THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-32-3428

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, Defendants,

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

INITIAL BRIEF OF RESPONDENT JOHN R. RAKOWSKY

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2. Whether Appellant was required to file an expert affidavit pursuant to S.C. Code § 15-36-100 where the complaint alleged legal malpractice claims that were not within the ambit of common knowledge and experience.

3. Whether the record supports the additional sustaining ground that Appellant failed to timely commence this action where the Summons and Complaint were not filed within the statute of limitations or within 120 days of filing.

STATEMENT OF THE CASE

In this legal malpractice action, Appellant James Spencer appeals the trial court's December 6, 2013 order denying his motion to reconsider the trial court's August 23, 2013 order dismissing the complaint. The lawsuit was filed on August 15, 2011 in the Richland County Court of Common Pleas by James Spencer ("Spencer"), individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce against John R. Rakowsky ("Rakowsky"), and Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC ("Falgione"). The complaint asserted claims for legal malpractice, breach of fiduciary duty, and breach of contract arising out of the alleged coerced settlement of an underlying federal lawsuit on May 9, 2007 captioned Southern Holdings, *et al.* v. Horry County, *et al.*, Civil Action No.: 4:02-cv-1859-RBH. (Compl.).

Rakowsky moved to dismiss the complaint on November 3, 2011 for failure to file an expert affidavit pursuant to S.C. Code § 15-36-100, failure file suit within the statute of limitations, lack of service of process, and failure to state a claim. (Rakowsky Mtn. to Dismiss). The motion also asserted that venue was improper in Richland County. Falgione filed a similar motion on November 4, 2011. (Falgione Mtn. to Dismiss). Rakowsky was served with the summons and complaint on December 16, 2011. (Aff. of Rakowsky).

On January 24, 2012, Spencer filed two requests for entry of default as to Rakowsky and Falgione. Santacroce filed similar requests on January 25, 2012. On March 27, 2012, Spencer and Santacroce filed a motion to disqualify Rakowsky's counsel based on her prior representation of Rakowsky in an arbitration matter.

On May 27, 2012, the Honorable James Barber, III held a joint status conference in this action and a separate interpleader action involving the disposition of funds from the

underlying federal case.[1] The transcript of the joint status conference is what Spencer refers to throughout his brief as the "Standing Orders of Judge Barber." (Status Conf. Transcr. May 27, 2012). Judge Barber issued two orders following the status conference, both of which were filed on June 28, 2012. The first denied Santacroce's motion to disqualify Rakowsky's counsel, continued the hearing on Spencer's motion to disqualify and the motions to dismiss, required affidavits for any future continuances requested for medical reasons, and ordered that if any plaintiff failed to appear at any future hearing or proceeding without good cause, their claims would be dismissed with prejudice. (Order on Disqual. and Continuances, June 28, 2012). Judge Barber's second order denied the requests for entry of default against Rakowsky and Falgione. (Order on Default, June 28, 2012). On July 31, 2012, Judge Barber wrote to the counsel of record and *pro se* parties to advise that he had signed all of the orders that he intended sign and they will stand. (Letter, July 31, 2012).

On August 15, 2012, the Honorable Brooks P. Goldsmith issued an order changing venue to Lexington County. (Order, Aug. 15, 2012). The order followed an August 1, 2012 hearing on motions to change venue filed by Falgione and Rakowsky on May 17, 2012 and June 4, 2012, respectively. (Mtns. Change Venue). On August 30, 2012, Plaintiffs filed a Motion to Reconsider Judge Goldsmith's Order. On October 1, 2012, Judge Goldsmith issued an order denying Plaintiffs' Motion to Reconsider the venue order. (Order, Oct. 1, 2012).

[1] Rakowsky v. Falgione, *et al.*, No. 2008-CP-40-6656. The interpleader action was made necessary by the Southern Holdings plaintiffs' refusal to consummate the settlement. The defendants included Spencer and the other Southern Holdings plaintiffs, along with various other persons and entities who asserted or could have assert a claim of any kind to the funds. A final order granting interpleader and related relief was issued on December 23, 2014 and is currently before this Court in Appellate Case No. 2014-002029.

On May 7, 2013, the two motions to dismiss, Spencer's motion to disqualify, and four other motions were scheduled to be heard before the Honorable Eugene C. Griffith, Jr. Plaintiffs were served with notice of the hearing on April 23, 2013, but failed to appear. On May 13, 2013, Judge Griffith issued an order dismissing Santacroce's claims with prejudice and scheduling a hearing on the seven pending motions for June 5, 2013 at the Laurens County Courthouse. (Order, May 13, 2013).

The June 5, 2013 hearing was held before the Honorable Frank R. Addy, Jr. The parties consented on the record to allow the motions to be heard pending issuance of an order assigning the case to Judge Addy, which was issued on June 27, 2013, *nunc pro tunc* June 5, 2013. (Hrg. Transcr., June 5, 2013; Order, June 27, 2013). After hearing Spencer's motion to disqualify and Rakowsky's and Falgione's motions to dismiss, Judge Addy held the other motions in abeyance pending a ruling on the motions to dismiss. On June 27, 2013, Spencer filed a Brief on Corrections.

On August 23, 2013, Judge Addy issued an order granting defendants' motions to dismiss. (Order, Aug. 23, 2013). Judge Addy found that Plaintiffs' claims were barred by the three-year statute of limitations in that Plaintiffs knew or should have known of their claims by no later than July 3, 2007, but did not commence this action until August 15, 2011. The order also dismissed the complaint for failure to file an expert affidavit, finding that the common knowledge exception did not apply, and that an affidavit filed more than 600 days after the complaint was untimely.

On September 9, 2013, Spencer filed a motion pursuant to Rule 59(e), SCRCP, requesting that the trial court reconsider its rulings on the statute of limitations, equitable estoppel, and the need for an expert affidavit. (Pltf's Mtn. to Reconsider Dismissal). On

November 1, 2013, Judge Addy issued an order denying Spencer's motion to disqualify Rakowsky's counsel. (Order, Nov. 1, 2013). On December 6, 2013, Judge Addy issued an order denying Spencer's motion to reconsider the dismissal order. (Order, Dec. 6, 2013).

