

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

APPELLATE CASE NO. 2014-000091

John R. Rakowsky, *Esquire - Respondent*
Adrian Falgione, *Esquire - Respondent*

v.

James Spencer, *Pro Se Appellant*

**REPLY TO RETURN OF
RESPONDENT FALGIONE**

RECEIVED
APR 04 2016
SC Court of Appeals

NOW COMES Appellant James Spencer, *Pro Se*, (hereinafter “Appellant”) and files this Reply to the Return of Respondent Falgione regarding the reinstatement of Case No. 2014-000091 which was dismissed for “Appellant’s repeated failure to serve and file a record on appeal that includes all matters designated by the parties.”

DISCUSSION

The Appellant will address the forty-eight (48) page Return of Respondent Falgione without addressing the assumptions, unsubstantiated allegations, and intentional diversions utilized once again by Respondent and/or his counsel to distract and misdirect this Court. First, the Appellant has no desire to prolong this matter by not providing a complete Joint Appendix with documents designated by all parties. In this regard, Appellant has gone to the extent of filing a Motion to Remand on *November 13, 2015* to obtain such records. On *November 23, 2015*, Respondent Falgione actually opposed the motion to remand filed by Appellant to supplement the Joint Appendix. The Court denied the Motion to Remand to Supplement the Record on *November 25, 2015*.

On June 25, 2014, Respondent Falgione’s counsel unilaterally cut off all communication through which the contents of the communication are verifiable by an independent third party (i.e. the server). This apparently was meant to be

punishment for the *Pro Se* Appellant pointing out and clearly documenting Respondent Falgione and his counsel's repeated submission of sworn affidavits in this case to the Court that were knowingly untruthful. In an attempt to stop such activities Appellant filed a Motion for Sanctions on *August 20, 2015*, which documented Respondent's use of untruthful affidavits going as far back as *July 19, 2012*.

RESPONDENT'S RETURN

The Appellant believed the **Joint** Appendix was meant to be a work that was objective and that there was no reason or way this Joint Appendix could be used to dismiss this Appeal as it was effectively a joint work product based on the records of the case. However, the lay Appellant was wrong.

If the Appellant fails to address any conjecture or baseless illusion of the Respondent in his Return it should not be considered in any way an admission. It is an effort to save the Court's time by not addressing the ridiculous and distracting rhetoric of Respondent and his counsel wanting this Appeal dismissed on a technicality and thereby keeping the merits of the case from being heard.

First, the Appellant will address the contradictory Affidavit of Mr. Bruner, Respondent's counsel, in the Return. Second, the Appellant will address the documents and the allegations regarding the documents raised by Respondent in his

Return.

- On page 7 of his return, footnote number 2, Respondent states,

“In Support of his motion, Appellant included affidavits from himself and his hired assistant which claim Appellant attempted to contact Respondent’s counsel but received no response. Contrary to the self-serving testimony, the undersigned received no telephone call, facsimile, email, letter or other communication from Appellant requesting clarification or copies of the designated matter. (Bruner Aff., March 25, 2016, **Exhibit I.**)

In Mr. Bruner’s affidavit, **Exhibit I**, referred to in his Return he includes email attachments in which Mr. Bruner restricted any communications with him by the Appellant to letter only. Communications in any other way were blocked or ignored by Mr. Bruner. The letter sent to Respondent’s counsel simply requested Mr. Bruner to call Appellant on the telephone to work on the **Joint** Appendix as Appellant was having trouble locating or identifying certain documents.

Mr. Bruner had already opposed Appellant’s Motion to Remand to complete the Court record for the Joint Appendix. Therefore, Mr. Bruner’s Affidavit contradicts the very evidence he attached to his Affidavit and his refusal to allow a remand to obtain missing documents were both consistent and not a total surprise to Appellant. Also not a surprise was his refusal through non-response of the request for help in the letter sent to him. It must

have violated his dictum that communication *could not be done by telephone*.

