

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-40-03865

Wells Fargo Bank, N.A.

D. Bruce Wolff

RECEIVED
NOV 20 2018
SC Court of Appeals

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Theodore von Keller Bar No. 5718	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	
Wells Fargo Bank, N.A.	D. Bruce Wolff	\$70,473.34
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.



Richland Common Pleas

Case Caption: Wells Fargo Bank N A vs D Bruce Wolff

Case Number: 2017CP4003865

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755

- variable rate, that rate will be determined for each monthly billing cycle by taking the highest Wells Fargo prime rate in effect during the determination date range and adding a spread. The Bank initially determines your spread based on the evaluation of your credit risk. The Bank may subsequently change and spread at Bank's sole discretion".
12. That the Defendant continue to utilize the Line of Credit and continue to make purchases and payments up to and including October 30, 2015.
 13. That in the monthly statement dated May 4, 2012, the Defendant was advised "beginning with your June 2012 statement a new interest rate will apply. Please refer to the letter mailed in April or the enclosure for the changes to your business line account".
 14. That contemporaneously with the May 4, 2012 notice, a letter was mailed to Mr. Wolff advising him that the interest rate was going to increase and that he could elect to either close the account and pay it off or accept the new terms.
 15. That the Defendant continued to utilize the Line of Credit.
 16. That the monthly statement to Defendant dated June 5, 2012 reflected the increase in the interest rate from 3.75% to 6.25%.
 17. That the increase in the interest rate reflected an evaluation of the credit risk of Mr. Wolff and the fact that only minimal payments were being received and the balance was \$74,940.26.
 18. That the monthly statement dated September 4, 2013 informed the Defendant that "beginning with your October 2013 statement a new interest rate will apply. Please refer to the letter mailed in July are the enclosure for the changes to your business line account".
 19. That the monthly statement dated October 3, 2013 reflecting an increase in the annual interest rate from 6 to 7.25%.
 20. On or about December 16, 2015 the Wells Fargo Prime rate increased by .25%.
 21. That effective with the January 5, 2016 statement the Defendant's interest rate was increased from 7.25% to 7.5%.
 22. That the BusinessLine Customer Agreement informed Mr. Wolff that the "daily finance charge rate shown on your statement may or may not change in the month following a change in the Wells Fargo prime rate".
 23. That the last payment received by the Defendant was on October 30, 2015.
 24. That by letter dated March 17, 2017, Plaintiff made demand on Defendant for the \$70,473.34 owing under the BusinessLine Line of Credit.
 25. The court finds as a fact that the Plaintiff has met its burden of proof in this breach of contract action by establishing the contract, its breach and the damages caused by such breach.
 26. That there is currently past due and owing the amount of \$70,473.34 in unpaid charges on the Line of Credit.
 27. The Court finds as fact that the affidavit of the Defendant is insufficient to create a genuine issue of fact necessary to defeat Plaintiff's Motion for Summary Judgment due to a total absence of competent evidence showing that Defendant did not enter into the BusinessLine Line of Credit and thereafter utilize the Line of Credit with Plaintiff or that the sum sought by Plaintiff is inaccurate.

28. At the Motion for Summary Judgment hearing, the Defendant indicated to the court that he intended to amend his answer to assert a counterclaim, however, the Defendant filed his initial pro se answer on July 24, 2017 and obtained a continuance at the first Motion for Summary Judgment hearing on May 22, 2018 indicating that he desired counsel, which he did not. The court finds as a fact therefore that the Defendant has unreasonably delayed in seeking to amend his pleadings and that any amendment would prejudice Plaintiff.

CONCLUSIONS OF LAW

1. When a motion for summary judgment is made and supported as provided by rule 56 SCR CP, 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 rule 56, 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. Rule 56(e) SCRCF.
2. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Moore v. Barony House Restaurant, LLC, WL 596610(S.C. App. 2009).
3. In a breach of contract action the burden is upon the Plaintiff to prove the contract, its breach and the damages caused by such breach. Fuller v. E. Fire & Cas. Ins. Co., 240 S.C. 75, 89, 124 S.E. 2d 602,610 (1967).
4. A party may amend his pleadings only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires and not prejudice the other party. Rule 15 (a) SCRCF.
5. In order to defeat a properly supported motion for Summary Judgment, a Defendant must submit an affidavit with complete evidence to create a genuine issue of fact. Baughman v. American Tel. & Tel.Co. 410 SE 2d 537 (1991 SC).

WHEREFORE;

1. Plaintiff's Motion for Summary Judgment is granted.
2. Defendant's oral Motion to Amend his answer is denied.
3. Judgment is awarded to Plaintiff in the amount of \$70,473.34.

AND IT IS SO ORDERED

Presiding Judge Perry H Gravely

August 10, 2018