

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

The Honorable Frank R. Addy, Jr.

RECEIVED

JUN 09 2014

SC Court of Appeals

Case No. 2014-000091

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.

**RESPONSE IN OPPOSITION TO
RESPONDENTS RETURN TO MOTION**

Appellants, Estate of Doris Holt and shareholder Dan Green, by and through the undersigned counsel, hereby respond to Return to Motion of appellants' Motion to Intervene ("Return to Motion").

Initially, it is admitted that there was a scrivener's error as to the Motion to Intervene and the date of the Certificate of Service; and that counsel, Michael G. Sribnick, M.D., J.D. admitted the same by telephone and Email to defense counsel, Ms. Dudgeon, Esq.

STATEMENT OF THE CASE

Respondent's statement of the case fails to mention that *pro se* litigant, James B. Spencer, filed motions (still pending) (**See attached Exhibits**) to amend the initial complaint to be in accordance with South Carolina Law, in The Court of Common Pleas of Lexington County including one on June 3, 2013 in Case No. 2012-CP-32-03428 (The Malpractice Action) asking that the Estate of Doris Holt be removed as an entity as there was no required counsel to represent the Estate. The estate of Doris Holt has several claimants and, the lay *pro se* plaintiff, James Spencer, executor or not, (1) cannot represent the interests of an estate which has multiple other interested parties and (2) Mr. Spencer had conflicting interests to the estate as an individual plaintiff in this action.

The underlying case to the malpractice action, is Southern Holdings, et al. v. Horry County, et al., which was filed in Federal District Court, State Of South Carolina, Florence District, Case No: 4:02-cv-01895-RBH in May, 2002.

Further, in the present case, The South Carolina Supreme Court has ruled that a non-lawyer cannot represent an estate in an appeal: "We addressed the specific question by holding that because the filing of notice of appeal on behalf of the estate and preparation of briefs that will be required to further perfect this appeal clearly constitutes the practice of law. Appellant, who is not admitted to the practice of law, cannot represent the estate on appeal." *Brown v. Coe*, 365 S.C., 664 (S.C. 2005). Likewise, Mr. Spencer on June 3, 2013, filed a motion (**See attached**

Exhibits) to amend the same complaint as to Southern Holdings, Inc. since under South Carolina Law a corporation, a jural person, must be represented by a licensed attorney in circuit and appellate courts in South Carolina. *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 515 S.E.2d 257 (S.C. 1999).

The Respondents in this case received a series of unfavorable oral rulings on May 7, 2012 by Chief Judge James R. Barber III, the Chief Judge of Richland County that took into account the indigent and serious medical condition of the plaintiffs. This case became extremely convoluted, when Judge Barber *defacto* merged the malpractice action with another action still pending from 2008, the Interpleader Action, (Case No. 2008-CP-40-6656), between the same parties (respondents represented by the same and different counsel), by holding the joint hearing on May 7, 2012, and issuing scheduling orders on the cases.

Furthermore, on that same date, Judge Barber ordered that discovery in the legal malpractice case was ongoing and that depositions be taken in the Interpleader Case. Judge Barber asked respondents counsel (including Ms. Dudgeon) to draft the written orders that had been issued orally during the May 7, 2012 hearing. The respondents' counsels have to date not only refused to draft those orders, but respondents counsels in both cases blocked all forms of discovery in both cases, despite Judge Barber's rulings. Respondent counsel, Mr. Bruner, Esq, in a hearing on June 5, 2013 stated that a judge's [Judge Barber's standing oral orders] order or ruling is not valid unless reduced to writing. This statement is contrary to South Carolina case law: "Furthermore, the fact that the order in the prior proceeding was never reduced to writing is not dispositive of the issue. An oral order compelling arbitration was issued by the court and is acknowledged in a letter by then counsel for RDC...A judge may bind the parties with an oral order dictated into the record. *Lane v. Williamson*, 414 S.E.2d 177 (Ct. App. 1992). Finally,

through this behavior by respondents, the indigent plaintiffs have been denied litigation funds that are undisputed, as to belonging to appellant Spencer that could be used to pay for expert witnesses, costs, etc. even though expert witnesses were never required by the *pro se* Appellant's malpractice complaint which was filed pursuant to S.C. Code § 15-36-100 (C)(1) ¹. Indeed, the underlying malpractice action was dismissed for lack of an expert.

