

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No: 2014-000091

RECEIVED
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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr. Circuit Court Judge

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

v.

James Spencer, *Pro Se, Appellant*

RECORD ON APPEAL

VOLUME I

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Addendum Notation

On May 26, 2016, the Court Ordered the Respondents to provide documents missing from the proposed Joint Appendix. Respondent specifically listing item 22 of John Rakowsky's Designation of Matters. Furthermore, Respondent failed to provide the missing documents listed in item 16 of the Appellant's Designation of Matter which were documents that Judge Addy incorporated in reaching his terminal decision to dismiss this case. Documents received by Judge Addy giving him including instructions, most of the documents on the case which were provided to Judge Griffith and an overview of the case as detailed in the June 5, transcript (i.e. page 5, lines 2-17 and page 7, lines 5-12)."

These records were not provided to the Appellant at any time before after or
during the hearing, nor were they in the SC State Judicial records retention system.

530-531

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2011CP4005384

James Spencer

John R Rakowsky

Estate of Doris Holt

Adrian L Falgione

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ 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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Non Suit);
☐ 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
		\$
		\$
		\$

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 28th day of June, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

James Spencer

Irene Santacroce

Andrew W. Countryman

Benjamin C. Bruner

Amanda Kurzen Dudgeon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court

Jeanette W. McBride

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.)

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

Defendants.)

ORDER

JEANETTE W. MCBRIDE
C.C.P. & G.S.

2012 JUN 28 PM 2:25

RICHLAND COUNTY
CLERK OF COURT

THIS MATTER came before the undersigned by way of the Plaintiffs' motions for entry of default against the Defendants.¹ The Plaintiffs contend entry of default is proper because the Defendants failed to plead or otherwise defend within thirty days of being served with the summons and complaint. I disagree.

Entry of default is proper when a defendant has failed to plead or otherwise defend as provided by the South Carolina Rules of Civil Procedure. Rule 55(a), SCRPC. The Plaintiffs contend the Defendants were served on September 15, 2011, based upon Affidavits of Tammy Lail, and then again on December 15, based upon the Affidavits of Alden Wheeler. However, the Affidavits of Tammy Lail are not notarized and, therefore, are fatally defective. *See* Rule 11(c), SCRPC (defining affidavits as statements sworn to or affirmed before an officer authorized to administer oaths); *see also* 1 S.C. Jur. *Affidavits* § 12 ("An affidavit without the signature and certification of an officer authorized to administer oaths is fatally defective, and is

¹ On January 24, 2012, James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc., filed two Requests for Entry of Clerk's Default, one as to Defendant Rakowsky, and one as to the Falgione Defendants. Plaintiff Irene Santacroce filed two similar Requests for Entry of Clerk's Default on January 25, 2012. These motions are construed as motions for entry of default pursuant to Rule 55(a), SCRPC.

SCANNED

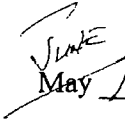
not an affidavit at all.”). In addition, the record shows Defendant John Rakowsky filed a Motion to Dismiss on November 3, 2011, and Defendants Adrian Falgione and the Law Office of Adrian Falgione, LLC filed their Motion to Dismiss on November 4, 2011. These motions preclude an entry of default under Rule 12, SCRPC. Additionally, I find the Plaintiffs’ proofs of service fail to meet the requirements set forth in Rule 4(g), SCRPC. I therefore find the Plaintiffs have failed to establish that the Defendants failed to plead or otherwise defend as provided in the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiffs’ motions for entry of default are denied.

AND IT IS SO ORDERED.



James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit


May 14, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUITJames Spencer, individually and 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.)

C/A No. 2011-CP-40-5

JEANETTE W. McBRIDE
S.C. C.P. & G.S.

2012 AUG 15 AM 10:18

RICHLAND COUNTY
FILED**ORDER GRANTING DEFENDANTS'
MOTIONS TO CHANGE VENUE**

THIS MATTER came before the undersigned by way of motions to change venue, which were filed on May 17, 2012, on behalf of Adrian L Falgione ("Falgione") and The Law Offices of Adrian L. Falgione, LLC (collectively, "Falgione Defendants"), and on June 4, 2012, on behalf of John R. Rakowsky ("Rakowsky"). At a hearing on these motions on August 1, 2012, at the Richland County Judicial Center, the Plaintiffs appeared pro se, Benjamin C. Bruner, Esquire -- appeared on behalf of the Falgione Defendants, and Amanda K. Dudgeon, Esquire appeared on behalf of Rakowsky. Having carefully considered the arguments and submissions of the parties, I find the Defendants' motions should be granted and this case should be transferred to Lexington County.

When a plaintiff files suit in a county that is not the proper venue for trial under the venue statutes, the Court may transfer the case to a proper county for trial. S.C. Code Ann. § 15-7-100 (Supp. 2011.). Based upon the allegations in the Complaint, S.C. Code Ann. § 15-7-30 governs venue of this action. Under that statute, venue is proper either in the defendant's resident county or in the county where the most substantial part of the alleged act or omission giving rise to the

SCANNED

plaintiff's claim occurred. S.C. Code Ann. § 15-7-30(C), (E) (Supp. 2011). The South Carolina Supreme Court has recognized that a defendant's right to be tried in his resident county is a substantial one. Jeter v. South Carolina Dept. of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 147-48 (2006). Furthermore, "in a case involving only one defendant or multiple defendants who reside in a single county, the venue choice generally is controlled by the residence of the defendant." Id.

In this legal malpractice action, the Defendants contend this case should be transferred to Lexington County as a matter of right because Richland County is not a proper venue under §15-7-30 and because Lexington County is the Defendants' resident county. I agree.

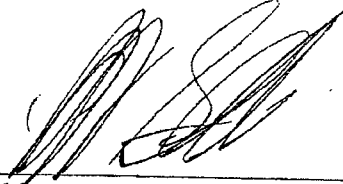
I find venue is not proper in Richland County. All the named defendants are from Lexington County, and the most substantial part of the acts and omissions alleged in the Complaint occurred outside Richland County. The Plaintiffs argued at the hearing that they signed fee agreements with the Defendants in Richland County. Even if this were true,¹ where the fee agreements were signed does not override the Defendants' substantial right to be tried in their resident county, nor does it establish that the most substantial part of the acts and omissions alleged in the Complaint occurred in Richland County, as the statute requires. In fact, Plaintiff Spencer argued at the hearing that the alleged malpractice occurred in Florence County. I therefore find Richland County is not a proper venue for this action and the Defendants have a substantial right to be tried in Lexington County that has not been waived.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants' motions to change venue should be, and hereby are, granted and that the above-

¹ The Defendants submitted affidavits stating that the fee agreements were signed at their offices in Lexington County. In response, the Plaintiffs submitted a series of documents that purported to be affidavits in support of their argument that the fee agreements were drafted and signed in Richland County, but none of the affidavits the Plaintiffs submitted were notarized.

captioned case be, and hereby is, transferred to the Court of Common Pleas for Lexington County. **IT IS FURTHER ORDERED** that the Clerk of Court for Richland County is hereby directed to take all steps necessary to effectuate the immediate transfer to the Lexington County Court of Common Pleas of all pleadings and other documents presently on file with this Court in connection with this action.

AND IT IS SO ORDERED.



The Honorable Brooks P. Goldsmith
Presiding Judge, Fifth Judicial Circuit

August 15, 2012

Columbia, South Carolina

The Supreme Court of South Carolina

Irene Santacroce, et al.

Plaintiffs,

v.

John R. Rakowsky, et al.

Defendants.

Lexington County
2012-CP-32-03428

ORDER

This matter is pending in Lexington County. The Honorable R. Knox McMahon, Chief Judge for Administrative Purposes (Civil), cannot act as Chief Judge for Administrative Purposes to administer this case. The Honorable William P. Keesley, Chief Judge for Administrative Purposes (Criminal), also cannot act as Chief Judge for Administrative Purposes to administer this case. Now therefore,

IT IS ORDERED that the Honorable Eugene C. Griffith, Jr., as the Chief Judge for Administrative Purposes in the Eighth Judicial Circuit, be assigned as Chief Judge for Administrative Purposes in the Eleventh Judicial Circuit (Civil) for the sole purpose of administering this case and preparing it for trial. Any judge subsequently appointed as Chief Judge for Administrative Purposes in the Eighth Judicial Circuit shall assume this responsibility



Jean Hofer Toal
Chief Justice

January 17, 2013
Columbia, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

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

JUL 13 2013 10:59

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.)

ORDER

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

Defendants.)

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.

SEN

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**

-2-
JEL

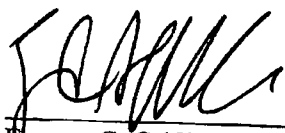
PREJUDICE pursuant to the Order issued June 14, 2012 and filed June 28, 2012;

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 5th 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 5th 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



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

Taylor Rollins
 Law Clerk

Post Office Box 375
 1226 College Street
 Newberry, SC 29108
 Phone: (803) 321-1430
 Fax: (803) 276-3281
 egriffithlc@sccourts.org

May 30, 2013

Via Facsimile

Benjamin Bruner
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 Columbia, South Carolina 29260-1110
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Amanda K. Dudgeon
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 40 Calhoun Street Suite 400
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 Fax Number: (843) 727-2995

Via First Class Mail

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

James Spencer
 Box 183
 7001 Saint Andrews Road
 Columbia, South Carolina 29212

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,

A handwritten signature in dark ink, appearing to read 'TWR', with a stylized flourish extending from the end.

Taylor Rollins

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON FOR THE ELEVENTH JUDICIAL CIRCUIT

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

Plaintiffs,)

v.)

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

Defendants.)

C/A No. 2012-CP-³²40-3428

ORDER OF DISMISSAL

THIS MATTER came before the undersigned by way of Motions to Dismiss filed by John R. Rakowsky ("Rakowsky") and by Defendants Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC (collectively, "Falgione Defendants") in November of 2011.¹ At a hearing on June 5, 2013, in Laurens, South Carolina, the Plaintiffs appeared *pro se*, Amanda K. Dudgeon, Esquire, appeared on behalf of Rakowsky, and Benjamin C. Bruner, Esquire, appeared on behalf of the Falgione Defendants. The parties consented on the record to allow the undersigned to hear this matter pending issuance of an order granting this Judge jurisdiction. That order was issued on June 27, 2013, *nunc pro tunc* June 5, 2013. After careful consideration of the allegations in the complaint and the arguments of the parties at the hearing,² I find the Defendants' Motions to Dismiss shall be granted for the reasons set forth below.

¹ The Falgione Defendants later amended their motion on January 3, 2013 to challenge timeliness and sufficiency of service.

² Plaintiff and others contacted the court via email on several occasions after the hearing was concluded and interposed additional arguments which do not relate to the merits of the narrow issue before the court. Although the court is extremely sympathetic with the assertions of Plaintiff and others that they were not treated fairly by the Federal Court in the Underlying Case, this court is constrained to follow the law as written.

STANDARD

FILED
JUN 23 2007
BELEA, JUDGE
CLERK OF COURT
LEXINGTON, SC

"In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper." *Doe*, 373 S.C. at 395; 645 S.E.2d at 247. Conversely, if the complaint fails to state facts sufficient to constitute a cause of action, then dismissal is proper under Rule 12(b)(6), SCRPC.

FACTUAL/PROCEDURAL BACKGROUND

This is a legal malpractice action that arises out of a case in which Rakowsky and Falgione represented the Plaintiffs. The underlying case was filed in federal court for the District of South Carolina, Florence Division, and assigned Civil Action No.: 4:02-cv-1859-RBH ("Underlying Case"). The complaint in the Underlying Case was filed in May 2002 (by two attorneys not defendants to this case) and included allegations against the Plaintiffs' former business partners, the Horry County Sheriff's Department, and the Myrtle Beach Police Department, as well as various officials, deputies, and officers in those agencies, all of whom took some part in an alleged attempt to take over Southern Holdings, Inc.

Plaintiffs allege that on May 8, 2007, the day before trial, the Court conducted a pretrial hearing, at which it heard arguments on evidentiary motions. After the hearing, the presiding judge held a conference in chambers with the attorneys. According to the complaint, Rakowsky and Falgione told the Plaintiffs certain evidence had been excluded and then attempted to coerce the Plaintiffs to accept a settlement offer for \$55,000. Plaintiffs allege, however, that they

emphatically and vigorously refused to settle. Instead, the Plaintiffs told Rakowsky and Falgione they would object when the judge polled them about the settlement.

On the following day, May 9, 2007, when the trial was scheduled to begin, the Plaintiffs and their attorneys, the Defendants in this action, appeared in Court. After a conference in chambers, a hearing was held in which the attorneys placed the terms of the settlement on the record, allegedly against the Plaintiffs' wishes. The Court accepted the settlement and dismissed the jury pool. According to the complaint, the Court did not poll the Plaintiffs. The Plaintiffs further allege they were told the settlement was not final until a settlement agreement was signed.

In late May 2007, the Plaintiffs in the Underlying Case began inundating the Court with letters "pointing out inconsistencies in Rakowsky's letters, the transcript of the [pretrial] evidentiary hearing, and why the Judge made the evidentiary rulings he did, as reported by Rakowsky and Falgione behind closed doors." (Compl. ¶ 54.) The Court construed the letters as motions to set aside the settlement, and on July 3, 2007, issued an Order denying the motions.

More than three years later, on August 15, 2011, the Plaintiffs filed this *pro se* malpractice suit against Rakowsky and Falgione. No expert affidavit was filed with the complaint or within 45 days after, nor did the Plaintiffs request an extension to file an expert affidavit in support of their legal malpractice claims.

DISCUSSION

I. Failure to File Expert Affidavit

The Defendants first argue dismissal is proper because the Plaintiffs failed to timely file an expert affidavit pursuant to S.C. Code § 15-36-100. I agree.

FILED
2013 AUG 23 10:00
CLERK OF COURT
LEXINGTON, SC

In South Carolina, a plaintiff in a legal malpractice action is required to file an expert affidavit as part of his complaint. S.C. Code §§ 15-36-100(B), (G)(2). This requirement protects professionals licensed by the State of South Carolina from frivolous claims. See *Harris Teeter, Inc. v. Moore & Van Allen, PLLC*, 390 S.C. 275, 282, 701 S.E.2d 742, 745 (2010) (“[G]enerally, a plaintiff in a legal malpractice action must establish this standard of care by expert testimony.”); *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 S.C. 433, 435, 472 S.E.2d 612, 613 (1996) (same). While an exception to the contemporaneous filing requirement exists when the statute of limitations will expire within ten days of filing the complaint, the plaintiff must nevertheless supplement the complaint with an expert affidavit within forty-five days of the date of filing. S.C. Code § 15-36-100(C)(1). If the plaintiff fails to file an expert affidavit within the specified period, “the complaint is subject to dismissal for failure to state a claim.” *Id.*

There can be little doubt that the expert affidavit requirement applies to this action. The Plaintiffs acknowledge as much in Paragraph 7 of the complaint, which purports to be filed “pursuant to S.C. Code § 15-36-100(c)(1). . . .” Since the Complaint alleges the statute of limitations was about to expire, § 15-36-100(C)(1) required the Plaintiffs to file an expert affidavit no later than September 29, 2011, forty-five days after the Complaint was filed.

At the hearing, Spencer argued no expert affidavit is required because the Defendants have admitted malpractice. However, the record does not support Spencer’s argument. Likewise, the common knowledge exception clearly does not apply in this case. Furthermore, I find the nature of the allegations the Plaintiffs have made against the Defendants requires expert testimony to establish the applicable standard of care. *Harris Teeter*, 390 S.C. at 282, 701 S.E.2d at 745.

The record does contain an affidavit filed by the Plaintiffs on April 16, 2013 from Aimee Zmroczek, a purported expert. However, that affidavit was filed more than 600 days after the complaint, well beyond the time allowed by S.C. Code §15-36-100(C)(1).

Accordingly, I find the Plaintiffs failed to comply with S.C. Code §15-36-100 and, therefore, that their claims against the Defendants should be dismissed.

II. Statute of Limitations

In addition, the Defendants argue dismissal is proper under Rule 12(b)(6), SCRCP, because the Plaintiffs failed to commence their action within the three-year statute of limitations. I agree.

"The statute of limitations in a legal malpractice case is three years." S.C. Code § 15-3-530; *Kimmer v. Wright*, 396 S.C. 53, 57-58, 719 S.E.2d 265, 268 (Ct. App. 2011), *reh'g denied* (Dec. 19, 2011). "Under the discovery rule, the three-year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Id.* (internal quotations omitted). In *Epstein v. Brown*, 363 S.C. 372, 610 S.E.2d 816 (2005), the Supreme Court explained that reasonable diligence means,

an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party **might** exist. **The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.**

363 S.C. at 376, 610 S.E.2d at 818 (emphasis in original). Applying that understanding of the discovery rule to the facts of this case, it is apparent the Plaintiffs failed to commence their action within the statute of limitations.

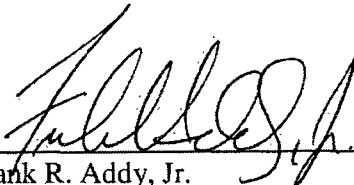
In the complaint, the Plaintiffs allege various acts of misconduct by Rakowsky and Falgione that culminated in the May 9, 2007 settlement. Most importantly, the Plaintiffs allege they emphatically and vigorously told the Defendants they refused to settle the case. The Plaintiffs were present in the courtroom on May 9, 2007, and witnessed their attorneys settle their case on the record. That fact cannot be overlooked. If, as they allege, the Plaintiffs emphatically refused to settle and intended to state their objections on the record, then there is little doubt they knew they had suffered an actionable injury when they left the courthouse that day.

Although the Plaintiffs contend they were told the settlement was not final at that time, the only inference from their letters to the Federal Judge, who construed the letters as motions to set aside the settlement, is the finality of the settlement had set in. At the latest, therefore, the three-year clock began to run when Judge Harwell issued his July 3, 2007 order. The complaint in this action, filed August 15, 2011, is well beyond the three-year statute.

Accordingly, the Defendants' motions should be granted and the claims against them dismissed.

IT IS THEREFORE ORDERED that the Motions to Dismiss filed by Rakowsky and by the Falgione Defendants are hereby granted for the reasons set forth above. **IT IS FURTHER ORDERED** that the complaint shall be and hereby is dismissed with prejudice.

IT IS SO ORDERED.


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

August 19, 2013
 Greenwood, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON) FOR THE ELEVENTH JUDICIAL CIRCUIT

2013 DEC -6 A 4 34

James Spencer, individually and on behalf)
of the Estate of Doris Holt and on behalf)
of Southern Holdings, Inc.;)
CLERK OF COURT
LEXINGTON, SC

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

Plaintiffs,)

v.)

ORDER DENYING RULE 59(e) MOTION

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

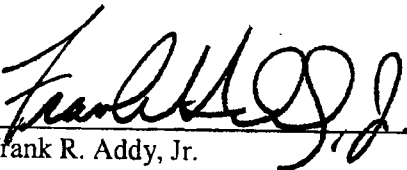
Defendants.)

THIS MATTER COMES BEFORE THE COURT on Plaintiff Spencer's motion of September 9, 2013 requesting reconsideration of the court's prior order dismissing this case. No party requested a hearing on Plaintiff's motion.

The court has reviewed the pleadings, record, and fully considered the arguments made in Plaintiff's motion. The court finds that the prior order dismissing this action shall stand.

WHEREFORE, Plaintiff's motion pursuant to Rule 59 is denied.

IT IS SO ORDERED.


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

December 4, 2013
Lexington, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-40-6656

John R. Rakowsky,

Plaintiff,

vs.

Adrian L. Falgione, James Spencer,
Doris Holt, Rodney Keith Lail, Irene
Santacrose, Marguerite Stephens, Ricky
Stephens, Michael Hartness, Horry County,
S.C., Eugene G. Chewing and Glenn W.
Harrison,

Defendants.

**ORDER DENYING
MOTION TO COMPEL,
SUBSTITUTING PARTIES,
RELEASE OF LITIGATION
FUNDS, AND AMENDING
COMPLAINT ACCORDINGLY**

This matter came before me on September 15, 2011, for hearing on Defendant James Spencer's "*EXPEDITED MOTION TO COMPEL DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST TO COMPEL PLAINTIFF TO ANSWER DEFENDANTS FIRST ROUND OF INTEROGATORIES AND REQUEST FOR A JURY TRIAL ON ALL MATTERS RELATED TO 2008-CP-40-6656*". Present were the Plaintiff and his Counsel, Stephanie Weissenstein, Defendant, Adrian Falgione, *pro se*, and Defendants James Spencer and Rodney Lail, who are *pro se*.

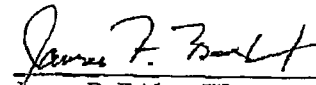
This case was before the Honorable William H. Seals, Jr. for a hearing on July 11, 2011, for a hearing on several motions, including Plaintiff's motion to quash a subpoena issued against him at the behest of Defendant James Spencer. The subpoena which was the subject of that hearing and the requests for production which Mr. Spencer seeks to compel includes several of the same documents.

There is a long-standing rule in this State that one judge of the same court cannot overrule another. *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E.2d 689 (1943). Therefore, IT IS HEREBY ORDERED THAT Mr. Spencer's motion to compel the production of documents included in the subpoena is **Denied**¹.

The Court understands that Defendant Doris Holt is now deceased. Plaintiff Rakowsky, Defendant Falgione, Defendant Spencer and Defendant Lail consent to Doris Holt's estate being substituted as the real party at interest. The substitution of the estate is **Granted**.

IT IS SO ORDERED.

October 18, 2011
Richland County


James R. Barber, III
Judge for the 5th Judicial Circuit

¹ By the same written motion, Mr. Spencer also requested a jury trial. That issue was not addressed at the hearing.

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

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,

Handwritten signature

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
 12-11-13
 OF COURT
 LEXINGTON, SC

DISCUSSION

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,¹ 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).

¹If 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.

ORIGINAL

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

IT IS SO ORDERED.

Spencer, South Carolina
Oct. 25, 2013

2013 NOV - 1 A 14

ELIJA C. G. G.
CLERK OF COURT

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

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

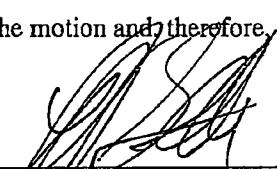
CIVIL CASE NO: 2011-CP-40-5384

ORDER

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

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

SCANNED

The Supreme Court of South Carolina

Irene Santacroce, et al.,

Plaintiffs,

v.

John R. Rakowsky, et al.,

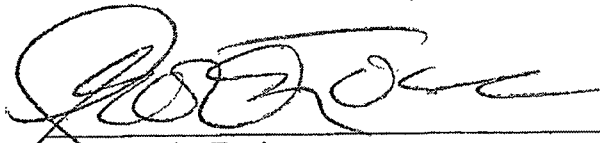
Defendants.

Lexington County
2012-CP-32-03428

ORDER

This matter is pending in Lexington County. The Honorable Eugene C. Griffith, Jr., Chief Judge for Administrative Purposes in the Eighth Judicial Circuit, was assigned as the Chief Judge for Administrative Purposes in the Eleventh Circuit (Civil) to administer this case and prepare it for trial. A conflict has arisen and he can no longer administer this case. Now therefore,

IT IS ORDERED that the Order dated January 17, 2013 be rescinded and that the Honorable DeAndrea G. Benjamin, as the Chief Judge for Administrative Purposes (Criminal) for the Fifth Judicial Circuit, be assigned as Chief Judge for Administrative Purposes (Civil) in the Eleventh Judicial Circuit for the sole purpose of administering this case and preparing it for trial. Any judge subsequently appointed as Chief Judge for Administrative Purposes (Criminal) for the Fifth Judicial Circuit shall assume this responsibility.



Jean Hofer Toal
Chief Justice

June 11, 2013
Columbia, South Carolina

ORIGINAL

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

Irene Santacroce, et al.,)

vs.)

John Rakowsky, et al.,)

Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE ELEVENTH JUDICIAL CIRCUIT

2012-CP-32-03428

ORDER NUNC PRO TUNC
 LEXINGTON, SC

By order dated June 11, 2013, this Court was appointed Chief Judge for Administrative Purposes (Civil) in the Eleventh Judicial Circuit for the sole purpose of administering this case and preparing it for trial. Under that appointment, this Court assigns this case to the Honorable Frank R. Addy, Jr.

AND IT IS SO ORDERED.



 The Honorable DeAndrea Gist Benjamin
 Presiding Judge, Eleventh Judicial Circuit

June 25, 2013
 Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

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

CIVIL ACTION COVERSHEET

Plaintiff(s)

2011-CP - 40- 5384

vs.

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

Defendant(s)

(Please Print)

Submitted By: James B. Spencer

Address: Suite 183, 7001 St. Andrews Rd., Columbia, SC
29212

SC Bar #: Pro Se
Telephone #: 803-414-0889
Fax #:
Other:
E-mail: jamesbspencer@scbar.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

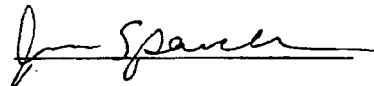
NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|--|
| <p>Contracts</p> <p>☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199)</p> | <p>Torts - Professional Malpractice</p> <p>☒ Dental Malpractice (200)
☒ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)</p> | <p>Torts - Personal Injury</p> <p>☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☒ Other (399)</p> | <p>Real Property</p> <p>☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)</p> |
| <p>Inmate Petitions</p> <p>☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)</p> | <p>Judgments/Settlements</p> <p>☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Other (799)</p> | <p>Administrative Law/Relief</p> <p>☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)</p> | <p>Appeals</p> <p>☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)

☐ Public Service Commission (990)
☐ Employment Security Comm (991)

☐ Other (999)</p> |
| <p>Special/Complex /Other</p> <p>☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)</p> <p>☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510)</p> | | | |

Submitting Party Signature:



Date: August 15, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

James Spencer, individually and on behalf of
the Estate of Doris Holt, and 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

C/A No.: 2011-CP-40-

SUMMONS

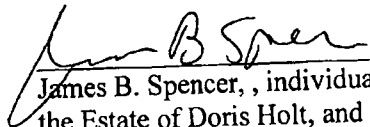
JEANETTE W. MURBRIDGE
C.C.P. & G.S.

2011 AUG 15 PM 4:32

FILED

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.


James B. Spencer, , individually and on behalf of
the Estate of Doris Holt, and Southern Holdings,
Inc.
Suite 183, 7001 St. Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com
PRO SE

August 12, 2011

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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

C/A No.: 2011-CP-40-

COMPLAINT
(Jury Trial Demand)

JEANETTE W. McBRIDE
C.C.P. & G.S.

2011 AUG 15 PM 4:32

RICHLAND COUNTY
FILED

The Plaintiffs, by and through their undersigned counsel, complaining of the
Defendants herein, alleges the following:

PARTIES

1. Plaintiff James Spencer ("Spencer") is a citizen and resident of Richland County, State of South Carolina. He brings this action on behalf of himself and the Estate of Doris Holt, Spencer's mother, under her rights of assignment dated May 5, 2011. He brings this action on behalf of Southern Holdings, Inc., as interim Trustee/Administrator appointed July 14, 2011.
2. Plaintiff, Irene Santacroce ("Santacroce") is a citizen and resident of Horry County, State of South Carolina.
3. Southern Holdings, Inc. ("Southern") was a foreign corporation organized and existing under the laws of the State of Nevada, whose principal place of business was located in Richland County, South Carolina.

4. Defendant John R. Rakowsky ("Rakowsky"), is upon information and belief, a citizen and resident of Lexington County, South Carolina. At all times mentioned herein Rakowsky was an attorney licensed to practice law in the State of South Carolina.
5. Defendant Adrian L. Falgione ("Falgione"), is upon information and belief a citizen and resident of Lexington, County, South Carolina. At all times mentioned herein Falgione was an attorney licensed to practice law in the State of South Carolina.
6. Defendant Law Offices of Adrian Falgione, LLC, is, upon information and belief, a limited liability company organized and existing under the laws of the State of South Carolina, and is located in Lexington County, South Carolina. At all times herein, Falgione was an attorney with the law firm of Law Offices of Adrian Falgione, LLC, acted in the course and scope of his employment, and whose actions caused the liability of Law Offices of Adrian Falgione, LLC.

JURISDICTION AND VENUE

7. Jurisdiction and venue is proper in this county as the acts and/or omissions occurred in Richland County, South Carolina. This Complaint is filed pursuant to S.C. Code § 15-36-100 (C)(1) in anticipation of the possible need for the contemporaneous filing of an Affidavit by an expert, as the limitations on claims will likely expire within ten days of this filing and prior to the Plaintiffs obtaining such an Affidavit.

FACTUAL ALLEGATIONS

8. An original lawsuit was filed in Federal District Court, State of South Carolina, Florence District, Case No. Case No: 4:02-cv-01859-RBH in May, 2002. The Plaintiffs in this case were Spencer, Southern, Dan Green ("Green"), Rodney Lail ("Lail"), Marguerite

Stephens ("M. Stephens"), Ricky Stephens ("R. Stephens"), Doris Holt ("Holt") and Irene Santacroce ("Santacroce").

9. Plaintiffs in the aforementioned action hired Michael Goldberg ("Goldberg") of Atlanta and John Carrigg ("Carrigg") of Columbia to represent them in their case. Both attorneys brought the original complaint.
10. Almost immediately, Carrigg realized he may have a conflict with Horry County and withdrew from representation.
11. Defendant Rakowsky, after reviewing complaint of the Plaintiffs and completing his due diligence, filed notice of appearance to represent Plaintiffs on December 3, 2002.
12. In March 2005, Goldberg withdrew as counsel and was replaced by Ron Serota ("Serota") of Nevada.
13. Defendant Falgione, after reviewing complaint of the Plaintiffs and the succeeding filings and upon completion of his due diligence, filed notice of appearance on November 15, 2006, to represent the Plaintiffs.
14. Defendants Rakowsky and Falgione had Spencer and Williamson drafting the motions and also responses to motions as the Defendants claimed they had to focus their limited time on preparation for trial.
15. Defendant Rakowsky provided Spencer with his confidential and personal access codes to the South Carolina Federal Court Electronic Filing system ("ECF") to file the motions and answers drafted by Spencer and Williamson as Rakowsky claimed he did not understand how to use the ECF filing system.

16. Rakowsky and Falgione came into continual conflict with Serota, as Serota routinely complained to Plaintiffs that Rakowsky and Falgione were not spending the time necessary to prepare properly for trial of such complex litigation.
17. As the time drew near for trial, Rakowsky and Falgione issued an ultimatum to the Plaintiffs that either Serota resign as a co-counsel or both Rakowsky and Falgione would both resign, leaving Plaintiffs without local counsel.
18. Defendants orchestrated a conflict among Plaintiffs' co-counsels beginning on or about January 2007, resulting in the resignation of Plaintiffs' co-counsel Serota on March 20, 2007, less than two months before the trial was to begin and prior to the key evidentiary hearing.
19. Plaintiffs, in early 2007 sought to add Dan Ivy, Esquire ("Ivy") to supplement the legal team. Ivy is an experienced counsel in Federal Court complex litigation cases and had become familiar with the Plaintiffs' case.
20. Plaintiffs wanted to supplement the legal representation as Spencer and Williamson did not want to write motions and responses and enter them into the ECF system since they were untrained lay individuals.
21. Upon Rakowsky and Falgione successfully orchestrating and obtaining the resignation of Serota, Plaintiffs sought to substitute in Ivy to replace Serota.
22. Rakowsky and Falgione again threatened Plaintiffs they would resign leaving Plaintiffs without local counsel if Plaintiffs brought in Ivy. Rakowsky and Falgione maintained they had the expertise and time between themselves to successfully litigate the complex litigation and did not need another counsel.

23. On May 8, 2007, Rakowsky and Falgione attended an evidentiary hearing regarding the admission of specific items of evidence that were to be admitted during the jury trial scheduled to begin on May 9, 2007.
24. At some point the evidentiary hearing was moved to Judge Harwell's chambers, outside the presence of the court reporter and Plaintiffs.
25. Prior to the evidentiary hearing being moved to the Judge's Chambers, the Plaintiffs' evidence was being admitted intact by Judge Harwell, as documented in the Court Record.
26. Following the hearing, Rakowsky and Falgione met with Spencer and Green, reporting that the Judge, in Chambers, had reconsidered and ruled against the majority of the Plaintiffs' evidence, including all documentation of damages and further ruled that all of the Defendants' evidence in that case was admissible.
27. Rakowsky and Falgione stated that the Plaintiffs' evidence was ruled inadmissible by the Judge because it had been untimely filed by former legal counsels Serota and Goldberg.
28. Rakowsky and Falgione further revealed that an Offer of Judgment existed unbeknownst to Plaintiffs in that case, which Rakowsky and Falgione indicated would expose those Plaintiffs to over \$300,000 in Court awarded costs, as the Judge had ruled against the admission of evidence related to Plaintiffs' damages in that case. Rakowsky and Falgione insisted that a settlement offer tendered by the Defendants in the amount of approximately \$55,000.00 be accepted by Plaintiffs.
29. Spencer emphatically indicated to both Rakowsky and Falgione that he was not interested in the proposed settlement.

30. Then CEO of Southern Green informed Rakowsky and Falgione that he did not have the authority to authorize a settlement, as any proposed settlement required a vote of the Board of Directors.
31. On the morning of May 9, 2007, Rakowsky and Falgione, arranged to meet separately with four other Plaintiffs, without the knowledge or presence of Spencer and Green.
32. Rakowsky and Falgione further requested that Holt not be at the Court hearing on May 9, 2007. Holt had vigorously voiced her opinion to Rakowsky numerous times that she would never agree to a settlement offer unless the settlement paid the damages established by the expert evaluations in the case.
33. On May 9, 2007, Rakowsky and Falgione met first with Santacroce, R. Stephens and M. Stephens, and then again in a second meeting which included Lail.
34. Rakowsky and Falgione provided the same information to the four individuals that they had provided to Spencer and Green regarding the evidentiary hearing and its ramifications.
35. When Santacroce asked to read the referenced Offer of Judgment, Rakowsky refused to produce any documentation.
36. All four individuals were admonished not to listen to any alternative beyond settlement from Spencer, or they risked incurring the aforementioned costs in excess of \$300,000.00.
37. Rakowsky and Falgione then met with all the parties except Holt and unsuccessfully tried to coerce the Plaintiffs to accept the settlement through a highly emotional tirade that included threats by Rakowsky and Falgione of their withdrawal from the case on the spot

if the Plaintiffs in that action did not comply with Rakowsky's and Falgione's demands for settlement, on the opposing parties terms, prior to the beginning of trial that morning.

