(8)

RECORD ON APPEAL

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FEB 23 2016
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No: 2014-000091

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

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

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

v.

James Spencer, *Pro Se, Appellant*

RECORD ON APPEAL

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INDEX

Orders Issued	**Pg. #**
Order Denying Motion for Entry of Default, signed June 14, 2012	1-3
Order Granting Defendants' Motion to Change Venue, August 15, 2012	4-8
Order of the Lexington Circuit Court, May 8, 2013	9-13
Order of S.C. Supreme Court, June 11, 2013	14-16
Order *Nunc Pro Tunc*, June 25, 2013	17-20
Order of Dismissal, signed August 19, 2013, Judge Addy	21-29
Order Denying Rule 59(e) Motion, December 6, 2013 by Judge Addy	30-32
Order Denying Motions to Set Aside Settlement in Southern Holdings, Inc. *v.* Horry County., et al., Dkt. #510 C/A No. 4:02-CV-01859-RBH, July 3, 2007	33-41
Order of Continuance signed June 14, 2012 (April 3, 2012 hearing)	42-57
South Carolina Court Administration inconsistent paperwork regarding appointment of Judge Addy	58-63
Order by Recused Judge Griffith of May 8, 2013 - Headley	64-69
Order Granting Motion to Change Venue, filed August 15, 2012 with Defendants partial listing of outstanding motions	70-74
Order Granting Motion to Dismiss, Judge Addy, August 19, 2013	85-92
Order Denying Motion to Compel, October 18, 2011	93-94
Pleadings	
Complaint, August 15, 2011	95-112

Motion and Memorandum for Disqualification of Amanda Dudgeon and her firm March 27, 2012 113-141

Memorandum Adrian Falgione Motion to Change Venue, July 25 2012 142-150

Motion to Amend Complaint 5/28/2013 to remove Doris Holt & Southern Holdings 151-154

June 27, 2013, Plaintiffs' Brief on Corrections submitted for Judge Addy's June 5, 2013 155-234

Rakowsky's Motion to Dismiss, November 3, 2011 235-237

Notice of Appearance, Motion to Dismiss, Falgione, November 4, 2011 238-243

Motion to Disqualify A. Dungeon, filed March 27, 2012 244-272

Falgione's Motion for Admissions filed May 16, 2013 273-283

Rakowsky's Motion to Change Venue, filed May 31, 2012 284-288

Rule 59(e) Motion for Reconsideration of Dismissal Judge Addy 289-293

Amended Motion to Dismiss, January 3, 2012 295-300

Falgione's Motion for Admissions filed May 16, 2013 301-311

Dkt # 516 Falgione's Motion to be Relieved as Counsel 312-315

Notice of Appearance, November 2, 2011 316-321

Transcripts

Transcript of June 5, 2013 hearing before Judge Addy 322-390

Transcript of May 7, 2012 hearing before Judge Barber 391-457

Dkt. #482 – May 8, 2007, Evidentiary Hearing Transcript 458-486

Exhibits and other Documents

Plaintiffs' Motion for Reconsideration of Change of Venue	494-500
July 31, 2012, Misaddressed Judge Barber Letter Regarding Unrelated Action	501-502
Expedited Motion to Compel and to Stay Hearings July 30, 2012 with Declaration of Irene Santacroce	503-509
Memorandum in Opposition of Plaintiffs Motion for Reconsider of Venue Change	511-514
Order by Judge Addy Denying 59(e) Motion 12/04/2013	523-525
May 23, 2014, Affidavit of John Rakowsky	526-528
Dkt. #486, Rakowsky letter to LawMax concerning events during May 8, 2007	536
Dkt. #492, Memorandum in Opposition to Vacate	540-547
Dkt. #510, Order regarding evidentiary hearing and Motions to Vacate	548-556
Dkt. #519, Motion Clarification of Court Order #510	557-564
Dkt. # 582, Motion of Reconsideration of Court Order #577	565-574
Dkt. # 639-5 – July 20, 2007, Court Reporter, Vince Rolland's letter to Irene Santacroce regarding the Evidentiary Hearing on May 8, 2007	575
Dkt. #659 – August 5, 2008, Plaintiffs' Second Motion for Clarification of the Events and Decisions of the May 8, 2007, Evidentiary Hearing	576-589
Dkt. #668 – August 13, 2008, Order on May 8, 2007 and May 9, 2007 events	590-596
Dkt. #719 – September 29, 2008, Plaintiffs' Response to Defendants' Memorandum in Opposition to Plaintiffs' Second Motion for Clarification	597-602
Affidavit of Robert Wadley and Subpoena's for Deposition of Defendants Jan 7, 2013	607-614
Affidavits of Rakowsky dated January 25 and 26 of 2012	615-620

June 5, 2013 Hearing, Court Exhibit 1 (never provided at the hearing) and Exhibit 2 (June 21, 2008 LawMax letter AAA) 621

Documents regarding missing receipt of authority and instructions and Case Overview written by Judge Griffith's law clerk of case as detailed in June 5, 2013 hearing transcript by Judge Addy 622-625

Notice of Judge Griffith's hearing of May 7, 2013 626-628

INDEX

Orders Issued	**Pg. #**
Order Denying Motion for Entry of Default, signed June 14, 2012	1-3
Order Granting Defendants' Motion to Change Venue, August 15, 2012	4-8
Order of the Lexington Circuit Court, May 8, 2013	9-13
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Notice of Judge Griffith's hearing of May 7, 2013 626-628

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005384

James Spencer
Estate of Doris Holt
PLAINTIFF(S)

John R Rakowsky
Adrian L Falgione
DEFENDANT(S)

FILED
2012 JUN 28 PM 2:25
RICHLAND COUNTY
CLERK OF COURT
C.C.P. & G.S.

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 28th day of June, 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer
Irene Santacroce
ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew W. Countryman
Benjamin C. Bruner
Amanda Kurzen Dudgeon
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____ **Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.; and Irene Santacroce; Plaintiffs, v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	)	C/A No. 2011-CP-40-5384 **ORDER**

2012 JUN 28 PM 2:25
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

THIS MATTER came before the undersigned by way of the Plaintiffs' motions for entry of default against the Defendants.[1] The Plaintiffs contend entry of default is proper because the Defendants failed to plead or otherwise defend within thirty days of being served with the summons and complaint. I disagree.

Entry of default is proper when a defendant has failed to plead or otherwise defend as provided by the South Carolina Rules of Civil Procedure. Rule 55(a), SCRCP. The Plaintiffs contend the Defendants were served on September 15, 2011, based upon Affidavits of Tammy Lail, and then again on December 15, based upon the Affidavits of Alden Wheeler. However, the Affidavits of Tammy Lail are not notarized and, therefore, are fatally defective. *See* Rule 11(c), SCRCP (defining affidavits as statements sworn to or affirmed before an officer authorized to administer oaths); *see also* 1 S.C. Jur. *Affidavits* § 12 ("An affidavit without the signature and certification of an officer authorized to administer oaths is fatally defective, and is

[1] On January 24, 2012, James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., filed two Requests for Entry of Clerk's Default, one as to Defendant Rakowsky, and one as to the Falgione Defendants. Plaintiff Irene Santacroce filed two similar Requests for Entry of Clerk's Default on January 25, 2012. These motions are construed as motions for entry of default pursuant to Rule 55(a), SCRCP.

SCANNED

not an affidavit at all."). In addition, the record shows Defendant John Rakowsky filed a Motion to Dismiss on November 3, 2011, and Defendants Adrian Falgione and the Law Office of Adrian Falgione, LLC filed their Motion to Dismiss on November 4, 2011. These motions preclude an entry of default under Rule 12, SCRCP. Additionally, I find the Plaintiffs' proofs of service fail to meet the requirements set forth in Rule 4(g), SCRCP. I therefore find the Plaintiffs have failed to establish that the Defendants failed to plead or otherwise defend as provided in the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiffs' motions for entry of default are denied.

AND IT IS SO ORDERED.

James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit

May 14, 2012

Columbia, South Carolina

BRUNER, POWELL, WALL & MULLINS, LLC

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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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

August 17, 2012

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street, Suite 146
Lexington, SC 29072-3599

RE: ***James Spencer, et al. vs. John R. Rakowsky, et al.***
Richland Co. C/A No.: 2011-CP-40-5384
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Mrs. Carrigg:

Please find enclosed an Order transferring the above-referenced case from Richland County to the Lexington County docket. I am writing to bring your attention to the motions that are currently pending in this case. According to my file, the following motions are currently pending in this case:

(1) Defendant John Rakowsky's Motion to Dismiss, filed November 3, 2011;
(2) Defendants Adrian Falgione's and The Law Offices of Adrian Falgione's Motion to Dismiss, filed November 4, 2011;
(3) Plaintiff James Spencer's Motion to Disqualify, filed March 27, 2012;
(4) Defendant John Rakowsky's Motion to Compel, filed July 16, 2012; and
(5) Plaintiffs' Expedited Motion to Compel and to Stay hearings in the Above Captioned Case until the Court Rules on this Motion to Compel the Defendants to Comply with this Court's Previous Orders, filed July 30, 2012.

None of these motions have been heard yet. My understanding is Ms. McBride's Office is forwarding the case file to you. If I can be of any further assistance in the meantime, please do not hesitate to call.

Sincerely,

Benjamin C. Bruner

BCB/nys
/Enclosures

cc: James B. Spencer, pro se (w/ enclosures)
Irene Santacroce, pro se (w/ enclosures)
Amanda K. Dudgeon, Esquire (w/ enclosures)

FORM 4

5

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005384

James Spencer	John R Rakowsky
Estate of Doris Holt	Adrian L Falgione
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

RICHLAND COUNTY FILED
2012 AUG 15 AM 10:19
JEANETTE W. McBRIDE
CLERK OF COURT & COMP.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 15 August 2012 to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer — Irene Santacroce — Andrew W. Countryman, Amanda Kurzen Dudgeon — Benjamin C. Bruner

James Spencer

ATTORNEY(S) FOR THE PLAINTIFF(S) — **ATTORNEY(S) FOR THE DEFENDANT(S)**

Court Reporter _____ **Clerk of Court** Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.; and Irene Santacroce; Plaintiffs, v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	C/A No. 2011-CP-40-5184 **ORDER GRANTING DEFENDANTS' MOTIONS TO CHANGE VENUE**

RICHLAND COUNTY
FILED
2012 AUG 15 AM 10:
JEANETTE W. McBRIDE
C.C.P. & G.S.

THIS MATTER came before the undersigned by way of motions to change venue, which were filed on May 17, 2012, on behalf of Adrian L Falgione ("Falgione") and The Law Offices of Adrian L. Falgione, LLC (collectively, "Falgione Defendants"), and on June 4, 2012, on behalf of John R. Rakowsky ("Rakowsky"). At a hearing on these motions on August 1, 2012, at the Richland County Judicial Center, the Plaintiffs appeared pro se, Benjamin C. Bruner, Esquire appeared on behalf of the Falgione Defendants, and Amanda K. Dudgeon, Esquire appeared on behalf of Rakowsky. Having carefully considered the arguments and submissions of the parties, I find the Defendants' motions should be granted and this case should be transferred to Lexington County.

When a plaintiff files suit in a county that is not the proper venue for trial under the venue statutes, the Court may transfer the case to a proper county for trial. S.C. Code Ann. § 15-7-100 (Supp. 2011.). Based upon the allegations in the Complaint, S.C. Code Ann. § 15-7-30 governs venue of this action. Under that statute, venue is proper either in the defendant's resident county or in the county where the most substantial part of the alleged act or omission giving rise to the

SCANNED

plaintiff's claim occurred. S.C. Code Ann. § 15-7-30(C), (E) (Supp. 2011). The South Carolina Supreme Court has recognized that a defendant's right to be tried in his resident county is a substantial one. Jeter v. South Carolina Dept. of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 147-48 (2006). Furthermore, "in a case involving only one defendant or multiple defendants who reside in a single county, the venue choice generally is controlled by the residence of the defendant." Id.

In this legal malpractice action, the Defendants contend this case should be transferred to Lexington County as a matter of right because Richland County is not a proper venue under §15-7-30 and because Lexington County is the Defendants' resident county. I agree.

I find venue is not proper in Richland County. All the named defendants are from Lexington County, and the most substantial part of the acts and omissions alleged in the Complaint occurred outside Richland County. The Plaintiffs argued at the hearing that they signed fee agreements with the Defendants in Richland County. Even if this were true,[1] where the fee agreements were signed does not override the Defendants' substantial right to be tried in their resident county, nor does it establish that the most substantial part of the acts and omissions alleged in the Complaint occurred in Richland County, as the statute requires. In fact, Plaintiff Spencer argued at the hearing that the alleged malpractice occurred in Florence County. I therefore find Richland County is not a proper venue for this action and the Defendants have a substantial right to be tried in Lexington County that has not been waived.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants' motions to change venue should be, and hereby are, granted and that the above-

[1] The Defendants submitted affidavits stating that the fee agreements were signed at their offices in Lexington County. In response, the Plaintiffs submitted a series of documents that purported to be affidavits in support of their argument that the fee agreements were drafted and signed in Richland County, but none of the affidavits the Plaintiffs submitted were notarized.

captioned case be, and hereby is, transferred to the Court of Common Pleas for Lexington County. **IT IS FURTHER ORDERED** that the Clerk of Court for Richland County is hereby directed to take all steps necessary to effectuate the immediate transfer to the Lexington County Court of Common Pleas of all pleadings and other documents presently on file with this Court in connection with this action.

AND IT IS SO ORDERED.

~~The Honorable~~ Brooks P. Goldsmith
Presiding Judge, Fifth Judicial Circuit

August 15, 2012

Columbia, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.; and Irene Santacroce; Plaintiffs, v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	C/A No. 2012-CP-32-3428 **ORDER**

THIS MATTER came before the undersigned for a hearing at the Lexington County Courthouse on May 7, 2013 on seven motions currently pending before the Court. At the hearing, Amanda K. Dudgeon, Esquire appeared on behalf of John Rakowsky ("Rakowsky"), and Benjamin C. Bruner, Esquire appeared on behalf of Adrian Falgione and his law firm (collectively, "Falgione"). No one appeared on behalf of the Plaintiffs.

The Plaintiffs in this matter are *pro se*. Immediately prior to the hearing, the Court received correspondence from Brian J. Headley, Esquire ("Headley") that Plaintiff James Spencer ("Spencer") contacted him the same morning about representation. Mr. Headley requested that the hearing be continued for thirty (30) days to allow him time to review the file and determine whether to represent Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc. (collectively, "Spencer Plaintiffs"). The Defendants objected to a continuance and requested that either the hearing proceed or the case be dismissed pursuant to a prior Order in this case issued by Judge Barber on June 14, 2012 and filed June 28, 2012. I find it proper to allow Headley twenty-one (21) days to determine whether he will represent the Spencer Plaintiffs in this matter.

SCM

However, with respect to the claims alleged by Santacroce, this Court is bound by Judge Barber's prior order. In that order, the Court continued three of the motions that are still pending. The Court further ruled,

> 4. If any Plaintiff shall again fail to appear at any hearing or proceeding in this action without good cause, that Plaintiffs claims shall be dismissed with prejudice.
>
> 5. In addition, if any Plaintiff unnecessarily delays this case further, Defendants may seek sanctions.

The Plaintiffs were served with notice of this motions hearing by letter dated April 23, 2013. Santacroce failed to properly request a continuance and failed to appear without good cause. I therefore find all claims by Santacroce in this case should be dismissed with prejudice, pursuant to Judge Barber's June 28, 2012 Order.

As an additional matter, the undersigned disclosed to Headley during a telephone call and to counsel for Rakowsky that he is a distant relative of counsel for Falgione. While this relationship alone is not sufficient to require disqualification, I find it prudent to obtain waiver from the parties before ruling on the merits of the issues in this case. Had the Plaintiffs appeared at the hearing, the Court would have disclosed this relationship on the record and allowed the parties time to discuss waiver. As Headley does not represent any party at this time, he cannot waive the conflict for the Spencer Plaintiffs. Nevertheless, this issue must be resolved before the Court can dispose of the pending motions and proceed with the remainder of the case. Therefore, the Spencer Plaintiffs have ten (10) days from the date of this Order to notify the Court in writing about whether they waive any disqualification and consent to the undersigned hearing this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff Irene Santacroce's claims in this matter are hereby DISMISSED WITH

PREJUDICE pursuant to the Order issued June 14, 2012 and filed June 28, 2012;

2. James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., shall notify the Court in writing **within ten (10) days of the date of this Order,** whether they waive any potential disqualification the undersigned may have in this case;

3. A hearing is hereby scheduled for **June 5, 2013 beginning at 9:30 AM at the Laurens County Courthouse in Laurens, SC** on the following motions:

   i. Rakowsky's Motion to Dismiss filed November 3, 2011;

   ii. Falgione's Motion to Dismiss filed November 4, 2011;

   iii. Plaintiff Spencer's Motion to Disqualify filed March 27, 2012;

   iv. Rakowsky's Motion to Compel Discovery Responses filed July 16, 2012;

   v. The Plaintiffs' Motion to Compel and Stay Hearings filed July 30, 2012;

   vi. Falgione's Motion to Quash and for Protective Order filed January 22, 2013; and

   vii. Rakowsky's Motion to Quash and for Protective Order filed January 25, 2013;

4. In the event the Spencer Plaintiffs timely request that the undersigned recuse himself from further proceedings, the June 5th hearing shall proceed as scheduled before another presiding judge;

5. Mr. Headley shall notify the Court in writing by May 29, 2013 whether he represents the Spencer Plaintiffs in this matter. The June 5th motions hearing will proceed regardless of whether Mr. Headley agrees to represent the Spencer Plaintiffs; and

6. Any discovery in this matter shall be held in abeyance pending further Order of this Court.

AND IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Presiding Judge, Eleventh Judicial Circuit

May 9, 2013

Lexington, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3203428

James Spencer Southern Holdings Inc Doris Holt Irene Santacroce	John R Rakowsky Law Offices of Adrian Falgione LLC Adrian L Falgione
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **N/A**, and a copy mailed first class or placed in the appropriate attorney's box on **14TH OF MAY 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer
7001 St Andrews Rd ste 183
Columbia, SC 29212
Irene Santacroce
205 Deer Trace Cir
Myrtle Beach, SC 29588

ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew W Countryman
Carlock Copeland & Stair LLP
40 Calhoun St Ste 400 Charleston, SC 29401
Amanda Kurzen Dudgeon
40 Calhoun St., Ste. 400
Charleston, SC 29401
Benjamin C. Bruner
PO Box 61110
Columbia, SC 29260

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Beth A. Carrigg - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

The Supreme Court of South Carolina

Irene Santacroce, et al., Plaintiffs,

v.

John R. Rakowsky, et al., Defendants.

Lexington County
2012-CP-32-03428

ORDER

This matter is pending in Lexington County. The Honorable Eugene C. Griffith, Jr., Chief Judge for Administrative Purposes in the Eighth Judicial Circuit, was assigned as the Chief Judge for Administrative Purposes in the Eleventh Circuit (Civil) to administer this case and prepare it for trial. A conflict has arisen and he can no longer administer this case. Now therefore,

IT IS ORDERED that the Order dated January 17, 2013 be rescinded and that the Honorable DeAndrea G. Benjamin, as the Chief Judge for Administrative Purposes (Criminal) for the Fifth Judicial Circuit, be assigned as Chief Judge for Administrative Purposes (Civil) in the Eleventh Judicial Circuit for the sole purpose of administering this case and preparing it for trial. Any judge subsequently appointed as Chief Judge for Administrative Purposes (Criminal) for the Fifth Judicial Circuit shall assume this responsibility.

Jean Hoefer Toal
Chief Justice

June 11, 2013
Columbia, South Carolina

Michael Sribnick

From: Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams) <dbenjaminlc@sccourts.org>
Sent: Thursday, November 12, 2015 9:14 AM
To: Michael Sribnick
Subject: RE: FOIA request for information....

Dr. Sribnick,

Any documents related to this would be available through the Lexington County Clerk of Court's office. Furthermore, Judge Benjamin did not hold court in Lexington during the time period requested. She was Chief of General Sessions in the Fifth Circuit at the time. If you require further assistance, please contact Rosalyn Frierson at rfrierson@sccourts.org. She is with Court Administration. Thank you, and have a great day.

Stacy A. Williams
Law Clerk to the Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
P.O. Box 192
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1511
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

From: Michael Sribnick [mailto:legaldocumentation@sc.rr.com]
Sent: Monday, November 09, 2015 3:54 PM
To: Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams)
Subject: FOIA request for information....

Dear Ms. Williams:

Please consider this email a request under the authority of the South Carolina Freedom of Information Act.

Please provide copies of any correspondence and/or orders issued by the Honorable Judge De Andrea G. Benjamin or her office regarding Lexington County Case Number: 2012-CP-32-3428, Spencer vs. Rakowsky, et al., during the period of May 30, 2013 through September 30, 2013.

Please respond by email if no such document(s) exist and advise by email if they do exist and I will have a courier pick them up from your office for your convenience.

Thank you for your assistance in this matter.

Yours truly,

Michael Sribnick, MD, JD
Attorney for Jim Spencer

This electronic message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction and is strictly prohibited. If you have received this communication in error, please notify the sender by return electronic message or telephone, and destroy the original message without making any copies.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.
~~~

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3203428

James Spencer Southern Holdings Inc Doris Holt Irene Santacroce	John R Rakowsky Law Offices of Adrian Falgione LLC Adrian L Falgione
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

_____

_____

INFORMATION FOR THE JUDGMENT INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **n/a**, and a copy mailed first class or placed in the appropriate attorney's box on **27th of June 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer
7001 St Andrews Rd
ste 183
Columbia, SC 29212

ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew W Countryman
Carlock Copeland & Stair LLP
40 Calhoun St Ste 400
Charleston, SC 29401
Amanda Kurzen Dudgeon
40 Calhoun St., Ste. 400
Charleston, SC 29401
Benjamin C. Bruner
PO Box 61110
Columbia, SC 29260
Warren C. Powell Jr.
PO Box 61110
Columbia, SC 29260

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Beth A. Carrigg - Clerk of Court

19

ORIGINAL

FILED
CLERK OF COURT
LEXINGTON, SC

State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

DeAndrea Gist Benjamin
Judge

Post Office Box 192
1701 Main Street, Room 215
Columbia, SC 29202
Phone: (803) 576-1770
Fax: (803) 576-1772
dbenjaminj@sccourts.org

June 27, 2013

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street
Lexington, SC 29072

Dear Ms. Carrigg,

Please find enclosed an order (Order Nunc Pro Tunc) signed by Judge DeAndrea Gist Benjamin case number **2012CP3203428.**

Please file the order with your office and return a clocked copy to our office in the enclosed envelope. If you have any questions, comments, or concerns please contact our office as soon as possible.

With Warmest Regards,

Jerrell Kirk-James

Jerrell Kirk-James
Administrative Assistant for
The Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1746
Fax: 803-576-1777
www.sccourts.org
dbenjaminsc@sccourts.org

20

ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
Irene Santacroce, et al., vs. John Rakowsky, et al., Defendant.	2012-CP-32-03428 **ORDER NUNC PRO TUNC**

FILED
BETTY A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

By order dated June 11, 2013, this Court was appointed Chief Judge for Administrative Purposes (Civil) in the Eleventh Judicial Circuit for the sole purpose of administering this case and preparing it for trial. Under that appointment, this Court assigns this case to the Honorable Frank R. Addy, Jr.

AND IT IS SO ORDERED.

The Honorable DeAndrea Gist Benjamin
Presiding Judge, Eleventh Judicial Circuit

June 25, 2013
Columbia, South Carolina

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 803-753-0060
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

August 27, 2013

VIA US CERTIFIED MAIL, RETURN RECEIPT REQUESTED
James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2012-CP-32-03428
BPWM File No.: 3-1742-108

Dear Mr. Spencer:

Enclosed herewith, please find a copy of the Order from the Motions Hearings on June 5, 2013, which was filed with the Court on August 23, 2013.

Sincerely,

S/ Benjamin C. Bruner

Benjamin C. Bruner

BCB/nys

Enclosure

cc: Amanda K. Dudgeon, Esquire (via e-mail only)

ORIGINAL 22

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
	C/A No. 2012-CP-~~40~~32-3428
James Spencer, individually and on behalf) of the Estate of Doris Holt and on behalf) of Southern Holdings, Inc.;)	
Plaintiffs,)	
v.)	**ORDER OF DISMISSAL**
John R. Rakowsky; Adrian L. Falgione;) and The Law Offices of Adrian Falgione,) LLC;)	
Defendants.)	

THIS MATTER came before the undersigned by way of Motions to Dismiss filed by John R. Rakwosky ("Rakowsky") and by Defendants Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC (collectively, "Falgione Defendants") in November of 2011.[1] At a hearing on June 5, 2013, in Laurens, South Carolina, the Plaintiffs appeared *pro se*, Amanda K. Dudgeon, Esquire, appeared on behalf of Rakowsky, and Benjamin C. Bruner, Esquire, appeared on behalf of the Falgione Defendants. The parties consented on the record to allow the undersigned to hear this matter pending issuance of an order granting this Judge jurisdiction. That order was issued on June 27, 2013, *nunc pro tunc* June 5, 2013. After careful consideration of the allegations in the complaint and the arguments of the parties at the hearing,[2] I find the Defendants' Motions to Dismiss shall be granted for the reasons set forth below.

[1] The Falgione Defendants later amended their motion on January 3, 2013 to challenge timeliness and sufficiency of service.

[2] Plaintiff and others contacted the court via email on several occasions after the hearing was concluded and interposed additional arguments which do not relate to the merits of the narrow issue before the court. Although the court is extremely sympathetic with the assertions of Plaintiff and others that they were not treated fairly by the Federal Court in the Underlying Case, this court is constrained to follow the law as written.

FILED
2013 AUG 23 P
BERKELEY COUNTY
CLERK OF COURT
LEXINGTON, S.C.

STANDARD

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe*, 373 S.C. at 395; 645 S.E.2d at 247. Conversely, if the complaint fails to state facts sufficient to constitute a cause of action, then dismissal is proper under Rule 12(b)(6), SCRCP.

FACTUAL/PROCEDURAL BACKGROUND

This is a legal malpractice action that arises out of a case in which Rakowsky and Falgione represented the Plaintiffs. The underlying case was filed in federal court for the District of South Carolina, Florence Division, and assigned Civil Action No.: 4:02-cv-1859-RBH ("Underlying Case"). The complaint in the Underlying Case was filed in May 2002 (by two attorneys not defendants to this case) and included allegations against the Plaintiffs' former business partners, the Horry County Sherriff's Department, and the Myrtle Beach Police Department, as well as various officials, deputies, and officers in those agencies, all of whom took some part in an alleged attempt to take over Southern Holdings, Inc.

Plaintiffs allege that on May 8, 2007, the day before trial, the Court conducted a pretrial hearing, at which it heard arguments on evidentiary motions. After the hearing, the presiding judge held a conference in chambers with the attorneys. According to the complaint, Rakowsky and Falgione told the Plaintiffs certain evidence had been excluded and then attempted to coerce the Plaintiffs to accept a settlement offer for $55,000. Plaintiffs allege, however, that they

emphatically and vigorously refused to settle. Instead, the Plaintiffs told Rakowsky and Falgione they would object when the judge polled them about the settlement.

On the following day, May 9, 2007, when the trial was scheduled to begin, the Plaintiffs and their attorneys, the Defendants in this action, appeared in Court. After a conference in chambers, a hearing was held in which the attorneys placed the terms of the settlement on the record, allegedly against the Plaintiffs' wishes. The Court accepted the settlement and dismissed the jury pool. According to the complaint, the Court did not poll the Plaintiffs. The Plaintiffs further allege they were told the settlement was not final until a settlement agreement was signed.

In late May 2007, the Plaintiffs in the Underlying Case began inundating the Court with letters "pointing out inconsistencies in Rakowsky's letters, the transcript of the [pretrial] evidentiary hearing, and why the Judge made the evidentiary rulings he did, as reported by Rakowsky and Falgione behind closed doors." (Compl. ¶ 54.) The Court construed the letters as motions to set aside the settlement, and on July 3, 2007, issued an Order denying the motions.

More than three years later, on August 15, 2011, the Plaintiffs filed this *pro se* malpractice suit against Rakowsky and Falgione. No expert affidavit was filed with the complaint or within 45 days after, nor did the Plaintiffs request an extension to file an expert affidavit in support of their legal malpractice claims.

DISCUSSION

I. Failure to File Expert Affidavit

The Defendants first argue dismissal is proper because the Plaintiffs failed to timely file an expert affidavit pursuant to S.C. Code § 15-36-100. I agree.

FILED
2013 AUG 23 P 12:07
BETTY J. MORRIS
CLERK OF COURT
LEXINGTON, SC

In South Carolina, a plaintiff in a legal malpractice action is required to file an expert affidavit as part of his complaint. S.C. Code §§ 15-36-100(B), (G)(2). This requirement protects professionals licensed by the State of South Carolina from frivolous claims. *See Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010) ("[G]enerally, a plaintiff in a legal malpractice action must establish this standard of care by expert testimony."); *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 435, 472 S.E.2d 612, 613 (1996) (same). While an exception to the contemporaneous filing requirement exists when the statute of limitations will expire within ten days of filing the complaint, the plaintiff must nevertheless supplement the complaint with an expert affidavit within forty-five days of the date of filing. S.C. Code § 15-36-100(C)(1). If the plaintiff fails to file an expert affidavit within the specified period, "the complaint is subject to dismissal for failure to state a claim." *Id.*

There can be little doubt that the expert affidavit requirement applies to this action. The Plaintiffs acknowledge as much in Paragraph 7 of the complaint, which purports to be filed "pursuant to S.C. Code § 15-36-100(c)(1). . . ." Since the Complaint alleges the statute of limitations was about to expire, § 15-36-100(C)(1) required the Plaintiffs to file an expert affidavit no later than September 29, 2011, forty-five days after the Complaint was filed.

At the hearing, Spencer argued no expert affidavit is required because the Defendants have admitted malpractice. However, the record does not support Spencer's argument. Likewise, the common knowledge exception clearly does not apply in this case. Furthermore, I find the nature of the allegations the Plaintiffs have made against the Defendants requires expert testimony to establish the applicable standard of care. *Harris Teeter*, 390 S.C. at 282, 701 S.E.2d at 745.

FILED
2013 AUG 23 P 12:08
BARBARA G. TAYLOR
CLERK OF COURT
LEXINGTON, S.C.

The record does contain an affidavit filed by the Plaintiffs on April 16, 2013 from Aimee Zmroczek, a purported expert. However, that affidavit was filed more than 600 days after the complaint, well beyond the time allowed by S.C. Code §15-36-100(C)(1).

Accordingly, I find the Plaintiffs failed to comply with S.C. Code §15-36-100 and, therefore, that their claims against the Defendants should be dismissed.

II. Statute of Limitations

In addition, the Defendants argue dismissal is proper under Rule 12(b)(6), SCRCP, because the Plaintiffs failed to commence their action within the three-year statute of limitations. I agree.

"The statute of limitations in a legal malpractice case is three years." S.C. Code § 15-3-530; *Kimmer v. Wright*, 396 S.C. 53, 57-58, 719 S.E.2d 265, 268 (Ct. App. 2011), *reh'g denied* (Dec. 19, 2011). "Under the discovery rule, the three-year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Id.* (internal quotations omitted). In *Epstein v. Brown,* 363 S.C. 372, 610 S.E.2d 816 (2005), the Supreme Court explained that reasonable diligence means,

> an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party **might** exist. **The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.**

363 S.C. at 376, 610 S.E.2d at 818 (emphasis in original). Applying that understanding of the discovery rule to the facts of this case, it is apparent the Plaintiffs failed to commence their action within the statute of limitations.

In the complaint, the Plaintiffs allege various acts of misconduct by Rakowsky and Falgione that culminated in the May 9, 2007 settlement. Most importantly, the Plaintiffs allege they emphatically and vigorously told the Defendants they refused to settle the case. The Plaintiffs were present in the courtroom on May 9, 2007, and witnessed their attorneys settle their case on the record. That fact cannot be overlooked. If, as they allege, the Plaintiffs emphatically refused to settle and intended to state their objections on the record, then there is little doubt they knew they had suffered an actionable injury when they left the courthouse that day.

Although the Plaintiffs contend they were told the settlement was not final at that time, the only inference from their letters to the Federal Judge, who construed the letters as motions to set aside the settlement, is the finality of the settlement had set in. At the latest, therefore, the three-year clock began to run when Judge Harwell issued his July 3, 2007 order. The complaint in this action, filed August 15, 2011, is well beyond the three-year statute.

Accordingly, the Defendants' motions should be granted and the claims against them dismissed.

IT IS THEREFORE ORDERED that the Motions to Dismiss filed by Rakowsky and by the Falgione Defendants are hereby granted for the reasons set forth above. IT IS FURTHER ORDERED that the complaint shall be and hereby is dismissed with prejudice.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Presiding Judge, Eleventh Judicial Circuit

August 19, 2013
Greenwood, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3203428

PLAINTIFF(S)	DEFENDANT(S)
James Spencer Doris Holt Southern Holdings Inc	John R Rakowsky Adrian L Falgione Law Offices of Adrian Falgione LLC

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

_____

_____

INFORMATION FOR THE JUDGMENT INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

8/26/2013

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **8/26/2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer 7001 St Andrews Rd ste 183 Columbia, SC 29212

ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew W Countryman Carlock Copeland & Stair LLP 40 Calhoun St Ste 400 Charleston, SC 29401
Amanda Kurzen Dudgeon 40 Calhoun St., Ste. 400 Charleston, SC 29401
Benjamin C. Bruner PO Box 61110 Columbia, SC 292601110
Warren C. Powell Jr. PO Box 61110 Columbia, SC 29260
Stephanie Nichole Weissenstein PO Box 6338 West Columbia, SC 291716338

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg PPD.

Beth A. Carrigg - Clerk of Court

Court Reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3203428

James Spencer Southern Holdings Inc Doris Holt	John R Rakowsky Law Offices of Adrian Falgione LLC Adrian L Falgione
PLAINTIFF(S)	**DEFENDANT(S)**
Submitted by:	**Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge **Judge Code** 12/12/2013 **Date**

For Clerk of Court Office Use Only

This judgment was entered on **12th of December 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **12th of December 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer 7001 St Andrews Rd ste 183 Columbia, SC 29212

Andrew W Countryman Carlock Copeland & Stair LLP 40 Calhoun St Ste 400 Charleston, SC 29401
Amanda Kurzen Dudgeon 40 Calhoun St., Ste. 400 Charleston, SC 29401
Benjamin C. Bruner PO Box 61110 Columbia, SC 292601110
Warren C. Powell Jr. PO Box 61110 Columbia, SC 29260
Stephanie Nichole Weissenstein PO Box 6338 West Columbia, SC 291716338

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ORIGINAL

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
2013 DEC -6 A 9:34	
James Spencer, individually and on behalf) of the Estate of Doris Holt and on behalf) of Southern Holdings, Inc.; CLERK OF COURT LEXINGTON, SC)	C/A No. 2012-CP-32-3428
Plaintiffs,)	
)	
v.)	**ORDER DENYING RULE 59(e) MOTION**
)	
John R. Rakowsky; Adrian L. Falgione;) and The Law Offices of Adrian Falgione,) LLC;)	
Defendants.)	
)	

THIS MATTER COMES BEFORE THE COURT on Plaintiff Spencer's motion of September 9, 2013 requesting reconsideration of the court's prior order dismissing this case. No party requested a hearing on Plaintiff's motion.

The court has reviewed the pleadings, record, and fully considered the arguments made in Plaintiff's motion. The court finds that the prior order dismissing this action shall stand.

WHEREFORE, Plaintiff's motion pursuant to Rule 59 is denied.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Presiding Judge, Eleventh Judicial Circuit

December 4, 2013
Lexington, South Carolina

 33

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

SOUTHERN HOLDINGS, INC., et al., Plaintiffs, v. HORRY COUNTY, et al., Defendants.	Civil Action No.: 4:02-cv-1859-RBH **ORDER ON MOTIONS PURSUANT TO F.R.A.P. 4(a)(4)**

Pending before the court are: 1) Letter/motion [Docket Entry # 483] by Dan Green, C.E.O. of Southern Holdings, Inc.; 2) Letter/motion [Docket Entry # 484] by Irene Santacroce; 3) Letter/motion [Docket Entry # 485] by Marguerite Stephens; 4) Letter/motion [Docket Entry # 486] by Ricky Stephens; and 5) Letter/motion [Docket Entry # 487] by Rodney Lail. All of these letters/motions request relief from the Order dismissing this case with prejudice pursuant to a settlement agreement that was stated on the record. *See* [Docket Entry # 475]; Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482]. The above letters/motions were not filed by Plaintiffs' counsel, but were filed *pro se* by the Plaintiffs listed above.[1]

On June 7, 2007, the court issued an Order requesting that any parties wishing to file responses to the Plaintiffs' *pro se* letters/motions must do so no later than June 14, 2007. Order [Docket Entry # 488]. On June 14, 2007, the court received responses from all Defendants and the Plaintiffs' attorneys.

As noted below, a Notice of Appeal has been filed in this case. However, pursuant to Federal Rule of Appellate Procedure 4(a)(4), this court has jurisdiction to rule on the pending

[1] It should be noted that Plaintiffs' attorneys, Rakowsky and Falgione, have not been relieved as attorneys for the Plaintiffs, nor have any motions to withdraw as attorney been filed.

letters/motions. Under Local Rule of Civil Procedure 7.08, hearings on motions are not required. Therefore, the court, in its discretion, elects to rule on the pending matters without a hearing.

Procedural and Factual Background

The procedural background of this case is extensive; however, the procedural and factual background relevant to the current matters is fairly limited. The trial of this case was set to begin on May 9, 2007. On May 8, 2007, a larger than normal jury panel was brought in due to the anticipated length of the case, which was expected to last at least three weeks. On May 9, 2007, the jurors who had been selected reported to the courthouse for the beginning of trial.

On May 9, 2007, with the jury waiting to be brought out and just before the trial was to begin, the lawyers advised the court of a settlement, the terms of which were then stated on the record in the presence of all of the Plaintiffs who filed the *pro se* letters/motions.[2] Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482]. Accordingly, on the record, with the consent of counsel, and in the presence of the parties, the court Ordered that the case be dismissed with prejudice per the settlement agreement. [Docket Entry # 475]; Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482]. None of the parties objected to the settlement agreement or to the dismissal of the case with prejudice. Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482].

Beginning on June 1, 2007, chambers began receiving emails from individual plaintiffs

[2] According to the Clerk's office, the total cost to the federal government to bring in jurors for the panel and first day of trial was Eleven thousand, nine hundred eighty-four dollars ($11,984.67) and sixty-seven cents.

35

with various attachments ranging from affidavits, court transcripts, court docket entries, and letters from Attorney Rakowsky to third persons.[3] These emails requested that this court, among other things, vacate the settlement and reinstate the case.

Some of the emails sent to chambers referenced relief under Rule 59(e) of the Federal Rules of Civil Procedure.[4] One email did not reference a specific procedural rule.[5] All of the letters appeared to seek relief on the basis that: 1) Both Plaintiffs' counsel and Defendants' counsel engaged in fraud in order to coerce the Plaintiffs into a settlement; 2) Plaintiffs' counsel misrepresented to Plaintiffs either certain evidentiary rulings the court had made or was going to make; 3) Plaintiffs' counsel allegedly gave the Plaintiffs bad legal advice concerning the likelihood of exposure to a Judgment in light of a previous Offer of Judgment; 4) Plaintiffs did not agree to the settlement offer at any time; and 5) the Offer of Judgment was somehow "bogus." Specifically, Dan Green, Ricky Stephens, Marguerite Stephens, Rodney Lail, and Irene Santacroce asked the court to: 1) vacate the settlement; 2) reinstate the case to active status; 3) order an independent Federal investigation into the corruption that has been

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[3] With regard to Attorney Rakowsky's letters to third parties, while the court does not agree with many of the statements by Attorney Rakowsky concerning statements attributed to the court, this court did express concern about the matter of Plaintiffs' untimely production of evidence as argued by the Defendants in open court on May 8, 2007. The court reserved ruling until the next day at which time the court was advised the parties had reached a settlement.

[4] Rodney Lail, who sent an email on June 3, 2007, Irene Santacroce, who sent an email on June 4, 2007, Ricky Stephens, who sent an email on June 6, 2007, and Marguerite Stephens, who sent an email on June 6, 2007, all asked the court to vacate the settlement under Rule 59(e) based on alleged fraud and coercion committed against the Plaintiffs by Plaintiffs' attorneys in conjunction with Defendants' counsel.

[5] On June 1, 2007, Dan Green, C.E.O. of Southern Holdings, Inc., emailed a letter requesting that the court vacate the settlement based on the same factual allegations as the Plaintiffs noted in Footnote #4; however, Dan Green's email did not reference a specific procedural rule. Dan Green, who is not an attorney licensed to practice in this jurisdiction, purports to represent Southern Holdings, Inc.; however, Local Rule of Civil Procedure 83.I.07(3) states that a corporation cannot proceed without counsel and that such counsel must be admitted to practice in this District. Local Civil Rule 83.I.07(3) DSC.

associated with this case; and 4) stay the case until an independent review can be conducted, the Plaintiffs can assess the damage done to their case, and obtain qualified counsel to represent the Plaintiffs.[6]

On June 7, 2007, the court instructed that all of the emails be filed with the Clerk of Court. *See* [Docket Entry ## 483-487]. On the same day, the court Ordered that any party wishing to file a response to the letters/motions must do so no later than June 14, 2007. By June 14, 2007, all parties, including Plaintiffs' counsel Rakowsky and Falgione, responded to the allegations contained in Plaintiffs' *pro se* letters/motions. Additionally, the Hartness Defendants filed a motion for sanctions and other relief against the Plaintiffs. No replies have been filed.

As if the matter were not complicated enough, on June 21, 2007, a Notice of Appeal was filed by Ron Serota, Esq. on behalf of all Plaintiffs. On June 22, 2007, Attorney Serota also filed a motion to vacate the judgment on behalf of Doris Holt, an individual Plaintiff that had not previously filed a *pro se* letter/motion.

It should be noted that Attorney Serota, who is not admitted to the South Carolina Bar and was previously admitted in this case *pro hac vice*, was later removed and relieved as counsel for the Plaintiffs on May 3, 2007, pursuant to motions filed by both the Plaintiffs and Serota himself. Serota has *not* been readmitted *pro hac vice* and has not obtained sponsorship from any local counsel admitted to practice in this District. Serota has violated various Local Civil Rules of this District by: 1) filing documents without first being admitted *pro hac vice*;

[6] The Docket Report in this case indicates that the Plaintiffs have had several attorneys terminated or withdrawn from the case.

2) failing to obtain sponsorship by local counsel; and 3) failing to have his Notice of Appeal and motion signed by local counsel. As mentioned earlier, Attorneys Rakowsky and Falgione have not been relieved as counsel for any of the Plaintiffs. Additionally, it appears Serota filed these documents using Attorney Rakowsky's CM/ECF login and password without Rakowsky's permission. Nevertheless, the Notice of Appeal filed by Serota will be transmitted to the Fourth Circuit Court of Appeals where the propriety of the Notice of Appeal will ultimately be determined.[7] Because of Serota's failure to comply with the Local Civil Rules regarding local counsel, Holt's motion [Docket Entry # 500] to set aside the judgment based on Rule 60(b) is not properly before this court.[8]

Discussion

Plaintiffs' *pro se* letters/motions are untimely under Federal Rule of Civil Procedure 59(e)

To the extent Plaintiffs seek relief from this court's May 9, 2007, Order dismissing this case with prejudice, their motions are untimely. Rule 59(e) clearly states that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e). Even if this court considers the date Plaintiffs emailed their letters to chambers as the filing date, their motions are still untimely. The 10 day deadline contained in Rule 59(e) is mandatory and cannot be extended pursuant to Rule 6(b). Fed. R. Civ. P. 6(b). Therefore, Plaintiffs' letters/motions founded on Rule 59(e) are denied as untimely.

Plaintiffs' *pro se* letters/motions under Federal Rule of Civil Procedure 60(b)(3)

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[7] At first glance, Plaintiffs' Notice of Appeal appears to be untimely; however, that matter would be more properly decided by the Fourth Circuit Court of Appeals.

[8] The court also notes that Doris Holt's affidavit that was submitted with Attorney Serota's Rule 60(b) motion does not appear to be properly signed or notarized.

To the extent that Plaintiffs allege fraud as a basis for relief, the court liberally construes their letters/motions as motions under Rule 60(b)(3), which provides for relief from judgment or order based on fraud, misrepresentation, or other misconduct of an adverse party. Fed. R. Civ. P. 60(b)(3). The basis of Plaintiffs' allegations against the adverse parties is that they concocted a "bogus" Offer of Judgment and that, in conjunction with various alleged misrepresentations by the attorneys for the Plaintiffs, they coerced the Plaintiffs to settle the case.

Plaintiffs' *pro se* letters/motions fail under Rule 60(b)(3) because they have failed to show by clear and convincing evidence that the adverse parties, the Defendants or Defendants' counsel, were guilty of any fraud. *See Schultz v. Butcher*, 24 F.3d 626, 630 (4th Cir. 1994). This conclusion is evident from the court's review of the submissions of the parties relevant to the Plaintiffs' letters/motions.

To prevail on a Rule 60(b)(3) motion, the moving party must establish: 1) a meritorious defense; 2) misconduct by clear and convincing evidence; and 3) the misconduct prevented the moving party from fully presenting its case. *Schultz*, 24 F.3d at 630 (citing *Square Constr. Co. v. Washington Metro. Area Transit Auth.*, 657 F.2d 68, 71 (4th Cir. 1981)).

Two Offers of Judgment are at issue. The Hartness Defendants' Offer of Judgment, signed by E. Glenn Elliot, Esq., is dated July 12, 2005. As evidenced by the facsimile transmission reports attached with the Hartness Defendants' response, the Hartness Offer of Judgment was successfully faxed to Plaintiffs' Attorneys Rakowsky, Serota, Cooper, and Hardee on July 12, 2005.

The second Offer of Judgment concerns the Horry County Defendants. The Horry

County Offer of Judgment contains a certificate of service indicating that the Offer of Judgment was mailed to Plaintiffs' Attorney Goldberg on July 21, 2004. Horry County also attached a facsimile transmission report that showed that the Horry County Offer of Judgment was successfully faxed to Plaintiffs' Attorney Goldberg on July 21, 2004. In fact, on July 24, 2004, the Horry County Defendants received an Objection from Plaintiffs' Attorney Goldberg and their local counsel at the time, James Cooper, to the Offer of Judgment. So the contention that the Defendants' attorneys "crafted" a fraudulent Offer of Judgment just days before trial, without proper service, in an attempt to coerce the Plaintiffs into a settlement agreement is totally without merit. The Plaintiffs assert no evidence whatsoever, much less clear and convincing evidence, of any fraud or misrepresentation by any of the adverse parties or lawyers in this case. Additionally, the Plaintiffs have not shown that the supposedly "bogus" Offers of Judgment prevented them from moving forward with their case. As noted above, a jury had already been selected and the settlement agreement was announced the morning trial was set to begin. Therefore, their requests for relief based on Rule 60(b)(3), fraud by an "adverse party," is denied. To the extent the Plaintiffs allege fraud committed by their own counsel, that is not a basis for relief under Rule 60(b)(3) as Plaintiffs' own counsel are not "adverse parties."

Other Grounds for Relief under Rule 60(b)

The court has reviewed the various submissions by the parties, and to the extent the Plaintiffs' letters/motions raise issues that could be construed as seeking relief under other subsections of Rule 60(b), the court has reviewed the applicable law regarding relief under subsections of Rule 60(b) that are arguably applicable to these circumstances and concludes

that the Plaintiffs are not entitled to any such relief. In other words, the Plaintiffs have not made a sufficient showing of entitlement such relief.

Further, with regard to any claim by the Plaintiffs of either improper inducement, bad advice, or inadequate representation or preparation against Plaintiffs' own attorneys, such is not a valid basis for repudiating a settlement. *Petty v. Timken Corp.*, 849 F.2d 130, 133 (4th Cir. 1988). In the event there was any breach of the standard of care owed by Plaintiffs' attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, Plaintiffs have an available remedy for damages against their own attorneys. *See Petty*, 849 F.2d at 133.

Vacate or Set Aside Settlement Agreement

It is well settled that merely having second thoughts about entering into a settlement agreement is insufficient to set aside the settlement agreement. *Young v. Federal Deposit Ins. Corp.*, 103 F.3d 1180, 1195 (4th Cir. 1997). The court notes that all of the Plaintiffs who filed these letters/motions, *pro se* requests for relief, were present in the courtroom when the settlement agreement was announced on the record. Although the undersigned did not poll each plaintiff individually, nor each Defendant individually, he is not required to do so. This case did not involve a minor settlement or a wrongful death settlement, which would require court approval and may require the court to query a plaintiff regarding whether they believe the settlement is fair and in their best interests. Regardless, none of the Plaintiffs brought any of the matters they allege in their letters/motions to the court's attention until three weeks

41

later.[9] The court regrets that the Plaintiffs may have had a change of heart, but a change of heart is not a sufficient basis to set aside a settlement agreement. *See Petty*, 849 F.2d at 133.

Conclusion

For the reasons stated above, the relief requested in the: 1) Letter/motion [Docket Entry # 483] by Dan Green, C.E.O. of Southern Holdings, Inc.; 2) Letter/motion [Docket Entry # 484] by Irene Santacroce; 3) Letter/motion [Docket Entry # 485] by Marguerite Stephens; 4) Letter/motion [Docket Entry # 486] by Ricky Stephens; and 5) Letter/motion [Docket Entry # 487] by Rodney Lail is **DENIED**.

Because Attorney Serota failed to comply with this District's Local Rules of Civil Procedure regarding the use of local counsel, Holt's [Docket Entry # 500] motion to set aside or vacate the judgment is not even properly before the court.

Finally, because this case is on appeal to the Fourth Circuit, the court feels that it would not be appropriate to rule on the additional relief requested by the Hartness Defendants.

IT IS SO ORDERED.

Florence, SC
July 3, 2007

s/R. Bryan Harwell
R. Bryan Harwell
United States District Judge

[9] The court cannot disregard the fact that substantial juror costs and court time had been allocated for this case and to simply allow the matter to be reopened when a settlement agreement has been placed on the record in open court with a jury standing by would open the court to easy manipulation of its time and resources.

42

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **ORDER**

RICHLAND COUNTY
FILED
2012 JUN 28 PM 2:25
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on April 3, 2012, on Defendant John R. Rakowsky's (hereinafter "Defendant Rakowsky") Motion to Dismiss, Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC's ("Defendant Falgione") Motion to Dismiss, and *Pro Se* Plaintiffs James Spencer and Irene Santacroce's (hereinafter "Plaintiffs") Motion to Disqualify.

BACKGROUND

1. Defendant Rakowsky filed a Motion to Dismiss the present Complaint on November 3, 2011.

2. Defendant Falgione filed a Motion to Dismiss the present Complaint on November 4, 2011.

3. The Court noticed Defendants' Motions to Dismiss for a hearing on January 31, 2012.

4. On January 25, 2012, Plaintiff Spencer filed a Motion for Continuance of the January 31, 2012 hearing. Plaintiff Spencer stated in his Motion that he had a medical

SCANNED

appointment scheduled for January 31, 2012. Plaintiff Spencer did not specify the nature or location of the appointment.

5. On January 30, 2012, the Court continued the motions scheduled for January 31, 2012, based upon Spencer's representations.

6. The Court rescheduled and noticed Defendants' Motions to Dismiss for a hearing on February 28, 2012.

7. On February 7, 2012, Plaintiff Spencer submitted to the Court correspondence dated February 1, 2012, from Sarah W. Book, MD, Associate Professor of Psychiatry and Behavorial Sciences at the Medical University of South Carolina. In that letter, Ms. Book stated "If possible, I believe it would be best for Mr. Spencer's health if any hearing that he is involved in is postponed for the next two months."

8. Based upon Dr. Book's letter, Spencer requested protection from appearing in Court until after April 1, 2012 due to health reasons.

9. Relying on Spencer's representations and Dr. Book's letter, the Court continued the February 28, 2012 hearing, granted Spencer protection from court until after April 1, 2012, and noticed the hearing for April 3, 2012.

10. On March 27, 2012, Plaintiffs (including Spencer) filed an Expedited Motion to Disqualify Defendant Rakowsky's attorneys Amanda Dudgeon and Andrew Countryman.

11. On March 29, 2012, a telephone status conference was held in which the following individuals participated: Judge James R. Barber, III; Benjamin C. Bruner, as counsel for Defendant Falgione; Amanda K. Dudgeon, as counsel for Defendant Rakowsky; Plaintiff Spencer; and Plaintiff Santacroce. In the telephone conference, the parties were advised that Plaintiffs' Motion to Disqualify would be heard, at Plaintiffs' request, on April 3, 2012, at 9:00

am and that Defendants' Motions to Dismiss would be heard as scheduled on the roster on April 3, 2012, at 11:00 am.

12. On April 2, 2012, at 5:17 pm, one day before the scheduled hearings, Plaintiff Spencer emailed the Court and stated he was not able to attend the hearings in the morning. He likewise provided what appeared to be an April 2, 2012, notice of Robert Holt's[1] appointment at the Medical University of South Carolina in Charleston, South Carolina, with Dr. Book for April 3, 2012. The notice did not include any time for the appointment, but did include "due to emergency" in handwriting.

13. Plaintiff Santacroce forwarded to the Court correspondence indicating she did not plan to attend the hearings. She did not request a continuance.

14. On April 3, 2012, attorneys Benjamin Bruner, Amanda Dudgeon, and Desa Ballard, along with their respective clients, appeared for the scheduled hearings. Neither Plaintiff appeared for the hearing.

15. The counsel and parties who were present proceeded to chambers to attempt to contact Plaintiff Spencer and Plaintiff Santacroce by telephone.

16. Plaintiff Spencer did not answer when called at the telephone number on file with the Court.

17. However, Plaintiff Spencer did answer the telephone when called at (803) 414-0889. The undersigned advised Plaintiff Spencer that he could not continue to request continuances of the hearings, which had been scheduled three times.

18. Plaintiff Spencer agreed that the Court may discuss Spencer's medical condition with his medical providers to determine a schedule for this action.

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[1] Upon information and belief, Robert Holt is Plaintiff Spencer's alias.

RULINGS

1. Plaintiff Santacroce's Motion to Disqualify is denied.

2. The hearings on Plaintiff Spencer's Motion to Disqualify, Defendant Rakowsky's Motion to Dismiss, and Defendant Falgione's Motion to Dismiss are continued.

3. The continuances and other rulings by this Court shall have no effect on discovery in this case, which may proceed without delay.

4. Any future request for a continuance by any Plaintiff must be supported by a properly executed affidavit of a licensed medical professional unequivocally opining that the Plaintiff is not capable of attending the scheduled hearing or proceeding. If the Plaintiff's request for a continuance is not supported by such an affidavit, the request shall be denied.

5. If any Plaintiff shall again fail to appear at any hearing or proceeding in this action without good cause, that Plaintiff's claims shall be dismissed with prejudice.

6. In addition, if any Plaintiff unnecessarily delays this case further, Defendants may seek sanctions.

IT IS SO ORDERED.

James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

This 14 day of June, 2012.

Exhibit "A"

46

LAW OFFICES

CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

AMANDA K. DUDGEON

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(404) 522-8220

REPLY TO SC OFFICE

July 3, 2012

The Honorable James R. Barber, III
P O Box 2766
1701 Main Street, Room 223
Columbia , SC 29202-2766

Re: James Spencer, *et al.* v. John R. Rakowsky, *et al.*
Case No.: 2011-CP-40-5384
File No.: 2283-35025

Dear Judge Barber:

I received your signed Order Denying Plaintiff Santacroce's Motion to Disqualify, Continuing Plaintiff Spencer's Motion to Disqualify, and Continuing Defendants' Motions to Dismiss (Order signed June 14, 2012; filed June 28, 2012). Plaintiff Spencer apparently received the Order over the weekend (before I received it on Monday) and brought to my attention that I had not yet contacted him to discuss further his proposed changes for the purpose of agreeing to a joint Order.

By way of background, I prepared the Order after the April 3, 2012 hearing and circulated it to all counsel for approval before submitting it to the Court on May 4, 2012. I did not send the Order to the *pro se* Plaintiffs before submitting it to the Court because Plaintiffs were not in attendance at the hearing, and I did not see any possibility that we would reach an agreement on the Order. At the status conference on May 7, 2012, Your Honor then instructed the parties to circulate proposed Orders to all parties five (5) days before submitting them to the Court.

After the status conference, I again sent the Order to Mr. Spencer, and he replied with his version of the Order. The changes were not clearly noted, but I could see that I did not agree with the majority of the revisions. Your Honor subsequently signed my version of the Order before Mr. Spencer and I had reached any type of agreement on his revisions.

I have therefore enclosed a copy of Mr. Spencer's proposed Order as well as a copy of your signed Order. I maintain that the attached Order you signed (which was submitted in May) accurately represents the issues addressed on April 3, 2012, and Mr. Spencer's Order includes

inaccurate statements. Nevertheless, I apologize for any issues caused by not being more efficient in handling the issues with this Order.

Sincerely,

Mandi

AMANDA K. DUDGEON

AKD/bjg
Enclosures
cc: Benjamin C. Bruner, Esq.
James Spencer
Irene Santacroce

3015545v.1

48

Plaintiff James Spencer's Proposed Order re: April 3, 2012 Proceedings

state of south carolina	)	in the court of common pleas
	)	the fifth judicial circuit
county of richland	)	case no.: 2011-CP-40-5384
	)	
James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,	)	
	)	**ORDER**
Plaintiffs,	)	
	)	
v.	)	
	)	
John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC,	)	
	)	
Defendants.	)	
	)	

On April 3, 2012 a hearing was held before the Honorable Judge James R. Barber. Plaintiff James Spencer was granted a continuance due to medical reasons. Plaintiff Irene Santacroce was unable to attend for medical and financial reasons. Plaintiff Santacroce had failed to ask for a continuance prior to the hearing. This matter came before the Court on April 3, 2012, on Defendant John R. Rakowsky's (hereinafter "Defendant Rakowsky") Motion to Dismiss, Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC's ("Defendant Falgione") Motion to Dismiss, and *Pro Se* Plaintiffs James Spencer and Irene Santacroce's (hereinafter "Plaintiffs") Motion to Disqualify.

BACKGROUND

1. Plaintiffs filed a Complaint with the Richland County Court for legal malpractice against Defendant Rakowsky and Defendant Falgione on August 15, 2011.
2. Defendant Rakowsky and Defendant Falgione were each served a copy of the summons

and Complaint on September 15, 2011.

3. Defendant Rakowsky filed a Motion to Dismiss the present Complaint on November 3, 2011.

4. Defendant Falgione filed a Motion to Dismiss the present Complaint on November 4, 2011.

5. The Court noticed Defendants' Motions to Dismiss for a hearing on January 31, 2012.

6. On January 25, 2012, Plaintiff Spencer filed a Motion for Continuance of the January 31, 2012 hearing. Plaintiff Spencer stated in his Motion that he had a medical appointment scheduled for January 31, 2012, due to serious medical problems.

7. On January 30, 2012, the Court continued the motions scheduled for January 31, 2012, based upon Spencer's medical condition.

8. The Court rescheduled and noticed Defendants' Motions to Dismiss for a hearing on February 28, 2012.

9. On February 7, 2012, Plaintiff Spencer submitted to the Court correspondence dated February 1, 2012, from Sarah W. Book, MD, Associate Professor of Psychiatry and Behavioral Sciences at the Medical University of South Carolina. In that letter, Ms. Book stated "If possible, I believe it would be best for Mr. Spencer's health if any hearing that he is involved in is postponed for the next two months."

10. Based upon Dr. Book's recommendation, Spencer requested protection from appearing in Court until after April 1, 2012 due to health reasons.

11. The Court continued the February 28, 2012 hearing, granted Spencer protection from court until after April 1, 2012, and noticed the hearing for April 3, 2012.

12. On March 27, 2012, Plaintiffs (including Spencer) filed an Expedited Motion to Disqualify Defendant Rakowsky's attorneys Amanda Dudgeon and Andrew Countryman.

13. On March 29, 2012, a telephone status conference was held in which the following individuals participated: Judge James R. Barber, III; Benjamin C. Bruner, as counsel for Defendant Falgione; Amanda K. Dudgeon, as counsel for Defendant Rakowsky; Plaintiff Spencer; and Plaintiff Santacroce. In the telephone conference, the parties were advised that Plaintiffs' Motion to Disqualify would be heard, on April 3, 2012, at 9:00 am and that Defendants' Motions to Dismiss would be heard as scheduled on the roster on April 3, 2012, at 11:00 am.

14. On April 2, 2012, at 5:17 pm, Plaintiff Spencer contacted the Court and opposing counsel and stated he was not able to attend the hearings in the morning due to continuing serious medical problems.

15. Plaintiff Santacroce forwarded to the Court correspondence indicating she did not have a way to attend the hearing due to both medical and financial reasons. She did not request a continuance.

16. On April 3, 2012, attorneys Benjamin Bruner, Amanda Dudgeon, and Desa Ballard, along with their respective clients, appeared for the scheduled hearings. Neither Plaintiff appeared for the hearing.

17. The counsel and parties who were present proceeded to chambers to attempt to contact Plaintiff Spencer and Plaintiff Santacroce by telephone.

18. Plaintiff Spencer agreed that the Court may discuss Spencer's medical condition with

his medical providers to determine a schedule for this action.

19. Plaintiff Spencer pointed out his worsening medical condition caused him to delay the scheduled hearing for the second time since 2008, while Defendant Rakowsky and Falgione had the hearings continued over half a dozen times the latest being on January 18, 2012 before the Honorable Judge Clifton Newman.

RULINGS

20. Plaintiff Santacroce's Motion to Disqualify is denied.

21. The hearings on the other outstanding motions are continued.

22. The continuances and other rulings by this Court shall have no effect on discovery in this case, which shall proceed without delay. However, Plaintiff Spencer's participation in addressing Defendant's discovery shall not commence until June 1, 2012.

IT IS SO ORDERED.

_____

James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

This _____ day of _____, 2012.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005384

James Spencer
Estate of Doris Holt
PLAINTIFF(S)

John R Rakowsky
Adrian L Falgione
DEFENDANT(S)

FILED
RICHLAND COUNTY
2012 JUN 28 PM 2:25
JEANETTE W. McBRIDE
C.C.P. & G.S.

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 28th day of June, 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer Irene Santacroce
ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew W. Countryman Benjamin C. Bruner
Amanda Kurzen Dudgeon
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

54

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **ORDER**

RICHLAND COUNTY
FILED
2012 JUN 28 PM 2:25
JEANETTE W. McBRIDE
C.C.P. & G.S.

This matter came before the Court on April 3, 2012, on Defendant John R. Rakowsky's (hereinafter "Defendant Rakowsky") Motion to Dismiss, Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC's ("Defendant Falgione") Motion to Dismiss, and *Pro Se* Plaintiffs James Spencer and Irene Santacroce's (hereinafter "Plaintiffs") Motion to Disqualify.

BACKGROUND

1. Defendant Rakowsky filed a Motion to Dismiss the present Complaint on November 3, 2011.

2. Defendant Falgione filed a Motion to Dismiss the present Complaint on November 4, 2011.

3. The Court noticed Defendants' Motions to Dismiss for a hearing on January 31, 2012.

4. On January 25, 2012, Plaintiff Spencer filed a Motion for Continuance of the January 31, 2012 hearing. Plaintiff Spencer stated in his Motion that he had a medical

SCANNED

appointment scheduled for January 31, 2012. Plaintiff Spencer did not specify the nature or location of the appointment.

5. On January 30, 2012, the Court continued the motions scheduled for January 31, 2012, based upon Spencer's representations.

6. The Court rescheduled and noticed Defendants' Motions to Dismiss for a hearing on February 28, 2012.

7. On February 7, 2012, Plaintiff Spencer submitted to the Court correspondence dated February 1, 2012, from Sarah W. Book, MD, Associate Professor of Psychiatry and Behavorial Sciences at the Medical University of South Carolina. In that letter, Ms. Book stated "If possible, I believe it would be best for Mr. Spencer's health if any hearing that he is involved in is postponed for the next two months."

8. Based upon Dr. Book's letter, Spencer requested protection from appearing in Court until after April 1, 2012 due to health reasons.

9. Relying on Spencer's representations and Dr. Book's letter, the Court continued the February 28, 2012 hearing, granted Spencer protection from court until after April 1, 2012, and noticed the hearing for April 3, 2012.

10. On March 27, 2012, Plaintiffs (including Spencer) filed an Expedited Motion to Disqualify Defendant Rakowsky's attorneys Amanda Dudgeon and Andrew Countryman.

11. On March 29, 2012, a telephone status conference was held in which the following individuals participated: Judge James R. Barber, III; Benjamin C. Bruner, as counsel for Defendant Falgione; Amanda K. Dudgeon, as counsel for Defendant Rakowsky; Plaintiff Spencer; and Plaintiff Santacroce. In the telephone conference, the parties were advised that Plaintiffs' Motion to Disqualify would be heard, at Plaintiffs' request, on April 3, 2012, at 9:00

am and that Defendants' Motions to Dismiss would be heard as scheduled on the roster on April 3, 2012, at 11:00 am.

12. On April 2, 2012, at 5:17 pm, one day before the scheduled hearings, Plaintiff Spencer emailed the Court and stated he was not able to attend the hearings in the morning. He likewise provided what appeared to be an April 2, 2012, notice of Robert Holt's[1] appointment at the Medical University of South Carolina in Charleston, South Carolina, with Dr. Book for April 3, 2012. The notice did not include any time for the appointment, but did include "due to emergency" in handwriting.

13. Plaintiff Santacroce forwarded to the Court correspondence indicating she did not plan to attend the hearings. She did not request a continuance.

14. On April 3, 2012, attorneys Benjamin Bruner, Amanda Dudgeon, and Desa Ballard, along with their respective clients, appeared for the scheduled hearings. Neither Plaintiff appeared for the hearing.

15. The counsel and parties who were present proceeded to chambers to attempt to contact Plaintiff Spencer and Plaintiff Santacroce by telephone.

16. Plaintiff Spencer did not answer when called at the telephone number on file with the Court.

17. However, Plaintiff Spencer did answer the telephone when called at (803) 414-0889. The undersigned advised Plaintiff Spencer that he could not continue to request continuances of the hearings, which had been scheduled three times.

18. Plaintiff Spencer agreed that the Court may discuss Spencer's medical condition with his medical providers to determine a schedule for this action.

[1] Upon information and belief, Robert Holt is Plaintiff Spencer's alias.

RULINGS

1. Plaintiff Santacroce's Motion to Disqualify is denied.

2. The hearings on Plaintiff Spencer's Motion to Disqualify, Defendant Rakowsky's Motion to Dismiss, and Defendant Falgione's Motion to Dismiss are continued.

3. The continuances and other rulings by this Court shall have no effect on discovery in this case, which may proceed without delay.

4. Any future request for a continuance by any Plaintiff must be supported by a properly executed affidavit of a licensed medical professional unequivocally opining that the Plaintiff is not capable of attending the scheduled hearing or proceeding. If the Plaintiff's request for a continuance is not supported by such an affidavit, the request shall be denied.

5. If any Plaintiff shall again fail to appear at any hearing or proceeding in this action without good cause, that Plaintiff's claims shall be dismissed with prejudice.

6. In addition, if any Plaintiff unnecessarily delays this case further, Defendants may seek sanctions.

IT IS SO ORDERED.

James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

This 14 day of June, 2012.

South Carolina Court Administration

South Carolina Supreme Court

Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355
E-MAIL: rfrierson@sccourts.org

June 24, 2015

Michael G. Sribnick, Esquire
3 Kenilworth Avenue
Charleston, SC 29403-4305

Re: Irene Santacroce, et al. v. John R. Rakowsky, et al.
2012-CP-32-03428

Dear Mr. Sribnick:

Your letter addressed to Daniel Shearouse, dated June 20, 2015 has been forwarded to me for response. Per your request, I have enclosed a copy of two Orders issued by the Chief Justice in the above-mentioned matter. The first, dated January 17, 2013 assigns Judge Griffith to administer and prepare for trial the above-captioned matter. The second, dated June 11, 2013, rescinds the first Order, due to a conflict of interest, and assigns Judge Benjamin to serve in an administrative capacity for the above-captioned matter.

Should you require any further assistance, feel free to contact this office.

Sincerely,

Tiffany B. Raines
SCCA Staff Attorney

Enclosures

The Supreme Court of South Carolina

Irene Santacroce, et al. Plaintiffs,

v.

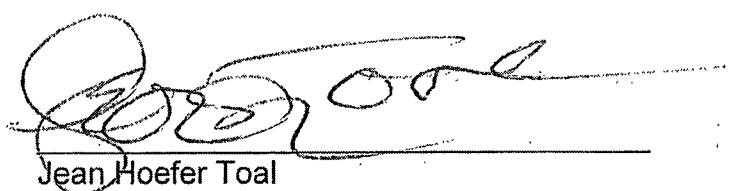
John R. Rakowsky, et al. Defendants.

Lexington County
2012-CP-32-03428

ORDER

This matter is pending in Lexington County. The Honorable R. Knox McMahon, Chief Judge for Administrative Purposes (Civil), cannot act as Chief Judge for Administrative Purposes to administer this case. The Honorable William P. Keesley, Chief Judge for Administrative Purposes (Criminal), also cannot act as Chief Judge for Administrative Purposes to administer this case. Now therefore,

IT IS ORDERED that the Honorable Eugene C. Griffith, Jr., as the Chief Judge for Administrative Purposes in the Eighth Judicial Circuit, be assigned as Chief Judge for Administrative Purposes in the Eleventh Judicial Circuit (Civil) for the sole purpose of administering this case and preparing it for trial. Any judge subsequently appointed as Chief Judge for Administrative Purposes in the Eighth Judicial Circuit shall assume this responsibility



Jean Hoefer Toal
Chief Justice

January 17, 2013
Columbia, South Carolina

60

The Supreme Court of South Carolina

Irene Santacroce, et al., Plaintiffs,

v.

John R. Rakowsky, et al., Defendants.

Lexington County
2012-CP-32-03428

ORDER

This matter is pending in Lexington County. The Honorable Eugene C. Griffith, Jr., Chief Judge for Administrative Purposes in the Eighth Judicial Circuit, was assigned as the Chief Judge for Administrative Purposes in the Eleventh Circuit (Civil) to administer this case and prepare it for trial. A conflict has arisen and he can no longer administer this case. Now therefore,

IT IS ORDERED that the Order dated January 17, 2013 be rescinded and that the Honorable DeAndrea G. Benjamin, as the Chief Judge for Administrative Purposes (Criminal) for the Fifth Judicial Circuit, be assigned as Chief Judge for Administrative Purposes (Civil) in the Eleventh Judicial Circuit for the sole purpose of administering this case and preparing it for trial. Any judge subsequently appointed as Chief Judge for Administrative Purposes (Criminal) for the Fifth Judicial Circuit shall assume this responsibility.

Jean Hoefer Toal
Chief Justice

June 11, 2013
Columbia, South Carolina

Michael Sribnick

From: Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams) <dbenjaminlc@sccourts.org>
Sent: Thursday, November 12, 2015 9:14 AM
To: Michael Sribnick
Subject: RE: FOIA request for information....

Dr. Sribnick,

Any documents related to this would be available through the Lexington County Clerk of Court's office. Furthermore, Judge Benjamin did not hold court in Lexington during the time period requested. She was Chief of General Sessions in the Fifth Circuit at the time. If you require further assistance, please contact Rosalyn Frierson at rfrierson@sccourts.org. She is with Court Administration. Thank you, and have a great day.

Stacy A. Williams
Law Clerk to the Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
P.O. Box 192
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1511
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

From: Michael Sribnick [mailto:legaldocumentation@sc.rr.com]
Sent: Monday, November 09, 2015 3:54 PM
To: Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams)
Subject: FOIA request for information....

Dear Ms. Williams:

Please consider this email a request under the authority of the South Carolina Freedom of Information Act.

Please provide copies of any correspondence and/or orders issued by the Honorable Judge De Andrea G. Benjamin or her office regarding Lexington County Case Number: 2012-CP-32-3428, Spencer vs. Rakowsky, et al., during the period of May 30, 2013 through September 30, 2013.

Please respond by email if no such document(s) exist and advise by email if they do exist and I will have a courier pick them up from your office for your convenience.

Thank you for your assistance in this matter.

Yours truly,

Michael Sribnick, MD, JD
Attorney for Jim Spencer

This electronic message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction and is strictly prohibited. If you have received this communication in error, please notify the sender by return electronic message or telephone, and destroy the original message without making any copies.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.
~~~

I am an employee or clerk of the Lexington County Clerk of Courts office and state the following regarding the files on Case No: 2012-CP-32-3428. I have searched the files for the following:

- A letter from Judge Griffith dated May 30, 2013, to Judge Addy referencing materials provided to Judge Addy.
- An Order from Justice Toal dated January 17, 2013, which appointed Judge Griffith as chief Judge for administrative purposes to hear specifically Case No: 2012-CP-32-3428.
- Any overview to Judge Addy on Case No: 2012-CP-32-3428 from Judge Griffith's clerk.
- Copies of any of the above records found are attached hereto for a total of ____ pages. Clerk's initials here.

Printed name of Emily L. Hinson

Signature of Emily L. Hinson Date: 5-29-15

Deputy Clerk of Common Pleas

Affix Seal of the Clerk of Court of Lexington County.

We do not have any of these documents in the Court file. This information was not filed with our office.

FILED
2015 MAY 29 A 11:06
BETTIE D. ROGERS
CLERK OF COURT
LEXINGTON, SC

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 803-753-0060
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

May 14, 2013

VIA US CERTIFIED MAIL, RETURN RECEIPT REQUESTED
James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

VIA US CERTIFIED MAIL, RETURN RECEIPT REQUESTED
Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Mr. Spencer and Ms. Santacroce:

Enclosed herewith, please find a copy of the Order from the Motions Hearings on May 7, 2013, which was filed with the Court on May 13, 2013.

Sincerely,

Benjamin C. Bruner

BCB/nys

Enclosure

cc: Amanda K. Dudgeon, Esquire
Brian J. Headley, Esquire

ORIGINAL

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.; and Irene Santacroce; Plaintiffs, v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	)	C/A No. 2012-CP-32-3428 **ORDER**

THIS MATTER came before the undersigned for a hearing at the Lexington County Courthouse on May 7, 2013 on seven motions currently pending before the Court. At the hearing, Amanda K. Dudgeon, Esquire appeared on behalf of John Rakowsky ("Rakowsky"), and Benjamin C. Bruner, Esquire appeared on behalf of Adrian Falgione and his law firm (collectively, "Falgione"). No one appeared on behalf of the Plaintiffs.

The Plaintiffs in this matter are *pro se*. Immediately prior to the hearing, the Court received correspondence from Brian J. Headley, Esquire ("Headley") that Plaintiff James Spencer ("Spencer") contacted him the same morning about representation. Mr. Headley requested that the hearing be continued for thirty (30) days to allow him time to review the file and determine whether to represent Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc. (collectively, "Spencer Plaintiffs"). The Defendants objected to a continuance and requested that either the hearing proceed or the case be dismissed pursuant to a prior Order in this case issued by Judge Barber on June 14, 2012 and filed June 28, 2012. I find it proper to allow Headley twenty-one (21) days to determine whether he will represent the Spencer Plaintiffs in this matter.

SCM

However, with respect to the claims alleged by Santacroce, this Court is bound by Judge Barber's prior order. In that order, the Court continued three of the motions that are still pending. The Court further ruled,

> 4. If any Plaintiff shall again fail to appear at any hearing or proceeding in this action without good cause, that Plaintiffs claims shall be dismissed with prejudice.
>
> 5. In addition, if any Plaintiff unnecessarily delays this case further, Defendants may seek sanctions.

The Plaintiffs were served with notice of this motions hearing by letter dated April 23, 2013. Santacroce failed to properly request a continuance and failed to appear without good cause. I therefore find all claims by Santacroce in this case should be dismissed with prejudice, pursuant to Judge Barber's June 28, 2012 Order.

As an additional matter, the undersigned disclosed to Headley during a telephone call and to counsel for Rakowsky that he is a distant relative of counsel for Falgione. While this relationship alone is not sufficient to require disqualification, I find it prudent to obtain waiver from the parties before ruling on the merits of the issues in this case. Had the Plaintiffs appeared at the hearing, the Court would have disclosed this relationship on the record and allowed the parties time to discuss waiver. As Headley does not represent any party at this time, he cannot waive the conflict for the Spencer Plaintiffs. Nevertheless, this issue must be resolved before the Court can dispose of the pending motions and proceed with the remainder of the case. Therefore, the Spencer Plaintiffs have ten (10) days from the date of this Order to notify the Court in writing about whether they waive any disqualification and consent to the undersigned hearing this matter.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Plaintiff Irene Santacroce's claims in this matter are hereby DISMISSED WITH

PREJUDICE pursuant to the Order issued June 14, 2012 and filed June 28, 2012;

2. James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., shall notify the Court in writing **within ten (10) days of the date of this Order,** whether they waive any potential disqualification the undersigned may have in this case;

3. A hearing is hereby scheduled for **June 5, 2013 beginning at 9:30 AM at the Laurens County Courthouse in Laurens, SC** on the following motions:

   i. Rakowsky's Motion to Dismiss filed November 3, 2011;

   ii. Falgione's Motion to Dismiss filed November 4, 2011;

   iii. Plaintiff Spencer's Motion to Disqualify filed March 27, 2012;

   iv. Rakowsky's Motion to Compel Discovery Responses filed July 16, 2012;

   v. The Plaintiffs' Motion to Compel and Stay Hearings filed July 30, 2012;

   vi. Falgione's Motion to Quash and for Protective Order filed January 22, 2013; and

   vii. Rakowsky's Motion to Quash and for Protective Order filed January 25, 2013;

4. In the event the Spencer Plaintiffs timely request that the undersigned recuse himself from further proceedings, the June 5th hearing shall proceed as scheduled before another presiding judge;

5. Mr. Headley shall notify the Court in writing by May 29, 2013 whether he represents the Spencer Plaintiffs in this matter. The June 5th motions hearing will proceed regardless of whether Mr. Headley agrees to represent the Spencer Plaintiffs; and

6. Any discovery in this matter shall be held in abeyance pending further Order of this Court.

AND IT IS SO ORDERED.

Eugene C. Griffith, Jr.
Presiding Judge, Eleventh Judicial Circuit

May 9, 2013

Lexington, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3203428

James Spencer Southern Holdings Inc	Doris Holt Irene Santacroce	John R Rakowsky Law Offices of Adrian Falgione LLC	Adrian L Falgione
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **N/A**, and a copy mailed first class or placed in the appropriate attorney's box on **14TH OF MAY 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer
7001 St Andrews Rd ste 183
Columbia, SC 29212
Irene Santacroce
205 Deer Trace Cir
Myrtle Beach, SC 29588

ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew W Countryman
Carlock Copeland & Stair LLP
40 Calhoun St Ste 400 Charleston, SC 29401
Amanda Kurzen Dudgeon
40 Calhoun St., Ste. 400
Charleston, SC 29401
Benjamin C. Bruner
PO Box 61110
Columbia, SC 29260

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Beth A. Carrigg - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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
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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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

August 17, 2012

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street, Suite 146
Lexington, SC 29072-3599

RE: ***James Spencer, et al. vs. John R. Rakowsky, et al.***
Richland Co. C/A No.: 2011-CP-40-5384
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Mrs. Carrigg:

Please find enclosed an Order transferring the above-referenced case from Richland County to the Lexington County docket. I am writing to bring your attention to the motions that are currently pending in this case. According to my file, the following motions are currently pending in this case:

(1) Defendant John Rakowsky's Motion to Dismiss, filed November 3, 2011;
(2) Defendants Adrian Falgione's and The Law Offices of Adrian Falgione's Motion to Dismiss, filed November 4, 2011;
(3) Plaintiff James Spencer's Motion to Disqualify, filed March 27, 2012;
(4) Defendant John Rakowsky's Motion to Compel, filed July 16, 2012; and
(5) Plaintiffs' Expedited Motion to Compel and to Stay hearings in the Above Captioned Case until the Court Rules on this Motion to Compel the Defendants to Comply with this Court's Previous Orders, filed July 30, 2012.