On January 13, 2014, Spencer filed a Notice of Appeal of Judge Addy's December 6, 2014 order. The Notice of Appeal states that Spencer received written notice of Judge Addy's order on December 15, 2013, and that he served counsel for Respondents on January 13, 2014. Spencer did not appeal Judge Addy's August 23, 2013 order granting defendants' motions to dismiss, or any other orders issued in this case. No other parties have served or filed a notice of appeal.[2]

INTRODUCTION

Rakowsky and Falgione previously represented Spencer and the other plaintiffs in an underlying federal lawsuit captioned Southern Holdings, Inc. *et al.* v. Horry County, *et al.*, Civil Action No.: 4:02-cv-1859-RBH ("Southern Holdings case"). In addition to Spencer and Southern Holdings, the plaintiffs included Spencer's mother, Doris Holt, and five other individuals who were connected in some way to Spencer, Southern Holdings, or both. The gravamen of the case was an alleged conspiracy involving the Horry County Police Department, *et al.* to ruin Spencer's credibility in order to gain control of Southern Holdings, Inc. for the purpose of accessing the company's tobacco contracts in South America. The alleged conspiracy culminated in a warrant being issued for Spencer's arrest, the search of Spencer's mother's home, and Spencer's arrest and detention in August 2000.

[2] The Estate of Doris Holt and Southern Holdings, Inc. have twice attempted to join in this appeal through motions filed by attorney Michael G. Sribnick. Their motions were denied by this Court by way of orders issued on July 14, 2014 and December 14, 2014.

The Southern Holdings complaint was filed in May 2002. Rakowsky became involved on behalf of the plaintiffs in December 2002, and Falgione in November 2006. The case was in litigation for five years before it was called for trial in May 2007.

A jury was empaneled on May 8, 2007, and the trial was scheduled to begin the following morning. Prior to the start of trial, all of the plaintiffs agreed to accept a combined settlement offer of $55,000.[3] Spencer and all of the other plaintiffs except Doris Holt were present at trial on May 9, 2007. The settlement agreement was placed on the record in their presence before United States District Court Judge R. Bryan Harwell.

Almost one month later, the plaintiffs in the Southern Holdings case objected to the settlement beginning with a series of *pro se* letters to Judge Harwell that were openly critical of their attorneys. The plaintiffs, who had not previously voiced any concerns about the settlement to Rakowsky or Falgione, claimed in the letters that they did not consent to the settlement and had been coerced into accepting it by their attorneys. Judge Harwell construed the letters as motions to set aside the settlement.

On July 3, 2007, Judge Harwell issued an order denying the plaintiffs any relief from the settlement. S. Holdings, Inc. v. Horry Cnty., No. 4:02-CV-1859 RBH, 2007 WL 1960590 (D.S.C. July 3, 2007). To the extent Spencer was not already on notice of any claims he may have had against Rakowsky and Falgione, Judge Harwell's July 3, 2007 order made that expressly clear:

> Further, with regard to any claim by the Plaintiffs of either improper inducement, bad advice, or inadequate representation or preparation against Plaintiffs' own attorneys, such is not a valid basis for repudiating a settlement. In the event there was any breach of the standard of care owed by Plaintiffs'

[3] Spencer, on behalf of himself and his mother as her attorney-in-fact, and Dan Green, on behalf of Southern Holding, authorized a combined settlement of $50,000 during a meeting with counsel on the evening of May 8, 2007. All of the remaining plaintiffs authorized the settlement on the morning of trial, which by that time had increased to $55,000.

> attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, Plaintiffs have an available remedy for damages against their own attorneys.

Id. at *4 (internal citations omitted). Over four years later, Spencer filed this lawsuit against Rakowsky and Falgione alleging he was improperly coerced into accepting the settlement.[4]

Spencer's complaint, filed on August 15, 2011, was based on the exact same allegations that were first raised in the *pro se* letters one month after the settlement, and asserted the very claims that were contemplated in Judge Harwell's July 3, 2007 order. The complaint also acknowledged "the possible need" for an expert affidavit, but was filed without an affidavit and no affidavit was supplemented within 45 days. These were the issues before the trial court on the motions to dismiss, and in dismissing the complaint, the trial court correctly found that Spencer failed to file suit within the statute of limitations, and failed to file an expert affidavit with the complaint.[5]

Spencer devotes the majority of his Brief of Appellant to issues that are irrelevant, not preserved, and not before this Court. Spencer attempts to challenge rulings decided by prior orders that have not been appealed, raises new arguments for the first time on appeal and

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[4] Indeed, the Southern Holdings settlement did not put Spencer's vast conspiracy theory to rest, but only spawned new allegations of a much greater conspiracy, which based on subsequent filings in the Southern Holdings case and three additional lawsuits, now appears to include not only the original defendants, but their attorneys, the federal government, the FBI, SLED, DSS, Doris Holt's medical providers, various other federal, state and local agencies and employees of federal, state and local agencies, and even Judge Harwell himself. *See* Lail v. U.S. Gov't, 771 F. Supp. 2d 49 (D.D.C. 2011) (dismissing complaint filed by Spencer, *et al.* involving alleged conspiracy to cover up civil rights violations in the underlying Southern Holdings case); Lail v. United States, No. 3:11-CV-0977-TLW-TER, 2012 WL 3779386 (D.S.C. Aug. 10, 2012) *report and recommendation adopted*, 2012 WL 3839338 (D.S.C. Aug. 30, 2012) (dismissing complaint filed by Spencer, *et al.* involving same claims dismissed in D.D.C. action); Holt v. Stroman, No. 3:12-CV-03539-JMC, 2015 WL 1061990 (D.S.C. Mar. 11, 2015) (dismissing complaint filed by Spencer, *et al.* involving alleged conspiracy to kidnap and mistreat Doris Holt in retaliation for filing the underlying Southern Holdings case).

[5] Spencer filed an affidavit on April 16, 2013, over 600 days after filing the complaint. Judge Addy found the affidavit was untimely. Spencer does not challenge this ruling on appeal, and for that matter, has not designated the affidavit to be included in the Record on Appeal.

other arguments that are not preserved for review, and makes bald allegations of conspiracy, fraud, and other wrongdoing by the parties and their attorneys. These are addressed accordingly below, but the issues before this Court are whether the trial court properly denied Spencer's motion to reconsider the order dismissing his complaint, and whether there are any additional sustaining grounds to support the trial court's ruling.

