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SC Court of Appeals

**FORM 13
BRIEF OF APPELLANT***

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Case No. 2023-CP-40-05766

Palmetto Citizens,

Respondent,

v.

Keiven Keon Minter,

Appellant.

[INITIAL] BRIEF OF APPELLANT

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* Under Rule 267(e), SCACR, the cover of the final briefs should be the following colors: brief of appellant - blue; brief of respondent - red; reply brief - gray; and amicus curiae or intervenor - green.

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STATEMENT OF ISSUES ON APPEAL

1. Because summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law, respondent was not entitled to summary judgement.
 - a. Because the elements of account stated were not met, decision by trial court should be overturned.
 - b. Did the trial court err in referencing it’s factual and procedural background from account no. XXX191 L40XX, in which respondent has never submitted a verified statement of account?

2. Because respondent did not reply to a counterclaim, failure to deny constitutes admission.
 - a. Because account XXX191-L72XX is hereby declared void ab initio, respondent is subject to disgorgement.
 - b. Did the trial court err in utilizing documents that are not in compliance with South Carolina Rules Of Civil Procedure (SCRCP) 9(i) to oppress appellants?

STATEMENT OF THE CASE

On October 30, 2023, attorney for respondent filed a claim with the court, alleging to be the holder of account XXX191-L72XX. Pursuant to SCRCP 9 (i) Verification of Account, In an action on an account the pleader shall attach a verified copy of the account to the pleading, or if the items of the account are set forth in the pleading, it must be verified. Attached to the complaint is a verified statement of account made by Gabriel McFadden, collections manager, as well as authorized agent for respondent. The verified statement of account identified account number XXX191-L72XX. In demand letter, submitted as Exhibit “B”, the demand letter is addressed to Ms. Minter of 2216 West Branch Road of Columbia, South Carolina.

On November 13, 2023, appellant, filed with the court as well as served on respondents’ attorney, a conditional acceptance, along with a cease and desist against any and all collection actions. A conditional acceptance according to S.C. Code Ann. § 36-2-207 (1), A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms. Being that conditions were expressly made conditional on assent of the claim, there can be no acceptance unless all the conditions are met.

On December 13, 2023, summary judgement is filed by the respondent’s attorney, an affidavit from Gabriel McFadden, the collections manager, whom lacks first-hand knowledge of the matter, identifies appellant as the borrower of account XXX191-L40XX, which is a different account number than what is stated on the verified statement of account. There is no verified statement of account for account number XXX191-L40XX.

Paragraph six, of the affidavit from the collections manager submitted on December 13, 2023, reads in verbatim: “The Defendant(s) agreed to make minimum payments on Account(s) per Agreement(s) attached as Exhibit “A.” Exhibit “A” is in violation of Rules of Privacy 41.2 (a)(3) SCRCP, (3) *Financial Account Numbers, Including Any Type of Bank Account Numbers, Personal Identification Number (PIN) Code, or Passwords*. If financial account numbers are relevant, only the last four digits of these numbers should be used. The document submitted as Exhibit “A”, is not in compliance, as it conceals financial account numbers that are relevant to this matter. This is also a violation of USC 18 § 2071(a) Concealment, whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, documents filed or deposited with any clerk or officer of any court, shall be fined or imprisoned not more than three years, or both.

On January 09, 2024, appellant served a copy to respondent’s attorney of record and filed with the clerk of court a motion for summary judgment. Appellant brought to the attention of the court that this was the first introduction of the account number XXX191-L40XX. Pursuant to SCRCP 9 (i), Verification of Account, In an action on an account the pleader shall attach a verified copy of the account to the pleading, or if the items of the account are set forth in the pleading, it must be verified. Since being served in January, the respondent’s attorneys of record have not updated the record to verify account XXX191-L40XX.

Respondent failed to comply with the cease and desist against all collection activity, issued on November 13, 2023. Respondent continued to report the disputed account to credit bureaus. While waiting on the courts to schedule a date for the motion hearing, appellant attempted to handle this matter administratively. Appellant called into the clerk of courts office to withdraw his motion for summary judgement.

