

83071

**RECEIVED**  
APR 14 2017  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Honorable Cordell Maddox, Circuit Court Judge  
Oconee County - Trial Court Case No. 2012CP3700902

Case No. 2017-000294

Alexander Pastene

Appellant,

v.

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

Respondents.

AMENDMENT TO APPELLANT'S MOTION TO REINSTATE  
ORDER TO DISMISS OF APRIL 4, 2017

COMES NOW, the Appellant, Alexander Pastene, on this April 12, 2017, and hereby pleas for good cause shown that his appeal is reinstated in accordance to Rule 260 , for, according to his documentation he made all the corrections required by the Appellate Court in its letters dated February 21, and 28, 2017, *et seq.*, on February 24, 2017; and states that his corrected responses may have gotten lost in the mail. Additionally, he did notify opposing counsel, as required.

As regards Court Recorder Vivian Cross' copy of the transcript of December 12, 2016, it is sill due the appellant on or before April 24, 2017, which is within the rules' sixty (60) day allowance by statute. As of today's date (4-13-2017) Appellant Pastene has not received the transcripts ordered on 2/15/2017. Wherefore, the appellant pleads that the appellant's appeal is reinstated, so, that justice can be done between the parties.

Appellant is herewith enclosing the \$25 money order motion fee required.

Respectfully submitted,



Alexander Pastene, Esq.  
P.O. Box 22298  
HiltonHead Is., SC, 29925  
843-605-5266  
[alexanderpastene@yahoo.com](mailto:alexanderpastene@yahoo.com)  
Appearing *pro se*  
April 7th, 2017

cc.

David A. Wilson, Esquire  
WILSON & ENGLEBARDT, LLC  
200 Whitsett Street - Suite 100-B  
Greenville, SC 29601  
864-232-2329  
Email [dwilson@GreenvilleSCLaw.com](mailto:dwilson@GreenvilleSCLaw.com)

*Note for Emilia*

**RECEIVED**

APR 14 2017

SC Court of Appeals

Dear Emilia:

I am sending this off-the-record disposable note concerning misunderstandings and bad communications which may have lead to my missing stuff. I am confused, and stunned about the court's dismissal of April 4, 2017. Indeed, at first there were some deficiencies (title format, new case #, etc). but then on 2-24-2017, I corrected all that, and it seems as though you did not receive them.

1. **On February 14, 2017**, I FILED A NOTICE OF APPEAL for which I paid a \$100 fee, and asked for a "received" stamped copy. Also served a Certificate of Mailing to the other side (Attorney David Wilson).

2. **On February 21, 2017**, I received two (2) letters from Clerk Jenny Abbott Kitchings, stating as follows:

**One letter** acknowledging receipt of my notice of appeal with a new Ct of Appeals case number.

**The other letter:** To comply with Rules 203 and 267 SCACR in ref. to title, and append the Orders or Judgments challenged on appeal.

To this effect I included a new Appellate case No. (2017-000294) to al my filings, and rearranged the order in which the tile should appear in the matter (Appellant on top, followed by the Respondent).

Also, on that same day February 21, 2017, I received Ct Appeals letter stating corrections to be made within ten (10) days or face dismissal, as follows:

- Names and addresses, etc., of all attorneys of record
- Rearrange the title, name of the Appellant first followed by Respondents
- Accompany order(s) and or judgment(s) challenged on appeal.
- Proof of service had not been provided.

According to my records, I complied with all that, so, what is it that I DID NOT COMPLY that demanded a dismissal? I suspect you never received my corrections.

I am enclosing here what I had done so far, so, would you can tell me where is it that I erred, so, I can correct. Please mark off with a sharpie or marker directly on the copied documents, so, that I can see exactly what's going on.

3. **On February 28, 2017**, I received two (2) letters from Deputy Clerk Clair Allen, stating as follows:

One letter referring to the Transcript to correct in 10 days from February 28th, 2017; to provide it to the Clerk of Court, and again to provide Proof of Service formatted as in 7 AppC part II.

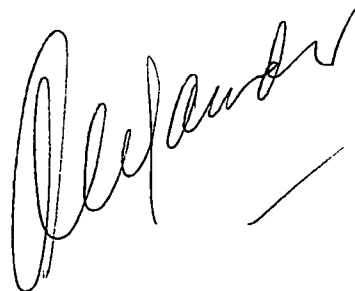
The other letter, referring to the Transcript stating that it should've been delivered by now.

PLEASE NOTE THAT, ALTHOUGH I ORDERED AND PAID FOR THE DECEMBER 12, 2016, TRANSCRIPT, COURT RECORDER VIVIAN CROSS HAS NOT YET SENT IT (SHE'S STILL WITHIN THE SIXTY (60) DAYS TO DELIVER IT).

Once again, I am enclosing here samples of everything that I've filed, so that you can mark-off, circle, or make notes of what needs to be corrected, and send back to me, so, that I can make those corrections immediately? This is a nightmarish collection of a simple debt, that was viciously counterclaimed, lasting about 4 years now, turned against me...all based on an ILLUSION BASED ON SMOKE to avoid the merits, now claiming \$300,000 in false damages and punitive.

Sorry for the inconvenience, thanking you again, with kindest regards,

Alexander 843-605- 5266.

A handwritten signature in black ink, appearing to read "Alexander", with a horizontal line underneath it.

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APR 14 2017

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

\_\_\_\_\_  
Case No. 2017-000294  
\_\_\_\_\_

Alexander Pastene

v.

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

Appellant,

Respondents.

\_\_\_\_\_  
**NOTICE OF APPEAL**  
\_\_\_\_\_

Alexander Pastene appeals the Order of the Honorable Cordell J. Maddox, dated January 17th, 2017. Appellant received written notice of entry of this Order on January 26th, 2017.

