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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

SC Court of Appeals

Frank R. Addy, Jr., 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,

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.

MOTION TO DISMISS APPEAL

Respondent John R. Rakowsky hereby moves to dismiss the above-captioned appeal for failure to comply with the South Carolina Appellate Court Rules pursuant to Rule 260, SCACR on grounds that Appellant has not served a copy of the Record on Appeal or filed proof of service of the Record with this Court.

Respondents' initial briefs and designations were served on July 27, 2015. Appellant did not serve or file a reply brief. Pursuant to Rule 210(a), SCACR, Appellant was required to serve the Record on Appeal by August 26, 2015 and immediately file proof of service of the Record with this Court. To date, Appellant has not served the Record on Appeal on Respondent Rakowsky, and the undersigned's review of the South Carolina Appellate Court Case Management System reflects that no proof of service of the Record has been filed with this Court.

Appellant has filed three motions since service of the last briefs,¹ none of which operates to stay the time limits imposed by Rule 210(a), SCACR. Pursuant to Rule 240(b), SCACR,

[u]nless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.

The deadline for Appellant to serve the Record on Appeal and file proof of service of the Record with this Court expired more than two months ago. Despite multiple dismissals, reinstatements, and extensions over the twenty two months that have elapsed since this appeal was filed, and this Court's admonition in the March 4, 2015 Order, Appellant has yet again failed to comply with the time limits imposed by the South Carolina Appellate Court Rules. Based on the foregoing, Respondent Rakowsky respectfully requests that the Court enter an order dismissing this appeal.

¹ On August 20, 2015, Appellant served and filed a "Motion to Strike Respondent Falgione's Opening Brief and Designation" and a "Motion for Sanctions Under Rule 269 Against Respondent Adrian Falgione." Respondent Falgione served returns to these motions on August 27, 2015, which were filed with the Court on August 29, 2015. On September 29, 2015, Appellant served and filed a "Motion to Allow Late Filing of Reply to Motion for Sanctions and Reply to Motion to Strike." All three motions are pending.

November 3, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to be "D. Overstreet", written over a horizontal line.

David W. Overstreet, Esq.
Michael B. McCall, Esq.
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
(843) 727-0307

Attorneys for Respondent John Rakowsky

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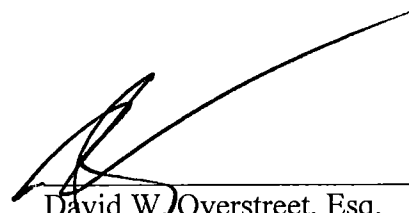
Respondents.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss on all parties to this appeal by depositing a copy in the United States Mail, postage prepaid, on November 3, 2015, addressed to *pro se* Appellant and counsel of record as follows:

Warren C. Powell, Jr., Esq.
Benjamin C. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
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Columbia, SC 29260-1110

James Spencer
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Attorneys for Respondent John Rakowsky

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LAW OFFICES

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SC Court of Appeals

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REPLY TO SC OFFICE

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November 3, 2015

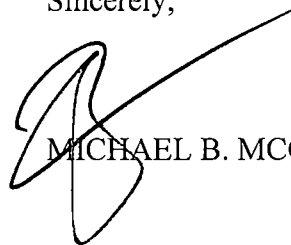
Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

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 the original and 6 copies of Respondent John R. Rakowsky's Motion to Dismiss Appeal, Affidavit of Counsel, and Proof of Service, as well as a check for the filing fee of \$25.00. By copy of this correspondence, I am serving a copy of the same upon Appellant and all counsel of record. If you have any questions, please do not hesitate to contact me. With kind regards, I am

Sincerely,

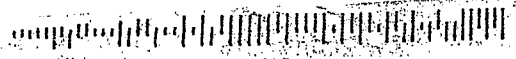
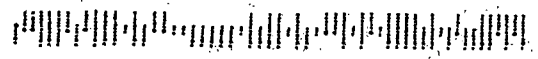



MICHAEL B. MCCALL

MBM:bjg

Enclosures

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



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