38. Rakowsky and Falgione stated to the Plaintiffs that they would lose their homes and have their credit destroyed if they did not settle before trial on the opposing parties terms, bringing several of the Plaintiffs in that action to tears.
39. Rakowsky and Falgione also stated at that time that the Judge was going to poll them individually and that each individual Plaintiff would be required to answer if they in fact accepted the proposed agreement.
40. Back-peddling, Rakowsky and Falgione then stated that when the aforementioned polling occurred, each Plaintiff would state their opposition to the settlement, causing the Court to delay the beginning of the trial long enough for Rakowsky and Falgione to research a way around the Judge's evidentiary rulings.
41. Rakowsky and Falgione further stated that no agreement would be legally binding unless each and every one of the Plaintiffs individually signed off on the settlement agreement, which would contain all the terms and conditions of the settlement, and that the agreement would not be available until at least thirty (30) days after the hearing.
42. Rakowsky and Falgione indicated that, as Holt was not present, no settlement could be finalized until she signed off on the paperwork, as her non-presence alone precluded a settlement. Rakowsky and Falgione led the individuals to believe that all Plaintiffs had to be present and each had to agree verbally to the settlement when polled, as allegedly required by Judge Harwell.
43. Plaintiffs in that case were coerced into agreeing to those terms as they had no choice but to go along with Rakowsky's and Falgione's plan to delay a trial until the evidentiary

rulings by the Judge were reviewed and a way was found around the case-killing evidentiary rulings. The Plaintiffs agreed that the exclusion of the Plaintiffs' experts and damages evidence in that case by the Judge had to be overcome.

44. Santacroce and Spencer informed Rakowsky and Falgione that when the Judge polled them, each Plaintiff would state their opposition to the settlement and then Green, as CEO of Southern, would state he could not agree to a proposed settlement on behalf of Southern without the authority of the board of directors.
45. Rakowsky and Falgione agreed as any disagreements between individuals would force the Judge to allow enough time to establish agreement among the Plaintiffs in that case, theoretically providing Rakowsky and Falgione time to find a way to admit Plaintiff's evidence.
46. Rakowsky and Falgione warned the Plaintiffs that if they spoke up without the Judge giving them permission to speak individually, as they would be when they were polled, the offender who disrupt the Court procedures and be held in contempt and could force the case to move forward without admission of the Plaintiffs' evidence and expert testimony.
47. Rakowsky and Falgione then proceeded to the courtroom with all individuals except Holt in attendance, and another meeting was held in Judge's chambers.
48. After the meeting, Rakowsky informed Plaintiffs that the default judgments, already received by the Plaintiffs in that case against two of the Defendants Garvin and Smith, would also be dismissed in the proposed settlement agreement per the explicit instructions of Judge Harwell. Rakowsky again stated not to worry, that the Judge's

instructions for dismissing their default judgments were not binding until any and all settlement agreements were signed off by each individual Plaintiff in that case.

49. The hearing was held and the Judge did not poll the Plaintiffs in that case, the settlement was announced and the jury was dismissed. The Plaintiffs were never given any opportunity to be heard, contrary to the claims of Defendants Rakowsky and Falgione.
50. Immediately, the individuals asked why they had not been polled, to which Rakowsky and Falgione responded that Judge Harwell was inexperienced and had made an error, but that no settlement was to be finalized until each and every Plaintiff executed the settlement agreement.
51. Subsequent to the hearing on May 9, 2007, Rakowsky issued a letter dated May 17, 2007, stating to investors in the litigation the nature of the problems with the evidence and the reason for the settlement, and Defendants Rakowsky and Falgione now maintained they could not find an answer to Judge Harwell's evidentiary decisions. Further, Defendants Rakowsky and Falgione stated in writing that both had determined the best course of action was to sue Serota and Goldberg for the misfiling of the evidence.
52. On or about the date Rakowsky and Falgione issued the May 17, 2007 letters, both Defendants told the Plaintiffs they would gladly represent the Plaintiffs in a malpractice action against Serota and Goldberg for their mishandling of the evidence.
53. On or about May 21, 2007, Plaintiffs in that case obtained a transcript of the evidentiary hearing held on May 8, 2007.
54. Several Plaintiffs in that case then sent letters, beginning in late May 2007, to Judge Harwell pointing out the inconsistencies in Rakowsky's letters, the transcript of the

evidentiary hearing, and why the Judge made the evidentiary rulings he did, as reported by Rakowsky and Falgione behind closed doors.

55. Judge Harwell viewed the letters as motions for setting aside the settlement and denied the motions on July 3, 2007, without addressing the evidentiary hearing which led to the disputed settlement agreement.
56. On July 12, 2007, Plaintiffs filed a motion for clarification as to what occurred in the evidentiary hearing held in Judge Harwell's chambers, without a reporter present, as to the Court's position regarding Rakowsky's letters and the Defendants' statements to the Plaintiffs in that case being an accurate representation of the decisions of the Court regarding the admission of the evidence.
57. On January 14, 2008, the Court denied the Plaintiffs' motion for clarification as to the accuracy of contents in Rakowsky's letters and Rakowsky and Falgione's statements to the Plaintiffs in that case as to what happened in the closed chamber purported evidentiary hearing, as the Court ruled the possibility of fraud having occurred was moot.
58. On January 30, 2008, Plaintiffs in that action filed a motion for reconsideration of Court Order No. 577, denying the Plaintiffs' motion for clarification of what happened during the evidentiary hearing.
59. The Defendants' Counsels in that action filed motions in opposition to the Plaintiffs' motion for reconsideration of the Court Order denying clarification.
60. On August 12, 2008, Judge Harwell issued a denial of the Plaintiffs' motion for reconsideration for clarification of what occurred at the evidentiary hearing.
61. On August 13, 2008, Judge Harwell, in answer to a motion made by Plaintiffs for his recusal, in Court Order No. 668, admitted for the first time that the evidentiary decisions

claimed by Defendants Rakowsky and Falgione to the Plaintiffs and expressed in Defendant Rakowsky's letters, were untruthful.

62. After over eight (8) years of suffering, the Plaintiffs had their lawsuit deceptively settled by the wrongful actions of Defendants.

63. Plaintiffs received essentially nothing for their significant damages, due to the Defendants negligent actions and intentional lies to coerce the Plaintiffs into a settlement, enforced by the Court, which the Plaintiffs never agreed to.

FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Legal Malpractice)

64. The Plaintiffs reallege and reiterate all of the allegations contained in paragraphs one (1) through sixty-three (63) as fully as if repeated herein verbatim.

65. Plaintiffs entered into an attorney client relationship with the Defendants.

66. At all times, Defendants owed a legal duty to Plaintiffs to conform to the generally recognized and accepted practices of the legal profession and respect of the services that the Defendants performed for the Plaintiffs.

67. Part of the service that Defendants were to perform for the Plaintiffs was representation of the Plaintiffs in the lawsuit against Horry County for numerous causes of action, including tortious interference with contractual obligations.

68. Defendants breached their duty to the Plaintiffs to conform to the generally recognized and accepted practices of the legal profession with respect to the services performed by the Defendants.

69. In particular, the Defendants were negligent in the following:

- a. failure to properly represent the Plaintiffs;

- b. failure to adequately prepare the case;
 - c. failure to adequately advise the clients of the status of the representation;
 - d. failure to adequately communicate with the clients regarding the representation;
 - e. failure to perform the contract of employment of legal services;
 - f. failure to provide competent legal representation of the Plaintiffs;
 - g. failure to act diligently in the interest of the Plaintiffs;
 - h. failure to communicate with the Plaintiffs properly and timely and in order for them to make an informed decisions about the case;
 - i. failure to use independent judgment when representing a client and violating their duty of loyalty;
 - j. failure to act with commitment and dedication to the interest of the clients;
 - k. investigation and litigation of the case and acting in direct contravention of the South Carolina Rules of Professional Conduct and as such other particulars as the evidence in this case may demonstrate;
70. As a direct and proximate result of the negligent and grossly negligent conduct of the Defendants, individually and severally, the Plaintiffs have been harmed by the Defendants and have incurred significant damages related to the damages suffered by the legal malpractice in this case and the losses related to the underlying breach of contract case.
71. Plaintiffs are entitled to and pray for judgment against the Defendants individually and jointly and severally for both actual damages in an amount to be deemed sufficient to compensate the Plaintiffs for their losses for which they have suffered past, present and future as well as punitive damages in an amount deemed sufficient to impress upon the

Defendants the seriousness of their conduct and to deter such similar conduct in the future.

FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Breach of Fiduciary Duty)

72. The Plaintiffs reallege and reiterate all of the allegations contained in paragraphs one (1) through seventy-one (71) as fully as if repeated herein verbatim.
73. At all times relative hereto, Defendants acted as attorneys for the Plaintiffs and were the fiduciaries to the Plaintiffs and owed the Plaintiffs the utmost duty of good faith, loyalty, fidelity and the duty to act single mindedly in the best interest of their clients, the Plaintiffs, even if to their own detriment.
74. The Defendants and each of them, violated their fiduciary duty to the Plaintiffs in a number of particulars, including, but not limited to, some or all of the following:
 - a. failure to properly represent the Plaintiffs;
 - b. failure to adequately prepare the case;
 - c. failure to adequately advise the clients of the status of the representation;
 - d. failure to adequately communicate with the clients regarding the representation;
 - e. failure to perform the contract of employment of legal services;
 - f. failure to provide competent legal representation of the Plaintiffs;
 - g. failure to act diligently in the interest of the Plaintiffs;
 - h. failure to communicate with the Plaintiffs properly and timely and in order for them to make an informed decisions about the case;
 - i. failure to use independent judgment when representing a client and violating their duty of loyalty;

- j. failure to act with commitment and dedication to the interest of the clients;
 - k. failure to adequately advise the Plaintiffs in all aspects of the investigation and litigation of the case and acting in direct contravention of the South Carolina Rules of Professional Conduct and as such other particulars as the evidence in this case may demonstrate;
75. As a direct and proximate result of the negligent and grossly negligent conduct of the Defendants, individually and severally, the Plaintiffs have been harmed by the Defendants and have incurred significant damages related to the damages suffered by the legal malpractice in this case and the losses related to the underlying breach of contract case.
76. Plaintiffs are entitled to and pray for judgment against the Defendants individually and jointly and severally for both actual damages in an amount to be deemed sufficient to compensate the Plaintiffs for their losses for which they have suffered past, present and future as well as punitive damages in an amount deemed sufficient to impress upon the Defendants the seriousness of their conduct and to deter such similar conduct in the future.

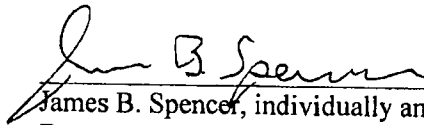
FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS

(Breach of Contract)

77. The Plaintiffs reallege and reiterate all of the allegations contained in paragraphs one (1) through seventy-six (76) as fully as if repeated herein verbatim.
78. The Defendants had a binding contract to provide legal representation to the Plaintiffs.
79. The Defendants breached that contract with the Plaintiffs by failing to provide adequate legal representation.

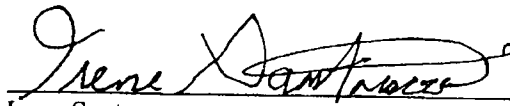
80. As a direct and proximate result of the Defendants' breach of contract, Plaintiffs have suffered actual and consequential damages in an amount to be determined at trial by the jury.

WHEREFORE, Plaintiffs pray for an award from this Court as to each Cause of Action in an amount to be determined at trial, as well as an additional punitive award in an amount sufficient to impress upon Defendants the seriousness of their conduct and to deter such similar conduct in the future, together with attorney's fees and costs of this action if permitted by law, and such further relief as the Court deems just and proper



James B. Spencer, individually and on behalf of the
Estate of Doris Holt and as interim
Administrator/Trustee of Southern Holdings, Inc.
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PRO SE



Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29212
(843) 455-0891

PRO SE

August 15, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)James Spencer, et al.)

Plaintiff,)

vs.)

John Rakowsky, et al.)

Defendant.)

IN THE COURT OF COMMON PLEAS

5th JUDICIAL CIRCUITCASE NO.: 2011 -CP- 40 - 5384**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Irene Santacroce</u> , Bar No. _____ Address: <u>205 Deer Trace Circle, Myrtle Beach, SC 29588</u> Phone: <u>843-455-0891</u> Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Amanda K. Dudgeon and Andrew Countryman, Carlock, Copeland and Stair, LLP _____, Bar No. <u>72516</u> Address: <u>40 Calhoun Street, Suite 400</u> <u>Charleston, SC 29401</u> Phone: <u>843-727-0307</u> Fax _____ E-mail: <u>adudgeon@CarlockCopeland.ocm</u> Other: _____																
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)																	
SECTION I: Hearing Information																	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO																	
SECTION II: Motion/Order Type																	
☒ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.																	
_____, 20 <u>12</u> Signature of Attorney for ☒ Plaintiff/ ☐ Defendant Date submitted																	
SECTION III: Motion Fee																	
☒ PAID – AMOUNT: \$ <u>25.00</u> ☐ EXEMPT: (check reason) <table style="width: 100%; border: none;"> <tr> <td>☐ Rule to Show Cause in Child or Spousal Support</td> <td>☐ State Agency v. Indigent Party</td> </tr> <tr> <td>☐ Domestic Abuse or Abuse and Neglect</td> <td>☐ Post-Conviction Relief</td> </tr> <tr> <td>☐ Indigent Status</td> <td>☐ Motion for Stay in Bankruptcy</td> </tr> <tr> <td>☐ Sexually Violent Predator Act</td> <td>☐ Motion for Publication</td> </tr> <tr> <td>☐ Motion for Stay in Bankruptcy</td> <td>☐ Motion for Execution (Rule 69, SCRCPP)</td> </tr> <tr> <td colspan="2">☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2">☐ Other: _____</td> </tr> </table>		☐ Rule to Show Cause in Child or Spousal Support	☐ State Agency v. Indigent Party	☐ Domestic Abuse or Abuse and Neglect	☐ Post-Conviction Relief	☐ Indigent Status	☐ Motion for Stay in Bankruptcy	☐ Sexually Violent Predator Act	☐ Motion for Publication	☐ Motion for Stay in Bankruptcy	☐ Motion for Execution (Rule 69, SCRCPP)	☐ 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: _____		☐ Other: _____	
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Name of Court Reporter: _____																	
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JUDGE'S SECTION																	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____, 20 ____																
CLERK'S VERIFICATION																	
Collected by: _____ Date Filed: _____, 20 ____																	
☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____																	

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2011- CP- 40-5384

James Spencer, individually, on)
behalf of the Estate of Doris Holt)
and on behalf of Southern)
Holdings, and Irene Santacroce,)
Plaintiffs,)
v.)
John R. Rakowsky, Adrian L.)
Falgione, and The Law Offices of)
Adrian Falgione, LLC)
Defendants.)

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

**EXPEDITED MOTION TO DISQUALIFY AMANDA K. DUDGEON,
ANDREW A COUNTRYMAN AND THE LAW FIRM OF
CARLOCK, COPELAND AND STAIR, LLP**

Pro Se Plaintiffs Irene Santacroce ("Santacroce") and James Spencer ("Spencer"), pursuant to the South Carolina Judicial Rule 8.4(a) and the South Carolina Rules of Professional Conduct sections, 1.18, 1.9, 3.3, 3.4, and 3.7 respectfully moves this Court for an order that disqualifies Amanda K. Dudgeon and Andrew A. Countryman ("Dudgeon and Countryman") and the law firm of Carlock Copeland and Stair, LLP, from acting as counsel in this matter. Dudgeon and Countryman and their law firm must be disqualified because both are essential fact witnesses in this matter for Santacroce and Spencer. Additionally, both Dudgeon and Countryman are essential

fact witnesses for Santacroce and Spencer who are defendants in the Interpleader Complaint case brought by their client, John Rakowsky, ("Rakowsky") in Richland County Court, Case No. 2008-CP-40-6656.

Rakowsky was a defendant in the LawMax litigation, due to his alleged legal malpractice in the Southern Holdings, Inc. case. These acts of legal malpractice are believed to be tied to acts of malpractice which are the subject of the case before this Honorable Court. Rakowsky's interests were represented by Dudgeon and Countryman in the LawMax litigation, American Arbitration Association, Case No: 13 194 01700 07, New Amsterdam Capital Partners, LLP (LawMax) v. John Rakowsky, Esq. and James Spencer. Spencer was unaware he was named a party with Rakowsky in the LawMax litigation.

The knowledge that Spencer was a named party in the LawMax litigation was kept from Spencer by Rakowsky, Dudgeon and Countryman. Rakowsky acted in the capacity of Spencer's attorney without Spencer's knowledge or approval. The LawMax litigation proceeded to conclusion without Spencer's knowledge that litigation directly impacting him had taken place. Rakowsky accepted service on Spencer's behalf, as LawMax believed Rakowsky represented Spencer. Rakowsky took these fraudulent actions to prevent the disclosure of material documents that pertain to the commission of legal malpractice. The LawMax litigation's resolution itself is an admission of legal malpractice by Rakowsky in the Southern Holdings case. All LawMax litigation correspondence that Spencer should have received was routed to Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP, instead of to

Spencer. Dudgeon and Countryman failed in their duty to see that Spencer had notice and received all pleadings.

This represents a significant conflict, as it is likely Rakowsky's testimony will conflict with the testimony of his law firm Carlock, Copeland and Stair, LLP and the individual named attorneys. Dudgeon and Countryman had a duty to reveal the LawMax fraud to the plaintiffs and this Court, under Rule 3.3(b) of the South Carolina Professional Code of Conduct.

Dudgeon and Countryman have already demonstrated their inability to deal with the conflicts and litigate the matter before this Honorable Court within the South Carolina Rules of Professional conduct. Dudgeon and Countryman failed in their requirement of candor toward the tribunal under Rule 3.3(b) of the South Carolina Professional Code of Conduct which states, "A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. See South Carolina Supreme Court, "In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."

Dudgeon and Countryman, instead of disclosing the LawMax litigation and their role in it, as required by Rule 3.3(b) of the South Carolina Professional Code of Conduct, used this Honorable Court to request an expedited litigation schedule without a stated reason in fact or law. The objective of this expedited litigation schedule was to prevent the *Pro Se* plaintiffs from obtaining knowledge of, and access to the LawMax litigation documents in a timely manner.

Further, Dudgeon and Countryman's actions of preventing Spencer access to the LawMax litigation documentation is also a violation of Rule 3.4(a) which states, "A lawyer shall not (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act." See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

Dudgeon and Countryman's actions up to this point are attempts to use this Honorable Court to perpetuate a fraud involving the cover-up of the LawMax litigation and the associated documents, which confirm their client's legal malpractice. Through these wrongful actions, Dudgeon and Countryman clearly demonstrate their inability to address the aforementioned conflicts within the South Carolina Rules of Professional Conduct, when compliance with the Rules would be detrimental to their client's interest.

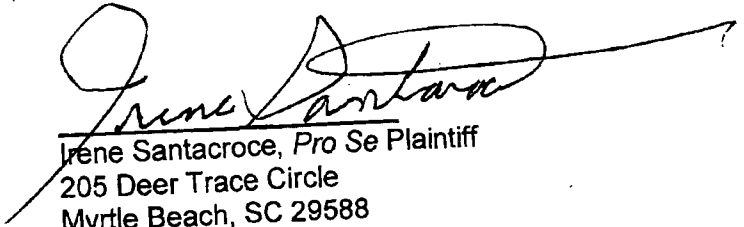
The LawMax litigation relates directly to the allegations of legal malpractice before this Honorable Court. Dudgeon and Countryman's involvement in the negotiation of the LawMax settlement, including their understanding as to the scope of the contested matters and the particular information that was exchanged between the settling parties, make them essential fact witnesses for Santacroce and Spencer in the matter before this Honorable Court.

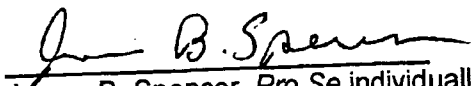
The basis for this Motion is set out in the Memorandum of Law in Support of Plaintiffs' Motion to Disqualify Dudgeon and Countryman and to disqualify the law firm of Carlock, Copeland and Stair, LLP, filed contemporaneously herewith.

Plaintiffs further pray that the Court handle this motion in an expedited fashion, because until this matter is resolved, Plaintiffs' case will be and has been prejudiced due to the failure of Dudgeon and Countryman to disclose their role in the LawMax litigation. Dudgeon and Countryman's conflict is further problematic by their dual representation of parties in the LawMax litigation through their *In absentia* and defacto representation of Spencer and their representation of Rakowsky. This dual representation itself is an insurmountable undisclosed conflict.

WHEREFORE, Plaintiffs humbly request that this Honorable Court enter an Order barring Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP, from representing any party in this matter.

Respectfully submitted this 26th day
of March, 2012, by:


Irene Santacroce, Pro Se Plaintiff
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891


James B. Spencer, Pro Se individually
and on behalf of the Estate of Doris Holt
and Administrator of Southern Holdings.
Suite 183, 7001 Saint Andrews Rd.
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011- CP- 40-5384

James Spencer, individually, on)
behalf of the Estate of Doris Holt)
and on behalf of Southern)
Holdings and Irene Santacroce,)
Plaintiffs,)
v.)
John R. Rakowsky, Adrian L.)
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Adrian Falgione, LLC)
Defendants.)

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO DISQUALIFY
AMANDA K. DUDGEON, ANDREW COUNTRYMAN AND THE LAW FIRM OF
CARLOCK, COPELAND AND STAIR, LLP**

Plaintiff Irene Santacroce ("Santacroce") and plaintiff James Spencer, pursuant to the South Carolina Judicial Rule 8.4(a) and in regards to the South Carolina Rules of Professional Conduct sections, 1.18, 1.9, 3.3, 3.4 and 3.7 submit this memorandum of law in support of *Pro Se* Plaintiffs' Motion to Disqualify Amanda K. Dudgeon, Andrew A. Countryman, and the law firm of Carlock, Copeland, and Stair, LLC, from acting as counsel in this matter, respectfully showing as follows:

INTRODUCTION AND BACKGROUND

This motion is filed because Amanda K. Dudgeon and Andrew Countryman ("Dudgeon and Countryman") lawyers with the firm of Carlock, Copeland, and Stair, LLC, are material witnesses to disputed facts that are critical to plaintiffs' case. Their client, John Rakowsky ("Rakowsky"), was a defendant party in a lawsuit¹ involving LawMax (also known as New Amsterdam Capital Partners, LLC). James Spencer ("Spencer"), a plaintiff in this case, was also named a party in the LawMax litigation. Rakowsky had accepted service as Spencer's lawyer in the LawMax litigation *without Spencer's knowledge and/or consent and litigation was conducted without the knowledge, consent and participation of Spencer. (See affidavit of Spencer attached hereto.)*

Based upon information and belief, Dudgeon and Countryman participated in covering up the lawsuit filed by LawMax against Rakowsky by wrongfully withholding information which would have revealed Rakowsky's acts of legal malpractice to Spencer. According to the American Arbitration Association, Spencer's representation was handled by Dudgeon and Countryman, the attorney's hired by John Rakowsky. In that regard, all copies of pleadings and correspondence addressed to Spencer in the LawMax litigation were sent to Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP. All communications and documents regarding the litigation were deliberately kept from Spencer during and after the pendency of the LawMax litigation **(See Exhibit "A" and *Exhibit Introduction* attached hereto).**

¹ American Arbitration Association, Case No: 13 194 01700 07, New Amsterdam Capital Partners, LLP (LawMax) v. John Rakowsky, Esq. and James Spencer.

The settlement of this litigation, based on information and belief, was kept, by stipulation, confidential, to keep relevant facts from the plaintiffs in this case. In that regard, the naming of LawMax as a defendant in an Interpleader Complaint, Richland County Court, Case No. 2008-CP-40-6656, filed by Rakowsky, was an abuse of judicial process. The LawMax listing was to cover up from Plaintiffs Santacroce and Spencer the existence of legal malpractice evidence related to the LawMax litigation.

Naming LawMax as a defendant in the Interpleader Complaint was a sham. Rakowsky wanted to keep the *Pro Se* Plaintiffs from knowing about the particulars of the settlement reached with LawMax over claimed acts of malpractice on the part of Rakowsky in the Southern Holdings, Inc., et al., vs. Horry County, et al., Case No: 4:02-cv-01859-RBH.

The LawMax settlement acts as an admission on the part of Rakowsky that attorney malpractice was committed by Rakowsky and other defendants in the action before this Honorable Court. Rakowsky has gone to the extent of refusing to answer interrogatory questions about LawMax in the Interpleader Complaint, by arrogantly and wrongfully relying upon a *non-existent order* by the Honorable Judge Barber, III, against discovery being conducted in the Interpleader case (**See Exhibit "B" and Exhibit Introduction attached hereto**).

PARTICULAR FACTS RELEVANT TO THIS MOTION

The instant motion involves existence of the conflict of interest of Dudgeon and Countryman which precludes their being able to be fact witnesses for the plaintiffs and simultaneously represent defendant Rakowsky. The existence of the conflict involves: (1) the information and documents being deliberately withheld from the plaintiffs

concerning Mr. Rakowsky's admission to malpractice through settlement with LawMax, (2) the wrongful defacto representation of Spencer, without Spencer's knowledge and consent, by Carlock, Copeland, and Stair, LLC, to further the aims of their client, Rakowsky in the LawMax litigation, and (3) the fact that Dudgeon and Countryman have already failed the litmus test of their being able to legally and ethically navigate the conflict. Dudgeon and Countryman failed the litmus test by disregarding the South Carolina Rules of Professional Conduct to further the interests of their client Rakowsky in the case before this Honorable Court.

There is an admission pending that has wrongfully been withheld from Plaintiffs Santacroce and Spencer and Southern Holdings, with respect to the LawMax litigation and settlement. The LawMax litigation settlement would be considered an admission of legal malpractice on the part of Rakowsky, and a full and complete disclosure to all parties involved is mandatory. This disclosure must be made before this case is allowed to move forward in the interest of justice and the perception of judicial integrity and fairness. In that regard, the plaintiffs now raise arguments that necessitate the use of testimony of Dudgeon and Countryman as fact witnesses.

THE BAD-FAITH ACTION

Attorneys Dudgeon and Countryman wrongfully represented both the diverse and divergent interests of Rakowsky and Spencer and reached a settlement with LawMax without the knowledge and consent of Plaintiff Spencer. Through their dual representation and withholding information from Spencer about the settlement, they kept information pertinent to Rakowsky's legal malpractice from the plaintiffs in this case.

John Rakowsky brought a lawsuit against Santacroce and Spencer naming them as defendants along with LawMax (Richland County Court, Case No. 2008-CP-40-6656) in an Interpleader Complaint. Dudgeon and Countryman have referenced this Interpleader Complaint numerous times in their motions to this Honorable Court in their request for expediting the malpractice litigation. Dudgeon and Countryman, having participated in the LawMax litigation and having wrongfully withheld the litigation related correspondence and pleadings from a party in that case, Spencer, are fully aware of the potential legal exposure of the incriminating LawMax litigation to their client, Rakowsky.

Dudgeon and Countryman sought to use this Court to perpetuate the previously described fraud by depriving the plaintiffs of the use of the incriminating legal malpractice and related information regarding the LawMax litigation by expediting this case. Dudgeon and Countryman made such motions for expediting this case, without presenting a cause or legal basis to the Court. Dudgeon and Countryman appear to be concerned that the incriminating truth contained in the proceedings of the LawMax litigation would come out in the Interpleader case and damage their client in this legal malpractice action. It is the reverberating clang of the silence of these attorneys that now drowns out all other sounds.

Dudgeon and Countryman embarked on a course of conduct that was a breach of their duty to disclose conflicts by covering up the conflict from the Court and Spencer. This bad-faith action should not be tolerated by the Court and should be dealt with swiftly and decisively.

SPECIFIC ALLEGATIONS AT ISSUE

Even without formal discovery being conducted in this case, plaintiffs are already able to identify disputed issues that require Dudgeon's and Countryman's testimony. For example, in the Motion to Dismiss, Rakowsky contends, "The complaint fails to state facts consistent with a cause of action." Further Rakowsky contends, "The plaintiffs filed the complaint outside the applicable statute of limitations." These statements are addressable by the plaintiffs through the testimony of Dudgeon and Countryman and possibly others employed by the law firm of Carlock, Copeland and Stair, LLP.

ARGUMENT AND CITATION OF AUTHORITY

Plaintiffs recognize the extraordinary nature of the relief requested here; but their request is not without precedent. Plaintiffs also recognize that the burden of proof to disqualify the defendants' counsel falls on plaintiffs' shoulders.

The South Carolina Rules of Professional Conduct, as incorporated into the Rules of this Court, prohibit lawyers from acting as both advocates and witnesses in the same case. In this case, Dudgeon's and Countryman's testimony and perhaps the testimony of others employed by the law firm, are fact witnesses and, as such, they are prohibited from being advocates as well in the case now heard by this Court. Thus, they must be disqualified.

Dudgeon and Countryman are believed by Plaintiffs to be experienced, competent and ethical attorneys. Therefore, plaintiffs are almost certain that they will testify in a manner inconsistent with the version of the facts provided by Rakowsky regarding the LawMax litigation. It is certain that Rakowsky is aware of the terms of the Settlement Agreement. Dudgeon and Countryman are aware of Rakowsky's role in

negotiating the Settlement Agreement, and Rakowsky interacted with Dudgeon and Countryman in accepting the terms of the Settlement Agreement with LawMax.

Rule 3.7(a) of South Carolina Rules of Professional Conduct provides:

"A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case;

or

(3) the disqualification of the lawyer would work a substantial hardship on the client."

See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

The three exceptions are not applicable in this case. Regarding exception number (1), the testimony relates to contested issues of legal malpractice and cover-up of such legal malpractice. Regarding exception number (2), the testimony does not relate to the nature and value of legal services in the case. Regarding exception number (3), the disqualification of the lawyers would not work a legitimate and substantial hardship on client, Rakowsky, as Rakowsky sought to have the trial expedited to prejudice the case against the plaintiffs and, therefore, he would still be able to have the case heard within the normal time frame in an equitable manner by retaining replacement counsel without a conflict.

Additionally, Dudgeon and Countryman must be disqualified due to their conflict of representation. The South Carolina Rules of Professional Conduct, as incorporated

into the Rules of this Court, prohibit lawyers from acting as counsel in a second matter when they represented both opposing parties in a prior related matter: Rule 1.9(a) of the South Carolina Rules of Professional Conduct states, "(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing." See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

This conflict was *never* revealed to Spencer by Dudgeon and Countryman, and Spencer, in no manner, gave Dudgeon and Countryman informed consent in writing.

Dudgeon's and Countryman's actions confirm they know what impact a release of the information regarding the settlement with LawMax would have on the Rakowsky malpractice litigation. As such, their actions have already been in bad faith by both having knowledge of the cover-up of LawMax litigation and also the fraudulent representation of Spencer *In absentia* in that litigation. The conflict and fraud involved in Dudgeon's and Countryman's dual representation of Spencer and Rakowsky in the LawMax litigation creates a clear conflict in Dudgeon's and Countryman's representation of Rakowsky in this related case against Spencer before this Court.

Dudgeon and Countryman had a duty to reveal the LawMax matters to the plaintiffs and this Court. Rule 3.3(b) of the South Carolina Professional Code of Conduct states, "A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent

conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. See South Carolina Supreme Court, "In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."

Dudgeon and Countryman must also be disqualified for their involvement in the concealment of the LawMax litigation under Rule 3.4(a) of the South Carolina Code of Professional Conduct which provides, "A lawyer shall not (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act." See South Carolina Supreme Court, "In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."

This failure of candor to the Court and the plaintiffs due to conflict of interest cannot be ignored as Dudgeon and Countryman have already met the criteria to be disqualified from representation of any party in this case. In that regard, the South Carolina Supreme Court determined the criteria for disqualification of counsel for conflict:

"Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses."

See South Carolina Supreme Court, "In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199, 212-213 (S.C. June 20, 2005)."

Lastly, Dudgeon and Countryman's law firm must also be disqualified. The South Carolina Rules of Professional Conduct Section 1.18(c) provides that, "(c) A lawyer

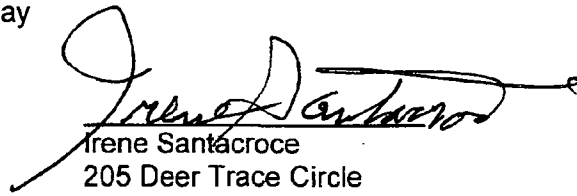
subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

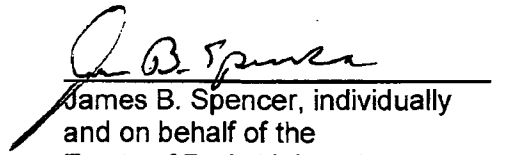
Paragraph (d) "When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if: (1) both the affected client and the prospective client have given informed consent, confirmed in writing, or (2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and (i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee there from; and (ii) written notice is promptly given to the prospective client." See South Carolina Supreme Court, *"In re Amendments to Rules of Prof'l Conduct, Rule 407, SCACR, 2005 S.C. LEXIS 199 (S.C. June 20, 2005)."*

The exceptions listed in Paragraph (d) do not apply in this case as Spencer has not been offered or given informed consent and the cover-up of the LawMax litigation from Spencer precludes application of the reasonable measures to avoid "disqualifying information" exception.

WHEREFORE, plaintiffs humbly request that this Court enter an Order barring Amanda K. Dudgeon, Andrew Countryman and the law firm of Carlock, Copeland, and Stair, LLC from representing any party in this matter. Doing so will protect the integrity of the Court, comply with the South Carolina Rules of Professional Conduct, and prevent prejudice to both their clients and the plaintiffs.

Respectfully submitted this 26th day
of March, 2012, by:


 Irene Santacroce
 205 Deer Trace Circle
 Myrtle Beach, SC 29588
 (843) 455-0891


 James B. Spencer, individually
 and on behalf of the
 Estate of Doris Holt and as
 Administrator of Southern Holdings.
 Suite 183, 7001 Saint Andrews Rd.
 Columbia, SC 29212
 (803) 414-0889
 JamesBSpencer@sc.rr.com

CERTIFICATE OF SERVICE

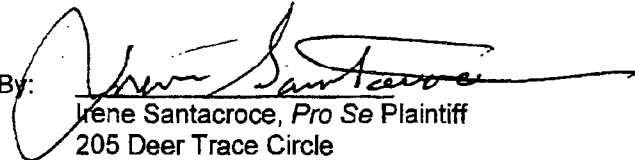
I, Irene Santacroce, *Pro Se*, plaintiff do hereby certify that the foregoing **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION TO DISQUALIFY AMANDA K. DUDGEON, ANDREW A COUNTRYMAN AND THE LAW FIRM OF CARLOCK, COPELAND AND STAIR, LLP**, has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Amanda K. Dudgeon, Esquire
 Andrews A. Countryman, Esquire
 Carlock, Copeland and Stair, LLP
 40 Calhoun Street, Suite 400
 Charleston, SC 29401
 (843) 727-0307
 Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
 Burner, Powell, Wall & Mullins, LLC
 1735 St. Julian Place, Suite 200
 P.O. Box 61110
 Columbia, SC 29260-1110
 (803) 252-7693
 Email: BBruner@BrunerPowell.com

RICHLAND COUNTY
 FILED
 2012 MAR 27 AM 8:37
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

This 26th day of March, 2012,

By: 
 Irene Santacroce, *Pro Se* Plaintiff
 205 Deer Trace Circle
 Myrtle Beach, SC 29588
 (843) 455-0891

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2011- CP- 40-5384

James Spencer, individually, on)
behalf of the Estate of Doris Holt)
and on behalf of Southern)
Holdings, and Irene Santacroce,)
Plaintiffs,)
v.)
John R. Rakowsky, Adrian L.)
Falgione, and The Law Offices of)
Adrian Falgione, LLC)
Defendants.)

