

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

JUL 15 2013

SC Court of Appeals

Case No. 2012-CP-40-04857

Court of Appeals Tracking No. 2013-000340

Lawrence Terry, Appellant,
v.
Allen University, Respondent.

**RETURN TO APPELLANT’S MOTION FOR CONTEMPT AND
SANCTIONS**

Appellant’s Motion for Contempt and Sanctions is completely without merit and should be denied. Allen University’s (“Allen”) attorney, Debbie Durban, did not act improperly when she informed the Richland County Clerk of Court’s office of a filing error. She never engaged in any fraudulent conduct intended to deceive Appellant or the Court.

Upon receipt of Appellant’s Notice of Appeal and Initial Brief on February 20, 2013, Ms. Durban learned that Appellant apparently thought that Allen had never responded to his Amended Complaint and had never answered his discovery requests. (Durban Affidavit ¶ 3, attached as Exhibit 1.) She knew this was not true because

Allen had earlier filed a Motion for a Protective Order to stay discovery and, after receiving the Amended Complaint, filed Renewed Motions to Show Cause, for Sanctions, and to Dismiss. (Durban Aff. ¶ 3, Exs. A and B.) Ms. Durban served each of these motions on Appellant by mail at his post office box address, which is the same address she had used throughout this lawsuit with no apparent issue. (Durban Aff. ¶ 3, Exs. A and B.)

To try and determine the basis for Appellant's mistaken belief, Ms. Durban checked Richland County's online public index. There she discovered that the Renewed Motions to Show Cause, for Sanctions, and to Dismiss and the Motion for Protective Order had been mistakenly filed by the Richland County Clerk of Court's office under the wrong civil action number. (Durban Aff. ¶ 4.) Instead of filing these motions under 2012-CP-40-04857, the current lawsuit, the clerk's office had filed them under 2011-CP-40-05469, which was Appellant's previously dismissed fourth lawsuit. (Durban Aff. ¶ 4.) Although the correct civil action number was on the front page of each pleading, the civil cover sheets attached to the pleadings had the civil action number from the earlier case which could have resulted in the misfiling by the clerk's office. (Durban Aff. ¶ 4.)

Ms. Durban called the Richland County Clerk of Court's office on February 20, 2013 and spoke with Jim Truitt, the Administrator, to explain the mistake and inquire how to remedy it. (Durban Aff. ¶ 5, Ex. C.) Mr. Truitt said he would look into it and get back with her. A few days later, Mr. Truitt called and spoke with Ms. Durban's administrative assistant and informed her that the motions had been refiled under the appropriate civil action number. (Durban Aff. ¶ 6.)

As demonstrated by the information above, Ms. Durban did not act improperly by informing the Clerk of Court's office of the misfiling. She explicitly did not engage in any fraudulent conduct intended to deceive Appellant or the Court. Therefore, Appellant's Motion for Contempt and Sanctions is without any merit whatsoever and should be denied.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 
Debbie Whittle Durban
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Attorney for Allen University

Columbia, South Carolina
July 12, 2013

Exhibit 1

(Durban Affidavit)

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. 2012-CP-40-04857

Court of Appeals Tracking No. 2013-000340

Lawrence Terry, Appellant,
v.
Allen University, Respondent.

AFFIDAVIT OF DEBBIE WHITTLE DURBAN

I, the undersigned Debbie Whittle Durban, being duly sworn, depose and state as follows:

1. I am over 21 years of age and am competent to testify as to the matters alleged herein.
2. I am the attorney for the Respondent, Allen University (“Allen”), in the above-referenced appeal.
3. Upon receiving Appellant’s Notice of Appeal and Initial Brief on February 19, 2012, I learned that Appellant apparently thought Allen had never responded to his Amended Compliant or answer his discovery requests. I knew this was not correct because upon receipt of Appellant’s discovery requests, I had filed a

Motion for Protective Order asking the court to stay discovery. Later, upon receiving the Amended Complaint, I filed Renewed Motions to Show Cause, for Sanctions, and to Dismiss. I served each of these motions on Appellant by mail at his post office box address, which is the same address I had used throughout this lawsuit with no apparent issue. (*See Exhibits A and B.*)

4. To try and determine the basis for Appellant's mistaken belief, I checked Richland County's online public index and discovered that both the Motion for Protective Order and the Renewed Motions to Show Cause, for Sanctions, and to Dismiss had been filed by the Clerk of Court's office under the wrong civil action number. Instead of filing these motions under 2012-CP-40-04857, the civil action number for the current lawsuit, the clerk's office had filed them under 2011-CP-40-05469, which was Appellant's previously dismissed fourth lawsuit. Although the correct civil action number was on the front page of each pleading, the civil cover sheets attached to the pleadings had the civil action number from the earlier case which could have resulted in the misfiling by the clerk's office.

