

APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Order of the Supreme Court of Kentucky Denying Discretionary Review (Signed April 19, 2023; Entered April 24, 2023)	1a
Order of the Court of Appeals of the Commonwealth of Kentucky Dismissing Appeal (December 8, 2022)	2a
Prehearing Conference Order of the Court of Appeals of the Commonwealth of Kentucky (May 13, 2022)	7a
Order of the Laurel Circuit Court for the 27th Judicial Circuit of the Commonwealth of Kentucky (February 15, 2022)	9a
Prehearing Conference Order of the Court of Appeals of the Commonwealth of Kentucky (November 30, 2020)	12a
Order of the Laurel Circuit Court for the 27th Judicial Circuit of the Commonwealth of Kentucky (Signed September 18, 2020; Entered September 21, 2020)	14a
Order Overruling Plaintiff's Motion to Set aside Judgment (July 31, 2020)	16a
Order of the Laurel Circuit Court for the 27th Judicial Circuit of the Commonwealth of Kentucky (October 14, 2019)	18a

APPENDIX TABLE OF CONTENTS (Cont.)

Order Denying Plaintiff's Motion to Set aside Judgment (Signed June 3, 2019; Entered June 4, 2019)	20a
Order of the Laurel Circuit Court for the 27th Judicial Circuit of the Commonwealth of Kentucky (May 14, 2019)	23a
Opinion of the Court of Appeals of the Commonwealth of Kentucky (July 14, 2017) ..	25a
Prehearing Conference Order of the Court of Appeals of the Commonwealth of Kentucky (October 15, 2015)	37a
Order Denying Plaintiff's Motion to Reconsider (Signed March 26, 2015; Entered March 27, 2015).....	39a
Finding of Facts, Conclusions of Law and Judgment (Signed March 13, 2015; Entered March 16, 2015).....	41a

OTHER DOCUMENTS

Complaint (October 2, 2012)	46a
Reply to the Response of Defendant (May 22, 2019)	51a
Docket Details.....	53a

App.1a

**ORDER OF THE
SUPREME COURT OF KENTUCKY
DENYING DISCRETIONARY REVIEW
(ENTERED APRIL 24, 2023;
SIGNED APRIL 19, 2023)**

SUPREME COURT OF KENTUCKY

ROBERT MARK SCOTT,

Movant,

v.

FORCHT BANK, N.A.,

Respondent.

2023-SC-0018-D
(2022-CA-0224)

Laurel Circuit Court 12-CI-00962

Before: Laurance B. VANMETER, Chief Justice.

The motion for review of the decision of the Court
of Appeals is denied.

ENTERED: April 19, 2023.

/s/ Laurance B. VanMeter
Chief Justice

App.2a

**ORDER OF THE COURT OF APPEALS
OF THE COMMONWEALTH OF KENTUCKY
DISMISSING APPEAL
(DECEMBER 8, 2022)**

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

ROBERT MARK SCOTT,

Appellant,

v.

FORCHT BANK,

Appellee.

No. 2022-CA-0224-MR

Appeal from Laurel Circuit Court
Honorable Thomas L. Jensen, Judge
Action No. 12-CI-00962

Before: CLAYTON, Chief Judge,
GOODWINE and McNEILL, Judges.

This cause comes before the Court on Appellee Forcht Bank's motion to dismiss the appeal on the ground that the law of the case doctrine precludes Appellant Robert Scott's appeal.

I. BACKGROUND

On March 16, 2015, the circuit court entered an order granting Forcht Bank's motion for judgment on the pleadings and dismissing the case. Scott by way of counsel, filed a motion to reconsider, which the circuit court denied. Thereafter, Scott filed an appeal. On May 12, 2017, this Court rendered an opinion and order affirming the circuit court's order of dismissal. *See Scott v. Forcht Bank, NA*, 521 S.W.3d 591 (Ky. App. 2017). The Court ruled:

In this case, the evidence of record does not support Scott's claim that he reasonably relied on any oral promise made by Forcht Bank. Specifically, Scott has provided no evidence to support his claim that he detrimentally relied on any promises of a second loan made by Jasper or Forcht Bank. In fact, by his own statements and recollection, it would appear that when Scott and Jasper met in 2008, Jasper only assured him that he would be able to build on Lot #23. Scott did not testify to any specific promise made by Jasper that a second loan would be made by Forcht Bank. Additionally, Scott has alleged that a writing of this supposed promise was made, but has been unable to produce any such writing. Jasper, the initial loan officer Scott met with, did not recall Scott stating that he would only accept the first loan if Forcht Bank promised to provide him with a second loan and testified that any documents would have been kept in Scott's loan file. No such written contract has ever been produced.

Id. at 596-97.

On May 3, 2019, Scott filed a CR¹ 60.02 motion to set aside the circuit court's March 16, 2015 order of dismissal based on the claim that there was "newly discovered evidence." On November 26, 2019, Forcht Bank filed an objection to Scott's CR 60.02 motion and requested an award of attorney's fees. On August 3, 2020, the circuit court denied Scott's CR 60.02 motion. Scott then filed a motion to reconsider. On September 21, 2020, the circuit court vacated the August 3, 2020 order and once again denied Scott's CR 60.02 motion to set aside the March 16, 2015 order of dismissal, but it reserved the issue of attorney's fees.

On October 19, 2020, Scott filed an instant appeal, from the September 21, 2020 order. This Court dismissed the appeal as interlocutory because it was not from a final and appealable order. On February 15, 2022, the circuit court entered a final and appealable order that (1) vacated the August 3, 2020 order denying Scott's CR 60.02, (2) denied Scott's CR 60.02 motion to set aside the summary judgment in favor of Forcht Bank, and (3) granted Forcht Bank its attorney's fees. Scott then filed the instant appeal from the order entered on February 15, 2022.

II. ANALYSIS

Relief under CR 60.02 is an extraordinary remedy and the denial of such a motion will only be reversed where a clear abuse of discretion is shown. *See generally, Bd. of Trustees of Policemen's & Firemen's Ret. Fund of City of Lexington v. Nuckolls*, 507 S.W.2d 183 (Ky. 1974). A circuit court abuses its discretion if

¹ Kentucky Rules of Civil Procedure.

its “decision was arbitrary, unreasonable, unfair, or unsupported by: sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

CR 60.02 is not intended as an additional opportunity to re-litigate the same issues that could have been presented by direct appeal. *McQueen v. Commonwealth*, 948 S.W.2d 415, 416 (Ky. 1997). Those matters that a party knew or could have known with the exercise of due diligence are not proper subjects for CR 60.02 relief. *Nuckolls*, 501 S.W.2d at 186.

The purpose of CR 60.02 is to provide relief that is not available by direct appeal. *Gross v. Commonwealth*, 648 S.W.2d 853, 856 (Ky. 1983). Grounds or issues that could have been raised or were raised on direct appeal cannot be raised in a CR 60.02 motion. *Id.*

Here, Scott makes the same arguments in his appellant’s brief as discussed in *Scott v. Forcht Bank, NA*, 521 S.W.3d 591 (Ky. App. 2017). He does not argue how the circuit court abused its discretion in denying the CR 60.02 motion based on newly discovered evidence. Additionally, he does not discuss the newly discovered evidence nor its effect on the circuit court’s previous ruling.

Forcht Bank argues that Scott attempts to re litigate the appeal, and the law of the case doctrine precludes this appeal, requiring dismissal. We agree. Therefore, we hold the above-styled appeal is precluded from the law of the case doctrine.

