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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No: 2014-002029

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

John R. Rakowsky, *Respondent*

v.

James Spencer, *Pro Se, Appellant*

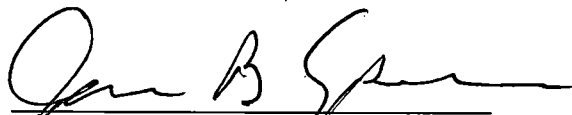
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AUG 28 2018

SC Court of Appeals

**Motion for Leave of the Court to Remand Due to
New Evidence and Fraud
Under Rule 60 (b)(2) & 60 (b)(3)**

By:



James B. Spencer, *Pro Se*

Suite 183

7001 Saint Andrews Road

Columbia, SC 29212

APPELLANT'S MOTION FOR LEAVE TO REMAND

Pro Se Appellant James Spencer submits the following motion for leave to remand this matter pursuant to Rule 60 of the South Carolina Rules of Civil Procedure ("SCRCP"). This motion documents key facts that were intentionally concealed from the Defendants during the pendency of this proceeding by the Respondent's counsels which clearly evidence a claim of fraud by Officers of the Court.

Background

Respondent commenced the Interpleader action below against Respondent Spencer on September 12, 2008. **(R. 42-50)** This action took place when Respondent Spencer requested the remainder of the litigation funds which were solely provided by Spencer through his own personal assets or through advances made solely to Spencer by third party financial organizations. **(R. 51-62).**

Respondent Rakowsky clearly failed to keep the required records documenting the funds received for expenses in the case required under SCRCP Rule 417. If Rakowsky had maintained the required accounting records, he would have known that the only funds that were provided directly or on behalf of Appellant Spencer, with no recourse to the financial provider, were the funds in question. This lack of record keeping was not a fault in any way of the Appellants.

Furthermore, before any settlement of a case takes place or even be agreed to in which the same attorney is representing multiple clients with different interests (under SCRPC, Rule 407 1.8(g) and South Carolina Federal Local Rule 83.I.08) an “informed consent agreement” is required to be signed by each client which puts in writing what each client would receive in the event of a lump sum settlement. Mr. Rakowsky and his counsels claimed they have such an executed agreement in their possession. However, they refused to present their client’s own agreement to them for inspection. They refused because admitting it does not exist is admitting to legal malpractice.

If they actually had such an agreement, there would not have been a need for an interpleader as all distributions would have been specifically described in the agreement. Likewise, there would not have been an appeal in the Federal District Court case. The Respondent and his counsels have claimed that the “informed consent agreement” is protected by attorney client privilege and therefore cannot be released. The Respondent and his counsels also claimed discovery was never authorized so the Appellants could not secure any such agreement through lawful discovery.

Timeliness and Jurisdiction

The Court issued its opinion in this case on July 25, 2018. This Rule 60 Motion for Leave to Remand is being filed within one year of the Appellate Court

Ruling of July 25, 2018, as required by Rule 60 of the SCRCP. The motion is timely, this Court retains jurisdiction as this motion is made before the Appellate Court issued a remitter.

Basis for Leave to Remand

Newly discovered evidence documents that officers of the Court, Ms. Desa Ballard, Esquire, Ms. Stephanie Weissenstein, Esquire, and Ms. Amanda K. Dudgeon, Esquire were involved in concealing documents and committing numerous acts of perjury, acts that were both confirmed and documented by the newly discovered evidence.¹ The nexus of this is the actual Court Order that was issued authorizing discovery by the Appellants which the above-named counsels conspired to conceal and actually denied its existence numerous times in acts of perjury and/or acts of fraud.² (See attached Exhibit A, Exhibit B and Exhibit C).

Case law is clear on this as documented in **Chewing v. Ford Motor Company:**

“The subornation of perjury by an attorney and/or the intentional concealment of documents by an attorney are actions which constitute extrinsic fraud. Contrary to perjury by a witness or a party's failure to disclose requested materials, conduct which constitutes intrinsic fraud,

¹ Within thirty days prior to the date of this motion.

² The presentation before Judge Addy cited herein, documents a clear pattern of actions involving these same officers of the court and two related cases, the case at bar and a legal malpractice lawsuit in both of which a written order authorizing discovery was issued which would have forced the production of the “informed consent agreement.” The Respondent and his counsels have both claimed to have and refused to release this informed consent agreement to the clients that were purportedly signatories to the agreement in both cases.

where an attorney - an officer of the court - suborns perjury or intentionally conceals documents, he or she effectively precludes the opposing party from having his day in court. These actions by an attorney constitute extrinsic fraud.....Accordingly, where an attorney embarks on a scheme to either suborn perjury or intentionally conceal documents, extrinsic fraud constituting a fraud upon the court occurs.”

