No. 23-12761-G

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CRESTHAVEN-ASHLEY MASTER ASSOCIATION, INC.,

Appellant,

v.

EMPIRE INDEMNITY INSURANCE COMPANY,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO.: 9:19-cv-80959-AHS

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INTRODUCTION

Cresthaven's residents are comprised primarily of elderly retirees, who paid Empire handsomely in exchange for a promise that Empire would pay specified damages in the event of a loss. While Empire was more than happy to accept the retirees' money, faced with a covered multi-million-dollar loss, Empire has broken both its contractual promises and those made after loss to both Cresthaven and the courts to avoid honoring its bargain.

Initially, a mediated settlement resulted in Empire waiving temporal limitations in order facilitate appraisal of the loss. Despite this agreement, Empire used waived temporal defenses to extend litigation for years, then dropped those defenses in order to avoid trial and secure a dismissal. Once the time limitations provided by FLA. STAT. § 95.11(2)(e)[1] had (allegedly) run, Empire did an about-

[1] The parties dispute whether FLA. STAT. § 95.11(2)(e) is a statute of repose or a statute of limitations. The distinction is immaterial for the purposes of the instant appeal and this Court need not resolve this dispute as it is not at issue and has not been briefed. However, the Court should be aware that the references to the "statute of limitations" in the Initial Brief and the references to the "statute of repose" in the Answer Brief both refer to FLA. STAT. § 95.11(2)(e). *Compare, e.g.*, (Init. Br. at 12-13); *with* (Ans. Br. at 15-16). Cresthaven will use "FLA. STAT. § 95.11(2)(e)" in the instant brief for the sake of clarity.

face and raised a temporal defense to avoid making millions of dollars' worth of payments now owed to Cresthaven.[2]

In its Answer Brief, Empire all but admits that this was the scheme all along. The district court unfortunately permitted Empire to abuse the federal judicial system in this manner. This Court should not. In fact, Rule 60's entire purpose is to ensure litigants are not able to secure judgments in the manner Empire has here.

ARGUMENT

I. THE DISTRICT COURT ERRED IN DENYING CRESTHAVEN RELIEF UNDER RULE 60(B)(6) BY APPLYING THE INCORRECT LEGAL STANDARD.

Empire starts by arguing the district court correctly denied Cresthaven's Rule 60(b)(6) motion because Cresthaven failed to take the necessary legal steps to protect its own interests. (Ans. Br. at 45-48).[3] According to Empire, the district court was correct to deny Cresthaven's motion based on its failure to pursue a tolling agreement with Empire. (*Id.*). The argument fails.

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[2] Not only is Cresthaven owed millions in O&L benefits, it is also owed hundreds of thousands of dollars for withheld depreciation on repairs that have now been completed.

[3] Cresthaven will cite to the briefs filed in this case using the CM/ECF page numbers affixed to the top of documents filed with this Court.

First, Empire had already waived temporal limitations as part of the mediation leading to appraisal of the loss. A tolling agreement would have been redundant. Second, the record shows that seeking a tolling agreement would not have been anything other than a fool's errand for Cresthaven, and Empire does not bother claiming otherwise in its Answer Brief. Instead, Empire argues the district court properly denied Cresthaven's motion based on its failure to seek a tolling agreement, because had such an agreement been sought, **Cresthaven would have uncovered Empire's chicanery.** (Ans. Br. at 48) (postulating that if Cresthaven had sought a tolling agreement, "it would have found out that Empire intended to enforce its statute of repose defense…."). If Empire had not intended to assert its FLA. STAT. § 95.11(2)(e) defense all along, how could Cresthaven's attempt to enter into a tolling agreement uncover such intentions? Thus, Empire concedes that: 1) pursuit of a tolling agreement would have been futile; and 2) Empire *always* intended to assert temporal defenses despite its agreement not to.

The first concession is important because the law does not require a party to take an action that would be futile. *See, e.g.*, *Oelrich Constr., Inc. v. PRC Precast, LLC*, No. 22-10305, 2023 WL 4534129, at *1 n. 1 (11th Cir. Jul. 13, 2023) (quoting *Waksman Enters., Inc. v. Or. Props., Inc.*, 862 So. 2d 35, 43 (Fla. 2d DCA 2003)); *Continental Cas. Co. v. City of Jacksonville*, 550 F.Supp.2d 1312, 1342 (M.D. Fla.

