

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

RECEIVED

JAN 31 2018

SC Court of Appeals

Common Pleas Case No. 2012-CP-37-00902
Appellate Court Case No. 2017-000294

Alexander Pastene, Appellant,

v.

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

REPLY BRIEF

ALEXANDER PASTENE, Esq.
Appellant, appearing *pro se*
Post Office Box 22298
Hilton Head Island, S.C. 29925
Tel 843-605-5266
Email: pastenehalexander@gmail.com
Date: January 26th, 2018

David A. Wilson, Esq., For Respondent
WILSON & ENGLEBARDT, LLC
200 Whitsett Street - Suite 100-B
Greenville, SC 29601
864-232-2329

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Certificate of Counsel

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Bateman v. Rouse, THE STATE OF SOUTH CAROLINA, In The Court of Appeals, Clotell Bateman, Respondent/Appellant, v. Helen V. Rouse, Appellant/Respondent. Appeal From Charleston County A. Victor Rawl, Circuit Court Judge, Opinion No. 3792. Heard March 11, 2004, Filed May 3, 2004. Default Case was reversed and remanded for a new trial grounded on the theory of *Void Ab Initio*.

Nationwide v. First Citizens. THE STATE OF SOUTH CAROLINA. In The Supreme Court. J. Ernest Kinard, Jr., judge. Opinion No. 24644. Heard April 2, 1997 - Filed July 21, 1997. the issue of bad faith when the jury was prejudiced on Mortgagee's counterclaim by evidence of Hunt's fraud and deceit. Affirmed. Remanded. *Void Ab Initio*.

ARGUMENTS IN REPLY

Striving to avoid making redundant arguments —most of which have been set forth in the Initial Brief— the Appellant offers the following points of clarification and rebuttal to the arguments raised by the Respondents.

I. It is incumbent upon the Respondent —and his attorney as officer of the court— to be truthful before the courts.

As regards the 01-16-18 Initial Brief of the Respondent on page 1, line 15, the Respondent stated that: *Appellant failed to timely file responsive pleadings to the counterclaims; this is utterly false & untrue.* Appellant did timely file and serve responsive pleadings to the Respondents' counterclaims of 8/29/2012, as proven by the Seneca Summary Court stamp indicating RECEIVED on 9/18/2012). See Appellant's Answer titled: PLAINTIFF'S RESPONSE TO DEFENDANT'S SUMMONS & NOTICE, ANSWER & COUNTERCLAIM STAMPED 9/18/2012, by Seneca Summary Court, dated 9/12/2012, enclosed herewith, marked Exh.2x. Actually, Appellant filed his responsive pleadings on 9/12/2012; specifically, six (6) days after receipt of the Respondent's unsubstantiated counterclaims, wherein he denied all allegations, demanded strict proof, and opposed to the removal of the case. This is undeniable fact.

II. It is further incumbent upon a Respondent and his Attorney to submit to the court truthful Affidavits.

On November, 13th, 2012, Attorney for the Respondent filed an "Affidavit of Default as to Defendant's [Respondent's] Counterclaims" before Court of Common Pleas, stamped RECEIVED by Oconee County Clerk of Court on Nov. 14, 2012. The contents of the Affidavit are false, even if notarized, for, the Appellant timely Answered, and did not default. See copy of Respondent's false Affidavit enclosed herewith. This is fact; not opinion.

III. Duplicity can be interpreted as not being truthful to the court, and carry the consequences of deceit.

Although the Respondent avoided to mention in his Initial Brief that Appellant had served him timely to his [near Seneca] Easley address, at 600 North A Street, SC 29640, as printed in Respondent's official stationary, the Appellant assumed—as any ordinary citizen—that all proceedings were being handled at the Respondent's Easley address [near Seneca] where the lawsuit was initiated and taking place, and that the attorney for the Respondent's address printed in his official stationary was valid, insomuch that it had not been crossed out or marked invalid.

The Appellant believes that attorney David A. Wilson for Respondent may have been disingenuous in using a false address in his official stationary, despite stating in the body of his Summons and Notice of August 29th, 2012, that mail was to be sent to his Greenville address. Regardless, nowhere in the SCACR it is specified that an attorney for a Respondent should be allowed to confuse or misrepresent opposing counsel by printing an invalid address in his stationary, while indicate another in the Summons. All addresses listed by litigants in their official stationary or documents, are assumed to be valid. See copy of Respondent's 2012 official stationery, with highlighted in yellow address, enclosed herewith.

