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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., Circuit Court Judge

APPELLATE CASE NO. 2026-001115

Pawnee Leasing CorporationRespondent,

v.

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

[INITIAL] BRIEF OF RESPONDENT

Thomas W. Bunch, II
Bunch Law LLC
1120 Summerwind Lane
Johns Island, South Carolina 29455
803-665-8900
tbunch@bunchlawllc.com
Counsel for Respondent

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(None)

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STATEMENT OF ISSUES ON APPEAL

1. **WHERE A NON-MOVING PARTY ON A MOTION FOR SUMMARY JUDGMENT FAILS TO CREATE A GENUINE ISSUE OF MATERIAL FACT, IS THE MOVING PARTY ENTITLED TO SUMMARY JUDGMENT?**
2. **MAY A NON-MOVING PARTY ON A MOTION FOR SUMMARY JUDGMENT REST UPON ALLEGATIONS AND DENIALS IN HIS PLEADINGS TO SHOW THAT THERE IS A GENUINE ISSUE FOR TRIAL?**
3. **MAY A NON-MOVING PARTY ON A MOTION FOR SUMMARY JUDGMENT DELAY A YEAR INTO THE CASE BEFORE SERVING DISCOVERY, SERVE DISCOVERY THE DAY BEFORE THE MOTION HEARING, THEN DEFEND THE MOTION ON THE BASIS THAT IT DID NOT HAVE A FULL AND FAIR OPORTUNITY TO CONDUCT DISCOVERY?**
4. **MAY A PARTY WHO FAILS TO CONTEST THE REASONABLENESS OF ATTORNEY'S FEES IN THE LOWER COURT, CONTEST THE REASONABLENESS OF THOSE FEES FOR THE FIRST TIME ON APPEAL?**

STATEMENT OF THE CASE

On February 19, 2025, Respondent Pawnee Leasing Corporation (“Pawnee”) commenced this action by filing a Summons and Verified Complaint with an attached Payoff Quotation and Equipment Finance Agreement (“EFA”) in which Pawnee sought a money judgment against Defendants as a borrower and a personal guarantor of the EFA. Defendants were served March 10, 2025, and filed their Answer on June 6, 2025. Defendants’ Answer adopted the parties contractual agreements but otherwise simply denied Pawnee’s allegations.

On January 13, 2026, Pawnee filed and served a motion for Summary Judgment and an Affidavit in support of the Motion executed by Pawnee’s Vice President of Legal and Asset Management including exhibits of contractual documents, business records, and the Payoff Quotation.

On March 4, 2026, a year after the filing of the case, Defendants served their first interrogatories and requests for production of documents on Plaintiff.

The following day, on March 5, 2026, the Honorable G. D. Morgan, Jr., Circuit Court Judge, heard Pawnee's summary judgment motion. On the day of the hearing, Defendants filed an unverified memorandum opposing summary judgment but they did not oppose the motion by filing any affidavits, answers to interrogatories, deposition transcripts, or other evidence.

On March 9, 2026, Judge Morgan entered a Form 4, Judgment in a Civil Case, granting Pawnee's Motion for Summary Judgment. Later that day, Pawnee's trial counsel (Anthohy D. Hoefer, Esq.) filed an affidavit of attorney's fees.

On March 13, 2026, Judge Morgan issued an Order for Judgment and a Form 4 finding Pawnee entitled to Judgment against Defendants in the principal sum of Sixty-Six Thousand, Three Hundred Seventy-Two, and 10/100 Dollars (\$66,372.10) (which is the amount stated in Plaintiff's Payoff Quotation as an exhibit to the Verified Complaint and affidavit filed in support of summary judgment) together with interest of Twenty-Four Percent (24%) per annum, as provided for in the EFA, from September 6th 2024 through March 9th 2026 in the sum of Twenty-Three Thousand, Nine Hundred Fifty-Eight, and 36/100 Dollars (\$23,958.36), together with attorney's fees in the sum of Nine Thousand, Nine Hundred Fifty-Five, and 00/100 Dollars (\$9,955.00), together with court costs in the sum of Two Hundred Sixty-Two and 06/100 Dollars (\$262.06), for a total Judgment of One Hundred Thousand, Five Hundred Forty-Seven, and 52/100 Dollars (\$100,547.52).

