

**PETITION FOR A WRIT OF CERTIORARI TO THE
COURT OF APPEALS**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2014-UP-192 (S.C. Ct. App. filed May 7, 2014)

Lawrence Terry

Petitioner

v.

Allen University

Respondent

APPENDIX

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(803) 414-0760
Petitioner Pro Se

Other Counsel of Record:
Debbie Whittle Durban
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RECEIVED

JUL 15 2014

S.C. Supreme Court

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RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

Lawrence Terry,

Appellant.

RECORD ON APPEAL

RECEIVED

FEB 21 2013

SC Court of Appeals

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Order of February 11, 2013

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-4857

Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT: This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b) SCRPC ☐ Rule 41(a) SCRPC (Vol. Nonsuit) ☐ Rule 43(a) SCRPC (Settled) ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRPC ☐ Bankruptcy ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award. ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed ☐ Reversed ☐ Remanded ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court

PLAINTIFF'S MOTION FOR RECONSIDERATION IS HEREBY DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (Last name(s) below)	Judgment Against (Last name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code 2061

Date 2/8/13

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of Feb 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Feb 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Order of September 17, 2012

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-04857

Lawrence Terry

Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. No. Suit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

THIS CAUSE OF ACTION IS DISMISSED WITH PREJUDICE. PLAINTIFF MAY APPEAL BUT MAY NOT FILE ANOTHER CAUSE OF ACTION REGARDING THIS MATTER WITH THIS COURT.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code 2061

Date 9/5/12

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

SCRPC Form 4C (10/2011)

SCANNED

Affidavit Of Default

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

LAWRENCE TERRY)

Plaintiff(s))

vs.)

ALLEN UNIVERSITY)

Defendant(s))

IN THE COURT OF COMMON PLEAS

CASE NO. 2012CP40-04857

AFFIDAVIT OF DEFAULT

2012 SEP 11 AM 10:00
FILED
CLERK OF COURT
C.C.P. & J.P.C.

PERSONALLY appeared before me ^{Lawrence Terry} who, being duly sworn, states that he is the Attorney for the Plaintiff(s) and that more than thirty (30) days have elapsed since the service of the Summons and Complaint, exclusive of the date of service, upon the Defendant(s) Original Complaint on, 7/30/2012, and more than (15) days have elapsed since the Amended Complaint was served on, 8/10/2012 : and that no Answer, Demurrer or Notice of Appearance has been served upon him as required by the Summons in this action; and that the Defendant(s) is not a member of the military service; and the Defendant(s) is in default.

Sworn to and Subscribed before me)

11 day of September, 2012)

Wanda J. Thompson)
Notary Public for South Carolina)

Attorney(s) for Plaintiff

My Commission expires)

10/20/2019)

WANDA J. THOMPSON
Notary Public - State of South Carolina
My Commission Expires October 20, 2019

Summons

TO THE SHERIFF OF RICHLAND COUNTY,
YOU ARE COMMANDED:

To Summon the above named defendant(s) and serve upon said defendant(s) a copy of this summons and complaint.

TO THE ABOVE NAMED DEFENDANT(S):

Within thirty (30) days after you receive this Summons, excluding the day you receive it, you must file an Answer to the attached Complaint if you want to deny the allegations. The original of your Answer must be filed with the Clerk's Office of the Court of Common Pleas, 1701 Main Street, Room 205 P.O. Box 2766 Columbia, SC 29202, South Carolina and must include proof that a copy of the Answer was served on the plaintiff or his/her attorney who is named on this Summons.

Failure to file an Answer denying the allegations will result in a judgment against you, and action may be taken by the plaintiff or his/her attorney to satisfy the judgment.

PLEASE TAKE NOTICE that Plaintiff Lawrence Terry also requires of Defendant Allen University answers under oath to the attached Requests for Admissions within thirty (30) days from the date of service hereof pursuant to South Carolina Rules of Civil Procedure 36.

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

Plaintiff, Lawrence Terry, files this Memorandum Of Law In Support Of his Motion For Default Judgment in this case. In support of its motion, Lawrence Terry states the following:

ARGUMENT

Under Rule 55(c), the entry of default may be set aside for "good cause shown," which is a less stringent standard than the excusable neglect standard of Rule 60(b). Sundown Operating Co. v. Intedge Indus. Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). The good cause standard of Rule 55(c) requires, as a threshold burden, a party to put forth "an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice."

Id. "Once a party has put forth a satisfactory explanation . . . the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." Id. at 607-08, 681 S.E.2d at 888. However, a trial court need not make specific findings of fact for each factor if sufficient evidence supports a trial court's determination that no reasonable explanation exists for vacation of default. Id.

In South Carolina, negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause to set aside entry of default. See Vanvolkenburg, 312 S.C. at 375, 440 S.E.2d at 410 (indicating, prior to Sundown, that the imputed negligence of an attorney to a defaulting litigant is not good cause). Similarly, our supreme court has recognized subsequent to Sundown that the good cause standard of Rule 55(c), encompasses a degree of reasonableness. See Richardson v. P.V., Inc., 383 S.C. 610, 618-19, 682 S.E.2d 263, 267 (2009) (finding, after Sundown, that negligence on the part of an insurance company or attorney will be imputed to a defaulting litigant and negligence does not constitute good cause to relieve an appellant from entry of default); see also Black's Law Dictionary 1133 (9th ed. 2009) (defining negligence as the failure to act reasonably under a specific set of circumstances). It stands, therefore, that because unreasonable conduct does not amount to good cause, an unreasonable explanation for defaulting is not a satisfactory explanation that serves a sufficient interest of justice.

Even if the Court decided to relieve the Defendant from default, based on the Defendant's failure to also respond to the Plaintiff's Requests For Admissions they have admitted to Negligence and Fraud so they would not have a meritorious defense.

CONCLUSION

For the reasons stated above, Lawrence Terry Plaintiff Pro Se, requests that the Court use its power to Grant Plaintiff's Motion For Default Judgment and set a hearing on damages only.

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION ON ORDER TO DISMISS

The requirements of procedural due process, usually deemed to apply in a contested case or hearing which affects an individual's property or liberty interest, generally include **adequate notice**, the opportunity **to be heard** at a meaningful time and in a meaningful way, the right to **introduce evidence**, the right to confront and cross-examine witnesses whose testimony is used to establish **facts**, and the right to **meaningful judicial review**. In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003); S.C. Dept. of Soc. Servs. v. Wilson, 352 S.C. 445, 452-53, 574 S.E.2d 730, 733-34 (2002); Cameron Barkley Co. v. S.C. Procurement Review Panel, 317 S.C. 437, 440, 454 S.E.2d 892, 894 (1995); Brown, 301 S.C. at 328-29, 391 S.E.2d at 867. "Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). Procedural due process requirements are not technical; no particular form of procedure is necessary. In re Vora, 354 S.C. at 595, 582 S.E.2d at 416. "Due process is flexible and calls for such procedural protections as the particular situation demands." Wilson, 352 S.C. at 452, 574 S.E.2d at 733 (quoting Morrissey v. Brewer, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972)). The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. S.C. Dept. of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). To prevail on a claim of denial of due process, there must be a showing of substantial prejudice. Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984). In the instant case there was and is no pending Motion To Dismiss on the docket for the Plaintiff to prepare for or to have received notice of. Therefore Plaintiff has no idea why the instant case was Dismissed or why Plaintiff's due process rights were so blatantly denied. Plaintiff has multiple pending Motions to be heard.

CONCLUSION

For the reasons stated above, Lawrence Terry Plaintiff Pro Se, requests that the Court use its power to reverse its previous Form Order To Dismiss and allow this case to move forward.

PLAINTIFF'S REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION OF PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff, Lawrence Terry, is truly being prejudice in the current case because the Plaintiff is forced to argue an Order Of Dismissal that was filed without Notice and does not specify why this cause of action was Dismissed. All my previous cases were Dismissed Without Prejudice and the Plaintiff's due process rights were denied. Plaintiff now files this Reply and states the following:

ARGUMENT

Plaintiff's interest in this proceeding is extraordinarily significant. Although the order may be appropriate, it is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are affected. Insurance Co. of North America v. Hyatt, 290 S.C. 159, 348 S.E. (2d) 532 (1986). If the judgment or order is taken without notice, the absent party may rightly ignore it and assume that no court will enforce it against his person. Insurance Co. of North America v. Hyatt, supra [citing Koester v. Citizens' Publishing Co., 154 S.C. 154, 151 S.E. 452 (1930)].

In the instant case there was and is no pending Motion To Dismiss on the docket for the Plaintiff to have prepared for or to have received Notice of. The Defendant failed to respond to all initial requests for discovery and failed to file any responsive pleading or motion in opposition to the Plaintiff's Amended Complaint. All requests for admissions were deemed admitted and the Defendant was in Default. Plaintiff properly filed an Affidavit of Default and also filed a Motion for Default Judgment, prior to the Order of Dismissal being filed. Now under the unique facts and circumstances of this case, I suggest the Court follow the rule set forth in Sijon v. Green, 289 S.C. 126, 345 S.E. (2d) 246 (1986). In Sijon, the Court held that where a party litigant denies receiving notice of a hearing with finality, and the judgment roll or record does not reflect

evidence of such notice, that party is entitled to a judicial determination as to whether or not they received proper notice. If it is determined that the party received such notice, then judgment would stand. If not, the objecting party would be entitled to a new trial.

CONCLUSION

In a previous lawsuit filed by the Plaintiff, case #2010-CP-40-06803, the Plaintiff was mistakenly informed about a pending hearing to Dismiss and the case was Dismissed based on the Plaintiff's failure to attend the hearing. Plaintiff then filed a Motion For Reconsideration and in the Order written by The Honorable George C. James, Jr he stated, "*Though I am extremely doubtful that this cause of action will survive Rule 12(b)(6), SCRPC scrutiny, I am granting Mr. Terry's motion out of an abundance of caution to his due process rights.*" So even though the Court was extremely doubtful about my cause of action I was still afforded my due process rights. It is often difficult to define "due process." But it is not difficult for attorneys and judges to agree that if due process means anything, it means that a litigant must be given an opportunity to meet an issue before an adverse determination is made.

For the reasons stated above, Lawrence Terry Plaintiff Pro Se, requests that the Court use its power to reverse its previous Form Order To Dismiss and allow this case to move forward.

PLAINTIFF'S BRIEF IN REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff, Lawrence Terry, files this Brief In Reply to Defendant's Memorandum In Opposition in this case. In support of its motion, Lawrence Terry states the following:

ARGUMENT

There is not a standing Motion To Dismiss on the docket so I do not understand how or why the Defendant stated in their Memorandum In Opposition, "*For the reasons explained in Defendant's Motion to Dismiss, filed on August 27, 2012, and incorporated herein, Defendant opposes Plaintiff's Motion For Reconsideration.*" I have attached a copy of the docket which

clearly shows the only document filed on August 27, 2012 was the Plaintiff's Motion For Summary Judgment. The Defendant did initially file a Motion To Dismiss on 7/31/2012 in response to my Original Complaint that was served to the Defendant on 7/30/2012 but the Plaintiff later filed an Amended Complaint on 8/10/2012 which the Defendant has failed to file ANY response to. The Plaintiff recently filed an Affidavit Of Default on 9/11/2012 and a Motion For Default Judgment, both also attached. The Defendant's negligence in failing to respond to the Plaintiff's Amended Complaint and Initial Discovery Requests is not a valid reason and is inexcusable. Now I just noticed that the Defendant has negligently used multiple case numbers on their Memorandum In Opposition and if the Defendant has done the same on previous allegedly submitted documents then that would make them grossly negligent in handling their case and with no fault of the Clerk of Court or the Plaintiff. The Defendant is well represented by experienced legal counsel from one of the largest law firms in the United States of America. Where an attorney is merely neglectful, the general rule applies and relief from judgment is unavailable. Concerning a claim of attorney neglect, the general rule is that "the neglect of the attorney is attributable to the client." *Graham v. Town of Loris*, 272 S.C. 442, 451, 248 S.E.2d 594, 598 (1978). In discussing this general rule, the *Graham* court quoted approvingly from *Simon v. Flowers*, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957):

Although a wide discretion is vested in courts to set aside or vacate judgments because of the neglect, misconduct or inadvertence of counsel employed in the case, the general rule undoubtedly is that the neglect of the attorney is the neglect of the client, and that no mistake, inadvertence or neglect attributable to the attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. The acts and omissions of the attorney in such case are those of the client.

In *Simon*, 231 S.C. 545, 99 S.E.2d 391, defense counsel failed to answer a complaint because he was involved in a multi-day trial. As a result of defense counsel's failure to answer the complaint, the court entered a default judgment against defendant. On appeal, our supreme court was sympathetic to defense counsel's plight but nevertheless adhered to the general rule and imputed the neglect of counsel to his client. The court explained:

[T]he default was the result of forgetfulness on [the attorney's] part which in turn was due to

pressure of his business in the trial of cases.... In the crowded routine of a busy lawyer's life a mistake such as the record here discloses is understandable; but it entails the penalty of default under strict enforcement of the rule of procedure, and the trial court's refusal to forgive it affords no basis for reversal.

Id. at 550-51, 99 S.E.2d at 394.

CONCLUSION

If the Dismissal was based on an alleged Motion To Dismiss filed on 8/27/2012 then the Dismissal is void because the docket clearly shows no such motion. The Court and the Plaintiff base their decisions off of what is filed on the docket. If the Plaintiff did not file an Affidavit Of Default and Motion For Default Judgment, as required by law, the Plaintiff could have had his lawsuit dismissed for Failure To Prosecute.

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

-
5. **Definition from Nolo's Plain-English Law Dictionary:** "Failure to exercise the care toward others that a reasonable or prudent person would use in the same circumstances or taking action that such a reasonable person would not, resulting in unintentional harm to another. Negligence forms a common basis for civil litigation, with plaintiffs suing for damages based on a variety of injuries, from physical or property damage to business errors and miscalculations." The Defendant admitted, exhibit B attached to Complaint, they made business errors and miscalculations in regards to my educational background.
 6. Plaintiff served Request For Admissions on 7/30/2012. The Defendant has failed to respond (Exhibit D attached) and pursuant SCCRP 36 all request are deemed admitted. Some of the admitted requests are as follows:

#6. Admit that You were negligent in handling the Plaintiff's student records.

#7. Admit that You were negligent either presently or in the past with handling some students' transcripts.

#8. Admit that You made an error with handling the Plaintiff's 2007 transcript.

#12. Admit that You have been negligent in handling financial aid money within the past 12 years.

#15. Admit that You have known that Your previous staff were not keeping accurate records.

#18. Admit that You have known that Your Business Office was negligent in handling financial aid money.

#19. Admit that by not disclosing the fact You have known of false grades being published on transcripts, You committed fraud.

#20. Admit that for some unknown reason false grades were being published on the Plaintiff's 2007 transcript.

#21. Admit that the Plaintiff's reputation was harmed because of the error on his 2007 transcript made by You in a reasonably foreseeable way.

#22. Admit that the error on the Plaintiff's transcript was a substantial factor in causing the Plaintiff's harm.

#23. Admit that every transcript prior to 2008 of the Plaintiff had false grades on them.

#24. Admit that You know the definition of Negligent and or Negligence.

#25. Admit that You know the definition of Fraud.

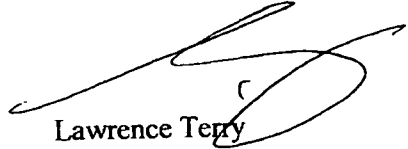
7. Admittedly, the Defendant was Negligent.

I declare under penalty of perjury that the foregoing is true and correct.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 21, 2013



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(803) 414-0760
Appellant, Pro Se

Appendix to the Record on Appeal

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

RECEIVED

JUL 15 2014

S.C. Supreme Court

Lawrence Terry

Appellant,

v.

Allen University

Respondent,

Supplement to Record on Appeal

RECEIVED

AUG 15 2013

SC Court of Appeals

Lawrence Terry
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Appellant, Pro Se

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Nelson Mullins Riley & Scarborough
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Attorney for Respondent

Appendix to the Record on Appeal

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

Lawrence Terry,

Appellant.

Appendix to the Record on Appeal

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[The remaining portion of the Appendix is composed of a copy of the documents listed in the Index.]

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

Lawrence Terry,) Civil Action No. 2011-CP-40-05469
)

Plaintiff,)

vs.)

Allen University,)

Defendant.)

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

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

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

STATEMENT OF FACTS¹

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

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

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

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

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

A. Lawsuit No. 1

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

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

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

B. Lawsuit No. 2

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

C. Lawsuit No. 3

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

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

D. Lawsuit No. 4

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

I. ALLEN'S MOTION TO DISMISS

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

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

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

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

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

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

1. Breach of Contract

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

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

2. Intentional Infliction of Emotional Distress

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

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

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

3. Constructive Fraud/Silent Fraud

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

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

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

4. Breach of Trust

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

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

5. Negligent Supervision

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

6. Libel

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

II. ALLEN'S MOTION FOR SANCTIONS

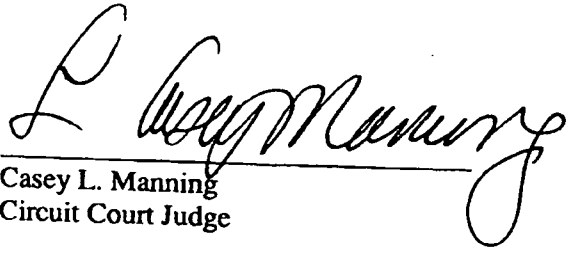
Allen has also moved for sanctions under the South Carolina Frivolous Civil Proceeding Sanctions Act, S.C. Code § 15-36-10. Under the Act, a pro se litigant participating in a civil action may be sanctioned for making frivolous arguments that are not reasonably supported by the facts. § 15-36-10(A)(4)(b).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

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

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

IT IS SO ORDERED

June 18, 2012
Columbia, South Carolina



Casey L. Manning
Circuit Court Judge

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

Lawrence Terry

Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC; ☐ Vol. Nonsuit; ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed, ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

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

Lawrence Terry

Debbie Whittle Durban

Lawrence Terry

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON) ☐ Rule 12(b), SCRPC, ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON) ☐ Rule 40(j), SCRPC, ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award. Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed, ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court

PLAINTIFF'S MOTION FOR RECONSIDERATION IS HEREBY DENIED

ORDER INFORMATION

This order ☒ ends ☐ does not end the case

Additional Information for the Clerk _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

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

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court [Signature]

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005469

LAWRENCE TERRY

ALLEN UNIVERSITY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed, ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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		\$
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		\$

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Circuit Court Judge

Judge Code 2061

Date JULY 9, 2012

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court _____

STATE OF SOUTH CAROLINA

COUNTY OF Richland
Lawrence Terry
Plaintiff(s)

vs.

Allen University
Defendant(s)

(Please Print)

Submitted By: Lawrence TerryAddress: P.O. Box 2418
Columbia, SC 29224

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 CP 400 4857

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filed and completely filled out and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

☒ JURY TRIAL demanded in complaint.☐ NON-JURY TRIAL demanded in complaint.☒ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
 Previous Notice of Intent Case #
 20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)

Torts - Personal Injury

- ☐ Assault/Slander/Label (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☒ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Administrative Law/Relief

- ☐ Reinstate Drv License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order
☐ Other (899)

Judgments/Settlements

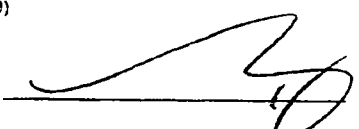
- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript of Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement
 Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
 Compensation Settlement
 Approval (780)

Appeals

- ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Commission
 (991)
☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions
☐ Motion to Quash Subpoena
 in Out-of-County Action
 (660)

Submitting Party Signature: Date: July 16, 2012

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann §15-36-10 et seq

SCCA / 234 (04/2012)

Page 1 of 2

FOR MANDATED ADR COUNTIES ON

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters,
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

IN THE COURT OF COMMONS PLEAS FOR THE STATE OF South Carolina
IN AND FOR Richland COUNTY

Lawrence Terry

Plaintiff (s),

v.

Allen University

Defendant (s),

Civil Action No.

RICHLAND COUNTY
FILED
2012 JUL 16 AM 4:04
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO THE SHERIFF OF RICHLAND COUNTY,
YOU ARE COMMANDED:

To Summon the above named defendant(s) and serve upon said defendant(s) a copy of
this summons and complaint.

TO THE ABOVE NAMED DEFENDANT(S):

Within thirty (30) days after you receive this Summons, excluding the day you
receive it, you must file an Answer to the attached Complaint if you want to deny the
allegations. The original of your Answer must be filed with the Clerk's Office of the Court
of Common Pleas, 1701 Main Street, Room 205 P.O. Box 2766 Columbia, SC 29202,
South Carolina and must include proof that a copy of the Answer was served on the
plaintiff or his/her attorney who is named on this Summons.

Failure to file an Answer denying the allegations will result in a judgment against you,
and action may be taken by the plaintiff or his/her attorney to satisfy the judgment.

PLEASE TAKE NOTICE that Plaintiff Lawrence Terry also requires of Defendant
Allen University answers under oath to the attached Requests for Admissions within
thirty (30) days from the date of service hereof pursuant to South Carolina Rules of Civil
Procedure 36.

DATED: July 16, 2012

Lawrence Terry
P.O. Box 24138 Columbia, SC 29224
803-414-0760

1 IN THE COURT OF COMMON PLEAS FOR THE STATE OF SOUTH CAROLINA
2 IN AND FOR RICHLAND COUNTY

3
4 Lawrence Terry,

5 Plaintiff,

6 vs.

