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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

Case No: 2014-002029

MAR 11 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Judge Doyet A. Early, III, Circuit Court Judge

Case No. 2008-CP-40-6656

John R. Rakowsky, *Respondent*

v.

Irene Santacroce, *Appellant*  
Estate of Doris Holt, *Appellant*  
Rodney Lail, *Appellant*

and

James B. Spencer, *Appellant, Pro Se*

**MOTION TO SERVE JOINT APPENDIX**

**OUT OF TIME**

**THIS MOTION HAS EXHIBITS**

Irene Santacroce, the Estate of Doris Holt, Rodney Lail, represented by the undersigned counsel, Michael Sribnick, MD, JD, (hereinafter “represented Appellants”) and James Spencer on a *Pro Se* basis, humbly move this Honorable Court to be allowed to file the Joint Appendix, out of time for the following reasons:

Counsel for the represented Appellants was unavoidably out of the United States during the major portion of the preparation time. Furthermore, counsel only relatively recently took on this eight year old case, on a *pro bono* basis, and did not have a case history that included many of the records. Having no funds to work with as my clients are indigent, I hired with, the disable *Pro Se* Appellant, an individual to assemble the records to put together the Joint Appendix that was originally submitted. The submitted document turned out not to be in proper form, as pointed out to me by the Court. The massive amount of documents submitted in error to all parties was obviously due to a number of factors not the least of which is lack of funds and inexperience on all our parts. When I returned to the country, I was buried in work with both Federal Appellate Court deadlines and South Carolina Appellate Court deadlines, many involving Joint Appendixes. I worked as fast as possible to meet these deadlines.

Further complicating this matter were that many of the Respondent’s designations for the Joint Appendix were inaccurate and others are believed not to exist. Such documents include but were not limited to, using the numbering on the

Respondents list:

- Item number 1 – “Form Order of December 17, 2013, signed by Judge Barber, Case No. 2008-CP-40-6656,” *could not be found. We cannot produce something that we do not have a copy of and by all appearances of does not exist.*
- Item number 6 – Form 4 Order of Judge Early (re: Omnibus Emergency Motions) filed September 11, 2014,” *could not be found. See attached paperwork (Exhibit A) Affidavit (See point 6 and statement from Gloria Tribble of the Richland County Clerk of Court’s office, which states it was not received. Despite all efforts, it cannot be found and Appellants cannot produce what they do not have.*
- Item number 9 – “Reply to Counter Claims to Second Amended Complaint for Interpleader, filed February 18, 2011,” *the only Counter Claims to Second Amended Complaint that could be found were filed August 29, 2011, which precludes a Reply to Counter Claims of Defendants by the dating, according to the records found. (Exhibit B).*
- Item Number 15 – “Email from Aliecia Bores, law clerk of Doyet A. Early, dated October 4, 2012 at 11:42 am to multiple recipients,” *simply does not exist. We took the liberty of inserting into the Joint Appendix an email dated October 4, 2014, believing that may be the one being requested.*

- Item Number 19 – “A letter and check from Desa Ballard to James B. Spencer dated August 8, 2014,” *a copy of the check received was provided, the money is being held in escrow in order to preserve such funds, no copy of a letter could be found and we cannot produce what cannot be found if it existed.*

Further complicating matters two Joint Appendixes were being worked on by the individual both due for the South Carolina Appellate Court. The two cases were 2014-000091 and 2014-002029. Unfortunately, **Respondents Designation of Matters** in Case No. 2014-000091 (**Exhibit C**) did not contain the required captioned case number so the Respondents Designations in the Joint Appendixes became accidentally interrelated by the inexperienced legal assistant. This explains the point the Court pointed out in the March 1, 2010, that a non-party to case 2014-002029 was named and served who is a party to case 2014-000091.

The undersigned *Pro Se* Appellant (“Appellant”) concurs with what the counsel for the represented Appellants has stated above. Appellant already 100% medically disabled, has recently been diagnosed with kidney disease and has begun treatments. This in addition to his diabetes, the Appellant’s limited ability to walk due to paralysis, severe eyesight problems, and the paralysis due to the severing of Appellant’s ulnar nerve in his right arm severely limits Appellants ability to put together thousands of documents, for multiple parties required by the Joint Appendix

filing. Appellant's medical disability and being indigent all resulted from the Defendants' wrongful actions in the underlying case that are still destroying Appellant's life in all ways including the filings with this Court. Appellant has now been assigned a PTSD trained dog as a companion as Appellant's illness is advancing rapidly and worsening his PTSD.

Most significantly, this delay in the filing of the Joint Appendix does not prejudice the Respondent in this litigation. It is a technicality problem that could easily be avoided if the represented Appellants and the *Pro Se* Appellant had any money. *Merits are not money related and all the Appellants simply request the merits be heard by this Honorable Court, something the Respondent wants to avoid.*

The Appellants pray this Court allow this case to move forward as the unintentional delay in filing the Joint Appendix is not any way intentional. It is due to medical problems and limitations on the quality of my life due to the actions of a convicted felon who was paid to stop the Appellants from complying with the law.

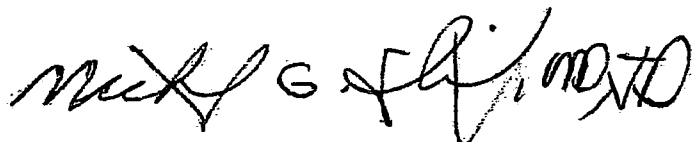
### CONCLUSION

The represented Appellants and the *Pro Se* Appellant humbly request due to the reasons stated above and in the interest of justice that the Appellants' Joint Appendix be allowed to be filed out of time. As requested by the Court a corrected Joint Appendix in format as requested by this Court on March 1, 2016, has this day

concurrently been filed with the Court and duly served to all applicable parties.

Submitted this March 11, 2016,

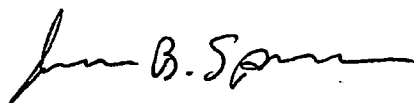
By:

A handwritten signature in black ink, appearing to read "Michael G. Sribnick, M.D., J.D.", written in a cursive style.

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Michael G. Sribnick, M.D., J.D., LLC  
3 Kenilworth Avenue  
Charleston, S.C. 29403  
Phone: (843) 789-3504  
Fax: (843) 720-8907  
michael.g.sribnickmdjdlc@gmail.com

By:

A handwritten signature in black ink, appearing to read "James B. Spencer", written in a cursive style.

