

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

Respondent,

v.

Lawrence Terry,

Appellant.

RECORD ON APPEAL

RECEIVED

FEB 21 2013

SC COURT OF APPEALS

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INDEX

Order of February 11, 2013 1

Order of September 17, 2012 2

Affidavit Of Default3

Summons.....4

Plaintiff’s Memorandum Of Law In Support Of Motion For Default Judgment.....4

Plaintiff’s Memorandum Of Law In Support Of Motion For Reconsideration On Order To Dismiss.....6

Plaintiff’s Reply To Defendant’s Memorandum In Opposition Of Plaintiff’s Motion For Reconsideration.....7

Plaintiff’s Brief In Reply to Defendant’s Memorandum In Opposition To Plaintiff’s Motion For Reconsideration.....8

Plaintiff’s Brief In Support Of Motion For Summary Judgment.....10

Plaintiff’s Exhibits

 D..... 12

Certificate of Appellant..... 13

Order of February 11, 2013

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF RICHLAND
 IN THE COURT OF COMMON PLEAS
 Lawrence Terry

JUDGMENT IN A CIVIL CASE
 CASE NUMBER: 2012-CP-40-4857
 Allen University

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input checked="" 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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC Rule 41(a), SCRPC (Vol. No. 101)
 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

PLAINTIFF'S MOTION FOR RECONSIDERATION IS HEREBY DENIED.

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
		\$
		\$
		\$

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 *J. W. Williams* Judge Code 2061 Date 2/8/13

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Feb, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)
 Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)
 Clerk of Court *Jeanette W. Guide*

SCANNED

Order of September 17, 2012

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012-CP-40-04857

Lawrence Terry

Allen University

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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC Vol. No. Suit; 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:

THIS CAUSE OF ACTION IS DISMISSED WITH PREJUDICE. PLAINTIFF MAY APPEAL BUT MAY NOT FILE ANOTHER CAUSE OF ACTION REGARDING THIS MATTER WITH THIS COURT.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

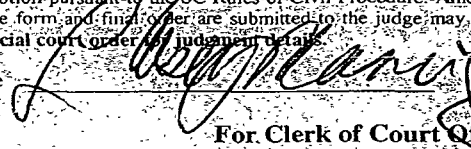
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Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
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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



Judge Code 2061

Date 9/5/12

For Clerk of Court Office Use Only

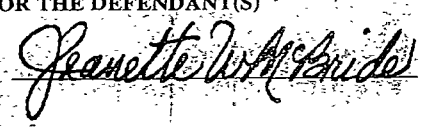
This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Sept, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



Summons

TO THE SHERIFF OF RICHLAND COUNTY,
YOU ARE COMMANDED:

To Summon the above named defendant(s) and serve upon said defendant(s) a copy of this summons and complaint.

TO THE ABOVE NAMED DEFENDANT(S):

Within thirty (30) days after you receive this Summons, excluding the day you receive it, you must file an Answer to the attached Complaint if you want to deny the allegations. The original of your Answer must be filed with the Clerk's Office of the Court of Common Pleas, 1701 Main Street, Room 205 P.O. Box 2766 Columbia, SC 29202, South Carolina and must include proof that a copy of the Answer was served on the plaintiff or his/her attorney who is named on this Summons.

Failure to file an Answer denying the allegations will result in a judgment against you, and action may be taken by the plaintiff or his/her attorney to satisfy the judgment.

PLEASE TAKE NOTICE that Plaintiff Lawrence Terry also requires of Defendant Allen University answers under oath to the attached Requests for Admissions within thirty (30) days from the date of service hereof pursuant to South Carolina Rules of Civil Procedure 36.

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

Plaintiff, Lawrence Terry, files this Memorandum Of Law In Support Of his Motion For Default Judgment in this case. In support of its motion, Lawrence Terry states the following:

ARGUMENT

Under Rule 55(c), the entry of default may be set aside for "good cause shown," which is a less stringent standard than the excusable neglect standard of Rule 60(b). Sundown Operating Co. v. Intedge Indus. Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). The good cause standard of Rule 55(c) requires, as a threshold burden, a party to put forth "an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice."

Id. "Once a party has put forth a satisfactory explanation . . . the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." Id. at 607-08, 681 S.E.2d at 888. However, a trial court need not make specific findings of fact for each factor if sufficient evidence supports a trial court's determination that no reasonable explanation exists for vacation of default. Id.

