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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master-In-Equity

Appellate Case No. 2020-001127

1st Franklin Financial Corporation .....Respondent,

v.

Roby A. Adams.....Appellant.

CONSENT MOTION TO REVISE FINAL BRIEF OF RESPONDENT TO REMOVE REFERENCE TO DEPOSITION TESTIMONY NOT INCLUDED IN THE RECORD ON APPEAL

Respondent 1st Franklin Financial Corporation ("1st Franklin" or "Respondent"), with the consent of Appellant Roby A. Adams ("Adams" or "Appellant"), hereby moves for an order granting 1st Franklin leave to revise its final brief to remove references to deposition testimony not included in the Record on Appeal.

1st Franklin's initial brief filed on February 16, 2021 contains two references to deposition testimony which is not included in the Record on Appeal. To comply with this Court's rules, 1st Franklin seeks to revise its final brief to remove these references.[1] The proposed revisions to 1st Franklin's final brief are shown in "redline" on pages 11-12 of the attached proposed final brief. (*See* **Exhibit A**). Out of an abundance of caution and because Rule 211(b) provides that final

[1] On April 29, 2021, 1st Franklin filed an Amended Designation of Matter to be Included in the Record on Appeal to remove two pages of deposition transcript which were not presented to the lower court.

briefs shall be substantively identical to initial briefs, 1st Franklin request leave of court to revise its final brief. Counsel for the Appellant consents to the proposed revisions.

Respondent has not enclosed a filing fee as it is Respondent's understating that the filing fees associated with a motion for an extension has been waived by Supreme Court Order 2020-05-29-02. However, should a filing fee be required, upon notification, counsel for Respondent will immediately transmit a filing fee.

Respectfully Submitted,

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May 18, 2021
Charleston, South Carolina

EXHIBIT A

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BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

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II. WHETHER THE MASTER-IN-EQUITY CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF 1ST FRANKLIN AFTER DETERMINING THAT A $9.08 DIFFERENCE IN THE AMOUNT ALLEGED IN TWO COMPLAINTS, FILED FIVE MONTHS APART, WAS NOT, AS A MATTER OF LAW, UNCONSCIONABLE CONDUCT IN COLLECTING OF A DEBT.

STATEMENT OF THE CASE

On October 23, 2015, Adams entered into a Loan Agreement with 1st Financial wherein 1st Financial agreed to loan money to Adams, and Adams agreed to repay the loan in installments. (R. pp. 3-4) (hereinafter the "Order"). Adams admitted that he signed the Loan Agreement agreeing to be bound by its terms. (R. p. 4). Adams has never disputed that he failed to pay 1st Franklin in accordance with the Loan Agreement or that he owed some amount of money to 1st Franklin. (R. p. 4).

On September 22, 2016, 1st Franklin filed this action in the Magistrate's Court for Dorchester County alleging that Adams defaulted under the Loan Agreement and owed $4,342.16. (R. p. 4). On December 5, 2016, Adams filed an Answer and Counterclaims asserting counterclaims against 1st Franklin for violations of the South Carolina Consumer Protection Code ("SCCPC"), violations of the South Carolina Unfair Trade Practices Act ("SCUTPA") and negligence *per se.* (R. p. 4).

The counterclaims, relying on S.C. Code Ann. § 37-5-108(2) of the SCCPC, which prohibits unconscionable conduct in collecting a debt, made three principle allegations in support of Adams' claims. (R. pp. 4-5). *First,* Adams alleged that 1st Franklin falsely represented the amount of the debt owed by Adams. (*Id*.). The basis for this allegation is that 1st Franklin filed two separate lawsuits, five months apart, which alleged different amounts were owed by Adams. (R. p. 5). The first lawsuit filed in April 2016 alleged Adams owed $4,351.24.[1] (R. p. 5). The subject lawsuit was filed in September 2016 and alleged $4,342.16 Adams owed. (R. p. 5). Thus, this lawsuit claimed $9.08 less than the first. (R. p. 5). During his deposition, Adams testified that

[1] The prior action, *1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148, was dismissed *without prejudice* following Adams's objection to 1st Franklin's failing to file documentation relating to non-lawyer representation of a corporation in Magistrate's Court.

