

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE LEXINGTON COUNTY
Court Of Common Pleas

Frank R. Addy, Circuit Court Judge

APPELLATE CASE NO.: 2014-000091

RECEIVED

FEB 29 2016

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

Of whom James Spencer is the Appellant, Appellant,

v.

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

Of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

SUPPLEMENTAL REPLY IN SUPPORT OF
MOTION TO DISMISS

Respondent John Rakowsky ("Rakowsky"), by and through his undersigned counsel, submits this supplemental reply in support of his motion to dismiss, filed December 21, 2015, based upon the amended record on appeal which the Appellant, James Spencer ("Appellant" or "Spencer"), served in this matter.

On December 21, 2015, Rakowsky moved, for the third time, to dismiss Spencer's Appeal on account of his continued failure to comply with the South Carolina Appellate Court Rules; in particular his failure to comply with Rule 260. By Order dated January 21, 2016, this Court directed Appellant to serve and file an amended record on appeal that

includes “all items from Respondents’ designations of matter that were omitted from the current record within thirty days from entry of this Court’s Order.” The Court further advised that “upon receipt of the amended record or expiration of thirty days, this court will entertain Respondents’ motions.”

On February 24, 2016, a package from UPS containing 628-pages purporting to be an amended record on appeal with a certification pursuant to Rule 210(g), SCACR from Spencer, and proof of service was received at the former law firm of Counsel for Rakowsky. (See, Exhibit A). Spencer served this amended record on appeal to the incorrect address despite having previously received notice that Counsel for Rakowsky’s address had changed. (See, Exhibit B). Fortunately, Counsel for Rakowsky was notified that a package was delivered to his former law firm, and was able to review the amended record, albeit on extremely short notice.

For the reasons set forth below, Spencer failed to comply with the Court’s January 21, 2016 Order and with the Rules of Appellate Practice, and upon entertaining Respondents’ motions to dismiss, the Court should grant Rakowsky’s motion to dismiss.

Despite this Court’s clear Order, Appellant has again failed or refused to include “all items from Respondents’ designations of matter”, including but not limited to the following from Rakowsky’s designations:

- a) Order filed November 1, 2013 (denying Motion to Disqualify);
- b) Order filed October 1, 2012 (denying Motion to Reconsider Venue Order);
- c) Falgione Motion to Change Venue filed May 17, 2012;
- d) Exhibit 1 at June 5, 2013 Hearing

Moreover, Spencer also omitted items designated by Respondent Falgione, including:

- a) Falgione's Memorandum in Support of Motion to Dismiss, dated January 27, 2012;
- b) Falgione's Motion to Transfer Venue, dated May 17, 2012;
- c) E-mail from Headley to Court, dated May 7, 2013;
- d) Spencer's Answer Regarding Waiver or Recusal, dated May 28, 2013;
- e) Notice of Appearance by Rakowsky's counsel dated November 4, 2011; and
- f) Letter from Judge Griffith to parties dated May 30, 2013.

Furthermore, several items designated by Respondents are incomplete. The transcript of the The May 7, 2012 status conference with Judge Barber was designated by Rakowsky, however, Spencer failed to include pages 35-38, 44 and 64 in the record. Also absent from the record is page 44, which is a page from another Circuit Court Order. Likewise, the Circuit Court's Order granting the Respondents' motions to dismiss is incomplete, as Spencer has failed to include pages 26 through 29 in the amended record.

Additionally, Spencer's amended record contains multiple items that were not designated by any party. For instance, the amended record includes a letter from Amanda Dudgeon, Esquire to Judge Barber, together with a proposed order from Spencer, at pages 46 through 57. Neither Attorney Dudgeon's letter nor Appellant's proposed order were designated by any party.

Finally, Spencer's amended record is replete with copies of various items that have been altered by him. Pages 35, 46, 137, 147, 148, 173, 174, 175, 176, 177, 207, 213, 214, 215, 216, 217, 238, 268, 316, 453, 454, 461, 462, 463, 501, 502, 543, 545, 546, 548, 549, 550, 552, 575, 592, 593, 594 and 595 of the amended record have been altered with what

appear to be Spencer's own notes, highlights, and markings that do not reflect the true and accurate form of the subject items

Accordingly, Spencer has (1) failed or refused to include all designations made by the Respondents, (2) provided incomplete copies of other designated items, (3) included documents not designated by any party, and (4) altered various other documents that were designated by the parties.

