IN THE UTAH COURT OF APPEALS

THE PEARL, Appellee, *v.* ANTONIA BLACKWELL, Appellant.	ORDER Case No. 20250324-CA

Before Judges Orme, Mortensen, and Oliver.

Antonia Blackwell appeals the district court's grant of summary judgment on The Pearl's unlawful detainer claim and its dismissal of her counterclaims after a bench trial. We have decided it is appropriate to resolve this appeal by order. *See* Utah R. App. P. 30(e) ("An appellate court's decision may be entered by order, opinion, or per curiam decision. An order will not stand as precedent but will otherwise have the same force and effect as other court decisions."). Since the parties are familiar with the relevant facts and procedural history, we need not recount them here.

Blackwell raises a number of issues on appeal. She first contends the district court erred in granting summary judgment to The Pearl on its claim of unlawful detainer. "We review a district court's grant of summary judgment for correctness, giving no deference to the district court's legal conclusions." *Musselman v. Keele*, 2024 UT App 143, ¶ 12, 559 P.3d 64 (cleaned up).

A grant of summary judgment is appropriate when "the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law." Utah R. Civ. P. 56(a). And it is well established that "[a] movant who seeks summary judgment on a claim on which it will bear the burden of persuasion at trial cannot seek summary judgment without producing affirmative evidence in support of the essential elements of its claim." *Salo v. Tyler*, 2018 UT 7, ¶ 26, 417 P.3d 581. Blackwell contends The Pearl did not meet this threshold evidentiary burden because it did not provide affirmative evidence that she was obligated to pay the disputed fees. In response, The Pearl correctly notes that "[n]othing in The Pearl's unlawful detainer cause of action, or [its] Motion for Summary Judgment, was dependent on Ms. Blackwell failing to pay the disputed fees."

Subsection (1)(b)(i) of the unlawful detainer statute provides that

> [a] tenant holding real property for a term less than life is guilty of an unlawful detainer if the tenant . . . [,] having leased real property for an indefinite time with monthly or other periodic rent reserved[,] . . . continues in possession of the property . . . after the end of any month or period, in cases where the owner, the owner's designated agent, or any successor in estate of the owner, 15 calendar days or more before the end of that month or period, has served notice requiring the tenant to quit the premises at the expiration of that month or period . . . .

Utah Code § 78B-6-802(1)(b)(i).[1] The Pearl "provided uncontroverted evidence" of each of these elements. The Pearl established—and Blackwell did not dispute—that (1) "[t]he parties entered into a residential rental agreement" which would automatically renew on March 17, 2023, unless either party gave at least 60 days' written notice; (2) The Pearl served notice on January 30, 2023, "terminating the [a]greement and requiring [Blackwell] to vacate on or before [March 31, 2023]"; and (3) Blackwell continued to possess the property after that date until she vacated on April 29, 2023.

These undisputed material facts were sufficient to establish that Blackwell had unlawfully detained the premises. Whether she was obligated to pay the disputed fees was simply not an "essential element[]" of The Pearl's unlawful detainer claim. *See Salo*, 2018 UT 7, ¶ 26. Thus, the district court did not err in granting summary judgment to The Pearl.

Blackwell next challenges the district court's dismissal of her counterclaims for discrimination and retaliation under the Utah Fair Housing Act and/or Federal Fair Housing Act (FHA).[2] At the core of her argument is the contention that the district court

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1. In its motion for summary judgment, The Pearl argued its claim of unlawful detainer under subsection (1)(b)(i). In granting summary judgment, the district court analyzed The Pearl's claim under subsection (1)(a) of the statute. But while the court viewed subsection (1)(a) as more applicable than (1)(b)(i), it noted that "under either provision the result would be the same—[Blackwell] is in unlawful detainer of the Premises."

2. Because Blackwell did not formally plead her discrimination and retaliation counterclaims, it is not entirely clear whether they were brought under the Utah Fair Housing Act, the Federal Fair Housing Act, or both. The district court analyzed Blackwell's FHA claims under federal precedent, citing *Malibu Investment Co. v. Sparks*,

(continued...)

clearly erred when it found she was obligated to pay the disputed fees. She asserts "[t]he district court's conclusion that she was not 'qualified to rent' and not engaged in a protected activity flowed directly from and rel[ied] on such clearly erroneous fact findings . . . ." "A trial court's factual determinations are clearly erroneous only if they are in conflict with the clear weight of the evidence, or if this court has a definite and firm conviction that a mistake has been made." *Staszkiewicz v. Thomas*, 2024 UT App 183, ¶ 19, 562 P.3d 723 (cleaned up), *cert. denied*, 568 P.3d 260 (Utah 2025).

After a bench trial on Blackwell's FHA counterclaims, the district court found "The Pearl had the right to charge the disputed fees under the Lease and Addendum" and "Blackwell refused to pay fees she agreed to pay pursuant to the Lease and Addendum." In so doing, the court found "the evidence presented by The Pearl" in this regard was "credible," while "Blackwell's testimony on this issue was not credible." As a reviewing court, we give great deference to such credibility determinations. *E.g.*, *id.* Here, the district court reviewed the lease agreement and addenda, the welcome letter, and other documents, and it had the opportunity to "view[] the witnesses firsthand," "assess their demeanor," and "consider their testimonies in the context of the proceedings as a whole." *Id.* (cleaned up). Thus, on our review, we cannot say the district court clearly erred when it found Blackwell was obligated to pay the disputed fees.[3]

Blackwell also challenges the district court's dismissal of her negligent misrepresentation counterclaim. She asserts the district court applied the wrong legal standard by "requir[ing] proof of an intent to deceive." "Whether the district court

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2000 UT 30, ¶ 27 n.11, 996 P.2d 1043 (noting the applicable provisions of the Utah and Federal FHA "are so similar . . . that it is appropriate to look to federal law as persuasive authority when interpreting the [Utah Fair Housing Act].").

3. Blackwell also asserts the court applied the wrong legal standards for "'qualified' to rent" for purposes of her discrimination claim and "engaged in a 'protected activity'" for purposes of her retaliation claim. She contends that, under the correct legal standards, she "satisfied the minimal prima facie burden on both theories," and so "the district court should have required The Pearl to offer a legitimate, non-discriminatory and non-retaliatory reason and then tested pretext." We need not reach this issue because the district court did address the burden shifting. With respect to both discrimination and retaliation, the district court noted that even if Blackwell had met her prima facie burden to establish her claims, "The Pearl had a 'legitimate, nondiscriminatory rationale' to issue the Notice to Vacate to not renew her lease" and Blackwell had "failed to meet her burden to prove" that discrimination or retaliation "was the real reason that The Pearl issued the Notice to Vacate."

applied the correct legal standard is a question of law, which we review for correctness." *Bad Ass Coffee Co. of Hawaii, Inc. v. Royal Aloha Int'l, LLC*, 2015 UT App 303, ¶ 6, 365 P.3d 161 (citation omitted).

On this point, Blackwell's claim is simply not consistent with the record. In its order following the bench trial, the district court correctly quoted the legal standard for a claim of negligent misrepresentation as found in *Moore v. Smith*: "A claim for negligent misrepresentation requires a party to demonstrate that (1) a party carelessly or negligently makes a false representation expecting the other party to rely and act thereon, (2) the plaintiff actually relies on the statement, and (3) suffers a loss as a result of that reliance." 2007 UT App 101, ¶ 36 n.12, 158 P.3d 562 (cleaned up). After making a series of factual findings, the court applied these elements and ultimately concluded "Ms. Blackwell did not meet her burden of proof related to her claim for negligent misrepresentation, including that The Pearl carelessly or negligently made a false representation, that Ms. Blackwell rel[ied] on [the] representation, and that she was damaged based on that representation." Because it applied the correct legal standard for negligent misrepresentation, the district court did not err in dismissing this claim.

Blackwell next contends the district court abused its discretion by denying her rule 60(b) motion to vacate, arguing the court's final judgment was void under rule 60(b)(4) of the Utah Rules of Civil Procedure for lack of notice. However, this issue is unpreserved. "An issue is preserved for appeal when it has been presented to the district court in such a way that the court has an opportunity to rule on it. . . . The issue must be specifically raised and must be supported by evidence and relevant legal authority." *Cove at Little Valley Homeowners Ass'n v. Traverse Ridge Special Serv. Dist.*, 2022 UT 23, ¶ 23, 513 P.3d 658 (cleaned up). Here, Blackwell's motion to vacate consisted of little more than a handful of bullet points, referencing "[n]o notice of judgment" and "[d]ue process violations." And while she listed rules 60(b)(3) and 60(b)(4) as supporting authority for her motion, she "d[id] not provide any factual or legal analysis regarding [her] arguments." Although we give pro se litigants "every reasonable indulgence," *Jones v. State*, 2020 UT App 125, ¶ 30, 473 P.3d 1190, "reasonable indulgence is not unlimited indulgence, and generally parties who represent themselves will be held to the same standard of knowledge and practice as any qualified member of the bar." *Id.* ¶ 19 (cleaned up). Thus, this issue is unpreserved.[4]

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4. In addition to the above-described motion to vacate, filed February 7, 2025, Blackwell asserts in her principal brief that "[s]he also filed a Rule 60(b) motion on May 19, 2025, to set aside the Judgment as void for lack of notice" and "the court denied the 60(b) motion (continued...)

Finally, Blackwell asserts the district court failed to address her claim under Utah Code section 57-17-3 for the return of her $500 security deposit. This issue is also unpreserved; it was only ever raised in passing (e.g., Blackwell mentioned it in a motion requesting the court reconsider its summary judgment decision and she testified at trial, "They stole my security deposit.") and was never squarely presented to the district court.[5] *See Cove at Little Valley Homeowners Ass'n*, 2022 UT 23, ¶ 23.

In sum, the district court did not err in granting summary judgment to The Pearl or in dismissing Blackwell's counterclaims, and Blackwell's remaining arguments on appeal are unpreserved. We thus affirm the district court in all respects. And because we affirm the district court, we also grant The Pearl's request for an award of attorney fees reasonably incurred on appeal. *See Johnson v. Schnabel*, 2023 UT App 102, ¶ 30, 536 P.3d 1147 ("A party entitled by contract or statute to attorney fees below and that prevails on appeal is entitled to fees reasonably incurred on appeal." (cleaned up)). Accordingly, we remand this case solely for a determination of The Pearl's reasonable appellate attorney fees.

Affirmed.

Dated this 5th day of May, 2026.

FOR THE COURT:

Amy J. Oliver, Judge

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in May 2025." These assertions are not supported by citation to the record, *see* Utah R. App. P. 24(e)(1), nor have we been able to locate any such motion or denial in the record before us.

5. Although not reflected in the record, The Pearl indicated at oral argument, without contradiction, that Blackwell's $500 security deposit was credited as a payment towards the judgment.

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2026, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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By _____
Tammy Berg
Legal Secretary

Case No. 20250324
THIRD DISTRICT, WEST JORDAN, 230401251

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
WEST JORDAN DEPARTMENT

THE PEARL, Plaintiff/Counterclaim Defendant, vs. ANTONIA BLACKWELL, Defendant/Counterclaim Plaintiff.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** Case No. 230401251 Judge James D. Gardner

THIS MATTER came before the Court for a bench trial on December 13, 2024. Plaintiff and Counterclaim Defendant The Pearl appeared through counsel Nicholas P. Lloyd. Defendant and Counterclaim Plaintiff Antonia Blackwell appeared and represented herself. The Court, having considered the testimony of the witnesses, received exhibits, heard the arguments of the parties regarding the issues presented in this case, and for good cause appearing in the record and in the admitted evidence, hereby makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Ms. Blackwell rented a residential property from The Pearl under a lease agreement (Lease) dated March 14, 2022. The Lease was to run from March 18, 2022, to March 17, 2023, and would "automatically renew month-to-month (not to exceed five (5) years) unless either party gives at least 60 days written notice of termination or intent to move-out . . . ."

2. On or about January 30, 2023, The Pearl served Ms. Blackwell with a Notice to Vacate at that end of her lease agreement, directing her to vacate no later than March 31, 2023.

3. On April 10, 2023, The Pearl filed a complaint against Ms. Blackwell, asserting causes of action for unlawful detainer, breach of contract, and ejectment.

4. On April 13, 2023, Ms. Blackwell filed an answer and counterclaim, asserting a counterclaim for negligent misrepresentation. Ms. Blackwell also alleged in the counterclaim that she had a filed a claim for discrimination against The Pearl with the UALD.

5. The case proceeded to an immediate occupancy hearing with Judge Paul B. Parker on April 25, 2023. At the hearing, the parties stipulated that Ms. Blackwell would vacate the property by April 30, 2023. Judge Parker reserved the rest of the issues for this Court's decision.

6. On October 11, 2023, The Pearl moved for summary judgment on its claims. The Pearl subsequently withdrew the motion.[1] (*See* Order on (1) Motions for Summary Judgment and (2) Motion to Continue Trial (April 2024 Order) at 4 n.6.)

7. On November 3, 2023, Ms. Blackwell filed a countermotion for summary judgment.

8. On January 23, 2024, The Pearl again moved for summary judgment, this time only on its unlawful detainer claim.

9. On March 13, 2024, the Court held a hearing on The Pearl's motion and Ms. Blackwell's countermotion. The Court also scheduled a bench trial for June 7, 2024.

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[1] For reasons discussed below, the motion for summary judgment filed on October 11, 2023 was offered and received as Defendant's exhibit E.

10. On March 21, 2024, Ms. Blackwell moved the Court to continue the June trial.

11. On April 2, 2024, the Court issued the April 2024 Order. The Court granted summary judgment in favor of The Pearl on the unlawful detainer claim, denied Ms. Blackwell's countermotion for summary judgment, and granted Ms. Blackwell's motion to continue the June trial. (April 2024 Order at 4, 6.)

12. On April 8, 2024, The Pearl moved the Court pursuant to rule 54(b) of the Utah Rules of Civil Procedure to enter judgment on the unlawful detainer claim (Rule 54 Motion).[2]

13. On June 3, 2024, the Court held a hearing on—and denied—the Rule 54 motion. The Court also scheduled the matter for a bench trial for October 23, 2024.

14. On October 15, 2024, The Pearl filed its Trial Brief. The Pearl noted, among other things, that "[t]he only remaining issue[s] to be tried are [Ms. Blackwell's] claims against [The Pearl] of discrimination and negligent misrepresentation." (Plaintiff's Trial Brief at 1.)

15. On October 23, 2024, the Court convened for a bench trial. At Ms. Blackwell's request, the Court granted a continuance and rescheduled trial for December 13, 2024.

16. On October 31, 2024, Ms. Blackwell filed six documents with the Court titled "Defense Exhibit 1," "Defense Exhibit 2," "Defense Exhibit 3," "Defense Exhibit 4," "Defense Exhibit 5," and "Defense Exhibit 6." Those documents appear on the docket at Dkts. 150-155.

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[2] In the Rule 54 Motion, The Pearl noted that it was no longer seeking any further amounts from Ms. Blackwell other than what was awarded in the April 2024 Order. (Rule 54 Motion at 3 (noting that The Pearl "is no longer seeking judgment for the contested past due amounts of $883.59 as sought in its Complaint"); *see also* April 2024 Order at 5 n.8 (noting The Pearl's indication that it "would not proceed on any other affirmative claims it had asserted against" Ms. Blackwell if the Court granted summary judgment on the unlawful detainer claim).) This was reaffirmed by counsel at subsequent hearings.

17. The Court ultimately held a bench trial on Ms. Blackwell's counterclaims on December 13, 2024.

18. In its Trial Brief, The Pearl noted that Ms. Blackwell was asserting counterclaims for discrimination, retaliation, and negligent misrepresentation. (Plaintiff's Trial Brief at 6-10.) Ms. Blackwell likewise asserted in her trial brief and at trial that she was seeking relief from this Court based on her claims of discrimination, retaliation, and negligent misrepresentation. Thus, even if Ms. Blackwell did not formally plead discrimination and retaliation counterclaims, the counterclaims were tried with both parties' consent. *See* Utah R. Civ. P. 15(b)(1) ("When an issue not raised in the pleadings is tried by the parties' express or implied consent, it must be treated in all respects as if raised in the pleadings.").

19. The Court considers each of Ms. Blackwell's counterclaims below.[3]

20. *Discrimination counterclaim.* Ms. Blackwell's discrimination counterclaim appears to be based on the Utah and/or Federal Fair Housing Act (FHA).[4] "Plaintiffs may establish a prima facie case of housing discrimination [under the FHA] by showing (1) that they are members of a protected class; (2) that they sought and were qualified to rent or purchase the housing; (3) that they were rejected; and (4) that the housing opportunity remained available to

[3] The Court has reviewed Ms. Blackwell's answer and counterclaim and finds that it does not state any other claims that are "sufficient to give fair notice of the nature and basis of the claim asserted and a general indication of the type of litigation involved." *Gudmundson v. Del Ozone*, 2010 UT 33, ¶ 40, 232 P.3d 1059 (quoting *Guardian Title Co. v. Mitchell*, 2002 UT 63, ¶ 15 n.4, 54 P.3d 130).

[4] The Utah Supreme Court has noted that the applicable provisions of the Federal Fair Housing Act and the Utah Fair Housing Act "are so similar . . . that it is appropriate to look to federal law as persuasive authority when interpreting the [Utah Fair Housing Act]." *Malibu Inv. Co. v. Sparks*, 2000 UT 30, ¶ 27 n.11, 996 P.2d 1043.

other renters or purchasers." *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003).[5] If the plaintiff "establishe[s] a prima facie case of discrimination, the burden shifts to the defendant to assert a legitimate, nondiscriminatory rationale for the challenged decision. If the defendant makes such a showing, the burden shifts back to the plaintiff to demonstrate that discrimination was the real reason for the defendant's action." *Id.* (citations omitted).

21. Prior to trial, The Pearl noted that one of the key factual disputes to be resolved was whether it disclosed certain fees disputed by Ms. Blackwell before charging those fees. (*See* Plaintiff's Trial Brief at 1.)

22. At trial, it became clear that the disputed fees related to pest control, trash, utilities and other services. (*See, e.g.*, Dec. 13, 2024 Bench Trial at 9:08:25 A.M. (Ms. Blackwell's testimony about pest control fees); *id.* at 9:26:43 A.M. (question from The Pearl's counsel about the "welcome letter," which states that "Utilities[—]Water, Sewer, Trash, Pest Control & Common Area Utilities will be set up for you by the office" and that "[y]our bill will be emailed monthly and is due with rent");[6] *see also* Plaintiff's Trial Brief at 2 ("[D]ue to utilities being assessed in arrears, in July 2022 the pest control, trash, and utility fees were assessed on [Ms. Blackwell's] ledger after she moved in.").)

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[5] The Pearl rephrased element (4) as "the circumstances surrounding her denial give rise to an inference of discrimination." (Plaintiff's Trial Brief at 9 (citing *Asbury v. Brougham*, 866 F.2d 1276, 1280 (10th Cir. 1989)).) The Pearl's rephrasing is consistent with the caselaw. *See, e.g.*, *Olsen v. Stark Homes, Inc.*, 759 F.3d 140, 152 (2d Cir. 2014) (noting, in context of FHA disability claim, that a plaintiff must show, as the fourth element, "that the rejection occurred in circumstances giving rise to an inference of discrimination on the basis of the handicap of the person residing or intending to reside with the plaintiff"). The rephrasing also makes sense logically because it suggests that the denial of a housing application is based on discrimination when the applicant is qualified and the housing opportunity remains available after the denial.

[6] The welcome letter was admitted as Plaintiff's exhibit K.

23. The Lease, which was admitted into evidence as Plaintiff's exhibit A, contains a "Utility and Services Addendum" (Addendum). The Addendum is "incorporated into and made part of" the Lease and includes provisions related to fees for water, sewer, trash, and pest control services.

24. The Pearl argued that Ms. Blackwell was not qualified under the FHA because she was obligated to pay the disputed fees and failed to do so. (*See, e.g.*, Plaintiff's Trial Brief at 10 (asserting that Ms. Blackwell "failed to pay the amounts owing under her lease agreement despite having been given numerous opportunities to do so by" The Pearl and that "persons who do not pay the amounts owing under their lease agreement are not qualified for a renewal lease when the time comes for renewal").)

25. Ms. Blackwell testified that she had "never missed a rent payment in [her] life." (Dec. 13, 2024 Bench Trial at 9:10:35 A.M.) She also testified that she did not know about the disputed fees and that she did not remember the Addendum being a part of the Lease. (*See id.* at 9:36:38 A.M (Ms. Blackwell: "I don't remember any of this being in my original lease because I never received . . . a copy of it.") Finally, in response to a question from counsel for The Pearl, Ms. Blackwell argued that the welcome letter did not specify "who was responsible for" the above-noted fees. (*Id.* at 9:27:30 A.M.)