7 Allen University,

8 Defendant
9

) Case No.:

) PLAINTIFF'S COMPLAINT FOR LIBEL,
) NEGLIGENCE, INTENTIONAL
) INFLECTION OF EMOTIONAL
) DISTRESS, CONSTRUCTIVE FRAUD,
) AND SILENT FRAUD

2012 JUL 19 AM 9:05
JEANETTE J. HARRIS
C.C.P. CLERK

RICHLAND COUNTY
FILED

10
11 I, Lawrence Terry, the plaintiff in this civil action do make the following claims:
12

13
14 1. I believe the Defendant, Allen University, is a business of Richland County in South Carolina,
15 and does business at 1530 Harden Street Columbia, SC 29204 for which this Complaint is
16 properly filed in Richland County.
17

18 2. Plaintiff complains and for causes of action alleges as follows:
19

20 Allen University has established a pattern of Fraud and Negligence in
21 regards to financial aid mishandling, see Exhibit A. This Complaint is based on, but not
22 wholly on, the Sworn Affidavit of Marilyn Young the current Registrar at Allen University,
23 submitted to this Court on January 11, 2012 and other evidence. The last sentence on page two,
24 paragraph #8, the Defendant stated and I quote, "It was simply an error that has since been
25 corrected." end quote. That statement shows ownership of their negligence and attempted fix.
26 Allen University admitted to Libel, Negligence, and Fraud within their Sworn Affidavit.
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1 They admitted to and provided evidence that they sent false grades to multiple 3rd parties. That is
2 the definition of Libel. It is also Fraudulent and Grossly Negligent of Allen University. It without
3 a doubt proves my claims of Libel, Intentional Infliction of Emotional Distress, both counts of
4 Fraud, and Negligence.

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7 As for the claim of Negligence, the December 2003 transcript sent to Midlands Tech did
8 not have grades on it for the fall 2003 semester. Marilyn Young stated in her Sworn Affidavit,
9 submitted January 2012, that I requested that transcript on December 8, 2003 and exams were
10 still going on at that time. Now keep in mind that she stated I "requested" it on December 8,
11 2003. **I had no control over when they were sent out.** That is the Registrar's job. She also
12 stated and I quote, "final grades were not due to the Registrar until December 16, 2003." She
13 later stated and I quote, "Once the fall semester 2003 grades were reported, Mr. Terry's
14 transcript was updated to reflect those grades." On track 1 of the audio transcript attached to the
15 Complaint I asked Marilyn Young and once again I quote, "If you knew my grades or yall were
16 going to add grades to my transcript, in four days. Why wouldn't you tell me oh wait we can't do
17 that, we are about to add some grades?" she responded with, "Yeah, that's what we would put.
18 Yeah that's what we would do." She also stated "I will have to pull your file...cause then, cause
19 ummm, if they sent it without those grades on it then we, are going to have to note it in the
20 system and that's how we are going to have to sent it out because if that's how it was sent out,
21 because we can't just go back and add.", end quote. The question to be answered is: What would
22 the reasonable professional have done under the same or similar circumstances? Well with the
23 current Registrar Marilyn Young stating that she would not do that, we have our answer. Allen
24 University's Registrar Marilyn Young stated in Exhibit B that they would not do the same
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1 actions as the previous did in handling my transcript request. The current or previous registrar
2 Marilyn Young also stated on the audio transcript attached to this Complaint, track 3, that she
3 could not verify my student records from when I attended because, "they weren't taking
4 accurate records so I can't see what they sent." The current registrar and/or staff were also
5 grossly negligent because it is clear that they knew of at least one issue with some students'
6 transcripts and when I initially asked NOBODY told me that major material fact. Since the
7 President is supposed to be head of the university then I would guess she would be the one that
8 the claim of Negligence would fall on. Allen University stated in their Sworn Affidavit,
9 submitted on January 11, 2012, that they did not discover one error(s) in the system that caused
10 false information to be published on some students' transcripts until 2008 and did not disclose
11 that material fact to any of the students affected by that information. The last sentence on page
12 two, paragraph #8, of their Sworn Affidavit the Defendant stated and I quote, "It was simply an
13 error that has since been corrected." end quote. That statement shows ownership of their gross
14 negligence and attempted fix. Therefore, because of this the Plaintiff was injured.
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19 As for the claim of Libel, Allen University has been and continues to print and send out
20 false information about me and admitted to it in the Sworn Affidavit. The Defendant stated and
21 attached evidence in their Sworn Affidavit that they printed false information concerning my
22 educational background and published and sent it to multiple 3rd parties. On page two, paragraph
23 #8, of the Defendant's Sworn Affidavit they stated and I quote, "I have also reviewed the copy of
24 Mr. Terry's transcript dated November 27, 2007, which he filed with the Court on September 23,
25 2001 also. This copy has an error in it..." end quote. They later went on to state that beginning
26 in 2008 they discovered for some "unknown reason" they were printing false grades on
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1 multiple students' transcripts. They have sent those false grades to numerous schools therefore
2 causing me to be humiliated and denied acceptance into schools. The Defendant later went on
3 to admit and attach evidence that they sent those false grades to Morris College, the
4 University Of South Carolina, and Coastal Carolina University. Allen University has
5 satisfied ALL elements of Libel. There is no reason for a trial on this issue because of this.
6 My character, reputation, and name have been ruined many times over! I cannot begin to explain
7 the embarrassment I suffered and continue to suffer daily. It is clear that by Allen University
8 publishing multiple official transcripts with false information it created defamatory statements
9 and/or representations that conveys an unjustly unfavorable impression of me and my
10 educational background. I have multiple official documents and/or transcripts from Allen
11 University with different grades and GPAs on them. Now only one can be true meaning the
12 others are false, containing false information. Carelessness, negligence, or recklessness is not an
13 excuse for libel. The incorporated document on page 9 of the Complaint proves that Allen
14 published false information about me and I have an Official Transcript from 2007, that the
15 Defendant stated had false grades on it in their Sworn Affidavit, and 2009 that Allen University
16 published that have different grades and GPAs. Correct and true photo copies of the official
17 transcripts published by Allen University are incorporated herein:
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Date Printed May 27 2007 Page 1 of 1
 Senator Lawrence M. Terry ID: [REDACTED] DCSN
 Program/Program/Committee Dispute Resolution: No Dispute Yet Assessed Date Generated
 Standard Audit/Client Nonprofit 1 30
Comprehensive GFL

Company ID		Title		Grade	Credits	GP/ave	Company ID		Title		Grade	Credits	GP/ave
Fall 2002 (Aug 24, 2002 - Dec 04, 2002)							Fall 2002 (Aug 21, 2002 - Dec 12, 2002)						
EDU111	University 101	C	3.00	0.000	HEAT110	Heat of Steam II	F	3.00	0.000				
EDU112	English Comp I	C	3.00	0.000	HEAT220	Heats Applied	F	3.00	0.000				
PHYS101	Physics I	A	3.00	12.000	PHYS200	Phy. of Cosmology	F	3.00	0.000				
PHYS102	Phy. of Mech I	F	3.00	0.000	PHYS205	Phy. Intro. to 1920	F	3.00	0.000				
PHIL101	Intro. to Med. Transm.	F	3.00	0.000									
Attempt	Started	Total	GP/ave	GP/ave	GP/ave	Attempt	Started	Total	GP/ave	GP/ave	GP/ave		
Term	16.00	12.00	12.00	16.00	23.000	2.50	Term	16.00	0.00	0.00	0.000		
Cum	16.00	12.00	12.00	16.00	23.000	2.50	Cum	30.00	32.00	32.00	30.000		
Spring 2003 (Jan 2, 2003 - May 2, 2003)							Total Credits Taken						
							Total Transfer Credits						
							Current Grades						
							End of Transcript						
ART200	Art Appreciation	C	3.00	0.000									
EDU110	General Strategy	F	4.00	0.000									
EDU112	General Strategy	F	3.00	0.000									
ENGL102	English Comp II	A	3.00	0.000									
PHYS102	Physics II	D	3.00	0.000									
PHYS110	Phy. of Mech. II	D	3.00	0.000									
Attempt	Started	Total	GP/ave	GP/ave	GP/ave	Attempt	Started	Total	GP/ave	GP/ave	GP/ave		
Term	16.00	6.00	6.00	16.00	16.000	1.25	Term	16.00	0.00	0.00	0.000		
Cum	30.00	30.00	30.00	30.00	32.000	1.75	Cum	30.00	32.00	32.00	30.000		
Summer 1 2003													
BUS200	Microcomputer App	B	3.00	0.000									
BUS210	Microcomputer App	B	3.00	0.000									
SPH200	Advanced Phys. II	C	3.00	0.000									
SPH210	Advanced Phys. II	C	3.00	0.000									
Attempt	Started	Total	GP/ave	GP/ave	GP/ave	Attempt	Started	Total	GP/ave	GP/ave	GP/ave		
Term	12.00	12.00	12.00	12.00	20.000	1.60	Term	12.00	0.00	0.00	0.000		
Cum	42.00	32.00	32.00	42.00	32.000	1.99	Cum	42.00	32.00	32.00	30.000		
Fall 2003 (Aug 21, 2003 - Dec 12, 2003)													
EDU110	General Strategy	F	4.00	0.000									
EDU112	General Strategy	F	3.00	0.000									

Maacketh Dyer 11-27-07
 Authorized Signature Date Processed
 IN ACCORDANCE WITH THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974, AS AMENDED, TRANSCRIPTS
 MAY NOT BE RELEASED TO A THIRD PARTY WITHOUT THE WRITTEN CONSENT OF THE STUDENT

It is generally known and accepted that the publication need only be to one person, but it must be a statement which claims to be fact and is not clearly identified as an opinion. With the publication being my official college transcript, signed and officially stamped by Allen, it is clear that it is meant to be fact and not opinion.

1 The four elements of libel are:

- 2 • The statement is false- I provided incorporated evidence to prove false information
3 and Allen University admitted it in their Sworn Affidavit and submitted evidence of
4 publication to multiple 3rd parties. That alone is the definition of Libel.
- 5 • The statement has a defamatory meaning- Stating that I had grades to some third
6 parties and also stating that I did not have grades to other third parties is
7 fraudulent, defamatory and deceitful. Only one can be right, if that.
- 8 • The allegedly injured party is clearly identified in the statement- My full name is clearly
9 posted at the top of each transcript and document.
- 10 • The statement has been published- The Defendant admitted to at least sending the
11 statements to the University of South Carolina and Coastal Carolina University.
- 12
- 13
- 14

15 I have supplied more than enough evidence, facts, and statements to support my claim of Libel.
16 The last sentence on page two, paragraph #8, in their Sworn Affidavit the Defendant stated and I
17 quote, "It was simply an error that has since been corrected." end quote. That statement shows
18 ownership of their gross negligence and attempted fix. Because of this the Plaintiff was injured.
19

20
21 As for the claim of Constructive Fraud, based on the statements by Marilyn Young
22 specifically, but not wholly, track one on Exhibit B and the Sworn Affidavit, the school would
23 have known that I would be harmed from Allen University adding random grades to students
24 transcripts and by knowing that material fact but yet failed to disclose that fact. Marilyn Young
25 stated in her Sworn Affidavit, submitted January 2012, that the school has known of issues with
26 false grades on some students' transcripts since 2008 but failed to disclose this material fact.
27

28 As a young student I trusted that Allen University's Registrar would help me not hurt me and

1 that confidence was broken. The current staff also knew that by correcting my transcript they
2 would get in trouble with their accrediting agencies and also State and Federal departments for
3 financial aid fraud. As the statements and evidence incorporated into the Complaint show, the
4 Plaintiff has satisfied all of the required elements. As defined by Nolo's Plain-English Law
5 Dictionary, "When the circumstances show that someone's actions give that person an unfair
6 advantage over someone else by unfair means (lying or not telling a buyer about defects in a
7 product, for example), the court may decide to treat the situation as if there was actual fraud even
8 if all the technical elements of fraud have not been proven." So although I may have or may not
9 have satisfied all of the technical elements, as I stated before Allen University actions were
10 clearly to gain an unfair advantage over me. Bad intent or dishonesty is not a requirement to
11 satisfy constructive fraud. The elements for actual and constructive fraud are the same with two
12 exceptions: constructive fraud drops the element of scienter--knowledge on the part of the injurer
13 of the representation's falsity--and adds the element of a fiduciary relationship. As a former
14 student I had complete confidence in Allen University to do the right thing but they did not. This
15 not the first time the Defendant has allegedly committed Fraud in respect to financial aid and
16 most likely won't be the last time unless something is done. The elements of constructive fraud
17 are:

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22 (1) a false misrepresentation; (Allen University stated in their Sworn Affidavit that they
23 knew of false grades being published on multiple student transcripts but failed to disclosed
24 that material fact. Marilyn Young also stated that she knew they did not keep accurate
25 records in the past. They also sent those false misrepresentations of my grades to multiple
26 3rd parties.)
27
28

1 (2) in reference to a material fact; (Failing to disclose the material fact of known false grades
2 on students' official transcript is of great importance.)

3
4 (3) for the purpose of inducing the other party to rely on such representation;(By not disclosing
5 that significant material fact they expected me and others to rely on the representation)

6
7 4) on which the other party did justifiably rely;(I and other students affected had no choice
8 but to rely on those false grades and so did the other 3rd parties who received them)

9
10 (5) which resulted in damages or injury; and (My reputation and self-esteem have been
11 injured many times over)

12
13 (6) a fiduciary relationship between the parties.(As a former student that paid a lot of money
14 I had complete confidence in Allen University to do the right thing but they did not)

15
16 The last sentence on page two, paragraph #8 of their Sworn Affidavit, the Defendant stated and I
17 quote, "It was simply an error that has since been corrected." end quote. That statement shows
18 ownership of their gross negligence and attempted fix. Because of this the Plaintiff was injured.

19
20 As for the claim of Silent Fraud, Allen University knew that by not disclosing the fact
21 that they knew of random false grades being published on students' official transcripts and if
22 they sent my transcript to Midlands Tech without certain grades I would continue to believe that
23 they did the right thing and that I would rely on that false impression and that is what they
24 intended the happen the whole time in order to keep the financial aid money. I know and they
25 know for a fact that they did not send my transcript with those grades on it to Midlands
26 Technical College. I also have supplemental evidence that supports the sworn statements of the
27
28

Defendant that shows multiple false grades being published by Allen University over the years.

A correct and true photo copy of the transcript evaluation of the official transcript sent to

Midlands Technical College, dated 01/05/2004, is incorporated herein:

STUDENT NAME: Mr. Lawrence M. Terry
ADDRESS: 2013 Shelby Dr.
Columbia, SC 29223

PROGRAM: BA in Business Administration

INSTITUTION: Allen University

TRANSFER COURSE

COURSE	GRADE	CREDIT	TRANSFER COURSE	GRADE	CREDIT
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- 1 • The Defendant failed to disclose one or more material fact about the subject matter of the
2 claim- **Allen did fail to disclose fact(s) two, one being the fact that they knew they**
3 **had been publishing false grades and they knew of an error in system since 2008.**
- 4 • The Defendant had actual knowledge of the fact(s)- **Allen did have actual knowledge**
5 **and seen the transcript evaluation form from Midlands Tech and they stated in**
6 **their Sworn Affidavit that they have known since 2008 of some error(s) in the**
7 **system in regards to false grades on some students' transcripts, including mine.**
- 9 • The Defendant's failure to disclose the fact(s) caused the plaintiff to have a false
10 impression- **It created a false impression of good and/or bad grades to me and other**
11 **3rd parties whom received those false grades.**
- 13 • When the Defendant failed to disclose the fact(s), the Defendant knew the failure would
14 create a false impression- **Allen clearly knew the outcome and relied on it**
- 15 • When Defendant failed to disclose the fact(s), Defendant intended that plaintiff rely on
16 the resulting false impression- **Allen definitely intended me to rely on the outcome**
- 17 • The plaintiff relied on the false impression; *and*
- 18 • The plaintiff was damaged as a result of the reliance upon the false impression." **Both**
19 **true.**

21
22 The statements and evidence incorporated into the Complaint satisfy the required elements. The
23 last sentence on page two, paragraph #8, of their Sworn Affidavit the Defendant stated and I
24 quote, "It was simply an error that has since been corrected." end quote. That statement shows
25 ownership of their gross negligence and attempted fix. Because of this the Plaintiff was injured.
26
27
28

1 **As for the claim of Intentional Infliction of Emotional Distress**, based on but not
2 wholly on the statements (Exhibit B) and the Sworn Affidavit made by Allen University's
3 registrar, Marilyn Young, any reasonable person would know with substantial certainty that a
4 student would suffer emotional distress if Allen University randomly added failing grades to a
5 student's transcript or Allen University **recklessly disregards** the high probability that emotional
6 distress will occur. They stated in their Sworn Affidavit that they knew of false grades on
7 students' transcript but intentionally did not inform any students. That material fact is of great
8 importance to me and all other students potential affected. As a young college student trying to
9 better yourself in this tough economy you cannot say that it is not "extremely wicked, brutal, or
10 cruel" for a school, that you paid good money to attend, refuse to correct the disputed
11 information within your student records which would clear up important issues concerning your
12 grades, GPA, and educational background? That is absurd and unrealistic. That far exceeds any
13 and all bounds of decency by a university! Their failure to inform and correct the disputed
14 information on my student records is affecting my ability to make a living and my ability to
15 further my education so that I may get a better job during these tough economic times. I am also
16 having issues sleeping and every day enjoyment of life. The tort of intentional infliction of
17 emotional distress has four elements: (1) the defendant must act intentionally or **recklessly**; (2)
18 the defendant's conduct must be extreme and **outrageous**; and (3) the conduct must be the cause
19 (4) of severe emotional distress. The last sentence on page two, paragraph #8, the Defendant
20 stated and I quote, "It was simply an error that has since been corrected." end quote. That
21 statement shows ownership of their negligence and attempted fix. I have proved all of these
22 elements within my complaint and attached evidence. Because of this the Plaintiff was injured.
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1 3. I believe, because of the above information, that I am entitled to relief in the form of the
2 specific performance I was offered, general and special damages in an amount to be determined
3 by the court and or a jury, punitive damages requested because the Defendant's actions are
4 particularly egregious, interest on damages, and/or other relief as below requested:
5

6 **Allen University admitted to Libel, Negligence, and Fraud in their Sworn Affidavit.**

7 Allen University admitted to and provided evidence that they sent false grades to multiple 3rd
8 parties. That is Fraud and Grossly Negligent of them. The last sentence on page two,
9 **paragraph #8, of their Sworn Affidavit the Defendant stated and I quote, "It was simply an**
10 **error that has since been corrected." end quote.** That statement shows ownership of their
11 negligence and attempted fix. I did not discover this information until the Defendant filed
12 their Sworn Affidavit in January 2012. I confirmed this in my Sworn Affidavit. I have since
13 undergone extreme mental suffering, problems controlling my emotions, loss of sleep, and
14 emotional distress. It has also affected my enjoyment of life past, present, and future. What I
15 would like to come from this case is to have my Official Transcript corrected by taking off the
16 grades from the Fall 2003 Semester as promised by Allen University, an apology letter, punitive
17 damages requested, general and special damages, including interest, and any costs resulting in
18 this action. For such other and further relief as the Court may deem proper. Thank you.
19
20
21

22 I state under penalty of perjury that the above is correct and truthful, except those based on my
23 information and belief.
24

25 Date July 16, 2012
26

27 Plaintiff Signature
28 Post Office Box 24438
Columbia, SC 29224
Lawrence Terry, Pro Se

Exhibit A

10 SITE SEARCH WEB SEARCH BY Google Go

<< Back

10

Students say they haven't received Allen track scholarships

Posted: Mar 11, 2010 5:33 PM EST

Updated: Mar 16, 2010 12:05 AM EDT

COLUMBIA, SC (WIS) - Some students on Allen University's track team say they were promised a full-ride scholarship but did not receive it.

Members of the team say they started getting bills for student loans they didn't know about, bills for thousands of dollars.

"He promised me that he would pay for everything," said student Kyle Vicks of the proposal.

"I thought he was there genuinely to help us out," said student Mark Walden.

"The money was supposed to cover everything from room and board, book money, tuition," said student Chester Braggs.

Since last week, Allen University track Coach Jeffrey Hughes has not responded to phone calls and could not be found on campus or at his house.

The three students say they are not waiting on answers from the coach; they've been meeting with attorneys.

"These young men were asked to sign original documents under duress," said attorney Grant Varner. "They were essentially handed documents by their coach, told sign on the dotted line and then the papers were collected."

"If we don't receive a response from the school in the near future, we're going to have no choice except to file a lawsuit," said attorney Kim Varner.

Allen University's executive vice president says the school is looking into the students' claims.

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Exhibit B

Transcript for attached audio cd.

Track 1: On this clip I was talking to Ms. Marilyn Young, Allen University's registrar, about my transcript and why grades were added. I stated (at 5sec mark), "If you knew my grades or yall were going to add grades to my transcript, in four days. Why wouldn't you tell me oh wait we can't do that, we are about to add some grades?" she responded with (at 13sec mark), "Yeah, that's what we would put. Yeah that's what we would do." She also stated that (at 20sec mark), "I will have to pull your file...cause then, cause ummm, if they sent it without those grades on it then we are going to have to note it in the system and that's how we are going to have to sent it out because if that's how it was sent out because we can't just go back and add." That statement clearly shows that if it is found that they did not send my transcript to MTC with fall 2003 grades on it then they would note it in the system, take those grades off, and resend my new transcript out without those made up grades. They never completed that investigation and if they did I was never given the results. I know and they know for a fact that they did not send my transcript with those grades on it to Midlands Technical College. They discovered that if they did change my grades they would have to answer to government for stealing/mishandling federal and state financial aid money and their accrediting agencies.

Track 2: On this clip Marilyn Young stated, "Because what you complained about, that's money from the government. You got to show you wasn't here because the government don't play." and I stated, "They going to come back for yall" and she stated, "That's right! but they ain't going to come back for me because I'm the registrar. That's business office."

Track 3: This clip is me and Ms Young talking about the record keeping from the past. She stated (21sec mark), "I thought you were talking about December.." I stated, "No not this year, no no '03 that fall." She later when to state (at 28sec mark), "No I cannot verify that cause umm... cause...back then they weren't taking accurate records so I can't see what they sent."

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Defendant

**PLAINTIFF'S AMENDED COMPLAINT
FOR NEGLIGENCE AND
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS**

JOANELLIE W. McBRIDE
C.C.P. & G.S.

