

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

RECEIVED

SEP 30 2015

SC Court of Appeals

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.

RETURN TO APPELLANT'S MOTION TO SERVE AND FILE
REPLIES OUT OF TIME

Respondent Adrian L. Falgione ("Falgione"), by and through his undersigned
counsel, submits this Return in opposition to the Appellant's Motion to Serve and File
Replies to Returns Out Of Time, served September 29, 2015.

Appellant seeks leave to file a Reply for each of the two motions currently
pending before this Court, one related to his Motion for Sanctions, and one related to his
Motion to Strike. Falgione served and filed Returns to both motions on August 27, 2015.
Under the South Carolina Appellate Court Rules, Appellant's reply was due September 1,
2015. Rule 240(f), SCACR. However, Appellant served his Replies on September 29,
2015, 28 days late.

Appellant argues this Court should once again grant him leave to file papers after his deadline has expired, this time four weeks after his deadline. In support, Appellant claims he never received Respondent's Returns even though copies of the filings were served on him by U.S. Mail to his last known address, a manner of service identical to which Appellant has been served throughout this appeal. Appellant claims he learned the Returns were filed when he checked the Court's web site, yet notably absent from the Motion is any indication of the date when Appellant made that discovery, nor does Appellant claim to have filed his Replies within five days of discovering the Returns had been filed. See id.

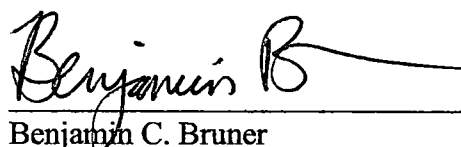
In addition, Appellant contends his medical condition prevented him from timely filing his Replies. However, Appellant claimed before he filed his motions that he was 100% disabled and that he relied on others. To the extent his condition affects his ability to meet deadlines, and specifically the September 1, 2015 deadline, Appellant could have easily requested an extension of time in advance, rather than four weeks after the fact. Nothing in Appellant's motion reveals any new, unforeseen circumstance that developed after Appellant filed his motion and excuses his failure to meet yet another deadline in this appeal.

Contrary to Appellant's argument, the proffered Replies do indeed prejudice Falgione because they are public filings which contain more of the same baseless, insidious allegations of fraud that have plagued this appeal. Appellant's arguments are rooted in inaccurate references to the record and in suspicions the record simply does not support. With respect to his Motion for Sanctions, Appellant simply repeats his unsubstantiated belief that Falgione and the undersigned engaged in fraud upon the Court

and then in a scheme to cover it up. As for his Motion to Strike, Appellant again claims the undersigned filed a “perjured affidavit” and offers argument grounded in inapplicable law that utterly disregards that filing is accomplished when a document is “deposit[ed]...in the U.S. mail, properly addressed to the clerk, with sufficient first class postage attached.” Rule 262(a)(2), SCACR. The Replies offer nothing new with respect to the motions before the Court; they serve no useful purpose. Rather, the only purpose the Replies serve is to yet again launch public accusations that Falgione and his attorney committed fraud and perjury. To allow such filings certainly results in undue prejudice to Falgione.¹

Given the continuation of Appellant’s allegations of fraud and the absence of substantive argument on the issues in his Replies, the Court should deny his Motion to Serve and File Replies to Returns Out Of Time.

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

September 30, 2015

¹ Appellant’s argument that the trial court awarded all settlement proceeds to Falgione is inaccurate. The trial court in this action dismissed Appellant’s claims. Disbursement of the settlement funds was at issue in an interpleader case that was pending in Richland County and is currently pending in a separate appeal before this Court. Falgione is not a party to the interpleader appeal.

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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 to Serve and File Replies to Returns Out Of Time* by depositing a copy of it in the U.S. Mail, postage prepaid, on September 30, 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.

September 30, 2015



Laura Fetner