

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
OTHA DELANEY, Individually and on)
behalf of all others similarly situated,)
)
Plaintiff,)
)
v.)
)
FIRST FINANCIAL OF CHARLESTON,)
INC.,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Case No.: 2011-CP-10-07166

**ORDER DENYING DEFENDANT’S
MOTION TO ALTER OR AMEND
AND/OR FOR RECONSIDERATION**

RECEIVED

Feb 03 2026

SC Court of Appeals

Presiding Judge: Hon. Deadra L. Jefferson
Plaintiff’s Attorney: Ashley Twombly, Esq.
Lee Anne Walters, Esq.
Defendant’s Attorney: Russell G. Hines, Esq.
Stephen L. Brown, Esq.
Date of Hearing: N/A
Court Reporter: N/A

This matter came before the Court on the Defendant’s Motion to Alter, Amend, and/or Reconsider, filed August 6, 2021. The Defendant asks the Court to reconsider its Order, filed July 27, 2021, Granting Plaintiff’s Motion for Class Certification, filed March 11, 2021. The Court received a copy of the Defendant’s Motion for Reconsideration on August 16, 2021 via email from Counsel for the Defendant. The Plaintiff filed their Memorandum in Opposition to the Defendant’s Motion for Reconsideration on September 8, 2021. The Defendant filed their Reply in Support of their Motion for Reconsideration on October 12, 2021. After consideration of the record, as well as the various interests balanced by the Court at the time of the ruling, the Defendant’s Motion to Alter, Amend, and/or Reconsider is heard and respectfully Denied.¹

¹ This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRCF; Pollard v. City of Florence, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994).

CONCLUSIONS OF LAW

“The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). “A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not.” Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)); See also Arnold v. State, 309 S.C. 157, 172–73, 420 S.E.2d 834, 842 (1992).

“A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order.” Rule 59(e), SCRPC. “[T]he ten-day deadline in Rule 59(e) is an absolute deadline. A trial court does not have the power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served, nor does a trial court have any power to grant the moving party an extension of time in which to file a Rule 59(e) motion.” Overland, Inc. v. Nance, 423 S.C. 253, 256-57, 815 S.E.2d 431, 433 (2018) (citation omitted) (citing Leviner v. Sonoco Prods. Co., 339 S.C. 492, 530 S.E.2d 127 (2000)).

“A party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion.” Rule 59(g), SCRPC; See also Smith v. Fedor, 422 S.C. 118, 126, 809 S.E.2d 612, 161 (Ct. App. 2017) (“Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule.

Further, our language in Gallagher v. Evert, 353 S.C. 59, 63-64, 577 S.E.2d 217, 219 (Ct. App. 2002) implies a trial court may deny the motion solely on the basis of the rule.”).

I. The Defendant’s assertion that the Plaintiff’s Motion for Class Certification was not “heard” or before the Court “on” June 14, 2021 is without merit.

The Defendant asserts that the Plaintiff’s Motion for Class Certification was not “heard” or before the Court “on” June 14, 2021 as stated in the Court’s Order, filed July 27, 2021. The Defendant asserts that the Court’s Order recognizes that the Motion for Class Certification was in fact “disposed of without the necessity of a hearing pursuant to the Chief Justice’s April 3, 2020 Order, As Amended June 15, 2021, Section (c)(4).” See Defendant’s Motion for Reconsideration at 2 citing Court’s July 27, 2021 Order at 1. However, “[f]or the sake of avoiding any potential for undue confusion and/or prejudice, especially in respect of the Subject Order’s reference to the Memo in Opposition having been filed June 15, 2021, FFC would clarify that the Motion for Class Certification was not ‘heard’ or before the Court ‘on’ June 14, 2021, but rather on the Court’s motions roster for the week of June 14, 2021.” See Defendant’s Motion for Reconsideration at 2.

The Chief Justice's April 3, 2020 Order, As Amended August 27, 2021, Section (d), citing the June 15, 2021 Amendment, Section (c)(4), states,

Minimizing Hearings on Motions. While the practice has been to conduct hearings on virtually all motions, this may not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a

motion raising that issue within ten (10) days of receiving written notice of entry of the order.

The Court's July 27, 2021 Order clearly indicates that the Plaintiff's Motion for Class Certification, "is listed on the June 14, 2021 Charleston County Motions Roster published May 14, 2021." See Court's July 27, 2021 Order at 1. Further, the Court's Order states that, "[t]he Defendant filed its Memorandum in Opposition on June 15, 2021." See Court's July 27, 2021 Order at 1. The Court did not issue its decision until July 27, 2021, making it apparent that a decision was not made until it considered all submissions on the issue. Therefore, the Defendant fails to show where the Court's Order invites any potential for undue confusion and/or prejudice. Therefore, the Court finds that the Defendant's assertion that the Plaintiff's Motion for Class Certification was not "heard" or before the Court "on" June 14, 2021 is without merit.

II. The Defendant's assertion that the Court believes "FCC makes loans to underprivileged South Carolina residents at high interest rates, takes a security interest in the residents' collateral, sells the collateral when the residents cannot repay the loan, and FCC retains the proceeds and seeks deficiency judgments from the residents" is in fact alleged in the Plaintiff's complaint based on the Court's use of the word 'alleges' is without merit.