26. The Court finds that the Lease was signed by Ms. Blackwell and that it included the Addendum. (*See* Plaintiff's ex. A.) Moreover, the welcome letter made clear that Ms. Blackwell was responsible for the fees related to "Utilities." (*See* Plaintiff's ex. K.)

27. Ms. Blackwell failed to prove that the Addendum was fabricated and/or was not part of the Lease. The Court finds that Ms. Blackwell's testimony on this issue was not credible.

28. Based on these facts, Ms. Blackwell had notice that she was responsible for paying the fees set forth in the Addendum, whether the notice was actual or constructive. *See, e.g.*, *Rappleye v. Rappleye*, 2004 UT App 290, ¶ 30, 99 P.3d 348 (defining "[c]onstructive notice" as circumstance "where information or knowledge of a fact is imputed to a person by law because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it" (quotation and marks omitted)).

29. Absent a finding of waiver, the fact that The Pearl apparently did not charge the disputed fees initially does not mean they were barred from doing so later. *See, e.g.*, *Anderson v. Thompson*, 2008 UT App 3, ¶ 37, 176 P.3d 464 ("A waiver is the intentional relinquishment of a known right." (quotation omitted)).[7]

30. Ms. Blackwell did not argue that The Pearl waived the right to charge the fees. Instead, she argued that The Pearl did not have the right to charge these fees at all. Because the Court finds that the fees are provided for in the Lease and Addendum (and referenced in the welcome letter), the Court disagrees that The Pearl did not have the right to charge the disputed fees.

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[7] At trial, Ms. Blackwell correctly noted that some of the numbers related to the disputed fees in The Pearl's original summary judgment motion did not match the numbers listed in The Pearl's ledger (which was received as Plaintiff's exhibit B) or the welcome letter. (*See, e.g.*, Dec. 13, 2024 Bench Trial at 11:33:29 A.M. (The Court: "Ms. Blackwell, maybe I can help you and just show them. . . . I want you[, Mr. Rutherford,] to look at paragraph 10, she's saying . . . for the prorated charges for the move in, the motion says $1,722.54. . . . The welcome letter . . . says $1,714.84. . . . So, Ms. Blackwell's saying, . . . 'those two numbers aren't the same. Why?'").) Jackson Rutherford, an agent for The Pearl, then testified that "it appear[ed] that something was left off, ultimately." (*Id.* at 11:34:39 A.M.) The Court finds that Ms. Blackwell has not established that The Pearl intentionally listed the wrong fees, whether in the motion, the ledger, or the welcome letter. Moreover, as set forth herein, The Pearl has abandoned its claims related to the disputed fees.

31. Stated another way, the Court finds that The Pearl had the right to charge the disputed fees under the Lease and Addendum. The Court further finds that Ms. Blackwell refused to pay fees she agreed to pay pursuant to the Lease and Addendum. The Court finds credible the evidence presented by The Pearl related to these issues.

32. Based on her nonpayment of fees under Lease, Ms. Blackwell has failed to establish that she was qualified to rent at The Pearl when The Pearl posted the Notice to Vacate on her door.[8] Thus, her claim for discrimination under the FHA fails.[9]

33. *Retaliation counterclaim.* Ms. Blackwell's retaliation claim also appears to be based on the FHA. To prevail on such a claim, "a plaintiff must show that (1) [s]he engaged in a protected activity; (2) the defendant subjected h[er] to an adverse action; and (3) a causal link exists between the protected activity and the adverse action." *Walker v. City of Lakewood*, 272

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[8] While the Court finds that Ms. Blackwell has not met her prima facie burden to establish discrimination, even if she had, the Court finds that The Pearl had a "legitimate, nondiscriminatory rationale" to issue the Notice to Vacate to not renew her lease. More specifically, the Court finds credible Mr. Rutherford's testimony that The Pearl issued the Notice to Vacate based on Ms. Blackwell's failure to pay fees required by the Lease. Finally, the Court finds that Ms. Blackwell failed to meet her burden to prove that discrimination was the real reason that The Pearl issued the Notice to Vacate.

[9] In one of her pretrial filings, Ms. Blackwell also asserted that "[a] white neighbor who questioned similar fees was allowed to renew his lease." (Defense Exhibit 6 at 3 (Dkt. 155).) In that filing, Ms. Blackwell included a declaration from the neighbor, Adam Shelton. (*Id.* at 56.) Mr. Shelton declares that he asked The Pearl's manager about the fees that Ms. Blackwell had disputed, that his questions were answered, that he was not evicted, and that he is a white male. (*Id.*) Notably absent from the declaration is whether Mr. Shelton paid the disputed fees. At trial, Mr. Rutherford testified that Mr. Shelton paid the fees. (*See* Dec. 13, 2024 Bench Trial at 11:10:18 A.M.) At any rate, Ms. Blackwell did not call Mr. Shelton as a witness at trial, nor did she offer the declaration as evidence. Moreover, even if she had offered the declaration, it is likely hearsay and Ms. Blackwell did not establish an applicable exception. *See* Utah R. Evid. 801(c) (defining "[h]earsay"); *id.* r. 802 (noting that "[h]earsay is not admissible except as provided by law or by" the Utah Rules of Evidence).

F.3d 1114, 1128 (9th Cir. 2001). A retaliation claim under the FHA has a burden-shifting analysis similar to that of an FHA discrimination claim. *Compare id.*, *with Mitchell*, 350 F.3d at 47.

34. The parties appear to disagree on what constitutes the underlying "activity" for purposes of the retaliation claim.

35. At trial, Ms. Blackwell suggested that the activity was her disputation of the fees. (*See, e.g.*, Dec. 13, 2024 Bench Trial at 10:09:11 A.M. (Question from Ms. Blackwell to Mr. Rutherford: "Is it typically ethical to put a notice to vacate on someone's door if they inquire about fees on their rent and not even have a conversation with them about it, Jackson?").)

36. The Pearl suggested that the activity was Ms. Blackwell's failure to pay the disputed fees. (*Id.* at 1:01:46 P.M. (Counsel for The Pearl: "There's a myriad of situations where you can retaliate against someone . . . if it's not based on their being a member of a protected class. For example, if someone doesn't pay their rent and they're served a three-day pay or vacate . . . . Technically speaking, serving someone a three-day . . . pay or vacate is retaliating against them, but it's not retaliating against them because they're a member of a protected class.").)

37. The Court assumes that the underlying activity was Ms. Blackwell's disputation of the fees.

38. However, Ms. Blackwell has not cited any authority suggesting that disputing lawfully assessed fees is a protected activity under the FHA. And, as set forth above, the Lease clearly provided for the disputed fees, even if The Pearl did not initially charge them. Therefore, Ms. Blackwell has not established that the fee dispute was a protected activity under the FHA.

39. Ms. Blackwell also testified that Mr. Rutherford posted the Notice to Vacate on her door in retaliation for her disputation of the fees. (Dec. 13, 2024 Bench Trial at 11:04:25 A.M.)

40. Mr. Rutherford testified that he posted the Notice to Vacate after Ms. Blackwell sent him an email that he believed made clear that Ms. Blackwell was not going to pay the disputed fees and made allegations of fraud. (*Id.* at 11:04:25 A.M.) Moreover, Mr. Rutherford answered in the affirmative to The Pearl's counsel's question about whether he would "have been willing to not proceed with an eviction against Ms. Blackwell if she had paid the outstanding balance[.]" (*Id.* at 10:57:18 A.M.) The Court finds Mr. Rutherford's testimony on these points to be credible.

41. Finally, the Lease was set to renew as a month-to-month agreement on March 17, 2023. (Plaintiff's ex. A.) Both parties had the right to end the Lease at the conclusion of the first year as long as the party gave 60 days' notice. (*Id.*) The Notice to Vacate, which the Court admitted into evidence as Plaintiff's exhibit D, was posted on January 30, 2023 and gave Ms. Blackwell until March 31, 2023 (60 days) to vacate the property. (Plaintiff's ex. D.)

42. Because Ms. Blackwell has failed to establish that the eviction was retaliatory, she has not established a causal link between the activity and the adverse action under the FHA.

43. For these reasons, the Court finds that Ms. Blackwell failed to meet her burden of proof on her retaliation claim.[10] Consequently, Ms. Blackwell's retaliation counterclaim fails.

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[10] Even if the Court found that Ms. Blackwell had met her prima facie burden to establish she engaged in a protected activity, as set forth herein, the Court finds that The Pearl had a "legitimate, nondiscriminatory rationale" to issue the Notice to Vacate to not renew her lease. Finally, the Court finds that Ms. Blackwell failed to meet her burden to prove that retaliation was the real reason that The Pearl issued the Notice to Vacate.

44. *Negligent misrepresentation counterclaim.* "[A] claim for negligent misrepresentation requires a party to demonstrate that (1) a party carelessly or negligently makes a false representation 'expecting the other party to rely and act thereon,' (2) the plaintiff actually relies on the statement, and (3) suffers a loss as a result of that reliance." *Moore v. Smith*, 2007 UT App 101, ¶ 36 n.12, 158 P.3d 562 (quoting *Smith v. Frandsen,* 2004 UT 55, ¶ 9, 94 P.3d 919).

45. In her closing argument, Ms. Blackwell argued that her negligent misrepresentation claim was based on her allegation that Greystar, the former managing company of The Pearl, charged the disputed fees "without proper notification or justification." (Dec. 13, 2024 Bench Trial at 1:06:33 P.M.) The argument appears to be that The Pearl did not disclose the disputed fees to her.

46. As set forth in detail above, the Lease and Addendum provided for—and Ms. Blackwell had notice of—the disputed fees. Therefore, Ms. Blackwell has not shown a false representation by The Pearl in connection with the Lease and Addendum.

47. Ms. Blackwell also asserted that The Pearl's misrepresentation was stating that it evicted her for not paying the disputed fees. (*Id.* at 1:07:00 P.M.) In other words, The Pearl allegedly used the nonpayment as a pretext to evict Ms. Blackwell. The Court finds that Ms. Blackwell's evidence on this issue was not credible.[11]

48. Finally, Ms. Blackwell's pleading alleges that "The Pearl stated on numerous occasions that the [disputed] fees were removed from [Ms. Blackwell's] account" and that "[i]t

[11] Furthermore, Ms. Blackwell did not explain how The Pearl's alleged use of the nonpayment as a pretext for evicting her induced any reliance on her part.

was reasonable for [Ms. Blackwell] to rely on The Pearl's assertions that the [disputed] fees were removed." (Answer and Counterclaim ¶¶ 2, 7, at pp. 8, 9.)

49. Mr. Rutherford testified that The Pearl waived certain fees related to Ms. Blackwell's failure to pay disputed fees "as a courtesy." (*See, e.g.*, Dec. 13, 2024 Bench Trial at 11:20:33 A.M.) The Court finds Mr. Rutherford's testimony to be credible. The Court does not find credible Ms. Blackwell's testimony that she relied on communications from The Pearl that she would never be charged the disputed fees.[12]

50. In sum, the Court finds that Ms. Blackwell did not meet her burden of proof related to her claim for negligent misrepresentation, including that The Pearl carelessly or negligently made a false representation, that Ms. Blackwell related on representation, and that she was damaged based on that representation.

51. Based on the foregoing, Ms. Blackwell has failed to prove her counterclaim for negligent misrepresentation against The Pearl.

CONCLUSIONS OF LAW AND ORDER

Based upon the above Findings of Fact, the Court hereby enters the following Conclusions of Law and Order:

1. The Court has jurisdiction over this matter and these parties.

2. Venue is properly laid before this Court.

3. For the reasons set forth above, Ms. Blackwell has failed to prove her counterclaims for discrimination, retaliation, and negligent misrepresentation.

[12] Moreover, as set forth above, Ms. Blackwell does not have any damages related to the disputed fees because The Pearl has abandoned any claim to the fees.

4. Based on this failure of proof, Ms. Blackwell's counterclaims are dismissed.

5. Because this Order resolves the remainder of the issues to be tried with this case, (see Plaintiff's Trial Brief at 1), the Court will enter Judgment pursuant to rule 58A of the Utah Rules of Civil Procedure.

DATED this 22nd day of January, 2025.

BY THE COURT:

Judge James D. Gardner
DISTRICT JUDGE

STATE OF UTAH
THIRD DISTRICT COURT
WEST JORDAN

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 230401251 by the method and on the date specified.

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MANUAL EMAIL: ANTONIA BLACKWELL kranberry99@yahoo.com

01/22/2025 /s/ KATHLEEN HARRIS

Date: _____ _____

Signature

The Order of the Court is stated below:
Dated: August 24, 2026 11:06:39 AM
/s/ JILL M. POHLMAN
Justice

IN THE SUPREME COURT OF THE STATE OF UTAH

----ooOoo----

THE PEARL, Respondent, v. ANTONIA BLACKWELL, Petitioner.	ORDER Supreme Court No. 20260871-SC Court of Appeals No. 20250324-CA Trial Court No. 230401251

----ooOoo----

This matter is before the Court upon a Petition for Writ of Certiorari, filed on July 6, 2026.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End of Order - Signature at the Top of the First Page

The Order of the Court is stated below:
Dated: June 03, 2026
02:06:45 PM

At the direction of:
/s/ JUDGE AMY J. OLIVER

by
/s/ Jennifer A. Gadbois
Clerk of Court

IN THE UTAH COURT OF APPEALS

THE PEARL, Appellee, v. ANTONIA BLACKWELL, Appellant.	ORDER Case No. 20250324-CA Trial Court Case No. 230401251

Before Judges Orme, Mortensen, and Oliver.

This matter is before the court on Appellant's petition for rehearing, filed May 19, 2026.

Now, therefore, IT IS HEREBY ORDERED that the petition for rehearing is denied.

End of Order - Signature at the Top of the First Page

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
WEST JORDAN DEPARTMENT

THE PEARL, Plaintiff, vs. ANTONIA BLACKWELL, Defendant.	**ORDER ON PENDING MOTIONS** Case No. 230401251 Judge James D. Gardner

THIS MATTER is before the Court on Defendant Antonia Blackwell's (1) Motion for Immediate Stay of Garnishment (First Motion), and (2) Motion to Stay Garnishment Pending Appeal (Second Motion). Having considered the arguments of the parties, the Court issues the following Order.

BACKGROUND

On January 22, 2025, the Court issued its Findings of Fact, Conclusions of Law, and Order (Findings) and entered judgment in favor of Plaintiff The Pearl and against Ms. Blackwell. After judgment was entered, The Pearl sought a writ of continuing garnishment and the Court issued the writ on February 20, 2025. In the First Motion, which she filed on March 7, 2025, Ms. Blackwell argues (1) that the "[g]arnishment is based on a fundamentally flawed judgment," (2) that she is "currently homeless," and (3) that her "basic necessities cannot be met." (First Motion at 5.) Ms. Blackwell also moves that the Court "[p]rohibit any further collection efforts pending resolution

of the Petion for Extraordinary Relief" (Petition). (*Id.* at 7.)[1] On March 20, 2025, the Utah Court of Appeals denied the Petition in its Order Denying Petition for Extraordinary Relief.

The Court held a hearing on the First Motion on March 24, 2025 and denied the First Motion from the bench.[2] On the day of the Hearing, Ms. Blackwell also filed the Second Motion. On April 7, 2025, The Pearl filed its Opposition to the Second Motion. Ms. Blackwell filed a Reply that same day. Then, on April 21, 2025, Ms. Blackwell filed a Request to Submit the Second Motion, stating that the Utah Court of Appeals has indicated that it "would not consider [the Second Motion] until this Court has ruled on the" Second Motion. (Request to Submit at 1.)

DISCUSSION

First Motion

In the First Motion, Ms. Blackwell asks the Court stay the writ of garnishment pending resolution of the Petition. Under rule 62(b) of Utah Rules of Civil Procedure, a party requesting a stay must "provid[e] a bond or other security . . . ." Rule 62(h)(1) provides in relevant part that "a court shall set the bond or other security in an amount that adequately protects the adverse party against loss or damage occasioned by the stay and assures payment after the stay ends." At the Hearing, the Court noted these standards, although it did not specifically reference rule 62. (See Hearing at 10:06:28 A.M. (The Court: "Mr. Lloyd, the rules provide for a cost bond, which I have waived. . . . You're talking about the bond that's different than that. You're talking about when someone has obtained a judgment—to stay the judgment, then you need to obtain a bond while you go through the appeal, correct? We're not talking about the cost bond that I've already waived

[1] Ms. Blackwell filed the Petition with the Utah Supreme Court on March 5, 2025.

[2] This Order gives a more detailed explanation of that denial issued at the March 24, 2025 hearing.

but the bond that would relate to the judgment amount." Counsel for The Pearl: "Correct, Your Honor.").) Consistent with her position in the First Motion, Ms. Blackwell stated that she was not able to furnish a bond. (*See id.* at 10:15:22 A.M.)

Because she did not post a bond pending the resolution of the Petition, the Court denied the First Motion at the Hearing. More importantly, as noted above, the Utah Court of Appeals denied the Petition on March 20, 2025. Because the First Motion moves to stay the writ of garnishment pending the resolution of the Petition, (First Motion at 7), the First Motion is effectively moot.

For the reasons set forth above, the First Motion is DENIED.

Second Motion

In the Second Motion, Ms. Blackwell moves to stay the garnishment efforts pending appeal under rule 8 of the Utah Rules of Appellate Procedure. Rule 8(a)(1)(A) provides, in relevant part, that "[a] party must ordinarily move first in the trial court for the following relief . . .a stay of the judgment or order without security pending appeal . . . ." Elsewhere, rule 8 provides the following:

> Ordinarily a stay without a bond or other security will not be granted unless the movant demonstrates a likelihood of success on the merits or the case presents serious issues on the merits warranting appellate review and the appellant demonstrates:
>
> > (A) a likelihood of irreparable harm to the movant outweighing the harm to any other party and the stay would not be adverse to the public interest; or
> >
> > (B) an extraordinary circumstance that justifies issuing a stay.

Id. r. 8(b)(2).[3]

For the reasons suggested in the Findings, the Court determines that Ms. Blackwell has not demonstrated a likelihood of success on the merits. Ms. Blackwell also suggests that the case presents serious issues on the merits that warrant appellate review. Such issues include, but are not necessarily limited to, whether the record demonstrates that (1) witnesses for The Pearl made "[f]alse [s]tatements in [c]ourt," (2) Ms. Blackwell provided prima facie evidence of discriminatory treatment under the Utah and/or Federal Fair Housing Acts, and/or (3) this Court denied Ms. Blackwell's "motions based on technical grounds rather than substantive merits." (Second Motion at 2.) While the Court determines that Ms. Blackwell has not demonstrated a likelihood of success on these issues, the Court finds that Ms. Blackwell has established that the case presents serious issues on the merits that warrant appellate review.[4]

Ms. Blackwell also states that she and her "minor child are currently homeless and have been since September 2024," that "[t]he garnishment reduces [her] already limited income, making it impossible to secure even temporary housing," that she "cannot meet basic necessities for [her]self and [her] child while wages are being garnished," and that her "[c]hild's education and welfare are directly impacted by the ongoing homelessness situation." (*Id.* at 3.) Based on these representations, the Court finds that Ms. Blackwell has sufficiently demonstrated that an

[3] The Court notes that rule 8 was amended effective May 1, 2025. Because the Second Motion was fulling briefed and submitted for decision under the prior version of the rule, the Court has used the prior version of the rule to decide the Second Motion.

[4] The Court also notes that in its opposition to the Second Motion that The Pearl does not substantively respond to Ms. Blackwell's arguments, but instead simply argues that this Court should deny the Second Motion on the same grounds that it denied the First Motion.

extraordinary circumstance justifies issuing a stay of the writ of garnishment that was issued on February 20, 2025.[5]

For these reasons, the Court finds that Ms. Blackwell has met her burden under rule 8(b)(2) to establish that the writ of continuing garnishment should be stayed pending her appeal. Therefore, the Second Motion is GRANTED.

CONCLUSION

Based on the foregoing, the First Motion is DENIED and the Second Motion is GRANTED.

DATED this 12th day of May, 2025.

BY THE COURT:

Judge James D. Gardner
DISTRICT JUDGE

STATE OF UTAH
THIRD DISTRICT COURT
WEST JORDAN

[5] To be clear, the Court is not ordering The Pearl to return any funds that have already been garnished, but instead is staying the garnishment as of the date of this order until resolution of the appeal.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 230401251 by the method and on the date specified.