App.6a

III. CONCLUSION

Having reviewed the record and being otherwise sufficiently advised, IT IS HEREBY ORDERED that Forcht Bank's motion to dismiss the appeal is GRANTED. The above-styled appeal shall be DISMISSED.

/s/ Pamela R. Goodwine
Judge, Court of Appeals

ENTERED: 12/08/2022

App.7a

**PREHEARING CONFERENCE ORDER
OF THE COURT OF APPEALS OF THE
COMMONWEALTH OF KENTUCKY
(MAY 13, 2022)**

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

ROBERT MARK SCOTT,

Appellant,

v.

FORCHT BANK,

Appellee.

No. 2022-CA-0224-MR

Appeal from Laurel Circuit Court
Honorable Thomas L. Jensen, Judge
Action No. 12-CI-00962

Pursuant to CR 76.03(7), it is now ordered that no prehearing conference shall be held in this appeal. It is further ordered that the running of time for all further steps on this appeal, subsequent to the filing of the notice of appeal, is no longer suspended and the time for all steps subsequent to the notice of appeal shall commence to run from the entry date of this order, pursuant to CR 76.03(3).

App.8a

The designation of evidence, in the event one is required, shall be filed with the circuit court clerk within ten (10) days of entry of this order. CR 75.01. The brief for the appellant(s) is not due until after the record has been certified by the circuit court clerk. CR 76.12(2) sets forth the time schedule for filing briefs.

/s/ Mary J. Gleason
Conference Attorney

ENTERED: May 13, 2022

**ORDER OF THE LAUREL CIRCUIT COURT
FOR THE 27TH JUDICIAL CIRCUIT OF THE
COMMONWEALTH OF KENTUCKY
(FEBRUARY 15, 2022)**

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
LAUREL CIRCUIT COURT

ROBERT MARK SCOTT,

Plaintiff,

v.

FORCHT BANK,

Defendant.

Civil Action No. 12-CI-00962
Division II

Before: Michael O. CAPERTON, Judge.

ORDER

This matter is before the Court on Plaintiff's request that it reconsider its previous order of August 3, 2020, overruling Plaintiff's motion to set aside the initial judgement of this matter.

This Court, in light of the Plaintiff's request for reconsideration, hereby vacates the previous order of August 3, 2020.

In so doing, however, the Court notes that it has again reviewed the issues in the present case pursuant to CR 60.02 and Plaintiff's recent request for reconsideration. In conducting this review, the Court notes that Summary Judgement was entered in this matter on March 16, 2015. This matter was appealed, and affirmed on appeal in a July 14, 2017 Order entered by the Kentucky Court of Appeals.

Having reviewed the submission of the Plaintiff, Robert Mark Scott, this Court hereby finds that Plaintiff has failed to produce any sufficient additional evidence or argument which would warrant setting aside the judgement. Accordingly, the Court hereby vacates its previously entered Order of August 3, 2020, and enters the order herewith.

Wherefore, IT IS HEREBY ORDERED that the previous August 3, 2020 Order of this Court overruling the motion of the Plaintiff, Robert Mark Scott, be and hereby is VACATED.

It is further ordered, having reviewed Plaintiff's motion to reconsider and finding it without merit, that Plaintiff's Motion to Set Aside Judgment be, and hereby is, OVERRULED.

Finally, the Court having reviewed the Defendant, Forcht Bank, Verified Motion for an award of costs and attorney fees, and the Court finding that the costs of \$15.10 and the requested attorney fees of \$2,972.00 are reasonable, the Court orders and adjudges the total sum of \$2987.10 be awarded to the Defendant, Forcht Bank, against the Plaintiff, Robert Mark Scott.

THIS IS A FINAL AND APPEALABLE ORDER
AND JUDGEMENT.

App.11a

DATED this the 15th of February 2022.

/s/ Michael O. Caperton
Judge, Laurel Circuit Court
Division II

**PREHEARING CONFERENCE ORDER
OF THE COURT OF APPEALS OF THE
COMMONWEALTH OF KENTUCKY
(NOVEMBER 30, 2020)**

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

ROBERT MARK SCOTT,

Appellant,

v.

FORCHT BANK,

Appellee.

No. 2020-CA-1326-MR

Appeal from Laurel Circuit Court
Honorable Thomas L. Jensen, Judge
Action No. 12-CI-00962

Pursuant to CR 76.03(7), it is now ordered that no prehearing conference shall be held in this appeal. It is further ordered that the running of time for all further steps on this appeal, subsequent to the filing of the notice of appeal, is no longer suspended and the time for all steps subsequent to the notice of appeal shall commence to run from the entry date of this order, pursuant to CR 76.03(3).

App.13a

The designation of evidence, in the event one is required, shall be filed with the circuit court clerk within ten (10) days of entry of this order. CR 75.01. The brief for the appellant(s) is not due until after the record has been certified by the circuit court clerk. CR 76.12(2) sets forth the time schedule for filing briefs.

/s/ Mary J. Gleason
Conference Attorney

ENTERED: November 30, 2020

**ORDER OF THE LAUREL CIRCUIT COURT
FOR THE 27TH JUDICIAL CIRCUIT OF THE
COMMONWEALTH OF KENTUCKY
(SIGNED SEPTEMBER 18, 2020;
ENTERED SEPTEMBER 21, 2020)**

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
LAUREL CIRCUIT COURT, DIVISION II

ROBERT MARK SCOTT,

Plaintiff,

v.

FORCHT BANK,

Defendant.

Civil Action No. 12-CI-00962

Before: Michael O. CAPERTON, Judge.

ORDER

This matter is before the Court on Plaintiff's request that it reconsider its previous order of August 3, 2020, overruling Plaintiff's motion to set aside the initial judgement of this matter.

This Court, in light of the Plaintiff's request for reconsideration, hereby vacates the previous order of August 3, 2020.

In so doing, however, the Court notes that it has again reviewed the issues in the present case pursuant to CR 60.02 and Plaintiff's recent request for reconsideration. In conducting this review, the Court notes that Summary Judgement was entered in this matter on March 16, 2015. This matter was appealed, and affirmed on appeal in a July 14, 2017 Order entered by the Kentucky Court of Appeals.

Having reviewed the submission of the Plaintiff, Robert Mark Scott, this Court hereby finds that Plaintiff has failed to produce any sufficient additional evidence or argument which would warrant setting aside the judgement. Accordingly, the Court hereby vacates its previously entered Order of August 3, 2020, and enters the order herewith.

Wherefore, IT IS HEREBY ORDERED that the previous August 3, 2020 Order of this Court overruling the motion of the Plaintiff, Robert Mark Scott, be and hereby is VACATED.

It is further ordered, having reviewed Plaintiff's motion to reconsider and finding it without merit, that Plaintiff's Motion to Set Aside Judgment be, and hereby is, OVERRULED.

IT IS FURTHER ORDERED AND ADJUDGED that this Court will reserve ruling on imposing attorney's fees after appropriate hearing, if necessary.

/s/ Michael O. Caperton
Judge, Laurel Circuit Court
Division II

Date: 9/18/20

**ORDER OVERRULING PLAINTIFF'S MOTION
TO SET ASIDE JUDGMENT
(JULY 31, 2020)**

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
LAUREL CIRCUIT COURT, DIVISION II

ROBERT MARK SCOTT,

Plaintiff,

v.

FORCHT BANK,

Defendant.

Civil Action No. 12-CI-00962

Before: Michael O. CAPERTON, Judge.

