

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY

Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No.: 2014-000142

Civil Action No.: 2012CP3600484

Discover BankRespondent,

v.

Samantha P. HendrixAppellant.

FINAL BRIEF OF RESPONDENT

SC Court of Appeals

AUG 08 2014

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August 8, 2014

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
FACTS	1
ARGUMENT	3
A. Plaintiff Discover Bank followed the S.C.R.C.P. by serving process on defendant's last known address, reported as the Defendant's address by Defendant, and by Credit Report inquiry, to a person over the age of 18 years, then living in the residence, and related to the defendant	3
B. Defendant timely answered the Complaint, making an appearance, said appearance in timely answering the complaint, in accordance with Rule 4(d) of the S.C.R.C.P. as described on the Notes therein, such voluntary appearance is equivalent to personal service	4
C. The trial court did not err in granting summary judgment to Discover because defendant's answer admitted all of the allegations as to the debt and no material issue of fact existed as to whether defendant owed Discover the amount of the judgment	4
CONCLUSION	5
CERTIFICATE OF COUNSEL	6
CERTIFICATE OF SERVICE	7

TABLE OF AUTHORITIES

CASES

Fassett v. Evans,
364 S.C. 42, 47, 610 S.E.2d 841, 844 (Ct. App. 2005)3

Hancock v. Mid-South Management Company, Incorporated
381 S.C. 326, 673 S.E.2d 801 (2009)5

Lanham v. Blue Cross and Blue Shield of South Carolina
349 S.C. 356, 563 S.E.2d 331 (2002)5

RULES

Rule 4(d)(1), SCRCP3

Rule 4(d), SCRCP4

Rule 56, SCRCP5

STATEMENT OF THE CASE

On August 31, 2012, Plaintiff-Respondent, Discover Bank (“Discover”), filed an action against Defendant-Appellant, Samantha Hendrix (“Hendrix”), alleging breach of contract and seeking debt collection. [R.pp.8-9]. On September 11, 2012, Discover served process at 503 S. Wheeler Ave., Prosperity, SC 29127. [R.p.19]. On October 11, 2012, Hendrix filed an answer in which she admitted all of the allegations of the complaint, but denying that she lived at the address 503 S. Wheeler Ave. with her parents. [R.pp.10-12]. On July 31, 2013, Discover filed a motion for summary judgment that was granted by the trial court on November 21, 2013. [R.pp.1-3; 13-14]. On December 10, 2013, Hendrix filed a motion to reconsider the grant of summary judgment. [R.pp.15-16]. On December 19, 2013, the trial court denied the motion to reconsider the grant of summary judgment. [R.pp.4-7]. Hendrix filed a notice of appeal with the South Carolina Court of Appeals on January 14, 2014.

FACTS

In 2002, Hendrix accepted a credit card offered by Discover. [R.p.68]. Subsequently, Hendrix defaulted on payments to Discover on purchases or cash advances made on the card. [R.pp.85-113]. At some point, Hendrix resided with her parents and reported same to creditors and the same was reported to Experian Credit services. [R.pp.20-21; 39-67]. In determining the address to be served:

1. Discover made calls to the number provided and spoke to persons who knew the defendants and stated that they would give her the message.
2. Discover checked the Experian database and confirmed her address according to Experian the credit reporting agency. [R.pp.115-116].

3. In preparing this Brief – Discover found that Experian STILL LISTS that address for Hendrix and the print from the screen is included. [Id.].
4. Discover relied on information obtained at some point from the Defendant as to her address.

Discover filed a Summons & Complaint and it was served on her home to her father. [R.pp.8-9]. Hendrix then made appearance in writing by timely answering the Summons & Complaint admitting the allegations therein but denying that she lived at that address. [R.pp.10-12]. Discover filed for summary judgment on the issues of the debt and summary judgment was granted. [R.pp.1-3; 13-14]. Hendrix moved for a reconsideration which was denied. [R.pp.4-7; 15-16]. The finder of fact found that Hendrix timely answered and that no issues of material fact as to the debt existed and the judgment was granted. [R.pp.15-16]. This Appeal ensued.

ARGUMENT

- A. Plaintiff, Discover Bank, followed the S.C.R.C.P. by serving process on defendant's last known address, reported as the Defendant's address by Defendant, and by Credit Report inquiry, to a person over the age of 18 years, then living in the residence, and related to the defendant

Rule 4(d)(1), SCRPC,

(d)(1) Individuals. Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to *him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein*, or by delivering a copy to an agent authorized by appointment or by law to receive service of process.

(emphasis added).