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James B. Spencer, *Pro Se*  
Suite 183  
7001 Saint Andrews Road  
Columbia, SC 29212

THE 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

John R. Rakowsky.....Respondent

Adrian I. Falgione,  
James Spencer,  
Estate of Doris Holt, Irene  
Santacroce, and Rodney Keith Lail.....Defendants

Of whom, Estate of Doris Holt, Irene Santacroce, and Rodney  
Lail, are.....Appellants

**AFFIDAVIT OF ROBERT WADLEY**



**PERSONALLY APPEARED** before me the undersigned Robert Wadley who after being duly sworn states the following:

I, Robert Wadley, declare under penalty of perjury:

1. I am over eighteen years of age and am qualified to testify.
2. The information in this affidavit is based on my personal knowledge.
3. I am a part time legal assistant for Dr. Michael Sribnick, Esquire and have been doing legal research of this nature for over two years.
4. In the above named capacity, on September 29, 2014, I went to the Richland County Clerk of Court's Office to review the files regarding Case No. 2008-CP-40-6656 as directed by Dr. Michael Sribnick, Esquire.
5. I was specifically looking for the "Form 4 Order" that Judge Early claimed he filed regarding his ruling against the Omnibus Motions heard on August 20, 2014, in a hearing which I attended.

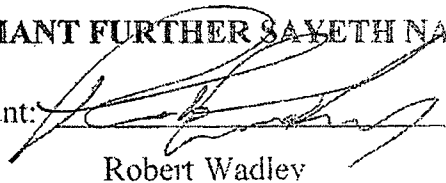
- 6. I could not find any documentation regarding the "Form 4 Order" and/or reason for dismissing the Omnibus motions that Judge Early stated he filed with the Richland County Clerk of Court's Office on September 9, 2014.
7. In order to make certain that I did not miss anything in the file I sought the help of Ms. Gloria Tribble, Administrative Deputy Clerk. Along with the assistance of Ms. Tribble, I was able to confirm that the Form 4 Order was both the correct document filed by Judge Early dismissing the Omnibus Motions and there was no required documentation as to legal rationale despite the affirmation such was attached on the "Form 4 Order" itself.
  8. I have attached to this Affidavit the "Form 4 Order" related to the dismissal of the Omnibus Motions in this proceeding.
  9. This "Form 4 Order" does not have any attachment of explanation with it as to the reasons for the dismissal of the Omnibus Motions despite the box checked indicating that it does. I have initialed the attached document.

RHW

10. As of the date of this affidavit, based on a search of the files, there still is no explanation formal or informal in the Clerk of Court's case file as to the reasons for the dismissal of the Omnibus Motions heard before Judge Early on August 20, 2014.
11. The signed statement attached, which I have initialed, I obtained from Ms. Tribble on September 29, 2014, which confirms my findings.
12. While searching in the Clerk of Court's Office on September 29, 2014, I could find no record, nor could Ms. Tribble find any record of the voiding of the *ex parte* Order executed on June 23, 2014 that Judge Early claimed he had sent to the Richland County Clerk of Court's Office.
13. As of the date of this affidavit based on my exhaustive search of the Richland County Clerk of Court's office file on this case there is still no documentation in the file validating that the Order issued by the Judge Early and Plaintiff's counsel Desa Ballard on June 23, 2014, was ever withdrawn in this case.
14. I did find an executed Supplemental Order which states Judge Early stands by the *ex parte* Order he issued on June 23, 2014, also attached and referenced by Gloria Tribble hereto.

**AFFIANT FURTHER SAYETH NAUGHT**


Affiant:

  
Robert Wadley

Date: 10/24/2014

Sworn and subscribed to before me

this 24 day of October, 2014

  
Notary Public for South Carolina

<p><b>GAYLE RABON</b> Notary Public - State of South Carolina My Commission Expires February 26, 2017</p>
-------------------------------------------------------------------------------------------------------------------

My Commission expires on: \_\_\_\_\_

*RHW*

Monday, September 29, 2014

The Only Document provided to the Court regarding the Order ruling against the Omnibus Motion is the attached Form 4 which I have also initialed, dated and certified stamped.

My name is Gloria Tribble, Admin. Deputy Clerk and we don't have the Supplemental Order that you're requesting 08-6656; it's possible that the Order is on the Judge's Desk. If you have any questions I be contact @ 803-576-1952

Gloria Tribble

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2008CP4006656

John R Rakowsky

Southern Holdings Inc

Law Max Legal Finance

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  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 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 18 September 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Desa Ballard

Ernest H Morton Jr  
Andrew F. Lindemann  
James Brian Spencer  
Irene Santacroce

Linda Wilamson Lawrence  
Adrian Lee Falgione  
Rodney Keith Lall  
James Brian Spencer

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*Jeanette W. McBride*

*RHW*

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

John R. Rakowsky,

Plaintiff,

v.

Adrian L. Falgione, James Spencer  
individually and as Administrator of  
the estate of Doris Holt, Rodney Lail,  
Irene Santacroce, Marguerite Stephens,  
Ricky Stephens, and Horry County,  
South Carolina,

Defendants.

(2008-CP-40-6656)

JEANETTE M. MORRIS  
C.C.P. & G.S.

2011 AUG 29 AM 10:59

FILED

**CERTAIN DEFENDANTS' AMENDED RESPONSE  
AND COUNTER CLAIMS IN RESPONSE TO  
JOHN RAKOWSKY'S  
SECOND AMENDED COMPLAINT FOR  
INTERPLEADER**

NOW COME CERTAIN DEFENDANTS' (hereinafter known as the  
"Defendants") and move the Court to Deny Plaintiff's request to disperse funds in  
accordance with Plaintiff Rakowsky's Complaint for Interpleader captioned above.

Defendants deny each and every allegation not hereinafter specifically admitted,  
modified or qualified.

1. Admitted.

2. Admitted.

James Spencer, individually and as Administrator for the Estate of Doris Holt, Ricky Stephens, Marguerite  
Stephens, Irene Santacroce, and Rodney Lail.

