

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

RECEIVED

DEC 06 2021

SC 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 National Association is a Respondent.

**MEMORANDUM OF RESPONDENT EDDIE B. LEWIS
ON APPEALABILITY**

On November 29, 2021 the South Carolina Court of Appeals requested that the parties serve and file a memorandum addressing the issue of appealability. In accordance with that request, this Memorandum is respectfully submitted on behalf of the Respondent, Eddie B. Lewis.

The Order which is the subject of this appeal is not immediately appealable and this appeal should accordingly be dismissed.¹

The Order that is the subject of this appeal is the Order of the Honorable Deadra L. Jefferson granting the Respondent Wells Fargo Bank National Association's motion pursuant to Rule 60(b), SCRCF, to set aside summary judgment previously entered against it and rescheduling

¹ This Memorandum on appealability essentially repeats the substance of the Motion to Dismiss Appeal previously filed on behalf of Respondent Eddie B. Lewis.

the summary judgment motion for a new hearing. An Order granting relief pursuant to Rule 60, SCRCF, is not immediately appealable, particularly under the circumstances of this case where the subject Order simply reschedules the summary judgment motion for another hearing.

A. FACTUAL BACKGROUND

This is a premises liability action which was commenced by the filing of a Summons and Complaint in the Beaufort County Court of Common Pleas on December 5, 2018. In his Complaint, the Plaintiff-Respondent Eddie B. Lewis (“Lewis”) alleges that he suffered personal injuries as a result of a fall and that his fall was the result of the negligence of the Defendants. He alleges that the Defendant-Respondent Wells Fargo Bank National Association (“Wells Fargo”) rented or leased the premises on which he suffered his fall from the Defendant-Appellant Saul, LLC (“Saul”). [See Exhibit A, Summons and Complaint].

An Amended Complaint, correcting the address of the subject premises, was filed on January 7, 2019 [Exhibit B, Amended Summons and Complaint].

On January 17, 2018 the Appellant Saul filed its Answer to the Amended Complaint and on February 11, 2019 the Respondent Wells Fargo filed its Answer to the Amended Complaint. In their Answers, both Defendants admit that the Appellant Saul was the owner and landlord of the subject premises, and the Respondent Wells Fargo was the tenant. Both Defendants, however, denied liability to the Plaintiff. Each Defendant denied that it exercised dominion or control over the premises at the time of Plaintiff’s fall. [See Exhibit C, Answer of Appellant Saul and Exhibit D, Answer of Respondent Wells Fargo].

On January 20, 2020 Appellant Saul filed a Motion for Summary Judgment, asserting that pursuant to the terms of the lease between it and the Respondent Wells Fargo it had “released the

complete and exclusive control of the subject property to Wells Fargo,” and accordingly owed no duty to the Plaintiff. [Exhibit E, Appellant Saul’s Motion for Summary Judgment, pg. 6].

As a result of a hearing held on March 17, 2020 the Honorable Deadra L. Jefferson, Presiding Judge, granted the Appellant Saul’s Motion for Summary Judgment. [Exhibit F].

On March 19, 2021 the Respondent Wells Fargo filed a Motion to Set Aside the aforesaid summary judgment motion pursuant to Rule 60, SCRPC. [Exhibit G]. This motion was made on the ground that where were “significant misrepresentations” made to the Court as to the terms of the lease between Saul and Wells Fargo, the contractual relationship of the parties, and which Defendant was responsible for the condition and maintenance of the area where the Plaintiff fell. *Id.*

As a result of a hearing held on March 23, 2021 Judge Jefferson filed an Order on September 21, 2021 granting the Respondent Well Fargo’s Motion to Set Aside the Summary Judgment Pursuant to Rule 60, SCRPC. Significantly, the Court concluded that there would be “little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC’s motion for summary judgment.” [Exhibit G, pg. 6].

B. LEGAL AUTHORITY

“An appeal ordinarily may be pursued only after a party has obtained a final judgment.” *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005); citing *Mid-State Distributors, Inc. v. Century Imps., Inc.*, 310 S.C. 330; 335, 426 S.E.2d 777, 781 (1993). “The right of appeal arises from and is controlled by statutory law.” *Id.*

“The determination of whether a party may immediately appeal an order issued before or during trial is governed primarily by (§14-3-330 of the South Carolina Code of Laws).” *Hagood*,

supra, 362 S.C. at 195, 607 S.E.2d at 708. “An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.” *Id.*

Section 14-3-330 provides that the following types of judgments, decrees, and orders are directly appealable:

“(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions ...;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.”

S.C. Code Ann. §14-3-330.

The subject Order in this case has absolutely no effect on the merits of this action, nor does it affect any substantial rights of the parties or limit any party’s ability to present its case. The net effect of the Order under appeal is to simply just reschedule Saul’s Motion for Summary Judgment for another hearing.

The subject Order in this case is an Order granting a party relief pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure, and the South Carolina Supreme Court has held that such an order is not immediately appealable. See, e.g., *Pocisk v. Sea Coast Construction of Beaufort*, 380 S.C. 584, 587, 671 S.E.2d 98, 100 (2008).

In *Pocisk v. Sea Coast Construction of Beaufort*, *supra*, the Court entered a judgment against the Pocisks. The Pocisks filed a motion to vacate the judgment pursuant to Rule 60(b),

SCRCP, and to restore the case to the trial roster. The Court granted the motion, vacating the judgment and restoring the case to the trial docket. Sea Coast Construction appealed this Order, and the South Carolina Supreme Court dismissed the appeal stating:

“The Pocisks assert the order granting Rule 60(b) relief is not immediately appealable. We agree.”

Id., 380 S.C. at 587, 671 S.E.2d at 100. The Court noted that an “order granting Rule 60(b) relief does not affect a substantial right” and accordingly is not immediately appealable. *Id.*, 380 S.C. at 588-89, 671 S.E.2d at 101 (numerous citations omitted). See also, *Pioneer Associates, Inc. v. Ticor Title Insurance Company*, 300 S.C. 346, 387 S.E.2d 711 (1989) (appeal dismissed because order granting Rule 60(b), SCRCP, motion to set aside a default judgment is not immediately appealable).

CONCLUSION

An order granting a Rule 60, SCRCP, motion to set aside a judgment is not immediately appealable. The net affect of Judge Jefferson’s Order in the instant case is to simply schedule the Appellant Saul’s Motion for Summary Judgment for a new hearing, the same effect as if she had simply continued the original hearing to begin with. Following Judge Jefferson’s Order, the Appellant Saul’s Motion for Summary Judgment remains pending and probably would have been heard by now but for this appeal. Judge Jefferson’s decision to, in effect, simply rehear Saul’s Motion for Summary Judgment has no effects on the rights of any party to this action. The Order under appeal is essentially a decision not to decide anything until a further hearing can be held.

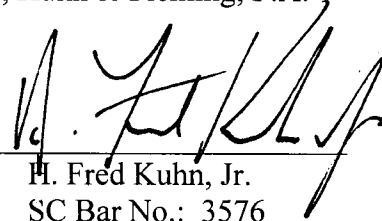
It is accordingly respectfully requested that this appeal be dismissed on the ground that the subject Order is not an appealable order, and the case remanded to the Beaufort County Court of Common Pleas so Saul’s Motion for Summary Judgment may be heard on its merits.

Respectfully submitted,

Moss, Kuhn & Fleming, P.A.

Beaufort, South Carolina
December 1, 2021

By:

A handwritten signature in black ink, appearing to read 'H. Fred Kuhn, Jr.', written over a horizontal line.

H. Fred Kuhn, Jr.

SC Bar No.: 3576

1501 North Street (29902)

Post Office Drawer 507

Beaufort, South Carolina 29901-0507

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Attorneys for Respondent Eddie B. Lewis

EXHIBIT A
SUMMONS AND COMPLAINT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
EDDIE B. LEWIS, JR.,)
)
Plaintiff,)
)
v.)
)
Saul, LLC and Wells Fargo)
Bank, National Association,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO: 2018-CP-07-_____

SUMMONS
(Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at his office, MOSS, KUHN & FLEMING, P. A., P. O. Drawer 507, 1501 North Street, Beaufort, SC 29901-0507, within thirty (30) days from the date of service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default and the relief demanded in the attached Complaint.

MOSS, KUHN & FLEMING, P.A.

By: s/Cory H. Fleming
Cory H. Fleming
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ATTORNEYS FOR PLAINTIFF

Beaufort, South Carolina
December 3, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-_____
)	
EDDIE B. LEWIS, JR.,)	
)	
Plaintiff,)	
)	
v.	)	COMPLAINT
)	
Saul, LLC, and Wells Fargo	)	(Jury Trial Demanded)
Bank, National Association)	
Defendant.)	

TO: THE DEFENDANTS ABOVE NAMED:

COME NOW, the Plaintiff, Eddie B. Lewis, Jr., complaining of the acts and/or omissions of the Defendants, Saul, LLC and Wells Fargo Bank, National Association, and allege as follows:

PARTIES AND JURISDICTION

1. That the Parties hereto, the subject matter hereof, and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.
2. The Plaintiff, Eddie B. Lewis, Jr., was at the time of the accident, and at all times material hereto, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That, upon information and belief, the Defendant, Saul, LLC, was at the time of the accident which is the subject of this suit, a corporation duly organized and established pursuant to the laws of the State of South Carolina, and is duly authorized to conduct business in the State of South Carolina.
4. That, upon information and belief, the Defendant, Wells Fargo Bank, National Association (here after named as Wells Fargo), was at the time of the accident which is the subject of this suit, and at all times material hereto, a Delaware Corporation duly authorized to conduct business in the State of South Carolina.

5. That, upon information and belief, the Defendant, SAUL, LLC, was the owner of the property located at 401 Port Republic Street, Beaufort, South Carolina, 29902, at the time of the accident which is the subject of this suit.

6. That, upon information and belief, at the time of the accident which is the subject of this suit, The Defendant, Wells Fargo, rented and/or leased the property located at 401 Port Republic Street, Beaufort, South Carolina, for commercial purposes from the Defendant, SAUL, LLC.

7. That, upon information and belief, at all times mentioned herein, the Defendant, SAUL, LLC, as the owner of the premises located at 401 Port Republic Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

8. That, upon information and belief, at all times mentioned herein, the Defendant, Wells Fargo, as the commercial tenant of the premises located at 401 Port Republic Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

FOR A FIRST CAUSE OF ACTION

(Negligence and Recklessness)

9. That, upon information and belief, on May 23, 2016, the Plaintiff, Eddie R. Lewis, Jr., did enter the parking lot/premises of the Defendant, Wells Fargo and Saul, LLC, for the sole purpose of conducting business dealings with the Defendant, Wells Fargo, and that the Plaintiff, Eddie Lewis, Jr., was an "invitee" and/or a "business visitor" on the Defendant's premises.