ARGUMENT

I. The Motion to Intervene is not improper as neither party was legally a party in the present action nor the underlying malpractice action

Respondents did not object in the underlying malpractice action to Southern Holdings being a nonentity. Further, Respondents falsely claim James Spencer was a corporate officer of a corporation that they provide documentation showing was dissolved on October 29, 2007. Therefore, the Respondents contention that Spencer had unique knowledge of the corporation as an officer of the corporation is baseless as there was no legal entity known as Southern Holdings, Inc. Further, Mr. Spencer had not been an officer of the corporation for the better part of a decade. His last position as a trustee administrator was not filed, as required, in the state of Nevada and in any event would have expired when the corporation was legally dissolved by the State of South Carolina.

¹ The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. The filing of a motion to dismiss pursuant to this section, shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

Indeed, any outstanding claims would have been an asset of the corporation and, therefore, is an asset of the shareholders, including Mr. Dan Green. See *Dunning v. Firemen's Ins. Co.*, 194 S.C. 98, 103 (S.C. 1940) "Unquestionably, all corporations are not under positive obligation to the state of their creation to carry on the business for which they were formed. Purely private corporations may, as a general rule, at any time put an end in fact to their transactions in whole or in part. They may, subject to the rights of creditors and a qualified right of minority dissenting stockholders, sell all the corporate property and after payment of the corporate debts distribute the balance among the stockholders, thereby in effect working a dissolution of the corporation."

Mr. Spencer is not a lawyer, and therefore, could not represent the multiple parties with claims on the estate without letters of informed consent from the multiple parties, and, further Mr. Spencer, had a conflict of interest with the estate as he was also an individual plaintiff in the matter with separate interests which were contrary to the interests of the estate. When Mr. Spencer was made aware he could not represent the estate due to the interests of various diverse parties including the State of South Carolina, Mr. Spencer filed timely motions to properly correct the complaint to conform to South Carolina law as to the Estate of Doris Holt and Southern Holdings, Inc. Before any discovery was ever conducted, the lay Plaintiff Mr. Spencer filed motions to properly remove Southern Holdings, Inc. and the Estate of Doris Holt.² These motions were left pending by the Circuit Court in obvious error.

Further, it is well established that any delay in these proceedings has been due to the efforts of Respondents as above in delaying court ordered discovery. Respondents cannot argue

² The lawyer initially hired to represent the interests of the estate of Doris Holt and Southern Holdings, Inc. if it was a legal entity, unexpectedly withdrew on the eve of the filing deadline as he was unexpectedly served with divorce papers from a Florida court by his wife who was also an attorney.

prejudice or delay when they are the ones who have inhibited discovery in both The Malpractice Case and the Interpleader Case in a concerted effort.

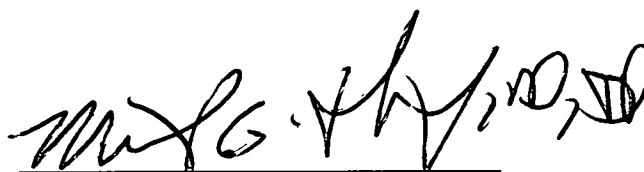
II. The Interveners are entitled to intervention of right because their interests were not already adequately represented in the present action and were not represented in the underlying malpractice case and they have complied with the requirements of Rule 24, SCRPC.

Arguing for the sake of argument does not make respondent's counsel correct. The parties are legally entitled to representation by an attorney under the law and rules of the appellate court to protect their rights. The very rules of civil procedure which the respondents try to use, but have in the instances stated above violated, are designed for the proper administration of justice by the court, procedure of lawyers, and civility amongst lawyers. For example, Respondents argue Southern Holdings, Inc. is not a legal entity and therefore cannot be represented in the present action but ignore the fact it was not a legal entity in the underlying legal malpractice case. Respondents simply cannot have it both ways.