In South Carolina, negligence on the part of an attorney is imputable to the client and will not be the basis of finding good cause to set aside entry of default. See Vanvolkenburg, 312 S.C. at 375, 440 S.E.2d at 410 (indicating, prior to *Sundown*, that the imputed negligence of an attorney to a defaulting litigant is not good cause). Similarly, our supreme court has recognized subsequent to *Sundown* that the good cause standard of Rule 55(c), encompasses a degree of reasonableness. See Richardson v. P.V., Inc., 383 S.C. 610, 618-19, 682 S.E.2d 263, 267 (2009) (finding, after *Sundown*, that negligence on the part of an insurance company or attorney will be imputed to a defaulting litigant and negligence does not constitute good cause to relieve an appellant from entry of default); see also Black's Law Dictionary 1133 (9th ed. 2009) (defining negligence as the failure to act reasonably under a specific set of circumstances). It stands, therefore, that because unreasonable conduct does not amount to good cause, an unreasonable explanation for defaulting is not a satisfactory explanation that serves a sufficient interest of justice.

Even if the Court decided to relieve the Defendant from default, based on the Defendant's failure to also respond to the Plaintiff's Requests For Admissions they have admitted to Negligence and Fraud so they would not have a meritorious defense.

CONCLUSION

For the reasons stated above, Lawrence Terry Plaintiff Pro Se, requests that the Court use its power to Grant Plaintiff's Motion For Default Judgment and set a hearing on damages only.

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR RECONSIDERATION ON ORDER TO DISMISS

The requirements of procedural due process, usually deemed to apply in a contested case or hearing which affects an individual's property or liberty interest, generally include **adequate notice**, the opportunity **to be heard** at a meaningful time and in a meaningful way, the right to **introduce evidence**, the right to confront and cross-examine witnesses whose testimony is used to establish **facts**, and the right to **meaningful judicial review**. *In re Vora*, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003); S.C. Dept. of Soc. Servs. v. Wilson, 352 S.C. 445, 452-53, 574 S.E.2d 730, 733-34 (2002); Cameron Barkley Co. v. S.C. Procurement Review Panel, 317 S.C. 437, 440, 454 S.E.2d 892, 894 (1995); Brown, 301 S.C. at 328-29, 391 S.E.2d at 867. "Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). Procedural due process requirements are not technical; no particular form of procedure is necessary. *In re Vora*, 354 S.C. at 595, 582 S.E.2d at 416. "Due process is flexible and calls for such procedural protections as the particular situation demands." *Wilson*, 352 S.C. at 452, 574 S.E.2d at 733 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972)). The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. *S.C. Dept. of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997). To prevail on a claim of denial of due process, there must be a showing of substantial prejudice. *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984). In the instant case there was and is no pending Motion To Dismiss on the docket for the Plaintiff to prepare for or to have received notice of. Therefore Plaintiff has no idea why the instant case was Dismissed or why Plaintiff's due process rights were so blatantly denied. Plaintiff has multiple pending Motions to be heard.

CONCLUSION

For the reasons stated above, Lawrence Terry Plaintiff Pro Se, requests that the Court use its power to reverse its previous Form Order To Dismiss and allow this case to move forward.

**PLAINTIFF'S REPLY TO DEFENDANT'S MEMORANDUM IN
OPPOSITION OF PLAINTIFF'S MOTION FOR RECONSIDERATION**

Plaintiff, Lawrence Terry, is truly being prejudice in the current case because the Plaintiff is forced to argue an Order Of Dismissal that was filed without Notice and does not specify why this cause of action was Dismissed. All my previous cases were Dismissed Without Prejudice and the Plaintiff's due process rights were denied. Plaintiff now files this Reply and states the following:

ARGUMENT

Plaintiff's interest in this proceeding is extraordinarily significant. Although the order may be appropriate, it is fundamental that no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice to the party whose rights are affected. Insurance Co. of North America v. Hyatt, 290 S.C. 159, 348 S.E. (2d) 532 (1986). If the judgment or order is taken without notice, the absent party may rightly ignore it and assume that no court will enforce it against his person. Insurance Co. of North America v. Hyatt, supra [citing Koester v. Citizens' Publishing Co., 154 S.C. 154, 151 S.E. 452 (1930)].

