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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**

Michael G. Nettles, Circuit Court Judge

Case No. 2025-000733

CBL Services,

v.

Ryan Antonio Burgess,

Respondent,

Appellant.

APPELLANT'S FINAL REPLY BRIEF

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PRELIMINARY STATEMENT

This appeal concerns whether the circuit court improperly granted summary judgment by resolving disputed factual issues concerning the alleged guaranty, assignment, commercial reasonableness of the collateral sale, deficiency calculations, and Appellant's personal liability.

ISSUES PRESENTED

1. Whether genuine issues of material fact existed.
2. Whether the circuit court improperly weighed evidence.
3. Whether Respondent established entitlement to judgment as a matter of law.
4. Whether de novo review requires reversal.

STATEMENT OF THE CASE

Respondent filed a collection action seeking a deficiency balance allegedly owed following repossession and sale of collateral. The circuit court granted summary judgment and entered findings adverse to Appellant. Appellant timely appealed.

STANDARD OF REVIEW

Summary judgment is reviewed de novo. All evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party. Summary judgment is inappropriate where more than one reasonable inference may be drawn from the evidence.

STATEMENT OF FACTS

Appellant disputed personal liability and challenged the alleged guaranty. Respondent relied upon business records, assignment documents, and an affidavit from a corporate employee. The circuit court adopted Respondent's version of events and entered findings regarding execution of the guaranty, assignment, commercial reasonableness, and liability.

ARGUMENT

I. RESPONDENT MISSTATES THE SUMMARY JUDGMENT STANDARD

Respondent repeatedly argues that summary judgment was proper because Appellant failed to file a counter-affidavit. This argument improperly shifts the burden of proof. Rule 56 places the initial burden on the moving party to establish the complete absence of any genuine issue of material fact. The mere filing of an affidavit does not entitle a party to judgment. Courts must determine whether disputes remain, not whether one side has produced more paperwork.

II. THE CIRCUIT COURT RESOLVED FACTUAL DISPUTES

The order contains affirmative findings that Appellant executed the guaranty, that the guaranty was enforceable, that assignments were valid, that the sale was commercially reasonable, and that the deficiency amount was accurate. These findings resemble trial findings. Summary judgment is not a substitute for trial and may not be used to resolve disputed facts.

III. THE GUARANTY PRESENTED A GENUINE ISSUE OF MATERIAL FACT

The alleged guaranty was central to Respondent's case. Appellant disputed the guaranty and denied recognizing it. Authenticity, execution, and enforceability of a guaranty are material factual issues. If the guaranty is disputed, personal liability is disputed. Such issues should be decided by a factfinder.

IV. RESPONDENT FAILED TO ESTABLISH ENTITLEMENT TO JUDGMENT AS A MATTER OF LAW

The supporting affidavit was based largely on review of records rather than firsthand participation in the transaction. The affidavit did not conclusively eliminate disputes concerning liability, assignment, commercial reasonableness, or damages. Consequently, Respondent failed to satisfy Rule 56.

V. QUESTIONS REMAINED REGARDING ASSIGNMENT AND STANDING

Respondent relied on multiple assignments involving different entities. The record should clearly establish ownership of the specific account and guaranty at issue. Any uncertainty regarding standing or ownership should have precluded summary judgment.

VI. COMMERCIAL REASONABLENESS WAS A FACT ISSUE

Whether a collateral sale is commercially reasonable typically depends on evidence concerning timing, marketing, procedures, condition, value, and industry standards. The order accepted commercial reasonableness as established without a full evidentiary inquiry.

VII. RULE 38 DOES NOT CURE RULE 56 DEFICIENCIES

Even if Appellant's jury demand was untimely, that issue is separate from whether summary judgment was proper. A waiver of jury trial cannot transform disputed facts into undisputed facts.

VIII. DE NOVO REVIEW REQUIRES REVERSAL

Because appellate review is de novo, the Court owes no deference to legal conclusions reached below. Viewing the evidence in the light most favorable to Appellant, disputes remained concerning the guaranty, standing, commercial reasonableness, deficiency calculations, and personal liability.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that the Court grant the appeal, reverse the Order Granting Summary Judgment, vacate the findings entered against Appellant, remand this matter for trial on the merits, and grant such further relief as the Court deems just and proper.

Respectfully submitted,

s/ 
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September 20, 2026