Chewing v. Ford Motor Co., 354 S.C. 72, 82-84, 579 S.E.2d 605, 610-11 (2003)

In **Raby Constr., v Orr** the South Carolina Supreme Court found that:

“There is no doubt that a court of equity has inherent power to grant relief from a judgment on the ground of fraud. However, not every fraud is sufficient to move a court of equity to grant relief from a judgment. Generally speaking, in order to secure equitable relief, it must appear that the fraud was extrinsic or collateral to the question examined and determined in the action in which the judgment was rendered;”
Raby Constr., L.L.P. v. Orr, 358 S.C. 10, 19, 594 S.E.2d 478, 482 (2004)

**The Fraudulent Hiding by Respondents’ Counsels
of Chief Judge Barber’s order
Granting Discovery is a heinous violation of due process**

Respondent’s counsels untruthfully claimed discovery had not been authorized in writing and therefore was not allowed to be conducted by the Appellants. This claim is simply false. As an example, see **Exhibit A, Page 1, Exhibit B, page 4, point 14 (which lists the attorneys who knew about the “shadow order” authorizing discovery), Exhibit C, page 1, and Exhibit D, page 47, lines 11-14. Exhibit D** documents how Respondents’ Counsels Amanda Dudgeon and Benjamin Brunner intentionally acted to hide by not listing, the then, chief Judge Barber’s written order granting discovery (the “shadow order”) as part of their complete

listing of documents that were executed by Judge Barber presented during a hearing held before the Honorable Judge Addy.³ **Exhibit E** documents how many requests for discovery were wrongfully litigated “off the Court record” through email under the direction of Judge Early. **Exhibit E** is an attempt by the Appellant to put the email litigation into documentation through the Office of the Clerk of Court.

Applicability of Rule 60 of the SCRPC

Rule 60 of the SCRPC states until issuance of the remitter by the Appellate Court, leave of the Appellate Court can be sought to remand to provide relief from a judgment due to newly discovered evidence and/or fraud. In the case at bar, both these criteria have been met and a remitter has not been issued.⁴

This issue involving the “shadow order” could not have been previously raised as the order’s existence was unknown to the Appellants as it had been wrongfully/fraudulently concealed from them. The *Pro Se* Appellant has filed this motion to preserve the newly discovered issue documenting a violation of due process and fraud on the court for appeal in the event that the Court of Appeals does not alter its ruling on this case, **In re Timmerman**, 331 S. C. 455, 460, 502 S.E.2d 920, 922 (Ct. App. 1998).

³ Ibid.

⁴ See Rule 60 of the SCRPC including clarifying notes.

Summary

The elements for this Honorable Appellate Court grant leave to remand centers around the complete failure of procedural due process in part listed below:

1. No discovery was allowed even though Judge Barber, the then, Chief Judge, had approved it. Attorneys in the case colluded against the *Pro Se* Appellant and kept the order allowing discovery by the Appellants covered up and refused all requests for production of the “informed consent agreement.” (**R., p., 544, lines 17-25; R., p., 545, lines 1-11 and lines 16- 25; 546, lines 1-18.**)⁵
2. The interpleader filing became a necessity because Respondent Rakowsky did not know how to distribute certain funds left in his trust account. If he had executed the required “informed consent agreement”⁶ and kept the records

⁵ On April 3, 2012, attorneys Benjamin Bruner, Amanda Dudgeon, and Desa Ballard, along with their respective clients appeared for a joint hearing. Judge Barber held the hearing despite *Pro Se* Plaintiff Spencer not attending as he was hospitalized and *Pro Se* Santacroce did not attend as she is disabled and could not appear due to the physical distance from her home in Horry County. Judge Barber ordered discovery to continue irrespective of any outstanding motions. However, the ruling for discovery was concealed as the lawyers presented attachment **Exhibit A** as the order issued to the Plaintiffs while concealing the actual order **Exhibit B** that authorized discovery.

⁶ The required “informed consent agreement” documents both the settlement of the Federal District Court case and the division of the \$55,000.00 in funds amongst the attorneys’ individual clients with distinct causes of action.

which he was so required to keep as stated above, the Court and Rakowsky would have known how to handle the distribution of the \$55,000.00 awarded by the Federal Court. This dispute over the Appellants' claim that there was no required "informed consent agreement" and the Respondent and his lawyers claim there is would have been answered by Appellants' conducting discovery. Allowing discovery, was the absolute key to solving the issues underlying the appeal in Federal District Court and the distribution of the \$55,000.00 in this interpleader action. The failure of the court to grant discovery in this proceeding as ordered by Chief Judge Barber and as guaranteed under the due process clauses of the 5th and 14th amendments to the U.S. Constitution, led to the continuation of a fraud facilitated by the improper acts of certain officers of the Court which constitutes a clear and complete failure of due process.

3. There were other significant breaches of procedural and substantive due process presented in **Exhibit E** which are not the specific subject of this motion for leave under Rule 60 but also represent major violations of due process. The fact that Judge Doyet Early allowed Respondent's Counsel Ballard, to originate and draft all the significant orders issued without allowing Appellants to review, let alone comment on, the draft order is consistent with concealing the discovery order. Attorney Ballard proceeded

to issue the orders that she wrote out of her private email. This was done without the Clerk of Court having any record of the orders effectively issued by Ms. Ballard at that time nor opposition and reconsideration motions required to be done by email are other significant failures of due process.

