

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Cordell Maddox, Circuit Court Judge

Case No. 2017-000294

Alexander Pastene

Appellant,

v.

Marion R. McMillan and
Synergy Spine Center, PA

Respondents.

APPELLANT'S ANSWER to RESPONDENT'S LETTER OF 05/30/18,
ON MISSING ATTACHMENTS TO HIS RETURN OF 12/8/16. in the ROA, AND,
ANSWER TO RESPONDENT'S FINAL BRIEF RECEIVED JUNE 7TH, 2018.

Comes Now, the Appellant, Alexander Pastene, on this June 8th, 2018, and answers the Respondent's letter dated May 30, 2018, in reference to missing exhibits to Respondent's Return to Plaintiff's Motion dated December 8, 2016, whereby, although all of the attachments already are in the case at bar, the Appellant acquiesces to the Respondent's request and reproduced the exhibits from the Respondents' copies, and is submitting them by consent as a supplement to his amended ROA.

Notwithstanding, it is puzzling that someone who owes money to another can avoid paying his debt simply by hiring an attorney to countersue under an unsupported claim, using procedure to prolong the case, and hoping that the creditor will give up and abandon his claim. Wouldn't such a system boycott justice?

Albeit, the Appellant notices the Respondent's concern for procedural fault and

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SC Court of Appeals

detail, while consistently failed to ignore factual evidence and the merits of the case at bar, *inter alia*:

- He evaded arguing the merits of the case (payment of a debt) by removing the case from Magistrate Court to Common Pleas, and countersuing on unsupported claims;
- Falsely accused the Appellant of not Answering his unsupported Counterclaim;
- Failed to remove, cross out, or post notice, about the invalidity of his address printed in his official stationary, inducing the Appellant to respond to that address;
- Missed to apprise the Easley Postal Service that he was moving out of Easley, and did not leave a forwarding address;
- Had the Respondent left a forwarding address with the Easley Post Office he would've received the Appellant's Answer on time a long time ago;
- The Appellant submitted the sealed envelope, returned by the Post Office, to the lower court showing that he had timely answered the Respondent's counterclaim.

Wherefore, the Appellant argues that all proceedings and orders that followed his timely Answer to the Respondent's Counterclaim *ab initio* are moot, and the case should be allowed to take its course and resolved on the merits, i.e., payment of a debt, before a judge or jury, so, that justice can be done between the parties.

Respectfully Submitted,



ALEXANDER PASTENE, Esq.
Appellant, appearing *pro se*
Post Office Box 22298
Hilton Head Island, S.C. 29925

David A. Wilson, Esq. for Respondent
WILSON & ENGLEBARDT, LLC
200 Whitsett Street-Suite 100-B
Greenville, S.C., 29601

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
SCRPC & 55 SCRPC"**

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 SCRPC & 55 SCRPC (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), SCRPC.

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

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

Alexander Pastene,

Plaintiff,

v.

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

Defendants.

ORDER FOR DEFAULT JUDGMENT

FILED OCONEE, SC
BEVERLY H. WINDFIELD
CLERK OF COURT
2014 JUN 17 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.

A TRUE COPY
JUN 17 2014
CLERK OF COURT



Presiding Judge
Tenth Judicial Circuit

6113 2014
2013

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

ELECTRONICALLY FILED - 2014 Dec 08 12:01 PM - OCOONEE - COMMON PLEAS - CASE#2012CP3700902

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-37-00902

Alexander Pastene

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

PLAINTIFF(S) DEFENDANT(S)

Submitted by: David A. Wilson	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
-------------------------------	---

2016 JUN 17 PM 4 48
 BEVENEY H. WHITFIELD
 CLERK OF COURT

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk : Order of Default Judgment-amount to be determined at damages hearing

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 and Synergy Spine Center, P.A.	Alexander Pastene	\$To Be Determined
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

[Signature] 2131 6/13/14
Circuit Court Judge Judge Code Date
For Clerk of Court Office Use Only

This judgment was entered on the 17th day of June, 20 14 and a copy mailed first class or placed in the appropriate attorney's box on this 17th day of June, 20 14 to attorneys of record or to parties (when appearing pro se) as follows:

A TRUE COPY
JUN 17 2014
CLERK OF COURT - OCONEE COUNTY

Alexander Pastene-Pro Se (mail)
P.O. Box 22298
Hilton Head, SC 29925
ATTORNEY(S) FOR THE PLAINTIFF(S)

David A. Wilson (mail)
200 Whitsett Street, Suite B
Greenville, SC 29601
ATTORNEY(S) FOR THE DEFENDANT(S)
Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

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

Alexander Pastene,
Plaintiff,

) MOTION FOR RECONSIDERATION
) ORDER CLOCKED JUNE 17, 2014

Versus

Marion R. McMillan and Synergy
Center, PA

Defendants.

FILED 3:00 PM '14
BEVERLY S. W. WHELFORD
CLERK OF COURT
2014 JUN 11 PM 1:28

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.