WHEREFORE, Respondents should be denied their misguided attempt at keeping legitimate parties who are impacted by decisions of this tribunal who were without representation, and named without necessary authority or legal standing in the underlying proceeding from their proper status. Respondents return proposes that the named parties be brought before this tribunal without both legal standing and professional representation and as such must be rejected by this Honorable Court.

On June 6, 2014

Respectfully Submitted by:



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 June 5, 2014, the document described below, was (were) served on all parties of record in this case by mailing a copy, by US mail.

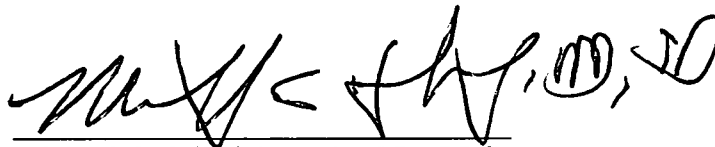
Documents served: **REPOSE IN OPPOSITION TO RESPONDENTS RETURN TO MOTION**

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
Box 183
7001 Saint Andrews Road
Columbia, South Carolina 29212



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

EXHIBITS

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON, Case No. 2012-CP-32-03428

BETH A. CARRIE
CLERK OF COURT
LEXINGTON

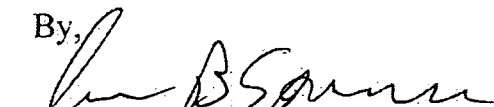
James Spencer, in his capacity)
as initial filer of complaint as)
Administrator for Southern)
Holdings, Inc.)
)
Plaintiff,)
)
)
v.)
)
John R. Rakowsky, Adrian L.)
Falgione, and The Law Offices of)
Adrian Falgione, LLC)
)
Defendants.)

**NOTICE OF WITHDRAWAL OF COMPLAINT
REGARDING PLAINTIFF SOUTHERN
HOLDINGS, INC.**

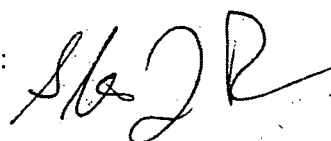
Southern Holdings, Inc., has not been a legal entity in South Carolina and/or in any state prior to and/or after the initial complaint was filed and the paperwork authorizing James Spencer as an administrator of the former Southern Holdings, Inc., was never filed in the State of Nevada. Therefore, Southern Holdings, Inc., was filed in error as a party to this lawsuit by James Spencer. Southern Holdings, Inc., has never had standing in this case and is required to be removed as a plaintiff in the above captioned case under the law as this entity has no standing.

October 25, 2012,

By,


James B. Spencer, *Pro Se* Plaintiff
Suite 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

Notary:



COPY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 28, 2013, the document described below, was (were) served on all parties of record in this case by mailing a copy, by US mail and addressed as set forth below, and a copy by email.

2013 JUN 3 10 21
BETH A. CANNIGG
CLERK OF COURT
LEXINGTON SC

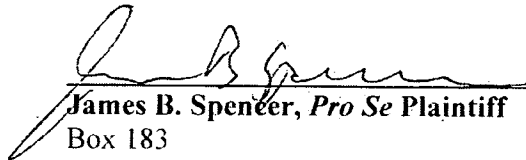
Topic: Correction of Caption to reflect legal parties.

Parties Served:

Irene Santacrose
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se Plaintiff

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 Plaintiff*
Box 183
7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
11th JUDICIAL CIRCUIT

FILED

CASE NO.: 2012-CP-32-3428

James Spence, et al.

2013 JUN -3

Plaintiff,

vs.

DEBRA C. BRUNER
CLERK OF COURT
LEXINGTON, SC

John Rakowsky, et al.

