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Jul 21 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Bank of the West,

Plaintiff,

vs.

Tammy Michele Epley,

Defendant.

IN THE CIRCUIT COURT

Case No. 2021-CP-10-02202

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

This matter came before the Court on July 10, 2023, on the Plaintiff's Motion for Summary Judgment. The hearing was attended by Robert C. Byrd and Phillip Fajgenbaum on behalf of the plaintiff Bank of the West, and defendant Tammy Michele Epley. Having considered the pleadings and all exhibits thereto, the applicable law, and the arguments and statements of counsel and the defendant, this Court finds that the Plaintiff's Motion should be granted, although entry of the judgment granted hereby shall be held in abeyance until July 25, 2023.

The Summons and Verified Complaint, which seeks recovery of the recreational vehicle (RV) purchased by the defendant with financing from the plaintiff and a money judgment for the amount outstanding, were personally served on the defendant on December 29, 2022. In response, the defendant served her *pro se* Answer generally denying the allegations of the Complaint, but asserting no affirmative defenses.

On February 16, 2023, the plaintiff mailed its First Set of Requests for Admission (the "Requests") to the defendant. In the Requests, the defendant was required to either admit or deny: (1) that the documents attached as exhibits to the Requests were "true and correct cop[ies]" of the documents dated February 25, 2019, and executed by the defendant in connection with her purchase of the recreational vehicle (RV) that is the subject of this action; (2) that the defendant

“is now, and for a period of time has been, in default” under the terms of the agreement with the plaintiff; and (3) that “the last payment made on the subject loan was in August 2022”. The Court finds that the defendant failed to timely serve any responses to the Requests, although it appears that the she may have filed copies with the Clerk of Court.

Under Rule 36(a), SCRCP, the failure to serve responses either admitting or denying requests for admission results in the requests being deemed admitted and conclusively established. *Hatchell v. Jackson*, 290 S.C. 256, 349 S.E.2d 407 (Ct. App. 1986) (failure to respond to requests for admission had the effect of deeming each matter to be admitted). *See also, Citibank Master Charge v. McRae*, 283 S.C. 56, 320 S.E.2d 503 (Ct. App. 1984) (reaching same conclusion in a collection case under former Circuit Court Rule 89). The defendant’s apparent lack of familiarity with the rules of civil procedure is not an excuse. *See, Cohen v. Cohen*, 438 S.C. 9, 19, 881 S.E.2d 650, 655-56 (App. 2022) (“[L]ack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.”).

In addition, the defendant failed to submit any affidavits in opposition to plaintiff’s summary judgment motion. When a summary judgment motion is made and supported as provided in Rule 56, SCRCP, the adverse party “ may not rest upon the mere allegations or denials of his pleading, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing there is a genuine issue for trial.” Rule 56(e), SCRCP. *See also, Conran v. Yager*, 263 S.C. 417, 420, 211 S.E. 2d 228, 229 (1975) (in an action to collect a debt, a general denial “is unavailing” where the debt instrument is attached to the complaint).

The defendant has failed to present, by affidavit or as otherwise provided by the rules, any facts showing there is a genuine of fact to be determined in a trial. Accordingly, I find and conclude

that the plaintiff is entitled to summary judgment as a matter of law and that the plaintiff is entitled to permanent possession of the subject RV, as described in the Verified Complaint.

The documents executed by the defendant provide for recovery by plaintiff of its reasonable attorneys' fees and costs incurred in connection with this action. In determining a reasonable attorney's fee, this Court is required to consider the following factors: (1) the nature, extent and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. *Dedes v. Strickland*, 307 S.C. 155, 414 S.E.2d 134 (1992). After considering the factors stated above, I find that the sum of \$7,380.00, which is less than 5% of the outstanding debt, is a reasonable sum to allow as attorneys' fees and the additional sum of \$290.00 in filing and service of process fees as costs incurred in this action. The fees and expenses set forth in the affidavit submitted by plaintiff's counsel are reasonable, given the time necessarily devoted to representing the plaintiff in this matter, the services of plaintiff's counsel, the professional standing of plaintiff's counsel, and the fees customarily awarded by this Court for similar services in this County.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

(1) Judgment shall be entered against the defendant **Tammy Michele Epley** in favor of the plaintiff, in the amount of \$147,546.38, plus interest accruing at the rate of 7.24% per annum from December 15, 2022, to July 10, 2023, in the amount of \$5,760.76, plus attorney's fees and costs in the amount of \$7,670.00 for a total judgment of \$160,977.14, plus interest accruing at the rate of 7.24% per annum from July 10, 2023, until entry of judgment, and post-judgment interest

accruing after judgment as provided by law until fully paid, subject only to the limitation set forth in Paragraph 7 hereinbelow.

(2) The plaintiff shall also have judgment for permanent possession of that certain 2019 Allegro 34PA Class A, Vin No. 1F66F5DY8K0A03787, including all accessions, attachments, accessories, and equipment placed in or on the said RV, with the right to dispose of the same according to law, subject only to the limitation set forth in Paragraph 7 hereinbelow.

(3) The defendant and anyone acting on her behalf are hereby enjoined and restrained from damaging, destroying, concealing, disposing of or removing the subject RV from Spartanburg County, South Carolina.

(4) The Sheriff of whatsoever county in which the aforescribed RV may be located is authorized and directed to take immediate possession thereof and to deliver peaceable possession to the plaintiff.

(5) The Sheriff(s) are further authorized to utilize any of their deputies as they deem necessary to take possession of the aforescribed RV, and are further authorized to use force to remove or oversee the removal of any impediment obstructing access to the RV.

(6) Any proceeds from the plaintiff's disposition of the RV, after payment of the costs of such disposition, shall be credited against the aforesaid money judgment.

(7) This Order and Judgment shall be held in abeyance until July 25, 2023, at which time the Clerk may enroll this Order as a judgment, and the plaintiff may proceed to enforce it, unless the amount found herein to be due the plaintiff is fully paid prior to July 25, 2023.

AND IT IS SO ORDERED.

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SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2021-CP-10-02202

Tammy Michele Epley,

Bank of the West,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Robert C. Byrd

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Order Granting Plaintiff's Motion for Summary Judgment

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Bank of the West	Tammy Michele Epley	\$160,977.14

If applicable, describe the property, including tax map information and address, referenced in the order:

