

**IN THE COURT OF APPEALS
STATE OF SOUTH CAROLINA**

Christopher Saunders Lawton,

Appellant,

v.

Discover Bank,

Respondent.

Appellate Case No. 2025-000833

Trial Court Case No. 2024-CP-23-05217

Appeal From Greenville County

Honorable William C. McMaster, III, Circuit Court Judge

AMENDED INITIAL REPLY BRIEF OF APPELLANT

Submitted by:

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SC Court of Appeals

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JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to **South Carolina Code § 14-8-200** and **Rule 203(b)(1), SCACR**, which authorize appeals from final judgments and appealable orders of the Circuit Court.

The Circuit Court for Greenville County entered an order granting Summary Judgment in favor of Discover Bank on **October 4, 2024**. Appellant timely served and filed a Notice of Appeal within thirty (30) days of receiving written notice of entry of that order, as required by **Rule 203(b)(1), SCACR**.

This appeal challenges the trial court's grant of Summary Judgment, the evidentiary rulings underlying that order, and related constitutional and procedural issues. Accordingly, the South Carolina Court of Appeals has subject-matter and appellate jurisdiction over this matter.

STANDARD OF REVIEW

The standard of review for a grant of Summary Judgment is **de novo**. The appellate court applies the same standard that governs the trial court under **Rule 56(c), SCRCP**. Summary judgment is appropriate only when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.

In applying this standard, the Court must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002); *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545

(1991). Any doubts about the existence of a genuine issue of material fact must be resolved against the movant. *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006).

When a party seeks summary judgment on a debt claim, that party bears the burden of presenting **admissible evidence** establishing the existence of the debt, the amount owed, and the defendant's liability. Conclusory affidavits and unauthenticated documents are not sufficient. *Moates v. Bank of Am.*, 395 S.C. 532, 720 S.E.2d 172 (Ct. App. 2011).

Whether the evidence submitted in support of a motion for summary judgment is admissible is a question of law, and evidentiary rulings based on the interpretation of rules such as **Rule 803(6)** and **Rule 901(a), SCRE**, are subject to appellate review. Where, as here, the trial court grants summary judgment over foundational and due process objections, the appellate court reviews the record anew to determine whether the movant carried its burden as a matter of law. *Wells Fargo Bank, N.A. v. Carter*, 424 S.C. 444, 818 S.E.2d 31 (Ct. App. 2018).

STATEMENT OF ISSUES ON APPEAL

1. **Whether the trial court erred in granting Summary Judgment where Discover Bank failed to submit admissible evidence establishing the existence of the alleged debt, the amount owed, and Appellant's liability under Rule 56(c), SCRPC.**
2. **Whether the affidavit offered by Discover Bank failed to satisfy the foundational requirements for the business-records exception under Rule 803(6), SCRE, thereby rendering the attached documents inadmissible.**

3. **Whether the documents attached to the affidavit were improperly authenticated under Rule 901(a), SCRE, and thus could not support summary judgment.**
 4. **Whether Discover Bank failed to establish ownership or standing to enforce the alleged account, a prerequisite to obtaining judgment as a matter of law.**
 5. **Whether genuine issues of material fact existed regarding the identity of the alleged debtor, the accuracy of the claimed balance, the reliability of the records, and the ownership of the account.**
 6. **Whether the trial court's entry of judgment based on inadmissible, conclusory evidence deprived Appellant of due process under the South Carolina Constitution and the Fourteenth Amendment to the United States Constitution.**
-

STATEMENT OF THE CASE

Discover Bank filed this action in the Circuit Court for Greenville County, alleging that Appellant owed a balance on a consumer credit account. The Complaint asserted breach of contract and related theories but did not include a signed credit agreement, itemized transaction history, or authenticated business records showing how the alleged balance was incurred.

Discover Bank later moved for Summary Judgment. In support of its motion, Discover submitted a single affidavit from an employee and several pages of purported account records. The affidavit contained generic statements about the existence and amount of the account but failed to identify the affiant's job title, specific responsibilities, or personal knowledge of the creation and

maintenance of the records. The affidavit did not adequately describe Discover's recordkeeping practices or how the attached documents satisfied the elements of the business-records exception.

