

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 FOR SANCTIONS

Respondent Adrian L. Falgione ("Falgione"), by and through his undersigned
counsel, submits this return to the motion for sanctions filed by Appellant James B.
Spencer ("Spencer" or "Appellant") in the above-referenced appeal.

Spencer's Motion for Sanctions is the latest in a series of filings in which he
accuses the Respondents and the defense attorneys in this lawsuit of unethical conduct
and lying to the Court. There is no factual basis for these accusations. Rather than
sanction Falgione, the record in this case demonstrates that Spencer's repeated and
unsubstantiated personal attacks, including his motion for sanctions, are grounds for the

Court to sanction the Appellant. Therefore, Spencer's motion for sanctions should be denied with attorney's fees and costs awarded to Falgione.

DISCUSSION

Rule 269, SCACR, empowers this Court to impose sanctions “[w]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules[.]” Appellant claims sanctions are appropriate and that this matter should be remanded for discovery because both Falgione and defense counsel have perjured themselves by filing false affidavits. Those claims are wholly without merit.

Spencer accuses counsel of committing fraud based upon an affidavit of counsel submitted on April 11, 2014 in opposition to Spencer's effort to reinstate the appeal. Spencer contends counsel attested that “Appellant was personally served at his home at 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212. . . .” (App.'s Motion for Sanctions p. 2, August 20, 2015) (emphasis added). An examination of the affidavit, however, reveals that Spencer's position is rooted in a misrepresentation of the testimony and a misunderstanding of the South Carolina Rules of Civil Procedure. In truth, the Affidavit states,

2. On December 13, 2013, I had a runner hand-deliver a copy of the Circuit Court's order denying the Appellant's Rule 59 Motion to the Appellant at his address: 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212. A true and accurate copy of that letter is attached as Exhibit A.

(Affidavit of Counsel ¶ 2, April 11, 2014.) At no point has Counsel claimed to have placed the Order directly into Spencer's hands at his residence. Rather, the affidavit states a runner working for counsel's law firm delivered the Circuit Court's order to

Spencer at 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212. Testimony from the runner, Charles Edgar, corroborates the facts in the April 11, 2014 affidavit and, contrary to the affidavit on which Spencer relies, is proffered by a witness who was actually present in the store on December 13, 2013. (Affidavit of Edgar ¶¶ 5-13, August 27, 2015, Exhibit A; *see also* Rules 801(c) and 802, SCRPC.)

Furthermore, the South Carolina Rules of Civil Procedure allow a party to effect service of a written order by hand-delivering a copy to an opposing party at his last known address, and the document need not be placed directly into the hands of the opposing party. Rule 5, SCRPC. Spencer cannot in good faith deny that the address to which the letter was delivered has been the only one he provided the parties and the Court throughout these proceedings. Allowing Spencer to file a lawsuit, provide an address to the Court and then claim delivery of papers to that address fail to satisfy service under Rule 5 undermines the purpose of the Rules of Civil Procedure to “secure the just, speedy, and inexpensive determination of every action.” Rule 1, SCRPC. Such an interpretation also invites manipulation of both the Rules of Civil Procedure and the Appellate Court Rules, for a party who fails to timely serve a Rule 59 motion or notice of appeal can simply claim he received the order on a later date—or that he never received it at all.

For these reasons, Spencer’s arguments are clearly based on a misinterpretation of the Rules of Civil Procedure and on an unreasonable and strained interpretation of counsel’s April 11, 2014 affidavit. His Motion, therefore, is frivolous and should be denied. See Holmes v. Haynsworth, Sinkler & Boyd, P.A., 408 S.C. 620, 644, 760 S.E.2d 399, 411 (2014) (affirming sanctions under both Rule 11 and FCPSA where,

among other things, pro se appellant "submitted numerous affidavits and memoranda accusing [Respondents] and [Respondents'] counsel of engaging in all manner of inappropriate and abusive conduct, each of which has been dismissed and discounted by the Court, and all of which were submitted without reasonable basis.").

