

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

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MAY 04 2015

SC Court of Appeals
ORDER GRANTING
PARTIAL RELIEF

RICHLAND COUNTY
 FILED
 2014 JUN 27 PM 2:30
 JEANNETTE W. MODRIDGE
 C.C.P. & G.S.

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

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

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



settlement of an earlier civil matter, and remaining funds which had been advanced for the use of the plaintiffs in that earlier civil litigation. At that time, the Court ruled that the lack of finality as to settlement funds prevented that issue from being addressed at this time.

SOUTHERN HOLDINGS LITIGATION

The earlier civil action, Southern Holdings Inc. et al. v. Horry County et al., Civil Action No. 4:02-cv-1859-RBH (hereafter “the Southern Holdings case”), was filed in the United States District Court for the District of South Carolina by a number of plaintiffs, some of whom are defendants in this case. The Southern Holdings case was resolved when a settlement agreement was stated on the record before United States District Court Judge R. Bryan Harwell on May 9, 2007. (Doc. 475). Plaintiff John Rakowsky (hereafter “Rakowsky”) and attorney Adrian Falgione, who practices law under the corporate entity defendant The Law offices of Adrian L. Falgione, LLC, were counsel of record in the Southern Holdings case at the time of settlement.

Since that time, numerous motions have been filed in the District Court (and at the Fourth Circuit Court of Appeals) by one or more of the then-plaintiffs attempting to set aside the settlement. The most recent motion challenging the settlement was filed on January 6, 2014 (Doc. 775) and remains pending. For that reason, the portion of the matter pending before this Court with reference to the proceedings from the settlement in the Southern Holdings case is premature.

ISSUES TO BE ADDRESSED

The issues regarding the settlement funds are framed by the Second Amended Complaint filed December 3, 2010¹. The defendants who have responded to the Second Amended Complaint and are active parties to the matter at this time are The Law Offices of Adrian L.

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

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Falgione, LLC (see order filed December 2, 2011²), Horry County (Answer dated December 29, 2010), James Spencer (hereafter “Spencer”), Estate of Doris Holt³ (hereafter “Holt”) Nick Williamson on behalf of RSC (hereafter “RSC”), Rodney Keith Lail (hereafter “Lail”), Irene Santacroce (hereafter “Santacroce”), Marguerite Stephens (hereafter “M. Stephens”) and Ricky Stephens (hereafter “R. Stephens”).

Spencer, Holt, RSC, Lail, Santacroce, M. Stephens, and R. Stephens filed a *pro se* answer which was clocked in on January 18, 2011⁴. In their *pro se* answer those defendants asked that the Court deny the interpleader. The *pro se* answer also asserted that the remaining litigation funds “were solely advanced by ‘RSC,’ under the written condition that such funds were to be expended only under the specific direction of Defendant Spencer. *Id.* @ ¶ 10. Those “defendants seek the release of the entire amount of litigation funds. . .” *Id.* ¶ 16. Their prayer for relief also demanded an accounting of litigation funds and further demanded that all money in the possession of Rakowsky (both the settlement funds and the remaining litigation funds) “be transferred forthwith into the trust account of the captioned Defendants’ self designated legal counsel.” *Id.* @ p. 6 of 8. The “self designated legal counsel” was not identified in the *pro se* answer filed by Spencer, Holt, Williamson⁵, Lail, Santacroce, Sanders and Stephens. A Notice of Appearance on behalf of Holt, Lail and Santacroce was later filed by attorney Michael G.

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

³ Doris Holt was originally named as a defendant. She died during this litigation. By order dated October 18, 2011, Judge James R. Barber III substituted the Estate of Doris Holt as a party in place of Doris Holt.

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

⁵ Spencer, Holt and Williamson had earlier requested that the remaining litigation funds be released by “certified check” to “the trust fund of Singleton, Burroughs, and Young P.A. to be credited in the name of Irene Santacroce and James Spencer for use as directed by James Spencer.” Motion for Court to Order Immediate Release of Funds, filed October 20, 2008). The file does not reflect the consent of any other defendants. The 2011 answer to second amended complaint requested the release of the remaining funds to Spencer, Holt, RSC, Lail, Santacroce, M. Stephens, and R. Stephens.

Sribnick on December 9, 2013. Sribnick filed an "objection" to the interpleader dated January 26, 2014.

