THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Circuit Court

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2021-001400

IOS, LLC.....Appellant-Respondent

v.

Lander University .....Respondent-Appellant

RETURN TO PETITION FOR EMERGENCY WRIT OF SUPERSEDEAS AND PETITION TO LIFT THE EMERGENCY STAY GRANTED BY ORDER DATED DECEMBER 3, 2021

Lander University files this return to Appellant-Respondent's petition for an emergency writ of supersedeas seeking to enforce a stay of this action pending in the Greenwood County Circuit Court. Appellant-Respondent's unverified petition without supporting affidavits requests enforcement of an emergency stay during its appeal of the lower court's grant of partial summary judgment. Pursuant to SCACR, 241(c), the trial court has the authority to grant or deny a stay and should consider whether such an order is necessary to preserve jurisdiction or prevent a contested issue from becoming moot. As the Respondent-Appellant will be substantially prejudiced by a stay in this matter, particularly the expiration of the foreclosure deficiency judgment on May 2, 2022, which may render issues raised by the case moot. The Respondent-Appellant therefore requests that the Appellant-Respondent's petition for supersedeas be denied

and moves that this Court's Order dated December 3, 2021, temporarily granting a stay of the trial which was to begin on December 6, be vacated.

BACKGROUND

This action was filed against Lander University, a commercial tenant of the Appellant-Respondent IOS, LLC. The property which was the subject of this lease was a hotel/restaurant known as the Inn on the Square in Greenwood, South Carolina. The Appellant-Respondent purchased the property in 2005 after the commencement of a foreclosure action against a previous owner, Palmetto Inns, by the mortgagee, Business Carolina, Inc. The property was transferred to IOS,LLC subject to the mortgage on March 7, 2005 and the foreclosure was dismissed on April 11, 2005. (Deed of Palmetto Inns to IOS, LLC, OCC for Greenwood County, Book 895, Page 90.)

IOS, LLC's manager, John Huffman, was the company's self-proclaimed "turnaround artist" (Huffman, Dep. 282,, Sept. 3, 2015.) He testified over the course of a three day deposition about efforts to rehabilitate and 'flip' the hotel which ended after September of 2008 when market changes owing to the national recession caused him to seek alternative uses for the property. It was his testimony that the venture remained profitable until the housing crash, at which point he set out to find a purchaser to salvage the investment he had in the project. According to the loan file obtained from the lender, Business Carolina, Inc., Respondent-Appellant argues that this was only a portion of the story.

The loan transcript obtained from Business Carolina, Inc., demonstrates that IOS, LLC, consistently had difficulty meeting its obligations the entire time it owned and operated the hotel. (Business Carolina Loan Transcript, Ex. 24 to Def's Reply to Pls Mem. in Opp'n. and Supplemental Mem. in Supp. of Def's Mot. for Summ. J., September 18, 2018.) This was exacerbated by the fact that IOS, LLC had leveraged the hotel with substantially more debt, thereby

increasing its overhead. Over the next two years, the following mortgages were additionally recorded against the property: Bridge Financial, LLC for $115,475.00 (recorded 9/12/06), Cornerstone Capital Funding for $230,000.00 (recorded 1/8/07), Upper Savannah Council of Governments for $250,000.00 (recorded 1/25/07), Uptown Development Corporation for $50,000.00 (recorded 1/25/07) and Upper Savannah Council of Governments for $50,000.00 (recorded 1/9/09) (Mortgage and Lien record filed in the OCC Greenwood County, Public Index, Ex. 20 to Def's Reply to Pls Mem. in Opp'n. and Supplemental Mem. in Supp. of Def's Mot. for Summ. J., September 18, 2018.)

