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SC Court of Appeals

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 John R. Rakowsky)
)
)
 Plaintiff,)
 vs.)
)
 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 and Ricky Stephens,)
 Michael Hartness, Horry County, S.C.,)
 Eugene Chewing, and Glenn W. Harrison,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Case No. 2008-CP-40-6656

**FINAL ORDER GRANTING
 INTERPLEADER
 AND RELATED RELIEF**
 (Concludes case)

2014 DEC 23 AM 9:08
 DEPARTMENT OF PROBATE
 & CHANCERY
 S.C.P.C. CLERK

This order addresses all remaining issues pending before the Court in this matter. Plaintiff Rakowsky's request for interpleader and equitable distribution are granted as set forth herein.

By prior order dated June 23, 2014, filed June 27, 2014, this Court directed the distribution of remaining litigation funds, which concluded one aspect of the litigation presented by this interpleader action. Certain parties objected to the order and by email dated July 10, 2014, I gave everyone an opportunity to submit a proposed order¹. Defendant James Spencer ("Spencer") submitted a proposed order. By order dated September 9, 2014, I declined to vacate the June 23, 2014 order.

Plaintiff Rakowsky (hereafter "Rakowsky") complied with the order and issued a check to James Spencer for the remaining litigation funds. Spencer acknowledges receipt of the check. Certain defendants represented by attorney Michael Sribnick have appealed that order to the South

¹ No motions were filed pursuant to Rule 59 or Rule 60, but because the June 23, 2014 Order had not been copied to all parties prior to its issuance, I gave everyone an opportunity to submit proposed orders on the issues addressed by the June 23, 2014 order.

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Carolina Court of Appeals. The appeal does not divest this Court of jurisdiction to address the remaining issues, which are unaffected by the appeal. Rule 205, SCACR.

The remaining issue before the Court relates to the Rakowsky's request to interplead settlement funds received by him, in his capacity as co-counsel for the then-plaintiffs, in a prior matter pending in the United States District Court for the District of South Carolina. He has also requested equitable indemnification for his fees and costs in bringing and pursuing this action.

By order dated July 9, 2014, this Court required that Rakowsky submit his brief on the remaining issues no later than July 25, 2014. He did so. No other party filed brief in response to the scheduling order. Instead, certain defendants filed "Omnibus Motions" which were heard by the Court on August 20, 2014 and denied by Form 4 order dated September 10, 2014.

By email dated September 12, 2014, my law clerk notified all parties to submit proposed orders no later than October 1, 2014. Rakowsky's counsel requested an extension until October 6, 2014 because she was in trial, and that request was granted. Sribnick requested another delay, claiming he did not understand what proposed orders were being requested. My law clerk responded to Sribnick by email dated October 4, 2014, again advising on the topic of the request for proposed orders. Since that time, I have received numerous letters, emails and filings by either Sribnick or Spencer arguing various positions, none of which have merit. Spencer has attacked the integrity of the Court and the judicial process and, while not expressly saying so, seems intent on provoking the undersigned into recusing himself from the case.

This court has no bias against Spencer or any of the parties, including those who previously represented themselves as *pro se* and who are now represented by Sribnick. Spencer's apparent belief that this court's prior rulings, which disagree with his position, somehow evidence prejudice by this court, are simply wrong. Silvester v. Spring Valley Country Club, 344 S.C. 220, 543 S.E.2d

563 (Ct.App. 2001). This court has carefully considered all arguments made by all parties and has addressed all matters presented based solely on the evidence and the law. This Court has permitted procedural leniency for Spencer based on his *pro se* status, and has construed every reasonable inference in his favor. The record in this case reflects that every judge who has heard anything in this matter has given Spencer (and the other *pro se* litigants) every benefit of every doubt and listened most carefully to all arguments. Pollard v. United States, 352 U.S. 354 (1957) (*Pro se* litigants are held to less stringent standards than pleadings drafted by lawyers.) See also Erickson v. Pardus, 551 U.S. 89 (2007). This Court has done the same.

I gave all parties until October 26, 2014 to submit proposed orders on the remaining issues, which are Rakowsky's request for interpleader and his motion for equitable indemnification, seeking attorney fees for the pursuit of this action. This order rules upon the last remaining issues arising from Spencer's 14 years of litigation following his 2000 arrest in Horry County, South Carolina.

