

RECEIVED

May 31 2024

SC Court of Appeals

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM MARLBORO COUNTY
Court of Common Pleas

Michael S. Holt, Circuit Court Judge

Appellate Case No. 2024-000280

Synchrony Bank,

Appellant,

v.

Michael Hudson,

Respondent.

INITIAL BRIEF OF APPELLANT

Wesley D. Dail
Post Office Box 110564
Durham, North Carolina 27709
(919) 354-1442
Attorney for Appellant

TABLE OF CONTENTS

Table of Authorities i

Statement of Issues on Appeal1

Factual & Procedural History1

Standard of Review 3

1. THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN DENYING SYNCHRONY BANK’S MOTION FOR SUMMARY JUDGMENT AND GRANTING HUDSON’S MOTION FOR SUMMARY JUDGMENT 4

2. THE TRIAL COURT ERRED IN DISMISSING SYCHRONY BANK’S COMPLAINT AS A SANCTION UNDER RULE 10(b) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE7

TABLE OF AUTHORITIES

CASES

Laurens Emergency Med. Specialists v. M.S. Baily and Sons Bankers, 355 S.C. 104, 584 S.E.2d 375 (2003)..... 3

Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002)..... 3

Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (CT App. 2003) 3

Sauner v. Public Serv. Auth., 354 S.C. 397, 581 S.E.2d 161 (2003)..... 3

Hendricks v. Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003)..... 3

Russell v. Wachovia Bank, N.A., 353 S.C. 208, 578 S.E.2d 329 (2003) 4

Trivelax v. South Carolina Dept. of Transp., 348 S.C. 125, 558 S.E.2d 271 (St. App. 2001) 4

SSI Med Servis., Inc. V. Cos, 301 S.C. 493, 392 S.E.2d 789 (1990)..... 4

Peterson v. West American Ins., Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999) 4

Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999) 8

Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 99, 674 S.E.2d. 524, 528 (Ct. App. 2009)..... 8

Conley v. Gibson, 355 U.S. 41, 45–46, 78 S.Ct. 99 2 L.Ed.2d 80 (1957)..... 9

**STATEMENT OF ISSUES ON
APPEAL**

1. DID THE TRIAL COURT ERR IN DENYING SYNCHRONY BANK'S MOTION FOR SUMMARY JUDGMENT AND GRANTING HUDSON'S MOTION FOR SUMMARY JUDGMENT?
2. DID THE TRIAL COURT ERR IN DISMISSING SYCHRONY BANK'S COMPLAINT AS A SANCTION UNDER RULE 10(b) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?

FACTUAL & PROCEDURAL HISTORY

Appellant, Synchrony Bank filed its Summons & Complaint in the Marlboro County Court of Common Pleas on August 23, 2021 (Civil Action No. 2021-CP-34-00228). Respondent, Michael Hudson, was successfully served on September 27, 2021. Thereafter, Respondent timely filed an Answer through counsel on November 10, 2021. Please note that the Answer was filed during the time period in which the allowable duration to file a responsive pleading was extended an additional thirty (30) days by an Order issued by the South Carolina Supreme Court in consideration for the challenges stemming from the coronavirus pandemic. See *S.C. Supreme Court Order, Appellate Case No. 2020-000447 (April 14, 2020)*.

After the parties exchanged Discovery, the Appellant filed its initial Motion for Summary Judgment on April 7, 2022. Appellant's Motion was first set to be heard before the Honorable Paul M. Burch on September 13, 2022. Prior to the scheduled Hearing, Appellant requested a continuance by email to Judge Burch's office due to a scheduling conflict. Counsel for the Respondent consented to Appellant's request on the same email chain. Judge Burch granted Appellant's request, which was confirmed by both a phone call and email with the Judge's office.

Appellant's Motion for Summary Judgment was next set for Hearing on June 20, 2023 by

Notice sent to both parties by the Court on May 19, 2023. Prior to the scheduled Hearing, Appellant filed a Memorandum in Support of its Motion on June 13, 2023. At the Hearing, Judge Burch issued a verbal denial of Appellant's Motion for Summary Judgment, holding that there was a genuine issue of material fact as to why there were two different account numbers shown on the records attached as an Exhibit to Appellant's pleadings.

The matter was subsequently placed on a Non-Jury Roster scheduled for November 13, 2023, to be heard before the Honorable Judge Michael S. Holt. Notice of such was sent by the Court to both parties on October 5, 2023. On October 11, 2023, counsel for the Respondent sent an email to Appellant's counsel, which stated in full:

“You are in luck. I will have to file a motion to continue this because I have oral arguments at the SC Supreme Court on Nov. 14. Please let me know if you consent to a continuance. I will file the motion later today.”