On March 20, 2026, Appellants filed Motion to Alter or Amend pursuant to Rule 59, SCRCF. Appellants included as one of their grounds in their Motion to Alter or Amend, that they had no opportunity to contest the attorney's fee award – the entitlement and amount. However,

Appellants did not file a motion or affidavit contesting the reasonableness of the award of attorney's fees.

On April 15, 2026, Judge Morgan denied Appellants' Motion to Alter or Amend by a Form 4 Order, and on May 11, 2026, Appellants filed their Notice of Appeal.

STANDARD OF REVIEW

In *Williams v. Jeffcoat*, the South Carolina Supreme Court reiterated the standard of review of an appeal from the trial court's grant of summary judgment:

Appellate courts apply the same standard of review applied by the trial court to review the grant of summary judgment pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure. Knight v. Austin, 396 S.C. 518, 521, 722 S.E.2d 802, 804 (2012). Summary 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. *See Rule 56(c), SCRPC.* (additional citations omitted) On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising from the evidence in the light most favorable to the non-moving party. USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791,796 (2008). Summary judgment is not proper when further inquiry into the facts is necessary "to clarify the application of the law." *Id.*

444 S.C. 224, 233-234, 906 S.E.2d 588, 593 (2024).

In *Lanier Constr. Co. v. Bailey & Yobs, Inc.*, this Court stated:

A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner.

384 S.C. 275, 278, 681 S.E.2d 909, 911 (Ct. App. 2009) *citing David v. McLeod Reg'l Medical Ctr.*, 376 S. C. 242, 250, 626 S.E.2d 1,5 (2006).

ARGUMENT

1. APPELLANTS FAILED TO CREATE A GENUINE ISSUE OF MATERIAL FACT IN OPPOSITION TO RESPONDENT'S SUMMARY JUDGMENT MOTION, AND THE LOWER COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF RESPONDENT.

Rule 56(c), SCRCR, provides, in part, “The judgment sought shall be rendered forthwith if 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.”

At their Argument IV, Appellants assert that there are four issues of material fact and those alleged issues shall be addressed herein:

a. **Value of collateral.** Appellants inaccurately describe the underlying case as a recovery of a deficiency judgment. They further inaccurately state that Respondent repossessed all collateral in which Respondent held a security interest. This case is a simple collection action after Respondent recovered only a portion of the collateral, and Appellants retained the other collateral. The Affidavit of Kenny Fitzgerald filed in support of Pawnee's summary judgment motion states that Pawnee recovered possession of a part of the financed equipment. (Aff. p. 2) The Order for Judgment states that “[Pawnee] recovered possession of a portion of the collateral for which Defendants were given credit.” (Order, pp. 1-2. The Order further provided that the Payoff Quotation “itemized the balance remaining due under the EFA after providing all credits due, including credit for the return of the collateral.” *Id.*, p. 2. It should be noted that Appellants did not plead any defense related to the value of collateral in their Answer to the Complaint or the disposition of the portion thereof recovered by Pawnee. Given the record before the lower Court,

it is respectfully submitted that Pawnee accounted for the value of the collateral it was able to secure and that Appellants received full credit for this portion of the collateral.

b. **Value of Collateral credited against Appellants' debt.** Appellants assert that there is an issue of fact whether the value of the collateral was credited to against the debt. They point to alleged inconsistencies in the Payoff Quotation and the Payment History. The Payment History is just that - a history of payments made on the EFA. It is not a statement of account, not a statement of all financial transactions associated with the EFA. It would not reflect other transactions such as gains or losses after the recovery of a portion of the Collateral. Likewise, the Payoff Quotation would not reflect such transactions. It provides an amount for the "Remaining Balance," an itemization of miscellaneous charges that are due, and an entry for a Termination Fee as provided for in the EFA. The fact that the "Remaining Balance" does not itemize how it was calculated coupled with Mr. Fitzgerald's Affidavit that all credits were applied to the debt does not create a genuine issue of material fact. It should be noted that Appellants did not plead any defense related to crediting the value of collateral to their debt in their Answer to the Complaint. Appellants simply denied the amount of the debt and rested on that allegation in response to the summary judgment motion. Given the record before the lower Court, it is respectfully submitted that Pawnee properly credited the value of the collateral it was able to secure to Appellants' debt.

