

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012- CP-37-00902

Alexander Pastene

Marion R. McMillan and Synergy Spine
 Center, P.A.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David A. Wilson

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 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 (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

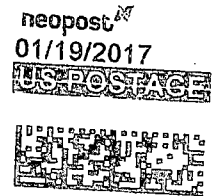
The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time 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.
 E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

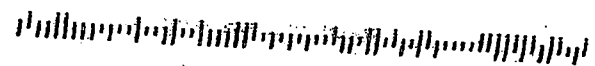
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Oconee County
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Walhalla, South Carolina 29691



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Alexander Pastene
PO Box 22298
Hilton Head, SC 29925

29925 22298 8011



STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Alexander Pastene)
 _____)
 Plaintiff,)
 vs.)
)
 Mariona R. McMillan and Synergy Spine)
 Center, P.A.)
 _____)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-37-00902

**MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET**

Plaintiff's Attorney: Pro Se, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: David A. Wilson, Bar No. 65273 Address: 200 Whitsett St., Suite 100B, Greenville, SC 29601 Phone: 864-232-2329 Fax 864-232-2350 E-mail: dwilson@greenvillesclaw.com Other: _____									
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)										
SECTION I: Hearing Information										
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO										
SECTION II: Motion/Order Type										
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> 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 <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant	01/11/17 Date submitted									
SECTION III: Motion Fee										
<input type="checkbox"/> PAID -- AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <table style="margin-left: 20px; border: none;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</td> </tr> <tr> <td><input checked="" type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td>Name of Court Reporter: _____</td> </tr> <tr> <td><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)	<input checked="" type="checkbox"/> 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: _____	<input type="checkbox"/> Other: _____
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<input type="checkbox"/> Domestic Abuse or Abuse and Neglect										
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<input checked="" type="checkbox"/> 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: _____										
<input type="checkbox"/> Other: _____										
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____									
CLERK'S VERIFICATION										
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____										

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
Case No.: 2012-CP-37-00902

Alexander Pastene,

Plaintiff,

v.

Marion R. McMillan and Synergy Spine
Center, P.A.,

Defendants.

**ORDER DENYING PLAINTIFF'S
MOTION FOR RELIEF FROM
JUDGMENT**

This matter came before the court on December 12, 2016 on "Plaintiff's Motion Relief from Judgment Under Rules 60 SCRPC & 55 SCRPC" (hereinafter "Motion for Relief from Judgment"). Plaintiff was present at the hearing as well as David A. Wilson as attorney for the Defendants. After hearing arguments from both sides and reviewing the file and the applicable law, I deny Plaintiff's Motion for Relief from Judgment from the "Default Judgment *Against Plaintiff Alexander Pastene.*"

This case has been pending for over four years. The parties have appeared before me on numerous occasions for various motions and hearings. The following is a summary of events relevant to my decision to deny the Plaintiff's Motion for Relief from Judgment.

Plaintiff filed a Complaint in Magistrate's Court for collection of a debt on June 18, 2012. The Defendants filed a Motion to Dismiss. The Magistrate denied the Motion to Dismiss by Order filed August 16, 2012.

Defendants filed and served an Answer and Counterclaim on August 31, 2012. The damages alleged in Counterclaim exceeded the jurisdictional limit of Magistrate's Court so the case was transferred in its entirety to the Court of Common Pleas for Oconee County.

The Plaintiff did not properly serve a Reply to the Counterclaim on Defendants in a timely fashion. Accordingly, Defendants filed an Affidavit of Default on November 13, 2012 and a Motion for Default Judgment on April 22, 2013.

After various filings and hearings, this court entered an Order of Default Judgment on June 17, 2014. Pursuant to the Order of Default Judgment, Plaintiff was held in default on the counterclaims and the court ordered a damages hearing to be scheduled on the unliquidated damages.

On August 11, 2014, Plaintiff filed a Motion for Reconsideration of the Order of Default Judgment. Although the Plaintiff acknowledged in his Motion for Reconsideration that he received the Order of Default Judgment on June 20, 2014, he did not file his Motion for Reconsideration until twenty-one (21) days later – well more than the ten (10) day deadline set forth in Rules 52 and 59, SCRCP.

I held a hearing on Plaintiff's Motion for Reconsideration on September 16, 2015 and issued an Order Denying the Motion on April 1, 2016.

The damages hearing pursuant to the Order of Default Judgment was held on April 12, 2016. I find that the Plaintiff did receive notice of the damages hearing. The Plaintiff did not appear for the hearing despite receiving notice of the hearing.

On April 19, 2016, I issued a Form 4 Judgment in a Civil Case awarding the Defendants judgment on the counterclaims in the amount of \$300,000 (\$100,000 actual damages and \$200,000 punitive damages).

On April 29, 2016, Plaintiff filed a Motion to Vacate or Reconsider the Form 4 Judgment. I denied the Motion to Vacate or Reconsider the Form 4 Judgment by Order signed June 3, 2016 and filed June 13, 2016.

I signed a formal Default Judgment *Against Alexander Pastene* (hereinafter "Default Judgment") on June 9, 2016 and it was filed on June 13, 2016. Plaintiff did not file a motion pursuant to Rules 52 or 59, SCRCF, after receiving the Default Judgment. Plaintiff also did not appeal the Default Judgment. The Default Judgment is a final order and is the law of this case.

