

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Palmetto Citizens Federal Credit Union,

Plaintiff,

v.

Keiven Keon Minter,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No: 2023-CP-40-05766

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

**AND ORDER DENYING DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT,
MOTION TO CHANGE VENUE, AND
MOTION TO AMEND ANSWER**

This matter came before the Court by way of Plaintiff Palmetto Citizens Federal Credit Union's ("Plaintiff") December 13, 2023 Motion for Summary Judgment on the claims asserted against Defendant Keiven Keon Minter ("Defendant") in Plaintiff's Complaint filed October 30, 2023. Defendant subsequently filed a Motion for Summary Judgment on January 9, 2024, a Motion to Change Venue on May 15, 2024 and a Motion to Amend his Answer on July 18, 2024. A hearing was held on this matter and all motions filed by the parties on August 8, 2024 via virtual proceedings. Katherine Engels was present as counsel for Plaintiff, and Keiven Keon Minter was present pro se.

Upon review of the pleadings, arguments of counsel and the parties, and the law, the Court hereby GRANTS Plaintiff Palmetto Citizens Federal Credit Union's Motion for Summary Judgment and DENIES Defendant Keiven Keon Minter's Motion for Summary Judgment, Motion to Change Venue, and Motion to Amend Answer.

FACTUAL AND PROCEDURAL BACKGROUND

This is an action for recovery of amounts due under a Vehicle Loan Agreement (the "Agreement") between Plaintiff and Defendant, which Defendant is in default for failure to make the minimum payments as required under the Agreement. On or about February 22, 2019, Plaintiff issued credit to Defendant at Defendant's request, Account No. XXX191 L40XX (the "Account"), which

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SC Court of Appeals

was used by Defendant to purchase an automobile. Defendant failed to make the minimum payments on the Account, and is now in default under the terms of the Account. The evidence before the Court shows that there is due and owing to the Plaintiff the principal amount of \$6,861.20 as of October 20, 2023, plus interest, costs and attorney's fees. Defendant's last payment was made on June 2, 2023. Plaintiff sent a Right to Cure notice to Defendant, as required by South Carolina Code Section 37-5-110, on August 22, 2023. Plaintiff is the original holder of the Account and has not sold or otherwise transferred the debt owed to Plaintiff by Defendant under the Account and the Agreement. Defendant presented no evidence to contest these facts.

Plaintiff subsequently filed this action on October 30, 2023. Defendant filed his Answer on November 13, 2023 declaring that he is not in possession of documentation proving Plaintiff's claims, and offering a conditional acceptance for payment to Plaintiff upon receipt of documentation surrounding the Account. Defendant filed his Motion for Summary Judgment on January 9, 2024 alleging various facts regarding Plaintiff's claims.

Defendant sent correspondence to Plaintiff on April 22, 2024 requesting an accounting of the debt owed. Plaintiff sent an accounting and payment history of the Account to Defendant on May 6, 2024. Defendant thereafter filed a Motion to Change Venue, arguing that the case should be removed from the alternative dispute resolution (ADR) roster and granting Defendant a Certificate of Exemption from ADR. Finally, Defendant filed a Motion to Amend his Answer and assert counterclaims against Plaintiff on July 18, 2024. Notice of a hearing date and time had been set for the parties' previously filed motions for August 8, 2024.

CONCLUSIONS OF FACT AND LAW

a. *The Parties' Motion for Summary Judgment*

At the hearing, Plaintiff's counsel argued for summary judgment in favor of Plaintiff as to the

claims asserted in its Complaint. As evident from the pleadings and exhibits thereto, Plaintiff is the holder of the Account which Defendant was obligated to make minimum payments on. Defendant was sent a Notice of a Right to Cure his default under the terms of the Account, and Defendant failed to cure the default. As Defendant presented no facts or testimony to contest this, Plaintiff's claim for the balance due on the Account stated against Defendant Keiven Minter is, **HEREBY, GRANTED.**

b. *Defendant's Motion for Change of Venue*

Defendant's Motion for Change of Venue was filed on the basis that the contract between Defendant and Plaintiff is not subject to arbitration. At the hearing, Defendant testified that this was filed in error as no demand for arbitration has been made by either party and no claims for such are brought in this instant action. To the extent Defendant is moving to be relieved from the alternative dispute resolution roster, the same is **HEREBY DENIED.**

c. *Defendant's Motion to Amend Answer*

Defendant's Motion to Amend his Answer was filed July 18, 2024, approximately nine (9) months after the filing of the Complaint, eight (8) months after the filing of Defendant's Answer, and less than one (1) month before the four (4) pending Motions were set to be heard by this Court. Rule 15 of the South Carolina Rules of Civil Procedure (SCRPC) provides that "leave [to amend the pleadings] shall be freely given where justice so requires and does not prejudice any other party." "The prejudice Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it." *Stanley v. Kirkpatrick*, 357 S.C. 169, 174, 592 S.E.2d 296, 298 (2004).

