

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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DEC 29 2015  
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable Frank R. Addy, Jr. Circuit Court Judge

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APPELLATE CASE NO. 2014-000091

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John R. Rakowsky, *Respondent*  
Adrian Falgione, *Respondent*

v.

James Spencer, *Pro Se, Appellant*

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OPPOSITION TO RAKOWSKY MOTION  
TO DISMISS APPEAL

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Appellant *pro se* submits this opposition to the third attempt by Respondent to dismiss this appeal. Once again, the motion is based on half-truths and misrepresentations.

For “obvious reasons”— as Respondent puts it— Appellant addresses argument (3) at the outset.

The contention that the Appellant served the Record on Appeal a day late is demonstrably false. More specifically, on December 14, 2015, a courier hand delivered an unbound version of the joint appendix consisting of 333 pages along with a request for documents to be provided to add to the joint appendix as Appellant did not have access to them and many were missing from the clerk of court files. Attached hereto as exhibits “A,” and “B,” respectively are the request for the requisite documents to be provided and the declaration from the courier attesting to that delivery.

The deliberate omission of these pertinent facts from the motion papers is nothing short of an outrageous attempt to mislead the Court. Indeed, it is probably sanctionable misconduct. See SCRPC 3.3(a)(1), 8.4(a), (d).

Insofar as Respondent contends that the Record on Appeal does not contain many of the items identified inserted. It is again noted that Appellant did not have them and a diligent search of both the court files and the judges records failed to disclose records that the Appellant also identified to be a part of the joint appendix. For that reason, a motion was made to remand the case to the trial court so those items could be obtained to be inserted in the Record on Appeal. Respondent opposed that motion and it was denied by this Court.

Again, it seems rather perverse that Respondent's counsel is complaining that items were not inserted in the Record on Appeal when he opposed the motion to remand and refused to supply them to Appellant.

Counsel also ignores that the Record on Appeal already contained over 333 pages and was more than sufficient to address the narrow issue on appeal as to whether summary judgment was properly granted. Yet, he insists that the Record on Appeal include motions and orders going to change of venue, disqualification, and reconsideration.

Once again, it is Respondent's counsel who has failed to comply with the relevant court rules. See SCRAP 209(b) ("A party shall not include any matter in his Designation which is not relevant to the appeal.").

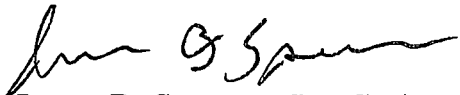
In any event, Appellant has no problem consenting to the Respondent's filing of a supplemental record, pursuant to SCRAP 212(b), if that will resolve the current motion containing all the missing named documents. In this manner, Respondent's bluff will be called. If he has the verifiable actual documents named to be included now is the time to produce them.

Finally, the certificate of service of the Record on Appeal has been timely filed under the rules as understood by the *Pro Se* Appellant.

**SIGNATURE ON FOLLOWING PAGE**

December 29, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James B. Spencer". The signature is fluid and cursive, with a large initial "J" and "S".

James B. Spencer, *Pro Se* Appellant  
7001 Saint Andrews Road  
Columbia, SC 29212  
(803) 414-0889

**EXHIBIT "A"**

**James B. Spencer**  
**Box 183**  
**7001 Saint Andrews Drive**  
**Columbia, SC 29212**  
**(803) 414-0889**

December 14, 2015

Andrew Countryman  
David W. Overstreet  
Carlock, Copeland & Stair, LLP  
40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401

Gentleman,

Attached please find the documents assembled for the Record on Appeal. Please supplement with any materials named and missing. My motion to remand was turned down and unless you have the documents sought after I have no ability to obtain them. I will be sending you binded copies in the next few days. Please email me any documents you have and I will include them.

Thank you very much.

Sincerely,

  
James B. Spencer

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPELLATE CASE NO. 2014-000091

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APPEAL FROM THE RICHLAND COUNTY  
COURT OF COMMON PLEAS

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Doyet A. Early, Circuit Court Judge  
Case No. 2008CP4006656

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JOHN R RAKOWSKY,

Respondent,

v.

Adrian L. Falgione, James Spencer,  
Estate of Doris Holt, Rodney Lail,  
Irene Santacroce, Marguerite  
Stephens, Ricky Stephens, Horry  
County, South Carolina,

Appellants.

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EXHIBIT B

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\_\_\_\_\_  
**DECLARATION OF ROBERT WADLEY**  
\_\_\_\_\_

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SC Court of Appeals

I, Robert Wadley, declare under penalty of perjury:

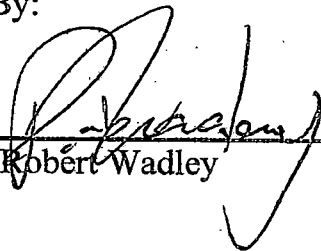
1. I am over eighteen years old and am qualified to testify.
2. The information in this declaration is based on my personal knowledge.
3. On the afternoon of December 14, 2015, I served a true copy of the Request for Documents and the Record of Appeal of 333 pages at the offices of Carlock, Copeland, and Stair.

**AFFIANT FURTHER SAYETH NAUGHT**

**DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.**

This 22<sup>nd</sup> day of December, 2015.

By:

  
\_\_\_\_\_  
Robert Wadley

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SC Court of Appeals

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PROFF OF SERVICE

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The undersigned hereby certifies that on , the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail and/or delivery by courier on this date December 29, 2015.

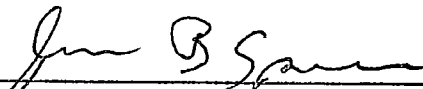
Documents served: **OPPOSITION TO JOHN RAKOWSKY MOTION  
TO DISMISS APPEAL**

**Parties Served:**

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