History

In a prior action in United States District Court for the District of South Carolina, Rakowsky and Falgione served as counsel for Southern Holdings Inc., Spencer, Rodney Keith Lail, Irene Santacroce, Ricky Stephens, Marguerite Stephens, and Doris Holt (hereafter referred to as "the Southern Holdings plaintiffs"). That case, Southern Holdings Inc. et al. v. Horry County et al., Civil Action No. 4:02-cv-1859-RBH (hereafter "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).

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 Southern Holdings plaintiffs attempting to set

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aside the settlement. United States District Judge Bryan Harwell has issued numerous orders confirming that the settlement is final, the latest of which was filed on June 11, 2014 (Doc. 788). While an appeal has been filed with the United States Court of Appeals for the Fourth Circuit (Spencer v. Horry County, No. 14-1666), no stay has been requested or issued. Fed. R. App. P. 8(a)(1). The finality of the 2007 settlement is clear, as a matter of law, and no stay is in effect.

During the litigation of this proceeding, certain of the defendants, primarily James B. Spencer (Spencer) and other defendants now represented by Michael Sribnick, Esquire, have attempted to collaterally challenge the settlement in the Southern Holdings case, attempting to engage in discovery to try to prove the settlement was not authorized or is not enforceable. The finality of the settlement is not before the Court. To the extent that it is raised (and will continue to be raised), the finality of the settlement cannot be challenged in this proceeding. Spencer and Sribnick are collaterally estopped from challenging the finality of the settlement in this proceeding. Nelson v. OHG of South Carolina Inc., 354 S.C. 290, 580 S.E.2d 171 (Ct. App. 2013).

Additionally, Spencer, *et al.* also sued Rakowsky and Falgione for legal malpractice, alleging that their consent to the settlement of the Southern Holdings case was "coerced." Spencer et al. v. Rakowsky et al., Case No. 2011-CP-40-5384 (Richland County Court of Common Pleas, Complaint dated August 15, 2012, ¶ 43)². That action was dismissed pursuant to Rule 12(b)(6) by order of the Circuit Court filed August 23, 2013. The finality of that case also operates as collateral estoppel, and prevents this Court from considering the repeated arguments that the Southern Holdings case was not settled or was not authorized to be settled. The significance of the legal malpractice lawsuit, however, is that Spencer and certain of his associates acknowledged the

² The legal malpractice action was transferred to Lexington County, where it was assigned Case No. 2012-CP-32-03428. Inquiry to C-Track indicates that the appeal in that case has been dismissed numerous times but at present has been reinstated.

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settlement occurred; they claimed their consent to the settlement was "coerced." *Id.* They, therefore, acknowledge the settlement occurred.

Lastly, the United States District Court for the District of Columbia has noted the finality of the settlement in the Southern Holdings case. While Rakowsky and Falgione were not parties to that action, Spencer was a plaintiff, as were Sribnick's clients. Lail, et al. v. U.S. Gov't, 771 F.Supp.2d 49 (D.D.C. 2011).

Interpleader Generally

The United States District Court for the District of South Carolina has held that the jurisdiction in an interpleader action can extend only to the funds sought to be deposited in court and "cannot embrace . . . issues of liability that go beyond the fund." Preferred Risk Mutual Insurance Co., v. Greer, 289 F.Supp. 261 (D.S.C. 1968). Thus, the multiple efforts by Spencer and others to introduce collateral issues is barred by procedural precedent, even if collateral estoppel did not prevent the attempts to litigate issues related to the settlement itself.

The only issue which remains for determination is Rakowsky's request that the settlement funds in the amount of \$55,000.00 be paid into the Court. Only one claim has been filed in this action against the funds, that being Rakowsky's claim (to be shared with Falgione) for \$22,000.00, which constitutes a forty-percent (40 %) attorneys' fee from the settlement proceeds. Rakowsky also seeks an award of equitable indemnification to recover from the net settlement funds (after payment of the \$22,000.00 attorney fees due to him and his co-counsel Falgione from the original settlement) his attorney fees in bringing this action and pursuing it to conclusion.

Notably, neither Spencer nor any other defendant has filed any claim to the \$55,000.00 settlement proceeds.