Conclusion

The newly discovered evidence hidden by acts of fraud on the Court demonstrates the complete failure of due process that occurred at trial court and the fact that if the decision of this Court stands and there is, in fact, no written informed consent agreement, this Court will effectively reward Respondent for committing legal malpractice and fraud on this Court. This Court will encourage such actions by financially rewarding not only Respondent Rakowsky and his co-counsel Adrian Falgione but financially rewarding Rakowsky's counsel, Desa Ballard, (\$33,000.00) for her actions that advanced the fraud and concealed documents which denied Appellants' discovery (*emphasis added*). If Appellants had been granted their right to conduct discovery they would have clearly revealed the inappropriate actions of using an interpleader proceeding to conceal Respondent Rakowsky's legal malpractice and the interpleaders misuse of judicial process. Not allowing discovery through acts of fraud by officers of the Court clearly deprived the *Pro Se* Appellant of his due process rights.

Remedy

The *Pro Se* Appellant based on the newly discovered and documented fraud on the Court by officers of the Court which fraud acted to deny discovery respectfully asks this Court to amend its decision regarding awarding attorney's fees of (\$33,000.00) to Respondent's counsel and grant leave of the court to remand this case back with instructions to the Court for (1) Respondent Rakowsky to produce the original "informed consent agreement" he and his legal counsels claim to have to the Appellants and (2) return the sum of \$55,000.00 distributed *forthwith* to the *Pro Se* Appellant upon presentation to the Court of the agreement(s) of the Appellants to repay *Pro Se* Appellant Spencer who funded expenses which exceed \$55,000.00 by loans not listed with the court.

Submitted on August 28, 2018

By,



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

LAW OFFICES

CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

AMANDA K. DUDGEON

DIRECT DIAL NUMBER
843-266-8207

E-MAIL ADDRESS
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ATLANTA OFFICE

191 Peachtree Street, N.E.
Suite 3600
Atlanta, Georgia, 30303-1231
(404) 522-8220

REPLY TO SC OFFICE

June 29, 2012

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

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588

Re: James Spencer, *et al.* v John R. Rakowsky, *et al.*
Case No.: 2011-CP-40-5384
File No.: 2283-35025

Dear Mr. Spencer and Ms. Santacroce:

Enclosed please the Form 4 and Order dated June 14, 2012, issued by James R. Barber, III, regarding the above captioned case which resulted from the April 3, 2012 hearing. Judge Barber refused to include the provisions regarding additional discovery being allowed that you submitted to him in your draft Order as is obvious from the enclosed executed Order.

As you have been advised in both this case and Case No. 2008-CP-6656, you are not entitled to copies of the informed consent agreement executed by the Plaintiffs that resulted in the settlement of South Carolina Federal District Court Case No.: 4:02-CV-01859-RBH. This document is protected from disclosure by Attorney Client Privilege.

Furthermore, Judge Barber has refused to put in writing your request for additional discovery in either case. Under South Carolina law to be valid an Order must be in writing. No such Order for discovery has ever been issued in either case in writing.

Please feel free to contact me if you have any questions.

Sincerely,


AMANDA K. DUDGEON

AKD/bjg

FORM 4

JUDGMENT IN A CIVIL CASE

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

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

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;)
)
Plaintiffs,)

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

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

~~JUNE~~
May 14, 2012

Columbia, South Carolina

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

ORDER

2012 JUN 28 PM 2:25
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

RICHLAND COUNTY
 FILED

This matter came before the Court on April 3, 2012, on Defendant John R. Rakowsky's (hereinafter "Defendant Rakowsky") Motion to Dismiss, Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC's ("Defendant Falgione") Motion to Dismiss, and *Pro Se* Plaintiffs James Spencer and Irene Santacroce's (hereinafter "Plaintiffs") Motion to Disqualify.

BACKGROUND

1. Defendant Rakowsky filed a Motion to Dismiss the present Complaint on November 3, 2011.
2. Defendant Falgione filed a Motion to Dismiss the present Complaint on November 4, 2011.
3. The Court noticed Defendants' Motions to Dismiss for a hearing on January 31, 2012.
4. On January 25, 2012, Plaintiff Spencer filed a Motion for Continuance of the January 31, 2012 hearing. Plaintiff Spencer stated in his Motion that he had a medical

appointment scheduled for January 31, 2012. Plaintiff Spencer did not specify the nature or location of the appointment.

5. On January 30, 2012, the Court continued the motions scheduled for January 31, 2012, based upon Spencer's representations.

6. The Court rescheduled and noticed Defendants' Motions to Dismiss for a hearing on February 28, 2012.

7. On February 7, 2012, Plaintiff Spencer submitted to the Court correspondence dated February 1, 2012, from Sarah W. Book, MD, Associate Professor of Psychiatry and Behavioral Sciences at the Medical University of South Carolina. In that letter, Ms. Book stated "If possible, I believe it would be best for Mr. Spencer's health if any hearing that he is involved in is postponed for the next two months."

