

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )  
Wells Fargo Bank, N.A., )  
Plaintiff, )  
v. )  
D. Bruce Wolff, )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Docket No. 2017-CP-40-03865

ORDER ON DAMAGES

**RECEIVED**

DEC 22 2022

SC Court of Appeals

This matter came before me on Plaintiff's Motion for Damages on Monday, July 18, 2022 by Webex. Present was Theodore von Keller, attorney for Wells Fargo Bank, N.A., Defendant D. Bruce Wolff, appeared Pro Se.

**PROCEDURAL HISTORY**

This matter was initially heard on Plaintiff's Motion for Summary Judgment in August 2018. This action arose out of a Business Line of Credit between Plaintiff's predecessor in interest, Wachovia Bank and Defendant. Plaintiff filed this action on June 22, 2017 seeking judgment in the amount of \$70,473.34 based upon Defendant's failure to pay the account. Defendant filed a pro se answer on July 24, 2017. Plaintiff moved for summary judgment on February 14, 2018. On August 14, 2018, summary judgment was granted by the circuit court in the amount of \$70,473.34. Defendant, through an attorney, filed a motion for reconsideration on August 24, 2018. The motion was denied on November 1, 2018. Thereafter, Defendant appealed the granting of summary judgment on November 20, 2018. Defendant was represented by counsel on appeal.

The Court of Appeals affirmed summary judgment as to liability but reversed and remanded to the circuit court for further proceedings on the amount of Wells Fargo's recovery. In its opinion, the appellate court held there was a genuine issue of material fact regarding the amount of Defendant's debt to Plaintiff because the terms of the customer agreement were unclear. Specifically, at issue are the terms relating to the variable interest rate and the significant increase in the required monthly payments. The Court indicated that it was "unable to determine from the record on appeal why Wolff's monthly payments increased to the extent shown on the statements particularly in view of the provision in ... [the] customer agreement that expressly provided periodic finance charges for purchases and advances would begin when the corresponding

transactions were made." Unpublished Opinion No. 2021-UP-236, p. 3 (filed June 23, 2021).

After the decision of the Court of Appeals, Defendant continued to be represented by counsel for almost a year. On remand, Plaintiff refiled its motion for damages in August 2021. Since February 2022 numerous hearings were scheduled and continued. Defendant's attorney moved to be relieved on May 12, 2022 which was granted on May 16, 2022. Thereafter, Defendant proceeded Pro Se.

A hearing was conducted on July 18, 2022. Amanda Layton testified on behalf of Plaintiff, Wells Fargo Bank N.A. as the Senior Loan Workout Specialist and the custodian of the records. Plaintiff introduced 15 exhibits A through O as business records. Defendant also testified.

During the hearing on July 18, 2022, Defendant requested additional time to obtain certain documents or to engage in mediation. He asserted that he was unaware of the process. However, Defendant had the opportunity to pursue those matters after the appeal and was represented by counsel who could have assisted him in gathering such information prior to being relieved as counsel. Further, the issues Defendant sought to raise were not relevant and not applicable to the issues in this case.

After consideration of the pleadings, the arguments presented and the various submissions by both parties, and construing all ambiguities, conclusions, and inferences arising from the evidence against the moving party, the court makes the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. On April 14, 1999, the Defendant D. Bruce Wolff entered into a Business BankLine of Credit with Wachovia Bank in the amount of \$78,000.
2. By the express terms of the Wachovia Business BankLine Note and Agreement, "the borrower agrees to pay a finance charge calculated under the formula set out in the variable-rate paragraph below". Plaintiff's Exhibit A.
3. On April 15, 1999, the Defendant took a Line of Credit Direct Advance in the amount of \$78,000. Plaintiff's Exhibit B.
4. The Defendant admitted in both his Answer and Affidavit that he obtained the Line of Credit and received the \$78,000 advance.
5. Wells Fargo acquired the assets of Wachovia Bank in 2010 and transitioned all Wachovia accounts to Wells Fargo. Defendant's account was transitioned as a

