

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Commons Pleas

Hon. T.J. Rode

Case No. 2024-CP-08-3108
Appellate Case No.: 2025-001820

David Hayes and Brooks A. Hayes.....Respondents

vs.

Miranda Mitchum.....Appellant

INITIAL BRIEF OF RESPONDENTS

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COUNTER STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF THE RESPONDENTS

II. WHETHER THE CIRCUIT PROPERLY DENIED APPELLANT’S MOTION TO VACATE

III. WHETHER APPELLANT ABANDONED THE ISSUES SHE RAISES ON APPEAL BY NOT CITING ANY AUTHORITY FOR HER POSITION

STATEMENT OF CASE

On December 13, 2022, the parties entered into a contract in writing styled “INSTALLMENT CONTRACT OF SALE”, (“Contract”). R.O.A. pages

_____.

Respondents together are shown in the Contract as “Sellers”. Appellant is shown as “Buyer”.

The Contract covered a leasehold interest in properties owed by Santee Cooper and a mobile home located at 630 Levee Drive, Moncks Corner, Berkeley County, South Carolina, (“Subject”).

The Contract provided for a sum certain purchase price of \$62,994.77.

The Contract called for a schedule of monthly payments of principal and interest and late fees commencing January 1, 2023 for 144 months.

The Contract provided that upon payment of all amounts due and owing under the Contract, the Seller shall convey to the Buyer, the Seller’s leasehold interest in the real property and the mobile home by good and sufficient Certificate of Title, free of all encumbrances or liens. (Emphasis added).

Appellant made only nine (9) payments under the Contract. Then she quit paying.

Her last payment on the Contract was the September 1, 2023. R.O.A. pages_____.

Because of her default on the Contract Respondents provided the Appellant a “NOTICE TO VACATE OR CURE DEFAULT” letter dated February 1, 2024. R.O.A. page_____.

As of November 4, 2024, Appellant did not voluntarily vacate the Subject nor did she cure the default pursuant to the notice. R.O.A., pages_____.

After failed attempts to resolve the matter, Respondents initiated this case in the Berkeley County Court of Common Pleas by the filing and service of their Summons and Notice and Complaint on November 4, 2024, in which they sought the following relief:

- a. For a declaratory order and judgment terminating the Contract relative to the Subject;
- b. For a declaratory order and judgment that Defendant and all others claiming by, through or under her, be forever barred and foreclosed of any right, title, interest and equity of redemption in the Subject;
- c. For a declaratory order and judgment that the Sheriff of Berkeley County eject and remove from the Subject all occupant(s), together with all personal property located thereon, and put Plaintiffs in full, quiet and peaceable possession of the Subject without delay and to keep Plaintiffs in peaceable possession thereof;
- d. For a judgment in favor of the Plaintiffs for an amount representing monies owed to Plaintiffs; and
- e. For such other and further relief as this Honorable Court deems just and proper in the premises.

By and through her attorney of record Appellant accepted service of the Summons and Notice and Complaint. R.O.A., page _____.

By and thorough her attorney of record Appellant filed her Answer to the Plaintiffs/Respondents' Complaint on December 9, 2024. R.O.A. pages _____.

In her Answer, Appellant admitted:

- a. The Contract.
- b. She admitted that she had been in possession of the Subject since January 1, 2023.
- c. She admitted that she made payments on the Contract from January 1, 2023, through the September 1, 2023, payment and no others.
- d. She admitted that there was a balance due and owing under the Contract for missed payments, accrued interest, late fees, lease fees, property taxes and insurance.
- e. She admitted that she failed to cure her default and that she is in default on the Contract.

Because there were no genuine issues of material facts in the matter, Respondents filed their Motion For Summary Judgment on March 24, 2025. R.O.A. pages _____.

Respondents filed their Memorandum In Support of Motion For Summary Judgment on April 15, 2025. R.O.A., pages _____, with various exhibits, including an affidavit of Respondent David Hayes regarding the status of the Mitchum account. R.O.A., pages _____.

Appellant filed her Memorandum In Opposition To Motion For Summary Judgment on September 4, 2025. R.O.A., pages _____. She supplied the court no counter-affidavit.