10. That, upon information and belief, the Defendant, Wells Fargo and Saul, LLC, by reasons of its relationship with Eddie Lewis, Jr., owed him a duty to exercise reasonable and due care for his safety and is liable for any injury resulting from the breach of this duty; this duty includes inspecting the premises and discovering the presence of any dangerous natural or

artificial conditions and to exercise reasonable and due care in either warning the invitee of such dangers or in making the conditions safe for him.

11. That on May 23, 2016, the Plaintiff, Eddie Lewis, Jr., was a customer of the Defendant, Wells Fargo, in a normal and routine manner; that the Plaintiff, Eddie Lewis, Jr., upon exiting the bank was walking on the sidewalk towards his vehicle when without warning, stepped in a gap on the sidewalk which caused the Plaintiff, Eddie Lewis, Jr., to trip and that unexpected trip caused him to lose his balance causing him to fall to the concrete, striking his face, shoulder and knee. This unexpected fall caused the Plaintiff, Eddie Lewis, Jr., to lose many of his teeth, injury his left arm and shoulder, and injury to his right knee.

12. That the injuries and damages suffered by the Plaintiff, Eddie Lewis, Jr., were due to, caused by, and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness, wantonness, and/or heedlessness of the Defendants, Wells Fargo and SAUL, LLC, jointly and severally and/or by virtue of their respective lessor/lessee, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, and/or other relationships, in one, more, or all of the following particulars, to wit:

AS TO THE DEFENDANT, WELLS FARGO:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;
- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or

- hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;
- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
 - G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
 - H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
 - I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
 - J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
 - K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
 - L. In all other ways being negligent.

AS TO THE DEFENDANT, SAULS LLC:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;

- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;
- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
- G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
- H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
- I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
- J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
- K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
- L. In all other ways being negligent.

13. That by reason of the acts and omissions of negligence, careless, recklessness, willfulness, wantonness, and heedlessness of the Defendants, Wells Fargo and SAUL, LLC, as set forth herein, and as a direct and proximate result thereof, the Plaintiff, Eddie Lewis, Jr., suffered severe and permanent physical, mental and emotional injuries and other damages in the following particular, to wit:

a. Upon walking on the sidewalk, the sudden and unexpected impact caused by the dangerous condition of the concrete, resulted in the Plaintiff, Eddie Lewis, Jr., sustaining serious and permanent injuries to his mouth, left arm, left shoulder, and right knee.

b. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has undergone expensive medical treatment, including but not limited to, painful surgery and physical therapy;

c. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered other injuries related to the compromised condition of his body due to the incident described herein, such injuries he would not have suffered but for the incident described herein:

d. As a result of his fall, the Plaintiff, Eddie Lewis, Jr., was forced to undergo uncomfortable, difficult and sometimes painful diagnostic tests and procedures;

e. As a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., suffers, has suffered, and likely will continue to suffer pain, physical injury, and severe discomfort in his whole body;

f. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered, and will most probably continue to suffer from emotional distress, anxiety, and mental anguish for the rest of his life.

g. As a result of his permanent injuries, the Plaintiff, Eddie Lewis, Jr., has suffered and experienced, and will most probably continue to suffer and experience, impairment of his enjoyment of living;

h. The ability of the Plaintiff, Eddie Lewis, Jr., to participate in recreational and/or other activities has been limited and impaired and will most probably be substantially limited and impaired in the future;

i. The Plaintiff, Eddie Lewis, Jr., has suffered, and will probably continue to suffer, permanent physical injuries, impairment, and pain as a result of his injuries; and

j. The Plaintiff, Eddie Lewis, Jr., has incurred substantial medical and hospital expenses and will likely incur substantial expenses for medical care and treatment in the future resulting directly from his injuries;

k. The Plaintiff, Eddie Lewis, Jr., has been injured and damaged in other ways, all to his substantial detriment.

14. As a result of said injuries, the Plaintiff has received, and will in the future continue to receive, medical and hospital care and treatment provided by and through the United States of America. The Plaintiff, for the sole use and benefit of the United States of America, under the provisions of 42 U.S.C. §§ 2651-2653 et seq. and 10 U.S.C. § 1095, and with its express consent, asserts a claim for the cost of said medical and hospital care and treatment and the value of future care.

FOR A SECOND CAUSE OF ACTION
(Premises Liability)

15. That the Plaintiff, Eddie Lewis, Jr., repeat, reallege, and incorporate herein as part of this Second Cause of Action against the Defendants, Wells Fargo and SAUL, LLC, Paragraphs One (1) through Fourteen (14) of the Plaintiff's Complaint and further alleges as follows:

16. That, the Plaintiff, Eddie Lewis, Jr., was an invitee and/or business visitor of the Well Fargo Bank, wholly and/or partially owned, managed, controlled, and/or operated by the Defendant, Wells Fargo, on May 23, 2016, and as a result, the presence of the Plaintiff, Eddie Lewis, Jr., in Wells Fargo benefited the Defendant, Wells Fargo.

17. That the Defendants, Wells Fargo and SAUL, LLC, owed duties to the Plaintiff, Eddie Lewis, Jr., as an invitee, including, but not limited to, the duty to warn the Plaintiff, Eddie Lewis, Jr., of latent and hidden dangers and a duty to exercise ordinary care to keep the premises in a reasonably safe condition; further, even if a dangerous condition on the premises is "open or obvious" the Defendants, Wells Fargo and SAUL, LLC, had a duty to warn the Plaintiff, Eddie Lewis, Jr., or take other reasonable steps to protect him if they had reason to anticipate that an invitee might nevertheless encounter the condition, or that his attention may be distracted, so that he will not discover what is obvious or fail to protect himself against it.

18. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had actual or constructive knowledge of the dangerous condition.

19. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had reason to anticipate that an invitee might unexpectedly trip on the sidewalk curb while walking in or out of the business.

20. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, failed to remedy the dangerous condition and let the dangerous condition remain despite the reasonably foreseeable risk of the dangerous sidewalk for the Plaintiff, Eddie Lewis, Jr., to trip and/or fall on the sidewalk when exiting or entering the business.

21. That, as a result of the dangerous and defective condition created by the Defendants, Wells Fargo and SAUL, LLC, and their failure to correct, warn about, and/or remedy the danger, the Plaintiff, Eddie Lewis, Jr., an invitee on the premises, unexpectedly tripped on the sidewalk while exiting the premises causing injuries while falling onto the ground; and that the Plaintiff,

Eddie Lewis, Jr., suffered severe and permanent injuries as outlined in Paragraph 10 through Paragraph 14 of this Complaint.

WHEREFORE, the Plaintiff, Eddie Lewis, Jr., demands judgment against the Defendants, Wells Fargo and SAUL, LLC, in such amounts as may be awarded by the jury, both actual, compensative and punitive damages, along with the costs, expenses and disbursements of this action.

MOSS, KUHN & FLEMING, P.A.

By: s/ Cory H. Fleming
Cory H. Fleming
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ATTORNEY FOR PLAINTIFF

Beaufort, South Carolina
December 3, 2018

EXHIBIT B
AMENDED SUMMONS AND COMPLAINT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
EDDIE B. LEWIS, JR.,)
)
)
Plaintiff,)
)
v.)
)
Saul, LLC and Wells Fargo)
Bank, National Association,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO: 2018-CP-07-02378

AMENDED SUMMONS
(Jury Trial Demanded)

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer upon the subscriber at his office, MOSS, KUHN & FLEMING, P. A., P. O. Drawer 507, 1501 North Street, Beaufort, SC 29901-0507, within thirty (30) days from the date of service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a judgment by default and the relief demanded in the attached Complaint.

MOSS, KUHN & FLEMING, P.A.

By: s/Cory H. Fleming
Cory H. Fleming
SC Bar #: 6999
P. O. Box 507
Beaufort, SC 29901-0507
(843) 524-3373
(843) 379-1322 Fax
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ATTORNEYS FOR PLAINTIFF

Beaufort, South Carolina
January 7, 2019

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT	)	CASE NO: 2018-CP-07-02378
)	
EDDIE B. LEWIS, JR.,)	
)	
Plaintiff,)	
)	
v.	)	AMENDED COMPLAINT
)	
Saul, LLC, and Wells Fargo	)	(Jury Trial Demanded)
Bank, National Association)	
Defendant.)	

TO: THE DEFENDANTS ABOVE NAMED:

COME NOW, the Plaintiff, Eddie B. Lewis, Jr., complaining of the acts and/or omissions of the Defendants, Saul, LLC and Wells Fargo Bank, National Association, and allege as follows:

PARTIES AND JURISDICTION

1. That the Parties hereto, the subject matter hereof, and all matters and things hereinafter alleged are within the jurisdiction of this Honorable Court.
2. The Plaintiff, Eddie B. Lewis, Jr., was at the time of the accident, and at all times material hereto, a citizen and resident of the County of Beaufort, State of South Carolina.
3. That, upon information and belief, the Defendant, Saul, LLC, was at the time of the accident which is the subject of this suit, a corporation duly organized and established pursuant to the laws of the State of South Carolina, and is duly authorized to conduct business in the State of South Carolina.
4. That, upon information and belief, the Defendant, Wells Fargo Bank, National Association (here after named as Wells Fargo), was at the time of the accident which is the subject of this suit, and at all times material hereto, a Delaware Corporation duly authorized to conduct business in the State of South Carolina.

5. That, upon information and belief, the Defendant, SAUL, LLC, was the owner of the property located at 1011 Bay Street, Beaufort, South Carolina, 29902, at the time of the accident which is the subject of this suit.

6. That, upon information and belief, at the time of the accident which is the subject of this suit, The Defendant, Wells Fargo, rented and/or leased the property located at 1011 Bay Street, Beaufort, South Carolina, for commercial purposes from the Defendant, SAUL, LLC.

7. That, upon information and belief, at all times mentioned herein, the Defendant, SAUL, LLC, as the owner of the premises located at 1011 Bay Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

8. That, upon information and belief, at all times mentioned herein, the Defendant, Wells Fargo, as the commercial tenant of the premises located at 1011 Bay Street, Beaufort, South Carolina, by and through its agents and employees, exercised dominion and control over the premises and had a duty to maintain aforementioned premises, including said sidewalks, parking lots, entrances and exits, in a reasonably safe condition for persons lawfully on said premises, to include the Plaintiff herein.