Motions Which Remain Pending

At a motion hearing on February 25, 2014, the Court heard argument from counsel for Rakowsky, Falgione, Horry County, Holt, Lail and Santacroce, and from Spencer. The Court also had the benefit of detailed filings by Spencer and Rakowsky. The Court took the following matters under advisement³:

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

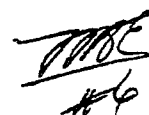
In addition, Rakowsky filed a Motion for Equitable Indemnification dated July 24, 2014. That motion has not been argued and no response to that motion has yet been filed. Rakowsky reserves the right to reply to any responses that may be filed to that motion, by supplemental memorandum.

A. Motion for Jury Trial, filed July 14, 2011

A request for jury trial must be made "not later than 10 days after the service of the last pleading directed to such issue." Rule 38(b), SCRPC. The last operative pleading is the "Certain Defendants' Response to John Rakowsky Second Amended Complaint for Interpleader" filed January 18, 2011⁴. No request for jury trial was made in that filing, and none had been made previously. The request filed July 14, 2011 was untimely and is denied. Shaw v. Atlantic Coast Life Insurance Co., 322 S.C. 139, 470 S.E.2d 382 (Ct. App. 1996).

³ The motion regarding the "uncontested" litigation funds was resolved by this Court's order dated June 23, 2014.

⁴ The counterclaims and other material were stricken from this pleading by order of Judge Seals dated July 25, 2011.



B. Motion to Amend Answer and Counterclaim, filed August 29/30, 2011

By motion dated August 30, 2011, certain defendants⁵ (Spencer, Estate of Doris Holt, Irene Santacroce, Ricky Stephens, Marguerite Stephens, and Rodney Lail) moved to amend their Answer to Second Amended Complaint for Interpleader. The argument made in the Motion to Amend falls into three (3) categories:

1. Arguments about alleged wrongs done to Doris Holt prior to her death;
2. A desire to add counterclaims based on discovery of "evidence (after July 12, 2011) supporting counter claims (*sic*) against the Plaintiff. . ."; and
3. Counterclaims aimed at vacating Judge Seal's order dated July 25, 2011.

1. Alleged wrongs done to Doris Holt

With reference to the alleged wrongs done to Doris Holt prior to her death, Spencer has already litigated these claims against other parties in his lawsuit in the District of Columbia, and lost them when the District Court issued its ruling on March 24, 2011. See Lail v. United States Government, *supra*.⁶ Collateral estoppel prevents the assertion of any claims on behalf of the Estate of Doris Holt for her alleged mistreatment in connection with her treatment while in the custody of the Department of Social Services. Nelson v. OHG of South Carolina, Inc., *supra*.

2. Counterclaims based on discovery of "evidence (after July 12, 2011) supporting counter claims (*sic*) against the Plaintiff. . ."

At the time of the motion to amend, Spencer and the Estate of Doris Holt had recently filed (on August 15, 2011) an entirely separate lawsuit against Rakowsky and Falgione asserting legal

⁵ The original Answer to Second Amended Complaint was also filed by Nick Williamson on behalf of RSC. He was not listed as a moving party in the motion to amend.

⁶ While the decision in Lail v. United States Government lists only Rodney Lail as the plaintiff in that action, the PACER record reflects that the "*et al.*" plaintiffs included Spencer and The Estate of Doris Holt. The District Court's order of March 24, 2011 denies "plaintiff's motion for leave to file a third amended complaint." *Id.*

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malpractice in Richland County (Case No. 2011-CP-40-5384), to which no responsive pleadings had yet been filed⁷. Spencer and the Estate had the opportunity to amend that action as a matter of right to assert any claims they wanted to against Rakowsky pursuant to Rule 15, SCRPC. It is completely illogical to seek to amend an answer, where the precise counterclaims had already been stricken, when a brand new action had only been filed days earlier and the claims could have been asserted there as a matter of right. The motion is denied.

