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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Hon. Michael G. Nettles, Circuit Court Judge

Appellate Case No.: 2025-000733

Ryan Antonio Burgess..... Appellant,

vs.

CBL Services.....Respondent.

FINAL BRIEF OF RESPONDENT

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Table of Contents

<u>STATEMENT OF ISSUES ON APPEAL</u>	3
<u>STATEMENT OF THE CASE</u>	3
<u>STATEMENT OF FACTS</u>	4
<u>STANDARD OF REVIEW FOR SUMMARY JUDGMENT APPEALS</u>	8
<u>ARGUMENT</u>	8
I. <u>Did the trial court properly conclude that Appellant’s failure to file a timely demand for a jury trial under Rule 38 of the South Carolina Rules of Civil Procedure constituted a waiver of the right to trial by jury, and that such waiver had no effect on the granting of Respondent’s Motion for Summary Judgment?</u>	8
II. <u>Did the trial court properly grant summary judgment in favor of Respondents where there was no genuine issue of material fact, and the defendant was entitled to judgment as a matter of law pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure?</u>	9
III. <u>Did the trial court properly determine that it had personal jurisdiction over Appellant under S.C. Code Ann. § 36-2-802 allowing Respondent’s case to proceed?</u>	10
IV. <u>Did the trial court properly grant Summary Judgment where Appellant failed to present evidence creating a genuine issue of material fact, even when the evidence is viewed in the light most favorable to Appellant?</u>	13
<u>CONCLUSION</u>	14

TABLE OF AUTHORITIES

Cases

<i>Citizens and Southern Nat’l Bank of S.C. v. Lanford</i> , 313 S.C. 540, 443 S.E.2d 549 (1994).....	13
<i>DD Dannar, LLC v. SC LAUNCH!, Inc.</i> , 431 S.C. 9, 846 S.E.2d 883 (Ct. App. 2020).....	8
<i>Elrod v. All</i> , 242 S.C. 425, 134 S.E.2d 410 (1964).....	11
<i>Gasque v. Gasque</i> , 246 S.C. 423, 143 S.E.2d 811 (1965)	11
<i>Johnson v. Alexander</i> , 413 S.C. 196, 775 S.E.2d 697 (2015).....	11
<i>Lanham v. Blue Cross & Blue Shield of S.C., Inc.</i> , 349 S.C. 356, 563 S.E.2d 331 (2002)	13
<i>Marlowe v. S.C. DOT Scdot</i> , 446 S.C. 309, 919 S.E.2d 553 (2025).....	8
<i>Roesler v. Roesler</i> , 396 S.C. 100, 719 S.E.2d 275 (Ct. App. 2011).....	11
<i>Rowe Furniture Corp. v. Carolina Wholesale Furniture Co.</i> , 292 S.C. 575, 375 S.E.2d 725 (Ct. App. 1987).....	9
<i>Transouth Fin. Corp. v. Cochran</i> , 324 S.C. 290, 478 S.E.2d 63 (Ct. App. 1996);	12
<i>Ziegler v. Dorchester Cty.</i> , 426 S.C. 615, 828 S.E.2d 218 (2019).....	8

Statutes

SC. Code Ann § 36-2-802 (2003).	10, 11
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Rules

Rule 38, SCRC.	9
Rule 56(c), SCRC.	10
Rule 56(e), SCRC	10

STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court properly conclude that Appellant's failure to file a timely demand for a jury trial under Rule 38 of the South Carolina Rules of Civil Procedure constituted a waiver of the right to trial by jury, and that such waiver had no effect on the granting of Respondent's Motion for Summary Judgment?
- II. Did the trial court properly grant summary judgment in favor of Respondents where there was no genuine issue of material fact, and the defendant was entitled to judgment as a matter of law pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure?
- III. Did the trial court properly determine that it had personal jurisdiction over Appellant under S.C. Code Ann. § 36-2-802 allowing Respondent's case to proceed?
- IV. Did the trial court properly grant Summary Judgment where Appellant failed to present evidence creating a genuine issue of material fact, even when the evidence is viewed in the light most favorable to Appellant?

STATEMENT OF THE CASE

On July 30, 2024, Respondent filed a Summons and Complaint seeking judgment against Appellant for a deficiency balance owed on a contract in the amount of \$35,934.63. (R. pp.10-

16.) Appellant answered Respondent's Complaint on November 8, 2024, and subsequently filed an amended Answer on November 12, 2024. (R. pp. 17-21.) Ryan Transport, LLC was initially a Defendant in the instant case, however, on January 15, 2025, Respondent filed a Motion and Order of Dismissal Without Prejudice as to Defendant Ryan Transport, LLC. The court approved the Order on January 15, 2025. (R. pp. 76-79.)

