

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE LEXINGTON COUNTY  
Court Of Common Pleas

Frank R. Addy, Circuit Court Judge

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APPELLATE CASE NO.: 2014-000091

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**RECEIVED**

MAR 28 2016

SC Court of Appeals

James Spencer, individually and on behalf of the Estate of Doris Holt  
and on behalf of Southern Holdings, Inc.; and Irene Santacroce, Plaintiffs,

Of whom James Spencer is the Appellant, Appellant,

v.

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

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

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RETURN TO MOTION TO REINSTATE

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Respondent Adrian L. Falgione (“Falgione”), by and through his undersigned  
counsel, submits this return in response to the Motion to Reinstate served upon counsel  
for Falgione on March 21, 2016 by the Appellant, James Spencer (“Appellant” or  
“Spencer”).

**DISCUSSION**

Spencer blames his repeated failure to serve and file a proper record on appeal on  
the Respondents. Specifically, Spencer argues the Respondents’ designations of matter  
failed to comply with Rule 209(b) because they were “misleading,” “inaccurate,” and

“insufficient.” (App.’s Mot. to Reinstate at 2.) Appellant also claims Respondents’ counsel ignored his requests for clarification of the designations. For the reasons discussed below, the Court should reject Appellant’s arguments, deny his motion to reinstate, and issue the remittitur.

**I. Respondents’ Designations satisfy Rule 209(b), SCACR.**

Despite Spencer’s arguments, the Respondents’ respective designations of matter are not misleading, inaccurate or insufficient. Rule 209(b), SCACR, requires that a party’s designations “clearly identify what the party desires to have included in the Record on Appeal. . . .” Appellant argues the following designations<sup>1</sup> failed to satisfy that standard:

- (1) Letter from Court to Parties dated May 30, 2013;
- (2) Answer Regarding Waiver or Recusal, May 28, 2013;
- (3) Notice of Appearance, November 4, 2011;
- (4) Motion to Dismiss, November 4, 2011;
- (5) E-mail from Headley to Court, May 7, 2013;
- (6) Transcript of May 27, 2012 Status Conference;
- (7) Order filed November 1, 2013 (denying Motion to Disqualify);
- (8) Order filed October 1, 2012 (denying Motion to Reconsider Venue Order);
- (9) Court Exhibits 1 and 2 at June 5, 2013 hearing;

An examination of these documents in light of the trial court’s file reveals the flaw in Appellant’s reasoning.

Court’s Letter to Parties dated May 30, 2013, and Appellant’s Answer Regarding Waiver or Recusal, filed May 28, 2013.

As part of his explanation of the convoluted procedural history of this case, Falgione cited the Answer Regarding Waiver or Recusal, filed May 28, 2013, and Judge Griffith’s subsequent letter of recusal. Appellant himself filed the Answer Regarding

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<sup>1</sup> Items 1 through 5 are from Falgione’s designations of matter; items 6 through 9, from Rakowsky’s.

Waiver or Recusal on May 28, 2013. (Answer Regarding Waiver or Recusal, **Exhibit A.**) Furthermore, Judge Griffith's letter of May 30, 2013 was sent directly to all parties, including Appellant. (Letter from Court to Parties, May 30, 2013, **Exhibit B.**) Thus, Appellant had both documents. The ignorance of these documents which he claims is questionable.

Notice of Appearance and Motion to Dismiss, both filed November 4, 2011

In early November of 2011, counsel for the Respondents filed respective notices of appearance and motions to dismiss. Rakowsky's notice and motion were dated November 2, 2011 and filed November 3, 2011; Falgione's were dated and filed November 4, 2011. Despite Falgione having clearly described the title and date for the November 4<sup>th</sup> notice of appearance and motion to dismiss filed, Appellant omitted them. Appellant claims the mistake was because he assumed Falgione intended to designate the notice of appearance filed by Rakowsky's counsel. That response, however, is not an excuse. It is undisputed that Falgione's counsel filed a notice of appearance and motion to dismiss on November 4, 2011. Moreover, Appellant overlooks the fact that Rakowsky's notice of appearance and motion to dismiss (filed November 3, 2011) were separately listed in Falgione's designations. (See Falgione's Designation of Matter, Items 2 and 3.) The notice of appearance and motion to dismiss filed on behalf of Falgione on November 4, 2011 were clearly identified and were readily available to any diligent and reasonable party.

E-mail from Headley to Court, May 7, 2013.

Appellant claims he omitted a May 7, 2013 e-mail from the record on appeal because he "does not know who 'Headley' is, the gender of Headley, or his relevance to

this case.” This response raises concerns beyond the omission of the e-mail from the record on appeal.

Brian J. Headley, Esquire is a South Carolina attorney whose office is in Mount Pleasant, South Carolina. (See E-mail from Headley to Court, May 7, 2013, **Exhibit C**.) On May 7, 2013, roughly two hours before a hearing was to begin on the Respondents’ motions to dismiss, Headley contacted the Court by e-mail to request a continuance on behalf of Appellant. Id. Headley represented to the Court that Appellant had contacted him that morning about representation and that Headley needed time to evaluate the case. Id. Based upon that representation, the Court continued the motions hearing as to Appellant’s claims. (See Order from May 7, 2013 Hearings, **Exhibit D**.) Appellant was served on May 14, 2013 with a copy of the Court’s order continuing the hearing. Id. On May 16, 2013, Headley notified Judge Griffith that he would not be representing Appellant, stating in part, “I am writing to let you know that I have informed Mr. Spencer that I will not represent him in this action or otherwise be involved.” (E-mail from Headley to Court, May 16, 2013, **Exhibit E**.) If the statement in Appellant’s motion to reinstate is truthful and Headley had no authority to contact the trial court, then Appellant’s claims should have been dismissed based upon Appellant’s failure to appear. (See Order from May 7, 2013 Hearings.) If, on the other hand, Headley’s representations to the Court were truthful, then Appellant’s statement that he never talked to Headley does not help Appellant’s cause.

Transcript of May 27, 2012 Status Conference.

Appellant claims he omitted pages which Rakowsky designated from the transcript of the May 7, 2012 status conference held before Judge Barber because

Rakowsky's designations stated the date as May 27<sup>th</sup>, rather than May 7<sup>th</sup>. Rakowsky's designation clearly contained a typographical error. Nevertheless, Appellant's omission of the additional pages Rakowsky designated is not justified. There was no hearing or other proceeding on May 27, 2012. Appellant had the entire transcript from the status conference, as evidenced by his inclusion of other pages from it in the record he served. Rakowsky's description of the document as the transcript from the "status conference" should have resolved any doubt about the matter.

Order filed November 1, 2013 (denying Motion to Disqualify)

Appellant claims to have omitted the Order denying his motion to disqualify Rakowsky's counsel because he has no record of it and he cannot discern the subject-matter of the order. The trial court's file contains only one order filed on November 1, 2013, and that order is an Order denying Appellant's motion to disqualify Rakowsky's counsel signed by Judge Addy on October 25, 2013. (See Order Denying Mot. to Disqualify, **Exhibit F**.) As shown on the second page of the Form 4 coversheet, the trial court served all parties, including Appellant, with a copy of the Order promptly after it was filed. Appellant has provided this Court no excuse for omitting that Order.

