

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

JUDGMENT IN CIVIL CASE

CASE NO. 2010 CP-40-2889

1634 Main, L.P.

Shirley Hammer, a/k/a Shirley Grace  
Hightower

Howard Hammer, Third Party Defendant

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: <i>The Court</i>	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.  See Page 2 for additional information
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  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 (~~final 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 (List amount(s) below)
Shirley Hammer	1634 Main, L.P.	\$102,032.87
		\$
		\$

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 *George C. James, Jr.*

2143  
Judge Code

*6/3/13*  
Date

SCANNED

*Exhibit B*

SCANNED



STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

FIFTH JUDICIAL CIRCUIT

2009-CP-40-05911 and

2010-CP-40-2889

Howard Hammer, )

Plaintiff, )

vs )

Shirley Hammer, a/k/a )

Shirley Grace Hightower, )

Defendant, )

1634 Main, L.P., )

Plaintiff, )

vs )

Shirley Hammer, a/k/a )

Shirley Grace Hightower, )

Defendant/Third Party Plaintiff, )

vs )

Howard Hammer, )

Addition Defendant on )

Counterclaim, )

**ORDER ADDRESSING  
POST-TRIAL MOTIONS**

JEANETTE W. MCBRIDE  
C.C.P. & G.S.

2013 JUN -6 AM 10:27

RICHLAND COUNTY  
FILED

This matter is before the court for disposition of certain motions made by the parties subsequent to this court's merits order dated January 28, 2013 and filed January 29, 2013. This order is double-captioned, and an original is to be filed in both case files in the office of the Clerk of Court.

In the merits order, the court issued findings and conclusions arising from a nonjury trial held October 29 and 30, 2012, and arising from a hearing held January 15,

2013. Shirley Hammer (alternatively referred to as "Mrs. Hammer") has now moved for sanctions under Rule 11, SCRPC and under S.C. Section 15-36-10, et seq., the South Carolina Frivolous Civil Proceedings Sanctions Act ("the Act"). Howard Hammer (also referred to as "Mr. Hammer") and 1634 Main L.P. have moved to dismiss the motion for sanctions as untimely. Mr. Hammer and 1634 Main L.P. (also referred to as "1634 Main" or "1634") have also moved to amend findings of fact, moved to alter or amend judgment, and moved for a new trial. Mr. Hammer also moves for a mistrial.

A hearing on Mr. Hammer's and 1634 Main's motions to dismiss the motion for sanctions was held on May 1, 2013. A hearing on the motion for sanctions was held in Sumter County on May 17. All parties waived any objection to venue. Appearing for Shirley Hammer at these May hearings was Desa Ballard, Esquire. Mr. Hammer represented himself in the 1634 Main litigation and appeared at both proceedings. Arthur K. Aiken, Esquire represents Mr. Hammer in the Hammer v Hammer litigation and appeared at both proceedings. Susan B. Lipscomb, Esquire appeared at both proceedings as counsel for 1634 Main, L.P. At the May 17 hearing, Mr. Hammer argued that he and 1634 Main were entitled to a hearing on their motions for new trial, to reconsider and/or to alter or amend. The court disagrees and will rule on those motions without a hearing.

**I. Motions for New Trial, Motions to Reconsider, Alter, Amend, or Modify Merits Order**

**A. Mr. Hammer's Motions**

Mr. Hammer represents himself in the 1634 action. His motion is forty-four (44) pages long and contains fifty-six (56) numbered paragraphs. In some of these paragraphs, Mr. Hammer raises issues on behalf of 1634 Main, L.P., which

he does not represent. For that reason alone, his arguments on behalf of 1634 Main, L.P. are dismissed. Even if raised properly<sup>1</sup>, they are dismissed as set forth below. Similarly, Mr. Hammer also raises in the motion authored by him certain arguments germane to the Hammer v Hammer litigation. Mr. Hammer has an attorney, Mr. Aiken, in that litigation and, in my view, may only advance arguments as a third party defendant in the 1634 Main litigation, in which he represents himself.<sup>2</sup>

All parties agree that page one of the merits order should be amended to correctly reference the fact that in Hammer v Hammer, Mr. Hammer authored and filed the lis pendens and the original summons and complaint, but that Ms. Lipscomb later prepared and filed amended pleadings represented Mr. Hammer for a time. Mr. Aiken began representing Mr. Hammer in Hammer v Hammer on October 29, 2012, the day trial began. The merits order is amended to reflect this information.