By the time Lander became involved in 2009, the mortgagee was no longer willing to defer payments and had already negotiated a sale of the Note to a third party which was preparing to close. (Banc Capital contract, Ex. 27 to Def's Reply to Pls Mem. in Opp'n. and Supplemental Mem. in Supp. of Def's Mot. for Summ. J., September 18.) The lender's loan file documents a conversation on August 5, 2009 between John Huffman and loan officer Todd Lucas, at which point Mr. Huffman was advised that the lender didn't want the lease and needed the hotel to stay open. (Exhibit 28, Business Carolina Credit Notes, Def's Reply to Pls Mem. in Opp'n. and Supplemental Mem. in Supp. of Def's Mot. for Summ. J., September 18, 2018.) Huffman purportedly replied that as he no longer had the credit line required to keep the hotel open he would begin shutting it down on August 8th and if the bank didn't approve the lease with Lander University, he would close it on August 15, 2009. (Id.) In the end the bank relented and as a result, Lander University argues, IOS, LLC hastily negotiated and executed the Lease with Option to Purchase at issue in this case to try to avoid the sale of the Note and loss of the property at foreclosure.

In the course of finalizing the lease, the parties executed forbearance agreements with each of IOS, LLC's creditors. (Ex. 29, Forbearance Agreement, IOS, LLC 2009, Def's Reply to Pls Mem. in Opp'n. and Supplemental Mem. in Supp. of Def's Mot. for Summ. J., September 18, 2018. *** the exhibits referred to in Respondent-Appellant's Response to the Petition for Supersedeas were contain in the Memoranda cited, and therefore not duplicated here as they are already contained in the record. If the Court wishes for them to be resubmitted, Respondent-Appellant is happy to do so.) The forbearance agreement with Business Carolina required IOS, LLC to acknowledge the loan was in default and that the default would not be cured by the lender's forbearance. (Id.) The agreement also required IOS, LLC to acknowledge that the lease was subject to an absolute and irrevocable Assignment of Leases and Rents which had been part of the original loan transaction. (Id.) The Assignment of Leases and Rents provided, in part, that an affidavit, certificate, letter or statement from any officer, agent or attorney of the Assignee showing that "any part of the Indebtedness to remain unpaid or unperformed" constituted "conclusive evidence of the validity, effectiveness and continuing force" of the Assignment and could be relied upon. (Assignment of Leases and Rents, OCC for Greenwood County, Book 1253, Page 100.) UCC-1's filed with the South Carolina Secretary of State also established a security interest in the furniture, fixtures and equipment of the hotel. These UCC's provided that the lender had a perfected security interest in any tangible personal property, as well as renewals or replacements thereof, "including but not limited to, ranges, refrigerators, HVAC systems, telephones, televisions, and computers." (See Business Carolina UCC Financing statements, 2/13/2003, continued in 2008 after IOS, LLC's purchase, Ex. 3(g) to Def's Reply to Pls Mem. in Opp'n. and Supplemental Mem. in Supp. of Def's Mot. for Summ. J., September 18, 2018.)

Business Carolina required that all lease payments made during forbearance go to a third party 'escrow agent' who allocated them in amounts approved by the lenders amongst the various creditors.

Respondent-Appellant has argued throughout the course of this case that at the time the lease with option was executed by the parties, there was no meeting of the minds between them as to a purchase price. No contract of sale was signed and Article 21 of the Lease itself set forth that "purchase of the Land and Building is subject to any required approvals by the South Carolina Joint Bond Review Committee." By withdrawing its causes of action for enforcement of an oral agreement to purchase real property, which Respondent-Appellant argued by barred by the statute of frauds, the Appellant-Respondent seemed to agree. Recently however, in Appellant-Respondent's Motion for Reconsideration, counsel seemed to try to revive this argument, which had been previously been voluntarily withdrawn in November of 2017. An entire paragraph of Appellant-Respondent's Motion for Reconsideration was devoted to this argument despite is having been previously abandoned.

In its summary judgment motion, Lander argued that the former South Carolina Budget and Control Board and General Services Division had a rather lengthy process which required independent appraisals, inspections and other due diligence as well as multiple readings before a vote could be taken to approve a purchase.

After approval and completion of most of these inspections, Respondent-Appellant argued, it determined that the cost of renovations necessary to bring the property up to compliance with the Budget and Control Board requirements, made exercise of its option to purchase financially impractical. Appellant-Respondent was notified and after the lease expired, the property was turned back over to IOS, LLC on June 15, 2011. Appellant-Respondent's lender immediately filed

for foreclosure on July 22, 2021. A deficiency judgment in the amount of $425,218.84 was entered on May 2, 2012.