In the instant case there was and is no pending Motion To Dismiss on the docket for the Plaintiff to have prepared for or to have received Notice of. The Defendant failed to respond to all initial requests for discovery and failed to file any responsive pleading or motion in opposition to the Plaintiff's Amended Complaint. All requests for admissions were deemed admitted and the Defendant was in Default. Plaintiff properly filed an Affidavit of Default and also filed a Motion for Default Judgment, prior to the Order of Dismissal being filed. Now under the unique facts and circumstances of this case, I suggest the Court follow the rule set forth in Sijon v. Green, 289 S.C. 126, 345 S.E. (2d) 246 (1986). In Sijon, the Court held that where a party litigant denies receiving notice of a hearing with finality, and the judgment roll or record does not reflect

evidence of such notice, that party is entitled to a judicial determination as to whether or not they received proper notice. If it is determined that the party received such notice, then judgment would stand. If not, the objecting party would be entitled to a new trial.

CONCLUSION

In a previous lawsuit filed by the Plaintiff, case #2010-CP-40-06803, the Plaintiff was mistakenly informed about a pending hearing to Dismiss and the case was Dismissed based on the Plaintiff's failure to attend the hearing. Plaintiff then filed a Motion For Reconsideration and in the Order written by The Honorable George C. James, Jr he stated, "*Though I am extremely doubtful that this cause of action will survive Rule 12(b)(6), SCRPC scrutiny, **I am granting Mr. Terry's motion out of an abundance of caution to his due process rights.***" So even though the Court was extremely doubtful about my cause of action I was still afforded my due process rights. It is often difficult to define "due process." But it is not difficult for attorneys and judges to agree that if due process means anything, it means that a litigant must be given an opportunity to meet an issue before an adverse determination is made.

For the reasons stated above, Lawrence Terry Plaintiff Pro Se, requests that the Court use its power to reverse its previous Form Order To Dismiss and allow this case to move forward.

PLAINTIFF'S BRIEF IN REPLY TO DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff, Lawrence Terry, files this Brief In Reply to Defendant's Memorandum In Opposition in this case. In support of its motion, Lawrence Terry states the following:

ARGUMENT

There is not a standing Motion To Dismiss on the docket so I do not understand how or why the Defendant stated in their Memorandum In Opposition, "*For the reasons explained in Defendant's Motion to Dismiss, filed on August 27, 2012, and incorporated herein, Defendant opposes Plaintiff's Motion For Reconsideration.*" I have attached a copy of the docket which

clearly shows the only document filed on August 27, 2012 was the Plaintiff's Motion For Summary Judgment. The Defendant did initially file a Motion To Dismiss on 7/31/2012 in response to my Original Complaint that was served to the Defendant on 7/30/2012 but the Plaintiff later filed an Amended Complaint on 8/10/2012 which the Defendant has failed to file ANY response to. The Plaintiff recently filed an Affidavit Of Default on 9/11/2012 and a Motion For Default Judgment, both also attached. The Defendant's negligence in failing to respond to the Plaintiff's Amended Complaint and Initial Discovery Requests is not a valid reason and is inexcusable. Now I just noticed that the Defendant has negligently used multiple case numbers on their Memorandum In Opposition and if the Defendant has done the same on previous allegedly submitted documents then that would make them grossly negligent in handling their case and with no fault of the Clerk of Court or the Plaintiff. The Defendant is well represented by experienced legal counsel from one of the largest law firms in the United States of America. Where an attorney is merely neglectful, the general rule applies and relief from judgment is unavailable. Concerning a claim of attorney neglect, the general rule is that "the neglect of the attorney is attributable to the client." *Graham v. Town of Loris*, 272 S.C. 442, 451, 248 S.E.2d 594, 598 (1978). In discussing this general rule, the *Graham* court quoted approvingly from *Simon v. Flowers*, 231 S.C. 545, 551, 99 S.E.2d 391, 394 (1957):

Although a wide discretion is vested in courts to set aside or vacate judgments because of the neglect, misconduct or inadvertence of counsel employed in the case, the general rule undoubtedly is that the neglect of the attorney is the neglect of the client, and that no mistake, inadvertence or neglect attributable to the attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. The acts and omissions of the attorney in such case are those of the client.

