

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Richland County  
Doyet A. Early III, Circuit Court Judge  
Case No. 2008-CP-40-6656  
Appellate Case No. 2014-002029<sup>1</sup>

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**RECEIVED**

FEB 12 2015

**SC Court of Appeals**

175028

John R. Rakowsky, Respondent,

v.

Law Offices of Adrian L. Falgione, LLC,  
James Spencer, Estate of Doris Holt, Nick Williamson  
On behalf of RSC, Irene Santacroce, Rodney Keith Lail,  
Marguerite Stephens, Ricky Stephens, Michael Hartness,  
Horry County, SC, Eugene Chewning and Glenn W.  
Harrison, Defendants.

Of whom:

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

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**MOTION TO DISMISS APPEAL  
NOTICE OF APPEAL RECEIVED 9-19-2014**

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There are three (3) appeals pending from two (2) orders in this action. Respondent John Rakowsky moves to dismiss the September, 2014 appeal filed by attorney Michael Sribnick on behalf of his clients Rodney Lail, Irene Santacroce, and Estate of Doris Holt. A separate motion is being filed this date as to the later (January 2015) appeals.

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<sup>1</sup> The Appellate Case Number was assigned by the Court by letter to Dr. Michael Gordon Sribnick dated September 24, 2014.

The trial court action was brought by Rakowsky to determine two (2) issues:

1. To whom to disburse leftover litigation funds from Rakowsky's representation of multiple clients in a prior federal court matter.<sup>2</sup> The litigation funds were not advanced by Rakowsky's clients; the funds came from lenders. The order identified in the Notice of Appeal addresses this issue (however, as stated below, that order has not been provided to this Court).
2. An interpleader to pay the settlement proceeds received by Rakowsky as counsel for the plaintiffs in the prior federal court matter<sup>3</sup>. Rakowsky filed a claim against the settlement funds for attorney's fees earned by him in the prior federal court matter. No other claims were filed against the settlement proceeds. Judge Early issued an order in December, 2014 addressing the remaining issues, and separate appeals have been taken from that order. A separate motion to dismiss addresses those appeals.

### **Sribnick's Appeal**

#### **A. Timeliness of Appeal**

The trial judge issued an order, recorded on June 27, 2014 in which he ordered the leftover litigation funds to be paid to James Spencer, who was one of Rakowsky's clients in the

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<sup>2</sup> Exhibit A to this motion is provided for context for the underlying litigation. The underlying litigation was settled before District Judge Bryan Harwell on May 9, 2007. **Exhibit A** is an order of Judge Harwell dated July 3, 2007 in which he denied multiple motions to set aside the settlement. Since the settlement occurred, an additional 217 filings have been noted in PACER, and multiple appeals have been filed with the Fourth Circuit Court of Appeals. No appeals are pending in the Fourth Circuit at present (at least, to Rakowsky's knowledge).

<sup>3</sup> The "prior federal court action," Southern Holdings et al v. Horry County, Case No. 4:02-cv-01859-RBH (United States District Court, District of South Carolina) was settled after a jury was impaneled in May, 2007. Numerous of the former plaintiffs in that action, acting *pro se*, have attempted to refute the settlement since that time, in this Court, the Richland County Circuit court, the United States District Court for the District of South Carolina, the Fourth Circuit Court of Appeals, and in a collateral action filed in the United States District Court for the District of Columbia three years after the prior federal court action was settled. Lail v. United States Government, Civil Action No. 1:10-0210-PLF. The last order from the prior federal court action (from the Fourth Circuit) attempting to conclude these matters almost eight (8) after the settlement, was issued on February 2, 2015.

prior federal court action<sup>4</sup>. Sribnick sent a series of emails to Judge Early inquiring about how the order came to be prepared and Judge Early responded<sup>5</sup>. None of these emails was made part of the record. Neither Sribnick nor anyone else filed any motions challenging the order or seeking reconsideration. Nonetheless, Judge Early issued a “Supplemental Order” filed September 11, 2014 in which he declined to vacate the June order.

Sribnick, on behalf of his clients Lail, Santacroce and Estate of Doris Holt filed and served a Notice of Appeal on September 19, 2014, indicating he was appealing Judge Early’s order of “July 10, 2014” (sic)<sup>6</sup>. The notice was deficient in that it did not include a copy of the Order on Appeal, as required by Rule 203(d)(1)(B)(ii), SCACR. This deficiency was noted via deficiency letter to Sribnick dated September 24, 2014. By letter dated September 29, 2014, Sribnick attempted to resolve the deficiency by enclosing a copy of emails exchanged with Judge Early, and a copy of Judge Early’s order dated September 11, 2014. **Exhibit B**. Sribnick did not include the order referenced in the Notice of Appeal, *i.e.*, Judge Early’s order of July 10, 2014. Thus, Sribnick’s Notice of Appeal is defective as not complying with Rule 203(d)(1)(B)(ii), SCACR, even after having the deficiency called to his attention.

The time has long since passed for Sribnick to timely appeal the June 27, 2014 order. Failure to timely serve appeal is a jurisdictional defect which cannot be solved by the grace of

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<sup>4</sup> Rakowsky’s counsel has complied with the order by sending a check in the amount of \$7,691.78 payable to James Spencer on August 7, 2014. Spencer negotiated the check on January 5, 2015.

<sup>5</sup> The order was drafted, at Judge Early’s request, by counsel for Rakowsky. It was inadvertently not copied to opposing counsel. However, Judge Early gave everyone an opportunity to submit counter-proposed orders. Only Spencer submitted one. The appealing parties did not.

<sup>6</sup> There is no order dated July 10, 2014 of which Respondent is aware.

the appellate court. The appellate court cannot excuse a jurisdictional defect. USAA Property & Casualty Insurance Company v. Clegg, 377 S.C.643, 661 S.E.2d 791 (2008).

### **B. Lack of Standing**

Sribnick's clients lack standing to appeal Judge Early's June 27, 2014 order, a copy of which is attached as **Exhibit C**. Sribnick represents Rodney Lail, Irene Santacroce, and Estate of Doris Holt<sup>7</sup>. While still acting *pro se* in the trial court, Sribnick's clients Lail, Santacroce, and Doris Holt, filed pleadings in which they asked that the remaining litigation funds be paid to James Spencer, another party to the action<sup>8</sup>. Sribnick's clients requested no relief in the underlying action. Judge Early's order awarded no relief, and denied no relief, to Sribnick's clients. Judge Early's order directed that all remaining litigation funds be paid to James Spencer, who has not appealed from Judge Early's order. **See Exhibit C**.

