For Publication

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

JOHN P. CHARLES, Appellant/Defendant, v. **AISHA PAYNE** Appellee/Plaintiff.	))))))))	**S. Ct. Civ. No. 2018-0012** Re: Super. Ct. Civ. No. 448/2011 (STX)

On Appeal from the Superior Court of the Virgin Islands
Division of St. Croix
Superior Court Judge: Harold W.L. Willocks

Argued: December 11, 2018
Filed: June 12, 2019

Cite as: 2019 VI 20

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and **IVE ARLINGTON SWAN**, Associate Justice.

APPEARANCES:

Martial A. Webster, Sr., Esq.
Law Office of Martial A. Webster, Sr.
St. Croix, U.S.V.I.
Attorney for Appellant,

Rhea Lawrence, Esq. (Argued)
Lee J. Rohn, Esq.
Lee J. Rohn and Associates, LLC
St. Croix, U.S.V.I.
Attorney for Appellee.

OPINION OF THE COURT

HODGE, Chief Justice.

¶ 1 John Charles appeals the Superior Court's denials of his motion to dismiss and his renewed motion for judgment as a matter of law. We affirm.

I. BACKGROUND

¶ 2 Aisha Payne and Curtis Lucien, Payne's then-boyfriend and now-husband, resided in a one-bedroom apartment at an apartment complex at 4E East Street, St. Croix. Charles owned the apartment complex. Lucien was the official tenant of the leasehold; he leased the apartment from Charles under an original one-year tenancy at a rental rate of $400 monthly.[1] After the original tenancy term expired, Lucien remained in the apartment although Charles allegedly asked him to vacate the rental premises.

¶ 3 The common area of the apartment complex, particularly the staircase over which persons must traverse to enter and leave the building, was alleged to be in a hazardous condition. Payne claims that the tiles on the steps of the stairs appeared to be tiles intended for indoor use and of varied texture. Puddles accumulated on the landing and on the steps between the first and third floor on rainy days, and at times, the water created puddles at the front door of Lucien's apartment which then streamed down the stairs. The accumulated rain water puddles caused mold and mildew to grow on the stairs.

¶ 4 Additionally, the staircase lacked an adequate handrail, as the handrail structure present did not begin until the fifth step down and was too wide for persons to grasp. According to plaintiff-appellee's expert witness, Scott Moore, the condition of the stairs violated building codes dating back 25 to 30 years. Payne and Lucien, along with other tenants of the apartment building, such as Michael Graham, often complained to Charles about the hazardous issues with the steps and requested remedial measures. The tenants knew that the stairs became slippery when wet because of the conditions. To prevent slip and falls, the rise of the first step should not have been more than

[1] In her complaint, Payne identifies herself as Charles's tenant.

seven inches, but the step was eight and a half to nine inches high. Further, the steps were sloped, which restricted drainage. Charles allegedly did nothing to prevent the water puddles and the mold growth that resulted from the condition. In his defense, Charles maintained that no one ever alerted him of the problem with the stairs.

¶ 5 On June 9, 2010, while on her way to work, Payne—four and a half months pregnant with a baby boy at the time—took the stairs after a rainy night and early morning. She slipped and fell after the first step. She tried to hold on to the wide, wooden board structure on her way down, but she failed to grasp it. Consequently, Payne fell six steps down; she landed on her buttocks and her left elbow, creating a loud sound which the neighbors heard. Moore testified that a proper handrail would have allowed Payne to regain her balance and non-skid tiles could have prevented the slip. Because of the slip, Payne lost her baby and suffered injuries, including bruises and pain to her lower back and knee. Payne and Lucien informed Charles of the slip; two weeks later, Charles placed non-skid strips on the tiles, but he never installed a handrail or cleaned the mold, nor did he address the water accumulation issue.

¶ 6 As a result of her injuries and losing her baby, Payne sued Charles in the Superior Court for negligence on September 27, 2011. Charles then filed an answer on November 1, 2011. Almost three years later on September 29, 2014, Charles moved to dismiss the case based on an indemnification clause in the lease agreement which he contended shielded him from liability to tenants. He then moved to file a motion to dismiss out of time. The Superior Court denied the motion to dismiss due to noncompliance with the scheduling order, which provided that the parties must submit all dispositive motions by February 28, 2014.

