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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

MAR 04 2016

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-32-3428

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,

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.

RETURN TO APPELLANT'S MOTION FOR SANCTIONS

Respondent John R. Rakowsky ("Rakowsky"), by and through his undersigned counsel, submits this return to the motion for sanctions filed by Appellant James B. Spencer ("Spencer" or "Appellant") in the above-referenced appeal.

In what is the latest in Spencer's over two year old pattern of delaying a disposition of this appeal with frivolous motions, requests for extensions, and unfounded accusations of ethical

violations against Respondents and their attorneys, Spencer now moves for sanctions against Rakowsky. The accusations against Respondent Rakowsky in this motion are entirely without basis.

Conversely, this motion demonstrated a clear violation of the very rule on which Spencer bases his motion. Without a proper sanction to discourage the repeated disregard for the rules and procedure of this Court, it appears that Spencer will simply continue to flood this appeal with irrelevant and baseless filings. Accordingly, his motion for sanction should be denied, with attorney's fees and costs awarded to Rakowsky.

DISCUSSION

As a matter of background, this is a legal malpractice action in which Spencer appeals the trial court's December 6, 2013 order denying his motion to reconsider the trial court's August 23, 2013 order dismissing the complaint for the expiration of the statute of limitations, and failure file an expert affidavit pursuant to S.C. Code §15- 36-100(B).

In the current motion, Appellant contends that sanctions are appropriate, that this Court should remand the matter to the circuit court for further discovery, and strike Respondent's statute of limitations and S.C. Code §15- 36-100(B) defenses based upon what he alleges to be a "fraud on the court" by Rakowsky and his counsel. In reality, Appellant's motion merely argues the disputed merits of his untimely legal malpractice claim. Accordingly, Spencer's allegations of "fraud upon the court" are without merit.

Initially, as a threshold matter, Spencer served the current motion to the former law firm of Counsel for Rakowsky. (See, Exhibit A, incorrectly labeled as a motion for sanction against Respondent Falgione). This was done despite having previously received notice that counsel for Rakowsky's address had changed. (See, Exhibit B). Fortunately, Counsel for Rakowsky was

notified that the current motion was delivered to his former law firm, and was able to respond to Spencer's allegations, albeit on short notice.

Responding to the merits of Spencer's request for sanctions, Rule 269, SCACR, provides that this Court may sanction a party or its attorneys where "an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules."

Here, Spencer accuses Rakowsky and his counsel of making "untruthful statements in his Initial Brief in this court (filed on July 30, 2015), that are the *foundation* of Respondent's Initial Brief and Respondent's entire case." (App's Motion for Sanctions p. 2, February 17, 2016). However, a review of Appellant's motion and Respondent's Initial Brief shows that this motion is simply another attempt to dispute the validity of a settlement in the prior Federal Court action, which has no relationship to the issues pending in this appeal.

In his motion, Spencer identifies a single footnote from the introduction of Respondent's Initial Brief as the basis for his motion:

Spencer on behalf of himself and his mother as her attorney-in-fact, and Dan Green, on behalf of Southern Holding, authorized a combined settlement of \$50,000 during a meeting with counsel on the evening of May 8, 2007. All of the remaining plaintiffs authorized the settlement on the morning of trial, which by that time had increased to \$55,000.

(App's Motion for Sanction ps. 2-3, February 17, 2016, citing, pg. 6 footnote 3 from Resp's Initial Brief).

Spencer argues that the settlement in the prior Federal Court case was coerced and/or done without consent, and that footnote 3 on page 6 of Respondent's Initial Brief constitutes fraud on the Court. In other words, Spencer's motion is based entirely on disputed allegations supporting his legal malpractice claim against Respondents had it not been time-barred. The Circuit Court, however, dismissed the case as untimely and for his failure to comply with the expert affidavit

requirement of S.C. Code §15- 36-100(B). There was no decision on the factual merits of Spencer's claims.

Furthermore, the newly fabricated documents attached as exhibits to his motion do nothing to support his assertion that Respondent or his counsel have made false statements to this Court. (See, Attachment A to App's Motion for Sanction). These documents, identified as declarations signed November 30, 2015, are not appropriate for consideration in this appeal. Likewise, as they are dated after Rakowsky filed his Initial Brief, they do not prove any known falsity conveyed to this Court by Rakowsky or his counsel.