- Item number 1 of 9 listed by Respondent on page 2 of his Return. **Exhibit B** in Respondent's Return is a letter from Taylor Rollins dated May 30, 2013. The Respondent on page 3 states, "*Judge Griffith's letter of May 30, 2013* was sent directly [by fax]¹ to all parties including Appellant. However, the letter was actually from Taylor Rollins, a law clerk for Judge Griffith, and was signed by Taylor Rollins and sent to all parties only by fax. Significantly, the fax number Taylor Rollins identified that he used for the Appellant is not Appellant's correct fax number and has never been so. Furthermore, this letter was also supposedly faxed to former Appellant Irene Santacroce. The number used for her fax, according to Taylor Rollins letter, was sent to her cell telephone number, clearly not a fax number. Finally, the Lexington County Clerk of Court's office has no record of Taylor Rollins's or Judge Griffith's letter dated May 30, 2013.

The Respondent's allegations regarding this document that the Appellant knew about its existence and did not supply it as required for the Joint Appendix is baseless. The Appellant tried to find out any possible

¹ Under Rule 262 (b) service has to be in person or the U.S. mail. Respondents have refused any other form of service by Appellant/Plaintiff including fax and email. It is interesting to note no mention of this form of service was made by the Respondents as not being lawful.

information about the May 30, 2013 document and the other documents sent to Judge Addy by contacting both the Court and the Clerk of Court but there were no records anywhere. See **attachment A**.

Significantly, this letter if received by the Appellant would have provided information to the Appellant informing him that Judge Griffith did not have the authority to set the hearing on June 5, 2013 in Lauren's South Carolina before Judge Addy. The other documents provided by Taylor Rollins to Judge Addy, documented in the June 5, 2013 transcript, pg. 5, lines 2 - 9, and pg. 7, lines 5 - 9, to this day are unknown to the Appellant and were included in the Appellant's designation of matter.

Appellant was severely disadvantaged by being prevented from having the May 30, 2013 letter and the other documents sent to Judge Addy by Taylor Rollins including Mr. Rollins's personal overview of this case provided to Judge Addy during the case. An overview that Judge Addy cited in the Transcript, pg. 7, lines 5-9 as the very basis for his understanding of the case that he, therefore used to make his "final" decisions in this proceeding.

The Appellant was further disadvantaged by having notice from the communication of May 30, 2013, that he could provide documentation, including the pivotal hearing transcript of May 7, 2012 to Judge Addy,

revealing the decisions of Judge Barber (i.e. regarding discovery and the release of the litigation funds so Appellant could obtain counsel before the next hearing was held). The May 30, 2013 letter would have informed the Appellant he could send these documents to Judge Addy who was presiding over a hearing scheduled less than a week away. Furthermore, the letter would have indicated to Appellant that Judge Griffith's recusal gave him no authority to both set a hearing date of June 5, 2013 and appoint the judge for the hearing. These actions ended up being fatal to the Appellant's chances of obtaining any measure of fairness in this matter.

This is another example of the failure of procedural due process in violation of the 5th and 14th Amendments to the United States Constitution that prejudiced the Appellant in the case and is now being used by Respondent in an attempt to dismiss Appellant's motion to reinstate.

- Item Number 2, Ans. Regarding Wavier or Recusal, May 28, 2013. After finding out that Judge Griffith was related to Respondent's counsel, Mr. Bruner, Appellant asked Judge Griffith to recuse himself and so did Plaintiff Irene Santacroce. Appellant mistakenly thought that Respondent's designation was asking for Appellant's copy of the Judge Griffith's answer to Appellant and Ms. Santacroce's request for his recusal. That would have been

the document dated May 30, 2013 from Taylor Rollins. Appellant clearly established herein that neither he nor Ms. Santacroce received that document. However, **Exhibit A** from Respondent's Return shows the Respondent wanted the two-sentence document from Appellant asking for Judge Griffith to recuse himself. Appellant did in fact not have a copy of this in his records and Appellant misinterpreted what Respondent was asking for in an inadvertent error.

