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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Hon. Deadra L. Jefferson
Presiding Circuit Court Judge

Appellate Case No.: 2021-001170

Eddie B. Lewis. . . . . Respondent

v.

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

Of Whom Saul, LLC is the Appellant and

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

APPELLANT'S PETITION FOR REHEARING

COMES NOW the Appellant Saul, LLC ("Appellant"), by and through its undersigned attorneys, respectfully petitioning to this Honorable Court for a rehearing of the opinion filed in this case on January 28, 2022, pursuant to Rule 221 of the South Carolina Appellate Court Rules. In its opinion, the Court held that the underlying order is not immediately appealable based on S.C. Code Ann. § 14-3-330 and *Pioneer Associates, Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 387 S.E.2d 711 (Ct. App. 1989). Appellant respectfully submits that this Court overlooked or misapprehended the following points:

I. SAUL MAY IMMEDIATELY APPEAL THE TRIAL COURT'S ORDER VACATING AN ORDER GRANTING SUMMARY JUDGMENT PURSUANT TO AUTHORITY FROM THE SOUTH CAROLINA SUPREME COURT.

In its opinion, this Court held that the underlying order on appeal was not immediately appealable pursuant to S.C. Code Ann. § 14-3-330 and *Pioneer Associates, Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 387 S.E.2d 711 (Ct. App. 1989) (holding the grant of a Rule 60(b) motion to set aside default judgment is not immediately appealable). However, Saul has appealed the Trial Court's Order vacating its Order for Summary Judgment because there was an erroneous exercise of discretion on the part of the circuit court judge. *See Winslow Bros. & Smith Co. v. Gossett*, 120 S.C. 164, 112 S.E. 825 (1922), *see also* S.C. Const. art V, § 9 ("The decisions of the Supreme Court shall bind the Court of Appeals as precedents.") and *Campbell v. Robinson*, 398 S.C. 12, 18, 726 S.E.2d 221, 225 (Ct. App. 2012) (stating that the Court of Appeals "may not overrule supreme court precedent"). Abuse of discretion means that the ruling of the trial court was without reasonable factual support, which resulted in prejudice to the rights of the appellant, and therefore, in the circumstances, amounted to error of law. *See Bridges v. Wyandotte Worsted Co.*, 239 S.C. 37, 40, 121 S.E.2d 300, 302 (1961). The South Carolina Supreme Court held in *Winslow Bros.* that an appeal from an order vacating a judgment is not appealable *unless there was an erroneous exercise of discretion on the part of the circuit court.* 120 S.C. 164, 112 S.E. 825. (emphasis added).

Saul's appeal arises from the Trial Court's abuse of its discretion by granting Respondent Wells Fargo's ("Wells Fargo") Motion to Set Aside Judgement when the record establishes that the Eddie B. Lewis ("Respondent") conceded Saul's Motion for Summary Judgment and Wells Fargo waived any arguments to the same. (*See* Saul's Initial Brief.). As evidenced in Saul's Initial Brief, the Trial Court's holding was unsupported by any supporting facts and are contradicted by

the record which amounted in an erroneous exercise of discretion. The question of whether an order is immediately appealable is determined on a case-by-case basis. *Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868 (2019). The Trial Court's Order in this matter is the exact "erroneous exercise of discretion" that was contemplated by the South Carolina Supreme Court in *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825, making, this matter immediately appealable.

The South Carolina Supreme Court's holding in *Winslow Bros.* is a published opinion that has not been overturned by the South Carolina Supreme Court and is binding precedent to date. The decisions of the South Carolina Supreme Court bind the Court of Appeals as precedent. *See Daniels v. City of Goose Creek*, 314 S.C. 494, 501, 431 S.E.2d 256, 260 (1993); *see also*, S.C. Const. art V, § 9. Pursuant to the South Carolina Supreme Court's holding in *Winslow Bros.*, Saul does indeed have an immediately appealable issue as there is ample evidence establishing that the Trial Court's Order vacating an Order for Summary Judgment was an erroneous exercise of discretion.

This Court's reliance on *Pioneer Associates, Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 387 S.E.2d 711 (Ct. App. 1989) is misplaced as the South Carolina Supreme Court's holding in *Winslow Bros.* binds the Court of Appeals. Thus, any modifications limiting the South Carolina Supreme Court's holding in *Winslow Bros.* must be done by the South Carolina Supreme Court. *See* S.C. Const. art V, § 9. Therefore, this Court is bound by the precedent in *Winslow Bros.*, which holds that an order vacating a judgment is appealable if there is an erroneous exercise of discretion on the part of the circuit court. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825.

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

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

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

First, this matter is distinguishable from the *Pioneer Associates* as this matter has been appealed based on the South Carolina Supreme Court holding in *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825, and not pursuant to Rule 72, SCRCP or S.C. Code § 14-3-330. Notwithstanding, this Court is bound by the precedent in *Winslow Bros.*, which holds that an order vacating a judgment is appealable if there is an erroneous exercise of discretion on the part of the circuit court. *See Winslow Bros.*, 120 S.C. 164, 112 S.E. 825. An order *generally* must fall into one of the several categories set forth in the statute governing appellate jurisdiction in order to be immediately

appealable. *See State v. Wilson*, 387 S.C. 597, 693 S.E.2d 923 (2010). (emphasis added). Determination of whether a party may immediately appeal an order issued before or during trial is governed *primarily* by statute. *See Pocisk v. Sea Coast Const. of Beaufort*, 380 S.C. 584, 671 S.E.2d 98 (Ct. App. 2008), 380 S.C. 584, 671 S.E.2d 98. (emphasis added). When making decisions on issues of appealability of matters under S.C. Code § 14-3-330, South Carolina Courts have consistently and carefully crafted their holdings to include qualifying language like "generally" and "primarily" which evidences that appeals may arise outside of categories set forth in the statutes governing appellate jurisdiction.[1] The question of whether an order is immediately appealable is determined on a case-by-case bases. *See Stone*, 426 S.C. 291, 826 S.E.2d 868. For example, the *Pocisk* court even acknowledged that the Appellate Court has considered appeals from the granting of Rule 60(b) relief. *See e.g. Johnson v. Johnson,* 310 S.C. 44, 425 S.E.2d 46 (Ct. App. 1992); *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

This matter is analogous to the facts found in *Mitchell Supply Co.*, which held that the trial court abused its discretion in vacating a judgment when the neglect relied on by the Respondents was their attorney's failure to properly review pleadings delivered to him. 297 S.C. 160, 375 S.E.2d 321. As shown Appellant's initial brief, this matter arises from an erroneous exercise of discretion by the Trial Court when the record establishes that the Respondent conceded to Saul's Motion for Summary Judgment and Counsel for Wells Fargo failed to make any arguments to the

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

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

On January 20, 2020, Saul filed its Motion with the Beaufort County Clerk of Court. (*See* Ex. 2 to Appellant's Memo in Supp. of Appeal.). On March 13, 2020, then counsel for Wells Fargo, Laura Robinson, emailed counsel for Respondent and Saul requesting a continuance for the Motion because she was leaving her firm and that Charles Blackburn would be taking the case over. (*See* Ex. 4-A to Appellant's Memo in Supp. of Appeal.). That same day, counsel for Saul informed Ms. Robinson that he could not consent to the request for continuance and wanted the motion heard because of the impending mediation scheduled and trial not before date. (*See Id.*). On March 16, 2020, attorney Charles G. Blackburn filed a Notice of Appearance on behalf of Wells Fargo. (*See* Ex. 4-C to Appellant's Memo in Supp. of Appeal.). That same day, counsel for the Appellant, Morgan S. Templeton, received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020, in which he advised that he would be appearing on behalf of Wells Fargo but would not be appearing at the hearing. (*See* Ex. 4-B to Appellant's Memo in Supp. of Appeal.). During this call, Mr. Blackburn informed the undersigned that he had read the Motion, that he did not believe he had a basis to oppose the Motion, and that he would not be attending the hearing on the Motion. (*See Id.*).

On March 17, 2020, the Trial Court heard arguments on the Motion. (*See* Ex. 6 to Appellant's Memo in Supp. of Appeal.). Counsel for the Respondent and Appellant were present for this hearing; however, ***counsel for Wells Fargo failed to appear***, despite being active in the case. (*See* Ex. 5 to Appellant's Memo in Supp. of Appeal.). Wells Fargo failed to file a Motion

for Continuance or any Memorandums in Opposition, despite having notice of the Motion since January 20, 2020. (*See Id.*). During the hearing, Respondent's counsel informed the Trial Court that counsel for Wells Fargo informed Respondent's Counsel that he was not going to attend the hearing on the Motion. (*See* Ex. 6 to Appellant's Memo in Supp. of Appeal, Hearing Transc. p. 2:12-17; *see also* Ex. 7 to Appellant's Memo in Supp. of Appeal.). After the Motion was granted, counsel for Wells Fargo received notice that the proposed Order was electronically filed on March 18, 2020. (*See* Ex. 5-A.). Counsel for Wells Fargo did not raise any objections to the proposed Order. (*See* Ex. 5.).

On March 24, 2020, the Trial Court granted Appellant's Motion for Summary Judgement. (*See* Ex. 8 to Appellant's Memo in Supp. of Appeal.). On March 26, 2021, counsel for Wells Fargo sent an email evidencing his knowledge of Saul's dismissal from this matter. (*See* Ex. 4-D to Appellant's Memo in Supp. of Appeal.). Neither the Respondent nor Wells Fargo filed a Motion to Reconsider. (*See* Ex. 5.). Wells Fargo did not appeal the Trial Court's Order. (*See Id.*).

On March 19, 2021, almost a year to the date of the entry of the Trial Court's Order, Wells Fargo first challenged the Trial Court's Order pursuant to Rules 60(b)(2) and (b)(3), SCRCP. (*See* Ex. 9 to Appellant's Memo in Supp. of Appeal.). Further, and most telling, Wells Fargo failed to make any argument or excuse as to why its counsel did not argue against Saul's Motion, file a motion or appeal the Trial Court's Order granting Saul's Motion. (*See Id.*).

Unlike the matter in *Pioneer Associates*, there is nothing in the record to indicate that counsel for Wells Fargo did not have an opportunity to be heard and make an argument at the appropriate time. Rather, the record is replete with support for the exact opposite: ***Wells Fargo had every opportunity to be heard and failed this opportunity.*** *See Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321.

It is undisputed that Wells Fargo was represented by counsel during the entire aforementioned procedural history. It is also undisputed that Wells Fargo's counsel had notice of the Motion, proposed Order, and final Order. Yet, it made no arguments. Still, the Trial Court erroneously concludes that Wells Fargo was not afforded an opportunity to be heard on Appellant's Motion for Summary Judgment. (*See* Ex. 11 to Appellant's Memo in Supp. of Appeal.). As such, the Trial Court abused its discretion in vacating a judgment, when the neglect relied on by the Respondents was their attorney's failure to properly review pleadings delivered to him, which is analogous to *Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321. The Trial Court clearly ignored the facts of the case: Wells Fargo failed to do even the bare minimum to argue against Appellant's Motion for Summary Judgment. Despite being put on notice of Saul's Motion on January 20, 2020, Wells Fargo's counsel did nothing until March 19, 2021. Wells Fargo has waived any rights to raise any arguments that should have been made at the time of the hearing. *See gen. SPUR at Williams Brice Owners Ass', Inc. v. Lalla*, 415 S.C. 72, 91, 781 S.E.2d 115, 125 (Ct. App. 2015).