Furthermore, the Respondent's attorney moved out of the Seneca-Easley area, but failed to leave a forwarding address with the USPS-Easley Post Office, see letter to postal employee Pam Davis, enclosed herewith, for, had he done so, there would've been enough time for him to receive the forwarded Appellant's Answer timely, insomuch that the Appellant had expeditiously filed his response to the counterclaims within six (6) days from receipt! Clearly, Appellant made a good faith effort to file/serve Respondent.

IV. The Respondent has been evasive and misleading in the way he presented the facts to the court in the case at bar.

On Respondent's statement, page 1, lines 10 et seq., of the Initial Brief of Respondent he stated that: *Appellant argued that Respondents did not file and serve the Answer and Counterclaim timely. The Magistrate denied the Appellant's motion*

and transferred the case to circuit court because the counterclaims exceeded the jurisdictional limit of the magistrate court (R. ___, 09/18/12 Order: Notice of Transfer of Case to Court of Common Pleas). This is an outright misrepresentation.

Note that, it was not the Magistrate who transferred the case to Common Pleas of his own volition; it was the Respondent who intentionally removed the case to Common Pleas by use of unsupported counterclaims of false defamation, while increased the dollar value to exceed the limit, and make the Magistrate lose jurisdiction.

See Respondent's letter marked Exh. 3, dated 08/30/2012.

Apropos the Magistrate's denial of the Appellant's Motion to Dismiss the Respondent's counterclaim for having filed and served them out of time, the denial took place specifically based of conflicting rules between SC Code §23-310, S.C.R.C.P. 12(b) (6), Rule 2, Magistrate Rules, S.C.R.C.P. 12(a)(2), Rule 12, S.C. Code §22-3-10, and S.C. Code §22-3-30, whereas, Magistrate Court ruled that the entire matter be transferred to the docket of the Court of Common Pleas of Oconee County. See Magistrate's Order of 9/18/2012, enclosed herewith.

Notwithstanding, going back in time when the Respondent cut the Appellant out and denied him payment for the several months of planning, marketing counseling, and implementation invested, see Exh.#81312, attached here (he replaced the Appellant and put his wife on, instead) he went on to deliver his dissertation at Sun City Hilton Head Seminar —set up by the Appellant— and made a profit on it without the Appellant's obstruction; note that the Appellant was absent at the hearing of April 12, 2016, and thus could not defend his case. See Transcript of April 12, 2016.

V. It is unfair to attempt to succeed in a legal case by use of procedural strategies designed to prolong the case indefinitely

As stated earlier, in the name of expediency & economy of justice, the Appellant decided to cut his losses, and file a Complaint against the Respondent in Magistrate Court, Seneca, S.C., to collect part of an unpaid debt of over \$30,000.00 dollars, for the maximum amount of \$7,500. Therein, Respondent answered by filing a Motion to Dismiss, and after discovery before Magistrate Court during a lengthy hearing, the

Respondent was denied his Motion to Dismiss, and the case was continued to decide on “meeting of the minds” before a jury. See Magistrate’s Court Order dated 08/16/12, enclosed here.

Upon learning about the Magistrate’s decision, and anticipating he’d probably lose the case on the merits if he appeared before a jury, the Respondent fired his original attorney, hired a new one, and removed the case from Summary Court to Common Pleas by filing a false counterclaim, and *idem* increasing the amount to meet Common Pleas requirements, however, despite all his machinations, as of today’s date the Respondent failed to submit the “strict proof” demanded by the Appellant in his Answer to the Respondent’s counterclaim. —It’s been one red herring after another— no different from those thrown in his fallacious Respondent’s Initial Brief: delay until doomsday.

VI. The Respondent and his attorney took advantage of the Appellant’s unwanted absence to mislead the court to obtain a judgment in a case that was clearly *void ab initio*

As regards the seminars, the Respondent was highly disingenuous to these courts by shrewdly avoiding to discuss the Sun City Hilton Head seminar —where the Respondent had actually made a profit at the Appellant’s expense— while focused the discussion on another seminar (Tide Pointe of Hilton Head Island) which had only been in the process of being arranged, but not finalized, see page 8, line 1 et seq. Transcript of April 12, 2016, especially, after the Appellant had been separated from the agency by the Respondent. Respondent’s deposition was taken in the absence of the Appellant.

