

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2013 CA 0791

SOUTHERN UNIVERSITY SYSTEM FOUNDATION

VERSUS

RALPH SLAUGHTER

Judgment Rendered: SEP 04 2014

APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 585405, DIVISION F, SECTION 22

HONORABLE TIMOTHY E. KELLEY, JUDGE

John S. McLindon
Baton Rouge, Louisiana

Attorney for Appellant
Ralph Slaughter

Preston J. Castille, Jr.
Eugene R. Groves
Baton Rouge, Louisiana

Attorneys for Appellee
Southern University System Foundation

BEFORE: PETTIGREW, McDONALD, AND DRAKE, JJ.

McDONALD, J.

In this appeal, a former university system president challenges two summary judgments against him and in favor of a university foundation, for a total of \$475,000, plus legal interest and costs. For the following reasons, we reverse one of the judgments in total, reverse the second judgment in part, and remand this matter for further proceedings.

FACTUAL AND PROCEDURAL BACKGROUND

Beginning in 1974, Dr. Ralph Slaughter was employed by the State of Louisiana in various capacities. From April 2006 to June 2009, Dr. Slaughter was employed as the President of the Southern University System in Baton Rouge, Louisiana; his tenure at Southern University (SU) has spawned multiple lawsuits. In 2007, Dr. Slaughter and the SU Board of Supervisors (SU Board) executed a written employment contract for a two-year term, from July 1, 2007 through June 30, 2009. The employment contract expressly provided that it was effective only upon the execution of a settlement agreement and the dismissal with prejudice of a then-pending "unlawful retaliation" civil rights suit Dr. Slaughter had earlier litigated against the SU Board and others in federal court (federal civil rights suit). See **Slaughter v. Board of Supervisors of Southern University and A&M College, et al.**, Civil Action Number 3:07-CV-379 (M.D. La. 2007). The pertinent compensation provisions of the employment contract provided that Dr. Slaughter's earned compensation for services rendered as President would be: a base salary of \$220,000 per annum; a vehicle allowance; housing and/or a housing allowance; and a salary supplement of \$200,000 per year from funds provided by the Southern University System Foundation (Foundation). The employment contract specifically stated that the salary supplement was "contingent upon the funds being provided by the Foundation."

In September 2007, Dr. Slaughter signed an Authorization for Disbursement of \$72,000 from the Foundation's "System Development" account payable to SU for the stated purpose of a "salary supplement." In November 2008, Dr. Slaughter signed another Authorization for Disbursement of \$128,000 from the Foundation's "System Development – General Fund" account payable to SU for the stated purpose of "Extra

Compensation” for “President Ralph Slaughter.” It is undisputed that the Foundation paid the \$72,000 and the \$128,000 amounts, a total of \$200,000, to SU, and then, in turn, SU paid the same amounts to Dr. Slaughter as part of his monthly paychecks. (Collectively, this \$200,000 will be referenced as the 2007-08 salary supplement.)

On March 27, 2009, the SU Board voted not to extend Dr. Slaughter’s employment contract beyond its two-year term, which was to expire on June 30, 2009. On that same day, Dr. Slaughter signed an Authorization for Disbursement of \$200,000 from the Foundation’s “System Development” account to be paid to SU for the stated purpose of “university support” (2009 salary supplement). The record indicates that the \$200,000 check was then issued by the Foundation, and SU paid Dr. Slaughter the same amount as part of his monthly paychecks.¹

In April and May 2009, Dr. Slaughter signed Authorizations for Disbursement of Foundation funds totaling \$75,000 (a \$25,000 check dated April 16, 2009, and a \$50,000 check dated May 28, 2009, both payable from the Foundation’s “Program Account”) for a legal retainer fee, payable to Ms. Jill Craft, the attorney who had represented him in the federal civil rights suit. In September 2009, Dr. Slaughter, represented by Ms. Craft, filed suit against the SU Board for past due wages. See Slaughter v. Board of Supervisors of Southern University and Agricultural and Mechanical College, 10-1049 (La. App. 1 Cir. 8/2/11), 76 So.3d 438, writ denied, 11-2110 (La. 1/13/12), 77 So.3d 970. In that case, this court found no error in the trial court’s determination that the 2007-08 and 2009 salary supplements received by Dr. Slaughter, as well as the vehicle allowance and the housing allowance he received, were correctly excluded from the calculation of Dr. Slaughter’s leave pay upon his retirement from the SU System. **Id.**, 76 So.3d at 455.²

¹ The record indicates that the Foundation’s \$200,000 check was made payable to the Foundation itself. In his brief, Dr. Slaughter argues that this creates a material issue of fact as to whether the \$200,000 ever actually left the Foundation’s bank account and was paid to Dr. Slaughter. We reject this notion as the record contains direct evidence, including statements by Dr. Slaughter himself, indicating that he did indeed receive the \$200,000.