2012 AUG 10 PM 4:43

FILED

Allen University has established a pattern of Negligence in regards to financial aid mishandling, see Exhibit A. I have provided evidence that Allen University was extremely reckless and they published and then sent false grades to multiple 3rd parties. That is Fraudulent and Grossly Negligent of Allen University. Those material facts without a doubt prove my claims of Intentional Infliction of Emotional Distress and Negligence. Allen University was negligent in more than one way in regards to the handling of my student records.

1
2 As for the claim of Negligence, the December 2003 transcript sent to Midlands Tech did
3 not have grades on it for the fall 2003 semester. The transcript evaluation form from Midlands
4 Technical College incorporated below proves this fact. I was told I requested that transcript on
5 December 8, 2003 and exams were still going on at that time. Now keep in mind I was told that I
6 "requested" it on December 8, 2003. **I had no control over when they were sent out. That is**
7 **the Registrar's job.** Final grades were not due to the Registrar until December 16, 2003 and
8 once the fall semester 2003 grades were reported my transcript was allegedly updated to reflect
9 those grades. On track 1 of the audio transcript attached to the Complaint I asked Marilyn Young
10 and once again I quote, "If you knew my grades or yall were going to add grades to my
11 transcript, in four days. Why wouldn't you tell me oh wait we can't do that, we are about to add
12 some grades?" she responded with, **"Yeah, that's what we would put. Yeah that's what we**
13 **would do."** She also stated "I will have to pull your file...cause then, cause ummm, if they sent it
14 without those grades on it then we, are going to have to note it in the system and that's how we
15 are going to have to sent it out because if that's how it was sent out, because we can't just go back
16 and add.", end quote. The question to be answered is: What would the reasonable professional
17 have done under the same or similar circumstances? **Well with the current Registrar Marilyn**
18 **Young stating that she would not do that, we have our answer.** Allen University's Registrar
19 Marilyn Young stated in Exhibit B that they would not do the same actions as the previous did in
20 handling my transcript request. The current or previous registrar Marilyn Young also stated on
21 the audio transcript attached to the Complaint, track 3, that she **could not verify my student**
22 **records** from when I attended because, **"they weren't taking accurate records** so I can't see
23 what they sent." My character, reputation, and name have been ruined many times over! I cannot
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1 begin to explain the embarrassment I suffered and continue to suffer daily. It is clear that by
2 Allen University publishing multiple official transcripts with false information it created
3 defamatory statements and/or representations that conveys an unjustly unfavorable impression of
4 me and my educational background. I have multiple official documents and/or transcripts
5 from Allen University with different grades and GPAs on them. Now only one can be true
6 meaning the others are false, containing false information. The incorporated document on page 5
7 of the Complaint proves that Allen was negligent in publishing false information about me and I
8 also have Official Transcripts from 2007 and 2009 that Allen University published which have
9 different grades and GPAs. Since the President and the Board of Trustees are supposed to be
10 head representatives of the University, then I would guess they would be the ones that the claim
11 of Negligence would fall on. This information was discovered in December 2009 and is well
12 within the statue of limitations. These material facts could not have been discovered any sooner.
13
14

- 15
16 1. Allen University owed me the duty of care. I was a paying student and Allen University
17 owed me the duty of making sure my student records were correct.
- 18
19 2. Allen University breached that duty of care on more than one occasion. Marilyn Young
20 told me in December 2009 that the previous staff at Allen University were not taking
21 accurate records and did not following proper procedures I regards to handling my
22 student records. If not for her informing me of those material facts in 2009 I would have
23 never known and could not have discovered that information any sooner. Another
24 instance of their gross negligence occurred when Marilyn Young stated, Exhibit B, that
25 she would correct the errors made by the previous staff within my student records but
26 refused to when the school realized they would have to answer to the State and Federal
27 government about financial aid mishandling.
28

1 3. If not for the gross negligence of Allen University's past and present staff I would not
2 have occurred injuries. They are the direct cause of my pain.

3 4. Allen University has cause me great harm in the forms daily headaches, loss of
4 enjoyment of life, loss of reputation, and many more issues I continue to suffer.
5

6 Therefore, because of this the Plaintiff was injured.
7

8
9 As for the claim of Intentional Infliction of Emotional Distress, based on but not
10 wholly on the statements (Exhibit B), any reasonable person would know with substantial
11 certainty that a student would suffer emotional distress if Allen University randomly added
12 failing grades to a student's transcript or Allen University **recklessly disregards** the high
13 probability that emotional distress will occur. They knew of false grades on students' transcript
14 but intentionally did not inform any students. That material fact is of great importance to me and
15 all other students potential affected not to mention the colleges and universities they sent them
16 too. They knew my Official Transcript had false grades on it but intentionally refused to correct
17 the issues as they stated they would, see Exhibit B. As a young college student trying to better
18 yourself in this tough economy you cannot say that it is not "extremely wicked, brutal, or cruel"
19 for a school, that you paid good money to attend, refuse to correct the disputed information
20 within your student records which would clear up important issues concerning your grades,
21 GPA, and educational background? That is absurd and unrealistic. That far exceeds any and all
22 bounds of decency by a university! Their failure to inform and correct the disputed information
23 on my student records is affecting my ability to make a living and my ability to further my
24 education so that I may get a better job during these tough economic times. I am also having
25 issues sleeping and every day enjoyment of life. The tort of intentional infliction of emotional
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distress has four elements: (1) the defendant must act intentionally or recklessly; (2) the defendant's conduct must be extreme and outrageous; and (3) the conduct must be the cause (4) of severe emotional distress. Allen University knew that by not disclosing the fact that they sent my transcript to Midlands Tech without certain grades I would continue to believe that they did the right thing and that I would rely on that false impression and that is what they intended the happen the whole time in order to keep the financial aid money. **I know and they know for a fact that they did not send my transcript with those grades on it to Midlands Technical College.** I also have supplemental evidence that supports the statements of the Defendant that shows multiple false grades being published by Allen University over the years. A correct and true photo copy of the transcript evaluation of the official transcript sent to Midlands Technical College, dated 01/05/2004, is incorporated herein:

STUDENT NAME: Mr. Lawrence M. Terry
ADDRESS: 2013 Shelby Dr.
Columbia, SC 29223

PROGRAM: **BA**

INSTITUTION: Allen University

TRANSFER COURSE

ETC EQUIVALENT COURSE

Allen University Course	Allen University Credits	ETC Equivalent Course	ETC Equivalent Credits
101-101	3.00	101-101	3.00
101-102	3.00	101-102	3.00
101-103	3.00	101-103	3.00
101-104	3.00	101-104	3.00
101-105	3.00	101-105	3.00
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1 **This clearly shows and supports the fact that they did indeed send my official**
2 **transcript without grades for the fall 2003 but refused to correct my transcript as**
3 **promised. They discovered that if they did correct my grades they would have to answer to**
4 **government for stealing/mishandling federal and state financial aid money and their accrediting**
5 **agencies.** Because of this the Plaintiff was injured.
6

7
8 **3. I believe, because of the above information, that I am entitled to relief in the form of the**
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12

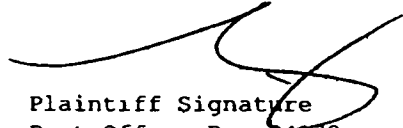
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15 **Negligent of them. I have since undergone extreme mental suffering, problems controlling my**
16 **emotions, loss of sleep, and emotional distress. I also have suffered from excruciating headaches**
17 **daily since discovering these issues. It has also affected my enjoyment of life past, present, and**
18 **future. What I would like to come from this case is to have my Official Transcript corrected by**
19 **taking off the grades from the Fall 2003 Semester as promised by Allen University, an apology**
20 **letter, punitive damages requested, general and special damages, including interest, and any costs**
21 **resulting in this action. For such other and further relief as the Court may deem proper. Thank**
22 **you.**
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26 **I state under penalty of perjury that the above is correct and truthful, except those based on my**
27 **information and belief.**
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Date

August 10, 2012



Plaintiff Signature
Post Office Box 24138
Columbia, Sc 29224
Lawrence Terry, Pro Se

 SITE SEARCH  WEB SEARCH BY Google

Exhibit A

[<< Back](#)

10

Students say they haven't received Allen track scholarships

Posted Mar 11 2010 5:33 PM EST
Updated Mar 16, 2010 12:05 AM EDT

COLUMBIA, SC (WIS) - Some students on Allen University's track team say they were promised a full-ride scholarship but did not receive it.

Members of the team say they started getting bills for student loans they didn't know about, bills for thousands of dollars.

"He promised me that he would pay for everything," said student Kyle Vicks of the proposal.

"I thought he was there genuinely to help us out," said student Mark Walden.

"The money was supposed to cover everything from room and board, book money, tuition," said student Chester Braggs.

Since last week, Allen University track Coach Jeffrey Hughes has not responded to phone calls and could not be found on campus or at his house.

The three students say they are not waiting on answers from the coach they've been meeting with attorneys.

"These young men were asked to sign original documents under duress," said attorney Grant Varner. "They were essentially handed documents by their coach, told sign on the dotted line and then the papers were collected."

"If we don't receive a response from the school in the near future, we're going to have no choice except to file a lawsuit," said attorney Kim Varner.

Allen University's executive vice president says the school is looking into the students' claims.

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Millions Ignore The President's Refinancing Advice Select Your Age

[Under 18](#) | [19-25](#) | [26-35](#) | [36-45](#) | [46-55](#) | [56-65](#) | [66-75](#) | [Over 75](#)

worldnow

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Transcript for attached audio cd.

Exhibit B

Track 1: On this clip I was talking to Ms. Marilyn Young, Allen University's registrar, about my transcript and why grades were added. I stated (at 5sec mark), "If you knew my grades or yall were going to add grades to my transcript, in four days. Why wouldn't you tell me oh wait we can't do that, we are about to add some grades?" she responded with (at 13sec mark), "Yeah, that's what we would put. Yeah that's what we would do." She also stated that (at 20sec mark), "I will have to pull your file...cause then, cause ummm, if they sent it without those grades on it then we are going to have to note it in the system and that's how we are going to have to sent it out because if that's how it was sent out because we can't just go back and add." That statement clearly shows that if it is found that they did not send my transcript to MTC with fall 2003 grades on it then they would note it in the system, take those grades off, and resend my new transcript out without those made up grades. They never completed that investigation and if they did I was never given the results. I know and they know for a fact that they did not send my transcript with those grades on it to Midlands Technical College. They discovered that if they did change my grades they would have to answer to government for stealing/mishandling federal and state financial aid money and their accrediting agencies.

Track 2: On this clip Marilyn Young stated, "Because what you complained about, that's money from the government. You got to show you wasn't here because the government don't play." and I stated, "They going to come back for yall" and she stated, "That's right! but they ain't going to come back for me because I'm the registrar. That's business office."

Track 3: This clip is me and Ms Young talking about the record keeping from the past. She stated (21sec mark), "I thought you were talking about December.." I stated, "No not this year, no no '03 that fall." She later when to state (at 28sec mark), "No I cannot verify that cause umm... cause...back then they weren't taking accurate records so I can't see what they sent."

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Lawrence Terry

vs.

Allen University

Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-40-04857

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Lawrence Terry, Plaintiff Pro Se, Bar No. _____ Address: P.O. Box 24138, Columbia, SC 29224 Phone: _____ Fax _____ E-mail: _____ Other: _____		Defendant's Attorney: Debbie W. Durban, Bar No. _____ Address: P.O. Box 11070, Columbia, SC 29211 Phone: 803-255-9465 Fax 803-255-9065 E-mail: debbie.durban@nelsonmullins.com Other: _____	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Defendant's Motions to Show Cause, for Sanctions, and to Dismiss Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: ☒ YES ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff ☒ Defendant <u>Debbie W. Durban</u> <u>July 31, 2012</u> Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRCP)			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION Collected by: <u>W.H.C.</u> Date Filed: <u>7/31/12</u> ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____			

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

Lawrence Terry,) Civil Action No. 2012-CP-4004857
Plaintiff,)
vs.)
Allen University,)
Defendant.)

**DEFENDANT'S MOTIONS TO
SHOW CAUSE, FOR SANCTIONS,
AND TO DISMISS**

2012 JUL 1 PM 4:59

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

PROCEDURAL BACKGROUND

The present lawsuit is the fifth lawsuit¹ Plaintiff has filed against Allen in the last year and a half based on a dispute he has regarding his fall semester 2003 student records. As shown in the previous lawsuits, Plaintiff, who was a student at Allen in 2002-2003, requested in December 2003 that Allen send his transcript to Midlands Technical College, where he was planning to transfer. Allen promptly did this but because the request came in prior to the end of the fall 2003 semester, Plaintiff's fall 2003 grades were not included on that transcript sent to Midlands Technical College. Plaintiff's fall semester 2003 grades, however, were included in subsequent transcripts sent to other schools at Plaintiff's request. Plaintiff claims that he did not realize that his fall semester 2003 grades had been added to his transcript until 2009, at which time

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

he went to Allen to request that the grades be removed. When Allen refused to remove the grades, Plaintiff began this unending process of suing Allen.

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

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

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

PRESENT LAWSUIT

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

Therefore, Allen requests the following:

- (1) The Court hold Plaintiff in contempt for failing to adhere to the Court's order enjoining him from filing additional lawsuits against Allen based on these facts;
- (2) The Court assess sanctions against Plaintiff in the form of Allen's fees and costs for violating the injunction; and

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: Debbie Whittle Durban
Debbie Whittle Durban
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Attorney for Allen University

Columbia, South Carolina

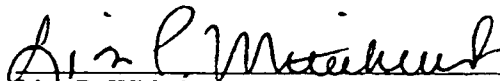
July 31, 2012

CERTIFICATE OF SERVICE

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

Pleadings: Defendant's Motions to Show Cause, for Sanctions and to Dismiss

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


Lisa P. Whitehurst
Administrative Assistant

July 31, 2012

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C.C.P. & G.

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Defendant

**PLAINTIFF'S REPLY TO DEFENDANT'S
MOTIONS TO SHOW CAUSE, FOR
SANCTIONS, AND TO DISMISS**

2012 AUG 17 PM 3:32
JEANETTE W. McBRIDE
C.C.P. & G.S.
lawyer, America

RICHLAND COUNTY
FILED

1. It is common practice that Plaintiffs, including those represented by lawyers, ~~Amend~~ Amend their Complaints multiple times during the process of litigation. **All of my previous cases were dismissed without prejudice. I chose to Amend rather than Appeal.**
2. The instant Amended Complaint is based on Allen University's own admissions of Negligence, exhibit B attached to Complaint, and other incorporated evidence (**vicarious liability, respondeat superior, & res ipsa loquitur**).
3. The Defendant stated on page 3 line 8 of their Motion To Dismiss that, "When this mistake was discovered, his transcript was corrected..." That statement shows acceptance of one occasion of gross negligence and attempted fix, in 2009.
4. The Defendant clearly stated and the Court agreed that all of the previous cases were based on "an alleged agreement" and "failure to investigate", **Breach Of Contract**. Page 5 paragraph #1 of the Order it clearly stated, "his Complaint specifically states that 'Allen University breached the said agreement by intentionally refusing to

complete the agreed investigation.' See Exhibit C attached. The instant Complaint is based on the Defendant's "failure to exercise reasonable care" or Negligence.

5. Cornell Law defines Negligence as: "A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct)."
- Allen University admitted, Exhibit B attached to Complaint, that the previous staff was Negligent in handling my student records and admitted that under the same circumstances they would not do the same actions. After admitting that material fact the Defendant intentionally refused to help correct the previous staffs' misconducts.
6. Definition from Nolo's Plain-English Law Dictionary: "Failure to exercise the care toward others that a reasonable or prudent person would use in the same circumstances or taking action that such a reasonable person would not, resulting in unintentional harm to another. Negligence forms a common basis for civil litigation, with plaintiffs suing for damages based on a variety of injuries, from physical or property damage to business errors and miscalculations." The Defendant admitted, exhibit B attached to Complaint, they made business errors and miscalculations in regards to my educational background.
7. No investigation is needed because I have supplied more than enough evidence to support my claims of Negligence, including the Defendant's own statements.

Therefore, I respectfully request the Court use its power to Deny Defendant's Motions.

Date

August 17, 2012

Plaintiff Signature
Lawrence Terry, Pro Se

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

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

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

A. Lawsuit No. 1

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

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

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

B. Lawsuit No. 2

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

C. Lawsuit No. 3

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

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

D. Lawsuit No. 4

No need to investigate because I have evidence and their own admissions of negligence

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

I. ALLEN'S MOTION TO DISMISS

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

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

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

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

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

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

1. Breach of Contract

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

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

2. Intentional Infliction of Emotional Distress

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

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

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

3. Constructive Fraud/Silent Fraud

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

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

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

4. Breach of Trust

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

I provided audio,
paperwork, and
 sworn statements.

Allen has also moved for sanctions under the South Carolina Frivolous Civil Proceeding Sanctions Act, S.C. Code § 15-36-10. Under the Act, a pro se litigant participating in a civil action may be sanctioned for ~~making a frivolous claim or defense~~ ~~§ 15-36-10(A)(4)(b)~~. Sanctions can include an order for a pro se litigant to pay the reasonable costs and attorneys' fees of the prevailing party and/or an order enjoining a plaintiff from bringing future frivolous actions. § 15-36-10(G)(3).

This Complaint
is based on
Negligence, not
on investigation.

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

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Lawrence Terry

☒ Plaintiff

v.

Allen University

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-40-04857

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Lawrence Terry, Bar No. Pro Se

Address:

PO Box 24138 Columbia, SC 29224

phone: 803-414-0760 fax:

e-mail: other:

Defendant's Attorney:

Debbie Whittle Durban, Bar No. 16893

Address:

Nelson Mullins Riley & Scarborough, LLP, PO Box

11070, Columbia, SC 29211

phone: 803-255-9465 fax: 803-255-9088

e-mail: other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT:

☐ EXEMPT:

(check reason) ☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by:

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Date Filed:

8/27/12

☐ MOTION FEE COLLECTED:

☐ CONTESTED - AMOUNT DUE:

IN THE COURT OF COMMON PLEAS FOR THE STATE OF South Carolina
IN AND FOR Richland COUNTY

Lawrence Terry,

Plaintiff,

vs.

Allen University,

Defendant,

Case # 2012-CP-40-04857

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
ON THE ISSUES OF NEGLIGENCE AND L.I.E.D.

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 AUG 27 PM 4:55

FILED
RICHLAND COUNTY

SUMMARY STATEMENT

Comes now Plaintiff, and for the legal basis of Plaintiff's Motion for Summary Judgment, states that there is no genuine dispute concerning the following material facts: (1) that the Defendant admitted to being Negligent in handling the Plaintiff's student records; (2) that the Defendant admitted that they had not been keeping accurate student records; (4) Admittedly the Defendant was thereby Grossly Negligent; (5) as a direct result of such Negligence Plaintiff sustained injury.

UNDISPUTED FACTS

Comes now Plaintiff and asserts that the following fact is uncontroverted:

- 1 It was discovered in December 2012 that the Defendant had been Negligent in handling the Plaintiff's student records. The Defendant admitted that material fact in 2012.
- 2 The Defendant admitted, in their Motion To Dismiss submitted July 31, 2012, to being Negligent in regards to handling the Plaintiff's student records. Sentence #8 on page three, of their Motion the Defendant stated and I quote, "When this mistake was discovered, his transcript was corrected...." end quote. That statement shows ownership of their gross negligence and attempted fix.

3. The audio transcript attached to the Complaint, incorporated document on page 5 of the Complaint, and Sworn Affidavit of the Plaintiff submitted to the Court supports the facts that the Defendant was Grossly Negligent on multiple occasions.
4. Admittedly the Defendant was thereby Grossly Negligent.

ARGUMENT

With Allen University admitting to Negligence there is not an argument. The Complaint is based off of the Defendant's own words. The question to be answered is: What would the reasonable professional have done under the same or similar circumstances? Well with the current Registrar Marilyn Young stating that she would not do that, we have our answer.

CONCLUSION

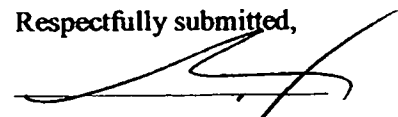
Plaintiff is entitled to judgment as a matter of law. The undisputed facts show that as a direct and proximate result of the Negligence of the Defendant. The Defendant owed the Plaintiff duty of care, admittedly breached that duty of care, caused Plaintiff to be injured, and that breach is a direct cause of the Plaintiff's injuries. I have since undergone extreme mental suffering, problems controlling my emotions, loss of sleep, and emotional distress. It has also affected my enjoyment of life past, present, and future. I have also been completely humiliated. The damages were directly and proximately caused by the aforementioned Negligence of the Defendant and were incurred without contributory negligence or assumption of the risk on the part of the Plaintiff. Their admitted Negligence is affecting my ability to make a living and my ability to further my education so that I may get a better job during these very tough economic times.

Accordingly, Plaintiff respectfully requests that this honorable Court enter judgment in favor of Plaintiff and against Defendant, and that this matter be set for a jury trial on the issue of damages only.

Date

8/27/2012

Respectfully submitted,



Signature of Plaintiff

Lawrence Terry, Pro Se

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Lawrence Terry

☒ Plaintiff

v.

Allen University

☐ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-40-04857

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

Lawrence Terry, Bar No. Pro Se

Address:

PO Box 24138 Columbia, SC 29224

phone: 803-414-0760 fax:

e-mail: other:

Defendant's Attorney:

Debbie Whittle Durban, Bar No. 16893

Address:

Nelson Mullins Riley & Scarborough, LLP, PO Box

11070, Columbia, SC 29211

phone: 803-255-9465 fax: 803-255-9069

e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted: 9/11/12

SECTION III: Motion Fee

☒ PAID - AMOUNT:

☐ EXEMPT:

(check reason) ☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: metts

Date Filed:

9/11/12

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

SCCA 022 (11-02)

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Lawrence Terry,
Plaintiff,
vs.
Allen University,
Defendant

**PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**

2017 SEP 14 AM 8:40
HONOLULU
LE W. M. B. RIDGE
P. & G.S.

The first factor weighs in favor of Granting Plaintiff's request for an award of monetary damages because Plaintiff will be prejudiced if default judgment is not entered.