Therefore, this matter is immediately appealable as the Trial Court's ruling that there was a basis to grant a motion to set aside which is based on Wells Fargo's Counsel's failure and neglect to argue at the appropriate time that resulted in an abuse of discretion which is appealable pursuant to *Winslow Bros.*, 120 S.C. 164, 112 S.E. 825; *see gen. Mitchell Supply Co.*, 297 S.C. 160, 375 S.E.2d 321. (holding in which the court of appeals considered an appeal from the granting of Rule 60(b) relief.).

Assuming arguendo, the Court is still not persuaded that this matter is immediately appealable, Saul reasserts that this matter should be certified to the South Carolina Supreme Court pursuant to Rules 204 and 242, S.C.A.C.R. Pursuant to Rule 204(b), S.C.A.C.R., "[i]n any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion

of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals."

CONCLUSION

For all of the aforementioned reasons, Saul respectfully submits that the above captioned appeal is appropriate, and the issues presented therein are immediately appealable.

Dated this 10th day of February, 2022. Respectfully,

WALL TEMPLETON & HALDRUP, P.A.

By: s/Morgan S. Templeton

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Attorneys for Appellant Saul, LLC

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.	)	
Plaintiff,	)	**Defendant Saul, LLC's Motion for Summary Judgment**
versus	)	
SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION	)	
Defendants.	)	

TO: COREY FLEMING, ATTORNEY FOR PLAINTIFF

Defendant, Saul, LLC ("Saul"), by and through its undersigned attorneys, will move before the presiding judge of the Court of Common Pleas for the County of Beaufort County, South Carolina, ten (10) days from the date of this motion or as soon thereafter as counsel may be heard for an order granting Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Saul submits that it had gave all control and duties of the subject property to Defendant Wells Fargo, and as a matter of law, owed no duty to the Plaintiff and summary judgment should be granted as to this Defendant.

ALLEGED FACTS

On or about May 23, 2016, Plaintiff, Eddie R. Lewis, entered the parking lot/premises located at 401 Port Republic Street, Beaufort, S.C. as a customer to Defendant Wells Fargo (hereinafter "Wells Fargo"). Am. Compl. ¶ 9. While exiting the parking lot, the Plaintiff allegedly tripped and fell causing him injuries. Am. Compl. ¶ 11. Saul owns the premises located at 401 Port Republic Street, Beaufort, S.C. Am. Compl. ¶ 7. Said property is and was leased by Saul to Wells

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 forborne 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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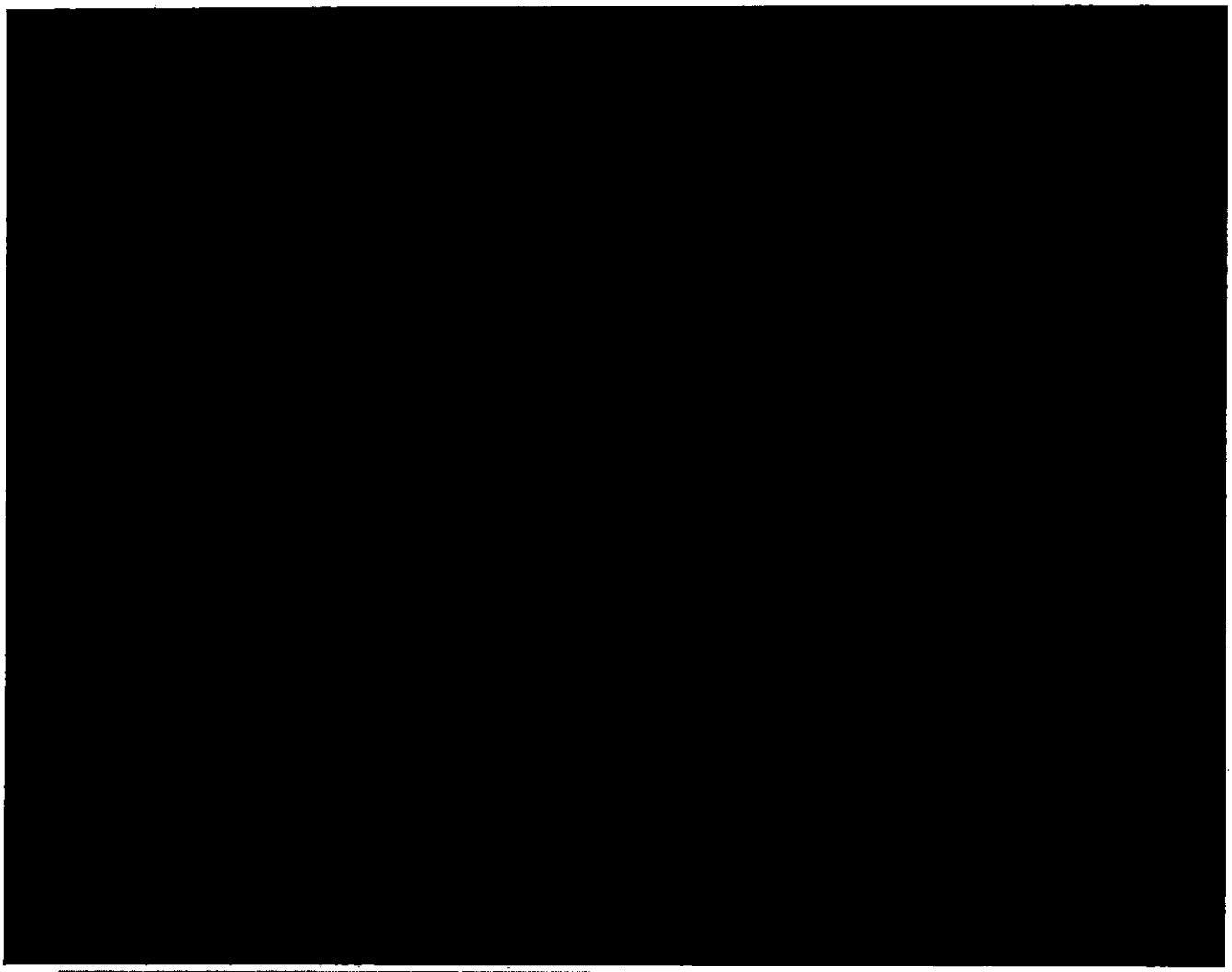
Charleston, South Carolina 29402
843-329-9500
Attorneys for Defendants Saul, LLC

EXHIBIT 4-A



From: Morgan S. Templeton
Sent: Friday, March 13, 2020 2:05 PM
To: Cory Fleming <cory@mossandkuhn.com>; Laura Robinson <lrobinson@scarolina-law.com>
Cc: Charles Blackburn <cblackburn@scarolina-law.com>
Subject: RE: Lewis, Jr., Eddie B. v. Saul, LLC and Wells Fargo Bank, NA:

Laura,

I am sorry as well to hear that. Unfortunately, I am not able to consent to a continuance of the summary judgment motion. The case is scheduled to be mediated with plaintiff on 4/2 and the case is subject to trial after 4/15. As such, I need to have the motion heard.

I wish you well for whatever your next steps take.

Morgan

Morgan S. Templeton
Attorney

Telephone: (843) 329-9500
Facsimile: (843) 329-9501

[redacted]

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From: Cory Fleming [mailto:cory@mossandkuhn.com]
Sent: Friday, March 13, 2020 1:49 PM
To: Laura Robinson <lrobinson@scarolina-law.com>
Cc: Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Charles Blackburn <cblackburn@scarolina-law.com>
Subject: Re: Lewis, Jr., Eddie B. v. Saul, LLC and Wells Fargo Bank, NA:

Laura

Sorry to hear your leaving the case. Wish you well in the future. As to the motion, I would be willing to consent to an Order allowing 30 days to respond to discovery. Obviously we have been waiting for some time now.

Thank you.

Cory Fleming
Cory@mossandkuhn.com
(843)986-6379

Please excuse the auto correct
Sent from my iPhone

On Mar 13, 2020, at 11:55 AM, Laura Robinson <lrobinson@scarolina-law.com> wrote:

EXHIBIT 4-A

Good morning Cory and Morgan,

I am resigning from Vernis & Bowling today and Charles Blackburn (copied here) will be taking over the representation of Wells Fargo. I know there is a motions hearing scheduled for Tuesday, and I am asking on Charles' behalf for your consent to continue the hearing. Charles will get up to speed as quickly as he possibly can, but he will not be prepared by Tuesday. HOPEFULLY, Charles will be able to send Cory the responses that will resolve the motion to compel and that hearing will never be necessary. But for both motions scheduled for Tuesday, will you please do Charles the professional courtesy of giving him a minute to get up to speed on the case before he has to be in front of a judge on it?

I have enjoyed working with both of you and look forward to seeing you again sometime soon!

Thank you,

Laura

Laura W. Robinson
Managing Attorney
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Click Here for my contact info

<image002.jpg>

EXHIBIT 4-B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	:	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	C.A. NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR.	)	
	)	
Plaintiff,	)	
	)	**AFFIDAVIT OF MORGAN S. TEMPLETON**
versus	)	
	)	
SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION	)	
	)	
	)	
Defendants.	)	
	)	

PERSONALLY appeared before me, Morgan S. Templeton, who being duly sworn, alleges and says as follows:

1. I am over the age of nineteen (19) and am otherwise competent to make this affidavit. I have personal knowledge of the matters set forth herein.

2. I am a member in good standing of the South Carolina bar and have been licensed to practice law since 1998.

3. I am lead counsel of record for Saul, LLC ("Saul") in the above captioned matter.

4. On March 16, 2020, at or around 2:37 p.m., I received a phone call from Charles Blackburn. Mr. Blackburn advised he was appearing on behalf of Wells Fargo Bank. According to the electronic docket, Mr. Blackburn filed a notice of appearance in this case the same day.

5. To the best of my memory and belief, Mr. Blackburn called to inquire about the hearing scheduled for March 17, 2020, regarding Saul's motion for summary judgment. During the call Mr. Blackburn informed me that he had read the motion for summary judgment, that he did not believe he had a basis to oppose the motion, and that he would not be attending the hearing on March

17, 2020. He further advised that the pending motion to compel against Wells Fargo brought by Plaintiff had been resolved by consent.

FURTHER DEPONENT SAYETH NOT.

Morgan S. Templeton

SWORN TO before me this 8th day of July, 2021.