3. Admitted in part and denied in part as Doris Holt is now deceased.
4. Admitted.
5. Admitted.
6. Admitted in part and denied in part. Based on information and belief Eugene Chewning is not a resident of South Carolina and Eugene Chewning's work is not completed.
7. Admitted in part and denied in part. Based on the information and belief that Glen Harrison is not a resident of Seminole County, Florida.
8. Admitted in part and denied in part. Plaintiff Rakowsky was not one of the most recent counsels added to that case as the Court Docket evidences, he was in fact one of the earliest counsels who made an appearance in the case. Mr. Rakowsky in fact became a member of the legal team shortly after the filing of the Complaint in Federal District Court of Case No. 4:02-CV-01859-RBH, entitled Southern Holdings, Inc., et al. vs. Horry County, et al. on May 29, 2002. Plaintiff Rakowsky did not file his Motion for Appearance until December 3, 2002 (Dkt.#57), months after he already had been working on the case. Plaintiff Rakowsky assumed control of the legal team and initiated the firing of legal counsels he determined needed to be dismissed, and the hiring of legal counsels he handpicked including the hiring of the two most recent Counsels in that case. The two most recent Counsels were Ron Serota (admitted July 6, 2005, Dkt.#146) and Defendant Adrian Falgione (admitted November 15, 2006, Dkt.#287). Additionally, former Defendants' Counsel in that action, Charles Cooper, died.

while the case was pending and James Cooper, Charles Cooper's brother and law partner, became ill and had to withdraw from that case for health reasons.

9. Admitted.

10. Denied. All funds held by the Plaintiff Rakowsky were advanced by Defendant Spencer and Plaintiff Rakowsky knows, or was/is required to know, the source and amount of those litigation funds advanced as Plaintiff Rakowsky was required to keep records of any such funds he held for such purposes under both South Carolina Rules of Professional Conduct, ("SCRPC") Rule 1.15(a) and under agreement with Defendant Spencer to provide such records and return such property on demand of former client Spencer under SCRPC 1.15(d) and 1.16. Furthermore, under Rule 417 of the South Carolina Judicial Department, Plaintiff Rakowsky was required to keep records showing the specific amount of funds provided by a client and any disbursement from said funds and the balance of funds provided by each client. Therefore, Plaintiff Rakowsky knew the litigation funds were provided by James Spencer and no other Defendant. The funds advanced by Lit Funding, Resolution Settlement Corporation and LawMax Legal Funding on behalf of James Spencer were non-recourse funds where all three organizations gave up any and all claims against any and all funds advanced for the litigation and/or personal expenses of Defendant Spencer to be used as determined by Defendant Spencer.

The purported balance of the litigation funds reported by Plaintiff Rakowsky was nine thousand, eight hundred and fifty-five dollars (\$9,855.00) which was an amount fully advanced by Defendant James Spencer and there were

no other claims to this \$9,855.00 in litigation funds and Plaintiff Rakowsky knew  
it from July 2007 to date.

The Defendants cannot rely on Plaintiff Rakowsky's claim as to the  
balance. Mr. Rakowsky and his counsel Desa Ballard have refused numerous  
requests and discovery requests by the Defendants to provide a complete  
accounting of the funds provided for that lawsuit regarding that litigation required  
under the SCRPC 1.16, Rule 417 of the SCAER and under contract with RSC and  
Defendant James Spencer.<sup>2</sup>

It is Denied. Mr. Rakowsky claimed on May 8<sup>th</sup>, 9<sup>th</sup>, and 10<sup>th</sup> of 2007 to the  
Defendants, except for Defendant Doris Holt, that no agreement could be legally  
binding until each and every individual Defendant that Plaintiff Rakowsky  
represented in Southern Holdings, Inc., et al. vs. Horry County, et al. had formally  
signed off on a final written settlement agreement. The Defendants never gave  
Plaintiff Rakowsky and co-counsel Defendant Falgione authorization to settle that  
case hence the dispute over the \$55,000.00 in "settlement funds". Defendant  
Doris Holt was not aware of any proposed settlement agreement and was not  
present in Court in May 2007, under the specific instructions of Plaintiff John  
Rakowsky. Doris Holt was never consulted with by either Plaintiff Rakowsky or  
co-counsel Defendant Adrian Falgione in that case directly, and/or indirectly,  
about the pseudo settlement of May 2007 at any time before, after and/or during  
May 2007. Defendant Doris Holt's position was steadfast from the date the

<sup>2</sup> Plaintiff John Rakowsky executed a notarized signature on a contract with RSC obligating Mr. Rakowsky  
to, "Transferor [Defendant James Spencer] hereby authorizes his attorney [John Rakowsky] to release to  
Transferee [RSC] any information, files, records, documents regarding the litigation requested by  
Transferee [RSC] who agrees to treat such information as privileged..." - from the RSC funding  
agreement executed on June 22, 2005, by Plaintiff John Rakowsky and Defendant James Spencer.

lawsuit was filed that she wanted the individuals who physically and financially injured her brought to justice solely under terms decided by a jury. Defendant Doris Holt never agreed to a settlement at any time. A malpractice action is now pending against Plaintiff John Rakowsky and his co-counsel Defendant Adrian Falgione in a Court with proper venue.

12. Denied. A malpractice action is pending against Plaintiff John Rakowsky and his co-counsel Defendant Adrian Falgione in that matter in a Court with proper venue.
13. Denied. Defendants cannot repudiate something they have never agreed to and the Defendants never agreed to the pseudo settlement agreement proffered by Plaintiff Rakowsky, Defendant Falgione, Defendant Horry County and its legal counsel Defendant Andrew Lindemann. Further, Plaintiff Rakowsky lacks sufficient information to make or infer such despite his de facto refusal to end the attorney-client relationship between the Defendants and Plaintiff Rakowsky by refusing to release the Plaintiff admitted remaining litigation funds of \$9,855.00 to the Defendants.
14. Defendants lack sufficient knowledge to admit or deny the allegations contained in paragraph 14.
15. Admitted.
16. Denied. Plaintiff Rakowsky purportedly has taken action as if he represents Defendants and as if he had not filed this Interpleader action, by wrongfully reducing the amount of Plaintiff reported remaining litigation funds by making a payment to a named Defendant in this Interpleader action from the reported