PROCEDURAL HISTORY

As you can see by the attached affidavit of counsel for the Respondent-Appellant, this matter has a somewhat tortured procedural history. Although some discovery was ultimately conducted and motions were finally heard, things progressed at a snail's pace.

By stipulation filed December 28, 2017, Appellant-Respondent dismissed a co-defendant to this action, The Lander Foundation. As stated previously, two of Appellant-Respondent's causes of action were contemporaneously withdrawn: breach of an oral contract to purchase real property and specific performance. (Pl's Resp. Opp'n Def's Mot. for Summ. J., filed 11/21/2017.) Following the election of November 2018, Mr. Smith accepted a position in January 2019 as Special Assistant to the President of the University of South Carolina. On March 8, 2019, the Honorable Frank R. Addy, Jr., requested Defendant prepare an Order granting in part its Motion for Summary Judgment. According to counsel for the Defendant's affidavit, in March and June of 2019, she traveled to the Mayo Clinic in Florida for testing with regard to symptoms which are now being treated her rheumatologist as an undifferentiated connective tissue disorder. On November 6, 2019, counsel for the Respondent-Appellant underwent a hiatal hernia revision surgery. On January and February and 2020, she underwent bi-lateral SI Joint injections, an MRI of the SI Joints and re-referral to a rheumatologist. On March 23, 2020, circuit court terms of court from March 23 until May 1, 2-2020 were canceled by the Order of the Honorable Donald Beatty, Chief Justice of the South Carolina Supreme Court.

Counsel for the Respondent-Appellant is intimately familiar with the interruptions that the pandemic has caused, having four children between the ages of 12 and 17, including a set of fraternal twins. Her children each attend a different public school, which operates to exponentially multiple the number of potential exposures for her family. As stated in the attached affidavit, nearly every time Greenwood County schools were closed or the Respondent-Appellant's minor children were quarantined, they attended virtually. Once in-person school attendance was resumed in Greenwood County in 2021, counsel and her family continued to have repeated direct exposures to the virus by both classmates, teachers and teammates, as well as experienced other non-Covid illnesses. These episodes necessitated time away from the office for doctors' appointments and/or testing as well as quarantine.

On February 13, 2021, attorney for the Respondent-Appellant and her twelve year old daughter tested positive for the Sars-Cov-2 virus. During 2021 alone, she and her husband and two of her four minor children were infected with the virus (February, March and August 2021) each time necessitating quarantines for entire family. During each of these episodes, she was either a caregiver or a patient.

ARGUMENT

In support of its argument for a stay during the appeal of the lower court's grant of partial summary judgment which was filed on November 2, 2021, counsel for the Appellant-Respondent has argued that:

(1) The Order which the Appellant-Respondent, appealed, though taken from Judge Addy's Form 4 of March 9, 2019, was not filed until November 2, 2021. Appellant-Respondent argues that his motion for reconsideration and appeal were timely and that

the matter is entitled to an automatic stay, such that he should not have been required to anticipate that the Court would to expect him to proceed with trial.

Appellant-Respondent filed an appeal of the lower court's Partial Summary Judgment Order on December 3, 2021, the Friday before the day certain trial was to commence in this action on Monday, December 6, 2021. The parties were made aware as early as June 2, 2021 during a remote motion hearing and status conference before Circuit Judge Donald B. Hocker that the Greenwood County Clerk would schedule this case for a date certain trial before the end of the 2021. On that date, Judge Hocker also granted the motion of Chris Moore, who petitioned to be relieved on May 19, 2021. Moore was Appellant-Respondent's former co-counsel, with law firm of Richardson, Thomas, Haltiwanger, Moore and Lewis, LLC. Mr. Moore's motion was filed shortly after he and four former members of Richardson, Patrick, Westbrook & Brickman LLC formed a new firm in March of 2021. Moore took over as lead co-counsel for the Appellant-Respondent after attorney James E. Smith, Jr. announced his bid for governor in October of 2017. Moore's motion to be relieved, to which Respondent-Appellant consented, stated that good cause existed as (1) Appellant-Respondent desired other counsel and wished to terminate Appellant-Respondent's relationship with Moore and both his current and former firm and (2) plaintiff would have ample time to secure alternate counsel. Though Moore's motion stated that the parties requested that Plaintiff be given thirty (30) days to secure alternate counsel, the order indicated that the Plaintiff would continue to be represented by existing counsel, Smith, who had lost the race for governor to incumbent Henry McMaster in November of 2018. Since January of 2019, Mr. Smith had been employed as a Special Assistant to the President of the University of South Carolina.