1 Plaintiff served process on the Defendant weeks ago. The Defendant has not answered or
2 otherwise responded to the Amended Complaint. If Plaintiff's motion for default
3 judgment is not granted, Plaintiff will likely be without other recourse for recovery and
4 Plaintiff will be forced to suffer continued irreparable injuries in the form of lost reputation, lost
opportunities, and goodwill everyday that the false and misleading statements remain on
Plaintiff's student records.

5 **B. The Merits of the Claim and the Sufficiency of the Complaint.**

6 The second and third factors favor a default judgment where the Amended Complaint
7 sufficiently states a claim for relief under the liberal pleading standards of Rule 8.
8 Plaintiff's Amended Complaint states plausible claims for relief under Rule 8, and the
9 Defendant has stipulated that Plaintiff is likely to succeed on its claims. The Defendant
10 has admitted to making mistakes in within the Plaintiff's student records and the exhibits
submitted by the Plaintiff also make the claims clear. The second and third factors
therefore favor a default judgment.

11 **C. The Amount of Money at Stake.**

12 Under the fourth factor, the Court considers the amount of money at stake in relation to
13 the seriousness of Defendant's conduct. Allen University, for nearly a decade, has
14 engaged in fraudulent and negligent business practices resulting in major losses and
15 inconvenience to students, many of them being teenagers. Plaintiff has presented
16 evidence showing that in the past three years alone Allen University has extracted an
17 unknown amount of state and federal financial aid money from students through their
unlawful activities. Given the duration and egregious nature of Defendant's misconduct,
a default judgment is reasonable. This factor weighs in favor of a default judgment.

18 **D. Possible Dispute Concerning Material Facts.**

19 Given the sufficiency of the Amended Complaint and Defendant's default, no genuine
20 dispute of material facts would preclude Granting Plaintiff's Motion. Plaintiff has
supplied more than enough evidence to support his claims of negligence.

21 **E. Whether Default Was Due to Excusable Neglect.**

22 The Defendant was properly served with the summons and Original Complaint on
23 7/30/2012. The Defendant responded to that Complaint on 7/31/2012. The Amended
24 Complaint was delivered on 8/10/2012 and it is now 9/13/2012 with no reply having been
25 submitted. It therefore is highly unlikely that Defendant's failure to answer and the
26 resulting default was the result of excusable neglect. The Defendant is well represented
27 by licensed counsel with multiple years of experience and who is also a Partner at a
28 prestigious law firm. The Defendant did not have an issue responding to the initial
complaint one day after being served either. It therefore is perfectly appropriate for the
court to enter default judgment against a university that failed to appear in the action
through licensed counsel.

1 **F. The Policy Favoring a Decision on the Merits.**

2 Cases should be decided upon their merits whenever reasonably possible, but the mere
3 existence of Rule 55 indicates that this preference, standing alone, is not dispositive.
4 Moreover, Defendant's failure to answer or otherwise respond to the Amended
5 Complaint makes a decision on the merits impractical, if not impossible. The Court
6 therefore is not precluded from entering default judgment against Defendant.

6 **G. Conclusion.**

7 After having reviewed Plaintiff's motion and supporting exhibits, and having carefully
8 considered the factors as a whole, the Plaintiff requests that, pursuant to Rule 55, the
9 entry of default judgment is Granted against Defendant Allen University. Plaintiff also
10 requests a hearing to be set for the issue of damages.

11 Date

9/14/2012

12 
13 Plaintiff Signature
14 Post Office Box 24138
15 Columbia, SC 29224
16 Lawrence Terry, Pro Se
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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Lawrence Terry

☒ Plaintiff

v.

Allen University

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2012-CP-40-04857

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Lawrence Terry, Bar No. Pro Se Address: PO Box 24138 Columbia, SC 29224 phone: 803-414-0760 fax: e-mail: other:		Defendant's Attorney: Debbie Whittle Durban, Bar No. 16893 Address: Nelson Mullins Riley & Scarborough, LLP, PO Box 11070, Columbia, SC 29211 phone: 803-255-9465 fax: 803-255-9069 e-mail: other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☒ Plaintiff ☐ Defendant			Date submitted: 9/18/2012
SECTION III: Motion Fee			
☒ PAID - AMOUNT: ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE: _____ CODE: _____ Date: _____	
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☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA 022 (11-07)

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) Case No.: 2012-CP-40-04857

**PLAINTIFF'S MOTION FOR
RECONSIDERATION ON ORDER
TO DISMISS**

vs.

SEP 18 AM 8:43
C.C.P. & G.S.

Defendant

ARGUMENT

[Questionnaire of individual -]

Key facts about this case are as follows:

- i. Plaintiff had no knowledge of a pending Motion To Dismiss.
- ii. There is not and was not a pending Motion To Dismiss on the docket.
- iii. The Defendant has failed to respond to the Plaintiff's Amended Complaint.
- iv. Plaintiff filed an Affidavit Of Default on 9/11/2012. Plaintiff also filed a Motion For Default Judgment on 9/14/2012 which included evidence that the Defendant failed to file any type of Answer or response to the Amended Complaint within the specified time.
- v. The Plaintiff has multiple Motions pending while the Defendant has none on the docket.
- vi. The initial Motion to Dismiss submitted by the Defendant requested a "hearing" although it was voided by the Amended Complaint.
- vii. The Plaintiff did not receive any notice of an unknown Motion.
- viii. The Plaintiff was denied the right to object or present evidence against the unknown Motion To Dismiss.
- ix. The Defendant failed to respond to any of the Plaintiff's Requests For Discovery including Requests For Admissions which were served with the Original Complaint. Therefore pursuant SCCRP 36 all Requests For Admissions are deemed Admitted and that in itself would defeat any real Motion To Dismiss if the Defendant presented one.
- x. To date the Defendant still has not filed anything other than their voided Motion To Dismiss.

The Court previously stated that the Plaintiff's claim of a breached investigation was void because it lacked consideration. The Defendant stated multiple times that they did not owe the Plaintiff any right or obligation to investigate his educational records and called it a "gracious offer" and the Court agreed. Based on the Defendant's own Privacy Guidelines on the university website, Exhibit A attached, which they take from a Federal Law of The Family Educational Rights and Privacy Act of 1974 the Plaintiff does have certain Rights which the school denied. The Plaintiff's claim of negligence refers to the multiple negligent acts in regards to the handling of the Plaintiff's educational records by the Defendant. FERPA/the Defendant's own guideline affords students certain rights with respect to their educational records.

1 So the instant complaint is based on negligence. The Defendant does not deny the fact that they
2 made mistakes. The fact that the Defendant failed to inform the Plaintiff of his rights under
3 FERPA is fraudulent and they broke Federal Laws. The recently discovered FERPA information
4 only strengthens the Plaintiff's claim of negligence. Once the Plaintiff discovered this FERPA
5 information I immediately sent a certified letter requesting a formal hearing and written
6 explanation but did not receive either. The emails are dated February 2010 so they are well
7 within the statute of limitations and once again they further prove negligence by the Defendant.

8 CONCLUSION

9 So if the Defendant is now claiming the instant Complaint is based on a failure to
10 investigate the Plaintiff's educational records then based on the newly discovered material facts
11 they are correct. I submitted audio and paperwork to support my claims. What more do I need to
12 provide to get a fair chance at a trial? The Defendant was grossly and willfully negligent in
13 handling the Plaintiff's educational records. I would file a Motion To Vacate the previous based
14 on this newly discovered FERPA evidence but the Court told me I could not file any more
15 Motions and if the information is not presented to the trial judge then the Court of Appeals will
16 not consider it.

17 For the reasons stated above, Lawrence Terry Plaintiff Pro Se, requests that the Court reverses its
18 previous Order To Dismiss and allow this case to move forward.

19 Date 9/16/2012

20
21 Plaintiff Signature
22 Post Office Box 24138
23 Columbia, SC 29224
24 Lawrence Terry, Pro Se
25
26
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28

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

Lawrence Terry,

Appellant.

FINAL BRIEF OF APPELLANT

RECEIVED

FEB 26 2013

SC Court of Appeals

Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

RECEIVED

FEB 21 2013

SC Court of Appeals

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OTHER AUTHORITIES

<u>Black's Law Dictionary</u> 1133 (9th ed. 2009).....	4
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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO GIVE NOTICE OR HOLD A HEARING BEFORE MAKING A FINAL RULING?
2. WAS THE APPELLANT'S DUE PROCESS RIGHTS VIOLATED?
3. DID THE TRIAL COURT ERR IN DISMISSING THE CASE WITH PREJUDICE ALTHOUGH THE RESPONDENT FAILED TO FILE ANY RESPONSE TO THE AMENDED COMPLAINT AND REQUESTS FOR ADMISSIONS?
4. DID THE TRIAL COURT ERR IN FAILING TO ENTER A DEFAULT JUDGMENT AFTER THE PLAINTIFF PROPERLY FILED AN AFFIDAVIT OF DEFAULT?
5. DID THE TRIAL COURT ERR IN FAILING TO GIVE A CLEAR EXPLANATION ON ITS DISMISSAL?

STATEMENT OF THE CASE

On July 16, 2012, Lawrence Terry brought this action alleging LIBEL, NEGLIGENCE, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, CONSTRUCTIVE FRAUD, AND SILENT FRAUD against Allen University. Allen was served the Original Complaint, Summons, and Initial Requests For Admissions on July 30, 2012 and one day later on July 31, 2012 Allen University responded by filing a Motion To Dismiss.

On August 10, 2012 the Appellant properly filed and served an Amended Complaint to only allege Negligence and Intentional Infliction Of Emotional Distress. On August 27, 2012 Appellant filed a Motion For Summary Judgment.

An Affidavit Of Default was filed on September 11, 2012 after the Respondent failed to file any response to the Amended Complaint. On September 14, 2012 the Appellant properly filed a Motion For Default Judgment.

Without any prior notice or a hearing, The Honorable Judge L. Casey Manning abruptly

filed a Form Order Dismissing the case With Prejudice on September 17, 2012. A Motion For Reconsideration was filed on September 18, 2012 by the Appellant and additional documents in support of said motion were also later filed. Appellant made it clear in said motion that no notice was provided or a hearing. Reconsideration was denied February 11, 2013. Both Form Orders only stated that the case was dismissed but did not provide any explanation or reasoning.

ARGUMENTS

- I. BECAUSE RESPONDENT FAILED TO RESPOND TO THE AMENDED COMPLAINT AND REQUESTS FOR ADMISSIONS THE CASE SHOULD NOT HAVE BEEN DISMISSED WITH PREJUDICE AND INSTEAD THE DEFAULT JUDGMENT ENTERED AND DEFAULT MOTION GRANTED.

The Summons and Original Complaint were properly served to the Respondent on August 30, 2012. The Affidavit of Service filed in the docket proves service to the Defendant. The Summons clearly stated the following, "*Failure to file an Answer denying the allegations will result in a judgment against you, and action may be taken by the plaintiff or his/her attorney to satisfy the judgment.... **PLEASE TAKE NOTICE** that Plaintiff Lawrence Terry also requires of Defendant Allen University answers under oath to the attached Requests for Admissions within thirty (30) days from the date of service hereof pursuant to South Carolina Rules of Civil Procedure 36.*"(Summons p.1)(R. p.4 lines, 12-16) As can be seen on the docket, no Answer, Motion, or Reply to the Requests For Admissions were filed at any time.(Exhibit D)(R. p.12)

Therefore the Respondent has given up their right to speak, plead, or defend themselves in the instant case and all Admissions are deemed Admitted. (Plaintiff's Brief In Support Of Motion For Summary Judgment p. 2-3)(R. p.10, lines 21-23; p. 11, lines 1-20)

There is not a valid reason why the Entry Of Default was not entered or why the Motion For Default Judgment not Granted. Under Rule 55(c), the entry of default may be set aside for "good cause shown," which is a less stringent standard than the excusable neglect standard of Rule 60(b). *Sundown Operating Co. v. Intedge Indus. Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). The good cause standard of Rule 55(c) requires, as a threshold burden, a party to put forth "an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Id.* "Once a party has put forth a satisfactory explanation . . . the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-08, 681 S.E.2d at 888. However, a trial court need not make specific findings of fact for each factor if sufficient evidence supports a trial court's determination that no reasonable explanation exists for vacation of default. *Id.* (Plaintiff's Memorandum Of Law In Support Of Motion For Default Judgment p.1)(R. p.4, lines 22-26; p.5, lines 1-6)

In South Carolina, negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause to set aside entry of default. See *Vanvolkenburg*, 312 S.C. at 375, 440 S.E.2d at 410 (indicating, prior to *Sundown*, that the imputed negligence of an attorney to a defaulting litigant is not good cause). Similarly, our supreme court has recognized subsequent to *Sundown* that the good cause standard of Rule 55(c), encompasses a degree of reasonableness. See *Richardson v. P.V., Inc.*, 383 S.C. 610, 618-19, 682 S.E.2d 263, 267 (2009)

(finding, after Sundown, that negligence on the part of an insurance company or attorney will be imputed to a defaulting litigant and negligence does not constitute good cause to relieve an appellant from entry of default); see also Black's Law Dictionary 1133 (9th ed. 2009) (defining negligence as the failure to act reasonably under a specific set of circumstances). It stands, therefore, that because unreasonable conduct does not amount to good cause, an unreasonable explanation for defaulting is not a satisfactory explanation that serves a sufficient interest of justice. (Plaintiff's Memorandum Of Law In Support Of Motion For Default Judgment p.1-2) (R. p.5, lines 7-19) Even if the Court decided to relieve the Respondent from default, based on the Respondent's failure to also respond to the Appellant's Requests For Admissions they have admitted to Negligence and Fraud so they would not have a meritorious defense.

II. BECAUSE NO NOTICE WAS GIVEN OR ANY HEARING HELD THE CASE SHOULD NOT HAVE BEEN DISMISSED BECAUSE THE APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED AND DENIED.

The requirements of procedural due process, usually deemed to apply in a contested case or hearing which affects an individual's property or liberty interest, generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to meaningful judicial review. *In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003); *S.C. Dept. of Soc Servs v Wilson*, 352 S.C. 445, 452-53, 574 S.E.2d 730, 733-34 (2002); *Cameron Barkley Co v S.C. Procurement Review Panel*, 317 S.C. 437,

440, 454 S.E.2d 892, 894 (1995); *Brown*, 301 S.C. at 328-29, 391 S.E.2d at 867. "Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). Procedural due process requirements are not technical; no particular form of procedure is necessary. *In re Vora*, 354 S.C. at 595, 582 S.E.2d at 416. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Wilson*, 352 S.C. at 452, 574 S.E.2d at 733 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972)). The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. *S.C. Dept. of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). To prevail on a claim of denial of due process, there must be a showing of substantial prejudice. *Palmetto Alliance, Inc v S C Pub. Serv. Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984). In the instant case there was and is not a pending Motion To Dismiss on the docket for the Appellant to prepare for or to have received notice of. Therefore Appellant has no idea why the instant case was Dismissed or why Appellant's due process rights were so blatantly denied. (Plaintiff's Memorandum Of Law In Support Of Motion For Reconsideration On Order To Dismiss p.2)(R. p.6, lines 3-25)

Although the order may be appropriate, it is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are affected. *Insurance Co. of North America v Hyatt*, 290 S.C. 159, 348 S.E. (2d) 532 (1986). If the judgment or order is taken without notice, the absent party may rightly ignore it and assume that no court will enforce it against his person. *Insurance Co. of North America v*

Hyatt, supra [citing *Koester v Citizens' Publishing Co.*, 154 S.C. 154, 151 S.E. 452 (1930)].

In the instant case there was and is no pending Motion To Dismiss on the docket for the Appellant to have prepared for or to have received Notice of. The Respondent failed to respond to all initial requests for discovery and failed to file any responsive pleading or motion in opposition to the Appellant's Amended Complaint. All requests for admissions were deemed admitted and the Respondent was in Default. Appellant properly filed an Affidavit of Default and also filed a Motion for Default Judgment, prior to the Order of Dismissal being filed. If Default was not properly filed then a Failure To Prosecute Order could have been entered and case Dismissed.

Now under the unique facts and circumstances of this case, I suggest the Court follow the rule set forth in *Sijon v Green*, 289 S.C. 126, 345 S.E. (2d) 246 (1986). In *Sijon*, the Court held that where a party litigant denies receiving notice of a hearing with finality, and the judgment roll or record does not reflect evidence of such notice, that party is entitled to a judicial determination as to whether or not they received proper notice. If it is determined that the party received such notice, then judgment would stand. If not, the objecting party would be entitled to a new trial.

(Plaintiff's Reply To Defendant's Memorandum In Opposition Of Plaintiff's Motion For Reconsideration p. 1-2)(R. p.7, lines 9-24; p.8, lines 1-3)

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be sufficient to enable the recipient to determine what is being proposed and what he must do to prevent the deprivation of his interest. The decision maker's

conclusion must rest solely on the legal rules and evidence adduced at the hearing. Some form of hearing is required before an individual is finally deprived of a property or liberty interest. It is often difficult to define "due process.", but it is not difficult for attorneys and judges to agree that if due process means anything, it means that a litigant must be given an opportunity to meet an issue before an adverse determination is made.

III. THE RESPONDENT DID NOT FILE ANYTHING IN THIS CASE ON AUGUST 27, 2012 OR ANY DATE AFTER THE AMENDED COMPLAINT WAS FILED.

There was not a Motion To Dismiss on the docket so I do not understand how or why the Respondent stated in their Memorandum In Opposition To Appellant's Motion For Reconsideration, "*For the reasons explained in Defendant's Motion to Dismiss, filed on August 27, 2012, and incorporated herein, Defendant opposes Plaintiff's Motion For Reconsideration*" I have included a copy of the docket which clearly shows the only document filed on August 27, 2012 was the Appellant's Motion For Summary Judgment. (Plaintiff's Brief In Support Of Motion For Summary Judgment, Exhibit D)(R. p.8, lines 23-26; p.12)

The Respondent is well represented by experienced legal counsel from one of the largest law firms in the United States of America. They had no issue responding the next day when the Original Complaint was served. Where an attorney is merely neglectful, the general rule applies and relief from judgment is unavailable. Concerning a claim of attorney neglect, the general rule is that "the neglect of the attorney is attributable to the client." *Graham v. Town of Loris*, 272 S.C. 442, 451, 248 S.E.2d 594, 598 (1978). In discussing this general rule, the *Graham* court quoted approvingly from *Simon v Flowers*, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957):

Although a wide discretion is vested in courts to set aside or vacate judgments because of the neglect, misconduct or inadvertence of counsel employed in the case, the general rule undoubtedly is that the neglect of the attorney is the neglect of the client, and that no mistake, inadvertence or neglect attributable to the attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. The acts and omissions of the attorney in such case are those of the client.

In *Simon*, 231 S.C. 545, 99 S.E.2d 391, defense counsel failed to answer a complaint because he was involved in a multi-day trial. As a result of defense counsel's failure to answer the complaint, the court entered a default judgment against defendant. On appeal, our supreme court was sympathetic to defense counsel's plight but nevertheless adhered to the general rule and imputed the neglect of counsel to his client. The court explained:

[T]he default was the result of forgetfulness on [the attorney's] part which in turn was due to pressure of his business in the trial of cases.... In the crowded routine of a busy lawyer's life a mistake such as the record here discloses is understandable; but it entails the penalty of default under strict enforcement of the rule of procedure, and the trial court's refusal to forgive it affords no basis for reversal.

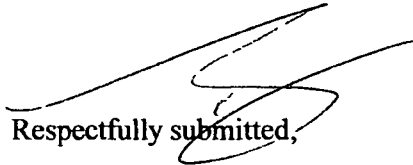
Id at 550-51, 99 S.E.2d at 394. (Plaintiff's Brief In Reply to Defendant's Memorandum In Opposition To Plaintiff's Motion For Reconsideration p. 2)(R. p.9, lines 11-29; p.10, lines 1-5)

CONCLUSION

I understand that I am not a lawyer but I should still be treated fairly. This appeal is clear. No notice was given, no hearing was held so that I could defend myself, and the order(s) did not give any reasoning behind the dismissal. The Respondent admitted to negligence and was in default by failing to respond to the Amended Complaint. The docket proves all of this. Motion

To Reconsider included newly discovered evidence, Amended Complaint included new causes of action from previous cases, and ALL previous cases were Dismissed WITHOUT PREJUDICE.

For the reasons stated, this Court should reverse the Order of the Circuit Court and allow the Entry Of Default to be entered.


Respectfully submitted,

February 21, 2013

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CERTIFICATE OF COUNSEL IN FINAL BRIEF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

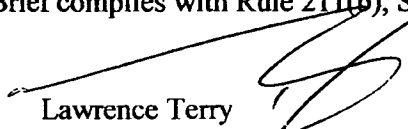
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The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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FEB 21 2013

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Court of Appeals Tracking No. 2013-000340

Lawrence Terry, ... Appellant,

v.

Allen University, ... Respondent.

AMENDED FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR IN FINDING THAT APPELLANT HAD BEEN ENJOINED FROM BRINGING THIS ACTION?
- II. DID THE TRIAL COURT ERR IN FINDING THIS ACTION WAS BARRED BY *RES JUDICATA*?
- III. DID THE TRIAL COURT ERR IN DISMISSING THIS ACTION BECAUSE APPELLANT FAILED TO STATE FACTS SUFFICIENT TO STATE A CAUSE OF ACTION?
- IV. DID THE TRIAL COURT VIOLATE APPELLANT'S DUE PROCESS RIGHTS?
- V. DID THE TRIAL COURT ERR IN FAILING TO ENTER A DEFAULT JUDGMENT?

