

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

RECEIVED

NOV 23 2015

SC 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.

---

RESPONDENT ADRIAN L. FALGIONE'S RETURN  
TO APPELLANT'S MOTION FOR EXTENSION OF TIME  
TO AMEND AND FILE RECORD ON APPEAL

---

Respondent Adrian L. Falgione ("Falgione"), by and through his undersigned counsel, hereby submits this Return in opposition to the Motion for Extension of Time to Amend and File Record on Appeal filed November 13, 2015 by Appellant James Spencer ("Appellant" of "Spencer").

Appellant moves pursuant to Rule 240, SCACR, for an Order granting him an extension to November 27 or 28, 2015<sup>1</sup> to file "an amended Initial Appellant Brief and

---

<sup>1</sup> The first full paragraph of Appellant's motion asks for an extension to November 28, 2015. The concluding paragraph, however, requests an extension to November 27, 2015.

[file] the documents Appellant has for the record on appeal.” Appellant’s motion, however, is devoid of any explanation why Appellant failed to compile and serve the record on appeal by the August 26, 2015 deadline<sup>2</sup> and failed to request an extension of time to do so before the deadline. Furthermore, Appellant provides no legal authority to support his request to amend his initial brief.

Appellant argues he should receive an extension because he discovered “key documents” missing from the clerk of court’s file while assembling the record on appeal. However, Appellant knew the documents were not in the clerk’s file three months before the deadline. A document Appellant filed as an exhibit to his Motion to Remand shows Appellant learned the documents were missing from the clerk’s file on or about May 29, 2015.<sup>3</sup> (See Letter of Emily L. Hinson, May 29, 2015, Exhibit B to App.’s Mot. to Remand, November 13, 2015.) Despite that knowledge, Appellant did not raise the issue to the Court and request additional time. In fact, Appellant has provided this Court no affidavit explaining what steps, if any, he took in July and August to compile the record, nor has appellant provided any other evidence excusing his failure to meet the August 26, 2015 deadline.

It is uncontroverted that Appellant has missed yet another deadline, this time by two months. It is also uncontroverted that although Appellant knew in May that he was unable to obtain certain documents, he requested an extension only after the Respondents filed their motions to dismiss. As a result of Appellant’s repeated failures to meet filing deadlines, this appeal has been unnecessarily protracted, and Falgione is unable to file his final brief. The prejudice is clear: the longer this legal malpractice case looms and the

---

<sup>2</sup> The last brief was served July 27, 2015. See Rule 208(a)(3), SCACR (requiring service of brief in reply within ten days after service of the respondent’s brief).

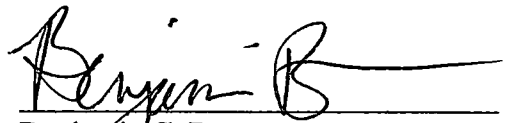
<sup>3</sup> Three days later, Appellant filed his final initial brief and designation of matter.

more opportunity this Court allows the Appellant to launch frivolous allegations, the greater the costs to defend this appeal.

Finally, it must be noted that although Appellant has appeared *pro se* throughout these proceedings, the submissions Appellant filed with his Motion to Remand reveal the involvement of counsel behind the scenes. (See Letter from Court to Sribnick, June 24, 2015, Exhibit B to App.'s Mot. to Remand; E-mail from Sribnick to Court, November 9, 2015; E-mail from Court to Sribnick, November 12, 2015.) As a result, Appellant should receive no leeway or latitude due to his *pro se* status.

For these reasons, the Appellant has failed to set forth any basis to extend his time to serve the record on appeal or amend his initial brief. Accordingly, the Appellant's motion for an extension of time should be denied and Respondents' motions to dismiss should be granted.

November 23, 2015

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

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.


---

PROOF OF SERVICE

---

I, Bridget Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Respondent Adrian L. Falgione, certify that I served a copy of the attached *Respondent Adrian L. Falgione's Return to Appellant's Motion for Extension of Time to Amend and File Record on Appeal* by depositing a copy of it in the U.S. Mail, postage prepaid, on November 23, 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.

November 23, 2015

  
\_\_\_\_\_  
Bridget Steele

# 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

FAX 803-254-5719

[WWW.BRUNERPOWELL.COM](http://WWW.BRUNERPOWELL.COM)

JAMES L. BRUNER, P.A.\*

WARREN C. POWELL, JR., P.A.\*\*

HENRY P. WALL

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.

\* Of Counsel

\*\* Also Admitted in District of Columbia

ANN F. ALLISON

CAITLIN C. HEYWARD

ROBERT C. OSBORNE III

AUTHOR'S E-MAIL: [BSTEELE@BRUNERPOWELL.COM](mailto:BSTEELE@BRUNERPOWELL.COM)

November 23, 2015

## VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings  
Clerk of Court, S.C. Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RECEIVED

NOV 23 2015

SC Court of Appeals

**Re: *James Spencer, et al. v. John Rakowsky, et al.***  
**Appellate Case No.: 2014-00091**  
**BPWM File No.: 3-1742-108**

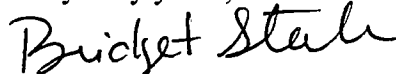
Dear Ms. Kitchings:

Enclosed herewith for filing please find an original and seven (7) copies each of Respondent Adrian Falgione's *Motion for Extension of Time to Amend and File Record of Appeal* 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 via 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,



Bridget S. Steele

*Legal Assistant to 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.)