RICHLAND COUNTY
FILED
2012 MAR 27 AM 8:37
JEANETTE W. McBRIDE
C.C.P. & G.S.

AFFIDAVIT OF JAMES SPENCER

I, James Spencer, hereby declare under the penalty of perjury the following
based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. That I learned that Amanda K. Dudgeon and Andrew A. Countryman ("Dudgeon and Countryman") and the law firm of Carlock Copeland and Stair, LLP, made an appearance on behalf of defendant John Rakowsky (Rakowsky) on or about November 2, 2011 in the above captioned action.
3. That in February of 2012, I learned for the first time about litigation brought against me and John Rakowsky in 2007 by LawMax.

4. That in February of 2012, I learned for the first time that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, represented John Rakowsky and myself as defendants in a lawsuit brought by LawMax in 2007.
5. That in February of 2012, I learned that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, and John Rakowsky had deliberately kept knowledge of this litigation from me to conceal information of acts of legal malpractice by the defendants in the above captioned proceeding.
6. In February of 2012, I learned from representatives of the American Arbitration Association ("AAA"), about Case No: 13 194 01700 07, New Amsterdam Capital Partners, LLP (LawMax) v. John Rakowsky, Esq. and James Spencer.
7. That before February of 2012, I had no idea that LawMax had brought litigation against me and Rakowsky for acts that were tantamount to legal malpractice in Southern Holdings, Inc., et al., vs. Horry County, et al., Case No: 4:02-cv-01859-RBH.
8. In February 2012, I learned that Rakowsky legally fought against jurisdiction for the litigation to be held in the state of New York.
9. In February 2012, I learned that Rakowsky lost the fight over jurisdiction in the LawMax litigation.
10. In February 2012, I learned from AAA that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, and Rakowsky had all

correspondence that I was supposed to receive as a party to the lawsuit diverted to Dudgeon and the law firm of Carlock Copeland and Stair, LLP, as they represented my interests in the LawMax litigation.

11. In February 2012, I learned from AAA that the litigation brought by LawMax and all claims LawMax had against Rakowsky and me were settled prior to the Interpleader complaint filed by Rakowsky in 2008.
12. In February 2012, I learned from AAA that Dudgeon and Countryman and the law firm of Carlock Copeland and Stair, LLP, and Rakowsky had all files related to the LawMax litigation in question destroyed.
13. LawMax, Dudgeon and Countryman, and the law firm of Carlock Copeland and Stair, LLP, Rakowsky and the AAA never sent me notice of any of the aforementioned activities.
14. In February 2012, based on AAA confirming I was a party to LawMax litigation, therefore, under my rights as a party to the litigation, I both requested and received copies of the few documents still in the possession of AAA that had been overlooked and not destroyed.

Affiant Sayeth Further Naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

03/19/2012
Date


James Spencer

Exhibit Introduction:

- **Exhibit "A"** clearly establishes James Spencer was a party to the LawMax litigation and, therefore, he has a right to the documentation. The fact that James Spencer did not know he was a party in the LawMax litigation, because it was wrongfully kept from him by Plaintiff Rakowsky and Rakowsky's counsel Amanda K. Dudgeon and her law firm of Carlock, Copeland, Semier & Stair, LLP, does not mitigate his right to all the documentation regarding the LawMax litigation.

- **Exhibit "B"** page one (1) documents the lengths Rakowsky and his counsel went to wrongfully keep the LawMax litigation covered up from plaintiffs Santacroce and Spencer. Rakowsky arrogantly and wrongfully claimed that the Honorable Judge Barber, III, issued an Order purportedly stating that there was to be no discovery in this case. Pages two and three of **Exhibit "B"** clearly document that was an untruthful claim and that the Honorable Judge Barber, III, did not issue such in the Order referenced by Rakowsky and his counsels Desa Ballard and Stephanie Weissenstein.



American Arbitration Association
Dispute Resolution Services

ORIGINAL

Northeast Case Management Center
Catherine Shanks
Vice President
Christopher Fracassa, Yvonne L. Baglini
Assistant Vice Presidents

VIA ELECTRONIC MAIL

250 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: <http://www.adr.org>

June 21, 2008

EXHIBIT "A"

Daniel Zolberg
LawMax
459 Columbia Avenue
New York, NY 10024-5129

Amanda K. Dudgeon
Carlock, Copeland, Semier & Stair, LLP
134 Meeting Street
Suite 500
Charleston, SC 29401

Re: 13 194 01700 07
New Amsterdam Capital Partners, LLC
and
James Spencer
and
John Rakowsky, Esq.

Dear Parties:

The Association has been notified that New Amsterdam Capital Partners, LLC has reached a settlement agreement with Carlock, Copeland, Semier & 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.

Cordially yours,

James F. Medeiros
Case Manager
401-431-4724
MedeirosJ@adr.org

Supervisor Information: Karen Fontaine, 401 431 4798, fontaine@adr.org

cc: Walter G. Gans, Esq.

CERTIFIED TO BE A TRUE AND
EXACT COPY OF THE ORIGINAL

BY

Catherine J. Palatton

EXHIBIT "B"

Page 1 of 3

Spencer which requested substantially similar information and pursuant to the oral ruling of Judge Barber that such discovery is not appropriate in this action.

5. Within thirty-three days after service hereof, you are requested to produce in writing under oath the answer to defendant at Suite 183, 7001 Saint Andrews Road, Columbia, SC

29212, to the following question(s): Has the Plaintiff ever been ~~sued by~~ Resolution Settlement Corporation ("RSC"), Lit Funding and/or ~~LawMax~~ and /or an agent for any of the above companies regarding the funding of the case captioned Southern Holdings, In. (sic), et al. vs.

Horry County, et al. Case No: 02-CV-01859-RBH? Which entity sued Plaintiff? What are the dates of litigation? What was the resolution and the date of resolution of the proceeding? What documents does the Plaintiff have access to regarding such litigation and what is the identity of anyone the Plaintiff knows that has documents regarding any such litigation? Will Plaintiff provide all such documents to Defendant and if not on what legal basis would you not provide such documents?

ANSWER: Plaintiff objects to this interrogatory on the basis that the information sought is irrelevant and not likely to lead to admissible evidence. Plaintiff further objects to this interrogatory on the basis that Judge Seals quashed the subpoena issued by Defendant Spencer which requested substantially similar information and ~~pursuant to the oral ruling of Judge Barber that such discovery is not appropriate in this action.~~

6. Within thirty-three days after service hereof, you are requested to produce in writing under oath the answer to defendant at Suite 183, 7001 Saint Andrews Road, Columbia, SC 29212, to the following question(s): did Plaintiff purchase an electronic copier combination fax, etc., with the money advanced by Defendant or on behalf of the Defendant or Defendants in the case captioned Southern Holdings, In. (sic), et al. vs. Horry County, et al. Case No: 02-CV-01859-RBH? If such a purchase was made, what was the amount of the money so expended on the purchase?

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

John R. Rakowsky,

Plaintiff,

vs.

Adrian L Falgione, James Spencer,
Doris Holt, Rodney Keith Lail, Irene
Santacroce, Marguerite Stephens, Ricky
Stephens, Michael Hartness, Horry County,
S.C., Eugene G. Chewing and Glenn W.
Harrison,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2008-CP-40-6656

**ORDER DENYING
MOTION TO COMPEL,
SUBSTITUTING PARTIES,
RELEASE OF LITIGATION
FUNDS, AND AMENDING
COMPLAINT ACCORDINGLY**

FILED
OCT 18 PM 4:19
RICHLAND COUNTY
CLERK W. McBRIDE

This matter came before me on September 15, 2011, for hearing on Defendant James Spencer's "*EXPEDITED MOTION TO COMPEL DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST TO COMPEL PLAINTIFF TO ANSWER DEFENDANTS FIRST ROUND OF INTEROGATORIES AND REQUEST FOR A JURY TRIAL ON ALL MATTERS RELATED TO 2008-CP-40-6656*". Present were the Plaintiff and his Counsel, Stephanie Weissenstein, Defendant, Adrian Falgione, *pro se*, and Defendants James Spencer and Rodney Lail, who are *pro se*.

This case was before the Honorable William H. Seals, Jr. for a hearing on July 11, 2011, for a hearing on several motions, including Plaintiff's motion to quash a subpoena issued against him at the behest of Defendant James Spencer. The subpoena which was the subject of that hearing and the requests for production which Mr. Spencer seeks to compel includes several of the same documents.

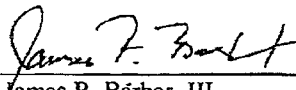
EXHIBIT "B"
Page 3 of 3

There is a long-standing rule in this State that one judge of the same court cannot overrule another. *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E.2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E.2d 689 (1943). Therefore, IT IS HEREBY ORDERED THAT Mr. Spencer's motion to compel the production of documents included in the subpoena is **Denied**¹.

The Court understands that Defendant Doris Holt is now deceased. Plaintiff Rakowsky, Defendant Falgione, Defendant Spencer and Defendant Lail consent to Doris Holt's estate being substituted as the real party at interest. The substitution of the estate is **Granted**.

IT IS SO ORDERED.

October 18, 2011
Richland County



James R. Barber, III
Judge for the 5th Judicial Circuit

¹ By the same written motion, Mr. Spencer also requested a jury trial. That issue was not addressed at the hearing.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011- CP- 40-5384

James Spencer, individually, on	)
behalf of the Estate of Doris Holt	)
and on behalf of Southern	)
Holdings, and Irene Santacroce,	)
	)
Plaintiffs,	)
	)
v.	)
	)
John R. Rakowsky, Adrian L.	)
Falgione, and The Law Offices of	)
Adrian Falgione, LLC	)
	)
Defendants.	)

ORDER

WHEREAS, Amanda K. Dudgeon and Andrew A. Countryman ("Dudgeon and Countryman") and the law firm of Carlock, Copeland and Stair, LLP, have a conflict of interest in this matter in that they represented Plaintiff James Spencer and Defendant John Rakowsky in a related matter and, heretofore, have not disclosed this conflict;

WHEREAS, Dudgeon and Countryman are to be called as material witnesses by the Plaintiffs in the matter caption above creating a second conflict of interest;

THEREFORE, IT IS HEREBY ORDERED that Dudgeon and Countryman and the law firm of Carlock, Copeland and Stair, LLP, are barred from representing any party in this matter.

IT IS SO ORDERED.

March _____, 2012
Richland County

Honorable James R. Barber, III
Judge for the 5th Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

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
THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-40-5384**DEFENDANT RAKOWSKY'S
MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

2011 NOV -3 PM 12:21
JEANETTE W. McBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

PLEASE TAKE NOTICE that Defendant John R. Rakowsky ("Defendant Rakowsky"), by and through his undersigned attorneys, hereby moves for an Order dismissing the Plaintiffs' Complaint with prejudice pursuant to SCRPC 12(b)(6). Defendant Rakowsky bases this Motion on the following:

- (1) Failure to comply with S.C. Code Ann. § 15-36-100, *et seq.*;
- (2) The Plaintiffs filed the Complaint outside the applicable statute of limitations;
- (3) Lack of service of process; and
- (4) The Complaint fails to state facts sufficient to constitute a cause of action.

Defendant Rakowsky bases this Motion on the pleadings, Rules of Civil Procedure, applicable statutes, applicable case law, and any supporting Memoranda and/or exhibits to be filed prior to the hearing of this Motion.

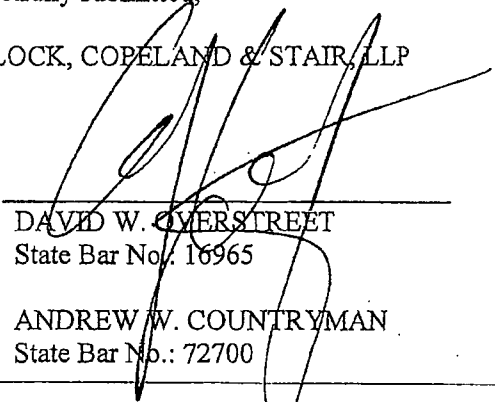
In the alternative and if the Court denies the Motion to Dismiss, Defendant Rakowsky moves for an Order changing venue pursuant to SCRPC 12(b)(3), as venue is not proper in Richland County.

SIGNATURE PAGE TO FOLLOW

This 2nd day of November, 2011.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: 

DAVID W. OVERSTREET
State Bar No. 16965

ANDREW W. COUNTRYMAN
State Bar No.: 72700

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
(843) 727-0307

Attorneys for Defendant John R. Rakowsky

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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,
THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-40-5384

CERTIFICATE OF SERVICE

FILED
2011 NOV -3 PM 1:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

I hereby certify that I have this day served a copy of the within and foregoing Motion to Dismiss upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

James Spencer
7001 St. Andrews Road, Suite 183
Columbia, SC 29212
Pro Se Plaintiff

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
Pro Se Plaintiff

This 2nd day of November, 2011.

Assistant to Andrew W. Countryman

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.)

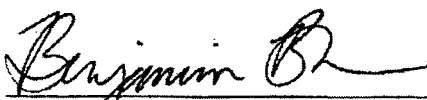
v.)

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)

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

**JAMES B. SPENCER
BOX 183
7001 SAINT ANDREWS ROAD
COLUMBIA, S.C. 29212
(803) 414-0889
JAMESBSPENCER@SC.RR.COM**

October 14, 2012

Bruce Bruner, Esquire
Bruner, Powell, Wall & Mullins
1735 St. Julian Place, Suite 200
PO Box 61110
Columbia, SC 29260
Sent Via email and fax

Re: Correcting the Caption of the August 15, 2011 complaint.

Dear Mr. Bruner:

As you are aware, I am not an attorney and, therefore, cannot represent my mother nor the corporation under the laws of the state of South Carolina. I respectfully seek your consent to correct the caption of the complaint by deleting both the corporation and my mother as plaintiffs in order for the complaint to comply with the law.

As you are aware the lawyer originally who was to handle this case literally on the eve of trial became entangled in his own divorce in the state of Florida and I was left to handle this case on a *Pro Se* basis.

Please seek agreement with Andrew W. Countryman, as these are merely cosmetic moves necessary to comply with the law in this case.

I look forward to hearing from you at your earliest convenience.

Yours truly,


James B. Spencer

Cc:
Andrew Countryman
Irene Santacroce

**JAMES B. SPENCER
BOX 183
7001 SAINT ANDREWS ROAD
COLUMBIA, S.C. 29212
(803) 414-0889
JAMESBSPENCER@SC.RR.COM**

October 14, 2012

Bruce Bruner, Esquire
Bruner, Powell, Wall & Mullins
1735 St. Julian Place, Suite 200
PO Box 61110
Columbia, SC 29260
Sent Via email and fax

Re: Correcting the Caption of the August 15, 2011 complaint.

Dear Mr. Bruner:

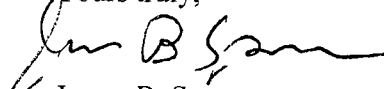
As you are aware, I am not an attorney and, therefore, cannot represent my mother nor the corporation under the laws of the state of South Carolina. I respectfully seek your consent to correct the caption of the complaint by deleting both the corporation and my mother as plaintiffs in order for the complaint to comply with the law.

As you are aware the lawyer originally who was to handle this case literally on the eve of trial became entangled in his own divorce in the state of Florida and I was left to handle this case on a *Pro Se* basis.

Please seek agreement with Andrew W. Countryman, as these are merely cosmetic moves necessary to comply with the law in this case.

I look forward to hearing from you at your earliest convenience.

Yours truly,


James B. Spencer

Cc:
Andrew Countryman
Irene Santacroce

**JAMES B. SPENCER
BOX 183
7001 SAINT ANDREWS ROAD
COLUMBIA, S.C. 29212
(803) 414-0889
JAMESBSPENCER@SC.RR.COM**

November 27, 2012

Bruce Bruner, Esquire
Bruner, Powell, Wall & Mullins
1735 St. Julian Place, Suite 200
PO Box 61110
Columbia, SC 29260
Sent Via email and fax

Re: Correcting the Caption of the August 15, 2011 complaint.

Dear Mr. Bruner:

Once again, I ask for your consent to amend the complaint. As you are aware, I am not an attorney and, therefore, cannot represent my mother nor the corporation under the laws of the state of South Carolina. I respectfully seek your consent to correct the caption of the complaint by deleting both the corporation and my mother as plaintiffs in order for the complaint to comply with the law.

Please seek agreement with Andrew W. Countryman, as these are merely cosmetic moves necessary to comply with the law in this case.

I look forward to hearing from you at your earliest convenience.

Yours truly,


James B. Spencer

Cc:
Andrew Countryman
Irene Santacroce

JAMES B. SPENCER
BOX 183
7001 SAINT ANDREWS ROAD
COLUMBIA, S.C. 29212
(803) 414-0889
JAMESBSPENCER@SC.RR.COM

November 27, 2012

Bruce Bruner, Esquire
Bruner, Powell, Wall & Mullins
1735 St. Julian Place, Suite 200
PO Box 61110
Columbia, SC 29260
Sent Via email and fax

Re: Correcting the Caption of the August 15, 2011 complaint.

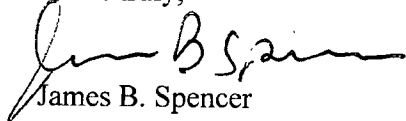
Dear Mr. Bruner:

Once again, I ask for your consent to amend the complaint. As you are aware, I am not an attorney and, therefore, cannot represent my mother nor the corporation under the laws of the state of South Carolina. I respectfully seek your consent to correct the caption of the complaint by deleting both the corporation and my mother as plaintiffs in order for the complaint to comply with the law.

Please seek agreement with Andrew W. Countryman, as these are merely cosmetic moves necessary to comply with the law in this case.

I look forward to hearing from you at your earliest convenience.

Yours truly,


James B. Spencer

Cc:
Andrew Countryman
Irene Santacroce

STATE OF SOUTH CAROLINA

FILED

THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

COUNTY OF LEXINGTON

2013 MAY 16 3:02

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

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

Plaintiff,

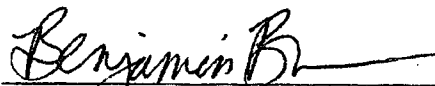
v.

**MOTION FOR ADMISSIONS
PURSUANT TO RULE 36, SCRPC**John R. Rakowsky; Adrian L. Falgione; and
The Law Offices of Adrian Falgione, LLC;

Defendants.

TO: THE PLAINTIFF, ABOVE-NAMED

YOU WILL PLEASE TAKE NOTICE that Defendants Adrian L. Falgione and The Law Offices of Adrian L. Falgione, LLC ("Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Eleventh Judicial Circuit, at the Lexington County Judicial Center, 205 East Main Street, Lexington, South Carolina, on the 10th day after service hereof, or as otherwise scheduled by the Court, for an Order pursuant to Rule 36, SCRPC, that the matters set forth in the Defendants' First Requests for Admissions (**Exhibit A**), which were properly served on the Plaintiff on February 24, 2012, be deemed admitted for the Plaintiff's failure to respond as required by the Rule. 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 Plaintiff before filing this Motion because he is *pro se* at this time.



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

May 15, 2013

EXHIBIT A
BRUNER, POWELL, WALL & MULLINS, LLC

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.

ATTORNEYS AND COUNSELORS AT LAW
 1735 ST. JULIAN PLACE, SUITE 200
 POST OFFICE BOX 61110
 COLUMBIA, SOUTH CAROLINA 29260-1110
 TELEPHONE 803-252-7693
 FAX 803-753-0060
 WWW.BRUNERPOWELL.COM

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

February 24, 2012

James B. Spencer
 7001 St. Andrews Road, Suite 183
 Columbia, South Carolina 29212

Irene Santacroce
 205 Deer Trace Circle
 Myrtle Beach, SC 29588

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 Mr. Spencer and Ms. Santacroce:

Enclosed please find Defendant Falgione's First Set of Interrogatories, Request for Production and Requests to Admit to The Plaintiffs, hereby served upon you.

Sincerely,


 Benjamin C. Bruner

BCB:nys

/Enclosures

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

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

FILED 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;)

Plaintiffs,)

v.)

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

Defendants.)

2013 MAY 16 3:02 C/A No. 2011-CP-40-5384

**DEFENDANTS ADRIAN L. FALGIONE
AND THE LAW OFFICES
OF ADRIAN FALGIONE, LLC'S
FIRST REQUESTS TO ADMIT
TO THE PLAINTIFFS**

TO: THE PLAINTIFFS, ABOVE-NAMED

Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC (collectively, "the Falgione Defendants"), hereby request, pursuant to Rule 36, SCRCP, that the above-named Plaintiffs respond to the following requests to admit within thirty (30) days from the date of service hereof:

REQUEST NO. 1: Admit the South Carolina law required you to file an expert affidavit specifying at least one negligent act of the Defendants to this action.

REQUEST NO. 2: Admit you failed to file an expert affidavit supporting your claims against the Defendants within forty-five (45) days of filing the Complaint.

REQUEST NO. 3: Admit the Complaint is subject to dismissal because you failed to file an expert affidavit as required by law.

REQUEST NO. 4: Admit you witnessed your federal lawsuit being settled in court on May 9, 2007.

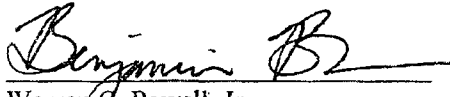
REQUEST NO. 5: Admit you became aware of the claims you allege in this action before July 31, 2007.

REQUEST NO. 6: Admit you filed the Complaint more than three years after you discovered the claims you allege against the Defendants in this action.

REQUEST NO. 7: Admit you failed to serve the Defendants with the Summons and Complaint within 120 days of the date of filing this lawsuit.

REQUEST NO. 8: Admit you failed to properly serve the Summons and Complaint on the Falgione Defendants.

BRUNER, POWELL, WALL & MULLINS, LLC



Warren C. Powell, Jr.

Benjamin C. Bruner

1735 St. Julian Place, Suite 200

P.O. Box 61110

Columbia, SC 29260

(P) 803-252-7693

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

February 24, 2012

Columbia, South Carolina

COPY

CERTIFICATE OF SERVICE

FILED

The undersigned hereby certifies that on February 24, 2012, the documents described below 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.

NETHA D. BRIGGS

Documents served: **DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST SET OF INTERROGATORIES TO THE PLAINTIFFS**

DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST REQUESTS FOR PRODUCTION TO THE PLAINTIFFS

DEFENDANTS ADRIAN L. FALGIONE AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S FIRST REQUESTS TO ADMIT TO THE PLAINTIFFS

Parties served:

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

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

Nancy Y. Stagg

Nancy Y. Stagg

EXHIBIT B

91

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 611110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-753-0060

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.
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

January 11, 2013

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

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.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Mr. Spencer:

I am in receipt of your January 5th letter. I disagree that the Court issued a "standing order" at the May 7th status conference essentially staying this case, and my recollection of what transpired at the August 1st hearing differs from yours. The Court has already rejected the arguments you make related to our motion to change venue and has recognized my clients' substantial right to be tried in their resident county. This is a right well-established under South Carolina case law. With respect to the funds you ask my client to pay over, allow me to emphasize that neither my clients nor this firm has ever held a dime of that money. Thus, my clients and I are unable to pay—or to agree to pay—any portion of those funds.

I believe that we all left the May 7th status conference expecting the motions to dismiss would be heard in June or July. Regrettably, those motions (and your motion to disqualify) still have not been heard. At this time—as was the case in May of last year—taking depositions will be unnecessary and a waste of resources if our motion to dismiss is granted. We have not even filed a formal answer yet, only a motion to dismiss. If the motion is denied, then we can discuss depositions. Based on your December 30th letter, it is my understanding that you have withdrawn the subpoena you served on December 28th. If I am incorrect and you insist on pressing forward with depositions, please advise. Please also allow me to point out that I have waited nearly one year for you and Ms. Santacroce to answer the discovery requests I served on February 24, 2012 in this case. I look forward to hearing from you.

Sincerely,



Benjamin C. Bruner

BCB/gh

cc: Amanda K. Dudgeon, Esquire
Irene Santacroce, *pro se*

EXHIBIT C

92

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 6140
COLUMBIA, SOUTH CAROLINA 29260-1410
TELEPHONE 803-252-7693
FAX 803-753-0060
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.
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

January 29, 2013

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

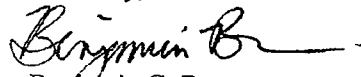
RE: *James Spencer, individually and on behalf of the Estate of Doris Holt and on behalf of Southern Holdings, Inc; and Irene Santacroce vs. John R. Rakowsky; Adrian L. Falgione; and The Law Offices of Adrian Falgione, LLC*
Civil Action No.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Ms. Santacroce:

I returned to the office this morning and received your e-mail from yesterday. Based on the status of this case and our argument that personal jurisdiction has not yet been established, I have moved the Court for an order protecting my client from being subjected to a deposition until our motion to dismiss is heard. This is the same position I took at the May 7, 2012 status conference when I asked Judge Barber for a hearing on the motion to dismiss so we can have time to pursue discovery afterwards if the motion is denied. Respectfully, I disagree with your interpretation of what occurred at that status conference. I find it telling that Judge Barber never issued a written order stating the rulings you say he made at that conference. Instead, he sent all of us a letter on July 31st explaining that he had signed the orders he intended to sign and they are to stand.

As for exchanging written discovery, at this time my file contains no response from either you or Mr. Spencer to the interrogatories, requests for production and requests for admissions I served on you both in this case. I served those requests on February 24, 2012, and to date I have received no written response, no objection, nor any documents from either of you to those requests. I am happy to discuss some agreeable discovery plan, including the mutual exchange of discovery responses, so we can submit it to the Court as a scheduling order if you are willing to entertain that option. Absent that cooperation, however, my only choice at this time is to request a status conference.

Sincerely,


Benjamin C. Bruner

BCB/gh

cc: Amanda K. Dudgeon, Esquire
James Spencer, *pro se*

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

1735 ST. JULIAN PLACE, SUITE 200

POST OFFICE BOX 61110

COLUMBIA, SOUTH CAROLINA 29260-1110

TELEPHONE 803-252-7693

FAX 803-753-0060

WWW.BRUNERPOWELL.COM

JAMES L. BRUNER, P.A.
WARREN C. POWELL, JR., P.A.*
HENRY P. WALL
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BRIAN P. ROBINSON, P.A.

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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

February 4, 2013

James B. Spencer
7001 St. Andrews Road, Suite 183
Columbia, South Carolina 29212

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.: 2012-CP-32-03428
Claim No.: 23192
BPWM File No.: 3-1742-108

Mr. Spencer:

I am in receipt of an e-mail from you dated February 2, 2013, attached to which appears to be a response you filed with the Clerk of Court in this matter in response to the Motion I filed on January 22, 2013. I have not yet received a copy by U.S. Mail pursuant to Rule 5, SCRC. If you have not yet, please ensure that you serve copies of your filing in accordance with the South Carolina Rules of Civil Procedure.

In your response, you argue in Paragraph 6 that you fully responded to those requests twice, the second time on July 10, 2012. I would like to reiterate that after searching my file again, I have not found any responses from you or Ms. Santacroce to the first set of discovery requests I served on you both. Please provide me the responses to which you refer.

You also claim Judge Barber ordered my clients to disburse the "uncontested litigation funds" on or before June 1, 2012. Not only does not such order exist, those funds are the subject of a separate lawsuit pending in Richland County, as you well know. Furthermore, neither Mr. Falgione nor his law firm holds those funds. They cannot turn over what they do not have, nor would it be proper for the Court in this case to order those funds paid when they are clearly the subject of another lawsuit.

Finally, I recently learned that this case will be assigned to a single judge for pre-trial and trial. This means we will have the same judge for the remainder of the case. Given the history of this case, I intend to reiterate to the new judge my request for a status conference to discuss a discovery plan moving forward. I believe this is necessary not only based on your arguments,

Letter to Spencer
February 4, 2013
Page 2 of 2

FILED

2013 MAY 16 3:02

which are false and mischaracterize events that have transpired, but also based on the continual delays this case has suffered.

If you are willing, I am still open to discussing a reasonable scheduling order that we can submit to the Court. Please advise if this is something you would consider, as it would certainly save us all time. In the meantime, please see that all papers, affidavits, motions, filings and other documents in this case have been served in accordance with Rule 5, SCRCP.

Sincerely,



Benjamin C. Bruner

BCB/gh

cc: Amanda K. Dudgeon, Esquire
Irene Santacroce, *pro se*

COPY

CERTIFICATE OF SERVICE

FILED

The undersigned hereby certifies that on May 15, 2013, 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.

BETH A. CARRIGE
CLERK OF COURT

Documents served: **MOTION FOR ORDER PURSUANT TO RULE 36, SCRPC**

Parties served:

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

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

Nancy G. Stagg
Nancy V. Stagg

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

Case No. **2008-CP-40-6656**

John R. Rakowsky,

Plaintiff,

v.

Adrian L. Falgione, James Spencer,
Doris Holt, Rodney Lail, Irene
Santacroce, Marguerite Stephens, Ricky
Stephens, Horry County, South Carolina.

Defendants.

JENNIFER L. SPENCER
CLERK, CC.

2011 JUL 14 AM 11:45

RICHLAND COUNTY
CLERK

**EXPEDITED MOTION TO COMPEL DEFENDANTS REQUEST FOR
PRODUCTION OF DOCUMENTS AND REQUEST TO COMPEL PLAINTIFF
TO ANSWER DEFENDANTS FIRST ROUND OF INTEROGATORIES AND
REQUEST FOR A JURY TRIAL ON ALL MATTERS RELATED TO
2008-CP-40-6656**

NOW COMES DEFENDANT, James Spencer, on a *Pro Se* basis in the above-styled civil action and pursuant to Rule 37 of the South Carolina Rules of Civil Procedure and move the Court for an order compelling plaintiff John Rakowsky to respond to defendant's first request for production of documents and defendant's first round of interrogatories and for Sanctions to be imposed by this Court on Plaintiff John Rakowsky for his orchestrated failure to cooperate in discovery and request for a trial by jury. In support of the defendant's motion, the defendant shows the following:

1. On December 1, 2009, Defendant Spencer served Plaintiff John Rakowsky with first request for production of documents (Exhibit “A”) for response within 33 days thereafter.
2. On December 1, 2009, Defendant Spencer served Plaintiff John Rakowsky with first round of interrogatories for response within 33 days thereafter.
3. On Monday, January 7, 2011, *Pro Se* Defendant Spencer served Plaintiff John Rakowsky a second time with first request for production of documents (Exhibit “B”) for response 33 days thereafter.
4. On February 10, 2011, a Subpoena was issued to Plaintiff John Rakowsky for the production of the documents that Plaintiff Rakowsky has refused to produce despite repeated requests for production. (Exhibit “C”).
5. On February 18, 2011, Plaintiff John Rakowsky filed a motion to Quash the Subpoena and Rakowsky requested a hearing.
6. On February 22, 2011, Plaintiff John Rakowsky filed a motion to strike and to file under seal Defendant James Spencer and certain other Defendants’ Response to John Rakowsky’s Second Amended Complaint for Interpleader.
7. On February 18, 2011, Defendant Adriann Flagione, Esquire (Note: Plaintiff John Rakowsky’s co-counsel on the case that gave rise to Plaintiff Rakowsky’s filing of this Interpleader action) filed a motion to Quash the Subpoena sent by Defendant Spencer and Falgione requested a hearing.
8. On Friday, May 6, 2011, Plaintiff John Rakowsky served a proposed Order For Default Judgment and Affidavit of Default as to Southern Holding, Inc., Litfunding USA, LawMax Legal Finance, Ronald Serota, David Smith, Harold

Hartness, Eugene Chewning, Jr., Glenn Harrison, and Michael Hartness on Defendant James Spencer and the remaining Defendants Andrew Lindeman (for Horry County), Doris Holt, Adrian Lee Falgione, Marguerite Stephens, Ricky Stephens, Irene Santacroce, and Rodney K. Lail.

9. On May 11, 2011, a roster hearing was held and when the case was called by the Honorable Judge George C. James, Jr., Stephanie Weissenstein, on behalf of Plaintiff John Rakowsky, arose first and announced to the Court a request for a continuance as Plaintiff Rakowsky had a conflict in his schedule.
10. On May 11, 2011, Defendant James Spencer agreed again to another of Plaintiff John Rakowsky's requests for a continuance in these matters as Defendant James Spencer's mother, *Pro Se* Defendant Doris Holt, had recently died and *Pro Se* Defendant Spencer had been just appointed as administrator of her estate on May 5, 2011. (Exhibit "D")
11. On June 24, 2011, Plaintiff John Rakowsky's legal counsel, Stephanie Weissenstein, Esquire, filed an ex parte motion for a "date certain" with the Honorable Alison Renee Lee notifying selective handpicked Defendants. (Exhibit "E")
12. On June 24, 2011, Plaintiff John Rakowsky's legal counsel, Stephanie Weissenstein, notified by copying Plaintiff John Rakowsky, Defendant Adriann Falgione, Esquire and Defendant Horry County Counsel John Lindemann (collectively hereinafter known as the "chosen handpicked parties").
13. Not notified about the June 24, 2011, motion for date certain, included *Pro Se* Defendants, James Spencer, Rodney Lail, Irene Santacorce, Ricky Stephens,

Doris Holt and Marguerite Stephens (collectively hereinafter referred to as the “stigmatized Defendants”). The “stigmatized Defendants” were all original Plaintiffs in the lawsuit that led to the Interpleader action captioned above.

14. Not coincidentally, the “chosen handpicked parties” are comprised of Plaintiff Rakowsky, Esquire and Defendant Falgione, Esquire who represented the “stigmatized Defendants” in litigation and Andrew Lindemann, Esquire who represented Defendant Horry County in that very litigation that gave rise to this Interpleader action before this Court captioned above.
15. Based on the motion for date certain with the false and misleading information, Defendant Spencer was informed of a Docket Hearing and Trial scheduled for Monday, July 11, 2011, set by the Honorable Judge Lee, by letter from Desa Ballard’s office on Thursday afternoon, July 7, 2011. This short notice prevented Defendant Spencer from properly preparing himself or a counsel for a motions hearing and trial on July 11, 2011.
16. Several of the “stigmatized Defendants” never received notice of the hearing on July 11, 2011 from Desa Ballard or the Court. (Exhibit “F”)
17. On July 12, 2011, Defendant Spencer was notified his subpoena’s for records were quashed at the hearing held on July 11, 2011. Obviously, the “stigmatized Defendants” were not prepared for the hearing given the short notice by Desa Ballard’s Office. Additionally, their **total lack of knowledge** of the existence of the ex parte motion for a date certain filed by Plaintiff John Rakowsky prevented the “stigmatized Defendants” from responding to the motion’s untruthful and misleading contents submitted to the Honorable Judge Lee by Plaintiff Rakowsky.