In paragraph 1 of Mr. Hammer's motion bearing the 1634 Main caption, Mr. Hammer argues that the court "misperceived the nature of the case of Hammer v Hammer . . . as a contract action . . . when in truth and in fact, the case was one for Declaratory Judgment . . . ." However, the allegations in that action address almost exclusively "a certain contract" (the Hammers' May 2008 property settlement agreement approved by the family court). The declaratory judgment

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<sup>1</sup> Attorney Lipscomb, counsel for 1634 Main, L.P., notes in 1634 Main's post-trial motions that 1634 Main incorporates by reference the points raised by Mr. Hammer in his motions. 1634 Main's motion is addressed below.

<sup>2</sup> In the post-trial motions made by Mr. Aiken in the Hammer v Hammer litigation, Mr. Aiken raises only two issues, both of which are addressed herein. The court knows of no legal authority allowing Mr. Hammer to include arguments for himself in litigation in which he has counsel. However, to avoid the absolute certainty of further argument on these issues, the court will rule on these arguments.

action repeatedly referred to the "May 2008 Contract" and how Mr. Hammer contended it was void. It is incomprehensible to this court how reference to this declaratory judgment cause of action as a "contract action" is a ground for a new trial or any other relief. This argument borders on being frivolous and dilatory. The court summarily rejects this argument and all other points raised in Paragraph 1 of Mr. Hammer's motion.

In Paragraph 2, Mr. Hammer argues the court should have directed a verdict for 1634 Main in the 1634 Main action. He does not represent 1634 Main. 1634 Main has counsel, and that counsel did incorporate all grounds raised by Mr. Hammer. The court denies all motions raised in Paragraph 2.

The court dismisses all grounds asserted by Mr. Hammer in Paragraphs 3 through 56 of his motion in Hammer v Hammer, and by extension, dismisses all grounds incorporated by counsel for 1634 Main in the 1634 Main, L.P. litigation. Likewise, to the extent any of Mr. Hammer's grounds can be interpreted to be made for himself as a third party defendant in the 1634 Main action (in which Mr. Hammer has an attorney), all such claims for relief are denied.

The court denies Mr. Hammer's motion for mistrial made in Paragraph 7.

In Paragraphs 9 and 10, Mr. Hammer addresses the court's two "Findings of Fact Applicable to Both Actions". He claims that this essentially amounts to a denial of due process since the actions, though consolidated and tried on the same days, were separated insofar as questioning of witnesses by counsel and Mr. Hammer were concerned. This argument is without merit, especially since Finding Number 1 applicable to both actions was a finding as to Mr. Hammer's

credibility as a witness, and Finding Number 2 applicable to both actions was (1) that Mr. and Mrs. Hammer were divorced as of May 12, 2008 but that family court litigation was still ongoing, and (2) that Mr. Hammer had threatened to engage Mrs. Hammer in litigation until she was bankrupt. These findings are germane to both captioned cases, and there are no adverse due process ramifications to Mr. Hammer. This argument borders on being frivolous and dilatory.

As noted above, all other grounds for relief asserted by Mr. Hammer are denied.

**B. Hammer v. Hammer Motion Made by Mr. Aiken**

Mr. Aiken represents Mr. Hammer in Hammer v Hammer and raises two issues in his "Motions to Amend Findings of Fact, to Alter or Amend Judgment and for a New Trial". First, he requests amendment of this court's finding as to the history of representation of Mr. Hammer in this action, which the court has already granted above. Second, he argues that the award of damages to Mrs. Hammer for "frustration" in her abuse of process counterclaim is against the weight of authority in South Carolina, and further, that since Mrs. Hammer had withdrawn her claim for emotional distress, any claim based on "frustration" was likewise withdrawn. The court disagrees and denies the request for relief.