he was unsure of how many payments, if any, he made to 1st Franklin and was unsure of the amount he owed to 1st Franklin. (R. p. 33, lines 17:15-25). Further, Adams admitted that he owed some amount to 1st Franklin. (R. p. 33, lines 17:15-25). Adams' allegation of a "false representation" is based solely on the fact that the first complaint alleged $9.08 more than the complaint in this action. (R . pp. 22, 34, lines 18:22-35. *Second*, Adams alleged that 1st Franklin is liable to Adams because the Dorchester County Sheriff's Office mistakenly served Adams' neighbor with the prior lawsuit. (R. pp. 10-11). Adams claimed the Sheriff's Office serving his neighbor act is a violation of S.C. Code Ann. § 37-5-108(5)(b)(4) of the SCCPC, which prohibits a creditor from communicating with anyone except the debtor or limited other persons regarding a debt. (R. pp. 10-11). Acknowledging that 1st Franklin did not directly communicate with the neighbor, Adams claimed that the Dorchester County Sheriff's Office was acting as 1st Franklin's agent, and therefore, 1st Franklin was vicariously liable. (R. pp. 10-11). *Third*, Adams alleged that 1st Franklin engaged in the unauthorized practice of law by failing to file a form evidencing the company's intent to proceed in Magistrate's Court without an attorney. (R. p. 5). Based on the foregoing, Adams claimed 1st Franklin is liable under the SCCPC and SCUTPA and for negligence *per se*. (R. p. 5).

On April 26, 2017, Adams filed his First Amended Answer and Counterclaims making the same allegations but claiming damages in excess of the Magistrate's Court jurisdictional limit. (R. p. 4 n.3). As a result, in May 2017, the case was transferred to the Court of Common Pleas for Dorchester County. In July 2017, this case was referred to the Master-in-Equity for Dorchester County.

On August 29, 2019, Adams filed his Second Amended Answer and Counterclaims. In addition to the allegations set forth above, Adams also alleged that 1st Franklin sent a letter and

called Adams on one occasion after 1st Franklin learned that Adams was represented by counsel. (R. p. 4-5). Adams alleged the communications further support his counterclaims for violations of the SCCPC, SCUTPA and negligence *per se*.

On May 16, 2019, 1st Franklin filed a motion for summary judgment which was heard before the Honorable James E. Chellis, Master-in-Equity for Dorchester County, on March 5, 2020.[2] (R. p. 3). In its motion, 1st Franklin moved for summary judgment, as to liability only, on its affirmative claim for breach of the Loan Agreement. (R. p. 3.). In addition and subject of this appeal, 1st Franklin moved for summary judgment, arguing that the conduct alleged in Adams' original and first amended counterclaims is not, as a matter of law "unconscionable conduct" under the SCCPC or otherwise actionable. (R. p. 3.). Specifically, 1st Franklin argued that (1) the different amounts alleged in the two complaints, (2) the Dorchester County Sheriff's Office serving Adams' neighbor, and (3) the allegations regarding 1st Franklin's alleged unauthorized practice of law do not, as a matter of law, constitute "unconscionable conduct in collecting a debt." (R. p. 3); *see also S*.C. Code Ann. § 37-5-108(2). Therefore, these allegations cannot support Adams' counterclaims.[3] (R. pp. 7-8).

1st Franklin did not move for summary judgment as to Adams's allegations relating to the alleged letter and phone call to Adams' after he retained an attorney. (R. p. 5 n.4). Adams claimed discovery into those allegations was still ongoing. (R. p. 5). At the hearing, because the case was scheduled for a trial in approximately one month, 1st Franklin informed the court that the motion for partial summary judgment was an effort to eliminate certain claims prior to the upcoming trial

[2] 1st Franklin's Motion for Summary Judgment was originally scheduled to be heard on July 16, 2019. However, prior to hearing 1st Franklin's motion, the court heard and granted Defendant's motion to file a Second Amended Complaint. As a result, the court continued 1st Franklin's Motion for Summary Judgment.

[3] Again, Adams counterclaims all depend on the alleged violations of the SCCPC. Adams' claims the alleged violations of the SCCPC also give rise to liability under SCUTPA and for negligence *per se*.

to ensure the remaining issue could be heard in a single day of trial. (R. p. 197, lines 18:10—16). The hearing lasted one hour and fifty-four minutes, a majority of which was Adams' counsel making arguments in opposition.

