

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE LEXINGTON COUNTY  
Court Of Common Pleas

Frank R. Addy, Circuit Court Judge

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APPELLATE CASE NO.: 2014-000091

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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.

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REPLY TO APPELLANT'S RETURN  
TO MOTION TO DISMISS

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Respondent Adrian L. Falgione ("Falgione"), by and through his undersigned counsel, submits this reply in response to the Return filed by the Appellant, James Spencer ("Appellant"), to Falgione's motion to dismiss filed December 22, 2015.

Appellant argues he satisfied Rule 210(a), SCACR, and this Court's Order of November 25, 2015 by having an unbound copy of the record on appeal hand-delivered to Falgione's counsel with a letter on December 14, 2015. In addition, Appellant contends in essence that if he failed to properly and timely serve the record on appeal, his shortcomings are the direct result of Respondents' counsel violating the South Carolina

Appellate Court Rules, employing obstructionist tactics and misleading the Court. As discussed below, Appellant's claim that a copy of the record was hand-delivered to counsel is questionable at best, and his remaining allegations are meritless.

Appellant first contends he had a courier by the name of Robert Wadley hand-deliver a copy of the record with a letter on the morning of December 14, 2015. Neither the courier nor the Appellant provide the address where they contend the documents were delivered. Prior to reading Appellant's return, counsel for Falgione was unaware that the letter dated December 14, 2015 existed or that Appellant contends a copy of the record was delivered on December 14, 2015. In response to Appellant's argument, counsel for Falgione has conducted an investigation which has included inquiring of all staff and all other attorneys in his law firm to determine whether any such documents were, in fact, delivered to his office on December 14, 2015. Despite a diligent investigation, the undersigned has uncovered no evidence, direct or circumstantial, supporting Appellant's claim. Rather, the only copy of Appellant's December 14, 2015 letter counsel has received to date is the copy attached to Appellant's Return, and the only copy of the record on appeal counsel has received to date is the bound copy Appellant mailed by UPS after the deadline. Interestingly, Appellant does not deny that he mailed the record on appeal by UPS after the deadline, nor does he explain why he would re-serve the record on appeal if he truly believed service on December 14, 2015 satisfied the Rules and this Court's Order. For these reasons, the veracity of Appellant's claims are questionable, and his inflammatory argument that Falgione's motion is an "outrageous attempt to mislead the Court" has no place in this matter. (Opp. to Falgione Mot. to Dismiss Appeal p. 3.)

Appellant also suggests that the documents missing from the record can only be obtained by remanding this matter to the trial court to settle the record. That is simply untrue. All of the material Falgione designated which Appellant chose to omit from the record on appeal is available from the trial court's file, save the transcript excerpts (which Appellant possesses) and the May 7, 2013 e-mail from Brian Headley, Esquire to the Court. Appellant was served with copies of most of the omitted matter during the proceedings before the lower court pursuant to Rule 5, SCRCR. It is apparent that Appellant made little, if any, effort to include the matter the Respondents designated to be included in the record on appeal. Appellant's claim that Respondents' counsel has obstructed or refused to cooperate in his attempt to prepare the record is rooted in pure fabrication.

Finally, Appellant states he will consent to the submission of a supplemental record to allow the omitted matter to be included. However, allowing the Respondents to supplement the record is simply insufficient. Under Rule 210, SCACR, the burden of preparing and filing the record on appeal falls on the Appellant's shoulders. Rather than diligently abide by the Rules, Appellant has shirked his obligations and attempts to shift the burden of preparing the record on the Respondents. Supplementing the record will neither cure nor properly address that conduct; it will only encourage the Appellant to continue missing deadlines and flouting the Rules and Orders of this Court. An order of dismissal, however, will properly and adequately address Appellant's conduct.

For these reasons, the Court should grant Falgione's motion and dismiss this appeal.

January 8, 2016

A handwritten signature in cursive script that reads "Benjamin Bruner". The signature is written in black ink and is positioned above a horizontal line.

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

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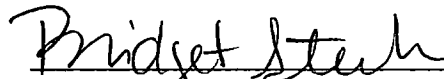
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PROOF OF SERVICE

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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 *Reply to Appellant's Return to Motion to Dismiss* by depositing a copy of it in the U.S. Mail, postage prepaid, on January 8, 2016, 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.

January 8, 2016

  
Bridget Steele

BRUNER, POWELL, WALL & MULLINS, LLC

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January 8, 2016

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

RECEIVED  
JAN 11 2016  
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

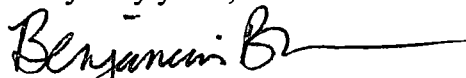
Dear Ms. Kitchings:

Enclosed herewith for filing please find an original and seven (7) copies each of Respondent Adrian Falgione's *Reply to Appellant's Return to Motion to Dismiss* 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 in the enclosed envelope.

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.)

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