walked on the side of the planter close to the car,
21 correct?

22 A. On this picture, yes. Coming out of the
23 bank, yes.

24 Q. And if I understood you right --

25 A. Just like this right here.

1 Q. So do you see this white kind of arrow mark
2 on the parking lot right beside that sidewalk?

3 A. I do.

4 Q. As you look at that white mark and we look
5 at where the horizontal sidewalk is, where along
6 this do you think you fell?

7 A. It had to be out here toward the edge. It
8 wasn't up here. It had to be down in this area
9 here. I'm not sure. I don't know whether it's here
10 or along here somewhere.

11 The only thing I know, before I
12 fell, I went this way and put my hands out. And I
13 shouldn't have went this way because there was
14 probably a car there. I fell coming this way on the
15 sidewalk onto the ground.

16 Q. For purposes of the transcript, what I think
17 you just indicated was that you think you, more than
18 likely, fell on the sidewalk area as opposed to the
19 asphalt on the parking lot?

20 A. I said when I started down, I probably
21 fell -- when I went down, I probably hit -- it's
22 hard to say. I don't even remember if there was a
23 car there. I don't remember that. The only thing I
24 remember is I fell down. That's the only thing I
25 can tell you. And I remember putting my hand down

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1 to stop my fall. It kind of dazed me a minute, and
2 this woman had her hand on my back and told me not
3 to move.

4 Q. Do you have any recollection when you woke
5 up and that woman had her hand on your back if you
6 were on the sidewalk versus on the asphalt?

7 A. I believe I was on the asphalt.

8 You asked me about the repairing
9 and about the responsibility of the bank a while
10 ago.

11 Q. Yes, sir.

12 A. If you walked around Beaufort, any area
13 where the tourists go, you probably seen some
14 sidewalks, very few, because Beaufort is really
15 pushy on their sidewalks. If you find one messed
16 up, it's got red or yellow tape on it. If it's
17 really bad, they have a cone on it. I don't know
18 where one is really bad at now.

19 MS. ROBINSON: So I am going to take my seat
20 and take these out. So Gentlemen, for purposes of
21 Exhibit 4, we are going to end up with seven
22 pictures in Exhibit 4.

23 And I'll renumber these for
24 the court reporter so that it starts with the one
25 that has the exhibit sticker on it. That will be 1

1 and do it sequentially to 7.

2 BY MS. ROBINSON:

3 Q. Mr. Lewis, I appreciate your patience with
4 me as we try to understand each other about where
5 you were and what happened.

6 A. I'm not trying to get cross with you on it.
7 I just want you to get everything down like you're
8 supposed to.

9 Q. Yes, sir. You look like you brought with
10 you a note pad and an envelope?

11 A. I was going to take notes, but I'm not.

12 MR. FLEMING: That envelope is from me. It's
13 just directions how to get here.

14 THE WITNESS: And this is my letter to get
15 me in the building here.

16 MS. ROBINSON: I believe those are all my
17 questions for you. But I need to give you a warning
18 that I want to look back through my notes and see if
19 I forgot something.

20 MR. FLEMING: I have a few things.

21 EXAMINATION

22 BY MR. FLEMING:

23 Q. The first thing I want to talk about is,
24 they asked you -- or Mr. Templeton asked you about
25 any car wrecks. And you didn't seem to recall one.

1 And I want to ask you, do you remember me
2 representing you in a car wreck about a year and a
3 half before this thing? Do you remember a car
4 wreck?

5 A. I remember a lady ran into my car out at the
6 theater.

7 Q. I don't remember anything about it. I just
8 know that I did. And I believe you got some sort of
9 injury in there. Do you remember what kind of
10 injuries there were?

11 A. I don't remember.

12 Q. But you do remember you were in a car wreck?

13 A. It must have been a long time ago.

14 Q. If you don't remember, that's fine. I was
15 trying to help you remember.

16 A. No.

17 MR. FLEMING: But I will say for the record,
18 I'm sure I have got records of that. I will be
19 happy to produce them.

20 BY MR. FLEMING:

21 Q. But you don't remember that wreck?

22 A. No.

23 Q. Next question I want to ask you about. They
24 asked you about all the injuries to you that you
25 suffered from the fall. I have looked at some

1 medical records. And one of them suggests that you
2 injured your teeth. Do you remember that?

3 A. When I fell?

4 Q. Yes.

5 A. Oh, I did.

6 Q. Tell us about that.

7 A. It knocked out two teeth out of my mouth.
8 When I fell, it made some of them loose. So when I
9 went to Charleston, I was going to get the two teeth
10 that got knocked out, and somebody told me that the
11 VA can put implants in.

12 I went up there and talked to
13 them, and they said you have too many teeth messed
14 up. You have four or five teeth that's loose. They
15 are completely loose. And the only thing that's
16 holding them in, really -- they are cracked. Two of
17 them has got the gums or the enamel, or whatever you
18 call it, that's holding the teeth. Have you been
19 eating anything real hard? What you eat has to be
20 soft. So they recommend I pull them out.

21 Q. So you had them all pulled out?

22 A. Correct.

23 Q. And they fitted you with teeth, full
24 dentures?

25 A. Yes, sir, they did.

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1 Q. So do you now remember that you did break at
2 least one if not two teeth in this fall?

3 A. If I had the stuff from my old house, I
4 could have brought the teeth with me.

5 Q. Does that mean that you hit your head --
6 when you hit the ground, did you hit your head?

7 A. Yes, that's the only way it could have
8 happened. I'm too old to get in a fight.

9 Q. So you remember that damage to your face?

10 A. Yes. I remember the doctor at the emergency
11 room, he said your face didn't look too bad. That
12 one tooth is really loose. And that's one of the
13 ones that was real loose. So that's as far as he
14 went on the teeth.

15 Q. At the hospital?

16 A. Yes.

17 Q. And then you went on your own to the
18 dentist, et cetera?

19 A. Yes, I went on my own a real short time,
20 about a week or two after that, because I couldn't
21 eat anything hard or tough.

22 Q. I also read in there that your forearm was
23 hurting and that you had a plate in your forearm
24 from before?

25 A. That had nothing to do with the fall. I

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1 have a little plate here where I got hit with a
2 piece of metal down here, and the doctor put a piece
3 of metal over it.

4 Q. That was in there before this fall?

5 A. Oh, yes, way before.

6 Q. But you were complaining of some pain so
7 they looked at it?

8 A. Yes, I hit my shoulder and my whole arm.

9 Q. Has that pain gone away?

10 A. Yes, it has. I was worried about it when I
11 fell, if it was going to knock that stupid plate
12 loose. But it didn't.

13 Q. When you were on the ground and that nice
14 lady said to just stay there, and then someone
15 called the EMS, right?

16 A. Yes.

17 Q. And the EMS is the one who came and got you,
18 right?

19 A. Right.

20 Q. In the ambulance?

21 A. Right.

22 Q. And you had a conversation with them. Do
23 you remember the conversation?

24 A. No, I told them I had to go, is what it was.
25 And then they checked my blood pressure and put the

1 mask on me, and I don't remember anything else until
2 I was at the hospital.

3 Q. I'm going to read something to you. And I
4 will tell you and the record that what I'm reading
5 is the Beaufort County Emergency Medical Services
6 patient care record for Eddie Lewis, Jr. dated May
7 23rd, 2016.

8 We have already responded and
9 given these records to everybody involved in the
10 case. And they have what's called a narrative,
11 Mr. Lewis. It's like a paragraph or two about what
12 they observed, what people told them, and what kind
13 of treatment they gave you, okay? I want to read
14 you a line from it.

15 It says, There are numerous
16 bystanders standing around answering questions on
17 patient's behalf. They state that they work at BMH,
18 which is Beaufort Memorial Hospital, and that
19 patient shouldn't be moved. That's probably the
20 lady that was touching your back. Does that sound
21 right?

22 A. Yes.

23 Q. It says, They were thanked for their
24 assistance and then asked to allow the patient
25 answer questions himself so that he could be

1 assessed properly.

2 So they wanted to talk to you,
3 right?

4 A. I guess so.

5 Q. And then it says, while prone on the ground,
6 he is able to describe the event that occurred
7 stating that he was walking on the sidewalk, and
8 when he went to step down, there was a raise -- and
9 that's in parenthesis -- in the concrete that caught
10 the bottom of his foot.

11 A. That sounds right.

12 MR. TEMPLETON: Object to form.

13 BY MR. FLEMING:

14 Q. Does that -- after I read that to you, does
15 that sound like what you told them?

16 A. Yes.

17 Q. Now, if we go back -- we have two pictures
18 in the record right now. This is the one that
19 Mr. Templeton showed you because he already knew
20 where you had indicated it happened on the diagram
21 that's in Exhibit 1.

22 Now, there are seams in this
23 concrete. Do you see it on this picture? In
24 Exhibit No. 2, there are seams in this concrete,
25 right?

1 A. Yes.

2 Q. When you looked at that, what did you
3 determine about the level of the concrete? Was
4 there or was there not a raise in the concrete,
5 meaning like that?

6 A. When I was walking down it?

7 Q. Not when you were walking but afterwards.
8 You had already fallen and you looked back at it.

9 A. I looked back at it because it was raised
10 because in one place it's separated.

11 MR. FLEMING: This one is in this batch
12 here. I am going to make this one No. 5.

13 (WHEREUPON, THE ABOVE-MENTIONED DOCUMENT WAS
14 MARKED EXHIBIT NO. 5 TO THE TESTIMONY OF THE
15 WITNESS AND IS ATTACHED HERETO.)

16 BY MR. FLEMING:

17 Q. This is the same area, right?

18 A. Yes.

19 Q. Exhibit 2 and Exhibit 5 are different
20 pictures in the same area but taken at different
21 times. The area that you're talking about where
22 there's a gap, do you see that on here?

23 A. Unless it's right here.

24 Q. You are pointing to not the first but the
25 second joint of the concrete. Do you remember when

1 you and I took pictures? I don't know if you
2 remember. This is a series of pictures that they
3 have. Do you remember that picture right there?

4 A. Yes. That's next to the front of the car
5 because that's the headlights right there.

6 Q. See that right there?

7 A. Yes.

8 Q. I will tell you, that's my feet right there
9 in the picture, right?

10 A. Yes.

11 Q. And we were taking these pictures, right?

12 A. Yes.

13 Q. And is there a gap in that concrete right
14 there?

15 A. Yes.

16 Q. And is there a difference in the height of
17 the two pieces of concrete?

18 A. Not sure if it's a difference in height, but
19 I know it's a big gap there.

20 Q. Do you see that picture with my hands in it?

21 A. Yes.

22 Q. My whole hand is in that gap?

23 A. Yes.

24 Q. Was that the condition of the sidewalk when
25 you fell that day.

1 A. Yes?

2 Q. And is that --

3 A. It's still like that now.

4 Q. I don't know that.

5 A. I'm sorry, I shouldn't have said anything.

6 Q. And when you told the EMS that your heel
7 caught on the raise of the concrete, is that what
8 you are talking about?

9 A. Yes.

10 MR. FLEMING: Now, Guys, that set of
11 pictures that I just showed him are the ones that I
12 showed you. I don't have hard copies. Do you want
13 me to attach them?

14 MR. TEMPLETON: I presume it's those that
15 you are talking about.

16 MR. FLEMING: Yes, this series of pictures
17 will be 6.

18 (WHEREUPON, THE ABOVE-MENTIONED DOCUMENT WAS
19 MARKED EXHIBIT NO. 6 TO THE TESTIMONY OF THE
20 WITNESS AND IS ATTACHED HERETO.)

21 MR. FLEMING: That's it. Thank you.

22 FURTHER EXAMINATION

23 BY MR. TEMPLETON:

24 Q. Mr. Lewis, did you grow up in Jackson,
25 Tennessee?

1 A. I grew up right outside of Jackson, a little
2 country town called Mercer.

3 Q. So that's why you came back here. This is
4 original home to you, right?

5 A. Yes, sir. Everybody is dead and gone, just
6 about.

7 MR. TEMPLETON: That's it. Thank you.

8 (SIGNATURE WAIVED.)

9 (Deposition concluded at 12:03 p.m.)
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C E R T I F I C A T E
STATE OF TENNESSEE)
)
COUNTY OF SHELBY)

I, MARIETTA McELROY HUTSELL, LCR #449,
Licensed Court Reporter and Notary Public, in and
for the State of Tennessee, do hereby certify that
the above deposition was reported by me, and the
transcript is a true and accurate record to the best
of my knowledge, skills, and ability.

I further certify that I am not related to
nor an employee of counsel or any of the parties to
the action, nor am I in any way financially
interested in the outcome of this case.

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IN WITNESS WHEREOF, I have hereunto set my
hand and affixed my notarial seal this 10th day of
December, 2019.



Marietta McElroy Hutsell, LCR #449

[& - answering]

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing.

When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign
require rejection of the deposition in whole or in
part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES
ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.
THE ABOVE RULES ARE CURRENT AS OF APRIL 1,
2019. PLEASE REFER TO THE APPLICABLE STATE RULES
OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

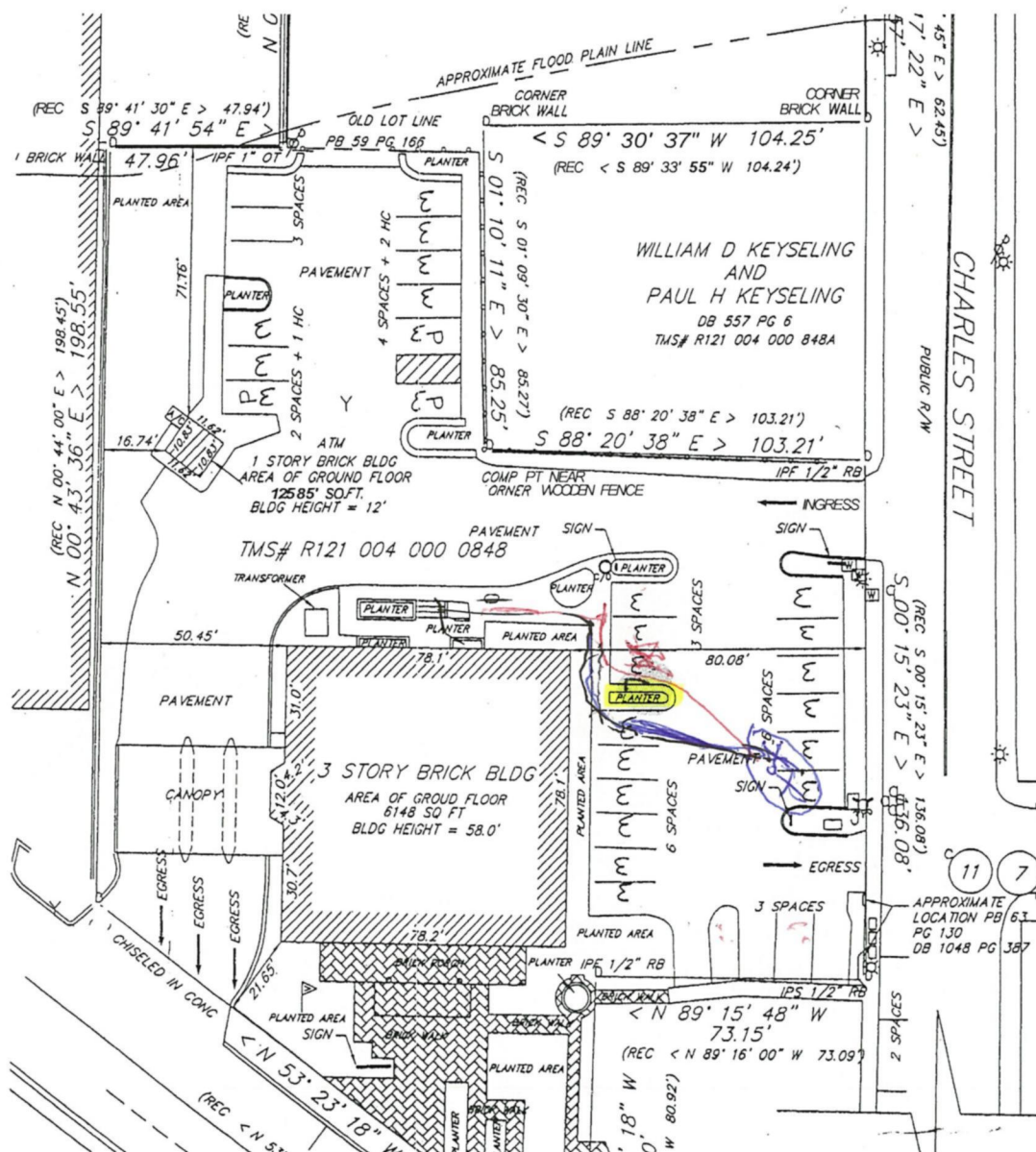
Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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W. Nachbaria spaces



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2018-CP-07-02378

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.

NOTICE OF APPEAL

Saul, LLC hereby appeals the Order of the Honorable Deadra L. Jefferson Granting Wells Fargo Bank National Association’s Motion to Set Aside Judgment entered on September 21, 2021 (hereinafter “Order”). The basis for the within appeal is that Judge Jefferson, respectfully, committed an erroneous exercise of discretion in issuing the Order. See Winslow Bros. & Smith Co. v. Gossett, 120 S.C. 164, 112 S.E. 825 (1922) (holding that an order granting a motion pursuant to Rule 60 of the South Carolina Rules of Civil Procedure “is not appealable unless there was an erroneous exercise of discretion on the part of his honor, the circuit court judge”); see also S.C. Const. art V, § 9 (“The decisions of the Supreme Court shall bind the Court of Appeals as precedents.”) and Campbell v. Robinson, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012)

(stating that the Court of Appeals “may not overrule supreme court precedent”). The Order is attached hereto as “Exhibit A.” Appellant received written notice of the Order on September 21, 2021, and timely files the within Notice of Appeal.

Dated this 14th day of October, 2021.

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1 THE COURT: Who is appearing on behalf of Saul, LLC?

2 MR. DODDS: Good morning, Your Honor. John Dodds.

3 THE COURT: Is there anyone appearing for Wells
4 Fargo?

5 MR. FLEMING: I was contacted this morning. I will
6 need to give you a little brief summary so you will
7 understand.

8 On Friday, one of the listed counsel for Wells
9 Fargo, the only lawyer we were dealing with, Laura Robertson,
10 resigned from that law firm. The law firm --

11 THE COURT: So they need to reassign the file?

12 MR. FLEMING: They have reassigned it to Charles
13 Blackburn as of yesterday. He contacted -- I believe he
14 talked to Morgan Templeton, lead counsel for Saul. He
15 contacted me, indicated that he could not be here for these
16 motions based on various things. And I told him that I would
17 inform the Court of that.

18 That is, unfortunately, the underlying problem in
19 the other motion in this file, the motion to compel
20 discovery, which I think may have some bearing potentially on
21 the motion for summary judgment.

22 THE COURT: So in a roundabout way, are you telling
23 me you can't go forward because Wells Fargo is absent, or
24 they are not necessary for these motions?

25 MR. FLEMING: I can't speak for Wells Fargo. I

1 personally believe that it's very important to Wells Fargo,
2 because they will be the sole defendant. They have not filed
3 any kind of indemnity or cross-claim back towards Saul. And
4 as such, I don't know they technically have any direct
5 standing in the motion. So I can't assert to the Court that
6 they are necessary to argue the motion.

7 THE COURT: Are you seeking some relief against
8 them?

9 MR. FLEMING: Against Wells Fargo?

10 THE COURT: Yeah.

11 MR. FLEMING: They are the primary defendant. Saul
12 is the property owner of the site of the bank where this
13 injury occurred. And the -- I won't speak for Saul except to
14 say Saul's motion for summary judgment is predicated on the
15 terms of the lease. And the terms of the lease tend to
16 support the notion that the landlord, Saul, granted all
17 control of the property, including inspection and/or
18 inspection, discovery and remedy of any dangerous conditions,
19 which is very clearly laid out in their brief.

20 THE COURT: Sir, are you conceding their motion
21 summary judgment?

22 MR. FLEMING: Well, here's why it gets complicated.
23 I have an outstanding motion to compel. Wells Fargo has
24 provided me no --

25 THE COURT: But they are not here. And I can't hear

1 it ex parte. So either -- that's why I'm asking for clarity.
2 If a lawyer has resigned, and I would assume that was
3 recent --

4 MR. FLEMING: It was Friday, yes, ma'am.

5 THE COURT: And Mr. -- I would assume then
6 Mr. Blackburn has not had an opportunity to get up to speed.
7 Why he did not send someone in his stead, I am not clear.

8 MR. FLEMING: I am not either, Your Honor.

9 THE COURT: I'm sorry?

10 MR. FLEMING: I am not either. I don't know why.

11 THE COURT: But I can't argue a motion in their
12 absence under the circumstances.

13 MR. FLEMING: I understand. I apologize. We spoke.
14 And they were going to -- they agreed to a consent order on
15 the motion to compel.

16 THE COURT: Okay. So you are going to submit a
17 consent order?

18 MR. FLEMING: That's correct. We are going to send
19 a consent order.

20 THE COURT: Who is going to be responsible for
21 preparing that?

22 MR. FLEMING: Mr. Blackburn is preparing it. And he
23 is going to -- and they are going to be providing me,
24 hopefully, that discovery. The reason that I bring that up
25 is simply because I do not -- as it regards the motion for

1 summary judgment --

2 THE COURT: I am not going to have preclusive
3 arguments on the motion for summary judgment. I'm going to
4 let Mr. Dodds argue his motion and let you respond. My
5 question was very direct, which is, are you conceding his
6 motion based on the previous statements, or do I need to hear
7 the motion?

8 MR. FLEMING: I think you will need to hear the
9 motion simply so I can tell you what my concern is with the
10 discovery issue.

11 THE COURT: Mr. Dodds, proceed with your motion.

12 MR. DODDS: Thank you, Your Honor. May it please
13 the Court. As Mr. Fleming said, this is a premises liability
14 action arising out of a trip and fall in the parking lot of a
15 Wells Fargo. The plaintiff has sued Wells Fargo and also my
16 client, Saul, LLC, which is the landlord for the building.

17 And the basis for the motion, as Mr. Fleming already
18 stated, is that Saul, LLC has relinquished all control of the
19 specific parking lot where the plaintiff fell to Wells Fargo
20 pursuant to the terms of the lease. And, therefore, Saul,
21 LLC owes no duty to the plaintiff.

22 There is a written lease, Your Honor. I have a copy
23 if you would like to look at it.

24 THE COURT: Did you file it?

25 MR. DODDS: Yes, Your Honor. It's Exhibit A to the

1 motion.

2 THE COURT: Then I have it.

3 MR. DODDS: It's a very long lease. But Section 5.5
4 of the lease provides that the landlord shall keep and
5 maintain and make all immediate repairs to the common areas.
6 Very standard lease. The obligation of the landlord is to
7 maintain and repair common areas. Those areas dedicated to
8 the exclusive use of the tenant, maintenance and repairs, the
9 tenant's obligation.

10 The area where the plaintiff fell is known as the
11 tenant-dedicated parking area under the lease. It's a
12 defined term. And it's basically a parking lot which only
13 Wells Fargo can use.

14 Section 1.2 of the lease states that Wells Fargo is
15 entitled on an exclusive basis to use the tenant-dedicated
16 parking areas.

17 By definition, an area where tenant is entitled to
18 exclusive use is not a common area. There's no obligation
19 for Saul to maintain and repair.

20 THE COURT: Why is it appropriate for me to
21 interpret a lease on a summary judgment motion? Are you all
22 telling me the facts are completely uncontroverted?

23 MR. DODDS: Yes, Your Honor. This is a question of
24 law. Interpretation of a contract is a question of law.

25 THE COURT: Are you all agreeing to that

1 interpretation of the law?

2 MR. DODDS: The plain terms --

3 THE COURT: That's not my question. My question is,
4 do you all agree to how it should be interpreted? That's the
5 only way summary judgment would be appropriate.

6 MR. DODDS: I don't believe there's any
7 disagreement.

8 MR. FLEMING: I do not disagree with their
9 interpretation of this lease.

10 MR. DODDS: Your Honor, I have a binder. There were
11 some documents produced by Wells Fargo in discovery that are
12 subject to a consent confidentiality order. I would like to
13 hand it up to Your Honor. I did spray it with Lysol this
14 morning.

15 THE COURT: Tell me what it is again. I'm sorry.

16 MR. DODDS: There are two documents that I have with
17 me in a binder. They were produced subject to a consent
18 confidentiality order between the parties.

19 THE COURT: What are they?

20 MR. DODDS: One of the documents is a property
21 management agreement between Wells Fargo and an independent
22 property manager by the name of CBRE Incorporated.

23 The second document is a list of work orders
24 submitted by Wells Fargo to its property manager in the year
25 of 2016, which is when this incident occurred.

1 Looking at the first document -- again, I'm happy to
2 provide to Your Honor if you are inclined.

3 THE COURT: They need to be filed if you want it
4 considered a part of the record.

5 MR. DODDS: It's subject to a consent
6 confidentiality --

7 THE COURT: Then you need to work it out with the
8 clerk how it's to be filed. But if you want it in this
9 record, you want to consider both purposes, you are going to
10 have to file it.

11 MR. DODDS: Okay. Well, Your Honor, there is a
12 property management agreement where Wells Fargo hired its own
13 independent property manager. There are records of work
14 orders and repairs made to the tenant-dedicated parking area
15 where Wells Fargo scheduled requested repairs, paid for
16 repairs out of their own pockets without any involvement of
17 Saul, LLC. And I just want to bring those documents up,
18 because the lease says what it says. It's very clear that
19 the tenant-dedicated parking area is not a common area.

20 And, furthermore, Wells Fargo acts in hiring an
21 independent property manager to inspect that very area and
22 make repairs clearly shows that Wells Fargo is in control of
23 this area.

24 Exhibit C to our motion was an e-mail from Wells
25 Fargo's managing general counsel and executive vice

1 president. It's attached as Exhibit C to the motion. And it
2 states that Saul, "has no right whatsoever to grant the use
3 of the tenant-dedicated parking area." In that quote, "These
4 parking areas are not common area under the lease."

5 As Your Honor is well aware, the crux of a premises
6 liability action in South Carolina is whether the entity or
7 person had possession or control over the land. Our Supreme
8 Court held in *Byerly v. Connor* that when land is occupied by
9 a lessee, law of property regards the lease as equivalent to
10 a sale of the premises for the term of the lease. After the
11 lessor surrenders possession and control of the land to the
12 lessee, the lessor is generally not responsible for hazardous
13 conditions which thereafter develop or are created by the
14 lessee.

15 Here, Saul had no possession and control over that
16 area. Wells Fargo was entitled to exclusive use of the area
17 under the lease. They hired their own independent property
18 manager to receive maintenance. They scheduled maintenance
19 and repairs and paid for that without any involvement by
20 Saul, LLC.

21 Exhibit D to our motion was an affidavit from Esther
22 Harnett on behalf of Saul, LLC stating the very same things
23 that I just expressed to Your Honor, that they relinquished
24 control, had not been involved in any repairs, that Wells
25 Fargo is entitled to the exclusive use of that property.

1 And for those reasons, Your Honor, Saul respectfully
2 requests the Court grant its motion for summary judgment.

3 THE COURT: Would you like to respond?

4 MR. FLEMING: Yes, ma'am. I do not take issue with
5 anything that counsel said concerning the lease,
6 interpretation of the lease, or any of the documents intended
7 to support his position.

8 I have not received, nor has, I believe, Saul
9 received any responses to discovery or interrogatories or
10 requests for production that would in any way refute any of
11 Saul's positions.

12 My only issue that I wanted to bring to the Court is
13 that because -- Wells Fargo did respond, I believe, in total
14 to Saul's interrogatories and requests to produce. They have
15 failed to respond to mine. And there is -- just out of
16 abundance of caution, I am uncomfortable with the notion that
17 30 days from now, they send something else that would --

18 THE COURT: Well, you haven't filed anything. And
19 you can't have it both ways. Either you concede the motion
20 or it needs to be continued. But I am not going to straddle
21 that line with you.

22 MR. FLEMING: I understand. Well, I concede then,
23 Your Honor. I concede that Saul is -- that their position, I
24 believe, is most supported by the law and by the facts as we
25 have gathered throughout this litigation.

1 THE COURT: Based on that concession, Mr. Dodds, if
2 you will prepare an order for the Court granting the summary
3 judgment. Please make sure all parties are copied on it when
4 you send it to the Court. And you need to E-file it. And
5 you need to make any findings of fact and conclusions of law
6 supported by the record.

7 MR. DODDS: Thank you, Your Honor.

8 THE COURT: Y'all stay safe.

9 MR. DODDS: Any specific timeline?

10 THE COURT: I would like it within five days. That
11 would be helpful. The sooner the better while it's fresh in
12 my mind.

13 (Whereupon, the proceedings are adjourned.)

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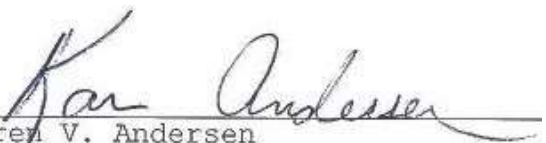
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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.

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STATEMENT OF THE ISSUE ON APPEAL

Whether the Trial Court abused its discretion by granting Wells Fargo's Motion to Set Aside Judgement when the record establishes that the Plaintiff conceded Saul's Motion for Summary Judgment and Wells Fargo waived any arguments to the same?

STATEMENT OF THE CASE

On or about May 23, 2016, Respondent, Eddie R. Lewis, (hereinafter "Plaintiff") entered the parking lot/premises located at 401 Port Republic Street, Beaufort, S.C. as a customer to Respondent Wells Fargo (hereinafter "Wells Fargo"). Am. Compl. ¶ 9. While exiting the parking lot, Lewis allegedly tripped and fell causing him injuries. Am. Compl. ¶ 11. Appellant, Saul, LLC, (hereinafter "Saul") owns the premises located at 401 Port Republic Street, Beaufort, S.C. Am. Compl. ¶ 7. 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. (*See gen. Mot. for Summ. J., Ex. A.*). Plaintiff brings this action against Saul on the theory of negligence and premises liability. Am. Compl. ¶¶ 9-21. Plaintiff 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." Am. Compl. ¶ 12, subsection A-L. Wells Fargo has not asserted any direct claims against Saul. (*See Wells Fargo's Answer to P. Compl.*). Saul moved for Summary Judgment ("Motion") as to the Plaintiff's Amended Complaint on January 20, 2020, based on the terms of the Lease. (*See Mot. for Summ. J.*). Attached to this Motion as an exhibit was a full and complete copy of the Lease. (*Id.*, at Ex. A.).

On March 13, 2020, the prior counsel for Wells Fargo emailed counsel for Plaintiff and Saul requesting a continuance for the Motion because she was leaving her firm and that Charles

Blackburn would be taking the case over. (*See* Saul Memo. in Reply, Ex. 1.). In response, 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. (*See Id.*). On March 16, 2020, Charles G. Blackburn filed a Notice of Appearance on behalf of Wells Fargo. (*See Id.*, Ex. 3.). 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. (*See Id.* Ex. 2.). 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. (*See Id.*).

On March 17, 2020, the Honorable Judge Deadra Jefferson (hereinafter “Trial Court”) heard arguments on the Motion. Counsel for both the Plaintiff and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear***. (*See* Saul’s Memo. in Opp. to Mot. to Set Aside.). During the hearing, Plaintiff’s counsel informed the Trial Court that counsel for Wells Fargo informed Plaintiff’s Counsel that he was not going to attend the hearing on the Motion. (*See* Hearing Transc. p. 2:12-17; *see also* Pl. Memo. in Resp. at pg. 3.). Wells Fargo received notice of the hearing and willfully elected and/or failed to file a Motion for Continuance or any Memorandums in Opposition. (*See* Saul’s Memo. in Opp. to Mot. to Set Aside at Ex. 1, 2, 3.).

During the hearing on March 17, 2020, counsel for the Plaintiff informed the Trial Court that he believed the determination of the Motion would be important to the absent Wells Fargo, despite its absence. (*See* Hearing Transc. p. 2:22-3:19.). The Trial Court questioned Plaintiff’s counsel whether he conceded to Saul’s motion or whether it needed to be continued. (*Id.* p. 10:18-

25.). In direct response to this question, Plaintiff's counsel conceded that Saul's Motion was supported by the law and by the facts. (*Id.* p. 10:18-25.). Specially, the hearing transcript evidences the following colloquy between the Trial Court and Plaintiff'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 Plaintiff's concession, the the Trial Court granted Appellant's Motion for Summary Judgment. (*See Id.* p. 11:1-6; *see also* Order Granting Saul's Mot. for Summ. J.). 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. (*See* Saul's Memo. in Opp. to Mot. to Set Aside, Ex. 4.).

