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.

This Court's reliance on *Pioneer Associates, Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 387 S.E.2d 711 (Ct. App. 1989) 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.

Notwithstanding, this matter is distinguishable from *Pioneer Associates* as it dealt with issues that are not present in this present appeal. 300 S.C. 346, 387 S.E.2d 711. In *Pioneer Associates*, the Plaintiff brought suit against Salmiah Corporation ("Salmiah"), in which the court

required the parties to set up an escrow account containing $100,000 in the name of the Defendant. *See Id.* The Defendant was not a party to this action and was not represented at the hearing between the Plaintiff and Salmiah. *See Id.* at S.C. 346, S.E.2d 712. The Plaintiff obtained a judgment against Salmiah for $100,000 then demanded disbursement from the Defendant of the funds in the escrow. *Id.* Subsequently, the Plaintiff filed suit against the Defendant served through the Chief Insurance Commissioner ("Commissioner"). *See Id.* at S.C. 347, S.E.2d 712. The Commissioner then sent the summons and complaint to the incorrect address of the Defendant, despite the Commissioner having the correct address. *See Id.*

As a result of not receiving the summons and complaint, the court issued an order of judgment for the Defendant on March 2, 1989. *See Id.* Prior to the issuance of the order of judgement, on February 27, 1989, the Commissioner mailed a copy of the summons and complaint to the correct address. *Id.* On March 9, 1989, just seven days from the issuance of the order of judgment, the Defendant filed a motion to vacate. *Id.* The trial court found a mistake or excusable neglect existed to justify granting Defendant's motion to vacate the default judgment. *Id.* The Plaintiff then appealed the trial court's order granting the motion to vacate the default judgment pursuant to Rule 72, SCRCP. *See Id.* at S.C. 348, S.E.2d 712

First, this matter is distinguishable from the *Pioneer Associates* as this matter 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 Rule 72, SCRCP or S.C. Code § 14-3-330. Notwithstanding, 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. An order *generally* must fall into one of the several categories set forth in the statute governing appellate jurisdiction in order to be immediately

appealable. *See State v. Wilson*, 387 S.C. 597, 693 S.E.2d 923 (2010). (emphasis added). Determination of whether a party may immediately appeal an order issued before or during trial is governed *primarily* by statute. *See Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008), 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.[1] The question of whether an order is immediately 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 Appellant's initial brief, 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

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

same. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825. This is not an appeal from a default judgment. The record is replete with evidence that Wells Fargo had appeared and was involved in this litigation; however, counsel for Respondent Wells Fargo failed to make any argument on the Motion at the appropriate time. (*See gen.* Ex. 5 to Appellant's Memo in Supp. of Appeal.).

On January 20, 2020, Saul filed its Motion with the Beaufort County Clerk of Court. (*See* Ex. 2 to Appellant's Memo in Supp. of Appeal.). 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 to Appellant's Memo in Supp. of Appeal.). 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 to Appellant's Memo in Supp. of Appeal.). 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 to Appellant's Memo in Supp. of Appeal.). 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 to Appellant's Memo in Supp. of Appeal.). Counsel for the Respondent and Appellant were present for this hearing; however, ***counsel for Wells Fargo failed to appear***, despite being active in the case. (*See* Ex. 5 to Appellant's Memo in Supp. of Appeal.). 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 to Appellant's Memo in Supp. of Appeal, Hearing Transc. p. 2:12-17; *see also* Ex. 7 to Appellant's Memo in Supp. of Appeal.). 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 Appellant's Motion for Summary Judgement. (*See* Ex. 8 to Appellant's Memo in Supp. of Appeal.). 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 to Appellant's Memo in Supp. of Appeal.). 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 to Appellant's Memo in Supp. of Appeal.). 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.*).

Unlike the matter in *Pioneer Associates*, 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 Appellant's Motion for Summary Judgment. (*See* Ex. 11 to Appellant's Memo in Supp. of Appeal.). 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 Appellant's Motion for Summary Judgment. 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 reasserts 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."

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 _10th_ day of February, 2022. Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

By: s/Morgan S. Templeton

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Attorneys for Appellant Saul, LLC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate 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.