FOR A FIRST CAUSE OF ACTION

(Negligence and Recklessness)

9. That, upon information and belief, on May 23, 2016, the Plaintiff, Eddie R. Lewis, Jr., did enter the parking lot/premises of the Defendant, Wells Fargo and Saul, LLC, for the sole purpose of conducting business dealings with the Defendant, Wells Fargo, and that the Plaintiff, Eddie Lewis, Jr., was an "invitee" and/or a "business visitor" on the Defendant's premises.

10. That, upon information and belief, the Defendant, Wells Fargo and Saul, LLC, by reasons of its relationship with Eddie Lewis, Jr., owed him a duty to exercise reasonable and due care for his safety and is liable for any injury resulting from the breach of this duty; this duty includes inspecting the premises and discovering the presence of any dangerous natural or

artificial conditions and to exercise reasonable and due care in either warning the invitee of such dangers or in making the conditions safe for him.

11. That on May 23, 2016, the Plaintiff, Eddie Lewis, Jr., was a customer of the Defendant, Wells Fargo, in a normal and routine manner; that the Plaintiff, Eddie Lewis, Jr., upon exiting the bank was walking on the sidewalk towards his vehicle when without warning, stepped in a gap on the sidewalk which caused the Plaintiff, Eddie Lewis, Jr., to trip and that unexpected trip caused him to lose his balance causing him to fall to the concrete, striking his face, shoulder and knee. This unexpected fall caused the Plaintiff, Eddie Lewis, Jr., to lose many of his teeth, injury his left arm and shoulder, and injury to his right knee.

12. That the injuries and damages suffered by the Plaintiff, Eddie Lewis, Jr., were due to, caused by, and were the direct and proximate result of the negligence, carelessness, recklessness, willfulness, wantonness, and/or heedlessness of the Defendants, Wells Fargo and SAUL, LLC, jointly and severally and/or by virtue of their respective lessor/lessee, master/servant, and/or principal/agent relationship(s), including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, and/or other relationships, in one, more, or all of the following particulars, to wit:

AS TO THE DEFENDANT, WELLS FARGO:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;
- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or

- hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;
- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
 - G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
 - H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
 - I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
 - J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
 - K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
 - L. In all other ways being negligent.

AS TO THE DEFENDANT, SAULS LLC:

- A. In negligently and recklessly creating or allowing to be created, unnecessary or preventable dangers and risks of injury for the Plaintiff, Eddie Lewis, Jr., by maintaining sidewalks in an unsafe manner;
- B. In creating, or allowing to be created, a hazardous, risky and dangerous condition on said sidewalk of the premises;
- C. In creating a foreseeable risk of injury by not warning invitees and/or business visitors of the dangerous condition of the sidewalks;
- D. In failing to secure and maintain the premises in a reasonably safe condition and/or to ensure the reasonable safety of invitees, namely the Plaintiff, Eddie Lewis, Jr., on the premises by formulating, designing, and putting into effect safeguards and precautions that would correct hazardous conditions or warn business visitors invitees of such hazardous conditions;

- E. In failing to adopt and/or enforce adequate policies, procedures, and/or standards for the continual monitoring, inspection, repair, and correction of any and all unsafe or hazardous conditions in and outside the business, including, but not limited to, the repair of sidewalks;
- F. In failing to properly inspect and maintain the sidewalks of the business in order to timely discover the hazardous, dangerous, and unreasonably safe condition thereof;
- G. In failing to properly and effectively warn invitees and/or business visitors, and more particularly the Plaintiff herein by signs, markings, hazard tape or otherwise of the conditions which could be hazardous and/or dangerous to them;
- H. In failing to maintain said premises in a reasonably safe conditions for invitees and/or business visitors;
- I. In failing to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks and thereby taking an unreasonable risk at the expenses of invitees and business visitors who need to move about the area;
- J. In failing to exercise ordinary, or even slight, care in the maintenance, supervision and control over the sidewalk on the said premises;
- K. In failing to use the degree of care and caution that a reasonably prudent business entity would have used under the circumstances then and there prevailing;
- L. In all other ways being negligent.

13. That by reason of the acts and omissions of negligence, careless, recklessness, willfulness, wantonness, and heedlessness of the Defendants, Wells Fargo and SAUL, LLC, as set forth herein, and as a direct and proximate result thereof, the Plaintiff, Eddie Lewis, Jr., suffered severe and permanent physical, mental and emotional injuries and other damages in the following particular, to wit:

a. Upon walking on the sidewalk, the sudden and unexpected impact caused by the dangerous condition of the concrete, resulted in the Plaintiff, Eddie Lewis, Jr., sustaining serious and permanent injuries to his mouth, left arm, left shoulder, and right knee.

b. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has undergone expensive medical treatment, including but not limited to, painful surgery and physical therapy;

c. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered other injuries related to the compromised condition of his body due to the incident described herein, such injuries he would not have suffered but for the incident described herein:

d. As a result of his fall, the Plaintiff, Eddie Lewis, Jr., was forced to undergo uncomfortable, difficult and sometimes painful diagnostic tests and procedures;

e. As a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., suffers, has suffered, and likely will continue to suffer pain, physical injury, and severe discomfort in his whole body;

f. Because of his injuries and as a result of the violent impacts with the concrete sidewalk, the Plaintiff, Eddie Lewis, Jr., has suffered, and will most probably continue to suffer from emotional distress, anxiety, and mental anguish for the rest of his life.

g. As a result of his permanent injuries, the Plaintiff, Eddie Lewis, Jr., has suffered and experienced, and will most probably continue to suffer and experience, impairment of his enjoyment of living;

h. The ability of the Plaintiff, Eddie Lewis, Jr., to participate in recreational and/or other activities has been limited and impaired and will most probably be substantially limited and impaired in the future;

i. The Plaintiff, Eddie Lewis, Jr., has suffered, and will probably continue to suffer, permanent physical injuries, impairment, and pain as a result of his injuries; and

j. The Plaintiff, Eddie Lewis, Jr., has incurred substantial medical and hospital expenses and will likely incur substantial expenses for medical care and treatment in the future resulting directly from his injuries;

k. The Plaintiff, Eddie Lewis, Jr., has been injured and damaged in other ways, all to his substantial detriment.

14. As a result of said injuries, the Plaintiff has received, and will in the future continue to receive, medical and hospital care and treatment provided by and through the United States of America. The Plaintiff, for the sole use and benefit of the United States of America, under the provisions of 42 U.S.C. §§ 2651-2653 et seq. and 10 U.S.C. § 1095, and with its express consent, asserts a claim for the cost of said medical and hospital care and treatment and the value of future care.

FOR A SECOND CAUSE OF ACTION
(Premises Liability)

15. That the Plaintiff, Eddie Lewis, Jr., repeat, reallege, and incorporate herein as part of this Second Cause of Action against the Defendants, Wells Fargo and SAUL, LLC, Paragraphs One (1) through Fourteen (14) of the Plaintiff's Complaint and further alleges as follows:

16. That, the Plaintiff, Eddie Lewis, Jr., was an invitee and/or business visitor of the Well Fargo Bank, wholly and/or partially owned, managed, controlled, and/or operated by the Defendant, Wells Fargo, on May 23, 2016, and as a result, the presence of the Plaintiff, Eddie Lewis, Jr., in Wells Fargo benefited the Defendant, Wells Fargo.

17. That the Defendants, Wells Fargo and SAUL, LLC, owed duties to the Plaintiff, Eddie Lewis, Jr., as an invitee, including, but not limited to, the duty to warn the Plaintiff, Eddie Lewis, Jr., of latent and hidden dangers and a duty to exercise ordinary care to keep the premises in a reasonably safe condition; further, even if a dangerous condition on the premises is "open or obvious" the Defendants, Wells Fargo and SAUL, LLC, had a duty to warn the Plaintiff, Eddie Lewis, Jr., or take other reasonable steps to protect him if they had reason to anticipate that an invitee might nevertheless encounter the condition, or that his attention may be distracted, so that he will not discover what is obvious or fail to protect himself against it.

18. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had actual or constructive knowledge of the dangerous condition.

19. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, had reason to anticipate that an invitee might unexpectedly trip on the sidewalk curb while walking in or out of the business.

20. That, upon information and belief, the Defendants, Wells Fargo and SAUL, LLC, failed to remedy the dangerous condition and let the dangerous condition remain despite the reasonably foreseeable risk of the dangerous sidewalk for the Plaintiff, Eddie Lewis, Jr., to trip and/or fall on the sidewalk when exiting or entering the business.

21. That, as a result of the dangerous and defective condition created by the Defendants, Wells Fargo and SAUL, LLC, and their failure to correct, warn about, and/or remedy the danger, the Plaintiff, Eddie Lewis, Jr., an invitee on the premises, unexpectedly tripped on the sidewalk while exiting the premises causing injuries while falling onto the ground; and that the Plaintiff,

Eddie Lewis, Jr., suffered severe and permanent injuries as outlined in Paragraph 10 through Paragraph 14 of this Complaint.

WHEREFORE, the Plaintiff, Eddie Lewis, Jr., demands judgment against the Defendants, Wells Fargo and SAUL, LLC, in such amounts as may be awarded by the jury, both actual, compensative and punitive damages, along with the costs, expenses and disbursements of this action.

MOSS, KUHN & FLEMING, P.A.

By: s/ Cory H. Fleming
Cory H. Fleming
SC Bar #: 6999
P. O. Drawer 507
Beaufort, SC 29901-0507
(843) 524-3373
(843) 379-1322 Fax
cory@mossandkuhn.com
ATTORNEY FOR PLAINTIFF

Beaufort, South Carolina
January 7, 2019

EXHIBIT C
ANSWER OF APPELLANT SAUL

STATE OF SOUTH CAROLINA)
 :
 COUNTY OF BEAUFORT)
)
 EDDIE B. LEWIS, JR.)
)
 Plaintiff,)
)
 versus)
)
 SAUL, LLC and WELLS FARGO BANK)
 NATIONAL ASSOCIATION)
)
 Defendants.)

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

**ANSWER TO AMENDED
 COMPLAINT**

TO: CORY H. FLEMING, ESQUIRE, ATTORNEY FOR PLAINTIFF:

Defendant Saul, LLC (hereinafter collectively referred to as "Saul"), answers the Plaintiff's Amended Complaint of Plaintiff, alleges and says:

1. Saul denies each and every allegation of the Amended Complaint not hereinafter specifically admitted.
2. As to the allegations contained in Paragraph 1 of the Plaintiff's Amended Complaint, Saul contends the same contains allegations that constitute legal conclusions that Saul is required neither to admit or deny. To the extent a response is required, Saul denies the same and demands strict proof thereof.
3. As to the allegations contained in Paragraph 2 of the Plaintiff's Amended Complaint, Saul lacks knowledge and information sufficient to form a belief and, therefore, denies the same and demands strict proof thereof
4. As to the allegations contained in Paragraphs 3 and 4 of the Plaintiff's Amended Complaint, Saul admits the same.
5. As to the allegations contained in Paragraph 5 of the Plaintiff's Amended Complaint, Saul

admits so much of said paragraph that it owned the building as of November 22, 2013. The remaining allegations contained in Paragraph 5 are denied and strict proof thereof demanded.