At the motion hearing on February 25, 2014, the Court heard argument from counsel for Rakowsky, Falgione, Horry County, Holt, Lail and Santacroce, and from Spencer, who continues to appear *pro se*. The Court also had the benefit of detailed filings by Spencer and Rakowsky. The Court took the following matters under advisement:

- A. Motion to Release Uncontested Litigation Funds, filed October 20, 2008
- B. Motion for Jury Trial, filed July 14, 2011
- C. Motion to Amend Answer and Counterclaim, filed August 29/30, 2011
- D. Motion for Sanctions (against attorney Stephanie Weissenstein) filed December 20, 2011.

Spencer and Sribnick also argued they should be entitled to discovery, although no formal motion for that relief had been filed. That request was denied, without prejudice, and the issue may be raised again when and if the Southern Holdings case is concluded, unless the request to interpleader funds is mooted by the District Court's ruling. However, the Court directed Rakowsky and Falgione to provide affidavits and evidence detailing the receipt and disbursement of all litigation funds that were advanced for the Southern Holdings litigation so the Court could rule on the pending Motion to Release Uncontested Litigation Funds filed October 20, 2008.

By email to the counsel and Spencer on February 27, 2014, the Court required "affidavits and evidence of all monies paid to Plaintiff's counsel in the original lawsuit for litigation expenses be provided to the Court no later than 10 days prior to hearing."

The hearing on the Motion for Release of Uncontested Litigation Funds was originally scheduled to be held on April 28, 2014. However, Spencer notified the Court he had been served with a subpoena requiring his presence in federal court at a time that would conflict with the April 28, 2014 hearing. The hearing was postponed to June 4, 2014.

After receiving the submissions from Rakowsky and Falgione, the Court notified counsel and Spencer that the June 4, 2014 hearing was not necessary and an order would be issued releasing the balance of litigation funds to Mr. Spencer.

This Court's mandate to the parties to provide an accounting of litigation funds provided to Rakowsky and/or Falgione lies in equity. In ruling upon the Motion for Release Uncontested Litigation Funds, filed October 20, 2008, the Court makes the following findings and conclusions.

FINDINGS OF FACT⁶

I make the following findings of fact by the preponderance of the evidence.

1. In his capacity as one of the Plaintiff's counsel in the Southern Holdings case, Rakowsky received the proceeds of loans from two (2) different entities for use as litigation funds on behalf of the plaintiffs.
2. Rakowsky received the sum of forty-two thousand, five-hundred dollars (\$42,500.00) from LFC 101, LLC a/k/a LitFunding. (Affidavit of Mara Ballard, Exhibit A, pp. 5-9; p. 28). These funds were deposited into Rakowsky's law firm IOLTA account at Security Federal Bank on June 21, 2005. *Id.* @ pp. 7-9.
3. These funds were paid to Rakowsky following his execution of a "Contingent

⁶ These findings of fact are made from the submissions provided by Adrian Falgione dated April 11, 2014, of John Rakowsky and Mara Ballard filed May 28, 2014 and the Declaration of Spencer dated May 24, 2014. The Court also had the benefit of the entire file of this litigation.

Advance and Security Agreement” signed by him on June 20, 2005. The loan agreement contains a “Client Consent Form” signed by James Spencer authorizing the payment to Rakowsky. *Id.* @ p. 18.

4. The Security Agreement identifies the loan proceeds for use of “plaintiff’s” costs in “the lawsuit.” The lawsuit is defined in the agreement, by name and case number, as the Southern Holdings litigation. *Id.* @ p. 11. The agreement identifies the plaintiff in the lawsuit as “James Spencer, et al.” *Id.*
5. The Security Agreement indicated the loan from LitFunding was in the amount of \$50,000.00, although Rakowsky received only \$42,500.00. Spencer⁷ requested by letter to LitFunding dated June 16, 2005 that \$7,500.00 of the loan proceeds be paid to “1st Choice Funding” and “send to my attorney the remaining balance of \$42,500.00.” *Id.* @ p. 27.
6. Section 3 of the Security Agreement gave LitFunding a “first priority lien” on the loan proceeds. *Id.* @ 12.
7. Rakowsky received another \$25,000.00 in litigation funding from Resolution Settlement Corporation (hereafter “RSC”), also in June, 2005. *Id.* @ pp. 29-32. These proceeds were generated as a result of a loan agreement between RSC and “Southern Holdings; James Spencer et al.”. Rakowsky was listed as the mailing address for Spencer. *Id.* @ p. 33.
8. Paragraph 6 of the RSC agreement provides that the borrowers’ attorney (Rakowsky) is aware of the agreement, but assumes no liability for complying with it. “[Borrower]’s attorney is solely and merely following [borrower]’s