Appellate review is available only to parties who are aggrieved by the underlying judgment. Ex Parte Whetstone, 289 S.C. 580, 347 S.E.2d 881 (1986). An "aggrieved party" is one who is injured in a legal sense or who has suffered an injury to person or property by virtue of the appealed order. Sribnick's clients were named in the action in the event they made claim to any of the proceeds in Rakowsky's possession. They did not. They repudiated the settlement

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<sup>7</sup> Mrs. Holt's estate is pending in Richland County. The personal representative is Robert B. Holt, who is identified as Mrs. Holt's son, so Mr. Holt, in his capacity as personal representative, is Mr. Sribnick's client.. On information and belief, Robert Holt is also James Spencer, a party to these actions. There is no evidence of which Rakowsky is aware that Robert Holt ever legally changed his name to James Spencer. On information and belief, Holt began using the name James Spencer after he moved to South Carolina to escape a North Carolina judgment against him in excess of \$1.5 million dollars. Holt v. Williamson, 125 N.C.App. 305, 481 S.E.2d 307 (N.C.App. 1997). Rakowsky was not aware of Spencer's fabricated identity when he represented Spencer in the underlying federal court action.

<sup>8</sup> In their answer to the second amended complaint in the trial court, Sribnick's clients (among others) prayed "the residual litigation funds. . . will be utilized as directed by captioned defendant James Spencer. . ." (Exhibit D, page 6 of 8). Sribnick's clients made no claim to the remaining litigation funds. .

and made no claim to the remaining litigation funds. They deferred to Spencer for handling of those funds. Judge Early gave them exactly what they asked for.

There is no relief that can be granted to Sribnick's clients through this appeal. They are not aggrieved parties.

### C. Mootness

As indicated above, the order which Sribnick's clients are appealing granted the relief which *pro se* party James Spencer requested, *i.e.*, payment to himself of the remaining litigation funds. Spencer did not appeal. Rakowsky, through counsel, paid the remaining litigation funds to James Spencer. Spencer has cashed the check. **Exhibit D**<sup>9</sup>. As a result, Spencer has ratified the order which Sribnick's clients are attempting to appeal, rendering any appeal of the order by anyone moot.

The appellate court will not entertain an appeal if the action is moot. Mathis v. South Carolina Highway Department, 260 S.C. 344, 195 S.E.2d 713 (1973). A case is moot is the reviewing court cannot grant effectual relief. Jones v. Dillon-Marion Human Resources Development Corp., 277 S.D. 533, 291 S.E.2d 195 (1983).

Thus, the September 2014 appeal by Sribnick, on behalf of his clients Lail, Estate of Doris Holt, and Santacroce should be dismissed. Not only was the appeal not properly or timely filed, Sribnick's clients lack standing because they are not aggrieved parties, and the appeal is moot.

[signature following page]

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<sup>9</sup> The check appears to be endorsed by "Bruce Holt" and "James Spencer" for deposit into an account apparently belonging to Bruce Holt. See footnote 6.

*Desa Ballard*

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ATTORNEY FOR RESPONDENT RAKOWSKY

February 12, 2015

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

SOUTHERN HOLDINGS, INC., et al.,	)	Civil Action No.: 4:02-cv-1859-RBH
	)	
Plaintiffs,	)	
	)	
v.	)	<b>ORDER ON MOTIONS</b>
	)	<b>PURSUANT TO F.R.A.P. 4(a)(4)</b>
HORRY COUNTY, et al.,	)	
	)	
Defendants.	)	
	)	

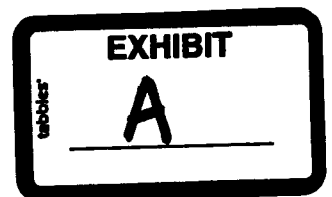
Pending before the court are: 1) Letter/motion [Docket Entry # 483] by Dan Green, C.E.O. of Southern Holdings, Inc.; 2) Letter/motion [Docket Entry # 484] by Irene Santacroce; 3) Letter/motion [Docket Entry # 485] by Marguerite Stephens; 4) Letter/motion [Docket Entry # 486] by Ricky Stephens; and 5) Letter/motion [Docket Entry # 487] by Rodney Lail. All of these letters/motions request relief from the Order dismissing this case with prejudice pursuant to a settlement agreement that was stated on the record. See [Docket Entry # 475]; Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482]. The above letters/motions were not filed by Plaintiffs' counsel, but were filed *pro se* by the Plaintiffs listed above.<sup>1</sup>

On June 7, 2007, the court issued an Order requesting that any parties wishing to file responses to the Plaintiffs' *pro se* letters/motions must do so no later than June 14, 2007. Order [Docket Entry # 488]. On June 14, 2007, the court received responses from all Defendants and the Plaintiffs' attorneys.

As noted below, a Notice of Appeal has been filed in this case. However, pursuant to Federal Rule of Appellate Procedure 4(a)(4), this court has jurisdiction to rule on the pending

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<sup>1</sup> It should be noted that Plaintiffs' attorneys, Rakowsky and Falgione, have not been relieved as attorneys for the Plaintiffs, nor have any motions to withdraw as attorney been filed.



letters/motions. Under Local Rule of Civil Procedure 7.08, hearings on motions are not required. Therefore, the court, in its discretion, elects to rule on the pending matters without a hearing.

### **Procedural and Factual Background**

The procedural background of this case is extensive; however, the procedural and factual background relevant to the current matters is fairly limited. The trial of this case was set to begin on May 9, 2007. On May 8, 2007, a larger than normal jury panel was brought in due to the anticipated length of the case, which was expected to last at least three weeks. On May 9, 2007, the jurors who had been selected reported to the courthouse for the beginning of trial.

On May 9, 2007, with the jury waiting to be brought out and just before the trial was to begin, the lawyers advised the court of a settlement, the terms of which were then stated on the record in the presence of all of the Plaintiffs who filed the *pro se* letters/motions.<sup>2</sup> Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482]. Accordingly, on the record, with the consent of counsel, and in the presence of the parties, the court Ordered that the case be dismissed with prejudice per the settlement agreement. [Docket Entry # 475]; Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482]. None of the parties objected to the settlement agreement or to the dismissal of the case with prejudice. Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482].

