

THE STATE OF SOUTH CAROLINA
In The SC Court of Appeals

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

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

Alexander Pastene,

Appellant,

v.

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

Respondents.

AMENDED INITIAL BRIEF OF APPELLANT

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

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SC Court of Appeals

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CASES

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

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

Cowart v. Poore 337 SC 359, 523 SE2d 182 (Ct App 1988)

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

Keith Watts Respondent Metro Sec. No 3365 June 2001

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

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

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

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

STATUTES

SC Code of Laws

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

The case at bar is about two incidents of assault by two tennis-playing club-members (respondents) against an employee (appellant) while he was performing his duties according to the instructions of his supervisor and club rules. The assaulting club members had no grounds for complaining to the general manager because they were breaking the rules, so, they took justice in their own hands by assaulting and threatening the appellant. See Plaintiff's Complaint clocked 2011 OCT 24 PM 2:35, and letters to Appellant's superiors reporting the respondent's habitual transgressions which had started about January 2010, that are appended to Appellant's "ANSWERS TO HONORABLE JUDGE ERNEST KINARD'S ORDER of March 2, 2012, clocked: 12 MAR -7 PM 12:35, granting MOTION TO DISMISS OF 3-2-12 & ANSWER TO DEFENDANTS RICHRD BEETLE, CCHH AND CLUBCORP MOTION TO DISMISS DATED 12-5-11" clocked 2012 APR 10 PM 4:00, under Exhibits 1-2 & 4 through 14-1. Please note that even if the Appellant had failed to state a proper claim, if the facts and inferences drawn from the facts alleged on the complaint would entitle him to relief on any theory, then the grant of motion to dismiss is improper. See Brown v. Leverette, 291 SC 364, 353, SE 2d 397, which should be viewed in the light most favorable to th Appellant, see Toussaint v. Ham 292 SC 415, 357 SE 2d 8 (1987); Cowart v Poore 337 SC 359, 523 SE2d E 2d (Ct App. 1999). Also, See Amendment Based on Rule 15 SCRPC and Memorandum in Support of Plaintiff's Motion for Reconsideration dated 8-17-12 clocked 2012 SEP 17 PM 3:24. In view of the club's

general manager protracted inaction and increasing aggression by respondents Trobaugh and Ginsburg, the appellant wrote letters to the club members on August 12, 2010, see exhibits 10 & 11 attached to ANSWERS to Hon. Judge Kinard Order clocked 2012 APR 10 PM 4:00, asking them to desist and compensate the employee. About two months later, on October 24, 2011, the appellant filed a Complaint against the respondents before B.C. Court of Common Pleas and Summonses were served by the B.C. Sheriff's Office. Insofar as the club's general manager intentional actions and inactions the appellant sued him for intentional negligence —failing to exercise his duty of care on behalf of his employee. As a result of the general manager respondent Beetle's actions (unfairly firing him from his job) and inactions, it took the appellant about three (3) years to secure a new job (from April 2011 through end of September 2013) with lost wages alone in the amount of about \$45,000.00, in addition to other damages. Additionally, the wife to one of the assailing club members defamed the appellant before the club's Tennis Committee. Incidentally, ClubCorp of Dallas, TX, is the parent company that owns the club (CCHH) and employs the respondent General Manager Beetle, thus, is liable for their agents actions and inactions. See Agents and Agencies SC Code of laws. At the risk of being repetitive, the first hearing on February 8, 2012, to review the Appellant's Complaint and the respondents Motion to Dismiss it for the club's General Manager, CCHH (Country Club of Hilton Head) and its parent company ClubCorp, Circuit judge Honorable Kinard, granted it on 3-7-12, although it instructed the appellant to replead