\$9,855.00 of Interplead litigation funds, reducing the reported funds to \$7,690.93 without authorization and without consent of either Defendant Spencer and/or the Court. Plaintiff Rakowsky for years wrongfully withheld the remaining litigation funds. Plaintiff Rakowsky is wrongfully misusing this Court to both control and purportedly disperse the Defendant's remaining litigation funds, supposedly protected in trust, without the Defendant's review, approval and consent; purportedly on behalf of the Defendants effectively retaining his representation of the Defendants. Additionally, any such payment out of litigation funds was not to be made by Plaintiff Rakowsky without the explicit consent of Defendant James Spencer under Defendant's agreement with Plaintiff Rakowsky. Withdrawing \$2,164.07 and expending such funds on behalf of the Defendants constituted a breach of ethics under SCRPC Sections 1.15 & 1.16, a breach of fiduciary duty to Defendant Spencer and a breach of contract with the contractual rights held by Defendant Spencer and contradictory to the supposed reason Plaintiff Rakowsky filed the Interpleader Action:

Plaintiff Rakowsky knows full well that the \$2,164.07 reduction is not a legitimate legal expense but were costs related to personal travel unrelated to the case by a potential witness visiting friends and family in Columbia, SC including his rental car expenses and flight expense (i.e. frolic & detour). Rakowsky maintained understood his clients position regarding the non-payment of these personal expenses when the expenses were invoiced in mid May 2007. Plaintiff Rakowsky further acknowledged and maintained Defendants had already advanced funds that covered any pretrial preparation time contained in that invoice by the Defendant who received the \$2,164.07. The Defendants refused to authorize the release of any funds to pay the \$2,164.07 invoice. Further, Plaintiff Rakowsky acknowledged this as his Interpleader Complaint filed on September 12, 2008 and his first Amended Interpleader Complaint filed on November 14, 2008 were without any claims on the litigation funds. (Note: The two Complaints were filed after Plaintiff Rakowsky received invoices for \$2,164.07 in May 2007, on or about August 20, 2008 and a hand delivered invoice was received by Rakowsky on October 14, 2008 a mere month before Rakowsky filed his first Amended Interpleader Complaint on November 14, 2008.) Further, under the terms of the Contract of Representation, dated May 27, 2005, with James Spencer it is clear no money is to be paid for legal expenses without the Defendant Spencer's explicit authorization. "amounts paid and or owed as authorized by client [James Spencer whose funds make up 100% of the litigation funds] of case related costs and expenses" (see page one of the contract of representation, lines 13, 14 and 15). This \$2,164.07 has never appeared on any accounting presented to the Defendant Spencer and any funds released to a named Defendant or a third party would have to both be approved by the client [James Spencer] and the Richland County Court where the Interpleader was filed by Plaintiff, neither of which occurred.

17. Admitted in part, denied in part as Plaintiff Rakowsky knows the originally purported \$9,855.00 in remaining litigation funds belongs to Defendant Spencer

18. Denied. The amount of \$55,000.00, relates to the disputed settlement and the amount of the originally purported remaining litigation funds of \$9,855.00 belongs to the Defendant Spencer for expenses authorized by Defendant Spencer.

Wherefore, the Defendants humbly pray this Honorable Court for an Order that the funds currently and wrongfully being controlled by John Rakowsky and Desa Ballard, in the sums of sixty-four thousand, eight hundred fifty-five dollars (\$64,855.00), to be transferred forthwith into the trust account of the Defendants' designated legal counsel, Jim Young, Esquire of Singleton, Burroughs and Young, P.A., located at 1303 3<sup>rd</sup> Avenue, Conway, SC, 29526. The funds are to be transferred by certified check in the amount of sixty-four thousand, eight hundred fifty-five dollars (\$64,855.00) which is to be mailed to the attention of Ms. Patty Davis, assistant to Jim Young, Esquire of Singleton, Burroughs and Young, P.A, with the litigation funds component to be further disbursed from that account as directed solely by Defendant Spencer. The Plaintiff has fully demonstrated through his actions that he has and continues to wrongfully use this Honorable Court to attempt to dissipate the litigation funds reportedly held in trust pending this litigation. Of the funds transferred, \$55,000.00 will be held in trust until the rights of ownership of the funds are established through the pending malpractice litigation against Plaintiff Rakowsky and Defendant Falgione and the anticipated litigation concerning the disputed settlement of the underlying case, Case No: 4:02-CV-01859-RBH, are both litigated to conclusion.

The residual litigation funds of \$9,855.00 or any portion thereof is to be utilized as directed by the Defendant Spencer as maintained in Defendants October 20, 2008, motion which is still pending before this Court. In addition, the Defendants pray that the Court impute an interest rate of eight and three-fourths percent (8.75%) per annum<sup>4</sup> to be used to compute interest on the litigation funds the \$9,855.00 plus any litigation funds wrongfully expended by Plaintiff Rakowsky (litigation funds expended without the express written permission of Defendant James Spencer in violation of Plaintiff's agreement with Defendant Spencer). This interest rate is to be computed from the date of July 14, 2007<sup>5</sup> to the date the remaining \$9,855.00 in litigation funds, or applicable funds thereof, are deposited into the trust account designated by the Defendants in their pending motion of October 20, 2008, still pending before this Court.

#### COUNTER CLAIMS BY DEFENDANTS

##### Facts

19. The Defendants learned on July 12, 2011, that a representative of Resolution Settlement Corporation ("RSC") had contacted Plaintiff John Rakowsky prior to filing this Interpleader Action and his legal counsel, Desa Ballard, and provided documentation to each regarding claims RSC had against any settlement funds in Case No: 4:02-CV-01859-RBH. It was also learned by the Defendants that RSC requested documentation from Plaintiff Rakowsky and Desa Ballard on the use of

<sup>4</sup> S.C. Code Ann. § 34-31-20. Legal rate of interest: "In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum."

<sup>5</sup> July 14, 2007, was the day after Plaintiff Rakowsky unilaterally resigned from the case.

litigation funds as this was documentation required to be provided under contract between RSC, Plaintiff Rakowsky and Defendant James Spencer.

20. All such lawful requests for accounting of funds by RSC went unanswered

21. Lit Funding and LawMax Legal Funding provided the same litigation funding service as RSC to Defendant Spencer also with the participation of Plaintiff Rakowsky in the same Case No. 4:02-CV-01359-RBH. Plaintiff John Rakowsky, in his initial Interpleader Complaint before this Court, named Lit Funding and LawMax as Defendants. Nevertheless, each successive version of the Interpleader Complaint thereafter did not name any of the three funding companies used by Defendant Spencer as Defendants in this action.<sup>6</sup> Importantly, upon information and belief, Lit Funding never contacted Plaintiff Rakowsky, nor his legal counsel Desa Ballard like RSC did, yet RSC was excluded by Plaintiff Rakowsky throughout the entire process as recognition of RSC would have revealed additional litigation funds unaccounted for by Plaintiff Rakowsky.