Beginning on June 1, 2007, chambers began receiving emails from individual plaintiffs

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<sup>2</sup> According to the Clerk's office, the total cost to the federal government to bring in jurors for the panel and first day of trial was Eleven thousand, nine hundred eighty-four dollars (\$11,984.67) and sixty-seven cents.

with various attachments ranging from affidavits, court transcripts, court docket entries, and letters from Attorney Rakowsky to third persons.<sup>3</sup> These emails requested that this court, among other things, vacate the settlement and reinstate the case.

Some of the emails sent to chambers referenced relief under Rule 59(e) of the Federal Rules of Civil Procedure.<sup>4</sup> One email did not reference a specific procedural rule.<sup>5</sup> All of the letters appeared to seek relief on the basis that: 1) Both Plaintiffs' counsel and Defendants' counsel engaged in fraud in order to coerce the Plaintiffs into a settlement; 2) Plaintiffs' counsel misrepresented to Plaintiffs either certain evidentiary rulings the court had made or was going to make; 3) Plaintiffs' counsel allegedly gave the Plaintiffs bad legal advice concerning the likelihood of exposure to a Judgment in light of a previous Offer of Judgment; 4) Plaintiffs did not agree to the settlement offer at any time; and 5) the Offer of Judgment was somehow "bogus." Specifically, Dan Green, Ricky Stephens, Marguerite Stephens, Rodney Lail, and Irene Santacroce asked the court to: 1) vacate the settlement; 2) reinstate the case to active status; 3) order an independent Federal investigation into the corruption that has been

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<sup>3</sup> With regard to Attorney Rakowsky's letters to third parties, while the court does not agree with many of the statements by Attorney Rakowsky concerning statements attributed to the court, this court did express concern about the matter of Plaintiffs' untimely production of evidence as argued by the Defendants in open court on May 8, 2007. The court reserved ruling until the next day at which time the court was advised the parties had reached a settlement.

<sup>4</sup> Rodney Lail, who sent an email on June 3, 2007, Irene Santacroce, who sent an email on June 4, 2007, Ricky Stephens, who sent an email on June 6, 2007, and Marguerite Stephens, who sent an email on June 6, 2007, all asked the court to vacate the settlement under Rule 59(e) based on alleged fraud and coercion committed against the Plaintiffs by Plaintiffs' attorneys in conjunction with Defendants' counsel.

<sup>5</sup> On June 1, 2007, Dan Green, C.E.O. of Southern Holdings, Inc., emailed a letter requesting that the court vacate the settlement based on the same factual allegations as the Plaintiffs noted in Footnote #4; however, Dan Green's email did not reference a specific procedural rule. Dan Green, who is not an attorney licensed to practice in this jurisdiction, purports to represent Southern Holdings, Inc.; however, Local Rule of Civil Procedure 83.I.07(3) states that a corporation cannot proceed without counsel and that such counsel must be admitted to practice in this District. Local Civil Rule 83.I.07(3) DSC.

associated with this case; and 4) stay the case until an independent review can be conducted, the Plaintiffs can assess the damage done to their case, and obtain qualified counsel to represent the Plaintiffs.<sup>6</sup>

On June 7, 2007, the court instructed that all of the emails be filed with the Clerk of Court. *See* [Docket Entry ## 483-487]. On the same day, the court Ordered that any party wishing to file a response to the letters/motions must do so no later than June 14, 2007. By June 14, 2007, all parties, including Plaintiffs' counsel Rakowsky and Falgione, responded to the allegations contained in Plaintiffs' *pro se* letters/motions. Additionally, the Hartness Defendants filed a motion for sanctions and other relief against the Plaintiffs. No replies have been filed.

As if the matter were not complicated enough, on June 21, 2007, a Notice of Appeal was filed by Ron Serota, Esq. on behalf of all Plaintiffs. On June 22, 2007, Attorney Serota also filed a motion to vacate the judgment on behalf of Doris Holt, an individual Plaintiff that had not previously filed a *pro se* letter/motion.

It should be noted that Attorney Serota, who is not admitted to the South Carolina Bar and was previously admitted in this case *pro hac vice*, was later removed and relieved as counsel for the Plaintiffs on May 3, 2007, pursuant to motions filed by both the Plaintiffs and Serota himself. Serota has not been readmitted *pro hac vice* and has not obtained sponsorship from any local counsel admitted to practice in this District. Serota has violated various Local Civil Rules of this District by: 1) filing documents without first being admitted *pro hac vice*;

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<sup>6</sup> The Docket Report in this case indicates that the Plaintiffs have had several attorneys terminated or withdrawn from the case.

2) failing to obtain sponsorship by local counsel; and 3) failing to have his Notice of Appeal and motion signed by local counsel. As mentioned earlier, Attorneys Rakowsky and Falgione have not been relieved as counsel for any of the Plaintiffs. Additionally, it appears Serota filed these documents using Attorney Rakowsky's CM/ECF login and password without Rakowsky's permission. Nevertheless, the Notice of Appeal filed by Serota will be transmitted to the Fourth Circuit Court of Appeals where the propriety of the Notice of Appeal will ultimately be determined.<sup>7</sup> Because of Serota's failure to comply with the Local Civil Rules regarding local counsel, Holt's motion [Docket Entry # 500] to set aside the judgment based on Rule 60(b) is not properly before this court.<sup>8</sup>

#### **Discussion**

#### **Plaintiffs' *pro se* letters/motions are untimely under Federal Rule of Civil Procedure 59(e)**

To the extent Plaintiffs seek relief from this court's May 9, 2007, Order dismissing this case with prejudice, their motions are untimely. Rule 59(e) clearly states that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e). Even if this court considers the date Plaintiffs emailed their letters to chambers as the filing date, their motions are still untimely. The 10 day deadline contained in Rule 59(e) is mandatory and cannot be extended pursuant to Rule 6(b). Fed. R. Civ. P. 6(b). Therefore, Plaintiffs' letters/motions founded on Rule 59(e) are denied as untimely.

