

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

TD Bank, NA, successor by merger with Carolina First
Bank, Respondent,

v.

David H. Jacobs, Appellant.

TD Bank, NA, successor by merger with Carolina First
Bank, Respondent,

v.

David H. Jacobs and James A. McFarland, Defendants,
Of Whom David H. Jacobs is the Appellant.

Appellate Case No. 2015-000730

Appeal From Richland County
Alison Renee Lee, Circuit Court Judge

Unpublished Opinion No. 2017-UP-300
Heard May 11, 2017 – Filed July 19, 2017

AFFIRMED

Charles E. Carpenter, Jr., of Carpenter Appeals & Trial

Support, LLC, of Columbia; and Gerald D. Jowers, of Columbia, for Appellant David H. Jacobs.

John T. Moore, Paul Thomas Collins, Jody Alan Bedenbaugh, and Allen Mattison Bogan, all of Nelson Mullins Riley & Scarborough, LLP, of Columbia, for Respondent.

PER CURIAM: David H. Jacobs appeals the denial of his motion for a new trial, arguing the trial court erred in (1) excluding evidence about the Troubled Asset Relief Program (TARP) and the government bailout, (2) excluding documentary evidence and witness testimony about the sale of the "Heron Lakes I" note, and (3) effectively overruling decisions made by another judge during summary judgment. We affirm pursuant to Rule 220(b), SCACR.

1. We find the trial court did not abuse its discretion when it excluded the TARP and government bailout evidence because there is no relevant link between the proffered testimony and the issue of whether Jacobs was legally responsible for paying his guaranty obligations. *See Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 567, 658 S.E.2d 80, 92 (2008) ("The admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion."). Even if the testimony was relevant, its probative value was substantially outweighed by the danger of unfair prejudice. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001) ("Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one.").

2. We also find the trial court did not abuse its discretion when it excluded evidence regarding Bank's decision to sell the note related to the Heron Lakes I loan because it was irrelevant and would likely confuse the jury regarding Bank's obligations to Jacobs. Jacobs argued the evidence showed the disparate treatment he received from Bank and how they proceeded in bad faith against him. However, the evidence only showed Bank chose to sell the Heron Lakes I note at a discounted price for business reasons. Further, that sale had nothing to do with the guaranties at issue in this case. Finally, Jacobs presented no evidence supporting

his allegation of a personal relationship between a Bank officer and the guarantor involved in the Heron Lakes I transaction. Accordingly, the Heron Lakes I evidence does not make any matter at issue more or less probable. *See Judy v. Judy*, 384 S.C. 634, 641, 682 S.E.2d 836, 839 (Ct. App. 2009) ("Evidence meets the test of relevance if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears.").

3. As to whether the trial court erred in effectively overruling issues previously decided by another judge during the summary judgment phase, we note Bank's motions for summary judgment did not specifically request exclusion of the TARP and Heron Lakes I evidence. Likewise, the order denying summary judgment did not include specific rulings concerning these issues. Accordingly, we find the trial court did not violate Rule 43(1), SCRCP, and this is not a situation where one judge has overruled another. *See* Rule 43(1), SCRCP ("If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action."); *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008) (acknowledging the rule that one circuit judge may not overrule a prior decision or set aside the order of another circuit judge).

AFFIRMED.

GEATHERS, MCDONALD, and HILL, JJ., concur.

The State Of South Carolina
In the Court of Appeals

Appeal from Richland County Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Civil Action No. 2012 – CP 40 -07540
Appellate Case: 2015-000730

TD Bank, NA, successor by Merger
with Carolina First Bank, Respondent,
v.

David H. Jacobs, Appellant
v.

TD Bank, NA, successor by Merger
with Carolina First Bank, Respondent,
v.

David H. Jacobs and James McFarland, Defendants,
Of Whom David H. Jacobs is the Appellant

Appellant David Jacobs' Petition for Rehearing

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Petition for Rehearing of Appellant David Jacobs

This case involved a Fiduciary Relationship between TD Bank, acquirer of Carolina First Bank and the Bank's client, David Jacobs. The Fiduciary Relationship, a special relationship, was established by the Carolina First executive team including President Mack Whittle, Justin Strickland, Larry Scotts and others. It was this special relationship that Carolina First used to attract banking customers away from competitors. [Proffer, R. p.569].