6. As to the allegations contained in Paragraph 6 of the Plaintiff's Amended Complaint, Saul admits the same.

7. As to the allegations contained in Paragraph 7 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

8. As to the allegations contained in Paragraph 8 of the Plaintiff's Amended Complaint, Saul admits so much of said paragraph that Wells Fargo is a commercial tenant of the property located at 1011 Bay Street, Beaufort, South Carolina. The remaining allegations contained in Paragraph 8 contains allegations that constitute legal conclusions that Saul is required neither to admit or deny. To the extent a response is required, Saul denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(NEGLIGENCE AND RECKLESSNESS)

9. As to the allegations contained in Paragraph 9 of the Plaintiff's Amended Complaint, Saul lacks knowledge and information sufficient to form a belief and, therefore, denies the same and demands strict proof thereof

10. As to the allegations contained in Paragraph 10 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

11. As to the allegations contained in Paragraph 11 the Plaintiff's Amended Complaint, Saul lacks knowledge and information sufficient to form a belief and, therefore, denies the same and demands strict proof thereof

12. As to the allegations contained in Paragraphs 12 and 13, including all subparts, of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

13. As to the allegations contained in Paragraph 14 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(PREMISES LIABILITY)

14. As to the allegations contained in Paragraph 15 of the Plaintiff's Amended Complaint, Saul realleges and reavers Paragraphs 1 through 13 above as set forth herein.

15. As to the allegations contained in Paragraphs 16, 17, 18, 19, 20, and 21 of the Plaintiff's Amended Complaint, Saul denies the same and demands strict proof thereof.

16. The final paragraph, which is not numbered, constitutes a prayer for relief which requires no response from Saul. To the extent a response is required, Saul denies each allegation contained therein and demands strict proof thereof.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIRST AFFIRMATIVE DEFENSE THERETO
(FAILURE TO STATE A CLAIM)

17. Saul realleges and reavers Paragraphs 1 through 16 above as if set forth herein.

18. Plaintiff's claims fail to state facts sufficient to constitute causes of action against Saul pursuant to Rule 12(b)(6), *SCRCP*, and Plaintiff's claims should be dismissed.

FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A SECOND AFFIRMATIVE DEFENSE HERETO
(FAILURE TO MITIGATE)

19. Saul realleges and reavers Paragraphs 1 through 18 above as if set forth herein.

20. Plaintiff may have failed to mitigate his damages.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A THIRD AFFIRMATIVE DEFENSE HERETO**
(STATUTE OF REPOSE)

21. Saul realleges and reavers Paragraphs 1 through 20 above as if set forth herein.
22. That all claims asserted against Saul may be barred by the applicable statute of repose.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS FOURTH AFFIRMATIVE DEFENSE THERETO**
(COMPARATIVE NEGLIGENCE)

23. Saul realleges and reavers Paragraphs 1 through 22 above as if set forth herein.
24. Any damage suffered by Plaintiff is the direct and proximate result of his comparative and contributory negligence and Plaintiff's recovery should be barred or, alternatively, reduced proportionately to his comparative negligence, if any.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIFTH AFFIRMATIVE DEFENSE THERETO**
(UNCONSTITUTIONAL PUNITIVE DAMAGES)

25. Saul realleges and reavers Paragraphs 1 through 24 above as if set forth herein.
26. Plaintiff's claim for punitive damages, and any award thereof, would violate the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution and the due process clause of Article I, Section 3 of the South Carolina Constitution.

**FURTHER ANSWERING THE AMENDED COMPLAINT
AND AS A FIFTH AFFIRMATIVE DEFENSE THERETO**
(OPEN AND OBVIOUS)

27. Saul realleges and reavers Paragraphs 1 through 26 above as if set forth herein.
28. Plaintiff either knew or should have known of any alleged deficiencies in the sidewalk and resided at the same with such knowledge. As a result, Plaintiff's recovery should be barred.

RESERVATION AND NON-WAIVER

29. Saul reserves and does not waive any additional or further defenses as may be revealed by

additional information that may be acquired in discovery or otherwise.

WHEREFORE, Defendant Saul, LLC, having fully answered the Plaintiff's Amended Complaint herein, prays that the same be dismissed with costs and for such other and further relief as the Court may deem just and proper.

Dated this 17th day of January, 2019.

WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton
Morgan S. Templeton (SC Bar #15456)
145 King Street, Suite. 300
Post Office Box 1200
Charleston, South Carolina 29402
Telephone: 843-329-9500
Attorneys for Defendant Saul, LLC

EXHIBIT D
ANSWER OF RESPONDENT WELLS FARGO

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT	)	IN THE 14 th JUDICIAL CIRCUIT
)	
Eddie B. Lewis, Jr.,	)	Civil Action No. 2018-CP-07-2378
)	
Plaintiff,)	
)	
v.	)	ANSWER
	)	(Jury Trial Demanded)
Saul, LLC, and Wells Fargo Bank, National Association)	
)	
Defendants.)	
)	
)	

Defendant Wells Fargo Bank, National Association (“Defendant”), answers the Complaint and respectfully assert the following:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not specifically admitted is denied.

FOR A SECOND DEFENSE

2. Defendant would respectfully show each and every cause of action set forth in the Complaint fails to state a claim upon which relief can be granted against Defendants and, should therefore be dismissed pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure* and other applicable state laws.

FOR A THIRD DEFENSE

3. Regarding the allegations of Paragraph 1, Defendant does not contest jurisdiction at this time.
4. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 2 of the Complaint.

5. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 3 of the Complaint.

6. Defendant admits the allegations of Paragraph 4 of the Complaint.

7. Upon information and belief, Defendant admits the allegations of Paragraph 5 of the Complaint.

8. Upon information and belief, Defendant admits the allegations of Paragraph 6 of the Complaint.

9. Upon information and belief, Defendant admits the allegations of Paragraph 7 of the Complaint.

10. Defendant denies the allegations of Paragraph 8 of the Complaint.

11. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 9 of the Complaint.

12. Defendant asserts the allegations of Paragraph 10 of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 10.

13. Defendant denies the allegations of Paragraph 11 of the Complaint.

14. Defendant asserts the allegations of Paragraph 12 (and its subparts A-L) of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 12 and its subparts.

15. Defendant asserts the allegations of Paragraph 13 (and its subparts a-k) of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 13 and its subparts.

16. Defendant denies the allegations of Paragraph 14 of the Complaint.

17. Defendant asserts that they are not required to respond to Paragraph 15 of the Complaint, but, to the extent that they are, Defendant reasserts and re-alleges each and every other allegation and Paragraph of its pleadings as if repeated herein verbatim.

18. Defendant lacks sufficient knowledge and information regarding the truth of the allegations of Paragraph 16 of the Complaint.

19. Defendant asserts the allegations of Paragraph 17 of the Complaint amount to legal conclusions and, therefore, no response to the same is required. To the extent a response is required, Defendant denies the allegations of Paragraph 17.

20. Defendant denies the allegations of Paragraph 18 of the Complaint.

21. Defendant denies the allegations of Paragraph 19 of the Complaint.

22. Defendant denies the allegations of Paragraph 20 of the Complaint.

23. Defendant denies the allegations of Paragraph 21 of the Complaint.

24. Defendant denies Plaintiff is entitled to the relief requested in the Prayer of the Complaint.

FOR A FOURTH DEFENSE

25. Defendant alleges any injury and damage sustained by Plaintiff were due to and caused by the sole negligence and/or willfulness of Plaintiff and, therefore, Defendants are not liable to Plaintiff for any sum whatsoever. Defendants reserve the right to amend the factual basis for her affirmative defenses and asserts discovery has not yet begun.

FOR A FIFTH DEFENSE

26. Defendant alleges the condition which Plaintiff alleges caused his injury was either open and obvious to Plaintiff at the time of his injury or was otherwise known to Plaintiff at the time of his injury. Furthermore, any danger created by said condition, which Defendant expressly

denies, was not of a nature that should have been anticipated by Defendant. Therefore, Plaintiff is barred from recovery in this action against Defendant. Defendant reserves the right to amend the factual basis for her affirmative defenses and asserts discovery has not yet begun.

FOR A SIXTH DEFENSE

27. Defendant would show the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a predetermined limit on the amount of punitive damages that a jury might impose would violate Defendant's due process rights guaranteed by United States Constitution and the South Carolina Constitution, and would violate the common law of the State of South Carolina.

13. Defendant alleges the claim of Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not:

- a. Provided with sufficiently clear standards for determining the appropriateness of a punitive damage award or the size of such award;
- b. Provided with adequate instructions as to the limits of punitive damage awards as determined by the principles underlying such an award;
- c. Instructed that awarding punitive damages on individually discriminatory characteristics of Defendant is improper;
- d. Instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary, nor capricious and that defines with reasonable clarity the actions of Defendant upon which an award of punitive damages may be based; and
- e. Subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness;

would violate Defendant's equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

WHEREFORE, having fully answered, Defendant prays that the Complaint be dismissed for the costs of defending this action and for such other relief as the Court and jury deem just and proper.

VERNIS & BOWLING OF COLUMBIA, LLC

/s/Joseph P. Bias
Joseph P. Bias, Bar No. 80367
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ATTORNEY FOR DEFENDANT

February 11, 2019

ELECTRONICALLY FILED - 2019 Feb 11 3:00 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378

EXHIBIT E
APPELLANT'S MOTION FOR
SUMMARY JUDGMENT

Fargo, who exercises complete control and responsibility of the property pursuant to the terms of the Lease. See gen. Exhibit A. Plaintiff brings this action against Saul on the theory of negligence and premises liability. Am. Compl. ¶¶ 9-21. Plaintiff alleges that Saul had a duty to “warn invites and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks” and breached its duty by “failing to maintain said premises in a reasonably safe condition for invitees and/or business visitors.” Am. Compl. ¶ 12, subsection A-L.

For the reasons set forth below, Saul is entitled to summary judgment because, as a matter of law, Saul gave control and responsibilities to Wells Fargo and therefore owes no duty to Plaintiff.