#### **Plaintiffs' *pro se* letters/motions under Federal Rule of Civil Procedure 60(b)(3)**

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<sup>7</sup> At first glance, Plaintiffs' Notice of Appeal appears to be untimely; however, that matter would be more properly decided by the Fourth Circuit Court of Appeals.

<sup>8</sup> The court also notes that Doris Holt's affidavit that was submitted with Attorney Serota's Rule 60(b) motion does not appear to be properly signed or notarized.

To the extent that Plaintiffs allege fraud as a basis for relief, the court liberally construes their letters/motions as motions under Rule 60(b)(3), which provides for relief from judgment or order based on fraud, misrepresentation, or other misconduct of an adverse party. Fed. R. Civ. P. 60(b)(3). The basis of Plaintiffs' allegations against the adverse parties is that they concocted a "bogus" Offer of Judgment and that, in conjunction with various alleged misrepresentations by the attorneys for the Plaintiffs, they coerced the Plaintiffs to settle the case.

Plaintiffs' *pro se* letters/motions fail under Rule 60(b)(3) because they have failed to show by clear and convincing evidence that the adverse parties, the Defendants or Defendants' counsel, were guilty of any fraud. *See Schultz v. Butcher*, 24 F.3d 626, 630 (4th Cir. 1994). This conclusion is evident from the court's review of the submissions of the parties relevant to the Plaintiffs' letters/motions.

To prevail on a Rule 60(b)(3) motion, the moving party must establish: 1) a meritorious defense; 2) misconduct by clear and convincing evidence; and 3) the misconduct prevented the moving party from fully presenting its case. *Schultz*, 24 F.3d at 630 (citing *Square Constr. Co. v. Washington Metro. Area Transit Auth.*, 657 F.2d 68, 71 (4th Cir. 1981)).

Two Offers of Judgment are at issue. The Hartness Defendants' Offer of Judgment, signed by E. Glenn Elliot, Esq., is dated July 12, 2005. As evidenced by the facsimile transmission reports attached with the Hartness Defendants' response, the Hartness Offer of Judgment was successfully faxed to Plaintiffs' Attorneys Rakowsky, Serota, Cooper, and Hardee on July 12, 2005.

The second Offer of Judgment concerns the Horry County Defendants. The Horry

County Offer of Judgment contains a certificate of service indicating that the Offer of Judgment was mailed to Plaintiffs' Attorney Goldberg on July 21, 2004. Horry County also attached a facsimile transmission report that showed that the Horry County Offer of Judgment was successfully faxed to Plaintiffs' Attorney Goldberg on July 21, 2004. In fact, on July 24, 2004, the Horry County Defendants received an Objection from Plaintiffs' Attorney Goldberg and their local counsel at the time, James Cooper, to the Offer of Judgment. So the contention that the Defendants' attorneys "crafted" a fraudulent Offer of Judgment just days before trial, without proper service, in an attempt to coerce the Plaintiffs into a settlement agreement is totally without merit. The Plaintiffs assert no evidence whatsoever, much less clear and convincing evidence, of any fraud or misrepresentation by any of the adverse parties or lawyers in this case. Additionally, the Plaintiffs have not shown that the supposedly "bogus" Offers of Judgment prevented them from moving forward with their case. As noted above, a jury had already been selected and the settlement agreement was announced the morning trial was set to begin. Therefore, their requests for relief based on Rule 60(b)(3), fraud by an "adverse party," is denied. To the extent the Plaintiffs allege fraud committed by their own counsel, that is not a basis for relief under Rule 60(b)(3) as Plaintiffs' own counsel are not "adverse parties."

Other Grounds for Relief under Rule 60(b)

The court has reviewed the various submissions by the parties, and to the extent the Plaintiffs' letters/motions raise issues that could be construed as seeking relief under other subsections of Rule 60(b), the court has reviewed the applicable law regarding relief under subsections of Rule 60(b) that are arguably applicable to these circumstances and concludes

that the Plaintiffs are not entitled to any such relief. In other words, the Plaintiffs have not made a sufficient showing of entitlement such relief.

Further, with regard to any claim by the Plaintiffs of either improper inducement, bad advice, or inadequate representation or preparation against Plaintiffs' own attorneys, such is not a valid basis for repudiating a settlement. *Petty v. Timken Corp.*, 849 F.2d 130, 133 (4th Cir. 1988). In the event there was any breach of the standard of care owed by Plaintiffs' attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, Plaintiffs have an available remedy for damages against their own attorneys. See *Petty*, 849 F.2d at 133.

#### Vacate or Set Aside Settlement Agreement

It is well settled that merely having second thoughts about entering into a settlement agreement is insufficient to set aside the settlement agreement. *Young v. Federal Deposit Ins. Corp.*, 103 F.3d 1180, 1195 (4th Cir. 1997). The court notes that all of the Plaintiffs who filed these letters/motions, *pro se* requests for relief, were present in the courtroom when the settlement agreement was announced on the record. Although the undersigned did not poll each plaintiff individually, nor each Defendant individually, he is not required to do so. This case did not involve a minor settlement or a wrongful death settlement, which would require court approval and may require the court to query a plaintiff regarding whether they believe the settlement is fair and in their best interests. Regardless, none of the Plaintiffs brought any of the matters they allege in their letters/motions to the court's attention until three weeks

later.<sup>9</sup> The court regrets that the Plaintiffs may have had a change of heart, but a change of heart is not a sufficient basis to set aside a settlement agreement. *See Petty*, 849 F.2d at 133.

**Conclusion**

For the reasons stated above, the relief requested in the: 1) Letter/motion [Docket Entry # 483] by Dan Green, C.E.O. of Southern Holdings, Inc.; 2) Letter/motion [Docket Entry # 484] by Irene Santacroce; 3) Letter/motion [Docket Entry # 485] by Marguerite Stephens; 4) Letter/motion [Docket Entry # 486] by Ricky Stephens; and 5) Letter/motion [Docket Entry # 487] by Rodney Lail is **DENIED**.

Because Attorney Serota failed to comply with this District's Local Rules of Civil Procedure regarding the use of local counsel, Holt's [Docket Entry # 500] motion to set aside or vacate the judgment is not even properly before the court.

Finally, because this case is on appeal to the Fourth Circuit, the court feels that it would not be appropriate to rule on the additional relief requested by the Hartness Defendants.

