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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable G.D. Morgan, Jr.

APPELLATE CASE NO. 2026-001115

Pawnee Leasing Corporation……...…………………………………..Respondent,

v.

Omega Laser & Skin Care, LLC, and Anacorita Ellisor………………Appellants.

INITIAL BRIEF OF APPELLANTS

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SUMMARY OF FACTS

On or around September 8, 2021, Omega Laser & Skin Care, LLC ("Omega") executed an equipment finance agreement ("EFA") with Tandem Finance Inc. ("Tandem") to obtain financing for the purchase of certain equipment: (1) a Spectrum Laser System and accessories, (2) a BodyTone, and (3) an UltraLight LED System ("Collateral"). (Comp. p. 1 ¶ 3; MSJ Ex. I).[1] The initial amount financed was $71,595. (MSJ Ex. IV). The EFA granted Tandem a first priority security interest in the Collateral. (MSJ Ex. I p. 2 ¶ 4). On September 9, 2021, Tandem assigned the EFA to Pawnee Leasing Corporation ("Respondent"). (Comp. p. 2 ¶ 5; MSJ Ex. I p. 6). On

[1] Respondent asserts that the owner of Omega, Anacorita Ellisor ("Ellisor") also executed a guarantee of the EFA on this date; however, Appellants deny this assertion. (Comp. p. 1 ¶ 3; Def. Resp to RFA p. 1 ¶ 3; Def. Supp. Resp. to RFA p. 2 ¶ 3).

September 10, 2021, a UCC Financing Statement was filed listing Omega as the debtor. (MSJ Ex. II).

Between October 1, 2021, and June 28, 2024, Omega paid $37,294.96 towards the amount financed;[2] however, it fell behind in making its required payments. (Pl. RFA Ex. IV). On or around August 1, 2024, Respondent repossessed the Collateral. (Pl. RFA Ex. III). On September 6, 2024, Tandem created a payoff quotation asserting that $66,372.10 was still due and owing on the account. (Pl. RFA Ex. III). No credit for the value of the Collateral appears on this payoff quotation. (Pl. RFA Ex. III).

STATEMENT OF THE CASE

On February 19, 2025, Respondent initiated this case by filing a summons and complaint. (Summons p. 1; Comp. p. 1). On June 6, 2025, Appellants filed their answer. (Ans. p. 1).

On January 13, 2026, Respondent filed a motion for summary judgment. (MSJ p. 1). On March 2, 2026, an order granting Appellants motion for substitution of counsel was filed. (Order p. 1). On March 4, 2026, Appellants served their first set of interrogatories and requests for production on Respondent. (Memo in Opp. Ex. A p. 10).

On March 5, 2026, a hearing of Respondent's motion for summary judgment was held before the Honorable G.D. Morgan, Jr. (Order of Judgment p. 1). On March 13, 2026, an order of judgment ("Order") was filed granting Respondent's motion and entering judgment against Appellants in the amount of $100,547.52. (Order of Judgment p. 3).

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[2] On January 31, 2025, Omega paid an additional $4,500 towards the amount financed after the Collateral was repossessed. (Pl. RFA Ex. IV).

On March 20, 2026, Appellants filed a motion to alter or amend the judgment. (MTR p. 1). On April 15, 2026, an order was filed denying Appellants' motion. On May 11, 2026, Appellants filed its notice of appeal. (NOA).

STANDARD OF REVIEW

In reviewing the grant of summary judgment, the reviewing court applies the same standard as the circuit court. Byrd v. City of Hartsville, 365 S.C. 650, 656, 620 S.E.2d 76, 79 (2005). "[A] moving party is entitled to summary judgment 'if the [evidence before the court] show[s] 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.'" Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 459, 892 S.E.2d 297, 299 (2023) (alterations in original) (quoting Rule 56(c), SCRCP). The court must view the evidence and all reasonable inferences taken from it in the light most favorable to the non-moving party. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

ARGUMENT

I. THE COURT ERRED BY GRANTING SUMMARY JUDGMENT BEFORE DEFENDANTS RECEIVED A FULL AND FAIR OPPORTUNITY TO COMPLETE DISCOVERY.