5. I then called the Richland County Clerk of Court's office on February 20, 2013, and spoke with Jim Truitt, the Administrator, to explain the mistake and inquire how to remedy it. Mr. Truitt told me he would look into it and get back to me. A time entry for this conversation is attached as Exhibit C. A few days later, Mr. Truitt called and spoke with my administrative assistant, Pam Jolley, and informed her that the motions had been refiled under the appropriate civil action number.

FURTHER AFFIANT SAYETH NOT

Debbie Whittle Durban

Debbie Whittle Durban

Sworn to and subscribed before me
this 12th day of July 2013

Janella K. Jolley (S.)

Notary Public for South Carolina

My Commission Expires 12/9/2013.

Exhibit 1 to Durban Affidavit

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Lawrence Terry,) Civil Action No. 2012-CP-4004857
)
 Plaintiff,)

vs.)

Allen University,) **DEFENDANT'S RENEWED**
) **MOTIONS TO SHOW CAUSE, FOR**
) **SANCTIONS, AND TO DISMISS**
 Defendant.) **PLAINTIFF'S AMENDED**
) **COMPLAINT**

RICHLAND COUNTY
 FILED
 2012 AUG 28 PM 12:59
 CLERK OF COURT

Defendant Allen University ("Allen") hereby moves the Court (1) to show cause why Plaintiff should not be held in contempt; (2) to assess sanctions; and (3) to dismiss Plaintiff's Amended Complaint with prejudice.

PROCEDURAL BACKGROUND

The present lawsuit, the fifth lawsuit¹ Plaintiff has filed against Allen in the last year and a half based on a dispute he has regarding his fall semester 2003 student records, was filed on July 16, 2012. Allen filed Motions to Show Cause, For Sanctions, and to Dismiss the lawsuit on August 1, 2012. Plaintiff subsequently filed an Amended Complaint on August 10, 2012 and hand-delivered a copy to Allen's counsel on August 13, 2012. Plaintiff's Amended Complaint states causes of action for negligence and intentional infliction of emotional distress, and appears to omit his prior claims of fraud and libel.

As shown in the previous lawsuits, Plaintiff, who was a student at Allen in 2002-2003, requested in December 2003 that Allen send his transcript to Midlands

¹ Lawsuit No. 1 was dismissed for lack of jurisdiction, Lawsuit No. 2 was voluntarily dismissed by Plaintiff, Lawsuits No. 3 and 4 were dismissed by the Court.

Technical College, where he was planning to transfer. Allen promptly did this but because the request came in prior to the end of the fall 2003 semester, Plaintiff's fall 2003 grades were not included on that transcript sent to Midlands Technical College. Plaintiff's fall semester 2003 grades, however, were included in subsequent transcripts sent to other schools at Plaintiff's request. Plaintiff claims that he did not realize that his fall semester 2003 grades had been added to his transcript until 2009, at which time he went to Allen to request that the grades be removed. When Allen refused to remove the grades, Plaintiff began this unending process of suing Allen.

Regarding Plaintiff's fourth lawsuit, on April 26, 2012, the Court granted Allen's Motion to Dismiss and Motion for Sanctions in a text order. On June 18, 2012, the Court issued a formal order denying Plaintiff's claims of breach of contract, intentional infliction of emotional distress, constructive/silent fraud, breach of trust, negligent supervision, and libel on the basis of *res judicata* and failure to allege facts sufficient to support his causes of action. The Court further granted Allen's Motion for Sanctions and enjoined Plaintiff from bringing further lawsuits against Allen based on these facts. A copy of this Order is attached as Exhibit A. Plaintiff subsequently filed a Motion for Reconsideration which the Court denied on June 20, 2012. A copy of this Order is attached as Exhibit B.

