

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable Frank R. Addy, Jr.

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Case. No. 2014-000091

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**RECEIVED**

JUN 02 2014

**SC Court of Appeals**

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

of whom James Spencer is the Appellant,

v.

John R. Rakowsky, Adrian L. Falgione, and the Law Offices of Adrian Falgione, LLC, Respondents,

of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

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**RESPONDENTS JOHN R. RAKOWSKY AND ANDRIAN L. FALGIONE'S  
RETURN TO MOTION TO INTERVENE OF THE ESTATE OF DORIS HOLT  
AND SHAREHOLDER DAN GREEN, THE FORMER PRESIDENT  
OF SOUTHERN HOLDINGS, INC.**

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Respondents John R. Rakowsky and Adrian L. Falgione hereby submit this Return to Motion to Intervene filed by the Estate of Doris Holt and shareholder Dan Green, the former President of Southern Holdings, Inc. ("Motion to Intervene").

As an initial matter, it is not clear whether the Motion to Intervene was filed before or after the Court's Order granting Appellant's Motion to Reinstate the Appeal, which was filed on May 21, 2014. Also, the Certificate of Service attached to the Motion

to Intervene contains an error. The Certificate of Service is dated May 19, 2014; however, the corresponding Motion was signed a day later on May 20, 2014, and post-marked on May 21, 2014. Attorney Michael Sribnick, who signed both the Motion to Intervene and the Certificate of Service, has advised counsel for Mr. Rakowsky that the Certificate of Service contains a scrivener's error such that the date on the Certificate of Service should be May 20, 2014.

#### STATEMENT OF THE CASE

The pending appeal arises out of an action filed by James Spencer, individually and on behalf of the Estate of Doris Holt and Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, against John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants, on August 15, 2011, Case No. 2011-CP-40-5384. The underlying action was dismissed on August 23, 2013. James Spencer filed a Notice of Appeal on January 13, 2014.

Respondents oppose the pending Motion to Intervene filed on behalf of "the Estate of Doris Holt and shareholder Dan Green, the former President of Southern Holdings, Inc." (collectively "Intervenors") for the reasons set forth below.

#### ARGUMENT

##### **I. The Motion to Intervene is improper.**

The Intervenors move under Rule 24 of the South Carolina Rules of Civil Procedure but cite no authority for intervention in an appellate matter under the jurisdiction of the South Carolina Court of Appeals. Rule 24 enables any individual or entity to intervene in a pending action and assert a claim or defense. Rule 24, SCRPC. The Rule requires the potential intervenor to file with the Motion to Intervene a pleading

setting forth the claim or defense for which intervention is sought. Rule 24(c), SCRPC. Because the present case has progressed past the trial stage and is on appeal, no additional claim or defense can be asserted. Nothing in the Appellate Court Rules supports the Intervenor's request "to join this case...so that they can move to have their names removed as parties in this action."

## **II. The Motion to Intervene is untimely.**

In the alternative, the Motion to Intervene is untimely. When considering the timeliness of a motion to intervene, a court must consider the following factors:

- 1) The time that has passed since the applicant knew or should have known of his or her interest in the suit; 2) the reason for the delay; 3) the stage to which the litigation has progressed; and 4) the prejudice the original parties would suffer from granting intervention and the applicant would suffer from denying intervention.

Ex parte Reichlyn, 310 S.C. 495, 427 S.E.2d 661 (1993) (citing David v. Jennings, 304 S.C. 502, 504, 405 S.E.2d 601, 603 (1991)).

In the present case, both Intervenor's have known of the underlying suit since it was filed. Although the Intervenor's are listed in the Motion to Intervene as an estate and a shareholder of a corporation, the knowledge of the suit is imputed to both parties by Appellant James Spencer, who filed suit on the Intervenor's behalf as an agent of each. James Spencer is the Personal Representative for the Estate of Doris Holt.<sup>1</sup> Likewise, Mr. Spencer is a former President and of Southern Holdings, Inc., which is a foreign

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<sup>1</sup> See Exhibit A, Application for Appointment and Fiduciary Letter from Richland County Probate Court file in Case No.: 2011-ES-40-533. Upon information and belief, it is undisputed that Robert B. Holt is an alias of Appellant James Spencer and that James Spencer a/k/a Robert B. Holt has been the personal representative for the Estate of Doris Holt at all times relevant hereto.