This Court having reviewed the issues in the present case, pursuant to 60.02 and being cognizant that Summary Judgment was entered in this matter on March 16, 2015, the matter having been appealed and affirmed on appeal by Order entered by the Kentucky Court of Appeals on July 14, 2017, and having reviewed the submission of Plaintiff, Robert Mark Scott, does find that insufficient evidence to disturb the Summary Judgment entered in this matter on March 16, 2015 as affirmed by the Kentucky Court of Appeals on July 14, 2017.

App.17a

IT IS HEREBY ORDERED that the motion of Plaintiff, Robert Mark Scott, is OVERRULED.

IT IS FURTHER ORDERED AND ADJUDGED that this Court will reserve ruling on imposing attorney's fees after appropriate hearing, if necessary.

DATED this 31st day of July, 2020.

/s/ Michael O. Caperton
Judge, Laurel Circuit Court
Division II

**ORDER OF THE LAUREL CIRCUIT COURT
FOR THE 27TH JUDICIAL CIRCUIT OF THE
COMMONWEALTH OF KENTUCKY
(OCTOBER 14, 2019)**

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
LAUREL CIRCUIT COURT

ROBERT MARK SCOTT,

Plaintiff,

v.

FORCHT BANK,

Defendant.

Civil Action No. 12-CI-00962
Division II

Before: Michael O. CAPERTON, Judge.

The plaintiff, Robert Mark Scott, having filed a Pro Se Motion to set aside the Court's previous Order denying his Motion to Set Aside Judgment, and the defendant, Forcht Bank, having objected to the motion and the Court being otherwise sufficiently advised, orders as follows:

The plaintiff, Robert Mark Scott's, Motion is denied and overruled.

App.19a

/s/ Michael O. Caperton
Judge, Laurel Circuit Court
Division II

Date: 10/14/19

**ORDER DENYING PLAINTIFF'S
MOTION TO SET ASIDE JUDGMENT
(SIGNED JUNE 3, 2019;
ENTERED JUNE 4, 2019)**

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
LAUREL CIRCUIT COURT, DIVISION II

ROBERT MARK SCOTT,

Plaintiff,

v.

FORCHT BANK,

Defendant.

Civil Action No. 12-CI-00962

Before: Michael O. CAPERTON, Judge.

**ORDER DENYING PLAINTIFF'S MOTION
TO SET ASIDE JUDGMENT**

This matter comes before the Court on motion of the Plaintiff, seeking to set aside a judgment. The Plaintiff filed the motion on May 3, 2019, and Court heard it on May 10, 2019, permitting the parties time to file a written response and reply. The time allotted for the submission of those pleadings having lapsed, and the matter now stands submitted for ruling.

As the basis for the motion, the Plaintiff cites CR 60.02(b), which allows for relief from judgment when new evidence is discovered that could not have been located through the exercise of due diligence in time to move for a new trial pursuant to CR 59.02. The newly discovered evidence in this instance consists of a written "business plan" that the Plaintiff obtained from the Office of the Comptroller of Currency on December 28, 2017. The Plaintiff had previously sought this document from the Defendant in the discovery process without success.

The Defendant sought, and the Court granted, judgment on the pleadings on March 16, 2015. The Court based its ruling on the fact that the alleged oral agreement regarding terms of the loan arraignment violated the statute of frauds. The Plaintiff appealed the Court's ruling, which the Court of Appeals affirmed in an opinion that became final on July 13, 2017. *Scott v. Forcht Bank, N.A.*, 521 S.W.3d 591 (Ky. App. 2017).

The Plaintiff, having obtained the business plan, now moves the Court to set aside the judgment on the basis that the business plan constitutes newly discovered evidence of such weight that the outcome of the action would be affected.

However, CR 60.02 places a limitation on such motions. "The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken." CR 60.02. Further, while 60.02(f) operates as a "catch-all" provision that allows relief from judgment for "any other reason of an extraordinary nature" allowing motions more than a year after the dispositive ruling, that subsection "can apply only if none of that rule's specific provisions applies."

Alliant Hosp., Inc. v. Benham, 105 S.W.3d 473, 478 (Ky. App. 2003). In other words, CR 60.02(f) cannot be used as a procedural back door to file a motion otherwise time-barred under CR 60.02(a)-(c).

The instant motion is time-barred. The original judgment was entered on March 16, 2015. Even if the limitations period dictated in CR 60.02 did not run during the pendency of the appeal, the Plaintiff had until one year after the opinion became final (or July 13, 2018), to file the motion. Instead, the Plaintiff waited until May 3, 2019 to file the motion.

The Plaintiffs failure to comply with the time limits dooms his CR 60.02(b) motion.

IT IS THEREFORE ORDERED that the Plaintiffs motion to set aside the judgment in this matter is hereby DENIED.

This the ____ day of _____, 2019.

/s/ Michael O. Caperton
Judge, Laurel Circuit Court
Division II

Date: 6/3/19

**ORDER OF THE LAUREL CIRCUIT COURT
FOR THE 27TH JUDICIAL CIRCUIT OF THE
COMMONWEALTH OF KENTUCKY
(MAY 14, 2019)**

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
LAUREL CIRCUIT COURT, DIVISION II

ROBERT MARK SCOTT,

Plaintiff,

v.

FORCHT BANK,

Defendant.

Civil Action No. 12-CI-00962

Before: Michael O. CAPERTON, Judge.

This matter comes before the Court on motion of the Plaintiff, seeking to set aside a judgment entered on March 16, 2015, pursuant to CR 60.02. The Plaintiff filed the motion on May 3, 2019, and Court heard it on May 10, 2019.

The parties having come to an agreement,

IT IS HEREBY ORDERED that the Defendant have fifteen days from May 10, 2019, to respond to the motion, and the Plaintiff shall have five days thereafter

App.24a

to file a reply if needed. Thereafter, the matter shall stand submitted for ruling.

This the 14th day of May, 2019.

/s/ Michael O. Caperton
Judge, Laurel Circuit Court
Division II

**OPINION OF THE COURT OF APPEALS OF
THE COMMONWEALTH OF KENTUCKY
(JULY 14, 2017)**

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

ROBERT MARK SCOTT,

Appellant,

v.

FORCHT BANK, NA, Successor in Interest to
LAUREL NATIONAL BANK,

Appellee.

No. 2015-CA-00594-MR

Appeal from Laurel Circuit Court
Honorable Thomas L. Jensen, Judge
Action No. 12-CI-00962

BEFORE: CLAYTON, JONES,
and NICKELL, Judges.

JONES, JUDGE.

The Appellant, Robert Mark Scott ("Scott"), appeals from the March 16, 2015, order of the Laurel County Circuit Court. In that order, the circuit court granted a motion for judgment on the pleadings made by the Appellee, Forcht Bank, N.A. ("Forcht Bank").

For the reasons more fully explained below, we AFFIRM.

I. Factual and Procedural Background

In September 2008, Scott approached Forcht Bank to obtain financing for the purchase of two undeveloped lots (Lot #23 and Lot #26) located in Cedar Creek Subdivision in Laurel County, Kentucky, and for the cost of building a rental home on one of the lots. According to Scott, the purpose of purchasing Lot #23 and Lot #26 was to construct a rental property, first on Lot #26, then use the proceeds from the rental property and the rental home itself, as collateral, to obtain a second loan from Forcht Bank to build a rental property on Lot #23. According to Scott, Forcht Bank was fully aware of his plans.

