

ORIGINAL

IN THE SUPREME COURT OF OHIO

BUCKINGHAM, DOOLITTLE &
BURROUGHS, LLP,

Plaintiff-Appellee,

v.

HEALTHCARE IMAGING SOLUTIONS,
LLC, et al.

And

JEFFREY M. MANDLER

Defendants-Appellants.

) CASE NO. 10-0526
)
) (On Appeal from the Summit County
) Court of Appeals)
)

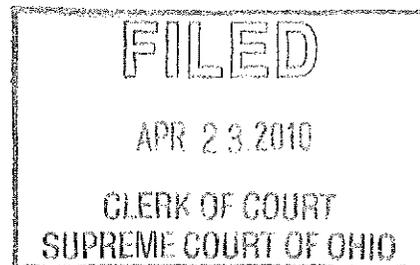
) **PLAINTIFF-APPELLEE'S MOTION**
) **TO STRIKE DEFENDANTS-**
) **APPELLANTS' NOTICE OF APPEAL**
) **AND MEMORANDUM IN SUPPORT**
) **OF JURISDICTION**
)

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Attorney for Defendants-Appellants



MOTION TO STRIKE

Plaintiff-Appellee, Buckingham, Doolittle & Burroughs, LLP (“Buckingham”), hereby moves pursuant to Rule 14.2(D) to strike the Notice of Appeal and Memorandum in Support of Jurisdiction filed by Defendants-Appellants, Healthcare Imaging Solutions, LLC and Jeffrey M. Mandler (“Appellants”).

Although Appellants’ Notice of Appeal and Memorandum in Support of Jurisdiction includes a Certificate of Service indicating that Appellants served Buckingham by ordinary mail on or about March 22, 2010, Buckingham’s counsel never received the service copy in the mail. Affidavit of Alan P. DiGirolamo, ¶4 and Affidavit of Michael J. Matasich, ¶4, attached as Exhibits “A” and “B” respectively. Buckingham’s counsel only discovered Appellants’ Notice of Appeal and Memorandum in Support of Jurisdiction when he checked the Summit County Court of Appeals docket approximately four business days ago. Exhibit “A”, ¶5.

Accordingly, Buckingham respectfully requests that Appellants’ Notice of Appeal and Memorandum in Support of Jurisdiction be stricken pursuant to Rule 14.2(D)(1), which provides in relevant part that “[w]hen a party * * * fails to provide service upon a party * * * any party adversely affected may file a motion to strike the document that was not served. * * * If the Supreme Court determines that service was not made as required by this rule, it may strike the document * * * .”

Alternatively, Buckingham respectfully requests this Court to order Appellants to serve the Notice of Appeal and Memorandum in Support of Jurisdiction on Buckingham’s counsel and to impose a new deadline of thirty (30) days from the date of the Court’s order for Buckingham to file its Memorandum in Response to Appellants’ Memorandum in Support of Jurisdiction. Rule 14(B)(2) provides, as an alternative to striking a document which was not properly served,

the Court may “order that the document be served and impose a new deadline for filing any responsive document.”¹

Respectfully submitted,



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Buckingham, Doolittle & Burroughs, LLP*

¹ Appellants’ counsel previously consented to an extension Buckingham’s deadline to file its Memorandum in Response to Appellees’ Memorandum in Support of Jurisdiction. Exhibit “B”, ¶5.

AFFIDAVIT OF ALAN P. DIGIROLAMO

STATE OF OHIO)
)SS:
COUNTY OF CUYAHOGA)

ALAN P. DIGIROLAMO, being first duly sworn, deposes and states as follows:

1. I am over 21 years of age and a resident of Summit County, Ohio. This Affidavit is made upon personal knowledge.

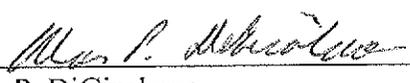
2. I am a duly licensed attorney and admitted to practice before the Supreme Court and other courts of Ohio, as well as various agencies of the state.

3. I am one of the attorneys of record for the Plaintiff-Appellee, Buckingham, Doolittle & Burroughs, LLP ("Plaintiff"), in the case of *Buckingham, Doolittle & Burroughs, LLP v. Healthcare Imaging Solutions, LLC, et al.*, Supreme Court of Ohio Case No. 10-526.

4. I did not receive a service copy of the Notice of Appeal or Memorandum in Support of Jurisdiction filed by Defendants-Appellants, Healthcare Imaging Solutions, LLC and Jeffrey M. Mandler (together referred to as "Appellees"), filed on May 23, 2010.

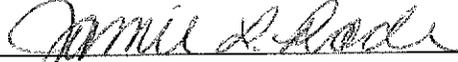
5. I happened to discover that Appellees filed a Notice of Appeal when I checked the Summit County Court of Appeals docket on or about April 15, 2010.

FURTHER AFFIANT SAYETH NAUGHT.



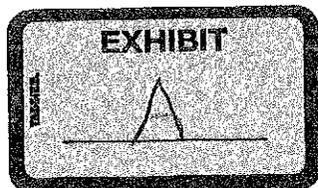
Alan P. DiGirolamo

SWORN TO and subscribed before me, a Notary Public in and for said County and State, this 21st day of April, 2009.



Notary Public

«CL2:370504_v1»10



Jamie L. Rode, Notary Public
Residence - Lake County
State Wide Jurisdiction, Ohio
My Commission Expires 5/8/2010

AFFIDAVIT OF MICHAEL J. MATASICH

STATE OF OHIO)
)SS:
COUNTY OF CUYAHOGA)

MICHAEL J. MATASICH, being first duly sworn, deposes and states as follows:

1. I am over 21 years of age and a resident of Medina County, Ohio. This Affidavit is made upon personal knowledge.

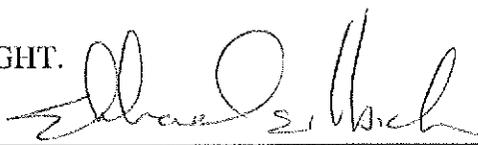
2. I am a duly licensed attorney and admitted to practice before the Supreme Court and other courts of Ohio.

3. I am one of the attorneys of record for the Plaintiff-Appellee, Buckingham, Doolittle & Burroughs, LLP ("Buckingham"), in the case of *Buckingham, Doolittle & Burroughs, LLP v. Healthcare Imaging Solutions, LLC, et al.*, Supreme Court of Ohio Case No. 10-526.

4. I did not receive a service copy of the Notice of Appeal or Memorandum in Support of Jurisdiction filed by Defendants-Appellants, Healthcare Imaging Solutions, LLC and Jeffrey M. Mandler (together referred to as "Appellees"), filed on May 23, 2010.

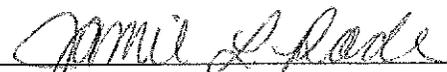
5. I spoke to Appellees' attorney of record, James R. Russell, Jr., by telephone on April 21, 2010, and he consented to an extension of time to file Buckingham's Memorandum in Response to Appellees' Memorandum in Support of Jurisdiction.

FURTHER AFFIANT SAYETH NAUGHT.



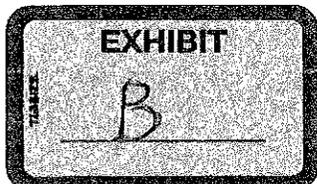
Michael J. Matasich

SWORN TO and subscribed before me, a Notary Public in and for said County and State, this 21st day of April, 2009.



Notary Public

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Jamie L. Rode, Notary Public
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