A hearing was held at the Berkeley County Courthouse on Respondents' motion for summary judgment before Circuit Judge T. J. Rode on September 5, 2025. Present at the hearing were John S. West of the West Law Firm, PA of Moncks Corner for Respondents and the Appellant *pro se*.

Following a full hearing on Respondents' motion, upon the pleadings, filings and pleadings before him and upon the arguments made by the parties in open court, Judge Rode entered his Order For Summary Judgment in favor of the Plaintiffs/ Respondents on September 29, 2025. R.O.A., pages _____.

In his Order For Summary Judgment, Judge Rode made various Findings of Salient Facts: R.O.A., pages _____.

Specifically, he found as follows:

1. The salient facts which I find herein are uncontroverted.
2. The subject matter herein involves a South Carolina Public Service Authority (Santee Cooper) leased lot held by Plaintiff Brooks A. Hayes and a 1999 Clayton Phoenix mobile home owned by David Hayes, together, ("Subject"), the same located at 630 Levee Drive, Moncks Corner, Berkeley County, South Carolina. This averment was alleged in Plaintiffs' Complaint and admitted in Defendant's Answer.
3. On December 13, 2022, the parties entered into an Installment Contract of Sale, ("Contract"), in writing whereby the Plaintiffs, together therein "Seller" and the Defendant therein "Buyer" agreed to the purchase and sale of the Subject for the purchase price of \$62,994.77 on terms and conditions as therein contained. This averment was alleged in Plaintiff's Complaint and admitted in Defendant's Answer.
4. Defendant has been and is now in possession of the Subject upon the Contract since January 1, 2023. This averment was alleged in Plaintiff's Complaint and admitted in Defendant's Answer.
5. Buyer commenced payments on the Contract on January 1, 2023. She made payments on the Contract until the September 1, 2023, payment. This averment was alleged in Plaintiffs' Complaint and admitted in Defendant's Answer.

6. Defendant has not made payment on the Contract since the September 1, 2023, payment. This averment was alleged in Plaintiff's Complaint and supported by Plaintiffs' Affidavit and Verified Statement of Account. Defendant has produced no evidence to the contrary.
7. There is a balance due and owing the Seller under the Contract for missed payments, accrued interest, late fees, lease fees, property taxes and insurance and related charges per the Contract. This averment was alleged in Plaintiffs' Complaint and admitted in Defendant's Answer.
8. As of the date of hearing, the specific balance due Plaintiffs under the Contract is \$25,622.40, as reflected on Plaintiffs' Amended Supplemental Affidavit and Verified Statement of Account of record.
9. Plaintiffs have provided all required notices to Defendant. This averment was alleged in Plaintiff's Complaint and supported by an exhibit. Defendant has produced no evidence to the contrary.
10. Defendant neglected, refused and failed to cure any default on the Contract. She has been and is in default on the Contract. This averment was alleged in Plaintiffs' Complaint and admitted in Defendant's Answer.

In In his Order For Summary Judgment, Judge Rode summarized the customary standard for summary judgment in South Carolina under *Rule 56, SCRCP*. R.O.A., pages _____. He then applied that standard to the matter before him. Judge Rode specifically found and concluded as follows:

Applying the summary judgment standard to the fully developed record before me on Plaintiffs' declaratory judgment cause of action for termination of the Contract, I find and conclude that there is no genuine issue regarding any material fact as to the existence of a contract and the breach thereof by the Defendant. Plaintiffs are entitled to judgment as a matter of law that the Contract should be terminated and that the Defendant and all others claiming by, through or under her be forever barred and foreclosed from any right, title, interest and equity of redemption in the Subject.

Applying the summary judgment standard to the fully developed record

before me on Plaintiffs' cause of action for monies owed on the Contract, I find and conclude that there is no genuine issue as to any material fact regarding the validity of the obligation of the Defendant to pay the Plaintiffs the total sum of \$25,622.40 through September 5, 2025. Plaintiffs are entitled to judgment as a matter of law against the Defendant in the total amount \$25,662.40 through September 5, 2025.

Having made, declared and determined that Plaintiffs are entitled to the relief set forth herein, I further find and conclude that the Sheriff of Berkeley County should be ordered and directed to immediately eject and remove from the Subject any and all occupant(s), together with all personal property located therein and thereon and put the Plaintiffs in full, quiet and peaceable possession of the Subject without delay and to keep the Plaintiffs in peaceable possession thereof. R.O.A., pages _____.