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05/12/2025 /s/ LISA MUNK

Date: _____ _____

Signature

IN THE UTAH COURT OF APPEALS	
Antonia Blackwell, Appellant, v. The Pearl, Appellee.	Court of Appeals Case No. 20250324-CA District Court Case No. 230401251

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, WEST JORDAN DIVISION, SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE JAMES R. GARDNER, CIVIL. NO. 230401251

APPELLANT'S PETITION FOR REHEARING

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INTRODUCTION

The Order overlooks or misapprehends five points warranting rehearing under Utah R. App. P. 35: (1) it affirms summary judgment on a record that did not authenticate the lease and on causation reasoning that overlooks Pearl's deliberate refusal of Ms. Blackwell's April rent tender; (2) it applies demeanor-based credibility deference to a trial in which the trial judge ordered Ms. Blackwell's camera off during her own testimony; (3) it treats the disputed fees as immaterial to the unlawful detainer claim while simultaneously deferring to a finding that the same fees were the legitimate, nondiscriminatory rationale for the eviction; (4) it leaves 42 U.S.C. § 3617 unanalyzed by any court, despite undisputed record evidence of the April 4, 2023 conditional offer; and (5) it treats the Federal Fair Housing Act counterclaims as both unclear and fully adjudicated, an inconsistency that cannot stand. The first ground reverses the $7,395 treble-damages judgment, the pending fee award, and ongoing garnishment. The remaining grounds reverse the dismissal of the federal civil-rights and state-law counterclaims. Rehearing is respectfully requested.

ARGUMENT

I. The Court overlooked controlling law and misapprehended the record.

The Court overlooked controlling authority including *Salo v. Tyler*, 2018 UT 7, 417 P.3d 581, and *Pepperwood Homeowners Ass'n v. Mitchell*, 2015 UT App 137, 351 P.3d 844. It also misapplied the summary judgment legal standard in three ways: there was no authenticated lease evidence, The Pearl deliberately refused Ms. Blackwell's April rent tender, and post-trial findings cannot be used to cure a deficient Utah R. Civ. P. 56 record.

A. The predicate facts were disputed at every stage.

The Order accepts as undisputed three propositions: that the parties entered a rental agreement with auto-renewal subject to 60 days' notice; that Pearl served the January 30, 2023 notice; and that Ms. Blackwell remained in possession past March 31, 2023. Order at 2. The record reflects active dispute on all three such conclusions. Ms. Blackwell filed a UALD discrimination complaint on March 8, 2023, before this lawsuit existed, alleging

that the fees underlying the Notice to Vacate were manufactured and that the Notice was retaliatory. (R. 233–43). She opposed Pearl's first motion for summary judgment and denied the authenticity of the lease document and addendum. She opposed the second motion on the same grounds. The district court found her opposition procedurally inadequate because she did not recite Pearl's statement of facts verbatim. (R. 348). That procedural ruling is not a finding that she admitted any fact. At the December 13, 2024 bench trial, she testified under oath that she did not agree to the disputed fees, that the addendum was unsigned, and that Pearl had repeatedly removed the fees as erroneous. The addendum in the record bears blank signature lines. (R. 15).

B. The Order quotes Salo but applies a contrary rule.

The Order recites the controlling rule: "[A] movant who seeks summary judgment on a claim on which it will bear the burden of persuasion at trial cannot seek summary judgment without producing affirmative evidence in support of the essential elements of its claim." Order at 1 (quoting *Salo*, 2018 UT 7, ¶ 26). One page later, the Order treats the predicate propositions as established because Ms. Blackwell "did not dispute" them. Order at 2. Those propositions cannot be reconciled. *Salo* does not turn on what the non-movant disputed. It turns on what the movant produced. Utah law is unambiguous. "[T]he moving party always bears the burden of establishing the lack of a genuine issue of material fact." *Salo*, 2018 UT 7, ¶ 2. The rule applies even where the nonmovant files no opposition: "summary judgment may not be entered against the nonmoving party merely by virtue of a failure to oppose; . . . the district court must still determine whether the moving party's pleadings, discovery, and affidavits demonstrate its entitlement to judgment as a matter of law." *Pepperwood Homeowners Ass'n v. Mitchell*, 2015 UT App 137, ¶ 6, 351 P.3d 844; accord *Tronson v. Eagar*, 2019 UT App 212, ¶ 17, 457 P.3d 407. Utah R. Civ. P. 56(e)(3) is mandatory: even where the nonmovant "fails to properly address [the movant's] assertion of fact," the court may grant the motion only "if the motion and supporting materials—including the facts considered undisputed—show that the moving party is

entitled to it[.]" The Court's adoption of the "deemed admitted" analysis reproduces what the Court quoted *Salo* as forbidding. That is a misapprehension of the controlling rule.

C. The authentication failure—not the utility fees—is the Salo defect at issue.

The Order characterizes Appellant's *Salo* challenge as a fee challenge. Order at 1. The argument raised below was authentication: without an authenticated lease, no element of Utah Code Ann. § 78B-6-802(1)(b)(i)—including auto-renewal, the 60-day notice, and unlawful possession—had admissible evidentiary support. Ms. Blackwell argues that Pearl failed to authenticate the lease document at all—without which no lease provision was properly before the district court, fees or otherwise. Reply Br. 6 ("On summary judgment, The Pearl had to prove the specific terms of the lease, not merely that some lease existed.").

Every element of subsection (1)(b)(i) depends on authenticating the lease document. Without authentication, there is no proof of the auto-renewal provision, no proof that the 60-day notice requirement was satisfied, and no proof of unlawful possession. The fees are downstream of the authentication failure, not its substance. Pearl produced no percipient witness. The complaint verification states only: "This action is based on a residential rental agreement." (R. 5 ¶ 4). It does not identify the attached 14 pages as that agreement. The Fox affidavit is conclusory; Ms. Fox was not employed when the lease was signed; she had no personal knowledge of its formation. (R. 314–15). Pearl declined to call its only percipient witness on lease formation—Stephanie Page, the community manager who signed the lease in March 2022. (R. 236; R.640–41 (exhibit list omitting Page)). When a movant who bears the burden of proof omits its only percipient witness, the threshold *Salo* burden is not met. Thus, *Pepperwood* controls. *Tronson* describes its holding: "'summary judgment may not be entered against the nonmoving party merely by virtue of a failure to oppose,' but instead a 'district court must still determine whether the moving party's pleadings, discovery, and affidavits demonstrate its entitlement to judgment as a matter of law.'" *Tronson*, 2019 UT App 212, ¶ 17 (cleaned up) (quoting *Pepperwood*, 2015 UT App 137, ¶ 6). *Tronson* says the specific defect in *Pepperwood* was the "failure to attach the

operative document[.]" *Tronson*, 2019 UT App 212, ¶ 21. That is the defect here, too. The Pearl attached a document and never authenticated it. The Order treats the document as the lease because no one objected at the right time. *Pepperwood* forecloses that result.

D. The Pearl cannot recover treble damages for rent it refused to accept.

The Order overlooks a causation defect in the treble-damages judgment itself. Pearl refused Ms. Blackwell's tender of April 2023 rent, then sued for and recovered treble damages on the non-payment its refusal created. The Reply Brief raised this argument squarely at pages 8–10. The Order does not address it. The record establishes how the non-payment came about. Pearl's Notice to Vacate rested on alleged unpaid utility fees that Pearl's own community manager Stephanie Page had previously described in writing as a "setting issue" that "has been fixed." (Def. Tr. Ex. F; R. 605; see also R. 239). Pearl abandoned the fees at the second summary judgment stage. (R. 304–05; MSJ Hrg. Tr. 8:16–9:2, R. 1163–1164 (counsel for Pearl: "We're not pursuing that"). On April 3, 2023, Pearl's counsel told the Utah Anti-Discrimination and Labor Division under penalty of perjury that the Notice to Vacate was served "because of unpaid utilities billed pursuant to the lease agreement." (R. 621). On April 4, 2023, three weeks after the Notice and one day after the UALD letter, Pearl's counsel offered to rescind the eviction, waive all fees, allow Ms. Blackwell to remain through June, and provide a positive reference—if she dismissed her UALD complaint. (Def. Tr. Ex. G; R. 603; see also R. 243). She declined.

Three days earlier, on March 31, 2023, Ms. Blackwell had attempted to pay April rent. She wrote to Pearl's agent Brennan McIff: "Since I haven't heard back regarding my tenancy, and still do not have a guarantee of a positive reference, I am assuming it is ok to pay the rent today for the month of April for $2690." (Def. Tr. Ex. G; R. 603). Pearl did not respond. She went in person to Pearl's office to pay. (R. 242; MSJ Hrg. Tr. 37:9-20; R. 1193). Pearl refused the tender. (MSJ Hrg. Tr. 37:9-20; R. 1193). The Pearl's counsel later confirmed on the record that the refusal was a deliberate litigation strategy, not a mistake or oversight. At the March 13, 2024 summary judgment hearing, in response to the district

court's direct question on mitigation, Pearl's counsel stated: "[The] offer to pay was when the case was still pending, ... and we didn't want to take a settlement agreement for a payment that would have voided our [unlawful detainer claim], essentially. My client was interested in seeing a vacate date and being able to obtain that portion of the relief under the unlawful detainer act . . . that would have voided [the claim] ... ." (MSJ Hrg. Tr. 37:9-20; R. 1193). The admission supplies the missing causation element directly. Pearl refused the tender because accepting it would have extinguished the unlawful detainer cause of action. The treble-damages default did not arise from Ms. Blackwell's conduct; it arose from a deliberate strategy by Pearl. Pearl created the breach and then recovered on it.

Ten days after refusing the rent, Pearl sued for unlawful detainer claiming Ms. Blackwell had failed to pay April rent. (R. 1–2). Pearl recovered treble damages on the rent it refused. Utah contract law forecloses recovery on this record. "[I]n a breach of contract action, the non-breaching party is required to show that the breach proximately caused the damages sought." *Christensen & Jensen, P.C. v. Barrett & Daines*, 2008 UT 64, ¶ 26, 194 P.3d 931. If The Pearl's refusal of Ms. Blackwell's tender caused the non-payment, Pearl cannot recover damages traceable to its own conduct. Causation is an element of contract and tort. *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 839–40 (1996). The Pearl's refusal of the tender proximately caused the non-payment for which it then recovered. Pearl cannot recover damages for a default it created. The Order treats the holdover as clean: "Blackwell continued to possess the property after that date until she vacated on April 29, 2023." Order at 2. But that framing accepts only the continued possession; it does not engage with why the rent was unpaid. These facts are dispositive and were briefed but were not addressed.

E. Trial findings cannot cure a deficient summary judgment record.

Footnote 1 acknowledges that the district court analyzed under subsection (1)(a) while the Court analyzed under subsection (1)(b)(i), stating that "under either provision the result would be the same." Order at 2 n.1. The Order then cross-references the post-trial findings on the lease and addendum as supporting the affirmance. Order at 3.

Utah law does not permit trial evidence to cure a deficient summary judgment record. An erroneously granted summary judgment is not an evidentiary error; it is a structural error that denies the right to trial on the merits. A court cannot grant summary judgment on deficient evidence and "cure" that error by admitting some evidence during later proceedings on different claims. Reply Br. 7. A Rule 56 record is fixed when the motion is decided. The $7,395 holdover judgment, the pending attorney-fee award, and the ongoing garnishment all rest on a summary judgment record that did not authenticate or establish the lease, the auto-renewal, the notice compliance, The Pearl's refusal of the tender, nor produce admissible evidence of any element. Under *Salo*, *Pepperwood*, and *Christensen & Jensen*, that record cannot support the judgment. Ms. Blackwell respectfully requests that the Court grant rehearing, vacate summary judgment, and remand for trial.

II. The trial judge could not observe Ms. Blackwell during her testimony.

The Order applies demeanor-based credibility deference without addressing that the trial judge ordered Ms. Blackwell to turn off her camera at the outset of her testimony, with no indication in the record that it was reinstated. Demeanor-based credibility deference under *Staszkiewicz v. Thomas*, 2024 UT App 183, 562 P.3d 723, should not apply where (1) the judge *could not see* the witness whose credibility he discounted, and (2) the audio of the trial gave rise to dozens of "unintelligible" designations in the final, court-transcriber prepared, official transcript of proceedings as shown in the record.

A. The deference rationale rests exclusively on visual observation.

Under Utah R. Civ. P. 52, "the reviewing court must give due regard to the trial court's opportunity to judge the credibility of the witnesses." Utah R. Civ. P. 52(a)(4). The Order articulates the deference in terms drawn from *Staszkiewicz*: "'trial courts have the benefit of viewing the witnesses firsthand, to assess their demeanor and to consider their testimonies in the context of the proceedings as a whole, making them much better equipped to make credibility determinations.'" *Id.* at ¶ 19 (quoting *Richins v. Weldon*, 2023 UT App 147, ¶ 65, 541 P.3d 274); Order at 3 (quoting *Staszkiewicz*, ¶ 19).

The language is uniformly visual. The Order says the trial judge could "view[]" the witnesses and "assess their demeanor." It does not say he heard them, evaluated their tone of voice, or listened to their inflection. The Court selected visual language because visual observation is the foundation of the doctrine. An appellate court reviewing a transcript can read tone-of-voice cues; it cannot see demeanor. Visual asymmetry is the reason for deference. The U.S. Supreme Court frames the doctrine the same way. "[O]nly the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said." *Anderson v. City of Bessemer City*, 470 U.S. 564, 575 (1985). The conjunctive is dispositive. Demeanor and tone of voice together support the deference. Tone of voice alone would not, because an appellate court reviewing a transcript of an audio would be in the same position as the trial judge.

B. The trial judge ordered Ms. Blackwell to turn off her camera.

The bench trial took place by Webex on December 13, 2024. At the outset of Ms. Blackwell's substantive testimony, the trial judge directed her to turn off her camera: "THE COURT: Hold on, Ms. Blackwell. That very end part, we lost you for a second on the record. My Clerk's saying, why don't you turn off your camera for a minute while you're testifying to make sure that—there was a lag a little bit in the Internet." (R. 922–923). The record contains no indication the camera came back on. When Pearl's witness Jackson Rutherford was called, the trial judge directed the clerk to "fix the camera so that Ms. Blackwell can see Mr. Rutherford." (R. 953). That instruction confirms two things: the camera setup was still configured with Ms. Blackwell off-camera, and the court was aware Ms. Blackwell could not see Pearl's witness without an adjustment. The court directed no reciprocal adjustment to see Ms. Blackwell. The trial judge therefore had no opportunity to observe Ms. Blackwell's demeanor during her testimony, and no opportunity to compare her demeanor to Pearl's witnesses. He saw only a blank screen. The trial judge's observational limits went beyond Ms. Blackwell. When she identified two of Pearl's

representatives positioned "on the top behind Mr. Lloyd," the judge said on the record, "I can't see the one gentleman behind him," and apologized. (Trial Tr. 200:12–14; R. 1109).

C. The audio record was also degraded throughout the trial.

The internet-lag problem persisted through trial. The transcript has 718 entries marked "(Unintelligible)." The court itself acknowledged multiple connection failures. At R. 924: "Ms. Blackwell, we lost you for a second. We heard—the last thing we heard was you were fighting for your life; your kid was kicked out of school.". Similar lapses recur. At R. 1077 Ms. Blackwell reported: "Sorry. Yeah, my Internet completely cut out, so I didn't hear anything that was just said." The record was compromised on both axes the doctrine relies on. The trial judge could not see Ms. Blackwell. The audio record on which any tone-of-voice or inflection inference would depend was degraded. Even if *Anderson* allowed deference based solely on audio (it does not), the audio quality was insufficient to permit this Court to distinguish its review perspective from the trial court.

D. The doctrine cannot apply where the trial judge could not see the witness.

Credibility deference exists for one reason: the trial judge can see the witness; the appellate court cannot. The reviewing court does not see the witness shift, look down, or set her jaw. The trial judge does. But when the asymmetry is absent—i.e., when the trial judge looks at the same record the appellate court will later review, with no visual access to the witness whose credibility is at issue—the foundation of deference disappears. That is this case. The trial judge did not observe Ms. Blackwell's demeanor when she gave the testimony he found not credible. The Order's invocation of demeanor-based deference rests on no record fact or evidence. The Court did not address the contradiction when it applied *Staszkiewicz* to a record in which deference's factual predicate was missing.

The reliability of demeanor-based credibility deference in remote proceedings has been questioned at the federal appellate level. In *Ndudzi v. Garland*, 41 F.4th 686, 693 n.2 (5th Cir. 2022), the Fifth Circuit observed that deference to an adjudicator's perception of demeanor is "perhaps unfounded" given research showing that subjective perception of

witness demeanor is an unreliable indicator of veracity. *Id.* (citing Liz Bradley & Hillary Farber, *Virtually Incredible: Rethinking Deference to Demeanor When Assessing Credibility in Asylum Cases Conducted by Video Teleconference*, 36 Geo. Immigr. L.J. 515 (2022)). That skepticism applied where the witness was "agitated" on video. *Id.* at 692.

E. Documentary evidence contradicts the credibility-deferred findings.

Anderson identifies a second, independent limit on credibility deference. A trial judge "may [not] insulate his findings from review by denominating them credibility determinations, for factors other than demeanor and inflection go into the decision whether or not to believe a witness. Documents or objective evidence may contradict the witness' story." *Anderson*, 470 U.S. at 575. The record contains multiple documents that contradict the credibility-deferred findings. First, the unsigned addendum. The finding that Ms. Blackwell "agreed to pay" the disputed fees rests on a signed addendum. The lease has blank signature lines. (R. 15). No credibility finding can supply a signature where none exists. Second, the $500 credit balance. On November 29, 2022, Pearl's regional manager granted Ms. Blackwell a $500 credit, leaving her ledger at negative $173.57—meaning Pearl owed her money. (R. 239; UALD Determination). On December 6, 2022, Pearl issued a pay-or-vacate notice to a tenant with a credit balance on its own books. R. 95, ¶34; 532 ¶20; 239; 532. This evidence contradicts the finding that Ms. Blackwell was delinquent.

Manager Page's contemporaneous admission that the fees were a "glitch." Stephanie Page, the manager who signed Ms. Blackwell's lease, wrote: "This has been fixed, it was a setting issue. I apologize for the inconvenience." (Def. Tr. Ex. F (Sept. 2022); R. 605; *see also* R. 239). The UALD Determination records the same characterization. (R. 239). The evidence contradicts a credibility-deferred finding that the fees were valid and owed. The April 4, 2023 conditional offer also undercuts the credited rationale. Three weeks after the Notice to Vacate, Pearl offered to dismiss all fees, allow Ms. Blackwell to remain through June, refrain from filing an eviction, and provide a positive reference—in exchange for dismissal of her UALD complaint. (Def. Tr. Ex. G; R.

603; see also R. 243). Pearl's willingness to waive every claim if Ms. Blackwell dropped her civil-rights complaint contradicts any finding that the eviction was for a legitimate, non-discriminatory reason. Each document independently contradicts a credibility-deferred finding the Order relied on, despite placing the case in the posture *Anderson* describes: findings deemed to be credibility determinations do not trump direct evidence.

F. The misapprehension affects the dispositive trial fact findings.

The district court's findings turn on credibility. It found Pearl's evidence "credible" and Ms. Blackwell's testimony "not credible." (R. 648–54). Three consequences follow.

- ***Discrimination***. The Order affirmed the finding that Ms. Blackwell was not "qualified" to rent because she had not paid fees "she agreed to pay pursuant to the Lease and Addendum." Order at 3. The finding turns on whether she agreed to pay the fees, which turns on whether she signed the addendum, which turns on a credibility determination the trial judge was not positioned to make. Independent of the addendum, the comparator evidence—Adam Shelton, a white tenant who disputed the same fees and received a meeting, lease renewal, and no notice to vacate, Trial Tr. 200–201; R. 1019, 1022, 1109—was never addressed by the district court and cannot be resolved by any credibility determination. *Anderson*, 470 U.S. at 575.
- ***Retaliation***. Footnote 3 found that The Pearl had a "legitimate, nondiscriminatory rationale" and that pretext was not shown. Order at 3 n.3. Both rest on the same credibility determination. Credibility cannot support a finding that the fees were owed, so it cannot support a finding that nonpayment of fees was the actual reason for eviction.
- ***Negligent misrepresentation***. The Order affirmed because the district court applied the correct legal standard from *Moore v. Smith*, 2007 UT App 101, ¶ 36 n.12, 158 P.3d 562. Order at 4. The district court's application—its findings that Pearl did not carelessly make a false representation, that Ms. Blackwell did not rely, and that she was not damaged—depends on the same credibility findings. (R. 653–54).

Every dispositive finding the Order deferred to, or mooted on credibility-deferred grounds, requires re-examination. Ms. Blackwell respectfully requests that the Court grant rehearing, reverse the judgment on all claims, and remand for a new trial.

