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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Appellate Court

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

William C. McMaster, Circuit Court Judge

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Appellate Case No. 2025-000833

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Discover Bank,

*Plaintiff-Respondent,*

v.

Christopher Lawton,

*Defendant-Appellant.*

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FINAL BRIEF OF RESPONDENT

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## TABLE OF CONTENTS

STATEMENT OF THE CASE.....	1
STANDARD OF REVIEW.....	1
ARGUMENT.....	2
I.    THE TRIAL COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENT.....	2
II.   RESPONDENT HAD STANDING TO BRING THE ACTION AGAINST APPELLANT.....	3
III.  THE TRIAL COURT CORRECTLY AFFORDED APPELLANT PROCEDURAL DUE PROCESS.....	4
IV.  ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION IS IRRELEVANT TO THIS PROCEEDING.....	5
V.   THE RATIFICATION OF THE FOURTHEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IS IRRELEVANT TO THIS PROCEEDING.....	6
VI.  THE TRIAL COURT DID NOT DEPRIVE APPELLANT OF HIS RIGHTS UNDER THE SEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.....	6
VII. THE TRIAL COURT APPROPRIATELY CONSIDERED APPELLANT’S PRO SE STATUS. ....	7
VIII. THERE IS NO SUPPORT FOR APPELLANT’S ARGUMENT THAT APPEARANCE COUNSEL WAS IMPROPER. ....	8
IX.  THE TRIAL COURT PROPERLY CONSIDERED THE AFFIDAVIT FILED BY RESPONDENT. ....	8
CONCLUSION .....	9

## TABLE OF AUTHORITIES

<i>U.S. Const. art. I, § 10</i> .....	5
<i>U.S. Const. amend. XIV</i> .....	6
<i>South Carolina Rules of Civil Procedure, Rule 56(c)</i> .....	1, 2
<i>South Carolina Rules of Evidence, Rule 803(6)</i> .....	8, 9
<i>Baughman v. AT&amp;T,</i> 306 S.C. 101, 115, 410 S.E.2d 537, 537 (1991).....	2
<i>Blanton v. Stathos,</i> 351 S.C. 534, 542, 570 S.E.2d 565, 565 (2002).....	5
<i>Blum v. Yaretsky,</i> 457 U.S. 991, 1002, 102 S.Ct. 2777 (1982).....	6
<i>Cohen v. Cohen,</i> 438 S.C. 9, 881 S.E.2d 650 (2022).....	7
<i>Ex parte Dep't of Health &amp; Envtl. Control,</i> 350 S.C. 243, 249-50, 565 S.E.2d 293, 297 (2002).....	8
<i>Goodson v. American Bankers Ins. Co.,</i> 295 S.C. 400, 368 S.E.2d 687 (1988).....	7
<i>Hill v. Dotts,</i> 345 S.C. 304, 547 S.E.2d 894 (2001).....	7
<i>John Doe v. Batson,</i> 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001).....	2
<i>Ken Morhead Oil Co. v. Federated Mut. Ins. Co.,</i> 323 S.C. 532, 476 S.E.2d 481 (1996).....	5
<i>Moore v. Moore,</i> 376 S.C. 467, 473, 657 S.E.2d 743, 743 (2008).....	4

<i>Pelfrey v. Bank of Greer,</i> 270 S.C. 691, 693, 244 S.E.2d 315 (1978).....	7
<i>Peterson v. Western American Ins. Co.,</i> 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999).....	2
<i>Protopapas v. Wall, Templeton, &amp; Haldrup, P.A.,</i> 442 S.C. 217, 226, 898 S.E.2d 150, 154 (2023).....	3
<i>S.C. Dep't of Revenue v. Meenaxi, Inc.,</i> 417 S.C. 639, 654-55, 790 S.E.2d 792, 800 (Ct. App.2016).....	8
<i>Spence v. Wingate,</i> 395 S.C. 148, 156, 716 S.E.2d 920 (2011).....	7
<i>Spencer v. Miller,</i> 259 S.C. 453, 456, 192 S.E.2d 863, 864 (1972).....	2
<i>Williams v. Jeffcoat,</i> 444 S.C. 224, 233, 906 S.E.2d 588, 588 (2024).....	1
<i>USAA Prop. &amp; Cas. Ins. Co. V. Clegg,</i> 377 S.C. 643, 653, 661 S.E.2d 791, 791 (2008),.....	2