On April 21, 2020, the Master-in-Equity entered an Amended Order on Plaintiff's Motion for Partial Summary Judgment.[4] The Order granted 1st Franklin summary judgment, as to liability only, on 1st Franklin's claim for breach of contract. Rather than enter judgment against Adams, the court noted that it would address the issue of damages at later proceedings. (R. p. 7). The Master-in-Equity also granted 1st Franklin's motion for partial summary judgment on Adams's allegations relating to the different amounts alleged in the two complaints, the Dorchester County Sheriff's Office serving Adams' neighbor, and the allegations regarding the alleged unauthorized practice of law. (R. p. 13).

On April 17, 2020, Adams offered judgment to be taken against him in the amount of $4,343.00 pursuant to Rule 68, SCRCP. 1st Franklin accepted the offer on April 29, 2020.

On May 1, 2020, Adams filed a motion to alter or amend pursuant to Rule 59(e), SCRCP. After further briefing by Adams and 1st Franklin, the Master-in-Equity denied Adams' motion on July 16, 2020. Adams filed his Notice of Appeal on August 14, 2020.

STANDARD OF REVIEW

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003). When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Bluestein v. Town of Sullivan's Island*, 429 S.C. 458, 462, 839 S.E.2d 879, 881 (2020) (quoting *Turner v. Milliman*, 392 S.C. 116, 121–22, 708 S.E.2d

[4] The Amended Order corrected a typographical mistake from the previously entered order granting 1st Franklin's Motion for Partial Summary Judgment. (*See* R. p. 3).

766, 769 (2011)). Rule 56, SCRCP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party's case." *Baughman v. Am. Tel. & Tel. Co.,* 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*." *Id.* (emphasis in original). The nonmoving party must specifically set forth such facts, "as would be admissible in evidence," to show that a true jury issue exists. *See* S.C. R. Civ. P. 56(e); *Humana Hosp.-Bayside v. Lightle*, 305 S.C. 214, 216, 407 S.E.2d 637, 638 (1991).

ARGUMENT

South Carolina courts strive to "secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP. This case has been none of those things. Adams received the loan at issue on October 23, 2015, almost six years ago. 1st Franklin first filed suit in Magistrate's Court to collect the debt on April 19, 2016. Despite Adams always acknowledging that he owed money to 1st Franklin, it took four years of litigation to resolve 1st Franklin's claim against him. Still, almost five years after it began, the case drags on. Adams' counterclaims remain, and regardless of the outcome of this appeal, additional proceedings at the lower court are required to resolve an additional claim asserted by Adams which is not the subject of this appeal.

Throughout this case, and now on appeal, Adams has attempted to extend the SCCPC well beyond its stated goal of discouraging "unconscionable conduct in collecting a debt." S.C. Code

Ann. § 37-5-108(2). Adams' counterclaims are without merit, and are a clear attempt to delay and to avoid his undisputed failure to repay the loan. For the reasons set forth below, 1st Franklin respectfully requests that this Court affirm the Master-In-Equity's Order in its entirety.

I. BECAUSE THE MASTER-IN-EQUITY, AFTER CONSIDERING THE SOUTH CAROLINA CONSUMER PROTECTION CODE'S STATUTORY FACTORS, FOUND THAT 1ST FRANKLIN DID NOT ENGAGE IN "UNCONSCIONABLE CONDUCT IN COLLECTING A DEBT," THE MASTER-IN-EQUITY CORRECTLY GRANTED SUMMARY JUDGMENT IN FAVOR OF 1ST FRANKLIN.

A. The Plain Language of the South Carolina Consumer Protection Code Gives the Trial Court Discretion, After Considering Statutory Factors, in Deciding Whether a Creditor has Engaged in Unconscionable Conduct in Collecting a Debt.

Adams argues that certain conduct, described as "factors" in S.C. Code Ann. § 37-5-108(5) automatically gives rise to liability under the SCCPC. The Master-in-Equity held that it does not. Rather, the Master-in-Equity correctly held that under the SCCPC, a trial court has discretion, after considering the statutory "factors," to determine whether a creditor has engaged in unconscionable conduct in collecting a debt in violation of the SCCPC. Adams' proposed interpretation of the SCCPC, an interpretation which strips the trial court of any judicial discretion and requires a finding of liability for any violation of the "factors" set forth in § 37-5-108(5), ignores the clear and unambiguous language of the SCCPC.

