

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

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

RECEIVED
MAY 18 2018
SC Court of Appeals

Alexander Pastene Appellant,

v.

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

AMENDED RECORD ON APPEAL



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

Other Counsel of Record:
For Respondent. 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

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JUNE 18-2012

4

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN SENECA MAGISTRATE COURT
CIVIL ACTION NO.:

Alexander Pastene,)
Plaintiff,)

To Collect Marketing Consulting
Services & Implementation fees.
Offenses against Public Policy
Blackmail

Vs.)

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

Defendants.)

Comes now the Plaintiff, Alexander Pastene, on this 18th day of June 2012, a citizen of Beaufort County, S.C. and complains against the defendants described *supra* for nonpayment of marketing consulting and implementation of a marketing plan's fees; and offenses against South Carolina Public Policy under §16-1-640, Blackmail, of the Code of Laws of South Carolina 1976. See Exhibits 7, 8, 10 and 11. The Plaintiff is an MBA graduate from The American University, Washington D.C. and sole proprietor of Pastene Consulting Firm, of Hilton Head Island, Beaufort County, South Carolina. Furthermore, he is a seventy one (71) year old retired executive who formerly directed Pastene International Business Company, Cooper Clark Co. Direct Mail Order Division and Pastene Manufacturing from about the early seventies until about the early 1990's. The Plaintiff was a designer, manufacturer and marketing director of in excess of eighty (80) equestrian products made in United States, England, South Korea and Argentina, while his products are still being recognized and traded in the Internet despite having stopped operating over twenty (20) years ago; see Pastene Saddles and or Clinton Northrop Saddles in Yahoo, Google or Ebay.

Upon information and belief, defendant McMillan is a doctor in medicine specializing in spine (back pain) procedures and runs Synergy Spine Center for profit in Seneca, South Carolina. That, upon information and belief in accordance to the South Carolina Secretary of State records attached herewith Defendant Marion R. McMillan, is the agent and owner of Synergy Spine Center, a professional corporation/organization for profit domiciled at 457D BYPASS 123, SENECA, South Carolina, 29678. See Exhibit 1. Secretary of State Business Filing.

STATEMENT OF FACTS

1. That, on or about Monday, March 12, 2012, the Plaintiff drove from Hilton Head Island, South Carolina to Seneca, S.C. and reported to Dr. Marion McMillan's Synergy Spine Center in Seneca for a preliminary examination in advance of back surgery to resolve a stenosis condition to take place on the next day in the early morning of Tuesday, March 13, 2012.
2. That, on March 12, 2012, at or about six (6) pm, following the plaintiff's examination, defendant Marion R. McMillan asked the Plaintiff to represent him and his clinic on Hilton Head Island because he was very interested in expanding his business there. The plaintiff accepted, and after further discussions subsequent to his procedure it was agreed that the Plaintiff would start work on defendant McMillan and his Clinic's behalf immediately to develop on a marketing plan/research and implement it, and the defendant told the plaintiff that he was going to contact his attorney to draw a contract to include a remuneration commensurate to 20% per procedure after cost or about \$1,000 per procedure secured through the plaintiff's marketing efforts in the Hilton Head Island, Savannah, Georgia, Charleston SC and Jax., Fla. area. See Exhibits 2 & 14, Invoice (and detail from the Plaintiff's logbook).
3. That, by March 20, 2012, the Plaintiff started sending defendant McMillan copies of Hilton Head Island Health magazines, such as Hilton Head Monthly, Pink Magazine and other for his perusal as possible advertising and promotion options. See Attachment 3.
4. That, about March 23, 2012, the Plaintiff established contact and started discussions with the heads of the Activities and Lifestyle Department of Del Webb Sun City of Bluffton, South Carolina, which is a retirement community of about seven thousand two hundred (7,200) homes and about twelve thousand (12,000) retired permanent residents over the age of about sixty (60) or sixty five (65) years of age, to market the defendant's services.
5. That, on March 29, 2012, the Plaintiff secured his first personal interview with the Director of Lifestyles at Sun City in Bluffton, South Carolina, to discuss possible means of communication with Del Webb Sun City residents about defendant McMillan and his clinic's back procedures and services, and had preliminary discussions about the possibility of setting up a Seminar in one of Del Webb Sun City's Seminar facilities, specifically, expandable seminar rooms for Power Point presentations to Sun City residents with back problems, sciatica and other spine ailments which affect many of them. See Exhibit 4 Pass SunCity.

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6. That, on March 29, 2012, *et seq.*, after conveying to defendant McMillan the possibility of a Power Point Presentation or Seminar to take place at Del Webb Sun City in Bluffton, SC, sometime in the near future defendant McMillan became very enthusiastic stating that he had given Seminars before elsewhere which had secured him additional patients, and that, he was much interested in "getting his foot in" Del Web Sun City Bluffton and to reserve time and day as soon as possible. He added that, regardless of number of attendees he always got at least one procedure which paid for all his expenses. See Exhibit 9. Seminar Order #045099
 7. Upon information and belief, the defendant charges \$7,500 for the least complicated Medicare-covered-Rhyzotomy procedure, which costs him \$1,500 to produce leaving a clean profit of \$5,000 for a 30-45 minute procedure.
 8. That, on March 29, 2012 *et seq.* the Plaintiff started to coordinate possible dates, time and space for the Seminars at Del Webb Sun City. See Exhibit 4 Passes to Sun City.
 9. That, on March 30, 2012, the Plaintiff contacted the director of SunSations Magazine, which is the official Del Webb Sun City Magazine and began to plan and design appropriate advertising to announce the upcoming Seminar and sent copies to the defendant. Exhibit 13.
 10. That, on March 30, 2012 *et seq.* the Plaintiff designed a "bulletin board communication" which adjusted to Del Webb Sun City specifications. See Exhibit 5 Color Announcement.
 11. That, by 4-3-12, the Plaintiff delivered the bulletin board sheet to Del Webb Sun City Director of Lifestyles to be added to the bulletin board. That, on or about 4-3-12 the Plaintiff mailed to defendant McMillan copies of the bulletin board sheets enclosed herewith as See Exhibit 5.
 12. That, on 4-3-12 several photos of the "expandable seminar rooms" to be used in accordance to the number of Sun City residents who signed-in were taken and mailed, along with several outdoor photos of Del Webb Sun City. See Exhibit 12 (Twelve Photos).
 13. That, on 4-6-12 *et seq.*, work on the advertising for Sunsations Magazine of Del Webb Sun City continued.
 14. That, on 4-20-12 *et seq.*, the Plaintiff initiated preliminary contacts with Hyatt's Tide Pointe of Hilton Head Island, which is an upscale retirement community, on the possibility of establishing another Seminar for the defendant and Synergy Spine Center to take place in the month of June 2012. See Exhibit 2.
 15. That, on 4-24-12 *et seq.*, the Plaintiff secured contacts with the Director of Hyatt's Tide Pointe of Hilton Head Island, a commitment and proceeded to work, plan and set up the

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Seminar to take place on or about June 22, 2012. The seminar was subsequently cancelled by Hyatt's TidePointe.

16. That, on or about 4-26-12, given a mild response according to the seminar sign-in sheet in response to the advertising on the official Del Webb SunSations Magazine, it was decided to send out a post card via the USPS to all seventy two hundred (7,200) residents of Del Webb Sun City a week before the Seminar took place on 5-25-12. See Attachment 15.
17. That, on 5-1-12, the first patient, a one Mrs. Hampton, SunCity resident, called *Pastene Consulting Firm* on Hilton Head Island to discuss with Plaintiff Pastene the defendants Synergy Pain Center, Marion McMillan services, her condition and to relate to her the Plaintiff's own experience.
18. That, since 5-3-12, *et seq.*, Plaintiff Pastene worked on the production, logistics and least expensive way to mail out the Del Webb Sun City Post card with the USPS, i.e., planning, design, indicia, implementation and other marketing matters related to the upcoming mail out, until the defendant arbitrarily severed the business relationship with the Plaintiff, told him his wife was taking over and refused to pay him for all of the work rendered him.

FOR A FIRST CAUSE OF ACTION AS TO ALL DEFENDANTS

COLLECTION OF FEES IN THE AMOUNT OF SEVENTY FIVE HUNDRED (\$7,500)
DOLLARS FOR UNPAID MARKETING PLAN, RESEARCH AND IMPLEMENTATION
OF SERVICES RENDERED

19. Plaintiff incorporates herein paragraphs 1 through 17 of his complaint.
20. The individual Defendant Marion R. McMillan declined payment for services rendered upon demand by Plaintiff on letter dated 5-29-12, which denial was made maliciously and have proximately caused damages actual and exemplary to the Plaintiff. See Exhibit 7.

FOR A SECOND CAUSE OF ACTION AS TO ALL DEFENDANTS

PUBLIC POLICY BLACKMAIL
UNDER §16-1-640, 1976 CODE OF LAWS OF SOUTH CAROLINA

21. Plaintiff incorporates herein paragraphs 1 through 19 of his complaint.

Defendant Marion R. McMillan blackmailed the Plaintiff via email. Said blackmail constitutes blackmail *per se* which was made maliciously with hubris and in bad faith to preempt Plaintiff from recovering his earned fees, which proximately caused damages actual and exemplary, to the Plaintiff. See Exhibits 7 and 8.

22. WHEREFORE, Plaintiff prays this Honorable Court:

1. Enter judgment against the defendants for all fees owed to the Plaintiff.
2. Enter judgment against the defendant for all the blackmail exerted upon the Plaintiff which caused him humiliation and anxiety as it would any other senior citizen taking into account that the defendant is a professional doctor of medicine and should be held to a higher standard, for, he knows better.
3. Grant such other and further relief as is deemed just and proper.

22. JURY DEMAND

In the event that the instant Complaint may result in trial the Plaintiff reserves the right to demand a trial by jury of all claims which may be tried to a jury.

Respectfully submitted,

On Hilton Head Island, S.C.
On this 18th day of June, 2012

Alexander Pastene
Plaintiff, appearing *pro se*
P.O. 22298
Hilton Head Is., S.C. 29925
843-227-2695
Email: alexanderpastene@yahoo.com

STATE OF SOUTH CAROLINA)

IN THE MAGISTRATE'S COURT

COUNTY OF OCONEE)

2012CV3710100244

CIVIL CASE NUMBER

ALEXANDER PASTENE,)

Plaintiff,)

vs.)

MARION MCMILLAN AND)

SYNERGY SPINE CENTER, P.A.,)

Defendants.)

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 Sirs.

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

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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 forgoing:

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

September 6, 2012

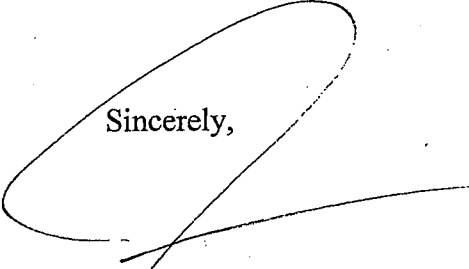
Alexander Pastene
P.O. Box 22298
Hilton Head Island, SC 29925

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

Dear Mr. Pastene:

Enclosed please find the filed Summons and Notice and Answer and Counterclaim in the above-captioned matter. If you wish to discuss a reasonable resolution to this dispute, please feel free to contact me.

Sincerely,



David A. Wilson

DAW/ccb
Enclosures
Cc: Dr. Marion McMillan

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Alexander Pastene,

Plaintiff,

v.

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

Defendants.

IN THE MAGISTRATE'S COURT

Case No.: 2012CV3710100244

SUMMONS AND NOTICE
(Jury Trial Demanded)

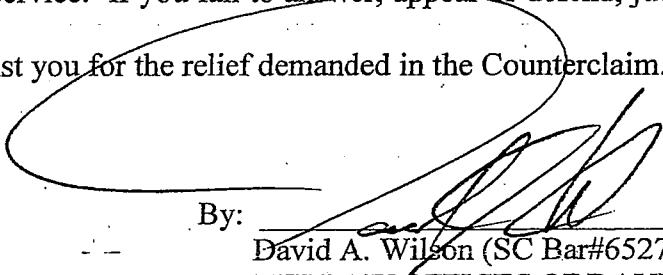
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2012 AUG 3 11:06

OCEAN COUNTY
CLERK OF COURT

TO: ALEXANDER PASTENE

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim in this action, a copy of which is herewith served upon you, and to serve a copy of your Response to the Counterclaim upon the subscriber at 200 Whitsett Street, Suite B, Greenville, South Carolina, within thirty (30) days after the service hereon, exclusive of the date of such service. If you fail to answer, appear or defend, judgment by default will be rendered against you for the relief demanded in the Counterclaim.

By: 

David A. Wilson (SC Bar#65273)
THE LAW OFFICES OF DAVID A. WILSON, LLC
200 Whitsett Street, Suite B
Greenville, S.C. 29601
(864) 232-2329
Attorney for Defendants

Greenville, South Carolina

August 29, 2012

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Alexander Pastene,

Plaintiff,

v.

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

Defendants.

IN THE MAGISTRATE'S COURT

Case No.: 2012CV3710100244

**ANSWER AND COUNTERCLAIM
(Jury Trial Demanded)**

TO: PLAINTIFF ALEXANDER PASTENE

The Defendants, by way of an Answer and Counterclaim to the Complaint of the Plaintiff, would respectfully allege and show under this Honorable Court as follows:

1. Each and every allegation contained in the Complaint not hereinafter admitted, qualified, modified or explained is denied and strict proof is demanded thereof.
2. With reference to the allegations contained within the Complaint, the Defendants admit that Marion McMillan is a resident of Oconee County but denies that he resides at 457D Bypass 123, Seneca, SC 29678 and demands strict proof thereof. The remaining allegations contained in the first paragraph of the Complaint are admitted.
3. With reference to the allegations for "unpaid bill for services rendered" in the amount of \$7,500.00, these Defendants deny same and demand strict proof thereof.
4. With reference to the allegations of "blackmail," these Defendants deny that this court has jurisdiction over the alleged criminal matter in this civil proceeding and demand strict proof thereof.

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FOR A SECOND DEFENSE

5. The Defendants reincorporate all of the previous responses, not inconsistent herewith, as if fully repeated herein.

6. The allegations set forth in the Complaint fail to state facts sufficient to state a cause of action against the Defendants and, therefore, should be dismissed with costs assessed against the Plaintiff.

FOR A THIRD DEFENSE

7. The Defendants reincorporate all of the previous responses, not inconsistent herewith, as if fully repeated herein.

8. To the extent the Complaint alleges cause of action for breach of contract, the Defendants deny the existence of any contract between the parties due to failure of an offer, acceptance and valuable consideration and demands strict proof thereof.

FOR A FOURTH DEFENSE

9. The Defendants reincorporate all of the previous responses, not inconsistent herewith, as if fully repeated herein.

10. To the extent the trier of fact determines that there was a contract between the parties, these Defendants allege that the Plaintiff breached this contract by failing to perform any services entitling him to compensation.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM

11. The Defendants reincorporate all of the previous responses, not inconsistent herewith, as if fully repeated herein.

12. Not only did the Plaintiff not work for the benefit of the Defendants, the Plaintiff

actually took steps to undermine and damage the Defendants' business opportunities and reputation in the community.

13. The Defendants were scheduled to have marketing seminars with various third parties to promote the business and medical procedures performed by the Defendants. The Plaintiff intentionally interfered with the Defendants' potential contractual relations with these third parties as well as potential patients for an improper purpose or by improper methods including, but not limited to, threatening litigation if the third parties continued to deal with the Defendants; all of which caused injury to the Defendants including loss of income.

14. Accordingly, the Defendants are entitled to actual and punitive damages against the Plaintiff in an amount to be determined by the trier of fact. The Defendants suffered actual damages including, but not limited to, loss of income in excess of \$25,000.00.

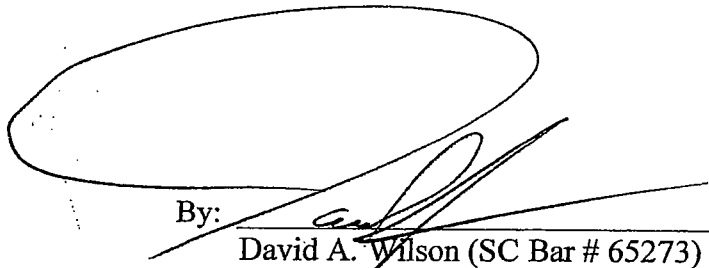
FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM

15. The Defendants reincorporate all of the previous responses, not inconsistent herewith, as if fully repeated herein.

16. The Defendants are informed and believe that the Plaintiff defamed the Defendants to third parties causing injury to the Defendants' reputation and special damages including loss of income.

17. Accordingly, the Defendants request an award of actual and punitive damages against the Plaintiff based upon defamation and defamation *per se* as the alleged publications implied the Defendants' unfitness in their business or profession. The Defendants suffered special and actual damages including, but not limited to, loss of income in excess of \$25,000.00.

WHEREFORE, having fully responded to the Complaint, the Defendants pray for same to be dismissed with costs assessed against the Plaintiff. The Defendants also pray for the relief requested in the Counterclaims.



By: _____

David A. Wilson (SC Bar # 65273)
THE LAW OFFICES OF DAVID A. WILSON, LLC
200 Whitsett Street, Suite B
Greenville, South Carolina 29601
(864) 232-2329
Attorney for Defendants

Greenville, South Carolina
August 25, 2012

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

On Hilton Head Island, S.C.
On this 12th day of September, 2012



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

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

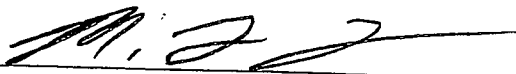
The Defendants in this matter have filed an answer and counterclaim exceeding the jurisdictional limits of this Court as set forth in S.C. Code §22-3-10. The Plaintiff claims that the answer and counterclaim are not filed timely. Upon review of the matter, this Court finds that the Defendants filed a 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

my copy

EXHIBIT 4X

BEVERLY H. WHITFIELD
CLERK OF COURT

2012 OCT 12 PM 12 40

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE COUNTY

Alexander Pastene

PLAINTIFF

VS

Marion R. McMillan, et al

DEFENDANT

IN THE COURT OF COMMON PLEAS

TENTH JUDICIAL CIRCUIT

NOTICE OF TRANSFER OF CASE
TO COURT OF COMMON PLEAS

CASE NO. 2012-CP-37-00902

(IN THE FUTURE YOU MUST USE THIS
NUMBER ON ALL DOCUMENTS FILED
IN THIS COURT)

This case, originally filed in the Magistrate's Court, has been transferred to this Court of Common Pleas, because a counterclaim has been filed which would exceed \$7,500.00, if successful.

Any documents to be filed in this case must contain the case number and should be delivered or mailed to the Clerk of Court at this address:

Beverly H. Whitfield, Clerk of Court
205 East Main Street or
P.O. Box 678
Walhalla, S.C. 29691

Procedure in this action is now governed by the South Carolina Rules of Civil Procedure, and you are responsible for following these Rules and for serving the other party to this lawsuit or his/her attorney, with copies of any pleadings or notices you file with the Clerk of Court.

Walhalla, South Carolina

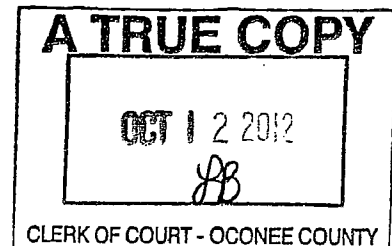
Clerk of Court, Oconee County, S.C.

October 12, 2012

by: Beverly H. Whitfield

X Copy mailed to ☒ Plaintiff or ☐ Plaintiff's Attorney on 10/12/2012 by LCB

X Copy mailed to ☐ Defendant or ☒ Defendant's Attorney on 10/12/2012 by LCB



STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

Alexander Pastene,

Plaintiff,

v.

