

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM MARLBORO COUNTY  
Court of Common Pleas

JUL 17 2024

SC Court of Appeals

Michael S. Holt  
Circuit Court Judge

Appellate Case No. 2024-000280  
Marlboro County Case No. 2021-CP-34-00228

Synchrony Bank, .....Appellant,

v.

Michael Hudson .....Respondent

**PETITION FOR REHEARING**

Respondent, pursuant to Rule 221(c), SCACR, requests rehearing of his Motion to Dismiss. Respondent would show the following in support of his request:

**BACKGROUND**

This is a debt collection action. Appellant Synchrony Bank (the creditor) alleges it issued Respondent Michael Hudson (the alleged debtor) a credit card, and that Respondent failed to pay under the alleged credit card agreement. On January 23, 2024, Judge Michael Holt granted Respondent's motion for summary judgment, dismissing Appellant's action with prejudice. Judge Holt held the following:

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), [SCADR], provides any sanction under Rule 37(b), SCRPC, is appropriate for violations of South Carolina's ADR Rules. Rule 37(b)(2)(C), SCRPC, 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, [...] 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), SCRPC; S.C. Code §§ 15-3-20 & 15-3-520.

*Synchrony Bank v. Hudson*, No. 2021-CP-34-00228 (S.C. Ct. Comm. Pl. Order dated January 23, 2024).

On February 19, 2024, the Appellant filed its Notice of Appeal with the Marlboro County Circuit Court. Appellant did not serve (as the rules understood at the time) Respondent with the Notice of Appeal until March 12, 2024. On March 26,

2024, Appellant filed a Motion to Dismiss for failure to serve, which this Court denied by order dated April 26, 2024, citing *Eberly v. Advanced Flooring & Design Div. of ISI, LLC*, Op. No. 28199 (S.C. Sup. Ct. filed Apr. 24, 2024) (Howard Adv. Sh. No. 15 at 16-20).

On May 31, 2024, the Appellant served its initial brief. However, Appellant's initial brief contains no citations to the record, as required by Rule 208(b)(4), SCACR. Appellant also did not serve a Designation of Matter, as required by Rule 209, SCACR. Respondent filed a Motion to Dismiss based on Appellant's deficiencies. The Appellant did not respond to Respondent's motion. On July 12, 2024, this Court denied Respondent's motion. This order stated, verbatim:

Appellant filed its initial brief on May 31, 2024. Respondent filed a motion to dismiss, arguing Appellant's failure to include citations to the record and a designation of matter was a fatal deficiency. Appellant did not file a return. After careful consideration, we deny the motion to dismiss without prejudice to a motion to strike. *See* Rule 208(b)(4), SCACR (explaining the initial "brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials. . . ."); Rule 209(a), SCACR (providing for a party to serve a designation of matter at the same time the party serves his initial brief).

*Synchrony Bank v. Hudson*, No. 2024-000280 (S.C. Ct. App. Order dated July 12, 2024). This Petition followed.

## ARGUMENT

### I. Dismissal is Mandatory Under these Circumstances.

South Carolina's appellate court rules provide: "Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk **shall** issue an order of dismissal, which shall have the same force and effect as an order of the appellate court." Rule 260(a), SCACR (emphasis added). It is undisputed the Appellant did not comply with Rule 208(b)(4), SCACR. It is undisputed the Appellant did not comply with Rule 209(a), SCACR. This Court, or the Clerk, "shall" dismiss this appeal under Rule 260(a).

### II. Dismissal is Necessary, even if it were not Mandatory.

"The appellant has the burden of providing this court with a sufficient record upon which to make a decision." *Medlock v. One 1985 Jeep Cherokee*, 322 S.C. 127, 470 S.E.2d 373 (1996). Appellant's failure to designate a record, as required by Rule 209(a), leaves this appeal without a Record on Appeal. This Court will not consider any fact which does not appear in the Record on Appeal. Rule 210(h), SCACR. Proceeding with this appeal is a practical impossibility without a record, and this appeal must be dismissed.

Furthermore, even if there were a Record on Appeal, the Initial Brief lacks any citations supporting its factual assertions, which is required by Rule 208(b)(4). Respondent cannot respond to Appellant's factual assertions without assembling the

record in this matter, effectively doing the Appellant's job for it.<sup>1</sup> This violates the letter and spirit of our appellate court rules.


**III. In the alternative, Respondent Moves to Strike Appellant's Initial Brief.**

To the extent this Court's July 12, 2024, order requests a motion to strike the Appellant's Initial Brief, Respondent makes said motion (in the alternative). With no brief from the Appellant, dismissal of this appeal is mandatory. Rule 208(a)(4); SCACR.

**CONCLUSION**

This petition should be granted and this appeal should be dismissed.

Dated: 07/15/2024

  
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**Attorney for Respondent**

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<sup>1</sup> Considering the standard of review of sanctions orders is "abuse of discretion", further briefing in this appeal would be futile.

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**CERTIFICATE OF SERVICE**

I certify that on the date July 15, 2024, I deposited the Petition for Rehearing in the United States Mail, first class, postage prepaid, addressed to: Wesley D. Dail, Esq., P.O. Box 110564, Durham, NC 27709.

Dated: 07/15/2024



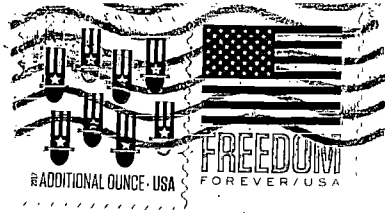
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