Numerous correspondences were sent to respondents' attorney of record, seeking to resolve this disputed matter. Respondent failed to meet the conditions of the conditional acceptance and have been found to be in default. On July 18, 2024, after exhausting all administrative remedies, appellant filed a motion to amend answers, as well as served a copy on respondent's attorney of record. Pursuant to SCRCF 15 (a), A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served. Pursuant to SCRCF 5(b)(1), Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court.

Pursuant to SCRCF 15 (c), Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading. Although appellants amended answers were served on the respondents' attorney of record and filed with the court on July 18, 2024, through the conduct and occurrences set forth by respondent, this amendment relates back to the date of the original pleading, November 13, 2023. Pursuant to Federal Rules of Civil Procedure (FRCP) RULE 12(a)(B), A party must serve an answer to a counterclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

On July 22, 2024, the courts gave notice of the motions roster publication. The motions to be heard were for motion to change venue, summary judgement, and amended answer. The motions hearing was scheduled for August 08, 2024. Respondent's attorney of record had 20 days before the trial to respond, however, the record will reflect, there is no response or rebutted affidavit on file to dispute the facts as presented by appellant, nor to contest the counter-claim asserted by appellant.

Motions Hearing: August 08, 2024

On August 08, 2024, Katherine Engle, attorney for respondent, stated to the court in verbatim, "This action comes as a collection on a vehicle loan agreement executed by defendant on February 29, 2019, for the amount of just over \$20,000." Respondent, nor respondent's attorney of record ever submitted any evidentiary documentation of any agreement that took place on February 29, 2019. Regardless of which calendar you view that date, February did not have a leap year in 2019, which makes that date non-existence.

Katherine Engle further stated in verbatim, "The Defendant has in his various correspondences conditionally accepted the allegations of the debt and the amount owed and in the required accounting that was sent to Defendant on April or on May 7th, 2024, showing the

account history and the payments made as well as the actual loan agreement that was filed with the motion for summary judgement.” During her entire presentation to the court, she never once mentioned an account number, not XXX191-L72XX, nor XXX191-L40XX.

Appellant stated in verbatim to the courts, “I’m Keiven Minter, holder in good faith, creditor beneficiary, acting as universal agent on behalf of Keiven Keon Minter, bona fide purchaser for value of account 189191 and from here on out I’ll be known as Defendant. Defendant has never requested or authorized issuance of bank credit from plaintiff. Defendant has verifiable proof of being the bona fide purchaser for value by way of accepted application for individual credit as submitted into evidence by the plaintiff. See the top of the accepted application for individual credit, and there’s a check mark by this account is to be used for individual credit. So, take note of the redacted account number. On the second page, you’ll see the signature of the Defendant. The Plaintiff reported libel slander to the credit reporting agencies on an exempted transaction, that exempted transaction is not permissible for collateralization. The Defendant is seeking assurance that the Plaintiff is the bona fide creditor of account XXX191-L72XX.”

On August 09, 2024, Judge Daniel Coble ruled in favor of the Defendant. The record will reflect the following order as wrote by Judge Daniel Coble, “This matter came before Judge Coble on August 08, 2024 via WebEx. Present at the hearing was counsel for the Plaintiff Katherine Engels, and Defendant Keiven Keon Minter, pro se. Following the hearing, Judge Coble took the matter under advisement. After carefully considering the motions and arguments of the parties, Defendant’s Motion to Change Venue and Amend Answer are denied. Defendant’s Motion for Summary Judgement is granted. The prevailing party shall provide a proposed order within ten (10) days for Judge Coble’s review.” This order does not end the case.

On August 15, 2024, Judge Daniel Coble, submitted another Form 4, stated in verbatim, “THIS ORDER AMENDS AND CORRECTS A SCRIVENER’S ERROR IN THE FORM 4 FILED ON AUGUST 9, 2024:

This matter came before Judge Coble on August 8, 2024 via WebEx. Present at the hearing was counsel for the Plaintiff Katherine Engels, and Defendant Keiven Keon Minter, pro se. Following the hearing, Judge Coble took the matter under advisement. After carefully considering the motions and arguments of the parties, Defendants Motions to Change Venue and Amend Answer are denied. Plaintiff’s Motion for Summary Judgement is granted. The prevailing party shall provide a proposed order within ten (10) days for Judge Coble’s review.” This order does not end the case.

