

THE STATE OF SOUTH CAROLINA
In The SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen T. Mullen, Circuit Court Judge

S.C. Court of Appeals Case No: 2014-000148

Alexander Pastene,

Appellant,

v.

Thomas Trobough, Mr. & Mrs. Norman
Ginsburg, W. Richard Beetle, Country
Club of Hilton Head, ClubCorp. Of Dallas,
Tx., CCH, Tennis Committee Members.

Respondents.

INITIAL BRIEF OF APPELLANT



Alexander Pastene
Post Office Box 22298
Hilton Head Is., SC 29925
(843) 605-5266
Appellant, appearing *pro se*

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MAR 31 2014

SC Court of Appeals

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Berry v. McCleod SC 328 SC 435, 492 SE2d 794 (Ct App 1997)

Brown v. Leverette 291 SC 364, 353 SE2d 697 (1987)

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Doe v Batson 345 SC 316, 548 SE2d 854 (2001)

Keith Watts Respondent Metro Sec. No 3365 June 2001

McCormick v. England 328 SC 627,494, SE2d 431(Ct. App 1997)

Mr. G v. Mrs. G 320SC 305, 465 SE2d 101 (Ct App 1995)

Stanley v. Kilpatrick SC 357 (2004) SE 169,592

Towissaint v. Ham 292SC 415, 357 SE2d 8 (Ct App 1987)

STATUTES

SC Code of Laws

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR BY DISMISSING THE CASE IN ORDER OF MARCH 2, 2012, BASED ON THE COMPLAINT'S CAPTION WHILE IGNORING THE FACE OF HIS COMPLAINT?
2. DID THE TRIAL COURT ERR BY CLOSING THE CASE WITH A MOTION STILL PENDING, AND THEN NOT ALLOWING THE APPELLANT TO HAVE HIS MOTION HEARING TO RESPOND TO THE COURT ORDER OF 12-11-13, WHICH HE HAD TIMELY MOTIONED AND PAID FOR?
3. DID THE TRIAL COURT ERR BY DENYING THE APPELLANT HIS RIGHT TO A TRIAL BEFORE A JURY AND DISMISSING THE CASE IN ITS ENTIRETY WITH PREJUDICE IN ORDER DATED MAY 24, 12 DESPITE BEING BASED ON FALSE FACTS?
4. DID THE MASTER IN EQUITY ERR BY RULING AGAINST HIS OWN RECUSAL INSTEAD OF APPOINTING A SPECIAL REFEREE AS REQUESTED BY THE APPELLANT?
5. DID THE MASTER IN EQUITY ERR BY RELYING ON THE FALSE INFORMATION PROVIDED BY COUNSEL FOR RESPONDENTS GENERAL MANAGER, CLUB AND PARENT COMPANY TO RULE ON THE CASE AT BAR?
6. DID THE TRIAL COURT ERR BY ALLOWING A BEAUFORT COUNTY MAGISTRATE WHO HAD BEEN BIASED AND PREJUDICED (RULE 501 SCACR) TO REMAIN IN THE CASE AS COUNSEL FOR THE TWO ASSAILING RESPONDENTS?
7. DID THE TRIAL COURT ERR WHEN IT RULED THAT APPELLANT FAILED TO PAY COUNSEL FOR THE RESPONDENTS THE SUM OF \$825 IN ORDER DATED 12-4-12?
8. DID THE TRIAL COURT ERR WHEN IT DENIED THE DISQUALIFICATION OF THE BC MAGISTRATE/COUNSEL IN ORDER DATED 10-18-12?

STATEMENT OF THE CASE

The case at bar is about two incidents of assault by two tennis-playing club-members (respondents) against an employee (appellant) while he was performing his duties according to the instructions of his supervisor and club rules. The assaulting club members had no grounds for complaining to the general manager because they were breaking the rules, so, they took justice in their own hands by assaulting and threatening the appellant. In view of the club's general manager's inaction the employee wrote letters to the assaulting club members on August 12, 2010, asking them to desist and compensate the employee. Subsequently, on October 24, 2011, the appellant filed a Complaint against the respondents before B.C. Court of Common Pleas and were served Summonses by the B.C. Sheriff's Office.

Insofar as the club's general manager the appellant sued him for intentional negligence for failing to exercise his duty of care on behalf of his employee after he decided to retain the offending club members and fire his employee. As a result of his actions and inactions, it took the appellant about three (3) years to secure a new job with lost wages in the amount of about \$45,000.00, plus other damages.

Additionally, the wife to the assailing club members defamed the appellant before the club's Tennis Committee.