As an initial matter, the Court need look no further than Spencer's own brief to affirm the trial court's ruling on the statute of limitations. Notwithstanding the pointed language in Judge Harwell's July 3, 2007 order, Spencer argues throughout his brief that the statute of limitations did not actually begin to run until August 13, 2008. (Brief of Appellant, p. 33 ("This is the actual date the statute of limitations started running."). Spencer's lawsuit was filed on August 15, 2011, three years and two days after Spencer himself contends that the statute of limitations began to run.

STANDARD

"In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 274 (2007) (*citing* Williams v. Condon, 347 S.C. 227, 233, 553 S.E.2d 496, 500 (Ct. App. 2001)). "Viewing the evidence in favor of the plaintiff, the motion must be granted if facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case." Jarrell v. Petoseed Co., Inc., 331 S.C. 207, 209, 500 S.E.2d 793, 794 (Ct. App. 1998). In considering a motion to dismiss, the trial court may rely on transcripts and court orders in an underlying case without converting the motion into one for summary judgment. Doe v. Bishop of Charleston, 407 S.C. 128, 134, 754 S.E.2d 494, 497-98 n. 2 (2014); *e.g.* Clark v. BASF Salaried

Employees' Pension Plan, 329 F.Supp.2d 694, 697-699 (W.D.N.C. 2004) (in deciding defendant's Rule 12(b)(6) motion to dismiss, a court may consider matters of public record from plaintiff's prior court proceedings).

ARGUMENT

I. THE TRIAL COURT CORRECTLY FOUND THAT SPENCER'S CLAIMS WERE TIME-BARRED.

The statute of limitations for a legal malpractice action is three years. S.C. Code Ann. § 15-3-530(5) (2005) (stating the statute of limitations for "an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law" is three years); *see also* Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 632-33, 682 S.E.2d 1, 4 (Ct. App. 2009); Berry v. McLeod, 328 S.C. 435, 444-45, 492 S.E.2d 794, 799 (Ct. App. 1997) (finding § 15-3-530(5) provides a three-year statute of limitations for legal malpractice actions).

Pursuant to the discovery rule, "the three-year clock starts ticking on the 'date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct.'" Martin v. Companion Healthcare Corp., 357 S.C. 570, 575-76, 593 S.E.2d 624, 627 (Ct. App. 2004) (*citing* Bayle v. S.C. Dep't. of Transp., 344 S.C. 115, 123, 542 S.E.2d 736, 740 (Ct. App. 2001). "This determination is objective, rather than subjective." Id. Accordingly, the question is not whether the particular plaintiff in this case actually knew he had a claim, but whether "the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded, or that some claim against another party might exist." Id. (*citing* Young v. S.C. Dep't of Corr., 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

A. Spencer had actual notice of his claims on May 9, 2007 when the allegedly coerced settlement was placed on the record, and no later than July 3, 2007 when Judge Harwell's order made it expressly clear that the remedy for an allegedly coerced settlement was an action for damages against the plaintiffs' own attorneys.

The settlement that Spencer claims was coerced was in fact authorized by Spencer and all of the Southern Holdings plaintiffs prior to it being accepted and placed on the record in Spencer's presence, but if it had been coerced or otherwise unauthorized as Spencer alleges, the trial court properly found that his claims were time-barred. Not only do the circumstances show that Spencer should have known of his claims more than three years before filing, Spencer had actual knowledge that claims might exist against Rakowsky and Falgione more than three years before filing.

The underlying settlement occurred on May 9, 2007. (Compl. ¶¶ 31-49). Spencer was present and had actual knowledge of the settlement at the moment it occurred. If the settlement had been coerced or was otherwise unauthorized, Spencer knew or should have known at that point "that some right of his has been invaded, or that some claim against another party might exist." Martin, 344 S.C. at 123, 542 S.E.2d at 740.

Spencer alleges in the complaint that even though the settlement was placed on the record by Rakowsky in his presence, that was actually a ruse to delay the trial; the real plan was to have the attorneys announce the settlement in open court, but then have the plaintiffs voice their objections when polled by Judge Harwell, which according to Spencer, would have resulted in Judge Harwell continuing the trial. (Compl. ¶¶ 40-49). Even accepting these baseless allegations, Spencer knew by the time court was adjourned on May 9, 2007 that the plaintiffs had not been polled, that the settlement was accepted and final, and that the case was dismissed with prejudice. (Compl. ¶ 49).

Spencer further alleges that after court was adjourned on May 9, 2007, Rakowsky and Falgione dismissed the notion that the settlement was final, and advised the plaintiffs that it would not be binding until they each executed written settlement agreements. (Compl. ¶ 49). However, within a month of the settlement, the Southern Holdings plaintiffs were writing *pro se* letters to Judge Harwell requesting that the settlement be set aside. (Compl. ¶ 54). As recounted by Judge Harwell in his July 3, 2007 order, all of the letters sought relief from the settlement based on allegations that plaintiffs did not agree to the settlement offer at any time, and that plaintiffs' counsel engaged in fraud in order to coerce the plaintiffs into a settlement, misrepresented either certain evidentiary rulings the court had made or was going to make, and gave bad legal advice concerning the likelihood of exposure to a judgment in light of a previous offer of judgment. S. Holdings, Inc. v. Horry Cnty., No. 4:02-CV-1859 RBH, 2007 WL 1960590, *3 (D.S.C. July 3, 2007).

If the statute of limitations was not already running by the time court adjourned on May 9, 2007, it certainly started to run by the time the Southern Holdings plaintiffs wrote *pro se* letters that were openly critical of Rakowsky and Falgione. *See* Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 632-33, 760 S.E.2d 399, 405 (2014) (the three-year statute of limitations applicable to legal malpractice claim began to run on the date client was openly critical of attorneys' performance in a *pro se* filing in district court).

