

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No: 2014-002029

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge Doyet A. Early, III, Circuit Court Judge

Case No. 2008-CP-40-6656

John R. Rakowsky, Respondent

v.

Irene Santacroce, Appellant
Estate of Doris Holt, Appellant
Rodney Lail, Appellant

and

James B. Spencer, Appellant, *Pro Se*

**RESPONSE IN OPPOSITION TO MOTION
TO DISMISS THE APPEAL FILED ON
FEBRUARY 12, 2014**

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FEB 23 2015

SC Court of Appeals

INTRODUCTION

NOW COMES THE APPELLANTS, Irene Santacroce, Rodney Lail, and the Estate of Doris Holt through the undersigned counsel and James Spencer *Pro Se* who will first submit pertinent facts in opposition to Ms. Ballard's Motion to Dismiss the appeal filed on February 3, 2013, she filed with this Court on February 12, 2015. The appeal is in regards to the terminal Order issued by Judge Early on December 23, 2014.

The Factual Background, the General Overview and Discussion of this action is set forth in Appellants Opposition to the Appellees Motion to Dismiss the September 19, 2014, appeal filed contemporaneously with this Motion in Opposition to the Motion to Dismiss the February 3, 2015 Appeal.

ARGUMENT AND LEGAL BASIS

Ms. Ballard's motion to dismiss the February 3, 2015 appeal was filed on February 12, 2015 staying the deadline issued to resolve any deficiencies as set forth in the February 10, 2015 correspondence from the Clerk of Court to perfect the appeal. Subsequently, the Orders being appealed by both the represented Appellants and the *Pro Se* Appellant have been filed with the Clerk of Court on February 20, 2015 and served on all parties on that same date. Further, on February 10, 2015, the Clerk of Court notified all parties the multiple notices of Appeal of this case will be consolidated for consideration. With the consolidation of all Appeal, the fees

already submitted cover the filing fee requested of \$100.00. However, in an abundance of caution, the Appellants are submitting simultaneously with this return, another \$100.00. The represented Appellants and *Pro Se* Appellant request that any overages of filing fees be applied to motion fees that may be incurred by the Appellants in the Future.

Response regarding “Sribnick’s Failure to Serve Notice of Appeal”

First, Ms. Ballard raises the issue of her not being served. Her own exhibit H shows she was served a motion for appeal that applied to both the represented and *pro se* party. Furthermore, she has again been served on February 20, 2015, in accordance with the Clerk of Court’s letter of February 10, 2015. Therefore, this issue is moot.

Response regarding “Sribnick’s Failure File with the Circuit Court”

Ms. Ballard raises once again raises an issue of service. In an abundance of caution on February 20, 2015, service was again made to the Circuit Court. This is the second time service has been made. In either event, this basis for dismissal is also moot, as it has now been double perfected.

False Statement in Notice of Appeal

The represented Appellants and the *Pro Se* Appellant all stand by this statement and will present evidence to the court in the formal brief. This is inappropriate to argue at this point of time, as notice of appeal does not warrant

consideration in that regard of the issues that will be raised in the appeal.

CONCLUSION

The Court has merged the appeals filed on September 19, 2014 and February 3, 2015. Subsequently, any defect has been addressed in a timely manner.

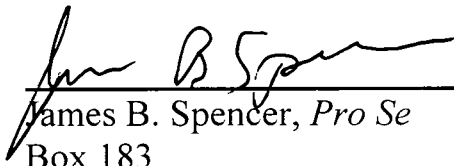
THEREFORE, since the Appeal filed, September 19, 2014, which was interlocutory was merged by the Court into the Appeal of the terminal Order filed on February 3, 2015, and for other reasons stated herein, this Motion to Dismiss, taken in the best light is moot and furthermore is baseless. The Appellants, pray the Appellees Motion to Dismiss be dismissed forthwith for the reasons stated herein.

This February 23, 2015,

By:

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on February 23, 2015, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail or by courier.

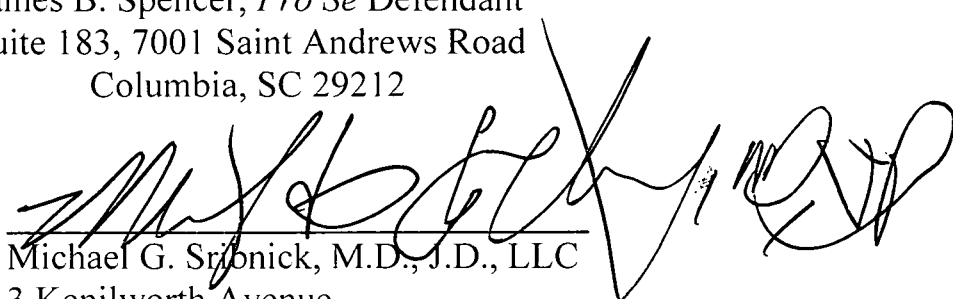
Documents Served: **RESPONSE IN OPPOSITION TO MOTION
TO DISMISS THE APPEAL FILED ON
February 23, 2015**

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