STATEMENT OF THE CASE

Appellant Lawrence Terry ("Appellant") brought this action against Respondent Allen University ("Allen") on July 16, 2012 alleging Allen failed to include his fall semester 2003 grades on the transcript Allen sent to Midlands Technical College ("Midlands Tech") in early December 2003 but later added his fall semester 2003 grades to his transcript. (Summons and Complaint, 7/16/2012; A.R.14-30)¹

This is the fifth lawsuit Appellant has brought pertaining to his allegation that Allen somehow harmed him by not including his fall semester 2003 grades in the transcript sent to Midlands Tech. His first lawsuit, filed in federal court, was dismissed for lack of jurisdiction. (Order Granting Allen University's Motion to Dismiss and Motion for Sanctions, A.R. 1-10) Appellant voluntarily dismissed his second lawsuit after being informed by the court that his claims were barred by the statute of limitations (*Id.*) His third lawsuit was dismissed for failure to show consideration. (*Id.*)

Appellant subsequently filed a fourth lawsuit alleging claims for intentional infliction of emotional distress, constructive fraud, breach of trust, negligent supervision, silent fraud, and libel Allen moved to dismiss this lawsuit and asked the court to award sanctions, including an injunction prohibiting Appellant from bringing further actions based on these facts. (*Id.*) The court subsequently dismissed this lawsuit

¹ Appellant filed the Record on Appeal on February 21, 2013, prior to receiving Respondent's Designation of Matter to Be Included in the Record on Appeal Upon receiving Respondent's designations, Appellant prepared an Appendix to the Record on Appeal and filed it on August 22, 2013. To distinguish between the two Records on Appeal, Respondent will refer to the February 21, 2013 Record as "R." and the August 22, 2013 Record as "A.R."

and enjoined Appellant from bringing further actions based on these facts. (*Id.*) When Appellant subsequently filed motions to alter or amend the judgment and for leave to amend the complaint, the court denied those motions and instructed Appellant that he could not file any further motions and must proceed to the appellate court level for any further disposition of the case. (July 9, 2012 Order; A.R. 13)

Instead of filing an appeal of the dismissal and injunction issued in the fourth lawsuit, Appellant filed the current action, his fifth complaint, alleging claims of libel, negligence, intentional infliction of emotional distress, constructive fraud, and silent fraud. (Summons and Complaint, July 16, 2012, A.R. 14-30.) In response, Allen filed Motions to Show Cause, for Sanctions, and to Dismiss requesting the court to: (1) hold Plaintiff in contempt for failing to adhere to the injunction; (2) assess sanctions in the form of fees and costs, and (3) dismiss on the basis of *res judicata* and for failure to allege facts sufficient to state a cause of action. (Defendant's Motions to Show Cause, for Sanctions, and to Dismiss; A.R. 40-45.)

Appellant subsequently filed an Amended Complaint alleging only claims for negligence and intentional infliction of emotional distress pertaining to the same facts as alleged in his original Complaint. (Plaintiff's Amended Complaint; A.R. 31-39.) On September 17, 2012, the court dismissed the lawsuit with prejudice. (Sept. 17, 2012 Order; R. 2.)

Respondent subsequently filed motions after the dismissal for summary judgment and for entry of default. (Plaintiff's Motion for Summary Judgment, A.R. 55-57; Plaintiff's Entry for Default, A.R. 58-61.) Appellant filed a motion for

reconsideration which the Court denied on February 11, 2013. (Plaintiff's Motion for Reconsideration; A.R 62-65; Feb 11, 2013 Order; R 1.)

FACTS

Appellant is a former student at Allen, having attending the college from August 24, 2002 through December 12, 2003. On December 9, 2003, at Appellant's request, Allen sent a copy of his transcript to Midlands Technical College ("Midlands Tech") (Amended Complaint; R 31-39). At some later unspecified date, Appellant opened sealed envelopes he had from Allen and Midlands Tech containing his official transcripts and discovered that the transcript that Allen had sent to Midlands Tech on December 9, 2003, did not contain his fall semester 2003 grades, whereas subsequent transcripts did contain those grades. (*Id.*) According to Appellant, the addition of his fall semester 2003 grades in subsequent transcripts sent by Allen caused his GPA to drop. (*Id.*) On December 14, 2009, Appellant went to Allen to dispute his fall semester 2003 grades and Allen agreed to investigate the issue. (*Id.*)

Allen's Registrar, Marilyn Young, reviewed Appellant's student file and found several documents Appellant had signed stating he had been a student at Allen during the 2003 fall semester. (*Id.*) Ms. Young also found several documents, signed by Appellant, showing that he had received veteran's benefits for his attendance during the fall 2003 semester. Ms. Young explained to Appellant that because he had requested his transcript be sent to Midlands Tech before the semester ended, his transcript was necessarily sent without his fall semester 2003 semester grades. Once the fall semester 2003 grades were reported, Appellant's transcript was updated to reflect those grades. (*Id.*)

ARGUMENT

Appellant requests the Court to set aside the dismissal of his lawsuit on the grounds that the court: (1) failed to give notice or hold a hearing prior to dismissal; (2) violated his due process rights, (3) erred in dismissing the case with prejudice; (4) erred in refusing to enter a default judgment; and (5) erred in failing to give a clear explanation for the reasons for the dismissal. (Appellant's Brief p. 1.) These arguments lack merit for several reasons. First, Appellant cannot challenge the dismissal of this lawsuit because he was previously enjoined from filing the action and he did not appeal the injunction. Second, Appellant had notice and many opportunities to be heard and thus the court did not violate his due process rights. Lastly, the court did not err in failing to enter a default judgment because Allen was never in default.

I. APPELLANT HAS BEEN ENJOINED FROM BRINGING THIS ACTION.

Concurrent with dismissing Appellant's fourth lawsuit, the court also enjoined Appellant from bringing any further actions against Allen based on the same facts. Appellant did not appeal this order and therefore, the order enjoining him is the law of the case. *See Bone v. U.S. Food Serv.*, 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012) (holding that the law of the case doctrine applies where a party does not challenge an issue on appeal when there has been an opportunity to do so); *Ables v. Gladden*, 378 S.C. 558, 569, 664 S.E.2d 442, 448 (2008) ("An unappealed order, right or wrong, is the law of the case").

Therefore, because Appellant had been previously enjoined from bringing this lawsuit, and he did not appeal the injunction, the court correctly dismissed this action.

II. APPELLANT'S CLAIMS OF NEGLIGENCE AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS ARE BARRED BY RES JUDICATA BECAUSE THESE CLAIMS WERE RAISED AND DISMISSED IN HIS PREVIOUS LAWSUIT.

Appellant's claims of negligence and intentional infliction of emotional distress were raised in his fourth lawsuit, which the court dismissed on *res judicata* grounds (June 20, 2012 Order; A.R. 1-11.) Appellant did not appeal the dismissal of his fourth lawsuit and therefore the dismissal based on *res judicata* is likewise the law of the case. *See Ables v. Gladden*, 378 S.C. 558, 569, 664 S.E.2d 442, 448 (2008).

Res judicata, or claim preclusion as it is sometimes called, bars plaintiffs from pursuing successive suits where the claim was litigated or could have been litigated. *Crestwood Gold Club v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (1997). It is generally recognized that a dismissal with prejudice indicates an adjudication on the merits. *See Nunnery v. Brantley Constr. Co.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986) (holding that where an action has been dismissed with prejudice, the judgment operates in a subsequent action involving the same subject matter, so as to conclusively settle not only all matters litigated in the earlier proceedings, but also all matter which might have been litigated therein), *Seel v. Home Dept USA, Inc.*, 2010 U.S. Dist. LEXIS 53131 (D.S.C. May 14, 2010) (holding a dismissal under Rule 12(b)(6) is a final determination on the merits and is accorded *res judicata* effect).

Because the causes of action alleged by Appellant in this lawsuit all arose from the same set of facts alleged in his fourth lawsuit, which was dismissed on *res judicata* grounds, the court appropriately dismissed the current lawsuit on *res judicata* grounds also.

III. THE COURT APPROPRIATELY DISMISSED THE LAWSUIT BECAUSE APPELLANT FAILED TO PLEAD FACTS SUFFICIENT TO STATE A CAUSE OF ACTION.

Appellant alleges Allen was negligent and intentionally caused him severe emotional distress by sending his transcript to Midlands Tech without his fall semester 2003 grades included. (Amended Complaint, A.R. 31-39.) These claims were alleged and dismissed by the court in Appellant's fourth lawsuit. Because Appellant did not appeal the dismissal of his fourth lawsuit, the court's dismissal of these claims is the law of the case

In addition, claims for negligence and intentional infliction of emotional distress are governed by the three-year statute of limitations found in S.C. Code Ann. § 15-3-530. Therefore, Appellant's claims are barred because the alleged acts occurred in December 2003 and he did not file this lawsuit until July 16, 2012.

To the extent Appellant's claims are not barred by the statute of limitations, he failed to plead facts sufficient to state a cause of action for either negligence or intentional infliction of emotional distress.

To state a claim for negligence, Appellant must show that Allen owed a duty of care to him, that Allen breached that duty by a negligent act or omission, and damages proximately resulting from the breach of duty. *Grier v. AMISUB of South Carolina, Inc.*, 397 S.C. 532, 537, 725 S.E.2d 693, 696 (2012). Proximate cause requires proof beyond just the act or omission in question and concerns whether it is the "but for" cause of a plaintiff's injuries and whether the harm was foreseeable. *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 88, 502 S.E.2d 78, 82 (1998).

Appellant has failed to show how Allen breached any duty to him. For example, he claims that even though he requested Allen send his transcript to Midlands Tech on December 8, 2003, Allen should have waited until the semester grades had been added before sending it. (Amended Complaint; R. 31-39.) Allen, however, had no duty to Appellant to wait to send his transcript. Allen was only doing as Appellant had requested and Appellant cannot request Allen perform an act, such as sending his transcript, and then claim negligence, when Allen performed as requested.

Furthermore, Appellant has not alleged that any such alleged breach of duty resulted in damages to him. In fact, his GPA on his transcript without the fall 2003 semester grades was higher than the subsequent transcripts that did include his fall 2003 grades. Therefore, he suffered no damages as a result of Allen sending his transcript without the fall 2003 semester grades on it. Therefore, Appellant's claim for negligence was appropriately dismissed.

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

It is unclear to Allen exactly what alleged act Appellant is claiming caused him emotional distress—Allen not including his fall 2003 semester grades in the transcript sent in December 2003, or Allen including his fall grades on subsequent transcripts. Neither alleged act, however, qualifies as conduct that was “extreme and outrageous” and “atrocious and utterly intolerable.” Again, Allen was merely doing as Appellant requested and he has failed to show that Allen acted in any wrongful way that would have caused him severe emotional distress. Therefore, the court appropriately dismissed his claim for the intentional infliction of emotional distress.

IV. APPELLANT’S DUE PROCESS RIGHTS WERE NOT VIOLATED.

Appellant also claims that the court violated his procedural due process rights by dismissing his lawsuit without giving notice or holding a hearing. The court’s dismissal of his lawsuit, however, did not affect Appellant’s property or liberty interests and therefore does not implicate his procedural due process rights.

Furthermore, Appellant’s claim that he was given no notice of the pending motion to dismiss is not correct. Appellant responded to Allen’s Motions to Show Cause, for Sanctions, and to Dismiss on August 17, 2012. (Plaintiff’s Reply to Motions to Show Cause, for Sanctions, and to Dismiss, A.R. 40-45.) Therefore, Appellants argument that he did not have notice is incorrect.

In addition, a court is not required to hold a hearing prior to ruling on a motion. *See Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 36-37, 644 S.E.2d 663, 675 (2007) (finding the trial court’s denial of the appellant’s memoranda without a hearing did not deny the appellant reasonable opportunity to present its evidence to aid the

court's determination). Appellant had multiple opportunities to be heard and to present evidence as demonstrated by the multiple motions and memoranda he filed.

Therefore, because Appellant had notice and the opportunity to present evidence, the court did not err in granting Allen's motion to dismiss without a hearing.

V. ALLEN WAS NOT IN DEFAULT.

As his final ground for appeal, Appellant argues that the court erred in not holding Allen in default, apparently based on his belief that Allen had failed to respond to his Amended Complaint or answer his discovery requests. (Appellant's Brief at 2.)

The only difference between his original Complaint and his Amended Complaint was his deletion of three causes of action; however, his claims for negligence and intentional infliction of emotional distress, plead in the original Complaint, remained in his Amended Complaint. Therefore, Allen was not required to file a new motion to dismiss simply because Appellant filed an Amended Complaint. *See* 6 Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, *Federal Practice and Procedure-Civil* § 1476 (2010) ("If some of the defects raised in the original motion remain in the new pleading, the court simply may consider the motion as being addressed to the amended pleading.").

Appellant further argues that the Court should hold Allen in default for not responding to his discovery requests. (Appellant's Brief 2-4.) A party's failure to respond to discovery requests, however, is not grounds for finding a party in default. Rule 55, S.C.R.C.P. Furthermore, at the time Appellant served discovery requests, he was in contempt of the court's injunction and therefore, Allen had no obligation or duty to respond to the discovery requests

CONCLUSION

The trial court did not err in dismissing Appellant's Amended Complaint because Plaintiff had been enjoined from bringing additional lawsuits based on the same facts as alleged in his four previous lawsuits. Appellant's claims are also barred by *res judicata*. Furthermore, Appellant failed to allege facts sufficient to support his claims for negligence and intentional infliction of emotional distress. In addition, the trial court did not violate Appellant's due process rights because he had notice and an opportunity to be heard prior to his lawsuit being dismissed. Finally, because Allen was not in default, the court did not err by not holding Allen in default.

Therefore, the Court should affirm the trial court's dismissal of Appellant's lawsuit.

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October 3, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Court of Appeals Tracking No. 2013-000340

Lawrence Terry, ... Appellant,

v.

Allen University, ... Respondent

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Amended Final Brief complies with Supreme Court Order dated August 13, 2007 regarding personal identifiers and sensitive information.

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APPEAL FROM RICHLAND COUNTY
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Lawrence Terry, ... Appellant,

v.

Allen University, ... Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Amended Final Brief complies with Rule 211(b), SCACR, with the exception of a footnote added to explain the references to the Record and the deletion of references in compliance with the Court's Order of August 9, 2013

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REPLY BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

Lawrence Terry,

Appellant.

REPLY BRIEF OF APPELLANT

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STATEMENT OF THE CASE

On July 16, 2012, Lawrence Terry brought this action alleging LIBEL, NEGLIGENCE, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, CONSTRUCTIVE FRAUD, AND SILENT FRAUD against Allen University. Allen was served the Original Complaint, Summons, and Initial Requests For Admissions on July 30, 2012 and one day later on July 31, 2012 Allen University responded by filing a Motion To Dismiss.

On August 10, 2012 the Appellant properly filed and served an Amended Complaint to only allege Negligence and Intentional Infliction Of Emotional Distress, so not to waste the court's time. On August 27, 2012 Appellant filed a Motion For Summary Judgment.

An Affidavit Of Default was filed on September 11, 2012 after the Respondent failed to file any response to the Amended Complaint. On September 14, 2012 the Appellant properly filed a Motion For Default Judgment.

Without any prior notice or a hearing, The Honorable Judge L. Casey Manning abruptly filed a Form Order Dismissing the case With Prejudice on September 17, 2012. A Motion For Reconsideration was filed on September 18, 2012 by the Appellant and additional documents in support of said motion were also later filed. Appellant made it clear in said motion that no notice was provided or a hearing. Reconsideration was denied February 11, 2013. Both Form Orders only stated that the case was dismissed but did not provide any explanation or reasoning. The Clerk Of Court, without motion or order, corrected the Respondent negligent actions by refiling their 8/8/2012 Motion For Protective Order, 8/28/2012 Motion For Protective Order, and 8/28/2012 Renewed Motion to Show Cause. These additions would completely change the case.

ARGUMENT

I. BECAUSE NO NOTICE WAS GIVEN OR A HEARING HELD THE CASE SHOULD NOT HAVE BEEN DISMISSED BECAUSE THE APPELLANT'S DUE PROCESS RIGHTS WERE VIOLATED.

It is often difficult to define "due process.", but it is not difficult for attorneys and judges to agree that if due process means anything, it means that a litigant must be given an opportunity to meet an issue before an adverse determination is made. "It is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are to be affected." Tryron Fed. Sav. & Loan Ass'n v. Phelps, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). Generally, a person against whom a judgment or order is taken without notice may rightly ignore it and may assume that no court will enforce it against his person or property. *Id.* The requirements of due process not only include notice, but also include an opportunity to be heard in a meaningful way, and judicial review. Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 58 L.Ed. 1363 (1914) ("The fundamental requisite of due process of law is the opportunity to be heard."); S.C. Dep't of Soc. Servs. v. Holden, 319 S.C. 72, 78, 459 S.E.2d 846, 849 (1995).

As to Appellant's right to a hearing on the circuit court's abrupt dismissal: See Dangerfield v. State, 376 S.C. 176, 179, 656 S.E.2d 352, 353-54 (2008) ("Due process considerations apply in contested cases or hearings which affect an individual's property or

liberty interests as contemplated by the federal and state constitutions. The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review.") (internal citations omitted) (emphasis added); see also State ex rel. McLeod v. Brown, 278 S.C. 281, 284, 294 S.E.2d 781, 782 (1982) ("We believe that an order substantially affecting a party's rights should not be made in a case without notice to the party prejudiced by it and an opportunity to be heard.") (emphasis added).

II. RESPONDENT SHOULD HAVE PROPERLY RAISED THEIR ISSUES UPON MOTION TO THE LOWER COURT INSTEAD OF NOW.

The Respondent failed to respond to the Amended Complaint. The Respondent is attempting to argue their points now in the Appeals Court when they should have properly raised their concerns by motion or during a hearing in the lower court, but neither was provided. Appellant will not entertain all of their current issues but will state that the order of dismissal only had two sentences with no reasoning or explanation behind the dismissal. The order denying the motion for reconsideration only had one sentence with no reasoning or explanation behind the dismissal. Both attached exhibits A & B. The Appellant included newly discovered evidence in his Motion To Reconsider that also shows negligence on the part of Allen University, The Family Educational Rights and Privacy Act. Appellant appealed the lower court's decision as the order

directed. The Respondent has agreed that no hearing was held. The Appellant properly replied and responded to everything that was submitted according to the docket.

**III. RESPONDENT WAS NEGLIGENT IN HANDLING THEIR CASE
AND DID NOT FOLLOW THE RULES OF CIVIL PROCEDURES AS
REQUIRED.**

The Respondent responded to the initial complaint 1 day after it was served and that response had all of the proper information for the clerk of court to file it in this case. Along with the initial Complaint and Summons were the Appellant's first Requests For Admissions. It was first brought to the Circuit Court's and Respondent's attention on 9/11/2012 in the Appellant's Brief in Support of Motion For Summary Judgment that the Respondent failed to respond to the Request For Admissions and that all requests were deemed admitted, attached exhibit C. Respondent did not reply or motion the court for any type of relief from the failure to respond. In the Motion for Default Judgment filed on 9/14/2012 Appellant brought it to the court's attention again that the Respondent failed to respond to the Amended Complaint and Requests For Admissions. Then on 9/18/2012 the Appellant AGAIN brought it to the Circuit Court's and the Respondent attention in the Motion For Reconsideration that no response to the Amended Complaint and Requests For Admissions were filed and yet the Respondent still did not motion the court relief or provide an explanation for the failures. The Appellant provided screenshots of the docket as proof. Appellant went on to file 7 more documents with the court between September 19, 2012 and December 13, 2012 reiterating the material facts that Allen University

failed to properly file any response or reply to the Requests For Admissions and Amended Complaint on the docket.

Now in the Respondent's Initial Brief they make claims that they did file responses to the Requests For Admissions and Amended Complaint. On page 3 of their Initial Brief Allen University even attempts to blame the clerk of court for their negligence in handling their case by stating at the bottom of the page, "Allen notes that apparently the clerk of court initially filed the renewed motions with Appellant's fourth lawsuit, rather than the present lawsuit. When brought to the clerk's attention, the clerk refiled the motions with the present action." This change was made in February 2013, five months later. As I previously stated, I pointed out the fact that the Respondent failed to reply or respond approximately 9 times in multiple documents filed with the court between September to December 2012. In the PLAINTIFF'S BRIEF IN REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION filed 10/8/2012, the Appellant made the Respondent's negligence in handling their case very clear by specifically stating on page 1 line 24, "*Now I just noticed that the Defendant has negligently used multiple case numbers on their Memorandum In Opposition and if the Defendant has done the same on previous allegedly submitted documents then that would make them grossly negligent in handling their case and with no fault of the Clerk of Court or the Plaintiff.*" That document is attached exhibit D. After receiving this notice of their negligence again the Respondent did not motion the court for any relief. Even the letter the Respondent just sent to the Appellant and Court of Appeals dated June 13, 2013 references "Civil Action No. 2010-CP-40-02301", attached exhibit E. The Appellant and Clerk Of Court do not have time to monitor the many errors of the Respondent or their seasoned legal team.

Our Court of Appeals have long held, "a party has a duty to monitor the progress of his case." Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct.App.2001) (quoting Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct.App.1988)).

IV. THE APPELLANT WOULD BE DEEPLY PREJUICE IF THE FRAUDLENT CHANGES MADE TO THE DOCKET ARE ALLOWED TO REMAIN.

Allen University's negligence was clearly brought to their attention and the court's attention on October 8, 2012. The Respondent stated in their Initial Brief, "When brought to the clerk's attention, the clerk refiled the motions with the present action." but yet the docket shows no motion requesting the court make these changes. Rule 7(b)(1), SCRCP, states: "An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion."

