

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Doyet A. Early, III, Circuit Court Judge

Case No. 2008-CP-40-6656

Appellate Case No. 2014-002029

John R. Rakowsky.....Respondent

v.

Adrian Falgione,
James Spencer,
Estate of Doris Holt, Irene
Santacroce, and Rodney Keith Lail,.....Defendants

Of whom, Estate of Doris Holt, Irene Santacroce, and Rodney
Lail, are.....Appellants

**Omnibus Emergency Motion to Stay the Proceedings
In the Underlying Case and
Motion to Allow the Undersigned to Order the
Transcript Late or Out of Time
(Amended)**

RECEIVED

OCT 27 2014

SC Court of Appeals

Appellants, Estate of Doris Holt, Irene Santacroce, and Rodney Lail, (hereinafter the Appellants) by and through the undersigned, file this Omnibus Emergency Motion to Stay the Proceedings in the Underlying Case and Motion to Allow the Undersigned to Order the Transcript Late or Out of Time.

BACKGROUND

Judge Early has conducted this case primarily through emails which have kept key matters off the Court Record, despite the continued objections of the undersigned and the *Pro Se* litigant James Spencer. (E. g. See attached Exhibit “A” Part I, and Exhibit “A” Part II, p. 7, last paragraph.)

On **June 23, 2014**, the Order being appealed was issued, after the hearing was cancelled by Judge Early that was scheduled to occur on June 4, 2014, where the opposing sides were to present the arguments for merit concerning issues covered by the dispositive June 23, 2014 Order.

From **June 23, 2014**, until **July 10, 2014**, the undersigned repeatedly requested the name of the author of the dispositive Order executed on June 23, 2014 (See attached Exhibit “B”), as the Order covered topics never raised before the Court in this proceeding and statements that are absolute fabrications of fact. All the requests by the undersigned went unanswered which included how the dispositive Order was developed without the knowledge or input of the undersigned counsel.

On **July 10, 2014**, Judge Early admitted that the Order he executed on June 23, 2014 was a product of *ex-parte* communications between the counsel for the Plaintiff, Desa Ballard, and His Honor. (See attached Exhibit “B”).

On **July 10, 2014**, Judge Early stated he was going to void the *ex-parte* Order issued on June 23, 2014. (See attached Exhibit “B”).

On **August 20, 2014**, a hearing was held on the Emergency Omnibus Motions filed by the undersigned and the *Pro Se* Defendant James Spencer regarding concerns including the basis for refusing to allow proper discovery related to issues that had been ruled on by the *ex-parte* dispositive Order.

On **September 9, 2014**, Judge Early sent an email with an unsigned Order which he said he had filed with the Richland County Clerk of Court that both reinstated the *ex-parte* Order of June 23, 2014 and dismissed the Omnibus Motions filed by the undersigned and the *Pro Se* Plaintiff James Spencer. (See attached Exhibit “C”).

On **September 17, 2014**, the undersigned filed an appeal on the *ex-parte* dispositive Order issued on June 23, 2014.

On **September 29, 2014**, the undersigned discovered from the Richland County Clerk of Court (See attached Exhibit “D”) that the *ex-parte* Order issued on June 23, 2014, had never been voided as untruthfully claimed by Judge Early on July 10, 2014. Further, no paperwork existed explaining the basis of his Order denying the Omnibus Motions according to the Clerk of Court’s office defacto documenting the Arbitrary and Capricious nature of the “Form Four” Order denying these well documented and evidence substantiated motions.

On **October 4, 2014**, Judge Early stated that he was going to decide the Interpleader action regarding the remaining issues on October 27, 2014. This is in direct conflict with the *ex-parte* Order issued on June 23, 2014, under appeal before this Appellate Court in which he states in the Order on page 12, paragraph E:

“The undersigned retains jurisdiction of the remaining portion of this action which seeks an interpleader as to the settlement funds from the Southern Holdings case once the federal court action is final.” (See Attached Exhibit “E”.)

On October 21, 2014, Judge Early was notified by email, US Mail and Fax that the federal action is not final. This was the latest of multiple reminders. (See attached Exhibit “F”.)

On October 23, 2014, Plaintiffs’ counsel once again ignored the fact that the interpleader issues are part of the *ex-parte* Order appealed before this Court. Plaintiff rushes to consummate this matter irrespective of the ongoing relevant litigation in both the South Carolina Appellate Court, which clearly stays this case from proceeding as documented in above herein and Exhibit “E”. Furthermore, the Fourth Circuit Court of Appeal confirms litigation in this matter is continuing. (See attached Exhibit “G”).

The evidence clearly establishes that once again Plaintiff is circumventing legal due process by presenting once again Judge Early with a draft Order that is fourteen pages long and goes into matters never raised in this case. The draft Order makes statements of fact that are untruthful in an attempt to interfere with the due process rights being pursued by the former clients, who are defendants in the interpleader action, in other legal forums. This is not only unethical but unconscionable and an attempt to circumvent the undersigned clients due process rights secured by the 14th Amendment of the United States Constitution.

Therefore, the undersigned has no option but request the Appellate Court issue an unprecedented Order to stay the proceedings to prevent irreparable harm to the former clients of the Plaintiff in the underlying action forthwith, due to the subject matter under appeal and the clear documentation of the misuse of Judicial Process underway in the lower court which has been sanctioned by Judge Early.

