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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Milton G. Kimpson, Circuit Court Judge

Appellate Case No. 2025-00397
Trial Court Case No. 2024-CP-40-03931

Professional Financial ServicesRespondent,

v.

Tremaine Golson a/k/a Tremaine D. Golson and Brittney L. Greene
a/k/a Brittney L. Golson Appellants.

INITIAL BRIEF OF RESPONDENT PROFESSIONAL FINANCIAL SERVICES

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court properly grant summary judgment to the Respondent?
2. Did the trial court properly deny the Appellants' request to compel arbitration?
3. Did the trial court properly deny the Appellants' request to dismiss the Respondent's case?

STATEMENT OF THE CASE

Respondent Professional Financial Services (“Respondent”) filed a Summons and Complaint on June 27, 2024 in the Court of Common Pleas for Richland County, seeking repossession of a 2014 GMC Yukon vehicle (the “Vehicle”) from the Appellants based upon a default in payments on the Retail Installment Sale Contract (the “Contract”) given by the Appellants to the Respondent’s predecessor in interest dated April 14, 2023, and subsequently assigned to the Respondent. The Respondent’s complaint also sought a monetary judgment against the Appellants for the sums due under the terms of the Contract. The Appellants filed an Answer in the case on September 16, 2024, and a motion to dismiss the Respondents action and compel arbitration on October 25, 2024. The Respondent filed a motion for summary judgment with an accompanying affidavit on October 7, 2025.

The Appellants’ motion to dismiss was based upon 42 U.S.C. §1983 for alleged due process violations in the case itself. The Respondent’s motion for summary judgment and the Appellants’ motion to dismiss and motion to compel arbitration were heard by the trial court on January 7, 2025. On March 17, 2025, the trial court issued its order granting Respondent summary judgment on its cause of action for breach of contract. The trial court further authorized the repossession of the Vehicle from the Appellants. The trial court also denied the Appellants’ motion to dismiss and motion to compel arbitration, finding that with regards to the due process argument, the Appellants had the opportunity to file responsive pleadings, motion, and had an opportunity to be heard in the matter and were not denied due process. Further, with regards to the §1983 claim that the Plaintiff, a private corporation, was somehow acting under color of law, the trial court found that claim was not founded in fact or law and was denied. As to the motion to compel arbitration, the trial court found that the Retail Installment Sale Contract between the parties did not contain an arbitration clause. The GWC Warranty Vehicle Services Contract (“Warranty Contract”) does contain a

provision mandating arbitration for disputes arising regarding the warranty agreement, but the trial court found no language in the Sale Contract making the Sale Contract subject to the arbitration provision in the Warranty Contract.

STANDARD OF REVIEW

The standard of review in a breach of contract repossession case is *de novo*. “The purpose of summary judgment is to expedite dispositions of cases which do not require the services of a fact finder.” George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). A motion for summary judgment must be granted “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.” Standard Fire v. Marine Contracting, 301 S.C. 418, 421, 392 S.E.2d 460, 462 (1990); Rule 56(c), SCRPC. If the non-moving party has not shown a genuine issue of material fact, “summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRPC. The “mere scintilla” standard does not apply under rule 56(c) and the proper standard is the “genuine issue of material fact” standard set forth in the text of the Rule. Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2003).

“Once the party moving for 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.” Regions Bank v. Schmauch, 354 S.C. 648, 660, 582 S.E.2d 432, 438, (Ct. App. 2003) (citing Rule 56(c), SCRPC; SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 497, 392 S.E.2d 789, 792 (1990); Peterson v. W. Am. Ins. Co., 336 S.C. 89, 94, 518 S.E.2d 608, 610 (Ct. App. 1999)). “Rather, the nonmoving party must come forward with specific facts showing there is a genuine issue for trial.” *Id.* To avoid the granting of a Motion for

Summary Judgment by Plaintiff, “[i]t is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine.” *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). “The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case.” *Harris v. Rose's Stores*, 315 S.C. 344, 346, 433 S.E.2d 905, 906, (Ct. App. 1993) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)).

The appeal from the trial court’s denial of the Appellants’ motion to compel arbitration is subject to de novo review. *Chassereau v. Global-Sun Pools, Inc.*, 363 S.C. 628, 611 S.E.2d 305 (Ct. App. 2005). However, the factual findings of the trial court in this regard must be honored if those findings are reasonably supported by evidence in the record. *Partain v. Upstate Auto. Grp.*, 386 S.C. 488, 689 S.E.2d 602 (2010).