David Jacobs is a real estate developer. He puts the land, the design team, the legal team, and the lending source together. [Proffer R. p. 568] David Jacobs agreed and the Bank and Jacobs entered into this special banking, partnering, and advising relationship. This fiduciary relationship worked as promised for approximately fifteen (15) years. The loans made during this relationship were not a simple lender/borrower relationship prevalent in most banks. It was a fiduciary relationship with the purpose of successfully developing projects and protecting the development assets.

Loans and loan documents were only a portion of the actions and work of the bank and all loans from Carolina First to David Jacobs were done within the scope of their fiduciary relationship. It was successful for both Jacobs and the Bank and they worked together flexibly and creatively to engage in successful projects. Changes and adaptations to loans, design, legal needs, and land needs were the regular actions between Carolina First and Jacobs in developing projects.

Carolina First did what it promised it would do. [Proffer, R. p. 570]. From 2002 until Carolina First was acquired by TD Bank, the Bank advised and guided him through his projects. [Proffer, R. p. 570-571]. The Bank would look at everything that

was going on in the project. The bank would become involved from the initial concept, go with him to look at the site and discuss the site with him. The bank would be involved in looking at the tenant or sponsor, the bank would ask him questions. [Proffer, R. p. 571]

The Bank would ask him different ways he could structure a loan and suggest different ways. [Proffer, R. p. 571]. The Bank officers were hands on and guided him through all aspects of developing a project. [Proffer, R. p. 571]

The bank added value to him and he came to rely on their advice, guidance and comments to help keep him in a good conservative direction and to improve the quality of his projects. [Proffer R. p. 571]

The relationship David Jacobs had with Carolina First was significantly different from his previous relationships with other banks. [Proffer R. p. 572] In the past, other banks would basically say here is the money, tell us what you are going to do. [Proffer R. p. 572].

All of the projects that Carolina First joined in were successful as long as the Bank officers from Carolina First were part of David Jacob's development team. [Proffer, R. p. 574].

During two of these projects we experienced the Recession and while American banks are forbidden under Canadian law from acquiring Canadian banks; Canadian banks are allowed to acquire American banks.

Toronto Dominion Bank readily took advantage of the conditions temporarily brought on by the recession and acquired a number of American banks, including Carolina First.

The two projects in which David Jacobs were involved had been entered into between Jacobs and Carolina First. When the acquiring bank renamed it TD Bank it breached the fiduciary duty it had under the bank's fiduciary relationship with Jacobs, abandoned the efforts to keep the projects successful, demanded payment as if there were no fiduciary relationship and brought suit on his personal guaranty, all the while knowing that his very substantial net worth was not liquid but was in various real estate holdings.

After demanding payment and refusing to extend terms, the bank forced the loan which also significantly elevated the interest rate and added costs; then foreclosed on the development property, sold it, and seeks a deficiency.

Yes there was a note, mortgage, and guaranty. But it was accomplished within the fiduciary relationship the bank had operated under for fifteen years without a failure. The acquiring bank gets what it acquires, nothing more. TD Bank acquired Carolina First which had this special way of attracting business and it was working.

TD Bank ignored that long held agreement and behaved as a predator against the very beneficiary of the fiduciary relationship it sought and established. TD Bank was not at risk. While the recession had a negative impact on almost everyone, including David Jacobs, he still had the highest net worth of any person doing business with that bank.

David Jacobs, respectfully petitions for a rehearing of the appeal in this action and for a reconsideration of the decision of this Court filed July 19, 2017, and respectfully submits that the following points have been overlooked or misapprehended in the opinion:

1. The opinion fails to recognize and give effect to the fact that the Bank had established a fiduciary relationship between David Jacobs and the Bank.
2. The opinion fails to recognize and give effect to the fact that the Banks owes fiduciary duties to David Jacobs.
3. The opinion fails to recognize and give effect to the fact that the Bank breached its fiduciary duties to David Jacobs.
4. The opinion fails to recognize and give effect to the method of carrying out its fiduciary duties during the preceding approximately fifteen (15) years of business done by the Bank with David Jacobs.
5. The opinion fails to recognize and give effect to legal principles that distinguish what a bank may do in a simple debtor – creditor relationship on the one hand and what it may not do in a fiduciary relationship on the other hand.