Appellant opposed the motion and raised multiple objections, including:

- That the affidavit was conclusory and failed to establish a foundation under **Rule 803(6), SCRE**;
- That the attached records were unauthenticated under **Rule 901(a), SCRE**;
- That there was no admissible evidence proving Appellant entered into any agreement with Discover Bank or that Discover Bank owned or had standing to enforce the alleged debt; and
- That genuine issues of material fact remained concerning the existence, amount, and validity of the alleged obligation.

Despite these objections, the Circuit Court granted Discover Bank's motion for Summary Judgment by order dated October 4, 2024. The order adopted Discover's position and did not address the evidentiary and foundational objections in detail.

Appellant timely filed a Notice of Appeal. This Amended Initial Reply Brief challenges the propriety of the Summary Judgment order.

STATEMENT OF FACTS

The Complaint filed by Discover Bank alleged an unpaid balance on an account purportedly associated with Appellant. No signed credit card agreement, application, or contract bearing Appellant's signature was filed. The Complaint attached no original account-level documents.

In connection with its motion for Summary Judgment, Discover Bank submitted:

- (1) a form affidavit by an employee; and
- (2) several pages of computer-generated account summaries and statements.

The affidavit did not:

- Identify the affiant's job title or responsibilities;
- Specify how long the affiant had been employed or in what capacity;
- Describe the process by which the records were created, maintained, or retrieved;
- State that the records were made at or near the time of the transactions by, or from information transmitted by, a person with knowledge;
- Explain that maintaining such records was the regular practice of Discover Bank; or
- Establish that the affiant had personal knowledge of the specific account allegedly attributed to Appellant.

The documents attached to the affidavit consisted primarily of a generic "account summary" and a small selection of statements. There was no testimony authenticating these documents as business records. The affiant did not testify to the accuracy of the amounts claimed, nor did the affidavit show how the balance was derived, whether fees and interest were properly assessed, or whether any prior holder of the account followed consistent recordkeeping practices.

Appellant disputed the allegations and objected that:

- The affidavit lacked foundation and personal knowledge;
- The records did not meet the requirements of the business-records exception;

- The documents were unauthenticated;
- There was no proof Discover Bank owned the alleged account; and
- The evidence was insufficient to eliminate genuine issues of material fact.

Notwithstanding the deficiencies in the affidavit and attached documents, and despite Appellant's evidentiary challenges, the trial court granted Summary Judgment in favor of Discover Bank.

SUMMARY OF THE ARGUMENT

The Summary Judgment order must be reversed because Discover Bank failed to meet its burden under **Rule 56(c), SCRC**P. A party seeking summary judgment must present **admissible evidence** showing that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. Discover Bank did not do so.

First, the affidavit submitted by Discover Bank is legally insufficient. It does not establish the affiant's personal knowledge or qualifications, fails to explain the recordkeeping system, and does not satisfy the requirements of **Rule 803(6), SCRE**. Without proper foundation, the attached documents cannot be admitted as business records.

Second, the documents themselves were not authenticated as required by **Rule 901(a), SCRE**. No witness with personal knowledge testified that the records were what Discover claimed them to be. The records appear to be litigation-generated summaries rather than contemporaneous business records.

Third, Discover Bank offered no admissible proof that it owned the alleged account or had standing to enforce it. Ownership and standing are threshold issues, and without them, no judgment can properly be entered.

Fourth, even if the affidavit and records were somehow considered, genuine issues of material fact clearly exist concerning whether Appellant is the debtor, whether the amount claimed is accurate, and whether the records are reliable. Resolving such disputes in favor of the moving party is contrary to the summary judgment standard.

Finally, entering judgment based on conclusory and inadmissible evidence violated Appellant's right to due process under both the South Carolina Constitution and the Fourteenth Amendment to the United States Constitution. The trial court's order must therefore be reversed.

ARGUMENT

A. DISCOVER BANK FAILED TO PRESENT ADMISSIBLE EVIDENCE REQUIRED BY RULE 56(c), SCRCP

Under **Rule 56(c), SCRCP**, summary judgment is appropriate only when “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. The rule presupposes that the evidence relied upon is **admissible**.