with specificity within thirty (30) days, which the appellant complied. See Respondents Beetle, CCHH & ClubCorp's Motion to Dismiss of Dec. 5, 2011; Judge Kinard's Order clocked March 7, 2012; and idem Appellant's Amendment and idem Memorandum in Support clocked 2012-SEP 17 PM 3:24 about what Judge Kinard really ordered; and Original Partial Transcript of Hearing dated February 28, 2012, pages 8¶14, 9¶3, 3¶16, 9¶10, et seq. Neither the two respondents who assaulted the appellant nor their counsel attended that hearing, but filed Answer, Counterclaim, First Request for Production on February 2, 2012 and First Request of Interrogatories & Request for Production dated February 24, 2012. Insomuch that counsel for the two assaulting respondents is a B.C. Magistrate, who had been unfair to the appellant before, see ADDENDUM TO AMENDMENT TO DISQUALIFY ATTORNEY TERRY FINGER clocked 2012 MAR 30 PM 4:43 and exhibits attached to it, the appellant filed a motion to disqualify him, see his motion clocked 2012 MAR 1, 4:45pm, and on 3-4-12 he filed an Amendment to the motion, clocked 2012 MAR 5 PM 3:52. Idem, on 3-30-12 the appellant filed an Addendum to his Amendment to disqualify attorney Finger, who, again, is a BC Magistrate. On 4-10-2012, the appellant filed his response to judge Duke's Order to Dismiss of 3-7-12, see clocked copy dated 2012 APR 10 PM 4:00. On April 23, 2012, the attorney for respondents general manager Beetle, CCHH, and parent company ClubCorp, wrote a letter to administrative judge Mullen, informing her that the case should be dismissed in its entirety [based on false procedural arguments] and sought direction as to where the

matter stood. See copy of Attorney Mary Lohr letter to Judge Carmen Mullen and Appellant's response by letter to same judge on 4-27-12 denying attorney Lohr's allegations, see clocked copy of 2012 APR 30 PM 3:46. Then, on May 15, 2012 9:30AM, Ms Allison C. Coppage (assistant to Judge Mullen) emailed attorney Mary Lohr for respondents' CCHH, W.R.Beetle and ClubCorp, asking her to redact an Order for her to sign. See attachment to letter from attorney for respondents Mary Lohr to Appellant Pastene dated May 15, 2012 and Appellant's response to Allison Coppage of May 18, 2012. Subsequently, on 5-17-12, appellant received copy of letter from Attorney Lohr to Judge Mullen enclosing Order for review and approval, and on that same day of 5-17-2012, Appellant received Form 4, see Judgment in Civil Case by Master in Equity Dukes, indicating that Appellant's motion to disqualify the BC Magistrate/Attorney Finger and continuance [to await Supreme Court's Office disciplinary Counsel] had been denied. On 5-19-12, Appellant wrote letter to Judge Mullen indicating that he had not filed a Motion to Reconsider that never existed: see copy of Appellant's letter to Judge Mullen clocked 2012 MAY 22 PM12:59. On 5-23-12, Appellant Motioned to Reconsider Judge Duke's Order denying the disqualification of Magistrate/Attorney Finger; see clocked copy dated 2012 MAY 23 AM11:00. On May 21, 2012, administrative judge Mullen issued an Order, prepared by Ms Lohr, attorney for the general manager, club and parent company, based on false information. See Judge Mullen's Order clocked May 24, 2012. On May 30, 2012, the appellant wrote letter to administrative judge Mullen and

requested hearing to explain. On July 12, 2012, appellant filed Motion to continue the disqualification of the BC Magistrate/Attorney Finger. On July 16, 2012, appellant wrote letter to administrative judge Mullen requesting his day in court before a jury, see appellant's letter to Judge Mullen w/copies to attorneys Lohr, Finger and Judge Dukes. On July 19, 2012, Appellant exchanged emails with Attorney Lohr's assistant Ms. Ashley Darden in reference to Judge Mullen's Order, see copies of email exchange dated July 19, 2012. On July 25, 2012 appellant filed Motion to reconsider the Order by the administrative judge of May 21, 12. See copy of his motion with payment receipt attached. And, on July 25, 2012 appellant received acknowledgement from SC Supreme Court Office of Disciplinary Counsel's Office of his Complaint against attorney/BC Magistrate Terry Finger, see letter from SCSC Office Disc. Counsel, dated July 24, 2012, signed by Joseph Turner, Jr. On 9-13-12 PM3:24, Appellant filed Amendment and Memorandum in Support of his Motion to reconsider the administrative Judge Mullen's Order of May 21,2012. See clocked copy of the amendment in question marked 2012 SEP 17 PM 3:24, which serves as an additional source of flow and referenced information on the case at bar. On September 19, 2012, appellant wrote a letter to Judge Kinard who had dismissed the case during the first hearing of 2-8-12, see letter from Appellant to honorable Judge Kinard with footnote telling him that respondents offered the sum of \$12,000 to settle the case, and on 9-14-12, Appellant filed Affidavit, see appellant's Affidavit notarized and sworn before SC Notary John Castellano, explaining the different

