

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

78845

Appeal from Richland County
Doyet A. Early III, Circuit Court Judge
Case No. 2008-CP-40-6656

Appellate Case No. 2014-002029

RECEIVED

John R. Rakowsky,

Respondent

MAR 07 2016

SC Court of Appeals

v.

Law Offices of Adrian L. Falgione, LLC, James Spencer,
Estate of Doris Holt, Nick Williams on behalf of RSC,
Irene Santacroce, Rodney Keith Lail, Marguerite Stephens
Ricky Stephens, Michael Hartness, Horry County, SC,
Eugene Chewing, and Glenn W. Harrison,

Defendants,

Of whom James Spencer, Irene Santacroce, Rodney Keith
Lail, and the Estate of Doris Holt are the

Appellants.

**MOTION TO DISMISS
OR MOTION TO REQUIRE COMPLIANCE WITH RULE 210(C) AND (G)
AND TO PAY RESPONDENT'S ATTORNEY FEES**

Respondent John Rakowsky once again moves the Court for an order dismissing this appeal. In the alternative, Rakowsky moves for an order requiring Appellants to comply with the South Carolina Rules of Appellate Practice with respect to the content of the Record on Appeal. If this Court permits Appellants to proceed with this appeal despite the numerous rule violations set forth below, Rakowsky respectfully requests that Appellants be required to pay his attorneys' fee and costs for the filing of this motion and

any future attorney's fees that may be incurred as a result of Appellants' future rule violations.

Appellants have refused on multiple occasions to comply with the time limits in this appeal; now they have ignored their obligations regarding the content of the Record on Appeal (in additional ways not already pointed out by this court). Rakowsky respectfully asserts that the latest incident of blatant failure to comply with the SCACR and at least one (1) order of this Court, dismissal is warranted. If, however, this Court is once again going to permit repeated violations, Rakowsky asserts that Appellants should be required to fully comply with the Rules as to the content and assembly of the Record on Appeal. In support, Rakowsky would show that, to date, Appellants, have violated the SCARC in the following manner:

1. By letter dated February 10, 2015, this Court notified Appellants that the Notice of Appeal was defective for failing to pay the filing fee and failure to include a copy of the order being appealed. Those omissions were apparently remedied on May 4, 2015, when copies of Judge Early's orders dated June 23, 2014¹ and December 18, 2014 were filed with this Court. *See also* order filed June 29, 2015, indicating a copy of the order on appeal had been received. The failure of the Appellants to include copies of the order on appeal rendered the Notice of Appeal defective. Nonetheless, the Notice of Appeal was accepted.

¹ Judge Early's order dated June 23, 2014 was the subject of the September, 2014 appeal that was dismissed by order of this Court dated June 29, 2015.

2. On the same date this Court issued the June 29, 2015 order, a letter was transmitted to Appellants advising the initial brief and designations were due within thirty (30) days of the letter, *i.e.*, no later than July 29, 2015.
3. On July 28, 2015 in this Court, Appellants requested an extension of time for filing of their initial brief, and Rakowsky did not object. The motion for an extension of time for filing the initial brief in this appeal was granted by this Court by order dated July 29, 2015. Appellants' initial brief and designations were then due August 29, 2015.
4. On August 31, 2015, this Court received another motion (dated August 28, 2015) for extension of time (30 additional days requested) from the *pro se* Appellant and the other Appellants' counsel. Rakowsky objected to this extension, pointing out the false statements made to the Court in support of the motion. Appellants failed to timely file a reply to Rakowsky's objection, and by motion received September 14, 2015, they requested an extension to file their reply.
5. By letter dated October 2, 2015, Rakowsky pointed out that Appellants had again missed their deadline for filing the Initial Brief and Designations and he asked for a dismissal of the appeal.
6. On October 26, 2015, almost two (2) months after the extended deadline had expired, and without permission of this Court to do so, Appellants filed their Initial Brief and Designations.