Appellant's counsel replied consenting to Respondent's request for a continuance and thereafter Respondent filed a formal Motion for a Continuance with the Court on October 11, 2023. The second paragraph of Respondent's Motion is especially pertinent in regard to the present Appeal:

“This case has not been mediated. *See* Rule 3(a), SCADR; Rule 5(f), SCADR; Rule 10(a), SCADR.”

It is crucial to note that the issue of mediation had not raised at any point prior to the reference contained in the second paragraph of Respondent's Motion for a Continuance. To that point there was no reference to any potential mediation contained in any portion of the Court's official record, nor was there any mention or discussion of such in any unofficial communication between counsel for each party. Additionally, no Notice of ADR was ever issued by the Court at any point. An Order granting the requested Continuance was issued by Judge Burch on October

12, 2023.

Appellant filed its second Motion for Summary Judgment on October 16, 2023 and later filed an Amended Motion for Summary Judgment on January 3, 2024, as well as a Memorandum in Support thereof on the same date. The following day, Respondent filed his own Motion for Summary Judgment, based on an allegation that Appellant failed “to comply with South Carolina’s ADR rules.” In response, Appellant filed a Motion in Opposition thereto on January 10, 2024.

The respective Motions of each party were heard before Judge Holt on January 16, 2024. After hearing arguments from both parties, Judge Holt stated that he would review the filings and issue a ruling at a later date. The following day, counsel for both parties were notified of Judge Holt’s decision by an email from his Law Clerk. That email informed the ruling to deny Appellant’s Motion for Summary Judgment and to grant Respondent’s Motion for Summary Judgment, further requesting that Respondent’s counsel draft and E-File an Order. The Order drafted by Respondent’s counsel was signed by Judge Holt on January 23, 2024. Appellant filed the Notice of Appeal on February 19, 2024.

STANDARD OF REVIEW

Under Rule 56 of the South Carolina Rules of Civil Procedure, summary judgment is properly granted when there is no genuine issue of material fact and where the moving party is entitled to summary judgment as a matter of law. See *Laurens Emergency Med. Specialists v. M.S. Baily and Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003); *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (CT App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. See *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v.*

Clemson Univ., 353 S.C. 449, 578 S.E.2d 711 (2003).

Additionally, summary judgment is appropriately granted where the pleadings, depositions, answer to interrogatories, and admissions on file, together with any affidavits that might have been filed with the court, show that there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. See *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003).

Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating an absence of a genuine issue of material fact. See *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; *Trivelax v. South Carolina Dept. of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (St. App. 2001). However, once the party moving summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. See *Regions Bank*, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. See *SSI Med Servis., Inc. V. Cos*, 301 S.C. 493, 392 S.E.2d 789 (1990); *Peterson v. West American Ins., Co.*, 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999).

ARGUMENTS

1. THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN DENYING SYNCHRONY BANK'S MOTION FOR SUMMARY JUDGMENT AND GRANTING HUDSON'S MOTION FOR SUMMARY JUDGMENT

The Trial Court found that there was “no material change in the proof for this motion [Synchrony's First Motion for Summary Judgment]” and that the Court finds there are genuine issues of material fact that must be considered by the jury and not by a Judge. While the Court is correct in stating that the “proof” has not changed, the Court's interpretation of that proof is wholly incorrect. The original denial of Synchrony's Motion for Summary was based on the Court's

ruling that the issue of material fact concerned the change in the account numbers for Hudson's credit card account and as to whether both numbers were in fact the same account. Judge Holt's observation that the same "proof" was used, namely that Synchrony used the copies of Account Statements issued on Hudson's Account, ignores the fact that those same Account Statements remove the issue of material fact found in the earlier denial of Synchrony's Motion for Summary Judgment.

Indeed, the Appellant's Motion for Summary Judgment that Judge Holt deemed to have no material change, went into some detail explaining to the Court why there was no issue of material fact remaining with regarding to the assignment of the Account Numbers. Please see the following extract from the Appellant's Motion for Summary Judgment denied by Judge Holt:

4. The Respondent entered into a credit agreement with Synchrony Bank, the Appellant herein, pursuant to which, the Appellant extended credit to the Respondent in the form of a Sam's Club MasterCard affiliate credit card credit account initially bearing the account number ending in the last four digits XXXX-XXXX-XXXX-2251, which was subsequently transferred to and became the Respondent's Sam's Club MasterCard affiliate credit card credit account bearing the account number ending in the last four digits XXXX-XXXX-XXXX-5478 (hereinafter, the "Respondent's Account").

5. The Respondent accepted and used the credit extended to him, in the form of the Respondent's Account, by the Appellant as evidenced by the attached redacted copies of the monthly account statements dated November 24, 2014 through April 24, 2020. Said monthly account statements are attached hereto as Exhibit "1" and are incorporated herein by this reference.