- Items Number 3 and 4, Notice of Appearance, November 4, 2011, and Motion to Dismiss dated November 4, 2011, respectfully were cited as documents not included in the Joint Appendix. Respondent discussed these supposedly not included items *ad nauseum* on page 3 of Respondent's return. See **Attachment B hereto**. Both items were actually included in the Joint Appendix. This is another example of how the Respondent's counsel continues to conjure up false claims and stories to further his cause of having the case dismissed without a hearing on the merits.
- Item number 5 of 9 on page 2 of Respondents' return. "Email from Headley to Court on May 7, 2013. Exhibit C in Respondent's Return is a May 7, 2013 email from Brian Headley, Esquire to a Monica Denise Huggins an individual purportedly with the Court. Please note this email documents that it was never

copied to the Appellant.

The Honorable Judge Barber had ordered during a hearing on May 7, 2012 that the remaining uncontested litigation funds were to be turned over to the Court and returned to Appellant prior to the next hearing so the disabled Appellant could obtain counsel. Appellant contacted numerous attorneys seeking legal counsel to assist him based on the May 7, 2012 transcript assurance by the judge that he would have the uncontested legal funds returned so that counsel could be obtained. When the funds were not turned over to the Court by Respondent Rakowsky, Appellant was forced to move forward without the benefit of counsel. After reviewing the email provided by the Respondent for the first time, it is now known by Appellant who "Headley" was. When the litigation funds were not returned to Appellant he had no choice but to move forward in the litigation acting as his own counsel despite his worsening health.

On page 4 of his Return Respondent requests that the appeal be dismissed in essence, because Appellant did not recall one of the many attempts Appellant made to get professional legal assistance in the absence of any funding, funding that was being withheld by Respondent Rakowsky. The request by Respondent for not including this heretofore-unknown email is

simply improper. Without the wrongfully withheld funds to pay Mr. Headley, Mr. Headley had no interest in the case. In any event, the email being designated by Respondent existence was unknown to the Appellant.

- Item number 6 of 9, the Transcript of May 27, 2012 status conference.

Respondent Falgione cites a document that had the wrong date and description in the Respondent Rakowsky designations. Respondent Falgione without basis or citation states that Appellant claimed he did not include four pages out of the seventy-one page transcript because of the faulty designation by Respondent, and the Appellant used the faulty designation as an excuse to withhold the four pages. Respondent's allegation is simply untruthful and represents nothing but twisted self-serving falsehoods on the part of Respondent Falgione as the Appellant never in any document claimed this as a reason for the few missing pages. The omission occurred because of a printer feeding error at Staples. Staples was tasked with making over 2,000 pages of copies of the Joint Appendix for the lay Appellant.

Significantly, the pages that were not included were all favorable to the Appellant's appeal. Furthermore, using common logic the Respondents misdesignation of this item could not be easily discerned, despite Respondent Falgione's assertion, otherwise it would not have been improperly designated

by Respondent in the first place. Errors happen and this is not a guessing game. Cooperation and communication on the part of opposing counsel would have easily solved the problem. Unfortunately, that was completely missing.

Additionally, other documents such as the Taylor Rollins letter, See second bullet point beginning on page 5 regarding Respondents' **Exhibit B** above, even though never received by the Appellants, and never filed with the Clerk of Court, turned out to be an actual letter that was undiscoverable by the Appellant.

This is exactly why the Appellant requested a remand to locate documents, a remand opposed by the Respondent who also refused to assist in assembling the Joint Appendix.

