

FINAL BRIEF RESPONDENT

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THE STATE OF SOUTH CAROLINA

DEC 20 2021

In The Court of Appeals

SC Court of Appeals

APPEAL FROM ABBEVILLE COUNTY

Court of Common Pleas

Donald B. Hocker, Circuit Court Judge

Case No. 2021-000142

Unifund CCR, LLC,

Respondent,

v.

Shonda L. Wade,

Appellant,

MOTION TO FILE FINAL BRIEF OF RESPONDENT

OUT OF TIME

AND

FINAL BRIEF OF RESPONDENT

Wesley D. Dail
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STATEMENT OF ISSUES ON APPEAL

1. WAS THE TRIAL COURT PROPER IN ITS DECISION TO GRANT RESPONDENT'S MOTION FOR SUMMARY JUDGMENT?

STATEMENT OF THE CASE

On March 14, 2020, Unifund CCR, LLC (hereinafter Unifund"), brought an action seeking to collect a debt alleged to be owed by Shonda L. Wade in the sum of \$4,372.61. Appellant filed an Answer on August 27, 2020. After Appellant failed to respond to Respondent's discovery requests, Respondent filed a Motion for Summary Judgment on December 29, 2020.

On February 1, 2020, Respondent's Motion was heard before the Honorable Donald B. Hocker, who granted Respondent's Motion and awarded Judgment in the total sum of \$4,659.67. On February 9, 2021, Respondent was served with Appellant's Notice of Appeal via certified mail.

STANDARD OF REVIEW

When reviewing the granting of a Motion for Summary Judgment, the same standard which governs the trial court under Rule 56(c), of the South Carolina Rules of Civil Procedure applies to the appellate court; summary judgment is properly granted when there is no issue of material fact and where the moving party is entitled to summary judgment as a matter of law. See *Laurens Emergency Med. Specialists v. M.S. Baily and Sons Bankers*, 355 S.C. 104, 584 S.E.2d 375 (2003); *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857 (2002); *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. See *Sauner v. Public Serv. Auth.*, 354 S.C. 397, 581 S.E.2d 161 (2003); *Hendricks v. Clemson Univ.*, 353 S.C. 449, 578 S.E.2d 711 (2003).

Additionally, summary judgment is appropriately granted where the pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits that might have been filed with the court, show that there is no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. See *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 578 S.E.2d 329 (2003).

Under Rule 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. See *Regions Bank*, 354 S.C. at 659, 582 S.E.2d at 438; *Trivelas v. South Carolina Dept. of Transp.*, 348 S.C. 125, 558 S.E.2d 271 (Ct. App. 2001). However, once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. See *Regions Bank*, 354 S.C. at 660, 582 S.E.2d at 438. Rather, the non-moving party must come forward with specific facts showing that there is a genuine issue for trial. See *SSI Med. Servs., Inc. v. Cos*, 301 S.C. 493, 392 S.E.2d 789 (1990); *Peterson v. West American Ins., Co.*, 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999)

FACTS

Respondent filed a Summons & Complaint in the Abbeville Court of Common Pleas on May 14, 2020. Appellant was successfully served with the Summons & Complaint on August 11, 2020 (R pages 11 – 13, Note, Appellant's Record on Appeal shows and incomplete copy of the Respondent's Summons and Complaint. Appellant's Record on Appeal does not attach the Respondent's Affidavit of Account). Thereafter, Appellant filed an Answer (R pages 14 – 16), on August 27, 2020. Appellant's Answer included general denials, as well as affirmative defenses claiming that (1) Respondent's claims were barred in whole or in part by the doctrines of laches, equitable estoppel, and unclean hands; (2) Respondent's claims were barred in whole or in part

due to its failure to mitigate damages; (3) Respondent's claims were barred in whole or in part because it did not correctly state the amount owed; (4) Respondent's claims were barred in whole or in part due to a possible violation of the statute of frauds.