6. The Respondent accepted and used the credit extended to him under the account number XXXX-XXXX-XXXX-2251, as shown by the account statements dated November 24, 2014 through May 25, 2018, thus tendering his promise to repay to the Appellant the balance incurred on the subject account. Additionally, the account statements show that the Respondent made payments towards the balances that the Respondent incurred on the Respondent's Account.

7. The account statement dated May 25, 2018, shows an ending balance due and owing on the Respondent's Account in the amount of \$3,439.12, with a previous balance due in the amount of \$3,528.52. Said statement also shows that the Respondent made a payment in the amount of \$160.00 towards the previous

balance thus demonstrating that the Respondent intended to repay to the Appellant, his obligation resulting from his use of the credit extended to him by the Appellant.

8. The account statement dated June 25, 2018, which is the first account statement bearing the account number ending in the last four digits of XXXX-XXXX-XXXX-5478, shows a previous balance due on the account number XXXX-XXXX-XXXX-5478 in the amount of \$0.00. Additionally, said statement shows a balance transfer in the amount of \$3,439.12 from the account number XXXX-XXXX-XXXX-2251 occurring on May 27, 2018. This account statement also shows that the Respondent used the subject account, now bearing the account number XXXX-XXXX-XXXX-5478, multiple times between June 2, 2018 and June 20, 2018, and that he also made a payment in the amount of \$129.00, which was posted to the Respondent's Account on June 15, 2018.

9. During the time period of May 27, 2018 through October 26, 2018, the Respondent continued to accept and use the credit extended to him by the Appellant, in the form of the credit card account now bearing the account number XXXX-XXXX-XXXX-5478. Moreover, the Respondent continued to make payments towards the balances incurred on the Respondent's Account through December 12, 2019, without disputing any of the charges or fees, payments or transactions posted to the subject account.

Synchrony Bank has fully demonstrated that there are no material facts remaining with regard to Judge Burch's original findings concerning the Account Numbers issued on Hudson's Account. Furthermore, since Judge Holt's Order Denying Synchrony Bank's Motion for Summary Judgment fails to specifically set forth any other material facts to be determined by a jury, it can only be presumed that Judge Holt also found material fact remaining with regard to the Account Numbers. As set forth above, Synchrony Bank has demonstrated that there is no issue of material fact remaining with regard to the Account Numbers issued on Hudson's Account, it can only be determined that the Court committed a reversible error when it found that there are material facts remaining in this matter.

Additionally, it should be noted that Hudson's Motion for Summary Judgment does not actually contend that there is no genuine issue of material fact as to the allegations of the Appellant's Complaint in this action. Namely, that Hudson entered into a credit agreement with

the Appellant, pursuant to which the Synchrony Bank extended credit to Hudson in the form of the account that is the subject of the Complaint. That Hudson accepted and used the credit, thus incurring balances that Hudson is obligated to repay to the Appellant and that Hudson defaulted on his obligation to repay the Appellant the debt owed on the Hudson's Account. Rather, Hudson ignores the facts underlying the Appellant's action in order to contend that there is no genuine issue of material fact as to whether the Appellant participated in a mediation under the South Carolina Rules of ADR. Therefore, Summary Judgment should have been granted in favor of Synchrony Bank.

2. THE TRIAL COURT ERRED IN DISMISSING SYNCHRONY BANK'S COMPLAINT AS A SANCTION UNDER RULE 10(b) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE

The Trial Court found that, despite the fact that it was Hudson's motion to continue the hearing date of November 13, 2023, Synchrony's conduct was "sufficiently intentional, the resolution of this matter has been sufficiently delayed, and the Respondent has been sufficiently prejudiced defending it to warrant the sanction of dismissal." Judge Holt's ruling that Synchrony has "delayed" the legal process ignores the fact that Synchrony has initiated this action in good faith and has taken all reasonable steps to prosecute this matter. Synchrony has filed two (2) separate Motions for Summary Judgment (and has amended its second Motion for Summary Judgment), has conducted discovery in this matter and has responded to Hudson's discovery requests. Additionally, this matter has been set for hearing in front of this court on four (4) occasions, with Synchrony's First Motion for Summary Judgment being heard and denied during one of those hearings. None of this can be described as "unreasonable neglect" of its obligation to properly and timely prosecute its action on the part of Synchrony.

Furthermore, Judge Holt specifically took umbrage that "instead of pursuing mediation the

Appellant [Synchrony] filed a second motion for summary judgment,” after the date of the November 13, 2023, hearing that was continued at Hudson’s request. This is incorrect. Synchrony’s Second Motion for Summary Judgment was filed with the Court on October 16, 2023, with the intent that that Motion be heard on November 13, 2023. As that hearing was continued at Hudson’s request, Synchrony amended its Second Motion for Summary Judgment on December 30, 2023.