III. The order contradicts itself on the role of the disputed fees.

The Court overlooked an internal contradiction in the Order itself. The disputed fees are treated as immaterial to the unlawful detainer claim (Order at 2) and as the dispositive "legitimate, nondiscriminatory rationale" for the eviction (Order at 3 n.3). Both

propositions cannot stand. In affirming summary judgment, the Order holds that "[w]hether [Ms. Blackwell] was obligated to pay the disputed fees was simply not an essential element[] of The Pearl's unlawful detainer claim." Order at 2. This conclusion was used to bypass the *Salo* challenge and to treat the unlawful detainer claim as a routine end-of-term holdover. In affirming dismissal, the Order defers to the district court's finding that The Pearl had a "legitimate, nondiscriminatory rationale" for issuing the Notice to Vacate and that Ms. Blackwell failed to prove pretext. Order at 3 n.3. The district court grounded that finding entirely in the same fees. It found Ms. Blackwell not "qualified to rent" because she refused to pay fees "she agreed to pay pursuant to the Lease and Addendum." (R. 648–54). It found her challenges to those fees did not constitute protected activity. (R. 648–54).

These two holdings are irreconcilable. Either the fees mattered to the eviction—in which case they were an essential element Pearl had to prove on summary judgment, and the *Salo*/*Pepperwood* failure (Section I) requires reversal of summary judgment. Or the fees did not matter—in which case they cannot serve as the "legitimate, nondiscriminatory rationale" for the eviction, and Footnote 3's pretext analysis loses its foundation. The Court cannot maintain both. The Pearl's counsel confirmed the abandonment at oral argument. Counsel stated Pearl declined to pursue the fees because they "were not worth recovery" and described Pearl's agents as wanting "to keep a happy tenant." This is inconsistent.

If the fees were not worth pursuing as a contract claim, they cannot serve as the actual reason for evicting the tenant who disputed them. Three trial admissions confirm the same point. Manager Rutherford admitted he had no documentation of pest control services. (Trial Tr. 80:12–14). He could not prove pest control was provided to Ms. Blackwell's apartment. (Trial Tr. 81:6–10). He agreed they cannot charge tenants for services not rendered, and that he himself would not pay for services not rendered. (Trial Tr. 81:11–19). The district court found these fees were validly owed. The Order deferred to that finding. Ms. Blackwell respectfully requests that the Court reconsider. If the fees

were essential, the *Salo/Pepperwood* failure forecloses summary judgment. If the fees were not essential, the district court's pretext analysis cannot stand.

Both readings cannot survive together. Rehearing should be granted.

IV. No court has applied 42 U.S.C. § 3617 to The Pearl's April 4, 2023 offer.

It was overlooked that no court at any level has analyzed 42 U.S.C. § 3617 as applied to Pearl's undisputed April 4, 2023 conditional offer. The reason for that gap is documented in the record and is contrary to *Small v. Small*, 2024 UT App 173, 561 P.3d 701.

A. The April 4 offer has never been analyzed under § 3617.

Section 3617 of the Fair Housing Act makes it unlawful to "coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed . . . any right granted or protected" by the substantive FHA provisions. 42 U.S.C. § 3617. The statute is independent of 42 U.S.C. § 3604's prohibition on discriminatory housing practices. The April 4 offer is in the record at R. 603 and Def. Tr. Ex. G. Pearl's counsel offered, through Ms. Blackwell's then-attorney, that Pearl would rescind the eviction, waive all fees, allow Ms. Blackwell to remain through June 2023, and provide a positive reference—if she dismissed her UALD discrimination complaint.

The content and timing of that offer are undisputed. Pearl's counsel confirmed the substance at oral argument, characterizing it as "settlement communications" while confirming Pearl was "willing to renew your lease for another . . . four or five months and let you continue living here. If you drop this claim." Conditioning continued housing on withdrawal of a discrimination complaint is § 3617 interference on its face. The statute does not require that the coercion succeed. It does not require that the coercion produce a separate eviction action. It prohibits the conditioning itself. Neither the trial court nor this Court analyzed § 3617 by name. The court's findings address retaliation only in relation to the January 30, 2023 Notice to Vacate. (R. 648–54). The Order does the same. Order at 3 & n.3. The retaliation analysis turns on whether Pearl had a "legitimate, nondiscriminatory rationale" for the Notice to Vacate. That is a § 3604 analysis under *McDonnell Douglas*

burden-shifting. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817 (1973). It does not reach a § 3617 claim arising from a separate communication two months later.

B. The trial court excluded the § 3617 evidence via a pretrial Rule 408 ruling.

The reason no court reached § 3617 is documented in the record. At the March 13, 2024 summary judgment hearing—nine months before trial—the district court instructed both parties: "There's a rule of evidence called Rule 408 of the Utah Rules of Evidence that doesn't let you bring in settlement communications. So if you start exchanging communications about settlement, that's not admissible at trial . . . if one of you make an offer or a counter-offer, those sort of things, don't believe that it's going to come into evidence. It's not." R. 1156-1210 (MSJ Hrg. Tr. 43–44). That was a blanket exclusion. At trial, Pearl's counsel characterized the April 4 offer as "settlement communications," tracking the court's pre-trial framing. The district court accepted the characterization without conducting any Utah R. Evid. 408(b)(1) "another purpose" analysis. Section 3617 was never reached because the evidence was foreclosed before trial.

C. The pre-trial Rule 408 ruling was contrary to binding authority.

The chronology forecloses any preservation objection. Judge Gardner issued the blanket Rule 408 ruling on March 13, 2024. *Small v. Small*, 2024 UT App 173, 561 P.3d 701, was decided November 29, 2024—eight months after the ruling and fourteen days before the December 13, 2024 trial. *Small* did not exist when the parties argued the March 2024 motion, and by the time it issued, the blanket exclusion was already operating as the framework under which both sides had prepared. The pre-trial ruling was contrary to authority that could not have been raised when the ruling was made. *Small* adopts the federal purpose-based analysis: "Under Federal Rule of Evidence 408, 'the admissibility of compromise [or settlement] evidence depend[s] on the purpose for which' the evidence is offered." *Id.* ¶ 14 (citation omitted) (alteration in original). Rule 408 does not bar evidence offered to prove "the existence and terms of the agreement" rather than "'to prove or disprove liability for or the validity or amount of a disputed claim.'" *Id.* ¶ 18 (quoting

Utah R. Evid. 408(a)). And *Small* "reverse[d] the district court's determination that rule 408 requires exclusion of all evidence regarding the settlement negotiations." *Id.* ¶ 24. Rule 408(b)(1) expressly permits admission "for another purpose." Utah R. Evid. 408(b)(1). The April 4 offer was not offered to prove liability on the eviction claim; it was offered to establish § 3617 retaliatory motive—a separate federal civil-rights claim. Under *Small*, that purpose-based distinction is dispositive. 2024 UT App 173, ¶ 14. Inferring the meaning of the April 4 offer is not a credibility question; indeed, the content and timing are undisputed.

V. The order's treatment of the federal FHA claims cannot work both ways.

The Court said the record is "not entirely clear" as to whether the discrimination and retaliation counterclaims were brought under the federal Fair Housing Act. Order at 2 n.2.[1]

The district court analyzed under federal precedent, citing *Mitchell v. Shane*, 350 F.3d 39 (2d Cir. 2003) at R. 646–47 n.4. The Pearl's Appellee Brief cited *Malibu Inv. Co. v. Sparks*, 2000 UT 30, ¶ 27 n.11, 996 P.2d 1043, and acknowledged the Utah and federal acts apply the same standards. Appellee Br. 25 n.5. Every party and both courts treated the counterclaims as federal claims analyzed under federal law. The Order cannot use the Footnote 2 ambiguity in only one direction. Either reading warrants rehearing. If the federal claims were before the Court, the failure to engage with § 3617, the Adam Shelton comparator evidence, and the documentary pretext evidence is reversible error. If the federal claims were not before the Court, then they were never fully and fairly adjudicated and cannot serve as a bar to subsequent federal proceedings on principles of claim preclusion. The Order adopts framing (B) in its Footnote 2 but reaches a substantive ruling

[1] The Footnote 2 ambiguity cannot work only one way. The federal nature of the counterclaims was clear, both below and on appeal. *E.g.*, Opening Br. 15 ("counterclaims for race discrimination and retaliation under the federal Fair Housing Act (42 U.S.C. §§ 3601–3617)"); Reply Br. 10 ("two federal Fair Housing Act (FHA) claims"); Appellee Br. 25 n.5 (conceding Utah and federal standards are equivalent); R. 646–47 n.4 (district court applying federal precedent). Footnote 2's ambiguity therefore cannot bar merits review while simultaneously operating as a merits adjudication for preclusion purposes.

as if it had adopted framing (A). That internal inconsistency is reversible error. The Court should either: (1) address directly the federal claims on the merits, including § 3617 and the documentary evidence the Order does not address, or (2) clarify that the disposition of the discrimination and retaliation counterclaims is not an adjudication on the merits.

VI. Preservation of federal claims

The independent federal cause of action under 42 U.S.C. § 3613 is preserved by statute, runs from the "occurrence or the termination of an alleged discriminatory housing practice . . . whichever occurs last," § 3613(a)(1)(A), and excludes from the two-year period "any time during which an administrative proceeding under this subchapter was pending," § 3613(a)(1)(B). The Pearl's ongoing enforcement of the judgment, including active garnishment, is a continuing violation. *See Havens Realty Corp. v. Coleman*, 455 U.S. 363, 380–81 (1982). No conciliation agreement was reached: UALD's no-cause determination is not one, nor is a state-court judgment. Ms. Blackwell requests that this Court's Order not be construed as a final adjudication on the merits of claims arising under 42 U.S.C. §§ 3604, 3613, and 3617 in any federal proceeding. Ms. Blackwell also expressly preserves her claims under 42 U.S.C. § 1982, the Civil Rights Act of 1866, which has never been analyzed by any court in these proceedings and which reaches private discrimination in the lease and conveyance of real property. *See Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 436–37 (1968) (§ 1982 governs private and public actors).

CONCLUSION

Ms. Blackwell respectfully requests that the Court grant rehearing and issue the relief requested in this petition, including ordering that there has been no adjudication on the merits of any of Appellant's federal civil rights claims. Counsel certifies under Utah R. App. P. 35(a)(3) that this Petition is presented in good faith and not for delay.

DATED the 19th day of May, 2026.

Respectfully submitted,

SPENCER WILLSON, PLLC

/s/ Sarah Elizabeth Spencer
Sarah Elizabeth Spencer
Court-Appointed Pro Bono Counsel for Appellant Antonia Blackwell

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2026, I caused a true and correct copy of the foregoing **APPELLANT'S PETITION FOR REHEARING** to be served via the Court's electronic filing system upon all counsel of record.

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CERTIFICATE OF COMPLIANCE

Pursuant to Utah R. App. P. 24(g), undersigned counsel certifies that this petition contains 15 pages of proportionally spaced 13-point typeface including headings and footnotes, and excluding the table of contents, table of authorities, certificates of service and compliance, and the addendum. This petition contains no non-public information.

SPENCERWILLSON, PLLC

/s/ Sarah Elizabeth Spencer
Sarah Elizabeth Spencer
Court-Appointed Pro Bono Counsel
for Appellant Antonia Blackwell

ADDENDUM

Utah Court of Appeals's May 5, 2026 Order

IN THE UTAH COURT OF APPEALS	
Antonia Blackwell, Appellant, v. The Pearl, Appellee.	Court of Appeals Case No. 20250324-CA District Court Case No. 230401251

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, WEST JORDAN DIVISION, SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE JAMES R. GARDNER, CIVIL. NO. 230401251

BRIEF OF APPELLANT ANTONIA BLACKWELL

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This case arises from a landlord–tenant dispute that evolved into a hybrid unlawful detainer and Fair Housing Act action. In late 2022, Appellee The Pearl began assessing new "utility and service" fees against Appellant Antonia Blackwell, even though Ms. Blackwell had paid her rent in full and on time (including a $500 rent credit for December 2022). On January 30, 2023, The Pearl abruptly served Ms. Blackwell with a three-day Notice to Vacate for nonpayment of these disputed fees. Ms. Blackwell immediately offered to pay any legitimately owed rent, but The Pearl refused her offer. In the weeks that followed, Ms. Blackwell—who is Black—sought a rental reference from The Pearl (to secure new housing) and filed a housing discrimination complaint after The Pearl refused the reference. In early April 2023, The Pearl's agent told Ms. Blackwell that her lease renewal was conditional on dropping her civil-rights complaint; Ms. Blackwell declined to do so. The Pearl then initiated this eviction action on April 10, 2023.

Ms. Blackwell answered the complaint and remained in possession of the leasehold premises during the litigation. She asserted counterclaims for race discrimination and retaliation under the federal Fair Housing Act (42 U.S.C. §§ 3601–3617), for negligent misrepresentation, and for violation of Utah's Residential Tenant Security Deposit Act (Utah Code Ann. § 57-17-3), for non-return of her $500 deposit). The case proceeded on dual tracks: The Pearl pursued an expedited unlawful detainer claim for possession and fees, while Ms. Blackwell pursued damages on her counterclaims. Ms. Blackwell claimed that she never agreed to the fee addendum purportedly attached to the lease agreement and that a Caucasian tenant who similarly disputed fees was not evicted, whereas Ms. Blackwell was. She also presented evidence that The Pearl's management had offered to

D. Post-judgment motion, appeal. And jurisdiction

After judgment, Ms. Blackwell learned that the signed January 22, 2025 judgment had never been served on her by the court clerk. Electronic notice of the judgment was not sent to Ms. Blackwell. On February 7, 2025 (within 16 days of judgment), Ms. Blackwell timely moved to set aside the judgment under Utah R. Civ. P. 60(b). R. 685-689. She argued the judgment was void due to lack of notice—a fundamental due process defect—because the court had failed to serve the entered judgment as required by Utah R. Civ. P. 58A. . Ms. Blackwell requested that the court vacate and re-enter the judgment with proper notice. R.685. A judgment entered without the notice required by due process is void ab initio under Utah law. *Judson*, 2012 UT 6, ¶ 18. While that Utah R. Civ. P. 60(b) motion was pending, Ms. Blackwell filed a notice of appeal on March 5, 2025. R.717.

Because the post-judgment motion had not yet been decided, the Utah Supreme Court and this Court treated the March 5, 2025 filing as a petition for extraordinary relief and denied it on March 20, 2025, ordering that direct appeal could proceed after the post-judgment motion was resolved. R.850. The district court denied Ms. Blackwell's Utah R. Civ. P. 60(b) motion on March 17, 2025. R.839. The order did not address Ms. Blackwell's voidness-by-lack-of-notice argument and declined to disturb the judgment. *Id.* Six days later, on March 24, 2025, Ms. Blackwell filed a second notice of appeal which included the original January 22, 2025 judgment and the March 17, 2025 Utah R. Civ. P. 60(b) denial order. R.856-860.

The Court has jurisdiction over this appeal. Ms. Blackwell's March 24, 2025 notice of appeal was timely filed within 30 days of the order on her February 7, 2025 Utah R. Civ.

new trial under the proper legal framework, free from the taint of the summary judgment misconception. And given the uncontroverted proof in the record, Ms. Blackwell is entitled to judgment as a matter of law on her FHA claims, with the case remanded only for determination of remedies. *See* 42 U.S.C. § 3613(c). The court also erred in dismissing Ms. Blackwell's negligent misrepresentation claim. The evidence showed The Pearl's agents repeatedly told her the extra charges would be removed as mistakes or "glitches." R.233 at 7; Trial Tr. 81:6–10), inducing her not to pay them. The court improperly required proof of intentional deceit (a higher standard) and ignored Ms. Blackwell's reasonable reliance on those assurances. This requires reversal so that claim can be properly evaluated under the correct negligence standard. *Frandsen*, 2004 UT 55, ¶ 9.

Third and finally, the district court's denial of Rule 60(b) relief was an abuse of discretion. It is undisputed that Ms. Blackwell never received notice of the January 22, 2025 judgment as required by Rule 58A. R.685, 839. The judgment was electronically entered without being served on her (due to a clerical error noting she was not emailed, and her homelessness affecting mail service. This lack of notice is a fundamental due process violation rendering the judgment void. A judgment entered without proper notice to a party cannot stand. *Judson*, 2012 UT 6, ¶ 18.

Ms. Blackwell moved promptly to vacate and re-enter the judgment upon discovering it (within 16 days, R.685), but the court refused, reasoning that she eventually learned of the judgment anyway. R.839. That was the wrong legal standard. Prejudice is inherent when a party is deprived of the opportunity to file post-trial motions or a timely appeal. If this Court does not otherwise reverse the judgment on the merits, it should direct

are even more reluctant to grant a summary judgment victory to a party on its own claim or defense. That is what happened here. And it happened on not enough evidence. That is reversible error. The lease agreement is not attached to The Pearl's motion. Rather, the motion cites a supporting declaration and to the complaint's exhibit, which is the document proffered by The Pearl as the correct version. But the declaration attached to the motion never says that the complaint's exhibit is the actual lease agreement in question.

Paragraph 9 of the declaration (R.314) states that the parties entered into a lease agreement, but it does not declare that the document attached to the complaint as an exhibit is in fact the binding, actual, agreed-to lease agreement. The lease agreement attached to the complaint is curious. As one example, the "Utility and Services Addendum," which is the basis for The Pearl's claimed right to charge these fees and surcharges, is unsigned. R.15. The proffered signature page from "RENTCafe eSignature services" says that a forty-page document was reviewed and signed by Ms. Blackwell—but only 14 pages are presented as part of the exhibit, and that assumes the signature pages were included in the forty pages, and that the forty pages referenced in the signature block is an accurate statement of the length of the signed contract. R.6-19. The margins for the exhibit lease agreement are partially cut-off, apparently by copying and scanning a paper lease agreement. This omits the bottom half of the document identification number. That raises additional questions about the evidentiary sufficiency of the proffered lease agreement. The Pearl ostensibly had access to, and could and should have filed, the original digital native PDF of the lease agreement, including all metadata, and the full contents. Instead, it chose

own claim, is not a matter of discretion or a continuum of possible right answers. There is only one right answer in cases of de novo review. The order granting summary judgment is incorrect and should be reversed with the cases remanded for a full trial on the merits.

2. The movant's burden versus this record

On its unlawful detainer claim, The Pearl had to prove each element with admissible proof at summary judgment. *Salo*, 2018 UT 7, ¶ 26 ("[a] movant who seeks summary judgment on a claim on which it will bear the burden of persuasion at trial cannot seek summary judgment without producing affirmative evidence in support of the essential elements of its claim"). That includes: a contract term that obligates Ms. Blackwell to pay the specific non-rental charges at issue, a default in paying amounts actually due under that contract, and a sum certain for any money judgment. A plaintiff who seeks judgment on its own claim must attach or authenticate the operative contract, supply a sworn witness with personal knowledge, and provide a ledger or other business records that itemize and compute the amount due. Rule 56 requires that showing. Summary judgment does not issue by default for formatting defects in the opposition if the motion itself falls short.

The record here falls short. The Pearl did not provide an authenticated, complete lease proving any obligation to pay the added "utility and services" fees. Its supporting declaration states only that the parties "entered into a lease," but it does not say the attached exhibit is a true and correct copy or that Ms. Blackwell agreed to the fee addendum. R.314. The "Utility and Services Addendum" page is unsigned. R.15. The exhibit appears to be a partial scan. The electronic signature page says a forty-page document was signed, yet only

person who created the lease agreement, signed the agreement on The Pearl's behalf, maintained the business records and ledgers later used by Mr. Rutherford and Mr. McIff to claim Ms. Blackwell was in breach, and determined early on that Ms. Blackwell would be credited for incorrect fees, etc.) could have easily explained why it came to be that an apparently digitally authenticated and signed document came to be printed out, pages cut out, and scanned in a copy machine for production in court. She could have also explained whether, in the normal course of business, it was indeed kept as a 40-page original as represented on the signature block, or parsed into a little over a dozen pages as reflected in the evidence presented to the court on summary judgment, or whether it was the full lease copy that managed to show up in the trial evidence submitted by The Pearl.

It does not matter that the findings of fact originated from a bench trial in which the district court heard live witness testimony. The district court made no credibility findings about Mr. Rutherford or Mr. McIff's testimony about Exhibit A, the proffered lease agreement. It did, however, deem Ms. Blackwell's testimony on the issue as lacking in credibility: "27. Ms. Blackwell failed to prove that the Addendum was fabricated and/or was not part of the Lease. The Court finds that Ms. Blackwell's testimony on this issue was not credible." R.648. But as discussed in the next section, this determination about the sufficiency of Ms. Blackwell's threshold prima facie proof relies on and applies the above clearly erroneous facts and the wrong law, both as to her discrimination and retaliation theories of FHA liability for this racially prejudicial eviction. The factual error drove the incorrect legal result. The court deemed Ms. Blackwell "not qualified" and "not engaged

in protected activity" only because it first found the lease bound her to the disputed fees. See findings of fact, conclusions of law, and order ¶ 26. R.643.

