

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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MAR 15 2016

SC Court of Appeals

Case No: 2014-002029

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*

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

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 Court to dismiss Respondent’s motion for the following reasons.

1. Despite being ordered by the Honorable Judge Barber to maintain open email communications and direct communications with the *Pro Se* Appellant James Spencer and the undersigned counsel, Respondent’s counsel has refused to do so. This has severely hampered if not prohibited communications that would have facilitated assembling a Joint Appendix with the specific documents identified by Respondent’s counsel. **See attached Affidavit (*Exhibit A*).**

2. Respondent’s Designation of Matter listings has made it problematic to include documents that either do not exist, or cannot be found to be included in the Joint Appendix. The following listing is an example of such a request identified by use of the numbering from the Respondent’s Designation of Matter:

- Item number 1 – “Form Order of December 17, 2013, signed by Judge Barber, Case No. 2008-CP-40-6656,” *could not be found. Appellants cannot produce something that we do not have and by all appearances 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 B) 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.*
- 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. Appellants took the liberty of inserting into the Joint Appendix an email dated October 4, 2014, in the belief that document 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 located.

Given the foregoing and the result that some of documents that were included in the Joint Appendix were the best attempt to provide the documents contained in the Respondent's flawed list or what was found in lieu of the specific document contained in the flawed list, neither the undersigned counsel nor the *Pro Se* Appellant can in all honesty comply with Rule 210 (G) by claiming "Appellant or his counsel shall certify that the Joint Appendix contains all material proposed to be included by any of the parties and not any other material." However, it can be said that the Appellants has made every possible effort to comply with the above statement.

Respondent's counsel knows Appellants' counsel has been out of the United States and that Appellants' counsel is working with disabled clients. Furthermore, the *Pro Se* Appellant is 100% disabled with worsening medical conditions and related symptoms. Represented Appellants' counsel is a solo practitioner with a part time legal assistant who has little experience. All the Appellants are indigent and counsel is handling this case on a *Pro Bono* basis.

This legal action was brought in "bad faith" by the Respondent in an effort to tie up litigation funds and economically starve out the Appellants from pursuing a legal malpractice lawsuit. There was no conflicting claims against the remaining litigation funds but instead of returning the litigation funds as required when Appellants asked for their return, Respondent, in order to deny the undersigned

Appellants' funds to secure counsel in a malpractice action, Respondent claimed he did not know which of the seven independent clients he received the funds from. If the Respondent had complied with the law, specifically South Carolina Court Rule 407, 1.8 (g) in compliance with Local Federal Rule 83.I.08, which states in the case of an aggregate settlement, which the *imposed* settlement was:

“A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client [*“an informed consent agreement”*]. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.”

Moreover, Rule 1.15 (a) Safekeeping Property, Rule 417, SCACR (Financial Recordkeeping) which requires that all necessary and appropriate records be kept for each of the seven individual clients of Respondent, there would have been no basis for the Interpleader.

The Respondent has refused to produce such documents and by Respondent's own refusal to comply with the law he inappropriately brought this interpleader lawsuit against the Appellants listed herein.

The Respondent's counsel to date has not conducted this case with professional courtesy and mutual discourse. Respondent's counsel by not doing so has caused unnecessary errors in filings, a tactic she then seeks to use as a remedy for the lack of merits for bringing this action attempting to have

this case dismissed through a technicality rather than have this case heard on the merits.

Appellants will not waste the Court's time by going far afield as the Respondent did in another of his endless motions to dismiss. Therefore, Appellants will not address Respondent's version of already resolved matters by the Court loaded into the motion to try to provide substance and divert the Court's attention. In that regard, the Appellants by not responding to previously decided issues or the Respondent's revised versions of those issues are not admitting to any of his allegations (*emphasis added*). The Appellants are simply addressing the issues concerning the Joint Appendix. The Respondent's requests in his Designation of Matter for what does not exist, cannot be found, and/or misidentified also cannot be dealt with through one-sided communications imposed by Respondent's counsel. Appellants were forced to make assumptions as to what was being requested to include in the Joint Appendix. In any case, this precludes the ability of the Appellants to certify, what is presented is all-inclusive and accurate under Rule 210 (G).

Appellants do however certify they made a good faith effort to comply with the Rules given the errors and unclear statements contained in Respondents Designation of Matter and attest to that in lieu of the using

wording under Rule 210 (G), which if used would be untruthful. This lack of specific wording is through no fault of the Appellants.