Order filed October 1, 2012 (denying Motion to Reconsider Venue Order).

Appellant also claims he failed to include the Order denying his motion to reconsider the trial court's Order changing venue because he could not locate an Order filed on October 1, 2012. Similar to the November 1, 2013 Order discussed above, a cursory examination of the trial court's file shows the Order denying Appellant's motion to reconsider was signed by Judge Goldsmith on September 26, 2012, file stamped on October 1, 2012, and served on Appellant and other parties on October 5, 2012. (See

Order filed October 1, 2012, **Exhibit G.**) Appellant's claim that the clerk's office told him the order was filed October 5, 2012, rather than October 1, 2012, is no excuse for Appellant's failure to include the order in the record on appeal.

Court Exhibits 1 and 2 from the June 5, 2013 motions hearing.

Appellant next claims he failed to include two exhibits submitted during the June 5, 2013 motions hearing because he never received copies of them. The first exhibit is Rakowsky's memorandum in opposition to Appellant's motion to disqualify Rakowsky's attorneys, which was served on Appellant months prior to the hearing. (See Transcript excerpts, **Exhibit H.**) The second is a June 21, 2008 letter Appellant himself presented to the Court at the hearing. *Id.* Not only were both documents included in the trial court's file, it was Appellant, not either of the Respondents, who submitted the June 21, 2008 letter. It is evident, therefore, that Appellant had access to those documents.

Other Documents and Issues

Notably, Appellant's motion fails to address *all* of the documents designated by Falgione which were excluded from the record on appeal. Appellant offers no explanation why he failed to include Falgione's Memorandum in Support of Motion to Dismiss and Falgione's Motion to Transfer Venue. For that reason alone, the Court should deny Appellant's motion to reinstate.

Furthermore, although he claims to have made every effort and has "exhausted every legal alternative" to comply with the Appellate Court Rule and with this Court's Orders, the undersigned was aware of no attempt by Appellant to obtain clarification or copies of matter designated until Appellant served his motion to reinstate. To date, the

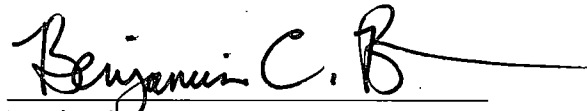
only indication counsel has received of Appellant's attempt is what Appellant filed with his motion.<sup>2</sup>

Finally, Appellant has pointed to nothing that occurred *after* this Court's January 21, 2016 Order which prevented his ability to serve a complete record on appeal. If Respondents' designations violate Rule 209(b), SCACR, that issue would have arisen prior to January 21, 2016 when Appellant first tried to prepare the record on appeal. That Appellant makes raises the issue now illustrates the disregard he showed Respondents' designations before the Court's January 21, 2016 Order directing otherwise.

### CONCLUSION

For these reasons, the Appellant has failed to provide this Court any justifiable reason why he failed to serve a record on appeal that included all of the matter the Respondents designated, and the Court should deny Appellant's motion accordingly.

March 25, 2016



Benjamin C. Bruner  
Bruner, Powell, Wall & Mullins, LLC  
P.O. Box 61110  
Columbia, South Carolina 29260  
803-252-7693  
*Attorney for Adrian L. Falgione*

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<sup>2</sup> In support of his motion, Appellant included affidavits from himself and his hired assistant which claim Appellant attempted to contact Respondents' counsel but received no response. Contrary to that self-serving testimony, the undersigned received no telephone call, facsimile, e-mail, letter, or other communication from Appellant requesting clarification or copies of designated matter. (Bruner Aff., March 25, 2016, **Exhibit I**.)



ORIGINAL

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 28, 2013, the document described below, was (were) served on all parties of record in this case by mailing a copy, by US mail and addressed as set forth below, and a copy by email.


**Topic: Request for Recusal**

Parties Served:

Irene Santacroce  
205 Deer Trace Circle  
Myrtle Beach, South Carolina 29588  
*Pro Se* Plaintiff

Amanda K. Dudgeon  
Carlock, Copeland & Stair, LLP  
40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
Attorneys for John Rakowsky

Bruner, Powel, Wall & Mullins, LLC  
1735 St. Julian Place, Suite 200  
Post Office Box 61110  
Columbia, South Carolina 29260-1110

  
**James B. Spencer, *Pro Se* Plaintiff**  
Box 183  
7001 Saint Andrews Road  
Columbia, SC 29212  
(803) 414-0889

U.S. DISTRICT COURT  
SOUTH DISTRICT OF SOUTH CAROLINA  
COLUMBIA, SOUTH CAROLINA

2013 MAY 28 2:02

FILED



State of South Carolina  
The Circuit Court of the Eighth Judicial Circuit

Taylor Rollins  
Law Clerk

Post Office Box 375  
1228 College Street  
Newberry, SC 29108  
Phone: (803) 321-1430  
Fax: (803) 276-3281  
egriffithc@sccourts.org

May 30, 2013

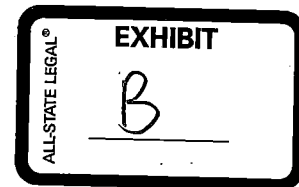
Via Facsimile

Benjamin Bruner  
Bruner, Powell, Wall & Mullins LLC  
P.O. Box 61110  
1735 St. Julian Place, Suite 200 (29204)  
Columbia, South Carolina 29260-1110  
Fax Number: (803) 753-0060

Amanda K. Dudgeon  
Carlock, Copeland & Stair, LLP  
40 Calhoun Street Suite 400  
Charleston, South Carolina 29401  
Fax Number: (843)727-2995

Irene Santacroce  
205 Deer Trace Circle  
Myrtle Beach, South Carolina 29588  
Fax Number: (843) 455-0891

James Spencer  
Box 183  
7001 Saint Andrews Road  
Columbia, South Carolina 29212  
Fax Number: (843) 455-7777



Re: Spencer, et al vs. Rakowsky et al. Case No: 2012-CP-32-3428

Dear Mr. Bruner, Ms. Dudgeon, Ms. Santacroce and Mr. Spencer:

On May 28, 2013, the Plaintiff filed an Answer Regarding Waiver or Recusal. In this answer, the Plaintiff requested that Judge Griffith recuse himself from all matters related to the above case.

Judge Griffith has recused himself from this case and, in his capacity as Chief Judge for Administrative Purposes for this particular case, has appointed the Honorable Frank R. Addy to hear these motions.

Therefore, Judge Addy will preside over the motions hearing scheduled for Wednesday June 5, 2013 at 9:30 AM. You may direct any correspondence or memoranda which you wish him to consider.

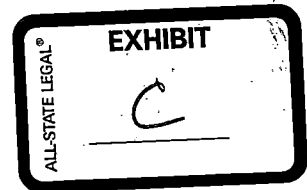
Sincerely,

Taylor Rollins

**Huggins, Mona Denise**

**From:** Brian Headley [bjheadley@yahoo.com]  
**Sent:** Tuesday, May 07, 2013 12:05 PM  
**To:** Huggins, Mona Denise  
**Subject:** James Spencer v. Rakowsky, et al.