South Carolina's policy favors "disposition of issues on their merits rather than on technicalities." See Mictronics Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (citing Columbia Pools v. Galvin, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986)). "Summary judgment is a drastic remedy and must not be granted until the opposing party has had a full and fair opportunity to complete discovery." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). Cross examination is the "greatest legal engine ever invented for the discovery of truth." Cal v. Green, 399 U.S. 149, 158 n.11 (1970) (quoting 5 Wigmore § 1367).

Appellants have not had a full and fair opportunity to conduct discovery. They filed their answer to close pleading on June 6, 2025, (Ans. p. 1), which was only six months prior to Respondent filing its motion for summary judgment on January 13, 2026 (MSJ p. 1). Upon receipt of the motion, Appellants immediately sought a new attorney, who was substituted as counsel on March 2, 2026. (Order Sub.). Upon being substituted as counsel, Appellants' new attorney immediately started the discovery process. (Memo in Opp. Ex. A p. 10). Respondent did not respond to these discovery requests prior to the motion hearing.

Appellants do not have access to Respondent's accounting records. As such, Appellants have not had the opportunity to challenge the accuracy of these records. Even if Appellants completely failed to answer the complaint and defaulted, they would have an opportunity to cross examine witnesses at a damages hearing and would be able to investigate and challenge the accuracy of Respondent's records. <u>See</u> <u>Howard v. Holiday</u>, 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978). Even if the witness believes he is telling the truth, those questions could prompt him to reconsider his testimony or see the accuracy of his records in a different light.

Here, however, even though Appellants engaged in the case by answering the pleadings and responding to discovery requests, summary judgment was granted based on Respondent's affidavit without any opportunity to cross examine or question the accuracy of that document. If the trial court's order is allowed to stand, it means it would be more beneficial for a defendant to refuse to answer and force a damages hearing rather than engage in the judicial process.

Further, there was no opportunity for the affiant to respond to the issues raised by Appellants. Was the amount owed reduced by the value of the Collateral? Where is that adjustment shown on the account statement? How have there been $41,794.96 in payments towards a debt and that debt has only been reduced by $5,222.90? It is problematic to grant positive relief to a plaintiff on summary judgment where there are unanswered cross-examination questions like these. The other material facts in contention in this case are reason enough to reverse the court's decision; however, the lack of responses in the record to these fundamental cross-examination questions are themselves genuine material facts justifying reversal. This is especially true where a defendant has not had a full and fair opportunity to complete discovery.

Therefore, Appellants respectfully request that this Court reverse the judgment of the circuit court.

II. THE COURT ERRED BY GRANTING SUMMARY JUDGMENT WITHOUT REQUIRING PROOF OF THE SECURED PROPERTY'S VALUE.

"[T]he debtor is entitled to a rebuttable presumption the collateral was worth the indebtedness." Matthias v. Hicks, 294 S.C. 305, 308, 363 S.E.2d 914, 916 (Ct. App. 1987). "It is the burden of the secured party to overcome the presumption by evidence that the value of the collateral was less than the debt." Id. "Only if the creditor rebuts the presumption may he maintain the action for the deficiency." Id.

Respondent repossessed the Collateral securing the debt. However, Respondent offered no evidence as to the value of that Collateral. Respondent did not present any evidence that it resold or attempted to resell the Collateral nor did Respondent present an appraisal of the Collateral or any other indication of value.

The only evidence Respondent presented that referred to the value of the Collateral is the conclusory statement that "the Payoff Quotation . . . accurately reflects the full charges and credits for the equipment, including credit for the recovered Collateral …" (Aff. in Supp. p. 2). However, neither the Payoff Quotation, (Pl. RFA Ex. III), nor Respondent's accounting records, (Pl. RFA

Ex. IV) show any credit amount for the repossessed Collateral. Further, even if a credit was listed, Respondent has provided no explanation or evidence regarding how Respondent determined the value of that credit.

The burden is on Respondent to overcome the presumption by evidence that the value of the Collateral was less than the debt owed. Respondent has not provided any evidence regarding the value of the Collateral. As such, Respondent has not met its burden and Appellants are entitled to the presumption that the value of the Collateral was at least equal to the amount of debt.

Therefore, Appellants respectfully request that this Court reverse the judgment of the circuit court.