As the primary architect of the *ex-parte* Order of June 23, 2014, Plaintiffs' counsel Desa Ballard is once again issuing a draft Order without factual basis which makes rulings on cases currently being litigated in other proceedings and are not and have not been a subject of this proceeding whatsoever. If Judge Early signs this draft Order he is not only wrongfully making untruthful statements on issues he knows nothing about, he is doing so to deliberately undermine the legitimate efforts of individuals seeking due process of law in violation of the 14th Amendment of the United States Constitution in other legal forums.

DISCUSSION

Based on the Clerk of Court Records, the undersigned **now believes** (*emphasis added*) the issues raised during the **August 20, 2014**, hearing are highly relevant since the undersigned learned what was supposed to be a revoked *ex-parte* Order that was issued on June 23, 2014, had never been revoked according to the records maintained by the Richmond County Clerk of Court **see attached Exhibit "C"**. Therefore, the undersigned has appropriately formerly requested a transcript of the hearing held on August 20, 2014. (**See attached Exhibit "H"**.)

The undersigned apologizes for the confusion, but as can be seen from the attached documents and the events described herein, the transcript of the August 20, 2014 hearing now appears to be highly relevant and necessary based on the inconsistencies of the records of the Clerk of Court's Office and the use of emails by Judge Early that effectively kept the proceedings off the Court record to conduct this litigation.

The undersigned was trying to conserve the funds of the indigent clients and assumed the statements by Judge Early were accurate and that the Clerk of Courts records would contain the relevant information needed. Because the undersigned represents indigent clients, he does not take the ordering of this transcript out of time lightly. Good cause exists and an absolute need

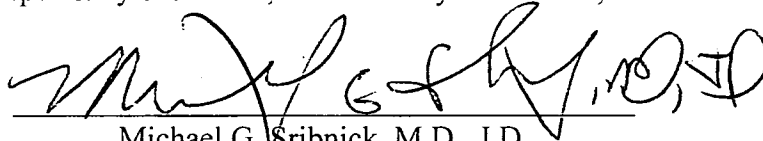
exists for this transcript to further understand what happened relative to the dispositive Order being appealed based on the evidence recently discovered on September 29, 2014, as documented herein.

CONCLUSION

After diligent efforts it turns out the only Court record intact is the transcript of August 20, 2014. Therefore, the August 20, 2014, transcript is now highly relevant given the discrepancy and missing Court records first discovered on September 29, 2014, concerning the dispositive *ex-parte* Order being appealed.

The Transcript of the hearing on August 20, 2014 is now relevant despite the hearing being held months after the issuance of the Order on June 23, 2014. This confusion and contradictions, missing records and litigation by email outside the office of the Clerk of Court and off the record, necessitate the ordering of the transcript of the hearing as the Orders containing the rationale for Judge Early's decisions are non-existent or forever lost. **Therefore,** for all the reasons herein, the Appellants humbly pray the granting of the Motion to Allow the Undersigned to Order the Transcript Late or Out of Time and prays this Honorable Court issue an Order to stay the proceeding in the lower court.

Respectfully submitted, this 24TH day of October, 2014

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.

3 Kenilworth Avenue

Charleston, South Carolina 29403

Phone: (843) 789-3504

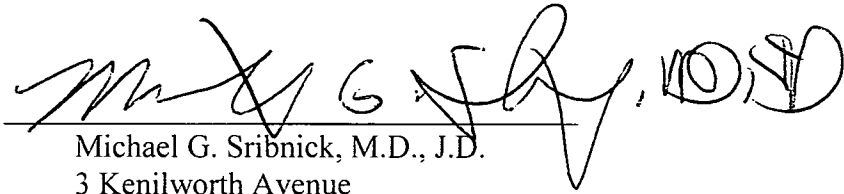
Fax: (843) 720-8907

Email: michael.g.sribnickmdllc@gmail.com

Certificate of Service

I certify that I have sent copies via U.S. Mail on this 24TH day of October to the following:

Desa Ballard, Esq.
226 State Street
West Columbia, SC 29169

A handwritten signature in black ink, appearing to read "Michael G. Sribnick, M.D., J.D.", written over a horizontal line. The signature is stylized and includes a circular stamp or mark to the right.

Michael G. Sribnick, M.D., J.D.
3 Kenilworth Avenue
Charleston, S.C. 29403
Phone: (843) 789-3504
Fax: (843) 720-8907
Email: michael.g.sribnickmdjdlc@gmail.com

EXHIBIT "A"
PART I

James B. Spencer
Box 183
7001 Saint Andrews Road
Columbia, SC 29212

October 2, 2014

The Honorable Doyet A. Early, III
PO Box 90
Bamberg, SC 29003

Re: Richland County Circuit Court Case No: 2008-CP-40-6656

**Administrative Problems caused by the
Court's method of Litigation and Order Issuance**

Dear Judge Early:

On September 10, 2014, your office emailed me the following request and asked me to submit any questions I have. Subsequently, I have asked the same questions several times and received no response. "Your Honor" requests each party, whether they desire to submit proposed orders on or before October 6, 2014, providing a copy to each party and ask the party for any questions they might have. First and foremost, I have no idea what the subject matter is of the requested Orders nor can I produce the rationale for the Judge's Orders on an Order that is not described in whole or in part. Please answer the question what specific Order or Orders is Your Honor talking about?

I also have questions regarding the enormous problems that Your Honor's informal and inappropriate methods of litigation and order issuance have caused the Plaintiff's former clients who are defendants in Richland County Circuit Court Case No: 2008-CP-40-6656. Additionally, Your Honor's actions are ignoring the fact that this case is under appeal in the South Carolina Court of the Appeals and the very basis for the Interpleader action itself is a question on appeal based on Your Honor's dispositive order that was the basis for appeal. Further the under lying case is on appeal in the United States 4th Circuit Court of Appeals, as Your Honor also knows.