On November 17, 2020, Respondent mailed certain written discovery requests to Appellant, consisting of Respondent's First Requests for Admissions (hereinafter "Admissions Request"), Respondent's First Interrogatories, and Respondent's First Request for Production of Documents. Appellant failed to respond to Respondent's discovery requests within the applicable 30-day period pursuant to Rule 36 of the South Carolina Rules of Civil Procedure. Thereafter, Respondent filed its Motion for Summary Judgment with the Court on December 29, 2020. Respondent received notice from the Court that its Motion was scheduled to be heard (via Webex videoconference) on Monday, February 1, 2021 before the Honorable Donald B. Hocker. Respondent mailed a Notice of Hearing to Appellant dated January 12, 2021 (Note, Appellant's Record on Appeal failed to include the Respondent's Motion for Summary Judgment, which included as Exhibit "3" the Respondent's First Set of Discovery Requests to the Appellant).

On January 22, 2021, Appellant filed an Answer to Respondent's Motion for Summary Judgment (R page 17). Appellant's Answer to Respondent's Motion for Summary Judgment alleged that Respondent had answered the Respondent as to what was known by Appellant pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, that Appellant has no knowledge of the Respondent's company or any of its representatives, and that all allegations that were levied by Respondent "is in question(s) as there has been no type of relationship with the [Respondent] or its representatives." Appellant further requested that Respondent's Motion for Summary Judgment be denied.

In response to the allegations contained in Appellant's Answer to Respondent's Motion for

Summary Judgment, Respondent mailed correspondence to Appellant dated January 25, 2021. This correspondence included a letter addressing Appellant's allegations and explaining that (1) Respondent does not allege that Appellant entered into an agreement with Unifund, rather that Appellant entered into a credit agreement with Capital One Bank (USA), N.A. (hereinafter, "Capital One Bank"), Unifund's predecessor in interest; (2) Appellant's acceptance and use of the credit extended, in the form of the subject account, by Capital One Bank, created the agreement requiring Appellant to repay in full the balance due and owing on the account; and (3) said obligation was subsequently purchased and acquired by Respondent, which is now the owner of all rights, title, and interest in the subject account, including the right to recover the balance due and owing on the account. This correspondence also included copies of Account Statements issued to Appellant by Capital One Bank, as well as a copy of the Chain of Assignment (Note, the Appellant's Record on Appeal failed to include the Respondent's correspondence).

Respondent's Motion for Summary Judgment was heard before the Honorable Donald B. Hocker via Webex at the scheduled time of 9:00am on Monday, February 1, 2021. When the case was called, Judge Hocker informed counsel for Respondent that the Appellant had previously been in the lobby of the Webex call, but was no longer. After the Court attempted to call the phone number for the Appellant without success, Judge Hocker asked counsel for Respondent to go forward with the argument for its Motion for Summary Judgment. After counsel for Respondent presented its argument, the Court awarded Summary Judgment in favor of the Respondent in the total sum of \$4,659.67 (principal balance of \$4,372.61, plus \$287.06 in costs). At the conclusion of the Hearing, Judge Hocker asked counsel for Respondent to prepare and E-File a Proposed Order Granting Summary Judgment. Counsel for Respondent thereafter E-Filed the Proposed Order Granting Summary Judgment, which was e-signed by Judge Hocker on February 3, 2021 (R

pages 18 – 22).

ARGUMENTS

- I. BECAUSE THE PLEADINGS EXHIBITED THAT THERE IS NO GENUINE ISSUE AS TO ANY MATERIAL FACT, RESPONDENT WAS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW, AND THE TRIAL COURT WAS PROPER IN ITS DECISION TO GRANT RESPONDENT’S MOTION.

The Trial Court was proper in granting Respondent’s Motion for Summary Judgment, as no genuine issue of material fact was present. Such absence was evidenced by the admissions made by virtue of Appellant’s failure to reply with a written answer or objection to Respondent’s Requests for Admission within 30 days after service of the request.

Rule 36(a) of the South Carolina Rules of Civil Procedure states, in part, that a party “may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b). Rule 36(a) further stipulates that “Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow or as stipulated in writing by the parties pursuant to Rules 29 and 6(b), the party whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.”

Rule 36(b) of the South Carolina Rules of Civil Procedure addresses the effect of admission, stating in part: “Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission.”