PROOF OF SERVICE

I, David A. Nasrollahi, of Wall Templeton & Haldrup, do hereby certify that I have served the Appellant's Petition for Rehearing, by depositing the same in the United States Mail, properly posted on February 10th, 2022 addressed as follows to counsel of record:

H. Fred Kuhn, Jr.
Moss Kuhn & Fleming, PA
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Beaufort, South Carolina 29901-0507
fred@mossandkuhn.com
ATTORNEYS FOR PLAINTIFF

Douglas E. Leadbitter
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Columbia, South Carolina 29201
dleadbitter@scarolina-law.com
ATTORNEYS FOR WELLS FARGO BANK, NATIONAL ASSOCIATION

[SIGNATURE INTENTIONALLY ON FOLLOWING PAGE]

Dated this 10th day of February, 2022.

WALL TEMPLETON & HALDRUP, P.A.

s/David A. Nasrollahi
Morgan S. Templeton, Esquire
David S. Nasrollahi, Esquire
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[SIGNATURE INTENTIONALLY ON FOLLOWING PAGE]

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February 10, 2022

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 Petition for Rehearing and Proof of Service in the above referenced matter. Please file the original and return a filed-stamped copy to me at your convenience. I am also enclosing the requisite filing fee of $50.

By copy of this letter to all counsel of record, I am serving them with the enclosed Appellant's Petition for Rehearing and Proof of Service.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

For 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 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.

RESPONDENT'S RETURN TO APPELLANT SAUL, LLC'S PETITION FOR REHEARING

The Respondent, Eddie B. Lewis, hereby submits his Return to the Appellant Saul, LLC's Petition for Rehearing.[1] Respondent Lewis, for the reasons set forth herein, respectfully requests that the Petition for Rehearing be denied.

SUMMARY OF ARGUMENT

In its Petition for Rehearing, Saul argues that the subject Order is immediately appealable because the Circuit Court Judge abused her discretion in vacating her Order granting Saul's Motion for Summary Judgment and rescheduling the motion for another hearing. In support of this

[1] This Return was requested by the South Carolina Court of Appeals by way of correspondence from the Honorable V. Claire Allen, Clerk, dated April 29, 2022.

position, Saul relies exclusively upon the succinct, two sentence, Opinion of the South Carolina Supreme Court in *Winslow Brothers & Smith Co. v. Gossett,* 120 S.C. 164, 112, S.E. 825 (1922), in which the Court held that an appeal from an order vacating a judgment by default was not appealable "unless there was an erroneous exercise of discretion on the part of his honor, the circuit court judge." *Id.*

It is respectfully submitted that the aforesaid holding in *Winslow Brothers & Smith Co. v. Gossett* has been modified by the enactment of S.C. Code 14-3-330.

Additionally, even if *Winslow Brothers & Smith Co. v. Gossett* is still good law, the Trial Judge did not abuse her discretion because: (1) There is reasonable factual support for her decision; and (2) Her decision has not prejudiced the rights of Saul.

I. *WINSLOW BROTHERS & SMITH CO. V. GOSSETT* IS NO LONGER THE LAW

Saul argues that *Winslow Brothers & Smith Co. v. Gossett*, which was decided by the South Carolina Supreme Court in 1922, is still good law because it has not been expressly overruled by the South Carolina Supreme Court. While it is true that the Supreme Court has never expressly overruled the Winslow Brothers case, that does not necessarily mean that it remains intact. The South Carolina General Assembly, in enacting §14-3-330 of the South Carolina Code of Laws, has expressly dictated the terms and conditions under which an Order is immediately appealable and when an Appellate Court can acquire jurisdiction over a case. Since the subject Order does not satisfy the requirements of §14-3-330, it is not immediately appealable.

II. THE SUBJECT ORDER HAS FACTUAL SUPPORT

Even if the Winslow Brothers case is still good law, there must be an erroneous exercise of discretion on the part of the Circuit Court Judge in order for the Order to be immediately appealable. As Saul admits in its Brief, "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 an error of law." Appellant's Petition for Rehearing, pg. 2, citing *Bridges v. Wyandotte Worsted Company,* 239 S.C. 37, 40, 121 S.E.2d. 300, 302 (1962).