² After the trial court orally ruled in favor of the Foundation in the wage suit, but before a written judgment was signed, Dr. Slaughter filed a motion to recuse Judge Timothy Kelley, the presiding trial judge. The motion was denied and Dr. Slaughter was ordered to pay monetary sanctions, attorney fees, and costs. This court affirmed that ruling in **Slaughter v. Board of Supervisors of Southern University and Agricultural and Mechanical College**, 10-1114 (La. App. 1 Cir. 8/2/11), 76 So.3d 465, writ denied, 11-2112 (La. 1/13/12), 77 So.3d 970.

On December 10, 2009, the Foundation filed the instant suit against Dr. Slaughter claiming he “misappropriated and converted” the 2007-08 salary supplement, the 2009 salary supplement, and the \$75,000 attorney fee, totaling \$475,000, “for his personal benefit” (the conversion suit).³ The Foundation alleged that Dr. Slaughter’s receipt of Foundation funds for his personal benefit was a breach of his fiduciary duty to the Foundation as a member of its board of directors. Among other filings, Dr. Slaughter filed exceptions, an answer, affirmative defenses, and a reconventional demand against the Foundation. Over the next two years, the parties litigated multiple ancillary issues which are not pertinent in this appeal.⁴

The Foundation ultimately filed two motions for summary judgment. The first motion, filed on June 20, 2012, sought judgment against Dr. Slaughter for \$275,000, the sum of the \$75,000 attorney fee paid to Ms. Craft and the 2009 salary supplement. The second motion, filed on August 13, 2012, sought judgment against Dr. Slaughter for the 2007-08 salary supplement. In support of its motions, the Foundation filed copies of the Foundation Bylaws; the Foundation Articles of Incorporation; Restatement (Amended) of the Articles of Incorporation of the Foundation; affidavits of Ernie T. Hughes, Joseph Delpit, and Domoine Rutledge; Dr. Slaughter’s two-year employment contract; and the authorizations for disbursement, invoices, and checks showing payment of the \$475,000. The Foundation argued that its bylaws and articles of incorporation specifically provided that none of its earnings or assets shall ever inure to the benefit of any private member or individual.

The Foundation further asserted that, although Dr. Slaughter’s employment

³ The Foundation’s conversion suit also alleged that Dr. Slaughter misappropriated and converted additional Foundation funds and property, including: tickets and Louisiana Superdome suite rental for the 2009 Essence Music Festival in New Orleans; personal moving fee expenses; and furniture, fixtures, and decorations removed from SU’s campus. In the October 22, 2012 judgment at issue in this appeal, the trial court dismissed with prejudice the Foundation’s claim to recover monetary damages for the tickets, suite rental, and moving expenses, as well as claims of fraud and conspiracy the Foundation made against Dr. Slaughter in its original and amended petitions. These rulings are not at issue in this appeal.

⁴ In May 2012, Dr. Slaughter filed suit against the Louisiana State Employees’ Retirement System (LASERS) after LASERS reduced his retirement benefit to exclude consideration of the 2007-08 and 2009 salary supplements. On October 3, 2013, the trial court rendered a declaratory judgment against LASERS stating that it was not entitled to reduce Dr. Slaughter’s retirement benefit nor seek recoupment of any alleged overpayments of retirement benefits to him. The judgment also ordered LASERS to return all sums withheld from Dr. Slaughter’s retirement benefits to him. LASERS’ appeal of that judgment is currently pending before this court in **Slaughter v. Louisiana State Employees’ Retirement System** under Docket Number 2013 CA 2255.

contract was executed by the SU Board and Dr. Slaughter, the Foundation was not a party to that contract. Payment of the salary supplements under the terms of the employment contract was "contingent upon the funds being provided by the Foundation." The Foundation urged that it never agreed to pay these funds, nor did the employment contract authorize the payment of Dr. Slaughter's personal attorney fees. Additionally, the Foundation argued that LSA-R.S. 17:3390 provides that when any payment or reimbursement to a University employee exceeds one thousand dollars, the University's management board must approve the transaction in writing. The Foundation submitted that there were no minutes, amendments, or resolutions of the Foundation's Board of Directors (Foundation Board) showing that the Foundation Board ever considered or approved the disbursement of Foundation funds to pay Dr. Slaughter's salary supplements or personal attorney fees.

Additionally, the Foundation argued that Dr. Slaughter owed a fiduciary duty to the Foundation as member of its board of directors.⁵ The Foundation argued that, as a member of the Foundation Board, Dr. Slaughter had a duty to act in a manner consistent with the purposes and functions of the Foundation and a duty to "operate principally for the benefit of the [SU System]," citing the Foundation bylaws. The Foundation contended that the payment of Foundation funds to Dr. Slaughter's attorney and his receipt of the salary supplements were breaches of his fiduciary duty. The Foundation prayed that Dr. Slaughter be ordered to return the \$475,000 in Foundation funds that he converted.