If that premise is wrong, then it necessarily follows that the resultant legal conclusions are in error. Without a legitimate fee term, refusing to pay those charges was opposition to a practice Ms. Blackwell arguably believed was unlawful. Section 3617 protects that conduct, and the administrative rule expressly lists it. 42 U.S.C. § 3617; 24 C.F.R. § 100.400(c)(5). Ms. Blackwell made a prima facie showing was met so the district court's analysis then should have moved to steps two and three of the *McDonnell Douglas* framework. *McDonnell Douglas*, 411 U.S. at 802–04; *Treece*, 593 F. Supp. 3d at 440.

2. Applying the wrong legal standard to gauge prima facie showing

Because Ms. Blackwell's FHA discrimination (42 U.S.C. § 3604(b)) and retaliation (42 U.S.C. § 3617) claims proceed on circumstantial proof, the court applies the burden-shifting framework which originated in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–04 (1973). Under that rubric, she first bears a *minimal* burden to make a prima facie showing; if she does, the burden shifts to The Pearl to *articulate* (not prove) a legitimate, non-discriminatory/non-retaliatory reason, after which the burden returns to Ms. Blackwell to show pretext. *McDonnell Douglas*, 411 U.S. at 802–04. *St. Mary's* clarifies the effect of these shifts: the ultimate burden of persuasion always remains with the plaintiff; once the landlord offers a reason, the presumption from the prima facie case drops out, and the factfinder decides intent including whether disbelief of the proffered reason, together with the prima facie case, permits an inference of unlawful motive. *St. Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506–11 (1993). Applied here, that framework

required the court to credit Ms. Blackwell's step-one showing and then test The Pearl's stated justification and pretext, rather than collapsing step one into the merits. The plaintiff's burden at this stage is minimal. *St. Mary's,* 509 U.S. at 506.

Discrimination under 42 U.S.C. § 3604(b) is shown by proof of (1) membership in a protected class; (2) qualification for the housing; (3) an adverse housing action; and (4) facts that permit an inference of discrimination (*e.g.*, differential treatment of a similarly situated tenant, suspicious timing, or statements showing bias). *See McDonnell Douglas*, 411 U.S. 792; *Wilson v. Glenwood Intermountain Props.*, 876 F. Supp. 1231, 1243 (D. Utah 1995) (qualification focuses on the landlord's objective rental criteria) (vacated and remanded on other grounds, 98 F.3d 590 (10th Cir. 1996)). Retaliation under 42 U.S.C. § 3617 requires: (1) protected activity; (2) the landlord knew of it; (3) an adverse housing action; and (4) a causal connection. *See* 42 U.S.C. § 3617; *St. Mary's*, 509 U.S. at 506 (prima facie burden is minimal). Filing a discrimination charge with a state agency and alleging racial discrimination of a landlord in housing are protected activities. *See* 24 C.F.R. § 100.400(c)(5). A landlord may not defeat a discrimination victim's prima facie case by pointing to the discriminatory practice the tenant challenges in the claim: "the challenged activity cannot defeat plaintiffs' prima facie case." *Treece*, 593 F. Supp. 3d at 440 (quoting *Petrello v. Prucka*, 484 F. App'x 939, 942 (5th Cir. 2013)).

Ms. Blackwell is Black (a protected class). She was qualified under the statute because The Pearl leased to her and she met its rental criteria; the record also reflects that she paid base rent in full through March 31, 2023. R.2. She then suffered an adverse action: a three-day notice and an eviction suit. R.20 (notice); R.1 (complaint). The record supports

an inference of discrimination: management offered to "drop everything" if she withdrew her civil rights complaint, and a similarly situated white tenant who disputed similar fees was not evicted (R.1111 ("you can only stay if you drop your (Unintelligible) your (Unintelligible) complaint,"; R.204; 1109 ("I met with with Mr. Adam Shelton in early January, because he also had questions on a lease, right? Mr. Mr. Shelton did not get a three-day pay-or-quit ..."); R.1019 (Rutherford admits Adam Shelton "was in a similar situation to Ms. Blackwell, and if he came down and was asking about monthly utilities that had been accruing"); R.1022 ("Q. Okay. Did Mr. Shelton receive a notice to vacate at the end of his lease agreement? A. He did not."). This makes out a prima facie case on the first step of discrimination and retaliation. The district court was thus required to move to the second step (evaluating whether The Pearl had proven a non-discriminatory purpose), and, if proven, then to the third step (analyzing whether Ms. Blackwell proved pretext).

The district court separately analyzed Ms. Blackwell's FHA claim under the subheadings of discrimination and retaliation. Both such theories required her to raise a prima facie showing of specific elements which if done meant the burden of proof shifted to The Pearl to establish legitimate grounds for its conduct. The district court acknowledged this when it recited the correct black letter law in Paragraphs 20 and 33 of the findings of fact, conclusions of law, and order. As for retaliation, one of Ms. Blackwell's proof elements was showing that she was "qualified" to rent the apartment. R.646-647. Regarding discrimination, she had to show a "protected activity." R.650-65.

i. "Qualified to rent" - retaliation

The district court held that Ms. Blackwell failed to meet her initial burden to raise a prima facie evidentiary showing of these elements and therefore it never reached whether The Pearl had legitimate justifications for its actions in this case. The basis for the finding that Ms. Blackwell was "not qualified" to rent is the district court's predicate factual finding that the Ms. Blackwell signed the lease agreement in the form proffered by The Pearl as Exhibit A, including the utility addendum, and that she was contractually bound to pay the fees and surcharges. But her nonpayment of disputed fees and surcharges is not the test for this element of qualified to rent. A protected person is qualified to rent if she meets the landlord's requirements to lease in the first place. "Qualified to rent" means that the individual meets such factors as minimum credit score, rental and eviction history, minimum monthly income, landlord and professional references, and criminal background. *See, e.g., Reese v. Jacobowitz,* No. 2:15-cv-1523, 2016 U.S. Dist. LEXIS 14215, *10, 2016 WL 454315 (W.D. Pa. Feb. 5, 2016) (denying motion to dismiss where plaintiffs adequately pleaded prima facie case of FHA discrimination; "The Reeses were clearly qualified to rent the apartment at issue. Indeed, they had been doing so for several years and had renewed their lease at least twice ... allegedly, had never missed a rent payment."); *Kennedy v. Related Mgmt.*, Civil No. 08-CV-3969, 2009 U.S. Dist. LEXIS 64732, 2009 WL 2222530, at *4 (S.D.N.Y. July 23, 2009), aff'd, 403 Fed. Appx. 566 (2d Cir. 2010) ("To satisfy the 'qualified' element for a prima facie FHA claim, the renter must satisfy the applicable criteria that the owner established.") (citing *Mitchell v. Shane,* 350 F.3d 39, 47-48 (2d Cir. 2003)("Clearly, the plaintiffs have established a prima facie case."); *Robinson v. 12 Lofts*

Realty, Inc., 610 F.2d 1032, 1038 (2d Cir. 1979) (qualification element of prima facie case met where applicant "meets the objective requirements of a landlord"); S*mith v. Anchor Bldg. Corp.*, 536 F.2d 231, 233 (8th Cir. 1976) (same); *cf. Passanante v. R.Y. Mgmt. Co., Inc.*, No. 99-CV-9760, 2001 WL 123858, at *5 (S.D.N.Y. Feb. 13, 2001) (holding that a plaintiff was not qualified to rent an apartment where he did not meet the requirement of having a Section 8 rent subsidy); *Rousseau v. St. Paul Pub. Hous. Auth.*, 2005 U.S. Dist. LEXIS 13563, at *9 (D. Minn. June 30, 2005) (holding that plaintiff who failed to disclose a preexisting felony conviction could not show he was "qualified to rent"); *Wilson*, 876 F. Supp. at 1243 ("... Plaintiffs admit that they were not BYU students when they contacted the Defendant Landlords about renting a space in BYU-approved student-housing. Plaintiffs [] were not 'otherwise qualified' to rent space at the sex-segregated apartments in question ... [and] cannot establish a prima facie case of gender discrimination ....").

A protected person who is alleged to have breached a disputed lease term does not somehow lose his or her status as a person who is qualified to rent in the first place. *See Treece*, 593 F. Supp. 3d at 439-40 ("qualified" "generally refers to the price and 'listing terms'"; "Plaintiffs directly challenge the legality of the occupancy limits, and the challenged activity cannot defeat Plaintiffs' prima facie case. Moreover, the City's ordinance does not seem to be the sort of 'listing term[]' or 'stated condition contemplated by the issue of housing qualification.") (citing *Petrello*, 484 F. App'x. at 942); (citing Miles v. Hous. Auth. of Texarkana, 667 F. App'x 450, 452 (5th Cir. 2016)). The Pearl rented to Ms. Blackwell because she was qualified to rent. She met financial, credit, eviction history, income, and related requirements. That is why The Pearl leased the apartment to her in the

first place. And, had Ms. Blackwell paid the disputed fees and surcharges, she could have stayed in the apartment through the term of her lease, and could have renewed it after that.

The district court conflated the issues when it found that a breach of a lease agreement by an existing, otherwise qualified renter, makes him or her unqualified after the fact. It cited no authority for that proposition, nor has Ms. Blackwell been able to locate any such authority. The law holds otherwise. The FHA protects post-possession or post-acquisition retaliation by, for example, discriminatory eviction, constructive or actual.

ii. Engaged in protected activity - discrimination

The district court found that Ms. Blackwell was bound by the addendum and then used that finding to defeat her claim on the prima facie step of the inquiry of her discrimination-based FHA theory. From there, it found that a tenant who disputes fees that are in fact owed, is not engaged in protected activity. R.650. That is legal error. Because Ms. Blackwell satisfied the minimal prima facie burden on both theories. [2] As such, the

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[2] See *Furnco Constr. Corp. v. Waters*, 438 U.S. 567, 577, (1978) (3-step burden-shifting proof analysis "is merely a sensible, orderly way to evaluate the evidence in light of common experience as it bears on the critical question of discrimination. A prima facie case ... raises an inference of discrimination only because we presume these acts, if otherwise unexplained, are more likely than not based on the consideration of impermissible factors."); *see also Mancuso v. Douglas Elliman LLC*, 808 F. Supp. 2d 606, 618-19 (S.D.N.Y. 2011) (stating that "[w]hen analyzing this prong of a prima facie case, courts have used as a starting point the applicable criteria that the owner has established regarding who is 'qualified,'" and discussing cases where "owner-established criteria ... were not post-hoc rationales concocted to cover intentional discrimination" but were instead "objective requirements, often long-standing ones, clearly communicated to potential renters or purchasers of property that relate to that person's ability, financial or otherwise, to purchase or rent the property in question"); *Treece*, 593 F. Supp. at 439-40 ("Plaintiffs directly challenge the legality of the occupancy limits, and the challenged activity cannot defeat Plaintiffs' prima facie case.").

district court should have required The Pearl to offer a legitimate, non-discriminatory and non-retaliatory reason and then tested pretext. *McDonnell Douglas*, 411 U.S. at 802–04.

Ms. Blackwell presented evidence that she did not agree to the utility addendum, that the lease agreement she signed did not have one, and that The Pearl's Trial Exhibit A presented to the court was not the document to which she agreed or which she signed. She showed that before a change in The Pearls' property management, fees were not enforced, different versions of the claimed ledger of amounts owed existed (suggesting manipulation), fees were not reconcilable or computable based on itemization of costs, that she received no utility services and that charges were made for common area utility services not actually incurred by The Pearl or its agent. She presented evidence that fees were enforced on her up to eviction while a white male neighbor who complained faced no consequences. She had the means to pay had she chosen to do so and were she legally required to, but she disputed the fees and surcharges in good faith. Meanwhile she was always current on all rent. Ms. Blackwell engaged in protected activity by complaining of racial bias and filing a discrimination charge (R.233; R.1073 ("I am a middle-aged Black woman and was kicked out for asking."); R.765 (manager communications). The Pearl discriminated based on race by filing and prosecuting the eviction complaint—and then using it as leverage, offering to dismiss the eviction if she dropped the UALD complaint. R.1; R.1111. That is more than enough at step one to show a minimal prima facie case. *See Honce v. Vigil*, 1 F.3d 1085, 1088–90 (10th Cir. 1993) (recognizing FHA liability for sex-based harassment by a landlord during an ongoing tenancy and tied it to § 3604(b)'s "terms, conditions, or privileges" and "provision of services"); *Wilson*, 876 F. Supp. at 1243

(qualification turns on rental criteria, not post-lease disputes); *Treece,* 593 F. Supp. 3d at 440 (landlord cannot use the challenged conduct to defeat the prima facie case).

The question on the first step of the burden shifting proof process is only whether the plaintiff showed enough evidence by which a reasonable juror could find for him or her on the element. This initial burden of production is "minimal." *St. Mary's,* 509 U.S. at 506; *see also McGuinness v. Lincoln Hall*, 263 F.3d 49, 52 (2d Cir. 2001) (holding plaintiff "satisfied her burden to present evidence that could support a reasonable finding that she was treated differently on the basis of her race."). Ms. Blackwell introduced enough evidence to make out a prima facie case of racial discrimination and retaliation: she consistently paid rent, which the UALD confirmed by noting she was "an ideal tenant in good standing that has always paid her rent on time" (R.233, p. 3), never agreed to the "utility fees" added later, with the UALD documenting that fees were repeatedly removed as "glitches" and that "each month Page removed the charges and told her that Respondent overcharged her due to a 'glitch' in the system" (R.233, p. 7), was treated more harshly than similarly situated white tenants, and was evicted only after she complained of discrimination. After Ms. Blackwell's March 8, 2023 discrimination complaint, The Pearl offered on April 4, 2023 to "drop everything" if she withdrew her complaint. *Id.*, p. 11. The Pearl's agent Mr. Rutherford admitted that "I've talked to a lot of residents that have had those issues" (Trial Tr. 000111:5-6) but Ms. Blackwell Blackwell—the only Black tenant—was evicted, and she was the only one. (R.233, p. 2). The district court's conclusion of law that she was not engaged in protected activity when she alleged housing discrimination to the UALD and to her landlord, fails as a matter of law on this record.

Had the district court correctly gone to the next stage and inquired about pretext, it would (and should) have concluded that The Pearl could not meet its burden on this record based on the undisputed evidence. Ms. Blackwell she was only Black tenant; she was treated differently for disputing the fees; she asserted her rights by making the UALD complaint and was evicted just after; and The Pearl used the eviction suit as leverage to try to force her to drop the UALD discrimination complaint. It is *per se* protected activity to complain about discrimination, even if an underlying about lease fees is later contractually rejected. The district court's order effectively holds that by exercising her rights under the FHA to challenge her landlord's racist enforcement of fraudulent lease fees she never agreed to pay, somehow makes her beyond the protection of the FHA in the first place.

But the exception cannot swallow the rule. If this were the law, no plaintiff could ever win because the complaint of discrimination itself is the thing that is being used against Ms. Blackwell to deem her conduct unprotected under the FHA to begin with.

The evidence is uncontroverted that The Pearl tried to parlay an eviction suit into abuse of process: a club to force a Black female tenant to waive her FHA rights and drop her retaliation and discrimination claims. That is per se discriminatory.

Judgment on the FHA claim should be reversed. The case should be remanded with instructions to enter judgment for Ms. Blackwell on the FHA claim as a matter of law.

C. The district court applied the wrong legal standard in adjudicating Ms. Blackwell's negligent misrepresentation claim: uncontroverted evidence of false statements and reasonable reliance are sufficient to establish a claim

A defendant who, doing business, supplies false information for the guidance of others in a business transaction is liable for pecuniary loss caused by the plaintiff's

D. The district court abused its discretion in denying Rule 60(b) relief despite the undisputed lack of notice of the judgment to Appellant

Under Utah law, a judgment may be void if entered in a manner inconsistent with due process. That includes a lack of notice that deprives a party of a meaningful chance to act. Utah R. Civ. P. 58A and 5(b) both require service of the signed judgment. When that notice is not given and the party is left without a fair opportunity to seek post-judgment relief or appeal, Rule 60(b)(4) relief is available. See *Migliore* 2015 UT 9, ¶ 25 (judgment is void if issued inconsistent with due process); *Judson,* 2012 UT 6, ¶ 18 (addressing due process implications of lack of notice of entry and the need for remedial relief).

An order denying Rule 60(b) relief is reviewed for abuse of discretion. A court abuses its discretion when it bases its ruling on an erroneous view of the law. Whether a judgment is void under Rule 60(b)(4) presents a legal question reviewed for correctness. *See Willey*, 2016 UT 53, ¶ 5 (abuse of discretion review of Rule 60(b)); *Menzies*, 2006 UT 81, ¶ 64 (misapplication of law abuses discretion); *Migliore*, 2015 UT 9, ¶ 25 (correctness).

If the Court reverses on the merits (issues 1–3, and issue 4 if reached), it need not decide the Rule 60(b) issue. If not, the denial of Rule 60(b) should be reversed and the case remanded to vacate and re-enter the judgment with proper Rule 58A notice, so post-judgment deadlines and appeal rights run from actual notice. Ms. Blackwell moved to set aside the judgment under Utah R. Civ. P. 60(b), because it was not served on her as required by applicable rules. After the trial, the district court entered its Final Judgment on January 22, 2025, awarding The Pearl $7,395 plus fees and denying Ms. Blackwell's counterclaims. It is undisputed that Ms. Blackwell *was never served with notice of this*

Judgment at that time. The court's docket reflects that the electronic notification to Ms. Blackwell failed—she was listed as a party not notified electronically. The certificate of service on the findings of fact stated that the judicial assistant emailed Ms. Blackwell a copy, but Ms. Blackwell never received any such email. Two days *after* judgment (Jan. 24, 2025), Ms. Blackwell, still unaware, filed a motion to supplement the record—indicating she thought the case was still under consideration. She only learned of the Judgment on February 6, 2025, when she contacted the court's Self-Help Center to inquire about the case status. By then, The Pearl had already obtained a writ of garnishment on the judgment. Ms. Blackwell on February 6 and February 7, 2025, filed motions in the district court to vacate or stay the judgment, citing the lack of notice and her imminent wage garnishment. She also filed a Rule 60(b) motion on May 19, 2025, to set aside the Judgment as void.

The district court denied all such relief. This refusal was an abuse of discretion. Few things undermine confidence in a judgment more than a party not knowing about it until after important deadlines have run. Utah R. Civ. P. 58A(c) requires that the prevailing party serve a copy of the signed judgment on the other party within 7 days. That did not happen here. The integrity of the judgment itself is in question due to the lack of notice. Rule 60(b)(4) provides that a judgment is void if rendered in a manner inconsistent with due process. Notice of entry of judgment is a requirement to meet due process in this context.

The district court should have granted the Rule 60(b) motion, set aside the judgment, and re-entered it, clearing up any doubt and obviating extra procedural hurdles. Instead, the court denied the 60(b) motion, saying essentially that Ms. Blackwell had managed to file an appeal, so she wasn't prejudiced. This refusal was an abuse of discretion. Due

IN THE UTAH COURT OF APPEALS

Antonia Blackwell Appellant v. The Pearl Appellee	Appellate Case No. 20250324-CA Trial Case No. 230401251

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, WEST JORDAN DIVISION, SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE JAMES R. GARDNER, CIVIL NO. 230401251

BRIEF OF APPELLEE THE PEARL

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beginning on 4/1/2023, the date after Ms. Blackwell was required to vacate, and ending on the date that Ms. Blackwell vacated the property.[1]

Ms. Blackwell filed a counterclaim alleging negligent misrepresentation and discrimination. The parties proceeded to an occupancy hearing held in accordance with The Pearl's unlawful detainer claim. At the occupancy hearing, the parties agreed on a vacate date of 4/30/2023 and the district court entered an order of restitution to that effect. R.56. Ms. Blackwell vacated the property on 4/29/2023. R.314

At the same time the eviction case was proceeding, Ms. Blackwell filed a separate administrative complaint against The Pearl with the Utah Antidiscrimination and Labor Division ("UALD") under Utah Code 57-21-1 *et. seq.*. However, the UALD administrative action is wholly separate from the proceedings before the district court and not before this court on appeal. Nonetheless, Ms. Blackwell filed a number of documents from the UALD administrative action with the district court in the present case, despite the UALD finding that The Pearl had not engaged in discrimination against Ms. Blackwell.