3. Counterclaims aimed at vacating Judge Seal's order dated July 25, 2011.

Judge Seal's order could have been appealed pursuant to S.C. Code Ann. Section 14-3-330(2)(c). It was not. The striking of the counterclaims, and the procedure which led up to that (which is apparently the basis for Spencer's claims of *ex parte* contact: Judge Seal's review of documents *in camera*) is the law of the case. Spencer is apparently seeking to add counterclaims that somehow challenge Judge Seal's order or the methodology by which he arrived at his decision to strike certain matter from the Answer (to Second Amended Complaint) dated January 18, 2011. Judge Seal's order is final. Nothing can be added to this litigation to change that. This motion is denied.

4. Motion for Sanctions against Attorney Stephanie Weissenstein

The gist of this motion is that Weissenstein, who formerly represented Rakowsky in this action, refused to release "uncontested" litigation funds. As more fully explained in this Court's order dated June 23, 2014, there were never any "uncontested" litigation funds. There were funds that Spencer demanded, but the pleadings and orders in this case establish clearly that he had no

⁷ Rakowsky's Motion to Dismiss that lawsuit was not filed until November 3, 2011. Rule 15, SCRPC, permitted Spencer and the Estate to assert whatever claims they wanted to against Rakowsky in the newly-filed legal malpractice action.



right to receive the funds until this court's order of June 23, 2014 was issued. This motion is denied.

Settlement Funds

The issues regarding the settlement funds are framed by the Second Amended Complaint filed December 3, 2010⁸. Horry County has filed an answer to this action, consenting to the interpleader and requesting the execution of a release. The Law Offices of Adrian L. Falgione LLC has also filed an answer consenting to the relief requested.

The other defendants who have responded to the Second Amended Complaint and are parties to the matter at this time are: James Spencer (hereafter "Spencer"), Estate of Doris Holt⁹ (hereafter "Holt"), Nick Williamson on behalf of RSC¹⁰ (hereafter "RSC"), Rodney Keith Lail (hereafter "Lail"), Irene Santacroce (hereafter "Santacroce"), Marguerite Stephens (hereafter "M. Stephens"), and Ricky Stephens (hereafter "R. Stephens") (Answer dated January 12, 2011). They oppose "Plaintiff's request to disperse funds in accordance with Plaintiff Rakowsky's Complaint for Interpleader." *Id.* The gist of their position is, as stated above, there was no settlement. That issue has long been determined; the settlement is as final as final can be¹¹. None of these parties has filed any claim to the settlement funds.

⁸ Earlier proceedings involved multiple other defendants, who either defaulted or were dismissed from the action.

⁹ 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.

¹⁰ According to PACER, Williamson was dismissed as a plaintiff in the Southern Holdings litigation in 2004, so he was not a settling party in 2007 when the litigation was settled.

¹¹ Rakowsky doesn't mean to suggest that Spencer and others will not continue litigation, but its 15th year and beyond, but the finality of the settlement in the Southern Holdings case will not change.

Rakowsky holds a total of \$55,000.00 in settlement proceeds for settlement on behalf of seven plaintiffs from the Southern Holdings litigation. He seeks an order of this Court permitting the clerk of court to accept those funds under Rule 22, SCRCP and to release him for liability as to those funds.

Rakowsky also requests that \$22,000.00 of the settlement funds be paid to him as attorneys' fees in accordance with his fee contract with his former clients. In his motion filed December 12, 2013, Rakowsky introduced the applicable fee agreements, which support his claim for \$22,000.00 in attorney fees. The only opposition to Rakowsky's claim comes from defendants Santacroce and Lail (Objection dated January 26, 2014). Their objection incorporates their argument that there was no settlement, but also argues various other grounds by which Rakowsky's fees should be denied. Primarily, it contains a "Declaration" by Spencer that he drafted the "Addendum" to the fee agreement, and that he didn't intend Rakowsky or Falgione to be paid unless certain circumstances were present. Spencer's declaration cannot be used to vary the terms of the fee agreement.

The fee agreement provides for a 40% contingency fee after trial begins. As repeatedly noted by District Judge Bryan Harwell, when the settlement was placed on the record and in subsequent written orders, the jury had already been impaneled and trial was ready to begin. The addendum to the fee agreement reaffirms the original fee agreement (which included Mark Hardee, who formerly represented the Southern Holdings plaintiffs). The closing paragraph of the original fee agreement provides that Rakowsky will be paid via *quantum meruit* if he is discharged. He has never been discharged as counsel, and Judge Harwell denied his request to be relieved.