On Jun 21, 2012, Plaintiff filed a Motion to Clarify, Alter or Amend Judgment. On June 29, the Court denied Plaintiff's Motion and held that the Order dismissing the case entered on June 20 was sufficiently clear. A copy of this Order is attached as Exhibit C.

On July 5, 2012, Plaintiff filed a Motion for Leave to Amend his Complaint. On July 9, 2012, the Court denied Plaintiff's Motion for Leave to Amend stating that the case had previously been dismissed and a Motion for Reconsideration had already been denied. The Court further enjoined Plaintiff from filing any additional motions in this matter at the circuit court level and informed him that he must proceed to the appellate court level for any further disposition of this case. A copy of this Order is attached as Exhibit D.

PRESENT LAWSUIT

On July 15, 2012, in contravention of the Court's Orders, Plaintiff filed yet a fifth lawsuit against Allen alleging claims of fraud, negligence, and libel, based on the same facts alleged in his other four lawsuits. Plaintiff filed an Amended Complaint on August 10, 2012. Plaintiff attempts to color this new lawsuit as being based on different facts stating that the lawsuit is based in part, but not entirely on an affidavit filed by Allen in the fourth lawsuit. In the affidavit by Marilyn Young, the Registrar at Allen, Ms. Young stated that at some point after 2003, courses that Plaintiff had taken at Midlands Technical College were added twice to his transcript. When this mistake was discovered, his transcript was corrected by deleting the duplicate courses. Plaintiff claims this is evidence that Allen has committed fraud, negligence and libel. Plaintiff, however, misses an integral point—that the innocent mistake was to Plaintiff's benefit, not his detriment. This is because the addition of the duplicate courses increased his grade point ratio rather than decreasing it. Therefore Plaintiff can show no harm to him by this innocent error and this alleged "new fact" does not support any of his alleged causes of action. Furthermore, any statements made in the course of litigation,

as was the statements in Ms. Young's affidavit, are absolutely privileged and thus cannot support Plaintiff's claims.

Therefore, Allen renews its requests the following:

(1) The Court hold Plaintiff in contempt for failing to adhere to the Court's order enjoining him from filing additional lawsuits against Allen based on these facts;

(2) The Court assess sanctions against Plaintiff in the form of Allen's fees and costs for violating the injunction; and

(3) The Court dismiss Plaintiff's Amended Complaint on the basis of *res judicata* and failure for Plaintiff to allege facts sufficient to support his causes of action.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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Attorney for Allen University

Columbia, South Carolina

August 27, 2012

Exhibit A

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT

Lawrence Terry,) Civil Action No. 2011-CP-40-05469
))
Plaintiff,)
))
vs.)
))
Allen University,)
))
Defendant.)

PROPOSED ORDER GRANTING
ALLEN UNIVERSITY'S MOTION
TO DISMISS AND MOTION FOR
SANCTIONS

2012 JUN 20 AM 11:58
RICHLAND COUNTY
FILED
JANETTE W. McBRIDE
S.C.P. & G.S.

Defendant Allen University ("Allen") has moved the Court to: dismiss
Plaintiff Lawrence Terry's ("Plaintiff") Complaint pursuant to *res judicata* and Rule
12(b)(6) of the South Carolina Rules of Civil Procedure; and (2) for sanctions pursuant to
the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-36-10. For
the reasons discussed below, the Court grants Allen's motion to dismiss and motion for
sanctions.

STATEMENT OF FACTS¹

Plaintiff is a former student of Allen, having attended Allen in 2002 and 2003.
On December 9, 2003, at Plaintiff's request, Allen sent a copy of Plaintiff's transcript to
Midlands Technical College ("Midlands Tech"), where Plaintiff was planning to transfer.
Plaintiff subsequently attended Midlands Tech during the spring and summer semesters
in 2004. In August 2004, Plaintiff requested Allen send his transcript to Coastal Carolina
University ("Coastal") and the University of South Carolina ("USC"), which Allen did.