On August 18, 2024, appellant sent an email to the following parties: Katherine Engels, Nelson Weston, and Michael Beam, stated in verbatim, “ Greetings to you all, I am requesting/demanding a copy of the unredacted version of the application for individual credit you submitted into evidence. I am available to pick this document up from either the lawyers office or from a local branch of the bank. If I have not heard back from anyone by noon on tomorrow, on where I (Keiven Minter, Primary Owner of Account 189191:L4000), can retrieve a copy of the unredacted version, then I will start at the law firm, and make my way over to the headquarters of the bank. I thank you for your help and support and may you all have a

wonderful weekend!”

On August 19, 2024, I received a response from Katherine Engels, stated in verbatim, “Good morning Mr. Minter, We will have the unredacted application available for you to pick up at our office today, 1900 Barnwell Street, Columbia, 29201. When you arrive, please tell the front desk your name and they will give you the envelope. If there are any issues, please let me know. Best”

After a review of the unredacted documents, provided by Katherine Engel, respondents attorney of record, it made sense as to why they had to submit their documents fully redacted. Although the fully redacted documents are in violation of not only state and federal laws, had the documents been in compliance with the law, they would have shown appellants ownership, and respondent would not be able to file suit.

On August 22, 2024, appellant served a copy upon the respondents attorney of record, as well as filed a copy with the clerk of court, a verified copy of appellants accepted application for individual credit, in which the court was able to verify appellant being the bona fide purchaser for value of account number XXX191, as well as the verified owner of account XXX191- L4000.

On September 03, 2024, Katherine Engles wrote an email to the Law Clerk of Judge Daniel Coble, in which I was included, the e-mail stated in verbatim, “ Good morning Mr. Thompson, I wanted to check with the court to see if the above case was still scheduled for a Roster Meeting tomorrow 9/4/2024 at 1PM virtually before Judge Coble, following his Form 4 and the proposed Order filed with the Court after the 8/8/2024 Motions Roster? If so, I can plan to attend and update the Court on the status of this case and any other outstanding issues. Otherwise, please let me know if there is anything needed for this matter! Best, Katie.”

Later that day, Sarah DiStefano, Law clerk to Judge Daniel Coble responded, her response in verbatim, “Hi Katie, it looks as though this case is still scheduled for the Roster Meeting tomorrow at 1PM on WebEx. Thank you in advance for planning to attend and giving the court an update. I hope you have a great afternoon!”

On September 04, 2024, we were scheduled to have court, being that the update of the last order issued by Judge Daniel Coble did not end the case. The morning of the court date, the link was not available for the court session to proceed. The Judge uploaded his final order ending the case. There was no consideration for the motion of amended answers, which was filed with the court, as well as served on the respondent’s attorney of record on August 22, 2024. There was no consideration for the counterclaim asserted by appellant in the amended answers which were properly filed with the court and served on respondent’s attorney of record on July 18, 2024.

Judgement Issued by Trial Court

Upon review of the final judgement issued by Judge Daniel Coble, I noticed a few errors that went against the rules of SCRPC. Under the factual and procedural background section,

stated in verbatim, “On or about February 22, 2019, Plaintiff issued credit to Defendant at Defendant’s request, Account No. XXX191 L40XX (the “Account”), which was used by Defendant to purchase an automobile.” The error here is respondent, nor respondent’s attorney of record ever submitted a verified statement of account for account XXX191 L40XX, which is required pursuant to SCRC 9 (i).

Furthermore, Judge Daniel Coble stated in verbatim, “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.”

The record will reflect that not only is appellant is the owner of the referenced account XXX191 L4000, appellant also served verifiable proof of this to respondents’ attorney of record, as well as filed it with the clerk of court on August 22, 2024.

Furthermore, Judge Daniel Coble stated in verbatim, “Finally, Defendant filed a Motion to Amend his Answer and assert counterclaim against Plaintiff on July 18, 2024. Notice of a hearing date and time had been set for the parties’ previously filed motions for August 08, 2024.”