Interpleader

Interpleader is an equitable remedy available to a third party when he holds money and it is unclear to whom the money should be paid. Symmes v. Graham, 167 S.C. 290, 166 S.E. 269 (1932). Interpleader provisions should be liberally construed as to best effectuate their purposes. First Union National Bank of South Carolina v. FCVS Communications, 321 S.C. 456, 469 S.E.2d 613 (Ct. App. 1996), *reversed in part* 328 S.C. 290, 494 S.E.2d 429. As long as there is a potential for multiple claims against the funds in question, interpleader is appropriate. *Id.*

Spencer, Holt, RSC, Lail, Santacroce, M. Stephens, and R. Stephens oppose the interpleader on the grounds that there was no settlement. There was a settlement that much is clearly established. Notwithstanding any allegations to the contrary, and setting aside the collateral estoppel effect of the prior rulings of this and other courts, the Southern Holdings plaintiffs are bound by the settlement that was placed on the record by their attorneys. Arnold v. Yarborough, 281 S.C.570, 316 S.E.2d 416 (Ct. App. 1984).

Rakowsky's motion to interplead the \$55,000.00 in settlement proceeds was made necessary by the refusal by his former clients to consummate the settlement; Judge Harwell's orders detail the proceedings following the settlement in glaring detail. The settlement is final. Horry County and the settling defendants in the Southern Holdings action are entitled to its release for payment of settlement funds. Rakowsky is entitled to be relieved of his duty to hold the settlement funds and should be permitted to pay them into court as pleaded in this action, less the \$22,000.00 attorney fee to which he is entitled.

Rakowsky's claim for equitable indemnification seeks an award of attorney's fees and costs against Spencer, Estate of Doris Holt, Nick Williamson on behalf of RSC, Irene Santacroce, Rodney Keith Lail, Marguerite Stephens and Ricky Stephens, to the extent the balance of the interpleaded funds is not sufficient to indemnify Rakowsky. He asserts that the

wrongful efforts of these parties to refute the settlement in the Southern Holdings case made the bringing of this action necessary. There can be little doubt that is true. The orders of Judge Harwell in the District Court case make that abundantly clear. What should have been a simple interpleader action has been made into dramatic, complex, and tortured litigation by Spencer and other defendants. Rakowsky is entitled to his fees and costs for bringing this action to conclusion. Byrd v. Livingston, 398 S.C. 237, 727 S.E.2d 620 (Ct. App. 2012).

Rakowsky has requested reimbursement for attorney's fees in the amount of \$ 66,172.35 (through the date of filing the motion). Having held Rakowsky is entitled to recover his attorney's fees and costs, this Court must examine that request in light of the factors set forth in *Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997). The billings for time Rakowsky's counsel worked on this case are reasonable (and excludes all billing prior to April, 2011) and are in fact modest in light of the work that has been required.

This case was filed in 2008 after Rakowsky attempted to pay the interpleader funds into Federal Court. Since filing this case, Plaintiff's counsel has necessarily filed and defended numerous motions and attended numerous hearings. After nearly six years, the Court's file on this case became so cumbersome, and the procedural history of the case so complex, that the case was assigned to a single judge, the undersigned. Nevertheless, the Court finds the total amount of fees requested should be reduced under the circumstances of this case. While Rakowsky is entitled to an award of attorney's fees and costs, that amount should not exceed the amount of the interpleader funds. I therefore find an award of \$33,000.00 is appropriate for Rakowsky's attorney's fees and costs.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

A. Rakowsky's Request for Interpleader is granted;

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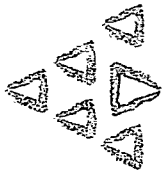
- B. Rakowsky shall be paid \$22,000.00 in attorney fees from the settlement proceeds for his representation of the Southern Holdings plaintiffs in the Southern Holdings litigation. These funds are to be shared with Falgione in whatever division they have agreed upon. Allocation of these funds between Rakowsky and Falgione is not before this Court;
- C. Rakowsky's request for equitable indemnification is granted in part. In addition to the award above, Rakowsky shall receive the amount of \$33,000.00 as reimbursement toward his reasonable attorney fees and costs incurred by him in bringing and prosecuting this matter to conclusion;
- D. Rakowsky's request for judgment for the balance of attorney fees and costs against Spencer and other defendants which are not paid from the \$55,000.00 is denied;
- E. Rakowsky is discharged from any further obligations regarding the settlement proceeds he received in his capacity as counsel for the Southern Holdings plaintiffs. Any and all claims which might have been made by any persons who are now or have been parties to this action against those funds are extinguished.
- F. The Clerk of Court is directed to execute a general release in favor of Horry County and the settling defendants in the Southern Holdings action on behalf of the Southern Holdings plaintiffs, to be prepared by counsel for Horry County. The general release shall release those defendants from claims that were brought or could have been brought in the Southern Holdings litigation.
- G. This order concludes this action in its entirety.

