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RECEIVED

JUL 25 2016
SC Court of Appeals

July 25, 2016

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

Re: *Rakowsky v Falgione, LLC, Spencer, Holt, et al.*
Appellate Case No: 2014-002029

Dear Ms. Kitchings:

Appellants are at an unnecessary impasse with Respondent Rakowsky in attempting to finalize the Record for appeal. In Ms. Ballard's July 22, 2016 letter to you, she insists that the Appellant do the impossible in creating the Record while she refuses to review or discuss the Appellants' inquires to her to complete the record to her "satisfaction." As just one example take point one below. After completing a second Record, Ms. Ballard suddenly, for the first time, admits her original designation in point one was incorrect and that the Appellants were correct. However, instead of pointing this out as a designation error by Ms. Ballard, she wants the case dismissed because the Appellants failed to insert what she previously claimed was incorrect into the new record.

Likewise, the Appellants have asked her to review and comment on four additional items she claimed were missing from the Record in a letter dated May 19, 2016. See items two through five below.

1. "Form Order of December 17, 2013, signed by Judge Barber." *There was no such Order issued or signed by Judge Barber. In Respondent's motion to dismiss, he identified this order as signed by Judge Manning. Instead of amending their designation of matter to show they wanted to include an Order signed by Judge Manning, Ms. Desa Ballard sought to hold the Appellant*

responsible for not putting an improperly designated order into the record. On March 22, 2016, Respondent again submitted to the court a request to include the same mistaken item as "Item 1. Form Order of December 17, 2013 signed by Judge Barber, Case No. 2008-CP-40-6656."

2. "Form 4 Order of Judge Early dated September 10, 2014. Appellant has asked Respondent to supply this document; however, there is no record of it at the Courthouse or as even being in existence. **(See Exhibit B attachment A)** Appellant believes that Respondent actually designated the Order filed on June 27, 2014 which is the Order referenced by the Supplemental Order from point 3 immediately below in an email dated September 10, 2014. Respondent did not reply to the letter delivered by courier attached hereto as Exhibit B. Despite Ms. Desa Ballard's claim, that it was not in the Appellant's Record, **it clearly was** despite the Respondent's misdesignation.
3. "Form 4 Order of Judge Early (re: Omnibus Emergency Motions filed September 11, 2014.)" **See Record Page 13.** This "Supplemental Order" is an order signed by Judge Early that matches the September 11, 2014 date confirmed by the Clerk of Court's Record. Despite Ms. Desa Ballard's claim, it was not in the Appellant's Record, **it clearly was.**
4. "Form 4 Order recorded December 30, 2014 re: Final Order Granting Interpleader." **See Record Page 26.** The Appellant can find no such Order to match the date given by Ms. Desa Ballard. However, there is an Order entitled THE FINAL ORDER GRANTING INTERPLEADER that matches the title provided by Ms. Desa Ballard. Despite Ms. Desa Ballard's claim, that it was not in the Record, **it clearly was.**
5. "Reply to Counterclaims to Second Amended Complaint for Interpleader, filed February 18, 2011." Appellant requested confirmation on this designation due to the simple fact Respondent's counterclaims were not first filed by Appellant until August 29, 2011 and the Reply to the counterclaims could not have been written seven months prior to their submission **(See Exhibit "B")**. However, Respondent again failed to respond.

The Appellants want to cooperate in completing the record in any way possible but it requires the cooperation of the Respondent's counsel. If Respondent continues, her pattern after each point she accedes to she will seek a dismissal and

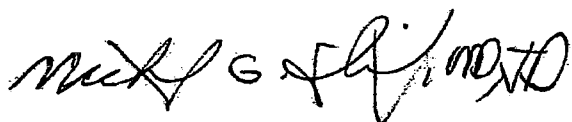
then want a new Record. Appellants respectfully ask the Court to stop this continual delay tactic. Ms. Ballard will not even acknowledge documents listed below that are in the Record despite the fact they were listed incorrectly in her designations.

Therefore, based on the foregoing the Appellants humbly request the Court to reinstate the Appeal and in so doing deny the Respondent's motion to dismiss. Furthermore, the Court have the Respondent to supplement the Record by submitting the documents she claims are missing and address the apparent misdesignation in item five.

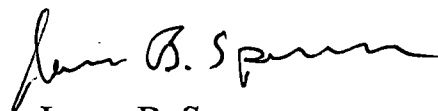
Enclosed please find the original and (6) copies of this letter for the Court.

