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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

Synchrony Bank,

Appellant,

v.

Michael Hudson, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT AND GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT?

2. DID THE TRIAL COURT ERR IN DISMISSING APPELLANT'S COMPLAINT AS A SANCTION UNDER RULE 10(b) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?

STATEMENT OF THE CASE

On August 23, 2021, Appellant, Synchrony Bank (hereinafter "Appellant"), brought an action seeking to collect a debt alleged to be owed by Respondent, Michael Hudson, (hereinafter "Respondent"), in the sum of $9,000.83. (R 1-10) .Respondent filed an Answer on November 10, 2021. (R 11-12).

After the parties exchanged Discovery, the Appellant filed its initial Motion for Summary Judgment on April 7, 2022. (R 13-323). 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 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. 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. (R 722).

Thereafter, the matter was next set to be heard before the late Michael S. Holt. Notice of the Hearing scheduled for November 13, 2023 was sent by the Court to both parties on October 5, 2023. On October 11, 2023, Respondent sent an email to Appellant, 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."** *See* Exhibit "A".

After Appellant consented to Respondent's request, Respondent subsequently filed a

Motion for a Continuance on October 11, 2023. Respondent's Motion listed the three points in support thereof:

1. Defendant's counsel is arguing before the South Carolina Supreme Court on November 14, 2023, in *Jeffcoat v. Williams*, 2021-001296. *See* Rule 601, SCACR. Defendant's counsel will be in Columbia, South Carolina, on November 12-13, 2023, preparing for oral arguments and will be unavailable to appear in Bennettsville.
2. **This case has not been mediated. *See* Rule 3(a), SCADR; Rule 5(f), SCADR; Rule 10(a), SCADR.**
3. Pursuant to Rule 11, SCRCP, Defendant's counsel has consulted with Plaintiff's counsel, who consents to the requested relief. (R 340).

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. (R 341-342).

Appellant filed an Amended Motion for Summary Judgment on October 16, 2023, as well as a Memorandum in Support thereof on January 3, 2024. (R 343-708). 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." (R 709-710). In response, Appellant filed a Motion in Opposition thereto on January 10, 2024. (R 711-721).

The respective Motions of each party were heard before Judge Holt on January 16, 2024. (R 722). 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. (R 722-724). Appellant filed the Notice of Appeal on February 19, 2024. (R 725-726)

STANDARD OF REVIEW

Motion for Summary Judgment

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).

Sanctions Under Rule 10(b), SCADR

Under South Carolina's ADR Rules, where a "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, including the dismissal of an action without prejudice or the striking of a pleading." *See* Rule 10(a), SCADR. Further, for any potential violation of the ADR Rules, "the court may, on its own motion or motion by any party, impose upon that party, person or entity, any lawful sanctions, including, but not limited to, the payment of attorney's fees, neutral's fees, and expenses incurred by persons attending the conference; contempt; and any other sanction authorized by Rule 37(b), SCRCP." *See* Rule 10(b), SCADR.

For such potential violations of the ADR Rules, imposing a sanction in the form of dismissing the action "is not mandatory; rather, the trial court is allowed to make such orders as it deems just under the circumstances, and the selection of a sanction is within the court's discretion." See *Kershaw Cnty. Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 395, 396 S.E.2d 369, 372 (1990). Issuing a sanction in the form of a Dismissal should be "made only if there is some showing of willful disobedience or gross indifference to the rights of the adverse party." See *Baughman v. At&T*, 306 S.C. 101, 410 S.E.2d 537 (1991).

ARGUMENTS

1. THE TRIAL COURT COMMITTED A REVERSIBLE ERROR IN DENYING APPELLANT'S MOTION FOR SUMMARY JUDGMENT AND GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

The Order of Dismissal states that there was "no material change in the proof for this motion [Appellant's First Motion for Summary Judgment]" and that there were genuine issues of material fact present. (R 722). While the Court is correct in stating that the "proof" has not changed, the Court's interpretation of that proof is wholly erroneous. Appellant's Motion for Summary Judgment was initially denied on the basis that genuine issues of material fact were present by virtue of the change in the Account Numbers for the subject credit card account. In finding that same "proof" was used in the form of the Account Statements presented, the Court failed to recognize that the chronological sequence of those same Account Statements and the Account Numbers listed thereon amounted to prima facie evidence sufficient to remove the genuine issues of material fact cited in the prior denial of Appellant's Motion for Summary Judgment.