22. Additionally, the Defendants also first learned on July 12, 2010, that representatives of RSC contacted the Honorable Judge Lee and notified Judge Lee on, or about, January 21, 2010, of the failure of Plaintiff Rakowsky to name RSC as having an interest in the settlement proceeds of \$55,000.00.

23. On July 11, 2011, at a hearing before this Court, Plaintiff John Rakowsky's counsel, Stephanie Weissenstein, falsely claimed to the Court that Plaintiff John Rakowsky had produced the required documentation on "four separate occasions" that pertained to the receipt of funds and disbursement of all the litigation funds

<sup>6</sup> First Interpleader Complaint dated September 12, 2008, the 1<sup>st</sup> Amended Interpleader Complaint dated November 14, 2008, the 2<sup>nd</sup> Amended Interpleader Complaint (Version 1) dated July 28, 2010, and the 3<sup>rd</sup> Amended Interpleader Complaint (Version 2) dated December 3, 2010.

which would be due former clients by Plaintiff John Rakowsky, Defendant James Spencer, RSC, Lit Funding and LawMax. However, Stephanie Weissenstein only produced documentation that showed deposits of \$67,500.00. The RSC agreements alone were for sixty thousand dollars (\$60,000.00) by themselves in litigation funds and living expenses for Defendants advanced by RSC to Plaintiff Rakowsky for Defendant James Spencer executed under terms and agreement also both acknowledged, agreed to and executed by Plaintiff John Rakowsky.

24. On July 12, 2011, the captioned Defendants learned that Plaintiff John Rakowsky and his legal counsel, Stephanie Weissenstein, had failed to respond to repeated requests by RSC for documentation that Plaintiff John Rakowsky is contractually obligated to provide to RSC.<sup>7</sup>

25. Additionally, as a result of: (1) the untruthful statements given to the Court during the July 11, 2011, hearing by the Plaintiff's counsel, Stephanie Weissenstein, on and for the behalf of Plaintiff Rakowsky and Defendant Falgione; (2) the *ex parte* communications conducted with the Court including *ex parte* evidence presented to the Court and sealed by the Court, upon information and belief only shared with Defendant Falgione and Defendant Horry County's legal counsel Andrew Biedemann and (3) the Court Order issued on August 3, 2011, making the information confidential due under contract to Defendant James Spencer and RSC regarding the use and authorization by Defendant James Spencer of the litigation

<sup>7</sup> Plaintiff John Rakowsky executed a notarized signature on a contract with RSC obligating Mr. Rakowsky to: "Transferor [Defendant James Spencer] hereby authorizes his attorney [John Rakowsky] to release to Transferee [RSC] any information, files, records, documents regarding the Litigation requested by Transferee [RSC] who agrees to treat such information as privileged..." - from the RSC funding agreement, executed on June 22, 2005, by Plaintiff John Rakowsky and Defendant James Spencer.

funds provided by RSC, it is clear that Plaintiff John Rakowsky misused this court to breach his fiduciary duty to Defendant Spencer and RSC.

26. Additionally, the Court Order issued on August 3, 2011, appears to make confidential and thus unavailable to the Defendants pertinent information the Defendants are entitled to under the South Carolina Rules of Professional Conduct Section 1.16 and Rule 417, SCACR.
27. Plaintiff Rakowsky has, therefore, breached his fiduciary duty regarding the care of the \$60,000.00 entrusted and advanced by Defendants obtained from RSC by Plaintiff John Rakowsky for use as directed by Defendant James Spencer.
28. Plaintiff Rakowsky has conducted *ex parte* communications with the Court and provided *ex parte* evidence to the Court which the Court has sealed in violation of Rule 3, CJC, Rule 501, SCACR, Canon 3(B)(5) which states, "judge shall not initiate, permit, or consider *ex parte* communications, or consider other communications made to the judge concerning a pending proceeding or consider other communications made to the judge outside the presence of the parties concerning a pending proceeding".<sup>8</sup>
29. Plaintiff Rakowsky unlawfully used this Court to conceal expenditures from the claimed \$60,000.00 in litigation funds provided by Spencer through RSC.
30. Plaintiff Rakowsky wrongfully withheld (by and through the misuse of this Interpleader action and this Court) the reported remaining \$9,855.00 in litigation funds. Further, Plaintiff Rakowsky claims to have expended additional amounts

<sup>8</sup> The *ex parte* communications excluding the Defendants (as defined herein), by Plaintiff John Rakowsky and/or his Counsel with the Court occurred, but are not limited to, on or before May 21, 2010, on or about February 22, 2011, on or about June 24, 2011, on or about July 11, 2011, and on or about the end of July 2011.

of litigation funds after filing the Interpleader without required authorization by Defendant Spencer after it had previously mutually agreed the \$2,167.04 invoice (see footnote 3 herein) was not proper by both Plaintiff Rakowsky and Defendant Spencer when received. Any such payment is a breach of fiduciary duty by Plaintiff Rakowsky due Defendant Spencer and a clear demonstration of the lack of legal basis initiating this baseless Interpleader action regarding litigation funds.

31. Plaintiff Rakowsky presented what he claimed to the court was a full accounting of monies he received from LawMax and Lit Funding, the two funding companies he named as Defendants in the Interpleader (*See Exhibit A, an accounting from Plaintiff's counsel Stephanie Weissenstein documenting total receipts as \$67,500.00 into the Rakowsky account from Lit Funding and LawMax*). Exhibit B (*See Exhibit B, attached hereto*), documents that Rakowsky acknowledged receipt through his signed record provided to the court by Rakowsky he received \$50,000 from Lit Funding, \$25,000<sup>9</sup> from RSC and \$35,000 from LawMax, for a total of \$110,000.00 into litigation funds that went to Rakowsky for litigation and living expenses as needed as determined by Defendant Spencer. Therefore, Rakowsky clearly is concealing at least \$42,500.00 (forty two thousand, five hundred dollars) of litigation funds an amount untruthfully had been verified by Stephanie Weissenstein on the Court record as having been properly accounted for under Rule 417 a summary of which was presented to the Defendants by Plaintiff's counsels (*See Exhibit A*). Stephanie Weissenstein claimed that a complete accounting was kept which she