- Item 7 of 9. "Order filed November 1, 2013 (denying Motion to Disqualify)."
Unknown to the Appellant, Judge Addy apparently signed an additional Order related to the June 5, 2013 hearing which the Appellant had no knowledge of. See **Exhibit F** in Respondent's Return. There is nothing on the Form 4 attached to the Order indicating any service was made of the document nor was there a certificate of service attached. It is believed this Order was drafted by Amanda Dudgeon, Esquire, a counsel for Respondent Rakowsky. The required draft of this Order for comments was never submitted to the

Appellant. The evidence, Exhibit F provided by the Respondent in his Return, also indicates the Order was never served on the Appellant. This was a second order issued over five months after the hearing on June 5, 2013. If the Appellant had any idea that this second Order had been issued Appellant would have certainly submitted an alternative draft, filed a 59(e) motion for rehearing, and if that was turned down included that Order in the Appeal before the Court. Again, the Appellant was denied proper procedural due process. The lay Appellant cannot receive a fair hearing under these conditions. Furthermore, the Respondent is using the lack of service and the lack of knowledge of the system on the part of the Appellant to attempt to gain a dismissal in order to avoid a review on the merits because of the Respondent's and the Court's actions that kept the Appellant out of the loop.

- Item 8 of 9. "Order filed October 1, 2012 (denying Motion to Reconsider Venue Order). The Appellant contacted the Richland County Clerk of Court's office and there was no Order dated October 1, 2012 as identified by the Respondent in his designation. The Clerk of Court's computer records showed no such Order with that date and the Deputy Clerk of Court of Richland County stated there was no Order with that date. On page 6 of his return Respondent claims that the lack of listing on the Clerk of Court's

computer records and the Deputy Clerk checking the hard copies and not locating any such order was not a good enough excuse for the Appellant not providing the miss-identified document by the Respondent. Appellant did his best and perhaps if the Appellant was not isolated from communications by Respondent's counsel, Appellant might have discovered the inconsistent filing errors in the Clerk of Courts office involving both the computer system and the hard documents. Appellant disagrees that this error in designation was discoverable despite the Respondent's miss-designation and Appellant believes he took all steps possible to locate the designated document irrespective of the Respondent's self-serving opinion.

- Item 9 of 9, Court Exhibits 1 and 2 from the June 5, 2013 motions hearing.

On Page 5 of the Return Respondent stated, "Appellant next claims he failed to include two exhibits submitted during the June 5, 2013 motions hearing because he never received copies of them." That is untrue. On page 8 of Appellant's Motion to Reinstate, Appellant stated:

"Court Exhibits 1 and 2 at June 5, 2013 hearing." (Item 22 from Mr. Rakowsky's list of designations). Appellant clearly identified that he never received "Exhibit 1" and the transcript of the June 5, 2013 hearing both lacks the exhibits presented to the Court and documents that no Exhibits were provided to Appellant (See transcript page 23 and index listing of exhibits on page 3 of June 5, 2013 Transcript). Respondents both failed to provide a copy [**Exhibit 1**] to

Appellant and opposed the Appellants motion to remand to obtain documents that were designated for the Joint Appendix.”

Appellant has no idea where the Respondent dreamed up the illusion that Appellant did not produce Exhibits 1 and 2. Clearly, Appellant provided Exhibit 2 in the Joint Appendix, but never received Exhibit I and could not locate it. Appellant has stated this repeatedly and highlighted that fact on the index of the Joint Appendix where Appellant stated, “**June 5, 2013 Hearing, Court Exhibit 1 (never provided at hearing)** and Exhibit 2 (June 21, 2008, LawMax letter AAA).”

Appellant provided Exhibit 2 in the Joint Appendix but still does not know what exactly Exhibit 1 is and the list in the transcript of the June 5, 2013 hearing does not describe it. See June 5, 2013 transcript, Pg.3, entitled Exhibits.

SUMMARY

Once again, Respondent’s counsel has submitted an untruthful and misleading affidavit to the Court in his return regarding lack of communications and who is responsible for cutting off communications. The Appellant produced over six hundred pages of documents. Any errors contained in this sizable undertaking by the Appellant were inadvertent and would have been correctable with the least bit of

communication with Respondent's counsel in completing the Joint Appendix.