On March 5, 2013, Scott met with Chris Jasper ("Jasper"), a loan officer with Forcht Bank. Scott indicated that he approached Jasper with a written plan for the two lots. Scott maintains that before agreeing to the loan terms, he requested assurance from Forcht Bank that he would be able to build on the second lot in accordance with this plans. Scott stated that Jasper assured him that he would be able to build on Lot #23 and that Jasper provided him a form, which Scott filled out explaining why he was buying Lot #23. A copy of this form was never produced during this action. Jasper only recalled reviewing Scott's handwritten construction and post-construction plans. He did not recall Scott stating that he would not accept the loan unless Forcht Bank agreed to a second, later loan for the construction of a rental home on Lot #23.

In September 2008, Scott's loan application was approved by Forcht Bank. In total, Forcht Bank loaned

Scott \$121,952.59 for the purchase price of Lot #23 and Lot #26 (the price for each lot was \$11,500.00) and the cost of building a rental home on Lot #26. Later in 2008, Jasper was dismissed by Forcht Bank. By the fall of 2008 Mike Sharp ("Sharp") was hired by Forcht Bank as its Market President.

In March 2009, Scott completed construction of the rental property on Lot #26, at which time he approached Forcht Bank and met with Sharp for the purpose of obtaining a loan to build another rental home on the second lot (Lot #23). Scott was denied the second loan from Forcht Bank and, according to him, Sharp asked Scott to sell the property on Lot #26 rather than renting it out as he had originally planned. Scott attempted to sell the home, but it never sold.

In August 2009, due to depleted funds from paying the mortgage out of pocket, Scott rented the property on Lot #26 for \$1,200.00 a month. According to Scott, Sharp never informed him during their March 2009 meeting that Forcht Bank would not make the second loan. Scott indicated that had Sharp notified him of this, he would have never attempted to sell the home and would have immediately rented it. Sharp indicated the denial of the second loan could likely be attributed to a change in Forcht Bank's policy, but no documentation of this change was ever produced. Scott was never able to obtain financing from Forcht Bank or any another financial institution to build a second rental property on Lot #23.

Subsequently, Scott filed suit against Forcht Bank for breach of contract, breach of promise, promissory estoppel, detrimental reliance, and various emotional damages. Specifically, Scott alleged that he had relied

to his detriment on the alleged promise that Forcht Bank would make a second loan to him so that he could construct a rental home on Lot #23. Scott also alleged that Forcht Bank's failure to make an additional loan to him was a breach of its fiduciary duty.

Forcht Bank filed a Motion for Judgment on the Pleadings. On March 16, 2015, the trial court granted Forcht Bank's Motion for Judgment on the Pleadings and dismissed Scott's complaint finding:

The plaintiff, Robert Mark Scott's, complaint is dismissed. The plaintiff's claim is barred by the statute of frauds, KRS 371.010(9) in as much as the claim is based upon Forcht Bank's alleged promise to loan Scott money. Scott has produced no writing supporting his claims and therefore the claim is barred by the statute of frauds.

Further, Scott has failed to produce any evidence that his relationship with Forcht rose to the level of Forcht owing him a fiduciary duty. Scott has failed to allege any gain or profit Forcht enjoyed from information received from Scott. The allegations made by Scott and the proof presented to the Court do not support the claim that a fiduciary relationship developed between the bank and Scott. The parties merely have a simple creditor-debtor relationship.

Scott filed a Motion to Reconsider. The trial court denied that motion. This appeal followed.

II. Standard of Review

Kentucky's "Civil Rule 12.03 provides that any party to a lawsuit may move for a judgment on the pleadings." *City of Pioneer Village v. Bullitt Cty.*, 104 S.W.3d 757, 759 (Ky. 2003). A judgment on the pleadings "should be granted if it appears beyond doubt that the nonmoving party cannot prove any set of facts that would entitle him/her to relief." *Id.* "[T]he circuit court is not required to make any factual determination; rather, the question is purely a matter of law." *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. App. 2002). Further, CR 12.03 may be treated as a motion for summary judgment. *Shultz v. Gen. Elec. Healthcare Fin. Servs., Inc.*, 360 S.W.3d 171, 177 (Ky. 2012). We review a judgment on the pleadings *de novo*. *Id.*

III. Analysis

On appeal, Scott maintains that the trial court erred as a matter of law when it dismissed his claims finding they were barred by the statute of frauds. It is Scott's position that because he detrimentally relied on the alleged oral promises regarding the second loan, Forcht Bank is estopped from claiming the affirmative defense of statute of frauds. We disagree.

In relevant part, KRS¹ 371.010, Kentucky's Statute of Frauds statute, states as follows:

No action shall be brought to charge any person:

...

¹ Kentucky Revised Statutes.

(9) Upon any promise, contract, agreement, undertaking, or commitment to loan money, to grant, extend, or renew credit, or make any financial accommodation to establish or assist a business enterprise or an existing business enterprise including, but not limited to the purchase of realty or real property, but this subsection shall not apply to agreements pursuant to which credit is extended by means of a credit card or similar device, or to consumer credit transactions;

unless the promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, be in writing and signed by the party to be charged therewith, or by his authorized agent. It shall not be necessary to express the consideration in the writing, but it may be proved when necessary or disproved by parol or other evidence.

There is no writing signed by Forcht Bank or any of its authorized agents in which Forcht Bank agreed to make a second loan to Scott. The various documents Scott points to were prepared by him. While he claims that he gave the written memorandum of his plans to Forcht Bank, there is nothing in the record to suggest that Forcht Bank signed off on the plans in writing. Scott counters that this section is not applicable because the purpose of the loan was to construct a personal residence, not to establish a business enterprise or to assist an existing one. See *Davis v. Davis*, 343 S.W.3d 610, 615 (Ky. App. 2011); *Flinn v. R.M.D. Corp.*, No. 3:11-CV-386-H, 2011 WL 5025354, at *3 (W.D. Ky. Oct. 21, 2011) (“[A] loan or

extension of credit to build a personal residence would fall outside Kentucky's Statute of Frauds."). The problem with this argument, however, is that Scott's plans clearly indicate that he wanted to build the home on Lot #23 to rent out, not as a personal residence for himself. Scott's plans were certainly in the nature of a business enterprise and, therefore, fall within the statute of frauds.

Nevertheless, Scott maintains that Forcht Bank should be estopped from pleading the statute of frauds as a defense because he detrimentally relied on the oral representations and assurances that were made to him before he agreed to the terms of the first loan. Scott explains that he would not have purchased the first lot but for Forcht Bank's reassurances that he could "absolutely" build on the second lot.

Promissory estoppel requires "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires." *Meade Constr. Co. v. Mansfield Commercial Elec., Inc.*, 579 S.W.2d 105, 106 (Ky. 1979) (quoting Restatement (Second) of Contracts §90 (1981)).

Regarding the application of the doctrine of estoppel as applied to the statute of frauds, a panel of this court has stated that "the doctrine of estoppel may, under the proper circumstances, prevent a party from employing the statute of frauds." *Nicholson v. Clark*, 802 S.W.2d 934, 939 (Ky. App. 1990). However, this is not to say that a claim for promissory estoppel will always bar a party from invoking a statute of

frauds defense. Rather, a claim of promissory estoppel “alone is not sufficient to defeat the statute of frauds; actual fraud must be proven.” *Rivermont Inn, Inc. v. Bass Hotels & Resorts, Inc.*, 113 S.W.3d 636, 642 (Ky. App. 2003).