Your Honor's order executed on June 23, 2014 stated, "the undersigned retains jurisdiction of the remaining portion of this action which seeks an interpleader as to the settlement funds from the Southern Holdings case once the federal court action is final." Does Your Honor understand that the Southern Holdings case federal court action is ongoing and therefore by Your Honor's own Order further action in regard to the Interpleader and the Settlement Funds is stayed?

Does Your Honor also understand that this case is stayed as the basis for the entire Interpleader action is in question itself in the South Carolina Court of Appeals? Does Your Honor understand his actions appear to be directed at undermining my actions in

the 4th Circuit United States Court of Appeals? Your Honor's inappropriate order issuance methods which include keeping things off the Court record and conducting this case by email resulted in an order crafted and issued through *ex parte* communications.

As you are aware or should be aware, I have previously requested, by motion and email that these methods be ceased and the correct methods of order issuance be used or the ability to effectively litigate will continue to be directly compromised in your Court. Do you realize your procedure is effectively keeping Orders and their date of issuance off the Court record which undermines any appeal process? Is this your intent? It is my duty as a litigant in this proceeding to bring this information to the attention of the supervising judge and others in authority. A specific example of this problem is cited below.

On September 19, 2014, Your Honor sent an email to the parties stating you had sent a document denying the Omnibus Motions filed by the former client defendants in this proceeding to the Richland County Clerk of Court. Your Honor also provided, as an attachment, an unsigned draft letter you identified as an item that was concurrently being sent to the Clerk of Court to reinstate the earlier order Your Honor stated you had voided. The Order you supposedly voided had been conceived and generated through improper *ex-parte* communications between Your Honor and Plaintiff's counsel, Desa Ballard. Personnel in the Clerk of Court's office are totally confused as to which documents represent your official orders, since you are not issuing the orders/opinions through them but through Desa Ballard's office. The first documented occurrence of this in this case was on your executed June 23, 2014 Order (the *ex parte* Order). Certain personnel at the Clerk's office said they never have seen any other judge act in such a cavalier manner toward the Clerk's office in clearly not following the proper procedure for issuance of orders in this case. How do you propose to correct the impact of these actions?

I have previously made a motion requesting that you declare this case a mistrial. I have requested the undisputed litigation funds be returned to me. Regarding the uncontested litigation funds, Your Honor and all parties have agreed on the court record that there are no other claims on them besides mine, yet they are still wrongfully held by the Plaintiff and have been since 2007. A precondition to release of the admitted uncontested litigation funds was put on their release by Your Honor and Ms. Ballard, in the *ex parte* Order. The precondition requires me to drop any appeal on the estimated forty thousand dollars of litigation funds that were provided to Plaintiff that remain unaccounted for. These funds are manifestly and indisputably missing, and no proper accounting has been provided by Plaintiff. Does Your Honor realize by refusing to allow me the opportunity to examine the documents that were the basis of the expert witness report on accounting and to question the expert witness your honor is basing the *ex parte* Order on inadmissible hearsay? How do you justify this?

In essence, you are requiring me to give up my due process rights in order to receive property that rightfully should had been given back to me in 2007 by the Plaintiff when

he ceased representation. It is wrong for the Plaintiff and the Court to leverage my deteriorating health, which these undisputed funds are required to economically address, in order to force me to give up my right to legal due process. These uncontested funds must be turned over to me forthwith, as they are needed for necessary medical treatments. By using an individual's own funds to induce him to give up his rights to due process is in violation of my 14th Amendment Rights to due process and fair treatment that is guaranteed under the United States Constitution (emphasis added).

Furthermore, I have requested that all remaining funds be turned over to the Court while the case is being properly reviewed through the Federal Court Appeals System. Interest accrual on these funds does not begin until they are turned over to the court. The former client defendants in the present case have been requesting that all the funds, both undisputed litigation and disputed settlement funds, be turned over to the Court since the Plaintiff filed this case in 2008. Why are you trying to force me to give away my rights in order to get undisputed funds back that I need for medical care? What is your rationale for not bringing these funds into the court to earn interest? I have no choice but to renew those simple lawful requests at this point once again and request you to explain why you are unwilling to do such to date? Fulfilling these requests does not prejudice the Plaintiff but ends the prejudice against the former clients who are defendants in this action.

Your method of making a ruling in favor of the Plaintiff and then utilizing Plaintiff's counsel as your *de facto* law clerk to draft orders to find a way to justify the rulings after the fact is terrible. You then issue those orders as your own, by email through Ms. Ballard and your own law clerk, but not through the Clerk of Court. This procedure is categorically wrong and is an abuse of judicial discretion. It is inappropriate, unethical and as far as I can tell, legally unfounded. The Orders drafted by Ms. Ballard that you signed on June 23, 2014, were so inappropriate that you effectively overruled Judge Barber's standing Oral orders in this case. In a baseless attempt to justify the order the order wrongfully stated there were conflicting claims on the litigation funds and, therefore, you did not consider Judge Barber's Order's proper. This is clearly untrue as documented in the Court transcripts I provided to you. Desa Ballard made you look foolish as you wrongfully contradicted Judge Barber's standing Orders including, but not limited to, the ones that discovery was to be allowed to be conducted by the former client defendants¹, that counter claims would be allowed by the former client defendants and that a hearing on the motion for sanctions would be held. The hearing for sanctions was originally held and started before the current Chief Administrative Judge the Honorable L. Casey Manning, when Desa Ballard showed up at the hearing without her

¹ Your Order completely ignored the documented fact that Desa Ballard refused to answer discovery questions submitted to her because she untruthfully claimed in writing that Judge Barber issued an Oral Order against discovery, this documentation was supplied to you as requested by you. How can you justify such outrageous claims in the order you executed stating discovery was never requested by the former client defendants?

client on January 12, 2012, and obtained a continuance. She now has written into the *ex parte* Order there will be no hearing on Sanctions, a hearing requested by the client defendants and Ordered by Judge Barber. How do you justify overruling the Honorable Judge Barber's standing Orders in this case?