On March 24, 2020, the Trial Court, after careful consideration of the record, granted Saul's Motion. (Order Granting Summ. J., filed Mar. 24, 2020.) The Trial Court made multiple changes (a total of approximately 15) to the proposed Order before signing it. (*See* Saul's Reply Memo., Ex. 1 and 2).¹ Neither the Plaintiff nor Wells Fargo filed a Motion to Reconsider. (*See*

¹ 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" was 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

Saul's Memo. in Opp. to Mot. to Set Aside.). Wells Fargo did not appeal the Trial Court's Order. (*See Id.*). On March 26, 2021, counsel for Wells Fargo sent an email evidencing his knowledge of Saul's dismissal from this matter. (*See Saul's Memo in Reply, Ex. 7.*). 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), SCRCF. (*See Wells Fargo's Mot. to Set Aside.*). 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. (*See gen. Id.; see also Memo. in Opp. to Mot. to Set Aside.*). Further, Wells Fargo's Motion to Set Aside failed to cite to a single case upon 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 arguments: that Wells Fargo's Motion to Set Aside violated Rule 7(b), SCRCF, lacked standing, Wells Fargo waived its rights to make arguments, the motion was a veiled Rule 59, SCRCF, motion, and the parole evidence rule barred any newly discovered evidence in interpreting a lease. (*See Saul's Memo. in Opp. to Mot. to Set Aside.*).

On July 2, 2021, Plaintiff 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

struck; 8) throughout the Order the introductory signals were struck by Judge Jefferson; 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 finally 15) the **Order** section was struck by the Court.

litigation of this matter. (*See gen. P. Mem. in Resp.*). Further, Plaintiff's Memorandum exemplified that at the time of filing the Memorandum: Wells Fargo had not identified which arguments constituted misrepresentation, presented any affidavits or other filings supporting their Motion to Set Aside, which had placed the Plaintiff in a position of being unable to address Wells Fargo's assertions. (*See Id.*, at pg.4-5.).

On July 6, 2021, for the first time, Wells Fargo finally submitted its memorandum in support of its Motion to Set Aside, with exhibits. (*See Wells Fargo's Memo. in Supp.*). 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."). (*See Saul's Memo. in Reply.*). 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 reach the difficult standards under Rule 60, SCRCF 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.

Nonetheless, despite the Plaintiff 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, SCRCF. (*See J. Jefferson's Order Granting Mot. to Set Aside.*). 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. (*See Hearing Transc. p. 2:22-3:19.*); 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. For these reasons, this appeal follows:

STANDARD OF REVIEW

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. *See Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922) (emphasis added), *see also* S.C. Const. art V, § 9 (“The decisions of the Supreme Court shall bind the Court of Appeals as precedents.”) and *Campbell v. Robinson*, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating that the Court of Appeals “may not overrule supreme court precedent”). 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).

ARGUMENT

1. Wells Fargo was not a party to the Order and therefore the Trial Court erroneously exercised discretion by granting a motion made by a party that lacked standing

In its most basic sense, “[s]tanding refers to a party’s right to make a legal claim or seek judicial enforcement of a duty or right.” *See Preservation Society of Charleston v. SCDHEC*, 430 S.C. 200, 209, 845 S.E.2d 481, 486 (2020). The Trial Court’s Order dealt entirely and solely with the claims asserted by Plaintiff. (See J. Order Granting Saul’s Mot. for Summ. J.). In fact, the Order does not contain any final judgment as to any claims asserted by Wells Fargo against Saul, *because there are none*. Wells Fargo never brought claims against Saul in this matter. (See Wells Fargo’s Answer to P. Compl.). At the hearing, Plaintiff’s counsel conceded that Saul’s Motion was supported by the law and by the facts. (Hearing Transc. p. 10:18- 11:1-3.). The hearing transcript states as follows:

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.

As shown, the Trial Court granted Appellant's Motion for Summary Judgment, based on the Plaintiff's concessions. (*See Id.*; *see also* Order Granting Saul's Mot. for Summ. J.). The Plaintiff even filed a Memorandum in opposition to Wells Fargo's Motion to Set Aside. (*See* P. Mem. in Resp.). The granting of Saul resulted in dismissing only the claims asserted by the Plaintiff against Saul, ***as Wells Fargo has not asserted any claims against Saul.*** (*See* Wells Fargo's Answer to P. Compl.).

Nevertheless, the Trial Court set aside its Order dismissing claims of the Plaintiff against Saul, made by a co-defendant who has no direct claims against Saul. (*See* J. Order Granting Saul's Mot. for Summ. J.). The Order did not dismiss any claims made by Wells Fargo against Saul, as there are none. Rule 60(b), SCRCF, provides that "the court may relieve a party or his legal representative from a final judgment, order or proceeding...." Pursuant to the plain terms of Rule 60(b), SCRCF, Wells Fargo is not a party or the legal representative of a party to the Trial Court's Order, which was issued only ***as to the Plaintiff's claims against Saul.*** *See gen. Narruhn v. Alea London Ltd.*, 404 S.C. 337, 745 S.E.2d 90 (2013).

Simply put, the Plaintiff conceded Saul's arguments made in its Motion and has not raised any issues with the Trial Court's Order. (See Hearing Transc. ¶ 10:18-25; see also P. Mem. in Resp.). However, the Trial Court was without reasonable factual support by granting a motion made by a non-party, Wells Fargo, to an Order. Wells Fargo has stepped into the shoes of the Plaintiff, when it had no right to do so. Therefore, the Trial Court's Order was based on a motion made by a party with no standing which resulted in prejudice to Saul and amounted to an abuse of discretion. See *gen. Bridges*, 239 S.C. 37, 40, 121 S.E.2d 300, 302. As such, the Trial Court was without reasonable factual support by granting a non-party to an Order's motion to set aside when it had no standing which has prejudiced Saul, and amounted in an error of law. See *Id.* For this reason, the Trial Court's Order should be reversed.

2. In Granting the Motion to Set Aside the Trial Court erred in construing the record which clearly evidences that Wells Fargo had an opportunity to be heard on the Motion and intentionally waived this opportunity

The Trial Court's Order states that Wells Fargo was not afforded an opportunity to be heard on Saul's Motion. (See J. Jefferson's Order Granting Mot. to Set Aside.). Nowhere in the record is there any factual support for this holding. The procedural history of this matter encapsulates the utter failure by Wells Fargo's counsel to raise any argument at the appropriate time to Saul's Motion. More specifically, it shows that Wells Fargo clearly had every opportunity to be heard yet it waived to do so at the appropriate time. Waiver is a voluntary and intentional abandonment of a known right. *SPUR at Williams Brice Owners Ass'n v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015). Acts inconsistent with the continued assertion of a right may give rise to waiver. *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928 (Ct. App. 1994).

First, on January 20, 2020, Saul filed its Motion with the Beaufort County Clerk of Court. (See Mot. for Summ. J.). Then counsel for Wells Fargo, Laura Robinson, received notice of this

Motion through the Notice of Electronic Filing. (See Jan. 21, 2020, NEF.). On March 13, 2020, Laura Robinson emailed counsel for Plaintiff and Saul requesting a continuance for the Motion because she was leaving her firm and that Charles Blackburn would be taking the case over. (See Saul Memo. in Reply, Ex. 1.). That same day, counsel for Saul informed Ms. Robinson that he could not consent to the request for continuance and wanted the motion heard because of the impending mediation scheduled. (See *Id.*). On March 16, 2020, Charles G. Blackburn filed a Notice of Appearance on behalf of Wells Fargo. (See *Id.*, Ex. 3.). 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. (See *Id.* Ex. 2.). 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, and that he would not be attending the hearing on the Motion. *Id.*

On March 17, 2020, the Trial Court heard arguments on the Motion. Counsel for the Plaintiff and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear.*** (See Saul's Memo. in Opp. to Mot. to Set Aside.). Wells Fargo failed to file a Motion for Continuance or any Memorandums in Opposition, despite having notice of the Motion since January 20, 2020. (See *Id.*). During the hearing, Plaintiff's counsel informed the Trial Court that counsel for Wells Fargo informed Plaintiff's Counsel that he was not going to attend the hearing on the Motion. (See Hearing Transc. p. 2:12-17; see also Pl. Memo. in Resp. at pg. 3.). After the Motion was granted, counsel for Wells Fargo received notice that the proposed Order was electronically filed on March 18, 2020. (See Saul's Memo. in Opp. to Mot. to Set Aside, Ex. 4.). Counsel for Wells Fargo did not raise any objections to the proposed Order.

On March 24, 2020, the Trial Court, after careful consideration of the record, granted Saul's Motion. (See Order Granting Summ. J., filed Mar. 24, 2020.) Neither the Plaintiff nor Wells Fargo filed a Motion to Reconsider. (See Saul's Memo. in Opp. to Mot. to Set Aside.). Wells Fargo did not appeal the Trial Court's Order. (See *Id.*).

On March 5, 2021, present counsel for Wells Fargo, Douglas E. Leadbitter, filed a Notice of Appearance in this matter. (See March 5, 2021, NEF.). 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. (See Wells Fargo's Mot. to Set Aside.). Further, and most telling, Wells Fargo fails to make any argument or excuse as to why its counsel did not argue against Saul's Motion, file a motion or appeal the Trial Court's Order granting Saul's Motion. Given this, there is nothing in the record to indicate that Wells Fargo did not have an opportunity to be heard. Rather the record is replete with support for the exact opposite: ***Wells Fargo had every opportunity to be heard and waived this opportunity.***

It is undisputed that Wells Fargo was represented by counsel during the entire aforementioned procedural history. It is also undisputed that Wells Fargo's counsel had notice of the Motion, proposed Order, and final Order. Yet, it made no arguments. Still, the Trial Court erroneously concludes that Wells Fargo was not afforded an opportunity to be heard on Saul's Motion. This clearly ignores the facts of the case: ***Wells Fargo's counsel failed to appear at the hearing, despite being on notice.*** Wells Fargo failed to do even the bare minimum to argue against Saul's Motion. Despite being put on notice of Saul's Motion on January 20, 2020, Wells Fargo's counsel did nothing until March 19, 2021. Wells Fargo has waived any rights to raise any arguments that should have been made at the time of the hearing. See *gen. SPUR at Williams Brice Owners Ass'n*, 415 S.C. 72, 91, 781 S.E.2d 115, 125.

THE STATE OF SOUTH CAROLINA
In the 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.

Appendix Volume 3

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The Trial Court's Order that former Wells Fargo's counsel's requests for a continuance, via email, should have been relayed onto the Court; (See J. Jefferson's Order Granting Mot. to Set Aside) ignores the fact that Mr. Blackburn, ***counsel of record for Wells Fargo at the time of the hearing***, informed both parties of his intent not to appear at the hearing. (See Saul Memo. in Reply, Ex. 2; see also Pl. Memo. in Resp. at pg. 3.). Further, Wells Fargo's counsel, at the time of the hearing, informed counsel for Saul that he had read the Motion, that he did not believe he had a basis to oppose the Motion, and that he would not be appearing at the hearing. (See Saul Memo. in Reply, Ex. 2.). Additionally, it was relayed onto the Trial Court that Wells Fargo would indeed not be present based on Mr. Blackburn's conversation with the Plaintiff. (See Hearing Transc. p. 2:12-17). In fact, and most telling, the Wells Fargo very own memorandum simply states: "...for reasons unknown, Mr. Blackburn, did not attend the hearing on March 17, 2020, and did not file a response to the Order after it was entered." (See Wells Fargo's Memo. in Supp.).

There is nothing in the record which evidences or even hints to any support that Wells Fargo did not have an opportunity to be heard on Saul's Motion. The Trial Court's holding that Wells Fargo was not afforded an opportunity to be heard on the matter is an erroneous exercise of discretion which is unsupported by any supporting facts which has amounted in Saul being severely prejudiced in having to relitigate this matter and therefore constitutes an error of law. See *Bridges*, 239 S.C. 37, 40, 121 S.E.2d 300, 302.

3. The Trial Court's holding that it was not informed Wells Fargo was a necessary party is contrary to the hearing record.

The Trial Court's Order states that it was represented to the Trial Court that "Wells Fargo was not necessary for the disposition of Saul, LLC's Motion for Summary Judgment." (See J. Jefferson's Order Granting Motion to Set Aside.). The hearing transcript establishes that counsel for the Plaintiff informed the Court that Wells Fargo ***indeed*** was a necessary party for these

motions, despite not having standing. (See Hearing Transc. p. 2:22-3:19.). Specifically, the following was stated at the hearing:

THE COURT: So in a roundabout way, are you telling me you can't go forward because Wells Fargo is absent, or they are not necessary for these motions?

MR. FLEMING: I can't speak for Wells Fargo. I personally believe that it's very important to Wells Fargo, because they will be the sole defendant. They have not filed any kind of indemnity or cross-claim back towards Saul. And as such, I don't know they technically have any direct standing in the motion. So I can't assert to the Court that they are necessary to argue the motion.

THE COURT: Are you seeking some relief against them?

MR. FLEMING: Against Wells Fargo?

THE COURT: Yeah.

MR. FLEMING: They are the primary defendant. Saul is the property owner of the site of the bank where this injury occurred. And the -- I won't speak for Saul except to say Saul's motion for summary judgment is predicated on the terms of the lease. And the terms of the lease tend to support the notion that the landlord, Saul, granted all control of the property, including inspection and/or inspection, discovery and remedy of any dangerous conditions, which is very clearly laid out in their brief.

Id.

Clearly, the Trial Court's holding that the parties withheld any information that Wells Fargo was not a necessary party to the motion is not supported by the hearing transcript and as such no fraud, misrepresentation, or other misconduct of an adverse party was made amounting in any relief pursuant to Rule 60(b)(3), SCRCP. As such, the Trial Court exercised erroneous discretion in holding otherwise and granting Wells Fargo's Motion to Set Aside on this reason. *See gen. Bridges*, 239 S.C. 37, 40, 121 S.E.2d 300, 302.

Notwithstanding the above argument, Plaintiff's counsel conceded that Saul's Motion was supported by the law and by the facts. (See Hearing Transc. ¶¶ 10:18- 11:1-3.). The Trial Court granted Saul's Motion, based on the Plaintiff's concessions. (See *Id.*; see also Order Granting Saul's Mot. for Summ. J.). In addition is the fact that the Trial Court was made aware of the fact that Wells Fargo's then-counsel, called Saul's counsel and informed him that he had read the Motion, that he did not believe he had a basis to oppose the Motion, and he would not be attending the hearing. (See Saul Memo. in Reply, Ex. 3). Nevertheless, the Trial Court ignored these key facts, which were presented to it, which resulted in an abuse of its discretion by granting Wells Fargo's Motion to Set Aside without reasonable factual support.

4. The Trial Court erroneously exercised discretion by granting the Motion to Set Aside when there was no reasonable support in the record establishing relief pursuant to Rule 60, SCRPC, was proper

Rule 60(b), SCRPC, requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. *Rouvet v. Rouvet*, 388 S.C. 301, 696 S.E.2d 204, 208 (Ct. App. 2010). In determining whether to grant relief under Rule 60(b)(1), SCRPC, the court must consider the following factors: 1) the promptness with which relief is sought; 2) the reasons for the failure to act promptly; 3) the existence of a meritorious defense; and 4) the prejudice to the other party. *Id.* The party requesting relief in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief. See *BB&T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

A. Wells Fargo's Motion pursuant to Rule 60, SCRPC was not made within a reasonable amount of time

As argued above, it is undisputed that Wells Fargo had counsel throughout this matter. Further, there has been no excuse as to why Wells Fargo's counsel failed to file a motion pursuant

to Rule 60(b), SCRCF. (*See* Wells Fargo's Memo. in Supp.). Rather, it is asserted by the Trial Court that the motion was made within a reasonable time because with the transition of Wells Fargo's representation that occurred, Mr. Leadbitter sought relief as soon as he discovered this judgment had been entered against Wells Fargo. (*See* J. Jefferson's Order Granting Motion to Set Aside, pg. 6). As mentioned before, Wells Fargo had counsel throughout this matter, who had notice of the Order granting Saul's Motion on March 24, 2020. (*See* Order Granting Summ. J., filed Mar. 24, 2020.). On March 26, 2021, counsel for Wells Fargo even sent an email evidencing his knowledge of Saul's dismissal from this matter. (*See* Saul's Memo in Reply, Ex. 7.). Wells Fargo did not file a Motion to Reconsider. (*See* Saul's Memo. in Opp. to Mot. to Set Aside.). Wells Fargo did not appeal the Trial Court's Order. (*See Id.*). To sum the argument up: Mr. Blackburn, counsel for Wells Fargo, had notice of the hearing, the proposed Order, and the Trial Court's Order and did not make any arguments at the appropriate time.

The assertion that there has not been unreasonable delay because there was transition of Wells Fargo's representation is unsupported by the record because this transition did not occur until March 5, 2021, with the filing of Mr. Leadbitter's Notice of Appearance, almost a year after the filing of the Trial Court's Order granting Saul's Motion. (*See* March 5, 2021, NEF.). On March 19, 2021, for the first time, 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), SCRCF. (*See* Wells Fargo's Mot. to Set Aside.). There is nothing in the record which evidences that Mr. Blackburn had left the firm and that Wells Fargo was unrepresented or transitioning from Mr. Blackburn to another attorney. The moving party has the burden of proof and in this matter, there was no support presented regarding why there was an undue delay in making the Rule 60, SCRCF, motion. *See gen. BB&T*, 369 S.C. 548, 552, 633 S.E.2d 501, 503. For this reason, the Trial Court

exercised erroneous discretion in granting Wells Fargo's Motion to Set Aside on this reason with no factual basis in support. *See gen. Bridges*, 239 S.C. 37, 40, 121 S.E.2d 300, 302.

B. The record is devoid of any explanation as to why Wells Fargo was unable to act promptly

For the same reasons set out above, the record is devoid of any factual basis or arguments as to why Wells Fargo did not act promptly. Rule 60(b), SCRPC, provides that a motion pursuant to this rule be made within a reasonable time. As shown above, Wells Fargo waited Three-Hundred and Sixty days since the Trial Court's Order was entered to first raise its Motion to Set Aside pursuant to Rule 60(b), SCRPC, while it had counsel of record. **Nowhere in the record is there any explanation for this delay.** Wells Fargo has not provided a single argument as to why there has been such a delay to the filing of its Motion to Set Aside or Memorandum of Law in Support.

Once again, Wells Fargo, as the moving party, had the burden of proof and none was presented regarding why there was an undue delay in making the Rule 60, SCRPC, motion. *See gen. BB&T*, 369 S.C. 548, 552, 633 S.E.2d 501, 503. For this reason, the Trial Court exercised erroneous discretion in granting Wells Fargo's Motion to Set Aside on this reason with no factual basis in support. *See gen. Bridges*, 239 S.C. 37, 40, 121 S.E.2d 300, 302.

C. Wells Fargo provided no supporting facts or admissible evidence which would constitute the existence of a meritorious defense

To establish that meritorious defense, a complainant need not show that he would prevail on the merits, but only that his defense is meritorious. *See Thompson v. Hammond*, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989).

[A] meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.

Id. (quoting *Graham v. Town of Loris*, 272 S.C. 442, 248 S.E.2d 594 (1978)). A party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essential to entitle him to relief. *See Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991).

i. The Trial Court’s holding regarding the meritorious defense element is unsupported by the record

In regards to this factor, the Trial Court held the following:

“With respect to the meritorious defense factor, as stated above, Saul, LLC’s Order contained findings of fact that interpreted a lease, determined culpability for the Plaintiff’s cause of action and assigned liability for the Plaintiff’s injuries to Wells Fargo without the knowledge or consent of Wells Fargo. As such, this Court finds that Wells Fargo has shown the existence of a meritorious defense.”

(*See J. Jefferson’s Order Granting Motion to Set Aside*, pg. 6).

First, the record is clear that it was not “Saul’s Order” that was entered by the Trial Court, rather it was the Trial Court’s Order. Pursuant to the Trial Court’s instructions, Saul submitted a proposed Order. (*See Hearing Transc.* p. 10:18- 11:1-3.). The Trial Court took it upon itself to correctly make multiple changes (a total of approximately 15) to the proposed Order before signing it. (*See Saul’s Reply Memo.*, Ex. 1 and 2).² Given this, there is ample evidence that the Trial Court inquired into the legal questions raised in Saul’s proposed Order and does not need to further

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. These 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**” was 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 Judge Jefferson; 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 finally 15) the **Order** section was struck by the Court.

investigate or discuss the same. Saul made its Motion as to the Plaintiff's Amended Complaint based on the terms of the Lease. (See Mot. for Summ. J.). Attached to this Motion as an exhibit was a full and complete copy of the Lease. (*Id.*, at Ex. A.). Additionally, the Trial Court held a hearing on the very meritorious defense that the Trial Court now holds should be reheard. This hearing was held on March 17, 2020, where counsel for the Plaintiff and Saul appeared, while counsel for Wells Fargo did not. (See Saul's Memo. in Opp. to Mot. to Set Aside.). As explained thoroughly above, Wells Fargo had every opportunity to assert its arguments at the time of the hearing but failed to do so and waived its arguments.

Importantly, Plaintiff's counsel conceded that Saul's Motion was supported by the law and by the facts. (Hearing Transc. p. 10:18-25.).³ On March 24, 2020, the Trial Court issued her Order which explicitly stated that she reviewed the record, which contained a full copy of the Lease, when she made her ruling. (See Order Granting Summ. J., filed Mar. 24, 2020.). Courts will interpret contracts in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning. See *M and M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 701 S.E.2d 33, (2010). The interpretation of the lease will not change at a rehearing as the Trial Court properly interpreted the lease already, and the Plaintiff has conceded to this interpretation. (See Order Granting Summ. J., filed Mar. 24, 2020.). As such, there is no evidence in the record which supports any contention that Wells Fargo has a valid meritorious defense. See *Thompson*, 299 S.C. 116, 382 S.E.2d 903.

³ Assuming *arguendo* that this matter Appeal is denied, the Plaintiff, who is the only party to have asserted claims against Saul has conceded on the record that Saul's interpretation of the lease is supported by the law and by the facts of this case. As such, Plaintiff has agreed that Saul cannot be liable under any claims asserted by the Plaintiff in the underlying case. Given this, a rehearing on Saul's Motion will do nothing more than to lead to the same conclusion: Saul should be dismissed.

ii. The record lacks any newly discovered evidence.

A trial court may relieve a party from a final judgment, order, or proceeding if “newly discovered evidence which by due diligence could not have been discovered in time to move from a new trial under Rule 59(b)” is presented to the trial court. Rule 60(b)(2), SCRCP. Trial courts are empowered to grant a new trial if a party establishes the newly discovered evidence (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. *See Morin v. Innegrity, LLC*, 424 S.C. 559, 819 S.E.2d 131 (Ct. App. 2018). Evidence is not “newly discovered” if it is known to the party at trial and in the party's possession. *Lanier v. Lanier*, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005).

Wells Fargo submitted its “newly discovered evidence” as affidavits from Ervin H. Weatherly and Gerald Scott Wooten, both employees of Wells Fargo. (*See Wells Fargo’s Memo. in Supp.*). The overwhelming majority of the information contained in these newly discovered Affidavits concern information relating to issues with the Lease, Esther S. Harnett’s Affidavit, and the Belthoff emails, ***all of which were available to Wells Fargo at the time of the hearing.*** (*See Id.*). There is no explanation in either Affidavits which explain why the sworn testimony was not known to the party at the time of the hearing on the Motion in 2020. (*See id.*). Further the record supports the fact that the Lease, Esther S. Harnett’s Affidavit, and the Belthoff emails were filed on January 20, 2020 and were available to Wells Fargo. (*See Saul’s Memo. in Reply.*). The record presented to the Trial Court established that the majority of the arguments presented in these Affidavits were known to Wells Fargo at the time of the hearing on the Motion and were in Wells Fargo’s possession as they were filed with the Court. (*See Id.*). Nevertheless, the Trial Court abused its discretion by ignoring the record which evidenced that Wells Fargo did not have any

explanation as to why the “new evidence” was recently discovered and that Wells Fargo did not possess the Lease, Esther S. Harnett’s Affidavit, and the Belthoff emails which resulted in an error of law, which is contrary to the record in this matter and resulted in an error of law.

Nevertheless, Saul will break down the two affidavits in order to show they are not newly discovered evidence:

a. Affidavit of Gerald Scott Wooten is not newly discovered evidence.

Mr. Wooten’s affidavit states that a) he has personal knowledge of the lease and disagrees with Esther Harnett’s affidavit; and b) he has issues relating to matters that occurred on April 25, 2018, including the Belthoff emails. (See Wells Fargo’s Memo. in Supp, Ex. C.).

First, Mr. Wooten’s affidavit violates the Parole Evidence Rule. The parole evidence rule states that a valid written contract, which is complete, and the terms of which are not ambiguous, cannot be contradicted, added to, altered, or varied by extrinsic evidence. *Garnett v. WRP Enterprises, Inc.*, 380 S.C. 206, 669 S.E.2d 591 (2008). The full and unambiguous Lease was provided to the Trial Court at the time of the filing of the Motion and at the hearing. (See Mot. for Summ. J., Ex. A.). Nothing in Mr. Wooten’s affidavit will change the result if a new hearing is granted as his affidavit cannot be used to interpret the terms of the Lease. See *Garnett*, 380 S.C. 206, 669 S.E.2d 591. Indeed, Wells Fargo does not even argue ambiguity.

Second, Mr. Wooten’s affidavit concerns issues that were known or should have been known to Wells Fargo prior to the date of the hearing. Despite Wells Fargo obtaining the Affidavit on April 21, 2021, and of course, only presenting it to the Court on July 6, 2021, which is 109 days after filing the instant motion, there remains no evidence or testimony from anyone as to why this was not discovered before. (See Wells Fargo’s Memo. in Supp, Ex. C.). In fact, nowhere in Wells

Fargo's Memorandum of Law or supporting Affidavits does it explain why Mr. Wooten's Affidavit was not available prior to the hearing. (*See Id.*).

Third, Mr. Wooten's affidavit is simply cumulative and impeachment testimony. The Trial Court was presented with the entire Lease. (*See Mot. for Summ. J., Ex. A.*). Mr. Wooten's Affidavit is simply that he disagrees with Ms. Harnett's affidavit, which was filed on January 20, 2020. (*See Wells Fargo's Memo. in Supp, Ex. C.*). This could have been presented in 2020 prior to the hearing. It was not. ***Nothing in Mr. Wooten's affidavit changes the terms of the Lease.*** *See Garnett*, 380 S.C. 206, 669 S.E.2d 591. Mr. Wooten's Affidavit is not newly discovered and any reliance by the Trial Court in granting Wells Fargo's Motion to Set Aside is an abuse of discretion which amounted in an error of law.

b. Affidavit of Ervin H. Weatherly is not newly discovered evidence.

Weatherly's affidavit states that a) he has personal knowledge of the lease and disagrees with Esther Harnett's affidavit; b) arguments relating to his interpretation regarding an alleged interaction with Esther Harnett on February 22, 2021; and c) issues relating to matters that occurred on April 25, 2018, including the Belthoff emails. (*See Wells Fargo's Memo. in Supp, Ex. F.*).

First, and once again, Mr. Weatherly's affidavit violates the Parole Evidence Rule for the same reasons set forth above with Mr. Wooten's affidavit. *See gen. Garnett*, 380 S.C. 206, 669 S.E.2d 591. Any sworn statements by Mr. Weatherly in his Affidavit regarding the lease violates the parole evidence rule. *See Id.* The full and unambiguous Lease has been provided to this Honorable Court at the time of the filing of the Motion and at the hearing. (*See Mot. for Summ. J., Ex. A.*). Any reliance by the Trial Court that Mr. Weatherly's affidavit would change the result of a new hearing is an erroneous error as his affidavit cannot be used to interpret the terms of the Lease. *See gen. Garnett*, 380 S.C. 206, 669 S.E.2d 591.

Second, Mr. Weatherly's Affidavit concerns matters that were known or should have been known to Wells Fargo prior to the date of the hearing: i.e. the Belthoff emails. (*See* Wells Fargo's Memo. in Supp, Ex. F.). As already explained, these emails were made an exhibit to the Motion at the time of filing and were available to Wells Fargo at the time of the hearing. (*See* Mot. for Summ. J., Ex. C.). Any argument that the Belthoff emails were misrepresented by Saul should have been made at the time of the hearing. Additionally, Mr. Weatherly's Affidavit contains a self-serving conclusory assertion that Ms. Harnett was bragging that "she misrepresented the content of the Belthoff letters, the lease provisions, and the facts of her sworn affidavit". (*See* Wells Fargo's Memo. in Supp, Ex. F.). Other than the alleged statements that "she was able to use the Belthoff 'nasty letters' against Wells Fargo," the Affidavit fails to explain how/why this statement is a misrepresentation. (*See* Wells Fargo's Memo. in Supp.). Indeed, Saul did rely on the Belthoff email and presented it to the Court. (*See* Mot. for Summ. J., Ex. C.). The Belthoff emails unequivocally take the position that the parking area is Wells Fargo's dominion and under its control. (*See Id.*). Regardless, the Belthoff emails were filed with Saul's Motion on January 20, 2020 and were available to Wells Fargo on March 17, 2020. (*Id.*).

Third, Mr. Weatherly's affidavit was filed simply in an effort to create an issue of fact to revisit summary judgment. The Trial Court was presented with the entire lease, the Belthoff emails, and the Affidavit of Esther S. Harnett at the hearing of the Motion. (*See* Mot. for Summ. J., Ex. A, C, and D.). Wells Fargo received them when the Motion was electronically filed as well and did nothing. (*See* Saul's Memo. in Opp. to Mot. to Set Aside at Ex. 1 and 3.). Mr. Weatherly's Affidavit is simply an attempt to create a material issue of fact under the guise of a Rule 60(b) Motion. All that is being attempted is an effort to impeach Ms. Harnett. Nothing in Mr. Weatherly's affidavit changes the terms of the lease, nor does it demonstrate that the Trial Court's

prior conclusion was incorrect. Mr. Weatherly's Affidavit is not newly discovered and Wells Fargo's Motion to Set Aside should be denied.

D. Wells Fargo's assumed defenses were information that were known at the time of the hearing on the Motion.

Assuming arguendo that the arguments set forth in Wells Fargo's Memorandum of Law in Support are considered Wells Fargo's asserted "meritorious defenses," these arguments are baseless. (*See* Wells Fargo's Memo. in Supp.). Wells Fargo's asserted the following "arguments" regarding information that was known at the time of the hearing, namely:

1. Issues relating to Esther S. Harnett's Affidavit, which was filed as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020;
2. Issues relating to the terms of the Lease, which was filed as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020;
3. Issues relating to the Deposition of Plaintiff Eddie B. Lewis, which took place on November 14, 2019, and was available to Wells Fargo; and
4. Issues relating to the emails sent by Rich Belthoff, which were made as an exhibit to Saul's Motion on January 20, 2020, and were available at the hearing on March 17, 2020. (*See Id.*).

A majority of the arguments set forth by Wells Fargo relate entirely to documents and affidavits which were available at the time of the hearing. (*See* Saul's Memo. in Reply.). Once again, it is undisputed that despite having counsel of record, Wells Fargo neglected to make even the most basic argument against Saul's Motion. Nevertheless, in the context of a Rule 60(b) Motion to Set Aside, Wells Fargo was allowed to take its second bite of the proverbial apple, even though it ignored its first opportunity. The appropriate approach would have been to address these concerns *at the time of the hearing*. The Trial Court erred by allowing Wells Fargo to bring its

arguments regarding a Motion for Summary Judgment that was heard on March 17, 2020. This stands for the proposition that litigation has no end, counsel and clients who do nothing in response to a properly filed motion and who later determine they are dissatisfied with the outcome can come back to Court and hit “reset” flies in the face of the notion of time deadlines/limitations. As has been stated by another court, “[i]f procrastination is the thief of time, as the philosophers moralize, it is also the pillager and despoiler of rights, privileges and prerogatives.” *Gloeckner v. School Dist. of Baldwin*, 175 A.2d 73, 76 (Pa. 1961).

Wells Fargo sat on its hands for an unreasonable amount of time and now come to the Trial Court in an improper attempt suggest impropriety on the part of Saul, so as to reargue Summary Judgment because they are now dissatisfied with the result. Wells Fargo’s Motion to Set Aside Judgment should be denied.

iii. There has been no fraud on the part of Saul as Wells Fargo failed to appear and argue at the appropriate time and thus has not established their inability to counter the arguments and supporting documents submitted by Saul

A claim of fraud upon the court, as a ground for relief from judgment, requires proof by clear and convincing evidence. *See Sanders v. Smith*, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). A party may not prevail on a motion for relief of judgment on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent’s representations **at the time of the alleged misconduct**. *Raby Const., L.L.P. V. Orr*, 358 S.C.10, 594 S.E.2d 478 (2004) (emphasis added). A judgment may be set aside on the ground of fraud only if the fraud is “extrinsic” and not “intrinsic.” *See Corley v. Centinnial Const. Co.*, 247 S.C. 179, 188, 146 S.E.2d 609, 613-14 (1966). The *Corley* Court stated that:

‘Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise

litigation would be interminable; relief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action.’

Id. The essential distinction between intrinsic and extrinsic fraud for purposes of relief from judgment is the ability to discover the fraud. *See Ray v. Ray*, 474 S.C. 79, 647 S.E.2d 237 (2007).

a. Wells Fargo failed to raise the arguments regarding fraud at the time of the hearing

Wells Fargo’s Motion to Set Aside fails to identify by clear and convincing evidence of extrinsic fraud upon the Court. (*See Wells Fargo’s Mot. to Set Aside.*). Virtually all of the arguments set forth by Wells Fargo relate to arguments made by Saul in its Motion, which could have been presented by Wells Fargo at the time of the hearing. (*See Id.*). All of the materials presented by Saul were made available to Wells Fargo prior to the hearing on Saul’s Motion for Summary Judgment. (*See Saul’s Memo. in Opp. to Mot. to Set Aside at Ex. 1 and 3.*). Nowhere in the record has there been any argument made by Wells Fargo to the otherwise. (*See Wells Fargo’s Mot. to Set Aside; see also Wells Fargo’s Memo. in Supp.*). Saul did not hide any of its evidence or information. Nowhere in Wells Fargo’s Motion to Set Aside or Memorandum of Law in Support is there any reason given as to why Wells Fargo failed to file a responsive memorandum, appear at the hearing, file a motion to reconsider, or appeal the Trial Court’s Order. (*See Id.*).