Following the grant of Mr. Moore's motion, on July 26, 2021 a trial in this matter was scheduled by Judge Donald B. Hocker for the December 6, 2021 during a combined term of jury and non-jury court in Greenwood County. Trial was only estimated to last a day and half. The case was to be heard by Judge Frank R. Addy, Jr., who had heard other motions, including the Defendant Lander University's motion for summary judgment. Though emails were sent by both Judge Addy's office and Judge Hocker requesting confirmation that the Plaintiff would be ready to proceed on December 6, 2021, it was not until December 3 that the lower court was notified that the Appellant-Respondent was not available for trial. On that date, Mr. Smith emailed that "[Appellant-Respondent] did not believe this would be an issue as trial seemed impossible…" (Email from James E. Smith, Jr. to Judges Donald B. Hocker and Frank R. Addy, Jr., et al dated December 3, 2021.)

Further, following the remote status conference and motion hearing with Judge Hocker back in June of 2021, both of the parties were made aware that due the age of the case it needed to tried. Counsel for both parties were also on notice of the South Carolina Supreme Court's Order of August 27, 2021 concerning the Operation of the Trial Courts During the Coronavirus Emergency, which stated that though the pandemic had delayed the resolution of many cases since March of 2020, the Court intended for attorneys, litigants and South Carolina courts to "focus on resolution of these cases in a safe, timely and just manner." (Operation of the Trial Court During the Coronavirus Emergency (as Amended August 27, 2021) SC Supreme Court, *emphasis added*.)

Based upon counsel for the Respondent-Appellant's recent conversation with Mr. Smith, the case at bar is his only pending case. There is one cause of action remaining to be tried for breach of contract resulting in damage to real and personal property which Appellant-Respondent claims arose following the expiration of lease. Despite the challenges of navigating the pandemic

throughout 2020 and 2021, counsel for the Respondent-Appellant was able to submit a Proposed Order as requested by Judge Addy, reply to the Motion to Reconsider filed by Appellant-Respondent, file an Offer of Judgment on November 29, 2021 and be prepared to proceed to trial on December 6, 2021.

(2) Respondent also argues that the Order should be immediately appealable, as it either "involves the merits" or a "substantial right" as set forth in categories (1) and (2) of S.C. Code Ann. 14-3-330, 1976 as amended. Appellant-Respondent argues in addition that proceeding with trial would result in piecemeal litigation and require unnecessary expense, as well as allow for more than one bite at the apple by providing multiple trials;

Respondent-Appellant takes the position that Plaintiff's election to abandon previous causes of action for specific performance and breach of an (oral) contract to purchase are not appealable as they were voluntarily withdrawn therefore no stay is necessary.

Pursuant to the S.C. Code Ann. 14-3-330 an order that does not finally end a case or prevent a final judgment from which a party could appeal is not immediately appealable. The underlying purpose of the final judgment rule is to allow lawsuits to be completed without the delay and expense of interlocutory appeals. S.C. Jurisprudence, Appeal and Error, Section 15, Final Judgment Rule. Judicial economy is thwarted if trial are stopped upon appeal of a partial directed verdict after presentation of the plaintiff's case. Ashenfelder v. City of Georgetown, 698, S.E,2d 856 (Ct. App. 2010) Judge Addy's order granting partial summary judgment left questions of fact to be decided, therefore it is not a final order. Further, appealing this order would not avoid

unnecessary litigation, because this matter is still to be litigated. Watson v. Underwood, 756 S.E.2d 155, 407 S.C. 443 (Ct. App. 2014.)