I have pointed out herein just a few examples of the outright fabrications in the *ex parte* order Your Honor executed on June 23, 2014, however, Your Honor is hopefully, unwittingly participating, by allowing matters to be handled in the manner previously described herein. This process effectively makes Desa Ballard the *defacto* presiding judge in this case. Further, all counsels were Ordered by Judge Barber during a hearing on October 18, 2011 to include me in all email communications without exception. Desa Ballard, obviously continues to refuse to comply with this standing Order by isolating me and not communicating with me as Ordered by the Court. I have pointed this out, but Your Honor ignores this fact and allows Ms. Ballard to continue with this practice of excluding me on communications making any attempt on my part to address the topical issues on a timely basis impossible. This whole process has reached the point of being a ridiculous insult to me, the other former clients of the Plaintiff and the judicial system of the state of South Carolina.

In the present instance regarding the pending Order, Your Honor avoided the wrongdoing of *ex parte* communications, which participated in with the creation of the June 23, 2014 Order you signed. However, you still are participating in the same inappropriate procedure, only openly by asking all parties to submit proposed written drafts to substantiate a ruling by you against the Omnibus motions and other issues which, despite my and other parties repeated requests you refuse to identify. This request for all parties to submit a proposed order occurred only after the former clients obtained an admission that you carried on the *ex parte* communications with Desa Ballard in crafting and executing the order you claimed to have voided due to the *ex parte* communications that it came out of.² However, the Clerk of Court has no notice of you voiding the Order. This behavior is inappropriate and could be viewed as an insult to the people of South Carolina and the Constitution that you have sworn to uphold. Will you provide me the documentation you say you mailed to the Clerk of Court necessary to void the inappropriate Order you subsequently reinstated?

In the latest instance on September 18, 2014, you filled a Form 4 without any attached order as required by the form providing the basis of your ruling to the Clerk of Court for denying my Omnibus Motion. I have obtained the copy of the Form 4 from the Clerk of Court's office and a letter of acknowledgement that there was no required attachment. Just as before, you are apparently waiting for Desa Ballard to draft an Order for your signature to justify your decision, a justification which she has to pull out of the thin air since you again issued no basis for your decision in any form. Such an order by Ms. Ballard will once again, I am sure, be a based on Ms. Ballard's biased imagination and

² The Clerk of Court's Office has no record of you voiding that *ex parte* Order despite your claims to the contrary.

be constructed with the use of untruths and half-truths, in the same manner the Order your honor executed on June 23, 2014 was crafted as previously pointed out herein. The same Order was properly appealed to the South Carolina Court of Appeals. This is the Order you and Desa Ballard wrongfully participated in developing and issuing on a completely *ex-parte* basis. This *ex parte* basis was finally confirmed by Your Honor after several weeks of unanswered questioning by the former clients of the Plaintiff both to Your Honor and Desa Ballard.

This rush to reach a judgment in this case is an all too apparent attempt to undermine the ongoing proceedings in Federal District Court by imposing the consummation of the disputed settlement in state court. Is this what your intent is? As the operative saying goes, "enough is enough". Do you have a problem with following the law and staying this litigation while this case is under appeal in the South Carolina Court of Appeals and releasing unconditionally the undisputed litigation funds, as they are not properly part of an interpleader action and are needed for medical purposes forthwith?

The proceedings in the Federal Courts need not be interfered with by Ms. Ballard misuse of the litigation process in this matter that has all but been turned over to her by Your Honor in this case.

Please Order the release of the uncontested funds forthwith without any precondition taking away my legal rights as leveraging my health is both unethical and immoral. Hopefully, you did not realize this was happening and will remedy it immediately.

The continuing violation of my 14th Amendment Rights for due process needs to be remedied, either through action in your Court or through another Court, as the Plaintiffs' former clients have been punished enough for seeking their constitutionally guaranteed rights of due process of law in the Courts.

Sincerely,



James B. Spencer, *Pro Se*

Cc:

Desa Ballard, Esquire

Andrew Lindemann, Esquire

Michael Sribnick, MD, JD

Ben Bruner, JD

Chief Administrative Judge, the Honorable Judge L. C. Manning

South Carolina Office of Court Administrator

am unable to respond knowledgeably to your request. I also read the proposed order of Dr. Sribnick regarding the disbursement of the undisputed litigation funds which I have no problem with the content of that draft order if that is in fact what was issued by Your Honor.

DISCUSSION

I read Mr. Bruner's email to you dated June 20, 2014, which I have attached to this filing marked as **Exhibit "A"**. Mr. Bruner's misrepresentations aside, the legal malpractice action is still being litigated despite Mr. Bruner's attempt to have it dismissed through an act of fraud. See attached hereto **Exhibit "B"**. **Exhibit B** is a filing in the legal malpractice action in the South Carolina Appellate Court. This filing documents that Mr. Bruner himself, submitted a sworn affidavit in which he falsely claimed that he had Plaintiff Spencer served with notice by a courier which caused a filing of Mr. Spencer's to be untimely and, therefore, Mr. Bruner moved for the action to be dismissed.