**IT IS SO ORDERED.**

Florence, SC  
July 3, 2007

\_\_\_\_\_  
s/R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge

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<sup>9</sup> The court cannot disregard the fact that substantial juror costs and court time had been allocated for this case and to simply allow the matter to be reopened when a settlement agreement has been placed on the record in open court with a jury standing by would open the court to easy manipulation of its time and resources.



Michael G. Sribnick, M.D., J.D., LLC  
 Attorney at Law  
 3 Kenilworth Avenue  
 Charleston, S.C. 29403-4305



September 29, 2014

Clerk of Court  
 South Carolina Court of Appeals Post  
 Office Box 11629 Columbia, South  
 Carolina 29211

RE: Appellate Case No: 2014-002029  
 Appellants: Irene Santacroce, Rodney Lail and the Estate of Doris Holt  
 v.

Respondent: John R. Rakowsky

Dear Ms. E. Carter:

Per our conversation today I submit this letter with attachments to address the question we discussed. The Order being appealed was a result of ex-parte communications between opposing counsel and the Honorable Judge Doyet Early. Judge Early agreed to void the order on July 10, 2014. Attached to this letter please find **Exhibit A**. As you can see Judge Early clearly established he was voiding the ex-parte Order he filed with the Court on June 27, 2014. Judge Early stated he voided the controversial Order on July 10, 2014. Judge Early, through document, **Exhibit B** attached hereto, issued on September 10, 2014, date stamped September 11, 2014. The Appellants filed their appeal on a timely basis on September 19, 2014. Please call if you have any additional questions.

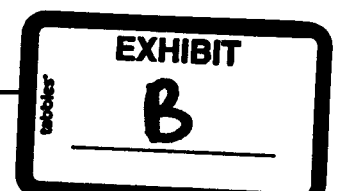
Sincerely,

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

**RECEIVED**

OCT 02 2014

**SC Court of Appeals**



Cc:  
Court Administrator  
Benjamin Bruner  
Andrew Lindeman  
James Spencer

**Exhibit "A"**

**James B. Spencer**

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**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)<<mailto:dearlylc@sccourts.org>>

**RECEIVED**

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**SC Court of Appeals**

On Jul 9, 2014, at 1:36 PM, Michael Sribnick  
<[michael.g.sribnickmdjdllc@gmail.com](mailto: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)<<http://www.michaelsribnicklaw.com>>

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

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FORM 4

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 Santacroce

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Clerk of Court

*Jeanette W. McBride*

**Exhibit "B"**

STATE OF SOUTH CAROLINA )

COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

FIFTH JUDICIAL CIRCUIT

John Rakowsky, )

Case No.: 2008-CP-40-6656

Plaintiff, )

Vs. )

**SUPPLEMENTAL ORDER**

Adrian Falgione, James Spencer, et al., )

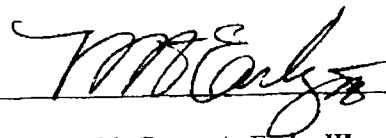
Defendant. )

2014 SEP 11 PM 12:01  
RICHLAND COUNTY  
FILED  
JEANETTE W. HOBBS  
C.C.P. S.C.

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

*Barnwell*  
Date: *Sept 9, 2014* SC



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

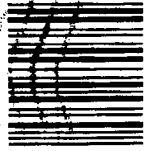
3 Kenilworth Avenue  
Charleston, S.C. 29403-4305

CHARLESTON SC 29403

30 SEP 2014



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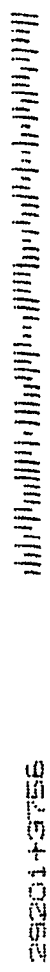
29201

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CHARLESTON, SC  
29403  
SEP 30 2014  
AMOUNT

**\$0.70**  
00093722-13

South Carolina Court of Appeals  
1205 Pendleton Street  
Columbia, S.C. 29201

Attn: Clerk



29201+3756



settlement of an earlier civil matter, and remaining funds which had been advanced for the use of the plaintiffs in that earlier civil litigation. At that time, the Court ruled that the lack of finality as to settlement funds prevented that issue from being addressed at this time.

### **SOUTHERN HOLDINGS LITIGATION**

The earlier civil action, Southern Holdings Inc. et al. v. Horry County et al., Civil Action No. 4:02-cv-1859-RBH (hereafter “the Southern Holdings case”), was filed in the United States District Court for the District of South Carolina by a number of plaintiffs, some of whom are defendants in this case. The Southern Holdings case was resolved when a settlement agreement was stated on the record before United States District Court Judge R. Bryan Harwell on May 9, 2007. (Doc. 475). Plaintiff John Rakowsky (hereafter “Rakowsky”) and attorney Adrian Falgione, who practices law under the corporate entity defendant The Law offices of Adrian L. Falgione, LLC, were counsel of record in the Southern Holdings case at the time of settlement.

Since that time, numerous motions have been filed in the District Court (and at the Fourth Circuit Court of Appeals) by one or more of the then-plaintiffs attempting to set aside the settlement. The most recent motion challenging the settlement was filed on January 6, 2014 (Doc. 775) and remains pending. For that reason, the portion of the matter pending before this Court with reference to the proceedings from the settlement in the Southern Holdings case is premature.

### **ISSUES TO BE ADDRESSED**

The issues regarding the settlement funds are framed by the Second Amended Complaint filed December 3, 2010<sup>1</sup>. The defendants who have responded to the Second Amended Complaint and are active parties to the matter at this time are The Law Offices of Adrian L.

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<sup>1</sup> Earlier proceedings involved multiple other defendants, who either defaulted or were dismissed from the action

Handwritten signature and initials, possibly "MPC" and "#7", in black ink.

Falgione, LLC (see order filed December 2, 2011<sup>2</sup>), Horry County (Answer dated December 29, 2010), James Spencer (hereafter “Spencer”), Estate of Doris Holt<sup>3</sup> (hereafter “Holt”) Nick Williamson on behalf of RSC (hereafter “RSC”), Rodney Keith Lail (hereafter “Lail”), Irene Santacroce (hereafter “Santacroce”), Marguerite Stephens (hereafter “M. Stephens”) and Ricky Stephens (hereafter “R. Stephens”).