ADDITIONAL CONSIDERATIONS AND APPLICABLE LAW

On July 13, 2011, *Pro Se* Defendant Spencer reviewed the clerk of court's file and found that even though Plaintiff's Counsel has not cooperated with the "stigmatized Defendants" in producing sought after evidence in discovery, Plaintiff's counsel has in fact been submitting ex parte evidence to Judge Lee without knowledge of the "stigmatized Defendants." (See Exhibit "G") These ex parte communications, one of which the Court has sealed, are clear violations of Rule 3, CJC, Rule 501, SCACR. The Supreme Court of the State of South Carolina has long held that ex parte communications of this nature are inappropriate. In *Burgess V. Stern* the SC Supreme Court held:

"It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition [*331] is not against "prejudicial" ex parte communications, but against ex parte communications."

Burgess v. Stern, 311 S.C. 326, 330-331 (S.C. 1993)

Plaintiff Rackowsky has sought to intentionally undermine the "stigmatized Defendants" discovery process in violation of Rule 37 of SC Rules of Civil Procedure. In that regard, Stephanie Weissenstein, Esquire on behalf of Plaintiff John Rakowsky, in her June 24, 2011, ex parte motion for a date certain, knowingly misled the Court as to the "stigmatized Defendants" responsibility for the delays and continuances in this case to date, when in fact Plaintiff John Rakowsky was responsible for the delays and continuances and received continuances on at least three separate occasions, including continuances for the issuance of two revised amended complaints after the "stigmatized Defendants" answers were submitted in response to each earlier version of the complaint.

Defendant Spencer can not recall one motion for a continuance filed with the court by the “stigmatized Defendants” collectively or individually that caused a continuance of this matter. Additionally, Stephanie Weissenstein, Esquire knowingly misled the Court by being untruthful as to her request to the Court on May 11, 2011 for another continuance for Plaintiff John Rakowsky by recasting history stating it was Defendant Spencer who forthwith asked for a continuance when the Judge called the case, when in fact it was Stephanie Weissenstein, Esquire on behalf of John Rakowsky.

Through outright untruths, insertion of half truths and spinning of the truth in the June 24, 2011, motion for a date certain sent to the Honorable Judge Lee on an ex parte basis in regards to the “stigmatized Defendants” was a deliberate attempt to undermine discovery by the “stigmatized Defendants”, who were deliberately not served the ex parte motion to conceal the fraud in the June 24, 2011, motion for a date certain sent to the Honorable Judge Lee by Plaintiff John Rakowsky.

The lack of cooperation by Plaintiff Rakowsky in discovery has disallowed the “stigmatized Defendants” the opportunity to discover evidence that may have led to counter claims and an amended or supplemented answer. (Exhibit “F”)

The *Pro Se* Defendant James Spencer’s discovery of the sealed ex parte evidence and additional ex parte communications has led to the *Pro Se* Defendant James Spencer’s request to this Court for a jury trial on all unsettled matters and possible counter claims related to this litigation, to be held upon completion of proper discovery by *Pro Se* Defendant James Spencer.

INTERIM REMEDY

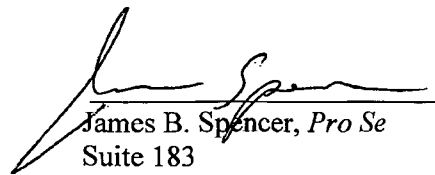
Wherefore, *Pro Se* Defendant James Spencer respectfully requests that the Court enter

an Order for the following: (1) requiring Plaintiff John Rakowsky to cooperate in discovery, respond fully and completely to Defendant Spencer's First Request for Documents and Answer Defendant Spencer's First round of Interrogatories forthwith, (2) allow the "stigmatized Defendants," based upon information and belief, their first continuance in this case so the "stigmatized Defendants" can conduct and complete proper discovery, (3) Plaintiff Rakowsky be assessed with an amount which would be considered normal attorney fees and costs associated with this motion, (4) all ex parte communications both unsealed and sealed be identified and released in full to *Pro Se* Defendant James Spencer (4) since all potential claims on the litigation funds of \$9,855.00 have been removed by John Rakowsky's revisions of his complaints and other filings, the litigation funds be released forthwith as previously directed by the "stigmatized Defendants", (5) a jury trial be granted as requested by the *Pro Se* Defendant James Spencer upon completion of proper discovery and for such other Sanctions and further relief as this Court deems necessary and is available under Rule 37 of the South Carolina Rules of Civil Procedure for Plaintiff John Rakowsky's failure to cooperate in discovery and his deception of this Honorable Court in that regard, coupled with the ex parte communications that creates public doubt on the unbiased nature of the Court as established in Burgess v. Stern, 311 S.C. 326, 330-331 (S.C. 1993).

RESPECTFULLY SUBMITTED

This 14th day of July, 2011.

By:


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

CERTIFICATE OF SERVICE

I, James Spencer, *Pro Se*, defendant do hereby certify that the foregoing EXPEDITED MOTION TO COMPEL DEFENDANTS REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST TO COMPEL PLAINTIFF TO ANSWER DEFENDANTS FIRST ROUND OF INTEROGATORIES AND REQUEST FOR A JURY TRIAL ON ALL MATTERS RELATED TO 2008-CP-40-6656 has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

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

Adrian Lee Falgione
 Law Offices of Adrian Lee Falgione, LLC
 P O Box 277
 Lexington, SC 29071

Andrew F. Lindemann
 Davidson & Lindemann, P.A.
 PO Box 8568
 Columbia, SC 29202

Doris Holt
 Suite 183
 7001 Saint Andrews Road
 Columbia, SC 29212

Marguerite Stephens
 207 Deer Trace Circle
 Myrtle Beach, SC 29588

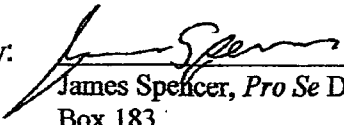
Ricky Stephens
 207 Deer Trace Circle
 Myrtle Beach, SC 29212

Irene Santacroce
 205 Deer Trace Circle
 Myrtle Beach, SC 29588

Rodney Keith Lail
 PO Box 2753
 Myrtle Beach, SC 29588

2011 JUL 14 AM 11:45
 JEANETTE H. HARRIS
 C.C.F. & G.S.

This 14th day of July, 2011.

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

James B. Spencer
Box 183
7001 Saint Andrews Road
Columbia, SC 29212

December 1, 2009

Desa Ballard, Esquire
226 State Street
West Columbia, SC 29169
Sent Via Fax, Email and/or
U.S Mail

Re: Accounting of funds request for production under Rule 33 of the SC
RCP for **2008-CP-40-6656**.

Dear Ms. Ballard:

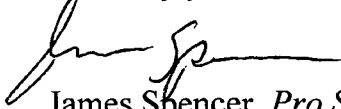
1. Any and all records concerning the creation of the trust account for the Plaintiffs' funding of the case of Southern Holdings, In., et al. vs. Horry County, et al. **Case No: 02-CV-01859-RBH.**
2. Any and all banking information on that trust account including deposit slips withdrawal checks and primary backup (copies of receipts and deposited checks) and monthly bank statements from inception to date.
3. Any and all records in any form of media on the trust account, purchases made with funds from the trust account, expenses paid and related receipts including but not limited to the printer, copier fax machine personal property John Rakowsky purchased for his personal use.
4. Any and all tax documents related to funds paid to third parties and/or legal assistants for work done on this case paid by funds advanced for litigation in this case.
5. Any and all paperwork and/or notes in any media form regarding LawMax funding including but not limited to bank deposit slips and checks written from funds advanced by LawMax.

6. Any and all paperwork and/or notes in any media form regarding Resolution Settlement Corporation including but not limited to bank deposit slips and checks written from funds advanced by Resolution Settlement Corporation (RSC) including any and all correspondence of any nature between RSC, Officers of RSC (e.g. Bruce Benson), Rakowsky and any representative of Rakowsky.

I look forward to a timely response within thirty-three days from the date of this letter under SC RCP 33.

Thank you very much.

Sincerely yours,



James Spencer, *Pro Se*, Defendant

Cc:

Adrian Falgione
Law Max Legal Finance
Litfunding USA
Linda Williamson Lawrence
Ernest H Morton
Ronald N Serota, Esquire
David Smith
Michael Steven Hartness
Harold Steven Hartness
Administrator, Horry County, South Carolina
Irene Santacroce
Marguerite Stephens
Ricky Stephens
Rodney Lail
Doris Holt
Nick Williamson, Southern Holdings, Inc.

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

January 7, 2011

Ballard, Watson, Weissenstein
To Whom it May Concern
226 State Street
West Columbia, SC 29169
Sent Via Fax, Email and/or
U.S Mail

Re: Defendant Spencer's Submission of First Request for Production under
Rule 33 of the SC RCP for **2008-CP-40-6656**.

1. Any and all records concerning the creation of the trust account for the Plaintiffs' funding of the case of Southern Holdings, In., et al. vs. Horry County, et al. **Case No: 02-CV-01859-RBH.**
2. Any and all banking information on that trust account including deposit slips withdrawal checks and primary backup (copies of receipts and deposited checks) and monthly bank statements from inception to date.
3. Any and all records in any form of media on the trust account, purchases made with funds from the trust account, expenses paid and related receipts including but not limited to the printer, copier fax machine personal property John Rakowsky purchased for his personal use.
4. Any and all tax documents related to funds paid to third parties and/or legal assistants for work done on this case paid by funds advanced for litigation in this case.
5. Any and all paperwork and/or notes in any media form regarding LawMax funding from any source including but not limited to legal proceedings and communications with Law Max and representatives of LawMax including but not limited to any Court decisions regarding venue. This request includes any and all agreements of any nature involving and/or related to

John Rakowsky in any nature and any Court decisions or filings made concerning the funding made by LawMax regarding the referenced case in point one (1) above.

6. Any and all paperwork and/or notes in any media form regarding Resolution Settlement Corporation including but not limited to bank deposit slips and checks written from funds advanced by Resolution Settlement Corporation (RSC) including any and all correspondence of any nature between RSC, Officers of RSC (e.g. Bruce Benson), Rakowsky and any representative of Rakowsky.
7. Any and all paperwork and/or notes in any media form regarding Lit Funding from any source including but not limited to legal proceedings and communications with Lit Funding and representatives of Lit Funding including but not limited to any Court decisions regarding venue. This request includes any and all agreements of any nature involving and/or related to John Rakowsky in any nature and any Court decisions or filings made concerning the funding made by Lit Funding regarding the referenced case in point one (1) above.

I look forward to a timely response within thirty-three days from the date of this letter under SC RCP 33.

Thank you very much.

Sincerely yours,



James Spencer, *Pro Se*, Defendant

Cc:

Adrian Falgione

Law Max Legal Finance

Litfunding USA

Ronald N Serota, Esquire

David Smith

Michael Steven Hartness

Harold Steven Hartness

Administrator, Horry County, South Carolina

Irene Santacroce

Marguerite Stephens

Ricky Stephens

Rodney Lail

Doris Holt

Nick Williamson, Southern Holdings, Inc.

STATE OF SOUTH CAROLINA

ISSUED BY THE **CIRCUIT** COURT IN THE COUNTY OF **RICHLAND**

John Rakowsky, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

R. Lail, J. Spencer, et al Defendants

Case Number: **2008-CP-40-6656**

Pending in **RICHLAND** County

TO: **John Rakowsky**

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects: **SEE ATTACHMENT**)

C/O James Spencer

PLACE **Suite 183, 7001 Saint Andrews Rd., Columbia, SC 29212**

DATE AND TIME **Feb 24, 2011 at 4:00 PM**

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

DATE

ATTORNEY/ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

Jeanette W. McBride

CLERK OF COURT/ISSUING OFFICER SIGNATURE

2/10/11

DATE

Jeanette W. McBride

PRINT NAME

John Rakowsky Subpoena Attachment:

1. Any and all records concerning the creation of the trust account for the Plaintiffs' funding of the case of Southern Holdings, In., et al. vs. Horry County, et al. **Case No: 02-CV-01859-RBH.**
2. Any and all banking information on that trust account including deposit slips withdrawal checks and primary backup (copies of receipts and deposited checks) and monthly bank statements from inception to date.
3. Any and all records in any form of media on the trust account, purchases made with funds from the trust account, expenses paid and related receipts including but not limited to the printer, copier fax machine personal property John Rakowsky purchased for his personal use.
4. Any and all tax documents related to funds paid to third parties and/or legal assistants for work done on this case.
5. Any and all paperwork and/or notes in any media form regarding LawMax funding from any source including but not limited to legal proceedings and communications with Law Max and representatives of LawMax including but not limited to any Court decisions regarding venue. This request includes any and all agreements of any nature involving and/or related to John Rakowsky in any nature and any Court decisions or filings made concerning the funding made by LawMax regarding the referenced case in point one (1) above.
6. Any and all paperwork and/or notes in any media form regarding Resolution Settlement Corporation including but not limited to bank deposit slips and checks written from funds advanced by Resolution Settlement Corporation (RSC) including any and all

correspondence of any nature between RSC, Officers of RSC (e.g. Bruce Benson), Rakowsky and any representative of Rakowsky.

7. Any and all paperwork and/or notes in any media form regarding Lit Funding from any source including but not limited to legal proceedings and communications with Lit Funding and representatives of Lit Funding including but not limited to any Court decisions regarding venue. This request includes any and all agreements of any nature involving and/or related to John Rakowsky in any nature and any Court decisions or filings made concerning the funding made by Lit Funding regarding the referenced case in point one (1) above.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PROBATE COURT

IN THE MATTER OF: DORIS E. HOLT

CASE NUMBER: 2011 ES40 00533

CERTIFICATE OF APPOINTMENT AS PERSONAL REPRESENTATIVE

This is to certify that

ROBERT B HOLT

is the duly qualified **PERSONAL REPRESENTATIVE**

in the above matter and that this appointment, having been executed on the 5th day of May, 2011, is now in full force and effect, including authorization to receive all monies, income, principal, interest & dividends of and belonging to said estate.

RESTRICTIONS:

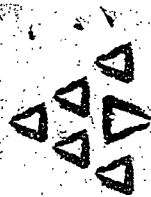
Only those imposed by law.

Executed this 5th day of May, 2011.

Amy W. McCulloch

Amy W. McCulloch
Richland County Probate Judge

Do not accept a copy of this
certificate without the raised
seal of the Probate Court.



**Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

EXHIBIT E
Page 1 of 2

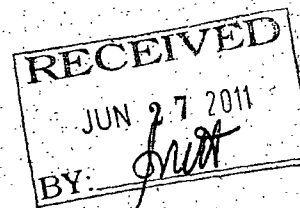
114

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | desaballard.com

June 24, 2011

Via U.S. Mail
Honorable Alison Renee Lee
Richland County Judicial Center
1701 Main Street, Room 324
Post Office Box 192
Columbia, South Carolina 29202-0192



Re: *John Rakowsky vs. Adriann Falgione, et al.*
Case No: 2008-CP-40-6656

ny trial

Dear Judge Lee:

Although date-certain scheduling is not the common or preferred method in South Carolina, I hereby request that in this circumstance, you please consider issuing such a scheduling order.

On behalf of the Plaintiff, attorney John Rakowsky, we filed the original complaint seeking to interplead funds on September 12, 2008 and served it on the Defendants. On October 20, 2008, some of the Defendants filed a motion demanding the immediate release of the funds. An Amended Complaint was filed on November 17, 2008, and this matter was called for hearing on January 19, 2010. The Court received notice from several individuals that additional claims would be made against the disputed funds, so the Court issued its judgment on May 21, 2010, denying Defendants' motion to release funds and requesting that the new parties be added to the action as defendants.

Plaintiff filed a motion pursuant to Rule 15, SCRPC, requesting an order permitting him to join new parties whose existence and involvement have been revealed through this matter and to delete claims against those who were not proper parties or who are no longer involved in the matter. Present at the hearing on Plaintiff's motion were the undersigned, Defendant Adrian L. Falgione; and counsel for Defendant Horry County. I affirmed that notice of the motion and hearing were served upon all defendants, pursuant to Rule 5, SCRPC, but none had appeared.

The case was placed on the roster for August 9, 2010, but the hearing could not be scheduled until November 1, 2010. As a result, a Second Amended Summons and Complaint were filed and served. The amended complaint included defendant John Doe, who was served by publication pursuant to South Carolina Code § 15-67-40 (1976, as amended).

Honorable Alison Renee Lee
Re: *John Rakowsky vs. Adriann Falgione, et al.*
June 24, 2011
Page: 2/2

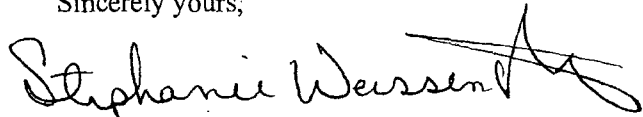
The case was called again for trial and the undersigned appeared at the roster meeting on May 11, 2011. Defendant Spencer announced to the Court that due to the last minute nature of the pending trial, some of the defendants would not be available to attend and he requested a continuance.

Your Honor, this case has been pending since 2008, and we feel the substantive issues are relatively simple: there is money held in trust and multiple parties claim to be owed a portion or all of it. Because this case has many *pro se* defendants who are antagonistic to plaintiff, the case continues to be delayed. We believe that a Date Certain Trial will give to all the parties enough notice that further delays and continuances will not be allowed, and this matter can finally be resolved. I consulted with counsel for Horry County and with Defendant Adrian Falgione, Esquire, regarding this request and they consent.

Please call me if you have any questions regarding this request for scheduling. Thank you for your consideration.

With warm personal regards, I am,

Sincerely yours,



Stephanie Weissenstein
stephanie@desaballard.com

cc: John R. Rakowsky, Esquire (*via U.S. mail*)
Adrian Falgione (*via U.S. mail*)
Andrew F. Lindemann, Esquire (*via U.S. mail*)

DECLARATION OF MARGUERITE SANTACROCE

I, Marguerite Stephens, declare under penalty of perjury:

1. I am over eighteen years old and am qualified to testify.
2. The information in this declaration is based on my personal knowledge.
3. I never received answers to questions (interrogatories) I submitted to John Rakowsky through his attorney in the matter captioned 2008CP4006656, John R. Rakowsky vs. Adrian Falgione, et al.
4. These questions were submitted after the second amended complaint by Rakowsky was issued (July, 2010) as his complaint was adjusted based upon responses to each issuance of the previous versions of the complaint.
5. I never received an answer to the interrogatory questions I submitted in August 2010.
6. I never received accounting of the funds received by Rakowsky despite multiple requests of production submitted.
7. I understand that there was to be a motions hearing on obtaining the information we have been seeking as required to be provided by John Rakowsky under Rule 1.15 of South Rules of Legal Ethics.
8. I did not receive word of the docketing hearing held today July 11, 2011, until Friday July 8, 2011 when Irene Santacroce called me about a letter she just received from Desa Ballard.
9. I never received any correspondence from Desa Ballard to date on this hearing.
10. I knew nothing about the motion for a request for a date certain that was submitted to the Court until I talked to Irene Santacroce on July 8, 2011.
11. My father just passed away on May 14, 2011, as he was fighting cancer. I have been taking turns with my sister Irene Santacroce (another defendant in this matter) taking care of my 90 year old mother who is also fighting cancer

and dealing with the death of my father. As such without proper notice I could not attend today's docket hearing.

12. I respectfully ask the Court to compel discovery to proceed in this matter by compelling production and having Rakowsky answer the interpleader questions previously submitted and compel Desa Ballard to give proper notice and work out details regarding motions for hearings to me as a Pro Se litigant.

Affiant further sayeth naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

This 11th day of July, 2011.

By:


Marguerite Stephens
207 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 283-6751

DECLARATION OF RICKY STEPHENS

I, Ricky Stephens, declare under penalty of perjury:

1. I am over eighteen years old and am qualified to testify.
2. The information in this declaration is based on my personal knowledge.
3. I never received answers to questions (interrogatories) I submitted to John Rakowsky through his attorney in the matter captioned 2008CP4006656, John R. Rakowsky vs. Adrian Falgione, et al.
4. These questions were submitted after the second amended complaint by Rakowsky was issued (July, 2010) as his complaint was adjusted based upon responses to each issuance of the previous versions of the complaint.
5. I never received an answer to the interrogatory questions I submitted in August 2010.
6. I never received accounting of the funds received by Rakowsky despite multiple requests of production submitted.
7. I understand that there was to be a motions hearing on obtaining the information we have been seeking as required to be provided by John Rakowsky under Rule 1.15 of South Rules of Legal Ethics.
8. I did not receive word of the docketing hearing held today July 11, 2011, until Friday July 8, 2011 when Irene Santacroe called me about a letter she just received from Desa Ballard.
9. I never received any correspondence from Desa Ballard to date on this hearing.
10. I knew nothing about the motion for a request for a date certain that was submitted to the Court until I talked to Irene Santacroe on July 8, 2011.
11. As I am 100% disabled I was not able to arrange transportation to the docket hearing on such short notice.

12. I respectfully ask the Court to compel discovery to proceed in this matter by compelling production and having Rakowsky answer the interpleader questions previously submitted and compel Desa Ballard to give proper notice and work out details regarding motions for hearings to me as a Pro Se litigant.

Affiant further sayeth naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

This 11th day of July, 2011.

By:

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

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

DECLARATION OF IRENE SANTACROCE

I, Irene Santacroce, declare under penalty of perjury:

1. I am over eighteen years old and am qualified to testify.
2. The information in this declaration is based on my personal knowledge.
3. I never received answers to questions (interrogatories) I submitted to John Rakowsky through his attorney in the matter captioned 2008CP4006656, John R. Rakowsky vs. Adrian Falgione, et al.
4. These questions were submitted after the second amended complaint by Rakowsky was issued (July, 2010) as his complaint was adjusted based upon responses to each issuance of the previous versions of the complaint.
5. I never received an answer to the interrogatory questions I submitted in August 2010.
6. I never received accounting of the funds received by Rakowsky of the funds despite multiple requests of production submitted.
7. I understand that there was to be a motions hearing on obtaining the information we have been seeking as required to be provided by John Rakowsky under Rule 1.15 of South Rules of Legal Ethics.
8. I did not receive word of the docketing hearing held today July 11, 2011, until Friday July 8, 2011, when I received a letter from Desa Ballard. I knew nothing about the motion for a request for a date certain that was submitted to the Court until I talked to James Spencer on July 8, 2011.
9. My father just passed away on May 14, 2011, as he was fighting cancer. I have been taking turns with my sister Marguerite Stephens (another defendant in this matter) taking care of my 90 year old mother who is also fighting cancer and dealing with the death of my father. As such without proper notice I could not attend today's docket hearing.
10. I respectfully ask the Court to compel discovery to proceed in this matter by compelling production and having Rakowsky answer the interpleader questions previously submitted and compel Desa Ballard to give proper

notice and work out details regarding motions for hearings to me as a Pro Se litigant.

Affiant further sayeth naught.

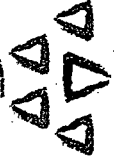
I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

This 11th day of July, 2011.

By:

A handwritten signature in black ink, appearing to read 'Irene Santacroce', written over a horizontal line.

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

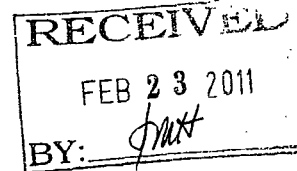
 **Ballard
Watson Weissenstein**
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III
Stephanie Weissenstein
Attorneys at Law

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169 | ph 803.796.9299 | fx 803.796.1066 | desaballard.com

Tuesday, February 22, 2011

Via U.S. Mail
Honorable Alison Renee Lee
Richland County Judicial Center
1701 Main Street, Room 324
Post Office Box 192
Columbia, South Carolina 29202-0192



Re: *John Rakowsky vs. Adriann Falgione, et al.*
Case No: 2008-CP-40-6656

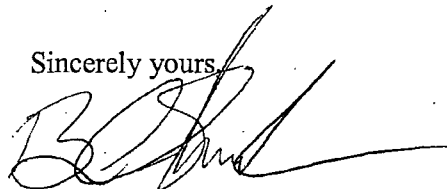
Dear Judge Lee:

Enclosed is a full copy the Motion to Strike and to File under seal in the above referenced matter that was sent to the Clerk of Court today for filing. Unlike the filed copy, this copy includes the confidential exhibits for the court's consideration *in camera*. These exhibits were likewise not provided to the opposing parties.

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

With warm personal regards, I am,

Sincerely yours,



Brooks Schumacher
Paralegal
brooks@desaballard.com

c: John Rakowsky, Esquire (Via E-mail)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF RICHLAND)

THE FIFTH JUDICIAL CIRCUIT)

CASE NO.: 2011-CP-40-5384)

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

Plaintiffs,)

**DEFENDANT RAKOWSKY'S
 NOTICE OF MOTION AND
 MOTION TO CHANGE VENUE**

v.)

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

Defendants.)

TO: ALL PARTIES AND THEIR COUNSEL

PLEASE TAKE NOTICE that Defendant John Rakowsky, by and through his undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit at 1701 Main Street in Columbia, South Carolina, on the tenth (10th) day after service hereof, or at such time as the Court may schedule, for an Order changing venue of this action to Lexington County, South Carolina pursuant to S.C. Code §§ 15-7-30 and 15-7-100 on the following grounds:

1. Both the individual Defendants have been residents of Lexington County at all times relevant to this action; and
2. The most substantial part of the alleged acts or omissions giving rise to the Plaintiffs' claims did not occur in Richland County.

Accordingly, the Defendants move for an Order changing venue of this action to Lexington County because Richland County is not the proper venue pursuant to statute. This Motion may be further supported by the record in the case, by affidavit, and by any memoranda and applicable law submitted prior to the hearing of this matter.

[SIGNATURE TO FOLLOW]

This 31st day of May, 2012.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, LLP

By: Amanda K. Dudgeon
DAVID W. OVERSTREET
State Bar No.: 16965

AMANDA K. DUDGEON
State Bar No.: 72516

40 Calhoun Street, Suite 400
Charleston, SC 29401-3531
(843) 727-0307

Attorneys for Defendant John R. Rakowsky

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT
CASE NO.: 2011-CP-40-5384

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.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing Motion to Change Venue upon all parties to this matter by depositing a true copy of same in the U.S. Mail, proper postage prepaid, addressed to counsel of record as follows:

Benjamin C. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
PO Box 61110
Columbia, SC 29260-1110
Counsel for Adrian L. Falgione and the Law Offices of Adrian L. Falgione, LLC

James Spencer
7001 St. Andrews Road, Suite 183
Columbia, SC 29212
Pro Se Plaintiff

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
Pro Se Plaintiff

This 31st day of May, 2012.



Assistant to Amanda K. Dudgeon

FILED

2013 JUN 27 5 18 06

PLAINTIFF'S BRIEF ON CORRECTIONS

Introduction

On June 5, 2013, a hearing was held before the Honorable Judge Frank R. Addy, Jr., in Laurens County Court, Laurens, South Carolina. During the hearing Judge Addy requested that *Pro Se* plaintiff Spencer present documented evidence to the contrary of statements made by defendants' counsels Amanda Dudgeon ("Dudgeon") and B. J. Bruner ("Bruner") made during the hearing after Spencer raised concerns that issues being raised by defendants' counsels had either already been decided or were inaccurate. Notwithstanding the statements made by Dudgeon/Bruner, to the contrary to your Honor, the *pro se* litigant is indigent, medically determined to be one hundred percent permanently disabled and the case being held in Richland County was in plaintiffs' medical and financial best interests. This brief will substantiate the documented facts and clearly move the court away from the Bruner/Dudgeon version of events.

Background

- The underlying case to this malpractice action is, Southern Holdings, et al. v. Horry County, et al., which was filed in Federal District Court, State of South Carolina, Florence District, Case No: 4:02-cv-01895-RBH in May, 2002. The case was deemed settled by the Court on May 9, 2007. The malpractice complaint is related to acts of malpractice in the underlying proceeding by plaintiff's attorneys, John Rakowsky and Adrian Falgione. It was filed on August 15, 2011.
- The defendants in the present case moved to change venue to their home county (Lexington County), after a series of oral rulings on May 7, 2012, by Chief Judge James R. Barber, III, of Richland County, that were not favorable to the defendants, that took into account the indigent and medical condition of the plaintiffs. The above captioned case became extremely convoluted, when Judge Barber defacto merged this case with another action still pending from 2008, "The Interpleader Action", between the same parties (the defendants are represented by different counsel) by holding the joint hearing

¹ Plaintiffs maintain an objection to this hearing having been held on June 5, 2012, as an appeal of a terminal ruling was made prior to the hearing on June 5, 2013, to the South Carolina Court of Appeals.

on May 7, 2012, and issuing scheduling orders between the cases, contingent on events happening in one case prior to events occurring in the other case.²

- On May 7, 2012, Judge Barber ordered that discovery in the legal malpractice case was ongoing, so the case could go to trial by October 2012. Being new to the case, it is critical for your Honor to note **Exhibit A** attached hereto which is a notarized statement from John Rakowsky's bank that documents a comingling of funds which is a breach of fiduciary duty to the *pro se* plaintiffs and therefore an act of malpractice.³

Defendant John Rakowsky and his counsel have claimed on the record, before three legal forums, that the non-lawyer expense funds, provided to them by the *pro se* plaintiffs for the underlying case, were deposited as required into a trust account.

However, the untruthfulness to the court and the legal malpractice of defendant John Rakowsky, in that regard, is clearly documented by **Exhibit A**. This document was not obtained and the malpractice could not have been discovered until **January 5, 2012**, as Rakowsky and Falgione both refused to provide financial records and deposit slips, regarding the litigation funds. Additionally, the defendants have been untruthful on the court record regarding the nature of the account the litigation funds were deposited into that they received for litigation of the underlying case was a trust account.

It was also determined through **Exhibit A**, on January 5, 2012, that Mr. Rakowsky attempted to cover-up his comingling of funds, involving an estimated one hundred thousand dollars (\$100,000.00) in litigation funds, and related malpractice, by using his influence with the local Lexington bank to change the nature of the account into a trust account, after the fact on **July 7, 2010**. Judge Barber knew the questions raised by

² May 7, 2012, was a simultaneous hearing on the case captioned above and Case No: 2008-CP-40-6656, an Interpleader action, brought by John Rakowsky in 2008 involving the same parties as the case captioned above in which John Rakowsky has both admitted on the court record in September 2011 that the litigation funds were not disputed and agreed to release the \$9,900 in undisputed litigation funds belonging to the *pro se* plaintiffs he has been wrongfully withholding since 2007 (See **Exhibit B**). Judge Barber recognized this and chastised John Rakowsky and Bruner for delaying tactics and the continued withholding of the undisputed litigation funds that prevented the indigent plaintiffs from hiring an representative counsel and an expert if necessary when he said, "Mr. Bruner, they haven't had a dime because we've been sitting up here arguing about \$9,500, [\$9,900 uncontested litigation funds] apparently. It should have been resolved a year ago." (Tr. Pg. 51, lines 20 - 23).

³ "In appropriate cases, rules of professional conduct may be relevant and admissible in assessing the legal duty of an attorney in a malpractice action. This is not to say, however, that all of the bar rules would necessarily be relevant in every legal malpractice action. In order to relate to the standard of care in a particular case, a bar rule must be intended to protect a person in the plaintiff's position or be addressed to the particular harm." *Smith v. Haynsworth*, 322 S.C. 433 (S.C. 1996)

the plaintiffs about the defendants' character, when he ordered discovery to continue in this case, and now your Honor has this knowledge.

- On May 7, 2012, Judge Barber ruled that the legal malpractice case would be heard at trial, in front of a jury, on the merits and not dismissed in favor of either side for any technicality beforehand.
- On May 7, 2012, after talking directly with plaintiff Spencer's medical doctors, Judge Barber ruled that the first hearing of either case was going to be on the litigation funds that were being held by defendant John Rakowsky. Judge Barber ordered the undisputed litigation funds to be turned over by June 1, 2012, so the indigent plaintiffs could secure counsel in the legal malpractice case captioned above.⁴
- Judge Barber ruled, this transfer of funds to the court on June 1, 2012, was to be done before either case moved forward. No further hearings were to be held until the undisputed litigation funds were placed with the court.⁵ (Tr⁶, Pg. 38, Lines 3-11, Pg. 67, Lines 2-5 & Pg 48, Lines 4-8.)
- Judge Barber's scheduling order, as laid out on May 7, 2012, was to have the legal malpractice trial completed before year end, 2012. (Tr. Pg 56, Lines 3-5 & 7, Pg 56, Lines 19-23)
- Judge Barber asked defendants' counsel (including Ms. Dudgeon) to draft the orders he issued during the May 7, 2012, hearing. (Tr. Pg 67, Lines 2-6).
- The defendants' counsels' response to Judge Barber's orders, on May 7, 2012, was to ignore them and move to change venue, in an attempt to strip away the rights of the plaintiffs, ordered by Judge Barber. In effect Bruner/Dudgeon put themselves "above the law" and stepped into the shoes of the judge. They decided they had the power to write or not write the law.
- In regard to stripping away the plaintiffs' rights, in the oral orders by Judge Barber, on May 7, 2012, Mr. Bruner expressed defendants' counsels' legal opinion to your Honor on

⁴ *Pro se* plaintiffs had counsel at one time, Tom Cryer, Esquire, who died from a heart attack, while waiting for release of the undisputed litigation funds to represent plaintiffs as counsel.

⁵ The Interplead litigation funds, rather than being turned over to the court so interest could be earned, have been kept without drawing interest since 2007 to date, in accounts controlled by defendant John Rakowsky.

⁶ TR. refers herein this document to the May 7, 2012, transcript

June 5, 2013. Mr. Bruner stated that a judge's order or ruling is not valid unless it is put in writing. South Carolina case law does not support Mr. Bruner's position,

"Furthermore, the fact that the order in the prior proceeding was never reduced to writing is not dispositive of the issue. An oral order compelling arbitration was issued by the court and is acknowledged in a letter by then-counsel for RDC...A judge may bind the parties with an oral order dictated into the record. *Lane v. Williamson*, 414 S.E.2d 177 (Ct. App. 1992). Once such an order is put into operation, absent a written order contradicting it, the court is bound by it."⁷

Hilton Head Resort Four Seasons Ctr. Horizontal Property Regime Council of Co-Owners v. Resort Inv. Corp., 311 S.C. 394, 401 (S.C. Ct. App. 1993)

- The defendants, through the change of venue, sought to re-litigate issues already decided by Judge Barber, with a judge not familiar with the case, so a ruling would be more likely to be made in defendants' favor.

This is how and why this matter was brought before your Honor, in Laurens County. This misuse of procedure is the real reason this proceeding has extended beyond December 2012, and why this case is before your Honor. The defendants sought to circumvent/void the standing oral orders by Judge Barber.

However, the law clearly is that no litigant should be worse off by a venue change, when a matter has already been decided by the judge in the preceding venue. There is a "long-standing rule in this State that one judge of the same court cannot overrule another." *Tisdale v. Amer. Life Ins. Co.* 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dankins v. Robbins*, 203 S.C. 199, 26 S.E. 2d 689 (1943)".