The problem as pointed out in **Exhibit B¹** (pages 4 – 6), the address Mr. Bruner swore under oath Mr. Spencer was personally served at was in fact a UPS mailbox which Mr. Bruner thought was Mr. Spencer's home address, an oversight which revealed his untruthfulness even in a sworn affidavit to the South Carolina Court of Appeals. The South Carolina Court of Appeals ruled against Mr.

¹ Exhibit B documents many other misstatements and outright dishonest claims by Mr. Bruner.

Bruner's motion to dismiss the case after receiving the documentation showing both his untruthfulness in that matter and the actual date of notification to Mr. Spencer verified by the Clerk of Court's office. However, undeterred by the facts, Mr. Bruner, then stated untruthfully to Your Honor in his email that the case was dismissed when in fact it was not. It was reinstated, based in large part, on Mr. Bruner's untruthful representations being conclusively exposed to the court.

In regard to Ms. Ballard's email to Your Honor dated June 17, 2014, a copy of which was mailed to Mr. Spencer by her office as she refuses to email Mr. Spencer. Mr. Spencer received the email copy on June 23, 2014, please see Ms. Ballard's email and letter attached hereto as **Exhibit "C"**.

Ms. Ballard wrongfully claimed the action in Federal District Court has been concluded. The Federal Court appeals process is not concluded and Ms. Ballard knows it or should know it. This is not the only instance Ms. Ballard misrepresented the facts. Ms. Ballard clearly misstated the facts regarding discovery and the purpose of discovery in this case. Ms. Ballard picks and chooses what she wishes to present to the court both ignoring the relevant facts and also ignoring the concept of truth. For example, see attached set of interrogatories which her client refused to answer in this case in its entirety dated October 12, 2011, attached hereto as **Exhibit "D"**. As you will see she based refusing to answer every question on the false assertion (*emphasis added*) that Judge Barber

gave an oral order denying discovery. Ms. Ballard knows quite well that no such oral or written order was ever issued (*emphasis added*) by the Honorable Judge Barber.

Your Honor has been presented with the transcripts of the May 7, 2012, hearing before Judge Barber during which Judge Barber issued oral orders ordering discovery to be conducted, including, but not limited to, the depositions of Mr. Rakowsky and Mr. Falgione, by Mr. Spencer. Ms. Ballard refuses to comply with the actual standing oral orders of Judge Barber and is now both trying to misrepresent the facts regarding discovery in this case as she cites an imaginary order by Judge Barber and also ignores the actual oral orders issued by Judge Barber (**See attached hereto Exhibit "E", the transcript portions of May 7, 2012, hearing during which both discovery and depositions of Mr. Rakowsky and Mr. Falgione were ordered by Judge Barber and acknowledged by Plaintiff Rakowsky and his counsels on that date**).

Further, Ms. Ballard is denying the very existence of the Federal Appeal process available to citizens of this country which is an insult to your office and to Your Honor.²

² In the second paragraph of Ms. Ballard's June 17, 2014. email she distorts an order issued by Judge Seals on August 3, 2011, claiming he denied the counter claims currently pending before the court. The pending counter claims allowed by order of Judge Barber, attached hereto Exhibit "E" were not even filed at the time of Judge Seals Order. Further also pending before this court is the motion for sanctions for Mr. Rakowsky's filing of ex-parte documents with Judge Seals, an act that is totally unethical and forbidden under South Carolina law. The South Carolina

Ridiculously, both Mr. Bruner and Ms. Ballard are now claiming there is no need for discovery because all issues are settled and in their emails allege that I personally seek discovery to harass John Rakowsky and Adrian Falgione through the discovery process. Please read the interrogatories submitted as stated in **(Exhibit D)**. Does any question seem to you to be anything but above board and professional discovery?

CONCLUSION

The undersigned is looking forward to responding to your office's request for what is needed to complete this case as soon as I receive your order regarding the release of the undisputed litigation funds. I and other defendants represented by Dr. Sribnick have been waiting for this order for over eight years releasing the undisputed litigation funds.

However, there remains a dispute over the total amount of litigation funds received by Mr. Rakowsky that has not been resolved. Such a dispute must be dealt with through legal due process conducted in accordance with the accepted rules of evidence.

Supreme Court ruled: "It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition is not against "prejudicial" ex parte communications, but against ex parte communications." Burgess v. Stern, 311 S.C. 326, 330-331 (S.C. 1993)

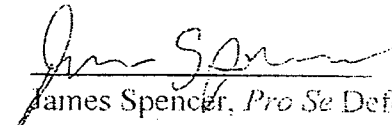
I ethically cannot and will not accept as a precondition of the release of undisputed litigation funds the defendants' acceptance of there not being a dispute over the total amount of litigation funds received by Mr. Rakowsky. I deserve the opportunity to question Mr. Rakowsky and the person who he solely hired, Mara T. Ballard, to put together documents in manner which is incomplete, self-serving and inconsistent with the requirements for such records under rule 417 of the South Carolina Appellate Rules of Financial Record Keeping. I believe I have a right to question the construction of these documents as to how the documents were produced by questioning the individuals who produced the documents. There is no question, based on what has presented so far, that being allowed to conduct discovery as ordered by Judge Barber, I can prove beyond any reasonable doubt the false nature of those financial statements and the misuse of judicial process regarding the interpleader action itself.