Seemingly, after firing the Appellant, the Respondent may have attempted to setup the Tide Pointe seminar himself, but failed, so, he retaliated by falsely accusing the Appellant of a defamation that never existed or is supported by any evidence, whatsoever. See Transcript of hearing of 04/12/16, in which Appellant was not deposed, absent, and unable to defend his position —given Clerk of Court’s confusing procedures. See Page 8, lines 3 et seq., and Page 9. Evidently, the Respondent and his new attorney chose a defense strategy that focused mainly on procedure, based on false premises rather than “merits” in a case of uncollected debt, and thus, prolonged the case for the

next five (5) years, avoiding jury trials on the merits of the case in both Magistrate and Common Pleas.

The Appellant, *idem*, who had filed a Complaint against the Respondent for an uncollected debt for services rendered, not only was denied payment, but delayed the case for over five (5) years, and retaliated with damages, including punitive, grounded on an illusory Defamation and Default that the Appellant never caused or even existed. In essence, the Respondent avoided paying his debt, by knocking the Magistrate from his jurisdiction, removing the case to another court, engaging in a moot Initial Brief diatribe of over 16 pages, and a Motion to Dismiss in Appellate Court, all based on an illusory procedure that never matched reality, in a case that did not go into discovery.

VII. Proof that the Appellant had timely filed & served the Respondent and the court the Answer to the counterclaims according to statute, made all subsequent proceedings & Court Orders *void ab initio*, and thus, moot, and invalid.

The Appellant, encloses here further proof that he Answered, filed, and served the court and Respondent, timely, legally within six (6) days, and includes the envelope stamped "Return to Sender" by the Easley Post Office, marked Exh. 5x.

VIII. Was it proper to compel Appellant to appear in another court and county (Pickens) to pursue his Oconee case? Confusion between Clerks of Court seemed commonplace, which may have contributed to missing the hearing of April 12, 2016 by the Appellant.

CONCLUSION

Based on the foregoing, in addition to the arguments made in the Initial Brief of the Appellant, he respectfully submits that the Respondent did not have valid Motions to Dismiss, Default, Notarized Affidavit, or Deposition given at the Hearing of April 12, 2016, in which the Appellant was not present, wherefore, the Appellant respectfully appeals to the good sense of this Honorable Court, to recognize that:

a. The Appellant, indeed, had answered timely by filing and serving both the court and the Respondent, the counterclaims, within statute, which has been proven

beyond a shadow of a doubt, by the official stamps marked RECEIVED affixed on the Appellant's Answers;

b. The Respondent's counterclaims, Motion of Default, Dismissal, Damages, and Affidavit, have not been supported by any evidence whatsoever, except hearsay; while Respondent viciously insulted the Appellant. See Respondent's email Exh.#53112.

c. All of the proceedings and Orders of the lower court issued beyond the Appellant's timely Answers in the case at bar should be moot, thus, vacated, and the case remanded to Common Pleas for a jury trial on the merits to take place preferably at another venue other than Walhalla or Anderson, South Carolina, so, that justice can be done between the parties.

Respectfully submitted,



ALEXANDER PASTENE
Appellant, appearing *pro se*
Post Office Box 22298
Hilton Head Island, S.C. 29925
Tel 843-605-5266
Email: alexanderpastene@yahoo.com
Date: January 26th, 2018

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

my copy

EXHIBIT 2x

FILED OCONEE, SC
IN THE STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
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)

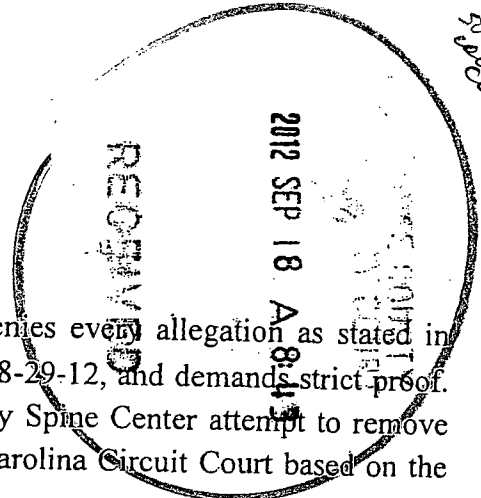
PLAINTIFF'S RESPONSE TO DEFENDANT'S
SUMMONS & NOTICE, ANSWER
AND COUNTERCLAIM

Plaintiff,

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

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 12th day of September, 2012

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-37-00902

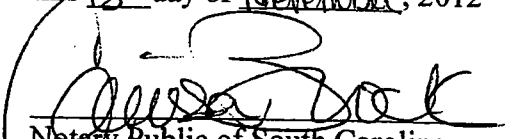
**AFFIDAVIT OF DEFAULT AS TO
DEFENDANT'S COUNTERCLAIMS**

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.