### **STATEMENT OF THE CASE**

Christopher Lawton (Appellant), entered into a credit card agreement with Discover Bank (Respondent) (R. pp. 2-8). Appellant used the credit card, incurred an outstanding balance on the credit card account, and later defaulted on the credit card agreement by failing to make minimum required payments as they became due. (R. pp. 2-12). An outstanding balance of \$3,016.65 was charged off by the Respondent. Respondent filed a lawsuit against Appellant on or about 28 August 2024 seeking judgment in the amount of \$3,016.65 plus court costs. (R. pp. 2-12). Appellant answered Respondent's Complaint, generally denying the material allegations therein. (R. pp. 16-19).

On or about 13 December 2024, Respondent filed a motion for summary judgment. (R. pp. 22-24). A summary judgment hearing was conducted on 24 March 2025 in front of the Honorable William C. McMaster. (R. pp. 244-259). The Appellant appeared *pro se* and counsel for the Respondent appeared at the hearing. (R. pp. 244-259). After hearing the arguments of both parties, the motion was taken under advisement. (R. pp. 244-259). Thereafter, the Court granted Respondent's motion for summary judgment and signed the Order on Motion for Summary Judgment on 05 May 2025. (R. p. 240). On or about 29 April 2025, Appellant appealed the entry of summary judgment in favor of Respondent. (R. p. 261).

### **STANDARD OF REVIEW**

In South Carolina, “[a]ppellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment.” *Williams v. Jeffcoat*, 444 S.C. 224, 233, 906 S.E.2d 588, 588 (2024). Under South Carolina Rule of Civil Procedure 56(c), “[s]ummary judgment is proper when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law.” *Id.* “On appeal from an order granting summary judgment, the appellate court will review all

ambiguities, conclusions, and inferences arising in and from the evidence in the light most favorable to the non-moving party below.” *USAA Prop. & Cas. Ins. Co. V. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 791 (2008).

## ARGUMENT

### **I. THE TRIAL COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF RESPONDENT.**

“The function of summary judgment is to avoid a useless trial; and a trial is not only not useless but absolutely necessary where there is a genuine issue as to any material fact.” *Spencer v. Miller*, 259 S.C. 453, 456, 192 S.E.2d 863, 864 (1972). Under SCRPC Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact, but once this initial burden is met, the opponent or non-moving party must come forward with specific facts showing there is a genuine issue for trial. S.C. R. Civ. P. 56(e). *See also Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 537 (1991) (citations omitted). In *John Doe v. Batson*, the court emphasized that the party opposing summary judgment must “come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial.” 345 S.C. 316, 321, 548 S.E.2d 854, 857 (2001). The Defendant-Appellant cannot rely on mere allegations in pleadings to overcome summary judgment. Instead, he must produce documentary evidence and proof to a general denial in a pleading. *Peterson v. Western American Ins. Co.*, 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999).

Appellant argues that the Trial Court erred in granting summary judgment because there was “no genuine issue of material facts” and Appellant states that “Discover Bank failed to attach admissible evidence showing that it owned the account or had a valid claim against Appellant.” (*Amended Initial Brief of Appellant*, pg. 3). Appellant’s argument seems to attack the position that Respondent has met its initial burden and does not reach on to the second part of the analysis,

coming forward with affidavits or other supporting documents to overcome the moving party's *prima facie* case.