- variable interest rate account, as it had been under Wachovia.
6. The express terms of the BusinessLine Customer Agreement with Wells Fargo effective April 1, 2010 (and at the time the account was transferred to Wells Fargo), stated that, "If your account is subject to a variable rate, that rate will be determined for each monthly billing cycle by taking the highest **Wells Fargo Prime Rate** in effect during the Determination Date Range and adding a Spread. The Bank initially determines your Spread based on the evaluation of your credit risk. The Bank may subsequently change the Spread at Bank's sole discretion." (Emphasis added) Plaintiff's Exhibit C.
  7. Defendant acknowledged he received a letter from Steve Milani, Vice President, Business Direct Line of Credit informing him of the changes to the line of credit. See Affidavit of D. Bruce Wolff filed August 18, 2018. The Letter from Milani also attached the terms of the Wachovia Business Line of Credit being transferred effective June 2010. The terms clearly state the following: credit limit of \$78,000 and the interest rate **Wells Fargo Prime + 0.05%**. The document also stated that as of May 1, 2010 the Wells Fargo interest rate is 3.25%. Exhibit A, pp. 24-25, Affidavit of D. Bruce Wolff, August 2, 2018 (emphasis added).
  8. Another letter from Steve Milani, dated September 29, 2010, provided additional information about the Wells Fargo BusinessLine of Credit indicating when the transfer of the account would occur. The letter also stated under the heading, "Your Business Line account terms", that "the terms of your account were revised in June 2010." The letter also stated how the "payment due" is calculated. See Exhibit A, pp. 27-28, Affidavit of D. Bruce Wolff, August 2, 2018. These documents clearly state the changes for the interest rate and the payment due. Defendant received them.
  9. In order for a previous Wachovia account to be accepted by Wells Fargo, the customer was provided with an Authorization Form setting forth the new terms and conditions of Wells Fargo BusinessLine Customer Agreement. Defendant executed the authorization form on November 29, 2010. Plaintiff's Exhibit C. By signing the Authorization Form, Defendant consented to and accepted the terms and conditions of the Wells Fargo BusinessLine Customer Agreement. The balance

- on the Wachovia account was transferred to the Wells Fargo BusinessLine account.
10. Additional information regarding the new account with Wells Fargo was sent on April 19, 2011 indicating that the balance of the new account will be the balance transfer from the Wells Fargo Business Line of Credit account. Additionally, "the account guarantor is the individual who signed as an authorized representative of the business and as a personal guarantor of the business debt to the bank. ... An account guarantor is personally liable for the entire debt incurred on the account." See Exhibit A, pp. 31-32, Affidavit of D. Bruce Wolff, August 2, 2018.
  11. Defendant did not question the terms of the BusinessLine Customer Agreement and continued to take advantage of the benefits associated with the account by utilizing the Line of Credit when the balance was transferred to the new account. By this conduct, he agreed to the increases in the interest rate as reflected in the documents.
  12. In the monthly statement dated May 4, 2012, Defendant was advised "beginning with your June 2012 statement a new interest rate will apply. Please refer to the letter mailed in April or the enclosure for the changes to your business line account". Supplemental Affidavit of Erica Mendoza, April 10, 2018, Exhibit D. Contemporaneously with the May 4, 2012 notice, a letter was mailed to Defendant advising him that the interest rate was going to increase and that he could elect to either close the account and pay it off or accept the new terms. Defendant did not close the account and pay of the balance. He continued to utilize the Line of Credit. Supplemental Affidavit of Erica Mendoza, April 10, 2018, ¶¶ 13-15.
  13. The monthly statement to Defendant dated June 5, 2012 reflected the increase in the interest rate from 3.75% to 6.25%. The increase in the interest rate reflected an evaluation of Defendant's credit risk, the fact that only minimal payments were being received, and the account balance was \$74,940.26. Supplemental Affidavit of Erica Mendoza, April 10, 2018, ¶16 and Exhibit E.
  14. The monthly statement dated September 4, 2013 informed Defendant that "BEGINNING WITH YOUR OCTOBER 2013 STATEMENT, A NEW INTEREST RATE WILL APPLY. PLEASE REFER TO THE LETTER MAILED IN JULY OR THE ENCLOSURE FOR THE CHANGES TO YOUR BUSINESSLINE ACCOUNT." Supplemental Affidavit of Erica Mendoza,

