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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

J. Derham Cole, Circuit Court Judge

Case No. 2017-CP-10-04371
APPELLATE CASE NO 2021-000446

Cary E. Fechter, MD

Appellant,

v.

Leon Martin Ortner, The Ortner Law Firm, LLC, Gerald Rosenthal, and
Rosenthal, Levy, Simon and Ryles, PA

Respondents.

**DESIGNATION OF MATTERS TO BE INCLUDED
IN THE RECORD ON APPEAL**

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John Marshall Mosser, SC Bar No. 71929
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*Counsel for Respondents Gerald Rosenthal and
Rosenthal, Levy, Simon and Ryles, PA*

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Respondents Gerald Rosenthal (“Respondent Rosenthal”) and Rosenthal, Levy, Simon and Ryles, PA, (“Respondent RLSR,” and with Respondent Rosenthal, collectively, “Rosenthal Respondents”) pursuant to Rule 209 of the South Carolina Appellate Court Rules, and hereby designates the parts of the transcripts, orders, pleadings, affidavits, exhibits, and/or other materials which they propose to include in the Record on Appeal.

ORDERS

1. SCRCF Form 4 Order/Judgment issued by the Honorable J. Derham Cole, Circuit Court Judge, dated and filed on February 5, 2020 (*granting the Rosenthal Defendants’ Motion to Dismiss and granting the Ortner Defendants’ Renewed Motion to Dismiss – formal orders to follow*);
2. Order Granting Gerald Rosenthal’s and Rosenthal, Levy Simon and Ryles’ Joint Motion to Dismiss issued by the Honorable J. Derham Cole, Circuit Court Judge, dated June 5, 2020, filed June 8, 2020 (*Dismissing Plaintiff’s Complaint With Prejudice*);
3. Order Granting Gerald Rosenthal’s and Rosenthal, Levy Simon and Ryles’ Joint Motion to Dismiss issued by the Honorable J. Derham Cole, Circuit Court Judge, dated and filed on August 4, 2020 (*Dismissing Plaintiff’s Complaint With Prejudice*);
4. Notice of Entry of Judgment/Order Pursuant to Rule 77 SCRCF, entered on August 4, 2020 (*Order of Dismissal as to Leon Ortner & Ortner Law Firm, Order of Dismissal as to Gerald Rosenthal et. al.*).
5. SCRCF Form 4 Order/Judgment issued by the Honorable J. Derham Cole, Circuit Court Judge, dated August 21, 2020, filed August 24, 2020 (*vacating August 4, 2020 order*);

6. Notice of Entry of Judgment/Order Pursuant to Rule 77 SCRPC entered on August 24, 2020 (*vacating identical erroneous order filed August 4, 2020*).

PLEADINGS

1. Gerald Rosenthal's and Rosenthal, Levy, Simon and Ryles' Joint Motion to Dismiss dated May 13, 2019, filed May 14, 2019;
 - A. Exhibit A - Charleston County Court of Common Pleas Docket Sheet (May 1, 2019);
 - B. Exhibit B - Affidavit of Cary E. Fechter, M.D. sworn to on January 7, 2019;
 - C. Exhibit C - Affidavits of Service by Certified Mail sworn to by Melvin D. Bannister, Esquire on January 8, 2019 (*alleging service on Rosenthal Levy Simon & Ryles*);
 - D. Exhibit D - Affidavit of Gerald Rosenthal sworn to on May 10, 2019;
 - E. Exhibit E - Affidavit of Jonathan Todd Levy sworn to on May 6, 2019;
 - F. Exhibit F - Affidavit of Ed Elder sworn to on May 6, 2019;
 - G. Exhibit G - United States Postal Service Tracking Report for Tracking Number 70151730000142889398 (*showing delivery of item on October 12, 2017*);
2. Motion to Reconsider Order Granting Gerald Rosenthal's and Rosenthal Levy Simon & Ryles' Motion to Dismiss dated and filed June 17, 2020;
3. Response to Motion to Reconsider Gerald Rosenthal's and Rosenthal, Levy, Simon, and Ryle's Joint Motion to Dismiss, dated and filed June 29, 2020;
4. Motion to Reconsider Order Granting Gerald Rosenthal's and Rosenthal Levy Simon & Ryles' Motion to Dismiss dated and filed August 13, 2020;