ClubCorp of Dallas, TX, is the parent company that owns the club and employs the General Manager, thus are liable for their agents actions and inactions.

During the first hearing on February 8, 2012, respondents general manager, club and parent company filed a Motion to Dismiss the case and the Circuit judge granted it on 3-7-12, although it instructed the appellant to replead with specificity

within thirty days, which the appellant complied. Neither the two respondents who assaulted the appellant nor their counsel attended the hearing, but filed an Answer and Counterclaim on February 2, 2012. Inasmuch that counsel for the two assaulting respondents is a B.C. Magistrate, who had been unfair to the appellant before, the appellant filed a motion to disqualify him on 3-1-12, and on 3-4-12 he filed an Amendment to the motion. On 3-30-12 the appellant filed an addendum to his amendment to disqualify the Magistrate judge. On 4-10-12 the appellant filed his response in accordance to the judge's Order to Dismiss of 3-7-12. On April 23, 2012, the attorney for respondents general manager, club and parent company wrote a letter to the administrative judge, asking that the case case was dismissed in its entirety based on false procedural arguments. The appellant responded by letter to same judge on 4-10-12 denying the allegations.

On 5-17-12, appellant received Form 4, Judgment in Civil Case by another BC Judge and Master in Equity, indicating that his motion to disqualify the BC Magistrate attorney for the two assaulting respondents and continuance were denied. On 5-23-12 appellant Motioned to Reconsider the denied disqualification. On May 21, 2012, the administrative judge issued an Order, prepared by the attorney for the general manager, club and parent company, based on false information. On May 30, 2012, the appellant wrote letter to administrative judge and requested hearing to explain. On July 12, 2012, appellant filed Motion to continue the disqualification of the BC Magistrate attorney for the assailing respondents. On July 16, appellant wrote letter to the administrative judge requesting his day in court before a jury. On July 25, 2012 appellant filed Motion to reconsider the Order by the

administrative judge of May 21, 12. And, on 9-17-12 appellant filed amendment and memorandum in support of his Motion to reconsider the administrative's Order of May 21,12. On september 19, 2012, appellant wrote letter to Judge who had dismissed the case during the first hearing of 2-8-12, On 9-14,12, appellant filed affidavit. On Oct 19, 2012, Master in Equity issued Order denying appellant motion to disqualify the BC Magistrate.

On 11-2-12, appellant filed response to the Master in Equity's order of 10-19-12.

On November 8, 2012, appellant received notice SC Supreme Court Office of Disciplinary Counsel indicating dismissal of appellant's compalint. On November 12, 2012 appellant filed Motion to reconsider Master in Equity's Order of 10-19-12.

On November 14, 12, appellant wrote letter to Master in Equity. On 11-27-12 appellant wrote letter to BC Clerk of Court requesting hearing before the administrative judge. On Dec. 7, 2012, Master in Equity issued Order dismissing the case against the two assaulting respondents. On December 14, 12, appellant file d a motion to reconsider the Master in Equity's Order of Dec. 4, 2012 based on false information by the attorney for the general manager, club and parent company. On Feb 26, 13, the appellant received notice of hearing before Master in Equity for March 11, 12. On March 3, 14, appellant received Notice Form 4, indicating that the case had been closed. On 4-22-13 appellant filed motion to excuse the master in Equity and appoint special referee. On 5-24-13, appellant wrote letter to adminsitrative judge indicating his need to explain his case at a pending hearing. On July 31, 13, Master in Equity scheduled hearing to excuse himself for August 15, 2013. On August 21, 2013, appellant received Order by Master in Equity

Of 8-15-13 denying his own excuse. On 9-20-13 appellant filed Notice of Appeal. On October 14, 2013, appellant filed amendment to his notice of appeal. On October 16, 2013, attorney for respondents general manager, club and parent company filed motion to dismiss before SC Court of Appals. On November 12, 13, appellant moved the court of appeals to extend tme to respond to respondents motion to dismiss, pending Transcript. On November 27, 13, SC Court of Appeals denied respondents' Motion to Dismiss and remanded for the pending hearing. On Friday, December 13, 2013, appellant filed a Response to respondents' attorney letter to the administrative judge dated December 2, 2012. On December 11, 2013, appellant received Order by administrative judge denying his motion for a hearing that he had timely filed and paid for. On December 20, 2013, appellant filed (new) Notice of Appeal. On Decemeber 21, 2013, appellant wrote letter to administrative judge's assistant that as of today's date remains unresponded.