¶ 7 A jury trial occurred from April 18 to April 21, 2016. After Payne rested her case in chief, Charles moved for judgment as a matter of law, arguing, in summary, that the evidence Payne

introduced did not prove that he was negligent. The Superior Court stated that it would take the motion under advisement. After deliberation, the jury returned a verdict for Payne, finding Charles liable for negligence and awarding damages in the amount of $47,000 in economic damages and $58,000 in non-economic damages, totaling $105,000 in damages. On May 17, 2016, Charles renewed his motion for entry of judgment as a matter of law, claiming that the lease agreement between him and Payne's boyfriend applies to Payne, because she claimed to be a tenant of the apartment, and thus, the indemnification clause contained in the lease agreement shields him from any liability to her.

¶ 8 On January 31, 2018, the Superior Court denied Charles's renewed motion for judgment as a matter of law, adopted the jury's verdict and entered judgment thereon. Charles appealed to this Court on February 22, 2018.

II. DISCUSSION

A. Jurisdiction and Standard of Review

¶ 9 We may review "all appeals from the [final] decisions of the courts of the Virgin Islands established by local law[.]" 48 U.S.C. § 1613a(d); *see also* 4 V.I.C. § 32(a). The Superior Court's January 31, 2018 judgment on the jury verdict and order denying Charles's motion for judgment as a matter of law was a final order. *See Allen v. HOVENSA, L.L.C.*, 59 V.I. 430, 434 (V.I. 2013). Thus, we have jurisdiction over this case.

¶ 10 We exercise plenary review over applications of law and review findings of fact for clear error. *See St. Thomas–St. John Bd. of Elections v. Daniel*, 49 V.I. 322, 329 (V.I. 2007). Further, this Court

> exercise[s] plenary review of an order granting or denying a motion [for judgment as a matter of law]. When reviewing such motions, we apply the same standard as the Superior Court . . . . Although judgment as a matter of law should be granted

> sparingly, a scintilla of evidence is not enough to sustain a verdict of liability. A [motion for judgment as a matter of law] should be granted only when viewing the evidence in the light most favorable to the nonmovant and giving it the advantage of every fair and reasonable inference, there is insufficient evidence from which a jury reasonably could find liability. In performing this narrow inquiry, [trial courts and appellate courts] must refrain from weighing the evidence, determining the credibility of witnesses, or substituting [their] own version of the facts for that of the jury.

Chestnut v. Goodman, 59 V.I. 467, 475 (V.I. 2013) (internal citations and quotation marks omitted) (modifications in original). Lastly, we examine the Superior Court's denial of a motion to dismiss filed after an answer by applying the standard of review for a judgment on the pleadings. *Benjamin v. AIG Ins. Co. of Puerto Rico*, 56 V.I. 558, 565-66 (V.I. 2012).

B. Timeliness of Notice of Appeal

¶ 11 In her appellate brief, Payne contends that this Court should dismiss this appeal in its entirety because it is untimely.[2] Relying on Rule 5(a)(4) of the Virgin Islands Rules of Appellate Procedure and the decision of this Court in *Companion Assurance Co. v. Smith*, 66 V.I. 562 (V.I. 2017), Payne maintains that the February 22, 2018 notice of appeal is untimely because Charles filed his renewed motion for judgment as a matter of law on May 17, 2016. Appellate Rule 5(a)(4) provides, in pertinent part, that

> If any party timely files in the Superior Court a motion for judgment as a matter of law; to amend findings or make additional findings; for a new trial; to alter or amend the judgment or order; or (if filed within 28 days) for relief from the judgment or order, the time for filing the notice of appeal for all parties is extended until 30 days after entry of an order disposing of the last such motion; provided,

[2] In her brief, Payne frames her challenge to the timeliness of this appeal in terms of subject-matter jurisdiction. However, this Court has previously held that the deadline to take an appeal from a final judgment of the Superior Court is not a jurisdictional rule that may be asserted at any time, but rather a mandatory claims-processing rule that is subject to waiver if not timely asserted by either the appellee or raised *sua sponte* by the Court. *See Simon v. Joseph*, 59 V.I. 611, 629 (V.I. 2013); *Vazquez v. Vazquez*, 54 V.I. 485, 489-90 (V.I. 2010). But even though Payne characterizes the challenge as jurisdictional, it is ultimately a distinction without significance, since she challenged the timeliness of Charles's notice of appeal at the earliest opportunity.