Complaints and COAs filed against the respective respondents represented by two law firms [Attorney Lohr of Howell, Gibson & Hughes, and those represented by Attorney/Magistrate Finger. On Oct 18, 2012, Master in Equity issued Order denying appellant motion to disqualify BC Magistrate/attorney Finger. See Judge Duke's clocked 2012 October 19 PM 2:04, unfairly imposing \$825 sanction based on false allegations by Attorney/Magistrate Finger, as stated by the Appellant in his Appeal to this Honorable Court. On 11-2-12, appellant filed response to the Master in Equity's Order of 10-19-12. See Appellant's Response to Judge Dukes Order clocked 2012 NOV -2 PM 2:11, which includes copy of the 10-16-12 BC Roster. On October 1, 2012, appellant received notice SC Supreme Court Office of Disciplinary Counsel indicating dismissal of Appellant's Complaint against Attorney/Magistrate Finger —here the Appellant believes that Attorney Lohr may have lied to the Supreme Court Office of Disciplinary Counsel/Judicial Misconduct if she stated that she did not hear Attorney/BC Magistrate Finger threaten the Appellant when he told him: if you file a complaint against me you better get yourself a good attorney, despite Ms. Lohr having been sitting right next to him, and thus dismissed Appellant's Complaint against Judge Finger, see Oct. 1, 2012, SCSC Commission on Judicial Conduct Notice of Final Disposition, Matter # 12-DE-J-0191. On November 13, 2012 appellant filed Motion to reconsider Master in Equity's Order of 10-19-12, see Motion clocked November 14, 2012. On November 12, 2012, appellant wrote letter to Master in Equity, see letter clocked November 14, 2012, indicating intention to file Motion to

Reconsider. On 11-27-12, Appellant wrote letter to BC Clerk of Court requesting hearing before administrative judge Mullen [that never materialized], see enclosed herewith letter from Appellant to Jamie Thompson BC Clerk of Court's Office referencing email sent to her 11-27-12 and 11-27-12, requesting to schedule a hearing to reconsider Judge Mullen's Order of May 21, 2012, which had been continued by Judge McDonald on Nov-5-2012, but which hearing never materialized. On Dec. 4, 2012, Master in Equity issued Order dismissing the case against the two assaulting respondents represented by Finger, See Order Judge Dukes Order clocked 12-7-12, and Form 4 dated 12-4-12, and Form 4 clocked 2013 MAR 14 PM 4:26, indicating: this Order "ends" the case, although there was a paid pending Motion awaiting the hearing before Judge Mullen. On December 14, 2012, Appellant filed a motion to reconsider the Master in Equity's Order of Dec. 4, 2012, that was based on the false information provided by Attorney Lohr [that the case had been closed for several months, and thus affected Judge Dukes' Order of 12-4-12], see Appellant's Motion clocked December 14, 2012. On Feb 26, 2013, the appellant received notice of hearing from Master in Equity's Office, to be held March 11, 2013 to rule on two Appellant's Motions to Reconsider: the October 19, 2012 and December 4, 2012 Orders, see Orders to be heard on March 11, 2012. Subsequently, on or about March 14, 2013, Appellant received Notice Form 4, indicating that the two motions had been denied and the case had ended. See copy of Form 4, dated 3-14-13 enclosed herewith. On 4-22-13 appellant filed Motion to Excuse Master in Equity Dukes and

