RECEIVED
Oct 01 2026
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 REPLY BRIEF

Luke A. Burke
Burke Law, LLC
Post Office Box 378
Greer, South Carolina 29652
(864) 735-8289

TABLE OF CONTENTS

Table of Authorities ii

Argument

I. THE COURT ERRED BY GRANTING SUMMARY JUDGMENT WHERE RESPONDENT'S OWN EVIDENCE SHOWS A DISPUTE AS TO A GENUINE ISSUE OF MATERIAL FACT 1

II. THE COURT ERRED BY GRANTING SUMMARY JUDGMENT BEFORE APPELLANTS RECEIVED A FULL AND FAIR OPPORTUNITY TO COMPLETE DISCOVERY 2

III. THE COURT ERRED BY GRANTING RESPONDENT ATTORNEY'S FEES AND COSTS WHERE APPELLANTS CONTESTED THE REASONABLENESS AND AMOUNT OF SAME WHEN THE AMOUNT OF FEES AND COSTS WERE SUBMITTED 5

Conclusion 6

TABLE OF AUTHORITIES

CASES

Baughman v. AT&T, 306 S.C. 101, 410 S.E.2d 537 (1991) 2

Blumberg v. Nealco, Inc., 310 S.C. 492, 427 S.E.2d 659 (1993) 5

Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) 2, 3, 4

Kitchen Planners, LLC v. Friedman, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020) 5

Matthias v. Hicks, 294 S.C. 305, 363 S.E.2d 914 (Ct. App. 1987) 1

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).....2

ARGUMENT

I. THE COURT ERRED BY GRANTING SUMMARY JUDGMENT WHERE RESPONDENT'S OWN EVIDENCE SHOWS A DISPUTE AS TO A GENUINE ISSUE OF MATERIAL FACT.

Respondent has the burden of proof to overcome the presumption by evidence that the value of collateral repossessed is less than the debt. Matthias v. Hicks, 294 S.C. 305, 308, 363 S.E.2d 914, 916 (Ct. App. 1987). In Matthias, the appellate court considered whether requesting bids from multiple local restaurant equipment dealers satisfied a landlord's burden of proving the value of the collateral repossessed. Id. at 307, 363 S.E.2d at 915. Because the tenant did not preserve and argue a challenge to the sufficiency of the evidence presented by the landlord or the commercial reasonableness of the sale, the court affirmed a jury verdict against the tenant regarding this issue. Id. at 307, 363 S.E.2d at 916.

Here, however, Respondent presented no evidence regarding the value of the collateral repossessed. Respondent did not present any evidence that it resold or attempted to resell the collateral nor did it present an appraisal or any other indication of value. As such, Respondent has not met its burden of proof to overcome the presumption by evidence that the value of collateral repossessed is less than the debt.

Appellants make reference to their argument in their Brief of Appellant in response to Respondent's argument regarding the accuracy of Respondent's accounting.

Finally, Respondent's argument regarding Appellant Ellisor's signature does not resolve the issue of whether Appellant Ellisor actually applied that signature to the personal guaranty. Appellants' admitted that the digital signature was the signature created for her by Respondent's Docusign software. (Def. Resp. RFA p. 1 ¶ 1; Def. Supp. Resp. RFA pp. 1 ¶ 1). However,

Appellants specifically denied that Appellant Ellisor applied that signature to a guaranty. (Def. Resp. RFA p. 1 ¶ 3; Def. Supp. Resp. RFA p. 2 ¶ 3). A digital signature may be applied to any document by anybody. Without the Docusign software's metadata showing when and how the signature was applied, the issue of whether Appellant Ellisor applied the signature to the guaranty cannot be determined.

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

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

Respondent relies upon 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) and Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433 (2003) as two examples of cases where summary judgment was affirmed less than a year after the complaint was filed. Resp. Br. 9. However, the issue of whether summary judgment is premature is not decided based on the time between the date the case is filed and the date the hearing occurs. Instead, the determination is based on whether the party has "demonstrated a likelihood that further discovery will uncover additional evidence relevant to the issue[s in the case]." Baughman v. AT&T, 306 S.C. 101, 112-13, 410 S.E.2d 537, 544 (1991).

Each of the cases relied upon by Respondent are distinguishable from the present case.

In Montedison, the plaintiff, a condominium development, brought the case against a roof manufacturer after a new roof of Flagon materials on the development failed and created significant water damage. Montedison, 320 S.C. at 473, 465 S.E.2d at 767. The leakage occurred

during a period of two consecutive five year written guarantees from Montedison whereby it guaranteed to maintain the roof in watertight condition. Id. The development's motion for "partial summary judgment was premised on the fact that 'underlying issues regarding the role, responsibility, and liability for the development, production, and marketing of the roofing material which failed [had] been previously adjudicated against [Montedison]' who was collaterally estopped from relitigating those issues." Id.