7. By order dated November 25, 2015, this Court granted Appellants' second request for extension of time² and dismissed Rakowsky's motion to dismiss the appeal. In so doing, this Court notified Appellants that "[n]o further extensions will be granted absent extraordinary circumstances, and failure to serve and file these documents within this timeframe may result in the dismissal of this appeal."
8. Rakowsky timely filed his Initial Response Brief and Designations and appellants timely filed an initial reply brief on January 11, 2016.
9. Pursuant to Rule 210(a), Appellants were required to file the Record on Appeal no later than February 11, 2016.
10. Appellants did not file or serve the Record on Appeal until February 26, 2016. It was fifteen (15) days late.
11. On March 1, 2016, this Court sent a deficiency letter to Appellants, advising of several technical deficiencies in the Record on Appeal and providing an additional ten (10) days to cure the deficiencies.
12. The Court did not *sua sponte* reject the Record on Appeal, even though it was more than two (2) weeks late, and no "extraordinary circumstances" were proffered for the late filing, in violation of this Court's order dated November 25, 2015 (*see* Paragraph G *supra*.)

² Granting the motion would have given Appellants until September 29, 2015 to file their initial brief and designations, based on the relief requested in the motion dated August 28, 2015. *See* Paragraph 4 *supra*. The effect of the Court's order of November 25, 2015 was to grant not only the relief requested in the motion, but also grant Appellants an additional two (2) months of extension that they didn't even ask for (but simply took). *See* Paragraph 6, *supra*.

13. By both accepting the Record on Appeal, and granting an additional ten (10) days of time in the deficiency letter of March 1, 2016, this Court has yet again granted an extension of time to Appellants. At no point have Appellants been required to comply with the applicable time rules set forth in the SCARC. Appellants have not proffered any “extraordinary circumstances” for their last two (2) failure to comply with the time limits required. Instead, they file what they want to, when they want to, and this Court accepts the filings.

14. On brief review of the purported Record on Appeal (which this Court has already identified as “deficient”) the Record violates Rule 210(c) and (g) because of Appellants’ failure to include the following items designated by Rakowsky:

1. Item 1, Form 4 Order of December 17, 2013 by Judge Barber;
2. Item 5, Form 4 Order of Judge Early dated September 10, 2014;
3. Item 6, Form 4 Order of Judge Early re: Omnibus Emergency Motions) filed September 11, 2014;
4. Item 9, Reply to counterclaims to Second Amended Complaint for Interpleader, filed February 18, 2011
5. Item 19, letter and check from Desa Ballard to James Spencer³.

15. One pleading which appears to have been designated by Appellants⁴ was included in the Record on Appeal and has been improperly redacted.

Attached hereto as **Exhibit A** is a copy of the Motion to Amend with

³ The check appears at Page 539 of the Record on Appeal. However, the letter is not included.

⁴ Item 2 in Appellant’s designations is “Amended Complaint”.

Proposed Complaint dated July 28, 2010; this was not designated by any party. Nonetheless, Appellants included the document and they inexplicably redacted certain portions on Pages 64-65 (Paragraphs 8 and 9 and a portion of Paragraph 11 of the Proposed Amended Complaint).

16. Appellants have not included in the Record on Appeal several of the items they designated⁵, but Rakowsky makes no objection to the omission of those items. A number of page citations in the Record are inaccurate⁶. Lastly, the index improperly identifies several documents by generic names rather by the actual name of the pleading or document.

17. Appellants have unilaterally granted themselves extensions of two (2) months (*see* Paragraph 6) and fifteen (15) days (*see* Paragraph 10) to which they were not entitled and for which they have not faced any consequences. This Court has repeatedly given them chance after chance, and expressly prohibited further extensions absent extraordinary circumstances in its order dated November 25, 2015 (*see* Paragraph 7). The latest extension (ROA due no later than February 10, 2016, filed on February 26, 2016, without consequence) was not even requested; Appellants simply took their time because this Court has repeatedly refused to enforce its rules and offered no excuse for doing so.


⁵ In many instances, the designations of Appellants were vague in that they did not identify the item by date, by what party it was filed, or even by its correct name.

⁶ By way of example only, the Complaint for Interpleader is reflected to appear on pages 39-44 of the ROA. However, it actually appears at pages 39-47.