5. Notice of Appeal to the South Carolina Court of Appeals dated April 21, 201, filed April 21, 2021;
6. Summons and Complaint dated August 17, 2017, filed on August 25, 2017;
7. Affidavit of Service by Certified Mail sworn to by Melvin D. Bannister, Esquire on January 8, 2019;
8. Affidavit of Gerald Rosenthal sworn to on May 10, 2019;
9. Affidavit of Jonathan Todd Levy sworn to on May 6, 2019;
10. Affidavit of Ed Elder sworn to on May 6, 2019;
11. Memorandum in Opposition to Motion to Dismiss on Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm, LLC dated January 8, 2019, and filed January 9, 2019,
 - A. Exhibit C - United States Postal Service Tracking Report for Tracking Number 70151730000142889398;
 - B. Exhibit D - Affidavit of Cary E. Fechter, M.D. sworn to on January 7, 2019;
12. Motion to Dismiss on Behalf of Defendants Leon Martin Ortner and Ortner Law Firm, LLC dated January 5, 2018, filed January 8, 2018;
 - A. Exhibit A - Order Granting Motion to Release Funds issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated January 26, 2016 (*ordering the release of \$500,000 in set aside funds*);
 - B. Exhibit B - Consent Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated July 22, 2014 (*approving settlement and allocation procedures*);

- C. Exhibit C - Initial Report of the SCWCC's Special Referee, H. Mills Gallivan, Esquire, dated November 13, 2015 (*addressing funds distribution and \$500,000.00 hold back*).
- D. Exhibit D - Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated December 10, 2015 (*adopting Initial Report of the Special Referee and ordering distribution of a portion of settlement funds, except the \$500,000 in set aside funds*);
- E. Exhibit E - Motion to Release Funds dated November 18, 2015 (SCWCC File No. 0326995, et. al);
 - A. Affidavit of Gerald Arthur Rosenthal sworn to on November 17, 2015;
 - 1. Letter from Rob Cluxton, CFO of Rosenthal & Levy, P.A. to Dr. Cary E. Fechter dated October 28, 2010;
- F. Exhibit F - Reply of Leon Martin Ortner to Motion to Release Funds dated November 30, 2015, and filed December 2, 2015 (SCWCC File No. 0326995);
 - A. Deposition of Cary E. Fechter, M.D. sworn to on 2 November (specific pages);
- G. Exhibit G - Letter from C. Tex Davis, Jr. of the Supreme Court of South Carolina's Office of Disciplinary Counsel to Dr. Cary E. Fechter dated March 2, 2016;
- H. Exhibit H - Agreement Approving Award of Special Referee dated April 27, 2017 (SCWCC File No. 0326828).

EXHIBITS

- 1. As set forth in the various paragraphs and subparagraphs of the PLEADINGS section.

The undersigned hereby certifies, pursuant to Rule 209(c), SCACR, that the Designation of Matter to be Included in the Record on Appeal submitted by the Respondents Gerald Rosenthal, and Rosenthal, Levy, Simon and Ryles, PA, does not contain any matter which is irrelevant to the appeal.

Respectfully submitted,

KING KOZLAREK LAW LLC

s/ Michael E. Kozlarek

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APPELLATE CASE NO 2021-000446

Cary E. Fechter, MD..... Appellant,

v.

Leon Martin Ortner, The Ortner Law Firm, LLC, Gerald Rosenthal, and
Rosenthal, Levy, Simon and Ryles, PA

Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on March 21, 2022, he caused to be served a copy of the foregoing **Designation of Matter to be Included in the Record On Appeal of Respondents Gerald Rosenthal and Rosenthal, Levy, Simon and Ryles, PA**, on all parties of record via electronic mail containing the above-referenced document to each counsel’s individual AIS email address pursuant to SC Supreme Court COVID Order 2020-05-29-01 as follows:

Counsel for Cary E. Fechter, MD:

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s/Michael E. Kozlarek

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Finance | Development | Litigation

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By E-Mail Only (ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
PO Box 11629
Columbia, South Carolina 29211

Re: Cary E. Fechter v. Leon Martin Ortner, et al.
Civil Action No.: 2017-CP-10-04371
Appellate Case No. 2021-000446

Dear Ms. Kitchings:

Enclosed for filing in connection with the above, please find Respondents Gerald Rosenthal and Rosenthal, Levy, Simon and Ryles, PA Initial Brief, Designation of Matter to be Included in the Record on Appeal, and Proofs of Service.

By copy of this correspondence, we are serving all counsel of record with a copy of the attached documents via email.

Should you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Michael E. Kozlarek

MEK/cbs

cc: Justin Novak, Esquire (via email)
M. Dawes Cook, Jr., Esquire (via email)
Stephen P. Groves, Sr. Esquire (via email)