The trial court's grant of partial summary judgment as to promissory estoppel, negligent misrepresentation and negligence, which all arise out of the same facts and circumstances as the remaining issues to be tried in the case, operates as an election of remedies, and is interlocutory. As discussed earlier and in the affidavit attached hereto, Appellant-Respondent's cause of action for negligent misrepresentation and negligence sound in tort. The damages alleged, however, are economic. In the alternative, the Appellant-Respondent alleges damages arising out of the breach of the lease and covenant to maintain in the condition it was found at the time the lease commenced. The economic loss rule prohibits negligence actions where the duties allegedly breached arise out of contract and the injury is exclusive to property. Bishop Logging Co., v. John Deer Industries Equipment Co., 445 S.E.2d 183, 317 S.C. 250 (1995.) The United States District Court for the District of South Carolina has concluded that contract law provides the exclusive right and remedy for economic loss to parties to a commercial contract where only the product itself is injured. Myrtle Beach Pipeline Corp. v. Emerson Elec. Co., 843 F. Supp. 1027 (D.S.C. 1993) Further, specifically addressing negligent misrepresentation, the District Court held that a transaction governed by a contract where the alleged loss is purely economic and the cause of action is for negligent misrepresentation, the economic loss rule bars recovery. South Carolina Electric and Gas Co., v. Westinghouse Elec. Corp., 826 F. Supp. 1549 (D.S.C. 1993)

Since it filed its Motion for Summary Judgment in March of 2013, the Respondent-Appellant has argued that the only matter before the court is the interpretation of the lease with option executed by the parties in August of 2009. The duties assumed by the parties are contained in that document. Beginning in 2016, the Court requested that the Appellant-Respondent

determine which causes of action it intended to pursue as they were barred by the economic loss rule from pursuing both.

Though generally, orders granting partial summary judgment may be immediately appealable, in the matter of Thornton v. South Carolina Elec. and Gas. Corp., 705 S.E.2d 475, 391 S.C. 297 (Ct. App. 2011) the Court of Appeals decided that an order granting defendant partial summary judgment where no private cause of action existed was not immediately appealable. Likewise, the Respondent-Appellant would argue that a grant of partial summary judgment where the Appellant-Respondent retains the right to proceed, under the same facts on a mutually exclusive remedy does not deprive the Appellant-Respondent of a substantial right or operate to strike pleadings. As in Thornton, IOS, LLC may still offer evidence of the violation of the lease contract to prove the allege damage to the property, it just can't offer testimony seeking to prove a tort which is mutually exclusive.

Further, the Respondent-Appellant would argue that enforcing the Emergency Stay which was ordered in this matter while this case is on Appeal would work to deprive it of a substantial right, as after the foreclosure judgment expires on May 2, 2022, the issue of whether the Assignment of Leases and Rents precludes IOS, LLC from standing to sue, which is subject of Lander University's Cross Appeal, is arguably moot.

December 8, 2021

s/Lena Y. Meredith
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The South Carolina Court of Appeals

IOS, LLC, Appellant,

v.

Lander University, Respondent.

Appellate Case No. 2021-001400

ORDER

Appellant filed suit against Respondent for breach of contract, specific performance, promissory estoppel, negligent misrepresentation, negligence, and breach of lease agreement. The trial court granted summary judgment in favor of Respondent as to Appellant's causes of action for promissory estoppel, negligent misrepresentation, and negligence, and determined the sole cause of action remaining was breach of lease agreement. Trial is scheduled to proceed on this cause of action beginning Monday, December 6, 2021. Appellant has now filed a petition for supersedeas, requesting this court stay trial on the remaining cause of action during pendency of this appeal. This court requests a return from Respondent. Respondent must file this return by Wednesday, December 8, 2021. In the meantime, Appellants' motion to stay is temporarily granted pending further order of this Court.