2007) (citing *Blackmon v. Hill*, 427 So. 2d 228, 230 (Fla. 3d DCA 1983)) (additional citation omitted); *Calder Race Course, Inc. v. Ill. Union Ins. Co.*, 714 F.Supp. 1183, 1189 (S.D. Fla. 1989) (citing *Sisco v. Rotenberg*, 104 So. 2d 365, 375 (Fla. 1958)); *see generally Alliance Metals, Inc., of Atlanta v. Hinely Indus., Inc.*, 222 F.3d 895, 905 (11th Cir. 2000). Further, the concession shows that the district court's tolling agreement conclusion is not supported by the record. *See Architectural Ingenieria Siglo XXI, LLC v. Dominican Republic*, 788 F.3d 1329, 1344 (11th Cir. 2015) (reversing district court's Rule 60(b) denial because factual findings were unsupported by the record). Given Empire's acknowledgment that it would never have agreed to a tolling agreement, the district court erred by requiring Cresthaven to pursue such an agreement and thereby applied an incorrect legal standard.

Even if, as Empire now claims, Cresthaven would have uncovered Empire's scheme by requesting a tolling agreement, then what? Empire claims that Cresthaven then would have been able to protect its legal interests by seeking to file an amended complaint prior to the alleged expiration of FLA. STAT. § 95.11(2)(e). (Ans. Br. at 48). But Empire does not describe what this amended complaint could have alleged that would avoid the district court again dismissing the amended complaint for lack of a ripe controversy. *See* (Doc. 193). Had such a complaint been filed, Cresthaven would have ended up in exactly the same place.

The second concession is significant because it cuts against Empire's argument that the district court was correct to require Cresthaven to take steps to protect against the possibility that Empire made false representations to the district court. (Ans. Br. at 48). Given Empire's concession, no "speculation" is required to conclude that Empire misled the district court when it stated that, upon completion of the repairs, "Cresthaven ***can***…present Empire with that claim to afford [Empire] the chance to ***adjust*** it." (Doc. 154 at 10-11) (emphasis added). If Empire intended to raise its FLA. STAT. § 95.11(2)(e) defense all along, as it now acknowledges, this statement was (at best) misleading.

Empire further argues that the district court was correct to deny relief under Rule 60(b)(6) for Empire's misrepresentations because other provisions of Rule 60 provide specific relief. (Ans. Br. at 48-49). Empire misses the point. Cresthaven does not argue that Empire's misrepresentations are a basis for relief under Rule 60(b)(6). Rather, Cresthaven's argument is that the district court erred in denying relief under the rule by requiring Cresthaven to take steps to protect its legal interests against the possibility Empire made misrepresentations to the district court. The district court erred by applying a legal standard which would have required Cresthaven to assume Empire would act in bad faith.

Next, Empire claims that Cresthaven failed to preserve its argument that it would be subjected to undue hardship if Empire is permitted to escape its obligations under the Policy. (Ans. Br. at 49). Empire's argument appears to be that because Cresthaven did not specify, in the specific Rule 60(b)(6) section of the motion, the amount of money that would be lost to Cresthaven if Empire was allowed to prevail, the argument has been forfeited. *See* (*id.*). Cresthaven did indeed argue that allowing Empire to escape its obligations under the Policy would cause an undue burden and noted that "millions of dollars in L&O related costs" were at stake. (Doc. 194 at 3-4, 17); *see also* (Doc. 194 at 6-7) (noting difficulty in performing repairs given limited available funds as a result of Empire's refusal to pay).

Cresthaven also argues that the Court applied the wrong legal standard when it decided that Empire's payment of $3.8 million in benefits under a separate coverage provision mitigated the harm that would be done to Cresthaven thereby precluding relief under Rule 60(b)(6), an argument for which no preservation was required since Cresthaven did not have an opportunity to object to the application of this legal standard. *See Baumann v. Savers Fed. Sav. & Loan Ass'n*, 934 F.2d 1506, 1513-14 (11th Cir. 1991) (holding argument was not forfeited even though not raised below since appellant did not have opportunity to raise said argument); *see also Access Now, Inc. v. Southwest Airlines Co.*, 385 F.3d 1324, 1332 (11th Cir. 2004) (noting that

rule against considering arguments not raised in the trial court "may be relaxed where the appellant raises an objection to an order which he had no opportunity to raise at the district court level.") (quoting *Wright v. Hanna Steel Corp.*, 270 F.3d 1336, 1342 (11th Cir. 2001) (quoting *Narey v. Dean*, 32 F.3d 1521, 1526-27 (11th Cir. 1994) (quoting *Dean Witter Reynolds, Inc. v. Fernandez*, 741 F.2d 355, 360-61 (11th Cir. 1984)))) (internal quotation marks omitted). The arguments have not been forfeited.

