

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

MAR 01 2016

SC Court of Appeals

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.

SUPPLEMENTAL REPLY IN SUPPORT OF
MOTION TO DISMISS

Respondent Adrian L. Falgione ("Falgione"), by and through his undersigned counsel, submits this supplemental reply in support of his motion to dismiss, filed December 22, 2015, based upon the amended record on appeal which the Appellant, James Spencer ("Appellant" or "Spencer"), served in this matter.

In its January 21, 2016 Order, this Court directed Spencer to serve and file an amended record on appeal that included "all items from Respondents' designations of matter that were omitted from the current record" within thirty days. On February 24, 2016, counsel for Falgione received a package from UPS containing an amended

record on appeal with Spencer's certification pursuant to Rule 210(g), SCACR, and proof of service. For the reasons set forth below, Spencer failed cure the defects in the record he prepared, failed to comply with the Court's January 21, 2016 Order, and failed once again to comply with the Rules of Appellate Practice. Therefore, the Court should grant Falgione's motion to dismiss.

Contrary to the Court's directive, Spencer did not include matter the Respondents designated in his amended record on appeal, including but not limited to the following from Falgione's designations:

- i. Falgione's Memorandum in Support of Motion to Dismiss, dated January 27, 2012 (Item 7 on Falgione's Designation of Matter);
- ii. Falgione's Motion to Transfer Venue, dated May 17, 2012 (Item 9 on Falgione's Designation of Matter);
- iii. E-mail from Headley to Court, dated May 7, 2013 (Item 12 on Falgione's Designation of Matter);
- iv. Spencer's Answer Regarding Waiver or Recusal, dated May 28, 2013 (Item 15 on Falgione's Designation of Matter);
- v. Notice of Appearance by Rakowsky's counsel dated November 4, 2011; and
- vi. Letter from Judge Griffith to parties dated May 30, 2013.

Because Falgione cites to all of these documents in his brief, he cannot file a proper, final brief with the record Spencer prepared.

Spencer also excluded portions from other designated documents. Although Respondent Rakowsky designated the entire transcript from the May 7, 2012 status conference with Judge Barber, Spencer failed to include pages 36, 37, 38, 44 and 64 of that transcript in the record. Also absent is a page from a Circuit Court Order that was designated and should appear as page 44 of the amended record. The amended record is

also missing pages 27 through 29, which should be pages of the Order the Circuit Court issued dismissing Spencer's claims.

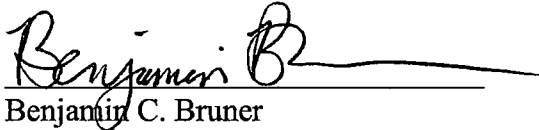
In addition to those omissions, Spencer included matter that no party designated. Pages 46 through 52 of the amended record are a letter from Amanda Dudgeon, Esquire to Judge Barber with enclosures that include a proposed order from Spencer. The manner in which Spencer assembled the record suggests the letter and proposed order were exhibits filed as part of the Circuit Court's Order of Continuance issued June 14, 2012. However, that Order had no exhibits, and neither Mrs. Dudgeon's letter nor Spencer's proposed order appear on any party's designations.

Finally, a number of the documents Spencer included in the amended record are not true and accurate copies of the designated matter. Specifically, pages 147, 148, 238, 316, 453, 454, 461, 462, 463, 543, 545, 546, 548, 549, 550, 552, 575, 592, 593, 594 and 595 of the amended record have been altered either by redactions, highlighting, or mark-ups (i.e., boxes drawn) which appear to have been made by the Appellant.

It is evident, therefore, that Spencer not only failed to include all of the Respondents' designations, he omitted pages from other designated documents, he included matter no party designated, and he included altered copies of some documents. Spencer has failed once again to comply with the South Carolina Appellate Court Rules and with the Orders of this Court. Specifically, Spencer failed to include in the amended record on appeal "all items from Respondents' designations of matter that were omitted from the current record," as this Court directed in its January 21, 2016 Order. Despite having an opportunity to cure the defects in the original record, Spencer has prepared, filed and served a record on appeal that violates Rule 210(c), SCACR, and belies the

certification he made pursuant to Rule 210(g), SCACR. The exclusion of designated matter alone prevents the Respondents from preparing and filing their final briefs. Accordingly, the Court should grant the Respondents' motions and dismiss this appeal.

February 25, 2016

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

Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
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Attorney for Adrian L. Falgione

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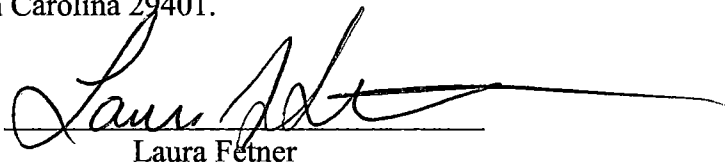
John R. Rakowsky, Adrian L. Falgione, and The Law Offices of
Adrian Falgione, LLC, Defendants,

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

PROOF OF SERVICE

I, Laura Fetner, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Respondent Adrian L. Falgione, 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 25, 2016, addressed to the *pro se* Appellant, James B. Spencer, 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212, and to Respondent John R. Rakowsky's attorneys of record, David W. Overstreet, Esquire at Earhart Overstreet, LLC, P.O. Box 22528, Charleston, SC 29413, and Michael B. McCall, Esquire at Carlock, Copeland & Stair, LLP, 40 Calhoun Street, Suite 400, Charleston, South Carolina 29401.

February 25, 2016


Laura Fetner

BRUNER, POWELL, WALL & MULLINS, LLC

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SC Court of Appeals

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

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

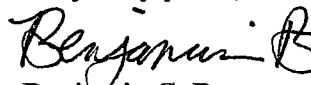
Dear Ms. Kitchings:

By Order entered January 21, 2016, the Court directed the Appellant to file an amended record on appeal in the above-referenced action. Yesterday, I received a copy of an amended record on appeal from the Appellant by UPS. Having reviewed what was served upon me, I am enclosing for filing an original and seven (7) copies of Respondent Adrian Falgione's *Supplemental Reply in Support of Motion to Dismiss* with a proof of service. Please file the original and copies and return one file stamped copy to me in the enclosed envelope.

Thank you for your assistance in this matter. If you have any questions, please do not hesitate to contact me.

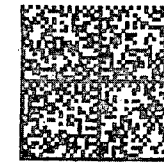
With my kindest regards, I am

Very truly yours,


Benjamin C. Bruner

BCB/gh
Enclosures

cc: James B. Spencer (via U.S. Mail w/ encl.)
David W. Overstreet, Esq. (via U.S. Mail w/ encl.)
Michael B. McCall, Esq. (via U.S. Mail w/ encl.)



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3-1742-108

The Honorable Jenny Abbott Kitchings
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