ARGUMENT

1. The trial court properly granted summary judgment to the Respondent.

In response to the Respondent’s complaint seeking repossession of the Vehicle and for a monetary judgment against the Appellants for the amounts due under the Contract, the Appellants filed motions to dismiss and to compel arbitration on September 16, 2024, and October 25, 2024. At no time did the Appellants dispute the existence of a contract between the parties, or that the Appellants had not made the payments required by the contract. Further, the Appellants did not dispute the amount of damages sought by the Respondent. “The elements for a breach of contract are the existence of the contract, its breach, and the damages caused by such breach.” *South Glass & Plastics Co. v. Kemper*, 399 S.C. 483, 491-92, 732 S.E.2d 205, 209 (Ct. App. 2012) (citing *Fuller v. Eastern Fire & Casualty Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

The Respondent established the elements to its causes of action for judgment on the Contract and repossession of the Vehicle in its complaint. The Appellants did not dispute these elements in their motions or at the hearing on the summary judgment motion. As a result, no material issue of fact exists as to the Appellants' breach of the contract. The Respondent's affidavit in support of summary judgment filed on October 7, 2024 listed the documentation of the Respondent's case including the statement of the debt owed as of April 30, 2024.

Where the party opposing summary judgment relies solely upon the pleadings, files no counter affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under rule 56, to grant summary judgment if, under the facts presented by the moving party, he was entitled to judgment as a matter of law. *Humana Hospital Bayside v. Lightle*, 305 S.C. 214, 407 S.E.2d 637 (1991).

2. The trial court properly denied the Appellants' motion to compel arbitration.

Appellants argue that the trial court failed to compel arbitration in this case based upon a arbitration clause allegedly contained in the Contract entered into between the parties. However, the Contract attached to the Respondent's complaint does not contain any arbitration clause whatsoever. Appellants attached a copy of the document they allege is the contract that contains the arbitration provision to their Answer filed on September 16, 2024. This is not a contract between the Respondent and the Appellants but is a contract between GWC Warranty Corporation and the Appellants. Page 4 of the GWC contract states that "Your Contract means this Vehicle Service Contract. It is a CONTRACT between You and Us." The Warranty Contract specifies that the "Us" is GWC Warranty Corporation and not the Respondent. Therefore, there is no contract between the Appellants and the Respondent that contains an arbitration provision.

Appellants argue that the trial court should have granted their motion to compel arbitration in this case pursuant to the Uniform Arbitration Act as codified in South Carolina Code § 15-48-10, et. seq. However, the within case is not one that would be subject to arbitration under the Act for the reason that there is no arbitration agreement between the parties. The Contract between the parties does not contain an arbitration provision; therefore, the matter is not subject to arbitration without the consent of both parties. While the Appellants have alleged the Contract contains an arbitration provision, the Warranty Contract they cite as proof is in actuality a warranty agreement on the Vehicle that does not include the Respondent. The trial court found that the Contract between the parties did not include an arbitration provision.

A review of S.C. Code § 15-48-10 shows that the Contract between the parties does not contain the required notice listed in the statute. The statute provides “Notice that a contract is subject to arbitration pursuant to this chapter shall be typed in underlined capital letters, or rubber-stamped prominently, on the first page of the contract and unless such notice is displayed thereon the contract shall not be subject to arbitration.” The Contract between the parties contains no such notice; therefore, the provisions of § 15-48-10 do not apply and the trial court properly denied the Appellants’ motion to compel arbitration.

3. The trial court properly denied the Appellants’ motion to dismiss.

Appellants argue that the case should have been dismissed pursuant to 42 U.S.C. §1983 and alleges that their due process rights have been violated. To establish a claim under this statute, the Appellant must show a deprivation of a constitutional right by a person acting under color of state law. The Appellants failed to establish how the Respondent was somehow acting under color of state law. It also appears from the statements made by the Appellants at the hearing January 7, 2025, and from their argument in their initial brief, that they believe the trial court was the entity

acting under the color of state law and not the Respondent. Section 1983 allows for a civil action to recover damages for deprivation of a constitutionally protected right. The Appellants have not properly pled a cause of action against the Respondent for a violation of 42 U.S.C. § 1983; therefore, the trial court properly denied the Appellants motion to dismiss. Failure to provide argument or supporting authority is deemed an abandonment of the issue. *First Savings Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) Although Appellants appear *pro se*, they are held to the same standard as an attorney licensed to practice before this Court. *Rouvet v. Rouvet*, 388 S.C. 301, 696 S.E. 2d 204 (Ct. App. 2010).

CONCLUSION

There are myriad reasons why Appellants' efforts to overturn the final judgment rendered in this case should fail. The motion to compel arbitration was properly denied because the contract between the parties did not contain an arbitration provision. The motion to dismiss under Section 1983 was also properly denied as there were no allegations pled against the Respondent under the statute. Lastly, the trial court granted the Respondent summary judgment on its causes of action as the Appellants did not dispute the existence of the contract between the parties, the breach of that contract by the Appellants, and damages incurred by the Respondent as a result of the Appellants' breach.


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