The Order of the Honorable Deadra L. Jefferson vacating her Order granting Saul's Motion for Summary Judgment contains not only reasonable, but ample, factual support. In her Order vacating her Summary Judgment Order, Judge Jefferson clearly and precisely made numerous findings of fact supporting her decision. These express factual findings include the following:

1. It was represented to her at the hearing on the Summary Judgment Motion that Lewis and Saul had no objection to Saul being dismissed from the case;

2. It was represented to her at the hearing on the Summary Judgment Motion that it was not necessary for Wells Fargo to appear or be heard in order to dispose of Saul's Motion for Summary Judgment;

3. The overwhelming majority of the findings of fact and conclusions of law contained in the Saul Consent Order Granting Summary Judgment consist of a myriad of findings regarding the interpretation of the lease between Saul and Wells Fargo;

4. That the Summary Judgment Order contains liability findings that relate not to Saul, but to Wells Fargo, a party who was not present at the summary judgment hearing;

5. That Wells Fargo was not afford an opportunity to be heard;

6. That Saul knew that Wells Fargo was not going to be present for the hearing on the motion;

7. That the findings in the Summary Judgment Order do not simply hold that Saul is not liable for the Plaintiff's injuries, but 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;

8. That Saul knew that Wells Fargo's representation was in a state of fluctuation, that Saul objected to Wells Fargo's request for a continuance, and Saul did not advise the Court that Wells Fargo sought a continuance.

9. As Saul acknowledges in its Petition for Rehearing, Wells Fargo's attorney had stepped down just days prior to the hearing and the new attorney was unfamiliar with the case and could not be at the hearing at the Motion for Summary Judgment, and desired that it be continued. Petition for Rehearing, pg. 6.

While Judge Jefferson acknowledged that it was incumbent upon Wells Fargo to file a Motion for Continuance, she was clearly troubled by the fact that Saul failed to advise the Court of Wells Fargo's request for a continuance when Saul was aware of the transition in Wells Fargo's representation and that Mr. Blackburn, Wells Fargo's new counsel, would not be able to attend the summary judgment hearing. Order Granting Wells Fargo's Motion to Set Aside Judgment Pursuant to Rule 60, SCRCP, pp. 4 and 5 and fn. 6.

In short, Judge Jefferson, upon learning that Wells Fargo's failure to appear at the initial summary judgment hearing was not the result of its consent to the motion, but rather, the result of a last minute change in counsel and new counsel's inability to attend, coupled with the fact that the Order Granting Summary Judgment contains numerous findings binding upon and prejudicial to Wells Fargo, properly exercised her discretion in deciding that she wanted to hear the motion on the merits, and give Wells Fargo an opportunity to be heard.

III. NO PREJUDICE TO SAUL

In order for there to be an abuse of discretion there must exist not only a lack of factual support, but the ruling must also result in prejudice to the rights of the Appellant. Appellant's Petition for Rehearing, pg. 2, and *Bridges v. Wyandotte Worsted Company,* 239 S.C. 37, 40, 121 S.E.2d. 300, 302 (1961).

Saul has suffered absolutely no prejudice as a result of Judge Jefferson's decision to vacate her Order granting Saul's Motion for Summary Judgment. Significantly, she did not deny Saul's Motion for Summary Judgment, she simply vacated her Order and set the motion for another hearing. Saul still has the opportunity to argue its motion and, if justified, have it granted. The Order Vacating the Order granting Summary Judgment is, in essence, simply an Order rescheduling Saul's Motion for Summary Judgment. No judgment has been entered against Saul. No findings of fact or conclusions of law have been made, much less any findings or conclusions that would affect Saul. As a result of the Order vacating summary judgment, Saul is in exactly the same position as it was when it filed the Motion for Summary Judgment. The only "prejudice" suffered by Saul is that it will have to reargue its motion in the presence of Wells Fargo. This is not prejudice that would constitute an abuse of discretion.

Judge Jefferson expressly considered this factor, as follows:

> "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. 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 the hearing on the merits of Saul, LLC's Motion for Summary Judgment. This is consistent with South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities."

Order on Wells Fargo's Motion to Set Aside Judgment, pp. 6-7.

It is well settled that simply avoiding another hearing, or even a trial, is not a substantial right entitling a party to immediately appeal of an interlocutory order. *Pocisk v. Sea Coast Construction of Beaufort,* 380 S.C. 584, 671 S.E.2d 98, 101 (S.C. App. 2008), see also, *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991).