Respondent’s First Requests for Admissions, which were served upon Appellant on

November 17, 2020, may be found in their entirety in Exhibit "3" attached to Respondent's Motion for Summary Judgment. Pursuant to Rule 36, each matter therein (separately set forth and numbered 1 through 20) is deemed as admitted and conclusively established by virtue of Appellant's failure to answer or object. The matters deemed admitted by Appellant and conclusively established include, but are not limited to the following: (1) Appellant entered into an agreement with Respondent's predecessor in interest, Capital One Bank (USA), N.A., pursuant to which, a credit card account was opened in Appellant's name with an account number ending in 4396; (2) Redacted copies of Account Statements dated February 3, 2017 through February 3, 2018 (attached to the discovery requests as Exhibit "A") are copies of genuine Account Statements issued to Appellant by Capital One in regard to the subject account; (3) Appellant accepted and used the credit extended by Capital One, and thereby incurred debt on the subject account; (4) The Account Statements set forth a running itemization of all amounts owed on the subject account, including charges and fees, resulting from Appellant's acceptance and usage of the credit extended by Capital One; (5) Appellant's acceptance and use of the credit extended by Capital One, resulted in balances due and owing on the subject account, which Appellant agreed to repay to Capital One; (6) There is no factual basis for any allegation that Appellant did not enter into and accept an agreement with Capital One, pursuant to which, Capital One extended credit to Appellant in the form of the subject account; (7) The Account Statement dated July 3, 2017 shows a payment in the amount of \$394.00, posted to the subject account on June 24, 2017; (8) Subsequent to June 24, 2017, Appellant failed to make the required payments on the subject account when they became due and thereby, Appellant defaulted on the obligation to re[ay the full balance of the debt incurred on the subject account; (9) There is no factual basis for any allegation that Appellant did not default on the obligation to repay the full balance of the debt incurred on the subject account; (10) There

is no factual basis for any allegation that Respondent is barred from proceeding in the subject action by any applicable Statute of Limitations; (11) The Account Statement dated February 3, 2018, shows a balance due and owing on the subject account in the amount of \$4,372.61; (12) The redacted copy of the Chain of Assignment (attached to the discovery requests as Exhibit "C") evidences that the subject account was assigned from Capital One Bank (USA), N.A. to Unifund CCR, LLC, and that Respondent is now the owner of all rights, title, and interest in the subject account; (13) There is no factual basis for any allegation that the balance claimed as due on the subject account in the principal sum of \$4,372.61, is not the correct balance due and owing on the subject account and that Respondent has failed to correctly state the amount owed on the subject account, nor is there a factual basis for any allegation that the balance claimed as due on the subject account in the principal sum of \$4,372.61, is not a valid debt owed by Appellant to Respondent; (14) During the time period of August 3, 2017 through February 3, 2018, Respondent's predecessor in interest, Capital One, properly provided Notice of Right to Cure to Appellant on a monthly basis in regard to the subject account; (15) There is no factual basis for any allegation that that Respondent has failed to properly provide an accounting of this debt or to provide documentation proving the amount owed by Appellant to Respondent; and (16) Appellant is indebted to Respondent for the amount owed on the subject account in the principal sum of \$4,372.61.

Rule 56(c) of the South Carolina Rules of Civil Procedure prescribes that Summary Judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

The Appellant's failure to respond via either answering or objecting to the requests contained in Respondent's Admissions Request, together with the evidence, including

Respondent's Affidavit of Account, which was filed with the Trial Court by the Respondent with the Respondent's Complaint in this matter, shows by a preponderance of the evidence that pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, there is no genuine issue as to any material fact. Respondent was and is therefore entitled to Summary Judgment as a matter of law.

II. BECAUSE THE APPELLANT HAS FAILED TO ESTABLISH THAT THERE IS A GENUINE ISSUE AS TO ANY MATERIAL FACT, RESPONDENT WAS ENTITLED TO SUMMARY JUDGMENT AS A MATTER OF LAW, AND THE TRIAL COURT WAS PROPER IN ITS DECISION TO GRANT RESPONDENT'S MOTION.