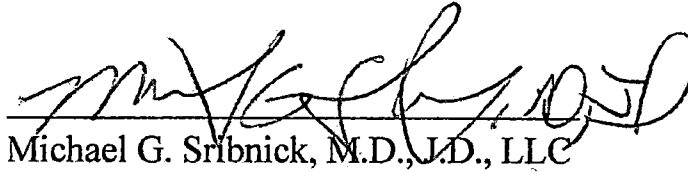
CONCLUSION

This motion should be dismissed with prejudice with attorney fees awarded by this Honorable Court to the represented Appellants for having to respond to a situation caused by the Respondent. Furthermore, this Court should Order the Respondent to produce the documents he wants to include that may be missing based on Respondent's problematic Designation of Matter.

SIGNATURES ON THE NEXT PAGE

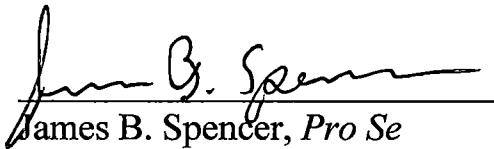
Submitted this March 15, 2016,

By:



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

By:



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

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Case No: 2014-002029

APPEAL FROM RICHLAND COUNTY
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Judge Doyet A. Early, III, Circuit Court Judge

Case No. 2008-CP-40-6656

John R. Rakowsky, Respondent

v.

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Estate of Doris Holt, Appellant
Rodney Lail, Appellant

and

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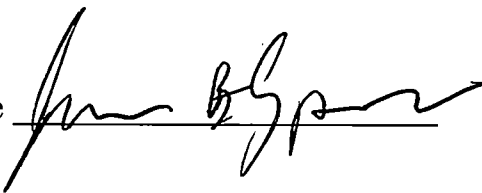
AFFIDAVIT OF JAMES SPENCER

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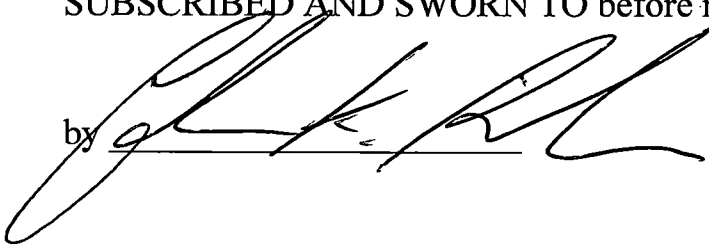
PERSONALLY APPEARED before me the undersigned James Spencer who after being duly sworn states the following:

1. I am over eighteen years of age and qualified to testify.
2. The information in this affidavit is based on my personal knowledge.
3. Respondent's counsel has refused to have contact with me and/or those helping me despite the fact Judge Barber had ordered her former Associate Counsel, Stephanie Weissenstein, that they were to communicate including, but not limited to, email.
4. My emails to Respondent's counsel go unanswered.
5. I have made a good faith effort to comply with the Rules given the errors and unclear statements contained in Respondents Designation of Matter and I attest to that under Rule 210 (G).

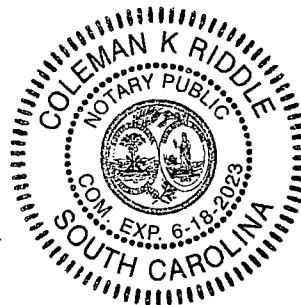
AFFIANT FURTHER SAYETH NAUGHT

Signature 

SUBSCRIBED AND SWORN TO before me this 14th day of March, 2016,

by 

NOTARY PUBLIC FOR SOUTH CAROLINA



My Commission Expires 06/18/2023

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

AW

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.

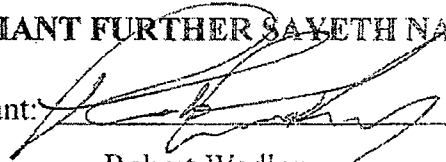
- 6. I could not find any documentation regarding the "Form 4 Order" and/or reason for dismissing the Omnibus motions that Judge Early stated he filed with the Richland County Clerk of Court's Office on September 9, 2014.
7. In order to make certain that I did not miss anything in the file I sought the 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:

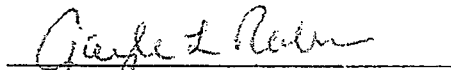

Robert Wadley

Date:

10/24/2014

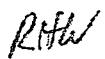
Sworn and subscribed to before me

this 24 day of October, 2014


Notary Public for South Carolina

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

My Commission expires on _____



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 Taibbe, 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 Taibbe

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 _____

RICHLAND COUNTY
 CLERK OF COURT
 2014 SEP 18 AM 9:51
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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

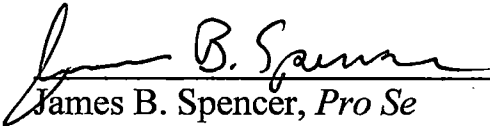
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 15, 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: **CORRECTED RETURN ON MOTION TO DISMISS OR MOTION TO REQUIRE COMPLIANCE WITH RULE 210(C) AND (G) AND TO PAY RESPONDENT'S ATTORNEY FEES**

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