Thereafter, The Pearl elected to pursue its claims for monetary damages on the unlawful detainer claim. The Pearl initially filed a motion for summary judgment asking for both the unpaid balance of $883.59 as well as treble damages beginning on 4/1/2023, and continuing until 4/29/2023, the date when Ms. Blackwell vacated the property. R.56-

[1] Treble damages are authorized in an eviction case under Utah Code 78B-6-811.

trial support the same outcome as the order granting summary judgment, then the deficiencies constitute harmless error and do not warrant reversal. *Scudder v. Kennecott Copper Corp.*, 886 P.2d 48, 50-51 (Utah 1984). In reviewing such "[t]o require reversal, error must be substantial and prejudicial in the sense that there is a *reasonable likelihood* that in its absence there would have been a different result." *Id.* (emphasis added) (citing *State v. Kozik*, 688 P.2d 459, 461 (Utah 1984).

In the present case, each and every element required to support The Pearl's cause of action for unlawful detainer was also presented at trial. The full lease agreement and addendums were admitted at trial. R.641. Importantly, Ms. Blackwell did not object to the lease and addendums being received as evidence. R.1035. The lease states that the initial term ends on 3/17/2023 and will continue on a month to month basis thereafter unless either party gives at least 60 days notice of termination. *See* Addendum – Ex. A (Lease & Addendums). The eviction notice requiring Ms. Blackwell to vacate was admitted at trial. R.641. Ms. Blackwell did not object to the eviction notice being received as evidence. R.1036. The Pearl's witness testified that he had served Ms. Blackwell the notice requiring her to vacate at the end of her lease. *Id.*; R.1017; see also Addendum – Ex. D (Notice to Vacate). Ms. Blackwell did not dispute proper service of that notice. R.920; R.965; R967; R968. And there is no dispute that Ms. Blackwell did not vacate until 4/29/2025. R.314. Therefore, The Pearl has shown all of the elements of its unlawful detainer claim and there is no reasonable likelihood of a different result, even if summary judgment had not been granted.

B. The District Court Used The Correct Legal Standard In Evaluating Ms. Blackwell's Fair Housing Claim.

In regard to Ms. Blackwell's fair housing claim, the legal standard applied by the district court was that Ms. Blackwell must show that (1) she is a member of a protected class, (2) that she sought relief and was qualified to rent or purchase housing, (3) that she was rejected, and (4) that the housing opportunity remained available to other renters. R. 646-47 (citing *Mitchell v. Shane*, 350 F.3d 39, 47 (2d Cir. 2003) & *Asbury v. Broughm*, 866 F.2d 1276, 1280 (10th Cir. 1989)).[5] The district court then recited the correct standard stating that if Ms. Blackwell had made the required prima facie showing of the four elements, the burden then shifted to The Pearl to assert a legitimate nondiscriminatory reason for the challenged decision. *Id.* The district court then recited the correct standard that if The Pearl made a showing of a legitimate, nondiscriminatory rationale that the burden would shift back to Ms. Blackwell to demonstrate that discrimination was the real reason for The Pearl's actions, and not the legitimate, nondiscriminatory rationale that was offered. *Id.* The district court found that Ms. Blackwell had failed to make the prima facie showing of the second element – that she was qualified to rent. R.650. Therefore, it did not move on to the burden shifting framework. The district court made this factual finding after hearing testimony from The Pearl's witness that tenants who do not pay all

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[5] The Utah Supreme Court has already held that applicable provisions of the Federal Fair Housing Act and the Utah Fair Housing Act "are so similar . . . that it is appropriate to look to federal law as persuasive authority when interpreting the [Utah Fair Housing Act]". *Malibu Inv. Co. v. Sparks*, 2000 UT 30, ¶ 27 n.11, 996 P.2d 1041. *See also* R.646.

charged to Ms. Blackwell were in fact due and owing. The issue is not whether a tenant is entitled to dispute fees. The issue is whether a tenant is entitled to withhold payment of fees that are in fact due and owing.

It should be noted that although Ms. Blackwell talks about the Utah Antidiscrimination and Labor Division ("UALD") determination attempting to support the notion that she was an "ideal tenant in good standing that has always paid her rent on time", the UALD matter is a separate administrative action, and was never procedurally before the district court. However, inasmuch as Ms. Blackwell cites to the UALD matter, it should be noted that the UALD found that The Pearl had not engaged in discrimination in violation of the FHA, similar to the district court's ruling.

3. Even If The District Court Considered The Burden Shifting Analysis, The Result Would Have Been The Same Because The Pearl Provided A Legitimate Nondiscriminatory Reason For Ms. Blackwell's Notice To Vacate, And Ms. Blackwell Offered No Evidence To Show That Their True Motivation Was Discrimination And Not The Legitimate Rationale Offered.

Ms. Blackwell claims that The Pearl admitted she was discriminated against by claiming that Ms. Blackwell and a white tenant disputed their fees, and that Ms. Blackwell received a notice to vacate while the white tenant did not. *See* Appellant's Brief at 38. Ms. Blackwell also quotes The Pearl's witness' testimony at trial in an attempt to show that she was wrongfully treated differently. However, Ms. Blackwell chooses in her brief to end her quotation of the record, directly before The Pearl is asked *why* Ms. Blackwell and the white tenant were treated differently.

Importantly, the record continues where Ms. Blackwell ends her quotation by stating "Q. . . .why did Mr. Shelton not receive a notice to vacate at the end of his lease agreement? A. He didn't have an outstanding balance." R. 1022. Mr. Shelton came down to the office and had a conversation with The Pearl's witness about whether he owed the same fees that Ms. Blackwell had disputed. *Id.* But after such discussion, Mr. Shelton paid those fees. And Mr. Shelton's ledger was admitted into evidence which showed that, after his discussion with management about the fees, he paid the fees and brought his account current. R.1021. Importantly, Ms. Blackwell did not object to this evidence being entered. *Id.* The reason that Ms. Blackwell and Mr. Shelton were treated differently was not because he was white and she was black, but was because he paid his fees and she refused to do so. The Pearl's witness even testified that Ms. Blackwell could have remained under a new lease agreement if she had just paid the balance owing. R.1012. Therefore, Mr. Shelton was a tenant who was "qualified to rent" as he did not have any fees owing at the end of his lease. And Ms. Blackwell was not "qualified to rent" because she refused to pay the fees owing. This is a legitimate non-discriminatory reason why Ms. Blackwell was treated differently than Mr. Shelton.

Had the court continued with analysis, the burden would have shifted back to Ms. Blackwell to show that The Pearl's stated justification for why they treated her and Mr. Shelton differently is inaccurate, and that their true motivation was discrimination. However, no evidence or testimony was presented by Ms. Blackwell that would suggest

afford relief under Rule 60(b)(4) is "exceedingly short". *Id.* (citing *United Student Aid Funds, Inc.*, 559 U.S. 260 at 270). And the expansion of Rule 60(b)(4) that is advocated for by Ms. Blackwell would swallow the rule.

1. Ms. Blackwell Had Actual Notice Of The Judgment.

In *United Student Aid Funds, Inc.*, the Supreme Court found that even though the plaintiff had failed to serve the defendant with a summons and complaint at the beginning of the case, this did not violate the defendants constitutional right to due process because the defendant had received actual notice. *Id.*

In the present case, the judgment was entered on 1/22/2025. R.659. On 2/7/2025 The Pearl proactively served Ms. Blackwell via mail with a notice of judgment and a copy of the judgment itself. R.667. However, it appears that Ms. Blackwell was already aware of the judgment because a few hours after Plaintiff *mailed* out the notice of judgment, Ms. Blackwell filed a Motion to Vacate that asked the district court to vacate the $7395.00 that was awarded in the judgment claiming that judgment was void. R.685-89. Ms. Blackwell even included a screenshot of the judgment amount on the court's docket as part of her motion. R.684. Therefore, even though Ms. Blackwell's name did not appear on the certificate of service, the record clearly shows that Ms. Blackwell had notice of the judgment and that any due process rights had been met. Further, even if she did not have notice of the judgment, The Pearl satisfied the requirements of Rule 58A when it sent the Notice of Judgment and an accompanying copy of the judgment to Ms. Blackwell on 2/7/2025.

IN THE UTAH COURT OF APPEALS	
Antonia Blackwell, Appellant, v. The Pearl, Appellee.	Court of Appeals Case No. 20250324-CA District Court Case No. 230401251

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT, WEST JORDAN DIVISION, SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE JAMES R. GARDNER, CIVIL. NO. 230401251

REPLY BRIEF OF APPELLANT ANTONIA BLACKWELL

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causation' label most frequently employed in tort analysis, these principles nevertheless exist to restrict liability in contract as well." *Exxon Co. v. Sofec, Inc.*, 517 U.S. 830, 839-40 (1996). Here, Ms. Blackwell was not the legal cause of The Pearl's claimed damages. She repeatedly tried to pay $2,690 for April rent.

IV. The district court misapplied the legal standard and made and relied on clearly erroneous factual findings to adjudicate the Fair Housing Act claims

Ms. Blackwell brought two federal Fair Housing Act (FHA) claims: (1) racial discrimination (disparate treatment), and (2) retaliation. Reversal is required for both.

A. Discrimination: undisputed evidence that Ms. Blackwell was "qualified"

To establish a prima facie case of housing discrimination, a plaintiff must show she is a member of a protected class, was qualified to rent, suffered adverse action, and that similarly situated persons outside her class were treated more favorably. The district court found Ms. Blackwell was not qualified solely because she had an "outstanding balance owing" (the $883.59 fee) and refused to pay it. That is not the law. A tenant who faithfully pays base rent and complies with all legitimate lease terms does not become "unqualified" by disputing an additional charge of dubious validity. "Qualification" in the FHA context means meeting legitimate rental obligations—not surrendering to disputed fees. Ms. Blackwell contested those fees precisely because The Pearl's own manager admitted they were erroneous (Def. Tr. Exh. F; Trial Tr. 69-70, 211) and The Pearl later abandoned all claims for them. (R. 1156-1210, March 13, 2024 MSJ Hrg. Tr. 9:1-2).

The "qualified" prong asks whether the plaintiff met initial screening criteria, not whether they later disputed a charge. *Wilson v. Glenwood Intermountain Properties*, 98

factor. At minimum, Ms. Blackwell established a prima facie case: she is in a protected class, was qualified (no lawful rent deficiency), suffered adverse action (eviction), and similarly situated tenants outside her class were treated more favorably.

The Pearl's fails to acknowledge the significance of its over to drop the eviction if Ms. Blackwell withdrew her discrimination complaint. The temporal proximity establishes causation: Ms. Blackwell filed her discrimination complaint on March 8, 2023; on April 4, 2023, The Pearl leveraged its status as landlord, trying to force Ms. Blackwell to dismiss her race discrimination claim by informing her that was the only way it would renew the lease; The Pearl sued to evict on April 10. It is undisputed that The Pearl was willing to continue the tenancy and waive all fees if Ms. Blackwell withdrew her civil rights complaint. When she refused, The Pearl evicted her. This shows retaliatory animus.

In short, there is ample evidence of discrimination from the undisputed timeline:

Date	**Event/Communication**	**Evidence**
March 18, 2022	Move in: Prorated rent $1,151.61 + fees = $1,722.54 total	R. 90, ¶10; R. 164-168 (Resident Ledger)
Thursday, March 24, 2022	Pro-rated first month's rent timely paid: Ms. Blackwell pays $1,715.00	
Apr-Jun 2022	All rent and agreed fees paid on time and in full: Ms. Blackwell pays $2,690.00 each month (on time). Agreed rent: $2,550 + $140 disclosed fees = $2,690	Def. Tr. Exh. E ¶11, Ex. C
July 27, 2022	New, unexplained fees: invalid fee charges begin ($24.07). Ms. Blackwell questions fees.	Def. Tr. Exh. D [Def. Tr. Exh. D]; Trial Tr. 120; R. 90-91, ¶12-17
July 4 & 25, 2022	Late fee ($255) added then removed "as courtesy"	
August 6, 2022	The Pearl acknowledges "accounting issues." Late fee ($255) added then removed due to "accounting issues"	R. 91, ¶18-19, R. 164-168 (Resident Ledger); Trial Tr. 121-122

Date	Event/Communication	Evidence
September 1, 2022	The Pearl acknowledges the fees are charged in error and tells Ms. Blackwell she requested help on the problem: Stephanie Page emails: "I have put in a help desk ticket... I can assure you that you will not be responsible for paying the late fees if you are paying your rent by the 3rd."	R. 92, ¶21, R. 164-168 (Resident Ledger); Trial Tr. 123 (Page 123, R.1032)(Rutherford testifying)
September 7, 2022	Apology email: Stephanie Page: "This has been fixed, it was a setting issue. I apologize for the inconvenience."	
September 6, 2022	Late fee ($255) added then removed to "placate" (R. 93) Ms. Blackwell, even though The Pearl's own pleading says as of September 3, 2022 "there were accounting issues on the ledger."	R. 92-93, ¶24, R. 164-168 (Resident Ledger); Trial Tr. 32-33, 123 (accounting issues; late fees reversed)
October 12, 2022	Late fee ($255) added then removed	Def. Tr. Exh. F; Trial Tr. 69-70 (R. 000978-979) ("...Stephanie Page, and we can pull up the exhibit, told me that she was removing those fees, and so I would, as a tenant, I am reasonably reliant, ...")
November 29, 2022	$500 credit applied: Regional manager grants concession for construction, internet, dishwasher issues. Ms. Blackwell's balance: -$173.57 (negative = credit balance)	
November 30, 2022	Ms. Blackwell emails Chelsea Perry: "I do see the $500 credit now... There are still all these other fees listed including late fees. I've never paid my rent late and have always paid prior to the 1st of the month." Screenshots show pest $2, trash $2.45, utility $4.65, valet $25, cable $37.33, late fees $255.	Def. Tr. Exh. B
January 8, 2023	Ms. Blackwell has phone conversation with new manager Rutherford about unrelated matter. Rutherford never mentions any delinquency or payment issues.	Trial Tr. 150-151

only Black tenant at the property (R.233 p.17). Rutherford admitted under oath that it is "not ethical" for a property manager to evict a tenant in response to an inquiry about the amount of fees assessed under the lease agreement (Trial Tr. 66:19-24). Ms. Blackwell was the only Black tenant at the property (R.233 p.17). Ms. Blackwell established a prima facie case: she is in a protected class, was qualified (no lawful rent deficiency), suffered adverse action (eviction), and similarly situated tenants outside her class were treated more favorably. The burden thus shifted to The Pearl to prove a legitimate, non-discriminatory reason for the disparate treatment. The Pearl's explanations do not withstand scrutiny when compared to its treatment of Mr. Shelton. This Court should reverse and remand for analysis under the correct legal standard: a tenant asserting her rights is not "unqualified," and evidence of differential treatment based on race establishes a prima facie case.

B. Retaliation: filing a discrimination complaint is protected activity

The district court rejected Ms. Blackwell's FHA retaliation claim (42 U.S.C. § 3617) on the ground that she did not engage in "protected activity." This was legal error.

1. Filing a discrimination complaint and challenging lease fees in good faith is protected activity under the FHA—Ms. Blackwell did not concede otherwise

The Pearl argues that Appellant concedes that the FHA does not apply, citing a badly worded sentence which The Pearl suggests means that Ms. Blackwell has conceded the FHA does not apply if indeed the fees are owed. That is not her argument. The statement on page 27 of her opening brief, "No one disputes that a tenant who disputes legitimate fees and surcharges that are actually owed under the lease is outside the protections of the

FHA", refers to a case of undisputed lease terms that preclude, facially and as a matter of law, a tenant's ability to make even a prima facie showing of retaliation.

That is not this case. Section 3617 makes it unlawful to "coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of" fair housing rights "or on account of his having exercised or enjoyed" such rights. 42 U.S.C. § 3617. HUD regulations prohibit "[r]etaliating against any person because that person has made a complaint... in a proceeding under the Fair Housing Act." 24 C.F.R. § 100.400(c)(5). The regulations also prohibit retaliation for reporting discrimination. 24 C.F.R. § 100.400(c)(6).

Whether activity is protected does not depend on whether the complainant ultimately wins. It depends on the good-faith act of opposing a practice the complainant reasonably believed was discriminatory. That is why even unsuccessful, but good faith, complaints are protected under the FHA. *Wyatt v. City of Boston*, 35 F.3d 13, 15 (1st Cir. 1994) (charge need not be valid or reasonable for FHA protection to attach); *Brower v. Runyon*, 178 F.3d 1002, 1006 (8th Cir. 1999) (same).

2. It is retaliation *per se* for a landlord to require dismissal of a race discrimination complaint as a condition of continued housing

During the April 4, 2023 meeting, The Pearl's management told Ms. Blackwell they would to "drop everything" if Ms. Blackwell withdrew her discrimination complaint (R.233 p.11, Trial Tr. 200-201; R. 1196; R. 1111-1112). That offer was communicated to Ms. Blackwell by her then-acting attorney, in an email relating a phone call:

> Trevor called me in a last attempt to resolve the matter. They have the paperwork drafted and will file the eviction tomorrow after 4:00 p.m. Here's the latest offer:

1. Dismiss all fees and costs to date—although they said there may be more in April, May, and June (i.e., they claim there are about $24 per month in addition to the rent and regular fees). He claims these fees are assessed to all tenants.
2. They would allow you to stay through June, with you paying regular rent, fees, and those noted in #1.
3. They will not file an eviction, which would harm your rental history. Instead, they will provide a positive reference.
4. You will move out by June 30, 2023.

This is in return for you dismissing your Discrimination Claim.
Let me know your thoughts.
Best regards.

R. 641 (Trial Exhibits); Def. Trial Exh. G.

The Pearl's April 4, 2023 offer to let her remain in her home if she dismissed her discrimination complaint is unlawful coercion under § 3617. It is retaliation *per se* because it shows, by inverse implication, that Ms. Blackwell's filing of a racial discrimination complaint is the reason The Pearl evicted her. *See* 42 U.S.C. § 3617; 24 C.F.R. § 100.400(c)(5); *United States v. Hinesville Hous. Auth., et al.*, No. 4:23-cv-00288-LGW-CLR (S.D. Ga. Sept. 29, 2023) (resolved by consent order) (finding retaliation where tenant received non-renewal notice within five days of landlord receiving notice of HUD complaint); *Stackhouse v. DeSitter*, 620 F. Supp. 208, 210-11 (N.D. Ill. 1985) (§ 3617 prohibits coercion "on account of the person's having exercised" FHA rights).

Ms. Blackwell's opening brief makes this argument in Issue 2, and on pages 33 through 40. The Pearl fails to respond to this argument. Because The Pearl has failed to respond, this Court should conclude Ms. Blackwell has shown a basis for reversal. *Cf. Broderick v. Apartment Mgmt. Consultants, LLC*, 2012 UT 17, ¶¶ 19, 20, 279 P.3d 391.

3. Ms. Blackwell established a prima facie case

In the beginning of the tenancy, The Pearl's manager told Ms. Blackwell the fees would be waived, causing Ms. Blackwell to reasonably rely on that representation. Later, after months went by during which The Pearl waived the fees, after property managers changed, suddenly The Pearl claimed that Ms. Blackwell owed $883.59 in fees.

Ms. Blackwell's trial Exh. F is the September 2022 email from Pearl's manager Stephanie Page apologizing to Ms. Blackwell and stating that the errant fees were a 'setting issue' that 'has been fixed.' (Trial Ex. F [Def. Tr. Exh. F]). This is The Pearl's own written admission that the charges were erroneous. The Pearl cannot now claim these were valid charges when its own manager called them a mistake and promised they were corrected. Under Utah law, statements made by an agent within the scope of the agency relationship are binding on the principal and admissible as vicarious admissions. *Hodges v. Gibson Prods. Co.*, 811 P.2d 151, 157 (Utah 1991) ("the liability of a principal is affected by the knowledge of an agent concerning a matter as to which the agent is authorized to act"). Ms. Page was The Pearl's person hired to communicate with tenants about billing matters. (Trial Ex. F [Def. Tr. Exh. F]; Trial Tr. 211). Her admission that the fees were caused by a "setting issue" that would be fixed, binds The Pearl. The court found that because it "believed" The Pearl's witnesses, no false statement occurred (R.653–54). This is clearly erroneous. The Pearl's agents may have negligently relied on their files or assumed she signed everything, but that is exactly the point of a negligent misrepresentation claim. The Pearl had no direct knowledge that she agreed to the fees, yet treated her as owing them and reported her as delinquent when she did not pay. There is enough evidence to support a finding that The Pearl made negligently false representations about her duty to pay the fees.