6. The opinion fails to recognize and give effect to the fact that the Bank destroyed the viability of the Newberry Medical Office Building project by breaching its fiduciary duties to David Jacobs.
7. The opinion fails to recognize and give effect to the fact that the Bank destroyed the viability of the Middle Sound Project in Wilmington, N.C. by breaching its fiduciary duties to David Jacobs.
8. The opinion fails to recognize and give effect to the fact that by breaching its fiduciary duties to David Jacobs it enriched itself by forcing Jacobs to liquidate otherwise successful projects to the benefit of the Bank and the detriment of David Jacobs.
9. The opinion fails to recognize and give effect to the fact that these transactions are within the confines of a fiduciary relationship and this case should be governed by the legal principles that apply to fiduciary relationships.
10. The opinion fails to recognize that the exclusion of the evidence was not just an evidentiary ruling because it had the effect of striking out David Jacobs defense to the Bank's lawsuit.

11. The opinion overlooked or misapprehended that when TD Bank acquired Carolina First that it not only acquired assets but it also acquired duties including duties owed to David Jacobs.
12. The opinion overlooked or misapprehended that when TD Bank acquired Carolina First that in doing so it acquired the benefit which Carolina First obtained from the Troubled Asset Relief Program (TARP) and the government bailout.
13. The opinion overlooked or misapprehended the relevance that the Bank received Troubled Asset Relief Program funds whose very purpose under Public Law 110 – 343 was to encourage banks to resume lending at levels seen before the crisis, both to each other and to consumers and businesses. TD Bank did exactly the opposite when it abandoned the method of lending that had been created in a fiduciary relationship.
14. The opinion overlooked or misapprehended the fact that the evidence the Bank received TARP funds but ignored Congress' intent just as it ignored its fiduciary duty under South Carolina law.
15. The opinion overlooked or misapprehended the relevance of the documentary evidence and witness testimony about the sale of the Heron Lakes I note

because that evidence of how the Bank carried out that transaction is relevant to the comparison of how the Bank treated David Jacobs loan on the issue of fairness and good faith.

16. The opinion overlooked or misapprehended the relevance of the documentary evidence and witness testimony about the sale of the Heron Lakes I note because that evidence of how the Bank carried out that transaction is relevant to the comparison of how the Bank treated David Jacobs loan on the issue of breach of fiduciary duties.

17. The opinion overlooked or misapprehended the relevance of the documentary evidence and witness testimony about the sale of the Heron Lakes I note because that evidence is relevant to ability of the jury to see and evaluate the behavior and actions of the Bank in its fiduciary relationship with David Jacobs in comparison and in the context of how it treated others in similar situations.

18. The opinion overlooked or misapprehended that Judge Casey Manning overruled a previous decision of Judge Joseph Strickland in which the evidence proffered to Judge Manning had already been set before Judge Strickland when he made his decision denying the Bank's Motion for Summary Judgment.

19. The opinion overlooked or misapprehended that when the evidence proffered to and excluded by Judge Manning had already been considered in the case before Judge Strickland and its admissibility was already the established law of the case.

20. The opinion overlooked or misapprehended the effect that the Bank did not specifically request exclusion of the TARP and Heron Lakes I evidence. In other words when the evidence was placed before Judge Strickland the Bank did not object to the evidence and it was received into evidence.

21. The opinion overlooked or misapprehended the prejudicial effect of allowing evidence to be put into the case before Judge Strickland and saying nothing until the trial starts and files an extraordinary Motion in Limine to exclude the evidence which David Jacobs had been using in his defense and intended to use it in the trial. Instead of a trial that day was spent proffering documents and testimony about the fiduciary relationship between David Jacobs and the Bank and the ways in which the Bank breached that fiduciary duty.

22. The opinion overlooked or misapprehended that the only thing David Jacobs could do with the evidence before Judge Strickland was to offer it, which he did; the Bank had the option to accept that evidence or object to it and did

not object; and it came in. That is the law of the case and is also waiver of any asserted objection before Judge Manning.