Spencer, Holt, RSC, Lail, Santacroce, M. Stephens, and R. Stephens filed a *pro se* answer which was clocked in on January 18, 2011<sup>4</sup>. In their *pro se* answer those defendants asked that the Court deny the interpleader. The *pro se* answer also asserted that the remaining litigation funds “were solely advanced by ‘RSC,’ under the written condition that such funds were to be expended only under the specific direction of Defendant Spencer. *Id.* @ ¶ 10. Those “defendants seek the release of the entire amount of litigation funds. . .” *Id.* ¶ 16. Their prayer for relief also demanded an accounting of litigation funds and further demanded that all money in the possession of Rakowsky (both the settlement funds and the remaining litigation funds) “be transferred forthwith into the trust account of the captioned Defendants’ self designated legal counsel.” *Id.* @ p. 6 of 8. The “self designated legal counsel” was not identified in the *pro se* answer filed by Spencer, Holt, Williamson<sup>5</sup>, Lail, Santacroce, Sanders and Stephens. A Notice of Appearance on behalf of Holt, Lail and Santacroce was later filed by attorney Michael G.

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<sup>2</sup> This order substituted the defendant originally named, Adrian L. Falgione, for his law firm, The Law Offices of Adrian L. Falgione, LLC.

<sup>3</sup> Doris Holt was originally named as a defendant. She died during this litigation. By order dated October 18, 2011, Judge James R. Barber III substituted the Estate of Doris Holt as a party in place of Doris Holt.

<sup>4</sup> Portions of the *pro se* answer were stricken by order of Judge Seals dated July 25, 2011.

<sup>5</sup> Spencer, Holt and Williamson had earlier requested that the remaining litigation funds be released by “certified check” to “the trust fund of Singleton, Burroughs, and Young P.A. to be credited in the name of Irene Santacroce and James Spencer for use as directed by James Spencer.” Motion for Court to Order Immediate Release of Funds, filed October 20, 2008). The file does not reflect the consent of any other defendants. The 2011 answer to second amended complaint requested the release of the remaining funds to Spencer, Holt, RSC, Lail, Santacroce, M. Stephens, and R. Stephens.

Sribnick on December 9, 2013. Sribnick filed an "objection" to the interpleader dated January 26, 2014.

At the motion hearing on February 25, 2014, the Court heard argument from counsel for Rakowsky, Falgione, Horry County, Holt, Lail and Santacroce, and from Spencer, who continues to appear *pro se*. The Court also had the benefit of detailed filings by Spencer and Rakowsky. The Court took the following matters under advisement:

- A. Motion to Release Uncontested Litigation Funds, filed October 20, 2008
- B. Motion for Jury Trial, filed July 14, 2011
- C. Motion to Amend Answer and Counterclaim, filed August 29/30, 2011
- D. Motion for Sanctions (against attorney Stephanie Weissenstein) filed December 20, 2011.

Spencer and Sribnick also argued they should be entitled to discovery, although no formal motion for that relief had been filed. That request was denied, without prejudice, and the issue may be raised again when and if the Southern Holdings case is concluded, unless the request to interpleader funds is mooted by the District Court's ruling. However, the Court directed Rakowsky and Falgione to provide affidavits and evidence detailing the receipt and disbursement of all litigation funds that were advanced for the Southern Holdings litigation so the Court could rule on the pending Motion to Release Uncontested Litigation Funds filed October 20, 2008.

By email to the counsel and Spencer on February 27, 2014, the Court required "affidavits and evidence of all monies paid to Plaintiff's counsel in the original lawsuit for litigation expenses be provided to the Court no later than 10 days prior to hearing."

The hearing on the Motion for Release of Uncontested Litigation Funds was originally scheduled to be held on April 28, 2014. However, Spencer notified the Court he had been served with a subpoena requiring his presence in federal court at a time that would conflict with the April 28, 2014 hearing. The hearing was postponed to June 4, 2014.

After receiving the submissions from Rakowsky and Falgione, the Court notified counsel and Spencer that the June 4, 2014 hearing was not necessary and an order would be issued releasing the balance of litigation funds to Mr. Spencer.

This Court's mandate to the parties to provide an accounting of litigation funds provided to Rakowsky and/or Falgione lies in equity. In ruling upon the Motion for Release Uncontested Litigation Funds, filed October 20, 2008, the Court makes the following findings and conclusions.

#### **FINDINGS OF FACT<sup>6</sup>**

I make the following findings of fact by the preponderance of the evidence.

1. In his capacity as one of the Plaintiff's counsel in the Southern Holdings case, Rakowsky received the proceeds of loans from two (2) different entities for use as litigation funds on behalf of the plaintiffs.
2. Rakowsky received the sum of forty-two thousand, five-hundred dollars (\$42,500.00) from LFC 101, LLC a/k/a LitFunding. (Affidavit of Mara Ballard, Exhibit A, pp. 5-9; p. 28). These funds were deposited into Rakowsky's law firm IOLTA account at Security Federal Bank on June 21, 2005. *Id.* @ pp. 7-9.
3. These funds were paid to Rakowsky following his execution of a "Contingent

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<sup>6</sup> These findings of fact are made from the submissions provided by Adrian Falgione dated April 11, 2014, of John Rakowsky and Mara Ballard filed May 28, 2014 and the Declaration of Spencer dated May 24, 2014. The Court also had the benefit of the entire file of this litigation.

Advance and Security Agreement” signed by him on June 20, 2005. The loan agreement contains a “Client Consent Form” signed by James Spencer authorizing the payment to Rakowsky. *Id.* @ p. 18.