**C. 1634 Main, L.P.'s motions for new trial, etc.**

1634 Main raises the impropriety of awarding damages for "frustration", as did Mr. Aiken. This ground is dismissed.

1634 Main asserts the court erred in finding that Mr. Hammer provided all information to CPA Ackerman for preparation of 1634 Main's tax returns and provided all information about tax planning related to Mrs. Hammer's interest in the building and real estate. 1634 Main claims the deposition of Mr. Ackerman establishes all this information was provided by Mr. Hammer, Mr. Turbeville, and a tax attorney. Even if the court erred in this regard, it would have no impact on the ultimate findings and the judgment entered against 1634 Main.

1634 Main adopted all grounds raised by Mr. Hammer in his motion, as noted above. All grounds raised by Mr. Hammer have been dismissed.

## **II. Timeliness of Mrs. Hammer's Motions for Sanctions**

Mrs. Hammer moves for sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code §15-36-10 (C)(1) ("the Act") and under Rule 11, SCRCF. Mr. Hammer and 1634 Main first argue the motion under the Act was not timely made.

As noted above, the trial was held October 29 and 30, 2012. On November 15, 2012, the court emailed counsel and Mr. Hammer and attached thereto a memorandum outlining its findings and requested Ms. Ballard, counsel for Mrs. Hammer, to prepare a proposed order. The court signed the order in its final form on January 28, 2013 and it was filed January 29, 2013. In the interim, the court convened a hearing on January 15, intending to receive evidence and argument on the issues pertaining to (1) punitive damages, (2) attorney's fees as actual damages for abuse of process, and (3) any motions under the Act. The January 15 hearing took place, but the court agreed with Mr. Hammer and 1634 Main that the taking of additional evidence and argument on punitive damages

and attorney's fees as actual damages would be improper since the trial was concluded and the record closed on October 30. The court also agreed with Mr. Hammer and 1634 Main that a hearing of a motion under the Act would be premature, since §15-36-10(D) provides that the target of a motion under the Act "has thirty (30) days to respond to the allegations".

Ms. Ballard, counsel for Mrs. Hammer, asserts in her affidavit that she provided Mr. Hammer, Mr. Aiken, and Ms. Lipscomb with separate copies of the unfiled motion for sanctions at the January 15 hearing. Mr. Hammer, Mr. Aiken, and Ms. Lipscomb assert in their affidavits that only one copy of the motion was placed on their counsel table. Mr. Aiken asserts in his affidavit that Ms. Lipscomb asked Ms. Ballard if she had copies for all three of them, and that Ms. Ballard replied that she only had one copy. Ms. Lipscomb and Mr. Hammer concur with this account. All agree that Ms. Ballard provided the court with a copy of the unfiled motion at the January 15 hearing. All agree the motion was mailed to them on February 13, 2013.

Aside from their argument that only one copy of the motion was provided to the three of them on January 15, Mr. Hammer, Mr. Aiken, and 1634 Main contend that §15-36-10(C)(1) renders any service of the motion on them as January 15 moot. §15-36-10(C)(1) provides:

At the conclusion of a trial and after a verdict . . . has been rendered or a case has been dismissed . . . , upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous.

(emphasis added)

Mr. Hammer, Mr. Aiken, and 1634 Main (collectively referred to as "the target parties") claim that even if all of them received a copy of the motion on January 15, the Act

specifically provides that such a motion can be made only after trial and verdict. They claim that the Act provides that the motion is to be made by “the prevailing party”, and that there could be no prevailing party in this case until the merits order was filed on January 29. They assert that since Ms. Ballard received the order from the Clerk of Court on January 30, she had until February 10 (February 9 was a Sunday) to serve her motion for sanctions. Case law interpreting the prior version of the Act held that motions under the former Act had to be made within ten (10) days of receipt of written notice of entry of judgment. See Pitman v Republic Leasing Company, 351 S.C. 429, 570 S.E. 2d 187 (Ct. App. 2002) and Ex parte Beard, 359 S.C. 351, 597 S.E. 2d 835 (Ct. App. 2004). The court concludes that the changes in the Act adopted in 2005 and effective today would not lead to Pitman and Beard being decided differently today.