IT IS SO ORDERED.

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Dec 18
~~October~~ __, 2014

Doyet A. Early III
Doyet A. Early III
Presiding Judge, Fifth Judicial Circuit



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson

Post Office Box 6538 | West Columbia, SC 2917
226 State Street | West Columbia, SC 2916
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December 23, 2014

Via U.S. Mail
Honorable Jeanette McBride
Richland County Clerk of Court
Post Office Box 2766
Columbia, South Carolina 29202

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FEB 2 2015

SC Court Apprais

Re: *John Rakowsky vs. Adriann Falgione, et al.*
Case No: 2008-CP-40-6656

Dear Ms. McBride:

Enclosed please find the Certificate of Service for the Final Order Granting Interpleader and Related Relief concerning the above referenced matter. A copy of the above document has also been enclosed. Please check and return the copy to us in the self-addressed envelope provided.

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

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)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
John R. Rakowsky)
)
Plaintiff,)
vs.)
)
Law Offices of Adrian L. Falgione, LLC,)
James Spencer, Estate of Doris Holt, Nick)
Williamson, on behalf of RSC,)
Rodney Keith Lail, Irene Santacroce,)
Marguerite Stephens and Ricky Stephens,)
Michael Hartness, Horry County, S.C.,)
Eugene Chewing and Glenn W. Harrison,)
Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-40-5656

CERTIFICATE OF SERVICE

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FEB 26 2015

SC Court of Appeals

I, Beth Cogan, an employee with the Ballard & Watson, Attorneys at Law, do hereby certify that on December 23, 2014, I served a copy of the **Final Order Granting Interpleader and Related Relief**, in the above-captioned case on the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

**Michael Sribnick
3 Kenilworth Avenue
Charleston, South Carolina 29403**

**Andrew Lindemann
Post Office Box 8568
Columbia, South Carolina 29202**

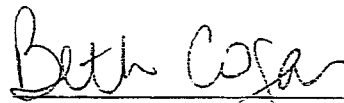
**Benjamin C. Bruner
Post Office Box 61110
Columbia, South Carolina 29260**

**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**

**James Spencer
7001 Saint Andrews Road
Box 183
Columbia, South Carolina 29212**


Beth Cogan, Paralegal

December 23, 2014
West Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-40-6656

John R. Rakowsky)

Plaintiff,)

vs.)

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 and Ricky Stephens,)
Michael Hartness, Horry County, S.C.,)
Eugene Chewing, and Glenn W. Harrison,)

Defendants,)

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FEB 20 2015

**SC Court of Appeals
ORDER GRANTING
PARTIAL RELIEF**

2014 JUN 27 PM 2:30
LAW OFFICE OF ADRIAN L. FALGIONE
C.C.F. 2110

Plaintiff seeks an order directing the distribution of advanced litigation funds that remained in his possession after his representation of certain parties in a prior matter ended. The pleadings also seek an interpleader regarding settlement proceeds from the prior matter, but that matter is not ripe for determination, as explained below. This order addresses only that part of the action that seeks a determination as to the proper distribution of remaining litigation funds.

This case was assigned to me for all purposes by order of the Chief Administrative Judge, L. Casey Manning filed on December 17, 2013. Following a status conference on that date, I issued an order dated January 10, 2014 outlining the procedure to be followed by the parties in preparing to adjudicate all remaining matters. Defendant Spencer, who is *pro se*, complied with the directives of the January 10, 2014 order by filing and serving a memorandum which was clocked on January 27, 2014. Plaintiff filed a responsive memorandum.