c. **Evidence of how Pawnee determined the payoff amount.** Appellants argue that Respondent should have presented additional evidence regarding the calculation of the payoff amount based on the Payment History Pawnee provided to the Court. Respondent provided a Payoff Quotation as an Exhibit to the verified Complaint. Respondent provided the Payoff Quotation as an exhibit to Mr. Fitzgerald's Affidavit filed with the Motion for Summary Judgment. Appellants are fully cognizant of the payments they made on the EFA and Guaranty. The payment

history does not include calculations for interest (24% per annum contractual rate) or late charges (15% of the delinquent payment), or other expenses associated with the EFA. (EFA, paras. 6 and 11 attached as exhibit to Complaint and Fitzgerald Affidavit) The Pay History is simply one component of the calculation of the amount owed to Pawnee by Appellants. The Payoff Quotation considers all factors and sets forth the amount owed by Appellants as stated in Mr. Fitzgerald's Affidavit. Further, at no time have Appellants presented any evidence that the Pay History and Payoff Quotation are inaccurate. Belatedly, at the hearing on the summary judgment motion, they argued without any support that Respondent should provide additional evidence of how the amount owed was calculated in light of the Pay History. That *argument* simply does not create a genuine issue of material fact.

d. Signature of personal guarantor. Appellants assert that there was genuine issue of material fact whether Appellant Anacorita Ellisor signed the Guaranty. However, she actually admitted signing it in Defendants' Supplemental Responses to Plaintiff's First Requests for Admissions.

1. That, with reference to the Tandem Finance Inc. Equipment Finance Agreement (hereinafter, "Agreement") dated September 8th, 2021, consisting of Four (4) pages, attached to Plaintiff's Complaint and also attached hereto as Exhibit I, the true signature of Anacorita Ellisor is contained thereon both on behalf of Omega Laser & Skin Care, LLC, and individually as Personal Guarantor. If you deny any or all of this paragraph, please specify in detail and in what respect.

RESPONSE: Denied as stated.

SUPPLEMENTAL RESPONSE: Admitted, upon information and belief.

Based on the admission by all Appellants, there is no genuine issue of material fact. Appellant Ellisor signed the Guaranty.

2. A NON-MOVING PARTY ON A MOTION FOR SUMMARY JUDGMENT MAY NOT REST UPON ALLEGATIONS AND DENIALS IN HIS PLEADINGS TO SHOW THAT THERE IS A GENUINE ISSUE FOR TRIAL.

Rule 56(e), SCRCR, provides that:

. . . an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Respondent Pawnee filed its Motion for Summary Judgment almost 11 months after commencement of the case accompanied by the Affidavit of Kenny Fitzgerald. The affidavit recited the existence of the Equipment Finance Agreement (“EFA”) signed by the Respondents, that the lender (Tandem Finance Inc). had assigned the EFA to Pawnee, that as a result of Defendants’ default in payment to Pawnee that Pawnee recovered part of the financed equipment, and that the Payoff Quotation attached as Exhibit III to the affidavit accurately reflected the full charges and credits for the purchase of the equipment with an amount owed of \$66,372.10.

Juxtaposed against Pawnee’s verified Complaint and affidavit filed with its summary judgment motion; Appellants did not file any affidavits or other evidence to create a genuine issue of material fact. Instead, they simply relied upon (1) an unverified Answer that did nothing more than deny the allegations of the Complaint, and (2) an unverified memorandum prepared by their counsel admitting that Appellants had failed to engage in discovery for a year after the case was filed and alleging that the amount claimed by Pawnee was in question and that Pawnee had failed to properly account for the part of the financed equipment which Pawnee did recover.

When a summary judgment motion is made and supported by an affidavit, depositions, answers to interrogatories and admissions on file, which show that there is no genuine issue as to any material fact – which Pawnee did – the moving party is “entitled to judgment as a matter of

law.” Rule 56(c), SCRPC. The non-moving party must oppose the motion by affidavits, deposition testimony, answers to interrogatories and admissions on file which set forth specific facts showing there is a genuine issue for trial. Rule 56(e), SCRPC. In this case, Appellants did not file an affidavit, nor deposition testimony, nor answers to interrogatories, nor admissions of any nature. They simply did not create an evidentiary record to enable the trial court to deny the summary judgment motion.

In *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003), the South Carolina Supreme Court found that even in a case where the non-moving party had filed affidavits opposing summary judgment, the Court held that the non-moving party had failed to present any “specific facts” establishing a genuine issue for trial. Here, Appellants established no facts since they failed to file any evidence in opposition to the well-grounded summary judgment motion.