<sup>9</sup> See Check from RSC deposited into Rakowsky's account documenting \$25,000 (of the \$60,000 funded by RSC) that Rakowsky did not account for as received funds in his Interpleader (*Attached hereto Exhibit C*).

reviewed and confirmed under the South Carolina Rules of Professional Conduct Section 1.16 and Rule 417, SCACR, however, the former Defendants were not entitled to see such records under the rules, a statement she has repeatedly made on the court record. Weissenstein, Ballard and Rakowsky therefore, knew or would have known both who the remaining litigation funds belonged to, which means there never was a basis for the remaining litigation funds to have been interplead and also the fact the remaining litigation funds accounted for by Plaintiff Rakowsky and his legal counsels were understated by \$42,500.00 due to the record requirements of Section 1.16 and Rule 417 of the SCACR which were claimed to have been complied with by the Plaintiff and Plaintiff's counsels.<sup>10</sup>

32. Upon information and belief, Plaintiff Rakowsky has breached his contract with Defendant Spencer and Defendant Spencer seeks a full refund of the \$42,500.00 and the \$9,855.00 for a total of \$52,385.00 plus interest of 8.75% compounded annually from the date July 14, 2007, to the date of payment in full of this amount plus interest as directed by Defendant Spencer.

33. The Defendants allege Plaintiff John Rakowsky withheld the remaining litigation funds, living expenses and the records regarding the litigation funds due Defendants under contract and/or as required by the South Carolina Rules of Professional Conduct Section 1.16 and Rule 417, SCACR, to prevent the use of

<sup>10</sup> Despite Desa Ballard and Stephanie Weissenstein's claims to the contrary, they cannot have it both ways. They have stated on the record all accounting records were maintained as required under the SCRPC Section 1.16 and Rule 417 of the SCACR by Plaintiff Rakowsky as verified by them. If that were true then there would be no confusion as to who the remaining litigation funds belonged to, however, if there was truly a confusion as to who the remaining litigation funds belonged to by Plaintiff Rakowsky he committed legal malpractice because the rules required each clients funds, receipts and disbursements be segregated and accounted for. The Plaintiff's legal counsels and Plaintiff are being untruthful to the tribunal.

the litigation funds by indigent and disabled Defendants to financially undermine any malpractice action against Plaintiff Rakowsky and Defendant and Falgione.

### Jurisdiction

34. This Court has jurisdiction to hear Counter Claims under SCRPC Rule 22(a).
35. South Carolina courts have considered breaches of fiduciary duty as the basis for contractual and tort actions. See e.g., *Corley v. Ori*, 326 S.C. 89, 485 S.E.2d 97 (1997); Restatement 2nd Torts § 874 cmt. (C) (1979); *Hendricks v. Clemson Univ.*, 339 S.C. 552, 561 (S.C. Ct. App. 2000)
36. Competing claims regarding the funds involved in the Interpleader action include, but are not limited to, a claim that Plaintiff John Rakowsky breached his fiduciary duty regarding \$52,385 in litigation funds advanced by Defendant Spencer.
37. The Defendants allege this Court has been misused by Plaintiff Rakowsky to circumvent his fiduciary duty and to circumvent his requirements under the South Carolina Rules of Professional Conduct Section 1.16 and Rule 417, SCAGR, regarding the litigation funds for the sole purpose of financially undermining Defendants' efforts to bring a Legal Malpractice action against Plaintiff Rakowsky and his co-counsel Defendant Falgione.

"One who uses a legal [\*\*256] process, whether criminal or civil, against another primarily [\*\*\*16] to accomplish a purpose for which it is not designed, is subject to liability to the other for harm caused by the abuse of process." Restatement (Second) of Torts § 682 (1977) (emphasis added). As noted in the Restatement comment, "the significance of [primarily] is that there is no action for abuse of process when the process is used for the purpose for which it is intended, but there is an incidental motive of spite or an ulterior purpose of benefit to the Defendant." Restatement (Second) of Torts § 682 cmt. b. at 475 (1977). Accordingly, liability exists not because a party merely seeks to gain a collateral advantage by using some legal process.

but because the collateral objective was its sole or paramount reason for acting. See *id.*, Harper, *supra*, § 4.9 at 4:84-85. HN37 ("The process must be used primarily to accomplish the ulterior end.")

Food Lion, Inc. v. United Food & Commer. Workers Int'l Union  
351 S.C. 65, 75 (S.C. Ct. App. 2002)

38. The Defendants seek a jury trial for all causes of action related to this Interpleader Complaint and Counter Claims still outstanding after the Court rules on the Defendant's motion to release the remaining litigation funds per the pending October 20, 2008, Defendant's motion plus any and all accrued interest on said funds.

#### COUNTER CLAIM RELIEF SOUGHT BY DEFENDANTS

**WHEREAS** the Defendants seek:

39. The remaining litigation funds clearly documented as provided by James Spencer from RSC, Lit Funding and LawMax (\$52,385.00) to Plaintiff Rakowsky. The \$52,385.00 is to be reduced by the remaining litigation funds, purportedly \$9,855.00, or any portion thereof held by Plaintiff John Rakowsky, that are turned over forthwith to the Defendants herein named attorney's trust account as Defendants pray are. Ordered by the Court in regard to Defendants' pending motion of October 20, 2008.
40. Plaintiff Rakowsky place the disputed \$55,000.00 of settlement money in an interest earning trust account of Defendants herein named attorney for safekeeping for release only as directed by Court Order so said funds can be earning interest.
41. Punitive damages of an amount to be determined by a jury for the misuse of judicial process in these matters to be assessed against Plaintiff Rakowsky.

42. The Court impute an interest rate of eight and three-fourths percent (8.75%) per annum<sup>11</sup> to be used to compute interest on remaining litigation funds (the \$9,855.00 and the \$42,500.00). This interest is to be computed from the date of July 14, 2007, to the date the \$52,385.00 in litigation funds are deposited into an account designated by Defendant Spencer.
43. Defendants seek an amount for their bills for legal research and costs owed for consulting fees incurred by the Defendants for Plaintiff Rakowsky bringing this baseless Interpleader action regarding the litigation funds. An amount that totals in excess of \$8,400.00 as of the date of this filing to be increased for costs that continue to be incurred and owed from the date of this filing.
44. Defendants reserve the right to amend this complaint if and when Plaintiff allows a proper discovery which all efforts to date have been unsuccessful.
45. Any other amount the Jury finds proper in order to deter such action from occurring in the future by members of the South Carolina Bar.
46. The Court impute an interest rate of eight and three-fourths percent (8.75%) per annum<sup>12</sup> to be used to compute lost interest on the settlement funds (\$55,000.00) from the date of deposit into Desa Ballard's account until the date the funds are deposited into an interest bearing account by order of this Honorable Court.
47. Any and all costs of counsel(s) and counsel's legal fees if counsel(s) can be found to represent the indigent Defendants in this action.