Hiding behind an imposed settlement in Federal Court and using untruthful and/or misleading affidavits should not be allowed to supersede both states rights and the truth. As has been shown above the forty-eight page Return is composed of nothing substantive as any inadvertent error on the part of the Appellant is more than offset by Respondent's errors, incomplete designations and the half-truths or outright untruths presented by the Respondent. Key documents needed by the Appellant and designated by the Appellant are nowhere to be found although they are documented through the hearing transcripts as having been cornerstones to Judge Addy's decision process. Furthermore, the Respondents have refused to produce nor address required litigation foundational documents from Appellants discovery requests, which includes compliance with South Carolina Court Rule 407, 1.8 (g) which states:

“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 [**an informed consent agreement**] signed by the client. 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.”

If the informed consent agreement does not exist under South Carolina law then this entire legal process is a fraud on the Court by the Respondents and their

legal counsels. The Federal Courts cannot take away this state property protection right of the South Carolina Appellant. Therefore, this Honorable Court needs to establish whether this entire legal process has been a fraud by the Respondents simply by requiring the Respondents to produce an authenticated informed consent agreement. The Respondents and their counsels are all officers of the Court and should have no problem establishing the legitimacy of their position that there was a legal settlement under the laws of South Carolina which centers on the legally required informed consent agreement signed by all the parties under the law as required by Court Rule 407 1.8 (g).

CONCLUSION

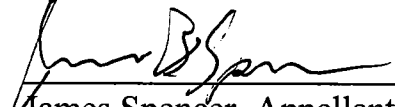
Respondents are trying to prevent this case from being heard on the merits. Appellant who is *Pro Se* is forced to deal with the Respondents and their counsels under these conditions. There has been a total lack of cooperation between the *Pro Se* Appellant and opposing counsel in the construction of the Joint Appendix. The Court must see that comity and cooperation between the *Pro Se* Appellant and the Respondent lasts at least long enough to complete the Joint Appendix. For the reasons stated above the Appellant's motion to reinstate the Appeal should be approved and the Respondents should be instructed to assist in providing and obtaining any missing documents that have been listed in all parties respective

designation of matter. Finally, the Informed Consent Agreement needs to be produced to legitimize these proceedings; otherwise, Appellant suggests that these proceedings are nothing more than the manifestation of Respondents fraud upon the Court. If such were not the case, why the countless requests for what should be benign legally required documents go unaddressed for close to a decade. This Court is requested to determine if fraud upon the Court by the Respondents and their counsel has occurred in order to preserve the appearance of the integrity of the Court.

Respectfully submitted,

March 30, 2016

By:



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

I am an employee or clerk of the Lexington County Clerk of Courts office and state the following regarding the files on Case No: 2012-CP-32-3428. I have searched the files for the following:

- A letter from Judge Griffith dated May 30, 2013, to Judge Addy referencing materials provided to Judge Addy.
- An Order from Justice Toal dated January 17, 2013, which appointed Judge Griffith as chief Judge for administrative purposes to hear specifically Case No: 2012-CP-32-3428.
- Any overview to Judge Addy on Case No: 2012-CP-32-3428 from Judge Griffith's clerk.
- Copies of any of the above records found are attached hereto for a total of ____ pages. Clerk's initials here.

Printed name of Emily L. Hinson
 Signature of Emily L. Hinson Date: 5-29-15
 Deputy Clerk of Common Pleas

Affix Seal of the Clerk of Court of Lexington County.

We do not have any of these documents in the Court file. This information was not filed with our office.

