

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

70113

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

RECEIVED

OCT 18 2013

SC Court of Appeals

Appellate Case No: 2013-002167
Civil Action No.: 2011-CP-07-04407

Alexander Pastene.....Appellant,

vs.

Thomas Trobaugh, Mr. and Mrs. Norman Ginsburg, Unknown Members of the
CCHH Tennis Committee, W. Richard Beetle, Country Club of Hilton Head, Club
Corp of Dallas, Texas.....Respondents.

MOTION TO DISMISS

This motion comes before the court in a case with a tortured and confusing history. Because of repeated filings by the Appellant against other Respondents, this history becomes even more labored. For that reason, this motion will only address the procedural posture and filings of the Plaintiff's claims against the moving Respondents, Country Club of Hilton Head and Beetle.

The Plaintiff filed suit against the above captioned Defendants alleging causes of action for assault, defamation and public policy wrongful termination. The Defendants Richard Beetle and Country Club of Hilton Head moved to dismiss these causes of action and raised to the Court's attention by way of that

same motion that Club Corp of Dallas TX and CCHH Tennis Committee Members are not known legal entities subject to suit.

Judge Kinard heard these motions on February 8, 2012 and by Order Dated March 2, 2012 and filed March 7, 2012, (See Exhibit A) found the following:

This cause of action [for assault] is dismissed with prejudice as to Richard Beetle and Country Club of Hilton Head.

Richard Beetle and Country Club of Hilton Head also have moved for an order dismissing the causes of action for defamation and wrongful termination against public policy. The Defendants argue that the Plaintiff failed to properly plead these causes of action. I agree. However, I dismiss these causes of action without prejudice and with leave for the Plaintiff to refile within 30 days of the date of this Order.

On April 10, 2012, the Plaintiff filed a document entitled "Answers to Honorable Judge Ernest Kinard's Order Granting Motion to Dismiss of 3-2-12 & Answer to Defendants Richard Beetle CCHH and Club Corp.'s Motion to Dismiss Dated 12-5-11. (See Exhibit B) This document appears to be a Motion for Reconsideration. A Motion for Reconsideration must be filed within ten days of the date of receipt of written notice of the Order. Rules 52(b) and 59(e), SCRCP. This motion was not filed timely as it appears it was filed about 30 days after receipt of the Order of Judge Kinard. The Appellant contends that this was not a

Motion for Reconsideration. At any rate, no Amended Complaint was ever filed and if this was a Motion for Reconsideration (which the Appellant denies, it was filed out of time).

Unsure how to proceed, Mary Lohr, Attorney for the Respondents Beetle and CCHH wrote the Chief Administrative Judge for Beaufort County, Carmen Mullen, copied to Appellant's counsel, on April 23, 2012, to advise that she believed the case should be dismissed as to CCHH and Beetle, for failure to comply with Judge Kinard's order or move to reconsider it timely. (See Exhibit C) Judge Mullen agreed with the procedural posture of the case as set forth by the Respondents, despite two letters to the court from the Appellant to the contrary (See Exhibit D and E) and by Order dated May 21, 2012, the Court found that:

"[b]ased on the clear terms of Judge Kinard's Order, there having been no amended complaint filed within 30 days of Judge Kinard's Order, this matter is dismissed with prejudice in its entirety as to the Defendants Richard Beetle and Country Club of Hilton Head (See Exhibit F).

At that point the Plaintiff moved for Reconsideration as to that Order, an amendment to that Motion to Reconsider, drafted a letter to Judge Kinard, and filed an Affidavit. (See Exhibits G, H, I and J). This Motion to Reconsider was never heard.

Initially, it would appear from a review of the pleadings would that the Motion to Reconsider the ruling of Judge Mullen is still pending. However, this order was in fact a mere, house-keeping matter so that the Clerk would remove

the case against Beetle and Country Club of Hilton Head officially from the trial roster, as the order of Judge Kinard dismissed the Complaint, but with leave to amend within thirty days. No motion for reconsideration, nor an appeal was filed on that Order, and no amendment to the Complaint was filed within the allowed thirty days. Thus, the judgment of Judge Kinard dismissing the complaint as to Beetle and The Country Club of Hilton Head became a final judgment thirty days from the date of Judge Kinard's original Order when no Motion to Reconsider and no Amended Complaint were filed. The appeal of that order is not now timely and should be dismissed.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary Bass Lohr

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for Country Club of Hilton
Head and Richard Beetle

Beaufort, South Carolina

October 16, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2011-CP-070-04407

Alexander Pastene,
Plaintiff,

vs.

Thomas Trobough, Mr. and Mrs.
Norman Ginsburg, W. Richard Beetle,
Country Club of Hilton Head, Club
Corp of Dallas TX, CCHH Tennis
Committee Members,
Defendants

ORDER GRANTING
DEFENDANT'S MOTION TO
DISMISS THE PLAINTIFF'S
COMPLAINT

2 MAR -1 PM 12:35
JENNIFER ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

This matter was heard before me on February 8, 2012. Present were Alexander Pastene, pro se, and Mary Lohr for Country Club of Hilton Head and Richard Beetle. No appearances were made on the parts of the remaining defendants.


Mr. Beetle and Country Club of Hilton Head, moved before the court for a motion dismissing the claims of the Plaintiff. As the assault claim, the Plaintiff having presented the facts of the face of the complaint, has failed to allege a cause of action against either Richard Beetle or Country Club of Hilton Head, as Mr. Beetle was not present during the alleged assault. This cause of action is dismissed with prejudice as to Richard Beetle and Country Club of Hilton Head.

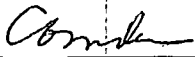
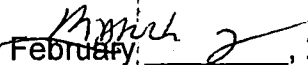
Richard Beetle and Country Club of Hilton Head also have moved for an order dismissing the causes of action for defamation and wrongful termination against public policy. The Defendants argue that the Plaintiff failed to properly



plead these causes of action. I agree. However, I dismiss these causes of action without prejudice and with leave for the Plaintiff to refile within 30 days of the date of this Order.

AND IT IS SO ORDERED

By: 
J. Ernest Kinard
Judge, Fourteenth Judicial Circuit


_____, South Carolina

February _____, 2012.

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
 ALEXANDER PASTENE)
)
 Plaintiff,)
)
)
 VS.)
 THOMAS TROBOUGH, NORMAN)
 GINSBURG, W. RICHARD BEETLE,)
 COUNTRY CLUB OF HILTON HEAD)
 CLUB CORP OF DALLAS, TX. MRS.)
 NORMAN GINSBURG AND UNKNOWN)
 MEMBERS OF THE CCHH TENNIS)
 COMMITTEE)
 Defendants.)

COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2011-cp-0704407
 ANSWERS TO HONORABLE
 JUDGE ERNEST KINARD'S
 ORDER GRANTING MOTION
 TO DISMISS OF 3-2-12 & ANSWER TO
 DEFENDANTS RICHARD BEETLE
 CCHH AND CLUB CORP.'s
 MOTION TO DISMISS
 DATED 12-5-11

JERRI ANN ROSENBERG
 CLERK OF COURT
 2012 APR 10 PM 4:00

Comes now the Plaintiff, Alexander Pastene, and responds to Attorney Mary Bass, ohr for defendants CCHH General Manager Richard Beetle (Beetle), Country Club of Hilton Head (CCHH) and Club Corp's Motions to Dismiss dated 12-05-11 for failure of the Plaintiff to set forth facts sufficient to state causes of action upon which relief can be granted. He also responds to Honorable Judge Kinard's Order to Dismiss dated March 2nd, 2012, clocked and mailed to the Plaintiff on March 12, 2012, based on the hearing of 2-8-12, granting defendants motion to dismiss for failure to allege a cause of action against either Richard Beetle or Country Club of Hilton Head [and ClubCorp] as Mr. Beetle was not present during the alleged assault, by stating that the Plaintiff certainly does have a valid cause for which relief can be granted in the case at bar in accordance with Rule 12 (b) of the SCRCP.

During the aforementioned hearing the Plaintiff objected to the dismissal and explained that there are sufficient facts to justify legal actions against defendant Beetle, *et al*, in accordance to Rule 12 (b) SCRCP, because although defendant Beetle was not present at the time of the assaults, which would have made him an accomplice in the defendants' assaults he nonetheless was an accessory and very much part of the assaults because defendant Beetle intentionally did not act in response to numerous reports by the Plaintiff about a the defendants and a group of bullying tennis players who retaliated against the Plaintiff for reporting their constant transgressions to the CCHH TENNIS RULES and GENERAL CLUB RULES, see Exhibits 1



(15) & (17), Exhibit 2 (4), (10) & (12) which habitual transgressions by the defendants interfered with the Plaintiff's job as instructed and club rules.

By **intentionally not acting for several months prior to the assaults** (bolded for emphasis) despite repeated reports and complaints by the Plaintiff against defendants Ginsburg and Trobaugh, defendant Beetle became an accessory and co-conspirator by tacitly encouraging and condoning the two offending defendants' actions, which ultimately lead to the assaults on the Plaintiff, the loss of his job and income. Further, the Plaintiff asserted during the hearing of 2-8-12 that, the details of the facts showing defendant Beetle's involvement in the assaults would be disclosed during discovery, however, in response to the Plaintiff's allegations Honorable Judge Kinard denied the Plaintiff's plea and told him that he had the right to respond to his Order later, which he is effectuating herewith.

Whereas, the plaintiff hereby reiterates all of his assertions posited during the hearing of February 8th, 2012 while supports and enhances them with several exhibits appended herewith, all of which contentions and documents support facts sufficient to state causes of action for which relief can be granted in accordance to Rule 12(b) SCRCF and states as follows:

1. That, defendant Richard Beetle is the General Manager of a fairly small country club owned by ClubCorp of Dallas, TX, consisting of one (1) golf course, six (6) clay tennis courts, one (1) outdoor swimming pool, One (1) indoor swimming pool, one (1) small-to-medium fitness center, two (2) dining rooms, two (2) small-medium cash bars, one (1) small swimming pool snack bar, one (1) small-medium kitchen, one (1) ball room and a total staff of about thirty five (35) employees, including maids, waiters, green keeper and golf maintenance crew, separated into about five (5) or six (6) departments.

2. That, ClubCorp and defendant Beetle *micromanage* (bolded for emphasis) all staff functions and activities at the club by his personal intervention and also through his department heads, *inter alia*, a Director of Golf, Director of Tennis, Director of Athletics-Fitness Center, Director of Food and Beverage, Director of Club Events, Director of Engineering, a Director of Marketing, Director of Accounting and a Kitchen Chef. Meetings with these department heads are held habitually once or twice per week. In other words, defendant Beetle and ClubCorp know everything (underlined for emphasis) that goes on at the CCHH on a daily basis, and were well apprised and aware about defendants Trobaugh & Ginsburg's constant harassments against the Plaintiff, which were ongoing since before December 2009. See Exhibit 4.

3. That, *idem* about August 2010 while dealing with defendants Trobaugh and Ginsburg, defendant Beetle was in constant communication with defendant ClubCorp in Dallas, including from his office in the Plaintiff's presence, about ways to resolve the incidents of harassment and assault by Ginsburg and Trobaugh, including conversations with a one Sandy Slack, who to the best of the Plaintiff's knowledge works at Club Corp.'s legal department in Dallas, TX.

4. That, plaintiff Pastene was hired in April of 2008 to fill a week-end, part-time position as Tennis Courts Technician, to maintain six (6) clay tennis courts at the club, about 7hs/week.

5. That, given Plaintiff Pastene's diligence, efficiency and punctuality—he never missed a single day's work and was never late not even once in the about three (3) years he was employed at the CCHH—and cheerful personality his job that was gradually extended to many other functions in addition to his regular tennis courts duties, such as: man the Fitness Center's front desk and all other Fitness Center duties on a regular basis. For this, he assiduously arrived at the club at about 5:00 am and left after 8:00 pm after closing the club down on Sundays and set all alarms. That, additionally he was called repeatedly during the week to substitute at Day Care, filled-in for other Tennis Court technicians during sick and vacation leaves and substituted for the Personal Trainer at the Fitness. That, during the summer seasons he was also given life-guard duties at the outdoor swimming pool; and that for the period of about three or four months he was assigned at the golf's men locker room when the permanent attendant was taken ill. Subsequently, he was assigned to permanently supervise the men's locker room on Saturdays and Sundays in addition to all his duties *supra*. See Exhibit 3-1 thru 3-4, and Exhibit 14-1 thru 14-4, showing his work-week gradual increase from about 7 hours per week to about 40 hours per week. That, despite becoming a part-time jack-of-all-trades of sorts at \$9.00 per hour with use of the club facilities the Plaintiff enjoyed his club endeavors, members and co-workers, thus, was always cooperative and cheerful. Moreover, he always challenged himself to perform a job of excellence while using best judgment and common sense, taking into account that club members came to the club to have a good time and leave their troubles behind, and given the Plaintiff's experience managing employees and customers for the better part of a quarter of a century.

6. That, tennis court transgressions by a small of group of players had become so intense that compelled the Plaintiff to report insults received while performing his duties on the courts to his superiors as early as mid-2009. See Exhibit 4. That, it is common knowledge at the club that

the defendants also harassed other court maintenance employees while they were performing mandatory maintenance and sprinkler-watering procedures on the courts. See Exhibit 4.

7. That, it is well documented that despite repeated reports by the Plaintiff involving harassment by a small group of tennis players, which included defendants Ginsburg and Trobaugh, who assiduously broke Tennis Court and CCHH General Rules for a long period of time prior to the two cases of assault, defendant Richard Beetle knowingly and intentionally did not take any action to resolve the problem in an untenable situation that was gradually getting worse. In essence, Beetle and ClubCorp did not take action for fear of losing revenues.

8. That, on June 19th, 2010, defendant Ginsburg assaulted the Plaintiff, see Exhibit 5, which assault he reported to his superiors, including defendant Beetle, but no action ensued. Meanwhile, by August 7, 2010, Ginsburg's harassment continued unabated. See Exhibit 8-1, 8-2.