If your Honor issues orders in this case, prior to discovery being allowed by the plaintiffs, it would be contrary to the standing oral orders of Judge Barber.

Correcting the Record of the June 5, 2013 Hearing

The *pro se* plaintiffs will raise issues that were raised by defendants, that were either untruthful or were contentions, that were interwoven with the truth in such a fashion so that the

⁷ The misaddressed letter by Judge Barber produced to your Honor by Bruner, pertains to a completely different case which is cited in the letter and advises the parties in that case that his signed orders will stand. It does not address nor contradict any standing oral order in writing in any case, *which under the law means the oral orders by Judge Barber stand.* *Emphasis added.*

truth is contorted into an untruth and finally there are also the issues raised by the defendants that are technically true but substantively are matters of no weight. The *pro se* plaintiffs will raise issues in the order presented to your Honor at the hearing held June 5, 2013 by the defendants.

Following each issue raised by defendants' counsel, the *pro se* litigants will provide verified facts, point by point, to clarify the issue. Documents are also attached for support of these statements of fact.

Motion to Disqualify Ms. Dudgeon

Issue:

- During the hearing on June 5, 2012, Ms. Dudgeon claimed that she did not represent Spencer in the litigation by LawMax against Rakowsky and Spencer through the American Arbitration Association ("AAA"). Further, she claimed that the LawMax litigation just went away to the benefit of Spencer, without any settlement agreement or payment to LawMax.⁸
- Dudgeon produced an email, purportedly from AAA, and claimed, based on that email, that a document Spencer presented to your Honor had not been authenticated.⁹
- Dudgeon further claimed she did not have an affidavit as to the authenticity of the document from AAA, presented by the plaintiffs, because the document presented by Spencer to the court had **never** been produced to her.

Facts:

- Dudgeon was untruthful with the court, as she received the document in question in the original filing by the plaintiffs, on **March 27, 2012**. Therefore, Dudgeon had plenty of time to obtain an affidavit from AAA, if such was actually obtainable.
- Dudgeon produced AAA documents on the AAA litigation, purportedly indicating that copies had been sent to Spencer and Spencer represented himself. However, (See **Exhibit C**) the letter dated August 16, 2008, is not properly addressed to Spencer, as

⁸ LawMax in its contract for funds advanced to John Rakowsky, for the non-lawyer costs of the underlying lawsuit, sued John Rakowsky for his misstatements and mishandling of the case and James Spencer as a beneficiary of those funds through the contract's arbitration provision. The LawMax contract was negotiated and executed by John Rakowsky. Arbitration Case No: 13-194-01700-07.

⁹ Ms. Dudgeon failed to provide this purported email to the plaintiffs prior to the hearing, as she was required to do, to allow for a proper review and authentication by plaintiffs.

Spencer has never lived in Columbus, SC and never received the correspondence. Spencer was subsequently no longer listed to receive mailings and (See Exhibit C, January 29, 2008 letter) was eliminated from all documents (and Dudgeon's firm, either through representation or by defacto, as Dudgeon claimed to your Honor, "cleared up" the legal matter for Spencer, without Spencer's knowledge, with LawMax giving up all claims¹⁰ against Rakowsky and Spencer.¹¹ None of the parties advised Spencer that such litigation existed.

- Tellingly, on December 28, 2011, Dudgeon's firm interfered with the production of documents subpoenaed in the Interpleader case, in which they had no representation.¹² **Exhibit D** is a letter from Pattison, Simpson, Ginsburg & Griffin, PC, LawMax's outside legal counsel. The letter states that LawMax would not release the subpoenaed information on payments made in settlement of and any settlement agreement for John Rakowsky, regarding the AAA litigation. Pattison, Simpson, et al, said it would not release the information because of objections from the opposing counsels' law firm, in Case No: 2008-CP-40-6656.¹³ Ms. Dudgeon's law firm was the firm cited by Pattison Simpson, et al., for refusing the subpoena (Note who was copied on the letter, Andrew Countryman, a partner and co-counsel of Ms. Dudgeon in the present case).

In conclusion, the facts require that discovery begin, as ordered by Judge Barber, so the plaintiffs and the court can make a proper reasoned decision, based on all the evidence, not just the evidence Bruner/Dudgeon wants the court to see. The pending motion to dismiss should be denied and discovery, as ordered by Judge Barber, on May 7, 2012, must proceed.

(Tr. Pg 41, Line 25, Pg 42, Line 1 & 5-7 & 10-22, Pg 56, Lines 24-25 and Pg 57, Lines 1-4)

¹⁰ Based upon information and belief there appears to have been a settlement agreement involving LawMax, Rakowsky that includes a confidentiality clause. Further, logic dictates if Spencer had received the documents that a party to this litigation should have received; there would be no reason why these subpoenaed documents would be withheld from Spencer by LawMax and Dudgeon's firm!

¹¹ If that was indeed the case, John Rakowsky wrongfully listed LawMax as having a claim in his 2008 Interpleader action he filed long after the AAA litigation was concluded. The only rationale for this would be to conceal the settlement with AAA.

¹² Case No: 2008-CP-40-6656.

¹³ The other reasons stated in the letter for non-compliance are not valid as the subpoena was in accordance with New York and South Carolina law and executed by the proper officials.

MOTION TO DISMISS FOR VIOLATION OF SECTION 15-36-100**Issue:**

- Ms. Dudgeon and Mr. Bruner wrongly contend that the *pro se* plaintiffs were required to have an expert witness in their case, because the *pro se* plaintiffs stated they required such, in their initial complaint filed against the defendants on August 15, 2011.

Fact:

- The *pro se* plaintiffs' complaint did not state they were required to have an expert witness. The complaint clearly stated: "This complaint is filed pursuant to S.C. Code § 15-36-100 (C)(1) in anticipation of the possible need *Emphasis Added* for the contemporaneous filing of an affidavit by an expert, as the limitations on claims will likely expire within ten days of this filing and prior to the plaintiffs obtaining such an Affidavit."¹⁴
- The malpractice acts, one of which is documented in Exhibit A, are clear, as the average individual understands a lawyer misunderstanding a judge's order regarding evidence being ruled admissible or not and misstatements to clients based on the misunderstanding. In that regard, misleading clients as to the lawyers responsible for the untimely filing of key evidence when there was no ruling on the untimely filing of key evidence, circumstances documented in writing, is clearly an act of malpractice the average person can understand. Additionally, the failure to remedy the damages incurred by the plaintiffs through the alleged malpractice acts by Serota and Goldberg, by bringing a legal malpractice lawsuit against them and then not doing such, is also a clearly understood act of malpractice. The plaintiffs relied on the legal analysis and promises of the defendants to remedy the legal malpractice that occurred, yet the defendants' legal analysis was flawed, based on the courts statement of August 13, 2008 and the promised lawsuit by the defendants relied on by the plaintiffs never occurred.
- South Carolina courts have held in this regard,

¹⁴ Tr. Pg 50, Lines 12-20, Pg 51, Lines 4-7 & Lines 20-23, Page 52, Lines 13-18.

"Expert testimony is not necessary to prove negligence or causation so long as lay persons possess the knowledge and skill to determine the matter at issue. Expert testimony is not required to prove proximate cause if the common knowledge or Experience of a layperson is extensive enough."

O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340 (S.C. Ct. App. 2006)

As Judge Barber understood there was a cover-up by the defendants in this case, the plaintiffs were allowed discovery, as ordered by Judge Barber. However, the defendants refused to comply with the judge's order and instead sought to change venue.

MOTION TO DISMISS UNDER THE STATUTE OF LIMITATIONS

Issue:

- At the hearing on June 5, 2013, Mr. Bruner and Ms. Dudgeon claimed that the plaintiffs should have known when the judge issued Order # 510, on July 3, 2007, that Judge Harwell put the plaintiffs on notice, concerning any legal malpractice committed by defendants Rakowsky and Falgione when Judge Harwell stated on the record,

"Further, with regard to any claim by the Plaintiffs of either improper inducement, bad advice, or inadequate representation or preparation against Plaintiffs' own attorneys, such is not a valid basis for repudiating a settlement. *Petty v. Timken Corp.*, 849 F.2d 130, 133 (4th Cir. 1988). In the event there was any breach of the standard of care owed by Plaintiffs' attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, Plaintiffs have an available remedy for damages against their own attorneys. *See Petty*, 849 F.2d at 133." (Order No. 510, Pg. 8, lines 3 - 9).

Bruner and Dudgeon alleged the plaintiffs filed their complaint after the statute of limitations had run, based on the date this order was issued, July 3, 2007.

Fact:

- In this case, the plaintiffs lacked knowledge of the facts of the truth in question and the presiding judge in the underlying case did not dispute the evidentiary rulings reported by the defendants, allegedly made behind closed chambers doors, until August 13, 2008.

- Prior to August 13, 2008, the defendants claimed their withdrawal from the case would not affect them going after the lawyers responsible for the legal malpractice, actually referred to by the judge in Order No. 510 and that they were bound by their prior statement of commitment to remedy the legal malpractice acts, through a malpractice lawsuit they would bring against the guilty attorneys.¹⁵
- Defendants never waived their commitment, both oral and in writing (**Exhibit E**) and the plaintiffs were assured they could rely on the defendants' commitment to pursue the guilty attorneys', separate from the defendants' statements withdrawing from the case, until after the August 13, 2008, confirmation by presiding judge, in the underlying case.
- South Carolina has laws in place to make sure such legal inequities are remedied through the law of equitable estoppel.

"The doctrine of equitable estoppel applies when the statute of limitations has run and the defendant asserts the running of the statute of limitations as a defense. The defendant is estopped from benefitting from the statute of limitations as a defense where the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. This conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. The party asserting equitable estoppel bears the burden of establishing all the elements. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped. The party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts."

Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626 (S.C. Ct. App. 2009)

Further,

"Equitable estoppel operates to deny a party the right to plead or prove an otherwise important fact. The elements of estoppel as to the party estopped are (1) conduct by the party estopped which amounts to a false representation or concealment of material facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or

¹⁵ See May 17, 2007 letter by plaintiff John Rakowsky, which was entered in Federal District Court without dispute of its authenticity, not withstanding Ms. Dudgeon's questions of authenticity to your Honor on June 5, 2013. Identified as **Exhibit E**, attached hereto.

constructive, of the true facts. As to the party claiming estoppel, the elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; and (2) reliance upon the conduct of the party estopped."

Maheer v. Tietex Corp., 331 S.C. 371 (S.C. Ct. App. 1998)

- Finally, the South Carolina Supreme Court decisions regarding the application of the doctrine of equitable estoppel has determined its further applicability to this case, regarding the tolling of the statute of limitations. On July 29, 2009, plaintiff Doris Holt, Jim Spencer's mother, was taken into so called "protective custody" by the South Carolina Department of Social Services (DSS). The agency initially alleged physical abuse by Spencer against his mother he had taken care of for thirty years and held her at an unknown location. Spencer legally fought to gain Intervenor status and the agency admitted on the court record, the physical abuse allegations against Spencer were found to be baseless.
- Spencer was warned by Princess Hodges of DSS and other unidentified individuals, as he reported to the Columbia police department at the time, that he would never see his mother again if he brought any lawsuits against Judge John Rakowsky, et al., as that would prove to DSS that Spencer did not have his mother's best interest in mind. As litigation to legally gain her release was ongoing, Doris Holt continued to be held against her will, until her death from starvation and malnutrition on February 19, 2011.
- From July 29, 2009, to February 19, 2011, Doris Holt was not allowed to sign papers of any nature and the majority of the time she was held in isolation at unknown locations. Governor Sanford's office intervened and helped Spencer find his mother who had been wrongfully hidden from him for close to two years. However, as he continued to fight in the courts to gain her freedom DSS and third parties still prohibited his mother from signing any documents to the day of her death on February 19, 2011. Under these exigencies, both plaintiffs Spencer and Doris Holt were physically prevented through real and acted upon threats from filing a lawsuit in this case. Therefore, the statute of limitations should be tolled. The Supreme Court of South Carolina has found,

"The equitable power of a court is not bound by cast-iron rules but exists to do fairness [*117] and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other."

Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 2009 S.C. LEXIS 559 (S.C. 2009)

Further the South Carolina Court of Appeals found,

"It has been observed that equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control. The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances."

Magnolia North Prop. Owners' Ass'n v. Heritage Cmty., Inc., 397 S.C. 348 (S.C. Ct. App. 2012)

Therefore, the motion to dismiss should be denied and Spencer should be allowed to pursue discovery, as ordered by Judge Barber. (Tr. Pg 41, Line 25, Pg 42, Line 1, 5-7, 10-22)

MOTION TO DISMISS FAILURE TO COMMENCE THE 120 DAY RULE

Issue:

- Dudgeon/Bruner contended on June 5, 2013, that their clients were not timely served. Bruner argued that Judge Barber ruled against the plaintiffs' default, based on the fact that he found lack of proper service and the corrected service was not sufficient and follow up service was untimely.

Facts:

- On May 7, 2012, Judge Barber ruled against the original server's affidavit for purposes of a plaintiffs' default, as it did not contain the time of day and exact location of service. See attached **Exhibit F**. Judge Barber did rule the defendants were served and as such appeared. Judge Barber did not rule against the corrected affidavit, and did not rule against the process server being Ms. Tammy Lail, as she has no financial ties to this case, and did not rule against the duplicate service of Alden Wheeler.

- Judge Barber ruled that the trial would be on the merits, in front of a jury, not dismissed by either side on a technicality, such as a default or an alleged flawed service.

Plaintiffs should not be subject to relitigating issues, when oral orders by Judge Barber are standing, notwithstanding Bruner and Dudgeon's flawed interpretation of the standing of oral orders as stated earlier within this document. (Tr. Pg. 44, Lines 20-23, Pg 45, Lines 5-8)

MOTION TO DISMISS DUE TO THE WAY FALGIONE WAS SERVED

Issue:

- Mr. Bruner claimed his client (defendant Falgione) was improperly served by process server Alden Wheeler. Mr. Bruner alleged the complaint was served on defendant Falgione by Alden Wheeler, walking into Falgione's office and dropping it with Julie Owens, a temporary employee, who was not an authorized agent. This claim was supported by an affidavit by defendant Falgione.¹⁶

Facts:

- Please see attached declarations/affidavits of service (**Exhibits G**) by Alden Wheeler. Mr. Wheeler totally disagrees with Mr. Bruner and Falgione's version of events.
- It is important to note that Judge Barber ruled he was not going to let this case be decided in favor of, either party, by a technicality, such as a default by the plaintiffs or the question of proper service by the defendants which makes Bruner's contention moot.
- Mr. Bruner knew that Judge Barber had already ruled that service questions were not going to be used as a "technicality", to impact the case in the favor of either side.

(Tr. Pg 45, Lines 22-25, Pg 46, Lines 1-12, Pg 54 Lines 22-24, Pg 55, Lines 1-3 and Pg 55, Lines 5-7)

¹⁶ Defendant Falgione is documented in this malpractice case to be untruthful in his sworn affidavits. As example see **Exhibit H**. Note: Falgione, in order to gain a change of venue to circumvent Judge Barber's orders, untruthfully claimed the letters of engagement were executed by the clients, in the underlying case, in his office in Lexington. However, the engagement documents attached to **Exhibit H**, were not signed in his office, as they all bore the signatures of notaries located outside of Lexington County, the majority in Horry County.

Bruner wrongfully again, raised this issue before your Honor, falsely claiming that Judge Barber had ruled service had not been perfected, in regard to the defendants' appearance in this matter. (Tr. Pg 46, Lines 22-25, Pg 47, Lines 1-9, Pg 54, Lines 2-17)

2013 JUN 27 2 46 PM

SUMMARY

The defendants sought to take advantage of the indigent and disabled *pro se* plaintiffs by misleading the court. The confusion caused by of the defacto merging of the cases by Judge Barber and his rulings which tied actions in the Interpleader case to actions in this legal malpractice case made the procedural history of the cases hard to follow. However, Judge Barber had both cases on a schedule to be finished by December 2012. This expedited schedule was specifically created with the medical condition of plaintiff Spencer and personally discussed between the medical doctors and Judge Barber.

The defendants further sought to take advantage of Spencer's medical condition by scheduling matters in such a manner that would favor them due to Spencer's medically disability and be against what Judge Barber had ordered scheduled. No litigant should be worse off due to a venue change than the litigant was prior to the venue change.

In this regard, the *pro se* plaintiffs humbly request your Honor to impose the scheduling order by Judge Barber that defendants to date have refused to comply with which long further has delayed this case from reaching a conclusion. This scheduling order, with dates changed to reflect it is now a year later, will allow for discovery including depositions prior to the hearings. Further, the plaintiffs request your Honor to order forthwith John Rakowsky to produce the uncontested litigation funds or impose sanctions. The funds remain under the direct control of John Rakowsky and not any court.

Further, the *pro se* plaintiffs have been prejudiced by the misstatements of the defendants' counsel on the court record. The misstatements, unintentional or not, regarding the record require appropriate action be taken against them.

Submitted on June 27, 2013

by:

Box 183

7001 Saint Andrews Road

Columbia, SC 29212

(803) 414-0889

CERTIFICATE OF SERVICE

COPY

139

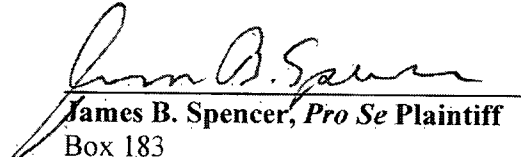
The undersigned hereby certifies that on June 27, 2013, the document described below, was (were) served on all parties of record in this case by electronic mail, and/or US mail and addressed as set forth below.

Topic: PLAINTIFF'S BRIEF ON CORRECTIONS

Parties Served:

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

B. J. Bruner
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

SPENCER, et al. v. RAKOWSKY, et al.

CASE NO. 2012-CP-32-3428

COPY

FILED

2013 JUL 27 P 4:46

FILED
JUL 27 2013
CLERK OF COURT
JUL 27 2013

EXHIBITS

PLAINTIFF'S BRIEF ON CORRECTIONS

Exhibit “A”

Certified Bank Statement

On

Non-Trust Account

P.O. Box 110, Aiken, South Carolina 29802



January 5, 2012

EXHIBIT "B"

Pg. 4 of 4

James Spencer
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212

Reference: John Rakowsky v. James Spencer, et al.
Case # 2008-CP-40-6656

Below please find the information subpoenaed for check #127 in the amount of \$25,000.00.

Check Date: June 30, 2005
Payable to: John Rakowsky and J B Spencer
Deposit Date: June 30, 2005
Deposit to: Security Federal Bank
Checking Account #xxxxxx1313

- a) The check was deposited into a Sole Proprietorship Checking Account on June 30, 2005.
- b) The account holder was John R. Rakowsky.
- c) The account was changed from a Proprietorship Checking to an IOLTA account on July 7, 2010.

If I can be of any further assistance please contact me at 803-641-3084.

Sincerely,

Annette Hagen

Annette Hagen
Security Federal Bank
Deposit Operations Manager/AVP
803-641-3084
ahagen@securityfederalbank.com

Margaret A. Blum
Notary Public for SC
Commission expires 3-15-2021

www.securityfederalbank.com
Main 803.641.3000 Toll Free 866.651.3000

Exhibit "B"

Rakowsky Has No Objection to
Turning over Money to the Court

1 THE COURT: Which is 9,000-some-odd dollars.

2 MR. RAKOWSKY: Our understanding was the agency that
3 actually paid in.

4 THE COURT: He just said --

5 MR. RAKOWSKY: Nobody's ever notified
6 Ms. Weissenstein --

7 THE COURT: Whoa! He just said the only people
8 claiming any of that have all agreed that those funds
9 should be paid into some lawyer's trust account.

10 MR. RAKOWSKY: We wouldn't object to that.

11 THE COURT: Unfortunately, you got an interpleader
12 action. So what's probably going to have to happen is get
13 that, funds paid into the Court and then you get this
14 thing heard. If everybody is agreeable that the \$9,000
15 ought to be paid to Mr. Young, then it will be paid to
16 Mr. Young.

17 MR. SPENCER: We haven't been delaying putting this
18 into --

19 THE COURT: I'm not blaming anybody. I'm just telling
20 you, this case was filed, when was it, 2008?

21 MR. SPENCER: Yes, sir.

22 THE COURT: That's too long for everybody.

23 MR. SPENCER: Right. I agree. Mr. Rakowsky just
24 made an offer that he will gladly submit the funds that
25 aren't in dispute.

1 THE COURT: He can't. He's got an interpleader
2 action now of which those are funds that are pled in the
3 interpleader.

4 MR. SPENCER: Okay.

5 THE COURT: So you better get a hearing and get it
6 resolved quickly. It sounds to me like y'all are fighting
7 each other over something that you shouldn't be fighting
8 at this stage. Pay the \$9,000 to Mr. Young. Put the
9 55,000 in the Court. Then I don't know what you're going
10 to have -- if y'all people dispute how the \$9,000 should
11 be divided up.

12 MR. SPENCER: No dispute.

13 THE COURT: Well then get it paid to whoever you
14 agree should get it. He doesn't care. Then the \$55,000
15 would be in the Court which is good. It's going to draw
16 some interest. It's good as being in a trust account
17 better, because if the lawyer absconds with the money
18 you'll have to go find her. If the County absconds with
19 it, you know where we are. So, draw me an order. I'm

20 denying this order -- I mean, this motion. I don't have
21 the authority to go behind Judge Seals' order. Judge
22 Seals' already determined that they're not entitled to
23 that information. What else?

24 MS. WEISSENSTEIN: Your Honor, would you like to make
25 an order that the funds that could be interpleaded into

1 the Court today?

2 THE COURT: Well, I can't do that. Nobody's been
3 given notice of the hearing for that purpose. I can't do
4 that. Seems to me if y'all can agree on that --

5 MS. WEISSENSTEIN: Your Honor, we have no pending --

6 THE COURT: If everybody can agree on it, let's take
7 the \$65,000 and pay it into the Court and acknowledge that
8 the only people that are entitled to the \$9,800 or so are
9 these folks. Y'all agree that it would be paid to
10 Mr. Young. I don't know why y'all would care about that.

11 MS. WEISSENSTEIN: This is the first we've heard of
12 it, Your Honor.

13 THE COURT: And then sign a consent order paying that
14 out.

15 MR. SPENCER: Your Honor --

16 THE COURT: Look, I don't care.

17 MR. SPENCER: Yeah.

18 THE COURT: But I do care about this. Come January 1
19 when I'm in charge of this roster, this case ain't going
20 to stay here very long. It's an '08 case.

21 MR. SPENCER: Sounds good to me.

22 THE COURT: But y'all ought to be able to resolve it
23 before then.

24 MR. SPENCER: I agree.

25 THE COURT: Sounds to me like you agree on it. You

1 want to put 55,000 and then let people make their claims.
2 Whatever it is, they need to fight about it. They can
3 claim whatever they want to claim.

4 MR. SPENCER: That's right.

5 THE COURT: Y'all can come in and show they're not
6 entitled to it.

7 MR. SPENCER: That's right.

8 THE COURT: They didn't do beans to get this.

9 MR. SPENCER: That's correct.

10 THE COURT: That's how you resolve it.

11 MR. SPENCER: That's right.

12 THE COURT: But at least you got \$10,000 out of the
13 equation, put it in your pockets or Mr. Young's pockets
14 and know what you're talking about.

15 MR. SPENCER: Yes, sir.

16 THE COURT: When are you going to get me an order?

17 MS. WEISSENSTEIN: Sir?

18 THE COURT: By the 26th. When can you have me an
19 order?

20 MS. WEISSENSTEIN: Tomorrow.

21 THE COURT: No. I need it by the 26th. I want
22 Mr. Spencer to see it before you send it to me.

23 MS. WEISSENSTEIN: Okay.

24 THE COURT: They got your address?

25 MR. SPENCER: Yes. They have my address and we've

1 communicated by e-mail.

2 MS. WEISSENSTEIN: I'll send it to you tomorrow and
3 then you by next Friday to give him time.

4 THE COURT: Well, I'm going to be in Kershaw County
5 all next week, so I won't be back here until Monday the
6 26th. You can send it, I guess you can send it to his,
7 you can put it on his -- what's your computer address?

8 LAW CLERK: Jbarberlc at SC Courts dot org
9 (jbarberlc@sccourts.org).

10 THE COURT: Man, three Lexington lawyers all in one
11 hour.

12 MS. WEISSENSTEIN: Thank you.

13 MR. SPENCER: Thank you, Your Honor.

14 THE COURT: All right, Mr. Spencer. Good luck.

15 END OF CASE: 4:25 P.M.

16 CERTIFICATE OF REPORTER

17 I, Cheri L. Young, Registered Professional Reporter,
18 and Official Court Reporter for the State of South
19 Carolina, do hereby certify that the foregoing transcript
20 of proceedings heard on Thursday, September 15, 2011, in
21 Columbia, South Carolina, was reported by me using machine
22 shorthand and realtime computer-aided translation and is a
23 true, accurate and complete transcript of the proceedings
24 had and evidence introduced in the hearing of the matter.

25 I do further certify that I am neither of kin, counsel
nor interest to any party hereto. I have hereunto set my
hand this Tuesday, the 27th day of September, 2011.

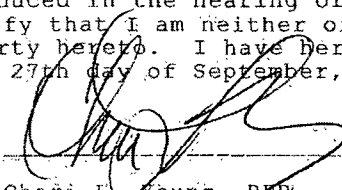

Cheri L. Young, RPR
Official Court Reporter

Exhibit “C”

Letters of August 16, 2007

And

January 29, 2008



American Arbitration Association
Dispute Resolution Services Worldwide

Northeast Case Management Center
Catherine Shanks
Vice President
Christopher Fracassa, Yvonne L. Baglin
Assistant Vice Presidents

August 16, 2007

950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: <http://www.adr.org/>

New Amsterdam Capital Partners, LLC
459 Columbus Avenue, Suite 299
New York, NY 10024-5129

Via Electronic Mail

James Spencer
7001 Saint Andrews Road
Suite 183
Columbus, SC 29212

Via First Class Mail

John Rakowsky, Esq.
Law Offices of John Rakowsky
P.O. Box 3593
West Columbia, SC 29171

Via Facsimile:

Re: 13 194 01700.07
New Amsterdam Capital Partners, LLC
and
James Spencer
and
John Rakowsky, Esq.

Dear Parties:

This will acknowledge receipt on August 10, 2007, of a Demand for Arbitration dated July 19, 2007, of a controversy arising out of a contract between the above-captioned parties, containing a clause providing for administration by this Association. We understand that a copy was sent to Respondent. A copy of our Commercial Arbitration Rules and Mediation Procedures, as amended and in effect September 15, 2005, may be obtained from our website at www.adr.org. Pursuant to the Rules, this matter is being administered under the Expedited Procedures.

In accordance with the Rules, if Respondent does not answer on or before August 31, 2007, we will assume that the claim is denied. If Respondent wishes to counterclaim, file the appropriate number of copies, together with the administrative fee, to the attention of the undersigned. A copy should be directly sent to Claimant.

We note the parties' agreement stipulates the locale as New York, New York.

We note the claim is \$63,000. If this amount is incorrect, please advise us on or before August 24, 2007 of the correct amount.

This will confirm an Administrative Conference is scheduled on August 28, 2007 at 10:00am EST via conference call. The Association will initiate this call.

The purpose of the administrative conference is to assist the Association in administering your case efficiently and expeditiously. Please be prepared to discuss the following:

- a. estimates on the expected duration of the case;
- b. number of arbitrators/party-appointed arbitrator provision;
- c. method of appointment of arbitrators, if applicable;
- d. your views on the qualifications of the arbitrators to be proposed;
- e. the possibility of submitting this dispute to mediation;

Enclosed is a Checklist for Conflicts to list those witnesses you expect to present, as well as any persons or entities with an interest in these proceedings. The Conflicts Checklist is due within fifteen days from the date of this letter. The parties are to exchange copies of all correspondence except this checklist and the arbitrator list.

The Association will make maximum use of fax machines when communicating in writing, and request that the parties do the same. If you have not provided us with your fax number, we ask that you do so at this time. If a party does not provide us with their fax number, then that party will have to rely on receiving correspondence via regular mail.

Parties will not send copies of documents being exchanged between the parties to the Association, such as discovery, unless they are being referred to the arbitrator for a determination. These documents will be returned to you if we receive them.

The Association has a strict policy regarding requests for extensions. If you need to extend any deadline during the course of these proceedings, please try to obtain the other party's agreement prior to contacting the AAA. Without the consent of the parties, case managers only have the authority to grant one extension per deadline, provided the request is reasonable and necessary. Untimely filings will not be considered by the Association.

This case will be administered by facilitating the exchange of appropriate written documents through the AAA. To ensure the proper handling of all case-related documents, the parties are asked not to submit correspondence directly to the arbitrator. Correspondence should be submitted to the undersigned for transmittal to the arbitrator, copying the other parties.

The Association will require advance deposits once the arbitrator is appointed. These deposits are calculated on the number of days the parties have suggested will be necessary, in addition to the pre and post hearing time that the arbitrator may charge pursuant to the arbitrator's resume.

Additionally, the parties may desire to mediate this case prior to an arbitration hearing. Mediation is a private, non-binding process under which the parties submit their dispute to a third-party neutral. The mediator may suggest ways of resolving the dispute, but may not impose a settlement on the parties; the parties attempt to negotiate their own settlement agreement. Please contact the undersigned for further details regarding mediation.

We invite the parties to visit our website to learn more about how to file and manage your cases online. As part of our administrative service, AAA's WebFile allows parties to perform a variety of case related activities, including:

- ☐ File additional claims
- ☐ Complete the Checklist for Conflicts form
- ☐ View invoices and submit payment
- ☐ Share and manage documents
- ☐ Strike and rank listed neutrals

☐ Review case status

AAA WebFile provides flexibility because it allows you to work online as your schedule permits - day or night. Cases originally filed in the traditional offline manner can also be viewed and managed online.

In closing we wish to remind the parties that the AAA has a refund schedule in the administrative fee section of the Rules. After 60 days or the appointment of the arbitrator the filing fees are non-refundable. If the parties enter settlement negotiations at any time after the AAA has opened its file, you should take into consideration the refund schedule in the Rules. In accordance with the administrative fee schedule, the Association charges a Case Service Fee when the hearing on the merits is scheduled. The Case Service Fee is the balance of the filing fee. It is refundable if the hearing on the merits is cancelled and the Association is notified at least 24 hours prior to the hearing. The AAA will only refund filing fees as outlined in the Rules and does not refund neutral costs incurred when parties settle their dispute or withdraw their claims. We encourage parties to resolve their disputes as amicably as possible and this notice is just to alert you to this issue so that it doesn't become a concern in the future.

Please feel free to call if you have any questions. We look forward to assisting you in this matter.

Sincerely,

Melanie Cabrera

Case Manager

401 431 4802

CabreraM@adr.org

Supervisor Information: Karen Fontaine, 401 431 4798; fontainek@adr.org

Encl. *Commercial Expedited Procedures Fact Sheet*
Checklist for Conflicts



American Arbitration Association
Dispute Resolution Services Worldwide

Northeast Case Management Center
Catherine Shanks
Vice President
Christopher Fracassa, Yvonne L. Baglini
Assistant Vice Presidents

January 29, 2008

950 Warren Avenue, East Providence, RI 02914
telephone: 866-293-4053 facsimile: 401-435-6529
internet: <http://www.adr.org/>

VIA ELECTRONIC MAIL

Daniel Zolberg
LawMax
459 Columbus Avenue
New York, NY 10024-5129

Amanda K. Dudgeon
Carlock, Copeland, Semler & Stair, LLP
134 Meeting Street
Suite 500
Charleston, SC 29401

Re: 13 194 01700 07
New Amsterdam Capital Partners, LLC
and
James Spencer
and
John Rakowsky, Esq.

Dear Counselors:

We ask the parties to kindly advise us as to the status on of before February 12, 2008, of the above referenced matter which was initiated on August 16, 2007, and has been on hold since November 2007.

Cordially yours,

James F. Medeiros
Case Manager
401 431 4724
MedeirosJ@adr.org

Supervisor Information: Karen Fontaine, 401 431 4798, fontainek@adr.org

Exhibit “D”

Letter from Law Firm

**PATTISON
SAMPSON**

PATTISON SAMPSON GINSBERG & GRIFFIN, PC
22 FIRST STREET, P.O. BOX 208 TROY, NY 12181-0208
TELEPHONE 518 266-1000 FACSIMILE 518 274-6939
WWW.PSGGLAW.COM
SERVICE BY FAX NOT ACCEPTED

Lambert L. Ginsberg
F. Redmond Griffin
Micki L. Harrington
Michael E. Ginsberg
Donald J. Shanley
Thomas E. Lavery
Jonathan G. Schöpi**
Dana M. Caswell

**Also admitted in PA

OF COUNSEL
Terence E. Shanley
Michele A. Santucci

December 28, 2011

James Spencer
Suite 183
7001 Saint Andrews Road
Columbia, SC 29212

Re: Subpoena to LawMax

Edward H. Pattison
(1896-1956)
Stephen B. Sampson
(1911-1982)
Ned Pattison
(1932-1990)
William M. Connors
(1912-1998)

Dear Mr. Spencer:

We are the attorneys for New Amsterdam Capital Partners, LLC, d/b/a LawMax Legal Finance. I am writing to you in response to your service of the annexed subpoena, which was received by mail on this date.

We object to the Subpoena insofar as it is not properly captioned; was not served in the manner specified by New York Civil Practice Law and Rules Section 2303; was not accompanied by the statutory fee; was not issued pursuant to a certification (following motion) by the court in South Carolina; was not served upon your adverse counsel, as required under both NY and SC law; and bears a signature other than that of the County Clerk, Norman Goodman. Moreover, we do not recognize the embossed seal, which seal is not generally employed by the County Clerk in the issuance of subpoenas.

Should you have any questions, or wish to discuss this matter, please do not hesitate to contact the undersigned attorney.

Very Truly Yours,

PATTISON, SAMPSON, GINSBERG & GRIFFIN, P.C.



Eileen T. Rohan, Esq.
Direct Dial: 518-266-1025

cc: ✓ Andrew W. Countryman, Esq.

STATE OF New York
ISSUED BY THE SUPREME COURT IN THE STATE OF New York

JOHN RAKOWSKY Plaintiff

SUBPOENA IN A CIVIL CASE

JAMES SPENCER Defendant

Case Number: 2008-CP-40-6658

Pending in Richland County

TO: New Amsterdam Capital Partners, LLC, aka LawMax Legal Finance

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects: **SEE ATTACHMENT**).

C/O JAMES SPENCER

PLACE SUITE 183, 7001 SAINT ANDREWS ROAD
COLUMBIA, SC. 29212

DATE AND TIME December 29, 2011
On or before the Above Date.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below:

PREMISES

DATE AND TIME

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE, PRACTICE SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH IT WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED MUST AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

DATE

ATTORNEY ISSUING OFFICER'S SIGNATURE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

CLERK OF COURT ISSUING OFFICER'S SIGNATURE

DATE

PRINT NAME

SCCA 254 (10-04)

(See Rule 45, South Carolina Rules of Civil Procedure Parts (c) & (d) on next page)

Failure of any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which that subpoena was issued.

