

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

**RECEIVED**  
MAY 04 2015  
SC Court of Appeals  
**FINAL ORDER GRANTING  
INTERPLEADER  
AND RELATED RELIEF**  
(Concludes case)

JEANNETTE W. MCGRIDE  
C.P. & G.S.  
2014 DEC 23 AM 9:58  
RICHLAND COUNTY  
FILED

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 order<sup>1</sup>. 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

<sup>1</sup> 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. 280, 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. 2003).

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)<sup>2</sup>. 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

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<sup>2</sup> 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.

  
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### 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 advisement<sup>3</sup>:

- 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), SCRCF. The last operative pleading is the “Certain Defendants’ Response to John Rakowsky Second Amended Complaint for Interpleader” filed January 18, 2011<sup>4</sup>. 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).

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<sup>3</sup> The motion regarding the “uncontested” litigation funds was resolved by this Court’s order dated June 23, 2014.

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

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

By motion dated August 30, 2011, certain defendants<sup>5</sup> (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*.<sup>6</sup> 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

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<sup>5</sup> 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.

<sup>6</sup> 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 filed<sup>7</sup>. 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 Seals' 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 Seals' review of documents *in camera*) is the law of the case. Spencer is apparently seeking to add counterclaims that somehow challenge Judge Seals' 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 Seals' 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

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<sup>7</sup> 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.

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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, 2010<sup>8</sup>. 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 Holt<sup>9</sup> (hereafter "Holt"), Nick Williamson on behalf of RSC<sup>10</sup> (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 18, 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 be<sup>11</sup>. None of these parties has filed any claim to the settlement funds.

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

<sup>9</sup> Doris Holt was originally named as a defendant. She died during this litigation. By order dated October 18, 2011, Judge James R. Barber III substituted the Estate of Doris Holt as a party in place of Doris Holt.

<sup>10</sup> 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.

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


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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, SCRPC 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 Santacrose 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**

  
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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. 496, 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

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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;

- 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 Holding 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

  
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Doyet A. Early III  
Presiding Judge, Fifth Judicial Circuit