February 14th, 2017

ALEXANDER PASTENE, Esq.  
Appearing *Pro se*  
Post Office Box 22298  
Hilton Head Is, SC 29925  
843-605-5266  
Email [pastenehalexander@gmail.com](mailto:pastenehalexander@gmail.com)

Other Counsel of Record:  
David A. Wilson, Esq.  
WILSON & ENGLEBARDT, LLC  
200 Whitsett Street-Suite 100-B  
Greenville, S.C., 29601  
Tel. 864 232-2329  
Email: [dwilson@GreenvilleSClaw.com](mailto:dwilson@GreenvilleSClaw.com)

*I had previously corrected this already*

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

**RECEIVED**

APR 14 2017

SC Court of Appeals

Case No. 2017-000294

Alexander Pastene

Appellant,

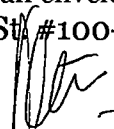
v.

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

Respondents.

PROOF OF SERVICE

I certify that on this date, 2/15/2017, I served a copy of Notice of Appeal in this action, on attorney David A. Wilson, of Wilson & Englehardt, LLC, for defendant Marion McMillan & Synergy Spine Center, PA, by mailing it to him, to his last known address: 200 Whitest St. #100-B Greenville, SC 29601, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed to: David A. Wilson at 200 Whitest St. #100-B Greenville, SC 29601.

  
ALEXANDER PASTENE, Esq.  
Appearing *Pro se*  
Post Office Box 22298  
Hilton Head Is, SC 29925  
843-605-5266  
Email pastenehalexander@gmail.com

David A. Wilson, Esq.  
WILSON & ENGLEBARDT, LLC  
200 Whitsett Street-Suite 100-B  
Greenville, S.C., 29601  
Tel. 864 232-2329  
Email: [dwilson@GreenvilleSClaw.com](mailto:dwilson@GreenvilleSClaw.com)  
For the Respondents.

*I had print corrected this already*

Rule

267

Proo

Proof of sum  
Account + 925 -

---

Please check  
and return to me  
in self-addressed  
postaged envelope  
Thank you

**RECEIVED**  
FEB 17 2017  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Cordell maddox, Circuit Court Judge

Case No. 2012-CP-37-00902

Marion McMillan, Synergy  
Spine, et al.,

Respondent,

v.

Alexander Pastene.

Appellant.


had  
JA corrected  
this already!

**RECEIVED**  
APR 14 2017  
SC Court of Appeals

NOTICE OF APPEAL

Alexander Pastene appeals the Order of the Honorable Cordell J. Maddox dated January 17<sup>th</sup>, 2017. Appellant received written notice of entry of this Order on January 26<sup>th</sup>, 2017.

February 14<sup>th</sup>, 2017

  
Alexander Pastene, Esq.  
Post Office Box 22298  
Hilton Head Is. South Carolina 29025  
(843) 605-5266 – pastenehalexander@gmail.com  
Appellant, appearing *pro se*

Other Counsel of Record:  
David A. Wilson  
200 Whitsett Street  
Greenville, South Carolina 29601  
Attorney for Respondent  
(864) 232-2329

my copy  
Emilia South  
Monica Carriolo

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM OCONEE  
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

Case No. 2012-CP-37-00902

Marion R. McMillan, Synergy Spine, *et al*

Respondent,

v

Alexander Pastene

Appellant.


**RECEIVED**

APR 14 2017

SC Court of Appeals

CERTIFICATE OF MAILING

I certify that on this date, 2/15/2017, I served a copy of Notice of Appeal in this action, on attorney David A. Wilson, of Wilson & Englehardt, LLC, for defendant Marion McMillan, *et al*, by mailing it to him, to his last known address: 200 Whitest St. #100-B Greenville, SC 29601, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed to: 200 Whitest St. #100-B Greenville, SC 29601.

  
ALEXANDER PASTENE, Esq.  
Appearing *Pro se*  
Post Office Box 22298  
Hilton Head Is, SC 29925  
843-605-5266  
Email pastenehalexander@gmail.com

THIS IS THE  
WAY IT WAS  
I already corrected  
this before

NOTE: false affidavit sworn before notary.

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Alexander Pastene,

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-3700902

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APR 14 2017

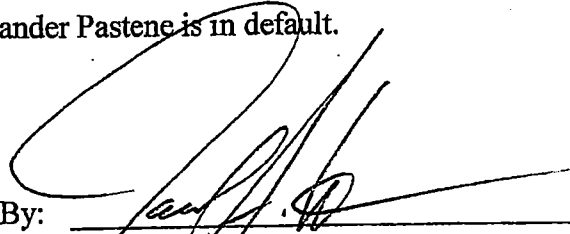
SC Court of Appeals

**AFFIDAVIT OF DEFAULT AS TO DEFENDANT'S COUNTERCLAIMS**

PERSONALLY appeared before me David A. Wilson, who, being duly sworn, states that he is the Attorney for the Defendants and that the Summons and Notice, Answer and Counterclaim were served on the Plaintiff by regular mail on September 6, 2012 making the Answer to the Counterclaim due on or before October 11, 2012. More than thirty-five (35) days have elapsed since the service of the Summons, Notice and Counterclaim, exclusive of the date of service, and no Answer, Notice of Appearance or other response to the pleading has been served upon him as required by the Summons and Notice in this action. Additionally, the Alexander Pastene is not a member of the military service. Accordingly, the Plaintiff Alexander Pastene is in default.

NOT TRUE

By:

  
David A. Wilson  
200 Whitsett Street, Suite B  
Greenville, South Carolina 29601  
(864) 232-2329  
Attorney for Defendants

Sworn to and subscribed before me this 13<sup>th</sup> day of November, 2012

  
Notary Public of South Carolina

My Commission Expires: 11/8/2011

2012 NOV 14 A 11:41

FILED OCONEE, SC  
BEVERLY H. WHITFIELD  
CLERK OF COURT

**RECEIVED**

APR 14 2017

SC Court of Appeals

Alexander Pastene, Esq.  
Post Office Box 22298  
Hilton Head island, S.C., 29925  
Email: [pastenehalexander@gmail.com](mailto:pastenehalexander@gmail.com)  
843-605-5266

Ms. Pam Davis  
EASLEY POST OFFICE  
810 S. Pendleton St,  
Easley, SC 29640

June 27th, 2016

Dear Ms. Davis:

It was nice talking with you over the telephone on today's date in reference to a forwarding address requested by a one David A. Wilson, Esq., who was domiciled at 600 North A Street, Easley, South Carolina, 29640, and moved to 200 Whitsett Street, Suite B, Greenville, South Carolina, 29601.