This subpoena is in compliance with the provisions of CPLR 3119 of the State of New York Rules of Civil Procedure and Rule 45 of the State of South Carolina Rules of Civil Procedure.

Subpoena Attachment:

1. Any and all records, documents and notes in any media form concerning John Rakowsky and/or any agent of John Rakowsky, Esquire directly and/or indirectly regarding the case of Southern Holdings, Inc., et al. vs. Horry County, et al. Case No: 02-CV-01859-RBH and any related funding provided by New Amsterdam Capital Partners, LLC, (hereinafter "LawMax").
2. Any and all documents and/or notes in any media form regarding LawMax including, but not limited to, legal proceedings and communications with LawMax and/or representatives of LawMax related directly and/or indirectly any discussion and/or decisions regarding venue involving John Rakowsky and/or agents of John Rakowsky concerning any funding provided by LawMax. This request includes any and all agreements of any nature involving and/or related to John Rakowsky and/or in any manner and any determining decision(s), filings and/or agreements and/or decisions made, regarding John Rakowsky which involved the determination of venue for litigation purposes and/or any other proceeding and/or purpose related both directly and/or indirectly to the referenced funding and/or any related matters pertaining to point one (1) herein above.
3. Any and all documents including, but not limited to, notations, notes of any kind, agreements and/or receipts in any media form regarding any and all proceedings related to the disposition of LawMax's claim of \$63,000 originally filed with the American Arbitration Association. [Ret: 13 194 01700 07] New Amsterdam Capital Partners, LLC, and John Rakowsky and/or James Spencer.
4. Any and all documents including, but not limited to, notations, notes of any kind, agreements and/or receipts in any media form regarding any and all issues and/or proceedings of any nature related to the disposition of any claim directly and/or indirectly involving John Rakowsky related directly and/or indirectly to the funding that LawMax provided in the case of Southern Holdings, Inc., et al. vs. Horry County, et al. Case No: 02-CV-01859-RBH.

PROOF OF SERVICE

SERVED	DATE _____	FEES AND MILEAGE TENDERED TO WITNESS ☐ YES ☐ NO AMOUNT \$ _____
	PLACE _____	
SERVED ON _____		MANNER OF SERVICE _____
SERVED BY _____		TITLE _____

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER _____

ADDRESS OF SERVER _____

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i. fails to allow reasonable time for compliance; or
- ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(ii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv. subjects a person to undue burden.

(B) If a subpoena:

- i. requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena was issued.

This subpoena is in compliance with the provisions of CPLR 3119 of the State of New York Rules of Civil Procedure and Rule 45 of the South Carolina Rules of Civil Procedure.

Exhibit “E”

**Rakowsky’s Letter to Mr. Bruce
Benson**

ATTACHMENT 54PAGE 1 OF 1

JOHN R. RAKOWSKI
ATTORNEY AT LAW
900 12TH STREET
POST OFFICE BOX 3592
WEST COLUMBIA, SOUTH CAROLINA 29171

TELEPHONE
(803) 791-8830
FAX
(803) 794-7880

May 17, 2007

Mr. Bruce Benson
6170 W. Lake Mead Blvd.
Suite 311
Las Vegas, Nevada 89108

Dear Mr. Benson:

On the afternoon of Tuesday, May 8, 2007, Judge Harwell held an evidentiary hearing regarding the evidence both sides proposed to admit at trial. Almost every document of evidence the Plaintiffs submitted was challenged by the Defendants' counsel. Prior to my involvement in this case, former Plaintiffs' counsel Michael Goldberg missed specific filing deadlines set by the Court's scheduling order, causing a serious problem in the admissibility of a very large proportion of Plaintiffs' evidence. Consequently, as just one example, Judge Harwell indicated that the next day, he would rule as inadmissible at least 75% of Plaintiffs' medical expenses. Accordingly, Judge Harwell suggested that the Plaintiffs take the pre-trial settlement that was being offered by the Defendants.

Additionally, it was revealed by Defendants' Counsel Saleeby for the first time that former Plaintiffs' counsel Goldberg had received an offer of Judgment from the Defendants that neither I, nor former local Plaintiffs' counsel James Cooper nor the individual Plaintiffs had ever seen before or knew about. This is critical because if the case was decided in favor of the Plaintiffs below the thirty thousand dollars (\$30,000) threshold amount in the "Offer of Judgment," the Plaintiffs would have been responsible both collectively and individually for all the Defendants costs, including attorney's fees from the first date of the signing of the offer. Adrian and I estimated that that would be a minimum amount of between \$200,000 and \$300,000 and likely much more.

Judge Harwell strongly suggested that Adrian and I get the Plaintiffs to settle for their best interests before he made the ruling against the Plaintiffs' evidence at trial on Wednesday, May 9, 2007, and the Defendants then subsequently drop their settlement offer. Judge Harwell indicated at the evidence hearing on Tuesday, May 8, 2007, that, (1) most of the Plaintiffs' medical damages, (2) most of the Plaintiffs' evidence regarding the civil conspiracy and the questionable action of the defendants, and (3) almost all of the Southern Holdings, Inc. valuation evidence was not going to be allowed to be admitted because it was not timely filed with the Court. Judge Harwell told Adrian and me in chambers that he wanted for everything related to this case to end at one time, so we needed to drop the claims against Dave Smith and Aneil Garvin as part of the settlement.

Without the admission of the critical evidence, the Plaintiffs would have been exposed to a Judgment against them of \$300,000 to 400,000 if we did not settle the case due to the Defendants' "Offer of Judgment" filed on July 21, 2004. Judge Harwell told us in chambers on Wednesday, May 9, 2007, the Plaintiffs acceptance of the Defendants' offer was the best decision for the Plaintiffs to make given that he was going to rule against the admission of the majority of the Plaintiffs' evidence. Now that this case is behind us we can go after Goldberg for not filing the evidence in a timely manner, which caused these problems in the first place, along with Goldberg's flawed initial pleadings.

Sincerely,



John R. Rakowski

Exhibit “F”

**Original Declaration/Affidavit
For Service**

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. **2011-CP-40-5384**

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.

**AFFIDAVIT OF
TAMMY COOKE LAIL**

I, Tammy Cooke Lail, hereby declare under the penalty of perjury the
following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On September 15, 2011, I personally served Adrian Falgione outside the
Richland County Court house a summons and complaint in Case No.
2011-CP-40-5384.
3. Adrian Falgione told me he was a Court officer and could not be served
at the Richland County Court house because he was on official duty.

4. John Rakowsky let the papers fall to the ground and refused to take them,
he then drove off in his car on or about 4:45 PM.
5. I walked away having completed the service.

Affiant Sayeth Further Naught.

**I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES
OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE
TRUE AND CORRECT TO THE BEST OF MY PERSONAL
KNOWLEDGE.**

09/15/11

Date

Tammy Cooke Lail

Tammy Cooke Lail

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011--CP-40-5384

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.

**AFFIDAVIT OF
TAMMY COOKE LAIL**

I, Tammy Cooke Lail, hereby declare under the penalty of perjury the following based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On September 15, 2011, I personally served John Rakowsky outside the Richland County Court house a summons and complaint in Case No. **2011-CP-40-5384** while he was getting into his car in the parking lot.
3. John Rakowsky told me he was a Judge and could not be served at the Richland County Court house because he was on official duty and showed me a badge he kept on his steering wheel column.

4. Adrian Falgione refused to take the papers and let them fall to the ground. He then walked away. This was on or about 4:35 PM.
5. I walked away having completed the service.

Affiant Sayeth Further Naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

09/15/11

Date

Tammy Cooke Lail

Tammy Cooke Lail

72

Page 1 of 2

summons and complaint in the above captioned case.

2. On September 15, 2011, I personally served Adrian Fatigone with the
1. I am over the age of eighteen years old and I am competent to testify.

based on my personal knowledge.

I, Tammy Lail, hereby declare under the penalty of perjury the following:

AFFIDAVIT OF
TAMMY LAIL

Defendants:
Adrian Fatigone, LLC
Fatigone and the Law Offices of
John R. Rakowski, Adrian
Plaintiff:
James Spencer, individually, on
behalf of the Estate of John "Pat"
and on behalf of Southern Holdings,
Inc. and Irene Sarracino.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-40-5384

Affiant Sayeth Further Naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES
OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE
TRUE AND CORRECT TO THE BEST OF MY PERSONAL
KNOWLEDGE.

08/15/11

Date

Tammy Lail

Tammy Lail

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-40-5384

James Spencer, individually, on
behalf of the Estate of Doris Hahn
and on behalf of Southern Holdings,
Inc., and Irene Samardac.

Plaintiff,

AFFIDAVIT OF
TAMMY LAIL

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

Defendant.

I, Tammy Lail, hereby declare under the penalty of perjury the following
based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On September 15, 2011, I personally served John Rakowsky with the
summons and complaint in the above captioned case.

TL

Affiant Sayeth Further Naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES
OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE
TRUE AND CORRECT TO THE BEST OF MY PERSONAL
KNOWLEDGE.

08/15/11

Date

Tammy Lail

Tammy Lail

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011--CP-40-5384

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

Plaintiffs,

v.

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

Defendants.

PROOF OF SERVICE

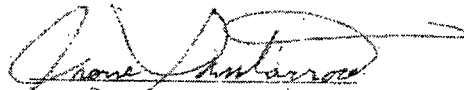
Service was attempted on multiple occasions as defendants in the above captioned case sought to avoid service. (See attached affidavits of service.) Service of summons and complaint was perfected on September 15, 2011 on both defendant John Rakowsky and defendant Adrian Falgione.

Service of summons and complaint was perfected a second time on defendant Adrian Falgione on December 15, 2011 and defendant John Rakowsky on December 16, 2011.

Submitted by:



James B. Spencer, individually and on behalf of the
Estate of Doris Holt and as interim Administrator/Trustee
of Southern Holdings, Inc.
Suite 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com



Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

Exhibit “G”

Declaration/Affidavits

Of

Alden Wheeler

Professional Service Processor

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-40-5384

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

Plaintiffs,

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

Defendants.

AFFIDAVIT OF
ALDEN WHEELER

I, Alden Wheeler, hereby declare under the penalty of perjury the following
based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify.
2. On December 15, 2011, I personally attempted service on John
Rakowsky at his law office, while he was off duty at his work place and
at his home on several occasions on this date.
3. Even though there were people at home in the evening of December 15,
2011, I could not get anybody to answer the door.

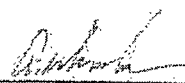
4. On December 16, 2011, I went by Mr. Rakowsky's law office and home and again nobody would answer the door at either location.
5. On December 16, 2011, I went by with an associate to serve Mr. Rakowsky at his home.
6. I saw two cars in the driveway when I drove up to the home and Mrs. Rakowsky in the kitchen window.
7. After approximately ten minutes of knocking on the door, Mr. Rakowsky unexpectedly got out of one of the cars and took service.
8. I have been a process server for over three years.
9. It is my understanding and belief that my service of Mr. Rakowsky was the first successful service and the six attempt to serve this Summons and Complaint on Mr. Rakowsky since December 1, 2011.

Affiant Sayeth Further Naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

12-31-11

Date



Alden Wheeler

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-40-5384

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

Plaintiffs,

v.

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

Defendants.

AFFIDAVIT OF
ALDEN WHEELER

I, Alden Wheeler, hereby declare under the penalty of perjury the following
based on my personal knowledge:

1. I am over the age of eighteen years old and I am competent to testify;
2. On December 15, 2011, I personally served and service was accepted by
Ms. Julie Owens for Adrian Falgione at the law offices of Adrian
Falgione at 113 E. Main St, Lexington, SC 29072.
3. When I entered Mr. Falgione's law office I asked Ms. Owens to see Mr.
Falgione as I had papers to serve him.

4. In response, his, Owens excused herself as she informed me she needed to go talk to Mr. Falgione.
5. A few minutes later, when Ms. Owens returned from speaking to Mr. Falgione she informed me that Mr. Falgione was tied up on the telephone but she would be glad to accept service for Mr. Falgione.
6. Ms. Owens then offered to make copies of the papers for me and I accepted her offer to do such.
7. I have been a process server for over three years.
8. It is my understanding and belief that my service of Mr. Falgione was the first successful service and the fourth attempt to serve this Summons and Complaint to Mr. Falgione since December 1, 2011.

Affiant Sayeth Further Naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FORGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

12-31-11

Date

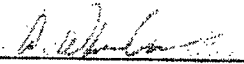

Alden Wheeler

Exhibit “H”

Falgione Affidavit and
Representation Agreements Notary
Signatures are Not From Lexington
County nor Falgione's Office as
untruthfully claimed by Defendant
Adrian Falgione

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

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;)

C/A No. 2011-CP-40-5384

Plaintiffs,)

v.)

**AFFIDAVIT OF
ADRIAN L. FALGIONE**John R. Rakowsky; Adrian L. Falgione; and)
The Law Offices of Adrian Falgione, LLC;)

Defendants.)

PERSONALLY appeared before me, the undersigned, who being duly sworn, says:

1. I am over the age of eighteen years old.
2. I have been a resident of Lexington County for the past twenty six consecutive years.
3. I am licensed to practice law in the State of South Carolina, and my practice has consisted of only one office in Lexington County, South Carolina, for the past twenty three years.
4. My fee agreement with the Plaintiffs to represent them in their federal case, Civil Action No.: 4:02-cv-1859, was drafted in Lexington County. I saw several of the Plaintiffs, including Mr. Spencer, sign the agreement in Lexington County.
5. Most of the work I performed on the Plaintiffs' lawsuit occurred at my office in Lexington, South Carolina. The hearings occurred at the Federal Courthouse in Florence, South Carolina.

FURTHER AFFIANT SAYETH NOT.

Sworn and subscribed to before me
this 17th day of July, 2012.Heather R. Hodge (L.S.)
Notary Public for South CarolinaMy Commission expires on 11/15/2016Adrian L. Falgione
Adrian L. Falgione

Addendum to
Contract of Representation
(Contingency Fee Agreement)
Executed on or about May 27, 2005
Between "Law Firm" and "Clients"
Regarding case Number 02-1859
As listed on the Docket of the Florence Division
of the South Carolina Federal District Court

This addendum is necessitated by the withdrawal of Mark Hardee from the Law Firm (Law Firm as defined within the Contract of Representation) and Mark Hardee's release of any and all claims against any potential recovery in this case.

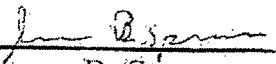
Adrian L. Falgione, Attorney at Law, has replaced Mark Hardee and as such under the terms of his retention, Mr. Falgione shall be entitled to the specific funds Mark Hardee would have received under the terms of the Contract of Representation executed between Clients and Law Firm and assumes the associated responsibilities formerly performed by Mark Hardee under the terms and conditions of the Contract of Representation as of November 15, 2006, the date the Motion for the Substitution of Counsel was filed with the Court.

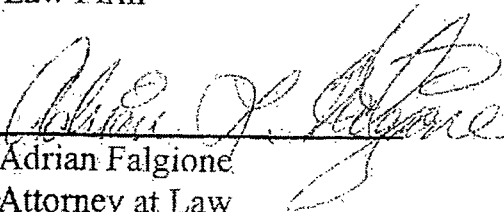
This Addendum has no effect on any and all terms and conditions of the Contract of Representation executed on or about May 27, 2005, between the Law Firm and the Clients. This Addendum is a confirmation of the agreement to retain Adrian Falgione as counsel and compensate Mr. Falgione with the funds that would have gone to Mark Hardee under the terms of the Contract of Representation whom Mr. Falgione replaced.

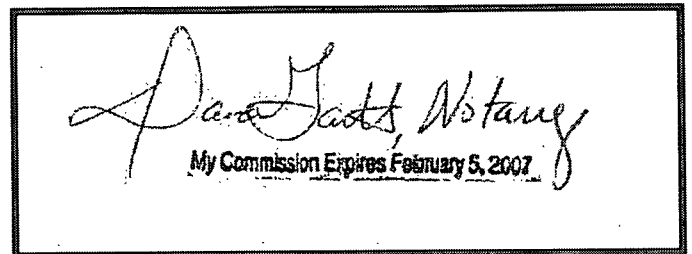
This Addendum is mutually agreed to by the Law Firm,
James B. Spencer and Adrian Falgione.

This 1st day of February, 2007


John R. Rakowsky as
Lead counsel, for the
Law Firm


James B. Spencer


Adrian Falgione
Attorney at Law



This Addendum is mutually agreed to by the Law Firm, Irene Santacroce and Adrian Falgione.

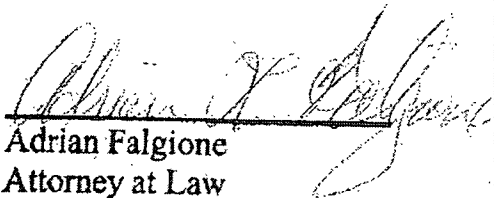
This 1st day of February, 2007



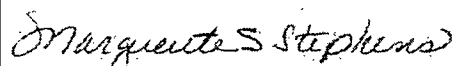
John R. Rakowsky as
Lead counsel, for the
Law Firm



Irene Santacroce



Adrian Falgione
Attorney at Law



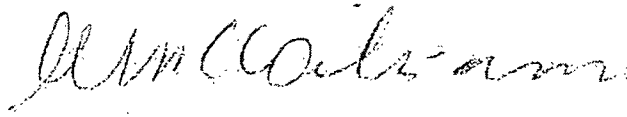
My Commission Expires
February 8, 2012

This Addendum is mutually agreed to by the Law Firm,
Southern Holdings, Inc., Nicholas C. Williamson for Southern
Holdings, Inc., Nicholas C. Williamson individually and Adrian
Falgione.

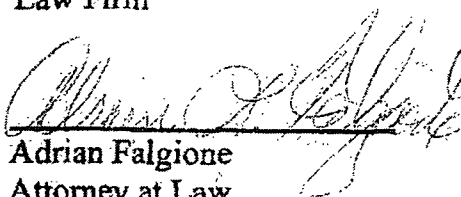
This 1st day of February, 2007



John R. Rakowsky as
Lead counsel, for the
Law Firm

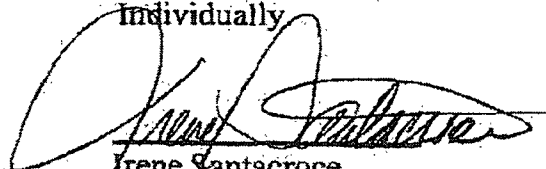


Nicholas C. Williamson
as CEO and Chairman of
of Southern Holdings, Inc.

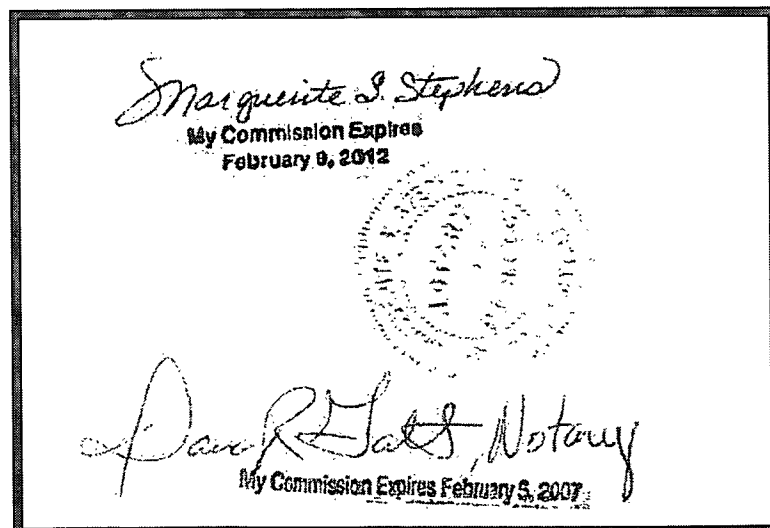


Adrian Falgione
Attorney at Law

Nicholas C. Williamson
Individually



Irene Santacroce
Corporate Secretary



**Excerpts from
May 7th, 2012
Hearing**

(Tr. Pg. 51, lines 20 - 23) Page 2 of 13

51

1 THE COURT: I don't know what the purpose of the
2 statute is. I wasn't up there when they passed the
3 statute, but ---

4 MS. DUDGEON: To avoid (unintelligible).

5 MR. BRUNER: Your Honor, the reason why ---

6 THE COURT: Then I'll just hold off on scheduling
7 your motions for a while.

8 MR. BRUNER: I don't know that it's something to
9 cure, is the point.

10 THE COURT: I don't know whether it is or not,
11 but at least they have a lawyer that might say
12 Mr. Spencer, unfortunately, you don't have an expert
13 and didn't have one when you needed one and I can't
14 help you.

15 MS. DUDGEON: Your Honor.

16 MR. BRUNER: I'm just saying that, respectfully,
17 Your Honor, that they have had plenty of time to go
18 talk to lawyers and we all know there are two law
19 school putting out lawyers in this state, now.

20 THE COURT: Mr. Bruner, they haven't had a dime
21 because we've been sitting up here arguing about
22 \$9,500, apparently. It should have been resolved a
23 year ago.

24 MS. DUDGEON: Your Honor, are you proposing that
25 we have a motion to dismiss on all grounds except the

- Judge Barber ruled this transfer of funds to the court on June 1, 2012, was to be done before either case moved forward. No further hearings were to be held until the undisputed litigation funds were placed with the court.¹ (Tr², Pg. 38, Lines 3-11, Pg. 67, Lines 2-5 & Pg 48, Lines 4-8.) Page 3

38

1 MS. SANTACROCE: No.

2 MR. LAIL: No, sir.

3 THE COURT: All right. Prepare an order and in
4 that order say that no funds will be held until it is
5 determined by the court who is to receive what and
6 that the court will immediately schedule, as soon as
7 it can after June 1, a hearing to determine whether
8 these three defendants or any of the named defendants
9 are entitled to any --- or any of the parties are
10 entitled to the \$9,500, whatever that amount is, and I
11 will schedule that sometime after June 1st, and if

Pg 48, Lines 4-8

2 THE COURT: Let me tell you, there is very little
3 benefit to being the administrative Judge, but one of
4 them is you don't do nonjury. I'm going to do the
5 interpleader action because I think they need to get
6 their monies and get on with this litigation so they
7 can hire their lawyer. We can bring this thing to a
8 conclusion this year, both cases, all right? We've

Pg. 67, Lines 2-6

2 THE COURT: All right. Anybody that I've asked
3 to do an order, do it and get it to me within seven
4 days. Again submit it to Mr. Spencer, Mr. Lail, and
5 Ms. Santacroce.
6 MS. DUDGEON: Yes, sir.

- Judge Barber's scheduling order, as laid out on May 7, 2012, was to have the legal malpractice trial completed before year end, December 2012. (Tr. Pg 56, Lines 3-5 & 7, Pg 56, Lines 19-23) Page 3

1 hearing on the \$9,500 early on, and if you all are
2 agreeable to hold it sooner than that, I'm not going
3 to be here the 28th or the 14th. I'll just have to
4 figure it out, but we all know we're going to try to
5 get those cases resolved this year.

6 MR. SPENCER: Yes, sir.

7 THE COURT: We need to put an end to them.

8 MR. SPENCER: Agreed.

9 THE COURT: We're going to --- Mr. Spencer, Ms.
10 Santacroce, you'll need to start figuring in your
11 minds whether you're represented or not represented,
12 who it is you want to depose so that we can come up
13 with a schedule at some point in time to move this
14 case along. I would like to try to maybe try this
15 case --- when was it filed?

16 MS. DUDGEON: It was filed in August. We
17 answered in November because we saw that it had been
18 filed.

19 THE COURT: All right. So August, it would be
20 coming up on 12 months. I'd like to see about trying
21 to get it tried by October. That would give y'all six
22 months or so to do whatever discovery you need to do
23 and put it all out there.

24 MS. DUDGEON: Your Honor, can we continue with
25 discovery during this time?

Judge Barber asked defendants' counsel (including Ms. Dudgeon) to draft the orders he issued during the May 7, 2012, hearing. (Tr. Pg 67, Lines 2-6). Page 3

1 MS. DUDGEON: Thank you.

2 THE COURT: All right. Anybody that I've asked
3 to do an order, do it and get it to me within seven
4 days. Again submit it to Mr. Spencer, Mr. Lail, and
5 Ms. Santacroce.

6 MS. DUDGEON: Yes, sir.

7 THE COURT: All right. Have a nice day. Thank
8 you for coming.

9 MS. SANTACROCE: Thank you, Judge.

10 THE COURT: Stay in touch.

11 MS. SANTACROCE: Your Honor.

12 THE COURT: Are there good days and bad days that
13 you can or can't be up here when I'm scheduling this
14 hearing on the \$9,500? I assume you would like to be
15 here for that day.

16 MS. SANTACROCE: I would like to, yes.

17 THE COURT: Are there certain days that are
18 easier to get here than not?

19 MS. SANTACROCE: No sir. I don't have any money
20 to drive up all the time either.

21 THE COURT: Well, we'll not --- we will attempt
22 to minimize that. Actually, in some things I don't
23 have a problem with your being on the telephone. The
24 problem is we don't have a speakerphone here in the
25 courtroom.

- (Tr. Pg 41, Line 25, Pg 42, Line 1 & 5-7 & 10-22, Pg 56, Lines 24-25 and Pg 57, Lines 1-4) Page.6

41

1 MS. DUDGEON: We'll be prepared immediately after
2 June 1st to handle that.

3 THE COURT: We're not going to have this hearing
4 on the same day we would have your hearing.

5 MS. DUDGEON: I understand.

6 THE COURT: We'll have to figure all that out.
7 I'd like to give Mr. Spencer a couple of days between
8 hearings to catch his breath and recoup, so that will
9 have to be the first hearing.

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11 was ---

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13 on behalf of each of the defendants and that's all
14 that I know that is pending, Your Honor.

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17 a motion to dismiss that we filed last November, the
18 day after Ms. Dudgeon's firm. We amended our motion
19 later, I believe, if it matters, both our amended
20 motion and our original motion are appearing as two
21 separate items on the docket, but the amended one is
22 the only one we need heard. We simply request that
23 it's heard as soon as possible ---

24 THE COURT: All right.

25 MR. BRUNER: --- so we can pursue discovery

1 before this cases pops up on the trial roster.

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3 dismissed. What discovery has to be done?

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5 THE COURT: Who would you want to depose?

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7 plaintiffs ---

8 THE COURT: I mean, I don't know who the
9 plaintiffs are. Mr. Spencer would be one ---

10 MS. DUDGEON: I would say there would be at least
11 five depositions. It also depends if they have an
12 expert, but at least five depositions.

13 THE COURT: All right. Mr. Spencer, who are you
14 all going to want to depose in that lawsuit --- or
15 Ms. Santacroce?

16 MR. SPENCER: There will be about six
17 depositions.

18 THE COURT: All right. Tell me who you're
19 thinking about at this time, Rakowsky and Falgione?

20 MR. SPENCER: At this time it would be Rakowsky
21 and Falgione would be two of the people. And, there
22 will be ---

23 THE COURT: All right. How about let's --- do you
24 think it's possibility to combine the discovery in
25 these two cases so they don't have to take their

1 hearing on the \$9,500 early on, and if you all are
2 agreeable to hold it sooner than that, I'm not going
3 to be here the 28th or the 14th. I'll just have to
4 figure it out, but we all know we're going to try to
5 get those cases resolved this year.

6 MR. SPENCER: Yes, sir.

7 THE COURT: We need to put an end to them.

8 MR. SPENCER: Agreed.

9 THE COURT: We're going to --- Mr. Spencer, Ms.
10 Santacroce, you'll need to start figuring in your
11 minds whether you're represented or not represented,
12 who it is you want to depose so that we can come up
13 with a schedule at some point in time to move this
14 case along. I would like to try to maybe try this
15 case --- when was it filed?

16 MS. DUDGEON: It was filed in August. We
17 answered in November because we saw that it had been
18 filed.

19 THE COURT: All right. So August, it would be
20 coming up on 12 months. I'd like to see about trying
21 to get it tried by October. That would give y'all six
22 months or so to do whatever discovery you need to do
23 and put it all out there.

24 MS. DUDGEON: Your Honor, can we continue with
25 discovery during this time?

1 THE COURT: Sure.

2 MS. DUDGEON: Or is it also ---

3 THE COURT: Sure.

4 MS. DUDGEON: Okay. I just wanted to confirm.

5 MR. BRUNER: Well, specifically, Your Honor, I
6 know Mr. Spencer's health is an issue.

7 THE COURT: Well, he's not required to do
8 anything until June 1st.

9 MR. BRUNER: Okay.

10 THE COURT: Other than come to a status
11 conference. I asked the doctors if he can come to a
12 status conferences and he said yes.

13 MR. BRUNER: Okay.

14 THE COURT: If you schedule depositions, my
15 suggestion is, unless he consents to it, don't
16 schedule more than one deposition a day, and I would
17 spread them out to some extent. I know that costs you
18 more money because you have to drive --- are you in
19 Charleston?

20 MS. DUDGEON: Yes, Your Honor.

21 THE COURT: Then drive up from Charleston. I've
22 talked to his doctor in Charleston, his doctor here,
23 and they both are on the same page. I told them I
24 would do what I could to help them, but apparently a
25 big stressor in his life is this litigation, so there

- Tr, Pg 50, Lines 12-20, Pg 51, Lines 4-7 & Lines 20-23, Page 52, Lines 13-18, Page 7 Footnote #12

50

1 worried that his case will get kicked before the
2 merits of the interpleader action is determined. We
3 all know that just because there is a hearing on a
4 Tuesday doesn't mean the judge rules on Tuesday. In a
5 case like this it's certain possible that the judge
6 may take ---

7 THE COURT: All right. So y'all have moved to
8 dismiss on ---

9 MS. DUDGEON: Expert affidavits, statute of
10 limitations, and service.

11 MR. SPENCER: Your Honor, we ---

12 THE COURT: Why don't you just have --- why don't
13 you stay the expert affidavit until he gets his
14 lawyer.

15 MS. DUDGEON: May I respectfully ask why, Your
16 Honor?

17 THE COURT: Probably because if something had
18 agreed to give them their \$8,500 or \$9,500, there
19 would have been a lawyer and the lawyer would have
20 been able to look at the case and say yeah or nay.
21 The lawyer is not going to cure the statute of
22 limitations problem. I don't care how good the lawyer
23 is, if the time has run, the time has run.

24 MS. DUDGEON: Then, Your Honor, what else the
25 purpose of the statute? I mean...

1 THE COURT: I don't know what the purpose of the
2 statute is. I wasn't up there when they passed the
3 statute, but ---

4 MS. DUDGEON: To avoid (unintelligible).

5 MR. BRUNER: Your Honor, the reason why ---

6 THE COURT: Then I'll just hold off on scheduling
7 your motions for a while.

8 MR. BRUNER: I don't know that it's something to
9 cure, is the point.

10 THE COURT: I don't know whether it is or not,
11 but at least they have a lawyer that might say
12 Mr. Spencer, unfortunately, you don't have an expert.
13 and didn't have one when you needed one and I can't
14 help you.

15 MS. DUDGEON: Your Honor.

16 MR. BRUNER: I'm just saying that, respectfully,
17 Your Honor, that they have had plenty of time to go
18 talk to lawyers and we all know there are two law
19 school putting out lawyers in this state, now.

20 THE COURT: Mr. Bruner, they haven't had a dime
21 because we've been sitting up here arguing about
22 \$9,500, apparently. It should have been resolved a
23 year ago.

24 MS. DUDGEON: Your Honor, are you proposing that
25 we have a motion to dismiss on all grounds except the

1 expert ---

2 THE COURT: We'll hear from them, but it may be a
3 month or two after they have the interpleader, the
4 \$9,500 case.

5 MS. DUDGEON: Your Honor I'll take what I can
6 get. I'll argue whatever motion I'm allowed to argue
7 as soon as I can.

8 THE COURT: And I hope to be there.

9 MS. DUDGEON: It's a good point, but I hope to
10 be.

11 THE COURT: How about that, Mr. Spencer?

12 MR. SPENCER: Sir?

13 THE COURT: Schedule the hearing on the motion to
14 dismiss on the grounds that one, you didn't file
15 within the statute of limitations and two, deficient
16 service, the issue of whether you had an expert,
17 needed an expert or met the expert requirement, we
18 will defer until you can get an attorney.

19 MR. SPENCER: Your Honor, I'd like to have an
20 attorney on those issues and it --- the second part is
21 that I've been waiting for their --- the ruling on the
22 entry for default.

23 THE COURT: I told you that on the phone.

24 MR. SPENCER: You said that the affidavit was
25 incorrect. We remedied the affidavit being incorrect,

- (Order No. 510, Pg. 8, lines 3 - 9). Page 8

that the Plaintiffs are not entitled to any such relief. In other words, the Plaintiffs have not made a sufficient showing of entitlement such relief.

Further, with regard to any claim by the Plaintiffs of either improper inducement, bad advice, or inadequate representation or preparation against Plaintiffs' own attorneys, such is not a valid basis for repudiating a settlement. *Petty v. Timken Corp.*, 849 F.2d 130, 133 (4th Cir. 1988). In the event there was any breach of the standard of care owed by Plaintiffs' attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, Plaintiffs have an available remedy for damages against their own attorneys. See *Petty*, 849 F.2d at 133.

Vacate or Set Aside Settlement Agreement

It is well settled that merely having second thoughts about entering into a settlement agreement is insufficient to set aside the settlement agreement. *Young v. Federal Deposit Ins. Corp.*, 103 F.3d 1180, 1195 (4th Cir. 1997). The court notes that all of the Plaintiffs who filed these letters/motions, *pro se* requests for relief, were present in the courtroom when the settlement agreement was announced on the record. Although the undersigned did not poll each plaintiff individually, nor each Defendant individually, he is not required to do so. This case did not involve a minor settlement or a wrongful death settlement, which would require court approval and may require the court to query a plaintiff regarding whether they believe the settlement is fair and in their best interests. Regardless, none of the Plaintiffs brought any of the matters they allege in their letters/motions to the court's attention until three weeks

• Tr. Pg 41, Line 25, Pg 42, Line 1, 5-7, 10-22) Page 10

41

1 MS. DUDGEON: We'll be prepared immediately after
2 June 1st to handle that.

3 THE COURT: We're not going to have this hearing
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17 depositions.

18 THE COURT: All right. Tell me who you're
19 thinking about at this time, Rakowsky and Falgione?

20 MR. SPENCER: At this time it would be Rakowsky
21 and Falgione would be two of the people. And, there
22 will be ---

23 THE COURT: All right. How about let's --- do you
24 think it's possibility to combine the discovery in
25 these two cases so they don't have to take their

(Tr. Pg 44, Lines 20-23, Pg 45, Lines 5-8) Page 11

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1 believe, somebody filed a motion of default where I
2 said the service was not sufficient service because it
3 doesn't meet the rule as to specificity as to this.
4 SAPBLTS about is that correct.