**Importance:** High



Dear Ms. Huggins:

To follow up on my voicemail from just a little while ago, I was contacted this morning about potentially representing the Plaintiff in this case. However, I have not yet had a sufficient opportunity to determine whether this is a case that I will take, though I would very much like the chance to further investigate to see if I can help. I understand that a hearing is set for this afternoon at 2:00 p.m. before Judge Griffith. Unfortunately, I will not be able to make it to the hearing to appear in person, but I could be available to appear by phone if the Court would so allow. At this point, I would ask that the Court postpone the hearing – which I understand was set for hearing only within the last week – to allow some additional time to explore representation and/or formally respond to the pending motion(s). I have also attempted to contact defense counsel to request that the hearing be postponed, but I have not yet heard back from them.

I appreciate your consideration and assistance. Should you need anything further, please do not hesitate to contact me.

Very truly yours,

Brian

Brian J. Headley, Esquire  
The Headley Law Firm  
145 Historic Drive  
Mount Pleasant, SC 29464  
(843) 375-6181  
(843) 375-6185 (fax)

BEITH A. O'CONNOR  
CLERK OF COURT  
LEXINGTON, SC

2013 MAY - 8 A 8:50

FILED

**ORIGINAL**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL CIRCUIT

MAY 13 2 59

James Spencer, individually and on behalf of )  
the Estate of Doris Holt and on behalf of )  
Southern Holdings, Inc.; and Irene Santacroce; )

C/A No. 2012-CP-32-3428

Plaintiffs, )

v. )

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

Defendants. )

ORDER



THIS MATTER came before the undersigned for a hearing at the Lexington County Courthouse on May 7, 2013 on seven motions currently pending before the Court. At the hearing, Amanda K. Dudgeon, Esquire appeared on behalf of John Rakowsky ("Rakowsky"), and Benjamin C. Bruner, Esquire appeared on behalf of Adrian Falgione and his law firm (collectively, "Falgione"). No one appeared on behalf of the Plaintiffs.

The Plaintiffs in this matter are *pro se*. Immediately prior to the hearing, the Court received correspondence from Brian J. Headley, Esquire ("Headley") that Plaintiff James Spencer ("Spencer") contacted him the same morning about representation. Mr. Headley requested that the hearing be continued for thirty (30) days to allow him time to review the file and determine whether to represent Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc. (collectively, "Spencer Plaintiffs"). The Defendants objected to a continuance and requested that either the hearing proceed or the case be dismissed pursuant to a prior Order in this case issued by Judge Barber on June 14, 2012 and filed June 28, 2012. I find it proper to allow Headley twenty-one (21) days to determine whether he will represent the Spencer Plaintiffs in this matter.

jen

However, with respect to the claims alleged by Santacroce, this Court is bound by Judge Barber's prior order. In that order, the Court continued three of the motions that are still pending. The Court further ruled,

4. If any Plaintiff shall again fail to appear at any hearing or proceeding in this action without good cause, that Plaintiffs claims shall be dismissed with prejudice.
5. In addition, if any Plaintiff unnecessarily delays this case further, Defendants may seek sanctions.

The Plaintiffs were served with notice of this motions hearing by letter dated April 23, 2013. Santacroce failed to properly request a continuance and failed to appear without good cause. I therefore find all claims by Santacroce in this case should be dismissed with prejudice, pursuant to Judge Barber's June 28, 2012 Order.

As an additional matter, the undersigned disclosed to Headley during a telephone call and to counsel for Rakowsky that he is a distant relative of counsel for Falgione. While this relationship alone is not sufficient to require disqualification, I find it prudent to obtain waiver from the parties before ruling on the merits of the issues in this case. Had the Plaintiffs appeared at the hearing, the Court would have disclosed this relationship on the record and allowed the parties time to discuss waiver. As Headley does not represent any party at this time, he cannot waive the conflict for the Spencer Plaintiffs. Nevertheless, this issue must be resolved before the Court can dispose of the pending motions and proceed with the remainder of the case. Therefore, the Spencer Plaintiffs have ten (10) days from the date of this Order to notify the Court in writing about whether they waive any disqualification and consent to the undersigned hearing this matter.


**IT IS THEREFORE ORDERED, ADJUDGED AND DECREED** as follows:

1. Plaintiff Irene Santacroce's claims in this matter are hereby **DISMISSED WITH**

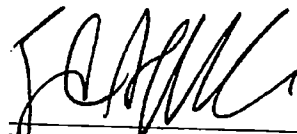
PREJUDICE pursuant to the Order issued June 14, 2012 and filed June 28, 2012;

2. James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., shall notify the Court in writing **within ten (10) days of the date of this Order**, whether they waive any potential disqualification the undersigned may have in this case;
3. A hearing is hereby scheduled for **June 5, 2013 beginning at 9:30 AM at the Laurens County Courthouse in Laurens, SC** on the following motions:
  - i. Rakowsky's Motion to Dismiss filed November 3, 2011;
  - ii. Falgione's Motion to Dismiss filed November 4, 2011;
  - iii. Plaintiff Spencer's Motion to Disqualify filed March 27, 2012;
  - iv. Rakowsky's Motion to Compel Discovery Responses filed July 16, 2012;
  - v. The Plaintiffs' Motion to Compel and Stay Hearings filed July 30, 2012;
  - vi. Falgione's Motion to Quash and for Protective Order filed January 22, 2013; and
  - vii. Rakowsky's Motion to Quash and for Protective Order filed January 25, 2013;
4. In the event the Spencer Plaintiffs timely request that the undersigned recuse himself from further proceedings, the June 5<sup>th</sup> hearing shall proceed as scheduled before another presiding judge;
5. Mr. Headley shall notify the Court in writing by May 29, 2013 whether he represents the Spencer Plaintiffs in this matter. The June 5<sup>th</sup> motions hearing will proceed regardless of whether Mr. Headley agrees to represent the Spencer Plaintiffs; and
6. Any discovery in this matter shall be held in abeyance pending further Order of this Court.