B. Ms. Blackwell suffered damages

The Pearl argues that Ms. Blackwell has not suffered a loss, because The Pearl ultimately waived the disputed fees. But The Pearl leveraged an invalid fee to create the default in the first place. It was that default which it cited to evict—and the penalty cost Ms. Blackwell far more than $883.59. Ms. Blackwell suffered concrete pecuniary loss—the judgment and subsequent garnishment. Ms. Blackwell lost her housing, was evicted and now has an adverse rental record, and endured the negative effects of the entire process (with treble rent damages) because of The Pearl's false representations about the fees.

VI. The judgment is void under Rule 60(b)(4) for lack of notice

Utah R. Civ. P. 58A(g) requires the prevailing party to "promptly" mail notice of judgment entry. Failure to comply renders a judgment void. *Judson v. Wheeler RV Las Vegas, LLC*, 2012 UT 6, ¶ 18, 270 P.3d 456; *Graham v. Sawaya*, 632 P.2d 851, 853 (Utah 1981) (holding that due process requires notice before rights affected by judgment); *Oseguera v. Farmers Ins.*, 2003 UT App 46, ¶ 4 n.6, 68 P.3d 1008 (failure to comply with Rule 58A notice requirement is relevant for Rule 60(b) purposes); *Meyers v. Interwest Corp.*, 632 P.2d 879, 881 n.2 (Utah 1981) (lack of notice results in void judgment).

The Pearl argues Ms. Blackwell had actual notice so the delay is harmless. But the notice requirement is mandatory, not discretionary. Moreover, Ms. Blackwell discovered the judgment through her own efforts before Pearl mailed notice—Pearl cannot claim credit for notice it never provided. Third, actual notice through independent discovery does not cure a notice violation. The rule prevents parties from having to monitor the docket.

IN THE SUPREME COURT OF THE STATE OF UTAH

ANTONIA BLACKWELL, *Petitioner,* v. THE PEARL, *Respondent.*	**PETITION FOR WRIT OF CERTIORARI** Supreme Court No. Court of Appeals No. 20250324-CA

On Petition for Writ of Certiorari to the Utah Court of Appeals

Court of Appeals Memorandum Decision (Order) entered May 5, 2026;
Rehearing Denied June 3, 2026

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List of All Parties

All parties to the proceeding in the Court of Appeals are identified in the caption. The petitioner is Antonia Blackwell, appellant below. The respondent is The Pearl, appellee below. There are no other parties.

Questions Presented for Review

I. A plaintiff who has the burden of persuasion at trial "cannot seek summary judgment without producing affirmative evidence in support of the essential elements of its claim." *Salo v. Tyler*, 2018 UT 7, ¶ 26, 417 P.3d 581. The Pearl moved for summary judgment on its own unlawful detainer claim without authenticating the lease agreement on which every element depends. Ms. Blackwell opposed the motion, but the district court treated The Pearl's statement of facts as established because she did not dispute them in the verbatim format required by Utah R. Civ. P. 56(a)(2) for an opposing memorandum. Did The Pearl satisfy its summary judgment burden under Rule 56 and *Salo*?

II. Under the Fair Housing Act, a tenant engages in protected activity when she opposes, in good faith, a practice she reasonably believes is discriminatory. The district court held Ms. Blackwell was neither "qualified" nor engaged in protected activity because the fees she disputed were later found owed. The Court of Appeals declined to review that standard. Does her fair-housing protection depend on whether she was right about the fees?

Decision of the Utah Court of Appeals

The Court of Appeals' decision is an unpublished decision entered by order on May 5, 2026 (*The Pearl v. Blackwell*, No. 20250324-CA) (Orme, Mortensen, and Oliver, JJ.). It is not reported. The order denying rehearing was entered June 3, 2026. Neither order will "stand as precedent[.]" Utah R. App. P. 30(e). Both are in the Appendix.

Grounds for Jurisdiction

The Court of Appeals entered its decision on May 5, 2026. *See* Appendix Ex. A, Order. Ms. Blackwell petitioned for rehearing under Utah R. App. P. 35(a) on May 19, 2026, which was denied on June 3, 2026. *See* Appendix Ex. B, order denying rehearing.

The first: may a plaintiff obtain summary judgment on its own claim without affirmative evidence of the claim's essential elements? This Court settled that rule in *Salo v. Tyler*. The Court of Appeals applied it in *Pepperwood Homeowners Ass'n v. Mitchell,* 2015 UT App 137, 351 P.3d 844. The decision below resolves it the other way.

The second: does a tenant forfeit fair-housing protection by disputing fees a court later finds owed? The Court of Appeals had that question and declined to answer it.

I. The decision misapplies *Salo v. Tyler* and departs from *Pepperwood.*

A. Under Salo, a plaintiff-movant must make a prima facie showing on all elements.

In *Salo*, this Court clarified Utah's summary-judgment standard, harmonizing it with the federal standard of *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), and disavowed earlier dicta suggesting the two differ. 2018 UT 7, ¶¶ 2, 28. It drew the distinction that controls here: "[t]he extent of the moving party's burden varies depending on who bears the burden of persuasion at trial," and "[a] movant who seeks summary judgment on a claim on which it will bear the burden of persuasion at trial cannot seek summary judgment without producing affirmative evidence in support of the essential elements of its claim." *Id.* ¶ 26. Only a movant challenging a claim on which the nonmovant bears the trial burden may prevail by pointing to an absence of proof. *Id.* Throughout, "the moving party always bears the burden of establishing the lack of a genuine issue of material fact." *Id.* ¶ 2.

On the branch that controls here, the *Salo* Court saw no controversy: "Everyone agrees that a moving party bears a burden of coming forward with evidence on matters on which the movant bears the burden at trial." *Id.* ¶ 24. The Court grounded that rule in the directed-verdict standard it mirrors. Summary judgment "is judgment before trial," appropriate only where no reasonable factfinder could rule for the nonmovant. *Id.* ¶ 30. Just as a defendant may win a directed verdict by showing the plaintiff failed to carry its burden of production, a movant may prevail on summary judgment without its own evidence only where the nonmovant bears the trial burden. *Id.* ¶¶ 30–31. The corollary is that a plaintiff moving on its own claim must adduce affirmative evidence of each element.

The Pearl sued on its own unlawful detainer claim and bears the burden of persuasion on it. Under *Salo*, it could not obtain summary judgment without affirmative evidence of each essential element. The nonmovant's response could not change that. Even where the nonmovant never responds, the court may grant summary judgment only "if the motion and supporting materials—including the facts considered undisputed—show that the moving party is entitled to it[.]" Utah R. Civ. P. 56(e)(3).

Summary judgment "may not be entered against the nonmoving party merely by virtue of a failure to oppose"; the court "must still determine whether the moving party's pleadings, discovery, and affidavits demonstrate its entitlement to judgment as a matter of law." *Pepperwood*, 2015 UT App 137, ¶ 6. "Where the moving party would bear the burden of proof at trial, the movant must establish each element of his claim[.]" *Id.* ¶ 8 (quoting *Orvis v. Johnson,* 2008 UT 2, ¶ 10). The 2015 restyling of Rule 56 left intact "the line of Utah cases regarding the burden of proof in motions for summary judgment." Utah R. Civ. P. 56 advisory committee notes (2015 amendments). *Accord Turley v. Childs*, 2022 UT App 85, ¶¶ 25–29, 515 P.3d 942; *Tronson v. Eagar*, 2019 UT App 212, ¶ 17, 457 P.3d 407.

The decision below quoted this rule (Order 1) and then applied its opposite, treating the dispositive facts as established because Ms. Blackwell "did not dispute" them (Order 2). *Salo* asks what the movant produced, not what the nonmovant disputed. This is not the branch of *Salo* that permits a movant to prevail by pointing to the nonmovant's lack of proof; that branch applies only where the nonmovant bears the burden at trial. *Id.* ¶ 31.

The Pearl bore the burden at trial so on summary judgment it had to do the same thing: adduce *prima facie* proof of all essential elements of the claim. It never did so.

B. Pepperwood is materially identical to this case, and the same firm litigated it.

In *Pepperwood*, a plaintiff moved for summary judgment to collect amounts allegedly due under a governing instrument, supporting the motion with a ledger and an agent's affidavit—but never produced the controlling document itself (a declaration of covenant). 2015 UT App 137, ¶ 2. The defendant denied being bound by the declaration

but later failed to oppose summary judgment; the court granted judgment "on the basis the Defendant failed to respond." *Id.* ¶ 3. The Court of Appeals reversed: because "there [was] no evidence of an instrument obligating [the defendant] to pay," the motion "failed to demonstrate its entitlement to judgment as a matter of law." *Id.* ¶ 10. It reversed even though the issue was unpreserved. Because it was "plain on the face of [the] motion" that the movant did not attach "the instrument that formed the basis of its claim," *id.* ¶ 11, the *Pepperwood* Court reversed summary judgment and the attorney fee award. *Id.* ¶¶ 4, 16.

The parallel between Pepperwood and this case is near exact. The Pearl is represented by the same firm that litigated *Pepperwood* on the same issue: a ledger and an affidavit but no instrument. The parallel runs to the arguments, too. The *Pepperwood* motion "incorrectly stated that Mitchell did not dispute" being bound by the instrument, *id.* ¶ 10 n.3, and here, the decision below affirms the judgment based on facts that it says Ms. Blackwell "did not dispute" (Order 2). And unlike the *Pepperwood* defendant, Ms. Blackwell filed written objections throughout the lower court proceedings. The unpreserved defect in *Pepperwood* (not responding) required reversal. The preserved defect here (responding but in the wrong format) demands the same result. *See id.* ¶¶ 4, 16.

C. Without an authenticated lease, the elements of Section 78B-6-802(1)(b)(i) had no evidentiary support and as a matter of law The Pearl made no prima facie case.

Every element of the theory the panel applied depends on the lease: whether the tenancy was "for an indefinite time with monthly or other periodic rent reserved," whether it auto-renewed absent 60 days' notice, and whether the January 30 notice complied. Utah Code Ann. § 78B-6-802(1)(b)(i). The Pearl authenticated none of it: no percipient witness; a verification that never identifies the attached pages as the agreement (R. 5 ¶ 4); a conclusory affidavit from a person with no personal knowledge of formation (R. 314–15); an unsigned addendum (R. 15). The Pearl's own figures did not reconcile: its motion claimed $1,722.54 where its welcome letter said $1,714.84, and Rutherford conceded "it appear[ed] that something was left off." (R. 649 n.7.) On that record there was "no evidence

factfinder could rule against it. 2018 UT 7, ¶¶ 26, 30–31. Blur that alignment and every burden downstream blurs with it: what a prima facie showing requires, who must come forward with evidence, and when silence counts as proof. Lawyers file and district courts decide these motions daily. They need a rule they can apply with confidence. The cost of a muddy rule lands on the appellate courts because summary judgment is reviewed for correctness; every errant grant becomes a full do-over on appeal. A nonmovant's silence in response to summary judgment cannot substitute for the movant's affirmative proof. To do just that while quoting *Salo* for the opposite not only errs, it undermines the rule.

The risk is acute on the high-volume eviction docket, where tenants frequently appear without counsel and cannot file technically perfect oppositions. Ms. Blackwell appeared pro se at summary judgment, and The Pearl's facts were deemed admitted because her opposition did not restate them in the required format. (R. 348.) That is precisely the *Pepperwood* posture, and it has now produced the same judgment twice.

The unpublished posture makes review more important, not less. The order below "will not stand as precedent," Utah R. App. P. 30(e), so the reading of *Salo* it adopts will never surface in the reporters. It will simply be repeated, one unpublished order at a time, on a docket where few tenants can petition at all. Only this Court can reach it. This case is a clean vehicle: the question is purely legal, it was squarely decided, and it turns on facts apparent on the face of The Pearl's own motion. Utah R. App. P. 46(a)(1), (a)(3).

II. The courts applied the wrong legal standard for the fair-housing prima facie case.

A. Protected activity turns on good-faith opposition to discrimination, not on the merits of the disputed practice.

Utah construes its Fair Housing Act in step with the federal Act, treating federal precedent as persuasive. *Malibu Inv. Co. v. Sparks*, 2000 UT 30, ¶ 27 n.11, 996 P.2d 1043. Both are analyzed under the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973), which federal courts apply to fair-housing claims. *E.g., Wilson v. Glenwood Intermountain Props., Inc.*, 876 F. Supp. 1231, 1240 (D. Utah 1995),

vacated on other grounds, 98 F.3d 590 (10th Cir. 1996); *Honce v. Vigil,* 1 F.3d 1085, 1088 (10th Cir. 1993). The claimant's prima facie burden "is not onerous." *Texas Dep't of Cmty. Affairs v. Burdine,* 450 U.S. 248, 253 (1981). A tenant makes a *prima facie* evidentiary showing of housing discrimination by establishing that she is a member of a protected class, was qualified to rent, suffered an adverse action, and the opportunity remained available. *Wilson*, 876 F. Supp. at 1240–41; *Mitchell v. Shane,* 350 F.3d 39, 47 (2d Cir. 2003).

For a retaliation claim, the threshold element of protected activity requires only a reasonable, good-faith belief that the practice opposed is discriminatory, such as filing a discrimination complaint; it is not lost because the underlying claim later fails. *Hertz v. Luzenac Am., Inc.*, 370 F.3d 1014 (10th Cir. 2004); *see Crumpacker v. Kansas Dep't of Hum. Res.*, 338 F.3d 1163, 1171 (10th Cir. 2003). A tenant is "qualified" if she meets the landlord's general rental criteria. *Wilson*, 876 F. Supp. at 1243.

B. Ms. Blackwell established a prima facie case.

On the correct standard, Ms. Blackwell made the minimal prima facie showing. She is African American, a member of a protected class. She was "qualified": The Pearl approved her tenancy, and she timely paid $2,690 in rent every month through March 2023. (R. 240–42; R. 530; R. 602; R. 1029.) She suffered adverse action: the Notice to Vacate, the non-renewal, and the eviction suit. (R. 1; R. 20.) The record supports an inference of discrimination and retaliation. A similarly situated white tenant, Adam Shelton, questioned the same fees, had his questions answered, and was not evicted. (R. 650 n.9 (describing Shelton's declaration); Trial Tr. 200:21–201:3; R. 1109.) Ms. Blackwell filed a discrimination complaint and on its heels she was sued for eviction. The Pearl offered to renew the lease "in return for [Ms. Blackwell] dismissing [her] Discrimination Claim," expressly conditioning her housing on abandonment of a civil-rights claim. (Def. Tr. Exh. G (R. 602–03); R. 640–41; R. 243.)

That offer is not merely evidence of motive: conditioning continued housing on the surrender of a pending discrimination complaint is the coercion and interference with the

"exercise or enjoyment" of fair-housing rights that 42 U.S.C. § 3617 forbids in terms. Neither the district court nor the Court of Appeals analyzed this. Instead, the district court ruled (and the Court of Appeals agreed) that Ms. Blackwell never made a prima facie case at the threshold. The crux is that, per the courts, the lease required Ms. Blackwell to pay the fees in the first place. She refused. Based on such, the courts ruled there is no basis to deem her dispute of fees a "protected activity" (R. 651) or to find her "qualified" to rent as required for a fair-housing claim (R. 650.)

The April 4 offer does more than support an inference; it removes the need for one. *McDonnell Douglas* is a tool for proving unlawful motive circumstantially, and it "is inapplicable where the plaintiff presents direct evidence of discrimination." *Trans World Airlines, Inc. v. Thurston,* 469 U.S. 111, 121 (1985). The offer to drop an eviction "in return for you dismissing your Discrimination Claim" is direct evidence: the condition is stated in terms, and no inference is required to see housing priced against a civil-rights complaint. (Def. Tr. Exh. G (R. 602–03); R. 640–41.) Coercion under 42 U.S.C. § 3617 proved by direct evidence needs no prima facie showing for a fee ruling to erase and no pretext stage for a "legitimate rationale" to survive. The courts below did not analyze the offer or the doctrine. As to coercion, their fee-based reasoning is not merely wrong; it is immaterial.

C. The district court inverted the governing standard.

The district court's reasoning collapses the prima facie inquiry into the merits.

Protected activity and qualification to rent are threshold questions answered when the tenant acts: when Ms. Blackwell disputed the fees she reasonably believed unlawful and filed her complaint. A later contractual ruling that the fees were owed does not travel back in time to strip that protection. If it did, every tenant who loses a fee dispute will automatically lose her fair-housing claim, nullifying the anti-retaliation guarantee. Federal courts put it plainly: "the challenged activity cannot defeat Plaintiffs' prima facie case." *Treece v. Perrier Condo. Owners Ass'n*, 593 F. Supp. 3d 422, 440 (E.D. La. 2022).

D. The Court of Appeals declined to reach the error, and the basis it substituted rests on the same unproven finding.

Presented squarely with this challenge, the Court of Appeals declined to resolve it, reasoning it "need not reach this issue because the district court did address the burden shifting" and The Pearl had a "legitimate, nondiscriminatory rationale." (Order 3 n.3.)

But the Court of Appeals' rationale depends on the same disputed fees, resting on the same finding that Ms. Blackwell "refused to pay fees she agreed to pay pursuant to the Lease and Addendum." (R. 650 ¶ 31.) That finding fails for the reasons set out in Part I: Ms. Blackwell denied signing that version of the lease (R. 1016; see also R. 648 ¶ 25), the addendum is unsigned (R. 15), and the witnesses who identified the lease began work at The Pearl only after it was signed (R. 955, 964, 1078). The district court discredited Ms. Blackwell, the only formation witness who was there, while making no credibility finding as to The Pearl's witnesses' account of the lease's formation. (R. 648.)

The findings assumed the protected activity was the fee dispute and analyzed nothing else (such as filing the discrimination claim with UALD). (R. 651 ¶¶ 37–38.) The March 8 complaint and the April 4 offer that priced it appear nowhere in the analysis. The most probative retaliation evidence was unmentioned. (R. 643–54; Def. Tr. Exh. G.) The panel deferred to a legally incorrect finding of the district court (Order 3), affirming factual findings made without evidentiary support and without viewing witness demeanor. Footnote 3 supplies no independent ground. It rests on the contested finding.

E. The record affirmatively shows pretext.

Even reaching pretext, the fees cannot bear the weight the panel placed on them. The Pearl's own manager wrote that the fees were a "setting issue" that "has been fixed." (R. 605.) The Pearl credited Ms. Blackwell $500 and abandoned the fees at the second summary-judgment stage. (R. 239; R. 304–05; R. 1163–64; R. 654 n.12.) At trial its manager admitted he had no documentation that the charged services were provided and agreed a tenant cannot be charged for services not rendered. (Trial Tr. 80–81.) A white

tenant who questioned the same fees was answered and kept his home. (R. 650 n.9; Trial Tr. 200:21–201:3; R. 1109.) And The Pearl tied dismissal of the eviction to dismissal of the discrimination complaint. (R. 603; R. 1111–12.) On this record, a finding that the fees were the true, nondiscriminatory reason for the eviction is not tenable. It rests, again, on the same unproven finding. Order, footnote 3, does not save the judgment on this timeline:

In December 2022, by The Pearl's own account, a balance went unpaid and The Pearl "chose to not file for eviction." (R. 532 ¶¶ 25–26.) No discrimination complaint existed yet. On January 30, 2023, the Notice to Vacate went up, and Ms. Blackwell answered that she would file a discrimination complaint. (R. 20; R. 182; R. 241–42.) The Pearl's reply sent her to its lawyers about "the case you plan on bringing." (R. 183.) She filed with UALD on March 8. (R. 233–43.) The Pearl refused her April rent, deliberately, to keep its eviction claim alive. (MSJ Hrg. Tr. 38; R. 1193.)

On April 4, 2023 it put a price on her home: dismissed fees, a stay through June, no eviction on her record, a positive reference, all of it "in return for you dismissing your Discrimination Claim." The offer was memorialized in writing that day. (Def. Tr. Exh. G (R. 602–03); R. 640–41; R. 243.) She would not pay that (unlawful) price. Six days later, The Pearl filed the eviction action. (R. 1.) By the second summary-judgment motion, it had abandoned the fees entirely. (R. 304–05; R. 1163–64; R. 654 n.12.)

What survived to judgment was one month of rent, trebled: rent she tendered, The Pearl refused, and The Pearl stood ready to take back the moment she dropped her complaint. Now remove the fees: The Pearl dropped them itself. Remove the rent: The Pearl refused it, then offered to accept it. Before the complaint, nonpayment of the disputed fees was tolerated. After it, payment was refused. All that remains is the complaint she would not drop. The Pearl put its reason in writing. And the rationale never held still: a three-day notice about disputed fees became a lease-end non-renewal, became a judgment trebling one month of rent The Pearl had refused to accept as part of its violation of federal

law. This judgment is for rent Ms. Blackwell "owed" only because she declined to trade her civil rights for her home. This evidence is more than enough to prove pretext.