In his Order, Judge Rode granted Respondents' motion for summary judgment.

STANDARD OF REVIEW

In reviewing a motion for summary judgment, a trial court's task is well-known and well-settled. Under *Rule 56, SCRPC*, summary judgment is proper when both:

- (a) No genuine issue as to any material fact exists, and
- (b) The moving party is entitled to judgment as a matter of law.

In making the determination of whether or not any triable issue of fact exists, it is settled South Carolina law that the evidence and all inferences that can reasonably be drawn must be viewed in the light most favorable to the nonmoving party. Our courts have consistently ruled that summary judgment should not be granted if further inquiry into the facts is desirable to clarify the application of the law.

To prevail on a summary judgment motion, the moving party has to show that there is no genuine issue as to any material fact. To determine whether any trial issues of fact exist for summary judgment purposes, the evidence and all inferences which can reasonably be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Carolina Convenience Stores, Inc. v. City of Spartanburg*, 398 S.C. 27, 727 S.E.2d 28 (Ct. App. 2012).

Summary judgment has been held to be appropriate only when plain, palpable and undisputed facts exist on which reasonable minds cannot differ. *Bessinger v. Bi-Lo*, 329 S.C. 617, 496 S.E.2d 33,34 (Ct.App.1998).

In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt.*, 381 S.C. 326, 673 S.E. 2d 801, 803 (2009). A scintilla of evidence is material evidence which, taken as true, would tend to establish the issue in the mind of a reasonable juror.

In the case of *Gibson v. Epting*, 426 S.C. 346, 827 S.E. 2d 178 (Ct. App. 2019), in discussing the scintilla rule, the Court observed, “the summary judgment standard governing Gibson’s claims requires her to produce only a “scintilla” of evidence to avoid judgment as a matter of law, but a scintilla is a perceptible amount. There still must be a verifiable spark, not something conjured by shadows. *Bethea v. Floyd*, 177 S.C. 521, 529, 181 S.E. 721, 724 (1935) (“ ‘Scintilla’ means, according to 56 C. J. 863, ‘a gleam,’ ‘a glimmer,’ ‘a spark,’ ‘the least particle,’ ‘the smallest trace.’ ”); *Crosby v. Seaboard Air Line Ry.*, 81 S.C. 24, 31–32, 61 S.E. 1064, 1067 (1908) (“[A] scintilla of evidence is any material evidence which, taken as true,

would tend to establish the issue in the mind of a reasonable juror.”); Scintilla, The Oxford English Dictionary (2nd ed. 2018) (“A spark ... a minute particle, an atom.”); see Russell v. Wachovia Bank, N.A., 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (“When opposing a summary judgment motion, the nonmoving party must do more than ‘simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’ ” (citations omitted)); Grimsley v. S.C. Law Enf’t Div., 415 S.C. 33, 42, 780 S.E.2d 897, 901 (2015) (affirming trial court’s grant of summary judgment and noting court of appeals improperly “cherry-picked” an isolated portion of the record, placed it out of context, and “elevated what is, at best, a metaphysical doubt into a genuine issue of material fact”); Main v. Corley, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984) (“The judge is not required to single out some one morsel of evidence and attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.”); Beale v. Hardy, 769 F.2d 213, 214 (4th Cir.1985) (explaining that party opposing summary judgment “cannot create a genuine issue of material fact through mere speculation or the building of one inference upon another”).

A non-moving party cannot evade summary judgment by creating and relying on “an inference that is not reasonable or an issue of fact that is not genuine. Town of Hollywood v. Floyd, 403 S.C. 466, 744 S. E, 2d 161, 166 (2013).