Specifically, I wish to know if attorney David A. Wilson placed a forward mail request. I believe that Attorney Wilson may have closed his office in Easley and moved to Greenville sometime around 2012.

Looking forward to your response, I remain,

Sincerely,

MM/AP

The Response was that Atty Wilson is  
unavailable; NEVER LEFT FORWARDING  
ADDRESS ;

DEFENDANT MOTION TO DISMISS WAS DENIED

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF OCONEE )  
 )  
ALEXANDER PASTENE, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MARION MCMILLAN AND )  
SYNERGY SPINE CENTER, P.A., )  
Defendants. )

IN THE MAGISTRATE'S COURT

2012CV3710100244  
CIVIL CASE NUMBER

RECEIVED

APR 14 2017

SC Court of Appeals

ORDER

CERTIFIED TRUE COPY  
JUDGE M. TODD SIMMONS

This matter comes before the Court upon the filing of a Motion to Dismiss by the Defendants. A hearing was held on the matter on July 23, 2012 at 1:34 p.m. Both parties were present and the Defendants were represented by attorney Gruber Sires.

At controversy in this matter is the existence or non-existence of a contract between the parties. Specifically, the Plaintiff claims he has an oral contract with the Defendants wherein he agreed to provide marketing services in exchange for a fee. While the Defendants admit there were discussions of a business relationship between the parties, the Defendants assert that there is no contract and that all actions of the Plaintiff were gratuitous in nature. Specifically, the Defendants' Motion to Dismiss is based upon two theories. The first is that the agreement must be in writing as required by the uniform commercial code. The second is that there was never a meeting of the minds between the parties, and no contract was ever finalized or entered into by the parties. During the hearing the undersigned ruled that the uniform commercial code does not apply to this controversy as the alleged contract was for services and not goods. The second issue regarding the "meeting of the minds" was taken under advisement and both parties submitted additional briefs, affidavits, and case law in support of their respective positions. This Order addresses the second issue raised by the Defendants in their Motion to Dismiss.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531 (2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267 (Ct.App.2004). In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct. Gaskins v. Blue Cross-Blue Shield of South Carolina, 271 S.C. 101 (1978); Moore v. Palmetto State Life Insurance Co., 222 S.C. 492 (1952). If agreement is manifested by words, the contract is said to be express. Thomas v. Lomax, 82 Ga.App. 592 (1950). If it is manifested by conduct, it is said to be implied. Dowling v. Charleston & W.C. Ry. Co., 105 S.C. 475 (1913). In either case, the parties must manifest a mutual intent to be bound. Hughes v. Edwards, 265 S.C. 529 (1975); Shealy v. Fowler, 182 S.C. 81 (1936). Without the actual agreement of the parties, there is no contract. Edens v. Laurel Hill, Inc., 271 S.C. 360 (1978).

MTS  
1 8/16/12

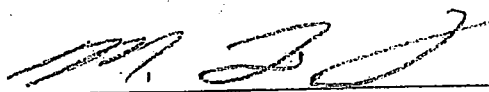
There is no doubt in this controversy that there were negotiations that occurred that could have led to a contract. The question is whether or not there was a mutual intent to be bound. The answer to that question can possibly be answered through not only the determination of the words exchanged between the parties, but also the conduct of the parties. Without commenting on the weight of evidence in favor of the non-moving party, there is some evidence which may indicate that the parties intended to be bound by an agreement. There is no doubt that conduct and words from both parties were exhibited which support the positions of both parties. When viewing the evidence presented and the inferences derived therefrom in the light most favorable to the Plaintiff, there exists a question as to whether there was a meeting of the minds between the parties. This question must be determined by the ultimate finder of fact either through a bench trial or a jury trial.

Based upon the foregoing:

IT THEREFORE ORDERED that the Defendants' Motion to Dismiss is DENIED; and

IT IS SO ORDERED!

August 16, 2012  
Seneca, South Carolina

  
M. TODD SIMMONS  
CHIEF MAGISTRATE

The South Carolina Court of Appeals

Alexander Pastene, Appellant,

v.

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

Appellate Case No. 2017-000294

**RECEIVED**  
APR 14 2017  
SC Court of Appeals

The Honorable J. Cordell Maddox, Jr.  
Oconee County  
Trial Court Case No. 2012CP3700902

ORDER

Appellant has failed to provide proof of having served his request to order the transcript required by Rule 207 and Rule 262 of the South Carolina Appellate Court Rules (SCACR), and the Court's letters dated February 28, 2017. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allan, Deputy  
CLERK

Columbia, South Carolina

cc:  
Alexander Pastene  
David Alan Wilson, Esquire

**FILED**  
April 4, 2017 AS



Both ltrs. responded  
3-4-17 see log for  
log

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

February 28, 2017

Alexander Pastene  
Post Office Box 22298  
Hilton Head Island SC 29925

**RECEIVED**

APR 14 2017

SC Court of Appeals

Re: Alexander Pastene v. Marion R. McMillan  
Appellate Case No. 2017-000294

Dear Mr. Pastene:

Our records indicate that the transcript in the above matter should have been delivered. As of today's date, we have not received any information indicating that the court reporter has been granted an extension. Further, you have not notified us that you have failed to receive the transcript, nor have we received your initial brief.

If you have not yet received the transcript, Rule 207 of the South Carolina Appellate Court Rules requires you to contact the Office of Court Administration. The address for Court Administration is as follows:

South Carolina Office of Court Administration  
1220 Senate Street, Suite 201  
Columbia, SC 29201

Be sure to copy the Court and opposing counsel with all correspondence concerning the transcript.