In *Sawyer v. Mills*, 295 S.W.3d 79 (Ky. 2009), Kentucky’s highest court addressed the application of promissory estoppel to the statute of frauds. Specifically, the *Sawyer* court explained:

First, it is not clear that under Kentucky law promissory estoppel can defeat the Statute of Frauds. Though the headnotes for the case state otherwise, the Court of Appeals has recently held that a claim of promissory estoppel “alone is not sufficient to defeat the statute of frauds; actual fraud must be proven.” *Rivermont Inn, Inc. v. Bass Hotels & Resorts, Inc.*, 113 S.W.3d 636, 642 (Ky. App. 2003). As the court then noted, the claim “confuses promissory estoppel with equitable estoppel, and incorrectly interchanges the terms” *Id.* Equitable estoppel requires a fraudulent misrepresentation as to a material fact, which has not been claimed in this case.

While this Court has stated that “the statute of frauds is not a bar to a fraud or promissory estoppel claim based on an oral promise of indefinite employment,” *United Parcel Serv. Co. v. Rickert*, 996 S.W.2d 464, 471. (Ky. 1999), the statement was only dicta, as the decision turned on equitable estoppel (i.e., a claim of fraud). More recently this Court stated that it is “incorrect[][to] infer []

from *Rickert* that detrimental reliance is a bar to the statute of frauds. All that may be deduced from *Rickert* concerning the statute of frauds is that in a fraud or promissory estoppel action involving a promise of employment, it does not act as a bar." *Farmers Bank and Trust Co. of Georgetown, Kentucky v. Willmott Hardwoods, Inc.*, 171 S.W.3d 4, 10 (Ky. 2005); see also *Architectural Metal Systems, Inc. v. Consolidated Systems, Inc.*, 58 F.3d 1227, 1231 (7th Cir. 1995) (Posner, J.) ("[T]he statute of frauds is applicable to a promise claimed to be enforceable by virtue of the doctrine of promissory estoppel." (citing *First Nat'l Bank v. McBride*, 267 Ill. App. 3d 367, 204 Ill. Dec. 676, 642 N.E.2d 138, 142 (1994); *Dickens v. Quincy College Corp.*, 245 Ill. App. 3d 1055, 185 Ill. Dec. 822, 615 N.E.2d 381, 386 (1993), and relying on Illinois law)). *Willmott Hardwoods, Inc.* then went on to hold that except in the most extreme circumstances, even equitable estoppel (which involves fraud) cannot defeat the statute of frauds, "lest the Court run afoul of judicially amending the statute in violation of separation of powers." *Id.*

Id. at 89-90.

In this case, the evidence of record does not support Scott's claim that he reasonably relied on any oral promise made by Forcht Bank. Specifically, Scott has provided no evidence to support his claim that he detrimentally relied on any promises of a second loan made by Jasper or Forcht Bank. In fact, by his own statements and recollection, it would appear

that when Scott and Jasper met in 2008, Jasper only assured him that he would be able to build on Lot #23. Scott did not testify to any specific promise made by Jasper that a second loan would be made by Forcht Bank. Additionally, Scott has alleged that a writing of this supposed promise was made, but has been unable to produce any such writing. Jasper, the initial loan officer Scott met with, did not recall Scott stating that he would only accept the first loan if Forcht Bank promised to provide him with a second loan and testified that any documents would have been kept in Scott's loan file. No such written contract has ever been produced.

Moreover, the initial loan made by Forcht Bank to Scott was reduced to writing, signed by him, and contained a merger clause, which provided:

It is further agreed, understood and acknowledged that Lender has made no oral or verbal representations or statements in order to induce Borrower's agreement hereto, that this writing along with the note of even date herewith, and including any documents required by law to be signed, constitutes the entire agreement between the parties, and that there are no side agreements or verbal understandings that are not expressly contained herein. Furthermore, this mortgage and the note of even date herewith may not be modified except by a writing signed by both parties and any such modification not reduced to writing shall not be binding upon the parties.

It is well settled in Kentucky that "as a matter of law, a party may not rely on oral representations

that conflict with written disclaimers to the contrary which the complaining party earlier specifically acknowledged in writing . . .” *Rivermont Inn, Inc.*, 113 S.W.3d at 640-41. Here, by its terms, any oral promise would contradict the written contract agreed to and signed by Scott. As such, we cannot say Scott reasonably relied on any alleged oral promise made by Forcht Bank to his detriment, as required to overcome the defense of the statute of frauds.

Scott also failed to plead any facts to suggest that a fiduciary relationship existed between him and Forcht Bank. Whether a fiduciary duty exists by virtue of the relationship between various actors is generally a question of law for the courts to decide as it essentially involves a policy determination. *Mullins v. Commonwealth Life Ins. Co.*, 839 S.W.2d 245, 248 (Ky.1992). If a fiduciary relationship does exist between the parties, the question of whether one party breached that duty is one of fact. *See Priestley v. Priestley*, 949 S. W.2d 594 (Ky. 1997).

Generally, banks do not owe a fiduciary duty to their customers. *See De Jong v. Leitchfield Deposit Bank*, 254 S.W.3d 817, 822 (Ky. App. 2007). Very rarely courts may impose a fiduciary duty on a bank where the bank possesses confidential information about its customer that it uses for its own gain. *Snow Pallet, Inc. v. Monticello Banking Co.*, 367 S.W.3d 1, 5 (Ky. App. 2012). Nothing in the record supports that Forcht Bank profited from denying the second loan.

IV. Conclusion

For the above stated reasons, we affirm the Laurel Circuit Court.

ALL CONCUR.

**PREHEARING CONFERENCE ORDER
OF THE COURT OF APPEALS OF THE
COMMONWEALTH OF KENTUCKY
(OCTOBER 15, 2015)**

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

ROBERT MARK SCOTT,

Appellant,

v.

FORCHT BANK, NA,

Appellee.

No. 2015-CA-000594-MR

Appeal from Laurel Circuit Court
Action No. 12-CI-00962

PREHEARING CONFERENCE ORDER

The prehearing conference in the above appeal was held on October 15, 2015, by telephone. No disposition was made of this appeal at that conference. It is therefore ORDERED that this appeal shall proceed in accordance with the Kentucky Rules of Civil Procedure and that the time for all further steps, subsequent to the notice of appeal, shall commence to run from the entry of this order except as follows:

App.38a

1. The Laurel Circuit Court Clerk shall certify the record on appeal within thirty (30) days of the entry date of this order;
2. The Appellant shall file his brief within sixty (60) days of the certification of the record;
3. The Appellee shall file its brief within sixty (60) days after the Appellant's brief is filed;
4. The Appellant shall file his reply brief within fifteen (15) days after the Appellee's brief is filed.

/s/ Leona A. Power
Conference Attorney

ENTERED: October 15, 2015

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER
(SIGNED MARCH 26, 2015;
ENTERED MARCH 27, 2015)**

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
LAUREL CIRCUIT COURT, DIVISION II

ROBERT MARK SCOTT,

Plaintiff,

v.

FORCHT BANK, NA, Successor-In-Interest to
LAUREL NATIONAL BANK,

Defendant.

Civil Action No. 12-CI-00962

Before: Thomas L. JENSEN, Judge.

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER**

This matter is before the Court on motion-by the Plaintiff, acting by and through counsel, requesting this Court reconsider its entry of judgment on the pleadings in favor of the Defendant, and dismissing the Plaintiff's complaint with prejudice. The judgment was entered on March 16, 2015, and the motion to reconsider same was filed on March 25, 2015.

App.40a

The basis for relief stated in the Plaintiff's motion is simply a restatement of facts of the case, which were already before the Court. The Plaintiff does not, however, cite a legal basis justifying the relief he now requests.