⁷ The letter of instruction from Spencer to LitFunding is from “Brian Spencer.” Rakowsky represents, and Spencer does not dispute, that he is the same person as Brian Spencer.

instructions . . . attorney is making neither representation no guarantee, inferred, expressed or implied; concerning either merits or value of the claim. . . attorney assumes no affirmative duties herein other than ministerial obligations of disbursement, and conveying information contained herein.” *Id.* @ p. 35, ¶ 7.

Rakowsky therefore had no duty to RSC.

9. The check from RSC was made payable to “John Rakowsky and J. B. Spencer” and was endorsed for deposit by “John Rakowsky and James Brian Spencer.” *Id.* @ p. 31. The full \$25,000.00 was deposited into Rakowsky’s IOLTA account at Security Federal on June 29, 2005. *Id.* @ pp. 29-32.
10. Rakowsky received no other funds from any other source for the expenses of the Southern Holdings case. The total litigation funding received by Rakowsky was \$67,500.00. Rakowsky received no advanced litigation funds from LawMax.
11. The Law Max funds were paid either to James Spencer or to his former attorney, Ronald N. Serota. Rakowsky signed a document confirming his knowledge of the loan, but he did not receive any of the funds.
12. Falgione received no advanced litigation funds from any source for the Southern Holdings case. He was reimbursed for legitimate case expenses for costs incurred for the Southern Holdings case on two occasions by Rakowsky from the advanced litigation funds held in Rakowsky’s IOLTA account. (Affidavit of Adrian Falgione, ¶ 14).
13. Rakowsky used the advanced litigation funds to make payments for litigation costs in the Southern Holdings case in the amount of \$57,644.14. (Affidavit of Mara Ballard, p. 4; Affidavit of John Rakowsky). Copies of the checks issued

from Rakowsky's IOLTA account for the expenditures made from the Southern Holdings funds have been presented to and reviewed by the Court. (Affidavit of Mara Ballard, pp. 42-43; pp. 50-53; pp. 55-57; p. 59; p. 61; p. 68-70; p. 72; pp. 74-76; pp. 78-79; pp. 85-93; p. 96; pp. 99-105; p. 107; p. 109; pp. 111-112; pp. 114-116; pp. 118-119). Rakowsky's submission also contains copies of invoices and receipts for expenditures made from the advanced litigation funds.

14. As stated above, the Southern Holdings case was settled on the record before United States District Judge R. Bryan Harwell on May 7, 2005. However, the settlement may not be final because of multiple post-settlement filings by Spencer and others.
15. In light of his former clients' rejection of the settlement, Rakowsky retained attorney Desa Ballard to assist him with handing both the settlement proceeds and the remaining litigation funds. The remaining litigation funds in the amount of \$9,855.55 were paid into Ms. Ballard's trust account, as were the \$55,000.00 settlement proceeds paid by the defendants in the Southern Holdings case. *Id.* P. 124. An effort to interplead the funds into the United States District Court was denied.
16. This interpleader action was filed on September 12, 2008. Among the defendants named and served, who later defaulted, was Law Max Legal Finance and Litfunding USA. Law Max and Litfunding defaulted⁸. The complaint was amended several times, to delete defendants and add others, with the last and operative complaint being the Second Amended Complaint filed on December 3,

⁸ Order of Default Judgment filed July 12, 2011. Also held in default by that order were defendants Southern Holdings Inc., Ronald Serota, David Smith, Harold Hartness, Eugene Chewning Jr., Glenn Harrison and Michael Hartness. *Id.*

2010.