(Seal)
Notary Public for South Carolina
My Commission Expires: December 3, 2024

SARAH JANE SCHRODETZKI
Notary Public, South Carolina
My Commission Expires
December 03, 2024

EXHIBIT 4-C

From: efiledonotreply@sccourts.org
To: David Nasrollahi
Subject: Courtesy NEF RE: 2018CP0702378
Date: Monday, March 16, 2020 3:38:31 PM

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP0702378

Official File Stamp:	03-16-2020 03:38:05 PM
Court:	CIRCUIT COURT
	Common Pleas
	Beaufort
Case Caption:	Eddie B Lewis Jr VS Saul Llc , defendant, et al
Event(s):	
	Notice/Notice of Appearance
Filed by or on behalf of:	Charles Grant Blackburn

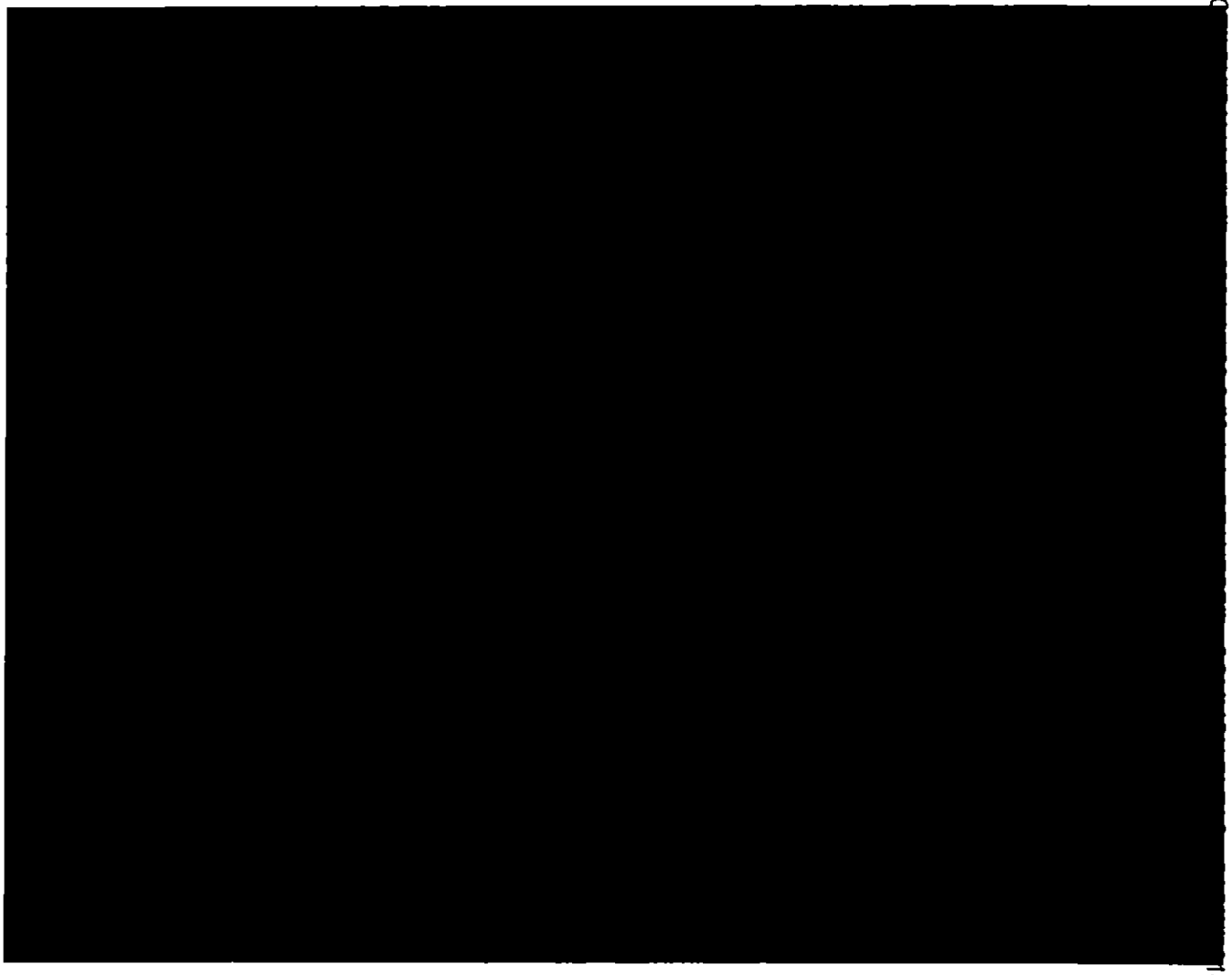
This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Morgan S. Templeton for Saul Llc
David Ali Nasrollahi for Saul Llc, Saul, Llc
Cory Howerton Fleming for Eddie B Lewis, Jr
Laura W Robinson for Wells Fargo Bank National Association, Wells Fargo Bank, National Association

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

EXHIBIT 4-D



From: Charles Blackburn <cblackburn@scarolina-law.com>
Sent: Thursday, March 26, 2020 11:44 AM
To: Tanya King <tanya@mossandkuhn.com>; Linda Smyth <Lsmyth@griffithfreeman.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>
Subject: Re: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Thank you for your email Tanya. I appreciate your consideration given my taking over this case now that Laura Robinson has resigned and Mr. Templeton's client being dismissed from this action. Realistically, a mid to late May mediation would allow me to get this case postured for a mediation and my adjuster time to get ready for a mediation.
With this said, please provide dates to mediate this case from mid May forward.
I appreciate your consideration and look forward to working with you to resolve this claim.
Thank you.
Charles Blackburn

Get Outlook for iOS

From: Tanya King <tanya@mossandkuhn.com>
Sent: Thursday, March 26, 2020 11:28:02 AM
To: Linda Smyth <Lsmyth@griffithfreeman.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; Charles Blackburn <cblackburn@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Linda:

Please be advised that the above mediation that you are holding for April 2nd needs to be cancelled. Mr. Templeton will no longer be needing to be at the mediation (Order Granting Defendant's Saul, LLC's Motion for Summary Judgment was signed and filed on 3/24/2020) of this case and Mrs. Robinson is no longer with the firm who represents Wells Fargo. Wells Fargo is now represented by Charles Blackburn who I have cc'ed on this email.

With this being said, can you please possible send us some dates for mediation towards the end of April –first part of May so that Mr. Blackburn and Mr. Fleming's offices can get together on a date?

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373
843-379-3381 direct dial
843-379-1322 fax

immediately notify us by telephone or by return e-mail, and **destroy** any copies (electronic, paper, or otherwise) that you may have of this communication.

From: Linda Smyth [mailto:Lsmyth@griffithfreeman.com]
Sent: Monday, March 02, 2020 5:16 PM
To: Tanya King; Morgan S. Templeton; Mitch Griffith
Cc: Cory Fleming; 'Laura Robinson'; jreese@scarolina-law.com; Linda Smyth
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Tanya –

This is to confirm that we are still holding April 2, 2020 for this mediation by Mitch Griffith.

Linda Smyth
600 Monson Street (29902)
PO Drawer 570
Beaufort, SC 29901
843-521-4242
843-521-4247 (fax)
lsmyth@griffithfreeman.com

From: Tanya King <tanya@mossandkuhn.com>
Sent: Monday, March 2, 2020 4:11 PM
To: Linda Smyth <Lsmyth@griffithfreeman.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>; jreese@scarolina-law.com
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Linda:

Please allow this email to confirm mediation for April 2 for the above matter. We are still waiting to confirm this date from Mrs. Robinson but we do not want to lose the date with Mr. Griffith.

Mrs. Robinson, please advise ASAP.

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373
843-379-3381 direct dial
843-379-1322 fax

From: Linda Smyth [mailto:Lsmyth@griffithfreeman.com]
Sent: Friday, February 21, 2020 2:56 PM
To: Tanya King; Morgan S. Templeton; Mitch Griffith
Cc: Cory Fleming; 'Laura Robinson'; Linda Smyth
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

All –

We are holding April 2, 2020 on Mitch Griffith's calendar for this mediation.

EXHIBIT 4-D

Linda Smyth
600 Monson Street (29902)
PO Drawer 570
Beaufort, SC 29901
843-521-4242
843-521-4247 (fax)
lsmyth@griffithfreeman.com

From: Tanya.King <tanya@mossandkuhn.com>
Sent: Friday, February 21, 2020 2:45 PM
To: Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; Linda Smyth <Lsmyth@griffithfreeman.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Mr. Templeton:

I am waiting to hear on the availability of Mrs. Robinson for April 2, 2020. For all others, April 2, 2020 is good.

Mrs. Robinson,

Please advise is April 2, 2020 is good with your schedule.

Thank you kindly,

Tanya King
Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373

843-379-3381 direct dial
843-379-1322 fax

From: Morgan S. Templeton [mailto:Morgan.Templeton@WallTempleton.com]
Sent: Friday, February 21, 2020 2:28 PM
To: 'Linda Smyth'; 'Mitch Griffith'; Tanya King
Cc: Cory Fleming; 'Laura Robinson'
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Have we been able to confirm this mediation?

Morgan S. Templeton
Attorney

Telephone: (843) 329-9500
Facsimile: (843) 329-9501

Wall Templeton
ATTORNEYS

Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402
www.WallTempleton.com

From: Morgan S. Templeton
Sent: Tuesday, February 18, 2020 1:01 PM
To: Linda Smyth <Lsmyth@griffithfreeman.com>; Mitch Griffith <Mgriffith@griffithfreeman.com>;

Tanya King <tanya@mossandkuhn.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Saul has no objection.

Morgan S. Templeton
Attorney

Telephone: (843) 329-9500
Facsimile: (843) 329-9501

Wall Templeton & Haldrup, P.A.
145 King Street, Suite 300 (29401)
Post Office Box 1200
Charleston, South Carolina 29402
www.WallTempleton.com

From: Linda Smyth [mailto:Lsmyth@griffithfreeman.com]
Sent: Tuesday, February 18, 2020 12:50 PM
To: Mitch Griffith <Mgriffith@griffithfreeman.com>; Tanya King <tanya@mossandkuhn.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; Morgan S. Templeton <Morgan.Templeton@WallTempleton.com>; 'Laura Robinson' <lrobinson@scarolina-law.com>; Linda Smyth <Lsmyth@griffithfreeman.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

That is correct, April 2, 2020 is available.

Also, our conflict search revealed that Mary Sharp, who has since left our firm, represented a Wells Fargo entity in several cases, and also represented a defendant in a matter in which Wells Fargo Bank, NA was the Plaintiff. However, Mr. Griffith was not involved in any of those matters. The search also revealed that Mr. Griffith was involved in a matter in which a Wells Fargo entity was a Defendant. However, we closed our file on that matter in 2011, which is outside the limit of our retention of file records and therefore we do not have

any further information regarding that case. Mr. Griffith is not currently involved in any matter in which Wells Fargo is a party. This is meant for disclosure purposes only and is not an attempt by Mr. Griffith to avoid serving as your mediator.

We request that each party respond to this email, acknowledging this disclosure and advising if any party has an objection to Mr. Griffith serving as you mediator.

Please let us know if you have any questions.