"The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." *A.O. Smith Corp. v. S.C. Dep't of Health & Envtl. Control*, 428 S.C. 189, 202, 833 S.E.2d 451, 458 (Ct. App. 2019) (quoting *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013)). "A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *Id.* (citing *Lockwood Greene Eng'rs, Inc. v. S.C. Tax Comm'n*, 293 S.C. 447, 449, 361 S.E.2d 346, 347 (Ct. App. 1987). "When interpreting the plain meaning of a statute, courts should not resort to subtle

or forced construction to limit or expand the statute's operation." *State v. Jacobs*, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (citing *Grazia v. S.C. State Plastering, LLC*, 390 S.C. 562, 569, 703 S.E.2d 197, 200 (2010)).

The legislature clearly intended that courts be given deference under the SCCPC. S.C. Code Ann. § 37-5-108(2) provides:

> [w]ith respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction…the consumer has a cause of action to recover actual damages and…a right to recover from the person violating this section a penalty in the amount determined by the court of not less than one hundred dollars nor more than one thousand dollars.

S.C. Code Ann. § 37-5-108(2). Thereafter, S.C. Code Ann. § 37-5-108(5) states "in applying [S.C. Code Ann. § 37-5-108(2)] ***consideration shall be given to each of the following factors***" before setting forth conduct the court should consider when deciding whether a creditor "has engaged in, is engaging in, or is likely to engage in unconscionable conduct" in violation of section 37-5-108(2) (emphasis added).

The SCCPC is clear that a private cause of action and right to recover damages exists only "if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in ***unconscionable conduct*** in collecting a debt." S.C. Code Ann. § 37-5-108(2) (emphasis added). The SCCPC is equally clear that section 37-5-108(5) sets forth "factors" to be given "consideration" in determining whether a creditor has engaged in unconscionable conduct. Adams' strained interpretation of the SCCPC, which would require a finding of liability if a creditor engages in any conduct listed as "factor" under section 37-5-108(5), is untenable.

"The words of the statute must be given their plain and ordinary meaning." *Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 310–11, 831 S.E.2d 429, 432 (2019). "Consideration" is defined as "continuous and careful thought" or "a matter weighed or taken into account when

formulating an opinion or plan." ADVANCE MERRIAM-WEBSTER DICTIONARY (2021), *available at* http://www.merriam-webster.com. A "factor" is "one of several things that cause or influence something." OXFORD LEARNER'S DICTIONARY (2021), *available at* https://www.oxfordlearnersdictionaries.com/us. Giving the words of the statute their plain and ordinary meaning, it is clear that the legislature intended for the "factors" in section 37-5-108(5) to be taken into account when the court makes the ultimate determination of whether a creditor has engaged in unconscionable conduct. Thus, while the trial court, in its discretion, may find that a single activity or event rises to the level of being "unconscionable conduct," the SCCPC does not require such a finding. Adams' argument that section 37-5-108(5) sets forth conduct which is *per se* unconscionable is unsupported by the language of the statute. Had the legislature intended to impose liability for any proven violation of the factors set forth in section 37-5-108(5), without affording any deference to the trial judge, it would have done so with specific language.

The cases cited by Adams are unpersuasive. Neither *Wells Fargo Bank, NA v. Smith*, 398 S.C. 487, 730 S.E.2d 328 (Ct. App. 2012)[5] nor *In re Zenner*, 348 S.C. 499, 501, 560 S.E.2d 406, 407 (2002) address the matter at issue in this appeal. In *Wells Fargo Bank v. Smith*, this Court confirmed that the court, not a jury, makes the finding of unconscionability. *See Wells Fargo Bank, NA v. Smith*, 398 S.C. at 497—98, 560 S.E.2d at 334. It does not support Adams' argument that a trial court has no discretion to determine whether a creditor has engaged in unconscionable conduct. *In re Zenner* is an attorney discipline matter with no discussion of the deference given to courts in deciding a violation of the SCCPC. *See In re Zenner*, 348 S.C. at 505—07, 560 S.E.2d at 409—10.