Judge Harwell treated these *pro se* letters as motions to vacate the settlement, and on July 3, 2007, Judge Harwell issued an order denying the plaintiffs any relief from the settlement. In fact, the *pro se* letters were so critical of Rakowsky and Falgione that Judge Harwell specifically addressed their complaints in his order denying relief from the settlement, finding that "[i]n the event there was any breach of the standard of care owed by

Plaintiffs' attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, ***Plaintiffs have an available remedy for damages against their own attorneys***." S. Holdings, Inc. v. Horry Cnty., No. 4:02-CV-1859 RBH, 2007 WL 1960590, *4 (D.S.C. July 3, 2007) (emphasis added).[6]

Again, accepting the allegations that Spencer was initially led to believe that that settlement would not be binding until reduced to writing, Spencer had actual knowledge by no later than July 3, 2007 that the settlement was binding, and that the case was dismissed with prejudice. *See* Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 633-37, 682 S.E.2d 1, 5-7 (Ct. App. 2009) (finding at least five instances where the legal malpractice plaintiff knew or should have known that a cause of action might exist against attorneys based on, *inter alia*, pleadings in the underlying case that placed her on inquiry notice, and a prior court order that placed her on actual notice that she was not an individual party-plaintiff to the underlying medical malpractice action).

If the denial of the motions to vacate the settlement were not enough, the July 3, 2007 order put Spencer on actual notice, in no uncertain terms, that if the settlement had been coerced, then he had an available remedy for damages against his own attorneys. The three-year clock started ticking no later than July 3, 2007. Spencer filed suit on August 15, 2011. The trial court properly found that his claims were time-barred.

B. Spencer concedes that he was on notice more than three years prior to filing suit.

[6] Judge Harwell's July 3, 2007 order, which is referenced in the complaint, (Compl. ¶ 55), was first raised in support of the statute of limitations defense in December 2012, and was presented to the trial court in support of the motions to dismiss without objection. (Hrg. Transcr.). *See e.g.* Doe v. Bishop of Charleston, 407 S.C. 128, 134, 754 S.E.2d 494, 497-98 n. 2 (2014).

Notwithstanding the pointed language in Judge Harwell's July 3, 2007 order, Spencer contends that it was Judge Harwell's August 13, 2008 order that started the clock ticking on the statute of limitations. According to Spencer, this is when Judge Harwell "admitted for the first time that the evidentiary decisions claimed by Defendants Rakowsky and Falgione to the Plaintiffs and expressed in Defendant Rakowsky's letters, were untruthful." (Compl.¶ 61). In his Brief of Appellant, Spencer conclusively asserts that "[t]his is the actual date the statute of limitations started running." (Brief of App. p. 33). Spencer repeats this assertion throughout his brief. (Brief of App. p. 21, p. 27, p. 29). Spencer has not advanced any argument that the statute of limitations started running any later than August 13, 2008, nor is there any support in the record for finding that the statute of limitations started running any later than August 13, 2008. Spencer filed suit on August 15, 2011. Even accepting Spencer's position, his lawsuit was still time-barred.

C. Judge Harwell's August 13, 2008 order does not support Spencer's claim that the statute was not running until that point.

The August 13, 2008 order[7] was issued in response to Spencer's motion to recuse Judge Harwell, which alleged bias towards the defendants, secret evidentiary hearings, improper discovery and pretrial conferences in chambers, and a conflict based on Judge Harwell's ownership of property in Horry County. Judge Harwell's August 13, 2008 order denied all of these allegations, including that there was a secret evidentiary in which the court ruled against virtually all of the plaintiffs' evidence.

According to Spencer, the fact that Judge Harwell denied the allegations in his motion to recuse proves that Rakowsky and Falgione misrepresented certain evidentiary rulings to coerce the plaintiffs into accepting the settlement, and therefore, it was not until Judge

[7] Southern Holdings v. Horry County, No.: 4:02-cv-1859-RBH (D.S.C. filed August 13, 2008) (Order Denying Mtn. to Recuse, Dkt. Entry 668).

Harwell's August 13, 2008 that Spencer was on notice that claims against Rakowsky and Falgione might exist.

However, the allegation that Rakowsky and Falgione misrepresented certain evidentiary rulings was first raised by the plaintiffs in the *pro se* letters to Judge Harwell one month after the settlement. Judge Harwell addressed those contentions in his July 3, 2007 order, noting that "while the court does not agree with many of the statements by Attorney Rakowsky concerning statements attributed to the court, this court did express concern about the matter of Plaintiffs' untimely production of evidence as argued by the Defendants in open court on May 8, 2007. The court reserved ruling until the next day at which time the court was advised the parties had reached a settlement."[8]

By the time Judge Harwell issued the July 3, 2007 order, not only had the plaintiffs actively claimed that Rakowsky and Falgione misrepresented certain evidentiary rulings in coercing them into accepting the settlement, they were on notice that Judge Harwell disagreed with many of the statements by Rakowsky concerning the court's evidentiary rulings. Judge Harwell's August 13, 2008 order denying that a secret evidentiary hearing took place and otherwise denying Spencer's motion for recusal adds nothing to whether Spencer knew or should have known of his claims by no later than July 3, 2007. *See* Epstein v. Brown, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005) (the statute of limitations begins to run at the point when "the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that

[8] In fact, Spencer's March 10, 2008 motion to recuse Judge Harwell cited this footnote from the July 3, 2007 order in arguing that "Judge Harwell's open disagreement with Judge John Rakowsky and Adrian Falgione regarding the proceedings of the secret evidentiary hearing on May 8, 2007, raises serious issues about the character of matters that utterly defined the decisions of the Plaintiffs on May 9, 2007." Southern Holdings v. Horry County, No.: 4:02-cv-1859-RBH (D.S.C. filed Mar. 10, 2008) (Mtn. to Disq., Entry No. 612, pp. 6-7, ¶ 15).

some claim against another party **might** exist. . . **not when advice of counsel is sought or a full-blown theory of recovery developed.**") (emphasis in original).

D. As an additional sustaining ground, if the complaint was timely filed, the action was not timely commenced.

As an additional affirming ground that is supported by the record and was expressly raised and argued below, Spencer failed to timely commence this action by serving the summons and complaint within 120 days of filing. *See* Rule 220(c), SCACR (an appellate court may affirm upon any grounds appearing in the Record on Appeal).