9. That, on July 3, 2010, defendant Trobaugh assaulted the Plaintiff, see Exhibit 6-1 thru 6-4 and despite having reported it to defendant Beetle, still no action was taken by him.

10. That, insomuch that by mid-August 2010, the harassment against the Plaintiff remained unabated and was getting increasingly dangerous, so much so, that he feared for his safety, Beetle was informed that the Plaintiff was ready to write letters to defendants Ginsburg and Trobaugh with copy to General Manager Beetle. See Exhibits 7, 8-1,8-2, 9, 10 and 11.

11. That, as per General Club Rules on 8-16-10, Ginsburg & Trobaugh were informed to place any complaints against the Plaintiff directly with General Manager Beetle. See Exhibit 7.

12. That, despite a parol agreement reached on or about the end of August 2010 between defendants Ginsburg and Trobaugh in the presence of General Manager Beetle to stop harassing the Plaintiff and having reached an understanding among all parties, including defendant Beetle, the Country Club of Hilton Head and ClubCorp *that there would be no retaliation against the Plaintiff, defendants Ginsburg and Trobaugh continued to harass the Plaintiff and defendant Beetle failed to take any action* (bolded for emphasis) until Beetle finally fired the Plaintiff from his job, while the acts and omissions of defendant Beetle/ClubCorp constitute the plaintiff's wrongful demotion, discharge, and replacement of the Plaintiff in violation of clear mandates of South Carolina public policy thereby proximately causing damages, both actual and exemplary, to the Plaintiff. That, defendant Beetle, CCHH and ClubCorp had made the decision to fire the Plaintiff under any excuse and keep the revenue-producing offending members at the club.

13. That, after a short hiatus since the parol agreement described under "11." *supra*, the Plaintiff was informed that Mrs. Ginsburg —wife of defendant Ginsburg— and other friends were retaliating by building a smooth campaign to defame the Plaintiff based on "rudeness" before the CCHH Tennis Committee for the purpose of having him fired.

14. That, about late March, 2011, the Plaintiff was presented with a 3-18-11 Employee Partner Corrective Action to sign, but he refused because it was based on false, unfounded and unsubstantiated allegations. The plaintiff requested a meeting with defendant Beetle which took place on March 21, 2011, where the Plaintiff was derided, coerced and strongly interrogated by Beetle. See Exhibit 12, which letter remained unresponded.

15. That, on March 28, 2011, defendant Beetle called the Plaintiff to his office and compelled him to sign a letter already signed by defendant Beetle. See Exhibit 13.

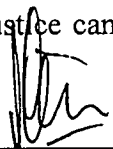
16. That, although it may be the prerogative of defendant Beetle, CCHH and Club Corp to fire the Plaintiff for any reason, that, there are consequences when acts of assault are instigated by the action or inaction, defamation, humiliation, harassment, retaliation and coercion by the General Manager, supported by the CCHH and Club Corp are committed within club grounds against a lowly employee, simply because defendant Beetle, the CCHH and ClubCop are under the jurisdiction of the State of South Carolina and the United States of America.

17. That, defendants Beetle, CCHH and ClubCorp conveniently selected, out of many attorneys in the area, the firm Howell, Gibson & Hughes, who had been unfair to the Plaintiff before, in an attempt to gain advantage over the plaintiff, despite being a club employee who was harassed and assaulted for doing his job as instructed. The Plaintiff requests that the law firm Howell, Gibson & Howell is disqualified from the case *sub judice*.

Wherefore, the Plaintiff respectfully pleads with this Honorable Court that it reverses its Order of March 2, 2012, simply because sufficient facts exist to state causes of action upon which relief can be granted against defendants Beetle, CCHH and ClubCorp, and allows for the case at bar to go forward, so, that discovery and a trial before a jury of his peers can take place to assess the facts of the instant case against the defendants, and justice can be done between the parties.

Respectfully submitted,

by:



ALEXANDER PASTENE, Esq.
Appearing *pro se*

On beautiful Hilton Head Island, South Carolina
On this tenth day of April of 2012

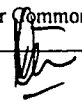
Post Office Box 22298
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Attorney Mary B. Lohr
HOWELL, GIBSON & HUGUES
P.O. Box 40
Beaufort, SC 29901

Attorney Terry Finger
FINGER & FRASER
P.O. Box 24005
Hilton Head Island, SC 29925

2012 APR 10 PM 4:00
JERRI ANN ROSENHEAD
BEAUFORT COUNTY, S.C.
CLERK OF COURT

CERTIFICATE OF SERVICE

The Plaintiff certifies that on 4-10-12 he served copy of his Answers to Judge Kinard's Order 2-8-12 and Motion to Dismiss dated 12-5-11 to Attorneys for defendants Ginsburg, Trobaugh, CCHH and Richard Beetle, Terry Finger at 35 Hospital Center Common, P.O. Box 24005, HHI, SC, 29925, and Mary B. Lohr at PO Box 40 Beaufort SC 29901. Signed: Alexander Pastene 

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

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Of Counsel

* Certified Mediator

25 RUE DU BOIS
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April 23, 2012

Hon. Carmen Tevis Mullen
Administrative Judge, Beaufort and Jasper
Beaufort County Court of Common Pleas
Post Office Box 1128
Beaufort, SC 29901

Re: Alexander Pastene vs. Thomas Trobough, Mr. and Mrs. Norman
Ginsberg, W. Richard Beetle, Country Club of Hilton
Head, Club Corp of Dallas TX. CCHH Tennis Committee Members
Civil Action No.: 2011-CP-070-04407
Our File No.: 11017 MBL

Dear Judge Mullen:

Please be advised I am in receipt of the attached "Answers to Honorable Judge Earnest Kinard's Order Granting Motion to Dismiss of 3-2-12 & Answer to Defendants Richard Beetle CCHH and Club Corp's Motion to Dismiss Dated 12-5-11." Previously, I had moved to dismiss on behalf of the Defendants Richard Beetle and Country Club of Hilton Head and raised to the Court's attention by way of that same motion that Club Corp of Dallas TX and CCHH Tennis Committee Members are not known legal entities subject to suit.

Judge Kinard heard these motions on February 8, 2012 and by Order Dated March 2, 2012 and filed March 7, 2012, found the following:

This cause of action is dismissed with prejudice as to Richard Beetle and Country Club of Hilton Head.

Richard Beetle and Country Club of Hilton Head also have moved for an order dismissing the causes of action for defamation and wrongful termination against public policy. The Defendants argue that the Plaintiff failed to properly plead these causes of action. I agree. However, I dismiss these causes of action without prejudice and with leave for the Plaintiff to refile within 30 days of the date of this Order.



I have likewise attached this Order for your review.

On April 10, 2012, the Plaintiff filed the above referenced document "Answers to Honorable Judge Ernest Kinard's Order Granting Motion to Dismiss of 3-2-12 & Answer to Defendants Richard Beetle CCHH and Club Corp.'s Motion to Dismiss Dated 12-5-11. Upon my review, this document appears to be a Motion for Reconsideration. Such a motion is out of time. Moreover, this matter is not filed with the Clerk of Court as a Motion so that it may be heard by Judge Kinard.