I find that this court lacks jurisdiction to grant the Plaintiff's Motion for Relief from Judgment as I have already denied his motion once and Plaintiff did not appeal from the denial. I am precluded from now granting the relief the Plaintiff seeks. Nevertheless, to the extent I still have jurisdiction to consider the Plaintiff's Motion for Relief from Judgment, I find that such relief is not justified in this case.

During the hearing on this Motion, Plaintiff primarily argued that he should not have been held in default. Plaintiff did not appeal the Order of Default Judgment, Form 4 Judgment or Default Judgment *Against Alexander Pastene*. The finding of Plaintiff's default has already been finally decided.

Although the motion at bar requests relief pursuant to Rules 55 and 60, SCRCF, only Rule 60 is implicated because Plaintiff is seeking relief from a final judgment.

The only issue arguably before the court is whether Plaintiff should be relieved from the Default Judgment pursuant to Rule 60(b)(1) or (3).¹ Accordingly, the issue is whether the judgment was obtained through mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or other misconduct of the Defendants.

The Plaintiff simply failed to show up for the damages hearing despite being notified of same. The judgment was not obtained through mistake, inadvertance, surprise

¹ Plaintiff does not allege that the judgment is void or that it is no longer equitable that the judgment should have prospective application pursuant to Rule 60(b)(4) and (5). Although Plaintiff cites Rule 60(b)(2) as a basis for his motion, he does not set forth any newly-discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).

or excusable neglect. Plaintiff had notice of the damages hearing and simply did not show up. His neglect was the cause of the problem and it was not excusable or reasonable. See Paul Davis Systems v. Deepwater of Hilton Head, 362 S.C. 220, 607 S.E.2d 358 (Ct. App. 2004); Goodson v. American Bankers Ins. Co., 295 S.C. 440, 402, 368 S.E.2d 687, 689 (Ct. App. 1988) (“party has the duty to monitor progress of his case. Lack of familiarity with proceedings is unacceptable and the court will not hold a layman to any lesser standard that is applied to an attorney”). Plaintiff’s failure to attend does not create grounds for relief from a judgment pursuant to Rule 60(b)(1).

Plaintiff claims he did not attend the April 12, 2016 damages hearing because he received a copy of Order Denying his Motion to Reconsider the Order of Default Judgment before the hearing scheduled for April 12, 2016 and he interpreted the order to mean that he did not have to appear for the hearing. The Motion to Reconsider was not scheduled to be heard on April 12, 2016. The court heard the Motion to Reconsider seven months earlier on September 16, 2015. The only hearing scheduled for April 12, 2016 was the damages hearing.

Additionally, there are no allegations of fraud, misrepresentation or other misconduct on the part of the Defendants *in connection with the damages hearing* which would justify relief pursuant to Rule 60(b)(3), SCRCP.² See Mr. G. v. Mrs. G., 320 S.C. 305, 311, 465 S.E.2d 101, 103 (Ct. App. 2005)(there is no fraud sufficient to set aside a judgment if party given notice of action and had opportunity to present evidence but neglected to do so). Plaintiff had notice of the hearing and neglected to appear. Defendants did nothing to induce Plaintiff not to appear.

² Plaintiff’s complaints about Defendants and their attorney involve allegations of events occurring long before the damages hearing or the filing of the Default Judgment *Against Plaintiff Alexander Pastene*. I find that Defendants did not engage in any fraud, misrepresentation or other misconduct.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that "Plaintiff's
Motion Relief from Judgment Under Rules 60 SCRCP & 55 SCRCP" is denied.

AND IT IS SO ORDERED.

Cordell Maddox
Presiding Judge
Tenth Judicial Circuit

_____, 2017



CUSTOMER'S RECEIPT

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NOT NEGOTIABLE

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Vivian Cross et Reporter

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At Millan Transcript

12-12-2016

KEEP THIS RECEIPT FOR YOUR RECORDS

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19666226351

Year, Month, Day

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299281

Amount

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Clerk

06

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HILTON HEAD ISLAND
SC

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4539610755

02/15/2017

(800)275-8777

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Sale Qty

Final Price

Dom M.O. - Value \$105.00

(Serial#:19666226351)

Dom M.O. Fee \$1.20

Purple Heart 1 10 \$4.90

2 (Unit Price:\$0.49)

Total \$111.10

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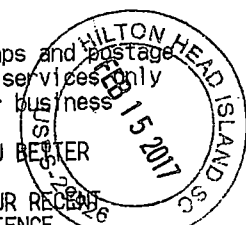
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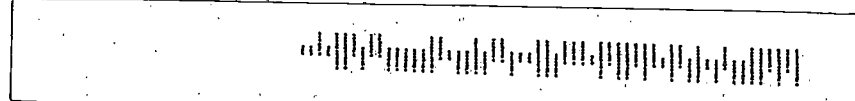
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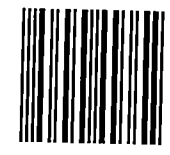


*SC. COURT OF APPEALS
ATTN. EMILIA SMITH
CLERK OF COURT
APPELLANT PASTENE'S
ORDER & PMT TRANSCRIPT
OF DEC 12, 2016, VIVIAN CROSS
COURT REPORTER. JUDGE CORDERL
MADDOX, WAZHAKA, S.C.
CASE NO. 2012-CP-37-00902*

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Hilton Head A.
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ATT. MS. Emilia Smith