Appellant's Amended Motion for Summary Judgment, provided much greater detail than the First in regard to the assignment of the Account Numbers. Please see the following extract from the Appellant's Motion below:

> 4. The Defendant entered into a credit agreement with Synchrony Bank, the Plaintiff herein, pursuant to which, the Plaintiff extended credit to the Defendant 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 Defendant'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 "Defendant's Account").

5. The Defendant accepted and used the credit extended to him, in the form of the Defendant's Account, by the Plaintiff 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. Furthermore, the Defendant repeatedly 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 Plaintiff the balance incurred on the subject account. Additionally, those statements show that the Defendant made payments towards the balances that the Defendant incurred on the Defendant's Account.

7. The account statement dated May 25, 2018, shows an ending balance due and owing on the Defendant'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 Defendant made a payment in the amount of $160.00 towards the previous balance thus demonstrating that the Defendant intended to repay to the Plaintiff, his obligation resulting from his use of the credit extended to him by the Plaintiff.

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 subject account 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 to the account number XXXX-XXXX-XXXX-5478 occurring on May 27, 2018.

9. The account statement dated June 25, 2018, also shows that the Defendant used the subject account now bearing the account number XXXX-XXXX-XXXX-5478 multiple times between June 2, 2018 and June 20, 2018. The Defendant also made a payment in the amount of $129.00, that was posted to the Defendant's Account on June 15, 2018.

10. During the time period of May 27, 2018 through October 26, 2018, the Defendant again repeatedly accepted and used the credit extended to him by the Plaintiff in the form of the Defendant's account bearing the account number XXXX-XXXX-XXXX-5478. Moreover, the Defendant made payments towards the balances incurred on the Defendant's Account through December 12, 2019, without disputing any of the charges or fees, payments or transactions posted to the subject account. (R 343-345).

Appellant has provided ample evidence to sufficiently demonstrate that no genuine issues of material fact are present with regard to the Account Numbers issued on Respondent's Account. As the Order of Dismissal does not contain reference to a finding of any additional issues of material fact present other than the change in Account Numbers, it can be presumed that no additional such issues of material fact were found. Given the detail set forth above, it can only be determined that the Court committed a reversible error in denying Appellant's Second Motion for Summary Judgment on the basis of the existence of a genuine issue of material fact.

As to Respondent's Motion for Summary Judgment, it should be noted that there is no contention in support of the existence of a genuine issue of material fact as to the allegations in Appellant's Complaint. Specifically, that Respondent entered into a credit agreement with Appellant, pursuant to which Appellant extended credit to Respondent in the form of the account that is the subject of Appellant's Complaint; that Respondent accepted and used the credit, thus incurring balances that Respondent is obligated to repay to the Appellant; and that Respondent defaulted on his obligation to repay the Appellant the debt owed on the Respondent's Account. Rather than address the allegations contained in Appellant's Complaint and whether there is the existence of any genuine material fact in regard thereto, Respondent relies on the contention that a genuine issue of material fact exists on as to whether the Appellant participated in a mediation under the South Carolina Rules of ADR. Therefore, based on the foregoing, Summary Judgment should have been granted in favor of the Appellant.