Linda Smyth
600 Monson Street (29902)
PO Drawer 570
Beaufort, SC 29901
843-521-4242
843-521-4247 (fax)
lsmyth@griffithfreeman.com

From: Mitch Griffith <Mgriffith@griffithfreeman.com>
Sent: Tuesday, February 18, 2020 12:28 PM
To: Tanya King <tanya@mossandkuhn.com>; Linda Smyth <Lsmyth@griffithfreeman.com>
Cc: Cory Fleming <cory@mossandkuhn.com>; morgan.templeton@walltempleton.com; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: RE: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Unless Linda corrects me I have 4/2 available. Mitch

E. Mitchell Griffith

EXHIBIT 4-D

From: Tanya King <tanya@mossandkuhn.com>
Sent: Tuesday, February 18, 2020 12:17 PM
To: Linda Smyth <Lsmyth@griffithfreeman.com>
Cc: Mitch Griffith <Mgriffith@griffithfreeman.com>; Cory Fleming <cory@mossandkuhn.com>; morgan.templeton@walltempleton.com; 'Laura Robinson' <lrobinson@scarolina-law.com>
Subject: Mediation dates availability for Eddie Lewis Jr., vs. Saul LLC and WElls Fargo

Linda:

Good afternoon. Would by chance Mr. Griffith have any of the four dates available for mediation: 3/25, 3/26, 3/30 and 4/2? Please advise as soon as possible.

Thank you kindly,

Tanya King

Paralegal to
Cory H. Fleming

P O Drawer 507 (mailing)
1501 North Street
Beaufort, South Carolina 29901
843-524-3373
843-379-3381 direct dial
843-379-1322 fax

EXHIBIT 5

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT EDDIE B. LEWIS., Plaintiff, vs. 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 **Defendant Saul, LLC's Memorandum in Reply Opposing Wells Fargo Bank, NA's Memorandum of Law in Support of its Motion for To Set Aside Judgement**

Defendant, Saul, LLC ("Saul"), by and through its undersigned attorneys, hereby submits the following reply to Defendant Wells Fargo, NA's ("Wells Fargo") Memorandum of law in support of its Rule 60, SCRCP, Motion. Saul hereby fully incorporates by reference its Memorandum in Response to Wells Fargo's Motion to Set Aside and also Plaintiff Eddie B. Lewis' ("Plaintiff") Memorandum in Response to Defendant Wells Fargo Bank, NA's Motion to Set Aside Judgment. For the reasons set forth below, and as set forth in the aforementioned pleadings, this Court should deny Wells Fargo's motion.

INTRODUCTION

The sole motion before this Honorable Court is one made pursuant to Rule 60, SCRCP, -- not Rules 56 or 59. Wells Fargo's motion seeks to impugn Saul for obtaining summary judgment by arguing it made misrepresentations to the Court. In doing so, Wells Fargo wants this Court to accept Wells Fargo's revisionist history to justify its request to set aside an Order that was properly entered. Despite Wells Fargo's assertions to the contrary, every document, affidavit, argument, and pleading submitted by Saul to this Court was equally provided to Wells Fargo in advance of the Court hearing the motion for summary judgment. Instead of responding in a timely fashion to

Saul's arguments, or even appearing at the hearing to oppose the motion, Wells Fargo waited until now to accuse Saul of wrongdoing. Wells Fargo wants this Court to ignore Wells Fargo's own culpable conduct. Wells Fargo offers no evidence, explanation, or excuse to justify why it consistently and repeatedly failed to appear, argue, or even articulate their position in this matter when it was appropriate to do so. Even this motion was not properly or timely presented and still fails to present the clear and convincing evidence required by Rule 60, SCRCP, to support their position. As this Court is being asked to review what Saul submitted in this matter, it is critical that this Court scrutinize the relevant and undisputed procedural history of this matter to determine if Wells Fargo is entitled to the equitable relief it seeks. Saul has done nothing improper and Wells Fargo is not entitled to any relief.[1]

RELEVANT PROCEDURAL HISTORY

On December 5, 2018, Plaintiff filed a Complaint against Defendants Saul and Wells Fargo based on theories of negligence and premises liability. Plaintiff then filed an Amended Complaint on January 1, 2019. On January 17, 2019, Saul filed its Answer to the Plaintiff's Amended Complaint. Wells Fargo has never filed any cross-claim against Saul.

Saul moved for summary judgment ("Motion") on January 20, 2020, based on the terms of the Lease. (See Mot. for Summ. J., filed Jan. 20, 2020.) The Motion contained multiple exhibits and fully set forth Saul's argument in the case. Attached to this Motion as an exhibit was a full and complete copy of the Lease. (Id., at Ex. A.).

Fifty-Seven days later, on March 17, 2020, the Honorable Judge Deadra Jefferson heard arguments on the Motion. This was not a consent motion. It was a contested motion. Counsel for

[1] No argument or affidavit is presented suggesting that counsel for Saul did anything improper.

the Plaintiff and Saul were present for this hearing; however, ***counsel for Wells Fargo failed to appear***. Wells Fargo's, then counsel, received notice of the hearing. Counsel asked for consent to continue the motion, but the undersigned did not agree. Wells Fargo failed to file a Motion for Continuance.[1]

Furthermore, the undersigned (Morgan S. Templeton) received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020, in which he advised that he would be appearing on behalf of Wells Fargo but would not be appearing at the hearing. See Exhibit 9. (Affidavit of Morgan S. Templeton). During this call, Mr. Blackburn informed the undersigned that he had read the motion for summary judgment, that he did not believe he had a basis to oppose the motion, and that he would not be attending the hearing on the Motion. Id. As explained in Plaintiff's Memorandum, on March 17, 2020, counsel for Wells Fargo also informed Plaintiff's Counsel that he was not going to attend the hearing on the Motion. (See Pl. Memorandum in Resp. at pg. 2-3.). Additionally, the fact that counsel for Wells Fargo indicated he was not going to attend the hearing was relayed onto this Court. (See Pl. Memorandum in Resp. at pg. 3.). Despite having fifty-seven days' notice of the Motion, Wells Fargo failed to file any responsive Memorandums to Saul's Motion. The Court heard arguments and granted the Motion.

On March 18, 2020, Saul submitted its proposed Order to the Court, which a Notice of Electronic file was sent to all parties of record as instructed by the Court.[2]

---

[1] Counsel for Wells Fargo emailed Saul requesting a continuance of the hearing on March 13, 2021; however, Saul declined to consent on March 13, 202 as mediation was scheduled on April 2, 2020 and the matter was subject to trial after April 15, 2020. See Exhibit 3 (Email from Morgan Templeton on March 13, 2020).

[2] It should be noted that Charles Grant Blackburn filed a Notice of Appearance on March 16, 2020 (See Exhibit 4. NEF of Notice of Appearance) and was served electronically with a copy of the Proposed Order Granting Saul's Motion for Summary Judgment. See Exhibit 5. (NEF of Proposed Order March 18, 2020).

On March 24, 2020, this Court, after careful consideration of the record, granted Saul's Motion as to the claims brought by the Plaintiff. (Order Granting Summ. J., filed Mar. 24, 2020.) Indeed, this Court made multiple changes (a total of approximately 15) to the proposed Order before signing it. (See and compare Exhibits 1 and 2).[3] Neither the Plaintiff nor Wells Fargo filed a Motion to Reconsider. Neither party appealed this Court's Order.

On March 26, 2020, counsel for Wells Fargo, Charles Blackburn, emailed regarding Saul's dismissal from this matter and expressed no concern with Saul's dismissal. See Exhibit 6 (Email from Charles Blackburn on March 26, 2020).

On March 19, 2021, Three-Hundred and Sixty (360) days later, Wells Fargo filed a five paragraph Motion to Set Aside Judgment pursuant to Rule 60, SCRP, which failed to include any supporting documents or cite to any case law, nor any affidavits in support of the motion as contemplated by Rule 6, SCRCP. Not until after Four-Hundred and Sixty-Nine (469) days had passed, on July 6, 2021, did Wells Fargo submit its support for this motion, which is well after the one-year time period for a Rule 60 motion.

SUMMARY OF THE ARGUMENT

[3] A side-by-side review of Saul's Proposed Order and this Court's Order highlights the edits and revisions made by this Honorable Court prior to entering the Order. The Court made a total of fifteen (15) changes/revisions to Saul's Proposed Order. Theses revisions included the following: 1) a Header was added, which included six additional lines; 2) The opening paragraph was completely changed; 3) a Footnote was added; 4) the words "**Applicable Law**" was struck; 5) The **Finding of Facts** section was moved to the front of the Order; 6) The first line of the Find of Facts section of the Proposed Order was struck; 7) the numbering of the paragraphs in the **Findings of Facts** section were struck; 8) throughout the Order the introductory signals were struck by Judge Jefferson; 8) the words "This Court makes the following conclusions of law" were struck; 9) The applicable legal standards sections were moved under the **Conclusions of Law**; 10) the numbering of the paragraphs in the **Conclusions of Law** section was struck; 11) The Summary Judgment Standard was completely revised which consisted of two paragraphs; 12) Additions to the citations under the Premises Liability Standard, which consisted of seven additions of the South Carolina Reporter citations; 13) A clerical edit was made on page 5 of the Order, which consisted in the addition of the word "Further;" 14) A conclusory sentence and paragraph was added which accounted for five additional sentences; and finally 15) the **Order** section was struck by the Court.

Wells Fargo's Motion to Set Aside Judgment should be denied because a) Wells Fargo's failed to preserve and argue their position against Summary Judgment; b) Wells Fargo's Memorandum of Law in Support contains numerous misstatements and incorrect statements which evidence it's lack of candor with the Court; c) the appropriate standard of review is under Rule 60, SCRCP, and not a reargument of the Motion for Summary Judgment; d) Wells Fargo has failed to present any newly discovered evidence to support its Rule 60 Motion; e) there has been no fraud on the part of Saul; and f) Wells Fargo's has not come to court with clean hands and is not entitled to equitable relief under Rule 60 and its actions are designed to create a burden shifting argument all of which are designed to deprive Saul of its due process rights.

i. Wells Fargo's Memorandum of Law is full of errors, misstatements, and incorrect statements.

Despite Wells Fargo's inflammatory accusations that Saul committed "half-truths" and blatant "lack of candor to the Court," Wells Fargo's very own Memorandum of Law is rife with errors and misstatements.

a. Wells Fargo's accusation that the Court was not provided with critical Lease provisions is false as clearly evidenced by the record.

Wells Fargo states "[a]nother critical lease provision, which was not provided to the Court at the summary judgment motion hearing, actually defines the common areas. *See, Exhibit E-Lease Common Areas Definition.*" Saul attached the full and complete lease to its Motion as Exhibit A, **which did include Wells Fargo's Exhibit E.** It is clear from the record that the full lease was provided to the Court. This false accusation made by Wells Fargo, ironically, encapsulates Wells Fargo's lack of candor to the Court.

b. Saul did not mishmash quotes from different sections of the Lease.

Next, Wells Fargo misstates the following:

It must be noted that the "Repairs by Landlord" provision of the lease is actually partially quoted in the proposed subject Order (presented by Saul to the Court). However, closer scrutiny of the language of the Order and a comparison to the lease language reveals the Order is actually confusing mishmash of quotes from different sections of the lease. *See, Exhibit D-Lease, Repairs by Tenant.*

Saul's Proposed Order cites directly to the Lease by stating the following:

> 2. 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 . . . ." See 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 . . . .
>
> See id. at § 5.6(a).

The Court's Final Order states as follows:

> 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, which is Exhibit A to the Motion, states:

> 5.5 Repairs by Landlord
>
> **(a) Landlord shall keep and maintain, and make all needed repairs to, the Base Building and the Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings (any such maintenance and/or repairs for which Landlord is responsible being herein collectively called "Landlord Repairs").**

. . .