Finally, Empire argues that the district court was justified in disregarding Cresthaven's argument about undermining confidence in the judicial system because it was based on Cresthaven's "discredited" assumptions that Empire had a plan to run out the clock until FLA. STAT. § 95.11(2)(e) allegedly expired. (Ans. Br. at 50). However, given Empire's aforementioned concession, in addition to its conspicuous failure to elsewhere deny that it had always maintained this plan, Cresthaven's "assumptions" are anything but "discredited."

In sum, the district court abused its discretion by applying an incorrect legal standard in its evaluation of Cresthaven's Rule 60(b)(6) motion when it: 1) penalized Cresthaven for failing to seek a tolling agreement that Empire admits was not forthcoming; 2) penalized Cresthaven for having believed Empire's representations that it would fairly adjust the claim after waiving its temporal defenses; 3) held

Cresthaven could not have suffered an undue hardship notwithstanding the millions of dollars owed because it received benefits under an entirely separate coverage provision; and 4) failed to address Cresthaven's argument about undermining confidence in the judicial system. When evaluated under the proper standard, it is clear that Cresthaven is entitled to Rule 60(b)(6) relief.

II. THE DISTRICT COURT ERRED IN DENYING CRESTHAVEN RELIEF UNDER RULE 60(b)(3) BY APPLYING AN INCORRECT LEGAL STANDARD.

Empire argues that Cresthaven merely takes issue with the district court's use of its discretion in finding that the evidence did not show misconduct which would permit relief under Rule 60(b)(3). (Ans. Br. at 51-56). While it is true that Cresthaven believes the district court made incorrect factual findings, Cresthaven's primary argument is that the district court erred by applying an incorrect legal standard when evaluating Cresthaven's Rule 60(b)(3) arguments, just as it had with Cresthaven's Rule 60(b)(6) arguments. (Init. Br. at 41-42).

As it had when evaluating the Rule 60(b)(6) arguments, when addressing Cresthaven's entitlement to relief under Rule 60(b)(3), the district court penalized Cresthaven for having failed to seek a tolling agreement that neither party mentioned or raised, and for believing Empire's representations that it was waiving its temporal defenses and would fairly adjust the claim once the litigation was dismissed—

including hundreds of thousands of dollars undisputedly owed for withheld depreciation. The district court erred in doing so as it departed from the correct legal standard for the reasons stated *supra*, § I.

Next, Empire attempts to avoid the application of judicial estoppel by citing an unpublished district court opinion that is easily distinguished. (Ans. Br. at 54) (citing *New Laxmi v. Rockhill Ins. Co.*, No. 22-23421-CIV, 2023 WL 2799885, at *2 (S.D. Fla. Feb. 23, 2023), *appeal dismissed sub nom. Laxmi v. Rockhill Ins. Co.*, No. 23-11066-D, 2023 WL 4306455 (11th Cir. May 19, 2023)). In *New Laxmi*, the insured attempted to estop the insurer from utilizing a position it took in *different litigation* against a *different insured. New Laxmi*, 2023 WL 2799885 at *4. Further, unlike Empire, the insurer in *New Laxmi* was not successful in the prior litigation with respect to the position the insured sought to estop. *Id.* Indeed, *New Laxmi* would support the application of judicial estoppel here, where Empire seeks to take a position contrary to the position it took to secure a dismissal. *See id.* Judicial estoppel should have prohibited Empire from having the instant litigation dismissed as moot, then asserting any further claim is barred by FLA. STAT. § 95.11(2)(e).