18. Even when filing the Record on Appeal on their own, leisurely, delayed schedule, Appellants' Record on Appeal is inaccurate and incomplete, not only as pointed out by this Court's deficiency letter dated March 1, 2016, but also in the numerous errors identified above.

Rakowsky asserts that the latest, and perhaps most blatant, flouting of the Court's rules and orders should be the final straw which prompts this Court to dismiss this appeal. This Court need not view this matter in isolation; the Court need only see the similar behavior by Appellants in Appellate Case No. 2014-000091.

For the reasons set forth above, Rakowsky respectfully requests that the motion for another extension of time be denied.


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ATTORNEY FOR RESPONDENT

March 4, 2016

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 John R. Rakowsky)
)
 Plaintiff,)
)
 vs.)
)
 Southern Holdings, Inc., Adrian L. Falgouts,)
 Law Max Legal Finance, Litfunding USA,)
 James Spencer, Doris Holt, Irene Santacroce)
 Ronald N. Serota, Rodney Keith Lail,)
 David Smith, Marguerite Stephens and Ricky)
 Stephens, Michael Hartness, Harold Hartness)
 Horry County, South Carolina,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-40-6656

MOTION TO AMEND COMPLAINT

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MAR 07 2016

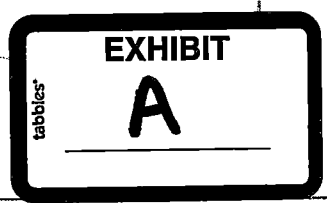
SC Court of Appeals

JUL 28 PM 4:36

NOTICE IS HEREBY GIVEN THAT Plaintiff will move before this Honorable Court pursuant to SCRPC Rule 15 for an order permitting Plaintiff to join additional parties and to amend its complaint in accordance with the proposed Second Amended Complaint and Affidavit of Default which are attached hereto as Exhibit A.

The grounds for this motion are that the identity of additional parties and additional claims regarding existing parties have been discovered since the filing of Judge Lee's order in May 2010 and that the parties should be added in order that complete relief may be accorded to the plaintiff. In support of this motion, Plaintiff respectfully submits the following:

1. This matter is before the court on Plaintiff's request to interplead certain funds related to protracted litigation and appeals in a separate matter. Plaintiff is informed and believes that several parties claim an interest or entitlement to the funds currently held by Plaintiff and Plaintiff wishes to ensure all parties so claiming are joined.
2. SCRPC Rule 15(a) permits amendments of pleadings before trial with leave of court or by the opposing parties' written consent. In this case, the plaintiff seeks to amend

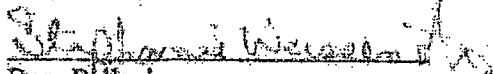


pleadings to delete claims against those who were not proper parties or who are no longer involved in the matter and, to join new parties whose existence and involvement have been revealed through the Court. "Pleadings may be amended by leave of court which shall be freely given when justice so requires and [it] does not prejudice any other party." *Griffith v. Griffith*, 332 S.C. 630, 506 SE2d 526, 529 (Cl. App. 1998).

3. Rule 20(a) permits joinder of parties who are interested in claims that arise out of the same transaction or occurrence, and who share in common at least one question of law or fact. *Ellis v. Oliver*, 307 SC 365, 367, 415 SE2d 400, 401 (1992). Upon information and belief, the amended pleading will finally ensure all interested parties are included in this matter.
4. A motion for continuance has been filed contemporaneously herewith to allow additional time for service of the amended pleading. Upon information and belief, no party will be prejudiced by the extension of time.

Wherefore, having fully set forth the grounds for the relief requested, Plaintiff moves for an order granting him permission to file and serve the proposed Second Amended Summons and Complaint.

Respectfully submitted,



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 Stephanie Weissenstein
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 226 State Street
 West Columbia, South Carolina 29169
 Telephone 803.796.9299
 Facsimile 803.796.1066
 E-mail: desab@desaballard.com
 ATTORNEY FOR PLAINTIFF

July 27, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

John R. Rakowaky)
)
Plaintiff,)

Case No: 2008-CP-40-6656

vs.)

