

RECEIVED

Nov 13 2023

SC Court of Appeals

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2021-CP-29-00808

Edrico Juan Blakeney,

Appellant,

v.

CITIBANK N.A,

Respondent.

INITIAL BRIEF OF APPELLANT

Edrico Juan Blakeney
2426 New Cut Church rd.
Lancaster, South Carolina 29720

* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case..... 1

Standard of Review 2

Facts and Procedural Back Ground3,4,5

Arguments

I. [Because Defendant answer in summon and company denying the total debt, and asking dept collector for verification of dept. Isn't the burden of proof on the plaintiff to prove the dept is owed by defendant? And without proof of the dept being owed by the defendant the plaintiff has no grounds to bring suit against defendant. There for the courts errored in granting plaintiff jurisdiction, the judgment on the pleading and summary judgment. And the lower courts for affirming the magistrate court ruling Bringing about an issue of material facts! FDCPA 1692g 809(a)(3)(4)(5)(b).....5

II. BECAUSE the courts errored in granting jurisdiction than summary judgment is improper. Because defendant states that he has never entered into an agreement with plaintiff that is raises an issue of material facts. As long as there are issues of material facts summary judgment is improper. *Cunningham v. Helping Hands, Inc.*, [352 S.C. 485, 491](#), [575 S.E.2d 549, 552](#) (2003) ("Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." (citations omitted)); *cf. Zurich Am. Ins. Co. v. Tolbert*, [387 S.C. 280, 283, 692 S.E.2d 523, 524](#) (2010) ("Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence." (citing *Hancock v. Mid-South Mgmt. Co.*, [381 S.C. 326, 330, 673 S.E.2d 801, 803](#) (2009))). The court of appeals' decision is therefore reversed and this case is remanded to the circuit court for trial. *S.C. Elec. & Gas Co. v. Anson Constr. Co.*, Op. No. 2015-UP-248 (S.C. Ct. App. filed May 13, 2015).....5

Conclusion

For the reasons stated, this Court should reverse the ruling and all judgments of the circuit court and grant any relief sought for by Appellant in the amount of \$18,084.79 for damages, attorney fee and court cost.....6

TABLE OF AUTHORITIES*

CASES

Cunningham v. Helping Hands, Inc., [352 S.C. 485, 491](#), [575 S.E.2d 549, 552](#) (2003).....2,3,5

Hancock v. Mid-South Mgmt. Co., [381 S.C. 326, 330](#), [673 S.E.2d 801, 803](#) (2009)..2,3,5

Zurich Am. Ins. Co. v. Tolbert, [387 S.C. 280, 283](#), [692 S.E.2d 523, 524](#) (2010)..... 2,3,5

S.C. Elec. & Gas Co. v. Anson Constr. Co., Op. No. 2015-UP-248 (S.C. Ct. App. filed May 13, 2015).....2,3,5

STATUTES

FDCPA 1692.....2,3,5

15 USC 1692a 803(6).....2,3,5

FDCPA 1692g 809(a)(3)(4)(5)(b).....2,3,5

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING JURISDICTION TO PLAINTIFF ?
2. DID THE TRIAL COURT ERR IN JUDGEMENT AND RULING ON THE PLEADING?
3. DID THE TRAIL COURT ERR IN RULING ON THE DAMAGES SUMMARY JUDGEMENT?
4. DID THE LOWER COURT ERR IN AFFIRMING TRIAL COURT RULING?

STATEMENT OF THE CASE

On August 20, 2020, Robert J. Stephenson Counsel and Debt Collection agency for Plaintiff CITIBANK N.A brought this Dept collection action alleging defendant entered into an agreement with Plaintiff for the use of a loan account against Edrico Juan Blakeney. On October 6, 2020 Blakeney answered contesting the jurisdiction of the courts, alleging CITIBANK N.A claim was a fraudulent claim and requested them to produce the contract or note of indebtedness.

