

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APR 16 2014

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr. Circuit Court Judge

APPELLATE CASE NO. 2014-000091

John R. Rakowsky, Respondent
Adrian Falgione, Respondent

v.

James Spencer, Appellant

APPELLANT'S RESPONSE IN OPPOSITION TO
ADRIAN L. FALGIONE'S RETURN

Appellant James Spencer, *Pro Se* ("Appellant") submits for the Court's deliberation this opposition to Adrian L. Falgione return filed on April 11, 2014, against Appellant's motion to "Stay Case for Thirty Days," filed on April 2, 2014. Respondent wrongfully claimed (1) the motion was moot, (2) the lay Appellant

failed to properly serve his motion, (3) that the motion was untimely, and (4) that the motion is meritless.

DISCUSSION AND BACKGROUND

Respondent also appears to be confused and as such unknowingly proves the lay Appellant's point that both were expecting the motion to proceed *in forma pauperis* would be decided upon by the Court before the appeal would move forward. Respondent wrongfully stated in his return continuously that Appellant wanted the Court "to reconsider its denial of his motion to proceed *in forma pauperis*" to prove various allegations, however, the allegations are baseless because according to the Appellate Clerk of Court, that motion has not been heard by the Court.

On April 2, 2014, at 3:00 PM, the Appellant contacted Ms. Elizabeth Carter of the South Carolina Appellate Clerk of Court's office to find out the status of his motion to proceed *in forma pauperis* and the filing of his appeal prior to spending money he otherwise needed on medication he requires for medical maintenance in April.

Ms. Carter notified the Appellant that his case was in the process of being remanded back to Circuit Court because the Court had not heard from the Appellant. Ms. Carter said Appellant had until 5:00 PM that very day, April 2,

2014, to file paperwork explaining why Appellant had not shown an effort to date to obtain the transcript of the hearing and file an initial brief after obtaining the transcript to delay the remand for a hearing.

The Appellant quickly filed a stay prior to 5:00 PM to preserve the case from being remanded back to the lower court. The lay Appellant and as it turned out, the legally trained and experienced Respondent, were both incorrect that the motion for *in forma pauperis* was not to be decided upon before the case proceeded forward.

The Appellant did not prejudice the Respondent by staying the case before it was remanded back to the lower Court. Further, Respondent is not correct, according to the Clerk of Court, the motion for *in forma pauperis* has not been heard as of this date by the Appellate Court. Yet throughout his return Respondent time and again wrongfully claims Appellant's motion for *in forma pauperis* has been turned down by this Court which Respondent uses as a foundation for many of the baseless claims Respondent makes in his return.

Respondent then proceeds to attack the Appellant's poverty, disability and candor. However, Respondent in his presentation, in this regard, unwittingly proves Respondent's reckless disregard for the truth or his inability to read and understand simple concepts and his contempt for the indigent and disabled

(emphasis added). Importantly, he establishes a lack of credibility through his presentation in the Respondent's return to anyone who is unbiased, seeks the truth, believes in justice and is of average intelligence. As a clear example see Respondent's **Exhibit D** of his return. Exhibit D is a page from the transcript of Judge Barber's May 7, 2012 hearing regarding the underlying case. Respondent states in his return, on page 3 second paragraph, that,

"Like other representations he [Appellant] has made to this Court, Appellant's claim that he is indigent and received indigent status is questionable. The Circuit Court denied Appellants request, (*See Exhibit D*), and this Respondent is unaware of any Court Order granting Appellant leave to proceed in forma pauperis in the Lexington County Court of Common Pleas or any other court for that matter."

The only reference in Respondent's Exhibit D to *in forma pauperis* is Appellants inquiry about *Pro Se* defendant Irene Santacrocce's question about the procedure to follow so she could obtain *in forma pauperis* status for herself. Judge Barber responded, "no, we're not going to do that. I mean, I told her how to handle this stuff [her filing for *in forma pauperis standing*]." See lines 12 through 21 on Respondent's Exhibit D. Not one word was mentioned about Appellant's *in forma pauperis* standing on Exhibit D and Respondent is being untruthful to the Court about this containing a denial of a motion of Appellant's motion for *in forma pauperis* standing. Yet Respondent unbelievably presents this as evidence that Appellant was denied *in forma*

paupers standing by the Circuit Court. This is an insult by Respondent and Respondent's counsel to the intellect of the Court and a waste of the court's time as Respondent attempts to defame the Appellant for his poverty.

There are pages of the May 7, 2012, transcript that are appropriate in this case and they are attached hereto as Appellant's **Exhibit A**, on page 51 of the transcript, lines 16-23, Respondent's counsel Bruner complains to the Court that Appellant has not found a lawyer. Judge Barber responded, "Mr. Bruner, they [the Appellant] haven't had a dime because we have been sitting up here arguing about \$9,500 [See footnote 1 below]...It should have been resolved a year ago."

Judge Barber talked directly with Appellants' doctors about the serious nature of his medical condition and Respondent's counsel Mr. Bruner confirmed his knowledge of this on the record. See Appellant's **Exhibit A** attached hereto, transcript page 40, lines 21 – 25 and transcript page 57, lines 5- 25.