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: James Spence, Bar No. _____ Address: Suite 183, 7001 Saint Andrews Road Phone: 843-455-0891 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: B. J. Bruner, Bar No. _____ Address: Columbia, SC Phone: 803-252-7693 Fax _____ E-mail: _____ Other: _____
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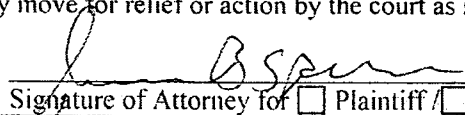
- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____
 Estimated Time Needed: _____ Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

- Written motion attached
 Form Motion/Order
 I hereby move for relief or action by the court as set forth in the attached proposed order.


 Signature of Attorney for Plaintiff / Defendant Date submitted _____

SECTION III: Motion Fee

- PAID - AMOUNT: \$ _____
 EXEMPT: (check reason)

<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v. Indigent Party
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Post-Conviction Relief
<input checked="" type="checkbox"/> Indigent Status	<input type="checkbox"/> Motion for Stay in Bankruptcy
<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	
Name of Court Reporter: _____	
<input type="checkbox"/> Other: _____	

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order.
 Other: _____
- JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

- Collected by: _____ Date Filed: _____
 MOTION FEE COLLECTED: \$ _____
 CONTESTED - AMOUNT DUE: \$ _____

COPY

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON FILED Case No. 2012-CP-32-03428

2013 JUN 3 2 21

James Spencer,

LEXINGTON
CLEER OF COURT
LEXINGTON SC

Plaintiff,

v.

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

Defendants.

MOTION TO AMMEND COMPLAINT

This matter comes before the Court on the Motion to Amend Complaint submitted by James B. Spencer ("Spencer") on August 15, 2011. Southern Holdings, a corporation, must be removed as an entity in the complaint because it does not have standing due to the fact it is not represented by an attorney as required by South Carolina law.

Standard of Review

Rule 15(a), of the South Carolina Rules of Civil Procedure ("SCRCP"), provides in relevant part that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Parker v.

Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct.App.2005). It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice." Foggie v. CSX Transportation, Inc., 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998). The Defendants will experience no prejudice to correct the caption as there is no legal presence of the entity and Rule 15(a), SCRCF, requires that leave to amend be freely granted in the absence of prejudice to the Defendants. Parker, 362 S.C. at 286, 607 S.E.2d at 716.

Discussion

Under South Carolina law Southern Holdings cannot have a legal presence as a party in this action without being represented by an attorney and was listed in error by *Pro Se* Litigant. A corporation is an artificial entity created by law, it cannot represent itself. A corporation must be represented by a licensed attorney in circuit and appellate courts in South Carolina but not in magistrate's court. Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 515 S.E.2d 257 (S.C. 1999).

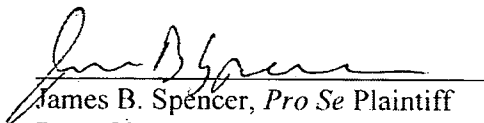
As an alternative under Rule 21 of the SCRCF parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Since Southern Holdings is not a legally authorized party to this suit the court has just cause to dismiss Southern Holdings without prejudice as a party to this action.

Summary

Therefore, under Rule 15 (a) or under Rule 21 of the South Carolina Rules of Civil Procedure, for legal procedural reasons, Southern Holdings needs to be removed forthwith from the caption as a party.

Pro Se Plaintiff has previously raised this matter with defendants' counsels and both counsels have refused to consent to the proposed withdrawal of Southern Holdings as a party to this proceeding.

Respectfully Submitted by:


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

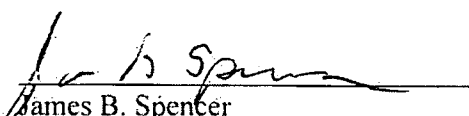
CERTIFICATE OF SERVICE

I, James Spencer, *Pro Se*, Plaintiff do hereby certify that the foregoing NOTICE OF WITHDRAWAL OF SOUTHERN HOLDINGS, INC., for lack of legal standing has this day October 25, 2012, been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Andrew Countryman, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
acountryman@carlockcopeland.com

Benjamin C. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
1735 St Julian Place, Suite 200
PO Box 61110
Columbia, SC 29260-1110
(803) 753-0060