¹ The facts as stated herein are pulled from Plaintiff's latest Complaint and the three other
Complaints Plaintiff filed in the preceding lawsuits as well as Plaintiff's testimony during
a hearing on Allen's Motion to Dismiss his third lawsuit. To the extent these facts are
considered to be outside Plaintiff's current Complaint, the Court has treated Allen's
Motion as a Motion for Summary Judgment.

SCANNED

At some later unspecified date, Plaintiff, who was having issues at his current unnamed school, claims he was told about his previous grade point average ("GPA"). Plaintiff then proceeded to open sealed envelopes he had from Allen and Midlands Tech containing his official transcripts and discovered that the transcript that Allen had sent to Midlands Tech on December 9, 2003 did not contain his fall semester 2003 grades, whereas subsequent transcripts did contain those grades.² According to Plaintiff, the addition of his fall semester 2003 grades in subsequent transcripts sent by Allen caused his GPA to drop.

On December 14, 2009, Plaintiff went to Allen to dispute his student record and claims that the registrar's office and the office of student affairs agreed to investigate the matter. Plaintiff says he was told to wait approximately one week for Allen to complete the investigation; however, he claims that Allen never completed the investigation.

The present lawsuit is the fourth lawsuit Plaintiff has filed against Allen based on a dispute he has regarding his fall semester 2003 student records.

A. Lawsuit No. 1

On January 14, 2010, Plaintiff filed a lawsuit in the United States District Court for South Carolina, Civil Action No. 3:10-cv-00090 ("Lawsuit No. 1"), claiming that Allen had injured him in the amount of \$25,375,000 by sending a copy of his official transcript on December 9, 2003, to Midlands Tech without including his fall semester 2003 grades, and then five days later updating his transcript by adding his fall semester

² Plaintiff requested that Allen send his transcript to Midlands Tech while exams were still ongoing and before grades had to be turned in for the Fall 2003 semester; thus Allen did not have Plaintiff's fall semester 2003 grades to send.

2003 grades without telling him. On April 12, 2010, the court dismissed the lawsuit for lack of subject matter jurisdiction.

B. Lawsuit No. 2

On April 5, 2010, Plaintiff filed a lawsuit in the South Carolina Court of Common Pleas, Civil Action No. 2010-CP-40-02301 ("Lawsuit No. 2") against Allen, alleging the same facts and claims alleged in Lawsuit No. 1, but dropping his claim for damages from \$25,375,000 to \$15,000,000. Allen timely moved to dismiss Lawsuit No. 2 for failure to serve and because his claim, relating to acts occurring in 2003, was beyond the statute of limitations.

C. Lawsuit No. 3

On September 30, 2010, while Allen's Motion to Dismiss Lawsuit No. 2 was pending, Plaintiff filed Lawsuit No. 3, Civil Action No. 2010-CP-40-06803. Plaintiff based his claim in Lawsuit No. 3 on his assertion that Allen failed to investigate his dispute about his grades in December 2009, and reduced his claim for damages from \$15,000,000 to \$3,430,000.

On February 24, 2011, the Court held a hearing on Allen's Motion to Dismiss Plaintiff's Lawsuit No. 3. After hearing argument by both parties, the Court granted Allen's Motion, holding that Plaintiff had not shown any consideration for the agreement he claimed he had with Allen, and that Allen's agreement to investigate was gratuitous and did not create an enforceable contract. On June 1, 2011, Plaintiff filed a Motion to Reconsider which the Court denied on June 6, 2011.

D. Lawsuit No. 4

On August 12, 2011, Plaintiff filed the instant Complaint against Allen ("Lawsuit No. 4") claiming that Allen breached an agreement he had that Allen would investigate his dispute regarding his fall semester 2003 grades. He asserts claims for breach of contract, intentional infliction of emotional distress, constructive fraud, breach of trust, negligent supervision, silent fraud, and libel.

I. ALLEN'S MOTION TO DISMISS

A. Plaintiff's Complaint is barred by *res judicata*.

Allen first moved to dismiss Plaintiff's Complaint on the basis of *res judicata*. *Res judicata*, or claim preclusion as it is sometimes called, bars plaintiffs from pursuing successive suits where the claim was litigated or could have been litigated. *Crestwood Golf Club v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (S.C. 1997).

