

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable Deadra L. Jefferson
Presiding Circuit Court Judge

Appellate Case No.: 2021-001170

RECEIVED
MAY 06 2022
SC Court of Appeals

Eddie B. Lewis, Respondent,

v.

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

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

**RESPONDENT'S RETURN TO
APPELLANT SAUL, LLC'S
PETITION FOR REHEARING**

The Respondent, Eddie B. Lewis, hereby submits his Return to the Appellant Saul, LLC's Petition for Rehearing.¹ Respondent Lewis, for the reasons set forth herein, respectfully requests that the Petition for Rehearing be denied.

SUMMARY OF ARGUMENT

In its Petition for Rehearing, Saul argues that the subject Order is immediately appealable because the Circuit Court Judge abused her discretion in vacating her Order granting Saul's Motion for Summary Judgment and rescheduling the motion for another hearing. In support of this

¹ This Return was requested by the South Carolina Court of Appeals by way of correspondence from the Honorable V. Claire Allen, Clerk, dated April 29, 2022.

position, Saul relies exclusively upon the succinct, two sentence, Opinion of the South Carolina Supreme Court in *Winslow Brothers & Smith Co. v. Gossett*, 120 S.C. 164, 112, S.E. 825 (1922), in which the Court held that an appeal from an order vacating a judgment by default was not appealable “unless there was an erroneous exercise of discretion on the part of his honor, the circuit court judge.” *Id.*

It is respectfully submitted that the aforesaid holding in *Winslow Brothers & Smith Co. v. Gossett* has been modified by the enactment of S.C. Code 14-3-330.

Additionally, even if *Winslow Brothers & Smith Co. v. Gossett* is still good law, the Trial Judge did not abuse her discretion because: (1) There is reasonable factual support for her decision; and (2) Her decision has not prejudiced the rights of Saul.

I. WINSLOW BROTHERS & SMITH CO. V. GOSSETT IS NO LONGER THE LAW

Saul argues that *Winslow Brothers & Smith Co. v. Gossett*, which was decided by the South Carolina Supreme Court in 1922, is still good law because it has not been expressly overruled by the South Carolina Supreme Court. While it is true that the Supreme Court has never expressly overruled the *Winslow Brothers* case, that does not necessarily mean that it remains intact. The South Carolina General Assembly, in enacting §14-3-330 of the South Carolina Code of Laws, has expressly dictated the terms and conditions under which an Order is immediately appealable and when an Appellate Court can acquire jurisdiction over a case. Since the subject Order does not satisfy the requirements of §14-3-330, it is not immediately appealable.

II. THE SUBJECT ORDER HAS FACTUAL SUPPORT

Even if the *Winslow Brothers* case is still good law, there must be an erroneous exercise of discretion on the part of the Circuit Court Judge in order for the Order to be immediately appealable. As Saul admits in its Brief, “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 an error of law.” Appellant’s Petition for Rehearing, pg. 2, citing *Bridges v. Wyandotte Worsted Company*, 239 S.C. 37, 40, 121 S.E.2d. 300, 302 (1962).

The Order of the Honorable Deadra L. Jefferson vacating her Order granting Saul’s Motion for Summary Judgment contains not only reasonable, but ample, factual support. In her Order vacating her Summary Judgment Order, Judge Jefferson clearly and precisely made numerous findings of fact supporting her decision. These express factual findings include the following:

1. It was represented to her at the hearing on the Summary Judgment Motion that Lewis and Saul had no objection to Saul being dismissed from the case;

2. It was represented to her at the hearing on the Summary Judgment Motion that it was not necessary for Wells Fargo to appear or be heard in order to dispose of Saul’s Motion for Summary Judgment;

3. The overwhelming majority of the findings of fact and conclusions of law contained in the Saul Consent Order Granting Summary Judgment consist of a myriad of findings regarding the interpretation of the lease between Saul and Wells Fargo;

4. That the Summary Judgment Order contains liability findings that relate not to Saul, but to Wells Fargo, a party who was not present at the summary judgment hearing;

5. That Wells Fargo was not afford an opportunity to be heard;

6. That Saul knew that Wells Fargo was not going to be present for the hearing on the motion;

7. That the findings in the Summary Judgment Order do not simply hold that Saul is not liable for the Plaintiff’s injuries, but 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;

8. That Saul knew that Wells Fargo's representation was in a state of fluctuation, that Saul objected to Wells Fargo's request for a continuance, and Saul did not advise the Court that Wells Fargo sought a continuance.

9. As Saul acknowledges in its Petition for Rehearing, Wells Fargo's attorney had stepped down just days prior to the hearing and the new attorney was unfamiliar with the case and could not be at the hearing at the Motion for Summary Judgment, and desired that it be continued. Petition for Rehearing, pg. 6.

While Judge Jefferson acknowledged that it was incumbent upon Wells Fargo to file a Motion for Continuance, she was clearly troubled by the fact that Saul failed to advise the Court of Wells Fargo's request for a continuance when Saul was aware of the transition in Wells Fargo's representation and that Mr. Blackburn, Wells Fargo's new counsel, would not be able to attend the summary judgment hearing. Order Granting Wells Fargo's Motion to Set Aside Judgment Pursuant to Rule 60, SCRCPP, pp. 4 and 5 and fn. 6.