The record will reflect since the beginning of this matter, Richland County Public Index has had this case listed to have a hearing for Alternative Dispute Resolution on May 27, 2024. Appellant filed for a change of venue to prevent from being denied a fair trial. Appellant later found out, that the date listed on the index was just a holding date that had no significance. The courts did not give notice of a hearing date until July 22, 2024. Appellant filed amended answers and asserted counterclaim on July 18, 2024, before notice was received of a scheduled hearing date.

Furthermore, Judge Daniel Coble stated in verbatim, “As evident from the pleadings and exhibits thereto, Plaintiff is the holder of the Account which Defendant was obligated to make minimum payments on.”

The record will reflect, respondent, nor respondent’s attorney of record has produced any new contract or promise that appellant agreed, signed, and became obligated to make minimum payments on.

Furthermore, Judge Daniel Coble stated in verbatim, “Rule 15 of the South Carolina Rules of Civil Procedure (SCRC 15) 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).”

The record will reflect, respondent’s attorney of record was given adequate amounts of time to respond to all correspondences, but failed to comply with conditions set forth for acceptance. Appellant has provided verified proof of ownership of the account referenced in this order.

Furthermore, Judge Daniel Coble stated in verbatim, “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, (Ct. App. 1987).”

The record will reflect, the existing evidence Judge Daniel Coble is referring to is the accepted application for individual credit, in which appellant has shown to be the bona fide purchaser for value of for account XXX191, as well as owner of account XXX191 L4000, in which has been verified by the court.

STANDARD OF REVIEW

CASES

Wise v. Leap, No. 2021-001463, 2024 WL 3518593, at *1 (S.C. Ct. App. July 17, 2024)

“An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56 [of the South Carolina Rules of Civil Procedure].” *Brockbank v. Best Cap. Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000). “Rule 56(c) ... provides that the moving party is entitled to summary judgment ‘if the [evidence before the court] show[s] that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’ ” *Kitchen Planners, LLC v. Friedman*, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (alterations in original) (quoting Rule 56(c), SCRCP). “[T]he evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party.” *Fleming v. Rose*, 350 S.C. 488, 493–94, 567 S.E.2d 857, 860 (2002).

Miller Constr. Co., LLC v. PC Constr. of Greenwood, Inc., 418 S.C. 186, 195, 791 S.E.2d 321, 326 (Ct. App. 2016)

“An action to construe a contract is an action at law reviewable under an ‘any evidence’ standard.” *Pruitt v. S.C. Med. Malpractice Liab. Joint Underwriting Ass'n*, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001). “In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law.” *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599–600, 675 S.E.2d 414, 415 (2009). “The Court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings.” *Id.* at 600, 675 S.E.2d at 415.

Robinson v. Est. of Harris, 378 S.C. 140, 144, 662 S.E.2d 420, 422 (Ct. App. 2008), aff'd, 390 S.C. 272, 701 S.E.2d 740 (2010)

“Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” *Moore v. Weinberg*, 373 S.C. 209, 215–16, 644 S.E.2d 740 743 (Ct.App.2007). “Summary judgment is not

appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Id.* “[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct.App.2004).

Laber v. Harvey, 438 F.3d 404, 433 (4th Cir. 2006)

Provision is made in the Rules for automatic amendment of the complaint in certain circumstances and for a liberal granting of leave to amend in other circumstances, *see* Fed.R.Civ.P. 15(a), but the interest in finality that attaches to every judgment must of necessity weigh in the exercise of the district court's discretion in a filing such as this. *See, e.g., Benzon v. Morgan Stanley Distribs., Inc.*, 420 F.3d 598, 613 (6th Cir.2005) (noting that “in the post-judgment context” the court “must also take into consideration the competing interest of protecting the finality of judgments and the expeditious termination of litigation”) (internal quotation marks omitted); *Doe v. Howe Military Sch.*, 227 F.3d 981, 989 (7th Cir.2000) (although “leave to amend shall be freely granted when justice so requires, justice may require something less in post-judgment situations than in pre-judgment situations”) (internal quotation marks omitted); *Vielma v. Eureka Co.*, 218 F.3d 458, 468 (5th Cir.2000) (noting that the district court's discretion to allow amendments “narrows considerably after entry of judgment”). Abuse of discretion is, after all, a deferential standard, and district courts are in the best position to determine “when justice so requires” that a litigant be permitted to amend his complaint. Fed.R.Civ.P. 15(a).