While Hudson titled his motion in this action a Motion for Summary Judgment (and which Judge Holt viewed as a Motion for Sanctions), Hudson actually argues in that Motion that Synchrony’s Complaint in this action should be dismissed with prejudice. Additionally, in Hudson’s Answer, Hudson did raise the affirmative defense that Synchrony has failed to set forth a claim upon which relief may be granted. If the Court is to dismiss Synchrony’s Complaint, Hudson’s Motion for Summary Judgment, in the light most favorable to Hudson, is best viewed as a Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Under this rule, a Complaint is subject to dismissal when it “fails to state facts sufficient to constitute a cause of action.” In considering whether to grant a Motion to Dismiss, the trial court must base its ruling solely on allegations set forth in the Complaint. If the facts and inferences drawn from the facts alleged in the Complaint, when viewed in the light most favorable to the Appellant, would entitle the Appellant to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. See *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). Furthermore, “the question is whether, in the light most favorable to the Appellant, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 99, 674 S.E.2d. 524, 528 (Ct. App. 2009). In determining whether a Complaint should be dismissed, the “accepted rule [is] that a complaint should not be

dismissed for failure to state a claim unless it appears beyond doubt that the Appellant can prove no set of facts in support of his claim which would entitle him to relief, *Conley v. Gibson*, 355 U.S. 41, 45–46, 78 S.Ct. 99 2 L.Ed.2d 80 (1957).

However, in Hudson’s Motion for Summary Judgment, Hudson takes absolutely no notice of the actual merits of the allegations of Synchrony’s Complaint. Most likely this is an acknowledgement of the fact that, as set forth in the other pleadings filed in this action, Synchrony has more than sufficiently established the basis for its Complaint and indeed for granting Summary Judgment in Synchrony’s favor in this action. Therefore, it can be determined that Hudson does not actually contend in this Motion that Synchrony’s Complaint fails to set forth a claim upon which relief may be granted. Rather, Hudson appears to be attempting to have the Appellant’s Complaint dismissed under Rule 10(b) of the South Carolina ADR. It is this position that Judge Holt also takes.

Synchrony freely admits and agrees with Judge Holt that the Court possesses the “inherent power to control its dockets and manage its affairs.” However, Synchrony would ask this body if the Sanction of a Dismissal with Prejudice, or even a dismissal at all, is an appropriate ruling on the part of Judge Holt. This is an especially pertinent question given that Rule 4(c) of the South Carolina ADR sets forth as follows:

“In circuit court cases subject to ADR in which no Proof of ADR has been filed on the 210th day after the filing of the action, the Clerk of Court shall appoint a primary mediator and a secondary mediator from the current Roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed. A Notice of ADR appointing the mediators shall be issued upon a form approved by the Supreme Court or its designee.”

Synchrony points out that the Court has not appointed any mediators in this action and no Notice of ADR appointing mediators has been issued by the Court.

Furthermore, Rule 10 (a) of the South Carolina ADR sets forth as follows:

“If by the time required by these rules, no Proof of ADR has been filed with the Office of the Clerk of Court and the case has not been exempted or deferred from ADR by court order, the Court may issue a Rule to Show Cause why sanctions should not be imposed...”

To the detriment of the Hudson’s Motion for Summary Judgment, the Court has not issued a Rule to Show Cause in this action.

Instead of appointing mediators in this matter pursuant to Rule 4 or issuing a Rule to Show Cause, Judge Holt moves past that to issue an Order Dismissing Synchrony’s action with Prejudice. In support of this decision, Judge Holt ignores the history of this case and the fact that, had Hudson not requested a continuance of the November 2023 hearing, Synchrony’s Motion for Summary Judgment would have been properly granted prior to the end of the ADR mandated time period.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

May 31, 2024

s/Wesley D. Dail
S.C. Bar No. 100355
Attorney for Appellant
P.O. Box 110564
Durham, North Carolina 27709
Telephone: (919) 688-1000
Fax: (919) 688-9000
Email: consumerinquiries@sessomslaw.com

RECEIVED

May 31 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appellate Case No. 2024-000280

Synchrony Bank,

Appellant,

vs.

Michael Hudson,

Respondent,

CERTIFICATE OF MAILING

This is to certify that, pursuant to Rule 5 of South Carolina Civil Procedure, a copy of the Initial Brief of Appellant was this day served upon the Respondent in this action by mailing a copy thereof, postage prepaid, to the Respondent's attorney, as follows:

Jason Scott Luck
Attorney at Law
P.O. 47
Bennettsville, South Carolina 29512

Dated: May 31, 2024

SESSOMS & ROGERS, P.A.

s/Wesley D. Dail
S.C. Bar No. 100355
Attorney for Appellant
P.O. Box 110564
Durham, North Carolina 27709
Telephone: (919) 688-1000
Fax: (919) 688-9000
Email: consumerinquiries@sessomslaw.com