A party may not prevail on a motion for relief of judgment on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent’s representations **at the time of the alleged misconduct**. *Raby Const., L.L.P. V. Orr*, 358 S.C.10, 594 S.E.2d 478 (2004). (emphasis added). Wells Fargo’s baseless arguments that a fraud was committed upon the Court is entirely based on information and supporting documents that were available to Wells Fargo at the time of the alleged misconduct. *See Id.* Any reliance by the Trial

Court regarding fraud upon the Trial Court set forth by Wells Fargo are unsupported by the record and resulted in an abuse of discretion amounting in an error of law.

b. There has been no showing of extrinsic fraud in this matter

Wells Fargo asserts that Esther S. Harnett bragged about misrepresenting the contents of the Belthoff emails, the lease provisions, and the facts of her sworn testimony. (*See* Wells Fargo's Memo. in Supp.). Saul's Motion, which was supported by the lease, the Belthoff emails, and the Affidavit of Esther S. Harnett were filed on January 20, 2020. (*See* Mot. for Summ. J., Ex. A, C, and D.). Nowhere has it been explained or even argued that Wells Fargo was unable to discover the alleged fraud that was committed by Saul. (*See* Wells Fargo's Mot. to Set Aside; *see also* Wells Fargo's Memo. in Supp.). Simply put, there is no extrinsic fraud in this matter. *See gen. Ray v. Ray*, 474 S.C. 79, 647 S.E.2d 237 (2007). Statements made by Esther S. Harnett regarding Saul's dismissal after the fact based on exhibits and arguments that were available to Wells Fargo at the time of the hearing is not extrinsic fraud. Wells Fargo has the burden of proof to establish a claim of fraud upon the court, as a ground for relief from judgment, by clear and convincing evidence. *See Sanders v. Smith*, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). The record is devoid of any argument, documents, or information that explains how or why Wells Fargo could not have discovered the alleged fraud at the time of the hearing. Wells Fargo failed to appear or argue its position at the time of the hearing. (*See* Saul's Memo. in Opp. to Mot. to Set Aside.). Wells Fargo has failed to prove by clear and convincing evidence that extrinsic fraud was committed. (*See Id.*).

c. Saul has been severely prejudiced by the Trial Court's Order Setting Aside Judgment

The Trial Court's Order has severely prejudiced Saul in that it has incurred significant costs and fees litigating a matter which has been conceded to by the Plaintiff on the record (Hearing

Transc. p. 10:18-25.). Further, Wells Fargo has not put forth any argument or supporting documents which refute Saul will be prejudiced, which it had the burden to do. *See BB&T*, 369 S.C. 548, 552, 633 S.E.2d 501, 503.

Nevertheless, Saul identifies the following manners in which it will be prejudiced: First, given the Plaintiff's concessions on the record, a rehearing on this matter will only reach the same conclusion: Saul being dismissed. Additionally, Saul has been prejudiced by not having an opportunity to participate in a year of discovery and depositions that have been undergoing since it was dismissed. As such, Saul will undertake significant legal fees and costs in re-noticing depositions and reviewing discovery due to Wells Fargo's unreasonable delay in making even a basic argument at the appropriate time. Wells Fargo, as the moving party, had the burden of proof and in this matter and there was none presented in making the Rule 60, SCRCp, motion. *See gen. BB&T*, 369 S.C. 548, 552, 633 S.E.2d 501, 503.

For this reason, the Trial Court exercised erroneous discretion in granting Wells Fargo's Motion to Set Aside with no factual basis in support. *See gen. Bridges*, 239 S.C. 37, 40, 121 S.E.2d 300, 302.

5. Wells Fargo has not come to Court with clean hands and has attempted to shift the burden of proof in deprivation of Saul's due process rights

Since Wells Fargo sought relief from judgment, it had the burden of presenting evidence proving facts essential to entitle relief. *Sanders v. Smith*, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). Wells Fargo filed its Motion on March 19, 2021, which asserted that it will be supported with "sworn Affidavits of Wells Fargo representatives, and a Memorandum of Law...." (*See Mot. to Set Aside.*). As evidenced by the Plaintiff's Memorandum in response, the responding parties were left to guess as to what Wells Fargo's allegations and evidence presented was going to be. (*See Pl. Memo. in Resp.*). On July 6, 2021, one-hundred nine (109) days after the filing of its

Motion to Set Aside, Wells Fargo filed its affidavits and Memorandum of law. (See Memo. in Supp. Mot. to Set Aside.). Wells Fargo's Memorandum in Support of its Motion to Set Aside attempted to reargue the Motion for Summary Judgment in the context of a Rule 60(b) Motion. (See *Id.*). Pursuant to Rule 60(b), SCRCF, the burden of proof rested entirely on Wells Fargo, not Saul. See *Sanders*, 431 S.C. 605, 848 S.E.2d 604. However, Saul and the Plaintiff were left guessing as to what exactly were Wells Fargo's arguments when it made its Motion to Set Aside. (See Saul's Memo. in Opp. to Mot. to Set Aside, see also Pl. Memo. in Resp.). As the maxim goes, "he who seeks equity must do equity". *Provident Life & Accident v. Driver*, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994). Wells Fargo has not done equity in this instance. It sat on its hands and does not come to Court with clean hands. See *gen. Associate Spring Corp v. Roy F. Wilson*, 410 F. Supp. 967, 978 (D.S.C. 1976) (applying SC law and collecting cases noting parties who seek equity must come with clean hands).

Wells Fargo has caused this entire situation by its own failure to appear, oppose a motion, and its decision to make baseless accusations in an effort to avoid the consequences of its own inaction and omissions. Wells Fargo's original motion was devoid of articulable information, facts, law, etc. (See Mot. to Set Aside.). Saul and the Plaintiff have articulated that they were unable to address Wells Fargo's allegations in their original filings. (See *gen. P. Memo. in Resp.*; see also Saul's Memo. in Opp.). Finally, when Wells Fargo was forced to provide a more meaningful motion (well after the one-year requirement), Saul was given three-days to respond. (See Saul's Memo in Reply.). Despite Wells Fargo bearing the burden of proof, Saul has essentially had to defend itself in the "dark," while the impression that Saul has done something improper. Saul requested a hearing on the matter so as to make a full and complete record of this matter; however, the Trial Court denied this request. (See *Id.*). Wells Fargo had over a year,

beyond the provided one year timeframe of Rule 60, SCRPC, to provide clear and convincing evidence that Saul acted improperly. It failed to do so within the one-year time period contemplated by Rule 60, SCRPC. As such, the Trial Court erroneously exercised discretion in relying on any arguments and memorandum made by Wells Fargo which were made beyond the one-year timeframe laid out by Rule 60(b), SCRPC.

Conclusion

For these reasons, the Trial Court's Order granting Wells Fargo's Motion to Set Aside was an exercise of erroneous discretion and should be reversed.

Dated this 12th day of November, 2021. Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

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November 30, 2021

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Eddie B. Lewis, Jr. v. Saul, LLC and Wells Fargo Bank, NA
Court of Appeals Case No.: 2021-00170
Civil Case No.: 2018-CP-07-02378

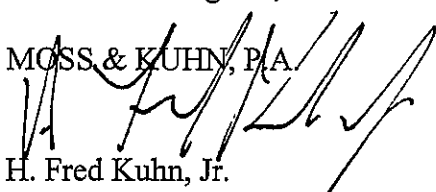
Dear Ms. Kitchings:

Enclosed for filing please find the original and seven (7) copies of the Motion to Dismiss Appeal in regard to the above-referenced matter. I would appreciate your filing the Motion to Dismiss Appeal and returning a filed copy to me in the enclosed self-addressed stamped envelope. By copy of this letter and the enclosures I am serving a copy of the same on all counsel of record.

I have also enclosed my firm's check in the amount of \$50.00 for the filing of the same.

With kindest regards, I am

MOSS & KUHN, P.A.


H. Fred Kuhn, Jr.

HFKjr:sr

cc: Morgan S. Templeton, Esquire (w/enclosure)
David A. Nasrollahi, Esquire (w/enclosure)
Douglas Edward Leadbitter, Esquire (w/enclosure)
John J. Dodds, IV, Esquire (w/enclosure)
Mr. Eddie B. Lewis (w/enclosure)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable 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, Defendants,

Of Which Saul, LLC is the Appellant and Wells Fargo National Association is a Respondent.

MOTION TO DISMISS APPEAL

PLEASE TAKE NOTICE that the Respondent, Eddie B. Lewis, hereby moves before the South Carolina Court of Appeals to dismiss the above-captioned appeal. This motion is made on the ground that the Order which is the subject of this appeal is not an appealable Order. More specifically, the Order that is the subject of this appeal is the Order of the Honorable Deadra L. Jefferson granting the Respondent Wells Fargo Bank National Association's Rule 60(b), SCRCP Motion to Set Aside Summary Judgment entered against it and rescheduling the summary judgment motion for a new hearing. An Order granting relief pursuant to Rule 60, SCRCP, is not immediately appealable, particularly under the circumstances of this case where the subject Order simply reschedules the summary judgment motion for another hearing.

A. FACTUAL BACKGROUND

In support of this Motion to Dismiss, the Respondent Eddie B. Lewis would show unto this Honorable Court as follows.

This is a premises liability action which was commenced by the filing of a Summons and Complaint in the Beaufort County Court of Common Pleas on December 5, 2018. In his Complaint, the Plaintiff-Respondent Eddie B. Lewis (“Lewis”) alleges that he suffered personal injuries as a result of a fall and that his fall was the result of the negligence of the Defendants. He alleges that the Defendant-Respondent Wells Fargo Bank National Association (“Wells Fargo”) rented or leased the premises on which he suffered his fall from the Defendant-Appellant Saul, LLC (“Saul”). [See Exhibit A, Summons and Complaint].

An Amended Complaint, correcting the address of the subject premises, was filed on January 7, 2019 [Exhibit B, Amended Summons and Complaint].

On January 17, 2018 the Appellant Saul filed its Answer to the Amended Complaint and on February 11, 2019 the Respondent Wells Fargo filed its Answer to the Amended Complaint. In their Answers, both Defendants admit that the Appellant Saul was the owner and landlord of the subject premises, and the Respondent Wells Fargo was the tenant. Both Defendants, however, denied liability to the Plaintiff. Each Defendant denied that it exercised dominion or control over the premises at the time of Plaintiff’s fall. [See Exhibit C, Answer of Appellant Saul and Exhibit D, Answer of Respondent Wells Fargo].

On January 20, 2020 Appellant Saul filed a Motion for Summary Judgment, asserting that pursuant to the terms of the lease between it and the Respondent Wells Fargo it had “released the complete and exclusive control of the subject property to Wells Fargo,” and accordingly owed no duty to the Plaintiff. [Exhibit E, Appellant Saul’s Motion for Summary Judgment, pg. 6].

As a result of a hearing held on March 17, 2020 the Honorable Deadra L. Jefferson, Presiding Judge, granted the Appellant Saul's Motion for Summary Judgment. [Exhibit F].

On March 19, 2021 the Respondent Wells Fargo filed a Motion to Set Aside the aforesaid summary judgment motion pursuant to Rule 60, SCRCF. [Exhibit G]. This motion was made on the ground that where were "significant misrepresentations" made to the Court as to the terms of the lease between Saul and Wells Fargo, the contractual relationship of the parties, and which Defendant was responsible for the condition and maintenance of the area where the Plaintiff fell. *Id.*

As a result of a hearing held on March 23, 2021 Judge Jefferson filed an Order on September 21, 2021 granting the Respondent Well Fargo's Motion to Set Aside the Summary Judgment Pursuant to Rule 60, SCRCF. Significantly, the Court concluded that there would be "little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC's motion for summary judgment." [Exhibit G, pg. 6].

B. LEGAL AUTHORITY

"An appeal ordinarily may be pursued only after a party has obtained a final judgment." *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005); citing *Mid-State Distributors, Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993). "The right of appeal arises from and is controlled by statutory law." *Id.*

"The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by (§14-3-330 of the South Carolina Code of Laws)." *Hagood, supra*, 362 S.C. at 195, 607 S.E.2d at 708. "An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable." *Id.*

Section 14-3-330 provides that the following types of judgments, decrees, and orders are directly appealable:

“(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 ...;

(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.”

S.C. Code Ann. §14-3-330.

The subject Order in this case has absolutely no effect on the merits of this action, nor does it affect any substantial rights of the parties or limit any party’s ability to present its case. The net effect of the Order under appeal is to simply just reschedule Saul’s Motion for Summary Judgment for another hearing.

The subject Order in this case is an Order granting a party relief pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure, and the South Carolina Supreme Court has held that such an order is not immediately appealable. See, e.g., *Pocisk v. Sea Coast Construction of Beaufort*, 380 S.C. 584, 587, 671 S.E.2d 98, 100 (2008).

In *Pocisk v. Sea Coast Construction of Beaufort*, *supra*, the Court entered a judgment against the Pocisks. The Pocisks filed a motion to vacate the judgment pursuant to Rule 60(b), SCRCF, and to restore the case to the trial roster. The Court granted the motion, vacating the

judgment and restoring the case to the trial docket. Sea Coast Construction appealed this Order, and the South Carolina Supreme Court dismissed the appeal stating:

“The Pocisks assert the order granting Rule 60(b) relief is not immediately appealable. We agree.”

Id., 380 S.C. at 587, 671 S.E.2d at 100. The Court noted that an “order granting Rule 60(b) relief does not affect a substantial right” and accordingly is not immediately appealable. *Id.*, 380 S.C. at 588-89, 671 S.E.2d at 101 (numerous citations omitted). See also, *Pioneer Associates, Inc. v. Ticor Title Insurance Company*, 300 S.C. 346, 387 S.E.2d 711 (1989) (appeal dismissed because order granting Rule 60(b), SCRCF, motion to set aside a default judgment is not immediately appealable).

CONCLUSION

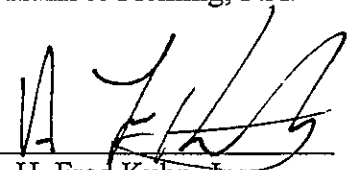
An order granting a Rule 60, SCRCF, motion to set aside a judgment is not immediately appealable. The net affect of Judge Jefferson’s Order in the instant case is to simply schedule the Appellant Saul’s Motion for Summary Judgment for a new hearing, the same effect as if she had simply continued the original hearing to begin with. Following Judge Jefferson’s Order, the Appellant Saul’s Motion for Summary Judgment remains pending and probably would have been heard by now but for this appeal. Judge Jefferson’s decision to, in effect, simply rehear Saul’s Motion for Summary Judgment has no effects on the rights of any party to this action. The Order under appeal is essentially a decision not to decide anything until a further hearing can be held.

It is accordingly respectfully requested that this appeal be dismissed on the ground that the subject Order is not an appealable order, and the case remanded to the Beaufort County Court of Common Pleas so Saul’s Motion for Summary Judgment may be heard on its merits.

Beaufort, South Carolina
November 30, 2021

Respectfully submitted,

Moss, Kuhn & Fleming, P.A.

By: 

H. Fred Kuhn, Jr.

SC Bar No.: 3576

1501 North Street (29902)

Post Office Drawer 507

Beaufort, South Carolina 29901-0507

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Email: fred@mossandkuhn.com

Attorneys for Respondent Eddie B. Lewis

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable 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, Defendants,

Of Which Saul, LLC is the Appellant and Wells Fargo National Association is a Respondent.

CERTIFICATE OF SERVICE

Undersigned certifies that the Motion to Dismiss Appeal to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Morgan S. Templeton, Esquire
Davis S. Nasrollahi, Esquire
John J. Dodds, IV, Esquire
Wall Templeton Haldrup, P.A.
Post Office Box 1200
Charleston, South Carolina 29402

Douglas Edward Leadbitter, Esquire
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 655
Columbia, South Carolina 29201

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on November 30, 2021.

MOSS & KUHN, P.A.

By: 
Sue Radford

EXHIBIT A
SUMMONS AND COMPLAINT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-_____
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	(Jury Trial Demanded)
Saul, LLC and Wells Fargo	)	
Bank, National Association,	)	
	)	
Defendant.	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at his office, MOSS, KUHN & FLEMING, P. A., P. O. Drawer 507, 1501 North Street, Beaufort, SC 29901-0507, within thirty (30) days from the date of service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default and the relief demanded in the attached Complaint.

MOSS, KUHN & FLEMING, P.A.

By: s/Cory H. Fleming
 Cory H. Fleming
 SC Bar #: 6999
 P. O. Box 507
 Beaufort, SC 29901-0507
 (843) 524-3373
 (843) 379-1322 Fax
cory@mossandkuhn.com
 ATTORNEYS FOR PLAINTIFF

Beaufort, South Carolina
 December 3, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-_____
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	
Saul, LLC, and Wells Fargo	)	(Jury Trial Demanded)
Bank, National Association	)	
Defendant.	)	

TO: THE DEFENDANTS ABOVE NAMED:

COME NOW, the Plaintiff, Eddie B. Lewis, Jr., complaining of the acts and/or omissions of the Defendants, Saul, LLC and Wells Fargo Bank, National Association, and allege as follows:

PARTIES AND JURISDICTION

1. That the Parties hereto, the subject matter hereof, and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.

2. The Plaintiff, Eddie B. Lewis, Jr., was at the time of the accident, and at all times material hereto, a citizen and resident of the County of Beaufort, State of South Carolina.

3. That, upon information and belief, the Defendant, Saul, LLC, was at the time of the accident which is the subject of this suit, a corporation duly organized and established pursuant to the laws of the State of South Carolina, and is duly authorized to conduct business in the State of South Carolina.

4. That, upon information and belief, the Defendant, Wells Fargo Bank, National Association (here after named as Wells Fargo), was at the time of the accident which is the subject of this suit, and at all times material hereto, a Delaware Corporation duly authorized to conduct business in the State of South Carolina.

5. That, upon information and belief, the Defendant, SAUL, LLC, was the owner of the property located at 401 Port Republic Street, Beaufort, South Carolina, 29902, at the time of the accident which is the subject of this suit.

6. That, upon information and belief, at the time of the accident which is the subject of this suit, The Defendant, Wells Fargo, rented and/or leased the property located at 401 Port Republic Street, Beaufort, South Carolina, for commercial purposes from the Defendant, SAUL, LLC.

7. That, upon information and belief, at all times mentioned herein, the Defendant, SAUL, LLC, as the owner of the premises located at 401 Port Republic Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

8. That, upon information and belief, at all times mentioned herein, the Defendant, Wells Fargo, as the commercial tenant of the premises located at 401 Port Republic Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

FOR A FIRST CAUSE OF ACTION

(Negligence and Recklessness)

9. That, upon information and belief, on May 23, 2016, the Plaintiff, Eddie R. Lewis, Jr., did enter the parking lot/premises of the Defendant, Wells Fargo and Saul, LLC, for the sole purpose of conducting business dealings with the Defendant, Wells Fargo, and that the Plaintiff, Eddie Lewis, Jr., was an "invitee" and/or a "business visitor" on the Defendant's premises.

10. That, upon information and belief, the Defendant, Wells Fargo and Saul, LLC, by reasons of its relationship with Eddie Lewis, Jr., owed him a duty to exercise reasonable and due care for his safety and is liable for any injury resulting from the breach of this duty; this duty includes inspecting the premises and discovering the presence of any dangerous natural or

artificial conditions and to exercise reasonable and due care in either warning the invitee of such dangers or in making the conditions safe for him.

11. That on May 23, 2016, the Plaintiff, Eddie Lewis, Jr., was a customer of the Defendant, Wells Fargo, in a normal and routine manner; that the Plaintiff, Eddie Lewis, Jr., upon exiting the bank was walking on the sidewalk towards his vehicle when without warning, stepped in a gap on the sidewalk which caused the Plaintiff, Eddie Lewis, Jr., to trip and that unexpected trip caused him to lose his balance causing him to fall to the concrete, striking his face, shoulder and knee. This unexpected fall caused the Plaintiff, Eddie Lewis, Jr., to lose many of his teeth, injury his left arm and shoulder, and injury to his right knee.

12. That the injuries and damages suffered by the Plaintiff, Eddie Lewis, Jr., were due to, caused by, and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness, wantonness, and/or heedlessness of the Defendants, Wells Fargo and SAUL, LLC, jointly and severally and/or by virtue of their respective lessor/lessee, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, and/or other relationships, in one, more, or all of the following particulars, to wit:

AS TO THE DEFENDANT, WELLS FARGO:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;
- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or

hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;

- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
- G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
- H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
- I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
- J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
- K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
- L. In all other ways being negligent.

AS TO THE DEFENDANT, SAULS LLC:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;

- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;
- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
- G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
- H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
- I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
- J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
- K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
- L. In all other ways being negligent.

13. That by reason of the acts and omissions of negligence, careless, recklessness, willfulness, wantonness, and heedlessness of the Defendants, Wells Fargo and SAUL, LLC, as set forth herein, and as a direct and proximate result thereof, the Plaintiff, Eddie Lewis, Jr., suffered severe and permanent physical, mental and emotional injuries and other damages in the following particular, to wit:

a. Upon walking on the sidewalk, the sudden and unexpected impact caused by the dangerous condition of the concrete, resulted in the Plaintiff, Eddie Lewis, Jr., sustaining serious and permanent injuries to his mouth, left arm, left shoulder, and right knee.

b. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has undergone expensive medical treatment, including but not limited to, painful surgery and physical therapy;

c. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered other injuries related to the compromised condition of his body due to the incident described herein, such injuries he would not have suffered but for the incident described herein:

d. As a result of his fall, the Plaintiff, Eddie Lewis, Jr., was forced to undergo uncomfortable, difficult and sometimes painful diagnostic tests and procedures;

e. As a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., suffers, has suffered, and likely will continue to suffer pain, physical injury, and severe discomfort in his whole body;

f. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered, and will most probably continue to suffer from emotional distress, anxiety, and mental anguish for the rest of his life.

g. As a result of his permanent injuries, the Plaintiff, Eddie Lewis, Jr., has suffered and experienced, and will most probably continue to suffer and experience, impairment of his enjoyment of living;

h. The ability of the Plaintiff, Eddie Lewis, Jr., to participate in recreational and/or other activities has been limited and impaired and will most probably be substantially limited and impaired in the future;

i. The Plaintiff, Eddie Lewis, Jr., has suffered, and will probably continue to suffer, permanent physical injuries, impairment, and pain as a result of his injuries; and

j. The Plaintiff, Eddie Lewis, Jr., has incurred substantial medical and hospital expenses and will likely incur substantial expenses for medical care and treatment in the future resulting directly from his injuries;

k. The Plaintiff, Eddie Lewis, Jr., has been injured and damaged in other ways, all to his substantial detriment.

14. As a result of said injuries, the Plaintiff has received, and will in the future continue to receive, medical and hospital care and treatment provided by and through the United States of America. The Plaintiff, for the sole use and benefit of the United States of America, under the provisions of 42 U.S.C. §§ 2651-2653 et seq. and 10 U.S.C. § 1095, and with its express consent, asserts a claim for the cost of said medical and hospital care and treatment and the value of future care.

FOR A SECOND CAUSE OF ACTION
(Premises Liability)

15. That the Plaintiff, Eddie Lewis, Jr., repeat, reallege, and incorporate herein as part of this Second Cause of Action against the Defendants, Wells Fargo and SAUL, LLC, Paragraphs One (1) through Fourteen (14) of the Plaintiff's Complaint and further alleges as follows:

16. That, the Plaintiff, Eddie Lewis, Jr., was an invitee and/or business visitor of the Well Fargo Bank, wholly and/or partially owned, managed, controlled, and/or operated by the Defendant, Wells Fargo, on May 23, 2016, and as a result, the presence of the Plaintiff, Eddie Lewis, Jr., in Wells Fargo benefited the Defendant, Wells Fargo.

17. That the Defendants, Wells Fargo and SAUL, LLC, owed duties to the Plaintiff, Eddie Lewis, Jr., as an invitee, including, but not limited to, the duty to warn the Plaintiff, Eddie Lewis, Jr., of latent and hidden dangers and a duty to exercise ordinary care to keep the premises in a reasonably safe condition; further, even if a dangerous condition on the premises is "open or obvious" the Defendants, Wells Fargo and SAUL, LLC, had a duty to warn the Plaintiff, Eddie Lewis, Jr., or take other reasonable steps to protect him if they had reason to anticipate that an invitee might nevertheless encounter the condition, or that his attention may be distracted, so that he will not discover what is obvious or fail to protect himself against it.

18. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had actual or constructive knowledge of the dangerous condition.

19. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had reason to anticipate that an invitee might unexpectedly trip on the sidewalk curb while walking in or out of the business.

20. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, failed to remedy the dangerous condition and let the dangerous condition remain despite the reasonably foreseeable risk of the dangerous sidewalk for the Plaintiff, Eddie Lewis, Jr., to trip and/or fall on the sidewalk when exiting or entering the business.

21. That, as a result of the dangerous and defective condition created by the Defendants, Wells Fargo and SAUL, LLC, and their failure to correct, warn about, and/or remedy the danger, the Plaintiff, Eddie Lewis, Jr., an invitee on the premises, unexpectedly tripped on the sidewalk while exiting the premises causing injuries while falling onto the ground; and that the Plaintiff,

Eddie Lewis, Jr., suffered severe and permanent injuries as outlined in Paragraph 10 through Paragraph 14 of this Complaint.

WHEREFORE, the Plaintiff, Eddie Lewis, Jr., demands judgment against the Defendants, Wells Fargo and SAUL, LLC, in such amounts as may be awarded by the jury, both actual, compensative and punitive damages, along with the costs, expenses and disbursements of this action.

MOSS, KUHN & FLEMING, P.A.

By: s/ Cory H. Fleming
Cory H. Fleming
SC Bar #: 6999
P. O. Drawer 507
Beaufort, SC 29901-0507
(843) 524-3373
(843) 379-1322 Fax
cory@mossandkuhn.com
ATTORNEY FOR PLAINTIFF

Beaufort, South Carolina
December 3, 2018

EXHIBIT B
AMENDED SUMMONS AND COMPLAINT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-02378
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED SUMMONS
	)	(Jury Trial Demanded)
Saul, LLC and Wells Fargo	)	
Bank, National Association,	)	
	)	
Defendant.	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at his office, MOSS, KUHN & FLEMING, P. A., P. O. Drawer 507, 1501 North Street, Beaufort, SC 29901-0507, within thirty (30) days from the date of service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default and the relief demanded in the attached Complaint.

MOSS, KUHN & FLEMING, P.A.

By: s/Cory H. Fleming
 Cory H. Fleming
 SC Bar #: 6999
 P. O. Box 507
 Beaufort, SC 29901-0507
 (843) 524-3373
 (843) 379-1322 Fax
cory@mossandkuhn.com
 ATTORNEYS FOR PLAINTIFF

Beaufort, South Carolina
 January 7, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-02378
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	
Saul, LLC, and Wells Fargo	)	(Jury Trial Demanded)
Bank, National Association	)	
Defendant.	)	

TO: THE DEFENDANTS ABOVE NAMED:

COME NOW, the Plaintiff, Eddie B. Lewis, Jr., complaining of the acts and/or omissions of the Defendants, Saul, LLC and Wells Fargo Bank, National Association, and allege as follows:

PARTIES AND JURISDICTION

1. That the Parties hereto, the subject matter hereof, and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.

2. The Plaintiff, Eddie B. Lewis, Jr., was at the time of the accident, and at all times material hereto, a citizen and resident of the County of Beaufort, State of South Carolina.

3. That, upon information and belief, the Defendant, Saul, LLC, was at the time of the accident which is the subject of this suit, a corporation duly organized and established pursuant to the laws of the State of South Carolina, and is duly authorized to conduct business in the State of South Carolina.

4. That, upon information and belief, the Defendant, Wells Fargo Bank, National Association (here after named as Wells Fargo), was at the time of the accident which is the subject of this suit, and at all times material hereto, a Delaware Corporation duly authorized to conduct business in the State of South Carolina.

5. That, upon information and belief, the Defendant, SAUL, LLC, was the owner of the property located at 1011 Bay Street, Beaufort, South Carolina, 29902, at the time of the accident which is the subject of this suit.

6. That, upon information and belief, at the time of the accident which is the subject of this suit, The Defendant, Wells Fargo, rented and/or leased the property located at 1011 Bay Street, Beaufort, South Carolina, for commercial purposes from the Defendant, SAUL, LLC.

7. That, upon information and belief, at all times mentioned herein, the Defendant, SAUL, LLC, as the owner of the premises located at 1011 Bay Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

8. That, upon information and belief, at all times mentioned herein, the Defendant, Wells Fargo, as the commercial tenant of the premises located at 1011 Bay Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

FOR A FIRST CAUSE OF ACTION

(Negligence and Recklessness)

9. That, upon information and belief, on May 23, 2016, the Plaintiff, Eddie R. Lewis, Jr., did enter the parking lot/premises of the Defendant, Wells Fargo and Saul, LLC, for the sole purpose of conducting business dealings with the Defendant, Wells Fargo, and that the Plaintiff, Eddie Lewis, Jr., was an "invitee" and/or a "business visitor" on the Defendant's premises.

10. That, upon information and belief, the Defendant, Wells Fargo and Saul, LLC, by reasons of its relationship with Eddie Lewis, Jr., owed him a duty to exercise reasonable and due care for his safety and is liable for any injury resulting from the breach of this duty; this duty includes inspecting the premises and discovering the presence of any dangerous natural or

artificial conditions and to exercise reasonable and due care in either warning the invitee of such dangers or in making the conditions safe for him.

11. That on May 23, 2016, the Plaintiff, Eddie Lewis, Jr., was a customer of the Defendant, Wells Fargo, in a normal and routine manner; that the Plaintiff, Eddie Lewis, Jr., upon exiting the bank was walking on the sidewalk towards his vehicle when without warning, stepped in a gap on the sidewalk which caused the Plaintiff, Eddie Lewis, Jr., to trip and that unexpected trip caused him to lose his balance causing him to fall to the concrete, striking his face, shoulder and knee. This unexpected fall caused the Plaintiff, Eddie Lewis, Jr., to lose many of his teeth, injury his left arm and shoulder, and injury to his right knee.

12. That the injuries and damages suffered by the Plaintiff, Eddie Lewis, Jr., were due to, caused by, and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness, wantonness, and/or heedlessness of the Defendants, Wells Fargo and SAUL, LLC, jointly and severally and/or by virtue of their respective lessor/lessee, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, and/or other relationships, in one, more, or all of the following particulars, to wit:

AS TO THE DEFENDANT, WELLS FARGO:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;
- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or

hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;

- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
- G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
- H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
- I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
- J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
- K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
- L. In all other ways being negligent.

AS TO THE DEFENDANT, SAULS LLC:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;

- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;
- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
- G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
- H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
- I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
- J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
- K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
- L. In all other ways being negligent.

13. That by reason of the acts and omissions of negligence, careless, recklessness, willfulness, wantonness, and heedlessness of the Defendants, Wells Fargo and SAUL, LLC, as set forth herein, and as a direct and proximate result thereof, the Plaintiff, Eddie Lewis, Jr., suffered severe and permanent physical, mental and emotional injuries and other damages in the following particular, to wit:

a. Upon walking on the sidewalk, the sudden and unexpected impact caused by the dangerous condition of the concrete, resulted in the Plaintiff, Eddie Lewis, Jr., sustaining serious and permanent injuries to his mouth, left arm, left shoulder, and right knee.

b. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has undergone expensive medical treatment, including but not limited to, painful surgery and physical therapy;

c. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered other injuries related to the compromised condition of his body due to the incident described herein, such injuries he would not have suffered but for the incident described herein:

d. As a result of his fall, the Plaintiff, Eddie Lewis, Jr., was forced to undergo uncomfortable, difficult and sometimes painful diagnostic tests and procedures;

e. As a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., suffers, has suffered, and likely will continue to suffer pain, physical injury, and severe discomfort in his whole body;

f. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered, and will most probably continue to suffer from emotional distress, anxiety, and mental anguish for the rest of his life.

g. As a result of his permanent injuries, the Plaintiff, Eddie Lewis, Jr., has suffered and experienced, and will most probably continue to suffer and experience, impairment of his enjoyment of living;

h. The ability of the Plaintiff, Eddie Lewis, Jr., to participate in recreational and/or other activities has been limited and impaired and will most probably be substantially limited and impaired in the future;

i. The Plaintiff, Eddie Lewis, Jr., has suffered, and will probably continue to suffer, permanent physical injuries, impairment, and pain as a result of his injuries; and

j. The Plaintiff, Eddie Lewis, Jr., has incurred substantial medical and hospital expenses and will likely incur substantial expenses for medical care and treatment in the future resulting directly from his injuries;

k. The Plaintiff, Eddie Lewis, Jr., has been injured and damaged in other ways, all to his substantial detriment.