III. THE COURT ERRED BY GRANTING RESPONDENT A WINDFALL RECOVERY BY ALLOWING RESPONDENT TO RETAIN THE REPOSSED COLLATERAL WHILE ALSO RECEIVING FULL MONETARY VALUE FOR THE SECURED DEBT.

"The law's refusal to allow a double recovery is fundamental." Gipson v. Coffey & McKenzie, P.A., 445 S.C. 395, 399, 914 S.E.2d 842, 844 (2025) (citing Riley v. Ford Motor Co., 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015); Hawkins v. Hatton, 10 S.C.L. (1 Nott & McC.) 318, 319 (1818) ("It is unreasonable, that a party should have more than one satisfaction for the same injury….")). A trial judge may invoke this basic common law rule to ensure the verdict amount comports with the plaintiff's actual loss. Id.

On September 8, 2021, purchased the Collateral for $71,595. (MSJ Ex. IV). On August 1, 2024, less than three years later, Respondent repossessed the Collateral. (Pl. RFA Ex. III). As stated in Section II, *supra*, Respondent has not presented any evidence indicating the value of the repossessed Collateral; however, the equipment must have some value after only three years in Appellants' possession. Further, this fact is supported by Respondent continuing to charge

Appellants for maintaining property insurance on the Collateral until it was repossessed. (MSJ Ex. I p. 3 ¶ 9; Pl. RFA Ex. IV). Finally, there is no indication of any deduction in the amount owed to offset the value of the Collateral in Respondent's payment records. (Pl. RFA Ex. IV).

If Respondent is granted full judgment against Appellants while also being allowed to retain the repossessed Collateral, then Respondent has received an impermissible double recovery: both the value of the Collateral and the Collateral itself.

Therefore, Appellants respectfully request that this Court reverse the judgment of the circuit court.

IV. THE COURT ERRED BY GRANTING SUMMARY JUDGMENT WHERE THERE ARE GENUINE ISSUES OF MATERIAL FACT TO BE DETERMINED.

"When determining whether triable issues of fact exist, all evidence and inferences drawn from the evidence must be viewed in the light most favorable to the non-moving party." Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004). "[A] moving party is entitled to summary judgment 'if the [evidence before the court] show[s] 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.'" Kitchen Planners, 440 S.C. at 459, 892 S.E.2d at 299 (alterations in original) (quoting Rule 56(c), SCRCP).

When the evidence presented at the motion for summary judgment is viewed in the light most favorable to Appellants, there are four genuine issues of material fact that remain triable: the value of the Collateral, whether the value of the Collateral was credited against the debt, the accuracy of Respondent's accounting records, and whether the guaranty was actually digitally signed by Appellant Ellisor.

First, it is necessary to determine the value of the Collateral to overcome the presumption that the value of the Collateral is less than the debt owed. See Matthias, 294 S.C. at 308, 363 S.E.2d at 916. The burden is on Respondent to overcome this presumption. Here, no evidence has been presented regarding the value of the Collateral. As such, when the evidence is viewed in the light most favorable to Appellants, the value of the Collateral must be presumed to be at least as much as the debt and the debt determined satisfied by the repossession.

Second, there was contradictory evidence presented regarding whether the value of the Collateral was credited against the debt. Respondent's affidavit contained the conclusory statement that the payoff quotation included a credit for the value of the Collateral. (Aff. in Supp. p. 2). However, neither the Payoff Quotation, (Pl. RFA Ex. III), nor Respondent's accounting records, (Pl. RFA Ex. IV) show any credit amount for the repossessed Collateral. As such, when the evidence is viewed in the light most favorable to Appellants, it should be determined that the payoff amount did not include a credit for the repossessed Collateral.

Third, no evidence was presented regarding how Respondent determined the payoff amount based on the payment history. Appellants paid $41,794.96 towards an initial debt of $71,595; however, that debt was only reduced by $5,222.90 on the payoff amount. Further, Appellants were unable to cross-examine Respondent's representative regarding how the payoff amount was determined or the accuracy of the payment history. As such, when the evidence is viewed in the light most favorable to Appellants, it should be determined that the payoff amount does not accurately reflect the actual payments towards the debt.