company that is not in good standing in the State of South Carolina.<sup>2</sup> Not only did Mr. Spencer file suit on the parties' behalf, but his knowledge is imputed to each.<sup>3</sup> In essence, the pending Motion to Intervene is Appellant James Spencer's attempt to circumvent the judicial process, avoid the disposition of the case, and reinstate claims on behalf of the Estate of Doris Holt and Southern Holdings, Inc., which were dismissed last year. Indeed, it was Mr. Spencer who, on behalf of himself and the Intervenors, filed this lawsuit and alleged jurisdiction was proper before the trial court in the first place.

As to the second timeliness factor, the Intervenors offer no explanation for the delay. As discussed above, representatives of both the Estate and the now defunct entity were well aware of the suit when it was filed.

The third factor also supports denial of the Motion to Intervene. The underlying suit has been pending since August 15, 2011; was dismissed by Order filed August 23, 2013; and is currently on appeal. It has already been adjudicated and has clearly progressed to the final stages. The time to appeal the Order has expired. Finally, the fourth factor, prejudice, supports a denial of the pending Motion. The litigation was pending for two years before the Order of dismissal was filed, and allowing Intervenors to prolong the litigation would prejudice Respondents.

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<sup>2</sup> See Exhibit B, South Carolina Secretary of State Online Records. Also, Mr. Spencer represented himself as the "interim Trustee/Administrator" of Southern Holdings, Inc., in Paragraph 1 of the underlying Complaint in this case.

<sup>3</sup> Generally, a corporate officer's knowledge, which is acquired in his official capacity, "is imputed to the corporation." See Equitable Trust Co. of Columbia v. Columbia Nat'l Bank, 145 S.C. 91, 115, 142 S.E. 811, 817 (1928); Citizens' Bank v. Heyward, 135 S.C. 190, 190, 133 S.E. 709, 709 (1925) (recognizing general rule that notice to an agent is notice to principal, particularly in cases of corporations).

**III. The Intervenor is not entitled to intervention of right because their interests are already adequately represented and they have not complied with the requirements of Rule 24, SCRPC.**

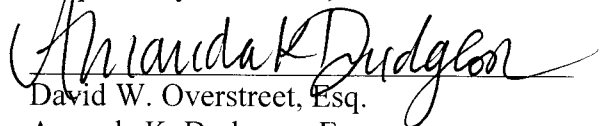
Intervenor is not entitled to intervention under Rule 24(a), SCRPC, which allows a timely intervention of right:

when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Rule 24(a), SCRPC. This matter has been adjudicated, and the interests of the parties were represented. This is not, for instance, a matter where the Intervenor's interest in property is unrepresented without intervention. Rather, the claims brought by the underlying Plaintiffs were considered and dismissed. If the Motion to Intervene is simply intended to provide legal counsel to the Appellant, Mr. Sribnick should file a Notice of Appearance.

This 30<sup>th</sup> day of May, 2014.

Respectfully submitted,



David W. Overstreet, Esq.

Amanda K. Dudgeon, Esq.

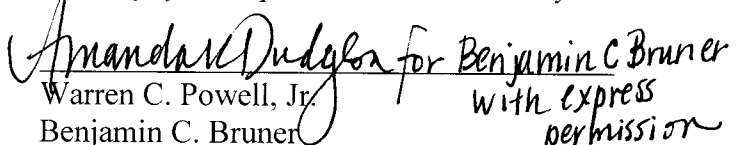
Carlock, Copeland & Stair, LLP

40 Calhoun Street, Suite 400

Charleston, South Carolina 29401

(843) 727-0307

*Attorneys for Respondent John Rakowsky*



Warren C. Powell, Jr.

Benjamin C. Bruner

Bruner, Powell, Wall & Mullins, LLC

P.O. Box 61110

Columbia, SC 29260

803-252-7693

*Attorneys for Respondent Adrian L. Falgione*

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM LEXINGTON COUNTY  
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The Honorable Frank R. Addy, Jr.