> however, that the failure to dispose of any motion by order entered upon the record within 120 days after the date the motion was filed shall constitute a denial of the motion for purposes of appeal.

(emphasis added). According to Payne, Charles's renewed motion for judgment as a matter of law was deemed denied on September 14, 2016, by operation of Appellate Rule 5(a)(4), and Charles was therefore required to file his notice of appeal on or before October 14, 2016. We disagree.

¶ 12 The plain language of Appellate Rule 5(a)(4) does provide that a motion for judgment as a matter of law is deemed denied if not ruled upon "within 120 days after the date the motion was filed." However, Payne's argument is based on the premise that Charles had filed his renewed motion for judgment as a matter of law on May 17, 2016. Although that is the date Charles submitted the motion to the clerk's office, the highly unique and unusual procedural posture of this case compels a finding that the motion must be deemed filed on January 31, 2018.

¶ 13 Because it was filed well before the March 31, 2017 effective date of the Virgin Islands Rules of Civil Procedure, Charles filed his renewed motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 50(b), which applied to proceedings in the Superior Court by virtue of former Superior Court Rule 7. Federal Rule of Civil Procedure 50(b) provides, in pertinent part, that such a motion must be filed "[n]o later than 28 days after the entry of judgment." FED. R. CIV. P. 50(b). At the time the jury rendered its verdict in this matter, entry of judgment after a civil jury trial was governed by Federal Rule of Civil Procedure 58(b), which required the clerk to "promptly prepare, sign, and enter the judgment when . . . the jury returns a general verdict," *see* FED R. CIV. P. 58(b)(1)(A), and provided that such a judgment is entered when entered in the civil docket, *see* FED. R. CIV. P. 58(c)(1).[3] The purpose of this requirement is

[3] While not invoked by any of the parties, we recognize that former Superior Court Rule 49 provided that "[u]pon determination of an action by a judge, the judge shall sign the judgment

to eliminate any uncertainty as to when the time to file post-judgment motions or to file a notice of appeal commences. *Bankers Trust Co. v. Mallis*, 435 U.S. 381, 386 (1978); *ABF Capital Corp. v. Osley*, 414 F.3d 1061, 1064 (9th Cir. 2005). After the March 31, 2017 adoption of the Virgin Islands Rules of Civil Procedure, this procedure remained largely unchanged, with Virgin Islands Rule of Civil Procedure 58(b) providing that "[u]pon determination of an action by a judge or jury, the judge shall promptly sign the judgment, which shall take effect, for purposes of appeal, upon entry by the clerk of the court."

¶ 14 Although both Federal Rule 58(b) and Virgin Islands Rule 58(b) require that judgment be entered "promptly" after a jury returns a verdict in a civil case, the record reflects that judgment in the present action was not entered until nearly two years later on January 31, 2018. But as noted above, the period for Charles to file a renewed motion for judgment as a matter of law did not begin to run until "28 days after the entry of judgment." FED. R. CIV. P. 50(b). Consequently, while Charles submitted his renewed motion for judgment as a matter of law on May 17, 2016, the 28-day period for filing such a motion had not even commenced on that date, due to the failure of the Superior Court to enter judgment. Similarly, because Rule 5(a)(1) of the Virgin Islands Rules of Appellate Procedure provides that a notice of appeal must be filed "within 30 days after the date of entry of the judgment or order appealed from," the failure of the Superior Court to enter judgment would also render any appeal from the jury verdict premature.[4]

---

which shall take effect, for purposes of appeal, upon entry by the clerk, unless otherwise ordered by the court." However, because this action was determined by a jury—rather than by a judge—we conclude that former Superior Court Rule 49 is not applicable to this matter.