8. Based upon Dr. Book's letter, Spencer requested protection from appearing in Court until after April 1, 2012 due to health reasons.

9. Relying on Spencer's representations and Dr. Book's letter, the Court continued the February 28, 2012 hearing, granted Spencer protection from court until after April 1, 2012, and noticed the hearing for April 3, 2012.

10. On March 27, 2012, Plaintiffs (including Spencer) filed an Expedited Motion to Disqualify Defendant Rakowsky's attorneys Amanda Dudgeon and Andrew Countryman.

11. On March 29, 2012, a telephone status conference was held in which the following individuals participated: Judge James R. Barber, III; Benjamin C. Bruner, as counsel for Defendant Falgione; Amanda K. Dudgeon, as counsel for Defendant Rakowsky; Plaintiff Spencer; and Plaintiff Santacroce. In the telephone conference, the parties were advised that Plaintiffs' Motion to Disqualify would be heard, at Plaintiffs' request, on April 3, 2012, at 9:00

am and that Defendants' Motions to Dismiss would be heard as scheduled on the roster on April 3, 2012, at 11:00 am.

12. On April 2, 2012, at 5:17 pm, one day before the scheduled hearings, Plaintiff Spencer emailed the Court and stated he was not able to attend the hearings in the morning. He likewise provided what appeared to be an April 2, 2012, notice of Robert Holt's¹ appointment at the Medical University of South Carolina in Charleston, South Carolina, with Dr. Book for April 3, 2012. The notice did not include any time for the appointment, but did include "due to emergency" in handwriting.

13. Plaintiff Santacroce forwarded to the Court correspondence indicating she did not plan to attend the hearings. She did not request a continuance.

14. On April 3, 2012, attorneys Benjamin Bruner, Amanda Dudgeon, and Desa Ballard, along with their respective clients, appeared for the scheduled hearings. Neither Plaintiff appeared for the hearing.

15. The counsel and parties who were present proceeded to chambers to attempt to contact Plaintiff Spencer and Plaintiff Santacroce by telephone.

16. Plaintiff Spencer did not answer when called at the telephone number on file with the Court.

17. However, Plaintiff Spencer did answer the telephone when called at (803) 414-0889. The undersigned advised Plaintiff Spencer that he could not continue to request continuances of the hearings, which had been scheduled three times.

18. Plaintiff Spencer agreed that the Court may discuss Spencer's medical condition with his medical providers to determine a schedule for this action.

¹ Upon information and belief, Robert Holt is Plaintiff Spencer's alias.

RULINGS

1. Plaintiff Santacroce's Motion to Disqualify is denied.
2. The hearings on Plaintiff Spencer's Motion to Disqualify, Defendant Rakowsky's Motion to Dismiss, and Defendant Falgione's Motion to Dismiss are continued.

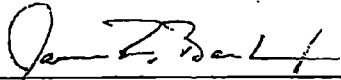
3. The continuances and other rulings by this Court shall have no effect on discovery in this case, which may proceed without delay.

4. Any future request for a continuance by any Plaintiff must be supported by a properly executed affidavit of a licensed medical professional unequivocally opining that the Plaintiff is not capable of attending the scheduled hearing or proceeding. If the Plaintiff's request for a continuance is not supported by such an affidavit, the request shall be denied.

5. If any Plaintiff shall again fail to appear at any hearing or proceeding in this action without good cause, that Plaintiff's claims shall be dismissed with prejudice.

6. In addition, if any Plaintiff unnecessarily delays this case further, Defendants may seek sanctions.

IT IS SO ORDERED.



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

Columbia, South Carolina

This 14 day of JUNE, 2012.



**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

May 21, 2012

Via U.S. Mail
Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588

Re: Rakowsky v Falgione, et seq.
Case No: 2008-CP-40-6656

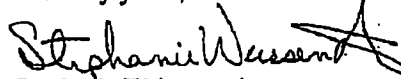
Dear Ms. Santacroce:

I am in receipt of your request for the executed consent agreement in writing you signed under Rule 407 1.8 (g) that resulted in the settlement of the Federal District Court Case No: 4:02-cv-01859-RBH. As you have previously been informed, this consent agreement is protected by attorney-client privilege and, therefore, both ethically and legally cannot be released. Furthermore, Judge Seal appropriately quashed the subpoena issued by Defendant Spencer which requested substantially similar information and pursuant to the oral ruling of Judge Barber, based on Judge Seal's decision, that discovery is both not necessary and also inappropriate for both this action and Case No.: 2011-CP-40-5384.

On April 3, 2012 and May 14, 2012, two status conferences were held at which Judge Barber ruled from the bench that both cases herein need to be quickly resolved. Judge Barber never issued a written order for discovery to be allowed to be conducted in either case and discovery has to be authorized in a written order which never happened.

Therefore, based on the above stated reasons, your request is both ethically and procedurally prohibited.