Spencer also accuses the undersigned of "fabricating a letter dated December 13, 2013" because he claims to have never received it. (App.'s Motion for Sanctions p. 3.) Notably, however, Spencer offers this Court no reliable evidence to support that claim. And contrary to that claim, the attached affidavits and their exhibits demonstrate that the letter at issue was in fact written, signed and delivered on December 13, 2013. (Affidavit of Edgar ¶¶ 5-13; Affidavit of Counsel ¶¶ 13-16, Exhibit B.) For these reasons, the record is clear that there is no reasonable basis for Spencer's motion for sanctions. See Holmes, supra.

Spencer's repeated, unwarranted claims of unethical and fraudulent conduct should not be allowed to continue unchecked. In this same litigation, Spencer made the same arguments to the Circuit Court and the Court rejected them each time. For example, Spencer argued to the Circuit Court that Falgione's counsel "disrespected Judge Barber's standing Orders," "wrongfully pursued their clients [sic] interests," and violated the South Carolina Rules of Professional Conduct. (App.'s Motion for Reconsideration pp. 3-4, August 30, 2012, Exhibit C.) In a motion he filed with the Circuit Court, Spencer argued that the undersigned had made "false representations" to the Court, "knowingly" had made false claims about the status of an order, and had "falsely claimed that engagement contracts had been executed" in Falgione's resident county. Id. at 4-5.

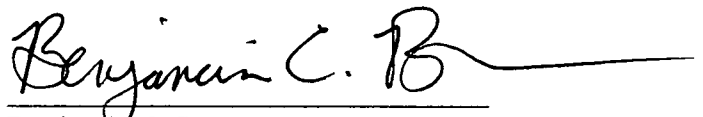
The Circuit Court considered and rejected Spencer's claims of fraud that time and every other time he has made them. (Order of October 1, 2012, Exhibit D.)

Unfazed by prior adverse rulings and by the absence of factual support for his suspicions, however, Spencer continues to attack the character of Falgione and of his counsel for no justifiable reason. Put simply, Spencer asks this Court to do what the Circuit Court has repeatedly declined to do. Such conduct itself is grounds for sanctions. See Rule 260(a), SCACR, and Holmes, supra. Based upon Spencer's filings in this appeal and his latest motion for sanctions, it is evident that the hyperbole and accusations of fraud will only continue unless the Court takes action to stop them.

CONCLUSION

For these reasons, Spencer's accusations are unreasonable, indefensible and frivolous. Accordingly, Falgione prays that the Court deny the motion for sanctions and award Falgione reasonable attorney's fees and costs incurred in connection with responding to the motion.

Respectfully submitted,



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

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

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.

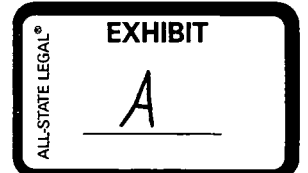
John R. Rakowsky, Adrian L. Falgione, and The Law Offices of
Adrian Falgione, LLC, Defendants,

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

AFFIDAVIT OF CHARLES EDGAR

PERSONALLY APPEARED BEFORE ME, Charles Edgar, who being duly
sworn, deposes and says as follows:

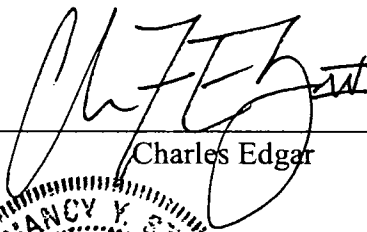
1. I am over 18 years old.
2. I have personal knowledge of the facts stated herein, except for those set forth upon information and belief.
3. I am currently a youth minister at a church.
4. Prior to my current job, I was a runner at Bruner, Powell, Wall & Mullins, LLC.
5. On December 13, 2013, I was handed a letter and was asked to deliver the



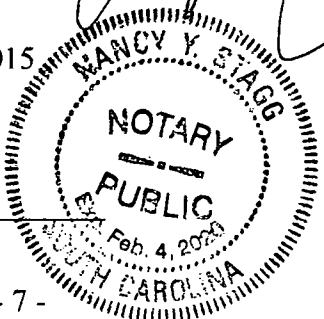
letter to 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina.