5.6 Repairs by Tenant

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

As can be seen there was no "confusing mishmash of quotes from different sections of the lease." Saul clearly used punctuation marks commonly known as "ellipsis" to indicate that there were intentional omissions of a word, sentence, or section which did not alter the text or original meaning. Just so it is clear Saul, by using an ellipsis, left out the following from Section 5.5 and 5.6 of the Lease which are highlighted in bold:

> "**Landlord** shall keep and maintain, and make all needed repairs to, the **Base Building and the** Common Areas in good condition and repair in accordance with the standards generally applicable with respect to Comparable Buildings **(any such maintenance and/or repairs which Landlord is responsible being herein collectively called "Landlord Repairs").**"
>
> 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 **(any such maintenance and/or repairs for which Tenant is responsible being herein collectively called "Tenant Repairs").**

None of the information which was intentionally omitted from these sections in the lease actually confuse or mishmash different sections of the Lease. Saul directly quoted and cited to the very exhibit which Wells Fargo has now attached as an Exhibit to its Memorandum of Law. Notwithstanding this, the *entire* Lease was made an Exhibit to Saul's Motion, which in total make up One-Hundred and Seventy-Seven pages. Wells Fargo states that Saul has cherry picked or combined different portions of different lease provisions is simply incorrect. Saul intentionally chose the sections of the Lease that were applicable to its argument, and still included the entire

lease as an exhibit to its Motion. It is simply impracticable and downright ridiculous to assert that Saul should have quoted the entire One-Hundred and Seventy-Seven pages of the Lease to the Court, which would have been irrelevant and a complete waste of time. Again, had Wells Fargo felt the Lease was improperly quoted or cited, it could have appeared in court and argued this point. It did not.

c. Wells Fargo's contention that the Plaintiff testified exactly where he fell is a misstatement of the facts

Wells Fargo asserts that Saul ignored the Plaintiff's sworn testimony about the exact location of the fall. Wells Fargo relays onto this Honorable Court that the location of the fall was a sidewalk. Once again, this is a misstatement of the facts that were known at the time of the hearing.[4] After a full and reasonable review of the deposition transcript of the Plaintiff's deposition it is clear that the location of the Plaintiff's fall is nothing but unconfirmed, other than being in the Tenant-Dedicated Parking Area. To be clear the Plaintiff's deposition transcript establishes that the Plaintiff does not know whether he fell on the sidewalk or the asphalt.

The Plaintiff was given a "map" of the subject area and was asked to mark in red pen where he fell. See Exhibit 7. (Dep. of Eddie B. Lewis 28:12-20.) The Plaintiff clearly marks in red pen an "X" which is in the Tenant-Dedicated Parking Area. See Exhibit 8. Next, the Plaintiff went on to assert that he was walking on the sidewalk by the planters while leaving Wells Fargo. Id. at 29:23-25 - 30:1-21. Finally, and most importantly, the Plaintiff went on to state the following:

> 16 Q. For purposes of the transcript, what I think
> 17 you just indicated was that you think you, more than
> 18 likely, fell on the sidewalk area as opposed to the
> 19 asphalt on the parking lot?
> 20 A. I said when I started down, I probably

[4] Since being granted Summary Judgment, Saul has not participated in discovery. Further, Wells Fargo's Memorandum of Law fails to include any supporting documents related to this assertion.

21 fell -- when I went down, I probably hit -- it's
22 hard to say. I don't even remember if there was a
23 car there. **I don't remember that. The only thing I**
24 **remember is I fell down. That's the only thing I**
25 **can tell you.** And I remember putting my hand down

---

1 to stop my fall. It kind of dazed me a minute, and
2 this woman had her hand on my back and told me not
3 to move.

Id. at 85:16-25 - 86:1-3. (emphasis added). As shown by the Plaintiff's very own deposition transcript, Wells Fargo's assertion that the location of the Plaintiff's fall on a sidewalk is confirmed through discovery is a misstatement, misleading, and lacks candor with this Court.

Despite Wells Fargo attempting to mislead this Court by stating it is undisputed where the Plaintiff fell, which as show is clearly incorrect, the sidewalk area is located in an area that was in complete control of Wells Fargo. The Lease states:

> "Parking Areas" shall mean the parking areas and facilities for the Property as indicated on Exhibit A-1 hereto, together with (i) any walkways, driveways and other passageways upon the Land providing ingress and egress between such areas and facilities and the Building and/or between such areas and facilities and the Building...."

See Exhibit A to Motion: page 16. Pursuant to Section 1.2 of the Lease, Saul leased the subject property to Wells Fargo 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. Id. at pg. 23- 24 (emphasis added). Additionally, attached as Exhibit C to the Motion, 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 to Motion. Further, the email states that "[t]hese parking areas are not common area under the Lease." Id. Once again, reading the Lease as a whole and in light of Rich

Belthoff's emails, it is clear that the walkways and other passageways in the Tenant-Dedicated Parking Area are included and under the exclusive control of Wells Fargo. Furthermore, the Belthoff emails are an admission by Wells Fargo as to control of the property and, of course, no evidence refuting that statement has been presented to the Court.

Finally, and as explained in Saul's Motion, 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 to Motion. 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.

d. Wells Fargo's assertion that Judge Jefferson's Order is not binding on it is a gross misstatement of the law of South Carolina.

Wells Fargo, without any legal citations or support, concludes Judge Jefferson's Order regarding its finding of facts and conclusion of law is not binding on Wells Fargo. "The written order is the trial judge's final order and as such constitutes the final judgment of the court." Ford v. State Ethics Com'n, 344 S.C. 643, 646, 545 S.E.2d 821, 823 (2001). Rule 60 explicitly provides that "[a] motion under this subdivision (b) *does not affect the finality of a judgment or suspend its operation*." S.C.R.C.P. Rule 60(b). (emphasis added). South Carolina Courts have long held that that an Order not appealed from is binding on all parties before the Court and constitutes the law of the case. See Walker v. Hannon, 191 S.C. 14, 3 S.E.2d 243, 245 (1939).

Taking into consideration the assertions made by Wells Fargo that Saul has lacked candor with the Court, it is clearly shown that it is truly Wells Fargo who has misrepresented the facts and law in this case.

ii. The only appropriate standard of review is pursuant to Rule 60, SCRCP

The only matter before this Court is the Motion under Rule 60, SCRCP, and not a Motion for Summary Judgment or Motion to Reconsider. Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. Rouvet v. Rouvet, 388 S.C. 301, 696 S.E.2d 204, 208 (Ct. App. 2010). The party requesting relief in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief. See BB&T v. Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

a. Wells Fargo's argument regarding misrepresentation does not reach anywhere near the difficult standards under Rule 60, SCRCP

The record unequivocally evidences a complete and utter failure by Wells Fargo to raise any argument at the appropriate time on Saul's Motion. The overwhelming majority of Wells Fargo's arguments in its Memorandum of Law in Support of its Motion rely on information and documents which were available to Wells Fargo at the time of the hearing, without any explanation as to why they were not raised at the time of the hearing. In fact, and most telling, the Wells Fargo memorandum simply states: "...for reasons unknown, Mr. Blackburn, did not attend the hearing on March 17, 2020, and did not file a response to the Order after it was entered." According to Plaintiff's Memorandum in Response, on the day of the hearing for the Motion for Summary Judgment, counsel for Wells Fargo informed Plaintiff's Counsel that he was not going to attend the hearing. (See Pl. Memorandum in Resp. pg. 2-3.) Further, the fact that counsel for Wells Fargo

indicated he was not going to attend the hearing was relayed onto this Court. (Id. at pg. 3.) Furthermore, the undersigned (Morgan S. Templeton) received a phone call from Mr. Blackburn at or around 2:37 p.m. on March 16, 2020, in which he advised that he would be appearing on behalf of Wells Fargo. See Exhibit 9. (Affidavit of Morgan S. Templeton). The following day, on March 17, 2021, Mr. Blackburn called the undersigned to inquire about the hearing. Id. During this call, Mr. Blackburn informed the undersigned that he had read the motion for summary judgment, that he did not believe he had a basis to oppose the motion, and that he would not be attending the hearing on the Motion. Id.

Rule 60(b), SCRCP, provides that a motion pursuant to this rule be made within a reasonable time. As shown above, Wells Fargo waited Three-Hundred and Sixty days since the Court's Order was entered to first raise its Motion pursuant to Rule 60(b), SCRCP. **Nowhere in the record is there any explanation for this delay.** Wells Fargo has not provided a single argument as to why there has been such a delay to the filing of its Motion to Set Aside or Memorandum of Law in Support. Wells Fargo's Memorandum of Law in Support details the following "arguments" regarding information that was known at the time of the hearing, namely:

1. Issues relating to Esther S. Harnett's Affidavit, which was filed as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020;

2. Issues relating to the terms of the Lease, which was filed as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020;

3. Issues relating to the Deposition of Plaintiff Eddie B. Lewis, which took place on November 14, 2019, and was available to Wells Fargo; and

4. Issues relating to the emails sent by Rich Belthoff, which was made as an exhibit to Saul's Motion on January 20, 2020, and was available at the hearing on March 17, 2020.

A majority of the arguments set forth by Wells Fargo relate entirely to documents and affidavits which were available at the time of the hearing. It is undisputed that despite having counsel of record, Wells Fargo neglected to make even the most basic argument against Saul's Motion. Now, in the context of a Rule 60(b) Motion to Set Aside, Wells Fargo is attempting to take its second bite of the proverbial apple, even though it ignored its first opportunity. The appropriate approach would have been to address these concerns *at the time of the hearing.* To allow Wells Fargo to now bring its arguments regarding a Motion for Summary Judgment that was heard on March 17, 2020, stands for the proposition that litigation has no end, counsel and clients who do nothing in response to a properly failed motion and who later determine they are dissatisfied with the outcome can come back to Court and hit "reset" flies in the face of the notion of time deadlines/limitations. As has been stated by another court, "[i]f procrastination is the thief of time, as the philosophers moralize, it is also the pillager and despoiler of rights, privileges and prerogatives." Gloeckner v. School Dist. of Baldwin, 175 A.2d 73, 76 (Pa. 1961).

Wells Fargo sat on its hands for an unreasonable amount of time and now come to this Court in an improper attempt suggest impropriety on the part of Saul, so as to reargue Summary Judgment because they are now dissatisfied with the result. Wells Fargo's Motion to Set Aside Judgment should be denied.

iii. The record lacks any newly discovered evidence.

A trial court may relieve a party from a final judgment, order, or proceeding if "newly discovered evidence which by due diligence could not have been discovered in time to move from a new trial under Rule 59(b)" is presented to the trial court. Rule 60(b)(2), SCRCP. Trial courts are empowered to grant a new trial if a party establishes the newly discovered evidence (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3)

could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. See Morin v. Innegrity, LLC, 424 S.C. 559, 819 S.E.2d 131 (Ct. App. 2018). Evidence is not "newly discovered" if it is known to the party at trial and in the party's possession. Lanier v. Lanier, 364 S.C. 211, 218, 612 S.E.2d 456, 459 (Ct. App. 2005).