14. As a result of said injuries, the Plaintiff has received, and will in the future continue to receive, medical and hospital care and treatment provided by and through the United States of America. The Plaintiff, for the sole use and benefit of the United States of America, under the provisions of 42 U.S.C. §§ 2651-2653 et seq. and 10 U.S.C. § 1095, and with its express consent, asserts a claim for the cost of said medical and hospital care and treatment and the value of future care.

FOR A SECOND CAUSE OF ACTION
(Premises Liability)

15. That the Plaintiff, Eddie Lewis, Jr., repeat, reallege, and incorporate herein as part of this Second Cause of Action against the Defendants, Wells Fargo and SAUL, LLC, Paragraphs One (1) through Fourteen (14) of the Plaintiff's Complaint and further alleges as follows:

16. That, the Plaintiff, Eddie Lewis, Jr., was an invitee and/or business visitor of the Well Fargo Bank, wholly and/or partially owned, managed, controlled, and/or operated by the Defendant, Wells Fargo, on May 23, 2016, and as a result, the presence of the Plaintiff, Eddie Lewis, Jr., in Wells Fargo benefited the Defendant, Wells Fargo.

17. That the Defendants, Wells Fargo and SAUL, LLC, owed duties to the Plaintiff, Eddie Lewis, Jr., as an invitee, including, but not limited to, the duty to warn the Plaintiff, Eddie Lewis, Jr., of latent and hidden dangers and a duty to exercise ordinary care to keep the premises in a reasonably safe condition; further, even if a dangerous condition on the premises is "open or obvious" the Defendants, Wells Fargo and SAUL, LLC, had a duty to warn the Plaintiff, Eddie Lewis, Jr., or take other reasonable steps to protect him if they had reason to anticipate that an invitee might nevertheless encounter the condition, or that his attention may be distracted, so that he will not discover what is obvious or fail to protect himself against it.

18. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had actual or constructive knowledge of the dangerous condition.

19. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had reason to anticipate that an invitee might unexpectedly trip on the sidewalk curb while walking in or out of the business.

20. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, failed to remedy the dangerous condition and let the dangerous condition remain despite the reasonably foreseeable risk of the dangerous sidewalk for the Plaintiff, Eddie Lewis, Jr., to trip and/or fall on the sidewalk when exiting or entering the business.

21. That, as a result of the dangerous and defective condition created by the Defendants, Wells Fargo and SAUL, LLC, and their failure to correct, warn about, and/or remedy the danger, the Plaintiff, Eddie Lewis, Jr., an invitee on the premises, unexpectedly tripped on the sidewalk while exiting the premises causing injuries while falling onto the ground; and that the Plaintiff,

Eddie Lewis, Jr., suffered severe and permanent injuries as outlined in Paragraph 10 through Paragraph 14 of this Complaint.

WHEREFORE, the Plaintiff, Eddie Lewis, Jr., demands judgment against the Defendants, Wells Fargo and SAUL, LLC, in such amounts as may be awarded by the jury, both actual, compensative and punitive damages, along with the costs, expenses and disbursements of this action.

MOSS, KUHN & FLEMING, P.A.

By: s/ Cory H. Fleming
Cory H. Fleming
SC Bar #: 6999
P. O. Drawer 507
Beaufort, SC 29901-0507
(843) 524-3373
(843) 379-1322 Fax
cory@mossandkuhn.com
ATTORNEY FOR PLAINTIFF

Beaufort, South Carolina
January 7, 2019

EXHIBIT C
ANSWER OF APPELLANT SAUL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.	)	
	)	
Plaintiff,	)	
	)	ANSWER TO AMENDED
versus	)	COMPLAINT
	)	
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION	)	
	)	
Defendants.	)	
	)	

TO: CORY H. FLEMING, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant Saul, LLC (hereinafter collectively referred to as "Saul"), answers the Plaintiff's Amended Complaint of Plaintiff, alleges and says:

1. Saul denies each and every allegation of the Amended Complaint not hereinafter specifically admitted.
2. As to the allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint, Saul contends the same contains allegations that constitute legal conclusions that Saul is required neither to admit or deny. To the extent a response is required, Saul denies the same and demands strict proof thereof.
3. As to the allegations contained in Paragraph 2 of the Plaintiff's Amended Complaint, Saul lacks knowledge and information sufficient to form a belief and, therefore, denies the same and demands strict proof thereof
4. As to the allegations contained in Paragraphs 3 and 4 of the Plaintiff's Amended Complaint, Saul admits the same.
5. As to the allegations contained in Paragraph 5 of the Plaintiff's Amended Complaint, Saul

admits so much of said paragraph that it owned the building as of November 22, 2013. The remaining allegations contained in Paragraph 5 are denied and strict proof thereof demanded.

6. As to the allegations contained in Paragraph 6 of the Plaintiff's Amended Complaint, Saul admits the same.

7. As to the allegations contained in Paragraph 7 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

8. As to the allegations contained in Paragraph 8 of the Plaintiff's Amended Complaint, Saul admits so much of said paragraph that Wells Fargo is a commercial tenant of the property located at 1011 Bay Street, Beaufort, South Carolina. The remaining allegations contained in Paragraph 8 contains allegations that constitute legal conclusions that Saul is required neither to admit or deny. To the extent a response is required, Saul denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(NEGLIGENCE AND RECKLESSNESS)

9. As to the allegations contained in Paragraph 9 of the Plaintiff's Amended Complaint, Saul lacks knowledge and information sufficient to form a belief and, therefore, denies the same and demands strict proof thereof

10. As to the allegations contained in Paragraph 10 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

11. As to the allegations contained in Paragraph 11 the Plaintiff's Amended Complaint, Saul lacks knowledge and information sufficient to form a belief and, therefore, denies the same and demands strict proof thereof

12. As to the allegations contained in Paragraphs 12 and 13, including all subparts, of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

13. As to the allegations contained in Paragraph 14 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(PREMISES LIABILITY)

14. As to the allegations contained in Paragraph 15 of the Plaintiff's Amended Complaint, Saul realleges and reavers Paragraphs 1 through 13 above as set forth herein.

15. As to the allegations contained in Paragraphs 16, 17, 18, 19, 20, and 21 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

16. The final paragraph, which is not numbered, constitutes a prayer for relief which requires no response from Saul. To the extent a response is required, Saul denies each allegation contained therein and demands strict proof thereof.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIRST AFFIRMATIVE DEFENSE THERETO
(FAILURE TO STATE A CLAIM)

17. Saul realleges and reavers Paragraphs 1 through 16 above as if set forth herein.

18. Plaintiff's claims fail to state facts sufficient to constitute causes of action against Saul pursuant to Rule 12(b)(6), *SCRCP*, and Plaintiff's claims should be dismissed.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A SECOND AFFIRMATIVE DEFENSE HERETO
(FAILURE TO MITIGATE)

19. Saul realleges and reavers Paragraphs 1 through 18 above as if set forth herein.

20. Plaintiff may have failed to mitigate his damages.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A THIRD AFFIRMATIVE DEFENSE HERETO
(STATUTE OF REPOSE)

21. Saul realleges and reavers Paragraphs 1 through 20 above as if set forth herein.
22. That all claims asserted against Saul may be barred by the applicable statute of repose.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FOURTH AFFIRMATIVE DEFENSE THERETO
(COMPARATIVE NEGLIGENCE)

23. Saul realleges and reavers Paragraphs 1 through 22 above as if set forth herein.
24. Any damage suffered by Plaintiff is the direct and proximate result of his comparative and contributory negligence and Plaintiff's recovery should be barred or, alternatively, reduced proportionately to his comparative negligence, if any.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIFTH AFFIRMATIVE DEFENSE THERETO
(UNCONSTITUTIONAL PUNITIVE DAMAGES)

25. Saul realleges and reavers Paragraphs 1 through 24 above as if set forth herein.
26. Plaintiff's claim for punitive damages, and any award thereof, would violate the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution and the due process clause of Article I, Section 3 of the South Carolina Constitution.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIFTH AFFIRMATIVE DEFENSE THERETO
(OPEN AND OBVIOUS)

27. Saul realleges and reavers Paragraphs 1 through 26 above as if set forth herein.
28. Plaintiff either knew or should have known of any alleged deficiencies in the sidewalk and resided at the same with such knowledge. As a result, Plaintiff's recovery should be barred.

RESERVATION AND NON-WAIVER

29. Saul reserves and does not waive any additional or further defenses as may be revealed by

additional information that may be acquired in discovery or otherwise.

WHEREFORE, Defendant Saul, LLC, having fully answered the Plaintiff's Amended Complaint herein, prays that the same be dismissed with costs and for such other and further relief as the Court may deem just and proper.

Dated this 17th day of January, 2019.

WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton
Morgan S. Templeton (SC Bar #15456)
145 King Street, Suite. 300
Post Office Box 1200
Charleston, South Carolina 29402
Telephone: 843-329-9500
Attorneys for Defendant Saul, LLC

EXHIBIT D
ANSWER OF RESPONDENT WELLS FARGO

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	IN THE 14 th JUDICIAL CIRCUIT
	)	
Eddie B. Lewis, Jr.,	)	Civil Action No. 2018-CP-07-2378
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER
	)	(Jury Trial Demanded)
Saul, LLC, and Wells Fargo Bank, National	)	
Association	)	
	)	
Defendants.	)	
	)	
	)	

Defendant Wells Fargo Bank, National Association ("Defendant"), answers the Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted against Defendants and, should therefore be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure* and other applicable state laws.

FOR A THIRD DEFENSE

3. Regarding the allegations of Paragraph 1, Defendant does not contest jurisdiction at this time.
4. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 2 of the Complaint.

5. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 3 of the Complaint.

6. Defendant admits the allegations of Paragraph 4 of the Complaint.

7. Upon information and belief, Defendant admits the allegations of Paragraph 5 of the Complaint.

8. Upon information and belief, Defendant admits the allegations of Paragraph 6 of the Complaint.

9. Upon information and belief, Defendant admits the allegations of Paragraph 7 of the Complaint.

10. Defendant denies the allegations of Paragraph 8 of the Complaint.

11. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 9 of the Complaint.

12. Defendant asserts the allegations of Paragraph 10 of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 10.

13. Defendant denies the allegations of Paragraph 11 of the Complaint.

14. Defendant asserts the allegations of Paragraph 12 (and its subparts A-L) of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 12 and its subparts.

15. Defendant asserts the allegations of Paragraph 13 (and its subparts a-k) of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 13 and its subparts.

16. Defendant denies the allegations of Paragraph 14 of the Complaint.

17. Defendant asserts that they are not required to respond to Paragraph 15 of the Complaint, but, to the extent that they are, Defendant reasserts and re-alleges each and every other allegation and Paragraph of its pleadings as if repeated herein verbatim.

18. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 16 of the Complaint.

19. Defendant asserts the allegations of Paragraph 17 of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 17.

20. Defendant denies the allegations of Paragraph 18 of the Complaint.

21. Defendant denies the allegations of Paragraph 19 of the Complaint.

22. Defendant denies the allegations of Paragraph 20 of the Complaint.

23. Defendant denies the allegations of Paragraph 21 of the Complaint.

24. Defendant denies Plaintiff is entitled to the relief requested in the Prayer of the Complaint.

FOR A FOURTH DEFENSE

25. Defendant alleges any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever. Defendants reserve the right to amend the factual basis for her affirmative defenses and asserts discovery has not yet begun.

FOR A FIFTH DEFENSE

26. Defendant alleges the condition which Plaintiff alleges caused his injury was either open and obvious to Plaintiff at the time of his injury or was otherwise known to Plaintiff at the time of his injury. Furthermore, any danger created by said condition, which Defendant expressly

denies, was not of a nature that should have been anticipated by Defendant. Therefore, Plaintiff is barred from recovery in this action against Defendant. Defendant reserves the right to amend the factual basis for her affirmative defenses and asserts discovery has not yet begun.

FOR A SIXTH DEFENSE

27. Defendant would show the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

13. Defendant alleges the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- a. Provided with sufficiently clear standards for determining the appropriateness of a punitive damage award or the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- c. Instructed that awarding punitive damages on individually discriminatory characteristics of Defendant is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of Defendant upon which an award of punitive damages may be based; and
- e. Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness;

would violate Defendant's equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed for the costs of defending this action and for such other relief as the Court and jury deem just and proper.

VERNIS & BOWLING OF COLUMBIA, LLC

/s/Joseph P. Bias
Joseph P. Bias, Bar No. 80367
1401 Main Street, Suite 655
Columbia, South Carolina 29201
(803) 234-5416
jbias@scarolina-law.com

ATTORNEY FOR DEFENDANT

February 11, 2019

EXHIBIT E
APPELLANT'S MOTION FOR
SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.	)	
	)	
Plaintiff,	)	
	)	Defendant Saul, LLC's Motion for
	)	Summary Judgment
versus	)	
	)	
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION	)	
	)	
Defendants.	)	

TO: COREY FLEMING, ATTORNEY FOR PLAINTIFF

Defendant, Saul, LLC ("Saul"), by and through its undersigned attorneys, will move before the presiding judge of the Court of Common Pleas for the County of Beaufort County, South Carolina, ten (10) days from the date of this motion or as soon thereafter as counsel may be heard for an order granting Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Saul submits that it had gave all control and duties of the subject property to Defendant Wells Fargo, and as a matter of law, owed no duty to the Plaintiff and summary judgment should be granted as to this Defendant.

ALLEGED FACTS

On or about May 23, 2016, Plaintiff, Eddie R. Lewis, entered the parking lot/premises located at 401 Port Republic Street, Beaufort, S.C. as a customer to Defendant Wells Fargo (hereinafter "Wells Fargo"). Am. Compl. ¶ 9. While exiting the parking lot, the Plaintiff allegedly tripped and fell causing him injuries. Am. Compl. ¶ 11. Saul owns the premises located at 401 Port Republic Street, Beaufort, S.C. Am. Compl. ¶ 7. Said property is and was leased by Saul to Wells

Fargo, who exercises complete control and responsibility of the property pursuant to the terms of the Lease. See gen. Exhibit A. Plaintiff brings this action against Saul on the theory of negligence and premises liability. Am. Compl. ¶¶ 9-21. Plaintiff 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.” Am. Compl. ¶ 12, subsection A-L.

For the reasons set forth below, Saul is entitled to summary judgment because, as a matter of law, Saul gave control and responsibilities to Wells Fargo and therefore owes no duty to Plaintiff.

ARGUMENT

1. **Saul gave complete control of the subject property to Wells Fargo, therefore, Saul owes no duty to the Plaintiff and cannot be found negligent as a matter of law.**

A plaintiff must prove three elements to recover on a claim for negligence: 1) a duty of care owed by the defendant to the plaintiff; 2) a breach of that duty by a negligent act or omission; and 3) damage proximately resulting from the breach. Chakrabati v. City of Orangeburg, 403 S.C. 308, 743 S.E.2d 109 (Ct. App. 2013). “If any of these elements is absent a negligence claim is not stated.” Id. citing Summers v. Harrison Constr., 298 S.C. 451, 455, 381 S.E.2d 493, 495 (Ct. App. 1989). A legal duty is that which the law requires to be done or forbore with respect to a particular individual or the public at large. South Carolina Electric & Gas Co. v. Utilities Construction Co., 244 S.C. 79, 135 S.E.2d 613 (1964). Without a violation of such a legal duty, there is no negligence. Id. An owner of land possesses a general duty to warn others of latent hazardous conditions on his land. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). This duty arises from the owner’s superior knowledge of conditions on the premises within his control.

See Dunbar v. Charleston & W.C. Ry. Co., 211 S.C.209, 44 S.E.2d 314 (1947). However, when land is occupied by a lessee the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. Id. After the premises is surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee. Id. citing W. Keeton, D. Dobbs, R. Keeton & D. Owen, *Prosser and Keeton on the Law of Torts* 435 (5th ed. 1984).

Pursuant to Section 1.2 of the Lease, Saul, LLC (interchangeably “Landlord”) leased the subject property to Wells Fargo/Wachovia (interchangeably “Tenant”) with the right to use on an *exclusive basis*, the Tenant-Dedicated Parking Areas and on a non-exclusive basis, the non-Dedicated Parking Areas and all the other Common Areas. See Exhibit A: pg. 23- 24 (emphasis added). Attached as an exhibit to the Lease is the Site Plan, which defines the “Tenant Dedicated Parking Areas” as spaces designated “W.” See Exhibit B.

Additionally, attached as Exhibit C, is an email sent by Rich Belthoff, counsel for Wells Fargo, which specifically asserts that “Wells Fargo has been granted in the Lease the exclusive right to use the Tenant Dedicated Parking Areas on a 24/7 basis.” See Exhibit C. Further, the email states that “[t]hese parking areas are not common area under the Lease.” Id.

Further, Section 5.6(s) of the Lease provides that Wells Fargo, at its expense, shall keep and maintain, take good care of, and make all needed repairs to the Leased Premises... and (ii) any Tenant Property located outside of the Leased Premises (any such maintenance and/or repairs for which Tenant is responsible being herein collectively called Tenant Repairs.)” See Exhibit A. pg. 72. Moreover, Section 5.6(e) of the Lease states that, “[i]n any such event, Tenant shall notify

Landlord of the need for any such Tenant Repair and its request that Landlord perform the same, and Landlord shall endeavor to respond timely to each such request.” Id. at pg. 73.

Finally, Section 14.1 of the Lease states that: “[a]ny notice or other communication required or permitted to be given under this Lease (each, a “notice”) must be in writing and shall be sent to all Notice Parties...” Id. The Lease provides under Section 5.5(a), that “Landlord shall keep and maintain, and make all needed repairs to, the Base Building and the Common Areas....” Id. However, the Lease fails to define maintenance and repairs.¹

Further, there has not been any documents presented by Wells Fargo that states that they ever notified Saul about any hazardous conditions in the Tenant Controlled Parking Area. The Lease stipulated that Wells Fargo shall notify Saul of any need of repair, in writing. Rather, as noted in the attached Affidavit of Esther Shaver Harnett, Saul was never given any Notice, as defined by the Lease, for any needs to make any maintenance or repairs to the exclusive Wells Fargo parking area prior to the alleged incident. See Exhibit D. Saul gave all rights to the subject property to Wells Fargo pursuant to the terms of the Lease. Wells Fargo had full control over the Tenant Controlled Parking Area. Wells Fargo had a duty to exercise reasonable care in maintaining the exclusive Tenant Controlled Parking Area, and to let Saul know in writing any needs for repairs. Pursuant to the Affidavit of Esther Shaver Harnett, Saul was never notified of any needs for repairs in the Tenant Controlled Parking Area. See Exhibit D.

Pursuant to the lease, Wells Fargo had complete control of the property. See Exhibit A (Lease) and Exhibit C (Email from Wells Fargo’s counsel). As such, there is no duty for Saul to seek out and determine whether any alleged defects or hazards existed in the parking lot which is

¹ An analysis on this issue will be provided in the following section.

not in Saul's control. See Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992) (establishing that in the absence of an agreement to the contrary, after a premises is surrendered to a lessee in good condition, the lessor typically is not responsible for hazardous conditions.) Wells Fargo exercised complete and exclusive control of the parking area where the alleged incident occurred, and therefore, Saul cannot be found liable to the Plaintiff as a matter of law.

2. **Saul never assumed a voluntary duty to inspect the property for latent defects, therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.**

At common law, where there is no duty to act, but an act is voluntarily undertaken, the actor assumes a duty to use due care. Sherer v. James, 290 S.C. 4040, 351 S.E.2d 148 (1986). In Byerly v. Connor, the Appellant argued that the lessor owed a duty to discover and warn of latent hazardous conditions because it undertook to inspect the property at issue. 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992). An agent of the Lessor testified that he conducted yearly inspections of the property solely for the purpose of ensuring that the property conformed to structural requirements of permits issued. Id. The South Carolina Supreme Court determined that the Lessor undertook a limited duty to use due care to discover structural nonconformity with permits, which did not include a duty to inspect for a latent hazardous condition. Id. "Summary Judgment can be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." Id. citing Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976). Courts will interpret contracts in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning. See M and M Corp. of S.C. v. Auto-Owners Ins. Co., 390 S.C. 255, 701 S.E.2d 33, (2010). "Courts must enforce, not write, contracts... and their language must be given its plain, ordinary [,] and popular

meaning.” Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977).

Here, Saul leased the property to Wells Fargo "as-is." See Exhibit A. However, pursuant to the lease Saul had an obligation to give maintenance and service to the property. Id. However, the lease fails to address whether Saul had a duty to *inspect*. Saul agrees it has a duty to maintain the property pursuant to the terms of the Lease – *when asked to perform repairs*. Here, there is nothing that shows that Saul was asked by Wells Fargo to correct any condition in the parking lot – and certainly not this condition. The work orders submitted by Wells Fargo establish that no request for work on this area was requested. Additionally, Wells Fargo has issued letters to Saul indicating they “control” the parking lot. See Exhibit C. While this email is after the alleged fall, the Affidavit of Esther Shaver Harnett establishes that Saul exercised no control over the use of the property. See Exhibit D.

As established above, Saul had given complete and exclusive control over the subject property where the alleged incident occurred to Wells Fargo. Saul did not assume a voluntary duty, as shown by the Attached Affidavit of Esther Shaver Harnett. See Exhibit D. Saul was not asked to perform any maintenance or services on the area where the alleged incident occurred. As such, Saul never assumed a voluntary duty to inspect the property for latent defects, therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.

CONCLUSION

Saul released the complete and exclusive control of the subject property to Wells Fargo, pursuant to the terms of the Lease and the email from Wells Fargo’s counsel. Since Saul gave the control of the subject property to Wells Fargo, Saul maintained no duties or obligations as a matter of law to Plaintiff. Saul never assumed a voluntary duty to inspect the property for latent defects,

therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.

Therefore, all claims made by Plaintiff against Saul, LLC should be dismissed as a matter of law.

Dated this 20th day of January, 2020

WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton

Morgan S. Templeton (SC Bar #15456)

David A. Nasrollahi (SC Bar #103242)

Post Office Box 1200

Charleston, South Carolina 29402

843-329-9500

Attorneys for Defendants Saul, LLC

EXHIBIT F
ORDER GRANTING
MOTION FOR SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	ORDER GRANTING
	)	DEFENDANT SAUL, LLC'S
vs.	)	MOTION FOR SUMMARY
	)	JUDGMENT
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION,	)	
	)	
Defendants.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Cory Fleming, Esq.
Defendant Saul, LLC's	
Attorney:	John Dodds, Jr., Esq.
Date of Hearing:	March 17, 2020
Court Reporter:	Karen Andersen

This matter came before the Court on March 17, 2020 for a hearing on Defendant Saul, LLC's ("Saul") motion for summary judgment as to all claims asserted by Plaintiff Eddie B. Lewis, Jr. ("Plaintiff"), filed January 20, 2020. After careful consideration of the record, the Court makes the following findings of fact and conclusions of law and Grants Saul's Motion for Summary Judgment.¹

FINDINGS OF FACT

Saul is the owner of certain real property and improvements located at 1011 Bay Street, Beaufort, South Carolina (the "subject property"). At all times relevant hereto, Defendant Wells Fargo National Association ("Wells Fargo") leased the subject property from Saul pursuant to a written lease agreement (the "lease"). The lease term is September 22, 2004 to September 30, 2024. Lease at § 1.1(a).

¹ Counsel for the Plaintiff was provided with a copy of the proposed Order and had no objection to the relief sought or the verbiage contained herein.

Pursuant to the terms of the lease, Saul “shall keep and maintain, and make all needed repairs to, the . . . Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings” Id. at § 5.5(a). With respect to Wells Fargo’s repair and maintenance obligations, the lease states:

Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises

Id. at § 5.6(a).

The lease also provides that Wells Fargo shall have its own parking area, known under the lease as the “Tenant Dedicated Parking Area.” Section 1.2 of the lease states that Wells Fargo shall be entitled to use, “on an exclusive basis,” the Tenant Dedicated Parking Area. Id. No other person or entity besides Wells Fargo and its customers is permitted to use the Tenant Dedicated Parking Area. Id.

During the lease term, Wells Fargo exercised control over the Tenant Dedicated Parking Area, hiring a property management company to inspect the area and oversee any necessary maintenance and repairs. Saul was never notified by Wells Fargo of any need for repairs and maintenance to the Tenant Dedicated Parking Area, and Wells Fargo completed any maintenance and repairs without permission or consent from Saul. See Aff. of Harnett at ¶ 7. Saul never undertook any maintenance or repairs to the Tenant Dedicated Parking Area during the lease term. Id. at ¶ 8.

On or about May 23, 2016, Plaintiff was a patron at the Wells Fargo bank at the subject property. Amend. Compl. at ¶ 9. While exiting the bank and walking through the Tenant Dedicated Parking Area, Plaintiff tripped and fell, sustaining various personal injuries (the “incident”). Id. at

¶ 11. As a result of the incident, Plaintiff filed the instant lawsuit against Saul and Wells Fargo sounding in traditional common law premises liability. Specifically, as it relates to Saul, Plaintiff alleges that Saul had a duty “to warn invitees 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.” Amend. Compl. at ¶ 12.

At the hearing, counsel for the Plaintiff stated that the Plaintiff does not disagree with the above facts, and does not disagree with Saul’s interpretation of the lease agreement.

CONCLUSIONS OF LAW

I. Summary Judgment Standard

“Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law.” Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRCF. “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, “the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party.” Id.

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law... Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008).

II. Premises Liability

In a negligence action, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligence act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. See, e.g., Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231, 237 (2002). "An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." Platt v. CSX Transp., Inc., 388 S.C. 441, 697 S.E.2d 575, 577 (2010). "Without a duty, there is no actionable negligence." Id. "The existence of a duty owed is a question of law for the courts." Doe v. Greenville Cnty. Sch. Dist., 375 S.C. 63, 651 S.E.2d 305, 309 (2007).

Premises liability is a theory of negligence that establishes the duty owed to someone injured on a landowner's property as a result of conditions or activities on the land. Singleton v. Sherer, 377 S.C. 185, 659 S.E.2d 196, 204 (Ct. App. 2008). Under South Carolina premises liability law, an owner or occupier of property is the person having control, rather than ownership, of the premises. Dunbar v. Charleston & W. Carolina Ry. Co., 211 S.C. 209, 44 S.E.2d 314, 317 (1947) ("As a general rule, liability for injuries caused by dangerous instrumentalities terminates with cessation of control thereover, and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question."). "One who controls the use of the property has a duty of care not to harm others by its use." Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813, 815 (1997). "Conversely, one who has no control owes no duty." Id.

When land is occupied by a lessee pursuant to a lease, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). "In the absence of an agreement to the contrary, the lessor surrenders

possession and control of the land to the lessee” and “typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee.” *Id.* (citing W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *Prosser and Keeton on the Law of Torts* § 434 (5th ed. 1984)).

Pursuant to the terms of the lease between Saul and Wells Fargo, Saul relinquished possession and control of the Tenant Dedicated Parking Area to Wells Fargo for the duration of the lease term. Further, the Tenant Dedicated Parking Area is not considered a “common area” under the terms of the lease, and, therefore, Saul is under no affirmative obligation to effectuate maintenance and repairs to the Tenant Dedicated Parking Area.

During Wells Fargo’s tenancy at the subject property, Wells Fargo exercised exclusive control over the Tenant Dedicated Parking Area, including performing various items of maintenance and repair thereto without involvement of Saul. There is no evidence before this Court that Saul was notified by Wells Fargo of any needed maintenance or repairs to the Tenant Dedicated Parking Area, and Saul never voluntarily undertook a duty to inspect for hazardous conditions and make repairs for same. Accordingly, Saul cannot be held liable under South Carolina’s premises liability laws for property over which Saul had no control.

Accordingly, after careful consideration of the record, the Court finds that no genuine issue of material fact exists as to the question of Saul’s liability. By the terms of the parties’ lease agreement, Saul had no duty to maintain or inspect the Tenant Dedicated Parking Area, and therefore cannot be liable for the Plaintiff’s injuries. Plaintiff does not contest the facts as stated supra or the legal interpretation of the parties’ lease agreement. It appearing that further inquiry into the facts of the case is not necessary clarify the application of the law, and that there is no dispute as to evidentiary facts or as to the conclusions or inferences to be drawn from them, Saul’s Motion for Summary Judgment is heard and respectfully Granted.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Chief Administrative Judge
Fourteenth Judicial Circuit

March _____, 2020
Charleston, South Carolina
At Chambers



Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al

Case Number: 2018CP0702378

Type: Order/Summary Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2020-03-24 13:54:19 page 7 of 7

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EXHIBIT G
RESPONDENT WELLS FARGO'S
MOTION TO SET ASIDE JUDGMENT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Eddie B. Lewis, Jr.,

Plaintiff,

vs.

Saul, LLC and Wells Fargo Bank, NA,

Defendant.

IN THE COURT OF COMMONS PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-07-02378

**DEFENDANT WELLS FARGO
MOTION TO SET ASIDE JUDGMENT
PURSUANT TO RULE 60, SCRPC**

YOU WILL PLEASE TAKE NOTICE that Co-Defendant Wells Fargo Bank, NA ("Wells Fargo"), by and through its undersigned attorney, will move for an Order pursuant to Rule 60, SCRPC seeking relief from a judgment order.

Wells Fargo seeks relief from the Order Granting the Defendant Saul, LLC ("Saul") Summary Judgment which was entered by the Court on March 24, 2020. This motion is made in accordance with the South Carolina Rules of Civil Procedure, and will be supported by sworn Affidavits of Wells Fargo representatives, and a Memorandum of Law In Support.

The Motion is based on the following:

1. Pursuant to Rule 60, SCRPC this motion is timely because it has been filed within one (1) year of the date the Honorable Deadra L. Jefferson entered the Order granting Saul's Motion for Summary Judgment.
2. Wells Fargo submits it is entitled to relief under Rule 60(b)(3), SCRPC because Saul's Summary Judgment Motion argument and supporting Affidavit contained significant misrepresentations as to the contractual relationship of the Parties.
3. Wells Fargo further submits that there were significant misrepresentations by Saul as to the responsibility for the condition and maintenance of the common areas, parking lot, and

landscaped areas of subject leased premises pursuant to the clear and unambiguous terms of the binding Lease agreement entered into between Wells Fargo and Saul.

4. The misrepresentations regarding the terms of the binding Lease are the cornerstone of any potential culpability or responsibility for the claims made by Plaintiff in this matter.
5. Wells Fargo further submits it is entitled to relief under Rule 60(b)(2), SCRCF, based on newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), SCRCF.

Respectfully submitted,

VERNIS & BOWLING OF COLUMBIA, LLC

s/Douglas E. Leadbitter

Douglas E. Leadbitter, SC Bar No. 68430

1401 Main Street, Suite 655

Columbia, South Carolina 29201

Tel: (803) 234-5416

dleadbitter@scarolina-law.com

ATTORNEYS FOR WELLS FARGO, NA

March 19, 2021

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Eddie B. Lewis, Jr.,

Plaintiff,

vs.

Saul, LLC and Wells Fargo Bank, NA,

Defendant.

IN THE COURT OF COMMONS PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-07-02378

**DEFENDANT WELLS FARGO
MOTION TO SET ASIDE JUDGMENT
PURSUANT TO RULE 60, SCRPC**

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landscaped areas of subject leased premises pursuant to the clear and unambiguous terms of the binding Lease agreement entered into between Wells Fargo and Saul.

4. The misrepresentations regarding the terms of the binding Lease are the cornerstone of any potential culpability or responsibility for the claims made by Plaintiff in this matter.
5. Wells Fargo further submits it is entitled to relief under Rule 60(b)(2), SCRCF, based on newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), SCRCF.