Sincerely yours,


Stephanie Weissenstein
stephanie@desaballard.com

c. James Spencer, Rodney Lail, Adrian Falgione, Esquire,
John Rakowsky, Esquire, Amanda Dudgeon, Esquire,
Benjamin Bruner, Esquire

EXHIBIT C PAGE 2 OF 7
241



James B. Spencer

From: Michael Sribnick [michael.g.sribnick@jdlc.com]
Sent: Thursday, July 10, 2014 3:22 PM
To: Desa Ballard; Early, Doyel A. Law Clerk (Cassie M. Weathersbee); David L.
Cc: Beth Cogan; Andrew Lindemann; Ben Bruner; Mara Ballard
Subject: Re: Depositions and document production via subpoena.

Dear Ms. Weathersbee:

I have still not had my answer as to who drafted the litigation funds order.

Regards, I am

Dr. Michael G. Sribnick, Esq.

On Thu, Jul 10, 2014 at 10:40 AM, Desa Ballard <desab@desaballard.com> wrote:

Mr. Sribnick:

Let me clear. Neither Ms. Ballard nor Mr. Rakowsky will be producing documents or appearing at the depositions you have scheduled.

db

C: James Spencer, via U.S. mail only

Desa Ballard

Ballard & Watson

Attorneys at Law

Telephone 803.796.9299

Facsimile 803.796.1066

E-mail: desab@desaballard.com, copy to maral@desaballard.com

STATE OF SOUTH CAROLINA
ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF RICHLAND

JOHN RAKOWSKY, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

ADRIAN FALGIONE, et al., Defendants

Case Number: 2008-CP-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 , AM

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

PLACE OF DEPOSITION- VIDEOTAPED Irmo Public Library Conference Room, 6251 Saint Andrews Road Columbia, SC 29212 - applicable mileage rates will be paid to Mr. Rakowsky after the deposition.	DATE AND TIME July 25, 2014, 10:00 AM
--	---------------------------------------

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 attached.

PLACE Box 183, 7001 Saint Andrews Road, Columbia, SC 29212.	DATE AND TIME July 14, 2014, 5:00 PM
--	--------------------------------------

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

PREMISES	DATE AND TIME , AM
----------	--------------------

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.

	07/03/2014	Michael G. Scribnick
Attorney/Issuing Officer's Signature	Date	Print Name

Indicate if Attorney for Plaintiff or Defendant:
Attorney's Address and Telephone Number:
Attorney for the Defendants, Lail, Santacroce, & Estate of Doris Holt, 3 Kenilworth Ave., Charleston, SC, 29403, 843-789-3504

Clerk of Court/Issuing Officer's Signature	Date	Print Name
Pro Se Litigant's Name, Address and Telephone Number:		

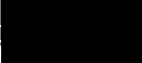
EXHIBIT C PAGE 4 OF 7

ATTACHMENT TO SUBPOENA DUCES TECUM

As a matter of law in this case as established by both the South Carolina Supreme Court, *South Carolina Court Rule 407, 1.8 (g)* and adopted by the South Carolina Federal District Court, *Federal District Court Local Rule 83.1.08*, in order for there to be a lawful settlement in the underlying case, a settlement claimed by Plaintiff John Rakowsky, there has to be a document of "informed consent" signed in writing by each of the seven individual clients who each had different interests and also different claims in the underlying proceeding. This document is required to show the participation of each client, who are defendants in the present case, in the aggregate settlement. This is a defining document in the present case, yet this document, which by law has to be in existence if there was a true settlement, has not been produced to date.

Therefore, please **provide the "document of informed consent" with the written signatures of all seven clients** that was the legally required basis for the alleged settlement agreement in the underlying case **CIVIL ACTION NO.: 4:02-1859-RBH, (Southern Holdings, Inc., et al. v. Horry County, et al.)**. A document which will show the agreed upon distribution of the aggregate settlement among the client-defendants in the present case, a key question currently before this court.

EXHIBIT C PAGE 5 OF 7



MICHAEL G SRIBNICK, M.D., J. D., LLC
3 KENILWORTH AVE
CHARLESTON, SC 29403-4305

1129
87-604/639
BRANCH 216

7/3/13 Date

Pay to the Order of Maria T Bellamy \$ 25.⁰⁰/₁₀₀ ~~XX~~

twenty-five dollars and 00/100 Dollars

First Citizens

For deposited with per Mark H. [Signature]

⑆05390604⑆⑆07950 4865101⑆ 1129

MICHAEL G SRIBNICK, M.D., J. D., LLC
3 KENILWORTH AVE
CHARLESTON, SC 29403-4305

1128
87-604/639
BRANCH 216

7/3/14 Date

Pay to the Order of John Patonakis \$ 25.⁰⁰/₁₀₀ ~~XX~~

twenty-five dollars and 00/100 Dollars

First Citizens

For deposited with per Mark H. [Signature]

⑆05390604⑆⑆07950 4865101⑆ 1128

EXHIBIT C PAGE 6 OF 7

STATE OF SOUTH CAROLINA
ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF RICHLAND

JOHN RAKOWSKY, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

ADRIAN FALGIONE, et al., Defendant

Case Number: 2008-CP-6656

Pending in RICHLAND County

TO: MARA T. BALLARD

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 , AM

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

PLACE OF DEPOSITION -VIDEOTAPED- Irmo Public Library Conference Room, 6251 Saint Andrews Road Columbia, SC 29212 - applicable mileage rates will be paid to Ms. Ballard after the deposition.	DATE AND TIME July 25, 2014, 3:00 PM
--	--------------------------------------

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 attached.