Plaintiff's claims arising out of his allegation that Allen breached the agreement to investigate was litigated and dismissed in Lawsuit No. 3. It is generally recognized that a dismissal with prejudice indicates an adjudication on the merits. *See Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986) (holding that where an action has been dismissed with prejudice, the judgment operates, in a subsequent action involving the same subject matter, so as to conclusively settle not only all matters litigated in the earlier proceedings, but also all matter which might have been litigate therein.); *Deel v. Home Depot USA, Inc.*, 2010 U.S. Dist. LEXIS 53131 (D.S.C. May 14, 2010) (holding a dismissal under Rule 12(b)(6) is a final determination on the merits and is accorded *res judicata* effect.) Because the other causes of actions alleged by Plaintiff in Lawsuit 4 all arose out of the same set of facts and had accrued prior to his filing Lawsuit No. 3, these claims are also barred by *res judicata*.

Therefore, the Court finds that Plaintiff's Complaint should be dismissed because *res judicata* bars him from pursuing these claims in a subsequent action.

B. Plaintiff Has Failed to Allege Facts Sufficient to State a Cause of Action.

Even if Plaintiff's claims were not barred by *res judicata*, Plaintiff has failed to allege facts, even if taken as true, which would be sufficient to support the causes of action he alleges.

1. Breach of Contract

Although Plaintiff argued at the hearing on this matter that he had not asserted a claim for breach of contract, his Complaint specifically states that "Allen University breached the said agreement by intentionally refusing to complete the agreed investigation," thus to the extent Plaintiff does assert a claim that Allen breached the agreement Plaintiff says he had that it would investigate his issue regarding his fall semester 2003 grades, Plaintiff has failed to show the consideration necessary to create an enforceable contract. It is well settled law that gratuitous agreements without consideration over and above a party's moral duty are not binding in law. *See, e.g., Walters v. University of South Carolina*, 280 S.C. 572, 313 S.E.2d 346 (Ct. App. 1984) (holding that extra benefits granted by university to student were gratuitous and not part of the student's grant in aid, and therefore university did not breach the contract with the student when it ceased providing the extra benefits); *Coggeshall v. Coggeshall*, 33 S.C.L. 51, 1847 WL 2157 (S.C. App. L.) ("[A]ll executory contracts to give in future, if exclusively gratuitous, i.e., without some valuable consideration, over and above the mere moral duty of the donor, are not binding in law, unless such valuable consideration be both alleged in the pleadings and proved at the trial.").

Thus as the Court held in Lawsuit No. 3, any agreement by Allen to investigate was gratuitous and did not create an enforceable contract. Therefore, Plaintiff's breach of contract claim should be dismissed.

2. Intentional Infliction of Emotional Distress

To the extent Plaintiff bases this claim of intentional infliction of emotional distress on Allen's "randomly adding failing grades" to his transcript in 2003, the claim is barred by the three-year statute of limitations. S.C. Code § 15-3-530. If Plaintiff is basing this claim on his belief that Allen caused him severe emotional distress because he believes it did not investigate his claim in 2009, Allen's alleged failure to investigate, even if true, does not rise, as a matter of law, to the level required to state a claim for intentional infliction of emotional distress.

As the South Carolina Supreme Court recently held, to state a claim for intentional infliction of emotional distress, Plaintiff must establish that: (1) Allen intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from its conduct; (2) the conduct was so "extreme and outrageous" so as to exceed "all possible bounds of decency" and must be regarded as "atrocious, and utterly intolerable in a civilized community; (3) Allen's actions caused him emotional distress; and (4) the emotional distress suffered by Plaintiff was "severe" such that "no reasonable man could be expected to endure it." *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 710 S.E.2d 67 (2011).

Plaintiff's allegation that Allen did not investigate does not meet the standard for an intentional infliction of emotional distress claim and thus the Court dismisses that claims.

3. ~~Constructive Fraud/Silent Fraud~~

To the extent Plaintiff's allegations of fraud pertain to his allegation that Allen wronged him by sending his transcript to another school in 2003 without his fall 2003 grades, these claims are barred by the statute of limitations, S.C. Code § 15-3-550. To the extent Plaintiff is basing these claims on his belief that Allen failed to investigate this issue in 2009, these claims fail as a matter of law.