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 13th day of November, 2012


Notary Public of South Carolina

My Commission Expires: 11/8/2011

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2012 NOV 14 A 11:41

November 14, 2012

The Honorable Beverly Whitfield
P.O. Box 678
Walhalla, SC 29691

RE: Alexander Pastene v. Marion R. McMillan and Synergy Spine Center, P.A.
Case No.: 2012-CP-23-00902

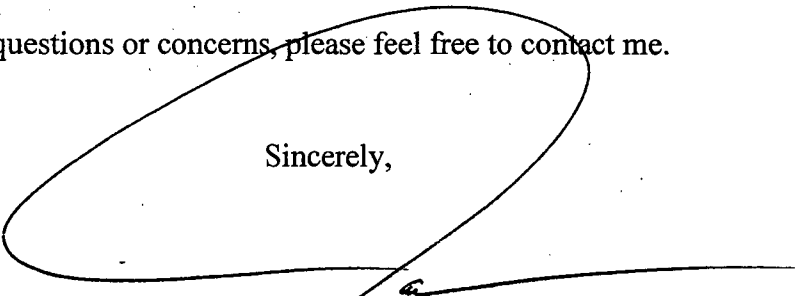
Dear Ms. Whitfield:

Enclosed please find the original and three copies of the Motion for Default Judgment and proposed Order for Default Judgment regarding the above-captioned matter. Please return the filed copies to me in the enclosed self-addressed stamped envelope along with the Order for Default Judgment once it is signed by the Presiding Judge.

Also enclosed please find the \$25.00 filing fee for the Motion.

If you have any questions or concerns, please feel free to contact me.

Sincerely,



David A. Wilson

DAW/ccb
Enclosures

cc: Marion R. McMillan
Alexander Pastene

Alexander Pastene, Esq.
Post Office Box 22298
Hilton Head island, S.C., 29925
Email: 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

August 30, 2012

The Honorable M. Todd Simmons
Magistrate's Court
207-A East North 1st Street
Seneca, SC 29678

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

Dear Judge Simmons:

Enclosed please find the original and three copies of the Summons and Notice and Answer and Counterclaim in the above-referenced matter along with the original and three copies of the Affidavit of Service upon the Plaintiff. Please return the filed copies to me in the enclosed self-addressed stamped envelope.

Additionally, as our Counterclaims are in excess of the jurisdictional limit for Magistrate's Court, please transfer this matter to Circuit Court. If the court requires a more formal motion for the transfer, please let me know and I will be happy to file one.

Respectfully,



David A. Wilson

DAW/ccb
Enclosures

Cc: Dr. Marion McMillan
Alexander Pastene

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

**ORDER
 CERTIFIED TRUE COPY
 JUDGE M. TODD SIMMONS**

The Defendants in this matter have filed an answer and counterclaim exceeding the jurisdictional limits of this Court as set forth in S.C. Code §22-3-10. The Plaintiff claims that the answer and counterclaim are not filed timely. Upon review of the matter, this Court finds that the Defendants filed a Motion to Dismiss pursuant to S.C.R.C.P. 12(b)(6). This motion was filed on the same day that the Defendants were served with the Plaintiff's Complaint. S.C.R.C.P. 12(b)(6) is not specifically mentioned in the South Carolina Rules of Magistrate Court. In these instances, Rule 2 of the Magistrate Rules provides "*the Court shall proceed in a manner consistent with... Circuit Court practice in similar situations but not inconsistent with these rules*". S.C.R.C.P. 12(a)(2) alters the time in which an answer and counterclaim must be filed. Specifically Rule 12 provides, "*...if the Court denies the motion...the responsive pleading shall be served within 15 days after notice of the Courts action*". The Court delivered to the parties on August 16, 2012 via U.S. Mail the Order denying the Defendants' Motion to Dismiss. Thereafter, the Defendants filed an answer and counterclaim on August 31, 2012. As such, the Defendants have timely filed their responsive pleading according to S.C.R.C.P. 12(a)(2). Moreover, when a counterclaim is filed which if successful would exceed the magistrates' civil jurisdictional amount as provided in S.C. Code §22-3-10, then the initial claim and counterclaim must be transferred to the docket of the common pleas court for that judicial circuit. (S.C. Code §22-3-30).