However, the Court of Appeals’ decision in Rutland v Holler, Dennis, Corbett, Ormond & Garner, 371 S.C. 91, 637 S.E. 2d 316 (Ct. App. 2006) merits examination. In Rutland, the circuit court granted the defendant’s motion to dismiss and signed a form order on August 9, 2004 to that effect, with a notation in the form order that a formal order would follow. The clerk of court mailed the form order to the parties on August 10, 2004. The defendant moved for sanctions on September 1, 2004. The circuit court issued its formal order on December 7, 2004. The motion for sanctions was heard in April 2005.

The plaintiff in Rutland argued that the September 1 motion was untimely because it was made more than ten (10) days after counsel would have received the August 9 form order. The Court of Appeals disagreed, ruling that the form order was not a final order

because it specified that a formal order would be issued, thereby rendering the form order merely interlocutory.

The Rutland court did not address the scenario in the instant case, i.e., a motion for sanctions is ostensibly served after a judge advises by unfiled memorandum that he has decided the relevant issues, spells out the details of his findings, and requests the prevailing party's counsel to prepare a proposed order, but the prevailing part does not reserve the motion after the formal order is filed and mailed to all parties.

The target parties point to paragraph 133 of the merits order as further support for their argument that the motion had to be re-served. In that paragraph, this court acknowledged that at the conclusion of the January 15 hearing, Mrs. Hammer asserted a claim for sanctions under the Act. The court further stated that the Act was "not a factor at this stage as the very terms of the Act do not apply until the post-trial stage . . . ." The court denied the sanctions claims without prejudice to Mrs. Hammer's right to seek relief under the Act "after this matter is concluded." The court instructed counsel for Mrs. Hammer "to serve a filed copy of the motion upon all other parties and to mail the court a copy of the filed motion." Mrs. Hammer's counsel mailed a filed copy of the motion to the target parties on February 13, 2013. If the ten (10) day deadline applies as argued by the target parties, the motion was served two (2) days late.

Mrs. Hammer claims Rutland stands for the proposition that a motion for sanctions under the Act can be made before a final order is issued. Therefore, she claims, the court's directive in paragraph 133 is irrelevant to the timeliness issue, and that even so, she complied with the directive when she mailed the filed motion to the target parties on February 13.

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In my view, the unique posture of this case on January 15 compels the conclusion that the motion was timely “made”, i.e. served, on January 15. See Curtis v Blake, 381 S.C. 189, 672 S.E. 2d 576 (2009) for the proposition that “made” means “served”). The target parties were fully aware that Mrs. Hammer had prevailed on the merits, and they were fully aware she had moved for sanctions. I conclude they were properly served with the motion on January 15, 2013.

In light of this ruling, the court need not address Mrs. Hammer’s other arguments about the timeliness of her motion.

The court further notes that the foregoing timeliness discussion may be moot as a practical matter, as Mrs. Hammer also seeks sanctions against the target parties under Rule 11, SCRPC. In Russell v Wachovia Bank, N.A., 370 S.C. 5, 633 S.E. 2d 722 (2006), the Supreme Court stated:

We do distinguish between [the Act] and the Rule 11 sanctions. There is no requirement that a motion for sanctions made pursuant to Rule 11 be made within ten days from notice of entry of judgment. As a result, we decline to address what time limit is proper with regard to Rule 11 sanctions because the issue is not before us.

633 S.C. 2d at 730 (fn11)  
(emphasis added)

Mrs. Hammer’s Rule 11 motion is grounded on the same allegations as her motion under the Act. Rule 11 issues are decided by employing a subjective standard, while application of the Act requires employment of an objective standard.

### **III. Merits of Sanctions Motion**

#### **A. Preliminary Issues**

The court will first address two issues raised by Mr. Hammer in the motion against him in the 1634 Main action. He suggests, but does not demand, that I may recuse myself from hearing the sanctions motions because I may not be able to be impartial, in light of my ruling in many particulars in the merits order that his tactics and actions were frivolous and grounded in bad faith. These finds were pertinent to findings of fact and conclusions of law in the abuse of process counterclaim of Mrs. Hammer, and were also pertinent to the issue of punitive damages. Mr. Hammer claims the Act does not require the initial trial judge to hear the motion for sanctions. Mr. Aiken, for himself and for Mr. Hammer in Hammer v Hammer, and Ms. Lipscomb, for 1634 Main, do not advance this position. I have no doubt I can resolve these issues impartially and will not recuse myself.