In opposition to the Foundation's motions for summary judgment, Dr. Slaughter filed his own affidavit, as well as the affidavits of Jill Craft,⁶ Cedric Upshaw, and Melvin Sanders.⁷ At the outset, he argued that the breach of a fiduciary duty is a factual

⁵ As President of the SU System, Dr. Slaughter served as a member of the Foundation Board of Directors, for which he had voting rights pursuant to Article III, Section 2(g) of the Foundation's Bylaws. Also by virtue of his presidency, Dr. Slaughter served on the Foundation Executive Committee pursuant to Article V, Section 7(e) of the Foundation Bylaws.

⁶ Ms. Craft had earlier withdrawn as Dr. Slaughter's attorney.

⁷ In support of his oppositions, Dr. Slaughter also adopted "his previously filed answers, affirmative defenses, Motion for Partial Summary Judgment, and Supplemental Motion for Partial Summary Judgment with all attachments, as well as his Opposition to [t]he Foundation's [First] Motion for Partial Summary Judgment."

inquiry and should not be resolved by way of summary judgment. Regarding the attorney fee paid to Ms. Craft, Dr. Slaughter asserted that the attorney fee was related to his role as President of the SU System and was required due to the retaliatory actions taken in an attempt to "oust" him. He further alleged that the Foundation had established a precedent of paying not only his attorney fees but the attorney fees of other persons associated with SU. Regarding the salary supplements, Dr. Slaughter admitted that the Foundation was not a party to the employment contract; however, he claimed it was a "misrepresentation of the facts" to suggest that the Foundation was unaware of his negotiations and federal court settlement with the SU Board. To the contrary, Dr. Slaughter argued that the Foundation was an "active participant" in structuring the way he would be paid the salary supplements. He contended the Foundation's attorney, Mr. Preston Castille, was involved in the negotiations that led to the execution of the employment contract, and that it was he who proposed the method of having the Foundation pay Dr. Slaughter's salary supplements over a two-year period, similar to how another of Mr. Castille's clients, Louisiana State University (LSU), had structured salary supplements to multiple highly compensated employees.

Additionally, Dr. Slaughter argued that the procedures by which the Foundation funds were requested and paid were in accordance with long standing Foundation policies and procedures. He asserted that he properly submitted the authorizations for disbursement requesting that the Foundation pay the salary supplements; that two Foundation officers signed each check without question, as required by the Foundation bylaws; and, that they did so "for the simple reason that everyone knew that Dr. Slaughter was entitled to this money pursuant to the [federal court] settlement agreement"

In response to the Foundation's argument that the salary supplements improperly inured to Dr. Slaughter's personal benefit, and were in violation of the Foundation bylaws and articles of incorporation, Dr. Slaughter disputed that the payments benefited him as a private person. According to Dr. Slaughter, SU was legally obligated to pay him the salary supplements by virtue of the federal court settlement; the Foundation relieved SU of that obligation by "stepping up" and agreeing to pay it;

and thus, it was not him, but SU, who benefited from the Foundation's payment of the salary supplements.

On July 13, 2012, Dr. Slaughter filed a peremptory exception raising the objection of prescription as to the Foundation's claim for the \$72,000 payment made in September 2007.⁸ He argued that, as to this amount, the Foundation's conversion suit was untimely filed under the Louisiana Civil Code or the law applicable to nonprofit corporations.

On July 31, 2012, the trial court held a hearing on the Foundation's first motion for summary judgment, Dr. Slaughter's prescription exception, and other matters.⁹ By judgment dated August 2, 2012, the trial court granted the Foundation's first motion for summary judgment and awarded judgment in favor of the Foundation and against Dr. Slaughter for \$275,000, plus legal interest from date of judicial demand until paid, and all costs of the proceedings. Dr. Slaughter filed an application for supervisory writs with this court seeking review of the August 2, 2012 judgment. This court declined to exercise its supervisory jurisdiction and stated that Dr. Slaughter had an adequate remedy by review on appeal. **Southern University System Foundation v. Ralph Slaughter**, 2012 CW 1303 (La. App. 1 Cir. 8/9/12) (unpublished writ action).

On August 13, 2012, the Foundation filed its second motion for summary judgment, seeking to recover the 2007-08 salary supplement from Dr. Slaughter. Dr. Slaughter opposed the motion. On October 22, 2012, the trial court signed a judgment: granting the Foundation's motion and rendering judgment in favor of the Foundation and against Dr. Slaughter for \$200,000, plus interest from the date of judicial demand, and costs; granting in part and denying in part the Foundation's motion in limine regarding the law between the parties; granting the Foundation's motion in limine to

⁸ Dr. Slaughter first filed an exception raising the objection of prescription on January 15, 2010, which Judge Janice Clark denied on February 25, 2010. Dr. Slaughter filed his second prescription exception on July 13, 2012, which Judge Timothy Kelley, the trial court judge who replaced Judge Clark after her recusal, denied in open court on that same day.

