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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr. Circuit Court Judge

CASE No.: 2012-CP-32-3428

APPELLATE CASE No.: 2014-000091

John R. Rakowsky, Respondent
Adrian Falgione, Respondent

v.

James Spencer, *Pro Se*, Appellant

INITIAL INFORMAL BRIEF OF *PRO SE* APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. THE JUDGE ERRED IN OVERRULING STANDING ORDERS BY A JUDGE ON THE SAME LEVEL; THIS INCLUDED THE ORDER THAT THE PLAINTIFFS BE ALLOWED TO CONDUCT DISCOVERY IN THE PROCEEDING AND THAT THE DEFENDANT RETURN THE REMAINING LITIGATION FUNDS TO ENABLE THE *PRO SE* PLAINTIFF TO HIRE AN EXPERT WITNESS AND AN ATTORNEY PRIOR TO ANY HEARINGS BEING HELD ON DEFENDANTS' MOTIONS TO DISMISS. JUDGE ADDY, NOT COMPLYING WITH THE STANDING ORDERS OF JUDGE BARBER, CLEARLY PREJUDICED THE CASE AGAINST THE *PRO SE* LITIGANT.

II. THE JUDGE ERRED IN DISMISSING THE CLAIM OF LEGAL MALPRACTICE AGAINST DEFENDANTS BASED ON THE LACK OF AN EXPERT WITNESS AS THIS REVERSED AN EARLIER RULING BY A JUDGE ON THE SAME LEVEL AND VIOLATED SOUTH CAROLINA LAW SINCE THIS CASE DOES NOT REQUIRE AN EXPERT WITNESS.

III. THE JUDGE ERRED BY DISMISSING ALL OTHER PENDING MOTIONS WITHOUT REVIEW WHEN THESE MOTIONS CLEARLY SHOULD HAVE BEEN HEARD BEFORE THE DEFENDANTS' MOTIONS TO DISMISS THE LEGAL MALPRACTICE CAUSE OF ACTION UNDER PRIOR COURT ORDER. THIS RESULTED IN JUDGE ADDY NOT REVIEWING PENDING MOTIONS INCLUDING MOTIONS FOR DISCOVERY THAT WOULD HAVE NEGATED ANY MERITS FOR DISMISSING THE LEGAL MALPRACTICE CAUSE OF ACTION.

IV. THE JUDGE ERRED IN ALLOWING THE STATUTE OF LIMITATIONS TO BE USED TO PROTECT THE DEFENDANTS WHEN FRAUD ON THE COURT INVOLVING THE DEFENDANTS STAYED THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.

V. THE JUDGE ERRED BY REVIEWING ONLY THE LEGAL MALPRACTICE CLAIM AND FAILED BOTH TO REVIEW AND ADDRESS THE INDEPENDENT CLAIMS OF BREACH OF FIDUCIARY DUTY AND THE CLAIM FOR BREACH OF CONTRACT.

VI. THE JUDGE ERRED IN NOT DISMISSING THE UNREPRESENTED AND ABSENT PLAINTIFF, SOUTHERN HOLDINGS, INC., FROM BEING A PARTY IN THE LAWSUIT AS IT WAS EFFECTIVELY BEING TRIED *IN ABSENTIA* AND IN VIOLATION OF SOUTH CAROLINA LAW.

VII. THE JUDGE ERRED IN NOT DISMISSING THE UNREPRESENTED AND ABSENT PLAINTIFF, THE ESTATE OF DORIS HOLT, FROM BEING A PARTY IN THE LAWSUIT AS IT WAS EFFECTIVELY BEING TRIED *IN ABSENTIA* AND IN VIOLATION OF SOUTH CAROLINA LAW.

VIII. THE JUDGE ERRED IN ALLOWING AMANDA DUDGEON AND HER LAW FIRM TO REPRESENT DEFENDANT RAKOWSKY BASED ON HER ACTIVE PARTICIPATION IN CONCEALING INFORMATION DOCUMENTING RAKOWSKY'S FRAUD ON THE COURT IN THE UNDERLYING CASE, AND HIS BREACH OF FIDUCIARY DUTY AND HIS BREACH OF CONTRACT.

STATEMENT OF THE CASE

This appeal is on underlying actions for breach of contract, breach of fiduciary duty and legal malpractice filed on August 15, 2011 ("*August 2011 case*"). Defendants in this action are John R. Rakowsky, Attorney at Law, ("Rakowsky") and Adrian L. Falgione, Attorney at Law, individually and doing business as The Law Offices of Adrian Falgione, LLC, ("Falgione"). The complaint and summons were served on both Defendants on September 15, 2011. Rakowsky responded by filing a motion to dismiss on November 2, 2011. Falgione responded by filing a motion to dismiss on November 4, 2011.

Rakowsky had previously filed an Interpleader action on September 14, 2008, Case No. 2008-CP-40-6656, that was still pending before the same Richland County Circuit Court involving the same parties. That lawsuit involved remaining litigation funds that were advanced to Rakowsky for the personal use of Plaintiff Spencer and the litigation of the various lawsuits by *Pro Se* litigant Spencer. Rakowsky knew that the individual *Pro Se* litigants were both indigent and *one hundred percent medically disabled.*[1] By Rakowsky withholding all the remaining litigation funds, the indigent *Pro Se* litigants were forced to litigate both actions without counsel.

The Honorable James R. Barber III, Chief Administrative Judge, due to the

[1] The *Pro Se* Plaintiffs' disabilities were the direct result of the physical battery by the Defendants, a cause of action and a basis for damages in the underlying lawsuit for which Rakowsky served as Plaintiffs' counsel, South Carolina Federal District Court Case No. 4:02-CV-01859-RBH.

common parties in both the *August 2011 case* and Interpleader case and the emanation of both cases from South Carolina Federal District Court Case No. 4:02-CV-01859-RBH, held a hearing on both cases simultaneously on May 7, 2012.

Judge Barber at the hearing made several rulings pertaining to the *August 2011 case* including the issuance of a scheduling Order. These rulings included, but were not limited to, the following:

A. Judge Barber ordered that the interpleader case was to be litigated first so the remaining litigation funds could be turned over to the *Pro Se* litigants. Judge Barber stated he would then disperse the funds to the indigent *Pro Se* litigants so they could hire a lawyer to litigate the *August 2011 case* action on their behalf.

   (ROA[2], May 7, 2012 Hearing Transcript; Tr. P.32, lines 7-25, P. 34, lines 1-19, P. 48, lines 2-10, P. 9, lines 20-25, P. 10, lines 1-25, P. 11, 1-6, P. 38, lines 3-25, P.39, lines 1-25, P. 40, lines 1-11.)