None of these motions have been heard yet. My understanding is Ms. McBride's Office is forwarding the case file to you. If I can be of any further assistance in the meantime, please do not hesitate to call.

Sincerely,

Benjamin C. Bruner

BCB/nys
/Enclosures

cc: James B. Spencer, pro se (w/ enclosures)
Irene Santacroce, pro se (w/ enclosures)
Amanda K. Dudgeon, Esquire (w/ enclosures)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMI IN A CIVIL CASE

71

CASE NUMBER: 2011CP4005384

James Spencer	John R Rakowsky
Estate of Doris Holt	Adrian L Falgione
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: _____	**Attorney for :** ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

RICHLAND COUNTY FILED
2012 AUG 15 AM 10:9
JEANETTE W. McBRIDE
C.C.P. & G.S.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 15 August 2012 to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer — Irene Santacroce — Andrew W. Countryman, Amanda Kurzen Dudgeon — Benjamin C. Bruner

James Spencer
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

72

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
James Spencer, individually and on behalf of) the Estate of Doris Holt and on behalf of) Southern Holdings, Inc.; and Irene Santacroce;)	C/A No. 2011-CP-40-5184
Plaintiffs,)	
v.)	
John R. Rakowsky; Adrian L. Falgione; and) The Law Offices of Adrian Falgione, LLC;)	**ORDER GRANTING DEFENDANTS' MOTIONS TO CHANGE VENUE**
Defendants.)	

RICHLAND COUNTY FILED
2012 AUG 15 AM 10:
JEANETTE W. McBRIDE C.C.P. & G.S.

THIS MATTER came before the undersigned by way of motions to change venue, which were filed on May 17, 2012, on behalf of Adrian L Falgione ("Falgione") and The Law Offices of Adrian L. Falgione, LLC (collectively, "Falgione Defendants"), and on June 4, 2012, on behalf of John R. Rakowsky ("Rakowsky"). At a hearing on these motions on August 1, 2012, at the Richland County Judicial Center, the Plaintiffs appeared pro se; Benjamin C. Bruner, Esquire appeared on behalf of the Falgione Defendants, and Amanda K. Dudgeon, Esquire appeared on behalf of Rakowsky. Having carefully considered the arguments and submissions of the parties, I find the Defendants' motions should be granted and this case should be transferred to Lexington County.

When a plaintiff files suit in a county that is not the proper venue for trial under the venue statutes, the Court may transfer the case to a proper county for trial. S.C. Code Ann. § 15-7-100 (Supp. 2011.). Based upon the allegations in the Complaint, S.C. Code Ann. § 15-7-30 governs venue of this action. Under that statute, venue is proper either in the defendant's resident county or in the county where the most substantial part of the alleged act or omission giving rise to the

SCANNED

plaintiff's claim occurred. S.C. Code Ann. § 15-7-30(C), (E) (Supp. 2011). The South Carolina Supreme Court has recognized that a defendant's right to be tried in his resident county is a substantial one. Jeter v. South Carolina Dept. of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 147-48 (2006). Furthermore, "in a case involving only one defendant or multiple defendants who reside in a single county, the venue choice generally is controlled by the residence of the defendant." Id.

In this legal malpractice action, the Defendants contend this case should be transferred to Lexington County as a matter of right because Richland County is not a proper venue under §15-7-30 and because Lexington County is the Defendants' resident county. I agree.

I find venue is not proper in Richland County. All the named defendants are from Lexington County, and the most substantial part of the acts and omissions alleged in the Complaint occurred outside Richland County. The Plaintiffs argued at the hearing that they signed fee agreements with the Defendants in Richland County. Even if this were true,[1] where the fee agreements were signed does not override the Defendants' substantial right to be tried in their resident county, nor does it establish that the most substantial part of the acts and omissions alleged in the Complaint occurred in Richland County, as the statute requires. In fact, Plaintiff Spencer argued at the hearing that the alleged malpractice occurred in Florence County. I therefore find Richland County is not a proper venue for this action and the Defendants have a substantial right to be tried in Lexington County that has not been waived.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants' motions to change venue should be, and hereby are, granted and that the above-

[1] The Defendants submitted affidavits stating that the fee agreements were signed at their offices in Lexington County. In response, the Plaintiffs submitted a series of documents that purported to be affidavits in support of their argument that the fee agreements were drafted and signed in Richland County, but none of the affidavits the Plaintiffs submitted were notarized.

captioned case be, and hereby is, transferred to the Court of Common Pleas for Lexington County. **IT IS FURTHER ORDERED** that the Clerk of Court for Richland County is hereby directed to take all steps necessary to effectuate the immediate transfer to the Lexington County Court of Common Pleas of all pleadings and other documents presently on file with this Court in connection with this action.

AND IT IS SO ORDERED.

~~The Honorable~~ Brooks P. Goldsmith
Presiding Judge, Fifth Judicial Circuit

August 15, 2012

Columbia, South Carolina

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
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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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

August 17, 2012

The Honorable Beth Carrigg
Lexington County Clerk of Court
205 East Main Street, Suite 146
Lexington, SC 29072-3599

RE: ***James Spencer, et al. vs. John R. Rakowsky, et al.***
Richland Co. C/A No.: 2011-CP-40-5384
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Mrs. Carrigg:

Please find enclosed an Order transferring the above-referenced case from Richland County to the Lexington County docket. I am writing to bring your attention to the motions that are currently pending in this case. According to my file, the following motions are currently pending in this case:

(1) Defendant John Rakowsky's Motion to Dismiss, filed November 3, 2011;
(2) Defendants Adrian Falgione's and The Law Offices of Adrian Falgione's Motion to Dismiss, filed November 4, 2011;
(3) Plaintiff James Spencer's Motion to Disqualify, filed March 27, 2012;
(4) Defendant John Rakowsky's Motion to Compel, filed July 16, 2012; and
(5) Plaintiffs' Expedited Motion to Compel and to Stay hearings in the Above Captioned Case until the Court Rules on this Motion to Compel the Defendants to Comply with this Court's Previous Orders, filed July 30, 2012.

None of these motions have been heard yet. My understanding is Ms. McBride's Office is forwarding the case file to you. If I can be of any further assistance in the meantime, please do not hesitate to call.

Sincerely,

Benjamin C. Bruner

BCB/nys
/Enclosures

cc: ✓James B. Spencer, pro se (w/ enclosures)
Irene Santacroce, pro se (w/ enclosures)
Amanda K. Dudgeon, Esquire (w/ enclosures)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMI IN A CIVIL CASE

CASE NUMBER: 2011CP4005384

81

James Spencer
Estate of Doris Holt
PLAINTIFF(S)

John R Rakowsky
Adrian L Falgione
DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

JEANETTE W. McBRIDE
C.C.C. & G.
2012 AUG 15 AM 10:19
RICHLAND COUNTY
FILED

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		$
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		$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 15 August 2012 to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer
Irene Santacroce
Andrew W. Countryman
Amanda Kurzen Dudgeon
Benjamin C. Bruner

James Spencer
ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
James Spencer, individually and on behalf of) the Estate of Doris Holt and on behalf of) Southern Holdings, Inc.; and Irene Santacroce;)	C/A No. 2011-CP-40-5384
Plaintiffs,)	
v.)	
John R. Rakowsky; Adrian L. Falgione; and) The Law Offices of Adrian Falgione, LLC;)	**ORDER GRANTING DEFENDANTS' MOTIONS TO CHANGE VENUE**
Defendants.)	

RICHLAND COUNTY FILED
2012 AUG 15 AM 10:18
JEANETTE W. McBRIDE, C.C.P. & G.S.

THIS MATTER came before the undersigned by way of motions to change venue, which were filed on May 17, 2012, on behalf of Adrian L Falgione ("Falgione") and The Law Offices of Adrian L, Falgione, LLC (collectively, "Falgione Defendants"), and on June 4, 2012, on behalf of John R. Rakowsky ("Rakowsky"). At a hearing on these motions on August 1, 2012, at the Richland County Judicial Center, the Plaintiffs appeared pro se, Benjamin C. Bruner, Esquire appeared on behalf of the Falgione Defendants, and Amanda K. Dudgeon, Esquire appeared on behalf of Rakowsky. Having carefully considered the arguments and submissions of the parties, I find the Defendants' motions should be granted and this case should be transferred to Lexington County.

When a plaintiff files suit in a county that is not the proper venue for trial under the venue statutes, the Court may transfer the case to a proper county for trial. S.C. Code Ann. § 15-7-100 (Supp. 2011.). Based upon the allegations in the Complaint, S.C. Code Ann. § 15-7-30 governs venue of this action. Under that statute, venue is proper either in the defendant's resident county or in the county where the most substantial part of the alleged act or omission giving rise to the

SCANNED

plaintiff's claim occurred. S.C. Code Ann. § 15-7-30(C), (E) (Supp. 2011). The South Carolina Supreme Court has recognized that a defendant's right to be tried in his resident county is a substantial one. Jeter v. South Carolina Dept. of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 147-48 (2006). Furthermore, "in a case involving only one defendant or multiple defendants who reside in a single county, the venue choice generally is controlled by the residence of the defendant." Id.

In this legal malpractice action, the Defendants contend this case should be transferred to Lexington County as a matter of right because Richland County is not a proper venue under §15-7-30 and because Lexington County is the Defendants' resident county. I agree.

I find venue is not proper in Richland County. All the named defendants are from Lexington County, and the most substantial part of the acts and omissions alleged in the Complaint occurred outside Richland County. The Plaintiffs argued at the hearing that they signed fee agreements with the Defendants in Richland County. Even if this were true,[1] where the fee agreements were signed does not override the Defendants' substantial right to be tried in their resident county, nor does it establish that the most substantial part of the acts and omissions alleged in the Complaint occurred in Richland County, as the statute requires. In fact, Plaintiff Spencer argued at the hearing that the alleged malpractice occurred in Florence County. I therefore find Richland County is not a proper venue for this action and the Defendants have a substantial right to be tried in Lexington County that has not been waived.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants' motions to change venue should be, and hereby are, granted and that the above-

[1] The Defendants submitted affidavits stating that the fee agreements were signed at their offices in Lexington County. In response, the Plaintiffs submitted a series of documents that purported to be affidavits in support of their argument that the fee agreements were drafted and signed in Richland County, but none of the affidavits the Plaintiffs submitted were notarized.

captioned case be, and hereby is, transferred to the Court of Common Pleas for Lexington County. **IT IS FURTHER ORDERED** that the Clerk of Court for Richland County is hereby directed to take all steps necessary to effectuate the immediate transfer to the Lexington County Court of Common Pleas of all pleadings and other documents presently on file with this Court in connection with this action.

AND IT IS SO ORDERED.

~~The Honorable~~ Brooks P. Goldsmith
Presiding Judge, Fifth Judicial Circuit

August 15, 2012

Columbia, South Carolina

ORIGINAL 85

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
	32
James Spencer, individually and on behalf) of the Estate of Doris Holt and on behalf) of Southern Holdings, Inc.;)	C/A No. 2012-CP-~~40~~-3428
Plaintiffs,)	
v.)	**ORDER OF DISMISSAL**
John R. Rakowsky; Adrian L. Falgione;) and The Law Offices of Adrian Falgione,) LLC;)	
Defendants.)	

THIS MATTER came before the undersigned by way of Motions to Dismiss filed by John R. Rakwosky ("Rakowsky") and by Defendants Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC (collectively, "Falgione Defendants") in November of 2011.[1] At a hearing on June 5, 2013, in Laurens, South Carolina, the Plaintiffs appeared *pro se*, Amanda K. Dudgeon, Esquire, appeared on behalf of Rakowsky, and Benjamin C. Bruner, Esquire, appeared on behalf of the Falgione Defendants. The parties consented on the record to allow the undersigned to hear this matter pending issuance of an order granting this Judge jurisdiction. That order was issued on June 27, 2013, *nunc pro tunc* June 5, 2013. After careful consideration of the allegations in the complaint and the arguments of the parties at the hearing,[2] I find the Defendants' Motions to Dismiss shall be granted for the reasons set forth below.

[1] The Falgione Defendants later amended their motion on January 3, 2013 to challenge timeliness and sufficiency of service.

[2] Plaintiff and others contacted the court via email on several occasions after the hearing was concluded and interposed additional arguments which do not relate to the merits of the narrow issue before the court. Although the court is extremely sympathetic with the assertions of Plaintiff and others that they were not treated fairly by the Federal Court in the Underlying Case, this court is constrained to follow the law as written.

FILED
2013 AUG 23 P 12:
CLERK OF COURT
LEXINGTON

STANDARD

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe*, 373 S.C. at 395; 645 S.E.2d at 247. Conversely, if the complaint fails to state facts sufficient to constitute a cause of action, then dismissal is proper under Rule 12(b)(6), SCRCP.

FACTUAL/PROCEDURAL BACKGROUND

This is a legal malpractice action that arises out of a case in which Rakowsky and Falgione represented the Plaintiffs. The underlying case was filed in federal court for the District of South Carolina, Florence Division, and assigned Civil Action No.: 4:02-cv-1859-RBH ("Underlying Case"). The complaint in the Underlying Case was filed in May 2002 (by two attorneys not defendants to this case) and included allegations against the Plaintiffs' former business partners, the Horry County Sherriff's Department, and the Myrtle Beach Police Department, as well as various officials, deputies, and officers in those agencies, all of whom took some part in an alleged attempt to take over Southern Holdings, Inc.

Plaintiffs allege that on May 8, 2007, the day before trial, the Court conducted a pretrial hearing, at which it heard arguments on evidentiary motions. After the hearing, the presiding judge held a conference in chambers with the attorneys. According to the complaint, Rakowsky and Falgione told the Plaintiffs certain evidence had been excluded and then attempted to coerce the Plaintiffs to accept a settlement offer for $55,000. Plaintiffs allege, however, that they

emphatically and vigorously refused to settle. Instead, the Plaintiffs told Rakowsky and Falgione they would object when the judge polled them about the settlement.

On the following day, May 9, 2007, when the trial was scheduled to begin, the Plaintiffs and their attorneys, the Defendants in this action, appeared in Court. After a conference in chambers, a hearing was held in which the attorneys placed the terms of the settlement on the record, allegedly against the Plaintiffs' wishes. The Court accepted the settlement and dismissed the jury pool. According to the complaint, the Court did not poll the Plaintiffs. The Plaintiffs further allege they were told the settlement was not final until a settlement agreement was signed.

In late May 2007, the Plaintiffs in the Underlying Case began inundating the Court with letters "pointing out inconsistencies in Rakowsky's letters, the transcript of the [pretrial] evidentiary hearing, and why the Judge made the evidentiary rulings he did, as reported by Rakowsky and Falgione behind closed doors." (Compl. ¶ 54.) The Court construed the letters as motions to set aside the settlement, and on July 3, 2007, issued an Order denying the motions.

More than three years later, on August 15, 2011, the Plaintiffs filed this *pro se* malpractice suit against Rakowsky and Falgione. No expert affidavit was filed with the complaint or within 45 days after, nor did the Plaintiffs request an extension to file an expert affidavit in support of their legal malpractice claims.

DISCUSSION

I. Failure to File Expert Affidavit

The Defendants first argue dismissal is proper because the Plaintiffs failed to timely file an expert affidavit pursuant to S.C. Code § 15-36-100. I agree.

FILED
2013 AUG 23 P 2:10
BETTY CRAIG
CLERK OF COURT
LEXINGTON, SC

In South Carolina, a plaintiff in a legal malpractice action is required to file an expert affidavit as part of his complaint. S.C. Code §§ 15-36-100(B), (G)(2). This requirement protects professionals licensed by the State of South Carolina from frivolous claims. *See Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010) ("[G]enerally, a plaintiff in a legal malpractice action must establish this standard of care by expert testimony."); *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 435, 472 S.E.2d 612, 613 (1996) (same). While an exception to the contemporaneous filing requirement exists when the statute of limitations will expire within ten days of filing the complaint, the plaintiff must nevertheless supplement the complaint with an expert affidavit within forty-five days of the date of filing. S.C. Code § 15-36-100(C)(1). If the plaintiff fails to file an expert affidavit within the specified period, "the complaint is subject to dismissal for failure to state a claim." *Id.*

There can be little doubt that the expert affidavit requirement applies to this action. The Plaintiffs acknowledge as much in Paragraph 7 of the complaint, which purports to be filed "pursuant to S.C. Code § 15-36-100(c)(1). . . ." Since the Complaint alleges the statute of limitations was about to expire, § 15-36-100(C)(1) required the Plaintiffs to file an expert affidavit no later than September 29, 2011, forty-five days after the Complaint was filed.

At the hearing, Spencer argued no expert affidavit is required because the Defendants have admitted malpractice. However, the record does not support Spencer's argument. Likewise, the common knowledge exception clearly does not apply in this case. Furthermore, I find the nature of the allegations the Plaintiffs have made against the Defendants requires expert testimony to establish the applicable standard of care. *Harris Teeter*, 390 S.C. at 282, 701 S.E.2d at 745.

The record does contain an affidavit filed by the Plaintiffs on April 16, 2013 from Aimee Zmroczek, a purported expert. However, that affidavit was filed more than 600 days after the complaint, well beyond the time allowed by S.C. Code §15-36-100(C)(1).

Accordingly, I find the Plaintiffs failed to comply with S.C. Code §15-36-100 and, therefore, that their claims against the Defendants should be dismissed.

II. Statute of Limitations

In addition, the Defendants argue dismissal is proper under Rule 12(b)(6), SCRCP, because the Plaintiffs failed to commence their action within the three-year statute of limitations. I agree.

"The statute of limitations in a legal malpractice case is three years." S.C. Code § 15-3-530; *Kimmer v. Wright*, 396 S.C. 53, 57-58, 719 S.E.2d 265, 268 (Ct. App. 2011), *reh'g denied* (Dec. 19, 2011). "Under the discovery rule, the three-year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Id.* (internal quotations omitted). In *Epstein v. Brown,* 363 S.C. 372, 610 S.E.2d 816 (2005), the Supreme Court explained that reasonable diligence means,

> an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party **might** exist. **The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.**

363 S.C. at 376, 610 S.E.2d at 818 (emphasis in original). Applying that understanding of the discovery rule to the facts of this case, it is apparent the Plaintiffs failed to commence their action within the statute of limitations.

In the complaint, the Plaintiffs allege various acts of misconduct by Rakowsky and Falgione that culminated in the May 9, 2007 settlement. Most importantly, the Plaintiffs allege they emphatically and vigorously told the Defendants they refused to settle the case. The Plaintiffs were present in the courtroom on May 9, 2007, and witnessed their attorneys settle their case on the record. That fact cannot be overlooked. If, as they allege, the Plaintiffs emphatically refused to settle and intended to state their objections on the record, then there is little doubt they knew they had suffered an actionable injury when they left the courthouse that day.

Although the Plaintiffs contend they were told the settlement was not final at that time, the only inference from their letters to the Federal Judge, who construed the letters as motions to set aside the settlement, is the finality of the settlement had set in. At the latest, therefore, the three-year clock began to run when Judge Harwell issued his July 3, 2007 order. The complaint in this action, filed August 15, 2011, is well beyond the three-year statute.

Accordingly, the Defendants' motions should be granted and the claims against them dismissed.

IT IS THEREFORE ORDERED that the Motions to Dismiss filed by Rakowsky and by the Falgione Defendants are hereby granted for the reasons set forth above. IT IS FURTHER ORDERED that the complaint shall be and hereby is dismissed with prejudice.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Presiding Judge, Eleventh Judicial Circuit

August 19, 2013
Greenwood, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3203428

James Spencer Southern Holdings Inc Doris Holt	John R Rakowsky Law Offices of Adrian Falgione LLC Adrian L Falgione
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	**Judgment Against (List name(s) below)**	**Judgment Amount To be Enrolled (List amount(s) below)**
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge **Judge Code** 8/26/2013 **Date**

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on **8/26/2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer 7001 St Andrews Rd ste 183 Columbia, SC 29212

ATTORNEY(S) FOR THE PLAINTIFF(S)

Andrew W Countryman Carlock Copeland & Stair LLP 40 Calhoun St Ste 400 Charleston, SC 29401
Amanda Kurzen Dudgeon 40 Calhoun St., Ste. 400 Charleston, SC 29401
Benjamin C. Bruner PO Box 61110 Columbia, SC 292601110
Warren C. Powell Jr. PO Box 61110 Columbia, SC 29260
Stephanie Nichole Weissenstein PO Box 6338 West Columbia, SC 291716338

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg PPD.

Beth A. Carrigg - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-40-6656

RICHLAND COUNTY FILED
2011 OCT 18 PM 4:19
MARIETTE W. McBRIDE C.C.P. & G.S.

John R. Rakowsky,

Plaintiff,

vs.

Adrian L Falgione, James Spencer, Doris Holt, Rodney Keith Lail, Irene Santacroce, Marguerite Stephens, Ricky Stephens, Michael Hartness, Horry County, S.C., Eugene G. Chewing and Glenn W. Harrison,

Defendants.

ORDER DENYING MOTION TO COMPEL, SUBSTITUTING PARTIES, RELEASE OF LITIGATION FUNDS, AND AMENDING COMPLAINT ACCORDINGLY

This matter came before me on September 15, 2011, for hearing on Defendant James Spencer's *"EXPEDITED MOTION TO COMPEL DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST TO COMPEL PLAINTIFF TO ANSWER DEFENDANTS FIRST ROUND OF INTEROGATORIES AND REQUEST FOR A JURY TRIAL ON ALL MATTERS RELATED TO 2008-CP-40-6656"*. Present were the Plaintiff and his Counsel, Stephanie Weissenstein, Defendant, Adrian Falgione, *pro se*, and Defendants James Spencer and Rodney Lail, who are *pro se*.

This case was before the Honorable William H. Seals, Jr. for a hearing on July 11, 2011, for a hearing on several motions, including Plaintiff's motion to quash a subpoena issued against him at the behest of Defendant James Spencer. The subpoena which was the subject of that hearing and the requests for production which Mr. Spencer seeks to compel includes several of the same documents.

SCANNED

There is a long-standing rule in this State that one judge of the same court cannot overrule another. *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E.2d 689 (1943). Therefore, IT IS HEREBY ORDERED THAT Mr. Spencer's motion to compel the production of documents included in the subpoena is **Denied**[1].

The Court understands that Defendant Doris Holt is now deceased. Plaintiff Rakowsky, Defendant Falgione, Defendant Spencer and Defendant Lail consent to Doris Holt's estate being substituted as the real party at interest. The substitution of the estate is **Granted.**

IT IS SO ORDERED.

James R. Barber, III
Judge for the 5th Judicial Circuit

October 18, 2011
Richland County

[1] By the same written motion, Mr. Spencer also requested a jury trial. That issue was not addressed at the hearing.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

James Spencer, individually and on behalf of the Estate of Doris Holt, and Southern Holdings, Inc., and Irene Santacroce
Plaintiff(s)

vs.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC
Defendant(s)

2011-CP - 40- 5394

(Please Print)
Submitted By: James B. Spencer
Address: Suite 183, 7001 St. Andrews Rd., Columbia, SC 29212

SC Bar #: Pro Se
Telephone #: 803-414-0889
Fax #:
Other:
E-mail: jamesbspencer@scbr.com

2011 DEC 15 PM 12:32
RICHLAND COUNTY
FILED
JEANNETTE W. WALKER
CLERK OF COURT

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☒ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☒ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☒ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: James Spencer **Date: August 15, 2011**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Spencer, individually and on behalf of the Estate of Doris Holt, and Southern Holdings, Inc., and Irene Santacroce

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-40-

SUMMONS

FILED
2011 AUG 15 PM 4:32
JEANETTE W. McBRIDE
C.C.P. & G.S.

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

James B. Spencer, , individually and on behalf of the Estate of Doris Holt, and Southern Holdings, Inc.
Suite 183, 7001 St. Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com
PRO S E

August 12, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2011-CP-40-

COMPLAINT
(Jury Trial Demanded)

RICHLAND COUNTY
FILED
2011 AUG 15 PM 4:32
JEANNETTE W. McBRIDE
C.C.P. & G.S.

The Plaintiffs, by and through their undersigned counsel, complaining of the Defendants herein, alleges the following:

PARTIES

1. Plaintiff James Spencer ("Spencer") is a citizen and resident of Richland County, State of South Carolina. He brings this action on behalf of himself and the Estate of Doris Holt, Spencer's mother, under her rights of assignment dated May 5, 2011. He brings this action on behalf of Southern Holdings, Inc., as interim Trustee/Administrator appointed July 14, 2011.

2. Plaintiff, Irene Santacroce ("Santacroce") is a citizen and resident of Horry County, State of South Carolina.

3. Southern Holdings, Inc. ("Southern") was a foreign corporation organized and existing under the laws of the State of Nevada, whose principal place of business was located in Richland County, South Carolina.

4. Defendant John R. Rakowsky ("Rakowsky"), is upon information and belief, a citizen and resident of Lexington County, South Carolina. At all times mentioned herein Rakowsky was an attorney licensed to practice law in the State of South Carolina.

5. Defendant Adrian L. Falgione ("Falgione"), is upon information and belief a citizen and resident of Lexington, County, South Carolina. At all times mentioned herein Falgione was an attorney licensed to practice law in the State of South Carolina.

6. Defendant Law Offices of Adrian Falgione, LLC, is, upon information and belief, a limited liability company organized and existing under the laws of the State of South Carolina, and is located in Lexington County, South Carolina. At all times herein, Falgione was an attorney with the law firm of Law Offices of Adrian Falgione, LLC, acted in the course and scope of his employment, and whose actions caused the liability of Law Offices of Adrian Falgione, LLC.

JURISDICTION AND VENUE

7. Jurisdiction and venue is proper in this county as the acts and/or omissions occurred in Richland County, South Carolina. This Complaint is filed pursuant to S.C. Code § 15-36-100 (C)(1) in anticipation of the possible need for the contemporaneous filing of an Affidavit by an expert, as the limitations on claims will likely expire within ten days of this filing and prior to the Plaintiffs obtaining such an Affidavit.

FACTUAL ALLEGATIONS

8. An original lawsuit was filed in Federal District Court, State of South Carolina, Florence District, Case No. Case No: 4:02-cv-01859-RBH in May, 2002. The Plaintiffs in this case were Spencer, Southern, Dan Green ("Green"), Rodney Lail ("Lail"), Marguerite

Stephens ("M. Stephens"), Ricky Stephens ("R. Stephens"), Doris Holt ("Holt") and Irene Santacroce ("Santacroce").

9. Plaintiffs in the aforementioned action hired Michael Goldberg ("Goldberg") of Atlanta and John Carrigg ("Carrigg") of Columbia to represent them in their case. Both attorneys brought the original complaint.

10. Almost immediately, Carrigg realized he may have a conflict with Horry County and withdrew from representation.

11. Defendant Rakowsky, after reviewing complaint of the Plaintiffs and completing his due diligence, filed notice of appearance to represent Plaintiffs on December 3, 2002.

12. In March 2005, Goldberg withdrew as counsel and was replaced by Ron Serota ("Serota") of Nevada.

13. Defendant Falgione, after reviewing complaint of the Plaintiffs and the succeeding filings and upon completion of his due diligence, filed notice of appearance on November 15, 2006, to represent the Plaintiffs.

14. Defendants Rakowsky and Falgione had Spencer and Williamson drafting the motions and also responses to motions as the Defendants claimed they had to focus their limited time on preparation for trial.

15. Defendant Rakowsky provided Spencer with his confidential and personal access codes to the South Carolina Federal Court Electronic Filing system ("ECF") to file the motions and answers drafted by Spencer and Williamson as Rakowsky claimed he did not understand how to use the ECF filing system.

16. Rakowsky and Falgione came into continual conflict with Serota, as Serota routinely complained to Plaintiffs that Rakowsky and Falgione were not spending the time necessary to prepare properly for trial of such complex litigation.

17. As the time drew near for trial, Rakowsky and Falgione issued an ultimatum to the Plaintiffs that either Serota resign as a co-counsel or both Rakowsky and Falgione would both resign, leaving Plaintiffs without local counsel.

18. Defendants orchestrated a conflict among Plaintiffs' co-counsels beginning on or about January 2007, resulting in the resignation of Plaintiffs' co-counsel Serota on March 20, 2007, less than two months before the trial was to begin and prior to the key evidentiary hearing.

19. Plaintiffs, in early 2007 sought to add Dan Ivy, Esquire ("Ivy") to supplement the legal team. Ivy is an experienced counsel in Federal Court complex litigation cases and had become familiar with the Plaintiffs' case.

20. Plaintiffs wanted to supplement the legal representation as Spencer and Williamson did not want to write motions and responses and enter them into the ECF system since they were untrained lay individuals.

21. Upon Rakowsky and Falgione successfully orchestrating and obtaining the resignation of Serota, Plaintiffs sought to substitute in Ivy to replace Serota.

22. Rakowsky and Falgione again threatened Plaintiffs they would resign leaving Plaintiffs without local counsel if Plaintiffs brought in Ivy. Rakowsky and Falgione maintained they had the expertise and time between themselves to successfully litigate the complex litigation and did not need another counsel.

23. On May 8, 2007, Rakowsky and Falgione attended an evidentiary hearing regarding the admission of specific items of evidence that were to be admitted during the jury trial scheduled to begin on May 9, 2007.

24. At some point the evidentiary hearing was moved to Judge Harwell's chambers, outside the presence of the court reporter and Plaintiffs.

25. Prior to the evidentiary hearing being moved to the Judge's Chambers, the Plaintiffs' evidence was being admitted intact by Judge Harwell, as documented in the Court Record.

26. Following the hearing, Rakowsky and Falgione met with Spencer and Green, reporting that the Judge, in Chambers, had reconsidered and ruled against the majority of the Plaintiffs' evidence, including all documentation of damages and further ruled that all of the Defendants' evidence in that case was admissible.

27. Rakowsky and Falgione stated that the Plaintiffs' evidence was ruled inadmissible by the Judge because it had been untimely filed by former legal counsels Serota and Goldberg.

28. Rakowsky and Falgione further revealed that an Offer of Judgment existed unbeknownst to Plaintiffs in that case, which Rakowsky and Falgione indicated would expose those Plaintiffs to over $300,000 in Court awarded costs, as the Judge had ruled against the admission of evidence related to Plaintiffs' damages in that case. Rakowsky and Falgione insisted that a settlement offer tendered by the Defendants in the amount of approximately $55,000.00 be accepted by Plaintiffs.

29. Spencer emphatically indicated to both Rakowsky and Falgione that he was not interested in the proposed settlement.

30. Then CEO of Southern Green informed Rakowsky and Falgione that he did not have the authority to authorize a settlement, as any proposed settlement required a vote of the Board of Directors.

31. On the morning of May 9, 2007, Rakowsky and Falgione, arranged to meet separately with four other Plaintiffs, without the knowledge or presence of Spencer and Green.

32. Rakowsky and Falgione further requested that Holt not be at the Court hearing on May 9, 2007. Holt had vigorously voiced her opinion to Rakowsky numerous times that she would never agree to a settlement offer unless the settlement paid the damages established by the expert evaluations in the case.

33. On May 9, 2007, Rakowsky and Falgione met first with Santacroce, R. Stephens and M. Stephens, and then again in a second meeting which included Lail.

34. Rakowsky and Falgione provided the same information to the four individuals that they had provided to Spencer and Green regarding the evidentiary hearing and its ramifications.

35. When Santacroce asked to read the referenced Offer of Judgment, Rakowsky refused to produce any documentation.

36. All four individuals were admonished not to listen to any alternative beyond settlement from Spencer, or they risked incurring the aforementioned costs in excess of $300,000.00.

37. Rakowsky and Falgione then met with all the parties except Holt and unsuccessfully tried to coerce the Plaintiffs to accept the settlement through a highly emotional tirade that included threats by Rakowsky and Falgione of their withdrawal from the case on the spot

if the Plaintiffs in that action did not comply with Rakowsky's and Falgione's demands for settlement, on the opposing parties terms, prior to the beginning of trial that morning.

38. Rakowsky and Falgione stated to the Plaintiffs that they would lose their homes and have their credit destroyed if they did not settle before trial on the opposing parties terms, bringing several of the Plaintiffs in that action to tears.

39. Rakowsky and Falgione also stated at that time that the Judge was going to poll them individually and that each individual Plaintiff would be required to answer if they in fact accepted the proposed agreement.

40. Back-peddling, Rakowsky and Falgione then stated that when the aforementioned polling occurred, each Plaintiff would state their opposition to the settlement, causing the Court to delay the beginning of the trial long enough for Rakowsky and Falgione to research a way around the Judge's evidentiary rulings.

41. Rakowsky and Falgione further stated that no agreement would be legally binding unless each and every one of the Plaintiffs individually signed off on the settlement agreement, which would contain all the terms and conditions of the settlement, and that the agreement would not be available until at least thirty (30) days after the hearing.

42. Rakowsky and Falgione indicated that, as Holt was not present, no settlement could be finalized until she signed off on the paperwork, as her non-presence alone precluded a settlement. Rakowsky and Falgione led the individuals to believe that all Plaintiffs had to be present and each had to agree verbally to the settlement when polled, as allegedly required by Judge Harwell.

43. Plaintiffs in that case were coerced into agreeing to those terms as they had no choice but to go along with Rakowsky's and Falgione's plan to delay a trial until the evidentiary

rulings by the Judge were reviewed and a way was found around the case-killing evidentiary rulings. The Plaintiffs agreed that the exclusion of the Plaintiffs' experts and damages evidence in that case by the Judge had to be overcome.

44. Santacroce and Spencer informed Rakowsky and Falgione that when the Judge polled them, each Plaintiff would state their opposition to the settlement and then Green, as CEO of Southern, would state he could not agree to a proposed settlement on behalf of Southern without the authority of the board of directors.

45. Rakowsky and Falgione agreed as any disagreements between individuals would force the Judge to allow enough time to establish agreement among the Plaintiffs in that case, theoretically providing Rakowsky and Falgione time to find a way to admit Plaintiff's evidence.

46. Rakowsky and Falgione warned the Plaintiffs that if they spoke up without the Judge giving them permission to speak individually, as they would be when they were polled, the offender who disrupt the Court procedures and be held in contempt and could force the case to move forward without admission of the Plaintiffs' evidence and expert testimony.

47. Rakowsky and Falgione then proceeded to the courtroom with all individuals except Holt in attendance, and another meeting was held in Judge's chambers.

48. After the meeting, Rakowsky informed Plaintiffs that the default judgments, already received by the Plaintiffs in that case against two of the Defendants Garvin and Smith, would also be dismissed in the proposed settlement agreement per the explicit instructions of Judge Harwell. Rakowsky again stated not to worry, that the Judge's

instructions for dismissing their default judgments were not binding until any and all settlement agreements were signed off by each individual Plaintiff in that case.

49. The hearing was held and the Judge did not poll the Plaintiffs in that case, the settlement was announced and the jury was dismissed. The Plaintiffs were never given any opportunity to be heard, contrary to the claims of Defendants Rakowsky and Falgione.

50. Immediately, the individuals asked why they had not been polled, to which Rakowsky and Falgione responded that Judge Harwell was inexperienced and had made an error, but that no settlement was to be finalized until each and every Plaintiff executed the settlement agreement.

51. Subsequent to the hearing on May 9, 2007, Rakowsky issued a letter dated May 17, 2007, stating to investors in the litigation the nature of the problems with the evidence and the reason for the settlement, and Defendants Rakowsky and Falgione now maintained they could not find an answer to Judge Harwell's evidentiary decisions. Further, Defendants Rakowsky and Falgione stated in writing that both had determined the best course of action was to sue Serota and Goldberg for the misfiling of the evidence.

52. On or about the date Rakowsky and Falgione issued the May 17, 2007 letters, both Defendants told the Plaintiffs they would gladly represent the Plaintiffs in a malpractice action against Serota and Goldberg for their mishandling of the evidence.

53. On or about May 21, 2007, Plaintiffs in that case obtained a transcript of the evidentiary hearing held on May 8, 2007.

54. Several Plaintiffs in that case then sent letters, beginning in late May 2007, to Judge Harwell pointing out the inconsistencies in Rakowsky's letters, the transcript of the

evidentiary hearing, and why the Judge made the evidentiary rulings he did, as reported by Rakowsky and Falgione behind closed doors.

55. Judge Harwell viewed the letters as motions for setting aside the settlement and denied the motions on July 3, 2007, without addressing the evidentiary hearing which led to the disputed settlement agreement.

56. On July 12, 2007, Plaintiffs filed a motion for clarification as to what occurred in the evidentiary hearing held in Judge Harwell's chambers, without a reporter present, as to the Court's position regarding Rakowsky's letters and the Defendants' statements to the Plaintiffs in that case being an accurate representation of the decisions of the Court regarding the admission of the evidence.

57. On January 14, 2008, the Court denied the Plaintiffs' motion for clarification as to the accuracy of contents in Rakowsky's letters and Rakowsky and Falgione's statements to the Plaintiffs in that case as to what happened in the closed chamber purported evidentiary hearing, as the Court ruled the possibility of fraud having occurred was moot.

58. On January 30, 2008, Plaintiffs in that action filed a motion for reconsideration of Court Order No. 577, denying the Plaintiffs' motion for clarification of what happened during the evidentiary hearing.

59. The Defendants' Counsels in that action filed motions in opposition to the Plaintiffs' motion for reconsideration of the Court Order denying clarification.

60. On August 12, 2008, Judge Harwell issued a denial of the Plaintiffs' motion for reconsideration for clarification of what occurred at the evidentiary hearing.

61. On August 13, 2008, Judge Harwell, in answer to a motion made by Plaintiffs for his recusal, in Court Order No. 668, admitted for the first time that the evidentiary decisions

claimed by Defendants Rakowsky and Falgione to the Plaintiffs and expressed in Defendant Rakowsky's letters, were untruthful.

62. After over eight (8) years of suffering, the Plaintiffs had their lawsuit deceptively settled by the wrongful actions of Defendants.

63. Plaintiffs received essentially nothing for their significant damages, due to the Defendants negligent actions and intentional lies to coerce the Plaintiffs into a settlement, enforced by the Court, which the Plaintiffs never agreed to.

FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Legal Malpractice)

64. The Plaintiffs reallege and reiterate all of the allegations contained in paragraphs one (1) through sixty-three (63) as fully as if repeated herein verbatim.

65. Plaintiffs entered into an attorney client relationship with the Defendants.

66. At all times, Defendants owed a legal duty to Plaintiffs to conform to the generally recognized and accepted practices of the legal profession and respect of the services that the Defendants performed for the Plaintiffs.

67. Part of the service that Defendants were to perform for the Plaintiffs was representation of the Plaintiffs in the lawsuit against Horry County for numerous causes of action, including tortious interference with contractual obligations.

68. Defendants breached their duty to the Plaintiffs to conform to the generally recognized and accepted practices of the legal profession with respect to the services performed by the Defendants.

69. In particular, the Defendants were negligent in the following:

a. failure to properly represent the Plaintiffs;

b. failure to adequately prepare the case;

c. failure to adequately advise the clients of the status of the representation;

d. failure to adequately communicate with the clients regarding the representation;

e. failure to perform the contract of employment of legal services;

f. failure to provide competent legal representation of the Plaintiffs;

g. failure to act diligently in the interest of the Plaintiffs;

h. failure to communicate with the Plaintiffs properly and timely and in order for them to make an informed decisions about the case;

i. failure to use independent judgment when representing a client and violating their duty of loyalty;

j. failure to act with commitment and dedication to the interest of the clients;

k. investigation and litigation of the case and acting in direct contravention of the South Carolina Rules of Professional Conduct and as such other particulars as the evidence in this case may demonstrate;

70. As a direct and proximate result of the negligent and grossly negligent conduct of the Defendants, individually and severally, the Plaintiffs have been harmed by the Defendants and have incurred significant damages related to the damages suffered by the legal malpractice in this case and the losses related to the underlying breach of contract case.

71. Plaintiffs are entitled to and pray for judgment against the Defendants individually and jointly and severally for both actual damages in an amount to be deemed sufficient to compensate the Plaintiffs for their losses for which they have suffered past, present and future as well as punitive damages in an amount deemed sufficient to impress upon the

Defendants the seriousness of their conduct and to deter such similar conduct in the future.

FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Breach of Fiduciary Duty)

72. The Plaintiffs reallege and reiterate all of the allegations contained in paragraphs one (1) through seventy-one (71) as fully as if repeated herein verbatim.

73. At all times relative hereto, Defendants acted as attorneys for the Plaintiffs and were the fiduciaries to the Plaintiffs and owed the Plaintiffs the utmost duty of good faith, loyalty, fidelity and the duty to act single mindedly in the best interest of their clients, the Plaintiffs, even if to their own detriment.

74. The Defendants and each of them, violated their fiduciary duty to the Plaintiffs in a number of particulars, including, but not limited to, some or all of the following:

a. failure to properly represent the Plaintiffs;

b. failure to adequately prepare the case;

c. failure to adequately advise the clients of the status of the representation;

d. failure to adequately communicate with the clients regarding the representation;

e. failure to perform the contract of employment of legal services;

f. failure to provide competent legal representation of the Plaintiffs;

g. failure to act diligently in the interest of the Plaintiffs;

h. failure to communicate with the Plaintiffs properly and timely and in order for them to make an informed decisions about the case;

i. failure to use independent judgment when representing a client and violating their duty of loyalty;

j. failure to act with commitment and dedication to the interest of the clients;

k. failure to adequately advise the Plaintiffs in all aspects of the investigation and litigation of the case and acting in direct contravention of the South Carolina Rules of Professional Conduct and as such other particulars as the evidence in this case may demonstrate;

75. As a direct and proximate result of the negligent and grossly negligent conduct of the Defendants, individually and severally, the Plaintiffs have been harmed by the Defendants and have incurred significant damages related to the damages suffered by the legal malpractice in this case and the losses related to the underlying breach of contract case.

76. Plaintiffs are entitled to and pray for judgment against the Defendants individually and jointly and severally for both actual damages in an amount to be deemed sufficient to compensate the Plaintiffs for their losses for which they have suffered past, present and future as well as punitive damages in an amount deemed sufficient to impress upon the Defendants the seriousness of their conduct and to deter such similar conduct in the future.

FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Breach of Contract)

77. The Plaintiffs reallege and reiterate all of the allegations contained in paragraphs one (1) through seventy-six (76) as fully as if repeated herein verbatim.

78. The Defendants had a binding contract to provide legal representation to the Plaintiffs.

79. The Defendants breached that contract with the Plaintiffs by failing to provide adequate legal representation.

80. As a direct and proximate result of the Defendants' breach of contract, Plaintiffs have suffered actual and consequential damages in an amount to be determined at trial by the jury.

WHEREFORE, Plaintiffs pray for an award from this Court as to each Cause of Action in an amount to be determined at trial, as well as an additional punitive award in an amount sufficient to impress upon Defendants the seriousness of their conduct and to deter such similar conduct in the future, together with attorney's fees and costs of this action if permitted by law, and such further relief as the Court deems just and prope

James B. Spencer, individually and on behalf of the
Estate of Doris Holt and as interim
Administrator/Trustee of Southern Holdings, Inc.
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(843) 455-0891

PRO SE

August 15, 2012

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	5th JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	CASE NO.: 2011 -CP- 40 - 5384
)	
James Spencer, et al.)	**MOTION AND ORDER INFORMATION**
Plaintiff,)	**FORM AND COVERSHEET**
vs.)	
)	
John Rakowsky, et al.)	
Defendant.)	

Plaintiff's Attorney:	Defendant's Attorney: Amanda K. Dudgeon and Andrew Countryman, Carlock, Copeland and Stair, LLP
Irene Santacroce, Bar No.	, Bar No 72516
Address: 205 Deer Trace Circle, Myrtle Beach, SC 29588	Address: 40 Calhoun Street, Suite 400 Charleston, SC 29401
Phone: 843-455-0891 Fax	Phone: 843-727-0307 Fax
E-mail: Other:	E-mail: adudgeon@CarlockCopeland.com Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☒ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ March 26, 20 12
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____, 20___

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20___

☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011- CP- 40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

EXPEDITED MOTION TO DISQUALIFY AMANDA K. DUDGEON, ANDREW A COUNTRYMAN AND THE LAW FIRM OF CARLOCK, COPELAND AND STAIR, LLP

Pro Se Plaintiffs Irene Santacroce ("Santacroce") and James Spencer ("Spencer"), pursuant to the South Carolina Judicial Rule 8.4(a) and the South Carolina Rules of Professional Conduct sections, 1.18, 1.9, 3.3, 3.4, and 3.7 respectfully moves this Court for an order that disqualifies Amanda K. Dudgeon and Andrew A. Countryman ("Dudgeon and Countryman") and the law firm of Carlock Copeland and Stair, LLP, from acting as counsel in this matter. Dudgeon and Countryman and their law firm must be disqualified because both are essential fact witnesses in this matter for Santacroce and Spencer. Additionally, both Dudgeon and Countryman are essential

fact witnesses for Santacroce and Spencer who are defendants in the Interpleader Complaint case brought by their client, John Rakowsky, ("Rakowsky") in Richland County Court, Case No. 2008-CP-40-6656.

Rakowsky was a defendant in the LawMax litigation, due to his alleged legal malpractice in the Southern Holdings, Inc. case. These acts of legal malpractice are believed to be tied to acts of malpractice which are the subject of the case before this Honorable Court. Rakowsky's interests were represented by Dudgeon and Countryman in the LawMax litigation, American Arbitration Association, Case No: 13 194 01700 07, New Amsterdam Capital Partners, LLP (LawMax) v. John Rakowsky, Esq. and James Spencer. Spencer was unaware he was named a party with Rakowsky in the LawMax litigation.

The knowledge that Spencer was a named party in the LawMax litigation was kept from Spencer by Rakowsky, Dudgeon and Countryman. Rakowsky acted in the capacity of Spencer's attorney without Spencer's knowledge or approval. The LawMax litigation proceeded to conclusion without Spencer's knowledge that litigation directly impacting him had taken place. Rakowsky accepted service on Spencer's behalf, as LawMax believed Rakowsky represented Spencer. Rakowsky took these fraudulent actions to prevent the disclosure of material documents that pertain to the commission of legal malpractice. The LawMax litigation's resolution itself is an admission of legal malpractice by Rakowsky in the Southern Holdings case. All LawMax litigation correspondence that Spencer should have received was routed to Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP, instead of to

Spencer. Dudgeon and Countryman failed in their duty to see that Spencer had notice and received all pleadings.

This represents a significant conflict, as it is likely Rakowsky's testimony will conflict with the testimony of his law firm Carlock, Copeland and Stair, LLP and the individual named attorneys. Dudgeon and Countryman had a duty to reveal the LawMax fraud to the plaintiffs and this Court, under Rule 3.3(b) of the South Carolina Professional Code of Conduct.

Dudgeon and Countryman have already demonstrated their inability to deal with the conflicts and litigate the matter before this Honorable Court within the South Carolina Rules of Professional conduct. Dudgeon and Countryman failed in their requirement of candor toward the tribunal under Rule 3.3(b) of the South Carolina Professional Code of Conduct which states, *"A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.* See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

Dudgeon and Countryman, instead of disclosing the LawMax litigation and their role in it, as required by Rule 3.3(b) of the South Carolina Professional Code of Conduct, used this Honorable Court to request an expedited litigation schedule without a stated reason in fact or law. The objective of this expedited litigation schedule was to prevent the *Pro Se* plaintiffs from obtaining knowledge of, and access to the LawMax litigation documents in a timely manner.

Further, Dudgeon and Countryman's actions of preventing Spencer access to the LawMax litigation documentation is also a violation of Rule 3.4(a) which states, *"A lawyer shall not (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act."* See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

Dudgeon and Countryman's actions up to this point are attempts to use this Honorable Court to perpetuate a fraud involving the cover-up of the LawMax litigation and the associated documents, which confirm their client's legal malpractice. Through these wrongful actions, Dudgeon and Countryman clearly demonstrate their inability to address the aforementioned conflicts within the South Carolina Rules of Professional Conduct, when compliance with the Rules would be detrimental to their client's interest.

The LawMax litigation relates directly to the allegations of legal malpractice before this Honorable Court. Dudgeon and Countryman's involvement in the negotiation of the LawMax settlement, including their understanding as to the scope of the contested matters and the particular information that was exchanged between the settling parties, make them essential fact witnesses for Santacroce and Spencer in the matter before this Honorable Court.

The basis for this Motion is set out in the Memorandum of Law in Support of Plaintiffs' Motion to Disqualify Dudgeon and Countryman and to disqualify the law firm of Carlock, Copeland and Stair, LLP, filed contemporaneously herewith.

Plaintiffs further pray that the Court handle this motion in an expedited fashion, because until this matter is resolved, Plaintiffs' case will be and has been prejudiced due to the failure of Dudgeon and Countryman to disclose their role in the LawMax litigation. Dudgeon and Countryman's conflict is further problematic by their dual representation of parties in the LawMax litigation through their *In absentia* and defacto representation of Spencer and their representation of Rakowsky. This dual representation itself is an insurmountable undisclosed conflict.

WHEREFORE, Plaintiffs humbly request that this Honorable Court enter an Order barring Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP, from representing any party in this matter.

Respectfully submitted this 26th day of March, 2012, by:

Irene Santacroce, *Pro Se* Plaintiff
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

James B. Spencer, *Pro Se* individually
and on behalf of the Estate of Doris Holt
and Administrator of Southern Holdings.
Suite 183, 7001 Saint Andrews Rd.
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

CERTIFICATE OF SERVICE

I, Irene Santacroce, ***Pro Se***, plaintiff do hereby certify that the foregoing **MOTION TO DISQUALIFY AMANDA K. DUDGEON AND ANDREW A COUNTRYMAN, THE LAW FIRM OF CARLOCK, COPELAND AND STAIR, LLP,** has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Amanda K. Dudgeon, Esquire
Andrews A. Countryman, Esquire
Carlock, Copeland and Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
Burner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
(803) 252-7693
Email: BBruner@BrunerPowell.com

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

This 26th day of March, 2012,

By: _____

Irene Santacroce, *Pro Se* Plaintiff
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011- CP- 40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO DISQUALIFY AMANDA K. DUDGEON, ANDREW COUNTRYMAN AND THE LAW FIRM OF CARLOCK, COPELAND AND STAIR, LLP

Plaintiff Irene Santacroce ("Santacroce") and plaintiff James Spencer, pursuant to the South Carolina Judicial Rule 8.4(a) and in regards to the South Carolina Rules of Professional Conduct sections, 1.18, 1.9, 3.3, 3.4 and 3.7 submit this memorandum of law in support of *Pro Se* Plaintiffs' Motion to Disqualify Amanda K. Dudgeon, Andrew A. Countryman, and the law firm of Carlock, Copeland, and Stair, LLC, from acting as counsel in this matter, respectfully showing as follows:

INTRODUCTION AND BACKGROUND

This motion is filed because Amanda K. Dudgeon and Andrew Countryman ("Dudgeon and Countryman") lawyers with the firm of Carlock, Copeland, and Stair, LLC, are material witnesses to disputed facts that are critical to plaintiffs' case. Their client, John Rakowsky ("Rakowsky"), was a defendant party in a lawsuit[1] involving LawMax (also known as New Amsterdam Capital Partners, LLC). James Spencer ("Spencer"), a plaintiff in this case, was also named a party in the LawMax litigation. Rakowsky had accepted service as Spencer's lawyer in the LawMax litigation *without Spencer's knowledge and/or consent and litigation was conducted without the knowledge, consent and participation of Spencer.* **(See affidavit of Spencer attached hereto.)**

Based upon information and belief, Dudgeon and Countryman participated in covering up the lawsuit filed by LawMax against Rakowsky by wrongfully withholding information which would have revealed Rakowsky's acts of legal malpractice to Spencer. According to the American Arbitration Association, Spencer's representation was handled by Dudgeon and Countryman, the attorney's hired by John Rakowsky. In that regard, all copies of pleadings and correspondence addressed to Spencer in the LawMax litigation were sent to Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP. All communications and documents regarding the litigation were deliberately kept from Spencer during and after the pendency of the LawMax litigation **(See Exhibit "A" and *Exhibit Introduction* attached hereto).**

[1] American Arbitration Association, Case No: 13 194 01700 07, New Amsterdam Capital Partners, LLP (LawMax) v. John Rakowsky, Esq. and James Spencer.

The settlement of this litigation, based on information and belief, was kept, by stipulation, confidential, to keep relevant facts from the plaintiffs in this case. In that regard, the naming of LawMax as a defendant in an Interpleader Complaint, Richland County Court, Case No. 2008-CP-40-6656, filed by Rakowsky, was an abuse of judicial process. The LawMax listing was to cover up from Plaintiffs Santacroce and Spencer the existence of legal malpractice evidence related to the LawMax litigation.

Naming LawMax as a defendant in the Interpleader Complaint was a sham. Rakowsky wanted to keep the *Pro Se* Plaintiffs from knowing about the particulars of the settlement reached with LawMax over claimed acts of malpractice on the part of Rakowsky in the Southern Holdings, Inc., et al., vs. Horry County, et al., Case No: 4:02-cv-01859-RBH.

The LawMax settlement acts as an admission on the part of Rakowsky that attorney malpractice was committed by Rakowsky and other defendants in the action before this Honorable Court. Rakowsky has gone to the extent of refusing to answer interrogatory questions about LawMax in the Interpleader Complaint, by arrogantly and wrongfully relying upon a *non-existent order* by the Honorable Judge Barber, III, against discovery being conducted in the Interpleader case **(See Exhibit "B" and Exhibit Introduction attached hereto).**

PARTICULAR FACTS RELEVANT TO THIS MOTION

The instant motion involves existence of the conflict of interest of Dudgeon and Countryman which precludes their being able to be fact witnesses for the plaintiffs and simultaneously represent defendant Rakowsky. The existence of the conflict involves: (1) the information and documents being deliberately withheld from the plaintiffs

concerning Mr. Rakowsky's admission to malpractice through settlement with LawMax, (2) the wrongful defacto representation of Spencer, without Spencer's knowledge and consent, by Carlock, Copeland, and Stair, LLC, to further the aims of their client, Rakowsky in the LawMax litigation, and (3) the fact that Dudgeon and Countryman have already failed the litmus test of their being able to legally and ethically navigate the conflict. Dudgeon and Countryman failed the litmus test by disregarding the South Carolina Rules of Professional Conduct to further the interests of their client Rakowsky in the case before this Honorable Court.

There is an admission pending that has wrongfully been withheld from Plaintiffs Santacroce and Spencer and Southern Holdings, with respect to the LawMax litigation and settlement. The LawMax litigation settlement would be considered an admission of legal malpractice on the part of Rakowsky, and a full and complete disclosure to all parties involved is mandatory. This disclosure must be made before this case is allowed to move forward in the interest of justice and the perception of judicial integrity and fairness. In that regard, the plaintiffs now raise arguments that necessitate the use of testimony of Dudgeon and Countryman as fact witnesses.

THE BAD-FAITH ACTION

Attorneys Dudgeon and Countryman wrongfully represented both the diverse and divergent interests of Rakowsky and Spencer and reached a settlement with LawMax without the knowledge and consent of Plaintiff Spencer. Through their dual representation and withholding information from Spencer about the settlement, they kept information pertinent to Rakowsky's legal malpractice from the plaintiffs in this case.

John Rakowsky brought a lawsuit against Santacroce and Spencer naming them as defendants along with LawMax (Richland County Court, Case No. 2008-CP-40-6656) in an Interpleader Complaint. Dudgeon and Countryman have referenced this Interpleader Complaint numerous times in their motions to this Honorable Court in their request for expediting the malpractice litigation. Dudgeon and Countryman, having participated in the LawMax litigation and having wrongfully withheld the litigation related correspondence and pleadings from a party in that case, Spencer, are fully aware of the potential legal exposure of the incriminating LawMax litigation to their client, Rakowsky.

Dudgeon and Countryman sought to use this Court to perpetuate the previously described fraud by depriving the plaintiffs of the use of the incriminating legal malpractice and related information regarding the LawMax litigation by expediting this case. Dudgeon and Countryman made such motions for expediting this case, without presenting a cause or legal basis to the Court. Dudgeon and Countryman appear to be concerned that the incriminating truth contained in the proceedings of the LawMax litigation would come out in the Interpleader case and damage their client in this legal malpractice action. It is the reverberating clang of the silence of these attorneys that now drowns out all other sounds.

Dudgeon and Countryman embarked on a course of conduct that was a breach of their duty to disclose conflicts by covering up the conflict from the Court and Spencer. This bad-faith action should not be tolerated by the Court and should be dealt with swiftly and decisively.

SPECIFIC ALLEGATIONS AT ISSUE

Even without formal discovery being conducted in this case, plaintiffs are already able to identify disputed issues that require Dudgeon's and Countryman's testimony. For example, in the Motion to Dismiss, Rakowsky contends, "The complaint fails to state facts consistent with a cause of action." Further Rakowsky contends, "The plaintiffs filed the complaint outside the applicable statute of limitations." These statements are addressable by the plaintiffs through the testimony of Dudgeon and Countryman and possibly others employed by the law firm of Carlock, Copeland and Stair, LLP.

ARGUMENT AND CITATION OF AUTHORITY

Plaintiffs recognize the extraordinary nature of the relief requested here; but their request is not without precedent. Plaintiffs also recognize that the burden of proof to disqualify the defendants' counsel falls on plaintiffs' shoulders.

The South Carolina Rules of Professional Conduct, as incorporated into the Rules of this Court, prohibit lawyers from acting as both advocates and witnesses in the same case. In this case, Dudgeon's and Countryman's testimony and perhaps the testimony of others employed by the law firm, are fact witnesses and, as such, they are prohibited from being advocates as well in the case now heard by this Court. Thus, they must be disqualified.

Dudgeon and Countryman are believed by Plaintiffs to be experienced, competent and ethical attorneys. Therefore, plaintiffs are almost certain that they will testify in a manner inconsistent with the version of the facts provided by Rakowsky regarding the LawMax litigation. It is certain that Rakowsky is aware of the terms of the Settlement Agreement. Dudgeon and Countryman are aware of Rakowsky's role in

negotiating the Settlement Agreement, and Rakowsky interacted with Dudgeon and Countryman in accepting the terms of the Settlement Agreement with LawMax.

Rule 3.7(a) of South Carolina Rules of Professional Conduct provides:

"A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) the disqualification of the lawyer would work a substantial hardship on the client."

See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

The three exceptions are not applicable in this case. Regarding exception number (1), the testimony relates to contested issues of legal malpractice and cover-up of such legal malpractice. Regarding exception number (2), the testimony does not relate to the nature and value of legal services in the case. Regarding exception number (3), the disqualification of the lawyers would not work a legitimate and substantial hardship on client, Rakowsky, as Rakowsky sought to have the trial expedited to prejudice the case against the plaintiffs and, therefore, he would still be able to have the case heard within the normal time frame in an equitable manner by retaining replacement counsel without a conflict.

Additionally, Dudgeon and Countryman must be disqualified due to their conflict of representation. The South Carolina Rules of Professional Conduct, as incorporated

into the Rules of this Court, prohibit lawyers from acting as counsel in a second matter when they represented both opposing parties in a prior related matter: Rule 1.9(a) of the South Carolina Rules of Professional Conduct states, *"(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing."* See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

This conflict was *never* revealed to Spencer by Dudgeon and Countryman, and Spencer, in no manner, gave Dudgeon and Countryman informed consent in writing.

Dudgeon's and Countryman's actions confirm they know what impact a release of the information regarding the settlement with LawMax would have on the Rakowsky malpractice litigation. As such, their actions have already been in bad faith by both having knowledge of the cover-up of LawMax litigation and also the fraudulent representation of Spencer *In absentia* in that litigation. The conflict and fraud involved in Dudgeon's and Countryman's dual representation of Spencer and Rakowsky in the LawMax litigation creates a clear conflict in Dudgeon's and Countryman's representation of Rakowsky in this related case against Spencer before this Court.

Dudgeon and Countryman had a duty to reveal the LawMax matters to the plaintiffs and this Court. Rule 3.3(b) of the South Carolina Professional Code of Conduct states, *"A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent*

conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

Dudgeon and Countryman must also be disqualified for their involvement in the concealment of the LawMax litigation under Rule 3.4(a) of the South Carolina Code of Professional Conduct which provides, "A lawyer shall not *(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act."* See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

This failure of candor to the Court and the plaintiffs due to conflict of interest cannot be ignored as Dudgeon and Countryman have already met the criteria to be disqualified from representation of any party in this case. In that regard, the South Carolina Supreme Court determined the criteria for disqualification of counsel for conflict:

> "Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses."
>
> See South Carolina Supreme Court, "*In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199, 212-213 (S.C. June 20, 2005.)"*

Lastly, Dudgeon and Countryman's law firm must also be disqualified. The South Carolina Rules of Professional Conduct Section 1.18(c) provides that, *"(c) A lawyer*

subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

Paragraph (d) "When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if: (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee there from; and (ii) written notice is promptly given to the prospective client." See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

The exceptions listed in Paragraph (d) do not apply in this case as Spencer has not been offered or given informed consent and the cover-up of the LawMax litigation from Spencer precludes application of the reasonable measures to avoid "disqualifying information" exception.

WHEREFORE, plaintiffs humbly request that this Court enter an Order barring Amanda K. Dudgeon, Andrew Countryman and the law firm of Carlock, Copeland, and Stair, LLC from representing any party in this matter. Doing so will protect the integrity of the Court, comply with the South Carolina Rules of Professional Conduct, and prevent prejudice to both their clients and the plaintiffs.

Respectfully submitted this 26th day of March, 2012, by:

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

James B. Spencer, individually
and on behalf of the
Estate of Doris Holt and as
Administrator of Southern Holdings.
Suite 183, 7001 Saint Andrews Rd.
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

CERTIFICATE OF SERVICE

I, Irene Santacroce, ***Pro Se***, plaintiff do hereby certify that the foregoing **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO DISQUALIFY AMANDA K. DUDGEON, ANDREW A COUNTRYMAN AND THE LAW FIRM OF CARLOCK, COPELAND AND STAIR, LLP,** has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Amanda K. Dudgeon, Esquire
Andrews A. Countryman, Esquire
Carlock, Copeland and Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
Burner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
(803) 252-7693
Email: BBruner@BrunerPowell.com

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

This 26th day of March, 2012,

By: _____
Irene Santacroce, *Pro Se* Plaintiff
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011- CP- 40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

AFFIDAVIT OF JAMES SPENCER

I, James Spencer, hereby declare under the penalty of perjury the following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. That I learned that Amanda K. Dudgeon and Andrew A. Countryman ("Dudgeon and Countryman") and the law firm of Carlock Copeland and Stair, LLP, made an appearance on behalf of defendant John Rakowsky (Rakowsky) on or about November 2, 2011 in the above captioned action.
3. That in February of 2012, I learned for the first time about litigation brought against me and John Rakowsky in 2007 by LawMax.

4. That in February of 2012, I learned for the first time that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, represented John Rakowsky and myself as defendants in a lawsuit brought by LawMax in 2007.

5. That in February of 2012, I learned that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, and John Rakowsky had deliberately kept knowledge of this litigation from me to conceal information of acts of legal malpractice by the defendants in the above captioned proceeding.

6. In February of 2012, I learned from representatives of the American Arbitration Association ("AAA"), about Case No: 13 194 01700 07, New Amsterdam Capital Partners, LLP (LawMax) v. John Rakowsky, Esq. and James Spencer.

7. That before February of 2012, I had no idea that LawMax had brought litigation against me and Rakowsky for acts that were tantamount to legal malpractice in Southern Holdings, Inc., et al., vs. Horry County, et al., Case No: 4:02-cv-01859-RBH.

8. In February 2012, I learned that Rakowsky legally fought against jurisdiction for the litigation to be held in the state of New York.

9. In February 2012, I learned that Rakowsky lost the fight over jurisdiction in the LawMax litigation.

10. In February 2012, I learned from AAA that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, and Rakowsky had all

correspondence that I was supposed to receive as a party to the lawsuit diverted to Dudgeon and the law firm of Carlock Copeland and Stair, LLP, as they represented my interests in the LawMax litigation.

11. In February 2012, I learned from AAA that the litigation brought by LawMax and all claims LawMax had against Rakowsky and me were settled prior to the Interpleader complaint filed by Rakowsky in 2008.

12. In February 2012, I learned from AAA that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, and Rakowsky had all files related to the LawMax litigation in question destroyed.

13. LawMax, Dudgeon and Countryman, and the law firm of Carlock Copeland and Stair, LLP, Rakowsky and the AAA never sent me notice of any of the aforementioned activities.

14. In February 2012, based on AAA confirming I was a party to LawMax litigation, therefore, under my rights as a party to the litigation, I both requested and received copies of the few documents still in the possession of AAA that had been overlooked and not destroyed.

Affiant Sayeth Further Naught.

I DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

03/19/2012
Date

James Spencer

Exhibit Introduction:

- **Exhibit "A"** clearly establishes James Spencer was a party to the LawMax litigation and, therefore, he has a right to the documentation. The fact that James Spencer did not know he was a party in the LawMax litigation, because it was wrongfully kept from him by Plaintiff Rakowsky and Rakowsky's counsel Amanda K. Dudgeon and her law firm of Carlock, Copeland, Semier & Stair, LLP, does not mitigate his right to all the documentation regarding the LawMax litigation.

- **Exhibit "B"** page one (1) documents the lengths Rakowsky and his counsel went to wrongfully keep the LawMax litigation covered up from plaintiffs Santacroce and Spencer. Rakowsky arrogantly and wrongfully claimed that the Honorable Judge Barber, III, issued an Order purportedly stating that there was to be no discovery in this case. Pages two and three of **Exhibit "B"** clearly document that was an untruthful claim and that the Honorable Judge Barber, III, did not issue such in the Order referenced by Rakowsky and his counsels Desa Ballard and Stephanie Weissenstein.

133

136

American Arbitration Association
Dispute Resolution Services Worldwide

ORIGINAL

Northeast Case Management Center
Catherine Shanks
Vice President
Christopher Fracassa, Yvonne L. Baglini
Assistant Vice Presidents

950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: http://www.adr.org

VIA ELECTRONIC MAIL

EXHIBIT "A"

June 21, 2008

Daniel Zolberg
LawMax
459 Columbia Avenue
New York, NY 10024-5129

Amanda K. Dudgeon
Carlock, Copeland, Semier & Stair, LLP
134 Meeting Street
Suite 500
Charleston, SC 29401

Re: 13 194 01700 07
New Amsterdam Capital Partners, LLC
and
James Spencer
and
John Rakowsky, Esq.

Dear Parties:

The Association has been notified that New Amsterdam Capital Partners, LLC has reached a settlement agreement with Carlock, Copeland, Semier & Stair, LLP, for James Spencer and John Rakowsky, Esq. As of this date there is no outstanding balance. Therefore, the entire case file will be destroyed per request.

Cordially yours,

James F. Medeiros
Case Manager
401-431-4724
MederiosJ@adr.org

Supervisor Information: Karen Fontaine, 401 431 4798, fontaine@adr.org

cc: Walter G. Gans, Esq.

CERTIFIED TO BE A TRUE AND
EXACT COPY OF THE ORIGINAL
BY Catherine J. Pabbon

EXHIBIT "B"
Page 1 of 3

Spencer which requested substantially similar information and pursuant to the oral ruling of Judge Barber that such discovery is not appropriate in this action.

5. Within thirty-three days after service hereof, you are requested to produce in writing under oath the answer to defendant at Suite 183, 7001 Saint Andrews Road, Columbia, SC 29212, to the following question(s): Has the Plaintiff ever been sued by Resolution Settlement Corporation ("RSC"), Lit Funding and/or LawMax and /or an agent for any of the above companies regarding the funding of the case captioned Southern Holdings, In. (sic), et al. vs. Horry County, et al. **Case No: 02-CV-01859-RBH**? Which entity sued Plaintiff? What are the dates of litigation? What was the resolution and the date of resolution of the proceeding? What documents does the Plaintiff have access to regarding such litigation and what is the identity of anyone the Plaintiff knows that has documents regarding any such litigation? Will Plaintiff provide all such documents to Defendant and if not on what legal basis would you not provide such documents?

ANSWER: Plaintiff objects to this interrogatory on the basis that the information sought is irrelevant and not likely to lead to admissible evidence. Plaintiff further objects to this interrogatory on the basis that Judge Seals quashed the subpoena issued by Defendant Spencer which requested substantially similar information and pursuant to the oral ruling of Judge Barber that such discovery is not appropriate in this action.

6. Within thirty-three days after service hereof, you are requested to produce in writing under oath the answer to defendant at Suite 183, 7001 Saint Andrews Road, Columbia, SC 29212, to the following question(s): did Plaintiff purchase an electronic copier combination fax, etc., with the money advanced by Defendant or on behalf of the Defendant or Defendants in the case captioned Southern Holdings, In. (sic), et al. vs. Horry County, et al. **Case No: 02-CV-01859-RBH**? If such a purchase was made, what was the amount of the money so expended on the purchase?

EXHIBIT "B"
Page 2 of 3

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-40-6656

RICHLAND COUNTY FILED
2011 OCT 18 PM 4:19
BERNETTE W. McBRIDE C.C.P. & G.S.

John R. Rakowsky,

Plaintiff,

vs.

Adrian L Falgione, James Spencer, Doris Holt, Rodney Keith Lail, Irene Santacroce, Marguerite Stephens, Ricky Stephens, Michael Hartness, Horry County, S.C., Eugene G. Chewing and Glenn W. Harrison,

Defendants.

ORDER DENYING MOTION TO COMPEL, SUBSTITUTING PARTIES, RELEASE OF LITIGATION FUNDS, AND AMENDING COMPLAINT ACCORDINGLY

This matter came before me on September 15, 2011, for hearing on Defendant James Spencer's "*EXPEDITED MOTION TO COMPEL DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST TO COMPEL PLAINTIFF TO ANSWER DEFENDANTS FIRST ROUND OF INTEROGATORIES AND REQUEST FOR A JURY TRIAL ON ALL MATTERS RELATED TO 2008-CP-40-6656*". Present were the Plaintiff and his Counsel, Stephanie Weissenstein, Defendant, Adrian Falgione, *pro se*, and Defendants James Spencer and Rodney Lail, who are *pro se*.

This case was before the Honorable William H. Seals, Jr. for a hearing on July 11, 2011, for a hearing on several motions, including Plaintiff's motion to quash a subpoena issued against him at the behest of Defendant James Spencer. The subpoena which was the subject of that hearing and the requests for production which Mr. Spencer seeks to compel includes several of the same documents.

SCANNED

There is a long-standing rule in this State that one judge of the same court cannot overrule another. *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E.2d 689 (1943). Therefore, IT IS HEREBY ORDERED THAT Mr. Spencer's motion to compel the production of documents included in the subpoena is **Denied**[1].

The Court understands that Defendant Doris Holt is now deceased. Plaintiff Rakowsky, Defendant Falgione, Defendant Spencer and Defendant Lail consent to Doris Holt's estate being substituted as the real party at interest. The substitution of the estate is **Granted**.

IT IS SO ORDERED.

James R. Barber, III
Judge for the 5th Judicial Circuit

October 18, 2011
Richland County

[1] By the same written motion, Mr. Spencer also requested a jury trial. That issue was not addressed at the hearing.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011- CP- 40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

ORDER

WHEREAS, Amanda K. Dudgeon and Andrew A. Countryman ("Dudgeon and Countryman") and the law firm of Carlock, Copeland and Stair, LLP, have a conflict of interest in this matter in that they represented Plaintiff James Spencer and Defendant John Rakowsky in a related matter and, heretofore, have not disclosed this conflict;

WHEREAS, Dudgeon and Countryman are to be called as material witnesses by the Plaintiffs in the matter caption above creating a second conflict of interest;

THEREFORE, IT IS HEREBY ORDERED that Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP, are barred from representing any party in this matter.

IT IS SO ORDERED.

March _____, 2012
Richland County

_____
Honorable James R. Barber, III
Judge for the 5th Judicial Circuit

139

142

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 803-753-0060
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

July 25, 2012

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, SC 29202

RE: ***James Spencer, et al. vs. John R. Rakowsky, et al.***
Claim No.: 23192
C/A No.: 2011-CP-40-5384
BPWM File No.: 3-1742-108

Dear Ms. McBride:

Enclosed for filing with your office, please find the original and two (2) copies of the Memorandum in Support of Defendants Adrian L. Falgione and the Law Offices of Adrian Falgione, LLC's Motion to Change Venue in the above-referenced matter. Please have your office file the original and return the stamped filed copies in the enclosed self-addressed stamped envelope. If you have any questions please do not hesitate to call.

By copy of the letter, I am serving same upon the other parties of record. With my kindest regards, I am,

Sincerely,

Benjamin C. Bruner

BCB/nys
/Enclosures

cc: James B. Spencer, pro se (via U.S. Mail w/ enclosures)
Irene Santacroce, pro se (via U.S. Mail w/ enclosures)
Amanda K. Dudgeon, Esquire (via U.S. Mail w/ enclosures)

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.; and Irene Santacroce; Plaintiffs, v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	C/A No. 2011-CP-40-5384 **MEMORANDUM IN SUPPORT OF DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S MOTION TO CHANGE VENUE**

Defendants Adrian L Falgione ("Falgione") and The Law Offices of Adrian L. Falgione, LLC (collectively, "Falgione Defendants"), offer this memorandum for the Court's consideration in support of their Motion to Change Venue filed May 17, 2012. The Falgione Defendants seek an Order transferring this case to Lexington County because Lexington is the Defendants' resident county and because Plaintiffs' complaint is based upon alleged acts and omissions that occurred outside of Richland County.

FACTUAL/PROCEDURAL BACKGROUND

This is a legal malpractice action the Plaintiffs filed on August 15, 2011, based upon a federal case in which John Rakowsky ("Rakowsky") and Falgione represented the Plaintiffs and others. Rakowsky and Falgione are South Carolina attorneys who live and conduct their respective law offices in Lexington County, South Carolina. (**Exhibits A & B.**) The underlying case was a federal lawsuit filed in 2002 in the District of South Carolina, Florence Division, and assigned Civil Action No.: 4:02-cv-1859-RBH ("Underlying Case"). Rakowsky first appeared in

the Underlying Case in 2002 (Compl. ¶ 11) and Falgione first appeared in 2006. (Compl. ¶ 13.) The parties to the Underlying Case, including the named Plaintiffs, settled that case on the record before Judge Harwell on May 9, 2007. (Compl. ¶ 49.)

On August 15, 2011, the Plaintiffs filed this malpractice suit *pro se* against Rakowsky, Falgione and Falgione's law firm. Currently, the Defendants' have not yet answered the complaint because their respective motions to dismiss the complaint are pending and have not been rescheduled for a hearing. At this time, the only motions before the Court are the Defendants' Motions to Change Venue requesting that this case be transferred to Lexington County for trial pursuant to S.C. Code Ann. §§ 15-7-30 and 100 (Supp. 2011). The Falgione Defendants filed their Motion on May 27, 2012.

ISSUES

I. Is Richland County a proper venue for this action?

II. If not, then is Lexington County a proper venue?

DISCUSSION

When a plaintiff files suit in a county that is not the proper venue for trial under the venue statutes, the Court may transfer the case to a county that is proper for trial under that Chapter. S.C. Code Ann. § 15-7-100. Because the Plaintiffs' claims do not invoke the venue provisions in S.C. Code Ann. §§ 15-7-10 or 20, § 15-7-30 governs venue of this action. That statute provides that a lawsuit against a resident individual "must be brought and tried" in either the county in which the defendant resides at the time the claim arose or the county where the most substantial part of the alleged act or omission giving rise to the plaintiff's claim occurred. S.C. Code Ann. § 15-7-30(C).[1] A suit against a domestic limited liability company "must be brought and tried" in

[1] In 2005, the Legislature amended the venue statute to add subsections (C) through (H). The amendment was effective July 1, 2005 and is "applicable to all causes of action arising on or after that date." Because the

either the county of the company's principal place of business or the county where the most substantial part of the alleged act or omission giving rise to the plaintiff's claim occurred. S.C. Code Ann. § 15-7-30(E).

The Defendants seek an order transferring this action from Richland County, an improper venue, to Lexington County, a proper venue for trial. First, both Falgione and Rakowsky are residents of Lexington County and have lived in that county at all times relevant to the Plaintiffs' claims. (**Exhibits A & B.**) Furthermore, the offices for their respective law practices have been located exclusively in Lexington County. Id. Lexington County is therefore the resident county for the individual defendants and the principal place of business for Falgione's law firm.

Second, the most substantial part of the acts and omissions on which the Plaintiffs base their claims occurred outside of Richland County. The Plaintiffs' various allegations relate to trial preparation and to the Defendants having settled their case the morning of trial. The lawyers' attached affidavits demonstrate that most of the trial preparation work occurred not in Richland County but rather in Lexington County, where their offices were located. (**Exhibits A & B.**) Since the Underlying Case was pending in Federal Court in Florence, the settlement that was placed on the record on the morning of trial occurred not in Richland County but in Florence County. (Id.; Compl. ¶ 49.) Therefore, the most substantial part of the acts and omissions the Plaintiffs' allege occurred either in Lexington County or Florence County.

In their Memorandum in Opposition, the Plaintiffs' raise various arguments for denying the Defendants' motions. However, they do not contradict that Lexington County is the attorneys' resident county and the principal place of business for Falgione's law firm. Rather, Plaintiffs' make a variety of factual assertions that either have no bearing on whether venue is

---

Plaintiffs' allegations include facts as early as 2002, the prior version of the venue statute, which determines venue solely on the defendant's resident county when suit is filed, may apply to the Plaintiffs' claim against Rakowsky.

proper or are inaccurate.[2] The analysis under S.C. Code Ann. § 15-7-100(A)(1), however, hinges on whether the county in which the action was filed is a proper venue. In this case, even taking into consideration the Plaintiffs' arguments, Richland is not a proper county because it is neither the resident county of the defendants, the principal place of business for Falgione's law firm, nor the county where the most substantial part of the events giving rise to the Plaintiffs' claim occurred. Instead, most of the alleged events occurred in Lexington County, where the Defendants lived and conducted their practices.

For these reasons, Richland County is an improper venue for this action, and the Falgione Defendants' motion to transfer the case to Lexington County for trial should be granted.

Warren C. Powell, Jr.
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC

July 25, 2012

Columbia, South Carolina

[2] For example, the trial preparation and meetings with the Defendants occurred at the Defendants' law office in Lexington County (Exs. A & B.); the fee agreements between the Plaintiffs and Defendants were signed in Lexington County (Exs. A & B.); several witnesses, including the Defendants, are Lexington County residents; the address Plaintiff Spencer has provided the Court is located in Lexington County; and Mr. Rakowsky is a Municipal Court Judge in Lexington (not the Chief Magistrate Judge).

1494

EXHIBIT A

147

COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.; and Irene Santacroce;)	C/A No. 2011-CP-40-5384
Plaintiffs,)	
v.)	**AFFIDAVIT OF ADRIAN L. FALGIONE**
John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC;)	
Defendants.)	

FILED
2012 JUL 25 AM 11:04
JEANNE W. McBRIDE
C.C.P. & G.S.