ARGUMENT

1. **Saul gave complete control of the subject property to Wells Fargo, therefore, Saul owes no duty to the Plaintiff and cannot be found negligent as a matter of law.**

A plaintiff must prove three elements to recover on a claim for negligence: 1) a duty of care owed by the defendant to the plaintiff; 2) a breach of that duty by a negligent act or omission; and 3) damage proximately resulting from the breach. Chakrabati v. City of Orangeburg, 403 S.C. S.C. 308, 743 S.E.2d 109 (Ct. App. 2013). “If any of these elements is absent a negligence claim is not stated.” Id. citing Summers v. Harrison Constr., 298 S.C. 451, 455, 381 S.E.2d 493, 495 (Ct. App. 1989). A legal duty is that which the law requires to be done or forbome with respect to a particular individual or the public at large. South Carolina Electric & Gas Co. v. Utilities Construction Co., 244 S.C. 79, 135 S.E.2d 613 (1964). Without a violation of such a legal duty, there is no negligence. Id. An owner of land possesses a general duty to warn others of latent hazardous conditions on his land. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). This duty arises from the owner’s superior knowledge of conditions on the premises within his control.

See Dunbar v. Charleston & W.C. Ry. Co., 211 S.C.209, 44 S.E.2d 314 (1947). However, when land is occupied by a lessee the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992). In the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee. Id. After the premises is surrendered in good condition, the lessor typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee. Id. citing W. Keeton, D. Dobbs, R. Keeton & D. Owen, Prosser and Keeton on the Law of Torts 435 (5th ed. 1984).

Pursuant to Section 1.2 of the Lease, Saul, LLC (interchangeably “Landlord”) leased the subject property to Wells Fargo/Wachovia (interchangeably “Tenant”) with the right to use on an *exclusive basis*, the Tenant-Dedicated Parking Areas and on a non-exclusive basis, the non-Dedicated Parking Areas and all the other Common Areas. See Exhibit A: pg. 23- 24 (emphasis added). Attached as an exhibit to the Lease is the Site Plan, which defines the “Tenant Dedicated Parking Areas” as spaces designated “W.” See Exhibit B.

Additionally, attached as Exhibit C, is an email sent by Rich Belthoff, counsel for Wells Fargo, which specifically asserts that “Wells Fargo has been granted in the Lease the exclusive right to use the Tenant Dedicated Parking Areas on a 24/7 basis.” See Exhibit C. Further, the email states that “[t]hese parking areas are not common area under the Lease.” Id.

Further, Section 5.6(s) of the Lease provides that Wells Fargo, at its expense, shall keep and maintain, take good care of, and make all needed repairs to the Leased Premises... and (ii) any Tenant Property located outside of the Leased Premises (any such maintenance and/or repairs for which Tenant is responsible being herein collectively called Tenant Repairs.)” See Exhibit A. pg. 72. Moreover, Section 5.6(e) of the Lease states that, “[i]n any such event, Tenant shall notify

Landlord of the need for any such Tenant Repair and its request that Landlord perform the same, and Landlord shall endeavor to respond timely to each such request.” Id. at pg. 73.

Finally, Section 14.1 of the Lease states that: “[a]ny notice or other communication required or permitted to be given under this Lease (each, a “notice”) must be in writing and shall be sent to all Notice Parties...” Id. The Lease provides under Section 5.5(a), that “Landlord shall keep and maintain, and make all needed repairs to, the Base Building and the Common Areas....” Id. However, the Lease fails to define maintenance and repairs.¹

Further, there has not been any documents presented by Wells Fargo that states that they ever notified Saul about any hazardous conditions in the Tenant Controlled Parking Area. The Lease stipulated that Wells Fargo shall notify Saul of any need of repair, in writing. Rather, as noted in the attached Affidavit of Esther Shaver Harnett, Saul was never given any Notice, as defined by the Lease, for any needs to make any maintenance or repairs to the exclusive Wells Fargo parking area prior to the alleged incident. See Exhibit D. Saul gave all rights to the subject property to Wells Fargo pursuant to the terms of the Lease. Wells Fargo had full control over the Tenant Controlled Parking Area. Wells Fargo had a duty to exercise reasonable care in maintaining the exclusive Tenant Controlled Parking Area, and to let Saul know in writing any needs for repairs. Pursuant to the Affidavit of Esther Shaver Harnett, Saul was never notified of any needs for repairs in the Tenant Controlled Parking Area. See Exhibit D.

Pursuant to the lease, Wells Fargo had complete control of the property. See Exhibit A (Lease) and Exhibit C (Email from Wells Fargo’s counsel). As such, there is no duty for Saul to seek out and determine whether any alleged defects or hazards existed in the parking lot which is

¹ An analysis on this issue will be provided in the following section.

not in Saul's control. See Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992) (establishing that in the absence of an agreement to the contrary, after a premises is surrendered to a lessee in good condition, the lessor typically is not responsible for hazardous conditions.) Wells Fargo exercised complete and exclusive control of the parking area where the alleged incident occurred, and therefore, Saul cannot be found liable to the Plaintiff as a matter of law.

2. Saul never assumed a voluntary duty to inspect the property for latent defects, therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.

At common law, where there is no duty to act, but an act is voluntarily undertaken, the actor assumes a duty to use due care. Sherer v. James, 290 S.C. 4040, 351 S.E.2d 148 (1986). In Byerly v. Connor, the Appellant argued that the lessor owed a duty to discover and warn of latent hazardous conditions because it undertook to inspect the property at issue. 307 S.C. 441, 445, 415 S.E.2d 796, 799 (1992). An agent of the Lessor testified that he conducted yearly inspections of the property solely for the purpose of ensuring that the property conformed to structural requirements of permits issued. Id. The South Carolina Supreme Court determined that the Lessor undertook a limited duty to use due care to discover structural nonconformity with permits, which did not include a duty to inspect for a latent hazardous condition. Id. "Summary Judgment can be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." Id. citing Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976). Courts will interpret contracts in accordance with its plain, ordinary, and popular meaning, except with technical language or where the context requires another meaning. See M and M Corp. of S.C. v. Auto-Owners Ins. Co., 390 S.C. 255, 701 S.E.2d 33, (2010). "Courts must enforce, not write, contracts... and their language must be given its plain, ordinary [,] and popular

meaning.” Sloan Constr. Co. v. Cent. Nat’l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977).

Here, Saul leased the property to Wells Fargo "as-is." See Exhibit A. However, pursuant to the lease Saul had an obligation to give maintenance and service to the property. Id. However, the lease fails to address whether Saul had a duty to *inspect*. Saul agrees it has a duty to maintain the property pursuant to the terms of the Lease – *when asked to perform repairs*. Here, there is nothing that shows that Saul was asked by Wells Fargo to correct any condition in the parking lot – and certainly not this condition. The work orders submitted by Wells Fargo establish that no request for work on this area was requested. Additionally, Wells Fargo has issued letters to Saul indicating they “control” the parking lot. See Exhibit C. While this email is after the alleged fall, the Affidavit of Esther Shaver Harnett establishes that Saul exercised no control over the use of the property. See Exhibit D.

As established above, Saul had given complete and exclusive control over the subject property where the alleged incident occurred to Wells Fargo. Saul did not assume a voluntary duty, as shown by the Attached Affidavit of Esther Shaver Harnett. See Exhibit D. Saul was not asked to perform any maintenance or services on the area where the alleged incident occurred. As such, Saul never assumed a voluntary duty to inspect the property for latent defects, therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.

CONCLUSION

Saul released the complete and exclusive control of the subject property to Wells Fargo, pursuant to the terms of the Lease and the email from Wells Fargo’s counsel. Since Saul gave the control of the subject property to Wells Fargo, Saul maintained no duties or obligations as a matter of law to Plaintiff. Saul never assumed a voluntary duty to inspect the property for latent defects,

therefore, Saul never voluntarily undertook a duty to use due care and owes no duty to the Plaintiff.

Therefore, all claims made by Plaintiff against Saul, LLC should be dismissed as a matter of law.

Dated this 20th day of January, 2020

WALL TEMPLETON & HALDRUP, P.A.

s/Morgan S. Templeton

Morgan S. Templeton (SC Bar #15456)

David A. Nasrollahi (SC Bar #103242)

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ELECTRONICALLY FILED - 2020 Jan 20 4:15 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378

EXHIBIT F
ORDER GRANTING
MOTION FOR SUMMARY JUDGMENT

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

EDDIE B. LEWIS, JR.,)
)
Plaintiff,)
)
vs.)
)
SAUL, LLC and WELLS FARGO BANK)
NATIONAL ASSOCIATION,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2018-CP-07-02378

**ORDER GRANTING
DEFENDANT SAUL, LLC'S
MOTION FOR SUMMARY
JUDGMENT**

Presiding Judge: Hon. Deadra L. Jefferson
Plaintiff's Attorney: Cory Fleming, Esq.
Defendant Saul, LLC's Attorney: John Dodds, Jr., Esq.
Date of Hearing: March 17, 2020
Court Reporter: Karen Andersen

This matter came before the Court on March 17, 2020 for a hearing on Defendant Saul, LLC's ("Saul") motion for summary judgment as to all claims asserted by Plaintiff Eddie B. Lewis, Jr. ("Plaintiff"), filed January 20, 2020. After careful consideration of the record, the Court makes the following findings of fact and conclusions of law and Grants Saul's Motion for Summary Judgment.¹

FINDINGS OF FACT

Saul is the owner of certain real property and improvements located at 1011 Bay Street, Beaufort, South Carolina (the "subject property"). At all times relevant hereto, Defendant Wells Fargo National Association ("Wells Fargo") leased the subject property from Saul pursuant to a written lease agreement (the "lease"). The lease term is September 22, 2004 to September 30, 2024. Lease at § 1.1(a).

¹ Counsel for the Plaintiff was provided with a copy of the proposed Order and had no objection to the relief sought or the verbiage contained herein.

Pursuant to the terms of the lease, Saul “shall keep and maintain, and make all needed repairs to, the . . . Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings” Id. at § 5.5(a). With respect to Wells Fargo’s repair and maintenance obligations, the lease states:

Tenant, at its expense, shall keep and maintain, take good care of, and make all needed repairs to, (i) the Leased Premises (inclusive of Leasehold Improvements), excluding, however, the components of the Base Building located within the Leased Premises, and (ii) any Tenant Property located outside the Leased Premises

Id. at § 5.6(a).

The lease also provides that Wells Fargo shall have its own parking area, known under the lease as the “Tenant Dedicated Parking Area.” Section 1.2 of the lease states that Wells Fargo shall be entitled to use, “on an exclusive basis,” the Tenant Dedicated Parking Area. Id. No other person or entity besides Wells Fargo and its customers is permitted to use the Tenant Dedicated Parking Area. Id.