B. Judge Barber ruled that the Plaintiffs would be given the time to hire an expert witness, if one was needed, and hire a lawyer before there would be a hearing on the Defendants' motion to dismiss regarding an expert witness. In that regard, Judge Barber ruled that he was extending the time allowed to produce

[2] Each ROA references specific transcript in the informal Brief Exhibit Appendix that is part of the Record on Appeal.

an expert report to the Plaintiffs until after Plaintiffs secured a lawyer and their lawyer determined if an expert was needed in the *August 2011 case,* before the motion to dismiss regarding the issue on the lack of an expert report was heard. ***(ROA, May 7, 2012 Hearing Transcript; Tr. P. 51, lines 24-25, Tr. P. 52, lines 1-4, lines 13-18.)***

C. Judge Barber ruled that discovery was to be ongoing in the *August 2011 case* as confirmed by Defendants' counsels on the Court record. Judge Barber ruled that discovery in the *August 2011 case* would continue to be ongoing for at least the next six months from the date of the May 7, 2012 until the hearing and that he was going to get the cases tried by October 2012. ***(ROA, May 7, 2012 Hearing Transcript; Tr. P., 41, Line 25, P., 42, Line 1 & 5-7 &10-22, P. 56, lines 16-25, Tr. P. 57, lines 1-4.)***

D. Judge Barber ruled the first hearing to be held in the *August 2011 case* would be on the *Pro Se* Plaintiffs' motion regarding the disqualification of Rakowsky's counsel (Amanda Dudgeon and her law firm). Judge Barber ruled that this would be the only issue heard during the hearing due to health concerns regarding the capability and capacity of the 100% disabled *Pro Se* litigant Spencer. He also ruled on standards to be met during the ongoing discovery due to Spencer's health. ***(ROA, May 7, 2012 Hearing Transcript; Tr. P. 40, lines 13-25, Tr. P. 41, lines 1-9, Tr. P. 57, lines 11-***

25, Tr. P. 58, lines 1-2.)

E. Judge Barber ruled that a hearing in the *August 2011 case* regarding the Defendants' motion to dismiss due to lack of an expert witness will be deferred until the *Pro Se* Plaintiffs can get an attorney [after the remaining litigation money was returned by Rakowsky in the interpleader case]. ***(ROA, May 7, 2012 Hearing Transcript; Tr. P. 52, lines 13-18.)***

F. When *Pro Se* Plaintiffs raised the issue of the tardiness of a response from the Defendants regarding a default judgment, Judge Barber stated that the *August 2011* case would not be dismissed on any technicality. Judge Barber ruled that the *August 2011 case* would be heard before a jury on the merits of the claims and no technicality on either side would be allowed to dismiss this case. ***(ROA, May 7, 2012 Hearing Transcript; Tr. P. 45, lines 22-25, P. 46, lines 1-12.)***

G. Judge Barber ruled that both cases were to be completed by the end of 2012, as he was Chief Judge he would make an exception and personally handle the nonjury interpleader action so "they" [the *Pro Se* litigants] can get their money back to hire a lawyer. We can conclude this thing, "both cases," this year [2012]. ***(ROA, May 7, 2012 Hearing Transcript; P. 48, lines 2-10.)***

H. Judge Barber instructed the Defendant's counsels to draft the Orders he issued during the hearing and for Defendants to "run the draft by" the *Pro Se* Plaintiffs

for their input prior to submission, Defendants' counsels stated they would comply on the record. ***(ROA, May 7, 2012 Hearing Transcript; P. 38, lines 3-25, P. 39, lines 1-25, P. 40, lines, 1-12, P. 61, lines 7-18, P. 67, lines 2-6.)***

I. However, subsequent to the hearing the Defendants' counsels in both cases refused to draft the Orders issued by Judge Barber.

J. Defendants' counsels, in the alternative, filed a motion to change the venue of the *August 2011 case*. By changing, the venue Judge Barber would no longer be the Chief Administrative Judge on the *August 2011 case*. The motion was to change venue from Richland County to Lexington County, irrespective of the disability of the individual *Pro Se* litigants, which clearly restricted their ability to travel. The motion claimed the Defendants had a right to have the case heard in the County in which they resided for their convenience. The *Pro Se* Plaintiffs responded that because Rakowsky was the Chief City Judge in Lexington he would have an unfair advantage with a Lexington venue.

K. *Pro Se* Plaintiff Spencer, a non-attorney, attempted to amend the complaint in the *August 2011 case*, as he was not allowed under South Carolina law to represent a former corporate entity, Southern Holdings, nor the entity of the estate of Doris Holt. ***See Informal Brief Appendix, Exhibit 1.***

L. The *Pro Se* litigant filed an expedited [Emergency] motion on July 30, 2012,

to stay the hearing scheduled on August 1, 2012 until Rakowsky complied with the standing Orders by Judge Barber issued on May 7, 2012. That included the order that prior to the next hearing in the *August 2011 case* the remaining litigation fees to enable the indigent and disabled *Pro Se* litigants to hire a legal counsel were to be released by Rakowsky. ***See Informal Brief Appendix, Exhibit 2.***

M. Contrary to Judge Barber's standing Order, a hearing was held before Judge Goldsmith, from the 6th Judicial Circuit ***(emphasis added)***, on August 1, 2012 concerning a change of venue for the *August 2011 case.* This series of events regarding the change of venue occurred while Judge Barber was on a prolonged vacation. Judge Goldsmith opened the hearing admitting he had not seen the case file. ***See Informal Brief Appendix, Exhibit 3.***

N. After the hearing on August 1, 2012, Judge Goldsmith granted the Defendants' motion request to change venue for the *August 2011 case* to Lexington County, South Carolina. ***See Informal Brief Appendix, Exhibit 4.***

O. Mr. Falgione's Counsel, Ben Bruner, in an amazing display of efficiency, almost as if he knew the outcome before the hearing, mailed the proposed order for a change of venue to the *Pro Se* litigant on that same date August 1, 2012. ***See Informal Brief Appendix, Exhibit 5.***

P. *Pro Se* Plaintiffs filed a timely 59(e) motion for reconsideration on August 30,

2012. ***See Informal Brief Exhibit Appendix, Exhibit 3.***

Q. *Pro Se* Plaintiffs requested Judge Goldsmith to wait for the transcript of the hearing on May 7, 2012, documenting the standing Orders by Judge Barber before he made his ruling on the 59(e).

R. Ms. Weissenstein and her law firm, Ballard, Watson, Weissenstein, Attorneys at Law, became counsels of record for both Defendants' without giving proper notice in the *August 2011 case* at some unknown date after the venue was changed to Lexington County, South Carolina. ***See Informal Brief Appendix, Exhibit 6, P.3, Section entitled attorneys for the defendants and compare to Exhibit 4, P.2, Section entitled attorneys for defendants.***

S. The legal teams for Rakowsky and Falgione from both the Interpleader case and the *August 11 case* had been merged and allowed the coordination of the efforts for their clients in both cases, according to records from the Clerk of Court of Lexington County once the venue was moved to Lexington County, South Carolina. The *Pro Se* Appellant only became aware of this merger and coordination of actions (e.g. refusal to release the uncontested litigation funds in the interpleader case despite the standing order of Judge Barber). This economically precluded the individual *Pro Se* litigants from obtaining counsel in the *August 11 case* or non-actions in both cases when Judge Addy's Order was issued on August 19, 2013.