[5] Adams correctly notes that the Supreme Court ordered this opinion to be depublished and of no precedential value. *See Wells Fargo Bank NA v. Smith*, 2014 WL 2887651, at *1 (S.C. June 11, 2014).

Adams' reliance on the Fair Debt Collection Practices Act ("FDCPA") is also misplaced. Adams cites *Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364 (3d. Cir. 2011) for the proposition that the FDCPA is a strict liability statute, and he argues that "the strict liability standard of the FDCPA should be applied when interpreting the SCCPC as well."[6] (Brief of Appellant p. 8). However, the language of the FDCPA is decidedly different than that of the SCCPC. 15 U.S.C. § 1692(e) states "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, ***the following conduct is a violation of this section***." Subsections (1) through (16) of section 1692(e) then set forth conduct which is explicitly "a violation" of the FDCPA. *See* 15 U.S.C. § 1692(e)(1) – (16).[7] However, unlike the FDCPA, the SCCPC does not explicitly state that certain conduct is a violation of the statute that gives rise to liability. Instead, section 37-5-108 sets forth "factors" to be given "consideration" in deciding whether a creditor has engaged in unconscionable conduct in collecting a debt. The language of the SCCPC is clearly distinguishable from that of the FDCPA.

The SCCPC is clear that the trial court has discretion, after giving consideration to the factors in section 37-5-108, in deciding whether a creditor has engaged in unconscionable conduct. The Master-in-Equity's ruling should be affirmed.

[6] *Allen ex rel. Martin* held that "[t]he FDCPA is a strict liability statute to the extent it imposes liability without proof of an intentional violation." *Allen ex rel. Martin*, 629 F.3d at 368.

[7] Other provisions of the FDCPA are also clear that other conduct is "a violation" of the FDCPA. *See e.g.*, 15 U.S.C.A §1692(f) (A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, ***the following conduct is a violation of this section***….) (emphasis added).

B. The Trial Court Correctly Determined That a $9.08 Difference in the Amount Alleged to be Owed in the Two Complaints Was Not Unconscionable Conduct in Collecting a Debt.

Adams claims that 1st Franklin "falsely represented" the amount owed by Adams in violation of the SCCPC when it filed two separate lawsuits, five months apart, which alleged different amounts were owed. (*See* R. pp. 170-171). In April 2016, 1st Franklin filed an action in Magistrate's Court alleging Adams owed $4,351.24. *See 1st Franklin Financial Corporation v. Roby A. Adams*, Civil Action 2016-CV-18-10302148. That action was dismissed, without prejudice. Then, in September 2016, 1st Franklin filed this action alleging Adams owed $4,342.16—$9.08 less than the prior lawsuit. Based solely upon the differing amounts in the two lawsuits, Adams alleged that 1st Franklin "falsely represented" the amount owed by Adams in violation of the SCCPC. Adams' claim relies on S.C. Code Ann. § 37-5-108(2), which as discussed above, prohibits unconscionable conduct in collecting a debt. More specifically, Adams relies on the "factor" set forth in section 37-5-108(5)(c)(i), which cautions against "using fraudulent, deceptive, or misleading representations in connection with the collection of a consumer credit transaction," including "false representations" of the "character, amount, or legal status of any debt." *See* S.C. Code Ann. § 37-5-108(5)(c)(i).

It is undisputed that the lawsuit filed in April 2016 alleged $9.08 more was owed than the lawsuit filed in September 2016. The precise reason for the differing amounts is unclear. (R. pp. 67-68). ~~During her deposition, 1st Franklin's branch manager testified that she believes the difference may have been due to calculating the loan's payoff on a specific day versus the loan's "charge-off amount." (T. Schwerin Depo. 20: 4 – 18).~~ Significantly, during his deposition Adams admitted that he did not contend a specific amount was due, and that he was unaware of the amount he owed to 1st Franklin. Adams testified as follows:

Q: According to paragraph 12 [of the counterclaims] you allege, "That, upon information and belief, the Plaintiff has falsely represented the amount allegedly owed and that it is asserted that two different amounts are owed in two separate complaints." How do you know that both of those numbers -- if one of those numbers is false or both of them are false, how do you know that?

A: This was handled by my attorney. ~~I wasn't even there. I mean, you know, like I explained earlier, you know, he'd gotten documents to where there was two different amounts~~.