Wells Fargo submits its "newly discovered evidence" as affidavits from Ervin H. Weatherly and Gerald Scott Wooten, both employees of Wells Fargo. The overwhelming majority of the information contained in these newly discovered Affidavits concern information relating to issues with the Lease, Esther S. Harnett's Affidavit, and the Belthoff emails, all of which were available to Wells Fargo at the time of the hearing. There is no explanation in either Affidavits, regarding these issues, which explain why this information was not known to the party at the time of the hearing on the Motion in 2020. Further the record supports the fact that the Lease, Esther S. Harnett's Affidavit, and the Belthoff emails were filed on January 20, 2020 and were available to Wells Fargo. As such, the record establishes that the majority of the arguments presented in these Affidavits were known to the parties, i.e. Wells Fargo, at the time of the hearing and were in Wells Fargo's possession as they were filed with the Court.

Nevertheless, Saul will break down the two affidavits in order to show they should not be considered newly discovered evidence:

a. Affidavit of Gerald Scott Wooten is not newly discovered evidence.

Mr. Wooten's affidavit states that a) he has personal knowledge of the lease and disagrees with Esther Harnett's affidavit; and b) he has issues relating to matters that occurred on April 25, 2018, including the Belthoff emails.

First, Mr. Wooten's affidavit violates the Parole Evidence Rule. The parole evidence rule states that a valid written contract, which is complete, and the terms of which are not ambiguous,

cannot be contradicted, added to, altered, or varied by extrinsic evidence. Garnett v. WRP Enterprises, Inc., 380 S.C. 206, 669 S.E.2d 591 (2008). The full and unambiguous Lease was provided to this Court at the time of the filing of the Motion and at the hearing. Nothing in Mr. Wooten's affidavit will change the result if a new hearing is granted as his affidavit cannot be used to interpret the terms of the Lease. Indeed, Wells Fargo does not even argue ambiguity.

Second, Mr. Wooten's affidavit concerns issues that were known or should have been known to Wells Fargo prior to the date of the hearing. Despite Wells Fargo obtaining the Affidavit on April 21, 2021, and of course, only presenting it to the Court on July 6, 2021, which is 109 days after filing the instant motion, there remains no evidence or testimony from anyone as to why this was not discovered before. In fact, nowhere in Wells Fargo's Memorandum of Law or supporting Affidavits does it explain why Mr. Wooten's Affidavit was not available prior to the hearing.

Third, Mr. Wooten's affidavit is simply cumulative and impeachment testimony. The Court was presented with the entire lease. Mr. Wooten's Affidavit is simply that he disagrees with Ms. Harnett's affidavit, which was filed on January 20, 2020. This could have been presented in 2020 prior to the hearing. It was not. Nothing in Mr. Wooten's affidavit changes the terms of the lease. Mr. Wooten's Affidavit is not newly discovered and Wells Fargo's Motion to Set Aside should be denied.

b. Affidavit of Ervin H. Weatherly is not newly discovered evidence.

Weatherly's affidavit states that a) he has personal knowledge of the lease and disagrees with Esther Harnett's affidavit; b) arguments relating to his interpretation regarding an alleged interaction with Esther Harnett on February 22, 2021; and c) issues relating to matters that occurred on April 25, 2018, including the Belthoff emails.

First, and once again, Mr. Weatherly's affidavit violates the Parole Evidence Rule for the same reasons set forth above with Mr. Wooten's affidavit. Any sworn statements by Mr. Weatherly in his Affidavit regarding the lease violates the parole evidence rule. The full and unambiguous Lease has been provided to this Honorable Court at the time of the filing of the Motion and at the hearing. Nothing in Mr. Weatherly's affidavit will change the result if a new hearing is granted as his affidavit cannot be used to interpret the terms of the Lease.

Second, Mr. Weatherly's Affidavit concerns matters that were known or should have been known to Wells Fargo prior to the date of the hearing: i.e. the Belthoff emails. As already explained, these emails were made an exhibit to the Motion at the time of filing and were available to Wells Fargo at the time of the hearing. Any argument that the Belthoff emails were misrepresented by Saul should have been made at the time of the hearing. Additionally, Mr. Weatherly's Affidavit contains a self-serving conclusory assertion that Ms. Harnett was bragging that "she misrepresented the content of the Belthoff letters, the lease provisions, and the facts of her sworn affidavit". Other than the alleged statements that "she was able to use the Belthoff 'nasty letters' against Wells Fargo," the Affidavit fails to explain how/why this statement is a misrepresentation. Indeed, Saul did rely on the Belthoff email and presented it to the Court. The Belthoff emails unequivocally takes the position that the parking area is Wells Fargo's dominion and under its control. Regardless, the Belthoff emails were filed with Saul's Motion on January 20, 2020 and were available to Wells Fargo on March 17, 2020.

Third, Mr. Weatherly's affidavit is simply an effort to create an issue of fact to revisit summary judgment. The Court was presented with the entire lease, the Belthoff emails, and the Affidavit of Esther S. Harnett. Wells Fargo received them as well and did nothing. Mr. Weatherly's Affidavit is simply an attempt to create a material issue of fact under the guise of a

Rule 60(b) Motion. All that is being attempted is an effort to impeach Ms. Harnett. Nothing in Mr. Weatherly's affidavit changes the terms of the lease, nor does it demonstrate that this Court's prior conclusion was incorrect. Mr. Weatherly's Affidavit is not newly discovered and Wells Fargo's Motion to Set Aside should be denied.

iv. There has been no fraud on the part of Saul as Wells Fargo failed to appear and argue at the appropriate time and thus has not established their inability to counter the arguments and supporting documents submitted by Saul

A claim of fraud upon the court, as a ground for relief from judgment, requires proof by clear and convincing evidence. Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). A party may not prevail on a motion for relief of judgment on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations ***at the time of the alleged misconduct.*** Raby Const., L.L.P. V. Orr, 358 S.C.10, 594 S.E.2d 478 (2004) (emphasis added). A judgment may be set aside on the ground of fraud only if the fraud is "extrinsic" and not "intrinsic." See Corley v. Centinnial Const. Co., 247 S.C. 179, 188, 146 S.E.2d 609, 613-14 (1966). The Corley Court stated that:

> 'Equitable relief from a judgment is denied in cases of intrinsic fraud, on the theory that an issue which has been tried and passed upon in the original action should not be retried in an action for equitable relief against the judgment, and that otherwise litigation would be interminable; relief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action.'

Id. The essential distinction between intrinsic and extrinsic fraud for purposes of relief from judgment is the ability to discover the fraud. See Ray v. Ray, 474 S.C. 79, 647 S.E.2d 237 (2007).

a. Wells Fargo failed to raise the arguments at the time of the hearing and cannot as a matter of law claim extrinsic fraud upon the Court at this time

Wells Fargo's motion fails to identify by clear and convincing evidence of extrinsic fraud upon the Court. Virtually all of the arguments set forth by Wells Fargo relate to arguments made by Saul in its Motion for Summary Judgment, which could have been presented by Wells Fargo then. All of the materials presented by Saul were made available to Wells Fargo prior to the hearing on Saul's Motion for Summary Judgment. Saul did not hide any of its evidence or information. Nowhere in Wells Fargo's Motion to Set Aside or Memorandum of Law in Support is there any reason given as to why Wells Fargo failed to file a responsive memorandum, appear at the hearing, file a motion to reconsider, or appeal this Court's Order.

A party may not prevail on a motion for relief of judgment on the basis of fraud where he or she has access to disputed information or has knowledge of inaccuracies in an opponent's representations ***at the time of the alleged misconduct.*** Raby Const., L.L.P. V. Orr, 358 S.C.10, 594 S.E.2d 478 (2004). (emphasis added). Wells Fargo's baseless arguments that a fraud was committed upon the Court is entirely based on information and supporting documents that were available to Wells Fargo at the time of the alleged misconduct. See Id. Wells Fargo's Motion to Set Aside based on arguments related to fraud upon the Court should be denied.

b. There has been no showing of extrinsic fraud in this matter

Wells Fargo asserts that Esther S. Harnett bragged about misrepresenting the contents of the Belthoff emails, the lease provisions, and the facts of her sworn testimony. Saul's Motion for Summary Judgment which was supported by the lease, the Belthoff emails, and the Affidavit of Esther S. Harnett were filed on January 20, 2020. Nowhere has it been explained or even argued that Wells Fargo was unable to discover the alleged fraud that was committed by Saul. As such, there is no extrinsic fraud in this matter. See Ray v. Ray, 474 S.C. 79, 647 S.E.2d 237 (2007). Statements made by Esther S. Harnett regarding Saul's dismissal after the fact based on exhibits

and arguments that were available to Wells Fargo at the time of the hearing is not extrinsic fraud. Wells Fargo has the burden of proof to establish a claim of fraud upon the court, as a ground for relief from judgment, by clear and convincing evidence. See Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). The record is devoid of any argument, documents, or information that explains how or why Wells Fargo could not have discovered the alleged fraud at the time of the hearing. Wells Fargo failed to appear or argue its position at the time of the hearing. Wells Fargo has failed to prove by clear and convincing evidence that extrinsic fraud was committed. See Id.

v. Wells Fargo has not come to Court with clean hands and has attempted to shift the burden of proof in deprivation of Saul's due process rights

Movant seeking relief from judgment has the burden of presenting evidence proving facts essential to entitle relief. Sanders v. Smith, 431 S.C. 605, 848 S.E.2d 604 (Ct. App. 2020). Wells Fargo filed its Motion on March 19, 2021, which asserts that it will be supported with "sworn Affidavits of Wells Fargo representatives, and a Memorandum of Law...." On July 6, 2021, one-hundred nine (109) days after the filing of its Motion, Wells Fargo filed its affidavits and Memorandum of law. As evidenced by the Plaintiff's Memorandum in response, Saul was left to guess as to what Wells Fargo's allegations and evidence presented was going to be. What has been revealed now, is simply Wells Fargo attempts to reargue a Motion for Summary Judgment in the context of a Rule 60(b) Motion. Pursuant to Rule 60(b), SCRCP, the burden of proof lies entirely on Wells Fargo, not Saul. What cannot be ignored is Wells Fargo's conduct. Relief from judgment is largely an equitable principal. As the maxim goes, "he who seeks equity must do equity". Provident Life & Accident v. Driver, 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994). Wells Fargo has not done equity in this instance. It sat on its hands and does not come to Court

with clean hands. See gen. Associate Spring Corp v. Roy F. Wilson, 410 F. Supp. 967, 978 (D.S.C. 1976) (applying SC law and collecting cases noting parties who seek equity must come with clean hands).

Wells Fargo has caused this situation by its failure to appear, oppose a motion, and its decision to make baseless accusations in an effort to avoid the consequences of its own inaction. Wells Fargo's original motion is devoid of articulable information, facts, law, etc. Saul and the Plaintiff have articulated that they were unable to address Wells Fargo's allegations in their original filings. Finally, when Wells Fargo was forced to provide a more meaningful motion (well after the one year requirement), Saul was given three-days to respond. Despite having the affidavits relied upon (dated April 21, 2021), Wells Fargo's did not provide them until this Court set a deadline of July 6, 2021. Despite Wells Fargo bearing the burden of proof, Saul has essentially had to defend itself in the "dark," and has created the impression that Saul has done something improper. Saul continues to maintain its request for a hearing on the matter so as to make a full and complete record of this matter. Wells Fargo has had over a year to provide clear and convincing evidence that Saul acted improperly. It has failed to do so within the one-year time period contemplated by Rule 60. Wells Fargo's Motion to Set Aside should be denied pursuant to Rule 7(b), SCRCP.