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

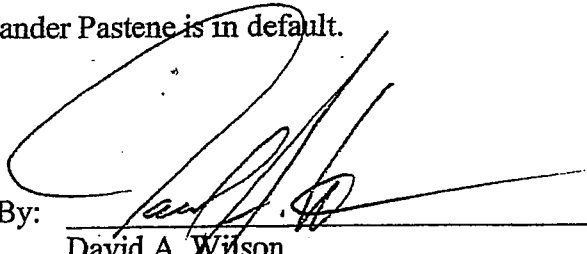
Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-37-00902

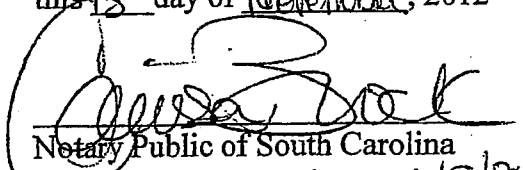
**AFFIDAVIT OF DEFAULT AS TO
DEFENDANT'S COUNTERCLAIMS**

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: 11/8/2016

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT

2012 NOV 14 A 11:41

27

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

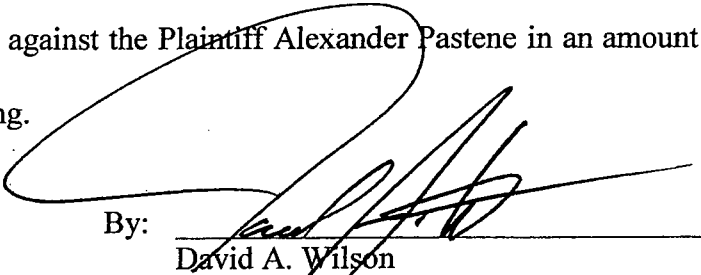
Case No.: 2012-CP-37-00902

MOTION FOR DEFAULT JUDGMENT

The undersigned attorney for the Defendants in the above-captioned matter hereby moves for a Default Judgment against the Plaintiff Alexander Pastene in an amount to be determined by the court at a damages hearing.

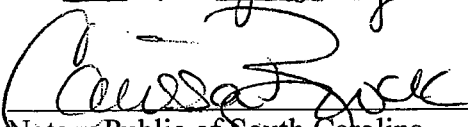
Said Motion is based upon the following grounds: the Counterclaim filed in this matter on August 31, 2012; the Plaintiff was served on September 6, 2012 as shown by the Affidavit of Default; and the Plaintiff failed to serve on the attorney for the Defendant any appearance, Answer or other response to the pleading as required by the said Summons and more than thirty-five (35) days have elapsed since the service thereof.

Based upon the foregoing, the undersigned counsel for the Defendant in this matter respectfully requests judgment against the Plaintiff Alexander Pastene in an amount to be determined at a damages hearing.

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 30th day of January 2013


Notary Public of South Carolina

My Commission Expires: 11/8/2021

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

ORDER FOR DEFAULT JUDGMENT

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JUN 27 PM 4 48

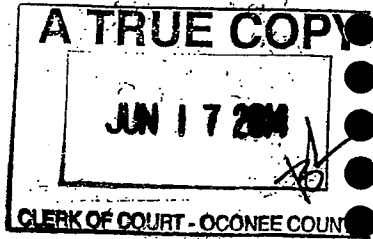
It appearing to me that the Summons and Notice, Answer and Counterclaim in the above entitled action have been served by regular mail on the Plaintiff Alexander Pastene on September 6, 2012 and that no notice of appearance, Answer or other responsive pleading has been served or received in response thereto from the Plaintiff.

It further appearing from the Counterclaim that the damages sought therein are not liquidated.

NOW, THEREFORE, based upon the Affidavit of Default filed by David A. Wilson, attorney for the Defendant, and the Motion for Default Judgment, the Plaintiff Alexander Pastene is held to be in default.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendants herein has judgment against the Plaintiff Alexander Pastene in an amount to be determined by the court at a damages hearing to be scheduled.

AND IT IS SO ORDERED.





Presiding Judge
Tenth Judicial Circuit

6/13, ²⁰¹⁴~~2013~~

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 JUN 17 PM 4 48

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Alexander Pastene,

Plaintiff,

Versus

Marion R. McMillan and Synergy
Center, PA

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2012-CP-37=00902

MOTION FOR RECONSIDERATION
ORDER CLOCKED JUNE 17, 2014

FILED 2014 JUN 11 PM 1:28
BEVERLY H. WHELAN, CLERK OF COURT

Comes now, the Plaintiff, Alexander Pastene, and moves this Honorable Court to reconsider its Order of Default dated 6-13-2014, clocked copy of which was notified to the Plaintiff by the Clerk of Court on June 17, 2014, which notification was received by the Plaintiff on or around Friday, June 20th, 2014.

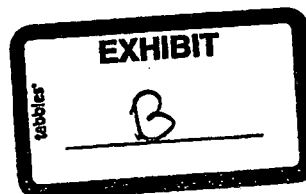
That, the Plaintiff timely responded to defendants' Summons & Notice, Answer and Counterclaim on September 6, 2012 (under Magistrate Court No. 2012-CV-3710-100244). Also see, Plaintiff's letter to Judge MacAulay dated 11-21-12, and See Plaintiff's letter to Clerk of Court dated 2-2-2013.

That, it may have been improper for the defendants to remove the case from Magistrate Court to Court of Common Pleas seemingly because they did not like the way their case was developing in Magistrate Court (see Court's denials) for the purpose of delaying and complicating a simple case of unpaid debt.

That, the defendants' Summons and Notice and Answer and Counterclaim was filed on 8-29-12, out of time. See Plaintiff's Response to Defendants Summons and Notice, Answer and Counterclaim dated 9-12-12. Also see, Plaintiff's Response to Notice of Transfer of case to Common Pleas.

That, any act of defamation or other offense against the defendants by the plaintiff is denied and never existed.

That, the attorney for the defendants used a confusing, evasive and false address in his stationary, to which the Plaintiff responded on time, but he claimed he never received. See still sealed envelope sent to defendants submitted to this honorable court.



That, a hearing before Judge Maddox he determined that he was taking the case "on advice" and the Plaintiff is still to receive a response from Judge Maddox. Additionally, the Plaintiff has been patiently awaiting for his jury trial that was first set for the week of December 2, 2013, before Judge Maculay, at 9:30am, but never materialized.

Wherefore, the Plaintiff respectfully requests that, the defendant's Motion for Default is denied, that the Order for Default is found to be in error, and that a trial date to ascertain the facts and merits of the case at bar is set at the earliest.

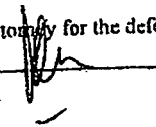
Respectfully submitted,


Alexander Pastene Plaintiff
Appearing *pro se*
P.O. Box 22298
Hilton Head Is., SC 29925
Tel. 843-605-5266

David A. Wilson
Attorney for the defendants
200 Whitsett Street Suite B
Greenville, SC 29601

FILED 2016 DEC 08 PM 12:01
BEVERLY H. WILSON
CLERK OF COURT
2016 AUG 11 PM 1 28

CERTIFICATE OF MAILING:

I certify that the Plaintiff, Alexander Pastene, mailed copies of his Motion to Reconsider to the attorney for the defendants David A. Wilson to their last known addresses, on the 17th day of July, 2014. Signed: Alexander Pastene, Signed: 

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

Alexander Pastene,)

Plaintiff,)

v.)

Marion McMillan.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-37-00902

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2016 APR -1 A 11:22

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION

?? Error?

This matter came before the Court through the Plaintiff's Motion for Reconsideration. After careful consideration and review, the Court finds that Plaintiff's Motion for Reconsideration should be denied.

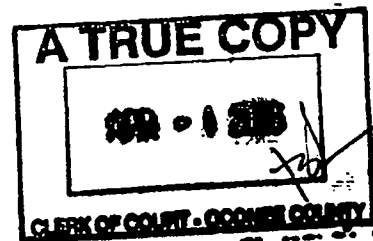
It is hereby ordered that Plaintiff's Motion for Reconsideration is denied.

IT IS SO ORDERED.

J. Cordell Maddox, Jr.
The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court Judge

Anderson, South Carolina

3/24, 2016



STATE OF
SOUTH CAROLINA



NOTICE OF MOTION SCHEDULING

March 10, 2016

Motion "MOFREE - Damages Hearing" for Case: 2012CP3700902 - Alexander Pastene VS Marion R McMillan, defendant, et al has been added to the following Motions Roster:

50 - Non-Jury Motions Roster Week of April 11, 2016

This hearing of this motion has been scheduled for 4/12/2016 at 2:00 PM.

The cases referenced in this email are scheduled on the Non-Jury Motions Roster for the week of April 11, 2016. PLEASE NOTE ALL HEARINGS ARE SCHEDULED FOR TUESDAY APR 12.

The Docket is available at <http://publicindex.sccourts.org/oconee/courtrosters/>. ALL cases on this Roster are scheduled for hearings. The presiding judge will be the Honorable J. Cordell Maddox, Jr.

Any request for continuance/rescheduling is considered a motion and requires a \$25 filing fee, which must be paid at the time of the request. Forms are available on the online roster page under Roster News. Requests may be submitted to this office. If your Motion has been resolved, settled or needs to be withdrawn, please notify us in writing via fax (864-638-4282) or email (thightower@oconeesc.com).

Mail Notice To
Alexander Pastene P O Box 22298 Hilton Head Island, SC 29925

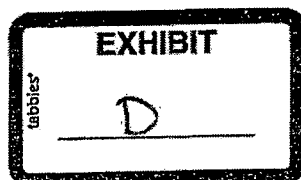
Court Info
Common Pleas 205 W. Main Street Walhalla, SC 29691-9691

If you have any questions regarding the scheduling of this motion, please contact the courts at:

(864) 638-4280

Respectfully,

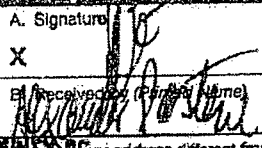
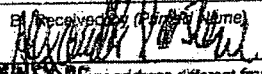
COPY
Beverly H. Whitfield
Clerk of Court



U.S. Postal Service™ CERTIFIED MAIL™ RECEIPT (Domestic Mail Only. No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Sent To: Alexander Pastene	
Street, Apt. Box 22298 or PO Box No.	
City, State, ZIP+4	
PS Form 3800, August 2006	

ELECTRONICALLY FILED - 2016 Dec 08 12:01 PM - OCONEE - COMMON PLEAS - CASE#2012CP3700902

29

SENDER: COMPLETE THIS SECTION		ADDRESSEE: COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature  ☒ Agent ☐ Addressee	
1. Article Addressed to: Alexander Pastene P.O. Box 22298 Hilton Head Island, SC 29925		B. Received by (Print Name)  C. Date of Delivery	
2. Article Number (Transfer from service label) 7014 0510 0000 5214 6507		3. Service Type ☐ Certified Mail® ☐ Priority Mail Express™ ☐ Registered Mail® ☐ Return Receipt for Merchandise ☐ Insured Mail® ☐ Collect on Delivery	
4. Restricted Delivery? (Extra Fee) ☐ Yes		5. If delivery address different from item 1? ☐ Yes ☒ No If Yes, enter delivery address below:	

2012-CP-37-00902

PS Form 3811, July 2013 Domestic Return Receipt

FILED OCONEE COUNTY SC
BEVERLY H. WHITE
CLERK OF COURT

2016 MAR 24 A 10 21



VERY

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COMPUTER

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-37-00902

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

Alexander Pastene

Marion R. McMillan, et al

2016 APR 19 P 2:48

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **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: Damages Granted \$100,000 Actual Damages and \$200,000 Punitive Damages. Attorney Wilson to prepare formal order.

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)
Marion R. McMillan & Synergy Spine Center	Alexander Pastene	\$100,000.00 Actual Damages & \$200,000.00 Punitive Damages
Marion R. McMillan & Synergy Spine Center	Alexander Pastene	\$300,000.00 Total Damages

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

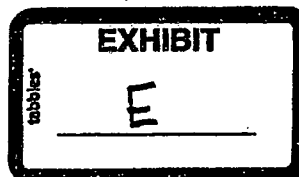
Circuit Court Judge

2131
Judge Code

4/18/16
Date

For Clerk of Court Office Use Only

SCRPC Form 4C (03/2013)



Page 1

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cert copy to all

Alexander Pastene, pro se

David A. Wilson

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield

CLERK OF COURT

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

*can also
return to me
THANK YOU*

32

STATE OF SOUTH CAROLINA

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

2016 APR 29 AM 11:16

CASE NO.: 212-CP-37-00902

ALEXANDER PASTENE,

Plaintiff,

Versus

MARION . MCMILLAN & SYNERGY SPINE

CENTER, P.A.

Defendants.

)
)
) PLAINTIFF'S MOTION TO VACATE
) JUDGE MADDOX'S ORDER OF 4-1-16
) RECONSIDER, AND SET DATE FOR
) TRIAL BEFORE JURY.
)
)
)
)
)
)

Comes Now, the Plaintiff Alexander Pastene, and respectfully moves this Honorable Court to reconsiders, vacates its Order of April 18, 2016 —clocked April 19,— 2016, and sets date for trial grounded on the following facts:

1. That, Plaintiff did not attend the “damages hearing” (as per March 10, 2016, Motion “MOFREE-Damages Hearing” for Case 2012-cp37009092) set for April 12, 2016, because he was specifically told by telephone call from Clerk of Court, Ms. Beverly Whitfield, that insomuch there was confusion with the Anderson Clerk of Court that needed to be clarified, that, unless Plaintiff heard otherwise, that the hearing set to take place at the Walhalla Courthouse, on 4-12-16, at 2:00PM, that the Plaintiff was required to attend.
2. That, on or about the first days of April, 2016, Plaintiff received copy of ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION, clocked twice on April 1st, 2016, seemingly by the Anderson and Walhalla Clerks of Court.

Wherefore, since the Plaintiff “heard from the Court” he understood that he was not required to attend the hearing, supposedly because the litigants had been removed from the motion roster; the hearing was to be continued, or any other reason.

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3. That, added to the confusion of having, indeed, "heard from the court," and thus, understood that he was NOT to attend the hearing of 4-12-16, he received ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION, whereby the Plaintiff became increasingly confused because Judge Maddox had signed an Order denying the "DEFENDANTS" their Motion for Reconsideration. The Plaintiff could not find any Motions for Reconsideration by the Defendants, despite the body of the Order of 4-1-16, mentioning that "this matter came before the Court through the Plaintiff's Motion for Reconsideration...seemingly a contradiction.

4. That, the Plaintiff, Alexander Pastene, is now anxiously awaiting the Transcript from Court Recorder, Ms. Cross, who had been traveling out of town, copies which he had requested on April 14, and again on April 23, 2016, to show this Honorable Court that, indeed, at the September 16, 2015, hearing in Anderson, S.C., Judge Maddox ordered a trial to take place on January 2016, which made moot both the defendants' Motion for Damages and the plaintiff's Motion to Reconsider. Actually, Attorney Wilson did understand and conceded that both litigants' motions had become moot. The Plaintiff will submit asap, copy of the September 16, 2015, Transcript of Hearing, held at the Anderson Courthouse, S.C. and additional documents.

5. That, the Plaintiff believes that Judge Maddox's Order dated April 1, 2016, may have been issued in error; that, Attorney Wilson may have noticed the error, especially, if he received a copy of the Transcript from Ms. Cross quite some time ago, and did not report it up to the Court or the Plaintiff; that, as of today's date Attorney Wilson did not share the Transcript with the Plaintiff, despite his request.

Wherefore, bearing in mind that the Plaintiff has been patiently waiting for a trial before a jury to secure some relief from this Honorable Court and payment of debt by defendant McMillan since 2012 —almost four (4) years— the Plaintiff respectfully pleads with this Honorable Court that, it vacates its Order of April 1, 2016; that, it reiterates its denials to the parties' motions in accordance to this Honorable Court's decision made during the Anderson Hearing of September 16, 2016; that it dismisses the

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defendant's countersuit for being completely groundless, devoid of any evidence whatsoever, except defendant's hearsay, and that, it sets a date for trial before jury.

Respectfully submitted,



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

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-37-00902

Alexander Pastene,

Plaintiff,

v.

Marion McMillan.,

Defendants.

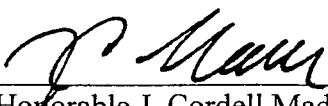
ORDER DENYING PLAINTIFF'S
MOTION TO VACATE JUDGMENT

FILED OCONEE COUNTY, SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2016 JUN 13 P 2:34

This matter came before the Court through Plaintiff's Motion to Vacate judgment as entered by This Court on April 12, 2016. This Court was set to hear Plaintiff's Motion to Reconsider, however Plaintiff failed to appear and Plaintiff's motion was dismissed. This Court has held that trial judges possess the inherent power to dismiss actions sua sponte for a party's failure to prosecute the relevant claims. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 211, 493 S.E.2d 826, 832 (1997). Furthermore, Defendant's counterclaim against Plaintiff was granted. After careful consideration and review, the Court finds that Plaintiff's Motion to Vacate should be denied.

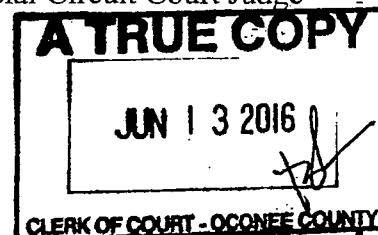
It is hereby ordered that Plaintiff's Motion to Vacate is denied.

IT IS SO ORDERED.


The Honorable J. Cordell Maddox, Jr.
South Carolina Tenth Judicial Circuit Court Judge

Anderson, South Carolina

June 3, 2016



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-37-0002

DEFAULT JUDGMENT

AGAINST

PLAINTIFF ALEXANDER PASTENE

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 JUN 13 P 2:44

This matter came before the court on April 12, 2016 for a damages hearing in connection with the counterclaims brought by Defendant Marion R. McMillan and Synergy Spine Center, P.A.

The Defendant Marion R. McMillan, individually and as sole owner of Defendant Synergy Spine Center, P.A. was present at the call of the case with his attorney David A. Wilson of The Law Offices of David A. Wilson, LLC. The Plaintiff Alexander Pastene was not present at the call of the case.

From review of the court's file, the Plaintiff was provided written notice of this hearing by the court on March 24, 2016. The Clerk of Court's office also confirmed via telephone that Plaintiff had notice of the hearing. The court waited approximately twenty minutes after the scheduled start of the hearing before proceeding. The Plaintiff did not show up before the conclusion of the hearing.

The Plaintiff initially filed this action in Magistrate's Court for breach of contract. The Defendants filed and served an Answer and Counterclaim alleging causes of action for intentional interference with prospective contractual relations and defamation. The Defendants requested actual and punitive damages in connection with their counterclaims.

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On November 14, 2012, the Defendants filed an "Affidavit of Default as to Defendant's Counterclaims." By Order of Default Judgment filed June 17, 2014, this court held Plaintiff Alexander Pastene to be in default and ordered a damages hearing on the issues raised in the counterclaims. The Plaintiff filed a Motion for Reconsideration which was denied by Order Denying Plaintiff's Motion for Reconsideration filed April 1, 2016.

At the damages hearing, the Defendants established by testimony and documentary evidence actual damages in the amount of up to \$480,000.00. Based upon the evidence presented, including but not limited to, the Defendants' prior experience with direct patient marketing seminars, I find that the Defendants sustained \$100,000.00 in actual damages directly and proximately caused by the Plaintiff's conduct related to the cancellation of the direct patient marketing seminar scheduled to take place at Tide Pointe in Hilton Head, South Carolina as well as Plaintiff's actions related to filing a complaint against Defendant McMillan with the South Carolina Department of Labor, License and Regulation.

I also find, upon review of the factors set forth in Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991), that the Defendants are entitled to an award of \$200,000.00 as punitive damages against the Plaintiff. Punitive damages in this case serve as a vindication of private rights as it has been shown that Plaintiff Pastene wantonly, willfully and maliciously violated the rights of the Defendants in this case. The Plaintiff was aware of his conduct and that it was improper. The record in this case establishes the need to deter the Plaintiff and others from like conduct. I find that a punitive damages award of \$200,000.00 is reasonably related to the harm likely to result from such conduct. I find that a punitive damages award of \$200,000.00 in connection with the actual damages of \$100,000.00 not to be grossly disproportionate to the severity of the offense. I find that punitive damages are allowed in the interest of society in the nature of punishment and as

a warning and example to deter the wrongdoer and others from committing like offenses in the future.

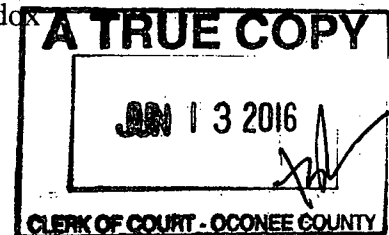
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgement be entered against Plaintiff Alexander Pastene in favor of the Defendants Marion R. McMillan and Synergy Spine Center, P.A. in the amount of \$100,000.00 for actual damages and \$200,000.00 for punitive damages resulting in a total judgment of \$300,000.00.

AND IT IS SO ORDERED.


Honorable Cordell Maddox
Tenth Judicial Circuit

6/9/, 2016

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 JUN 13 P 2:44



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

FILED OCONEE COUNTY, SC
BEVERLY H. WHITEHEAD
CLERK OF COURT
2016 JUL -8 A 11:37

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
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.