**AND IT IS SO ORDERED.**

May , 2013

Lexington, South Carolina



Eugene C. Griffith, Jr.  
Presiding Judge, Eleventh Judicial Circuit

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2012CP3203428

James Spencer Southern Holdings Inc	Doris Holt Irene Santacroce	John R Rakowsky Law Offices of Adrian Falgione LLC	Adrian L Falgione
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

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.  See Page 2 for additional information.
- 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:

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**INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

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 N/A, and a copy mailed first class or placed in the appropriate attorney's box on 14TH OF MAY 2013, to attorneys of record or to parties (when appearing pro se) as follows:

**James Spencer**  
7001 St Andrews Rd ste 183  
Columbia, SC 29212  
**Irene Santacroce**  
205 Deer Trace Cir  
Myrtle Beach, SC 29588

**Andrew W Countryman**  
Carlock Copeland & Stair LLP  
40 Calhoun St Ste 400 Charleston, SC 29401  
**Amanda Kurzen Dudgeon**  
40 Calhoun St., Ste. 400  
Charleston, SC 29401  
**Benjamin C. Bruner**  
PO Box 61110  
Columbia, SC 29260

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/mh

Beth A. Carrigg - Clerk of Court

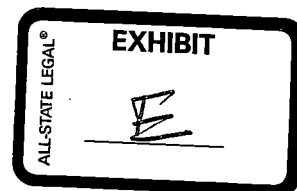
Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

## Ben Bruner

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**From:** Brian Headley [bjheadley@yahoo.com]  
**Sent:** Thursday, May 16, 2013 3:47 PM  
**To:** egriffithlc@sccourts.org  
**Cc:** Ben Bruner; adudgeon@carlockcopeland.com  
**Subject:** Spencer v. Rakowsky, et al.



Dear Judge Griffith and Taylor:

First of all, thank you for accommodating me last Tuesday and allowing me to appear for the hearing by phone. Also, thank you for permitting me the time needed to determine whether I will be involved in this action. I am writing to let you know that I have informed Mr. Spencer that I will not represent him in this action or otherwise be involved. I have also reminded him of the action needed on the potential conflict issue and of the upcoming hearing on June 5, 2013. By copy of this email and in a separate email sent earlier this afternoon, I have so advised defense counsel. I will also forward this email on to Mr. Spencer.

Please let me know if you need anything further from me on this matter. Thanks again.

Very truly yours,

Brian

Brian J. Headley, Esquire  
The Headley Law Firm  
145 Historic Drive  
Mount Pleasant, SC 29464  
(843) 375-6181  
(843) 375-6185 (fax)

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )  
 )  
James Spencer, individually, on behalf of )  
the Estate of Doris Holt and on behalf of )  
Southern Holdings, Inc., and Irene )  
Santacroce, )

Plaintiffs, )

v. )

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

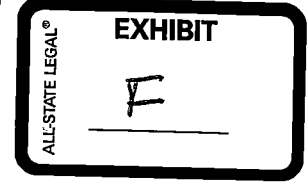
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS )  
FOR THE ELEVENTH JUDICIAL CIRCUIT )

CASE NO.: 2012-CP-32-3428 )

2013 NOV -1 A 14 )

DIANA C. COOK, JUDGE )  
CLERK OF COURT )  
LEXINGTON, SC )



ORDER DENYING )  
MOTION TO DISQUALIFY )

**ORIGINAL**

This matter came before the Court on June 5, 2013, in Laurens, South Carolina, on Plaintiff James Spencer, individually, on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc.'s (collectively "Spencer") Motion to Disqualify filed March 27, 2012. For the reasons stated below, the Court denies Spencer's Motion to Disqualify attorney Amanda Dudgeon, attorney Andrew Countryman, and the law firm of Carlock, Copeland & Stair, LLP (collectively "CCS") as counsel for Defendant John R. Rakowsky.

**STATEMENT OF THE CASE**

This is a legal malpractice action that arises out of a case in which Rakowsky and Falgione represented the Plaintiffs. The underlying case, Southern Holdings, et al. v. Horry County, et al., was filed in May 2002 in federal court for the District of South Carolina, Florence Division, and assigned Civil Action No.: 4:02-cv-1859-RBH ("Southern Holdings Case").

The present legal malpractice complaint was filed on August 15, 2011. Defendant Rakowsky filed a Motion to Dismiss Plaintiffs' Complaint in November 2011. On March 27,

A handwritten signature in black ink, appearing to be "JWR".

**ORIGINAL**

2012, Plaintiffs filed the present Motion to Disqualify Mr. Rakowsky's attorneys. Both Motions were heard on June 5, 2013, at which time this Court denied Spencer's Motion to Disqualify and took Defendants' Motions to Dismiss under advisement.

2013 NOV -1 A 114  
DISCUSSION OF COURT  
LEXINGTON, SC

Spencer claims attorney CCS's representation of Mr. Rakowsky in New Amsterdam Capital Partners, LLP v. John Rakowsky, et al. ("LawMax Matter") disqualifies it as counsel for Mr. Rakowsky in the present malpractice action. By way of background, LawMax, a legal funding company, filed with the American Arbitration Association ("AAA") a Demand for Arbitration on July 19, 2007. The Demand for Arbitration named as Respondents Spencer and Mr. Rakowsky. Spencer was named because he had received monies to fund the underlying Southern Holdings Case, and Mr. Rakowsky was also named, purportedly because he was Spencer's attorney in the underlying litigation.

According to the filed Affidavits of Amanda Dudgeon and John Rakowsky, CCS only represented Rakowsky in the LawMax Matter. At the hearing on this Motion, Spencer likewise agreed that he did not retain Ms. Dudgeon or Mr. Countryman or their firm to represent him in the LawMax Matter. I find no attorney client relationship existed between Spencer and CCS.

Spencer further contends attorneys Amanda Dudgeon and Andrew Countryman are necessary witnesses in the present action. I disagree. The present action is a legal malpractice action brought by Spencer against Rakowsky, whereas the LawMax Matter was a dispute over legal funding for the Southern Holdings Case that apparently did not progress further than a demand for arbitration. According to the Affidavits of Amanda Dudgeon and John Rakowsky, no settlement payment was ever made to LawMax. Rather, according to CCS and Rakowsky and the documents presented to this Court, Rakowsky opposed jurisdiction of the AAA as well

**ORIGINAL**

as the New York locale and maintained he was an improper party, and LawMax ultimately ceased pursuing the arbitration. Spencer seems to maintain, however, that the parties to the LawMax Matter reached a settlement, making Rakowsky's attorneys essential witnesses subject to disqualifications. In support of this contention, Spencer presented to the Court a letter dated June 21, 2008, from the AAA to attorney Dudgeon, which states:

The Association has been notified that New Amsterdam Capital Partners, LLC has reached a settlement agreement with Carlock, Copeland, Semler & Stair, LLP, for James Spencer and John Rakowsky, Esq. As of this date there is no outstanding balance. Therefore, the entire case file will be destroyed per request.

At the hearing, counsel for Defendant Rakowsky questioned the authenticity of the June 21, 2008, letter. Irrespective of its authenticity,<sup>1</sup> I find that, according to the evidence before me, Rakowsky's attorneys are not essential witnesses. First, this case is not up for trial. Second, Rakowsky's attorneys cannot offer testimony material to the determination of the issues being litigated in the present action, namely whether or not Rakowsky breached the standard of care in his representation of Spencer in the Southern Holdings Case. If for some reason Mr. Spencer chooses to question the result in the LawMax Matter, which appears to be unrelated to the present allegations and which further appears to have benefitted Spencer, Mr. Rakowsky or a representative from LawMax can testify.

I find that CCS's representation of Mr. Rakowsky in the LawMax matter does not disqualify it from representation of him in the present matter.