Respectfully submitted,

Sincerely,



Michael G. Sribnick, MD, JD
Attorney for Irene Santacroce, Rodeny Lail,
Estate of Doris Holt



James B. Spencer
Pro Se Appellant

Attachment

Cc: Desa Ballard, Esquire

EXHIBIT "B"

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

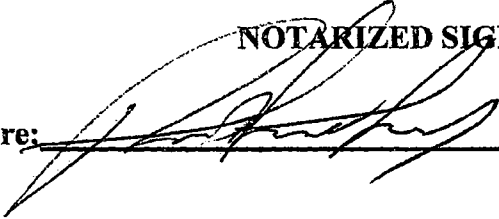
AFFIDAVIT OF ROBERT H. WADLEY

PERSONALLY APPEARED before me the undersigned Robert H. Wadley who after being duly sworn states the following as being true based on his personal knowledge:


- 1. I am currently over eighteen years of age and competent to testify.
- 2. On May 19, 2016 I hand delivered the attached document to the offices of Desa Ballard at 226 State Street, West Columbia, 29169.
- 3. I have made numerous service deliveries to Ms. Ballard and/or Ms. Weissenstein over the past several years at this address.

AFFIANT FURTHER SAYETH NAUGHT

NOTARIZED SIGNATURE

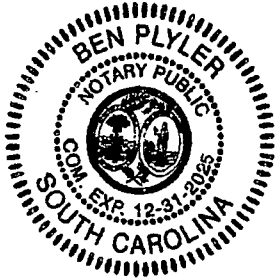
Signature: 

Subscribed and sworn before me, this 20th day of July of the year 2016.

Signature of Notary: 

Expiration date of Commission: 12-31-25

Notary Seal or Stamp



RAW

James B. Spencer
7001 Saint Andrews Road
Columbia, SC 29212
803-414-0889
JamesBSpencer@sc.rr.com

May 19, 2016

Desa Ballard, Esquire
Ballard and Watson, Attorneys at Law
PO Box 6338
West Columbia, SC 29171
Via Courier

Re: *Rakowsky v Falgione, et al.*
Appellate Case No.: 2014-002029

Dear Ms. Ballard:

I am trying to finish the record and make sure everything you have designated has been included. I would appreciate your help in clarifying certain matters.

First your designations of: "Form Order of December 17, 2013 signed by Judge Barber." You keep designated this even after I have informed you I can find no such order in the Clerk of Court's Office. Please see Attachment A to this letter. It simply does not exist by all records I can find. Please send me a copy and I will include it in the record.

Second your designations of: "Form 4 Order of Judge Early dated September 10, 2014." Please see Attachment A to this letter. I can find no document dated or signed September 10, 2014. Please provide me this document so I can include it in the Record.

Third your designations of: "Form 4 Order of Judge Early (re: Omnibus Emergency Motions filed September 11, 2014).

Fourth your designations of: "Reply to Counterclaims to Second Amended Complaint for Interpleader filed February 18, 2011." The *Pro Se* Appellant did not file any counterclaims until August 29, 2011. In order to ensure this is not an

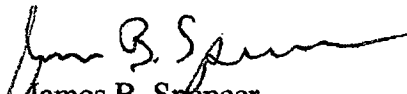
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oversight please confirm to me that you are not actually wanting your response to the Counterclaims filed by the Appellant which was not given by Respondent until the hearing on May 7, 2012. See Attached Document B.

Fifth your designation of: August 7, 2014 letter to *Pro Se* Appellant.

I await your response so I can add the documents you want to add irrespective of the apparent misdesignations by the Respondent.

Sincerely,


James B. Spencer
Pro Se Appellant

Attachments.

Cc: Michael Sribnick, MD, JD

RHW

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RICHLAND COUNTY CLERK OF COURT RECORDS