FOR THE COURT

Columbia, South Carolina

cc:

FILED
Dec 03 2021

James Emerson Smith, Jr., Esquire
Lena Younts Meredith, Esquire

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Circuit Court

Frank R. Addy, Jr., Circuit Court Judge

Case No.: 2021-001400

IOS, LLC.....Appellant-Respondent

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AFFIDAVIT OF COUNSEL FOR RESPONDENT-APPELLANT, LENA Y. MEREDITH

Having been duly sworn, the undersigned affiant does hereby swear or affirm as follows:

My name is Lena Y. Meredith. I am the managing member of the law firm of Nicholson, Meredith and Anderson, LLC. I practice in multiple areas, including but not limited to: workers' compensation, civil litigation (both federal and state), social security disability appeals, estate planning and estate administration.

I filed a notice of appearance in this matter on September 16, 2013 and served as co-counsel with lead counsel Douglas Lamar Bell of the McDonald Patrick Firm in Greenwood, South Carolina until his recusal due to a conflict serving as both the attorney for Lander University and as a witness in this case. In arguing that his petition for an emergency stay in this case pending the appeal of the trial court's grant of partial summary judgment, counsel for the Appellant-

Respondent indicates that "though this case has some age on it, it is no fault of the Appellant." (Appellant-Respondent's Petition for Emergency Writ of Supersedeas filed December 3, 2021.) Pursuant to SCACR Rule 225, I wish to address this issue directly in the form of an affidavit.

The lease which is at issue in this case terminated on June 15, 2011. Counsel for Appellant-Respondent, filed suit against Lander on May 29, 2012, after a foreclosure of the property in dispute had been ordered, a sale was finalized and a deficiency judgment had been entered on May 2, 2012 in the amount of $425,218.84. Plaintiff's complaint alleged a breach of oral contract to purchase, specific performance, promissory estoppel, negligent misrepresentation, negligence and breach of the lease contract. A non-jury trial was requested. The Respondent-Appellant was initially represented by Douglas Bell of the McDonald Patrick firm of Greenwood, South Carolina, who filed an answer on behalf of Lander University alleging amongst other defenses that IOS, LLC did not have standing to pursue damages to the property as it had been sold pursuant to an Order of Foreclosure. The matter initially was placed on the trial roster in January 2013, prior to having been on the docket for one year. As discovery had not been completed, a continuance was granted.

Lander University subsequently filed a Motion to Strike as well as a Motion for Summary Judgment on March 8, 2013 but these matters languished for some time as counsel for the Plaintiff was granted protection from appearance during legislative session of the House of Representatives, where he was serving his eleventh term. During the summer when the Legislature was not in session, Mr. Smith was protected while he was activated or participating in exercises held by the Army National Guard. When Mr. Smith was not in session or on duty with the National Guard, progress was often further stalled by cases he was responsible for in other jurisdictions that he argued had priority.

Defendant's Motion to Strike was finally decided on August 22, 2016, but its Motion for Summary Judgment was not ripe as discovery was still not complete.

Between February 15, 2013 and August 25, 2017, the parties were served by the court with a non-jury trial roster nineteen (19) times, as is evidenced by the Greenwood County Eighth Judicial Circuit Public Index. Discovery and outstanding motions became nearly impossible to complete due to the limited window counsel for the Plaintiff was available. Throughout the course of this case, the Defendants attempted to address multiple delays with regard to outstanding issues. The following a small representative sample of the delays which were occasioned by the Plaintiff or his attorney, taken from correspondence to Judge Frank R. Addy, Jr., dated October 27, 2017:

1) Plaintiff filed repeated motions for continuance with regard to Defendant's motion for summary judgment originally filed on March 8, 2013. A hearing on this motion was set for September 12, 2014, but continued until September 29, 2014 at counsel for Plaintiff's request due to his being in a court ordered deposition. It was continued again at the request of Plaintiff's counsel until November 3, 2014 due to scheduling conflict with a trial in Charleston County. On November 3, 2014, counsel for the Plaintiff requested a continuance indicating he was number three for trial in Richland County. At a status conference held on November 4, 2014, Plaintiff's counsel requested that the court temporarily table Defendant's summary judgment motion without prejudice proposing that discovery be exchanged and a scheduling order be entered. Another status conference was held in December 2014 during which many of the same issues were discussed and Defendant again requested the motion for summary judgment be scheduled.