I have been asking for eight years for the opportunity for discovery in this proceeding, I have been granted such by Judge Barber's oral orders and yet I continue to be denied the right for discovery much less cross examination of witnesses who wrote documents presented to the court as evidence, litigate counter claims before a jury trial all of which was ordered by Judge Barber. I await receiving your order so I can properly respond as your office has requested via the attached email, **Exhibit F**.

There is no question the undersigned has a right to both due process and discovery, counter claims as well as for the jury trial properly requested by the defendants and ordered by Judge Barber. I look forward to receiving the order you sent out so I can respond intelligently to the email request from your office.

I have submitted this response to document on the record the litigation that is being carried on by email. There needs to be a record to document the emails and the misrepresentations contained in them communicated to Your Honor on the court record.

This 24th day of July, 2014,
Respectfully submitted,

By: 
James Spencer, *Pro Se* Defendant
Box 183
7001 Saint Andrews Road
Columbia, SC 29212

CERTIFICATE OF SERVICE

I, James Spencer, *Pro Se*, defendant do hereby certify that the foregoing RESPONSE TO ATTACHED EMAIL LITIGATION has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Desa Ballard, Esquire
Ballard Watson Weissenstein
PO Box 6338
West Columbia, SC 29171

RECEIVED

JUN 24 2014

SC Court of Appeals

Andrew F. Lindemann
Davidson & Lindemann, P.A.
PO Box 8568
Columbia, SC 29202

RECEIVED
2014 JUN 25 AM 10:43
JAMES SPENCER
C.D.P. & OS.

Benjamin Bruner
Bruner, Powel, Wall & Mullins, LLC
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Columbia, South Carolina 29260-1110

Michael G. Sribnick, M.D., J.D., LLC
3 Kenilworth Avenue
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Telephone: (843) 789-3504
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michael.g.sribnickmdjdllc@gmail.com

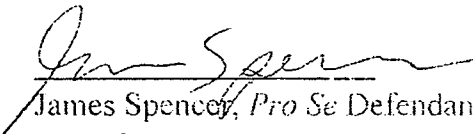
By: 
James Spencer, *Pro Se* Defendant
Box 183
7001 Saint Andrews Road
Columbia, SC 29212

EXHIBIT "B"

James B. Spencer

From: Early, Doyet A. Law Clerk (Cassie M. Weathersbee) [dearlylc@sccourts.org]
Sent: Thursday, July 10, 2014 3:37 PM
To: Michael Sribnick
Cc: desab@desaballard.com Ballard; Andrew Lindemann; Ben Bruner; David L.
Subject: Re: Who drafted the order regarding the litigation funds?

Counsel:

Please see below for correspondence from Judge Early:

Ms. Ballard prepared a proposed order. I modified and signed the order. I assumed she provided everyone with a copy. If you did not receive a copy and if anyone cares to submit a proposed order, I will void the filed order and give everyone who wishes 45 days to submit. I will then make my decision.

Cassie Weathersbee Hall, Esq.
Law Clerk to the Honorable D.A. Early, III The Circuit Court of the 2nd Judicial Circuit PO
Box 90 Bamberg, SC 29003
Telephone: 803.245.4004
Fax: 803.245.2983
dearlylc@sccourts.org<<mailto:dearlylc@sccourts.org>>

On Jul 9, 2014, at 1:36 PM, Michael Sribnick
<michael.g.sribnickmdjdllc@gmail.com<<mailto:michael.g.sribnickmdjdllc@gmail.com>>> wrote:

Dear Your Honor, Counselors, and pro se litigant:
I respectfully ask for the third time that His Honor, Judge Doyet Early, answer my question as to who drafted the order regarding the litigation funds. I am not out of order in this request for information which is my right to know as a diligent attorney and officer of the court.
Regards, I am
Michael G. Sribnick, M.D., J.D., Attorney at Law Michael G. Sribnick, M.D., J.D., LLC
www.michaelsribnicklaw.com<<http://www.michaelsribnicklaw.com/>>

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

DISCLAIMER:

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James B. Spencer

Subject: FW: Rakowsky v. Falgione Case No. 2008-CP-40-6656
Attachments: ATT00001.htm; Supplemental Order - Rakowsky v. Adrian falgione, et al.docx

RECEIVED

SEP 19 2014

SC Court of Appeals

From: Early, Doyet A. Law Clerk (Aliccia Bores) <dearlyv@sccourts.org>
Date: Wed, Sep 10, 2014 at 2:47 PM
Subject: Rakowsky v. Falgione Case No. 2008-CP-40-6656
To: Beth Cogan <Beth@desaballard.com>
Cc: "Early, Doyet A. Law Clerk (Aliccia Bores)" <dearlyv@sccourts.org>, "Early, Doyet A." <dearlyv@sccourts.org>, "alindemann@dml-law.com" <alindemann@dml-law.com>, "bbruner@brunerpowell.com" <bbruner@brunerpowell.com>, "michael.g.sribnickmdjdlc@gmail.com" <michael.g.sribnickmdjdlc@gmail.com>, Desa Ballard <desab@desaballard.com>, Mara Ballard <Mara@desaballard.com>

All,

Please see attached the Supplemental Order which was signed by Judge Early and mailed to the Clerk of Court in Richland County to be filed. Judge Early has also signed a Form Order Denying the Defendants Omnibus Motions. Please let me know if you have any questions. Thank you.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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

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STATE OF SOUTH CAROLINA )

COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

FIFTH JUDICIAL CIRCUIT

John Rakowsky, )

Case No.: 2008-CP-40-6656

**RECEIVED**

SEP 19 2014

Plaintiff, )

**SC Court of Appeals**

Vs. )

SUPPLEMENTAL ORDER

Adrian Falgione, James Spencer, et al., )

Defendant. )

I signed an order on June 23, 2014 ruling on certain matters before me. All parties did not receive a copy of the proposed order. By e-mail dated July 10, 2014, I gave everyone an opportunity to submit a proposed order.

