

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

The Honorable Deadra L. Jefferson  
Circuit Court Judge

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Appellate Case No. 2021-001170

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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 Respondent.

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RESPONDENT WELLS FARGO BANK, NATIONAL ASSOCIATION'S RETURN TO  
PETITION FOR WRIT OF CERTIORARI

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**S.C. SUPREME COURT**

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## STATEMENT OF THE CASE

The instant Petition arises out Saul, LLC's ("Saul") appeal challenging an interlocutory Order under Rule 60, SCRCP granting relief to Respondent Wells Fargo Bank, National Association ("Wells Fargo") from the original Order granting Saul summary judgment and ordering a new hearing in connection with Saul's Motion for Summary Judgment.

The underlying case involves a claim for premises liability, wherein Respondent Eddie B. Lewis ("Lewis") alleged that he suffered personal injuries and damages as a result of the purported negligence of one or both of the Defendants. He asserted that the premises upon which he was injured was owned by Saul and leased by Wells Fargo.

The Amended Complaint was filed on January 7, 2019. Appendix, pp. 17-25 (Amended Summons and Complaint). Appellant Saul filed its Answer to the Amended Complaint on January 17, 2019, and Respondent Wells Fargo filed its Answer to the Amended Complaint on February 11, 2019. Each Defendant admitted in its Answer that Saul was the owner and landlord of the property and Wells Fargo the lessee and tenant. Each Defendant also denied that it exercised dominion and control over the portion of the premises where Lewis fell at the time of the fall. Appendix, pp. 26-31 (Answer of Wells Fargo).

Days after filing its Answer to the Amended Complaint, Saul filed a Motion for Summary Judgment alleging that pursuant to the terms of the lease between it and Wells Fargo it had "released the complete and exclusive control of the subject property to Wells Fargo," and owed no duty to Lewis giving rise to his claim against

it for premises liability. Appendix p. 37 (Saul's Motion for Summary Judgment at p. 6). A hearing was scheduled for March 17, 2020, in connection with Saul's Motion. Prior to the hearing date, counsel of record for Wells Fargo contacted counsel for Saul to advise that she would be leaving the firm, the case would be transferred to another attorney within the firm and that she would need to have the hearing continued to allow for the transition. Counsel for Saul advised that he would be unable to consent to the continuance. New counsel filed a Notice of Appearance the day prior to the hearing and, again, contacted counsel for Saul to advise that he would be unable to attend the hearing. Accordingly, the hearing went forward on March 17, 2020, before the Honorable Deadra L. Jefferson and in the absence of anyone on behalf of Wells Fargo, the Defendant to whom Saul was seeking to assign sole responsibility for the premises where Lewis was allegedly injured. Judge Jefferson granted Saul's Motion for Summary Judgment by Order dated March 24, 2020. Appendix, pp. 2-8.

On March 19, 2021, Wells Fargo filed a Motion to Set Aside Order Granting Summary Judgment pursuant to Rule 60, SCRCF. Appendix, pp. 224-225. The issue was briefed by all parties and Judge Jefferson entered an Order on September 21, 2021, setting aside the previous grant of summary judgment pursuant to Rule 60, SCRCF. Appendix, pp. 9-16. Judge Jefferson's very thorough and reasoned analysis came "[a]fter consideration of the record as well as the various interests balanced by the Court at the time of the ruling..." Appendix, pp. 9-10. Of particular import, Judge Jefferson 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,” citing “South Carolina’s policy favoring the disposition of issues on their merits rather than on technicalities.” Appendix, pp. 14-15. Judge Jefferson also directed the common pleas non-jury clerk “to schedule 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.” Appendix, p. 15.

Rather than wait for the next available motions roster to permit its motion to be heard and disposed of on the merits, Saul elected to file a Notice of Appeal on October 14, 2021. The Court of Appeals wasted little time in requesting that the parties brief the issue of whether or not Judge Jefferson’s Order was immediately appealable. On January 28, 2022, the Court of Appeals issued an Order, pursuant to Rule 221 of the SCACR, concluding that the underlying Order of Judge Jefferson was not immediately appealable. Saul filed a Motion for Rehearing on February 10, 2022. The Court of Appeals denied the Motion for Rehearing by Order dated June 9, 2022. It is from that denial that the Petition for Writ of Certiorari is taken.

### **ARGUMENT**

**I. THE SOUTH CAROLINA COURT OF APPEALS CORRECTLY DISMISSED SAUL’S APPEAL AND THE DISMISSAL DOES NOT CONFLICT WITH THE DECISION OF THIS COURT IN *WINSLOW BROS. & SMITH v. GOSSETT*, 120 S.C. 164, 112 S.E. 825 (1922).**

In no less than three submissions to the Court of Appeals, its Initial Brief, Return to Motion to Dismiss, and Petition for Rehearing, Saul argued to the Court of Appeals that Judge Jefferson’s Order Setting Aside Order Granting Summary Judgment that the Order was appealable due to the 1922 holding by this Court in *Winslow Bros.* that an interlocutory order is appealable if there is an “erroneous

exercise of discretion on the part of his Honor, the Circuit Judge.” Suffice it to say, the Court of Appeals had ample opportunity to review and consider the applicability of *Winslow Bros.* to the instant case and found Saul’s argument wanting.