[4] Payne argues that entry of the jury verdict on the docket satisfies the "entry of judgment" requirement mandated by Appellate Rule 5(a)(1), and that therefore the time to appeal from the jury verdict began on April 21, 2016, when the clerk entered a docket notation titled "Verdict reached by jury." However, this Court has previously held that entry of judgment is not a ministerial act that can be done by the clerk acting alone without any judicial involvement, and

¶ 15 Neither the Federal Rules of Civil Procedure nor the Rules of the Superior Court that had been applicable to this proceeding prior to March 31, 2017, nor the Virgin Islands Rules of Civil Procedure that went into effect on March 31, 2017, address the effect of a prematurely-filed renewed motion for judgment as a matter of law. This omission is not surprising, given that both Federal Rule 58(b) and Virgin Islands Rule 58(b) require that entry of judgment occur "promptly." And so it is not contemplated that a substantial gap between the announcement of a jury verdict and entry of a signed judgment on the jury verdict on the civil docket—such as the nearly two-year gap in this case—will occur. In fact, the Committee Note following Virgin Islands Rule 58(b) expressly states that several members believed a specific time period for entry of judgment should be set, but that this was not adopted because "[a] large majority of the Committee . . . felt that by using the requirement that the judge 'promptly sign the judgment' the Rule goes far enough to avoid unnecessary delays in the process of entering judgments." Moreover, the Federal Rules of Appellate Procedure lack a provision equivalent to the 120-day deemed denied language found in Appellate Rule 5(a)(4), and therefore the fact that a post-judgment motion may have been filed prematurely does not have any practical significance.

---

that a judge may reasonably elect to delay entry of judgment on a jury verdict, such as to determine whether a party may file a timely motion for costs. *See In re Royer*, S. Ct. Civ. No. 2014-0023, 2014 WL 2938456, at *2 (V.I. June 30, 2014) (unpublished). Our precedent is codified in Virgin Islands Rule of Civil Procedure 58(b), which—unlike its federal counterpart—provides that "[u]pon determination of an action by a judge or jury, *the judge shall promptly sign the judgment*, which shall take effect, for purposes of appeal, upon entry by the clerk.") (emphasis added). While we recognize that the delay in entry of judgment in this case is highly excessive and unusual, the appropriate remedy is not to disregard the well-established law of the Virgin Islands as to how judgment is entered on jury verdicts, but to request that the Advisory Committee on Rules to reconsider its recommendation not to impose a firm deadline for a judge to sign the judgment embodying a jury verdict. *See* V.I. R. CIV. P. 50(b) Committee Discussion Point (noting that the Committee had discussed whether to establish a 120-day period upon which a jury verdict is deemed to have been filed, but that the proposal had been rejected by a majority of the Committee).

¶ 16 This Court, however, is not without guidance in this situation. The Supreme Court of Alabama—which has adopted a rule similar to Appellate Rule 5(a)(4) providing that post-judgment motions are deemed denied after 90 days of filing—encountered this very situation. In *Jakeman v. Lawrence Group Mgmt. Co., LLC*, 82 So.3d 655 (Ala. 2011), a party filed a post-judgment motion on August 2, 2010, even though entry of judgment did not occur until some six weeks later, on September 17, 2010. Even though the pertinent Alabama court rule provided that a post-judgment motion "is deemed denied by operation of law 90 days after the filing date," the Supreme Court of Alabama concluded that a post-judgment motion that is prematurely filed before entry of judgment "quickens" on the date that entry of judgment occurs. *Jakeman*, 82 So.3d at 659. Consequently, the court held that the August 2, 2010 motion "was deemed filed on September 17, 2010," the judgment entry date, with the 90-day period for the trial court to rule on the post-judgment motion running from the date it is deemed filed rather than the day it was actually filed. *Id*.

¶ 17 We agree with the reasoning of the Alabama Supreme Court in *Jakeman*. Such an interpretation is consistent with the provisions in the Virgin Islands Rules of Appellate Procedure that provide that a notice of appeal filed prior to entry of judgment "is treated as filed on the date of and after the entry of judgment." V.I. R APP. P. 5(a)(1); V.I. R. APP. P. 5(b)(1). It is also consistent with the rule announced by this Court that subsequent events may ripen otherwise premature court proceedings. *See, e.g.*, *Rohn v. People*, 57 V.I. 637, 642 n.4 (V.I. 2012). And perhaps most importantly, it is consistent with the clear intent of Appellate Rule 5(a)(4), which is to expedite the appellate process by placing an absolute time limit on the Superior Court's consideration of post-judgment motions that toll the time to take an appeal to this Court.