Second, Mr. Hammer addresses the provisions of the Act requiring the court to report findings to the Commission on Lawyer Conduct and the Supreme Court, and the provision requiring reporting to the Governor, Senate, and House of Representatives. He claims these requirements chill the viability of any appeal he may pursue, deny the opportunity for a fair hearing, and serve to deny him due process. The court disagrees.

The court next addresses Mrs. Hammer's claim for sanctions against Mr. Aiken, counsel for Mr. Hammer in Hammer v Hammer from the day of trial through the present, and as counsel for Mr. Hammer in the third party action in the 1634 Main action from October 28, 2011 through October 29, 2012, the day trial began. Mrs. Hammer claims Mr. Aiken is subject to sanctions because he, among other things, made motions for continuance, prepared subpoenas, etc. It is important to note that Mr. Aiken was at all times defending Mrs. Hammer's counterclaims or third party claims. While the Act and

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Rule 11 allow for sanctions for activity in defending claims, the court concludes Mr. Aiken's conduct was in no way sanctionable under either the Act or Rule 11. The fact he sought and received continuances or served subpoenas is not sufficient, without further evidence of sanctionable conduct, to warrant imposition of sanctions.

The target parties claim there can be no award of sanctions because Mrs. Hammer must have been granted summary judgment on Mr. Hammer's and 1634 Main's claims before she can be awarded sanctions under the Act. Case law supports the proposition that if a plaintiff's claims survive a motion for summary judgment, the defendant may not receive sanctions under the Act. See Hanahan v Simpson, 326 S.C. 140, 485 S.E. 2d 903 (1997). Here, however, if Mrs. Hammer filed a motion for summary judgment on 1634 Main's claims against her, it was never heard. In Hammer v Hammer, Mr. Hammer's claims were dismissed by the Honorable L. Casey Manning for lack of subject matter jurisdiction. The target parties cite no authority for the proposition that the moving party must actually move for and be granted summary judgment in order to be entitled to sanctions. Therefore, the court concludes that this particular argument has no merit.

1634 Main also argues there can be no sanctions under the Act because the court denied Mrs. Hammer's motion for involuntary nonsuit at the close of 1634's case. The court disagrees that such a denial renders 1634's claims non-frivolous as a matter of law. The two actions were consolidated for trial, and the 1634 issues were somewhat convoluted, and any denial of the motion for involuntary nonsuit was the product of the court's effort to have all the evidence before it in order to resolve both cases on the merits. Many tenuous issues were raised by Mr. Hammer and by 1634, and the court saw the need to have all evidence before it before issuing the merits order. Technically,

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survival of a nonsuit motion might shield a party from sanctions, but as a practical matter, that would have been an illogical and inefficient manner of judicially resolving this case.

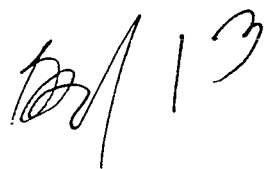
Any argument to this effect advanced by Mr. Hammer is dismissed. He was the target of counterclaims in Hammer v. Hammer and was the third party defendant in the 1634 Main action. If any motions for summary relief were made by Mrs. Hammer against Mr. Hammer, such would be irrelevant to the issue of whether Mr. Hammer can be sanctioned.

The target parties also argue that the term “frivolous” as used in §15-36-10 (C)(2) of the Act does not equate to the notion of lack of good faith or the terms “harass”, “injure”, etc. used in §15-36-10 (C)(1)(a), (b), and (c). However, the term “frivolous” is clearly invoked in the provisions immediately preceding (a), (b), and (c). This argument is totally without merit.

Mr. Hammer also claims that since Paragraph 96 of the merits order sets forth that Ms. Lipscomb’s conduct was in no way objectionable, and since she represented Mr. Hammer for a time in Hammer v Hammer, there can be no award of sanctions against anyone in Hammer v Hammer. I disagree. The court’s findings in Paragraph 96 dealt solely with Ms. Lipscomb’s role as counsel for 1634 Main, and the merits cannot be read in good faith in any other way.

