IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-5530
Appellate Case No. 2012-211872

Coastal Federal Credit Union, ...Respondent

v.

Clarence LeAnders Griffin, Jr.,.....Appellant

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT PROPERLY GRANT SUMMARY JUDGMENT ON RESPONDENT'S CLAIM FOR POSSESSION AND DAMAGES WHEN APPELLANT ADMITTED THE CONTRACT AND HIS DEFAULT, THERE EXISTS NO DUTY TO MODIFY OR REINSTATE THE CONTRACT AND RESPONDENT'S ACTIONS WERE PURSUANT TO THE CONTRACT?

2. DID THE TRIAL COURT PROPERLY DISMISS APPELLANT'S COUNTERCLAIM ASKING TO REINSTATE THE ACCELERATED LOAN, ACCOUNT FOR CP INSURANCE PREMIUMS AND VALIDATE THE LOAN WHEN NO CAUSE OF ACTION EXISTS FOR ANY OF THE PURPORTED CLAIMS?

STATEMENT OF THE CASE

Respondent filed this action on August 19, 2011, seeking possession of a 2008 Chevrolet Tahoe, VIN # 1GNFC130X8J113924, and damages pursuant to a retail installment sale contract. Appellant answered, alleging that Respondent was not entitled to possession because it would not accept regular payments after acceleration of the debt. Appellant also purported to raise a Counterclaim requiring reinstatement and modification of the loan, validation of the debt and an accounting for creditor protection insurance ("CP Insurance") proceeds. Respondent filed a motion for summary judgment on its claims and a motion to dismiss the Counterclaim. The matter was heard on February 9, 2012. Judge L. Casey Manning granted summary judgment for the Respondent and dismissed the Appellant's Counterclaim on March 30, 2012. Appellant filed notice of appeal on April 24, 2013.

FACTS

Appellant purchased a 2008 Chevrolet Tahoe ("the Vehicle") on May 19, 2008. (R. pp. 10-11). He financed 100% of the purchase price with interest at 8.8% per annum, via a Retail Installment Sale Contract ("the Contract") in the principal sum of $53,875.00. The Contract was subsequently assigned to Respondent. (R. p. 10). Pursuant to the terms of the Contract, Appellant granted Respondent a first lien on the Vehicle, which Respondent duly perfected, as noted on the Certificate of Title for the Vehicle. (R. p. 11, sec. 2.c., lines 50-64; R. p. 12). Appellant thereafter failed to make the regularly scheduled payments called for under the Contract; the last payment made by Appellant for the Vehicle was on or about November 12, 2010. (App. p. 2, lines 10-12).[1]

The Contract also provides that Appellant will maintain physical damage insurance on the Vehicle at all times that the Contract is in effect. (R. p. 11, sec. 2.d., lines 65-81.). On March 10, 2011, Respondent obtained a creditor protection insurance policy ("CP Insurance") in its own name, at a cost of $5,208.00, due to Appellant's failure to maintain the required physical damage insurance coverage on the Vehicle as required by the Contract. (App. p. 2, lines 13-18; R. p. 11, sec. 2.d., lines 65-81). This

[1] Respondent notes that the Record filed by Appellant did not include the complete Verified Statement and Affidavit submitted by Respondent in support of its summary judgment motion. (R. pp. 36-38). The Respondent has filed herewith a motion pursuant to the South Carolina Appellate Court Rule 212(b) to supplement the record with the complete Verified Statement and Affidavit, including exhibits. Respondent's references to the Verified Statement and Affidavit are to the Appendix, a proposed copy of which was filed and served with the motion.

amount was charged to Appellant's account, as allowed by the Contract. After the Appellant's account was charged off due to Appellant's payment default, Respondent cancelled the CP Insurance and applied the premium refund of $4,138.00 that it received on April 8, 2011 to Appellant's account. (R. p. 11, sec. 2.c., lines 82-87; App. p. 2, lines 19-23; App. p. 7, line 14).

