

ORIGINAL

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

MAY 13 2 58

James Spencer, individually and on behalf of)
the Estate of Doris Holt and on behalf of)
Southern Holdings, Inc.; and Irene Santacroce;)

C/A No. 2012-CP-32-3428

Plaintiffs,)

v.)

ORDER

John R. Rakowsky; Adrian L. Falgione; and)
The Law Offices of Adrian Falgione, LLC;)

Defendants.)

THIS MATTER came before the undersigned for a hearing at the Lexington County Courthouse on May 7, 2013 on seven motions currently pending before the Court. At the hearing, Amanda K. Dudgeon, Esquire appeared on behalf of John Rakowsky ("Rakowsky"), and Benjamin C. Bruner, Esquire appeared on behalf of Adrian Falgione and his law firm (collectively, "Falgione"). No one appeared on behalf of the Plaintiffs.

The Plaintiffs in this matter are *pro se*. Immediately prior to the hearing, the Court received correspondence from Brian J. Headley, Esquire ("Headley") that Plaintiff James Spencer ("Spencer") contacted him the same morning about representation. Mr. Headley requested that the hearing be continued for thirty (30) days to allow him time to review the file and determine whether to represent Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc. (collectively, "Spencer Plaintiffs"). The Defendants objected to a continuance and requested that either the hearing proceed or the case be dismissed pursuant to a prior Order in this case issued by Judge Barber on June 14, 2012 and filed June 28, 2012. I find it proper to allow Headley twenty-one (21) days to determine whether he will represent the Spencer Plaintiffs in this matter.

SEN

However, with respect to the claims alleged by Santacroce, this Court is bound by Judge Barber's prior order. In that order, the Court continued three of the motions that are still pending. The Court further ruled,

4. If any Plaintiff shall again fail to appear at any hearing or proceeding in this action without good cause, that Plaintiffs claims shall be dismissed with prejudice.
5. In addition, if any Plaintiff unnecessarily delays this case further, Defendants may seek sanctions.

The Plaintiffs were served with notice of this motions hearing by letter dated April 23, 2013. Santacroce failed to properly request a continuance and failed to appear without good cause. I therefore find all claims by Santacroce in this case should be dismissed with prejudice, pursuant to Judge Barber's June 28, 2012 Order.

As an additional matter, the undersigned disclosed to Headley during a telephone call and to counsel for Rakowsky that he is a distant relative of counsel for Falgione. While this relationship alone is not sufficient to require disqualification, I find it prudent to obtain waiver from the parties before ruling on the merits of the issues in this case. Had the Plaintiffs appeared at the hearing, the Court would have disclosed this relationship on the record and allowed the parties time to discuss waiver. As Headley does not represent any party at this time, he cannot waive the conflict for the Spencer Plaintiffs. Nevertheless, this issue must be resolved before the Court can dispose of the pending motions and proceed with the remainder of the case. Therefore, the Spencer Plaintiffs have ten (10) days from the date of this Order to notify the Court in writing about whether they waive any disqualification and consent to the undersigned hearing this matter.

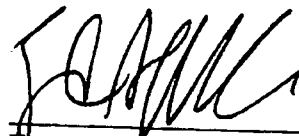
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff Irene Santacroce's claims in this matter are hereby **DISMISSED WITH**

PREJUDICE pursuant to the Order issued June 14, 2012 and filed June 28, 2012;

2. James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., shall notify the Court in writing **within ten (10) days of the date of this Order**, whether they waive any potential disqualification the undersigned may have in this case;
3. A hearing is hereby scheduled for **June 5, 2013 beginning at 9:30 AM at the Laurens County Courthouse in Laurens, SC** on the following motions:
 - i. Rakowsky's Motion to Dismiss filed November 3, 2011;
 - ii. Falgione's Motion to Dismiss filed November 4, 2011;
 - iii. Plaintiff Spencer's Motion to Disqualify filed March 27, 2012;
 - iv. Rakowsky's Motion to Compel Discovery Responses filed July 16, 2012;
 - v. The Plaintiffs' Motion to Compel and Stay Hearings filed July 30, 2012;
 - vi. Falgione's Motion to Quash and for Protective Order filed January 22, 2013; and
 - vii. Rakowsky's Motion to Quash and for Protective Order filed January 25, 2013;
4. In the event the Spencer Plaintiffs timely request that the undersigned recuse himself from further proceedings, the June 5th hearing shall proceed as scheduled before another presiding judge;
5. Mr. Headley shall notify the Court in writing by May 29, 2013 whether he represents the Spencer Plaintiffs in this matter. The June 5th motions hearing will proceed regardless of whether Mr. Headley agrees to represent the Spencer Plaintiffs; and
6. Any discovery in this matter shall be held in abeyance pending further Order of this Court.

AND IT IS SO ORDERED.



Eugene C. Griffith, Jr.
Presiding Judge, Eleventh Judicial Circuit

May  2013

Lexington, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP3203428

James Spencer Southern Holdings Inc	Doris Holt Irene Santacroce	John R Rakowsky Law Offices of Adrian Falgione LLC	Adrian L Falgione
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:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on N/A, and a copy mailed first class or placed in the appropriate attorney's box on **14TH OF MAY 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer
 7001 St Andrews Rd ste 183
 Columbia, SC 29212
Irene Santacroce
 205 Deer Trace Cir
 Myrtle Beach, SC 29588

Andrew W Countryman
 Carlock Copeland & Stair LLP
 40 Calhoun St Ste 400 Charleston, SC 29401
Amanda Kurzen Dudgeon
 40 Calhoun St., Ste. 400
 Charleston, SC 29401
Benjamin C. Bruner
 PO Box 61110
 Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Beth A. Carrigg - Clerk of Court

Court Reporter

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