Respectfully submitted,

VERNIS & BOWLING OF COLUMBIA, LLC

s/Douglas E. Leadbitter

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ATTORNEYS FOR WELLS FARGO, NA

March 19, 2021

EXHIBIT A

ELECTRONICALLY FILED - 2021 Sep 21 4:11 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378
ELECTRONICALLY FILED - 2021 Oct 14 11:09 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	Case No.: 2018-CP-07-02378
EDDIE B. LEWIS	)	
Plaintiff,	)	
	)	ORDER ON WELLS FARGO'S
v.	)	MOTION TO SET ASIDE JUDGMENT
	)	PURSUANT TO RULE 60, SCRPC
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION,	)	
Defendants.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Cory Fleming, Esq.
Defendant's Attorney, Saul, LLC:	John Dodds, Jr., Esq. and Morgan Templeton, Esq.
Defendant's Attorney, Wells Fargo Bank:	Douglas E. Leadbitter, Esq.
Date of Hearing:	March 17, 2020 & March 23, 2021
Court Reporter:	Karen Andersen

This matter came before the Court on Defendant Wells Fargo Bank, NA's ("Wells Fargo") Motion to Set Aside Judgment pursuant to Rule 60, SCRPC, filed March 19, 2021. Wells Fargo asks the Court to reconsider its Order Granting Saul, LLC's Motion for Summary Judgment, filed March 24, 2020. The Court received a copy of the Motion to Set Aside Judgment on March 23, 2021 via email from the Beaufort County Clerk of Court.¹ Defendant Saul, LLC ("Saul, LLC") filed its response to Wells Fargo's Motion to Set Aside Judgment on March 31, 2021. The Plaintiff filed his response to Wells Fargo's Motion to Set Aside Judgment on July 2, 2021. Wells Fargo filed its Memorandum in Support on July 6, 2021. Saul, LLC filed its Reply on July 9, 2021. After consideration of the record, as well as the various interests balanced by the Court at the time of the

¹ This Motion was sent to the Court by the Clerk of Court's Office as it perceived it to be in the nature of a Motion for Reconsideration of Judgment. Although this Court did not retain jurisdiction of this matter, it is in the best posture to dispose of the Motion, as this Court heard the underlying Motion for Summary Judgment giving rise to the present Motion to Set Aside Judgment.

ruling, the Motion to Set Aside Judgment is Granted and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.²

PROCEDURAL HISTORY

This matter originally came before the Court on March 17, 2020 on Saul, LLC's Motion for Summary Judgment, filed January 20, 2020. Present and appearing on behalf of the Plaintiff was Cory Fleming, Esq. Present and appearing on behalf of Saul, LLC was John Dodds, Jr., Esq. No counsel of record appeared for Wells Fargo. Mr. Fleming advised the Court that on the Friday immediately preceding the hearing, March 13, 2020, he received an email from Laura Robinson advising that she was resigning from the firm and that on March 16, 2021, this case was being assigned to Charles Blackburn, Esq. Audio Transcript of March 17, 2020 Hearing at 1:14:30-1:14:58. Mr. Fleming stated that he believed Mr. Blackburn communicated with Morgan Templeton, lead counsel for Saul, LLC, wherein Mr. Blackburn indicated that he could not be present at the hearing "for various reasons." *Id.* at 1:15:00-1:15:15.³

At the time of the hearing, it was represented to the Court by Mr. Fleming that Wells Fargo's presence was not necessary to dispose of the Motion for Summary Judgment. *Id.* at 1:16:00-1:16:10. Moreover, Mr. Fleming conceded that he did not disagree with Saul, LLC's interpretation of the lease, and conceded that Saul, LLC's position on summary judgment was

² This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; *Pollard v. City of Florence*, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994) and pursuant to the Chief Justice's April 3, 2020 Order, As Amended August 27, 2021, Section (d), citing the June 15, 2021 Amendment, Section (c)(4). However, the Court held two (2) conference calls with counsel to afford the Plaintiff and Defense counsel time to resolve the matter without the necessity of the Court ruling on the merits of the motion. Counsel for Saul, LLC failed to see the wisdom of this option and declined the opportunity.

³ In conjunction with this motion it was subsequently revealed that Laura Robinson sent an email to Cory Fleming and Morgan Templeton on March 13, 2020, advising that Ms. Robinson was resigning from the firm that represents Wells Fargo, and seeking Mr. Fleming and Mr. Templeton's consent to continue the March 17, 2020 hearing. *See* Exhibit A to Wells Fargo's Memorandum in Support. Mr. Fleming consented to a continuance of the hearing, and Mr. Templeton did not. *Id.* At the hearing the Court was never made aware and was not privy to the request by Ms. Robinson or the communication between counsel regarding the issue. If the Court had been aware of Ms. Robinson's request it would have been granted. Subsequently, the Court was advised that Charles Blackburn resigned from the firm shortly after Ms. Robinson's departure.

supported by the terms of the lease, South Carolina law, and the facts of the case. Id. at 1:24:50-1:26:18. Based on that concession, and the Plaintiff and Defendant Saul LLC's representation that they consented to the relief sought, the Court instructed Mr. Dodds to prepare a proposed Consent Order granting summary judgment between Lewis and Saul, LLC for the Court's consideration. Id. at 1:26:20-1:26:35.⁴ The Court instructed Mr. Dodds to copy all counsel of record on the submission of the proposed order to the Court.⁵ Id. Mr. Fleming advised that he had no objection to the relief sought in the proposed order or the verbiage contained therein.

The Court issued the Consent Order Granting Summary Judgment on March 24, 2020. Wells Fargo filed the present Motion to Set Aside Judgment on March 19, 2021. For the following reasons, Wells Fargo's Motion to Set Aside Judgment is head and respectfully Granted, and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.

CONCLUSIONS OF LAW

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b), SCRCP.

"The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken... This rule does

⁴ The Court perceived the parties' representation to be that the agreement they reached regarding the grant of the Motion for Summary Judgment limited relief to the parties that were present at the hearing and represented that as being Lewis and Saul, LLC.

⁵ The Court's staff received the proposed consent order granting summary judgment on March 18, 2020 from Mr. Dodd's staff. Laura Robinson was copied on the email. However, Charles Blackburn was not.

not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.” *Id.* “[W]hen considering whether to grant relief from final judgments, a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.” Raby Const., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004) (internal citations omitted).

“A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. Whether to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial judge.” Perry v. Heirs at L. of Gadsden, 357 S.C. 42, 46–47, 590 S.E.2d 502, 504 (Ct. App. 2003).

I. The Motion to Set Aside Judgment is Granted.

Rule 60(b)(3), SCRCP permits a judgment to be vacated for fraud, misrepresentation, or other misconduct of an adverse party. It was represented to the Court at the hearing on March 17, 2020, that the Plaintiff and Defendant Saul, LLC had no objection to Saul, LLC being dismissed from the case, and that Wells Fargo was not necessary for the disposition of Saul, LLC’s Motion for Summary Judgment.

However, the overwhelming majority of the findings of fact and conclusions of law contained in Saul, LLC’s Consent Order to the Court contained a myriad of findings regarding the interpretation of the lease between Saul, LLC and Wells Fargo and liability findings that related not to Saul, LLC and the Plaintiff, but to Wells Fargo, a party who was not present at the March 17, 2020 hearing and was not afforded an opportunity to be heard. And most importantly, that Lewis and Saul, LLC knew Wells Fargo was not going to be present for the hearing on the motion. The findings contained in the Order do not simply hold that Saul, LLC is not liable for the Plaintiff’s injuries. Rather, the findings contained in the Order interpret a lease, determine

culpability for the Plaintiff's cause of action and assign liability for the Plaintiff's injuries to Wells Fargo. This is particularly troubling in light of the fact that counsel for Lewis and Saul, LLC knew that Wells Fargo's representation was in flux, objected to Wells Fargo's request for a continuance, and did not advise the Court that Wells Fargo sought a continuance.⁶

Rule 60(b)(1), SCRCP permits a judgment to be vacated for mistake, inadvertence, surprise, or excusable neglect. In determining whether to grant relief under Rule 60(b)(1), the court must consider: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010). To establish a meritorious defense, the party does not have to show he would prevail on the merits, but rather, the defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)).

"[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "[W]here a Rule 60(b) motion is filed shortly after the movant becomes aware of the basis therefor and there is no evidence of unreasonable delay, the motion is timely." Ex Parte Carter, 422 S.C.

⁶ While it was incumbent upon Wells Fargo to file a Motion for Continuance, the Court is nevertheless troubled that Saul, LLC failed to advise the Court of Wells Fargo's request for continuance when Saul, LLC was aware of the transition of Wells Fargo's representation. This is heightened by Lewis and Saul, LLC's knowledge that Wells Fargo would not be represented and Mr. Blackburn would not be able to attend the hearing on March 17, 2020.

623, 631, 813 S.E.2d 686, 690 (2018). However, “[t]he one year limit is a non-discretionary mandate . . .” Coleman v. Dunlap, 303 S.C. 511, 402 S.E.2d 181, 183 (Ct. App. 1991), reversed, 306 S.C. 491, 413 S.E.2d 15 (1992).

Saul, LLC’s Motion for Summary Judgment was heard on March 17, 2020 and a Consent Order granting that motion was entered on March 24, 2020. Attorney for Wells Fargo, Douglas Leadbitter, filed a motion to set aside the judgment on March 19, 2021. Thus, Leadbitter made his motion within the allotted time period. Furthermore, this Court finds that Leadbitter made his motion within a reasonable time, not exceeding one year. With the transition of Wells Fargo’s representation that occurred, this Court finds that Leadbitter sought relief as soon as he discovered this judgment had been entered against Wells Fargo. With respect to the meritorious defense factor, as stated above, Saul, LLC’s Order contained findings of fact that interpreted a lease, determined culpability for the Plaintiff’s cause of action and assigned liability for the Plaintiff’s injuries to Wells Fargo without the knowledge or consent of Wells Fargo. As such, this Court finds that Wells Fargo has shown the existence of a meritorious defense. Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)). Finally, this Court finds that the degree of prejudice the Plaintiff and Saul, LLC will suffer if relief is granted is not so high as to outweigh the other factors.⁷ Wells Fargo was a party to the March 17, 2020 hearing, however, was not present at the hearing and was not afforded an opportunity to be heard. Both the Plaintiff and Saul, LLC knew that Wells Fargo would not be represented at the March 17, 2020 hearing and, therefore, this Court finds little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC’s Motion for Summary Judgment. “This is consistent with South Carolina’s policy favoring the disposition

⁷ Prejudice is defined as the lack of notice or knowledge which inhibits the ability to refute. Rouvet v. Rouvet, 388 S.C. 301, 312-13, 696 S.E.2d 204, 209-10 (Ct. App. 2010).

of issues on their merits rather than on technicalities.” Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. Appt. 2001) (citing Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986)); see Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001) (citing Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (“Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues); see also Curry v. Carolina Insurance Group of SC, Inc., 428 S.C. 60, 70, 832 S.E.2d 760, 764-65 (Ct. App. 2019) (quoting Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) (“Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial”).

CONCLUSION

After fully considering the Defendant Wells Fargo's Motion to Set Aside Judgment, filed March 19, 2021 the Court finds pursuant to Rule 60(b)(3) and (b)(1), SCRCF and fundamentally in the interests of justice that the relief is Granted and the Court's Order dated March 24, 2020, is **VACATED**. Accordingly, the Motion to Set Aside Judgment is heard and respectfully **GRANTED**.⁸

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge

September _____, 2021
Charleston, South Carolina

⁸ The common please non-jury clerk is hereby directed to schedule the Defendant Saul, LLC's Motion for Summary Judgment filed January 20, 2020 on the next available motions roster so that it can be heard and disposed of on its merits.



Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al
Case Number: 2018CP0702378
Type: Order/Set Aside Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2021-09-21 12:43:41 page 8 of 8

ELECTRONICALLY FILED - 2021 Sep 21 4:11 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378
ELECTRONICALLY FILED - 2021 Oct 14 11:09 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	Case No.: 2018-CP-07-02378
EDDIE B. LEWIS	)	
Plaintiff,	)	
	)	ORDER ON WELLS FARGO'S
v.	)	MOTION TO SET ASIDE JUDGMENT
	)	PURSUANT TO RULE 60, SCRCF
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION,	)	
Defendants.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Cory Fleming, Esq.
Defendant's Attorney, Saul, LLC:	John Dodds, Jr., Esq. and Morgan Templeton, Esq.
Defendant's Attorney, Wells Fargo Bank:	Douglas E. Leadbitter, Esq.
Date of Hearing:	March 17, 2020 & March 23, 2021
Court Reporter:	Karen Andersen

This matter came before the Court on Defendant Wells Fargo Bank, NA's ("Wells Fargo") Motion to Set Aside Judgment pursuant to Rule 60, SCRCF, filed March 19, 2021. Wells Fargo asks the Court to reconsider its Order Granting Saul, LLC's Motion for Summary Judgment, filed March 24, 2020. The Court received a copy of the Motion to Set Aside Judgment on March 23, 2021 via email from the Beaufort County Clerk of Court.¹ Defendant Saul, LLC ("Saul, LLC") filed its response to Wells Fargo's Motion to Set Aside Judgment on March 31, 2021. The Plaintiff filed his response to Wells Fargo's Motion to Set Aside Judgment on July 2, 2021. Wells Fargo filed its Memorandum in Support on July 6, 2021. Saul, LLC filed its Reply on July 9, 2021. After consideration of the record, as well as the various interests balanced by the Court at the time of the

¹ This Motion was sent to the Court by the Clerk of Court's Office as it perceived it to be in the nature of a Motion for Reconsideration of Judgment. Although this Court did not retain jurisdiction of this matter, it is in the best posture to dispose of the Motion, as this Court heard the underlying Motion for Summary Judgment giving rise to the present Motion to Set Aside Judgment.

ruling, the Motion to Set Aside Judgment is Granted and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.²

PROCEDURAL HISTORY

This matter originally came before the Court on March 17, 2020 on Saul, LLC's Motion for Summary Judgment, filed January 20, 2020. Present and appearing on behalf of the Plaintiff was Cory Fleming, Esq. Present and appearing on behalf of Saul, LLC was John Dodds, Jr., Esq. No counsel of record appeared for Wells Fargo. Mr. Fleming advised the Court that on the Friday immediately preceding the hearing, March 13, 2020, he received an email from Laura Robinson advising that she was resigning from the firm and that on March 16, 2021, this case was being assigned to Charles Blackburn, Esq. Audio Transcript of March 17, 2020 Hearing at 1:14:30-1:14:58. Mr. Fleming stated that he believed Mr. Blackburn communicated with Morgan Templeton, lead counsel for Saul, LLC, wherein Mr. Blackburn indicated that he could not be present at the hearing "for various reasons." *Id.* at 1:15:00-1:15:15.³

At the time of the hearing, it was represented to the Court by Mr. Fleming that Wells Fargo's presence was not necessary to dispose of the Motion for Summary Judgment. *Id.* at 1:16:00-1:16:10. Moreover, Mr. Fleming conceded that he did not disagree with Saul, LLC's interpretation of the lease, and conceded that Saul, LLC's position on summary judgment was

² This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; *Pollard v. City of Florence*, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994) and pursuant to the Chief Justice's April 3, 2020 Order, As Amended August 27, 2021, Section (d), citing the June 15, 2021 Amendment, Section (c)(4). However, the Court held two (2) conference calls with counsel to afford the Plaintiff and Defense counsel time to resolve the matter without the necessity of the Court ruling on the merits of the motion. Counsel for Saul, LLC failed to see the wisdom of this option and declined the opportunity.

³ In conjunction with this motion it was subsequently revealed that Laura Robinson sent an email to Cory Fleming and Morgan Templeton on March 13, 2020, advising that Ms. Robinson was resigning from the firm that represents Wells Fargo, and seeking Mr. Fleming and Mr. Templeton's consent to continue the March 17, 2020 hearing. *See* Exhibit A to Wells Fargo's Memorandum in Support. Mr. Fleming consented to a continuance of the hearing, and Mr. Templeton did not. *Id.* At the hearing the Court was never made aware and was not privy to the request by Ms. Robinson or the communication between counsel regarding the issue. If the Court had been aware of Ms. Robinson's request it would have been granted. Subsequently, the Court was advised that Charles Blackburn resigned from the firm shortly after Ms. Robinson's departure.

supported by the terms of the lease, South Carolina law, and the facts of the case. Id. at 1:24:50-1:26:18. Based on that concession, and the Plaintiff and Defendant Saul LLC's representation that they consented to the relief sought, the Court instructed Mr. Dodds to prepare a proposed Consent Order granting summary judgment between Lewis and Saul, LLC for the Court's consideration. Id. at 1:26:20-1:26:35.⁴ The Court instructed Mr. Dodds to copy all counsel of record on the submission of the proposed order to the Court.⁵ Id. Mr. Fleming advised that he had no objection to the relief sought in the proposed order or the verbiage contained therein.

The Court issued the Consent Order Granting Summary Judgment on March 24, 2020. Wells Fargo filed the present Motion to Set Aside Judgment on March 19, 2021. For the following reasons, Wells Fargo's Motion to Set Aside Judgment is head and respectfully Granted, and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.

CONCLUSIONS OF LAW

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b), SCRCP.

"The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken... This rule does

⁴ The Court perceived the parties' representation to be that the agreement they reached regarding the grant of the Motion for Summary Judgment limited relief to the parties that were present at the hearing and represented that as being Lewis and Saul, LLC.

⁵ The Court's staff received the proposed consent order granting summary judgment on March 18, 2020 from Mr. Dodd's staff. Laura Robinson was copied on the email. However, Charles Blackburn was not.

not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.” *Id.* “[W]hen considering whether to grant relief from final judgments, a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.” *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004) (internal citations omitted).

“A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. Whether to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial judge.” *Perry v. Heirs at L. of Gadsden*, 357 S.C. 42, 46–47, 590 S.E.2d 502, 504 (Ct. App. 2003).

I. The Motion to Set Aside Judgment is Granted.

Rule 60(b)(3), SCRCF permits a judgment to be vacated for fraud, misrepresentation, or other misconduct of an adverse party. It was represented to the Court at the hearing on March 17, 2020, that the Plaintiff and Defendant Saul, LLC had no objection to Saul, LLC being dismissed from the case, and that Wells Fargo was not necessary for the disposition of Saul, LLC’s Motion for Summary Judgment.

However, the overwhelming majority of the findings of fact and conclusions of law contained in Saul, LLC’s Consent Order to the Court contained a myriad of findings regarding the interpretation of the lease between Saul, LLC and Wells Fargo and liability findings that related not to Saul, LLC and the Plaintiff, but to Wells Fargo, a party who was not present at the March 17, 2020 hearing and was not afforded an opportunity to be heard. And most importantly, that Lewis and Saul, LLC knew Wells Fargo was not going to be present for the hearing on the motion. The findings contained in the Order do not simply hold that Saul, LLC is not liable for the Plaintiff’s injuries. Rather, the findings contained in the Order interpret a lease, determine

culpability for the Plaintiff's cause of action and assign liability for the Plaintiff's injuries to Wells Fargo. This is particularly troubling in light of the fact that counsel for Lewis and Saul, LLC knew that Wells Fargo's representation was in flux, objected to Wells Fargo's request for a continuance, and did not advise the Court that Wells Fargo sought a continuance.⁶

Rule 60(b)(1), SCRCP permits a judgment to be vacated for mistake, inadvertence, surprise, or excusable neglect. In determining whether to grant relief under Rule 60(b)(1), the court must consider: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010). To establish a meritorious defense, the party does not have to show he would prevail on the merits, but rather, the defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)).

"[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "[W]here a Rule 60(b) motion is filed shortly after the movant becomes aware of the basis therefor and there is no evidence of unreasonable delay, the motion is timely." Ex Parte Carter, 422 S.C.

⁶ While it was incumbent upon Wells Fargo to file a Motion for Continuance, the Court is nevertheless troubled that Saul, LLC failed to advise the Court of Wells Fargo's request for continuance when Saul, LLC was aware of the transition of Wells Fargo's representation. This is heightened by Lewis and Saul, LLC's knowledge that Wells Fargo would not be represented and Mr. Blackburn would not be able to attend the hearing on March 17, 2020.

623, 631, 813 S.E.2d 686, 690 (2018). However, “[t]he one year limit is a non-discretionary mandate . . .” Coleman v. Dunlap, 303 S.C. 511, 402 S.E.2d 181, 183 (Ct. App. 1991), reversed, 306 S.C. 491, 413 S.E.2d 15 (1992).

Saul, LLC’s Motion for Summary Judgment was heard on March 17, 2020 and a Consent Order granting that motion was entered on March 24, 2020. Attorney for Wells Fargo, Douglas Leadbitter, filed a motion to set aside the judgment on March 19, 2021. Thus, Leadbitter made his motion within the allotted time period. Furthermore, this Court finds that Leadbitter made his motion within a reasonable time, not exceeding one year. With the transition of Wells Fargo’s representation that occurred, this Court finds that Leadbitter sought relief as soon as he discovered this judgment had been entered against Wells Fargo. With respect to the meritorious defense factor, as stated above, Saul, LLC’s Order contained findings of fact that interpreted a lease, determined culpability for the Plaintiff’s cause of action and assigned liability for the Plaintiff’s injuries to Wells Fargo without the knowledge or consent of Wells Fargo. As such, this Court finds that Wells Fargo has shown the existence of a meritorious defense. Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)). Finally, this Court finds that the degree of prejudice the Plaintiff and Saul, LLC will suffer if relief is granted is not so high as to outweigh the other factors.⁷ Wells Fargo was a party to the March 17, 2020 hearing, however, was not present at the hearing and was not afforded an opportunity to be heard. Both the Plaintiff and Saul, LLC knew that Wells Fargo would not be represented at the March 17, 2020 hearing and, therefore, this Court finds little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC’s Motion for Summary Judgment. “This is consistent with South Carolina’s policy favoring the disposition

⁷ Prejudice is defined as the lack of notice or knowledge which inhibits the ability to refute. Rouvet v. Rouvet, 388 S.C. 301, 312-13, 696 S.E.2d 204, 209-10 (Ct. App. 2010).

of issues on their merits rather than on technicalities.” Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. Appt. 2001) (citing Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986)); see Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001) (citing Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (“Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues); see also Curry v. Carolina Insurance Group of SC, Inc., 428 S.C. 60, 70, 832 S.E.2d 760, 764-65 (Ct. App. 2019) (quoting Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) (“Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial”).

CONCLUSION

After fully considering the Defendant Wells Fargo's Motion to Set Aside Judgment, filed March 19, 2021 the Court finds pursuant to Rule 60(b)(3) and (b)(1), SCRCP and fundamentally in the interests of justice that the relief is Granted and the Court's Order dated March 24, 2020, is **VACATED**. Accordingly, the Motion to Set Aside Judgment is heard and respectfully **GRANTED**.⁸

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge

September _____, 2021
Charleston, South Carolina

⁸ The common please non-jury clerk is hereby directed to schedule the Defendant Saul, LLC's Motion for Summary Judgment filed January 20, 2020 on the next available motions roster so that it can be heard and disposed of on its merits.



Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al

Case Number: 2018CP0702378

Type: Order/Set Aside Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2021-09-21 12:43:41 page 8 of 8



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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November 29, 2021

Mr. Morgan S. Templeton, Esquire
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Mr. David Ali Nasrollahi, Esquire
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Mr. H. Fred Kuhn, Jr., Esquire
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Mr. Douglas Edward Leadbitter, Esquire
1401 Main Street, Suite 655
Columbia SC 29201

Mr. Charles Grant Blackburn, Esquire
1701 Cherry Laurel Dr.
Columbia SC 29204

Re: Eddie Lewis v. Saul, LLC
Appellate Case No. 2021-001170

Dear Counsel:

This Court has received the notice of appeal. A preliminary review of the order(s)

challenged on appeal indicates it might not be immediately appealable.

Accordingly, it is requested that you serve and file a memorandum addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memorandum.

Very truly yours,

V. Claire Allen

CLERK

LAW OFFICES
MOSS & KUHN P.A.

JAMES H. MOSS
H. FRED KUHN, JR.

1501 North Street P.O. Drawer 507~Beaufort, South Carolina 29901-0507
TELEPHONE 843-524-3373
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December 1, 2021

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

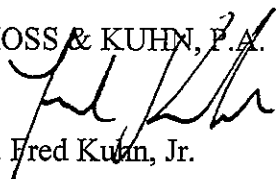
RE: Eddie B. Lewis, Jr. v. Saul, LLC and Wells Fargo Bank, NA
Court of Appeals Case No.: 2021-00170
Civil Case No.: 2018-CP-07-02378

Dear Ms. Kitchings:

Enclosed for filing please find the original and one (1) copy of the Memorandum of Respondent Eddie B. Lewis on Appealability in regard to the above-referenced matter. I would appreciate your filing the Memorandum of Respondent Eddie B. Lewis on Appealability and returning a filed copy to me in the enclosed self-addressed stamped envelope. By copy of this letter and the enclosures I am serving a copy of the same on all counsel of record.

With kindest regards, I am

MOSS & KUHN, P.A.



H. Fred Kuhn, Jr.

HFKjr:sr

cc: Morgan S. Templeton, Esquire (w/enclosure)
David A. Nasrollahi, Esquire (w/enclosure)
Douglas Edward Leadbitter, Esquire (w/enclosure)
John J. Dodds, IV, Esquire (w/enclosure)
Charles Grant Blackburn, Esquire (w/enclosure)
Mr. Eddie B. Lewis (w/enclosure)

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable 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, Defendants,

Of Which Saul, LLC is the Appellant and Wells Fargo National Association is a Respondent.

**MEMORANDUM OF RESPONDENT EDDIE B. LEWIS
ON APPEALABILITY**

On November 29, 2021 the South Carolina Court of Appeals requested that the parties serve and file a memorandum addressing the issue of appealability. In accordance with that request, this Memorandum is respectfully submitted on behalf of the Respondent, Eddie B. Lewis.

The Order which is the subject of this appeal is not immediately appealable and this appeal should accordingly be dismissed.¹

The Order that is the subject of this appeal is the Order of the Honorable Deadra L. Jefferson granting the Respondent Wells Fargo Bank National Association's motion pursuant to Rule 60(b), SCRCP, to set aside summary judgment previously entered against it and rescheduling

¹ This Memorandum on appealability essentially repeats the substance of the Motion to Dismiss Appeal previously filed on behalf of Respondent Eddie B. Lewis.

the summary judgment motion for a new hearing. An Order granting relief pursuant to Rule 60, SCRCF, is not immediately appealable, particularly under the circumstances of this case where the subject Order simply reschedules the summary judgment motion for another hearing.

A. FACTUAL BACKGROUND

This is a premises liability action which was commenced by the filing of a Summons and Complaint in the Beaufort County Court of Common Pleas on December 5, 2018. In his Complaint, the Plaintiff-Respondent Eddie B. Lewis (“Lewis”) alleges that he suffered personal injuries as a result of a fall and that his fall was the result of the negligence of the Defendants. He alleges that the Defendant-Respondent Wells Fargo Bank National Association (“Wells Fargo”) rented or leased the premises on which he suffered his fall from the Defendant-Appellant Saul, LLC (“Saul”). [See Exhibit A, Summons and Complaint].

An Amended Complaint, correcting the address of the subject premises, was filed on January 7, 2019 [Exhibit B, Amended Summons and Complaint].

On January 17, 2018 the Appellant Saul filed its Answer to the Amended Complaint and on February 11, 2019 the Respondent Wells Fargo filed its Answer to the Amended Complaint. In their Answers, both Defendants admit that the Appellant Saul was the owner and landlord of the subject premises, and the Respondent Wells Fargo was the tenant. Both Defendants, however, denied liability to the Plaintiff. Each Defendant denied that it exercised dominion or control over the premises at the time of Plaintiff’s fall. [See Exhibit C, Answer of Appellant Saul and Exhibit D, Answer of Respondent Wells Fargo].

On January 20, 2020 Appellant Saul filed a Motion for Summary Judgment, asserting that pursuant to the terms of the lease between it and the Respondent Wells Fargo it had “released the

complete and exclusive control of the subject property to Wells Fargo,” and accordingly owed no duty to the Plaintiff. [Exhibit E, Appellant Saul’s Motion for Summary Judgment, pg. 6].

As a result of a hearing held on March 17, 2020 the Honorable Deadra L. Jefferson, Presiding Judge, granted the Appellant Saul’s Motion for Summary Judgment. [Exhibit F].

On March 19, 2021 the Respondent Wells Fargo filed a Motion to Set Aside the aforesaid summary judgment motion pursuant to Rule 60, SCRCP. [Exhibit G]. This motion was made on the ground that where were “significant misrepresentations” made to the Court as to the terms of the lease between Saul and Wells Fargo, the contractual relationship of the parties, and which Defendant was responsible for the condition and maintenance of the area where the Plaintiff fell. *Id.*

As a result of a hearing held on March 23, 2021 Judge Jefferson filed an Order on September 21, 2021 granting the Respondent Well Fargo’s Motion to Set Aside the Summary Judgment Pursuant to Rule 60, SCRCP. Significantly, the Court concluded that there would be “little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC’s motion for summary judgment.” [Exhibit G, pg. 6].

B. LEGAL AUTHORITY

“An appeal ordinarily may be pursued only after a party has obtained a final judgment.” *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005); citing *Mid-State Distributors, Inc. v. Century Imps., Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 781 (1993). “The right of appeal arises from and is controlled by statutory law.” *Id.*

“The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by (§14-3-330 of the South Carolina Code of Laws).” *Hagood*,

supra, 362 S.C. at 195, 607 S.E.2d at 708. “An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.” *Id.*

Section 14-3-330 provides that the following types of judgments, decrees, and orders are directly appealable:

“(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 ...;

(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.”

S.C. Code Ann. §14-3-330.

The subject Order in this case has absolutely no effect on the merits of this action, nor does it affect any substantial rights of the parties or limit any party’s ability to present its case. The net effect of the Order under appeal is to simply just reschedule Saul’s Motion for Summary Judgment for another hearing.

The subject Order in this case is an Order granting a party relief pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure, and the South Carolina Supreme Court has held that such an order is not immediately appealable. See, e.g., *Pocisk v. Sea Coast Construction of Beaufort*, 380 S.C. 584, 587, 671 S.E.2d 98, 100 (2008).

In *Pocisk v. Sea Coast Construction of Beaufort*, *supra*, the Court entered a judgment against the Pocisks. The Pocisks filed a motion to vacate the judgment pursuant to Rule 60(b),

SCRCP, and to restore the case to the trial roster. The Court granted the motion, vacating the judgment and restoring the case to the trial docket. Sea Coast Construction appealed this Order, and the South Carolina Supreme Court dismissed the appeal stating:

“The Pocisks assert the order granting Rule 60(b) relief is not immediately appealable. We agree.”

Id., 380 S.C. at 587, 671 S.E.2d at 100. The Court noted that an “order granting Rule 60(b) relief does not affect a substantial right” and accordingly is not immediately appealable. *Id.*, 380 S.C. at 588-89, 671 S.E.2d at 101 (numerous citations omitted). See also, *Pioneer Associates, Inc. v. Ticor Title Insurance Company*, 300 S.C. 346, 387 S.E.2d 711 (1989) (appeal dismissed because order granting Rule 60(b), SCRCP, motion to set aside a default judgment is not immediately appealable).

CONCLUSION

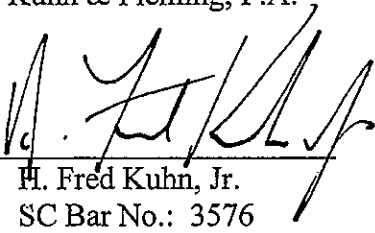
An order granting a Rule 60, SCRCP, motion to set aside a judgment is not immediately appealable. The net affect of Judge Jefferson’s Order in the instant case is to simply schedule the Appellant Saul’s Motion for Summary Judgment for a new hearing, the same effect as if she had simply continued the original hearing to begin with. Following Judge Jefferson’s Order, the Appellant Saul’s Motion for Summary Judgment remains pending and probably would have been heard by now but for this appeal. Judge Jefferson’s decision to, in effect, simply rehear Saul’s Motion for Summary Judgment has no effects on the rights of any party to this action. The Order under appeal is essentially a decision not to decide anything until a further hearing can be held.

It is accordingly respectfully requested that this appeal be dismissed on the ground that the subject Order is not an appealable order, and the case remanded to the Beaufort County Court of Common Pleas so Saul’s Motion for Summary Judgment may be heard on its merits.

Respectfully submitted,

Moss, Kuhn & Fleming, P.A.

Beaufort, South Carolina
December 1, 2021

By: 

H. Fred Kuhn, Jr.

SC Bar No.: 3576

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843-524-3373 - Telephone

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Attorneys for Respondent Eddie B. Lewis

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable 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, Defendants,

Of Which Saul, LLC is the Appellant and Wells Fargo National Association is a Respondent.

CERTIFICATE OF SERVICE

Undersigned certifies that the Memorandum of Respondent Eddie B. Lewis on Appealability to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Morgan S. Templeton, Esquire
Davis S. Nasrollahi, Esquire
John J. Dodds, IV, Esquire
Wall Templeton Haldrup, P.A.
Post Office Box 1200
Charleston, South Carolina 29402

Douglas Edward Leadbitter, Esquire
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 655
Columbia, South Carolina 29201

Charles Grant Blackburn, Esquire
1701 Cherry Laurel Drive
Columbia, South Carolina 29204

in a post office or official depository under the exclusive care and custody of the United States
Postal Service, on December 2, 2021.

MOSS & KUHN, P.A.

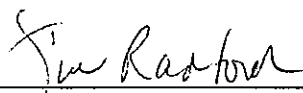
By: 
Sue Radford

EXHIBIT A
SUMMONS AND COMPLAINT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-_____
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	SUMMONS
	)	(Jury Trial Demanded)
Saul, LLC and Wells Fargo	)	
Bank, National Association,	)	
	)	
Defendant.	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at his office, MOSS, KUHN & FLEMING, P. A., P. O. Drawer 507, 1501 North Street, Beaufort, SC 29901-0507, within thirty (30) days from the date of service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default and the relief demanded in the attached Complaint.

MOSS, KUHN & FLEMING, P.A.

By: s/Cory H. Fleming
 Cory H. Fleming
 SC Bar #: 6999
 P. O. Box 507
 Beaufort, SC 29901-0507
 (843) 524-3373
 (843) 379-1322 Fax
cory@mossandkuhn.com
 ATTORNEYS FOR PLAINTIFF

Beaufort, South Carolina
 December 3, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-_____
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	
Saul, LLC, and Wells Fargo	)	(Jury Trial Demanded)
Bank, National Association	)	
Defendant.	)	

TO: THE DEFENDANTS ABOVE NAMED:

COME NOW, the Plaintiff, Eddie B. Lewis, Jr., complaining of the acts and/or omissions of the Defendants, Saul, LLC and Wells Fargo Bank, National Association, and allege as follows:

PARTIES AND JURISDICTION

1. That the Parties hereto, the subject matter hereof, and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.

2. The Plaintiff, Eddie B. Lewis, Jr., was at the time of the accident, and at all times material hereto, a citizen and resident of the County of Beaufort, State of South Carolina.