T. Despite Judge Barber's standing Orders regarding discovery being ongoing, Rakowsky and Falgione refused to cooperate. The individual *Pro Se* litigants on December 27, 2012 notified the court that the Defendants were not complying with the standing orders of Judge Barber.

U. Despite the standing orders issued by Judge Barber regarding the release of the remaining litigation funds to the *Pro Se* Appellants and the fact that no hearing was to be held until the Plaintiff/Appellants obtained counsel with these litigation funds, a motions hearing was noticed for the *August 2011 case* received by the *Pro Se* Plaintiff on June 3, 2013 and held on June 5, 2013, in Laurens County, South Carolina with the Honorable Judge Addy presiding.

V. Realizing this case was moving forward despite the standing orders of Judge Barber, *Pro Se* litigant James Spencer, filed an expedited [Emergency] motion to amend the complaint on June 3, 2013, to remove entities, Southern Holdings, Inc. and the Estate of Doris Holt since he could not represent them as a layperson under South Carolina law. The *Pro Se* Plaintiff also wanted to incorporate previously concealed information by the Defendants that had recently been discovered.

W. Judge Addy, held the hearing and documented on the court record at the beginning of the June 5, 2013 hearing he virtually had no idea what the background of this case was nor what the issues were that he was supposed to

deal with as he asked *"what [issues] are we dealing with"* and stated *"I know this is a -- there's an underlying medical malpractice action which apparently had been settled --- (Off the record briefly) --- legal malpractice. Okay. I'm sorry. Sorry."* --- He revealed on the court record that his knowledge of the case came from, "Judge Griffith's clerk did prepare a brief overview." ***(ROA, June 5, 2013 Hearing Transcript; P. 7, lines 5-17.)*** The *Pro Se* Plaintiffs requested a copy of the "overview," they were promised a copy but they never received one.

The motions hearing before Judge Addy on June 5, 2013 was on the Plaintiffs' motion to disqualify, due to a conflict of interest, Rakowsky's counsel, Amanda Dudgeon, and her firm from representing Rakowsky. The hearing, in direct conflict Judge Barber's standing orders, also was on the motions filed by the Defendants to dismiss the legal malpractice cause of action against Rakowsky and Falgione. Judge Addy ruled against the motion to disqualify Amanda Dudgeon and her law firm at the hearing on June 5, 2013. Reversing his earlier position during the hearing that he was to deal with the outstanding motions, in closing the hearing, he admitted he was unprepared for the hearing. Judge Addy stated, if he decided not to dismiss the legal malpractice cause of action, "we will reconvene, and address those, since those relate to the actual merits and I would need to wade in a little bit deeper on this case factually in order to be able to rule intelligently as to those

matters." ***(ROA, June 5, 2013 Hearing Transcript; P. 64, lines 16-19.)*** Failure to review the outstanding motions in the manner ruled by Judge Barber clearly prejudiced the case against the *Pro Se* Plaintiffs. The discovery denied them and the medical considerations for the holding of hearings regarding the disabled and indigent *Pro Se* Plaintiffs both took the *Pro Se* Plaintiff by surprise and the *Pro Se* Plaintiff was unprepared to litigate once again previously litigated and ruled upon matters.

Again, due to the continuing failure, by Judge Addy, to comply with standing Orders by Judge Barber, *Pro Se* Plaintiff Spencer moved for a mistrial on June 5, 2013. Judge Addy immediately denied the motion during the hearing. ***(ROA, June 5, 2013 Hearing Transcript; P. 65, lines, 23-25, P.66, lines, 1-13.)***

Judge Addy ruled on August 19, 2013, in favor of the two motions from Rakowsky and Falgione respectfully to dismiss the legal malpractice cause of action against Rakowsky and Falgione. Timely post-trial motions were filed and denied by Judge Addy's order dated December 4, 2013. This appeal followed.

STATEMENT OF THE FACTS

Pro Se Appellant James Spencer with six other Plaintiffs with various causes of action and claims filed a lawsuit on May 29, 2002 in South Carolina Federal District Court Case No. 4:02-CV-01859-RBH. Defendant Rakowsky made notice

of appearance as counsel for each of the seven independent Plaintiffs on December 3, 2002, under seven representation contracts each requiring the written approval of each of the seven Plaintiffs before any settlement could be agreed to by any Plaintiffs' counsel. Rakowsky hired Ron Serota, Esquire, from Nevada, who made his notice of appearance as counsel on July 7, 2005[3] and Defendant Falgione[4] a friend of Rakowsky from Lexington, SC. Falgione made his notice of appearance as counsel on November 16, 2006. Like Rakowsky, both Falgione and Ron Serota also represented each of the seven independent Plaintiffs under seven individual representation agreements. All three were required to abide by South Carolina Rule 407 1.8 (g) and 83.1.08 of the South Carolina local federal rules of civil procedure.[5]

On March 26, 2007, Rakowsky and Falgione had disagreements with Co-counsel Ron Serota that came to a head with the filing of Dkt. # 367 a motion asking Ron Serota be dismissed from the case and gagged. On April 30, 2007, the Court ordered in Dkt. # 410 that Ron Serota turn over legal documents and his work papers on the case to Rakowsky as Rakowsky and Falgione had forced Ron Serota off the Plaintiffs' legal team. This occurred eight days before the May 8, 2007 evidentiary

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[3] Replaced Plaintiffs' Counsel Charles F Cooper, who died during the pendency of the case

[4] Replaced Plaintiffs' Counsel James Cooper, who withdrew because of illness after the death of his brother Charles Cooper

[5] Under Rule 407 1.8(g) and South Carolina Local Federal Rule 83.1.08, when the same counsel or counsels represent more than one party, an informed agreement of written consent signed by each represented party is required, stating the terms of the settlement and the distribution of the settlement when an aggregate settlement is involved before a settlement can be agreed to

hearing and nine days before the case was scheduled to go to trial before a jury on May 9, 2007.