In Fassett, Hugh Evans (Evans) sought to set aside a default judgment because he was served at his marital home while he and his wife were temporarily separated. Fassett v. Evans, 364 S.C. 42, 610 S.E.2d 841 (Ct. App. 2005). The South Carolina Court of Appeals held that “[i]n the case of a married person, the usual place of abode is presumed to be with the family.” Id. at 47,610 S.E.2d at 844. The Court found that Evans bore the burden of overcoming the presumption of proper service. Id. at 49, 610 S.E.2d at 845.

Because Evans could not prove that he established a usual place of abode elsewhere or had no intention to return to the marital home, then Evans was properly served, and the trial court had personal jurisdiction over Evans. Id.

Here, Discover served Hendrix at 503 S. Wheeler Ave. Hendrix reported residence and the residence of defendant's parents. Copies of the summons and complaint were left with Hendrix's father. Hendrix had lived at the residence and reported to others that she received mail there. Experian credit agency also reported that this was her proper address, her last known address. [R.p.115]. According to Experian

credit reporting agency, this is still reported as of 03/25/2014, as the address for Hendrix.

[Id.]

- B. Defendant timely answered the Complaint, making an appearance, said appearance in timely answering the complaint, in accordance with Rule 4(d) of the S.C.R.C.P. as described on the Notes therein, such voluntary appearance is equivalent to personal service.

Rule 4(d), SCRCP,

(d) Summons: Personal Service. The summons and complaint must be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Voluntary appearance by defendant is equivalent to personal service; and written notice of appearance by a party or his attorney shall be effective upon mailing, or may be served as provided in this rule. Service Shall be made as follows: . . .

Note:

This Rule 4(a) differs from the Federal Rule by continuing the present State practice of the plaintiff or his attorney issuing the summons, rather than having it issued by the Clerk of Court. The second sentence requires only copies of the original summons to be served with the complaint on each defendant. Rule 4(b) is substantially identical to the Federal Rule, being modified only to conform to State practice as set out in Rule 4(a). The first sentence of Rule 4(c) continues present State practice. The second sentence makes more definite the requirement of Code § 15-9-1030 that an official person must serve all other process such as rules and orders, except subpoenas. *Rule 4(d) conforms to present State and Federal Practice, and states specifically, as does Code §15-9-70, that voluntary appearance is equivalent to personal service. It also preserves Circuit Rule 17 as to notice of appearance.*

(emphasis added).

Hendrix timely answered the complaint by filing with the Clerk of Court within the 30 days.

- C. The trial court did not err in granting summary judgment to Discover because defendant's answer admitted all of the allegations as to the debt and no material issue of fact existed as to whether defendant owed Discover the amount of the judgment

Defendant admitted the allegations of the debt in her answer as attached and

included. To determine whether a genuine issue of material fact exists, a court must view “the evidence and all inferences which can be reasonably drawn ... in the light most favorable to the nonmoving party.” Rule 56, SCRPC; Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 361-2, 563 S.E.2d 331, 333 (2002). A court should not grant summary judgment when the application of the law requires “further inquiry into the facts” or when the parties “[disagree] concerning the conclusion to be drawn from those facts.” Lanham, at 362, 563, S.E.2d at 333. “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. Co. Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). When reviewing a grant of summary judgment, an appellate court applies the same standard as the trial court. Lanham, at 361, 563 S.E.2d at 333.

Here, Discover moved for summary judgment as to the debt, and Hendrix objected to the court’s jurisdiction over Hendrix alleging that Discover failed to properly serve Hendrix. [R.pp.13-18].

Hendrix, in her Answer, admitted all of the allegations as to the debt.

CONCLUSION

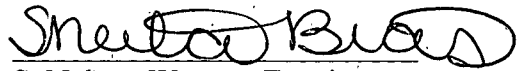
No genuine material issue of fact exists as to the debt according the Hendrix answer. Hendrix was properly served and had opportunity to answer the allegations when she properly and timely answered the complaint by filing her answer with the Clerk of Court within the 30 days.

The finder of fact is in the best position to determine summary judgment.

Therefore, the trial court properly granted summary judgment to Discovery.

Wherefore, the Court of Appeals should allow the ruling of the finder of fact to stand.

RESPECTFULLY SUBMITTED,



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CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A. do hereby certify that I have this day served the foregoing Final Respondent's Brief by personally depositing a copy of the same in the United States Postal Service mailbox, postage prepaid, addressed to the following:

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Chapin, South Carolina 29036-9705



Daisy F. Bonds

Dated: August 8, 2014

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Respondent's Final Brief Complies with Rule 211(b), SCACR.



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