Appellant filed a Motion to Dismiss on December 13, 2024. (R. pp. 39-41.) A hearing on Appellant's Motion to Dismiss was held on January 28, 2025. (R. pp. 72-75.) The Parties were informed that the presiding judge denied Appellant's Motion on February 10, 2025. (R. pp. 72-75.)

Appellant subsequently filed a Motion for Reconsideration of Defendant's Motion to Dismiss and a Motion for Jury Trial on February 11, 2025. (R. pp. 42-44.) Appellant's Motion for Reconsideration was denied by the court on February 14, 2025. (R. pp. 80-83.)

On March 14, 2025, Respondent filed its Motion for Summary Judgment and accompanying Affidavits and Exhibits. (R. pp. 84-89.) A hearing on Respondent's Motion was held on April 7, 2025. (R. pp. 1-7.) The Parties were informed that the presiding judge ruled for Respondent's Motion for Summary Judgment via Form 4 Order filed on April 11, 2025. (R. pp. 1-7.) Respondent filed a Motion for a Damages Hearing on April 11, 2025. (R. p. 1-7; 37, ¶ 1-3.) Appellant filed a Notice of Appeal for the instant case on April 17, 2025. (R. pp. 94-95.) The instant appeal was filed prior to the scheduling of said damages hearing.

STATEMENT OF FACTS

On or about September 22, 2021, Appellant Ryan Antonio Burgess on behalf of Ryan Transport, LLC made, executed and delivered to North Mill Credit Trust, for valid consideration given, a certain Commercial Security Agreement, Personal Guaranty, Certificate

of Incumbency and Authority, Authorization Agreement for Automatic Withdrawal from Account, Electronic Record and Signature Disclosure, and North Mill Credit Insurance Requirements (hereinafter collectively referred to as the “Contract”) in writing, wherein and whereby payment was promised to North Mill Credit Trust or its order the sum of Seventy-One Thousand, Eight Hundred Fifty-Seven and 98/100 (\$71,857.98) Dollars pursuant to the terms and conditions set out in the Contract. (R. pp. 1-7; 84-92.)

For valuable consideration given, and to further induce the Respondent’s predecessor-in-interest to enter into the Contract, Burgess did Personally Guaranty the amounts due under the Contract delivered to Plaintiff on or about September 22, 2021. Appellant Ryan Antonio Burgess, as Personal Guarantor, promised to repay Plaintiff the amounts due under the Contract in the event that Ryan Transport, LLC failed to abide by the terms of the Contract at issue. (R. pp. 1-7; 84-92.)

Ryan Transport, LLC was initially a Defendant in the instant case, however, on January 15, 2025, Respondent filed a Motion and Order of Dismissal Without Prejudice as to Defendant Ryan Transport, LLC. The court approved the Order on January 15, 2025. (R. pp. 76-79.) The subject Contract was subsequently assigned to the Appellant. (R. pp. 1-7.)

The Contract enabled Ryan Transport, LLC to purchase a 2018 Wabash Articlite Dry Freight 53-foot Trailer. Ryan Transport LLC granted a security interest in said collateral unto Respondent’s predecessor-in-interest. (R. pp. 1-7; 84-92.)

Ryan Transport, LLC defaulted on payment under the Contract, and on or about November 2022, Ryan Transport, LLC surrendered the collateral unto Plaintiff’s predecessor-in-interest. (R. pp. 1-7.)

On or about November 15, 2022, a Notice of Public Private Sale was issued unto Appellant Ryan Antonio Burgess and Ryan Transport, LLC. (R. pp. 1-7.)

A subsequent sale of the subject collateral was held in a commercially reasonable manner, producing proceeds of \$26,000.00 which were applied to the subject account. On or about February 9, 2023, a Notice was issued to Ryan Antonio Burgess and Ryan Transport, LLC notifying them of a then remaining deficiency balance of \$32,836.32, as well as their responsibility for said deficiency. This balance remains unpaid. (R. pp. 1-7.)

As Ryan Transport, LLC has failed to cure the deficiency, and as a result of the subject guaranty, Defendant Ryan Antonio Burgess is responsible for payment of the balance owed under the Contract to the Plaintiff. (R. pp. 1-7.)

Pursuant to the subject Personal Guaranty, Appellant Ryan Antonio Burgess is responsible for payment of all attorneys' fees incurred by Plaintiff in the instant case. (R. pp. 1-7.)