⁹ While the Foundation's first motion for summary judgment was pending, Dr. Slaughter executed an act of donation inter vivos transferring certain assets to his wife, Shalonda Denise Slaughter. Dr. and Mrs. Slaughter also entered into a post-matrimonial agreement whereby they terminated the community of acquets and gains and declared certain assets as Mrs. Slaughter's separate property. Following Dr. Slaughter's appeal of the judgments at issue in this appeal, the Foundation filed a petition for revocatory action against the Slaughters challenging the matrimonial agreement. By judgment dated July 29, 2013, the trial court revoked the inter vivos donation in its entirety and revoked the transfer of property from Dr. Slaughter to Mrs. Slaughter.

exclude exhibits from Dr. Slaughter's exhibit list; granting in part and denying in part the Foundation's motion in limine to exclude witnesses; and denying Dr. Slaughter's motion to exclude/disqualify Mr. Castille and his law firm from participating in the case. The judgment specifically stated that it, along with all previously rendered interlocutory judgments, were "now final and appealable." Dr. Slaughter appealed from the October 22, 2012 judgment "and all previously rendered [j]udgments in this matter."

On appeal, Dr. Slaughter asserts four assignments of error, challenging: (1) the denial of his prescription exceptions as to \$72,000 of the 2007-08 salary supplement; (2) the grant of the August 2 and October 22, 2010 summary judgments against him for the \$275,000 and \$200,000, respectively; (3) the denial of his motion to exclude/disqualify Mr. Castille and his law firm from participating as witnesses and/or attorneys; and (4) the grant of the Foundation's motions in limine to exclude Dr. Slaughter's exhibits and witnesses.

PRESCRIPTION

In his first assignment of error, Dr. Slaughter contends the trial court erred in denying his peremptory exceptions raising the objection of prescription as to the Foundation's claim that Dr. Slaughter misappropriated and converted \$72,000 in supplementary compensation on September 25, 2007. According to Dr. Slaughter, the two-year prescriptive period set forth in LSA-R.S. 12:226(D) bars the Foundation's \$72,000 claim, because the Foundation's conversion suit was filed on December 10, 2009, over two years after the alleged misappropriation on September 25, 2007. On the other hand, the Foundation argues a ten-year prescriptive period applies to its \$72,000 claim against Dr. Slaughter and that its conversion suit was timely filed within that ten-year period.

It is undisputed that the Foundation is a nonprofit 501(C) corporation. Under LSA-R.S. 12:226(A), the officers and directors of a nonprofit corporation owe fiduciary duties that run in favor of the corporation and its members. **Mary v. Lupin Foundation**, 609 So.2d 184, 187 (La. 1992). Louisiana Revised Statute 12:226(A) also defines the standard of care the officers and directors must employ in fulfilling their duties, as follows:

Officers and directors shall be deemed to stand in a fiduciary relation to the corporation and its members and shall discharge the duties of their respective positions in good faith, and with that diligence, care, judgment and skill which ordinarily prudent men would exercise under similar circumstances in like positions.

In addition to the general standard of care imposed by LSA-R.S. 12:226(A), Paragraph (D) of LSA-R.S. 12:226 creates a modified standard of care that applies only to directors and then only when a director votes in favor of an unlawful distribution, a particular type of fiduciary duty. **Mary**, 609 So.2d at 188. Louisiana Revised Statute 12:226 (D) provides:

If any unlawful distribution, payment or return of assets be made to the members, or if the corporation purchase or redeem any of its own shares in violation of this Chapter, the directors who knowingly, or without the exercise of reasonable care and inquiry, voted in favor thereof shall be liable jointly and severally to the corporation, or to creditors of the corporation, or to both, in an amount equal to the amount of the unlawful distribution. **An action to enforce such liability must be brought within two years from the date on which the distribution was made, and this time limit shall not be subject to suspension on any ground, nor to interruption except by timely suit.** (Emphasis added.)

The two-year prescriptive period set forth in LSA-R.S.12:226(D) applies to an action against a director who has "knowingly, or without the exercise of reasonable care and inquiry, voted in favor" of "any unlawful distribution, payment or return" made to members or "if the corporation purchase[s] or redeem[s] any of its own shares in violation of the" Nonprofit Corporation Law. In contrast, an action against an officer or director for breach of fiduciary duty under LSA-R.S. 12:226(A) is subject to a ten-year prescriptive period. **Mary**, 609 So.2d at 188; accord **Lawly Brooke Burns Trust v. RKR, Inc.**, 96-1231 (La. App. 1 Cir. 3/27/97), 691 So.2d 1349, 1352-53. Because the transactions in dispute do not involve an "unlawful payment" resulting from a "vote" in favor thereof by the "directors" of the Foundation, we conclude that the two-year prescriptive period set forth in LSA-R.S. 12:226(D) is not applicable. Rather, we find that the Foundation's action against Dr. Slaughter falls under the ten-year prescriptive period applicable to actions filed under LSA-R.S. 12:226(A); thus, because the Foundation's conversion suit, filed on December 10, 2009, was within ten years of the date of the alleged \$72,000 misappropriation on September 27, 2007, the trial court

correctly denied both of Dr. Slaughter's prescription exceptions. This assignment of error is without merit.