Empire also attempts to narrow the scope of the waiver it utilized in securing the initial dismissal of this action. (Ans. Br. at 53-54). Problem being, in its motion to dismiss wherein it sought to convince the district court that there was no remaining

controversy, Empire stated that it had "agreed to waive—in this litigation only—**the temporal limitations on Ordinance or Law payment.**" (Doc. 154 at 4, n. 2) (emphasis added). And as Cresthaven discussed in its Initial Brief, "temporal limitations" include limitations periods for filing suit. (Init. Br. at 39) (citing *Roman v. Spirit Airlines, Inc.*, 482 F.Supp.3d 1304, 1309 (S.D. Fla. 2020)). Cresthaven—and the district court—took Empire at its word.

Empire does not address this statement. Regardless, Empire cannot now narrow the broad temporal defense waiver that it used to secure a dismissal of Cresthaven's suit. Cresthaven agrees that Empire did not make an unqualified promise to pay Cresthaven's O&L benefits. Empire did, however, promise not to assert temporal defenses it may have otherwise held in response to a demand for payment from Cresthaven.

III. THE DISTRICT COURT ERRED IN DENYING CRESTHAVEN RELIEF UNDER RULE 60(b)(2) BY APPLYING AN INCORRECT LEGAL STANDARD.

As it did with Cresthaven's arguments under Rule 60(b)(6) and Rule 60(b)(3), Empire frames Cresthaven's arguments as mere disagreement with the district court's findings subject to abuse of discretion analysis. (Ans. Br. at 56-60). Again, while Cresthaven does indeed challenge the district court's factual findings,

Cresthaven's primary argument continues to be that the district court applied an incorrect legal standard in evaluating Cresthaven's arguments.

As with the district court's evaluation of Cresthaven's Rule 60(b)(6) and Rule 60(b)(3) arguments, when addressing Cresthaven's entitlement to relief under Rule 60(b)(2), the district court penalized Cresthaven for having failed to seek a tolling agreement with Empire and for believing Empire's representations that it was waiving its temporal defenses and would fairly adjust the claim once the litigation was dismissed. The district court erred in doing so as it departed from the correct legal standard for the reasons stated *supra*, § I.

Empire goes on to argue that Rule 60(b)(2) is inapplicable in cases where a trial is not held. (Ans. Br. at 57). Empire cites to two unpublished district court orders to support this proposition, neither of which are persuasive. (*Id.*) (citing *Ellis v. U.S. Bank, N.A.*, No. 16-cv-1750, 2017 WL 1230683 (M.D. Fla. Apr. 3, 2017); *Mills v. New York State*, No. 15-cv-280, 2016 WL 5919844 (W.D.N.Y. Oct. 11, 2016)). The text of Rule 60(b)(2) does not restrict itself to cases where a trial is held and this Court should not modify the Federal Rules of Civil Procedure by adding absent terms. All that is required is that the new evidence relied upon must not have been discoverable within 28 days of the entry of judgment. *See* FED. R. CIV. P. 60(b)(2).

Finally, Empire continues to argue that the district court did not err in finding Cresthaven's allegation that Empire always intended to assert the FLA. STAT. § 95.11(2)(e) defense was not supported by the record. This argument, however, is significantly (if not definitively) undercut by Empire's concessions discussed in § I, *supra*. Indeed, Empire does not even bother to deny that this was its objective all along. When the full record is examined, it is obvious Empire never intended to pay the O&L benefits Cresthaven was awarded by the appraisal panel.

IV. THE DISTRICT COURT ERRED BY FAILING TO ADDRESS CRESTHAVEN'S MOTION FOR LEAVE TO FILE A SUPPLEMENTAL COMPLAINT.

Empire argues that Cresthaven abandoned its argument that the district court erred when it declined to address Cresthaven's arguments under Rule 15(d), because (in Empire's view) Cresthaven did not sufficiently address the issue in the initial brief. (Ans. Br. at 60). Not so. Though Cresthaven's argument on this issue was concise, in-depth discussion was not required. The district court erred by failing to address Cresthaven's Rule 15 arguments *altogether*. The district court did so because it had (erroneously) concluded that Cresthaven was not entitled to relief under Rule 60. Accordingly, Cresthaven argues that once this Court concludes the district court's Rule 60 analysis must be reversed (for the reasons stated in the earlier sections), this Court should remand the Rule 15(d) motion back to the district court

so the district court may review it in the first instance. There is no requirement that every argument receive 30 pages of briefing. Cresthaven's argument is not abandoned.

