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# Transcript of Hearing

**Date:** December 18, 2024

**Case:** Aiken -v- Emmons

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STATE OF SOUTH CAROLINA, COUNTY OF BEAUFORT  
IN THE COURT OF COMMON PLEAS  
FOURTEENTH JUDICIAL CIRCUIT

-----  
JAYLEN AIKEN, :  
 :  
Plaintiff, :  
 :  
vs : No.: 2024 CP 0700660  
 :  
RICHARD EMMONS, :  
 :  
Defendant. :  
-----

Court Hearing  
Held Before Patrick W. Carr, Esquire  
Wednesday, December 18, 2024  
5:05 p.m. EST

Job No.: 565727  
Pages: 1-22  
Reported by: Briana Sample

1 Court Hearing, held pursuant to  
2 agreement, before Briana Sample, Notary Public of  
3 the State of Virginia.

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A P P E A R A N C E S

6

ON BEHALF OF PLAINTIFF:

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C O N T E N T S

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| Mr. Carr     | 19   |

E X H I B I T S

(None.)

1 P R O C E E D I N G S

2 MR. CARR: I appreciate you all sending  
3 me what you sent me. I'm going to pull it up  
4 right now. I've looked at it previously when we  
5 had this hearing scheduled earlier, and Mr.  
6 Anderson, you're the moving party, so I'd be glad  
7 to hear from you.

8 MR. ANDERSON: Yes, sir. Ms. Sample,  
9 are we ready to get started on the record? Thank  
10 you. Mr. Carr, thank you again. I know you've  
11 had a long day. I appreciate you hearing us right  
12 here at the end. I will try to be brief.

13 I don't think this is going to be  
14 factually involved. This is our motion for relief  
15 under Rule 60 from the final judgment entered by  
16 the special referee. Essentially we've got two of  
17 the Rule 60(b) grounds that we're removing under  
18 60(b)(1) for mistake inadvertence and excusable  
19 neglect and then 60(b)(3) for misrepresentation.

20 In support of that motion we have filed  
21 the affidavit of my client, Mr. Emmons. Mr.  
22 Emmons is a Penske employee, a licensed CDL driver  
23 for more than 50 years. This case, as you're well  
24 aware, arises from an automobile accident that  
25 happened in Dorchester County in December of 2022.

1           Mr. Emmons was driving a Penske vehicle  
2           in the same direction of traffic as the plaintiff  
3           behind the plaintiff. There is a factual dispute  
4           as to exactly what happened that I'll get to in a  
5           minute, but it's undisputed that a collision  
6           occurred and that the plaintiff subsequently filed  
7           this lawsuit as a result.

8           The matter was referred to the special  
9           referee, a judgment was entered on September 3rd.  
10          We moved for relief on October 4th. As Mr. Emmons  
11          sets forth in his affidavit, there was a lot going  
12          on in his life during the course of this  
13          litigation.

14          Number one, as he states and he  
15          attaches his daughter's obituary, he was served  
16          with the complaint when he returned from New York  
17          following his daughter's funeral on April 9th. He  
18          took the complaint, took the papers to Penske,  
19          reported it to them, and he reasonably believed  
20          that Penske was handling the matter.

21          In May he returned to New York to  
22          handle affairs with his daughter's estate under  
23          the reasonable belief that Penske was addressing  
24          the situation. That turned out not to be the case  
25          and he received the notice of hearing before the

1 special referee when he was still in New York on  
2 August 19th.

3 August 19th -- excuse me, August 17th  
4 he received the hearing notice. He again informs  
5 Penske that this is happening. Penske tells him  
6 that they'll handle it. He also contacted the  
7 plaintiff's attorney's office and asked them to  
8 postpone the August 20th hearing until he could  
9 get back to South Carolina.

10 Plaintiff's attorney is under no  
11 obligation to do so, of course, but they refused.  
12 Mr. Emmons, still in New York when the hearing  
13 goes forward, is not present when the hearing goes  
14 forward and judgment is entered as a result.

15 Now, as to the facts of the accident I  
16 will say this -- let me back up a minute. We  
17 exchanged some E-mails when this hearing was first  
18 scheduled about the appropriate standard in Rule  
19 60(b) and the governing case law in South  
20 Carolina.

