

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE LEXINGTON COUNTY
Court Of Common Pleas

Frank R. Addy, Circuit Court Judge

APPELLATE CASE NO.: 2014-000091

RECEIVED
AUG 27 2015
SC Court of Appeals

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, 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.

RETURN TO APPELLANT'S MOTION TO STRIKE

Respondent Adrian L. Falgione ("Falgione"), by and through his undersigned counsel, responds to the Motion to Strike filed by Appellant James B. Spencer ("Appellant") in the above-referenced appeal. Appellant moves to strike the initial brief and designation of matter Falgione filed because Appellant claims the filing was untimely. For the reasons set forth below and others appearing in the record, Appellant's motion should be denied.

Spencer filed several iterations of his initial brief and designation of matter in this case, the latest having been filed on June 1, 2015. Upon motion, the Court extended Falgione's deadline to serve his initial brief and designation of matter to July 27, 2015.

Under the South Carolina Appellate Court Rules, service may be accomplished by “depositing the document in the U.S. mail, properly addressed to the clerk, with sufficient first class postage attached.” Rule 262(a)(2), SCACR. The date of filing is the date the document is placed in the mail. *Id.* In this case, Falgione’s initial brief and designation of matter were placed in the U.S. Mail on July 27, 2015. (*See* Proof of Service, July 27, 2015, Exhibit A; Affidavit of Counsel ¶¶ 5-7, August 25, 2015, Exhibit B.) The documents were properly addressed to the Clerk with sufficient first class postage because the Clerk received them and filed them on July 29, 2015. (Affidavit of Counsel ¶ 7.) Under the Rule, therefore, Falgione timely filed and served his initial brief and designation of matter.

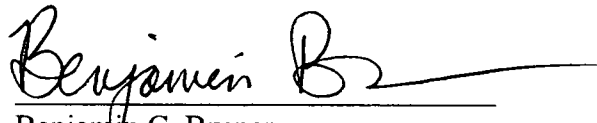
The sole basis for Spencer’s claim is that an additional stamp appears on the envelope bearing the date of July 28, 2015. Spencer presumes that stamp conclusively proves Falgione’s counsel deposited the documents into the mail on July 28, 2015. Spencer offers no reliable evidence, however, to support his claim. Because the documents were deposited into the mail on July 27, 2015, the stamp, if it is the work of the U.S. Postal Service at all, must have been placed on the envelope at some later time and, therefore, is no reflection of the date the document was deposited into the U.S. Mail pursuant to the South Carolina Appellate Court Rules.

As further support for his Motion, Spencer alleges both Falgione and his counsel have previously perjured themselves and committed ethical violations during this lawsuit. Sadly, those sort of baseless and insidious attacks against counsel have become a trademark of Spencer’s filings. Those attacks do not change the fact that Falgione’s initial brief and designation of matter were timely submitted and, therefore, will not be

further glorified by discussion here. It must also be noted that numerous times throughout this appeal Spencer's appeal has been reinstated and his filings accepted notwithstanding his failure to comply with deadlines.

For these reasons, as well as those appearing elsewhere in the record, the Court should deny Spencer's Motion to Strike and award attorney's fees and costs to Falgione.

Respectfully submitted,

A handwritten signature in cursive script that reads "Benjamin C. Bruner". The signature is written in black ink and is positioned above a horizontal line.

Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, South Carolina 29260
803-252-7693
Attorney for Respondent Adrian L. Falgione

August 27, 2015

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PROOF OF SERVICE

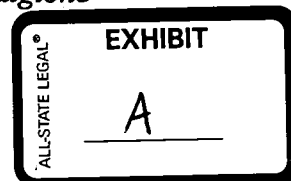
I, Benjamin C. Bruner, certify that I have served *RESPONDENT ADRIAN L. FALGIONE'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL* by depositing a copy of it in the United States Mail, postage prepaid, on July 27, 2015, addressed to the *pro se* Appellant, James B. Spencer, 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212, and to Respondent John R. Rakowsky's attorneys of record, David W. Overstreet, Esquire and Michael B. McCall, Esquire at Carlock, Copeland & Stair, LLP, 40 Calhoun Street, Suite 400, Charleston, South Carolina 29401.

July 27, 2015



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

PROOF OF SERVICE

I hereby certify that I served the *Initial Brief of Respondent Adrian L. Falgione* by depositing a copy of it in the United States Mail, postage prepaid, on July 27, 2015, addressed to the *pro se* Appellant, James B. Spencer, 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212, and to Respondent John R. Rakowsky's attorneys of record, David W. Overstreet, Esquire and Michael B. McCall, Esquire at Carlock, Copeland & Stair, LLP, 40 Calhoun Street, Suite 400, Charleston, South Carolina 29401.

July 27, 2015



Benjamin C. Bruner
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Attorney for Adrian L. Falgione

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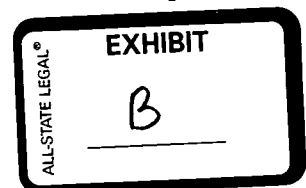
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Of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

AFFIDAVIT OF COUNSEL

PERSONALLY APPEARED BEFORE ME, Benjamin C. Bruner, who being
duly sworn, deposes and says as follows:

1. I am over 18 years old.
2. I have personal knowledge of the facts stated herein, except for those set forth upon information and belief.
3. I represent Respondent Adrian L. Falgione in this appeal.
4. I have reviewed my file to confirm the facts set forth below.
5. I have read the Motion to Strike served by Appellant James B. Spencer ("Spencer") in this matter.

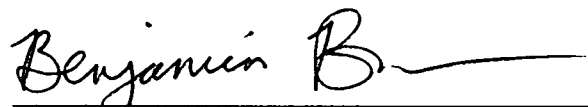


6. Contrary to Spencer's arguments, I did timely file and serve the initial brief and designation of matter in the U.S. Mail on July 27, 2015, pursuant to the South Carolina Appellate Court Rules.

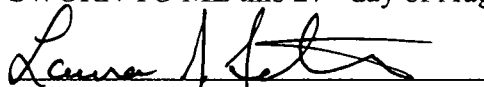
7. On July 27, 2015, after completing the initial brief and designation of matter, I placed them in an envelope with a cover letter, certificate of counsel and proofs of service. That same day, on my way home from work, I deposited the envelope containing those documents into a U.S. Postal Service mailbox located at 2108 Greene Street, Columbia, South Carolina. The envelope was properly addressed to the Clerk of Court and contained sufficient First Class postage, as demonstrated by the Court's ultimate receipt of the package.

8. My client has necessarily incurred \$450 in attorney's fees as a result of Spencer's Motion to Strike due to the need to review the motion, to review my file and the documents in the record related to the Motion and to draft and file a Return and Affidavit in opposition to the Motion.

FURTHER AFFIANT SAYETH NOT.


Benjamin C. Bruner

SWORN TO ME this 27th day of August, 2015


Notary Public for South Carolina
My Commission Expires: 4/2/16

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PROOF OF SERVICE

I, Laura Fetner, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Respondent Adrian L. Falgione, certify that I served a copy of the attached *Return to Appellant's Motion to Strike and Exhibits* by depositing a copy in the U.S. Mail, postage prepaid, on August 27, 2015, addressed to the *pro se* Appellant, James B. Spencer, 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212, and to Respondent John R. Rakowsky's attorneys of record, David W. Overstreet, Esquire and Michael B. McCall, Esquire at Carlock, Copeland & Stair, LLP, 40 Calhoun Street, Suite 400, Charleston, South Carolina 29401.

August 27, 2015


Laura Fetner