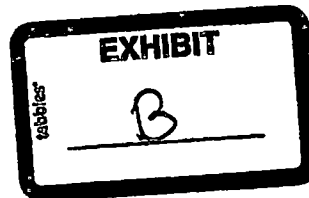
That, the Plaintiff timely responded to defendants' Summons & Notice, Answer and Counterclaim on September 6, 2012 (under Magistrate Court No. 2012-CV-3710-100244). Also see, Plaintiff's letter to Judge MacAulay dated 11-21-12, and See Plaintiff's letter to Clerk of Court dated 2-2-2013.

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.

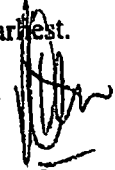
That, the attorney for the defendants used a confusing, evasive and false address in his stationary, to which the Plaintiff responded on time, but he claimed he never received. See still sealed envelope sent to defendants submitted to this honorable court.



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,

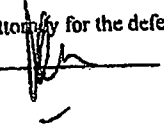


Alexander Pastene Plaintiff
Appearing *pro se*
P.O. Box 22298
Hilton Head Is., SC 29925
Tel. 843-605-5266

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

FILED 000 000, SC
BEVERLY P. W. WELLS
CLERK OF COURT
2014 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.)
)
MarionMcMillan.,)
)
Defendants.)
_____)

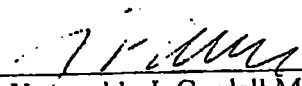
IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-37-00902
FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 APR -1 A 11: 22

ORDER DENYING DEFENDANT'S
MOTION FOR RECONSIDERATION

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.

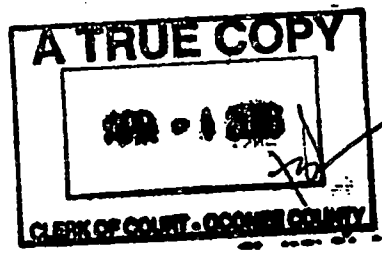
It is hereby ordered that Plaintiff's Motion for Reconsideration is denied.

IT IS SO ORDERED.



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).

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

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

EXHIBIT
D

2059 4125 0000 0150 4102

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	\$

RESTRICTED DELIVERY

Sent To: Alexander Pastene
Street, Apt, PO Box 22298
or PO Box No.
City, State, ZIP+4® Hilton Head Island, SC 29925

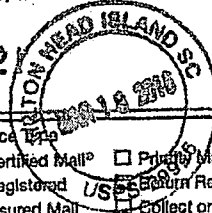
PS Form 3800, August 2008

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

SENDER: COMPLETE THIS SECTION		RECEIVER: SIGN AND DELIVER	
<input checked="" type="checkbox"/> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. <input checked="" type="checkbox"/> Print your name and address on the reverse so that we can return the card to you. <input checked="" type="checkbox"/> Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee	
1. Article Addressed to: Alexander Pastene P O Box 22298 Hilton Head Island, SC 29925 2012-CP-37-00902		B. Received by (Print Name) <i>Alexander Pastene</i> C. Date of Delivery 2016 MAR 24 A 10:21	
2. Article Number (Transfer from service label) PS Form 3811, July 2013		3. Service Type <input type="checkbox"/> Certified Mail® <input type="checkbox"/> Priority Mail Express™ <input type="checkbox"/> Registered Mail <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> Collect on Delivery	
4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes		5. Delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, enter delivery address below:	
7014 0510 0000 5214 6507		DOMESTIC RETURN RECEIPT	

VERY

FILED DISTRICT COURT
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 MAR 24 A 10:21



ENTERED
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 : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. 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. McMillian & Synergy Spine Center	Alexander Pastene	\$100,000.00 Actual Damages & \$200,000.00 Punitive Damages
Marion R. McMillian & 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



cert copy to all

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

This judgment was entered on the 19th day of April, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 19th day of April, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Alexander Pastene, pro se

David A. Wilson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beverly H. Whitfield

CLERK OF COURT

Court Reporter: Vivian H. Cross

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

[Lined area for additional information regarding the decision]

STATE OF SOUTH CAROLINA **FILED OCONEE COUNTY, SC** IN THE COURT OF COMMON PLEAS
 BEVERLY H. WHITFIELD
 CLERK OF COURT)
 COUNTY OF OCONEE 2016 APR 29 A 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.



Copies to:
 Atty (P) _____
 DSS _____
 Mailed _____
 ENTERED COMPUTER
 2016 APR 20

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

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)
)
Alexander Pastene,)
)
Plaintiff,)
)
v.)
)
Marion McMillan.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-37-00902


ORDER DENYING PLAINTIFF'S
MOTION TO VACATE JUDGMENT

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

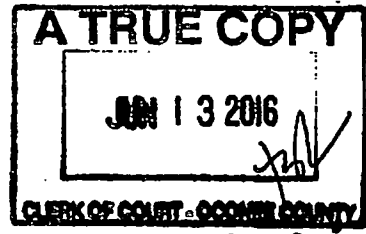
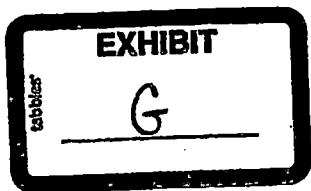
This matter came before the Court through Plaintiff's Motion to Vacate judgment as entered by This Court on April 12, 2016. This Court was set to hear Plaintiff's Motion to Reconsider, however Plaintiff failed to appear and Plaintiff's motion was dismissed. This Court has held that trial judges possess 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.,

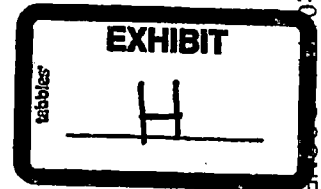
Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2012-CP-37-00902

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2016 JUN 13 P 2:14

**DEFAULT JUDGMENT
AGAINST
PLAINTIFF ALEXANDER PASTENE**



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.