Empire next argues that Cresthaven's inclusion of a motion for relief under Rule 15 in the Rule 60 motion was procedurally improper. (Ans. Br. at 61). Empire cites to a single unpublished district court opinion for this proposition and fails to mention that in that case, the district court: 1) nevertheless entertained both motions; and 2) recognized that the proper relief otherwise would have been to deny the motions without prejudice and allow them to be refiled separately. *Wilson v. Big Steve's Deli, LLC*, No. 20-60381-CIV, 2020 WL 9552081, at *1 (S.D. Fla. Jul. 15, 2020). Further, it is notable that other district courts have considered combined Rule 60 motions and motions to file a supplemental complaint upon the case being reopened. *See W. Watersheds Project v. Bennett*, No. 04-0181-S-BLW, 2008 WL 2003114, at *9 (D. Idaho May 8, 2008).

Finally, Empire argues that Cresthaven has not shown that supplementation is warranted on appeal. (Ans. Br. at 61). The argument misses the point. The district court passed over the motion to supplement the complaint because it believed Cresthaven was not entitled to relief under Rule 60. Since, for the reasons stated herein and in the Initial Brief Cresthaven is entitled to relief under Rule 60, the

district court erred by failing to address the motion for Rule 15 relief and Cresthaven submits that the proper course is for this Court to remand the issue back to the district court to decide in the first instance. Cresthaven is not asking this Court to find that Cresthaven is entitled to supplement the complaint and as such this argument is a red herring.

V. EMPIRE'S ALTERNATIVE GROUND FOR AFFIRMANCE IS MERITLESS.

Empire concludes by briefly arguing that this Court should affirm since the district court's dismissal order "rests on sound legal principles." (Ans. Br. at 62-64). According to Empire, a party can never be entitled to relief under Rule 60(b) if the judgment rests on "sound legal principles." *See* (*id.*). The argument crumbles upon inspection.

The sole case Empire cites in support of this proposition, an unpublished order out of the Middle District of Georgia, *Jackson v. Christensen*, No. 09-CV-274, 2012 WL 966633 (M.D. Ga. Mar. 21, 2012), says no such thing. In that case, a *pro se* plaintiff filed a motion under Rule 60(b) to set aside an order of summary judgment in favor of the defendant. *Id.* at *1. The motion sought relief under subsections (1), (3), (4), and (6). *Id.* The court analyzed the plaintiff's arguments with respect to each subsection one by one, finding the plaintiff failed to meet his burden under the established respective tests. *Id.* at *1-3.

In summarizing its findings, the court proceeded to hold that "**[f]or the reasons set forth above,** the Judgment in this case rests on sound legal principles, and the Plaintiff is not entitled to relief under Rule 60(b)." *Id.* at *3 (emphasis added). In other words, the *Jackson* Court was saying that its judgment "rested on sound legal principles" *because the plaintiff failed to meet his burden under each Rule 60(b) test*; the court was not, as Empire would have this Court believe, conducting a separate inquiry regarding the legal reasoning of the challenged judgment. *See id.* If this Court were to apply the same test the *Jackson* Court applied, it would find that the judgment below does not rest on "sound legal principles" for the reasons stated in the sections above.

Empire's rule also runs contrary to the precedents of the Supreme Court, this Court, its sister courts, and the text of Rule 60(b) itself which all make plain that the rule calls for considerations outside the factual and/or legal accuracy of the challenged judgment. *See, e.g.*, *Klapprott v. United States*, 336 U.S. 942 (1949) (explaining that Rule 60(b)(6) "vests power in courts…to vacate judgments whenever such action is appropriate to accomplish justice."); *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir. 1978)[4] (noting that Rule 60(b)(3) "is aimed at

[4] The decisions of the United States Court of Appeals for the Fifth Circuit, as that court existed on September 30, 1981, handed down by that court prior to the close of

judgments which were *unfairly* obtained, **not at those which are factually incorrect.**") (emphasis added); *Henson v. Fid. Nat'l Fin., Inc.*, 943 F.3d 434, 447 (9th Cir. 2019) (reasoning that because "Rule 60(b)(6) is largely an equitable decision, it makes sense to consider whether Plaintiffs were blindsided…."). In fact, the rule proposed by Empire would transform Rule 60(b) into a simple motion for reconsideration and require "the parties to relitigate the merits of claims or defenses, or to raise new claims or defenses that could have been asserted during the litigation of the case[]" which was never the intended purpose of Rule 60(b). *Gonzalez v. Sec'y for Dep't of Corr.*, 366 F.3d 1253, 1291-92 (11th Cir. 2004).

