

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF MARLBORO) FOURTH JUDICIAL CIRCUIT
)
Synchrony Bank,)
) No 2021-CP-34-00228
 Plaintiff,)
)
 v.)
)
Michael Hudson,)
)
 Defendant.)

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Feb 29 2024

Order **SC Court of Appeals**

This matter comes before this Court on the parties’ cross-motions for summary judgment, which were heard by this Court on January 16, 2024, at the Marlboro County Courthouse. Plaintiff argues that there is no genuine issue of material fact regarding the existence of Defendant’s debt to the Plaintiff and is entitled to judgment as a matter of law. Defendant argues that this action should be dismissed for failure to comply with South Carolina’s Alternate Dispute Resolution Rules. After considering the submissions and arguments of counsel, this Court finds and concludes as follows.

Plaintiff’s Motion for Summary Judgment

This Court finds no material change in the proof for this motion from Plaintiff’s motion for summary judgment Judge Burch denied from the bench on June 20, 2023. This Court agrees with Judge Burch and finds there are genuine issues of material fact that must be considered by the jury, not by a judge. *See* Rule 56, SCRPC; *Kitchen Planners, LLC v. Freidman*, 440 S.C. 456, 892 S.E.2d 297 (2023). Plaintiff’s motion for summary judgment is denied.

Defendant’s Motion for Summary Judgment

As to Defendant’s motion for summary judgment, this Court will treat this as a motion for sanctions under Rule 10(b), SCADR, as that is the motion’s stated basis. *See Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (The substance of the relief, not the form of the motion, is what matters.). This Court would note that the summons and complaint in this

case was filed on August 23, 2021; according to South Carolina's ADR rules, this matter "shall" be mediated within 300 days after filing. Rule 5(f), SCADR. South Carolina's ADR rules provide for sanctions for violations of those rules without good cause. Rule 10(b), SCADR. Here, the parties have not mediated this matter in accordance with Rule 5(f) and no party has requested exemption from South Carolina's ADR requirement. Plaintiff argues that because no ADR notice was issued by this Court or the Clerk of Court, it is excused from ADR. This argument does not constitute "good cause" – our ADR rules clearly and unambiguously mandate ADR. Rule 3(a), SCADR.

Rule 10(b), SCRCPP, provides any sanction under Rule 37(b), SCRCPP, is appropriate for violations of South Carolina's ADR Rules. Rule 37(b)(2)(C), SCRCPP, provides authority to dismiss an action. This Court also possesses the inherent power to control its dockets and manage its affairs, including the ability to strike pleadings. *See Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 211-212, 493 S.E.2d 826, 832 (1997). This case, which was filed in 2021, was to be tried on November 13, 2023. Defendant's October 11, 2023, motion to continue the trial noted, *inter alia*, that this action had not been mediated. After trial was continued, but instead of pursuing mediation the Plaintiff filed a second motion for summary judgment. This conduct is sufficiently intentional, the resolution of this matter has been sufficiently delayed, and the Defendant has been sufficiently prejudiced defending it to warrant the sanction of dismissal. Defendant's motion is granted, and this action is dismissed. Because this action cannot be refiled and served within the requisite limitations period, this dismissal is with prejudice. *See* Rule 3(a), SCRCPP; S.C. Code §§ 15-3-20 & 15-3-520.

Accordingly, it is **ordered**, **adjudged**, and **decreed** that Plaintiff's motion for summary judgment is **denied**, Defendant's motion for summary judgment (treated as a motion for sanctions) is **granted**, and this action is **dismissed with prejudice**.

It is so Ordered.



Marlboro Common Pleas

Case Caption: Synchrony Bank VS Michael Hudson

Case Number: 2021CP3400228

Type: Order/Dismissal

So Ordered

s/ Michael S. Holt, 2772