Please advise the Court of the status of the transcript within ten (10) days of

the date of this letter, or your appeal will be dismissed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: David Alan Wilson, Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
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[www.sccourts.org](http://www.sccourts.org)

February 28, 2017

**RECEIVED**

Alexander Pastene  
Post Office Box 22298  
Hilton Head Island SC 29925

APR 14 2017

SC Court of Appeals

Re: Alexander Pastene v. Marion R. McMillan  
Appellate Case No. 2017-000294

Dear Mr. Pastene:

Upon reviewing your correspondence regarding the transcript, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- A copy of this document was not provided to the Office of Court Administration as required by the SCACR. The address for Court Administration is 1220 Senate Street, Suite 201, Columbia, SC 29201.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: David Alan Wilson, Esquire

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

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Case No. 2017-000294  
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Alexander Pastene

Appellant,

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Respondents.

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February 14th, 2017

  
ALEXANDER PASTENE, Esq.  
Appearing *Pro se*  
Post Office Box 22298  
Hilton Head Is, SC 29925  
843-605-5266  
Email [pastenehalexander@gmail.com](mailto:pastenehalexander@gmail.com)

Other Counsel of Record:  
David A. Wilson, Esq.  
WILSON & ENGLEBARDT, LLC  
200 Whitsett Street-Suite 100-B  
Greenville, S.C., 29601  
Tel. 864 232-2329  
Email: [dwilson@GreenvilleSClaw.com](mailto:dwilson@GreenvilleSClaw.com)

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

---

Case No. 2017-000294

---

Alexander Pastene

Appellant,

v.

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

Respondents.

---

PROOF OF SERVICE

---

I certify that on this date, 2/15/2017, I served a copy of Notice of Appeal in this action, on attorney David A. Wilson, of Wilson & Englehardt, LLC, for defendant Marion McMillan & Synergy Spine Center, PA, by mailing it to him, to his last known address: 200 Whitest St. #100-B Greenville, SC 29601, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed to: David A. Wilson at 200 Whitest St. #100-B Greenville, SC 29601.

ALEXANDER PASTENE, Esq.  
Appearing *Pro se*  
Post Office Box 22298  
Hilton Head Is, SC 29925  
843-605-5266  
Email [pastenehalexander@gmail.com](mailto:pastenehalexander@gmail.com)

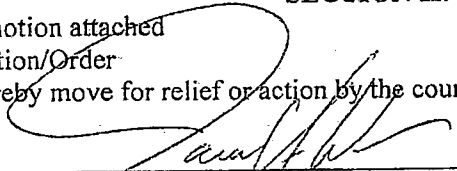
David A. Wilson, Esq.  
WILSON & ENGLEBARDT, LLC  
200 Whitsett Street-Suite 100-B  
Greenville, S.C., 29601  
Tel. 864 232-2329  
Email: [dwilson@GreenvilleSClaw.com](mailto:dwilson@GreenvilleSClaw.com)  
For the Respondents.

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)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO	
<b>SECTION II: Motion/Order Type</b>	
<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
<b>SECTION III: Motion Fee</b>	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason) <ul style="list-style-type: none"> <li><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</li> <li><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</li> <li><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party</li> <li><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief</li> <li><input type="checkbox"/> Motion for Stay in Bankruptcy</li> <li><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</li> <li><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</li> </ul> Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
<b>JUDGE'S SECTION</b>	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

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 : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> 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



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

Case No.: 2012-CP-37-00902

Alexander Pastene,

Plaintiff,

v.

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

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

Defendants.

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, SCRCP, 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, SCRCP, 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).<sup>1</sup> 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

---

<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>2</sup> 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 SCRPC & 55 SCRPC" is denied.

AND IT IS SO ORDERED.

---

Cordell Maddox  
Presiding Judge  
Tenth Judicial Circuit

\_\_\_\_\_, 2017



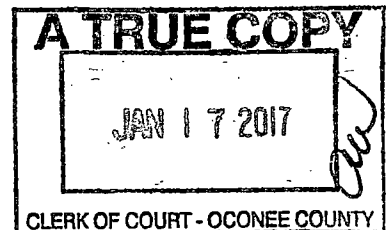
Oconee Common Pleas

**Case Caption:** Alexander Pastene VS Marion R McMillan , defendant, et al  
**Case Number:** 2012CP3700902  
**Type:** Order/Other

So Ordered

s/ J. Cordell Maddox Jr.

Electronically signed on 2017-01-16 13:35:31 page 10 of 10



4 DCS to S.C. Appeals + copies to  
 Wilson. Amended Notice of Appeal  
 Certificate of Service  
 copy request transcript

FAIRFIELD  
 213 WILLIAM HILTON PKWY  
 HILTON HEAD ISLAND  
 SC

29926-9998  
 4539610755

02/24/2017 (800)275-8777 11:16 AM

Product Description	Sale Qty	Final Price
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First-Class Mail	1	\$1.40
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Large Envelope  
 (Domestic)  
 (COLUMBIA, SC 29211)  
 (Weight:0 Lb 2.60 Oz)  
 (Expected Delivery Day)  
 (Monday 02/27/2017)

First-Class Mail	1	\$1.40
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 (Domestic)  
 (GREENVILLE, SC 29601)  
 (Weight:0 Lb 2.70 Oz)  
 (Expected Delivery Day)  
 (Monday 02/27/2017)

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(Card Name:MasterCard)  
 (Account #:XXXXXXXXXX8358)  
 (Approval #:02468Z)  
 (Transaction #:510)

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**Oconee County**  
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 Walhalla, South Carolina 29691

**Alexander Pastene**  
**PO Box 22298**  
**Hilton Head, SC 29925**

POSTAGE PAID  
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 ZIP 29691  
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APR 14 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Honorable Cordell Maddox, Circuit Court Judge  
Oconee County - Trial Court Case No. 2012CP3700902

---

Case No. 2017-000294

---

Alexander Pastene

Appellant,

v.

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

Respondents.

