

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

172255

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

MOTION TO INTERVENE

Pursuant to Rule 24 of the South Carolina Rules of Civil Procedure, the Estate of Doris Holt, and shareholder Dan Green, the former President of Southern Holdings, Inc., through their undersigned counsel, move to intervene in this action as Appellants so that their interests can be represented.

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APPLICABLE LAW

To intervene as a matter of right under Rule 24(a)(2), a party must: (1) establish timely application; (2) assert an interest relating to the property or transaction that is the subject matter of the action; (3) demonstrate that it is in a position such that without intervention, disposition of the action may impair or impede its ability to protect that interest, and (4) demonstrate that its interest is inadequately represented by other parties. *In re Horry County State Bank*, 361 S.C. 503, 604 S.E.2d 723 (Ct. App. 2004). The interveners named above readily satisfy these criteria.

The first criteria is met by the interveners as the proceeding is still pending in its initial stages as no briefs have been filed by the Appellant. Further, this is a procedural issue which should not be a point of contention. The second criteria is similarly clear: the subject matter of this litigation involves legal rights being taken away from the interveners without due process, rights that may entail rights in the future.

The interveners had no legal representation in the underlying action and the court had no jurisdiction over the interveners. The Appellant filed petitions requesting the interveners to be removed as named parties in that proceeding. Unfortunately, the presiding judge failed to act on the motion for their removal in

an obvious oversight. The disposition of this action would wrongfully impact the interveners who have never legally been parties nor have they been represented in the underlying case.

Regarding the third and fourth criteria, this litigation, in its current posture, relates to rights of the interveners, interveners that the Circuit Court had no jurisdiction over under South Carolina law.

Thus the interveners have both been drawn into a case without their consent as Plaintiffs, and have no representation under the laws of the State of South Carolina in both the underlying litigation in Circuit Court which had no jurisdiction over them and now are forced to seek intervention in the South Carolina Court of Appeals to remedy this by having their names properly removed as parties in this action.

In regard to intervener Southern Holdings, under South Carolina law Southern Holdings could not have a legal presence as a party in the underlying action without being represented by an attorney. A corporation is an artificial entity created by law, it cannot represent itself. A corporation must be represented by an attorney in both South Carolina Circuit and Appellate Courts. *Renaissance Enterprises Inc. v. Sunset Teleservices, Inc.* 515 S.E. 2d 277 (S.C. 1999). Further, the Supreme Court of South Carolina ruled: "A non-lawyer cannot represent a

corporation in circuit or appellate courts as a corporation,” see *Brown v. Coe*, 365 S.C. 137 (S.C. 2005).

In regard to the Estate of Doris Holt, the lawyer who had originally agreed to represent the estate of Doris Holt in this case unexpectedly became involved in his own divorce in the state of Florida and had to withdraw from the case and move from the area prior to the filing of the complaint. A motion was filed to remove the estate as a Plaintiff when it was learned the lawyer would not be making an appearance for either for the estate of Doris Holt or for Southern Holdings.

Under South Carolina law the estate had to be represented by counsel, Section 40-5-310 and the law prohibited the administratrix, who was not a lawyer, from taking such actions on behalf of the estate because the estate was a separate legal entity with interests other than the administratrix's alone. *Brown v. Coe*, 365 S.C. 137 (S.C. 2005). Further, the Administratrix, as a separate party in this action, had a conflict of interest with the estate and could not represent the estate of Doris Holt and its creditors and other beneficiaries.

Therefore, the interveners pray for this Honorable Court to allow them to join this case for the reasons cited above so they can move to have their names removed as parties in this action.

Submitted, this May 20, 2014,

By:

A handwritten signature in black ink, appearing to read "Michael G. Sribnick, M.D., J.D.", written over a horizontal line.

Michael G. Sribnick, M.D., J.D., LLC

3 Kenilworth Avenue

Charleston, S.C. 29403

Phone: (843) 789-3504

Fax: (843) 720-8907

Email: michael.g.sribnickmdjdlc@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 19, 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:

MOTION TO INTERVENE


Parties Served:

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

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

By:

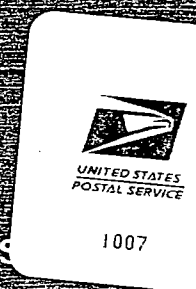
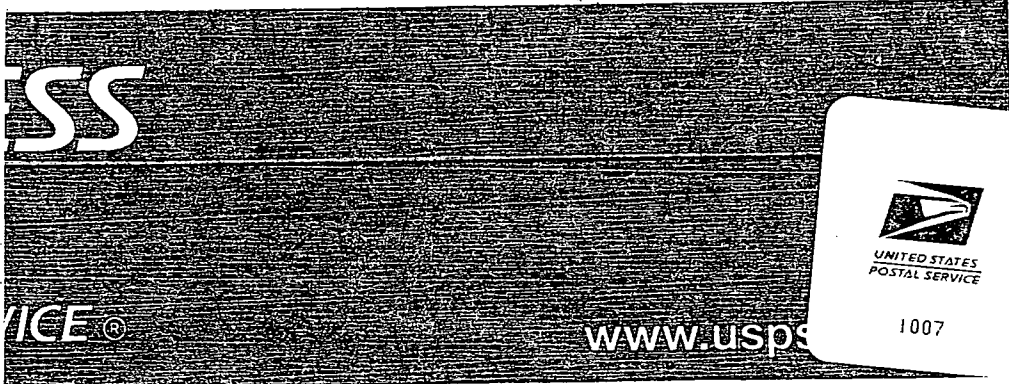

Michael G. Stribnick, M.D., J.D., LLC
3 Kenilworth Avenue
Charleston, S.C. 29403

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Phone: (843) 789-3504
Fax: (843) 720-8907
Email: michael.g.sribnickmdjllc@gmail.com



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