PERSONALLY appeared before me, the undersigned, who being duly sworn, says:

1. I am over the age of eighteen years old.

2. I have been a resident of Lexington County for the past twenty six consecutive years.

3. I am licensed to practice law in the State of South Carolina, and my practice has consisted of only one office in Lexington County, South Carolina, for the past twenty three years.

4. My fee agreement with the Plaintiffs to represent them in their federal case, Civil Action No.: 4:02-cv-1859, was drafted in Lexington County. I saw several of the Plaintiffs, including Mr. Spencer, sign the agreement in Lexington County.

5. Most of the work I performed on the Plaintiffs' lawsuit occurred at my office in Lexington, South Carolina. The hearings occurred at the Federal Courthouse in Florence, South Carolina.

FURTHER AFFIANT SAYETH NOT.

Adrian L. Falgione

Sworn and subscribed to before me
this 24th day of July, 2012.

Heather R Hodge (L.S.)
Notary Public for South Carolina
My Commission expires on 4/15/2016

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **AFFIDAVIT OF JOHN R. RAKOWSKY**

RICHLAND COUNTY
FILED
2012 JUL 24 PM 2:22
JEANETTE W. McBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, John R. Rakowsky, who, under oath, states as follows:

1. I am over the age of 18 years and competent to give this affidavit.

2. I have personal knowledge of the facts contained in this affidavit.

3. The facts herein are true and correct to the best of my knowledge.

4. I have been a resident of Lexington County for at least the past thirty-five (35) consecutive years.

5. I am licensed to practice law in the State of South Carolina, and my practice has consisted of only one office in Lexington County, South Carolina, for at least the past twenty-seven (27) years.

6. My fee agreements with the Plaintiffs to represent them in their federal case, Civil Action No.: 4:02-CV-1859, was drafted in Lexington County. I saw several of the Plaintiffs, including Mr. Spencer, sign the agreement in Lexington County.

7. Most of the work I performed on the Plaintiffs' lawsuit occurred at my office in Lexington, South Carolina. The hearings occurred at the Federal Courthouse in Florence, South Carolina.

FURTHER AFFIANT SAYETH NOT.

John R. Rakowsky

SWORN to and subscribed before me
this 23 day of July, 2012

Notary Public for South Carolina

My commission expires: 5-18-12

3026550v.1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 25, 2012, the document(s) described below was(were) served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

Documents served: **MEMORANDUM IN SUPPORT OF DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S MOTION TO CHANGE VENUE**

Parties served:

James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se

Amanda K. Dudgeon
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John R. Rakowsky

Benjamin C. Bruner

148

COPY

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case No. **2012-CP**-32-03428

James Spencer,

Plaintiff,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

MOTION TO AMMEND COMPLAINT

This matter comes before the Court on the Motion to Amend Complaint submitted by James B. Spencer ("Spencer") on August 15, 2011. Southern Holdings, a corporation, must be removed as an entity in the complaint because it does not have standing due to the fact it is not represented by an attorney as required by South Carolina law.

Standard of Review

Rule 15(a), of the South Carolina Rules of Civil Procedure (" SCRCP"), provides in relevant part that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Parker v.

Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct.App.2005). It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice." Foggie v. CSX Transportation, Inc., 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998). The Defendants will experience no prejudice to correct the caption as there is no legal presence of the entity and Rule 15(a), SCRCP, requires that leave to amend be freely granted in the absence of prejudice to the Defendants. *Parker*, 362 S.C. at 286, 607 S.E.2d at 716.

Discussion

Under South Carolina law Southern Holdings cannot have a legal presence as a party in this action without being represented by an attorney and was listed in error by *Pro Se* Litigant. A corporation is an artificial entity created by law, it cannot represent itself. A corporation must be represented by a licensed attorney in circuit and appellate courts in South Carolina but not in magistrate's court. *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 515 S.E.2d 257 (S.C. 1999).

As an alternative under Rule 21 of the SCRCP parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Since Southern Holdings is not a legally authorized party to this suit the court has just cause to dismiss Southern Holdings without prejudice as a party to this action.

Summary

Therefore, under Rule 15 (a) or under Rule 21 of the South Carolina Rules of Civil Procedure, for legal procedural reasons, Southern Holdings needs to be removed forthwith from the caption as a party.

Pro Se Plaintiff has previously raised this matter with defendants' counsels and both counsels have refused to consent to the proposed withdrawal of Southern Holdings as a party to this proceeding.

Respectfully Submitted by:

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

151

154

COPY

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 28, 2013, the document described below, was (were) served on all parties of record in this case by mailing a copy, by US mail and addressed as set forth below, and a copy by email.

Topic: Correction of Caption to reflect legal parties.

Parties Served:

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se Plaintiff

Amanda K. Dudgeon
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John Rakowsky

Bruner, Powel, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Post Office Box 61110
Columbia, South Carolina 29260-1110

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

COPY

SPENCER, et al. v. RAKOWSKY, et al.

CASE NO. 2012-CP-32-3428

FILED
2013 JUN 27 P 4:46
CLERK OF COURT

PLAINTIFF'S BRIEF ON CORRECTIONS[1]

Introduction

On June 5, 2013, a hearing was held before the Honorable Judge Frank R. Addy, Jr., in Laurens County Court, Laurens, South Carolina. During the hearing Judge Addy requested that *Pro Se* plaintiff Spencer present documented evidence to the contrary of statements made by defendants' counsels Amanda Dudgeon ("Dudgeon") and B. J. Bruner ("Bruner") made during the hearing after Spencer raised concerns that issues being raised by defendants' counsels had either already been decided or were inaccurate. Notwithstanding the statements made by Dudgeon/Burner, to the contrary to your Honor, the *pro se* litigant is indigent, medically determined to be one hundred percent permanently disabled and the case being held in Richland County was in plaintiffs' medical and financial best interests. This brief will substantiate the documented facts and clearly move the court away from the Bruner/Dudgeon version of events.

Background

- The underlying case to this malpractice action is, Southern Holdings, et al. v. Horry County, et al., which was filed in Federal District Court, State of South Carolina, Florence District, Case No: 4:02-cv-01895-RBH in May, 2002. The case was deemed settled by the Court on May 9, 2007. The malpractice complaint is related to acts of malpractice in the underlying proceeding by plaintiff's attorneys, John Rakowsky and Adrian Falgione. It was filed on August 15, 2011.
- The defendants in the present case moved to change venue to their home county (Lexington County), after a series of oral rulings on May 7, 2012, by Chief Judge James R. Barber, III, of Richland County, that were not favorable to the defendants, that took into account the indigent and medical condition of the plaintiffs. The above captioned case became extremely convoluted, when Judge Barber defacto merged this case with another action still pending from 2008, "The Interpleader Action", between the same parties (the defendants are represented by different counsel) by holding the joint hearing

[1] Plaintiffs maintain an objection to this hearing having been held on June 5, 2012, as an appeal of a terminal ruling was made prior to the hearing on June 5, 2013, to the South Carolina Court of Appeals.

on May 7, 2012, and issuing scheduling orders between the cases, contingent on events happening in one case prior to events occurring in the other case.[2]

- On May 7, 2012, Judge Barber ordered that discovery in the legal malpractice case was ongoing, so the case could go to trial by October 2012. Being new to the case, it is critical for your Honor to note **Exhibit A** attached hereto which is a notarized statement from John Rakowsky's bank that documents a comingling of funds which is a breach of fiduciary duty to the *pro se* plaintiffs and therefore an act of malpractice.[3]

Defendant John Rakowsky and his counsel have claimed on the record, before three legal forums, that the non-lawyer expense funds, provided to them by the *pro se* plaintiffs for the underlying case, were deposited as required into a trust account.

However, the untruthfulness to the court and the legal malpractice of defendant John Rakowsky, in that regard, is clearly documented by **Exhibit A**. This document was not obtained and the malpractice could not have been discovered until **January 5, 2012**, as Rakowsky and Falgione both refused to provide financial records and deposit slips, regarding the litigation funds. Additionally, the defendants have been untruthful on the court record regarding the nature of the account the litigation funds were deposited into that they received for litigation of the underlying case was a trust account.

It was also determined through **Exhibit A**, on January 5, 2012, that Mr. Rakowsky attempted to cover-up his comingling of funds, involving an estimated one hundred thousand dollars ($100,000.00) in litigation funds, and related malpractice, by using his influence with the local Lexington bank to change the nature of the account into a trust account, after the fact on **July 7, 2010.** Judge Barber knew the questions raised by

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[2] May 7, 2012, was a simultaneous hearing on the case captioned above and Case No: 2008-CP-40-6656, an Interpleader action, brought by John Rakowsky in 2008 involving the same parties as the case captioned above in which John Rakowsky has both admitted on the court record in September 2011 that the litigation funds were not disputed and agreed to release the $9,900 in undisputed litigation funds belonging to the *pro se* plaintiffs he has been wrongfully withholding since 2007 **(See Exhibit B)**. Judge Barber recognized this and chastised John Rakowsky and Bruner for delaying tactics and the continued withholding of the undisputed litigation funds that prevented the indigent plaintiffs from hiring an representative counsel and an expert if necessary when he said, "Mr. Bruner, they haven't had a dime because we've been sitting up here arguing about $9,500, [$9,900 uncontested litigation funds] apparently. It should have been resolved a year ago." **(Tr. Pg. 51, lines 20 - 23)**.

[3] "In appropriate cases, rules of professional conduct may be relevant and admissible in assessing the legal duty of an attorney in a malpractice action. This is not to say, however, that all of the bar rules would necessarily be relevant in every legal malpractice action. In order to relate to the standard of care in a particular case, a bar rule must be intended to protect a person in the plaintiff's position or be addressed to the particular harm." Smith v. Haynsworth, 322 S.C. 433 (S.C. 1996)

the plaintiffs about the defendants' character, when he ordered discovery to continue in this case, and now your Honor has this knowledge.

- On May 7, 2012, Judge Barber ruled that the legal malpractice case would be heard at trial, in front of a jury, on the merits and not dismissed in favor of either side for any technicality beforehand.
- On May 7, 2012, after talking directly with plaintiff Spencer's medical doctors, Judge Barber ruled that the first hearing of either case was going to be on the litigation funds that were being held by defendant John Rakowsky. Judge Barber ordered the undisputed litigation funds to be turned over by June 1, 2012, so the indigent plaintiffs could secure counsel in the legal malpractice case captioned above.[4]
- Judge Barber ruled, this transfer of funds to the court on June 1, 2012, was to be done before either case moved forward. No further hearings were to be held until the undisputed litigation funds were placed with the court.[5] **(Tr[6]., Pg. 38, Lines 3-11, Pg. 67, Lines 2-5 & Pg 48, Lines 4-8.)**
- Judge Barber's scheduling order, as laid out on May 7, 2012, was to have the legal malpractice trial completed before year end, 2012. **(Tr. Pg 56, Lines 3-5 & 7, Pg 56, Lines 19-23)**
- Judge Barber asked defendants' counsel (including Ms. Dudgeon) to draft the orders he issued during the May 7, 2012, hearing. **(Tr. Pg 67, Lines 2-6).**
- The defendants' counsels' response to Judge Barber's orders, on May 7, 2012, was to ignore them and move to change venue, in an attempt to strip away the rights of the plaintiffs, ordered by Judge Barber. In effect Bruner/Dudgeon put themselves "above the law" and stepped into the shoes of the judge. They decided they had the power to write or not write the law.
- In regard to stripping away the plaintiffs' rights, in the oral orders by Judge Barber, on May 7, 2012, Mr. Bruner expressed defendants' counsels' legal opinion to your Honor on

---

[4] *Pro se* plaintiffs had counsel at one time, Tom Cryer, Esquire, who died from a heart attack, while waiting for release of the undisputed litigation funds to represent plaintiffs as counsel.

[5] The Interplead litigation funds, rather than being turned over to the court so interest could be earned, have been kept without drawing interest since 2007 to date, in accounts controlled by defendant John Rakowsky.

[6] TR. refers herein this document to the May 7, 2012, transcript

June 5, 2013. Mr. Bruner stated that a judge's order or ruling is not valid unless it is put in writing. South Carolina case law does not support Mr. Bruner's position,

> "Furthermore, the fact that the order in the prior proceeding was never reduced to writing is not dispositive of the issue. An oral order compelling arbitration was issued by the court and is acknowledged in a letter by then-counsel for RDC...A judge may bind the parties with an oral order dictated into the record. Lane v. Williamson, 414 S.E.2d 177 (Ct. App. 1992). Once such an order is put into operation, absent a written order contradicting it, the court is bound by it."[7]
>
> **Hilton Head Resort Four Seasons Ctr. Horizontal Property Regime Council of Co-Owners v. Resort Inv. Corp., 311 S.C. 394, 401 (S.C. Ct. App. 1993)**

- The defendants, through the change of venue, sought to re-litigate issues already decided by Judge Barber, with a judge not familiar with the case, so a ruling would be more likely to be made in defendants' favor.

This is how and why this matter was brought before your Honor, in Laurens County. This misuse of procedure is the real reason this proceeding has extended beyond December 2012, and why this case is before your Honor. The defendants sought to circumvent/void the standing oral orders by Judge Barber.

However, the law clearly is that no litigant should be worse off by a venue change, when a matter has already been decided by the judge in the preceding venue. There is a "**long-standing rule in this State that one judge of the same court cannot overrule another**." *Tisdale v. Amer. Life Ins. Co.* 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dankins v. Robbins,* 203 S.C. 199, 26 S.E. 2d 689 (1943)".

If your Honor issues orders in this case, prior to discovery being allowed by the plaintiffs, it would be contrary to the standing oral orders of Judge Barber.

Correcting the Record of the June 5, 2013 Hearing

The *pro se* plaintiffs will raise issues that were raised by defendants, that were either untruthful or were contentions, that were interwoven with the truth in such a fashion so that the

[7] The misaddressed letter by Jude Barber produced to your Honor by Bruner, pertains to a completely different case which is cited in the letter and advices the parties in that case that his signed orders will stand. It does not address nor contradict any standing oral order in writing in any case, ***which under the law means the oral orders by Judge Barber stand." Emphasis added.***

truth is contorted into an untruth and finally there are also the issues raised by the defendants that are technically true but substantively are matters of no weight. The *pro se* plaintiffs will raise issues in the order presented to your Honor at the hearing held June 5, 2013 by the defendants.

Following each issue raised by defendants' counsel, the *pro se* litigants will provide verified facts, point by point, to clarify the issue. Documents are also attached for support of these statements of fact.

Motion to Disqualify Ms. Dudgeon

Issue:

- During the hearing on June 5, 2012, Ms. Dudgeon claimed that she did not represent Spencer in the litigation by LawMax against Rakowsky and Spencer through the American Arbitration Association ("AAA"). Further, she claimed that the LawMax litigation just went away to the benefit of Spencer, without any settlement agreement or payment to LawMax.[8]
- Dudgeon produced an email, purportedly from AAA, and claimed, based on that email, that a document Spencer presented to your Honor had not been authenticated.[9]
- Dudgeon further claimed she did not have an affidavit as to the authenticity of the document from AAA, presented by the plaintiffs, because the document presented by Spencer to the court had **never** been produced to her.

Facts:

- Dudgeon was untruthful with the court, as she received the document in question in the original filing by the plaintiffs, on **March 27, 2012.** Therefore, Dudgeon had plenty of time to obtain an affidavit from AAA, if such was actually obtainable.
- Dudgeon produced AAA documents on the AAA litigation, purportedly indicating that copies had been sent to Spencer and Spencer represented himself. However, **(See Exhibit C)** the letter dated August 16, 2008, is not properly addressed to Spencer, as

[8] LawMax in its contract for funds advanced to John Rakowsky, for the non-lawyer costs of the underlying lawsuit, sued John Rakowsky for his misstatements and mishandling of the case and James Spencer as a beneficiary of those funds through the contract's arbitration provision. The LawMax contract was negotiated and executed by John Rakowsky. Arbitration Case No: 13-194-01700-07.

[9] Ms. Dudgeon failed to provide this purported email to the plaintiffs prior to the hearing, as she was required to do, to allow for a proper review and authentication by plaintiffs.

Spencer has never lived in Columbus, SC and never received the correspondence. Spencer was subsequently no longer listed to receive mailings and (See Exhibit C, January 29, 2008 letter) was eliminated from all documents (and Dudgeon's firm, either through representation or by defacto, as Dudgeon claimed to your Honor, "cleared up" the legal matter for Spencer, without Spencer's knowledge, with LawMax giving up all claims[10] against Rakowsky and Spencer.[11] None of the parties advised Spencer that such litigation existed.

- Tellingly, on December 28, 2011, Dudgeon's firm interfered with the production of documents subpoenaed in the Interpleader case, in which they had no representation.[12] **Exhibit D** is a letter from Pattison, Simpson, Ginsburg & Griffin, PC, LawMax's outside legal counsel. The letter states that LawMax would not release the subpoenaed information on payments made in settlement of and any settlement agreement for John Rakowsky, regarding the AAA litigation. Pattison, Simpson, et al, said it would not release the information because of objections from the opposing counsels' law firm, in Case No: 2008-CP-40-6656.[13] Ms. Dudgeon's law firm was the firm cited by Pattison Simpson, et al., for refusing the subpoena (Note who was copied on the letter, Andrew Countryman, a partner and co-counsel of Ms. Dudgeon in the present case).

In conclusion, the facts require that discovery begin, as ordered by Judge Barber, so the plaintiffs and the court can make a proper reasoned decision, based on all the evidence, not just the evidence Bruner/Dudgeon wants the court to see. The pending motion to dismiss should be denied and discovery, as ordered by Judge Barber, on May 7, 2012, must proceed.

(Tr. Pg 41, Line 25, Pg 42, Line 1 & 5-7 &10-22, Pg 56, Lines 24-25 and Pg 57, Lines 1-4)

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[10] Based upon information and belief there appears to have been be a settlement agreement involving LawMax, Rakowsky that includes a confidentially clause. Further, logic dictates if Spencer had received the documents that a party to this litigation should have received; there would be no reason why these subpoenaed documents would be withheld from Spencer by LawMax and Dudgeon's firm!

[11] If that was indeed the case, John Rakowsky wrongfully listed LawMax as having a claim in his 2008 Interpleader action he filed long after the AAA litigation was concluded. The only rationale for this would be to conceal the settlement with AAA.

[12] Case No: 2008-CP-40-6656.

[13] The other reasons stated in the letter for non-compliance are not valid as the subpoena was in accordance with New York and South Carolina law and executed by the proper officials.

MOTION TO DISMISS FOR VIOLATION OF SECTION 15-36-100

Issue:

- Ms. Dudgeon and Mr. Bruner wrongly contend that the *pro se* plaintiffs were required to have an expert witness in their case, because the *pro se* plaintiffs stated they required such, in their initial complaint filed against the defendants on August 15, 2011.

Fact:

- The *pro se* plaintiffs' complaint did not state they were required to have an expert witness. The complaint clearly stated: "This complaint is filed pursuant to S.C. Code § 15-36-100 (C)(1) in anticipation **of the possible need** ***Emphasis Added*** for the contemporaneous filing of an affidavit by an expert, as the limitations on claims will likely expire within ten days of this filing and prior to the plaintiffs obtaining such an Affidavit."[14]
- The malpractice acts, one of which is documented in Exhibit A, are clear, as the average individual understands a lawyer misunderstanding a judge's order regarding evidence being ruled admissible or not and misstatements to clients based on the misunderstanding. In that regard, misleading clients as to the lawyers responsible for the untimely filing of key evidence when there was no ruling on the untimely filing of key evidence, circumstances documented in writing, is clearly an act of malpractice the average person can understand. Additionally, the failure to remedy the damages incurred by the plaintiffs through the alleged malpractice acts by Serota and Goldberg, by bringing a legal malpractice lawsuit against them and then not doing such, is also a clearly understood act of malpractice. The plaintiffs relied on the legal analysis and promises of the defendants to remedy the legal malpractice that occurred, yet the defendants' legal analysis was flawed, based on the courts statement of August 13, 2008 and the promised lawsuit by the defendants relied on by the plaintiffs never occurred.
- South Carolina courts have held in this regard,

[14] **Tr. Pg 50, Lines 12-20, Pg 51, Lines 4-7 & Lines 20-23, Page 52, Lines 13-18.**

> "Expert testimony is not necessary to prove negligence or causation so long as lay persons possess the knowledge and skill to determine the matter at issue. Expert testimony is not required to prove proximate cause if the common knowledge or Experience of a layperson is extensive enough."
>
> O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340 (S.C. Ct. App. 2006)

As Judge Barber understood there was a cover-up by the defendants in this case, the plaintiffs were allowed discovery, as ordered by Judge Barber. However, the defendants refused to comply with the judge's order and instead sought to change venue.

MOTION TO DISMISS UNDER THE STATUTE OF LIMITATIONS

Issue:

- At the hearing on June 5, 2013, Mr. Bruner and Ms. Dudgeon claimed that the plaintiffs should have known when the judge issued Order # 510, on July 3, 2007, that Judge Harwell put the plaintiffs on notice, concerning any legal malpractice committed by defendants Rakowsky and Falgione when Judge Harwell stated on the record,

> "Further, with regard to any claim by the Plaintiffs of either improper inducement, bad advice, or inadequate representation or preparation against Plaintiffs' own attorneys, such is not a valid basis for repudiating a settlement. *Petty v. Timken Corp.*, 849 F.2d 130, 133 (4th Cir. 1988). In the event there was any breach of the standard of care owed by Plaintiffs' attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, Plaintiffs have an available remedy for damages against their own attorneys. *See Petty*, 849 F.2d at 133." **(Order No. 510, Pg. 8, lines 3 - 9)**.

Bruner and Dudgeon alleged the plaintiffs filed their complaint after the statute of limitations had run, based on the date this order was issued, July 3, 2007.

Fact:

- In this case, the plaintiffs lacked knowledge of the facts of the truth in question and the presiding judge in the underlying case did not dispute the evidentiary rulings reported by the defendants, allegedly made behind closed chambers doors, until August 13, 2008.

- Prior to August 13, 2008, the defendants claimed their withdrawal from the case would not affect them going after the lawyers responsible for the legal malpractice, actually referred to by the judge in Order No. 510 and that they were bound by their prior statement of commitment to remedy the legal malpractice acts, through a malpractice lawsuit they would bring against the guilty attorneys.[15]
- Defendants never waived their commitment, both oral and in writing **(Exhibit E)** and the plaintiffs were assured they could rely on the defendants' commitment to pursue the guilty attorneys', separate from the defendants' statements withdrawing from the case, until after the August 13, 2008, confirmation by presiding judge, in the underlying case.
- South Carolina has laws in place to make sure such legal inequities are remedied through the law of equitable estoppel.

> "The doctrine of equitable estoppel applies when the statute of limitations has run and the defendant asserts the running of the statute of limitations as a defense. The defendant is estopped from benefitting from the statute of limitations as a defense where the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. This conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. The party asserting equitable estoppel bears the burden of establishing all the elements. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped. The party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts."
>
> Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626 (S.C. Ct. App. 2009)

Further,

> "Equitable estoppel operates to deny a party the right to plead or prove an otherwise important fact. The elements of estoppel as to the party estopped are (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or

[15] See May 17, 2007 letter by plaintiff John Rakowsky which was entered in Federal District Court without dispute of its authenticity, not withstanding Ms. Dudgeon's questions of authenticity to your Honor on June 5, 2013. Identified as **Exhibit E**, attached hereto.

> constructive, of the true facts. As to the party claiming estoppel, the elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; and (2) reliance upon the conduct of the party estopped."
>
> Maher v. Tietex Corp., 331 S.C. 371 (S.C. Ct. App. 1998)

- Finally, the South Carolina Supreme Court decisions regarding the application of the doctrine of equitable estoppel has determined its further applicability to this case, regarding the tolling of the statue of limitations. On July 29, 2009, plaintiff Doris Holt, Jim Spencer's mother, was taken into so called "protective custody" by the South Carolina Department of Social Services (DSS). The agency initially alleged physical abuse by Spencer against his mother he had taken care of for thirty years and held her at an unknown location. Spencer legally fought to gain Intervenor status and the agency admitted on the court record, the physical abuse allegations against Spencer were found to be baseless.
- Spencer was warned by Princess Hodges of DSS and other unidentified individuals, as he reported to the Columbia police department at the time, that he would never see his mother again if he brought any lawsuits against Judge John Rakowsky, et al., as that would prove to DSS that Spencer did not have his mother's best interest in mind. As litigation to legally gain her release was ongoing, Doris Holt continued to be held against her will, until her death from starvation and malnutrition on February 19, 2011.
- From July 29, 2009, to February 19, 2011, Doris Holt was not allowed to sign papers of any nature and the majority of the time she was held in isolation at unknown locations. Governor Sanford's office intervened and helped Spencer find his mother who had been wrongfully hidden from him for close to two years. However, as he continued to fight in the courts to gain her freedom DSS and third parties still prohibited his mother from signing any documents to the day of her death on February 19, 2011. Under these exigencies, both plaintiffs Spencer and Doris Holt were physically prevented through real an acted upon threats from filing a lawsuit in this case. Therefore, the statute of limitations should be tolled. The Supreme Court of South Carolina has found,

> "The equitable power of a court is not bound by cast-iron rules but exists to do fairness [*117] and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other."

> Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 2009 S.C. LEXIS 559 (S.C. 2009)

Further the South Carolina Court of Appeals found,

> "It has been observed that equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control. The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances."
> Magnolia North Prop. Owners' Ass'n v. Heritage Cmtys., Inc., 397 S.C. 348 (S.C. Ct. App. 2012)

Therefore, the motion to dismiss should be denied and Spencer should be allowed to pursue discovery, as ordered by Judge Barber. **(Tr. Pg 41, Line 25, Pg 42, Line 1, 5-7, 10-22)**

MOTION TO DISMISS FAILURE TO COMMENCE THE 120 DAY RULE

Issue:

- Dudgeon/Bruner contended on June 5, 2013, that their clients were not timely served. Bruner argued that Judge Barber ruled against the plaintiffs' default, based on the fact that he found lack of proper service and the corrected service was not sufficient and follow up service was untimely.

Facts:

- On May 7, 2012, Judge Barber ruled against the original server's affidavit for purposes of a plaintiffs' default, as it did not contain the time of day and exact location of service. See attached **Exhibit F**. Judge Barber did rule the defendants were served and as such appeared. Judge Barber did not rule against the corrected affidavit, and did not rule against the process server being Ms. Tammy Lail, as she has no financial ties to this case, and did not rule against the duplicate service of Alden Wheeler.

- Judge Barber ruled that the trial would be on the merits, in front of a jury, not dismissed by either side on a technicality, such as a default or an alleged flawed service.

Plaintiffs should not be subject to relitigating issues, when oral orders by Judge Barber are standing, notwithstanding Bruner and Dudgeon's flawed interpretation of the standing of oral orders as stated earlier within this document. **(Tr. Pg. 44, Lines 20-23, Pg 45, Lines 5-8)**

MOTION TO DISMISS DUE TO THE WAY FALGIONE WAS SERVED

Issue:

- Mr. Bruner claimed his client (defendant Falgione) was improperly served by process server Alden Wheeler. Mr. Bruner alleged the complaint was served on defendant Falgione by Alden Wheeler, walking into Falgione's office and dropping it with Julie Owens, a temporary employee, who was not an authorized agent. This claim was supported by an affidavit by defendant Falgione.[16]

Facts:

- Please see attached declarations/affidavits of service **(Exhibits G)** by Alden Wheeler. Mr. Wheeler totally disagrees with Mr. Bruner and Falgione's version of events.
- It is important to note that Judge Barber ruled he was not going to let this case be decided in favor of, either party, by a technicality, such as a default by the plaintiffs or a question the question of proper service which makes Burner's contention moot.
- Mr. Bruner knew that Judge Barber had already ruled that service questions were not going be used as a "technicality", to impact the case in the favor of either side.
  (Tr. Pg 45, Lines 22-25, Pg 46, Lines 1-12, Pg 54 Lines 22-24, Pg 55, Lines 1-3 and Pg 55, Lines 5-7)

[16] Defendant Falgione is documented in this malpractice case to be untruthful in his sworn affidavits. As example see **Exhibit H**. Note: Falgione, in order to gain a change of venue to circumvent Judge Barber's orders, untruthfully claimed the letters of engagement were executed by the clients, in the underlying case, in his office in Lexington. However, the engagement documents attached to **Exhibit H**, were not signed in his office, as they all bore the signatures of notaries located outside of Lexington County, the majority in Horry County.

Bruner wrongfully again, raised this issue before your Honor, falsely claiming that Judge Barber had ruled service had not been perfected, in regard to the defendants' appearance in this matter. **(Tr. Pg 46, Lines 22-25, Pg 47, Lines 1-9, Pg 54, Lines 2-17)**

FILED
2013 JUN 27 P 4:46
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

SUMMARY

The defendants sought to take advantage of the indigent and disabled *pro se* plaintiffs by misleading the court. The confusion caused by of the defacto merging of the cases by Judge Barber and his rulings which tied actions in the Interpleader case to actions in this legal malpractice case made the procedural history of the cases hard to follow. However, Judge Barber had both cases on a schedule to be finished by December 2012. This expedited schedule was specifically created with the medical condition of plaintiff Spencer and personally discussed between the medical doctors and Judge Barber.

The defendants further sought to take advantage of Spencer's medical condition by scheduling matters in such a manner that would favor them due to Spencer's medically disability and be against what Judge Barber had ordered scheduled. No litigant should be worse off due to a venue change than the litigant was prior to the venue change.

In this regard, the *pro se* plaintiffs humbly request your Honor to impose the scheduling order by Judge Barber that defendants to date have refused to comply with which long further has delayed this case from reaching a conclusion. This scheduling order, with dates changed to reflect it is now a year later, will allow for discovery including depositions prior to the hearings. Further, the plaintiffs request your Honor to order forthwith John Rakowsky to produce the uncontested litigation funds or impose sanctions. The funds remain under the direct control of John Rakowsky and not any court.

Further, the *pro se* plaintiffs have been prejudiced by the misstatements of the defendants' counsel on the court record. The misstatements, unintentional or not, regarding the record require appropriate action be taken against them.

Submitted on June 27, 2013

by: _____

Box 183
7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889

COPY

CERTIFICATE OF SERVICE

FILED
2013 JUN 27 P 4:46
BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

The undersigned hereby certifies that on June 27, 2013, the document described below, was (were) served on all parties of record in this case by electonic mail, and/or US mail and addressed as set forth below.

Topic: PLAINTIFF'S BRIEF ON CORRECTIONS

Parties Served:

Amanda K. Dudgeon
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John Rakowsky

B. J. Bruner
Bruner, Powel, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Post Office Box 61110
Columbia, South Carolina 29260-1110

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

SPENCER, et al. v. RAKOWSKY, et al.

CASE NO. 2012-CP-32-3428

COPY

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CLERK OF COURT
LEXINGTON SC

EXHIBITS

PLAINTIFF'S BRIEF ON CORRECTIONS

Exhibit "A"

Certified Bank Statement

On

Non-Trust Account

P.O. Box 810, Aiken, South Carolina 29802

Security Federal Bank

January 5, 2012

EXHIBIT "B"
Pg. 4 of 4

James Spencer
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212

Reference: John Rakowsky v. James Spencer, et al.
Case # 2008-CP-40-6656

Below please find the information subpoenaed for check #127 in the amount of $25,000.00.

Check Date:	June 30, 2005
Payable to:	John Rakowsky and J B Spencer
Deposit Date:	June 30, 2005
Deposit to:	Security Federal Bank Checking Account #xxxxxx1313

a) The check was deposited into a Sole Proprietorship Checking Account on June 30, 2005.
b) The account holder was John R. Rakowsky.
c) The account was changed from a Proprietorship Checking to an IOLTA account on July 7, 2010.

If I can be of any further assistance please contact me at 803-641-3084.

Sincerely,

Annette Hagen

Annette Hagen
Security Federal Bank
Deposit Operations Manager/AVP
803-641-3084
ahagen@securityfederalbank.com

Marquit A Hunt
Notary Public for SC
Commission expires 3-15-2021

Exhibit "B"

Rakowsky Has No Objection to Turning over Money to the Court

THE COURT: Which is 9,000-some-odd dollars.

MR. RAKOWSKY: Our understanding was the agency that actually paid in.

THE COURT: He just said --

MR. RAKOWSKY: Nobody's ever notified Ms. Weissenstein --

THE COURT: Whoa! He just said the only people claiming any of that have all agreed that those funds should be paid into some lawyer's trust account.

MR. RAKOWSKY: We wouldn't object to that.

THE COURT: Unfortunately, you got an interpleader action. So what's probably going to have to happen is get that, funds paid into the Court and then you get this thing heard. If everybody is agreeable that the $9,000 ought to be paid to Mr. Young, then it will be paid to Mr. Young.

MR. SPENCER: We haven't been delaying putting this into --

THE COURT: I'm not blaming anybody. I'm just telling you, this case was filed, when was it, 2008?

MR. SPENCER: Yes, sir.

THE COURT: That's too long for everybody.

MR. SPENCER: Right. I agree. Mr. Rakowsky just made an offer that he will gladly submit the funds that aren't in dispute.

THE COURT: He can't. He's got an interpleader action now of which those are funds that are pled in the interpleader.

MR. SPENCER: Okay.

THE COURT: So you better get a hearing and get it resolved quickly. It sounds to me like y'all are fighting each other over something that you shouldn't be fighting at this stage. Pay the $9,000 to Mr. Young. Put the 55,000 in the Court. Then I don't know what you're going to have -- if y'all people dispute how the $9,000 should be divided up.

MR. SPENCER: No dispute.

THE COURT: Well then get it paid to whoever you agree should get it. He doesn't care. Then the $55,000 would be in the Court which is good. It's going to draw some interest. It's good as being in a trust account better, because if the lawyer absconds with the money you'll have to go find her. If the County absconds with it, you know where we are. So, draw me an order. I'm denying this order -- I mean, this motion. I don't have the authority to go behind Judge Seals' order. Judge Seals' already determined that they're not entitled to that information. What else?

MS. WEISSENSTEIN: Your Honor, would you like to make an order that the funds that could be inter pleaded into

the Court today?

THE COURT: Well, I can't do that. Nobody's been given notice of the hearing for that purpose. I can't do that. Seems to me if y'all can agree on that --

MS. WEISSENSTEIN: Your Honor, we have no pending --

THE COURT: If everybody can agree on it, let's take the $65,000 and pay it into the Court and acknowledge that the only people that are entitled to the $9,800 or so are these folks. Y'all agree that it would be paid to Mr. Young. I don't know why y'all would care about that.

MS. WEISSENSTEIN: This is the first we've heard of it, Your Honor.

THE COURT: And then sign a consent order paying that out.

MR. SPENCER: Your Honor --

THE COURT: Look, I don't care.

MR. SPENCER: Yeah.

THE COURT: But I do care about this. Come January 1 when I'm in charge of this roster, this case ain't going to stay here very long. It's an '08 case.

MR. SPENCER: Sounds good to me.

THE COURT: But y'all ought to be able to resolve it before then.

MR. SPENCER: I agree.

THE COURT: Sounds to me like you agree on it. You

want to put 55,000 and then let people make their claims. Whatever it is, they need to fight about it. They can claim whatever they want to claim.

MR. SPENCER: That's right.

THE COURT: Y'all can come in and show they're not entitled to it.

MR. SPENCER: That's right.

THE COURT: They didn't do beans to get this.

MR. SPENCER: That's correct.

THE COURT: That's how you resolve it.

MR. SPENCER: That's right.

THE COURT: But at least you got $10,000 out of the equation, put it in your pockets or Mr. Young's pockets and know what you're talking about.

MR. SPENCER: Yes, sir.

THE COURT: When are you going to get me an order?

MS. WEISSENSTEIN: Sir?

THE COURT: By the 26th. When can you have me an order?

MS. WEISSENSTEIN: Tomorrow.

THE COURT: No. I need it by the 26th. I want Mr. Spencer to see it before you send it to me.

MS. WEISSENSTEIN: Okay.

THE COURT: They got your address?

MR. SPENCER: Yes. They have my address and we've

communicated by e-mail.

MS. WEISSENSTEIN: I'll send it to you tomorrow and then you by next Friday to give him time.

THE COURT: Well, I'm going to be in Kershaw County all next week, so I won't be back here until Monday the 26th. You can send it, I guess you can send it to his, you can put it on his -- what's your computer address?

LAW CLERK: Jbarberlc at SC Courts dot org (jbarberlc@sccourts.org).

THE COURT: Man, three Lexington lawyers all in one hour.

MS. WEISSENSTEIN: Thank you.

MR. SPENCER: Thank you, Your Honor.

THE COURT: All right, Mr. Spencer. Good luck.

END OF CASE: 4:25 P.M.

CERTIFICATE OF REPORTER

I, Cheri L. Young, Registered Professional Reporter, and Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing transcript of proceedings heard on Thursday, September 15, 2011, in Columbia, South Carolina, was reported by me using machine shorthand and realtime computer-aided translation and is a true, accurate and complete transcript of the proceedings had and evidence introduced in the hearing of the matter.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. I have hereunto set my hand this Tuesday, the 27th day of September, 2011.

Cheri L. Young, RPR
Official Court Reporter

Exhibit "C"

Letters of August 16, 2007

And

January 29, 2008

American Arbitration Association
Dispute Resolution Services Worldwide

Northeast Case Management Center
Catherine Shanks
Vice President
Christopher Fracassa, Yvonne L. Baglini
Assistant Vice Presidents

950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: http://www.adr.org/

August 16, 2007

New Amsterdam Capital Partners, LLC
459 Columbus Avenue, Suite 299
New York, NY 10024-5129

Via Electronic Mail

James Spencer
7001 Saint Andrews Road
Suite 183
Columbus, SC 29212

Via First Class Mail

John Rakowsky, Esq.
Law Offices of John Rakowsky
P.O. Box 3593
West Columbia, SC 29171

Via Facsimile:

Re: 13 194 01700 07
New Amsterdam Capital Partners, LLC
and
James Spencer
and
John Rakowsky, Esq.

Dear Parties:

This will acknowledge receipt on August 10, 2007, of a Demand for Arbitration dated July 19, 2007, of a controversy arising out of a contract between the above-captioned parties, containing a clause providing for administration by this Association. We understand that a copy was sent to Respondent. A copy of our Commercial Arbitration Rules and Mediation Procedures, as amended and in effect September 15, 2005, may be obtained from our website at www.adr.org. Pursuant to the Rules, this matter is being administered under the Expedited Procedures.

In accordance with the Rules, if Respondent does not answer on or before August 31, 2007, we will assume that the claim is denied. If Respondent wishes to counterclaim, file the appropriate number of copies, together with the administrative fee, to the attention of the undersigned. A copy should be directly sent to Claimant.

We note the parties' agreement stipulates the locale as New York, New York.

We note the claim is $63,000. If this amount is incorrect, please advise us on or before August 24, 2007 of the correct amount.

This will confirm an Administrative Conference is scheduled on August 28, 2007 at 10:00am EST via conference call. The Association will initiate this call.

The purpose of the administrative conference is to assist the Association in administering your case efficiently and expeditiously. Please be prepared to discuss the following:

a. estimates on the expected duration of the case;
b. number of arbitrators/party-appointed arbitrator provision;
c. method of appointment of arbitrators, if applicable;
d. your views on the qualifications of the arbitrators to be proposed;
e. the possibility of submitting this dispute to mediation;

Enclosed is a Checklist for Conflicts to list those witnesses you expect to present, as well as any persons or entities with an interest in these proceedings. The Conflicts Checklist is due within fifteen days from the date of this letter. The parties are to exchange copies of all correspondence except this checklist and the arbitrator list.

The Association will make maximum use of fax machines when communicating in writing, and request that the parties do the same. If you have not provided us with your fax number, we ask that you do so at this time. If a party does not provide us with their fax number, then that party will have to rely on receiving correspondence via regular mail.

Parties will not send copies of documents being exchanged between the parties to the Association, such as discovery, unless they are being referred to the arbitrator for a determination. These documents will be returned to you if we receive them.

The Association has a strict policy regarding requests for extensions. If you need to extend any deadline during the course of these proceedings, please try to obtain the other party's agreement prior to contacting the AAA. Without the consent of the parties, case managers only have the authority to grant one extension per deadline, provided the request is reasonable and necessary. Untimely filings will not be considered by the Association.

This case will be administered by facilitating the exchange of appropriate written documents through the AAA. To ensure the proper handling of all case-related documents, the parties are asked not to submit correspondence directly to the arbitrator. Correspondence should be submitted to the undersigned for transmittal to the arbitrator, copying the other parties.

The Association will require advance deposits once the arbitrator is appointed. These deposits are calculated on the number of days the parties have suggested will be necessary, in addition to the pre and post hearing time that the arbitrator may charge pursuant to the arbitrator's resume.

Additionally, the parties may desire to mediate this case prior to an arbitration hearing. Mediation is a private, non-binding process under which the parties submit their dispute to a third-party neutral. The mediator may suggest ways of resolving the dispute, but may not impose a settlement on the parties; the parties attempt to negotiate their own settlement agreement. Please contact the undersigned for further details regarding mediation.

We invite the parties to visit our website to learn more about how to file and manage your cases online. As part of our administrative service, AAA's WebFile allows parties to perform a variety of case related activities, including:

- ☐ File additional claims
- ☐ Complete the Checklist for Conflicts form
- ☐ View invoices and submit payment
- ☐ Share and manage documents
- ☐ Strike and rank listed neutrals

☐ Review case status

AAA WebFile provides flexibility because it allows you to work online as your schedule permits - day or night. Cases originally filed in the traditional offline manner can also be viewed and managed online.

In closing we wish to remind the parties that the AAA has a refund schedule in the administrative fee section of the Rules. After 60 days or the appointment of the arbitrator the filing fees are non-refundable. If the parties enter settlement negotiations at any time after the AAA has opened its file, you should take into consideration the refund schedule in the Rules. In accordance with the administrative fee schedule, the Association charges a Case Service Fee when the hearing on the merits is scheduled. The Case Service Fee is the balance of the filing fee. It is refundable if the hearing on the merits is cancelled and the Association is notified at least 24 hours prior to the hearing. The AAA will only refund filing fees as outlined in the Rules and does not refund neutral costs incurred when parties settle their dispute or withdraw their claims. We encourage parties to resolve their disputes as amicably as possible and this notice is just to alert you to this issue so that it doesn't become a concern in the future.

Please feel free to call if you have any questions. We look forward to assisting you in this matter.

Sincerely,

Melanie Cabrera
Case Manager
401 431 4802
CabreraM@adr.org
Supervisor Information: Karen Fontaine, 401 431 4798, fontainek@adr.org

Encl. *Commercial Expedited Procedures Fact Sheet*
Checklist for Conflicts

American Arbitration Association
Dispute Resolution Services Worldwide

Northeast Case Management Center
Catherine Shanks
Vice President
Christopher Fracassa, Yvonne L. Baglini
Assistant Vice Presidents

950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: http://www.adr.org/

January 29, 2008

VIA ELECTRONIC MAIL

Daniel Zolberg
LawMax
459 Columbus Avenue
New York, NY 10024-5129

Amanda K. Dudgeon
Carlock, Copeland, Semler & Stair, LLP
134 Meeting Street
Suite 500
Charleston, SC 29401

Re: 13 194 01700 07
New Amsterdam Capital Partners, LLC
and
James Spencer
and
John Rakowsky, Esq.

Dear Counselors:

We ask the parties to kindly advise us as to the status on of before February 12, 2008, of the above referenced matter which was initiated on August 16, 2007, and has been on hold since November2007.

Cordially yours,

James F. Medeiros
Case Manager
401 431 4724
MedeirosJ@adr.org

Supervisor Information: Karen Fontaine, 401 431 4798, fontainek@adr.org

Exhibit "D"

Letter from Law Firm

PATTISON
SAMPSON

PATTISON SAMPSON GINSBERG & GRIFFIN, PC
22 FIRST STREET P.O. BOX 208 TROY, NY 12181-0208
TELEPHONE 518 266 1000 FACSIMILE 518 274 6034
WWW.PSGGLAW.COM
SERVICE BY FAX NOT ACCEPTED

Lambert L. Ginsberg
F. Redmond Griffin
Mickki L. Harrington
Michael E. Ginsberg
Donald J. Shanley
Thomas E. Lavery
Jonathan G. Schopf**
Dana M. Caswell

**Also admitted in PA

OF COUNSEL
Terence E. Shanley
Michele A. Santucci

Edward H. Pattison
(1896-1986)
Stephen H. Sampson
(1911-1982)
Ned Pattison
(1932-1990)
William M. Connors
(1912-1998)

December 28, 2011

James Spencer
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212

Re: Subpoena to LawMax

Dear Mr. Spencer:

We are the attorneys for New Amsterdam Capital Partners, LLC, d/b/a LawMax Legal Finance. I am writing to you in response to your service of the annexed subpoena, which was received by mail on this date.

We object to the Subpoena insofar as it is not properly captioned; was not served in the manner specified by New York Civil Practice Law and Rules Section 2303; was not accompanied by the statutory fee; was not issued pursuant to a certification (following motion) by the court in South Carolina; was not served upon your adverse counsel, as required under both NY and SC law; and bears a signature other than that of the County Clerk, Norman Goodman. Moreover, we do not recognize the embossed seal, which seal is not generally employed by the County Clerk in the issuance of subpoenas.

Should you have any questions, or wish to discuss this matter, please do not hesitate to contact the undersigned attorney.

Very Truly Yours,

PATTISON, SAMPSON, GINSBERG & GRIFFIN, P.C.

Eileen T. Rohan, Esq.
Direct Dial: 518-266-1025

cc: Andrew W. Countryman, Esq.

STATE OF **New York**

ISSUED BY THE **SUPREME** COURT IN THE **STATE** OF **New York**

JOHN RAKOWSKY, Plaintiff

v.

JAMES SPENCER, Defendant

SUBPOENA IN A CIVIL CASE

Case Number: **2008-CP-40-6656**

Pending in **Richland** County

TO: **New Amsterdam Capital Partners, LLC, aka LawMax Legal Finance**

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects: **SEE ATTACHMENT.**

C/O JAMES SPENCER

PLACE	DATE AND TIME
SUITE 183, 7001 SAINT ANDREWS ROAD COLUMBIA, SC. 29212	**December 29 2011** **On or before the Above Date.**

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6) SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

DATE

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

CLERK OF COURT/ISSUING OFFICER SIGNATURE — DATE: 12/14/11 — PRINT NAME: Nina Goodman

SCCA 254 (10-04)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page)

Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which that subpoena was issued.

This subpoena is in compliance with the provisions of CPLR 3119 of the State of New York Rules of Civil Procedure and Rule 45 of the State of South Carolina Rules of Civil Procedure.

Subpoena Attachment:

1. Any and all records, documents and notes in any media form concerning John Rakowsky and /or any agent of John Rakowsky, Esquire directly and/or indirectly regarding the case of Southern Holdings, In., et al. vs. Horry County, et al. Case No: 02-CV-01859-RBH and any related funding provided by New Amsterdam Capital Partners, LLC. (hereinafter "LawMax").

2. Any and all documents and/or notes in any media form regarding LawMax including, but not limited to, legal proceedings and communications with LawMax and/or representatives of LawMax related directly and/or indirectly any discussion and/or decisions regarding venue involving John Rakowsky and/or agents of John Rakowsky concerning any funding provided by LawMax. This request includes any and all agreements of any nature involving and/or related to John Rakowsky and/or in any manner and any determining decision(s), filings and/or agreements and/or decisions made regarding John Rakowsky which involved the determination of venue for litigation purposes and/or any other proceeding and/or purpose related both directly and/or indirectly to the referenced funding and/or any related matters pertaining to point one (1) herein above.

3. Any and all documents including, but not limited to, notations, notes of any kind, agreements and/or receipts in any media form regarding any and all proceedings related to the disposition of LawMax's claim of $63,000 originally filed with the American Arbitration Association. [Re: 13 194 01700 07] New Amsterdam Capital Partners, LLC, and John Rakowsky and/or James Spencer.

4. Any and all documents including, but not limited to, notations, notes of any kind, agreements and/or receipts in any media form regarding any and all issues and/or proceedings of any nature related to the disposition of any claim directly and/or indirectly involving John Rakowsky related directly and/or indirectly to the funding that LawMax provided in the case of Southern Holdings, Inc., et al. vs. Horry County, et al. Case No: 02-CV-01859-RBH.

PROOF OF SERVICE

SERVED	DATE _____	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE _____	☐YES ☐NO AMOUNT $ _____
SERVED ON _____		MANNER OF SERVICE _____
SERVED BY _____		TITLE _____

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena was issued.

This subpoena is in compliance with the provisions of CPLR 3119 of the State of New York Rules of Civil Procedure and Rule 45 of the South Carolina Rules of Civil Procedure.

Exhibit "E"

Rakowsky's Letter to Mr. Bruce Benson

ATTACHMENT 54

PAGE 1 OF 1

JOHN R. RAKOWSKY
ATTORNEY AT LAW
900 12TH STREET
POST OFFICE BOX 3593
WEST COLUMBIA, SOUTH CAROLINA 29171

TELEPHONE
(803) 791-8830
FAX
(803) 794-7880

May 17, 2007

Mr. Bruce Benson
6170 W. Lake Mead Blvd.
Suite 311
Las Vegas, Nevada 89108

Dear Mr. Benson:

On the afternoon of Tuesday, May 8, 2007, Judge Harwell held an evidentiary hearing regarding the evidence both sides proposed to admit at trial. Almost every document of evidence the Plaintiffs submitted was challenged by the Defendants' counsel. Prior to my involvement in this case, former Plaintiffs' counsel Michael Goldberg missed specific filing deadlines set by the Court's scheduling order, causing a serious problem in the admissibility of a very large proportion of Plaintiffs' evidence. Consequently, as just one example, Judge Harwell indicated that the next day, he would rule as inadmissible at least 75% of Plaintiffs' medical expenses. Accordingly, Judge Harwell suggested that the Plaintiffs take the pre-trial settlement that was being offered by the Defendants.

Additionally, it was revealed by Defendants' Counsel Saleeby for the first time that former Plaintiffs' counsel Goldberg had received an offer of Judgment from the Defendants that neither I, nor former local Plaintiffs' counsel James Cooper nor the individual Plaintiffs had ever seen before or knew about. This is critical because if the case was decided in favor of the Plaintiffs below the thirty thousand dollars ($30,000) threshold amount in the "Offer of Judgment," the Plaintiffs would have been responsible both collectively and individually for all the Defendants costs, including attorney's fees from the first date of the signing of the offer. Adrian and I estimated that that would be a minimum amount of between $200,000 and $300,000 and likely much more.

Judge Harwell strongly suggested that Adrian and I get the Plaintiffs to settle for their best interests before he made the ruling against the Plaintiffs' evidence at trial on Wednesday, May 9, 2007, and the Defendants then subsequently drop their settlement offer. Judge Harwell indicated at the evidence hearing on Tuesday, May 8, 2007, that, (1) most of the Plaintiffs' medical damages, (2) most of the Plaintiffs' evidence regarding the civil conspiracy and the questionable action of the defendants, and (3) almost all of the Southern Holdings, Inc. valuation evidence was not going to be allowed to be admitted because it was not timely filed with the Court. Judge Harwell told Adrian and me in chambers that he wanted for everything related to this case to end at one time, so we needed to drop the claims against Dave Smith and Ancil Garvin as part of the settlement.

Without the admission of the critical evidence, the Plaintiffs would have been exposed to a Judgment against them of $300,000 to 400,000 if we did not settle the case due to the Defendants' "Offer of Judgment" filed on July 21, 2004. Judge Harwell told us in chambers on Wednesday, May 9, 2007, the Plaintiffs acceptance of the Defendants' offer was the best decision for the Plaintiffs to make given that he was going to rule against the admission of the majority of the Plaintiffs' evidence. Now that this case is behind us we can go after Goldberg for not filing the evidence in a timely manner, which caused these problems in the first place, along with Goldberg's flawed initial pleadings.

Sincerely,

John R. Rakowsky

Exhibit "F"

Original Declaration/Affidavit

For Service

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. **2011-CP-40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

AFFIDAVIT OF TAMMY COOKE LAIL

I, Tammy Cooke Lail, hereby declare under the penalty of perjury the following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On September 15, 2011, I personally served Adrian Falgione outside the Richland County Court house a summons and complaint in Case No. **2011-CP-40-5384**.
3. Adrian Falgione told me he was a Court officer and could not be served at the Richland County Court house because he was on official duty.

4. John Rakowsky let the papers fall to the ground and refused to take them, he then drove off in his car on or about 4:45 PM.
5. I walked away having completed the service.

Affiant Sayeth Further Naught.

I DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

09/15/11
Date

Tammy Cooke Lail

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. **2011--CP-40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

AFFIDAVIT OF TAMMY COOKE LAIL

I, Tammy Cooke Lail, hereby declare under the penalty of perjury the following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On September 15, 2011, I personally served John Rakowsky outside the Richland County Court house a summons and complaint in Case No. **2011-CP-40-5384** while he was getting into his car in the parking lot.
3. John Rakowsky told me he was a Judge and could not be served at the Richland County Court house because he was on official duty and showed me a badge he kept on his steering wheel column.

4. Adrian Falgione refused to take the papers and let them fall to the ground. He then walked away. This was on or about 4:35 PM.

5. I walked away having completed the service.

Affiant Sayeth Further Naught.

I DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

09/15/11
Date

Tammy Cooke Lail
Tammy Cooke Lail

192

195

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011--CP-40-5384

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

AFFIDAVIT OF TAMMY LAIL

I, Tammy Lail, hereby declare under the penalty of perjury the following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On September 15, 2011, I personally served Adrian Falgione with the summons and complaint in the above captioned case.

TL

193

196

Affiant Sayeth Further Naught.

I DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT, TO THE BEST OF MY PERSONAL KNOWLEDGE.

09/15/11
Date

Tammy Lail
Tammy Lail

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011--CP-40-5384

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

AFFIDAVIT OF TAMMY LAIL

I, Tammy Lail, hereby declare under the penalty of perjury the following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On September 15, 2011, I personally served John Rakowsky with the summons and complaint in the above captioned case.

TL

Affiant Sayeth Further Naught.

I DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

9/15/11
Date

Tammy Lail

196

199

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. **2011–CP-40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

2012 JAN -5 PM 3:54

PROOF OF SERVICE

Service was attempted on multiple occasions as defendants in the above captioned case sought to avoid service. (See attached affidavits of service.) Service of summons and complaint was perfected on **September 15, 2011** on both defendant John Rakowsky and defendant Adrian Falgione.

Service of summons and complaint was perfected a second time on defendant Adrian Falgione on **December 15, 2011** and defendant John Rakowsky on **December 16, 2011.**

Submitted by,

James B. Spencer, individually and on behalf of the
Estate of Doris Holt and as interim Administrator/Trustee
of Southern Holdings, Inc.
Suite 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

Exhibit "G"

Declaration/Affidavits

Of

Alden Wheeler

Professional Service Processor

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011--CP-40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

AFFIDAVIT OF ALDEN WHEELER

I, Alden Wheeler, hereby declare under the penalty of perjury the following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On December 15, 2011, I personally attempted service on John Rakowsky at his law office, while he was off duty at his work place and at his home on several occasions on this date.
3. Even though there were people at home in the evening of December 15, 2011, I could not get anybody to answer the door.

4. On December 16, 2011, I went by Mr. Rakowsky's law office and home and again nobody would answer the door at either location.
5. On December 16, 2011, I went by with an associate to serve Mr. Rakowsky at his home.
6. I saw two cars in the driveway when I drove up to the home and Mrs. Rakowsky in the kitchen window.
7. After approximately ten minutes of knocking on the door, Mr. Rakowsky unexpectedly got out of one of the cars and took service.
8. I have been a process server for over three years.
9. It is my understanding and belief that my service of Mr. Rakowsky was the first successful service and the six attempt to serve this Summons and Complaint on Mr. Rakowsky since December 1, 2011.

Affiant Sayeth Further Naught.

I DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

12-31-11
Date

Alden Wheeler

201

204

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011--CP-40-5384**

2012 JAN -5 PM 3:44

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,	
Plaintiffs,	**AFFIDAVIT OF ALDEN WHEELER**
v.	
John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC	
Defendants.	

I, Alden Wheeler, hereby declare under the penalty of perjury the following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On December 15, 2011, I personally served and service was accepted by Ms. Julie Owens for Adrian Falgione at the law offices of Adrian Falgione at 113 E. Main St, Lexington, SC 29072.
3. When I entered Mr. Falgione's law office I asked Ms. Owens to see Mr. Falgione as I had papers to serve him.

202

205

4. In response, Ms. Owens excused herself as she informed me she needed to go talk to Mr. Falgione.
5. A few minutes later, when Ms. Owens returned from speaking to Mr. Falgione she informed me that Mr. Falgione was tied up on the telephone but she would be glad to accept service for Mr. Falgione.
6. Ms. Owens then offered to make copies of the papers for me and I accepted her offer to do such.
7. I have been a process server for over three years.
8. It is my understanding and belief that my service of Mr. Falgione was the first successful service and the fourth attempt to serve this Summons and Complaint to Mr. Falgione since December 1, 2011.

Affiant Sayeth Further Naught.

I DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

12-31-11
Date

A. Wheeler
Alden Wheeler

Exhibit "H"

Falgione Affidavit and Representation Agreements Notary Signatures are Not From Lexington County nor Falgione's Office as untruthfully claimed by Defendant Adrian Falgione

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.; and Irene Santacroce; Plaintiffs, v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	)	C/A No. 2011-CP-40-5384 **AFFIDAVIT OF ADRIAN L. FALGIONE**

PERSONALLY appeared before me, the undersigned, who being duly sworn, says:

1. I am over the age of eighteen years old.

2. I have been a resident of Lexington County for the past twenty six consecutive years.

3. I am licensed to practice law in the State of South Carolina, and my practice has consisted of only one office in Lexington County, South Carolina, for the past twenty three years.

4. My fee agreement with the Plaintiffs to represent them in their federal case, Civil Action No.: 4:02-cv-1859, was drafted in Lexington County. I saw several of the Plaintiffs, including Mr. Spencer, sign the agreement in Lexington County.

5. Most of the work I performed on the Plaintiffs' lawsuit occurred at my office in Lexington, South Carolina. The hearings occurred at the Federal Courthouse in Florence, South Carolina.

FURTHER AFFIANT SAYETH NOT.

Adrian L. Falgione
Adrian L. Falgione

Sworn and subscribed to before me
this 6th day of July, 2012.

Heather R Hodge (L.S.)
Notary Public for South Carolina
My Commission expires on 4/15/2016

Addendum to
Contract of Representation
(Contingency Fee Agreement)
Executed on or about May 27, 2005
Between "Law Firm" and "Clients"
Regarding case Number 02-1859
As listed on the Docket of the Florence Division
of the South Carolina Federal District Court

This addendum is necessitated by the withdrawal of Mark Hardee from the Law Firm (Law Firm as defined within the Contract of Representation) and Mark Hardee's release of any and all claims against any potential recovery in this case.

Adrian L. Falgione, Attorney at Law, has replaced Mark Hardee and as such under the terms of his retention, Mr. Falgione shall be entitled to the specific funds Mark Hardee would have received under the terms of the Contract of Representation executed between Clients and Law Firm and assumes the associated responsibilities formerly performed by Mark Hardee under the terms and conditions of the Contract of Representation as of November 15, 2006, the date the Motion for the Substitution of Counsel was filed with the Court.

This Addendum has no effect on any and all terms and conditions of the Contract of Representation executed on or about May 27, 2005, between the Law Firm and the Clients. This Addendum is a confirmation of the agreement to retain Adrian Falgione as counsel and compensate Mr. Falgione with the funds that would have gone to Mark Hardee under the terms of the Contract of Representation whom Mr. Falgione replaced.

This Addendum is mutually agreed to by the Law Firm, James B. Spencer and Adrian Falgione.

This 1st day of February, 2007

John R. Rakowsky as
Lead counsel, for the
Law Firm

James B. Spencer

Adrian Falgione
Attorney at Law

Notary
My Commission Expires February 5, 2007

This Addendum is mutually agreed to by the Law Firm, Irene Santacroce and Adrian Falgione.

This 1st day of February, 2007

John R. Rakowsky as
Lead counsel, for the
Law Firm

Irene Santacroce

Adrian Falgione
Attorney at Law

Marquerite S Stephens
My Commission Expires
February 8, 2012

This Addendum is mutually agreed to by the Law Firm, Southern Holdings, Inc., Nicholas C. Williamson for Southern Holdings, Inc., Nicholas C. Williamson individually and Adrian Falgione.

This 1st day of February, 2007

John R. Rakowsky as
Lead counsel, for the
Law Firm

Nicholas C. Williamson
as CEO and Chairman of
of Southern Holdings, Inc.

Adrian Falgione
Attorney at Law

Nicholas C. Williamson
Individually

Irene Santacroce
Corporate Secretary

Marguerite S. Stephens
My Commission Expires
February 9, 2012

Dawn R. Gatts, Notary
My Commission Expires February 5, 2007

Excerpts from May 7th, 2012 Hearing

(Tr. Pg. 51, lines 20 - 23) **Page 2 of 13**

THE COURT: I don't know what the purpose of the statute is. I wasn't up there when they passed the statute, but ---

MS. DUDGEON: To avoid (unintelligible).

MR. BRUNER: Your Honor, the reason why ---

THE COURT: Then I'll just hold off on scheduling your motions for a while.

MR. BRUNER: I don't know that it's something to cure, is the point.

THE COURT: I don't know whether it is or not, but at least they have a lawyer that might say Mr. Spencer, unfortunately, you don't have an expert and didn't have one when you needed one and I can't help you.

MS. DUDGEON: Your Honor.

MR. BRUNER: I'm just saying that, respectfully, Your Honor, that they have had plenty of time to go talk to lawyers and we all know there are two law school putting out lawyers in this state, now.

THE COURT: Mr. Bruner, they haven't had a dime because we've being sitting up here arguing about $9,500, apparently. It should have been resolved a year ago.

MS. DUDGEON: Your Honor, are you proposing that we have a motion to dismiss on all grounds except the

- Judge Barber ruled this transfer of funds to the court on June 1, 2012, was to be done before either case moved forward. No further hearings were to be held until the undisputed litigation funds were placed with the court.[1] **(Tr[2]., Pg. 38, Lines 3-11, Pg. 67, Lines 2-5 & Pg 48, Lines 4-8.) Page 3**

38

MS. SANTACROCE: No.

MR. LAIL: No, sir.

THE COURT: All right. Prepare an order and in that order say that no funds will be held until it is determined by the court who is to receive what and that the court will immediately schedule, as soon as it can after June 1, a hearing to determine whether these three defendants or any of the named defendants are entitled to any --- or any of the parties are entitled to the $9,500, whatever that amount is, and I will schedule that sometime after June 1st, and if

[redacted]

Pg 48, Lines 4-8

THE COURT: Let me tell you, there is very little benefit to being the administrative Judge, but one of them is you don't do nonjury. I'm going to do the interpleader action because I think they need to get their monies and get on with this litigation so they can hire their lawyer. We can bring this thing to a conclusion this year, both cases, all right? We've

Pg. 67, Lines 2-6

THE COURT: All right. Anybody that I've asked to do an order, do it and get it to me within seven days. Again submit it to Mr. Spencer, Mr. Lail, and Ms. Santacroce.

MS. DUDGEON: Yes, sir.

- Judge Barber's scheduling order, as laid out on May 7, 2012, was to have the legal malpractice trial completed before year end, December 2012. **(Tr. Pg 56, Lines 3-5 & 7, Pg 56, Lines 19-23) Page 3**

213

216

hearing on the $9,500 early on, and if you all are agreeable to hold it sooner than that, I'm not going to be here the 28th or the 14th. I'll just have to figure it out, but we all know we're going to try to get those cases resolved this year.

MR. SPENCER: Yes, sir.

THE COURT: We need to put an end to them.

MR. SPENCER: Agreed.

THE COURT: We're going to --- Mr. Spencer, Ms. Santacroce, you'll need to start figuring in your minds whether you're represented or not represented, who it is you want to depose so that we can come up with a schedule at some point in time to move this case along. I would like to try to maybe try this case --- when was it filed?

MS. DUDGEON: It was filed in August. We answered in November because we saw that it had been filed.

THE COURT: All right. So August, it would be coming up on 12 months. I'd like to see about trying to get it tried by October. That would give y'all six months or so to do whatever discovery you need to do and put it all out there.

MS. DUDGEON: Your Honor, can we continue with discovery during this time?

Judge Barber asked defendants' counsel (including Ms. Dudgeon) to draft the orders he issued during the May 7, 2012, hearing. **(Tr. Pg 67, Lines 2-6). Page 3**

MS. DUDGEON: Thank you.

THE COURT: All right. Anybody that I've asked to do an order, do it and get it to me within seven days. Again submit it to Mr. Spencer, Mr. Lail, and Ms. Santacroce.

MS. DUDGEON: Yes, sir.

THE COURT: All right. Have a nice day. Thank you for coming.

MS. SANTACROCE: Thank you, Judge.

THE COURT: Stay in touch.

MS. SANTACROCE: Your Honor.

THE COURT: Are there good days and bad days that you can or can't be up here when I'm scheduling this hearing on the $9,500? I assume you would like to be here for that day.

MS. SANTACROCE: I would like to, yes.

THE COURT: Are there certain days that are easier to get here than not?

MS. SANTACROCE: No sir. I don't have any money to drive up all the time either.

THE COURT: Well, we'll not --- we will attempt to minimize that. Actually, in some things I don't have a problem with your being on the telephone. The problem is we don't have a speakerphone here in the courtroom.

- **(Tr. Pg 41, Line 25, Pg 42, Line 1 & 5-7 &10-22, Pg 56, Lines 24-25 and Pg 57, Lines 1-4) Page 6**

MS. DUDGEON: We'll be prepared immediately after June 1st to handle that.

THE COURT: We're not going to have this hearing on the same day we would have your hearing.

MS. DUDGEON: I understand.

THE COURT: We'll have to figure all that out. I'd like to give Mr. Spencer is couple of days between hearings to catch his breath and recoup, so that will have to be the first hearing.

Then there was another motion that we heard that was ---

MS. DUDGEON: There's two motion to dismiss, one on behalf of each of the defendants and that's all that I know that is pending, Your Honor.

MR. BRUNER: Yes, that's correct, Your Honor. Ben Bruner here for Mr. Falgione and his firm. We have a motion to dismiss that we filed last November, the day after Ms. Dudgeon's firm. We amended our motion later, I believe, if it matters, both our amended motion and our original motion are appearing as two separate items on the docket, but the amended one is the only one we need heard. We simply request that it's heard as soon as possible ---

THE COURT: All right.

MR. BRUNER: --- so we can pursue discovery

before this cases pops up on the trial roster.

THE COURT: Let's assume that the case is not dismissed. What discovery has to be done?

MS. DUDGEON: Your Honor, probably ---

THE COURT: Who would you want to depose?

MS. DUDGEON: Well, at least all the actual plaintiffs ---

THE COURT: I mean, I don't know who the plaintiffs are. Mr. Spencer would be one ---

MS. DUDGEON: I would say there would be at least five depositions. It also depends if they have an expert, but at least five depositions.

THE COURT: All right. Mr. Spencer, who are you all going to want to depose in that lawsuit --- or Ms. Santacroce?

MR. SPENCER: There will be about six depositions.

THE COURT: All right. Tell me who you're thinking about at this time, Rakowsky and Falgione?

MR. SPENCER: At this time it would be Rakowsky and Falgione would be two of the people. And, there will be ---

THE COURT: All right. How about let's --- do you think it's possibility to combine the discovery in these two cases so they don't have to take their

hearing on the $9,500 early on, and if you all are agreeable to hold it sooner than that, I'm not going to be here the 28th or the 14th. I'll just have to figure it out, but we all know we're going to try to get those cases resolved this year.

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MS. DUDGEON: Your Honor, can we continue with discovery during this time?

THE COURT: Sure.

MS. DUDGEON: Or is it also ---

THE COURT: Sure.

MS. DUDGEON: Okay. I just wanted to confirm.

MR. BRUNER: Well, specifically, Your Honor, I know Mr. Spencer's health is an issue.

THE COURT: Well, he's not required to do anything until June 1st.

MR. BRUNER: Okay.

THE COURT: Other than come to a status conference. I asked the doctors if he can come to a status conferences and he said yes.

MR. BRUNER: Okay.

THE COURT: If you schedule depositions, my suggestion is, unless he consents to it, don't schedule more than one deposition a day, and I would spread them out to some extent. I know that costs you more money because you have to drive --- are you in Charleston?

MS. DUDGEON: Yes, Your Honor.

THE COURT: Then drive up from Charleston. I've talked to his doctor in Charleston, his doctor here, and they both are on the same page. I told them I would do what I could to help them, but apparently a big stressor in his life is this litigation, so there

- **Tr. Pg 50, Lines 12-20, Pg 51, Lines 4-7 & Lines 20-23, Page 52, Lines 13-18. Page 7 Footnote #12**

worried that his case will get kicked before the merits of the interpleader action is determined. We all know that just because there is a hearing on a Tuesday doesn't mean the judge rules on Tuesday. In a case like this it's certain possible that the judge may take ---

THE COURT: All right. So y'all have moved to dismiss on ---

MS. DUDGEON: Expert affidavits, statute of limitations, and service.

MR. SPENCER: Your Honor, we ---

THE COURT: Why don't you just have --- why don't you stay the expert affidavit until he gets his lawyer.

MS. DUDGEON: May I respectfully ask why, Your Honor?

THE COURT: Probably because if something had agreed to give them their $8,500 or $9,500, there would have been a lawyer and the lawyer would have been able to look at the case and say yeah or nay. The lawyer is not going to cure the statute of limitations problem. I don't care how good the lawyer is, if the time has run, the time has run.

MS. DUDGEON: Then, Your Honor, what else the purpose of the statute? I mean...

THE COURT: I don't know what the purpose of the statute is. I wasn't up there when they passed the statute, but ---

MS. DUDGEON: To avoid (unintelligible).

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THE COURT: Mr. Bruner, they haven't had a dime because we've being sitting up here arguing about $9,500, apparently. It should have been resolved a year ago.

MS. DUDGEON: Your Honor, are you proposing that we have a motion to dismiss on all grounds except the

expert ---

THE COURT: We'll hear from them, but it may be a month or two after they have the interpleader, the $9,500 case.

MS. DUDGEON: Your Honor I'll take what I can get. I'll argue whatever motion I'm allowed to argue as soon as I can.

THE COURT: And I hope to be there.

MS. DUDGEON: It's a good point, but I hope to be.

THE COURT: How about that, Mr. Spencer?

MR. SPENCER: Sir?

THE COURT: Schedule the hearing on the motion to dismiss on the grounds that one, you didn't file within the statute of limitations and two, deficient service, the issue of whether you had an expert, needed an expert or met the expert requirement, we will defer until you can get an attorney.

MR. SPENCER: Your Honor, I'd like to have an attorney on those issues and it --- the second part is that I've been waiting for their --- the ruling on the entry for default.

THE COURT: I told you that on the phone.

MR. SPENCER: You said that the affidavit was incorrect. We remedied the affidavit being incorrect,

222

225

- **(Order No. 510, Pg. 8, lines 3 - 9).** Page 8

that the Plaintiffs are not entitled to any such relief. In other words, the Plaintiffs have not made a sufficient showing of entitlement such relief.

Further, with regard to any claim by the Plaintiffs of either improper inducement, bad advice, or inadequate representation or preparation against Plaintiffs' own attorneys, such is not a valid basis for repudiating a settlement. *Petty v. Timken Corp.*, 849 F.2d 130, 133 (4th Cir. 1988). In the event there was any breach of the standard of care owed by Plaintiffs' attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, Plaintiffs have an available remedy for damages against their own attorneys. *See Petty*, 849 F.2d at 133.

Vacate or Set Aside Settlement Agreement

It is well settled that merely having second thoughts about entering into a settlement agreement is insufficient to set aside the settlement agreement. *Young v. Federal Deposit Ins. Corp.*, 103 F.3d 1180, 1195 (4th Cir. 1997). The court notes that all of the Plaintiffs who filed these letters/motions, *pro se* requests for relief, were present in the courtroom when the settlement agreement was announced on the record. Although the undersigned did not poll each plaintiff individually, nor each Defendant individually, he is not required to do so. This case did not involve a minor settlement or a wrongful death settlement, which would require court approval and may require the court to query a plaintiff regarding whether they believe the settlement is fair and in their best interests. Regardless, none of the Plaintiffs brought any of the matters they allege in their letters/motions to the court's attention until three weeks

- **Tr. Pg 41, Line 25, Pg 42, Line 1, 5-7, 10-22) Page 10**

MS. DUDGEON: We'll be prepared immediately after June 1st to handle that.

THE COURT: We're not going to have this hearing on the same day we would have your hearing.

MS. DUDGEON: I understand.

THE COURT: We'll have to figure all that out. I'd like to give Mr. Spencer is couple of days between hearings to catch his breath and recoup, so that will have to be the first hearing.

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THE COURT: All right. Tell me who you're thinking about at this time, Rakowsky and Falgione?

MR. SPENCER: At this time it would be Rakowsky and Falgione would be two of the people. And, there will be ---

THE COURT: All right. How about let's --- do you think it's possibility to combine the discovery in these two cases so they don't have to take their

(Tr. Pg 44, Lines 20-23, Pg 45, Lines 5-8) Page 11

believe, somebody filed a motion of default where I said the service was not sufficient service because it doesn't meet the rule as to specificity as to this. SAPBLTS about is that correct.

THE COURT: I already addressed that issue.

MS. DUDGEON: Your Honor addressed in the status conference ---

MS. SANTACROCE: Yes, I know, but what I'm saying is that we sent a supplement when I got the ---

THE COURT: A supplement --- what?

MS. SANTACROCE: --- the process server to redo what they should have done.

MR. BRUNER: Your Honor, my understanding is that it was Mr. Lail's wife that's reported to have served my client at the September 15th hearing at the interpleader case. Your Honor did address that. We had a court reporter there at the last hearing. I don't think that that's before the court right now. If it is ---

THE COURT: I've already determined that based on what is filed --- you know, one of the things with a lawsuit, you don't get to go back and redo things because they didn't get done right the first time.

MS. SANTACROCE: Well, in all the cases I've been in, Your Honor, and that's been quite a few since

227

230

(Tr. Pg 45, Lines 22-25, Pg 46, Lines 1-12, Pg 54 Lines 22-24, Pg 55, Lines 1-3 and Pg 55, Lines 5-7) Page 12

2008, the other side is always sending supplement this, supplement that, so my experience as a pro se litigant, I thought it was okay, so I straightened it out and I resubmitted it.

THE COURT: I already ruled. I determined there is no default because there is no appropriate affidavit showing anybody was served. I mean, it wasn't even something you'd have a hearing on.

MR. BRUNER: I believe that ---

THE COURT: If it's an entry of default, you would normally file, send me an affidavit of service, an affidavit of nonmilitary service, a copy of the --- I don't know, whatever else you may have.

MS. SANTACROCE: Yeah, and you did say that on the phone.

THE COURT: I would review the facts and either sign the default or deny the default. In this instance you sent it, I pulled the file and I reviewed it, the affidavit that you --- whoever filed your affidavit of service was clearly deficient under the rule, so I denied the entry of default and that's where it is. We don't go back and redo it again, but we're not trying this case on the default. We're trying this case on the merits of the case. If you all are entitled to money against them, you're going

to get it based on the merits of your claim.

MS. SANTACROCE: Yes, sir.

THE COURT: If they have something about you, they're going to get it on the merits of the claim. That's not going to be done on some technicality that kicks you out of court or kicks them out of the court. That's the purpose of litigation. You give everybody the opportunity to offer whatever they want to offer and somebody is going to make a decision as to who is entitled to recover. In this case you get to a jury and the jury is going to make a decision. Were you wronged and if so what damages are you entitled to.

MS. SANTACROCE: Yes, sir.

MR. Bruner: Your Honor, at the risk of beating a dead horse, I would like to point out for the record that the motion for default was filed three months after we filed our notice of appearance and our motion to dismiss.

THE COURT: I'm well aware of that.

MR. BRUNER: I'd just like to get that on the record, Your Honor.

THE COURT: That's an issue --- do you all want me to do an order saying that I had Ms. Santacroce send a proposed entry of default, the court reviewed the file, determined that the affidavit of service was

does.

Proof of service shall state the date and time of service, the name and address of such person served. None of which that affidavit stated. It had the person. That's all it had.

MR. SPENCER: Yes, sir, and they responded. They responded accordingly in their response. They responded two weeks late so they had to have been served. They responded, so they were served.

THE COURT: Well ---

MR. SPENCER: They didn't respond without being served.

THE COURT: Well, if they responded, they had to served, there's no doubt about it, but the question is when were they served?

MR. SPENCER: They were served on the 15th. They responded 20, 30 days later.

THE COURT: I don't know when they were served. Your affidavit was not sufficient. They appeared. We're not going to argue that. I've already ruled.

MR. SPENCER: Okay.

THE COURT: You all understand this, we're not ending this case on either side based on some silly technicality.

MR. SPENCER: Okay.

THE COURT: If you're entitled to recover funds, you're going to recover them because your claim says, I've been wronged and this is how you rectify that.

MR. SPENCER: Yes, sir.

THE COURT: You can't go back and undo what's been done. The only way we do it our system is somebody pays money.

MR. SPENCER: Yes, sir.

THE COURT: All right. Same way with them.

MR. SPENCER: Right.

THE COURT: At least anything that I'm involved in. All right. Let me look at it. I'll figure it out.

MS. DUDGEON: Your Honor, I'm sorry.

THE COURT: What I'm going to schedule is what I'm going to schedule.

MS. DUDGEON: Okay. But our goal, so I understand ---

THE COURT: We had a term of court, I think on the 18th of June, nonjury that would have been perfect for this, but Judge Benjamin decided she was going on vacation. They moved her and those rosters may have gone out. I don't know. The next term would be the end of June. I just am going to have to see what the schedule is, but I do know I'm going to hold this

(Tr. Pg 46, Lines 22-25, Pg 47, Lines 1-9, Pg 54, Lines 2-17) Page 12

to get it based on the merits of your claim.

MS. SANTACROCE: Yes, sir.

THE COURT: If they have something about you, they're going to get it on the merits of the claim. That's not going to be done on some technicality that kicks you out of court or kicks them out of the court. That's the purpose of litigation. You give everybody the opportunity to offer whatever they want to offer and somebody is going to make a decision as to who is entitled to recover. In this case you get to a jury and the jury is going to make a decision. Were you wronged and if so what damages are you entitled to.

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **DEFENDANT RAKOWSKY'S MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

RICHLAND COUNTY
FILED
2011 NOV -3 PM 1:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

PLEASE TAKE NOTICE that Defendant John R. Rakowsky ("Defendant Rakowsky"), by and through his undersigned attorneys, hereby moves for an Order dismissing the Plaintiffs' Complaint with prejudice pursuant to SCRCP 12(b)(6). Defendant Rakowsky bases this Motion on the following:

(1) Failure to comply with S.C. Code Ann. § 15-36-100, *et seq.*;

(2) The Plaintiffs filed the Complaint outside the applicable statute of limitations;

(3) Lack of service of process; and

(4) The Complaint fails to state facts sufficient to constitute a cause of action.

Defendant Rakowsky bases this Motion on the pleadings, Rules of Civil Procedure, applicable statutes, applicable case law, and any supporting Memoranda and/or exhibits to be filed prior to the hearing of this Motion.

In the alternative and if the Court denies the Motion to Dismiss, Defendant Rakowsky moves for an Order changing venue pursuant to SCRCP 12(b)(3), as venue is not proper in Richland County.