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

**DEFENDANTS' RETURN
TO
"PLAINTIFF'S MOTION RELIEF
FROM JUDGMENT UNDER RULES 60
SCRCP & 55 SCRCP"**

Plaintiff Alexander Pastene moves this court for relief from the "Default Judgment *Against Plaintiff Alexander Pastene*" filed June 13, 2016. Defendants oppose Plaintiff's Motion Relief from Judgment Under Rules 60 SCRCP & 55 SCRCP (hereinafter "Motion for Relief from Judgment").¹ Plaintiff fails to set forth sufficient reasons to grant relief from a final judgment pursuant to Rule 60 and his motion is barred factually, legally and procedurally.

The moving party in a Rule 60(b) motion has the burden of presenting evidence entitling him to relief. A memorandum in support of a Rule 60(b) motion is not evidence. McClurg v. Deaton, 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011). By "Addendum" to the Motion for Relief from Judgment Plaintiff provides "Facts and Detailed Sequence of Events" from 2012 through 2016. Although a fair portion of the "facts" as set forth in this "Addendum" are not in evidence, most are irrelevant to this court's consideration of the pending motion anyway. The relevant inquiry revolves around the prior orders in this case, the damages hearing and the Plaintiff's conduct in connection with the hearing.

¹ Rule 55(c) does not apply because Plaintiff is not seeking to set aside an entry of default. He is asking for relief from a final judgment. See Howard v. Holiday Inns, 271 S.C. 238, 246 S.E.2d 880 (1978)(after the filing of an order declaring defendant to be in default and setting damages hearing, the order may only be set aside upon a showing that it was taken through mistake, inadvertance, surprise or excusable neglect).

On June 17, 2014, the court filed a Final Order of Default Judgment (Exhibit "A"). Pursuant to this Order for Default Judgment, Plaintiff was held to be in default on the Defendants' counterclaim.

On June 20, 2014, Plaintiff, by his own admission, received a copy of the Order for Default Judgment. (Exhibit "B" – Motion for Reconsideration).² Plaintiff filed a Motion for Reconsideration on or about August 11, 2014 – long after the ten day deadline set forth in Rules 52 and 59(e), SCRCP.

The court heard Plaintiff's Motion to Reconsider the Order of Default Judgment on September 16, 2015.

The court denied Plaintiff's Motion for Reconsideration by order filed April 1, 2016 (Exhibit "C"). Plaintiff received a copy of this Order Denying Motion for Reconsideration. (See Motion for Relief from Judgment p. 10 para. 53). Plaintiff did not file a Notice of Appeal from the Order Denying the Motion for Reconsideration or the Order for Default Judgment. Accordingly, the Order of Default Judgment became the law of the case.

The damages hearing related to the Order for Default Judgment was held on April 12, 2016. The Clerk's Office mailed a "Notice of Motion Scheduling" by certified mail to Plaintiff. (Exhibit "D"). This Notice clearly indicated that the "Damages Hearing" was scheduled for April 12, 2016 at 2:00 p.m. The Plaintiff signed the Return Receipt on March 18, 2016. As acknowledged by Plaintiff in his Motion for Relief from Judgment, Beverly Whitfield of the Oconee County Clerk of Court's Office also advised Defendant of this hearing by phone.

² In his most recent Motion for Relief from Judgment, Plaintiff now claims he never received a copy of the Order of Default Judgment. (Motion for Relief from Judgment p. 7, para. 33). This assertion is false in light of Plaintiff's prior admission coupled with the fact he actually submitted a letter to Judge Maddox and filed a Motion to Reconsideration from the June 17, 2014 Order of Default Judgment. (Addendum to Motion for Relief from Judgment p. 34-35).

By Form 4 Judgment in a Civil Case dated April 18, 2016 and filed April 19, 2016, the court awarded the Defendants \$100,000 in actual damages and \$200,000 in punitive damages. The Form 4 specifically stated that a formal order was to follow. (Exhibit "E").

On or about April 29, 2016, Plaintiff filed a Motion to Vacate the Form 4 Judgment filed April 1, 2016. (Exhibit "F"). In this Motion, Plaintiff requested that the court reconsider and vacate the Form 4 Judgment arguing that he did not attend the damages hearing because "he understood that he was not required to attend the hearing." This motion was denied by Order filed June 13, 2016. (Exhibit "G").

The formal order entitled Default Judgment *Against Plaintiff Alexander Pastene* was filed June 13, 2016. (Exhibit "H").

The Plaintiff did not appeal the Order denying the Motion to Vacate the Form 4 Judgment and it is the law of the case. Plaintiff did not appeal the Order for Default Judgment and it is the law of the case. Plaintiff's arguments in opposition to the finding of default are barred as a matter of law. The relief he seeks now by way of the Motion for Relief from Judgment has already been denied by this court several times and not appealed.

Even if these issues are not barred by *res judicata* or collateral estoppel, Plaintiff still cannot prevail.

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).³ Accordingly, the issue is whether the judgment was obtained through mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or other misconduct of an adverse party.

³ 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).

The Plaintiff simply failed to show up for the damages hearing despite being notified of same. His 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 this motion seven months earlier on September 16, 2015. The only hearing scheduled for April 12, 2016 was the damages hearing.

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”).

Additionally, there are no allegations of fraud, misrepresentation or other misconduct on the part of the Defendants *in connection with the damages hearing*.⁴ 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.

⁴ 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*.

Based upon the foregoing, the Defendants respectfully request that this court deny Plaintiff's Motion Relief from Judgment Under Rules 60 SCRPC & 55 SCRPC.

By: s/David A. Wilson
David A. Wilson (SC Bar # 65273)
The Law Offices of David A. Wilson, LLC
200 Whitsett Street, Suite B
Greenville, South Carolina 29601
(864) 232-2329
Attorney for Defendants

Greenville, South Carolina
December 8, 2016

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

AND IT IS SO ORDERED.

Cordell Maddox
Presiding Judge
Tenth Judicial Circuit

_____, 2017

ELECTRONICALLY FILED - 2017 Jan 17 1:33 PM - OCONEE - COMMON PLEAS - CASE#2012CP3700902

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE) CASE NO.: 212-CP-37-00902
ALEXANDER PASTENE,)
Plaintiff,) ADDENDUM TO PLAINTIFF'S
) MOTION RELIEF FROM JUDGMENT
vs.) UNDER RULES 60 AND 55 SCRPC
MARION MCMILLAN & SYNERGY SPINE)
CENTER, P.A. Defendants.)

Comes now, the Plaintiff, Alexander Pastene, on this Monday, June 22, 2016, and details the sequence of events since the inception of the case *sub judice*:

FACTS AND DETAILED SEQUENCE OF EVENTS
2012-2013-2014-2015-2016

2012

1. **On or about June 2012**, right before the Defendant was to appear to deliver his first medical dissertation at Sun City, in Bluffton, SC —which the Plaintiff had initiated and set up as part of a Marketing Plan for the defendant— the defendant rescinded his contract with the Plaintiff, stating that his wife was taking over from there.
2. **On May 29, 2012**, Plaintiff contacted defendant McMillan demanded payment for marketing services rendered, and appended his Invoice dated May 25, 2012.
3. **On May 31, 2012**, the defendant responded via email, stating that he refused to pay, disavowed any contract between Plaintiff and defendant, and proceeded insult and falsely accuse the him of being “CERTIFIABLY INSANE”, having engaged in “MEDICAID FRAUD”, and allegedly placed false complaints against Plaintiff with Medicaid and the SC

Attorney General's Office, both of which government entities investigated Plaintiff and found no wrong doing). See Plaintiff's letter to Magistrate Simmons dated 6-7-12.

4. **On June 18, 2012**, the Plaintiff, filed a **Summons & Complaint** in **Magistrate Court**, Seneca, South Carolina, against defendants Marion McMillan & Synergy Spine Center for Debt Collection of \$7,500.00 fees for marketing services & implementation rendered to defendants Marion McMillan and Synergy Spine Center, in addition to offenses against S.C. Public Policy, Blackmail-Extortion.

5. **On or about June 25, 2012**, Defendants filed a **Motion to Dismiss** that was DENIED by Magistrate Simmons during the July 23, 2012 hearing, signed into Order on August 16, 2012. The defendants Answered the Plaintiff's Complaint on August 31, 2012; that is, seventy five (75) days after the Plaintiff's Complaint, which technically placed the defendants in DEFAULT.

6. **On July 23, 2012**. A hearing took place in Seneca, S.C. before Magistrate Court, Honorable Judge Michael Todd Simmons presiding, to review and discuss the facts and applicable law of the Plaintiff's case. Defendant was represented by attorney Gruber Sires, however, no "Answer" to the Plaintiff's Complaint was filed by the defendants until August 31, 2012; that is, seventy five (75) days (over two (2) months after the Plaintiff's Complaint, which placed them in DEFAULT.

7. **On August 16, 2012**, Magistrate M. Todd Simmons issued Order Denying Defendants Motion to Dismiss, see copy of Judge Simmons' Order, and ordered that a bench or jury trial be set to determine the existence of a "meeting of the minds". The defendants immediately changed attorneys, from Gruber Sires to David Wilson, who fabricated a baseless Defamation counterclaim against the Plaintiff.

8. **On August 31, 2012**, the defendants filed Answer and Counterclaim to Plaintiff's Complaint denying all of the Plaintiff's allegations and Motioned to Dismiss, praying for relief on their Counterclaim. *(Please note that Judge Simmons had already*

ruled on the defendants' Motion to Dismiss —the defendants did not motion to reconsider or appealed). See doctrine of res judicata. Defendants' Motion to Dismiss of August 31, 2012, had already been DENIED by the Magistrate Court, thus, the new Motion to Dismiss in Common Pleas was improper. Assuming the defendants were not found to be in default, a trial date on the Collection of Marketing fees should've been set at that time, which the plaintiff reiterates herewith.

9. **On September 12, 2012**, the Plaintiff responded to defendants' Answer and Counterclaim of August 31, 2012, by denying all allegations on the Defamation and demanding strict proof.

10. **On September 18, 2012**, Judge Magistrate Simmons Ordered that the entire matter be transferred to the docket of the Court of Common Pleas for Oconee County.

11. **Discovery on the Defendants Counterclaim on Defamation.** As of today's date (6-10-2016) the defendants have not produced any evidence whatsoever to support their counterclaim for Defamation against the Plaintiff. Meanwhile, discovery on the defamation countersuit never took place, mainly due to defendants' frivolous Motions of Default and other procedural rigmarole designed to confuse and delay. Moreover, during the Anderson Courthouse hearing of 9-16-15, upon Judge Maddox's inquiry on discovery, Attorney Wilson falsely stated: ***"I don't think it warrants discovery. Here's my evidence. We are ready to go."*** See Transcript of 9-16-15, Page 18, lines 20 & 21. Attorney Wilson never submitted any evidence whatsoever.

12. **On Sept. 7, 2012**, Plaintiff reported Dr. McMillan's actions and threats against the Plaintiff to the SC Dept. of Labor, Licensing & Regulation, because medical doctors are not supposed to extort/threat patients. Plaintiff was Defendant McMillan's patient.

13. **On September 12, 2012.** Plaintiff filed "PLAINTIFF'S RESPONSE TO DEFENDANTS' SUMMONS & NOTICE, ANSWER AND COUNTERCLAIM" before Seneca Magistrate Court, Oconee County, SC., under Civil Action 2012-CV-3710-100244, where

he denied every allegation and demanded strict proof (which was never produced by the defendant).

14. **On Sept 20, 2012**, defendant McMillan falsely accused Plaintiff before the SC Attorney General, Alan Wilson, and Medicaid, by falsely alleging fraud. An investigation followed but no wrong doing was found on the part of the Plaintiff. See letter from Plaintiff to Attorney General Alan Wilson dated 9-20-12.

15. **On November 11, 2012**, the Plaintiff wrote a letter to Judge MacAulay, Resident Judge, stating that Plaintiff, indeed, had Answered Defendant's Counterclaim, on 9-12-15, with copy to Attorney Wilson, and the Courts (Walhalla and Magistrate Clerk of Court), see PLAINTIFF'S RESPONSE TO DEFENDANT'S SUMMONS & NOTICE, ANSWER AND COUNTERCLAIM, which he effectuated before Seneca Magistrate Court.

16. **On November 13, 2012**, the defendant filed an Affidavit of Default, stating that the Plaintiff had failed to Answer defendant's Counterclaim for Defamation sent to him by regular mail on September 6, 2012. This is not true. The Plaintiff filed Answer to defendants' Counterclaim to attorney Wilson and the courts, six (6) days after he received it on Sept. 12, 2015.

17. **On November 14, 2012**, defendant Filed Motion for Default Judgment against Plaintiff falsely alleging no answer by Plaintiff.

18. **On November 21, 2012**, Plaintiff wrote a letter to Honorable Judge MacAulay, with copy to Honorable Clerk of Court Walhalla, acknowledging receipt of defendants' Motion for Default judgment essentially stating that attorney Wilson had lied to these Honorable Courts, because Plaintiff had, indeed, timely answered. See official record, Walhalla Courthouse to find out that Plaintiff had timely Answered and denied all allegations in the defendant's counterclaim. Attorney Wilson mislead the court and Plaintiff by using a misleading false address in his stationary. See copy of letter to Judge MacAulay, attached herewith.

2013

19. **ON JANUARY 30, 2013**, Defendants filed Motion for Default Judgment against the Plaintiff for failure to timely respond to Defendants' Counterclaim.
20. **ON FEBRUARY 2-2013**, Letter by the Plaintiff to Hon. Beverly Whitfield, Oconee County S.C., Clerk of Court, in response to defendants' and Attorney Wilson to Ms. Beverly Whitfield of January 30, 2012, stating that defendants' attempt to have the case dismissed on default grounds is erroneous, insofar that Plaintiff had responded on September 12, 2012, (only six (6) days after he received the defendants' Answer and Counterclaim), denying all allegations, and asking the court to set a trial date.
21. **ON MAY 17, 2013, clocked May 21, 2013**, Plaintiff wrote a letter to Hon. Judge Alexander MacAulay, stating concern that the case was not moving forward, that the counterclaim was a sham, to deny the counterclaim, and remand to Magistrate.
22. **On JUNE 11, 2013**, Notice of Motion Scheduling. MMFDEF Motion/Default Judgment by defendants against the Plaintiff, was scheduled for July 29, 2013.
23. **On JULY 12, 2013**, Notice of Case Scheduling, Jury Roster for the week of August 12, 2013, before Hon. Judge R. Lawton McIntosh, Presiding.
24. **On July 18th, 2013**, Defendants' attorney Wilson wrote letter to Hon. Cordell Judge Maddox, Jr., at PO Box 8002, Anderson, SC, stating that on April 22, 2013, he filed Motion for Default Judgment against Plaintiff, which he attached, and inquired whether the hearing of July 29th, 2013, would address the "default on the counterclaim" or was set for "damages".
25. **ON AUGUST 1, 2013**, defendants' contacted the S.C. Attorney General's Office enclosing and stating that a Subpoena had been filed, commanding them to release or

permit inspection of documents related to the "Investigation of Alexander Pastene" triggered by their vicious accusations of a Medicare fraud that never existed.

26. **On August 6 & 7, 2013**, defendants clocked "DEFENDANTS' RETURN TO PLAINTIFF'S ANSWER TO HON. JUDGE MADDOX'S REQUEST OF RETURNED ENVELOPE CONTAINING RESPONSE TO DEFENDANTS'S COUNTERCLAIM DATED AUGUST 12, 2012", which included:

- a. An [obviously incomplete] defendants' TIMELINE OF PLEADINGS;
- b. Copy of Plaintiff's Civil Action in Magistrate Court, clocked June 21, 2012;
- c. Plaintiff's affidavit & itemization of accounts clocked June 21, 2012;
- d. Plaintiff's Complaint dated June 18, 2012;
- e. Certified Copy of Judge M.Todd Simmon's Order dated 8-16-12;
- f. Defendants' Summons and Notice, clocked 8-31-12;
- g. Defendants' Answer and Counterclaim dated August 29, 2012;
- i. Order by Judge Magistrate Simmons dated 9-18-2012, transferring the entire matter to Common Pleas, Oconee County;
- j. Notice of Transfer of Case to Common Pleas, clocked October 12, 2012.
- k. Plaintiff's Response to Notice of Transfer of case to Common Pleas, increasing the amount owed the Plaintiff by the defendant to Thirty One thousand eight hundred (\$31,800.00) dollars.
- l. Defendants' Affidavit of Default as to Defendant's Counterclaims, clocked November 14, 2012.
- m. Plaintiff's Letter to Hon. Judge Alexander MacAulay, dated 5-17-13, concerned that the case was not moving forward, **demanding a dismissal** of the defendants' counterclaim.

27. **ON AUGUST 20, 2013**, Plaintiff received letter from the SC Dept. Labor, Licensing and Regulation, Board of Examiners, stating that his Complaint against defendant Dr. McMillan, for threatening and extorting the Plaintiff (a patient of his) had been dismissed.

28. **ON SEPTEMBER 3, 2013**, a non-jury Motion/Quash Subpoena & Protective Order, **MQUASH**, was added to the roster hearing set for 9-3-2013. hearing for Fraud against the Plaintiff for defrauding the Medicaid system. Defendants' request for information from the SC Attorney General's Office. conducting an investigation of Mr. Pastene. Mr. Moultrie D. Roberts, S.C. Assistant Attorney General, of the SC Attorney General's Office, appeared before Judge Alexander MacAulay, to have the Motion quashed, which subsequently was.

29. **ON SEPTEMBER 6, 2013**, Defendants and their attorney David Wilson who failed to appear for the Sept. 3, 2013 hearing before Hon. Judge MacAulay, wrote letter of apology to Judge MacAulay, and requested that the hearing be rescheduled. The Motion to Quash was granted the SC Attorney General.

30. **ON SEPTEMBER 10, 2013**, The Plaintiff, wrote letter to Hon. Judge MacAulay, expressing his dismay at the defendants' delaying tactics.

31. **ON SEPTEMBER 20, 2013**, **MQUASH-Ex Parte** Motion to Quash Subpoena and Protective Order; hearing was scheduled for 10-24-1013. Order issued 10-28-1013.

32. **ON NOVEMBER 5, 2013**, **NOTICE OF CASE SCHEDULING**. Trial set for the week of December 2, 2013. This notice was postponed until Judge Maddox rules on his "on advisory" ruling.

2014

33. **ON JUNE 17, 2014**, **ORDER OF DEFAULT JUDGMENT**. (Pleas note that Plaintiff was never notified of Judge Maddox's Order of Default Judgment).

34. **ON AUGUST 11 2014**, clocked copy of Plaintiff's Letter to Hon. Judge Cordell Maddox with enclosures showing Plaintiff didi respond to Defendants' Summons & Notice, Answer and Counterclaim on September 12, 2012. Also, letter to Hon. Judge A. MacAulay, dated 11-21-12.

35. **ON AUGUST 11, 2014**, PLAINTIFF'S MOTION FOR RECONSIDERATION HON. JUDGE MADDOX ORDER OF JUNE 13, 2012.

36. **ON AUGUST 26, 2014**, MRECON Motion for Reconsideration HEARING SCHEDULED FOR SEPTEMBER 30, 2014, 2:00PM, in Walhalla Courthouse, S.C.

37. **ON SEPTEMBER 10, 2014**, Defendants' letter by Attorney Wilson advising of hearing, and making offer to discuss reasonable settlement of the matter.

38. **ON SEPTEMBER 19, 2014** (clocked 9-22-14), Plaintiff's response to defendants' letter of September 10, 2014, agreeing to a reasonable settlement, but Plaintiff never heard from defendants again.

2015

39. **ON FEBRUARY 05, 2015**, MRECON - Motion to Reconsider, hearing scheduled for February 26, 2015.

40. **ON FEBRUARY 24, 2015, CLOCKED MARCH 2, 2015**, Plaintiff's letter to Hon. Judge Maddox with polygraph attachments.