---

MOTION IN RESPONSE TO ORDER OF DISMISSAL  
BY SOUTH CAROLINA COURT OF APPEALS  
FILED APRIL 4, 2017, RULES 207 & 262 SCACR

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Appellant, Alexander Pastene, did provide proof of having served his request to order the transcripts onto Recorder Vivian Cross, as required by Rule 207 and Rule 262 of the SCACR, and the Court letters dated February 28th, 2017, on February 15, 2017, (see copies of USPS receipt and Postal Money Order #19666226352, dated 2-15-17, enclosed herewith). In addition, he did notify opposing counsel, as required.

As per information by Court Recorder Vivian Cross, copy of the transcript of December 12, 2016, will be mailed out to Plaintiff Pastene on or before April 15, 2017, within the sixty (60) days allowed by statute. As of today's date (4-7-2017) Appellant Pastene has not received the transcripts as yet, although these are still not due until the 15th day of April, 2017. Wherefore he pleads that the Order of Dismissal is vacated.

Respectfully submitted,



Alexander Pastene, Esq.  
P.O. Box 22298  
HiltonHead Is., SC, 29925  
843-605-5266  
[alexanderpastene@yahoo.com](mailto:alexanderpastene@yahoo.com)  
Appearing *pro se*  
April 7th, 2017

cc.

David A. Wilson, Esquire  
WILSON & ENGLEBARDT, LLC  
200 Whitsett Street - Suite 100-B  
Greenville, SC 29601  
864-232-2329  
Email [dwilson@GreenvilleSCLaw.com](mailto:dwilson@GreenvilleSCLaw.com)

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

**RECEIVED**

APR 14 2017

**SC Court of Appeals**

---

Case No. 2017-000294

---

Alexander Pastene

Appellant,

v.

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

Respondents.

---

APPELLANT'S RESPONSE TO S.C. COURT OF APPEALS  
CORRESPONDENCE OF FEBRUARY 28, 2017

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Appellant did timely order and pay for the Transcript of December 12, 2017, from Court Recorder Ms. Vivian Cross.

As of today's date, Appellant did not receive Transcript of 12/12/2017 from Court Recorder. Thus, no Appellant Initial Brief is due.

According to Appellant's file he did file proof of service as required by SCACR.

Appellant copied instant response to attorney David A. Wilson for the Respondent.

Sincerely

Alexander Pastene, Esq.  
P.O. Box 22298  
HiltonHead Is., SC, 29925  
843-605-5266  
[alexanderpastene@yahoo.com](mailto:alexanderpastene@yahoo.com)  
Appearing *pro se*  
March 3, 2017

FILED OCOONEE, SC  
IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF OCOONEE )  
BEVERLY H. WHITFIELD )  
CLERK OF COURT )

IN SENECA MAGISTRATE COURT  
CIVIL ACTION NO: 2012-CV-3710-100244

Alexander Pastene )  
2012 OCT 11 PM 4 51 )

PLAINTIFF'S RESPONSE TO DEFENDANT'S )  
SUMMONS & NOTICE, ANSWER )  
AND COUNTERCLAIM )  
**RECEIVED**

Plaintiff,

APR 14 2017

SC Court of Appeals

Vs.

Marion R. McMillan and Synergy )  
Spine Center of Seneca, S.C. )

Defendants. )

Comes now the Plaintiff Alexander Pastene, and denies every allegation as stated in defendants' Summons & Notice, Answer & Counterclaim of 8-29-12, and demands strict proof. Additionally, he opposes defendants McMillan's and Synergy Spine Center attempt to remove the instant case from Oconee's Summary Court's to South Carolina Circuit Court based on the following arguments:

1. That, on June 18, 2012, the Plaintiff filed his Summons and Complaint against defendants Marion R. McMillan and Synergy Spine Center in Magistrate's Court and not Circuit Court. That, On June 25, 2012, the defendants filed a Motion for Dismissal. On July 23, 2012 a hearing took place to resolve the legal arguments raised by the defendants. Then, on 8-7-12, the defendants filed two (2) jurisprudence cases concerning "meeting of the minds". On 8/16/12 the Magistrate Court denied the defendants' motion to dismiss.

That, according to Rules 7,8, *et seq.*, SCRMC, Rule 12(a) (b) SCRCP *et seq.*, the defendants' SUMMONS AND NOTICE and ANSWER AND COUNTERCLAIM dated August 29, 2012, was not timely filed, and although pleadings may be amended at any time before or during the trial or upon appeal, the allowance of the amendment applies only to promote "substantial justice" (Rule 14, SCRMC); not evade it as in the case at bar.

2. That, the amount demanded by the Plaintiff in the case at bar is \$7,500.00, and not \$25,000.00, which action falls within this Honorable Summary Court's jurisdiction as filed by the Plaintiff under the SCRMC.

3. That, according to the doctrine of *res judicata*, where identical parties or their privies, in identity of subject matter, adjudication of the issue in the former lawsuit exist, then in such a case the unsuccessful litigant is precluded from re-litigating the claims that were actually litigated and any which could have been litigated, see Ford v. Watson 282 SC 66, 316 SE 2d 429 (Ct App., 1987). Clearly, the defendants did not like this Honorable Court's proceedings and Order and now wish to remove it to another court to start the case over again.

4. That, based on the doctrine of Malicious Prosecution recognized by the Supreme Court of South Carolina (SCSC) as a cause of action for the prosecution of any ordinary civil action, which elements are: the institution or continuation of original judicial proceedings, either civil or

APPELLANT'S COUNTERCLAIM WAS ANSWERED  
ON SEPT 12-2012 - 6 DAYS AFTER COUNTERCLAIM  
WHERE IS THE  
DETAIL?

2012 SEP 18 A 8:11

RECEIVED

criminal; by or at the instance of the defendant; the termination of such proceedings in the plaintiff's favor; maliciousness in instituting such proceedings; want of probable cause resulting injury or damage; see Gaar v North Myrtle Beach Realty Co. 287 SC 525, 339, SE 2d 887 (Ct App 1986), and Cisson v. Pickens Savings & Loan Association, 258 SC 37, 186 SE 2d 822 (1972), wherefore the defendants' untimely answer and counterclaim should be denied.