The Case History for this case, attached exhibit F, states that these changes were made February 22, 2013, approximately five months after it was first brought to both the court's and Respondent's attention. The Respondent did not discover this until 6/14/2013. The Clerk Of Court, without motion or order, corrected the Respondent negligent actions by refileing their 8/8/2012 Motion For Protective Order, 8/28/2012 Motion For Protective Order, and 8/28/2012 Renewed Motion to Show Cause. The Appellant was not given any notice of these changes and the negligent addition of those invalid motions to the docket would completely change the dynamics of the case as a whole and truly prejudice the Appellant who has followed all of the rules of civil procedures while the Respondent has not. The Respondent is well represented by experienced legal counsel from one of the largest law firms in the United States of America. Where an attorney is merely neglectful, the general rule applies and relief from judgment is

unavailable. Concerning a claim of attorney neglect, the general rule is that "the neglect of the attorney is attributable to the client." *Graham v. Town of Loris*, 272 S.C. 442, 451, 248 S.E.2d 594, 598 (1978). In discussing this general rule, the *Graham* court quoted approvingly from *Simon v. Flowers*, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957):

Although a wide discretion is vested in courts to set aside or vacate judgments because of the neglect, misconduct or inadvertence of counsel employed in the case, the general rule undoubtedly is that the neglect of the attorney is the neglect of the client, and that no mistake, inadvertence or neglect attributable to the attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. The acts and omissions of the attorney in such case are those of the client.

In *Simon*, 231 S.C. 545, 99 S.E.2d 391, defense counsel failed to answer a complaint because he was involved in a multi-day trial. As a result of defense counsel's failure to answer the complaint, the court entered a default judgment against defendant. On appeal, our supreme court was sympathetic to defense counsel's plight but nevertheless adhered to the general rule and imputed the neglect of counsel to his client. The court explained:

[T]he default was the result of forgetfulness on [the attorney's] part which in turn was due to pressure of his business in the trial of cases.... In the crowded routine of a busy lawyer's life a mistake such as the record here discloses is understandable; but it entails the penalty of default under strict enforcement of the rule of procedure, and the trial court's refusal to forgive it affords no basis for reversal.

Id. at 550-51, 99 S.E.2d at 394.

**V. IF NOT FOR THE CIRCUIT COURT'S ERROR IN DISMISSING
THE CASE THEN THE ENTRY OF DEFUALT WOULD HAVE
PROCEEDED AGAINST ALLEN UNIVERSITY.**

In the case of Morgan v. State Farm Mutual Insurance Co., 229 S.C. 44, 91 S.E. (2d) 723, 724, the plaintiff made a motion for permission to enter up a default judgment against the Insurance Company, and it applied for extension of time in which to file an answer. The court entered an order refusing the extension of time in which to file an answer and authorized the plaintiff to proceed with the entering up of a default judgment. The Company appealed. The court, in disposing of the appeal, said:

"And his conclusion thereabout will not be disturbed unless there is a clear showing of abuse of discretion. While the motion in the instant case was made prior to the entering up of the judgment and not after such judgment had been entered up as in most cases, the reasoning and language of the Court in such cases is apropos here. See, Poston v. State Highway Department, 192 S.C. 137, 5 S.E. (2d) 729; Pruitt v. Burns, 212 S.C. 325, 47 S.E. (2d) 785; Savage v. Cannon, 204 S.C. 473, 30 S.E. (2d) 70; Brown v. Nix, 208 S.C. 230, 37 S.E. (2d) 579; Marthers v. Hurst, 226 S.C. 621, 86 S.E. (2d) 581."

o

Quoting again from the case of Morgan v. State Farm Mutual Insurance Company, *supra*, Mr. Associate Justice Stukes, now Chief Justice of the Supreme Court, in a concurring opinion, used language very appropriate to the matter under consideration. He said: "Neglect is shown, but no excuse for it." [229 S.C. 44, 91 S.E. (2d) 725.]

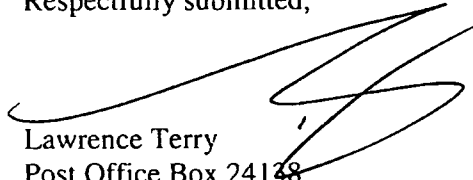
Although the entry of default was properly filed but not yet entered it is still clear that "Neglect is shown" by the Respondent's multiple failures and negligence in handling their case, "but no excuse for it." There were no pending motions by the Respondent on the docket and there was no reasoning or excuse to dismiss the case without first hearing all the other pending motions or at least hold a hearing. Allen was in Default. The apparent errors in correcting the Respondent's multiple filing mistakes truly prejudice the Appellant by changing the complete dynamics of this case. The Appellant respectfully request that this court address this issue too.

CONCLUSION

Because both parties agree on the due process violation with the Respondent making it very clear in their letter to this Appeals Court dated February 25, 2013(attached Exhibit G) that, **“there was no hearing or other proceedings in this case”**, the circuit court's order of dismissal should be reversed for failure to conduct a hearing. The Respondent did not answer or otherwise responded to the Amended Complaint. If the Entry of Default and Appellant's Motion For Default Judgment is not granted, Appellant will likely be without other recourse for recovery and Appellant will be forced to suffer continued irreparable injuries in the form of lost reputation, lost opportunities, and goodwill everyday that the false and misleading statements remain on Appellant's student records. If not for the circuit court's error in dismissing the case then the entry of default would have proceeded and motion for default judgment granted. Appellant will truly be prejudice if this Appeals Court does not also address the status of the entry of default and error of the Clerk Of Court by correcting the mistakes of the Respondent 5 months later without a motion or an order addressing them to.

For the reasons stated, this Court should reverse the Order of the Circuit Court and allow the Entry Of Default to be entered.

Respectfully submitted,



Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
Appellant, Pro Se

June 19, 2013

Exhibit A

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-04857

Lawrence Terry

Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC Vol. Nonsuit;
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

THIS CAUSE OF ACTION IS DISMISSED WITH PREJUDICE. PLAINTIFF MAY APPEAL BUT MAY NOT FILE ANOTHER CAUSE OF ACTION REGARDING THIS MATTER WITH THIS COURT.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code 2061

Date 9/5/12

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Sept, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Jeanette W. McBride

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-4857

Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

PLAINTIFF'S MOTION FOR RECONSIDERATION IS HEREBY DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code 2061

Date 2/8/13

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Feb, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Janette W. McBride

Exhibit C

IN THE COURT OF COMMON PLEAS FOR THE STATE OF South Carolina
IN AND FOR Richland COUNTY

Lawrence Terry,

Plaintiff,

vs.

Allen University,

Defendant,

ca# 2012-CP-40-04857

RECEIVED

JUN 19 2013

SC Court of Appeals

JEANETTE W. HERRIDGE
C.C.P. & G.S.

2012 SEP 11 AM 8:33

FILED

PLAINTIFF'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

In support of Plaintiff's Motion For Summary Judgment the Plaintiff states the following facts:

1. On August 10, 2012 Plaintiff filed an Amended Complaint dropping Libel, Silent Fraud, and Constructive Fraud as causes of actions leaving only Negligence and Intentional Infliction Of Emotional Distress so not to waste the Court's time.
2. Plaintiff continues to suffer irreparable injury in the form of **lost reputation**, lost opportunities, and goodwill everyday that the false and misleading statements remain on Plaintiff's student records.
3. The Defendant recently stated on page 3 line 8 of their Motion To Dismiss that, "**When this mistake was discovered, his transcript was corrected...**" That statement shows acceptance of one occasion of gross negligence and attempted fix.
4. **Cornell Law defines Negligence** as: "A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one's previous conduct)." Allen University admitted, Exhibit B attached to Complaint, that the previous staff was Negligent in handling my student records. After admitting that material fact the Defendant still intentionally refused to help correct the previous staffs' misconducts.

5. **Definition from Nolo's Plain-English Law Dictionary:** "Failure to exercise the care toward others that a reasonable or prudent person would use in the same circumstances or taking action that such a reasonable person would not, resulting in unintentional harm to another. Negligence forms a common basis for civil litigation, with plaintiffs suing for damages based on a variety of injuries, from physical or property damage to business errors and miscalculations." The Defendant admitted, exhibit B attached to Complaint, they made business errors and miscalculations in regards to my educational background.
6. Plaintiff served Request For Admissions on 7/30/2012. The Defendant has failed to respond (Exhibit D attached) and pursuant SCCRP 36 all request are deemed admitted. Some of the admitted requests are as follows:

#6. Admit that You were negligent in handling the Plaintiff's student records.

#7. Admit that You were negligent either presently or in the past with handling some students' transcripts.

#8. Admit that You made an error with handling the Plaintiff's 2007 transcript.

#12. Admit that You have been negligent in handling financial aid money within the past 12 years.

#15. Admit that You have known that Your previous staff were not keeping accurate records.

#18. Admit that You have known that Your Business Office was negligent in handling financial aid money.

#19. Admit that by not disclosing the fact You have known of false grades being published on transcripts, You committed fraud.

#20. Admit that for some unknown reason false grades were being published on the Plaintiff's 2007 transcript.

#21. Admit that the Plaintiff's reputation was harmed because of the error on his 2007 transcript made by You in a reasonably foreseeable way.

#22. Admit that the error on the Plaintiff's transcript was a substantial factor in causing the Plaintiff's harm.

#23. Admit that every transcript prior to 2008 of the Plaintiff had false grades on them.

#24. Admit that You know the definition of Negligent and or Negligence.

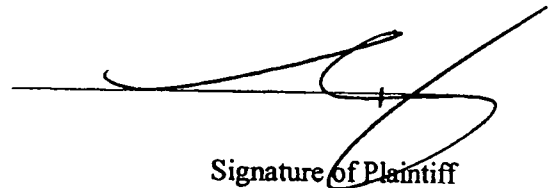
#25. Admit that You know the definition of Fraud.

7. Admittedly, the Defendant was Negligent.

I declare under penalty of perjury that the foregoing is true and correct.

September 11, 2012

Dated:


Signature of Plaintiff

Lawrence Terry, Pro Se



Richland County
Fifth Judicial Circuit
Public Index Search


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[Back](#)
[New Search](#)

Lawrence Terry vs Allen University

Case Number: 2012CP4004857

Case Type: Common Pleas

Status: Pending

Disposition:

Original Source Doc:

Judgment Number:

Court Agency: Richland County Common Pleas

Case Sub Type: Personal Injury 350

Assigned Judge:

Disposition Date

Original Case #:

Filed Date: 07/16/2012

File Type: Non-Jury

Disposition Judge:

[Parties](#) | [Judgments](#) | [Actions](#) | [Associated Cases](#) | [Tax Map Information](#)

Actions

Name	Description	Action Type	Begin Date	Completion Date
Terry, Lawrence	Request/Request for Production of Documents	Filing	07/16/2012 - 11:11:06	
Terry, Lawrence	Request/Request for Admissions	Filing	07/16/2012 - 11:11:40	
Terry, Lawrence	Summons & Complaint	Filing	07/16/2012 - 16:02:55	
Terry, Lawrence	ADR/Alternative Dispute Resolution (Workflow)	Filing	07/16/2012 - 16:08:57	
Terry, Lawrence	Affidavit	Filing	07/16/2012 - 16:14:37	
Terry, Lawrence	Interrogatories	Filing	07/16/2012 - 16:15:03	
Terry, Lawrence	Amended Coversheet For Non Jury	Filing	07/18/2012 - 08:49:52	
Terry, Lawrence	Motion For An Expedited Non Jury Trial Date	Motion	07/20/2012 - 11:31:19	
Terry, Lawrence	Motion/Motion Filing Fee	Amount	07/20/2012 - 13:21:42	
Terry, Lawrence	Verification/Verified	Filing	07/26/2012 - 09:00:54	
Allen University	Motions to Show Cause, For Sanctions, and To Dismiss	Motion	07/31/2012 - 12:12:07	
Terry, Lawrence	Amended Complaint For Negligence and Intentional Infliction	Filing	08/10/2012 - 10:11:01	
Terry, Lawrence	Service/Affidavit Of Service on Allen University	Filing	08/10/2012 - 15:34:46	
Terry, Lawrence	Statement of Additional Facts For Motion For An Expedited No	Filing	08/17/2012 - 14:17:13	
Terry, Lawrence	Reply to Defendant's Motions to Show Cause, For Sanctions, a	Filing	08/17/2012 - 14:18:16	
Terry, Lawrence	Motion For Summary Judgment	Motion	08/27/2012 - 10:50:35	
Terry, Lawrence	Motion/Motion Filing Fee	Amount	08/27/2012 - 16:54:34	

CMS 5.5.07.02

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Exhibit D

Exhibit D

IN THE COURT OF COMMON PLEAS FOR THE STATE OF South Carolina
IN AND FOR Richland COUNTY

Lawrence Terry,
Plaintiff,
vs.
Allen University,
Defendant

Case No.: 2012-CP-40-04857

PLAINTIFF'S BRIEF IN REPLY
TO DEFENDANT'S
MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S MOTION FOR
RECONSIDERATION

FILED
2012 OCT -8 PM 1:23
C.C.P. & GS.
JANETTE W. McBRIDE
CLERK

Plaintiff, Lawrence Terry, files this Brief In Reply to Defendant's Memorandum In Opposition in this case. In support of its motion, Lawrence Terry states the following:

ARGUMENT

There is not a standing Motion To Dismiss on the docket so I do not understand how or why the Defendant stated in their Memorandum In Opposition, "*For the reasons explained in Defendant's Motion to Dismiss, filed on August 27, 2012, and incorporated herein, Defendant opposes Plaintiff's Motion For Reconsideration.*" I have attached a copy of the docket which clearly shows the only document filed on August 27, 2012 was the Plaintiff's Motion For Summary Judgment. The Defendant did initially file a Motion To Dismiss on 7/31/2012 in response to my Original Complaint that was served to the Defendant on 7/30/2012 but the Plaintiff later filed an Amended Complaint on 8/10/2012 which the Defendant has failed to file ANY response to. The Plaintiff did file an Affidavit Of Default on 9/11/2012 and a Motion For Default Judgment, both also attached. The Defendant's negligence in failing to respond to the Plaintiff's Amended Complaint and Initial Discovery Requests is not a valid reason and is inexcusable. Now I just noticed that the Defendant has negligently used multiple case numbers on their Memorandum In Opposition and if the Defendant has done the same on previous allegedly submitted documents then that would make them grossly negligent in handling their case and with no fault of the Clerk of Court or the Plaintiff. The Defendant is well represented by experienced legal counsel from one of the largest law firms in the United States of America.

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JUN 19 2013
SC Court of Appeals

1 Where an attorney is merely neglectful, the general rule applies and relief from judgment is
2 unavailable. Concerning a claim of attorney neglect, the general rule is that "the neglect of the
3 attorney is attributable to the client." *Graham v. Town of Loris*, 272 S.C. 442, 451, 248 S.E.2d
4 594, 598 (1978). In discussing this general rule, the *Graham* court quoted approvingly from
5 *Simon v. Flowers*, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957):

6 Although a wide discretion is vested in courts to set aside or vacate judgments because of the
7 neglect, misconduct or inadvertence of counsel employed in the case, the general rule
8 undoubtedly is that the neglect of the attorney is the neglect of the client, and that no mistake,
9 inadvertence or neglect attributable to the attorney can be successfully used as a ground for
10 relief, unless it would have been excusable if attributable to the client. The acts and omissions of
11 the attorney in such case are those of the client.

12 In *Simon*, 231 S.C. 545, 99 S.E.2d 391, defense counsel failed to answer a complaint because he
13 was involved in a multi-day trial. As a result of defense counsel's failure to answer the
14 complaint, the court entered a default judgment against defendant. On appeal, our supreme court
15 was sympathetic to defense counsel's plight but nevertheless adhered to the general rule and
16 imputed the neglect of counsel to his client. The court explained:

17 [T]he default was the result of forgetfulness on [the attorney's] part which in turn was due to
18 pressure of his business in the trial of cases.... In the crowded routine of a busy lawyer's life a
19 mistake such as the record here discloses is understandable; but it entails the penalty of default
20 under strict enforcement of the rule of procedure, and the trial court's refusal to forgive it affords
21 no basis for reversal.

22 *Id.* at 550-51, 99 S.E.2d at 394.

23 CONCLUSION

24
25 If the Dismissal was based on an alleged Motion To Dismiss filed on 8/27/2012 then the
26 Dismissal is void because the docket clearly shows no such motion. The Court and the Plaintiff
27 base their decisions off of what is filed on the docket. If the Plaintiff did not file an Affidavit Of
28

1 Default and Motion For Default Judgment, as required by law, the Plaintiff could have had his
2 lawsuit dismissed for Failure To Prosecute. The Plaintiff Pro Se has followed the South Carolina
3 civil rules of procedures while the negligent actions of the Defendant's experienced legal counsel
4 have failed to abide by those rules. The Defendant received proper Notice of the Amended
5 Complaint, Requests For Admissions, and the Defendant has known for weeks that the docket
6 did not show any response to the Amended Complaint because the Plaintiff also attached a copy
7 of the docket to their Brief In Support Of Motion For Summary Judgment, but yet they still
8 failed to file any Motion to try to correct it. The Defendant has basically lost this case in multiple
9 ways including the fact that they failed to respond to the Amended Complaint, based on their
10 failure to respond to the requests for admissions negligence is admitted, and the overwhelming
11 evidence submitted by the Plaintiff clearly shows negligence on the part of the Defendant.
12 Therefore, Plaintiff also requests that the Court use its power to rule on the pending Motion For
13 Summary Judgment and/or the Motion For Default Judgment.
14
15
16

17
18 For the reasons stated above Lawrence Terry, Plaintiff Pro Se, requests that the Court
19 reverses its previous Order To Dismiss, Rule on Plaintiff's pending Motions, and allow this case
20 to move forward.
21
22

23 Date 10/8/2012

24 
25 Plaintiff Signature
26 Post Office Box 24138
27 Columbia, SC 29224
28 Lawrence Terry, Pro Se

Exhibit E

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9069
www.nelsonmullins.com

Debbie Whittle Durban
(Admitted in SC & NC)
Tel: 803.255.9465
Fax: 803.255.9069
debbie.durban@nelsonmullins.com

June 13, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1015 Sumter Street - 5th Floor
Columbia, SC 29201

RECEIVED
JUN 19 2013
SC Court of Appeals

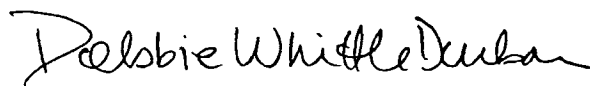
RE: Lawrence Terry v. Allen University
~~Civil Action No. 2010-CP-40-02301~~
Court of Appeals Tracking No.: 2013-000340
Our File No. 31667/01501

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter, please find (1) the Initial Brief of Respondent, and (2) the Respondent's Designation of Matter to be Included in the Record on Appeal. By copy of this letter, copies of the documents have been served on Lawrence Terry, the Pro Se Appellant, and a Proof of Service is attached to each document. Please stamp the enclosed extra copies of the Initial Brief and the Designation of Matter with the time and date of filing and return them to me in the enclosed envelope.

Thank you for your attention to this matter.

Very truly yours,


Debbie Whittle Durban

DWD:pjolley
Enclosures

cc: Lawrence Terry (Plaintiff Pro Se)

Richland County Common Pleas
CASE HISTORY FOR CASE 2012CP4004857

Exhibit F

FILED DATE: 7/16/2012

Lawrence Terry vs Allen University

CASE TYPE: CP/Personal Injury 350

JUDGE:

STATUS: Appeal

CASE PARTIES:

Plaintiff Terry, Lawrence

Defendant Allen University

Plaintiff Pro Se Terry, Lawrence

P O Box 24138, Columbia, SC 29224

Defendant Attorney Durban, Debbie Whittle

PO Box 11070, Columbia, SC 29211

CASE HISTORY FOR CASE 2012CP4004857

Allen University

Age: Unknown

DOB: Unknown

DL#:

SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
------	----------	-------------	-----------	--------------

Total:

DATE	TIME	EVENT DESCRIPTION
7/31/2012	12:12 PM	Motions to Show Cause, For Sanctions, and To Dismiss
8/1/2012	12:00 AM	COCMORENO recorded the following Case Note: Certificate of Service
8/8/2012	3:06 PM	Motion For Protective Order
10/3/2012	12:12 PM	Filing recorded: Memorandum in Opposition to Plaintiff's Motion For Reconsideration of Court's Order Dismissing Case, Certificate of Case
10/3/2012	12:00 AM	COCMORENO recorded the following Case Note: Memorandum in Opposition to Plaintiff's Motion For Reconsideration of Court's Order Dismissing Case, Certificate of Case
2/22/2013	12:00 AM	COCMORENO recorded the following Case Note: Certificate of Service

Print Date: 06/14/2013
Print Time: 9:54:59AM
Requested By: COCRYAN

CaseHistory.rpt V6.1

Page 1 of 1

Richland County Common Pleas
CASE HISTORY FOR CASE 2012CP4004857

Lawrence Terry vs Allen University

FILED DATE: 7/16/2012

CASE TYPE: CP/Personal Injury 350

STATUS: Appeal

JUDGE:

CASE PARTIES:

Plaintiff Terry, Lawrence

Defendant Allen University

Plaintiff Pro Se Terry, Lawrence

P O Box 24138, Columbia, SC 29224

Defendant Attorney Durban, Debbie Whittle

PO Box 11070, Columbia, SC 29211

CASE HISTORY FOR CASE 2012CP4004857

Terry, Lawrence

Age: Unknown

DOB: Unknown

DL#:

SSN: 000-00-0000

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY
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Total:

DATE	TIME	EVENT DESCRIPTION
7/16/2012	11:11 AM	Filing recorded: Request/Request for Production of Documents
7/16/2012	11:11 AM	Filing recorded: Request/Request for Admissions
7/16/2012	4:02 PM	Filing recorded: Summons & Complaint
7/16/2012	4:08 PM	Filing recorded: ADR/Alternative Dispute Resolution (Workflow)
7/16/2012	4:14 PM	Filing recorded: Affidavit
7/16/2012	4:15 PM	Filing recorded: Interrogatories
7/18/2012	8:49 AM	Filing recorded: Amended Coversheet For Non Jury
7/20/2012	11:31 AM	Motion For An Expedited Non Jury Trial Date
7/20/2012	1:21 PM	Motion/Motion Filing Fee
7/26/2012	9:00 AM	Filing recorded: Verification/Verified