FILED

2015 MAY 29 A 11:06

BEULAH CASTRO
CLERK OF COURT
LEXINGTON, SC

James

From: Addy, Frank R. Secretary (Freda E. Sartin) <faddysc@sccourts.org>
Sent: Monday, October 12, 2015 12:32 PM
To: JamesBSpencer@sc.rr.com
Cc: Addy, Frank R. Law Clerk (Hallie Willm); Addy, Frank R.
Subject: 2012-CP-32-03428 (spencer v. Rakowsky, et al)

Mr. Spencer,

This is a follow up email pertaining to my conversation with you that took place on Friday, October 9th and to the fax that was received at our office on Saturday, October 10th. I have looked through our office and court term notation files for the term of court that was held on June 5th, 2013 more than once. This particular term of court was held in Laurens County. Judge Addy did hear matters from other counties during this assigned court term and does hear matters outside of the assigned county from time to time. The only documentation that is located in our file notes pertaining to the above case are copies of documents that were sent to the Lexington County Clerk of Court's office for filing. We have copies of the following Order of Dismissal, Order Denying Rule 59(e) Motion, Order Denying Motion to Disqualify and all of the originals were sent to the Lexington County Clerk of Court's office for filing. I can only speak of what is in our office and there is not any letters or correspondence in our notation files pertaining to the above case. Any letters or correspondence may not necessarily be in the Clerk of Court's file but, our office cannot speak to what is or is not in the Clerk of Court's file.

Freda Sartin
Administrative Assistant
Honorable Frank R Addy Jr
Resident Judge, Eighth Judicial Circuit Greenwood County Courthouse
528 Monument St , Room 210
Greenwood, SC 29646
Phone: (864)943-8020
Fax: (864)942-8581
Email: faddysc@sccourts.org<<mailto:faddysc@sccourts.org>>

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**James B. Spencer**  
**Box 183**  
**7001 Saint Andrews Road**  
**Columbia, SC 29212**  
**(803) 414-0889**  
**Email: JamesBSpencer@sc.rr.com**

October 9, 2015

Ms. Freda Sartin  
Admin Assistant  
528 Monument St., Ste. 210  
Greenwood, SC 29646  
Via Fax: (864) 942-8581

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

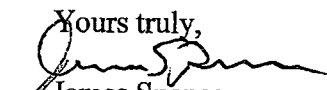
Dear Ms. Sartin:

Thank you very much for your kindness in researching the records in the files at your offices today concerning the above case. As I mentioned, I am putting together the required appendix for the South Carolina Appellate Court and I want to be sure I have all the documents. As we discussed this is a Lexington County Civil Case that was heard by the Honorable Judge Addy in Laurens, South Carolina on June 5, 2013.

There being no record of Judge Addy ever having heard this case in your files I am sure is an oversight. Your records do show that Judge Addy held court in Laurens on June 5, 2013 and heard two identified cases. It is my understanding that Judge Griffith appointed Judge Addy to hold the hearing on June 5, 2013 on this case. The only record and/or document you found in your files concerning this case was Judge Addy's Order turning down the 59(e) Motion I filed. The motion itself and any other documents generated regarding this case by Judge Addy and/or correspondence concerning this case from Judge Griffith or any other person or party, under court procedures, would have been sent to the Lexington County Clerk of Court's office according to your understanding.

Before you send me the confirming, email regarding this, would you kindly double-check the files perhaps a document was filed in a Judge Griffith correspondence file by error. Being *Pro Se* I just want to make sure, I am filing correct information in the Appendix.

Thank you very much; I look forward to hearing from you.

Yours truly,  
  
James Spencer

**Michael Sribnick**

---

**From:** Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams) <[dbenjaminlc@sccourts.org](mailto:dbenjaminlc@sccourts.org)>  
**Sent:** Thursday, November 12, 2015 9:14 AM  
**To:** Michael Sribnick  
**Subject:** RE: FOIA request for information....

Dr. Sribnick,

Any documents related to this would be available through the Lexington County Clerk of Court's office. Furthermore, Judge Benjamin did not hold court in Lexington during the time period requested. She was Chief of General Sessions in the Fifth Circuit at the time. If you require further assistance, please contact Rosalyn Frierson at [rfrierson@sccourts.org](mailto:rfrierson@sccourts.org). She is with Court Administration. Thank you, and have a great day.