Having been presented with no basis upon which the Court can justify changing its prior ruling,

IT IS THEREFORE ORDERED that the Plaintiff's motion is hereby DENIED.

This the 26th day of March, 2015.

/s/ Thomas L. Jensen
Judge, Laurel Circuit Court
Division II

**FINDING OF FACTS,
CONCLUSIONS OF LAW AND JUDGMENT
(SIGNED MARCH 13, 2015;
ENTERED MARCH 16, 2015)**

COMMONWEALTH OF KENTUCKY
27TH JUDICIAL CIRCUIT
LAUREL CIRCUIT COURT

ROBERT MARK SCOTT,

Plaintiff,

v.

FORCHT BANK, NA, Successor-In-Interest to
LAUREL NATIONAL BANK,

Defendant.

Civil Action No. 12-CI-00962
Division II

Before: Thomas L. JENSEN, Judge.

**FINDING OF FACTS, CONCLUSIONS
OF LAW AND JUDGMENT**

The defendant, Forcht Bank, NA, ("Forcht"), having moved the Court for Judgment on the Pleadings to dismiss the plaintiff, Robert Mark Scott's, ("Scott"), Complaint, and Scott having responded to the motion and a hearing having been held, the Court enters the

following Findings of Fact, Conclusions of Law and Judgment:

FINDINGS OF FACT

On September 29, 2008, Forcht loaned Scott \$121,952.59 for the purchase of Lots 26 and 23 in Cedar Point Subdivision. The purchase price for the lots was \$11,500.00 each with the balance to be used to build a house on Lot 26. Scott subsequently applied for a second loan to construct a rental house on Lot 23. Forcht declined to make the second loan. Scott filed suit claiming Forcht breached its fiduciary duty to him by failing to make the second loan. Scott has failed to produce any written documentation showing Forcht ever promised to make the additional loan. Scott has also failed to allege Forcht has profited in any way from any information gained from him.

CONCLUSIONS OF LAW

KRS 371.010(9) reads as follows:

371.010. Statute of Frauds-Contracts to be written.

No action shall be brought to charge any person:

...

(9) Upon any promise, contract, agreement, undertaking; or commitment to loan money, to grant, extend, or renew credit, or make any financial accommodation to establish or assist a business enterprise or an existing business, enterprise including, but not limited to the purchase of realty or real property, but this subsection shall not apply to agreements

pursuant to which credit is extended by means of a credit card or similar devise, or to consumer credit transactions;

unless the promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, be in writing and signed by the party to be charged therewith, or by his authorized agent. . . .

The Kentucky courts define a fiduciary duty as “a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence”. *Snow Pallet, Inc., v. Monticello Banking Company*, Ky. App. 367 S.W.3d 1, 4 (2012); *Steelvest, Inc., v. Scansteel Service, Inc.*, Ky., 807 S.W.2d 476, 485 (1991). A fiduciary duty is “the highest order of duty imposed by law . . . and [i]t is not to be lightly required.” *Snow Pallet* at 5, citing *In Re Sallee v. Fort Knox Nat’l Bank, NA*, 286 F.3d 878, 891 (6th Cir. 2002). Further, “[a]s a general rule, banks do not owe a fiduciary duty to their customers”. *Snow Pallet* at 4.

The Kentucky Court of Appeals citing U.S. Court of Appeals for the Sixth Circuit has noted that there are “only two published cases in Kentucky where courts found a fiduciary relationship between a bank and a borrower” and “[i]n both instances, the bank profited from confidential information received through the borrower”. *Snow Pallet* at 4, citing *Sallee* at 893. The Court in *Snow Pallet* also stated, “[i]n an arms-length commercial transaction, where each party is assumed to be protecting its own interest, no such duty arises.” *Id.* at 5.

The US Appeals Court explained in *Sallee* that a bank and its borrower's relationship is that of creditor-debtor relationship only. As stated in *Sallee*:

As a matter of business, banks seek to maximize their earnings by charging interest rates or fees as high as the market will allow. Banks seek as much security for their loans as they can obtain. In contrast, debtors hope to pay the lowest possible interest rate and fee charges and give as little security as possible. Without a great deal more, a mere confidence that a bank will act fairly does not create a fiduciary relationship obligating the bank to act in the borrower's interest ahead of its own interest.

Sallee at 893.

JUDGMENT

The plaintiff, Robert Mark Scott's, Complaint is dismissed. The plaintiff's claim is barred by the statute of frauds, KRS 371.010(9) in as much as the claim is based upon Forcht Bank's alleged promise to loan Scott money. Scott has produced no writing supporting his claims and therefore the claim is barred by the statute of frauds.

Further, Scott has failed to produce any evidence that his relationship with Forcht rose to the level of Forcht owing him a fiduciary duty. Scott has failed to allege any gain or profit Forcht has enjoyed from information received from Scott. The allegations made by Scott and the proof presented to the Court do not support the claim that a fiduciary relationship

App.45a

developed between the bank and Scott. The parties merely have a simple creditor-debtor relationship.

The plaintiff, Robert Mark Scott's, Complaint is therefore dismissed with prejudice.

This is a final and appealable Judgment.

Dated this 13th day of March, 2015.

/s/ Thomas L. Jensen
Judge, Laurel Circuit Court
Division II

COMPLAINT
(OCTOBER 2, 2012)

COMMONWEALTH OF KENTUCKY
LAUREL CIRCUIT COURT, DIVISION II

ROBERT MARK SCOTT,

Plaintiff,

v.

FORCHT BANK, NA, SUCCESSOR IN INTEREST TO
LAUREL NATIONAL BANK,

Defendant.

Civil Action No. 12-CI-00962

COMPLAINT

Comes the Plaintiff, by counsel, and for his cause
of action herein states as follows:

PARTIES

1. The Plaintiff, Robert Mark Scott, is an adult
resident of the Commonwealth of Kentucky and
Laurel County with a mailing address of 1104 Pleasant
View Road, London, Kentucky 40744;

2. That the Defendant, Forcht Bank (hereinafter
referred to as "Defendant" or "Bank") is a Banking
institution licensed to do business under the laws of
the Commonwealth of the Kentucky, with its principal

place of business in Laurel County, Kentucky located at the 2404 Sir Barton Way, Lexington, Kentucky 40509;

VENUE

3. Laurel Circuit Court is the appropriate venue for this action as the loan contracts and promises in question were issued and made in Laurel County, Kentucky, and all acts complained of herein occurred in Laurel County, Kentucky;

4. The allegations and cause of action contained herein are within the jurisdiction of the Laurel Circuit Court;

OPERATIVE FACTS

5. The Plaintiff met with Chris Jasper, Vice President and Loan Officer, of Defendant, at Forcht Bank in London, Kentucky on or about August 29, 2008 and discussed the financing of certain loans pertaining to Plaintiff's construction of certain rental properties. That the Plaintiff and Defendant, through its's employees, discussed and agreed upon certain construction loan plans, so as to allow the Plaintiff to secure certain loans to enable him to build multiple rental homes. The Plaintiff provided the bank with an appraisal of a floor plan for a rental home to be constructed in Cedar Point subdivision in London, Kentucky. The parties agreed to use the appraisal but have the same updated so that Forcht Bank could use the appraisal to make the necessary loan. The bank and Plaintiff discussed the Plaintiff's plans and intent in construction of multiple homes. The Bank agreed and loaned the Plaintiff \$121,952.59 (one-hundred and twenty-one thousand nine hundred fifty-

two and 59 cents) to purchase a lot (#26) on which the first home would be constructed and included in this loan was \$11,000.00 (eleven thousand dollars) to purchase a second lot, lot #23, on which another rental home would be constructed after the completion of the construction of the rental home on lot #26.