In order to prove fraud, the following elements must be shown: (1) a representation, (2) its falsity, (3) its materiality, (4) either knowledge of its falsity or a reckless disregard of its truth or falsity, (5) intent that the representation be acted upon, (6) the hearer's ignorance of its falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon; and (9) the hearer's consequent and proximate injury. *Ardis v. Cox*, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993). "To establish constructive fraud, all elements of actual fraud except the element of intent must be established." *Id.* In addition, Rule 9(b) of the South Carolina Rules of Civil Procedure requires a plaintiff to plead the circumstances surrounding fraud with particularity. "A complaint is fatally defective if it fails to alleged all nine elements of fraud," and "[w]here the complaint omits allegations on any element of fraud, the trial court should grant the defendant's motion to dismiss the claim. *Id.*

Here, Plaintiff has failed to sufficiently allege any cause of action based on fraud, and therefore the Court dismisses this claim.

4. Breach of Trust

Plaintiff apparently bases his claim of breach of trust on his allegation that he trusted Allen to investigate his claim and when it allegedly did not do so, he was injured.

In South Carolina, breach of trust is usually a criminal act punishable under S.C. § 16-13-230, or a claim brought against trustees for violation of a trustee's duty owed to a beneficiary of a trust under S.C. Code § 62-7-100. Otherwise, there is no civil action for breach of trust cognizable under South law. Therefore, the Court dismisses Plaintiff's claim for breach of trust.

5. Negligent Supervision

Plaintiff's allegation that Allen negligently supervised the registrar when she failed to include his fall 2003 on his transcript she sent in December 2003 is barred by the three-year statute of limitations for negligence claims. S.C. Code § 15-3-530.

6. Libel

Plaintiff claims that Allen "has been and continues to print and send out false information about me," and that "[t]hey have sent those false grades to numerous schools" Nowhere in the Complaint, however, has Plaintiff alleged that the grades on his transcript were false—only that Allen failed to initially include the fall semester 2003 grades on his transcript. To the extent Plaintiff is now claiming that the grades posted for fall semester 2003 are somehow false, then he should have disputed those grades when he received them and thus his claim is barred by the statute of limitations. S.C. Code § 15-3-550. Furthermore, Allen only sent his transcripts to other schools at his explicit request to do so and thus he cannot attempt to hold Allen liable for acts that he requested it do. Therefore, the Court dismisses Plaintiff's libel claim for failure to allege facts sufficient to state a cause of action.

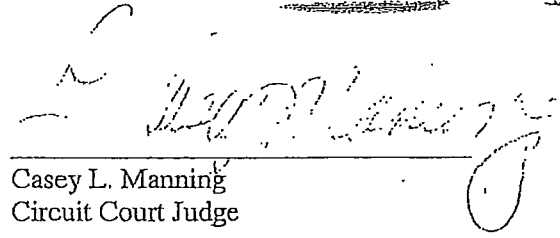
II. ALLEN'S MOTION FOR SANCTIONS

-Allen has also moved for sanctions under the South Carolina ~~Frivolous Civil~~ Proceeding Sanctions Act, S.C. Code § 15-36-10. Under the Act, a pro se litigant participating in a civil action may be sanctioned for making frivolous arguments that are not reasonably supported by the facts. § 15-36-10(A)(4)(b). Sanctions can include an order for a pro se litigant to pay the reasonable costs and attorneys' fees of the prevailing party and/or an order enjoining a plaintiff from bringing future frivolous actions. § 15-36-10(G)(3).

As discussed above, this is the fourth lawsuit Plaintiff has brought against Allen in the last year and a half, all arising from the same set of facts. Plaintiff knows that his complaint regarding his fall semester 2003 grades is time-barred, yet he persists in bringing yet another action based on that issue. Then, in an apparent attempt to avoid dismissal because of the statute of limitations, Plaintiff re-characterize his claim as one pertaining to an alleged agreement he had with Allen in 2009 to investigate what had occurred in 2003. This is nothing more than an attempt to bootstrap his 2003 claim to a "new and improved" 2009 claim, based still, however, on the same facts. Plaintiff also knows that claims based on an alleged 2009 agreement are not valid because he had no enforceable agreement with Allen, as the Court informed him when it dismissed Lawsuit No. 3.