A hearing convened on all motions on February 25, 2014. Based on the memoranda submitted to me in advance of the hearing, it appeared that one aspect of this matter is premature. The interpleader sought to interplead two categories of funds: settlement funds from the

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, 2010¹. 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.

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

Handwritten signature and initials, possibly "MCE" and "#2", in the bottom right corner.

Falgione, LLC (see order filed December 2, 2011²), Horry County (Answer dated December 29, 2010), James Spencer (hereafter “Spencer”), Estate of Doris Holt³ (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, 2011⁴. 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, Williamson⁵, Lail, Santacroce, Sanders and Stephens. A Notice of Appearance on behalf of Holt, Lail and Santacroce was later filed by attorney Michael G.

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

³ 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.

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

⁵ 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 FACT⁶

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

⁶ 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. Spencer⁷ requested by letter to LitFunding dated June 16, 2005 that \$7,500.00 of the loan proceeds be paid to “1st 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

⁷ 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 defaulted⁸. 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,

⁸ 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 funds⁹ other than in

⁹ 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.

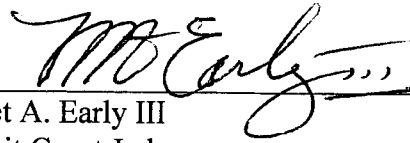
THEREFORE, IT IS ORDERED:

- 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 *13*, 2014

heretofore in which Plaintiff served as legal counsel for certain of these defendants, including James Spencer. Furthermore, I find that the materials sought from Defendant Falgione, which are not in his custody, are also confidential in nature and that the request is overly broad and not likely to lead to admissible evidence.

Therefore, IT IS HEREBY ORDERED THAT the Subpoenas issued by *pro se* Defendant James Spencer on February 10, 2011 is quashed for the reasons stated above.


Plaintiff moves to strike the Answer and Counterclaim Complaint which was filed by Defendants James Spencer, Doris Holt, Rodney Keith Lail, Irene Santacroce, Marguerite Stephens and Ricky Stephens, and Michael Hartness on or around January 18, 2011. Plaintiff asserts that these defendants have alleged facts and submitted documents containing confidential and inflammatory information that could cause substantial harm to the Plaintiff and which do not have any bearing on this lawsuit. After *in camera* review of certain documentation presented by Plaintiff and of the pleadings in this record, I conclude that these matters are defamatory in nature, unnecessary to ensure a fair trial, and have been addressed and disposed of in another forum in favor of Plaintiff.

Therefore, IT IS HEREBY ORDERED THAT any and all pleadings filed by *pro se* defendants James Spencer, Doris Holt, Rodney Keith Lail, Irene Santacroce, Marguerite Stephens and Ricky Stephens, and Michael Hartness in response to Complaints regarding this matter on in which allegations are made either against Plaintiff or related to his prior professional relationship with these defendants are hereby stricken. Specifically, IT IS HEREBY ORDERED THAT all the allegations highlighted in Exhibit A of Plaintiff's Motion to Strike shall be redacted from the Response to Second Amended Complaint.

Plaintiff has requested that the pleadings in this matter be filed under seal pursuant to Rule 4.1(b), SCRPC. That motion is DENIED.

IT IS SO ORDERED.

July ~~25~~, 2011
Richland County



William H. Seals, Jr.
Judge for the 5th Judicial Circuit

Certificate of Service

I certify that I have served copies of the both the letters dated February 20, 2015 from James Spencer, *Pro Se* and Michael Sribnick including enclosures by hand delivery or U.S. Mail to the following on February 20, 2015:

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SC Court of Appeals

By:



James B. Spencer
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Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson

December 23, 2014

Via U.S. Mail Only

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Aynor, South Carolina 29511

Ricky Stephens
2455 Moores Mill Road
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Re: *John Rakowsky vs. Adriann Falgione, et al.*
Case No: 2008-CP-40-6656

Gentlemen and Mr. Spencer:

We received an original order from Judge Early late yesterday and filed it for entry of judgment with the clerk of court this morning. Enclosed for service upon you is a clocked-in copy of the final order concluding this action.

Best wishes for the holiday.

Sincerely yours,

Desa Ballard
desab@desaballard.com

Enclosure

cc: Honorable Doyet A. Early (Cover letter only via U.S. Mail)
John Rakowsky, Esquire (via Email)