Based on the clear terms of Judge Kinard's Order, there having been no amended complaint filed within 30 days of Judge Kinard's Order, this matter should be dismissed in its entirety as to these Defendants. The Clerk of Court, likely unclear as to procedurally what has occurred and the time limits imposed by Judge Kinard, has not dismissed this matter pursuant to Judge Kinard's Order. As Administrative Judge for the County, I am writing to you to seek direction as to where this matter stands. Thank you for your consideration.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

Mary Bass Lohr

MBL/ad

Enclosure

cc: Hon. Jerri Ann Roseneau
Mr. Alexander Pastene
Mr. Gregory S. Lones

Alexander Pastene
Post Office Box 12298
Hilton Head Island, S.C., 29925
Email: alexanderpastene@yahoo.com, S.C.
843-271-2593
CLERK OF COURT

APR 27 2012 PM 3:46
ROSENEAU
BEAUFORT COUNTY, S.C.

April 27, 2012
Honorable Carmen T. Mullen
Administrative Judge
Beaufort County Court of Common Pleas
B.C. Courthouse – Ribaut Road
P.O. Box 1128
Beaufort, South Carolina, 29901

Re: Case No. 2011-cp-0704407
Pastene vs Thomas Trobaugh,
Mr. & Mrs. N. Ginsburg, The
Country Club of Hilton Head,
ClubCorp *et al.*

Dear Judge Mullen:

This is in response to Attorney Mary Bass Lohr of Howell, Gibson & Hugues, PA, letter to you dated 4-23-12, "seeking direction as where this matter stands".

Above all, there is, and was *ab initio*, enough documentary evidence in the case *sub judice* to implicate defendants Beetle, CCHH and ClubCorp in my case of assault against all of the defendants.

On 2-8-12, Attorney Mary Lohr and I appeared before Hon. Judge Kinard, Jr., in response to Attorney Lohr's Motion to Dismiss my action against her clients Defendants Richard Beetle, CCHH and ClubCorp. Of Dallas, Texas, based on rule 12(b) of the SCRCF, claiming that I had failed to allege a cause of action for which relief can be granted; Ms. Lohr claimed that her client was not present during the assaults against me, and, thus, he was not a part in the assaults.

I responded that although defendant Beetle was not present during the assaults, that he was an accessory to the assaults because despite having been thoroughly apprised and aware about the harassment by two the bullies for several months before and after the assaults, he and his employers intentionally did not act, and thus encouraged, condoned and promoted the assaults by the defendants, and then retaliated by firing me from a job I thoroughly enjoyed and needed.

On the day of the hearing Hon. Judge Kinard dismissed my case against defendants Beetle, CCHH and ClubCorp amid my protestations because the case had not reached discovery, but Judge Kinard told me to not worry that I had thirty (30) days to answer and support my case, which I timely answered and clocked on 4-10-12, explaining and documenting the facts of the case, which clearly implicate defendant Beetle and his employer in the assaults.

In essence, *inter alia*, defendant Beetle and his employers intentionally chose to ignore my repeated memorandums enclosed in my Answer, where I reported aggressive behavior on the part of the defendants and several tennis players of the same tennis group, who had been bullying me and grossly breaking CCHH Tennis Court and General Club Rules for several months, *idem*, before and after the assaults, which

EXHIBIT

D

tabbles

clearly show that defendant Beetle and his employers knew about the bullying and harassment against me, but chose to look the other way.

Another thing, the audio tapes by the Court Reporter of the day of the hearing may vouch my contentions and Hon. Judge Kinard's own words *vis a vis* the Order composed by Attorney Lohr using language that seems conveniently worded to favor her motion, whereas, Judge Kinard's intention seemed to seek additional proof implicating defendant's Beetle, CCHH and ClubCorp insofar as *idem* her clients Richard Beetle was not present during the assaults. Frankly, I do not recall Judge Kinard asking me to "amend" or "re-file" my Complaint during the hearing of 2-8-12. Instead, I recall Judge Kinard telling me in no uncertain terms that I had thirty days (30) to further explain and document my allegations. Of course, I timely complied with the court's request to support my allegations.

Attorney Lohr seems to have based her arguments on the caption of my Answer, instead of the content of my response, which documents *per se* are enough to satisfy any doubts about defendant Beetle and his employers' awareness, intention and implication in the assaults bestowed upon me by defendants Trobaugh and Ginsburg.

Clearly, Defendant Beetle and his employers chose to preserve the offending paying members (perpetrators of the assaults) and punish me (the victim), which in my opinion is disgraceful and against South Carolina public policy.

Additionally, the defendants had the option, according to Club Rules, to place any complaints against me using proper channels, but decided to take matters in their own hands—simply because they had no valid complaint, except their transgressions. And, now they wish continue to bully me with powerful attorneys and even a judge acting as counsel to gain advantage, and squash me like bug.

Judge, I feel that all of the defendants should face a jury as requested in my Complaint to decide on the facts and assess the actual and punitive damages in the instant case, so, that justice can be done between the parties.

Sincerely,

A handwritten signature in black ink, appearing to be the name of the sender, written in a cursive style.

copy

Alexander Pastene
Post Office Box 22298
Hilton Head Island, S.C., 29925
Email: alexanderpastene@yahoo.com
843-227-2695

Carmen T. Mullen, Chief Administrative Judge
BEAUFORT COUNTY COURT HOUSE
102 Ribaut Road
P.O. Drawer 1228
Beaufort, SC 29901

5-19-12
Re: Pastene v Trobaugh, CCHH *et al*
Case No: 2011-cp-070-04407

Dear Judge Mullen:

On yesterday's date I received copy of attorney Mary Bass Lohr's letter to you of 5-17-12 with attached copy of a prepared Order to Dismiss to execute and return, based on what in her words "appears to be a Motion for Reconsideration" filed out of time.

Your Honor, I neither paid nor filed a Motion for Reconsideration to Judge Kinard's Order to Dismiss of 3-2-12; **Attorney Lohr presented you with an Order to dismiss based on a Motion to Reconsider that never existed.**

Moreover, I reiterate the inclusion of defendants ClubCorp of Dallas, Texas (parent company of the Country Club of Hilton Head) and certain members of the CCHH Tennis Committee to be discovered as being legal entities subject to suit.

I respectfully request that, you do not approve or sign what appears to be a false prepared order and allow the case to move forward into discovery, so, that justice can be done between the parties.

Sincerely,

cc. Mary Bass Lohr, Esq. ✓
Terry Finger, Esq.



Alexander Pastene
Post Office Box 22298
Hilton Head Island, South Carolina, 29925
843-227-2695

Mr. Eric Affeld, CEO
ClubCorp
3030 LBJ Freeway
Dallas, TX 75234

5-11-2012
Re: Case No.2011-cp-0704407

Mr. Affeld,

Attached here is a copy of my letter to your stooge Richard Beetle GM of the Country Club of Hilton Head, which is self explanatory.