2. THE TRIAL COURT ABUSED ITS DISCRETION IN DISMISSING APPELLANT'S COMPLAINT AS A SANCTION UNDER RULE 10(b) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE

The Trial Court's ruling that Appellant intentionally "delayed" the legal process fails to take into consideration that Appellant brought the action in good faith and has consistently taken every

available measure to prosecute its case. Appellant has filed two Motions for Summary Judgment, initiated the Discovery process, and provided responses to Respondent's discovery requests. The Court of Appeals has previously held that it "will not interfere with a trial court's exercise of its discretion with respect to the imposition of sanctions unless an abuse of discretion has occurred. *See Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542, 489 S.E.2d 679, 681 (Ct. App. 1997). "An 'abuse of discretion' may be found by this Court where the appellant shows that the conclusion reached by the lower court was without reasonable factual support, resulted in prejudice to the right of appellant, and, therefore, amounted to an error of law." *See Dunn v. Dunn*, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989). The factual history of Appellant's conduct throughout this matter does not support the finding of "unreasonable neglect" stated in the Order of Dismissal.

Dismissals issued under Rule 37(b)(2)(C) are commonly done when a party has willfully and intentionally failed to comply with Court Orders. Appellant certainly committed no such failure here, as no Order mandating ADR was ever issued by the Court. 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." *See* Rule 4(c), SCADR.

Appellant has previously and correctly noted that the Court never issued a Notice of ADR or appointed mediators. Additionally, 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…" *See* Rule 10(a), SCADR.

Just the same as no Notice or Order mandating ADR was ever issued by the Court, a Rule

to Show Cause was also never issued in this action. Rather than issuing a Notice of ADR or Rule to Show Cause, the Trial Court took the drastic measure of Dismissing Appellant's action with Prejudice. "When the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly." *See Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 511 S.E.2d 716 (Ct. App. 1999). "[T]he sanction imposed should be reasonable, and the Court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case." See *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990).

In cases where the Court of Appeals has reviewed Dismissals issued under Rule 37(b)(2)(C), the Court has "generally upheld the trial court's decision to use dismissal as a sanction only when necessary to protect the rules of discovery or when there was evidence of bad faith, misconduct, willful disobedience, or a callous disregard for the rights of other litigants." *See Rickerson v. Karl*, 412 S.C. 215, 770 S.E.2d 767 (Ct. App. 2015). In this case there is no evidence present in the facts, nor any presented by Respondent, which would reasonably show "bad faith, misconduct, willful disobedience, or a callous disregard for the rights of other litigants" on the part of the Appellant. During the course of this action, the only "bad faith" or "callous disregard for the rights of other litigants" displayed has been done so by Respondent. This is evidenced by Respondent noting that the case had yet to be mediated in his Motion for Continuance, which was clearly a set up for Respondent's subsequent Motion for Summary Judgment based on the alleged failure of Appellant to comply with the Rules of ADR. The Motions filed by Respondent where done so after the email sent to Appellant on October 11, 2023 requesting Appellant's consent to a Continuance. That email contained no reference to ADR or potential mediation. In fact, the parties never discussed the issue of ADR or mediation at any point during the entirely of this matter's

history. The first reference to such was made by Respondent in his Motion for Continuance. That reference was entirely unnecessary for the purpose of obtaining an Order for Continuance, as Respondent had shown a scheduling conflict for a matter previously set by another Court, and moreover by virtue of the fact that the opposing party (Appellant) had consented to the continuance. Given the ensuing actions taken by Respondent, it is clear that the course of action taken was an underhanded and surreptitious measure, tantamount to "bad faith" and "callous disregard for the rights of other litigants".

Throughout this matter, Respondent has continually failed to present a meritorious defense to Appellant's claims. Instead, Respondent has merely relied on ultimately insignificant alleged procedural deficiencies. To award the course of action and lack of any legitimate defense presented by Respondent, would be to forgo a true and rightful administration of justice.

The totality of the facts present and substance of the arguments listed above combine to show that the Trial Court's issuance of sanctions in the form of dismissing the action altogether was an abuse of its discretion, which was without reasonable factual support and produced a result that was disproportionally prejudicial against Appellant.

CONCLUSION

Based upon the evidence presented and the arguments contained herein, this Honorable Court should reverse the Dismissal entered by the Circuit Court and remand this matter for Appellant's case to be heard on the merits.

Respectfully submitted,

January 7, 2025

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