4. The Security Agreement identifies the loan proceeds for use of “plaintiff’s” costs in “the lawsuit.” The lawsuit is defined in the agreement, by name and case number, as the Southern Holdings litigation. *Id.* @ p. 11. The agreement identifies the plaintiff in the lawsuit as “James Spencer, et al.” *Id.*
5. The Security Agreement indicated the loan from LitFunding was in the amount of \$50,000.00, although Rakowsky received only \$42,500.00. Spencer<sup>7</sup> requested by letter to LitFunding dated June 16, 2005 that \$7,500.00 of the loan proceeds be paid to “1<sup>st</sup> Choice Funding” and “send to my attorney the remaining balance of \$42,500.00.” *Id.* @ p. 27.
6. Section 3 of the Security Agreement gave LitFunding a “first priority lien” on the loan proceeds. *Id.* @ 12.
7. Rakowsky received another \$25,000.00 in litigation funding from Resolution Settlement Corporation (hereafter “RSC”), also in June, 2005. *Id.* @ pp. 29-32. These proceeds were generated as a result of a loan agreement between RSC and “Southern Holdings; James Spencer et al.”. Rakowsky was listed as the mailing address for Spencer. *Id.* @ p. 33.
8. Paragraph 6 of the RSC agreement provides that the borrowers’ attorney (Rakowsky) is aware of the agreement, but assumes no liability for complying with it. “[Borrower]’s attorney is solely and merely following [borrower]’s

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<sup>7</sup> The letter of instruction from Spencer to LitFunding is from “Brian Spencer.” Rakowsky represents, and Spencer does not dispute, that he is the same person as Brian Spencer.

instructions . . . attorney is making neither representation no guarantee, inferred, expressed or implied; concerning either merits or value of the claim. . . attorney assumes no affirmative duties herein other than ministerial obligations of disbursement, and conveying information contained herein.” *Id.* @ p. 35, ¶ 7. Rakowsky therefore had no duty to RSC.

9. The check from RSC was made payable to “John Rakowsky and J. B. Spencer” and was endorsed for deposit by “John Rakowsky and James Brian Spencer.” *Id.* @ p. 31. The full \$25,000.00 was deposited into Rakowsky’s IOLTA account at Security Federal on June 29, 2005. *Id.* @ pp. 29-32.
10. Rakowsky received no other funds from any other source for the expenses of the Southern Holdings case. The total litigation funding received by Rakowsky was \$67,500.00. Rakowsky received no advanced litigation funds from LawMax.
11. The Law Max funds were paid either to James Spencer or to his former attorney, Ronald N. Serota. Rakowsky signed a document confirming his knowledge of the loan, but he did not receive any of the funds.
12. Falgione received no advanced litigation funds from any source for the Southern Holdings case. He was reimbursed for legitimate case expenses for costs incurred for the Southern Holdings case on two occasions by Rakowsky from the advanced litigation funds held in Rakowsky’s IOLTA account. (Affidavit of Adrian Falgione, ¶ 14).
13. Rakowsky used the advanced litigation funds to make payments for litigation costs in the Southern Holdings case in the amount of \$57,644.14. (Affidavit of Mara Ballard, p. 4; Affidavit of John Rakowsky). Copies of the checks issued

from Rakowsky's IOLTA account for the expenditures made from the Southern Holdings funds have been presented to and reviewed by the Court. (Affidavit of Mara Ballard, pp. 42-43; pp. 50-53; pp. 55-57; p. 59; p. 61; p. 68-70; p. 72; pp. 74-76; pp. 78-79; pp. 85-93; p. 96; pp. 99-105; p. 107; p. 109; pp. 111-112; pp. 114-116; pp. 118-119). Rakowsky's submission also contains copies of invoices and receipts for expenditures made from the advanced litigation funds.

14. As stated above, the Southern Holdings case was settled on the record before United States District Judge R. Bryan Harwell on May 7, 2005. However, the settlement may not be final because of multiple post-settlement filings by Spencer and others.
15. In light of his former clients' rejection of the settlement, Rakowsky retained attorney Desa Ballard to assist him with handing both the settlement proceeds and the remaining litigation funds. The remaining litigation funds in the amount of \$9,855.55 were paid into Ms. Ballard's trust account, as were the \$55,000.00 settlement proceeds paid by the defendants in the Southern Holdings case. *Id.* P. 124. An effort to interplead the funds into the United States District Court was denied.
16. This interpleader action was filed on September 12, 2008. Among the defendants named and served, who later defaulted, was Law Max Legal Finance and Litfunding USA. Law Max and Litfunding defaulted<sup>8</sup>. The complaint was amended several times, to delete defendants and add others, with the last and operative complaint being the Second Amended Complaint filed on December 3,

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<sup>8</sup> Order of Default Judgment filed July 12, 2011. Also held in default by that order were defendants Southern Holdings Inc., Ronald Serota, David Smith, Harold Hartness, Eugene Chewning Jr., Glenn Harrison and Michael Hartness. *Id.*

2010.

17. RSC was not named as a defendant in the original or any of the amended complaints. However, RSC appeared in this action by filing an answer (in conjunction with Spencer and other *pro se* parties) clocked on January 18, 2011. No objection was raised to RSC's participation in this case.
18. Rakowsky has properly documented the disbursements of the \$67,500.00 he received as advanced litigation funds for the Southern Holdings case. At the time his former clients repudiated the settlement, Rakowsky still held \$9,855.55 of the advanced litigation funds. The funds were not sequestered, however, so it is unknown whether the remaining litigation funds came from the RSC loan, or from the LitFunding loan.
19. In accordance with his obligations under Rule 1.15 of the Rules of Professional conduct, Rakowsky's obligation, when holding funds to which multiple claims are made, was to file this interpleader action.
20. After the litigation was filed, an additional litigation expense was brought to Rakowsky's attention. Ms. Ballard confirmed this was a legitimate expense of the litigation and on December 18, 2008, Ms. Ballard paid from the remaining litigation an invoice from Eugene G. Chewning, Jr., PhD. After the payment to Chewning, the balance of the litigation funds which remain are \$7,691.78.
21. Spencer has claimed these funds are "undisputed" and should come to him, but the file does not reflect any affirmative claim by him to these funds<sup>9</sup> other than in

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<sup>9</sup> As indicated, the answer to the second amended complaint asked that the remaining litigation funds be paid to "the captioned Defendants (*sic*) self (*sic*) appointed lawyers trust." The identity of that person does not appear from any pleadings. The earlier 2008 motion requested release of the funds to Spencer, Holt and Williamson. See footnote 5, *supra*.

concert with other defendants. Spencer relies on discussions that occurred at one or more status conferences with Judge James Barber. However, the earlier claims for distribution of the remaining litigation funds make conflicting requests as to whom the funds should be released.