It should be noted that after May 3, 2007, the record is disputed among the Officers of the Court including the presiding Judge R. Bryan Harwell. The discovery ordered by Judge Barber **(emphasis added)** *in both the relatèd interpleader case and the August 2011 case, has been one sided as both Rakowsky and Falgione have refused to cooperate in any manner. Motions to compel have been filed but have never been addressed by any judge. Furthermore, the presiding Judge in the Federal District Court, Judge Harwell has refused all motions by the Plaintiffs in that case to clarify the record (July 12, 2007 (Dkt. # 519), January 30, 2008 (Dkt. # 582), August 5, 2008 (Dkt. # 659), and September 19, 2008 (Dkt. # 719).*

On May 8, 2007, an evidentiary hearing was held before presiding Judge Harwell. The Plaintiffs were not allowed to attend. The court reporter, Vince Rolland, documented it lasted for forty-eight minutes before it was adjourned to Judge's chambers without the presence of the court reporter. There it lasted for a period of sixty-seven minutes. At that point, according to Vince Rolland, a woman came out of the judge's chambers and announced in the courtroom that "everything was over," Mr. Rolland then turned off his camera/recorder. **(Dkt # 639-5)** Only a few pieces of evidence on medical damage expenses was discussed on the record representing a few thousand dollars as possibly being untimely according to the

transcript. This was an insignificant amount of damages considering the damages were documented to be in excess of thirty six million dollars. Further, the damages discussed as possibly being denied by the court affected only a couple of the Plaintiffs. **(Dkt # 481)**

According to officers of the court Rakowsky, Falgione and Andrew Lindemann ("Lindemann") (lead counsel for the Government Defendants), all the evidence was reviewed, and the vast majority of the Plaintiffs' evidence on conspiracy and the associated damages were dismissed by Judge Harwell while all of the Defendants' evidence was left intact. These three lawyers also claimed that Judge Harwell ordered the unrepresented and absent Defendants Ancil Garvin and David Smith dismissed from the case as part of a settlement, he imposed. **(Dkt # 492) (Dkt #486)** Judge Harwell fifteen months later disagreed with both these claims by the three officers of the court on August 13, 2008. **(Dkt #668, P. 5, P.6)** Mr. Lindemann claimed the case was settled on May 9, 2007 along with Falgione and Judge Harwell. Rakowsky claimed in a sworn affidavit he put on the court record on May 16, 2014, in the interpleader case, that the settlement agreement was completed during the closed-door evidentiary hearing on **May 8, 2007.** ***See Informal Brief Exhibit Appendix, Exhibit 7, paragraph 11.***

Officer of the Court E. Glenn Elliott claimed the settlement terms were discussed on May 8, 2007 during the evidentiary hearing behind the closed doors

discussed on May 8, 2007 during the evidentiary hearing behind the closed doors **(Dkt #491).** Judge Harwell disagreed with that claiming there were only informal discussions regarding evidentiary matters in chambers between counsels on May 8, 2007. **(Dkt. # 668)** The Plaintiffs had made it clear to all their counsels that they were to be included in these meeting and that they were to be "on the record."

Plaintiffs filed documents with the court on June 1, 2007, on a *Pro Se* basis, within twenty-four hours after the May 8, 2007 and May 9, 2007 hearings transcripts were released, stating they did not give authority to settle the case to Rakowsky and Falgione. Rakowsky and Falgione claimed the entire situation was due to the mistakes made by former counsels Mr. Serota and Michael Goldberg who they were going to sue on behalf of the Plaintiffs (Dkt #486). The lay, indigent, and disabled Plaintiffs sought clarification from the court through a series of motions for clarification (July 12, 2007 (Dkt. # 519), January 30, 2008 (Dkt. # 582), August 5, 2008 (Dkt. # 659), and September 29, 2008 (Dkt. # 719)). All these motions for clarification went unanswered.

The motions of clarification sought the specifics of what happened at the evidentiary hearing and how the alleged settlement occurred. Judge Harwell ruled that it was in his sole discretion as to whether to hold or not hold a plenary hearing on whether or not there was a legal settlement authorized by the Plaintiffs and refused to answer motions to clarify what he stated he did not agree with in Dkt #510

were not in attendance at the May 8, 2007 hearing and two were absent on the May 9, 2007 hearing. The *Pro Se* Plaintiffs believed that Rakowsky and Falgione were being truthful that no agreement was final until a unanimous agreement was reached, put in writing, and executed by every Plaintiff individually and that Rakowsky and Falgione were being truthful about the results of the evidentiary hearing behind closed doors on May 8, 2007. It was not until the issuance of Dkt. # 668 on August 13, 2008, that it became apparent that the Federal District Judge had been covering up the truth about the dismissal of the unrepresented and absent Defendants being ordered on May 9, 2007. It was not until August 13, 2008, the Pro Se Plaintiffs found out that Judge Harwell had concealed the fact he knew that the evidence being considered for dismissal amounted to no more than a few thousand dollars instead of the over thirty million dollars of documented damages that were claimed by Rakowsky and Falgione. It was also at this point that the *Pro Se* Plaintiffs realized Rakowsky and Falgione had no intention of following through with a lawsuit for malpractice against Mr. Serota and Michael Goldberg who they claimed were responsible for the actions of Judge Harwell regarding the dismissal of the evidence and over thirty million dollars in monetary damages. Judge Harwell finally confirmed over fifteen months after the settlement was imposed either on May 8, 2007 or on May 9, 2007, depending on which story by which officer of the court one chooses to believe, that the statements made on the court record by Rakowsky,

Falgione and Lindemann were inconsistent with what the court put forth as the truth. As of August 13, 2007, what happened during the hearings on May 8, 2007 and May 9, 2007 is unclear, and all officers of the court present refuse to answer discovery questions and/or motions to clarify.

Furthermore, in order for the underlying case to have been properly settled the Defendants were required to abide by South Carolina Rule 407 1.8(g) and Rule 83.1.08 of the local federal rules of civil procedure, see footnote 4 herein. There was required to be by the above-cited rules a signed agreement of informed consent by each of the plaintiffs giving their consent to a joint settlement applicable to all of the diverse plaintiffs with diverse interests with an aggregate settlement. There never was such an agreement. Additionally, there was no substantive settlement agreement in a case involving in excess of thirty three million dollars in damages. The lack of these agreements is fatal to any alleged settlement.

The *Pro Se* Plaintiff has never been allowed to conduct the discovery ordered by Judge Barber in this case to determine why these required rules above were not followed by the Defendants. The *Pro Se* Plaintiff was never able to conduct discovery ordered by Judge Barber regarding any of the three separate claims in the complaint. The Plaintiffs were denied discovery on all matters including why Rakowsky provided the *Pro Se* Plaintiffs with his ECF federal passcodes and as Rakowsky dismissed lawyers from the case why he required the lay *Pro Se* Plaintiffs

to write pleadings and submit them to the Federal District Court with Rakowsky and Falgione's signatures. At the time, Rakowsky and Falgione claimed they needed their clients to do this so they could prepare for trial otherwise the case would be dismissed. However, the trial in federal court never occurred for reasons unknown by the *Pro Se* Plaintiff and the discovery ordered by Judge Barber, which would have provided the answers, was wrongfully shut down by Judge Addy. Judge Addy overruling Judge Barber's orders severely prejudiced this case against the *Pro Se* Plaintiff.