On or about July 30, 2024, Respondent filed a Summons and Complaint seeking judgment for a deficiency balance owed under a contract in the amount of \$35,934.63. (R. pp. 10-16.) Service was first attempted on Appellant on September 11, 2024. (Aff. Non-Service.) During that attempt, the process server spoke with Appellant through a Ring doorbell, and Appellant advised that he was an over-the-road truck driver who would return to his residence in two weeks. (R. pp. 96-97.) Although Appellant was aware that service was being attempted, a second attempt on or about September 20, 2024, was unsuccessful, despite personal vehicles being present on the property. (R. pp. 96-97.) Additional attempts were made on September 21, 22, and 26, 2024, but Appellant did not respond. (R. pp. 96-97.) An Affidavit of Non-Service as to Appellant was filed with the Court on October 22, 2024. (R. pp. 96-97.)

Appellant availed himself of the court's jurisdiction through his filing of a responsive Answer with the Court on November 12, 2024. (R. pp. 17-21)

Appellant filed a Motion to Dismiss with Prejudice on December 13, 2024. (R. pp. 39-41.) A hearing on Appellant's motion was held on January 28, 2025. (R. pp. 72-75.) The Parties were informed that the presiding judge denied Appellant's Motion to Dismiss February 10, 2025. (R. pp. 72-75.)

On February 7, 2025, Plaintiff's First Set of Interrogatories, Plaintiff's First Requests to Admit, and Plaintiff First Requests for Production were served upon Appellant via U.S. mail, making the deadline for response March 10, 2025. Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Appellant did not respond to Plaintiff's Requests for Admission within 30 days, and therefore, said requests are all deemed as admitted. (R. pp. 84-92.)

Appellant subsequently filed a Motion for Reconsideration of Defendant's Motion to Dismiss on February 11, 2025. (R. pp. 42-44; 52-54.) On February 11, 2025, Appellant also filed a Motion for Jury Trial. (R. pp. 80-83.) Appellant's Motion for Reconsideration was denied by the court on February 14, 2025. (R. pp. 80-83.)

On March 14, 2024, Respondent filed its Motion for Summary Judgment and accompanying Affidavits and Exhibits. (R. pp. 84-92.) Appellant failed to file a counter Affidavit or any evidence contradicting Respondent's Motion for Summary Judgment. A hearing for Respondent's Motion for Summary Judgment was held on April 7, 2025. (R. pp. 1-7.) Judgment was found in favor of the Respondent at said hearing, and a formal Order granting Respondent's Motion was filed thereafter. (R. pp. 1-7.) Respondent subsequently filed a Motion for a Damages Hearing on April 11, 2025. (R. p. 1-7; 37, ¶ 1-3.) Appellant filed a

Notice of Appeal for the instant case on April 17, 2025. (R. pp. 94-95.) As such, the instant appeal was filed prior to the scheduling of a damages hearing.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT APPEALS

When reviewing a grant of summary judgment, the South Carolina Court of Appeals applies the same standard applied by the trial court pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure (SCRPC). *DD Dannar, LLC v. SC LAUNCH!, Inc.*, 431 S.C. 9, 16, 846 S.E.2d 883, 887 (Ct. App. 2020). Under this rule, summary judgment is appropriate 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 a judgment as a matter of law. Rule 56, SCRPC.

In reviewing an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party. *Marlowe v. S.C. DOT Scdot*, 446 S.C. 309, 315, 919 S.E.2d 553, 556 (2025). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable inferences in the light most favorable to the non-moving party. *Id.*

When a circuit court grants summary judgment on a question of law, the Court of Appeals will review the ruling *de novo*. *DD Dannar, LLC v. SC LAUNCH!, Inc.*, 431 S.C. 9, 16, 846 S.E.2d 883, 887 (Ct. App. 2020). Courts have established that questions of law are reviewed *de novo*. *Ziegler v. Dorchester Cty.*, 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019).

ARGUMENT

Did the trial court properly conclude that Appellant's failure to file a timely demand for a jury trial under Rule 38 of the South Carolina Rules of Civil Procedure constituted a

waiver of the right to trial by jury, and that such waiver had no effect on the granting of Respondent's Motion for Summary Judgment?