Appoint Special Referee. On 5-24-13, appellant wrote letter to Administrative Judge Mullen indicating his need to explain his case at a pending hearing. See Appellant's letter to Judge Mullen clocked 13 MAY 30 PM 4:00. On July 31, 2013, Master in Equity's Office scheduled hearing to excuse himself for August 15, 2013. See letter from Heather R.H. McLeod, Judicial Assistant to Judge Dukes, enclosed herewith, and on August 21, 2013, appellant received Order by Master in Equity of 8-15-13 denying his own excusal/recusal. On October 7, 2013, Appellant exchanged emails with Court Recorder Ms. Wanda Rowe with acknowledgment of request for transcript. See copy of email exchange attached herewith. On 9-20-13 appellant filed Notice of Appeal. See copy of Appellant's Notice of Appeal clocked 2013 SEP 20 PM 3:14. On October 14, 2013, appellant filed Amended Notice of Appeal. On October 16, 2013, attorney for respondents general manager, club and parent company filed Motion to Dismiss before SC Court of Appeals claiming "a case with a tortured and confusing history" [which torture and confusion are not attributable to the appellant]. On November 12, 13, appellant moved the Court of Appeals to Extend Time to Respond to Respondents' Motion to Dismiss and pending Court Recorder's Transcript. On November 27, 13, S.C. Court of Appeals denied Respondents' Motion to Dismiss and remanded for the lower court to consider the pending motion. See Appellate Judge Cureton's Order dated 11-27-13. On December 2, 2013, Attorney Lohr (for ClubCorp, Beetle, et al) wrote letter to Judge Mullen to consider Appellant's Motion for Reconsideration of 7-25-12, and requested either a hearing or

ruling: On Friday, December 9, 2013, appellant wrote letter to Judge Mullen and also partially responded to attorney Lohr's letter to Administrative Judge Mullen of December 2, 2012. See copies of both letters to Judge Mullen enclosed herewith. On December 13, 2013, Appellant filed the complete response to Attorney Lohr's letter to Judge Mullen of 12-2-13, see copy of his letter clocked 13 DEC 17 PM 3:04, enclosed herewith. On December 13, 2013, Appellant responded call/request from Judge Mullen's Office to send copy of his [lost?] Motion for Reconsideration of 7-25-12, but, seemingly crossed in the mail he received letter from Judge Mullen's Office (Ms. Scrantom) enclosing Judge Mullen's [final] Order dated and clocked December 11, 2013; see enclosed herewith, —once again issued without the Appellant's being heard. On December 21, 2013, appellant wrote a much self-explanatory letter to administrative judge's assistant (Ms. Scrantom) in response to her letter of 12-11-13, but as of today's date remains unresponded. Finally, on December 20th, 2013 the appellant filed a Notice of Civil Appeal, to include all of the Orders issued by Judges Kinard, Mullen and Dukes in the case at bar. See copy of Appellant's Notice of Appeal dated January 7, 2014. On January 27, 2014, Appellant received letter from SC Court of Appeals, acknowledging receipt of his Notice of Appeal requesting correction of defficiencies. On February 20, 2014, Appellant Motioned to Extend Time to file Initial Brief. And, on February 20, 2014, he faxed SC Court of Appeals corrected copy of Notice of Appeal. On February 28, 2014, SC Court of Appeals wrote to the Appellant requesting corrected defficiencies within ten

(10) days. And, on March 3, 2014, SC Court of Appeals requested from Appellant that he corrected deficiencies within ten (10) days the Initial Brief and designation of matter out of time, which he did on March 13, 2014. On April 4, 2014, Appellant filed his Initial brief along with flow chart. On April 8, 2014, SC Court Appeals wrote to Appellant requesting missing designation of matter to be included in the record of appeal, which he mailed to the Court on April 18, 2014. On April 15, 2014, Attorney Finger filed Motion to Dismiss. On April 24, 2014, Attorney Lohr filed Motion to Dismiss. On April 26, 2014, Appellant responded to Attorney Finger for Respondents Trobaugh & Ginsburg Motion to Dismiss, and on May 3, 2014, he responded to Attorney Lohr for respondents CCHH, Richard Beetle & ClubCorp' Motion to Dismiss. Finally, on June 10, 2014, SC Court of Appeals denied Respondents' Motions to dismiss and granted Appellant's Motion to file his Initial Brief Out of Time, and Extend time to file, and ordered him to amend his Initial Brief to include references within twenty (20) days., which to which he is complying herewith on today's date of June 30, 2014, by delivering it to the United States Postal Service, along with copies to the Respondents.