When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c)[of the South Carolina Rules of Civil Procedure (SCRCP)], which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.”); Wilson v. Style Crest Prods., Inc., 367 S.C. 653, 656, 627 S.E.2d 733, 735 (2006) (“In determining

whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the non-moving party.”); *id.* (“Even when there is no dispute as to the evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.”); *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009) (“[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment”); *Sims v. Amisub of S.C., Inc.*, 408 S.C. 202, 208, 758 S.E.2d 187, 190-91 (Ct. App. 2014) (“Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” (quoting *Sides v. Greenville Hosp. Sys.*, 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004))); *Eadie v. Krause*, 381 S.C. 55, 64 n.5, 671 S.E.2d 389, 393 n.5 (Ct. App. 2008) (“[T]o survive a motion for summary judgment, the plaintiff must offer some evidence that a genuine issue of material fact exists as to each element of the claim unless that element is either uncontested or agreed to by stipulation; otherwise, the plaintiff cannot meet his burden of proof and the claim may be determined as a matter of law by the trial judge.”); *Legette v. Piggly Wiggly, Inc.*, 368 S.C. 576, 579, 629 S.E.2d 375, 377 (Ct. App. 2006).

ARGUMENTS

I. THE CIRCUIT COURT PROPERLY GRANTED SUMMARY JUDGMENT IN FAVOR OF THE RESPONDENTS

Respondents’ Notice of Motion and Motion For Summary Judgment was based upon *Rule 56, SCRPC*, which provides in pertinent part:

(c) Motions and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party may serve

opposing affidavits not later than two days before the hearing. **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 (emphasis added).** A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. **When a motion for summary judgment is made and supported as provided in this rule, 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. (Emphasis added).**

Respondent set forth in their pleadings all relevant allegations to have the trial court declare and determine that the Contract terminated as a matter of law and related relief. Their pleadings were clear and unambiguous. Appellant's lawyer filed her responsive pleadings admitting the substantive allegations of the Complaint.

It was up to the Appellant to establish for the trial court "at least a scintilla" of evidence in the record sufficient to defeat Respondents' motion for summary judgment. She did not do so and she could not do so.

Her opposition to summary judgment failed at the hearing before Judge Rode because it was a failing position and must fail on appeal because Appellant produced no evidence establishing that there was a genuine issue of material fact. For reasons known only to Appellant she chose not to file any counter-affidavit(s) disputing the clear and unambiguous affidavit of Mr. Hayes. She could have filed a counter-affidavit saying for example: “I disagree that I am in default on the Contract because I am current on my payments”, or something akin to that. There is no evidence at all in opposition to Respondents’ motion for summary judgment which may constitute a scintilla of evidence. There is no question of fact. It is totally absent. Since there is no evidence in the record anywhere contrary to the evidence presented by the Respondents, there is no scintilla of evidence on which she can rely to defeat summary judgment.

Well-settled case law in South Carolina is consistent with the provisions of Rule 56(e), SCRPC, (emphasized above). In a case decided by this court, Klippel v. Mid-Carolina Oil, Inc., 303 S.C. 127, 399 S.E. 2d 163 (Ct. App., 1990), this court held that when a party makes a motion for summary judgment and supports it by affidavits, **the adverse party may not rest on the allegations of his pleadings but must respond by affidavits or other evidence demonstrating a genuine issue of material fact. (emphasis added).** Sheppard v. Kimbrough, 282 S.C. 348, 318 S.E.2d 573 (Ct.App.1984).

Appellant embraces misplaced significance to the title to the mobile home in her disagreement with Judge Rode’s summary judgment order. In doing so, she refuses to accept that Judge Rode did not address the title to the mobile home in his summary judgment because he did not need to. The uncontroverted fact of

Appellant's uncured default on the Contract was the basis for terminating the Contract and granting summary judgment.

Had Appellant fully performed her obligations under the Contract to make all 144 payments due the Sellers, which she did not, the Sellers would have then either delivered good title to the mobile home and an executed assignment of the Santee Cooper lease, which they were contractually bound to do, or they would not. It would only be upon the Sellers' default, which is clearly not the case, that Appellant would have a reason to complain. During the pendency of the Contract, Respondents retained title to the mobile home and held the status of tenant under the Santee Cooper lease. That was the parties' deal.

Appellant claims that her due process rights were violated because there was no discovery conducted in the case. Appellant never presented any discovery requests. From the Respondents' perspective, since the facts were not in dispute and admitted by her, a motion for summary judgment was timely and proper.

At the summary judgment motion hearing, Judge Rode could have in his discretion continued the hearing to permit discovery to be conducted. He saw no need for that because the factual issues relative to Appellant's default on the Contract were not in dispute and uncontroverted.

Appellant claims that Judge Rode accepted untimely evidence after he signed the Order for Summary Judgement. That position is without merit and is inconsistent with the record. R.O.A., pages _____.