CONCLUSIONS

The appealability of an interlocutory order is now governed by S.C. Code §14-3-330 and an Order which simply reschedules a Motion for Summary Judgment is not an appealable order under §14-3-330.

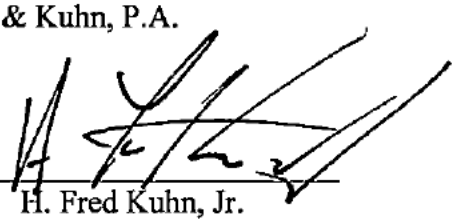
Judge Jefferson did not abuse her discretion in vacating the summary judgment order. Her Order contains ample factual findings supporting her decision. It is clear from her Order that she carefully weighed all of these factors and, while not totally excusing Wells Fargo's conduct, was also deeply disturbed by the lack of candor from Saul and Plaintiff's then counsel regarding Wells Fargo's counsel's absence at the summary judgment motion hearing. In the end, after carefully balancing these facts and factors, she decided that it was in the best interest of justice to simply reschedule the summary judgment motion, finding that a full and fair hearing participated in by all parties was in the best interest of justice.

The final result is that Judge Jefferson simply rescheduled Saul's motion for summary judgment for a new hearing. This does not prejudice Saul in the least.

It is accordingly respectfully requested that Saul's Petition for Rehearing be denied and this case remanded back to the Beaufort County Court of Common Pleas.

Respectfully submitted,

Moss & Kuhn, P.A.

By: 

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Attorneys for Respondent Eddie B. Lewis

Beaufort, South Carolina
May 5, 2022

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 Respondent's Return to Appellant Saul, LLC's Petition for Rehearing 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
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 May 5, 2022.

Moss & Kuhn, P.A.

By: _____
Sue Radford

MOSS & KUHN, P.A.

ATTORNEYS AT LAW

JAMES H. MOSS
jim@mossandkuhn.com

H. FRED KUHN, JR.
fred@mossandkuhn.com

May 5, 2022

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 please find the original and seven (7) copies of the Respondent's Return to Appellant Saul, LLC's Petition for Rehearing in the above matter. Please return 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

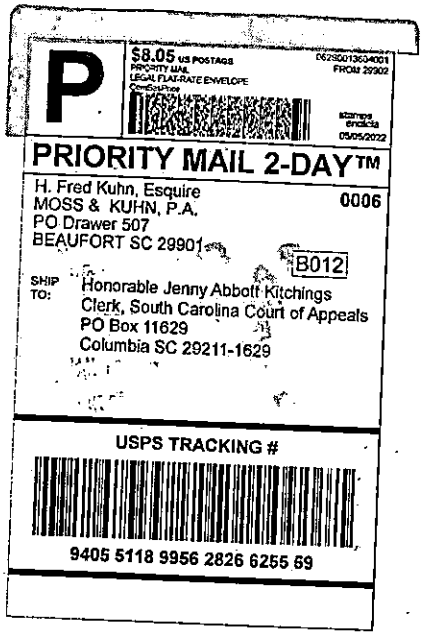
Very truly yours,

MOSS & KUHN, P.A.

H. Fred Kuhn, Jr.

HFKjr:sr
Enclosures

cc: Morgan S. Templeton, Esquire (w/enclosure)
Douglas Edward Leadbitter, Esquire (w/enclosures)
Charles Grant Blackburn, Esquire (w/enclosures)



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Clerk, South Carolina Court of Appeals
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Columbia SC 29211-1629

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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 RETURN MEMORANDUM IN REPLY TO RESPONDENT EDDIE B. LEWIS' RETURN TO APPELLANT'S PETITION FOR REHEARING

Appellant Saul, LLC (hereinafter "Saul"), hereby submits the following memorandum in reply to Respondent Eddie B. Lewis' (hereinafter "Lewis") Return to Saul's Petition for Rehearing.[1] As set forth below, this matter is immediately appealable pursuant to South Carolina Law.

[1] Saul notes that Respondent Wells Fargo National Association has failed or neglected to file a Return as requested by the South Carolina Court of Appeals by way of correspondence from the Honorable V. Clair Allen, Clerk, dated April 29, 2022.