FACTS

Two club members assaulted an employee for consistently reporting their transgressions since about January-August 2010, and enforcing tennis court club rules on six (6) clay tennis courts for mandatory closure for maintenance). The two club members were unable to file formal complaints against the employee because

they were breaking the rules themselves, so, they decided to take justice in their own hands. As a result of the incident the appellant, who had been an excellent employee of the club, who was never late or missed a single day's work for the duration of his three (3) year employment, was humiliated, wrongfully terminated and defamed without proper compensation (please note that counsel for the general manager, club and parent company attempted to settle the case in the amount of twelve thousand dollars (\$12,000.00) which the appellant rejected for being too low). The appellant was unable to secure a job for the subsequent two and one half years, from April 2011 until September 2013, ie. About \$45,000 in lost wages, financial hardship endured, which compelled him to seriously indebt himself with a local predator lenders, such as Top Dollar Pawn shop of Huiltion Head Island, Titlemax of Bluffton, SC and other individuals to pay for his necessities, while he is still indebted due to the actions and inactions of all of the respondents.

SEPARATE STATEMENT OF FACTS

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

ARGUMENTS

- I. BECAUSE *AB INITIO* RESPONDENTS SELECTED BIASED AND PREJUDICED COUNSEL TO GAIN UNFAIR ADVANTAGE OVER THE APPELLANT, THE APPELLANT NEVER HAD THE CHANCE TO SECURE A FAIR TRIAL FOR THE LAST 3 YEARS.
- II. BECAUSE THE EVIDENCE SHOWS THAT THE COUNSEL FOR THE RESPONDENTS ACTED IN BAD FAITH, PROVIDED FALSE INFORMATION TO THE TRIAL COURT AND LENT THE WEIGHT

OF THEIR INFLUENCE TO BIAS THE CASE, THE APPELLANT NEVER HAD THE CHANCE TO SECURE THE TRIAL BY JURY HAD REQUESTED. (One counsel was untruthful by stating that his appearance in court at a motion hearing caused him undue costs, which he motioned to have the appellant pay for them –about \$825- and also finding him and the Master in Equity having a conversation before the hearing in the presence of a Sheriff Deputy and absence of the appellant. Also the other counsel provided false information to the presiding judge, which triggered an adverse ruling against the appellant.)

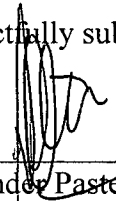
III. BECAUSE THE COUNSEL FOR THE GENERAL MANAGER, CLUB AND PARENT COMPANY WAS UNFAIR AND MISLEADING IN THE PREPARATION OF ORDERS FOR THE JUDGE TO SIGN.

CONCLUSION

For the reasons stated this court should void all of the flawed proceedings and orders in the lower court; orders new proceedings to take place in another venue, such as Columbia, S.C. before a different judge, or in the alternative remands and orders the instant case to run its course culminating in a jury trial to take place at the earliest without further delay.

June 30th, 2014

Respectfully submitted,



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Appellant, appearing *pro se*

THE STATE OF SOUTH CAROLINA
In The SC Court of Appeals

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

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

ALEXANDER PASTENE,

Appellant,

v.

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

Respondents.

CERTIFICATE OF MAILING

The Appellant, Alexander Pastene, certifies that on this 30th day of June, 2014, he mailed copies of his Amended Initial Brief to counsel Mary B. Lohr (for respondents Richard Beetle, CCHH, ClubCorp, CCHH Tennis Committee, et al) and attorney Terry Finger (Counsel for respondents Thomas Trobough and Norman Ginsburg), via USPS, to their last known addresses, P.O. Box 40 Beaufort SC and PO Box 24005 HHI, SC. Signed by: _____

Alexander Pastene.

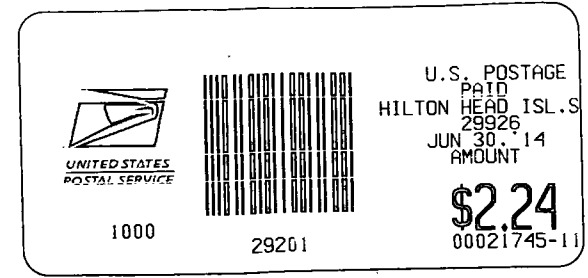
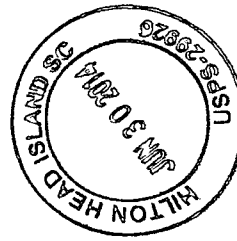
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