In sum and substance, Spencer simply continued his long-standing disregard for the South Carolina Appellate Court Rules as well as the Orders of this Court. This appeal has been pending for over two years, and Appellant has shown a consistent and willful disregard for the Rules of this Court and the Appellate process as a whole. Despite being given the opportunity to cure his defects time and time again, Spencer has instead opted to riddle this appeal with irrelevant filings, requests for extensions, and frivolous motions—of which he has filed yet another in the form of a motion for sanctions against Rakowsky.

Here, Spencer has prepared, filed and served a record on appeal that violates Rule 210(c), SCACR, contradicting his Rule 210(g), SCACR certification. Accordingly, the Court should grant the Respondents' motions and dismiss this appeal.

February 26, 2016



David W. Overstreet, Esq.
Earhart Overstreet, LLC
P.O. Box 22528
Charleston, South Carolina 29413
843-972-9404
Attorney for John Rakowsky

PROOF OF SERVICE

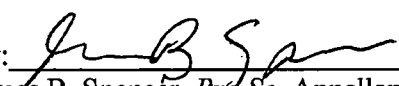
The undersigned hereby certifies that on , the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail and/or delivery by courier on this date February 22, 2016.

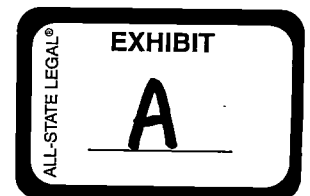
Documents served: Record on Appeal

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
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Earhart Overstreet

ATTORNEYS AT LAW

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PO Box 22528, Charleston, SC 29413

January 15, 2016

Via e-mail only

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212
JamesBSpencer@sc.rr.com

Re: Spencer v. Rakowsky, et al.
File No.: 110-0159

Dear Mr. Spencer:

I wanted to let you know that I have switched law firms but will remain the counsel involved in this case at my new firm. My new contact information is **Earhart Overstreet LLC**, P.O. Box 22528, Charleston, SC 29413, 843-972-9401. My email address is david@earhartoverstreet.com. I may not get any emails you send at this point to my old address, so I would ask that you update your system.

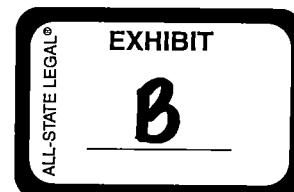
Thanks in advance for your help.

Sincerely yours,

David W. Overstreet

DWO/cmg

cc: Benjamin C. Bruner, Esq. (BBruner@brunerpowell.com)
Michael G. Sribnick, M.D., J.D. (Michael.g.sribnickmdjdlle@gmail.com)



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IN THE COURT OF APPEALS

APPEAL FROM THE LEXINGTON COUNTY
Court Of Common Pleas

Frank R. Addy, Circuit Court Judge

APPELLATE CASE NO.: 2014-000091

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

Of whom James Spencer is the Appellant, Appellant,

v.

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

Of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

PROOF OF SERVICE

I, Camille M. Gardner, an employee of Earhart Overstreet, LLC, attorneys for Respondent John Rakowsky, certify that I served a copy of the attached *Supplemental Reply in Support of Motion to Dismiss* by depositing a copy of it in the U.S. Mail, postage prepaid, on February 26, 2016, addressed to the *pro se* Appellant, James B. Spencer, 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212, and to Respondent Adrian Falgione's attorneys of record, Benjamin C. Bruner, Esquire. and Warren C. Powell, Jr., Esquire, at Bruner, Powell, Wall & mullins, LLC, P.O. Box 61110, Columbia, South Carolina 29260.

February 26, 2016


Camille M. Gardner



Earhart Overstreet

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PO Box 22528, Charleston, SC 29413

February 26, 2016

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

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SC Court of Appeals

Re: James Spencer v. John R. Rakowsky, *et al.*
Case No.: 2014-000091
EO File No.: 110-0159

Dear Ms. Kitchings:

Enclosed for filing, please find the original and 6 copies of Respondent John R. Rakowsky's Supplemental Reply in Support of Motion to Dismiss and Proof of Service in this case. By copy of this correspondence, I am serving a copy of the same upon Appellant and all counsel of record. If you have any questions, please do not hesitate to contact me. With kind regards, I am

Sincerely,

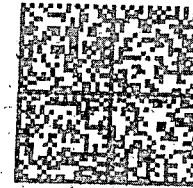
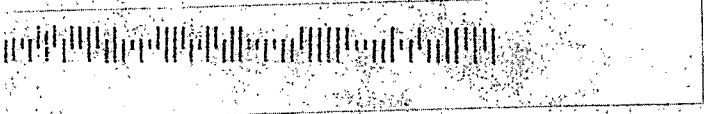


STEVEN R. KROPSKI

SRK:tmm

Enclosures

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



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