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Sep 17 2024

SC Court of Appeals

**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
Marlboro County Case No. 2021-CP-34-00228**

Synchrony Bank, **Appellant,**

v.

Michael Hudson..... **Respondent**

**RESPONDENT'S RETURN
TO
APPELLANT'S MOTION TO SERVE RECORD
ON APPEAL OUTSIDE OF TIME ALLOWED**

Respondent opposes Appellant's Motion to Serve Record on Appeal Outside of Time Allowed and requests this Court instead dismiss this appeal.

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, the late 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), 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, [...] 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.

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, Appellant served its Initial Brief. However, Appellant's Initial Brief contained 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. 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). On July 15, 2024, Respondent filed a petition for rehearing of his motion to dismiss (or, in the alternative, a motion to strike); this application is pending.

In the interest of moving this long-delayed appeal forward, Respondent filed and served his Initial Brief on July 19, 2024. Though the Appellant had never served a Designation of Matter under Rule 209, SCACR, Respondent served his own, designating Judge Holt's January 23, 2024, order for the record.

On or about August 2, 2024, Appellant mailed to Respondent a proposed Record on Appeal and requested Respondent consent to its filing. (Exhibit A). On August 5, 2024, Respondent responded by letter stating, in relevant part:

I have received your August 2, 2024, proposed Record on Appeal. I have no objection to what this document proposes to include in the record. I do, however, object to the use of this document in this appeal. I drafted Respondent's initial brief utilizing the record you originally designated under Rule 209, SCACR, *i.e.*, no record. You are welcome to file your proposed Record on Appeal with the court, but I reserve the right to move to strike it, and your brief, for your failure to comply with Rules 208 & 209, SCACR.¹

...

¹ I also reserve the right to move to strike your proposed Record on Appeal for any other technical violations, such as the omission of my information from the cover and the lack of page numbers. *See* Rules 210(c) & 210(d), SCACR.

(Exhibit B).

On September 5, 2024, this Court notified Appellant that the time to serve the Record on Appeal has expired and in order to proceed it would have to file a motion to serve the Record on Appeal out of time. On September 16, 2024, Appellant moved accordingly and provided its proposed Record on Appeal.

ARGUMENT

Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.

Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Appellant's repeated refusals to comply with South Carolina's Appellate Court Rules has burdened this Court, and the Respondent, long enough. This Court should deny Appellant's motion and dismiss its appeal.

First, acceptance of Appellant's proposed Record on Appeal will prejudice the Respondent, who prepared his Initial Brief in reliance on the original record Appellant designated (*i.e.*, no Record on Appeal). If Appellant's motion is granted, then Respondent must be afforded the opportunity to amend his Designation of Matter and Initial Brief. However, doing so would punish *Respondent for Appellant's* refusal to comply with South Carolina's Appellate Court Rules.¹

Second, Appellant's proposed Record on Appeal will not serve its intended function. It lacks page numbers, which are required by Rule 210(c), SCACR.² Without page numbers, no party can prepare a final brief.³ *See* Rule 211(b)(1), SCACR.

¹ An award of costs and fees to Respondent could mitigate the prejudice. *See* Rule 269, SCACR ("Where an appeal, petition, motion or return is ... not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.").

² Appellant was well aware of this requirement. (Exhibit B).

³ Appellant's Initial Brief also lacks references to the record, as required by Rule

Third, proceeding with this appeal is futile. Appellant seeks review of a denial of a motion for summary judgment; such a decision cannot be appealed. *See, e.g., Ballenger v. Bowen*, 313 S.C. 476, 476, 443 S.E.2d 379, 380 (1994) (“This Court has repeatedly held that the denial of summary judgment is not directly appealable.”). Appellant also seeks review of Judge Holt’s decision to sanction Appellant for its failure to seek mediation. Appellant has not shown how this decision was unsupported by the evidence or controlled by an error of law (*i.e.*, an abuse of discretion). *See Mobile Mini Storage Solutions v. Bethea*, No. 2021-CP-34-00265, 2024 WL 3402785 (S.C. Ct. Comm. Pl. Order dated April 12, 2024) (Dismissal for failure to mediate, as alternate ground).

CONCLUSION

Respondent’s motion should be denied and this appeal should be dismissed.

Dated: 09/17/2024

/s/ Jason Scott Luck
Jason Scott Luck
P.O. Box 47
Bennettsville, SC 29512
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Attorney for Respondent

208(b)(4), SCACR. *See* Resp. Pet. for Reh’g. pp. 4-5.

EXHIBIT A



Sessoms
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August 2, 2024

Jason Scott Luck
Attorney at Law
P.O. Box 47
Bennettsville, SC 29512

Current Creditor: Synchrony Bank
Account Affiliate: Sam'sClubMC
Michael Hudson
Marlboro County Case No. 2021CP3400228
Account Number: XXXXXXXXXXXXX5478
Our File Number: 351909
Balance: \$9,000.83

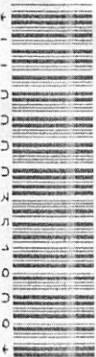
Dear Mr. Luck:

In an effort to comply with the Appellate Court's most recent Order, please find enclosed the Appellant's proposed Record on Appeal. Please review the proposed Record and, if you agree that the record is complete, respond to our office and I will forward a Statement of Settlement of Record on Appeal to your office for your signature.

If you have any questions, please contact me at (919) 354-1442 or at wddail@sessomslaw.com.

Sincerely yours,

Wesley D. Dail
Attorney at Law



WDD:kgs
DD000274v3.4

**This communication is from a debt collector.
This is an attempt to collect a debt and any information obtained will be used for that purpose.**

EXHIBIT B

JASON SCOTT LUCK

ATTORNEY AT LAW

P.O. BOX 47 (107 S. PARSONAGE ST.)
BENNETTSVILLE, SC 29512
843.479.6863

5 August 2024

Wesley D. Dail
Sessoms & Rogers, P.A.
P.O. Box 110564
Durham, NC 27709

Re: *Synchrony Bank v. Hudson*, 2024-000280

Dear Mr. Dail:

I have received your August 2, 2024, proposed Record on Appeal. I have no objection to what this document proposes to include in the record. I do, however, object to the use of this document in this appeal. I drafted Respondent's initial brief utilizing the record you originally designated under Rule 209, SCACR, *i.e.*, no record. You are welcome to file your proposed Record on Appeal with the court, but I reserve the right to move to strike it, and your brief, for your failure to comply with Rules 208 & 209, SCACR.¹

With Kind Regards,



Jason Scott Luck

/JSL

¹ I also reserve the right to move to strike your proposed Record on Appeal for any other technical violations, such as the omission of my information from the cover and the lack of page numbers. *See* Rules 210(c) & 210(d), SCACR.

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CERTIFICATE OF SERVICE

I certify that on the date September 17, 2024, I emailed the Respondent's Return to Appellant's Motion to Serve Record on Appeal Outside of Time Allowed to scfilings@sessomslaw.com and wddail@sessomslaw.com.

Dated: 09/17/2024

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