21 There are three factors, three things  
22 we've got to show under 60(b), and I'm taking this  
23 from Williams V. Watkins, 384 SC 319, a 2009 case  
24 from the Supreme Court. This is a discretionary  
25 ruling, of course, but the Supreme Court says that

1 when determining whether to grant relief the  
2 factors to consider are these three things.

3 Number one, the timing of the motion  
4 for relief; number two, whether the party  
5 requesting relief has a meritorious defense; and  
6 three, the degree of prejudice to the opposing  
7 party. Those are the three factors.

8 Now, on the timing for the motion for  
9 relief Rule 60(b) says it's got to be within one  
10 year. We moved within one month. We're well  
11 within the time limit allowed by the rule that Mr.  
12 Emmons moved as promptly as possible with his  
13 affidavit once he learned of the judgment.

14 Now, whether or not we have a  
15 meritorious defense I want to be clear we don't  
16 have to establish that defense for purposes of  
17 relief under Rule 60. That same case says that to  
18 establish a meritorious defense the party does not  
19 have to show he would prevail on the merits.

20 Rather, a meritorious defense, quote,  
21 need be only one which is worthy of a hearing or  
22 judicial inquiry because it raises a question of  
23 law deserving of some investigation and discussion  
24 or a real controversy as to real facts arising  
25 from conflicting or doubtful evidence.

1                   Here we've got a meritorious defense  
2 based on the facts alleged in the complaint and  
3 the facts in evidence that Mr. Emmons has  
4 submitted with his affidavit. Now, in the  
5 complaint and in the testimony that was presented  
6 by the plaintiff that summarized it in the  
7 judgment the plaintiff says that both vehicles are  
8 traveling on the road.

9                   There's a law enforcement situation.  
10 The plaintiff says that he pulls over to the  
11 shoulder following a direction of law enforcement  
12 and that Mr. Emmons, my client, disobeyed the  
13 instructions of law enforcement and went to pass  
14 him, struck his vehicle when he went to pass him.

15                   Mr. Emmons in his affidavit says  
16 contrary to that that -- and this is taken from  
17 paragraph three, he says traffic was slowing ahead  
18 and I slowed as well. The car immediately in  
19 front of me pulled off the roadway onto the  
20 shoulder.

21                   All of a sudden and without warning the  
22 car that had pulled off the shoulder seemingly  
23 made a U-turn apparently to travel in the opposite  
24 direction. There's nothing about a U-turn in the  
25 complaint, there doesn't appear to have been any

1 testimony about a U-turn at the hearing before  
2 judgment was entered. Mr. Emmons says that as a  
3 result of this the vehicles collided. Mr. Emmons  
4 also at Exhibit A attaches photographs that he  
5 took of both vehicles immediately after the  
6 accident.

7           And I think if you look at those  
8 photographs and you look at the damage to the  
9 front right side of the plaintiff's vehicle and  
10 the admittedly slighter damage exclusively to the  
11 right side of the Penske vehicle, it doesn't  
12 follow that that damage occurred when the Penske  
13 vehicle went to pass that blue vehicle in front of  
14 it.

15           To have struck the front of that  
16 vehicle while passing it the Penske vehicle would  
17 have had to have gone all the way around and  
18 turned back around to make contact with the front  
19 of the vehicle. The photos we would submit are  
20 far more supportive of Mr. Emmons' account than  
21 they are of the plaintiff's account.

22           There's also the fact attested to by  
23 Mr. Emmons in his affidavit that he received no  
24 citation in connection with this incident.  
25 There's law enforcement at the scene, and

1 according to the plaintiff Mr. Emmons disobeyed an  
2 instruction given by law enforcement.

3 Now, if, in fact, Mr. Emmons disobeyed  
4 directions from law enforcement, struck a vehicle  
5 causing injury to the occupant of that vehicle and  
6 then left the scene with no citation of any kind  
7 from law enforcement that in my experience would  
8 be a first.

9 So I think we've got a factual dispute  
10 here that is worthy of attention, particularly  
11 given in South Carolina we all know there is a  
12 strongly expressed public policy in favor of  
13 deciding these matters on the merits, so that's  
14 our meritorious defense.