41. **ON FEBRUARY 25, 2015, CLOCKED MARCH 4, 2015**, Plaintiff's letter to Clerk of Court, Hon. Beverly Whitfield with a second polygraph attachment to be included in the record.
42. **JULY 24, 2015, NOTICE OF CASE SCHEDULING.** Jury Roster Status Conference. for the court period of 8/14/15 thru 8/14/15. 3 of 37 cases.
43. **ON AUGUST 10, 2015.** Motion Hearing, September 1, 2015, Motions to Reconsider by Plaintiff, and Default & damages by defendants.
44. **ON AUGUST 20, 2015.** Letter from defendant's attorney Wilson to Plaintiff Pastene informing him of Sept. 1, 2015 hearing.
45. **ON AUGUST 27, 2015. NOTICE OF CASE SCHEDULING. JURY ROSTER FOR THE WEEK OF SEPTEMBER 28, 2015. COMMON PLEASE JURY TRIAL. HONORABLE LETTIA H. VERDIN, PRESIDING.**
46. **ON SEPTEMBER 2, 2015, PLAINTIFF'S LETTER TO JUDGE MADDOX, CLOCKED 9/14/15.** Notice of rescheduled hearing for September 16, 2015 at Anderson, SC.
47. **ON SEPTEMBER 4, 2015,** Letter from Clerk of Court Hon. Beverly Whitfield to Plaintiff informing of hearing rescheduling for Sept. 16, 2015 in Anderson SC
48. **ON SEPTEMBER 21, 2015,** letter to Court Recorder from Attorney Wilson for the defendants requesting copy of transcript of the September 16, 2015 proceedings.
49. **ON SEPTEMBER 16, 2015,** Hearing before Hon. Judge Maddox at the Courthouse in Anderson, S.C. See copy of Transcript of that same date.

50. **ON SEPTEMBER 22, 2015, Clocked 9-22-15. FORM4, JUDGMENT, Case to be continued** from the Jury Trial roster for the term of September 28, 2015, and not to be placed on the docket until after January 1, 2016. ***Please note Order Error: The Motion was by the Plaintiff; not the defendant.***

51. **ON OCTOBER 31, 2015, CLOCKED NOVEMBER 13, 2015, Plaintiff's Answer to Defendants' Return.**

2016

52. **ON MARCH 10, 2016. NOTICE OF MOTION SCHEDULING.** Hearing scheduled for April 12, 2016 at 2:00pm. Damages Hearing.

53. **ON APRIL 1ST, 2016. ORDER DENYING PLAINTIFF MOTION FOR RECONSIDERATION.**

54. **ON APRIL 14, 2016,** Plaintiff's letter to Court Recorder requesting transcript.

55. **ON APRIL 18, 2016, CLOCKED APRIL 19, 2016.** Form 4 Judgment in a Civil Case.

56. **ON APRIL 23, 2016,** Plaintiff letter to Court Recorder ordering transcript of 9-16-2016.

57. **ON APRIL 29, 2016. PLAINTIFF'S MOTION TO VACATE JUDGE MADDOX'S ORDER OF 4-1-16, RECONSIDER, AND SET DATE FOR TRIAL BEFORE JURY.**

58. **ON JUNE 13, 2016. HON. JUDGE MADDOX'S ORDER DENYING PLAINTIFF MOTION TO VACATE JUDGMENT.** Order was received by Plaintiff on June 26, 2016.

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.** 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, 399 S.E.2d 439 (Ct.App.1990). **The sanction should be aimed at the specific misconduct of the party sanctioned.** See Balloon Plantation, 303 S.C. at 154, 399, S.E.2d See at 440.

Furthermore, **"whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules of Civil Procedure"**. See Downey, 294 S.C. at 45, 362 S.E.2d at 318; Kershaw Co. Bd. of Educ. v. United States Gypsum Co., 302 S.C. 390, 396 S.E.2d 369 (1990).

The South Carolina Rules of Civil Procedure (SCRCP) are clear and comprehensive when it comes to Judgments by Default, see SCRCP Rules 37, 55, 60, et seq.

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 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). 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).

Rule 37 SCRPC, expressly grants the trial court power to order judgment by default for either the violation of a court order, or, upon motion for a party's failure to respond to certain discovery requests, see Rule 37(b)(2)(C) & (d), SCRPC, however, when the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless **harsh medicine that should not be administered lightly.** See generally Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996); Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).

LAW/ANALYSIS

Above all, the Plaintiff, Alexander Pastene, never displayed any misconduct, violated a court order, or incurred any elements of bad faith, willfulness, or gross indifference to the rights of other litigants to warrant a judgment by default. Also, the conclusion reached by the trial court may have been without reasonable factual support and resulted in prejudice to the rights of the Plaintiff, thereby amounting to an error of law. Also, Attorney for the defendant opposed to discovery, see Judge Maddox Page 18, line 18); discovery never took place in Court of Common Pleas.

Moreover, in the case at bar the defendants attempted to foreclose a decision on the merits by using, *ab initio* every procedural machination, including frivolously removing the case that the Plaintiff filed in Magistrate Court based on fabricated and false grounds (a defamation that never existed). The defendants viciously removed the

case from Magistrate to Circuit Court to avoid a sure loss at Magistrate. See September 16, 2015, Court Transcript page 4, line 13, and lines 15 thru 19 [hearing held at the Anderson Courthouse 9-16-15]. The defendant and his attorney David Wilson seemingly threw a red herring at the Plaintiff's original Complaint (Collection of a debt for marketing-consulting-services by filing a bogus defamation counterclaim, while induced the Plaintiff to respond to a false address printed in his official stationary.

Additionally, the Plaintiff, Alexander Pastene, argues that this Honorable Court may have erred in granting a default order to the defendants McMillan and Synergy Spine, on this claim, prior to the opportunity for full and fair discovery, see Transcript page 18, line 20; the Plaintiff was not given the opportunity to exercise his right to depose the defendant.

The Plaintiff, who has been waiting for relief since 2012, i.e., about four (4) years to get relief from these honorable courts, *idem*, never showed any indications of bad faith, willfulness, or gross indifference to the rights of the other litigants to deserve a Judgment by default. Quite on the contrary, he was compelled to travel about four (4) times from Hilton Head Island to Seneca, Walhalla, and Anderson, for a total of about 32 hours travel time on the road in response to these Honorable Courts.

Notwithstanding, Rule 55 (c) SCRCF states that **for good cause shown the court may set aside an entry of default** and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b) (1). Note should be taken that there was confusion between the two Clerks of Court of Walhalla and Anderson, followed with instructions to the Plaintiff by the Walhalla Clerk of Court to attend the hearing unless otherwise notified; he was notified, so, he followed instructions and did not attend; clearly a misunderstanding that never involved bad faith, willfulness, or gross indifference to this Honorable Court or the rights of the other litigants by the Plaintiff. Also see Rule 60 SCRCF.

Admittedly, Walhalla Hon. Clerk of Court Beverly Whitfield placed an early telephone call to the Plaintiff—who is not a Walhalla local—on the day of the hearing,

and left a message indicating that he was to attend the hearing of that same day, however, the plaintiff was working that morning at his golf course job on Hilton Head Island, and did not receive the message until about 2:00 pm or 3:00 pm, which would've made it impossible to make it on time for the hearing at Walhalla. Travel time from Hilton Head Island to Walhalla, SC is about four (4) to five (5) hours.

Moreover, please note that the Plaintiff's telephone carrier (Family Mobile) does not serve the area where he was working and the golf course is located. Meanwhile, the Plaintiff questions why didn't the Clerk of Court, Hon. Beverly Whitfield not advice the Plaintiff by telephone message the day or evening before that he was to appear before Hon. Judge Maddox the next day knowing that it was impossible for the Plaintiff to meet the deadline if he was coming from out of town four to five hours away?

Wherefore, the Plaintiff pleads with this Hon. Court that based of the foregoing it vacates its default orders, and sets a date for the trial of to elucidate the merits of the case at bar, to take place at the earliest possible.

Respectfully submitted,


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

On Hilton Head Island, South Carolina,
 On this 24th day of June, 2016

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

DEC 30-2016 67

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF OCONEE	)	CASE NO.: 212-CP-37-00902
	)	
ALEXANDER PASTENE,	)	
	)	ABOUT RULE 60 SCRPC, AND
Plaintiff,	)	PLAINTIFF'S RESPONSE TO
	)	TRANSCRIPT OF HEARING
Vs.	)	OF APRIL 12, 2016, AND
	)	
MARION MCMILLAN & SYNERGY SPINE	)	
	)	
CENTER, P.A.	)	
Defendants.	)	
	)	

Comes Now, the Plaintiff Alexander Pastene, on this 30th day of December, 2016, and respectfully reiterates that, he had been held by this court to be in default in failing to Answer the Defendant's Answer & Counterclaim, filed in Seneca Summary Court, and served onto the Plaintiff on September 6th, 2012, despite Plaintiff's argument *ab initio* since 2012, that **he had not been in default** (bolded for emphasis).

Specifically, the Plaintiff filed his Answer in Summary Court and notified defendants of his denial and demand of strict proof to the defendants' address appearing in Attorney David Wilson's stationary in Easley, S.C. —which is the closest town up from Seneca's Summary Court— but the letter came back undelivered. Upon Plaintiff's request, USPS-Easley confirmed to him that there was no record for forwarding address, moving notice, or information about Attorney David Wilson.

In reviewing the recently received Transcript of the April 12, 2016-hearing, from Circuit Court Recorder, the defendants' falsely stated therein as follows:

1. That, "He [the Plaintiff] did not respond to our [defendants] Counterclaim" See page 2 line 16 et seq., of the Transcript of 4-12-16, 4-12-16. This not true.
2. That, "Plaintiff did not Answer the defendants' Counterclaim" and declared under oath: "Accordingly, the Plaintiff Alexander Pastene is in default". Please note that the

defendant actually Swore in Affidavit of Default, and had his false statement certified by Notary Public. See copy of defendant's sworn Affidavit enclosed herewith.

3. That, Judge Maddox may have issued his Orders based on [false] "exhibits before him and false testimony given". See, Page 24, line 2 of the Official Transcript of 4-12-12.

4. That, Defendants' Answer & Counterclaim, and Summons & Notice, were filed before **Summary Court** on August 31, 2012, which were served onto the Plaintiff on September 6th, 2012, clocked copy of which is enclosed herewith. Irrespective, Plaintiff answered to the defendants before Summary Court on September 12th, 2012, which clocked it on September 18th, 2012, within statute.

5. That, Defendant McMillan declared under oath to Judge Maddox that, "Plaintiff had been held in Default on a claim for damages" see page 5 line 25, and page 6 line 1 of Transcript the April 12, 2016. This is false; Plaintiff was not in default.

6. That, the Plaintiff denied having defamed, retaliated, or having defendant's seminars at Sun City, Tide Pointe, or elsewhere cancelled, and demanded strict proof. Defendant ended the business agreement with Plaintiff, who required payment for marketing services rendered. To avoid payment Defendant threatened Plaintiff with complaints before SC Attorney General's Office, Medicare, and Medicaid, which he effcetuated. Plaintiff did not solicit business from defendant. Defendant wanted to open office on Hilton Head Island, and sought the Plaintiff's assistance.

Plaintiff was compelled to file complaint against Defendant McMillan because he threatened Plaintiff who was his patient. Doctors are not allowed to threaten patients.

7. That, Defendant McMillan slandered Plaintiff for using "quasi-legal training" to extort money from others, which is denied, see Page 21, line 25, and ditto Page 22, line 14. Plaintiff is a trained lawyer, who graduated from an accredited State University Law School, under a regular 4 year graduate program, that required about 125 credit hours of legal work to complete, and was awarded an official diploma.

8. That, the statement: "And obviously this is not the first time I've had a hearing and he [Plaintiff] has failed to appear" is incorrect, see page 2, line 19, and page 23, lines 18-20 of the Transcript. Plaintiff failed to appear only once on 4-12-16 due to court error

Wherefore, according to Rule 60 SCRPC, Plaintiff pleads relief with this Hon. Court. That, all Orders of Default and damages grounded on false Defamation or contractual matters based on defendants' hearsay, including actual & punitive damages for Defamation, based on false exhibits and false testimony given by the defendants before Hon. Judge Maddox on 4-12-12, are vacated; that, interrogatories are effectuated, and a trial date is set (as promised by this honorable court about December 2013, and during the September 16, 2015, hearing at Anderson Courthouse)

Respectfully submitted,


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

On Hilton Head Island, South Carolina,
On this 30th day of December, 2016

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

Certificate of Mailing

The Plaintiff, Alexander Pastene, certifies that on this December 30th 2016, he served the defendants, by placing copies in the US Postal Service, postage paid, to their last known address at 200 Whitsett Street, Suite B, Columbia, South Carolina, 29601. Signed:  Alexander Pastene

2013 70 ?
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

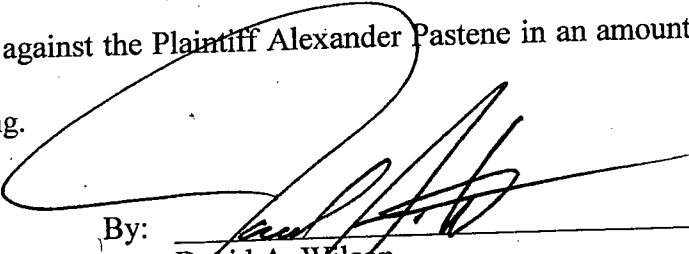
Case No.: 2012-CP-37-00902

MOTION FOR DEFAULT JUDGMENT

The undersigned attorney for the Defendants in the above-captioned matter hereby moves for a Default Judgment against the Plaintiff Alexander Pastene in an amount to be determined by the court at a damages hearing.

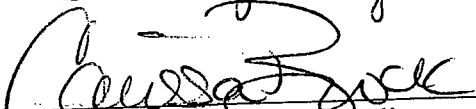
Said Motion is based upon the following grounds: the Counterclaim filed in this matter on August 31, 2012; the Plaintiff was served on September 6, 2012 as shown by the Affidavit of Default; and the Plaintiff failed to serve on the attorney for the Defendant any appearance, Answer or other response to the pleading as required by the said Summons and more than thirty-five (35) days have elapsed since the service thereof.

Based upon the foregoing, the undersigned counsel for the Defendant in this matter respectfully requests judgment against the Plaintiff Alexander Pastene in an amount to be determined at a damages hearing.

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 30th day of January 2013


Notary Public of South Carolina

My Commission Expires: 11/8/2016

2014

about July 17 2014
71

9

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	CASE NUMBER 2012-CP-37=00902
	)	
Alexander Pastene,	)	
	)	
Plaintiff,	)	MOTION FOR RECONSIDERATION
	)	ORDER CLOCKED JUNE 17, 2012
Versus	)	
	)	
Marion R. McMillan and Synergy	)	
Center, PA	)	
Defendants.	)	

Comes now, the Plaintiff, Alexander Pastene, and moves this Honorable Court to reconsider its Order of Default dated 6-13-2014, clocked copy of which was notified to the Plaintiff by the Clerk of Court on June 17, 2014, which notification was received by the Plaintiff on or around Friday, June 20th, 2014.

That, the Plaintiff timely responded to defendants' Summons & Notice, Answer and Counterclaim on September 6, 2012 (under Magistrate Court No. 2012-CV-3710-100244). Also see, Plaintiff's letter to Judge MacAulay dated 11-21-12, and See Plaintiff's letter to Clerk of Court dated 2-2-2013.

That, it may have been improper for the defendants to remove the case from Magistrate Court to Court of Common Pleas seemingly because they did not like the way their case was developing in Magistrate Court (see Court's denials) for the purpose of delaying and complicating a simple case of unpaid debt.

That, the defendants' Summons and Notice and Answer and Counterclaim was filed on 8-29-12, out of time. See Plaintiff's Response to Defendants Summons and Notice, Answer and Counterclaim dated 9-12-12. Also see, Plaintiff's Response to Notice of Transfer of case to Common Pleas.

That, any act of defamation or other offense against the defendants by the plaintiff is denied and never existed.

That, the attorney for the defendants used a confusing, evasive and false address in his stationary, to which the Plaintiff responded on time, but he claimed he never received. See still sealed envelope sent to defendants submitted to this honorable court.

That, a hearing before Judge Maddox he determined that he was taking the case "on advice" and the Plaintiff is still to receive a response from Judge Maddox. Additionally, the Plaintiff has been patiently awaiting for his jury trial that was first set for the week of December 2, 2013, before Judge Maculay, at 9:30am, but never materialized.

Wherefore, the Plaintiff respectfully requests that, the defendant's Motion for Default is denied, that the Order for Default is found to be in error, and that a trial date to ascertain the facts and merits of the case at bar is set at the earliest.

Respectfully submitted,

Alexander Pastene Plaintiff
Appearing *pro se*
P.O. Box 22298
Hilton Head Is., SC 29925
Tel. 843-605-5266

David A. Wilson
Attorney for the defendants
200 Whitsett Street Suite B
Greenville, SC 29601

CERTIFICATE OF MAILING:

I certify that the Plaintiff, Alexander Pastene, mailed copies of his Motion to Reconsider to the attorney for the defendants David A. Wilson to their last known addresses, on the 17th day of July, 2014. Signed: Alexander Pastene, Signed: _____

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STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

IN THE COURT OF COMMON
PLEAS

ALEXANDER PASTENE,	)	2012-CP-37-0902
	)	
PLAINTIFF,	)	
	)	
VS	)	JULY 29, 2017
	)	
MARION R. MCMILLAN, MD,	)	
MOULTRIE D. ROBERTS,	)	
SYNERGY SPINE CENTER,	)	TRANSCRIPT OF RECORD
	)	
DEFENDANTS.	)	

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

A P P E A R A N C E S:

Alexander Pastene
Pro se Plaintiff

David Alan Wilson, Esquire
Attorney for the Defendants

Renee H. Tollison, CVR
Circuit Court Reporter
(Retired)

HEARING JULY 29,
2013

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I N D E X

Motion for Default Judgment
Certificate of Reporter

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I N D E X O F E X H I B I T S

(No exhibits proffered.)

1 (WHEREUPON, court convened with all parties present,
2 and the following proceedings were had commencing at
3 approximately 2:08 p.m.)

4 THE COURT: Pastene versus McMillan?

5 MR. WILSON: Yes, Your Honor.

6 THE COURT: Is everybody ready?

7 MR. WILSON: I'm not sure.

8 Are you Mr. Pastene?

9 MR. PASTENE: Your Honor, I'm Alexander Pastene.

10 THE COURT: Come on up, sir.

11 MR. PASTENE: Okay.

12 THE COURT: And I have this as a motion for
13 default judgment, is that correct?

14 MR. WILSON: That's correct, Your Honor.

15 THE COURT: Okay.

16 And Mr. Pastene, you don't have a lawyer?

17 MR. PASTENE: No, I don't.

18 THE COURT: Okay. And do you understand what
19 we're doing here today?

20 MR. PASTENE: Yes.

21 THE COURT: Yes, sir, you can call your first
22 witness.

23 MR. WILSON: Actually, Your Honor, it's my
24 understanding we're just doing the -- getting the entry of
25 default and not actually --

1 THE COURT: You don't want a judgment today, just
2 the default?

3 MR. WILSON: Just confirmation that they are in
4 default.

5 THE COURT: That's a much easier thing.

6 MR. WILSON: Yeah, because we need a bunch of
7 witnesses for the damages hearing.

8 THE COURT: Okay.

9 MR. WILSON: I would like to hand up for the
10 Court's review -- I'll hand Mr. Pastene a copy. It's sort
11 of a timeline of the pleadings that have been filed in this
12 case. It started out with Mr. Pastene filing an action in
13 magistrate's court back in June of 2012. A motion to
14 dismiss was filed by the defendants and a hearing was held
15 on that motion to dismiss resulting in an order denying the
16 motion to dismiss. I then got involved and filed an answer
17 and counterclaim, served it on the plaintiff August 31,
18 2012.

19 At some point, Mr. Pastene contacted the magistrate
20 and said he didn't think my answer and counterclaim was
21 timely filed. I didn't get notice of that. But
22 regardless, the judge issued an order September 18th
23 saying, yes, we did file it timely.

24 The case was then transferred to the circuit court. I
25 filed an affidavit of default because nobody had filed an

1 answer or reply to my counterclaim. And here we are today.

2 I got a letter this morning from Mr. Pastene stating
3 that -- and this is a letter to you, Your Honor. I'm not
4 sure if you've gotten it yet.

5 THE COURT: No, I have not.

6 MR. WILSON: Dated July 24, 2013. He says in
7 this letter that he did send an answer to the counterclaim
8 sometime in September. I never received that. And
9 otherwise, I would not be here, Your Honor, if I'd ever
10 received a copy of anything in response to my answer and
11 counterclaim. But we'd like him to be held in default and
12 a damages hearing set the next term of nonjury court.

13 THE COURT: Okay. Let me just look through and
14 see what I've got in the file.

15 Mr. Pastene, do you know when you sent the answers to
16 the counterclaim? Do you have a date?

17 MR. PASTENE: Yes. I responded on the 12th of
18 September. And what it says is plaintiff's response to
19 defendant's summons and notice answer and counterclaim. I
20 have a copy right here.