A jury will love to hear about a case like this, because this thing about hiring an attorney who contended against me before, in a clear effort to gain advantage, shows a continuing pattern of hubris, abuse and unfairness against an inoffensive senior citizen by powerful people who they themselves engage in wrongful actions, which is unacceptable under any standard in an advanced society like the United States.

Let me tell you that I will do everything in my power to put Richard Beetle on the stand before a jury in State and Federal Courts to cover for the *inter alia* grief, humiliation, harassment and assaults bestowed upon me after having given you my loyalty and highest quality work; I was never late or missed a single day in three years, rain or shine, hot or cold, while did my job diligently and treated co-workers and club members with utmost respect and kindness, to boot. In return, you condoned and favored two paltry bullies and fired *me*, the victim, under a false excuse, instead.

Any ordinary citizen detests abuse by the powerful on the weak and elderly, who are generally without recourse, because it is wrong and un-American; obviously you haven't seen or heard anything about a statute standing between Arlington Cemetery and the Lincoln Memorial in Washington. Harassing, extorting, looking the other way in the face of acts of assault, humiliating, defaming and arbitrarily firing employees who are precisely the ones who make it possible for you to derive revenues and profits and not compensating them properly for damages and losses suffered by your wrongful actions is **shameful and outright pathetic.**

I believe everyone on Hilton Head Island, including the newspapers and public institutions should know about this, as well as the government of Argentina and US Embassy in Buenos Aires. Sir, your actions are enough to make anyone puke.

Sincerely,



Alexander Pastene
Post Office Box 22298
Hilton Head Island, South Carolina, 29925
843-227-2695

Mr. Richard Beetle, General Manager
Country Club of Hilton Head
70 Skull Creek Dr
Hilton Head Island, S.C., 29926

5-11-2012
Re: Case No.2011-cp-0704407

Mr. Beetle:

I am once again disappointed by you and your employer's unfairness and lack of character. First, you came to a Federal Mediation hiding under the skirt of a woman attorney specifically picked from a long list of area attorneys, who knew me and contended against me in other cases, clearly to gain advantage. Who came up with this brilliant idea, was it "Judge" Finger, counsel to the other two defendants? Why didn't you come alone; why did you need an attorney to state facts before a Federal Mediator which she didn't even witness; to alter or hide them? I think so.

You and your employer know well that you did me wrong, and that although it was your and your employer's prerogative to fire me from a job I needed and enjoyed, for any reason, including my old age and injuries sustained while performing my duties, it is still your moral and legal obligation to properly compensate me for damages caused. **I was assaulted and constantly harassed by two of your club members and others from the same tennis group at a club under your supervision, and thus, you became an accessory to their assaults and harassment by intentionally condoning and consistently choosing to not take action and look the other way, which gradually emboldened the two defendants to assault me, which are crimes included in the South Carolina Code of Laws, and then you fired *me* (the victim)** (Bolded for emphasis) How can you act like this and sleep at night? Maybe you don't.

Moreover, how could you and your employer not voluntarily compensate me for unfairly separating me from my job since I was the victim in the case at bar? How many other club employees without recourse did you abuse and extort and or are presently extorting? Why did you not give me copies of the letters I had requested? Why did the two defendants not use proper channels, according to Club General Rules, to file complaints instead of taking justice in their own hands? A jury and I will like to hear your responses when I put you and them on the stand.

Clearly, I am the "little people" being squashed by the actions of a seeming ruthless "multinational corporation"; the axiom of abusers and bullies who come to court with the hat in the hand and lame excuses accompanied by influential attorneys to protect them and justify their opprobrious actions. Shame on you and ClubCorp.

Sincerely,

cc. Attorney Mary Bass Lohr, Howell, Gibson & Hughes.
Mr. Clinton James Smith, Federal Mediator, EEOC

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 2011-CP-070-04407

Alexander Pastene,)

Plaintiff,)

vs.)

Thomas Trobough, Mr. and Mrs.)
Norman Ginsburg, W. Richard Beetle,)
Country Club of Hilton Head, Club)
Corp of Dallas TX, CCHH Tennis)
Committee Members,)

Defendants)

ORDER

12 MAY 24 AM 11:36
SCOTT J. ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

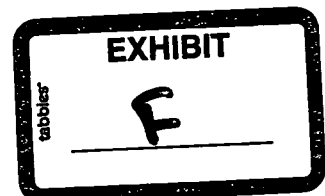
The Plaintiff filed suit against the above captioned Defendants alleging causes of action for assault, defamation and public policy wrongful termination. The Defendants Richard Beetle and Country Club of Hilton Head moved to dismiss these causes of action and raised to the Court's attention by way of that same motion that Club Corp of Dallas TX and CCHH Tennis Committee Members are not known legal entities subject to suit.

Judge Kinard heard these motions on February 8, 2012 and by Order Dated March 2, 2012 and filed March 7, 2012, found the following:

This cause of action [for assault] is dismissed with prejudice as to Richard Beetle and Country Club of Hilton Head.

Richard Beetle and Country Club of Hilton Head also have moved for an order dismissing the causes of action for defamation and wrongful termination against public policy. The Defendants argue that the Plaintiff failed to properly plead these causes of action. I agree. However, I dismiss these causes of action without prejudice and with leave for the Plaintiff to refile within 30 days of the date of this Order.

On April 10, 2012, the Plaintiff filed a document entitled "Answers to Honorable Judge Ernest Kinard's Order Granting Motion to Dismiss of 3-2-12 & Answer to Defendants Richard Beetle CCHH and Club Corp.'s Motion to Dismiss Dated 12-5-11. This document appears to be a Motion for Reconsideration. A motion for reconsideration must be filed within ten days of the date of receipt of



written notice of the order. Rules 52(b) and 59(e), SCRCP. This motion was not filed timely as it appears it was filed about 30 days after receipt of the Order of Judge Kinard.

Based on the clear terms of Judge Kinard's Order, there having been no amended complaint filed within 30 days of Judge Kinard's Order, this matter is dismissed with prejudice in its entirety as to the Defendants Richard Beetle and Country Club of Hilton Head. The only remaining Defendants in this suit are Thomas Trobough and Mr. and Mrs. Norman Ginsburg.

AND IT IS SO ORDERED.

By: 

Carmen Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit

Beaufort, South Carolina

May 21, 2012.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS)
FOURTEENTH JUDICIAL CIRCUIT)
CIVIL ACTION NO.: 2011-cp-0704407)

ALEXANDER PASTENE)
Plaintiff,)

VS.)

Plaintiff's Motion for Reconsideration)

THOMAS TROBOUGH. NORMAN)
GINSBURG. W. RICHARD BEETLE.)
COUNTRY CLUB OF HILTON HEAD)
CLUB CORP OF DALLAS, TX. MRS.)
NORMAN GINSBURG AND UNKNOWN)
MEMBERS OF THE CCHH TENNIS)
COMMITTEE Defendants.)