¶ 18 As we note above, Appellate Rule 5(a)(1) would preclude Charles from appealing the jury

verdict to this Court prior to entry of judgment. Consequently, the failure of the Superior Court to rule on Charles's prematurely-filed renewed motion for judgment as a matter of law within 120 days would have no effect whatsoever with respect to expediting the appellate process; Charles could not have appealed until entry of judgment occurred, regardless of when or if the court ruled upon the prematurely-filed motion. *See ABF Capital Corp.*, 414 F.3d at 1064-65 (holding that it is "common sense" that the time to appeal from a judgment does not begin until actual entry of judgment on a civil verdict, even if the trial court has already ruled on a prematurely-filed post-verdict motion).

¶ 19 Under these highly unusual circumstances, we hold that Charles's renewed motion for judgment as a matter of law must be deemed filed on January 31, 2018—the same day that the Superior Court entered judgment on the underlying civil jury verdict.[5] Consequently, the renewed motion for judgment as a matter of law was not deemed denied for purposes of appeal by virtue of Appellate Rule 5(a)(4), since the Superior Court ruled on it within 120 days of the date the motion was deemed filed. Accordingly, Charles's February 22, 2018 notice of appeal was timely, and it effectuated an appeal from both the denial of his renewed motion for judgment as a matter of law, as well as from the civil jury verdict.

C. The Lease Agreement

¶ 20 Charles argues that the Superior Court "should have considered and granted [his] motion for judgment as a matter of law and his earlier motion to dismiss because Appellee's claim was

[5] Importantly, unlike in *Companion Assurance Co. v. Smith*, 66 V.I. 562 (V.I. 2017) where the Superior Court entered a final judgment and the appellant's motion stayed the time for an appeal under App. R. P. 5(a)(4), here the Superior Court did not enter a final judgment until January 31, 2018.

barred by the terms of the lease agreement." (Appellant's Br. 13.) However, Charles waived this argument for two reasons. First, on appeal, Charles only addresses the lease indemnification argument as to his earlier motion to dismiss in a perfunctory manner, and spends most of his brief making his argument in connection to his Rule 50(b) motion. *See* V.I. R. APP. P. 22(m)(3) ("Issues that . . . are only averted to in a perfunctory manner . . . are deemed waived for purposes of appeal[.]").

¶ 21 Second, although Charles made the lease indemnification argument in his renewed motion for judgment as a matter of law, he did not raise it in his pre-verdict motion. *See, e.g., Marshall v. Columbia Lea Reg'l Hosp.*, 474 F.3d 733, 738-39 (10th Cir. 2007) ("The renewed motion under Rule 50(b) cannot assert grounds for relief not asserted in the original motion"); *see also* E. H. Schopler, Annotation, *Practice and Procedure With Respect to Motions for Judgment Notwithstanding or in Default of Verdict Under Federal Civil Procedure Rule 50(b) or Like State Provisions*, 69 A.L.R.2d 449 (1960, updated 2019) (collecting state and federal appellate cases holding the same). Hence, Charles waived the lease indemnification argument, and thus, it is not properly before this Court.[6]

D. Insufficient Evidence

¶ 22 Charles maintains that there was insufficient evidence to find him negligent. In response, Payne argues that Charles has not preserved this argument for appellate review because, although he made it in a pre-verdict motion, he did not do so in his renewed Rule 50(b) motion. We agree with Payne and conclude that Charles has waived this issue.

[6] Because we conclude that Charles waived the lease indemnification argument for purposes of appeal, we decline to address Payne's arguments that Charles waived the lease indemnification argument at an earlier time by failing to raise the argument in his answer or pre-answer motion.

¶ 23 It is the consensus among both state and federal appellate courts with similar Rule 50 provisions[7] that, ordinarily, a party waives her pre-verdict argument for judgment as a matter of law if she fails to renew the argument post-verdict. *See, e.g.*, *Patterson v. Liberty Nat. Life Ins.*, 903 So. 2d 769 (Ala. 2004) (declining to address a party's Rule 50 motion on appeal because she failed to renew the motion post-verdict). Some federal courts of appeals took a more forgiving view and permitted sufficiency claims in civil cases to be considered on appeal without a post-verdict motion so long as the issue was the subject of a pre-verdict motion. *See, e.g.*, *Szmaj v. Am. Tel. & Tel. Co.*, 291 F.3d 955, 956 (7th Cir. 2002) (collecting cases). But the Supreme Court of the United States overruled those cases, and expressly held that a post-verdict Rule 50(b) motion is a prerequisite to raising the sufficiency of the evidence as an issue on appeal. *Unitherm Food Sys. v. Swift-Eckrich Inc.*, 546 U.S. 394, 401 (2006). In doing so, the United States Supreme Court emphasized that a Rule 50(b) motion is "not an idle motion" but "an essential part of the rule, firmly grounded in principles of fairness." *Id.* (quoting *Johnson v. New York, New Haven & Hartford R.R. Co.*, 344 U.S. 48, 53 (1952)). Significantly, the United States Supreme Court