Stacy A. Williams  
Law Clerk to the Honorable DeAndrea Gist Benjamin  
Richland County Judicial Center  
P.O. Box 192  
1701 Main Street, Suite 215  
Columbia, SC 29201  
Phone: 803-576-1511  
Fax: 803-576-1777  
[www.sccourts.org](http://www.sccourts.org)  
[dbenjaminlc@sccourts.org](mailto:dbenjaminlc@sccourts.org)

---

**From:** Michael Sribnick [<mailto:legaldocumentation@sc.rr.com>]  
**Sent:** Monday, November 09, 2015 3:54 PM  
**To:** Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams)  
**Subject:** FOIA request for information....

Dear Ms. Williams:

Please consider this email a request under the authority of the South Carolina Freedom of Information Act.

Please provide copies of any correspondence and/or orders issued by the Honorable Judge De Andrea G. Benjamin or her office regarding Lexington County Case Number: 2012-CP-32-3428, Spencer vs. Rakowsky, et al., during the period of May 30, 2013 through September 30, 2013.

Please respond by email if no such document(s) exist and advise by email if they do exist and I will have a courier pick them up from your office for your convenience. 5

Thank you for your assistance in this matter.

Yours truly,

Michael Sribnick, MD, JD  
Attorney for Jim Spencer

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BRUNER, POWELL, WALL & MULLINS, LLC

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POST OFFICE BOX 61110
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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.
WILLIAM D. BRITT, JR., P.A.

BENJAMIN C. BRUNER
MATTHEW H. STABLER

* Also Admitted in District of Columbia

AUTHOR'S E-MAIL: BBRUNER@brunerpowell.com

November 4, 2011

VIA HAND DELIVERY

The Honorable Jeanette W. McBride
Richland County Clerk of Court
1701 Main Street
Columbia, SC 29202

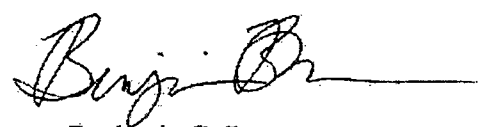
RE: *James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC*
Civil Action No.: 2011-CP-40-5384
Claim No.: 23192
BPWM File No.: 3-1742-108

Dear Ms. McBride:

Enclosed for filing with your office, please find the original and two (2) copies of a Notice of Appearance, as well as a Motion to Dismiss in the above-referenced action. Also enclosed is the \$25.00 filing fee. Please have your office file the original and return the stamped filed copies to me via my courier. If you have any questions please do not hesitate to contact me.

By copy of the letter, I am serving same upon the other parties of record. With my kindest regards, I am,

Sincerely yours,


Benjamin C. Bruner

BCB/nys
/Enclosures

cc: James B. Spencer, pro se (via Certified Mail, Return Receipt, Restricted to Addressee)



David W. Overstreet, Esquire
Andrew W. Countryman, Esquire

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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. 2011-CP-40-5384

Plaintiffs.)

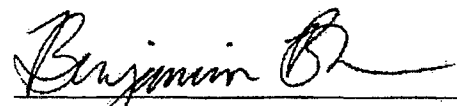
v.)

NOTICE OF APPEARANCE

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

Defendants.)

Bruner, Powell, Wall & Mullins, LLC, by its undersigned, hereby notifies this honorable Court that it is appearing on behalf of Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC in the above-referenced action. Please send all notices to Bruner, Powell, Wall & Mullins, LLC at P.O. Box 61110, Columbia, SC 29260.



Warren C. Powell, Jr.
Benjamin C. Bruner
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260
803-252-7693

*Attorneys for Adrian L Falgione and The Law Offices
of Adrian L. Falgione, LLC*

November 4, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

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

IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT

CASE NO. 2011-CP-40-5384

3

Plaintiff)

v.)