6. I drove to that address with the letter.
7. Upon arriving at the address, I learned that the address was for a UPS Store.
8. I entered the store and asked a man who appeared to be a store employee about the address on the envelope. I showed the employee the envelope with Mr. Spencer's name on it and asked whether Mr. Spencer had a box at that store.
9. The employee informed me that it was the store's policy not to provide any information about who rented or used the boxes.
10. I informed the employee that I was a runner for a law firm and had a letter to deliver.
11. The employee repeated the store's policy but then told me to leave the letter there and made it clear to me that he would see that Mr. Spencer received the letter.
12. Based upon the employee's representations to me, I left the letter with the employee at the store.
13. If I had not believed the employee would see that Mr. Spencer received the letter, I would not have left it at the store and instead would have returned to the office with it.

FURTHER AFFIANT SAYETH NOT.



Charles Edgar



SWORN TO ME this 27th day of August, 2015



Nancy Y. Stagg

Notary Public for South Carolina

My Commission Expires: 2/4/2020

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

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,

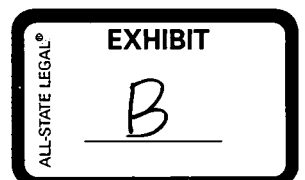
Of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

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 for Sanctions served by Appellant James B.

Spencer ("Spencer") in this matter.



6. On April 11, 2014, I submitted an affidavit (“the Affidavit”) in opposition to the motion filed by Spencer on April 2, 2014 to reinstate this appeal.

7. My Affidavit noted that on December 13, 2013, I had a runner deliver a copy of the trial court’s order denying Spencer’s Rule 59 motion (hereinafter, “Order”) to Spencer at 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212 pursuant to Rule 5, SCRPC.

8. On December 13, 2013, I contacted the Lexington County Clerk’s Office after learning that the Court had entered an Order on Spencer’s Rule 59 Motion. After calling the Clerk’s Office, I sent an e-mail requesting a copy of the Order. The Clerk’s Office responded by e-mail and sent me a copy of the Order. A true and accurate copy of my e-mail exchange with the Clerk’s Office is attached to this affidavit as Exhibit B-1.

9. Immediately upon receiving a copy of the Order by e-mail, I placed it with a cover letter I had already prepared (“the December 13th letter”), and I arranged for a runner to deliver it to Spencer’s last known address. Although Spencer claims I fabricated the December 13th letter later, I am certain that I wrote, signed and arranged for service of the letter on Spencer on December 13, 2013. As proof of that fact, I am attaching to this Affidavit as Exhibit B-2 a true and accurate copy of an e-mail with an attachment from my inbox dated December 13, 2013. That e-mail was generated when I had the December 13th letter and enclosures scanned immediately prior to placing them in an envelope and having the runner, Charles Edgar, deliver them to Spencer at his last known address, 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212.

10. My client has necessarily incurred \$525 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

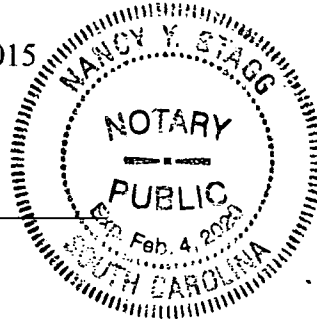
the documents in the record related to the Motion and to draft a Return and this Affidavit in opposition to the Motion.

FURTHER AFFIANT SAYETH NOT.

Benjamin C. Bruner
Benjamin C. Bruner

SWORN TO ME this 27th day of August, 2015

Nancy Y. Stagg
Notary Public for South Carolina
My Commission Expires: 2/4/2020



Ben Bruner

From: Huggins, Mona Denise [MHuggins@lex-co.com]
Sent: Friday, December 13, 2013 3:43 PM
To: Ben Bruner
Subject: RE: Spencer, et al. v. Rakowsky, et al. / CA No: 2012-CP-32-03428

Just emailed it to you from a do not reply address. If you don't get it in a few, let me know.