23. The opinion overlooked or misapprehended the correct principle of evidence law when it stated: "We find the trial court did not abuse its discretion when it excluded the TARP and government bailout evidence because there is no relevant link between the proffered testimony and the issue of whether Jacobs was legally responsible for paying his guaranty obligations. *See Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 567, 658 S.E.2d 80, 92 (2008) ("The admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion."). Even if the testimony was relevant, its probative value was substantially outweighed by the danger of unfair prejudice. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001) ("Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one."). This is error because the context of banking laws, and the federal stature encouraging banks to lend as they had before the recession is

absolutely relevant to the issue of whether the Bank breached its fiduciary duty which is relevant to whether David Jacobs has a defense to the Bank's claim.

24. The opinion overlooked or misapprehended the correct principle of evidence law when it stated: "We find the trial court did not abuse its discretion when it excluded the TARP and government bailout evidence because there is no relevant link between the proffered testimony and the issue of whether Jacobs was legally responsible for paying his guaranty obligations. *See Fields v. J. Haynes Waters Builders, Inc.*, 376 S.C. 545, 567, 658 S.E.2d 80, 92 (2008) ("The admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion."). Even if the testimony was relevant, its probative value was substantially outweighed by the danger of unfair prejudice. *See* Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."); *State v. Cheeseboro*, 346 S.C. 526, 547, 552 S.E.2d 300, 311 (2001) ("Evidence is unfairly prejudicial if it has an undue tendency to suggest a decision on an improper basis, such as an emotional one."). This is error because this evidence has very significant probative value in David Jacob's effort to prove his defense and it is not tangential, it is an undisputed fact that shows the Bank's actions in violation

of the policy of federal law and in violation of its fiduciary duties which under any reasonable analysis outweighs any prejudice that could possibly derive from letting the jury know what the Troubled Asset Relief Program from which the Bank had benefitted; the Congressional purpose of the Troubled Asset Relief Program, and how the Bank did not treat David Jacobs loan as it had before the recession. In the legal sense of prejudice there is no prejudice to weigh against its probative value. It is straight up undisputed factual evidence that the Bank doesn't like but it does not have some alternative meaning or other prejudicial effect and the evidence is admissible.

25. The opinion overlooked or misapprehended the facts and the correct principle of evidence law when it stated "We also find the trial court did not abuse its discretion when it excluded evidence regarding Bank's decision to sell the note related to the Heron Lakes I loan because it was irrelevant and would likely confuse the jury regarding Bank's obligations to Jacobs. Jacobs argued the evidence showed the disparate treatment he received from Bank and how they proceeded in bad faith against him. However, the evidence only showed Bank chose to sell the Heron Lakes I note at a discounted price for business reasons. Further, that sale had nothing to do with the guaranties at issue in this case. Finally, Jacobs presented no evidence supporting his allegation of a personal relationship between a Bank officer and the guarantor involved in the Heron Lakes I transaction. Accordingly, the Heron Lakes I

evidence does not make any matter at issue more or less probable. *See Judy v. Judy*, 384 S.C. 634, 641, 682 S.E.2d 836, 839 (Ct. App. 2009) ("Evidence meets the test of relevance if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears.")” This is error because the evidence was relevant to and showed how the Bank treated others more favorably than it treated David Jacobs. The opinion correctly observes that the evidence did not establish that the Bank officer and bank customer were friends, so it wasn't as powerful as hoped, but it still showed more favorable treatment to a bank customer than what David Jacobs received and it was the only such evidence available to David Jacobs because the Bank requires others to sign confidentiality so people cannot see if they are getting the same treatment as others dealing with the Bank. It is very relevant to show that the Bank gave less favorable treatment in its fiduciary capacity than in the Heron Lakes I loan. It makes the fact that the Bank's treatment of David Jacobs more probable that the Bank breached its fiduciary duty.

26. The opinion overlooked or misapprehended the fiduciary relationship that was the very basis upon which the Bank recruited David Jacobs to become a member of a mutually supportive team in a special and fiduciary relationship. Neither the evidence of that relationship or the relationship itself neither mentioned nor analyzed in the opinion.

27. The opinion overlooked or misapprehended the important issues that overlap when a Bank transaction is carried entered into with one to whom the Bank owes fiduciary duties. Bank Trust Departments establish special relationships and owe fiduciary duties and also engage in transactions with the beneficiaries of the trust but the law imposes fiduciary boundaries and the same special relationships can be formed between the Bank and a developer just as was done in this case with David Jacobs. It is error to treat the transaction as if it were only a debtor-creditor relationship when that debtor-creditor relationship is within a larger, greater fiduciary relationship. It was error not to hold the Bank to the standards of a fiduciary and allow relevant evidence of the fiduciary relationship and its breach by the Bank into evidence.