FACTS

Two club members assalted an employee for consistently reporting their transgressions and enforcing tennis court club rules on six (6) clay tennis courts for mandatory closure for maintenance). The two club members were unable to file a complaint against the employee because they were braking the rules themselves, so, they decided to take justice in their own hands. As a result of the incident the appellant, who had been an excellent employee of the club, who was never late and never missed a single day's work for the duration of his three (3) year employment, was humiliated, wrongfully terminated and defamed without proper compensation

(please note that counsel for the general manager, club and parent company attempted to settle the case in the amount of twelve thousand dollars (\$12,000.00) which the appellant rejected for being too low). The appellant was unable to secure a job for the subsequent two and one half years, from April 2011 until September 2013, ie. About \$40,000 in lost wages, financial hardship endured, which compelled him to endebthimself with a local pawn shop, Titlemax and other individuals to pay for his necessities, while he's is still indebted due to the actions and inactions of all of the respondents.

SEPARATE STATEMENT OF FACTS

See Exhibits 1 and 2 appended to the instant Initial Brief captioned: ORDERS OF OCTOBER 18 AND DECEMBER 4, 2012, AND FLOW CHART FOR HEARING OF MARCH 11-12 10AM MASTER IN EQUITY

ARGUMENTS

- I. BECAUSE *AB INITIO* RESPONDENTS SELECTED BIASED AND PREJUDICED COUNSEL TO GAIN UNFAIR ADVANTAGE OVER THE APPELLANT, THE APPELLANT NEVER HAD THE CHANCE TO SECURE A FAIR TRIAL FOR THE LAST 3 YEARS.

- II. BECAUSE THE EVIDENCE SHOWS THAT THE COUNSEL FOR THE RESPONDENTS ACTED IN BAD FAITH, PROVIDED FALSE INFORMATION TO THE TRIAL COURT AND LENT THE WEIGHT OF THEIR INFLUENCE TO BIAS THE CASE, THE APPELLANT NEVER HAD THE CHANCE TO SECURE THE TRIAL BY JURY HE HAD REQUESTED. (One counsel was untruthful by stating that his appearance in court at a motion hearing caused him undue costs, which he motioned to have the appellant pay for them –about \$825- and also finding him and the Master in Equity having a conversation before the hearing in the presence of a Sheriff Deputy and absence of the appellant.

Also the other counsel provided false information to the presiding judge, which triggered an adverse ruling against the appellant.)

III. BECAUSE THE COUNSEL FOR THE GENERAL MANAGER, CLUB AND PARENT COMPANY WAS UNFAIR AND MISLEADING IN THE PREPARATION OF ORDERS FOR THE JUDGE TO SIGN.

CONCLUSION

For the reasons stated, this Court should void all the proceeding in the lower court; order a new trial to take place in another venue, such as Columbia, SC, before a new judge, or in the alternative remand and order a Jury Trial be included in the docket and take place without further delay.

March 28th, 2014

Respectfully submitted,



Alexander Pastene
Post Office Box 22298
Hilton Head Is., S.C., 29925
(843) 605-5266
Appellant, appearing *pro se*

THE STATE OF SOUTH CAROLINA
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ALEXANDER PASTENE,

Appellant,

v.

THOMAS TROBOUGH, MR & MRS
NORMAN GINSBURG, W. RICHARD
BEETLE, COUNTRY CLUB OF HILTON
HEAD, CLUBCORP OF DALLAS, TX.,
CCHH TENNIS COMMITTEE MEMBERS

Respondents.

CERTIFICATE OF MAILING

The Appellant, Alexander Pastene, certifies that on this 28th day of March, 2014, he mailed copies of his Initial Brief to counsel Mary B. Lohr (for respondents Richard Beetle, CCHH, ClubCorp, CCHH Tennis Committee, et al) and attorney Terry Finger (Counsel for respondents Thomas Trobough and Norman Ginsburg), via USPS, to their last known addresses, P.O. Box 40 Beaufort SC and PO Box 24005 HHI, SC. Signed by: _____

Alexander Pastene.

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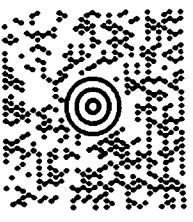
SC Court of Appeals

ALEXANDER PASTENE
(803) 605-5266
4 STILLBRIER LN
HILTON HEAD ISL SC 29926-6705

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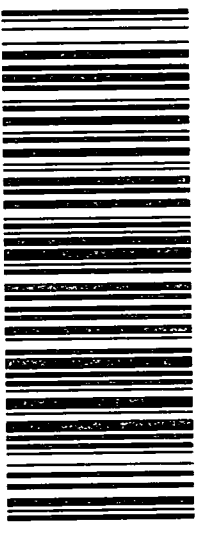


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