6. The parties mutually understood through and during their negotiations and discussions that the Plaintiff would not purchase the second lot #23 if he could not secure financing from the Defendant to construct a rental home upon said lot. In other words, the parties mutually agreed that if the Plaintiff bought lot #23 that he would be approved, by the Defendant, for a second loan to construct a rental home upon this lot (#23). Based upon the promise that he would be given an additional loan to construct a second rental home on lot #23, he purchased lot #23, along with lot number 26, so that the lot #23 would be paid for when the construction on the first house, lot #26, was completed. Thereafter he would immediately be in a position to begin construction on lot #23.

7. That after the loan on lots 23 & 26 were made and construction was completed on lot #26 the Defendant refused to even allow the Plaintiff to apply for a second loan to construct a home on lot #23.

Count I

8. That the Plaintiff hereby incorporates by reference each and every allegation contained in paragraph 1 through 1 through 8, the same as set forth herein;

9. That the Defendant, Forcht Bank, by and through its employees, made certain promises to the Plaintiff to induce him to purchase two building lots in Cedar Point Subdivision and thereafter issued certain loan proceeds for the purchase of these two lots and the construction of a home on lot #26.

10. That the Plaintiff, detrimentally relied upon the promises of the Defendant, to make his decision to purchase lot #23, and thereafter be assured of a construction loan to build upon lot #23; Such detrimental reliance caused the Plaintiff to be unable to construct a home on lot #23 causing him great financial loss, being more than the minimum jurisdictional limits of this court.

11. The conduct of the Defendant was a substantial factor and the direct and proximate cause of the damages complained of herein, and such conduct of the Defendant, it's agents, assigns and employees, was reckless, willful wanton, negligent, grossly negligent, outrageous, unreasonable, unfair and violated the fiduciary duty owed to the Plaintiff.

12. The Plaintiff is entitled to recover actual damages, cost, attorney fee's and punitive damages.

WHEREFORE, the Plaintiff demands a judgment from the Defendant, Forcht Bank, for actual damages, prejudgment interest, damages for anxiety and mental anguish, public humiliation, embarrassment and shame, damages to credit, damages to good name all to be determined by the trier of fact in the amount in excess of the minimum jurisdiction of this court;

2. A Trial;

3. For cost and attorney fees;

App.50a

4. Punitive damages; and
5. And for any and all other relief to which they may appear entitled.

Respectfully submitted,

/s/ Bill Meader

P.O. Box 499

Hyden, KY 41749

Phone: 606-672-5150

Fax: 606-672-5109

**REPLY TO THE RESPONSE OF DEFENDANT
(MAY 22, 2019)**

COMMONWEALTH OF KENTUCKY
LAUREL CIRCUIT COURT

MARK SCOTT,

Plaintiff,

v.

FORCHT BANK,

Defendant.

Action No.: 12-CI-00962

REPLY

Comes now the Plaintiff, by counsel, and submits a reply to the response of the Defendant and states as follows;

Plaintiff states that their motion is based upon section F of Rule 60.02. In that section there is no required time for the filing of the motion. In addition, the section states any other reason justifying relief in this case plaintiff states that a review of the depositions and the arguments show that the Plaintiff has a viable cause of action that should be addresses in the Court and heard by a jury.

App.52a

Respectfully Submitted,

/s/ Hon. Dan Thompson

P.O. Box 851

Somerset, KY 42502

606-679-5297

dan@jdtinc.com

DOCKET DETAILS

**SCOTT, ROBERT MARK
VS.
FORCHT BANK, N.A.**

Case #: 12-CJ-00962

**County: LAUREL
Court: CIRCUIT Court
Opening Judge: Hon. John Knox Mills
Current Judge: Hon. Thomas L. Jensen
Closing Judge: Hon. Thomas L. Jensen**

01/04/2016

**Document Filed
MISCELLANEOUS
RECORD CHECKED TO HON. JASON
WILLIAM'S OFFICE**

01/12/2016

**Document Filed
MISCELLANEOUS
RECORD CHECKED FROM HON. JASON
WILLIAM'S OFFICE**

03/02/2016

**Document Filed
MISCELLANEOUS**

App.54a

RECORD CHECKED OUT TO HON. TIPTON'S
OFFICE

03/15/2016

Document Filed
MISCELLANEOUS
RECORD RETURNED FROM HON. TIPTON'S
OFFICE

04/07/2016

Document Filed
MISCELLANEOUS
LETTER FROM THE COURT OF APPEALS TO
TRANSMIT RECORD

04/08/2016

Document Filed
MISCELLANEOUS
RECORD MAILED TO THE COURT OF
APPEALS-I VOLUME RECORD, 3 DVDS AND
6 DEPOSITIONS – BY CERTIFIED MAIL

04/18/2016

Document Filed
MISCELLANEOUS
CERTIFIED MAIL FOR HON. SAMUEL
GIVENS, JR. WAS RECEIVED BY KERRY
HINES ON 04-12-2016

05/15/2017

Document Filed
OPINION
OPINION – AFFIRMING – ENTERED FROM
THE COURT OF APPEALS

App.55a

07/14/2017

Document Filed
OPINION
OPINION – AFFIRMING – ENTERED FROM
THE COURT OF APPEALS

07/14/2017

Document Filed
MISCELLANEOUS
RECORD RETURNED FROM THE COURT OF
APPEALS – 1 VOLUME RECORD, 3 CD'S AND
6 DISPOSITIONS

05/03/2019

Document Filed
MOTION TO SET ASIDE
ATTORNEY FOR PLAINTIFF

05/10/2019

Scheduled Event May 10 2019 at 10:30 AM
MOTION HOUR
HON. MICHAEL CAPERTON

05/14/2019

Document Filed
OBJECTION
AD

05/14/2019

Document Filed
TENDERED DOCUMENT
AD

05/14/2019

Document Filed

App.56a

ORDER - OTHER

JUD

DEF SHALL HAVE 15 DAYS FROM 5-10-19 TO
RESPOND TO THE MOTION THE PLAINTIFF
SHALL HAVE 15 DAYS TO FILE A REPLY

05/14/2019

NOE to All Counsel of Record and
Parties Not Represented by Counsel.