15 The third item from Williams V.  
16 Watkins, the degree of prejudice to the opposing  
17 party, and here we would submit that there is no  
18 prejudice. The judgment that was entered was for  
19 the 8,900 and some odd dollars in medical bills,  
20 \$20,000 in pain and suffering.

21 If the facts are determined to be as  
22 the plaintiff has alleged and they've got \$9,000  
23 in medical bills I think it's quite likely that a  
24 jury will, in fact, award a larger verdict at the  
25 end of the case than the judgment that's already

1       been entered.

2                   The plaintiff will suffer no prejudice  
3       from having to establish his case on the merits,  
4       and that's all we're asking for the opportunity to  
5       do.

6                   MR. CARR: All right. I think I  
7       understand your position, Mr. Anderson. Thank  
8       you. Let me hear from plaintiff's counsel, Mr.  
9       Harvin.

10                  MR. HARVIN: Thank you. First off I  
11       didn't hear anything from Mr. Anderson suggesting  
12       there was anything wrong with the procedure of  
13       this, and the affidavit from Mr. Emmons clearly  
14       shows that he was properly served and was  
15       additionally served and that he properly received  
16       notice of the hearing, so there doesn't seem to be  
17       any allegation there was anything procedurally  
18       wrong with the process.

19                  Also I didn't hear anything from Mr.  
20       Anderson about why the relief should be given for  
21       excusable neglect, mistake, any of the factors set  
22       forth in Rule 60 that they have to prove before  
23       they can reach the three factors that Mr. Anderson  
24       suggested, the timing and the prejudice and the  
25       meritorious defense.

1           To get relief they have to show the  
2 excusable neglect first, and there is nothing in  
3 the affidavit and nothing Mr. Anderson said to  
4 show any kind of excusable neglect under Rule 60.  
5 In this case the -- Mr. Emmons received the  
6 summons, he talked to the folks at Penske. It was  
7 going to legal team.

8           Again he talked to the human resources  
9 and they assured him that the legal team would  
10 take care of it. There are plenty of cases in  
11 South Carolina where any neglect on the part of  
12 somebody's lawyer is imputable to the client. We  
13 also -- there's nothing in the affidavit to  
14 suggest why Penske did not answer the complaint or  
15 attend the hearing.

16           There's nothing from the legal  
17 department as to why the legal department didn't  
18 do their job and as attorneys they didn't do their  
19 job, so the burden of proof is with the defendant  
20 and with relief and there has been nothing about  
21 excusable neglect, mistake, inadvertence or  
22 anything like that to establish relief, and  
23 without those we don't even get to the other three  
24 factors mentioned by Mr. Anderson.

25           MR. ANDERSON: Mr. Carr, very briefly

1 in response if I may I agree with Mr. Harvin,  
2 there's a lot of South Carolina law on the fact  
3 that look, neglect, negligence or incompetence  
4 that's attributable to an attorney or an insurance  
5 company is not grounds for relief under Rule 60.

6 We agree on that. Neither one of those  
7 happened here. What we have here is a defendant  
8 who relies on his employer, not his attorney, not  
9 his insurance company, his employer whose vehicle  
10 he was driving at the time of the accident.

11 He relies on his employer's reasonable  
12 assurances that this matter will be taken care of.  
13 That's a very different relationship than a  
14 defendant has with the defendant's attorney or the  
15 defendant's insurance company.

16 Specifically against an attorney or as  
17 to an insurance company that defendant has  
18 recourse for the mistakes that those two parties  
19 may have made. The relationship between a  
20 defendant and his employer, that's entirely  
21 different.

22 MR. CARR: Can I ask a question on that  
23 topic, Mr. Ander -- well, really for all counsel?  
24 Mr. Emmons works for Penske, correct?

25 MR. ANDERSON: That's correct.

1 MR. CARR: And as I understand it he  
2 was working for them and driving their vehicle at  
3 the time of this crash incident; is that right?