STATUTES

Rule 5 (b)(1) SCRCF

(b)(1) Same: How Made. Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.

Rule 7 (a) SCRCF

(a) Pleadings. There shall be a complaint and an answer; and a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under Rule 14, and there

shall be a third-party answer, if a third-party complaint is served. No other pleadings shall be allowed, except that the court may order a reply to an answer or a third-party answer; and there may be a reply to affirmative defenses as provided in Rule 8(c).

Note:

This Rule 7(a) is identical to the Federal Rule, and the provisions of Code §§ 15-13-10, 15-13-210, 15-13-310 and 15-13-610. There is no change to State practice, except the references to third-party pleadings.

Rule 8 (b) SCRCF

(b) Defenses; Form of Denials. A party shall state in short and plain terms the facts constituting his defenses to each cause of action asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

Note:

This Rule 8(b) is the same as the Federal Rule. It abolishes the "general denial" unless the pleader can controvert every allegation of the complaint, including the jurisdictional allegations. Every allegation must be specifically admitted or denied. Failure to deny constitutes admission. An answer neither admitting nor denying but "demanding proof thereof" is insufficient. The pleader must deny in good faith all parts of an averment not admitted.

Note to 1986 Amendment:

Rule 8(b) is amended to make clear that fact pleading is required for both the complaint and answer.

Rule 8 (d) SCRCF

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Note:

This Rule 8(d) is simply a restatement of Code § 15-13-80.

Rule 9 (i) SCRCF

(i) Verification of Account. In an action on an account the pleader shall attach a verified copy of the account to the pleading, or if the items of the account are set forth in the pleading, it must be verified.

Note:

All parts of Rules 9(a) through 9(g) conform to the Federal Rules and to present State practice. Rule 9(h) was added to preserve Code §§ 15-13-760 and 15-13-770 as to pleading libel and slander. Rule 9(i) preserves Code § 15-13-710.

Rule 12 (b) SCRPC

(b) How Presented. Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Note:

This important Rule 12(b) enables a party to: (1) raise by motion or answer all of the defenses now raised by demurrer, and (2) eliminates the necessity of the awkward "special appearance to object to jurisdiction" under present State practice. The motion should be made before answer for early disposition of cases; but the defenses enumerated may be made in the responsive pleading and are not waived by being stated in a pleading rather than by motion. The last sentence eliminates the so-called "speaking demurrer" at trial, by treating such late motion as a motion for Summary Judgment under Rule 56.

Note to 1986 Amendment:

The amendment to the fourth sentence of Rule 12(b) clarifies the litigant's right to assert at trial any defenses as well as any claims he could have raised in a permissive pleading but chose not to do so. Consequently, the election not to reply to an affirmative defense does not waive the right to contest that affirmative defense.

Rule 15 (a) SCRPC

(a) Amendments. A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the pleading is one to which no responsive pleading is required and the action has not been placed upon the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his

pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within fifteen days after service of the named amended pleading, whichever period may be the longer, unless the court otherwise orders.

Note:

This Rule 15(a) is substantially the same as the Federal Rule and preserves present State practice under Code §§ 15-13-910 and 15-13-920. The Rule increases the time to amend a pleading without court order from 20 to 30 days, and the time to plead in response to an amended pleading from 10 to 15 days. It also adds the requirement that the court not allow amendment prejudicial to another party, which is a statement of existing case law.

Rule 15 (c) SCRPC

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading.

An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by law for commencing the action against him the party to be brought in by amendment (1) has received such notice of the institution of the action that he will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.

Note:

This Rule 15(c) is the same as the Federal Rule.

Rule 41.2 (a)(3) SCRPC

(a) Redaction. A person filing a document in paper or electronic format shall not include, or will redact where inclusion is necessary, the following personal identifying information.

(3) Financial Account Numbers, Including Any Type of Bank Account Numbers, Personal Identification Number (PIN) Code, or Passwords. If financial account numbers are relevant, only the last four digits of these numbers should be used.