<sup>11</sup> S.C. Code Ann. § 34-31-20, Legal rate of interest. "In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest, according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum."

<sup>12</sup> *Ibid*

Deposits.....\$ 67500.00
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## Expenses thru 8/01/06

S. Smith.....	1250.00
postage.....	23.65
Forensic Analysis (S. Cain).....	11000.00
R. Sarota (Expenses).....	1050.00
Equipment.....	613.00
Copies.....	28.50
Copies/ikon.....	315.15
M. Hardee.....	150.00
Garber Reporting.....	379.45
Garber Reporting.....	508.80
Copies/ikon.....	418.49
Copies/ikon.....	69.63
Copies/ikon.....	50.65
Copies/ikon.....	73.22
J. Spencer (Personal Advance).....	2500.00
Kim Sellers.....	1980.00
Clerk of Court/Jury Info Misc.....	175.00
Cl. Of Appeals.....	170.00
Long Distance.....	78.53
Marybeth Collet.....	2055.00
Eugene Chewning.....	6306.25
Glenn Harrison.....	2646.18
Federal Court.....	175.00
Postage.....	37.00
Glenn Harrison.....	6094.00
J. Spencer (Personal Advance).....	5000.00
Long Distance.....	170.55

Misc Supplies.....	128.28
Copies/Leas.....	365.30
Long Distance.....	374.50
Gibson Moore Appellate Services.....	361.28
Sub Total Expenses Thru 8/01/06.....	\$44547.41

8/01/06 Balance.....	\$22,952.59
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Allen Geoghgan.....	500.00
Misc. Supplies.....	97.50
J. Spencer (Personal Advance).....	1500.00
Long Distance.....	76.73
John O'Leary.....	3000.00
Forensic Tape Analysis, Steve Cain.....	900.00
Long Distance.....	37.38
J. Spencer.....	1200.00
Adrian Falgione, Copies.....	600.00
John Rakowsky, Travel Costs.....	697.50
M & M Document Center.....	117.13
Supplies, Binders, Copies.....	315.00
Al Cannon.....	300.00
Adrian Falgione, Long Distance.....	650.00
Southern Reporting.....	283.40
Spectrum Reporting.....	100.00
Rose Reporting.....	291.20
Creel Reporting.....	100.00
Spectrum Reporting.....	445.00
Williams Reporting.....	144.00

Spectrum Reporting.....135.50

John O'Leary.....1106.40

**Sub Total Expenses Thru 9/01/07.....\$13,096.74**

**Balance on Account for James Spencer.....\$9,855.85**

\*\*\*DISCLOSURE STATEMENT\*\*\*

EXHIBIT B  
1 of 2

1. Principal Amount to be advanced by Buyer to Seller under this Agreement:

\$35,000.00

2. Minimum annual rate of return for the first year:

2.2x Investment Amount

3. Total amount to be paid by Seller to Buyer (the "LawMax Ownership Stake"):

On or before September 09, 2007	\$63,000.00
After September 09, 2007 but on or before March 09, 2008	\$77,000.00
After March 09, 2008 but on or before September 09, 2008	\$91,000.00
After September 09, 2008 but on or before March 09, 2009	\$105,000.00
After March 09, 2009 but on or before September 09, 2009	\$122,500.00
After September 09, 2009 but on or before March 09, 2010	\$140,000.00
After March 09, 2010	\$157,500.00

\*\*\* CONSUMER'S RIGHT TO CANCELLATION: YOU MAY CANCEL THIS AGREEMENT WITHOUT PENALTY OR FURTHER OBLIGATION WITHIN FIVE BUSINESS DAYS FROM THE DATE YOU RECEIVE FUNDING FROM BUYER. In order for the cancellation to be effective, you must either: (i) return the full amount of disbursed funds to Buyer by delivering Buyer's uncashed check to Buyer's office in person, within 5 business days of the disbursement of funds, or (ii) mail a notice of cancellation and include in that mailing a return of the full amount of disbursed funds (in the form of Buyer's check or a registered or certified check or money order), by insured, registered or certified United States mail, postmarked within five business days of receiving funds from Buyer, at the following address: 459 Columbus Ave., Suite 299, New York, NY 10024.\*\*\*

  
CLIENTS INITIALS





⑆00000166⑆  
07/03/2005  
6125518787

This is a LEGAL COPY of  
your check. You can use  
it the same way you  
would use the original  
check.

5002/007/07 07/03/2005  
84888888  
94888888  
190200000000

RESOLUTION SETTLEMENT CORP.  
1022 W. FLORISSANT RD. SUITE 11000  
LAS VEGAS, NV 89119

127

DATE July 30, 2005

PAY TO THE ORDER OF John Rakovsky and J. G. Spivey

Twenty five thousand and No/100 DOLLARS

COLONIAL BANK  
100 South Main Street  
Las Vegas, NV 89101

FOR \_\_\_\_\_

⑆0000052000⑆

⑆000127⑆

41: 8 2240 378 11:

8035935199⑆

⑆0002500000⑆



Questions about your account, call  
Colonial Connection: 877-502-2255

www.colonialbank.com

## Business Edge Checking

ACCOUNT NUMBER 8035935199

STATEMENT PERIOD July 1, 2008 - July 31, 2008

Page 1 of 2

02010 E02

3 of 3

Colonial Bank appreciates  
your business. Thank you  
for being our Customer.