The Defendant asserts that the Court's use of the word 'alleges' in its Order, filed July 27, 2021, stating, "[t]he Plaintiff alleges that FCC makes loans to underprivileged South Carolina residents at high interest rates, takes a security interest in the residents' collateral, sell the collateral when the residents cannot repay the loan, and FCC retains the proceeds and seeks deficiency judgements from the residents," makes it seem as though the Court believes the foregoing is in fact alleged in Plaintiff's complaint, which the Defendant advises the Court it is not. However, the Court's July 27, 2021 Order cites to the Plaintiff's Memorandum in Support. See Court's July 27, 2021 Order at 2.

Therefore, the Court's Order is clear in its citation that the allegation cited to was provided to the Court in the Plaintiff's Memorandum in Support of Class Certification, filed June 11, 2021, and not the Plaintiff's complaint. The Defendant has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, the Court finds the Defendant's assertion that the Court believes "FCC makes loans to underprivileged South Carolina residents at high interest rates, takes a security interest in the residents' collateral, sells the collateral when the residents cannot repay the loan, and FCC retains the proceeds and seeks deficiency judgments from the residents" is in fact alleged in the Plaintiff's complaint based on the Court's use of the word 'alleges' is without merit.

III. The Defendant's assertion that commonality, typicality, and adequacy of representation are undermined by the fact that the "Delaney Presale Notice" and the "Revised Presale Notice" are materially different is without merit.

The Defendant asserts that the Court should reconsider its July 27, 2021 Order and Deny Plaintiff's Motion for Class Certification because the Court failed to address the Defendant's argument that commonality, typicality, and adequacy of representation are undermined by the fact that the "Delaney Presale Notice" and the "Revised Presale Notice" are materially different. See Defendant's Motion to Reconsider at 5-6. The Court finds this argument without merit.

The Court finds that the Defendant seeks only to reargue that the "Delaney Presale Notice" and the "Revised Presale Notice" are materially different and therefore undermine the commonality, typicality, and adequacy of representation needed for class certification. The Defendant reargues on the same basis previously presented to the Court, and presents no novel facts, arguments, or theories in support of its position. The Defendant has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. The Court conducted a thorough analysis of whether the Plaintiff met their burden

in establishing commonality, see Court's July 27, 2021 Order at 5-6, typicality, Id. at 6, and adequacy, Id. at 7.

Accordingly, the Court has considered the merits of the Defendant's material difference argument and the Court's decision on that issue is the law of the case. To revisit the Defendant's material difference argument would be unnecessary to complete the required analysis for class certification. Therefore, the Court finds that the Defendant's assertion that commonality, typicality, and adequacy of representation are undermined by the fact that the "Delaney Presale Notice" and the "Revised Presale Notice" are materially different is without merit.

IV. The Defendant's assertion that the Court cannot reasonably conclude that the Plaintiff is primarily seeking injunctive and declaratory relief in this action is without merit.

The Defendant asserts that the Court should reconsider its July 27, 2021 Order and Deny Plaintiff's Motion for Class Certification because it cannot reasonably be concluded that Plaintiff is *primarily* seeking injunctive and declaratory relief in this action. See Defendant's Motion for Reconsideration at 6. Further, the Defendant asserts that the Plaintiff himself does not even argue that this is so. See Defendant's Motion for Reconsideration at 6 citing Plaintiff's Memorandum in Support of Motion of Class Certification at 23. The Court finds this argument without merit.

The Plaintiff, on page 23 of their Memorandum in Support of Class Certification, filed June 11, 2021, assert that, "[e]ach class member's claim passes the \$100 threshold. Recovery for each post-sale notice violation imposes a flat penalty of \$500." Further, the Plaintiff asserts,

[m]ost of the relief sought by the class members is wholly uniform: **statutory damages** of \$500 for each post-sale notice violation, **injunctive relief** (enjoining FFC from collecting deficiency balances, time price differential, and delinquency and collection charges and compelling FFC to have any adverse credit information it wrongfully reported removed from Class members' credit reports), and **declarations** that FFC's presale and post-sale notice

violated the law. The only relief sought by Delaney and the Class that is not strictly uniform is statutory damages under § 36-9-625(c)(2).

See Plaintiff's Memorandum in Support of Class Certification at 27 [emphasis added]. The Court finds that it can reasonably be concluded that the relief sought by the Plaintiff is primarily injunctive and declaratory pursuant to the Plaintiff's Memorandum in Support of Class Certification. The Court conducted a thorough analysis of this issue. See Court's July 27, 2021 Order at 8.

The Defendant has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, the Court finds that The Defendant's assertion that the Court cannot reasonably conclude that the Plaintiff is primarily seeking injunctive and declaratory relief in this action is without merit.

CONCLUSION

After fully considering the Defendant's Motion to Alter, Amend, and/or Reconsider, the Court finds that the Defendant seeks only to reargue the issues on the same basis previously presented to the Court and presents no novel facts, arguments, or theories in support of its position. The Defendant has not highlighted any portions of the record this Court may have misunderstood, failed to fully consider, or perhaps failed to rule on. Accordingly, the Defendant's Motion is heard and respectfully Denied.

AND IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

February ____, 2022
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Otha Delaney VS First Financial Of Charleston Inc

Case Number: 2011CP1007166

Type: Order/Other

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128