During the lease term, Wells Fargo exercised control over the Tenant Dedicated Parking Area, hiring a property management company to inspect the area and oversee any necessary maintenance and repairs. Saul was never notified by Wells Fargo of any need for repairs and maintenance to the Tenant Dedicated Parking Area, and Wells Fargo completed any maintenance and repairs without permission or consent from Saul. See Aff. of Harnett at ¶ 7. Saul never undertook any maintenance or repairs to the Tenant Dedicated Parking Area during the lease term. Id. at ¶ 8.

On or about May 23, 2016, Plaintiff was a patron at the Wells Fargo bank at the subject property. Amend. Compl. at ¶ 9. While exiting the bank and walking through the Tenant Dedicated Parking Area, Plaintiff tripped and fell, sustaining various personal injuries (the “incident”). Id. at

¶ 11. As a result of the incident, Plaintiff filed the instant lawsuit against Saul and Wells Fargo sounding in traditional common law premises liability. Specifically, as it relates to Saul, Plaintiff alleges that Saul had a duty “to warn invitees and/or business visitors of the hazardous, unsafe, and unreasonably dangerous condition of the sidewalks” and breached its duty by “failing to maintain said premises in a reasonably safe condition for invitees and/or business visitors.” Amend. Compl. at ¶ 12.

At the hearing, counsel for the Plaintiff stated that the Plaintiff does not disagree with the above facts, and does not disagree with Saul’s interpretation of the lease agreement.

CONCLUSIONS OF LAW

I. Summary Judgment Standard

“Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law.” Evening Post Pub. Co. v. Berkeley County Sch. Dist., 392 S.C. 76, 81, 708 S.E.2d 745, 748 (2011); Rule 56(c), SCRCP. “Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact.” Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548 (1986)). In considering a motion for summary judgment, “the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party.” Id.

“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law... Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.” USAA Property & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008).

II. Premises Liability

In a negligence action, a plaintiff must show: (1) the defendant owed a duty of care to the plaintiff; (2) the defendant breached the duty by a negligence act or omission; (3) the defendant's breach was the actual and proximate cause of the plaintiff's injury; and (4) the plaintiff suffered an injury or damages. *See, e.g., Sabb v. S.C. State Univ.*, 350 S.C. 416, 567 S.E.2d 231, 237 (2002). "An essential element in a cause of action based upon negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Platt v. CSX Transp., Inc.*, 388 S.C. 441, 697 S.E.2d 575, 577 (2010). "Without a duty, there is no actionable negligence." *Id.* "The existence of a duty owed is a question of law for the courts." *Doe v. Greenville Cnty. Sch. Dist.*, 375 S.C. 63, 651 S.E.2d 305, 309 (2007).

Premises liability is a theory of negligence that establishes the duty owed to someone injured on a landowner's property as a result of conditions or activities on the land. *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196, 204 (Ct. App. 2008). Under South Carolina premises liability law, an owner or occupier of property is the person having control, rather than ownership, of the premises. *Dunbar v. Charleston & W. Carolina Ry. Co.*, 211 S.C. 209, 44 S.E.2d 314, 317 (1947) ("As a general rule, liability for injuries caused by dangerous instrumentalities terminates with cessation of control thereover, and the liability of a landowner, likewise, is terminated ordinarily when he parts with possession of the premises in question."). "One who controls the use of the property has a duty of care not to harm others by its use." *Miller v. City of Camden*, 329 S.C. 310, 494 S.E.2d 813, 815 (1997). "Conversely, one who has no control owes no duty." *Id.*

When land is occupied by a lessee pursuant to a lease, the law of property regards the lease as equivalent to a sale of the premises for the term of the lease. *Byerly v. Connor*, 307 S.C. 441, 415 S.E.2d 796 (1992). "In the absence of an agreement to the contrary, the lessor surrenders

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

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

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

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

AND IT IS SO ORDERED.

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

March _____, 2020
Charleston, South Carolina
At Chambers

ELECTRONICALLY FILED - 2020 Mar 24 3:56 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378



Beaufort Common Pleas

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

IT IS SO ORDERED.

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

EXHIBIT G
RESPONDENT WELLS FARGO'S
MOTION TO SET ASIDE JUDGMENT

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Eddie B. Lewis, Jr.,

Plaintiff,

vs.

Saul, LLC and Wells Fargo Bank, NA,

Defendant.

IN THE COURT OF COMMONS PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-07-02378

**DEFENDANT WELLS FARGO
MOTION TO SET ASIDE JUDGMENT
PURSUANT TO RULE 60, SCRPC**

YOU WILL PLEASE TAKE NOTICE that Co-Defendant Wells Fargo Bank, NA (“Wells Fargo”), by and through its undersigned attorney, will move for an Order pursuant to Rule 60, SCRPC seeking relief from a judgment order.

Wells Fargo seeks relief from the Order Granting the Defendant Saul, LLC (“Saul”) Summary Judgment which was entered by the Court on March 24, 2020. This motion is made in accordance with the South Carolina Rules of Civil Procedure, and will be supported by sworn Affidavits of Wells Fargo representatives, and a Memorandum of Law In Support.

The Motion is based on the following:

1. Pursuant to Rule 60, SCRPC this motion is timely because it has been filed within one (1) year of the date the Honorable Deadra L. Jefferson entered the Order granting Saul’s Motion for Summary Judgment.
2. Wells Fargo submits it is entitled to relief under Rule 60(b)(3), SCRPC because Saul’s Summary Judgment Motion argument and supporting Affidavit contained significant misrepresentations as to the contractual relationship of the Parties.
3. Wells Fargo further submits that there were significant misrepresentations by Saul as to the responsibility for the condition and maintenance of the common areas, parking lot, and

landscaped areas of subject leased premises pursuant to the clear and unambiguous terms of the binding Lease agreement entered into between Wells Fargo and Saul.

4. The misrepresentations regarding the terms of the binding Lease are the cornerstone of any potential culpability or responsibility for the claims made by Plaintiff in this matter.
5. Wells Fargo further submits it is entitled to relief under Rule 60(b)(2), SCRCPC, based on newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b), SCRCPC.

Respectfully submitted,

VERNIS & BOWLING OF COLUMBIA, LLC

s/Douglas E. Leadbitter

Douglas E. Leadbitter, SC Bar No. 68430

1401 Main Street, Suite 655

Columbia, South Carolina 29201

Tel: (803) 234-5416

dleadbitter@scarolina-law.com

ATTORNEYS FOR WELLS FARGO, NA

March 19, 2021

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Eddie B. Lewis, Jr.,

Plaintiff,

vs.

Saul, LLC and Wells Fargo Bank, NA,

Defendant.

IN THE COURT OF COMMONS PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No. 2018-CP-07-02378

**DEFENDANT WELLS FARGO
MOTION TO SET ASIDE JUDGMENT
PURSUANT TO RULE 60, SCRPC**

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3. Wells Fargo further submits that there were significant misrepresentations by Saul as to the responsibility for the condition and maintenance of the common areas, parking lot, and

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Respectfully submitted,

VERNIS & BOWLING OF COLUMBIA, LLC

s/Douglas E. Leadbitter

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ATTORNEYS FOR WELLS FARGO, NA

March 19, 2021

EXHIBIT A

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)
)
EDDIE B. LEWIS)
)
Plaintiff,)
)
v.)
)
SAUL, LLC and WELLS FARGO BANK)
NATIONAL ASSOCIATION,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2018-CP-07-02378

**ORDER ON WELLS FARGO'S
MOTION TO SET ASIDE JUDGMENT
PURSUANT TO RULE 60, SCRPC**

Presiding Judge: Hon. Deadra L. Jefferson
Plaintiff's Attorney: Cory Fleming, Esq.
Defendant's Attorney, John Dodds, Jr., Esq. and
Saul, LLC: Morgan Templeton, Esq.
Defendant's Attorney, Douglas E. Leadbitter, Esq.
Wells Fargo Bank: March 17, 2020 & March 23, 2021
Date of Hearing: Karen Andersen
Court Reporter:

This matter came before the Court on Defendant Wells Fargo Bank, NA's ("Wells Fargo") Motion to Set Aside Judgment pursuant to Rule 60, SCRPC, filed March 19, 2021. Wells Fargo asks the Court to reconsider its Order Granting Saul, LLC's Motion for Summary Judgment, filed March 24, 2020. The Court received a copy of the Motion to Set Aside Judgment on March 23, 2021 via email from the Beaufort County Clerk of Court.¹ Defendant Saul, LLC ("Saul, LLC") filed its response to Wells Fargo's Motion to Set Aside Judgment on March 31, 2021. The Plaintiff filed his response to Wells Fargo's Motion to Set Aside Judgment on July 2, 2021. Wells Fargo filed its Memorandum in Support on July 6, 2021. Saul, LLC filed its Reply on July 9, 2021. After consideration of the record, as well as the various interests balanced by the Court at the time of the

¹ This Motion was sent to the Court by the Clerk of Court's Office as it perceived it to be in the nature of a Motion for Reconsideration of Judgment. Although this Court did not retain jurisdiction of this matter, it is in the best posture to dispose of the Motion, as this Court heard the underlying Motion for Summary Judgment giving rise to the present Motion to Set Aside Judgment.

ruling, the Motion to Set Aside Judgment is Granted and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.²

PROCEDURAL HISTORY

This matter originally came before the Court on March 17, 2020 on Saul, LLC's Motion for Summary Judgment, filed January 20, 2020. Present and appearing on behalf of the Plaintiff was Cory Fleming, Esq. Present and appearing on behalf of Saul, LLC was John Dodds, Jr., Esq. No counsel of record appeared for Wells Fargo. Mr. Fleming advised the Court that on the Friday immediately preceding the hearing, March 13, 2020, he received an email from Laura Robinson advising that she was resigning from the firm and that on March 16, 2021, this case was being assigned to Charles Blackburn, Esq. Audio Transcript of March 17, 2020 Hearing at 1:14:30-1:14:58. Mr. Fleming stated that he believed Mr. Blackburn communicated with Morgan Templeton, lead counsel for Saul, LLC, wherein Mr. Blackburn indicated that he could not be present at the hearing "for various reasons." *Id.* at 1:15:00-1:15:15.³

At the time of the hearing, it was represented to the Court by Mr. Fleming that Wells Fargo's presence was not necessary to dispose of the Motion for Summary Judgment. *Id.* at 1:16:00-1:16:10. Moreover, Mr. Fleming conceded that he did not disagree with Saul, LLC's interpretation of the lease, and conceded that Saul, LLC's position on summary judgment was

² This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCP; *Pollard v. City of Florence*, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994) and pursuant to the Chief Justice's April 3, 2020 Order, As Amended August 27, 2021, Section (d), citing the June 15, 2021 Amendment, Section (c)(4). However, the Court held two (2) conference calls with counsel to afford the Plaintiff and Defense counsel time to resolve the matter without the necessity of the Court ruling on the merits of the motion. Counsel for Saul, LLC failed to see the wisdom of this option and declined the opportunity.