- Exhibit F. The monthly statement dated October 3, 2013 reflects an increase in the annual interest rate from 6% to 7.25%. Supplemental Affidavit of Erica Mendoza, Exhibit G.
15. Prior to the February 2015 statement, notice was sent to Defendant informing him the "Current Payment Due will be equal to the sum of finance charges, bank fees, other charges plus 1.00% of your New Balance, rounded to the next higher dollar ...." The February 4, 2015 statement reflected the changes stated in the notice. The Current Payment Due of \$1,191.00 was a significant increase over the previous payments. Plaintiff's Exhibit K. The February 4, 2015 statement also reflected a New Balance of \$74,571.66 and finance charges of \$445.26. One percent of the New Balance plus the Finance Charges due totaled \$1,190.97. This figure was rounded to \$1,191.00 as stated in the notice to Defendant.
  16. On or about December 16, 2015, the Wells Fargo Prime rate increased by .25%. Effective with the January 5, 2016 statement, Defendant's interest rate was increased from 7.25% to 7.5%. The BusinessLine Customer Agreement informed Defendant that the "daily finance charge rate shown on your statement may or may not change in the month following a change in the Wells Fargo prime rate". Supplemental Affidavit of Erica Mendoza, April 10, 2018, ¶¶19-21.
  17. The last payment from Defendant was received on October 30, 2015.
  18. By letter dated March 17, 2017, Plaintiff made demand on Defendant for the \$70,473.34 owing under the BusinessLine Line of Credit.
  19. Currently, there is past due and owing the amount of \$70,473.34 in unpaid charges on the Line of Credit.
  20. Defendant applied and was approved for the BusinessLine Line of Credit. He utilized the Line of Credit by using the account. He was notified that if he wanted to cancel the account and not incur additional interest he would have to pay the account in full. He failed to do so. Defendant continued to have access to the Line of Credit with Plaintiff.
  21. Defendant failed to provide evidence to demonstrate that the amount sought by Plaintiff is inaccurate.
  22. Defendant requested a continuance of the hearing to allow him to gather

information from a class action arising out of California and North Carolina to allow computation of damages that Defendant suffered as a result of Plaintiff's conduct in fraudulently charging certain interest rates. The class action documents presented by Defendant are not applicable to the line of credit and the interest charged in this matter. The documents presented by Defendant refers to Wells Fargo's Community Bank for services related to retail, commercial, and corporate bank services through Community Bank, Wholesale Banking, and Wealth and Investment Management. These entities are not involved in any of the transactions in this matter.

23. Additionally, Defendant testified Plaintiff lost the stock certificates he provided as collateral. His affidavit states that he was forced to liquidate shares at the wrong time. Documents provided by Defendant do not support his claim that he was forced to liquidate any shares of stock. He purchased a Surety Bond at a cost of \$1812.00 to replace lost certificates for redemption in 2013. See Exhibit A, pp. 18-20, Affidavit of D. Bruce Wolff dated August 8, 2018.
24. Further, documentation from Wells Fargo show that it has not been able to determine the status of any collateral presented to Wachovia in 1999, despite its attempts to do so. Documents clearly establish that this stock was provided as collateral in 1999 when the Line of Credit was extended. Defendant received replacement stock certificates and it appears he subsequently sold shares of stock. See Affidavit of D. Bruce Wolff, dated July 12, 2022, Exhibit 2, Exh. A pp.11-23.
25. Throughout the hearing, Defendant requested time to obtain information from various sources and stated he was unaware of certain matters. These assertions are not timely. Defendant had several years to gather information and also had the benefit of counsel after the case was remanded to the circuit court. He had ample opportunity to gather and present any evidence needed to support his claims. This Court notes that the Court of Appeals opinion specifically affirms the finding of liability that Defendant owed a debt to Wells Fargo. The sole question for this Court is the amount owed.
26. At the hearing on the motion for Summary Judgment in 2018, Defendant indicated to the court that he intended to amend his answer to assert a counterclaim.

However, from the time Defendant filed his initial pro se answer on July 24, 2017, obtained counsel for the appeal, and after the remain in 2021, continued with the representation of an attorney until May 2022, Defendant failed to pursue any filing of a counterclaim or attempts to gather additional evidence to support his claims. Defendant unreasonably delayed seeking to amend his pleadings and gather additional evidence, any amendments or additional evidence at this time would prejudice Plaintiff.