The Contract further provides in Section 3(b) that in the event Appellant pays late or breaks any of his other promises in the Contract, Respondent has the right to accelerate the then-remaining balance due and make demand for immediate payment thereof. (R. p. 11, sec. 3.b., lines 94-99). Section 3(d) further provides that Respondent may repossess and sell the Vehicle in the event of any default by Appellant under the Contract. (R. p. 11, sec. 3.d., lines 116-26).

Respondent initiated this breach of contract action to recover the $44,417.83 outstanding balance owed under the Contract at the time of Appellant's payment default, as well as possession of the Vehicle itself. (R. pp. 2-21). Appellant filed an Answer and Counterclaim in which he admitted entering into the Contract but alleged that his account had not been properly credited for the CP Insurance premium refund, and that he had unjustifiably not been allowed to bring the account current after acceleration. (R. pp. 22-23). Accordingly, he requested that his "loan be reinstated or that a loan modification be granted by the plaintiff for the

alleged defaulted Debtor." Appellant's Answer and Counterclaim also requested that the Court require Respondent to validate the debt and to credit the CP Insurance refund to his account. (R. pp. 22-23).

Respondent thereafter filed a motion for summary judgment as to its claims against Appellant and a motion to dismiss Appellant's Counterclaim, supported by an affidavit by the business records custodian of Respondent having control of Respondent's business records relative to Appellant's account. (R. p. 34; App. pp. 1-8). Appellant produced an Affidavit and Memorandum in response, but alleged no specific facts to defeat Respondent's claims. (R. pp. 39-48). These motions were heard before Judge L. Casey Manning on February 9, 2012. On March 30, 2012, Judge Manning issued an order granting Respondent's motion for summary judgment and dismissing Appellant's Counterclaim. (R. pp. 52-53).

ARGUMENTS

1. JUDGE MANNING PROPERLY GRANTED SUMMARY JUDGMENT FOR RESPONDENT BECAUSE THE DEFENDANT ADMITTED THE CONTRACT AND HIS DEFAULT, AND PRESENTED NO EVIDENCE OF A MATERIAL ISSUE OF FACT WITH RESPECT TO PLAINTIFF'S CLAIMS OR HIS STATED DEFENSES THERETO.

A. **Standard of Review**. On appeal, the Court reviews the granting of summary judgment "under the same standard as applied by the trial court under Rule 56(c)." Sea Cove Development, LLC v. Harbourside Community Bank, 387 S.C. 95, 98, 691 S.E.2d 158, 159 (2010). Accordingly, "[t]he judgment may be affirmed only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Singletary v. Aetna Casualty & Surety Co., 316 S.C. 199, 200, 447 S.E.2d 869, 870 (Ct. App. 1994); SCRCP 56(c). Further, in reviewing a grant of summary judgment, the reviewing court, like the trial court, must consider the facts and inferences in the light most favorable to the non-moving party. Id.

B. **The Undisputed Facts Support the Summary Judgment In Favor of Respondent**. In this case, Respondent produced undisputed evidence to fully support every element of its breach of contract claim against Appellant, and is therefore entitled to judgment against Appellant as a matter of law. The burden then shifted to Appellant to set forth specific facts, admissible into evidence, showing summary judgment should not be

entered against him. City of Columbia v. Town of Irmo, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994); Klippel v. Mid-Carolina Oil Co., 303 S.C 127, 129, 399 S.E. 2d 163, 164 (Ct. App. 1990); Dickert v. Metropolitan Life Ins. Co., 306 S.C. 311, 313, 411 S.E.2d 672, 673 (Ct. App. 1993). However, by his own Answer and Counterclaim, Appellant admitted that he entered into the Contract and that he made some but not all of the regular monthly payments to Respondent called for thereunder. (R. p. 22, para. 2; R pp. 22-23).

It is well settled that when a borrower admits an auto loan and the default, the finance contract is enforceable. *See* Callicutt v. Brown, 244 S.C. 164, 135 S.E.2d 852 (1964) (court directed verdict for plaintiff on auto loan deficiency when defendant admitted the execution of the contract and subsequent payment default). Here, Appellant has admitted the Contract and his default, but contests that Respondent did not do him the favor of reinstating his loan. (R. pp. 22-23).