CONCLUSION

This Court should deny Wells Fargo's Rule 60 motion as it has failed to meet its burden of proof by clear and convincing evidence. Wells Fargo is improperly trying to apply a Rule 56 or 59 standard. Saul was properly granted summary judgment on March 17, 2020, and that Order remains proper.

[SIGNATURE INTENTIONALLY ON THE FOLLOWING PAGE]

Dated this 9th day of July, 2021.

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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EXHIBIT 5-A

From: efiledonotreply@sccourts.org
To: David Nasrollahi
Subject: Courtesy NEF RE: 2018CP0702378
Date: Wednesday, March 18, 2020 10:45:33 AM

****** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2018CP0702378

Official File Stamp:	03-18-2020 10:45:00 AM
Court:	CIRCUIT COURT
	Common Pleas
	Beaufort
Case Caption:	Eddie B Lewis Jr VS Saul Llc , defendant, et al
Event(s):	
	Notice/Notice of Appearance
	Order/Order Cover Sheet $25.00
Document(s) Submitted:	Proposed Order/Summary Judgment
Filed by or on behalf of:	John Joseph Dodds, IV

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Morgan S. Templeton for Saul Llc
Charles Grant Blackburn for Wells Fargo Bank National Association
David Ali Nasrollahi for Saul Llc, Saul, Llc
Cory Howerton Fleming for Eddie B Lewis, Jr
Laura W Robinson for Wells Fargo Bank National Association, Wells Fargo Bank, National Association

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

STATE OF SOUTH CAROLINA)	
)	Court of Common Pleas
COUNTY OF BEAUFORT)	Case No. 2018-CP-07-2378
)	
EDDIE B. LEWIS JR,)	
)	
Plaintiff,)	
)	
vs.)	Transcript of Record
)	
SAUL LLC,)	
)	
Defendant.)	DATE: March 17, 2020

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON

A P P E A R A N C E:

CORY HOWERTON FLEMING
PO Drawer 507
Beaufort SC 29901
Attorney for Plaintiff

JOHN JOSEPH DODDS, IV
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PO Box 1200
Charleston SC 29402
Attorney for Defendant

Original transcript ordered by:
WALL TEMPLETON

Stenographically recorded and transcribed by:

Karen V. Andersen, RMR, CRR, CSR

THE COURT: Who is appearing on behalf of Saul, LLC?

MR. DODDS: Good morning, Your Honor. John Dodds.

THE COURT: Is there anyone appearing for Wells Fargo?

MR. FLEMING: I was contacted this morning. I will need to give you a little brief summary so you will understand.

On Friday, one of the listed counsel for Wells Fargo, the only lawyer we were dealing with, Laura Robertson, resigned from that law firm. The law firm --

THE COURT: So they need to reassign the file?

MR. FLEMING: They have reassigned it to Charles Blackburn as of yesterday. He contacted -- I believe he talked to Morgan Templeton, lead counsel for Saul. He contacted me, indicated that he could not be here for these motions based on various things. And I told him that I would inform the Court of that.

That is, unfortunately, the underlying problem in the other motion in this file, the motion to compel discovery, which I think may have some bearing potentially on the motion for summary judgment.

THE COURT: So in a roundabout way, are you telling me you can't go forward because Wells Fargo is absent, or they are not necessary for these motions?

MR. FLEMING: I can't speak for Wells Fargo. I

personally believe that it's very important to Wells Fargo, because they will be the sole defendant. They have not filed any kind of indemnity or cross-claim back towards Saul. And as such, I don't know they technically have any direct standing in the motion. So I can't assert to the Court that they are necessary to argue the motion.

THE COURT: Are you seeking some relief against them?

MR. FLEMING: Against Wells Fargo?

THE COURT: Yeah.

MR. FLEMING: They are the primary defendant. Saul is the property owner of the site of the bank where this injury occurred. And the -- I won't speak for Saul except to say Saul's motion for summary judgment is predicated on the terms of the lease. And the terms of the lease tend to support the notion that the landlord, Saul, granted all control of the property, including inspection and/or inspection, discovery and remedy of any dangerous conditions, which is very clearly laid out in their brief.

THE COURT: Sir, are you conceding their motion summary judgment?

MR. FLEMING: Well, here's why it gets complicated. I have an outstanding motion to compel. Wells Fargo has provided me no --

THE COURT: But they are not here. And I can't hear

it ex parte. So either -- that's why I'm asking for clarity. If a lawyer has resigned, and I would assume that was recent --

MR. FLEMING: It was Friday, yes, ma'am.

THE COURT: And Mr. -- I would assume then Mr. Blackburn has not had an opportunity to get up to speed. Why he did not send someone in his stead, I am not clear.

MR. FLEMING: I am not either, Your Honor.

THE COURT: I'm sorry?

MR. FLEMING: I am not either. I don't know why.

THE COURT: But I can't argue a motion in their absence under the circumstances.

MR. FLEMING: I understand. I apologize. We spoke. And they were going to -- they agreed to a consent order on the motion to compel.

THE COURT: Okay. So you are going to submit a consent order?

MR. FLEMING: That's correct. We are going to send a consent order.

THE COURT: Who is going to be responsible for preparing that?

MR. FLEMING: Mr. Blackburn is preparing it. And he is going to -- and they are going to be providing me, hopefully, that discovery. The reason that I bring that up is simply because I do not -- as it regards the motion for

summary judgment --

THE COURT: I am not going to have preclusive arguments on the motion for summary judgment. I'm going to let Mr. Dodds argue his motion and let you respond. My question was very direct, which is, are you conceding his motion based on the previous statements, or do I need to hear the motion?

MR. FLEMING: I think you will need to hear the motion simply so I can tell you what my concern is with the discovery issue.

THE COURT: Mr. Dodds, proceed with your motion.

MR. DODDS: Thank you, Your Honor. May it please the Court. As Mr. Fleming said, this is a premises liability action arising out of a trip and fall in the parking lot of a Wells Fargo. The plaintiff has sued Wells Fargo and also my client, Saul, LLC, which is the landlord for the building.

And the basis for the motion, as Mr. Fleming already stated, is that Saul, LLC has relinquished all control of the specific parking lot where the plaintiff fell to Wells Fargo pursuant to the terms of the lease. And, therefore, Saul, LLC owes no duty to the plaintiff.

There is a written lease, Your Honor. I have a copy if you would like to look at it.

THE COURT: Did you file it?

MR. DODDS: Yes, Your Honor. It's Exhibit A to the

motion.

THE COURT: Then I have it.

MR. DODDS: It's a very long lease. But Section 5.5 of the lease provides that the landlord shall keep and maintain and make all immediate repairs to the common areas. Very standard lease. The obligation of the landlord is to maintain and repair common areas. Those areas dedicated to the exclusive use of the tenant, maintenance and repairs, the tenant's obligation.

The area where the plaintiff fell is known as the tenant-dedicated parking area under the lease. It's a defined term. And it's basically a parking lot which only Wells Fargo can use.

Section 1.2 of the lease states that Wells Fargo is entitled on an exclusive basis to use the tenant-dedicated parking areas.

By definition, an area where tenant is entitled to exclusive use is not a common area. There's no obligation for Saul to maintain and repair.

THE COURT: Why is it appropriate for me to interpret a lease on a summary judgment motion? Are you all telling me the facts are completely uncontroverted?

MR. DODDS: Yes, Your Honor. This is a question of law. Interpretation of a contract is a question of law.

THE COURT: Are you all agreeing to that

interpretation of the law?

MR. DODDS: The plain terms --

THE COURT: That's not my question. My question is, do you all agree to how it should be interpreted? That's the only way summary judgment would be appropriate.

MR. DODDS: I don't believe there's any disagreement.

MR. FLEMING: I do not disagree with their interpretation of this lease.

MR. DODDS: Your Honor, I have a binder. There were some documents produced by Wells Fargo in discovery that are subject to a consent confidentiality order. I would like to hand it up to Your Honor. I did spray it with Lysol this morning.

THE COURT: Tell me what it is again. I'm sorry.

MR. DODDS: There are two documents that I have with me in a binder. They were produced subject to a consent confidentiality order between the parties.

THE COURT: What are they?

MR. DODDS: One of the documents is a property management agreement between Wells Fargo and an independent property manager by the name of CBRE Incorporated.

The second document is a list of work orders submitted by Wells Fargo to its property manager in the year of 2016, which is when this incident occurred.

Looking at the first document -- again, I'm happy to provide to Your Honor if you are inclined.

THE COURT: They need to be filed if you want it considered a part of the record.

MR. DODDS: It's subject to a consent confidentiality --

THE COURT: Then you need to work it out with the clerk how it's to be filed. But if you want it in this record, you want to consider both purposes, you are going to have to file it.

MR. DODDS: Okay. Well, Your Honor, there is a property management agreement where Wells Fargo hired its own independent property manager. There are records of work orders and repairs made to the tenant-dedicated parking area where Wells Fargo scheduled requested repairs, paid for repairs out of their own pockets without any involvement of Saul, LLC. And I just want to bring those documents up, because the lease says what it says. It's very clear that the tenant-dedicated parking area is not a common area.

And, furthermore, Wells Fargo acts in hiring an independent property manager to inspect that very area and make repairs clearly shows that Wells Fargo is in control of this area.

Exhibit C to our motion was an e-mail from Wells Fargo's managing general counsel and executive vice

president. It's attached as Exhibit C to the motion. And it states that Saul, "has no right whatsoever to grant the use of the tenant-dedicated parking area." In that quote, "These parking areas are not common area under the lease."

As Your Honor is well aware, the crux of a premises liability action in South Carolina is whether the entity or person had possession or control over the land. Our Supreme Court held in *Byerly v. Connor* that when land is occupied by a lessee, law of property regards the lease as equivalent to a sale of the premises for the term of the lease. After the lessor surrenders possession and control of the land to the lessee, the lessor is generally not responsible for hazardous conditions which thereafter develop or are created by the lessee.

Here, Saul had no possession and control over that area. Wells Fargo was entitled to exclusive use of the area under the lease. They hired their own independent property manager to receive maintenance. They scheduled maintenance and repairs and paid for that without any involvement by Saul, LLC.

Exhibit D to our motion was an affidavit from Esther Harnett on behalf of Saul, LLC stating the very same things that I just expressed to Your Honor, that they relinquished control, had not been involved in any repairs, that Wells Fargo is entitled to the exclusive use of that property.

And for those reasons, Your Honor, Saul respectfully requests the Court grant its motion for summary judgment.

THE COURT: Would you like to respond?

MR. FLEMING: Yes, ma'am. I do not take issue with anything that counsel said concerning the lease, interpretation of the lease, or any of the documents intended to support his position.

I have not received, nor has, I believe, Saul received any responses to discovery or interrogatories or requests for production that would in any way refute any of Saul's positions.