SUMMARY JUDGMENT

In his second assignment of error, Mr. Slaughter contends the trial court erred in granting the summary judgments in favor of the Foundation, because there are numerous factual issues in dispute, including, but not limited to, Mr. Slaughter's motives and intents and whether he breached his fiduciary duty to the Foundation. In opposition, the Foundation asserts that it is undisputed that Mr. Slaughter breached his fiduciary duty to the Foundation; thus, even if his reason or motive for doing so is factually disputed, such is irrelevant to the trial court's proper determination that his breach of fiduciary duty actually did occur and that summary judgment was warranted.

An appellate court reviews a trial court's decision to grant a motion for summary judgment de novo, using the same criteria that govern the trial court's consideration of whether summary judgment is appropriate. **Smith v. Our Lady of the Lake Hospital, Inc.**, 93-2512 (La. 7/5/94), 639 So.2d 730, 750. The motion should be granted only if the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, if any, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B)(2)¹⁰; **George S. May International Co. v. Arrowpoint Capital Corp.**, 11-1865 (La. App. 1 Cir. 8/10/12), 97 So.3d 1167, 1171. Although summary judgments are now favored, factual inferences reasonably drawn from the evidence must be construed in favor of the party opposing the motion, and all doubt must be resolved in the opponent's favor. **Willis v. Medders**, 00-2507 (La. 12/8/00), 775 So.2d 1049, 1050. Because it is the applicable substantive law that determines materiality, whether a particular fact in dispute is material, for purposes of summary judgment, can be seen only in light of the substantive law applicable to the case. **Gaspard v. Graves**, 05-1042 (La. App. 1 Cir. 3/29/06), 934 So.2d 158, 160, writs denied, 06-0882 and 06-0958 (La. 6/16/06), 929 So.2d 1286 and 1289. The Foundation alleges Mr. Slaughter

¹⁰ Louisiana Code of Civil Procedure article 966 was amended in 2013 and again in 2014. The amendments are not implicated in the issues presented in this appeal. See 2013 La. Acts, No. 391, §1, effective August 1, 2013, and 2014 La. Acts, No. 187, §1, effective August 1, 2014.

breached his fiduciary duty by requesting the payment of \$75,000 in Foundation funds to his attorney, and by receiving the \$400,000 in Foundation funds as salary supplements, without first obtaining a required vote of approval from the Foundation Board.

Under LSA-R.S. 12:226(A), Dr. Slaughter indeed had a fiduciary relation to the Foundation and its members. As part of this fiduciary relationship, Dr. Slaughter was required to discharge the duties of his position "in good faith, and with that diligence, care, judgment and skill which ordinarily prudent men would exercise under similar circumstances in like positions." LSA-R.S. 12:226(A). However, a determination that a fiduciary duty has been breached requires an analysis of subjective intent. **Fair Farms, Inc. v. Holt**, 48,246 (La. App. 2 Cir. 8/28/13), 124 So.3d 25, 32, writ denied, 13-2322 (La. 12/6/13), 129 So.3d 535. Summary judgment is seldom appropriate for determinations based on subjective facts of intent, motive, malice, good faith, or knowledge. **Eskind v. Marcel**, 06-0369 (La. App. 1 Cir. 12/28/06), 951 So.2d 289, 292. Further, issues that require the determination of the reasonableness of acts and conduct of parties under all facts and circumstances of the case cannot ordinarily be disposed of by summary judgment. **Id.** These subjective facts call for credibility evaluations and the weighing of testimony, and summary judgment is inappropriate for such determinations. **Fair Farms, Inc.**, 124 So.3d at 31, n.6; see also **Cenla Physical Therapy & Rehabilitation Agency, Inc. v. Lavergne**, 94-1538 (La. App. 3 Cir. 5/3/95), 657 So.2d 175, 178 (reversal of summary judgment when genuine issues of material fact existed as to whether employees breached fiduciary duty to employer). In deciding a motion for summary judgment, it is assumed that all witnesses are credible. **GE Commercial Finance Business Property Corporation v. Louisiana Hospital Center, LLC**, 13-0029 (La. App. 1 Cir. 9/13/13), 134 So.3d 616, 622.

In granting the two summary judgments in favor of the Foundation, the trial court determined that Dr. Slaughter breached his fiduciary duty to the Foundation by

allowing Foundation funds to inure to his personal benefit in the total amount of \$475,000.¹¹ In both instances, the trial court did not consider the reasons why Dr. Slaughter acted as he did as material facts for the purpose of deciding the summary judgments. In other words, the trial court determined that the “undisputed” fact that Dr. Slaughter breached his fiduciary duty, without further inquiry as to why, was sufficient to grant the summary judgments in favor of the Foundation. After a de novo review, we conclude the trial court erred in this regard.