South Carolina courts have long held that a party seeking summary judgment bears the initial burden of producing admissible evidence to support its claim. *Fleming v. Rose*, 350 S.C. 488,

567 S.E.2d 857 (2002); *Moates v. Bank of Am.*, 395 S.C. 532, 720 S.E.2d 172 (Ct. App. 2011).

Conclusory or unsupported assertions are insufficient.

Here, Discover Bank did not produce a signed contract, a complete and authenticated payment history, or a properly supported affidavit explaining the origin and accuracy of the alleged debt. Instead, it relied on a boilerplate affidavit and documents lacking foundation and authentication. Such materials do not satisfy the burden under Rule 56, and summary judgment should have been denied.

B. THE AFFIDAVIT FAILED TO SATISFY RULE 803(6), SCRE, AND CANNOT SUPPORT SUMMARY JUDGMENT

To admit records under the **business-records exception** in **Rule 803(6), SCRE**, the proponent must show that:

1. The record was made at or near the time of the event recorded;
2. By, or from information transmitted by, a person with knowledge;
3. It was kept in the course of a regularly conducted business activity;
4. It was the regular practice of that business to make such records; and
5. The foundational testimony is given by a custodian or other qualified witness who is familiar with the recordkeeping system.

Wells Fargo Bank, N.A. v. Carter, 424 S.C. 444, 818 S.E.2d 31 (Ct. App. 2018).

The affidavit submitted by Discover Bank does not meet these requirements. It does not identify:

- The affiant's job title or specific responsibilities;
 - The length and nature of the affiant's employment;
 - How the records are created or maintained;
-
- Whether the records were made at or near the time of the underlying transactions; or
 - Whether maintaining such records is a regular practice of the business.

Instead, the affidavit offers only generic statements that the records are "true and correct" without explaining how the affiant knows this or how the records satisfy the criteria of Rule 803(6). South Carolina law does not permit the admission of business records based solely on such conclusory statements.

Because the requirements of Rule 803(6), SCRE, were not satisfied, the purported business records attached to the affidavit are inadmissible. Without admissible records, Discover Bank had no competent evidence to support its claim, and summary judgment was improper.

C. DISCOVER BANK FAILED TO ESTABLISH OWNERSHIP OR STANDING TO ENFORCE THE ALLEGED DEBT

Standing is a fundamental prerequisite to obtaining judgment in a debt collection action. A plaintiff must prove it owns the account or has been validly assigned the right to enforce it. *BAC Home Loans Servicing, LP v. Kinder*, 398 S.C. 619, 731 S.E.2d 803 (2012).

In this case, Discover Bank offered no admissible proof that it owned the alleged account associated with Appellant at the time the action was filed or at the time of judgment. No assignment documents were produced. No chain of title was established. The affidavit did not

detail how the account came into Discover's possession or what relationship, if any, existed between Discover and any predecessor creditor.

Without competent evidence demonstrating ownership or standing, Discover Bank failed to prove that it was the proper party to bring this action. A judgment entered in favor of a party that has not established standing cannot stand.

**D. THE DOCUMENTS ATTACHED TO THE AFFIDAVIT WERE NOT
AUTHENTICATED UNDER RULE 901(a), SCRE**

Rule 901(a), SCRE requires the proponent of a document to present "evidence sufficient to support a finding that the matter in question is what its proponent claims." This typically requires testimony from a witness with knowledge, or other evidence, linking the documents to the business and the particular account at issue.

The documents attached to Discover Bank's affidavit were never properly authenticated. The affiant did not testify that the records were created in the ordinary course of business at or near the time of the transactions. The affiant did not explain how the records were generated, who entered the data, or whether prior holders of the account followed consistent practices.

The account summary and statements appear to be printed specifically for litigation, without supporting information to demonstrate that they are accurate and complete representations of an actual, regularly maintained account record. Without proper authentication under Rule 901(a), these documents are inadmissible and cannot support the grant of summary judgment.