Respondent made its *prima facie* case that no genuine issue of material fact exists by showing contract formation, breach of the contract by failure to pay and a resulting balance owed to Respondent. (R. pp. 22-236; R. pp. 244-259). Plaintiff's Motion for Summary Judgment and Affidavit in Support of Plaintiff Motion for Summary Judgment contain verified allegations that the Defendant-Appellant opened the credit card account, used the credit card, failed to make payments as they became due and an outstanding balance of \$3,016.65 is now due and owing. (R. pp. 22-236).

Plaintiff-Respondent made a *prima facie* case for summary judgment and Defendant-Appellant failed to come forward with affidavits or other supporting documents to overcome the motion. (R. pp. 22-236). The trial court did not err in granting summary judgment.

## **II. RESPONDENT HAD STANDING TO BRING THE ACTION AGAINST APPELLANT.**

As stated in *Protopapas v. Wall, Templeton, & Haldrup, P.A.*, to establish standing "the plaintiff must have suffered an 'injury in fact' [...], there must be a causal connection between the injury and the conduct complained of [...], and it must be 'likely,' as opposed to merely 'speculative,' that the injury will be redressed a favorable decision." 442 S.C. 217, 226, 898 S.E.2d 150, 154 (2023).

In this case, Appellant argues that the trial court erred in overlooking the standing requirement because Discover Bank failed to provide sufficient proof of assignment, ownership, or injury traceable to Appellant. Appellant's standing argument is directly contradicted by the evidence. Exhibit 1 of Respondent's Complaint is an Affidavit of Account, which shows that Defendant-Appellant owes Plaintiff-Respondent \$3,016.65. (R. pp. 3-4) Additionally, Exhibit A

details the Cardmember Agreement between Appellant and Respondent, and Exhibit B is a statement of account showing the outstanding balance of \$3,016.65. (R. pp. 3-12). The exhibits found in Respondent's pleadings all portray the contractual relationship between Appellant and Respondent and further reiterate Respondent's standing to bring an action against Appellant. (R. pp. 3-12). Respondent's injury in fact is the outstanding balance- the credit extended that has not been repaid as agreed. (R. pp. 3-12).

The Appellant's account has never been sold or assigned. (R. pp. 3-12). There is nothing in the record indicating that this Account or the debt has been sold or assigned. Respondent is the original creditor and there is no chain of title or proof of assignment to produce. (R. pp. 3-12).

The trial court was correct in finding that Respondent has alleged concrete and particularized injury fairly traceable to Appellant's failure to repay credit extended to him by the Respondent. Appellant fails to rebut this showing.

For the abovementioned reasons, the Respondent had, and has, standing to sue the Appellant for the claims asserted. The trial court did not err in allowing this case to proceed forward to judgment.

### **III. THE TRIAL COURT CORRECTLY AFFORDED APPELLANT PROCEDURAL DUE PROCESS.**

"Procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Moore v. Moore*, 376 S.C. 467, 473, 657 S.E.2d 743, 743 (2008). "Procedural due process requirements are not technical" and allow for flexibility, calling "for such procedural protections as the particular situation demands." *Id.* (citations omitted). "The Due Process Clause demands notice reasonably calculated under all circumstances to apprise interested parties of the

pendency of the action and afford them an opportunity to present their objections.” *Blanton v. Stathos*, 351 S.C. 534, 542, 570 S.E.2d 565, 565 (2002).

To the extent Appellant is asserting a violation of his due process rights, this argument is without merit. Appellant was provided notice of the summary judgment hearing, as evidenced by the Certificate of Mailing of Respondents Notice of Motion, Motion for Summary Judgment, and Memorandum of Law dated 13 December 2024, as well as his presence at the hearing on 24 March 2025. (R. pp. 21-22; R. pp. 244-259). Appellant was provided with an opportunity to be heard, as evidenced by the transcript from the summary judgment hearing on 24 March 2025. (R. pp. 244-259). After missing virtually every deadline, Appellant was granted extensions, providing him with a plethora of opportunities to present evidence, raise objections, or take other reasonable actions. After taking Appellant’s arguments under advisement, the trial court properly considered his concerns but correctly found that no genuine issue of material fact existed. (R. pp. 244-259; R. pp. 258-260). Therefore, the trial court did not violate the Appellant’s due process rights, nor did it err in entering an order for summary judgment in favor of Respondent.