SIGNATURE PAGE TO FOLLOW

This 2nd day of November, 2011.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: _____

DAVID W. OVERSTREET
State Bar No.: 16965

ANDREW W. COUNTRYMAN
State Bar No.: 72700

Attorneys for Defendant John R. Rakowsky

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
(843) 727-0307

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO.: 2011-CP-40-5384
	)	
James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,	)	**CERTIFICATE OF SERVICE**
Plaintiffs,	)	
v.	)	
John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC,	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2011 NOV -3 PM 1:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

I hereby certify that I have this day served a copy of the within and foregoing Motion to Dismiss upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

James Spencer
7001 St. Andrews Road, Suite 183
Columbia, SC 29212
***Pro Se* Plaintiff**

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
***Pro Se* Plaintiff**

This 2nd day of November, 2011.

Assistant to Andrew W. Countryman

2856539v.1

238
235

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 803-753-0060
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

November 4, 2011

VIA HAND DELIVERY
The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, SC 29202

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2011-CP-40-5384
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Ms. McBride:

Enclosed for filing with your office, please find the original and two (2) copies of a Notice of Appearance, as well as a Motion to Dismiss in the above-referenced action. Also enclosed is the $25.00 filing fee. Please have your office file the original and return the stamped filed copies to me via my courier. If you have any questions please do not hesitate to contact me.

By copy of the letter, I am serving same upon the other parties of record. With my kindest regards, I am,

Sincerely yours,

Benjamin C. Bruner

BCB/nys
/Enclosures

cc: James B. Spencer, pro se (via Certified Mail, Return Receipt, Restricted to Addressee)
[redacted]
David W. Overstreet, Esquire
Andrew W. Countryman, Esquire

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce; Plaintiffs. v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	C/A No. 2011-CP-40-5384 **NOTICE OF APPEARANCE**

Bruner, Powell, Wall & Mullins, LLC, by its undersigned, hereby notifies this honorable Court that it is appearing on behalf of Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC in the above-referenced action. Please send all notices to Bruner, Powell, Wall & Mullins, LLC at P.O. Box 61110, Columbia, SC 29260.

Warren C. Powell, Jr.
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC

November 4, 2011

235

240

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	))))	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICAL CIRCUIT
James Spencer, individually and on behalf of the Estate of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce; Plaintiff v. John R. Rakowsky; Adrian L. Falgione; and the Law Offices of Adrian Falgione, LLC Defendant	)))))))	CASE NO. 2011-CP-40-5384 MOTION INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
James B. Spenser Address: e-mail:	Benjamin C. Bruner No. 77544 Address: P.O. Box 61110 Columbia, SC 29260 phone: 803-252-7693 fax: 803-753-0060 e-mail: Bbruner@brunerpowell.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss
Estimated Time Needed: 15 Min. Court Reporter Needed: YES / NO

SECTION II: Motion Type

☒ Written motion attached.
☐ Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐Plaintiff / ☒Defendant — November 4, 2011 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce; Plaintiffs, v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	C/A No. 2011-CP-40-5384 **NOTICE OF MOTION AND MOTION TO DISMISS**

TO: THE PLAINTIFFS, ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that Defendants Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC (collectively, "Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Fifth Judicial Circuit, at the Richland County Judicial Center, 1701 Main Street in Columbia, South Carolina on the 10th day after service hereof, or soon thereafter as counsel can be heard, for an Order dismissing the allegations by James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc, and Irene Santacroce (collectively, "Plaintiffs") against the Defendants in this action.

This Motion is made upon the following grounds:

(1) The Plaintiffs have failed file an expert affidavit pursuant to S.C. Code § 15-36-100;

(2) The Plaintiffs' claims are barred by the three-year statute of limitations established in S.C. Code § 15-3-530;

(3) The Plaintiffs have failed to serve the Defendants with the Summons & Complaint; and

(4) The Complaint fails to state facts sufficient to constitute a cause of action against the Defendants.

Accordingly, the Defendants move for an Order dismissing the Plaintiffs' claims against the Defendants pursuant to Rules 3 and 12 of the South Carolina Rules of Civil Procedure, as well as S.C. Code §§ 15-3-530 and 15-36-100. This Motion may be further supported by the record in the case, by affidavits, and by such cases as have been made and provided. Pursuant to Rule 11, SCRCP, the undersigned has no duty to consult with the Plaintiffs before filing this Motion.

Warren C. Powell, Jr.
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC

November 4, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 4, 2011, the document(s) described below was(were) served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

Documents served: **NOTICE OF APPEARANCE**
NOTICE OF MOTION AND MOTION TO DISMISS

Parties served:

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DELIVERY RESTRICTED TO ADDRESSEE
James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DELIVERY RESTRICTED TO ADDRESSEE
Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se

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

Benjamin C. Bruner

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
James Spencer, et al.)
Plaintiff,)
vs.)
)
John Rakowsky, et al.)
Defendant.)

IN THE COURT OF COMMON PLEAS
5th JUDICIAL CIRCUIT

CASE NO.: 2011 -CP- 40 - 5384

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney: Amanda K. Dudgeon and Andrew Countryman, Carlock, Copeland and Stair, LLP
Irene Santacroce, Bar No.	, Bar No 72516
Address: 205 Deer Trace Circle, Myrtle Beach, SC 29588	Address: 40 Calhoun Street, Suite 400 Charleston, SC 29401
Phone: 843-455-0891 Fax	Phone: 843-727-0307 Fax
E-mail: Other:	E-mail: adudgeon@CarlockCopeland.com Other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant

March 26, 20 12
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter:
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE CODE
Date: , 20

CLERK'S VERIFICATION

Collected by: Date Filed: , 20

☐ MOTION FEE COLLECTED: $
☐ CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011- CP- 40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

EXPEDITED MOTION TO DISQUALIFY AMANDA K. DUDGEON, ANDREW A COUNTRYMAN AND THE LAW FIRM OF CARLOCK, COPELAND AND STAIR, LLP

Pro Se Plaintiffs Irene Santacroce ("Santacroce") and James Spencer ("Spencer"), pursuant to the South Carolina Judicial Rule 8.4(a) and the South Carolina Rules of Professional Conduct sections, 1.18, 1.9, 3.3, 3.4, and 3.7 respectfully moves this Court for an order that disqualifies Amanda K. Dudgeon and Andrew A. Countryman ("Dudgeon and Countryman") and the law firm of Carlock Copeland and Stair, LLP, from acting as counsel in this matter. Dudgeon and Countryman and their law firm must be disqualified because both are essential fact witnesses in this matter for Santacroce and Spencer. Additionally, both Dudgeon and Countryman are essential

fact witnesses for Santacroce and Spencer who are defendants in the Interpleader Complaint case brought by their client, John Rakowsky, ("Rakowsky") in Richland County Court, Case No. 2008-CP-40-6656.

Rakowsky was a defendant in the LawMax litigation, due to his alleged legal malpractice in the Southern Holdings, Inc. case. These acts of legal malpractice are believed to be tied to acts of malpractice which are the subject of the case before this Honorable Court. Rakowsky's interests were represented by Dudgeon and Countryman in the LawMax litigation, American Arbitration Association, Case No: 13 194 01700 07, New Amsterdam Capital Partners, LLP (LawMax) v. John Rakowsky, Esq. and James Spencer. Spencer was unaware he was named a party with Rakowsky in the LawMax litigation.

The knowledge that Spencer was a named party in the LawMax litigation was kept from Spencer by Rakowsky, Dudgeon and Countryman. Rakowsky acted in the capacity of Spencer's attorney without Spencer's knowledge or approval. The LawMax litigation proceeded to conclusion without Spencer's knowledge that litigation directly impacting him had taken place. Rakowsky accepted service on Spencer's behalf, as LawMax believed Rakowsky represented Spencer. Rakowsky took these fraudulent actions to prevent the disclosure of material documents that pertain to the commission of legal malpractice. The LawMax litigation's resolution itself is an admission of legal malpractice by Rakowsky in the Southern Holdings case. All LawMax litigation correspondence that Spencer should have received was routed to Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP, instead of to

Spencer. Dudgeon and Countryman failed in their duty to see that Spencer had notice and received all pleadings.

This represents a significant conflict, as it is likely Rakowsky's testimony will conflict with the testimony of his law firm Carlock, Copeland and Stair, LLP and the individual named attorneys. Dudgeon and Countryman had a duty to reveal the LawMax fraud to the plaintiffs and this Court, under Rule 3.3(b) of the South Carolina Professional Code of Conduct.

Dudgeon and Countryman have already demonstrated their inability to deal with the conflicts and litigate the matter before this Honorable Court within the South Carolina Rules of Professional conduct. Dudgeon and Countryman failed in their requirement of candor toward the tribunal under Rule 3.3(b) of the South Carolina Professional Code of Conduct which states, *"A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.* See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

Dudgeon and Countryman, instead of disclosing the LawMax litigation and their role in it, as required by Rule 3.3(b) of the South Carolina Professional Code of Conduct, used this Honorable Court to request an expedited litigation schedule without a stated reason in fact or law. The objective of this expedited litigation schedule was to prevent the *Pro Se* plaintiffs from obtaining knowledge of, and access to the LawMax litigation documents in a timely manner.

Further, Dudgeon and Countryman's actions of preventing Spencer access to the LawMax litigation documentation is also a violation of Rule 3.4(a) which states, *"A lawyer shall not (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act."* See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

Dudgeon and Countryman's actions up to this point are attempts to use this Honorable Court to perpetuate a fraud involving the cover-up of the LawMax litigation and the associated documents, which confirm their client's legal malpractice. Through these wrongful actions, Dudgeon and Countryman clearly demonstrate their inability to address the aforementioned conflicts within the South Carolina Rules of Professional Conduct, when compliance with the Rules would be detrimental to their client's interest.

The LawMax litigation relates directly to the allegations of legal malpractice before this Honorable Court. Dudgeon and Countryman's involvement in the negotiation of the LawMax settlement, including their understanding as to the scope of the contested matters and the particular information that was exchanged between the settling parties, make them essential fact witnesses for Santacroce and Spencer in the matter before this Honorable Court.

The basis for this Motion is set out in the Memorandum of Law in Support of Plaintiffs' Motion to Disqualify Dudgeon and Countryman and to disqualify the law firm of Carlock, Copeland and Stair, LLP, filed contemporaneously herewith.

Plaintiffs further pray that the Court handle this motion in an expedited fashion, because until this matter is resolved, Plaintiffs' case will be and has been prejudiced due to the failure of Dudgeon and Countryman to disclose their role in the LawMax litigation. Dudgeon and Countryman's conflict is further problematic by their dual representation of parties in the LawMax litigation through their *In absentia* and defacto representation of Spencer and their representation of Rakowsky. This dual representation itself is an insurmountable undisclosed conflict.

WHEREFORE, Plaintiffs humbly request that this Honorable Court enter an Order barring Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP, from representing any party in this matter.

Respectfully submitted this 26th day of March, 2012, by:

Irene Santacroce, *Pro Se* Plaintiff
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

James B. Spencer, *Pro Se* individually
and on behalf of the Estate of Doris Holt
and Administrator of Southern Holdings.
Suite 183, 7001 Saint Andrews Rd.
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

CERTIFICATE OF SERVICE

I, Irene Santacroce, ***Pro Se***, plaintiff do hereby certify that the foregoing **MOTION TO DISQUALIFY AMANDA K. DUDGEON AND ANDREW A COUNTRYMAN, THE LAW FIRM OF CARLOCK, COPELAND AND STAIR, LLP,** has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Amanda K. Dudgeon, Esquire
Andrews A. Countryman, Esquire
Carlock, Copeland and Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
Burner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
(803) 252-7693
Email: BBruner@BrunerPowell.com

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

This 26th day of March, 2012,

By: _____
Irene Santacroce, *Pro Se* Plaintiff
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011- CP- 40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO DISQUALIFY AMANDA K. DUDGEON, ANDREW COUNTRYMAN AND THE LAW FIRM OF CARLOCK, COPELAND AND STAIR, LLP

Plaintiff Irene Santacroce ("Santacroce") and plaintiff James Spencer, pursuant to the South Carolina Judicial Rule 8.4(a) and in regards to the South Carolina Rules of Professional Conduct sections, 1.18, 1.9, 3.3, 3.4 and 3.7 submit this memorandum of law in support of *Pro Se* Plaintiffs' Motion to Disqualify Amanda K. Dudgeon, Andrew A. Countryman, and the law firm of Carlock, Copeland, and Stair, LLC, from acting as counsel in this matter, respectfully showing as follows:

INTRODUCTION AND BACKGROUND

This motion is filed because Amanda K. Dudgeon and Andrew Countryman ("Dudgeon and Countryman") lawyers with the firm of Carlock, Copeland, and Stair, LLC, are material witnesses to disputed facts that are critical to plaintiffs' case. Their client, John Rakowsky ("Rakowsky"), was a defendant party in a lawsuit[1] involving LawMax (also known as New Amsterdam Capital Partners, LLC). James Spencer ("Spencer"), a plaintiff in this case, was also named a party in the LawMax litigation. Rakowsky had accepted service as Spencer's lawyer in the LawMax litigation *without Spencer's knowledge and/or consent and litigation was conducted without the knowledge, consent and participation of Spencer.* **(See affidavit of Spencer attached hereto.)**

Based upon information and belief, Dudgeon and Countryman participated in covering up the lawsuit filed by LawMax against Rakowsky by wrongfully withholding information which would have revealed Rakowsky's acts of legal malpractice to Spencer. According to the American Arbitration Association, Spencer's representation was handled by Dudgeon and Countryman, the attorney's hired by John Rakowsky. In that regard, all copies of pleadings and correspondence addressed to Spencer in the LawMax litigation were sent to Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP. All communications and documents regarding the litigation were deliberately kept from Spencer during and after the pendency of the LawMax litigation **(See Exhibit "A" and *Exhibit Introduction* attached hereto).**

[1] American Arbitration Association, Case No: 13 194 01700 07, New Amsterdam Capital Partners, LLP (LawMax) v. John Rakowsky, Esq. and James Spencer.

The settlement of this litigation, based on information and belief, was kept, by stipulation, confidential, to keep relevant facts from the plaintiffs in this case. In that regard, the naming of LawMax as a defendant in an Interpleader Complaint, Richland County Court, Case No. 2008-CP-40-6656, filed by Rakowsky, was an abuse of judicial process. The LawMax listing was to cover up from Plaintiffs Santacroce and Spencer the existence of legal malpractice evidence related to the LawMax litigation.

Naming LawMax as a defendant in the Interpleader Complaint was a sham. Rakowsky wanted to keep the *Pro Se* Plaintiffs from knowing about the particulars of the settlement reached with LawMax over claimed acts of malpractice on the part of Rakowsky in the Southern Holdings, Inc., et al., vs. Horry County, et al., Case No: 4:02-cv-01859-RBH.

The LawMax settlement acts as an admission on the part of Rakowsky that attorney malpractice was committed by Rakowsky and other defendants in the action before this Honorable Court. Rakowsky has gone to the extent of refusing to answer interrogatory questions about LawMax in the Interpleader Complaint, by arrogantly and wrongfully relying upon a *non-existent order* by the Honorable Judge Barber, III, against discovery being conducted in the Interpleader case **(See Exhibit "B" and Exhibit Introduction attached hereto).**

PARTICULAR FACTS RELEVANT TO THIS MOTION

The instant motion involves existence of the conflict of interest of Dudgeon and Countryman which precludes their being able to be fact witnesses for the plaintiffs and simultaneously represent defendant Rakowsky. The existence of the conflict involves: (1) the information and documents being deliberately withheld from the plaintiffs

concerning Mr. Rakowsky's admission to malpractice through settlement with LawMax, (2) the wrongful defacto representation of Spencer, without Spencer's knowledge and consent, by Carlock, Copeland, and Stair, LLC, to further the aims of their client, Rakowsky in the LawMax litigation, and (3) the fact that Dudgeon and Countryman have already failed the litmus test of their being able to legally and ethically navigate the conflict. Dudgeon and Countryman failed the litmus test by disregarding the South Carolina Rules of Professional Conduct to further the interests of their client Rakowsky in the case before this Honorable Court.

There is an admission pending that has wrongfully been withheld from Plaintiffs Santacroce and Spencer and Southern Holdings, with respect to the LawMax litigation and settlement. The LawMax litigation settlement would be considered an admission of legal malpractice on the part of Rakowsky, and a full and complete disclosure to all parties involved is mandatory. This disclosure must be made before this case is allowed to move forward in the interest of justice and the perception of judicial integrity and fairness. In that regard, the plaintiffs now raise arguments that necessitate the use of testimony of Dudgeon and Countryman as fact witnesses.

THE BAD-FAITH ACTION

Attorneys Dudgeon and Countryman wrongfully represented both the diverse and divergent interests of Rakowsky and Spencer and reached a settlement with LawMax without the knowledge and consent of Plaintiff Spencer. Through their dual representation and withholding information from Spencer about the settlement, they kept information pertinent to Rakowsky's legal malpractice from the plaintiffs in this case.

John Rakowsky brought a lawsuit against Santacroce and Spencer naming them as defendants along with LawMax (Richland County Court, Case No. 2008-CP-40-6656) in an Interpleader Complaint. Dudgeon and Countryman have referenced this Interpleader Complaint numerous times in their motions to this Honorable Court in their request for expediting the malpractice litigation. Dudgeon and Countryman, having participated in the LawMax litigation and having wrongfully withheld the litigation related correspondence and pleadings from a party in that case, Spencer, are fully aware of the potential legal exposure of the incriminating LawMax litigation to their client, Rakowsky.

Dudgeon and Countryman sought to use this Court to perpetuate the previously described fraud by depriving the plaintiffs of the use of the incriminating legal malpractice and related information regarding the LawMax litigation by expediting this case. Dudgeon and Countryman made such motions for expediting this case, without presenting a cause or legal basis to the Court. Dudgeon and Countryman appear to be concerned that the incriminating truth contained in the proceedings of the LawMax litigation would come out in the Interpleader case and damage their client in this legal malpractice action. It is the reverberating clang of the silence of these attorneys that now drowns out all other sounds.

Dudgeon and Countryman embarked on a course of conduct that was a breach of their duty to disclose conflicts by covering up the conflict from the Court and Spencer. This bad-faith action should not be tolerated by the Court and should be dealt with swiftly and decisively.

SPECIFIC ALLEGATIONS AT ISSUE

Even without formal discovery being conducted in this case, plaintiffs are already able to identify disputed issues that require Dudgeon's and Countryman's testimony. For example, in the Motion to Dismiss, Rakowsky contends, "The complaint fails to state facts consistent with a cause of action." Further Rakowsky contends, "The plaintiffs filed the complaint outside the applicable statute of limitations." These statements are addressable by the plaintiffs through the testimony of Dudgeon and Countryman and possibly others employed by the law firm of Carlock, Copeland and Stair, LLP.

ARGUMENT AND CITATION OF AUTHORITY

Plaintiffs recognize the extraordinary nature of the relief requested here; but their request is not without precedent. Plaintiffs also recognize that the burden of proof to disqualify the defendants' counsel falls on plaintiffs' shoulders.

The South Carolina Rules of Professional Conduct, as incorporated into the Rules of this Court, prohibit lawyers from acting as both advocates and witnesses in the same case. In this case, Dudgeon's and Countryman's testimony and perhaps the testimony of others employed by the law firm, are fact witnesses and, as such, they are prohibited from being advocates as well in the case now heard by this Court. Thus, they must be disqualified.

Dudgeon and Countryman are believed by Plaintiffs to be experienced, competent and ethical attorneys. Therefore, plaintiffs are almost certain that they will testify in a manner inconsistent with the version of the facts provided by Rakowsky regarding the LawMax litigation. It is certain that Rakowsky is aware of the terms of the Settlement Agreement. Dudgeon and Countryman are aware of Rakowsky's role in

negotiating the Settlement Agreement, and Rakowsky interacted with Dudgeon and Countryman in accepting the terms of the Settlement Agreement with LawMax.

Rule 3.7(a) of South Carolina Rules of Professional Conduct provides:

"A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) the disqualification of the lawyer would work a substantial hardship on the client." See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

The three exceptions are not applicable in this case. Regarding exception number (1), the testimony relates to contested issues of legal malpractice and cover-up of such legal malpractice. Regarding exception number (2), the testimony does not relate to the nature and value of legal services in the case. Regarding exception number (3), the disqualification of the lawyers would not work a legitimate and substantial hardship on client, Rakowsky, as Rakowsky sought to have the trial expedited to prejudice the case against the plaintiffs and, therefore, he would still be able to have the case heard within the normal time frame in an equitable manner by retaining replacement counsel without a conflict.

Additionally, Dudgeon and Countryman must be disqualified due to their conflict of representation. The South Carolina Rules of Professional Conduct, as incorporated

into the Rules of this Court, prohibit lawyers from acting as counsel in a second matter when they represented both opposing parties in a prior related matter: Rule 1.9(a) of the South Carolina Rules of Professional Conduct states, *"(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing."* See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

This conflict was *never* revealed to Spencer by Dudgeon and Countryman, and Spencer, in no manner, gave Dudgeon and Countryman informed consent in writing.

Dudgeon's and Countryman's actions confirm they know what impact a release of the information regarding the settlement with LawMax would have on the Rakowsky malpractice litigation. As such, their actions have already been in bad faith by both having knowledge of the cover-up of LawMax litigation and also the fraudulent representation of Spencer *In absentia* in that litigation. The conflict and fraud involved in Dudgeon's and Countryman's dual representation of Spencer and Rakowsky in the LawMax litigation creates a clear conflict in Dudgeon's and Countryman's representation of Rakowsky in this related case against Spencer before this Court.

Dudgeon and Countryman had a duty to reveal the LawMax matters to the plaintiffs and this Court. Rule 3.3(b) of the South Carolina Professional Code of Conduct states, *"A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent*

conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

Dudgeon and Countryman must also be disqualified for their involvement in the concealment of the LawMax litigation under Rule 3.4(a) of the South Carolina Code of Professional Conduct which provides, "A lawyer shall not *(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act."* See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

This failure of candor to the Court and the plaintiffs due to conflict of interest cannot be ignored as Dudgeon and Countryman have already met the criteria to be disqualified from representation of any party in this case. In that regard, the South Carolina Supreme Court determined the criteria for disqualification of counsel for conflict:

> "Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses."
>
> See South Carolina Supreme Court, "*In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199, 212-213 (S.C. June 20, 2005.)"*

Lastly, Dudgeon and Countryman's law firm must also be disqualified. The South Carolina Rules of Professional Conduct Section 1.18(c) provides that, *"(c) A lawyer*

subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

Paragraph (d) "When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if: (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee there from; and (ii) written notice is promptly given to the prospective client." See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

The exceptions listed in Paragraph (d) do not apply in this case as Spencer has not been offered or given informed consent and the cover-up of the LawMax litigation from Spencer precludes application of the reasonable measures to avoid "disqualifying information" exception.

WHEREFORE, plaintiffs humbly request that this Court enter an Order barring Amanda K. Dudgeon, Andrew Countryman and the law firm of Carlock, Copeland, and Stair, LLC from representing any party in this matter. Doing so will protect the integrity of the Court, comply with the South Carolina Rules of Professional Conduct, and prevent prejudice to both their clients and the plaintiffs.

Respectfully submitted this 26th day of March, 2012, by:

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

James B. Spencer, individually
and on behalf of the
Estate of Doris Holt and as
Administrator of Southern Holdings.
Suite 183, 7001 Saint Andrews Rd.
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

CERTIFICATE OF SERVICE

I, Irene Santacroce, ***Pro Se***, plaintiff do hereby certify that the foregoing **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO DISQUALIFY AMANDA K. DUDGEON, ANDREW A COUNTRYMAN AND THE LAW FIRM OF CARLOCK, COPELAND AND STAIR, LLP,** has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Amanda K. Dudgeon, Esquire
Andrews A. Countryman, Esquire
Carlock, Copeland and Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
Burner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
(803) 252-7693
Email: BBruner@BrunerPowell.com

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

This 26th day of March, 2012,

By: _____
Irene Santacroce, *Pro Se* Plaintiff
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011- CP- 40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

AFFIDAVIT OF JAMES SPENCER

I, James Spencer, hereby declare under the penalty of perjury the following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. That I learned that Amanda K. Dudgeon and Andrew A. Countryman ("Dudgeon and Countryman") and the law firm of Carlock Copeland and Stair, LLP, made an appearance on behalf of defendant John Rakowsky (Rakowsky) on or about November 2, 2011 in the above captioned action.
3. That in February of 2012, I learned for the first time about litigation brought against me and John Rakowsky in 2007 by LawMax.

4. That in February of 2012, I learned for the first time that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, represented John Rakowsky and myself as defendants in a lawsuit brought by LawMax in 2007.

5. That in February of 2012, I learned that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, and John Rakowsky had deliberately kept knowledge of this litigation from me to conceal information of acts of legal malpractice by the defendants in the above captioned proceeding.

6. In February of 2012, I learned from representatives of the American Arbitration Association ("AAA"), about Case No: 13 194 01700 07, New Amsterdam Capital Partners, LLP (LawMax) v. John Rakowsky, Esq. and James Spencer.

7. That before February of 2012, I had no idea that LawMax had brought litigation against me and Rakowsky for acts that were tantamount to legal malpractice in Southern Holdings, Inc., et al., vs. Horry County, et al., Case No: 4:02-cv-01859-RBH.

8. In February 2012, I learned that Rakowsky legally fought against jurisdiction for the litigation to be held in the state of New York.

9. In February 2012, I learned that Rakowsky lost the fight over jurisdiction in the LawMax litigation.

10. In February 2012, I learned from AAA that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, and Rakowsky had all

correspondence that I was supposed to receive as a party to the lawsuit diverted to Dudgeon and the law firm of Carlock Copeland and Stair, LLP, as they represented my interests in the LawMax litigation.

11. In February 2012, I learned from AAA that the litigation brought by LawMax and all claims LawMax had against Rakowsky and me were settled prior to the Interpleader complaint filed by Rakowsky in 2008.

12. In February 2012, I learned from AAA that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, and Rakowsky had all files related to the LawMax litigation in question destroyed.

13. LawMax, Dudgeon and Countryman, and the law firm of Carlock Copeland and Stair, LLP, Rakowsky and the AAA never sent me notice of any of the aforementioned activities.

14. In February 2012, based on AAA confirming I was a party to LawMax litigation, therefore, under my rights as a party to the litigation, I both requested and received copies of the few documents still in the possession of AAA that had been overlooked and not destroyed.

Affiant Sayeth Further Naught.

I DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

03/19/2012
Date

James Spencer

Exhibit Introduction:

- **Exhibit "A"** clearly establishes James Spencer was a party to the LawMax litigation and, therefore, he has a right to the documentation. The fact that James Spencer did not know he was a party in the LawMax litigation, because it was wrongfully kept from him by Plaintiff Rakowsky and Rakowsky's counsel Amanda K. Dudgeon and her law firm of Carlock, Copeland, Semier & Stair, LLP, does not mitigate his right to all the documentation regarding the LawMax litigation.

- **Exhibit "B"** page one (1) documents the lengths Rakowsky and his counsel went to wrongfully keep the LawMax litigation covered up from plaintiffs Santacroce and Spencer. Rakowsky arrogantly and wrongfully claimed that the Honorable Judge Barber, III, issued an Order purportedly stating that there was to be no discovery in this case. Pages two and three of **Exhibit "B"** clearly document that was an untruthful claim and that the Honorable Judge Barber, III, did not issue such in the Order referenced by Rakowsky and his counsels Desa Ballard and Stephanie Weissenstein.

262

267

American Arbitration Association
Dispute Resolution Services Worldwide

ORIGINAL

Northeast Case Management Center
Catherine Shanks
Vice President
Christopher Fracassa, Yvonne L. Baglini
Assistant Vice Presidents

950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: http://www.adr.org/

VIA ELECTRONIC MAIL

June 21, 2008

EXHIBIT "A"

Daniel Zolberg
LawMax
459 Columbia Avenue
New York, NY 10024-5129

Amanda K. Dudgeon
Carlock, Copeland, Semier & Stair, LLP
134 Meeting Street
Suite 500
Charleston, SC 29401

Re: 13 194 01700 07
New Amsterdam Capital Partners, LLC
and
James Spencer
and
John Rakowsky, Esq.

Dear Parties:

The Association has been notified that New Amsterdam Capital Partners, LLC has reached a settlement agreement with Carlock, Copeland, Semier & Stair, LLP, for James Spencer and John Rakowsky, Esq. As of this date there is no outstanding balance. Therefore, the entire case file will be destroyed per request.

Cordially yours,

James F. Medeiros
Case Manager
401-431-4724
MederiosJ@adr.org

Supervisor Information: Karen Fontaine, 401 431 4798, fontaine@adr.org

cc: Walter G. Gans, Esq.

CERTIFIED TO BE A TRUE AND
EXACT COPY OF THE ORIGINAL
BY Catherine J. Pabbon

Spencer which requested substantially similar information and pursuant to the oral ruling of Judge Barber that such discovery is not appropriate in this action.

5. Within thirty-three days after service hereof, you are requested to produce in writing under oath the answer to defendant at Suite 183, 7001 Saint Andrews Road, Columbia, SC 29212, to the following question(s): Has the Plaintiff ever been sued by Resolution Settlement Corporation ("RSC"), Lit Funding and/or LawMax and /or an agent for any of the above companies regarding the funding of the case captioned Southern Holdings, In. (sic), et al. vs. Horry County, et al. **Case No: 02-CV-01859-RBH**? Which entity sued Plaintiff? What are the dates of litigation? What was the resolution and the date of resolution of the proceeding? What documents does the Plaintiff have access to regarding such litigation and what is the identity of anyone the Plaintiff knows that has documents regarding any such litigation? Will Plaintiff provide all such documents to Defendant and if not on what legal basis would you not provide such documents?

ANSWER: Plaintiff objects to this interrogatory on the basis that the information sought is irrelevant and not likely to lead to admissible evidence. Plaintiff further objects to this interrogatory on the basis that Judge Seals quashed the subpoena issued by Defendant Spencer which requested substantially similar information and pursuant to the oral ruling of Judge Barber that such discovery is not appropriate in this action.

6. Within thirty-three days after service hereof, you are requested to produce in writing under oath the answer to defendant at Suite 183, 7001 Saint Andrews Road, Columbia, SC 29212, to the following question(s): did Plaintiff purchase an electronic copier combination fax, etc., with the money advanced by Defendant or on behalf of the Defendant or Defendants in the case captioned Southern Holdings, In. (sic), et al. vs. Horry County, et al. **Case No: 02-CV-01859-RBH**? If such a purchase was made, what was the amount of the money so expended on the purchase?

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-40-6656

RICHLAND COUNTY FILED
2011 OCT 18 PM 4:19
JEANETTE W. McBRIDE C.C.P. & G.S.

John R. Rakowsky,

Plaintiff,

vs.

Adrian L Falgione, James Spencer, Doris Holt, Rodney Keith Lail, Irene Santacroce, Marguerite Stephens, Ricky Stephens, Michael Hartness, Horry County, S.C., Eugene G. Chewing and Glenn W. Harrison,

Defendants.

ORDER DENYING MOTION TO COMPEL, SUBSTITUTING PARTIES, RELEASE OF LITIGATION FUNDS, AND AMENDING COMPLAINT ACCORDINGLY

This matter came before me on September 15, 2011, for hearing on Defendant James Spencer's "*EXPEDITED MOTION TO COMPEL DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST TO COMPEL PLAINTIFF TO ANSWER DEFENDANTS FIRST ROUND OF INTEROGATORIES AND REQUEST FOR A JURY TRIAL ON ALL MATTERS RELATED TO 2008-CP-40-6656*". Present were the Plaintiff and his Counsel, Stephanie Weissenstein, Defendant, Adrian Falgione, *pro se*, and Defendants James Spencer and Rodney Lail, who are *pro se*.

This case was before the Honorable William H. Seals, Jr. for a hearing on July 11, 2011, for a hearing on several motions, including Plaintiff's motion to quash a subpoena issued against him at the behest of Defendant James Spencer. The subpoena which was the subject of that hearing and the requests for production which Mr. Spencer seeks to compel includes several of the same documents.

SCANNED

There is a long-standing rule in this State that one judge of the same court cannot overrule another. *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E.2d 689 (1943). Therefore, IT IS HEREBY ORDERED THAT Mr. Spencer's motion to compel the production of documents included in the subpoena is **Denied**[1].

The Court understands that Defendant Doris Holt is now deceased. Plaintiff Rakowsky, Defendant Falgione, Defendant Spencer and Defendant Lail consent to Doris Holt's estate being substituted as the real party at interest. The substitution of the estate is **Granted.**

IT IS SO ORDERED.

James R. Barber, III
Judge for the 5th Judicial Circuit

October 18, 2011
Richland County

[1] By the same written motion, Mr. Spencer also requested a jury trial. That issue was not addressed at the hearing.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011- CP- 40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

ORDER

WHEREAS, Amanda K. Dudgeon and Andrew A. Countryman ("Dudgeon and Countryman") and the law firm of Carlock, Copeland and Stair, LLP, have a conflict of interest in this matter in that they represented Plaintiff James Spencer and Defendant John Rakowsky in a related matter and, heretofore, have not disclosed this conflict;

WHEREAS, Dudgeon and Countryman are to be called as material witnesses by the Plaintiffs in the matter caption above creating a second conflict of interest;

THEREFORE, IT IS HEREBY ORDERED that Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP, are barred from representing any party in this matter.

IT IS SO ORDERED.

March _____, 2012
Richland County

_____
Honorable James R. Barber, III
Judge for the 5th Judicial Circuit

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE FIFTH JUDICAL CIRCUIT
)
James Spencer, individually and on behalf of the Estate of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce;) CASE NO. 2012-CP-32-3428

FILED COPY

2013 MAY 16 P 3:02

Plaintiff)
v.)
John R. Rakowsky; Adrian L. Falgione; and the Law Offices of Adrian Falgione, LLC) MOTION INFORMATION FORM
) AND COVER SHEET
Defendant)

Plaintiff's Attorney:	Defendant's Attorney:
James B. Spenser *pro se* Address: 7001 Saint Andrews Road, Suite 183 Columbia, SC 29212 e-mail:	Benjamin C. Bruner No. 77544 Address: P.O. Box 61110 Columbia, SC 29260 phone: 803-252-7693 fax: 803-753-0060 e-mail: Bbruner@brunerpowell.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: **Motion for Admissions Pursuant to Rule 36, SCRCP**
Estimated Time Needed: 10 mins Court Reporter Needed: YES / NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Benjamin B

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — May 15, 2013 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (1/2003)

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)

FILED
2013 MAY 16 P 3:02

James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.;

Plaintiff,

v.

John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC;

Defendants.

C/A No. 2012-CP-32-3428

MOTION FOR ADMISSIONS PURSUANT TO RULE 36, SCRCP

TO: THE PLAINTIFF, ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that Defendants Adrian L. Falgione and The Law Offices of Adrian L. Falgione, LLC ("Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Eleventh Judicial Circuit, at the Lexington County Judicial Center, 205 East Main Street, Lexington, South Carolina, on the 10th day after service hereof, or as otherwise scheduled by the Court, for an Order pursuant to Rule 36, SCRCP, that the matters set forth in the Defendants' First Requests for Admissions (**Exhibit A**), which were properly served on the Plaintiff on February 24, 2012, be deemed admitted for the Plaintiff's failure to respond as required by the Rule. This Motion may be further supported by the record in the case, by affidavits, and by such cases as have been made and provided. Pursuant to Rule 11, SCRCP, the undersigned has no duty to consult with the Plaintiff before filing this Motion because he is *pro se* at this time.

Warren C. Powell, Jr.
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC

May 15, 2013

EXHIBIT A

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 803-753-0069
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

FILED
2013 MAY 16 P 3:02
BETTY J. CARR
CLERK OF COURT

February 24, 2012

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2011-CP-40-5384
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Mr. Spencer and Ms. Santacroce:

Enclosed please find Defendant Falgione's First Set of Interrogatories, Request for Production and Requests to Admit to The Plaintiffs, hereby served upon you.

Sincerely,

Benjamin C. Bruner

BCB:nys

/Enclosures

cc: Andrew W. Countryman, Esquire
David W. Overstreet, Esquire

COPY

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FILED FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	
	2013 MAY 16 P 3:02
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce;	C/A No. 2011-CP-40-5384
Plaintiffs,	**DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST REQUESTS TO ADMIT TO THE PLAINTIFFS**
v.	
John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC;	
Defendants.	

TO: THE PLAINTIFFS, ABOVE-NAMED

Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC (collectively, "the Falgione Defendants"), hereby request, pursuant to Rule 36, SCRCP, that the above-named Plaintiffs respond to the following requests to admit within thirty (30) days from the date of service hereof:

REQUEST NO. 1: Admit the South Carolina law required you to file an expert affidavit specifying at least one negligent act of the Defendants to this action.

REQUEST NO. 2: Admit you failed to file an expert affidavit supporting your claims against the Defendants within forty-five (45) days of filing the Complaint.

REQUEST NO. 3: Admit the Complaint is subject to dismissal because you failed to file an expert affidavit as required by law.

REQUEST NO. 4: Admit you witnessed your federal lawsuit being settled in court on May 9, 2007.

REQUEST NO. 5: Admit you became aware of the claims you allege in this action before July 31, 2007.

FILED
2013 MAY 16 P 3:02

REQUEST NO. 6: Admit you filed the Complaint more than three years after you discovered the claims you allege against the Defendants in this action.

REQUEST NO. 7: Admit you failed to serve the Defendants with the Summons and Complaint within 120 days of the date of filing this lawsuit.

REQUEST NO. 8: Admit you failed to properly serve the Summons and Complaint on the Falgione Defendants.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr.
Benjamin C. Bruner
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260
(P) 803-252-7693
Attorneys for Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC

February 24, 2012

Columbia, South Carolina

COPY

CERTIFICATE OF SERVICE

FILED

The undersigned hereby certifies that on February 24, 2012, the documents described below were served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

2012 MAY 16 P 3:02

BETH A. GARRIGO
CLERK OF COURT

Documents served: **DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST SET OF INTERROGATORIES TO THE PLAINTIFFS**

DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST REQUESTS FOR PRODUCTION TO THE PLAINTIFFS

DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST REQUESTS TO ADMIT TO THE PLAINTIFFS

Parties served:

James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se

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

Nancy Y. Stagg

Nancy Y. Stagg

279

EXHIBIT B

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ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110
TELEPHONE 803-252-7693
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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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

FILED
2013 JAN 16 P 3:02

January 11, 2013

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Mr. Spencer:

I am in receipt of your January 5th letter. I disagree that the Court issued a "standing order" at the May 7th status conference essentially staying this case, and my recollection of what transpired at the August 1st hearing differs from yours. The Court has already rejected the arguments you make related to our motion to change venue and has recognized my clients' substantial right to be tried in their resident county. This is a right well-established under South Carolina case law. With respect to the funds you ask my client to pay over, allow me to emphasize that neither my clients nor this firm has ever held a dime of that money. Thus, my clients and I are unable to pay—or to agree to pay—any portion of those funds.

I believe that we all left the May 7th status conference expecting the motions to dismiss would be heard in June or July. Regrettably, those motions (and your motion to disqualify) still have not been heard. At this time—as was the case in May of last year—taking depositions will be unnecessary and a waste of resources if our motion to dismiss is granted. We have not even filed a formal answer yet, only a motion to dismiss. If the motion is denied, then we can discuss depositions. Based on your December 30th letter, it is my understanding that you have withdrawn the subpoena you served on December 28th. If I am incorrect and you insist on pressing forward with depositions, please advise. Please also allow me to point out that I have waited nearly one year for you and Ms. Santacroce to answer the discovery requests I served on February 24, 2012 in this case. I look forward to hearing from you.

Sincerely,

Benjamin C. Bruner

BCB/gh
cc: Amanda K. Dudgeon, Esquire
Irene Santacroce, *pro se*

EXHIBIT C

BRUNER, POWELL, WALL & MULLINS, LLC
ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
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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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

FILED
2013 JAN 29 P 3:02

January 29, 2013

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Ms. Santacroce:

I returned to the office this morning and received your e-mail from yesterday. Based on the status of this case and our argument that personal jurisdiction has not yet been established, I have moved the Court for an order protecting my client from being subjected to a deposition until our motion to dismiss is heard. This is the same position I took at the May 7, 2012 status conference when I asked Judge Barber for a hearing on the motion to dismiss so we can have time to pursue discovery afterwards if the motion is denied. Respectfully, I disagree with your interpretation of what occurred at that status conference. I find it telling that Judge Barber never issued a written order stating the rulings you say he made at that conference. Instead, he sent all of us a letter on July 31st explaining that he had signed the orders he intended to sign and they are to stand.

As for exchanging written discovery, at this time my file contains no response from either you or Mr. Spencer to the interrogatories, requests for production and requests for admissions I served on you both in this case. I served those requests on February 24, 2012, and to date I have received no written response, no objection, nor any documents from either of you to those requests. I am happy to discuss some agreeable discovery plan, including the mutual exchange of discovery responses, so we can submit it to the Court as a scheduling order if you are willing to entertain that option. Absent that cooperation, however, my only choice at this time is to request a status conference.

Sincerely,

Benjamin C. Bruner

BCB/gh
cc: Amanda K. Dudgeon, Esquire
James Spencer, *pro se*

EXHIBIT D

BRUNER, POWELL, WALL & MULLINS, LLC
ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
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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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

FILED
2013 MAY 16 P 3:02
BETH H. SANFORD
CLERK OF COURT

February 4, 2013

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Mr. Spencer:

I am in receipt of an e-mail from you dated February 2, 2013, attached to which appears to be a response you filed with the Clerk of Court in this matter in response to the Motion I filed on January 22, 2013. I have not yet received a copy by U.S. Mail pursuant to Rule 5, SCRCP. If you have not yet, please ensure that you serve copies of your filing in accordance with the South Carolina Rules of Civil Procedure.

In your response, you argue in Paragraph 6 that you fully responded to those requests twice, the second time on July 10, 2012. I would like to reiterate that after searching my file again, I have not found <u>any</u> responses from you or Ms. Santacroce to the first set of discovery requests I served on you both. Please provide me the responses to which you refer.

You also claim Judge Barber ordered my clients to disburse the "uncontested litigation funds" on or before June 1, 2012. Not only does not such order exist, those funds are the subject of a separate lawsuit pending in Richland County, as you well know. Furthermore, neither Mr. Falgione nor his law firm holds those funds. They cannot turn over what they do not have, nor would it be proper for the Court in this case to order those funds paid when they are clearly the subject of another lawsuit.

Finally, I recently learned that this case will be assigned to a single judge for pre-trial and trial. This means we will have the same judge for the remainder of the case. Given the history of this case, I intend to reiterate to the new judge my request for a status conference to discuss a discovery plan moving forward. I believe this is necessary not only based on your arguments,

FILED
2013 MAY 16 P 3:02

which are false and mischaracterize events that have transpired, but also based on the continual delays this case has suffered.

If you are willing, I am still open to discussing a reasonable scheduling order that we can submit to the Court. Please advise if this is something you would consider, as it would certainly save us all time. In the meantime, please see that all papers, affidavits, motions, filings and other documents in this case have been served in accordance with Rule 5, SCRCP.

Sincerely,

Benjamin C. Bruner

BCB/gh

cc: Amanda K. Dudgeon, Esquire
Irene Santacroce, *pro se*

COPY

CERTIFICATE OF SERVICE

FILED

The undersigned hereby certifies that on May 15, 2013, the document(s) described below was(were) served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

2013 MAY 16 P 3:02

BETTIA CARRIGG
CLERK OF COURT

Documents served: **MOTION FOR ORDER PURSUANT TO RULE 36, SCRCP**

Parties served:

James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

Amanda K. Dudgeon
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John R. Rakowsky

Nancy G. Stagg

Nancy G. Stagg

LAW OFFICES

CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

AMANDA K. DUDGEON
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E-MAIL ADDRESS
adudgeon@carlockcopeland.com
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CHARLESTON, SC 29401
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ATLANTA OFFICE
191 Peachtree Street, N.E.
Suite 3600
Atlanta, Georgia 30303
(404) 522-8220
REPLY TO SC OFFICE

May 31, 2012

Ms. Jeanette W. McBride, Clerk
Circuit Court of Richland County
P.O. Box 2766
Columbia, SC 29202

Re: Spencer, *et al.* v. John R. Rakowsky, *et al.*
Case No.: 2011-CP-40-5384
File No.: 2283-35025

Dear Ms. McBride:

Enclosed please find an original and one copy of the Defendant John R. Rakowsky's Notice of Motion and Motion to Change Venue along with a motion slip and appropriate filing fee. Please return a clocked copy of the Motion in the stamped envelope enclosed for your convenience. If you have any questions, please do not hesitate to contact me.

Sincerely,

AMANDA K. DUDGEON

AKD/bjg
Enclosures
cc: Benjamin C. Bruner, Esq.
James Spencer
Irene Santacroce

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,

Plaintiffs,

vs.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC,

× Defendant.

IN THE COURT OF COMMON PLEAS
THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-40-5384

MOTION INFORMATION & COVER SHEET

(check box above indicating submitting party)

Pro Se Plaintiff James Spencer 7001 St. Andrews Road, Suite 183 Columbia, SC 29212 *Pro Se* Plaintiff Irene Santacroce 205 Deer Trace Circle Myrtle Beach, SC 29588 Counsel for Adrian L. Falgione and the Law Offices of Adrian L. Falgione, LLC Benjamin C. Bruner, Esq. Bruner, Powell, Wall & Mullins, LLC PO Box 61110 Columbia, SC 29260-1110	Name, S.C. Bar no. and address of Defendant's attorney David W. Overstreet, Esq. (SC Bar No. 16965) Amanda K. Dudgeon, Esq. (SC Bar No. 72516) Carlock Copeland & Stair, LLP 40 Calhoun Street, Suite 400 Charleston, SC 29401 T: 843-727-0307 F: 843-727-2995 email: doverstreet@carlockcopeland.com adudgeon@carlockcopeland.com

× MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Change Venue
Estimated Time Needed: 30 minutes Court Reporter Needed: Yes

SECTION II: Motion Type

× Written motion attached
☐ Form Motion

I hereby move for relief or action by the court as set forth in the attached proposed order.

Amanda K. Dudgeon 5/31/2012
Signature of Attorney for Defendant Date submitted

SECTION III: Motion Fee

× PAID - AMOUNT: $25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE
CODE: _____ Date: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)
☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **DEFENDANT RAKOWSKY'S NOTICE OF MOTION AND MOTION TO CHANGE VENUE**

TO: ALL PARTIES AND THEIR COUNSEL

PLEASE TAKE NOTICE that Defendant John Rakowsky, by and through his undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit at 1701 Main Street in Columbia, South Carolina, on the tenth (10th) day after service hereof, or at such time as the Court may schedule, for an Order changing venue of this action to Lexington County, South Carolina pursuant to S.C. Code §§ 15-7-30 and 15-7-100 on the following grounds:

1. Both the individual Defendants have been residents of Lexington County at all times relevant to this action; and

2. The most substantial part of the alleged acts or omissions giving rise to the Plaintiffs' claims did not occur in Richland County.

Accordingly, the Defendants move for an Order changing venue of this action to Lexington County because Richland County is not the proper venue pursuant to statute. This Motion may be further supported by the record in the case, by affidavit, and by any memoranda and applicable law submitted prior to the hearing of this matter.

[SIGNATURE TO FOLLOW]

This 31st day of May, 2012.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: _____
DAVID W. OVERSTREET
State Bar No.: 16965

AMANDA K. DUDGEON
State Bar No.: 72516

Attorneys for Defendant John R. Rakowsky

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
(843) 727-0307

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing Motion to Change Venue upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Benjamin C. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260-1110
Counsel for Adrian L. Falgione and the Law Offices of Adrian L. Falgione, LLC

James Spencer
7001 St. Andrews Road, Suite 183
Columbia, SC 29212
***Pro Se* Plaintiff**

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
***Pro Se* Plaintiff**

This 31st day of May, 2012.

Assistant to Amanda K. Dudgeon

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) 11th JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-32-3428
James Spencer et al,)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
John Rakowsky, et al.)
Defendant.)

FILED
2013 SEP -9 A 9:44
COPY

Plaintiff's Attorney:	Defendant's Attorney:
James Spencer, Bar No. _____ Address: Box 183, 7001 Saint Andrews Road, Columbia, SC 29212 Phone: 843-414-0889Fax _____ E-mail: _____Other: _____	B. J. Bruner, Bar No. _____ Address: Columbia, SC Phone: 803-252-7693 Fax_____ E-mail: _____Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

James B. Spencer 09/09/13
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ _____
☒ EXEMPT:
(check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☒ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS
Case No: 2012-CP-32-3428

FILED
2013 SEP
COPY

James B. Spencer, et al.,

Plaintiff,

v.

John R. Rakowsky, Adrian Falgione and the Law Offices of Adrian Falgione, LLC

Defendants.

RULE 59(e) MOTION FOR RECONSIDERATION AND TO STRIKE COURT'S RULINGS IN REGARD TO THE DISMISSAL OF THE LEGAL MALPRACTICE ACTION CAPTIONED ABOVE

Plaintiff James B. Spencer, respectfully requests this Honorable Court, under Rule 59(e) of the South Carolina Rules of Civil Procedures (SCRCP) to reconsider and reverse this Court's decision made on August 26, 2013, by reinstating the Legal Malpractice Lawsuit against the defendants captioned above.

BACKGROUND AND DOCUMENTS SUBMITTED AS REQUESTED

In regard to plaintiffs submitting documents after the hearing concluded, during the hearing Your Honor should recall plaintiffs objected to matters which had already been decided by the court in prior proceedings being re-litigated by defendants. Your Honor did not have the case file from Lexington and had not reviewed the case file from Lexington as the case was being heard *nunc pro tunc* as the court had not received proper

authority to hear the case. Plaintiffs were not prepared to litigate matters already decided by the Honorable Judge Barber in earlier proceedings. Your Honor asked for plaintiffs to submit documents to the Court after the hearing in that regard and they would be taken into consideration by Your Honor before making decisions. Accordingly, plaintiffs submitted, "PLAINTIFFS BRIEF ON CORRECTIONS", "EXHIBITS TO PLAINTIFFS' BRIEF ON CORRECTIONS", AND TWO SUPPLEMENTS TO EXHIBITS TO PLAINTIFFS BRIEF ON CORRECTIONS IDENTIFIED AS "A" AND "H".

Your Honor characterized the supplemental filings at the Lexington Court House of which stamped courtesy filings were sent by the plaintiffs via email (when plaintiffs were informed by the Lexington Clerk of Court Your Honor had never received the case files on this matter prior to or after the August 26, 2013 hearing), as "email on several occasions after the hearing was concluded and interposed additional arguments which do not relate to the merits of the narrow issue before the court."

Plaintiffs respectfully ask Your Honor to kindly reconsider these filings as they directly address: 1. Statute of limitations, 2. Equitable Estoppel, and 3. the need for an expert affidavit, all of which were ruled on by Your Honor. The documents are with the other case files at the Lexington County Clerk of Court's Office in addition courtesy copies were previously emailed to your office and are attached to this and accompanying emails.

Additionally, Your Honor failed to make the procedural changes to the plaintiffs' complaint to bring it into compliance with South Carolina law. Southern Holdings, Inc., was not represented by counsel and was not a legal entity in this matter, therefore, the plaintiffs moved to amend the complaint and remove Southern Holdings, Inc. Plaintiffs

contend this motion should have been automatically accepted as the motion was timely filed and it brings the complaint into conformity with the SC law. A corporation must be represented by a licensed attorney in circuit and appellate courts in South Carolina but not in magistrate's court. *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 515 S.E.2d 257 (S.C. 1999).

At the June 5, 2013 hearing, Your Honor announced you were going to review the other outstanding motions and hold a follow up hearing, if necessary. Your Honor specifically mentioned the two procedural motions, attached hereto to this email, filed by the plaintiffs regarding amending the complaint to remove Southern Holdings, Inc. as a plaintiff and remove the Estate of Doris Holt as parties. Under South Carolina law the administrator of an estate cannot represent the estate in legal proceedings in Circuit Court if there are multiple claims of interest on the estate, which there were in this case. Therefore, the Estate of Doris Holt, which gained multiple claimants during the pendency of the proceeding also needed to be removed as a party to the complaint to be in compliance with South Carolina Law. Plaintiffs contend this motion should have been automatically accepted as the motion was timely filed and it brings the complaint into conformity with the SC law. See plaintiffs' two motions to amend complaint.

ADDITIONAL CONSIDERATIONS

Plaintiffs received notice for the first time that Stephanie Weissenstein was an attorney of record on this case when it received the Order on August 31, 2013. Ms. Weissenstein's presence as an attorney of record ties the legal team of this case to the withholding of the uncontested litigation funds which prevented the plaintiffs from obtaining counsel in this and other matters before South Carolina courts. This further

enhances the argument of Equitable Estoppel to stop the misuse of the law to tie up funds from indigent litigants and further warrants the use of Equitable Estoppel to disallow the use by the defendants of the Statute of Limitations Doctrine as a bar in this matter.

Plaintiffs Rule 59(e) motion is filed within ten days upon receipt of the order in accordance with applicable law.

REMEDIES

Procedurally both Southern Holdings, Inc. and the Estate of Doris Holt should be withdrawn as parties to this action forthwith. The malpractice action should be reinstated and a scheduling Order should be reissued in accordance with the timing as specified in Judge Barber's verbal scheduling Order issued on May 7, 2012.

Submitted by:
On September 9, 2013

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

295

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICAL CIRCUIT
)
James Spencer, individually and on behalf of the Estate of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce;) CASE NO. 2011-CP-40-5384

COPY

Plaintiff)
v.)
John R. Rakowsky; Adrian L. Falgione; and the Law Offices of Adrian Falgione, LLC) MOTION INFORMATION FORM

) AND COVER SHEET
Defendant)

Plaintiff's Attorney:	Defendant's Attorney:
James B. Spenser *pro se* Address: 7001 Saint Andrews Road, Suite 183 Columbia, SC 29212 e-mail:	Benjamin C. Bruner No. 77544 Address: P.O. Box 61110 Columbia, SC 29260 phone: 803-252-7693 fax: 803-753-0066 e-mail: Bbruner@brunerpowell.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: **Amended Motion to Dismiss**
Estimated Time Needed: 15 min. Court Reporter Needed: YES / NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

William C. Powell
Signature of Attorney for ☐Plaintiff / ☒Defendant

December 30, 2011
Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: Date Filed:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (1/2003)

FILED
2012 JAN -3 AM 11:33
RICHLAND COUNTY
BEATTIE W. McBRIDE
C.P. & G.S.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce;)	C/A No. 2011-CP-40-5384
Plaintiffs,)	
v.)	**AMENDED MOTION TO DISMISS**
John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC;)	
Defendants.)	

JEANETTE W. McBRIDE
C.C.P. & G.S.
2012 JAN -3 AM 11:33
RICHLAND COUNTY
FILED

TO: THE PLAINTIFFS, ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that Defendants Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC (collectively, "Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Fifth Judicial Circuit, at the Richland County Judicial Center, 1701 Main Street in Columbia, South Carolina on the 10th day after service hereof, or soon thereafter as counsel can be heard, for an Order dismissing the allegations by James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc, and Irene Santacroce (collectively, "Plaintiffs") against the Defendants in this action.

This Motion is made upon the following grounds:

(1) The Plaintiffs have failed to file an expert affidavit pursuant to S.C. Code § 15-36-100;

(2) The Plaintiffs' claims are barred by the three-year statute of limitations established in S.C. Code § 15-3-530;

(3) The Plaintiffs failed to serve the Summons & Complaint in accordance with the South Carolina Rules of Civil Procedure, as set forth in the Affidavits attached hereto as **Exhibits A** and **Exhibit B**; and

(4) The Complaint fails to state facts sufficient to constitute a cause of action against the Defendants.

Accordingly, the Defendants move for an Order dismissing the Plaintiffs' claims against the Defendants pursuant to Rules 3 and 12 of the South Carolina Rules of Civil Procedure, as well as S.C. Code §§ 15-3-530 and 15-36-100. This Motion may be further supported by the record in the case, by affidavits, and by such cases as have been made and provided. Pursuant to Rule 11, SCRCP, the undersigned has no duty to consult with the Plaintiffs before filing this Motion.

Warren C. Powell, Jr.
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC

December 30, 2011

Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	
James Spencer, individually and on behalf of) the Estate of Doris Holt and on behalf of) Southern Holdings, Inc; and Irene Santacroce;)	C/A No. 2011-CP-40-5384
Plaintiffs,)	**AFFIDAVIT OF ADRIAN L. FALGIONE**
v.)	
John R. Rakowsky; Adrian L. Falgione; and) The Law Offices of Adrian Falgione, LLC;)	
Defendants.)	

JEANETTE W. McBRIDE C.C.P. & G.S.
2012 JAN -3 AM 11:33
RICHLAND COUNTY FILED

PERSONALLY appeared before me, the undersigned, who being duly sworn, says:

1. I am over the age of eighteen years old.

2. I am licensed to practice law in the State of South Carolina, and my office is currently located in Lexington, South Carolina.

3. On the afternoon of December 15, 2011, I received a copy of the Summons and Complaint filed in this action from Julie Owens, a temporary employee at my firm. Ms. Owens told me a man had just come by the office and dropped off some papers for me.

4. Upon information and belief, the Complaint in this action was filed on August 15, 2011.

5. Ms. Owens is neither an officer nor a manager at my office, and I never authorized her to accept any service of process for me or my law firm. I am listed as the registered agent for The Law Offices of Adrian Falgione, LLC.

6. To the best of my knowledge, December 15, 2011 was the first time the Plaintiff attempted to serve me or my firm with the Summons and Complaint.

7. Neither I nor my firm has taken any action to impede the Plaintiff's ability to serve the Complaint.

FURTHER AFFIANT SAYETH NOT.

Adrian L. Falgione

Sworn and subscribed to before me
this 22nd day of December, 2011.

Heather R. Hodge (L.S.)
Notary Public for South Carolina

My Commission expires on 11/15/2016

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

AFFIDAVIT OF JULIE OWENS

Personally appeared before me the undersigned who, being duly sworn and says:

I, Julie Owens, am currently a temporary employee working as a Legal Assistant for attorney Adrian L. Falgione through Carolina Legal Systems. I was at the front desk of Mr. Falgione's office on Thursday, December 15, 2011, at approximately 3:45 p.m. when a gentleman came to the front window and asked for attorney Adrian L. Falgione. I told him Mr. Falgione was on the phone at that time. He stated he just needed to leave some documents for Mr. Falgione and asked me to make a copy. He had short brown hair, medium build, less than six feet tall. I made a copy and gave them to him. He asked me my first name which I told him and he left. I then gave the documents to attorney Adrian L. Falgione. It was a Summons and Complaint.

RICHLAND COUNTY
FILED
2012 JAN -3 AM 8:33
JEANETTE W. WALRIDGE
C.C.P. & G.S.

Julie Owens

Sworn to before me this 15th day
of December, 2011
Notary Public for South Carolina
My commission expires: 11/15/2016

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 30, 2011, the document(s) described below was(were) served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

Documents served: **AMENDED MOTION TO DISMISS**

RICHLAND COUNTY
FILED
2012 JAN -3 AM 11:33
JEANETTE W. McBRIDE
C.C.P. & G.S.

Parties served:

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DELIVERY RESTRICTED TO ADDRESSEE
James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DELIVERY RESTRICTED TO ADDRESSEE
Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se

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

Nancy G. Stagg
Nancy G. Stagg

296

301

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE FIFTH JUDICAL CIRCUIT
)
James Spencer, individually and on behalf of the Estate of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce;) CASE NO. 2012-CP-32-3428

FILED COPY

2013 MAY 16 P 3:02

Plaintiff)
v.)
John R. Rakowsky; Adrian L. Falgione; and the Law Offices of Adrian Falgione, LLC) MOTION INFORMATION FORM
) AND COVER SHEET
Defendant)

Plaintiff's Attorney:	Defendant's Attorney:
James B. Spenser *pro se* Address: 7001 Saint Andrews Road, Suite 183 Columbia, SC 29212 e-mail:	Benjamin C. Bruner No. 77544 Address: P.O. Box 61110 Columbia, SC 29260 phone: 803-252-7693 fax: 803-753-0060 e-mail: Bbruner@brunerpowell.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: **Motion for Admissions Pursuant to Rule 36, SCRCP**
Estimated Time Needed: 10 mins Court Reporter Needed: YES / NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Benjamin B

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — May 15, 2013 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (1/2003)

COPY

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)

FILED
2013 MAY 16 P 3:02

James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.;

Plaintiff,

v.

John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC;

Defendants.

C/A No. 2012-CP-32-3428

MOTION FOR ADMISSIONS PURSUANT TO RULE 36, SCRCP

TO: THE PLAINTIFF, ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that Defendants Adrian L. Falgione and The Law Offices of Adrian L. Falgione, LLC ("Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Eleventh Judicial Circuit, at the Lexington County Judicial Center, 205 East Main Street, Lexington, South Carolina, on the 10th day after service hereof, or as otherwise scheduled by the Court, for an Order pursuant to Rule 36, SCRCP, that the matters set forth in the Defendants' First Requests for Admissions (**Exhibit A**), which were properly served on the Plaintiff on February 24, 2012, be deemed admitted for the Plaintiff's failure to respond as required by the Rule. This Motion may be further supported by the record in the case, by affidavits, and by such cases as have been made and provided. Pursuant to Rule 11, SCRCP, the undersigned has no duty to consult with the Plaintiff before filing this Motion because he is *pro se* at this time.

Warren C. Powell, Jr.
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC

May 15, 2013

218

303

EXHIBIT A

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 803-753-0060
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

FILED
2013 MAY 16 P 3:02
BETH A. GARDNER
CLERK OF COURT

February 24, 2012

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2011-CP-40-5384
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Mr. Spencer and Ms. Santacroce:

Enclosed please find Defendant Falgione's First Set of Interrogatories, Request for Production and Requests to Admit to The Plaintiffs, hereby served upon you.

Sincerely,

Benjamin C. Bruner

BCB:nys

/Enclosures

cc: Andrew W. Countryman, Esquire
David W. Overstreet, Esquire

294

304

COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
2013 MAY 16 P 3:02	
James Spencer, individually and on behalf)	C/A No. 2011-CP-40-5384
of the Estate of Doris Holt and on behalf)	
of Southern Holdings, Inc; and Irene)	
Santacroce;)	
)	**DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST REQUESTS TO ADMIT TO THE PLAINTIFFS**
Plaintiffs,)	
v.)	
)	
John R. Rakowsky; Adrian L. Falgione;)	
and The Law Offices of Adrian Falgione,)	
LLC;)	
)	
Defendants.)	
)	

TO: THE PLAINTIFFS, ABOVE-NAMED

Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC (collectively, "the Falgione Defendants"), hereby request, pursuant to Rule 36, SCRCP, that the above-named Plaintiffs respond to the following requests to admit within thirty (30) days from the date of service hereof:

REQUEST NO. 1: Admit the South Carolina law required you to file an expert affidavit specifying at least one negligent act of the Defendants to this action.

REQUEST NO. 2: Admit you failed to file an expert affidavit supporting your claims against the Defendants within forty-five (45) days of filing the Complaint.

REQUEST NO. 3: Admit the Complaint is subject to dismissal because you failed to file an expert affidavit as required by law.

REQUEST NO. 4: Admit you witnessed your federal lawsuit being settled in court on May 9, 2007.

300

305

REQUEST NO. 5: Admit you became aware of the claims you allege in this action before July 31, 2007.

FILED
2013 MAY 16 P 3:02
SETH A CARRIG

REQUEST NO. 6: Admit you filed the Complaint more than three years after you discovered the claims you allege against the Defendants in this action.

REQUEST NO. 7: Admit you failed to serve the Defendants with the Summons and Complaint within 120 days of the date of filing this lawsuit.

REQUEST NO. 8: Admit you failed to properly serve the Summons and Complaint on the Falgione Defendants.

BRUNER, POWELL, WALL & MULLINS, LLC

Warren C. Powell, Jr.
Benjamin C. Bruner
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260
(P) 803-252-7693
Attorneys for Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC

February 24, 2012

Columbia, South Carolina

COPY

CERTIFICATE OF SERVICE

FILED

The undersigned hereby certifies that on February 24, 2012, the documents described below were served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

2012 MAY 16 P 3:02

BETH A. GIBBS
CLERK OF COURT

Documents served: **DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST SET OF INTERROGATORIES TO THE PLAINTIFFS**

DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST REQUESTS FOR PRODUCTION TO THE PLAINTIFFS

DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST REQUESTS TO ADMIT TO THE PLAINTIFFS

Parties served:

James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se

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

Nancy Y. Stagg

Nancy Y. Stagg

302

307

EXHIBIT B

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 803-753-0060
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

FILED
2013 JAN 16 P 3:02

January 11, 2013

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Mr. Spencer:

I am in receipt of your January 5th letter. I disagree that the Court issued a "standing order" at the May 7th status conference essentially staying this case, and my recollection of what transpired at the August 1st hearing differs from yours. The Court has already rejected the arguments you make related to our motion to change venue and has recognized my clients' substantial right to be tried in their resident county. This is a right well-established under South Carolina case law. With respect to the funds you ask my client to pay over, allow me to emphasize that neither my clients nor this firm has ever held a dime of that money. Thus, my clients and I are unable to pay—or to agree to pay—any portion of those funds.

I believe that we all left the May 7th status conference expecting the motions to dismiss would be heard in June or July. Regrettably, those motions (and your motion to disqualify) still have not been heard. At this time—as was the case in May of last year—taking depositions will be unnecessary and a waste of resources if our motion to dismiss is granted. We have not even filed a formal answer yet, only a motion to dismiss. If the motion is denied, then we can discuss depositions. Based on your December 30th letter, it is my understanding that you have withdrawn the subpoena you served on December 28th. If I am incorrect and you insist on pressing forward with depositions, please advise. Please also allow me to point out that I have waited nearly one year for you and Ms. Santacroce to answer the discovery requests I served on February 24, 2012 in this case. I look forward to hearing from you.

Sincerely,

Benjamin C. Bruner

BCB/gh
cc: Amanda K. Dudgeon, Esquire
Irene Santacroce, *pro se*

COPY

CERTIFICATE OF SERVICE

FILED
2013 MAY 16 P 3:02
BETTIA CARRIGG
CLERK OF COURT

The undersigned hereby certifies that on May 15, 2013, the document(s) described below was(were) served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

Documents served: **MOTION FOR ORDER PURSUANT TO RULE 36, SCRCP**

Parties served:

James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

Amanda K. Dudgeon
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John R. Rakowsky

Nancy G. Stagg
Nancy G. Stagg

FILED
2013 MAY 16 P 3:02

which are false and mischaracterize events that have transpired, but also based on the continual delays this case has suffered.

If you are willing, I am still open to discussing a reasonable scheduling order that we can submit to the Court. Please advise if this is something you would consider, as it would certainly save us all time. In the meantime, please see that all papers, affidavits, motions, filings and other documents in this case have been served in accordance with Rule 5, SCRCP.

Sincerely,

Benjamin C. Bruner

BCB/gh

cc: Amanda K. Dudgeon, Esquire
Irene Santacroce, *pro se*

EXHIBIT D

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 803-753-0060
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

FILED
2013 MAY 16 P 3:02
CLERK OF COURT
RICHLAND COUNTY, SC

February 4, 2013

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Mr. Spencer:

I am in receipt of an e-mail from you dated February 2, 2013, attached to which appears to be a response you filed with the Clerk of Court in this matter in response to the Motion I filed on January 22, 2013. I have not yet received a copy by U.S. Mail pursuant to Rule 5, SCRCP. If you have not yet, please ensure that you serve copies of your filing in accordance with the South Carolina Rules of Civil Procedure.

In your response, you argue in Paragraph 6 that you fully responded to those requests twice, the second time on July 10, 2012. I would like to reiterate that after searching my file again, I have not found any responses from you or Ms. Santacroce to the first set of discovery requests I served on you both. Please provide me the responses to which you refer.

You also claim Judge Barber ordered my clients to disburse the "uncontested litigation funds" on or before June 1, 2012. Not only does not such order exist, those funds are the subject of a separate lawsuit pending in Richland County, as you well know. Furthermore, neither Mr. Falgione nor his law firm holds those funds. They cannot turn over what they do not have, nor would it be proper for the Court in this case to order those funds paid when they are clearly the subject of another lawsuit.

Finally, I recently learned that this case will be assigned to a single judge for pre-trial and trial. This means we will have the same judge for the remainder of the case. Given the history of this case, I intend to reiterate to the new judge my request for a status conference to discuss a discovery plan moving forward. I believe this is necessary not only based on your arguments,

EXHIBIT C

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 803-753-0060
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

January 29, 2013

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Ms. Santacroce:

I returned to the office this morning and received your e-mail from yesterday. Based on the status of this case and our argument that personal jurisdiction has not yet been established, I have moved the Court for an order protecting my client from being subjected to a deposition until our motion to dismiss is heard. This is the same position I took at the May 7, 2012 status conference when I asked Judge Barber for a hearing on the motion to dismiss so we can have time to pursue discovery afterwards if the motion is denied. Respectfully, I disagree with your interpretation of what occurred at that status conference. I find it telling that Judge Barber never issued a written order stating the rulings you say he made at that conference. Instead, he sent all of us a letter on July 31st explaining that he had signed the orders he intended to sign and they are to stand.

As for exchanging written discovery, at this time my file contains no response from either you or Mr. Spencer to the interrogatories, requests for production and requests for admissions I served on you both in this case. I served those requests on February 24, 2012, and to date I have received no written response, no objection, nor any documents from either of you to those requests. I am happy to discuss some agreeable discovery plan, including the mutual exchange of discovery responses, so we can submit it to the Court as a scheduling order if you are willing to entertain that option. Absent that cooperation, however, my only choice at this time is to request a status conference.

Sincerely,

Benjamin C. Bruner

BCB/gh
cc: Amanda K. Dudgeon, Esquire
James Spencer, *pro se*

 312

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION
C/A NO.: 4:02-cv-01859-RBH

Southern Holdings, Inc.; James Spencer; Rodney Keith Lail; Irene Santacroce; Ricky Stephens; Marguerite Stephens; and Doris Holt,

Plaintiffs,

vs.

Horry County, South Carolina; Horry County Sheriff's Department; Horry County Police Department; James Albert Allen, Jr., Individually and in his official capacity as an officer with the Horry County Sheriff's Department; Sidney Rick Thompson, Individually and in his Official capacity as an officer with The Horry County Sheriff's Department; Jeffery S. Caldwell, Individually and in his official capacity) as an official capacity as an officer with the Horry County Sheriff's Department; Charles McClendon, Individually and in his official capacity) as an officer with the Horry County Police Department; Jay Brantley, Individually and in his official capacity) as an officer with the Horry County Police Department, Andy Christensen, Individually and in his Official capacity as an officer with The Horry County Police Department; Michael Steven Hartness; Harold; Steve Hartness; Ancil B. Garvin, III; David Smith; Richard B. Way; and John Does,

Defendants.

MOTION TO BE RELIEVED AS COUNSEL

Adrian L. Falgione, one of the listed attorneys for the Plaintiffs in this action, hereby moves the Court for an Order, pursuant to Local Rule 83.I.07, relieving him as counsel of record in this case upon the following grounds;

313

1. This case was ended by way of settlement agreement of the parties and approval of the Court on May 9, 2007.

2. On June 7, 2007, certain of the Plaintiffs filed with the Court *pro se* requests to vacate the settlement and expressions of dissatisfaction with counsel.

3. Counsel believes that Plaintiffs' allegations have created a conflict of interest that prohibits any further representation by him of the Plaintiffs.

4. Plaintiff, Southern Holdings, Inc., has been advised via this Court's Order, Entry #510 (f.n.5.) that a corporation cannot proceed without counsel and that counsel must be admitted in this District.

5. Counsel has served all parties with this motion.

This 10TH day of July, 2007.

BY: */s/Adrian Falgione*

Adrian L. Falgione, Fed. I.D. #5022
Attorney for Plaintiffs
113 E. Main St.
Lexington, SC 29071
Phone: (803) 957-6453
Fax: (803) 957-8902

309

314

CERTIFICATE OF SERVICE

I, Adrian L. Falgione, Attorney for the Plaintiffs, do hereby certify that the foregoing Motion to Be Relieved as Counsel has this day been served upon the following person(s), this 10Th day of July, 2007:

Via Electronic Mailing

Jefferson Boone Aiken, III	jba@aikenbridges.com,
Benjamin A. Baroody	bb@aikenbridges.com
Andrew F. Lindemann	alindemann@dml-law.com
Stephanie P. McDonald	smcdonald72@comcast.net
John Robert Rakowsky	johnrakowskylawofc@sc.rr.com
James M. Saleeby, Jr.	jms@aikenbridges.com
E. Glenn Elliott	ege@aikenbridges.com
Sandra J. Senn, Esquire	sjsenn@btitelecom.net

Via First Class Mail

Mr. Dan Green, CEO
Southern Holdings, Inc.
6170 W. Lake Mead Blvd., Suite 311
Las Vegas, NV 89108

Mr. Rodney Keith Lail
P.O. Box 2753
Myrtle Beach, SC 29578

Ms. Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588

Ms. Marguerite Stephens
207 Deer Trace Circle
Myrtle Beach, SC 29588

Mr. Ricky L. Stephens
207 Deer Trace Circle
Myrtle Beach, SC 29588

Dr. Linda Williamson Lawrence
105 Yadkin Street, Suite 203

315

310 Albemarle, NC 28001

Ernest H. Morton, Jr., Esquire
P.O. Box 519
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BY: */s/ Adrian L. Falgione*
Adrian L. Falgione
Federal I.D. #5022

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November 4, 2011

VIA HAND DELIVERY
The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, SC 29202

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2011-CP-40-5384
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Ms. McBride:

Enclosed for filing with your office, please find the original and two (2) copies of a Notice of Appearance, as well as a Motion to Dismiss in the above-referenced action. Also enclosed is the $25.00 filing fee. Please have your office file the original and return the stamped filed copies to me via my courier. If you have any questions please do not hesitate to contact me.

By copy of the letter, I am serving same upon the other parties of record. With my kindest regards, I am,

Sincerely yours,

Benjamin C. Bruner

BCB/nys
/Enclosures

cc: James B. Spencer, pro se (via Certified Mail, Return Receipt, Restricted to Addressee)
[redacted]
David W. Overstreet, Esquire
Andrew W. Countryman, Esquire

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce; Plaintiffs, v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	C/A No. 2011-CP-40-5384 **NOTICE OF APPEARANCE**

Bruner, Powell, Wall & Mullins, LLC, by its undersigned, hereby notifies this honorable Court that it is appearing on behalf of Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC in the above-referenced action. Please send all notices to Bruner, Powell, Wall & Mullins, LLC at P.O. Box 61110, Columbia, SC 29260.

Warren C. Powell, Jr.
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC

November 4, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICAL CIRCUIT
	)	
James Spencer, individually and on behalf of the Estate of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce;	)	CASE NO. 2011-CP-40-5384
Plaintiff	)	
v.	)	
John R. Rakowsky; Adrian L. Falgione; and the Law Offices of Adrian Falgione, LLC	)	MOTION INFORMATION FORM
	)	AND COVER SHEET
Defendant	)	

Plaintiff's Attorney:	Defendant's Attorney:
James B. Spenser	Benjamin C. Bruner No. 77544
Address:	Address:
	P.O. Box 61110
	Columbia, SC 29260
e-mail:	phone: 803-252-7693 fax: 803-753-0060
	e-mail: Bbruner@brunerpowell.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss
Estimated Time Needed: 15 Mins Court Reporter Needed: YES / NO

SECTION II: Motion Type

☒ Written motion attached
☐ Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — November 4, 2011 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce; Plaintiffs, v. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC; Defendants.	C/A No. 2011-CP-40-5384 **NOTICE OF MOTION AND MOTION TO DISMISS**

TO: THE PLAINTIFFS, ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that Defendants Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC (collectively, "Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Fifth Judicial Circuit, at the Richland County Judicial Center, 1701 Main Street in Columbia, South Carolina on the 10th day after service hereof, or soon thereafter as counsel can be heard, for an Order dismissing the allegations by James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc, and Irene Santacroce (collectively, "Plaintiffs") against the Defendants in this action.

This Motion is made upon the following grounds:

(1) The Plaintiffs have failed file an expert affidavit pursuant to S.C. Code § 15-36-100;

(2) The Plaintiffs' claims are barred by the three-year statute of limitations established in S.C. Code § 15-3-530;

(3) The Plaintiffs have failed to serve the Defendants with the Summons & Complaint; and

(4) The Complaint fails to state facts sufficient to constitute a cause of action against the Defendants.

Accordingly, the Defendants move for an Order dismissing the Plaintiffs' claims against the Defendants pursuant to Rules 3 and 12 of the South Carolina Rules of Civil Procedure, as well as S.C. Code §§ 15-3-530 and 15-36-100. This Motion may be further supported by the record in the case, by affidavits, and by such cases as have been made and provided. Pursuant to Rule 11, SCRCP, the undersigned has no duty to consult with the Plaintiffs before filing this Motion.

Warren C. Powell, Jr.
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693
Attorneys for Adrian L. Falgione and The Law Offices of Adrian L. Falgione, LLC

November 4, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 4, 2011, the document(s) described below was(were) served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

Documents served: **NOTICE OF APPEARANCE**
NOTICE OF MOTION AND MOTION TO DISMISS

Parties served:

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DELIVERY RESTRICTED TO ADDRESSEE
James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DELIVERY RESTRICTED TO ADDRESSEE
Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se

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

Benjamin C. Bruner

322

State of South Carolina
The Circuit Court of the Eighth Judicial Circuit

Maryann S. Nevers
Circuit Court Reporter
Certified Verbatim Reporter - Master, Certificate of Merit

Post Office Box 90202
Columbia, South Carolina 29290
mnevers@sccourts.org

September 1, 2014

To: Mr. James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, SC 29212-1137

Date of Hearing: 06/05/13

Caption: 2012-CP-32-3428 – Spencer, et al. v. Rakowsky, et al.

Dear Mr. Spencer:

In accordance with your request, enclosed is the transcript of the hearing in the above-referenced matter, along with my invoice showing a credit balance owed to Mr. Azar. I will process the overpayment and it will be forwarded to Mr. Azar under separate cover.

Should you have any questions in this regard, please contact me at the above address. Thank you for your assistance.

Sincerely,

Maryann S. Nevers, CVR-M-CM

Enclosures

INVOICE: 090114

September 1, 2014

TO:

Mr. James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, SC 29212-1137
JamesBSpencer@sc.rr.com

Maryann S. Nevers, CVR-M-CM
Official Court Reporter
Eighth Judicial Circuit, At-Large
Post Office Box 90202
Columbia, SC 29290
mnevers@sccourts.org

Quantity	Description	Unit Price	Total
68 Pages	Transcript of proceeding held 06/05/13 2012-CP-32-3428 – Spencer v. Rakowsky	$3.25	$221.00
	Postage Costs		$5.05
	Credit for Prepayment		-$232.55
	TRANSCRIPT FEES PROMULGATED BY SCACR 607		
	Refund Due		$6.50

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR: "A COURT REPORTER SHALL RECEIVE THE FEE OF $.75 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT."

TRANSCRIPT FEES PROMULGATED BY SCACR 607

ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT FROM OPPOSING PARTY OR NON-PARTIES SHOULD BE SENT TO:

Make all checks payable to MARYANN S. NEVERS, CVR-M-CM

THANK YOU FOR YOUR BUSINESS

State of South Carolina) In the Court of Common Pleas
) Eleventh Judicial Circuit
County of Lexington) 2012-CP-32-3428

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,

Plaintiffs,

vs.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC,

Defendants.