SUMMARY OF ARGUMENT

Saul appealed the Trial Court's Order vacating its Order for Summary Judgment because there was an erroneous exercise of discretion on the part of the circuit court judge. *See Winslow Brothers & 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"). The holding in *Winslow Bros.* is still the law of South Carolina as it has not been overturned and has not abrogated by S.C. Code Ann. § 14-3-330.

It is an erroneous exercise of discretion to vacate a judgment which was consented to by Lewis, unopposed by the other Respondent Wells Fargo Bank National Association, (hereinafter "Wells Fargo"), and premised upon arguments which are not supported by the actual Record. A circuit court is a court of Record. *See* S.C. Code Ann. § 14-5-10. What occurs in open court matters and cannot be ignored. Here, Lewis' counsel conceded its claims against Saul were not sustainable, which was the basis for granting Saul's Motion for Summary Judgment (hereinafter "Motion"). (Hearing Transc. p. 10:18- 11:1-3.); *See also Shelton v. Bressant*, 312 S.C. 183, 184, 439 S.E. 2d 833, 834 (1993) ("Acts of an attorney are directly attributable to and binding upon a client."). Only after the passage of over a year, did Wells Fargo finally seek to revise history by arguing the subject Order Vacating Saul's summary judgement (hereinafter "Order") was improperly entered. The Order was without a scintilla of support and ignored Wells Fargo's deliberate inaction while casting of aspersions against Saul by suggesting it improperly presented the case to the trial court. The Record firmly establishes that the premise for the Order granting Saul summary judgment was appropriate, and Wells Fargo's conscious decision to not timely

appear in court or file opposition papers should not be sanctified by this Court. To hold otherwise, devalues the confidence that litigants have with the judicial process and the foundation of the judicial system – *res judicata*.

I. *WINSLOW BROTHERS & SMITH CO. V. GOSSETT* IS STILL THE LAW OF SOUTH CAROLINA

Saul appeals this matter 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 Ann. § 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 v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008) (emphasis added). When making decisions on issues of appealability of matters under S.C. Code Ann. § 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 on a case-by-case bases. *See Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019). For example, the *Pocisk* court even acknowledged that the Appellate Court has considered appeals from the granting of Rule 60(b) relief. *See e.g. Johnson v. Johnson*, 310

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

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).

The Trial Court's ruling that there was a basis to grant a motion to set aside which is based on Wells Fargo's failure and neglect to argue at the appropriate time resulted in an abuse of discretion which is immediately 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, that the only manner in which a matter is immediately appealable is bound by S.C. Code Ann. § 14-3-330, then *Winslow Bros.'* holding is still good law, and this matter is immediately appealable. Lewis asserts that the South Carolina Supreme Court holding in *Winslow Bros.* is no longer good law. Lewis relies on the flawed argument that *Winslow Bros.* which was decided in 1922, has been abrogated when the South Carolina General Assembly enacted S.C. Code Ann. § 14-3-330. Lewis fails to provide any legal support for this blanket contention. Rather a plain reading of S.C. Code. Ann. § 14-3-330 with the holding in *Winslow Bros.* clearly establishes that this exact type of case is in fact immediately appealable. S.C. Code Ann. § 14-3-330 provides as follows:

> ***The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases***, and shall review upon appeal:
>
> > (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
> >
> > (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new

> trial or (c) strikes out an answer or any part thereof or any pleading in any action;
>
> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

(emphasis added).

The holding in *Winslow Bros*. is that an order granting a motion vacating a judgment is only appealable if there was *an erroneous exercise of discretion on the part of his honor,* the circuit court judge. 120 S.C. 164, 112 S.E. 825 (1922) (emphasis added). Abuse of discretion means that the ruling of the trial court was without reasonable factual support, which resulted in prejudice to the rights of the appellant, and therefore, in the circumstances, *amounted to error of law*. *See Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961). (emphasis added). An error of law is the same as an erroneous exercise of discretion which is not based on reasonable factual support. *See gen*. *Id.* The South Carolina General Assembly expressly included appellate jurisdiction for the correction of errors of law. *See* S.C. Code Ann. § 14-3-330. Therefore the holding of *Winslow Bros.* is indeed still the law of South Carolina and this matter is immediately appealable.