Quoting *Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991), *Dawkins* held, “Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under Rule 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.” Likewise, “... summary judgement is completely appropriate when a properly supported motion sets forth facts that ... are contested in a deficient manner.” *David v. McLeod Reg’l Med. Ctr.*, 237, S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

It is respectfully submitted that based upon the record before it, the trial court was “required under Rule 56” to enter judgment in favor of Respondent and properly did so.

3. A NON-MOVING PARTY MAY NOT DELAY A YEAR INTO THE CASE BEFORE SERVING DISCOVERY AND OPPOSE A SUMMARY JUDGMENT MOTION ON THE BASIS THAT IT DID NOT HAVE A FULL AND FAIR OPORTUNITY TO CONDUCT DISCOVERY.

The day before the hearing on Respondent's summary judgment motion and a year into the case Appellants' served their first set of interrogatories and their first set of requests for production of documents. Incredulously, Appellants point out that Respondent did not answer the discovery within a day and argue that they did not have a full and fair opportunity to conduct discovery before summary judgment was granted against them. (App. Brief, p.4).

Appellants offer no good reason why a year is not sufficient time to tend to discovery that might (or might not) be useful in opposing summary judgment. They postulate various unfounded theories that discovery might shed light upon. Further, Appellants made no motion to continue the summary judgment hearing.

In *Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison S.p.A*, 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995), this Court addressed a non-moving party's argument that it did not have a full and fair opportunity to engage in discovery.

The Regime commenced this action on October 26, 1992, and filed its motion for summary judgment on February 8, 1993. The motion was heard on June 14, 1993. Although, Montedison S.p.A contested personal jurisdiction, Montedison USA, Inc. did not. Montedison advances no good reason why four months was insufficient time under the facts of this case to develop documentation in opposition to the motion for summary judgment. The Regime's motion had been rescheduled on at least three previous occasions. Thus, Montedison could not have been caught by surprise. Further, the record discloses Montedison made no formal motion for a continuance or pointed out in any specific manner how it would be prejudiced by its inability to conduct discovery.

320 S.C. at 479-480, 465 S.E.2d 771-772.

See, also, Dawkins v. Fields, supra, affirming the granting of a summary judgment motion filed within four months of the Complaint being filed over the non-moving parties' objection that they did not have a full and fair opportunity for discovery.

Further, under Rule 56(f), SCRCP, if Appellants were unable to present affidavits or other evidence opposing summary judgment, they were obligated to submit an affidavit to the lower court that they could not for reasons stated in the affidavit present essential facts that would justify their opposition to the motion. Such an affidavit would permit the presiding judge to deny the motion or continue the hearing. Appellants did not submit such an affidavit. Appellants did not submit such an affidavit because there was no justifiable reason for them not to have engaged in discovery. They theorize that they might develop information which would preclude the grant of summary judgment, but they do not "... set forth specific facts showing there is a genuine issue for trial." Rule 56(e), SCRCP.

4. A PARTY WHO FAILS TO CONTEST THE REASONABLENESS OF ATTORNEY'S FEES IN THE LOWER COURT, MAY NOT CONTEST THE REASONABLENESS OF THOSE FEES FOR THE FIRST TIME ON APPEAL.

The EFA and personal guaranty contain provisions for attorney's fees to be awarded to Pawnee enforcing its rights against Appellants upon their default. As to the Appellant personal guarantor: "You will reimburse us for all expenses we incur in enforcing our rights against Borrower or any of you, including without limitation, attorneys' fees and costs." As to the Appellant Omega: "You will owe all costs and expenses, including legal fees, collection expenses, collection fees or commissions, travel, or any other cost we incur enforcing our remedies."

Upon notification that the lower court had granted Pawnee's motion for summary judgment, Pawnee's trial counsel filed an affidavit of attorney's fees which addressed all of the six factors which the lower court should consider under *Blumberg v. Nealco, Inc.*, 307 S.C. 537, 416

S.E.2d 211 (Ct. App. 1992). The lower court filed its order on summary judgment awarding the legal fees set forth in Respondent's Affidavit of Attorney's fees.¹ Appellants filed their Motion to Alter or Amend stating that they had "no opportunity to contest" (emphasis added) the reasonableness of the fee award – neither the entitlement nor the amount. (Motion to Alter or Amend Judgment)

- As to entitlement to attorney's fees, given Appellants' default of their respective contractual obligations, the EFA and Guaranty expressly provided for payment of all expenses incurred by Pawnee including attorney's fees.
- As to reasonableness of the attorney's fees included in the judgment, Appellants never filed a motion or affidavit, nor requested a hearing to dispute the reasonableness of the attorney's fees Respondent presented to the lower court.² Instead, they simply complained that they did not have the opportunity to contest the reasonableness of the fees.