In *Simon*, 231 S.C. 545, 99 S.E.2d 391, defense counsel failed to answer a complaint because he was involved in a multi-day trial. As a result of defense counsel's failure to answer the complaint, the court entered a default judgment against defendant. On appeal, our supreme court was sympathetic to defense counsel's plight but nevertheless adhered to the general rule and imputed the neglect of counsel to his client. The court explained:

[T]he default was the result of forgetfulness on [the attorney's] part which in turn was due to

pressure of his business in the trial of cases.... In the crowded routine of a busy lawyer's life a mistake such as the record here discloses is understandable; but it entails the penalty of default under strict enforcement of the rule of procedure, and the trial court's refusal to forgive it affords no basis for reversal.

Id. at 550-51, 99 S.E.2d at 394.

CONCLUSION

If the Dismissal was based on an alleged Motion To Dismiss filed on 8/27/2012 then the Dismissal is void because the docket clearly shows no such motion. The Court and the Plaintiff base their decisions off of what is filed on the docket. If the Plaintiff did not file an Affidavit Of Default and Motion For Default Judgment, as required by law, the Plaintiff could have had his lawsuit dismissed for Failure To Prosecute.

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

5. **Definition from Nolo's Plain-English Law Dictionary:** "Failure to exercise the care toward others that a reasonable or prudent person would use in the same circumstances or taking action that such a reasonable person would not, resulting in unintentional harm to another. Negligence forms a common basis for civil litigation, with plaintiffs suing for damages based on a variety of injuries, from physical or property damage to business errors and miscalculations." The Defendant admitted, exhibit B attached to Complaint, they made business errors and miscalculations in regards to my educational background.
6. Plaintiff served Request For Admissions on 7/30/2012. The Defendant has failed to respond (Exhibit D attached) and pursuant SCCR 36 all request are deemed admitted. Some of the admitted requests are as follows:

#6. Admit that You were negligent in handling the Plaintiff's student records.

#7. Admit that You were negligent either presently or in the past with handling some students' transcripts.

#8. Admit that You made an error with handling the Plaintiff's 2007 transcript.

#12. Admit that You have been negligent in handling financial aid money within the past 12 years.

#15. Admit that You have known that Your previous staff were not keeping accurate records.

#18. Admit that You have known that Your Business Office was negligent in handling financial aid money.

#19. Admit that by not disclosing the fact You have known of false grades being published on transcripts, You committed fraud.

#20. Admit that for some unknown reason false grades were being published on the Plaintiff's 2007 transcript.

#21. Admit that the Plaintiff's reputation was harmed because of the error on his 2007 transcript made by You in a reasonably foreseeable way.

#22. Admit that the error on the Plaintiff's transcript was a substantial factor in causing the Plaintiff's harm.

#23. Admit that every transcript prior to 2008 of the Plaintiff had false grades on them.

#24. Admit that You know the definition of Negligent and or Negligence.

#25. Admit that You know the definition of Fraud.

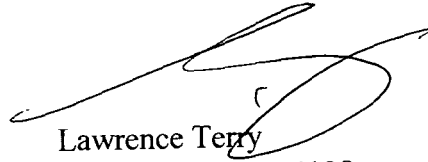
7. Admittedly, the Defendant was Negligent.

I declare under penalty of perjury that the foregoing is true and correct.

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 21, 2013



Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

PROOF OF SERVICE OF RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

L. Casey Manning, Circuit Court Judge

Case No. 2012-CP-40-04857

Allen University,

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Appellant.

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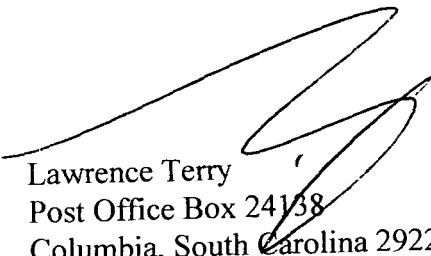
FEB 26 2013

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served copies of the Record On Appeal on Allen University by personally delivering the copies of it to his attorney of record, Debbie Whittle Durban, at her office at Post Office Box 11070 Columbia, South Carolina 29211, on February 21, 2013.

February 21, 2013


Lawrence Terry
Post Office Box 24138
Columbia, South Carolina 29224
(803) 414-0760
Appellant, Pro Se

RECEIVED

FEB 21 2013

SC Court of Appeals