The appellate court affirmed partial summary judgment because Montedison was collaterally estopped from denying its product was defective by the ruling in a prior case. Id. at 476, 465 S.E.2d at 769. Further, the court held affirmed summary regarding the development's warranty claim because the claim was based on undisputed facts and an unambiguous contract. Id. at 477-78, 465 S.E.2d at 770-71. Finally, the court affirmed the decision that further discovery by Montedison would not uncover additional relevant evidence because "Montedison had been a party to other suits involving Flagon roofs that addressed most of the same issues involved in this case." Id. at 480, 465 S.E.2d at 772.

In Dawkins, the plaintiffs (Dawkins and Chisholm) were two shareholders of a real estate company who challenged the propriety of three stock issuances by the company based on the allegations that the directors failed to disclose the stock issuances and the nature of same to the shareholders. Dawkins, 354 S.C. at 62, 580 S.E.2d at 435. The plaintiffs filed discovery requests and received responses from the defendants. Id. at 63, 580 S.E.2d at 435. Defendants provided an "exhibit book" containing numerous corporate documents. Id. The corporate documents unequivocally showed that the company debts, properly notified its shareholders of the intent to satisfy these debts through a stock issuance, and fairly offered the stock to shareholders. Id. at 71,

580 S.E.2d at 439. Further, it was "undisputed that Dawkins participated in meetings where these issues were discussed and received notice of the stock offerings" and "the only logical inference from the record is that Chisholm either was on notice of the stock offerings, or by his own conduct, prevented himself from receiving the notice." Id. The Court held that "under the unusual circumstances of this case, the trial court appropriately granted summary judgment" because the Court "agree[d] with the trial court that further discovery was unlikely to create any genuine issues of material fact." Id. at 71, 580 S.E.2d at 439-440.

In Dawkins, discovery could not create any genuine issues of material fact because the allegations of the plaintiffs had been unequivocally proven to be false. The plaintiffs alleged they did not receive notice of the stock issuances or nature of same. The corporate documents proved that the plaintiffs either had directly received notice or had actively avoided notice. Therefore, no further discovery could counteract that proof.

Here, Appellants have requested but have not received any discovery responses from Respondent. Further, there are genuine issues of material fact which could be but have not been resolved through the discovery process. The value of the collateral repossessed by Respondent has not been established. Further, the accuracy of Respondent's accounting has not been questioned or confirmed. Finally, the method by which Appellant Ellisor's digital signature was added to the guaranty has not been established.

The fact that these questions linger and the fact that they would be resolved or not resolved through the discovery process is why summary judgment at this stage of the proceedings is premature. Therefore, Appellants respectfully request that this Court reverse the judgment of the circuit court.

III. THE COURT ERRED BY GRANTING RESPONDENT ATTORNEY'S FEES AND COSTS WHERE APPELLANTS CONTESTED THE REASONABLENESS AND AMOUNT OF SAME WHEN THE AMOUNT OF FEES AND COSTS WERE SUBMITTED.

Respondent relies upon Kitchen Planners, LLC v. Friedman, 432 S.C. 267, 851 S.E.2d 724 (Ct. App. 2020) affirmed Kitchen Planners, LLC v. Friedman, 440 S.C. 456, 892 S.E.2d 297 (2023), for the proposition that a party cannot challenge the contents of a fee affidavit for the time in a Rule 59(e) motion. Resp. Br. 12. However, in that case, the respondent filed and served their attorney fee affidavit several days before a motion for summary judgment hearing. Id. at 286, 851 S.E.2d at 734. As such, the appellant had the opportunity to challenge the contents of the affidavit and the reasonableness of the fees at the hearing but failed to do so.

Here, the hearing occurred on March 5, 2026; however, Respondent did not file its fee affidavit until five days after the hearing on March 9, 2026. (Order p. 1; Aff. Atty Fees p. 1). Even though the fee affidavit was filed after the hearing, the court improperly considered the affidavit in awarding Respondent's fees and costs without allowing Appellant an opportunity to challenge the contents of the affidavit or the reasonableness of the fees. As such, Appellant raised these issues at their first available opportunity in the Motion to Alter or Amend filed March 20, 2026. (MTR p. 3).

Further, the trial court made no findings regarding the *Blumberg* factors. See Blumberg v. Nealco, Inc., 310 S.C. 492, 494, 427 S.E.2d 659, 660 (1993). Instead, the court specifically stated that the attorney's fees were solely awarded "as provided for in the EFA and based upon the Affidavit of Attorneys Fees filed contemporaneously with this Order." (Order p. 3). The court awarded the full amount stated in Respondent's attorney fee affidavit without determining if these fees and costs were reasonable for the services performed in this case.

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

CONCLUSION

For the foregoing reasons and the arguments in the Brief of Appellant, Appellants respectfully request that this Court reverse the judgment of the circuit court.

Respectfully submitted,

s/Luke A. Burke
Luke A. Burke (SC Bar # 100033)
BURKE LAW, LLC
Post Office Box 378
Greer, South Carolina 29652
(864) 735-8289
lburke@gvlattorney.com
Counsel for the Appellants

Dated: October 1, 2026