Print Date: 06/14/2013

Print Time: 9:35:50AM

Requested By: COCTRIBBLE

CaseHistory.rpt V6.1

Page 1 of 2

CASE HISTORY FOR CASE 2012CP4004857

8/10/2012	10:11 AM	Filing recorded: Amended Complaint For Negligence and Intentional Infliction
8/10/2012	3:34 PM	Filing recorded: Service/Affidavit Of Service on Allen University
8/13/2012	12:00 AM	COCMORENO recorded the following Case Note: Amended Complaint For Negligence and Intentional Infliction of Emotional Distress
8/17/2012	2:17 PM	Filing recorded: Statement of Additional Facts For Motion For An Expedited No
8/17/2012	2:18 PM	Filing recorded: Reply to Defendant's Motions to Show Cause, For Sanctions, a
8/20/2012	12:00 AM	COCMORENO recorded the following Case Note: Reply to Defendant's Motions to Show Cause, For Sanctions, and to Dismiss
8/20/2012	12:00 AM	COCMORENO recorded the following Case Note: Statement of Additional Facts For Motion For An Expedited Non-Jury Trial Date
8/27/2012	10:50 AM	Motion For Summary Judgment
8/27/2012	4:54 PM	Motion/Motion Filing Fee
8/28/2012	11:25 AM	Filing recorded: Motion For Protective Order
8/28/2012	11:28 AM	Filing recorded: Renewed Motion to Show Cause, For Sanctions, and to Dismiss
9/11/2012	9:51 AM	Filing recorded: Brief in Support of Motion For Summary Judgment
9/11/2012	10:35 AM	Filing recorded: Affidavit of Default
9/14/2012	8:39 AM	Motion/Motion Filing Fee
9/14/2012	2:30 PM	Motion For Default Judgment
9/17/2012	12:00 AM	COCGUNTER recorded the following Case Note: Form Order This Casue of Action is DISMISSED with prejudice. Plaintiff May Appeal, but may not file another cause of action regarding this matter with this court.
9/17/2012	1:59 PM	Form Order This Casue of Action is DISMISSED with prejudice.
9/18/2012	8:43 AM	Motion/Motion Filing Fee
9/18/2012	9:34 AM	Motion For Reconsideration on Order to Dismiss
9/19/2012	11:36 AM	Filing recorded: Affidavit of Plaintiff
9/19/2012	11:37 AM	Filing recorded: Brief in Support of Motion For Reconsideration on Order to D
9/20/2012	12:00 AM	COCMORENO recorded the following Case Note: Brief in Support of Motion For Reconsideration on Order to Dismiss
9/21/2012	12:00 AM	COCMORENO recorded the following Case Note: Memorandum of Law in Support of Motion For Reconsideration on Order to Dismiss
9/21/2012	9:37 AM	Filing recorded: Memorandum of Law in Support of Motion For Reconsideration o
9/24/2012	12:00 AM	COCMORENO recorded the following Case Note: Additional Statements of Fact in Support of Motion For Reconsideration on Order to Dismiss
9/24/2012	11:57 AM	Filing recorded: Additional Statements of Fact in Support of Motion For Recon
10/4/2012	12:00 AM	COCMORENO recorded the following Case Note: Reply to Defendant's Memorandum in Opposition of Plaintiff's Motion For Reconsideration
10/4/2012	2:38 PM	Filing recorded: Reply to Defendant's Memorandum in Opposition of Plaintiff's
10/8/2012	8:48 AM	Filing recorded: Brief In Reply To Defendant's Memorandum in Opposition to Pl
10/9/2012	12:00 AM	COCMORENO recorded the following Case Note: Brief In Reply To Defendant's Memorandum in Opposition to Plaintiff's Motion For Reconsideration
12/11/2012	12:00 AM	COCMORENO recorded the following Case Note: Additional Statements of Facts in Reply to Defendants Memorandum In Opposition of Plaintiff's Motion For Reconsideration
12/11/2012	4:41 PM	Filing recorded: Additional Statements of Facts in Reply to Defendants Memora
12/13/2012	10:06 AM	Filing recorded: Memorandum of Law in Support of Motion For Default Judgment
2/11/2013	10:44 AM	Form Order Plaintiff's motion for Reconsideration is DENIED.
2/19/2013	10:42 AM	Filing recorded: Notice of Appeal
~~2/22/2013~~	~~12:00 AM~~	~~COCGUNTER recorded the following Case Note: Renewed Motion to Show Cause, For Sanctions, and to Dismiss Plaintiff's Amended Complaint, Certificate of Service~~
~~2/22/2013~~	~~12:00 AM~~	~~COCGUNTER recorded the following Case Note: Renewed Motion to Show Cause, For Sanctions, and to Dismiss Plaintiff's Amended Complaint, Certificate of Service~~

Print Date: 06/14/2013
 Print Time: 9:35:50AM
 Requested By: COCTRIBBLE

CaseHistory.rpt V6.1

Page 2 of 2

Nelson Mullins

Nelson Mullins Riley & Scarborough LLP
Attorneys and Counselors at Law
1320 Main Street / 17th Floor / Columbia, SC 29201
Tel: 803.799.2000 Fax: 803.255.9069
www.nelsonmullins.com

Debbie Whittle Durban
(Admitted in SC & NC)
Tel: 803.255.9465
Fax: 803.255.9069
debbie.durban@nelsonmullins.com

February 25, 2013

Ms. V. Claire Allen
Deputy Clerk
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

FEB 26 2013

RE: Lawrence Terry v. Allen University
Appellate Case No. 2013-000340

SC Court of Appeals

Dear Ms. Allen:

This letter is to notify you that I agree with the Appellant, Mr. Terry, that there is no reason to order a transcript in order to proceed in the above-referenced appeal. Because there was no hearing or other proceedings in this case below, there is no transcript available.

Please let me know if you have questions or if you need additional information.

With kind regards, I am

Very truly yours,



Debbie Whittle Durban

cc: Mr. Lawrence Terry

PROOF OF SERVICE OF REPLY BRIEF

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

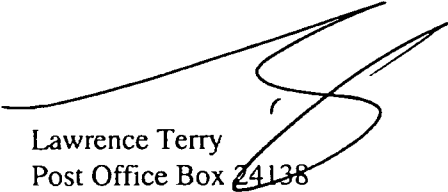
Lawrence Terry,

Appellant.

PROOF OF SERVICE

I certify that I have served copies of the Reply Brief on Allen University by personally delivering the copies of it to his attorney of record, Debbie Whittle Durban, at her office at Post Office Box 11070 Columbia, South Carolina 29211, on June 19, 2013.

June 19, 2013



Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

RECEIVED
JUN 19 2013

SC Court of Appeals

NOTICE OF NO FINAL REPLY BRIEF TO BE FILED

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

Lawrence Terry,

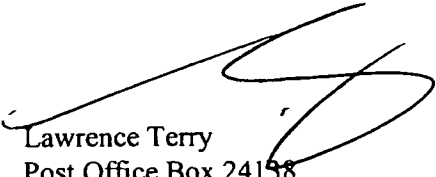
Appellant.

NOTICE OF NO FINAL REPLY BRIEF TO BE FILED

With this Appeals Court recently ruling that the Respondent failed to properly file any documents in the lower court, no Reply to their Final Brief is needed. This case is clear.

Based on the information stated above, the Appellant respectfully requests that this court allows this appeal to move forward.

September 12, 2013


Lawrence Terry
Post Office Box 24158
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

RECEIVED

SEP 12 2013

SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Lawrence Terry, Appellant,

v.

Allen University, Respondent.

Appellate Case No. 2013-000340

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2014-UP-192
Submitted April 1, 2014 – Filed May 7, 2014

AFFIRMED

Lawrence Terry, of Columbia, pro se.

Debbie Whittle Durban, of Nelson Mullins Riley &
Scarborough, LLP, of Columbia, for Respondent.

PER CURIAM: Lawrence Terry appeals the trial court's order dismissing his causes of action against Allen University, arguing (1) the trial court erred in dismissing the case with prejudice, (2) the trial court erred in failing to give a clear explanation of its order of dismissal, (3) his due process rights were violated, (4) the trial court erred in failing to give notice and hold a hearing before making its

final ruling, and (5) the trial court erred in failing to enter default judgment in his favor.¹ We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in granting Allen University's motion to dismiss: *Profl Bankers Corp. v. Floyd*, 285 S.C. 607, 613, 331 S.E.2d 362, 365 (Ct. App. 1985) ("An appealable order from which no appeal is taken becomes the law of the case in all subsequent proceedings involving the same parties and the same subject matter.").²

2. As to whether the trial court violated Terry's right to procedural due process: *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) ("Due process does not . . . require that the defendant in every civil case actually have a hearing on the merits."); *id.* (explaining that all the Due Process Clause requires is an opportunity for a "hearing appropriate to the nature of the case" at a "meaningful time and in a meaningful manner" (internal quotation marks omitted)).

3. As to whether the trial court erred in denying Terry's motion for default judgment: *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not address appellant's remaining issues when its determination of a prior issue is dispositive).

AFFIRMED.³

HUFF, THOMAS, and GEATHERS, JJ., concur.

¹ We have combined issues one and two into a single issue and issues three and four into a single issue.

² Even if this issue was not barred by the law of the case doctrine, this argument would still be without merit. *See Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties."); S.C. Code Ann. § 15-3-530(5) (2005) (setting a three-year statute of limitations for claims of negligence and intentional infliction of emotional distress).

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

72137

PETITION FOR REHEARING

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

RECEIVED

MAY 08 2014

SC Court of Appeals

Lawrence Terry,

Appellant,

v.

Allen University,

Respondent.

PETITION FOR REHEARING

Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

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STATEMENT OF ISSUES FOR REHEARING

- I. THE FIRST ARGUMENT OF THE APPEALANT'S BRIEF WAS MISAPPREHENDED BY THE COURT DURING THE WRITING OF IT'S OPINION

ARGUMENTS

- I. THE FIRST ARGUMENT OF THE APPEALANT'S BRIEF WAS MISAPPREHENDED BY THE COURT DURING THE WRITING OF ITS OPINION.

Bulletin number one states, "As to whether the trial court erred in granting Allen University's motion to dismiss:" was misinterpreted. Allen University did not have a motion to dismiss on the docket when the trial court rendered its Order. In this Appeals Court's Order dated August 9, 2013, it was stated that. "We find the motions Respondent filed with the circuit court which were misfiled remained misplaced in another case file until after the circuit court issued its orders dismissing Appellant's action and denying reconsideration. Accordingly, we find those motions were "not presented to the lower court" and may not properly be included in either the Record on Appeal or Supplemental Record on Appeal in this matter." This Appeals Court further stated in its Order dated September 24, 2013 that, "However, because the misfiled motions were stricken from the Record on Appeal by an order dated August 9, 2013, all references to the misfiled motions shall be omitted from Respondent's initial Brief. Accordingly, Respondent shall serve and file an Amended Initial Brief omitting any reference to the misfiled motions within thirty days." Both Orders are attached. Those Orders would imply that Allen University did not

file anything on the lower court docket in reply to the Amended Complaint and the Initial Requests for Admissions, deeming them all admitted. Therefore Allen University admitted to Negligence and Fraud.

The Opinion also references "Res judicata" and "three-year statute of limitations". As I stated in my Final Brief, the trial court's order only had two sentences with one of them instructing me that I may Appeal the order. So I did timely file my notice of appeal. It did not state that it was based on Res Judicata as the previous complaints were based on "breach of contract", as stated in the proposed order written by Allen University and signed by the lower court judge, plus the instant complaint is based on multiple negligent acts by Allen University. The initial issues were discovered in December 2009. That would make the claims void after December 2012. With the instant complaint being first filed in July 2012 and the amended complaint filed in August 2012 they both were well within the 3 year statute of limitations. The motion for reconsideration included newly discovered evidence of negligence and so did both complaints. All of the previous cases were dismissed without prejudice and I chose to amend/refile instead of appealing.

CONCLUSION

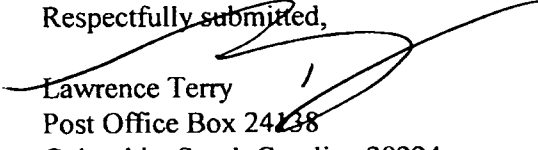
This case involves my educational background and ability to earn a living. The Order of Dismissal from the lower court only stated two plain and clear sentences, "THIS CAUSE OF ACTION IS DISMISSED WITH PREJUDICE. PLAINTIFF MAY APPEAL BUT MAY NOT FILE ANOTHER CAUSE OF ACTION REGARDING THIS MATTER WITH THIS COURT."

The Order is again attached. I did what the Order stated I could do which was Appeal. That same judge ruled on the previous case and if it were barred by any other means, he would have stated or even reiterated it after I filed my motion for reconsideration. I filed an affidavit of default six days prior to the Order of dismissal thereby voiding said Order. Based on Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E. 2d 122, 123 (Ct.App.1987) (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party), attached. The Honorable presiding Judge A.J. Cureton even ruled in a similar case citing Thynes v. Lloyd in Stark Truss Co., Inc., v. Superior Construction Corporation and national Fire Insurance Company of Hartford, attached. There was not a Motion To Dismiss by Allen University for the trial court to err in granting nor did the Appellant state that as one of his issues.

For the reasons stated, this Court should rehear its recent Opinion.

May 8, 2014

Respectfully submitted,


Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

The South Carolina Court of Appeals

Lawrence Terry, Appellant,

v.

Allen University, Respondent.

Appellate Case No. 2013-000340

RICHLAND COUNTY
FILED
2013 AUG 14 AM 11:20
JEANETTE W. MCBRIDE
C.C.P. & G.S.

ORDER

Appellant has filed motions seeking judicial notice, contempt and sanctions, and an extension of time and clarification. Respondent has filed returns to the latter two motions, and Appellant has filed a reply to the last motion. After careful consideration, Appellant's Motion for Judicial Notice and Motion for Contempt and Sanctions are hereby denied.

We construe Appellant's Motion for Clarification as a motion to strike portions of Respondent's Designation of Matter and Initial Brief. We find the motions Respondent filed with the circuit court which were misfiled remained misplaced in another case file until after the circuit court issued its orders dismissing Appellant's action and denying reconsideration. Accordingly, we find those motions were "not presented to the lower court" and may not properly be included in either the Record on Appeal or a Supplemental Record on Appeal in this matter. *See* Rule 210(c), SCACR ("The Record shall not . . . include matter which was not presented to the lower court or tribunal."); *see also* Rule 210(h), SCACR ("Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal."); Rule 212, SCACR (requiring either written consent of all attorneys of record or leave of court to file a supplemental record on appeal).

Appellant's Motion for Extension of Time is hereby granted. Appellant shall prepare and file the record on appeal within fifteen days from the date hereof.

IT IS SO ORDERED.


FOR THE COURT

Columbia, South Carolina

cc:

Lawrence Terry

Debbie Whittle Durban

FILED
8/9/13

The South Carolina Court of Appeals

Lawrence Terry, Appellant,

v.

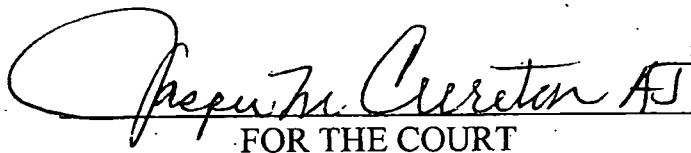
Allen University, Respondent.

Appellate Case No. 2013-000340

ORDER

Appellant has filed a motion seeking to strike Respondent's Initial Brief, in whole or in part, and for "clarification," asking this court to instruct the circuit court to remove certain motions from case file #2012-CP-40-04857. Respondent has filed a return to Appellant's motion, and Appellant has filed a reply.

After careful consideration, we deny Appellant's motion. However, because the misfiled motions were stricken from the Record on Appeal by an order dated August 9, 2013, all references to the misfiled motions shall be omitted from Respondent's Initial Brief. Accordingly, Respondent shall serve and file an Amended Initial Brief omitting any reference to the misfiled motions within thirty days.


FOR THE COURT

Columbia, South Carolina

cc: Lawrence Terry
Debbie Whittle Durban

FILED

24 Sept 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Lawrence Terry, Appellant,

v.

Allen University, Respondent.

Appellate Case No. 2013-000340

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2014-UP-192
Submitted April 1, 2014 – Filed May 7, 2014

AFFIRMED

Lawrence Terry, of Columbia, pro se.

Debbie Whittle Durban, of Nelson Mullins Riley &
Scarborough, LLP, of Columbia, for Respondent.

PER CURIAM: Lawrence Terry appeals the trial court's order dismissing his causes of action against Allen University, arguing (1) the trial court erred in dismissing the case with prejudice, (2) the trial court erred in failing to give a clear explanation of its order of dismissal, (3) his due process rights were violated, (4) the trial court erred in failing to give notice and hold a hearing before making its

final ruling, and (5) the trial court erred in failing to enter default judgment in his favor.¹ We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in granting Allen University's motion to dismiss: *Profl Bankers Corp. v. Floyd*, 285 S.C. 607, 613, 331 S.E.2d 362, 365 (Ct. App. 1985) ("An appealable order from which no appeal is taken becomes the law of the case in all subsequent proceedings involving the same parties and the same subject matter.").²

2. As to whether the trial court violated Terry's right to procedural due process: *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971) ("Due process does not . . . require that the defendant in every civil case actually have a hearing on the merits."); *id.* (explaining that all the Due Process Clause requires is an opportunity for a "hearing appropriate to the nature of the case" at a "meaningful time and in a meaningful manner" (internal quotation marks omitted)).

3. As to whether the trial court erred in denying Terry's motion for default judgment: *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting an appellate court need not address appellant's remaining issues when its determination of a prior issue is dispositive).

AFFIRMED.³

HUFF, THOMAS, and GEATHERS, JJ., concur.

¹ We have combined issues one and two into a single issue and issues three and four into a single issue.

² Even if this issue was not barred by the law of the case doctrine, this argument would still be without merit. *See Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) ("Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties."); S.C. Code Ann. § 15-3-530(5) (2005) (setting a three-year statute of limitations for claims of negligence and intentional infliction of emotional distress).

³ We decide this case without oral argument pursuant to Rule 215, SCACR.

Exhibit A

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-04857

Lawrence Terry

Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT: This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. No. suit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

THIS CAUSE OF ACTION IS DISMISSED WITH PREJUDICE. PLAINTIFF MAY APPEAL BUT MAY NOT FILE ANOTHER CAUSE OF ACTION REGARDING THIS MATTER WITH THIS COURT.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code 2061

Date 9/5/12

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Sept, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

LETTER TO CLERK OF LOWER COURT
Supplemental Citations

September 19, 2013

The Honorable Jenny Abbott Kitchings

Clerk of Court for SC Appeals Court

1015 Sumter Street, Columbia, South Carolina 29201

RE: Allen University, Respondent, v. Lawrence Terry, Appellant, Case No.
2012-CP-40-04857 Appellant Case No. 2013-000340

Dear Jenny Abbott Kitchings:

This letter comes to you pursuant Rule 208(b)(7), Supplemental Citations. Although I have already mentioned the below citation in previously filed "motions", I just wanted to confirm that they would be considered with the briefs. This citation is in regards to Argument #1 and Issues #3 and #4 in the brief(s). I was recently informed they would not unless submitted under Rule 208(b)(7).

Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. See Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct.App.1987) (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party). The filed Affidavit of Default on 9/11/2012 was six days before the abrupt 9/17/2012 Order to Dismiss. The Amended Complaint contained substantive changes from the Original and therefore the Respondent had a duty to respond, but did not.

Sincerely,

Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

cc: Debbie W. Durban
Post Office Box 11070
Columbia, South Carolina 29211
(803) 255-9465
Attorney for Respondent

RECEIVED

SEP 19 2013

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Stark Truss Co., Inc., Respondent,

v.

Superior Construction Corporation and
National Fire Insurance Company of
Hartford, Appellants.

Appeal From Laurens County
James W. Johnson, Jr., Circuit Court Judge

Opinion No. 3859
Submitted March 8, 2004 – Filed August 16, 2004

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

A. Cruickshanks, IV, of Clinton; and Steele B.
Windle, III, of Charlotte, for Appellants.

Paul B. Zion, of Spartanburg, for
Respondent.

CURETON, A.J.: Superior Construction Corporation and National Fire Insurance Company of Hartford (collectively, "Appellants") appeal the circuit court's order denying their motion to set aside an entry of default judgment and dismissing their counterclaims against Stark Truss Co., Inc. We affirm in part, reverse in part and remand.

FACTS

In 2001, Superior signed a purchase order agreement under which Stark Truss was to manufacture and deliver all the roof trusses Superior needed to complete a school construction project for the amount of \$95,861. National issued Superior a labor and materials payment bond on the project. A dispute arose between Superior and Stark Truss concerning the condition of the trusses provided. Superior refused to pay in full for

the materials, and Stark Truss refused to deliver the remaining materials without full payment. Superior obtained replacement materials from another supplier. In June 2002, Stark Truss filed a \$49,799 payment bond claim with National for the remaining balance of the purchase order price. National denied Stark Truss's claim on the basis of the existence of a bona fide dispute.

On July 12, 2002, Stark Truss filed a summons and complaint against Appellants for the remaining balance plus interest. The summons and complaint were served upon Superior on July 24 and upon National on July 26. National gave its defense in the matter to Superior on August 5, 2002, apparently intending for Superior to answer on its behalf.

Superior did not send a copy of Stark Truss's summons and complaint or National's suit papers to its attorneys until September 5, 2002. Upon receipt that same morning, Appellants' attorneys immediately telephoned Stark Truss's attorneys and requested an extension of time in which to file an answer. Later that day, Appellants' attorneys were contacted by one of Stark Truss's attorneys and informed that default proceedings had already begun, with the motion for entry of default judgment and affidavit of default being mailed that morning prior to the initial call. Stark Truss denied the request for an extension.

The Appellants' joint answer and counterclaim for damages in excess of \$75,000 was prepared, filed with the court on September 6, 2002, and served on Stark Truss. Stark Truss's affidavit of default, motion for entry of default judgment, and a proposed order directing entry of default judgment, dated September 5, 2002, were received and filed five days later on September 11, 2002. Based on Stark Truss's motion, the court issued an order, without a hearing, simultaneously granting entry of default and a default judgment against Appellants.