³ In conjunction with this motion it was subsequently revealed that Laura Robinson sent an email to Cory Fleming and Morgan Templeton on March 13, 2020, advising that Ms. Robinson was resigning from the firm that represents Wells Fargo, and seeking Mr. Fleming and Mr. Templeton's consent to continue the March 17, 2020 hearing. See Exhibit A to Wells Fargo's Memorandum in Support. Mr. Fleming consented to a continuance of the hearing, and Mr. Templeton did not. *Id.* At the hearing the Court was never made aware and was not privy to the request by Ms. Robinson or the communication between counsel regarding the issue. If the Court had been aware of Ms. Robinson's request it would have been granted. Subsequently, the Court was advised that Charles Blackburn resigned from the firm shortly after Ms. Robinson's departure.

EXHIBIT A

supported by the terms of the lease, South Carolina law, and the facts of the case. Id. at 1:24:50-1:26:18. Based on that concession, and the Plaintiff and Defendant Saul LLC's representation that they consented to the relief sought, the Court instructed Mr. Dodds to prepare a proposed Consent Order granting summary judgment between Lewis and Saul, LLC for the Court's consideration. Id. at 1:26:20-1:26:35.⁴ The Court instructed Mr. Dodds to copy all counsel of record on the submission of the proposed order to the Court.⁵ Id. Mr. Fleming advised that he had no objection to the relief sought in the proposed order or the verbiage contained therein.

The Court issued the Consent Order Granting Summary Judgment on March 24, 2020. Wells Fargo filed the present Motion to Set Aside Judgment on March 19, 2021. For the following reasons, Wells Fargo's Motion to Set Aside Judgment is head and respectfully Granted, and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.

CONCLUSIONS OF LAW

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b), SCRCP.

"The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken... This rule does

⁴ The Court perceived the parties' representation to be that the agreement they reached regarding the grant of the Motion for Summary Judgment limited relief to the parties that were present at the hearing and represented that as being Lewis and Saul, LLC.

⁵ The Court's staff received the proposed consent order granting summary judgment on March 18, 2020 from Mr. Dodd's staff. Laura Robinson was copied on the email. However, Charles Blackburn was not.

not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.” Id. “[W]hen considering whether to grant relief from final judgments, a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.” Raby Const., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004) (internal citations omitted).

“A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. Whether to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial judge.” Perry v. Heirs at L. of Gadsden, 357 S.C. 42, 46–47, 590 S.E.2d 502, 504 (Ct. App. 2003).

I. The Motion to Set Aside Judgment is Granted.

Rule 60(b)(3), SCRCP permits a judgment to be vacated for fraud, misrepresentation, or other misconduct of an adverse party. It was represented to the Court at the hearing on March 17, 2020, that the Plaintiff and Defendant Saul, LLC had no objection to Saul, LLC being dismissed from the case, and that Wells Fargo was not necessary for the disposition of Saul, LLC’s Motion for Summary Judgment.

However, the overwhelming majority of the findings of fact and conclusions of law contained in Saul, LLC’s Consent Order to the Court contained a myriad of findings regarding the interpretation of the lease between Saul, LLC and Wells Fargo and liability findings that related not to Saul, LLC and the Plaintiff, but to Wells Fargo, a party who was not present at the March 17, 2020 hearing and was not afforded an opportunity to be heard. And most importantly, that Lewis and Saul, LLC knew Wells Fargo was not going to be present for the hearing on the motion. The findings contained in the Order do not simply hold that Saul, LLC is not liable for the Plaintiff’s injuries. Rather, the findings contained in the Order interpret a lease, determine

EXHIBIT A

culpability for the Plaintiff's cause of action and assign liability for the Plaintiff's injuries to Wells Fargo. This is particularly troubling in light of the fact that counsel for Lewis and Saul, LLC knew that Wells Fargo's representation was in flux, objected to Wells Fargo's request for a continuance, and did not advise the Court that Wells Fargo sought a continuance.⁶

Rule 60(b)(1), SCRCP permits a judgment to be vacated for mistake, inadvertence, surprise, or excusable neglect. In determining whether to grant relief under Rule 60(b)(1), the court must consider: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010). To establish a meritorious defense, the party does not have to show he would prevail on the merits, but rather, the defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)).

"[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "[W]here a Rule 60(b) motion is filed shortly after the movant becomes aware of the basis therefor and there is no evidence of unreasonable delay, the motion is timely." Ex Parte Carter, 422 S.C.

⁶ While it was incumbent upon Wells Fargo to file a Motion for Continuance, the Court is nevertheless troubled that Saul, LLC failed to advise the Court of Wells Fargo's request for continuance when Saul, LLC was aware of the transition of Wells Fargo's representation. This is heightened by Lewis and Saul, LLC's knowledge that Wells Fargo would not be represented and Mr. Blackburn would not be able to attend the hearing on March 17, 2020.

EXHIBIT A

623, 631, 813 S.E.2d 686, 690 (2018). However, “[t]he one year limit is a non-discretionary mandate . . .” Coleman v. Dunlap, 303 S.C. 511, 402 S.E.2d 181, 183 (Ct. App. 1991), reversed, 306 S.C. 491, 413 S.E.2d 15 (1992).

Saul, LLC’s Motion for Summary Judgment was heard on March 17, 2020 and a Consent Order granting that motion was entered on March 24, 2020. Attorney for Wells Fargo, Douglas Leadbitter, filed a motion to set aside the judgment on March 19, 2021. Thus, Leadbitter made his motion within the allotted time period. Furthermore, this Court finds that Leadbitter made his motion within a reasonable time, not exceeding one year. With the transition of Wells Fargo’s representation that occurred, this Court finds that Leadbitter sought relief as soon as he discovered this judgment had been entered against Wells Fargo. With respect to the meritorious defense factor, as stated above, Saul, LLC’s Order contained findings of fact that interpreted a lease, determined culpability for the Plaintiff’s cause of action and assigned liability for the Plaintiff’s injuries to Wells Fargo without the knowledge or consent of Wells Fargo. As such, this Court finds that Wells Fargo has shown the existence of a meritorious defense. Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)). Finally, this Court finds that the degree of prejudice the Plaintiff and Saul, LLC will suffer if relief is granted is not so high as to outweigh the other factors.⁷ Wells Fargo was a party to the March 17, 2020 hearing, however, was not present at the hearing and was not afforded an opportunity to be heard. Both the Plaintiff and Saul, LLC knew that Wells Fargo would not be represented at the March 17, 2020 hearing and, therefore, this Court finds little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC’s Motion for Summary Judgment. “This is consistent with South Carolina’s policy favoring the disposition

⁷ Prejudice is defined as the lack of notice or knowledge which inhibits the ability to refute. Rouvet v. Rouvet, 388 S.C. 301, 312-13, 696 S.E.2d 204, 209-10 (Ct. App. 2010).

EXHIBIT A

ELECTRONICALLY FILED - 2021 Sep 21 4:11 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378
ELECTRONICALLY FILED - 2021 Oct 14 11:09 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0702378

of issues on their merits rather than on technicalities.” Micronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. Appt. 2001) (citing Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986)); see Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001) (citing Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (“Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues); see also Curry v. Carolina Insurance Group of SC, Inc., 428 S.C. 60, 70, 832 S.E.2d 760, 764-65 (Ct. App. 2019) (quoting Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) (“Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial”).

CONCLUSION

After fully considering the Defendant Wells Fargo's Motion to Set Aside Judgment, filed March 19, 2021 the Court finds pursuant to Rule 60(b)(3) and (b)(1), SCRCP and fundamentally in the interests of justice that the relief is Granted and the Court's Order dated March 24, 2020, is **VACATED**. Accordingly, the Motion to Set Aside Judgment is heard and respectfully **GRANTED**.⁸

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge

September _____, 2021
Charleston, South Carolina

⁸ The common please non-jury clerk is hereby directed to schedule the Defendant Saul, LLC's Motion for Summary Judgment filed January 20, 2020 on the next available motions roster so that it can be heard and disposed of on its merits.



Beaufort Common Pleas

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

IT IS SO ORDERED.

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

ruling, the Motion to Set Aside Judgment is Granted and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.²

PROCEDURAL HISTORY

This matter originally came before the Court on March 17, 2020 on Saul, LLC's Motion for Summary Judgment, filed January 20, 2020. Present and appearing on behalf of the Plaintiff was Cory Fleming, Esq. Present and appearing on behalf of Saul, LLC was John Dodds, Jr., Esq. No counsel of record appeared for Wells Fargo. Mr. Fleming advised the Court that on the Friday immediately preceding the hearing, March 13, 2020, he received an email from Laura Robinson advising that she was resigning from the firm and that on March 16, 2021, this case was being assigned to Charles Blackburn, Esq. Audio Transcript of March 17, 2020 Hearing at 1:14:30-1:14:58. Mr. Fleming stated that he believed Mr. Blackburn communicated with Morgan Templeton, lead counsel for Saul, LLC, wherein Mr. Blackburn indicated that he could not be present at the hearing "for various reasons." *Id.* at 1:15:00-1:15:15.³

At the time of the hearing, it was represented to the Court by Mr. Fleming that Wells Fargo's presence was not necessary to dispose of the Motion for Summary Judgment. *Id.* at 1:16:00-1:16:10. Moreover, Mr. Fleming conceded that he did not disagree with Saul, LLC's interpretation of the lease, and conceded that Saul, LLC's position on summary judgment was

² This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCPP; Pollard v. City of Florence, 314 S.C. 397, 401-402, 444 S.E.2d 534, 536 (Ct. App. 1994) and pursuant to the Chief Justice's April 3, 2020 Order, As Amended August 27, 2021, Section (d), citing the June 15, 2021 Amendment, Section (c)(4). However, the Court held two (2) conference calls with counsel to afford the Plaintiff and Defense counsel time to resolve the matter without the necessity of the Court ruling on the merits of the motion. Counsel for Saul, LLC failed to see the wisdom of this option and declined the opportunity.