#### **B. Claim for Sanctions under Rule 11, SCRPC**

I now turn to the merits of Mrs. Hammer’s sanctions claims and will first address her Rule 11 claim. Under Rule 11, SCRPC, a party and/or the party’s attorney may be sanctioned for filing a frivolous pleading, motion, or other paper, or for making frivolous arguments. The party or attorney may also be sanctioned for doing these things in bad



faith **whether or not** there is good ground to support the filing or argument. Ex parte Gregory, 378 S.C. 430, 663 S.E. 2d 46 (2008). Claims which are not made in good faith are subject to sanction pursuant to Rule 11. Chewing v Ford Motor Co., 354 S.C. 72, 579 S.E. 2d 605 (2003). As noted above, the court is to employ a subjective standard in determining whether Rule 11 sanctions are warranted.

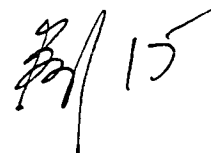
If the court imposes sanctions, it is to describe the conduct determined to constitute a violation of Rule 11 and should explain the basis for the sanctions imposed. Ex Parte Gregory, supra. The sanctions may include an order to pay the reasonable costs and attorney fees incurred by the party defending the frivolous action or action brought in bad faith, a reasonable fine to be paid to the court, or a directive of a nonmonetary nature, or reasonable monetary penalty to the other party. Ex parte Gregory and Runyon v Wright, 322 S.C. 15, 471 S.E. 2d 160 (1996).

This court determines that Howard's conduct warrants an award of sanctions under Rule 11. Applying a subjective standard, this court is absolutely convinced that Howard's initiation of and prolonging both captioned actions were the product of his bad faith desire to harass Mrs. Hammer and cause her the most financial injury possible. With regard to sanctions imposed against Mr. Hammer and 1634 Main, L.P., the court incorporates herein its findings in Paragraphs 1, 2, 13, 14, 20, 22, 30, 32, 37, 39, 40, 41, 42, 43, 46, 53, 58-60, 76, 77, 80, 83, 88-90, 92, 94, 97, 98, 103, 105, 106, 109, 117, 123, 128, 131, and 136 of the merits order. Mr. Hammer's actions have resulted in Mrs. Hammer incurring attorneys' fees and costs in two actions sponsored by him. As noted in the merits order, the court is convinced Mr. Hammer threatened and desired to

bankrupt Mrs. Hammer through this litigation. That is a classic example of the bad faith contemplated by Rule 11.

An award of sanctions against 1634 Main under Rule 11 is also warranted. 1634 Main, acting through Mr. Hammer, engaged in conduct that convinces the court of its bad faith pursuit of a frivolous collection action against Mrs. Hammer. This was a product of Mr. Hammer's bad faith motives that are reviewed in the merits order in detail. It should be again noted that the general partner in 1634 Main is SH5, LLC, of which Mr. Hammer is the sole member. Thus, he controls the actions of 1634 Main. Mr. Hammer is also a limited partner, individually. He prompted the 1634 litigation ostensibly to collect money from Mrs. Hammer for the purpose of making repairs to the building at that address. However, he made sure collection efforts were not directed at him, when he also owned a percentage interest in the property. These efforts to collect against Mrs. Hammer were undertaken in spite of the fact that she had, pursuant to family court order, tendered her interest in the partnership and in the real property, which tender Mr. Hammer refused to accept.

In her Amended Affidavit of Attorneys' Fees and Costs, counsel for Mrs. Hammer divides fees and costs into six categories or "Packets". Packet No. 1 reflects billing for fees and costs incurred for petitioning the Supreme Court to assign one judge to hear circuit court matters and one judge to hear family court matters. I agree with counsel that the necessity of the petition was evident in light of Mr. Hammer's abuse of the system in prolonging litigation. This packet also includes billing for the mediation of all circuit court and family court disputes. The total of fees and costs in Packet No. 1 is \$39,480.17. It would not be proper for this court to award fees and costs incurred in



family court litigation and Packet No. 1 does not adequately distinguish between the two. The court realizes this would be a difficult if not impossible task in hindsight. However, the court declines to speculate as to which is which.