In the Appellant's Brief, the Appellant argues that the Judge presiding erred in granting Summary Judgment in favor of the Respondent because (1) the Respondent relied on the Appellant's failure to respond to the Respondent's discovery requests; (2) that the Appellant had no knowledge of any debt owed to the Respondent; and (3) that the Appellant argues that no contract, written or oral was ever established with the Respondent.

While it is true that the Respondent's Motion for Summary Judgment was based in part on the Appellant's failure to respond to the Respondent's First Requests for Admissions, the Appellant is incorrect to assert that the Respondent relied solely on the discovery. The Respondent's Motion for Summary Judgment also provided the Trial Court with copies of Account Statements issued on the Appellant's Account during the time said account was active. These statements proved that the Appellant accepted and used the credit extended to her by the Respondent's predecessor in interest. The statements also proved that the Appellant failed to make the required payments set forth as due and owing on the Appellant's account thereby defaulting

on her obligations with regard to the subject account. Furthermore, the Respondent's Motion provided the Trial Court with a copy of the Chain of Assignment demonstrating that the Respondent had purchased and acquired the Appellant's Account from Capital One Bank.

The Appellant's argument that she had no knowledge of any debt owed to the Respondent is likewise incorrect. The Respondent informed the Appellant of the debt she owed the Respondent in a letter February 18, 2020, October 26, 2020, as well as in the aforementioned letter dated January 25, 2021. In all three letters the Respondent informed the Appellant that the debt she had previously owed to Capital One Bank, had been purchased and acquired by the Respondent and that the Appellant now owed the balance due on the Appellant's Account to the Respondent. Additionally, in the October 26, 2020, letter, the Respondent provided proof of the purchase and acquisition of the Appellant's Account to the Appellant.

Likewise, the Appellant's argument that there was no contract, written or oral was ever established between the Respondent and the Appellant fails to be convincing. The Respondent has never claimed that the Appellant entered into an agreement with the Respondent. Rather, as has been set forth previously, the Appellant entered into an agreement with Capital One Bank. It is the Appellant's obligation to repay the debt incurred to Capital One Bank that the Respondent seeks to recover on. The Appellant has failed, despite numerous opportunities to do so, to deny that she in fact had entered into an agreement with Capital One Bank, pursuant to which she incurred the obligation that the Respondent now seeks to recover.

As the Respondent met its initial burden to demonstrate that there are no genuine issues of material fact, the Appellant cannot simply assert that her Answer to the Respondent's Complaint is sufficient to establish a triable issue. The Appellant has failed to come forward with any specific facts showing that there are genuine issues to be tried in this matter and thus has failed to establish,

even when viewed under a light most favorable to the Appellant, that any triable issue exists. Therefore, the Appellant has failed to establish that there were any genuine issues of material fact that the Appellant could have raised with the Trial Court and that the Respondent should not have been granted summary judgment in this matter.

CONCLUSION

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

Date: This the 24 day of November, 2021.

Respectfully submitted,

SESSOMS & ROGERS, P.A.



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Attorney for Respondent

CERTIFICATE OF COMPLIANCE WITH RULE 211

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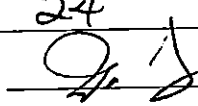
Shonda L. Wade,

Appellant,

FINAL BRIEF OF RESPONDENT

The Respondent hereby certifies that the Final Brief of Respondent fully complies with the provisions of Rule 211(b).

This the 24 day of November, 2021.


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Attorney for Respondent

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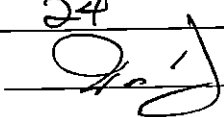
Shonda L. Wade,

Appellant,

This is to certify that, pursuant to Rule 5 of South Carolina Civil Procedure, the Plaintiff's Motion to File Final Brief of Respondent and Final Brief of Respondent, was this day served upon the Defendant in this action by mailing a copy, postage prepaid, to the Defendant, at the Defendant's address as follows:

Shonda L. Wade
17 Carver Street Ext
Due West, South Carolina 29639

This the 24 day of November, 2021.


Wesley D. Dail
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P.O. Box 1110564
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(919) 688-1000
Attorney for Respondent