ARGUMENT

ISSUE ONE

I. THE JUDGE ERRED IN OVERRULING STANDING ORDERS BY A JUDGE ON THE SAME LEVEL. THIS INCLUDED THE ORDER THAT THE PLAINTIFFS BE ALLOWED TO CONDUCT DISCOVERY IN THE PROCEEDING AND THAT THE DEFENDANT RETURN THE REMAINING LITIGATION FUNDS TO ENABLE THE *PRO SE* PLAINTIFF TO HIRE AN EXPERT WITNESS AND AN ATTORNEY PRIOR TO ANY HEARINGS BEING HELD ON DEFENDANTS' MOTIONS TO DISMISS. JUDGE ADDY NOT COMPLYING WITH THE STANDING ORDERS OF JUDGE BARBER CLEARLY PREJUDICED THE CASE AGAINST THE *PRO SE* LITIGANT.

There is a "**a long-standing rule in this State that one judge of the same court cannot overrule another**." *Tisdale v. Amer. Life Ins. Co.* 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dankins v. Robbins,* 203 S.C. 199, 26 S.E. 2d 689 (1943)".

Judge Addy verified on the record that his only knowledge on this case came from materials sent to him described as "most of the materials which had been

provided to him [Judge Griffith]" who recused himself from this case due to a conflict of interest. ***(ROA, June 5, 2013 Hearing Transcript; P. 5, lines 1-9)***. The known materials provided to Judge Griffith were from Rakowsky's counsel Amanda Dudgeon, which she admitted on the court record she had provided to Judge Griffith ***(ROA, June 5, 2013 Hearing Transcript; Tr. P. 7, lines 10 - 25)***.

When Judge Addy opened the hearing, he stated he was operating under the understanding gained from an overview provided by Judge Griffith's clerk. Furthermore, which Judge Addy identified the action before him as from a "*medical malpractice action*" ***(emphasis added)*** ***(ROA, June 5, 2013 Hearing Transcript; P. 7, lines 5-9, P. 8, lines 1-25 and P. 9, lines 1-20)***.

The *Pro Se* Plaintiff has no idea what was in this overview and what information had been provided to Judge Addy. Judge Griffith recused himself and neither he nor his clerk ever heard any motions nor had access to the transcript of the May 7, 2012 hearing that contains the standing verbal orders of Judge Barber in this case. Judge Addy failed to incorporate the standing orders in his actions and decisions during the hearing and in his subsequent order. However, South Carolina law is quite clear and Judge Addy not being aware of the standing orders by not reviewing the complete case history does not preclude the applicability of the standing orders by the issuing judge. South Carolina law is quite clear on the

applicability of the Judge Barber's oral orders:

> "Furthermore, the fact that the order in the prior proceeding was never reduced to writing is not dispositive of the issue. An oral order compelling arbitration was issued by the court and is acknowledged in a letter by then-counsel for RDC...A judge may bind the parties with an oral order dictated into the record. Lane v. Williamson, 414 S.E.2d 177 (Ct. App. 1992). Once such an order is put into operation, absent a written order contradicting it, the court is bound by it."
>
> **Hilton Head Resort Four Seasons Ctr. Horizontal Property Regime Council of Co-Owners v. Resort Inv. Corp., 311 S.C. 394, 401 (S.C. Ct. App. 1993)**

Judge Barber ruled the parties were to continue discovery in this case **(See paragraph "C" herein above).** The Defendants refused to comply and the *Pro Se* Plaintiff filed a motion to compel that was pending. Judge Barber ruled that the remaining litigation funds were to be turned over to the *Pro Se* litigants prior to a hearing on the motions to dismiss so they could hire a lawyer and an expert to represent them **(See paragraphs "A" & "G" herein above)**.

ISSUE TWO

II. THE JUDGE ERRED IN DISMISSING THE CLAIM OF LEGAL MALPRACTICE AGAINST DEFENDANTS BASED ON THE LACK OF AN EXPERT WITNESS AS THIS REVERSED AN EARLIER RULING BY A JUDGE ON THE SAME LEVEL AND VIOLATED SOUTH CAROLINA LAW SINCE THIS CASE DOES NOT REQUIRE AN EXPERT WITNESS.

Judge Barber ruled in open court that no expert witness was required in this proceeding by the *Pro Se* litigants until after the remaining litigation funds were

turned over to the disabled *Pro Se* litigants by Rakowsky. Judge Barber ruled that any hearing on the motions to dismiss for the lack of an expert witness would only occur once Rakowsky returned the unused litigation funds so the *Pro Se* Plaintiff could economically hire a lawyer and an expert to represent them **(See paragraphs "A" & "G" herein above)**. Judge Addy not knowing and/or not following the standing orders of Judge Barber clearly disadvantaged the *Pro Se* Plaintiffs when he prematurely had a hearing and made a ruling on August 1, 2013, without complying with Judge Barber's standing Order for Rakowsky to return the residual litigation funds. Without these funds, the indigent and disabled *Pro Se* litigant was wrongfully prevented from hiring a counsel and an expert before a hearing was to occur on the motions to dismiss for lack of an expert witness.

Further, the *Pro Se* Plaintiff contends that Rakowsky defacto admitted he committed legal malpractice when he filed his interpleader action. The law in this jurisdiction is quite clear. When a lawyer admits to malpractice, an expert witness is not required as this admission would be a common knowledge exemption. Judge Barber's orders wrongfully being overruled by Judge Addy prevented discovery in this matter. Rakowsky claimed he did not know whom the litigation funds belonged to among the Plaintiffs as a basis for the interpleader action, but he is required to keep records of such under the South Carolina Rule 417 and under South Carolina Rule 1.15, safekeeping of property. By filing the interpleader case regarding the

residual litigation funds, he is admitting to the failure to maintain the proper records. If he had kept the proper records he would be aware of whom the funds belonged. The attorney admission in this regard qualifies for the common knowledge exception under SC Code Ann 15-36-100.

Furthermore, Judge Harwell stated in an Order on August 13, 2008, DKT. #668 that he did not review the evidence Rakowsky and Falgione claimed Judge Harwell ruled against in Dkt.#486. Clearly this misstatement or untruth is black and white and would fall under common knowledge exclusion under SC Code Ann 15-36-100 (c)(2). The South Carolina Supreme Court ruled:

> "Expert testimony is not necessary to prove negligence or causation so long as lay persons possess the knowledge and skill to determine the matter at issue. Expert testimony is not required to prove proximate cause if the common knowledge or Experience of a layperson is extensive enough."
>
> **O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340 (S.C. Ct. App. 2006)**

Once again Judge Addy not knowing and/or not following the standing orders of Judge Barber clearly disadvantaged the *Pro Se* Plaintiffs when he prematurely ruled on the Legal Malpractice cause of action. Judge Addy did this without complying with Judge Barber's standing Order for the Defendants to return the residual litigation funds so they could hire a qualified attorney and expert, if one was necessary, before a hearing was to be held on the motion to dismiss the legal malpractice cause of action.

