

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APR 06 2016

SC 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 RAKOWSKY**

NOW COMES Appellant James Spencer, *Pro Se*, (hereinafter “Appellant”) and files this Reply to the Return of Respondent Mr. Rakowsky received by Appellant on April 5, 2016 regarding the reinstatement of Case No. 2014-000091.

DISCUSSION

Respondent Mr. Rakowsky (hereinafter “Rakowsky”) filed a two-page response including caption sheet that in summation and in closing states on page 2,

“These nine matters [raised in Mr. Falgione’s Return] and the additional matters that Spencer conveniently omits are thoroughly addressed by Respondent Falgione in his return to Spencer’s motion. For the sake of brevity, Respondent Rakowsky joins in Respondent Falgione’s return and respectfully requests that the Court deny Spencer’s motion and issue the remittitur.”

Mr. Rakowsky’s counsels in an effort to avoid a hearing on the merits do allege they never received service of a stamped filed copy with the Court of the Appellant’s Motion to Reinstate and do so because the Appellate Court’s website is not up to date. Mr. Rakowsky’s counsels are fishing blindly for a technicality instead of verifying the facts. The *Pro Se*, disabled Appellant with the use of only one hand is once again forced to respond to blind baseless speculation. Also attached to the two page Return are Affidavits that claim neither of Mr. Rakowsky’s counsels received a request for assistance from Appellant. If Mr. Rakowsky’s counsels used the same diligence they used in verifying Respondent Falgione’s Return, taken in

the best light, it would explain both the inability to recognize and respond to the Appellant's request for assistance. Significantly, Appellant has no control over Mr. Rakowsky's changing counsels and firms and the related logistics involved in correspondence exchanges.

Finally, Mr. Rakowsky's designations were made on July 30, 2015 and mailed from Carlock, Copeland & Stair, LLP, 40 Calhoun Street, Suite 400, Charleston, SC 29401. **See Attachment "A" pg. 2.** According to a filing before this Court, Rakowsky's counsels on February 29, 2016, stated they were having trouble receiving mail from the firm they were previously with and blamed Appellant for sending the over 600 page Joint Appendix to that former address. **See Attachment "B" pg. 2.**

Appellant did not receive word that Mr. Rakowsky's counsels were changing firms and moving until receiving notification from Mr. Overstreet on or about January 15, 2016, **See Attachment "C."** The Appellant's letter for assistance was sent prior to receiving notice and Appellant had no way of knowing that Mr. Overstreet was having trouble with his old firm until the filing of February 29, 2016 regarding correspondence. Appellant has no control over the relations between Mr. Overstreet and his former firm when it comes to their communications. Appellant, therefore, totally rejects the baseless Affidavits based on Respondent Rakowsky's

own admissions of having trouble receiving mail from their former firm and the fact Appellant has nothing to gain by not presenting a complete Joint Appendix.

SUMMARY

The Appellant addressed the nine points of Respondent Falgione that were once again reaffirmed by Respondent Rakowsky on April 5, 2016. Appellant stands by the response made in his Reply to Respondent Falgione's return. Respondent Rakowsky, like Respondent Falgione, asked for documents that have nothing to do with the heart of this litigation that is inextricably tied to fraud on the Court by the Respondents and their counsels.

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 was shown Respondent Falgione's forty-eight page Return is composed of nothing substantive and that any inadvertent error on the part of the Appellant is more than offset by Respondent's errors, incomplete designations and half-truths or outright untruths presented by the Respondent in it. 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 foundation documents to

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.”

Furthermore, South Carolina Federal Local Rule: 83.I.08: RDE RULE IV (B) States:

“Acts or omissions by an attorney admitted to practice before this court, individually or in concert with any other person or persons, that violate the Code of Professional Responsibility adopted by this court shall constitute misconduct and shall be grounds for discipline, whether or not the act or omission occurred in the course of any attorney-client relationship. The Code of Professional Responsibility adopted by this court is the South Carolina Rules of Professional Conduct (Rule 407 of the South Carolina Appellate Court Rules) adopted by the South Carolina Supreme Court, as amended from time to time by that state court, except as otherwise provided by specific rule of this court.”

If the informed consent agreement does not exist under South Carolina law, then this entire legal process being conducted before this Court 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 that is legally required for Respondents to negotiate a settlement in this case.

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 individual parties represented by the Respondents under the rules as required by Court Rule 407 1.8 (g). All Respondents have to do is present the informed consent agreement.

Furthermore, Respondents and their counsels bypassing the legal requirements involving these property rights established by the State of South Carolina are violations of the due process and equal protection clauses of the 5th and 14th amendments to the U.S. Constitution.

The seminal case on this topic is **Hazel-Atlas Co. v. Hartford-Empire co.**, 322 U.S. 238, 239, 64 S. Ct. 997, 998 (1944). In **Hazel-Atlas** the United States Supreme Court set aside a judgment because it found a party and its attorneys engaged in a “deliberately planned and carefully executed scheme to defraud” the Circuit Court of Appeals. **Id** at 245. As in **Hazel-Atlas** the fraud upon the Court is being committed in the Appellate Court in this case; therefore the Appellate Court

is responsible to determine the perpetrators of the fraud without need to remand it back to the Court of Common Pleas for such a hearing. Further this Appellate Court has the power to incorporate appropriate sanctions for such fraud upon the Court. In **Hazel-Atlas**, the Supreme Court found, “for fraud practiced upon it, and is not bound to remit the complainant to the district court for relief.”