### CONCLUSIONS OF LAW

22. Rakowsky properly filed this interpleader seeking the court's direction as to the proper distribution of the remaining advanced litigation funds.
23. James B. Spencer moves to have the remaining litigation funds released to him. While the pleadings make conflicting claims as to whom the funds should be released, it appears the loans which generated the proceeds that were advanced to Rakowsky were initiated by James B. Spencer and he may have some residual obligations on those loans. That matter is not before me.
24. Rakowsky disbursed litigation funds from the \$67,500.00 received by him via loans from litigation companies for expenses related to the Southern Holdings litigation. The issues before the Court did not require an accounting of those funds, but at the request of the Court, Rakowsky submitted an accounting that fully supports the disbursements made.
25. The remaining litigation funds in the amount of \$7,691.78 may be released to James B. Spencer and Rakowsky is relieved and discharged of any obligation to hold the remaining litigation funds or to account therefore.
26. Such disbursement shall be made after time for appeal of this order shall have passed. Should an appeal be filed, the funds shall not be released until final order of the appellate court.

27. By taking possession of these funds, James B. Spencer shall indemnify and hold harmless all other parties to this action as well as their attorneys, agents, assigns, successors, heirs, representatives and insurers from any and all claims, demands, causes of actions, payments, bills, charges, expenses or subrogated interests as may be asserted in against any funds which were advanced to Rakowsky as litigation funds for the Southern Holdings litigation.

28. The Court reserves ruling on the Motion for Jury Trial, filed July 14, 2011, Motion to Amend Answer and Counterclaim, filed August 29/30, 2011, and Motion for Sanctions (against attorney Stephanie Weissenstein) filed December 20, 2011.

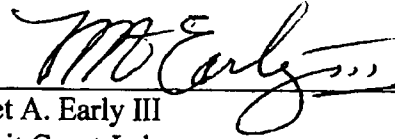
THEREFORE, IT IS ORDERED:

- A. Plaintiff is authorized and directed to release to James B. Spencer the balance of litigation funds in the amount of \$7, 691.78 as set forth herein.
- B. Such disbursement shall not occur until the time for appeal of this order has expired, and this order becomes final.
- C. Upon receipt of the remaining litigation funds, James B. Spencer shall be obligated to indemnify and hold harmless all other parties to this action as well as their attorneys, agents, assigns, successors, heirs, representatives and insurers from any and all claims, demands, causes of actions, payments, bills, charges, expenses or subrogated interests as may be asserted in against any funds which were advanced to Rakowsky as litigation funds for the Southern Holdings litigation.
- D. Rakowsky is released from all responsibility for the remaining litigation funds or

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

SOUTH CAROLINA BANK AND TRUST  
COLUMBIA, SC 29202

1256  
67-98/532

**BALLARD & WATSON, ATTORNEYS AT LAW**  
IOLTA ACCOUNT  
226 STATE ST  
WEST COLUMBIA, SC 29169  
803-796-9299

Aug 07/14

PAY TO THE ORDER OF James Spencer \$ \$7,691.78

\*\*\* Seven Thousand Six Hundred Ninety One \*\*\*\*\* 78/100 DOLLARS

James Spencer

VOID AFTER 90 DAYS

MEMO 2008-CP-40-6656 Order dated 6-23-2014

*[Signature]*  
AUTHORIZED SIGNATURE

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Details on Back  
Security Features Included

1256 \$7,691.78 01/05/2015

*THE DEPOSIT ONLY  
DRAWN FROM  
PAY TO Robert B. Jank  
James B. Spencer*

1256 \$7,691.78 01/05/2015



**RECEIVED**

FEB 12 2015

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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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.

Law Offices of Adrian L. Falgione, LLC,  
James Spencer, Estate of Doris Holt, Nick Williamson  
On behalf of RSC, Irene Santacroce, Rodney Keith Lail,  
Marguerite Stephens, Ricky Stephens, Michael Hartness,  
Horry County, SC, Eugene Chewning and Glenn W.  
Harrison, Defendants.

Of whom:

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

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**CERTIFICATE OF SERVICE**

---

I, Beth Cogan, an employee with the Ballard & Watson, Attorneys at Law, do hereby certify that on February 12, 2015, I served a copy of the **Motion to Dismiss Appeal received September 19, 2014** in the above-captioned case on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

The Honorable Doyet A. Early III  
Post Office Box 90  
Bamberg, South Carolina 29003

Andrew F. Lindemann  
Davidson & Lindemann, P.A.  
Post Office Box 8568  
Columbia, South Carolina 29202-8568

Benjamin C. Bruner  
Bruner Powell Wall & Mullins, LLC  
Post Office Box 61110  
Columbia, South Carolina 29260

Michael Sribnick  
3 Kenilworth Avenue  
Charleston, South Carolina 29403

James Spencer  
7001 Saint Andrews Road  
P.O. Box 183  
Columbia, South Carolina 29212

Marguerite Stephens  
2455 Moores Mill Road  
Aynor, South Carolina 29511

Ricky Stephens  
2455 Moores Mill Road  
Aynor, South Carolina 29511

Nicholas Williamson  
8005 White Ash Court  
Oak Ridge, North Carolina 27310

  
Beth Cogan, Paralegal

February 12, 2015  
West Columbia, South Carolina



**Ballard & Watson**  
Attorneys at Law  
PERSISTENT. UNWAVERING.

Desa Ballard  
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171  
226 State Street | West Columbia, SC 29169  
ph 803.796.9299 | fx 803.796.1066 | [desaballard.com](http://desaballard.com)

February 12, 2015

*Via Hand-Delivery*  
Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: *John Rakowsky vs. Adriann Falgione, et al.*  
Appellate Case No.: 2014-002029

Dear Ms. Kitchings:

Enclosed please find an original and one copy of the **Motion to Dismiss Appeal Received September 19, 2014** concerning the above-referenced matter. Please clock and return the copy to us upon hand-delivery of the original. Enclosed with this letter is a check for \$25.00 for the cost of this motion.

By copy of this letter, I am serving the *pro se* Defendant and all counsel of record. Thank you for your time in this matter. If you have any questions or concerns, please do not hesitate to contact me or Desa Ballard. With warm personal regards, I am,

Sincerely yours,

Beth Cogan, Paralegal  
[beth@desaballard.com](mailto:beth@desaballard.com)

cc: (all via U.S. mail)  
Honorable Doyet A. Early  
Michael Sribnick, Esquire  
Benjamin Bruner, Esquire  
Andrew Lindemann, Esquire  
Marguerite Stephens  
Ricky Stephens  
Nicholas Williamson  
James Spencer  
John Rakowsky, Esquire (via Email)

**RECEIVED**

FEB 12 2015

**SC Court of Appeals**