Transcript of Record

June 5, 2013
Laurens, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

A P P E A R A N C E S:

James Spencer
Plaintiff, Pro Se

Amanda K. Dudgeon, Esquire
Attorney for Defendant Rakowsky

Benjamin C. Bruner, Esquire
Attorney for Defendants Falgione and Law Offices of Adrian Falgione, LLC

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

I N D E X

Proceedings 4

Certificate Page 68

E X H I B I T S

No.	Description	Page No.
C-1	Memorandum	23
C-2	Correspondence	23
C-3	E-Mail	23
C-4	Correspondence	39
C-5	Affidavit of Tammy Lail	67

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 9:40 a.m.)

THE COURT: All right. If we may, let's go ahead and go on the record. I think that we're assembled in a Lexington County case, Case No. 12-CP-32-3428. Is it *James Spencer v. John R. Rakowsky, Adrian Falgione, et al.*? Is that correct?

MS. DUDGEON: Yes, Your Honor.

THE COURT: All right.

MR. BRUNER: Yes, Your Honor.

THE COURT: Let me get the names of everybody and who they are representing, if I could, please.

MS. DUDGEON: Thank you, Your Honor. Mandi Dudgeon here for the defendant, John Rakowsky.

MR. BRUNER: Your Honor, I'm Ben Bruner, and I represent Mr. Falgione and his law firm.

THE COURT: All right. And, yes, sir?

MR. SPENCER: James Spencer, pro se.

THE COURT: All right. Thank you, Mr. Spencer. And this is a ---

MR. SPENCER: He's ---

THE COURT: --- friend of yours or ---

MR. SPENCER: No. He's helping me because of -- I've got a ---

THE COURT: Okay. Very good.

MR. SPENCER: --- problem.

THE COURT: One housekeeping matter that I do need to take care of before we proceed: I only received Judge Griffith's letter last week. And I received a copy of the -- most of the materials which had been provided to him. And the letter that I'm talking about is dated May the 30th, in which Judge Griffith informed Ms. Dudgeon -- Dudgeon, Mr. Bruner, and Mr. Spencer that he was recusing himself from further action on the case.

The letter also indicated that I would be able to hear these motions -- or the pending motions today. And in that material that I reviewed yesterday, it included the order of Judge Toal -- Justice Toal, rather -- dated January 17th of this year, which appointed Judge Griffith as chief judge for administrative purposes to hear this particular matter. Apparently, Judge McMahon and Keesley had conflicts on hearing the case.

I contacted court administration because I was a little concerned about the -- what was in the body of the order. It basically indicated that Judge Griffith had been appointed. Judge Griffith had been under the impression, based on a conversation I had with him last night, that because he was chief judge for administrative purposes, he could appoint this matter or assign this matter to me or some other judge.

In conversing with court administration last night, what they basically said was that -- that that's an incorrect reading of the Chief Justice's order, but that what they could do is get a -- do another order, in light of Judge Griffith's conflict; appoint somebody else as chief admin judge to hear this matter: either appoint me or appoint somebody else who could then assign it to me.

The gentleman, Motte Talley, who I spoke with late yesterday evening, told me that he's on vacation for the next two days so -- or next three days -- today, tomorrow, and Friday. So he was not going to be able to do an order last night in advance of this hearing. Usually, the way that we handle these things is that they're done *nunc pro tunc* when they eventually get around to it.

Is everybody okay proceeding today? is what I'm basically asking, with the anticipation that court administration will be issuing this order, probably sometime early next week, giving me authority to hear this matter. And -- and so basically what I'm asking is: Is it -- the -- what I'm saying is the order is en route; it's just not here yet. Everybody okay to go forward today? Mr. Spencer, you're all right with that?

MR. SPENCER: Yes, sir.

THE COURT: All right. Y'all are okay?

MS. DUDGEON: Yes, Your Honor.

THE COURT: All right.

MR. BRUNER: Yes ---

THE COURT: Very good.

MR. BRUNER: --- Your Honor.

THE COURT: If you could, bring me up to speed a little bit on what we are dealing with. Judge Griffith's clerk did prepare a brief overview. I know that this is a -- there's an underlying medical malpractice action which apparently had been settled ---

(Off the record briefly.)

THE COURT: --- legal malpractice. Okay. I'm sorry. Sorry.

MS. DUDGEON: Your Honor ---

THE COURT: Correct.

MS. DUDGEON: --- I'd be happy to give you a quick overview.

THE COURT: Please.

MS. DUDGEON: Again, Mandi Dudgeon for John Rakowsky. This -- we're here on a legal malpractice action. The underlying action was a 1983 action arising out of a 2000 traffic stop and a lawsuit against Horry County and various other entities. That lawsuit, which I will call the "underlying lawsuit," was filed in 2006. So we are here on a legal malpractice action filed in 2011.

We have about, I believe eight ---

(Whereupon, Ms. Dudgeon and Mr. Bruner conferred.)

MS. DUDGEON: I'm sorry. 2000 -- no. This -- this legal malpractice action was filed in 2011. We have about eight motions before the Court today. I have a list from the last time we were in front of Judge Griffith, if that would -- if you don't already have a list, I have one.

THE COURT: I don't have that list, I believe.

MS. DUDGEON: I didn't bring extra copies, but I'm happy to let Mr. Spencer look at the list ---

THE COURT: Sure.

MS. DUDGEON: --- first.

THE COURT: My clerk has one. I don't have a hard copy. So if you could hand one up to me, that'd be helpful.

MS. DUDGEON: It -- it does not include two most recently filed motions, but we'll get there when we get there; at least includes the first seven.

May I approach?

THE COURT: Please. Thanks.

MS. DUDGEON: And I also have the materials related to those motions in the event you don't have the file. And Mr. Bruner just advised me that I had the wrong date. The underlying suit was filed in 2002, not 2006.

THE COURT: Okay. All right. And apparently, according to the motions, we're dealing with Defendant

Rakowsky's and Falgione's -- if I am mispronouncing these, I ---

MR. BRUNER: No, you're ---

THE COURT: --- apologize ---

MR. BRUNER: --- not ---

THE COURT: --- so ---

MR. BRUNER: --- Your Honor.

MS. DUDGEON: You -- you have it right.

THE COURT: --- if -- if I'm slaughtering these names ---

MS. DUDGEON: That's okay.

THE COURT: --- I'm sorry. But those, it would appear, need to be taken up first. Is that y'all's understanding or ---

MS. DUDGEON: It is. But, Your Honor, one -- one matter: Mr. Spencer filed a motion to disqualify me right before our hearing was scheduled for last March. And he has been making some allegations that I am unethically involved in this case. So I would like that motion to be heard first.

THE COURT: That's probably prudent.

Mr. Spencer, the motion to disqualify Ms. Dudgeon, I'll be inclined to hear that first, if -- if that's okay with you, sir.

MR. SPENCER: That's -- certainly.

THE COURT: What are the grounds for the motion to disqualify her from further representation in this case?

MR. SPENCER: It turns out that in 2007 her firm represented Mr. Rakowsky when the -- and, apparently, myself in involvement in a lawsuit that he was sued for in the mishandling of that case in 2002. I had -- they settled the case; I knew nothing about it. And I only found out about it about a year ago.

THE COURT: All right. Say that again. Let me make sure I understand the factual background. Her firm represented you?

MR. SPENCER: I did not know about it. Apparently, Mr. Rakowsky got the paperwork. And then he engaged Ms. Dudgeon's firm to represent him on a suit from LawMax Legal Finance.

I -- apparently, after the fact I received from LawMax, which was about a -- a year or so ago, information that showed that I was named -- also named a party to that suit. I had no idea I was named a party to the suit. I had no idea that there was a -- a -- a suit going on and that Mrs. -- Ms. Dudgeon represented Mr. Rakowsky.

Certainly, she would be a material witness in any case involving malpractice. I would want to know what -- what happened in that case, where the paperwork was from that case. And that -- that's why I move to disqualify her:

because I plan to call her as a witness.

THE COURT: All right. Let me just understand, though: She represented Dr. Rakowsky against you?

MR. SPENCER: Not Dr. Rakowsky; John Rakowsky. She -- no, not against me. She -- she represented John Rakowsky and, apparently, me against LawMax, who is suing John Rakowsky for his inappropriate actions in the 2002 lawsuit that is the -- that is the subject of the malpractice. And that suit was commenced in 2007 and was finalized in 2008.

THE COURT: Can you speak to what he's describing?

MS. DUDGEON: Yes, Your Honor, I will.

THE COURT: Try -- try and fill me in a little bit. I'm -- I'm having a -- a hard time understanding exactly the players and -- and ---

MS. DUDGEON: Sure.

THE COURT: --- what your firm's involvement was.

MS. DUDGEON: Before I get fired up about the accusations, I'll just go to the facts of what ---

THE COURT: Yeah.

MS. DUDGEON: --- the underlying ---

THE COURT: Just give ---

MS. DUDGEON: --- matter ---

THE COURT: --- me some background ---

MS. DUDGEON: --- was.

THE COURT: --- please.

MS. DUDGEON: Again, we're here on a legal malpractice case. Underlying case, my client, John Rakowsky, and Mr. Falgione, represented Mr. Spencer ---

THE COURT: Right.

MS. DUDGEON: --- other parties. Mr. Spencer obtained legal funding -- I don't know if you're familiar with the companies that provide legal funding sometimes for plaintiffs in cases. One of those companies was LawMax.

THE COURT: Okay.

MS. DUDGEON: In 2007 LawMax, once they heard of the underlying settlement, filed a notice of demand for arbitration, saying we want our portion of that settlement because we provided funding to this underlying case. That notice of arbitration named both Mr. Spencer, because he was the person who -- you know, the recipient, the plaintiff; and Mr. Rakowsky. Mr. Rakowsky was named in the normal course of he is the attorney who was representing Mr. Spencer in the underlying case.

My firm was retained to represent Mr. Rakowsky and Mr. Rakowsky only. We absolutely never represented Mr. Spencer. The case was never settled because we just told them: "You need to come to South Carolina to sue us; we're not going to New York." And they kind of gave up.

So if anything, it was a benefit to Mr. Spencer. We have never represented him. And it did not involve any

claims of legal malpractice. There's absolutely no way to make me a witness in this case.

And I have the materials that actually show this information, if you'd like to see them.

THE COURT: Please, if you don't mind ---

MR. SPENCER: I object ---

THE COURT: --- showing ---

MR. SPENCER: --- to this, Your Honor. I have not received these materials.

THE COURT: Okay.

MS. DUDGEON: Mr. Spencer received them back in June of 2012.

THE COURT: All right. Why don't you take a look at what she's handed you, and maybe you can -- maybe that'll refresh your memory as to whether you got them or not.

And just so that the record's clear: This is a Richland case. It's captioned *James Spencer, individually and on behalf of the Estate of Doris Holt, etc., Plaintiffs, v.* -- same defendants pretty much that we have here. And it's Case 11-CP-40-5384.

MS. DUDGEON: And, Your Honor, this is actually the same case. It was just -- the venue was transferred to Lexington.

THE COURT: Oh, okay.

MS. DUDGEON: And what you have in front of you is our

memo, which you can -- you don't really need to look at, but Tab A would be the demand for arbitration, showing who it was sent to, including Mr. Spencer. Tab B is my firm's -- my letter to the American Arbitration, indicating who we represent and copying Mr. Spencer. Tab C is correspondence from the American Arbitration to me, as well as to Mr. Spencer's e-mail address.

And -- and -- and the point of this is just to show we didn't represent him; it wasn't settled; and there's no reason that I would be a witness in this case.

I also have included affidavits -- my own affidavit, as well as Mr. Rakowsky's affidavit in these materials. And I sent Mr. Spencer a letter two weeks ago, asking him to review the documents previously sent; sending him another copy; and asking him to withdraw this motion because it has no basis.

THE COURT: All right. Mr. Spencer, have you had a chance to review the materials that she's handed me?

MR. SPENCER: Yes, sir, I have.

THE COURT: All right. I'm having difficulty seeing how she would have a conflict in this particular matter. Do you want to elaborate on that or explain again what your theory is? Because it looks like she's represented the same individual throughout the course of -- of this action. And the materials that she's given to me don't seem to

conflict her out in this particular case.

MR. SPENCER: Your Honor, I tried to -- Judge Barber opened up discovery. And in another case, I sent a subpoena to LawMax, requesting information on Mr. -- on this case, because I had no knowledge of it. The representative for LawMax told me the case had been settled; that they had been paid; but that -- that -- that -- I -- so I asked for the information because I was a party to the suit.

In the meantime they called Ms. Dudgeon's firm, who was not involved in this lawsuit. And next thing I know, I'm shut off from receiving any material.

So despite having discovery being allowed in this case, any questions I've asked to be provided regarding this case, I've received no answers. And so what I -- what I was hoping was that since Judge Barber allowed discovery, that we be allowed discovery to find out what the depth of her true involvement was.

MS. DUDGEON: Your Honor, unfortunately, that's just simply not true. Mr. Spencer did attempt to subpoena this company, I believe. And I do not believe there was a response to the subpoena, not an authenticated one.

But they did provide him with documents, which they e-mailed to both me and to him at the same time. And those documents, the majority of which are attached to this -- to

this memorandum -- there are some others, but what you have before you clearly repudiates what he is saying. And I've not seen anything from him to show otherwise.

MR. SPENCER: Ms. Dudgeon is throwing sand up in the air, Your Honor. She's -- documents -- and she's producing documents from the arbitration association. I subpoenaed directly to LawMax. And LawMax's attorneys got involved and had contacted Mrs. Dudgeon.

And they are the ones that refused to supply the information of what happened to the suit. Everything had been destroyed by the arbitration board.

MS. DUDGEON: Your Honor, truthfully, I'm -- I'm -- I'm not sure what -- what Mr. Spencer's referring to. But my affidavit is included. It -- it states that I did not represent him and that no settlement money was ever paid in this case.

THE COURT: All right. Mr. Spencer, it doesn't appear that she or her firm ever represented you. If you were correct that -- that they did, perhaps you would have grounds to allege that she and her firm have a conflict in proceeding in representing Mr. Rakowsky.

I'm looking at the attachments to the materials that have been handed up. And I'll make this a Court's exhibit just so that the record's clear. But it looks like you were copied on most of these materials.

I -- I have trouble seeing how this is anything but a nonissue.

MR. SPENCER: If you'd give me a second, Your Honor.

THE COURT: Sure. I -- I -- I just don't see how this really relates to anything that we need to address. It looks like a matter that's totally collateral. And more importantly, there's no conflict in representation and that she simply didn't represent you. Do you have anything indicating an agreement between you and her firm or ---

MR. SPENCER: No. There was no agreement.

MS. DUDGEON: Your Honor, if, at some point, Mr. Spencer comes up with valid evidence, although I know it doesn't exist, then he can make this motion if he has that information. It's -- it -- it -- this was used as a tactic to avoid a -- a -- a hearing date back in March of 2012.

THE COURT: All right. At -- at -- at this point I really don't see where your motion is proper unless you can show me something definitive that ---

MR. SPENCER: I'm looking for ---

THE COURT: --- she ---

MR. SPENCER: --- it, Your Honor.

THE COURT: Okay. Very good. I'll give you a moment, then.

(Off the record from 9:59 a.m. until 10:05 a.m.)

MR. SPENCER: Your Honor, can we approach the bench?

THE COURT: Sure. Come on up. Did you find something?

All right. I've been handed a letter that's dated June 21st, 2008. It does not appear to be copied -- well, it does -- it was apparently copied to Ms. -- or it was sent to Ms. Dudgeon and Daniel Zolberg of LawMax in New York.

It reads: "Dear Parties: The association has been notified that New Amsterdam Capital Partners, LLC, has reached a settlement agreement with Carlock, Copeland, et al., for James Spencer and John Rakowsky, Esquire. As of the date -- this date, there is no outstanding balance. Therefore, the entire case file will be destroyed per request. Cordially yours, James F. M-e-d-e-i-r-o-s, Case Manager"; copied to Walter G. Gans, G-a-n-s, Esquire.

Are you -- have you seen that or do you recall that? Do -- or do you need to look at that?

MS. DUDGEON: Your Honor, that document is not in my file. Mr. Spencer has not produced it to me. I was hoping he would not attempt to present it to the Court as an authentic document. But since he has, if I could just first confirm it's the letter I think it is. May I look at ---

THE COURT: Sure.

MS. DUDGEON: --- it, Your Honor?

THE COURT: Come on up. It's ---

MS. DUDGEON: Thank you.

Okay. Your Honor, bear with me while I explain the -- a little bit of a chain of events.

THE COURT: Please.

MS. DUDGEON: Mr. Spencer had -- has already referenced attempting to get documents from the arbitration association. I mentioned that they did provide him with documents, which they sent to all of us. They did so.

And included in those documents was Mr. Spencer's letter to the association, saying: "As we discussed, please confirm X, Y, Z," things that weren't true.

And so I called the association to say, "What is this all about? And have you ever seen a June 21, 2008, letter?"

They confirmed it was not part of their file; that they have no one by the name of Catherine Paulston in their company to be able to certify a document. They actually pointed out to me, rather than me to them, that the numbering on the June 21st, 2008, appeared to be questionable. And the document Your Honor has appears to be a complete original, not even a -- not even a e-mailed copy or a copy that would've been faxed to Mr. Spencer.

I -- I did not think he would attempt to present this. And it has not been produced to me. Therefore, I -- I

don't have an affidavit, for instance, from AAA. But, Your Honor, my affidavit, Mr. Rakowsky's affidavit verifying those settlement funds were paid; I also have an e-mail from the AAA, specifically stating: "This document does not exist in our file."

MR. SPENCER: Your Honor, if you can see the certificate of service, it was served upon Ms. Dudgeon and her firm. She did already file paperwork in the Court on this. She contacted them; they sent me a -- I contacted them.

I want a reclarification of this. They sent us the files and said they don't have any other files. And so that's when I went ahead and tried to get confirmation from LawMax.

THE COURT: All right. Well -- well, Mr. Spencer, more to the point, you say you've never retained them to represent you.

MR. SPENCER: That's correct.

THE COURT: They say they've never represented you.

MR. SPENCER: Yes.

THE COURT: They've never undertaken to represent you.

MR. SPENCER: That's correct. But that -- that letter says that ---

THE COURT: I don't know what this letter says. I don't know what it relates to. I don't know -- and it

sounds like its genuineness is somewhat suspect. Is that what you're saying?

MS. DUDGEON: Yes, Your Honor. And again, this is just an e-mail from the AAA after my conversation with them, regarding the existence of this letter since I didn't have it in my file.

MR. SPENCER: Excuse me? I don't have a -- a copy of this. I haven't seen this.

MS. DUDGEON: I just handed it to your ---

(Whereupon, Mr. Spencer and his assistant conferred.)

MS. DUDGEON: --- assistant.

Your Honor, again, I was hoping Mr. Spencer would not attempt to do this. But it -- and we -- we've already had issues of allegedly fraudulent documents in this case. And this is one where he's accusing me of ethical violations. I don't think the letter itself even changes my opposition whatsoever.

I have affidavits indicating there's no settlement. There was no settlement. Even if there was, it would've benefitted Mr. Spencer. I did not represent him.

MR. SPENCER: Your Honor, I object to this document. It was not provided to me in a timely fashion. I have no way of knowing that this had happened so I could go back and talk to these people and get clarification.

THE COURT: All right. If you want to talk to them,

if you want to get clarification at a later point in time, that's perfectly fine. There are serious concerns about the genuineness of the June 21st letter.

My clerk is making a copy of it. It'll be marked as Court's 2. I'll also mark the e-mail dated May 6, 2013, from Melanie Rutherford to counsel; that'll be Court's 3.

Everyone seems to agree that at no point in time did the firm or Ms. Dudgeon represent the plaintiff in this particular case. So for those reasons, I'm going to deny your -- your motion. I -- it appears that everyone agrees that she's never represented -- or her firm has never represented y'all.

That's where we are. If that changes, I suppose you can renew your motion at that particular point in time.

But I have some concerns about the authenticity of the June 21st, '08, letter, especially in light of the e-mail from ADR. So I'll hand this -- this copy of the motion and the attachments back to Mr. Spencer. So if you want to come up and -- or, Mr. Byers, if you want to hand that to him.

THE BAILIFF: (Complied.)

MR. SPENCER: Will you note my objection to the introduction of that ---

THE COURT: Certainly. Your -- your -- your objection is -- is certainly ---

MR. SPENCER: All right.

THE COURT: --- noted. Her e-mail, of course, is in reply to the materials that you have provided. And as she said, she was not -- she didn't think that you were going to go down that road necessarily.

So while we have a few moments, I'll take a brief break. Then we'll boot up with the motions that -- I think that the next motion -- it'd be proper to go ahead and address the motion to dismiss at this point in time. But we're going to go ahead and get these marked so that I don't forget to do so and take a brief break, and then we proceed.

MS. DUDGEON: Thank you, Your Honor.

(Off the record from 10:12 a.m. until 10:25 a.m.)

(Whereupon, Court's Exhibits 1, 2, and 3 were marked for identification while off the record.)

THE COURT: All right. Let's go ahead and address and -- oh, I'm sorry, Mr. Spencer. You wanted to say something else, sir?

MR. SPENCER: Yes, Your Honor. Can I have the Court also put these in the record? This is the response from American Arbitration Association. I didn't find it till just a second ago, which shows about nine letters going to Ms. Amanda ---

THE COURT: Sure. Hand them up. I'll -- let her see

them, if you don't mind, before y'all pass them up, just so that we can get on the same sheet of music.

MS. DUDGEON: And, Your Honor, I'm not sure if I have all these, but I can get a copy from the Court's record if I need it.

THE COURT: All right. Thank you.

All right. I've been shown a letter from Mr. Spencer to Heather Pina, P-i-n-a, of the American Arbitration Association, dated June 22nd, 2012. The response indicates -- the response from the American Arbitration Association indicates that there were a few letters that were stored in electronic format, but that otherwise, the file had been already destroyed.

I don't know that it changes a great deal. Have you had a chance to review these or ---

MS. DUDGEON: I mean, I don't know, Your Honor. I -- it -- it -- I can take a look at them in detail and see if I have them. I -- I don't know what Mr. Spencer's trying to do.

I didn't represent him; no settlement money was paid. It -- it -- if anything, that matter was to his benefit in representing Mr. Rakowsky. And the -- the LawMax went away because we said, "Come to South Carolina if you want to sue us. We're not coming to New York."

And I'm starting to get a little fired up because Mr.

Spencer is trying to find any way he can to prolong things and to avoid my client getting his motion to dismiss heard. And it's just getting old.

THE COURT: All right. I -- I ---

MR. SPENCER: Your -- if -- if I was going to prolong things, Your Honor, I would've objected to the hearing going on today.

THE COURT: I -- I ---

MR. SPENCER: She ---

THE COURT: --- understand.

MS. DUDGEON: And I ---

MR. SPENCER: And ---

MS. DUDGEON: --- apologize ---

MR. SPENCER: --- those ---

MS. DUDGEON: --- Your Honor, for getting ---

MR. SPENCER: --- those are ---

MS. DUDGEON: --- fired up.

MR. SPENCER: --- those information -- that information right there shows that she was being copied; Rakowsky was getting copied. I was not getting copied, and I was named a party in the suit.

And every one of those correspondence shows that. I had no way of knowing this was going on. Somehow, they stopped the communication -- or -- or -- and said, "Look, just communicate with these people."

And when I tried to go direct to the law firm that handled it for them, I received a letter back, saying that they had contacted her, Ms. Dudgeon, and she said do not provide me with any information.

MS. DUDGEON: I would love to see that letter. I was on maternity leave for the majority of this time. I would ---

MR. SPENCER: All right. I can bring that letter. It's in the -- I can produce that letter later. It's in another file.

THE COURT: All right. Again, I don't know what the genesis for all this underlying stuff with the American Arbitration Association really is. One letter in here, September 19th, 2007, indicates that -- that you were copied when there was an objection to basically, as she says: "Look, come to South Carolina and sue us if you want to; we're not coming to New York."

Everybody's agreeing that they've never undertaken representation of you, Mr. Spencer. It appears to be a nonissue to me. I'll be more than happy to have these documents made a Court's exhibit if you desire or make copies of them and have those ---

MR. SPENCER: Yes, sir.

THE COURT: --- made as a Court's exhibit. We'll make those Court's D or 4, whichever we're using.

All right. Let's move forward on -- I think it'd be best to go ahead and address the motions to dismiss that have been filed by the two defendants. You have the floor.

MS. DUDGEON: Thank you, Your Honor. I apologize for losing my cool, but it's been a -- it's been a long time of a lot of accusations.

THE COURT: I understand.

MS. DUDGEON: I'm going to hand up our memorandum. It's for a motion to dismiss which was filed and served in January of last year. I'm handing a copy to Mr. Spencer and for the Court.

THE COURT: Thank you.

(Whereupon, Ms. Dudgeon and Mr. Bruner conferred.)

MS. DUDGEON: Your Honor, to keep things efficient, I'm going to hand up Mr. Bruner's documents as well.

THE COURT: Thank you.

MS. DUDGEON: Sure. Again, we are here on defendant's motion to dismiss. My motion is based on three grounds. I believe Defendant Falgione has an additional ground.

The three grounds are violation of Section 15-36-100, which is the expert-affidavit statute. The second ground is statute of limitations. And the third ground is failure to commence within the 120-day rule. I'll address the expert-affidavit issue first.

This suit was filed in August of 2011. It was filed

without any supporting expert affidavit. The complaint itself references the statute. Therefore, the plaintiff was well aware of the requirement of an expert affidavit.

The complaint, if you'd like to review it, Your Honor, is Tab A in the documents that I've handed up. The -- Paragraph 7 of the complaint addresses 15-36-100. So the plaintiff was aware -- not that that matters, but they're aware of the -- the requirement. No expert affidavit was filed.

I learned of this lawsuit through those e-mails you get, the court system where you can see when lawsuits are filed. And so I saw that my client was named in a lawsuit.

He had not been served yet, but we chose to go ahead and file a motion to dismiss in November of 2011. So August -- three months after the complaint was filed, we file a motion to dismiss, which is what's before you today. Approximately 18 months ago that was filed.

Mr. Spencer did not produce an expert at any point during the next several months. I believe he has found an affidavit at some point recently. I have not been served with that. I haven't been served with really anything by Mr. Spencer in the last several months. But that's essentially a nonissue.

No affidavit was filed. There's no supporting legal opinion from an expert. This is not a common-knowledge

case. The 45-day exception does not apply. So it's -- it's a fairly straightforward argument applying that statute.

Our second argument is on the grounds of failure to file within the three-year statute of limitations. Mr. Spencer's own complaint supports this argument.

Again, I know it's hard to get the background on this case. But the allegations against my client involve -- again, a lawsuit is filed in 2002; underlying suit is filed in 2002 -- federal court in Florence -- proceed. In May of 2007 they are up for trial. The parties reach a settlement.

The allegations against my client in this case involve that they were -- the -- the plaintiffs were wrongfully coerced into this settlement in May of 2007. Almost immediately after the settlement conference, the plaintiffs began filing motions with the court to set aside that settlement. They filed an appeal, all in 2007, all well before -- you know, four years before this action was filed.

And again, if you turn to plaintiffs' own complaint, starting with Paragraph -- just so we -- we can be clear -- for instance, Paragraph 23 addresses kind of the allegations of -- we wouldn't -- you know, we were coerced into this settlement. Paragraph 26 and 29 address Mr.

Spencer's meetings with the defendant, telling them: "I -- I don't want a settlement" -- he claims. All of these allegations occur in May of 2007.

And if that is not enough, the court issued a July 27 order, denying the motions to set aside this settlement and clearly putting the plaintiffs on notice. And now, I know that Your Honor's probably aware: A -- a legal malpractice under the discovery rule does not depend upon when an appeal ends or when a judgment ends, but when plaintiff -- yeah -- knew or should've known.

And so that's -- that's our fairly straightforward argument in that case. Again, 2007 they're on notice; 2011 they file suit.

The final ground is failure to properly effect service and commence the action under Rule 3 and 5. This suit was filed on August 15th, 2011. My client was served on December 16th, 2011. The 120 days expired on December 13th.

So we have three fairly clear grounds for dismissal. And I will let Mr. Bruner continue.

THE COURT: All right. Mr. Bruner, let me hear from you. You raise the identical three grounds. And you have an additional ground?

MR. BRUNER: Yes, Your Honor. And -- and I did e-mail a copy of my memorandum in support last week. I don't know

if you've had a chance to read it.

THE COURT: I -- I actually did a few moments ago, so ---

MR. BRUNER: Okay.

THE COURT: --- go ahead.

MR. BRUNER: I -- I want to -- I want to fill in some gaps on the -- on the first three grounds. And then, I'll -- the fourth one's going to be rather brief.

I -- I'd like to point out, with -- well, as to the statute of limitations: If you read the complaint, Mr. Spencer was there in court on -- in May -- I believe it was May 9th, 2007 -- and saw his case settled. And if that's not notice of a claim after you've told your attorneys you don't want to settle, I don't know what is.

And -- and really, Paragraph 38 of the complaint -- it's on page 7 of 16 -- I'm sorry -- page 8 of 16, Paragraph 44. This is -- this is the allegation that caught my eye: "Santacroce and Spencer informed Rakowsky and Falgione that when the judge polled them, each plaintiff would state their opposition to the settlement; and then Green, as CEO of Southern, would state he could not agree to a proposed settlement on behalf of Southern without the authority of the board of directors."

And when you -- when you read through the complaint, the -- these are allegations of what's happening the day of

trial -- at the federal courthouse in Florence the day of trial. I think it's evident that they allege they were there and they saw the case settled. So I'm -- I'm not sure how they can say the -- the discovery rule as applied has a statute run after August 15th, 2008, nearly a year later.

Your Honor, with respect to timeliness of service, they have 120 days under the rule. The plaintiffs filed a motion for default against all the defendants. And their basis for that was that they alleged they served all of the defendants, my clients included, with the summons and complaint on September 15th, 2011.

Judge Barber denied that. That's one of the few orders in the record. And I have a copy of Judge Barber's order if you'd like it. But -- but Judge Barber denied that.

And in holding it, he -- on page 2 of that order, he denies the default and says the record shows that Rakowsky and -- and Falgione -- and I'm summarizing -- filed motions to dismiss. Now, this is word for word, quote: These motions preclude an entry of default under Rule 12, South Carolina Rules of Civil Procedure.

And the important part about that, the key part about that, is that Judge Barber, in order to find that -- that those motions were timely filed and that they preclude a

motion for default, has to have found that the plaintiffs failed to prove they served my clients and Mr. Rakowsky on September 15th, 2011. That finding has to be premised on -- on the fact that there was no service of process on September 15th.

So, you know, I'd -- I'd like to just add that argument, Your Honor: that to the extent the plaintiffs now argue that they have evidence they served the defendants on September 15th, I think the Court's already held that that's not the case. That order hadn't been -- hadn't been challenged; there was no motion to reconsider. And I'm not aware of any appeal on that. And that's all I'd like to add on the third ground.

The fourth ground, Your Honor, is based on the manner in which my client was served. And this is the reason you'll -- you may note in the record that I filed a motion to dismiss November 4th, 2011, and then later filed an amended motion to dismiss. I later amended my motion after the -- the complaint was served on my clients by someone walking into his office and dropping them with a temporary employee.

Your Honor, he -- Your -- Your Honor, proper service requires that -- that you serve an authorized agent for service of process. We have affidavits -- I have an affidavit of Mr. Falgione and of Julie Owen, who is the

temporary employee who was served. I -- I -- I forget the name of the gentleman who dropped the summons and complaint off, Your Honor.

But -- but Ms. Owen was neither the office manager; she was not -- she's not the statutory agent for -- registered agent for service of process. And, Your Honor, she had no authority to accept service of process.

The Makawi case -- the recent Makawi case that I cite, I think, sets a pretty good rule in favor of our argument. I have seen no evidence from the plaintiffs that Ms. Owen had authority. And I think they have to show it.

Interestingly, Your Honor, last night when I was -- when I was Shepardizing the Makawi case, I came across an opinion in -- from the federal court. And it was from a federal magistrate. And that's the only case I could find that cited *Makawi*. And that was the case of *Lail v. United States*.

And the reason that's interesting is because that is the federal lawsuit that the plaintiffs current -- and others currently have pending in, I believe, the Columbia division of the federal court for the District of South Carolina right now against Horry County and others, based on allegations that -- that those entities made misrepresentations, committed fraud, and misled the Court in the underlying case -- in the same underlying case as

this one.

So we've got the underlying suit. We've got a federal suit in Columbia that's -- that's arisen out of the underlying suit. We've got this legal malpractice suit.

I believe there's also a federal suit that was filed for -- in the District of D.C. And there is also currently pending a federal suit in Nevada. There's another state suit that's pending in Richland County over the settlement money.

They're a whole bunch of lawsuits. I -- I just want to paint the big picture for Your Honor. But the bottom line is I think the magistrate in that federal case -- and -- and if you bear with me, I have a copy of it, Your Honor.

MR. SPENCER: Your Honor ---

MR. BRUNER: I can hand it up to ---

MR. SPENCER: --- Mr. Bruner is ---

MR. BRUNER: --- the Court.

MR. SPENCER: --- getting way off topic here.

THE COURT: Well, I'll let -- I'll let him talk and I'll let you talk, okay?

MR. BRUNER: May I approach, Your Honor?

THE COURT: Sure.

MR. SPENCER: Your Honor, I object. This -- I -- this is first time I've seen it.

MR. BRUNER: Your Honor, I'm -- I'm handing this case of *Lail v. U.S.* It's -- it's a federal suit, not reported in the Federal Supplement. But I -- I offer it to Your Honor simply for the discussion on page 6 in the right-hand column. The magistrate was Judge Rogers.

And the magistrate held: "In *Graham Law Firm v. Makawi*, the Court upheld the trial court's ruling that plaintiff's attempt to serve the defendant by certified mail was insufficient because the return receipt was signed by an unauthorized person -- namely, an employee of the individual defendant's business -- because the plaintiff had failed to present evidence that the employee had either actual or apparent authority to accept service. Here the plaintiffs -- here plaintiffs failed" -- let me start that sentence over. "Here plaintiffs failed to present sufficient evidence that Richardson or Hazel had apparent authority to accept service." And then, the magistrate goes on to quote Wright and Miller, Federal Practice and Procedure Manual, in further support.

Your Honor, I think the same -- same reasoning applies here. In the event the failure to file an expert affidavit as required by law is -- and -- and the failure to timely commence this action under the statute of limitations and the failure to timely commence the suit under Rule 3 of the South Carolina civil rules is insufficient. They also

failed to properly serve Mr. Falgione's law firm.

And I'd be happy to answer any questions you have.

THE COURT: All right. Well, apparently, this order is public record. So I'll overrule Mr. Spencer's objections to this authority that's been handed up. I'm trying to find a citation to refer to it. But it's -- oh, here we are. 2012 WL -- Westlaw -- 3779386 is the only citation that apparently is available. It's Civil Action No. 3:11-cv-0977-TLW-TER, dated August 10th, 2012. That's what's been presented to me.

All right. Thank ---

MR. BRUNER: And I understand it's not controlling, Your Honor, but I ---

THE COURT: Certainly.

MR. BRUNER: --- I just offer it for the application of *Makawi*.

THE COURT: I understand. All right.

Mr. Spencer, you want to address the defendants' grounds? In turn, the -- the first is the expert affidavit. It's alleged that you have not been able to locate an expert to attest to the malpractice of the defendants in this case.

MR. SPENCER: Yes, sir. First of all, if -- we filed the complaint with the understanding that if a defendant in a complaint admits that there was malpractice that occurred

in the case, then there's no need to file an affidavit from an expert. We, however, have supplemented and filed an affidavit from an expert as to the malpractice.

Judge Barber, on June -- on -- excuse me -- May 7th, 2011, in his hearing had allowed us the opportunity to produce a expert, if necessary, once Mr. Rakowsky -- and they referred to this other suit that Mr. Rakowsky brought that is tying up uncontested-litigation funds that we were going to use to obtain an expert. Mr. Rakowsky has sat on those funds, even though he's admitted they're uncontested, since 2008.

Judge Barber, on -- on May 7th, asked them to be turned over to the Court by June 1st, 2011. And they were not turned over by the Court -- turned over to the Court for distribution to us. However, we did secure an expert after that point in time.

But as I was saying before, if you admit to the malpractice -- can I present this?

THE COURT: Well, is that the expert affidavit?

MR. SPENCER: Huh?

THE COURT: Is that the expert affidavit?

MR. SPENCER: No, that's not the expert affidavit. This is the affidavit where Rakowsky and Falgione are admitting malpractice.

THE COURT: Okay. All right. Show it, if you would,

to counsel before you hand it up. And ---

(Whereupon, Mr. Spencer and his assistant conferred.)

THE COURT: --- since you have an expert affidavit, if you'll locate that too.

MR. SPENCER: Okay.

(Whereupon, Court's Exhibit 4 was marked for identification.)

(Off the record briefly.)

MS. DUDGEON: Your Honor, are -- is -- if you -- what are we looking for? Because I may be able to assist.

THE COURT: All right. It -- I -- I -- I was allowing him some -- a chance to flip through his voluminous paperwork and see if he could locate the expert affidavit. He's handed up a letter dated May 17th, 2007, from your client to Mr. Bruce Benson, explaining what happened in front of Judge Harwell.

And the portion that has been highlighted by the plaintiff states: "So we need to drop the claims against Dave Smith and Ancil Garvin as part of the settlement." And then, the last sentence of the letter says: "Now that this case is behind us, we can go after Goldberg for not filing the evidence in a timely manner, which caused these problems in the first place, along with Goldberg's flawed initial pleadings."

MS. DUDGEON: Okay. I ---

THE COURT: Do you have the affidavit that he ---

MS. DUDGEON: I ---

THE COURT: --- references?

MS. DUDGEON: --- I do.

THE COURT: All right. Why don't you go ahead and hand that up and let me look at it.

MS. DUDGEON: And, Your Honor, this is an affidavit filed in April of this year. I -- I -- I don't think it's -- a discussion of it is relevant to this motion. But I want the Court to at least see it ---

THE COURT: Thank you.

MS. DUDGEON: --- rather than . . .

(Whereupon, Mr. Spencer and his assistant conferred.)

(Whereupon, Ms. Dudgeon and Mr. Bruner conferred.)

MS. DUDGEON: And, Your Honor, I don't want to get into a back-and-forth, but I would like time to address my objections to the affidavit and to that letter you've reviewed.

THE COURT: Okay. The affidavit is signed by Aimee, A-i-m-e-e -- I'm not even going to try and pronounce this last name -- Z-m-r-o-c-z-e-k. It's notarized February the 8th of 2013. And it is about -- it's 12 pages in length. Apparently, he has filed an affidavit. Do you want to address that?

MS. DUDGEON: Yes, Your Honor. First of all, the

sufficiency of the affidavit or the qualifications of this expert are a whole nother issue, which I don't think is before the Court. But it -- it contains mostly a recitation of the rules of professional conduct and some allegations that are simply just not true.

But it doesn't change the fact that the plaintiffs did not have supporting expert opinion in August of 2011 when they filed this suit. Again, this affidavit is in 2013. And it is untimely and, really, is not for the -- for the Court's consideration.

As to the letter that's been presented, I -- I can't confirm if it's a letter. I -- there's a similar letter that I've seen at some point. I cannot confirm right now if that's accurate. It looks like a different letterhead; I'm not sure.

But it doesn't contain an admission. It's not attached to the complaint. And it's not alleged in the complaint that my clients admitted to -- my client admitted to anything or that Mr. Falgione did.

And I believe it's outside the scope of Rule 12. I -- I know that's a diatribe of objections. But I did want to note them for the record.

MR. BRUNER: Your Honor, we -- we join in those objections. I also want to note that the plaintiffs never filed a motion to file this expert affidavit out of time.

And -- and I don't think it satisfied the -- satisfies the requirements under 15-36-100.

MR. SPENCER: Your Honor?

THE COURT: Sure.

MR. BRUNER: And, Your Honor, I have a copy of the statute in the binder under ---

THE COURT: Oh.

MR. BRUNER: --- Tab 4.

THE COURT: I've got it right here too. All right.

And while I'm looking at the statute, I understand your position that normally, an expert affidavit would need to be filed contemporaneously with the -- the pleadings; or, at the very least, sometime close to when they're filed. But it was represented that apparently Judge Barber held this question in abeyance pending the money being paid out.

MS. DUDGEON: And, Your Honor, I ---

THE COURT: How does that affect this?

MS. DUDGEON: I -- I disagree with that representation. There is -- there is no order stating that our motion to dismiss, based on failure to file an expert affidavit, was denied; or an order instructing Mr. Rakowsky to release certain funds. What I believe -- and I will tread carefully here, because I don't have the transcript memorized. But what occurred -- and Mr. Bruner can correct

me where I'm wrong -- we had a May 2012 status conference in front of Judge Barber for two cases: the legal malpractice case, as well as a separate interpleader case.

Understandably, when my client has settlement funds in trust and a lawsuit is filed over those funds by multiple parties seeking an interest in those funds, he hired Desa Ballard, who filed an interpleader action with the Court, saying: "We need the Court's ruling on where this money goes. We want to pay it into the Court. Let's deal with it that way."

So that's a separate action. There -- again, there has been no order that Mr. Rakowsky release any funds. He's been instructed by counsel to have an order from the interpleader action instructing him to do so.

Mr. Spencer claims he didn't have the money to get an expert, which, frankly, I don't think is what the statute addresses. But he's -- has multiple suits going where he has other attorneys. He has a suit pending months before this one was filed in federal court where he has two attorneys involved.

He is involved in a lawsuit against my client in Nevada. So the -- the -- the allegation that he does not have funds ---

MR. SPENCER: Your Honor ---

MS. DUDGEON: --- is ---

MR. SPENCER: --- I challenge ---

MS. DUDGEON: --- questionable.

MR. SPENCER: --- Ms. Dudgeon to ---

THE COURT: One second. Let her finish talking, if you would, please. Go ahead.

MS. DUDGEON: I -- I -- I'm finished, Your Honor.

THE COURT: Oh, okay. Mr. Spencer?

MR. SPENCER: Ms. Dudgeon has a way of twisting the truth; it's unbelievable. She cannot tie me to any lawsuit in Nevada, and she knows full well she can't. She cannot -- the lawyers that are handling the lawsuit are handling it purely on a contingency basis here because they believe in what they're doing.

And so she's trying to mispresent the -- the simple facts. And we happen to have the transcript that you don't have that shows that he said that money should be produced by June 1st. We'll move on. And we'll -- we're prepared to present the transcript. Mr. Bruner ---

THE COURT: All right.

MR. SPENCER: --- if you want to go up ---

THE COURT: Well, we're -- we're -- we're dealing with a very limited type of an issue here. If you're looking at the law, it says: "If an affidavit is not filed within the period specified in this subsection, or as extended by the trial court, and the defendant against him an affidavit

should have been filed alleges by motion to dismiss filed contemporaneously with its initial responsive pleadings, that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim."

That's what the law says.

MR. SPENCER: Right.

THE COURT: And, I mean, I -- I ---

MR. SPENCER: Judge Barber ---

THE COURT: --- I -- I -- I didn't write that. I just ---

MR. SPENCER: Oh, I understand ---

THE COURT: --- read it.

MR. SPENCER: --- that, sir. But Judge Barber, in his hearing, was quite clear that we didn't have the money to get it. They're to release that uncontested money, and then we can get our expert.

THE COURT: Okay. Can you point to a part in the transcript -- you say you have the transcript. Can you show me what you are referring to, please ---

MR. SPENCER: Yes. Just ---

THE COURT: --- which -- which page and which line?

MR. SPENCER: All right.

(Whereupon, Mr. Spencer and his assistant conferred.)

MR. BRUNER: Your Honor, the -- I've got copies of the

transcript. I have a clean copy for Your Honor.

THE COURT: Thanks. Hand it up, please.

MR. BRUNER: This is from a -- from the May 7th, 2012, status conference.

MS. DUDGEON: And, Your Honor, if I may, I have the order that followed that status conference.

MR. BRUNER: Your Honor, the plaintiffs have made ---

MS. DUDGEON: I'll wait.

MR. BRUNER: --- numerous representations and filed affidavits about their beliefs of what rulings were made at the status conference. The bottom line is this: Judge Barber discussed paying out the interpleader money. That was discussed because the interpleader case was one of the two cases that the status conference was held for.

And my recollection -- and when I go back and read through the transcript, what I see, is there was a discussion about paying out what they are representing is an uncontested portion of the funds. It's 9800-some-odd dollars. That is not part of this legal malpractice suit. That's entirely within the interpleader suit.

And on top of that, I'm not so sure that they are uncontested. I don't see any ruling by Judge Barber that that money is to be paid. And there is no order, to my knowledge, in the record in this case or in the interpleader case, directing the money to be paid.

I -- I want to also focus on this: Mr. Falgione never held any of this money. They money's currently being held in Desa Ballard's trust account, is my understanding, based on that status conference, more than anything else.

So -- so to the extent there's some equitable argument that -- that the contemporaneous-filing requirement doesn't apply because the lawyers are holding money that would allow them to hire an expert, I don't think that should apply to Mr. Falgione.

THE COURT: All right.

MR. BRUNER: And my -- the best reading I can find on -- on the enforceability of orders in this state leads me to believe that -- that an order is final when it's written and signed by the judge and submitted for filing, period. And if you look at the orders that were filed in this case after that -- that May 7th status conference, they are a June -- an order signed June 14th by Judge Barber, denying the plaintiffs' motion for entry of default against the defendants.

There's an order signed June 14th, continuing the motions to dismiss and Mr. Spencer's motion to disqualify, denying Ms. Santacroce's motion to disqualify, filed, I believe, June 28th. There's a July 30th, 2012, order that granted me protection for a personal vacation.

Now -- now, after the status conference, there were --

there -- the file -- I'm not sure how much of it you have, Your Honor, but there are numerous correspondence from Mr. Spencer directly to Judge Barber about his understandings of the rulings. And -- and on July 31st, Judge Barber -- I'm looking for a copy of it, Your Honor, to hand up to the Court.

On July 31st of last year, what appears to me to be in response to all the plaintiffs' arguments about the rulings he made, Judge Barber issued a letter. I'm going to hand a copy of it up.

MR. SPENCER: Your Honor, I object to this letter.

THE COURT: On what grounds?

MR. SPENCER: Grounds it's not applicable. If you take a look at the -- with the cases this is regarding, it's not this case. It's regarding a different case. This is a typographical error that should be thrown out and not even considered in this case.

MR. BRUNER: Your Honor, I -- I think Mr. Spencer's right: That's nothing more than a typographical error committed by either Ms. -- Judge -- Judge Barber's law clerk or his administrative assistant.

MR. SPENCER: Your -- your assumption of a typographical error and the applicability of this motion doesn't make this any more legitimate document.

THE COURT: All right. It -- it simply -- it's --

it's one sentence. Certainly, we can agree on one sentence: "I have signed the orders I intend to sign, and they will stand," period, end of story. That seems to be -- it's on Judge Barber's letterhead. It's got his signature.

MR. SPENCER: But it's not regarding this case.

THE COURT: I -- I understand. It -- it is apparently, however, addressed to you, Mr. Spencer. Are you involved in the other case?

MR. SPENCER: No, I'm not involved -- involved in the other cases. That's ---

THE COURT: It would stand ---

MR. SPENCER: --- why I'm ---

THE COURT: --- to -- it ---

MR. SPENCER: --- saying ---

THE COURT: --- would ---

MR. SPENCER: --- this is -- Judge Barber -- the characterization they've made of these other orders being issued? They were issued on a -- not on the -- on this hearing on May 7th. They -- they well know it. Those orders were issued on a April hearing.

THE COURT: All right. We need to move this along. Have you located in the transcript that part where you say Judge Barber gives you additional time to locate an expert?

MR. SPENCER: Yeah.

(Whereupon, Mr. Spencer and his assistant conferred.)

(Off the record briefly.)

THE COURT: Would it be around pages 48 on through ---

MR. SPENCER: That's what I'm looking for. Page 50, I believe.

MS. DUDGEON: And, Your Honor, again, as Mr. Bruner has mentioned, this status conference we discussed the timing of the lawsuits and when the interpleader would be held. It didn't happen.

Desa Ballard's office followed up with judge; "What do you want us to do?"

The response was the letter, saying: "The orders that I have filed stand."

And I have a letter from Desa's office if you need it, but I -- I don't want to muddy already clear waters.

THE COURT: All right.

MR. BRUNER: And, Your Honor, the -- I mean, I -- I just want to, for the record, point out: The primary thrust of this discussion is trying to figure out a scheduling order going forward.

THE COURT: Just curious: Why isn't Judge Barber hearing this? How'd this get over to Judge Griffith and then myself?

MR. BRUNER: Well, it's been a long, winding road, Your Honor. We -- it -- time -- the lawsuit was getting

older. And I was faced -- you know, my -- I believe my client had a substantial right to be tried in his resident county. And our motion to dismiss hadn't been heard.

So I could either risk popping up on the trial roster without any discovery and my motion to dismiss till -- still pending, or go ahead and try to move to Lexington County. And -- and we made the call to go ahead and transfer venue.

THE COURT: I hear you.

MR. BRUNER: So it ---

THE COURT: All right.

MR. BRUNER: --- fell in your able lap, Your Honor.

THE COURT: I've reviewed the portion of the transcript. The transcript speaks for itself; the order speaks for itself. Let's move along.

How do you -- how do you get -- Mr. Spencer, how does the statute of limitations not apply in this case?

MR. SPENCER: Statute of limitations doesn't apply in this case because if you read the letter -- and that letter is on the -- it's on the court record in federal district court -- it's from the court record, and they well know it -- Mr. Rakowsky -- if -- if a attorney admits to malpractice going on in a case, which what -- he did in this case -- he's claiming that other lawyers were involved in the malpractice -- and that he would cure this

malpractice, because he and Falgione were going to end up suing the other lawyers. Okay? And we did not -- and they cannot point to one document where I questioned this until the following August, when Judge Harwell admitted on the record that he never ordered the defendants -- or the unrepresented defendants dismissed from the case, which is completely contrary.

He also said that he never reviewed all the evidence, the way Rakowsky and Falgione said. And that -- that's when I knew that there was a reason why Rakowsky and Falgione had not taken action -- remedial action to correct the case by suing the attorneys that they said they were going to sue, who they said were responsible for the rulings of the judge. The judge never made those rulings.

And so they misled us. And under the ---

THE COURT: Let -- let's focus -- let's focus in on this: The question is: When did you have notice or when should you have known that, assuming what you're saying is true -- malpractice took place; and clearly, you were at the hearing with Judge Harwell ---

MR. SPENCER: Yes.

THE COURT: --- clearly, this is something that apparently, for lack of a better word, Judge Harwell shoved down everybody's throat and you were not happy with that; and apparently, Judge Harwell did not ask the various

individuals who were in attendance -- did not ask them individually if they agreed to the settlement; and it's been represented that you wrote Judge Harwell, or you and other plaintiffs wrote Judge Harwell after the fact, taking issue with the settlement. Is that an accurate statement of -- of what's ---

MR. SPENCER: No, sir.

THE COURT: --- transpired?

Okay. Where am I wrong?

MR. SPENCER: Okay. I did not write the judge and take issue with -- with the settlement at that -- at that point in time. It -- according to John Rakowsky and Falgione, what they were doing was looking for a way around the judge's rulings on the evidence. And so what -- what the -- what they wrote the Court about was that the -- the transcript they got back was completely different than what Rakowsky and Falgione had put in that letter, claiming that all the evidence was dismissed.

Judge Harwell refused to comment on it, saying no; that -- that's moot. And so Rakowsky said that that's right, but that the judge had, in fact, been sanctioned before for holding a hearing -- an evidentiary hearing in chambers. And he showed me that ---

MS. DUDGEON: Your Honor, we're -- we're ---

THE COURT: We're ---

MS. DUDGEON: --- getting ---

THE COURT: --- we're -- we're -- we're getting a little far afield. The -- the ---

MR. SPENCER: Okay.

THE COURT: --- the question is very ---

MR. SPENCER: I did ---

THE COURT: --- simple.

MR. SPENCER: --- not -- I did not know until -- that the judge confirmed that there was not an evidentiary hearing. It had to have been a settlement hearing.

THE COURT: But you were present when the settlement took place; it's the settlement that you have issue with; it's the fact that the case was settled that you have an issue with, correct?

MR. SPENCER: Well, my understanding was the case would not be settled until we -- we signed the settlement documents and accepted the settlement funds. Neither -- neither occurred. That was my understanding.

But if I was asked in court, I would tell them that I was not in agreement with the settlement. So Rakowsky -- Rakowsky had told us to keep us our mouths shut unless we were polled.

MS. DUDGEON: Your Honor, my client had filed a motion to be relieved within two months, in July of 2007. Mr. Spencer was writing the Court, saying, "Counsel Rakowsky

has failed to protect the interests of his clients," on July 30th, 2007, just two months after this settlement hearing. It's a three-year statute of limitations for a reason. It gives them time to look into the claim they have notice of.

MR. SPENCER: The ---

THE COURT: All right.

MR. BRUNER: I think Your Honor ---

THE COURT: When -- when was the suit filed?

MR. SPENCER: The -- the suit was filed on ---

MR. BRUNER: August ---

MR. SPENCER: --- the third ---

MR. BRUNER: --- 15th ---

MR. SPENCER: --- third anniversary of Judge Harwell admitting that -- that he didn't hold ---

THE COURT: But the ---

MR. SPENCER: --- an evidentiary ---

THE COURT: --- I -- I need a date. I don't need ---

MS. DUDGEON: August ---

MR. SPENCER: Oh, okay. It was, I think, August -- August 11th, 2008.

MS. DUDGEON: August 15th ---

MR. SPENCER: August 15th.

MS. DUDGEON: --- 2011.

MR. SPENCER: Yeah.

MR. BRUNER: The immediate suit was filed August 15th, 2011.

MR. SPENCER: Oh. 2011. Right.

MR. BRUNER: Your Honor, the -- I -- I think we go to the complaint. This is a 12(b)(6) motion. And the allegations in the complaint are that the defendants failed to properly represent the plaintiffs; failed to adequately prepare the case, which necessarily occurred before May 9th, 2007; failed to adequately advise the clients of the status of the representation, which necessarily happened in 2007 or prior; failed to adequately communicate with the clients regarding the representation; failure to perform the contract of employment of legal services; failed to provide competent legal representation of the plaintiffs; failed to act diligently in the interests of the plaintiffs; failed to communicate with the plaintiffs properly and timely in order for them to make informed decisions about the case.

And that -- all -- all these allegations are the representation during and leading up to the settlement. And I think Your Honor is correct. The primary thrust is: "Hey, our -- our lawyers settled our case out from under us."

They allege in their complaint that they told their attorneys, "Well, I'm -- I'm not going to agree to any

settlement. And if -- and if the judge polls me, I'm going to tell him I don't agree."

And -- and, Your Honor -- and -- and then they start inundating the Court. I -- I want to point out that Mr. Spencer says he didn't write a letter. And -- and I haven't found a letter yet. We haven't gotten into discovery. But I haven't found a letter from Mr. Spencer directly to Judge Harwell.

THE COURT: All right. Well, I'm reviewing Judge Harwell's order that apparently has not been reported in F. Supp. 2d, but it is dated, I guess, July 3rd, 2007.

MR. BRUNER: Yes, Your Honor.

THE COURT: Addressing the 60(b) motion, and the second paragraph of that captioned section, saying "Other Grounds for Relief Under Rule 60(b)," second paragraph says: "Further, with regard to any claim by the plaintiffs of either improper inducement, bad advice, or inadequate representation or preparation against plaintiffs and attorneys, such is not a valid basis for repudiating a settlement, citing *Petty*. In the event there was any breach of the standard of care by -- owed by plaintiffs' attorneys to the plaintiffs as a result of the alleged coercion, improper inducement, fraud, or inadequate representation, plaintiffs have an available remedy for damages against their own attorneys."

So Judge Harwell is denying the 60(b) on that ground. And again, that order is -- I want to double-check the date.

MR. BRUNER: And that's the July 3rd, 2007, order, Your Honor?

THE COURT: According to the Westlaw, it's -- yes -- July 3rd, 2007.

MR. BRUNER: It's ---

THE COURT: And it is ---

MR. BRUNER: --- 2000 WL 1960590?

THE COURT: --- 1960590. Correct.

MR. BRUNER: Your Honor, if you look at Footnote 3 in that same order ---

(Whereupon, Ms. Dudgeon and Mr. Bruner conferred.)

MR. BRUNER: It -- I -- I think -- I think that order, if -- if nothing else, puts them on notice of any claim; that the latest possible date that they could -- the -- the statute would begin to run is on that date. And I -- I think this is -- if -- if the Court needs to, I think this is a public record.

THE COURT: Right.

MR. SPENCER: Your Honor?

THE COURT: Yes, sir.

MR. SPENCER: The letter that John Rakowsky issued to us claims that our attorneys did, in fact, commit

malpractice. But he was pointing to the other attorneys. Okay? The other attorneys that had been on the case, that's who he's referring to.

And he was going to remedy that problem by suing those attorneys. Okay? That is what we were -- that was what myself and -- my mother and I were led to believe. It never occurred. Then we learned why, when it came out in August.

But he had three years to sue them. He was never intending to sue them. All's he was doing was setting aside the money that he was supposed to -- that he was holding onto was supposed to be used for that lawsuit.

MR. BRUNER: And I ---

MR. SPENCER: So yes. They're talking about lawyers -- our former lawyers.

THE COURT: All right.

MR. BRUNER: I don't see that argument in the complaint, Your Honor. It's -- it's news to me -- this -- this theory of recovery is news to me.

THE COURT: All right.

MR. SPENCER: It's in his letter.

THE COURT: All right. Moving on to the third point, improper service: What do you say to that, Mr. Spencer?

MR. SPENCER: The -- the -- the -- they were served -- well, the -- the judge -- you know, they're -- they're

sitting here, saying -- Mr. Bruner is making a statement that Judge Barber found that they were not served. That's not true. Judge Barber stated that he didn't find the dates -- the -- the documents that were filed didn't contain the full information. And so therefore, we resubmitted the documents.

And he found that -- that he -- he said, "Well, it's too late. Even though you've resubmitted the documents, I still can't go for the -- them not responding on a timely basis, because the original documents you submitted didn't carry the exact place that they -- or the name of the place that they were served." But he did not find that they were not served properly.

MR. BRUNER: I have a copy of the order, if Your Honor ---

THE COURT: Please.

MR. BRUNER: --- would like it.

MS. DUDGEON: And, Your Honor, we've also attached affidavits regarding the time that our clients were served.

THE COURT: Thank you.

MR. BRUNER: Your Honor, we -- the -- the rule that -- my -- my argument is not that there was a clear ruling that -- that -- basically, my argument was that in order for that holding to be so, there has to be no service on September 15th. They had their opportunity. They put up

defective affidavits. And Judge Barber made his ruling. I think they're stuck with it.

MR. SPENCER: This ruling was on the -- was on the subject of default.

THE COURT: All right. I understand. Can you -- can you present any evidence that the person that you served, when you served the defendants, have authority to accept service?

MR. SPENCER: The person that served -- the -- the -- the individuals that were served -- accept service was Rakowsky and Falgione themselves. They were served a second time ---

THE COURT: Do you have an affidavit to that effect?

MR. SPENCER: Yes. Somewhere.

THE COURT: Is that correct? Were ---

MS. DUDGEON: No, Your ---

THE COURT: --- they ---

MS. DUDGEON: --- Honor.

THE COURT: --- individually served?

MS. DUDGEON: No, Your Honor. The first time -- he was individually served on December 16th, yes, but not before that time. And it . . .

THE COURT: Okay. Well, what was he served with on December 16th, then, the complaint or ---

MS. DUDGEON: The -- yes. The -- December 16th.

Nothing on September. We -- he -- no one even contacted him on September -- and there's an affidavit of where he was at that time ---

THE COURT: Okay.

MS. DUDGEON: --- in the ---

MR. SPENCER: Where he ---

MS. DUDGEON: --- in the file.

MR. SPENCER: --- where he ---

(Whereupon, Mr. Spencer and his assistant conferred.)

MS. DUDGEON: I apologize, Your Honor. It's actually Stephanie Weissenstein's affidavit about where John was on the day that plaintiffs claim that they served him. My client, Mr. Rakowsky's affidavits, show that he was not served on the 15th of September, but was served on the 16th of December. Who's on first?

THE COURT: Which is outside the limit?

MS. DUDGEON: Yes, Your Honor.

MR. BRUNER: And likewise, Your Honor, Exhibit A to my amended motion includes an affidavit from Mr. Falgione, stating that he was served on December 15th, 2011, beyond the 120 days. Paragraph 6 says: "To the best of my knowledge, December 15th, 2011, was the first time the plaintiff attempted to serve me or my firm with the summons and complaint."

(Whereupon, Ms. Dudgeon and Mr. Bruner conferred.)

THE COURT: And just so that the record is clear, the order that was handed up involves -- it's Judge Barber's order, dated June 14th, 2012, Case No. 11-CP-40-5384; order speaks for itself. All right.

MS. DUDGEON: Your Honor, what's being handed up is the same affidavit that Judge Barber already addressed in his order. And it's also signed by the wife of one of the plaintiffs in the underlying case. And it's not notarized. But again, that's addressed in the order, I believe.

THE COURT: All right. I'm being shown a document. It purports to be affidavit of Tammy -- Tammy Lail, L-a-i-l, two-page document, dated September 15th, 2011. It is not notarized. And I presume it's the wife of one of the parties in interest in this matter ---

MR. SPENCER: Which ---

THE COURT: --- therein. It -- is this person the spouse of somebody involved in this suit?

MR. SPENCER: Not in this suit or ---

THE COURT: I mean, the -- the whole underlying thing.

MR. SPENCER: The -- the whole underlying ---

THE COURT: Yes, sir.

MR. SPENCER: Yes.

THE COURT: Okay. Do you have anything further, Mr. Spencer?

MR. SPENCER: No, sir.

THE COURT: All right. Here's what I'm going to do: We've been at this for two hours. The remaining motions, as I see it, relate primarily to discovery issues, timing issues, motions to quash. That's what we've got left.

I will be taking the matter under advisement. Upon receipt by the powers that be of authority to rule, I will issue a ruling on this issue.

Depending upon what I do after reviewing this, we may reconvene to address any other discovery issues, where the -- the remaining motions: namely, Motions 4 through 7 -- defendant -- the defendant's motion to compel discovery responses, plaintiffs' motion to compel and stay hearing, defendant's motion -- and the two defendants' motions to quash.

So if I do not grant the defendants' motions to dismiss, we will reconvene and address those, since those relate to the actual merits and I would need to wade in a little bit deeper on this case factually in order to be able to rule intelligently as to those motions.

MR. SPENCER: Your Honor, there's ---

THE COURT: Yes, sir.

MR. SPENCER: --- two other motions that have presented before the Court.

THE COURT: Right. That's what I was just talking about.

MR. SPENCER: Okay.

THE COURT: That -- I was going to hold those in abeyance, based upon -- because if the case is dismissed, it ---

MR. SPENCER: Well, it had to do with the parties to ---

THE COURT: Oh.

MR. SPENCER: --- the case.

THE COURT: To amend the complaint? We'll -- we'll cross that bridge if we come to it. If -- if the matter is not resolved through this hearing, I'm going to need to get a -- a lot more up to speed on the other motions.

My understanding, in all candor, concerning the hearing today was that I was dealing solely with the motions to dismiss and that we weren't going to be taking up these other matters. So I have not had a chance to -- to review those as -- as thoroughly as I would to get as involved in the file as I would need to be to address discovery disputes.

MR. SPENCER: And, Your Honor, I'd like to also make a motion ---

THE COURT: Sure.

MR. SPENCER: --- under 59(b) that -- that this -- because of the fact that they merged these two hearings, they tied these orders together of both these cases under

Judge Barber. This case was transferred out. It's become so convoluted, including the submission of ex parte information in the other case. I'd like to move for a mistrial on this.

THE COURT: All right. I appreciate your position. I don't necessarily disagree with your -- what you're saying, as far as the case becoming somewhat convoluted. Obviously, there's a lot of paper in front of you. There's a lot of paper in front of the defendants.

I'm not inclined to grant a motion for a mistrial, though. I don't really see any grounds for that. But I appreciate your concerns.

Very good. We'll be at ease on this. Thank you.

MS. DUDGEON: Thank you, Judge.

MR. BRUNER: Thank you, Your Honor.

MR. SPENCER: Thank you, Your Honor.

MR. BRUNER: Would you ---

THE COURT: Thank you.

MR. BRUNER: --- like proposed orders from the parties?

THE COURT: Not until I get authority from my boss, saying everything is good; go ahead and issue an order.

MR. BRUNER: Okay.

THE COURT: Thank you.

MR. BRUNER: Thank you for your time this morning,

Your Honor.

THE COURT: No. Not a problem.

MR. SPENCER: Thank you, Your Honor.

THE COURT: Thank you, Mr. Spencer. Good to meet you, sir.

(Whereupon, the proceeding was concluded at 11:34 a.m.)

(Whereupon, Court's Exhibit 5 was marked for identification while off the record.)

--- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT, OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 5TH DAY OF JUNE, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 1, 2014

STATE OF SOUTH CAROLINA)) County of Richland))) John R. Rakowsky,)) Plaintiff)) vs.)) Adrian L. Falgione,) and The Law Offices of) Adrian Falgione, LLC,) James Spencer, Estate) of Doris Holt, Rodney) Lail, Irene Santacroce,) Marguerite Stephens,) Ricky Stephens.)) Defendants)	COURT OF Common Pleas 2008-CP-40-6656 TRANSCRIPT OF RECORD
STATE OF SOUTH CAROLINA)) County of Richland))) James Spencer,) Individually, on behalf) of the Estate of Doris) Holt and on behalf of) Southern Holdings, and) Irene Santacroce,)) Plaintiffs)) vs.)) John R. Rakowsky,) Adrian L. Falgione,) and The Law Offices of) Adrian Falgione, LLC) Defendants.)	COURT OF Common Pleas 2011-CP-40-5384 TRANSCRIPT OF RECORD FOR BOTH CASES HEARD JOINTLY

May 7, 2012
Columbia, South Carolina

BEFORE:

The Honorable James Barber, III, Judge

APPEARANCES:

Stephanie Weissenstein, Esq.

Amanda Dudgeon, Esq.

Adrian Falgione, Esq.

Benjamin Bruner, Esq.

James Spencer, Appearing Pro Se

KAREN AMBROZIAK
Official Court Reporter

CONTENTS:

WITNESSES:

(There were no witnesses called.)

EXHIBITS:

(There were no exhibits introduced.)

CERTIFICATE OF REPORTER 70

THE COURT: All right. I need people to tell me who is here and who is not here. We're here today to try to figure out where we are in these cases, where we need to go and how we're ultimately going to resolve them. We've had some issues with --- here is Mr. Spencer --- Mr. Spencer's health and they're ongoing I assume. Come on up here, Mr. Spencer.

(Complies.)

MR. SPENCER: Yes, sir.

THE COURT: Is Ms. Santacroce coming?

MR. SPENCER: Yes, sir, she is on her way up.

THE COURT: Is this Ms. Santacroce?

MR. SPENCER: Yeah.

THE COURT: Let her sit at the table. She is one of the parties in this action, actions.

Now, as most things have gone in this case, when we were having all the discussion several weeks ago about hearings and where we're going to go and how we're going to do things, we being my office, my law clerk, pulled all the files, two files and got them all organized so that we would start from there. Of course, we took them back to the clerk's office and our clerk can't find where they are, but that's --- so you're going to have to fill me in a little bit.

We have two actions here. We have an

interpleader action on some money that's been paid. What's the money in the trust account that's presently being held? Anybody have an idea of the value? What's the amount of money in that? Are you all holding that?

MS. WEISSENSTEIN: Stephanie Weissenstein, and we have the money in our trust account. It's about $63,000.

THE COURT: $63,000. All right. There is an interpleader action to pay that $63,000 into the court, the clerk's office is that --- that's one action. That's the oldest action, right.

MS. WEISSENSTEIN: Yes, sir.

THE COURT: Anybody disagree with that? All right. Now, I have heard --- we weren't able to come up with this information when we were reviewing and organizing the file. It's been repeated to me that there's 10, 12, 13, $9,000 that nobody can contest that somebody wants to be able to disperse that. Does anybody know anything about this?

MS. WEISSENSTEIN: Your Honor, there was a comment made in one hearing that referred to about $9,500 as being undisputed in the sense that those funds belong to or were generated for a cost of litigation, and since then there's been by the pro se

defendants the claim that it's on the court record that these are undisputed funds and that they're being improperly withheld. What our position has always been, Your Honor, is it's an interpleader action and we want to pay all the money to the court.

THE COURT: So there is no segregated $9,500 in some account somewhere that's separate and ---

MS. WEISSENSTEIN: It's all in one lump sum in our trust account.

THE COURT: The only money that is being held is the $63,000 that's in a trust account with your law firm?

MS. WEISSENSTEIN: Yes, sir; yes, sir.

THE COURT: All right. The interpleader was filed on behalf of ---

MS. WEISSENSTEIN: Mr. Rakowsky.

THE COURT: Mr. Rakowsky. All right, and this being the defendants, Mr. Spencer and Ms. Santacroce. Anybody else?

MS. WEISSENSTEIN: There was actually a plethora of parties, Your Honor, but most of them are in default, so the only remaining parties are Mr. Falgione and the pro se defendants and we also believe that Mr. Rakowsky will, once the money is interpled, can take on the posture of also being a

claimant, so there are multiple claimants.

THE COURT: Do y'all have any counter claims in the interpleader action?

MR. SPENCER: Well, let me straighten something out. First of all, Your Honor ---

THE COURT: Identify yourself.

MR. SPENCER: I'm Jim Spencer. I'm a defendant in the interpleader. The amount in question is $9,855.85, by their own accounting records that were submitted to your court on September 15th. I have a copy of this right here.

THE COURT: All right. But that money is not a segregated amount of money that ---

MR. SPENCER: That money --- they have combined that money and have said that that money is not disputed.

THE COURT: All right. Well, we're not getting into the merits.

MR. SPENCER: It's supposed to be segregated.

THE COURT: I'm just trying to find out where the cash is.

MR. SPENCER: It's supposed to be segregated and they didn't segregate it.

THE COURT: So it's in one account?

MR. SPENCER: I don't know that.

THE COURT: All right. Well, they have represented that, and you don't have any information to the contrary. All right. Now, are there any counterclaims on the interpleaders?

MR. SPENCER: Yes.

MS. WEISSENSTEIN: Sir, the counterclaims are all dismissed.

UNIDENTIFIED SPEAKER: They didn't dismiss us.

MR. SPENCER: They have been dismissed.

THE COURT: Don't talk to them. They don't talk to you. Everything comes through me.

All right. Are there orders on the counterclaims?

MS. WEISSENSTEIN: Yes, there was an order on the counterclaims, sir.

THE COURT: What was the counterclaim?

MR. SPENCER: Your Honor, we've asked for a counterclaim to get the ---

THE COURT: What was the cause of action on the counterclaim?

MR. SPENCER: A dispute in the amount of money in question.

THE COURT: Well, I understand that at some point in time if they are successful, there's going to be some issues as to who gets the money. You're making a

claim for some of the money. I don't know whether Ms. Santacroce is making a claim for the money. Ail apparently Ms. Weissenstein says that somebody else might --- I don't know if Mr. Falgione --- I don't know who is going to make any claims or what claims are pending, but is that what --- is that what y'all are looking for?

MR. SPENCER: No, sir. Mr. Rakowsky, on September 15th, acknowledged that he had no problem with that litigation money being paid out, that $9,855.85, which is separate from the $50,000 that was put in.

THE COURT: All right. Well, I don't care what he said at that point in time. I'm still trying to understand in my mind what we ---

MR. SPENCER: There are no other claims on that $9,855 but our claim.

THE COURT: All right. Well, here is the deal. Y'all oppose the money being paid into the court?

MR. SPENCER: We oppose the $9,855.85 being paid into the court.

THE COURT: Because you say you want it paid directly to you?

MR. SPENCER: That's correct.

THE COURT: Do you oppose the 9,000 some odd

dollars -- who has the claim on that?

MR. SPENCER: The only people who have a claim on that are the defendants.

THE COURT: Give me the names.

MR. SPENCER: The three defense (sic) are Irene Santacroce, Rodney Lail, and myself.

THE COURT: All right. Do you dispute that that there is a $9,000 ---

MS. WEISSENSTEIN: Your Honor, the other possible claimants have all defaulted, so we have disputed paying anything to anyone without a court order.

THE COURT: I understand that, but if you can all agree that 9,000 some odd dollars should go to these defendants for some reason, we'll sign a consent order and put the $54,000, pay it into trust and we'll argue about who gets that.

MS. WEISSENSTEIN: Your Honor, a consent order that firmly releases my client from any kind of liability as to the payment of that 9,500 whatever dollars will be okay, but without an order, we're just not going to pay these people any money.

THE COURT: Well, I know, but the best you're going to get ---

MS. WEISSENSTEIN: I'm sorry.

THE COURT: The best you're going to get on the

interpleader action is permission for the court to hold the money as opposed to you. There will not be any action on the interpleader action as to who is entitled to what. Just to pay the money into the court. Do you understand that?

MS. WEISSENSTEIN: I do, sir.

THE COURT: And then there's going to be --- I guess, I don't have the pleading. Somebody is making a claim for that money.

MS. WEISSENSTEIN: Yes, sir.

THE COURT: Be it Mr. Spencer, Mr. Rakowsky, somebody is making a claim for the money. They say, being the defendants in the interpleader action, say there's $9,500 for lack of a different --- that is not disputed and it should go to them. There is a dispute as to the other $54,000. Who gets that? Well, you know, if, in fact, they should get it, we might as well give it to them. If you can't, here is what's going to happen. I'm going to order the money be paid at some point in time into the court. There's no reason for them to hold when the court can hold it. And then we're going to have to set up some process for determining who gets $64,000.

MR. SPENCER: Your Honor, it's my understanding that according to the law that if the money is not in

dispute, it is not to be put into the interpleader. This money is not in dispute. It's supposed to be paid to us.

THE COURT: They're claiming it is in dispute.

MR. SPENCER: No, they just said it wasn't in dispute.

THE COURT: I didn't hear them say that. They said we'll pay anything if we're relieved of any liability. Well, are you agreeable to relieving them of any liability with respect to ---

MR. SPENCER: Well, I'm not sure what she is talking about with any liability.

THE COURT: I would assume that however --- I don't know how.

MR. SPENCER: What liability is she looking for release from?

THE COURT: I don't know.

MR. SPENCER: We're just asking that $9,500 be paid that we agreed to.

THE COURT: Well, here's what you need to do. You all need to agree to just pay the money into the court. You all need to agree that let's have a hearing as quickly as we can to decide who gets it. If there is some of that money, that $64,000 that is not --- that y'all acknowledge. You say it's for the

advancement of some court costs or ---

MR. SPENCER: Litigation funds.

THE COURT: All right. If that's, in fact, the case, then pay it to them. These folks need money at least based on my outside observation. If it's theirs, give it to them. Who is entitled to the other $50,000? $55,000? Do you have an opinion as to that?

MS. WEISSENSTEIN: Yes, sir, we do.

THE COURT: All right. What is your opinion as to who is entitled to that?

MS. WEISSENSTEIN: Our opinion is that $55,000 was settlement proceeds.

THE COURT: All right. And who gets ---

MS. WEISSENSTEIN: And then the attorneys representing the parties would be entitled to their fee, but in addition to that, Your Honor, there are other considerations that would be presented to the court at a hearing to ascertain those amounts of money.

THE COURT: Look ---

MS. WEISSENSTEIN: But, again, in terms of the interpleader action ---

THE COURT: This is a status conference. We're not holding anybody responsible. Basically your client believes they are entitled to a contingent fee on the

$50,000; is that right?

MS. WEISSENSTEIN: Yes.

THE COURT: Is there other money that they say they're entitled to in addition to the fee?

MS. WEISSENSTEIN: The fees and costs that were not paid in relation to the representation of Mr. Spencer.

THE COURT: All right. So everything you're claiming is litigation fees or costs?

MS. WEISSENSTEIN: I think so, Your Honor.

MR. FAGIONE: If I may, Your Honor, I'm Adrian Falgione. I'm one of the defendants in this interpleader action. I think there were multiple plaintiffs in that action, more than just the three people that are before you today, and I think they are entitled to that.

THE COURT: I don't care what they are entitled to. I want to know what you claim you're entitled to.

MR. FAGIONE: Our fees and costs, Your Honor.

THE COURT: Anything else?

MR. FAGIONE: I didn't have anything else in that particular action, Your Honor.

THE COURT: All right. And then you claim all the other plaintiffs are due the rest of it.

MR. FAGIONE: The plaintiffs and there were some

expert witnesses, I believe, Your Honor, but I have not kept up with the status of all those.

THE COURT: Expert witnesses on behalf of who?

MR. FAGIONE: On behalf of the plaintiffs.

THE COURT: Who paid them?

MR. FAGIONE: I don't know if they all have been paid or not, Your Honor. I've lost touch with what's gone on. This case, it's five years ago, six years old.

THE COURT: I ran for judgeship one time. Somebody on the committee wrote a letter to somebody who had filed a complaint against another judge and said, "Would you're like to file a complaint against Judge Barber?"

Now, we're not going out and looking for people to come in here and claim these funds if they're not interested in protecting their own whatever.

MS. WEISSENSTEIN: Your Honor, the --- everyone that we can think of who could have possibly been the contacted was identified and the Summons and Complaint was advertised in the newspaper.

THE COURT: When was this case settled?

MS. WEISSENSTEIN: I'm sorry?

THE COURT: When was the case settled?

MS. WEISSENSTEIN: The underlying action?

THE COURT: The $50,000 settlement, when was that settled?

MS. WEISSENSTEIN: I believe sir, that it was in 2005.

THE COURT: They ain't appeared, they have no claims. I can tell you that.

All right. So the parameters are --- do you understand that, Mr. Spencer? There's $63,000. They claim that they are entitled to some attorney fees and costs and that the plaintiffs are entitled to the other money. I'm not saying that's a valid claim. I'm not saying that's what will happen. That's what they claim.

MR. SPENCER: I'm not objecting to anything to do with that $55,000. The only thing we're asking for is the litigation expenses back, and we'll litigate over the other fees. That's all we're asking for. The money that we paid for litigation expenses that wasn't used, back.

THE COURT: All right. Well, I'm trying to understand in my mind, and I want you to understand in your mind what it is they're claiming.

MR. SPENCER: I understand what they were claiming.

THE COURT: All right. Now we have a second

lawsuit. The second lawsuit is you have filed a negligence action and some other cause of action in which you're seeking, Mr. Spencer, and I guess, Ms. Santacroce damages from Mr. Falgione and Mr. Rakowsky, right?

MR. SPENCER: Yes, sir.

THE COURT: And that's the newest suit?

MR. SPENCER: Yes, sir.

THE COURT: All right. Now, when is it that y'all believe we'll be able to deal with the $63,000? Is there any discovery that has to be done in that case?

MR. SPENCER: Yes, Your Honor.

THE COURT: All right. Who needs to do discovery?

MR. SPENCER: We have been trying to do discovery. We have a motion to compel. Irene has ---

THE COURT: I read ---

MS. SANTACROCE: I'm Irene Santacroce. I have a motion to compel to get some answers.