The relevant inquiry is whether Dr. Slaughter failed to act “in good faith, and with that diligence, care, judgment and skill which ordinarily prudent men would exercise under similar circumstances in like positions” when he did not obtain a vote of preapproval from the Foundation Board for the \$475,000 transactions. Contrary to the trial court’s conclusion, we find that this inquiry does indeed require an examination of the reasons why Dr. Slaughter proceeded as he did, because his reasons are material to

¹¹ The trial court gave the following oral reasons for granting the first summary judgment:

There is no question that [Dr. Slaughter] was a member of the [Foundation] Board. There is no question but that he was also a member of the executive committee. Irrespective of whether he had voting powers or not, he was charged with a fiduciary duty. The [\$200,000] and the [\$75,000] did, in fact, inure to his benefit. That is a prohibited transaction under the bylaws of the Foundation. It could only legally have occurred had the bylaws been amended or repealed by affirmative vote of two-thirds of the members of the [Foundation Board] at either a regular meeting or a special meeting of the members called for that purpose, provided there had been prior written notice to all members of the [Foundation] Board at least thirty days ahead of time. There is no vote of two-thirds of the [Foundation Board] at a regular meeting that’s been put before this court. There is no vote, minutes of a vote of two-thirds of the members at a special meeting that’s supported by a thirty day written notice. If you want to argue that Article II(A) delegates the authority to go against those bylaws, I disagree, but even if it did, there’s nothing that says that the executive committee voted to allow this, these payments to be made. The prohibited transaction is a prohibited transaction. Dr. Slaughter was charged with the fiduciary duty of protecting that corporation and to not allow any of the earnings or assets to inure to the benefit of any private member, including himself. He failed to do so, and by doing so, by law, he breached his fiduciary duty. There are no genuine issues of material fact regarding those seminal facts and all the facts that are required – those are all the facts that are required to determine whether there was a breach of a fiduciary duty; therefore, I am going to grant the partial summary judgment on both the [\$75,000] payment and the [\$200,000] payment. ...

The trial court gave similar reasons for granting the second motion for summary judgment:

The issue has always been one of, as a member of the board, did [Dr. Slaughter] owe a fiduciary duty to the [Foundation] Board to follow the bylaws of the Foundation? He did. Did he fail? He did fail. He knew of the bylaws. He bypassed the bylaws, either by himself or through the help of others. There was no amendment to the bylaws that allowed these funds to inure to his benefit, which they did. There was no two-thirds vote of either the membership itself or, arguendo, the executive board to amend the bylaws to allow for these payments. That’s all that had to have been done. He knew it had to have been done. He had a fiduciary duty to see that it was done, and he failed to do so and accepted those funds; therefore, there really are no genuine issues of material fact regarding intent or anything else with regard to this matter. ...

whether he acted with the good faith, diligence, care, judgment, and skill that an ordinarily prudent man in his position should have acted. Assuming a Foundation Board vote was required before Foundation funds could inure to the personal benefit of one of its members, we find that Dr. Slaughter has presented ample evidence to create a genuine issue of material fact as to whether he breached his fiduciary duty, as set forth in LSA R.S. 12:226(A), when he failed to obtain that vote.

In his affidavit, presented in opposition to the summary judgments, Dr. Slaughter described the events that led to the transactions. Regarding the salary supplements, Dr. Slaughter stated that this amount was due him as part of the settlement of the federal civil rights suit. He described the negotiations that led to the settlement, including multiple conversations he had with Mr. Castille, the Foundation's attorney, as to the manner in which the salary supplements would be paid. Dr. Slaughter stated that Mr. Castille suggested to him that payment of the salary supplements be made through the Foundation, and that another of his clients, LSU, had paid salary supplements to some of its administrators in a similar manner. Mr. Castille forwarded copies of the employment contracts of football coach Nick Saban, as well as Chancellor Sean O'Keefe, and LSU System President John Lombardi, to Dr. Slaughter as examples of such arrangements. According to Dr. Slaughter, Mr. Castille assured him that the Foundation "was in agreement with the supplement[s] and that doing so was exactly how his firm's other client, LSU, had paid additional compensation to their [a]dministrators."¹² We note that Dr. Slaughter's version of Mr. Castille's involvement in the structuring of the salary supplement payments is corroborated by the affidavit of his attorney, Ms. Craft, whose testimony is consistent with that given by Dr. Slaughter.

In his affidavit, Dr. Slaughter also stated that he discussed the matter with Foundation Board President Richard Turnley, and Mr. Turnley told him "that he had spoken to ... and told Attorney Castille that the [Foundation] was in agreement with and was going to pay the supplementary compensation." As further evidence that the Foundation was aware of and committed to paying the salary supplements, Dr.