21 THE COURT: Okay. Well, let me make sure it's
22 filed. Did you send it -- have it filed too?

23 MR. PASTENE: I'm sorry, sir?

24 THE COURT: Did you have it filed to -- send it
25 to the clerk's office?

1 MR. PASTENE: I don't have it, that copy. It
2 probably is in the record.

3 THE COURT: Okay. Let me see if I can find it.

4 MR. PASTENE: Okay.

5 THE COURT: Okay. Yeah, I do have it.

6 Plaintiff's response to defendant's summons and notice
7 answer to counterclaim which was received by the clerk --
8 it's got two dates on it, September 18th and October 11th.

9 MR. WILSON: Your Honor, of course, as an officer
10 of the court, I will represent that I never received a copy
11 of that. I think the elements require him to serve me with
12 that response. And I filed an affidavit of default in
13 November of 2012 and served it on Mr. Pastene, and he did
14 not respond by saying, well, here I sent this answer to
15 your counterclaim. And obviously I would have handled the
16 case differently if there was an active defense to the
17 counterclaims.

18 THE COURT: All right. Do you know if you sent a
19 copy -- the rules require you to file a --

20 MR. PASTENE: Yes.

21 THE COURT: Did you send a copy to Mr. Wilson?

22 MR. PASTENE: Yes, I believe so.

23 THE COURT: Do you have any proof of that?

24 MR. PASTENE: Well, there is a problem, Your
25 Honor. I've been sending him -- whatever actions, I took

1 copies to him to an Easley address that he has on his
2 stationery because I assumed that it was the closest one,
3 but he has another address somewhere in Greenville or
4 Columbia. I can't remember which. So they've been coming
5 back. And I've been telling the clerk of court that I've
6 been sending these things and that he may not be notified,
7 maybe they want to notify him, or something to that effect.

8 THE COURT: Okay. Do me a favor. Show him and
9 see if that is your old address.

10 MR. WILSON: Your Honor, I have two offices.
11 That's correct. The summons and notice clearly states he's
12 to respond to my Greenville address. It's clearly written
13 on the summons and notice. I do not get mail at the Easley
14 address. All my mail comes to Greenville. That's what I
15 put in my summons and notice and answer and counterclaim.
16 So obviously he knew these were coming back.

17 MR. PASTENE: No. Why would I do that? That's
18 useless.

19 MR. WILSON: Because the purpose is to let me
20 know that --

21 THE COURT: Well, is the Easley address on the
22 letterhead?

23 MR. PASTENE: It's right here. Right here is an
24 example where I have some.

25 MR. WILSON: Yes, Your Honor, it's on my

1 letterhead, but it's not on the summons and notice. And it
2 says respond within 30 days to 200 Woodson Street.

3 MR. PASTENE: And those dates, it didn't have --
4 let me see here and check here for a second, Your Honor.
5 In his counterclaim, he has that address in the summons and
6 complaint; in his letterhead where he refers to me, he has
7 the Easley address. Let me see here.

8 MR. WILSON: Your Honor, there's a copy -- I
9 believe there's a copy of my answer and counterclaim with
10 the summons and notice in the packet I handed up. If not,
11 I will hand up another copy.

12 MR. PASTENE: Anyway, obviously I didn't see that
13 because there was -- in his letterhead where he sent me his
14 summons and so on, he has the Easley address in there. And
15 I assumed that Seneca, Easley is pretty much that was his
16 office. I assumed that was it. Let me see here.

17 MR. WILSON: Well, Judge, these letters, one is
18 February of 2013, and one is November 26, 2012. So neither
19 one of these could have been the thing he allegedly filed
20 in September and served on me in September.

21 MR. PASTENE: I think I have some other ones.
22 Anyway, I assumed that the attorney here would check the
23 record being so close here which is what any attorney would
24 do, to go and check the record to see what's going on. But
25 anyway...

1 MR. WILSON: Your Honor, I take certain offense
2 at that.

3 THE COURT: I'm not worried about all that.

4 MR. PASTENE: I believe that there was a -- all
5 right. The only thing I have here is the two addresses,
6 and I assumed that his address was here closer to the
7 courthouse. That's what he has on his stationery.

8 THE COURT: Well, believe it or not, in 12 years,
9 I've never had that come up. What I'm going to do is...

10 Do you agree -- have you seen this?

11 MR. PASTENE: No. I have it right here.

12 THE COURT: Take a look at that and make sure
13 those times -- I'm more concerned about this front page.

14 MR. PASTENE: Okay.

15 THE COURT: If it is, what I'm going to do is
16 take it under advisement. I need to look and make sure if
17 there's any law on addresses of service when you have two
18 offices which is a problem --

19 MR. PASTENE: Your Honor --

20 THE COURT: -- a problem for a lot of people.

21 MR. PASTENE: -- is the whole case here?

22 THE COURT: No. This timeline of pleadings,
23 that's the main thing I'm concerned about.

24 MR. PASTENE: Okay.

25 THE COURT: The one thing you can insert in there

1 is that there was -- there appears to be filed an answer to
2 the counterclaim.

3 MR. WILSON: Your Honor, could I see a copy of
4 the one that's in the court file? The response to my
5 counterclaim.

6 THE COURT: Sure. It's got two dates on it.
7 It's got October 18th and October 11th.

8 MR. WILSON: So October 18th would not be timely.

9 THE COURT: I don't know why it's got two dates.
10 I'm not sure what the deal is. That's one thing I'll have
11 to find out. She'll make you a copy of that.

12 MR. WILSON: Thank you, Judge.

13 THE COURT: What I'll do is I'll take the matter
14 under advisement because the issue is really whether or not
15 your attempts to serve him with the answer to the
16 counterclaim at his Easley address were sufficient because
17 all we're here to do today is to find you in default on
18 that. It's going to take me -- I'm going to be gone for
19 about ten days, so I'll take it under advisement and let
20 y'all know something. And it will take me ten days.

21 MR. WILSON: Your Honor, just for clarity, first
22 of all, I don't think he's established he actually sent me
23 anything to even the Easley address with the answer to the
24 counterclaim. And second of all, we are on the jury docket
25 for mid August. I think we're, like, 38th on the docket.

1 MR. PASTENE: Twelfth.

2 MR. WILSON: Or 12.

3 We're number 12 on the docket?

4 MR. PASTENE: No, no, no. I think it's August.

5 MR. WILSON: August 12th. I think we're
6 30-something on the docket. I guess I'd ask that that be
7 continued while we hash this out.

8 MR. PASTENE: Yeah, I think you're going to have
9 to hash this out. I will continue the -- you will not be
10 tried August 12th.

11 MR. WILSON: Okay.

12 THE COURT: I'll continue it.

13 Do you have a copy -- do you have an envelope there
14 that you can tell was the envelope that you used to send
15 him the answer and complaint?

16 MR. PASTENE: Well, I have a couple of envelopes
17 here, but I'm not sure that it's that particular one. It
18 appears that I only have two for the month of February and
19 November 2012. Let me say -- can I say something, Your
20 Honor?

21 THE COURT: Sure.

22 MR. PASTENE: I brought this case before
23 magistrate court because I wanted to get this thing
24 resolved as quickly as possible. And I was ready to take a
25 lot less just to expedite this thing. The judge, the

1 magistrate judge, Judge Simmons, really determined that
2 this was a case that was supposed to be -- in other words,
3 he cleared it to go to either a judge, a bench trial or a
4 regular trial.

5 Then they come in with this new thing, the
6 counterclaim, that they never mentioned before. They
7 removed the case from that judge. It was a really amazing
8 thing that they can do this type of thing and that this
9 attorney would take a case like that. That's my opinion.

10 Anyway, there is another question here that I
11 presented to Judge Simmons, and this is the following.
12 When I presented that complaint -- I think it was the month
13 of June -- the defendants came to respond to that. So in
14 other words, their response was on that day as far as I can
15 see. So the 30 days to actually counterclaim should have
16 counted from that day, from the day they appeared in court.

17 There's an actual rule here that talks about that, and
18 I presented it to Judge Simmons. But unfortunately, he
19 told me that it had already been sent to circuit court.
20 But what it is is simple. When they responded to my
21 complaint and they appeared in court that day before Judge
22 Simmons, in essence, that's when they actually responded to
23 my complaint. And so they had 30 days to do that. They
24 never did that. They did that at the end of the month of
25 October, I think it was. So that was way beyond the

1 30 days right there. So in other words, that complaint --
2 I mean that counterclaim should never have been really
3 accepted. It was out of time.

4 MR. WILSON: Your Honor, the motion to dismiss
5 obviously tolled the time running on that.

6 THE COURT: Right. Okay. Here's what I need you
7 to do. When you go back, see if you can find that envelope
8 that would have been in. If you can, send a copy to Mr.
9 Wilson and to the clerk's office here. And then when I get
10 back, I will take it under advisement -- I'll take it under
11 advisement now, and then I'll let you know something. It's
12 really -- realistically, the way my schedule is...

13 Where are we next week?

14 There is a potential that I may go to Edgefield. I
15 may not. It's going to be two weeks before you hear from
16 me.

17 MR. WILSON: Okay. That's fine, Your Honor.
18 Thank you.

19 THE COURT: Thank you all.

20 MR. PASTENE: Your Honor, will I have to come
21 back in two weeks, you say?

22 THE COURT: No, no. I'll issue an order on his
23 motion in two weeks, and then that will determine whether
24 or not you have to come back or not. Now, this is just on
25 the counterclaim. So because of that, I'm continuing your

1 August 12th hearing, so you're not going to have a trial
2 that week.

3 MR. PASTENE: Okay.

4 THE COURT: So they'll let you know when it will
5 be. It will probably be sometime substantially later in
6 October.

7 MR. PASTENE: September?

8 THE COURT: No. I don't know when it will be.
9 October maybe. Who knows? It's hard to tell at this
10 point. Okay?

11 MR. PASTENE: So in other words, you're taking
12 this under advisement because I need to find that --

13 THE COURT: Well, because you sent your
14 counterclaim, your answer to the counterclaim, to an
15 address that is his legitimate address, but that's not the
16 address that his summons asked you to send it to. That is
17 somewhat of a novel issue, quite frankly. I want to see if
18 there's any law on it. And, also, I need to see if you've
19 got any proof that you sent that.

20 MR. PASTENE: To him?

21 THE COURT: Right.

22 MR. PASTENE: Right.

23 THE COURT: So go through your envelopes that you
24 saved, anything that came back. And if you can find it,
25 send a copy to him and a copy to the clerk.

1 MR. PASTENE: But I did send a copy to the court,
2 and it was clocked.

3 THE COURT: Right. But the rules require you to
4 send a copy to the court and to him.

5 MR. PASTENE: Right. And I did. But then he
6 had -- why does he have an address in there that he doesn't
7 answer? That's what you're going to decide?

8 THE COURT: Well, just see if you can find that.
9 See if you can find the return where that was sent back to
10 you. That would help me a little bit.

11 MR. PASTENE: I hope I can find it.

12 THE COURT: Okay.

13 MR. PASTENE: Because I have my whole case here.
14 Everything is here. Let me see one more time. It's
15 possible it just came out of it. But I know that I have
16 been sending him everything that I have been doing. You
17 know, the record shows that, that I've been actually
18 sending him copies of everything that I have done. It is
19 in my interest really.

20 MR. WILSON: Well, I don't think we're at an
21 evidentiary hearing at this point, Judge. I've gotten two
22 letters, I think, from Mr. Pastene. If he's known for
23 multiple months that the mail doesn't go to the Easley
24 address, he should be sending them to my other address.

25 Especially since I sent you an e-mail telling you

1 that.

2 MR. PASTENE: Your Honor, I hope that this court
3 will see through what these people are doing because they
4 owe me money for the last, what, almost two years now. And
5 I have to come in here all the way, it's a 9-hour drive.
6 It's four and a half and four and a half. And they keep on
7 coming up with things that is just amazing. Why doesn't he
8 pay his bill. And that's it. This causes me very
9 inconvenience. And then in addition to that, I did my job.
10 I did it right. Now they've brought up things that they
11 never brought up before the trial, before Judge Simmons,
12 that I didn't do my job right. All kinds of things.

13 THE COURT: Let me ask you this. Have y'all
14 mediated this case?

15 MR. WILSON: No, your Honor.

16 THE COURT: Y'all don't have mandatory mediation?

17 THE CLERK: Effective June 1st, we went to
18 mandatory mediation, but anything filed prior to that is
19 not required.

20 THE COURT: Really?

21 THE CLERK: So we do now. Just not then.

22 THE COURT: All right. I'll let you know what I
23 discover after I look through the file and do some
24 research.

25 MR. PASTENE: Thank you, Judge.

1 MR. WILSON: Thank you, Judge.

2 THE COURT: Thank you.

3 (WHEREUPON, the hearing concluded at approximately
4 2:29 p.m.)

5

6 *** End of requested transcript of record ***

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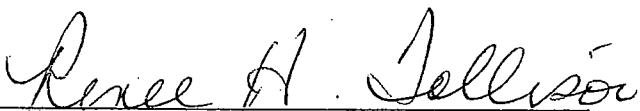
CERTIFICATE OF REPORTER

I, the undersigned Renee H. Tollison, Official Court Reporter (Retired) for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 29th day of July 2013.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 11, 2017



Renee H. Tollison, CVR

Circuit Court Reporter (Retired)

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)
-----)

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IN THE COURT OF
COMMON PLEAS
2012-CP-37-00902

COPY

ALEXANDER PASTENE,)
PLAINTIFF)
vs.)
MARION R. MCMILLAN and)
SYNERGY SPINE CENTER,)
DEFENDANTS)
-----)

TRANSCRIPT OF RECORD

SEPTEMBER 16, 2015
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR.

A P P E A R A N C E S:

PLAINTIFF APPEARING PRO SE

DAVID A. WILSON, ESQUIRE
ATTORNEY FOR DEFENDANT

VIVIAN CROSS,
CIRCUIT COURT REPORTER

I N D E X

Motion hearing 3

P R O C E E D I N G S

THE COURT: I don't have a file, and there was some urgency to hearing this a week or so ago when I was in Oconee and I was sick and had to come back here. So I don't have a file. I need somebody to tell me what it's about and what we're here for.

MR. WILSON: Your Honor, there are two motions pending; one is Mr. Pastene's Motion to Reconsider your Order of Default. You entered default -- I can hand this up if the court needs it.

THE COURT: Yeah, I do.

MR. WILSON: On June 17, 2014, and I'll also hand up his motion. These are my only copies.

THE COURT: No, I'll give them back to you. It's just because this is an Oconee County case -- now, I'm assuming that no one objects to hearing this in Anderson. Mr. Pastene, do you care about -- obviously there's some venue and jurisdiction issues that all of y'all would have to waive.

MR. PASTENE: I can't hear you well. I'm sorry.

THE COURT: Do you have any objection to hearing this case here in Anderson?

MR. PASTENE: No, not at all.

THE COURT: Okay.

1 MR. WILSON: No, Your Honor.

2 THE COURT: Okay. Hold on just a second. But,
3 obviously, I couldn't take the file from up there.
4 That's just -- it's a no-go anymore.

5 All right. It looks like, just for the record,
6 back in June of last year I signed an Order of Default
7 in this case, which would be something that would be
8 handed to me in a stack of 200 by the Clerk's Office
9 over there, but we would also check. And I'm -- the
10 order says that there was no appearance, Answer or
11 responsive pleadings; is that correct?

12 MR. WILSON: Well, Your Honor, what happened was
13 Mr. Pastene filed a Complaint in Magistrate's Court.

14 THE COURT: Right.

15 MR. WILSON: My client, through another lawyer,
16 filed an Answer-- well, actually filed a notice -- a
17 Motion to Dismiss that action. The judge did not
18 dismiss it, and then we filed an Answer and
19 Counterclaim raising jurisdictional limits to circuit
20 court.

21 Mr. Pastene did not file an Answer to that
22 Answer and Counterclaim for nine months give or take --
23 I don't have the information in front of me. We had a
24 hearing before Your Honor, and he raised his arguments
25 about he sent it in -- or it wasn't the right address,

1 et cetera. The court that ruled that it was done
2 properly and he was in default.

3 And then after the order of default, 28 days
4 later, he filed that Motion to Reconsider which, of
5 course, we take the position that's untimely and the
6 court lacks jurisdiction to amend the Order of Default.

7 THE COURT: Okay. All right. Like I said, I've
8 got so many cases, it's very difficult for me to hear
9 --

10 MR. WILSON: I wouldn't expect you to remember
11 this, Judge.

12 THE COURT: Yeah, with 5200 cases, it's hard. All
13 right.

14 Now, in Mr. Pastene's Motion of Reconsideration,
15 he says that he has not received my order. Did I do an
16 order or was it a form order?

17 MR. WILSON: No, it was the order that's
18 underneath --

19 THE COURT: Right here. And that was served as
20 far as you're concerned?

21 MR. WILSON: Oh, yes, sir. And it was served on
22 the Clerk's Office. We've had issues regarding service
23 with Mr. Pastene over this entire time, so I believe it
24 was even served by certified mail for this hearing
25 because of those issues. But, yes, he's got a copy of

1 it.

2 THE COURT: Okay. Yes, sir. I'll be happy to
3 hear from you.

4 MR. PASTENE: Okay, Your Honor.

5 THE COURT: Now, I know where we are. I got you.

6 MR. PASTENE: Well, as Mr. Wilson explained, this
7 whole thing started in Magistrate's Court. The reason
8 I did that is because I didn't want to have a long,
9 drawn out case over something that I decided I'll go
10 ahead and settle for the \$7,500 -- they owe me
11 something like \$30,000 -- or over \$30,000. And, in
12 reality, Judge Simmons denied every motion and decided
13 there was going to be a trial to -- to find, you know,
14 the facts, I guess.

15 THE COURT: Right.

16 MR. PASTENE: At that point in time, I was just
17 waiting for that to happen, going back and whatever.
18 And the defendant changed attorneys and filed a
19 counterclaim for defamation, which was never supported
20 as far as I'm concerned. I mean, I have -- as far as I
21 know.

22 And for the -- seemingly for the purpose of
23 removing what seemed like a sure judgment against the
24 defendant. By that time, I immediately wrote back to
25 Judge Simmons -- I have right here my letter to him on

1 September 12th saying "comes now the Plaintiff,
2 Alexander Pastene, and denies every allegation as
3 stated in Defendant's Summons and Notice, Answer and
4 Counterclaim of 8/29", which is the one that they filed
5 for the first time.

6 Now, if you look at the dates in there, they
7 never really answered my Complaint, but they filed a
8 Motion to Dismiss, which was denied.

9 THE COURT: So you're saying they never answered
10 in Magistrate's Court?

11 MR. PASTENE: In Magistrate's Court, yeah. Then
12 two months after that, then they filed this Answer,
13 which he said the 29th -- but it was clocked on the
14 31st -- but that was two months after that.

15 So in other words, they concocted this
16 defamation thing two months after -- in other words,
17 they never brought that up in any way or form at the
18 Magistrate's trial -- hearing and so on. And then they
19 brought it up two months after that, and took two
20 months to answer.

21 I claim -- or I feel that they were in default
22 for not answering in one month -- in the 30 days that
23 are allocated, but since they filed that Motion to
24 Dismiss they, in essence, answered my Complaint in a
25 certain way -- I'll give them that. But this

1 defamation new thing that they came up with for the --
2 seemingly for the sole purpose of removing the case --
3 the case that I brought, by the way, in Magistrate's
4 Court. And here the defendant takes it upon himself to
5 remove the case to another court, which I thought was
6 pretty unusual, but it was done.

7 Now, on that particular -- on the --

8 THE COURT: Well, first, let me ask you this --
9 you're standing up -- are you saying he answered?

10 MR. WILSON: Yes, Your Honor. And I have it right
11 here in front of me. And also Judge Simmons ruled on
12 his Motion to Reconsider the denial -- the denial of
13 the Motion to Dismiss. All this has been raised and
14 ruled upon, Your Honor. I'll be happy to hand up
15 whatever you would like to see.

16 THE COURT: All right. Well, then -- what's the
17 confusion about the Answer? He says he answered and
18 you say he didn't.

19 MR. WILSON: I think the -- I think his confusion
20 is the timing of it. We had to wait for the Judge to
21 rule on the Motion to Dismiss. Once he ruled on that,
22 then we filed an Answer and Counterclaim.

23 MR. PASTENE: Your Honor?

24 THE COURT: Go ahead. Yes, sir.

25 MR. PASTENE: As soon as this defamation and

1 Counterclaim was filed, and I got a notice that they
2 were removing the case. That's when I wrote
3 immediately to Judge Simmons, to say that I wanted the
4 case to stay in Magistrate's Court, that there was no
5 defamation that I knew of so...