Maliciousness on the part of the defendants has been ongoing since the Plaintiff demanded payment and the defendants responded by: first, defaming him with false accusations of insanity by the medical doctor he trusted; blackmailing the plaintiff to deter him from collecting and suing him; unfairly denying the Plaintiff's allegations despite an abundance of documentary evidence to the contrary; attempting to remove the case to another court using groundless counterclaims and false accusations to further deter and intimidate him. Moreover, the defendants' resolve to avoid paying the Plaintiff for services rendered, which they promoted, accepted and declared complete satisfaction are now paying fees to two attorneys to help them evade their obligations shows a quality of bad faith and viciousness that should be taken into account in deciding the case at bar, see C.A.N. Enters., Inc. v. S.C. Health & Human Serv. Fin. Comm'n., 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

5. That, this Honorable Court's Order of 8-16-12 denied the defendants' Motions to Dismiss, whereas the determination of intent to be bound depends not only on words but conduct as which must be determined in either a bench or jury trial.

Wherefore, the Plaintiff pleads with this Honorable Court that, the defendants' captioned "Summons & Notice" & "Answer & Complaint" is dismissed with prejudice and the defendants are found in default; the bench trial on October 15, 2012, at 10am in Magistrate's Court, Seneca, S.C. is confirmed; it awards compensatory and punitive damages plus fees and costs given the defendants' willfulness and malice; so, that justice can be done between the parties.

Respectfully submitted,



Alexander Pastene  
Plaintiff, appearing *pro se*  
P.O. 22298  
Hilton Head Is., S.C. 29925  
843-227-2695

On Hilton Head Island, S.C.  
On this 12<sup>th</sup> day of September, 2012

June 12, 2013

Alexander Pastene  
P.O. Box 22298  
Hilton Head Island, SC 29925

**RE: Alexander Pastene v. Marion R. McMillan and Synergy Spine Center, P.A.  
Case No.: 2012CV3710100244**

Dear Mr. Pastene:

Please be advised that the hearing on my Motion for Default Judgment is scheduled for July 29, 2013 at 2:00pm at the Oconee County Courthouse.

If you wish to discuss reasonable resolution to this case prior to that date, please feel free to contact me in writing.

Please note that my mailing address is 200 Whitsett Street, Suite B, Greenville, SC 29601. I do not receive mail at the Easley address.

Sincerely,

  
David A. Wilson

DAW/ccb  
Enclosures  
Cc: Dr. Marion McMillan

*FALSE ADDRESS*

*Responded via email  
on 7-10-13 (3:30pm)*

*FALSE ADDRESS*

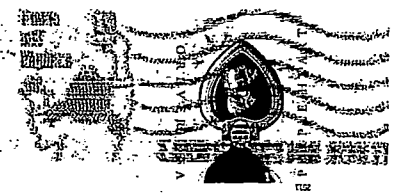
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Attorney David Wilson  
600 North A Street  
Easley, GA 31501

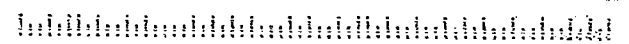
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Thank You

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
ALEXANDER PASTENE,  
Plaintiff,  
vs.  
MARION MCMILLAN & SYNERGY SPINE  
CENTER, P.A. Defendants.

) IN THE COURT OF COMMON PLEAS  
)  
) CASE NO.: 212-CP-37-00902  
)

) PLAINTIFF'S MOTION  
) RELIEF FROM JUDGMENT  
) UNDER RULES 60 SCRPC  
) & 55 SCRPC

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APR 14 2017

SC Court of Appeals

FILED OCONEE COUNTY SC  
BEVERLY H. WHITEHEAD  
CLERK OF COURT  
2016 JUL 29 A 12 37

Comes now, the Plaintiff, Alexander Pastene, on this Wednesday, June 29, 2016, and pleads with this Honorable Court that it sets aside the Default Judgment entered on June 13, 2016, which stated that: *Plaintiff failed to appear, and Plaintiff's Motion was dismissed. Furthermore, that Defendant's counterclaim against Plaintiff is granted,* based on the following grounds:

1. The Plaintiff failed to attend the hearing of April 11, 2016, in Walhalla, in good faith, for good cause (he responded promptly, has a good reason for his failure, has a meritorious defense, was prejudiced by the other party, see Rouvet v. Rouvet, SC App (2010) 388 SC 301, 696, SE2d 204, for, he was induced by mistake, inadvertence, surprise, excusable neglect, clerical error, fraud, misrepresentation or other misconduct by the defendants, as stated in Rule 60 (a) and (b) 1,2,3) SCRP. Plaintiff is now awaiting Official Transcript of the April 11, 2016, hearing before Hon. Judge Maddox, to further respond accordingly.

2. Specifically, on the morning of April 11, 2016, Oconee County Clerk of Court Tammy Hightower phoned the Plaintiff and left message in his answering service stating that Judge Maddox asked for the Plaintiff's time of arrival to the hearing scheduled for that same afternoon at 2:00pm in Walhalla, SC.

Plaintiff was unable to retrieve Ms. Hightower's message until sometime that afternoon because he works in the mornings at a local golf course, and does not get off work until about 1:30/2:00pm. Additionally, the Plaintiff's cell phone company provider (Mobil) does not service or reach the golf course area, so, by the time he received Ms. Hightower's call it had become impossible for him to drive from Hilton Head Island to Walhalla and make it on time to appear at the hearing. Driving time from Hilton Head to Walhalla is about 4 to 5 hours. The Plaintiff would've attended had he received the call the day before, on April 10, 2016.

3. As per Plaintiff's Motion of April 28, 2016, Plaintiff was informed by Ms. Whitfield that there had been some confusion between Oconee County and Anderson's Clerks of Court that needed to be resolved. Plaintiff was told by phone by Ms. Whitfield that unless he heard from the court, he **was** to attend the hearing at Walhalla on April 11, 2016, (bolded for emphasis) however, subsequently Plaintiff received copy of ORDER dated 4-1-16, from the court, so, he obviously interpreted that he **was not** to appear on the 4-11-16, see Rule 60(a) SCRPC.