5 THE COURT: I already addressed that issue.

6 MS. DUDGEON: Your Honor addressed in the status
7 conference ---

8 MS. SANTACROCE: Yes, I know, but what I'm saying
9 is that we sent a supplement when I got the ---

10 THE COURT: A supplement --- what?

11 MS. SANTACROCE: --- the process server to redo
12 what they should have done.

13 MR. BRUNER: Your Honor, my understanding is that
14 it was Mr. Lail's wife that's reported to have served
15 my client at the September 15th hearing at the
16 interpleader case. Your Honor did address that. We
17 had a court reporter there at the last hearing. I
18 don't think that that's before the court right now.
19 If it is ---

20 THE COURT: I've already determined that based on
21 what is filed --- you know, one of the things with a
22 lawsuit, you don't get to go back and redo things
23 because they didn't get done right the first time.

24 MS. SANTACROCE: Well, in all the cases I've been
25 in, Your Honor, and that's been quite a few since

(Tr. Pg 45, Lines 22-25, Pg 46, Lines 1-12, Pg 54 Lines 22-24, Pg 55, Lines 1-3 and Pg 55, Lines 5-7). Page 12

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1 2008, the other side is always sending supplement
2 this, supplement that, so my experience as a pro se
3 litigant, I thought it was okay, so I straightened it
4 out and I resubmitted it.

5 THE COURT: I already ruled. I determined there
6 is no default because there is no appropriate
7 affidavit showing anybody was served. I mean, it
8 wasn't even something you'd have a hearing on.

9 MR. BRUNER: I believe that ---

10 THE COURT: If it's an entry of default, you
11 would normally file, send me an affidavit of service,
12 an affidavit of nonmilitary service, a copy of
13 the --- I don't know, whatever else you may have.

14 MS. SANTACROCE: Yeah, and you did say that on
15 the phone.

16 THE COURT: I would review the facts and either
17 sign the default or deny the default. In this
18 instance you sent it, I pulled the file and I reviewed
19 it, the affidavit that you --- whoever filed your
20 affidavit of service was clearly deficient under the
21 rule, so I denied the entry of default and that's
22 where it is. We don't go back and redo it again, but
23 we're not trying this case on the default. We're
24 trying this case on the merits of the case. If you
25 all are entitled to money against them, you're going

1 to get it based on the merits of your claim.

2 MS. SANTACROCE: Yes, sir.

3 THE COURT: If they have something about you,
4 they're going to get it on the merits of the claim.
5 That's not going to be done on some technicality that
6 kicks you out of court or kicks them out of the court.
7 That's the purpose of litigation. You give everybody
8 the opportunity to offer whatever they want to offer
9 and somebody is going to make a decision as to who is
10 entitled to recover. In this case you get to a jury
11 and the jury is going to make a decision. Were you
12 wronged and if so what damages are you entitled to.

13 MS. SANTACROCE: Yes, sir.

14 MR. Bruner: Your Honor, at the risk of beating a
15 dead horse, I would like to point out for the record
16 that the motion for default was filed three months
17 after we filed our notice of appearance and our motion
18 to dismiss.

19 THE COURT: I'm well aware of that.

20 MR. BRUNER: I'd just like to get that on the
21 record, Your Honor.

22 THE COURT: That's an issue --- do you all want
23 me to do an order saying that I had Ms. Santacroce
24 send a proposed entry of default, the court reviewed
25 the file, determined that the affidavit of service was

1 does.

2 Proof of service shall state the date and time of
3 service, the name and address of such person served.
4 None of which that affidavit stated. It had the
5 person. That's all it had.

6 MR. SPENCER: Yes, sir, and they responded. They
7 responded accordingly in their response. They
8 responded two weeks late so they had to have been
9 served. They responded, so they were served.

10 THE COURT: Well ---

11 MR. SPENCER: They didn't respond without being
12 served.

13 THE COURT: Well, if they responded, they had to
14 served, there's no doubt about it, but the question is
15 when were they served?

16 MR. SPENCER: They were served on the 15th. They
17 responded 20, 30 days later.

18 THE COURT: I don't know when they were served.
19 Your affidavit was not sufficient. They appeared.
20 We're not going to argue that. I've already ruled.

21 MR. SPENCER: Okay.

22 THE COURT: You all understand this, we're not
23 ending this case on either side based on some silly
24 technicality.

25 MR. SPENCER: Okay.

1 THE COURT: If you're entitled to recover funds,
2 you're going to recover them because your claim says,
3 I've been wronged and this is how you rectify that.

4 MR. SPENCER: Yes, sir.

5 THE COURT: You can't go back and undo what's
6 been done. The only way we do it our system is
7 somebody pays money.

8 MR. SPENCER: Yes, sir.

9 THE COURT: All right. Same way with them.

10 MR. SPENCER: Right.

11 THE COURT: At least anything that I'm involved
12 in. All right. Let me look at it. I'll figure it
13 out.

14 MS. DUDGEON: Your Honor, I'm sorry.

15 THE COURT: What I'm going to schedule is what
16 I'm going to schedule.

17 MS. DUDGEON: Okay. But our goal, so I
18 understand ---

19 THE COURT: We had a term of court, I think on
20 the 18th of June, nonjury that would have been perfect
21 for this, but Judge Benjamin decided she was going on
22 vacation. They moved her and those rosters may have
23 gone out. I don't know. The next term would be the end
24 of June. I just am going to have to see what the
25 schedule is, but I do know I'm going to hold this

(Tr. Pg 46, Lines 22-25, Pg 47, Lines 1-9, Pg 54, Lines 2-17) Page 12

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1 to get it based on the merits of your claim.

2 MS. SANTACROCE: Yes, sir.

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20 We're not going to argue that. I've already ruled.

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22 THE COURT: You all understand this, we're not
23 ending this case on either side based on some silly
24 technicality.

25 MR. SPENCER: Okay.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Case No. 2011--CP-40-5384

James Spencer, individually, on)
behalf of the Estate of Doris Holt)
and on behalf of Southern Holdings,)
and Irene Santacroce,)
Plaintiffs,)
v.)
John R. Rakowsky, Adrian L.)
Falgione, and The Law Offices of)
Adrian Falgione, LLC)
Defendants.)

RICHLAND COUNTY
FILED
2012 JUL 30 PM 2:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

**Expedited Motion to Compel and to Stay hearings in the Above Captioned
Case until the Court Rules on this Motion to Compel the Defendants to
Comply with this Court's Previous Orders**

WHEREFORE, on May 7, 2012, the Honorable Judge Barber, the Chief Administrative Judge, ordered that the next hearing in this proceeding would not occur until Defendant John Rakowsky has released the uncontested litigation funds and that Judge Barber has subsequently held a hearing and both released such funds to the Plaintiffs in this matter, and that the Court subsequently has also

provided time for Plaintiffs to secure representative counsel (See Attached Affidavit).

Whereas, Defendant John Rakowsky has not complied with the Court Orders issued on May 7, 2012 and Judge Barber has been unavailable since July 19, 2012 and, therefore, cannot correct this oversight,

Whereas Judge Barber on September 15, 2011, issued an Order in which by he cited, "There is a long-standing rule in this State that one judge of the same court cannot overrule another." *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E. 2d 689 (1943).

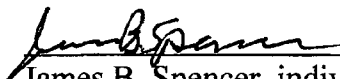
If the hearing is allowed to proceed on August 1, 2012, this will completely contradict the long standing policy as stated immediately above by Judge Barber and the following of long standing policy will turn the jurisdictional rules backwards toward judicial anarchy in the State of South Carolina. Thus the Plaintiffs humbly move the Court to order that:

1. The August 1, 2012 hearing is delayed until defendant John Rakowsky has complied with the Order of Judge Barber entered on May 7, 2012, to release the uncontested litigation funds and the Plaintiffs' have thereby been allowed to secure counsel, per Judge Barber's court Orders issued on May 7, 2012;

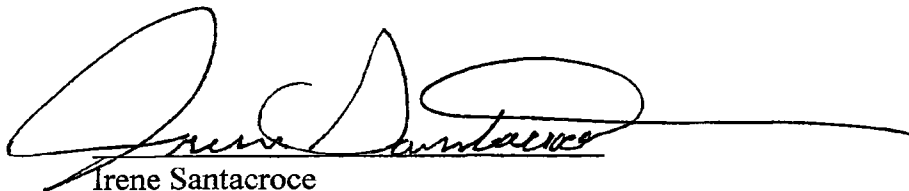
2. This hearing be delayed until the transcript of the May 7, 2012 hearing in this matter is available which documents Judge Barber's rulings on that date. This transcript has been on order by the Plaintiffs for several weeks;
3. Defendant John Rakowsky is assessed the costs associated with the filing of this motion to compel his compliance with Judge Barber's Order's issued on May 7, 2012.

Submitted this 30th day of July, 2012,

By,



James B. Spencer, individually and on behalf of the
Estate of Doris Holt and as interim Administrator
of Southern Holdings Co.,
PMB 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com



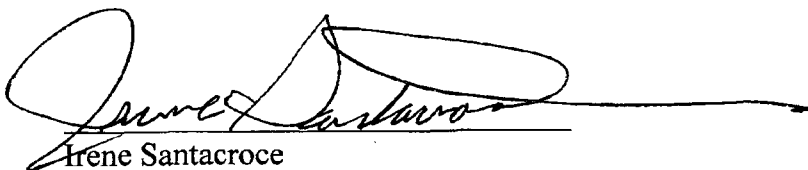
Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

CERTIFICATE OF COMPLIANCE

I, Irene Santacroce, *Pro Se*, do hereby certify that the foregoing Motion to Compel and to Stay any hearings on these matters until the Court Rules on the Motion to Compel the Defendants to Comply with its Previous Orders has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Andrew A. Countryman, Esquire
 Amanda K. Dudgeon, Esquire
 Carlock, Copeland and Stair, LLP
 40 Calhoun Street, Suite 400
 Charleston, SC 29401
 Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
 Bruner, Powell, Wall & Mullins, LLC
 1735 St. Julian Place, Suite 200
 P.O. Box 61110
 Columbia, SC 29260-1110
 Email: BBRUNER@brunerpowell.com



Irene Santacroce
 205 Deer Trace Circle
 Myrtle Beach, SC 29588
 (843) 455-0891

RICHLAND COUNTY
 FILED
 2012 JUL 30 PM 2:30
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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and Irene Santacroce,)

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Falgione, and The Law Offices of)
Adrian Falgione, LLC)

Defendants.)

RICHLAND COUNTY
FILED
2012 JUL 30 PM 2:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

DECLARATION OF IRENE SANTACROCE

I, Irene Santacroce declare under penalty of perjury:

1. I am over eighteen years old and am qualified to testify.
2. The information in this declaration is based on my personal knowledge.
3. I attended the hearing before Judge Barber on May 7, 2012.
4. I understood with complete certainty that Judge Barber ruled that no hearings were to be held in Case No. **2011--CP-40-5384** until defendant John Rakowsky has complied with the Order of Judge Barber entered on May 7, 2012, to release the uncontested litigation funds and the Plaintiffs'

have thereby been allowed to secure counsel, per Judge Barber's court Order issued on May 7, 2012;

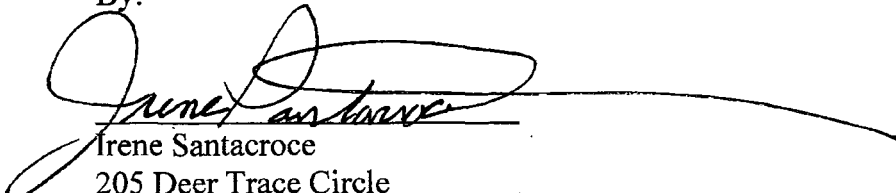
5. I have ordered the transcript of the May 7, 2012 hearing;
6. I have requested a conference with Judge Barber to resolve this issue, however, I just found out he has been on vacation since this matter has come to my attention.

Affiant further sayeth naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

This 30th day of July, 2012.

By:


Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED
IN THE COURT OF COMMON PLEAS
Case No. 2012-CP-32-3428

COPY

James B. Spencer, et al.,

Plaintiff,

v.

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

Defendants.

**RULE 59(e) MOTION FOR RECONSIDERATION AND TO STRIKE COURT'S
RULINGS IN REGARD TO THE DISMISSAL OF THE LEGAL MALPRACTICE
ACTION CAPTIONED ABOVE**

Plaintiff James B. Spencer, respectfully requests this Honorable Court, under Rule 59(e) of the South Carolina Rules of Civil Procedures (SCRCP) to reconsider and reverse this Court's decision made on August 26, 2013, by reinstating the Legal Malpractice Lawsuit against the defendants captioned above.

BACKGROUND AND DOCUMENTS SUBMITTED AS REQUESTED

In regard to plaintiffs submitting documents after the hearing concluded, during the hearing Your Honor should recall plaintiffs objected to matters which had already been decided by the court in prior proceedings being re-litigated by defendants. Your Honor did not have the case file from Lexington and had not reviewed the case file from Lexington as the case was being heard *nunc pro tunc* as the court had not received proper

authority to hear the case. Plaintiffs were not prepared to litigate matters already decided by the Honorable Judge Barber in earlier proceedings. Your Honor asked for plaintiffs to submit documents to the Court after the hearing in that regard and they would be taken into consideration by Your Honor before making decisions. Accordingly, plaintiffs submitted, "PLAINTIFFS BRIEF ON CORRECTIONS", "EXHIBITS TO PLAINTIFFS' BRIEF ON CORRECTIONS", AND TWO SUPPLEMENTS TO EXHIBITS TO PLAINTIFFS BRIEF ON CORRECTIONS IDENTIFIED AS "A" AND "H".

Your Honor characterized the supplemental filings at the Lexington Court House of which stamped courtesy filings were sent by the plaintiffs via email (when plaintiffs were informed by the Lexington Clerk of Court Your Honor had never received the case files on this matter prior to or after the August 26, 2013 hearing), as "email on several occasions after the hearing was concluded and interposed additional arguments which do not relate to the merits of the narrow issue before the court."

Plaintiffs respectfully ask Your Honor to kindly reconsider these filings as they directly address: 1. Statute of limitations, 2. Equitable Estoppel, and 3. the need for an expert affidavit, all of which were ruled on by Your Honor. The documents are with the other case files at the Lexington County Clerk of Court's Office in addition courtesy copies were previously emailed to your office and are attached to this and accompanying emails.

Additionally, Your Honor failed to make the procedural changes to the plaintiffs' complaint to bring it into compliance with South Carolina law. Southern Holdings, Inc., was not represented by counsel and was not a legal entity in this matter, therefore, the plaintiffs moved to amend the complaint and remove Southern Holdings, Inc. Plaintiffs

contend this motion should have been automatically accepted as the motion was timely filed and it brings the complaint into conformity with the SC law. A corporation must be represented by a licensed attorney in circuit and appellate courts in South Carolina but not in magistrate's court. *Renaissance Enterprises, Inc. v. Summit Teleservices, Inc.*, 515 S.E.2d 257 (S.C. 1999).

At the June 5, 2013 hearing, Your Honor announced you were going to review the other outstanding motions and hold a follow up hearing, if necessary. Your Honor specifically mentioned the two procedural motions, attached hereto to this email, filed by the plaintiffs regarding amending the complaint to remove Southern Holdings, Inc. as a plaintiff and remove the Estate of Doris Holt as parties. Under South Carolina law the administrator of an estate cannot represent the estate in legal proceedings in Circuit Court if there are multiple claims of interest on the estate, which there were in this case. Therefore, the Estate of Doris Holt, which gained multiple claimants during the pendency of the proceeding also needed to be removed as a party to the complaint to be in compliance with South Carolina Law. Plaintiffs contend this motion should have been automatically accepted as the motion was timely filed and it brings the complaint into conformity with the SC law. See plaintiffs' two motions to amend complaint.

ADDITIONAL CONSIDERATIONS

Plaintiffs received notice for the first time that Stephanie Weissenstein was an attorney of record on this case when it received the Order on August 31, 2013. Ms. Weissenstein's presence as an attorney of record ties the legal team of this case to the withholding of the uncontested litigation funds which prevented the plaintiffs from obtaining counsel in this and other matters before South Carolina courts. This further

enhances the argument of Equitable Estoppel to stop the misuse of the law to tie up funds from indigent litigants and further warrants the use of Equitable Estoppel to disallow the use by the defendants of the Statute of Limitations Doctrine as a bar in this matter.

Plaintiffs Rule 59(e) motion is filed within ten days upon receipt of the order in accordance with applicable law.

REMEDIES

Procedurally both Southern Holdings, Inc. and the Estate of Doris Holt should be withdrawn as parties to this action forthwith. The malpractice action should be reinstated and a scheduling Order should be reissued in accordance with the timing as specified in Judge Barber's verbal scheduling Order issued on May 7, 2012.

Submitted by:

On September 9, 2013


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

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.)

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

Defendants.)

AMENDED
 MOTION TO DISMISS

JEANETTE W. McBRIDE
 C.C.P. & G.S.

2012 JAN -3 AM 11:33

RICHLAND COUNTY
 FILED

TO: THE PLAINTIFFS, ABOVE-NAMED

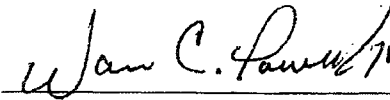
YOU WILL PLEASE TAKE NOTICE that Defendants Adrian L Falgione and The Law Offices of Adrian L. Falgione, LLC (collectively, "Defendants"), by and through their undersigned counsel, will move before the Presiding Judge of the Fifth Judicial Circuit, at the Richland County Judicial Center, 1701 Main Street 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 to 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 failed to serve the Summons & Complaint in accordance with the South Carolina Rules of Civil Procedure, as set forth in the Affidavits attached hereto as **Exhibits A** and **Exhibit B**; 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*

December 30, 2011

Columbia, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

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;)

C/A No. 2011-CP-40-5384

Plaintiffs,)

v.)

AFFIDAVIT OF
ADRIAN L. FALGIONEJohn R. Rakowsky; Adrian L. Falgione; and)
The Law Offices of Adrian Falgione, LLC;)

Defendants.)

RICHLAND COUNTY
FILED
2012 JAN -3 AM 11:33
JEANETTE W. BRIDGES
C.C.P.

PERSONALLY appeared before me, the undersigned, who being duly sworn, says:

1. I am over the age of eighteen years old.
2. I am licensed to practice law in the State of South Carolina, and my office is currently located in Lexington, South Carolina.
3. On the afternoon of December 15, 2011, I received a copy of the Summons and Complaint filed in this action from Julie Owens, a temporary employee at my firm. Ms. Owens told me a man had just come by the office and dropped off some papers for me.
4. Upon information and belief, the Complaint in this action was filed on August 15, 2011.
5. Ms. Owens is neither an officer nor a manager at my office, and I never authorized her to accept any service of process for me or my law firm. I am listed as the registered agent for The Law Offices of Adrian Falgione, LLC.
6. To the best of my knowledge, December 15, 2011 was the first time the Plaintiff attempted to serve me or my firm with the Summons and Complaint.
7. Neither I nor my firm has taken any action to impede the Plaintiff's ability to serve the Complaint.

FURTHER AFFIANT SAYETH NOT.

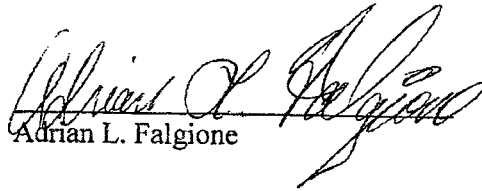
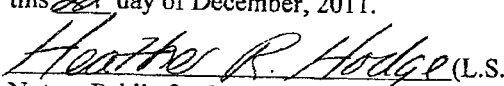
Sworn and subscribed to before me
this 22nd day of December, 2011.
Adrian L. Falgione
Notary Public for South CarolinaMy Commission expires on 11/15/2016

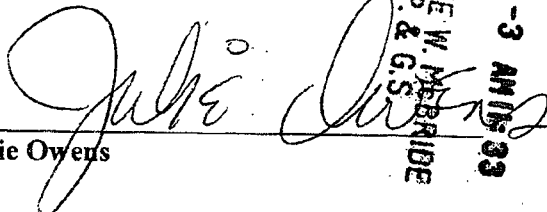
EXHIBIT B

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

AFFIDAVIT OF JULIE OWENS

Personally appeared before me the undersigned who, being duly sworn and says:

I, Julie Owens, am currently a temporary employee working as a Legal Assistant for attorney Adrian L. Falgione through Carolina Legal Systems. I was at the front desk of Mr. Falgione's office on Thursday, December 15, 2011, at approximately 3:45 p.m. when a gentleman came to the front window and asked for attorney Adrian L. Falgione. I told him Mr. Falgione was on the phone at that time. He stated he just needed to leave some documents for Mr. Falgione and asked me to make a copy. He had short brown hair, medium build, less than six feet tall. I made a copy and gave them to him. He asked me my first name which I told him and he left. I then gave the documents to attorney Adrian L. Falgione. It was a Summons and Complaint.


 Julie Owens

Sworn to before me this 15th day
 of December, 2011

Anthony B. Hodge
 Notary Public for South Carolina

My commission expires: 11/15/2016

FILED
 RICHLAND COUNTY
 2012 JAN -3 AM 10:33
 JENNIFER W. McBRIDE
 C.C.P. & G.S.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 30, 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: **AMENDED MOTION TO DISMISS**

Parties served:

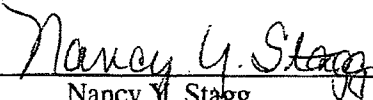
**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, DELIVERY
RESTRICTED TO ADDRESSEE**

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



Nancy Y. Stagg

2012 JAN -3 AM 11:33
FILED
RICHLAND COUNTY
JEANETTE M. McBRIDE
C.C.P. & G.S.

The Circuit Court of South Carolina
Fifth Judicial Circuit

James R. Barber, III
Circuit Court Judge
Richland County Judicial Center
P.O. Box 2766
Columbia, South Carolina, 29201

(803) 576-1779
FAX (803) 576-1782



July 31, 2012

Amanda Kurzen Dudgeon
40 Calhoun St., Ste. 400
Charleston, SC 29401

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588

Benjamin C. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260

James Spencer
7001 St. Andrews Road, Suite 183
Columbia, SC 29212

Stephanie Weissenstein
Ballard, Watson, Wessenstein
P.O. Box 6338
West Columbia, SC 29171

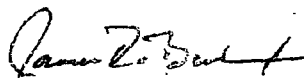
Rodney Lail
7001 St. Andrews Road
P.O. Box 183
Columbia, SC 29212

Re: Stewart Buchanan, #69848 v. Robert Brown, in his individual capacity, Sandra S. Bowie, in her individual capacity, and David Tatarsky, in his individual capacity
Case No. 2010-CP-40-5896

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

I have signed the orders I intended to sign and they will stand.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "James R. Barber, III".

James R. Barber, III

JRB:ecb

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

John R. Rakowsky)

Case No. 2008-CP-40-6656

Plaintiff,)

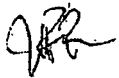
vs.)

AFFIDAVIT OF JOHN RAKOWSKYAdrian L. Falgione, James Spencer, Doris)
Holt, Rodney Keith Lail, Irene Santacroce,)
Marguerite Stephens and Ricky Stephens,)
and Horry County, S.C.,)

Defendants.)

Personally appeared before me, John R. Rakowsky, who being duly sworn, deposes and says that:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters so stated, except those matters stated on information and belief, and as to those, I have a good faith basis for believing them to be true.
2. I am a member of the South Carolina Bar, having been admitted in 1979. I was previously admitted to practice law in Ohio in 1976. I have maintained a solo practice in Lexington County since I was admitted to practice in South Carolina. For the past twenty-seven (27) years I have been a municipal judge for Lexington, South Carolina. As a result, I practice law part-time.
3. I am providing this affidavit at the direction of Judge Doyet A. "Jack" Early regarding that portion of this action which addresses my request to interplead the remaining litigation funds into the Court for distribution as the Court deems appropriate.



4. During my tenure as co-counsel for the Plaintiffs, I received a total of \$67,500.00 in advanced litigation funds on behalf of the plaintiffs from two (2) different funding sources. These funds were deposited into my trust account at Security Federal Bank, Account ending in xxxx1313. The funds were used for litigation expenses as set forth in the affidavit of Mara Ballard dated April 17, 2014, submitted herewith.
5. On or about June 21, 2005, as counsel for the plaintiffs in the Southern Holdings case in United States District Court. I received two checks totaling \$42,500.00 from LitFunding USA, a/k/a LFC 101, LLC, and LFC 104, LLC and deposited those funds to Account xxxx1313, which was and is my trust account.
6. On or about June 30, 2005, I received one check in the amount of \$25,000.00 from Resolution Settlement Corporation and deposited those funds into account xxxx1313.
7. I have reviewed the affidavit of Ms. Ballard, and the attachments in detail, and it is an accurate reflection of funds received by me as counsel for the Southern Holdings plaintiffs, and disbursed as litigation expenses on behalf of the Southern Holdings plaintiffs.
8. Resolution Settlement corporation authorized me to advance funds to James Spencer for living expenses from the \$25,000.00 paid by it. (Exhibit A). Mr. Spencer was advanced a total of \$12,550.00 from the litigation funds.
9. I maintained records of the disbursements for the Southern Holdings case, and I provided Mr. Spencer and the other plaintiffs with a record of disbursements.
10. On multiple occasions, I reimbursed myself from the trust account for out-of-pocket expenses (copy costs, telephone costs, postage, etc.) for several cases at one time. That is my standard practice. On each occasion, I calculated the actual numbers for each client and bundled them together to write myself a single check for reimbursement. Costs reimbursed



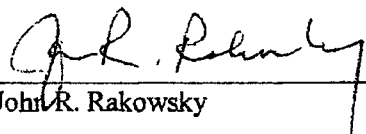
to me for the Southern Holdings case are included in the following check numbers written to me from Account xxx1313: Check Nos. 219, 233, 247, 277,342, 400. I did not maintain records of the breakdown for the individual case calculations for each case when I reimbursed case costs on these occasions.

11. After the Southern Holdings plaintiffs repudiated the settlement which was reached on May 8, 2007, I consulted with attorney Desa Ballard as to what to do with the remaining litigation funds in the amount of \$9,855.85, as well as the settlement funds paid by the defendants.

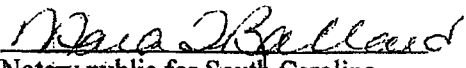
12. I delivered a check from my trust account xxx1313 to Ms. Ballard in the amount of \$9,855.85. I am informed and believe she deposited those funds into her trust account. On my behalf, she filed this interpleader action on September 12, 2008.
13. During the litigation, and in response to one of the amended complaints, an invoice was received for an unpaid litigation expense in the amount of \$2,163.77. This was a legitimate expense of the litigation that was to be paid from the advanced litigation costs. I consulted with Ms. Ballard, and she paid the amount of \$2,163.77 from her trust account to Eugene G. Chewning, Jr., PhD, CPA for services he rendered for the plaintiffs during the litigation.
14. I am informed and believe that Mr. Spencer obtained an advance of \$35,000 from a third source, LawMax, in 2007. I did not receive any of those funds. Based on the documentation which I have regarding that transaction (Exhibit B), I am informed and believe those funds went either to Mr. Serota or to Mr. Spencer.
15. I am informed and believe that the balance of litigation funds in the amount of \$7,691.78 are being held in Ms. Ballard's trust account, pending this court's order. I am aware of no claims having been filed against those funds.



Further, deponent sayeth not.


John R. Rakowsky

Sworn to before me this 16th
day of May, 2014


Notary public for South Carolina
My Commission expires: 11.28.17

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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
 THE FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2011-CP-40-5384

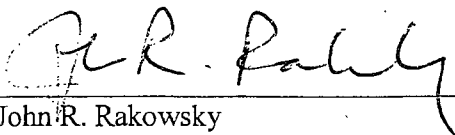
AFFIDAVIT OF JOHN R. RAKOWSKY

PERSONALLY APPEARED BEFORE ME, John R. Rakowsky, who, under oath, states
 as follows:

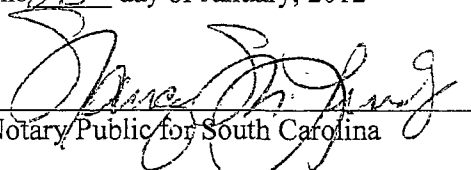
1. I am over the age of 18 years and competent to give this affidavit.
2. I have personal knowledge of the facts contained in this affidavit.
3. The facts herein are true and correct to the best of my knowledge.
4. On December 16, 2011, I was served at my home with an unfilled copy of the

Summons for the above-captioned action along with a filed copy of the Complaint.

FURTHER AFFIANT SAYETH NOT.


 John R. Rakowsky

SWORN to and subscribed before me
 this 25 day of January, 2012


 Notary Public for South Carolina

My commission expires: 6-30-15

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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.

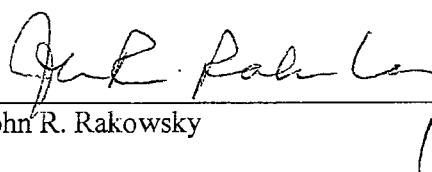
IN THE COURT OF COMMON PLEAS
 THE FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2011-CP-40-5384

AFFIDAVIT OF JOHN R. RAKOWSKY

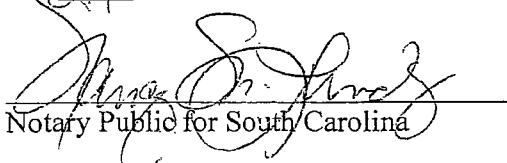
PERSONALLY APPEARED BEFORE ME, John R. Rakowsky, who, under oath, states
 as follows:

1. I am over the age of 18 years and competent to give this affidavit.
2. I have personal knowledge of the facts contained in this affidavit.
3. The facts herein are true and correct to the best of my knowledge.
4. I was not served with any documents on September 15, 2011.

FURTHER AFFIANT SAYETH NOT.


 John R. Rakowsky

SWORN to and subscribed before me
 this 26 day of January, 2012


 Notary Public for South Carolina

My commission expires: 6-30-15

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON **FILED** Case No. **2012-CP-32-03428**

James Spencer,

Plaintiff,

v.

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

Defendants.

MOTION TO AMMEND COMPLAINT

This matter comes before the Court on the Motion to Amend Complaint submitted by James B. Spencer ("Spencer") on August 15, 2011. Southern Holdings, a corporation, must be removed as an entity in the complaint because it does not have standing due to the fact it is not represented by an attorney as required by South Carolina law.

Standard of Review

Rule 15(a), of the South Carolina Rules of Civil Procedure ("SCRCP"), provides in relevant part that "a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires and does not prejudice any other party." The prejudice Rule 15 envisions is a lack of notice that the new issue is going to be tried, and a lack of opportunity to refute it." Parker v.

Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 286, 607 S.E.2d 711, 716-17 (Ct.App.2005). It is well established that the decision whether to grant or deny a Rule 15(a) motion is within the sound discretion of the trial judge, and that "the party opposing the motion has the burden of establishing prejudice." Foggie v. CSX Transportation, Inc., 313 S.C. 98, 103, 431 S.E.2d 587, 590 (1993); City of North Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 232-33, 599 S.E.2d 462, 465 (Ct. App. 2004); Pruitt v. Bowers, 330 S.C. 483, 499 S.E.2d 250, 253 (Ct. App. 1998). The Defendants will experience no prejudice to correct the caption as there is no legal presence of the entity and Rule 15(a), SCRCP, requires that leave to amend be freely granted in the absence of prejudice to the Defendants. Parker, 362 S.C. at 286, 607 S.E.2d at 716.

Discussion

Under South Carolina law Southern Holdings cannot have a legal presence as a party in this action without being represented by an attorney and was listed in error by *Pro Se* Litigant. A corporation is an artificial entity created by law, it cannot represent itself. A corporation must be represented by a licensed attorney in circuit and appellate courts in South Carolina but not in magistrate's court. Renaissance Enterprises, Inc. v. Summit Teleservices, Inc., 515 S.E.2d 257 (S.C. 1999).

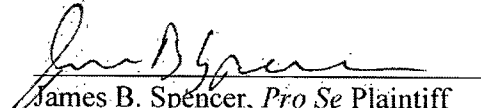
As an alternative under Rule 21 of the SCRCP parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Since Southern Holdings is not a legally authorized party to this suit the court has just cause to dismiss Southern Holdings without prejudice as a party to this action.

Summary

Therefore, under Rule 15 (a) or under Rule 21 of the South Carolina Rules of Civil Procedure, for legal procedural reasons, Southern Holdings needs to be removed forthwith from the caption as a party.

Pro Se Plaintiff has previously raised this matter with defendants' counsels and both counsels have refused to consent to the proposed withdrawal of Southern Holdings as a party to this proceeding.

Respectfully Submitted by:


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

COPY ²³³

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.

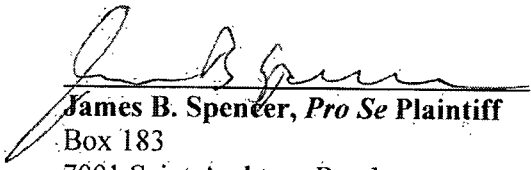
Topic: Correction of Caption to reflect legal parties.

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

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 CHANGE VENUE**

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

TO: ALL PARTIES, AND THEIR COUNSEL

You will please take notice that Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC, by and through their undersigned counsel, will move before the Presiding Judge of the Court of Common Pleas for the Fifth Judicial Circuit at 1701 Main Street in Columbia, South Carolina, on the tenth (10th) day after service hereof, or at such time as the Court may schedule, for and Order changing venue of this action to Lexington County, South Carolina pursuant to S.C. Code §§ 15-7-30 and 100 and the following grounds:

- (1) Both the individual Defendants have been residents of Lexington County at all times relevant to this action;
- (2) The Defendant limited liability company held its principal place of business in Lexington County at all times relevant to this action; and
- (3) The most substantial part of the alleged acts or omissions giving rise to the Plaintiffs' claims did not occur in Richland County.

Accordingly, the Defendants move for an Order changing venue of this action to Lexington County because Richland County is not the proper venue pursuant to statute. This Motion may be further supported by the record in the case, by affidavit, and by such cases as

have been made and provided. Pursuant to Rule 11, SCRCP, the undersigned has no duty to consult with the *pro se* Plaintiffs before filing this Motion.

A handwritten signature in cursive script, appearing to read "Benjamin Bruner", written over a horizontal line.

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*

May 16, 2012

Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 16, 2012, 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.

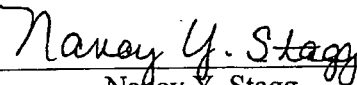
Documents served: **NOTICE OF MOTION AND MOTION TO CHANGE VENUE**

Parties served:

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

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

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



Nancy Y. Stagg

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.)

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

**ORDER GRANTING DEFENDANTS'
MOTIONS TO CHANGE VENUE**

Defendants.)

THIS MATTER came before the undersigned by way of motions to change venue, which were filed on May 17, 2012, on behalf of Adrian L Falgione ("Falgione") and The Law Offices of Adrian L. Falgione, LLC (collectively, "Falgione Defendants"), and on June 4, 2012, on behalf of John R. Rakowsky ("Rakowsky"). At a hearing on these motions on August 1, 2012, at the Richland County Judicial Center, the Plaintiffs appeared pro se, Benjamin C. Bruner, Esquire appeared on behalf of the Falgione Defendants, and Amanda K. Dudgeon, Esquire appeared on behalf of Rakowsky. Having carefully considered the arguments and submissions of the parties, I find the Defendants' motions should be granted and this case should be transferred to Lexington County.