In sum, disqualification is a "severe remedy" and is not appropriate in this case. Brown v. Daniel, 180 F.R.D. 298, 300 (D.S.C. 1998) (construing Rule 3.7(b) of the South Carolina Rules of Professional Conduct and denying motion to disqualify law firm in case where partner would be witness).

<sup>1</sup>If it is found that the June 21, 2008, letter presented by Spencer was in fact forged or in any way fraudulent, this Order is not intended to hinder any Motion for Sanctions sought by Defendant Rakowsky.

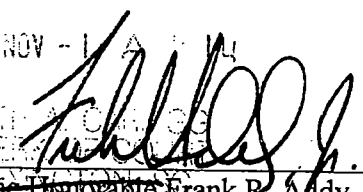
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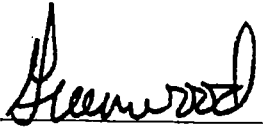
For these reasons, the Court denies Spencer's Motion to Disqualify.

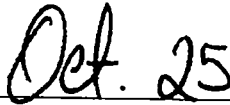
IT IS SO ORDERED.

2013 NOV - 1 A P M

CLERK OF COURT  
ELEVENTH JUDICIAL CIRCUIT

  
The Honorable Frank R. Addy, Jr.  
Presiding Judge, Eleventh Judicial Circuit

  
\_\_\_\_\_, South Carolina

  
\_\_\_\_\_, 2013

FORM 4

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

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2012CP3203428

James Spencer Southern Holdings Inc	Doris Holt	John R Rakowsky Law Offices of Adrian Falgione LLC	Adrian L Falgione
--	------------	--	-------------------

PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

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.  See Page 2 for additional information.
- 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 JUDGMENT 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 (List amount(s) below)

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 11/1/2013

**For Clerk of Court Office Use Only**

This judgment was entered on **1st of November 2013**, and a copy mailed first class or placed in the appropriate attorney's box on **1st of November 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

**James Spencer** 7001 St Andrews Rd ste 183 Columbia, SC  
29212

**Andrew W Countryman** Carlock Copeland & Stair LLP 40  
Calhoun St Ste 400 Charleston, SC 29401  
**Amanda Kurzen Dudgeon** 40 Calhoun St., Ste. 400  
Charleston, SC 29401  
**Benjamin C. Bruner** PO Box 61110 Columbia, SC  
292601110  
**Warren C. Powell Jr.** PO Box 61110 Columbia, SC 29260  
**Stephanie Nichole Weissenstein** PO Box 6338 West  
Columbia, SC 291716338

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

---

**ATTORNEY(S) FOR THE DEFENDANT(S)**

Beth A. Carrigg/mh

---

**Court Reporter**

---

Beth A. Carrigg - Clerk of Court

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

JUDGME IN A CIVIL CASE

CASE NUMBER: 2011CP4005384

James Spencer  
Estate of Doris Holt  
PLAINTIFF(S)

John R Rakowsky  
Adrian L Falgione  
DEFENDANT(S)



Submitted by: \_\_\_\_\_ Attorney for :  Plaintiff  Defendant or  Self-Represented Plaintiff

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 right to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

JEANETTE W. BRIDGE  
2012 OCT - 5 AM 9:38  
RICHLAND COUNTY  
FILED

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 5 October 2012 to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer

Irene Santacroce

Andrew W. Countryman  
Amanda Kurzen Dudgeon

Benjamin C. Bruner

James Spencer

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

Clerk of Court \_\_\_\_\_

*Jeanette W. Bridge*

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF RICHLAND )  
)  
James Spencer, individually and on behalf, )  
of the Estate of Doris Holt and on behalf )  
of Southern Holdings, Inc.; and Irene )  
Santacroce, )  
)  
Plaintiffs, )  
)  
vs. )  
)  
John R. Rakowsky; Adrian L. Falgione; and )  
The Law Offices of Adrian Falgione, LLC, )  
)  
Defendants. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS

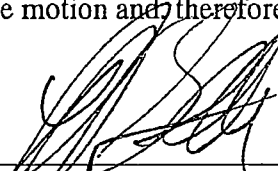
CIVIL CASE NO: 2011-CP-40-5384

ORDER

2012 OCT -1 AM 11:44  
JEANETTE W. McBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

This matter comes before the Court upon Plaintiff's Motion to Reconsider the Court's Order, dated August 15, 2012, that granted Defendant's Change of Venue Motion.

After considering the arguments set for in memoranda submitted by each party's counsel, this Court finds there is no basis for granting the motion and therefore, denies Plaintiff's motion.

  
\_\_\_\_\_  
Brooks P. Goldsmith, Judge

Lancaster, South Carolina  
September 26, 2012

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<u>No.</u>	<u>Description</u>	<u>Page No.</u>
C-1	Memorandum	23
C-2	Correspondence	23
C-3	E-Mail	23
C-4	Correspondence	39
C-5	Affidavit of Tammy Lail	67

1 claims of legal malpractice. There's absolutely no way to  
2 make me a witness in this case.

3 And I have the materials that actually show this  
4 information, if you'd like to see them.

5 THE COURT: Please, if you don't mind ---

6 MR. SPENCER: I object ---

7 THE COURT: --- showing ---

8 MR. SPENCER: --- to this, Your Honor. I have not  
9 received these materials.

10 THE COURT: Okay.

11 MS. DUDGEON: Mr. Spencer received them back in June  
12 of 2012.

13 THE COURT: All right. Why don't you take a look at  
14 what she's handed you, and maybe you can -- maybe that'll  
15 refresh your memory as to whether you got them or not.

16 And just so that the record's clear: This is a  
17 Richland case. It's captioned *James Spencer, individually*  
18 *and on behalf of the Estate of Doris Holt, etc.,*  
19 *Plaintiffs, v. --* same defendants pretty much that we have  
20 here. And it's Case 11-CP-40-5384.

21 MS. DUDGEON: And, Your Honor, this is actually the  
22 same case. It was just -- the venue was transferred to  
23 Lexington.

24 THE COURT: Oh, okay.

25 MS. DUDGEON: And what you have in front of you is our

1 memo, which you can -- you don't really need to look at,  
2 but Tab A would be the demand for arbitration, showing who  
3 it was sent to, including Mr. Spencer. Tab B is my firm's  
4 -- my letter to the American Arbitration, indicating who we  
5 represent and copying Mr. Spencer. Tab C is correspondence  
6 from the American Arbitration to me, as well as to Mr.  
7 Spencer's e-mail address.

8 And -- and -- and the point of this is just to show we  
9 didn't represent him; it wasn't settled; and there's no  
10 reason that I would be a witness in this case.

11 I also have included affidavits -- my own affidavit,  
12 as well as Mr. Rakowsky's affidavit in these materials.  
13 And I sent Mr. Spencer a letter two weeks ago, asking him  
14 to review the documents previously sent; sending him  
15 another copy; and asking him to withdraw this motion  
16 because it has no basis.