¹² The knowledge of an attorney, actual or otherwise, is imputed to his client. **Slaughter**, 76 So.3d at 476.

Slaughter submitted a September 25, 2007 letter from Foundation Executive Director Ernie Troy Hughes to Mr. Tolor White, SU System Vice President of Finance, wherein Mr. Hughes stated, "The [Foundation] will support and make salary supplements for the extra compensation to President Ralph Slaughter, as approved by the [SU] Board of Supervisors in the amount of \$200,000.00 annually from funds designated for that purpose."¹³

In due course, as earlier stated, the SU Board and Dr. Slaughter settled the federal civil rights suit and executed his employment contract providing for "a salary supplement from Southern University System Foundation funds in the amount of \$200,000 per year ... contingent upon the funds being provided by the Foundation." According to Dr. Slaughter, he and Mr. Castille thereafter had conversations about the Foundation's payment of the salary supplements, including Mr. Castille's "direct inquires confirming that [the supplements] had been and would be paid to Southern University, into the State's fund, and disbursed to [Dr. Slaughter] in [his] regular paychecks."

Regarding the payment of the attorney fee, Dr. Slaughter stated that, in 2007, he and Mr. Castille discussed the payment, through the Foundation, of his attorney fee, and the attorney fees of two others involved in the federal civil rights suit, and that Mr. Castille agreed that such payment was appropriate. According to Ms. Craft's affidavit, following settlement of the federal civil rights suit, the Foundation paid her \$150,000 in September 2007 for her legal representation of Dr. Slaughter. She further stated that, in March 2009, Dr. Slaughter contacted her for legal advice based on his belief that he and several witnesses and alleged victims from the federal civil rights suit were going to be terminated because of their involvement in that suit. Ms. Craft accepted the representation, and, subsequently billed Dr. Slaughter for a \$75,000 retainer fee – one invoice for \$25,000 and a second invoice for \$50,000. In April and May 2009, Dr. Slaughter signed the Authorizations for Disbursement of Foundation funds to pay Ms. Craft's retainer, and Foundation funds were used to pay her. According to Ms. Craft, the retainer was "in conjunction with the mediation efforts during the months of April,

¹³ We note that Mr. Hughes explained the intent of the letter differently in testimony submitted at the trial of Dr. Slaughter's wage suit. See **Slaughter**, 76 So.3d at 454-55.

May, and June, 2009, in continuing efforts to resolve all claims, including those involving the former 2007 witnesses and victims.”

Regarding the issuance of the Foundation checks for \$475,000, Dr. Slaughter stated, in his affidavit, that during his more than twelve years of employment with the SU System, a time during which he processed hundreds of Foundation disbursement vouchers, the Foundation’s check writing approval process had been a function of the Foundation’s officers. He explained that the checks at issue were approved and signed by two Foundation officers as was required by Foundation bylaws. Dr. Slaughter stated that he was not an officer and, thus, could not and did not participate in the review, approval, or signing of the checks.

In addition to his own statement regarding the issuance of the \$475,000 in Foundation checks, Dr. Slaughter also submitted the affidavit of Melvin Sanders, the Foundation Treasurer from July 2007 to July 2009. Mr. Sanders also stated that, during his term, the Foundation’s approval of disbursements and checks was handled by Foundation officers, not by the Foundation Board. In describing the process, Mr. Sanders stated:

[R]equests for disbursement vouchers were submitted to the Foundation office and then processed by the Foundation support staff who reviewed the forms for initial completeness, coding, entry and funds availability. During the disbursement vouchers approval process, Foundation checks were prepared and attached to the disbursement vouchers. The disbursement vouchers and checks were approved by an officer of the Foundation. The Foundation Secretary/Executive Director and Treasurer usually signed checks and/or disbursements at the Foundation office. A Foundation staff member would travel to the home or office of the Foundation’s President or Vice President to have the checks and/or disbursements signed and returned to the Foundation office. Vouchers and checks were then returned to [the] appropriate Foundation staff member to complete the disbursement and check distribution and filing process.

Mr. Sanders then went on to identify each of the checks comprising the \$475,000 payments, naming the Foundation officer that approved the disbursement voucher for the checks, as well as the two Foundation officers that signed each check. He noted that “these disbursement vouchers and checks were processed by the Foundation staff in accordance with the established policies and practices of the [Foundation].”

Finally, Dr. Slaughter filed the affidavit of Mr. Cedric Upshaw, Foundation

Secretary/Executive Director from September 2008 until July 2009, in support of his opposition to the Foundation's motions for summary judgment. Mr. Upshaw stated that at all times during his tenure, he was "fully aware of and approved the payment of supplementary compensation" to Dr. Slaughter. He also stated that he discussed the matter with Mr. Castille and that Mr. Castille "fully supported" the Foundation's payment of the salary supplements to Dr. Slaughter.