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891


James B. Spencer
Suite 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

BETH A. CARRIE
CLERK OF COURT
LEVY COUNTY, FL

2012 OCT 26 A 9:20

FILED

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case No. 2012-CP-32-03428

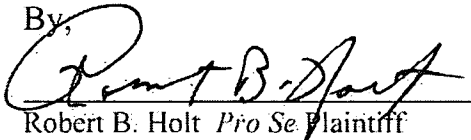
Robert B. Holt, in his capacity)
as initial filer of complaint as)
Administrator for Southern)
Holdings, Inc.)
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v.)
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John R. Rakowsky, Adrian L.)
Falgione, and The Law Offices of)
Adrian Falgione, LLC)
)
Defendants.)

**NOTICE OF WITHDRAWAL OF COMPLAINT
REGARDING PLAINTIFF SOUTHERN
HOLDINGS, INC.**

**The notarized document attached is signed in triplicate for James
Spencer by Robert B. Holt.**

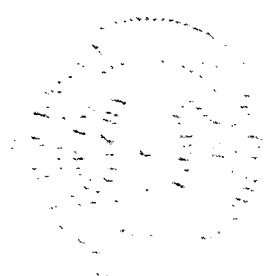
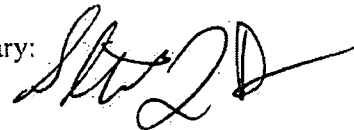
October 25, 2012,

By,



Robert B. Holt *Pro Se* Plaintiff
Suite 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

Notary:



STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

FILED)

IN THE COURT OF COMMON PLEAS
11th JUDICIAL CIRCUIT

COPY

CASE NO.: 2012-CP-32-3428

James Spence, et al.)

2013 JUN - 3 P 2:20)

Plaintiff,)

vs.)

John Rakowsky, et al.)

Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: James Spencer, Bar No. _____ Address: Suite 183, 7001 Saint Andrews Road Phone: 843-455-0891 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: B. J. Bruner, Bar No. _____ Address: Columbia, SC Phone: 803-252-7693 Fax _____ E-mail: _____ Other: _____																
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information																	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO																	
SECTION II: Motion/Order Type																	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.																	
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant _____ Date submitted _____																	
SECTION III: Motion Fee																	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: <table border="0" style="margin-left: 20px;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td><input type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input checked="" type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Motion for Publication</td> </tr> <tr> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> <td><input type="checkbox"/> Proposed order submitted at request of the court; or,</td> </tr> <tr> <td colspan="2">reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Other: _____</td> </tr> </table>		<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support	<input type="checkbox"/> State Agency v. Indigent Party	<input type="checkbox"/> Domestic Abuse or Abuse and Neglect	<input type="checkbox"/> Post-Conviction Relief	<input checked="" type="checkbox"/> Indigent Status	<input type="checkbox"/> Motion for Stay in Bankruptcy	<input type="checkbox"/> Sexually Violent Predator Act	<input type="checkbox"/> Motion for Publication	<input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)	<input type="checkbox"/> Proposed order submitted at request of the court; or,	reduced to writing from motion made in open court per judge's instructions		Name of Court Reporter: _____		<input type="checkbox"/> Other: _____	
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Name of Court Reporter: _____																	
<input type="checkbox"/> Other: _____																	
JUDGE'S SECTION																	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____																
CLERK'S VERIFICATION																	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____																	

Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct.App.2005). It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice." Foggie v. CSX Transportation, Inc., 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998). Releasing the estate of Doris Holt under Rule 15(a), SCRCF, requires that leave to amend be freely granted in the absence of prejudice to the Defendants. *Parker*, 362 S.C. at 286, 607 S.E.2d at 716.

Discussion

The South Carolina Supreme Court has ruled a non-lawyer cannot represent an estate in an appeal:

"We addressed that specific question by holding that because the filing of a notice of appeal on behalf of the estate and preparation of briefs that will be required to further perfect this appeal clearly constitutes the practice of law, appellant, who is not admitted to the practice of law, cannot represent the estate on appeal."