More importantly, the disputed issues identified in Spencer's motion for sanctions are entirely irrelevant to the issues on appeal; the expiration of the statute of limitations and Appellant's failure to file an expert affidavit. Appellant's personal opinion concerning the truth of disputed facts that played no part in the Circuit Court's dismissal (of Appellant's lawsuit) do not provide grounds to accuse Respondent and Respondent's counsel of committing fraud upon this Court.

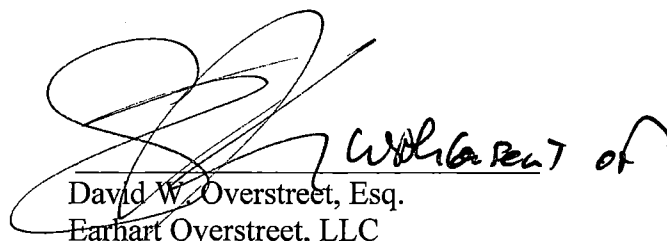
Taken as a whole, this motion represents at least the third time that Spencer has filed a frivolous, unfounded and irrelevant motion with this Court requesting that the case be "remanded back for discovery" and accusing the Respondents and their attorneys of impropriety. (See, App's Motion for Sanction filed August 20, 2015; App's Motion to Remand filed November 13, 2015). Each time, Respondents have responded to these motions, which have no basis in fact or law, and do not comply with the Rules of this Court.

CONCLUSION

Accordingly, for the reasons stated herein, Respondent Rakowsky prays that the Court deny Appellant's motion for sanctions and award Rakowsky reasonable attorney's fees and costs incurred in connection with responding to this motion.

This 1st day of March, 2016.

Respectfully submitted by,

A handwritten signature in black ink, appearing to read "David W. Overstreet", is written over a horizontal line. The signature is stylized and cursive.

David W. Overstreet, Esq.
Earhart Overstreet, LLC
P.O. Box 22528
Charleston, South Carolina 29413
(843) 972-9404

Attorneys for Respondent John Rakowsky

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

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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.

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 corrected *Return to Appellant's Motion for Sanctions* by depositing a copy of it in the U.S. Mail, postage prepaid, on March 1, 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.

March 1, 2016


Camille M. Gardner



Earhart Overstreet

ATTORNEYS AT LAW

Phone: 843.972.9400
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PO Box 22528, Charleston, SC 29413

March 1, 2016

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

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

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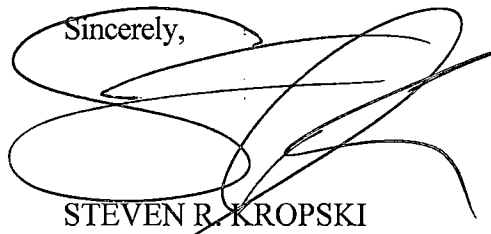
MAR 04 2016

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find an original and 6 copies of a corrected copy of Respondent John R. Rakowsky's Return to Motion for Sanctions and Proof of Service in this case. Our previous filing of February 29, 2016 inadvertently omitted the Exhibits referenced in the subject Return. 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

PROFF OF SERVICE

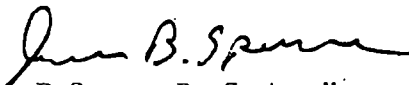
The undersigned hereby certifies that on , the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail and/or delivery by courier on this date February 17, 2016.

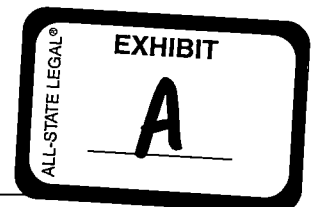
Documents served: **MOTION FOR SANCTIONS UNDER RULE 269 AGAINST RESPONDENT ADRIAN FALGIONE.**

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

By: 
James B. Spencer, *Pro Se*, Appellant
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889





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.

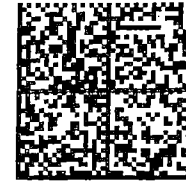
Sincerely yours,

David W. Overstreet

DWO/cmg

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





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Jenny Abbott Kitchings, Clerk
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