17 THE COURT: All right. Mr. Spencer, have you had a  
18 chance to review the materials that she's handed me?

19 MR. SPENCER: Yes, sir, I have.

20 THE COURT: All right. I'm having difficulty seeing  
21 how she would have a conflict in this particular matter.  
22 Do you want to elaborate on that or explain again what your  
23 theory is? Because it looks like she's represented the  
24 same individual throughout the course of -- of this action.  
25 And the materials that she's given to me don't seem to

1 conflict her out in this particular case.

2 MR. SPENCER: Your Honor, I tried to -- Judge Barber  
3 opened up discovery. And in another case, I sent a  
4 subpoena to LawMax, requesting information on Mr. -- on  
5 this case, because I had no knowledge of it. The  
6 representative for LawMax told me the case had been  
7 settled; that they had been paid; but that -- that -- that  
8 -- I -- so I asked for the information because I was a  
9 party to the suit.

10 In the meantime they called Ms. Dudgeon's firm, who  
11 was not involved in this lawsuit. And next thing I know,  
12 I'm shut off from receiving any material.

13 So despite having discovery being allowed in this  
14 case, any questions I've asked to be provided regarding  
15 this case, I've received no answers. And so what I -- what  
16 I was hoping was that since Judge Barber allowed discovery,  
17 that we be allowed discovery to find out what the depth of  
18 her true involvement was.

19 MS. DUDGEON: Your Honor, unfortunately, that's just  
20 simply not true. Mr. Spencer did attempt to subpoena this  
21 company, I believe. And I do not believe there was a  
22 response to the subpoena, not an authenticated one.

23 But they did provide him with documents, which they e-  
24 mailed to both me and to him at the same time. And those  
25 documents, the majority of which are attached to this -- to

1 this memorandum -- there are some others, but what you have  
2 before you clearly repudiates what he is saying. And I've  
3 not seen anything from him to show otherwise.

4 MR. SPENCER: Ms. Dudgeon is throwing sand up in the  
5 air, Your Honor. She's -- documents -- and she's producing  
6 documents from the arbitration association. I subpoenaed  
7 directly to LawMax. And LawMax's attorneys got involved  
8 and had contacted Mrs. Dudgeon.

9 And they are the ones that refused to supply the  
10 information of what happened to the suit. Everything had  
11 been destroyed by the arbitration board.

12 MS. DUDGEON: Your Honor, truthfully, I'm -- I'm --  
13 I'm not sure what -- what Mr. Spencer's referring to. But  
14 my affidavit is included. It -- it states that I did not  
15 represent him and that no settlement money was ever paid in  
16 this case.

17 THE COURT: All right. Mr. Spencer, it doesn't appear  
18 that she or her firm ever represented you. If you were  
19 correct that -- that they did, perhaps you would have  
20 grounds to allege that she and her firm have a conflict in  
21 proceeding in representing Mr. Rakowsky.

22 I'm looking at the attachments to the materials that  
23 have been handed up. And I'll make this a Court's exhibit  
24 just so that the record's clear. But it looks like you  
25 were copied on most of these materials.

1 I -- I have trouble seeing how this is anything but a  
2 nonissue.

3 MR. SPENCER: If you'd give me a second, Your Honor.

4 THE COURT: Sure. I -- I -- I just don't see how this  
5 really relates to anything that we need to address. It  
6 looks like a matter that's totally collateral. And more  
7 importantly, there's no conflict in representation and that  
8 she simply didn't represent you. Do you have anything  
9 indicating an agreement between you and her firm or ---

10 MR. SPENCER: No. There was no agreement.

11 MS. DUDGEON: Your Honor, if, at some point, Mr.  
12 Spencer comes up with valid evidence, although I know it  
13 doesn't exist, then he can make this motion if he has that  
14 information. It's -- it -- it -- this was used as a tactic  
15 to avoid a -- a -- a hearing date back in March of 2012.

16 THE COURT: All right. At -- at -- at this point I  
17 really don't see where your motion is proper unless you can  
18 show me something definitive that ---

19 MR. SPENCER: I'm looking for ---

20 THE COURT: --- she ---

21 MR. SPENCER: --- it, Your Honor.

22 THE COURT: Okay. Very good. I'll give you a moment,  
23 then.

24 (Off the record from 9:59 a.m. until 10:05 a.m.)

25 MR. SPENCER: Your Honor, can we approach the bench?

1 THE COURT: Sure. Come on up. Did you find  
2 something?

3 All right. I've been handed a letter that's dated  
4 June 21st, 2008. It does not appear to be copied -- well,  
5 it does -- it was apparently copied to Ms. -- or it was  
6 sent to Ms. Dudgeon and Daniel Zolberg of LawMax in New  
7 York.

8 It reads: "Dear Parties: The association has been  
9 notified that New Amsterdam Capital Partners, LLC, has  
10 reached a settlement agreement with Carlock, Copeland, et  
11 al., for James Spencer and John Rakowsky, Esquire. As of  
12 the date -- this date, there is no outstanding balance.  
13 Therefore, the entire case file will be destroyed per  
14 request. Cordially yours, James F. M-e-d-e-i-r-o-s, Case  
15 Manager"; copied to Walter G. Gans, G-a-n-s, Esquire.

16 Are you -- have you seen that or do you recall that?  
17 Do -- or do you need to look at that?

18 MS. DUDGEON: Your Honor, that document is not in my  
19 file. Mr. Spencer has not produced it to me. I was hoping  
20 he would not attempt to present it to the Court as an  
21 authentic document. But since he has, if I could just  
22 first confirm it's the letter I think it is. May I look at  
23 ---

24 THE COURT: Sure.

25 MS. DUDGEON: --- it, Your Honor?

1 THE COURT: Come on up. It's ---

2 MS. DUDGEON: Thank you.

3 Okay. Your Honor, bear with me while I explain the --  
4 a little bit of a chain of events.

5 THE COURT: Please.

6 MS. DUDGEON: Mr. Spencer had -- has already  
7 referenced attempting to get documents from the arbitration  
8 association. I mentioned that they did provide him with  
9 documents, which they sent to all of us. They did so.

10 And included in those documents was Mr. Spencer's '  
11 letter to the association, saying: "As we discussed,  
12 please confirm X, Y, Z," things that weren't true.

13 And so I called the association to say, "What is this  
14 all about? And have you ever seen a June 21, 2008,  
15 letter?"

16 They confirmed it was not part of their file; that  
17 they have no one by the name of Catherine Paulston in their  
18 company to be able to certify a document. They actually  
19 pointed out to me, rather than me to them, that the  
20 numbering on the June 21st, 2008, appeared to be  
21 questionable. And the document Your Honor has appears to  
22 be a complete original, not even a -- not even a e-mailed  
23 copy or a copy that would've been faxed to Mr. Spencer.

24 I -- I did not think he would attempt to present this.  
25 And it has not been produced to me. Therefore, I -- I

1 don't have an affidavit, for instance, from AAA. But, Your  
2 Honor, my affidavit, Mr. Rakowsky's affidavit verifying  
3 those settlement funds were paid; I also have an e-mail  
4 from the AAA, specifically stating: "This document does  
5 not exist in our file."