Packet No. 2 reflects fees and costs incurred for Mrs. Hammer's defense in Hammer v. Hammer. These fees and costs were incurred in the amount of \$19,981.84, and the court concludes they are reasonable, after consideration of the factors set forth in Rule 407, SCACR, Rule 1.5. The target parties have not disputed the amount incurred and have presented no evidence on the requisite factors. The court concludes extensive time and labor was necessarily devoted to defending Mr. Hammer's claims, and great litigation skill and experience were necessary. The amount of time expended was reasonable, and it is clear that counsel was not able to devote substantial time to other matters. The hourly rates charged are reasonable. The results obtained were favorable to Mrs. Hammer. The theories presented by Mr. Hammer were novel (though groundless) to the court of common pleas. Mrs. Hammer faced great financial exposure if the claims were not vigorously defended. Ms. Ballard and those in her firm have the requisite experience and reputation to justify the fees charged. No one can dispute their expertise and ability. Certainly, concentrated effort was necessary to defend these claims and to have a motion to dismiss heard as soon as possible. The court sanctions Mr. Hammer in the amount of \$19,981.94.

Packet No. 3 reflects fees and costs incurred in the defense of Mrs. Hammer in the 1634 Main action. In my view, the litigation was baseless. As noted in the merits order, the court concluded the 1634 litigation was promoted and instigated by Mr. Hammer. This is obvious because 1634 Main sued only Mrs. Hammer for her purported share of

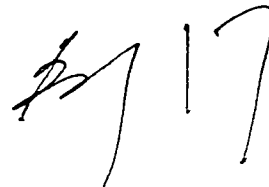
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the repair/maintenance estimate. Mr. Hammer and his young son were also partners and were not sued for and did not confess judgment for their admitted shares, nor did they pay it. His claim that he did not have the money to pay his share is beside the point, as there is no requirement that a party must "have the money" to pay a debt before he can be sued for collection. It is clear that his marching orders to Mr. Turbeville (the principal in the 1634 Main's property manager) were that 1634 was to sue only Mrs. Hammer. The paragraphs of the merits order referenced on page 12 above are again incorporated herein by reference. The findings pertinent to 1634 Main L.P. are relevant to the rationale in imposing sanctions against 1634 Main.

Mrs. Hammer incurred fees and costs totaling \$102,032.87 in defending herself in the 1634 action. Analysis of the foregoing eight factors is much the same as it was for Packet No. 2, and the court is compelled to sanction 1634 Main, L.P. in that amount.

Packet No. 4 sets forth fees and costs of \$40,762.46 incurred by Mrs. Hammer in Hammer v. Hammer for combating the appeal filed by Mr. Hammer after Judge Manning dismissed that action for lack of subject matter jurisdiction. The incorporated findings from the merits order set forth on page 12 above pertinent to Mr. Hammer have application to the imposition of sanctions against Mr. Hammer. The analysis of the eight factors set forth above concerning Packet No. 2 is certainly the same for Packet No. 4. The court sanctions Mr. Hammer in the amount of \$40,762.46.

The court declines to impose sanctions on either Mr. Hammer or 1634 Main for the fees and costs set forth in Packet Nos. 5 and 6, in the event Mrs. Hammer requests the same. These packets reflect fees and costs incurred in pursuing her counterclaims and in pursuing the instant motion for sanctions.



The court notes that Mr. Hammer, Mr. Aiken, Ms. Lipscomb, and attorney James B. Richardson, Jr. have all submitted affidavits in opposition to the motion for sanctions. Mr. Richardson states that he has read the Court of Appeals decision in Hammer v. Hammer, 399 S.C. 100, 730 S.E. 2d 874 (Ct. App. 2012). This is the opinion affirming Judge Manning's dismissal of Hammer v. Hammer. Of course, Hammer v. Hammer is the contract action upon which this court's merits order awarding damages to Mrs. Hammer for abuse of process is partially based. Mr. Richardson states that the Court of Appeals' decision was a sophisticated, detailed legal analysis of the issues and that he believes the Court of Appeals never has and never will publish an opinion in a case the Court Of Appeals deems frivolous. In my view, while Mr. Richardson is certainly an experienced, exceedingly capable, and highly respected attorney, the fact that the Court of Appeals undertook a detailed and sophisticated analysis of the issues then on appeal does not translate to a finding that the underlying action was not frivolous.

