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SC Court of Appeals

FINAL BRIEF OF RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas,
Daniel D. Hall, Circuit Court Judge

Case No. 2021-CP-29-00808

Edrico Juan Blakeney

Appellant,

v.

Citibank, N.A., Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN GRANTING JUDGEMENT ON THE PLEADINGS IN FAVOR OF THE PLAINTIFF?

STATEMENT OF THE CASE

On August 31 2020, Citibank brought this action for credit card collection against Edrico J. Blakeney. Blakeney answered, alleging Citibank's claims were precluded by SC code of law section 32-3-10 and 32-10-20 without directly addressing any of the allegations brought in the summons and complaint.

On June 9, 2021, a bench trail was held before the magistrate and the magistrate upon motion by Citibank granted judgment on the pleadings in the amount of $4858.98.

On June 30, 2021, Blakeney appealed the magistrate's judgment to circuit court. A bench trial was held on June 21, 2023 after which the circuit court affirmed the order of the magistrate.

On July 24 2023, Blakeney served notice of appeal on Citibank.

STANDARD OF REVIEW

"Whether reviewing a grant of summary judgment or a judgment on the pleadings, we apply the same legal standards as the trial court.' *Ziegler v. Dorchester County*, 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019)." *Tegeler v. Collier*, 2023-UP-325, Appellate Case 2020-001525 (S.C. App. Oct 04, 2023)

"An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance of the agreement resulting in loss to himself and benefit to the other. *Scurry v. Edwards*, 232 S.C. 53, 100 S.E.2d 812 (1957)." *Graham v. Prince*, 358 S.E.2d 714, 293 S.C. 77 (S.C. App. 1987)

FACTS

Blakeney, in his pleadings, never contradicted the allegation by Citibank that it is a corporation organized and existing under the laws of the united states of American and is authorized to do business in the state of South Carolina.

Blakeney in his pleadings did not refute Citibank's allegations that Blakeney resides in

Lancaster County and is subject to the jurisdiction of this court.

During the trial Citibank moved for a judgment on the pleadings on the grounds that Blakeney in his answer did not directly address any of the allegation set forth in Citibank's complaint and only alleged as affirmative defense the Statue of frauds, South Carolina code of laws Section 32-3-10 and 32-3-20. The court ruled in Citibank's favor.

The court subsequently took testimony from custodian of records for Citibank, Steven Sabo, regarding damages. Through Sabo, selected account statements for Blakeney's account were introduced showing charges made to the account and advanced to Blakeney as well as payments made on the account by Blakeney, and the total amount outstanding on the account. Blakeney did not offer any evidence to refute the authenticity of the documents or the testimony of Sabo. The court then rendered judgement that Citibank was entitled to damages in the amount of 4858.98.

On June 30 2021 Blakeney appealed the magistrates ruling to the circuit court. On June 21 2023 the appeal was heard at a bench trial. On June 23 2023 the circuit court affirmed the ruling of the magistrate court holding that the appellant failed to provide sufficient legal basis for the circuit court to reverse or remand the magistrate court's order.

ARGUMENTS

1. BECAUSE APPELLANT DID NOT DIRECTLY RAISE ANY ALLEGATION IN THE SUMMONS AND COMPLAINT AND RAISED ONLY THE STATUE OF FRAUDS AS DEFIENCE THE TRIAL COURT WAS CORRECDT IN GRANTING RESPONDENTS MOTION FOR JUDGMENT ON THE PLEADINGS

Though he afterword and in other documents presented to the court made denials and counter allegations, he nevertheless failed, in his Answer, to deny any of Citibank's allegations in its Complaint. Namely that credit was extended to him by Citibank and that he failed to make the required payments. He merely relies on the Statue of Frauds (SCCL 32-3-10 and 32-3-20) to assert that any agreement between Citibank and himself must be in writing. Blakeney in his Answer also never contradicted the allegation by Citibank that it is a corporation organized and existing under the laws of the united states of American and is authorized to do business in the state of South Carolina, nor that Blakeney resides in Lancaster County and is subject to the jurisdiction of the court.

In *Tegeler v. Collier*, the court held: "[w]hether reviewing a grant of summary judgment or a judgment on the pleadings, we apply the same legal standards as the trial court.' *Ziegler v. Dorchester County*, 426 S.C. 615, 619, 828 S.E.2d 218, 220 (2019)." *Tegeler v. Collier*, 2023-UP-325, Appellate Case 2020-001525 (S.C. App. Oct 04, 2023)

Furthermore, in *Graham v. Prince*, the court held: "An oral contract within the Statute of Frauds may be taken out by performance where one party does some act essential to performance

of the agreement resulting in loss to himself and benefit to the other. *Scurry v. Edwards*, 232 S.C. 53, 100 S.E.2d 812 (1957)." *Graham v. Prince*, 358 S.E.2d 714, 293 S.C. 77 (S.C. App. 1987)

The trial court, therefore, properly found that because Blakeney did not deny the extension of credit itself in his pleadings, that said extension of credit was an act essential to performance of the credit agreement resulting in loss to Citibank and benefit to Blakeney, and, therefore, the Statue of Frauds did not bar Citibank's recovery under the credit agreement as a matter of law.

The trial court, also properly found that jurisdiction was proper as a matter of law.

Finally, we would call the court's attention to the fact that the court took testimony from custodian of records for Citibank, Steven Sabo, regarding damages and that, when given the opportunity to do so Blakeney did not offer any evidence to refute this testimony.

CONCLUSION

For the reasons stated, this Court should affirm the judgment of the circuit court and magistrate court.

Respectfully submitted,

February 20, 2024

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