I have reviewed the proposed order from pro se defendant James Spencer. I stand by my original order.

**SO ORDERED.**

\_\_\_\_\_  
The Honorable Doyet A. Early, III  
Presiding Judge of the Fifth Judicial Circuit

\_\_\_\_\_, SC  
Date: \_\_\_\_\_



**EXHIBIT "D"**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Doyet A. Early, III, Circuit Court Judge

Case No. 2008-CP-40-6656  
Appellate Case No. 2014-002029

John R. Rakowsky.....Respondent

v.

Adrian I. Falgione,  
James Spencer,  
Estate of Doris Holt, Irene  
Santacroce, and Rodney Keith Lail.....Defendants

Of whom, Estate of Doris Holt, Irene Santacroce, and Rodney  
Lail, are.....Appellants

**AFFIDAVIT OF ROBERT WADLEY**

**PERSONALLY APPEARED** before me the undersigned Robert Wadley who after being duly sworn states the following:

I, Robert Wadley, declare under penalty of perjury:


1. I am over eighteen years of age and am qualified to testify.
2. The information in this affidavit is based on my personal knowledge.
3. I am a part time legal assistant for Dr. Michael Sribnick, Esquire and have been doing legal research of this nature for over two years.
4. In the above named capacity, on September 29, 2014, I went to the Richland County Clerk of Court's Office to review the files regarding Case No. 2008-CP-40-6656 as directed by Dr. Michael Sribnick, Esquire.
5. I was specifically looking for the "Form 4 Order" that Judge Early claimed he filed regarding his ruling against the Omnibus Motions heard on August 20, 2014, in a hearing which I attended.
6. I could not find any documentation regarding the "Form 4 Order" and/or reason for dismissing the Omnibus motions that Judge Early stated he filed with the Richland County Clerk of Court's Office on September 9, 2014.
7. In order to make certain that I did not miss anything in the file I sought the help of Ms. Gloria Tribble, Administrative Deputy Clerk. Along with the assistance of Ms. Tribble, I was able to confirm that the Form 4 Order was both the correct document filed by Judge Early dismissing the Omnibus Motions and there was no required documentation as to legal rationale despite the affirmation such was attached on the "Form 4 Order" itself.
8. I have attached to this Affidavit the "Form 4 Order" related to the dismissal of the Omnibus Motions in this proceeding.
9. This "Form 4 Order" does not have any attachment of explanation with it as to the reasons for the dismissal of the Omnibus Motions despite the box checked indicating that it does. I have initialed the attached document.



10. As of the date of this affidavit, based on a search of the files, there still is no explanation formal or informal in the Clerk of Court's case file as to the reasons for the dismissal of the Omnibus Motions heard before Judge Early on August 20, 2014.
11. The signed statement attached, which I have initialed, I obtained from Ms. Tribble on September 29, 2014, which confirms my findings.
12. While searching in the Clerk of Court's Office on September 29, 2014, I could find no record, nor could Ms. Tribble find any record of the voiding of the *ex parte* Order executed on June 23, 2014 that Judge Early claimed he had sent to the Richland County Clerk of Court's Office.
13. As of the date of this affidavit based on my exhaustive search of the Richland County Clerk of Court's office file on this case there is still no documentation in the file validating that the Order issued by the Judge Early and Plaintiff's counsel Desa Ballard on June 23, 2014, was ever withdrawn in this case.
14. I did find an executed Supplemental Order which states Judge Early stands by the *ex parte* Order he issued on June 23, 2014, also attached and referenced by Gloria Tribble hereto.

**AFFIANT FURTHER SAYETH NAUGHT**

Affiant: \_\_\_\_\_

  
Robert Wadley

Date: \_\_\_\_\_

10/24/2014

Sworn and subscribed to before me

this 27 day of October, 2014

  
\_\_\_\_\_  
Notary Public for South Carolina

|                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------|
| <p><b>GAYLE RABON</b><br/>Notary Public - State of South Carolina<br/>My Commission Expires February 26, 2017</p> |
|-------------------------------------------------------------------------------------------------------------------|

My Commission expires on: \_\_\_\_\_

*RHW*

Monday September 29, 2014

The Only Document provided to the Court regarding the Order ruling against the Omnibus Motion is the attached Form 4 which I have also initialed, dated and certified stamped.

My name is Yvonne Turbok, Admin Deputy Clerk and we don't have the Supplemental Order that you're requesting 08-6656; As possible that the order is on the

Judge's Desk. If you have any questions I be contact @ 803-576-1952

Yvonne Turbok

RHW

**James B. Spencer**

---

**From:** Gloria Tribble [TribbleG@rcgov.us]  
**Sent:** Monday, September 29, 2014 4:29 PM  
**To:** jamesbspencer@sc.rr.com  
**Subject:** 2008CP4006656  
**Attachments:** ATT00019.eml (63.9 KB); ATT00025.eml (55.0 KB)  
**Importance:** High

*RHW*

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

John Rakowsky, )

Plaintiff, )

Vs. )

Adrian Falgione, James Spencer, et al., )

Defendant. )

COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Case No.: 2008-CP-40-6656

**SUPPLEMENTAL ORDER**

RICHLAND COUNTY  
FILED  
2014 SEP 11 PM 12:01  
DEANETTE W. MCBRIDE  
C.C.P. CLERK

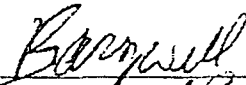
I signed an order on June 23, 2014 ruling on certain matters before me. All parties did not receive a copy of the proposed order. By e-mail dated July 10, 2014, I gave everyone an opportunity to submit a proposed order.