THE COURT: All right. I read the interrogatories, and I read the discovery responses, and I I'm going to tell you Ms. Santacroce, in looking that the responses and the questions, you're not going to prevail. There may be some things that you'll get,

but some of your questions are just kind of left field. You know, under the rules, you're entitled to any discovery that is relevant or that may lead to something that is relevant. You're not entitled to just ask questions and expect people to just answer those questions. If it's not relevant or something that's likely to lead to something that's relevant, then that's not going to fly. Now, I'll be happy --- whatever your entitled to get, I'll be happy to see to it that you get.

MS. SANTACROCE: Okay.

THE COURT: But I went through all your discovery, all your interrogatories and ---

MS. SANTACROCE: Well, all the answers were the same.

THE COURT: Well, you're questions were --- I just didn't see any kind of relevancy to most of your questions.

MS. SANTACROCE: Okay.

THE COURT: But, I mean, --- do you all want to do any depositions?

MR. SPENCER: Yes, sir.

THE COURT: All right. Who do you want to depose?

MR. SPENCER: I want to depose Mr. Rakowsky.

THE COURT: This is on the interpleader action.

MR. SPENCER: Yes, sir.

THE COURT: All right. You want to depose Mr. Rakowsky. Anybody else?

MR. SPENCER: No, I can't think of anybody else.

THE COURT: Ms. Santacroce, do you want to take any depositions?

MS. SANTACROCE: No.

THE COURT: You will have an opportunity to question the witnesses at the same time that the deposition is being taken.

MS. SANTACROCE: Yes, sir.

THE COURT: You can take one. One of you will be the lead litigant and the other one can ask whatever you want to ask.

All right. Are there any motions outstanding in that first case?

MS. WEISSENSTEIN: Not by us, Your Honor.

THE COURT: All right. Mr. Spencer, any motions outstanding in the ---

MR. SPENCER: In the interpleader, yes, sir.

THE COURT: What is the motion?

MR. SPENCER: There is a motion for sanctions.

THE COURT: All right. For what?

MR. SPENCER: For interpleading funds that are

not supposed to be interpleaded and for ---

THE COURT: Well, and that won't be dealt with prior to trial.

MR. SPENCER: Okay.

THE COURT: Because that won't be --- what you will probably have to do is seek some sort of frivolous action if, in fact, they're not there.

MR. SPENCER: That's part of our counterclaim.

THE COURT: All right. Well, that will have to be decided in the whole picture.

MR. SPENCER: We have a motion to amend our answer for a counterclaim and for a jury trial.

THE COURT: Well, I don't think it's for a jury trial.

MR. SPENCER: All right. Our counterclaim ---

THE COURT: It's an equitable action.

And you have a proposed counterclaim?

MR. SPENCER: Yes, sir.

THE COURT: On the amended complaint?

MR. SPENCER: We have had an amended complaint and counterclaim since August of 2011.

THE COURT: Have you seen the amended complaint?

MS. WEISSENSTEIN: Your Honor, I couldn't understand what he just said.

THE COURT: He said that since August of 2011, he

had filed a motion to amend the answer and the counterclaim and when he did that, he submitted a proposed answer and counterclaim, which is what you're required to do. Are you going to fighting him on the amendment? You're going to lose. Do you want to fight him?

MS. WEISSENSTEIN: Your Honor, I believe that an order of August 3rd, 2011 addressed that motion.

THE COURT: Let me see it.

MS. WEISSENSTEIN: I'm sorry?

THE COURT: Let me see it.

MS. WEISSENSTEIN: I don't have that with me today, Your Honor.

THE COURT: Why wasn't it filed?

MS. WEISSENSTEIN: Because, Your Honor, I believed that we were here to schedule the outstanding motions and not litigate the issues.

THE COURT: We're here to determine the status of the thing. I'm not litigating it, but you know as well as I do, the rules liberally allows for amended pleas, so you're probably going lose that.

What I'm trying to figure out is the if he amends, when can they do the depositions and let's go ahead and schedule the hearing on the merits of the interpleader action.

MS. WEISSENSTEIN: Your Honor, if the --- this action has been pending since 2008. He could have moved for the depositions a long time ago, and we would object to any further discovery at this point. It's an interpleader action.

THE COURT: I don't care. We're going to give him an opportunity to do it. We are going to give everybody an opportunity to do what they need to do before we go to a hearing, but we're going to schedule a hearing. If they don't do it before we go to the hearing, then they're going to give up their right to do it. I want to get the issues framed so that everybody knows what it is we're talking about when we go to a hearing.

What you need to do is consent to his amending the answer and the counterclaim, let's get on with that. Find out when it is he can take these depositions, let's get on with that and schedule a hearing.

MS. WEISSENSTEIN: All right. Your Honor. We'll consent to him filing his amended.

THE COURT: All right, they're consenting to allow you to amend your answer and counterclaim, so get them filed and get them served.

MR. SPENCER: Yes, sir.

THE COURT: I am going to give you fifteen days to do that.

MR. SPENCER: Yes, sir.

THE COURT: If you don't, you blow this.

MR. SPENCER: I understand.

THE COURT: Then you answer the amended answer and counterclaim.

MS. WEISSENSTEIN: We will, sir.

THE COURT: I'll give you ten days to do that.

MS. WEISSENSTEIN: All right.

THE COURT: From service. And when do you want to --- when can you take depositions, Mr. Spencer?

MR. SPENCER: Well, I can --- I'll have to get the ---

THE COURT: Can you do it within 30 days of their filing an answer?

MR. SPENCER: Within thirty days of their filing an answer.

THE COURT: Within thirty days of your filing an answer, I mean, a reply to their counterclaim, he needs to take Mr. Rakowsky's and you need to make him available and Mr. Falgione. Do you have any discovery you want to take?

MS. WEISSENSTEIN: Not really, Your Honor, but I mean, are they going to be required to notice my

client's deposition?

THE COURT: Notice in what way? Yeah, I'll get them to --- send a notice when you want to take them.

MR. SPENCER: Yes, sir.

THE COURT: We can do it the hard way, or we can see if we can ---

MS. WEISSENSTEIN: And that's what I'm asking. I'll be happy to cooperate and coordinate for dates and times.

THE COURT: Do you all have e-mail, I mean, email addresses?

MR. SPENCER: Yes, sir.

THE COURT: All right. Then you and Ms. Santacroce figure out some times that you --- now have don't just figure out one day, because this lady has a busy schedule and these lawyers have busy schedules, so you're going to have to give them several days.

MR. SPENCER: We will.

THE COURT: And y'all get together and get those depositions scheduled.

MR. SPENCER: Yes, sir.

THE COURT: All right. Then when do you all want to have a hearing? So we're --- it's probably going get it to June, July --- when do you want to have a

hearing?

MS. WEISSENSTEIN: In July, Your Honor, we are pretty much open any day but the 16th.

THE COURT: Well, it probably won't be in July. It will be later than that. How about after August 15th?

MR. SPENCER: Yes, sir.

MR. FALGIONE: Your Honor, with great trepidation, I would like to inform the court that I intend to ask for a week, and it's the week following the 15th.

THE COURT: Get your client to write a letter of protection for you. I never take vacations away from people. I mean, I'm not saying it's going to be the week of the 5th. It may be September 15th before we get around to setting it. I've got to find an nonjury term. How much time are we going to take on this thing, a day?

MS. WEISSENSTEIN: I imagine so, Your Honor.

THE COURT: Do you think we can do it in a day, Mr. Spencer?

MR. SPENCER: I would believe so, sir.

THE COURT: We will schedule a hearing for one day after September --- I mean, August 15th. Now, don't call me on the 16th saying I haven't got notice

yet, because I'm got to --- I mean, I've got get judges. I've got get courtrooms. I've got get y'all. I'll try to give y'all as much notice as I possibly can.

All right. Does that take care of --- now, we'll look at your counterclaims and see what the deal is on whether they're legal or equitable. I'm not sure that you're going to be able to file a legal counterclaim on the interpleader action.

MR. SPENCER: Yes, sir.

THE COURT: I'm not sure what it is that you're going to want to do specifically. You've already got your damages lawsuit pending now. If you're seeking --- bringing a counterclaim seeking damages that you're already seeking in your ongoing litigation, you know, they're going to get kicked. You're only entitled to one kick of the mule. That may be the lawsuit y'all have got pending now.

MR. SPENCER: Yes, sir, I understand.

THE COURT: But take a look at it. You understand what the parameters are. All right. Lawsuit number two.

MR. SPENCER: Your Honor, the $9,855.85, are they willing to release that to us?

THE COURT: Apparently not.

MS. SANTACROCE: I don't --- excuse me, Your Honor, but I don't understand if Mr. Rakowsky and Mr. Falgione ---

THE COURT: I don't know if you've introduced yourself fully.

MS. SANTACROCE: Yes, sir. I'm Irene Santacroce.

THE COURT: I'm sorry. All right. Go ahead.

MS. SANTACROCE: I don't understand why, if Mr. Rakowsky and Mr. Falgione --- I know Mr. Rakowsky has, even in this, he has no problems with releasing the $9,800 worth.

THE COURT: Who doesn't?

MS. SANTACROCE: Mr. Rakowsky. Is that not true?

MR. RAKOWSKY: Your Honor, after I talked to my counsel, she said there were some issues that were going to have to be addressed so that the money, I mean, I defer to her. Outside of this, I'm the client. If she feels that there's still any potential issues about repayment and for that reason I'm going to defer to her. If she says that that are ---

THE COURT: All right. Tell me how the $63,000 comes into play? Where is that money?

MR. RAKOWSKY: There was a $55,000 paid as a result of a federal court settlement and then there was some money that was paid into an account prior to

the case being resolved, but was to be used for resolution of the case, but there was money borrowed and ---

THE COURT: Whoa, whoa. There was some other money paid into what again?

MR. RAKOWSKY: Into my trust account by the two lenders who Mr. Spencer and the parties had contacted requesting money to be paid. It was litigation expense money and these lenders ---

THE COURT: All right. So $55,000 is the settlement and in your trust account were some monies that had been advanced by these clients ---

MR. RAKOWSKY: No, not these clients, but through these companies on behalf of their clients.

THE COURT: Well, I assume they were on the line to get this money advanced, either signed some note or did something to generate those funds.

MR. RAKOWSKY: Yes.

THE COURT: So whether they took it out of their pocket or they went to the bank and borrowed, it is money that would be theirs.

MR. RAKOWSKY: Theirs is the issue, the word theirs. I don't have a strong opinion who is defined to be theirs because each loan was different. There were different parties involved at the time the loans

came in. Quite frankly, I think it's an issue that probably the court should hear. That's my opinion. That's what Ms. Weissenstein has advised me of. At this point I'm not trying to give an opinion either way because I'm not sure that I know who the present potential claimants are on that $9,500.

Certainly Mr. Spencer is, but from what Ms. Weissenstein tells me, there could be other claims. For that reason, I think they're misstating where I stand, but I'm not going to get into an argument about it.

THE COURT: But you acknowledge that you have no claim to that money, right?

MR. RAKOWSKY: Not to the $9,500, no.

THE COURT: And Mr. Falgione has no claim to that money. Is that correct, Mr. Falgione, the $9,500?

MR. FALGIONE: That's correct, Your Honor.

THE COURT: The only people that would have claim to that would be the plaintiff --- or the defendants in the interpleading action.

MR. RAKOWSKY: Or any of the lenders.

MS. WEISSENSTEIN: Your Honor, Mr. Spencer has made representations and allegations against Mr. Rakowsky regarding the lenders and the failure to properly contract with or repay or name as parties or

et cetera the lenders that for this $9,800 so they have created much of our concern with these allegations that he's made via e-mail and in pleadings.

THE COURT: All right.

MS. WEISSENSTEIN: So we would prefer for the safety of ---

THE COURT: Mr. Spencer, I want you to sit down. You stay seated. You don't have to address the court standing up.

MR. SPENCER: Okay.

MS. WEISSENSTEIN: For the purpose of the interpleader action, Your Honor, for the protection of my client, if we were to issue a check to Mr. Spencer, what's to say that Ms. Santacroce or some other person with whom they are in concert with would not then sue my client for conversion or for some other action and so I would just, for the safety of my client and for full representation, the entire $63,000 needs to be paid ---

THE COURT: Look, I'm not asking you to write a check to anybody. What you would do is we're going to pay this money into the court.

MS. WEISSENSTEIN: Yes, sir.

THE COURT: What you would do is consent to those

funds being paid upon court approval.

MS. WEISSENSTEIN: Yes, sir.

THE COURT: If it's these three --- I don't know how many defendants in the interpleader.

MS. WEISSENSTEIN: Currently, Your Honor, we have ---

THE COURT: How many were named?

MS. WEISSENSTEIN: Mr. Falgione, Mr. Lail, Mr. Spencer, Ms. Santacroce and Horry County.

THE COURT: Horry County, Mr. Lail, Mr. Falgione, Ms. Santacroce, and Mr. Spencer. All right.

MS. SANTACROCE: Also, Ricky Stephens and Marguerite Stephens, as well.

THE COURT: Are they in default?

MS. SANTACROCE: Well, they haven't shown up.

THE COURT: All right. So they're in default.

MR. SPENCER: Your Honor, if I may speak.

THE COURT: Hold on a second. Judge Benjamin, do you need to see me?

JUDGE BENJAMIN: When you get a second.

THE COURT: That may be tomorrow. You can come up here.

JUDGE BENJAMIN: Okay.

(WHEREUPON, there was a bench conference.)

THE COURT: All right. Now, tell the me about

who --- so the only --- did Horry County file ---

MR. LINDEMANN: Your Honor, I'm Andrew Lindemann for Horry County. We have no claim to any of the $63,000 ---

THE COURT: So you don't have a claim.

MR. LINDEMANN: No, sir.

THE COURT: So y'all are three of the defendants, right? And who else did you say?

MS. WEISSENSTEIN: Your Honor, beside Horry County, there was Marguerite Stephens and Ricky Stephens; they never made an appearance.

THE COURT: All right. So. They were are in default.

MS. WEISSENSTEIN: Well, they filed an answer signed by Mr. Spencer, but they never actually ---

THE COURT: Well, he can't represent them, so they are in default. Where are these people, Mr. Spencer?

MR. SPENCER: Your Honor, first of all, I did not --- they filed their own answer and they asked that their rights today, money be turned over. We all signed the same motion October 2008. The money be turned over. They are in default. They have no claims on the money.

THE COURT: They're out of the case.

MR. SPENCER: They're out of the case. The lending companies are out of the case.

THE COURT: Mr. Spencer, I'm trying --- if they're in default, they're out of the case.

MR. SPENCER: Everybody is in default, the only claims are right here.

THE COURT: All right.

MR. SPENCER: And Ms. Weissenstein knows that. She is trying to keep this money out of our hands so we cannot ---

THE COURT: Whoa.

MR. SPENCER: Okay.

THE COURT: Don't talk about her.

MR. SPENCER: Okay.

THE COURT: Y'all have a problem with let's sign a consent order ordering all the money be paid into the court and then let's have an immediate hearing on the $9,500 to determine who gets that money. We know Horry county is not making a claim. Y'all can sign a waiver of any claim.

UNIDENTIFIED MAN: Your Honor, we paid 30,000 of the 55 settlement. That's why we're in the case.

THE COURT: Y'all can waive any claim to that --- who was --- Mr. Rakowsky, he was one of the defendants in the case, interpleading action; is that right?

MS. WEISSENSTEIN: He is a claimant, yes. Mr. Falgione is a defendant in the interpleader case, so they're claiming to the $55,000.

THE COURT: I'm not talking about the $55,000. I'm talking about the $9,500.

MS. WEISSENSTEIN: Neither Mr. Falgione nor Mr. Rakowsky have a claim to that.

THE COURT: All right. So. They can waive any claim to that.

MS. WEISSENSTEIN: Yes.

THE COURT: And then they can get up and tell me why it is they're entitled to the money and if that's the only evidence in front of me and there will be a record, then I'll sign an order giving them the money. I assume these folks want to use some of this money to prosecute this action. Maybe not. Maybe they want to go have a party. Let's not waste time. Let's get to the bottom of this.

MS. WEISSENSTEIN: Yes, sir, absolutely.

THE COURT: The bottom of this is you've got $55,000 of which these two gentleman may have some claim to.

MS. WEISSENSTEIN: Yes, sir.

THE COURT: And that's all they claim. Nobody else is making a claim to the $55,000 but these folks.

MS. WEISSENSTEIN: Yes, sir.

THE COURT: If they don't prevail, they get it all. If they prevail, they get whatever they don't get. I mean, whatever is left, but that's easy. Let's go ahead with that. Do you have a problem with that, have an immediate hearing on the $9,500?

MR. SPENCER: No, sir. That's all we've asked for since day one in 2008.

THE COURT: All right. Well, let's do that. Do you need to do any discovery as to the $9,500?

MR. SPENCER: I'm taking their record of $9,855.85.

THE COURT: I don't know why you wanted to do discovery on the other claim. You know what it is.

MR. SPENCER: Yes, sir.

THE COURT: That is, they think they're entitled to, I guess, a 33 percent interest in the settlement and some costs that they've advanced on your behalf.

MR. SPENCER: I know what they are claiming.

THE COURT: You can spend the money on the depositions if you want, but I don't know that you need to, but if you want.

All right. Well, I'm going to --- can we have a hearing on $9,500 quickly?

MR. SPENCER: It's, you know, it's --- all we're

MR. SPENCER: In our proposal, from day one, to put that into one trust account and everybody has agreed to that. That motion has been before the court since ---

THE COURT: Well, I'm not sure what one trust account.

MR. SPENCER: We've all named a trust account, a lawyer to be paid into.

THE COURT: And who is that?

MS. SANTACROCE: It's James T. Young.

THE COURT: Where is he?

MS. SANTACROCE: He's with Singleton Burroughs & Young out of Conway, South Carolina.

THE COURT: Can you get something from him saying that he is agreeable to accept those funds if the court orders it and hold those funds in trust on behalf of whoever ---

MS. SANTACROCE: Yes.

THE COURT: All right. Get something and bring that to the hearing ---

MS. SANTACROCE: Okay.

THE COURT: --- saying that if the court authorized the payments to y'all for your claims for the $9,500, that you're authorizing it be paid to him and he will hold it in trust for your use and benefit.

MS. SANTACROCE: That's correct.

THE COURT: And you all need to figure out what you need to do with him in order to be able to authorize the expenditure of that money or authorize the payment to you.

MS. SANTACROCE: Right. Yes, sir.

THE COURT: All right. So we'll get rid of that and then we'll have a hearing sometime after August 15th to decide what happens to the $55,000, $54,000.

MS. WEISSENSTEIN: Yes, sir.

THE COURT: All right.

Lawsuit number two, when was that filed, Mr. Spencer?

MR. SPENCER: That was filed in August of 2011.

THE COURT: All right.

Now, we know in that suit we have a motion to exclude.

MS. DUDGEON: Yes, Your Honor, Mandy Dudgeon, for Mr. Rakowsky. There is motion to disqualify.

THE COURT: That's the first thing we need to hear. We're going to hear it. Now, Mr. Spencer the doctors have asked --- they tell me that he can start and will be able to hold hearings, but not more than one a day.

MS. DUDGEON: We'll be prepared immediately after June 1st to handle that.

THE COURT: We're not going to have this hearing on the same day we would have your hearing.

MS. DUDGEON: I understand.

THE COURT: We'll have to figure all that out. I'd like to give Mr. Spencer is couple of days between hearings to catch his breath and recoup, so that will have to be the first hearing.

Then there was another motion that we heard that was ---

MS. DUDGEON: There's two motion to dismiss, one on behalf of each of the defendants and that's all that I know that is pending, Your Honor.

MR. BRUNER: Yes, that's correct, Your Honor. Ben Bruner here for Mr. Falgione and his firm. We have a motion to dismiss that we filed last November, the day after Ms. Dudgeon's firm. We amended our motion later, I believe, if it matters, both our amended motion and our original motion are appearing as two separate items on the docket, but the amended one is the only one we need heard. We simply request that it's heard as soon as possible ---

THE COURT: All right.

MR. BRUNER: --- so we can pursue discovery

before this cases pops up on the trial roster.

THE COURT: Let's assume that the case is not dismissed. What discovery has to be done?

MS. DUDGEON: Your Honor, probably ---

THE COURT: Who would you want to depose?

MS. DUDGEON: Well, at least all the actual plaintiffs ---

THE COURT: I mean, I don't know who the plaintiffs are. Mr. Spencer would be one ---

MS. DUDGEON: I would say there would be at least five depositions. It also depends if they have an expert, but at least five depositions.

THE COURT: All right. Mr. Spencer, who are you all going to want to depose in that lawsuit --- or Ms. Santacroce?

MR. SPENCER: There will be about six depositions.

THE COURT: All right. Tell me who you're thinking about at this time, Rakowsky and Falgione?

MR. SPENCER: At this time it would be Rakowsky and Falgione would be two of the people. And, there will be ---

THE COURT: All right. How about let's --- do you think it's possibility to combine the discovery in these two cases so they don't have to take their

depositions twice?

MS. DUDGEON: No, Your Honor, because I would anticipate our motions would be heard in June and that would be about the same time they were going to be deposing people, so no, I would not want to combine the discovery.

THE COURT: All right. Do you all anticipate securing counsel if you get this money?

MR. SPENCER: Yes, sir.

THE COURT: So all of this may be for naught because your lawyer may step in here and say I need something different; is that correct?

MR. SPENCER: I can't speak for somebody I don't know, sir. However, I would like to bring up ---

THE COURT: All right. Go ahead.

MR. SPENCER: No one has addressed the entry of default that we filed.

THE COURT: I don't know about entry of default.

MR. BRUNER: Your Honor, I believe that's the motion for entry of default that Mr. Spencer filed as against my clients and Ms. Dudgeon's client prepared an answer to the complaint timely. That was attached to an unnotarized affidavit. I believe we discussed that at the status conference.

THE COURT: Somebody --- Ms. Santacroce, I

432

2008, the other side is always sending supplement this, supplement that, so my experience as a pro se litigant, I thought it was okay, so I straightened it out and I resubmitted it.

THE COURT: I already ruled. I determined there is no default because there is no appropriate affidavit showing anybody was served. I mean, it wasn't even something you'd have a hearing on.

MR. BRUNER: I believe that ---

THE COURT: If it's an entry of default, you would normally file, send me an affidavit of service, an affidavit of nonmilitary service, a copy of the --- I don't know, whatever else you may have.

MS. SANTACROCE: Yeah, and you did say that on the phone.

THE COURT: I would review the facts and either sign the default or deny the default. In this instance you sent it, I pulled the file and I reviewed it, the affidavit that you --- whoever filed your affidavit of service was clearly deficient under the rule, so I denied the entry of default and that's where it is. We don't go back and redo it again, but we're not trying this case on the default. We're trying this case on the merits of the case. If you all are entitled to money against them, you're going

433

to get it based on the merits of your claim.

MS. SANTACROCE: Yes, sir.

THE COURT: If they have something about you, they're going to get it on the merits of the claim. That's not going to be done on some technicality that kicks you out of court or kicks them out of the court. That's the purpose of litigation. You give everybody the opportunity to offer whatever they want to offer and somebody is going to make a decision as to who is entitled to recover. In this case you get to a jury and the jury is going to make a decision. Were you wronged and if so what damages are you entitled to.

MS. SANTACROCE: Yes, sir.

MR. Bruner: Your Honor, at the risk of beating a dead horse, I would like to point out for the record that the motion for default was filed three months after we filed our notice of appearance and our motion to dismiss.

THE COURT: I'm well aware of that.

MR. BRUNER: I'd just like to get that on the record, Your Honor.

THE COURT: That's an issue --- do you all want me to do an order saying that I had Ms. Santacroce send a proposed entry of default, the court reviewed the file, determined that the affidavit of service was

deficient, that it failed the specificity of the rule stating who was served, what time they were served, where they were served and all that, that it was deficient, but it was served after the fact that y'all had already served an answer, if I remember correctly and the court has determined that there is no default based on there is no sufficient affidavit.

MR. BRUNER: Your Honor, if we need an order ---

THE COURT: All right. Do me that order. All right. Now, we need to find out whether you're in the case or not in the case.

MS. DUDGEON: Yes, Your Honor.

THE COURT: And then we need to hear the motions to dismiss.

MS. DUDGEON: Yes, Your Honor.

THE COURT: Then, we need to figure out a scheduling order as to discovery. Mr. Spencer, I would like you and Ms. Santacroce to determine --- are you going to have any experts in this case? I need we need to find out whether you have a lawyer or not.

MR. SPENCER: Yes, Your Honor.

MS. DUDGEON: Your Honor, perhaps we could have one hearing a week in the month of June.

THE COURT: I don't think I can have ---

MS. DUDGEON: Well, I was going to beg you to

make yourself available.

THE COURT: Let me tell you, there is very little benefit to being the administrative Judge, but one of them is you don't do nonjury. I'm going to do the interpleader action because I think they need to get their monies and get on with this litigation so they can hire their lawyer. We can bring this thing to a conclusion this year, both cases, all right? We've got a term of nonjury, I think the 4th of this month, of June.

MS. DUDGEON: We could fit two motions in one week.

THE COURT: We may try to do that and then the following week hear this interpleader action and then if the motions to dismiss are denied, and he's granted, they're granted the funds, they can go get their lawyer and then we will have a status conference with their lawyer to determine ---

MS. DUDGEON: A scheduling order.

THE COURT: --- a scheduling order.

MR. SPENCER: Your Honor, we're trying to get the funds to obtain a lawyer, which they're --- one of the objections they raise is that we don't have an expert witness which requires fund from the lawyer, so they were trying to schedule it before we get the funds for

the lawyer. That's what they're trying to do, sir.

MS. DUDGEON: My case is separate from the interpleader. I'm just trying to get a motion that was filed in November.

THE COURT: Well, what is --- do they say this is a negligent malpractice case?

MR. BRUNER: Yes, Your Honor.

THE COURT: You all are alleging that they need an expert in order to go forward with ---

MS. DUDGEON: There are actually three separate grounds for a motion to dismiss. One being expert affidavits and two being ---

THE COURT: I don't know, is this a common knowledge case?

MS. DUDGEON: Two being --- absolutely not.

MR. BRUNER: The plaintiffs allege in the complaint that they were required to file an extra affidavit. They actually used the safe harbor provision in the frivolous claims proceedings act. We have alleged they failed to include the affidavit as required. We've alleged that they failed to initiate the case timely enough, and we've initiated an insufficiency and untimely service of process.

Your Honor, several of those grounds I don't know if they can be cured, but to the extent Mr. Spencer is

worried that his case will get kicked before the merits of the interpleader action is determined. We all know that just because there is a hearing on a Tuesday doesn't mean the judge rules on Tuesday. In a case like this it's certain possible that the judge may take ---

THE COURT: All right. So y'all have moved to dismiss on ---

MS. DUDGEON: Expert affidavits, statute of limitations, and service.

MR. SPENCER: Your Honor, we ---

THE COURT: Why don't you just have --- why don't you stay the expert affidavit until he gets his lawyer.

MS. DUDGEON: May I respectfully ask why, Your Honor?

THE COURT: Probably because if something had agreed to give them their $8,500 or $9,500, there would have been a lawyer and the lawyer would have been able to look at the case and say yeah or nay. The lawyer is not going to cure the statute of limitations problem. I don't care how good the lawyer is, if the time has run, the time has run.

MS. DUDGEON: Then, Your Honor, what else the purpose of the statute? I mean...

438

THE COURT: I don't know what the purpose of the statute is. I wasn't up there when they passed the statute, but ---

MS. DUDGEON: To avoid (unintelligible).

MR. BRUNER: Your Honor, the reason why ---

THE COURT: Then I'll just hold off on scheduling your motions for a while.

MR. BRUNER: I don't know that it's something to cure, is the point.

THE COURT: I don't know whether it is or not, but at least they have a lawyer that might say Mr. Spencer, unfortunately, you don't have an expert and didn't have one when you needed one and I can't help you.

MS. DUDGEON: Your Honor.

MR. BRUNER: I'm just saying that, respectfully, Your Honor, that they have had plenty of time to go talk to lawyers and we all know there are two law school putting out lawyers in this state, now.

THE COURT: Mr. Bruner, they haven't had a dime because we've being sitting up here arguing about $9,500, apparently. It should have been resolved a year ago.

MS. DUDGEON: Your Honor, are you proposing that we have a motion to dismiss on all grounds except the

expert ---

THE COURT: We'll hear from them, but it may be a month or two after they have the interpleader, the $9,500 case.

MS. DUDGEON: Your Honor I'll take what I can get. I'll argue whatever motion I'm allowed to argue as soon as I can.

THE COURT: And I hope to be there.

MS. DUDGEON: It's a good point, but I hope to be.

THE COURT: How about that, Mr. Spencer?

MR. SPENCER: Sir?

THE COURT: Schedule the hearing on the motion to dismiss on the grounds that one, you didn't file within the statute of limitations and two, deficient service, the issue of whether you had an expert, needed an expert or met the expert requirement, we will defer until you can get an attorney.

MR. SPENCER: Your Honor, I'd like to have an attorney on those issues and it --- the second part is that I've been waiting for their --- the ruling on the entry for default.

THE COURT: I told you that on the phone.

MR. SPENCER: You said that the affidavit was incorrect. We remedied the affidavit being incorrect,

and now you say that you're going to rule against it. Now, at that point in time we would amend that complaint and amend it to where we don't need an expert if we cannot afford an expert. Now they're arguing service on a timeliness basis when just a few minutes ago they were just saying that it doesn't matter if they miss a few days. Now they're arguing back that we missed a few days. I don't understand the dichotomy of two different standards.

THE COURT: I don't know what you mean, it doesn't matter if you miss a few days.

MR. SPENCER: They were talking about the twenty-one days that they failed to respond on a timely basis, doesn't matter. They're going to have a hearing.

THE COURT: Did you all read your affidavit of service, Mr. Spencer?

MR. SPENCER: Yes, I will reread the affidavit of service. The affidavit of service was ---

THE COURT: Did you compare it with the rule?

MR. SPENCER: No, sir. We understood that the affidavit of service was supposed to be sufficient that they used that affidavit of service in federal court and it was acceptable.

THE COURT: Well, I don't know what federal court

441

does.

Proof of service shall state the date and time of service, the name and address of such person served. None of which that affidavit stated. It had the person. That's all it had.

MR. SPENCER: Yes, sir, and they responded. They responded accordingly in their response. They responded two weeks late so they had to have been served. They responded, so they were served.

THE COURT: Well ---

MR. SPENCER: They didn't respond without being served.

THE COURT: Well, if they responded, they had to served, there's no doubt about it, but the question is when were they served?

MR. SPENCER: They were served on the 15th. They responded 20, 30 days later.

THE COURT: I don't know when they were served. Your affidavit was not sufficient. They appeared. We're not going to argue that. I've already ruled.

MR. SPENCER: Okay.

THE COURT: You all understand this, we're not ending this case on either side based on some silly technicality.

MR. SPENCER: Okay.

THE COURT: If you're entitled to recover funds, you're going to recover them because your claim says, I've been wronged and this is how you rectify that.

MR. SPENCER: Yes, sir.

THE COURT: You can't go back and undo what's been done. The only way we do it our system is somebody pays money.

MR. SPENCER: Yes, sir.

THE COURT: All right. Same way with them.

MR. SPENCER: Right.

THE COURT: At least anything that I'm involved in. All right. Let me look at it. I'll figure it out.

MS. DUDGEON: Your Honor, I'm sorry.

THE COURT: What I'm going to schedule is what I'm going to schedule.

MS. DUDGEON: Okay. But our goal, so I understand ---

THE COURT: We had a term of court, I think on the 18th of June, nonjury that would have been perfect for this, but Judge Benjamin decided she was going on vacation. They moved her and those rosters may have gone out. I don't know. The next term would be the end of June. I just am going to have to see what the schedule is, but I do know I'm going to hold this

hearing on the $9,500 early on, and if you all are agreeable to hold it sooner than that, I'm not going to be here the 28th or the 14th. I'll just have to figure it out, but we all know we're going to try to get those cases resolved this year.

MR. SPENCER: Yes, sir.

THE COURT: We need to put an end to them.

MR. SPENCER: Agreed.

THE COURT: We're going to --- Mr. Spencer, Ms. Santacroce, you'll need to start figuring in your minds whether you're represented or not represented, who it is you want to depose so that we can come up with a schedule at some point in time to move this case along. I would like to try to maybe try this case --- when was it filed?

MS. DUDGEON: It was filed in August. We answered in November because we saw that it had been filed.

THE COURT: All right. So August, it would be coming up on 12 months. I'd like to see about trying to get it tried by October. That would give y'all six months or so to do whatever discovery you need to do and put it all out there.

MS. DUDGEON: Your Honor, can we continue with discovery during this time?

THE COURT: Sure.

MS. DUDGEON: Or is it also ---

THE COURT: Sure.

MS. DUDGEON: Okay. I just wanted to confirm.

MR. BRUNER: Well, specifically, Your Honor, I know Mr. Spencer's health is an issue.

THE COURT: Well, he's not required to do anything until June 1st.

MR. BRUNER: Okay.

THE COURT: Other than come to a status conference. I asked the doctors if he can come to a status conferences and he said yes.

MR. BRUNER: Okay.

THE COURT: If you schedule depositions, my suggestion is, unless he consents to it, don't schedule more than one deposition a day, and I would spread them out to some extent. I know that costs you more money because you have to drive --- are you in Charleston?

MS. DUDGEON: Yes, Your Honor.

THE COURT: Then drive up from Charleston. I've talked to his doctor in Charleston, his doctor here, and they both are on the same page. I told them I would do what I could to help them, but apparently a big stressor in his life is this litigation, so there

is some benefit to moving on that and getting him beyond that stressor.

MS. DUDGEON: Your Honor, do you think there is any problem to at least getting a motion to disqualify, since that is first in my case on the list?

THE COURT: I'll get to that in a second.

MS. DUDGEON: I did present a proposed order, but I don't know if you've had a chance to review it. It's just ---

THE COURT: I didn't see it.

MS. DUDGEON: It was just from the status conference where you continued Mr. Spencer's outstanding motions and you granted --- I mean, you denied the motion to disqualify from Ms. Santacroce. You had asked that I prepare an order that walked through kind of the time line of events.

THE COURT: When did you send this?

MS. DUDGEON: Very late.

THE COURT: Very late?

MS. DUDGEON: Friday morning.

THE COURT: Well, see, I was out of town.

MS. DUDGEON: I know and I apologize for that, but if you can review it, I can make any changes. It's lengthy because you asked us to go through the

446

time line of what got us to that point.

THE COURT: All right.

MS. DUDGEON: We can file it by e-mail ---

MR. SPENCER: Your Honor, this order is premature.

THE COURT: I haven't seen it. I'll look at it.

MR. SPENCER: I know nothing about what her claims are on this.

THE COURT: My recollection is that I told somebody to prepare an order. Did you prepare an order setting forth the time frame that you didn't have any --- you didn't have any hearings before June 1st, all that stuff.

MR. SPENCER: Your Honor, this goes way beyond that.

THE COURT: I'll have to look about it.

MS. DUDGEON: We didn't know about June 1 at the time of preparing this order so that ---

MS. SANTACROCE: No, but you did tell me, Judge Barber, when we were speaking on the phone, that you were going to dismiss me out for the reasons of not showing up.

MS. DUDGEON: Just ---

MS. SANTACROCE: But you said before you were going to do anything, you were going to wait to see

447

what condition, what was going on with Mr. Spencer first.

THE COURT: Well, you know, it doesn't matter.

MS. DUDGEON: It was just motions to disqualify and you said it could actually be changed later.

THE COURT: If Mr. Spencer gets them disqualified, they're disqualified regardless of whether you do or don't. I assume you all have the same reason, right?

MR. SPENCER: Yes, sir.

THE COURT: All right.

MR. SPENCER: Your Honor, in the future, could you have opposing counsel submit these proposed orders to us in a timely basis so we have them and can ---

THE COURT: I don't know what that means, a timely basis.

MR. SPENCER: Well, I mean ---

THE COURT: Here is what I require, and I can tell you that it's not been done on either side. I know that Ms. Santacroce sends me all of the kinds of stuff and talks to my law clerk and nobody else is copied.

MS. SANTACROCE: Yeah, ever since you told me that on the phone, yes, sir, I did.

THE COURT: Well, here is --- we're not

having --- we're not being pen pals anymore.

MS. SANTACROCE: Nope, nope.

THE COURT: Anything your send to me, all these defendants have to be copied, all these lawyers have to be copied and I'm not reading anything else from now on if everybody doesn't get a copy of whatever is sent. If I ask somebody to send an order to me, I want the other parties to be copied before it's sent to me. I don't want it to go contemporaneously with me because I sit there and I read it and I think that's sounds pretty good, so I wait five days to see if somebody doesn't want me to sign it, and the other side takes eight days to notify me.

MS. DUDGEON: Yes, Your Honor.

THE COURT: So send it to the other side and then wait five days and send it to me so that both sides have the right to read it and then make an issue of it if you want to make an issue of it.

Ms. Santacroce, if you want to go back and look at --- I reviewed your discovery and your request and frankly, I mean, it just --- some of it just didn't maker any sense to me.

MS. SANTACROCE: I will recheck it, Your Honor. I'll recheck it.

THE COURT: You know, I'm happy to give you a

hearing, get on the telephone, and resolve all discovery disputes. Now, if you have a discovery dispute with them, Mr. Spencer doesn't need to be on the telephone for your discovery dispute.

MS. SANTACROCE: That's correct.

THE COURT: And if he has one, you don't need to be on the phone, but you know, let's make it meritorious on what we're trying to do. If you have a discovery dispute, then send an e-mail saying I'm having a discovery dispute. Send a copy to whatever lawyer it is and ask me to get it resolved. I will, within 48 hours, I will be on the telephone and we'll resolve it.

MS. SANTACROCE: Yes, sir, thank you.

THE COURT: You don't have to send a motion in forma pauperis because we're not doing in forma pauperis.

All right, here, this must be what you sent.

THE COURT: If the Stephens, if they're not in this case, Mr. Spencer if you're would get in touch with them and have them file something with the court saying that they're no longer interested in pursuing any claim.

MR. SPENCER: Yes, sir.

THE COURT: And have that notarized and send it

to me and then that takes them out of the being noticed, even if they're in default.

MR. SPENCER: Yes, sir.

THE COURT: That makes it easy, the least number of people we have involved in the case, the less difficulty there's going to be.

MR. SPENCER: Yes, sir.

THE COURT: All right. Anything else y'all want to tell me?

MS. DUDGEON: No, Your Honor.

THE COURT: Anything else y'all want to tell me?

MR. SPENCER: I was just curious about you had mentioned something about something that Irene had submitted in formal pauperis and you weren't going to allow that.

THE COURT: Yeah, she wanted to file a motion to compel in forma pauperis.

MR. SPENCER: And you wouldn't allow in forma pauperis?

THE COURT: No, we're not going to do that. I mean, I told her how to handle this stuff.

MR. SPENCE: Okay.

THE COURT: That's what they're entitled to again because of a technicality, but you know, every time you file a motion, I'm not going to have to go back

THE COURT: All right. Are y'all submitting affidavits in support of your motions to disqualify then?

MR. SPENCER: Yes, sir.

THE COURT: Have you done that yet?

MR. SPENCER: We have, yes.

THE COURT: You have submitted all the affidavits?

MR. SPENCER: No, we've got more affidavits that we need to submit.

THE COURT: All right. Well, you need to get them in. We're going to hear that motion in June.

I can tell you the court just went through this on another case. We're not taking affidavits the day of the hearing.

MR. SPENCER: I haven't received anything from the other side.

THE COURT: You have the burden.

MR. SPENCER: Correct.

THE COURT: And they can't respond to something --- have they submitted any affidavits to you?

MS. DUDGEON: No, I don't believe any affidavits, just some documents.

MR. SPENCER: We haven't.

THE COURT: If you have any affidavits, I want them submitted five days before the hearing.

MR. SPENCER: Yes, sir.

THE COURT: All right.

MS. DUDGEON: Okay.

THE COURT: Okay. Anything else?

MS. DUDGEON: I don't think so.

THE COURT: Let's do our best to get this thing resolved.

MS. DUDGEON: Your Honor, would you take a review of that order? I apologize, I did not circulate it to Mr. Spencer beforehand. I apologize. If he has any changes to it, I'll be happy to consider them to incorporate them and submit to you again, or we can just put a time limit on his response. Whatever you would like to do.

THE COURT: You can review the order, get in touch with her if you have any problems, questions or concerns, get in touch with her, let her know. If you all can't resolve those, then whatever they are, send them to me.

MR. SPENCER: Yes, sir.

THE COURT: Copying her.

MR. SPENCER: All right.

THE COURT: All right.

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MR. SPENCER: Yes, sir.

THE COURT: Copying her.

MR. SPENCER: All right.

THE COURT: All right.

MS. DUDGEON: Thank you.

THE COURT: All right. Anybody that I've asked to do an order, do it and get it to me within seven days. Again submit it to Mr. Spencer, Mr. Lail, and Ms. Santacroce.

MS. DUDGEON: Yes, sir.

THE COURT: All right. Have a nice day. Thank you for coming.

MS. SANTACROCE: Thank you, Judge.

THE COURT: Stay in touch.

MS. SANTACROCE: Your Honor.

THE COURT: Are there good days and bad days that you can or can't be up here when I'm scheduling this hearing on the $9,500? I assume you would like to be here for that day.

MS. SANTACROCE: I would like to, yes.

THE COURT: Are there certain days that are easier to get here than not?

MS. SANTACROCE: No sir. I don't have any money to drive up all the time either.

THE COURT: Well, we'll not --- we will attempt to minimize that. Actually, in some things I don't have a problem with your being on the telephone. The problem is we don't have a speakerphone here in the courtroom.

MS. SANTACROCE: I'll get you a speaker phone if that helps.

THE COURT: For the courthouse? Richland County would appreciate that.

MS. SANTACROCE: Okay. We'll get one. Can you get one for them?

And, Judge Barber, while everybody is here, I also have medical issues that prevents me sometimes from driving long distances. Now, I can send you a copy and I can send everybody a copy of ---

THE COURT: Well, I'm the one that needs --- I'm not continuing anything without some medical verification.

MS. SANTACROCE: No. I mean, I've got it. I'm just saying.

THE COURT: So you need to send it to me.

MS. SANTACROCE: Okay. I'm worried about ex parte, now. You know, so I'm trying to follow your rules.

THE COURT: Scheduling is something I can talk to individuals about.

MS. SANTACROCE: Okay.

THE COURT: I can't talk about the merits of the case, or anything about the case, but with scheduling, you're sick, she has another hearing somewhere else.

Mr. Bruner, his Monday is laid out.

MS. SANTACROCE: Yeah, I know.

THE COURT: But I can schedule it, but I mean, the thing is, if you know you have some medical problem that is going to confine you for a certain period of time, don't wait for the day of the hearing.

MS. SANTACROCE: Well, see sometimes it happens like at five, six o'clock and, you know.

THE COURT: This lady is driving up from Charleston and somebody is paying her a lot of money to do that.

MS. SANTACROCE: Well, I'll make every effort, Judge Barber.

THE COURT: All right. Thank you all.

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the 5th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing, prepared by Vicki Everhart, Transcriptionist, is a true, accurate complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned cases, relative to appeal, in the Common Pleas Court for Richland County, South Carolina, on the 7th day of May, 2012.

Signed

October 17, 2012

Karen Ambroziak

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

SOUTHERN HOLDINGS, INC., ET AL.,

PLAINTIFFS,

VS.

HORRY COUNTY, SOUTH CAROLINA, ET AL.,

DEFENDANTS.

CIVIL ACTION
NO. 4:02-1859

UNITED STATES COURTHOUSE
FLORENCE, SOUTH CAROLINA
MAY 8, 2007.

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TRANSCRIPT OF HEARING PROCEEDINGS

BEFORE THE HON. R. BRYAN HARWELL, DISTRICT JUDGE

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APPEARANCES:

ADRIAN L. FALGIONE, ESQ.
JOHN R. RAKOWSKY, ESQ.
LEXINGTON, SOUTH CAROLINA
FOR THE PLAINTIFFS.

ANDREW F. LINDEMANN, ESQ.
COLUMBIA, SOUTH CAROLINA
JAMES M. SALEEBY, JR., ESQ.
FLORENCE, SOUTH CAROLINA
SANDRA SENN, ESQ.
ROBIN L. JACKSON, ESQ.
CHARLESTON, SOUTH CAROLINA
FOR THE DEFENDANTS HORRY COUNTY, ET AL.

EDWARD GLENN ELLIOTT, ESQ.
FLORENCE, SOUTH CAROLINA
FOR THE DEFENDANTS HARTNESS.

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(THEREUPON, THE FOLLOWING PROCEEDINGS WERE HAD:)

THE COURT: ALL RIGHT. LET'S TAKE UP ANY MATTERS, WHAT I CALL HOUSEKEEPING MATTERS. PARTICULARLY, LET'S TALK ABOUT, HAS THERE BEEN ANY RESOLUTION REGARDING MR. HERROLD AND HIS DEPOSITION?

MR. RAKOWSKY: WE TOOK A SUPPLEMENTAL DEPOSITION MONDAY.

THE COURT: EXCUSE ME?

MR. RAKOWSKY: WE TOOK HIS SUPPLEMENTAL DEPOSITION OFFER THE TELEPHONE MONDAY.

THE COURT: IS THAT CORRECT?

MR. SALEEBY: YES, SIR.

THE COURT: SO THAT'S BEEN TAKEN CARE OF. ANY OTHER MATTERS?

MR. FALGIONE: EXCUSE ME, YOUR HONOR. REGARDING MR. HERROLD AND THAT VIDEOTAPE DEPOSITION, I BELIEVE MS. SENN IS IN AGREEMENT THOSE PORTIONS REGARDING THE 706 WITNESS FOR THE COURT WILL BE DELETED.

MS. SENN: YES, YOUR HONOR. THEY FILED LIKE FIVE PAGES OF DOCUMENTS THIS MORNING, I DON'T KNOW IF YOU SAW IT, PERTAINING TO THAT, AND I'M NOT SURE WHAT THE PURPOSE WAS. IT GOT FILED THIS MORNING. I GUESS TRYING TO SAY THAT WE KNEW OR SHOULD HAVE KNOWN. I DIDN'T KNOW AND

APPARENTLY THEY DIDN'T EITHER, BECAUSE DURING THE DISCOVERY DEPOSITION, I CONTINUED TO MAKE THOSE ASSERTIONS DURING THE DISCOVERY DEPOSITION. I WAS NEVER CORRECTED BY THE PLAINTIFF'S COUNSEL EARLIER. I WANT TO APOLOGIZE AGAIN FOR MY ASSUMPTION, AND WE'LL BE HAPPY TO STRIKE THAT.

MR. FALGIONE: YOUR HONOR, WE'RE NOT ALLEGING MS. SENN DID THAT INTENTIONALLY.

THE COURT: I THINK IT WAS APPROPRIATE FOR ME TO SUA SPONTE BRING IT UP.

MR. FALGIONE: WE APPRECIATE THAT.

THE COURT: YOU, I GUESS, HAVE EDITED OUT THOSE PORTIONS OF HIS DEPOSITION?

MS. SENN: YES, SIR. I HAD ASKED AND I'M SURE IT IS, I'D HAVE TO CHECK, I ASKED TO GET A REPORTER THAT WOULD HAVE THE STAMP DOWN AT THE BOTTOM SO WE COULD FAST FORWARD. THAT REPORTING SERVICE SAID THEY HAD IT. WE'LL JUST HAVE TO GET TOGETHER AND FAST FORWARD THROUGH THOSE SECTIONS.

THE COURT: ALL RIGHT. VERY GOOD.

DID Y'ALL GET TOGETHER AND TAKE AL CANNON, WAS IT?

MR. RAKOWSKY: WE TOOK THAT YESTERDAY MORNING, YOUR HONOR.

THE COURT: SO THAT'S RESOLVED. GOOD.

WE TALKED ABOUT THIS BRIEFLY. OPENING STATEMENTS

TOMORROW, HOW MUCH TIME ARE YOU GOING TO NEED, MR. RAKOWSKY.

MR. RAKOWSKY: I DON'T SEE MUCH MORE THAN A HALF HOUR, 35 MINUTES, MAYBE.

THE COURT: CAN THE THREE OF Y'ALL COVER WHAT YOU NEED TO IN 45 MINUTES COLLECTIVELY?

MS. SENN: YOU MEAN 15 MINUTES APIECE OR 45 MINUTES?

THE COURT: 45 MINUTES. YOU'RE GOING TO COVER THE SAME GROUND.

MR. SALEEBY: PROBABLY, YOUR HONOR, IF YOU'LL GIVE US A LITTLE LATITUDE.

THE COURT: MR. RAKOWSKY, IF YOU NEED UP TO 45 MINUTES, YOU'VE GOT IT. YOU PROBABLY WON'T NEED IT.

MR. RAKOWSKY: I'M NOT GOING TO TRY TO, YOUR HONOR.

THE COURT: CERTAINLY IF Y'ALL NEED 45, 50 MINUTES, THAT'S FINE. I'LL GIVE YOU A LITTLE EXTRA TIME IF YOU NEED IT. I GENERALLY GIVE JURIES SOME BRIEF OPENING INSTRUCTIONS, AS WELL.

ALL RIGHT. LET'S TALK ABOUT ANY EXHIBITS. HAVE Y'ALL GOT TOGETHER AND MARKED YOUR EXHIBITS? AND WORKED OUT AS MUCH AS YOU CAN WORK OUT. LET'S GO THROUGH, I GUESS LET'S START WITH PLAINTIFF'S EXHIBITS AND SEE WHAT THERE IS NO OBJECTION TO.

I'M GOING TO ASK YOU, MR. RAKOWSKY, I'VE GOT YOUR LIST OF EXHIBITS HERE, WHICH WAS FILED, CAN YOU TELL ME WHICH EXHIBITS THAT THERE ARE NO OBJECTIONS TO? BY ANY OF THE DEFENDANTS?

MR. RAKOWSKY: YOUR HONOR, I COULD. I DON'T HAVE THAT COPY IN FRONT OF ME RIGHT YET. WE HAD SOME SUPPLEMENTALS THAT CAME IN AND I HAVEN'T BEEN ABLE TO ADJUST. THERE'S A GOOD BIT THERE'S AN OBJECTION TO.

MR. SALEEBY: YOUR HONOR, I THINK I HAVE THE LIST OF THE INITIAL OBJECTIONS THAT WE TALKED ABOUT AT THE EXHIBIT MEETING. I COULD PROBABLY GO THROUGH THAT, AND I THINK MS. SENN HAS FILED SOME SUPPLEMENTAL OBJECTIONS SINCE THEN, IN ADDITION TO WHAT MR. ELLIOTT HAS FILED.

THE COURT: ALL RIGHT. HAVE YOU GOT YOUR LIST?

MR. RAKOWSKY: I DO, YOUR HONOR.

THE COURT: LET'S GO THROUGH. I'LL BE GLAD TO HEAR FROM YOU, MR. SALEEBY, IF YOU CAN SET FORTH WHAT EXHIBITS THE DEFENDANTS DO NOT HAVE AN OBJECTION TO.

MR. SALEEBY: IF YOU LET ME BEGIN WITH MS. SENN'S SUPPLEMENT.

THE COURT: I'M SORRY, I HAVING TROUBLE HEARING YOU.

MR. SALEEBY: I'LL BEGIN AND LET MS. SENN SUPPLEMENT AND MR. ELLIOTT.

THE COURT: ALL RIGHT.

MR. SALEEBY: NUMBER 26 WE OBJECTED TO, AND THEN 30 THROUGH 33. 36 THROUGH 43. 49. 52. 58 THROUGH 61. 97 THROUGH 99. 111. 113. 115 THROUGH 118. 136 THROUGH 147. 151 AND 152. 156. 158 THROUGH 164.

MR. RAKOWSKY: THAT'S MY UNDERSTANDING, YOUR HONOR. I FOUND MY LIST.

THE COURT: ALL RIGHT. LET ME ASK MS. SENN, ARE THERE ANY ADDITIONAL ONES MR. SALEEBY DID NOT MENTION?

MS. SENN: YES, SIR, YOUR HONOR. IN FACT THE VAST MAJORITY OF THESE DOCUMENTS, I'M NOT GOING TO HAVE ANY OBJECTION TO THEM COMING IN ONCE THE FOUNDATION IS LAID, BUT THERE ARE A LOT OF DOCUMENTS THAT I SIMPLY CAN'T TELL WHAT THEY ARE. THEY ARE IN SPANISH, OR THEY ARE PEOPLE, IT DOESN'T SAY WHO IT'S TO, WHO IT'S FROM, SO MY OBJECTION IS, ONCE MR. SPENCER TAKES THE STAND AND HE TELLS US WHAT THESE THINGS ARE AND SOMEBODY ATTESTS TO THEM, I'M OKAY WITH THEM. HE'S JUST GOING TO HAVE TO LAY THE FOUNDATION FOR SOME OF THESE THINGS.

THE COURT: CAN YOU GO AHEAD AND TELL ME WHAT THOSE ARE?

MS. SENN: PRETTY MUCH THE ENTIRE FIRST PAGE. DO YOU HAVE THE SAME LIST WE'RE WORKING FROM?

THE COURT: I MAY NOT.

MR. RAKOWSKY: MAY I PASS UP A COPY?

THE COURT: IF IT'S NOT ALREADY FILED.

MR. RAKOWSKY: IT'S THE SAME THING, JUST NOT MARKED. IT'S A LIST OF 1 THROUGH 166. THAT IS WHAT WE FILED.

THE COURT: ALL RIGHT. I'VE GOT THAT.

MS. SENN: IT'S PROBABLY GOING TO BE EASIER FOR ME TO GO THROUGH THE ONES I DON'T OBJECT TO, AND AGAIN, ONCE THE WITNESS TAKES THE STAND, WE'RE NOT GOING TO BE ARGUING OVER THEM. I WAS CONCERNED TO SAY IT'S ALL RIGHT TO LET THESE IN WITHOUT SOMEBODY SAYING SOMETHING ABOUT THEM.

I DON'T HAVE ANY OBJECTION TO PLAINTIFF'S 23, ANCIL GARVIN'S RESIGNATION. I DON'T HAVE ANY OBJECTION TO THE SECRETARY OF STATE'S APPLICATION, NUMBER 28, OR NUMBER 29, THE ANNUAL LISTINGS OF SHAREHOLDERS. I BELIEVE IT'S JUST A LISTING OF THE OFFICERS. LET ME LOOK REAL QUICK.

NO OBJECTION TO HIS COLLEGE TRANSCRIPTS, I BELIEVE AT 54 AND 55. NO OBJECTION TO 83, 84, 85. 101. 102. 103, IF I DIDN'T SAY THAT, THROUGH 106. 107. 108. 110. 112. 128. 129. 130. 131. 132. 134. 135. 149. 150. I TAKE BACK 150. THEY ARE JUST GOING TO HAVE TO SHOW WHERE THOSE CAME FROM. ONCE THEY DO THAT, I'M GOOD. IF YOUR HONOR CAN MOVE ON TO MR. ELLIOTT, I'LL SCAN THESE REAL QUICK.

THE COURT: ALL RIGHT. THANK YOU. HOW ABOUT YOU,

MR. ELLIOTT?

MR. ELLIOTT: DID YOU WANT WHAT I OBJECTED TO OR HAVE NOT OBJECTED TO?

THE COURT: FIRST OF ALL, LET ME ASK, WITH REGARD TO THOSE THAT MS. SENN HAS INDICATED SHE HAS NO OBJECTION TO, THOSE THAT SHE JUST WENT THROUGH, LET ME ASK IF ANY OF YOU HAVE ANY OBJECTION TO THOSE GOING AHEAD AND BEING ADMITTED?

MR. SALEEBY: NONE HERE, YOUR HONOR.

MR. ELLIOTT: NO, SIR.

THE COURT: SO THOSE THAT MS. SENN HAS INDICATED SHE HAS NO OBJECTION, THOSE CAN BE ADMITTED WITHOUT OBJECTION. SO THOSE WILL GO AHEAD AND BE ADMITTED NOW WITHOUT OBJECTION.

GO AHEAD, MR. ELLIOTT, AND TELL ME WHICH ONES YOU DO HAVE AN OBJECTION TO, HOW ABOUT THAT?

MR. ELLIOTT: THAT WILL BE EASIER, JUDGE. 78. 79. 80 AND 81 ARE E-MAILS, COPIES OF E-MAILS THAT I'M NOT SURE A FOUNDATION HAS BEEN LAID FOR THEM. 148, AND THEN I GENERICALLY LISTED ALL OF THE NUMBERS RELATED TO THE PLAINTIFFS MEDICAL BILLS, YOUR HONOR, FOR THIS REASON.

AS YOU KNOW, WE WERE GOING TO TRY THIS CASE IN JULY OF 2005, AND THEN OF COURSE, DID NOT. AT THAT TIME, WE HAD VIRTUALLY MINIMAL OR NO MEDICAL BILLS FROM MOST OF

THE PLAINTIFFS, MAYBE 15, 18,000 FOR HOLT, SPENCER, SOMETHING ALONG THE LINES THAT I CAN RECALL OR REMEMBER OF MAYBE $1200 FOR MS. SANTACROCE, AND VIRTUALLY NOTHING IN TERMS OF ANYTHING ELSE IN TERMS OF MEDICAL BILLS OR RECORDS PROVIDED. THERE WAS NOTHING SET FORTH IN THE ANSWERS TO INTERROGATORIES, NO SUPPLEMENTAL DISCOVERY OTHER THAN STACKS OF DOCUMENTS GIVEN TO US AS EXHIBITS RIGHT BEFORE TRIAL. IN CHAMBERS FRIDAY, YOU MAY REMEMBER THE COMMENT FROM MR. RAKOWSKY THAT ONE OF HIS PLAINTIFFS NOW HAS IN EXCESS OF $200,000 OF MEDICAL BILLS, WHICH WE'VE NEVER SEEN, LITERALLY, UNLESS THEY ARE IN THE STACK OF EXHIBITS HANDED TO US LAST WEEK WHEN WE MET FOR THAT. I'M GOING TO HAVE TO PUT AN OBJECTION ON THE RECORD TO ANYTHING THAT WE HAVEN'T SEEN POST JULY OF 2005. THERE WERE NO SUPPLEMENTAL DISCOVERY SERVED, WE HAVEN'T HAD AN OPPORTUNITY TO DEPOSE ANYBODY OR GO BACK. I JUST HAVE A LOT OF PROBLEMS WITH THE $200,000 IN ACTUAL MEDICAL BILLS.

MR. SALEEBY: YOUR HONOR, WE JOIN IN THAT REGARD. WE'VE GONE BACK AND LOOKED AT WHAT WAS GIVEN TO US IN JULY OF 2005, BEFORE TRIAL, AND COMPARED THAT TO WHAT WE WERE GIVEN, I THINK LAST WEDNESDAY WAS THE EXHIBITS MEETING. APPARENTLY THERE WAS SOME ONGOING TREATMENT WITH MR. HOLT AND OTHERS, AND WE HAVE TWO SITUATIONS, WE HAVE A SITUATION WHERE SOME MEDICAL BILLS ARE COMPLETELY

NEW FOR A PLAINTIFF, I BELIEVE, AND SOME OF IT IS ONGOING CARE, WHICH IS MUCH MORE SIGNIFICANT FINANCIALLY, WHICH WAS JUST PROVIDED WEDNESDAY, WHICH WE REALLY CAN'T RESPOND TO.

THE COURT: HOW ABOUT IT, MR. RAKOWSKY?

MR. FALGIONE: YOUR HONOR, IT'S MY UNDERSTANDING IN LOOKING AT THE MEDICAL RECORDS AND MEDICAL BILLS FILED IN THIS MATTER, BEFORE I GOT INTO IT IN 2004, THEY ALL INDICATED ONGOING TREATMENT. I THINK MR. ELLIOTT'S PRESCRIPTION BILLS INDICATED $18,000 PER YEAR. SO IT WOULD BE MY POSITION AND MY ASSERTION, YOUR HONOR, THAT THEY WERE NOTIFIED OF ONGOING CONTINUING CARE. THEY CHOSE NOT TO TAKE THE DEPOSITIONS OF THOSE TREATING PHYSICIANS, I THINK DR. BARBIAN SPECIFICALLY, AND THAT THEY WERE PUT ON NOTICE THAT IT WAS ACCRUING AT THE RATE OF $18,000, APPROXIMATELY, IN MEDICAL BILLS, NOT MEDICAL BILLS, BUT PRESCRIPTION BILLS.

THE OTHER SIDE OF THAT, YOUR HONOR, I CERTAINLY UNDERSTAND DEFENSE COUNSEL'S ARGUMENT. WE PUT THOSE BILLS TOGETHER AND WE GAVE THEM TO THEM THE VERY SAME TIME WE RECEIVED THEM. SO THAT'S, IT IS ONGOING TREATMENT, IT'S ONGOING TREATMENT FOR THE SAME INJURY, THE SAME AILMENTS AND SAME PROBLEMS THAT AROSE OUT OF THIS INCIDENT, AND I RESPECTFULLY SUBMIT THEY WERE PUT ON NOTICE OF IT AND COULD EXPECT THE BILL WOULD BE HIGHER

SOME TWO YEARS LATER.

MR. SALEEBY: YOUR HONOR, HAD THE PLAINTIFFS TIMELY SUPPLEMENTED, AT LEAST WE WOULD HAVE BEEN GIVEN THE OPTION TO DEPOSE THESE PHYSICIANS, BUT WE WEREN'T GIVEN THAT OPTION, AND THE MEDICAL PICTURE IS VERY DIFFERENT TODAY THAN IT WAS IN 2005.

MR. ELLIOTT: WITH ALL DUE RESPECT TO MR. FALGIONE, IF YOU LOOK AT THE DISCOVERY RESPONSES AND WHAT WE WERE GIVEN, AND IT'S IN EVERY DEPOSITION, WE RESERVE THE RIGHT TO COME BACK, WE DEPOSED ALL THESE PLAINTIFFS, WE HAVE NO MEDICAL ON ANYBODY. WE LATER, THROUGH OUR OWN SUBPOENAS GOT SOME THINGS FROM A COUPLE OF PSYCHIATRISTS WE WERE USING AND DID GET SOME STUFF TO DR. BARBIAN. I OBJECTED TO DR. BARBIAN THROUGH JULY OF 2005. THAT'S FINE. THE MEDICAL BILLS OR DOCUMENTS THAT MR. FALGIONE REFERS TO THAT SHOULD HAVE PLACED US ON NOTICE OF $18,000 IN BILLS WERE TRIAL EXHIBITS GIVEN TO US A FEW DAYS BEFORE TRIAL LAST TIME. WE NEVER GOT TO THEM, AND WE KNEW THE THING WAS GOING TO BLOW UP EARLY, AS WAS TELEGRAPHED IN E-MAILS AND OTHER THINGS. WE NEVER GOT AROUND TO HAVING THIS CONVERSATION THEN, OR WE WOULD HAVE BEEN OBJECTING TO WHAT WE WERE GIVEN THEN. I CAN'T BE ON NOTICE OF THINGS I NEVER RECEIVED AND NEVER SAW.

THERE IS ABSOLUTELY NO MEDICAL BILL WHATSOEVER IN EVIDENCE PRIOR TO THAT TIME, WITH THE EXCEPTION OF A FEW,

DR. BARBIAN, THAT WE GOT OURSELVES AND A FEW PRESCRIPTION PRINTOUTS FROM THE PHARMACY THAT NEEDED TO BE RELATED UP.

THE COURT: WHAT MEDICAL RECORDS, IF ANY, HAVE BEEN PRODUCED, MR. FALGIONE, PRIOR TO LAST WEEK?

MR. FALGIONE: YOUR HONOR, I'D HAVE TO DEFER TO MR. ELLIOTT, BECAUSE I WASN'T INVOLVED IN THIS CASE. I DON'T KNOW WHAT THOSE RECORDS ARE. AS YOU MAY REMEMBER, WE DIDN'T RECEIVE AND STILL HAVE NOT RECEIVED MANY MEDICAL RECORDS FROM OUT OF STATE COUNSEL. SO WE WERE AT A DISADVANTAGE HERE TRYING TO PULL THIS TOGETHER AT THE LAST MINUTE. PERSONALLY, I CANNOT SPEAK WHAT WAS PRESENTED TO MR. ELLIOTT. I HAVE NO REASON TO DOUBT MR. ELLIOTT'S ASSERTION WHAT RECORDS WERE PRODUCED TO HIM.

MR. ELLIOTT: YOUR HONOR, I DID MISSPEAK A MOMENT AGO. WE DID DEPOSE DR. HWANG ON THE INJURIES. WE HAVE THOSE BILLS, THE WRIST INJURY.

THE COURT: WHICH RECORDS WOULD THOSE BE, PLEASE, SIR? WHICH EXHIBITS ARE WE TALKING ABOUT RELATED TO DR. HWANG THAT YOU SAY YOU DO HAVE?

MR. RAKOWSKY: IT'S GOING TO BE A PORTION OF EXHIBIT 140, YOUR HONOR.

MR. ELLIOTT: WHAT I DON'T KNOW, JUDGE, IS IF THERE'S ANYTHING PAST JULY OF 2005, I NEVER RECEIVED UNTIL IT WAS HANDED TO ME LAST WEEK, I GUESS. SO UP THROUGH HIS, UP THROUGH THE DATE OF HIS DEPOSITION, OF

DR. HWANG, WE'VE NEVER SUPPLEMENTED WITH ANYTHING, WITH REGARD TO DR. HWANG. WHAT WE GOT IN HIS DEPOSITION IS WHAT WAS PRODUCED TO US OR WHAT WE OBTAINED PRIOR TO THE DEPOSITION.

DR. BARBIAN, THEY DID PRODUCE AND/OR WE OBTAINED, I DON'T REMEMBER IF IT'S BOTH, THROUGH, AGAIN, JULY OF 2005. I CAN'T SAY WE DIDN'T HAVE THAT. WE DID HAVE SOME VARIOUS OR WERE GIVEN AT SOME POINT IN TIME SOME VARIOUS PRESCRIPTION BILLS, I THINK FROM MS. SANTACROCE, IF I'M NOT MISTAKEN. BUT IN TERMS OF WHAT WAS ACTUALLY GIVEN TO US OR WHAT WE WERE ON NOTICE OF IN OUR HANDS, THAT WAS IT.

MR. RAKOWSKY: YOUR HONOR, IF I COULD CLARIFY A LITTLE BIT FROM WHAT I KNOW PERSONALLY. WHEN I CAME INTO THIS THING IN 05 WHEN WE WERE READY TO GO IN 05, I KNOW OF SOME OF THE PHARMACY BILLS FOR MS. STEPHENS AND MS. SANTACROCE HAD BEEN PROVIDED. THEY WERE PHARMACY, AND THEN I THINK THAT BY 05, SOME OF THE TREATMENT NOTES FOR MS. SANTACROCE WERE PROVIDED FROM TEANNE OEHLER, SPECIFICALLY THERE WAS A LETTER ADVISING SOME TREATMENT AND A COUPLE OTHER RECORDS. BUT THAT'S ALL THAT WAS PROVIDED ON MS. SANTACROCE.

MS. STEPHENS APPARENTLY, AND I DON'T KNOW THE ANSWER TO THIS, BUT MR. GOLDBERG APPARENTLY GOT SOME MEDICAL RECORDS ON HER, BUT DIDN'T PROVIDE THEM AND I

TRIED TO SUPPLEMENT THOSE, BUT THAT'S ALL I CAN TELL YOU. I'M JUST TRYING TO BRING IT BACK WHERE IT SHOULD BE, BUT I DON'T THINK THERE WAS ANY CLAIM BY THE DEFENDANTS THAT THEY DIDN'T KNOW THESE PEOPLE WERE RECEIVING TREATMENT FROM THESE DOCTORS. I JUST THINK THERE MIGHT HAVE BEEN A LIMITED AMOUNT OF RECORDS BEING PROVIDED AT THE END OF THE DISCOVERY PERIOD, AND THEN IN 05 WE PRESENTED MORE INFORMATION ON THE EVE OF TRIAL, AT THE EXCHANGE OF EXHIBITS IN 05.

ON MR. HOLT, NOW, HIS RECORDS, THE RECORDS THAT WE PROVIDED ON MR. HOLT ARE FROM DR. BARBIAN --

THE COURT: EXCUSE ME, WHAT'S HIS NAME?

MR. RAKOWSKY: BARBIAN. B-A-R-B-I-A-N. THOSE NOTES I THINK WERE RECEIVED BY MR. ELLIOTT AND MR. SALEEBY BACK IN 04, I'M SORRY, 05, PRIOR TO THE EXHIBITS BEING PRESENTED. THEN WE SUPPLEMENTED. DR. BARBIAN IS AN ONGOING PSYCHOLOGIST WHO IS TREATING MR. SPENCER FOR THE LAST SEVERAL YEARS, AND SO, WE DID PROVIDE MORE CURRENT NOTES THAT WERE RECEIVED SUBSEQUENT TO, I MEAN AFTER 05. I DO ADMIT, WE HAVE PROVIDED SOME RECORDS THAT WERE CREATED AFTER 05, BUT THEY KNEW HE WAS BEING TREATED BY BARBIAN. I DON'T THINK THEY EVER TOOK HIS DEPOSITION, AS FAR AS I KNOW. I DON'T KNOW IF THAT HAPPENED OR NOT. I KNOW RECORDS WERE PROVIDED. HE WAS A NAMED WITNESS IN THE RESPONSE TO INTERROGATORIES, AND SO WAS DR. HWANG.

SO IT WAS MY THEORY THAT SINCE THEY KNEW WHO THESE TREATING PHYSICIANS WERE, THEY KNEW THERE WAS ONGOING TREATMENT, AND THAT THERE HAD BEEN A PARTIAL RECORD DISCLOSURE, THAT I JUST CONTINUED, I SUPPLEMENTED WHATEVER ELSE WAS THERE, AND THEN AS FAR AS PHARMACY GOES, I KNOW FOR A FACT THERE WERE PHARMACY BILLS PROVIDED IN 05 PRIOR TO TRIAL BECAUSE I PROVIDED THEM, AND THEN I SUPPLEMENTED THEM AGAIN, BECAUSE ONCE AGAIN, THE TESTIMONY FROM DR. -- MR. SPENCER, DR. HWANG AND DR. BARBIAN ARE GOING TO BE THAT THIS MAN IS HAVING ONGOING TREATMENT FROM THE POINT OF INJURY FOR THESE SPECIFIC ILLNESSES.

SO THERE ARE SUPPLEMENTS TO THE NOTES THAT WERE PROVIDED ORIGINALLY, AND I SUPPLEMENTED BECAUSE I FELT A NEED TO GIVE THEM AS MUCH AS I HAD, BUT THEY DIDN'T HAVE EVERYTHING THAT THEY HAVE NOW IN 05, AND THEY DIDN'T HAVE WHAT THEY HAD IN 05 IN 04, AND THAT'S ONLY BECAUSE OF THE FACT THAT I TRIED TO, IN GOOD FAITH, PROVIDE AS MUCH OF THE RECORD AS POSSIBLE, ONCE IT WAS PROVIDED TO ME. BUT THEY WERE AWARE OF THE FACT, BECAUSE THEY TOOK HWANG'S DEPOSITION AND THEY DID, THEY WERE NOTICED EARLY ON ABOUT BARBIAN, AND -- THAT THOSE TWO WERE THE PRIMARY TREATING PHYSICIANS, AND OF COURSE, THOSE ARE THE ONES WE'RE FOCUSING IN ON IN THIS TRIAL.

THE COURT: DR. BARBIAN AND DR. HWANG.

MR. RAKOWSKY: YES, YOUR HONOR. OF COURSE, PART OF THAT AMOUNT IS ONGOING MEDS, PHARMACY BILLS. WE DID PROVIDE AS MUCH OF THE BLOCK OF PHARMACY BILLS AVAILABLE IN 05, AND THEN I DID PROVIDE WHAT WAS MADE AVAILABLE TO ME AS QUICK AS --

THE COURT: WHAT IS THE $200,000?

MR. ELLIOTT: I DON'T KNOW WHERE THEY COME FROM. AT THE TIME AT THE END OF DISCOVERY --

THE COURT: ARE WE TALKING ABOUT MR. HOLT?

MR. ELLIOTT: LET'S TALK ABOUT MR. HOLT FIRST. AT THE TIME OF THE END OF DISCOVERY PRIOR TO TRIAL LAST TIME, WE HAD NO DEFINITE NUMBER FROM ANYONE ON HIS MEDICAL BILLS. WE HAD RECEIVED THROUGH SUBPOENA AND/OR DISCLOSURE, I THINK IT WAS BOTH, WE CHECKED BEHIND EACH OTHER, DR. BARBIAN'S NOTES AND BILLS THROUGH JULY OF 2005. THAT IS NOT, UP TO THAT POINT, I DON'T HAVE ANY OBJECTION TO HIM. DR. HWANG UNLESS HE'S BEEN BACK SINCE 2005 WHEN WE DEPOSED HIM SINCE THE SURGERY, UNLESS HE'S BEEN BACK TO HWANG.

MR. RAKOWSKY: HE'S HAD NO MORE SURGERY BUT FOLLOWUP.

THE COURT: WITH DR. BARBIAN?

MR. RAKOWSKY: AND DR. HWANG.

THE COURT: OKAY.

MR. ELLIOTT: SINCE HIS DEPOSITION, DR. HWANG'S

DEPOSITION IN 2004 OR 05 WHEN WE TOOK IT, WE RECEIVED NOTHING ON HIM. THE SUPPLEMENTATION THAT MR. RAKOWSKY IS DISCUSSING WAS THE EXHIBIT MEETING LAST WEEK. THERE WAS NO SUPPLEMENTATION IN THE MEANTIME, IN BETWEEN 2005 AND LAST WEEK. SO WE COULDN'T HAVE HAD NOTICE OF ANYTHING IN REGARD TO THAT. SO THAT IS WHY I'M DRAWING THE LINE IN THE SAND IN JULY OF 2005, THAT IS WHAT WE KNEW OR COULD HAVE BEEN GIVEN ABOUT BARBIAN OR HWANG. AND IT WAS IN JULY OF 2005, I THINK LITERALLY A FEW DAYS BEFORE TRIAL, THAT MR. RAKOWSKY HAD SENT TO US THIS STACK OF THINGS, WHICH IS NOT ALL MEDICAL BILLS, BUT THAT'S WHEN WE FIRST, I THINK, ACTUALLY RECEIVED ANY BILLS AT ALL ON MS. SANTACROCE OR MS. STEPHENS. AGAIN, THAT'S WHEN WE RECEIVED THIS. WE NEVER HAD A CHANCE TO DO ANY DISCOVERY ABOUT IT. I WOULD HAVE BEEN OBJECTING TO THESE THEN BECAUSE IT'S NOT TIMELY PRODUCTION. JUST BECAUSE THEY WERE GIVEN TO US IN 2005 DOESN'T MEAN WE HAD A CHANCE TO DO ANYTHING ABOUT THEM OR OBJECT TO THEM. IN FACT, IF YOUR HONOR WOULD REMEMBER WHEN THIS CASE WAS APPEALED, WE STOOD IN YOUR OFFICE AND TALKED ABOUT THE CASE REMAINING STATUS QUO UNTIL THE APPEAL WAS DONE. YOUR HONOR ISSUED AN ORDER STAYING THE CASE. WE WERE STUCK ON GO, WHERE WE WERE IN TIME AND AS FAR AS I'M CONCERNED, WHERE WE ARE NOW, EXCEPT FOR BEING HANDED A BIG STACK OF DOCUMENTS.

THE COURT: THOSE RECORDS YOU HAVE THERE, YOU'VE

HAD THOSE SINCE WHEN.

MR. ELLIOTT: JULY 14, 2005 IS THE DATE ON THE LETTER.

THE COURT: I CAN'T REMEMBER WHEN THE STAY WAS LIFTED.

MR. ELLIOTT: I'VE NEVER SEEN AN ORDER LIFTING THE STAY. I'M NOT GOING TO ARGUE THAT. THE ONLY DISCOVERY ANYBODY HAS ASKED ME ABOUT, WHEN WE CAME BACK TO YOU IN MARCH OR FEBRUARY WHEN WE WERE TALKING ABOUT NEEDING MORE DISCOVERY AND DOING THINGS. IF WE HAD BEEN GIVEN BILLS AND RECORDS THEN, WE COULD HAVE HAD AN OPPORTUNITY TO DO SOMETHING ABOUT IT. WE'VE HAD ABOUT SIX MONTHS SINCE THE APPEAL WAS OVER TO GET BACK INTO THE CASE AND WORK BEFORE TODAY. BUT WE WERE NEVER GIVEN ANYTHING UNTIL LAST WEEK. I CAN'T RESPOND TO IT. I CAN'T DEAL WITH IT. MY CARRIER CERTAINLY CAN'T DEAL WITH IT.

THE COURT: GO AHEAD.

MR. SALEEBY: I TAKE THE SAME POSITION AS MR. ELLIOTT. I KNOW MR. RAKOWSKY AND MR. FALGIONE HAVE DONE EVERYTHING IN THEIR CIRCUMSTANCES THAT THEY CAN DO TO SUPPLEMENT. I DON'T FAULT THEM. THE FACT REMAINS, WE'RE JUST PREJUDICED. THE MEDICAL PICTURE HAS CHANGED DRAMATICALLY. I DIDN'T GO BACK AND DO AN ACCOUNTING OF THE MEDICAL BILLS IN 2005, BUT THE MEDICAL PICTURE WAS VERY VERY SMALL IN COMPARISON TO WHAT EXISTS TODAY, AND

WE'RE NOT IN A POSITION TO ADEQUATELY RESPOND.

MS. SENN: YOUR HONOR, CAN I JUST DITTO THIS RATHER THAN ARGUE. I DON'T KNOW IF WE CAN HAVE AN AGREEMENT THAT THE OBJECTION OF ONE IS THE OBJECTION OF ALL.

THE COURT: AND MOST OF THESE RECORDS DEAL WITH MR. HOLT AND HIS TREATMENT OF DR. BARBIAN AND DR. HWANG, IS THAT CORRECT?

MR. ELLIOTT: I'M ASSUMING SO.

MR. SALEEBY: I WOULD SAY IN VOLUME, YES, SIR, BUT THERE ARE ALSO NEW MEDICALS AS TO MS. STEPHENS, RICKY STEPHENS, IRENE SANTACROCE.

MR. RAKOWSKY: THERE'S NOTHING ON RICKY STEPHENS.

THE COURT: NOTHING ON RICKY STEPHENS.

MR. RAKOWSKY: NOT OF ANY CONSEQUENCE SINCE 04.

MR. SALEEBY: EXHIBIT 160 IS RICKY STEPHENS MEDS.

MR. RAKOWSKY: THAT IS NOT VOLUMINOUS.

MR. SALEEBY: I'M SAYING THAT'S SOMETHING NEW, YOUR HONOR. THE MEDS THAT ARE LISTED IN THE NEW EXHIBIT LIST OF PLAINTIFFS YOUR HONOR IS 137 FOR IRENE SANTACROCE, 138 IS ALSO IRENE SANTACROCE. 139 IS FOR MARGUERITE STEPHENS. 140 WHICH IS THE LARGEST IN VOLUME, IS FOR MR. HOLT. AND 143 ARE MEDICALS FOR MARGUERITE STEPHENS. 144, MEDS FOR IRENE SANTACROCE. 145, MEDS FOR RODNEY LAIL, WHICH IS NEW TO US AS WELL. 146, MEDS FOR

DORIS HOLT. 160, MEDS FOR RICKY STEPHENS. 163, MEDS AGAIN FOR DORIS HOLT, AND 164, MEDS FOR IRENE SANTACROCE.

THE COURT: 160 IS FOR WHO?

MR. SALEEBY: 160 IS FOR RICKY STEPHENS.