In evaluating the summary judgment evidence, we must resolve all doubt in Dr. Slaughter's favor and must construe all factual inferences reasonably drawn from the evidence in his favor as well. **Willis**, 775 So.2d at 1050. Further, we must assume that all witnesses are credible. **GE Commercial**, 134 So.3d at 622. Under these guidelines, we find that the evidence presented demonstrates there are genuine issues of material fact as to whether Dr. Slaughter breached his fiduciary duty to the Foundation. The Foundation presented evidence indicating that it did not agree to pay the \$475,000 and that Dr. Slaughter breached his fiduciary duty by not obtaining a required vote of preapproval. However, there is sufficient evidence to create a disputed factual issue as to whether the Foundation indeed knew of and approved the payments and that, under the circumstances, Dr. Slaughter reasonably could have believed, as a prudent man in his position, that further Foundation Board approval was not needed. The affidavits of Dr. Slaughter, Ms. Craft, Mr. Sanders, and Mr. Upshaw, as well as Mr. Hughes' letter to Mr. White, support a finding that the Foundation, through Mr. Castille and others, was indeed an active participant in the settlement of the federal civil rights suit, the negotiation of the employment contract, and even though not a party to the contract, that the Foundation agreed to pay Dr. Slaughter the salary supplements. Regarding the attorney fee, Dr. Slaughter's affidavit and Ms. Craft's affidavit create disputed issues as to whether Dr. Slaughter could have reasonably considered that Ms. Craft's representation was again to protect his civil rights as President of the SU System, as in the federal suit where her fees had been paid by the Foundation, or whether such was for Dr. Slaughter's personal benefit. Further, the above evidence also supports Dr. Slaughter's position that the Foundation participated in the structuring of the payments, and that the procedures by which the Foundation funds were

requested and paid were in accordance with long standing Foundation practices, which did not require a vote of the Foundation Board or its executive committee.

As stated, the proper resolution of this matter (whether a breach of fiduciary duty occurred) requires a determination as to whether Dr. Slaughter discharged the duties of his position as a Foundation Board member "in good faith, and with that diligence, care, judgment and skill which ordinarily prudent men would exercise under similar circumstances." See LSA-R.S. 12:226(A). This will require a determination of the reasonableness of Dr. Slaughter's acts, and the acts of those representing the Foundation, under all the facts and circumstances of this case. Such a determination requires an analysis of subjective intent, which further calls for credibility evaluations and the weighing of testimony. See **Fair Farms**, 124 So.3d at 32. Summary judgment is inappropriate for such determinations. See **Eskind**, 951 So.2d at 292.

For these reasons, we conclude there are genuine issues of material fact in this case, and the Foundation was not entitled to summary judgment against Dr. Slaughter for \$475,000. The trial court's judgments, granting summary judgment in favor of the Foundation on this issue, must be reversed.

REMAINING ASSIGNMENTS OF ERROR

In his third and fourth assignments of error, Dr. Slaughter challenges the October 22, 2012 judgment insofar as it: (1) denied his motion to exclude/disqualify Mr. Castille and his law firm as witnesses and/or attorneys; and (2) granted the Foundation's motions in limine to exclude certain of Dr. Slaughter's exhibits and witnesses. Regarding the denial of Dr. Slaughter's motion to exclude/disqualify Mr. Castille and his law firm, we find no merit to Dr. Slaughter's challenge and affirm the October 22, 2012 judgment on this issue. We note however that, on remand, further proceedings in this case may require that this issue be revisited. Regarding the grant of the Foundation's motions in limine to exclude certain of Dr. Slaughter's exhibits and witnesses, we reverse the October 22, 2012 judgment on these issues, and in light of our reversal of the summary judgments rendered in favor of the Foundation and against Dr. Slaughter, remand these issues to the trial court for reconsideration.

CONCLUSION

For the foregoing reasons, the trial court's August 2, 2012 judgment, granting the Foundation's first motion for summary judgment, and awarding judgment in favor of the Foundation and against Dr. Slaughter for \$275,000, is reversed. The trial court's October 22, 2012 judgment, granting the Foundation's second summary judgment, is reversed, in part, as follows: (1) insofar as the judgment granted the Foundation's second motion for summary judgment and awarded judgment in favor of the Foundation and against Dr. Slaughter for \$200,000, the judgment is reversed; (2) insofar as the judgment granted in part the Foundation's motion in limine to exclude exhibits from Dr. Slaughter's exhibit list, the judgment is reversed; (3) and, insofar as the judgment granted in part the Foundation's motion in limine to exclude certain of Dr. Slaughter's witnesses, the judgment is reversed. In all other respects, the October 22, 2012 judgment is affirmed. This matter is remanded to the trial court for further proceedings consistent with this opinion. Costs of this appeal are assessed equally to the parties.

AUGUST 2, 2012 JUDGMENT REVERSED; OCTOBER 22, 2012 JUDGMENT REVERSED IN PART, AND AFFIRMED IN PART; REMANDED.