Counsel for Respondent Lewis has provided a thorough analysis in his brief as to Judge Jefferson’s well-reasoned decision to ~~set~~ aside her prior order and permit a new hearing on the issue, and, accordingly, the lack of pertinence of *Winslow Bros.* to the instant case. Counsel has correctly asserted that there is no right to appeal Judge Jefferson’s Order at this stage of the proceedings. Respondent Wells Fargo adopts this analysis herein and incorporates it in full.

**II. S.C. CODE ANN. § 14-3-330 DOES NOT AUTHORIZE THE IMMEDIATE APPEAL OF AN ORDER THAT MERELY VACATES A PRIOR ORDER AND PERMITS THE PARTIES A FULL AND FAIR OPPORTUNITY FOR A NEW HEARING ON THE MOTION.**

§14-3-330 provides that the following 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 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 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.

Nothing in any of these categories applies to the instant case, such that Saul would be permitted to appeal Judge Jefferson's Order. Nevertheless, Saul argues that a plain reading of this code section establishes that this "narrow type of case" is immediately appealable. *Petition for Writ of Certiorari*, p. 13. In so doing, it is attempting to use the narrow holding in one one-hundred-year-old case, which has not been cited as precedent within the intervening time period; whereas, the referenced statute, in one iteration or another, has been published in each successive code since that time and the legislature, in concert with the Supreme Court, has had ample opportunity to amend the statute to include such an exception, should it deem necessary or prudent.

Our appellate courts have made clear that denial of a motion for summary judgment and denial of a motion to dismiss do "not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings." *Levi v. N. Anderson Cnty EMS*, 409 S.C. 374, 381, 762 S.E. 2d 44, 48 (S.C. App. 2014). While Judge Jefferson's Order did not deny either a motion for summary judgment or a motion to dismiss, instead, undoing a grant of summary judgment, it actually gave Saul more than denial of summary judgment would. It gave Saul the opportunity to almost immediately re-argue its motion, only, this time, with Wells Fargo having the opportunity to be heard, something Saul clearly does not relish. If denial of a motion for summary judgment is not immediately appealable, it is axiomatic that an order essentially re-establishing the status quo ante, without any

prejudice at all to Saul's right to argue the exact same motion on the exact same merits in a timely fashion would not be immediately appealable. Were the shoe on the other foot and Judge Jefferson denied Wells Fargo's Rule 60 motion, it would have been relegated to trying the case against Lewis on the merits and electing whether or not to appeal the grant of summary judgment to Saul at the conclusion of the trial on the merits. This, despite what counsel freely concedes would likely be my own personal feeling that Judge Jefferson engaged in an "erroneous exercise of discretion" in denying the motion.

The Court of Appeals previously addressed the very question of whether or not an order granting a Rule 60(b), SCRCF, motion is immediately appealable. *Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (S.C. App. 2008). In *Pocisk* the Plaintiffs filed a motion to vacate a prior consent judgment pursuant to Rule 60(b). The trial court granted the motion and restored the case to the trial roster. Johnny Payne, the principal of Sea Coast, then appealed the trial court's order granting the Rule 60(b) motion. The Court of Appeals dismissed the appeal, holding "[t]he Pocisks assert that the order granting Rule 60(b) relief is not immediately appealable. We agree." *Id.*, 380 S.C. at 587, 671 S.E.2d at 101. 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. 588-89, 671 S.E.2d at 101 (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 default judgment is not immediately appealable).

**III. THIS COURT'S HOLDING IN *WINSLOW BROS.* DOES NOT CREATE AN APPEALABLE ISSUE.**

Wells Fargo adopts in full and incorporates herein the arguments set forth by Lewis in his response to Argument III.

**CONCLUSION**

It is clear, both under our Appellate Court Rules and case law, that an order granting a Rule 60, SCRCR, motion to set aside a judgment is not immediately appealable. Furthermore, Saul is no better or worse off than it was prior to the original hearing on the Motion for Summary Judgment on March 17, 2020, other than finding itself almost one more year down the road from Judge Jefferson's decision to set aside her prior Order and set a new hearing, due to its erroneous decision to appeal the unappealable.

Respondent Wells Fargo respectfully requests that the road be closed to this meandering detour, by way of dismissal of this impermissible appeal, and that the parties be returned to the proper path of travel in the trial court, where Petitioner Saul's Motion for Summary Judgment may be fully and fairly heard and the parties be given a look over the horizon at what final destination may await each of them in this case.

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