Brown v. Coe, 365 S.C. 664 (S.C. 2005)

Pro Se litigant James Spencer who sought to represent the estate of his dead mother to litigation conclusion will not be able to represent her under South Carolina law. The defendants will not be prejudiced in any way as they have refused to participate in discovery by the release of the estate of Doris Holt without prejudice. As an entity with multiple parties of interest, the Estate of Doris Holt cannot have a legal presence as a

party in this action to be represented to conclusion without being represented by an attorney. An estate is an artificial entity created by law.

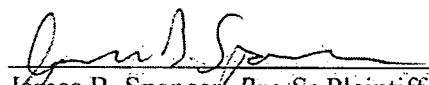
As an alternative under Rule 21 of the SCRCP parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Since the Estate of Doris Holt is not allowed to participate to the full extent of the legal process under South Carolina law the court has just cause to remove the estate of Doris Holt without prejudice as a party to this action.

Summary

Therefore, under Rule 15 (a) or under Rule 21 of the South Carolina Rules of Civil Procedure, for legal procedural reasons, the estate of Doris Holt needs to be removed forthwith without prejudice as a party to this action as the defendants have stated on the court record that this case has not proceeded since the filing of the defendants response.

Pro Se Plaintiff has previously raised this matter with defendants' counsels and both counsels have refused to consent to the proposed withdrawal of the estate of Doris Holt as a party to this proceeding.

Respectfully Submitted by:


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

COPY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 3, 2013, the document described below, was (were) served on all parties of record in this case by mailing a copy, by US mail and addressed as set forth below, and a copy by email JUN - 3 2: 20

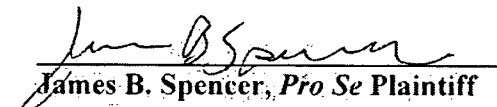
Topic: Correction of Caption to remove the estate of Doris Holt without prejudice due to the limitations under South Carolina for for an administrator to litigate for an estate.

Parties Served:

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se Plaintiff

Amanda K. Dudgeon
Carlock, Copeland & Stair, LLP
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Charleston, South Carolina 29401
Attorneys for John Rakowsky

Bruner, Powel, Wall & Mullins, LLC
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Post Office Box 61110
Columbia, South Carolina 29260-1110


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

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON) FILED)

COPY
IN THE COURT OF COMMON PLEAS
11th JUDICIAL CIRCUIT

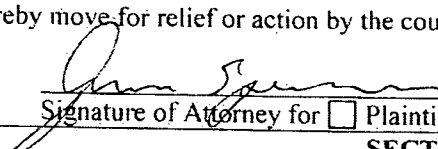
CASE NO.: 2012-CP-32-3428

James Spence, et al.)
)
) Plaintiff,)

vs.)

John Rakowsky, et al.)
)
) Defendant.)

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: James Spencer, Bar No. _____ Address: Suite 183, 7001 Saint Andrews Road Phone: 843-455-0891 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: B. J. Bruner, Bar No. _____ Address: Columbia, SC Phone: 803-252-7693 Fax _____ E-mail: _____ Other: _____
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input checked="" type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for <input type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted _____	
SECTION III: Motion Fee	
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT: (check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input checked="" type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case No. 2012-CP-32-03428

2012 JUN 3 2 20
FILED

James Spencer,

LETHA A. CARROLL
CLERK OF COURT
LEXINGTON, SC

Plaintiff,

v.

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

Defendants.

MOTION TO AMMEND COMPLAINT

This matter comes before the Court on the Motion to Amend Complaint submitted by James B. Spencer ("Spencer") on August 15, 2011. The estate of Doris Holt must be removed as an entity in the complaint because it does not have the ability to be fully litigated by the administrator of the estate

Standard of Review

Rule 15(a), of the South Carolina Rules of Civil Procedure ("SCRCP"), provides in relevant part that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Parker v.

Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct.App.2005). It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice." Foggie v. CSX Transportation, Inc., 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998). Releasing the estate of Doris Holt under Rule 15(a), SCRCP, requires that leave to amend be freely granted in the absence of prejudice to the Defendants. *Parker*, 362 S.C. at 286, 607 S.E.2d at 716.