3. That, upon information and belief, the Defendant, Saul, LLC, was at the time of the accident which is the subject of this suit, a corporation duly organized and established pursuant to the laws of the State of South Carolina, and is duly authorized to conduct business in the State of South Carolina.

4. That, upon information and belief, the Defendant, Wells Fargo Bank, National Association (here after named as Wells Fargo), was at the time of the accident which is the subject of this suit, and at all times material hereto, a Delaware Corporation duly authorized to conduct business in the State of South Carolina.

5. That, upon information and belief, the Defendant, SAUL, LLC, was the owner of the property located at 401 Port Republic Street, Beaufort, South Carolina, 29902, at the time of the accident which is the subject of this suit.

6. That, upon information and belief, at the time of the accident which is the subject of this suit, The Defendant, Wells Fargo, rented and/or leased the property located at 401 Port Republic Street, Beaufort, South Carolina, for commercial purposes from the Defendant, SAUL, LLC.

7. That, upon information and belief, at all times mentioned herein, the Defendant, SAUL, LLC, as the owner of the premises located at 401 Port Republic Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

8. That, upon information and belief, at all times mentioned herein, the Defendant, Wells Fargo, as the commercial tenant of the premises located at 401 Port Republic Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

FOR A FIRST CAUSE OF ACTION

(Negligence and Recklessness)

9. That, upon information and belief, on May 23, 2016, the Plaintiff, Eddie R. Lewis, Jr., did enter the parking lot/premises of the Defendant, Wells Fargo and Saul, LLC, for the sole purpose of conducting business dealings with the Defendant, Wells Fargo, and that the Plaintiff, Eddie Lewis, Jr., was an "invitee" and/or a "business visitor" on the Defendant's premises.

10. That, upon information and belief, the Defendant, Wells Fargo and Saul, LLC, by reasons of its relationship with Eddie Lewis, Jr., owed him a duty to exercise reasonable and due care for his safety and is liable for any injury resulting from the breach of this duty; this duty includes inspecting the premises and discovering the presence of any dangerous natural or

artificial conditions and to exercise reasonable and due care in either warning the invitee of such dangers or in making the conditions safe for him.

11. That on May 23, 2016, the Plaintiff, Eddie Lewis, Jr., was a customer of the Defendant, Wells Fargo, in a normal and routine manner; that the Plaintiff, Eddie Lewis, Jr., upon exiting the bank was walking on the sidewalk towards his vehicle when without warning, stepped in a gap on the sidewalk which caused the Plaintiff, Eddie Lewis, Jr., to trip and that unexpected trip caused him to lose his balance causing him to fall to the concrete, striking his face, shoulder and knee. This unexpected fall caused the Plaintiff, Eddie Lewis, Jr., to lose many of his teeth, injury his left arm and shoulder, and injury to his right knee.

12. That the injuries and damages suffered by the Plaintiff, Eddie Lewis, Jr., were due to, caused by, and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness, wantonness, and/or heedlessness of the Defendants, Wells Fargo and SAUL, LLC, jointly and severally and/or by virtue of their respective lessor/lessee, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, and/or other relationships, in one, more, or all of the following particulars, to wit:

AS TO THE DEFENDANT, WELLS FARGO:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;
- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or

hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;

- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
- G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
- H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
- I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
- J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
- K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
- L. In all other ways being negligent.

AS TO THE DEFENDANT, SAULS LLC:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;

- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;
 - F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
 - G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
 - H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
 - I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
 - J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
 - K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
 - L. In all other ways being negligent.
13. That by reason of the acts and omissions of negligence, careless, recklessness, willfulness, wantonness, and heedlessness of the Defendants, Wells Fargo and SAUL, LLC, as set forth herein, and as a direct and proximate result thereof, the Plaintiff, Eddie Lewis, Jr., suffered severe and permanent physical, mental and emotional injuries and other damages in the following particular, to wit:
- a. Upon walking on the sidewalk, the sudden and unexpected impact caused by the dangerous condition of the concrete, resulted in the Plaintiff, Eddie Lewis, Jr., sustaining serious and permanent injuries to his mouth, left arm, left shoulder, and right knee.
 - b. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has undergone expensive medical treatment, including but not limited to, painful surgery and physical therapy;

c. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered other injuries related to the compromised condition of his body due to the incident described herein, such injuries he would not have suffered but for the incident described herein:

d. As a result of his fall, the Plaintiff, Eddie Lewis, Jr., was forced to undergo uncomfortable, difficult and sometimes painful diagnostic tests and procedures;

e. As a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., suffers, has suffered, and likely will continue to suffer pain, physical injury, and severe discomfort in his whole body;

f. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered, and will most probably continue to suffer from emotional distress, anxiety, and mental anguish for the rest of his life.

g. As a result of his permanent injuries, the Plaintiff, Eddie Lewis, Jr., has suffered and experienced, and will most probably continue to suffer and experience, impairment of his enjoyment of living;

h. The ability of the Plaintiff, Eddie Lewis, Jr., to participate in recreational and/or other activities has been limited and impaired and will most probably be substantially limited and impaired in the future;

i. The Plaintiff, Eddie Lewis, Jr., has suffered, and will probably continue to suffer, permanent physical injuries, impairment, and pain as a result of his injuries; and

j. The Plaintiff, Eddie Lewis, Jr., has incurred substantial medical and hospital expenses and will likely incur substantial expenses for medical care and treatment in the future resulting directly from his injuries;

k. The Plaintiff, Eddie Lewis, Jr., has been injured and damaged in other ways, all to his substantial detriment.

14. As a result of said injuries, the Plaintiff has received, and will in the future continue to receive, medical and hospital care and treatment provided by and through the United States of America. The Plaintiff, for the sole use and benefit of the United States of America, under the provisions of 42 U.S.C. §§ 2651-2653 et seq. and 10 U.S.C. § 1095, and with its express consent, asserts a claim for the cost of said medical and hospital care and treatment and the value of future care.

FOR A SECOND CAUSE OF ACTION
(Premises Liability)

15. That the Plaintiff, Eddie Lewis, Jr., repeat, reallege, and incorporate herein as part of this Second Cause of Action against the Defendants, Wells Fargo and SAUL, LLC, Paragraphs One (1) through Fourteen (14) of the Plaintiff's Complaint and further alleges as follows:

16. That, the Plaintiff, Eddie Lewis, Jr., was an invitee and/or business visitor of the Well Fargo Bank, wholly and/or partially owned, managed, controlled, and/or operated by the Defendant, Wells Fargo, on May 23, 2016, and as a result, the presence of the Plaintiff, Eddie Lewis, Jr., in Wells Fargo benefited the Defendant, Wells Fargo.

17. That the Defendants, Wells Fargo and SAUL, LLC, owed duties to the Plaintiff, Eddie Lewis, Jr., as an invitee, including, but not limited to, the duty to warn the Plaintiff, Eddie Lewis, Jr., of latent and hidden dangers and a duty to exercise ordinary care to keep the premises in a reasonably safe condition; further, even if a dangerous condition on the premises is "open or obvious" the Defendants, Wells Fargo and SAUL, LLC, had a duty to warn the Plaintiff, Eddie Lewis, Jr., or take other reasonable steps to protect him if they had reason to anticipate that an invitee might nevertheless encounter the condition, or that his attention may be distracted, so that he will not discover what is obvious or fail to protect himself against it.

18. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had actual or constructive knowledge of the dangerous condition.

19. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had reason to anticipate that an invitee might unexpectedly trip on the sidewalk curb while walking in or out of the business.

20. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, failed to remedy the dangerous condition and let the dangerous condition remain despite the reasonably foreseeable risk of the dangerous sidewalk for the Plaintiff, Eddie Lewis, Jr., to trip and/or fall on the sidewalk when exiting or entering the business.

21. That, as a result of the dangerous and defective condition created by the Defendants, Wells Fargo and SAUL, LLC, and their failure to correct, warn about, and/or remedy the danger, the Plaintiff, Eddie Lewis, Jr., an invitee on the premises, unexpectedly tripped on the sidewalk while exiting the premises causing injuries while falling onto the ground; and that the Plaintiff,

Eddie Lewis, Jr., suffered severe and permanent injuries as outlined in Paragraph 10 through Paragraph 14 of this Complaint.

WHEREFORE, the Plaintiff, Eddie Lewis, Jr., demands judgment against the Defendants, Wells Fargo and SAUL, LLC, in such amounts as may be awarded by the jury, both actual, compensative and punitive damages, along with the costs, expenses and disbursements of this action.

MOSS, KUHN & FLEMING, P.A.

By: s/ Cory H. Fleming
Cory H. Fleming
SC Bar #: 6999
P. O. Drawer 507
Beaufort, SC 29901-0507
(843) 524-3373
(843) 379-1322 Fax
cory@mossandkuhn.com
ATTORNEY FOR PLAINTIFF

Beaufort, South Carolina
December 3, 2018

EXHIBIT B
AMENDED SUMMONS AND COMPLAINT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-02378
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED SUMMONS
	)	(Jury Trial Demanded)
Saul, LLC and Wells Fargo	)	
Bank, National Association,	)	
	)	
Defendant.	)	

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at his office, MOSS, KUHN & FLEMING, P. A., P. O. Drawer 507, 1501 North Street, Beaufort, SC 29901-0507, within thirty (30) days from the date of service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default and the relief demanded in the attached Complaint.

MOSS, KUHN & FLEMING, P.A.

By: s/Cory H. Fleming
 Cory H. Fleming
 SC Bar #: 6999
 P. O. Box 507
 Beaufort, SC 29901-0507
 (843) 524-3373
 (843) 379-1322 Fax
cory@mossandkuhn.com
 ATTORNEYS FOR PLAINTIFF

Beaufort, South Carolina
 January 7, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-02378
	)	
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED COMPLAINT
	)	
Saul, LLC, and Wells Fargo	)	(Jury Trial Demanded)
Bank, National Association	)	
Defendant.	)	

TO: THE DEFENDANTS ABOVE NAMED:

COME NOW, the Plaintiff, Eddie B. Lewis, Jr., complaining of the acts and/or omissions of the Defendants, Saul, LLC and Wells Fargo Bank, National Association, and allege as follows:

PARTIES AND JURISDICTION

1. That the Parties hereto, the subject matter hereof, and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.
2. The Plaintiff, Eddie B. Lewis, Jr., was at the time of the accident, and at all times material hereto, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That, upon information and belief, the Defendant, Saul, LLC, was at the time of the accident which is the subject of this suit, a corporation duly organized and established pursuant to the laws of the State of South Carolina, and is duly authorized to conduct business in the State of South Carolina.
4. That, upon information and belief, the Defendant, Wells Fargo Bank, National Association (here after named as Wells Fargo), was at the time of the accident which is the subject of this suit, and at all times material hereto, a Delaware Corporation duly authorized to conduct business in the State of South Carolina.

5. That, upon information and belief, the Defendant, SAUL, LLC, was the owner of the property located at 1011 Bay Street, Beaufort, South Carolina, 29902, at the time of the accident which is the subject of this suit.

6. That, upon information and belief, at the time of the accident which is the subject of this suit, The Defendant, Wells Fargo, rented and/or leased the property located at 1011 Bay Street, Beaufort, South Carolina, for commercial purposes from the Defendant, SAUL, LLC.

7. That, upon information and belief, at all times mentioned herein, the Defendant, SAUL, LLC, as the owner of the premises located at 1011 Bay Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

8. That, upon information and belief, at all times mentioned herein, the Defendant, Wells Fargo, as the commercial tenant of the premises located at 1011 Bay Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

FOR A FIRST CAUSE OF ACTION

(Negligence and Recklessness)

9. That, upon information and belief, on May 23, 2016, the Plaintiff, Eddie R. Lewis, Jr., did enter the parking lot/premises of the Defendant, Wells Fargo and Saul, LLC, for the sole purpose of conducting business dealings with the Defendant, Wells Fargo, and that the Plaintiff, Eddie Lewis, Jr., was an "invitee" and/or a "business visitor" on the Defendant's premises.

10. That, upon information and belief, the Defendant, Wells Fargo and Saul, LLC, by reasons of its relationship with Eddie Lewis, Jr., owed him a duty to exercise reasonable and due care for his safety and is liable for any injury resulting from the breach of this duty; this duty includes inspecting the premises and discovering the presence of any dangerous natural or

artificial conditions and to exercise reasonable and due care in either warning the invitee of such dangers or in making the conditions safe for him.

11. That on May 23, 2016, the Plaintiff, Eddie Lewis, Jr., was a customer of the Defendant, Wells Fargo, in a normal and routine manner; that the Plaintiff, Eddie Lewis, Jr., upon exiting the bank was walking on the sidewalk towards his vehicle when without warning, stepped in a gap on the sidewalk which caused the Plaintiff, Eddie Lewis, Jr., to trip and that unexpected trip caused him to lose his balance causing him to fall to the concrete, striking his face, shoulder and knee. This unexpected fall caused the Plaintiff, Eddie Lewis, Jr., to lose many of his teeth, injury his left arm and shoulder, and injury to his right knee.

12. That the injuries and damages suffered by the Plaintiff, Eddie Lewis, Jr., were due to, caused by, and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness, wantonness, and/or heedlessness of the Defendants, Wells Fargo and SAUL, LLC, jointly and severally and/or by virtue of their respective lessor/lessee, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, and/or other relationships, in one, more, or all of the following particulars, to wit:

AS TO THE DEFENDANT, WELLS FARGO:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;
- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or

hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;

- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
- G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
- H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
- I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
- J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
- K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
- L. In all other ways being negligent.

AS TO THE DEFENDANT, SAULS LLC:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;

- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;
- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
- G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
- H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
- I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
- J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
- K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
- L. In all other ways being negligent.

13. That by reason of the acts and omissions of negligence, careless, recklessness, willfulness, wantonness, and heedlessness of the Defendants, Wells Fargo and SAUL, LLC, as set forth herein, and as a direct and proximate result thereof, the Plaintiff, Eddie Lewis, Jr., suffered severe and permanent physical, mental and emotional injuries and other damages in the following particular, to wit:

a. Upon walking on the sidewalk, the sudden and unexpected impact caused by the dangerous condition of the concrete, resulted in the Plaintiff, Eddie Lewis, Jr., sustaining serious and permanent injuries to his mouth, left arm, left shoulder, and right knee.

b. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has undergone expensive medical treatment, including but not limited to, painful surgery and physical therapy;

c. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered other injuries related to the compromised condition of his body due to the incident described herein, such injuries he would not have suffered but for the incident described herein:

d. As a result of his fall, the Plaintiff, Eddie Lewis, Jr., was forced to undergo uncomfortable, difficult and sometimes painful diagnostic tests and procedures;

e. As a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., suffers, has suffered, and likely will continue to suffer pain, physical injury, and severe discomfort in his whole body;

f. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered, and will most probably continue to suffer from emotional distress, anxiety, and mental anguish for the rest of his life.

g. As a result of his permanent injuries, the Plaintiff, Eddie Lewis, Jr., has suffered and experienced, and will most probably continue to suffer and experience, impairment of his enjoyment of living;

h. The ability of the Plaintiff, Eddie Lewis, Jr., to participate in recreational and/or other activities has been limited and impaired and will most probably be substantially limited and impaired in the future;

i. The Plaintiff, Eddie Lewis, Jr., has suffered, and will probably continue to suffer, permanent physical injuries, impairment, and pain as a result of his injuries; and

j. The Plaintiff, Eddie Lewis, Jr., has incurred substantial medical and hospital expenses and will likely incur substantial expenses for medical care and treatment in the future resulting directly from his injuries;

k. The Plaintiff, Eddie Lewis, Jr., has been injured and damaged in other ways, all to his substantial detriment.

14. As a result of said injuries, the Plaintiff has received, and will in the future continue to receive, medical and hospital care and treatment provided by and through the United States of America. The Plaintiff, for the sole use and benefit of the United States of America, under the provisions of 42 U.S.C. §§ 2651-2653 et seq. and 10 U.S.C. § 1095, and with its express consent, asserts a claim for the cost of said medical and hospital care and treatment and the value of future care.

FOR A SECOND CAUSE OF ACTION
(Premises Liability)

15. That the Plaintiff, Eddie Lewis, Jr., repeat, reallege, and incorporate herein as part of this Second Cause of Action against the Defendants, Wells Fargo and SAUL, LLC, Paragraphs One (1) through Fourteen (14) of the Plaintiff's Complaint and further alleges as follows:

16. That, the Plaintiff, Eddie Lewis, Jr., was an invitee and/or business visitor of the Well Fargo Bank, wholly and/or partially owned, managed, controlled, and/or operated by the Defendant, Wells Fargo, on May 23, 2016, and as a result, the presence of the Plaintiff, Eddie Lewis, Jr., in Wells Fargo benefited the Defendant, Wells Fargo.

17. That the Defendants, Wells Fargo and SAUL, LLC, owed duties to the Plaintiff, Eddie Lewis, Jr., as an invitee, including, but not limited to, the duty to warn the Plaintiff, Eddie Lewis, Jr., of latent and hidden dangers and a duty to exercise ordinary care to keep the premises in a reasonably safe condition; further, even if a dangerous condition on the premises is "open or obvious" the Defendants, Wells Fargo and SAUL, LLC, had a duty to warn the Plaintiff, Eddie Lewis, Jr., or take other reasonable steps to protect him if they had reason to anticipate that an invitee might nevertheless encounter the condition, or that his attention may be distracted, so that he will not discover what is obvious or fail to protect himself against it.

18. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had actual or constructive knowledge of the dangerous condition.

19. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had reason to anticipate that an invitee might unexpectedly trip on the sidewalk curb while walking in or out of the business.

20. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, failed to remedy the dangerous condition and let the dangerous condition remain despite the reasonably foreseeable risk of the dangerous sidewalk for the Plaintiff, Eddie Lewis, Jr., to trip and/or fall on the sidewalk when exiting or entering the business.

21. That, as a result of the dangerous and defective condition created by the Defendants, Wells Fargo and SAUL, LLC, and their failure to correct, warn about, and/or remedy the danger, the Plaintiff, Eddie Lewis, Jr., an invitee on the premises, unexpectedly tripped on the sidewalk while exiting the premises causing injuries while falling onto the ground; and that the Plaintiff,

Eddie Lewis, Jr., suffered severe and permanent injuries as outlined in Paragraph 10 through Paragraph 14 of this Complaint.

WHEREFORE, the Plaintiff, Eddie Lewis, Jr., demands judgment against the Defendants, Wells Fargo and SAUL, LLC, in such amounts as may be awarded by the jury, both actual, compensative and punitive damages, along with the costs, expenses and disbursements of this action.

MOSS, KUHN & FLEMING, P.A.

By: s/ Cory H. Fleming
Cory H. Fleming
SC Bar #: 6999
P. O. Drawer 507
Beaufort, SC 29901-0507
(843) 524-3373
(843) 379-1322 Fax
cory@mossandkuhn.com
ATTORNEY FOR PLAINTIFF

Beaufort, South Carolina
January 7, 2019

EXHIBIT C
ANSWER OF APPELLANT SAUL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.	)	
	)	
Plaintiff,	)	
	)	ANSWER TO AMENDED
versus	)	COMPLAINT
	)	
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION	)	
	)	
Defendants.	)	
	)	

TO: CORY H. FLEMING, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant Saul, LLC (hereinafter collectively referred to as "Saul"), answers the Plaintiff's Amended Complaint of Plaintiff, alleges and says:

1. Saul denies each and every allegation of the Amended Complaint not hereinafter specifically admitted.
2. As to the allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint, Saul contends the same contains allegations that constitute legal conclusions that Saul is required neither to admit or deny. To the extent a response is required, Saul denies the same and demands strict proof thereof.
3. As to the allegations contained in Paragraph 2 of the Plaintiff's Amended Complaint, Saul lacks knowledge and information sufficient to form a belief and, therefore, denies the same and demands strict proof thereof.
4. As to the allegations contained in Paragraphs 3 and 4 of the Plaintiff's Amended Complaint, Saul admits the same.
5. As to the allegations contained in Paragraph 5 of the Plaintiff's Amended Complaint, Saul

admits so much of said paragraph that it owned the building as of November 22, 2013. The remaining allegations contained in Paragraph 5 are denied and strict proof thereof demanded.

6. As to the allegations contained in Paragraph 6 of the Plaintiff's Amended Complaint, Saul admits the same.

7. As to the allegations contained in Paragraph 7 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

8. As to the allegations contained in Paragraph 8 of the Plaintiff's Amended Complaint, Saul admits so much of said paragraph that Wells Fargo is a commercial tenant of the property located at 1011 Bay Street, Beaufort, South Carolina. The remaining allegations contained in Paragraph 8 contains allegations that constitute legal conclusions that Saul is required neither to admit or deny. To the extent a response is required, Saul denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(NEGLIGENCE AND RECKLESSNESS)

9. As to the allegations contained in Paragraph 9 of the Plaintiff's Amended Complaint, Saul lacks knowledge and information sufficient to form a belief and, therefore, denies the same and demands strict proof thereof

10. As to the allegations contained in Paragraph 10 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

11. As to the allegations contained in Paragraph 11 the Plaintiff's Amended Complaint, Saul lacks knowledge and information sufficient to form a belief and, therefore, denies the same and demands strict proof thereof

12. As to the allegations contained in Paragraphs 12 and 13, including all subparts, of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

13. As to the allegations contained in Paragraph 14 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(PREMISES LIABILITY)

14. As to the allegations contained in Paragraph 15 of the Plaintiff's Amended Complaint, Saul realleges and reavers Paragraphs 1 through 13 above as set forth herein.

15. As to the allegations contained in Paragraphs 16, 17, 18, 19, 20, and 21 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

16. The final paragraph, which is not numbered, constitutes a prayer for relief which requires no response from Saul. To the extent a response is required, Saul denies each allegation contained therein and demands strict proof thereof.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIRST AFFIRMATIVE DEFENSE THERETO
(FAILURE TO STATE A CLAIM)

17. Saul realleges and reavers Paragraphs 1 through 16 above as if set forth herein.

18. Plaintiff's claims fail to state facts sufficient to constitute causes of action against Saul pursuant to Rule 12(b)(6), *SCRCP*, and Plaintiff's claims should be dismissed.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A SECOND AFFIRMATIVE DEFENSE HERETO
(FAILURE TO MITIGATE)

19. Saul realleges and reavers Paragraphs 1 through 18 above as if set forth herein.

20. Plaintiff may have failed to mitigate his damages.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A THIRD AFFIRMATIVE DEFENSE HERETO
(STATUTE OF REPOSE)

21. Saul realleges and reavers Paragraphs 1 through 20 above as if set forth herein.
22. That all claims asserted against Saul may be barred by the applicable statute of repose.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS FOURTH AFFIRMATIVE DEFENSE THERETO
(COMPARATIVE NEGLIGENCE)

23. Saul realleges and reavers Paragraphs 1 through 22 above as if set forth herein.
24. Any damage suffered by Plaintiff is the direct and proximate result of his comparative and contributory negligence and Plaintiff's recovery should be barred or, alternatively, reduced proportionately to his comparative negligence, if any.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIFTH AFFIRMATIVE DEFENSE THERETO
(UNCONSTITUTIONAL PUNITIVE DAMAGES)

25. Saul realleges and reavers Paragraphs 1 through 24 above as if set forth herein.
26. Plaintiff's claim for punitive damages, and any award thereof, would violate the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution and the due process clause of Article I, Section 3 of the South Carolina Constitution.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIFTH AFFIRMATIVE DEFENSE THERETO
(OPEN AND OBVIOUS)

27. Saul realleges and reavers Paragraphs 1 through 26 above as if set forth herein.
28. Plaintiff either knew or should have known of any alleged deficiencies in the sidewalk and resided at the same with such knowledge. As a result, Plaintiff's recovery should be barred.

RESERVATION AND NON-WAIVER

29. Saul reserves and does not waive any additional or further defenses as may be revealed by

additional information that may be acquired in discovery or otherwise.

WHEREFORE, Defendant Saul, LLC, having fully answered the Plaintiff's Amended Complaint herein, prays that the same be dismissed with costs and for such other and further relief as the Court may deem just and proper.

Dated this 17th day of January, 2019.

WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton
Morgan S. Templeton (SC Bar #15456)
145 King Street, Suite. 300
Post Office Box 1200
Charleston, South Carolina 29402
Telephone: 843-329-9500
Attorneys for Defendant Saul, LLC

EXHIBIT D
ANSWER OF RESPONDENT WELLS FARGO

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	IN THE 14 th JUDICIAL CIRCUIT
	)	
Eddie B. Lewis, Jr.,	)	Civil Action No. 2018-CP-07-2378
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER
	)	(Jury Trial Demanded)
Saul, LLC, and Wells Fargo Bank, National Association	)	
	)	
Defendants.	)	
	)	
	)	

Defendant Wells Fargo Bank, National Association ("Defendant"), answers the Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted against Defendants and, should therefore be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure* and other applicable state laws.

FOR A THIRD DEFENSE

3. Regarding the allegations of Paragraph 1, Defendant does not contest jurisdiction at this time.
4. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 2 of the Complaint.

5. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 3 of the Complaint.

6. Defendant admits the allegations of Paragraph 4 of the Complaint.

7. Upon information and belief, Defendant admits the allegations of Paragraph 5 of the Complaint.

8. Upon information and belief, Defendant admits the allegations of Paragraph 6 of the Complaint.

9. Upon information and belief, Defendant admits the allegations of Paragraph 7 of the Complaint.

10. Defendant denies the allegations of Paragraph 8 of the Complaint.

11. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 9 of the Complaint.

12. Defendant asserts the allegations of Paragraph 10 of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 10.

13. Defendant denies the allegations of Paragraph 11 of the Complaint.

14. Defendant asserts the allegations of Paragraph 12 (and its subparts A-L) of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 12 and its subparts.

15. Defendant asserts the allegations of Paragraph 13 (and its subparts a-k) of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 13 and its subparts.

16. Defendant denies the allegations of Paragraph 14 of the Complaint.

17. Defendant asserts that they are not required to respond to Paragraph 15 of the Complaint, but, to the extent that they are, Defendant reasserts and re-alleges each and every other allegation and Paragraph of its pleadings as if repeated herein verbatim.

18. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 16 of the Complaint.

19. Defendant asserts the allegations of Paragraph 17 of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 17.

20. Defendant denies the allegations of Paragraph 18 of the Complaint.

21. Defendant denies the allegations of Paragraph 19 of the Complaint.

22. Defendant denies the allegations of Paragraph 20 of the Complaint.

23. Defendant denies the allegations of Paragraph 21 of the Complaint.

24. Defendant denies Plaintiff is entitled to the relief requested in the Prayer of the Complaint.

FOR A FOURTH DEFENSE

25. Defendant alleges any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever. Defendants reserve the right to amend the factual basis for her affirmative defenses and asserts discovery has not yet begun.

FOR A FIFTH DEFENSE

26. Defendant alleges the condition which Plaintiff alleges caused his injury was either open and obvious to Plaintiff at the time of his injury or was otherwise known to Plaintiff at the time of his injury. Furthermore, any danger created by said condition, which Defendant expressly

denies, was not of a nature that should have been anticipated by Defendant. Therefore, Plaintiff is barred from recovery in this action against Defendant. Defendant reserves the right to amend the factual basis for her affirmative defenses and asserts discovery has not yet begun.

FOR A SIXTH DEFENSE

27. Defendant would show the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

13. Defendant alleges the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- a. Provided with sufficiently clear standards for determining the appropriateness of a punitive damage award or the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- c. Instructed that awarding punitive damages on individually discriminatory characteristics of Defendant is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of Defendant upon which an award of punitive damages may be based; and
- e. Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness;

would violate Defendant's equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed for the costs of defending this action and for such other relief as the Court and jury deem just and proper.

VERNIS & BOWLING OF COLUMBIA, LLC

/s/Joseph P. Bias

Joseph P. Bias, Bar No. 80367
1401 Main Street, Suite 655
Columbia, South Carolina 29201
(803) 234-5416
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ATTORNEY FOR DEFENDANT

February 11, 2019

EXHIBIT E
APPELLANT'S MOTION FOR
SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.	)	
	)	
Plaintiff,	)	
	)	Defendant Saul, LLC's Motion for
	)	Summary Judgment
versus	)	
	)	
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION	)	
	)	
Defendants.	)	

TO: COREY FLEMING, ATTORNEY FOR PLAINTIFF

Defendant, Saul, LLC ("Saul"), by and through its undersigned attorneys, will move before the presiding judge of the Court of Common Pleas for the County of Beaufort County, South Carolina, ten (10) days from the date of this motion or as soon thereafter as counsel may be heard for an order granting Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Saul submits that it had gave all control and duties of the subject property to Defendant Wells Fargo, and as a matter of law, owed no duty to the Plaintiff and summary judgment should be granted as to this Defendant.

ALLEGED FACTS

On or about May 23, 2016, Plaintiff, Eddie R. Lewis, entered the parking lot/premises located at 401 Port Republic Street, Beaufort, S.C. as a customer to Defendant Wells Fargo (hereinafter "Wells Fargo"). Am. Compl. ¶ 9. While exiting the parking lot, the Plaintiff allegedly tripped and fell causing him injuries. Am. Compl. ¶ 11. Saul owns the premises located at 401 Port Republic Street, Beaufort, S.C. Am. Compl. ¶ 7. Said property is and was leased by Saul to Wells

Fargo, who exercises complete control and responsibility of the property pursuant to the terms of the Lease. See gen. Exhibit A. Plaintiff brings this action against Saul on the theory of negligence and premises liability. Am. Compl. ¶¶ 9-21. Plaintiff 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.” Am. Compl. ¶ 12, subsection A-L.

For the reasons set forth below, Saul is entitled to summary judgment because, as a matter of law, Saul gave control and responsibilities to Wells Fargo and therefore owes no duty to Plaintiff.

ARGUMENT

1. Saul gave complete control of the subject property to Wells Fargo, therefore, Saul owes no duty to the Plaintiff and cannot be found negligent as a matter of law.

A plaintiff must prove three elements to recover on a claim for negligence: 1) a duty of care owed by the defendant to the plaintiff; 2) a breach of that duty by a negligent act or omission; and 3) damage proximately resulting from the breach. Chakrabati v. City of Orangeburg, 403 S.C. 308, 743 S.E.2d 109 (Ct. App. 2013). “If any of these elements is absent a negligence claim is not stated.” Id. citing Summers v. Harrison Constr., 298 S.C. 451, 455, 381 S.E.2d 493, 495 (Ct. App. 1989). A legal duty is that which the law requires to be done or forbore with respect to a particular individual or the public at large. South Carolina Electric & Gas Co. v. Utilities Construction Co., 244 S.C. 79, 135 S.E.2d 613 (1964). Without a violation of such a legal duty, there is no negligence. Id. An owner of land possesses a general duty to warn others of latent hazardous conditions on his land. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). This duty arises from the owner’s superior knowledge of conditions on the premises within his control.

See Dunbar v. Charleston & W.C. Ry. Co., 211 S.C.209, 44 S.E.2d 314 (1947). However, when land is occupied by a lessee the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. Id. After the premises is surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee. Id. citing W. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on the Law of Torts 435 (5th ed. 1984).

Pursuant to Section 1.2 of the Lease, Saul, LLC (interchangeably “Landlord”) leased the subject property to Wells Fargo/Wachovia (interchangeably “Tenant”) with the right to use on an *exclusive basis*, the Tenant-Dedicated Parking Areas and on a non-exclusive basis, the non-Dedicated Parking Areas and all the other Common Areas. See Exhibit A: pg. 23- 24 (emphasis added). Attached as an exhibit to the Lease is the Site Plan, which defines the “Tenant Dedicated Parking Areas” as spaces designated “W.” See Exhibit B.

Additionally, attached as Exhibit C, is an email sent by Rich Belthoff, counsel for Wells Fargo, which specifically asserts that “Wells Fargo has been granted in the Lease the exclusive right to use the Tenant Dedicated Parking Areas on a 24/7 basis.” See Exhibit C. Further, the email states that “[t]hese parking areas are not common area under the Lease.” Id.

Further, Section 5.6(s) of the Lease provides that Wells Fargo, at its expense, shall keep and maintain, take good care of, and make all needed repairs to the Leased Premises... and (ii) any Tenant Property located outside of the Leased Premises (any such maintenance and/or repairs for which Tenant is responsible being herein collectively called Tenant Repairs.)” See Exhibit A. pg. 72. Moreover, Section 5.6(e) of the Lease states that, “[i]n any such event, Tenant shall notify

Landlord of the need for any such Tenant Repair and its request that Landlord perform the same, and Landlord shall endeavor to respond timely to each such request.” Id. at pg. 73.