Comes now the Plaintiff, Alexander Pastene, and motions this court to reconsider Order received from Mary Bass Lohr assistant Ms. darden based on the following arguments:

1. That, the Plaintiff never motioned or paid for a motion to reconsider Judge Kinard's Order, but responded in accordance with his instructions.
2. That, the instant Order was issued without previous review of the Reporter's report, copy of which the Plaintiff is now in the process of securing from Court Reporter Wanda Rowe.

Respectfully submitted,

by:

ALEXANDER PASTENE, Esq.
Appearing *pro se*

On beautiful Hilton Head Island, South Carolina Post Office Box 22298

On this 25th day of July, 2012

Hilton Head Island, South Carolina
29925 • Tel 843-227-2695

Attorney Mary B. Lohr ✓
P.O. Box 40
Beaufort, SC 29901

Attorney Terry Finger
P.O. Box
Hilton Head Island, SC 29925

CERTIFICATE OF SERVICE

The Plaintiff certifies that he served copy of his Motion to Disqualify dated 7-25-12 to Attorneys for defendants Ginsburg, Trobaugh, CCHH and Richard Beetle, Terry Finger at 35 Hospital Center Common, P.O. Box 24005, HHI, SC, 29925, and Mary B. Lohr at PO Box 40 Beaufort SC 29901. Signed: Alexander Pastene _____

EXHIBIT

G

Atty Lohr

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
ALEXANDER PASTENE)
Plaintiff,)
VS.)
Thomas Trobaugh, Norman Ginsburg, W.)
Richard Beetle, Country Club of Hilton Head)
ClubCorp of Dallas, Texas, Mrs. Norman)
Ginsburg and unknown members of the)
Members of the CCHH Tennis Committee)
Defendants.)

COURT OF COMMON PLEAS)
FOURTEENTH JUDICIAL CIRCUIT)
Civil Action No.: 2011-cp-0704407)

Amendment based on Rule 15SCRPC)
and Memorandum in Support of)
Plaintiff's Motion for Reconsideration)
dated 8-17-12)

Comes now the Plaintiff, Alexander Pastene, and states that, on 8-17-12, he ordered copy of the official Court Transcription to the 2-8-12 hearing before Honorable Judge E. Kinard, Jr., issued by B.C. Official Court Recorder Wanda Rowe CVR-M to compare Judge Kinard's words with Judge Mullen's Order prepared by attorney Mary B. Lohr for defendants Beetle (Beetle), Country Club of Hilton Head (CCHH) and ClubCorp, insofar as the plaintiff did not hear Judge Kinard ask him to *refile* his case, which the Plaintiff would have interpreted as "file a new Complaint". Also, he did not hear Judge Kinard say that the case was *dismissed in its entirety*.

Pursuant to electronic mail exchange with Attorney Lohr's assistant Ms Ashley Darden, the Plaintiff timely filed a Motion for Reconsideration to Judge Mullen's Order of May 21, 2012, and requested a hearing to defend his ANSWER TO JUDGE KINARD'S ORDER. Specifically, Attorney Lohr's quotation of Judge Kinard as having said: *...and with leave for the Plaintiff to refile (bolded for emphasis) within 30 days of the date of this Order*, the word **refile** does not seem to appear anywhere in the transcript, which would have required from the plaintiff to spend an additional one hundred and fifty (\$150) dollar filing fee. Instead, Judge Kinard used words as *amend, re-plead and re-allege*, see pages 8 ¶14, 9 ¶3, 3 ¶16, 9 ¶10 et seq.: *He has the right to amend his pleadings and we are doing that*, which is exactly what the Plaintiff did as instructed.

According to Brown v. Leverette if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper, see Brown versus Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987); McCormick v. England, 328 S.C. 627, 494 S.E.2d 431 (Ct. App. 1997). Additionally, the facts and inferences alleged on the complaint [incl. Answer/Amendments]



should be viewed in the light most favorable to the plaintiff. Toussaint v Ham, 292S.C. 415, 357 S.E.2d 8 (1987); Cowart v. Poore, 337S.C. 359, 523S.E.2d 182 (Ct. App. 1999); Mr. G. v. Mrs. G., 320S.C. 305, 465 S.E.2d 101 (Ct. App. 1995).

Furthermore, on the fifth paragraph of pages 1-2 of Judge Mullen's Order of 5-21-12, Attorney Lohr may have misstated Judge Kinard's words when she stated: *Based on the clear terms of Judge Kinard's Order, there having been no amended complaint filed within 30 days of Judge Kinard's Order this matter is dismissed with prejudice in its entirety as to Defendants Richard Beetle and CCHH*, which seemed drastic, for, Judge Kinard never mentioned that the case was to be dismissed in its entirety against defendants Beetle, CCHH and ClubCorp. Please note that on email to the Plaintiff dated 7-19-12, attorney Lohr stated that she prepared the Judicial Order based on her recollections and notes, and not on the Official Court Transcription.

Clarification No. 1: Nowhere in the body of the Plaintiff's Complaint, Answer, *et seq.*, did he mention that his actions against Beetle, CCHH and ClubCorp were for assault, for, the actions for assault were specifically against defendants Ginsburg and Trobaugh, and no one else. Meanwhile, it is clear from the Plaintiff's allegations that the connection between the assaults by defendants Ginsburg & Trobaugh and Beetle is based on Beetle's failure to exercise his duty of care owed the plaintiff (his employee); Beetle looked the other way before, during and after the assaults by two members of his country club and failed to exercise his duty of care despite Country Club of Hilton Head General Club Rules 2010, see General Rules Rule 15, Exhibit 1A, submitted by the Plaintiff, which states that: *It is inappropriate for any Member or Guest to abuse any of the Club's employees, verbally or otherwise. All service employees of the club are under the ultimate supervision of the General Manager [defendant Beetle] and no member shall reprimand or discipline any employee...* The Plaintiff attempted to show these documents to Judge Kinard during the hearing see pages 4 ¶2 & 8¶9 to demonstrate Beetle's negligence and failure to exercise his duty of care, which negligence resulted in damages to him, but Judge Kinard asked the plaintiff to include them in his response within thirty (30) days, which he did in his timely amendment which he captioned ANSWER, so, why was Judge Mullen's Order issued?

Clarification No. 2: Judge Kinard said: *The fact that the manager might have participated after (see Court Hearing Transcript, ¶4, page 8) the fact is not the assault that occurred on you..* the Plaintiff agrees, see transcript page 6¶9, however, the Plaintiff complied by supplementing his Complaint in his ANSWER of 4-10-12 with factual evidence to support his

actions for negligence against Beetle and his employers. The Plaintiff believes that Judge Kinard's Order dismissing Plaintiff's action for assault with prejudice against Beetle, CCHH, ClubCorp may be moot as well, because the Plaintiff did not sue these defendants for assault, although he used the word "accessory" to signify the connection between Beetle's inactions and the assaults of Ginsburg and Trobaugh.

Clarification No. 3. As regards Attorney Lohr's claim that the Plaintiff did not timely file a Motion for Reconsideration to Judge Kinard's Order of 3-2-12, which would have required a response within ten (10) days, is groundless, simply because the Plaintiff never filed or paid for a Motion to Reconsider Judge Kinard's Order.