The action was tried by bench trial in magistrate court on June 9, 2021, and judgment on the pleading was ruled on and summary judgment in the amount of \$4858.98 entered on behalf of CITIBANK N.A June 9, 2021. Stating that defendant Blakeney failed to provide sufficient legal basis for an defense.

On June 30, 2021, notice of appeal to the Courts Of Common Pleas was filled. On June 21, 2023 appeal was heard by a bench trial, an oral hearing was had. CITIBANK N.A didn't show up for hearing. Blakeney argued that he wasn't the account holder and never head of account until being served with court papers. And the Courts erred in granting jurisdiction and ruling for judgment on the pleadings and summary judgment in damages in the amount of \$4858.98 without Plaintiff presenting evidence that could prove that Blakeney was liable for said account. On June 23, 2023 the Courts affirmed the ruling of the magistrate courts that Appellant failed to provide sufficient legal basis for an defense for the circuit court to reverse or remand in this matter.

On July 24, 2023, Blakeney served an Notice of Appeal on the lower Court, CITIBANK N.A and there attorney's.

STANDARD OF REVIEW

15 USC 1692

Robert J Stephenson, RAS LaVrar, llc and CITIBANK N.A s a Debt Collection Company according to 15 USC 1692a 803(6)

Wasn't CITIBANK N.A. required to answer and provide evidence to defendant with the information he asks for verification of the dept., in the Answer to the summons and complaint. FDCPA 15 USC 1692g 809(a)(3)(4)(5)(b)

STANDARD OF REVIEW

Having carefully reviewed the record, we are firmly persuaded there is a genuine issue of material fact regarding the terms of the parties' contract. Because of this factual dispute, the entry of summary judgment was improper. *See, e.g., Cunningham v. Helping Hands, Inc.*, [352 S.C. 485, 491](#), [575 S.E.2d 549, 552](#) (2003) ("Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." (citations omitted)); *cf. Zurich Am. Ins. Co. v. Tolbert*, [387 S.C. 280, 283](#), [692 S.E.2d 523, 524](#) (2010) ("Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence." (citing *Hancock v. Mid-South Mgmt. Co.*, [381 S.C. 326, 330](#), [673 S.E.2d 801, 803](#) (2009))). The court of appeals' decision is therefore reversed and this case is remanded to the circuit court for trial. *S.C. Elec. & Gas Co. v. Anson Constr. Co.*, Op. No. 2015-UP-248 (S.C. Ct. App. filed May 13, 2015).

FACTUAL AND PROCEDURAL
BACKGROUND

Until being served with summons and complaints on 9/9/2020 from Trail Court, Appellant Edrico Juan Blakeney never heard of Plaintiff CITIBANK N.A., Tractor Supply credit cards, and Robert J Stephenson, RAS LaVrar, llc Counsel for plaintiff nor of ANY ALLEDGED accounts. Blakeney never applied for such card or any card with CITIBANK N.A or TRACTOR SUPPLY COMPANY. Blakeney never received or used any Credit Card from CITIBANK N.A/TRACTOR SUPPLY COMPANY at any time in his life. Blakeney never had any form of communication with or from CITIBANK N.A/TRACTOR SUPPLY COMPANY, or Counsel for plaintiff before summons and complaint. After, being served with the summons and complaint on 9/9/2020 Blakeney sent his First letter labeled, NOTICE OF UNDERSTANDING AND CONDITIONAL ACCEPTANCE AND REQUEST FOR A PROPER BILL AND LAWUL CONTRACT AND FULL RECORD OF ACCOUNTING AND FEE SCHEDULE followed by multiple letters on additional dates to CITIBANK NA, TRACTOR SUPPY COMPANY, AND Robert J Stephenson Counsel for CITIBANK NA denying all claim stating everything that was stated above. Also asking for verification of the alleged debt by way of some form of contract between appellant and them. Simultaneously Mr. Blakeney examined his credit report to find that CITIBANK N.A/TRACTOR SUPPLY COMPANY had been reporting the same information labeled as Statement of Accounts in the summons and complaint to all three major credit bureaus. So, Blakeney wrote letters disputing all information reported by them accompanied with the same First letter that was sent to CITIBANK NA, TRACTOR SUPPLY COMPANY, and Counsel for them. After disputing all information reported on Blakeney credit report by them, the account and information was removed from Blakeney's credit report.