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John R. Rakowsky, Adrian L. Falgione, and the Law Offices of Adrian Falgione, LLC,  
Respondents,

of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

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**CERTIFICATE OF SERVICE**

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I certify that I have served Respondents John Rakowsky and Adrian Falgione's Return to Motion to Intervene of the Estate of Doris Holt and shareholder Dan Green, the Former President of Southern Holdings, Inc. by depositing a copy in the United States Mail, postage prepaid, on May 30, 2014, addressed to:

Michael G. Sribnick, M.D., J.D., LLC  
3 Kenilworth Avenue  
Charleston, South Carolina 29403

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

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JUN 02 2014

**SC Court of Appeals**



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Bonnie Ellenberger-Grimes  
Legal Secretary to Amanda Dudgeon

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

PROBATE COURT

IN THE MATTER OF DORIS E. HOLT

CASE NUMBER 2011 ES40 00533

**FIDUCIARY LETTER**

**Personal Representative**

On the 5th day of May, 2011,

**Robert B Holt 7001 Saint Andrews Rd, Suite 183, Columbia, SC 29212**

was appointed and qualified as Personal Representative of the above matter by this Court, with all the authority granted to a fiduciary by law.

NOW, THEREFORE, LETTERS are issued as evidence of such appointment, qualification, and authority of the above Personal Representative to do and to perform all acts, which may be authorized by law.

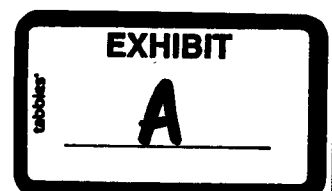
RESTRICTIONS:

Executed this 5th day of May, 2011.

**Amy W. McCulloch**

Amy W. McCulloch  
Richland County Probate Judge

*[Handwritten signature]*



STATE OF SOUTH CAROLINA )  
COUNTY OF: RICHLAND )  
IN THE MATTER OF: DORIS E. HOLT )

IN THE PROBATE COURT

CASE NUMBER: 2011-ES-533

APPLICATION FOR

INFORMAL

(check any that apply)

- PROBATE OF WILL  
 APPOINTMENT

PETITION FOR

FORMAL

- TESTACY  
 APPOINTMENT

Applicant/Petitioner: ROBERT B HOLT AKA JAMES SPENCER  
Address: SUITE 183, 7001 Saint Andrews Road, Columbia, SC 29212  
Telephone: 803-414-0889

FILED  
11 MAY -5 PM 11:28  
CLERK OF PROBATE COURT  
RICHLAND COUNTY, S.C.

I. ALL APPLICANTS/PETITIONERS MUST COMPLETE THIS SECTION.

1. Give your relationship to the decedent, if any, and your interest in this proceeding.

SON

2. Decedent Information

Name: Doris E. Holt  
Last Four Digits of Social Security Number: XXX-XX-6881  
Date of Birth: 01-15-17  
Date of Death: 02-19-2011  
Age at date of death: 94  
Domicile at date of death: Richland SC  
(county) (state)

3. Venue for this proceeding is proper in this county because:

- Decedent was domiciled in this county at date of death.  
 Decedent was not domiciled in South Carolina, but property of Decedent was located in this county at date of death.  
 Decedent has a right to take legal action in this county because:  
Doris E. Holt's home was in Richland County

- 4.a. Names and addresses of devisees in the will including dates of birth of minors. If there are no minors, so state.

Name	Date of Birth	Address	Relationship to Decedent
Robert Holt	11/15/50	Suite 183, 7001 Saint Andrews Road, Columbia, SC	son
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(use additional sheet if necessary)

4.b. Names and addresses of intestate heirs who are not devisees, including dates of birth of minors. If there are no minors, so state. Intestate heirs are the persons who would inherit if the decedent left no will.

Name	Date of Birth	Address	Relationship to Decedent
<u>See Attach</u>			

(use additional sheet if necessary)

5. Did decedent have any change of marital status or the birth or adoption of any children after execution of this will, if one exists, or has any child of the decedent been born since his death, or is any birth of a child of the decedent anticipated? (This includes illegitimate children.)
 

NO       YES If yes, please explain, on page 3.
6. To the best of your knowledge, was the decedent a patient in a South Carolina Mental Health facility during his/her lifetime?
 

NO       YES If yes, please explain, on page 3.
7. Has a guardian or conservator ever been appointed for this person?
 