Discussion

The South Carolina Supreme Court has ruled a non-lawyer cannot represent an estate in an appeal:

"We addressed that specific question by holding that because the filing of a notice of appeal on behalf of the estate and preparation of briefs that will be required to further perfect this appeal clearly constitutes the practice of law, appellant, who is not admitted to the practice of law, cannot represent the estate on appeal."

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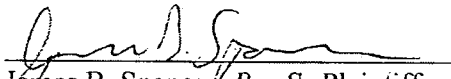
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Respectfully Submitted by:


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

COPY

CERTIFICATE OF SERVICE

FILED

The undersigned hereby certifies that on June 3, 2013, the document described below, was (were) served on all parties of record in this case by mailing a copy, by US mail and addressed as set forth below, and a copy by email JUN - 3 2:20

BETH A. GARRISS

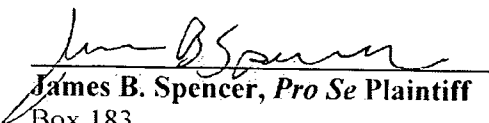
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Parties Served:

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se Plaintiff

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 Plaintiff*
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7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
11th JUDICIAL CIRCUIT

FILED

CASE NO.: 2012-CP-32-3428

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James Spencer et al,

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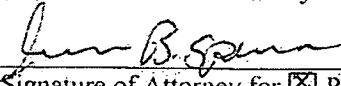
MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

vs.

Plaintiff,

John Rakowsky, et al.

Defendant.

Plaintiff's Attorney: James Spencer, Bar No. _____ Address: Box 183, 7001 Saint Andrews Road, Columbia, SC 29212 Phone: 843-414-0889 Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: B. J. Bruner, Bar No. _____ Address: Columbia, SC Phone: 803-252-7693 Fax _____ E-mail: _____ Other: _____
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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
2013 SEP Case No: 2012-CP-32-3428

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_____)
 James B. Spencer, et al.,)
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)
 Plaintiff,)
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 v.)
)
 John R. Rakowsky, Adrian)
 Falgione and the Law Offices of)
 Adrian Falgione, LLC)
)
)
 Defendants.)
 _____)

FILED
2013 SEP 10 10:30 AM
CLERK OF COURT

**RULE 59(e) MOTION FOR RECONSIDERATION AND TO STRIKE COURT'S
RULINGS IN REGARD TO THE DISMISSAL OF THE LEGAL MALPRACTICE
ACTION CAPTIONED ABOVE**

Plaintiff James B. Spencer, respectfully requests this Honorable Court, under Rule 59(e) of the South Carolina Rules of Civil Procedures (SCRCP) to reconsider and reverse this Court's decision made on August 26, 2013, by reinstating the Legal Malpractice Lawsuit against the defendants captioned above.

BACKGROUND AND DOCUMENTS SUBMITTED AS REQUESTED

In regard to plaintiffs submitting documents after the hearing concluded, during the hearing Your Honor should recall plaintiffs objected to matters which had already been decided by the court in prior proceedings being re-litigated by defendants. Your Honor did not have the case file from Lexington and had not reviewed the case file from Lexington as the case was being heard *nunc pro tunc* as the court had not received proper

authority to hear the case. Plaintiffs were not prepared to litigate matters already decided by the Honorable Judge Barber in earlier proceedings. Your Honor asked for plaintiffs to submit documents to the Court after the hearing in that regard and they would be taken into consideration by Your Honor before making decisions. Accordingly, plaintiffs submitted, "PLAINTIFFS BRIEF ON CORRECTIONS", "EXHIBITS TO PLAINTIFFS' BRIEF ON CORRECTIONS", AND TWO SUPPLEMENTS TO EXHIBITS TO PLAINTIFFS BRIEF ON CORRECTIONS IDENTIFIED AS "A" AND "H".