ISSUE THREE

III. THE JUDGE ERRED BY DISMISSING ALL OTHER PENDING MOTIONS WITHOUT REVIEW WHEN THESE MOTIONS CLEARLY SHOULD HAVE BEEN HEARD BEFORE THE DEFENDANTS MOTIONS TO DISMISS THE LEGAL MALPRACTICE CAUSE OF ACTION UNDER PRIOR COURT ORDER. THIS RESULTED IN JUDGE ADDY NOT REVIEWING MOTIONS INCLUDING DISCOVERY THAT WOULD HAVE NEGATED THE MERITS OF DISMISSING THE LEGAL MALPRACTICE CAUSE OF ACTION.

Judge Addy failed to address the pending motions that should have been heard prior to the motion to dismiss as they pertained to Judge Barber's standing orders and the Defendants refusal to comply with the discovery including depositions ordered by Judge Barber. **See paragraph "C" above herein.** These pending motions included Falgione's Motion to quash his subpoena for deposition, Rakowsky's motion to quash his subpoena for deposition, the *Pro Se* Plaintiffs motion to compel discovery, the *Pro Se* Plaintiffs Expedited [Emergency] motion to stay the hearing before Judge Addy on any motion to dismiss until Defendants complied with Judge Barber's orders regarding discovery, and the turning over of funds to acquire legal counsel and expert witness and the *Pro Se* Plaintiffs Motion to Amend Complaint to bring it into proper form.

ISSUE FOUR

IV. THE JUDGE ERRED IN ALLOWING THE STATUTE OF LIMITATIONS TO BE USED TO PROTECT THE DEFENDANTS WHEN FRAUD ON THE COURT INVOLVING THE DEFENDANTS STAYED THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.

In this case, the plaintiffs lacked knowledge of the facts of the truth in question and the presiding judge in the underlying case did not dispute the evidentiary rulings reported by the defendants, allegedly made behind closed chambers doors, until August 13, 2008.

Prior to August 13, 2008, the defendants claimed their withdrawal from the case would not affect them going after the lawyers responsible for the legal malpractice, actually referred to by the judge in Order No. 510 and that they were bound by their prior statement of commitment to remedy the legal malpractice acts, through a malpractice lawsuit they would bring against the guilty attorneys.[6]

Defendants never waived their commitment, both oral and in writing[7] and the plaintiffs were assured they could rely on the defendants' commitment to pursue the guilty attorneys', separate from the defendants' statements withdrawing from the case, until after the August 13, 2008, confirmation by presiding judge, in the underlying case.

South Carolina has laws in place to make sure such legal inequities are remedied through the law of equitable estoppel.

> "The doctrine of equitable estoppel applies when the statute of limitations has run and the defendant asserts the running of the statute of limitations as a defense. The defendant is estopped from benefitting from the statute of limitations as a defense where the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. This conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. The party asserting equitable estoppel bears the burden of establishing all the elements. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and

[6] See May 17, 2007 **(Dkt. # 486)**, the letter by plaintiff John Rakowsky, which was entered in Federal District Court without dispute of its authenticity, notwithstanding Ms. Dudgeon's knowingly baseless allegations before Judge Addy of its lack of authenticity during the hearing on June 5, 2013 ***(ROA, June 5, 2013 Hearing Transcript; Tr. P. 41, lines 11-15.)***

[7] Dkt. #486

> means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped. The party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts." Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626 (S.C. Ct. App. 2009)

Further,

> "Equitable estoppel operates to deny a party the right to plead or prove an otherwise important fact. The elements of estoppel as to the party estopped are (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. As to the party claiming estoppel, the elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; and (2) reliance upon the conduct of the party estopped." Maher v. Tietex Corp., 331 S.C. 371 (S.C. Ct. App. 1998)

Finally, the South Carolina Supreme Court decisions regarding the application of the doctrine of equitable estoppel has determined its further applicability to this case, regarding the tolling of the statute of limitations. On July 29, 2009, plaintiff Doris Holt, Jim Spencer's mother, was taken into so called "protective custody" by the South Carolina Department of Social Services (DSS). The agency initially alleged physical abuse by Spencer against his mother he had taken care of for thirty years and held her at an unknown location. Spencer legally fought to gain Intervenor status and the agency admitted on the court record, the physical abuse allegations against Spencer were found to be baseless.

Spencer was warned by Princess Hodges of DSS and other unidentified individuals, as he reported to the Columbia police department at the time, that he would never see his mother again if he brought any lawsuits against Judge John

Rakowsky, et al., as that would prove to DSS that Spencer did not have his mother's best interest in mind. As litigation to legally gain her release was ongoing, Doris Holt continued to be held against her will, until her death from starvation and malnutrition on February 19, 2011.

From July 29, 2009, to February 19, 2011, Doris Holt was not allowed to sign papers of any nature and the majority of the time she was held in isolation at unknown locations. Governor Sanford's office intervened and helped Spencer find his mother who had been wrongfully hidden from him for close to two years. However, as he continued to fight in the courts to gain her freedom DSS and third parties still prohibited his mother from signing any documents to the day of her death on February 19, 2011. Under these exigencies, both plaintiffs Spencer and Doris Holt were physically prevented through real and acted upon threats from filing a lawsuit in this case. Therefore, the statute of limitations should be tolled. The Supreme Court of South Carolina has made the law clear on this matter,

> "The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other."
>
> <u>Hooper v. Ebenezer Senior Servs. & Rehab. Ctr</u>., 2009 S.C. LEXIS 559 (S.C. 2009)

Further the South Carolina Court of Appeals found,

> "It has been observed that equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control. The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances,

to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances."

Magnolia North Prop. Owners' Ass'n v. Heritage Cmtys., Inc., 397 S.C. 348 (S.C. Ct. App. 2012)

Finally, the *Pro Se* litigants believed the Defendants assertions that unless they were polled by the court or executed a settlement agreement which was applicable in this specific case under South Carolina Federal Local Rule 83.1.08 and Rule 407 1.8 (g) the Judge Harwell could not legally impose a settlement. The Plaintiffs had no idea that the judge would refuse to hold the required plenary hearing and had no idea the evidence was not reviewed in camera as maintained by the Defendants and as confirmed by the presiding judge through his actions until August 13, 2008 and the issuance of Dkt # 668. At that date the Plaintiffs finally knew the federal judge had been covering up for Defendants regarding being untruthful at what happened during the evidentiary hearing behind closed doors. The *Pro Se* Plaintiffs believed in the system and had no reason to doubt the actions of the presiding judge at that point, until he finally revealed the truth on August 13, 2008. This is the actual date the statute of limitations started running. The average person would not believe a Federal District Judge would take such obviously bias actions by keeping the truth covered up and, therefore, there was no basis for the Plaintiffs to file a malpractice action until the judge revealed the truth on August 13, 2008. The *Pro Se* Plaintiffs had no basis to sue when the law under Rule 407 1.8(g) and

Federal Local Rule 83.1.08 there could not have been a settlement, as there was no executed informed consent agreement.