After receiving the new credit report, Blakeney filled his answer with the trail courts on 10/6/2020. Blakeney answer and legal defense that was turned into the court all together in one document consisting of a total of six (6) pages. The first page is the courts blank defendants ANSWER and AFFIDAVITE form sent with original summons and complaint. Appellant Answer see attached; is 4 pages numbered 1 of 4 through 4 of 4. On page 1 of 4 of the AFFIDAVITS there is 4 points raised as a legal defense. The first 2 points are statues of frauds. The 3rd point is the name Edrico Juan Blakeney is copywrite/trademark with affidavit to support it. And the 4th point raised is The First letter sent NOTICE OF UNDERSTANDING AND CONDITIONAL ACCEPTANCE AND REQUEST FOR A PROPER BILL AND LAWUL CONTRACT AND FULL RECORD OF ACCOUNTING AND FEE SCHEDULE. In this letter the appellant clearly says he does not and has never had such an account with the plaintiff. The defendants answer denying all the claims made by plaintiff and asking them to verify according to FDCPA 15 USC 1692g 809 (a)(3)(4)(5)(b) to defendant and the court that defendant opened the account making defendant the holder of the account which defendant denies. Upon legal verification that defendant personally opened the alleged account, and that defendant has made any agreement with CITI BANK NA./TRACTOR

SUPPLY COMPANY To Supply the form with defendant's signature or something to prove defendant's point of contact to initiate a contract for the purported account. Proof that he is the card holder. Any lawful proof of the exercising of an agreement/contract. Blakeney also sent letters by certified mail, return receipt requested also on 10/6/2020, 11/9/2020, 12/4/2020 and 1/25/2021 and never received any response from Plaintiff nor their Attorney.

Trial date was set for 6/9/2021. The trial was started by the courts setting the stage for trial. The courts asked Mr. Blakeney if he understood the proceedings. Mr. Blakeney pointed out to the courts that proceedings couldn't start without jurisdiction being established by them. Mr. Blakeney stated that the same question's that was raised about a legal agreement needed in his Proposal/ Answer to the courts summons and complaint filed was never addressed by the courts, or by CITIBANK NA. Then CITIBANK NA. was granted jurisdiction. As Blakeney objected, there isn't a contract or proof of an agreement between parties for the courts to have jurisdiction to try the case. The courts ruled in CITIBANK NA favor. Blakeney let the courts know that he would be appealing because he felt the courts erred in granting jurisdiction without proof of Blakeney being the account holder. The courts took notice of Blakeney notice of appeal. CITIBANK asked for motion judgment on the pleading pointing to **Defendants response to Plaintiffs complaint** saying that no legal defense was raised but the statue of fraud. Blakeney objected stating that they never proved he was the account holder. And he had evidence to support his statement. Then the Court said that we have talked a lot about things we have not seen evidence for yet, we would have to get into the case before it could make a ruling. Immediately CITIBANK requested for the same motion judgment on the pleading saying no legal defense was raised but the statue of fraud. The Courts rule in favor of Plaintiff motion for judgment on the pleading. Blakeney objected stating that CITIBANK has not brought forward any evidence and that we had to get into the case before any evidence could be given as the courts just stated!. But the courts interrupted and quickly agreed with CITIBANK. The Courts told Blakeney that he couldn't object to the Court's ruling because the Plaintiff was correct that Blakeney answer to summon, and complaint wasn't a legal defense. And that Plaintiff was stating why it wasn't a legal defense, and the courts know that it wasn't as well. Blakeney asked the courts to explain to him what the ruling on the pleading meant and how did it affect the trail. The courts explain again that nothing in Blakeney answer to the summons and complaint was a legal defense to make claim on. Blakeney asked the Courts to confirm for him that the plaintiff had established that they have a legal standing to bring him into courts and to be rewarded with judgment on the pleading, the Courts answered yes! Blakeney stated that he had evidence to prove otherwise. The courts said it wasn't needed; they have already ruled in their favor. And they were moving on to prove the damages.