Due to the fact that the Defendants have timely filed their responsive pleadings and based upon the forgoing discussion:

IT THEREFORE ORDERED that the entire matter be transferred to the docket of the Court of Common Pleas for Oconee County;

IT IS SO ORDERED!

September 18, 2012
 Seneca, South Carolina


 M. TODD SIMMONS
 CHIEF MAGISTRATE

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT

COUNTY OF OCONEE)

2012CV3710100244
CIVIL CASE NUMBER

ALEXANDER PASTENE,)

Plaintiff,)

ORDER

vs.)

MARION MCMILLAN AND)

SYNERGY SPINE CENTER, P.A.,)

Defendants.)

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

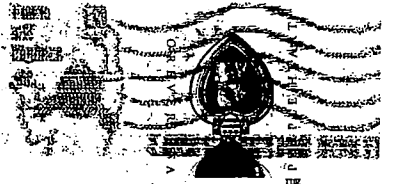

M. TODD SIMMONS
CHIEF MAGISTRATE

EXHIBIT 5x

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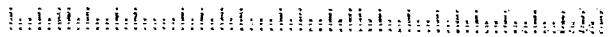
Attorney David Wilson
600 North A Street
Easley, GA 31029

NEXTE 206 4E 3 70 11/20/12

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 79975779898 *7438-09774-76-33

0640+1005 107798



~~SEE~~ EXHIBIT #81312
copy
Sand

ERRATA

Alexander Pastene
Post Office Box 22298
Hilton Head Island, South Carolina, 29925
Telephone 843-227-2695

Honorable Michael Todd Simmons,
Chief Magistrate
OCONEE COUNTY SUMMARY COURT
207-a East North 1st Street
Seneca, South Carolina, 29678

8-13-12
Re: Case Pastene vs McMillan et al
Case No.:

Dear Judge Simmons:

I appreciate your taking time to review this case.

Since defendant McMillan terminated our agreement, *see Exhibit 8*, I have come to suspect that the outcome of my business relationships with the defendant was predetermined, because the second time he retained me as marketing consultant I thought it was his way of redeeming himself for having left me unpaid the first time under some cockamamie excuse four years ago. Besides, who would not trust his own doctor, especially, one who deals with spinal disorders that can leave a patient permanently incapacitated?

Although, I am a Christian, but not a fanatic, from a Catholic family that I can trace it back to the 10th Century in Genoa, Italy, 4 years ago the defendant quoted me the Bible: "*Do not be yoked with Unbelievers*" *see exhibit EM-2008/2*; he offered to pay the bill for the 90 hours worked, but never paid me. His use of theurgy to justify his wrongful actions, which he invokes in his writings, telephone conversations and even before this Honorable Court during the hearing, is disturbing, for, it seems as though his mistakes or wrongdoings were designed—in his own words— by God and the Holy Spirit, and thus, does not seem to take responsibility for his actions. Just imagine using such rationalizations when dealing with patients at his clinic...

Anyway, despite ambiguities the case at bar boils down to an unpaid bill for services rendered. Upon demand for payment the defendant falsely denied any business relationship, insulted me by calling me mentally ill, threatened me with false accusations of fraud and blackmailed me with Medicare/Medicaid using jail as deterrent to not pay his bill, which is additionally disturbing coming from a medical doctor who should be held to a higher standard.

Please let me know if I can be of any further help,

Sincerely,

EXHIBIT
5312

Subject: Mental illness
From: Marion R. McMillan MD (mrmmd3@gmail.com)
To: alexanderpastene@yahoo.com;
Date: Thursday, May 31, 2012 2:11 PM

Alexander:

I think you are certifiably insane and in need of urgent mental health evaluation. There is not, has never been, and never will be any business relationship between us.

I can say that if and when you are convicted for Medicaid fraud, once in state prison you will have access to the full spectrum of mental health services available to the other inmates, free of charge.

Take care, and do get some help.

--
Marion R. McMillan MD
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