A civil action is commenced by filing and serving the summons and complaint within the statute of limitations, or filing within the statute of limitations and serving within 120 days of filing. Rule 3, SCRCP. Spencer contends that the statute of limitations started running on August 13, 2008. To the extent his complaint was timely filed on August 15, 2008, the deadline to complete service within 120 days of filing ran on December 13, 2011. Rakowsky was not served until December 16, 2011. (Aff of Rakowsky).

Contrary to what Spencer claims in his Brief of Appellant, Rakowsky was not served on September 15, 2011. This argument was rejected by the trial court's prior order of June 28, 2013 denying Spencer's request for entry of default. (R.). Spencer has not appealed that order and is bound by those findings. In re Morrison, 321 S.C. 370 n. 2, 468 S.E.2d 651 n. 2 (1996) (an unappealed ruling becomes the law of the case and precludes further consideration of the issue on appeal). The record conclusively shows that Spencer failed to timely commence this action, and the Court should affirm on this additional sustaining ground.

II. THE TRIAL COURT PROPERLY DISMISSED THE COMPLAINT FOR FAILURE TO COMPLY WITH SOUTH CAROLINA CODE SECTION 15-36-100.

A. Spencer was required to attach an expert affidavit to the complaint or supplement within 45 days.

South Carolina Code § 15-36-100 (Supp. 2005) requires a plaintiff in a legal malpractice action to file an expert affidavit as part of the complaint. The expert affidavit "must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." Id.

There are two exceptions to the contemporaneous filing requirement. Section 15-36-100(C)(1) allows an additional 45 days to supplement an affidavit when the statute of limitations is set to expire within ten days of filing the complaint. Id. Section 15-36-100(C)(2) provides that "[t]he contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant." Id.

Unless one of these two exceptions is met, the expert affidavit must be filed as part of the complaint. There is no language in Section 15-36-100 that indicates the contemporaneous filing requirement is otherwise optional. *See* id. ("the plaintiff *must file as part of the complaint* an affidavit of an expert witness . . . if an affidavit is not filed . . . the complaint is subject to dismissal for failure to state a claim.") (emphasis added).

Spencer's complaint acknowledged that his claims fell within the scope of Section 15-36-100, specifically alleging that "[t]his Complaint is filed pursuant to S.C. Code § 15-36-100 (C)(1) in anticipation of the possible need for the contemporaneous filing of an Affidavit by an expert, as the limitations on claims will likely expire within ten days of this filing and

prior to the Plaintiffs obtaining such an Affidavit." (Compl. ¶ 7). The 45-day grace period provided by subsection (C)(1) expired on September 29, 2011 without an affidavit being filed, and Spencer never moved to extend that deadline. Rakowsky raised the failure to file an expert affidavit in his motion to dismiss filed on November 3, 2011.

In ruling on this issue, the trial court found that Spencer was required to, but did not, file an affidavit with the complaint or supplement an affidavit within 45 days, and that based on the nature of the allegations in the complaint, the common knowledge exception did not apply. On appeal, Spencer first argues that the so-called "Standing Orders of Judge Barber" relieved him of the obligation to file an affidavit. As discussed in Section III below, to the extent this issue is preserved, the "Standing Orders of Judge Barber" do not exist. Spencer further argues that an affidavit was not required because Rakowsky admitted malpractice by filing the interpleader action, and because Judge Harwell's August 13, 2008 order brings the case within the common knowledge exception in subsection (C)(2).

B. The common knowledge exception is not applicable to Spencer's complaint.

In arguing for the application of the common knowledge exception, Spencer essentially argues that a lay person would be able to evaluate Rakowsky's conduct and determine whether he was negligent by either considering the fact that Rakowsky filed an interpleader action, or by reading Judge Harwell's August 13, 2008 order. While Spencer arguably raised the August 13, 2008 order as a basis to apply the common knowledge exception in the trial court below, his argument that the filing of an interpleader is a *de facto* admission of malpractice was raised for the first time on appeal. It is not preserved for review. Preserved or not, Rakowsky's filing of an interpleader action is not an admission of

malpractice,[9] Judge Harwell's August 13, 2008 order denying Spencer's recusal motion does not contain any findings or admissions of malpractice, and neither supports the application of the common knowledge exception.

Spencer's common knowledge arguments miss the point. Spencer confuses what he believes to be evidence of malpractice with the statutory requirement of a "*pleaded specification of negligence* involving subject matter that lies within the ambit of common knowledge and experience . . . ." Id. Spencer has not pointed to a single "pleaded specification of negligence" in his complaint that would support the application of the common knowledge exception.

Section 15-36-100 does not allow a plaintiff to avoid filing an expert affidavit simply because a plaintiff has what he believes to be evidence of malpractice. Rather, the common knowledge exception is reserved for situations where the alleged malpractice is so clear and obvious that a lay person could evaluate the conduct and determine whether the attorney was negligent without testimony from an expert trained in the profession. *See* Cianbro Corp. v. Jeffcoat & Martin, 804 F. Supp. 784, 791 (D.S.C. 1992). That is not the case with this complaint.

The complaint alleges a scheme to coerce Spencer, *et al.* into accepting the settlement based on issues involving pre-trial discovery rulings, anticipated evidentiary rulings, and the effect of an offer of judgment and potential exposure as a result, which culminated in a failed plan to delay the trial by announcing the settlement on the record, then have the individual plaintiffs object when polled by the court. (Compl. ¶¶ 8-63). The standard of care would not

[9] Spencer contends that filing the interpleader is a *de facto* admission that Rakowsky violated Rule 1.15 of the Rules of Professional Conduct. Notably, Judge Early concluded the exact opposite in the June 27, 2014 order in the interpleader action, which found that Rakowsky satisfied his obligation under Rule 1.15 by filing the interpleader.

be plainly obvious to a lay person reading the complaint, or for that matter, reading the interpleader complaint or Judge Harwell's August 13, 2008 order. The trial court correctly found that an expert affidavit was required and dismissed the complaint accordingly.