6 MR. SPENCER: Your Honor, if you can see the  
7 certificate of service, it was served upon Ms. Dudgeon and  
8 her firm. She did already file paperwork in the Court on  
9 this. She contacted them; they sent me a -- I contacted  
10 them.

11 I want a reclarification of this. They sent us the  
12 files and said they don't have any other files. And so  
13 that's when I went ahead and tried to get confirmation from  
14 LawMax.

15 THE COURT: All right. Well -- well, Mr. Spencer,  
16 more to the point, you say you've never retained them to  
17 represent you.

18 MR. SPENCER: That's correct.

19 THE COURT: They say they've never represented you.

20 MR. SPENCER: Yes.

21 THE COURT: They've never undertaken to represent you.

22 MR. SPENCER: That's correct. But that -- that letter  
23 says that ---

24 THE COURT: I don't know what this letter says. I  
25 don't know what it relates to. I don't know -- and it

1 sounds like its genuineness is somewhat suspect. Is that  
2 what you're saying?

3 MS. DUDGEON: Yes, Your Honor. And again, this is  
4 just an e-mail from the AAA after my conversation with  
5 them, regarding the existence of this letter since I didn't  
6 have it in my file.

7 MR. SPENCER: Excuse me? I don't have a -- a copy of  
8 this. I haven't seen this.

9 MS. DUDGEON: I just handed it to your ---

10 (Whereupon, Mr. Spencer and his assistant conferred.)

11 MS. DUDGEON: --- assistant.

12 Your Honor, again, I was hoping Mr. Spencer would not  
13 attempt to do this. But it -- and we -- we've already had  
14 issues of allegedly fraudulent documents in this case. And  
15 this is one where he's accusing me of ethical violations.  
16 I don't think the letter itself even changes my opposition  
17 whatsoever.

18 I have affidavits indicating there's no settlement.  
19 There was no settlement. Even if there was, it would've  
20 benefitted Mr. Spencer. I did not represent him.

21 MR. SPENCER: Your Honor, I object to this document.  
22 It was not provided to me in a timely fashion. I have no  
23 way of knowing that this had happened so I could go back  
24 and talk to these people and get clarification.

25 THE COURT: All right. If you want to talk to them,

1 if you want to get clarification at a later point in time,  
2 that's perfectly fine. There are serious concerns about  
3 the genuineness of the June 21st letter.

4 My clerk is making a copy of it. It'll be marked as  
5 Court's 2. I'll also mark the e-mail dated May 6, 2013,  
6 from Melanie Rutherford to counsel; that'll be Court's 3.

7 Everyone seems to agree that at no point in time did  
8 the firm or Ms. Dudgeon represent the plaintiff in this  
9 particular case. So for those reasons, I'm going to deny  
10 your -- your motion. I -- it appears that everyone agrees  
11 that she's never represented -- or her firm has never  
12 represented y'all.

13 That's where we are. If that changes, I suppose you  
14 can renew your motion at that particular point in time.

15 But I have some concerns about the authenticity of the  
16 June 21st, '08, letter, especially in light of the e-mail  
17 from ADR. So I'll hand this -- this copy of the motion and  
18 the attachments back to Mr. Spencer. So if you want to  
19 come up and -- or, Mr. Byers, if you want to hand that to  
20 him.

21 THE BAILIFF: (Complied.)

22 MR. SPENCER: Will you note my objection to the  
23 introduction of that ---

24 THE COURT: Certainly. Your -- your -- your objection  
25 is -- is certainly ---

1 MR. SPENCER: All right.

2 THE COURT: --- noted. Her e-mail, of course, is in  
3 reply to the materials that you have provided. And as she  
4 said, she was not -- she didn't think that you were going  
5 to go down that road necessarily.

6 So while we have a few moments, I'll take a brief  
7 break. Then we'll boot up with the motions that -- I think  
8 that the next motion -- it'd be proper to go ahead and  
9 address the motion to dismiss at this point in time. But  
10 we're going to go ahead and get these marked so that I  
11 don't forget to do so and take a brief break, and then we  
12 proceed.

13 MS. DUDGEON: Thank you, Your Honor.

14 (Off the record from 10:12 a.m. until 10:25 a.m.)

15 (Whereupon, Court's Exhibits 1, 2, and 3 were marked  
16 for identification while off the record.)

17 THE COURT: All right. Let's go ahead and address and  
18 -- oh, I'm sorry, Mr. Spencer. You wanted to say something  
19 else, sir?

20 MR. SPENCER: Yes, Your Honor. Can I have the Court  
21 also put these in the record? This is the response from  
22 American Arbitration Association. I didn't find it till  
23 just a second ago, which shows about nine letters going to  
24 Ms. Amanda ---

25 THE COURT: Sure. Hand them up. I'll -- let her see

**CERTIFICATE**

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED  
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,  
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL  
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY  
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND  
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE  
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT  
COURT FOR LEXINGTON COUNTY, SOUTH CAROLINA, ON THE 5TH  
DAY OF JUNE, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



---

MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

SEPTEMBER 1, 2014 .

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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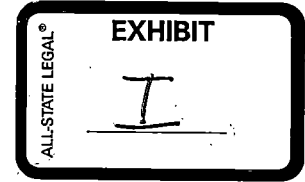
APPEAL FROM THE LEXINGTON COUNTY  
Court Of Common Pleas

Frank R. Addy, Circuit Court Judge

---

APPELLATE CASE NO.: 2014-000091

---



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.

---

AFFIDAVIT OF COUNSEL

---

PERSONALLY APPEARED BEFORE ME, Benjamin C. Bruner, who being  
duly sworn, deposes and says as follows:

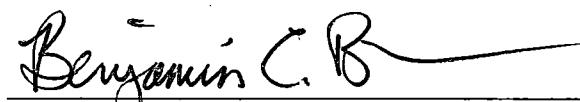
1. I am over 18 years old.
2. I have personal knowledge of the facts stated herein, except for those set forth upon information and belief.
3. I represent Respondent Adrian L. Falgione in this appeal.
4. I have reviewed my file to confirm the facts set forth below.

5. Appellant, James Spencer, claims he attempted to contact me regarding this appeal to obtain clarification and/or copies of documents I designated to be included in the record on appeal.


6. To the best of my knowledge, I received no telephone call, facsimile, letter, note, or other communication from Appellant requesting clarification or copies of designated matter. I first learned of Appellant's alleged attempt to contact me when I read his motion to reinstate this appeal.

7. In the event the Appellant claims to have communicated with me by e-mail, the Appellant should know any such attempt would be futile. On June 25, 2014, after Appellant yet again accused me of lying to the court, I blocked his e-mail address from my account. I notified him that I was blocking his address, and I asked that he communicate with me by U.S. Mail. A true and accurate copy of my e-mail exchange with the Appellant is attached hereto.

FURTHER AFFIANT SAYETH NOT.