6 But anyway, I responded to that Counterclaim --
7 Answer and Counterclaim within 12 days in Magistrate's
8 Court because that's where it was, you know, when I got
9 the -- when I got the notification, which as I
10 mentioned earlier was already two months -- actually
11 one month late. It was responded to in two months.
12 Now, then I responded to Judge -- I mean to Attorney
13 Wilson.

14 And there was an issue about his stationary. If
15 you take a look at the stationary back in 2012, it has
16 two addresses. I assumed at that time that because
17 this case was served in Seneca, that the Easley town
18 was the next town up, in essence, -- or very close, and
19 that that's where Attorney Wilson had been contacted.

20 And so -- so there was an issue in Greenville --
21 now Greenville County it seems to -- to be the new
22 address. But I received that letter that I sent --
23 that response back from the post office. And I didn't
24 want to open that letter or anything, because that's
25 what I had responded and I submitted to this court

1 closed, the way it was sealed and so on, for the court
2 to open up and see that I had actually responded on
3 time.

4 So this thing on the -- this Order of Default he
5 prepared, had signed, it seems to me like it shouldn't
6 have been signed. I mean, it was based on what Mr.
7 Wilson submitted to this court. And this court, I
8 assume, relied on his affidavit and this and that, and
9 then awarded the -- that, you know, signed that Order
10 of Default. But in reality, it's not based -- sorry --
11 not based on -- on what really happened.

12 I really responded. It was in my interest to
13 respond and do anything that the defendant sent me -- I
14 mean, it was in my interest. I was going to lose the
15 case just because I chose not to respond; I did.

16 THE COURT: All right. What about that -- just so
17 I can keep it straight.

18 MR. PASTENE: What -- I'm sorry?

19 THE COURT: I was going to let him respond to that
20 particular issue. Go ahead.

21 MR. WILSON: Well, I'm not sure which particular
22 issue. There were a lot --

23 THE COURT: About the Answer. He's saying that --

24 MR. WILSON: Your Honor, I've got a timeline --

25 THE COURT: Okay.

1 MR. WILSON: -- that I presented to Your Honor on
2 August 7, 2013. I don't have a copy to give to Mr.
3 Pastene, but it sets forth --

4 MR. PASTENE: I don't recognize this.

5 MR. WILSON: Well, Your Honor, if I may hand up to
6 the court -- it's already been filed, and it has the
7 timeline of pleadings that Your Honor relied upon to
8 issue the Order of Default at the exact --

9 THE COURT: Can you make a copy of that -- let me
10 get a copy so he has it, so we'll be on the same page.

11 MR. WILSON: I guess I need two copies.

12 THE COURT: Yeah. Then two. Hold on just a
13 second. Y'all wait and she'll make a copy. That way,
14 at least we'll all know what we're talking about.

15 MR. PASTENE: Right. Can I say something, Your
16 Honor? One second.

17 THE COURT: Yes.

18 MR. PASTENE: The stationary that Mr. Wilson used
19 back in 2012, looks almost the same as the one he's
20 using now. The difference is that address underneath
21 doesn't show -- so he -- apparently he changed
22 stationary because it -- it was an address that didn't
23 exist. In other words, it gave me the impression that
24 he put an address in there that didn't exist, so it was
25 inducing a litigant, like me, to respond to that

1 address.

2 And since there was no address, by the time I
3 got the letter back, then I lost my -- my -- it wasn't
4 timely. So I thought this is pretty a bizarre way to,
5 you know, to operate. I mean, I just -- then he brings
6 up the -- the -- the motion and default, when I had
7 really -- I didn't have anything to do. I had no
8 option. I never got that letter. As they say, I
9 forwarded -- I mean, I submitted to -- to this court.
10 So I don't want to interrupt him anymore, what I think
11 --

12 THE COURT: All right. Well, while she's doing
13 that, what's this about an address?

14 MR. WILSON: Your Honor, I had two offices at the
15 time --

16 THE COURT: If I sent something to either one,
17 would it get to you?

18 MR. WILSON: Not necessarily. But on the Summons
19 and Notice it was circled, said send it to 200 Whitsett
20 Street, which is my main office. But, Your Honor, I
21 think the more important thing is this has all been
22 raised and ruled upon -- I mean, you didn't just sign
23 an Order of Default. There was a hearing before --

24 THE COURT: Right.

25 MR. WILSON: -- that Order of Default. And he

1 hasn't raised any substantive issues. Procedurally I'm
2 -- I'm pretty sure he's out of time because he filed
3 his Motion to Reconsider 28 days after he received it
4 as noted in his motion itself. He's -- he had ten days
5 under Rule 59(b)(2) to file that motion, and he filed
6 it 18 days late.

7 So I think procedurally and jurisdictionally the
8 court cannot rule on his motion, except to deny it.
9 But he's -- with all due respect, he's just rehashing
10 the exact same argument we had before.

11 THE COURT: Well, I need to get a look at the
12 file. I mean, I -- this is all -- I need to look at
13 your timeline and then when I'm up in Oconee, I'll look
14 at it. I mean, we have a check list to go through with
15 Orders of Default. It looks like they were gone
16 through, but I want to double check it. This was a
17 different law clerk.

18 Now, you're coming up from Hilton Head every
19 time?

20 MR. PASTENE: I'm sorry?

21 THE COURT: Are you coming up from Hilton Head
22 every time?

23 MR. PASTENE: Yes. Yes.

24 THE COURT: Okay. Now, let me ask you this just
25 so -- I'm trying to jog my memory to June of last year.

1 What was his original lawsuit about? Was it rental
2 payments?

3 MR. PASTENE: He didn't -- he didn't pay the bill.

4 THE COURT: That's what I thought.

5 MR. PASTENE: I gave him so many hours of
6 marketing consulting work.

7 THE COURT: That's what I mean -- so it's
8 basically a debt collection action.

9 MR. PASTENE: One more thing I want to say, Your
10 Honor, this thing here about having two addresses,
11 one -- one of which is non-existent, regardless of what
12 Mr. Wilson had claimed that he wrote down one address,
13 Judge, it's pretty misleading. I just don't -- I can't
14 understand why he would put two addresses, one of which
15 is non-existent. In essence, I mean, you know, maybe I
16 didn't pay attention to what he wrote down there. You
17 know, when I responded, I responded to the closest
18 place, but I assumed that he operated from -- to his
19 Easley, which is very close to Seneca --

20 MR. WILSON: Your Honor --

21 MR. PASTENE: -- so -- in other words, he induced
22 me to make a mistake. I mean, and then used it against
23 me to claim that I didn't -- I didn't responded timely.

24 MR. WILSON: Your Honor, there's also no proof he
25 sent that letter to the other address timely.

1 MR. PASTENE: Maybe, I don't know.

2 MR. WILSON: Your Honor, he doesn't know, but you
3 did know. You heard it. You ruled on it, that he
4 didn't file the Answer timely.

5 THE COURT: Now, I get it. What I've got to do is
6 I need to look through -- they had that file for me --
7 I was as sick as I've been in a long time, and I --
8 obviously I had to rule on it.

9 I'll read through everything. I'll get a copy
10 of the pertinent documents in the file, take it under
11 advisement -- it's going to be the end of October.

12 MR. WILSON: All right, sir. Just so you know,
13 the reason why we had to come over to Anderson, we're
14 number one or two on the jury docket for September --
15 in two weeks.

16 THE COURT: The 28th.

17 MR. WILSON: And, you know, we can't really have a
18 jury trial if we -- if he's in default.

19 THE COURT: Is this on the defamation action?

20 MR. WILSON: The defamation action, we have a --
21 hopefully a damages hearing today. The jury trial was
22 on his main Complaint.

23 THE COURT: Well, the problem I've got is, as I
24 said, I don't have a file here. And I don't want to --

25 MR. PASTENE: Your Honor, I have the file here.

1 THE COURT: No, I mean, I don't have the official
2 file. Just give me -- I mean, are y'all dying to try
3 this thing September 28th?

4 MR. WILSON: No, Your Honor. They just told me in
5 Ocone County that I'm showing up.

6 THE COURT: All right.

7 MR. WILSON: But I wanted to -- and I hate to beat
8 a dead horse, but regardless of Mr. Pastene's factual
9 arguments, legally speaking he filed his Motion to
10 Reconsider the order untimely.

11 THE COURT: I understand. I mean I do. I just --
12 I just as both -- as I believe both of you, I've got to
13 look at it and see. And I'll do that.

14 Now, what I'm going to do is also call Beverly
15 and tell her this case is not going to be ready for a
16 September 28th trial, because there is no way I'm going
17 to get up there with what I've got between now and then
18 -- and we're spread pretty thin. I just -- if you're
19 -- if y'all are okay with that, it's probably going to
20 be continued, which it doesn't sound like it's a big
21 deal.

22 MR. WILSON: I'm fine with that, Your Honor.

23 THE COURT: Okay.

24 MR. PASTENE: So we're going to have the trial,
25 Your Honor?

1 THE COURT: No. No. On September 28th, no,
2 because I can't get back up there to get that file and
3 look at it.

4 MR. PASTENE: I mean, at some point in the future?

5 THE COURT: Oh, at some point in the future, there
6 will be a trial.

7 MR. PASTENE: Yeah.

8 THE COURT: The question is whether it's just on
9 their claim, or whether I'll look at the file and
10 decide that you're right and allow your case to go back
11 in. And I've got to give you -- quite frankly, to be
12 fair to both of you, I'm not comfortable doing that on
13 my memory. But I have a memory of this case, but I
14 don't even have my notes. I've got to go find them,
15 because it's a year ago.

16 So what I'm going to do is -- how about, calling
17 Beverly -- this case will be off the roster for
18 September 28th -- so don't worry about that. And as
19 soon as I can get up there, or get her to fax me the
20 pertinent documents, I'll let you know, and I'll call
21 you.

22 And I'll call -- what I'll do is call him and
23 have him do an order, just because he's local. And
24 then he'll send it to you and send it to me, whatever I
25 rule. Okay.

1 MR. WILSON: That's fine, Your Honor. And we have
2 each other's email addresses, so...

3 THE COURT: Okay. Okay. I mean, this thing -- it
4 sounds like it sort of world winded out of control.

5 MR. WILSON: I told them, this is not exactly how
6 it normally works. But --

7 THE COURT: No, this ain't normal. But -- but I'm
8 not sure -- the older I get, the more I wonder if there
9 is normal.

10 MR. WILSON: Right.

11 THE COURT: Okay.

12 MR. PASTENE: Your Honor, I just want -- this
13 defamation, I have absolutely no support or anything.
14 It's just their word. I have absolutely nothing that
15 they have sent me -- the only thing they did was say
16 we've got to sue him for defamation, and there's no
17 basis --

18 THE COURT: Has there been any discovery, or you
19 just don't intend to do any?

20 MR. WILSON: I don't think it warrants discovery.
21 Here's my evidence. We're ready to go.

22 THE COURT: Okay. All right. You know, in the
23 meantime, if there is discovery, you need to -- you
24 need to get that moving. If there's a deposition you
25 need to take or something, you need to schedule it.

1 But you're off September 28th, don't worry about that.

2 MR. WILSON: Thank you, Your Honor.

3 THE COURT: I'll take care of that personally.

4 Okay.

5 MR. WILSON: And if could just get back, I guess
6 the two documents -- I only had one copy of.

7 THE COURT: Yeah.

8 MR. WILSON: Unless y'all can make copies?

9 THE COURT: No. We'll give you back -- because
10 I'm going to get the originals when I go up there. But
11 I am going to keep your Return.

12 MR. WILSON: That's fine, Your Honor.

13 THE COURT: And thank y'all.

14 MR. WILSON: Thank you.

15 (Off-record discussion concerning email
16 addresses.)

17 THE COURT: Okay. Again, thanks for y'all's
18 patience.

19 MR. WILSON: Thank you, Judge.

20 MR. PASTENE: Thank you.

21 (Whereupon, the hearing adjourned.)

22

23

END OF TRANSCRIPT

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CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
COMMON PLEAS IN ANDERSON COUNTY, SOUTH CAROLINA, ON THE
16TH OF SEPTEMBER, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

11.27.15

COP 5/11/16

Sharon D. Jones



SHARON D. JONES,
CERTIFIED COURT REPORTER

111

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
Alexander Pastene,	)	
	)	
	)	
v.	)	Case No. 12-CP-37-0902
	)	
Marion R. McMillan, <i>et. al.</i>	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on April 12, 2016, before The Honorable J. Cordell Maddox in the Court of Common Pleas for Oconee County; South Carolina; attended by counsel as follows:

APPEARANCES:

Alexander Pastene
Post Office Box 22298
Hilton Head, South Carolina 29925
...Appearing Pro Se

David Alan Wilson, Esq.
...Appearing for Defendant

Transcribed for Vivian Cross, Circuit Court Reporter

Deborah Garrison
Circuit Court Reporter – 13th Judicial Circuit
P O Box 27145
Greenville, South Carolina 29616
dgarrison@sccourts.org

1 THE COURT: Okay. This is
2 Alexander Pastene versus Marion R. McMillan.
3 It's got "damages hearing." Catch me up on
4 this. We were trying to remember where we
5 were at this point because it has a torturous
6 and long road.

7 MR. WILSON: It has been, Your
8 Honor, and I'm not sure I can even remember
9 everything, but ---

10 THE COURT Well, I sure can't.

11 MR. WILSON: Mr. Pastene filed a
12 Complaint in Magistrates Court. We filed an
13 Answer and counterclaim that got it beyond
14 the jurisdictional limit in Magistrates
15 Court. It got bumped up here.

16 He did not respond to our
17 counterclaim. We filed a motion for default
18 and we had numerous hearings about that and
19 either he didn't show up or he showed up with
20 some position -- we actually argued his
21 motion twice.

22 THE COURT Yeah.

23 MR. WILSON: And then we had a
24 Motion to reconsider that we heard as well.
25 And the Court ruled on that just recently,

1 denied his motion to reconsider the entry of
2 default. So we're here on a damages hearing
3 on the tortious interference with respect to
4 contractual relations and defamation.

5 THE COURT Okay. And it appears
6 that -- well, the last thing in the file --
7 this is what -- well, there's a thing in the
8 file that says, "I've looked in the file. I
9 placed it on the next CP jury term of court.
10 The next term is the week of March 28th."

11 CLERK: Yes, Your Honor. In the
12 file that Robert has, there is -- Mr. Wilson
13 had contacted me and let me know that we
14 couldn't put it on the jury docket because
15 there was outstanding Motions. They were
16 ruled on and that's the next hearing.

17 THE COURT: All right. I just ---

18 CLERK: Yeah, I understand your
19 confusion.

20 THE COURT: So this is it?

21 CLERK: Right. The notification
22 for being put on the March docket was never
23 mailed to Mr. Pastene, because as soon as they
24 went out via email Mr. Wilson contacted me and
25 let me know that I was in error. So I never

1 mailed it out to him. So he wasn't even aware
2 that it was put on the 28th docket.

3 THE COURT: Okay. But he is aware
4 of today?

5 CLERK: Yes, sir. I think what you
6 have in your hand is the notification for
7 today. And the next one closer to me is the
8 card where he signed for it.

9 THE COURT: Okay. All right.
10 Okay. It appears on March 24th he did receive
11 notice of today's hearing. March 24, 2016.
12 And it is now 2:40. The hearing was set for
13 2:00. We have 3:00 Motion hearings and it's
14 been a long day, so you can proceed.

15 MR. WILSON: Thank you, Your Honor.

16 THE COURT: I don't know what else
17 to do.

18 MR. WILSON: I call Marion McMillan
19 to the stand.

20 (WITNESS TAKES STAND)

21 THE COURT: Sir, if you would,
22 give us your full name and spell your last
23 just for the court reporter.

24 WITNESS: I am Marion R.
25 McMillan, III, M-C-M-I-L-L-A-N.

1 MR. WILSON: May it please the
2 Court?

3 THE COURT: Yes, sir.

4 MARION R. MCMILLAN, having been duly
5 sworn to tell the truth, and nothing but the
6 truth, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. WILSON:

9 Q. Dr. McMillan, tell the Court a
10 little bit about yourself; what you do for
11 a living, where you work, all that jazz?

12 A. I'm a medical professional involved
13 in the independent practice of spinal
14 medicine and surgery in Oconee County where
15 I've resided and practiced since 1992.

16 I'm a physician licensed to practice
17 medicine in South Carolina and Georgia.

18 Q. And where do you work?

19 A. I work at the Synergy Spine Center
20 in Seneca, South Carolina.

21 Q. Are you the only owner of that
22 business?

23 A. I am.

24 Q. All right. As this is a damages
25 hearing, Mr. Pastene's already been held in

1 default on a claim for damages. But let's
2 just real briefly go into your damages and
3 then we'll talk about why that's your
4 opinion.

5 What's your opinion as to damages you
6 sustained as a result of Mr. Pastene's
7 interference with respect to contractual
8 relations?

9 A. The damages would cover a range
10 between a minimum of fifty thousand dollars
11 (\$50,000) and a maximum of four hundred and
12 eighty thousand dollars (\$480,000) based on
13 the payer mix and the type of patients that
14 would present for my care.

15 Q. Okay. So tell the Court what Mr.
16 Pastene did to interfere with respect to
17 contractual relations?

18 A. In March of 2012 in retaliation for
19 our failure to establish a formal business
20 relationship, Mr. Pastene maliciously and
21 willfully set out to damage my reputation, my
22 character, my professional competence, and to
23 cause patient education seminars that had
24 been scheduled to be cancelled against my
25 wishes.

1 Q. All right. Tell the Court what a
2 patient seminar is?

3 A. In the practice of certain types of
4 medicine, it is helpful to identify
5 prospective patients that might benefit from
6 your services and to hold educational
7 seminars to explain in laymen's language the
8 complexities of the medical care that is
9 being contemplated.

10 We have found that these patient
11 education seminars are our strongest
12 marketing tool. They're used by most
13 independent practices that offer these
14 similar services. And we have employed them
15 with great success in the past.

16 So it was an important part of our
17 marketing program. It's something that we
18 needed to accomplish.

19 Q. Did Mr. Pastene solicit you or
20 encourage you to have such seminars on your
21 behalf?

22 A. Yes, he did.

23 Q. And did he take steps to promote
24 that seminar?

25 A. Yes, he did.

1 Q. And where was that seminar to take
2 place?

3 A. It was to take place at Sun City in
4 Hilton Head and also at TidePointe in Hilton
5 Head one month later.

6 Q. Okay. Now, the TidePointe seminar,
7 did that ever take place?

8 A. It did not take place.

9 Q. Why did that not take place?

10 A. Directly due to the efforts by Mr.
11 Pastene to deliberately undermine the attempt
12 to have the seminar. He did so by
13 threatening lawsuits and defaming my
14 reputation and my character before the people
15 that were hosting it.

16 Q. Okay. So there was advertising
17 material prepared?

18 A. Yes.

19 Q. And it was mailed out and posted at
20 TidePointe?

21 A. Yes.

22 Q. And it was set up for specific
23 dates, specific times; correct?

24 A. That is correct.

25 Q. And because of some conflicts y'all

1 have, he affirmatively cancelled that
2 seminar?

3 A. Yes, he did.

4 Q. Now, have you had seminars like that
5 in the past?

6 A. Yes, we have.

7 Q. And where have you had those?

8 A. We typically try to have them in
9 retirement communities where there are large
10 populations of patients that have the
11 diseases that we treat. We had one at Keowee
12 Key here in the Oconee area March 29th of
13 2011.

14 Q. And was that a successful seminar?

15 A. Extremely so.

16 Q. How many people showed up at that
17 seminar?

18 A. We had sixty-two patients show up.

19 Q. Okay. How many of those people that
20 showed up actually became patients of yours?

21 A. Approximately half, twenty-nine or
22 so, about forty-seven percent of those
23 patients.

24 Q. So twenty-nine of sixty-two is
25 forty-seven percent?

1 A. That's correct.

2 Q. Is that conversion rate sort of
3 customary in the industry?

4 A. It's typical and expected for this
5 type of presentation.

6 Q. Now, when Mr. Pastene was pitching
7 this idea to you, what was he telling you was
8 sort of the benchmark -- benchmark coming to
9 look at as to advertising these type of
10 seminars?

11 A. We patterned the seminars on his
12 recommendation after the Laser Spine
13 Institute in Tampa, Florida.

14 Q. All right. Let me show you this
15 chain of e-mails. Tell the Court what that
16 is, please?

17 A. This is a chain of e-mails during
18 which Mr. Pastene presented to me the type of
19 seminars that Laser Spine Institute
20 popularized as part of their successful
21 marketing strategy and suggested that we
22 should do the same thing in the Hilton Head
23 Region.