#### **IV. ARTICLE I, SECTION 10 OF THE UNITED STATES CONSTITUTION IS IRRELEVANT TO THIS PROCEEDING.**

Appellant’s attempted application of Article I, Section 10 of the United States Constitution to the issue at hand is misplaced. While both the United States Constitution and the South Carolina Constitution have versions of the Contracts Clause, the focus of the Contracts Clause in both iterations is on *legislative* actions which may impair contracts. *See* U.S. Const. art. I, § 10; S.C. Const. art. I, § 4. *See also Ken Morhead Oil Co. v. Federated Mut. Ins. Co.*, 323 S.C. 532, 476 S.E.2d 481 (1996). The transaction at issue here involves the mere enforcement of a private contract between private parties. (R. pp. 2-12). No legislative action was involved. Contrary to

Appellant’s argument, the Contracts Clause was not ignored by the trial court—it simply does not apply.

Additionally, Appellant argues that through the trial court’s entry of summary judgment, the substantive terms of the contract were altered without “his input or acknowledgment.” However, no alterations to the terms of the contract were made. The evidence establishes that Appellant entered into a contract with Respondent to open a line of credit, utilized that credit, and failed to make payments. (R. pp. 2-12). These objective facts are evidenced by the exhibits contained in the Designation of Matters. There does not appear to be, and Appellant did not cite, any South Carolina authority which supports the contention that an entry of summary judgment somehow alters the terms of the contract. Therefore, this argument is without merit.

**V. THE RATIFICATION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION IS IRRELEVANT TO THIS PROCEEDING.**

The proper ratification of the Fourteenth Amendment to the United States Constitution has no relevance to this legal proceeding. Appellant does not address how the Fourteenth Amendment would be implicated. “[The Fourteenth Amendment of the Constitution] erects no shield against merely private conduct, however discriminatory or wrongful.” *Blum v. Yaretsky*, 457 U.S. 991, 1002, 102 S.Ct. 2777 (1982) (internal citations omitted). Here, the transaction at issue involves purely private action. (R. pp. 2-12). Therefore, the Fourteenth Amendment does not come into play and is irrelevant in this Court’s consideration of whether summary judgment was properly granted by the trial court.

**VI. THE TRIAL COURT DID NOT DEPRIVE APPELLANT OF HIS RIGHTS UNDER THE SEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.**

Appellant argues that he was entitled to a jury trial under the Seventh Amendment to the United States Constitution. Appellant has misconstrued the constitutional rights which attach to the

dispute at hand. South Carolina courts have explicitly held that the Seventh Amendment to the United States Constitution “governs right to trial by jury in Federal courts. This amendment has never been held applicable to the States...” *Pelfrey v. Bank of Greer*, 270 S.C. 691, 693, 244 S.E.2d 315 (1978). Therefore, it is improper to assert the applicability of the Seventh Amendment of the United States Constitution in this matter.

Further, assuming *arguendo* Appellant had a right to trial by jury under South Carolina law, and assuming *arguendo* that he properly demanded trial by jury in this matter, this right was not violated. Through its entry of summary judgment, the trial court correctly found that no genuine issues of material fact existed which may have been presented to a jury. (R. pp. 258-260). When no genuine issues of material fact are said to exist, there is nothing to introduce to a jury, the need for a jury trial is eliminated, and the role of a jury is rendered moot. *See Spence v. Wingate*, 395 S.C. 148, 156, 716 S.E.2d 920 (2011) (emphasizing that the purpose of summary judgment is to determine the existence of triable issues).

For the abovementioned reasons, the trial court did not err in granting summary judgment in favor of Respondent.