Rule 56 (c) SCRPC

(c) Motions and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve opposing affidavits not later than two days before the hearing. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if

any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

OTHER AUTHORITIES

- *(Creditor Beneficiary)*-A third-party beneficiary of a contract who is owed a debt that is to be satisfied by another's parties' performance under the contract. **Black's Law Dictionary. (11th ed. 2019) PG 192**
- *(Universal Agent)*- An agent authorized to perform all acts that the principal could personally perform.) **Black's Law Dictionary. (11th ed. 2019) Page 81**
- *Consumer Credit*- Credit extended to an individual to facilitate the purchase of consumer goods and services - **Black's Law Dictionary. (11th ed. 2019) PG 463**
- *Bank Credit*-Credit that a bank makes available to a borrower. **Black's Law Dictionary. (11th ed. 2019) PG 463**
- *(Disgorgement)*-The act of giving up something (such as profits illegally obtained) on demand or by legal compulsion. **Black's Law Dictionary. (11th ed. 2019) PG 588**
- *(Ab initio)*-From the beginning, **Black's Law Dictionary. (11th ed. 2019) PG 5**
- *(Bona fide)*-Made in good faith: without fraud or deceit. **Black's Law Dictionary. (11th ed. 2019) PG 217**
- *Bona fide Creditor*- A creditor who receives payment for value that it has provided and who may therefore be allowed to keep payment even if it was made by mistake or with money wrongfully taken from another party, so long as the recipient had no notice of the problem and is not to be blame for it. **Black's Law Dictionary. (11th ed. 2019) PG 464**

S.C. Code Ann. § 15-3 120

SECTION 15-3-120.Effect of new promises in writing or part payments.

No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter unless it be contained in some writing signed by the party to be charged thereby. But payment of any part of principal or

interest is equivalent to a promise in writing.

HISTORY: 1962 Code Section 10-112; 1952 Code Section 10-112; 1942 Code Section 368; 1932 Code Section 368; Civ. P. '22 Section 351; Civ. P. '12 Section 157; Civ. P. '02 Section 131; 1870 (14) 450 Section 133.

S.C. Code Ann. § 15-3 350

SECTION 15-3-350. Action founded on title or for rents or services.

No cause of action or defense to an action founded upon a title to real property or to rents or services out of the same shall be effectual unless it appear that the person prosecuting the action or making the defense or under whose title the action is prosecuted or the defense is made, or the ancestor, predecessor or grantor of such person, was seized or possessed of the premises in question within ten years before the committing of the act in respect to which such action is prosecuted or defense made.

HISTORY: 1962 Code Section 10-126; 1952 Code Section 10-126; 1942 Code Section 375; 1932 Code Section 375; Civ. P. '22 Section 318; Civ. P. '12 Section 124; Civ. P. '02 Section 99; 1870 (14) 445 Section 102; 1873 (15) 496.

S.C. Code Ann. § 15-36 10 (c)

SECTION 15-36-10. Frivolous lawsuits; signing pleadings; imposition of sanctions; notice and opportunity to respond; reporting violations.

(c) a reasonable attorney in the same circumstances would believe that his procurement,

initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party;

S.C. Code Ann. § 36-2-207

SECTION 36-2-207.Additional terms in acceptance or confirmation.

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

(3) Conduct by both parties which recognizes the existence of a contract is sufficient to establish a contract for sale although the writings of the parties do not otherwise establish a contract. In such case the terms of the particular contract consist of those terms on which the writings of the parties agree, together with any supplementary terms incorporated under any other provisions of this act.

HISTORY: 1962 Code Section 10.2-207; 1966 (54) 2716.

RULE 602

LACK OF PERSONAL KNOWLEDGE

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

Note:

This rule is identical to the federal rule and is consistent with South Carolina law. See *Gentry v. Watkins-Carolina Trucking Co.*, 249 S.C. 316, 154 S.E.2d 112 (1967); *Wilson v. Clary*, 212 S.C. 250, 47 S.E.2d 618 (1948).