[7] V.I. R. CIV. P. 50(a)(2)-(b) provide:

> (2) Motion. A motion for judgment as a matter of law may be made at any time before the case is submitted to the jury. The motion must specify the judgment sought and the law and facts that entitle the movant to the judgment.
> (b) Renewing the Motion After Trial; Alternative Motion for a New Trial. If the court does not grant a motion for judgment as a matter of law made under Rule 50(a), the court is considered to have submitted the action to the jury subject to the court's later deciding the legal questions raised by the motion. No later than 28 days after the entry of judgment—or if the motion addresses a jury issue not decided by a verdict, no later than 28 days after the jury was discharged — the movant may file a renewed motion for judgment as a matter of law and may include an alternative or joint request for a new trial under Rule 59. In ruling on the renewed motion, the court may: (1) allow judgment on the verdict, if the jury returned a verdict; (2) order a new trial; or (3) direct the entry of judgment as a matter of law.

rejected the argument that a pre-verdict motion under Rule 50(a) fairly presents the issue of sufficiency of the evidence to the trial court so as to render a post-verdict Rule 50(b) motion unnecessary, stating:

> [T]he text and application of Rule 50(a) support our determination that respondent may not challenge the sufficiency of the evidence on appeal on the basis of the District Court's denial of its Rule 50(a) motion. The Rule provides that "the court may determine" that "there is no legally sufficient evidentiary basis for a reasonable jury to find for [a] party on [a given] issue," and "may grant a motion for judgment as a matter of law against that party . . . ." Thus, while a district court is permitted to enter judgment as a matter of law when it concludes that the evidence is legally insufficient, it is not required to do so. To the contrary, the district courts are, if anything, encouraged to submit the case to the jury, rather than granting such motions.

Unitherm Food Sys., 546 U.S. at 405.

¶ 24 We agree with the United States Supreme Court's interpretation of Rule 50 in *Unitherm*, though we are not bound to follow decisions of the Supreme Court of the United States when it comes to interpreting the rules of practice and procedure applicable to the courts of the Virgin Islands. *See Antilles School v. Lembach*, 64 V.I. 400, 417 (V.I. 2016). Specifically, we agree that a party only preserves a Rule 50 motion based on sufficiency of the evidence for appeal if she presents a post-verdict motion that raises the same argument under Rule 50(b).[8] *See* V.I. R. APP. P. 4(h) ("Only issues and arguments fairly presented to the Superior Court may be presented for review on appeal."). Both Virgin Islands Rule of Civil Procedure 50(a) and Federal Rule of Civil Procedure 50(a), share the directive that a court ruling on a Rule 50(a) motion "may" resolve the motion, without requiring that it do so in lieu of submitting the matter to the jury. Here, the Superior Court took Charles's pre-verdict challenge to the sufficiency of the evidence under advisement rather than denying it, as Rule 50(a) permitted the court to do. In contrast, had Charles

[8] In *Tip Top Constr. Corp. v. Austin*, 2019 VI 18, ¶14, we came to the same conclusion.

filed a post-verdict motion under Rule 50(b) that included the sufficiency of evidence argument, the Superior Court would have had no choice but to rule on the motion on the merits and provide the reasons justifying its ruling. Because the Superior Court was never placed in a position where it had to rule on the sufficiency of the evidence, we conclude that Charles did not properly or "fairly present" this issue to the Superior Court. *See Unitherm Food Sys.*, 546 U.S. at 405; *see also* V.I. R. APP. P. 4(h). Thus, we agree with Payne that this issue has been waived.

III. CONCLUSION

¶ 25 We conclude that Charles filed a timely notice of appeal, but that he waived both his lease indemnification argument and his challenge to the sufficiency of the evidence. Therefore, we affirm the judgment of the Superior Court.

Dated this 12th day of June 2019.

BY THE COURT:

/s/Rhys S. Hodge
RHYS S. HODGE
Chief Justice

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court