Mona

From: Ben Bruner [<mailto:BBruner@brunerpowell.com>]
Sent: Friday, December 13, 2013 2:44 PM
To: Huggins, Mona Denise
Cc: Nancy Stagg
Subject: Spencer, et al. v. Rakowsky, et al. / CA No: 2012-CP-32-03428

Good afternoon, Mona. I learned this week that Judge Addy signed an order denying Jim Spencer's motion to reconsider in this case. There is a hearing next week in a related case, and I will be extremely grateful if you could help me get a filed copy of the order ASAP. I can send a runner if necessary.

Thank you for your help,

Ben

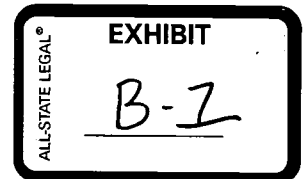
Benjamin C. Bruner

BRUNERPOWELL

BRUNER, POWELL, WALL & MULLINS, LLC
P.O. Box 61110
1735 St. Julian Place, Suite 200 (29204)
Columbia, SC 29260-1110
(p) 803.252.7693
(f) 803.753.0060
www.brunerpowell.com

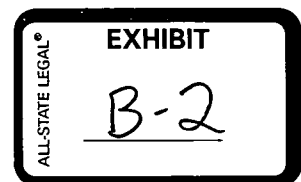
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Ben Bruner

From: copier@bprwm.com
Sent: Friday, December 13, 2013 3:43 PM
To: Ben Bruner
Subject: Attached Image
Attachments: 1624_001.pdf



BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

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BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

December 13, 2013

VIA HAND DELVIERY

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

RE: *James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc. vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC*
Civil Action No.: 2012-CP-32-03428
BPWM File No.: 3-1742-108

Mr. Spencer:

Please find enclosed a copy of the Court's Order denying the Rule 59 Motion you filed in this action, hereby hand-delivered to you pursuant to Rule 5, SCRPC.

Sincerely,



Benjamin C. Bruner

BCB/gh

/Enclosure

cc: Amanda K. Dudgeon, Esquire (via e-mail only)

FORM 4

STATE OF SOUTH CAROLINA
 COUNTY OF LEXINGTON
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2012CP3203428

James Spencer Southern Holdings Inc	Doris Holt	John R Rakowsky Law Offices of Adrian Falgione LLC	Adrian L Falgione
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

12/12/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on **12th of December 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **12th of December 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer 7001 St Andrews Rd ste 183 Columbia, SC
29212

Andrew W Countryman Carlock Copeland & Stair LLP 40
Calhoun St Ste 400 Charleston, SC 29401
Amanda Kurzen Dudgeon 40 Calhoun St., Ste. 400
Charleston, SC 29401
Benjamin C. Bruner PO Box 61110 Columbia, SC
292601110
Warren C. Powell Jr. PO Box 61110 Columbia, SC 29260
Stephanie Nichole Weissenstein PO Box 6338 West
Columbia, SC 291716338

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ORIGINAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

2013 REC -6 A 9 34

James Spencer, individually and on behalf)
of the Estate of Doris Holt and on behalf)
of Southern Holdings, Inc.;)
CLERK OF COURT)
LEXINGTON, SC)

C/A No. 2012-CP-32-3428

Plaintiffs,)

v.)

ORDER DENYING RULE 59(e) MOTION

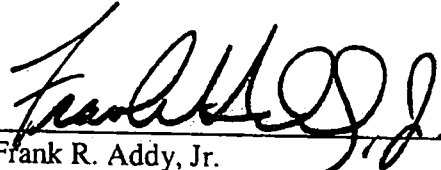
John R. Rakowsky; Adrian L. Falgione;)
and The Law Offices of Adrian Falgione,)
LLC;)
Defendants.)