24 Q. All right.

25 MR. WILSON: I'd mark that

1 tentatively Defendant's 1, Your Honor.

2 THE COURT All right. So marked
3 without objection.

4 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

5 DIRECT EXAMINATION CONTINUED

6 BY MR. WILSON:

7 Q. Have you had occasion to talk to
8 somebody at the Laser Spine Institute
9 regarding how these seminars work?

10 A. Yes. I spoke with one of the
11 founders of the Institute and had extensive
12 consultations with him about it.

13 Q. And who was that?

14 A. That is Joe Sam Daly.

15 Q. Okay. And what is his relationship
16 to the Laser Spine Institute?

17 A. He was one of the founders at the
18 inception of the institute.

19 Q. Did we ask him to prepare an
20 affidavit as to his experience with these
21 seminars and the conversion rates?

22 A. Yes, we did.

23 Q. Is that a copy of that affidavit he
24 prepared?

25 A. It is.

1 MR. WILSON: I'd mark that
2 Defendant's 2, Your Honor.

3 THE COURT All right. Without
4 objection.

5 (SO ENTERED AS DEFENDANT'S EXHIBIT 2)

6 DIRECT EXAMINATION CONTINUED

7 BY MR. WILSON:

8 Q. All right. So let's go back to the
9 Keowee Seminar and your experience. How much
10 did you bill for services you rendered to
11 those patients that came to the seminar and
12 ultimately became patients of yours?

13 A. We billed three hundred and fifty-
14 two thousand dollars (\$352,000).

15 Q. And how much of that did you
16 actually collect?

17 A. Sixty-one thousand dollars
18 (\$61,000).

19 Q. All right. So that comes out to
20 about twenty-one hundred dollars (\$2,100) --
21 two thousand one hundred twenty and twenty
22 dollars (\$2,120) per patient; is that
23 correct?

24 A. That is correct.

25 Q. And let me show you this sort of

1 summary of those -- well, tell the Court what
2 this is.

3 A. This is a listing of the patients
4 that we saw and a tabular summary of bill
5 charges versus collected to date.

6 Q. And did you obtain that information
7 from these medical records?

8 A Oh, yes, yes. We have a practice
9 management system that documents everything.

10 Q. So instead of having the Court
11 review all these records you consolidate it
12 into the summary?

13 A. Of course.

14 MR. WILSON: I'd like to mark that
15 as Defendant's next, Your Honor.

16 THE COURT All right. Without
17 objection.

18 (SO ENTERED AS DEFENDANT'S EXHIBIT 3)

19 DIRECT EXAMINATION CONTINUED

20 BY MR. WILSON:

21 Q. Were you expecting to generate more
22 or less income from this Hilton Head seminar
23 than you did at Keowee Key?

24 A. I would say significantly more.

25 Q. And why do you say that?

1 A. Because we had a volunteer who
2 presented himself as a marketing
3 professional, who was willing to promote the
4 event. Hilton Head is a more established
5 retirement community with more eligible
6 patients. And we just expected that it would
7 be crown jewel of our -- of that year's
8 marketing effort.

9 Q. The Keowee Key seminar, did you have
10 anybody helping you do that?

11 A. We had a couple of folks that -- I
12 think one lady that I had operated on that
13 lived out there had provided some support.
14 But we didn't have anybody really
15 aggressively promoting it or doing anything
16 to increase the profitability. At that time,
17 we had been in formal discussions with a
18 couple of people, but we really -- it was
19 pretty much myself and the patient that I had
20 worked on.

21 Q. All right. And did Mr. Pastene tell
22 you he was an expert in the marketing in this
23 type of practice?

24 A. Oh, he was quite verbose in
25 describing and promoting himself as an expert

1 marketing professional with years of
2 experience and success and clients throughout
3 the region that would recommend his services.
4 Yes, he did.

5 Q. Okay. How many attendees to these
6 seminars did he estimate he could get?

7 A. He had suggested that we could
8 expect to receive at least eighty, eighty
9 patients per seminar as a result of his
10 efforts.

11 Q. Patients or attendees?

12 A. Attendees. I'm sorry.

13 Q. Attendees?

14 A. Yeah.

15 Q. So let me show you a couple of
16 emails. One starts March 14, 2012. One is
17 May 3 2012. Tell the Court if you recognize
18 those and what they represent?

19 A. Well, the first email represents
20 something that apparently he received from
21 the Laser Spine Institute where they are
22 using their seminar model and their patient
23 solicitation techniques to try to get them to
24 attend a seminar in Charleston.

25 Q. And in that email, does he indicate

1 you should get at least twenty-five
2 attendees?

3 A. Oh, absolutely, yes. Yes, yes.
4 That's right.

5 Q. And the second email thread, is it
6 his position you should expect eighty
7 attendees?

8 A. Yes.

9 Q. There's a lot that's going on in
10 Hilton Head?

11 A. Yes. As a result of the initial
12 effort he suggested -- well, he'd indicated
13 that -- he predicted that we should have
14 forty patients before the meeting but he
15 wanted twice that many, which he thought was
16 quite attainable, which was the eighty
17 attendees.

18 Q. And then -- but that was the seminar
19 that was ultimately cancelled; correct?

20 A. That is correct.

21 Q. All right.

22 MR. WILSON: I'd mark these collective,
23 Your Honor, as Defendants -- I believe 4.

24 THE COURT Okay. Without
25 objection.

(SO ENTERED AS DEFENDANT'S EXHIBIT 4)

DIRECT EXAMINATION CONTINUED

BY MR. WILSON:

Q. And so that range is sort of consistent with what you experienced at Keowee Key; correct?

A. That's correct.

Q. Now if you had eighty attendees, you'd expect about forty patients; is that correct?

A. That's correct, based on industry standards as well as our own experience?

Q. And at two thousand one hundred twenty dollars (\$2,120) per patient, that's eighty-four thousand eight hundred dollars (\$84,800) that you would actually ---

A. Collect.

Q. --- collect?

A. Yes.

Q. Bill way more than that?

A. Now, again, it depends on the patient payer mix. That is a minimum figure assuming that most of the patients would be on the Medicare program. But invariably, the larger the attendee population, you typically

1 have patients that have private insurance
2 that reimburses three, four, five times as
3 high. But you just can't know that. So you
4 just take whatever comes. But it could have
5 been substantially higher.

6 Q. And would you have expected it to be
7 substantially higher than what you had at
8 Keowee Key?

9 A. I think because it's a larger
10 community with, you know, a more diverse
11 population, surrounding folks that, you know,
12 may have private insurance. Sure, I think
13 that's a reasonable conclusion.

14 Q. And in your experience is Hilton
15 Head a more affluent neighborhood than Keowee
16 Key or the area in Keowee Key?

17 A. I would say so, yes.

18 Q. All right. So based upon the range
19 of damages you expressed to the Court at the
20 beginning of the hearing, what do you think
21 is a reasonable number for the Court to award
22 in damages?

23 A. I would say very conservatively one
24 hundred thousand dollars (\$100,000) based on
25 the range of a low figure of fifty (\$50,000)

1 and a high figure of four hundred and eighty
2 thousand (\$480,000). I think given the usual
3 predominance of Medicare patients, I think a
4 hundred thousand dollars (\$100,000) is a very
5 conservative effort.

6 Q. All right. And that's based upon
7 knowledge and Mr. Pastene's representations
8 about his success rate, your experience in
9 the industry, and also expert testimony in
10 the affidavit?

11 A. Yes, that is correct.

12 Q. All right. Let's talk to the
13 defamation claim. In addition to cancelling
14 these seminars and defaming you to the people
15 that were going to run the seminars with you,
16 what else did he do to sully your reputation
17 or to otherwise defame you?

18 A. Mr. Pastene reported me to the State
19 Medical Board and accused me of
20 unprofessional conduct as well as blackmail
21 in connection with the same set of facts that
22 we're discussing here.

23 Q. Okay. And what would have happened
24 if those charges had stuck?

25 A. Anything ranging from an admonition

1 to a sanction of my license to suspension of
2 my license and formal action by the board. I
3 could have lost my medical license.

4 Q. About how long from the time you
5 were notified of this complaint until the
6 resolution. How long did that take?

7 A. A little less than a year. I think
8 about ten or eleven months.

9 Q. And what did you go through during
10 those ten or eleven months?

11 A. Oh, it was awful. I mean, you know,
12 I'm struggling with, you know, the complexity
13 of a medical practice. Now I've got the
14 medical board breathing down my neck for a
15 complaint that I think is unfounded. I've
16 got to defend myself. It's just mental
17 anguish, real concern about my future as a
18 licensed physician in South Carolina.

19 Q. All right. Let me show you these
20 two documents from the South Carolina
21 Department of Labor, Licensing and
22 Regulation. Is this the complaint from Mr.
23 Pastene and the Board's resolution of that
24 complaint?

25 A. Yes, it is.

1 Q. All right.

2 MR. WILSON: I'd like to mark that
3 Defendant's Number 5, Your Honor.

4 COURT REPORTER: Five.

5 THE COURT All right. Without
6 objection.

7 (SO ENTERED AS DEFENDANT'S EXHIBIT 5)

8 DIRECT EXAMINATION CONTINUED

9 BY MR. WILSON:

10 Q. So are you asking for punitive
11 damages in this case?

12 A. Yes, I am.

13 Q. Why are you asking for punitive
14 damages?

15 A. Because I think Mr. Pastene's
16 actions were willful. They're malicious.
17 They're intended to hurt me. They've been
18 found to be unfounded by the Board; certainly
19 completely frivolous in my opinion. And the
20 claim with the Board of Medical Examiners
21 given the same set of facts, as well as my
22 defense against those facts, dismissed the
23 complaint in its entirety.

24 I think it's an abuse of procedure. I
25 think he uses his quasi-legal training to

1 abuse the system and to haul people into
2 court for, you know, shabby complaints,
3 hoping to force a settlement or otherwise
4 extort us into, you know, some sort of
5 monetary payment. I just think it's wrong.

6 And I think when people do these kind of
7 things -- the guy's not even here today. I
8 think -- I really think -- I think the Court
9 should send him a message that this sort of
10 behavior is not going to be tolerated.

11 Q. And he's filed numerous lawsuits
12 throughout the State; is that right?

13 A. Oh, I mean, just -- you know, he has
14 used his quasi-legal training as a weapon to
15 extort money from unsuspecting people. You
16 know, it's much easier to pay a guy off than
17 to take time away from my practice and come
18 up here and hire an attorney and argue a case
19 over a period of, you know, months behind
20 this kind of frivolous activity. And I just
21 think it's an abuse of our laws and our
22 system. And I think it should be stopped.

23 Q. All right. So how much are you
24 asking the Court to award you in punitive
25 damages?

1 A. I'd respectfully ask twice the
2 actual damages. I think two times the actual
3 damages would be fair.

4 Q. Okay.

5 MR. WILSON: That's all I have,
6 Your Honor.

7 THE COURT: All right. Thank you,
8 sir.

9 (WITNESS STEPS DOWN)

10 THE COURT All right. Again,
11 just for the record, let me reflect it is now
12 3:00 and Mr. Pastene has not appeared. The
13 clerk's office called him on his cellphone,
14 left him a message but got no answer. So it
15 appears that he has not shown up. I realize
16 he was driving from Hilton Head but it was a
17 2:00 hearing and he had received notice of
18 it. And obviously this is not the first time
19 I've had a hearing and he has failed to
20 appear.

21 How about doing me an order?
22 Obviously, this is a damages hearing. It is
23 hard to keep track of because we have two
24 different files that are growing. I find that
25 his request for a hundred thousand dollars

1 (\$100,000) is reasonable in actual damages
2 based upon the exhibits before me and the
3 testimony as given. Specifically, based upon
4 his prior history with these seminars and the
5 number of billable hours or billable patients
6 -- that's not the correct term, but you know
7 what I mean. And, also, the amount
8 collected.

9 And then in regard to the punitive
10 damages on the defamation, two times the
11 actual damages. So a hundred thousand
12 (\$100,000) plus two hundred (\$200,000)
13 punitive.

14 MR. WILSON: Thank you, Your Honor.

15 THE COURT Thank y'all.

16 (TRANSCRIPT CONCLUDED)
17
18
19
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22
23
24
25

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Walter Garrison

December 26, 2016

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Alexander Pastene,	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	2012-CP-23-00902
Marion R. McMillan and.	)	
Synergy Spine Center,	)	
	)	
Defendants.	)	

ORIGINAL
TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on December 12, 2016, before The Honorable J. Cordell Maddox, Oconee County Courthouse; attended by counsel as follows:

APPEARANCES:

Alexander Pastene,
Plaintiff, Pro Se.

David Alan Wilson. Esq.,
Appearing for The Defendants.

Vivian H. Cross
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

I-N-D-E-X

ALEXANDER PASTENE v. MARION R. McMILLAN
AND SYNERGY SPINE CENTER
CASE NO. 2012-CP-23-00902
DECEMBER 12, 2016

PAGE NO.

COLLOQUY

3

COURT REPORTER'S CERTIFICATE

28

E-X-H-I-B-I-T-S

IDENTIFICATION ENTERED

*****NO EXHIBITS OFFERED*****

PROCEEDINGS

1:37 P.M.

1
2
3 **THE COURT:** Okay, the first one I have is
4 *Alexander Pastene versus McMillan*; is that right?

5 **MR. PASTENE:** Yes.

6 **MR. WILSON:** That's correct, Your Honor.

7 **THE COURT:** And you're Mr. Pastene?

8 **MR. PASTENE:** Yes, sir.

9 **THE COURT:** Okay. What -- I -- you're gonna
10 have to remind me; I remember a little bit about
11 this case, but what are we here for today? I
12 don't remember much, other than I had a hearing at
13 some point.

14 **MR. WILSON:** Well, Your Honor, I'm gonna --
15 I'm gonna hand up a timeline of the Motions and
16 Orders that are relevant, I think, to this
17 hearing. Also with my brief that I submitted via
18 E -- E -- electronic filing. I gave Mr. Pastene a
19 copy.

20 But I don't want to speak for him, but it's a
21 Motion filed by Mr. Pastene to vacate the, uh,
22 Order we got on default.

23 **THE COURT:** Oh---

24 **MR. WILSON:** There was a damage -- we had a
25 damages hearing---

1 **THE COURT:** ---oh, okay.

2 **MR. WILSON:** ---and he's filed a Motion to
3 Vacate that.

4 **THE COURT:** Okay. Yes, sir, I'll be happy to
5 hear from you.

6 **MR. PASTENE:** Sure. Um, okay, first -- first
7 of all, this is set up -- in your words, uh -- as
8 a, uh -- I want to tell The Court exactly what you
9 said. This is the collection of a -- of a debt.
10 That's -- that's what it is, basically. That's
11 what it was.

12 Uh, Your Honor, I, uh -- I've been held, uh,
13 by this Court to be in default, uh, on a
14 Counterclaim by the, uh -- uh, Defendant. Uh,
15 and -- and that -- it wasn't a, um -- I was
16 notified of this -- he filed it at the end of
17 August and he notified me of -- of the, uh,
18 Summons and Notice, and Answer and Complaint. Can
19 I, uh, approach?

20 **THE COURT:** Sure. You mean you got an Order
21 from The Court?

22 **MR. PASTENE:** Uh, well, yes, uh...

23 **THE COURT:** Okay, this is them serving you
24 with the---

25 **MR. PASTENE:** Serving me on the 6th---

1 **THE COURT:** ---Answer and the Counterclaim.

2 **MR. PASTENE:** ---okay, the 6th of September.

3 **THE COURT:** Okay, of 2012.

4 **MR. PASTENE:** 2012; and I -- I argue that I
5 was not in default. On September 12th, I made my
6 Answer to the Defendant's Counterclaim in
7 Magistrate Court, and, uh, I made that on the 12th
8 of, uh, September. And, uh -- let's see -- and
9 the, uh, Magistrate Court stamped that -- Summary
10 Court -- stamped -- stamped that on September the
11 18th. So that's like twelve days after the, uh --
12 uh, the Counterclaim, uh, was served on me. So,
13 you know, I -- I was right on time, you know, to,
14 uh...

15 Um, and so then -- I'm missing something.

16 **THE COURT:** All right, well let me -- let me
17 ask Mr. Wilson something.

18 **MR. PASTENE:** I didn't have---

19 **THE COURT:** Let me ask this. Did this start
20 in Magistrate's Court?

21 **MR. WILSON:** Yes.

22 **THE COURT:** I mean, again, I've got thousands
23 of these so I don't remember.

24 **MR. WILSON:** Your -- Your Honor, he filed in
25 Magistrate's Court, we filed an Answer and

1 Counterclaim which bumped it up to Circuit Court.

2 **THE COURT:** And it got bumped up to Circuit
3 Court by somebody other than me, right?

4 **MR. WILSON:** Correct.

5 **THE COURT:** Okay.

6 **MR. WILSON:** And -- and, Your Honor,
7 everything Mr. Pastene -- and I want him to have
8 his day in Court, but we've gone over these same
9 issues I think now three times. There's already
10 been an Order of Default Judgement, there's been
11 a -- which set aside -- which set the Default;
12 that's a final Order. Not just an Entry of
13 Default, an Order of Default. Then we had a
14 Damages Hearing that Mr. Pastene did not show up
15 for, and now we're here again arguing the same
16 issues.

17 **THE COURT:** Well, here's -- here's what I'm
18 asking is that he did file a Response in
19 Magistrate's Court? How did there end up being a
20 Default? And again, you're gonna have to forgive
21 me because I don't remember and I don't know.

22 **MR. WILSON:** Because he didn't serve it on me
23 timely.

24 **THE COURT:** It was filed, it just wasn't
25 served; right?

1 **MR. WILSON:** Correct; and it wasn't -- I
2 don't think it was even filed.

3 **THE COURT:** Well, it's---

4 **MR. WILSON:** I think he just sent a letter.

5 **THE COURT:** Look at that. That -- that's
6 what I'm worried about; there's---

7 **MR. WILSON:** But Your Honor, it's already
8 been -- you've already ruled on this twice.

9 **THE COURT:** Well, I understand but I'm just
10 trying to catch up. Because, I've -- I've---

11 **MR. WILSON:** Right; if it was -- if it was
12 dated with The Court in time, it wasn't served on
13 me timely and that was the basis for the Default.

14 **THE COURT:** It's stamped here October 11th.
15 Okay, I'm just -- again, I again -- I'm just
16 trying to make sure everything's right. So---

17 **MR. WILSON:** But it -- it---

18 **THE COURT:** ---it was---

19 **MR. WILSON:** ---and I don't want to like jump
20 into my argument too early, but if you look at my
21 timeline of, I think, the events relevant to this
22 hearing, uh, we had an Order of Default Judgment
23 June 17, 2014. Mr. Pastene filed to reconsider.
24 We had a hearing on that Motion to Reconsider. We
25 had an Order denying the Motion to Reconsider by

1 Your Honor. Then we had the Damages hearing.
2 Then we had the -- the Form 4 Judgment for three
3 hundred thousand dollars. Then we had a Motion by
4 Mr. Pastene to Vacate or Reconsider. The Court
5 denied that Motion to Vacate or Reconsider. I did
6 the formal Order, you know, the same damages
7 amount, and he's filed another Motion to
8 Reconsider or Vacate.

9 I don't think The Court has jurisdiction to
10 issue any ruling in this matter. It's already
11 issued an Order regarding the Motion to
12 Reconsider. There's already been a Motion to
13 Vacate; all those Motions have been denied. And
14 here we are again and he's going back to 2012 when
15 we've already had the issue decided not once, not
16 twice, but I think now three time, uh, that he was
17 in default.

18 So, I think the -- the -- the hearing today
19 is his Motion to Set Aside the most recent
20 judgment based upon him not showing up at the last
21 hearing 'cause he claims he didn't think he had
22 to. Um...

23 **THE COURT:** Okay. Mr. Pastene, I do remember
24 that there was a hearing, and I -- that you
25 weren't here on and, um, do you remember that? Do

1 you remember when that was?

2 **MR. PASTENE:** (No response.)

3 **THE COURT:** There was a hearing that you
4 didn't appear? It was a Motion -- it was your
5 Motion to Reconsider or Vacate and you weren't
6 present?

7 **MR. PASTENE:** Was that the one the -- the
8 month -- right now in the month of April?

9 **MR. WILSON:** April 12, 2016.

10 **MR. PASTENE:** Yeah; that was a -- that was a
11 confusion with the, uh, Clerk of Court's office.
12 Uh, they had a, uh, -- when the -- before that we,
13 uh, met at Anderson. Uh, and the -- the files,
14 the -- the case was not -- there was a confusion
15 between both. And, uh -- uh, the way I
16 understood, it was not supposed to, uh, be on
17 the 12th.