My only issue that I wanted to bring to the Court is that because -- Wells Fargo did respond, I believe, in total to Saul's interrogatories and requests to produce. They have failed to respond to mine. And there is -- just out of abundance of caution, I am uncomfortable with the notion that 30 days from now, they send something else that would --

THE COURT: Well, you haven't filed anything. And you can't have it both ways. Either you concede the motion or it needs to be continued. But I am not going to straddle that line with you.

MR. FLEMING: I understand. Well, I concede then, Your Honor. I concede that Saul is -- that their position, I believe, is most supported by the law and by the facts as we have gathered throughout this litigation.

THE COURT: Based on that concession, Mr. Dodds, if you will prepare an order for the Court granting the summary judgment. Please make sure all parties are copied on it when you send it to the Court. And you need to E-file it. And you need to make any findings of fact and conclusions of law supported by the record.

MR. DODDS: Thank you, Your Honor.

THE COURT: Y'all stay safe.

MR. DODDS: Any specific timeline?

THE COURT: I would like it within five days. That would be helpful. The sooner the better while it's fresh in my mind.

(Whereupon, the proceedings are adjourned.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

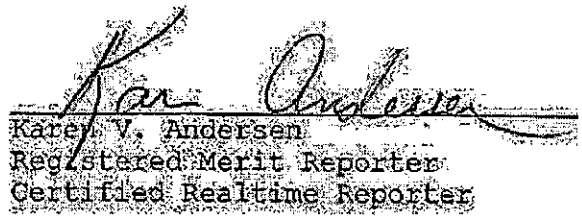

EXHIBIT 7

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 **Plaintiff's Memorandum in Response to Defendant Wells Fargo Bank, NA's Motion to Set Aside Judgment**

TO: DOUGLAS E. LEADBITTER, ATTORNEY FOR DEFENDANT WELLS FARGO, NA:

The Plaintiff, Eddie B. Lewis, Jr., by and through his undersigned counsel, hereby submits the following Memorandum in response to Defendant Wells Fargo, NA's ("Wells Fargo") Motion to Set Aside Judgment pursuant to Rule 60, SCRCP. The Honorable Judge Deadra Jefferson granted Saul's Motion for Summary Judgment on March 17, 2020.

PROCEDURAL HISTORY

On December 5, 2018, Plaintiff Eddie R. Lewis (Plaintiff) filed a Complaint against Defendants Saul and Wells Fargo based on negligence and premises liability. Plaintiff then filed an Amended Complaint on January 7, 2019. On January 17, 2019, Saul files its Answer to the Plaintiff's Amended Complaint. On February 11, 2019, Wells Fargo files it Answer to the Plaintiff's Amended Complaint, which does not contain any cross claims against Saul.

On June 27, 2019, Plaintiff served both Wells Fargo and Saul with his first set of interrogatories and request for production. Saul provided their responses within 30 days of the request, however Wells Fargo failed to timely respond to this discovery request. On December

11, 2019, counsel for the Plaintiff wrote a Rule 11 letter to Wells Fargo's Attorney at the time, Laura Robinson, requesting that they respond within ten (10) days. On December 11, 2019, Plaintiff served his second set of interrogatories and request for production on Wells Fargo. Wells Fargo failed to timely respond to that set of discovery requests as well.

On January 23, 2020, counsel for the Plaintiff again wrote Laura Robinson a Rule 11 letter requesting responses to both sets of discovery within ten (10) days. The following day, Laura Robinson indicated that discovery responses would be provided on January 27, 2020. However, Wells Fargo failed to comply with that request as well. Therefore, on February 14, 2020, Plaintiff filed a Motion to Compel responses to both sets of discovery, the first set being nearly seven (7) months past due. (See Mot. To Compel, filed Feb. 14, 2020)

During this time, Saul moved for Summary Judgment as to the Plaintiff's Amended Complaint on January 20, 2020, based on the terms of the Lease.

On March 5, 2020, all parties were notified that both the Motion to Compel and the Motion for Summary Judgement were scheduled to be heard on March 17, 2020. Nonetheless, Wells Fargo failed to respond to the outstanding discovery requests.

On March 13, 2020, Laura Robinson contacted counsel for the Plaintiff and informed him that she was leaving the law firm of Vernis and Bowling and that Charles Blackburn would be taking over the case. She then asked if the Plaintiff would consent to continue the Motion to Compel scheduled for the next week. Counsel for the Plaintiff agreed to a Consent Order that would require that Wells Fargo provide responses within thirty (30) days of the Order.

On the morning of March 17, 2020, Charles Blackburn called counsel for the plaintiff and confirmed that a Consent Order would be entered on the Motion to Compel scheduled to be heard at 10:00 a.m. that day. Mr. Blackburn agreed to prepare the Consent Order and submit it for

signature. He then informed counsel for the Plaintiff that he would not be attending the hearing that day.

On March 17, 2020, the Honorable Judge Deadra Jefferson heard arguments on Saul's Motion of Summary Judgment. Counsel for the Plaintiff and Saul were present for this hearing, however, counsel for Wells Fargo failed to appear. Counsel for the Plaintiff informed the Court that the Motion to Compel was resolved on a Consent Order and that Mr. Blackburn indicated that he was not going to attend the hearing.

Notwithstanding the agreement made by Mr. Blackburn, Wells Fargo still failed to respond to the outstanding discovery requests and failed to submit the proposed Consent Order. Therefore, on June 18, 2020, Plaintiff's counsel wrote counsel for Wells Fargo requesting discovery answers. No answers were received prompting Plaintiff's counsel to file a second Motion to Compel Discovery on July 1, 2020. This Motion to Compel hearing took place via Webex on August 6, 2020 and was heard by the Honorable Judge Brooks P. Goldsmith. Present and appearing were Plaintiff's Counsel and Wells Fargo Counsel, Charles Blackburn. Prior to the hearing, the parties notified the Court that they had reached an agreement. The Plaintiff would agree to continue the Motion to Compel, and Wells Fargo would answer outstanding discovery within thirty (30) days of August 6, 2020. Ultimately, Wells Fargo began to provide responses to discovery on August 31, 2020.

PLAINTIFF'S RESPONSE

In this action, it is uncontested that either Saul or Wells Fargo was responsible for the area of the subject property where the Plaintiff was injured. No other person or entity had any ownership or control of this property. No party to this action has ever asserted that any other person

or entity had ownership or control of this property. Therefore, the issue of the control of the property and the resulting duty to business invitees became a disagreement between Saul and Wells Fargo.

When Saul filed the Motion for Summary judgement, it was clear that the motion was made solely on the argument that Wells Fargo was the only entity that had control of the property and a resulting duty to business invitees. Saul did not argue that the property was not unreasonably dangerous. Nor did Saul argue that the condition of the property was not the proximate cause of the Plaintiff's injuries. While procedurally the Motion was directed to the Plaintiff, it was clear that Saul was seeking a ruling that, as a matter of law, it had no control of the property and therefore Wells Fargo had to be the party that had such control and the resulting legal duty.

The Plaintiff had filed two separate sets of discovery requests that were ignored by Wells Fargo. When the motion for Summary Judgement was filed, Wells Fargo had almost two months to produce answers and documents to refute the arguments forwarded by Saul. It would be reasonable to assume that since Wells Fargo did not produce any documents or other evidence to refute Saul's argument, file any responsive memorandum, or even attend the hearing, that Wells Fargo either could not refute the argument or simply acquiesced to it.

The Order on the Summary Judgement Motion issued by the Court reflected the conclusion that because Wells Fargo had exclusive control of the property in question, they had the resulting duties to business invitees. That is the argument that Saul forwarded in their Motion and attached exhibits. Wells Fargo had the opportunity to oppose that argument but simply chose not to.

The Motion to Set Aside Judgement makes assertions concerning Saul's arguments leading up to and during the hearing on their Summary Judgement Motion. The Plaintiff is simply not in a position to respond to the assertions. Furthermore, Wells Fargo has not clearly identified which

arguments constitute misrepresentation, nor have they presented any affidavits or other filings to support the claims. Without more, the Plaintiff is not able to address Wells Fargo's assertions.

RESPECTFULLY SUBMITTED,

/s/ Cory H. Fleming
Cory H. Fleming
Moss, Kuhn & Fleming, P.A.
SC Bar #: 6999
P O Drawer 507
Beaufort, South Carolina 29901
(843) 524-3373 telephone
(843) 524-1302 fax
Attorneys for Eddie B. Lewis, Jr.

Beaufort, South Carolina
July 2, 2021

EXHIBIT 8

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2018-CP-07-02378
EDDIE B. LEWIS, JR., Plaintiff, vs. SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION, Defendants.	)	**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.

EXHIBIT 8

AND IT IS SO ORDERED.

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

March _____, 2020
Charleston, South Carolina
At Chambers

EXHIBIT 8

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 9

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, SCRCP**

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, SCRCP 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, SCRCP 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), SCRCP 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), SCRCP, 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), SCRCP.

Respectfully submitted,

VERNIS & BOWLING OF COLUMBIA, LLC

s/Douglas E. Leadbitter
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Tel: (803) 234-5416
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ATTORNEYS FOR WELLS FARGO, NA

March 19, 2021

EXHIBIT 11

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT)	
)	Case No.: 2018-CP-07-02378
EDDIE B. LEWIS)	
Plaintiff,)	**ORDER ON WELLS FARGO'S MOTION TO SET ASIDE JUDGMENT PURSUANT TO RULE 60, SCRCP**
)	
v.)	
)	
SAUL, LLC and WELLS FARGO BANK NATIONAL ASSOCIATION,)	
Defendants.)	

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

This matter came before the Court on Defendant Wells Fargo Bank, NA's ("Wells Fargo") Motion to Set Aside Judgment pursuant to Rule 60, SCRCP, 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

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[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.

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. 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.

EXHIBIT 11

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

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Deadra L. Jefferson, Circuit Court Judge

Appellate Case No.: 2021-001170

Eddie B. Lewis. . . . . Plaintiff

v.

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

Of Whom Saul, LLC is the Appellant.

PROOF OF SERVICE

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

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fred@mossandkuhn.com
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ATTORNEYS FOR WELLS FARGO BANK, NATIONAL ASSOCIATION

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Dated this 10th day of February, 2022.

WALL Ttempleton & HALDRUP, P.A.

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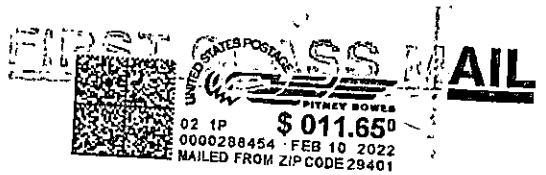

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February 10, 2022

The Honorable Jerry Abbott Kitchings
South Carolina Court of Appeals
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Columbia, South Carolina 29211

Re: *Eddie B. Lewis, Jr v. Saul, LLC, et al*
Case No: 2021-001170
Insured: Saul, LLC
Claim No.: 300-0011686-2019

Dear Mr. Kitchings:

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

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

Thank you for your time and attention to this matter.

Sincerely,

WALL TEMPLETON & HALDRUP, P.A.

For David A. Nasrollahi

DAN/sjs
enclosures
cc: H. Fred Kuhn, Jr., Esquire (*w/ encl, via electronic mail only)*
Douglas E. Leadbitter, Esquire (*w/ encl, via electronic mail only*)