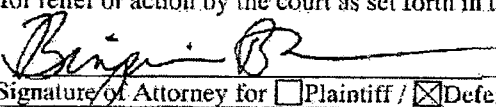
John R. Rakowsky; Adrian L. Falgione; and the Law Offices of Adrian Falgione, LLC)

Defendant)

MOTION INFORMATION FORM

AND COVER SHEET

| | |
|--|--|
| Plaintiff's Attorney:
James B. Spenser
Address:

e-mail: | Defendant's Attorney:
Benjamin C. Bruner No. 77544
Address:
P.O. Box 61110
Columbia, SC 29260
phone: 803-252-7693 fax: 803-753-0060
e-mail: Bbruner@brunerpowell.com |
| <input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
<input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) | |
| SECTION I: Hearing Information | |
| Nature of Motion: Motion to Dismiss
Estimated Time Needed: 15 mins Court Reporter Needed: YES / NO | |
| SECTION II: Motion Type | |
| <input checked="" type="checkbox"/> Written motion attached
<input type="checkbox"/> Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order. | |
| 
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant | <u>November 4, 2011</u>
Date submitted |
| SECTION III: Motion Fee | |
| <input checked="" type="checkbox"/> PAID - AMOUNT: 25.00
<input type="checkbox"/> EXEMPT: (check reason) | |
| <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support
<input type="checkbox"/> Domestic Abuse or Abuse and Neglect
<input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party
<input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief
<input type="checkbox"/> Motion for Stay in Bankruptcy
<input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)
<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
<input type="checkbox"/> Other: | |
| JUDGE'S SECTION | |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.
<input type="checkbox"/> Other: | JUDGE: _____
CODE: _____ Date: _____ |
| CLERK'S VERIFICATION | |
| Collected by: _____ | Date Filed: _____ |
| <input type="checkbox"/> MOTION FEE COLLECTED: _____
<input type="checkbox"/> CONTESTED - AMOUNT DUE: _____ | |

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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. 2011-CP-40-5384

Plaintiffs,)

v.)

**NOTICE OF MOTION AND
MOTION TO DISMISS**

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

Defendants.)

TO: THE PLAINTIFFS, ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that Defendants Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC (collectively, "Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Fifth Judicial Circuit, at the Richland County Judicial Center, 1701 Main Street in Columbia, South Carolina on the 10th day after service hereof, or soon thereafter as counsel can be heard, for an Order dismissing the allegations by James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc, and Irene Santacroce (collectively, "Plaintiffs") against the Defendants in this action.

This Motion is made upon the following grounds:

- (1) The Plaintiffs have failed file an expert affidavit pursuant to S.C. Code § 15-36-100;
- (2) The Plaintiffs' claims are barred by the three-year statute of limitations established in S.C. Code § 15-3-530;
- (3) The Plaintiffs have failed to serve the Defendants with the Summons & Complaint; and

(4) The Complaint fails to state facts sufficient to constitute a cause of action against the Defendants.

Accordingly, the Defendants move for an Order dismissing the Plaintiffs' claims against the Defendants pursuant to Rules 3 and 12 of the South Carolina Rules of Civil Procedure, as well as S.C. Code §§ 15-3-530 and 15-36-100. This Motion may be further supported by the record in the case, by affidavits, and by such cases as have been made and provided. Pursuant to Rule 11, SCRPC, the undersigned has no duty to consult with the Plaintiffs before filing this Motion.



Warren C. Powell, Jr.

Benjamin C. Bruner

Bruner, Powell, Wall & Mullins, LLC

P.O. Box 61110

Columbia, SC 29260

803-252-7693

*Attorneys for Adrian L. Falgione and The Law
Offices of Adrian L. Falgione, LLC*

November 4, 2011

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on November 4, 2011, the document(s) described below was(were) served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

Documents served: **NOTICE OF APPEARANCE**
 NOTICE OF MOTION AND MOTION TO DISMISS

Parties served:


**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DELIVERY
RESTRICTED TO ADDRESSEE**

James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DELIVERY
RESTRICTED TO ADDRESSEE**

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

David W. Overstreet
Andrew W. Countryman
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John R. Rakowsky


Benjamin C. Bruner