ISSUE FIVE

V. THE JUDGE ERRED BY REVIEWING ONLY THE LEGAL MALPRACTICE CLAIM AND FAILED BOTH TO REVIEW AND ADDRESS THE INDEPENDENT CLAIMS OF BREACH OF FIDUCIARY DUTY AND THE CLAIM FOR BREACH OF CONTRACT.

Judge Addy failed to address the separate issues regarding breach of fiduciary duty and breach of contract in the complaint. ***(See Complaint, Exhibit 8 in the Informal Brief Appendix.)*** There is simply no mention of either of these claims during the hearing on June 5, 2013, nor in the judge's order issued on August 19, 2013. South Carolina law is clear on this matter in these particular circumstances.

The South Carolina Supreme Court has ruled that there has to be a basis to dismiss a cause of action:

> "Under S.C. R. Civ. P. 12(b)(6), a party may move to dismiss a complaint against him based on a failure to state facts sufficient to constitute a cause of action. In considering a motion to dismiss under Rule 12(b)(6), the trial court must base its ruling solely on the allegations set forth in the complaint. Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief."
>
> **Cole Vision Corp. v. Hobbs, 394 S.C. 144 (S.C. 2011)**

Further:

"RFT argues for the first time on appeal that one difference between its two claims was that malpractice normally requires expert testimony on the attorney's standard of care and breach, while the breach of fiduciary duty claim requires no expert testimony, so the jury could have not believed RFT's experts and still found for it on a breach of fiduciary duty claim."

RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322, 337 (S.C. 2012)

ISSUE SIX

VI. THE JUDGE ERRED IN NOT DISMISSING THE UNREPRESENTED AND ABSENT PLAINTIFF, SOUTHERN HOLDINGS, INC., FROM BEING A PARTY IN THE LAWSUIT AS IT WAS EFFECTIVELY BEING TRIED *IN ABSENTIA* AND IN VIOLATION OF SOUTH CAROLINA LAW.

Judge Addy's refusal to remove Southern Holdings from the complaint as the *Pro Se* litigant was in violation of South Carolina law *S.C. Code Ann. § 40-5-310* (2001). The motion to amend the complaint to comply with the law was left pending by Judge Addy. The *Pro Se* litigant was not provided the funds necessary to hire an attorney, as Judge Barber ordered the Defendants to do. Therefore, Southern Holdings had to be removed as a party from the complaint. Judge Addy's refusal to review the pending motions allowed the wrongful and unlawful participation *in absentia* of the entity formerly known as Southern Holdings, Inc. as a party, in this case. However, South Carolina law is clear on this point:

"In *State v. Wells, 191 S.C. 468, 5 S.E.2d 181 (1939)*, this Court held that a corporation must act through licensed attorneys in legal matters. That holding was modified in *In re Unauthorized Practice of Law, 309 S.C. 304, 422 S.E.2d 123 (1992),* in which the Court held a non-lawyer, officer, agent, or employee may represent a business entity pursuant to *S.C. Code Ann. § 40-5-80* (1986) in civil magistrate's court proceedings. The Court stated further that the magistrate shall require a written authorization from the entity's president, chairperson, general partner, owner or chief executive officer. Finally, in *Renaissance Enters., Inc. v. Summit Teleservices, Inc., supra*, the Court held a non-lawyer cannot represent a corporation in circuit or appellate courts and once again held that a corporation may appear *pro se* only in magistrate's court."

Sharon Brown, Administratrix of the Estate of Ronnie Lee Brown, Appellant, v. Suzanne E. Coe. ***365 S.C. 137*; *616 S.E.2d 705*; *2005***

ISSUE SEVEN

VII. THE JUDGE ERRED IN NOT DISMISSING THE UNREPRESENTED AND ABSENT PLAINTIFF, THE ESTATE OF DORIS HOLT, FROM BEING A PARTY IN THE LAWSUIT AS IT WAS EFFECTIVELY BEING TRIED *IN ABSENTIA* AND IN VIOLATION OF SOUTH CAROLINA LAW.

Judge Addy's refusal to remove the Estate of Doris Holt from the complaint as a *Pro Se* litigant was in violation of South Carolina law. The motion to amend the complaint to comply with the law was left pending by Judge Addy. The estate of Doris Holt has multiple parties with claims filed against it. This precludes the *Pro Se* litigant from representing the estate. The *Pro Se* litigant was not provided the funds necessary to hire an attorney, as Judge Barber ordered the Defendants to do from the remaining litigation funds Rakowsky was withholding. Therefore, the Estate of Doris Holt had to be removed from the complaint. Judge Addy's refusal

to review the pending motions allowed the wrongful and unlawful *in absentia* participation of the Estate of Doris Holt, in this case. However, South Carolina law is clear on this point:

> "The South Carolina Constitution provides this Court with the duty to regulate the practice of law in this state. *S.C. Const. art. V, § 4*; see also *S.C. Code Ann. § 40-5-10* (2001). South Carolina, like other jurisdictions, limits the practice of law to licensed attorneys. *In re Lexington County Transfer Court, 334 S.C. 47, 512 S.E.2d 791 (1999).* "No person may practice or solicit the cause of another in a court of this State unless he has been admitted and sworn as an attorney." *S.C. Code Ann. § 40-5-310* (2001). The generally understood definition of the practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts. *Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2003)*; *State v. Despain, 319 S.C. 317, 460 S.E.2d 576 (1995)*; *In re Duncan, 83 S.C. 186, 65 S.E. 210 (1909).*
>
> "The adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." *Renaissance Enters., Inc. v. Summit Teleservices, Inc., 334 S.C. 649, 651, 515 S.E.2d 257, 258 (1999)* (citing *Williams v. Bordon's, Inc., 274 S.C. 275, 262 S.E.2d 881 (1980))*. "The goal of the prohibition against the unauthorized practice of law is to protect the public from incompetent, unethical, or irresponsible representations." Id."
>
> **Sharon Brown, Administratrix of the Estate of Ronnie Lee Brown, Appellant, v. Suzanne E. Coe.** ***365 S.C. 137*; *616 S.E.2d 705*; *2005***

ISSUE EIGHT

VIII. THE JUDGE ERRED IN ALLOWING AMANDA DUDGEON AND HER LAW FIRM TO REPRESENT DEFENDANT RAKOWSKY BASED ON HER ACTIVE PARTICIPATION IN REPRESENTING THE *PRO SE* PLAINTIFF WITHOUT HIS KNOWLEDGE AND BY DOING SO CONCEALING INFORMATION DOCUMENTING RAKOWSKY'S FRAUD ON THE COURT IN THE UNDERLYING CASE AND HIS

BREACH OF FIDUCIARY DUTY AND HIS BREACH OF CONTRACT.