E. GENUINE ISSUES OF MATERIAL FACT EXIST, PRECLUDING SUMMARY JUDGMENT

Even if Discover Bank's evidence were admissible (it is not), there are multiple genuine issues of material fact that preclude summary judgment, including:

- Whether Appellant ever entered into a valid contract with Discover Bank;
- Whether the account in question is actually Appellant's;
- Whether the amount claimed is accurate and properly calculated;
- Whether fees, charges, and interest were lawfully imposed; and
- Whether Discover Bank owns or has the right to enforce the alleged debt.

Summary judgment is inappropriate where material facts are disputed or where the inference to be drawn from the facts is uncertain. *Fleming*, 350 S.C. at 493; *Baughman*, 306 S.C. at 115.

Here, the trial court effectively resolved disputed facts in favor of the moving party instead of requiring Discover Bank to prove its case at trial. That is contrary to the principles governing summary judgment.

F. THE TRIAL COURT'S RELIANCE ON INADMISSIBLE EVIDENCE VIOLATED APPELLANT'S RIGHT TO DUE PROCESS

The due process guarantees of **Article I, § 3 of the South Carolina Constitution** and the **Fourteenth Amendment to the United States Constitution** prohibit the State from depriving any person of property without due process of law. At a minimum, due process requires notice

and a meaningful opportunity to be heard before an impartial tribunal based on competent evidence.

By granting judgment based on a conclusory, foundationless affidavit and unauthenticated records, the trial court deprived Appellant of a meaningful opportunity for contested factual issues to be resolved at trial. The court's reliance on inadmissible evidence to enter judgment against Appellant constitutes a violation of due process.

When judgment is premised on incompetent proof, it is not merely a harmless evidentiary error; it is a structural defect that undermines the integrity of the proceeding. The Summary Judgment order should therefore be reversed on constitutional as well as procedural grounds.

G. SUMMARY JUDGMENT WAS IMPROPER AS A MATTER OF LAW

Taken together, the deficiencies in Discover Bank's evidentiary showing—lack of admissible business records, lack of authentication, lack of standing, and unresolved factual disputes—make clear that summary judgment was improper as a matter of law. Under **Rule 56(c), SCRPC**, and the cases interpreting it, the trial court should have denied the motion and allowed the matter to proceed to trial.

Instead, the court resolved disputed facts in favor of Discover Bank, accepted inadmissible evidence, and did not address Appellant's foundational objections. This is not consistent with South Carolina's summary judgment jurisprudence. The judgment must be reversed and the case remanded for further proceedings.

CONSTITUTIONAL PRESERVATION

Appellant expressly preserves all constitutional issues raised in the proceedings below and implicated by the trial court's ruling, including violations of due process under **Article I, § 3 of the South Carolina Constitution** and the **Fourteenth Amendment to the United States Constitution**.

Appellant specifically objected that:

1. Discover Bank's evidence was inadmissible under the South Carolina Rules of Evidence;
2. Judgment was entered without competent proof of the alleged debt; and
3. Factual disputes were resolved in favor of the moving party contrary to summary judgment principles.

By granting Summary Judgment despite these objections, the trial court effectively denied Appellant a fair opportunity to contest the claim and to have material factual disputes resolved by a trier of fact. To the extent this deprived Appellant of property without due process of law, those constitutional claims are preserved for appellate review pursuant to **Rule 207(b)(1), SCACR**.

CONCLUSION & RELIEF REQUESTED

For the foregoing reasons, Discover Bank failed to meet its burden under **Rule 56(c), SCRPC**, and the trial court erred in granting Summary Judgment based on inadmissible and insufficient evidence. The affidavit did not satisfy **Rule 803(6), SCRE**, the documents were not

authenticated under **Rule 901(a), SCRE**, standing and ownership were not proven, genuine issues of material fact remain, and the proceedings violated Appellant's right to due process.

Appellant respectfully requests that this Court:

1. **Reverse** the order granting Summary Judgment to Discover Bank;
2. **Vacate** the judgment entered against Appellant; and
3. **Remand** this case to the Circuit Court for further proceedings consistent with this Court's opinion.

Appellant further requests such other and additional relief as this Court deems just and proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the **Amended Initial Reply Brief of Appellant** on counsel for Respondent, Discover Bank, by depositing the same in the United States Mail, **postage prepaid**, sent via **Certified Mail** to the following:

Jerry T. Meyers, Esq.

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