THIS MATTER COMES BEFORE THE COURT on Plaintiff Spencer's motion of September 9, 2013 requesting reconsideration of the court's prior order dismissing this case. No party requested a hearing on Plaintiff's motion.

The court has reviewed the pleadings, record, and fully considered the arguments made in Plaintiff's motion. The court finds that the prior order dismissing this action shall stand.

WHEREFORE, Plaintiff's motion pursuant to Rule 59 is denied.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Presiding Judge, Eleventh Judicial Circuit

December 4, 2013
Lexington, South Carolina

top" of a closed case file." Judge Goldsmith had copies made of the letter and gave copies to the parties present at the hearing.

The letter was nothing more than a proverbial "red herring" as it was both inadmissible and also irrelevant because it does not pertain to this case. The letter clearly states it relates to Case No. 2010-CP-40-5896, the case of "Stewart Buchanan, #69848 v. Robert Brown, in his individual capacity, Sandra S. Bowie, in her individual capacity and David Tatarsky, in his individual capacity."

The only statement that constituted the entire body of letter pertaining to Case No. 2010-CP-40-5896 was, "I have signed all the orders I intended to sign and they will stand." Not only does that statement not negate any previous orders issued by Judge Barber in that case it has nothing to do with the case the hearing was being presided over by Judge Goldsmith. (**See Exhibit "A" attached.**)

Subsequently, Judge Goldsmith's ruling in this case, is completely inconsistent with the oral rulings and the Scheduling Order issued by Judge Barber, at the previous hearing on the case captioned above held on May 7, 2012.

Judge Goldsmith stated on the Court record he located the case file and the letter lay unattended on top of a case file in Judge Barber's office and he assumed the letter was pertaining to this case. Significantly, Judge Goldsmith didn't review anything else in the case file. So Judge Goldsmith's subsequent rulings were being based on this "red hearing."

Taken in the light least favorable to the Plaintiffs, in this case, the "red hearing" produced by Judge Goldsmith did not negate any of the rulings made by Judge Barber during the May 7, 2012 hearing.

However, Judge Goldsmith's ruling is contra to Judge Barber's rulings on the May 7, 2012 Court record pertaining to this case. In that regard, Judge Barber himself ruled that one Judge cannot overrule another judge. See Judge Barber's Order, dated October, 18, 2011, Case No.: 2008-CP-40-6656¹, where Judge Barber states, **"There is a long-standing rule in this State that one judge of the same court cannot overrule another."** *Tisdale v. Amer. Life Ins. Co.* 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dankins v. Robbins*, 203 S.C. 199, 26 S.E. 2d 689 (1943)." The *Pro Se* Plaintiffs concur. Therefore, Judge Goldsmith's ruling to change venue must be reversed as it is contradictory to the rulings made by Judge Barber on May 7, 2012.

During the May 7, 2012 hearing, Judge Barber issued the Order for the undisputed litigation funds to be turned over to the Court by June 1, 2012 and issued the scheduling Order for both cases, in an effective joinder of both cases (Case No. 2008-CP-40-6656 and 2011-CP-40-5384) including, but not limited to, the holding of simultaneous depositions.

Also, unknown to Judge Goldsmith, as he was not prepared and had not reviewed the case file, a motion to compel (**See Exhibit "B" attached**) was pending and Judge Barber had Ordered on May 7, 2012, that no other hearings were to take place in case 2011-CP-40-5384 and case 2008-CP-40-6656 until after the interplead uncontested litigation funds were turned over to the *Pro Se* litigants and the *Pro Se* litigants had time to hire counsel and experts for both the cases.

The *Pro Se* Plaintiffs informed Judge Goldsmith of Judge Barber's Orders, issued on May 7, 2012, but opposing counsels Amanda Dudgeon and Ben Bruner disrespected Judge Barber's standing Orders on May 7, 2012 and wrongfully pursued their clients interests knowing this was contrary to prior rulings made by the Court on May 7, 2012 which itself appears to the lay *Pro Se*

¹ Note on May 7, 2012, Judge Barber in a joined hearing of Case No. 2008- CP-40-6656 and 2011-CP-40-5384.

litigants to be a violation of the South Carolina Rules of Professional ethics for lawyers by Mr. Bruner and Ms. Dudgeon.