2) Counsel for the Plaintiff refused to advise the court pursuant to an Order dated November 3, 2016 (reiterated again during a telephone status conference on December 23, 2016) as to whether his client intended to proceed on all causes of action or would be electing a remedy so that discovery could proceed accordingly and the motion for summary judgment could be rescheduled. Plaintiff received an extension until the third week in January 2017 to make this election. Although many attorneys might have filed a Rule to Show Cause under the circumstances, out of respect and deference to Mr. Smith's legislative position and service in the Army National Guard, I wrote to him on March 24, 2017 requesting a response and copied the trial judge. The parties were both contacted by Judge Addy in May of 2017, who request a response. The case was subsequently placed on the non-jury trial docket for June 2, 2017, when Mr. Smith would be out of legislative session but again Mr. Smith asked for protection. I subsequently received an email from Mr. Smith on August 1, 2017 requesting dates for 30(b)(6) depositions of Lander employees, but failing to address the issues before the court, including an election of remedies and Plaintiff's accountant's refusal to respond to a subpoena. At this point, I filed a Motion to Compel which was scheduled for September 2017. At the hearing to compel the Plaintiff's accountant to respond to my subpoena, which was heard on September 13, 2017, Mr. Smith did not recall the Order requiring him to notify the court if he intended to elect a remedy. At that time, the matter was set for trial on December 4, 2017. Mr. Smith declined to give consent to the production of documents requested by subpoena, stating that he did not have the Plaintiff's consent to do so, despite that fact that we'd had to delay the deposition of a key Plaintiff's witness until the records were available for cross examination.

Mr. Smith subsequently agreed to depose this witness on October 31, 2017, which conflicted with the motions calendar scheduled for the same date.

As time wore on, I was forced to repeatedly object to motions for continuance and requests for protection which were not associated with Plaintiff's legislative responsibilities or National Guard duty in order to attempt to move the case forward while Mr. Smith was available.

The parties attempted a mediation on November 20, 2017 which resulted in impasse. Just the month before, Mr. Smith had announced his candidacy for governor on October 5, 2017. This had the effect of slowing this matter to a crawl until Chris Moore was associated during Mr. Smith's candidacy (see Notice of Appearance filed February 1, 2018). Mr. Moore seemed to do his best to abide by the schedule set by the Court, though it was apparent at mediation that the client still deferred to Mr. Smith, who wasn't present during the entirety of negotiations. Following the failed mediation, Defendant renewed efforts to narrow the causes of action pending via its Motion for Summary Judgment which was briefed and heard, followed by supplemental briefs which were allowed by the Court. (See Defendant's Supplemental Reply to Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment filed September 18, 2018.) Additional discovery continued throughout this process.

In March and June of 2019, I drove to the Mayo Clinic in Jacksonville, Florida for testing with regard to symptoms that are now being treated by my rheumatologist in Greenville as an undifferentiated connective tissue disorder. On November 6, 2019, I underwent a hiatal hernia revision surgery. Between January and February of 2020, I had bi-lateral SI Joint injections, an MRI of the SI Joints and was re-referred to rheumatology. Not long after, circuit court terms of court from March 23 until May 1, 2-2020 were canceled by the Order of the Honorable Donald

Beatty, Chief Justice of the South Carolina Supreme Court and schools started shutting down intermittently in Greenwood County.

From March 31, 2020 until January 22, 2021, Greenwood public schools intermittently discontinued face to face instruction in favor of virtual learning. An attempt to open permanently was delayed on January 11 until January 25, 2021 when 707 new positive COVID cases appeared in Greenwood County over a two weeks period.

In March of 2020, I had four school age children, who were then twelve, twelve, fourteen and sixteen. They attended four different public schools and had repeated direct exposures to the coronavirus by both classmates and teachers which required me to leave the office to attend doctors' appointments and have them tested, as well as myself. My eleventh grader was quarantined no less than five times during the 2020-21 school year. When one of the children did remained quarantined, I had to do my best to work as well as ensure they attended class virtually and didn't have any difficulty completing their school work. Members of the family who might normally be able to help were in high risk categories due to their age and health conditions, so that left my left me and my husband, who owns his own business, to supervise and provide meals as best we could while continue to try to keep our businesses afloat.