C. **Respondent Was Under No Legal Duty To Provide Loan Modifications At Appellant's Request**. Appellant's first "defense" to Respondent's claim is merely that Respondent refused to allow him to continue making monthly payments after he defaulted and Respondent accelerated the loan, as Respondent is permitted to do by the Contract's express terms. (R. pp. 22-23; R. p. 11 sec. 3.b., lines 94-110). However, Respondent had no legal duty to modify the payment terms of the Contract

at Appellant's request, or otherwise do anything not required by the Contract, including reinstating Appellant's loan after acceleration following default. For example, in Ginyard v. Lincoln Insurance, the plaintiffs defaulted on their life insurance payments and the policy was canceled. Plaintiffs requested reinstatement of the policy, and the insurer denied reinstatement. Plaintiffs sued for reinstatement, and the Supreme Court upheld a directed verdict for the insurer on the reinstatement issue, holding that once the plaintiffs breached their obligations and the defendants canceled the contract, there was no duty to reinstate it upon plaintiff's request. Ginyard v. Lincoln Ins. Co., 135 S.C. 48, 49, 133 S.E. 227, 228 (S.C. 1926). Similarly, there is no duty in this case to reinstate the Appellant's delinquent loan after default and acceleration. *See also* TC X, Inc. v. Commonwealth Land Title Insurance Co., 928 F. Supp 618, 632 (D.S.C. 1995)(title insurer under no duty to rewrite policy with larger limits).

D. The CP Insurance Refund Did Not Bring Appellant's Account "Current."

Appellant's second "defense" to Respondent's claim, alleging that Respondent improperly failed to use the CP Insurance policy premium refund to bring his defaulted account "current," is without factual or legal support. As permitted by the terms of the Contract, the CP Insurance policy was obtained and paid for by Respondent to protect Respondent's

interest in the Vehicle should it be damaged or destroyed prior to the Contract balance being paid in full. (R. p. 11, sec. 2.d., lines 65-81). The amount of the premium paid by Respondent for the CP Insurance policy was then charged to Appellant's account, as also permitted by the terms of the Contract. (R. p. 11, sec. 2.e., lines 82-86; App. p. 2., lines 19-23; App. p. 7, line 14). When Respondent canceled the CP Insurance policy prior to the expiration of the policy's term, and therefore received a refund of a portion of the premium paid for same, Respondent credited the $4,138.00 refund to Appellant's account as an offset against the prior debit to Appellant's account for the $5,208.00 policy premium. (App. p. 7, line 14, line 19). Since Appellant did not pay for any portion of the CP Insurance policy premium in the first instance, Appellant obviously had no claim to any of the premium refund issued when the CP Insurance policy was cancelled. As such, Appellant had no legal basis to demand that all or any portion of such refund be credited by Respondent to any of the Contract payments that Appellant had failed to make to Respondent by the time the CP Insurance policy refund was received. Accordingly, Appellant's account properly remained in default status with respect to such missed payments even after the CP Insurance policy refund was applied to Appellant's account.

2. JUDGE MANNING PROPERLY DISMISSED APPELLANT'S COUNTERCLAIM, AS THERE EXISTS NO DUTY TO MODIFY APPELLANT'S LOAN, THE CP INSURANCE WAS CREDITED PURSUANT TO THE CONTRACT, AND RESPONDENT COMPLIED WITH APPELLANT'S REQUEST TO PROVIDE VALIDATION OF THE LOAN.

For his Counterclaim, Appellant requested that his loan with Respondent be reinstated or modified, that Respondent be required to account for the CP Insurance proceeds, and that Respondent be required to validate the debt. Inasmuch as none of these requests are actionable at law, Respondent filed a motion to dismiss Appellant's Counterclaim pursuant to Rule 12(b)(6) of the Rules of Civil Procedure.