When a plaintiff files suit in a county that is not the proper venue for trial under the venue statutes, the Court may transfer the case to a proper county for trial. S.C. Code Ann. § 15-7-100 (Supp. 2011.). Based upon the allegations in the Complaint, S.C. Code Ann. § 15-7-30 governs venue of this action. Under that statute, venue is proper either in the defendant's resident county or in the county where the most substantial part of the alleged act or omission giving rise to the

plaintiff's claim occurred. S.C. Code Ann. § 15-7-30(C), (E) (Supp. 2011). The South Carolina Supreme Court has recognized that a defendant's right to be tried in his resident county is a substantial one. Jeter v. South Carolina Dept. of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 147-48 (2006). Furthermore, "in a case involving only one defendant or multiple defendants who reside in a single county, the venue choice generally is controlled by the residence of the defendant." Id.

In this legal malpractice action, the Defendants contend this case should be transferred to Lexington County as a matter of right because Richland County is not a proper venue under §15-7-30 and because Lexington County is the Defendants' resident county. I agree.

I find venue is not proper in Richland County. All the named defendants are from Lexington County, and the most substantial part of the acts and omissions alleged in the Complaint occurred outside Richland County. The Plaintiffs argued at the hearing that they signed fee agreements with the Defendants in Richland County. Even if this were true,¹ where the fee agreements were signed does not override the Defendants' substantial right to be tried in their resident county, nor does it establish that the most substantial part of the acts and omissions alleged in the Complaint occurred in Richland County, as the statute requires. In fact, Plaintiff Spencer argued at the hearing that the alleged malpractice occurred in Florence County. I therefore find Richland County is not a proper venue for this action and the Defendants have a substantial right to be tried in Lexington County that has not been waived.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants' motions to change venue should be, and hereby are, granted and that the above-

¹ The Defendants submitted affidavits stating that the fee agreements were signed at their offices in Lexington County. In response, the Plaintiffs submitted a series of documents that purported to be affidavits in support of their argument that the fee agreements were drafted and signed in Richland County, but none of the affidavits the Plaintiffs submitted were notarized.

captioned case be, and hereby is, transferred to the Court of Common Pleas for Lexington County. **IT IS FURTHER ORDERED** that the Clerk of Court for Richland County is hereby directed to take all steps necessary to effectuate the immediate transfer to the Lexington County Court of Common Pleas of all pleadings and other documents presently on file with this Court in connection with this action.

AND IT IS SO ORDERED.

The Honorable Brooks P. Goldsmith
Presiding Judge, Fifth Judicial Circuit

August __, 2012

Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 1, 2012, 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.

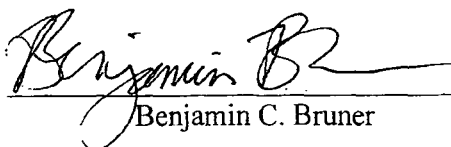
Documents served: **PROPOSED ORDER GRANTING DEFENDANTS' MOTIONS TO CHANGE VENUE.**

Parties served:

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Attorneys for John R. Rakowsky


Benjamin C. Bruner

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

FILED Case No. 2012-CP-40-5384

32-3428

2013 MAY 28 P 2:02

James Spencer,

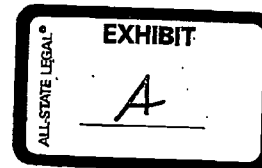
RETURN OF DEEDS

Plaintiff,

v.

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

Defendants.

**ANSWER REGARDING WAVIER OR RECUSAL**

Pro Se Plaintiff James Spencer requests that due to the family ties with Defendants' counsel, the Honorable Judge Eugene Griffith, Jr., recuse himself on all matters regarding Case No. 2012-CP-40-5384. This notice is timely filed within ten days set by Judge Griffith.

32-3428

Respectfully Submitted by:

A handwritten signature in blue ink, appearing to read "James B. Spencer".

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

ORIGINAL

CERTIFICATE OF SERVICE

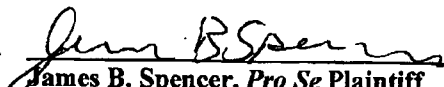
The undersigned hereby certifies that on May 28, 2013, the document described below, was (were) served on all parties of record in this case by mailing a copy, by US mail and addressed as set forth below, and a copy by email.

Topic: Request for Recusal**Parties Served:**

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Myrtle Beach, South Carolina 29588
Pro Se Plaintiff

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FILED

2013 MAY 28 2:02

RECEIVED
CLERK OF COURT
JULY 1, 2013

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.)

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

Defendants.)

MEMORANDUM IN SUPPORT OF
DEFENDANTS ADRIAN L. FALGIONE
AND THE LAW OFFICES OF ADRIAN
FALGIONE, LLC'S MOTION TO DISMISS

2012 JAN 27 PM 4:11
 JEANNETTE W. HARRIS
 C.C.P. & C.V.
 FILED
 RICHLAND COUNTY

Defendants Adrian L Falgione ("Falgione") and The Law Offices of Adrian L. Falgione, LLC (collectively, "Falgione Defendants"), offer this memorandum for the Court's consideration in support of their Motion to Dismiss filed November 4, 2011 and amended December 22, 2011. The Defendants seek dismissal based upon the Plaintiffs' failure to file an expert affidavit, failure to timely commence this action, failure to timely serve the Complaint, and failure to properly serve the Complaint.

FACTUAL/PROCEDURAL BACKGROUND¹

This is a legal malpractice action arising out of a case in which John Rakowsky and Falgione represented the Plaintiffs. Rakowsky and Falgione are licensed attorneys whose practices are in Lexington, South Carolina. The underlying case was filed in federal court for the District of South Carolina, Florence Division, and assigned Civil Action No.: 4:02-cv-1859-RBH ("Underlying Case"). The complaint in the Underlying Case was filed on May 29, 2002

¹ For the limited purposes of this Motion, the pertinent facts are set forth herein construing the well-pleaded allegations in the Complaint in accordance with the standard for a motion to dismiss under Rule 12(b)(6), SCRC.P.

(by two attorneys not named as defendants herein). (Compl. ¶ 8.) Plaintiffs' alleged a wide array of claims against former business partners, the Horry County Sheriff's Department, and the Myrtle Beach Police Department, as well as various officials, deputies, and officers in those agencies, all of whom took some part in an attempt to take over Southern Holdings, Inc. Rakowsky became involved in the case relatively early; however, Falgione did not appear in the case until over four years later, on December 3, 2006, when the Plaintiffs were preparing for the trial. (Compl. ¶¶ 11, 16.)

On May 8, 2007, the day before trial, the Court conducted a pretrial hearing, at which it heard arguments on evidentiary motions. (Compl. ¶ 23.) After the hearing, the presiding judge held a conference in chambers with the attorneys. (Compl. ¶ 24.) Following that conference, the Plaintiffs were lead to believe that the judge had ruled a majority of the Plaintiffs' evidence was inadmissible, including all evidence of damages. (Compl. ¶¶ 26-27.) Rakowsky and Falgione attempted to coerce the Plaintiffs to accept a settlement offer of \$55,000. However, the Plaintiffs would not agree. (Compl. ¶¶ 28-32, 37, 44.)

On the following day, May 9, 2007, immediately prior to trial, the Plaintiffs attended a hearing at which the settlement terms were placed on the record. The Court announced the settlement and dismissed the jury pool. (Compl. ¶ 49.) Contrary to Rakowsky's and Falgione's representations, the Court did not poll the Plaintiffs about whether they agreed to accept the settlement. Id. In a subsequent letter dated May 17, 2007, Rakowsky blamed the evidentiary problems on two other attorneys who had previously represented the Plaintiffs in the case, and suggested the best course of action was a malpractice claim against those other attorneys. (Compl. ¶ 51.)

In late May 2007, several plaintiffs in the Underlying Case began inundating the Court

with letters “pointing out inconsistencies in Rakowsky’s letters, the transcript of the [pretrial] evidentiary hearing, and why the Judge made the evidentiary rulings he did, as reported by Rakowsky and Falgione behind closed doors.” (Compl. ¶ 54.) The Court construed those letters as motions, and on July 3, 2007, issued an Order denying the motions. (Compl. ¶ 55.)

More than three years later, on August 15, 2011, the Plaintiffs filed this *pro se* malpractice suit against Rakowsky and Falgione. The Plaintiffs base their allegations on events that occurred leading up to and during the settlement on May 9, 2007. The Plaintiffs attempted to serve the Summons and Complaint on the Falgione Defendants on December 15, 2011, and on Rakowsky on December 16, 2011. To date, the Plaintiffs have not filed an expert affidavit.

Rakowsky and the Falgione Defendants have moved to dismiss the Complaint for the following reasons: (i) Plaintiffs have failed to file an expert affidavit pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §§ 15-36-10 to 100; (ii) Plaintiffs claims are barred by the three-year statute of limitations established in S.C. Code § 15-3-530; and (iii) Plaintiffs failed to serve the Summons & Complaint within the 120-day deadline in Rule 3(a)(2), SCRCPP. In addition, Falgione and his law firm seek dismissal based upon the Plaintiffs’ failure to properly serve the Summons and Complaint pursuant to Rule 4, SCRCPP.

STANDARD

“In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). Documents incorporated into or attached to the complaint are considered part of the pleading. Rule 10(c), SCRCPP; Brazell v. Windsor, 384 S.C. 512, 516, 682 S.E.2d 824, 826 (2009).

“If the facts alleged and inferences reasonably deducible therefrom, viewed in the light

most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then dismissal under Rule 12(b)(6) is improper.” Doe, 373 S.C. at 395; 645 S.E.2d at 247. “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Id.

DISCUSSION

I. The Plaintiffs failed to timely file an Failure to File Expert Affidavit

In South Carolina, a plaintiff in a legal malpractice action is required to file an expert affidavit as part of his complaint. S.C. Code §§ 15-36-100(B), (G)(2). This requirement protects professionals licensed by the State of South Carolina from frivolous claims. *See Hall v. Fedor*, 349 S.C. 169, 174, 561 S.E.2d 654, 656-57 (Ct. App. 2002) (plaintiff must generally establish standard of care by expert testimony). While an exception to the contemporaneous filing requirement exists when the statute of limitations will expire within ten days of filing the complaint, the plaintiff must nevertheless supplement the complaint with an expert affidavit within forty-five days of the date of filing. S.C. Code § 15-36-100(C)(1). If the plaintiff fails to file an expert affidavit within the specified period, “the complaint is subject to dismissal for failure to state a claim.” Id.

There can be little doubt that the expert affidavit requirement applies to this action. The Plaintiffs acknowledge as much in Paragraph 7 of the complaint, which purports to be filed “pursuant to S.C. Code § 15-36-100(c)(1). . . .” Since the Complaint alleges the statute of limitations was about to expire, § 15-36-100(C)(1) required the Plaintiffs to file an expert affidavit no later than September 29, 2011, forty-five days after the Complaint was filed. To date, more than five months after filing the Complaint, the Plaintiffs have still failed to file an expert affidavit. Accordingly, for their continuing disregard of the expert affidavit requirement,

it is only proper that the Falgione Defendants' Motion be granted and the Complaint be dismissed with prejudice for failure to state a claim.

II. Statute of Limitations

"The statute of limitations in a legal malpractice case is three years." S.C. Code § 15-3-530; Kimmer v. Wright, ___ S.C. ___, 719 S.E.2d 265 (Ct. App. 2011), *reh'g denied* (Dec. 19, 2011). "Under the discovery rule, the three-year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Id.* (internal quotations omitted). In Epstein v. Brown, 363 S.C. 372, 610 S.E.2d 816 (2005), the Supreme Court explained that reasonable diligence means,

an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party **might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full-blown theory of recovery developed.**

363 S.C. at 376, 610 S.E.2d at 818 (emphasis in original). Applying that understanding of the discovery rule to the facts of this case, it is apparent the Plaintiffs failed to commence their action within the statute of limitations.

In the Complaint, the Plaintiffs allege various acts of misconduct by Rakowsky and Falgione that culminated in the May 9, 2007 settlement. Perhaps most importantly, the Plaintiffs allege they refused to settle the case, despite their attorneys' attempts to coerce them. That the Plaintiffs were present in the courtroom on May 9, 2007, and saw their attorneys settling their case on the record cannot be ignored. If the Plaintiffs did refuse to settle, as they allege, then surely they were on notice that day of a malpractice claim.

To the extent the Plaintiffs contend they did not believe the settlement was final at that time, certainly they understood the finality of the settlement weeks later, when they began

inundating the Court with letters requesting to vacate the settlement and reopen the case. According to Judge Harwell's July 3, 2007, Order,² many of the grounds for relief in those letters are the same ones the Plaintiffs allege in this action: (i) fraud designed to coerce the Plaintiffs to settle; (ii) misrepresentation of evidentiary rulings the court had made or was going to make; (iii) poor legal advice concerning an Offer of Judgment; and (iv) the Plaintiffs' disagreement with the settlement. S. Holdings, Inc. v. Horry County, 4:02-cv-1859-RBH, 2007 WL 1960590 at *2 (D.S.C. July 3, 2007).

Importantly, with respect to the evidentiary rulings, the Court clearly stated in that Order that he reserved ruling on those issues until the next day, at which time the court was advised the case had settled. S. Holdings, Inc., 2007 WL 1960590 at *1 n.3. Furthermore, the Court wrote, "In the event there was any breach of the standard of care owed by Plaintiffs' attorneys to the Plaintiffs as a result of alleged coercion, improper inducement, fraud, or inadequate representation, Plaintiffs have an available remedy for damages against their own attorneys." 2007 WL 1960590 at *4. Considering these facts, it strains credulity for the Plaintiffs to contend they had no notice of their claims until August of 2008.

Based solely on the allegations in the Complaint, the Plaintiffs were aware on May 9, 2007, of facts giving rise to their claims. Even assuming a person of common knowledge would not have been on notice of a malpractice claim after watching his attorneys settle his case without consent, the Plaintiffs' cannot deny that Federal Court issued its July 3, 2007 Order only because the Plaintiffs voiced serious concerns about the manner in which their attorneys handled the Underlying Case. At the absolute latest, the three-year clock began to run in July of 2007.

² While this Court need not rely on this document to dispose of this Motion, the Court may consider the orders of the District Court for the Underlying Case because they are incorporated into the Complaint and they are public records.

Accordingly, since the Plaintiffs filed the Complaint on August 15, 2011, more than three years later, their claims are barred, and the Complaint should be dismissed with prejudice.

III. Untimely Service of Process

In addition to the grounds discussed above, this Court should dismiss the Plaintiffs' case because they failed to serve the Summons and Complaint within the period set forth in Rule 3(a), SCRCP. This rule provides, "A civil action is commenced when the summons and complaint are filed with the clerk of court . . . if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing." Rule 3(a)(2), SCRCP. This time limitation is consistent with S.C. Code § 15-3-20, which provides:

- (A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.
- (B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing.

"If a plaintiff files but fails to make actual service upon the defendant the action has not yet commenced." Blyth v. Marcus, 322 S.C. 150, 154, 470 S.E.2d 389, 391 (Ct. App. 1996). "Therefore, because the statute of limitations period continues to run, unless the plaintiff can correct this 'failed' commencement before expiration of the limitations period, the claim will normally be time barred." Id. (citing McLain v. Ingram, 314 S.C. 359, 360, 444 S.E.2d 512, 513 (1994)).

The Plaintiffs in this case filed the complaint on August 15, 2011. On December 15, 2011, more than one hundred twenty days after the complaint was filed, a process server walked into Falgione's office and gave a temporary employee, Julie Owens, a copy of the summons, which bore no file stamp, and a copy of the complaint, which bore a file stamp. *See* Rule 5(d),

SCRCF (summons and complaint must be filed, and then served). By rule, the deadline for service was December 13, 2011. Thus, the Plaintiffs failed to timely serve the summons and complaint, and this action should be dismissed with prejudice.

IV. Insufficient Service of Process

Finally, the complaint should be dismissed because the Plaintiffs have not yet properly served the Summons and Complaint. Instead, the Plaintiffs attempted to serve Falgione and the Law Firm by delivering a copy of the Summons and Complaint to a temporary employee, who had no authority—actual, implied, or apparent—to accept service of process. In a recent decision, the Supreme Court of South Carolina recognized,

The class of persons authorized to sign on behalf of defendants is narrow: “Actual appointment for the specific purpose of receiving process normally is expected and the mere fact a person may be considered to act as defendant’s agent for some purpose does not necessarily mean that the person has authority to receive process.” Service on an employee is effective when the employee has apparent authority to receive it on behalf of the employer.

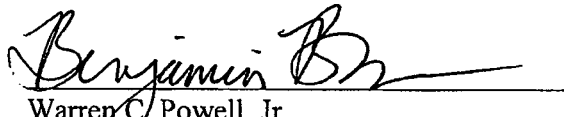
Graham Law Firm, P.A. v. Makawi, Op. No. 27086, 2012 WL 130671 (S.C. Jan. 17, 2012) (quoting Moore v. Simpson, 322 S.C. 518, 473 S.E.2d 64 (Ct.App.1996)). The Makawi court relied in part on Roberson v. S. Fin. of S. C., Inc., 365 S.C. 6, 615 S.E.2d 112 (2005), a case in which the plaintiff attempted service by certified mail. In Roberson, a clerical employee of the defendant signed the return receipt, and the defendant failed to answer and the trial court entered a default judgment. 365 S.C. at 8-9, 615 S.E.2d at 114. The defendant/employer moved to set aside the judgment under Rule 60(b), but the court denied the motion. 365 S.C. at 9, 615 S.E.2d at 114. On appeal, the Court noted that the employee testified she was never authorized to accept service of process. Id. (“[A]n agent has no implied authority unless she herself believed she had such authority.”). Reversing the trial court, the Supreme Court held there was no evidence on the record that the defendant/employer had manifested that the employee was its

agent for service of process, nor was there any evidence that the employee had actual or implied authority to act as the defendant's registered agent. 365 S.C. at 11, 615 S.E.2d at 115.

Similarly in this case, there is no evidence that Julie Owens, the temporary clerical employee who received the Summons and Complaint, was authorized to accept service of process for either Falgione or his law firm. To the contrary, the Affidavits of record demonstrate that Ms. Owens never had authority to accept service of process. Therefore, the Plaintiffs have failed to properly serve the Falgione Defendants in accordance with the South Carolina Rules of Civil Procedure, and the Complaint should be dismissed pursuant to Rule 12(b)(5), SCRCPP.

V. Conclusion

Based upon these several grounds, the Falgione Defendants seek dismissal of the claims against them. Not only have the Plaintiffs have failed to file the required expert affidavit, they also failed to commence their action within three years of the May 9, 2007, hearing, at which they watched their case being settled without their consent. Furthermore, dismissal is appropriate because the Plaintiffs' failed to timely and properly serve the summons and complaint pursuant to the South Carolina Rules of Civil Procedure. Although the Plaintiffs are appearing in this action *pro se*, these Rules and statutes still apply with full force.



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*

January 25, 2012

Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on January 25, 2012, 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: **MEMORANDUM IN SUPPORT OF DEFENDANTS ADRIAN L. FALGIONE; AND THE LAW OFFICES OF ADRIAN FALGIONE, LLC'S MOTION TO DISMISS**

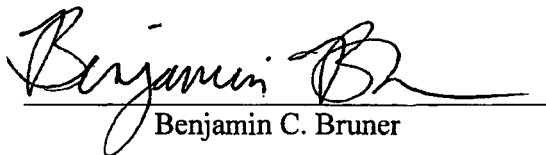
Parties served:

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David W. Overstreet
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Charleston, South Carolina 29401
Attorneys for John R. Rakowsky

RICHLAND COUNTY
FILED
2012 JAN 27 PM 1:28
JEANNETTE W. MCBRIDE
C.C.P. & G.S.


Benjamin C. Bruner

- I. I am familiar with the standard of care applicable to lawyers who litigate before the state and federal courts in South Carolina, and the *applicable rules of procedure and evidence that apply*. I am also familiar with the standard of conduct applicable to lawyers who engage in complex litigation in South Carolina.
 - J. I have attached a copy of my curriculum vitae, which further outlines my education, training and work experience.
3. My opinions in this matter are based upon the facts presented to me by Plaintiffs' counsel, as well as my own review of the following material:
- A. The following docket entries in Southern Holdings, Inc., et al., vs. Horry County, et al., Case No: 4:02-cv-01859-RBH:
 1. Complaint, entered May 29, 2002, (Dkt. # 1);
 2. Transcript of May 8, 2007, evidentiary hearing. (Dkt. #481) entered May 31, 2007.
 3. Transcript of May 9, 2007, trial. (Dkt. # 482) entered May 31, 2007.
 4. Letters and attachments from *Pro Se* Plaintiffs to the Court requesting relief dated beginning, June 1, 2007. (Dkt. #s 483, 484, 485, 486, and 487.)
 5. Defendant John Rakowsky's letters dated May 17, 2007, describing the events of the evidentiary hearing held on May 8, 2007. (Dkt. #s 483, 484, 485, 486, 487, and 519.)
 6. Defendants Rakowsky and Falgione's response to *Pro Se* Plaintiffs' letters to the Court, on June 14, 2007. (Dkt. #493).
 7. Plaintiff Doris Holt's motion to set aside judgment June 22, 2007. (Dkt. #500)
 7. Court Order, July 3, 2007. (Dkt. # 510).
 8. Defendant Falgione's July 10, 2007, motion to withdraw. (Dkt. #516).
 9. *Pro Se* Plaintiffs' Motion for Clarification July 12, 2007. (Dkt. #519).
 10. Defendant Rakowsky's motion to withdraw, July 13, 2007. (Dkt. #525).

11. *Pro Se* Plaintiffs' motion in opposition to Defendant Rakowsky's withdrawal and request for Court Order for Rakowsky to return case files and assist in finding replacement counsel, July 30, 2007. (Dkt. #551).
 12. *Pro Se* Plaintiffs motion in opposition to Defendant Falgione's withdrawal and request for Court Order for Falgione to return case files and assist in finding replacement counsel, July 30, 2007. (Dkt. #554).
 13. Court Order denying Plaintiffs' motion for clarification, January 14, 2008, (Dkt. #577).
 14. Plaintiffs' motion for reconsideration of clarification. January 31, 2008. (Dkt. #582).
 15. Plaintiffs' motion to recuse Judge, March 10, 2008, (Dkt. #612).
 17. Plaintiffs' second motion for clarification and recusal of Judge, August 5, 2008, (Dkt. #659 and 662).
 18. Court Order denying Plaintiffs' motion for Reconsideration of clarification, (Dkt. # 665).
 19. Court Order denying recusal, August 13, 2008. (Dkt. #668).
- B. *The Complaint in Southern Holdings, Inc., et al. v Horry County et al*, 4:02-cv-01859-RBH, filed May 22, 2002 and signed by Michael Goldberg and John W. Carrigg, Jr., for the several parties, including the Plaintiffs, which stated Fifteen causes of action, including violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) – 18 U.S.C. § 1961, all of which support claims for actual, punitive or treble damages.
- C. The appearance motions of John Rakowsky, December 3, 2002, (Dkt. # 57), and Adrian Falgione, November 15, 2006, (Dkt. # 287).
- D. The ECF access and filing records pertaining to Case No. 4:02-cv-01859-RBH.
- E. The Pacer access and billing records pertaining to Case No. 4:02-cv-01859-RBH.

- F. Document #668, including, but not limited to, pg. 5 of 7, August 13, 2008, in which the Judge denies, for the first time, statements made by Defendant Rakowsky and Defendant Falgione regarding the pivotal evidentiary hearing of May 8, 2007 to the Plaintiffs, concerning the Court rulings against the Plaintiffs' evidence and the contents depicting the events described in the May 17, 2008, Defendant Rakowsky's letters, concerning the dismissal of the Plaintiffs' evidence and the admission of the Defendants' evidence by the Court.
- G. John Rakowsky's Interpleader Complaint, dated December 3, 2010, (Case No. 2008-CP-40-6656) including, but not limited to, Point 8 in the Interpleader Complaint, in which Defendant Rakowsky states that he and Defendant Falgione were the last two counsels added by the Plaintiffs in Case No. 4:02-cv-01859-RBH.
- H. Resolution Settlement Corporation's bank account records and John Rakowsky's bank account records.

4. These factual and legal materials are of the type reasonably relied upon by experts, in the field of legal malpractice, in forming opinions.

5. Based upon my experience, education, training, knowledge of the standard of care for lawyers, and review of the above-listed materials, it is my opinion that the Defendant John Rakowsky, Esquire, Defendant Adrian Falgione Esquire and The Law Firm of Adrian Falgione, engaged in negligent acts and omissions, in their representation of the Plaintiffs, in the underlying matters in Southern Holdings, Inc., et al., vs. Horry County, et al., Case No: 4:02-cv-01859-RBH, filed in Federal District Court, State of South Carolina, Florence Division, including the following:

- A. Failure to provide competent representation;
- B. Failure to provide diligent representation;

- C. Failure to adequately and reasonably communicate with the *Plaintiffs*;
- D. Failure to reasonably expedite litigation;
- E. Failure to provide candid communication with the *Plaintiffs* or the Court;
- F. Failure to meet filing deadlines causing the majority of the *Plaintiffs'* damages and evidence of the torts to be ruled inadmissible;
- G. Failure to abide by a duty to advise the *Plaintiffs* truthfully about *circumstances of a key evidentiary hearing*, that resulted in termination of the federal case, with prejudice and a settlement for the *Plaintiffs*, without the consent of the *Plaintiffs*, who were both under coercion and duress by Defendant Rakowsky, Defendant Falgione and the Falgione Law Firm, to preliminarily accept an settlement without one dollar of financial benefit to the *Plaintiffs*, under terms dictated by the opposing parties and the presiding judge according to Defendants;
- H. *Failure to abide by the duty of honesty owed to the Plaintiffs*;

- I. Failure to make reasonable efforts to ensure that the co-counsels *had in effect measures, giving reasonable assurance that all* lawyers conformed to the Rules of Professional Conduct.
- J. Neglect of legal matters, provided incompetent representation, failed to adequately and reasonably communicate with the Plaintiffs, failed to expedite the litigation, failed to provide candid communication about the matters under representation, and failed to abide by the duty of honesty owed to the Plaintiffs;
- K. Failure to abide by an adequate attorney-client relationship, where there was no appropriate termination, as contemplated by Rule 1.16, of the South Carolina Rules of Professional Conduct (“RPC”), Rule 407, SCACR;
- L. Defendants took on complex litigation in Federal District Court, involving civil RICO claims, without requisite experience which Defendants are now believed to have little or no experience in (the Defendants refuse to reveal their claimed extensive experience), experience Defendants misrepresented to the Plaintiffs they had as *they sought to take on the litigation on behalf of the Plaintiffs;*
- M. Defendants have refused to provide a proper accounting of their use of Plaintiffs' litigation funds as required under the RPC and it

is now known that Defendants violated the RPC by depositing
litigation funds into a non-trust personal bank account; and

N. Defendants Rakowsky and Falgione admitted acts of malpractice took place, but wrongfully misled Plaintiffs into believing Defendants.

6. In particular, lawyers in South Carolina are required to conform to the Rules of Professional Conduct ("RPC"). *Cf.* Rule 5.1(c), RPC, Rule 407, SCACR.¹ This duty includes making sure co-counsel is in compliance with the RPC. The duty also includes taking appropriate remedial measures when a lawyer discovers a lawyer engaged in behavior that violates the RPC and injures a client. The duty also includes, providing the client with sufficient information regarding the status of the matter, and adequately advising the client of available options, including consulting other counsel. Additionally, the Defendants failed to report the Professional Misconduct, as required under Rule 8.3, RPC.

7. Furthermore, lawyers in South Carolina are expected to exhibit a

¹ Since the Rules of Professional Conduct ("RPC") establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct. Scope, RPC, Comment [7], Rule 407, SCACR. Experts may also rely upon the RPC in expressing opinions about whether a lawyer accused of malpractice has violated the standard of care required by lawyers, where the Rule is designed to protect a person in the plaintiff's position or addresses a particular harm. *Smith v. Haynsworth, Marion, McKay & Geurard*, 322 SC. 433, 472 S.E.2d 612 (1996). Accord *McNair v. Rainsprad*, 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998) (violation of the RPC is merely a circumstance that, along with other facts and circumstances, may be considered in determining whether the attorney acted with reasonable care). Hence, this report references the RPC where a provision relates to negligent conduct.

minimum level of competence and diligence in their representation of clients. Cf, Rules 1.1 and 1.3, RPC. This includes the legal knowledge, skill, thoroughness and preparation, reasonably necessary for the representation. As the Supreme Court has declared:

"An attorney, who contracts to prosecute an action on behalf of his client, impliedly represents that he possesses the requisite degree of learning, skill and ability, which is necessary to the practice of his profession; that he will exert his best judgment in the prosecution of the litigation entrusted to him; and that he will exercise reasonable and ordinary care and diligence in the use of his skill and in the application of his knowledge to the cause of his client. This requires that an attorney should with reasonable diligence and dispatch prosecute his client's cause."

Norris v. Alexander, 246 S.C. 14, 18, 142 S.E.2d 214, 217 (1965).

By negligently misunderstanding the instructions of the Federal District Judge, regarding his "required dismissal of the unrepresented Defendants" by the Plaintiffs, the Defendants caused both the Court and the Plaintiffs to have a settlement imposed on them in this case. It is my opinion that the Defendants exhibited a total lack of competence and diligence, expected of lawyers in South Carolina, and the Defendants' negligence, taken in the best light, was a violation of the standard of conduct and standard of care.

8. It is my opinion that the Defendants' conduct fell below the acceptable standard of conduct, by failing to allow for sufficient, competent counsel and in that regard, Defendants required the Plaintiffs to independently perform their own legal work and to facilitate this, the Defendants both wrongfully provided confidential

Federal Electronic Case Filing (Federal ECF) system entry passwords to the Plaintiffs and also required the Plaintiffs to directly enter lay work product onto the Federal ECF system, without Defendants reviewing it, thereby jeopardizing the Plaintiffs' case. *Cf.* Rule 1.1, RPC. Thereby, the Defendants again failed, in their obligation to give straightforward advice and honest assessments about the case, to the Plaintiffs. *Cf.* Rule 2.1, RPC. The Defendants had the Plaintiffs do the work of counsel and Defendants signed off on the work of non-attorneys, plagiarizing the Defendants lay work as Defendants own.

9. It is my opinion that the Defendants also breached their duty to expedite this litigation, consistent with the interests of the Plaintiffs, *Cf.* Rule 3.2, RPC and failed in their responsibility to provide zealous advocacy for the Plaintiffs, as stated in the preamble to the RPC.

10. By engaging in dilatory practices, the Defendants caused the District Court to settle the case, with prejudice and without the consent of the Plaintiffs, which resulted in a settlement; economically unjustified by any standard under the circumstances, as the Plaintiffs received not one dollar of compensation for their damages and the only money from the settlement would go to the Defendants. This judgment(s) was/were entered without a trial on the merits of the claims, but was/were based entirely upon the Defendants' negligence, acts and omissions. No competent lawyer, acting in good faith, would regard the course of action and/or inaction

engaged in by the Defendant-attorneys, as having any substantial purpose, than taken in its best light, as negligence and inattention to the matter.

11. The Defendants' conduct also fell below the acceptable standard of conduct, by not engaging in adequate discovery, in preparation for complex litigation.

It is my opinion that the Defendants breached their duty to make a reasonably diligent effort to force the opposing parties, in the underlying case, to comply with the Plaintiffs' discovery requests and hold opposing Counsels to the standards under Rule 3.4, of the RPC. The minimum standards of conduct mandate that lawyers comply with discovery rules, and orders directing such compliance. E.g. Samples v. Mitchell, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1998) (discussing the duty to abide by discovery rules); Downey v. Dixon, 294 S.C.42, 362 S.E.2d 311 (Ct. App. 1987) (noting that the rights of discovery provided by the Rules give the trial lawyer the means to be prepared for trial). By failing to abide by the minimum standards required for conducting discovery and to compel discovery, Defendants' conduct fell below the required standard of conduct for lawyers in South Carolina, and that breach of the standard contributed to the pseudo settlement of the Plaintiffs' underlying lawsuit and the entry of judgment by the Defendants, without the Plaintiffs' consent.

12. It is my opinion that the Defendants also breached the standards of conduct expected of a lawyer in South Carolina, by failing to communicate with the Plaintiffs or preserve the Plaintiffs' ability to challenge the evidentiary orders,

purportedly made by the Court. Defendants did not discuss any further options for challenging the evidentiary Orders, such as a motion to set the Order aside or an appeal of that Order.

13. It is my opinion that the Defendants breached the standards of conduct expected of a lawyer in South Carolina, by essentially abandoning their representation of the Plaintiffs in the Federal Case of Southern Holdings, Inc., et al., vs. Horry County, et al., Case No: 4:02-cv-01859-RBH Federal, after lying to the Plaintiffs as to the evidentiary rulings, not providing Plaintiffs the opportunity to seek a second opinion, not providing the Plaintiffs the opportunity to obtain competent representation, not preserving the Plaintiffs' rights to appeal and withholding the Plaintiffs' case files from the Plaintiffs. *Cf*, Rule 1.16, RPC.

14. It is my opinion that the Defendants breached the standards of conduct expected of a lawyer in South Carolina by engaging in conduct that amounted to a conflict of interest, when the Defendants conspired to misinform Plaintiffs about evidentiary rulings, the Court never made and to take any reasonable steps to prevent or remedy the Defendants lies about the purported Court evidentiary rulings.

15. As a result of the above stated facts, it is my opinion that the Defendants' conduct fell below the standard of care, competence, diligence, honesty and communication expected of lawyers in South Carolina.

16. The opinions in this affidavit are given to a reasonable degree of certainty and are based specifically on the materials discussed above. I reserve the right to alter, amend, modify, reduce, or expand these opinions if and when additional information is presented for my review.

FURTHER AFFIANT SAYETH NOT.

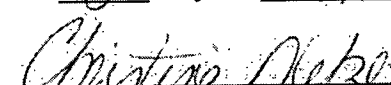


Aimee Zimroczek, Esquire

State of South Carolina
County of Richland

Sworn to and subscribed before me

This 8th day of February, 2013



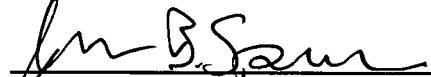
Notary Public for South Carolina

My commission expires: 9/25/16

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

By:

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

James B. Spencer, *Pro Se*
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PROOF OF SERVICE

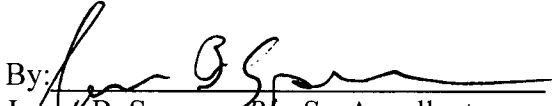
The undersigned hereby certifies that on , the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail and/or delivery by courier on this date July 8, 2016.

Documents served: **Record On Appeal, Volume I**

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