Finally, Section 14.1 of the Lease states that: “[a]ny notice or other communication required or permitted to be given under this Lease (each, a “notice”) must be in writing and shall be sent to all Notice Parties...” Id. The Lease provides under Section 5.5(a), that “Landlord shall keep and maintain, and make all needed repairs to, the Base Building and the Common Areas....” Id. However, the Lease fails to define maintenance and repairs.¹

Further, there has not been any documents presented by Wells Fargo that states that they ever notified Saul about any hazardous conditions in the Tenant Controlled Parking Area. The Lease stipulated that Wells Fargo shall notify Saul of any need of repair, in writing. Rather, as noted in the attached Affidavit of Esther Shaver Harnett, Saul was never given any Notice, as defined by the Lease, for any needs to make any maintenance or repairs to the exclusive Wells Fargo parking area prior to the alleged incident. See Exhibit D. Saul gave all rights to the subject property to Wells Fargo pursuant to the terms of the Lease. Wells Fargo had full control over the Tenant Controlled Parking Area. Wells Fargo had a duty to exercise reasonable care in maintaining the exclusive Tenant Controlled Parking Area, and to let Saul know in writing any needs for repairs. Pursuant to the Affidavit of Esther Shaver Harnett, Saul was never notified of any needs for repairs in the Tenant Controlled Parking Area. See Exhibit D.

Pursuant to the lease, Wells Fargo had complete control of the property. See Exhibit A (Lease) and Exhibit C (Email from Wells Fargo’s counsel). As such, there is no duty for Saul to seek out and determine whether any alleged defects or hazards existed in the parking lot which is

¹ An analysis on this issue will be provided in the following section.
Page 4 of 7

not in Saul's control. See Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992) (establishing that in the absence of an agreement to the contrary, after a premises is surrendered to a lessee in good condition, the lessor typically is not responsible for hazardous conditions.) Wells Fargo exercised complete and exclusive control of the parking area where the alleged incident occurred, and therefore, Saul cannot be found liable to the Plaintiff as a matter of law.

2. Saul never assumed a voluntary duty to inspect the property for latent defects, therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.

At common law, where there is no duty to act, but an act is voluntarily undertaken, the actor assumes a duty to use due care. Sherer v. James, 290 S.C. 4040, 351 S.E.2d 148 (1986). In Byerly v. Connor, the Appellant argued that the lessor owed a duty to discover and warn of latent hazardous conditions because it undertook to inspect the property at issue. 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992). An agent of the Lessor testified that he conducted yearly inspections of the property solely for the purpose of ensuring that the property conformed to structural requirements of permits issued. Id. The South Carolina Supreme Court determined that the Lessor undertook a limited duty to use due care to discover structural nonconformity with permits, which did not include a duty to inspect for a latent hazardous condition. Id. "Summary Judgment can be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." Id. citing Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976). Courts will interpret contracts in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning. See M and M Corp. of S.C. v. Auto-Owners Ins. Co., 390 S.C. 255, 701 S.E.2d 33, (2010). "Courts must enforce, not write, contracts... and their language must be given its plain, ordinary [,] and popular

meaning.” Sloan Constr. Co. v. Cent. Nat’l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977).

Here, Saul leased the property to Wells Fargo “as-is.” See Exhibit A. However, pursuant to the lease Saul had an obligation to give maintenance and service to the property. Id. However, the lease fails to address whether Saul had a duty to *inspect*. Saul agrees it has a duty to maintain the property pursuant to the terms of the Lease – *when asked to perform repairs*. Here, there is nothing that shows that Saul was asked by Wells Fargo to correct any condition in the parking lot – and certainly not this condition. The work orders submitted by Wells Fargo establish that no request for work on this area was requested. Additionally, Wells Fargo has issued letters to Saul indicating they “control” the parking lot. See Exhibit C. While this email is after the alleged fall, the Affidavit of Esther Shaver Harnett establishes that Saul exercised no control over the use of the property. See Exhibit D.

As established above, Saul had given complete and exclusive control over the subject property where the alleged incident occurred to Wells Fargo. Saul did not assume a voluntary duty, as shown by the Attached Affidavit of Esther Shaver Harnett. See Exhibit D. Saul was not asked to perform any maintenance or services on the area where the alleged incident occurred. As such, Saul never assumed a voluntary duty to inspect the property for latent defects, therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.

CONCLUSION

Saul released the complete and exclusive control of the subject property to Wells Fargo, pursuant to the terms of the Lease and the email from Wells Fargo’s counsel. Since Saul gave the control of the subject property to Wells Fargo, Saul maintained no duties or obligations as a matter of law to Plaintiff. Saul never assumed a voluntary duty to inspect the property for latent defects,

therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff. Therefore, all claims made by Plaintiff against Saul, LLC should be dismissed as a matter of law.

Dated this 20th day of January, 2020

WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton
Morgan S. Templeton (SC Bar #15456)
David A. Nasrollahi (SC Bar #103242)
Post Office Box 1200
Charleston, South Carolina 29402
843-329-9500
Attorneys for Defendants Saul, LLC

EXHIBIT F
ORDER GRANTING
MOTION FOR SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.,	)	
	)	
Plaintiff,	)	ORDER GRANTING
	)	DEFENDANT SAUL, LLC'S
vs.	)	MOTION FOR SUMMARY
	)	JUDGMENT
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION,	)	
	)	
Defendants.	)	

Presiding Judge:	Hon. Deadra L. Jefferson
Plaintiff's Attorney:	Cory Fleming, Esq.
Defendant Saul, LLC's	
Attorney:	John Dodds, Jr., Esq.
Date of Hearing:	March 17, 2020
Court Reporter:	Karen Andersen

This matter came before the Court on March 17, 2020 for a hearing on Defendant Saul, LLC's ("Saul") motion for summary judgment as to all claims asserted by Plaintiff Eddie B. Lewis, Jr. ("Plaintiff"), filed January 20, 2020. After careful consideration of the record, the Court makes the following findings of fact and conclusions of law and Grants Saul's Motion for Summary Judgment.¹

FINDINGS OF FACT

Saul is the owner of certain real property and improvements located at 1011 Bay Street, Beaufort, South Carolina (the "subject property"). At all times relevant hereto, Defendant Wells Fargo National Association ("Wells Fargo") leased the subject property from Saul pursuant to a written lease agreement (the "lease"). The lease term is September 22, 2004 to September 30, 2024. Lease at § 1.1(a).

¹ Counsel for the Plaintiff was provided with a copy of the proposed Order and had no objection to the relief sought or the verbiage contained herein.

Pursuant to the terms of the lease, Saul “shall keep and maintain, and make all needed repairs to, the . . . Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings” Id. at § 5.5(a). With respect to Wells Fargo’s repair and maintenance obligations, the lease states:

Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises

Id. at § 5.6(a).

The lease also provides that Wells Fargo shall have its own parking area, known under the lease as the “Tenant Dedicated Parking Area.” Section 1.2 of the lease states that Wells Fargo shall be entitled to use, “on an exclusive basis,” the Tenant Dedicated Parking Area. Id. No other person or entity besides Wells Fargo and its customers is permitted to use the Tenant Dedicated Parking Area. Id.

During the lease term, Wells Fargo exercised control over the Tenant Dedicated Parking Area, hiring a property management company to inspect the area and oversee any necessary maintenance and repairs. Saul was never notified by Wells Fargo of any need for repairs and maintenance to the Tenant Dedicated Parking Area, and Wells Fargo completed any maintenance and repairs without permission or consent from Saul. See Aff. of Harnett at ¶ 7. Saul never undertook any maintenance or repairs to the Tenant Dedicated Parking Area during the lease term. Id. at ¶ 8.

On or about May 23, 2016, Plaintiff was a patron at the Wells Fargo bank at the subject property. Amend. Compl. at ¶ 9. While exiting the bank and walking through the Tenant Dedicated Parking Area, Plaintiff tripped and fell, sustaining various personal injuries (the “incident”). Id. at

¶ 11. As a result of the incident, Plaintiff filed the instant lawsuit against Saul and Wells Fargo sounding in traditional common law premises liability. Specifically, as it relates to Saul, Plaintiff alleges that Saul had a duty “to warn invitees 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.” Amend. Compl. at ¶ 12.

At the hearing, counsel for the Plaintiff stated that the Plaintiff does not disagree with the above facts, and does not disagree with Saul’s interpretation of the lease agreement.

CONCLUSIONS OF LAW

I. Summary Judgment Standard

“Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law.” Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRCF. “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, “the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party.” Id.

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law... Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008).

II. Premises Liability

In a negligence action, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligence act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. See, e.g., Sabb v. S.C. State Univ., 350 S.C. 416, 567 S.E.2d 231, 237 (2002). "An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." Platt v. CSX Transp., Inc., 388 S.C. 441, 697 S.E.2d 575, 577 (2010). "Without a duty, there is no actionable negligence." Id. "The existence of a duty owed is a question of law for the courts." Doe v. Greenville Cnty. Sch. Dist., 375 S.C. 63, 651 S.E.2d 305, 309 (2007).

Premises liability is a theory of negligence that establishes the duty owed to someone injured on a landowner's property as a result of conditions or activities on the land. Singleton v. Sherer, 377 S.C. 185, 659 S.E.2d 196, 204 (Ct. App. 2008). Under South Carolina premises liability law, an owner or occupier of property is the person having control, rather than ownership, of the premises. Dunbar v. Charleston & W. Carolina Ry. Co., 211 S.C. 209, 44 S.E.2d 314, 317 (1947) ("As a general rule, liability for injuries caused by dangerous instrumentalities terminates with cessation of control thereover, and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question."). "One who controls the use of the property has a duty of care not to harm others by its use." Miller v. City of Camden, 329 S.C. 310, 494 S.E.2d 813, 815 (1997). "Conversely, one who has no control owes no duty." Id.

When land is occupied by a lessee pursuant to a lease, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). "In the absence of an agreement to the contrary, the lessor surrenders

possession and control of the land to the lessee” and “typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee.” Id. (citing W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on the Law of Torts § 434 (5th ed. 1984)).

Pursuant to the terms of the lease between Saul and Wells Fargo, Saul relinquished possession and control of the Tenant Dedicated Parking Area to Wells Fargo for the duration of the lease term. Further, the Tenant Dedicated Parking Area is not considered a “common area” under the terms of the lease, and, therefore, Saul is under no affirmative obligation to effectuate maintenance and repairs to the Tenant Dedicated Parking Area.

During Wells Fargo’s tenancy at the subject property, Wells Fargo exercised exclusive control over the Tenant Dedicated Parking Area, including performing various items of maintenance and repair thereto without involvement of Saul. There is no evidence before this Court that Saul was notified by Wells Fargo of any needed maintenance or repairs to the Tenant Dedicated Parking Area, and Saul never voluntarily undertook a duty to inspect for hazardous conditions and make repairs for same. Accordingly, Saul cannot be held liable under South Carolina’s premises liability laws for property over which Saul had no control.

Accordingly, after careful consideration of the record, the Court finds that no genuine issue of material fact exists as to the question of Saul’s liability. By the terms of the parties’ lease agreement, Saul had no duty to maintain or inspect the Tenant Dedicated Parking Area, and therefore cannot be liable for the Plaintiff’s injuries. Plaintiff does not contest the facts as stated supra or the legal interpretation of the parties’ lease agreement. It appearing that further inquiry into the facts of the case is not necessary clarify the application of the law, and that there is no dispute as to evidentiary facts or as to the conclusions or inferences to be drawn from them, Saul’s Motion for Summary Judgment is heard and respectfully Granted.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Chief Administrative Judge
Fourteenth Judicial Circuit

March _____, 2020
Charleston, South Carolina
At Chambers



Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al

Case Number: 2018CP0702378

Type: Order/Summary Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2020-03-24 13:54:19 page 7 of 7

EXHIBIT G
RESPONDENT WELLS FARGO'S
MOTION TO SET ASIDE JUDGMENT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Eddie B. Lewis, Jr.,

Plaintiff,

vs.

Saul, LLC and Wells Fargo Bank, NA,

Defendant.

IN THE COURT OF COMMONS PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-07-02378

**DEFENDANT WELLS FARGO
MOTION TO SET ASIDE JUDGMENT
PURSUANT TO RULE 60, SCRCF**

YOU WILL PLEASE TAKE NOTICE that Co-Defendant Wells Fargo Bank, NA ("Wells Fargo"), by and through its undersigned attorney, will move for an Order pursuant to Rule 60, SCRCF seeking relief from a judgment order.

Wells Fargo seeks relief from the Order Granting the Defendant Saul, LLC ("Saul") Summary Judgment which was entered by the Court on March 24, 2020. This motion is made in accordance with the South Carolina Rules of Civil Procedure, and will be supported by sworn Affidavits of Wells Fargo representatives, and a Memorandum of Law In Support.

The Motion is based on the following:

1. Pursuant to Rule 60, SCRCF this motion is timely because it has been filed within one (1) year of the date the Honorable Deadra L. Jefferson entered the Order granting Saul's Motion for Summary Judgment.
2. Wells Fargo submits it is entitled to relief under Rule 60(b)(3), SCRCF because Saul's Summary Judgment Motion argument and supporting Affidavit contained significant misrepresentations as to the contractual relationship of the Parties.
3. Wells Fargo further submits that there were significant misrepresentations by Saul as to the responsibility for the condition and maintenance of the common areas, parking lot, and

landscaped areas of subject leased premises pursuant to the clear and unambiguous terms of the binding Lease agreement entered into between Wells Fargo and Saul.

4. The misrepresentations regarding the terms of the binding Lease are the cornerstone of any potential culpability or responsibility for the claims made by Plaintiff in this matter.
5. Wells Fargo further submits it is entitled to relief under Rule 60(b)(2), SCRCP, based on newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), SCRCP.

Respectfully submitted,

VERNIS & BOWLING OF COLUMBIA, LLC

s/Douglas E. Leadbitter

Douglas E. Leadbitter, SC Bar No. 68430

1401 Main Street, Suite 655

Columbia, South Carolina 29201

Tel: (803) 234-5416

dleadbitter@scarolina-law.com

ATTORNEYS FOR WELLS FARGO, NA

March 19, 2021

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Eddie B. Lewis, Jr.,

Plaintiff,

vs.

Saul, LLC and Wells Fargo Bank, NA,

Defendant.

IN THE COURT OF COMMONS PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-07-02378

**DEFENDANT WELLS FARGO
MOTION TO SET ASIDE JUDGMENT
PURSUANT TO RULE 60, SCRCF**

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ATTORNEYS FOR WELLS FARGO, NA

March 19, 2021

EXHIBIT A

ELECTRONICALLY FILED - 2021 Sep 21 4:11 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378
ELECTRONICALLY FILED - 2021 Oct 14 11:09 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	Case No.: 2018-CP-07-02378
EDDIE B. LEWIS	)	
Plaintiff,	)	
	)	ORDER ON WELLS FARGO'S
v.	)	MOTION TO SET ASIDE JUDGMENT
	)	PURSUANT TO RULE 60, SCRCP
SAUL, LLC and WELLS FARGO BANK	)	
NATIONAL ASSOCIATION,	)	
Defendants.	)	
Presiding Judge:		Hon. Deadra L. Jefferson
Plaintiff's Attorney:		Cory Fleming, Esq.
Defendant's Attorney,		
Saul, LLC:		John Dodds, Jr., Esq. and
		Morgan Templeton, Esq.
Defendant's Attorney,		
Wells Fargo Bank:		Douglas E. Leadbitter, Esq.
Date of Hearing:		March 17, 2020 & March 23, 2021
Court Reporter:		Karen Andersen

This matter came before the Court on Defendant Wells Fargo Bank, NA's ("Wells Fargo") Motion to Set Aside Judgment pursuant to Rule 60, SCRCP, filed March 19, 2021. Wells Fargo asks the Court to reconsider its Order Granting Saul, LLC's Motion for Summary Judgment, filed March 24, 2020. The Court received a copy of the Motion to Set Aside Judgment on March 23, 2021 via email from the Beaufort County Clerk of Court.¹ Defendant Saul, LLC ("Saul, LLC") filed its response to Wells Fargo's Motion to Set Aside Judgment on March 31, 2021. The Plaintiff filed his response to Wells Fargo's Motion to Set Aside Judgment on July 2, 2021. Wells Fargo filed its Memorandum in Support on July 6, 2021. Saul, LLC filed its Reply on July 9, 2021. After consideration of the record, as well as the various interests balanced by the Court at the time of the

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ruling, the Motion to Set Aside Judgment is Granted and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.²

PROCEDURAL HISTORY

This matter originally came before the Court on March 17, 2020 on Saul, LLC's Motion for Summary Judgment, filed January 20, 2020. Present and appearing on behalf of the Plaintiff was Cory Fleming, Esq. Present and appearing on behalf of Saul, LLC was John Dodds, Jr., Esq. No counsel of record appeared for Wells Fargo. Mr. Fleming advised the Court that on the Friday immediately preceding the hearing, March 13, 2020, he received an email from Laura Robinson advising that she was resigning from the firm and that on March 16, 2021, this case was being assigned to Charles Blackburn, Esq. Audio Transcript of March 17, 2020 Hearing at 1:14:30-1:14:58. Mr. Fleming stated that he believed Mr. Blackburn communicated with Morgan Templeton, lead counsel for Saul, LLC, wherein Mr. Blackburn indicated that he could not be present at the hearing "for various reasons." *Id.* at 1:15:00-1:15:15.³

At the time of the hearing, it was represented to the Court by Mr. Fleming that Wells Fargo's presence was not necessary to dispose of the Motion for Summary Judgment. *Id.* at 1:16:00-1:16:10. Moreover, Mr. Fleming conceded that he did not disagree with Saul, LLC's interpretation of the lease, and conceded that Saul, LLC's position on summary judgment was

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supported by the terms of the lease, South Carolina law, and the facts of the case. Id. at 1:24:50-1:26:18. Based on that concession, and the Plaintiff and Defendant Saul LLC's representation that they consented to the relief sought, the Court instructed Mr. Dodds to prepare a proposed Consent Order granting summary judgment between Lewis and Saul, LLC for the Court's consideration. Id. at 1:26:20-1:26:35.⁴ The Court instructed Mr. Dodds to copy all counsel of record on the submission of the proposed order to the Court.⁵ Id. Mr. Fleming advised that he had no objection to the relief sought in the proposed order or the verbiage contained therein.

The Court issued the Consent Order Granting Summary Judgment on March 24, 2020. Wells Fargo filed the present Motion to Set Aside Judgment on March 19, 2021. For the following reasons, Wells Fargo's Motion to Set Aside Judgment is head and respectfully Granted, and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.

CONCLUSIONS OF LAW

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b), SCRCP.

"The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken... This rule does

⁴ The Court perceived the parties' representation to be that the agreement they reached regarding the grant of the Motion for Summary Judgment limited relief to the parties that were present at the hearing and represented that as being Lewis and Saul, LLC.

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not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.” *Id.* “[W]hen considering whether to grant relief from final judgments, a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.” Raby Const., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004) (internal citations omitted).

“A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. Whether to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial judge.” Perry v. Heirs at L. of Gadsden, 357 S.C. 42, 46–47, 590 S.E.2d 502, 504 (Ct. App. 2003).

I. The Motion to Set Aside Judgment is Granted.

Rule 60(b)(3), SCRCP permits a judgment to be vacated for fraud, misrepresentation, or other misconduct of an adverse party. It was represented to the Court at the hearing on March 17, 2020, that the Plaintiff and Defendant Saul, LLC had no objection to Saul, LLC being dismissed from the case, and that Wells Fargo was not necessary for the disposition of Saul, LLC’s Motion for Summary Judgment.

However, the overwhelming majority of the findings of fact and conclusions of law contained in Saul, LLC’s Consent Order to the Court contained a myriad of findings regarding the interpretation of the lease between Saul, LLC and Wells Fargo and liability findings that related not to Saul, LLC and the Plaintiff, but to Wells Fargo, a party who was not present at the March 17, 2020 hearing and was not afforded an opportunity to be heard. And most importantly, that Lewis and Saul, LLC knew Wells Fargo was not going to be present for the hearing on the motion. The findings contained in the Order do not simply hold that Saul, LLC is not liable for the Plaintiff’s injuries. Rather, the findings contained in the Order interpret a lease, determine

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culpability for the Plaintiff's cause of action and assign liability for the Plaintiff's injuries to Wells Fargo. This is particularly troubling in light of the fact that counsel for Lewis and Saul, LLC knew that Wells Fargo's representation was in flux, objected to Wells Fargo's request for a continuance, and did not advise the Court that Wells Fargo sought a continuance.⁶

Rule 60(b)(1), SCRCP permits a judgment to be vacated for mistake, inadvertence, surprise, or excusable neglect. In determining whether to grant relief under Rule 60(b)(1), the court must consider: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010). To establish a meritorious defense, the party does not have to show he would prevail on the merits, but rather, the defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)).

"[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "[W]here a Rule 60(b) motion is filed shortly after the movant becomes aware of the basis therefor and there is no evidence of unreasonable delay, the motion is timely." Ex Parte Carter, 422 S.C.

⁶ While it was incumbent upon Wells Fargo to file a Motion for Continuance, the Court is nevertheless troubled that Saul, LLC failed to advise the Court of Wells Fargo's request for continuance when Saul, LLC was aware of the transition of Wells Fargo's representation. This is heightened by Lewis and Saul, LLC's knowledge that Wells Fargo would not be represented and Mr. Blackburn would not be able to attend the hearing on March 17, 2020.

EXHIBIT A

623, 631, 813 S.E.2d 686, 690 (2018). However, “[t]he one year limit is a non-discretionary mandate” Coleman v. Dunlap, 303 S.C. 511, 402 S.E.2d 181, 183 (Ct. App. 1991), reversed, 306 S.C. 491, 413 S.E.2d 15 (1992).

Saul, LLC’s Motion for Summary Judgment was heard on March 17, 2020 and a Consent Order granting that motion was entered on March 24, 2020. Attorney for Wells Fargo, Douglas Leadbitter, filed a motion to set aside the judgment on March 19, 2021. Thus, Leadbitter made his motion within the allotted time period. Furthermore, this Court finds that Leadbitter made his motion within a reasonable time, not exceeding one year. With the transition of Wells Fargo’s representation that occurred, this Court finds that Leadbitter sought relief as soon as he discovered this judgment had been entered against Wells Fargo. With respect to the meritorious defense factor, as stated above, Saul, LLC’s Order contained findings of fact that interpreted a lease, determined culpability for the Plaintiff’s cause of action and assigned liability for the Plaintiff’s injuries to Wells Fargo without the knowledge or consent of Wells Fargo. As such, this Court finds that Wells Fargo has shown the existence of a meritorious defense. Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)). Finally, this Court finds that the degree of prejudice the Plaintiff and Saul, LLC will suffer if relief is granted is not so high as to outweigh the other factors.⁷ Wells Fargo was a party to the March 17, 2020 hearing, however, was not present at the hearing and was not afforded an opportunity to be heard. Both the Plaintiff and Saul, LLC knew that Wells Fargo would not be represented at the March 17, 2020 hearing and, therefore, this Court finds little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC’s Motion for Summary Judgment. “This is consistent with South Carolina’s policy favoring the disposition

⁷ Prejudice is defined as the lack of notice or knowledge which inhibits the ability to refute. Rouvet v. Rouvet, 388 S.C. 301, 312-13, 696 S.E.2d 204, 209-10 (Ct. App. 2010).

EXHIBIT A

of issues on their merits rather than on technicalities.” Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (citing Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986)); see Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001) (citing Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (“Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues); see also Curry v. Carolina Insurance Group of SC, Inc., 428 S.C. 60, 70, 832 S.E.2d 760, 764-65 (Ct. App. 2019) (quoting Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) (“Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial”).

CONCLUSION

After fully considering the Defendant Wells Fargo's Motion to Set Aside Judgment, filed March 19, 2021 the Court finds pursuant to Rule 60(b)(3) and (b)(1), SCRCP and fundamentally in the interests of justice that the relief is Granted and the Court's Order dated March 24, 2020, is **VACATED**. Accordingly, the Motion to Set Aside Judgment is heard and respectfully **GRANTED**.⁸

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge

September _____, 2021
Charleston, South Carolina

⁸ The common please non-jury clerk is hereby directed to schedule the Defendant Saul, LLC's Motion for Summary Judgment filed January 20, 2020 on the next available motions roster so that it can be heard and disposed of on its merits.

EXHIBIT A



Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al
Case Number: 2018CP0702378
Type: Order/Set Aside Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

Electronically signed on 2021-09-21 12:43:41 page 8 of 8

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Presiding Judge:	Hon. Deadra L. Jefferson
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Defendant's Attorney, Saul, LLC:	John Dodds, Jr., Esq. and Morgan Templeton, Esq.
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"[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "[W]here a Rule 60(b) motion is filed shortly after the movant becomes aware of the basis therefor and there is no evidence of unreasonable delay, the motion is timely." Ex Parte Carter, 422 S.C.

⁶ While it was incumbent upon Wells Fargo to file a Motion for Continuance, the Court is nevertheless troubled that Saul, LLC failed to advise the Court of Wells Fargo's request for continuance when Saul, LLC was aware of the transition of Wells Fargo's representation. This is heightened by Lewis and Saul, LLC's knowledge that Wells Fargo would not be represented and Mr. Blackburn would not be able to attend the hearing on March 17, 2020.

623, 631, 813 S.E.2d 686, 690 (2018). However, “[t]he one year limit is a non-discretionary mandate . . .” Coleman v. Dunlap, 303 S.C. 511, 402 S.E.2d 181, 183 (Ct. App. 1991), reversed, 306 S.C. 491, 413 S.E.2d 15 (1992).

Saul, LLC’s Motion for Summary Judgment was heard on March 17, 2020 and a Consent Order granting that motion was entered on March 24, 2020. Attorney for Wells Fargo, Douglas Leadbitter, filed a motion to set aside the judgment on March 19, 2021. Thus, Leadbitter made his motion within the allotted time period. Furthermore, this Court finds that Leadbitter made his motion within a reasonable time, not exceeding one year. With the transition of Wells Fargo’s representation that occurred, this Court finds that Leadbitter sought relief as soon as he discovered this judgment had been entered against Wells Fargo. With respect to the meritorious defense factor, as stated above, Saul, LLC’s Order contained findings of fact that interpreted a lease, determined culpability for the Plaintiff’s cause of action and assigned liability for the Plaintiff’s injuries to Wells Fargo without the knowledge or consent of Wells Fargo. As such, this Court finds that Wells Fargo has shown the existence of a meritorious defense. Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)). Finally, this Court finds that the degree of prejudice the Plaintiff and Saul, LLC will suffer if relief is granted is not so high as to outweigh the other factors.⁷ Wells Fargo was a party to the March 17, 2020 hearing, however, was not present at the hearing and was not afforded an opportunity to be heard. Both the Plaintiff and Saul, LLC knew that Wells Fargo would not be represented at the March 17, 2020 hearing and, therefore, this Court finds little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC’s Motion for Summary Judgment. “This is consistent with South Carolina’s policy favoring the disposition

⁷ Prejudice is defined as the lack of notice or knowledge which inhibits the ability to refute. Rouvet v. Rouvet, 388 S.C. 301, 312-13, 696 S.E.2d 204, 209-10 (Ct. App. 2010).

of issues on their merits rather than on technicalities.” Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. Appt. 2001) (citing Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986)); see Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001) (citing Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (“Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues); see also Curry v. Carolina Insurance Group of SC, Inc., 428 S.C. 60, 70, 832 S.E.2d 760, 764-65 (Ct. App. 2019) (quoting Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) (“Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial”).

CONCLUSION

After fully considering the Defendant Wells Fargo's Motion to Set Aside Judgment, filed March 19, 2021 the Court finds pursuant to Rule 60(b)(3) and (b)(1), SCRCPP and fundamentally in the interests of justice that the relief is Granted and the Court's Order dated March 24, 2020, is **VACATED**. Accordingly, the Motion to Set Aside Judgment is heard and respectfully **GRANTED**.⁸

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge

September _____, 2021
Charleston, South Carolina

⁸ The common please non-jury clerk is hereby directed to schedule the Defendant Saul, LLC's Motion for Summary Judgment filed January 20, 2020 on the next available motions roster so that it can be heard and disposed of on its merits.



Beaufort Common Pleas

Case Caption: Eddie B Lewis Jr VS Saul Llc , defendant, et al

Case Number: 2018CP0702378

Type: Order/Set Aside Judgment

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Deadra L. Jefferson
Circuit Court Judge

Appellate Case No. 2021-001170

Eddie B. Lewis,

Respondent

v.

Saul, LLC and Wells Fargo Bank,
National Association,

Of which Saul LLC is the Appellant;
and Wells Fargo Bank, National
Association is a Respondent

MEMORANDUM ON APPEALABILITY
OF RESPONDENT WELLS FARGO BANK, NATIONAL ASSOCIATION

s/Douglas E. Leadbitter
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STATEMENT OF THE CASE

Saul, LLC ("Saul") filed the instant appeal challenging an interlocutory Order under Rule 60, SCRPC granting relief to Respondent Wells Fargo Bank, National Association ("Wells Fargo"). Eddie Lewis is also a Respondent to the appeal.

This Court contacted the parties on November 29, 2021 and requested Memoranda from the Parties addressing whether or not Judge Jefferson's Order granting Wells Fargo's Rule 60 Motion is immediately appealable.

FACTUAL BACKGROUND

This is a premises liability case that arose out of an alleged trip and fall by the Plaintiff, Eddie Lewis, at a banking location in Beaufort, South Carolina that was formerly leased by Wells Fargo. Wells Fargo leased the subject premises from Saul.

Saul filed a Motion for Summary Judgment asserting that various provisions in the Wells Fargo lease proved that Saul, LLC gave Wells Fargo "complete control" of the parking lot and the "tenant dedicated parking", therefore Saul was not responsible to Plaintiff for his alleged injuries as a matter of law.

Judge Jefferson granted Saul's Motion for Summary Judgment. Wells Fargo then filed a Rule 60, SCRPC Motion seeking an Order setting aside the summary judgment Order granting relief to Saul.

Argument

This Court should dismiss this appeal because the Order granting the Rule 60, SCRPC Motion in favor of Wells Fargo is not immediately appealable.

The Order granting Wells Fargo's Rule 60, SCRPC Motion is not immediately appealable. The determination of whether a party may immediately appeal an Order issued before or during trial is governed primarily by S.C. Code

Ann. § 14–3–330 (Supp. 2021). Pocisk v. Sea Coast Const. of Beaufort, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008).

S.C. Code Ann. § 14–3–330 (Supp. 2021)

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.

In Pocisk, the appellant Sea Coast (Payne) sought an appeal of the grant of a Rule 60, SCRCP Motion setting aside a default judgment. Sea Coast argued that the interlocutory Order was immediately appealable because the interlocutory Order affected a substantial right. The Court held that the Rule 60 (b) relief, that results in avoidance of a trial, does not affect a substantial right which would entitle a party to an immediate appeal. Id. The Court of Appeals further held that Sea Coast Construction (Payne) could seek appellate review of the Order granting Rule 60(b) relief following *final* judgment in the case (emphasis added). Id.

The facts of this case are on all fours with the holding of Posick. Judge Jefferson's Rule 60 Order was not a final disposition of the matter. Judge Jefferson specifically ruled that Saul's Motion for Summary Judgment would be re-scheduled for a new hearing. Even though the result of the prior grant of summary judgment to Saul could have resulted in an avoidance of the trial, that trial avoidance is not a substantial right under S.C. Code Ann. § 14-3-330. Id.

Since Judge Jefferson's ruling was not a final disposition and did not impact a substantial right, this Court should hold that this is an interlocutory Order which is not allowed to be immediately appealed. Id.

CONCLUSION

For the reasons argued above, this Court should dismiss this appeal.

VERNIS & BOWLING OF COLUMBIA, LLC

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Dec 09 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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.

APPELLANT'S MEMORANDUM IN SUPPORT
OF ITS RIGHT TO APPEAL

I. ISSUE

Whether an Order vacating a Summary Judgment Order pursuant to Rule 60, S.C.R.C.P.,
is immediately appealable pursuant to South Carolina Law?

II. SHORT CONCLUSION

Saul, LLC may appeal an order granting a motion vacating a judgment because there was
an erroneous exercise of discretion on the part of the circuit court judge. *See Winslow Bros. &
Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922), *see also* S.C. Const. art V, § 9 ("The
decisions of the Supreme Court shall bind the Court of Appeals as precedents.") and *Campbell v.*

Robinson, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating that the Court of Appeals “may not overrule supreme court precedent”). The South Carolina Supreme 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. 120 S.C. 164, 112 S.E. 825.

III. PROCEDURAL HISTORY & MATERIAL FACTS

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”). (Ex 1., Am. Compl. ¶ 9.). While exiting the parking lot, Lewis allegedly tripped and fell causing him injuries. (*See Id.*). Appellant, Saul, LLC, (hereinafter “Saul”) owns the premises located at 401 Port Republic Street, Beaufort, S.C. (*See 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. (*See gen. Ex. 2-A, Mot. for Summ. J.*). Respondent brings this action against Saul on the theory of negligence and premises liability. (Ex. 1, Am. Compl. ¶¶ 9-21.). 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.” (*See Ex. 1, Am. Compl. ¶ 12, subsection A-L.*) Wells Fargo has not asserted any direct claims against Saul. (*See Ex. 3, Wells Fargo’s Answer to P. Compl.*). Saul moved for summary judgment (“Motion”) as to the Respondent’s Amended Complaint on January 20, 2020, based on the terms of the Lease. (*See Ex. 2, Mot. for Summ. J.*). Saul attached a full and complete copy of the Lease to this Motion as an exhibit. (*See Ex. 2-A*).