These significant documents relate to perpetrated by Respondents and their counsel upon the South Carolina Appellate court. When compared to the Respondents’ request for the inclusion of Notice of Appearance by their counsel the law and the equities must lie on the side of the Appellant.

CONCLUSION

Respondents are trying to do everything possible to prevent this case from being heard on the merits, including Appellant’s motion for sanctions. Appellant who is *Pro Se* is forced to deal with the Respondents and their counsels under these conditions. For the reasons stated above the Appellant’s motion to reinstate the Appeal should be approved and the Respondents instructed to assist in providing and obtaining any missing documents that have been listed in all the parties respective designation of matter for the Joint Appendix.


Finally, the Informed Consent Agreement required by South Carolina Court Rule 407, 1.8 (g) needs to be produced to legitimize these proceedings, otherwise

Appellant charges that these proceedings are nothing but the manifestation of Respondents fraud upon the Court. South Carolina law is the topic here regarding States Rights; the Federal Court Actions are not the topic. What is being questioned is whether Respondents complied with the applicable South Carolina law regarding what is required for there being a legitimate settlement. If Respondents did not comply with the South Carolina law then they fully know the foundation of their legal position is baseless and therefore Respondents are wasting the Court's time.

Without a valid written *informed consent agreement*, the Respondents and their counsels are committing fraud upon the Court and appropriate action needs to be taken by this Court. It is black white either the Respondents produce what should be the benign executed informed consent agreement, or this Court has been a victim of fraud on the Court by the Respondents for years.

Respectfully submitted,
April 6, 2016

By:

A handwritten signature in black ink, appearing to read "James Spencer", written over a horizontal line.

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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 30 2015

SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-32-3428

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

of whom James Spencer is the,

Appellant,

v.

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

of whom John R. Rakowsky
and Adrian L. Falgione are the,

Respondents.

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

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

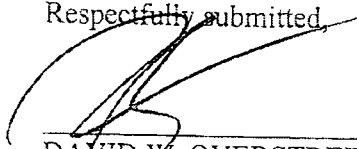
Appeal:

1. Order filed December 6, 2013 (denying Motion to Reconsider)

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

3. Order filed August 23, 2013 (granting Motion to Dismiss)

Respectfully submitted,



DAVID W. OVERSTREET
MICHAEL B. McCALL

Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307

Attorneys for Respondent John R. Rakowsky

July 27, 2015

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.: 2014-00009

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FEB 29 2016

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.

SUPPLEMENTAL REPLY IN SUPPORT OF
MOTION TO DISMISS

Respondent John Rakowsky ("Rakowsky"), by and through his undersigned counsel, submits this supplemental reply in support of his motion to dismiss, filed December 21, 2015, based upon the amended record on appeal which the Appellant, James Spencer ("Appellant" or "Spencer"), served in this matter.

On December 21, 2015, Rakowsky moved, for the third time, to dismiss Spencer's Appeal on account of his continued failure to comply with the South Carolina Appellate Court Rules; in particular his failure to comply with Rule 260. By Order dated January 21, 2016, this Court directed Appellant to serve and file an amended record on appeal that

includes "all items from Respondents' designations of matter that were omitted from the current record within thirty days from entry of this Court's Order." The Court further advised that "upon receipt of the amended record or expiration of thirty days, this court will entertain Respondents' motions."

On February 24, 2016, a package from UPS containing 628-pages purporting to be an amended record on appeal with a certification pursuant to Rule 210(g), SCACR from Spencer, and proof of service was received at the former law firm of Counsel for Rakowsky. (See, Exhibit A). Spencer served this amended record on appeal to the incorrect address despite having previously received notice that Counsel for Rakowsky's address had changed. (See, Exhibit B). Fortunately, Counsel for Rakowsky was notified that a package was delivered to his former law firm, and was able to review the amended record, albeit on extremely short notice.

For the reasons set forth below, Spencer failed to comply with the Court's January 21, 2016 Order and with the Rules of Appellate Practice, and upon entertaining Respondents' motions to dismiss, the Court should grant Rakowsky's motion to dismiss.

Despite this Court's clear Order, Appellant has again failed or refused to include "all items from Respondents' designations of matter", including but not limited to the following from Rakowsky's designations:

- a) Order filed November 1, 2013 (denying Motion to Disqualify);
- b) Order filed October 1, 2012 (denying Motion to Reconsider Venue Order);
- c) Falgione Motion to Change Venue filed May 17, 2012;
- d) Exhibit 1 at June 5, 2013 Hearing



Earhart Overstreet
ATTORNEYS AT LAW

January 15, 2016

Via e-mail only

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212
JamesBSpencer@sc.rr.com

Re: Spencer v. Rakowsky, et al.
File No.: 110-0159

Dear Mr. Spencer:

I wanted to let you know that I have switched law firms but will remain the counsel involved in this case at my new firm. My new contact information is **Earhart Overstreet LLC**, P.O. Box 22528, Charleston, SC 29413, 843-972-9401. My email address is david@earhartoverstreet.com. I may not get any emails you send at this point to my old address, so I would ask that you update your system.

Thanks in advance for your help.

Sincerely yours,

David W. Overstreet

DWO/cmg

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



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APR 06 2016

SC Court of Appeals

The undersigned hereby certifies that on , the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail and/or delivery by courier on this date April 6, 2016.

Documents served: **REPLY TO RETURN OF RESPONDENT RAKOWSKY**

Parties Served:

Benjamin C. Bruner
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Attorneys for John Rakowsky

By: 

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