4 MR. ANDERSON: I think there is -- let  
5 me put it like this: That is -- that's what Mr.  
6 -- that's what Mr. Emmons says, yes. I don't know  
7 --

8 MR. CARR: Okay.

9 MR. ANDERSON: -- that Penske agrees  
10 with that, but --

11 MR. CARR: In other words, perhaps  
12 Penske could have been made a proper party to the  
13 action but they were not, and because it is agency  
14 relationship or employment relationship with  
15 Penske he turned over the legal papers to someone  
16 at Penske.

17 MR. ANDERSON: I think that's a fair  
18 statement as to what Mr. Emmons understood his  
19 responsibility with respect to this lawsuit to be,  
20 yes, sir.

21 MR. CARR: And do you all know if  
22 there's any case in South Carolina that speaks to  
23 that issue where you've got an employee/employer  
24 relationship or some type of agency relationship  
25 and, you know, they hand it over to the legal

1 department and something gets lost in the mix or  
2 doesn't get handled, and is the mistake of the  
3 employer imputable to the employee? Is there any  
4 case law on that one way or the other? I'm not  
5 aware of it. I'm just curious.

6 MR. ANDERSON: I spent some time  
7 looking for it and I didn't find anything.  
8 Everything I found spoke to negligence or neglect  
9 that's attributable to either an insurance  
10 adjuster, representative or an attorney.

11 I didn't find a case that involved that  
12 employer/employee relationship or frankly a case  
13 of any relationship outside the context of  
14 attorney or insurer.

15 MR. HARVIN: I will just say again just  
16 for purposes this is a little bit different than  
17 somebody who is working for, you know, some mom  
18 and pop store who goes down and hands it. The  
19 affidavit specifically talks about the legal  
20 department twice, so we're talking about lawyers.

21 We're not talking about somebody who --  
22 with no legal training. We're talking about  
23 lawyers that were involved on the Penske side and  
24 --

25 MR. ANDERSON: Well, I --

1 MR. HARVIN: -- the -- excuse me.  
2 Again the defendant has the burden here and  
3 there's absolutely nothing that was presented  
4 afterwards so, you know, that -- and again it's  
5 their burden in this hearing as well.

6 The lawyers for Penske did not do  
7 anything. There's nothing that was presented in  
8 this matter. Whether the lawyers didn't get it or  
9 they sat on it or whatever, there was absolutely  
10 nothing that's presented, and again they have the  
11 burden.

12 MR. CARR: Mr. Anderson, on the grounds  
13 under Rule 60(b) as I hear your argument do you  
14 concede that there's no evidence of entitlement to  
15 relief under 60(b)(3) for fraud or  
16 misrepresentation?

17 MR. ANDERSON: No, sir, we don't  
18 concede under 60(b)(3). I think there was  
19 misrepresentation made to the special referee at  
20 the hearing on this matter regarding the facts of  
21 the accident.

22 MR. CARR: Okay. All right. That --  
23 was that -- I mean, is that the only  
24 misrepresentation that you would point to?

25 MR. ANDERSON: That is.

1 MR. CARR: Okay. All right.

2 MR. ANDERSON: We're not aware of any  
3 other misrepresentation, and I want to be clear,  
4 you know, when we were -- when I was talking  
5 earlier about the request to continue the hearing  
6 that was denied and the testimony of the plaintiff  
7 I do not mean to suggest Mr. Harvin or anyone on  
8 his staff did anything improper at all.

9 I do not believe that to be the case.  
10 Mr. Harvin, I apologize for interrupting you a  
11 moment earlier. I didn't mean to do that either,  
12 but as to the reference to the legal team in the  
13 affidavit I want to be very clear. Mr. Emmons  
14 never spoke with anyone on that legal team.

15 He spoke with his supervisors and his  
16 supervisors referenced a Penske legal team, but  
17 there was nothing said to Mr. Emmons, no reference  
18 in that affidavit to any communication that Mr.  
19 Emmons himself had with the Penske legal team.

20 MR. CARR: If we're looking at an  
21 analysis of whether there's prejudice to the  
22 nonmoving party here based on relief being granted  
23 is there case law in South Carolina that talks  
24 about just the fact of having to go through  
25 litigation process and the expense and delay of

1 that in a case that you've essentially already won  
2 by reason of default, is that prejudice?