During the hearing on June 5, 2013, Ms. Dudgeon claimed that she did not represent Spencer in the litigation by LawMax against Rakowsky and Spencer through the American Arbitration Association ("AAA"). Further, she claimed that the LawMax litigation just went away to the benefit of Spencer, without any settlement agreement or payment to LawMax.[8]

Dudgeon produced an email, purportedly from AAA, and claimed, based on that email, that a document Spencer presented to Judge Addy had not been authenticated.[9]

Dudgeon further claimed she did not have an affidavit as to the authenticity of the document from AAA, presented by the plaintiffs, because the document presented by Spencer to the court had **never** been produced to her.

It is apparent that Dudgeon was untruthful with the court, as she received the document in question in the original filing by the plaintiffs, on **March 27, 2012.**

---

[8] LawMax in its contract for funds advanced to John Rakowsky, for the non-lawyer costs of the underlying lawsuit, sued John Rakowsky for his misstatements and mishandling of the case and James Spencer as a beneficiary of those funds through the contract's arbitration provision. The LawMax contract was negotiated and executed by John Rakowsky. Arbitration Case No: 13-194-01700-07.

[9] Ms. Dudgeon failed to provide this purported email to the plaintiffs prior to the hearing, as she was required to do, to allow for a proper review and authentication by Plaintiffs the Judge Addy errored in allowing its admission.

Therefore, Dudgeon had plenty of time to obtain an affidavit from AAA, if such was actually obtainable, as the hearing was not held until **June 5, 2013**.

Dudgeon produced an apparent AAA letter dated August 16, 2008, purportedly indicating that copies had been sent to Spencer which she claimed indicated Spencer represented himself. However, the letter dated August 16, 2008, is not properly addressed to Spencer, as Spencer has never lived in *Columbus*, SC and never received the correspondence. Spencer was subsequently no longer listed to receive mailings and January 29, 2008 letter was eliminated from all documents and Dudgeon's firm, either through representation or by defacto, as Dudgeon claimed to your Honor, she "cleared up" the legal matter for Spencer, without Spencer's knowledge, with LawMax giving up all claims[10] against Rakowsky and Spencer.[11] None of the parties advised Spencer that such litigation existed.

Tellingly, on December 28, 2011, Dudgeon's firm interfered with the production of documents subpoenaed in the Interpleader case, in which they had no representation.[12] The letter stated that LawMax would not release the subpoenaed information on payments made in settlement of and any settlement agreement for John Rakowsky, regarding the AAA litigation. *Pattison, Simpson, et al,* said it

[10] Based upon information and belief there appears to have been be a settlement agreement involving LawMax, Rakowsky that includes a confidentially clause. Further, logic dictates if Spencer had received the documents that a party to this litigation should have received; there would be no reason why these subpoenaed documents would be withheld from Spencer by LawMax and Dudgeon's firm!

[11] If that was indeed the case, John Rakowsky wrongfully listed LawMax as having a claim in his 2008 Interpleader action he filed long after the AAA litigation was concluded. The only rationale for this would be to conceal the settlement made with AAA.

[12] Case No: 2008-CP-40-6656.

would not release the information because of objections from the opposing counsels' law firm, in Case No: 2008-CP-40-6656.[13] Ms. Dudgeon's law firm was the firm cited by *Pattison Simpson, et al.,* for refusing the subpoena (Andrew Countryman, a partner and co-counsel of Ms. Dudgeon in the present case was copied on this letter presented to the court).

In conclusion, the facts require that discovery begin, as ordered by Judge Barber, so the plaintiffs and the court can make a proper reasoned decision, based on all the evidence, not just the evidence Bruner/Dudgeon wants the court to see. The pending motion to dismiss should be denied and discovery, as ordered by Judge Barber, on May 7, 2012, must proceed. ***(ROA, May 7, 2012 Hearing Transcript; P., 41, Line 25, P., 42, Line 1 & 5-7 &10-22, P. 56, Lines 24-25 and P. 57, Lines 1-4)***

CONCLUSION

The *Pro Se* Appellant for the reasons stated above prays this Honorable Court will remand this case back for litigation under the Orders established by the Honorable Judge Barber and under a truly independent judge commencing with discovery including depositions. Further, the *Pro Se* Plaintiff requests sanctions against the Defendants for their actions. Actions that included, but were not limited to, falsely misrepresenting and denying standing Orders and thereby wasting the court's and indigent *Pro Se* litigants' resources by retrying issues already decided until they came out in Defendants' favor and additionally ignoring the standing

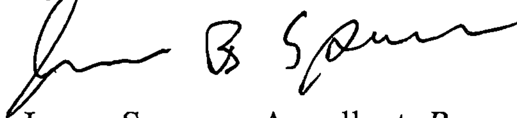
[13] The other reasons stated in the letter for non-compliance are not valid as the subpoena was in accordance with New York and South Carolina law and executed by the proper officials.

orders addressing the *Pro Se* litigant's serious medical limitations. Judge Barber had issued standing Orders regarding the extent of a hearing and the timing of hearings after he discussed the medical aspects with the disabled and indigent *Pro Se* litigant medical doctors. The *Pro Se* litigant requests sanctions consisting of an amount equivalent to attorney and expert fees for the indigent and disabled *Pro Se* litigant to hire legal representation and an expert witness to complete this case.

The *Pro Se* litigant humbly requests the unrepresented entities in this action be properly removed from the complaint as they were not legally represented in these matters, should not been part of this litigation without both legal representation nor legal standing as parties to this action under South Carolina law.

Submitted this April 7, 2015

By:



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CERTIFICATE OF SERVICE

I, James Spencer, ***Pro Se***, Plaintiff, do hereby certify that the foregoing Informal Initial Brief this day April 7, 2015, been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

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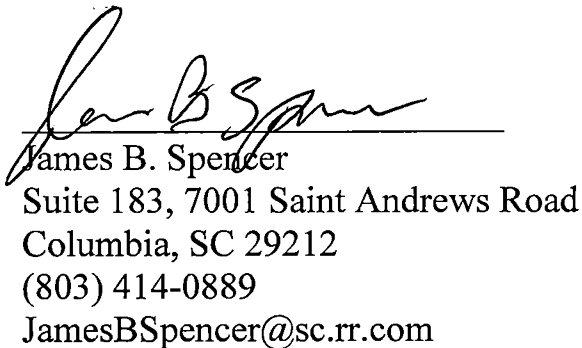

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