  
Benjamin C. Bruner

SWORN TO ME this 25<sup>th</sup> day of March, 2016

  
Notary Public for South Carolina

Name: Bridget S. Steele

My Commission Expires: 5.27-2018

## Ben Bruner

---

**From:** Ben Bruner  
**Sent:** Wednesday, June 25, 2014 6:59 PM  
**To:** 'James B. Spencer'  
**Subject:** RE: Defendant Spencer's response to emails and notification of not receiving order Your Honor Filed with Clerk of Court

**Sensitivity:** Personal

Mr. Spencer:

I understand that you disagree with my arguments, but there is no need for your repeated personal attacks against me. I am blocking your e-mail address to prevent you from sending more improper e-mails like the one below. Please send all future correspondence to me by US Mail.

Sincerely,

Benjamin C. Bruner

**BRUNERPOWELL**

BRUNER, POWELL, WALL & MULLINS, LLC  
P.O. Box 61110  
1735 St. Julian Place, Suite 200 (29204)  
Columbia, SC 29260-1110  
(p) 803.252.7693  
(f) 803.753.0060  
[www.brunerpowell.com](http://www.brunerpowell.com)

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---

**From:** James B. Spencer [mailto:jamesbspencer@sc.rr.com]  
**Sent:** Wednesday, June 25, 2014 5:48 PM  
**To:** Ben Bruner  
**Subject:** RE: Defendant Spencer's response to emails and notification of not receiving order Your Honor Filed with Clerk of Court  
**Importance:** High  
**Sensitivity:** Personal

Mr. Bruner:

Good since you both know you flat lied and I can prove it. No courier ever delivered anything to me from you or your office.

Sincerely,

Jim Spencer

---

**From:** Ben Bruner [mailto:BBruner@brunerpowell.com]

**Sent:** Wednesday, June 25, 2014 4:52 PM

**To:** 'James B. Spencer'

**Subject:** RE: Defendant Spencer's response to emails and notification of not receiving order Your Honor Filed with Clerk of Court

**Sensitivity:** Personal

Mr. Spencer:

In your Response to Emails, you again claim that I lied to the Court. You and I know that I had the order hand-delivered to the address you provided to me and to the Court in your filings. Indeed, this is the same address you list on the signature line of your Response to Emails. If you would like me to serve you at another address, then please provide it to me. Until you do, the Saint Andrews Road address is the last known address I have for you. I do not believe you can frustrate another party's efforts to hand-deliver an order—in a case where a party and have appeared—by claiming that you do not live at the address you gave the Court.

Moreover, the Court of Appeals did not deny my motion to dismiss your appeal as untimely (yet) because I have not filed one. I only responded to your motion, and the Court simply granted what it construed as your motion to reinstate the appeal. Finally, you know that what I told Judge Early was that you sued Mr. Falgione and lost, which you did. That is why you are the appellant in the appeal.

Although you likely disagree, your claim that I committed fraud or lied to the Court is an extremely serious one that I do not take lightly. Consider this notice to dispense with your unsubstantiated, frivolous allegations in this matter.

I will be sending a much more succinct response to the Judge since I have no intention of debating this issue with you over email.

Sincerely,

Benjamin C. Bruner

**BRUNERPOWELL**

BRUNER, POWELL, WALL & MULLINS, LLC

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---

**From:** James B. Spencer [mailto:jamesbspencer@sc.rr.com]

**Sent:** Wednesday, June 25, 2014 12:03 PM

**To:** Judge Early

**Cc:** 'Desa Ballard'; Ben Bruner; 'Andrew Lindemann'; 'Michael Sribnick'

**Subject:** Defendant Spencer's response to emails and notification of not receiving order Your Honor Filed with Clerk of Court

**Importance:** High

**Sensitivity:** Personal

Dear Your Honor:

Attached please find my response to the email representations recently sent to you regarding and your office's email request. I filed this response with the Clerk of Court. The Clerk of Court has not received as of this date the order you filed with the Court on June 17, 2014, so I am understandably unable to respond to the outstanding matters beyond my response attached hereto. Once I receive your filed Court Order I can and will quickly respond regarding the outstanding matters on a knowledgeable basis. I am sure you can understand my need to review your Order so I can respond based on facts.

Thank you very much, I await your receipt of the Order Your Honor filed with the Court.

With the utmost respect,

I am very truly yours,

James Spencer, *Pro se*

**Cc:**

Desa Ballard, Esquire

Andrew Lindeman, Esquire

Ben Bruner, Esquire

Michael Sribnick, MD, JD

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THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM THE LEXINGTON COUNTY  
Court Of Common Pleas

Frank R. Addy, Circuit Court Judge

---

APPELLATE CASE NO.: 2014-000091

---

**RECEIVED**

MAR 28 2016

SC Court of Appeals

James Spencer, individually and on behalf of the Estate of Doris Holt  
and on behalf of Southern Holdings, Inc.; and Irene Santacroce, Plaintiffs,

Of whom James Spencer is the Appellant, Appellant,

v.

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

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

---

PROOF OF SERVICE

---

I, Bridget Steele, an employee of Bruner, Powell, Wall & Mullins, LLC, attorneys for Respondent Adrian L. Falgione, certify that I served a copy of the attached *Return to Motion to Reinstate* by depositing a copy of it in the U.S. Mail, postage prepaid, on March 25, 2016, addressed to the *pro se* Appellant, James B. Spencer, 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212, and to Respondent John R. Rakowsky's attorneys of record, David W. Overstreet, Esquire at Earhart Overstreet, LLC, P.O. Box 22528, Charleston, SC 29413, and Michael B. McCall, Esquire at Carlock, Copeland & Stair, LLP, 40 Calhoun Street, Suite 400, Charleston, South Carolina 29401.

March 25, 2016

  
Bridget Steele

# BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

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POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

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[WWW.BRUNERPOWELL.COM](http://WWW.BRUNERPOWELL.COM)

JAMES L. BRUNER, P.A.\*  
WARREN C. POWELL, JR., P.A.\*\*  
HENRY P. WALL  
E. WADE MULLINS III, P.A.  
BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.  
JOEY R. FLOYD, P.A.  
BENJAMIN C. BRUNER, P.A.

ANN F. ALLISON  
CAITLIN C. HEYWARD  
ROBERT C. OSBORNE III  
BRYAN M.J. TRIPLETT

\* Of Counsel

\*\* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: [BBRUNER@BRUNERPOWELL.COM](mailto:BBRUNER@BRUNERPOWELL.COM)

March 25, 2016

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

**RECEIVED**

MAR 28 2016

SC Court of Appeals

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

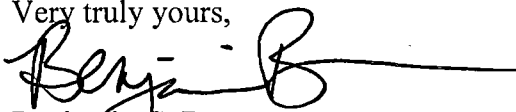
Dear Ms. Kitchings:

Enclosed for filing please find an original and seven (7) copies of Respondent Adrian Falgione's *Return to Motion to Reinstate* with a proof of service. Please file the original and copies and return one file stamped copy to me in the enclosed envelope.

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

With my kindest regards, I am

Very truly yours,

  
Benjamin C. Bruner

BCB/gh  
Enclosures

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



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3-1742-108

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

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MAR 28 2016  
SC Court of Appeals