SUMMONS TO SECOND
AMENDED COMPLAINT
FOR INTERPLEADER

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

TO: DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the second amended complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said complaint upon the subscriber, at 226 State Street, West Columbia, South Carolina 29169, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, plaintiff will apply to the Court for the relief demanded in the complaint, by judgment by default.

Stephanie Weissstein
Desa Ballard
Stephanie Weissstein
Law Offices of Desa Ballard
226 State Street
West Columbia, South Carolina 29169
Telephone: 803-796-9299
Facsimile: 803-796-1066
E-mail: desab@desaballard.com
ATTORNEYS FOR PLAINTIFF

July 27, 2010

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)
FIFTH JUDICIAL CIRCUIT)

COUNTY OF RICHLAND)

John R. Rakowsky)

Case No. 2008-CP-40-6656)

Plaintiff,)

vs.)

SECOND AMENDED COMPLAINT)
FOR INTERPLEADER¹)

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

Defendants².)

Plaintiff John Rakowsky, pursuant to Rule 22 of the *South Carolina Rules of Civil Procedure*, herein prays unto this Honorable Court for an order allowing him to pay certain funds in the amount of sixty-two thousand six hundred ninety-one dollars and seventy-eight cents (\$62,691.78) into court and to make a determination of the owners of said funds which are hereby tendered to the Court. In support of the relief sought, plaintiff Rakowsky would show:

1. Plaintiff John R. Rakowsky (hereafter "Rakowsky") is an attorney in good standing with the state and federal courts of South Carolina.
2. On information and belief, Defendant Adrian L. Falgione is a citizen and resident of the County of Lexington, State of South Carolina.
3. On information and belief, Defendants Doris Holt and James Spencer are citizens.

¹ This Complaint is being amended to delete parties who defaulted and to add parties to the case who have recently asserted claims to the funds or who were omitted in the prior complaint.

² The following persons were defendants in the Complaint and Amended Complaint but have been removed as failed to appeal and thus having defaulted: Southern Holdings, Inc., Law Max Legal Finance, LiFunding USA, Ronald Serota, David Smith and Harold Hartness. Proof of Service of these defendants has been filed herewith, along with an affidavit of default. Linda Williamson Lawrence, and Ernest Morton, Jr. were each removed from the case via his or her own motion.

[REDACTED]

[REDACTED]

10. In connection with the litigation of the federal court action, one or more of the federal court plaintiffs advanced funds for costs to be incurred in the federal court litigation. The balance of these funds was eventually held by Rakowsky in trust. At the time of the events described herein, Rakowsky held in trust the sum of nine thousand eight hundred and fifty-five dollars (\$9,855.00) which had not been expended toward litigation costs.

11. In or about May 2007, the federal court plaintiffs authorized Rakowsky and Falgione to enter into a settlement in the federal court action which would provide, *inter alia*, for payment to them of a settlement in the amount of fifty-five thousand dollars (\$55,000.00). [REDACTED] y [REDACTED] s [REDACTED] d [REDACTED]

[REDACTED] s [REDACTED]

[REDACTED]

[REDACTED] 1. [REDACTED] s [REDACTED] 3) [REDACTED]

[REDACTED]

12. Falgione and Rakowsky are each entitled to receive a portion of the funds in question as attorneys fees for their services in the federal court action. Rakowsky, acting as legal counsel for the plaintiffs in the federal court action, now defendants named above, received the fifty-five thousand dollar (\$55,000.00) settlement proceeds in trust from the federal court defendants as agent for the plaintiffs in the federal court action.

13. On information and belief, one or more of the plaintiffs in the federal court action

thereafter repudiated the settlement and sought various avenues of relief through the federal court action, all of which were denied.