Finally, Respondent alleges that Appellant Ellisor signed to guaranty the debt in her personal capacity. (Comp. p. 1 ¶ 3). Appellants deny Ellisor signed the guaranty. (Def. Resp. RFA p. 1 ¶¶ 1, 3; Def. Supp. Resp. RFA pp. 1-2 ¶¶ 1, 3). The agreement and guaranty are electronically signed documents with signatures generated by the DocuSign software. (MSJ Ex. I). No evidence was presented from the metadata of the DocuSign envelope to show when the document was signed or by whom.

The trial court found that the signature on the agreement was identical to the signature on the guaranty. (Order p. 2). Obviously, to the human eye these signatures are identical because they are not actual signatures – rather, they are digital signatures created by the DocuSign software based on the name typed into the software. The only evidence of when the document was electronically signed and by whom is to analyze the metadata of the DocuSign envelope, which was not presented to the court. As such, there continues to be a genuine issue of material fact as to whether Appellant Ellisor signed the guaranty.

Therefore, Appellants respectfully request that this Court reverse the judgment of the circuit court.

V. THE COURT ERRED BY GRANTING RESPONDENT ATTORNEY'S FEES AND COSTS WITHOUT DETERMINING THE REASONABLENESS OF THE FEES OR ALLOWING APPELLANTS TO CONTEST THE REASONABLENESS OR AMOUNT OF SAME.

Under South Carolina law, attorney's fees are not recoverable unless authorized by contract or statute. Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 383, 377 S.E.2d 296, 297 (1989). When the recovery of attorney's fees is authorized by contract, the award of attorney's fees "is left to the discretion of the trial judge and will not be disturbed unless an abuse of discretion is shown." Id. at 384.

Once a basis for an award is established, to evaluate a request for attorney's fees and expenses, the court must consider the following factors when determining an award of attorney's fees: (1) the nature, extent, and difficulty of the legal services rendered; (2) time and labor devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) fee customarily charged in the locality for similar services; and (6) beneficial results obtained. See Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993) (citing Collins v. Collins, 239 S.C. 170, 122 S.E.2d 1 (1961)). All six factors should be given consideration in determining whether an award of attorney's fees is reasonable, and no single factor is controlling. Baron, 297 S.C. at 384, 377 S.E.2d at 297. Further, "[t]he trial court should make specific findings of fact on the record for each of these factors." Burton v. York County Sheriff's Dep't, 358 S.C. 339, 358, 594 S.E.2d 888, 898 (Ct. App. 2004). On appeal an award of attorney's fees will be affirmed so long as sufficient evidence in the record supports each factor. Blumberg, 310 S.C. at 494, 427 S.E.2d at 660.

Here, Appellants are not in default. Even if they were in default, they would still be entitled to object and challenge the reasonableness of Respondent's attorney's fees by cross examination. Rule 55(b)(3) SCRCP; see also Howard, 271 S.C. at 241, 246 S.E.2d at 882 (1978), Buist v. Buist, 410 S.C. 569, 766 S.E.2d 381 (2014). However, Appellants were not even aware of the amount of attorney's fees until they were submitted by affidavit *after the hearing*. (Atty. Fee Aff.). Appellants raised their objection to the award of attorney's fees in their post-trial motion, (MTR p. 3); however no opportunity to challenge the amount of attorney's fees was allowed by the court.

Further, the trial court did not consider any of the factors above in determining the amount of attorney's fees to award to Respondent. There is no finding in the court's order regarding the nature, extent, and difficulty of the legal services rendered; time and labor devoted to the case; professional standing of counsel; (4) contingency of compensation; fee customarily charged in the locality for similar services; or beneficial results obtained. The court simply accepted Respondent's unchallenged attorney fee affidavit as fact without any scrutiny. As such, the award of attorney's fees should be overturned. See Burton, 358 S.C. at 358, 594 S.E.2d at 898; see also Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987) ("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred.").

Finally, to the extent this Court reverses the trial court on any of the issues stated above, the Court should also reverse and remand the issue of attorney's fees and costs for consideration in light of the change in beneficial results obtained. See Jackson v. Speed, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997).

Therefore, Appellants respectfully request that this Court reverse the judgment of the circuit court.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the judgment of the circuit court.

Respectfully submitted,

s/Luke A. Burke

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