II. THE TRIAL COURT'S ORDER LACKS ANY IDENTIFIABLE FACTUAL SUPPORT IN THE RECORD WHICH AMOUNTS TO AN ERROR OF LAW

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 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.

First, the record shows that Lewis consented to Saul's Motion for Summary Judgment ("Motion"). At the hearing, Lewis' counsel, on the Record, conceded that Saul's Motion for Summary Judgement was supported by the law and by the facts. (Hearing Transc. p. 10:18- 11:1-3.). The Trial Court granted Saul's Motion for Summary Judgment, based on the Lewis' concessions. (*See Id.*; *see also* Order Granting Saul's Mot. for Summ. J.). Lewis even filed a Memorandum in opposition to Wells Fargo's Motion to Set Aside. (*See* P. Mem. in Resp.).

Second, 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.[3] 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).

Initially, 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,

[3] Saul notes that Wells Fargo continues its practice of failing or neglecting to argue by its failure to file a Return as requested by the South Carolina Court of Appeals by way of correspondence from the Honorable V. Clair Allen, Clerk, dated April 29, 2022.

2020, Laura Robinson emailed counsel for Lewis and Saul requesting a continuance for the Motion. (*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. (*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 Saul 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 Lewis 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, Lewis' counsel informed the Trial Court that counsel for Wells Fargo informed him 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, Wells Fargo's counsel received notice that the proposed Order was electronically filed. (*See* Saul's Memo. in Opp. to Mot. to Set Aside, Ex. 4.). 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 Lewis 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.*).

Almost a year later, on March 5, 2021, counsel for Wells Fargo, Douglas E. Leadbitter, filed a Notice of Appearance in this matter. (*See* March 5, 2021, NEF.). On March 19, 2021, 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.). 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. 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.***

Wells Fargo's counsel had notice of the Motion, proposed Order, and final Order. Yet, it made no arguments. Still, the Trial Court erroneously concluded 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***. Despite being put on notice of Saul's Motion on January 20, 2020, Wells Fargo 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 Trial Court's Order states 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.).[4] Further, Wells Fargo's counsel,

[4] Further, the Trial Court's Order erroneously states that it was represented that Wells Fargo was not necessary for the disposition of Saul's Motion; however, the hearing transcript establishes that counsel for Lewis 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.).

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 Lewis' counsel. (*See* Hearing Transc. p. 2:12-17). Wells Fargo's 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. Interestingly, even now Wells Fargo has failed to file a Return as requested by the South Carolina Court of Appeals by way of correspondence from the Honorable V. Claire Allen, Clerk, dated April 29, 2022. Once again evidencing the habit of Wells Fargo having every opportunity to be heard yet not taking advantage of the same.

Putting it simply, Lewis' 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 Lewis' 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,

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 4

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ATTORNEYS FOR PETITIONER SAUL, LLC

which resulted in an abuse of its discretion by granting Wells Fargo's Motion to Set Aside without reasonable factual support.

III. SAUL HAS BEEN PREJUDICED BY THE TRIAL COURT'S ORDER SETTING ASIDE JUDGEMENT

Contrary to the Lewis' assertions, the Trial Court's Order has severely prejudiced Saul in that it has incurred significant costs, fees, and delay in litigating a matter which has been conceded to by the Lewis' counsel on the Record. (*See* Hearing Transc. p. 10:18-25.). Further, Wells Fargo failed to set forth any argument or supporting documents which refute Saul will be prejudiced, which it had the burden to do at the time it filed the Motion to Set Aside. *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 Respondent's concessions on the Record, a rehearing on this matter will only reach the same conclusion: Saul being dismissed. It has long been the case that parties to a suit are bound by admissions, made by their attorneys of record in open court. *See Shelton*, 312 S.C. 184, 439 S.E. 2d 834; *Smith v. Pearson*, 210 S.C. 524, 530, 43 S.E.2d 479, 481 (1947) (finding appellants bound by statement made by counsel at the outset of hearing); *Hall v. Benefit Ass'n of Ry. Employees*, 164 S.C. 80, 83, 161 S.E. 867, 868 (1932) ("The parties to a suit are bound by admissions, made by their attorneys of record, in open court, or elsewhere, touching matters looking to the progress of the trial."). What occurs in open court matters and cannot be ignored. Here, Respondent's counsel conceded that its claims against Saul were not sustainable, and judgment was entered based on these concessions. However, by vacating the same the Trial Court's Order will result in avoidable unnecessary litigation. *See gen. Osborne v. Allstate Ins. Co.*, 319 S.C. 479, 462 S.E.2d 291 (Ct. App. 1995) (holding that an order that is not directly appealable will nonetheless be considered if there is an appealable issue before the Court and a