III. SPENCER'S REMAINING ARGUMENTS ARE IRRELEVANT, NOT PRESERVED AND NOT BEFORE THIS COURT.

Spencer devotes a total of five paragraphs of the arguments section of his brief to the substantive issues before the Court. (Brief of App. pp. 26-27, p. 29). Spencer spends the remainder of his brief challenging rulings decided by prior orders that have not been appealed and are the law of this case, raising new arguments for the first time on appeal and other arguments that are not preserved for review, and making bald allegations of conspiracy, fraud, and other wrongdoing by the parties and their attorneys.

A. Spencer failed to preserve the majority of the arguments raised in his Brief of Appellant.

A review of the arguments raised by Spencer at various stages of the proceeding below demonstrates that most of the arguments he now makes on appeal were not properly raised in the trial court or preserved for appellate review. At the hearing on June 5, 2013, Spencer raised the following arguments in opposition to the motions to dismiss: that Rakowsky's May 17, 2007 letter to Bruce Benson was an admission of malpractice; that an expert affidavit has been supplemented; that Judge Barber granted Spencer additional time to obtain an expert; that the statute of limitations did not begin to run until Judge Harwell's August 13, 2008 order; and that Rakowsky and Falgione were served within 120 days of filing. (Hrg. Transcr.).

On June 27, 2013, Spencer filed a "Brief on Corrections[,]" ostensibly at the request of Judge Addy, although the transcript of that hearing reveals that no such request was made.

(Hrg. Transcr.). The Brief on Corrections repeated many of the same arguments raised by Spencer at the hearing, but also raised several new arguments, including that the court was without jurisdiction to hear the motions on June 5, 2013 because a notice of appeal had been filed as to the order dismissing Santacroce; that Rakowsky should be equitably estopped from asserting the statute of limitations based on a far-fetched, unsworn hearsay statement involving a purported threat to not file this lawsuit; and with respect to the motion to disqualify, that Rakowsky's counsel was untruthful in challenging the authenticity of a letter that Spencer presented to the court.

On appeal, only two of the argument Spencer advances were actually raised by him at the motion to dismiss hearing: that the statute of limitations did not begin to run until August 13, 2008, and that an expert affidavit was not required because Judge Harwell's August 13, 2008 order demonstrates that this case falls within the common knowledge exception. To the extent that Spencer's *sua sponte* post-hearing Brief on Corrections was a proper mechanism to raise new issues in the trial court, those issues were not ruled on by the trial court. To preserve those issues for review, Spencer was required to raise them in his Rule 59(e) motion. *See* Smith v. NCCI, Inc., 369 S.C. 236, 247-48, 631 S.E.2d 268, 274 (Ct. App. 2006) ("When a trial court does not explicitly rule on an argument raised, and the appellant makes no Rule 59(e), SCRCP, motion to obtain a ruling, the appellate court may not address the issue."). Spencer's Rule 59(e) motion was limited to the statute of limitations, equitable estoppel, the need for an expert affidavit, and Spencer's motions to amend the caption to remove Southern Holdings and the Estate of Doris Holt.

B. If preserved, Spencer's remaining arguments are not relevant, not before this court, and are without merit.

(1) The status conference transcript is not a standing order.

In Section I of Spencer's Brief of Appellant, he argues that in dismissing the complaint, Judge Addy overruled the "Standing Orders of Judge Barber." As set forth above, this issue is not preserved for review because it was not ruled on by the trial court and Spencer failed to request a ruling on it in his Rule 59(e) motion. To the extent this issue is preserved, all of Spencer's arguments that are premised on the "Standing Orders of Judge Barber" are without merit because there are no written orders filed in the action below that encompass any of the rulings made in what Spencer characterizes as the "Standing Orders of Judge Barber."

In referring to the "Standing Orders of Judge Barber[,]" Spencer is actually referring to the transcript of the joint status conference held on May 7, 2012. In arguing for the existence of these "Standing Orders," Spencer ignores that no such orders were ever issued by Judge Barber. Spencer ignores that Judge Barber twice reiterated at the status conference that it was just that, and that they were not there to hold anybody responsible or litigate the issues. (Hrg. Transcr., p.13:23-24, 21:18-19). Spencer ignores that Judge Barber actually issued two written orders following the status conference, neither of which addressed any of the alleged oral rulings that Spencer claims were made. (R. June 28, 2012 Orders). Spencer ignores that Judge Barber himself confirmed that the two written orders he issued after the status conference were the only orders he intended to sign. (R. July 31, 2012 Letter).

If Judge Barber had ruled orally on any of these issues, it was neither final nor binding on the parties until it was reduced to a written order signed by Judge Barber and filed with the court. Brailsford v. Brailsford, 380 S.C. 443, 452, 669 S.E.2d 342, 346 (Ct. App.

2008) ("An oral order of the court is not final and binding until reduced to writing, signed by the judge, and delivered for recordation.") (*citing* Case v. Case, 243 S.C. 447, 134 S.E.2d 394 (1964)); Corbin v. Kohler Co., 351 S.C. 613, 620, 571 S.E.2d 92, 96 (Ct. App. 2002) ("No order is final until it is written and entered."). Stated another way, "an oral pronouncement is not a final ruling on the merits and it is not binding upon the parties until it has been reduced to writing, signed by the Judge and delivered for recordation." Hilton Head Resort Four Seasons Ctr. Horizontal Prop. Regime Council of Co-Owners, Inc. v. Resort Inv. Corp., 311 S.C. 394, 398, 429 S.E.2d 459, 462 (Ct. App. 1993) (*quoting* Bayne v. Bass, 302 S.C. 208, 210, 394 S.E.2d 726, 727 (Ct. App. 1990) (internal quotations and alterations by court omitted).

In Hilton Head Resort, 311 S.C. at 398, 429 S.E.2d at 462,[10] the circuit court verbally ordered the parties to arbitrate at a prior hearing, but the verbal order was never reduced to a written order and entered in the record. When one of the parties subsequently moved to compel arbitration, the circuit court denied the motion, finding that "it was not bound by any verbal order it might have issued because it had not reduced any such order to writing. Id. at 397, 461-62. On appeal, this Court affirmed, finding that "[w]ithout an order for arbitration set forth and entered in the record during the pendency of the action, the parties were not properly required to proceed with arbitration because a final order compelling arbitration never materialized." Id. at 398, 462.