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. (*See* Ex. 4-A.). 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. (*See Id.*). On March 16, 2020, Charles G. Blackburn filed a Notice of Appearance on behalf of Wells Fargo. (*See* Ex. 4-C.). 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. (*See* Ex. 4-B.). 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. (*See 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***. (*See* Ex. 5, Saul’s Memo. in Opp. to Mot. to Set Aside.). 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. (*See* Ex. 6, Hearing Transc. p. 2:12-17; *see also* Ex. 7, Pl. Memo. in Resp. at pg. 3.). Wells Fargo received notice of the hearing and willfully elected and/or failed to file a Motion for Continuance or any Memoranda in Opposition. (*See* Ex. 5, Saul’s Memo. in Opp. to Mot. to Set Aside).

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. (*See* Ex. 6, Hearing Transc. p. 2:22-3:19.). The Trial Court questioned Respondent’s Counsel whether he conceded to Saul’s motion or whether it needed to be continued. (*Id.* p. 10:18-25.). In direct response to this question, Respondent’s counsel conceded that Saul’s

Motion was supported by the law and by the facts. (*Id.* p. 10:18-25.). 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. (*See Id.* p. 11:1-6; *see also* Ex. 8, Order Granting Saul's Mot. for Summ. J.). 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. (*See* Ex. 5-A.).

On March 24, 2020, the Trial Court, after careful consideration of the record, granted Saul's Motion. (Ex. 8.). The Trial Court made approximately 15 changes to the Proposed Order before signing it. (*See* Ex. 4-E and Ex. 4-F.).¹ Neither the Respondent nor Wells Fargo filed a

¹ 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. These 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;"

Rule 59(e) Motion. (*See* Ex. 5.). Wells Fargo did not appeal the Trial Court’s Order. (*See Id.*). On March 26, 2020, counsel for Wells Fargo sent an email evidencing his knowledge of Saul’s dismissal from this matter. (*See* Ex. 4-D.). 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. (*See* Ex. 9, Wells Fargo’s Mot. to Set Aside.). 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. (*See gen. Id.*; *see also* Ex. 5.). 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 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. (*See* Ex. 5.).

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. (*See gen. Ex. 7.*). 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. (*See Id.*, at pg. 4-5.). Thus, Wells Fargo had placed the Respondent in a position of being unable to address Wells Fargo’s assertions. (*See Id.*).

14) A conclusory sentence and paragraph was added which accounted for five additional sentences; and 15) the **Order** section was struck by the Court.

On July 6, 2021, for the first time, Wells Fargo finally submitted its Memorandum in Support of its Motion to Set Aside, with exhibits. (*See* Ex. 10, Wells Fargo’s Memo. in Supp.). 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.”). (*See* Ex. 4.). 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 reach the difficult standards under Rule 60, SCRCF 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. (*See Id.*).

Nonetheless, 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, SCRCF. (*See* Ex. 11, Order Granting Mot. to Set Aside.). 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 (*See* Ex. 6, Hearing Transc. p. 2:22-3:19); 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. 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. 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. This response follows.

IV. ARGUMENT

SAUL MAY IMMEDIATELY APPEAL THE TRIAL COURT'S ORDER VACATING AN ORDER GRANTING SUMMARY JUDGMENT PURSUANT TO AUTHORITY FROM THE SOUTH CAROLINA SUPREME COURT.

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. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825 (emphasis added), *see also* S.C. Const. art V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.") and *Campbell v. Robinson*, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating that the Court of Appeals "may not overrule supreme court precedent"). 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). The South Carolina Supreme 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*. 120 S.C. 164, 112 S.E. 825. (emphasis added).

Saul's appeal arises from the Trial Court's abuse of its discretion by granting Wells Fargo's Motion to Set Aside Judgment when the record establishes that the Respondent conceded Saul's Motion for Summary Judgment and Wells Fargo waived any arguments to the same. (*See* Saul's Initial Brief.). As evidenced in Saul's Initial Brief, the Trial Court's holding was unsupported by any supporting facts and are contradicted by the record which amounted in an erroneous exercise of discretion. The question of whether an order is immediately appealable is determined on a case-

by-case basis. *Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019). The Trial Court's Order in this matter is the exact "erroneous exercise of discretion" that was contemplated by the South Carolina Supreme Court in *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825, making, this matter immediately appealable.

The South Carolina Supreme Court's holding in *Winslow Bros.* is a published opinion that has not been overturned by the South Carolina Supreme Court and is binding precedent to date. The decisions of the South Carolina Supreme Court bind the Court of Appeals as precedent. *See Daniels v. City of Goose Creek*, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (1993); *see also*, S.C. Const. art V, § 9. Pursuant to the South Carolina Supreme Court's holding in *Winslow Bros.*, Saul does indeed have an immediately appealable issue as there is ample evidence establishing that the Trial Court's Order vacating an Order for Summary Judgment was an erroneous exercise of discretion.

Saul assumes that this Court is concerned with Saul's right to immediately appeal the Trial Court's Order in light of *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008) (holding an order granting a motion for relief from judgment is not immediately appealable). Any reliance upon *Pocisk* is misplaced, as the South Carolina Supreme Court's holding in *Winslow Bros.* binds the Court of Appeals. Thus, any modifications limiting the South Carolina Supreme Court's holding in *Winslow Bros.* must be done by the South Carolina Supreme Court. *See* S.C. Const. art V, § 9. Therefore, this Court 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. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825.

Nevertheless, this matter is distinguishable from *Pocisk* as it dealt with issues that are not present in this present appeal. 380 S.C. 584, 671 S.E.2d 98. In *Pocisk*, the Plaintiffs brought an

action against a Contractor, and others, alleging their house had been defectively constructed. *Id.* at 99 and 586. Although the Contractor's insurer denied coverage for the claim, it provided Contractor with a defense, pursuant to a full reservation of rights. *See Id.* After the other defendants settled with the Plaintiffs, Contractor and the Plaintiffs entered into a settlement agreement in which the Contractor confessed judgment and the Plaintiffs agreed not to seek satisfaction of the judgment from Contractor. *See Id.* Contractor assigned to the Plaintiffs, his rights in any claim involving insurance coverage and bad faith issues arising out the denied coverage. *See Id.* A judgment was entered against Contractor in the Beaufort County Court of Common Pleas, which did not mention the condition that the Plaintiffs would not seek satisfaction against Contractor. *See Id.* at S.C. 586, S.E.2d 100.

After the parties entered into the settlement agreement, the insurer brought a declaratory judgment action in the United States District Court seeking a declaration that it was not obligated to defend or indemnify Contractor for the Plaintiffs' claim. *See Id.* Relying on opinions from the Fourth Circuit Court of Appeals, the district court held the settlement agreement was presumptively unreasonable and therefore invalid. *See Id.* S.C. 587, S.E.2d 100, (citing *St. Paul Travelers v. Payne*, 444 F.Supp.2d 519, 522 (D.S.C. 2006)). The court concluded that because the settlement agreement was invalid, the insurer was not obligated to indemnify the Contractor for the judgment. *See Id.* In its order on the Plaintiffs and Contractor's motion to alter or amend, the district court clarified that if the judgment entered on the underlying suit was vacated, it would then have jurisdiction to consider the issue of whether insurer's denial of the claim was appropriate. *See Id.*

The Plaintiffs then filed a motion in the Beaufort County Court of Common Pleas to vacate the consent judgment pursuant to Rule 60(b), SCRCp, and restore the action to the trial roster. *See*

Id. The court initially denied the Plaintiffs the relief requested. *See Id.* The Plaintiffs filed a motion to alter or amend asserting the court's ruling violated the doctrines of *res judicata* and collateral estoppel, which the Contractor did not file a return. *See Id.* The trial court granted the motion to alter or amend, finding the district court decision was binding on all parties to this action. *See Id.* It vacated the consent judgment and restored the case to the trial docket. *See Id.* Contractor filed a motion to reconsider, which the trial court denied, and an appeal followed based on arguments arising out of S.C. Code § 14-3-330(20). *See Id.* S.C. 588, S.E.2d 100. The Court of Appeals held that the order granting Plaintiffs' motion did not meet the requirements under S.C. Code § 14-3-330, which was the basis for Contractor's appeal, and as such was not immediately appealable. *See Id.* S.C. 589, S.E.2d 101.

This matter is distinguishable from the *Pocisk* as it has been appealed based on the South Carolina Supreme Court holding in *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825, and not pursuant to S.C. Code § 14-3-330. 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*, 380 S.C. 584, 671 S.E.2d 98. (emphasis added). 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.² The question of whether an order is immediately

² 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, SCRCF, 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, SCRCF, which explicitly finds that the rules shall not be construed to extend or limit the jurisdiction

appealable is determined on a case-by-case bases. *See Stone*, 426 S.C. 291, 826 S.E.2d 868. 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, this matter arises from an erroneous exercise of discretion by the Trial Court when the record establishes that the Respondent conceded to Saul's Motion for Summary Judgment and Counsel for Wells Fargo failed to make any arguments to the same. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825. The record clearly evidences that counsel for Respondent Wells Fargo failed to make any argument on the Motion at the appropriate time. (*See gen. Ex. 5.*).

On January 20, 2020, Saul filed its Motion with the Beaufort County Clerk of Court. (*See Ex. 2.*). On March 13, 2020, then counsel for Wells Fargo, Laura Robinson, emailed counsel for Respondent and Saul requesting a continuance for the Motion because she was leaving her firm and that Charles Blackburn would be taking the case over. (*See Ex. 4-A.*). That same day, counsel for Saul informed Ms. Robinson that he could not consent to the request for continuance and wanted the motion heard because of the impending mediation scheduled and trial not before date. (*See Id.*). On March 16, 2020, attorney Charles G. Blackburn filed a Notice of Appearance on

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).

behalf of Wells Fargo. (*See* Ex. 4-C.). 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. (*See* Ex. 4-B.). 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, and that he would not be attending the hearing on the Motion. (*See Id.*).

On March 17, 2020, the Trial Court heard arguments on the Motion. (*See* Ex. 6.). Counsel for the Respondent and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear.*** (*See* Ex. 5.). Wells Fargo failed to file a Motion for Continuance or any Memorandums in Opposition, despite having notice of the Motion since January 20, 2020. (*See Id.*). 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. (*See* Ex. 6, Hearing Transc. p. 2:12-17; *see also* Ex. 7.). After the Motion was granted, counsel for Wells Fargo received notice that the proposed Order was electronically filed on March 18, 2020. (*See* Ex. 5-A.). Counsel for Wells Fargo did not raise any objections to the proposed Order. (*See* Ex. 5.).

On March 24, 2020, the Trial Court granted Saul's Motion. (*See* Ex. 8.). On March 26, 2021, counsel for Wells Fargo sent an email evidencing his knowledge of Saul's dismissal from this matter. (*See* Ex. 4-D.). Neither the Respondent nor Wells Fargo filed a Motion to Reconsider. (*See* Ex. 5.). Wells Fargo did not appeal the Trial Court's Order. (*See Id.*).

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. (*See* Ex. 9.). Further, and most telling, Wells Fargo failed to make any argument or excuse as to why

its counsel did not argue against Saul's Motion, file a motion or appeal the Trial Court's Order granting Saul's Motion. (*See Id.*).

Given this, there is nothing in the record to indicate that counsel for Wells Fargo did not have an opportunity to be heard and make an argument at the appropriate time. Rather, the record is replete with support for the exact opposite: ***Wells Fargo had every opportunity to be heard and failed this opportunity.*** *See Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321.

It is undisputed that Wells Fargo was represented by counsel during the entire aforementioned procedural history. It is also undisputed that Wells Fargo's counsel had notice of the Motion, proposed Order, and final Order. Yet, it made no arguments. Still, the Trial Court erroneously concludes that Wells Fargo was not afforded an opportunity to be heard on Saul's Motion. (*See Ex. 11.*). As such, 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, which is analogous to *Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321. The Trial Court clearly ignored the facts of the case: Wells Fargo failed to do even the bare minimum to argue against Saul's Motion. Despite being put on notice of Saul's Motion on January 20, 2020, Wells Fargo's counsel did nothing until March 19, 2021. Wells Fargo has waived any rights to raise any arguments that should have been made at the time of the hearing. *See gen. SPUR at Williams Brice Owners Ass', Inc. v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015).

Therefore, 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 Wells Fargo's Counsel'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.).

Assuming arguendo, the Court is still not persuaded that this matter is immediately appealable, Saul asserts that this matter should be certified to the South Carolina Supreme Court pursuant to Rules 204 and 242, S.C.A.C.R. Pursuant to Rule 204(b), S.C.A.C.R., “[i]n any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals.”

V. CONCLUSION

For all of the aforementioned reasons, Saul respectfully submits that the above captioned appeal is appropriate, and the issues presented therein are immediately appealable.

Dated this 9th day of December, 2021. Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

By: s/Morgan S. Templeton
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RECEIVED

Dec 09 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2021-001170

Eddie B. Lewis. Plaintiff

v.

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

Of Whom Saul, LLC is the Appellant and Wells Fargo Bank National Association is a
Respondent.

PROOF OF SERVICE

I, Morgan S. Templeton, of Wall Templeton & Haldrup, do hereby certify that I have served the
Appellant's Memorandum in Support of Its Right to Appeal, by electronic mail on December 9,
2021 addressed as follows to counsel of record:

H. Fred Kuhn, Jr.
Moss Kuhn & Fleming, PA
Post Office Box 507
Beaufort, South Carolina 29901-0507
fred@mossandkuhn.com
ATTORNEYS FOR PLAINTIFF

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**ATTORNEYS FOR WELLS FARGO
BANK, NATIONAL ASSOCIATION**

[SIGNATURE INTENTIONALLY ON FOLLOWING PAGE]

Dated this 9th day of December, 2021.

WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton
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December 9, 2021

The Honorable Jerry Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *Eddie B. Lewis, Jr v. Saul, LLC, et al*
Case No: 2021-001170
Insured: Saul, LLC
Claim No.: 300-0011686-2019

Dear Mr. Kitchings:

Please find enclosed an original and seven copies of Appellant's Memorandum in Support of Its Right to Appeal and Proof of Service in the above referenced matter. Please file the original and return a filed-stamped copy to me in the envelope provided for your convenience.

By copy of this letter to all counsel of record, I am serving them with the enclosed Appellant's Memorandum in Support of Its Right to Appeal and Proof of Service.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

David A. Nasrollahi

DAN/sjs
enclosures

cc: H. Fred Kuhn, Jr., Esquire (*w/ encl, via electronic mail only*)
Douglas E. Leadbitter, Esquire (*w/ encl, via electronic mail only*)

Dec 09 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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.

APPELLANT’S MEMORANDUM RETURN
TO RESPONDENT EDDIE B. LEWIS’ MOTION TO DISMISS

Appellant Saul, LLC (hereinafter “Saul”), hereby submits the following return memorandum in opposition of Respondent Eddie B. Lewis’ motion to dismiss the above captioned appeal. As sort forth below, this matter is immediately appealable pursuant to South Carolina Law.

A. PROCEDURAL HISTORY & MATERIAL FACTS

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”). (Ex 1., Am. Compl. ¶ 9.). While exiting the parking lot, Lewis allegedly tripped and fell causing him injuries. (*See Id.*). Appellant, Saul,

LLC, (hereinafter “Saul”) owns the premises located at 401 Port Republic Street, Beaufort, S.C. (*See 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. (*See gen. Ex. 2-A, Mot. for Summ. J.*). Respondent brings this action against Saul on the theory of negligence and premises liability. (*Ex. 1, Am. Compl. ¶¶ 9-21.*). 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.” (*See Ex. 1, Am. Compl. ¶ 12, subsection A-L.*) Wells Fargo has not asserted any direct claims against Saul. (*See Ex. 3, Wells Fargo’s Answer to P. Compl.*). Saul moved for summary judgment (“Motion”) as to the Respondent’s Amended Complaint on January 20, 2020, based on the terms of the Lease. (*See Ex. 2, Mot. for Summ. J.*). Saul attached a full and complete copy of the Lease to this Motion as an exhibit. (*See Ex. 2-A*).

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. (*See Ex. 4-A.*). 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. (*See Id.*). On March 16, 2020, Charles G. Blackburn filed a Notice of Appearance on behalf of Wells Fargo. (*See Ex. 4-C.*). 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. (*See Ex. 4-B.*). 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. (*See 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.*** (See Ex. 5, Saul’s Memo. in Opp. to Mot. to Set Aside.). 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. (See Ex. 6, Hearing Transc. p. 2:12-17; *see also* Ex. 7, Pl. Memo. in Resp. at pg. 3.). Wells Fargo received notice of the hearing and willfully elected and/or failed to file a Motion for Continuance or any Memoranda in Opposition. (See Ex. 5, Saul’s Memo. in Opp. to Mot. to Set Aside).

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. (See Ex. 6, Hearing Transc. p. 2:22-3:19.). The Trial Court questioned Respondent’s Counsel whether he conceded to Saul’s motion or whether it needed to be continued. (*Id.* p. 10:18-25.). In direct response to this question, Respondent’s counsel conceded that Saul’s Motion was supported by the law and by the facts. (*Id.* p. 10:18-25.). 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. (*See Id.* p. 11:1-6; *see also* Ex. 8, Order Granting Saul's Mot. for Summ. J.). 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. (*See* Ex. 5-A.).

On March 24, 2020, the Trial Court, after careful consideration of the record, granted Saul's Motion. (Ex. 8.). The Trial Court made approximately 15 changes to the Proposed Order before signing it. (*See* Ex. 4-E and Ex. 4-F.).¹ Neither the Respondent nor Wells Fargo filed a Rule 59(e) Motion. (*See* Ex. 5.). Wells Fargo did not appeal the Trial Court's Order. (*See Id.*). On March 26, 2020, counsel for Wells Fargo sent an email evidencing his knowledge of Saul's dismissal from this matter. (*See* Ex. 4-D.). 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), SCRPC. (*See* Ex. 9, Wells Fargo's Mot. to Set Aside.). 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

¹ 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. These 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.

supported these claims. (*See gen. Id.*; *see also* Ex. 5.). 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 arguments: that Wells Fargo’s Motion to Set Aside violated Rule 7(b), SCRCF, lacked standing, Wells Fargo waived its rights to make arguments, the motion was a veiled Rule 59, SCRCF, motion, and the parole evidence rule barred any newly discovered evidence in interpreting a lease. (*See* Ex. 5.).

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. (*See gen. Ex. 7.*). 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. (*See Id.*, at pg. 4-5.). Thus, Wells Fargo had placed the Respondent in a position of being unable to address Wells Fargo’s assertions. (*See 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. (*See* Ex. 10, Wells Fargo’s Memo. in Supp.). 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.”). (*See* Ex. 4.). 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 reach the difficult standards under Rule 60, SCRCF 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. (*See Id.*).

Nonetheless, 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. (See Ex. 11, Order Granting Mot. to Set Aside.). 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 (See Ex. 6, Hearing Transc. p. 2:22-3:19); 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. 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. On November 30, 2021, Respondent filed a Motion to Dismiss this appeal. This response follows.

B. LEGAL AUTHORITY

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. See *Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922) (emphasis added), *see also* S.C. Const. art V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.") and *Campbell v. Robinson*, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating that the Court of Appeals "may not overrule supreme court precedent"). 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).

IV. ARGUMENT

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. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825 (emphasis added), *see also* S.C. Const. art V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.") and *Campbell v. Robinson*, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating that the Court of Appeals "may not overrule supreme court precedent"). 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). The South Carolina Supreme 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.* 120 S.C. 164, 112 S.E. 825. (emphasis added).

Saul's appeal arises from the Trial Court's abuse of 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. (*See* Saul's Initial Brief.). As evidenced in Saul's Initial Brief, the Trial Court's holding was unsupported by any supporting facts and are contradicted by the record which amounted in an erroneous exercise of discretion. The question of whether an order is immediately appealable is determined on a case-by-case basis. *Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019). The Trial Court's Order

in this matter is the exact “erroneous exercise of discretion” that was contemplated by the South Carolina Supreme Court in *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825, making, this matter immediately appealable.

The South Carolina Supreme Court’s holding in *Winslow Bros.* is a published opinion that has not been overturned by the South Carolina Supreme Court and is binding precedent to date. The decisions of the South Carolina Supreme Court bind the Court of Appeals as precedent. See *Daniels v. City of Goose Creek*, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (1993); see also, S.C. Const. art V, § 9. Pursuant to the South Carolina Supreme Court’s holding in *Winslow Bros.*, Saul does indeed have an immediately appealable issue as there is ample evidence establishing that the Trial Court’s Order vacating an Order for Summary Judgment was an erroneous exercise of discretion.

Respondent asserts that the right to immediately appeal is controlled by the holding in *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008) (holding an order granting a motion for relief from judgment is not immediately appealable). Any reliance upon *Pocisk* is misplaced, as the South Carolina Supreme Court’s holding in *Winslow Bros.* binds the Court of Appeals. Thus, any modifications limiting the South Carolina Supreme Court’s holding in *Winslow Bros.* must be done by the South Carolina Supreme Court. See S.C. Const. art V, § 9. Therefore, this Court 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. See *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825.

Nevertheless, this matter is distinguishable from *Pocisk* as it dealt with issues that are not present in this present appeal. 380 S.C. 584, 671 S.E.2d 98. In *Pocisk*, the Plaintiffs brought an action against a Contractor, and others, alleging their house had been defectively constructed. *Id.*

at 99 and 586. Although the Contractor's insurer denied coverage for the claim, it provided Contractor with a defense, pursuant to a full reservation of rights. *See Id.* After the other defendants settled with the Plaintiffs, Contractor and the Plaintiffs entered into a settlement agreement in which the Contractor confessed judgment and the Plaintiffs agreed not to seek satisfaction of the judgment from Contractor. *See Id.* Contractor assigned to the Plaintiffs, his rights in any claim involving insurance coverage and bad faith issues arising out the denied coverage. *See Id.* A judgment was entered against Contractor in the Beaufort County Court of Common Pleas, which did not mention the condition that the Plaintiffs would not seek satisfaction against Contractor. *See Id.* at S.C. 586, S.E.2d 100.

After the parties entered into the settlement agreement, the insurer brought a declaratory judgment action in the United States District Court seeking a declaration that it was not obligated to defend or indemnify Contractor for the Plaintiffs ' claim. *See Id.* Relying on opinions from the Fourth Circuit Court of Appeals, the district court held the settlement agreement was presumptively unreasonable and therefore invalid. *See Id.* S.C. 587, S.E.2d 100, (citing *St. Paul Travelers v. Payne*, 444 F.Supp.2d 519, 522 (D.S.C. 2006)). The court concluded that because the settlement agreement was invalid, the insurer was not obligated to indemnify the Contractor for the judgment. *See Id.* In its order on the Plaintiffs and Contractor's motion to alter or amend, the district court clarified that if the judgment entered on the underlying suit was vacated, it would then have jurisdiction to consider the issue of whether insurer's denial of the claim was appropriate. *See Id.*

The Plaintiffs then filed a motion in the Beaufort County Court of Common Pleas to vacate the consent judgment pursuant to Rule 60(b), SCRCp, and restore the action to the trial roster. *See Id.* The court initially denied the Plaintiffs the relief requested. *See Id.* The Plaintiffs filed a

motion to alter or amend asserting the court's ruling violated the doctrines of *res judicata* and collateral estoppel, which the Contractor did not file a return. *See Id.* The trial court granted the motion to alter or amend, finding the district court decision was binding on all parties to this action. *See Id.* It vacated the consent judgment and restored the case to the trial docket. *See Id.* Contractor filed a motion to reconsider, which the trial court denied, and an appeal followed based on arguments arising out of S.C. Code § 14-3-330(20). *See Id.* S.C. 588, S.E.2d 100. The Court of Appeals held that the order granting Plaintiffs' motion did not meet the requirements under S.C. Code § 14-3-330, which was the basis for Contractor's appeal, and as such was not immediately appealable. *See Id.* S.C. 589, S.E.2d 101.

This matter is distinguishable from the *Pocisk* as it has been appealed based on the South Carolina Supreme Court holding in *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825, and not pursuant to S.C. Code § 14-3-330. 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*, 380 S.C. 584, 671 S.E.2d 98. (emphasis added). 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.² The question of whether an order is immediately appealable is determined

² 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, SCRCF, 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, SCRCF, 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), SCRCF. 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

on a case-by-case bases. *See Stone*, 426 S.C. 291, 826 S.E.2d 868. 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, this matter arises from an erroneous exercise of discretion by the Trial Court when the record establishes that the Respondent conceded to Saul's Motion for Summary Judgment and Counsel for Wells Fargo failed to make any arguments to the same. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825. The record clearly evidences that counsel for Respondent Wells Fargo failed to make any argument on the Motion at the appropriate time. (*See gen. Ex. 5.*).

On January 20, 2020, Saul filed its Motion with the Beaufort County Clerk of Court. (*See Ex. 2.*). On March 13, 2020, then counsel for Wells Fargo, Laura Robinson, emailed counsel for Respondent and Saul requesting a continuance for the Motion because she was leaving her firm and that Charles Blackburn would be taking the case over. (*See Ex. 4-A.*). That same day, counsel for Saul informed Ms. Robinson that he could not consent to the request for continuance and wanted the motion heard because of the impending mediation scheduled and trial not before date. (*See Id.*). On March 16, 2020, attorney Charles G. Blackburn filed a Notice of Appearance on behalf of Wells Fargo. (*See Ex. 4-C.*). 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,

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).

in which he advised that he would be appearing on behalf of Wells Fargo but would not be appearing at the hearing. (See Ex. 4-B.). 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, and that he would not be attending the hearing on the Motion. (See *Id.*).

On March 17, 2020, the Trial Court heard arguments on the Motion. (See Ex. 6.). Counsel for the Respondent and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear.*** (See Ex. 5.). Wells Fargo failed to file a Motion for Continuance or any Memorandums in Opposition, despite having notice of the Motion since January 20, 2020. (See *Id.*). 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. (See Ex. 6, Hearing Transc. p. 2:12-17; see also Ex. 7.). After the Motion was granted, counsel for Wells Fargo received notice that the proposed Order was electronically filed on March 18, 2020. (See Ex. 5-A.). Counsel for Wells Fargo did not raise any objections to the proposed Order. (See Ex. 5.).

On March 24, 2020, the Trial Court granted Saul's Motion. (See Ex. 8.). On March 26, 2021, counsel for Wells Fargo sent an email evidencing his knowledge of Saul's dismissal from this matter. (See Ex. 4-D.). Neither the Respondent nor Wells Fargo filed a Motion to Reconsider. (See Ex. 5.). Wells Fargo did not appeal the Trial Court's Order. (See *Id.*).

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. (See Ex. 9.). Further, and most telling, Wells Fargo failed to make any argument or excuse as to why its counsel did not argue against Saul's Motion, file a motion or appeal the Trial Court's Order granting Saul's Motion. (See *Id.*).

Given this, there is nothing in the record to indicate that counsel for Wells Fargo did not have an opportunity to be heard and make an argument at the appropriate time. Rather, the record is replete with support for the exact opposite: ***Wells Fargo had every opportunity to be heard and failed this opportunity.*** See *Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321.

It is undisputed that Wells Fargo was represented by counsel during the entire aforementioned procedural history. It is also undisputed that Wells Fargo's counsel had notice of the Motion, proposed Order, and final Order. Yet, it made no arguments. Still, the Trial Court erroneously concludes that Wells Fargo was not afforded an opportunity to be heard on Saul's Motion. (See Ex. 11.). As such, 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, which is analogous to *Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321. The Trial Court clearly ignored the facts of the case: Wells Fargo failed to do even the bare minimum to argue against Saul's Motion. Despite being put on notice of Saul's Motion on January 20, 2020, Wells Fargo's counsel did nothing until March 19, 2021. Wells Fargo has waived any rights to raise any arguments that should have been made at the time of the hearing. See *gen. SPUR at Williams Brice Owners Ass', Inc. v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015).

Therefore, 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 Wells Fargo's Counsel'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.).

Assuming arguendo, the Court is still not persuaded that this matter is immediately appealable, Saul asserts that this matter should be certified to the South Carolina Supreme Court pursuant to Rules 204 and 242, S.C.A.C.R. Pursuant to Rule 204(b), S.C.A.C.R., “[i]n any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals.”

V. CONCLUSION

For all of the aforementioned reasons, Saul respectfully submits this reply in opposition to Respondent Eddie B. Lewis’ motion to dismiss the appeal and shows that the above captioned appeal is appropriate and the issues presented therein are immediately appealable.

Dated this 9th day of December, 2021. Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

By: s/Morgan S. Templeton
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David A. Nasrollahi, S.C. Bar 103242
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Attorneys for Appellant Saul, LLC

RECEIVED

Dec 09 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Case No.: 2021-001170

Eddie B. Lewis. Plaintiff

v.

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

Of Whom Saul, LLC is the Appellant and Wells Fargo Bank National Association is a
Respondent.

PROOF OF SERVICE

I, Morgan S. Templeton, of Wall Templeton & Haldrup, do hereby certify that I have served the
Appellant's Memorandum in Support of Its Right to Appeal, by electronic mail on December 9,
2021 addressed as follows to counsel of record:

H. Fred Kuhn, Jr.
Moss Kuhn & Fleming, PA
Post Office Box 507
Beaufort, South Carolina 29901-0507
fred@mossandkuhn.com
ATTORNEYS FOR PLAINTIFF

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1401 Main Street, Suite 655
Columbia, South Carolina 29201
dleadbitter@scarolina-law.com
**ATTORNEYS FOR WELLS FARGO
BANK, NATIONAL ASSOCIATION**

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Dated this 9th day of December, 2021.

WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton
Morgan S. Templeton, Esquire
David S. Nasrollahi, Esquire
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December 9, 2021

The Honorable Jerry Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

Dec 09 2021

SC Court of Appeals

Re: *Eddie B. Lewis, Jr v. Saul, LLC, et al*
Case No: 2021-001170
Insured: Saul, LLC
Claim No.: 300-0011686-2019

Dear Mr. Kitchings:

Please find enclosed an original and seven copies of Appellant's Memorandum Return to Respondent Eddie B. Lewis' Motion to Dismiss and Proof of Service in the above referenced matter. Please file the original and return a filed-stamped copy to me in the envelope provided for your convenience.

By copy of this letter to all counsel of record, I am serving them with the enclosed Appellant's Memorandum Return to Respondent Eddie B. Lewis' Motion to Dismiss and Proof of Service.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

David A. Nasrollahi

DAN/sjs
enclosures

cc: H. Fred Kuhn, Jr., Esquire (*w/ encl, via electronic mail only*)
Douglas E. Leadbitter, Esquire (*w/ encl, via electronic mail only*)

The South Carolina Court of Appeals

Eddie B. Lewis, Respondent,

v.

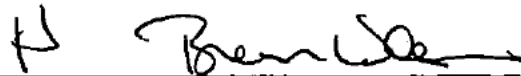
Saul, LLC and Wells Fargo Bank National Association,
Defendants,

of which Saul, LLC is the Appellant and Wells Fargo
Bank National Association is a Respondent.

Appellate Case No. 2021-001170

ORDER

After careful consideration, the motion to dismiss is granted because the underlying order on appeal is not immediately appealable. *See* 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) (holding the grant of a Rule 60(b) motion to set aside a default judgment is not immediately appealable). The remittitur will be sent as required by Rule 221(b), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

Morgan S. Templeton, Esquire
David Ali Nasrollahi, Esquire
H. Fred Kuhn, Jr., Esquire
Douglas Edward Leadbitter, Esquire
Charles Grant Blackburn, Esquire

FILED
Jan 28 2022

Feb 10 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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.

APPELLANT'S PETITION FOR REHEARING

COMES NOW the Appellant Saul, LLC ("Appellant"), by and through its undersigned attorneys, respectfully petitioning to this Honorable Court for a rehearing of the opinion filed in this case on January 28, 2022, pursuant to Rule 221 of the South Carolina Appellate Court Rules. In its opinion, the Court held that the underlying order is not immediately appealable based on S.C. Code Ann. § 14-3-330 and *Pioneer Associates, Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 387 S.E.2d 711 (Ct. App. 1989). Appellant respectfully submits that this Court overlooked or misapprehended the following points:

I. SAUL MAY IMMEDIATELY APPEAL THE TRIAL COURT’S ORDER VACATING AN ORDER GRANTING SUMMARY JUDGMENT PURSUANT TO AUTHORITY FROM THE SOUTH CAROLINA SUPREME COURT.

In its opinion, this Court held that the underlying order on appeal was not immediately appealable pursuant to S.C. Code Ann. § 14-3-330 and *Pioneer Associates, Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 387 S.E.2d 711 (Ct. App. 1989) (holding the grant of a Rule 60(b) motion to set aside default judgment is not immediately appealable). However, 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. *See Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922), *see also* S.C. Const. art V, § 9 (“The decisions of the Supreme Court shall bind the Court of Appeals as precedents.”) and *Campbell v. Robinson*, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating that the Court of Appeals “may not overrule supreme court precedent”). 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). The South Carolina Supreme 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*. 120 S.C. 164, 112 S.E. 825. (emphasis added).

Saul’s appeal arises from the Trial Court’s abuse of its discretion by granting Respondent Wells Fargo’s (“Wells Fargo”) Motion to Set Aside Judgment when the record establishes that the Eddie B. Lewis (“Respondent”) conceded Saul’s Motion for Summary Judgment and Wells Fargo waived any arguments to the same. (See Saul’s Initial Brief.). As evidenced in Saul’s Initial Brief, the Trial Court’s holding was unsupported by any supporting facts and are contradicted by