Although the Court respects the rights of persons to bring legitimate claims for adjudication in a court of law, Allen and the Court should not be forced to continue expending time and money in defending these repeated lawsuits brought by Plaintiff. Therefore, The Court grants Allen's Motion for Sanction and enjoins Plaintiff's from bringing further lawsuits against Allen based on these facts.

IT IS SO ORDERED



Casey L. Manning
Circuit Court Judge

June 18, 2012
Columbia, South Carolina

Exhibit B

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or 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.
- 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

PLAINTIFF'S MOTION FOR RECONSIDERATION IS HEREBY DENIED

RICHLAND COUNTY
FILED
JUN 20 12 01
JEANETTE W. MERIDIE
C.P. 25.5

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)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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.

Circuit Court Judge [Signature] Judge Code 2061 Date JUNE 18, 2012

For Clerk of Court Office Use Only

This judgment was entered on the 20 day of June, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 20 day of June, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court [Signature]

Exhibit C

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input 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.
- 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 _____

RICHLAND COUNTY
 FILED
 2012 JUN 29 11:15 AM
 JEANETTE W. McBRIDE
 CLERK OF COURT

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

PLAINTIFF'S MOTION TO CLARIFY, ALTER, OR AMEND JUDGMENT TO BE MORE SPECIFIC ON RULING IS HEREBY DENIED. THE ORDER DISMISSING THE CASE ENTERED ON JUNE 20, 2012, IS SUFFICIENTLY CLEAR. FURTHERMORE, THIS COURT IS NOT ABLE TO GIVE LEGAL ADVICE TO ANY LITIGANT.

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)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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.

Circuit Court Judge _____

Judge Code 2061

Date June 27, 2012

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 29 day of June, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

Exhibit D

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input 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.
- 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:

PLAINTIFF'S MOTION FOR LEAVE TO AMEND COMPLAINT FILED ON JULY 5, 2012, IS HEREBY DENIED. THIS CASE HAS PREVIOUSLY BEEN DISMISSED AND A MOTION FOR RECONSIDERATION HAS ALREADY BEEN DENIED. PLAINTIFF IS HEREBY ENJOINED FROM FILING ANY ADDITIONAL MOTIONS IN THIS MATTER AT THE CIRCUIT COURT LEVEL AND MUST PROCEED TO THE APPELATE COURT LEVEL FOR ANY FURTHER DISPOSITION OF THIS CASE.

JEANETTE W. McBRIDE
 2012 JUL 9 10:23 59
 RICHLAND COUNTY
 CLERK OF 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)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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.

Circuit Court Judge [Signature] Judge Code 2061 Date JULY 9, 2012

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of July, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of July, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)
Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)
Clerk of Court [Signature]

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Allen University, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Defendant's Renewed Motions to Show Cause, For Sanctions, and to Dismiss Plaintiff's Amended Complaint

Counsel Served: Lawrence Terry, Plaintiff Pro Se
P.O Box 24138
Columbia, SC 29224


Susan Raines
Administrative Assistant

August 27, 2012

FILED
2012 AUG 28 PM 12:59
JEANETTE W. McBRIDE
C. CLERK G.S.

Exhibit 2 to Durban Affidavit

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

Lawrence Terry,) Civil Action No. 2012-CP-4004857
)
) Plaintiff,)
)
) vs.)
) **DEFENDANT'S MOTION FOR**
) **PROTECTIVE ORDER**
)
Allen University,)
)
) Defendant.)
)

2012 AUG -8 PM 4:21
RECEIVED
CLERK OF COURT
FIFTH JUDICIAL CIRCUIT
RICHLAND COUNTY
SOUTH CAROLINA

Pursuant to Rule 26(c) of the South Carolina Rules of Civil Procedure, Defendant Allen University ("Allen") hereby moves the Court for a Protective Order that discovery, including depositions, not proceed in this case until the Court has ruled on Allen's Motion to Show Cause, for Sanctions, and to Dismiss.