The "Standing Orders of Judge Barber" do not exist. The transcript of the May 7, 2012 status conference is not an order. Regardless of how Spencer construes the transcript, any oral rulings that Spencer believes Judge Barber made at the status conference had to be

[10] Although not cited as such in his Brief of Appellant, Spencer's quote from Hilton Head Resort is taken from Judge Littlejohn's dissenting opinion. Id. at 401, 464 (Littlejohn, J., dissenting).

reduced to writing, signed by Judge Barber and filed to be final and binding. Because no such orders exist, it follows that all of Spencer's arguments that are premised on overruling, failing to follow or otherwise offending the "Standing Orders of Judge Barber" are without merit.

(2) The trial court properly held the other motions in abeyance pending a ruling on the motions to dismiss.

In Section III of Spencer's Brief of Appellant, he argues that Judge Addy erred in not addressing the other motions that were pending at the time the motions to dismiss were heard. As set forth above, this issue is not preserved for review because it was not ruled on by the trial court and Spencer failed to request a ruling on it in his Rule 59(e) motion. To the extent this issue is preserved, the trial court properly held the other motions in abeyance as they were irrelevant to the issues to be decided in the motions to dismiss.

Spencer contends there were five other motions that should have been heard, including two motions to quash filed by Rakowsky and Falgione, Spencer's motion to compel, Spencer's two motions to amend the caption, and Spencer's motion to stay the hearing. In reality, the only other motion of Spencer's that was scheduled to be heard on June 5, 2013 was Spencer's motion to compel filed on July 30, 2012. (Order, May 13, 2013). Although styled a motion to compel, Spencer's July 30, 2012 motion was not a discovery motion, but a motion to compel Rakowsky to comply with the "Standing Orders of Judge Barber" by staying the August 1, 2012 venue hearing.

As set forth above, the "Standing Orders of Judge Barber" do not exist. Further, the August 1, 2012 venue hearing proceeded as scheduled, and on August 15, 2012, Judge Goldsmith issued an order changing venue to Lexington County. (Order, Aug. 15, 2012). Spencer's July 30, 2012 motion was moot by the time Judge Addy heard the motions to

dismiss on June 5, 2013. Neither that motion, nor any other motions that Spencer claims should have been heard at the June 5, 2013 hearing, would have added anything substantive to the narrow issues before the court on the motions to dismiss. There was no error Judge Addy declining to hear the other motions before ruling on the motions to dismiss.

(3) The bald assertion that Spencer was prevented from filing suit because of an alleged threat is not preserved for review and fails both factually and legally.

In Section IV of Spencer's Brief of Appellant, he argues that Rakowsky should be equitably estopped from asserting the statute of limitations defense because he was "physically prevented through real and acted upon threats from filing a lawsuit in this case." (Brief of App. pp. 31-32). According to Spencer, he "was warned by Princess Hodges of DSS and other unidentified individuals. . . 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." (Brief of App. p. 31).

Although this purported threat is an iteration of threats that Spencer raised in other litigation dating back to February 2010,[11] the first time Spencer made this assertion in this case or raised equitable estoppel was after the motion to dismiss was heard. To the extent this issue is preserved for review, Spencer's outlandish claim is wholly unsupported and fails as a matter of law.

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[11] Lail v. United States, No. 1:10-cv-00210-PLF (D.D.C. filed Feb. 5, 2010) (Dkt. Entry 1, Complaint, p. 54, ¶ 181) (Spencer alleging he was warned by an unknown subject that "if he did not drop the Tort Claim and any other legal action his mother would disappear and he would never see her again."); Lail v. United States, No. 3:11-cv-00977-MGL-PJG (D.S.C. filed Apr. 25, 2011) (Dkt. Entry 1, Compl., p. 37, ¶ 69) (Spencer alleging that he was advised by Princess Hodges of DSS that "if he [Spencer] wanted his mother released in good health any time soon he and the others should drop their plans to bring the tort claims action as that would be viewed as an act of good faith showing that Spencer had his mother's best health interests in mind. Otherwise, she [Hodges] feared the worst could happen. Ms. Hodges told Spencer to keep his mouth shut about her tip or her mother's life was out of her hands.").

First, it was Spencer's burden to establish all of the elements of equitable estoppel. *See* Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626, 638, 682 S.E.2d 1, 7 (Ct. App. 2009). His fanciful, unsworn hearsay statement to the court describing this alleged threat was insufficient to carry this burden. Further, as Spencer himself acknowledges, equitable estoppel applies to situations where "*the defendant* has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action." Id. at 638, 7 (emphasis added). Spencer's carefully worded description of what Princess Hodges and other unidentified individuals told him makes absolutely no mention of any involvement by Rakowsky. According to Spencer himself, the alleged threat originated from DSS out of concerns by DSS that Spencer did not have his mother's best interest in mind. And, assuming for the purpose of responding that this purported threat or some iteration of it did occur, it did not deter Spencer from a lawsuit *against DSS and its employee* on February 5, 2010,[12] six months before the statute of limitations ran in this case. To the extent Spencer's outlandish claim was even before the trial court and is preserved for review, it was properly disregarded.

(4) If preserved for review, the fiduciary duty and breach of contract claims were duplicative and subject to dismissal on the same grounds as the legal malpractice claim.

In Section V of Spencer's Brief of Appellant, he argues that Judge Addy failed to address the separate claims for breach of fiduciary duty and breach of contract. As Spencer points out, there was no specific mention of either in the trial court's order. Nor was there any mention by Spencer of this argument at the motion to dismiss hearing or in his motion to

[12] Lail v. United States, No. 1:10-cv-00210-PLF (D.D.C. filed Feb. 5, 2010) (Dkt. Entry 1, Complaint, ¶¶ 36-37) (lawsuit filed by Spencer, *et al.*, naming DSS and its employee Susan Stroman as defendants, alleging that DSS conspired with others to kidnap Doris Holt in retaliation for the Southern Holdings case.)

reconsider. Spencer raises this argument for the first time on appeal. It is not preserved to review.