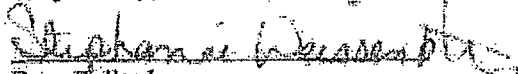
14. During that time, it became known that former defendants hereto Serota, Law Max Legal Finance LLC and Litfunding USA Inc. claimed an interest in the settlement proceeds.
15. On or about February 21, 2008, Rakowsky filed a Motion for Deposit of Funds with the United States District Court, Florence Division, which was ultimately denied.
16. On information and belief, the federal court action is concluded, but the federal court plaintiffs repudiated the settlement and the settlement was never consummated. No determination of the ownership of the funds has been made. Rakowsky remains in possession of the sum of sixty-two thousand, six hundred ninety-one dollars and seventy-eight cents (\$62,691.78), which is composed of fifty-five thousand dollars (\$55,000.00) in settlement proceeds and seven thousand six hundred ninety dollars and ninety-three cents (\$7,690.93)³ in costs advanced by one or more of the federal court plaintiffs.
17. Rakowsky is informed and believes that the ownership of the funds is in dispute and that one or more of the Defendants claims entitlement to all or a portion of the funds currently held by him.
18. Because there exist claims by one or more of the Defendants to the settlement monies in the amount of fifty-five thousand dollars (\$55,000.00) as well as claims to the funds for advanced costs in the amount of seven thousand six hundred

³ This total consists of the \$9,855.00 reflected in the original complaint minus \$2,164.07 for the litigation cost payment to Dr. Cheung. See Exhibit A.

ninety dollars and ninety-three cents (\$7690.93) being held in trust by the Plaintiff. Plaintiff hereby tenders funds in the amount of sixty-two thousand six hundred ninety-one dollars and seventy-eight cents (\$62,691.78) to the Court for determination and distribution as deemed to be appropriate.

Wherefore, Plaintiff prays for an order permitting the clerk of court to receive the sum of sixty-two thousand six hundred ninety-one dollars and seventy-eight cents (\$62,691.78) until further order of this Court.

Respectfully submitted,



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Stephanie Weissenstein

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ATTORNEY FOR PLAINTIFF

July 26, 2010

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

MOTION FEE COLLECTED: \$ _____

CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Doyet A. Early III, Circuit Court Judge
Case No. 2008-CP-40-6656
Appellate Case No. 2014-002029

RECEIVED

MAR 07 2016

SC Court of Appeals

John R. Rakowsky, Respondent

v.

Law Offices of Adrian L. Falgione, LLC, James Spencer,
Estate of Doris Holt, Nick Williams on behalf of RSC,
Irene Santacroce, Rodney Keith Lail, Marguerite Stephens
Ricky Stephens, Michael Hartness, Horry County, SC,
Eugene Chewing, and Glenn W. Harrison,
Defendants,

Of whom James Spencer, Irene Santacroce, Rodney Keith
Lail, and the Estate of Doris Holt are the
Appellants.

CERTIFICATE OF SERVICE

I, Beth Cogan, an employee with Ballard & Watson, Attorneys at Law, do hereby certify that on March 4, 2016, I served a copy of the **Motion to Dismiss or Motion to Require Compliance with Rule 210(C) and (G) and to Pay Respondent's Attorney Fees** in the above-captioned case on the following individual by United States Mail, with sufficient first-class postage affixed, addressed as follows:

James Spencer
7001 Saint Andrews Road
P.O. Box 183
Columbia, South Carolina 29212

Michael Sribnick, MD, Esquire
3 Kenilworth Avenue
Charleston, South Carolina 29403


Beth Cogan, Paralegal

March 4, 2016
West Columbia, South Carolina



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

March 4, 2016

Via U.S. Mail

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *John Rakowsky vs. Adriann Falgione, et al.*
Appellate Case No.: 2014-002029

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MAR 07 2016

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of the **Motion to Dismiss or Motion to Require Compliance with Rule 210(C) and (G) and to Pay Respondent's Attorney Fees** concerning the above-referenced matter. Please clock and return the copy to us upon hand-delivery of the original. Enclosed with this letter is a check for \$25.00 for the cost of this motion.

By copy of this letter, I am serving the *pro se* Defendant and all counsel of record. Thank you for your time in this matter. If you have any questions or concerns, please do not hesitate to contact me or Desa Ballard. With warm personal regards, I am,

Sincerely yours,

Beth Cogan, Paralegal
beth@desaballard.com

cc: (all via U.S. mail)
Michael Sribnick, Esquire
James Spencer
John Rakowsky, Esquire (via Email)



Law Offices of Desa Ballard

226 State Street
West Columbia, SC 29169

To:

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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10/27/96

SC Court of Appeals