F. The decision treats the same fees as immaterial and dispositive.

The Court of Appeals held that proving Ms. Blackwell owed the fees was "simply not an 'essential element[]'" of the eviction claim (Order 2). But it also treated the fees as the dispositive "legitimate, nondiscriminatory rationale" for the eviction (Order 3 n.3).

These conclusions cannot stand together because they are inconsistent. If the fees were immaterial, they cannot defeat the fair-housing claims. If they were dispositive, they were essential and had to be proved. Either way, the judgment is the product of not only legal error but also substantial and factually undisputed civil rights violations. Landlords cannot condition housing on their tenants' waiving fair-housing civil liberties.

The contradiction is not a quibble; it is an independent ground for review. When the same unproven fact is deemed non-essential to sustain one claim and outcome-determinative to defeat another, the decision supplies no rule—only a result. One holding or the other must yield, and only this Court can say which. Resolving that kind of confusion is a basis for granting certiorari, Utah R. App. P. 46(a)(3), and squarely applies here.

G. The question is unsettled, recurring, and outcome-determinative.

Whether a tenant who disputes allegedly unlawful fees and files a discrimination complaint engages in protected activity and remains "qualified," or instead forfeits fair-housing protection if the fees are later found owed, is a question this Court has not resolved. It recurs whenever a tenant complains of discrimination over a contested charge. If a tenant forfeits fair-housing protection whenever the disputed fees are later found owed, the playbook writes itself: refuse the tender, price the eviction at the complaint, and collect treble rent when the tenant will not sell her claim.[3] The Court of Appeals had the question

[3] The pattern is nationwide. In January 2025, the Federal Trade Commission and the State of Colorado sued Greystar Real Estate Partners, LLC, and five affiliated entities, alleging that Greystar advertised rental prices that omitted mandatory recurring fees (including

and declined to answer. It, too, is a burden question about the scope and contours of the oft-applied legal standard, what a prima facie showing requires, and what erases it. This Court resolves antidiscrimination burden-shifting standards on certiorari, looking to federal law. *See Christensen v. Labor Comm'n*, 2025 UT 55, ¶ 53, 582 P.3d 749. Here, applying those standards dispositively resolves Ms. Blackwell's claim by compelling reversal of the judgment and a remand for a new trial on the merits. Utah R. App. P. 46(a)(2), (a)(4).

Conclusion

The Court should grant the petition for a writ of certiorari.

DATED this 6th day of July, 2026.

Respectfully submitted,

SPENCER WILLSON, PLLC

/s/ Sarah Elizabeth Spencer
Sarah Elizabeth Spencer, #11141
Court-appointed pro bono counsel for Petitioner Antonia Blackwell

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valet-trash, package-handling, pest-control, and utility-administration charges) and thereby misrepresented the true monthly cost of its apartments in violation of Section 5 of the FTC Act, Section 521 of the Gramm-Leach-Bliley Act, and the Colorado Consumer Protection Act. The action was resolved by a stipulated order entered December 12, 2025, requiring Greystar to pay $24 million in monetary relief ($23 million to the FTC and $1 million to Colorado) and to disclose the total monthly leasing price whenever it advertises a base or partial rent and before collecting any payment. *FTC v. Greystar Real Est. Partners, LLC*, No. 1:25-cv-00165-CNS (D. Colo. Dec. 12, 2025), ECF no. 69. *See* Appendix Ex. I.

To:

Trevor called me in a last attempt to resolve the matter. They have the paperwork drafted and will file the eviction tomorrow after 4:00 p.m. Here's the latest offer:

1. Dismiss all fees and costs to date - although they said there may be more in April and May and June ie they claim there are about $24 per month in addition to the rent and regular fees. He claims these fees are assessed to all tenants.

2. They would allow you to stay through June with you paying regular rent, fees and these noted in #1.

3. They will not file an eviction, which will harm your rental history. They will give you a positive reference.

4. You will move out by June 30, 2023.

This in return for you dismissing your Discrimination Claim.

Let me know your thoughts.

Best regards.

--

8 Messages

Back **Toni Blackwell -...**

Toni B 3/31/23
To: Brennan Mciff

Good Morning Brennan

Since I haven't heard back regarding my tenancy, and still do not have a guarantee of a positive reference. I am assuming it is ok to pay the rent today for the month of April for $2690.

Best.

Toni Blackwell, MBA, MSPM
[redacted]

Appendix H

IN THE UTAH COURT OF APPEALS

THE PEARL, Appellee, *v.* ANTONIA BLACKWELL, Appellant.	ORDER Case No. 20250324-CA

Before Presiding Judge Harris.

Before the court is a motion, filed by Appellant Antonia Blackwell, seeking the disqualification of Judges Gregory Orme and Amy Oliver from participation in this appeal. Judges Orme and Oliver have questioned the legal sufficiency of the motion and have referred it to me in my capacity as Presiding Judge of the Utah Court of Appeals.

In the motion, Blackwell contends that Rule 2.11(A) of the Utah Code of Judicial Conduct requires Judges Orme and Oliver to be disqualified from this case. That rule provides that "[a] judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned." To be clear, Blackwell does not assert, or even suggest, that either Judge Orme or Judge Oliver "harbor actual bias" against her. Instead, she asserts that their impartiality "might reasonably by questioned" by a "reasonable observer."

Underlying Blackwell's motion is the fact that, in June 2025, Blackwell filed a judicial conduct complaint against several judges, including Judges Orme and Oliver, related to their handling of a separate appeal in which she was a party. And in a motion filed in that other appeal, Blackwell informed the judges that she had filed the judicial conduct complaint. Blackwell's contention, as concerns her current motion, is that now that Judges Oliver and Orme presumably know that she has filed a judicial conduct complaint against them, a reasonable observer could question their impartiality in any appeal in which she is a party.

But Blackwell herself acknowledges that judges are not required to disqualify themselves merely because a litigant has filed a judicial conduct complaint against them. *See* Utah Ethics Advisory Comm., Informal Opinion 05-3 (Nov. 28, 2005) ("The mere fact

that a litigant has filed a judicial conduct commission complaint against a judge does not automatically require disqualification by that judge."). A contrary rule would allow litigants to easily judge-shop by manufacturing a reason for disqualification. *Id.* Thus, the fact that Blackwell has filed a conduct complaint against Judges Orme and Oliver does not require their disqualification.

Instead, "there must be other facts," aside from the mere existence of the conduct complaint, "upon which a reasonable person could perceive bias." Among other potential factors, a judge should consider "whether the complaint has merit on its face or whether it appears to be a tactical maneuver designed to remove the judge," "whether the complaint alleges specific facts from an extra-judicial source," "whether the complaint alleges specific facts concerning bias against the complainant," and "whether the complaint has, in fact, caused any actual, personal bias." *Id.* In this case, these factors militate strongly against granting Blackwell's motion.

I start with the premise that motions seeking to disqualify a judge based on that judge's rulings or in-court conduct—as opposed to motions based on a judge's out-of-court relationships or conduct—are only rarely to be granted, and that parties claiming that a judge is biased or partial must generally "demonstrate that the alleged bias stems from an extrajudicial source." *See Dahl v. Dahl*, 2015 UT 79, ¶ 49, 345 P.3d 566; *see also State v. Munguia*, 2011 UT 5, ¶ 17, 253 P.3d 1082 (stating that "the bias or prejudice must usually stem from an extrajudicial source, not from occurrences in the proceedings before the judge" (cleaned up)). In particular, "bias cannot be inferred from an adverse ruling." *See Edwards v. Powder Mountain Water & Sewer*, 2009 UT App 185, ¶ 31, 214 P.3d 120; *see also In re Affidavit of Bias*, 947 P.2d 1152, 1153 (Utah 1997) (Zimmerman, J., memorandum decision) (stating that "no deduction of bias and prejudice may be made from adverse rulings by a judge" (cleaned up)).

In this instance, Blackwell's judicial conduct complaint—by her own description—was entirely about an adverse ruling that Judges Orme and Oliver signed off on in the separate appeal. Her conduct complaint is not in the record submitted to this court, but as she describes that complaint, she asserted that Judges Orme and Oliver ignored controlling rules and precedent, decided the matter too quickly, and refused to address one of her arguments. In her motion and accompanying materials, she does not say whether the Judicial Conduct Commission found her complaint to have any merit. Given this record, there is simply no basis to conclude that there are any "other facts," aside from the existence of the complaint itself, that would cause a reasonable observer to question the impartiality of Judges Orme and Oliver.

Examination of the factors set forth in the advisory opinion makes this conclusion clear. First, there is no indication that the judicial conduct complaint Blackwell filed had any merit. As described, it appears meritless on its face, because it simply challenges a ruling the judges made. And there is no indication, on the record before the court, that the Judicial Conduct Commission found any merit to it. Second, the facts alleged in the complaint all stem from the most judicial source of all: a substantive ruling made by the judges. The complaint contains no facts that allege an extra-judicial reason for any conflict of interest or bias. Third, the complaint alleges no facts indicating that either Judge Orme or Judge Oliver harbor any specific bias against Blackwell. And finally, Blackwell herself acknowledges, in her motion, that there is no indication of any actual bias.

On this record, there is simply no basis for disqualification of Judges Orme and Oliver from this case. No reasonable observer would question their impartiality under the facts presented here. Accordingly, Blackwell's motion is DENIED.

Dated this 25 day of February, 2026.

FOR THE COURT:

_____

Ryan M. Harris, Presiding Judge

The Order of the Court is stated below:
Dated: February 19, 2026
12:25:58 PM

At the direction of:
/s/ JUDGE AMY J. OLIVER

by
/s/ Jennifer A. Gadbois
Clerk of Court

IN THE UTAH COURT OF APPEALS

THE PEARL,
Appellee,
v.
ANTONIA BLACKWELL,
Appellant.

ORDER

Case No. 20250324-CA

Trial Court Case No. 230401251

Judge Oliver hereby certifies "Appellant's Emergency Motion . . . For Recusal of Judges Oliver and Orme" to the Presiding Judge of the Utah Court of Appeals for decision.

End of Order - Signature at the Top of the First Page

The Order of the Court is stated below:
Dated: February 19, 2026
12:27:35 PM

At the direction of:
/s/ JUDGE GREGORY K. ORME

by
/s/ Jennifer A. Gadbois
Clerk of Court

IN THE UTAH COURT OF APPEALS

THE PEARL,
Appellee,
v.
ANTONIA BLACKWELL,
Appellant.

ORDER

Case No. 20250324-CA

Trial Court Case No. 230401251

Judge Orme hereby certifies "Appellant's Emergency Motion . . . For Recusal of Judges Oliver and Orme" to the Presiding Judge of the Utah Court of Appeals for decision.

End of Order - Signature at the Top of the First Page

THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
WEST JORDAN DEPARTMENT

THE PEARL, Plaintiff, vs. ANTONIA BLACKWELL, Defendant.	**ORDER ON (1) MOTIONS FOR SUMMARY JUDGMENT AND (2) MOTION TO CONTINUE TRIAL** Case No. 230401251 Judge James D. Gardner

THIS MATTER is before the Court on (1) Plaintiff The Pearl's Motion for Summary Judgment (Plaintiff's Motion); (2) Defendant Antonia Blackwell's Counter Motion to Motion to Summary Judgement (Defendant's Motion); and (3) Defendant's Motion to Continue Trial (Motion to Continue). On March 13, 2024, the Court heard oral argument from the parties on the cross-motions for summary judgment.[1] At the March 13, 2024 hearing, the Court set this matter for a trial on June 7, 2024.[2] Having carefully considered the arguments of the parties, the Court issues the following Order.

[1] Plaintiff filed the Plaintiff's Motion on January 23, 2024. On February 12, 2024, Defendant filed a Memorandum Opposing the Plaintiff's Motion (Defendant's Opposition). On February 21, 2024, Plaintiff filed its Reply (Plaintiff's Reply) and submitted the Plaintiff's Motion for the Court's decision. Defendant filed the Defendant's Motion on November 3, 2023. On November 15, 2023, Plaintiff filed an Opposition to the Defendant's Motion (Plaintiff's Opposition). Neither party submitted the Defendant's Motion for the Court's decision. Nonetheless, the parties argued it at the hearing on March 13, 2024. Therefore, the Defendant's Motion is fully briefed and ripe for the Court's decision.

[2] Defendant filed the Motion to Continue on March 21, 2024. Plaintiff filed an Opposition to the Motion to Continue on March 25, 2024.

MOTIONS FOR SUMMARY JUDGMENT

Background

Plaintiff and Defendant entered into a lease agreement (Lease) that was to run from March 18, 2022, to March 17, 2023. Under the Lease, Plaintiff rented residential property (Premises) to Defendant. The Lease has a provision stating that it "will automatically renew month-to-month (not to exceed five (5) years) unless either party gives at least 60 days written notice of termination or intent to move-out as required by paragraph 45. . . ." (Lease ¶ 3, at p. 1 (Dkt. 1 at p. 6).) Defendant declares that, as she was paying her February rent on January 28, 2023, she "noticed $800 in charges on top of [her] rent." (Defendant's Opposition at 2.) Defendant declares that she inquired about the additional charges and that Plaintiff's manager then issued a notice to vacate (Notice) to Defendant. (*Id.*) Plaintiff issued the Notice on or about January 30, 2023. (Complaint at 20.) The Notice states that the Lease was being terminated and that Defendant was to vacate the Premises by March 31, 2023. (*Id.*) When Defendant did not vacate the Premises by March 31, 2023, Plaintiff filed the Complaint in this case. (*Id.* at 1.) The Complaint asserts claims for unlawful detainer, breach of contract, and ejectment. (*Id.* at 2-3.) The case proceeded to an immediate occupancy hearing, at which the parties stipulated that Defendant would vacate the premises by April 30, 2023. Defendant vacated the premises on April 29, 2023.

Three days after Plaintiff filed the Complaint, Defendant filed an Answer and Counterclaim. In the Counterclaim, Defendant alleges that she was led to believe that Plaintiff agreed to forgive the $800 fee charges, noted above, because they had not been disclosed to Defendant. (Counterclaim ¶ 13, at p. 7.) Defendant also alleges that Plaintiff discriminated against her by issuing the Notice. (*Id.* ¶ 15, at p. 8.) Finally, Defendant alleges that Plaintiff violated Utah

law by failing to provide an executed copy of the Lease to Defendant. (*Id.* ¶ 2, at p. 6.) The Counterclaim ultimately asserts one claim for negligent misrepresentation. (*Id.* p. 8.)

Plaintiff's Motion

Plaintiff seeks summary judgment on its unlawful detainer claim. The unlawful detainer statute provides that

> [a] tenant holding real property for a term less than life is guilty of an unlawful detainer if the tenant . . . continues in possession, in person or by subtenant, of the property or any part of the property, after the expiration of the specified term or period for which it is let to the tenant, which specified term or period, whether established by express or implied contract, or whether written or parol, shall be terminated without notice at the expiration of the specified term or period[.]

Utah Code Ann. § 78B-6-802(1)(a).[3] Plaintiff's Motion sets forth seven statements of undisputed material facts that were not properly contested by Defendant.[4] Instead, the focus of Defendant's opposition is not that she did not remain in unlawful detainer of the Premises, but instead that Plaintiff is liable to Defendant because, among other things, Plaintiff "violated multiple laws" and sought to terminate the Lease in "retaliation." In sum, Plaintiff has provided uncontroverted evidence that (1) the parties entered into a Lease, (2) Plaintiff served notice of the termination of the Lease requiring her to vacate on or before March 31, 2023, (3) Defendant continued in

[3] Plaintiff appears to argue that Utah Code Ann. § 78B-6-802(b) applies to the Lease in this case. (*See* Plaintiff's Motion at 3.) That provision applies when a person "ha[s] leased real property for an *indefinite* time with monthly or other periodic rent reserved. . . ." (Emphasis added.) While the Court believes sub-subsection (1)(a) applies, under either provision the result would be the same—Defendant is in unlawful detainer of the Premises.

[4] Defendant did not come forward with admissible material in the record to contest Plaintiff's undisputed material facts. Instead, Defendant appeared to largely ignore Plaintiff's facts related to Defendant's Motion. Alternatively, Plaintiff's Statement of Material Facts was not properly controverted by Defendant pursuant to Rule 56(a)(2) of the Utah Rules of Civil Procedure and is deemed admitted on this basis. Rule 56(a)(2) of the Utah Rules of Civil Procedure provides that "a memorandum opposing the motion must include a verbatim restatement of each of the moving party's facts that is disputed with an explanation of the grounds for the dispute supported by citing to materials in the record . . . ."

possession of the Premises until April 29, 2023; and (4) Defendant owes treble damages in the amount of $7,395.00 for her unlawful detention of the Premises.[5] Therefore, Plaintiff has established that Defendant is liable to Plaintiff for unlawful detainer.

In addition to treble damages for the unlawful detainer in the amount of $7,395.00, Plaintiff seeks attorney's fees and court costs from Defendant in connection with Defendant's unlawful detainer. If a defendant is found to be liable under the unlawful detainer statute, judgment on an unlawful detainer claim "shall be entered against the defendant for the rent, for three times the amount of the damages assessed[.]" Utah Code Ann. § 78B-6-811(3). A court must also "award costs and reasonable attorney fees to the prevailing party[.]" *Id.* § 78B-6-811(5)(a). As set forth above, based on Defendant's failure to vacate the Premises until April 29, 2023, in addition to treble damages in the amount of $7,395.00, Plaintiff is entitled to court costs and reasonable attorney's fees.[6] Plaintiff can therefore file an affidavit of attorney's fees and court costs pursuant to Rules 54 and 73 of the Utah Rules of Civil Procedure.

Based on the foregoing, Plaintiff's Motion is GRANTED.

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[5] The daily rent under the Agreement is $85.00 a day ($2,550.00 / 30). Therefore, treble damages are $7,395.00 ($85.00 x 3 x 29 days).

[6] To be clear, however, Plaintiff is entitled only to its attorney's fees in connection with Plaintiff's Motion. Plaintiff is not entitled to fees incurred in connection with its prior motion for summary judgment (which was filed on October 11, 2023, and which Plaintiff withdrew at the hearing on December 4, 2023). Plaintiff likewise is not entitled to any attorney's fees in connection with Defendant's counterclaim.

Defendant's Motion

Defendant's Motion appears to essentially ask the Court to deny Plaintiff's Motion. As set forth above, however, the uncontroverted evidence establishes that Plaintiff is entitled to summary judgment on its unlawful detainer claim. Therefore, Defendant's Motion is DENIED.[7]

MOTION TO CONTINUE

At the March 13, 2024 hearing, the Court inquired whether there was any overlap between Defendant's current criminal case and this case, and whether Defendant would like to delay trial in this case until the resolution of her pending criminal case. Defendant indicated at the hearing that she wanted to move forward with a trial in this case on her affirmative claims.[8] Based on the Motion to Continue, it appears that Defendant has reconsidered her position and now asks the Court to continue without date the bench trial currently set in this matter for June 7, 2024 until her criminal case is resolved. Plaintiff also seeks a continuance based on her current mental health. Plaintiff opposes the Motion to Continue. Pursuant to Rule 40 of the Utah Rules of Civil Procedure, the Court finds that Defendant has shown good cause to continue the trial. Therefore, the Court strikes the June 7, 2024 trial. As soon as Defendant's pending criminal case is resolved, or no later than six months from this Order, whichever is sooner, either party may request a pretrial conference to re-set the trial in this case.

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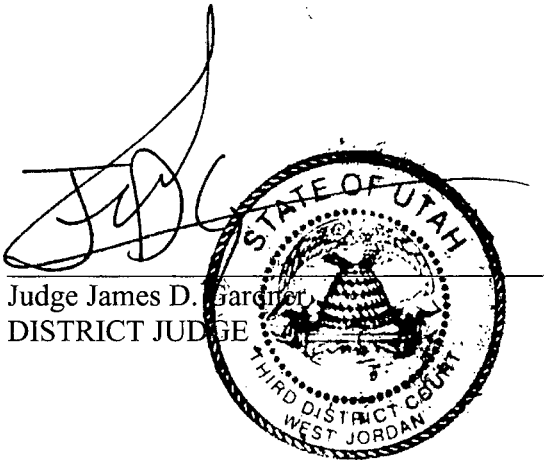
[7] To the extent that Defendant seeks summary judgment on her counterclaim for negligent misrepresentation, Defendant has not established that she is entitled to summary judgment on the counterclaim.

[8] Plaintiff indicated at the hearing that, if the Court granted Plaintiff's Motion, Plaintiff would not proceed forward on any other affirmative claims it had asserted against Defendant.

Based on the foregoing, Plaintiff's Motion to Continue is GRANTED.

DATED this 2nd day of April, 2024.

BY THE COURT:



Judge James D. Gardner
DISTRICT JUDGE