ruling on appeal will avoid unnecessary litigation.). Given this, Saul has been prejudiced in time, legal fees, and costs in having to reargue its Motion which will result in the same conclusion: Summary Judgment.

Second, Saul has been prejudiced by not having an opportunity to participate in over a year of discovery and depositions that have been undergoing since it was dismissed. 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. All the while, Saul will be incurring these unnecessary legal fees and costs with the fact that Lewis, the only party who has brought claims against Saul, has conceded that his claims are not sustainable.

Third, Saul's due process rights of having a final determination in this case have been prejudiced by Wells Fargo's complete and utter disregard to argue even the most basic argument at the appropriate time. The procedural history of this case establishes that the Trial Court's Order has created a revisionist history of the Record which is in contradiction to the only reasonable view of the Record: ***Wells Fargo had every opportunity to be heard and waived this opportunity.*** The outcome of the Trial Court's Order has prejudiced Saul by shifting the burden from Wells Fargo, the party with unclean hands, to Saul.

Wells Fargo filed its Motion to Set Aside 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.). Lewis' Memorandum in response to the Motion to Set Aside stated that the responding parties were left to guess what Wells Fargo's allegations and evidence presented were going to be. (*See* Pl. Memo. in Resp.). 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), SCRCP, the burden of proof rested entirely on Wells Fargo, not Saul. *See Sanders v. Smith*, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). However, Saul and Lewis were left guessing as to what exactly Wells Fargo's arguments were 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 did 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.). 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 has been made that Saul has done something improper. Wells Fargo had over a year, beyond the provided one year timeframe of Rule 60, SCRCP, 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, SCRCP. As such, Saul has been prejudiced by the Trial Court's Order which 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), SCRCP.

CONCLUSION

For all of the aforementioned reasons, Saul respectfully submits this memorandum in reply to Respondent Eddie B. Lewis' Return to Saul's Petition for Rehearing and shows that the above captioned appeal is appropriate, and the issues presented therein are immediately appealable.

Dated this 11th day of May, 2022.

Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

By: s/Morgan S. Templeton

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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

Appellate 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

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

PROOF OF SERVICE

I, Morgan S. Templeton, of Wall Templeton & Haldrup, do hereby certify that I have served the Appellant's Return Memorandum in Reply to Respondent Eddie B. Lewis' Return to Appellant's Petition for Rehearing, by electronic mail service and by depositing the same in the United States Mail, properly posted on May 11th, 2022 addressed as follows to counsel of record:

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Dated this 11th day of May, 2022.

WALL TEMPLETON & HALDRUP, P.A.

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May 11, 2022

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 Return Memorandum in Reply to Respondent Eddie B. Lewis' Return to Appellant's Petition for Rehearing and Proof of Service in the above referenced matter. Please file the original and return a filed-stamped copy to me at your convenience.

By copy of this letter to all counsel of record, I am serving them with the enclosed Appellant's Return Memorandum in Reply to Respondent Eddie B. Lewis' Return to Appellant's Petition for Rehearing and Proof of Service.

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

Morgan S. Templeton

MST/sjs
enclosures
cc: H. Fred Kuhn, Jr., Esquire (*w/ encl, via electronic mail only)*
Douglas E. Leadbitter, Esquire (*w/ encl, via electronic mail only*)
Charles G. Blackburn, 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 of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

J.

J.

J.

Columbia, South Carolina

FILED
Jun 09 2022

cc:

Morgan S. Templeton, Esquire
David Ali Nasrollahi, Esquire
H. Fred Kuhn, Jr., Esquire
Douglas Edward Leadbitter, Esquire
Charles Grant Blackburn, Esquire
Kristian M Cross, Esquire