18 Uh, that, uh -- and then, uh, someone from
19 the, uh -- uh, Clerk of Court's Office, uh, called
20 in the morning but I didn't get the call until
21 about one, uh, and that was too late to come in,
22 uh, because there's a five-hour drive to come in.

23 But, Your Honor, I have here, uh, the, uh,
24 Order from Judge -- from Judge Simmons from the
25 Magistrate Court that is actually dated September

1 18 ordering the transfer of the case to Common
2 Pleas.

3 **THE COURT:** Right.

4 **MR. PASTENE:** So what happened was that
5 the -- if you take a look at the stamp, uh, on
6 the, uh -- uh, the Order to transfer the case and
7 my, uh, Response in there, they were both stamped
8 by the, uh, Clerk of Court Common Pleas pretty
9 much the same day. One was, uh, on the 11th, the
10 other was on the 12th. But I had already
11 responded, uh, timely in Magistrate Court. Uh,
12 Judge Simmons signed his Order on the 18th and, uh,
13 if you take a look at the, uh -- uh, at my
14 Response, it is stamped on the 18th -- September
15 the, uh, 18th 2012. That means that I responded,
16 as I had mentioned, since the very -- very be- --
17 beginning. That I had responded within what,
18 uh -- let me see. She send it on the 6th; I re- --
19 within six days. He sent the, uh -- uh, the
20 Counterclaim on the 6th of September and I
21 responded on the 12th. And this stamped on the---

22 **THE COURT:** But -- but now, did you serve
23 him? Because you got it -- I think this is the
24 same issue we had before. It's filed and it says
25 on here that it was received September 18th. But

1 then it says it was filed in Oct- -- Ocone
2 County---

3 **MR. PASTENE:** I think it says Summary
4 Judgement if I'm not mistaken.

5 **THE COURT:** Pardon me?

6 **MR. PASTENE:** You're -- you're looking at
7 this? Uh, at my Response?

8 **THE COURT:** Right; it says September 18th.

9 **MR. PASTENE:** Does -- does it say my copy in
10 there by chance?

11 **THE COURT:** Pardon me?

12 **MR. PASTENE:** Does it -- does it say my copy
13 in there by chance? At the very top? Because I
14 think I gave you the wrong.

15 **THE COURT:** Yeah---

16 **MR. PASTENE:** Yeah.

17 **THE COURT:** ---it says your copy. But it --
18 okay.

19 **MR. PASTENE:** That's it. But anyway, you
20 can -- thanks, that was my copy. I just got
21 confused; thank you.

22 **THE COURT:** See, the question is whether you
23 served this on them. I don't think you served --
24 I -- my recollection is that you filed it but you
25 never served it on the parties.

1 **MR. PASTENE:** Well what happened is -- what
2 happened -- yeah, I did serve it, uh, to his
3 address. Uh, there was a close -- see, this is a
4 case was -- was a Magistrate Court with Seneca.
5 It's right next to, uh -- uh, Easley. So, in his
6 stationery he had an Easley address and I -- I
7 assumed, uh, that, uh, that he was handling --
8 handling this from this Easley address and I
9 responded to that.

10 Well, it came back; the envelope came back
11 and I -- I submitted to this Court sealed. So
12 there's my -- my response in there was inside for
13 sure. And, uh, then what I did was this year,
14 actually, I went to the, uh, Post Office in Easley
15 to -- to find out if he had left a forwarding
16 address or to say that he moved.

17 **MR. WILSON:** Your Honor -- Your Honor, I'd
18 like to object---

19 **MR. PASTENE:** And, uh---

20 **MR. WILSON:** ---to him testifying at this
21 point.

22 **THE COURT:** I know. I'm just trying -- I'm
23 trying to get this thing -- I -- I -- your -- it's
24 noted. Go ahead, tell me what you did. I'm just
25 trying to figure out -- 'cause I have heard two

1 Motions to Reconsider on this, and I -- this will
2 be the last one. So I need to do it. So go
3 ahead, you can tell me what you did.

4 **MR. PASTENE:** Right. So, uh -- uh, I don't
5 know how he didn't get the, uh -- uh, the Response
6 itself. Then after that there was discussion
7 about it so he knew that -- that there was a,
8 uh -- that there had been a Response.

9 But, uh, what I'm saying is, uh, I -- I did
10 what I was supposed to do. I -- I -- he, uh, he
11 presented a Counterclaim with an Answer like
12 thirty-five -- I don't know, even more on that.
13 Not thirty-five I'd say but a lot, uh, later that
14 the, uh, time allowed to respond. But then the,
15 uh, Judge, uh, in Magistrate Court decided that,
16 uh -- uh, that it was timely. Uh, his Answer was
17 timely and, uh, we continued on. The case was,
18 uh, sent to, uh -- uh, to Common Pleas here at the
19 same time as my Response and, uh, it -- I mean,
20 it's -- I don't know what to say. I did what I
21 was supposed to do. And to be found in Default
22 when I'm really not in Default is -- is -- is
23 something that I, uh, I hope we resolve here.

24 **THE COURT:** All right, tell me again -- just
25 go back, rem- -- remind me again why he was in

1 Default. You didn't get served, or---

2 **MR. WILSON:** I did not---

3 **THE COURT:** ---because that's the major
4 issue.

5 **MR. WILSON:** ---I did not get served timely,
6 Your Honor. And, I filed my Affidavit of Default
7 and then I asked for a -- a hearing on that
8 Default. There was an Order of Default Judgement
9 entered; a Damages hearing to be set. Mr. Pastene
10 filed a Motion to Reconsider upon that Order of
11 Default Judgement. We had a hearing on that
12 Motion; Your Honor ruled on that Motion against
13 him. Then we had a Damages hearing. Um, and it's
14 interesting, the only hearing set for April the
15 12th was the Damages hearing, which is Exhibit B to
16 the brief I submitted. Uh, so that was the only
17 hearing set for that day. He had mentioned his
18 filing -- he talked to Beverly Whitfield, um,
19 prior to that week and she said yes, you're
20 supposed to show at that hearing unless you -- he
21 said, unless you hear from me otherwise or
22 something to that effect. There was nothing
23 otherwise that came down and he didn't show at the
24 Damages hearing.

25 So, he filed a Motion to Vacate, Motion to

1 Reconsider from that Order which you denied and
2 now he's filing another Motion to Vacate.

3 Uh, and I -- like I said, I don't think you
4 have jurisdiction to even rule on what he's asking
5 you to rule on today. But even if you do have
6 jurisdiction and decide to rule on it, I mean,
7 it's not excusable neglect to just fail to show up
8 for a Damages hearing. Uh, and I've cited some
9 cases in my brief.

10 Uh, there's no question he had notice of it,
11 and there's no question that he didn't show
12 up. Um, and if you -- you recall -- which I know
13 you -- you know, this is not your only case, Your
14 Honor. Prior to that hearing we had the Clerk's
15 Office confirm that they had talked to him and
16 told him about the hearing. So -- and there's
17 actually a green card in the file, uh, with the
18 date, sent in certified mail and he signed for it.
19 The notice of the hearing. And that's attached to
20 my filing as well.

21 So, the only issue before The Court is this
22 Motion to Vacate. It's already been ruled on
23 once; I don't think you can rule on it again.
24 But, if you decide to, uh, I think it's pretty
25 clear it's not excusable neglect. He just failed

1 to show up for a hearing after notice.

2 And we've had four, five, six different
3 hearings on multiple issues in this case, and then
4 we keep rehashing the same things. And I -- I
5 didn't come prepared with my timeline of all those
6 hearings.

7 **THE COURT:** No, no, I---

8 **MR. WILSON:** All right.

9 **THE COURT:** ---I'm just -- you know, it's in
10 front of me so I want to hear it.

11 **MR. WILSON:** Right.

12 **MR. PASTENE:** And, Your Honor, I have a
13 transcript here from the, uh -- uh, fifth -- I
14 think it's, uh -- well it is September 16, 2015.
15 And one thing here you said, uh -- uh, I asked
16 you, I said, so are we gonna have a trial, Your
17 Honor? And you said, uh, no on September 28. No,
18 because I can't get back up there and the file --
19 whatever. I said, I mean at some point in the
20 future? And you said, uh, oh, at some point in
21 the future there will be a trial.

22 So at that time was already, you know, uh,
23 pretty -- I don't know what happened here but I --
24 since the very beginning it's just one delay after
25 the other, one delay after another. I mean, I was

1 not -- not in default since day one.

2 So, I mean, I was trying to collect a debt
3 that this, uh, Defendant did not pay. I mean, I
4 put on so many hours marketing, uh, consulting to
5 him. Uh, he want to open an office in -- on
6 Hilton Head and, uh, then at the last minute he
7 said that his wife was gonna take charge or
8 whatever. And I said, okay, I'll pass him the,
9 uh, the bill for the work that I did. And he told
10 me that I was insane and all kinds and he never
11 paid me.

12 **MR. WILSON:** Your Honor, once again I want to
13 object to extraneous testimony. Uh, I understand
14 he wants his day in The Court now.

15 **MR. PASTENE:** Right. The thing here is, uh,
16 that I, uh -- uh, responded, uh -- uh, according
17 that, uh -- with -- within the time limit allowed
18 by Statute. Uh, and I mailed the, uh, the Answer,
19 uh, to the Magistrate Court with a stamp that says
20 straight, crystal clear in there, uh, September
21 18. Then it was here, uh -- it was stamped here
22 October 11. But, it coincides with the transfer
23 of the case. It took almost, I don't know, but
24 it's like, uh, twelve days and, uh -- from, uh,
25 the Magistrate Court to send it here and then -- I

1 don't know whether they took a whole month, but,
2 uh, it -- it -- there was a -- a problem with
3 that. And it coincided with the, uh -- with my
4 Answer. But---

5 **THE COURT:** Well, I -- obviously I don't
6 remember everything I've said, but I -- if I said
7 there was gonna be a trial, I probably meant
8 Damages Hearing because that would have been set
9 at the hearing on Motion for Reconsideration,
10 which would have been, um, the Second Motion for
11 Reconsideration which was September 16, 2015.
12 And, um, and then we had that Damages Hearing and
13 I do remember that day because I assumed that we
14 were gonna be dealing with, um, the issue of
15 damages and, you know, you weren't here.

16 **MR. PASTENE:** Well -- well, the -- the whole
17 thing is I'm trying to collect a debt. And, uh, I
18 could have done it right there on Magistrate Court
19 if it hadn't been for the -- the Defendant
20 changing attorneys and removing the case.

21 I mean, I -- I actually sued in -- in
22 Magistrate's Court for a reason. I didn't want to
23 put up with four years of -- of -- of -- of, uh,
24 of this type of thing. And I wanted to get that
25 thing done. You owe me like thirty-something

1 thousand dollars, but I said, okay, let's go ahead
2 and, uh -- uh, go to Magistrate's Court. At least
3 I'll get my seventy-five hundred which is the, uh,
4 maximum. And just when the Judge said okay, we're
5 gonna have a trial, change attorneys, remove the
6 case, and he's having me here hanging for the last
7 four years; almost five, uh, with Defaults. And
8 this never -- I mean, this is very clear. I
9 answered within the time. I send him an invoi- --
10 I sent him a copy to -- to the address that he
11 listed in his stationery. What else can I do? I
12 mean, I -- I'm on Hilton Head Island, I can't come
13 on there and do it in person. But, uh -- uh,
14 possibly, well then that I could -- to send it,
15 uh -- send it certified or something. I don't
16 know which way they do it, but if you would want
17 to see -- let's see here.

18 This is the, uh -- yeah, this is the, uh --
19 the notice of...

20 **THE COURT:** Have you got any evidence that
21 you served -- because this is the seminal issue --
22 have you got any evidence that you served this
23 Answer to the, uh, Counterclaim---

24 **MR. PASTENE:** To the Defendant?

25 **THE COURT:** ---on the Defendant?

1 **MR. PASTENE:** Well, here's a copy of the
2 envelope that I just, uh, took from the file.
3 It's in the file. And, uh, what I did with the,
4 uh, with the invoice, uh -- I'm sorry, with the,
5 uh---

6 **THE COURT:** The Answer.

7 **MR. PASTENE:** ---with the Return--

8 **THE COURT:** Answer, yeah.

9 **MR. PASTENE:** ---envelope, I submitted it to
10 The Court, sealed, because I didn't want to, you
11 know, give any idea that I put my Answer in there.
12 And so, I just left it sealed and it was, uh -- I
13 believe copies were taken and that -- I took it
14 out of the, uh, of the case this morning.

15 But, Your Honor, basically what it is, I --
16 I've done what I have -- what I was supposed to.
17 I've been here for four -- as I said, almost five
18 years. Coming in here from Hilton Head, that's
19 like a ten-hour drive. It's five hours to go,
20 five hours to come back. And I did this -- like
21 this is the fifth time, and, uh, we're back to
22 square one. As -- as he, uh -- Attorney Wilson,
23 uh, said, this is, uh, really di- -- discussing
24 the Default. We're still discussing a Default.
25 Uh---

1 **THE COURT:** Well, that's what gave rise to
2 the Damages. Because they -- he was here on the
3 16th and put -- put up the Defendants as I recall,
4 and they testified about their damages.

5 **MR. PASTENE:** But that a very (sic) -- that
6 was a -- a great error not by me, as I say. But,
7 there was a misunderstanding with the, uh, Clerk
8 of Court. Then a lady by the name of, uh,
9 Tammy -- I think it was Tammy Hightower or
10 somehow, she gave me a call and I was -- I called
11 back as soon as I -- I could, and, uh, it was like
12 one o'clock that day. It was impossible to make
13 it here in time -- in time anyway. So it wasn't
14 that I didn't -- I mean, I have been coming in
15 here consistently and, uh, I -- I -- that was a,
16 evidently, an error. I mean, it wasn't, uh, my
17 intention not to be here. I mean---

18 **MR. WILSON:** Your Honor, if I could address
19 that point?

20 **THE COURT:** Sure.

21 **MR. WILSON:** In -- in his Affidavit he
22 submits with his, uh, Motion, he says that he
23 talked to Beverly Whitfield in the Clerk's Office
24 and she said to be at the hearing unless you hear
25 otherwise from The Court.

1 **MR. PASTENE:** Correct.

2 **MR. WILSON:** And there was nothing otherwise
3 from The Court.

4 **MR. PASTENE:** Well, when I said from The
5 Court, I -- I assume there was a Clerk of Court.

6 **THE COURT:** Well, that's who Beverly
7 Whitfield is.

8 **MR. PASTENE:** Beverly Whitfield, yeah,
9 because there was a -- a -- it was some sort of a
10 mix-up or some sort of a -- a -- something that,
11 uh -- between the Clerk of Court, uh -- between
12 Mrs. Whitfield and the Clerk of Court at Anderson.
13 And I don't know what went on there but -- but
14 there was something related to the case or that it
15 went there again or it was -- I don't know what it
16 was really.

17 But anyway, what she said is -- is that --
18 she said this. If you don't hear from me, come on
19 down. And, uh, and then -- and then I heard from
20 her. So I said, okay, then I'm not supposed to
21 go.

22 **MR. WILSON:** But what's -- but, Your Honor --
23 what did you -- that's not what your Affidavit
24 says.

25 **MR. PASTENE:** What is it that the Affidavit

1 says?

2 **MR. WILSON:** You said you didn't hear
3 anything else from them.

4 **MR. PASTENE:** No, no, no, no, no. Just the
5 opposite.

6 **MR. WILSON:** Except for the day of the
7 hearing.

8 **MR. PASTENE:** No, no; just the opposite. She
9 said, if you don't hear from me, come on down.
10 Let me see if I can remember; I mean it's---

11 **THE COURT:** Well, I think that's what she
12 said. And then she -- then---

13 **MR. PASTENE:** You know what, there was a
14 confusion in there, a -- whatever it was said.

15 **THE COURT:** All right, well let me ask you
16 this. Just -- just I want to end this. This
17 attorney, David Wilson, 600 North A Street. Have
18 you ever had---

19 **MR. WILSON:** I -- I did have that address,
20 Your Honor, but it was not the address that was on
21 my Answer and Counterclaim and my notice -- and my
22 Summons saying this is where you respond.

23 **THE COURT:** Okay.

24 **MR. WILSON:** And---

25 **MR. PASTENE:** That is true, Your Honor, that

1 is true.

2 **MR. WILSON:** ---we -- he has that. Your
3 Honor, I---

4 **MR. PASTENE:** He -- he circled the -- his --
5 his Greenville address. But you're in the middle
6 of responding to someone -- I really -- when I
7 mailed it out, I looked at the stationery. I
8 didn't see the, uh -- that he was specifically --
9 no, why didn't he just cross it out or -- or use
10 another stationery? He has an address in there
11 that doesn't exist. I mean, I didn't know at that
12 time. It was my interest -- evidently, my
13 interested, uh -- uh -- uh, giving copy, uh, to my
14 response. Otherwise, look at this, I mean, we're
15 still discussing it. It wasn't that -- in my
16 interest not to -- to, uh -- uh, copy him. So...

17 **THE COURT:** Okay.

18 **MR. WILSON:** Your -- Your Honor, on a legal
19 point, Mr. Pastene has been held in default I
20 think five different times by five different
21 lawyers and Your Honor. Um, that issue is water
22 under the bridge. The only issue is whether he
23 gets relief from the Default Judgement, um, based
24 upon excusable neglect under Rule 60(b).

25 His documentation establishes he had notice

1 of the hearing on April the 12th 2016. My exhibits
2 from The Clerk's Office shows he was mailed
3 notice of the hearing -- which was only a Damages
4 hearing -- for April the 12th 2016. He signed the
5 return receipt on -- my eyes are not great, but it
6 looks like March the 18th 2016, almost a month
7 before the hearing. Um, he talked to
8 Ms. Whitfield, as he indicates in his Affidavit;
9 and she told him to be at the hearing. At the
10 Damages hearing we got confirmation from the
11 Clerk's Office that they talked to him and told
12 him about the hearing. So the issue is whether he
13 was excusably neglectful in not attending the
14 hearing, and I don't think that he was. Um, he
15 just did not show.

16 So, I first believe The Court doesn't have
17 jurisdiction because it's been raised and ruled
18 upon; not appealed. But even if The Court does
19 consider it, I don't think he's raised sufficient
20 grounds for relief under 60(b).

21 **THE COURT:** Okay.

22 **MR. PASTENE:** Your Honor?

23 **THE COURT:** Yeah?

24 **MR. PASTENE:** Can I say something? Uh,
25 reasonableness, I think, uh, is a vital ingredient

1 in any, uh -- uh -- uh, argument I'd -- I'd
2 say.

3 And, uh, here I was in to Magistrate Court,
4 uh, to collect a debt for seventy-five hundred
5 dollars. They change attorneys, they change
6 Courts, uh, and now they want to collect three
7 hundred thousand dollars from me. This is just
8 like unbelievable. Right?

9 **THE COURT:** Okay; All right, well what
10 I'll do is, uh, I'll go through this. I mean,
11 I -- it -- I have heard this reconsideration
12 twice; it's unusual to do three times. My fear is
13 that you just failed to -- to properly, uh, file
14 your Answer and -- and serve it, and that is a
15 requirement.

16 And see, back in October -- or, in April,
17 when he had that damages hearing, that would have
18 been the time for me to deal with that.

19 **MR. PASTENE:** To do the -- the jud- -- the,
20 uh, trial right there?

21 **THE COURT:** Yeah.

22 **MR. PASTENE:** Uh, but---

23 **THE COURT:** But let me -- I'll look through
24 everything and let you-all know and I'll -- and
25 I'll probably, when I read through everything and

1 make sure the dates are correct, I'll get in touch
2 with you. You can do a proposed Order, send it to
3 him, and then send it to me. Okay?

4 Okay; thank you-all.

5 **MR. WILSON:** Thank you, Judge.

6 **MR. PASTENE:** Thank you.

7 (WHEREUPON, HEARING ENDED AT 2:04 P.M.)

8 *****END OF REQUESTED TRANSCRIPT*****
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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF ANDERSON)

4

5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT

6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF

7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS

8 A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE

9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE

10 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE

11 COURT OF COMMON PLEAS FOR OCONEE COUNTY, SOUTH

12 CAROLINA, ON THE 12TH DAY OF DECEMBER 2016.

13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,

14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

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Vivian H. Cross

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VIVIAN H. CROSS, COURT REPORTER

23

TENTH CIRCUIT AT LARGE

24

MAY 24, 2017

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