In reviewing a motion to dismiss pursuant to Rule 12(b)(6), the court must take into account only the allegations set forth in the Counterclaim, and must presume all facts therein to be true. *See* Charleston County School Dist. v. Laidlaw Transit, Inc., 348 S.C. 420, 424, 559 S.E.2d 362, 364 (Ct. App. 2001); Gressette v. South Carolina Electric & Gas Co., 370 S.C. 377, 378-79, 635 S.E.2d 538, 539 (2006); Hambrick v. GMAC Mortg Corp., 370 S.C. 118, 122, 634 S.E.2d 5, 7 (Ct. App. 2006). Under that standard, dismissal of Appellant's Counterclaim was wholly appropriate. Taking all allegations in the Counterclaim as true, Appellant simply alleged no cause(s) of action justiciable against Respondent under South Carolina law. Graham v. State Farm Mutual Auto Ins. Co., 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) ("A justiciable controversy exists when a concrete

issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.")

To the contrary, Appellant merely complained about undisputed acts by Respondent that were each expressly permitted by the terms of the Contract. However, a creditor's conduct within the terms of an agreed contract do not support a cause of action by the borrower. Bates v. Chase Home Finance, LLC, 2010 WL 5059648 (D.S.C) (certain negative consequences for failing to comply with the contract were agreed to by the borrower in the document itself and do not support a cause of action.)

In this case, by entering into the Contract, Appellant expressly agreed that if he failed to timely make each of the regular monthly payments called for thereunder, Respondent had the right to accelerate and make demand for payment at once of the entire remaining balance then remaining due under the Contract. As discussed above, neither the Contract nor applicable law required Respondent to reinstate Appellant's loan after default or otherwise modify the Contract's terms merely because Appellant requested same. Accordingly Appellant failed to state a cognizable legal claim based on Respondent's refusal to grant Appellant's request for reinstatement and/or modification, and that part of Appellant's Counterclaim was appropriately dismissed under Rule 12(b)(6).

Respondent fully "accounted for" the CP Insurance policy premium refund in question by applying it to Appellant's account as an offset

payment to the prior CP Insurance policy premium charged to his account as set forth above, and no further "accounting" for the same is required of Respondent as a matter of law. (App. p. 7, line 14). Moreover, a request for an accounting does not state a cognizable legal claim and Appellant's Counterclaim as it relates to such a request was appropriately dismissed under Rule 12(b)(6).

Finally, Appellant's Counterclaim as it relates to requiring Respondent to validate the debt in question fails to state any cognizable legal claim and was appropriately dismissed under Rule 12(b)(6). Respondent provided thorough validation of the debt requested by Appellant by filing the Complaint and Affidavit and Verified Statement with the trial court. Appellant admitted the debt, and there is no cause of action for "validation" of a well-documented, admitted debt. As such, the dismissal of the Counterclaim should be affirmed.

CONCLUSION

By means of the undisputed evidence properly before the trial court in this case, Respondent fully proved its right to recover the Contract balance from Appellant, as a matter of law. Accordingly, summary judgment was properly granted on Respondent's claims against Appellant by the trial court. Appellant's Counterclaim does not raise a justiciable claim against Respondent upon which relief may be granted. Accordingly, Respondent's motion to dismiss Appellant's Counterclaim against

Respondent was also properly granted by the trial court. As such, Respondent respectfully urges this Court to affirm the trial court's judgment in all respects.

Respectfully submitted this the 16 day of July, 2013.

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Clarence LeAnders Griffin, Jr.,.....Appellant

CERTIFICATE OF COMPLIANCE

Respondent certifies that a copy of the foregoing Final Brief of Respondent complies with Rule 211(b) of the South Carolina Appellate Court Rules.

This the 10 day of July, 2013.

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PROOF OF SERVICE

Respondent certifies that a copy of the foregoing Final Brief of Respondent has been served on Appellant by placing a copy of same, postage prepaid, in a receptacle in the control of the U.S. Postal Service, addressed as follows:

Clarence LeAnders Griffin, Jr.
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This the 10 day of July, 2013.

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