***

~~I said they were false, because there were two different amounts.~~

Q: But you don't have any -- again, you can't tell me how many payments you've made on this loan so you don't know what the actual -- what you're saying what the actual amount is due and owing, right?

A: Right.

(R. pp. 56, line 16-25; R. p. 57, lines 11-15)

The Master-In-Equity, after considering the record before him, determined that the $9.08 reduction in the amount alleged in the current action was not, as a matter of law, unconscionable conduct in collecting a debt. The Master-in-Equity found that "[i]n three years of litigation [Adams] has provided no evidence in the record upon which the court could find that 1st Franklin falsely represented the amount owed in a manner that could, even viewed in the light most favorable to [Adams], be characterized as 'fraudulent, deceptive or misleading' or 'unconscionable'" (R. p. 10).

This Court should affirm the Master-in-Equity's ruling. According to Adams, the fact that the first complaint alleged that Adams owed $9.08 more than the second complaint is, without more, a violation of the SCCPC. (R. p. 254, line 17-p. 255, line 5). During the hearing, Adams' counsel unequivocally stated that if a creditor alleges a certain amount is owed in a complaint, and that amount is, for whatever reason, later determined to be incorrect, the creditor has falsely represented the amount of the debt in violation of the SCCPC. (R. p. 254, line 17-p. 255, line 5).

Adams' brief makes the same argument, stating: "It is clear that the $9.08 overcharge in the first lawsuit was a false representation of the amount of [Adams'] debt. This alone is sufficient to make it 'fraudulent, deceptive, or misleading' under S.C. Code Sec. 37-5-108(5)(c)(1) [sic], which then makes it 'unconscionable' debt collection conduct under S.C. Code Sec. 37-5-108(2)." (Brief of Appellant p. 12). This overly simplistic approach fails.

As set forth above, the SCCPC prohibits "unconscionable conduct in collecting a debt." It does not impose liability when a creditor, in good faith, recalculates the amount of the debt then claims that the debtor actually owes a lower amount. Adams failed to (and cannot) present *any* evidence even suggesting that 1st Franklin engaged in "fraudulent, deceptive or misleading" or "unconscionable" conduct. *See* S.C. Code Ann. §§ 37-5-108(2); 37-5-108(5)(c)(i). The fact that 1st Franklin's branch manager was unable to explain the precise reason as to why the amounts in the complaints varied by $9.08 does not lead to a different result.[8] At the summary judgment stage, the opposing party "must come forward with specific facts showing that there is a genuine issue for trial." *Baughman v. Am. Tel. & Tel. Co.,* 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Here, Adams did nothing more than point to the fact that the two complaints alleged different amounts were owed.[9] More is required. As the Master-in-Equity's noted,

> [a]ccepting [Adams'] argument would lead to a finding of liability any time an amount alleged in a complaint by a creditor is, for whatever reason, found to be

[8] Although Adams appears to acknowledge that whether a creditor has engaged in unconscionable conduct is a question of law, he argues that issues of fact over the $9.08 difference in the complaints create an issue of fact which precludes summary judgment. (Brief of Appellant p. 9).

[9] On appeal, Adams shockingly argues he was denied an opportunity to present his full argument on this issue at the hearing. (*See* Brief of Appellant Brief p. 13). Adams chose not to file a substantive brief in opposition to 1st Franklin's motion for summary judgment prior to the hearing. Further, the hearing began at 10:12 a.m. and ended at 12:06 p.m., almost two hours later. A vast majority of the hearing was Adams' argument in opposition. Any additional time would have required "special permission of the court." S.C. Code Ann. § 40-5-330 ("No attorney, solicitor or counsellor shall be allowed to occupy more than two hours of the time of the court in the argument of any cause, unless he shall first obtain the special permission of the court to do so.") Regardless, Adams cannot escape that the alleged "false representation" is a $9.08 difference in the two complaints. The fact that a letter may have referenced the higher amount or that 1st Franklin's branch manager may have mentioned the higher amount in her deposition is immaterial. (*See* Brief of Appellant p. 13).

> incorrect. Such a ruling would have a chilling effect on creditors pursuing debts they are rightfully owed and likely lead to a significant increase in claims by debtors seeking to avoid debts on technicalities. The proper response to the incorrect allegation is simply to deny it and demand strict proof.