NO       YES If yes, please explain on page 3.
8. Has a personal representative of the decedent been appointed prior to this date by a Court in this state or elsewhere?
 

NO       YES If yes, please state details, including name and address of such Personal Representative on page 3.
9. Have you received or are you aware of any demands for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this state or elsewhere?
 

NO       YES If yes, please state details, including names and addresses on page 3.
10. Have more than ten years passed since the decedent's death?
 

NO       YES If yes, please state circumstances authorizing tardy probate on page 3.
11. The decedent died with a personal estate of about the value of \$500 and real estate of about the value of -0-. (A full inventory and appraisal, Form #350PC, must be filed within 90 days.) If decedent was non-resident, please attach South Carolina Commission form ET 101.
 

*Litigation*
12. After the exercise of reasonable diligence, are you aware of any unrevoked will and/or codicil(s), other than the one(s) attached hereto, relating to property in this State?
 

NO       YES If yes, please explain on page 3 and then proceed to Section II.

II. IF A WILL EXISTS, PLEASE COMPLETE THIS SECTION.

1. Regarding the decedent's will:

- The original is attached
- The original is in the Court's possession
- An authenticated copy of a will probated in another jurisdiction is attached
- An authenticated copy of a will not probated in another jurisdiction is attached
- The will is lost, destroyed, or otherwise unavailable, however, a description of its contents is attached

2. Do you believe, to the best of your knowledge, the will described above was validly executed?

- Yes       NO If no, please explain on page 3.

3. The date of execution of the will was: January 15, 2004  
codicil(s): \_\_\_\_\_

4. Are you aware of any instrument or document amending or revoking the will?

- NO       YES If yes, please explain on page 3.

5. Have you exercised reasonable diligence to determine there is no instrument or document revoking the will?

- YES       NO If no, please explain on page 3.

6. Do you believe the will defined in "1" above is the decedent's last will?

- YES       NO If no, please explain on page 3.

COMPLETE EXPLANATION (S) FOR QUESTIONS IN SECTIONS I and II HERE.  
(If more space is required, use additional sheet.)

III. IF APPLYING FOR INFORMAL OR FORMAL APPOINTMENT, PLEASE COMPLETE THE FOLLOWING.

- The name(s) and address(es) of the proposed Personal Representative(s) is/are:  
Robert B. Holt
- Priority for this appointment is:
  - named as Primary Personal Representative in will
  - named as Alternate Personal Representative in will
  - nominee of above Primary Personal Representative in will
  - nominee of above Alternate Personal Representative in will
  - surviving spouse of decedent who is devisee of decedent or nominee of said spouse
  - other devisee of decedent, (describe): \_\_\_\_\_ or nominee of said devisee
  - surviving spouse of decedent or nominee of said spouse
  - other heir of decedent (describe): \_\_\_\_\_
  - creditor (Forty-five days after death must have passed), or nominee of creditor
  - other (describe): \_\_\_\_\_
- List below the names of any other persons, if any, having a prior or equal right of appointment (see priority above).

IV. ALL APPLICANTS/PETITIONERS MUST COMPLETE VERIFICATION.

VERIFICATION

The undersigned, being sworn, states that the facts set forth in the foregoing statement are true to the best of the undersigned's knowledge, information and belief, and hereby submits to the Court's jurisdiction in this matter.

SWORN to before me this 5 day of April, 2011

*Courtney V. Cooper*  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

**COURTNEY V. COOPER**  
Notary Public - State of South Carolina  
My Commission Expires October 01, 2012

Signature: *Robert B. Holt*  
Name: Robert B. Holt  
Address: Suite 183, Lockstock Mountain Road  
Columbia, SC 29212  
E-mail: JamesB.Spence@SC.RR.COM  
Telephone (O): 903-414-0889  
(H): Same