II. THE CIRCUIT COURT PROPERLY DENIED APPELLANT'S MOTION TO VACATE

Appellant challenges the Circuit Court's denial of Appellant's motion to vacate.

Rule 60(b)(5), SCRCP provides:

(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. **During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. (Emphasis added).** Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Appellant's motion to vacate Judge Rode's Order For Summary Judgment was filed in the Circuit Court after she noticed her appeal. She did not receive leave from the appellate court to do so as required by Rule 60(b)(5). R.O.A., pages _____.

At a hearing on December 15, 2025, the subject of Appellant's Motion to Vacate was addressed. Also addressed was the matter of a Stay of Execution Pending Appeal Bond. This hearing was directed by Order of the Court of Appeals. R.O.A., pages _____.

Appellant filed an affidavit in support of her motion to vacate and a memorandum in support of her motion. R.O.A., pages _____.

Respondents filed their Memorandum In Opposition To Motion To Vacate and an exhibit. R.O.A., pages _____. Respondents also filed their Memorandum In Opposition To Motion For Stay. R.O.A., pages _____.

Following the December 15, 2025, hearing Judge Rode issued his Order Denying Motion To Vacate and Setting Appeal Bond on December 22, 2025. R.O.A., pages _____.

Judge Rode specifically concluded in his order that because Appellant appealed his Order For Summary Judgement, he lacked jurisdiction to consider the relief sought by the Appellant. He further provided in his December 22, 2025, order the requirements of an appeal bond. R.O.A., pages _____.

Judge Rode cites in his order Rule 205, SCACR, ... "that upon the service of the notice of appeal, the appellate court has exclusive jurisdiction over the appeal... the lower court shall have jurisdiction to entertain only those matters not affected by the appeal." R.O.A., pages _____.

III. THE APPELLANT HAS ABANDONED HER POSITION BY NOT CITING ANY AUTHORITY IN SUPPORT OF HER POSITION

Appellant struggles to cite and does not cite any authority to support her positions. She strains credulity by arguing what she wants the law to be, not what the law is with regard to this case. She clearly does not like the outcome and she declares her grievance with the results, but that's it.

"An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority." *Estate of Combis v. Combis*, 439 S.C. 485, 499, 888 S.E.2d 1, 8 (2023) (citing *State v. Lindsey*, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (2011)). *See also Bryson v. Bryson*, 378 S.C. 502, 510, 662 S.E.2d 611, 615 (2008). "South Carolina law clearly states that

short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.” *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (2001). “When an appellant provides no legal authority regarding a particular argument, the argument is abandoned and the court can decline to address the merits of the issue.” *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139, 796 S.E.2d 165, 172-73 (2016) (citing *State v. Lindsey*, 394 S.C. 354, 363 (2011)).

In *Combis*, Appellants, in their brief, “make short, conclusory statements concerning the circuit court's alleged error—asserting simply, “Clearly, this was error”—and fail to cite to any relevant legal authority in support of their argument. *Estate of Combis*, 439 S.C. at 499, 888 S.E.2d 1, 8 (2003). There, Appellants cite one case in support of their argument, which the Court of Appeals found to be “irrelevant.” *Id.* Therefore, the court found that “Appellants’ arguments [were] abandoned on appeal and decline[d] to address the merits of [the] issue.” *Id.*

Similarly, in *Mead v. Beaufort Cty. Assessor*, the Assessor asserted an argument that the Administrative Law Court’s order violated public policy. In his brief, the Appellant/Assessor “provided no case law on the issue, particularly no case law or other authority on public policy and what constitutes a violation of it.” *Id.* Accordingly, court found that “this issue [was] abandoned.” *Id.*

Likewise, in the present case, Appellant makes similar conclusory and self-serving statements and protests. However, Appellant fails to cite any relevant authority in support of these conclusory statements.

Accordingly, because Appellant has failed to provide any relevant legal authority regarding her arguments, the same should be deemed abandoned.

CONCLUSION

Based upon the foregoing, the Circuit Court's Order Granting Plaintiffs' Motion For Summary Judgment and Order Denying Motion To Vacate and Setting Appeal Bond should be **AFFIRMED**.

Respectfully submitted,

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