My daughter and I both tested positive for the Sars-Cov-2 virus on February 13, 2021 and were quarantined until March 1, 2021. During 2021 alone, me, my husband and two of our children were each infected at various times (February, March, and August) necessitating absences and/or quarantines each time. During each of these episodes, I was either a part time caregiver trying to continue to work - or patient trying to continue to work.

In June of 2021, after Chris Moore was relieved, Mr. Smith often did not seem to reply to emails from the court. I took the liberty of asking Mr. Moore for James's university email and

carbon copied him at that address several times, including when I replied to Judge Hocker on June 4, 2021 regarding the parties availability on December 6th, 2021. At that time, he indicated he needed to check with his client but never updated the Court or my office on their response. He did not copy me on a reply to the email of Judge Addy's administrative assistant on October 11, 2021 who had requested that we all confirm that December 6, 2021 was still when the parties intended to procced to trial.

On October 14, 2021, I sent a copy of the proposed order granting partial summary judgment to both his AIS and University email, as I didn't know which he was using more frequently. He replied from his James Smith, PA email on that occasion, stating that he needed until the close of business on Tuesday October 19, 2021 to review.

After I filed and served our Offer of Judgment on November 29, 2021, I again did not hear from him. I called him on December 1, while I was preparing for trial, to remind him that the court had indicated we would proceed on the following Monday. He advised me that he was still waiting on the trial court to rule on his Motion for Reconsideration, therefore he did not think we would be called. I encouraged him to check with the court, as I knew from handling other cases in this jurisdiction that the Bar was being encouraged to try to reduce the backlog of cases which had inevitably piled up during the Coronavirus Emergency.

After our conversation, he emailed Judge Addy's administrative assistant, Freda Sartin, indicating that he did not feel it was safe to move forward to trial on Monday, and that he would be filing for a continuance later that day. I had advised him I did not think my clients could consent to a continuance and the case needed to be tried. In response to his email, indicating for the first time that he planned to file an appeal and did not intend to go forward on Monday, I told

the Court that if a Form 4 Order on the Plaintiff's Motion for Reconsideration was forthcoming, Defendant was ready for trial and took the position that the matter should not be stayed.

Further affiant sayeth naught.

Lena Y. Meredith

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Attorney for Respondent-Appellant

SWORN TO BEFORE ME this
8th day of December, 2021.

Marylea N Carter

Notary Public For South Carolina
My Commission Expires: July 15, 2029

THE STATE OF SOUTH CAROLINA

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Lander University ..... Respondent-Appellant

PROOF OF SERVICE

I certify that I have served the Return to Petition for Emergency Writ of Supersedeas and Petition to Lift The Emergency Stay Granted By Order Dated December 3, 2021, upon Appellant-Respondent, IOS, LLC, by AIS and U.S. Mail by filing same with the Attorney Information System and depositing a copy of it in the United States Mail, postage prepaid, on December 8, 2021, addressed to Appellant-Respondent's attorney of record:

James E. Smith, Jr.
James E. Smith, Jr., P.A.
1422 Laurel Street
Post Office Box 50333
Columbia, SC 29250

December 8, 2021

s/Lena Y. Meredith
Lena Y. Meredith, SC Bar 9663
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* Certified Mediator/Arbitrator
+ Also Licensed in North Carolina

December 8, 2021

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Via Email to Ctappfilings@sccourts.org
1220 Senate Street
Post Office Box 11629
Columbia, South Carolina 29201

Re: IOS, LLC v. Lander University
Appellate Case No.: 2021-001400

Dear Ms. Kitchings:

Enclosed please find the Respondent-Appellant's Return to Petition for Emergency Writ of Supersedeas and Petition to Lift The Emergency Stay Granted By Order Dated December 3, 2021. The Appellant-Respondent's Petition for Emergency Writ of Supersedeas was received by my office on December 3, 2021. Attached also is our Proof of Service.

I would appreciate your assistance with filing the attached and returning clocked copies.

Sincerely,

s/Lena Y. Meredith
Lena Y. Meredith
Nicholson, Meredith & Anderson, LLC
109 W. Court Avenue
Post Office Box 457
Greenwood, SC 29648
(864) 229-7241