28. The opinion overlooked or misapprehended the correct analysis in examining David Jacobs position that Judge Manning reversed Judge Strickland in excluding evidence that came before Judge Strickland without objection. The opinion is in error in its statement:” As to whether the trial court erred in effectively overruling issues previously decided by another judge during the summary judgment phase, we note Bank's motions for summary judgment did not specifically request exclusion of the TARP and Heron Lakes I evidence. Likewise, the order denying summary judgment did not include specific rulings concerning these issues. Accordingly, we find the trial court

did not violate Rule 43(1), SCRCP, and this is not a situation where one judge has overruled another. *See* Rule 43(1), SCRCP ("If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action."); *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008) (acknowledging the rule that one circuit judge may not overrule a prior decision or set aside the order of another circuit judge). The opinion observed the "Bank's Motion for summary judgment did not specifically request exclusion of the TARP and Heron Lakes I evidence and the order denying summary judgment did not include specific rulings concerning these issues."

That is exactly the point that the Bank did not seek to exclude the evidence before Judge Strickland. So it came in and was considered by Judge Strickland.

29. The opinion overlooked or misapprehended the correct analysis when it stated: The opinion overlooked or misapprehended the correct analysis in examining David Jacobs position that Judge Manning reversed Judge Strickland in excluding evidence that came before Judge Strickland without objection. The opinion is in error in its statement:" As to whether the trial court erred in effectively overruling issues previously decided by another judge during the summary judgment phase, we note Bank's motions for summary judgment did not specifically request exclusion of the TARP and

Heron Lakes I evidence. Likewise, the order denying summary judgment did not include specific rulings concerning these issues. Accordingly, we find the trial court did not violate Rule 43(1), SCRCP, and this is not a situation where one judge has overruled another. *See* Rule 43(1), SCRCP ("If any motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action."); *Salmonsens v. CGD, Inc.*, 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008) (acknowledging the rule that one circuit judge may not overrule a prior decision or set aside the order of another circuit judge). The opinion observed the "Bank's Motion for summary judgment did not specifically request exclusion of the TARP and Heron Lakes I evidence and the order denying summary judgment did not include specific rulings concerning these issues."

This is error no basis for ignoring what took place before the Circuit Judge and not reason to ignore waiver or failure to object to evidence presented to the Circuit Court. There is no requirement that a Circuit Judge address in an order the admissibility of or any other aspect of evidence that was not objected to. That a Circuit Court Judge does not specifically address the admissibility of evidence that came in without objection is common place. There is no requirement that a Circuit Judge address what came in without objection. The analysis mistaken and Judge Manning should not have excluded evidence that Judge Strickland admitted.

30. The opinion overlooked or misapprehended the significance that the Bank not only did not object to Jacob's proffered evidence but the Banks position did not change and the Bank did not seek to exclude the evidence until the actual trial started. The evidence was appropriate and probative of David Jacobs defense; it was already admitted in the case; and it should not have been excluded

31. The opinion overlooked or misapprehended the appropriateness of issuing an opinion pursuant to Rule 220(b), SCACR and prohibiting its being cited as precedent except under Rule 268(d)(2), SCACR. This is error because the case involves a rarely encountered fact pattern in which a Bank simultaneously occupies a role as a fiduciary and creditor. An analysis of the effect of these conjoined relationships would be a precedent and guide if it contained an analysis of those facts, as it should have.

Conclusion

For the reasons set forth, David Jacobs, Petitioner, requests that the Court reconsider its decision and opinion, grant a rehearing on this appeal, reverse the judgment below, and remand for a New Trial in which the evidence heard by Judge Strickland and proffered before Judge Manning is admissible.

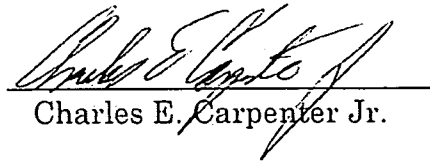
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Certificate of Service

As Counsel for the Appellant Petitioner certify that I have served the Petition for Rehearing by personally depositing a copy in a United States Postal Service mailbox, postage paid on July 27, 2017

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Charles E. Carpenter Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-6074; Appellate Case No. 2015-000730

TD Bank, N.A., successor by merger with Carolina First Bank, Respondent,

v.