Mr. Bruner then in his return shows his utter contempt for the South Carolina Appellate Court and the South Carolina Code of Professional Conduct by knowingly putting untruthful statements on their face in his sworn affidavit

¹ These are undisputed litigation funds that have been tied up by Respondent Rakowsky since 2008 to date. They have intentionally not been released to deny Appellant economic access to counsel and thus both aggravate his total disability as he is forced to litigate this action on his own because of his poverty.

dated April 11, 2014. Mr. Bruner untruthfully claimed he had a runner personally deliver a copy of the order denying Appellants Rule 59 motion to the Appellant at his address: 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212 on December 13, 2013. See point two in Affidavit of Counsel as part of Respondent's return. This is impossible, Mr. Bruner failed to realize this address is an address to a UPS box. Even though Appellant is indigent he could not utilize this box as a home and, therefore, Appellant could not have been personally served by a runner. Mr. Bruner lied to the Court, his lack of verification of the address being a residence exposed his pedigree and contempt for the Court. Respondent's Exhibit A is a bogus letter that was attached to the sworn affidavit. Further, in case Mr. Bruner tries to say it was accidentally misworded, UPS policy precludes personal deliveries that do not come through Fed Ex, the postal service and/or UPS.

Mr. Bruner then raises the technical difficulties associated with the post office and attempts to claim because of the envelope was postal stamped January 15, 2014, an envelope that supposedly contained his notice of service, that the *pro se* litigants appeal should be dismissed. However, this elaborate scheme to commit fraud on the court by Respondent and Respondent's counsel falls short and is hereby exposed.

First, see **Exhibit B** attached hereto. Appellant's notice of the Court Order denying the 59(e) was mailed out by the Lexington County Clerk of Court to the Post Office Box on December 19, 2014. Therefore, Spencer's notice was timely as the envelope Mr. Bruner produced was post marked January 15, 2014, and therefore, Mr. Bruner's claims under Rules 221, 240, 262 (b), 240(g) and 200(a) are baseless.

However, Mr. Bruner's fraud included fabricating the letter dated December 13, 2013, as part of an obvious contrived scheme by Respondent and Respondent's counsel to commit fraud upon this Honorable Court. This fraud needs to be addressed. Appellant *Pro Se* will file a motion seeking sanctions forthwith, but given the time constraint Appellant is rushing to respond in a timely manner to file this response in opposition to Respondent.

Appellant immediately responded within two hours of finding out there was an action to remand the case back to the lower court and in order to address all aspects in a proper action the Appellant humbly requested a stay of thirty days so he can reply accordingly to reinstate the case. This was done prior to the remand being sent out by the Appellate Court Clerk of Courts office and accordingly was timely according to the Clerk of Court's Office. Respondent has resorted to every means including fraud on the court to not

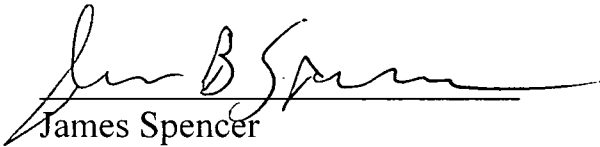
allow this case to be heard on the merits. The Respondent withholding the undisputed litigation funds since 2008, and refusing to turn them over to the court for disbursement is unconscionable and is economically depriving the Appellant from seeking a hearing on the merits of his case through qualified counsel.

CONCLUSION

Appellant has done nothing but deal with the economic reality of his situation and simply asked for a thirty day stay to correct any and all filings including the filings Respondent claims were necessary for the case to be reconsidered. Appellant did not resort to fraud unlike Respondent and as such Appellant humbly requests this Honorable court to grant his motion for thirty days irrespective of the fraud based opposition of the Respondent so Appellant can research and file all documentation due under the law.

Submitted, this April 16, 2014,

By:



James Spencer
Post Office Box 183
Columbia, South Carolina 29212
Appellant, *Pro Se*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 16, 2014, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail.

Documents served:

**APPELLANT'S RESPONSE IN OPPOSITION TO
ADRIAN L. FALGIONE'S RETURN**

Parties Served:

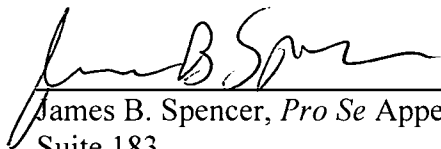
Amanda K. Dudgeon
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John Rakowsky

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APR 16 2014

SC Court of Appeals

Bruner, Powel, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Post Office Box 61110
Columbia, South Carolina 29260-1110


James B. Spencer, *Pro Se* Appellant
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889

1 THE COURT: I don't know what the purpose of the
2 statute is. I wasn't up there when they passed the
3 statute, but ---

4 MS. DUDGEON: To avoid (unintelligible).

5 MR. BRUNER: Your Honor, the reason why ---

6 THE COURT: Then I'll just hold off on scheduling
7 your motions for a while.

8 MR. BRUNER: I don't know that it's something to
9 cure, is the point.

10 THE COURT: I don't know whether it is or not,
11 but at least they have a lawyer that might say
12 Mr. Spencer, unfortunately, you don't have an expert
13 and didn't have one when you needed one and I can't
14 help you.