³ In conjunction with this motion it was subsequently revealed that Laura Robinson sent an email to Cory Fleming and Morgan Templeton on March 13, 2020, advising that Ms. Robinson was resigning from the firm that represents Wells Fargo, and seeking Mr. Fleming and Mr. Templeton's consent to continue the March 17, 2020 hearing. See Exhibit A to Wells Fargo's Memorandum in Support. Mr. Fleming consented to a continuance of the hearing, and Mr. Templeton did not. *Id.* At the hearing the Court was never made aware and was not privy to the request by Ms. Robinson or the communication between counsel regarding the issue. If the Court had been aware of Ms. Robinson's request it would have been granted. Subsequently, the Court was advised that Charles Blackburn resigned from the firm shortly after Ms. Robinson's departure.

supported by the terms of the lease, South Carolina law, and the facts of the case. Id. at 1:24:50-1:26:18. Based on that concession, and the Plaintiff and Defendant Saul LLC's representation that they consented to the relief sought, the Court instructed Mr. Dodds to prepare a proposed Consent Order granting summary judgment between Lewis and Saul, LLC for the Court's consideration. Id. at 1:26:20-1:26:35.⁴ The Court instructed Mr. Dodds to copy all counsel of record on the submission of the proposed order to the Court.⁵ Id. Mr. Fleming advised that he had no objection to the relief sought in the proposed order or the verbiage contained therein.

The Court issued the Consent Order Granting Summary Judgment on March 24, 2020. Wells Fargo filed the present Motion to Set Aside Judgment on March 19, 2021. For the following reasons, Wells Fargo's Motion to Set Aside Judgment is head and respectfully Granted, and the Court's March 24, 2020 Order Granting Saul, LLC's Motion for Summary Judgment is Vacated.

CONCLUSIONS OF LAW

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b), SCRCP.

"The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken... This rule does

⁴ The Court perceived the parties' representation to be that the agreement they reached regarding the grant of the Motion for Summary Judgment limited relief to the parties that were present at the hearing and represented that as being Lewis and Saul, LLC.

⁵ The Court's staff received the proposed consent order granting summary judgment on March 18, 2020 from Mr. Dodd's staff. Laura Robinson was copied on the email. However, Charles Blackburn was not.

not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.” Id. “[W]hen considering whether to grant relief from final judgments, a court must balance the interest of finality against the need to provide a fair and just resolution of the dispute.” Raby Const., L.L.P. v. Orr, 358 S.C. 10, 20, 594 S.E.2d 478, 483 (2004) (internal citations omitted).

“A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. Whether to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial judge.” Perry v. Heirs at L. of Gadsden, 357 S.C. 42, 46–47, 590 S.E.2d 502, 504 (Ct. App. 2003).

I. The Motion to Set Aside Judgment is Granted.

Rule 60(b)(3), SCRCP permits a judgment to be vacated for fraud, misrepresentation, or other misconduct of an adverse party. It was represented to the Court at the hearing on March 17, 2020, that the Plaintiff and Defendant Saul, LLC had no objection to Saul, LLC being dismissed from the case, and that Wells Fargo was not necessary for the disposition of Saul, LLC’s Motion for Summary Judgment.

However, the overwhelming majority of the findings of fact and conclusions of law contained in Saul, LLC’s Consent Order to the Court contained a myriad of findings regarding the interpretation of the lease between Saul, LLC and Wells Fargo and liability findings that related not to Saul, LLC and the Plaintiff, but to Wells Fargo, a party who was not present at the March 17, 2020 hearing and was not afforded an opportunity to be heard. And most importantly, that Lewis and Saul, LLC knew Wells Fargo was not going to be present for the hearing on the motion. The findings contained in the Order do not simply hold that Saul, LLC is not liable for the Plaintiff’s injuries. Rather, the findings contained in the Order interpret a lease, determine

culpability for the Plaintiff's cause of action and assign liability for the Plaintiff's injuries to Wells Fargo. This is particularly troubling in light of the fact that counsel for Lewis and Saul, LLC knew that Wells Fargo's representation was in flux, objected to Wells Fargo's request for a continuance, and did not advise the Court that Wells Fargo sought a continuance.⁶

Rule 60(b)(1), SCRCP permits a judgment to be vacated for mistake, inadvertence, surprise, or excusable neglect. In determining whether to grant relief under Rule 60(b)(1), the court must consider: "(1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) the prejudice to the other party." Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010). To establish a meritorious defense, the party does not have to show he would prevail on the merits, but rather, the defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)).

"[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "[W]here a Rule 60(b) motion is filed shortly after the movant becomes aware of the basis therefor and there is no evidence of unreasonable delay, the motion is timely." Ex Parte Carter, 422 S.C.

⁶ While it was incumbent upon Wells Fargo to file a Motion for Continuance, the Court is nevertheless troubled that Saul, LLC failed to advise the Court of Wells Fargo's request for continuance when Saul, LLC was aware of the transition of Wells Fargo's representation. This is heightened by Lewis and Saul, LLC's knowledge that Wells Fargo would not be represented and Mr. Blackburn would not be able to attend the hearing on March 17, 2020.

623, 631, 813 S.E.2d 686, 690 (2018). However, “[t]he one year limit is a non-discretionary mandate . . .” Coleman v. Dunlap, 303 S.C. 511, 402 S.E.2d 181, 183 (Ct. App. 1991), reversed, 306 S.C. 491, 413 S.E.2d 15 (1992).

Saul, LLC’s Motion for Summary Judgment was heard on March 17, 2020 and a Consent Order granting that motion was entered on March 24, 2020. Attorney for Wells Fargo, Douglas Leadbitter, filed a motion to set aside the judgment on March 19, 2021. Thus, Leadbitter made his motion within the allotted time period. Furthermore, this Court finds that Leadbitter made his motion within a reasonable time, not exceeding one year. With the transition of Wells Fargo’s representation that occurred, this Court finds that Leadbitter sought relief as soon as he discovered this judgment had been entered against Wells Fargo. With respect to the meritorious defense factor, as stated above, Saul, LLC’s Order contained findings of fact that interpreted a lease, determined culpability for the Plaintiff’s cause of action and assigned liability for the Plaintiff’s injuries to Wells Fargo without the knowledge or consent of Wells Fargo. As such, this Court finds that Wells Fargo has shown the existence of a meritorious defense. Williams v. Watkins, 384, S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009) (citing McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008)). Finally, this Court finds that the degree of prejudice the Plaintiff and Saul, LLC will suffer if relief is granted is not so high as to outweigh the other factors.⁷ Wells Fargo was a party to the March 17, 2020 hearing, however, was not present at the hearing and was not afforded an opportunity to be heard. Both the Plaintiff and Saul, LLC knew that Wells Fargo would not be represented at the March 17, 2020 hearing and, therefore, this Court finds little prejudice in requiring the parties to proceed with a hearing on the merits of Saul, LLC’s Motion for Summary Judgment. “This is consistent with South Carolina’s policy favoring the disposition

⁷ Prejudice is defined as the lack of notice or knowledge which inhibits the ability to refute. Rouvet v. Rouvet, 388 S.C. 301, 312-13, 696 S.E.2d 204, 209-10 (Ct. App. 2010).

of issues on their merits rather than on technicalities.” Mictronics, Inc. v. South Carolina Department of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (citing Columbia Pools, Inc. v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986)); see Doe v. Batson, 345 S.C. 316, 322, 548 S.E.2d 854, 857 (2001) (citing Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 112, 410 S.E.2d 537, 543 (1991) (“Summary judgment is a drastic remedy, which should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues); see also Curry v. Carolina Insurance Group of SC, Inc., 428 S.C. 60, 70, 832 S.E.2d 760, 764-65 (Ct. App. 2019) (quoting Spence v. Wingate, 395 S.C. 148, 156, 716 S.E.2d 920, 925 (2011) (“Because summary judgment is a drastic remedy, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial”).

CONCLUSION

After fully considering the Defendant Wells Fargo's Motion to Set Aside Judgment, filed March 19, 2021 the Court finds pursuant to Rule 60(b)(3) and (b)(1), SCRCP and fundamentally in the interests of justice that the relief is Granted and the Court's Order dated March 24, 2020, is **VACATED**. Accordingly, the Motion to Set Aside Judgment is heard and respectfully **GRANTED**.⁸

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge

September _____, 2021
Charleston, South Carolina

⁸ The common please non-jury clerk is hereby directed to schedule the Defendant Saul, LLC's Motion for Summary Judgment filed January 20, 2020 on the next available motions roster so that it can be heard and disposed of on its merits.



Beaufort Common Pleas

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

IT IS SO ORDERED.

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

Honorable Deadra L. Jefferson
Presiding Circuit Court Judge

Appellate Case No.: 2021-001170

Eddie B. Lewis, Respondent,

v.

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

Of Which Saul, LLC is the Appellant and Wells Fargo National Association is a Respondent.

CERTIFICATE OF SERVICE

Undersigned certifies that the Memorandum of Respondent Eddie B. Lewis on Appealability to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

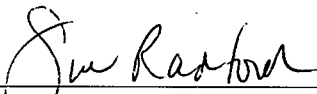
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Wall Templeton Haldrup, P.A.
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Charleston, South Carolina 29402

Douglas Edward Leadbitter, Esquire
Vernis & Bowling of Columbia, LLC
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Columbia, South Carolina 29201

Charles Grant Blackburn, Esquire
1701 Cherry Laurel Drive
Columbia, South Carolina 29204

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MOSS & KUHN, P.A.

By: 
Sue Radford

LAW OFFICES
MOSS & KUHN P.A.

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SC Court of Appeals

December 1, 2021

The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Eddie B. Lewis, Jr. v. Saul, LLC and Wells Fargo Bank, NA
Court of Appeals Case No.: 2021-00170
Civil Case No.: 2018-CP-07-02378

Dear Ms. Kitchings:

Enclosed for filing please find the original and one (1) copy of the Memorandum of Respondent Eddie B. Lewis on Appealability in regard to the above-referenced matter. I would appreciate your filing the Memorandum of Respondent Eddie B. Lewis on Appealability and returning a filed copy to me in the enclosed self-addressed stamped envelope. By copy of this letter and the enclosures I am serving a copy of the same on all counsel of record.

With kindest regards, I am

MOSS & KUHN, P.A.


H. Fred Kuhn, Jr.

HFKjr:sr

cc: Morgan S. Templeton, Esquire (w/enclosure)
David A. Nasrollahi, Esquire (w/enclosure)
Douglas Edward Leadbitter, Esquire (w/enclosure)
John J. Dodds, IV, Esquire (w/enclosure)
Charles Grant Blackburn, Esquire (w/enclosure)
Mr. Eddie B. Lewis (w/enclosure)

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