A witness for CITIBANK Steven Sabo, Corporate representative/assistance vice president and custodian of business record was sworn in and questioned by their own attorney. Then Blakeney questioned the witness asking him to prove his position at CITIBANK and prove to the courts that Blakeney was the account holder and how did he know Mr. Blakeney And when and how did he come in contact with him. The Attorney objected and said that information was covered with ruling on the pleading. And had no part with the pleading on the damages. The courts agreed and awarded summary judgment in the amount of \$4858.98.

On June 30, 2021, notice of appeal to the Courts Of Common Pleas was filled. On June 21, 2023

appeal was heard by a bench trial, an oral hearing was had. CITIBANK N.A didn't show up to the hearing. Blakeney argued that he wasn't the account holder and never heard of such account until being served with court papers. And the Courts erred in granting jurisdiction and ruling for judgment on the pleadings and summary judgment in damages in the amount of \$4858.98 without Plaintiff presenting evidence that could prove that Blakeney was liable for said account. On June 23, 2023 the Courts affirmed the ruling of the magistrate courts that Appellant failed to provide sufficient legal basis for an defense for the circuit court to reverse or remand in this matter.

On July 24, 2023, Blakeney served an Notice of Appeal on the lower Court, CITIBANK N.A and there attorney's.

ARGUMENTS

- III. [Because Defendant answer in summon and company denying the total debt, and asking dept collector for verification of dept. Isn't the burden of proof on the plaintiff to prove the dept is owed by defendant? And without proof of the dept being owed by the defendant the plaintiff has no grounds to bring suit against defendant. There for the courts erred in granting plaintiff jurisdiction, the judgment on the pleading and summary judgment. And the lower courts for affirming the magistrate court ruling Bringing about an issue of material facts! FDCPA 1692g 809(a)(3)(4)(5)(b)]

ARGUMENTS

- IV. BECAUSE the courts erred in granting jurisdiction than summary judgment is improper. Because defendant states that he has never entered into an agreement with plaintiff that is raises an issue of material facts. As long as there are issues of material facts summary judgment is improper. *Cunningham v. Helping Hands, Inc.*, [352 S.C. 485, 491](#), [575 S.E.2d 549, 552](#) (2003) ("Summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." (citations omitted)); *cf. Zurich Am. Ins. Co. v. Tolbert*, [387 S.C. 280, 283, 692 S.E.2d 523, 524](#) (2010) ("Summary judgment should be denied where the non-moving party submits a mere scintilla of evidence." (citing *Hancock v. Mid-South Mgmt. Co.*, [381 S.C. 326, 330, 673 S.E.2d 801, 803](#) (2009))). The court of appeals' decision is therefore reversed and this case is remanded to the circuit court for trial. *S.C. Elec. & Gas Co. v. Anson Constr. Co.*, Op. No. 2015-UP-248 (S.C. Ct. App. filed May 13, 2015).

CONCLUSION

For the reasons stated, this Court should reverse the ruling and all judgment of the circuit court and grant any relief sought for by Appellant in the amount of \$18,084.79 for damages, attorney fee and court cost.

Respectfully submitted,

November 13, 2023

/s/ Edrico Juan Blakeney
Edrico Juan Blakeney
2426 New Cut Church rd
Lancaster, South Carolina 29720
Appellant