On September 12, Stark Truss served on Appellants' attorneys its motion to dismiss Appellants' counterclaims, asserting the compulsory claims were barred by the default judgment. Appellants filed a "Motion to Set Aside Entry of Default Judgment" on October 22, 2002, in which Appellants argued both the entry of default and default judgment should be set aside. At the motions hearing, Appellants argued that because they filed an answer and counterclaim prior to the court's receipt of the motion for entry of default and default judgment, they had appeared in the matter, rendering the facts supporting the motion for default judgment inaccurate. Appellants also asserted that because they had appeared, entry of default was improper and required the entry of default judgment to be set aside. Appellants' attorney informed the circuit court that there was no good explanation for not filing an answer within thirty days, other than the fact that Superior's president was "struggling with some depression and a lot of things slipped through his fingers."

On November 15, 2002, the circuit court issued an order holding that Appellants had failed to present sufficient proof of either "good cause" for relief from default under Rule 55(c), SCRCP, or "mistake, inadvertence, surprise, or excusable neglect" under Rule 60(b), SCRCP sufficient to vacate the entry of default judgment. Since the counterclaims were compulsory and the answer was not timely filed, the court also granted Stark Truss's motion to dismiss all counterclaims. This appeal followed.

STANDARD OF REVIEW

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. Thompson v. Hammond, 299 S.C. 116, 119, 382 S.E.2d 900, 902-903 (1989); Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct. App. 1989). This decision will not be reversed absent an abuse of that discretion. Thompson, 299 S.C. at 119, 382 S.E.2d at 902-903; In Re Estate of Weeks, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997). An abuse of discretion occurs when the order was controlled by an error of law or when the order is without evidentiary support. Id.

LAW / ANALYSIS

A.

Appellants argue the circuit court erred in entering default and in refusing to set aside the entry of default because they appeared in the matter by filing their answer and counterclaim prior to the filing of the motion for entry of default. We disagree.

A determination in this case requires an evaluation of Rule 55, SCRCP regarding default judgments. When interpreting a court rule, "we apply the same rules of construction used in interpreting statutes. Therefore, the words of [the rule] must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the rule." Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994). When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning.

Unless an extension is granted, a defendant must serve his answer within thirty days "after the service of the complaint upon him." Rule 12(a), SCRCP. If a party has failed to "plead or otherwise defend [1] as provided by [the South Carolina Rules of Civil Procedure] and that fact is made to appear by affidavit or otherwise," the clerk of court will enter default. Rule 55(a), SCRCP. Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. See Thynes v. Lloyd, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct. App. 1987) (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party).

Appellants initially argue the circuit court erred in entering default. Although Appellants' late answer amounted to a "pleading" filed prior to entry of default, it did not comply with the time requirements of Rule 12(a), SCRCP. Appellants clearly failed to file an answer within thirty days of service of the summons and complaint upon them and they were technically in default. Thus, Appellants' answer was not a valid pleading or defense "as provided by" the Rules of Civil Procedure. A plain reading of Rule 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in Rule 12(a), SCRCP, meaningless. We find the court's entry of default was proper.

Appellants point to cases from other jurisdictions holding that entry of default is improper if even a late answer is filed prior to entry of default. See, e.g., Moore v. Sullivan, 473 S.E.2d 659, 660 (N.C. Ct. App. 1996) ("After an answer has been filed, even if the answer is untimely filed, a default may not be entered."). That is not the current law in this state.

Further, filing a late answer would not alter the fact that Appellants were in default, especially if entering default is a ministerial act to be automatically performed once an affidavit shows the defendant has failed to comply with the requirements of the rules. Thynes, 294 S.C. at 153-54, 363 S.E.2d at 123.

Appellants also argue the circuit court erred in denying their motion to set aside the entry of default. We disagree.

Rule 55(c), SCRCP, allows the circuit court to set aside an entry of default "for good cause shown." Rule 55(c), SCRCP. "In deciding whether good cause exists, the trial court should consider the following factors: (1) the timing of the defendant's motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." Pilgrim v. Miller, 350 S.C. 637, 640, 567 S.E.2d 527, 528 (Ct. App. 2002), cert. dismissed (April 25, 2003). Whether to grant relief from entry of default is a decision within the sound discretion of the circuit court. Wham, 298 S.C. at 465, 381 S.E.2d at 502. In reviewing the court's exercise of discretion, the issue before the appellate court is not whether it believes good cause existed to set aside the default, "but rather, whether the [trial judge's] determination is supportable by the evidence and not controlled by an error of law." Pilgrim, 350 S.C. at 640-41, 567 S.E.2d at 528.

Appellants' motion for relief from entry of default was filed over a month after the circuit court entered default judgment. They argued that the entry of default should be set aside because they appeared prior to entry of default. The attorney for Appellants informed the circuit court that Superior's president had no good reason, other than depression, for failing to act when he was served with the summons and complaint. The attorney did not give any reason for National's failure to serve and file its answer to the summons and complaint. Based on these facts, we find there was evidence to support the circuit court's refusal to set aside the entry of default.

B.

Appellants argue that because they filed a late answer, they made an "appearance" in the action and entry of default judgment was improper. They further argue that the circuit court erred in refusing to set aside the default judgment. We agree.

Rule 55(b)(1), SCRCP, entitled "Cases Involving Liquidated Damages or Sum Certain," provides that where the amount sought is a sum certain and the defaulting party has not made an appearance, the judge may enter default judgment for the amount sought without holding a hearing. Rule 55(b)(2), entitled "All Other Cases," provides, in pertinent part, that a party who has "appeared" in the action is entitled to notice and a hearing before judgment by default may be entered. A party may seek relief from a default judgment for mistake, inadvertence, newly discovered evidence, fraud or other misconduct, where the judgment is void, or where the judgment has been satisfied. Rule 60(b), SCRCP.

Whether Appellants' late answer amounted to an "appearance" in this case is a critical question. This court has previously discussed whether a late filing constitutes an "appearance." In Dymon v. Hyman, 305 S.C. 170, 406 S.E.2d 388 (Ct. App. 1991), the defendant filed and served his answer late, and the plaintiff acknowledged service of the late answer. However, the plaintiff informed the defendant that he considered the defendant to be in default. Two months later, the plaintiff sought and obtained a judgment

by default without giving notice to the defendant. The defendant learned of the default judgment months later, and the circuit court denied the motion for relief from judgment. Interpreting the prior version of Rule 55(b)(1), [2] this court held that the defendant's late answer was an "appearance" and thus the defendant was entitled to notice and a hearing on the motion for default judgment. Because no notice was given, this court reversed the circuit court's refusal to set aside the void judgment. Dymon, 305 S.C. at 171, 406 S.E.2d at 389.

Appellants in the present case clearly filed their answer and counterclaims more than thirty days after they were served with the summons and complaint. However, as in Dymon, Appellants' late answer, filed before Stark Truss's motions were received by the circuit court, constituted an appearance in the matter. Appellants were entitled to notice and a hearing before judgment by default was entered. Dymon, 305 S.C. at 171-72, 406 S.E.2d at 389. Because no notice was given and no hearing was held, the default judgment was void. The circuit court erred in refusing to relieve Appellants from the void judgment. Id.; see also Rule 60(b)(4), SCRCP ("On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding [where] . . . the judgment is void.").

C.

Appellants assert the circuit court erred in granting Stark Truss's motion to dismiss their counterclaims as compulsory. We disagree.

The circuit court found, and Appellants do not dispute, that the counterclaims asserted with the late answer were compulsory. Rule 13(a), SCRCP, provides that compulsory counterclaims must be asserted along with a responsive pleading. As Appellants were in default and failed to timely file and serve their answer, they also failed to timely assert their counterclaims. In this instance, we find the circuit court did not err in dismissing the Appellants' counterclaims.

CONCLUSION

Appellants failed to timely serve and file their answer and compulsory counterclaims on Stark Truss pursuant to the Rules of Civil Procedure. Thus, the entry of default was proper, the circuit court's refusal to set aside the entry of default was supported by the evidence, and the dismissal of Appellants' compulsory counterclaims was proper. However, as Appellants made an appearance in this action by filing a late answer, they were entitled to notice before entry of default judgment. The circuit court's refusal to set aside the void default judgment was error. We reverse the refusal to set aside the default judgment and remand for proceedings consistent with this opinion.

For the foregoing reasons, the decision of the circuit court is

AFFIRMED IN PART, REVERSED IN PART AND REMANDED.

HUFF and STILWELL, JJ., concur.

[1] “The words ‘otherwise defend’ refer to the interposition of various challenges to such matters as service, venue, and the sufficiency of the prior pleading, any of which might prevent a default if pursued in the absence of a responsive pleading.” 10A Charles Allen Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 2682, at 16-17 (3rd ed. 1989).

[2] The prior version of Rule 55(b)(1) is nearly identical to the current version of Rule 55(b)(2). The rules were amended in 1998 to add the version of Rule 55(b)(1) concerning default judgments with liquidated damages and where the defaulting party has failed to appear. The former Rule 55(b)(1) became Rule 55(b)(2). See Rule 55, SCRCP Notes to 1998 Amendments.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857
Court of Appeals Tracking No. 2013-000340

RECEIVED

MAY 15 2014

SC Court of Appeals

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

Respondent's Return to Appellant's Petition for Rehearing

Pursuant to Rule 221(a) and 240(e) of the South Carolina Appellate Court Rules, Respondent Allen University files this return to Appellant's petition for rehearing as to the Panel's unpublished opinion in this matter (Terry v. Allen University, Op. No. 2014-UP-192 (S.C. Ct. App. filed May 7, 2014) (Shearouse Adv. Sh. No. 18)). The panel did not overlook or misapprehend any argument advanced by Appellant in rendering the opinion. Therefore, the petition for rehearing should be denied.

As an initial matter, petition for rehearing should be denied because Appellant cannot use a petition to ask the Panel to reconsider arguments previously presented. The Supreme Court has held that a petition for rehearing cannot be used to present previously made and considered appellate arguments. See Kennedy v. South Carolina Retirement Sys., 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) (holding it is not "the

Based on the foregoing, the Panel should deny the petition for rehearing.

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Post Office Box 11070 (29211-1070)
Columbia, SC 29201
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Attorney for Allen University

Columbia, South Carolina

May 15, 2014

rehearing as to those claims. See, e.g., Biales v. Young, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) ("Failure to argue is an abandonment of the issue and precludes consideration on appeal.").

REPLY TO RETURN FOR PETITION FOR REHEARING

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Lawrence Terry,

Appellant,

v.

Allen University,

Respondent.

REPLY TO RETURN FOR PETITION FOR REHEARING

RECEIVED

MAY 21 2014

SC Court of Appeals

Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

ORIGINAL

ARGUMENTS

I. THE ARGUMENTS IN THE OPINION ARE NOT THAT OF THE APPELLANT.

This Opinion is based on arguments that were never presented by the Appellant to this Court of Appeals and references a Motion to Dismiss which was stricken from the Record on Appeal and Briefs by two Orders of this Appeals Court. Please refer to the Appellant's Final Brief to confirm the issues and arguments submitted. Allen University was in Default. Lawrence Terry properly filed an Affidavit of Default against Allen University six days before Order to Dismiss. No extension of time was granted nor was any means of relief motioned for by Allen. On page one of the Opinion the Appellant's arguments were cited accurately and although some arguments were combined the argument that was used in the ruling of "1" on page two of the Opinion is unsubstantiated. That misinterpretation would completely change the dynamics of the Opinion, rulings, and the case as a whole. Ruling "3" on page two of the Opinion also incorrectly states, "As to whether the trial court erred in denying Terry's motion for default judgment". No Order denying said motion was ever filed or heard. Furthermore, it was not one my arguments. This Appeals Court's Order dated August 9, 2013 states, "Rule 210(c), SCACR ("The Record shall not...include matter which was not presented to the lower court or tribunal."); see also Rule 210(h), SCACR ("Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal."). With those motions being affirmatively removed, it would confirm Allen University did not file a response to the Amended Complaint making it impossible for them to now arguments for this court.

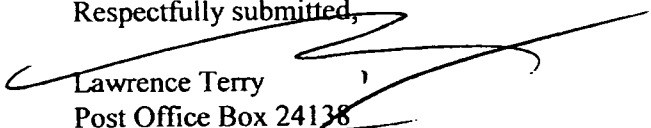
CONCLUSION

An abuse of discretion occurs when the order was controlled by an error of law or when the order is without evidentiary support. The Order of Dismissal by the trial court was controlled by an error of law in that Allen University was in Default at the time of the rendering of the Order. Based on Allen University's Default and Admitted Requests for Admissions, the Order is without evidentiary support. It would further imply that the trial court abused its discretion. The Appellant would be deeply prejudiced if this Opinion is allowed to stand and not corrected. Once combined, the words and meanings of my original issues and arguments seem to have been omitted or transposed unintentionally. This is why I petition this graciously fair court for relief. To aid in making a decision I have attached a copy of the First Set of Requests for Admissions that were supplied to Allen University along with the Complaint and Summons. All requests were deemed admitted based on Allen University's failure to respond and would abrogate any legitimate motion to dismiss, if one was presented. The Record on Appeal contains the Affidavit of Default and the two Orders of this Appeals Court confirm Allen University did not file anything in response to the Amended Complaint or the Initial Requests for Admissions.

For the reasons stated, this Court should rehear and rewrite its recent Opinion. It is also requested that this gracious court set a jury trial date to determine the damages in this default.

May 21, 2014

Respectfully submitted,


Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

RECEIVED

MAY 21 2014

SC Court of Appeals

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PLAINTIFF'S FIRST SET OF REQUESTS FOR ADMISSIONS

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1 4. Immediately prior to Your answer to each Request for Information, or any part thereof, restate
2 the Request for Admissions or any part thereof.

3 5. Divulge all knowledge and/or information which is in the possession, custody or control of
4 You, Your attorneys, employees, investigators, agents, or other representatives or persons acting
5 on Your behalf.

6
7 6. If You object to any Request for Admission or part thereof on the grounds that it calls for the
8 provision of privileged communications between attorney and client, state: (a) the date on which
9 the communication occurred; (b) the parties to the communication; (c) the type of
10 communication, e.g., telephone conversation, personal conversation, etc.; (d) the identity of all
11 persons present when the communication took place, who overheard the communication, or who
12 read the communication; and (e) the identity of all persons to whom the communication has been
13 divulged.
14

15 7. If You object to any Request for Admission or part thereof on the grounds that it calls for
16 information protected by the "work-product" doctrine, state all facts on which You rely to
17 support the validity of such objection.
18

19 8. If any of the information requested in the following Requests for Admissions is stored in a
20 computer or any other means of electronic data compilation or storage, provide hard, i.e., printed
21 copies.

22 9. If an answer to any Request for Admission or part thereof is not provided to Plaintiff's counsel
23 within 30 days after service of these requests, it shall be deemed to have been admitted.
24

25 10. "You" and "Your" shall refer to Allen University, as well as all persons acting on Your
26 behalf, including, but not limited to, attorneys and their associates, investigators, employees,
27 agents and other representatives.
28

1 11. The "Property" shall refer to the property located at 1530 Harden Street, Columbia,
2 SC 29204, as well as any part, internal or external, thereof.

3 12. "Person" as used herein refers to any natural person and/or any association, joint venture,
4 partnership, corporation or other legal or business entity.

5 13. "His" as used herein shall be considered to include either the masculine or the feminine
6 gender.

7
8 14. "Document" shall mean any written, printed, typed, recorded or other graphic matter of any
9 kind or nature, whether produced, reproduced or stored on papers cards, tapes, belts, film or
10 computer storage devices or any other medium; and it shall also mean all tangible things
11 including writings, drawings, graphs, charts, photographs, models, machinery, and
12 instrumentalities within the scope of Rules 26 and 34 of the Rules of Civil Procedure, in the
13 possession and/or control of You or Your agents, attorneys, and any other person acting or
14 purporting to act on behalf of You or known by You to exist, including all originals, copies of
15 originals, non-identical copies or originals, and all prior drafts thereof.
16

17 15. "Identify" or "identity,"

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19 a. when used in the reference to an individual, means and requires You to state: (1) his full name;
20 (2) his present business and home address; and (3) his present or last-known employer and his
21 present or last-known position with such employer.

22 b. when used in reference to a firm, partnership, incorporated or unincorporated association or
23 other legal or commercial entity, means and requires You to state: (1) its name; (2) the type of
24 entity that it is, e.g. firm, partnership, C corporation, etc.; (3) its licensed or otherwise registered
25 agent as required by law, if applicable; and (4) its place of incorporation or formation, as
26 applicable.
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c. when used in reference to a document, means and requires You to state: (1) the date of its preparation or compositions; (2) its author; (3) its intended recipient; (4) its title or designation; (5) a summary of its contents; and (6) its present location and the person who has possession, custody, or control of it.

d. when used in reference to a conversation, conference or meeting, or communication, means and requires You to state: (1) its date and time; (2) its location; (3) the identity of all participating, attending, or observing persons; (4) they identity of all documents that record, summarize, or otherwise reflect the contents of the conversation, conference or meeting, or communication; and (5) the method of communication, e.g. telephone, conference call, in-person, etc.

16. "Expert" shall mean any person whom You claim or may claim: (a) possesses a special skill or knowledge derived from his experience; and (b) is qualified to have an opinion or to state a conclusion concerning any matter at issue in this litigation or is capable of aiding a jury in determining the facts.

REQUESTS FOR ADMISSIONS

1. Admit that You submitted a Sworn Affidavit Of Marilyn Young to the South Carolina Court Of Common Pleas on or about January 11, 2012.

2. Admit that You that reviewed the copy of the Plaintiff's transcript dated November 27, 2007, which was filed with the Court on September 23, 2011.

3. Admit that after reviewing said 2007 transcript You noticed it had false grades on it.

4. Admit that if You correct the Plaintiff's transcript by removing the fall 2003 grades, You would have to return the financial aid money received for fall 2003 too.

1 5. Admit that You sent numerous Official Transcripts, for the years prior to 2008, of the Plaintiff
2 to multiple colleges and or universities.

3 6. Admit that You were negligent in handling the Plaintiff's student records.

4 7. Admit that You were negligent either presently or in the past with handling some students'
5 transcripts.

6 8. Admit that You made an error with handling the Plaintiff's 2007 transcript.

7 9. Admit that after You discovered an error within the Plaintiff's student records, You made at
8 least one attempt to correct it.

9 10. Admit that You did not disclose, to the Plaintiff, the fact that You have known since 2008 of
10 false grades being published on the Plaintiff's transcript when he disputed his grades in 2009.

11 11. Admit that You did not disclose that fact that You have known since 2008 of false grades
12 being published on the Plaintiff's transcript, prior to filing said Sworn Affidavit in 2012.

13 12. Admit that You have been negligent in handling financial aid money within the past 12 years.

14 13. Admit that You sent the Plaintiff's 2003 Official Transcript to Midlands Technical College
15 without Fall 2003 grades on it.

16 14. Admit that You were not taking students' attendance from the years of 2002-2003.

17 15. Admit that You have known that Your previous staff were not keeping accurate records.

18 16. Admit that it is Marilyn Young, current or previous Registrar at Allen University, having a
19 conversation with the Plaintiff on the audio disc previously sent to Your attorney, Nelson
20 Mullins Riley & Scarborough.

21 17. Admit that You have heard an audio disc of Your, current or previous, employee Marilyn
22 Young having a conversation with the Plaintiff Lawrence Terry.

1 18. Admit that You have known that Your Business Office was negligent in handling financial
2 aid money.

3 19. Admit that by not disclosing the fact You have known of false grades being published on
4 transcripts, You committed fraud.

5 20. Admit that for some unknown reason false grades were being published on the Plaintiff's
6 2007 transcript.

7
8 21. Admit that the Plaintiff's reputation was harmed because of the error on his 2007 transcript
9 made by You in a reasonably foreseeable way.

10 22. Admit that the error on the Plaintiff's transcript was a substantial factor in causing the
11 Plaintiff's harm.

12
13 23. Admit that every transcript prior to 2008 of the Plaintiff had false grades on them.

14 24. Admit that You know the definition of Negligent and or Negligence.

15 25. Admit that You know the definition of Fraud.

16 26. Admit that You know the definition of Libel.

17 27. Admit that based on Your Sworn Affidavit of Marilyn Young and other documents You have
18 viewed, You are guilty of Negligence.

19
20 28. Admit that based on Your Sworn Affidavit of Marilyn Young and other documents You have
21 viewed, You are guilty of Fraud.

22 29. Admit that based on Your Sworn Affidavit of Marilyn Young and other documents You have
23 viewed, You are guilty of Libel.

24
25
26 Date

27 Plaintiff Signature
28 Post Office Box 24138
Columbia, Sc 29224

The South Carolina Court of Appeals

Lawrence Terry, Appellant,

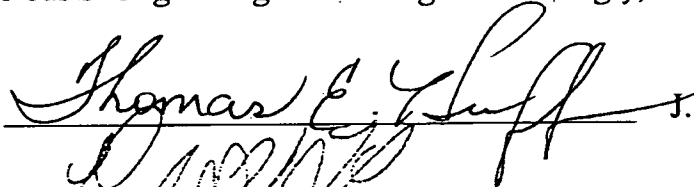
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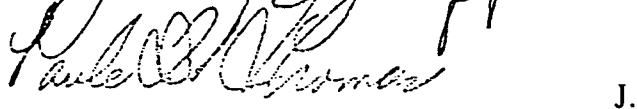
Allen University, Respondent.

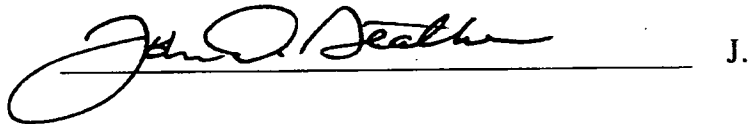
Appellate Case No. 2013-000340

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc: Lawrence Terry
Debbie Whittle Durban, Esquire

FILED

June 25, 2014