Opposing Counsels Amanda Dudgeon and Ben Bruner knew that changing the venue to Lexington County where Amanda Dudgeon's client John Rakowsky is the long standing Chief Presiding Municipal Judge holding power county wide and is politically well connected would obviously prejudice the case against the Plaintiffs and chose to ignore the Court's prior rulings on May 7, 2012.

Further, based on Counsel Bruner's false representations, the Court erred in its Order that the Plaintiffs' declarations had no significance, and should not be considered when in fact they carry the same authority as the defendants' affidavits as established by the Federal Courts.²

"an unsworn declaration has the same force and effect as an affidavit if it recites -- as Fadale's declaration does -- that it was executed under penalty of perjury."

Sterling China Co. v. Glass, Molders, Pottery, Plastics & Allied Workers Local No. 24, 357 F.3d 546, 557 (6th Cir. Ohio 2004)

Additionally, Counsel Bruner in order to undermine the Pro Se Plaintiffs' credibility knowingly falsely claimed on the Court record that an Order had been issued by Judge Barber whereby Amanda Dudgeon and her law firms position to represent John Rakowsky, which had

² § 1746. Unsworn declarations under penalty of perjury

"Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

been challenged by the Plaintiffs in a motion filed on March 27, 2012 due to a conflict of interest, had been resolved as the Plaintiffs claims of a conflict of interest were found baseless. This is patently untrue and certainly a violation of ethics by Mr. Bruner and Ms. Dudgeon as she stood by and allowed the false statement on her behalf to go on the Court record unchallenged.

Further Counsel Bruner falsely claimed that engagement contracts had been executed in Lexington County between the Plaintiffs and his client Adrian Falgione. During the hearing on August 1, 2012, the Plaintiffs pointed out this was not true and that Counsel Bruner could not produce one such document as Adrian Falgione was hired by John Rakowsky and no contracts were ever executed between the Plaintiffs and Adrian Falgione.

Through the untruthful statements in Adrian Falgione's affidavit Counsel Bruner was using in the affidavit of Adrian Falgione to establish venue in Lexington County. Counsel Bruner made such a statement without seeing any such contract purportedly executed by the Plaintiffs and Adrian Falgione and without researching the law wrongfully claiming that Plaintiffs' sworn declarations carried no legal weight and the affidavits of the Defendants superseded the meaningless Plaintiffs' declarations. The Court erred and stated it agreed that the Plaintiffs Declarations were legally meaningless and had no legal weight compared to the sworn affidavit of Adrian Falgione.

Therefore, Judge Goldsmith without being prepared and acting on both a red hearing and misinformation provided by opposing counsels Bruner and Dudgeon wrongfully concluded that the change in venue was called for, when in fact, a change in venue to Lexington County was not proper as the vast majority of the work was done in Richland County, South Carolina and Clark County, Nevada and the acts of malpractice occurred outside Lexington County in both Richland County, Florence County and Clark County Nevada. Therefore, under SC §§ 15-7-20 Richland

County, SC or Clark County Nevada would be proper venues and Lexington County would be improper under SC §§ 15-7-100 as the Lexington County venue would lead to an impartial trial in that venue given the political position of Defendant Chief Judge John Rakowsky of Lexington County (See Exhibit "C" attached hereto).

Counsel Bruner knew or should have known that Defendant John Rakowsky is a Chief Judge in Lexington County, S.C., yet Mr. Bruner wrongly claimed the Pro Se Plaintiffs were untruthful in footnote #2, on page 4 of his Memorandum in Support of Defendant's, Adrian L. Falgione and the Law Offices of Adrian Falgione, LLC's Motion to Change Venue about John Rakowsky's position as "Chief Judge."