THE COURT: 163 IS FOR DORIS HOLT.

MR. SALEEBY: THAT'S RIGHT, YOUR HONOR.

THE COURT: 164 IS FOR WHO?

MR. SALEEBY: IRENE SANTACROCE.

MR. RAKOWSKY: YOUR HONOR, 160 THAT YOU JUST MENTIONED IS JUST A SUMMARY OF MEDICAL EXPENSES THAT WERE INCURRED BY DR. PARKER AND IT WAS DATED 1-2000 TO 2005. THAT WAS PROVIDED PRIOR TO THE LAST CASE. IT'S JUST A STATEMENT OF MEDICAL BILLS.

MR. SALEEBY: YOUR HONOR, IT MAY OR MAY NOT HAVE BEEN PROVIDED IN 2005. I THINK GLENN HAS THE EXHIBITS PRODUCED IN JULY. JUST BECAUSE THE DATE IS THAT DATE, I'M NOT SURE IT WAS PROVIDED AT THAT TIME.

THE COURT: WHAT IS EXHIBIT 138?

MR. SALEEBY: 138, IT'S ENTITLED PARTIAL ESTIMATION OF EXPENSES/DAMAGES OF IRENE SANTACROCE. WHEN I LOOKED AT THE EXHIBIT, MY NOTE SAYS WAL-MART PHARMACY ON IT. SO I'M ASSUMING THOSE ARE PHARMACY BILLS FROM WAL-MART.

MR. RAKOWSKY: YOUR HONOR, WHAT IT IS, IS A NEW SUMMARY OF PHARMACY BILLS THAT WERE, WE HAVE PROVIDED

SOME PHARMACY BILLS ON HER IN THE PAST, AND THIS JUST KIND OF BRINGS US CURRENT FROM 01. IT'S 01 TO 07. MS. SANTACROCE, THERE HAD BEEN SOME DOCUMENTS PROVIDED BY HER AND I SUPPLEMENTED IT, SINCE SHE HAD ONGOING, AND VIRTUALLY IN 04 THEY GOT SOME, AND THEN IN 05 THEY GOT SOME ON HER, AND I JUST TRIED TO BRING IT TO WHERE IT SHOULD BE TODAY. THAT'S WHAT WE DID. SOME OF THIS STUFF IS REITERATION OF, LIKE 136 ARE THE OLD PHARMACY RECORDS, AND SO I KEPT THEM SEPARATE BECAUSE I DIDN'T WANT TO MISLEAD ANYBODY BY WHAT WE DID AND WHAT -- WHAT WE HAD BEFORE AND WHAT WE HAD NOW. THAT IS WHY THERE'S SO MANY DIFFERENT LISTINGS.

MR. ELLIOTT: YOUR HONOR, I'M NOT GOING TO STAND HERE AND DIRECTLY DISPUTE MR. RAKOWSKY, BECAUSE I'M OLD AND DUMB. SO I MAY HAVE MISSED SOMETHING. BUT WITH REGARD TO EVERYONE EXCEPT MR. SPENCER, I DON'T RECALL ACTUALLY BEING GIVEN ANY DOCUMENTATION ABOUT BILLS UNTIL RIGHT BEFORE THE LAST TRIAL, WHICH WOULD HAVE BEEN, AGAIN, WHEN WE WOULD HAVE BEEN AT THIS STAGE THEN TO OBJECT TO THEM, BECAUSE THEY WERE LATE THEN. NOW, IF THERE'S SOMETHING I MISSED, I'LL GLADLY OWN UP TO IT. I'VE GONE BACK AND LOOKED AT MY DISCOVERY RESPONSES, AND AS EVERY PLAINTIFF DID IN THEIR DEPOSITION, THEY TALKED GENERALLY ABOUT PROBLEMS, MY HEART, MY THIS, MY STRESS, MY THAT. BUT NOBODY PRODUCED ANY BILLS, UNTIL THIS STACK

THE WEEK BEFORE TRIAL LAST TIME, WHEN WE WERE GOING TO HAVE OUR EXHIBIT MEETINGS, WHICH WE NEVER GOT TO DO. THEN A FEW DAYS LATER, AS I RECALL, OR SOMETIME LATER, MR. RAKOWSKY SENT THIS STACK. THESE ARE NOT ALL MEDICAL BILLS, BUT OTHER THINGS AS WELL. AGAIN, THIS IS ALL JULY 2005. I DON'T CARE WHEN THEY ARE DATED, WE DIDN'T GET THEM. I'M SURE IT'S NOT THEIR FAULT.

MR. RAKOWSKY: I'M NOT GOING TO DISAGREE. I DON'T KNOW WHAT HAPPENED TO 04. I CAN'T SAY. I DO KNOW THAT IN AN EFFORT TO TRY TO BRING IT TOGETHER IN PREPARATION FOR 05, I TOOK THE RESPONSIBILITY TO TRY TO GET AS MANY OF THE RECORDS TO THEM AS I COULD PRIOR TO OUR LAST EXHIBIT MEETING, AND I KNOW THAT I PROVIDED A SUBSTANTIAL AMOUNT OF MEDICAL RECORDS IN 05 THAT PROBABLY HADN'T BEEN PROVIDED IN 04 FOR TWO REASONS. ONE, SOME OF THEM DIDN'T EXIST, AND THE OTHER, I THINK MR. GOLDBERG WAS LACKING IN GIVING THEM TO THEM, AND I JUST FELT COMPELLED TO TRY TO DO WHAT I COULD IN GOOD FAITH TO BRING IT CURRENT. THEN I BELIEVE THAT BECAUSE THEY WERE AWARE OF THE ONGOING TREATMENT, THAT, THAT I HAD A RIGHT TO SUPPLEMENT WHAT I HAD GIVEN THEM A YEAR AGO. THAT'S WHERE WE ARE.

I'M NOT TRYING TO HIDE ANYTHING, AND I'M CERTAINLY NOT TRYING TO SQUEEZE ANYTHING THROUGH. THESE DOCTORS, IT WAS MY INTENTION TO HAVE THEM TESTIFY ABOUT THE ONGOING TREATMENT, AND HAVE THEM REFER TO RECORDS ABOUT

THE ONGOING TREATMENT AND THE AMOUNTS THAT THE BILLS MIGHT HAVE BEEN DURING THE COURSE OF THEIR TREATMENT. THAT IS THE WAY I WANTED TO APPROACH IT.

FOR THE OTHER PLAINTIFFS, I KNOW YOU'RE TIRED OF HEARING ABOUT THIS, BUT I JUST HAD TWO LAWYERS IN FRONT OF ME THAT JUST OBVIOUSLY DIDN'T DO WHAT THEY NEEDED TO DO, AND I JUST THOUGHT MR. FALGIONE AND I HAD A RESPONSIBILITY TO TRY TO CURE AS MUCH OF THAT AS WE COULD. I KNOW YOU'RE TIRED OF HEARING ABOUT THAT.

THE COURT: NO, I'M NOT. NO, I'M NOT. YOU KNOW, THE LAWYERS DO HAVE A DUTY TO SUPPLEMENT. MR. ELLIOTT, THOSE RECORDS YOU INDICATED, THOSE TWO STACKS OF RECORDS THERE THAT YOU GOT, WHICH YOU RECEIVED IN 2005, DO THOSE, I ASSUME OVERLAP WITH THE ADDITIONAL RECORDS THAT MR. RAKOWSKY GAVE Y'ALL LAST WEEK? OR ARE THERE ADDITIONAL RECORDS THAT YOU GOT LAST WEEK IN ADDITION TO THOSE?

MR. ELLIOTT: YES, SIR. YES, SIR. EVERYTHING FROM 2005 UNTIL TODAY OR LAST WEEK IS WHAT WE GOT LAST WEEK.

THE COURT: ALL RIGHT. HOW ARE YOU PREJUDICED WITH REGARD TO THOSE RECORDS THAT YOU'VE GOT THERE, THAT YOU RECEIVED IN 2005?

MR. ELLIOTT: YOUR HONOR, AGAIN, WE RECEIVED THOSE AFTER DISCOVERY HAD CLOSED IN THIS CASE ORIGINALLY. WE WOULD HAVE BEEN HAVING THIS ARGUMENT ABOUT OBJECTIONS AND

TIMELY PRODUCTION OF MEDICAL BILLS AND RECORDS IN THAT CASE AT THIS STAGE LAST TIME, BECAUSE THEY WEREN'T PRODUCED DURING DISCOVERY. THE ONLY REASON WE DIDN'T HAVE THAT CONVERSATION IS BECAUSE OF THE APPEAL. WHEN THE CASE WENT UP ON APPEAL YOU LOST JURISDICTION, WE WERE STATUS QUO, AS I UNDERSTOOD, AND YOU ISSUED AN ORDER STAYING THE CASE. WHEN WE CAME BACK, THERE WAS A CONVERSATION ABOUT WANTING MORE DISCOVERY AND OTHER THINGS, BUT NOBODY MENTIONED ANY OF THIS. NOW, IF I'M ON NOTICE OF WHAT'S IN MY FILE IN 2005, I HAVE TO LIVE WITH THAT. YOU KNOW, WE CAN ARGUE AND SQUAWK ABOUT THAT, BUT I CAN'T RESPOND TO THINGS I WAS NEVER GIVEN UNTIL LAST WEEK.

THE COURT: I UNDERSTAND THAT. WHAT I'M GETTING AT IS, I'M NOT SURE I SEE --

MR. ELLIOTT: I'VE HAD NO DISCOVERY, JUDGE. I'VE NEVER HAD ANY CHANCE TO DO ANYTHING. I'M NOT GOING TO SCREAM AND HOLLER AS MUCH ABOUT THIS AS I AM ABOUT THE NEW STUFF, BUT I DON'T KNOW WHAT THE MEDICAL RECORDS TOTAL OR ANYTHING LIKE THAT, AND YOU KNOW, WE MAY HAVE DONE SOME DIFFERENT DISCOVERY, SENT OUT SOME INTERROGATORIES OR SUBPOENAS OR DONE DIFFERENT THINGS HAD WE BEEN GIVEN THIS STUFF TIMELY. I KNOW IT'S NOT THEIR FAULT, THESE GENTLEMEN'S FAULT. BUT WE WEREN'T GIVEN EVERYTHING, AND IN EVERY DEPOSITION WE PUT ON THE RECORD

WE'RE GOING TO HAVE TO COME BACK, WE DON'T HAVE ANYTHING FOR YOU. TELL ME WHAT'S WRONG WITH YOU, AND THEY WOULD JUST GENERALIZE. SOME OF THEM DIDN'T REMEMBER DOCTORS' NAMES. SOME OF THEM DID, BUT SOME OF THEM COULDN'T REMEMBER THE NAMES OF DOCTORS THEY WERE TREATING WITH.

THE COURT: I APPRECIATE WHAT YOU'RE SAYING. I'M TALKING ABOUT TWO SEPARATE GROUPS HERE. I'M TALKING ABOUT THOSE DOCUMENTS RECEIVED IN 2005, AND A SEPARATE SET OF DOCUMENTS THAT WERE RECEIVED LAST WEEK.

MR. ELLIOTT: YES, SIR.

THE COURT: WITH REGARD TO THE DOCUMENTS THAT WERE RECEIVED IN 2005, YOUR CONCERN IS THAT YOU DIDN'T GET TO DO ANY OR, OR THE CONCERN OF THE OTHER COUNSEL IS THAT YOU HAVEN'T HAD AN OPPORTUNITY TO DO ANY DISCOVERY WITH REGARD TO THOSE RECORDS THAT YOU GOT IN 2005, WHICH YOU WOULD HAVE ARGUED THEN, HAD IT NOT BEEN APPEALED, THAT THEY WERE UNTIMELY, IS THAT RIGHT?

MR. ELLIOTT: ABSOLUTELY, YOUR HONOR. WITH YOUR ORDER STAYING THE CASE, I'M NOT SURE WHEN DISCOVERY ENDED, BUT --

THE COURT: ALL RIGHT. BUT SINCE THEN, SINCE THEN, NO ONE HAS ASKED ME TO ENGAGE IN ANY DISCOVERY OR OPEN DISCOVERY WITH REGARD TO THOSE.

MR. ELLIOTT: WHY WOULD I WANT TO DO THAT? THAT IS NOT MY DUTY. IT'S NOT MY DUTY. IF THEY ARE GOING TO

SUPPLEMENT OR GIVE ME THINGS THAT ARE NEW THAT I NEED TO DEAL WITH IN THIS TRIAL, THEN THAT'S -- AND I'M NOT TALKING ABOUT THIS, I'M TALKING ABOUT THIS.

THE COURT: I'M TALKING ABOUT THAT, TOO.

MR. ELLIOTT: THAT'S MY POINT. THEY WERE LATE THEN. WE'VE HAD, IN THEORY, NO DISCOVERY BETWEEN THEN AND NOW EXCEPT THE SPECIAL THINGS YOU'VE ORDERED BECAUSE OF TAPES, OR YOU KNOW, LATE THINGS, AND I SAY LATE, I APOLOGIZE FOR THE WORD, MAYBE MS. SENN HAS BROUGHT UP, NEW THINGS IN THE CASE. THESE AREN'T NEW THINGS. JUST BECAUSE I'VE BEEN GIVEN A STACK OF BILLS, I DON'T KNOW HOW I'M SUPPOSED TO GLEAN FROM THAT THAT TREATMENT IS AUTOMATICALLY ONGOING, EITHER. SO AGAIN, I UNDERSTAND THE POINT THAT THE COURT -- THE COURT'S DISTINCTION AND I SEE THE BABY ABOUT GETTING TO BE SPLIT, BUT THAT'S MY CONCERN. THESE ARE ALL NEW TO US. IF THEY CAN BE LINKED UP AND THEY ARE GOING TO BRING DOCTORS TO TALK ABOUT WHERE THEY WERE IN 2005 IN TREATMENT UP UNTIL THAT POINT, YOU KNOW, THAT TO ME IS A DIFFERENT BALL OF WAX. I'VE STILL GOT OBJECTIONS, BUT IT'S A WHOLE LOT EASIER TO SQUAWK. YEAH. I GUESS THAT'S KIND OF LIKE SAYING JUDGE, THEY NEVER GAVE ME MEDICAL BILLS. WHY DIDN'T YOU FILE A MOTION TO COMPEL? IT'S NOT MY JOB. THEY HAVE GOT THE BURDEN. THEY ARE SUPPOSED TO BRING IT TO ME BECAUSE I'VE ASKED FOR IT IN DISCOVERY AND THE COURT'S MANDATORY

DISCLOSURE. ABSENT THEM BRINGING IT TO ME, WHY SHOULD IT COME IN? I UNDERSTAND THESE GENTLEMEN HAVE MADE A VALIANT EFFORT GETTING READY AND JUMPING INTO THIS CASE, AND IT'S NOT THEIR FAULT, I'LL SAY THAT.

THE COURT: OBVIOUSLY, I DON'T HAVE IN FRONT OF ME A LIST OF THE MEDICAL BILLS OR MEDICAL RECORDS THAT YOU HAD, OR THAT THEY GAVE YOU IN 2005 VERSUS WHAT THEY HANDED OVER TO YOU LAST WEEK.

MR. ELLIOTT: BECAUSE NONE HAS NEVER BEEN PRODUCED, WHICH WE ASKED FOR. MY INTERROGATORY SPECIFICALLY ASKED EACH PLAINTIFF TO NAME A SPECIFIC ELEMENT OF DAMAGE AND SPECIFIC DOLLAR AMOUNT TO GO WITH IT, AND SPECIFIC DOCUMENTS AND DOCTOR TO PROVE EACH ONE. I GET ONE LITTLE PARAGRAPH ABOUT THEY CLAIM THEY GOT MENTAL HEALTH PROBLEMS AND STRESS AND HEART RELATED. THAT'S ALL I GET, ALL I GOT UNTIL THE WEEK OF TRIAL LAST TIME, UNTIL THE APPEAL. I WOULD HAVE BEEN HAVING THIS SCREAMING ARGUMENT BACK THEN, IF WE HAD GOT THERE.

THE COURT: WHAT DOCTORS ARE GOING TO BE HERE TO TESTIFY?

MR. FALGIONE: YOUR HONOR, WE ANTICIPATE DR. BARBIAN AND DR. HWANG. DR. TEANNE --

MR. RAKOWSKY: MAYBE IT WOULD BE BETTER TO TALK ABOUT EACH PLAINTIFF, YOUR HONOR.

THE COURT: YES, SIR.

MR. RAKOWSKY: MR. HOLT IS GOING TO HAVE DR. BARBIAN AND DR. HWANG. AND THAT'S IT FOR MR. HOLT.

DR. OEHLER, O-E-H-L-E-R, I THINK IS HOW YOU PRONOUNCE HER NAME IS FOR IRENE SANTACROCE. DR. LAMM FOR MARGUERITE STEPHENS.

THE COURT: L-A-N-D?

MR. RAKOWSKY: I THINK IT'S L-A-M-M. THEN AS FAR AS MR. LAIL, MR. LAIL IS NOT GOING TO HAVE ANYBODY TESTIFY AS FAR AS I RECALL. IS THERE ANYBODY?

MR. FALGIONE: NO.

MR. RAKOWSKY: HE'S GOING TO TESTIFY ON HIS OWN WHAT HIS MEDICAL BILLS WERE FROM THE PHARMACY, BUT THAT'S THE EXTENT OF HIS TESTIMONY. I DON'T KNOW IF I MISSED SOMEBODY OR NOT. MS. HOLT. SHE HAS SOME TREATMENT, YOUR HONOR. MS. HOLT IS, THERE'S AN INDIAN DOCTOR THAT I CAN'T PRONOUNCE HIS NAME, AND DR. BARBIAN ALSO HAS SOME TREATMENT FOR MS. HOLT. SWANINATHAN OR SOMETHING LIKE THAT.

THE COURT: LET'S TAKE A SHORT RECESS. TEN MINUTES.

(THEREUPON, THE PROCEEDINGS WERE ADJOURNED.)

I CERTIFY THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE RECORD OF PROCEEDINGS AS HEREINABOVE SET OUT.

S/ VINCE ROLLAND — MAY 21, 2007

VINCE ROLLAND — DATE

OFFICIAL COURT REPORTER

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

494
107

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

James Spencer, Estate of Doris Holt and Irene Santacroce

Plaintiffs,

v.

John R. Rakowsky, Adrian L Falgione, and The Law Offices of Adrian L. Falgione,

Defendants.

Case No. **2011-CP-40-5384**

RICHLAND COUNTY
FILED
2012 AUG 30 AM 10:29
JEANETTE W. McBRIDE
C.P. & G.S.

MOTION FOR RECONSIDERATION UNDER RULE 59 (e) SOUTH CAROLINA RULES OF CIVIL PROCEDURE TO CHANGE VENUE TO LEXINGTON, COUNTY

Plaintiff Irene Santacroce and Plaintiff James Spencer request this Honorable Court, under Rule 59 (e) of the South Carolina Rules of Civil Procedure, (SCRCP) to reconsider changing the venue to Lexington County, due to the fact that such a move is improper and will prejudice the outcome of the litigation against the Plaintiffs. This motion is filed within the ten day limit for filing after receipt of the executed Order in the mail under Rule 59 (e) of the SCRCP.

Judge Goldsmith's decision to change venue was based on a lack of relevant information and the information he did have was limited, incorrect and/or false. The Court record will show that Judge Goldsmith was totally unprepared for the hearing and had not reviewed the case file, either before or during the hearing. As the hearing was underway, Judge Goldsmith physically left the hearing to look for the case file and came back with a document he stated he found "laying on

top" of a closed case file." Judge Goldsmith had copies made of the letter and gave copies to the parties present at the hearing.

The letter was nothing more than a proverbial "red herring" as it was both inadmissible and also irrelevant because it does not pertain to this case. The letter clearly states it relates to Case No. 2010-CP-40-5896, the case of "Stewart Buchanan, #69848 v. Robert Brown, in his individual capacity, Sandra S. Bowie, in her individual capacity and David Tatarsky, in his individual capacity."

The only statement that constituted the entire body of letter pertaining to Case No. 2010-CP-40-5896 was, "I have signed all the orders I intended to sign and they will stand." Not only does that statement not negate any previous orders issued by Judge Barber in that case it has nothing to do with the case the hearing was being presided over by Judge Goldsmith. **(See Exhibit "A" attached.")**

Subsequently, Judge Goldsmith's ruling in this case, is completely inconsistent with the oral rulings and the Scheduling Order issued by Judge Barber, at the previous hearing on the case captioned above held on May 7, 2012.

Judge Goldsmith stated on the Court record he located the case file and the letter lay unattended on top of a case file in Judge Barber's office and he assumed the letter was pertaining to this case. Significantly, Judge Goldsmith didn't review anything else in the case file. So Judge Goldsmith's subsequent rulings were being based on this "red hearing."

Taken in the light least favorable to the Plaintiffs, in this case, the "red hearing" produced by Judge Goldsmith did not negate any of the rulings made by Judge Barber during the May 7, 2012 hearing.

However, Judge Goldsmith's ruling is contra to Judge Barber's rulings on the May 7, 2012 Court record pertaining to this case. In that regard, Judge Barber himself ruled that one Judge cannot overrule another judge. See Judge Barber's Order, dated October, 18, 2011, Case No.: 2008-CP-40-6656[1], where Judge Barber states, **"There is a long-standing rule in this State that one judge of the same court cannot overrule another**. *Tisdale v. Amer. Life Ins. Co.* 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dankins v. Robbins,* 203 S.C. 199, 26 S.E. 2d 689 (1943)." The *Pro Se* Plaintiffs concur. Therefore, Judge Goldsmith's ruling to change venue must be reversed as it is contradictory to the rulings made by Judge Barber on May 7, 2012.

During the May 7, 2012 hearing, Judge Barber issued the Order for the undisputed litigation funds to be turned over to the Court by June 1, 2012 and issued the scheduling Order for both cases, in an effective joinder of both cases (Case No. 2008-CP-40-6656 and 2011-CP-40-5384) including, but not limited to, the holding of simultaneous depositions.

Also, unknown to Judge Goldsmith, as he was not prepared and had not reviewed the case file, a motion to compel **(See Exhibit "B" attached)** was pending and Judge Barber had Ordered on May 7, 2012, that no other hearings were to take place in case 2011-CP-40-5384 and case 2008-CP-40-6656 until after the interplead uncontested litigation funds were turned over to the *Pro Se* litigants and the *Pro Se* litigants had time to hire counsel and experts for both the cases.

The *Pro Se* Plaintiffs informed Judge Goldsmith of Judge Barber's Orders, issued on May 7, 2012, but opposing counsels Amanda Dudgeon and Ben Bruner disrespected Judge Barber's standing Orders on May 7, 2012 and wrongfully pursued their clients interests knowing this was contrary to prior rulings made by the Court on May 7, 2012 which itself appears to the lay *Pro Se*

[1] Note on May 7, 2012, Judge Barber in a joined hearing of Case No. 2008- CP-40-6656 and 2011-CP-40-5384.

litigants to be a violation of the South Carolina Rules of Professional ethics for lawyers by Mr. Bruner and Ms. Dudgeon.

Opposing Counsels Amanda Dudgeon and Ben Bruner knew that changing the venue to Lexington County where Amanda Dudgeon's client John Rakowsky is the long standing Chief Presiding Municipal Judge holding power county wide and is politically well connected would obviously prejudice the case against the Plaintiffs and chose to ignore the Court's prior rulings on May 7, 2012.

Further, based on Counsel Bruner's false representations, the Court erred in its Order that the Plaintiffs' declarations had no significance, and should not be considered when in fact they carry the same authority as the defendants' affidavits as established by the Federal Courts.[2]

> "an unsworn declaration has the same force and effect as an affidavit if it recites -- as Fadale's declaration does -- that it was executed under penalty of perjury."
>
> Sterling China Co. v. Glass, Molders, Pottery, Plastics & Allied Workers Local No. 24, 357 F.3d 546, 557 (6th Cir. Ohio 2004)

Additionally, Counsel Bruner in order to undermine the Pro Se Plaintiffs' credibility knowingly falsely claimed on the Court record that an Order had been issued by Judge Barber whereby Amanda Dudgeon and her law firms position to represent John Rakowsky, which had

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[2] § 1746. Unsworn declarations under penalty of perjury

"Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).
(Signature)".
(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).
(Signature)".

28 USCS § 1746

been challenged by the Plaintiffs in a motion filed on March 27, 2012 due to a conflict of interest, had been resolved as the Plaintiffs claims of a conflict of interest were found baseless. This is patently untrue and certainly a violation of ethics by Mr. Bruner and Ms. Dudgeon as she stood by and allowed the false statement on her behalf to go on the Court record unchallenged.

Further Counsel Bruner falsely claimed that engagement contracts had been executed in Lexington County between the Plaintiffs and his client Adrian Falgione. During the hearing on August 1, 2012, the Plaintiffs pointed out this was not true and that Counsel Bruner could not produce one such document as Adrian Falgione was hired by John Rakowsky and no contracts were ever executed between the Plaintiffs and Adrian Falgione.

Through the untruthful statements in Adrian Falgione's affidavit Counsel Bruner was using in the affidavit of Adrian Falgione to establish venue in Lexington County. Counsel Bruner made such a statement without seeing any such contract purportedly executed by the Plaintiffs and Adrian Falgione and without researching the law wrongfully claiming that Plaintiffs' sworn declarations carried no legal weight and the affidavits of the Defendants superseded the meaningless Plaintiffs' declarations. The Court erred and stated it agreed that the Plaintiffs Declarations were legally meaningless and had no legal weight compared to the sworn affidavit of Adrian Falgione.

Therefore, Judge Goldsmith without being prepared and acting on both a red hearing and misinformation provided by opposing counsels Bruner and Dudgeon wrongfully concluded that the change in venue was called for, when in fact, a change in venue to Lexington County was not proper as the vast majority of the work was done in Richland County, South Carolina and Clark County, Nevada and the acts of malpractice occurred outside Lexington County in both Richland County, Florence County and Clark County Nevada. Therefore, under SC §§ 15-7-20 Richland

County, SC or Clark County Nevada would be proper venues and Lexington County would be improper under SC §§ 15-7-100 as the Lexington County venue would lead to an impartial trial in that venue given the political position of Defendant Chief Judge John Rakowsky of Lexington County (**See Exhibit "C" attached hereto**).

Counsel Bruner knew or should have known that Defendant John Rakowsky is a Chief Judge in Lexington County, S.C., yet Mr. Bruner wrongly claimed the Pro Se Plaintiffs were untruthful in footnote #2, on page 4 of his Memorandum in Support of Defendant's, Adrian L. Falgione and the Law Offices of Adrian Falgione, LLC's Motion to Change Venue about John Rakowsky's position as "Chief Judge."

THERFORE, due to the foregoing the Plaintiffs humbly request the Judge Goldsmith's decision in favor of Defendants motion for a change in venue to Lexington County, based on the forgoing, be reversed and denied with prejudice.

RESPECTFULLY SUBMITTED
This 29th day of August, 2012.

By: Irene Santacroce

Irene Santacroce
Pro Se Plaintiff

James Spencer
Pro Se Plaintiff

500

CERTIFICATE OF SERVICE

I, Irene Santacroce, *Pro Se* Plaintiff do hereby certify that the **Motion for Reconsideration and Strike OF THE COURT'S RULING IN REGARD TO THE MOTION TO CHANGE VENUE** has this day been served on the following person(s) by mail, fax or electronic transfer a true and correct copy, as follows:

Amanda K. Dudgeon, Esquire
Andrews A. Countryman, Esquire
Carlock, Copeland and Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
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Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
Burner, Powell, Wall & Mullins, LLC
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Email: BBruner@BrunerPowell.com

RICHLAND COUNTY
FILED
2012 AUG 30 AM 10:29
JEANETTE W. McBRIDE
C.C.P. & G.S.

This 29th day of August, 2012.

By: Irene Santacroce

Irene Santacroce, *Pro Se* Plaintiff
205 Deer Trace Circle
Myrtle Beach, SC 295889
(843) 455-0891

501
111

Exhibit "A"
1 of 2

The Circuit Court of South Carolina
Fifth Judicial Circuit

James R. Barber, III
Circuit Court Judge
Richland County Judicial Center
P.O. Box 2766
Columbia, South Carolina, 29201

(803) 576-1779
FAX (803) 576-1782

July 31, 2012

Amanda Kurzen Dudgeon
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Stephanie Weissenstein
Ballard, Watson, Wessenstein
P.O. Box 6338
West Columbia, SC 29171

Rodney Lail
7001 St. Andrews Road
P.O. Box 183
Columbia, SC 29212

Re: Stewart Buchanan, #69848 v. Robert Brown, in his individual capacity, Sandra S. Bowie, in her individual capacity, and David Tatarsky, in his individual capacity
Case No. 2010-CP-40-5896

Dear Mr. Dudgeon, Ms. Santacroce, Mr. Bruner, Mr. Spencer, Ms. Wessenstein, and Mr. Lail:

Exhibit "A"
2 of 2

I have signed the orders I intended to sign and they will stand.

Sincerely yours,

James R. Barber, III

JRB:ecb

503
113

EXHIBIT "B"

STATE OF SOUTH CAROLINA — IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND — Case No. **2011--CP-40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, and Irene Santacroce,	)
Plaintiffs,	)
v.	)
John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC	)
Defendants.	)

RICHLAND COUNTY
FILED
2012 JUL 30 PM 2:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

Expedited Motion to Compel and to Stay hearings in the Above Captioned Case until the Court Rules on this Motion to Compel the Defendants to Comply with this Court's Previous Orders

WHEREFORE, on May 7, 2012, the Honorable Judge Barber, the Chief Administrative Judge, ordered that the next hearing in this proceeding would not occur until Defendant John Rakowsky has released the uncontested litigation funds and that Judge Barber has subsequently held a hearing and both released such funds to the Plaintiffs in this matter, and that the Court subsequently has also

provided time for Plaintiffs to secure representative counsel (See Attached Affidavit).

Whereas, Defendant John Rakowsky has not complied with the Court Orders issued on May 7, 2012 and Judge Barber has been unavailable since July 19, 2012 and, therefore, cannot correct this oversight,

Whereas Judge Barber on September 15, 2011, issued an Order in which by he cited, "There is a long-standing rule in this State that one judge of the same court cannot overrule another." *Tisdale v. Amer. Life Ins. Co.,* 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dinkins v. Robbins,* 203 S.C. 199, 26 S.E. 2d 689 (1943).

If the hearing is allowed to proceed on August 1, 2012, this will completely contradict the long standing policy as stated immediately above by Judge Barber and the following of long standing policy will turn the jurisdictional rules backwards toward judicial anarchy in the State of South Carolina. Thus the Plaintiffs humbly move the Court to order that:

1. The August 1, 2012 hearing is delayed until defendant John Rakowsky has complied with the Order of Judge Barber entered on May 7, 2012, to release the uncontested litigation funds and the Plaintiffs' have thereby been allowed to secure counsel, per Judge Barber's court Orders issued on May 7, 2012;

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2. This hearing be delayed until the transcript of the May 7, 2012 hearing in this matter is available which documents Judge Barber's rulings on that date. This transcript has been on order by the Plaintiffs for several weeks;
3. Defendant John Rakowsky is assessed the costs associated with the filing of this motion to compel his compliance with Judge Barber's Order's issued on May 7, 2012.

Submitted this 30th day of July, 2012,

By,

James B. Spencer, individually and on behalf of the
Estate of Doris Holt and as interim Administrator
of Southern Holdings Co.,
PMB 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

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CERTIFICATE OF COMPLIANCE

I, Irene Santacroce, *Pro Se*, do hereby certify that the foregoing **Motion to Compel and to Stay any hearings on these matters until the Court Rules on the Motion to Compel the Defendants to Comply with its Previous Orders** has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

RICHLAND COUNTY
FILED
2012 JUL 30 PM 2:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

Andrew A. Countryman, Esquire
Amanda K. Dudgeon, Esquire
Carlock, Copeland and Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
Email: **BBRUNER@brunerpowell.com**

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. **2011--CP-40-5384**

James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, and Irene Santacroce,

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

RICHLAND COUNTY
FILED
2012 JUL 30 PM 2:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

DECLARATION OF IRENE SANTACROCE

I, Irene Santacroce 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. I attended the hearing before Judge Barber on May 7, 2012.
4. I understood with complete certainty that Judge Barber ruled that no hearings were to be held in Case No. **2011--CP-40-5384** until defendant John Rakowsky has complied with the Order of Judge Barber entered on May 7, 2012, to release the uncontested litigation funds and the Plaintiffs'

have thereby been allowed to secure counsel, per Judge Barber's court Order issued on May 7, 2012;

5. I have ordered the transcript of the May 7, 2012 hearing;

6. I have requested a conference with Judge Barber to resolve this issue, however, I just found out he has been on vacation since this matter has come to my attention.

Affiant further sayeth naught.

I DO SOLEMLY SWEAR AND AFFIRM UNDER THE PENALITIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

This 30th day of July, 2012.

By:

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29

MUNICIPAL COURT JUDGES
LANCASTER, LAURENS, LEE, AND LEXINGTON COUNTIES

EXHIBIT "C"

The Honorable Bill M. Cade Chief Judge 186 North Carlisle Street Gaston, SC 29053-9403 OFFICE: (803) 796-7725 FAX: (803) 739-5793 County: Lexington Municipality: Gaston Gender: Male Race: Caucasian	The Honorable Rebecca L. Adams Chief Judge Post Office Box 406 Irmo, SC 29063-0230 OFFICE: (803) 781-8700 FAX: (803) 749-2743 County: Lexington Municipality: Irmo Gender: Female Race: _____
The Honorable Joseph M. Epting Chief Judge Post Office Box 406 Irmo, SC 29063-0230 OFFICE: (803) 781-8700 FAX: (803) 749-2743 County: Lexington Municipality: Irmo Gender: Male Race: _____	The Honorable Gary W. Reinhart Assistant Judge Post Office Box 406 Irmo, SC 29063-0230 OFFICE: (803) 781-8700 FAX: (803) 749-2743 County: Lexington Municipality: Irmo Gender: Male Race: _____
The Honorable John R. Rakowsky [redacted] 111 Maiden Lane Lexington, SC 29072-3450 OFFICE: (803) 359-6260 FAX: (803) 951-4643 County: Lexington Municipality: Lexington Gender: Male Race: Caucasian	The Honorable Brian W. Jeffcoat Associate Judge 111 Maiden Lane Lexington, SC 29072-3450 OFFICE: (803) 359-6260 FAX: (803) 951-4643 County: Lexington Municipality: Lexington Gender: Male Race: Caucasian
The Honorable Scott D. Whittle Chief Judge P.O. Box 7 Pelion, SC 29123-0007 OFFICE: (803) 894-3535 FAX: (803) 894-3535 County: Lexington Municipality: Pelion Gender: Male Race: Caucasian	The Honorable Stephanie S. Cameron Associate Judge P.O. Box 7 Pelion, SC 29123-0007 OFFICE: (803) 894-3535 FAX: (803) 894-3535 County: Lexington Municipality: Pelion Gender: Female Race: Caucasian

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO.: 2011-CP-40-5384
	)	
James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce,	)	**DEFENDANT JOHN R. RAKOWSKY'S MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR RECONSIDERATION**
Plaintiffs,	)	
v.	)	
John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC,	)	
Defendants.	)	

Defendant John R. Rakowsky, by and through his undersigned counsel, hereby submits this Memorandum in Opposition to Plaintiffs' Motion for Reconsideration.[1] This matter came before the Court for a hearing on August 1, 2012, on Defendants' Motions to Change Venue to Lexington County. By Order dated August 15, 2012, the Court granted the Defendants' Motions (hereinafter the "Court's Order"). On August 30, 2012, the Plaintiffs filed a Motion for Reconsideration under Rule 59(e) South Carolina Rules of Civil Procedure to Change Venue to Lexington County ("Motion to Reconsider"). For the reasons set forth below, the Plaintiffs' Motion should be denied.

STANDARD OF REVIEW

"A motion to change venue is addressed to the sound discretion of the trial judge and will not be disturbed on appeal absent a manifest abuse of discretion." Mathis v. Brown & Brown of South Carolina, Inc., 389 S.C. 299, 319, 698 S.E.2d 773, 784 (2010)(citing McKissick v. J.F. Cleckley & Co., 325 S.C. 327, 335, 479 S.E.2d 67, 71 (Ct. App. 1996)).

[1] Defendant incorporates by reference his previously filed Memorandum of Law in Support of Motion to Change Venue (filed July 27, 2012) as well as Defendants Falgione's Memorandum in Opposition to Plaintiffs' Motion for Reconsideration. This Defendant will attempt to avoid duplicating previous arguments.

ARGUMENT

The Court's Order properly applied the facts at hand to the law of South Carolina. Pursuant to SOUTH CAROLINA CODE ANNOTATED § 15-7-30, an action against a resident individual "must be brought and tried" in either the county in which the defendant resides at the time the claim arose or the county where the most substantial part of the alleged act or omission giving rise to the plaintiff's claim occurred. S.C. Code Ann. § 15-7-30(C) (2005); Jeter v. S. Carolina Dept. of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 147 (2006) (noting that a defendant's right to be tried in his resident county is "substantial"). It is undisputed that Mr. Rakowsky is a resident of Lexington County. It is undisputed that the underlying action which gave rise to the present legal malpractice action was not filed in Richland County. It is undisputed that the acts that gave rise to the crux of the allegations against Mr. Rakowsky in this case – namely, that Plaintiffs were improperly forced to enter into a settlement in the underlying case – did not occur in Richland County. Therefore, venue is proper in Lexington County.

Defendant objects, as this Defendant has done on numerous occasions in this litigation, to Plaintiffs' outlandish allegations against Defendant and his counsel as meritless and irrelevant to the matter at hand. To the extent the Court deems it necessary to consider the remaining allegations and arguments, however, this Defendant requests the opportunity to be heard on those issues.

For these reasons, Plaintiffs' Motion for Reconsideration should be denied.

This ___ day of September, 2012.

[SIGNATURE PAGE TO FOLLOW]

This 13th day of September, 2012.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: Amanda K Dudgeon
DAVID W. OVERSTREET
State Bar No.: 16965

AMANDA K. DUDGEON
State Bar No.: 72516

Attorneys for Defendant John R. Rakowsky

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
843-727-0307

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the within and foregoing pleading upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

James Spencer, individually and
on behalf of the Estate of Doris Holt and as interim
Administrator/Trustee of Southern Holdings, Inc.
7001 St. Andrews Road, Suite 183
Columbia, SC 29212
***Pro Se* Plaintiff**

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
***Pro Se* Plaintiff**

Benjamin C. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260-1110
Counsel for Adrian L. Falgione and the Law Offices of Adrian L. Falgione, LLC

This 13th day of September, 2012.

Assistant to Amanda K. Dudgeon

Gregory ADAMS

~~GARZI~~
Virzi

Mike Virzi

ZONING

FASTER

123.75

Vick Everhart

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ORIGINAL

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
2013 DEC -6 A 9:34	
James Spencer, individually and on behalf) of the Estate of Doris Holt and on behalf) of Southern Holdings, Inc.; CLERK OF COURT LEXINGTON, SC)	C/A No. 2012-CP-32-3428
Plaintiffs,)	
)	
v.)	**ORDER DENYING RULE 59(e) MOTION**
)	
John R. Rakowsky; Adrian L. Falgione;) and The Law Offices of Adrian Falgione,) LLC;)	
Defendants.)	

THIS MATTER COMES BEFORE THE COURT on Plaintiff Spencer's motion of September 9, 2013 requesting reconsideration of the court's prior order dismissing this case. No party requested a hearing on Plaintiff's motion.

The court has reviewed the pleadings, record, and fully considered the arguments made in Plaintiff's motion. The court finds that the prior order dismissing this action shall stand.

WHEREFORE, Plaintiff's motion pursuant to Rule 59 is denied.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Presiding Judge, Eleventh Judicial Circuit

December 4, 2013
Lexington, South Carolina

524

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP3203428

PLAINTIFF(S)	DEFENDANT(S)
James Spencer Southern Holdings Inc Doris Holt	John R Rakowsky Law Offices of Adrian Falgione LLC Adrian L Falgione
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

12/12/2013

Circuit Court Judge **Judge Code** **Date**

5 23

5 25

1 of 5

For Clerk of Court Office Use Only

This judgment was entered on **12th of December 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **12th of December 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer 7001 St Andrews Rd ste 183 Columbia, SC 29212

Andrew W Countryman Carlock Copeland & Stair LLP 40 Calhoun St Ste 400 Charleston, SC 29401
Amanda Kurzen Dudgeon 40 Calhoun St., Ste. 400 Charleston, SC 29401
Benjamin C. Bruner PO Box 61110 Columbia, SC 292601110
Warren C. Powell Jr. PO Box 61110 Columbia, SC 29260
Stephanie Nichole Weissenstein PO Box 6338 West Columbia, SC 291716338

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Court Reporter

Beth A. Carrigg - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

526

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	
	)	
John R. Rakowsky	)	
	)	Case No. 2008-CP-40-6656
Plaintiff,	)	
vs.	)	
	)	**AFFIDAVIT OF JOHN RAKOWSKY**
Adrian L. Falgione, James Spencer, Doris Holt, Rodney Keith Lail, Irene Santacroce, Marguerite Stephens and Ricky Stephens, and Horry County, S.C.,	)	
	)	
Defendants.	)	

Personally appeared before me, John R. Rakowsky, who being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters so stated, except those matters stated on information and belief, and as to those, I have a good faith basis for believing them to be true.
2. I am a member of the South Carolina Bar, having been admitted in 1979. I was previously admitted to practice law in Ohio in 1976. I have maintained a solo practice in Lexington County since I was admitted to practice in South Carolina. For the past twenty-seven (27) years I have been a municipal judge for Lexington, South Carolina. As a result, I practice law part-time.
3. I am providing this affidavit at the direction of Judge Doyet A. "Jack" Early regarding that portion of this action which addresses my request to interplead the remaining litigation funds into the Court for distribution as the Court deems appropriate.

4. During my tenure as co-counsel for the Plaintiffs, I received a total of $67,500.00 in advanced litigation funds on behalf of the plaintiffs from two (2) different funding sources. These funds were deposited into my trust account at Security Federal Bank, Account ending in xxxx1313. The funds were used for litigation expenses as set forth in the affidavit of Mara Ballard dated April 17, 2014, submitted herewith.
5. On or about June 21, 2005, as counsel for the plaintiffs in the Southern Holdings case in United States District Court. I received two checks totaling $42,500.00 from LitFunding USA, a/k/a LFC 101, LLC, and LFC 104, LLC and deposited those funds to Account xxxx1313, which was and is my trust account.
6. On or about June 30, 2005, I received one check in the amount of $25,000.00 from Resolution Settlement Corporation and deposited those funds into account xxxx1313.
7. I have reviewed the affidavit of Ms. Ballard, and the attachments in detail, and it is an accurate reflection of funds received by me as counsel for the Southern Holdings plaintiffs, and disbursed as litigation expenses on behalf of the Southern Holdings plaintiffs.
8. Resolution Settlement corporation authorized me to advance funds to James Spencer for living expenses from the $25,000.00 paid by it. (Exhibit A). Mr. Spencer was advanced a total of $12,550.00 from the litigation funds.
9. I maintained records of the disbursements for the Southern Holdings case, and I provided Mr. Spencer and the other plaintiffs with a record of disbursements.
10. On multiple occasions, I reimbursed myself from the trust account for out-of-pocket expenses (copy costs, telephone costs, postage, etc.) for several cases at one time. That is my standard practice. On each occasion, I calculated the actual numbers for each client and bundled them together to write myself a single check for reimbursement. Costs reimbursed

to me for the Southern Holdings case are included in the following check numbers written to me from Account xxx1313: Check Nos. 219, 233, 247, 277,342, 400. I did not maintain records of the breakdown for the individual case calculations for each case when I reimbursed case costs on these occasions.

11. After the Southern Holdings plaintiffs repudiated the settlement which was reached on May 8, 2007, I consulted with attorney Desa Ballard as to what to do with the remaining litigation funds in the amount of $9,855.85, as well as the settlement funds paid by the defendants.

12. I delivered a check from my trust account xxx1313 to Ms. Ballard in the amount of $9,855.85. I am informed and believe she deposited those funds into her trust account. On my behalf, she filed this interpleader action on September 12, 2008.

13. During the litigation, and in response to one of the amended complaints, an invoice was received for an unpaid litigation expense in the amount of $2,163.77. This was a legitimate expense of the litigation that was to be paid from the advanced litigation costs. I consulted with Ms. Ballard, and she paid the amount of $2,163.77 from her trust account to Eugene G. Chewning, Jr., PhD, CPA for services he rendered for the plaintiffs during the litigation.

14. I am informed and believe that Mr. Spencer obtained an advance of $35,000 from a third source, LawMax, in 2007. I did not receive any of those funds. Based on the documentation which I have regarding that transaction (Exhibit B), I am informed and believe those funds went either to Mr. Serota or to Mr. Spencer.

15. I am informed and believe that the balance of litigation funds in the amount of $7,691.78 are being held in Ms. Ballard's trust account, pending this court's order. I am aware of no claims having been filed against those funds.

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139

Further, deponent sayeth not.

John R. Rakowsky

Sworn to before me this 16th
day of May, 2014

Notary public for South Carolina
My Commission expires: 11.28.17

Document #486

JOHN R. RAKOWSKY
ATTORNEY AT LAW
900 12th STREET
POST OFFICE BOX 3593
WEST COLUMBIA, SOUTH CAROLINA 29171

TELEPHONE
(803) 791-8830
FAX
(803) 794-7880

May 17, 2007

Mr. Alex Rozenzaft
LawMax
459 Columbus Avenue, Suite 299
New York, NY 10024

Dear Mr. Rozenzaft:

On the afternoon of Tuesday, May 8, 2007, Judge Harwell held an evidentiary hearing regarding the evidence both sides proposed to admit at trial. Almost every document of evidence the Plaintiffs submitted was challenged by the Defendants' counsel. Prior to my involvement in this case, former Plaintiffs' counsel Michael Goldberg missed specific filing deadlines set by the Court's scheduling order, causing a serious problem in the admissibility of a very large proportion of Plaintiffs' evidence. Consequently, as just one example, Judge Harwell indicated that the next day, he would rule as inadmissible at least 75% of Plaintiffs' medical expenses. Accordingly, Judge Harwell suggested that the Plaintiffs take the pre-trial settlement that was being offered by the Defendants.

Additionally, it was revealed by Defendants' Counsel Saleeby for the first time that former Plaintiffs' counsel Goldberg had received an offer of Judgment from the Defendants that neither I, nor former local Plaintiffs' counsel James Cooper nor the individual Plaintiffs had ever seen before or knew about. This is critical because if the case was decided in favor of the Plaintiffs below the thirty thousand dollars ($30,000) threshold amount in the "Offer of Judgment," the Plaintiffs would have been responsible both collectively and individually for all the Defendants costs, including attorney's fees from the first date of the signing of the offer. Adrian and I estimated that that would be a minimum amount of between $200,000 and $300,000 and likely much more.

Judge Harwell strongly suggested that Adrian and I get the Plaintiffs to settle for their best interests before he made the ruling against the Plaintiffs' evidence at trial on Wednesday, May 9, 2007, and the Defendants then subsequently drop their settlement offer. Judge Harwell indicated at the evidence hearing on Tuesday, May 8, 2007, that, (1) most of the Plaintiffs' medical damages, (2) most of the Plaintiffs' evidence regarding the civil conspiracy and the questionable action of the defendants, and (3) almost all of the Southern Holdings, Inc. valuation evidence was not going to be allowed to be admitted because it was not timely filed with the Court. Judge Harwell told Adrian and me in chambers that he wanted for everything related to this case to end at one time, so we needed to drop the claims against Dave Smith and Ancil Garvin as part of the settlement.

Without the admission of the critical evidence, the Plaintiffs would have been exposed to a Judgment against them of $300,000 to 400,000 if we did not settle the case due to the Defendants' "Offer of Judgment" filed on July 21, 2004. Judge Harwell told us in chambers on Wednesday, May 9, 2007, the Plaintiffs acceptance of the Defendants' offer was the best decision for the Plaintiffs to make given that he was going to rule against the admission of the majority of the Plaintiffs' evidence. Now that this case is behind us we can go after Goldberg for not filing the evidence in a timely manner, which caused these problems in the first place, along with Goldberg's flawed initial pleadings.

Sincerely,

John R. Rakowsky

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

Southern Holdings, Inc., et al., Plaintiffs, v. Horry County, South Carolina, et al., Defendants.	)	Civil Action No. 4:02-1859-RBH

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO VACATE SETTLEMENT

The Plaintiffs Southern Holdings, Inc., Irene Santacroce, Marguerite Stephens, Ricky Stephens, and Rodney Lail have filed letters requesting that the Court vacate or set aside the settlement agreement reached by the parties and placed on the record in open court on May 9, 2007.[1] The letters/motions were not submitted by these Plaintiffs' counsel of record. These Plaintiffs have submitted this request for relief from the settlement *pro se* and without any motion to relieve their current counsel of record.

These Plaintiffs request that the Court vacate or set aside the settlement based upon the "fraud and coercion committed on the Plaintiffs by Defendants' Counsel and Plaintiffs' Counsel

[1] The Plaintiffs Spencer and Holt have not filed any letter or motion.

through threats, untruthful statements with the use of a bogus document called an 'Offer of Settlement.'" (Doc. # 486).[2] The governmental Defendants take great exception to the frivolous and unsubstantiated claims of fraud and coercion committed by their counsel. The record establishes that a proper settlement was reached between the parties and was communicated to and accepted by the Court and the litigants in open court. The Court is requested to reject these Plaintiffs' attempt to repudiate this settlement.

DISCUSSION

"Compromises of disputed claims are favored by the courts." *Clarion Corp. v. American Home Products Corp.*, 494 F.2d 860, 863 (7th Cir. 1974), *citing Williams v. First National Bank*, 216 U.S. 582 (1910). Likewise, "[a] strong policy of the Fourth Circuit is to foster settlement in order to advantage the parties and to conserve scarce judicial resources." *United States v. Centex-Simpson Construction Co.*, 34 F.Supp.2d 397, 399 (N.D. W.Va. 1999), *citing Central Wesleyan College v. W.R. Grace & Co.*, 6 F.3d 177 (4th Cir. 1993).

"The Fourth Circuit has clearly held that district courts possess the inherent power to enforce settlement agreements and to enter judgments based on such agreements without a plenary hearing." *Young v. Federal Deposit Ins. Corp.*, 103 F.3d 1180, 1194 (4th Cir. 1997), *citing Petty v. Timken Corp.*, 849 F.2d 130 (4th Cir. 1988). The Fourth Circuit has further recognized that "having second thoughts about the results of a settlement agreement does not justify setting aside an otherwise valid agreement." 103 F.3d at 1195.

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[2] Each of the Plaintiffs phrase the basis for their motion slightly differently, but the substance is the same. These Plaintiffs allege that the Offers of Judgment were "bogus" or fabricated and that the advice received from their own counsel was faulty.

The district court in *United States v. Centex-Simpson Construction Co.*, 34 F.Supp.2d 397 (N.D.W.Va. 1999), ruled that "a settlement agreement, voluntarily entered into, cannot be repudiated by either party and will be summarily enforced by the court." 34 F.Supp.2d at 399. The district court explained: "when parties have agreed to a settlement that was reduced to terms of dollars and cents, the district court has the power and authority to enforce payment of that amount and should not set aside the agreement absent substantial unfairness." *Id.* The district court further recognized that "[a] settlement made in open court ... is a valid, enforceable agreement and need not be reduced to writing." *Id.* "Failure to complete formal settlement papers does not indicate that a settlement agreement was not in fact reached." 34 F.Supp.2d at 400.

In the case at bar, the parties entered into a valid, enforceable settlement agreement. The material terms of that agreement were entered by the parties on the record in open court and were accepted by this Court. The terms of the settlement were communicated to the Court in the presence of the Plaintiffs who now attempt to repudiate the settlement. Those parties never voiced any concern or disagreement with the settlement in open court. Moreover, no attempt was made to communicate to the Court any disagreement or reservations with the settlement until almost a full month after the case was settled. The Plaintiffs' claims that they were not provided an opportunity to object to the settlement is unavailing.

Furthermore, these Plaintiffs' claim that the settlement was the result of fraud committed by the Defendants' counsel is frivolous and without any evidentiary basis. Such bald accusations of wrongdoing are indeed deserving of Rule 11 sanctions.[3] The record reflects that the governmental Defendants served their Offer of Judgment by mail and by facsimile transmission

[3] The governmental Defendants join in and adopt the request by the Hartness Defendants that the Court award sanctions under Rule 11 against the moving Plaintiffs.

543
155

on July 21, 2004, on the Plaintiffs' counsel. *See*, Exhibit 1. The Plaintiffs' counsel then responded with an objection to the Offer of Judgment on the very next day, July 22, 2004. *See*, Exhibit 2. While the Plaintiffs complain that the Offer of Judgment was not served on their local counsel, the objection served the next day was signed by both the lead counsel Michael L. Goldberg as well as local counsel, James D. Cooper. Clearly, the Plaintiffs' counsel was well aware of the Offer of Judgment and responded thereto in a timely manner.[4]

At any rate, these documents clearly demonstrate that the Plaintiffs' bald allegations that the Offer of Judgment was fabricated for "purposes of coercion" are frivolous. Clearly, the Defendants' counsel did not prepare the Offer of Judgment at the time of trial in an attempt to coerce or trick the Plaintiffs into a settlement. Consequently, the Court should reject any contention that the settlement was procured through fraud or deceit by the Defendants or their counsel.

These Plaintiffs also maintain that the settlement was procured by misrepresentations by their own counsel regarding anticipated evidentiary rulings by the Court and the potential consequences of the Offer of Judgment. While it is appropriate to allow John Rakowsky and Adrian Falgione to address their own conduct in this case, the governmental Defendants submit that erroneous information (if any) received by the Plaintiffs from their own counsel is not a valid basis for repudiating a settlement. If their counsel breached any standard of care in

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[4] The Plaintiffs' apparent contention that the Offer of Judgment was invalid because it was not served on local counsel lacks merit. While Local Civil Rule 83.I.06 provides that "the service of all pleadings and notices as required shall be sufficient if served upon only the associated local counsel," the rule does not require that local counsel must be served in order for proper service to be effected. The Offer of Judgment was properly served in this case when service was effected on Michael L. Goldberg. At any rate, no prior objection to service was raised, and the objection served by Plaintiffs' counsel demonstrates that local counsel was aware of and rejected the offer.

advising their clients (which is not suggested), the Plaintiffs have an available remedy for damages, and the repudiation of a valid and enforceable settlement in open court is not the appropriate remedy.

The Fourth Circuit, in fact, has espoused that very holding. In *Petty v. Timken Corp.*, 849 F.2d 130 (4th Cir. 1988), the Court addressed a plaintiff's motion to vacate a settlement made in open court based upon allegations of "improper inducement" and inadequate representation by his counsel. The Court explained:

> Even were we to assume that the charges of misconduct subsequently brought against [counsel] by [plaintiff] were true, it would not create a material question regarding the validity of that settlement. When a litigant voluntarily accepts an offer of settlement, either directly or indirectly through the duly authorized actions of his attorney, *the integrity of the settlement cannot be attacked on the basis of inadequate representation by the litigant's attorney*. In such cases, any remaining dispute is purely between the party and his attorney. Unless the resulting settlement is substantially unfair, judicial economy commands that a party be held to the terms of a voluntary agreement.

849 F.2d at 133. (Emphasis added).

Nonetheless, the governmental Defendants submit that the concerns allegedly voiced to their clients by Rakowsky and Falgione were legitimate and constitute prudent advice. While these Plaintiffs acting *pro se* challenge whether they could have been held liable for attorney's fees as a component of the awardable "costs" under Rule 68, FRCP, they fail to recognize that this action was brought pursuant to 42 U.S.C. § 1983. As such, attorney's fees are a component of costs. *See*, *Marek v. Chesny*, 473 U.S. 1 (1985).[5] The Plaintiffs' counsel were correct to

[5] *See, Lucas v. Wild Dunes Real Estate, Inc.*, 197 F.R.D. 172 (D.S.C. 2000), in which Judge Norton awarded the defendant attorney's fees as part of its post-offer costs. Citing *Marek*, the Court recognized that the term "costs" under Rule 68 included attorney's fees if recoverable under the relevant substantive statute. In that case, the plaintiff rejected an offer of judgment of $20,000 and then recovered only $5,500 in damages. As a result, Judge Norton

anticipate that the governmental Defendants would have certainly attempted to recover any post-offer attorney's fees and litigation costs awardable under Rule 68 and 42 U.S.C. § 1988. The Plaintiffs' counsel were also correct to anticipate that the claimed costs would have been substantial given the amount of costs incurred since July 21, 2004, and the expected costs from a three to four week trial.

Further, the advice allegedly provided by Rakowsky and Falgione regarding evidentiary rulings that could be anticipated was also sound. During the in limine hearing on May 8, 2007, and the subsequent in chambers discussion, the Court voiced considerable concern with the evidence that had not been properly produced during discovery. The Plaintiffs' counsel were also able to gauge the inherent weaknesses in other aspects of the Plaintiffs' case including anticipated rulings on other evidentiary issues. Counsel apparently attempted to provide their clients with the stark realities of their case, and the Plaintiffs wisely acted on that advice. While they may now have second thoughts and are more willing with additional reflection to take their chances, that is not a proper basis for repudiating a settlement to which they implicitly concurred in open court. The Fourth Circuit has soundly rejected any attempt to repudiate a settlement where the litigant has "second thoughts" regarding the settlement. *Petty v. Timken Corp.*, 849 F.2d 130, 133 (4th Cir. 1988). The Court further explained:

> A litigant who enters the judicial process through the agency of freely chosen counsel always assumes a certain risk that the result achieved will not be satisfactory. Defeated expectations do not, therefore, entitle the litigant to repudiate commitments made to opposing parties or to the court.

Id.

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awarded the defendant its attorney's fees as a component of "costs" because the relevant statute allowed for an award of attorney's fees to a defendant who qualified as a prevailing party.

546

In sum, these Plaintiffs have not presented this Court with any legitimate basis to repudiate a settlement made in open court in their presence. There is no question that a settlement was reached. The terms of that settlement were spelled out on the record. The Plaintiffs' claims of a fraudulent Offer of Judgment have been easily disproved and shown to be frivolous. The Plaintiffs' claims of any improper conduct by their own counsel or faulty advice simply will not support the repudiation of the settlement under Fourth Circuit precedent. At best, the Plaintiffs have expressed "second thoughts" or reservations regarding the settlement to which they agreed in open court. That is not a sufficient or proper basis for setting aside the settlement.

CONCLUSION

Based the foregoing discussion, the Defendants Horry County, Allen, Thompson, Caldwell, McClendon, Brantley, and Christensen respectfully request that this Court deny the Plaintiffs' motions to vacate or set aside the settlement reached on May 9, 2007. These Defendants further join the request by the Hartness Defendants that the Court award sanctions under Rule 11 against the moving Plaintiffs.

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

SOUTHERN HOLDINGS, INC., et al., Plaintiffs, v. HORRY COUNTY, et al., Defendants.	Civil Action No.: 4:02-cv-1859-RBH **ORDER ON MOTIONS PURSUANT TO F.R.A.P. 4(a)(4)**

Pending before the court are: 1) Letter/motion [Docket Entry # 483] by Dan Green, C.E.O. of Southern Holdings, Inc.; 2) Letter/motion [Docket Entry # 484] by Irene Santacroce; 3) Letter/motion [Docket Entry # 485] by Marguerite Stephens; 4) Letter/motion [Docket Entry # 486] by Ricky Stephens; and 5) Letter/motion [Docket Entry # 487] by Rodney Lail. All of these letters/motions request relief from the Order dismissing this case with prejudice pursuant to a settlement agreement that was stated on the record. *See* [Docket Entry # 475]; Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482]. The above letters/motions were not filed by Plaintiffs' counsel, but were filed *pro se* by the Plaintiffs listed above.[1]

On June 7, 2007, the court issued an Order requesting that any parties wishing to file responses to the Plaintiffs' *pro se* letters/motions must do so no later than June 14, 2007. Order [Docket Entry # 488]. On June 14, 2007, the court received responses from all Defendants and the Plaintiffs' attorneys.

As noted below, a Notice of Appeal has been filed in this case. However, pursuant to Federal Rule of Appellate Procedure 4(a)(4), this court has jurisdiction to rule on the pending

[1] It should be noted that Plaintiffs' attorneys, Rakowsky and Falgione, have not been relieved as attorneys for the Plaintiffs, nor have any motions to withdraw as attorney been filed.

letters/motions. Under Local Rule of Civil Procedure 7.08, hearings on motions are not required. Therefore, the court, in its discretion, elects to rule on the pending matters without a hearing.

Procedural and Factual Background

The procedural background of this case is extensive; however, the procedural and factual background relevant to the current matters is fairly limited. The trial of this case was set to begin on May 9, 2007. On May 8, 2007, a larger than normal jury panel was brought in due to the anticipated length of the case, which was expected to last at least three weeks. On May 9, 2007, the jurors who had been selected reported to the courthouse for the beginning of trial.

On May 9, 2007, with the jury waiting to be brought out and just before the trial was to begin, the lawyers advised the court of a settlement, the terms of which were then stated on the record in the presence of all of the Plaintiffs who filed the *pro se* letters/motions.[2] Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482]. Accordingly, on the record, with the consent of counsel, and in the presence of the parties, the court Ordered that the case be dismissed with prejudice per the settlement agreement. [Docket Entry # 475]; Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482]. None of the parties objected to the settlement agreement or to the dismissal of the case with prejudice. Transcript of Trial Proceedings, at 2-6 [Docket Entry # 482].

Beginning on June 1, 2007, chambers began receiving emails from individual plaintiffs

[2] According to the Clerk's office, the total cost to the federal government to bring in jurors for the panel and first day of trial was Eleven thousand, nine hundred eighty-four dollars ($11,984.67) and sixty-seven cents.

with various attachments ranging from affidavits, court transcripts, court docket entries, and letters from Attorney Rakowsky to third persons.[3] These emails requested that this court, among other things, vacate the settlement and reinstate the case.

Some of the emails sent to chambers referenced relief under Rule 59(e) of the Federal Rules of Civil Procedure.[4] One email did not reference a specific procedural rule.[5] All of the letters appeared to seek relief on the basis that: 1) Both Plaintiffs' counsel and Defendants' counsel engaged in fraud in order to coerce the Plaintiffs into a settlement; 2) Plaintiffs' counsel misrepresented to Plaintiffs either certain evidentiary rulings the court had made or was going to make; 3) Plaintiffs' counsel allegedly gave the Plaintiffs bad legal advice concerning the likelihood of exposure to a Judgment in light of a previous Offer of Judgment; 4) Plaintiffs did not agree to the settlement offer at any time; and 5) the Offer of Judgment was somehow "bogus." Specifically, Dan Green, Ricky Stephens, Marguerite Stephens, Rodney Lail, and Irene Santacroce asked the court to: 1) vacate the settlement; 2) reinstate the case to active status; 3) order an independent Federal investigation into the corruption that has been

[3] With regard to Attorney Rakowsky's letters to third parties, while the court does not agree with many of the statements by Attorney Rakowsky concerning statements attributed to the court, this court did express concern about the matter of Plaintiffs' untimely production of evidence as argued by the Defendants in open court on May 8, 2007. The court reserved ruling until the next day at which time the court was advised the parties had reached a settlement.

[4] Rodney Lail, who sent an email on June 3, 2007, Irene Santacroce, who sent an email on June 4, 2007, Ricky Stephens, who sent an email on June 6, 2007, and Marguerite Stephens, who sent an email on June 6, 2007, all asked the court to vacate the settlement under Rule 59(e) based on alleged fraud and coercion committed against the Plaintiffs by Plaintiffs' attorneys in conjunction with Defendants' counsel.

[5] On June 1, 2007, Dan Green, C.E.O. of Southern Holdings, Inc., emailed a letter requesting that the court vacate the settlement based on the same factual allegations as the Plaintiffs noted in Footnote #4; however, Dan Green's email did not reference a specific procedural rule. Dan Green, who is not an attorney licensed to practice in this jurisdiction, purports to represent Southern Holdings, Inc.; however, Local Rule of Civil Procedure 83.I.07(3) states that a corporation cannot proceed without counsel and that such counsel must be admitted to practice in this District. Local Civil Rule 83.I.07(3) DSC.

associated with this case; and 4) stay the case until an independent review can be conducted, the Plaintiffs can assess the damage done to their case, and obtain qualified counsel to represent the Plaintiffs.[6]

On June 7, 2007, the court instructed that all of the emails be filed with the Clerk of Court. *See* [Docket Entry ## 483-487]. On the same day, the court Ordered that any party wishing to file a response to the letters/motions must do so no later than June 14, 2007. By June 14, 2007, all parties, including Plaintiffs' counsel Rakowsky and Falgione, responded to the allegations contained in Plaintiffs' *pro se* letters/motions. Additionally, the Hartness Defendants filed a motion for sanctions and other relief against the Plaintiffs. No replies have been filed.

As if the matter were not complicated enough, on June 21, 2007, a Notice of Appeal was filed by Ron Serota, Esq. on behalf of all Plaintiffs. On June 22, 2007, Attorney Serota also filed a motion to vacate the judgment on behalf of Doris Holt, an individual Plaintiff that had not previously filed a *pro se* letter/motion.

It should be noted that Attorney Serota, who is not admitted to the South Carolina Bar and was previously admitted in this case *pro hac vice*, was later removed and relieved as counsel for the Plaintiffs on May 3, 2007, pursuant to motions filed by both the Plaintiffs and Serota himself. Serota has <u>not</u> been readmitted *pro hac vice* and has not obtained sponsorship from any local counsel admitted to practice in this District. Serota has violated various Local Civil Rules of this District by: 1) filing documents without first being admitted *pro hac vice*;

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[6] The Docket Report in this case indicates that the Plaintiffs have had several attorneys terminated or withdrawn from the case.

2) failing to obtain sponsorship by local counsel; and 3) failing to have his Notice of Appeal and motion signed by local counsel. As mentioned earlier, Attorneys Rakowsky and Falgione have not been relieved as counsel for any of the Plaintiffs. Additionally, it appears Serota filed these documents using Attorney Rakowsky's CM/ECF login and password without Rakowsky's permission. Nevertheless, the Notice of Appeal filed by Serota will be transmitted to the Fourth Circuit Court of Appeals where the propriety of the Notice of Appeal will ultimately be determined.[7] Because of Serota's failure to comply with the Local Civil Rules regarding local counsel, Holt's motion [Docket Entry # 500] to set aside the judgment based on Rule 60(b) is not properly before this court.[8]

Discussion

Plaintiffs' *pro se* letters/motions are untimely under Federal Rule of Civil Procedure 59(e)

To the extent Plaintiffs seek relief from this court's May 9, 2007, Order dismissing this case with prejudice, their motions are untimely. Rule 59(e) clearly states that "[a]ny motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment." Fed. R. Civ. P. 59(e). Even if this court considers the date Plaintiffs emailed their letters to chambers as the filing date, their motions are still untimely. The 10 day deadline contained in Rule 59(e) is mandatory and cannot be extended pursuant to Rule 6(b). Fed. R. Civ. P. 6(b). Therefore, Plaintiffs' letters/motions founded on Rule 59(e) are denied as untimely.

Plaintiffs' *pro se* letters/motions under Federal Rule of Civil Procedure 60(b)(3)

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[7] At first glance, Plaintiffs' Notice of Appeal appears to be untimely; however, that matter would be more properly decided by the Fourth Circuit Court of Appeals.

[8] The court also notes that Doris Holt's affidavit that was submitted with Attorney Serota's Rule 60(b) motion does not appear to be properly signed or notarized.

To the extent that Plaintiffs allege fraud as a basis for relief, the court liberally construes their letters/motions as motions under Rule 60(b)(3), which provides for relief from judgment or order based on fraud, misrepresentation, or other misconduct of an adverse party. Fed. R. Civ. P. 60(b)(3). The basis of Plaintiffs' allegations against the adverse parties is that they concocted a "bogus" Offer of Judgment and that, in conjunction with various alleged misrepresentations by the attorneys for the Plaintiffs, they coerced the Plaintiffs to settle the case.

Plaintiffs' *pro se* letters/motions fail under Rule 60(b)(3) because they have failed to show by clear and convincing evidence that the adverse parties, the Defendants or Defendants' counsel, were guilty of any fraud. *See Schultz v. Butcher*, 24 F.3d 626, 630 (4th Cir. 1994). This conclusion is evident from the court's review of the submissions of the parties relevant to the Plaintiffs' letters/motions.

To prevail on a Rule 60(b)(3) motion, the moving party must establish: 1) a meritorious defense; 2) misconduct by clear and convincing evidence; and 3) the misconduct prevented the moving party from fully presenting its case. *Schultz*, 24 F.3d at 630 (citing *Square Constr. Co. v. Washington Metro. Area Transit Auth.*, 657 F.2d 68, 71 (4th Cir. 1981)).

Two Offers of Judgment are at issue. The Hartness Defendants' Offer of Judgment, signed by E. Glenn Elliot, Esq., is dated July 12, 2005. As evidenced by the facsimile transmission reports attached with the Hartness Defendants' response, the Hartness Offer of Judgment was successfully faxed to Plaintiffs' Attorneys Rakowsky, Serota, Cooper, and Hardee on July 12, 2005.

The second Offer of Judgment concerns the Horry County Defendants. The Horry

County Offer of Judgment contains a certificate of service indicating that the Offer of Judgment was mailed to Plaintiffs' Attorney Goldberg on July 21, 2004. Horry County also attached a facsimile transmission report that showed that the Horry County Offer of Judgment was successfully faxed to Plaintiffs' Attorney Goldberg on July 21, 2004. In fact, on July 24, 2004, the Horry County Defendants received an Objection from Plaintiffs' Attorney Goldberg and their local counsel at the time, James Cooper, to the Offer of Judgment. So the contention that the Defendants' attorneys "crafted" a fraudulent Offer of Judgment just days before trial, without proper service, in an attempt to coerce the Plaintiffs into a settlement agreement is totally without merit. The Plaintiffs assert no evidence whatsoever, much less clear and convincing evidence, of any fraud or misrepresentation by any of the adverse parties or lawyers in this case. Additionally, the Plaintiffs have not shown that the supposedly "bogus" Offers of Judgment prevented them from moving forward with their case. As noted above, a jury had already been selected and the settlement agreement was announced the morning trial was set to begin. Therefore, their requests for relief based on Rule 60(b)(3), fraud by an "adverse party," is denied. To the extent the Plaintiffs allege fraud committed by their own counsel, that is not a basis for relief under Rule 60(b)(3) as Plaintiffs' own counsel are not "adverse parties."

Other Grounds for Relief under Rule 60(b)

The court has reviewed the various submissions by the parties, and to the extent the Plaintiffs' letters/motions raise issues that could be construed as seeking relief under other subsections of Rule 60(b), the court has reviewed the applicable law regarding relief under subsections of Rule 60(b) that are arguably applicable to these circumstances and concludes

that the Plaintiffs are not entitled to any such relief. In other words, the Plaintiffs have not made a sufficient showing of entitlement such relief.

Further, with regard to any claim by the Plaintiffs of either improper inducement, bad advice, or inadequate representation or preparation against Plaintiffs' own attorneys, such is not a valid basis for repudiating a settlement. *Petty v. Timken Corp.*, 849 F.2d 130, 133 (4th Cir. 1988). In the event there was any breach of the standard of care owed by Plaintiffs' attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, Plaintiffs have an available remedy for damages against their own attorneys. *See Petty*, 849 F.2d at 133.

Vacate or Set Aside Settlement Agreement

It is well settled that merely having second thoughts about entering into a settlement agreement is insufficient to set aside the settlement agreement. *Young v. Federal Deposit Ins. Corp.*, 103 F.3d 1180, 1195 (4th Cir. 1997). The court notes that all of the Plaintiffs who filed these letters/motions, *pro se* requests for relief, were present in the courtroom when the settlement agreement was announced on the record. Although the undersigned did not poll each plaintiff individually, nor each Defendant individually, he is not required to do so. This case did not involve a minor settlement or a wrongful death settlement, which would require court approval and may require the court to query a plaintiff regarding whether they believe the settlement is fair and in their best interests. Regardless, none of the Plaintiffs brought any of the matters they allege in their letters/motions to the court's attention until three weeks

later.[9] The court regrets that the Plaintiffs may have had a change of heart, but a change of heart is not a sufficient basis to set aside a settlement agreement. *See Petty*, 849 F.2d at 133.

Conclusion

For the reasons stated above, the relief requested in the: 1) Letter/motion [Docket Entry # 483] by Dan Green, C.E.O. of Southern Holdings, Inc.; 2) Letter/motion [Docket Entry # 484] by Irene Santacroce; 3) Letter/motion [Docket Entry # 485] by Marguerite Stephens; 4) Letter/motion [Docket Entry # 486] by Ricky Stephens; and 5) Letter/motion [Docket Entry # 487] by Rodney Lail is **DENIED**.

Because Attorney Serota failed to comply with this District's Local Rules of Civil Procedure regarding the use of local counsel, Holt's [Docket Entry # 500] motion to set aside or vacate the judgment is not even properly before the court.

Finally, because this case is on appeal to the Fourth Circuit, the court feels that it would not be appropriate to rule on the additional relief requested by the Hartness Defendants.

IT IS SO ORDERED.

Florence, SC
July 3, 2007

s/R. Bryan Harwell
R. Bryan Harwell
United States District Judge

[9] The court cannot disregard the fact that substantial juror costs and court time had been allocated for this case and to simply allow the matter to be reopened when a settlement agreement has been placed on the record in open court with a jury standing by would open the court to easy manipulation of its time and resources.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Florence Division

SOUTHERN HOLDINGS, INC., et al. Plaintiffs, v. HORRY COUNTY, SOUTH CAROLINA, et al. Defendants.	Case No. 4:02-CV-01859-RBH

CERTAIN PLAINTIFFS' MOTION FOR CLARIFICATION OF COURT ORDER 510

Pursuant to Rules 52 and/or 60 of the Federal Rules of Civil Procedure, certain Plaintiffs[1] request clarification of particular statements by the Court in Court Order No. 510 (hereinafter the "Order"). Plaintiffs seek clarification from the Court on issues arising from the Order's references to Attorney Rakowsky's statements in letters he wrote concerning the Court's position as having been wrongfully described in three (3) letters (See attached hereto Plaintiffs' Exhibit "A") from Attorney Rakowsky, dated May 17, 2007 (hereinafter the "Letters"). Plaintiffs seek clarification regarding the Court's basis of the statement, "while the Court does not agree with many of the statements by Attorney Rakowsky, concerning statements attributed to the Court, the Court did express concern about the matter of the untimely production of evidence as argued by the Defendants in open court on May 8, 2007." (Court Order 510, Page 3, footnote 3.)

[1] The Plaintiffs joining this motion are Rodney Lail, Irene Santacroce, Ricky Stephens and Marguerite Stephens.

I. PLAINTIFFS REQUEST CLARIFICATION REGARDING THE SPECIFICS AS TO WHICH, IF ANY, OTHER STATEMENTS LISTED BELOW AND ATTRIBUTED TO THE COURT BY ATTORNEY RAKOWSKY IN THE LETTERS AND AS CONTAINED IN PLAINTIFFS' DOCUMENTS 483 – 487 WERE ACCURATE.

Although a number of the provisions in the Order detail specific items, the Court failed to provide specific information (besides the reference to the Plaintiffs' untimely production of evidence contained in the Letters and the Order) as to the veracity of the other statements which follow herein attributed to either or both Attorney Rakowsky and Attorney Falgione relating to the Court's position.

On the morning of May 9, 2007, the Plaintiffs in attendance in Court had to make decisions based solely on the representations of the Court's rulings on May 8, 2007, and representation of the stated positions of the Court on May 8, 2007, and May 9, 2007, both made to the Plaintiffs by the Officers of the Court Rakowsky and Falgione. Such representations included statements made throughout the Letters. Decisions based on the representations will likely negatively affect the Plaintiffs every day for the rest of their lives. Two Plaintiffs have been diagnosed as permanently disabled and incur maintenance medical bills of more than $60,000 annually due to the action of the Defendants, with these medical costs growing every year.

The Plaintiffs are sensitive to the costs of assembling the jury, but most of the Plaintiffs are financially ruined, having mortgaged their homes to fund their day in Court. The injured Plaintiffs' only method to pay for their necessary and life sustaining maintenance medicine and medical treatments would have been from Judgments against those responsible for their injuries, the Defendants.[2]

[2] It should be noted that while the Plaintiffs personally funded over $380,000 of expenses in legitimate pursuit of their claims, the Defendants both civilian and non-civilian litigation expenses were all paid by third parties mainly the taxpayers of the State of South Carolina and, through this Court's Order No. 127,

The only representation in the Letters singled out and confirmed by the Court as being accurate in the Order was that the court did express concern about the matter of the untimely production of evidence as argued in open court on May 8, 2007.

However, statements in the Letters which from the perspective of the Plaintiffs were much more ominous and predictive regarding the realized outcome of the case and the predisposed nature of the Court against the Plaintiffs as presented by Attorney Rakowsky and Attorney Falgione are not addressed by the Court. The Plaintiffs' Counsels established this predisposed nature by citing Judge Harwell's statements during the evidentiary hearing in open Court on May 8, 2007. Attorney Rakowsky and Attorney Falgione stated that Judge Harwell indicated he was going to rule against the majority of the Plaintiffs' evidence including (1) most of the Plaintiffs' medical damages, (2) most of the Plaintiffs' evidence regarding civil conspiracy and the questionable actions of the Defendants, including the spoliation of evidence, and (3) almost all of the Southern Holdings, Inc., valuation evidence.

According to Attorney Rakowsky and Attorney Falgione the Court's position was due to the fact that all the evidence listed in points 1, 2, & 3 herein above was untimely filed with the Court. Additionally, Officers of the Court Rakowsky and Falgione stated that during the evidentiary hearing Judge Harwell's statements included: (4) "Accordingly Judge Harwell suggested the Plaintiffs take the pre-trial settlement that was being offered by the Defendants," (5) "Judge Harwell strongly suggested that Adrian and I get the Plaintiffs to settle for their best interests before he made the ruling against the Plaintiffs' evidence at trial on Wednesday, May

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the taxpayers of the United States. The Plaintiffs incurred and paid over $40,000 in forensic expenses while the Defendants' forensic expenses including related testimony were all funded by the United States Government through participation of the FBI and Justice Department which provided lawyers, lab personnel and laboratory facilities. Oversight regulations prevent the FBI and Justice Department from participating in civil cases of this nature; however, through this Court's Order No. 127 these regulations, in this case, were bypassed and the total amount of civilian and non-civilian Defendants' forensic expenses were funded by the United States Government.

9, 2007, and the Defendants subsequently withdraw their offer," (6) (On May 8, 2007) "Judge Harwell told Adrian and me in Chambers that he wanted for everything related to this case to end at one time, so we needed to drop the claims against Dave Smith and Ancil Garvin as part of the settlement," and before the hearing on May 9, 2007, as presented by Plaintiffs' Counsels for the Plaintiffs to consider in making their decision in regard to acceptance of the proposed settlement, (7) "Judge Harwell told us [Attorney Rakowsky and Attorney Falgione] in chambers on Wednesday, May 9, 2007, the Plaintiffs' acceptance of the Defendants' offer was the best decision for the Plaintiffs to make given that he [Judge Harwell] was going to rule against the admission of the majority of the Plaintiffs' evidence." Additionally, as contained in the Plaintiffs' letters/Motions (Please see Documents 484 (Page 4, No. 7), 485 (Page 5, No. 7), 486 (Page 3, No. 3), and 487 (Page 2, No. 6)), letters/Motions which resulted in the Order, the Plaintiffs were informed by Officers of the Court Rakowsky and Falgione that (8) the Court had admitted on the record during the evidentiary hearing on May 8, 2007, all of the Defendants' evidence intact.