Rule 38(b) of the South Carolina Rules of Civil Procedure provides that a party may demand a trial by jury by “serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue.” Rule 38, SCRPC. Rule 38(d) further specifies that a party's failure to serve a timely jury demand as required by 38(b) constitutes a waiver of the right to a jury trial. *Id.* In *Rowe Furniture Corp. v. Carolina Wholesale Furniture Co.*, the South Carolina Court of Appeals firmly asserted that because the defendants failed to demand a jury trial as required by Rule 38, they waived their right to a jury trial and consequently, any decision to grant a jury trial thereafter rested within the trial court's sound discretion. *Rowe Furniture Corp. v. Carolina Wholesale Furniture Co.*, 292 S.C. 575, 576 375 S.E.2d 725, 725 (Ct. App. 1987).

In the instant case, Appellant's filed his amended answer with the court on November 18, 2024. (R. pp. 17-21.) However, he did not submit his Motion for Jury Trial until February 11, 2025, well beyond the ten-day period dictated by Rule 38(b). (R. pp. 45-46.) Accordingly, Appellant failed to make a timely jury trial demand and therefore waived his right to trial by jury. Because the waiver resulted from Appellant's noncompliance with the procedural requirements of Rule 38(b), the trial courts denial of a jury trial does not did not violate Appellant's due process rights or right to a fair and impartial trial. Moreover, Appellant's demand for a jury trial had no bearing on the disposition of, or court's decision to grant, Respondent's Motion for Summary Judgment.

Did the trial court properly grant summary judgment in favor of Respondents where there was no genuine issue of material fact, and the defendant was entitled to judgment as a matter of law pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure?

Appellant has identified no specific facts or evidence creating a genuine issue of material fact. Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a party opposing

summary judgment may serve affidavits up to two days before the scheduled hearing. Rule 56(c), SCRCP. After Respondent's filed their Motion for Summary Judgment, Appellant failed to submit any opposing Affidavits or Exhibits to the court. Therefore, there was no evidence before the court contradicting Respondent's assertions within their Motion for Summary Judgment. Rather, Appellant stated only that he "did not recall signing or recognized the personal guarantor document." (Appellant's Br. at 2.) That assertion is insufficient to defeat a Motion for Summary Judgment. Under Rule 56(e) of the South Carolina Rules of Civil Procedure, a party opposing summary judgment "may not rest upon the mere allegations or denials of his pleadings, but his response must set forth specific facts showing there is a genuine issue for trial." Rule 56(e), SCRCP. Here, Appellant points to no evidence in the record supporting his allegations. Unsupported assertions, without competent evidence, do not create a genuine issue of material fact. *Clark v. Greenville Cty.*, 313 S.C. 205, 208 437 S.E.2d 117, 118 (1993).

Appellant relies only on speculation and lack of recollection, neither of which is enough to survive a Motion for Summary Judgment. The record contains no evidence that would permit a reasonable factfinder to rule in Appellant's favor, and Appellant's arguments amount to a request that his Court disregard the governing summary judgment standard. Because Appellant failed to meet its burden under Rule 56, the trial court correctly entered judgment as a matter of law, and its order should be affirmed.

Did the trial court properly determine that it had personal jurisdiction over Appellant under S.C. Code Ann. § 36-2-802 allowing Respondent's case to proceed?

Despite Appellant's assertions to the contrary, there is every indication that the trial court had personal jurisdiction over Appellant. SC. Code Ann Section 36-2-802 outlines that a "court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, doing

business, or maintaining his or its principal place of business in, this State as to any cause of action.” SC. Code Ann § 36-2-802 (2003). Domicile, “means the place where a person has his true, fixed and permanent home and principal establishment, to which he has, whenever he is absent, an intention of returning.” *Roesler v. Roesler*, 396 S.C. 100, 107, 719 S.E.2d 275, 279 (Ct. App. 2011) (quoting *Gasque v. Gasque*, 246 S.C. 423, 426 143 S.E.2d 811, 812 (1965)).

The record reflects that Appellant is a permanent resident of Florence, South Carolina. In Appellant’s amended answer filed November 12, 2024, Appellant listed his address as “509 N Williamson Rd, Florence, SC 29506-8532.” (R. pp. 17-21.) Statements made by a party in pleadings are generally binding and conclusive, and a party may not later advance a position inconsistent with those allegations. *See Johnson v. Alexander*, 413 S.C. 196, 202 775 S.E.2d 697, 700 (2015). Accordingly, Appellant’s admission that his permanent residence is in Florence, South Carolina, constitutes a judicial admission that he resides in Florence. His in-state domicile therefore establishes the court’s personal jurisdiction over Appellant.