ORDER-OTHER

FIRST CLASS MAIL

DEF SHALL HAVE 15 DAYS FROM 5-10-19 TO
RESPOND TO THE MOTION THE PLAINTIFF
SHALL HAVE 15 DAYS TO FILE A REPLY

05/15/2019

Document Filed

TENDERED DOCUMENT

AD

PLACED TENDERED ORDER IN JUDGE
CAPERTONS BASKET

05/22/2019

Document Filed

REPLY

AP

06/04/2019

Document Filed

ORDER DENYING

JUD

PLAINTIFFS MOTION TO SET ASIDE
JUDGMENT

06/04/2019

NOE to All Counsel of Record and

App.57a

Parties Not Represented by Counsel.
ORDER DENYING
FIRST CLASS MAIL
PLAINTIFFS MOTION TO SET ASIDE
JUDGMENT

08/14/2019

Motion Filed
MOTION - OTHER
PLAINTIFF/PETITIONER
TO SEEK RELIEF TO COURT COST UNDER
CIVIL RULES

09/25/2019

Motion Filed
MOTION - OTHER
ATTORNEY FOR PLAINTIFF
TO SEEK RELIEF TO COURT UNDER CIVIL
RULES

10/08/2019

Document Filed
OBJECTION
AD

10/08/2019

Document Filed
TENDERED DOCUMENT
AD

10/11/2019

Scheduled Event Oct 11 2019 at 10:30 AM
MOTION HOUR
HON. MICHAEL CAPERTON

10/14/2019

App.58a

Document Filed
ORDER DENYING
JUD
ROBERT SCOTT'S MOTION

10/14/2019

NOE to All Counsel of Record and
Parties Not Represented by Counsel.
ORDER DENYING
FIRST CLASS MAIL
ROBERT SCOTT'S MOTION

10/17/2019

Monetary Event \$25.00
Monetary Event
Charges For Services (Copy - Video Tape/CD)

11/22/2019

Motion Filed
MOTION FOR RELIEF
DEFENDANT/ RESPONDENT

11/22/2019

Document Filed
CORRESPONDENCE
FROM ROBERT MARK SCOTT

11/25/2019

Motion Filed
MOTION FOR RELIEF
ATTORNEY FOR PLAINTIFF

11/26/2019

Document Filed
OBJECTION
AD

11/26/2019

Document Filed
TENDERED DOCUMENT
AD

12/05/2019

Document Filed
CORRESPONDENCE
P

12/06/2019

Motion Filed
MOTION FOR RELIEF
DEFENDANT/RESPONDENT

12/13/2019

Scheduled Event Dec 13 2019 at 10:30 AM
MOTION HOUR
HON. MICHAEL CAPERTON

02/11/2020

Scheduled Event Feb 11 2020 at 09:00 AM
OTHER HEARING
HON. MICHAEL CAPERTON

08/03/2020

Document Filed
ORDER OVERRULING
JUD
PLAINTIFF'S MOTION TO SET ASIDE
JUDGMENT

08/03/2020

NOE to All Counsel of Record and
Parties Not Represented by Counsel.

App.60a

ORDER OVERRULING
FIRST CLASS MAIL
PLAINTIFF'S MOTION TO SET ASIDE
JUDGMENT

08/17/2020

Motion Filed
MOTION - OTHER
PLAINTIFF/PETITIONER
TO STATE NEW EVIDENCE

08/19/2020

Motion Filed
MOTION - OTHER
PLAINTIFF/PETITIONER

09/15/2020

Scheduled Event Sep 15 2020 at 09:00 AM
MOTION HOUR
HON. MICHAEL CAPERTON

09/21/2020

Document Filed
ORDER-OTHER
JUD
VACATING PREVIOUS ORDER ON AUG 3,
2020. PLAINTIFF'S MOTION TO SET ASIDE
JUDGMENT IS OVERRULED.

09/21/2020

NOE to All Counsel of Record and
Parties Not Represented by Counsel.
ORDER-OTHER
FIRST CLASS MAIL

App.61a

VACATING PREVIOUS ORDER ON AUG 3,
2020. PLAINTIFF'S MOTION TO SET ASIDE
JUDGMENT IS OVERRULED.

09/28/2020

Motion Filed
MOTION - OTHER
PLAINTIFF/PETITIONER
TO STATE NEW EVIDENCE

10/05/2020

Motion Filed
MOTION - OTHER
PLAINTIFF/PETITIONER
PRO SE MOTION TO STATE NEW EVIDENCE

10/05/2020

Motion Filed
MOTION - OTHER
PLAINTIFF/PETITIONER
TO STATE NEW EVIDENCE

10/19/2020

Scheduled Event Oct 19 2020 at 09:00 AM
MOTION HOUR
HON. MICHAEL CAPERTON

10/19/2020

Monetary Event \$ 150.00
Monetary Event
Civil Filing Fee

10/19/2020

Monetary Event \$ 25.00
Monetary Event
Court Facilities Fee

App.62a

10/19/2020

Document Filed
NOTICE OF APPEAL
P
COPIES MAILED TO COURT OF APPEALS
AND HON. WESLEY TIPTON

10/28/2020

Document Filed
NOTICE OF FILING
P

12/02/2020

Document Filed
MISCELLANEOUS
IS NOW ORDERED THAT NO PREHEARING
CONFERENCE SHALL BE HELD IN THIS
APPEAL

12/07/2020

Motion Filed
MOTION TO SET ASIDE
DEFENDANT/RESPONDENT

12/07/2020

Document Filed
DESIGNATION OF RECORD
D

01/12/2021

Document Filed
NOTICE OF CERTIFICATION OF RECORD ON
APPEAL

App.63a

COPYS MAILED TO COURT OF APPEALS,
WESLEY TIPTON AND ROBERT MARK
SCOTT

03/24/2021

Document Filed
MISCELLANEOUS
RECORD CHECKED OUT BY WES TIPTON

09/01/2021

Document Filed
MISCELLANEOUS
ORDER DISMISSING APPEAL

09/02/2021

Document Filed
MISCELLANEOUS
RECORD RETURNED FROM WES TIPTON

09/13/2021

Motion Filed
MOTION - OTHER
PLAINTIFF/PETITIONER
FOR FINAL ORDER

10/12/2021

Scheduled Event Oct 12 2021 at 09:00 AM
MOTION HOUR
HON. MICHAEL CAPERTON

10/15/2021

Motion Filed
MOTION FOR ATTORNEY'S FEES
ATTORNEY FOR DEFENDANT

App.64a

10/21/2021

Document Filed
RESPONSE
D
TO MOTION FOR ATTY FEES

11/16/2021

Scheduled Event Nov 16 2021 at 09:00 AM
MOTION HOUR
HON. MICHAEL CAPERTON

01/10/2022

Motion Filed
MOTION - OTHER
PLAINTIFF/PETITIONER

01/12/2022

Document Filed
EXHIBIT
AD

01/12/2022

Motion Filed
MOTION FOR ATTORNEY'S FEES
ATTORNEY FOR DEFENDANT

01/18/2022

Scheduled Event Jan 18 2022 at 09:00 AM
MOTION HOUR
HON. MICHAEL CAPERTON

App.65a

01/26/2022

Document Filed
RESPONSE
AP
TO MOTION FOR ATTORNEY FEES

02/15/2022

Document Filed
ORDER-OTHER
JUD

02/15/2022

NOE to All Counsel of Record and
Parties Not Represented by Counsel.
ORDER-OTHER
FIRST CLASS MAIL

02/25/2022

Monetary Event \$150.00
Monetary Event
Civil Filing Fee

02/25/2022

Monetary Event \$25.00
Monetary Event
Court Facilities Fee

02/25/2022

Document Filed
NOTICE OF APPEAL
COPYS MAILED TO COURT OF APPEALS,
TIPTON & TIOPTON, MARK SCOTT

App.66a

03/28/2022

Document Filed
MAIL RETURNED UNDELIVERED
WESLEY TIPTON
UNABLE TO FORWARD
REMAILED ON 4-13-22 CS

06/13/2022

Document Filed
NOTICE OF CERTIFICATION OF RECORD ON
APPEAL
COPYS MAILED TO COURT OF APPEALS,
ROBERT MARK SCOTT, AND HON. WESLEY
TIPTON

09/09/2022

Document Filed
MISCELLANEOUS
RECORD ON APPEAL CHECKED OUT BY
HON JEFF TIPTON

12/12/2022

Document Filed
ORDER DISMISSING
APPEAL

04/24/2023

Document Filed
ORDER DENYING
DISCRETIONARY REVIEW FROM COURT OF
APPEALS