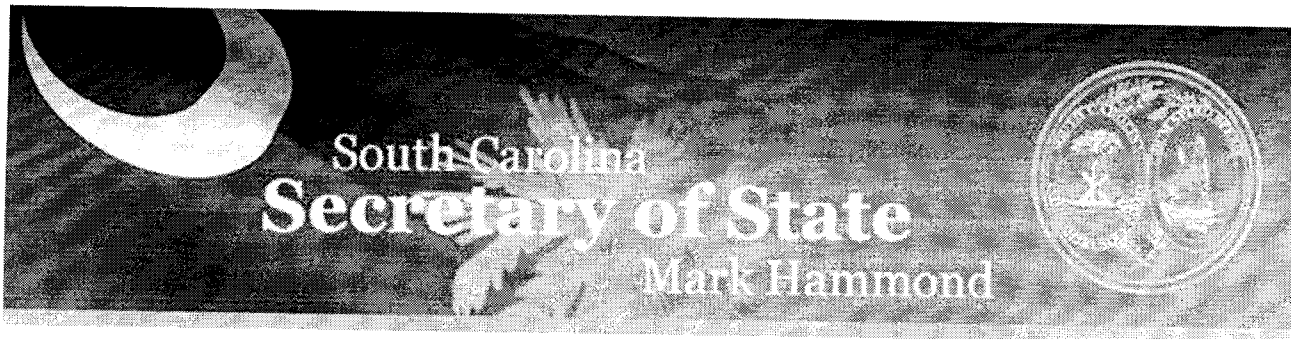
ORDER OF INFORMAL PROBATE

IT IS HEREBY ORDERED that the above application for probate of a will be  GRANTED  DENIED informally this 5<sup>th</sup> day of May 2011.

Amy W. McCulloch

Probate Court Judge

*[Signature]*  
*[Signature]*



**SOUTHERN HOLDINGS, INC.**

*Note: This online database was last updated on 5/29/2014 6:02:04 PM.  
See our Disclaimer.*

**DOMESTIC / FOREIGN:** Foreign  
**STATUS:** Forfeiture  
**STATE OF INCORPORATION / ORGANIZATION:** NEVADA Profit

**REGISTERED AGENT INFORMATION**

**REGISTERED AGENT NAME:** IRENE SANTACROCE  
**ADDRESS:** 205 DEER TRACE CIR  
**CITY:** MYRTLE BEACH  
**STATE:** SC  
**ZIP:** 29588  
**SECOND ADDRESS:**

**FILE DATE:** 10/24/1997  
**EFFECTIVE DATE:** 10/24/1997  
**DISSOLVED DATE:** 10/29/2007



**Corporation History Records**

CODE	FILE DATE	COMMENT	Document
Forfeiture	10/29/2007	DISSOLUTION BY FOR #2	
Agent	07/19/2002	CH AGT/ADD FR-BRIAN SPENCER	Image
Reinstatement	05/17/2002	REINSTATEMENT	Image
Forfeiture	12/28/1998	AUTH REVOKED #2	Image
Authority	10/24/1997	AUTHORITY	Image
Doing Business As	10/24/1997	DBA/INTERNATIONAL HOLDINGS, INC.	Image

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29201

Physical Address: Edgar Brown Building - 1205 Pendleton Street Suite 525 Columbia, SC 29201  
Mailing Address: SC Secretary of State's Office 1205 Pendleton Street Suite 525 Columbia, SC

LAW OFFICES  
**CARLOCK, COPELAND & STAIR, LLP**

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

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CHARLESTON, SC 29401

TELEPHONE (843) 727-0307

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ATLANTA OFFICE

191 Peachtree Street, N.E.  
Suite 3600  
Atlanta, Georgia 30303-1235  
(404) 522-8220

REPLY TO SC OFFICE

May 30, 2014

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

Re: James Spencer v. John R. Rakowsky, *et al.*  
Case No.: 2014-000091  
CCS File No.: 2283-35025

Dear Ms. Kitchings:

Enclosed for filing, please find the original and 6 copies of the Respondents John R. Rakowsky and Adrian L. Falgione's Return to Motion to Intervene and Certificate of Service.

By copy of this correspondence, I am serving a copy of the same upon the Appellant and all counsel of record. If you have any questions, please do not hesitate to contact me. With kind regards,

Sincerely,



AMANDA K. DUDGEON

AKD:bjg

Enclosure

cc: Benjamin C. Bruner, Esq.  
James Spencer  
Michael G. Sribnick

**RECEIVED**

JUN 02 2014

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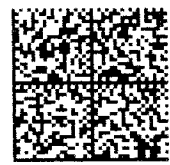
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40 Calhoun Street, Suite 400  
Charleston, SC 29401-3531

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Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

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