As a first matter of course, Defendant's Motion to Amend his Answer is untimely under SCRPC 15(a). Moreover, Defendant's assertion in the proposed Amended Answer is based on existing evidence and injecting a new theory of liability at the eleventh hour after the case had

been pending and dispositive motions had been set for hearing, is precisely the type of late notice that is considered unfairly prejudicial under SCRCP 15. See *Soil & Material Eng're, Inc., v. Folly Assocs.*, 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987) (“In considering potential prejudice to the opposing party, the court should consider whether the opposing party has had the opportunity to prepare for the issue now being raised formally.” (citation omitted)); *Holland ex rel. Knox v. Morbark, Inc.*, 407 S.C. 227, 236, 754 S.E.2d 714, 719 (Ct. App. 2014) (citing *Johnson v. Oroweat Foods Co.*, 785 F.2d 503, 510 (4th Cir. 1986) (finding prejudice can result when a proposed amendment is offered shortly before or during trial and raises a new legal theory that would require gathering and analysis of facts not already considered by opposition)).

Further, “[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003).

Defendant has not alleged nor argued any applicable standard under SCRCP 15 to allow for an untimely motion to amend his responsive pleading. As it stands, the record contains no basis for a conclusion that the Defendant was reasonably justified in his delay. Rather, the proposed Amended Answer makes no reference to the South Carolina Rules of Civil Procedure but simply sets forth additional claims and related information that would require Plaintiff to introduce additional or different evidence to prevail in the amended action. There is no meaningful opportunity for Plaintiff to conduct additional discovery before the hearing to address the new information contained in Defendant’s Motion to Amend. Therefore, Defendant’s Motion to Amend his Answer is **HEREBY DENIED**.

CONCLUSION

After having heard, reviewed, and fully considered the arguments of the respective parties, I,

hereby find no genuine issue of material fact exists with regards to Plaintiff's claims against Defendant, and that Defendant has raised no meritorious defenses to the Complaint. I find that venue is proper in this case, and an amended answer at this stage in the litigation would be prejudicial to the Plaintiff. Defendant has presented no evidence or testimony of good cause to amend his Answer after the time to do so has expired. As a result, Defendant's Motion for Summary Judgment, Motion to Change Venue, and Motion to Amend Answer are DENIED; and Plaintiff's Motion for Summary Judgment is hereby GRANTED.

Accordingly, IT IS HEREBY ORDERED that the Plaintiff's Motion for Summary Judgment be Granted in favor of Palmetto Citizens Federal Credit Union against Keiven K. Minter, pursuant to South Carolina Rules of Civil Procedure Rule 56.

Amount Due:	\$6,861.20
Interest:	\$363.64 (from 10/30/2023 to 8/22/2024)
Costs:	\$328.06
<u>Attorney's Fees:</u>	<u>\$2,554.25</u>
Total:	\$10,107.15

AND IT IS SO ORDERED.

Presiding Judge

Columbia, South Carolina

____ day of _____, 2024

FORM 4

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

JUDGMENT IN A CIVIL CASE

Case No: 2023CP4005766

Palmetto Citizens Federal Credit Union

Keiven K. Minter

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Katherine E. Engels	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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.
- 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

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 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)
Palmetto Citizens Federal Credit Union	Keiven Minter	\$10,107.15
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: ORDER OF POSSESSION		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	Judge Code	Date
For Clerk of Court Office Use Only		
This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:		
<u>S. Nelson Weston, Jr.</u> <u>Richardson Plowden & Robinson, PA</u> <u>Post Office Drawer 7788</u> <u>Columbia, SC 29202</u>		
ATTORNEY(S) FOR THE PLAINTIFF(S)	ATTORNEY(S)	FOR THE DEFENDANT(S)
	CLERK OF COURT	

Court Reporter:



Richland Common Pleas

Case Caption: Palmetto Citizens Federal Credit Union vs Keiven Keon Minter

Case Number: 2023CP4005766

Type: Order/Judgment and Form 4

So Ordered

s/ Daniel Coble, 2774