PLACE Box 183, 7001 Saint Andrews Road, Columbia, SC 29212.	DATE AND TIME July 17, 2014, 5:00 PM
--	--------------------------------------

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

PREMISES	DATE AND TIME , AM
----------	--------------------

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(e)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Michael G. Sribnick 07/03/2014 Michael G. Sribnick
Attorney/Issuing Officer's Signature Date Print Name

Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number:

Attorney for Defendants Lail, Santacroce & Estate of Doris Holt, 3 Kenilworth Ave, Charleston, SC,

843-789-3504

ATTACHMENT TO SUBPOENA DUCES TECUM

Please produce any and all documents, primary and other, used by Mara Ballard to produce her expert's report submitted to this court, dated April 17, 2014. This request includes all Mara Ballard's notes, calculations, correspondence, bills, travel logs, work logs, annotations, notes pertaining to conversations, interviews, library materials, telephone calls, in any form electronic or otherwise including, but not limited to production of documents that were reviewed and discarded and previous drafts of or related to the work product that was presented to the court as MTB0001 through MTB0145.

Under Rule 26 of the South Carolina Rules of Civil Procedure Mara Ballard, who identifies herself as an expert in the present case and presents an expert report to the court, on behalf of Plaintiff Rakowsky, is subject to discovery and deposition regarding the basis of her report, her credentials, scope of examination and her knowledge concerning matters before the court.

EXHIBIT D
2 OF 2

47

1 I -- I want to also focus on this: Mr. Falgione never
2 held any of this money. The money's currently being held
3 in Desa Ballard's trust account, is my understanding, based
4 on that status conference, more than anything else.

5 So -- so to the extent there's some equitable argument
6 that -- that the contemporaneous-filing requirement doesn't
7 apply because the lawyers are holding money that would
8 allow them to hire an expert, I don't think that should
9 apply to Mr. Falgione.

10 THE COURT: All right.

11 MR. BRUNER: And my -- the best reading I can find on
12 -- on the enforceability of orders in this state leads me
13 to believe that -- that an order is final when it's written
14 and signed by the judge and submitted for filing, period.
15 And if you look at the orders that were filed in this case
16 after that -- that May 7th status conference, they are a
17 June -- an order signed June 14th by Judge Barber, denying
18 the plaintiffs' motion for entry of default against the
19 defendants.

20 There's an order signed June 14th, continuing the
21 motions to dismiss and Mr. Spencer's motion to disqualify,
22 denying Ms. Santacroce's motion to disqualify, filed, I
23 believe, June 28th. There's a July 30th, 2012, order that
24 granted me protection for a personal vacation.

25 Now -- now, after the status conference, there were --

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)
The Estate of Doris Holt, Rodney)
Lail, Irene Santacroce, Horry)
County, South Carolina.)
)
Defendants.)
)

RICHLAND COUNTY
 FILED
 2014 JUN 25 AM 10:48
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

RESPONSE TO ATTACHED EMAIL LITIGATION

NOW COMES James Spencer, *Pro Se* and states the following: I have read the email motions/responses of Mr. Bruner and Ms. Ballard to the email from Ms. Cassie Weathersbee Hall sent on June 17, 2014, attached hereto as **Exhibit F**, notifying the parties that you had signed and sent in on that date an order to the Richland County Clerk of Court. Additionally, you again requested input from the parties what matters remain to be heard in this case. First and foremost, as of this date I have not received a copy of the order and according to the Richland County Clerk of Court they have no record of receiving the referenced order, therefore, I

am unable to respond knowledgeably to your request. I also read the proposed order of Dr. Sribnick regarding the disbursement of the undisputed litigation funds which I have no problem with the content of that draft order if that is in fact what was issued by Your Honor.

DISCUSSION

I read Mr. Bruner's email to you dated June 20, 2014, which I have attached to this filing marked as **Exhibit "A"**. Mr. Bruner's misrepresentations aside, the legal malpractice action is still being litigated despite Mr. Bruner's attempt to have it dismissed through an act of fraud. See attached hereto **Exhibit "B"**. **Exhibit B** is a filing in the legal malpractice action in the South Carolina Appellate Court. This filing documents that Mr. Bruner himself, submitted a sworn affidavit in which he falsely claimed that he had Plaintiff Spencer served with notice by a courier which caused a filing of Mr. Spencer's to be untimely and, therefore, Mr. Bruner moved for the action to be dismissed.

The problem as pointed out in **Exhibit B¹** (pages 4 – 6), the address Mr. Bruner swore under oath Mr. Spencer was personally served at was in fact a UPS mailbox which Mr. Bruner thought was Mr. Spencer's home address, an oversight which revealed his untruthfulness even in a sworn affidavit to the South Carolina Court of Appeals. The South Carolina Court of Appeals ruled against Mr.