**RESOLUTION SETTLEMENT CORPORATION**  
9360 W. FLAMINGO RD SUITE 110-527  
LAS VEGAS NV 89147

### Account Summary

Previous Balance	\$ 54,790.73	Average Collected Balance	\$ 18,812.91
Total Credit(s)	54,000.00		
Total Debit(s)	-44,907.30		
Service Charge	-0.00		
Ending Balance	\$ 63,883.43		

### Account Details

#### Deposits and Other Credits

DATE	DESCRIPTION	AMOUNT
7/8	DEPOSIT	7,500.00
7/28	DEPOSIT	46,500.00

#### Checks Paid A indicates check missing in sequence.

CHECK	DATE	AMOUNT	CHECK	DATE	AMOUNT
127	7/1	25,000.00	134 A	7/7	17,000.00
129 A	7/11	1,000.00	135	7/21	45.00
130	7/8	500.00	136	7/27	49.28
131	7/7	478.02	137	7/18	425.00
132	7/7	216.00	138	7/21	200.00

#### Daily Balance Summary

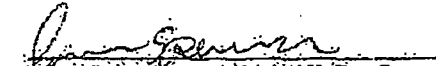
DATE	BALANCE	DATE	BALANCE	DATE	BALANCE
6/30	54,790.73	7/8	19,096.71	7/21	17,426.71
7/1	29,790.73	7/11	18,098.71	7/27	17,383.43
7/7	12,096.71	7/18	17,671.71	7/28	63,883.43

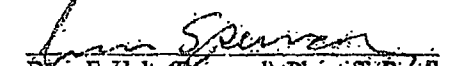
COLONIAL BANK, N.A.  
MEMBER FDIC


FINANCIAL STRENGTH IN LOCAL HANDS.


01015100100 001851 46


RESPECTFULLY SUBMITTED  
This 29<sup>th</sup> day of August, 2011. By:

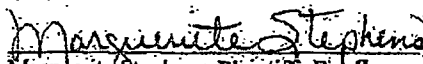
  
James Brian Spencer, Plaintiff, *Pro Se*  
Suite 183  
7001 Saint Andrews Road.  
Columbia, SC 29212

  
Doris E. Holt, (Deceased), Plaintiff, *Pro Se*  
Suite 183 by Administrator of Estate  
7001 Saint Andrews Road  
Columbia, SC 29212

  
Rodney K. Lail, Plaintiff, *Pro Se*  
Suite 183  
7001 Saint Andrews Road  
Columbia, SC 29212  
(843) 626-3229

  
Irene Santacroce, Plaintiff, *Pro Se*  
1836 Fall Pines Circle  
Columbia, SC 29205  
(843) 455-0891

  
Ricky Stephens, Plaintiff *Pro Se*  
207 Deer Trace Circle  
Myrtle Beach, SC 29588  
(843) 283-6751

  
Marguerite Stephens, Plaintiff, *Pro Se*  
207 Deer Trace Circle  
Myrtle Beach, SC 29588

CERTIFICATE OF SERVICE

I, James Spencer, *Pro Se*, do hereby certify that the foregoing **CERTAIN DEFENDANTS' AMENDED RESPONSE AND COUNTER CLAIMS IN RESPONSE TO JOHN RAKOWSKY'S SECOND AMENDED COMPLAINT FOR INTERPLEADER** has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

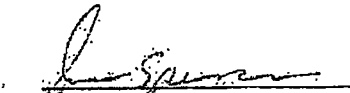
Stephanie Weissenstein, Esquire  
Ballard Watson Weissenstein  
PO Box 6338  
West Columbia, SC 29171

Defendant Adrian Lee Falgoutte, *Pro Se*  
Law Offices of Adrian Lee Falgoutte, LLC  
P O Box 277  
Lexington, SC 29071

Andrew F. Lindemann  
Davidson & Lindemann, P.A.  
for Defendant Horry County, SC  
PO Box 8568  
Columbia, SC 29202

This 29<sup>th</sup> day of August, 2011

By:

  
James Spencer, *Pro Se*  
Box 183  
7001 Saint Andrews Road  
Columbia, SC 29212

JEANLUCIE B. MORGENTHAU  
C.C.P. & G.S.  
2011 AUG 29 AM 10:59

FILED

**EXHIBIT "C"**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Case No. 2012-CP-32-3428

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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.

---

**RESPONDENT JOHN R. RAKOWSKY'S DESIGNATION OF MATTERS  
TO BE INCLUDED IN THE RECORD ON APPEAL**

---

Respondent John R. Rakowsky proposes the following to be included in the Record on

Appeal:

1. Order filed December 6, 2013 (denying Motion to Reconsider)
2. Order filed November 1, 2013 (denying Motion to Disqualify)
3. Order filed August 23, 2013 (granting Motion to Dismiss)

4. Order filed June 27, 2013 (assigning to Judge Addy)
5. Order filed May 13, 2013 (dismissing Santacroce, scheduling hearings)
6. Order filed October 1, 2012 (denying Motion to Reconsider Venue Order)
7. Order filed August 15, 2012 (granting Motion to Change Venue)
8. Order filed June 28, 2012 (denying Santacroce Motion to Disqualify, etc.)
9. Order filed June 28, 2012 (denying Requests for Default)
10. Complaint filed August 15, 2011
11. Rakowsky's Motion to Dismiss filed November 3, 2011
12. Falgione's Motion to Dismiss filed November 4, 2011
13. Spencer's Motion to Disqualify filed March 27, 2012
14. Falgione's Motion to Change Venue filed May 17, 2012
15. Rakowsky's Motion to Change Venue filed June 4, 2012
16. Pltf's Motion to Reconsider Dismissal filed September 9, 2013
17. Transcript of June 5, 2013 Hearing
18. Transcript of May 27, 2012 Status Conference
19. Affidavit of Rakowsky dated January 25, 2012
20. Affidavit of Rakowsky dated January 26, 2012
21. Letter of Judge Barber, July 31, 2012
22. Court Exhibits 1 and 2 at June 5, 2013 Hearing

I certify that this designation contains no matter which is irrelevant to this appeal.

RECEIVED

MAR 11 2016

SC Court of Appeals

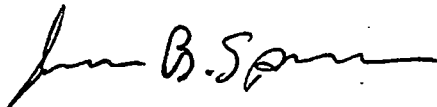
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on March 11, 2016, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail or by courier.

Documents Served: **MOTION TO FILE JOINT APPENDIX  
OUT OF TIME**

Parties Served:

Desa Ballard, Esquire  
Ballard and Watson, Attorneys at Law  
PO Box 6338  
West Columbia, SC 29171



---

James B. Spencer, *Pro Se*  
Suite 183  
7001 Saint Andrews Road  
Columbia, SC 29212