David H. Jacobs, Appellant.

Case No. 2012-CP-40-7540

TD Bank, N.A., successor by merger with Carolina First Bank, Respondent,

v.

David H. Jacobs and James A. McFarland, Defendants,
Of Whom David H. Jacobs is Appellant.

**RESPONDENT'S RETURN TO THE PETITION
FOR REHEARING**

Pursuant to Rule 240(e), SCACR, Respondent TD Bank, N.A., successor by merger with Carolina First Bank ("TD Bank") files this Return to Appellant David Jacobs' ("Appellant") Petition for Rehearing. Rehearing is not warranted because the Court correctly held in its opinion filed July 19, 2017 (the "Opinion") that Appellant's arguments on appeal are legally incorrect, and the thirty-one arguments in the petition are unavailing because the Court did not overlook or misapprehend any points of law or fact. The Court correctly affirmed the decision below.

I. The petition should be denied because Appellant merely rehashes arguments previously presented to the Court.

“The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time.” *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). Thus, in order to prevail on a petition for rehearing, a petitioner must demonstrate the Court overlooked or misapprehended his argument. Rule 221(b), SCACR.

Appellant presents thirty-one grounds in the petition. The grounds can be fairly grouped into five categories, each of which advances the same arguments presented in Appellant’s prior briefing:¹

1. Appellant’s grounds numbered 1–9, 11, 13–14, 16–17, 21, 23–27, and 31:² Appellant presented this same argument regarding fiduciary duty to the Court in his prior briefing. *See* (App. Br. pp. 14–22; Reply Br. pp. 5–7).

2. Appellant’s grounds numbered 12–14, and 23–24: Appellant presented this same argument regarding evidence related to the Troubled Asset Relief Program (“TARP”) to the Court in his prior briefing. *See* (App. Br. pp. 25–28; Reply Br. pp. 6–7).

3. Appellant’s grounds numbered 15–17, and 25: Appellant presented this same argument regarding evidence and testimony related to the sale of the Heron Lakes I note to the Court in his prior briefing. *See* (App. Br. pp. 29–33; Reply Br. pp. 8–9).

¹ Some of the grounds asserted by Appellant combine previous arguments made to the Court and, therefore, correspond to multiple arguments previously made by Appellant.

² Ground number thirty-one is not directly addressed in Appellant’s prior briefing. The argument that this Court should not have issued an opinion in this matter pursuant to Rule 220(b), however, is not a ground for rehearing. Moreover, the reasoning utilized by Appellant to support his argument is that TD Bank has a fiduciary duty to Appellant. The Court, therefore, considered and rejected the logic behind Appellant’s thirty-first ground.

4. Appellant's grounds numbered 18–22, and 28–30: Appellant presented this same argument regarding one judge improperly overruling decisions made by another judge to the Court in his prior briefing. *See* (App. Br. pp. 34–36; Reply Br. p. 9).

5. Appellant's ground number 10: Appellant presented this same argument regarding the evidentiary decisions adversely affecting his affirmative defenses to the Court in his prior briefing. *See* (App. Br. pp. 30, 35–37).

Thus, the Court did not overlook the grounds advanced by Appellant in the petition because the Court previously reviewed, weighed, and rejected the merits of each of Appellant's arguments. Accordingly, these grounds cannot constitute a basis for rehearing because they were previously presented to the Court. *See Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322. The petition for rehearing should be denied for this reason.

Moreover, the Court did not misapprehend any of the grounds set forth in the petition. While many of the grounds identified by Appellant relate to an argument not specifically addressed in the Opinion—that TD Bank owed a fiduciary duty, as a matter of law, to appellant—Appellant did not appeal a ruling on whether TD Bank owed Appellant a fiduciary duty as a matter of law. Rather, Appellant appealed the denial of his motion for a new trial, which raised the following three errors: (1) improper exclusion of evidence related to TARP and government bailouts, (2) improper exclusion of evidence related to the Heron Lakes I note sale, and (3) the circuit court's rulings on those issues effectively overruled decisions made by another judge during summary judgment.³ (R. pp. 465–66, 468, Motion for New Trial, ¶¶ 10–12, 25; *see also* App. Br. p. 1). The issue of whether TD Bank owed or breached a fiduciary duty to Appellant was submitted to the