4. Furthermore, Plaintiff invokes Rule 60 (b) *et seq.*, SCRPC, with respect to Defendants Motions of Default against Plaintiff regarding his timely Answer to Defendants' Answer and Counterclaim, inasmuch as Plaintiff did serve the defendants his Answer on 09-12-2012, and the Clerk of Court clocked it on Sept. 18, 2012. Meaning that Plaintiff's timely Answer made moot all subsequent Orders of Default against him.

5. The Plaintiff alleges that Attorney for the Defendants Wilson fraudulently misrepresented and mislead the Plaintiff and this Hon. Court by fudging over the use of a false address in his official stationary, which he did not cross out or replace as any ordinary citizen would. Note should be taken that defendant was evasive and thus untruthful when answering Judge Maddox about the existence of his address during the September 16, 2015 hearing at Anderson. There, Attorney Wilson admitted that he had two addresses and two offices (one in Easley) but then closed the Easley office, but made no corrections or scratched out the false address from his stationary, which induced the

Plaintiff to err. See Official Transcript of September 16, 2016, Page 12, lines 13 thru 25 et seq., and see Honorage Nursing v. Florence Conv. Ctr. (2005) 367 SC 108 623.

Moreover, Plaintiff *idem* timely mailed copy of his Answer to the Clerk of Court, who clocked it on 9-12-2012, while it seems as though Attorney Wilson may have failed to ask the Easley Post Office to forward his mail to his Greenville address, or failed to scratch it out from his stationary after his forwarding request may have expired.

Also, Attorney Wilson may have intentionally mislead this court on 09-16-16, because Judge Simmons denied the Plaintiff's Motion Opposing to the Transfer from Magistrate to Common Pleas, see Transcript P. 4, line 17, and page 8, lines 8 thru 22.

### STANDARD OF REVIEW

"Before invoking this severe remedy [default] the trial court must first determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants. [There were no elements of bad faith of the part of the Plaintiff.] The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case". See Balloon Plantation v. Head Balloons, 303 S.C. 152, 154, 399 S.E.2d 439 (Ct.App.1990). The sanction should be aimed at the specific misconduct of the party sanctioned. Also see Balloon Plantation, 303 S.C. at 154, 399,S.E.2d See at 440.

In 1997, the South Carolina Court of Appeals was explicit in deciding a case on the subject of default, see 327 S.C. 538 (1997) 489 S.E.2d 679 Paul KARPPI, d/b/a P/C Technology, Respondent, v. Greenville Terrazzo Co., Inc. and Ogden Teck Inc., it argued as follows: "The imposition of sanctions is generally entrusted to the sound discretion of the Circuit Court" see Downey v. Dixon, 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct.App. 1987). A trial court's exercise of its discretionary powers with respect to sanctions imposed in discovery matters will be interfered with by the Court of Appeals only if an abuse of discretion has occurred, see Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct.App. 1985). The decision to grant or deny a motion made pursuant to Rule 60(b) is within the sound discretion of the trial judge. see BB&T v. Taylor, 369 S.C. 548, 551, 633 S.E.

2d 501, 502 (2006). The appellate standard of review is limited to determining whether there was an abuse of discretion. Id. at 551, 633 S.E.2d at 502-03. An abuse of discretion occurs when the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support. see Gainey v. Gainey, 382 S.C. 414, 423, 675 S.E.2d 792, 797 (Ct.App.2009). Also, see Honorage Nursing v Florence Conv. Ctr. (2005), 367 SC 108, 623, where the moving party demonstrates that judgment was induced by mistakes, inadvertence, surprise, or excusable neglect.

The burden is upon the party appealing from the order to demonstrate the trial court abused its discretion, see Clark, 284 S.C. at 570, 328 S.E.2d at 107. (Ct.App. 1985). *Idem*, an abuse of discretion may be found where the appellant shows that the conclusion reached by the trial court was without reasonable factual support and resulted in prejudice to the rights of appellant, thereby amounting to an error of law, see Dunn v. Dunn, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989) (citing Darden v. Witham, 263 S.C. 183, 209 S.E.2d 42 (1974)). Also RRR Inc. v. Toggas 378 SC 174,662, SE2d 170.

Wherefore, the Plaintiff pleads with this Hon. Court the sets aside its Order of Default, dismisses the defendants' baseless Counterclaim for Defamation (which was claimed without evidence) allows for discovery, and sets a date for a trial to take place as Hon. Judge Maddox promised to the parties during the 09-16-2016 Anderson hearing, so, that justice can be done between the parties, see Transcript page 17-lines 5, 6.

Respectfully submitted,



---

Alexander Pastene, Esq., Appearing *pro se*  
P.O. Box 22298, Hilton Head Is., S.C., 29925  
email: [pastenehalexander@gmail.com](mailto:pastenehalexander@gmail.com)  
843-605-5266

On Hilton Head Island, South Carolina,  
On this 28th day of June, 2016

cc. Oconee County Clerk of Court, Walhalla, SC  
Attorney David Wilson, Columbia, SC  
Honorable Judge Maddox-attn. Robert Lake, Anderson, S.C.

Copy  
to SC  
(2-23-17)



**CUSTOMER'S RECEIPT**

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION  
**NOT NEGOTIABLE**

Pay to  
Address

*Vivian Cross et Repnte  
NE Millan Transcript*

KEEP THIS RECEIPT FOR YOUR RECORD

Serial Number

**19666226351**

Year, Month, Day

**2017-02-15**

Post Office

**299281**

Amount

**\$105.00**

Clerk

**0**

TRANSCRIPT CASE NE MILLAN  
2012-CP-37-0902

FAIRFIELD  
213 WILLIAM HILTON PKWY  
HILTON HEAD ISLAND  
SC

29926-9998

4539610755

02/15/2017 (800)275-8777 3:52 PM

Product Description	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
-------	--	----------

Debit Card Remit'd		\$111.10
--------------------	--	----------

(Card Name:Debit Card)  
(Account #:XXXXXXXXXXXX5760)  
(Approval #:  
(Transaction #:803)  
(Receipt #:006336)  
(Debit Card Purchase:\$111.10)  
(Cash Back:\$0.00)

\*\*\*\*\*  
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\*\*\*\*\*

In a hurry? Self-service kiosks offer quick and easy check-out. Any Retail Associate can show you how.