THEREFORE, due to the foregoing the Plaintiffs humbly request the Judge Goldsmith's decision in favor of Defendants motion for a change in venue to Lexington County, based on the foregoing, be reversed and denied with prejudice.

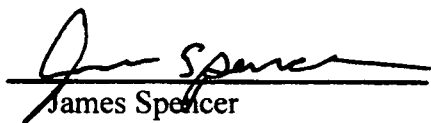
RESPECTFULLY SUBMITTED

This 29th day of August, 2012.

By:



Irene Santacroce
Pro Se Plaintiff



James Spencer
Pro Se Plaintiff

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 James Spencer, individually and on behalf,)
 of the Estate of Doris Holt and on behalf)
 of Southern Holdings, Inc.; and Irene)
 Santacroce,)
)
 Plaintiffs,)
)
 vs.)
)
 John R. Rakowsky; Adrian L. Falgione; and)
 The Law Offices of Adrian Falgione, LLC,)
)
 Defendants.)
)
 _____)

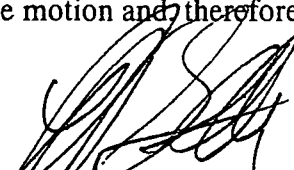
IN THE COURT OF COMMON PLEAS

CIVIL CASE NO: 2011-CP-40-5384

2012 OCT -1 AM 11:44
 RICHLAND COUNTY
 FILED
 JEANETTE W. McBRIDE
 C.C.P. & G.S.
 ORDER

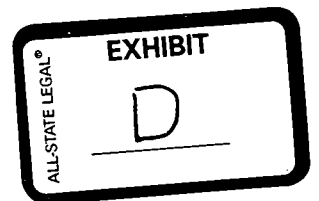
This matter comes before the Court upon Plaintiff's Motion to Reconsider the Court's Order, dated August 15, 2012, that granted Defendant's Change of Venue Motion.

After considering the arguments set for in memoranda submitted by each party's counsel, this Court finds there is no basis for granting the motion and therefore, denies Plaintiff's motion.



 Brooks P. Goldsmith, Judge

Lancaster, South Carolina
 September 26, 2012



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.

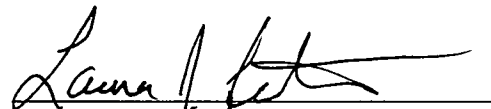
John R. Rakowsky, Adrian L. Falgione, and The Law Offices of
Adrian Falgione, LLC, Defendants,

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

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 for Sanctions and Exhibits* by depositing a copy of it 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

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

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E. WADE MULLINS, III, P.A.

BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.

JOEY R. FLOYD, P.A.

BENJAMIN C. BRUNER, P.A.

ANN ALLISON LEE

CAITLIN C. HEYWARD

* Of Counsel

** Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@BRUNERPOWELL.COM

August 27, 2015

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings

Clerk of Court, S.C. Court of Appeals

1220 Senate Street

Columbia, SC 29201

Re: *James Spencer, et al. v. John Rakowsky, et al.*

Appellate Case No.: 2014-00091

BPWM File No.: 3-1742.108

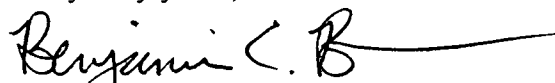
Dear Ms. Kitchings:

Enclosed herewith for filing please find an original and seven (7) copies each of Respondent Adrian Falgione's *Return to Appellant's Motion to Strike* and *Return to Appellant's Motion for Sanctions* in the above referenced action, together with a proof of service for each. Please file the original and copies and return one file stamped copy my courier.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

With my kindest regards, I am,

Very truly yours,


Benjamin C. Bruner

BCB/gh

Enclosures

cc: James B. Spencer (via U.S. Mail w/ encl.)
David W. Overstreet, Esq. (via U.S. Mail w/ encl.)
Michael B. McCall, Esq. (via U.S. Mail w/ encl.)

RECEIVED
AUG 27 2015
SC Court of Appeals