In their brief to this Court, Appellants raise for the first time that the amount of attorney's fees awarded to Pawnee may have been unreasonable. Number 5 of Appellants' Statement of Issues on Appeal states, "Whether the Court erred by granting Respondent attorney's fees and costs without determining the reasonableness of or allowing Appellants to contest the reasonableness or

¹ The lower court awarded fees of \$9,955.00 which amounted to 15% of the Payoff Quotation and 11% of the Payoff Quotation plus prejudgment interest, both percentages being less than the 25% contingency fee arrangement between Pawnee and its trial counsel as stated in the Affidavit of Attorney's Fees.

² 37 days passed between Respondent filing its affidavit of attorney's fees and the lower court's order denying Appellants' Motion to Alter or Amend Judgment. Appellants had ample opportunity in the lower court to contest the contents of Respondent's affidavit and the reasonableness of the attorney's fees, but they failed to present any documentation which the court could consider or rule upon.

amount of same.” However, Appellants elected not to file a motion or affidavit with the lower court contesting the reasonableness of the fees awarded by the lower court.

In a similar case, *Kitchen Planners, LLC v. Friedman*, 432, S.C. 267, 851 S.E.2d 724 (Ct. App. 2020) affirmed *Kitchen Planners v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023), this Court ruled that Kitchen Planners failed to preserve for review the reasonableness of attorney’s fees where it challenged the contents of the fee affidavit for the first time in its Rule 59(e) motion. Here, Appellants not only have failed to challenge the contents of the fee affidavit at any juncture of the case including at this Court, but they also improperly challenge the reasonableness of the fees for the first time at this Court. “It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review.” *Staubes v. City of Folly Beach*, 339 S.C. 406, 412, 529, S.E.2d 543, 546 (2000).

Respondent addressed by affidavit all six factors necessary for the lower court to properly award attorney’s fees. The contents of the affidavit are not addressed by Appellants - either at the lower court or to this Court. Appellants did not present any counter evidence as to the reasonableness of the attorney’s fees which were awarded. Reliance by Appellants on Rule 55, SCRCF, is misplaced as that Rule relates to Default Judgments. 37 days passed between Respondent’s submission of the attorney’s fee affidavit and the final order denying Appellants’ Motion to Alter or Amend; however, Appellants did not question the fee affidavit once.

“On appeal, absent sufficient evidentiary support on the record for each factor, the award should be reversed and the issue remanded for the trial court to make specific findings of fact.” *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993). The lower court exercised its discretion in awarding attorney’s fees. It had evidentiary support for all six factors,

and it is respectfully submitted that the lower court's award of attorney's was proper and should be affirmed.

CONCLUSION

Neither the arguments presented by Appellants' trial counsel, nor their pleadings create any genuine issue of material fact. Appellants create no doubt that Respondent Pawnee was entitled to judgment as a matter of law on Pawnee's Motion for Summary Judgment. Further, Mr. Fitzgerald's Affidavit remains uncontroverted as Appellants did not file any opposing affidavits, deposition transcripts, or other evidence opposing the Motion. Appellants rested upon the allegations in their pleadings, and they set forth no *specific facts* showing that there was a genuine issue for trial as required by Rule 56(e), SCRPC.

Where a plaintiff relies solely upon the pleadings, files no counter-affidavits, and makes no factual showing in opposition to a motion for summary judgment, the lower court is required under S.C. R. Civ. P. 56, to grant summary judgment, if, under the facts presented by the defendant, he was entitled to judgment as a matter of law.

Dawkins v. Fields, 354 S.C. 58, 62, 580 S.E.2d 433, 439 (2003).

It is respectfully submitted that the lower court properly granted Respondent Pawnee's Motion for Summary Judgment and that the lower court's order should be affirmed.

Respectfully submitted,

s/ Thomas W. Bunch, II
Thomas W. Bunch, II (SC Bar No. 1011)
Bunch Law LLC
1120 Summerwind Lane
Johns Island, South Carolina 29455
803-665-8900
tbunch@bunchlawllc.com
Appellate Counsel for Respondent