Similarly, while the court respects and appreciates the expertise and experience of Ms. Lipscomb and Mr. Aiken, their opinions as to the merits of the claims in Hammer v. Hammer and in the 1634 Main litigation do not necessarily foreclose the imposition of sanctions under Rule 11. The imposition of sanctions is in my view clearly and convincingly warranted by virtue of the conduct of Mr. Hammer and of 1634 Main, by and through Mr. Hammer.

The total amount of sanctions imposed against Mr. Hammer under Rule 11 is in the amount of \$60,744.30, and the total amount of sanctions imposed against 1634 Main, L.P. under Rule 11 is in the amount of \$102,032.87.

**C. Claim for Sanctions under the Act**

Such claims must be analyzed using an objective standard, rather than the subjective standard employed for Rule 11 claims. §15-36-10 C (1)(a)(b) and (c) allow sanctions against a party or an attorney of a party if a reasonable attorney in the same circumstances (a) would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith argument did not exist for changing the law, or (b) would believe that his initiation or continuation of the suit was intended merely to harass or injure the other party, or (c) would believe that the case was frivolous as not reasonably founded in fact or was interposed merely for delay, or was brought for a purpose other than securing proper discovery or adjudication of the claims upon which the action is based.

Under §15-36-10 (E), the court is to take into account the number of parties, the complexity of the claims, information disclosed or undisclosed during discovery and investigation, previous violations of the Act, the response, if any, to the allegations the Act had been violated, and all other factors the court considers just, equitable, or appropriate. In the Hammer v. Hammer case, there were only two parties. The claims of Mr. Hammer were, on their face, not exceedingly complex from a factual standpoint. Information disclosed during discovery and/or investigation was not of much note, as the parties already knew the issues because of the rampant family court litigation. There were no previous violations of the Act committed by Mr. Hammer or by 1634 Main, to the knowledge of the court. The court's main focus concerning sanctions is the egregious conduct of Mr. Hammer and 1634 Main, by and through Mr. Hammer, as set forth herein and as set forth in detail in the merits order. A reasonable attorney in Mr. Hammer's position would know full well that his initiation and continuation of the Hammer v.

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Hammer litigation (beginning with the filing of the *lis pendens*) were undertaken to harass and injure Mrs. Hammer and that the action was merely brought for purposes other than securing proper discovery, joinder of parties, or adjudication of the claim upon which the action was based. The same is to be said for the procurement, initiation, and continuation of the 1634 Main action against Mrs. Hammer. Among other things, Mr. Hammer, as sole of member of general partner SH5, LLC, saw to it that only Mrs. Hammer was sued for her purported share of the repair expenses. In addition, this litigation was procured even though Mrs. Hammer had attempted a tender of her interest in the partnership and in the real estate. A reasonable attorney, with knowledge of all pertinent-facts and as contemplated in the Act, would believe these actions in both cases were taken in violation of at least §15-36-10 (C) (1) (b) and (c). Mr. Hammer had knowledge of all pertinent facts at the time he filed the *lis pendens* and commenced Hammer v. Hammer. He also had knowledge of all pertinent facts at the time he orchestrated the initiation of the 1634 action. The totality of the circumstances and the greater weight of the evidence establish the claims were frivolous. Therefore, the court awards sanctions in the same foregoing amounts as awarded under Rule 11. Of course, Mrs. Hammer is not entitled to double recovery of these sanctions.

Based on the foregoing, it is ORDERED

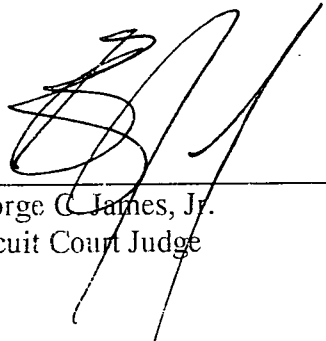
1. Shirley Hammer is awarded sanctions against Howard Hammer in the amount of \$60,744.30;
2. Shirley Hammer is awarded sanctions against 1634 Main, L.P. in the amount of \$102,032.87.
3. No sanctions are awarded against Arthur K. Aiken.

4. All motions for reconsideration, to alter or amend judgment, and/or for a new trial are denied.

**AND IT IS SO ORDERED.**

Sumter, South Carolina

June 3, 2013



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George C. James, Jr.  
Circuit Court Judge