### CONCLUSIONS OF LAW

1. In a breach of contract action, the burden is upon the Plaintiff to prove the contract, its breach and the damages caused by such breach. *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E. 2d 602, 610 (1967). This being an action for the breach of contract, the burden was upon the respondent to prove the contract, its breach, and the damages caused by such breach. *Baughman v. Southern Railway Co.*, 127 S.C. 493, 121 S.E. 356 (1924). The general rule is that for a breach of contract the defendant is liable for whatever damages follow, as a natural consequence and a proximate result of such breach. *National Tire & Rubber Co. v. Hoover*, 128 S.C. 344, 122 S.E. 858 (1924); and *Smyth v. Fleischmann*, 214 S.C. 263, 52 S.E.2d 199 (1949). Here, Plaintiff has met that burden by providing evidence to show that Defendant voluntarily entered into the contract and borrowed money under the Line of Credit. Plaintiff provided notice to Defendant of changes to the interest rate, minimum payments, and other charges and bank fees on the account.
2. A person who signs a contract or other written document cannot avoid the effect of the document by claiming he did not read it. *Sims v. Tyler*, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); *Evans v. State Farm Mut. Auto. Ins. Co.*, 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977). A person signing a document is responsible for reading the document and making sure of its contents. Every contracting party owes a duty to the other party to the contract and to the public to learn the contents of a document before he signs it. *Burwell v. South Carolina Nat'l Bank*, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986); *Sanders v. Allis Chalmers Mfg. Co.*, 237 S.C. 133, 139-40, 115 S.E.2d 793, 796 (1960); *Stanley Smith & Sons v. D.M.R. Inc.*,

- 307 S.C. 413, 417, 415 S.E.2d 428, 430 (Ct. App. 1992).
3. One who signs a written instrument has the duty to exercise reasonable care to protect himself. *Maw v. McAlister*, 252 S.C. 280, 285, 166 S.E.2d 203, 205 (1969); *Evans*, 269 S.C. at 587, 239 S.E.2d at 77; *DeHart v. Dodge City of Spartanburg*, 311 S.C. 135, 139, 427 S.E.2d 720, 722 (Ct. App. 1993).
  4. “The law does not impose a duty on the bank to explain to an individual what he could learn from simply reading the document.” *Citizens & S. Nat’l Bank of South Carolina v. Lanford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994). *Regions Bank v. Schmauch*, 354 S.C. 648, 663–64, 582 S.E.2d 432, 440 (Ct. App. 2003).
  5. A party may amend his pleadings only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires and not prejudice the other party. Rule 15(a) SCRPC. Defendant had the opportunity to amend his pleadings but failed to do so in a timely manner.
  6. Summary Judgment having been affirmed as to liability, the sole issue for this Court is the determination of the amount owed. Plaintiff established that the terms of the Wells Fargo BusinessLine of Credit were accepted by Defendant. The contract provided for a variable rate of interest based upon the Wells Fargo rate not the Wall Street Journal rate previously utilized by Wachovia. Defendant received notice of the increases in the interest rate as well as the basis for the increase in the minimum payment. Defendant had adequate advance notice of the changes to the account. He has failed to demonstrate any error in the amount of the debt owed under the line of credit.

### **ORDER**

Based upon the foregoing Findings of Fact and Conclusions of Law, **IT IS ORDERED** that judgment is awarded to Plaintiff in the amount of \$70,473.34.

**AND IT IS SO ORDERED.**



Richland Common Pleas

**Case Caption:** Wells Fargo Bank N A vs D Bruce Wolff  
**Case Number:** 2017CP4003865  
**Type:** Order/Damages

IT IS SO ORDERED!

s/ Alison Renee Lee



# The South Carolina Court of Appeals

D. Bruce Wolff

12/22/2022

## RECEIPT #97842

<b>Fee Type:</b>	Case Initiation Fee Filed After 10-15-18
<b>Amount:</b>	\$250.00
<b>Payment Type:</b>	Cash
<b>Reference No:</b>	
<b>Check/Money Order Date:</b>	12/22/2022
<b>Comments:</b>	Wells Fargo v. D. Bruce Wolff 2017CP4003865