I have reviewed the proposed order from pro se defendant James Spencer. I stand by my original order.

**SO ORDERED.**



The Honorable Doyet A. Early, III  
Presiding Judge of the Fifth Judicial Circuit

  
Date: Sept 9, 2014 SC



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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2008CP4006656

John R Rakowsky

Southern Holdings Inc

Law Max Legal Finance

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for:  Plaintiff  Defendant or  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.
- 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 PUBLIC 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 |
|-------------------------------------------|---------------------------------------|--------------------------------|
|                                           |                                       | \$                             |
|                                           |                                       | \$                             |
|                                           |                                       | \$                             |

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

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

Circuit Court Judge \_\_\_\_\_ Judge Code \_\_\_\_\_ Date \_\_\_\_\_

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 18 September 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard

Ernest H. Morton Jr  
Andrew F. Lindemann  
James Brian Spencer  
Irene Santacrose

Linda Wilamson Lawrence  
Adrian Lee Falgione  
Rodney Keith Lail  
James Brian Spencer

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court Jeanette W. McBride

RHW

any claims thereto.

E. The undersigned retains jurisdiction of the remaining portion of this action which seeks an interpleader as to the settlement funds from the Southern Holdings case once the federal court action is final.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Doyet A. Early III  
Circuit Court Judge

June 17, 2014

**James B. Spencer**

---

**From:** James B. Spencer [jamesbspencer@sc.rr.com]  
**Sent:** Tuesday, October 21, 2014 3:57 PM  
**To:** 'Early, Doyet A. Law Clerk (Aliecia Bores)'  
**Cc:** 'Andrew Lindemann'; 'Desa Ballard'; 'Ben Bruner'; 'Michael Sribnick'  
**Subject:** Attached Appeal Currently Before the 4th Circuit Court of Appeals...regarding Your Case No. 2008-CP-40-6656  
**Attachments:** Filed Intial Brief Doc 30.pdf

**Importance:** High  
**Sensitivity:** Personal

| <b>Tracking:</b> | <b>Recipient</b>                            | <b>Read</b>              |
|------------------|---------------------------------------------|--------------------------|
|                  | 'Early, Doyet A. Law Clerk (Aliecia Bores)' |                          |
|                  | 'Andrew Lindemann'                          | Read: 10/21/2014 4:01 PM |
|                  | 'Desa Ballard'                              |                          |
|                  | 'Ben Bruner'                                |                          |
|                  | 'Michael Sribnick'                          |                          |
|                  | Mara Ballard                                | Read: 10/21/2014 4:25 PM |

Dear Your Honor,

On June 23, 2014, you issued an Order for Partial Relief. In this Order you stated the following as the last sentence in the Order:

"The undersigned retains jurisdiction of the remaining portion of this action which seeks an interpleader as to the settlement funds from the Southern Holdings case once the federal court action is final."

**QUESTIONS**

1. It is obvious from the attached document filed with the 4th Circuit Court of Appeals this case is far from over in the federal courts. Yet you have apparently asked for draft Orders germane to the disputed litigation funds while the federal court action has not been finalized? Are you planning to comply with your own Order issued on June 23, 2014 or are you going to move forward disregarding the ongoing action in the 4th Circuit Court of Appeals?
2. Are you going to allow discovery regarding the existence of documents which the Plaintiff has maintained are in existence, an executed informed consent agreement, or not?
3. I have filed a number of previous questions with the Court as your honor has requested, yet in weeks I have not received one answer, will Your Honor answer those questions or not?
4. Will Your Honor at least answer the first two questions listed above?

Respectfully submitted,

James B. Spencer, *Pro Se*

**EXHIBIT "G"**

**RECORD NO. 14-1666**

(4:02-cv-01859-RBH)

---

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

---

**JAMES SPENCER,**

*Plaintiff-Appellant*

v.

**ANCIL B. GARVIN, et al.,**

*Defendants-Appellees*

---

**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

**ON ORDERS ISSUED ON JUNE 11, 2014 AND JUNE 18, 2014**

---

**APPELLANT'S INFORMAL BRIEF**

---

**THIS DOCUMENT DOES CONTAIN ATTACHMENTS**



**EXHIBIT "H"**

Dr. Michael G. Sribnick, M.D., J.D.  
3535 Overcreek Rd.  
Columbia, S.C. 29206  
(843) 789-3504

October 12, 2014

Ms. Daphne Helms  
556 Heron Glen Dr.  
Columbia, S.C. 29229

Re: **Case No. 2008-CP-40-6656**  
John Rakowsky v. Adrian Falgione, James Spencer, et al.

Dear Ms. Helms,

Please inform me of the cost for the transcript of the hearing on the above captioned case held on August 20, 2014, before the Honorable Judge Doyet A. Early, Circuit Court Judge in Richland County. You can mail me the cost to the above address or, if it is more convenient, call me at the telephone number I have provided above.

I will immediately send payment to you for the transcript of the August 20, 2014, hearing. I look forward to hearing from you at your earliest convenience.

Sincerely,

Amanda Cristaldi