(R. pp. 9-10).

The Master-in-Equity correctly held that the $9.08 difference in the amount alleged to be owed was not unconscionable conduct in collecting a debt. Therefore, the Master-in-Equity properly granted summary judgment in favor of 1st Franklin.

II. THE MASTER-IN-EQUITY'S DENIAL OF ADAMS' RULE 59 MOTION WAS NOT AN ABUSE OF DISCRETION

Adams also argues that the Master-In-Equity erred in denying his Rule 59(e), SCRCP motion. Adams' basis for this argument is not entirely clear, but he claims that the denial of his motion with a "Form 4" order was an abuse of discretion. (Brief of Appellant p. 16). The relief sought is also unclear. Adams states that he "is uncertain what proper action this court should take in regards to the Rule 59 Order, but perhaps it should be vacated, or this court should take such other action in regards to the Rule 59 Order as may be appropriate." (*Id.*).

In support of this argument, Adams cites *Lollis v. Dutton,* 421 S.C. 467, 486, 807 S.E.2d 723, 733 (Ct. App. 2017). In *Lollis*, following a bench trial, the trial judge issued an order stating that the prevailing parties' request for attorneys' fees was denied. *Id*. at 476, 807 S.E.2d at 728—29. No reasoning or explanation was provided. *Id*. at 476, 807 S.E.2d at 728—29. The parties seeking fees subsequently filed a Rule 59(e), SCRCP motion. *Id*. The Rule 59 motion was denied in a Form 4 Order, once again, with no reasoning or explanation. *Id*. On appeal, this Court held that the lower court erred because neither its first order nor the order denying the Rule 59(e) motion specifically addressed the merits of the request for attorneys' fees. *Id*. at 487, 807 S.E.2d at 733. This Court held that the orders did not demonstrate that the court exercised its discretion in evaluating the request for attorneys' fees. *Id*.

This case is easily distinguishable from *Lollis*. Here, unlike in *Lollis*, the court's order granting 1st Franklin's motion for summary judgment order details the arguments made by both parties, explicitly states that the court considered the arguments of the parties,[10] and then includes detailed reasoning for its decision. Adams' Rule 59 motion was a rehashing of the same arguments the court previously rejected. Regardless, the Master-in-Equity set a brief scheduling which allowed briefing from both parties. After the submission of a memorandum in support, a response in opposition, and a reply brief in further support, the court denied Adams' motion. The Master-In-Equity's Form 4 denial without a hearing was not an abuse of discretion.[11] *See Lollis*, S.C. at 487, 807 S.E.2d at 733 ("Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b)") (quoting Rule 52(a), SCRCP) (alteration in original); *see also* Rule 59(f), SCRCP (A Rule 59 motion "may in the discretion of the court be determined on briefs filed by the parties without oral argument"). Like Adams' other arguments, this argument also fails.

[10] The order states that the court's decision to grant summary judgment was made "[a]fter carefully considering the pleadings, memoranda, applicable law and arguments of counsel." (R. p. 13).

[11] Appellant's Brief references that Master-in-Equity denied Adams' Rule 59 motion "without a hearing" on multiple occasions. (*See* Brief of Appellant Brief pp. 5 and 15). Adams' Rule 59 motions explicitly states "[Adams] is agreeable to submitting the matter to the court on briefs by the parties without oral argument." (*See* R. p. 96). In a June 3, 2020 e-mail, Adams' counsel reaffirmed Adams' consent to have the Rule 59 motion decided on briefs without a hearing. (*See* R. p. 114.)

CONCLUSION

For these reasons set forth above, the Master-in-Equity correctly granted summary judgment in favor of 1st Franklin. 1st Franklin respectfully requests that this Court affirm the Master-in-Equity's Order in its entirety.

Respectfully Submitted,

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May 18, 2021
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In the Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

The Honorable James E. Chellis, Master-In-Equity

Appellate Case No. 2020-001127

1st Franklin Financial Corporation .....Respondent,

v.

Roby A. Adams.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(B), SCACR.

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PROOF OF SERVICE

The undersigned hereby certifies that on May 18, 2021, he has caused a copy of a **Consent Motion to Revise Final Brief of Respondent to Remove Reference to Deposition Testimony not Included in the Record on Appeal** to be served upon all parties of record via e-mail addressed as follows:

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