Spencer aptly cites RFT Mgmt. Co. v. Tinsley & Adams L.L.P., 399 S.C. 322, 732 S.E.2d 166 (2012). The holding in that case is relevant on two points, neither of which is helpful to Spencer. First, the court found that arguments raised by the appellant for the first time on appeal – just as Spencer has done here – were not preserved for review. Id. at 336 n. 7, 173 n. 7. The court in RFT Mgmt. Co. also recognized that a claim for breach of fiduciary duty arising out of the duty inherent in the attorney-client relationship is duplicative of a claim for legal malpractice arising out of the same factual allegations. Id. at 336, 173.

Here, all three of the claims alleged in the complaint arose out of the attorney-client relationship and were based on the same factual allegations. (Compl. ¶¶ 72-80). All three of the claims were subject to the same three-year statute of limitations. *See* S.C. Code § 15-3-530. All three of the claims were subject to dismissal pursuant to the expert affidavit statute. *See* S.C. Code § 15-36-100 ("[I]f an affidavit is not filed . . . *the complaint* is subject to dismissal for failure to state a claim.") (emphasis added). The trial court properly dismissed the action in its entirety.

(5) Southern Holdings and the Estate of Doris Holt were dismissed.

In Sections VI and VII of Spencer's Brief of Appellant, he argues the trial court erred *not* dismissing Southern Holdings and the Estate of Doris Holt. Judge Addy's order dismissed the action in its entirety. The claims of Southern Holdings and the Estate of Doris Holt were subject to the same statute of limitations and the same expert affidavit statute. Dismissal of the entire action was proper. And, to the extent there was any error in not

dismissing Southern Holdings and the Estate of Doris Holt before dismissing the entire action, it was harmless.

(6) The order denying Spencer's motion to disqualify is not before the Court, and Spencer's bald assertions of fraud and other wrongdoing are without merit.

In Section VIII of his Brief of Appellant, Spencer attempts to relitigate Judge Addy's order denying his motion to disqualify Rakowsky's counsel. Judge Addy denied Spencer's motion to disqualify on November 1, 2013, finding that counsel's prior representation of Rakowsky in an earlier arbitration matter was not grounds to disqualify counsel from representing Rakowsky in this case. (Order, Nov. 1, 2013). Spencer has not appealed that order. His arguments challenging that order are foreclosed by the law-of-the-case doctrine. Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009) ("Appellant may not seek relief from the prior unappealed order of the circuit court because the order has become the law of the case.").

Spencer also asserts that Rakowsky's counsel was untruthful at the June 5, 2013 hearing in questioning the authenticity of a letter that Spencer presented to the court. Notwithstanding that Spencer is again arguing issues that were decided in the order denying his motion to disqualify, the assertion that Rakowsky's counsel was untruthful with the court compels a response.

The letter in question was part of a set of documents that Spencer purportedly received from the American Arbitration Association, but was in fact fabricated. The from Spencer documents included a June 21, 2008 letter addressed to Rakowsky's counsel that Rakowsky's counsel had no record of ever receiving. Spencer attempted to use the letter in support of his motion to disqualify, arguing that it showed Rakowsky's counsel also

represented Spencer in the arbitration. The letter states that the plaintiffs in the arbitration action "reached a settlement agreement with Carlock, Copeland, Semier [*sic*][13] & Stair, LLP for James Spencer and John Rakowsky, Esq."

Prior to the hearing, Rakowsky's counsel contacted the AAA case manager, who confirmed by email that the matter was closed in their system as of June 2, 2008, that no copy of the June 21, 2008 letter was in AAA's electronic record, that no request for certified copies of document were in AAA's record, and that she did not recognize the signature on Spencer's copy of the letter. After Spencer presented the fabricated letter to the trial court at the hearing, Rakowsky's counsel presented the AAA case manager's email. (Hrg. Transcr. June 6, 2013). The letter and email were marked as Court's Exhibits 1 and 2 (R.).

In typical fashion, Spencer responds to credible evidence of his own fraud with baseless accusations against the parties and their attorneys. Again, his assertions are not before this court, and they are without merit. The trial court properly denied Spencer's motion to disqualify, and that is the law of this case.

[13] Carlock, Copeland & Stair, LLP was previously known as Carlock, Copeland, Semler & Stair, LLP. Of the five AAA letters produced by Spencer, only the letter in question misspelled Semler as Semier. Spencer also misspelled Semler as Semier in the cover letter he wrote to AAA that was produced with the letters. AAA letters are sent electronically in Word format. *See* Holt v. Williamson, 125 N.C. App. 305, 481 S.E.2d 307 (1997) (upholding $1.8 million verdict against Spencer, previously known as James B. Holt, for among other things, defrauding alleged common law wife by fabricating contracts and promissory notes).

CONCLUSION

For the foregoing reasons, Respondent John R. Rakowsky respectfully submits that the trial court's order dismissing the complaint should be affirmed.

Respectfully submitted,

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Attorneys for Respondent John R. Rakowsky

July 27, 2015

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-32-3428

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, Defendants,

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

PROOF OF SERVICE

I certify that on the date indicated below, I served *Initial Brief of Respondent John R. Rakowsky,* as well as *Respondent's Designation of Matters to be Included in the Record on Appeal* upon *pro se* parties and counsel of record by depositing a copy of it in the United States Mail, postage prepaid, addressed as follows:

James Spencer
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Columbia, SC 29212

Warren C. Powell, Jr.,
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This 27th day of July, 2015.

Michael B. McCall

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REPLY TO SC OFFICE

July 27, 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:

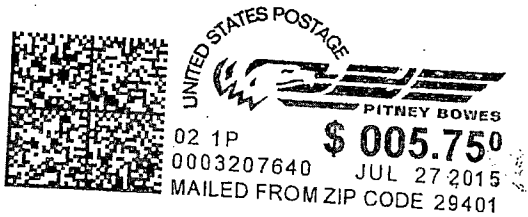
Enclosed for filing please find Respondent John R. Rakowsky's Initial Brief, Designation of Matters to be Included in the Record on Appeal, and Proof of Service of the same on all parties.

By copy of this correspondence, I have served the same upon all *pro se* parties and counsel of record. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

MICHAEL B. McCALL

MBM:tmm
Enclosures
cc: James Spencer
Benjamin C. Bruner, Esq.
Warren C. Powell, Esq.



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