15 MS. DUDGEON: Your Honor.

16 MR. BRUNER: I'm just saying that, respectfully,
17 Your Honor, that they have had plenty of time to go
18 talk to lawyers and we all know there are two law
19 school putting out lawyers in this state, now.

20 THE COURT: Mr. Bruner, they haven't had a dime
21 because we've being sitting up here arguing about
22 \$9,500, apparently. It should have been resolved a
23 year ago.

24 MS. DUDGEON: Your Honor, are you proposing that
25 we have a motion to dismiss on all grounds except the

1 MS. SANTACROCE: That's correct.

2 THE COURT: And you all need to figure out what
3 you need to do with him in order to be able to
4 authorize the expenditure of that money or authorize
5 the payment to you.

6 MS. SANTACROCE: Right. Yes, sir.

7 THE COURT: All right. So we'll get rid of that
8 and then we'll have a hearing sometime after
9 August 15th to decide what happens to the \$55,000,
10 \$54,000.

11 MS. WEISSENSTEIN: Yes, sir.

12 THE COURT: All right.

13 Lawsuit number two, when was that filed,
14 Mr. Spencer?

15 MR. SPENCER: That was filed in August of 2011.

16 THE COURT: All right.

17 Now, we know in that suit we have a motion to
18 exclude.

19 MS. DUDGEON: Yes, Your Honor, Mandy Dudgeon, for
20 Mr. Rakowsky. There is motion to disqualify.

21 THE COURT: That's the first thing we need to
22 hear. We're going to hear it. Now, Mr. Spencer the
23 doctors have asked --- they tell me that he can start
24 and will be able to hold hearings, but not more than
25 one a day.

1 THE COURT: Sure.

2 MS. DUDGEON: Or is it also ---

3 THE COURT: Sure.

4 MS. DUDGEON: Okay. I just wanted to confirm.

5 MR. BRUNER: Well, specifically, Your Honor, I

6 know Mr. Spencer's health is an issue.

7 THE COURT: Well, he's not required to do

8 anything until June 1st.

9 MR. BRUNER: Okay.

10 THE COURT: Other than come to a status

11 conference. I asked the doctors if he can come to a

12 status conferences and he said yes.

13 MR. BRUNER: Okay.

14 THE COURT: If you schedule depositions, my

15 suggestion is, unless he consents to it, don't

16 schedule more than one deposition a day, and I would

17 spread them out to some extent. I know that costs you

18 more money because you have to drive --- are you in

19 Charleston?

20 MS. DUDGEON: Yes, Your Honor.

21 THE COURT: Then drive up from Charleston. I've

22 talked to his doctor in Charleston, his doctor here,

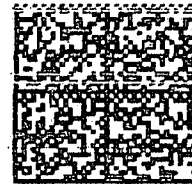
23 and they both are on the same page. I told them I

24 would do what I could to help them, but apparently a

25 big stressor in his life is this litigation, so there

Exhibit B
1 of 4

COUNTY OF LEXINGTON
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON COUNTY JUDICIAL CENTER
205 EAST MAIN STREET
LEXINGTON, S.C. 29072



Hasler

010126523503

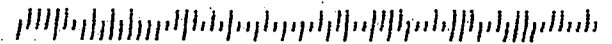
\$00.460

12/19/2013

Mailed From 29072
US POSTAGE

James Spencer
7001 St Andrews Road
Suite 183
Columbia, SC 29212

2921201197 0057



ORIGINAL

STATE OF SOUTH CAROLINA)
)
) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)

2013 DEC -6 A 4 34

James Spencer, individually and on behalf)
of the Estate of Doris Holt and on behalf)
of Southern Holdings, Inc.;)
CLERK OF COURT
LEXINGTON, SC)

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

Plaintiffs,)

v.)

ORDER DENYING RULE 59(e) MOTION

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

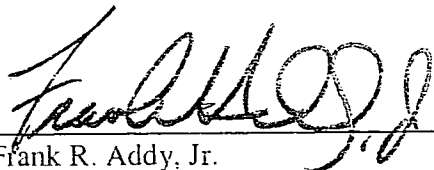
Defendants.)

THIS MATTER COMES BEFORE THE COURT on Plaintiff Spencer's motion of September 9, 2013 requesting reconsideration of the court's prior order dismissing this case. No party requested a hearing on Plaintiff's motion.

The court has reviewed the pleadings, record, and fully considered the arguments made in Plaintiff's motion. The court finds that the prior order dismissing this action shall stand.

WHEREFORE, Plaintiff's motion pursuant to Rule 59 is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Presiding Judge, Eleventh Judicial Circuit

December 4, 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	John R Rakowsky Law Offices of Adrian Falgione LLC	Adrian L Falgione
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <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 12/12/2013

For Clerk of Court Office Use Only

This judgment was entered on **12th of December 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **12th of December 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

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
292601110
Warren C. Powell Jr. PO Box 61110 Columbia, SC 29260
Stephanie Nichole Weissenstein PO Box 6338 West
Columbia, SC 291716338

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

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.