Appellant’s contention that he was not properly served with Summons and Complaint is improperly grounded and has been invalidated by his own actions. In the instant case, service was first attempted on Appellant on September 11, 2024. (R. pp. 96-97.) During that attempt, the process server spoke with Appellant through a Ring doorbell, and Appellant stated that he was an over-the-road truck driver who would return to his residence in two weeks. (R. pp. 96-97.) A second Service was attempted on September 20, 2024, which was also unsuccessful, despite multiple personal vehicles being present on Appellant’s property. (R. pp. 96-97.) Additional attempts were made on September 21, 22, and 26, 2024, but Appellant did not respond. (R. pp. 96-97.) An Affidavit of Non-Service as to Appellant was filed with the Court on October 22, 2024. (R. pp. 96-97.) Accordingly, the record establishes that Appellant had actual knowledge of the

attempted service, willfully evaded service of process, and is attempting to accrue a benefit from his own wrongful actions despite having appeared in this matter on appeal.

As is admitted in Appellant's brief, he voluntarily appeared in court in the instant action by filing a responsive Answer on November 12, 2024. (Appellant's Br. at 2.) Rule 4(d) of the South Carolina Rules of Civil Procedure explicitly provides that a "voluntary appearance by defendant is equivalent to personal service." As such, Appellant's voluntary appearance constitutes the equivalent of proper, personal service and represents a willful availment of personal jurisdiction as to the trial court.

Appellant therefore errs in arguing that the trial court's jurisdiction depended solely upon his relationship with Ryan Transport LLC. The trial court had independent grounds for exercising personal jurisdiction over Appellant, including, as stated above, his South Carolina domicile and his voluntary appearance in the action. Accordingly, the trial court properly exercised jurisdiction over Appellant irrespective of any connection to a limited liability company.

Furthermore, Appellant also mistakenly argues that Ryan Transport LLC's dissolution bars Respondent's claim against both the LLC and Appellant. Upon discovering the LLC's dissolution, Plaintiff moved for and was granted an Order dismissing said Party from the instant case on appeal on January 15, 2025.

Said dissolution and dismissal has no effect upon Appellant's independent, personal liability for the subject debt pursuant to his personal guaranty of payment to Respondent. South Carolina law recognizes that a guaranty of payment is as an obligation that is "separate and distinct from the original note," and a guarantor's liability is independent of the principal debt. *See Transouth Fin. Corp. v. Cochran*, 324 S.C. 290, 295, 478 S.E.2d 63, 65 (Ct. App. 1996); *See also Citizens and Southern Nat'l Bank of S.C. v. Lanford*, 313 S.C. 540, 544, 443 S.E.2d 549, 551

(1994). Therefore, regardless of the LLC's dissolution status, Appellant remains independently liable to Respondent under the guaranty. Because personal jurisdiction over Appellant is established through his domicile and voluntary court appearance, Ryan Transport's LLC's dissolution has no effect on the trial court's authority to assert personal jurisdiction over Respondent's claims against Appellant.

Did the trial court properly grant Summary Judgment where Appellant failed to present evidence creating a genuine issue of material fact, even when the evidence is viewed in the light most favorable to Appellant?

Although Appellant correctly notes that, when evaluating a Motion for Summary Judgment, “the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party,” he still failed to present competent, admissible evidence creating a genuine issue of material fact. *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349, 361-362 S.C. 356, 563 S.E.2d 331, 333 (2002). As previously emphasized, Appellant failed to submit any opposing Affidavits to Respondent's Motion for Summary Judgment. The court cannot view evidence in Appellant's favor when no such evidence exists. Appellant contends only that he did not recognize the document in dispute and that his signature did not appear on the document. (Appellant's Br. at 3.) Those contentions are merely allegations, and do not qualify as sufficient facts or evidence to present a genuine issue of material fact. As Rule 56(e) of the South Carolina Rules of Civil Procedure provides, a party opposing summary judgment “may not rest upon the mere allegations or denials of his pleadings, but his response must set forth specific facts showing there is a genuine issue for trial.” Rule 56, SCRCRCP. Moreover, as indicated by Respondent's Affidavit in support of summary judgment, Respondent produced ample competent evidence to support a ruling in its favor. (R. pp. 84-92.)

CONCLUSION

For the foregoing reasons, the trial court correctly granted summary judgment in favor of Respondents. Appellant failed to produce competent, admissible evidence to create a genuine issue of material fact. To the contrary, the record reflects only speculation and lack of recollection, which cannot defeat summary judgment. Because Appellant failed to meet his burden to demonstrate a triable issue, the trial court's ruling was proper. Accordingly, this Court should affirm the Order Granting Summary Judgment and remand this matter to allow Respondents to schedule a hearing to determine their damages.

RESPECTFULLY SUBMITTED

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