1. That, Beetle and his employers' negligence is conspicuous when their conduct is viewed as a whole: *if the facts and inferences drawn from the facts alleged on the complaint would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper; see Brown v. Leverette, 291 S.C. 364, 353 S.E.2d 697 (1987;* negligence was implied in the Plaintiff's statements during the hearing see page 6¶3-6&¶10, ¶16-19; also when it was alleged and documented in his Complaint, ¶6, ¶7, ¶8, *et seq.*, and his Answer to Judge Kinard in addition to the instant Memorandum; that, from the facts described therein it can be easily inferred that the COA against Beetle and his employers was to recover damages due their negligence for conveniently breaching their duty of care toward the Plaintiff.

2. That, it would take a fierce determination to not see Beetle and his employers' negligence and instead interpret that the Plaintiff had intended to sue two (2) inert entities and an individual who was not present during the assaults for assault, insomuch that the cases of assaults committed against the plaintiff were *idem* clearly brought up against two club members, and no one else. That, the Plaintiff's allegations *ab initio* reveal negligence on the part Beetle and his employers for failing to act and exercise their duty of care of an employee before, during and after the assaults in club grounds. Finally, Beetle and his employers retaliated against the Plaintiff [victim] by wrongfully terminating him and causing him damages. Likewise, in Harry Montgomery, Appellant v. CSX Transportation, Inc., Respondent, in appeal from Orangeburg County, heard October 10-13-04—Filed 12-6-04, The South Carolina Court of Appeals quoted United States Supreme Court, in Blair v. Baltimore & Ohio R.R., 323 U.S. 600 (1945) to clarify that, "*The duty of the employer becomes 'more imperative' as the risk increases. The negligence of the employer may be determined by viewing its conduct as a whole. And especially is this true*

in a case such as this, where the several elements from which negligence might be inferred are so closely interwoven as to form a single pattern, and where each imparts character to the others". In the case at bar the defendants started heckling and insulting the plaintiff and other tennis court technicians, and then threatened and assaulted him.

3. That, Rule 56(e), SCRPC, requires a party opposing summary judgment to come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial, *see Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2001). In the case *sub judice*, during the hearing the Plaintiff offered Judge Kinard factual evidence in his possession to support his allegations of negligence against defendant Beetle and his employers, *see pages 8 ¶9 & 4 ¶12 of the Transcript*, but Judge Kinard requested that the Plaintiff do it in writing within 30 days, which he diligently obeyed in his timely ANSWER TO HONORABLE JUDGE ERNEST KINARD'S ORDER of 5-21-12.

4. That, the South Carolina Court of Appeals in Keith Watts, Respondent, v. Metro Security Agency Opinion No. 3363, Submitted June 4, 2001 - Filed July 2, 2001, stated that: *the determination of whether a complaint states a valid cause of action must be made solely upon the allegations set forth in the complaint. The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief. The elements of a cause of action based on negligence are: 1) a duty of care owed to the plaintiff by the defendant; 2) a breach of that duty by some negligent act or omission; and 3) damage proximately resulting from that breach. All three elements must be present or the cause of action will fail.* In the case *sub judice* the Plaintiff's Complaint, *et seq.*, against Beetle, CCHH and ClubCorp include all of the negligence elements described in South Carolina Court of Appeals Keith Watts, Respondent, v. Metro Security Agency. June 4, 2001 as follows:

a) Defendant Beetle and his employers failed to exercise their duty of care to the plaintiff *before, during and after* the assaults despite having been apprised about the two club member's abuses against the Plaintiff repeatedly and in writing as early as January of 2010. b) Defendant Beetle and his employers' actions and inactions before, during and after the assaults perpetrated against the Plaintiff by the two club members were negligent. c) Defendant Beetle and his employer's actions caused damages to the Plaintiff.

5. In Stanley v Kilpatrick SC 2004 357S.C. 169, 592, the plaintiff was allowed to amend beyond the thirty (30) days because the facts in the amendment did not differ from the facts that

gave rise to the claim. Also, see Berry v. McLeod SC App 1997 328 SC 435, 492 S.E. 2d 794, where the trial Judge's finding as to whether to allow amendment to pleadings beyond time allowed for amendment will not be overturned without an abuse of discretion or unless manifest injustice has occurred. Clearly, justice would be compromised if defendant Beetle, CCHH and ClubCorp were allowed to go free without compensating the plaintiff due to their wrongdoing.

6. That, as regards Defamation, Beetle and his employers denied the Plaintiff his requests via certified mail to release certain emails, false allegations by the CCHH Tennis Committee and letter(s) of complaint mentioned in some Employee Evaluation or Corrective Actions which never made available to the Plaintiff, and were used to retaliate against the Plaintiff.

7. That as regards Retaliation and Wrongful Termination, his allegations against defendant Beetle and his employers stand as pledged and the Plaintiff is awaiting discovery to *sub poena* such information. Defendant Beetle favored the offending club members over his duty of care toward the Plaintiff, and wrongfully terminated him based on false accusations which were not substantiated despite Plaintiff's several requests. That, defendant Beetle coerced the Plaintiff during a vicious meeting in his office, where he compelled him to sign a communication against his will, copy of which he was later denied by defendant Beetle.

Wherefore, given the Plaintiff timely AMENDMENT/ANSWER within 30 days of Judge Kinard's Order, after viewing defendants Beetle, CCHH and ClubCorp negligent conduct as a whole in the light most favorable to the plaintiff, in accordance to Rule 56, insomuch that *justice* so requires it, the Plaintiff pleads that, pursuant to Rule 15a SCRPC: "*Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party, and leave shall be freely given when justice so require and does not prejudice any other party*" that this Honorable Court admits the instant amendment, Answer and documentary facts, so, that the instant case can go forward and the Plaintiff is compensated for the damaged caused him.


Respectfully submitted,



ALEXANDER PASTENE, Esq.
Appearing *pro se*
P.O. Box 22298
Hilton Head Is. SC 29925
843-227-269

PM 3:24
COURT

On Hilton Head Island, South Carolina
On this 13th day of September, 2012

CERTIFICATE OF SERVICE. The Plaintiff certifies that on 9-13-12 he served copy of his Motion to Reconsider Judge Mullen's Order, to Attorney Mary Bass Lohr, of HOWELL, GIBSON & HUGES for Defendant Richard Beetle, CCHH, Club Corp, and Attorney/Judge Terry Finger FINGER & FRASER for Defendants Norman Ginsburg and Thomas Trobaugh to their last known addresses at P.O. Box 40, Beaufort, SC, 29901, and Terry Finger at 35 Hospital Center Common, P.O. Box 24005, HHI, SC, 29925. Signed: Alexander Pastene, Plaintiff 

Copy sent to Koker

Alexander Pastene
Post Office Box 22298
Hilton Head Island, South Carolina, 29925
843-227-2695

Honorable J. Ernest Kinard Jr, Circuit Judge
1121 Broad Street - County Courthouse
P.O. Drawer 1707 - Camden, SC 29021-1707

9/17/12
Case No: 2011-cp-0704407

Dear Judge Kinard:

Please find enclosed copy of my clocked amendment and affidavit.