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.

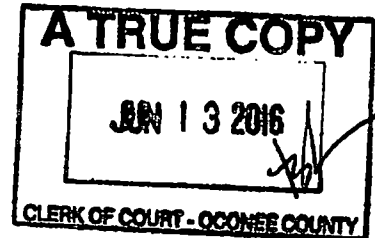
AND IT IS SO ORDERED.



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
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-37-00902

FILED OCONEE COUNTY,
 BEVERLY H. WHITFIELD
 CLERK OF COURT

Alexander Pastene

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

2016 JUN 13 P 2

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: David A. Wilson	Attorney for : <input type="checkbox"/> Plaintiff <input checked="" type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

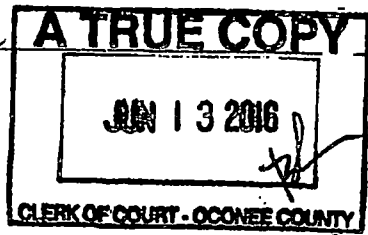
This order ends does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Marion R. McMillan and Synergy Spine Center, P.A.	Alexander Pastene	\$300,000.00
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge [Signature] Judge Code 2131 Date 6/19/16



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

For Clerk of Court Office Use Only

This judgment was entered on the 13th day of June 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 13th day of June 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Alexander Pastene, pro se
P.O. Box 22298
Hilton Head Island, SC 29925
ATTORNEY(S) FOR THE PLAINTIFF(S)

David A. Wilson
200 Whitsett Street, Suite 100-B
Greenville, SC 29601
ATTORNEY(S) FOR THE DEFENDANT(S)
Beverly H. Whitfield
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

See attached Default Judgment Against Plaintiff Alexander Pastene

Lined area for additional information regarding the decision by the court.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

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

Case No. 2017-000294

Alexander Pastene

Appellant,

v.

Marion R. McMillan, and
Synergy Spine Center, PA


Respondents.

RECEIVED
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SC Court of Appeals

PROOF OF SERVICE

I certify that on today's date June 11th, 2018, I have served Copy of onto Respondent Marion R. McMillan by depositing a copy of APPELLANT'S ANSWER to RESPONDENT'S LETTER OF 05/30/18, ON MISSING ATTACHMENTS TO HIS RETURN OF 12/8/16. in the ROA, AND, ANSWER TO RESPONDENT'S FINAL BRIEF RECEIVED JUNE 7TH, 2018, in the United States Mail, postage prepaid, addressed to his attorney of record, David A. Wilson, 200 Whitsett St. Suite 100B, Greenville, SC 29601

Signed: _____


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

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



WILSON & ENGLEBARDT, LLC
LITIGATION • APPEALS • DISPUTE RESOLUTION

David A. Wilson
Eric K. Englehardt

dwilson@GreenvilleSCLaw.com
eric@GreenvilleSCLaw.com

May 30, 2018

VIA EMAIL: pastenehalexander@gmail.com

AND REGULAR U.S. MAIL

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.: 2012-CP-23-00902**

Dear Mr. Pastene:

In reviewing the Amended Record on Appeal, I noticed that you did not include the Exhibits attached to and incorporated into Defendant's Return to "Plaintiff's Motion Relief from Judgment under Rules 60 SCRPC & 55 SCRPC." Attached is the complete copy of the Defendant's Return with the Exhibits. Please let me know if you will prepare a supplemental record on appeal by consent or whether I need to file a motion with the Court of Appeals.

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

Sincerely,

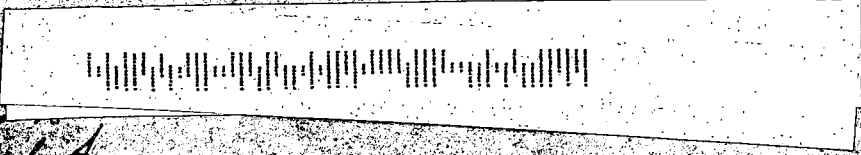


David A. Wilson

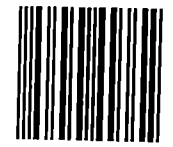
DAW/ccb
Enclosures

Cc: Dr. Marion McMillan
Honorable Jenny Kitchings, Clerk of Court, Court of Appeals

Justice
PO Box 220
Hilton Head Is.
SC 29925



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South Carolina Court of Appeals
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Columbia, SC 29211

Attn: Ms. Earla Switzer