³ The Court specifically addressed and rejected these three issues in the Opinion. (Opinion at *2-3). Additionally, the Court did specifically address—and reject—the argument that the excluded evidence relates to the defense of bad faith. (*Id.*).

jury and the jury found for TD Bank, rejecting Appellant's breach of fiduciary duty and breach of implied covenant of good faith and fair dealing defenses. (R. pp. 20-21, Jury Verdicts). Appellant did not contest the trial court's rulings on directed verdict, the jury instructions, or the jury's verdict. The issue of whether TD Bank breached a fiduciary duty is, therefore, not preserved for appeal. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review."). Accordingly, the Court did not need to address the issue of an alleged fiduciary duty and Appellant cannot utilize his petition to re-litigate an issue he failed to appeal. *Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322 (2001) (denying petition for rehearing where petition was based on an argument not preserved for appeal); *see also* Rule 220(b)(2), SCACR ("The Court of Appeals need not address a point which is manifestly without merit.").

Furthermore, the Court correctly affirmed the circuit court's ruling for the reasons set forth in TD Bank's Respondent's Brief. For the sake of brevity, TD Bank incorporates that brief in opposition to the grounds advanced in the petition. As shown therein, the Court did not misapprehend the issues on appeal, and the petition for rehearing should be denied.

II. Appellant fails to support any of his arguments with citations to legal authority and has, therefore, abandoned those arguments.

"South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). This Court routinely holds appellate arguments with no citation to legal authority are abandoned. *E.g., Mead v. Beaufort Cty. Assessor*, 419 S.C. 125, 139, 796 S.E.2d 165, 173 (Ct. App. 2016)

(“The Assessor provided no case law on the issue, particularly no case law or other authority on public policy and what constitutes a violation of it. Accordingly, this issue is abandoned.”).

Appellant does not cite to a single legal authority to support any of the thirty-one grounds for rehearing.⁴ Rather, Appellant argues thirty-one issues of law or fact were overlooked or decided incorrectly purely because the Court’s decision was adverse to Appellant. Accordingly, Appellant has abandoned these issues and this Court should deny Appellant’s petition for rehearing. *See Mead*, 419 S.C. at 139, 796 S.E.2d at 173.

CONCLUSION

This Court correctly affirmed the circuit court’s ruling. This Court’s ruling did not overlook or misapprehend any points of fact or law and, therefore, there is no basis upon which to grant rehearing.

[SIGNATURE ON FOLLOWING PAGE]

⁴ The only time legal citations appear in Appellant’s petition is when Appellant quotes the Opinion. Appellant also fails to cite to the Record on Appeal in any of his thirty-one grounds for rehearing.

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Columbia, South Carolina
August 7, 2017

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Alison Renee Lee, Circuit Court Judge

Case No. 2012-CP-40-6074
Appellate Case No. 2015-000730

TD Bank, N.A., successor by merger with Carolina
First Bank, Respondent,

v.

David H. Jacobs, Appellant.

Case No. 2012-CP-40-7540

TD Bank, N.A., successor by merger with Carolina
First Bank, Respondent,

v.

David H. Jacobs and James A. McFarland, Defendants,
Of Whom David H. Jacobs is, Appellant.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for TD Bank, N.A., do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

Respondent's Return to the Petition for Rehearing

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Lisa Whitehurst
Administrative Assistant

August 7, 2017

The South Carolina Court of Appeals

TD Bank, NA, successor by merger with Carolina First
Bank, Respondent,

v.

David H. Jacobs, Appellant.

TD Bank, NA, successor by merger with Carolina First
Bank, Respondent,

v.


David H. Jacobs and James A. McFarland, Defendants,

Of Whom David H. Jacobs is the Appellant.

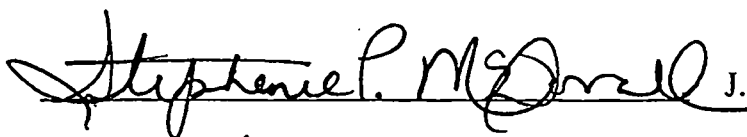
Appellate Case No. 2015-000730

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.

FILED

August 18, 2017

Columbia, South Carolina

cc:

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The Honorable Alison Renee Lee