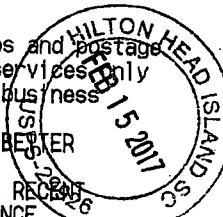
Order stamps at usps.com/shop or call 1-800-Stamp24. Go to usps.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

\*\*\*\*\*  
Get your mail when and where you want it with a secure Post Office Box. Sign up for a box online at usps.com/poboxes.  
\*\*\*\*\*

All sales final on stamps and postage  
Refunds for guaranteed services only  
Thank you for your business

HELP US SERVE YOU BETTER

TELL US ABOUT YOUR RECENT POSTAL EXPERIENCE



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*Vivian Cross et Repnte  
NE Millan Transcript*

12-12-2016

Clerk

**06**

Amount

**\$105.00**

Year, Month, Day

**2017-02-15**

Post Office

**299281**

Serial Number

**19666226351**

SEE BACK OF THIS RECEIPT FOR IMPORTANT CLAIM INFORMATION

**NOT NEGOTIABLE**

Pay to

Address

\*\*\*\*\*  
greeting  
at select

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s offer  
Retail

or call

Use usps.com/clicknship to print shipping labels with postage.

THE STATE OF SOUTH CAROLINA  
In The South Carolina Court of Appeals

APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

**RECEIVED**  
APR 14 2017  
SC Court of Appeals

---

Case No. 2017-000294

---

Alexander Pastene

Appellant,

v.

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

Respondents.

---

**CORRECTED DATES (from 2017 to 2016) ON APPELLANT'S RESPONSE TO S.C.  
COURT OF APPEALS CORRESPONDENCE OF FEBRUARY 28, 2017**

---


Appellant did timely order and pay for the Transcript of December 12, 2016, from Court Recorder Ms. Vivian Cross.

As of today's date, Appellant did not receive Transcript of 12/12/2016 from Court Recorder. Thus, no Appellant Initial Brief is due.

According to Appellant's file he did file proof of service as required by SCACR.

Appellant copied instant response to attorney David A. Wilson for the Respondent.

Sincerely

  
Alexander Pastene, Esq.  
P.O. Box 22298  
HiltonHead Is., SC, 29925  
843-605-5266  
[alexanderpastene@yahoo.com](mailto:alexanderpastene@yahoo.com)  
Appearing *pro se*  
March 30th, 2017

*Contestants of  
mailing to atty  
for the other side  
to Greenville, SC. (his  
new office)*

**RECEIVED**  
APR 14 2017  
SC Court of Appeals

\*\*\*\*\*

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Clerk: 05

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For delivery information, visit our website at <a href="http://www.usps.com">www.usps.com</a> ®.		GREENVILLE, SC 29611-0755 05	
Certified Mail Fee	\$3.35	Postmark Here	03/06/2017
Extra Services & Fees (check box, add fee \$1.00/line)	\$0.00		
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00		
<input type="checkbox"/> Return Receipt (electronic)	\$0.00		
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00		
<input type="checkbox"/> Adult Signature Required	\$0.00		
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00		
Postage	\$0.49		
Total Postage and Fees	\$3.84		
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FAIRFIELD  
213 WILLIAM HILTON PKWY  
HILTON HEAD ISLAND  
SC

29926-9998  
4539610755  
(800)275-8777 11:39 AM

03/06/2017

Product Description	Sale Qty	Final Price
First-Class Mail Letter	1	\$0.49

(Domestic)  
(GREENVILLE, SC 29601)  
(Weight: 0 Lb 0.20 Oz)  
(Expected Delivery Day)  
(Wednesday 03/08/2017)  
Certified (\$3.35)  
(@USPS Certified Mail #)  
(70153010000155402260)  
Affixed Postage (\$0.49)  
(Affixed Amount: \$0.49)

Total \$3.35

Credit Card Remitd \$3.35  
(Card Name: MasterCard)  
(Account #: XXXXXXXXXXXXXXX8358)  
(Approval #: 00681Z)  
(Transaction #: 751)

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*Sent to attorney for the other side*

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HILTON HEAD IS. SC 29925

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  - No Saturday Delivery (delivered next business day)
  - Sunday/Holiday Delivery Required (additional fee, where available)
  - 10:30 AM Delivery Required (additional fee, where available)
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SC COURT OF APPEALS  
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29211

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<input type="checkbox"/> 1-Day	<input type="checkbox"/> 2-Day	<input type="checkbox"/> Military	<input type="checkbox"/> DPO
PO ZIP Code 29926	Scheduled Delivery Date (MM/DD/YYYY) 4-14-17	Postage \$ 23.75	
Date Accepted (MM/DD/YYYY) 4-13-17	Scheduled Delivery Time <input type="checkbox"/> 10:30 AM <input type="checkbox"/> 3:00 PM <input checked="" type="checkbox"/> 12 NOON	Insurance Fee \$	COD Fee \$
Time Accepted 1330	10:30 AM Delivery Fee <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Return Receipt Fee \$	Live Animal Transportation Fee \$
Weight 7 lbs.	Flat Rate <input type="checkbox"/> Flat Rate	Sunday/Holiday Premium Fee \$	Total Postage & Fees \$ 23.75

DELIVERY (POSTAL SERVICE USE ONLY)

Delivery Attempt (MM/DD/YYYY) 4-14-17	Time 074	Employee Signature 
Delivery Attempt (MM/DD/YYYY)	Time	Employee Signature

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