17. RSC was not named as a defendant in the original or any of the amended complaints. However, RSC appeared in this action by filing an answer (in conjunction with Spencer and other *pro se* parties) clocked on January 18, 2011. No objection was raised to RSC's participation in this case.
18. Rakowsky has properly documented the disbursements of the \$67,500.00 he received as advanced litigation funds for the Southern Holdings case. At the time his former clients repudiated the settlement, Rakowsky still held \$9,855.55 of the advanced litigation funds. The funds were not sequestered, however, so it is unknown whether the remaining litigation funds came from the RSC loan, or from the LitFunding loan.
19. In accordance with his obligations under Rule 1.15 of the Rules of Professional conduct, Rakowsky's obligation, when holding funds to which multiple claims are made, was to file this interpleader action.
20. After the litigation was filed, an additional litigation expense was brought to Rakowsky's attention. Ms. Ballard confirmed this was a legitimate expense of the litigation and on December 18, 2008, Ms. Ballard paid from the remaining litigation an invoice from Eugene G. Chewning, Jr., PhD. After the payment to Chewning, the balance of the litigation funds which remain are \$7,691.78.
21. Spencer has claimed these funds are "undisputed" and should come to him, but the file does not reflect any affirmative claim by him to these funds⁹ other than in

⁹ As indicated, the answer to the second amended complaint asked that the remaining litigation funds be paid to "the captioned Defendants (*sic*) self (*sic*) appointed lawyers trust." The identity of that person does not appear from any pleadings. The earlier 2008 motion requested release of the funds to Spencer, Holt and Williamson. See footnote 5, *supra*.

concert with other defendants. Spencer relies on discussions that occurred at one or more status conferences with Judge James Barber. However, the earlier claims for distribution of the remaining litigation funds make conflicting requests as to whom the funds should be released.

CONCLUSIONS OF LAW

22. Rakowsky properly filed this interpleader seeking the court's direction as to the proper distribution of the remaining advanced litigation funds.
23. James B. Spencer moves to have the remaining litigation funds released to him. While the pleadings make conflicting claims as to whom the funds should be released, it appears the loans which generated the proceeds that were advanced to Rakowsky were initiated by James B. Spencer and he may have some residual obligations on those loans. That matter is not before me.
24. Rakowsky disbursed litigation funds from the \$67,500.00 received by him via loans from litigation companies for expenses related to the Southern Holdings litigation. The issues before the Court did not require an accounting of those funds, but at the request of the Court, Rakowsky submitted an accounting that fully supports the disbursements made.
25. The remaining litigation funds in the amount of \$7,691.78 may be released to James B. Spencer and Rakowsky is relieved and discharged of any obligation to hold the remaining litigation funds or to account therefore.
26. Such disbursement shall be made after time for appeal of this order shall have passed. Should an appeal be filed, the funds shall not be released until final order of the appellate court.

27. By taking possession of these funds, James B. Spencer shall indemnify and hold harmless all other parties to this action as well as their attorneys, agents, assigns, successors, heirs, representatives and insurers from any and all claims, demands, causes of actions, payments, bills, charges, expenses or subrogated interests as may be asserted in against any funds which were advanced to Rakowsky as litigation funds for the Southern Holdings litigation.
28. The Court reserves ruling on the Motion for Jury Trial, filed July 14, 2011, Motion to Amend Answer and Counterclaim, filed August 29/30, 2011, and Motion for Sanctions (against attorney Stephanie Weissenstein) filed December 20, 2011.

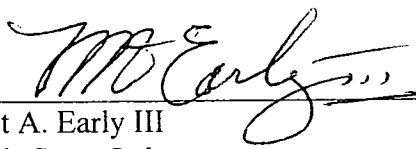
THEREFORE, IT IS ORDERED:

- A. Plaintiff is authorized and directed to release to James B. Spencer the balance of litigation funds in the amount of \$7, 691.78 as set forth herein.
- B. Such disbursement shall not occur until the time for appeal of this order has expired, and this order becomes final.
- C. Upon receipt of the remaining litigation funds, James B. Spencer shall be obligated to indemnify and hold harmless all other parties to this action as well as their attorneys, agents, assigns, successors, heirs, representatives and insurers from any and all claims, demands, causes of actions, payments, bills, charges, expenses or subrogated interests as may be asserted in against any funds which were advanced to Rakowsky as litigation funds for the Southern Holdings litigation.
- D. Rakowsky is released from all responsibility for the remaining litigation funds or

any claims thereto.

- E. The undersigned retains jurisdiction of the remaining portion of this action which seeks an interpleader as to the settlement funds from the Southern Holdings case once the federal court action is final.

IT IS SO ORDERED.



Doyet A. Early III
Circuit Court Judge

June *13*, 2014