ORIGINAL

IN THE SUPREME COURT OF OHIO

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP,	:	CASE NO. 10-0526
Appellee,	:	
vs.	:	
HEALTHCARE IMAGING SOLUTIONS, LLC,	:	(On Appeal from the Summit County Court of Appeals, Ninth Appellate District) CASE NO. 24699
and	:	
JEFFREY M. MANDLER,	:	
Appellants.	:	

MEMORANDUM APPELLANTS HEALTHCARE IMAGING SOLUTIONS, LLC AND JEFFREY M. MANDLER IN OPPOSITION TO MOTION TO STRIKE

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SUPREME COURT OF OHIO

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FILED
APR 27 2010
CLERK OF COURT
SUPREME COURT OF OHIO

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Appellant Healthcare Imaging Solutions, LLC ("Healthcare Imaging") and Appellant Jeffrey M. Mandler ("Mr. Mandler") respectfully requests that this Honorable Court deny the Motion of Buckingham, Doolittle & Burroughs, LLP ("Buckingham") to Strike to the extent that it requests that that the documents be stricken from the record. This case involves the proper applicable standard of review for lower court decisions on a Motion for Relief from Judgment. The trial court determined that case should be determined on the merits, rather than a default against Mr. Mandler and Healthcare Imaging. The Court of Appeals acknowledged that the Motion was timely filed, and evidenced a meritorious defense. But, the Court of Appeals disagreed with the findings regarding excusable neglect.

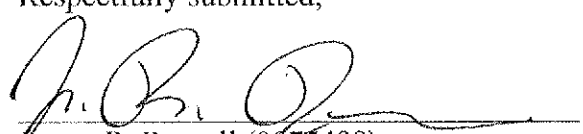
Healthcare Imaging and Mr. Mandler previously consented to an extension for Buckingham to file its Memorandum in Response to the Memorandum in Support of Jurisdiction on April 21, 2010. They still do not oppose an extension of time for Buckingham to file a Response now. It is respectfully submitted that it would be intellectually dishonest for them to oppose an extension by Buckingham when the underlying rule of law on this appeal is that doubt should be resolved in favor of decisions on the merits for a case. This is especially true if the counsel of record states that they did not receive the pleading that was sent by ordinary mail. However, the pleadings should not be completely stricken from the record as if not filed.

Healthcare Imaging and Mr. Mandler served Buckingham with the Notice of Appeal and the Memorandum of Jurisdiction on Monday, March 22, 2010 (*Affidavit of Lisa Lalonde*, p. 1). They placed both in the mail to be sent to "Michael J. Matasich, Alan P. DiGirolamo, Attorney at Law, Buckingham, Doolittle & Burroughs, LLP, 1375

E. 9th Street, Suite 1700, Cleveland, Ohio 44114." (*Affidavit of Lisa Lalonde*, p. 1). Further, Healthcare Imaging and Mr. Mandler sent a correspondence to Buckingham's Philadelphia attorney on March 22, 2010. *Id.* The receipt of that correspondence was acknowledged. In that, Mr. Mandler and Healthcare Imaging indicated that "[t]his case is currently being appealed to the Supreme Court of Ohio." At the very least, Buckingham should have known about this appeal then.

WHEREFORE, Appellants respectfully request that this Court deny the Motion to Strike to the Extent that Buckingham asks for the pleadings to be stricken. Nevertheless, Buckingham should receive a short extension of time to respond to the Memorandum in Support of Jurisdiction because Healthcare Imaging and Mr. Mandler consented to the same on April 21, 2010.

Respectfully submitted,



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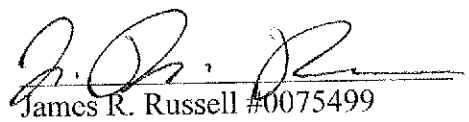
COUNSEL FOR APPELLANTS,
HEALTHCARE IMAGING SOLUTIONS,
LLC AND JEFFREY M. MANDLER

CERTIFICATE OF SERVICE

I certify that a copy of this pleading was sent by ordinary U.S. mail on this ___ day of April, 2010, to Counsel for Appellee:

Michael J. Matasich
Alan P. DiGirolamo
Attorneys at Law
Buckingham, Doolittle & Burroughs, LLP
1375 E. 9th Street, Suite 1700
Cleveland, Ohio 44114



James R. Russell #0075499

COUNSEL FOR APPELLANTS

AFFIDAVIT OF LISA LALONDE

STATE OF OHIO)
)SS:
SUMMIT COUNTY)

Lisa Lalonde, being of lawful age and duly sworn according to law, deposes and says:

1. I am an administrative assistant for Goldman & Rosen, Ltd. The office headquarters is located at 11 S. Forge Street, Akron, Ohio 44304. I have personal knowledge of the facts in this affidavit.

2. Among my duties at Goldman & Rosen, I submit correspondence and pleadings prepared by Attorney J.R. Russell, Jr., to opposing parties or counsel by ordinary mail.

3. I remember sending the Notice of Appeal and Memorandum of Jurisdiction in *Buckingham, Doolittle & Burroughs, LLP v. Healthcare Imaging Solutions, LLC, et al.*, to Michael J. Matasich, Alan P. DiGirolamo, Attorney at Law, Buckingham, Doolittle & Burroughs, LLP, 1375 E. 9th Street, Suite 1700, Cleveland, Ohio 44114, by ordinary mail.

4. The Notice of Appeal and Memorandum of Jurisdiction were prepared for filing on Friday afternoon, March 19, 2010. The originals were delivered to another attorney later that day, for him to file with the Supreme Court the next week. I sent the service copies of the Notice of Appeal and Memorandum of Jurisdiction to Buckingham, Doolittle & Burroughs from this office by ordinary U.S. Mail on Monday, March 22, 2010.

FURTHER AFFIANT SAITH NAUGHT.

LISA LALONDE

Sworn and ascribed before me this 26th day of April, 2010.

Notary Public

JAMES R. RUSSELL, JR., Attorney At Law
NOTARY PUBLIC, STATE OF OHIO
My Commission Has No Expiration
Section 147.03 R.C.