Rakowsky, John R	SC Court of Appeals Order Partial Remittitur	Order		08/05/2015-14:18	
Rakowsky, John R	Certificate Of Service	Filing		12/29/2014-16:47	12/23/2014-16:47
Rakowsky, John R	Order/Order Filing Fee	Filing		12/23/2014-09:57	12/23/2014-09:57
Rakowsky, John R	Affidavit Of Service on James Spencer	Filing		11/13/2014-11:16	12/23/2014-11:16
Spencer, James	Response in Opposition to Government Defendants and Plaintiff	Filing		11/07/2014-16:45	12/23/2014-16:45
Spencer, James	Response to Plaintiffs Draft Order and Attached Suggested Or	Filing		10/30/2014-14:35	12/23/2014-14:35
Spencer, James	Judicial Notice to The Court and Request For The Interventio	Filing		10/27/2014-15:14	12/23/2014-15:14
Lail, Rodney Keith	Request For Clarification by Judge Early	Filing		10/06/2014-09:24	12/23/2014-09:24
Rakowsky, John R	Amended Certificate of Service	Filing		09/23/2014-14:09	12/23/2014-14:09
Rakowsky, John R	Form 4 Order Defendant's Omnibus Emergency Motions including	Order		09/11/2014-09:47	12/23/2014-09:47
Santacrocce, Irene	Response to Email From Judge Early	Filing		08/29/2014-14:50	12/23/2014-14:50
Rakowsky, John R	Certificate Of Service	Filing		08/28/2014-11:07	12/23/2014-11:07
Holt, Doris	Response to Notice of Motion to Dismiss or to Substitute Par	Filing		08/26/2014-09:24	12/23/2014-09:24
Rakowsky, John R	Amended Plaintiffs Response to "Omnibus" Motions	Filing		08/21/2014-14:35	12/23/2014-14:35

ATTACHMENT "A"

1 not supposed to be interpleaded and for ---

2 THE COURT: Well, and that won't be dealt with
3 prior to trial.

4 MR. SPENCER: Okay.

5 THE COURT: Because that won't be --- what you
6 will probably have to do is seek some sort of
7 frivolous action if, in fact, they're not there.

8 MR. SPENCER: That's part of our counterclaim.

9 THE COURT: All right. Well, that will have to
10 be decided in the whole picture.

11 MR. SPENCER: We have a motion to amend our
12 answer for a counterclaim and for a jury trial.

13 THE COURT: Well, I don't think it's for a jury
14 trial.

15 MR. SPENCER: All right. Our counterclaim ---

16 THE COURT: It's an equitable action.

17 And you have a proposed counterclaim?

18 MR. SPENCER: Yes, sir.

19 THE COURT: On the amended complaint?

20 MR. SPENCER: We have had an amended complaint
21 and counterclaim since August of 2011.

22 THE COURT: Have you seen the amended complaint?

23 MS. WEISSENSTEIN: Your Honor, I couldn't
24 understand what he just said.

25 THE COURT: He said that since August of 2011, he

RHW

1 had filed a motion to amend the answer and the
2 counterclaim and when he did that, he submitted a
3 proposed answer and counterclaim, which is what you're
4 required to do. Are you going to fighting him on the
5 amendment? You're going to lose. Do you want to
6 fight him?

7 MS. WEISSENSTEIN: Your Honor, I believe that an
8 order of August 3rd, 2011 addressed that motion.

9 THE COURT: Let me see it.

10 MS. WEISSENSTEIN: I'm sorry?

11 THE COURT: Let me see it.

12 MS. WEISSENSTEIN: I don't have that with me
13 today, Your Honor.

14 THE COURT: Why wasn't it filed?

15 MS. WEISSENSTEIN: Because, Your Honor, I
16 believed that we were here to schedule the outstanding
17 motions and not litigate the issues.

18 THE COURT: We're here to determine the status of
19 the thing. I'm not litigating it, but you know as
20 well as I do, the rules liberally allows for amended
21 pleas, so you're probably going lose that.

22 What I'm trying to figure out is the if he
23 amends, when can they do the depositions and let's go
24 ahead and schedule the hearing on the merits of the
25 interpleader action.

RHW

1 MS. WEISSENSTEIN: Your Honor, if the --- this
2 action has been pending since 2008. He could have
3 moved for the depositions a long time ago, and we
4 would object to any further discovery at this point.
5 It's an interpleader action.

6 THE COURT: I don't care. We're going to give
7 him an opportunity to do it. We are going to give
8 everybody an opportunity to do what they need to do
9 before we go to a hearing, but we're going to schedule
10 a hearing. If they don't do it before we go to the
11 hearing, then they're going to give up their right to
12 do it. I want to get the issues framed so that
13 everybody knows what it is we're talking about when we
14 go to a hearing.

15 What you need to do is consent to his amending
16 the answer and the counterclaim, let's get on with
17 that. Find out when it is he can take these
18 depositions, let's get on with that and schedule a
19 hearing.

20 MS. WEISSENSTEIN: All right, Your Honor. We'll
21 consent to him filing his amended.

22 THE COURT: All right, they're consenting to
23 allow you to amend your answer and counterclaim, so
24 get them filed and get them served.

25 MR. SPENCER: Yes, sir.

RHW