18 U.S. Code § Concealment, removal, or mutilation generally

(a) Whoever willfully and unlawfully conceals, removes, mutilates, obliterates, or destroys, or attempts to do so, or, with intent to do so takes and carries away any record, proceeding, map, book, paper, document, or other thing, filed or deposited with any clerk or officer of any court of the United States, or in any public office, or with any judicial or public officer of the United States, shall be fined under this title or imprisoned not more than three years, or both.

(b) Whoever, having the custody of any such record, proceeding, map, book, document, paper, or other thing, willfully and unlawfully conceals, removes, mutilates, obliterates, falsifies, or destroys the same, shall be fined under this title or imprisoned not more than three years, or both; and shall forfeit his office and be disqualified from holding any office under the United States. As used in this subsection, the term "office" does not include the office held by any person as a retired officer of the Armed Forces of the United States.

(June 25, 1948, ch. 645, 62 Stat. 795; Pub. L. 101-510, div. A, title V, § 552(a), Nov. 5, 1990, 104 Stat. 1566; Pub. L. 103-322, title XXXIII, § 330016(1)(I), Sept. 13, 1994, 108 Stat. 2147.)

FACTS

1. Trial court judge granted summary judgement while there were genuine issues of material fact that had not been considered.
2. The affidavit of supporting statement for summary judgement submitted into evidence by respondent's attorney of record do not comply with SCRE 60, Rule 41.2(a)(3) SCRPC, Rule 9(i) SCRPC
3. The elements of account stated for account XXX191- L72XX were not met, respondent was not entitled to summary judgement.
4. The trial court erred in referencing it's factual and procedural background from account no. XXX191 L40XX, in which respondent has never submitted a verified statement of account, pursuant to Rule 9(i) SCRPC.
5. The trial court err in utilizing documents that are not in compliance with South Carolina Rules Of Civil Procedure (SCRPC) 9(i) to oppress appellant.
6. Respondent is not in compliance with Rule 7 SCRPC, for failure to reply to a counterclaim, as was served on respondent's attorney of record on July 18, 2024.
7. Respondent was not buyer, nor seller of good purchased.
8. The purchase price of the good was 20,375.00 credits. Appellants accepted application for individual credit was approved for \$20,778.00 credits.
9. It would be unconscionable for respondent to advance an owner of his own credits which were designated to be an individual credit and misrepresent the credits as a loan, as if it were a benefit conferred upon the owner.
10. Account XXX191-L72XX is hereby declared void ab initio, respondent is subject to disgorgement.

ARGUMENTS

1. Because the elements of account stated were not met, decision by trial court should be overturned.
2. Because the trial court err in referencing it's factual and procedural background from account no. XXX191 L40XX, in which respondent has never submitted a verified statement of account, decision by trial court should be overturned.
3. Because account XXX191-L72XX is hereby declared void ab initio, respondent is subject to disgorgement.
4. Because to not deny is to admit, respondent is in default to appellants counter claim.

CONCLUSION

Because this vehicle was a one-time purchase made with individual credit, the creation of account XXX191-L72XX, a sub-account of XXX191, is proof of lack of good faith on behalf of respondent. Account XXX191-L72XX is hereby declared void ab initio. Appellant requests to cancel account held with respondent due to material breach. Respondent is subject to disgorgement.

Respondent has libellee slandered appellant's name by providing inaccurate information to the credit bureaus on an exempted transaction ab initio of account February 22, 2019. Appellant is at an economic loss due to respondents continuing debt collections practices after being served with a cease and desist, which was filed with the court on November 13, 2023.

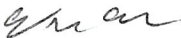
The document utilized to show cause is an unverified redacted copy of appellants accepted application for individual credit. The redacted copy submitted by respondent's attorney of record, was not verified by the court. The reason for the redaction was to conceal the financial account number in which respondent could not obtain a verified statement of account for.

A review of appellants documents submitted to the record on August 22, 2024, which was used to show proof of the account, will show that there is no additional, or new promise in which the appellant agreed to pay. Pursuant to S.C. Code Ann. § 15-3-120, No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter unless it be contained in some writing signed by the party to be charged thereby. Respondent has not submitted this into the record, because no such document exists.

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

November 15, 2024

Respectfully submitted,


/s/ Keiven Keon Minter
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