In sum, there is no authority that supports the application of Empire's "sound legal principles" test. If this Court applied the same reasoning as the court cited by Empire, it would reverse for the reasons stated here and in the Initial Brief. Finally, applying Empire's proposed test would run contrary to well-established precedent and the purpose of Rule 60(b).

CONCLUSION

This is not the first time that this Court and the district courts have confronted Empire's payment avoidance "playbook," though this might be the most striking

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business on that date, are binding precedent in the Eleventh Circuit. *Bonner v. Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

example.[5] This Court has consistently condemned abuses of the federal courts and this case should be no exception.[6] Accordingly, for the reasons stated herein and in the Initial Brief, Appellant, CRESTHAVEN-ASHLEY MASTER ASSOCIATION, INC., respectfully requests this Court reverse and remand the order of the district court.

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[5] *See, e.g.*, *Concord at Vineyards Condo. Ass'n, Inc. v. Empire Indem. Ins. Co.*, No. 21-cv-380, 2022 WL 4125041 (M.D. Fla. Aug. 10, 2022), *report and recommendation adopted*, 2022 WL 17261976 (M.D. Fla. Nov. 2, 2022), *appeal dismissed*, No. 22-13881, 2024 WL 455276 (11th Cir. Feb. 6, 2024) (noting Empire's arguments were "pull[ed] from the same playbook" used in other cases, and that cases rejecting the primary argument "are legion."); *Positano Place at Naples I Condo. Ass'n, Inc. v. Empire Indem. Ins. Co.*, No. 21-cv-178, 2022 WL 714808 (M.D. Fla. Mar. 10, 2022), *appeal dismissed*, 84 F.4th 1241 (11th Cir. 2023); *Marabella at Spanish Wells 1 Condo. Ass'n, Inc. v. Empire Indem. Ins. Co.*, No. 21-cv-181, 2022 WL 714809 (M.D. Fla. Mar. 10, 2022), *appeal dismissed*, No. 22-11782, 2023 WL 6972545 (11th Cir. Oct. 23, 2023); *Waterford Condo. Ass'n of Collier Cty., Inc. v. Empire Indem. Ins. Co.*, No. 19-CV-81, 2019 WL 3852731, at *2 (M.D. Fla. Aug. 16, 2019); *Creekside Crossing Condo. Ass'n, Inc. v. Empire Indem. Ins. Co.*, No. 20-cv-136, 2022 WL 780950 (M.D. Fla. Mar. 15, 2022), *appeal dismissed*, No. 22-10894, 2023 WL 7327952 (11th Cir. Nov. 7, 2023); *Breakwater Commons Ass'n, Inc. v. Empire Indem. Ins. Co.*, No. 20-cv-31, 2021 WL 1214888 (M.D. Fla. Mar. 31, 2021), *appeal dismissed*, No. 22-10713, 2023 WL 7327999 (11th Cir. Nov. 7, 2023); *Calusa Bay North Condo. Ass'n, Inc. v. Empire Indem. Ins. Co.*, No. 21-CV-540, 2022 WL 6162704 (M.D. Fla. Sept. 30, 2022), *appeal dismissed*, No. 23-11844, 2024 WL 33906 (11th Cir. Jan. 3, 2024).

[6] *See J.C. Penney Corp., Inc. v. Oxford Mall, LLC*, 100 F.4th 1340, 1349 (11th Cir. 2024); *Peer v. Lewis*, 606 F.3d 1306, 1316 (11th Cir. 2010).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

TYPE-VOLUME: This brief complies with the word limit of FED. R. APP. P. 32(a)(7)(B) because, excluding the parts of the brief exempted by FED. R. APP. P. 32(f), this brief contains 4,038 words.

TYPEFACE AND TYPE-STYLE: This brief complies with the typeface requirements of FED. R. APP. P. 32(a)(5) and the type-style requirements of FED. R. APP. P. 32(a)(6).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 12, 2024, a copy of the foregoing has been electronically furnished by CM/ECF to all parties.

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