3 MR. ANDERSON: I don't see how that can  
4 be prejudice because that sort of swallows the  
5 rule. If simply getting relief from a judgment  
6 that you have in hand is prejudice sufficient for  
7 the denial of relief then there are no possible  
8 circumstances in which you can get relief from a  
9 judgment that's already been entered.

10 I think what the rule is or what the  
11 factors are referring to there is undue prejudice,  
12 and here there is no undue prejudice in having to  
13 establish the facts adversarially that the  
14 plaintiff has already testified to at hearing.

15 MR. HARVIN: I will just -- if I can  
16 address prejudice. Had the defendant answered on  
17 time the prejudice is not necessarily what would  
18 happen in court had he shown up. He didn't show  
19 up. As a result Mr. Aiken had to leave and drive  
20 down from Collin County and Dorchester County down  
21 to Beaufort for a special referee hearing, had  
22 costs associated with that.

23 That in itself is prejudice outside of  
24 any meritorious defense. That's what he had to do  
25 to pursue the default hearing that he would not

1 have had to do had the defendant done what he  
2 needed to do and what he's obligated to do, which  
3 is to answer the complaint within 30 days of  
4 service upon it.

5 MR. CARR: All right. Anything  
6 further, gentlemen?

7 MR. HARVIN: Nothing from the  
8 plaintiff.

9 MR. ANDERSON: No, sir.

10 MR. CARR: So I know that you guys want  
11 me to just rule right away, but --

12 MR. HARVIN: It's 5:30. If you want me  
13 to submit -- both parties to submit orders we'll  
14 be happy to I think -- Matthew, would you be happy  
15 to submit an order as well based on the testimony?

16 MR. ANDERSON: Sure.

17 MR. CARR: I think if you guys would  
18 submit proposed competing orders that would be  
19 very helpful to me and I'll take it under  
20 advisement, and I don't want to couch either one  
21 of you into an untenable time frame given the hour  
22 of the day and the time of year so, I mean, what's  
23 say you guys, is 15 days good?

24 MR. HARVIN: Fifteen days basically is  
25 January the -- I guess January the 2nd, so could

1 we have 30 days?

2 MR. CARR: Of course. I mean, I have  
3 no objection to that unless Mr. Anderson does.

4 MR. ANDERSON: No objection.

5 MR. CARR: Yeah. Let's say -- I've got  
6 some travel on the horizon myself, so 30 days  
7 would actually be helpful to me, so yeah. All  
8 right. I appreciate everybody being patient with  
9 me and entrusting me with this case, and I pledge  
10 to look at everything again and take it under  
11 advisement, and I look forward to receiving your  
12 orders.

13 MR. HARVIN: Great. Thank you very  
14 much.

15 MR. CARR: All right.

16 MR. ANDERSON: Thank you, sir.

17 MR. CARR: Thank you.

18 (Whereupon, the Court Hearing was  
19 concluded at 5:27 p.m. EST.)

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CERTIFICATE OF TRANSCRIBER

I, Bonnie K. Panek, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

*Bonnie K. Panek*

BONNIE K. PANEK

1 CERTIFICATE OF DIGITAL REPORTER - NOTARY PUBLIC

2 I, Briana Sample, a Notary Public in and  
3 for The State of Virginia, the officer before whom  
4 the foregoing proceedings were taken, do hereby  
5 certify that the foregoing transcript is a true  
6 and correct record of the proceedings; that said  
7 proceedings were recorded by me digitally and  
8 thereafter reduced to typewriting under my  
9 supervision; and that I am neither counsel for,  
10 related to, nor employed by any of the parties to  
11 this case and have no interest, financial or  
12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set  
14 my hand and affixed my notarial seal this 26th day  
15 of May, 2025.

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20 NOTARY PUBLIC IN AND FOR

21 THE STATE OF VIRGINIA

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Transcript of Hearing  
 Conducted on December 18, 2024

| A                    |                   |                    |                     |
|----------------------|-------------------|--------------------|---------------------|
| <b>ability</b>       | <b>affixed</b>    | <b>anderson</b>    | <b>arises</b>       |
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| <b>according</b>     | <b>agree</b>      | <b>answer</b>      | 12:9                |
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