The transcript of the evidentiary hearing (Please see attached hereto Plaintiffs Exhibit "B") does not support the above citations and quotations from Judge Harwell and the Court's position statements all made by Officers of the Court Attorney Rakowsky and Attorney Falgione. Therefore, the Plaintiffs respectfully request the Court to expand upon its statement in the Order and provide confirmation as to what the Court's actual position was on May 8, 2007, and May 9, 2007, in regard to the issues above as compared to the transcript of the evidentiary hearing and to what was contained in the Letters and directly presented to the Plaintiffs by Attorney Rakowsky and Attorney Falgione.

After seven years of legal efforts that has left the Plaintiffs financially ruined, the Plaintiffs respectfully request to know what the Court's position is concerning what the Plaintiffs were told by the Officers of the Court Rakowsky and Falgione, regarding the issues contained herein this Motion, from the Officer of the Court who is being both referenced and quoted, Judge Harwell.

This motion focuses on several discrete issues where the Plaintiffs believe that the Order, the transcript of the evidentiary hearing, and the representations of the Court's position by Officers of the Court Rakowsky and Falgione made to the Plaintiffs are in conflict, unclear and require clarification.

II. PLAINTIFFS' REQUEST THAT THE COURT CLARIFY THE RECORD REGARDING THE COURT'S POSITION CONCERNING ATTORNEY RAKOWSKY'S STATEMENTS AND ATTORNEY FALGIONE'S STATEMENTS CONCERNING THE POSITION OF THE COURT AS CONTAINED HEREIN DUE TO THE COURT'S UNIQUE POSITION

The Court raised issues related to the Court's position and the presentation of the Courts' position by Attorney Rakowsky in the Order. Since there are no records that can be located that can verify either the written statements made in the Letters or the oral statements made to the Plaintiffs by Officers of the Court Rakowsky and Falgione, the Plaintiffs request the Court present the position of the Court as there appears to be no other source of records besides the transcript of the evidentiary hearing available to the Plaintiffs and the Court only confirmed one item in the Order from the long list of items in the Letters and as contained herein this motion.

III. DISCUSSION

In July of 2000, Plaintiffs submitted a Defendant generated document to two independent and renowned forensic experts for authentication and determination of authorship.

The document was forensically tied to Defendants, including Ancil B. Garvin, by both forensic document examiners. (Please see attached hereto Plaintiffs' Exhibit "C") Two relevant sentences in the document read, (1) "The courts and lawyers will protect us no matter what we do to the 'little people.' It will never get to a jury [the Plaintiffs' case] and if it does the judge will never let the truth be heard." (Exhibit "C", Page 4, Last Bullet Point), and (2) "Let Brian and the shareholders take the high ground. We have the connections, the money, the courts and we will fuck them all [the Plaintiffs]." (Exhibit "C", Page 6, First Bullet Point)

The Plaintiffs do not believe that Your Honor would ever under any circumstances whatsoever act in accordance with the Defendants' directly preceding statements. However, (1) the accuracy of the prediction of the almost decade old Defendants' statement in regard to the disposition of the evidence, and events of May 8, 2007, and May 9, 2007, as stated by Officers of the Court Rakowsky and Falgione concerning this Court's position, (2) the contrary statement by the Court in the Order, and (3) the contrary facts as contained in the certified transcript of the evidentiary hearing, result in this respectful request for clarification of the Court's position on the previously identified issues listed herein.

"Truth needs no disguise", Justice Hugo Black in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 247 (1944). The Plaintiffs merely seek the truth regarding the matters listed herein this Motion as to what the Court's position was on May 8, 2007, and May 9, 2007, in regard to the citations and quotations attributed to Judge Harwell as communicated to the Plaintiffs present at the Court on May 9, 2007, and as contained in the Letters.

IV. CONCLUSION

For the reasons stated, Plaintiffs respectfully request that the Court clarify its Order 510 in the respects described above.

DATED: July 10, 2007. Respectfully submitted by:

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559

564

CERTIFICATE OF SERVICE

I, Rodney Lail, hereby certify that I have this day filed with the Clerk of Court a true and correct copy of **CERTAIN PLAINTIFFS' MOTION FOR CLARIFICATION OF COURT ORDER 510.** In addition, I have mailed a true and correct copy of the foregoing Motion to all interested parties designated by the Court to receive paper copies as follows:

David Smith
1006 N. Holden Rd.
Greensboro, NC 27410
Defendant, In Proper Person

Other Interested Parties:
Linda Williamson Lawrence
105 Yadkin St., Suite 203
Albemarle, NC 28001

Ernest H. Morton, Jr.
117 W. North St.
P.O. Box 519
Albemarle, NC 28002

This 10th day of July, 2007.

by: _____
Rodney K. Lail, Plaintiff, *Pro Se*
PO Box 2753
Myrtle Beach, SC 29578
(843) 626-3229

565

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Florence Division

SOUTHERN HOLDINGS, INC., et al. Plaintiffs, v. HORRY COUNTY, SOUTH CAROLINA, et al. Defendants.	Case No. 4:02-CV-01859-RBH

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CERTAIN PLAINTIFFS' MOTION FOR RECONSIDERATION OF COURT ORDER 577 IN REGARD TO PLAINTIFFS MOTION FOR CLARIFICATION [DOCKET ENTRY #519]

Certain Plaintiffs[1] request reconsideration of Court Order No. 577 in regard to Plaintiffs Motion for clarification of particular statements by the Court in Court Order No. 510. The evidentiary hearing held on the afternoon of May 8, 2007, was an event during which pivotal evidentiary case decisions were made behind closed doors by Judge Harwell. This occurred while the Court Reporter engaged to record the evidentiary hearing inexplicably waited outside the closed doors of Judge Harwell's chambers. According to Officers of the Court Judge Rakowsky and Adrian Falgione, the majority of over two hundred decisions regarding Plaintiffs' evidence and Defendants' evidence were made during an approximately sixty (60) minute long hearing behind closed doors. According to Court Officers John Rakowsky and Adrian Falgione, virtually no evidentiary decisions were made during the first part of the

[1] The Plaintiffs joining this motion are James Spencer and Doris Holt.

evidentiary hearing, which was the only portion of the evidentiary hearing held in open court and is the only portion where there is a record of any part of the evidentiary hearing. This part of the evidentiary hearing lasted for approximately forty-five (45) minutes.

During this sixty-minutes of time in chambers behind closed doors almost "every piece of evidence submitted by the Plaintiffs' was successfully challenged by the Defendants' Counsels," according to Court Officers Judge Rakowsky and Adrian Falgione. That means approximately every eighteen (18) seconds during the closed door hearing (1) a piece of evidence was introduced by Plaintiffs' Counsels, (2) the evidence was then challenged by Defendants' Counsels, (3) the challenge was then responded to by the Plaintiffs' Counsels, and (4) then almost every evidentiary matter in question was decided in the Defendants' favor by Judge Harwell. Significantly, the approximately four hours of compilations of police video and police audio recordings, which Officers of the Court Judge John Rakowsky and Adrian Falgione, Esquire, maintained were reviewed in full and ruled as inadmissible by Judge Harwell at the May 8, 2007, closed door evidence hearing is unaccounted for since the closed door hearing lasted approximately only sixty minutes.

The Court raised the issue concerning the lack of accuracy of Court Officer Judge John Rakowsky's statements in three (3) separate documents Judge Rakowsky wrote describing how Judge Harwell's decisions regarding the evidence on May 8, 2007, ruined the Plaintiffs' case. The three (3) documents from Court Officers Judge Rakowsky and Adrian Falgione also contained instructions from Judge Harwell to the Plaintiffs regarding the terms of the settlement the Plaintiffs were to accept.

Judge Harwell's instructions were that the Plaintiffs were to settle all their claims under the terms offered by the Hartness Defendants and the Horry County Defendants. In that regard,

Judge Harwell instructed the Plaintiffs to drop all claims against Defendants Ancil Garvin and David Smith as part of the settlement. Ancil B. Garvin already had a default Judgment on him in the Plaintiffs favor and David Smith was not present at Court. The three documents written by Court Officer Judge John Rakowsky were dated May 17, 2007 (hereinafter the "Documents").

Plaintiffs seek clarification regarding the Court's basis of the statement, "while the Court does not agree with many of the statements by Attorney Rakowsky, concerning statements attributed to the Court, the Court did express concern about the matter of the untimely production of evidence as argued by the Defendants in open court on May 8, 2007." (Court Order 510, Page 3, footnote 3.) The question of timely production of medical damages was the main topic contained in the forty-five minute transcript of the first part of the evidence hearing on May 8, 2007.

In Order #577, the Court's only statement regarding Plaintiffs' Motion for Clarification Document #519 was, "it is DENIED as moot because the clarification sought by the Plaintiffs is irrelevant and unnecessary in the court's earlier disposition of the matter ruled upon."

I. THE CLARIFICATION SOUGHT BY THE PLAINTIFFS IS EXTREMELY RELEVANT AND NECESSARY FOR THE PLAINTIFFS TO DETERMINE THEIR LEGAL OPTIONS AND ACTIONS. THESE OPTIONS AND ACTIONS CAN BE DEFINED BY KNOWING THE TRUTH OF WHAT ACTUALLY HAPPENED BEHIND CHAMBERS CLOSED DOORS ON MAY 8, 2007

Plaintiffs present on the morning of May 9, 2007, were informed by Officers of the Court Judge John Rakowsky and Adrian Falgione that Defendants' Legal Counsels had successfully challenged and objected to almost every piece of Plaintiffs' evidence during the closed door evidentiary hearing on May 8, 2007. Officers of the Court Judge John Rakowsky and Adrian Falgione further advised Plaintiffs present at the Court on May 9, 2007, that Judge Harwell had instructed Rakowsky and Falgione to inform the Plaintiffs that he [Judge Harwell] had decided to rule as inadmissible the vast majority of the Plaintiffs' evidence. Further, Judge Harwell noticed the Plaintiffs through Officers of the Court Judge John Rakowsky and Adrian Falgione that Judge Harwell was admitting all of the Defendants' evidence. These decisions by Judge Harwell virtually destroyed any chances the Plaintiffs had in prevailing in the case.

Additionally, Judge Harwell advised the Plaintiffs were required to drop all claims against Defendants David Smith and Ancil Garvin. Judge Harwell further advised that if the Plaintiffs did not dismiss the claims against Smith and Garvin, that Judge Harwell would disallow the settlement with the Hartness Defendants and the Horry County Defendants and force the case to go to trial. If this occurred, Judge Harwell's decisions to disallow the Plaintiffs' evidence and allow all of the Defendants' evidence opened the door for the Court to

impose judgments of up to $300,000 against the Plaintiffs. This is the estimated amount of the Hartness Defendants and the Horry County Defendants attorney fees and costs of Court.

On the morning of May 9, 2007, the Plaintiffs in attendance in Court had to make decisions based on Judge Harwell's rulings on May 8, 2007, and Judge Harwell's instructions and "recommendations" to the Plaintiffs on May 8, 2007. Officers of the Court Judge John Rakowsky and Adrian Falgione, Esquire, delivered these rulings, instructions, and recommendations from Judge Harwell to the Plaintiffs as instructed by Judge Harwell. Part of Judge Harwell's rulings and instructions to Plaintiffs from the May 8, 2007, evidentiary hearing were included in the Documents sent out by Officers of the Court Judge John Rakowsky and Adrian Falgione, Esquire on May 17, 2007. (Please see **Plaintiffs' Exhibit "A."**)

In Court Order #510, the Court not only raised questions as to the accuracy of many of the facts reported to the Plaintiffs by Court Officers Judge John Rakowsky and Adrian Falgione, Esquire, but also singled out and confirmed only one item reported to the Plaintiffs by Court Officers Judge Rakowsky and Adrian Falgione as being accurate. The one item was the Court confirming it did express concern about the matter of the untimely production of the Plaintiffs' cost of medical damages as argued in open court on May 8, 2007. This was the major issue in the forty-five minute part of the evidentiary hearing conducted in open Court in front of and recorded by the court reporter in attendance on May 8, 2007.

Further, through Court Order #577, the Court is telling the Plaintiffs that even though the Court disagrees with Officers of the Court Judge John Rakowsky's and Adrian Falgione Esquire's statements regarding rulings attributed to Judge Harwell on May 8, 2007, that led directly to the disputed events of May 9, 2007, the truth does not matter.

The Federal Rules of Civil Procedure present the legal alternatives for the Plaintiffs at this point depending on the facts of the circumstances. By the Court denying the Plaintiffs from knowing a complete and accurate accounting of the facts and circumstances of what happened on May 8, 2007, behind the closed chambers doors, the Court is effectively preventing the Plaintiffs from pursuing legal due process that is available under the Federal Rules of Civil Procedure.

II. DISCUSSION

In the opinion of the Plaintiffs, there are three possible responses to the Plaintiffs' Request for Clarification of what actually happened on May 8, 2007: (1) the Court states the version of the events as related by Officers of the Court Judge John Rakowsky and Adrian Falgione are in fact correct; (2) the Court provides its unabridged version of the events, which, based on prior statements, disagrees with the version of the events related by Officers of the Court Judge John Rakowsky and Adrian Falgione; or, (3) the Court remains moot and denies the Plaintiffs the right to know the truth so it can proceed.

The Plaintiffs who are signatories to this motion have not accused former Counsel John Rakowsky or Adrian Falgione of committing fraud related to this case. The Plaintiffs are seeking the truth to determine the breakdown of communications or errors that might have occurred that led to the disputed events of May 9, 2007, in order to determine independently what legal options are available to the Plaintiffs.

The epicenters of the controversy of the events of May 9, 2007, are the disputed events of May 8, 2007, which the Court opened the door to in its Order #510 when the Court stated it disagreed with the "many" of the facts as presented by Officers of the Court Judge

John Rakowsky and Adrian Falgione. The statements the Court disagrees with **solely** led to the events of May 9, 2007.

The known individuals who attended the behind closed door session of the Court on May 8, 2007, were the Defendants' Counsels, the Plaintiffs' Counsels, and Judge Harwell. The Court has pointed out on more than one occasion that fraud or misconduct by the Plaintiffs' Counsels is not by itself reason to vacate the judgment. There has to be fraud or misconduct during the course of the case by an adverse party to vacate the judgment.

Fraud that benefits one party over another party is not committed in a vacuum. Such fraud would involve two or more individuals from each side, to the detriment of the unwitting victims of the fraud. The Plaintiffs believe mistakes were made and inadvertent errors occurred that would explain the events of both May 8th and May 9th of 2007 rather than fraud. However, the Plaintiffs need to have an accurate accounting of the truth in order to determine the origin and circumstance of the errors or misunderstandings.[2]

[2] **Clarification:** The Court in Order #577 and Order #578 correctly pointed out a Plaintiffs' appeal in this case was dismissed. However, Plaintiffs point out this appeal was dismissed because the Plaintiffs prior to a hearing of the facts unilaterally withdrew it. The appeal was in fact untimely filed due to Counsel John Rakowsky and Counsel Adrian Falgione's failure to timely preserve the Plaintiffs right of appeal as opposed to the Court of Appeals findings on the merits of the appeal.

III. CONCLUSION

"Truth needs no disguise", Justice Hugo Black in *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 247 (1944). The Plaintiffs merely seek the truth regarding the matters listed in Motion #519 as to what the Court's position was on May 8, 2007, and May 9, 2007, in regard to the citations and quotations attributed to Judge Harwell as communicated to the Plaintiffs present at the Court on May 9, 2007, and as contained in the Letters by Officers of the Court Judge John Rakowsky and Adrian Falgione.

The Plaintiffs believe in no way would the Honorable Judge Harwell be involved in misconduct in this or any other case or even allow an appearance of what could be interpreted as misconduct or bias without recusing himself, as is standard procedure. Therefore, the Plaintiffs respectfully request the Court to reconsider Court Order #577, reverse its position, and provide the Court's version of the truth as requested by Plaintiffs in Document #519.

DATED: January 30, 2008, Respectfully submitted by:

James B. Spencer, Plaintiff, *Pro Se*
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212

Doris E. Holt, Plaintiff, *Pro Se*
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212

CERTIFICATE OF SERVICE

I, James B. Spencer, hereby certify that I have this day filed with the Clerk of Court a true and correct copy of **CERTAIN PLAINTIFFS' MOTION FOR RECONSIDERATION COURT ORDER 577 IN REGARD TO PLAINTIFFS MOTION FOR CLARIFICATION [DOCKET ENTRY #519].** In addition, I have mailed a true and correct copy of the foregoing Motion to all interested parties designated by the Court to receive paper copies, as follows:

David Smith
1006 N. Holden Rd.
Greensboro, NC 27410
Defendant, In Proper Person

Other Interested Parties:
Linda Williamson Lawrence
105 Yadkin St., Suite 203
Albemarle, NC 28001

Ernest H. Morton, Jr.
117 W. North St.
P.O. Box 519
Albemarle, NC 28002

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588

Ricky Stephens
207 Deer Trace Circle
Myrtle Beach, SC 29588

Marguerite Stephens
207 Deer Trace Circle
Myrtle Beach, SC 29588

Rodney Lail
PO Box 2753
Myrtle Beach, SC 29578

Dan Green
Southern Holdings, Inc.
2620 Regatta Drive
Suite 102
Las Vegas, NV 89128

This 30th day of January, 2008.

By:
James B. Spencer, Plaintiff, *Pro Se*
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212

ATTACHMENT 53

PAGE 1 OF 1

Vincent Rolland FCRR
Official US Court Reporter
US District Court
P. O. Box 2317
Florence SC 29503
(843) 615-1654

July 20, 2007

To: Irene Santacroce

Re: Southern Holdings, Inc., vs. Horry County
May 8, 2007 Hearing

Dear Ms. Santacroce:

This letter is in response to your inquiry about the time the recess occurred at the above-referenced hearing.

The hearing began at 3:05 p.m., the recess was at 3:53 p.m., and I actually turned my machine off at 5:00 p.m.

The time notations are different from what I stated in our phone conversation, and the reason for that is, the machine wasn't set an hour ahead when daylight savings time began in April. This explains the approximate one hour difference in what I originally told you and what I have now calculated to be the correct times.

If you have any further questions, please let me know.

Sincerely,

Vincent Rolland

576
#4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Florence Division

SOUTHERN HOLDINGS, INC., et al. Plaintiffs, v. HORRY COUNTY, SOUTH CAROLINA, et al. Defendants.	Case No. 4:02-CV-01859-RBH

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PLAINTIFFS' SECOND MOTION FOR CLARIFICATION OF THE EVENTS AND DECISIONS OF THE MAY 8, 2007, EVIDENTIARY HEARING AND SECOND REQUEST FOR THE RECUSAL AND/OR DISQUALIFICATION OF JUDGE R. BRYAN HARWELL

NOW COME CERTAIN PLAINTIFFS[1], on a ***Pro Se*** basis, to respectfully move a second time that the Honorable Judge R. Bryan Harwell clarify what happened at the evidentiary hearing held on May 8, 2007, and for Judge R. Bryan Harwell to recuse himself from the above captioned case prior to making any further decisions in this case.

INTRODUCTION

Section 455(a) of Title 28 of the United States Code requires a federal judge to disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." Judge Harwell should disqualify himself from hearing new evidence regarding reopening this closed case for several actions, identified herein, that would bring his impartiality into question.

[1] Doris Holt, Rodney Lail, Irene Santacroce, Ricky Stephens, Marguerite Stephens and James Spencer.

First, Judge Harwell has a documented history of making evidentiary decisions without reviewing the evidence upon which he is making the decisions. In **United States v. Under Seal (In re Grand Jury Proceedings #5), 401 F.3d 247 (4th Cir. S.C. 2005)**, the Fourth Circuit found, "*In re Grand Jury Proceedings, 33 F.3d at 351*, is notably distinguishable because the district court in that case had detailed summaries of the allegedly privileged documents and, after examining these summaries along with the government's evidence, determined in its discretion that actual examination of the documents was not necessary.

"Here the District Court [Judge Harwell] had no such summaries and no basis on which to conclude that these documents are connected to crime or fraud. Indeed, no discussion even took place as to what [**20] information these documents might contain. We thus remand this case back to the district court either to examine the actual documents (or summaries thereof) *in camera* or to otherwise determine whether they satisfy prong two of the crime-fraud exception as it **applies to attorney-client privilege."**

In the Southern Holdings vs. Horry County case, pivotal Court decisions were made during an unexpectedly unrecorded evidentiary hearing on May 8, 2007. The Court Reporter was kept outside the Judge's Chambers with his camera running, during which Judge Harwell made unrecorded evidentiary decisions against the Plaintiffs' interests behind closed doors. Significantly, based on the time constraints, as established by the Court Reporter Vince Roland, it would have been impossible for the Court to have reviewed the evidence upon which the Court made decisions. This is parallel to the Grand Jury hearing instance previously cited herein.

Judge Harwell has refused to clarify the truth about events and decisions made in this pivotal, undocumented and controversial evidentiary hearing. This unwillingness to divulge the truth regarding these legal proceedings creates a reasonable doubt concerning Judge Harwell's

impartiality in the present case to such an extent that a reasonable person would question the bias of Judge Harwell and would conclude that such bias led to the loss of the integrity of the legal process in this case. These and other actions certainly demonstrate the appearance of a systematic bias by Judge Harwell against the interests of the Plaintiffs, a bias founded on past irregular practices of Judge Harwell regarding his not reviewing evidence upon which Judge Harwell subsequently made rulings.

Second, in May of 2000, while the perpetrators of the events under litigation in this case were planning the events, they generated *planning documents*, ones which were obtained by the Plaintiffs. These documents contained a guarantee that based on local political connections the perpetrators would be protected by the Court's and the lawyers' not allowing evidence to be seen by a jury if the case went to trial. The planning documents were forensically tied to two Defendants in this action, David Smith and Ancil Garvin. The two Defendants were tied to the planning documents by two renowned forensic experts Durward Matheny and Haywood Starling. **(Please see Plaintiffs' Exhibit "A" attached hereto.)** It should be noted that the perpetrators' planning memos that referenced lawyers and Court participation in a cover-up of the evidence were sent independently to these two unrelated forensic document examiners for their expert evaluation *months* before the actual events of August 6, 2000, occurred. It should be further pointed out that these memos were written *seven years prior* to the Court's summary dismissal on May 8, 2007, of the vast majority of the Plaintiffs' evidence in this case. This dismissal of the Plaintiffs' evidence occurred during the key May 8, 2007, evidence hearing that was unrecorded despite the presence of the Court reporter. Mr. Vince Rowland was hired to record the hearing, but was not allowed to record the hearing as he was relegated to a location outside of the Judge's Chambers doors as the hearing progressed inside.

Third, on or about May 22, 2000, notes in a handwritten journal kept by felon Defendant Harold Steve Hartness confirmed that the former long term (20 years) Horry County Clerk of Court, Billie Richardson, would arrange for a Judge at their [the perpetrators'] convenience. The felon's handwritten journal also diagramed how the request for a Judge was to be made by the perpetrators.

STATEMENT OF FACTS

1. **May 18, 2000**, date of planning document (hereinafter "the document") of civilian Defendants Ancil B. Garvin, David N. Smith. "The Courts and the lawyers will protect us no matter what we do to the 'little people' it will never get to a jury and if it does the judge will never let the truth be heard." (***Attached hereto, Exhibit "A", Page 4, last bullet point.***)
2. **June 22, 2000**, self confessed and convicted felon Defendant Harold Hartness makes a notation in a handwritten journal that the perpetrators will be provided a Judge at their convenience in these matters: **"Billie [Billie Richardson the former 20 year Horry County Clerk of Court] will hook us to a judge at our convenience. See Dickie [Richard Way, Billie Richardson's son in law] first, then Billie and then the judge! Dickie was the police commissioner > 1976."** ***(See attached hereto Exhibit "B", from the Harold Hartness journal, page stamped number 12.)***

It should be noted (1) that Harold Hartness's felony conviction involved activities with a criminal organization that bribed public officials, (2) that Harold Hartness also kept a journal of his activities in those criminal matters, and (3) that there was an overlapping of time periods between criminal activities in that case and the occurrence of events in this case. ***(See Case 1:07-cr-00104-TSE and related case documents***

involving Harold Steve Hartness, filed in Federal District Court, the Western District of North Carolina.)

3. **May 29, 2002**, this case, civil action 02-1859, is filed in South Carolina Federal District Court, Florence Division. Judge Houck is the presiding judge.
4. **July 12, 2004**, case is reassigned from Judge Houck to Judge R. Bryan Harwell, who had recently been named as a Federal District Judge.
5. **May 8, 2007**, Judge Harwell, behind chambers doors, conducts an unrecorded evidentiary hearing lasting approximately sixty minutes, while the Court Reporter assigned to record the evidentiary hearing, Vince Rolland, waited outside Judge Harwell's chambers doors with his court recorder camera running.
6. **May 8, 2007**, Judge Harwell in the evidentiary hearing, without any records of the proceedings being taken, rules against virtually all the Plaintiffs' evidence painstakingly collected over seven years with the help of renowned experts.
7. **May 8, 2007**, Judge Harwell in the same unrecorded evidentiary hearing, without any records of the proceedings being taken, rules to admit **all** the Defendants' evidence intact, including totally blacked out (redacted) "*trust me*" memos, which purportedly legitimized the Defendants' non-production of evidence legally sought by the Plaintiffs since August 2000. The contents of the blacked out memos written by the Defendants' law firm employees were purportedly too secret to be revealed to the Court or to the Plaintiffs; however, the Defendants' Counsels assured the Court and the Plaintiffs that you could trust the Defendants' Counsels not to submit anything that was not legitimate. (See attached **Plaintiffs' Exhibit "C"**). Plaintiffs believe that a reasonable person would conclude that Judge Harwell's admitting the content of these documents,

totally obliterated by the Defendants, as containing legitimate evidence demonstrates a definite bias in favor of the Defendants and to the determent of the Plaintiffs.

9. **May 17, 2007**, the Honorable Judge John Rakowsky, and his associate Adrian Falgione, Esquire, sent out three letters to various interested parties describing the events that occurred and the decisions the Court made during the non-recorded evidentiary hearing upon which they had reported to the Plaintiffs.

10. **July 3, 2007**, Judge Harwell issues Court Order No. 510. Judge Harwell states in Court Order No. 510, that "With regard to Attorney Rakowsky's letters to third parties **(See Plaintiffs' Exhibit "E" attached hereto)**, while the court does not agree with many of the statements by Attorney Rakowsky concerning statements attributed to the court, this court did express concern about the matter of Plaintiffs' untimely production of evidence as argued by the Defendants in open court on May 8, 2007."

Judge Harwell's open disagreement with Officers of the Court Judge John Rakowsky, Esquire and Adrian Falgione, Esquire regarding the proceedings of the unrecorded evidentiary hearing on May 8, 2007, *raises serious issues about the character of matters that utterly defined the decisions of the Plaintiffs on May 9, 2007.* The Plaintiffs who were present at Court on May 9, 2007, relied on the statements of fact provided by Officers of the Court Judge John Rakowsky and his associate Adrian Falgione, Esquire as to what happened regarding the summary elimination of the majority of the Plaintiffs' evidence and the summary admission of all the Defendants' evidence by Judge Harwell during the unrecorded evidentiary hearing on May 8, 2007, when the Plaintiffs made their decisions on May 9, 2007, regarding the disposition of the case.

11. **July 12, 2007**, Plaintiffs file Court Document No. 519. The Plaintiffs in Court Document No. 519 asked for clarification from Judge Harwell of what the truth was concerning what occurred and the decisions that were made during the proceedings of the unrecorded evidentiary hearing held on May 8, 2007.

In addition to learning of Judge Harwell's significant contradicting statement written into Court Order No. 510 concerning Judge Rakowsky's presentation of events during the unexpectedly unrecorded key evidentiary hearing, the Plaintiffs also learned that the hearing lasted only approximately 60 minutes. During that 60 minute time period, the Plaintiffs' evidentiary exhibits, which included over four hours of police videotapes and police recordings, were reviewed by the Court for the first time, in addition to over 200 Plaintiffs' documentary evidentiary exhibits. Disregarding the discrepancy of viewing 4 hours of videotapes in 60 minutes, it would mean each one of the Plaintiffs' 200 evidentiary exhibits was presented, argued, and decided upon approximately *every eighteen seconds*. On the face of this alone, Plaintiffs believe that the average individual would conclude this would not be possible.

12. **July 20, 2007**, Court Reporter Vince Roland provides written confirmation of the circumstances of his not recording the evidentiary hearing on May 9, 2007 **(See Plaintiffs Exhibit "D" attached hereto)**.

13. **January 14, 2008**, Judge Harwell issues Court Order No. 577, denying the Plaintiffs' Motion No. 519. In denying the Plaintiffs' motion Judge Harwell denied the Plaintiffs the right to know what the Court considers the truth to be concerning what occurred during the proceedings of the unrecorded evidentiary hearing held on May 8, 2007. The version of the proceedings of the unrecorded evidentiary hearing which was reported to

the Plaintiffs by Court Officers Judge John Rakowsky and Adrian Falgione (a version openly disagreed upon by Judge Harwell in Order No. 510) was the version of proceedings that led to decisions taken by the Plaintiffs present on May 9, 2007, regarding the disposition of this case. This refusal by Judge Harwell in Court Order No 577 to reveal the proceedings and decisions of the unrecorded evidentiary hearing effectively denies the Plaintiffs the right to know what happened during the pivotal evidentiary hearing. This leaves the Plaintiffs in a state of legal limbo as to how to proceed at this point in pursuit of their legal due process and keeps hidden what should be made public, which gives the distinct impression of a bias by Judge Harwell in favor of the Defendants.

14. **January 30, 2008** , The Plaintiffs filed Document No. 582, a request in District Court for reconsideration of Court Order No. 577, in order to find out what happened during the unrecorded and in dispute evidentiary hearing that was the pivotal moment in the case. The Court's (1) disagreeing with Officers of the Court Judge John Rakowsky's and Adrian Falgione's version of what happened during the evidentiary hearing, and yet (2) refusal to reveal what should be non-confidential hearing results, rightly or wrongly creates a cloud of suspicion of impropriety. The Court has not responded to date to this motion for reconsideration, Document No. 582.

ARGUMENT

Though "judges are presumed to be impartial," *Tripp v. Executive Office of the President*, 104 F. Supp. 2d 30, 34 (D.D.C., 2000), 28 U.S.C. 455(a) requires a federal judge to disqualify himself "in any proceeding in which his impartiality might reasonably be questioned." The standard for disqualification under this statute is an objective standard, *Liteky v. United States*, 510 U.S. 540,

548 (1994), and the purpose of the statute is "to promote public confidence in the integrity of the judicial process." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988). No actual bias need be demonstrated by the moving party, for §455(a) "focuses on the appearance of impartiality, as opposed to the existence in fact of any bias or prejudice, [and] a judge faced with a potential ground for disqualification ought to consider how his participation in a given case looks to the average person on the street." *Potashnick v. Port City Const. Co.*, 609 F.2d 1101, 1111 (5th Cir. 1980). In stark terms "what matters is not the reality of bias or prejudice but its appearance." *Liteky* at 458.

The apparent integrity of the judicial process and maintenance of the perception that courts are impartial venues are the chief goals of the statute, and judges must disqualify themselves even when "false and erroneous . . . allegations" are the bases of a motion for recusal if the court's impartiality may reasonably questioned because of such allegations. *Church of Scientology v Cooper* 495 F Supp 455, 461 (C.D. Cal. 1980). Section 455 was intended to overrule the "duty to sit" concept, and once a movant demonstrates facts that reasonably call into question a judge's impartiality the judge must disqualify himself. *Smith v. Pepsico, Inc.*, 434 F Supp 524 (S.D. Fla. 1977); *United States v. Corr*, 434 F. Supp. 408 (S.D.N.Y. 1977).

CONCLUSION

Judge Harwell's prior action in **United States v. Under Seal (In re Grand Jury Proceedings #5), 401 F.3d 247 (4th Cir. S.C. 2005)** of not reviewing evidence and making decisions related to the contents of the non-reviewed evidence mirrors this case in (1) Judge Harwell's conducting an unexpectedly unrecorded evidentiary hearing where the majority of the Plaintiffs' evidence was summarily ruled as inadmissible and where 100% of the Defendants

evidence was summarily ruled admissible, (2) the fact that the proceedings of this unrecorded evidentiary hearing presented by Judge Rakowsky and Adrian Falgione, Esquire were disputed by Judge Harwell in Court Order 510, yet Judge Harwell refuses to comment further on what aspects of the version of events during the unrecorded evidentiary hearing presented by his Officers of the Court were inaccurate, (3) the fact that during the unrecorded evidentiary hearing, which lasted approximately one hour, each piece of Plaintiffs' evidence was purportedly presented to the Court for the first time at this evidentiary hearing, including over four hours of police videotape and police audiotape recordings, and over 200 documentary exhibits. Not taking into account the four hours of police recorded videotape and police recorded audiotape evidence, this means that documentary evidence was purportedly introduced, argued and decided upon at the improbable rate of one evidentiary document *every eighteen seconds*. This establishes the Plaintiffs' evidence was summarily dismissed without review by the Court, (4) the fact that the Court Reporter, Mr. Vince Rolland, who was engaged to record the evidentiary hearing, was asked to wait outside Judge Harwell's chambers doors with his camera running, while the evidentiary hearing was held behind the closed chambers doors, (5) the fact that Judge Harwell allowed as legitimate evidence totally redacted documents that were composed, written and obliterated by the Defendants' Counsels' employees, documents which purportedly describe and legitimize the basis for Defendants' inability to locate evidence which the Plaintiffs allege was wrongfully destroyed, and the subsequent finding that Judge Harwell did not see any irregularity in the concealment of relevant evidence by the Defendants in their totally obliterated documents.

The preceding is not an exhaustive list of circumstances providing justification for the Plaintiffs' request for the recusal and/or disqualification of Judge Harwell from further decisions regarding this case. The history of actions and decisions cited herein, coupled with Judge Harwell's

preferences for not recording case defining adjudication make it clear that the strictures of §455(a) have been met, and Plaintiffs pray for Judge Harwell's recusal and/or disqualification in the above captioned case and that Judge Harwell be required to answer what happened regarding the actions and decisions made during the controversial and pivotal evidentiary hearing held on May 8, 2007, a hearing that was unexpectedly held behind closed doors with the Court reporter.Vince Roland, kept outside with his camera running.

Significantly, the pivotal May 8, 2007, hearing in which Judge Rakowsky's characterization in written documents **(attached hereto as Plaintiffs' Exhibit "E")** of the Court's actions and decisions was deemed incorrect to such an extent that Judge Harwell wrote in Court Order No. 510 "the court does not agree with many of the statements by Attorney Rakowsky concerning statements attributed to the court."

The controversy surrounding this key hearing means the information the Plaintiffs had relied on concerning the results of the hearing could not be used by the Plaintiffs to made a valid decision in this case. The knowledge of a disagreement of what exactly happened during the May 8, 2007, evidentiary hearing was not known by the Plaintiffs until July 3, 2007, when the Court issued Court Order No. 510. The Plaintiffs then verified on July 20, 2007, that the evidentiary hearing was in fact not recorded. The truth about this pivotal and case defining hearing must be publically made known including the truth concerning why the hearing was not allowed to be recorded by Court Reporter Vince Roland.

The Plaintiffs state of legal limbo needs to be concluded by the Court's issuance of definitive statements as to the truth of what happened during the evidentiary hearing, including answers as to the accuracy of each and every statement by Officers of the Court Judge John Rakowsky and Adrian Falgione. The Plaintiffs have heretofore taken every legally available

option the Plaintiffs have knowledge of to gain this information that is legally and rightfully due to them.

Based on the aforementioned, to ensure that the evidence is properly reviewed before decisions are made by this Court regarding the evidence, the Plaintiffs request that Judge Harwell recuse himself. Additionally, given the total predictive validity of the perpetrators' documents written seven years prior to the Plaintiff's evidence being dismissed on May 8, 2007, to avoid any appearance of impropriety, the Plaintiffs respectfully request that a Judge out of the Northern District of Virginia, with no ties to this geographic region, be requested to hear the Plaintiffs' motions that are languishing at this time in this case.

Respectfully submitted this 5th day of August, 2008.

By: _____

Doris Holt, Plaintiff, *Pro Se*
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212

_____

James B. Spencer, Plaintiff,
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Marguerite Stephens, *Pro Se*
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(843) 283-6751

CERTIFICATE OF SERVICE

I, James Rodney Lail, *Pro Se*, hereby certify that I have supplemented the Certificate of Service this day by either mailing, faxing or electronic transfer a true and correct copy of the following document: **PLAINTIFFS' SECOND MOTION FOR CLARIFICATION OF THE EVENTS AND DECISIONS OF THE MAY 8, 2007, EVIDENTIARY HEARING AND SECOND REQUEST FOR THE RECUSAL AND/OR DISQUALIFICATION OF JUDGE R. BRYAN HARWELL,** as follows:

Jefferson Boone Aiken, Edward G Elliott, James
M. Saleeby, Jr., Benjamin A. Baroody
Aiken, Bridges, Nunn, Elliott & Tyler, P.A..
181 East Evans Street,
Suite 409 Florence, SC 29506

Sandra J Senn, Stephanie P McDonald, Robin L Jackson
PO Box 12279
Charleston, SC 29422

John R Rakowsky & Desa A Ballard,
226 State Street, West Columbia, SC 29169

Adrain Falgionie,
PO Box 277 129 1/2 E Main St
Lexington, SC 29072-3420

David Smith
1006 N. Holden Road
Greensboro, NC 27410

Dan Green, CEO
Southern Holdings, Inc.
2620 Regatta Drive
Suite 102
Las Vegas, NV 89128

Ronald N. Serota
Corporate Law Center
2620 Regatta Drive
Suite 102
Las Vegas, NV 89128

Andrew F. Lindemann
Davidson Morrison and Lindemann
PO Box 8568
Columbia, SC 29202-8568

Other interested Parties:

Linda Williamson Lawrence
105 Yadkin Street, Suite 203
Albemarle, NC 28001

Ernest H. Morton
117 W. North St.
PO Box 519
Albemarle, NC 28002

This 5th day of August, 2008.

By: _____
Rodney Lail, *Pro Se*
P.O. Box 2753
Myrtle Beach, SC 29578

Court Order #668

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Southern Holdings, Inc., et al., Plaintiff, vs. Horry County, South Carolina, et al., Defendants.	C.A. No.: 4:02cv-01859-RBH **ORDER**

Certain plaintiffs seek the recusal of this court in motion/docket entry #612. Plaintiffs make allegations of inappropriate conduct by this Court ranging from rulings or alleged rulings on evidentiary issues, alleged secret evidentiary hearings or rulings, discovery or pretrial conferences held in chambers or by teleconference, and even possibly claiming bias based on the undersigned's ownership of property. None have merit.

Pursuant to 28 U.S.C. § 455(a), a judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." "The question is not whether the judge is impartial in fact. It is simply whether another, not knowing whether or not the judge is actually impartial, might reasonably question his impartiality on the basis of all the circumstances." *Hathcock v Navistar Int'l Transp. Corp.*, 53 F.3d 36, 40 (4th Cir. 1995) *citing Aiken County v. BSP Div. of Envirotech Corp.*, 866 F.2d 661, 679 (4th Cir. 1989); and *Rice vMcKenzie*, 581 F.2d 1114, 1116 (4th Cir. 1978). *Accord People Helpers Found, Inc. v. City of Richmond, Va.*, 12 F.3d 1321, 1325 (4th Cir. 1993) (judge need *not* recuse himself unless his impartiality might reasonably be questioned). The mere fact that a judge has ruled adversely in this or a related proceeding is insufficient to require recusal.

Court Order #668

United States v. Parker, 742 F.2d 127, 128-29 (4th Cir. 1984). Rather, to require recusal, the movant must show *"extrajudicial"* bias or conflict. *Liteky v. United States*, 510 U.S. 540, 551 (1994); *United States v. Morris*, 988 F.2d 1335, 1336-37 (4th Cir. 1993); *United States v. Guglielmi*, 929 F.2d 1001, 1007-08 (4th Cir. 1991); *In re Beard*, 811 F.2d 818, 827 (4th Cir. 1987); *Shaw v Martin*, 733 F.2d 304, 308 (4th Cir. 1984).

While it is difficult for the court to specifically recall many of the details of the history of the case (there are over 600 docket entries), this court is certain regarding two things.

First, the Court has not handled any matter in this case on an *ex parte* basis; nor do the plaintiffs claim that any conference or telephone call with the court was held *ex parte* or that their interests were not represented by their lead counsel, Goldberg.

At the outset, Plaintiffs attack this court by making allegations of impropriety concerning the non-recording of a December 6, 2004 conference. The court cannot specifically recall if the conference was held at the Court's request or the lawyers' request, and if it took place by telephone or in Chambers. Regardless, the plaintiffs in their supplemental filing, docket #631, then say they agree with defendants that the court was not required to have such a conference on the record with the court reporter.

Second, both of the orders of which the plaintiffs complain were Consent Orders submitted to the court by lawyers for both sides. This court is a neutral, impartial, unbiased third party. The court tries to accommodate parties and their lawyers, and tries to make itself available to the lawyers for the parties when requested. Plaintiffs argue their local lawyers were not involved in some of the matters, and that the local rules of practice mandate their appearance for hearings. First, the local rules may be suspended by the Court. Second, this was not a hearing, but an informal conference in Chambers or by telephone. Third, in most cases, local counsel asks not to be present where there is lead counsel

present. Fourth, the court does not recall Attorney Rakowsky being actively present in the case in early matters. Basically, plaintiffs cry foul because their lawyer Goldberg allegedly did not request a hearing with a court reporter, and they instructed him to do so. However, there is no evidence of any request to the Court for a hearing with a court reporter present. Plaintiffs' complaint stems from problems associated with their own numerous different lawyers and either communications or miscommunications with them. It is not this court's function to become a coordinator between a party and their own lawyers. The function of this court is to deal with disputes between the parties to the lawsuit, not to deal with problems that may exist or develop between clients and their numerous different lawyers[1] or the resulting lack of their lawyers' knowledge about what was going on with a case because of lack of communication between local counsel and lead counsel. This communication problem became apparent at the February 9, 2007 hearing when the court dealt with another unrelated issue and both Mr. Rakowsky and Mr. Serota were counsel of record and neither apparently knew what was going on in the mind of their former co-counsel, Mr. Hardee and Mr. Goldberg. Again, it is not this court's function to coordinate matters between Plaintiffs' various lawyers. It is also not this court's function to deal with disputes between the plaintiff's own lawyers, but that is exactly what this court has had to do. It has had to waste its time dealing with disputes between Attorneys Serota and Rakowsky, both co-counsel for the plaintiffs (*See* docket #367, Motion to Dismiss Serota and Motion for Gag Order on Serota, and docket #410 Order regarding same).

Far from being biased toward the defendants, this court has raised matters *sua sponte* that the plaintiffs' own counsel should have raised, but for lack of communication with their co-counsel. This

[1] The docket reveals (8) different lawyers involved in the representation of the plaintiffs during the history of this case.

court *sua sponte* raised the mischaracterization of Noel Herold as a court appointed Rule 706 expert during his deposition examination; this characterization was unobjected to by plaintiffs' counsel. This lack of understanding or miscommunication between plaintiffs' own lawyers again is not the responsibility of the Court. But rather than allow the defendants to present this twisted characterization that was unobjected to, the court interposed its own objection out of a basic sense of fairness. Some judges may have not raised the matter because there was no objection. It also appeared that the new defense counsel, Ms. Senn, who was at the deposition, was just as confused and similarly may not have communicated with other defense counsel, which was confirmed by Attorney Saleeby. The use of a deposition before a jury, indicating the witness was appointed by the judge, could have a profound impact on a jury. This court prevented that *sua sponte*.

Plaintiffs argue about evidentiary rulings or allowing Noel Herold to testify. Without going into unnecessary detail, this court fed everybody out of the same spoon and will not regurgitate its reasons for its ruling. Plaintiffs were allowed to name a late police liability expert as well, when their other expert abandoned them, and the court took various steps to enable them to take a supplemental deposition of Herold.

At the hearing on May 4, 2007, during the discussion of the Herold deposition, it was the Court's understanding that there were no policies or procedures upon which he relied, but there were photos that Herold used which had not been provided to Rakowsky. This was the basis for the objection to the Herold deposition which was taken care of by the supplemental deposition as indicated at the hearing on May 8, 2007. In addition, to the extent a party wishes to object to any rulings by the Court, the party should make a timely motion for reconsideration and/or appeal the case after final judgment.

Court Order #668

Plaintiffs' claim in this filing for recusal and in other filings that the court held a "secret" evidentiary hearing throwing out almost all of their evidence and that the court has in essence tried to hide the truth. Nothing could be farther from the truth. This is the same court that *sua sponte* raised the issue of its disagreement with statements attributed to it by plaintiffs' counsel to third parties (presumably lienholders or creditors of the plaintiffs). Again, this was done *sua sponte* by the Court and again it is not this Court's responsibility to continue dealing with disputes between lawyers and their clients. Additionally, in the same Order the court clearly explained this matter did not require court approval. Any conversations with this Court were with all lawyers present. This Court did not conduct a secret evidentiary hearing and did not rule on any evidentiary matters in chambers. While the lawyers may have generally informally discussed what they thought were strengths or weaknesses of their respective cases, the court had no other evidentiary rulings or considerations pending before it other than the untimely production of certain evidence which the court reserved ruling on. The fact that this court did not have before it, much less ruled on, the numerous matters of which the plaintiffs refer to should be self-evident. The transcript of the hearing of May 8, 2007 does not reference these many items of evidence referred to by the plaintiffs; nor does it appear from the docket that those matters were even before the Court by way of any filed pretrial objections or motions in limine, except to the extent that the defendants would not agree to certain items of plaintiffs' evidence before a proper foundation was laid at trial. Also, the sheer number of matters plaintiffs raise could not have been dealt with in that limited time. When the Court was advised that the case was settled with the represented defendants, and plaintiffs' counsel appeared to the Court to believe that the whole case was disposed of, the Court *sua*

sponte reminded plaintiffs' counsel of the pending claim against (2) *pro se* defendants[2] who were not present and the Court instructed plaintiffs' counsel to find out if plaintiffs were proceeding with those claims or not, since the Court had a jury waiting. The Court congratulated the lawyers for being able to settle the case as to the represented defendants, and indicated the Court was ready to proceed with regard to the (2) remaining *pro se* defendants since a jury was drawn. Plaintiffs were certainly free to proceed against the remaining (2) *pro se* defendants if they desired. The Court was shortly thereafter advised those claims were also being dismissed. The Court did not have a secret evidentiary hearing, and court approval of any settlement reached was not required. This Court did not bully or force anyone to do anything.

With regard to the undersigned's ownership of property in Horry County, such a claim is so tenuous that it merits no discussion other than that this interest would be unaffected by this proceeding.

For the plaintiffs to claim bias by this court is simply without support. This court has ruled in their favor on many issues. While the Court granted some of defendants' motions, it denied many others, as was appropriate in the case. Without listing each and every ruling, the Court would point out just some of the rulings in plaintiff's favor:

(1) The Court entered an Order in July of 2005 that involved a denial of defendants' motion for summary judgment of the § 1983 claims based on Qualified Immunity which was appealed by defendants and which the Fourth Circuit dismissed; denial of defendants' summary judgment motion based on *de mimimus* injury; denial of defendants' summary judgment motion on various state law claims; denial of Hartness defendants' motion for summary judgment on various state law claims.

(2) The Court *sua sponte* raising the issue regarding the mischaracterization of Noel Herold as a Court appointed 706 expert.

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[2]This Court had also in fact again *sua sponte* without plaintiffs even requesting it earlier entered default against one of these defendants. The other *pro se* defendant had filed an answer.

(3) Allowing the plaintiffs to name a late police liability expert when their previous one abandoned them.

(4) Denying the defendants motion to exclude plaintiffs' expert Cain.

(5) Granting plaintiffs' motion to strike defendants' expert witness Koenig.

Based on all of the above, no reasonable person could conclude that the impartiality of the undersigned could be reasonably questioned.

For the foregoing reasons, the motion for recusal is hereby **DENIED**.

IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

Florence, South Carolina
August 13, 2008

597

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
Florence Division

SOUTHERN HOLDINGS, INC., et al. Plaintiffs. v. HORRY COUNTY, SOUTH CAROLINA, et al. Defendants.	Case No. 4:02-CV-01859-RBH

RECEIVED
CLERK, COLUMBIA, SC
2008 SEP 29 P 3:51

PLAINTIFFS' RESPONSE TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' SECOND MOTION FOR CLARIFICATION AND SECOND MOTION FOR RECUSAL (DEFENDANTS' DOCUMENT NO. 711)

PLAINTIFFS[1] contend that in over eight years of litigation the Defendants have constantly avoided addressing relevant issues raised by the Plaintiffs. Defendants have continued that practice in Document No. 711. To avoid addressing the issues raised by the Plaintiffs in Document No. 659, Defendants' Counsel Lindeman continues his distortion of matters in Document No. 711.

In Defendants Document No. 621, Lindeman centered Defendants argument against Plaintiffs' First Motion for Judge Harwell to recuse himself (Document No. 612) on a Plaintiffs lack of extrajudicial evidence of a bias of Judge Harwell. Plaintiffs clearly center their argument in Document No. 659 on extrajudicial evidence citing a 4th Circuit Court of Appeals ruling involving Judge Harwell's making decisions without properly reviewing evidence (United States v. Under Seal (*In re Grand Jury Proceedings #5*) 401 F.3D 247 (4th Cir. S.C. 2005).

[1] Doris Holt, Rodney Lail, Irene Santacroce, Ricky Stephens, Marguerite Stephens and James Spencer.

Clearly, Lindeman has misrepresented to the Court in Document No. 711 that Plaintiffs Document No. 659 and Plaintiffs' Document No. 612 are duplicative; clearly, they are not and as such the Defendants have failed to file a legitimate response to Plaintiffs Motion for recusal. Therefore, the Defendants' and Defendants' Counsels' lack of addressing the issues raised by the Plaintiffs in Document No. 659 provides an admission of the validity of the Plaintiffs contentions contained in Document No. 659 and Judge Harwell should accordingly recuse himself from this case.

Regarding to the Defendants' Response (Document No. 711) to Plaintiffs Second Motion for Clarification Document No. 659, Defendants' Counsel Lindeman knows quite well Plaintiff Doris Holt and Plaintiff James Spencer have not previously filed a Motion for Clarification. This fact was pointed out in Lindeman's Document No. 594. The Court in Order No. 665 also took this position. Since Defendants' Counsel Lindeman received an extension to research and author his response, (Document No. 711), to Plaintiffs Document No. 659, then presumably Lindemann fully undersood the Plaintiffs assertions Lindemann responded to in Defendants' Document No. 711. Therefore, in regard to the Plaintiffs second Motion for Clarification, since the Defendants have failed to address the issues raised by Doris Holt and James Spencer these issues should be deemed admitted and the Plaintiffs Motion for Clarification contained in Document No. 659 should be granted by the Court.

Further, why would Defendants' Counsel object to the truth of an evidentiary hearing be known to the Plaintiffs? Since Judge Harwell conducted the hearing and was present Judge Harwell would have disclosed any attempt at fraud during such a conference; yet Judge Harwell has stated that the version reported to the Plaintiffs by Court Officers Judge John Rakowsky and Adrian Falgione. Esquire was incorrect, but Judge Harwell refuses to clarify this statement, putting Plaintiffs in a state of legal limbo as a result. The controversial report to the Plaintiffs by Judge John Rakowsky and Adrian Falgione was a case defining event; yet there is no consistent version of the events and Judge Harwell and the Defendants' Counsels refuse to allow the truth to be heard. The following question of the Plaintiffs is not a rhetorical one, why is the truth hidden from the Plaintiffs?

Based on the foregoing, the Plaintiffs Motion for Clarification contained in Document No. 659 should be granted by the Court and Judge Harwell should fully and completely disclose the events that occurred during that secretly held evidentiary hearing. By doing so this will allow the Plaintiffs to identify their legal rights at this point and will permit the Court to avoid any doubt of legitimacy of what transpired behind closed chambers doors on May 8, 2007.

RESPECTFULLY SUBMITTED
This 29th day of September, 2008.

By: _____

Doris E. Holt, Plaintiff, *Pro Se*
Box 183
7001 Saint Andrews Road
Columbia, SC 29212

_____
James Spencer, Plaintiff, *Pro Se*
Box 183
7001 Saint Andrews Road
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Rodney K. Lail, Plaintiff, *Pro Se*
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(843) 626-3229

Irene Santacroce, Plaintiff, *Pro Se*
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Ricky Stephens, Plaintiff, *Pro Se*
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(843) 283-6751

Marguerite Stephens, Plaintiff, *Pro Se*
207 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 283-6751

CERTIFICATE OF SERVICE

I, Rodney Lail, *Pro Se*, do hereby certify that the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' SECOND MOTION FOR CLARIFICATION AND SECOND MOTION FOR RECUSAL (DEFENDANTS' DOCUMENT NO. 711)** has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Jefferson Boone Aiken, Edward G Elliott, James
M. Saleeby, Jr., Benjamin A. Baroody
Aiken, Bridges, Nunn, Elliott & Tyler, P.A..
181 East Evans Street,
Suite 409 Florence, SC 29506

Sandra J Senn, Stephanie P McDonald, Robin L Jackson
PO Box 12279
Charleston, SC 29422

John R Rakowsky & Desa A Ballard,
226 State Street, West Columbia, SC 29169

Adrain Falgionie,
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David Smith
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Andrew F. Lindemann
Davidson Morrison and Lindemann
PO Box 8568
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Other interested Parties:

Linda Williamson Lawrence
105 Yadkin Street, Suite 203
Albemarle, NC 28001

Ernest H. Morton
117 W. North St.
PO Box 519
Albemarle, NC 28002

This 29th day of September, 2008.

By: Rodney K. Lail

Rodney Lail, *Pro Se*
P.O. Box 2753
Myrtle Beach, SC 29578

607

COPY

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON 2013 JAN -7 Case No. 2012-CP-32-03428

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC

James Spencer, et al.

Plaintiffs,

v.

John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC

Defendants.

AFFIDAVIT REGARDING PROOF OF SERVICE.

AFFIDAVIT OF ROBERT H. WADLEY

PERSONALLY APPEARED before me the undersigned Robert H. Wadley who after being duly sworn states the following:

1. I am over eighteen year of age and I am competent to testify,

2. On December 28, 2012, I personally served a subpoena for the video deposition of Adrian Falgione to Ms. Marie Peele who stated she was authorized to take service for Benjamin Burner. **(See Exhibit 1 attached hereto.)**

3. On December 2, 2012, I deposited in United States Mail a Certified Letter with a subpoena addressed to Ms. Amanda Dudgeon for the video deposition of John Rakowsky. **(See Exhibit II attached hereto.)**

4. On January 4, 2013, I delivered and had shipped by FED-EX a subpoena for the video deposition of John Rakowsky to his counsel Ms. Amanda Dudgeon. **(See Exhibit III attached hereto.)**

5. On January 7, 2013, service was accepted by K. Madigan of the subpoena I sent by FED-EX for the video deposition of John Rakowsky. **(See Exhibit IV attached hereto.)**

I affiant Robert H. Wadley sayeth further naught.

NOTARIZED SIGNATURE

Your Signature: _____

(To be signed in the presence of a Notary)

Subscribed and sworn before me, this, day of January 7 of the year 2013.

Signature of Notary: _____

Expiration of Commission: 9/24/2022

Notary Seal or Stamp:

KANAI BHAVSAR
COMM. EXP.
NOTARY
PUBLIC
SEPTEMBER 24, 2022
SOUTH CAROLINA

607

EXHIBIT I

609

PROOF OF SERVICE

SERVED	DATE 12/28/12 Columbia, SC 29223	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE 1735 St. Julian Place, Suite 200	☐YES ☒NO AMOUNT $
SERVED ON	Marie Peele	MANNER OF SERVICE Personal delivery
SERVED BY	Robert H. Wadley	TITLE Courier

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 12/28/12

SIGNATURE OF SERVER

449 Patterson Ave. Atlanta, GA 30316
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT II

COLUMBIA MPO APC 1
1601 ASSEMBLY ST
COLUMBIA, SC 29201-9998

12/28/2012 01:56:04 PM

Sales Receipt

Product Description	Sale Qty	Unit Price	Final Price
CHARLESTON, SC 29401			$5.20
Zone-2 Priority Mail®			
0 lb. 0.50 oz.			
* Expected delivery tomorrow, December 29.			
Certified Mail™			$2.95
%% Label #:			
9502 6000 0221 2363 0001 22			
Issue Postage:			$8.15
Total:			$8.15

Paid by:
DebitCard $8.15
Account #: XXXXXXXXXXXX9505
Approval #: 306515
Transaction #: 929
23-901980128-99
Receipt #: 130250

Transaction #: 31
USPS® # 451804-9550

%% To check on the delivery status of this article, visit our Track & Confirm website at USPS.com, use this Automated Postal Center™ (or any Automated Postal Center™ at other Postal locations) or call [redacted] 1-800-222-1811.

Thanks.
It's a pleasure to serve you.

ALL SALES FINAL ON STAMPS AND POSTAGE.
REFUNDS FOR GUARANTEED SERVICES ONLY.

EXHIBIT III

Fed Express Package US Airbill

FedEx Tracking Number 8022 4101 2195

Form ID No. 0200

1 From *Please print and press hard.*

Date 1/4/13 Sender's FedEx Account Number [redacted]

Sender's Name Rob Wadley Phone ( )

Company

Address 7001 St. Andrews Rd., Box 183 Dept/Floor/Suite/Room

City Columbia State SC ZIP 29212

2 Your Internal Billing Reference
First 24 characters will appear on invoice.

3 To

Recipient's Name Carlock, Copeland & Stair LLP Phone ( )

Company attn. Amanda Duckgeon

Address 40 Calhoun St., Suite 400
We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept./Floor/Suite/Room

Address
Use this line for the HOLD location address or for continuation of your shipping address.

City Charleston State SC ZIP 29401

HOLD Weekday FedEx location address REQUIRED. FedEx First Overnight.

HOLD Saturday FedEx location address REQUIRED FedEx Priority Overnight and FedEx 2Day to select locations.

4 Express Package Service * To most locations. *Packages up to 150 lbs. For packages over 150 lbs., use the new FedEx Express Freight US Airbill.*

- ☐ FedEx First Overnight — Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☑ FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.
- ☐ FedEx 2Day A.M. — Second business morning.* Saturday Delivery NOT available.
- ☐ FedEx 2Day — Second business afternoon.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
- ☐ FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

5 Packaging * Declared value limit $500.

☑ FedEx Envelope* ☐ FedEx Pak* ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling and Delivery Signature Options

☐ SATURDAY Delivery — FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

☐ No Signature Required — Package may be left without obtaining a signature for delivery

☑ Direct Signature — Someone at recipient's address may sign for delivery. Fee applies.

☐ Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

Does this shipment contain dangerous goods?

☑ No ☐ Yes As per attached Shipper's Declaration. ☐ Yes Shipper's Declaration not required. ☐ Dry Ice Dry Ice, 9, UN 1845 ____ x ____ kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box. ☐ Cargo Aircraft Only

7 Payment *Bill to:*

Enter FedEx Acct. No. or Credit Card No. below.

☐ Sender Acct. No. in Section 1 will be billed ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

FedEx Acct. No. Credit Card No. Exp. Date

Total Packages 1 Total Weight ____ lb. Total Declared Value† $ 0 .00

†Our liability is limited to US$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

644

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FedEx Express

FedEx Express
Customer Support Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone: 901-369-3600

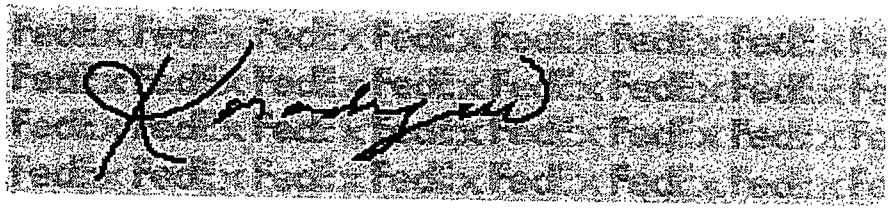
January 7,2013

Dear Customer:

The following is the proof-of-delivery for tracking number **802241012195**.

Delivery Information:

Status:	Delivered	**Delivered to:**	Receptionist/Front Desk
Signed for by:	K.MADIGAN	**Delivery location:**	40 CALHOUN ST STE 400 29401
Service type:	Standard Envelope	**Delivery date:**	Jan 7, 2013 08:38



Shipping Information:

Tracking number:	802241012195	**Ship date:**	Jan 4, 2013
		Weight:	0.1 lbs/<.1 kg

Recipient:
ATTN AMANDA DUDGEON
CARLOCK COPELAND & STAIR LLP
40 CALHOUN ST STE 400
29401 US

Shipper:
ROB WADLEY
COL 29212 US

Thank you for choosing FedEx Express.

FedEx Worldwide Customer Service
1.800.GoFedEx 1.800.463.3339

611

Exhibit III 2/2

Case 7613
339

PROOF OF SERVICE

SERVED	DATE 1/7/13 and/or 12/28/12	FEES AND MILEAGE TENDERED TO WITNESS	
	PLACE 40 Calhoun St Suite 400 Charleston SC 29401	☐YES ☒NO AMOUNT $	
SERVED ON	Amanda Dudgeon	MANNER OF SERVICE	certified mail & fedex
SERVED BY	Robert H. Wadley	TITLE	Courier

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 1/7/13

SIGNATURE OF SERVER

449 Patterson Ave. Atlanta, GA 30316
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

PROFF OF SERVICE

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 14, 2015.

Documents served: Letters of Request attached to **RECORD OF APPEAL PARTS ONE AND TWO**

Parties Served:

Benjamin C. Bruner
Bruner, Powel, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
Post Office Box 61110
Columbia, South Carolina 29260-1110

David W. Overstreet
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John Rakowsky

By: _____

James B. Spencer, *Pro Se,* Appellant
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889

LAW OFFICES

CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

AMANDA K. DUDGEON
DIRECT DIAL NUMBER
843-266-8207
E-MAIL ADDRESS
adudgeon@carlockcopeland.com
FACSIMILE
843-727-2995

40 CALHOUN STREET, SUITE 400
CHARLESTON, SC 29401
TELEPHONE (843) 727-0307
www.carlockcopeland.com

ATLANTA OFFICE
191 Peachtree Street, N.E.
Suite 3600
Atlanta, Georgia 30303
(404) 522-8220

REPLY TO SC OFFICE

May 17, 2013

Beth Carrig, Clerk
Circuit Court of Lexington County
205 East Main Street
Lexington, SC 29072

Re: Spencer, *et al.* v. John R. Rakowsky, *et al.*
Case No.: 2012-cp-32-3428
File No.: 2283-35025

Dear Ms. Carrig:

Enclosed for filing, please find an original and one copy of the following affidavits:

1) Affidavit of John R. Rakowsky dated January 25, 2012;
2) Affidavit of John R. Rawkowsky dated Janauary 26, 2012; and
3) Affidavit of Stephanie Weissenstein dated January 26, 2012.

Please file the originals and return stamped copies of each to our office in the self-addressed, stamped envelope enclosed for your convenience. By copy of this correspondence to counsel of record and *Pro Se* Plaintiff, I am serving them with the same. If you have any questions or concerns, please do not hesitate to contact me. With kind regards, I am

Sincerely,

AMANDA K. DUDGEON

AKD:tmm
Enclosures
cc: Benjamin C. Bruner, Esq.
James Spencer

4

616

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	)	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **AFFIDAVIT OF JOHN R. RAKOWSKY**

PERSONALLY APPEARED BEFORE ME, John R. Rakowsky, who, under oath, states as follows:

1. I am over the age of 18 years and competent to give this affidavit.

2. I have personal knowledge of the facts contained in this affidavit.

3. The facts herein are true and correct to the best of my knowledge.

4. On December 16, 2011, I was served at my home with an unfiled copy of the Summons for the above-captioned action along with a filed copy of the Complaint.

FURTHER AFFIANT SAYETH NOT.

J. R. Rakowsky

John R. Rakowsky

SWORN to and subscribed before me
this 25 day of January, 2012

Notary Public for South Carolina

My commission expires: 6-30-15

2909323v.1

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **AFFIDAVIT OF JOHN R. RAKOWSKY**

PERSONALLY APPEARED BEFORE ME, John R. Rakowsky, who, under oath, states as follows:

1. I am over the age of 18 years and competent to give this affidavit.

2. I have personal knowledge of the facts contained in this affidavit.

3. The facts herein are true and correct to the best of my knowledge.

4. I was not served with any documents on September 15, 2011.

FURTHER AFFIANT SAYETH NOT.

John R. Rakowsky

SWORN to and subscribed before me
this 26 day of January, 2012

Notary Public for South Carolina

My commission expires: 6-30-15

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC Defendants.	)	IN THE COURT OF COMMON PLEAS THE FIFTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-40-5384 **AFFIDAVIT**

Personally appeared before me, Stephanie Weissenstein, who being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein.
2. I am one of two (2) counsel of record for John Rakowsky in the action of John Rakowsky v. Adrian L. Falgione, et al., Case No. 2008-CP-0-6656. The action is an interpleader in which Mr. Rakowsky is attempting to pay disputed funds into the court so a determination can be made by the court as to the proper distribution of the funds. Among the opposing parties in that action are James Spencer and Rodney Lail, both of whom are pro se.

3. On September 15, 2011, we had a hearing before Judge Barber in the interpleader action, scheduled to begin at 3:30 PM. I don't know exactly what time the hearing began. The hearing took place in Courtroom 2-C at the Richland County Judicial Center. I was personally in attendance as was Mr. Rakowsky and Adrian Falgione.
4. I was not served by anyone with any papers for John Rakowsky that day, either in the courtroom, on the way to or from the courtroom or courthouse, or at my office.
5. Mr. Rakowsky has not authorized me to accept service of any pleadings in any other action other than the interpleader action.

Further, Affiant sayeth not.

Stephanie Weissenstein

January 26, 2012
Richland County, SC

Sworn to before me this 26 day of January, 2012

Notary public for South Carolina
My Commission expires: 4-21-20

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., and Irene Santacroce, Plaintiffs, v. John R. Rakowsky, Adrian L. Falgione, and The Law Offices of Adrian Falgione, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE ELEVENTH JUDICIAL CIRCUIT CASE NO.: 2012-CP-32-3428 **CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of the ***Affidavit of John R. Rakowsky, Affidavit of John R. Rakowsky and Affidavit of Stephanie Weissenstein*** upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to the *Pro Se* Plaintiff and counsel of record as follows:

James Spencer
7001 St. Andrews Road, Suite 183
Columbia, SC 29212
***Pro Se* Plaintiff**

Benjamin C. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260-1110
Counsel for Adrian L. Falgione
and the Law Offices of Adrian L. Falgione, LLC

This 17th day of May, 2013.

Tara Mackell
Assistant to Amanda K. Dudgeon

6619
621

American Arbitration Association
Dispute Resolution Services Worldwide

ORIGINAL

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Catherine Shanks
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950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: http://www.adr.org

VIA ELECTRONIC MAIL

June 21, 2008

Daniel Zolberg
LawMax
459 Columbia Avenue
New York, NY 10024-5129

Amanda K. Dudgeon
Carlock, Copeland, Semier & Stair, LLP
134 Meeting Street
Suite 500
Charleston, SC 29401

Re: 13 194 01700 07
New Amsterdam Capital Partners, LLC
and
James Spencer
and
John Rakowsky, Esq.

Dear Parties:

The Association has been notified that New Amsterdam Capital Partners, LLC has reached a settlement agreement with Carlock, Copeland, Semier & Stair, LLP, for James Spencer and John Rakowsky, Esq. As of this date there is no outstanding balance. Therefore, the entire case file will be destroyed per request.

Cordially yours,

James F. Medeiros
Case Manager
401-431-4724
MederiosJ@adr.org

Supervisor Information: Karen Fontaine, 401 431 4798, fontaine@adr.org

cc: Walter G. Gans, Esq.

CERTIFIED TO BE A TRUE AND EXACT COPY OF THE ORIGINAL
BY Catherine J Pelletier

RECEIVED TIME JUN. 24. 3:08PM

James

From: Addy, Frank R. Secretary (Freda E. Sartin) <faddysc@sccourts.org>
Sent: Monday, October 12, 2015 12:32 PM
To: JamesBSpencer@sc.rr.com
Cc: Addy, Frank R. Law Clerk (Hallie Willm); Addy, Frank R.
Subject: 2012-CP-32-03428 (spencer v. Rakowsky, et al)

Mr. Spencer,

This is a follow up email pertaining to my conversation with you that took place on Friday, October 9th and to the fax that was received at our office on Saturday, October 10th . I have looked through our office and court term notation files for the term of court that was held on June 5th , 2013 more than once. This particular term of court was held in Laurens County. Judge Addy did hear matters from other counties during this assigned court term and does hear matters outside of the assigned county from time to time. The only documentation that is located in our file notes pertaining to the above case are copies of documents that were sent to the Lexington County Clerk of Court's office for filing. We have copies of the following Order of Dismissal, Order Denying Rule 59(e) Motion, Order Denying Motion to Disqualify and all of the originals were sent to the Lexington County Clerk of Court's office for filing. I can only speak of what is in our office and there is not any letters or correspondence in our notation files pertaining to the above case. Any letters or correspondence may not necessarily be in the Clerk of Court's file but, our office cannot speak to what is or is not in the Clerk of Court's file.

Freda Sartin
Administrative Assistant
Honorable Frank R Addy Jr
Resident Judge, Eighth Judicial Circuit Greenwood County Courthouse
528 Monument St , Room 210
Greenwood, SC 29646
Phone: (864)943-8020
Fax: (864)942-8581
Email: faddysc@sccourts.org<mailto:faddysc@sccourts.org>

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Michael Sribnick

From: Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams) <dbenjaminlc@sccourts.org>
Sent: Thursday, November 12, 2015 9:14 AM
To: Michael Sribnick
Subject: RE: FOIA request for information....

Dr. Sribnick,

Any documents related to this would be available through the Lexington County Clerk of Court's office. Furthermore, Judge Benjamin did not hold court in Lexington during the time period requested. She was Chief of General Sessions in the Fifth Circuit at the time. If you require further assistance, please contact Rosalyn Frierson at rfrierson@sccourts.org. She is with Court Administration. Thank you, and have a great day.

Stacy A. Williams
Law Clerk to the Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
P.O. Box 192
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1511
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

From: Michael Sribnick [mailto:legaldocumentation@sc.rr.com]
Sent: Monday, November 09, 2015 3:54 PM
To: Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams)
Subject: FOIA request for information....

Dear Ms. Williams:

Please consider this email a request under the authority of the South Carolina Freedom of Information Act.

Please provide copies of any correspondence and/or orders issued by the Honorable Judge De Andrea G. Benjamin or her office regarding Lexington County Case Number: 2012-CP-32-3428, Spencer vs. Rakowsky, et al., during the period of May 30, 2013 through September 30, 2013.

Please respond by email if no such document(s) exist and advise by email if they do exist and I will have a courier pick them up from your office for your convenience.

Thank you for your assistance in this matter.

Yours truly,

Michael Sribnick, MD, JD
Attorney for Jim Spencer

This electronic message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction and is strictly prohibited. If you have received this communication in error, please notify the sender by return electronic message or telephone, and destroy the original message without making any copies.

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~~~

I am an employee or clerk of the Lexington County Clerk of Courts office and state the following regarding the files on Case No: 2012-CP-32-3428. I have searched the files for the following:

- A letter from Judge Griffith dated May 30, 2013, to Judge Addy referencing materials provided to Judge Addy.
- An Order from Justice Toal dated January 17, 2013, which appointed Judge Griffith as chief Judge for administrative purposes to hear specifically Case No: 2012-CP-32-3428.
- Any overview to Judge Addy on Case No: 2012-CP-32-3428 from Judge Griffith's clerk.
- Copies of any of the above records found are attached hereto for a total of ____ pages. Clerk's initials here.

Printed name of Emily L. Hinson

Signature of Emily L. Hinson Date: 5-29-15

Deputy Clerk of Common Pleas

Affix Seal of the Clerk of Court of Lexington County.

We do not have any of these documents in the Court file. This information was not filed with our office.

FILED
2015 MAY 29 A 11: 00
BEVERLY C. HARRIS
CLERK OF COURT
LEXINGTON, SC

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 803-753-0060
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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

April 23, 2013

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588

RE: ***James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC***
Civil Action No.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Mr. Spencer and Ms. Santacroce:

Please note that the court has scheduled hearings on all pending motions in the above-referenced matter. The hearings will take place on **May 7, 2013 at 2:00 PM** in **the Lexington County Court of Common Pleas located at 205 East Main Street in Lexington, SC** before **The Honorable Eugene C. Griffith, Jr.**. Enclosed is a copy of the motions roster from the court.

Sincerely,

Benjamin C. Bruner

BCB/nys

Enclosure

cc: Amanda K. Dudgeon, Esquire

627

Lexington County Eleventh Judicial Circuit - Roster Details
Motions Roster for week of May 6, 2013

Court Authority	Common Pleas	Judge	Griffith	Judge ID	28
Roster Type	Motion	Roster Begin Date	05/06/2013	Roster End Date	05/09/2013

Number of motions = 67

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
9	05/07/2013	11:00 AM		Motion/Modify Rule 7 Appeal	State Of South Carolina-PLT	04/24/2012	2012CP3201347 State Of South Carolina VS Wello N Hakim	Misc Civil Crim 320	Rachel Denning Erwin (803) 896-9664	Marcel E Schmid (803) 771-0079	
10	05/07/2013	11:00 AM		Motion for Damages Hearing	Samuel M Corley-PLT	04/16/2013	2012CP3203285 Samuel M Corley , plaintiff, et al VS Richard J Breibart , defendant, et al	Legal Malpract 210	Catherine Brown Kerney (843) 524-9500		
11	05/07/2013	11:00 AM		Motion/Dismiss	Cynthia Marie Lover -PAT	03/28/2013	2012CP3203384 Mountain States Adjustments , plaintiff, et al VS Margaret J Lagrasse , defendant, et al	Debt Collections 110	Cynthia Marie Lover (843) 626-2029	Donald Bloomingdale Margaret J Caron Margaret J Lagrasse	
12	05/07/2013	11:00 AM	3:0	Motion/Summary Judgment	Cynthia Marie Lover -PAT	03/21/2013	2012CP3203384 Mountain States Adjustments , plaintiff, et al VS Margaret J Lagrasse , defendant, et al	Debt Collections 110	Cynthia Marie Lover (843) 626-2029	Donald Bloomingdale Margaret J Caron Margaret J Lagrasse	
13	05/07/2013	2:00 PM		Hearings	James Spencer-PLT	08/21/2012	2012CP3203428 James Spencer , plaintiff, et al VS John R Rakowsky , defendant, et al	Legal Malpract 210	Irene Santacroce James Spencer	Benjamin C. Bruner (803) 252-7693 Andrew W Countryman (843) 266-8225 Amanda Kurzen Dudgeon (843) 727-0307	Continued
14	05/07/2013	2:00 PM		Motion/Disqualify	James Spencer-PLT	08/21/2012	2012CP3203428 James Spencer , plaintiff, et al VS John R Rakowsky , defendant, et al	Legal Malpract 210	Irene Santacroce James Spencer	Benjamin C. Bruner (803) 252-7693 Andrew W Countryman (843) 266-8225 Amanda Kurzen Dudgeon (843) 727-0307	
15	05/07/2013	2:00 PM		Motion/Reconsider	James Spencer-PLT	08/21/2012	2012CP3203428 James Spencer , plaintiff, et al VS John R Rakowsky , defendant, et al	Legal Malpract 210	Irene Santacroce James Spencer	Benjamin C. Bruner (803) 252-7693 Andrew W Countryman (843) 266-8225 Amanda Kurzen Dudgeon (843) 727-0307	
16	05/07/2013	2:00 PM		Motion/Dismiss	James Spencer-PLT	08/21/2012	2012CP3203428 James Spencer , plaintiff, et al VS John R Rakowsky , defendant, et al	Legal Malpract 210	Irene Santacroce James Spencer	Benjamin C. Bruner (803) 252-7693 Andrew W Countryman (843) 266-8225 Amanda Kurzen Dudgeon (843) 727	

628

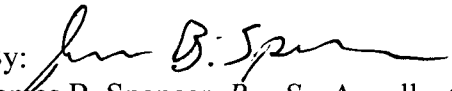
Lexington County Eleventh Judicial Circuit - Roster Details
Motions Roster for week of May 6, 2013

Circuit Court	Common Pleas	Judge	Griffith	Term of Court	28
Roster Type	Motion	Roster Date	05/06/2013	Run Date/Time	05/09/2013

Number of motions = 67

#	Date	Time	hr:mn	Description	Filing Party	Filed Date	Case	Sub Type	Plaintiff Attorney	Defendant Attorney	Notes
										-0307	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	2012CP3203428 James Spencer , plaintiff, et al VS John R Rakowsky , defendant, et al	Legal Malpract 210	[illegible] James Spencer	Benjamin C. Bruner (803) 252-7693 Andrew W Countryman (843) 266-8225 Amanda Kurzen Dudgeon (843) 727 -0307	
18	05/07/2013	2:00 PM		Motion/Quash	Amanda Kurzen Dudgeon-DAT	01/25/2013	2012CP3203428 James Spencer , plaintiff, et al VS John R Rakowsky , defendant, et al	Legal Malpract 210	Irene Santacroce James Spencer	Benjamin C. Bruner (803) 252-7693 Andrew W Countryman (843) 266-8225 Amanda Kurzen Dudgeon (843) 727 -0307	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	2012CP3203428 James Spencer , plaintiff, et al VS John R Rakowsky , defendant, et al	Legal Malpract 210	Irene Santacroce James Spencer	Benjamin C. Bruner (803) 252-7693 Andrew W Countryman (843) 266-8225 Amanda Kurzen Dudgeon (843) 727 -0307	
20	05/07/2013	2:00 PM		Return on Magistrates Appeal	Cameron Shane Weaver-PLT	04/18/2013	2012CP3201766 Cameron Shane Weaver VS State	Magistrate Crim 920	James McLeod Ervin (803) 394-8417	Joseph Alfred Vasquez (803) 796 -1285	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	2012CP3203505 Magnolia Key Homeowners Association Inc VS Philip A Coghlan , defendant, et al	Breach/Br Contr 140	Robert V Dilmha Jr (803) 364-5048 Jennifer Dowd Nichols (803) 345-3353	Spencer Andrew Syrett (803) 765-2110	
2	05/08/2013	9:30 AM		Motion/Summary Judgment	Kristen Stabler Stoker-PLT	04/04/2013	2012CP3203505 Kristen Stabler Stoker VS Family Services Inc , defendant, et al	Malpractice/ Oth 299	John D. Elliott (803) 252-9236	Ashley Anne Kutz (843) 720-4679	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
4	05/08/2013	9:30 AM		Motion to Adjudicate Default	Ethel Scott-PLT	04/11/2013	2012CP3203793 Ethel Scott VS Brookland Federal Credit Union	Contract/Oth er 199	Spencer Andrew Syrett (803) 765-2110	Aimee Jendrzejewski Zmroczek (803) 400-1918	
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	
6	05/08/2013	9:30 AM		Motion/Summary Judgment	Midland Funding LLC-PLT	04/03/2013	2012CP3203928 Midland Funding LLC	Debt Collections	Wylie Westmoreland		

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By: 

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