¹ Exhibit B documents many other misstatements and outright dishonest claims by Mr. Bruner.

Bruner's motion to dismiss the case after receiving the documentation showing both his untruthfulness in that matter and the actual date of notification to Mr. Spencer verified by the Clerk of Court's office. However, undeterred by the facts, Mr. Bruner, then stated untruthfully to Your Honor in his email that the case was dismissed when in fact it was not. It was reinstated, based in large part, on Mr. Bruner's untruthful representations being conclusively exposed to the court.

In regard to Ms. Ballard's email to Your Honor dated June 17, 2014, a copy of which was mailed to Mr. Spencer by her office as she refuses to email Mr. Spencer. Mr. Spencer received the email copy on June 23, 2014, please see Ms. Ballard's email and letter attached hereto as **Exhibit "C"**.

Ms. Ballard wrongfully claimed the action in Federal District Court has been concluded. The Federal Court appeals process is not concluded and Ms. Ballard knows it or should know it. This is not the only instance Ms. Ballard misrepresented the facts. Ms. Ballard clearly misstated the facts regarding discovery and the purpose of discovery in this case. Ms. Ballard picks and chooses what she wishes to present to the court both ignoring the relevant facts and also ignoring the concept of truth. For example, see attached set of interrogatories which her client refused to answer in this case in its entirety dated October 12, 2011, attached hereto as **Exhibit "D"**. As you will see she based refusing to answer every question on the false assertion (*emphasis added*) that Judge Barber

gave an oral order denying discovery. Ms. Ballard knows quite well that no such oral or written order was ever issued (*emphasis added*) by the Honorable Judge Barber.

Your Honor has been presented with the transcripts of the May 7, 2012, hearing before Judge Barber during which Judge Barber issued oral orders ordering discovery to be conducted, including, but not limited to, the depositions of Mr. Rakowsky and Mr. Falgione, by Mr. Spencer. Ms. Ballard refuses to comply with the actual standing oral orders of Judge Barber and is now both trying to misrepresent the facts regarding discovery in this case as she cites an imaginary order by Judge Barber and also ignores the actual oral orders issued by Judge Barber (**See attached hereto Exhibit "E", the transcript portions of May 7, 2012, hearing during which both discovery and depositions of Mr. Rakowsky and Mr. Falgione were ordered by Judge Barber and acknowledged by Plaintiff Rakowsky and his counsels on that date).**

Further, Ms. Ballard is denying the very existence of the Federal Appeal process available to citizens of this country which is an insult to your office and to Your Honor.²

² In the second paragraph of Ms. Ballard's June 17, 2014, email she distorts an order issued by Judge Seals on August 3, 2011, claiming he denied the counter claims currently pending before the court. The pending counter claims allowed by order of Judge Barber, attached hereto Exhibit "E" were not even filed at the time of Judge Seals Order. Further also pending before this court is the motion for sanctions for Mr. Rakowsky's filing of ex-parte documents with Judge Seals, an act that is totally unethical and forbidden under South Carolina law. The South Carolina

Ridiculously, both Mr. Bruner and Ms. Ballard are now claiming there is no need for discovery because all issues are settled and in their emails allege that I personally seek discovery to harass John Rakowsky and Adrian Falgione through the discovery process. Please read the interrogatories submitted as stated in **(Exhibit D)**. Does any question seem to you to be anything but above board and professional discovery?

CONCLUSION

The undersigned is looking forward to responding to your office's request for what is needed to complete this case as soon as I receive your order regarding the release of the undisputed litigation funds. I and other defendants represented by Dr. Sribnick have been waiting for this order for over eight years releasing the undisputed litigation funds.

However, there remains a dispute over the total amount of litigation funds received by Mr. Rakowsky that has not been resolved. Such a dispute must be dealt with through legal due process conducted in accordance with the accepted rules of evidence.

Supreme Court ruled: "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 is not against "prejudicial" ex parte communications, but against ex parte communications." Burgess v. Stern, 311 S.C. 326, 330-331 (S.C. 1993)

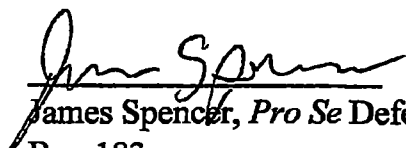
I ethically cannot and will not accept as a precondition of the release of undisputed litigation funds the defendants' acceptance of there not being a dispute over the total amount of litigation funds received by Mr. Rakowsky. I deserve the opportunity to question Mr. Rakowsky and the person who he solely hired, Mara T. Ballard, to put together documents in manner which is incomplete, self-serving and inconsistent with the requirements for such records under rule 417 of the South Carolina Appellate Rules of Financial Record Keeping. I believe I have a right to question the construction of these documents as to how the documents were produced by questioning the individuals who produced the documents. There is no question, based on what has presented so far, that being allowed to conduct discovery as ordered by Judge Barber, I can prove beyond any reasonable doubt the false nature of those financial statements and the misuse of judicial process regarding the interpleader action itself.

