

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

75649

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr.

Case. No. 2014-000091

James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.; and Irene Santacroce, Plaintiffs,

of whom James Spencer is the Appellant,

v.

John R. Rakowsky, Adrian L. Falgione, and the Law Offices of Adrian Falgione, LLC,
Respondents,

of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

MOTION TO DISMISS APPEAL

Respondent John R. Rakowsky hereby moves to dismiss the above-captioned appeal on grounds that Appellant failed to comply with this Court's Order of March 4, 2015, which required Appellant to file and serve his initial brief on or before April 3, 2015, and expressly provided that no further extensions will be granted absent extraordinary circumstances. This Motion is supported by the affidavit of counsel attached as "Exhibit A."

Appellant filed his Notice of Appeal on January 13, 2014. Despite multiple dismissals, reinstatements, and extensions over the fifteen months that have elapsed since

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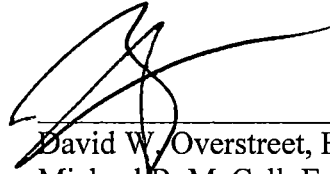
APR 13 2015

SC Court of Appeals

that time, and this Court's admonition in the March 4, 2015 Order, Appellant has neither served his initial brief on Respondent, nor moved this Court to extend the current deadline prior to its expiration. Accordingly, this appeal should be dismissed.

April 9, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David W. Overstreet", is written over a horizontal line.

David W. Overstreet, Esq.
Michael B. McCall, Esq.
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307

Attorneys for Respondent John Rakowsky

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AFFIDAVIT OF COUNSEL

PERSONALLY APPEARED BEFORE ME, Michael B. McCall, who being duly sworn, deposes and says as follows:

1. David W. Overstreet and I are the attorneys for Respondent John R. Rakowsky in the above-captioned appeal.
2. This Court's Order of March 4, 2014 required Appellant to file and serve his initial brief within thirty (30) days of the Order.
3. The deadline for Appellant to file and serve his initial brief was April 3, 2015.

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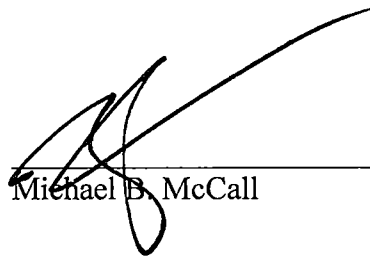
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4. As of today, April 9, 2015, thirty-six (36) days have elapsed from the March 4, 2014 Order.

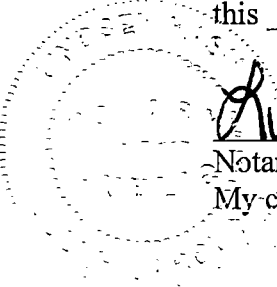
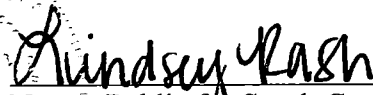
5. Appellant has not served his initial brief or any motion requesting an extension of the April 3, 2015 deadline on Respondent John R. Rakowsky.

FURTHER AFFIANT SAYETH NOT.



Michael B. McCall

SWORN to and subscribed before me
this 9th day of April, 2015.

Notary Public for South Carolina
My commission expires: 9-21-20

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Respondents,

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PROOF OF SERVICE

I certify that I have served the Motion to Dismiss and Affidavit of Counsel on all parties to this appeal by depositing a copy in the United States Mail, postage prepaid, on April 9, 2015, addressed to *pro se* Appellant and counsel of record as follows:

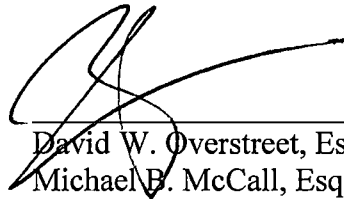
Warren C. Powell, Jr., Esq.
Benjamin C. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110

James Spencer
7001 Saint Andrews Road
Suite 183
Columbia, SC 29212

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David W. Overstreet, Esq.

Michael B. McCall, Esq.

Carlock, Copeland & Stair, LLP

40 Calhoun Street, Suite 400

Charleston, South Carolina 29401

(843) 727-0307

Attorneys for Respondent John Rakowsky

LAW OFFICES

CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

MICHAEL B. MCCALL

DIRECT DIAL NUMBER
843-266-8205

E-MAIL ADDRESS
mmccall@carlockcopeland.com

FACSIMILE
843-727-2995

40 CALHOUN STREET, SUITE 400
CHARLESTON, SC 29401

TELEPHONE (843) 727-0307

www.carlockcopeland.com

ATLANTA OFFICE

191 Peachtree Street, N.E.
Suite 3600
Atlanta, Georgia 30303-1235
(404) 522-8220

REPLY TO SC OFFICE

April 9, 2015

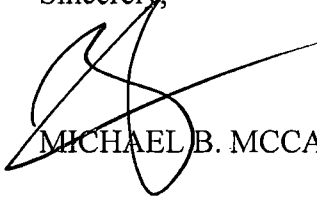
Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: James Spencer v. John R. Rakowsky, *et al.*
Case No.: 2014-000091
CCS File No.: 2283-35025

Dear Ms. Kitchings:

Enclosed for filing, please find the original and 6 copies of Respondent John R. Rakowsky's Motion to Dismiss Appeal and Proof of Service, in this case, as well as a check for the filing fee of \$25.00. By copy of this correspondence, I am serving a copy of the same upon the Appellant and all counsel of record. If you have any questions, please do not hesitate to contact me. With kind regards, I am

Sincerely,



MICHAEL B. MCCALL

MBM:tmm
Enclosures


cc: James Spencer
Benjamin C. Bruner, Esq.
Warren C. Powell, Esq.
Michael Sribnick, Esq.

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 40 Calhoun Street, Suite 400
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