In short, Judge Jefferson, upon learning that Wells Fargo's failure to appear at the initial summary judgment hearing was not the result of its consent to the motion, but rather, the result of a last minute change in counsel and new counsel's inability to attend, coupled with the fact that the Order Granting Summary Judgment contains numerous findings binding upon and prejudicial to Wells Fargo, properly exercised her discretion in deciding that she wanted to hear the motion on the merits, and give Wells Fargo an opportunity to be heard.

III. NO PREJUDICE TO SAUL

In order for there to be an abuse of discretion there must exist not only a lack of factual support, but the ruling must also result in prejudice to the rights of the Appellant. Appellant's Petition for Rehearing, pg. 2, and *Bridges v. Wyandotte Worsted Company*, 239 S.C. 37, 40, 121 S.E.2d. 300, 302 (1961).

Saul has suffered absolutely no prejudice as a result of Judge Jefferson's decision to vacate her Order granting Saul's Motion for Summary Judgment. Significantly, she did not deny Saul's Motion for Summary Judgment, she simply vacated her Order and set the motion for another hearing. Saul still has the opportunity to argue its motion and, if justified, have it granted. The Order Vacating the Order granting Summary Judgment is, in essence, simply an Order rescheduling Saul's Motion for Summary Judgment. No judgment has been entered against Saul. No findings of fact or conclusions of law have been made, much less any findings or conclusions that would affect Saul. As a result of the Order vacating summary judgment, Saul is in exactly the same position as it was when it filed the Motion for Summary Judgment. The only "prejudice" suffered by Saul is that it will have to reargue its motion in the presence of Wells Fargo. This is not prejudice that would constitute an abuse of discretion.

Judge Jefferson expressly considered this factor, as follows:

"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. 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 the hearing on the merits of Saul, LLC's Motion for Summary Judgment. This is consistent with South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities."

Order on Wells Fargo's Motion to Set Aside Judgment, pp. 6-7.

It is well settled that simply avoiding another hearing, or even a trial, is not a substantial right entitling a party to immediately appeal of an interlocutory order. *Pocisk v. Sea Coast Construction of Beaufort*, 380 S.C. 584, 671 S.E.2d 98, 101 (S.C. App. 2008), see also, *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991).

CONCLUSIONS

The appealability of an interlocutory order is now governed by S.C. Code §14-3-330 and an Order which simply reschedules a Motion for Summary Judgment is not an appealable order under §14-3-330.

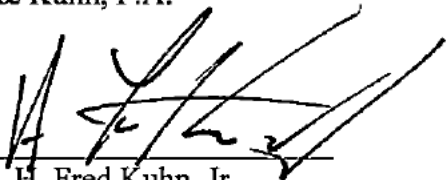
Judge Jefferson did not abuse her discretion in vacating the summary judgment order. Her Order contains ample factual findings supporting her decision. It is clear from her Order that she carefully weighed all of these factors and, while not totally excusing Wells Fargo's conduct, was also deeply disturbed by the lack of candor from Saul and Plaintiff's then counsel regarding Wells Fargo's counsel's absence at the summary judgment motion hearing. In the end, after carefully balancing these facts and factors, she decided that it was in the best interest of justice to simply reschedule the summary judgment motion, finding that a full and fair hearing participated in by all parties was in the best interest of justice.

The final result is that Judge Jefferson simply rescheduled Saul's motion for summary judgment for a new hearing. This does not prejudice Saul in the least.

It is accordingly respectfully requested that Saul's Petition for Rehearing be denied and this case remanded back to the Beaufort County Court of Common Pleas.

Respectfully submitted,

Moss & Kuhn, P.A.

By: 

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Beaufort, South Carolina
May 5, 2022

Attorneys for Respondent Eddie B. Lewis

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CERTIFICATE OF SERVICE

Undersigned certifies that the Respondent's Return to Appellant Saul, LLC's Petition for Rehearing to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Morgan S. Templeton, Esquire
Wall Templeton Haldrup, P.A.
Post Office Box 1200
Charleston, South Carolina 29402

Douglas Edward Leadbitter, Esquire
Vernis & Bowling of Columbia, LLC
1401 Main Street, Suite 655
Columbia, South Carolina 29201

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

in a post office or official depository under the exclusive care and custody of the United States
Postal Service, on May 5, 2022.

Moss & Kuhn, P.A.

By:  _____
Sue Radford

MOSS & KUHN, P.A.
ATTORNEYS AT LAW

JAMES H. MOSS
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May 5, 2022

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SC Court of Appeals

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

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

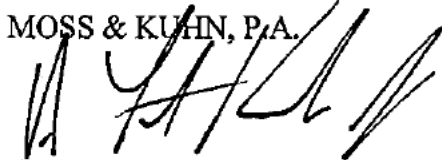
Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Respondent's Return to Appellant Saul, LLC's Petition for Rehearing in the above matter. Please return a filed copy to me in the enclosed self-addressed stamped envelope. By copy of this letter and the enclosures I am serving a copy of the same on all counsel of record.

With kindest regards, I am

Very truly yours,

MOSS & KUHN, P.A.



H. Fred Kuhn, Jr.

HFKjr:sr
Enclosures

cc: Morgan S. Templeton, Esquire (w/enclosure)
Douglas Edward Leadbitter, Esquire (w/enclosures)
Charles Grant Blackburn, Esquire (w/enclosures)

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