I have been asking for eight years for the opportunity for discovery in this proceeding, I have been granted such by Judge Barber's oral orders and yet I continue to be denied the right for discovery much less cross examination of witnesses who wrote documents presented to the court as evidence, litigate counter claims before a jury trial all of which was ordered by Judge Barber. I await receiving your order so I can properly respond as your office has requested via the attached email, **Exhibit F**.

There is no question the undersigned has a right to both due process and discovery, counter claims as well as for the jury trial properly requested by the defendants and ordered by Judge Barber. I look forward to receiving the order you sent out so I can respond intelligently to the email request from your office.

I have submitted this response to document on the record the litigation that is being carried on by email. There needs to be a record to document the emails and the misrepresentations contained in them communicated to Your Honor on the court record.

This 24th day of July, 2014,
Respectfully submitted,

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

CERTIFICATE OF SERVICE

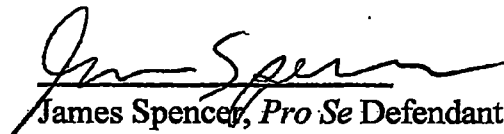
I, James Spencer, *Pro Se*, defendant do hereby certify that the foregoing **RESPONSE TO ATTACHED EMAIL LITIGATION** has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

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

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

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

Michael G. Sribnick, M.D., J.D., LLC
3 Kenilworth Avenue
Charleston, S.C. 29403
Telephone: (843) 789-3504
Fax: (843) 720-8907
michael.g.sribnickmdjdlc@gmail.com

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

RICHLAND COUNTY
FILED
2018 JUN 25 AM 10:48
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RECEIVED
AUG 10 2018
SC Court of Appeals

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 28, 2018, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail or by courier.

Documents Served: **Motion for Leave of the Court to Remand Due to New Evidence and Fraud Under Rule 60 (b)(2) & (3)**

Parties Served:

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

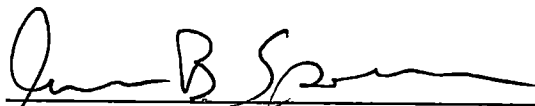
Michael G. Sribnick, M.D., J.D.
3 Kenilworth Avenue
Charleston, SC 29403

Honorable Doyet A. Early, III
Post Office Box 90
Bamberg, SC 29003

RECEIVED

AUG 28 2018

SC Court of Appeals



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

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

Email: JamesBSpencer@sc.rr.com

August 28, 2018

Via U.S. Mail

Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
AUG 28 2018
SC Court of Appeals

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

Dear Ms. Kitchings:

I am in receipt of the letter dated August 15, 2018, from Ms. Desa Ballard to the Court concerning her thoughts regarding the "Rule 59(e) Motion to Amend Court Order filed by pro se Appellant Spencer and the "Petition for Rehearing also filed by Mr. Spencer and attorney Michael Sribnick.

Regarding the "Rule 59(e)" motion Ms. Ballard claimed without citation (*emphasis added*) that it was inappropriate and does not require a substantive response. First, she failed to provide and cannot provide a single citation to back up her statement that the Rule 59(e) was inappropriate. There is no settled case law in South Carolina on this matter, but as the Rule 59(e) is written, it is applicable.

Second, Ms. Ballard failed to comply with South Carolina Appellate Court Rule (SCACR) 240 (c) in both form and substance and she failed to comply with SCACR 267. She failed to include required citations and authorities either attached or referenced in the Record on Appeal and she failed to file the proper required captions.

These fatal errors mean Ms. Ballard did not file a timely proper return and therefore under SCACR 240 (e) her failure to file a Return is considered a consent to the Rule 59(e) motion filed by the pro se Appellant Spencer. Therefore, **please make sure the Court is aware of Respondents consent to the Rule 59 (e) motion.**

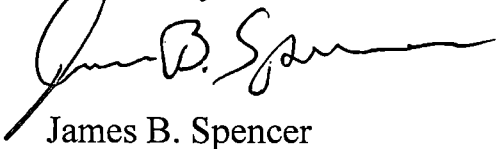
Additionally, and Significantly

Ms. Ballard wrongfully raises and challenges the separately filed Petition for Rehearing in circumvention of Rule 221 which states, “No return to a petition for rehearing may be filed unless requested by the appellate court.”

Ms. Ballard wrongfully stated that the majority of the pleadings in the 59(e) motion were from a separate case. The citation reference was from the related legal malpractice case clearly identified as being before Judge Addy. It unmistakably shows a pattern of conduct of concealing documents, by Ms. Ballard and other counsel that represent the Respondent, that is consistent in perpetrating fraud and hiding the case defining document known as the “informed consent agreement.”

Presentation of the original executed informed consent agreement to the Appellants, that Ms. Ballard and Respondent claim to have in their possession, would end any further litigation in any related area by the Appellant. If it does not exist the Respondent and his counsels have committed fraud upon the court and misused judicial process to conceal the fraud.

Yours truly,



James B. Spencer

Cc:

Desa Ballard

Michael Sribnick