## **VII. THE TRIAL COURT APPROPRIATELY CONSIDERED APPELLANT’S PRO SE STATUS.**

Appellant cites *Goodson v. American Bankers Ins. Co.*, 295 S.C. 400, 368 S.E.2d 687 (1988) to support his argument that “Courts must accommodate non-lawyers and construe filings liberally.” (*Initial Brief of Appellant*, pg. 9). However, Appellant’s position is contradicted by the same authority he cites: “[I]ack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” *Id.* at 403. This principle has been repeatedly emphasized by South Carolina courts. *See Cohen v. Cohen*, 438 S.C. 9, 881 S.E.2d 650 (2022). *See also Hill v. Dotts*, 345 S.C. 304, 547 S.E.2d 894 (2001). Therefore,

Appellant was not entitled to a relaxed standard or any advantages as a result of his lack of legal representation.

Appellant has put forth no evidence that, under South Carolina law, he experienced any mistreatment resulting from his *pro se* status. Consequently, the trial court did not err in granting summary judgment in favor of Respondent.

**VIII. THERE IS NO SUPPORT FOR APPELLANT'S ARGUMENT THAT APPEARANCE COUNSEL WAS IMPROPER.**

Appellant's argument seems to conflate the role of Respondent's Counsel with the role of the affiant who signed the Affidavit in Support of Plaintiff's [Respondent] Motion for Summary Judgment. Appearance counsel at the summary judgment hearing, Elizabeth Wright, is a licensed South Carolina attorney. (R. pp. 244-259). She is not claiming to have personal knowledge of the facts of the case. ((R. pp. 244-259). There is no authority, and Appellant has cited none, stating that an attorney needs to have personal knowledge of the facts she is arguing, or to testify or attest to any facts. That is not the role of an attorney. There is no authority, and Appellant has cited none, stating that counsel of record must appear at all hearings.

For the abovementioned reasons, the trial court did not err in granting summary judgment in favor of Respondent.

**IX. THE TRIAL COURT PROPERLY CONSIDERED THE AFFIDAVIT FILED BY RESPONDENT.**

Appellant argues the trial court improperly considered business records presented by the Respondent because the records lacked authentication or foundation. "Hearsay is not admissible except as provided by [the South Carolina Rules of Evidence] or by other rules prescribed by the Supreme Court of this State or by statute."; *Ex parte Dep't of Health & Envtl. Control*, 350 S.C. 243, 249-50, 565 S.E.2d 293, 297 (2002), *S.C. Dep't of Revenue v. Meenaxi, Inc.*, 417 S.C. 639, 654-55, 790 S.E.2d 792, 800 (Ct. App. 2016).

South Carolina Rules of Evidence Rule 803(6) provides such an exception to make admissible business records “made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness.” *See Id.*

The Affidavit attached as Exhibit 1 to Plaintiff-Respondent’s Complaint clearly lays out the foundation required by Rule 803(6). (R. pp. 3-4). In pertinent part, it states that the affidavit is “made on the basis of personal knowledge, as well as my review of documents held both by DISCOVER BANK and DISCOVER PRODUCTS INC.” (R. p. 3). The affidavit also states the affiant is attesting in her capacity as Litigation Support Coordinator and that she “has knowledge regarding, and access to, records regarding the Discover Card account...These records are maintained in the ordinary course of business, and the records are updated with information on events (such as charges and payments on the account) by individuals with personal knowledge of those events or by automated processes that track such events at or near the time that the events occur.” (R. p. 3). These statements clearly meet the Rule 803(6) requirements.

For the abovementioned reasons, the trial court did not err in granting summary judgment in favor of Respondent.

### **CONCLUSION**

Appellant has failed to present any legally supported argument demonstrating that the trial court erred in granting summary judgment in favor of Respondent. Additionally, Appellant has presented no evidence, affidavits, or documentation which undermines the trial court’s findings. Accordingly, the trial court’s decision to grant summary judgment in favor of

Respondent was proper, and Respondent respectfully requests that this Court affirm the trial court's entry of summary judgment.

Respectfully submitted.

March 30, 2025

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