Your Honor characterized the supplemental filings at the Lexington Court House of which stamped courtesy filings were sent by the plaintiffs via email (when plaintiffs were informed by the Lexington Clerk of Court Your Honor had never received the case files on this matter prior to or after the August 26, 2013 hearing), as "email on several occasions after the hearing was concluded and interposed additional arguments which do not relate to the merits of the narrow issue before the court."

Plaintiffs respectfully ask Your Honor to kindly reconsider these filings as they directly address: 1. Statute of limitations, 2. Equitable Estoppel, and 3. the need for an expert affidavit, all of which were ruled on by Your Honor. The documents are with the other case files at the Lexington County Clerk of Court's Office in addition courtesy copies were previously emailed to your office and are attached to this and accompanying emails.

Additionally, Your Honor failed to make the procedural changes to the plaintiffs' complaint to bring it into compliance with South Carolina law. Southern Holdings, Inc., was not represented by counsel and was not a legal entity in this matter, therefore, the plaintiffs moved to amend the complaint and remove Southern Holdings, Inc. Plaintiffs

contend this motion should have been automatically accepted as the motion was timely filed and it brings the complaint into conformity with the SC law. A corporation must be represented by a licensed attorney in circuit and appellate courts in South Carolina but not in magistrate's court: Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 515 S.E.2d 257 (S.C. 1999).

At the June 5, 2013 hearing, Your Honor announced you were going to review the other outstanding motions and hold a follow up hearing, if necessary. Your Honor specifically mentioned the two procedural motions, attached hereto to this email, filed by the plaintiffs regarding amending the complaint to remove Southern Holdings, Inc. as a plaintiff and remove the Estate of Doris Holt as parties. Under South Carolina law the administrator of an estate cannot represent the estate in legal proceedings in Circuit Court if there are multiple claims of interest on the estate, which there were in this case. Therefore, the Estate of Doris Holt, which gained multiple claimants during the pendency of the proceeding also needed to be removed as a party to the complaint to be in compliance with South Carolina Law. Plaintiffs contend this motion should have been automatically accepted as the motion was timely filed and it brings the complaint into conformity with the SC law. See plaintiffs' two motions to amend complaint.

ADDITIONAL CONSIDERATIONS

Plaintiffs received notice for the first time that Stephanie Weissenstein was an attorney of record on this case when it received the Order on August 31, 2013. Ms. Weissenstein's presence as an attorney of record ties the legal team of this case to the withholding of the uncontested litigation funds which prevented the plaintiffs from obtaining counsel in this and other matters before South Carolina courts. This further

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SEP 10 2013
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COLUMBIA, SC

enhances the argument of Equitable Estoppel to stop the misuse of the law to tie up funds from indigent litigants and further warrants the use of Equitable Estoppel to disallow the use by the defendants of the Statute of Limitations Doctrine as a bar in this matter.

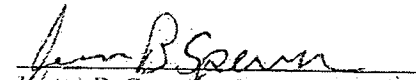
Plaintiffs Rule 59(e) motion is filed within ten days upon receipt of the order in accordance with applicable law.

REMEDIES

Procedurally both Southern Holdings, Inc. and the Estate of Doris Holt should be withdrawn as parties to this action forthwith. The malpractice action should be reinstated and a scheduling Order should be reissued in accordance with the timing as specified in Judge Barber's verbal-scheduling Order issued on May 7, 2012.

Submitted by:

On September 9, 2013


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

CERTIFICATE OF SERVICE

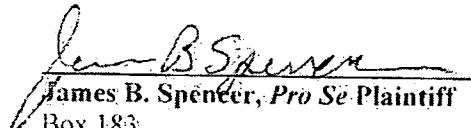
The undersigned hereby certifies that on September 10, 2013, the document described below, was (were) served on all parties of record in this case by mailing a copy by US mail and/or electronic mail as set forth below,

Topic: Plaintiffs' Motion for Reconsideration under Rule 59(e)

Parties Served:

Amanda K. Dudgeon
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Charleston, South Carolina 29401
Attorneys for John Rakowsky

Bruner, Powel, Wall & Mullins, LLC
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