This present lawsuit is the fifth lawsuit¹ Plaintiff has filed against Allen in the last year and a half based on a dispute he has regarding his fall semester 2003 student records. The Court dismissed Plaintiff's fourth lawsuit on June 20, 2012 and granted Allen's request for sanctions in the form of an injunction enjoining Plaintiff from bringing further lawsuits against Allen based on the same facts as alleged in the fourth lawsuit. Nevertheless, on July 15, 2012, Plaintiff filed the present lawsuit based on the same facts. On July 31, Allen filed a Motion to Show Cause, for Sanctions, and to Dismiss, which is currently pending with the Court.

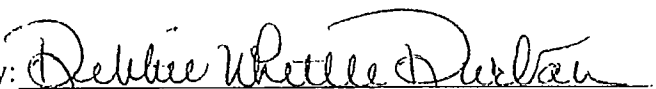
On August 6, 2012, Plaintiff sent an email to counsel for Allen stating that he would like to set up a time for depositions. Allen's counsel responded back to Plaintiff

¹ Lawsuit No. 1 was dismissed for lack of jurisdiction, Lawsuit No. 2 was voluntarily dismissed by Plaintiff, Lawsuits No. 3 and 4 were dismissed by the Court.

that because the Motion to Dismiss was pending, she believed depositions were premature pending the Court's decision on the Motion. Later that day, Plaintiff followed-up with a letter to Allen's counsel requesting to take the depositions of Dr. Pamela Wilson, the President of Allen, and Bishop Williams, the former Chairman of Allen's Board of Trustees on either August 18, August 25, September 1, or September 8.

Allen believes that Plaintiff's current lawsuit and his requests for deposition are intended to further harass Allen and cause it to expend even money defending yet another lawsuit which the Court has enjoined Plaintiff from bringing. Therefore, Allen respectfully requests the Court grant its Motion for Protective Order ordering that Plaintiff cannot proceed with depositions or other discovery until the Court has ruled on Allen's current Motion to Show Cause, for Sanctions, and to Dismiss.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Debbie Whittle Durban

SC Bar No. 16893

E-Mail: debbie.durban@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorney for Allen University

Columbia, South Carolina
August 8, 2012

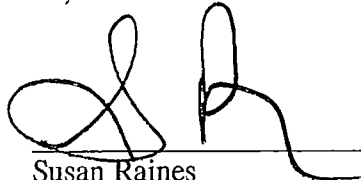
CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Allen University, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, the following address(es):

Pleadings: Defendant's Motion for Protective Order

Counsel Served:

Lawrence Terry, Plaintiff Pro Se
P.O Box 24138
Columbia, SC 29224



Susan Raines
Administrative Assistant

August 8, 2012

RECEIVED
2012 AUG -8 PM 4:21
NEW YORK, N.Y. U.S. MAIL

Exhibit 3 to Durban Affidavit

Debbie Durban (DW5) - Single Time Entry

2/20/2013

Client:	31667	Allen University
Matter:	01501	Terry, Lawrence v. Allen University
Hours:	2.6	Billable
Operator:	DW5	Debbie Durban
Status:		Converted Feb 25 2013 7:32PM

Review Notice of Appeal and Initial Brief filed by Plaintiff with Court of Appeals; review prior filings in matter to determine why Plaintiff believes Allen had not responded to his Amended Complaint; telephone call with Clerk of Court's Office to inform them that Allen's Motion to Dismiss the Amended Complaint had been filed with a prior case filed by Plaintiff; send copies of Notice and Initial Brief to client and insurer for review and suggestions as to response.

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. 2012-CP-40-04857

Court of Appeals Tracking No. 2013-000340

Lawrence Terry, Appellant,

v.

Allen University, Respondent.

PROOF OF SERVICE

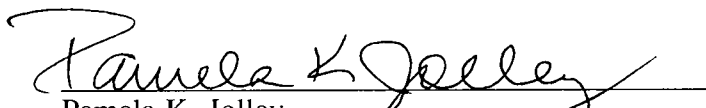
I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Respondent, do hereby certify that I have served a copy of the pleading(s) hereinbelow specified by mailing a copy of the same (1) by United States Mail, postage prepaid, and (2) via Certified Mail, Return Receipt Requested, to the following address(es):

Pleadings:

Return to Appellant's Motion for Contempt and Sanctions

Counsel Served:

Lawrence Terry, Plaintiff Pro Se
P.O Box 24138
Columbia, SC 29224


Pamela K. Jolley

Administrative Assistant

July 12, 2013