My surprises during the hearing before your court in Beaufort concomitant of my legal and procedural handicaps lead me to misname my COAs against defendants Beetle, *et al*.

Unfortunately, I did not have the funds to initiate three separate lawsuits against three sets of defendants, so, I was compelled to amalgamate them all in one. Admittedly, the language I used did not help in describing what I had meant (*negligence*) and used words such as *accessory to assaults*, instead, however, I believe I conveyed the actions and inactions of the two assailants on one hand, the general manager's and his employers on the other and the defamation by undisclosed offenders mentioned in some report, all of whom caused me serious damage and hurt me deeply; I lost my job, salary, was humiliated and stressed out beyond words.

I tried to object to your unexpected dismissal by showing evidence that I was carrying with me, but you kindly told me that I had plenty of time to put it in writing, which I did, but, then attorney Lohr for defendant Beetle, *et al* prepared an Order for Judge Mullen's signature stating that my "Motion for Reconsideration" and "Answer to your Order" were out of time.

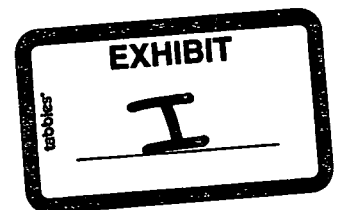
Clearly, from looking at the record I never filed or paid for a Motion for Reconsideration, and, I was not late in filing my amendment (which I had captioned "Answer to Judge Kinard's Order").

Ultimately, I filed a Motion for Reconsideration to Judge Mullen's Order prepared by Attorney Lohr, and refined my COA against defendants Beetle, CCHH and ClubCorp by re-naming "negligence" what I had captioned *accessory to assault* and elucidating the elements of negligence, which, incidentally, had been included *ab initio* in my Complaint, *et seq* against Beetle, CCHH and ClubCorp. Also, I thought I'd let you know that a new hearing was set and is on the docket for 11-4-12, but I'm not certain whether you or Judge Mullen will preside it.

With kindest regards, I remain,

Sincerely,

P.s. Defendants Beetle, CCHH & ClubCorp offered \$12,000 to settle the case, which included assailants Ginsburg & Trobaugh, but declined and pursuant *EEOC's Right to Sue*, I will sue Beetle *et al* in Federal Court within 90 days.



STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2011-CP-0704407

ALEXANDER PASTENE)
Plaintiff,)

VS.)
)

Plaintiff's Affidavit
dated September 14, 2012

Thomas Trobaugh, Norman Ginsburg, W.)
Richard Beetle, Country Club of Hilton Head)
ClubCorp of Dallas, Texas, Mrs. Norman)
Ginsburg and unknown members of the)
Members of the CCHH Tennis Committee)
Defendants.)

The Plaintiff, Alexander Pastene, hereby swears that he is stating the truth, the whole truth and nothing but the truth so help him God. That, in the instant lawsuit against the defendants the plaintiff intended to bring legal action against defendants Thomas Trobaugh and Norman Ginsburg for assault, and no one else, for having threatened to hurt him for doing his job, who acted against the plaintiff without provocation on Country Club of Hilton Head grounds. That, furthermore, *ab initio* the plaintiff intended to sue Country Club of Hilton Head (CCHH) General Manager William Richard Beetle, the CCHH and ClubCorp for negligence and not assault; for looking the other way; for failing to act when it was the general manager's duty to act on behalf of the plaintiff (his employee) in the face of attacks by two club members, although the Plaintiff recognizes that he did not specifically use the word "negligence" in his pleadings, but used the word "accessory" instead as described in his Complaint, Answer and letters to this Honorable Court. Moreover, that the Plaintiff brought up to the attention of this Honorable Court right from the outset violations of the CCHH General Club Rules by the general manager, which specifically state the duty of care of the General Manager toward his employees and how he failed to exercise his duty of care toward the plaintiff by his inactions and looking the other way instead of acting before, during and after the assaults by the two club members. That, it was the plaintiff's intention during the first hearing to show the presiding judge the evidence supporting a case for negligence against defendants Beetle and his employers, but was instructed to include them in his Answer, which he did.

Sincerely,

Signed: Alexander Pastene

County of Beaufort
State of South Carolina
Subscribed and sworn to before me
this 14th day of Aug, 2012
by John Castellano
Notary Public
My commission expires 4-18-21

NOTARY PUBLIC

tablier
EXHIBIT
J

THE STATE OF SOUTH CAROLINA
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Appellate Case No: 2013-002167
Civil Action No.: 2011-CP-07-04407

Alexander Pastene.....Appellant,

vs.

Thomas Trobaugh, Mr. and Mrs. Norman Ginsburg, Unknown Members of the
CCHH Tennis Committee, W. Richard Beetle, Country Club of Hilton Head, Club
Corp of Dallas, Texas.....Respondents.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing
Motion to Dismiss upon all counsel of record by affixing same with proper
postage and placing same with the United States Postal Service on 16 day of
October, 2013 addressed to the following:

Terry A. Finger, Esquire
Finger & Fraser P.A.
Post Office Box 24005
Hilton Head Island, SC 29925-4005

Alexander Pastene
Post Office Box 22298
Hilton Head Island, SC 29925

RECEIVED

OCT 18 2013

SC Court of Appeals

SIGNATURE PAGE FOLLOWS

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary Bass Lohr

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for Country Club of Hilton Head
and Richard Beetle

Beaufort, South Carolina

October 16, 2013

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040
www.hghpa.com

STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III *
DAVID S. BLACK
MARY BASS LOHR
THOMAS A. BENDLE, JR.

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2428

WILLIAM T. YOUNG III

JAMES S. GIBSON, JR *
Of Counsel

* Certified Mediator

October 16, 2013

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Alexander Pastene vs. Thomas Trobough, Mr. and Mrs. Norman
Ginsberg, W. Richard Beetle, Country Club of Hilton
Head, Club Corp of Dallas TX. CCHH Tennis Committee Members
Appellate Case No.: 2013-002167
Our File No: 11017 MBL

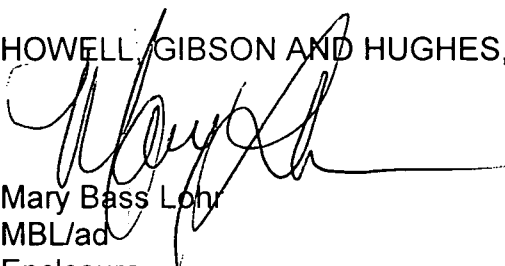
Dear Ms. Kitchings:

Please find enclosed herewith for filing Motion to Dismiss with regard to the
above referenced matter. I would appreciate your filing the same and returning a
filed clocked copy to me in the enclosed self-addressed, stamped envelope
provided for your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.


Mary Bass Lohr
MBL/ad
Enclosure

cc: Mr. Alexander Pastene
Terry A. Finger

RECEIVED
OCT 18 2013
SC Court of Appeals