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Columbia, SC 29201

LIPSCOMB LAW FIRM, PA

Attorneys at Law

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Susan Batten Lipscomb
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Kelsey@LLFSC.com

September 10, 2013

The Honorable Daniel E. Shearouse
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

RECEIVED

SEP 20 2013

S.C. Supreme Court

RE: Hammer v. Hammer, Case No. 2009-CP-40-05911
Appellate Tracking No. 2013-001635

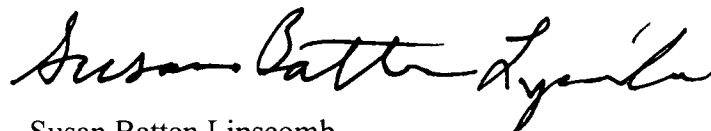
1634 Main, L.P. v. Shirley Hammer a/k/a Shirley Grace Hightower v. Howard Hammer
Appellate Case No. 2013-001634

Dear Mr. Shearouse:

Enclosed and in connection with the above-referenced matter please find the original plus seven copies of 1634 Main, L.P.'s **RETURN TO MOTION TO DISMISS OF RESPONDENT SHIRLEY HAMMER**, along with a Proof of Service. Please file the original plus six copies and clock-stamp the seventh copy to be returned to our office via the enclosed self-addressed envelope.

If you have any questions please let me know. Thank you in advance for your assistance in this matter.

Yours very truly,



Susan Batten Lipscomb

Enclosure

cc: The Honorable Jenny A. Kitchings
Arthur K. Aiken, Esquire
Howard Hammer, Esquire
Desa Ballard, Esquire
Stephanie Weissenstein, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge George James, Jr., Circuit Court Judge
James F. Barber, Supervising Circuit Court Judge

RECEIVED

SEP 20 2013

S.C. Supreme Court

Formerly Pending before the South Carolina Court of Appeals

Howard Hammer Appellant

v.

Shirley Hammer Respondent

Case No. 2009-CP-40-05911
Appellate No. 2013-001652

1634 Main, L.P. Plaintiff/ Appellant

v.

Shirley Hammer a/k/a Shirley Grace Hightower Defendant and Third Party
Plaintiff/Respondent

v.

Howard Hammer Appellant/Additional
Defendant on Counterclaim/Appellant

Case No. 2010-CP-40-2889
Appellate No. 2013-001638

**RETURN OF 1634 MAIN L.P., PLAINTIFF/APPELLANT TO MOTION TO
DISMISS OF RESPONDENT SHIRLEY HAMMER**

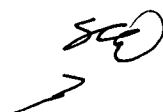
Respondent, Defendant and Third Party Plaintiff/Respondent Shirley Hammer
(hereafter Ms. Hammer) filed a Motion to Dismiss pursuant to Rule 207(a)(1), SCACR
alleging that Appellants failed to timely order and arrange for payment of the transcripts
of the trials and hearings resulting in Orders issued by the Honorable George C. James,
Jr. The Motion should be denied.

SB/

Plaintiff/Appellate 1634 Main, L.P. respectfully submits that Ms. Hammer's Motion to Dismiss should be denied because first, Plaintiff/Appellant 1634 Main L.P. did make timely requests for copies of the transcripts necessary to pursue the appeal, and offered to prepay for the transcripts or pay on receipt of an invoice. See **Exhibit A**. Further, the Motion to Dismiss should be denied, because there was a pending Motion to Remand for further ruling from the Court on Plaintiff/Appellate 1634 Main, L.P.'s Motion to Reconsider, which could have ostensibly precluded any need for certain appeal, in the event the lower court decided to change its Order. Judge James has denied Plaintiff/Appellant 1634 Main L.P.'s Motion to Reconsider, and it will appeal the Order. On information and belief Plaintiff/Appellant 1634 Main, L.P., unless otherwise directed by the Court, would have ten (10) days after filing of the Notice of Appeal to order the transcripts and make arrangements to pay for them. Lastly, Rule 263(b), SCRAP provides as follows: "The time prescribed by these Rules for performing any act, except the time for serving the notice of appeal under Rule 203 and 243, may be extended or shortened by the appellate court, or by any judge or justice thereof." Accordingly, Plaintiff/Appellant respectfully requests that Ms. Hammer's Motion to Dismiss be denied.

The underlying facts are as follows:

The above referenced cases were tried separately, one right after the other, on October 29, and 30, 2012, pursuant to the order of Judge James made before the trial began. Judge James issued an Order dated January 28, 2013, and filed January 29, 2013. Motions to Reconsider were served and filed by or on behalf of 1634 Main, LP and Howard Hammer. Shirley Hammer made a Motion for Sanctions. Hearings were held by

Handwritten signature and arrow pointing to the right.

Judge James on January 15, 2013, May 1, 2013, and on May 17, 2013. Judge James then issued an Order Addressing Post-Trial Motions and the Motion for Sanctions dated June 3, 2013, and filed June 6, 2013. Plaintiff/Appellant, 1634 Main L.P. received written notice of the entry of the Order as to Plaintiff/Appellant 1634 Main, L.P. on July 9, 2013. On July 15, 2013, Plaintiff/Appellant 1634 Main, L.P. served a Notice of Motion and Motion to Reconsider, Alter, Amend or Modify as to the Order filed June 6, 2013, insofar as the Order dealt with sanctions, for which no prior Order had been issued. Plaintiff/Appellant 1634 Main, L.P. also served a Notice of Appeal of the Orders. See **Exhibit B**, without attachments. On July 25, 2013, the undersigned as counsel for Plaintiff/Appellant 1634 Main L.P. requested in writing the transcripts for the trial and subsequent hearings. See letters attached as **Exhibit A**. In each letter the undersigned on behalf of 1634 Main, L.P. offered to prepay the estimated cost or to pay for the transcript on receipt of an invoice.

On July 31, 2013, Plaintiff/Appellant 1634 Main L.P. made a Motion to Remand requesting an Order remanding the case of 1634 Main, L.P. v. Shirley Hammer v. Howard Hammer, Case No. 2010-CP-40-2889, so that the lower court could hear and issue an Order on its Motion to Reconsider, Alter, Amend or Modify. By letter dated Wednesday, July 31, 2013, Attorney for Ms. Hammer sent a letter consenting to the Motion for Remand by Plaintiff/Appellant 1634 Main, L.P. A copy of the letter is attached as **Exhibit C**.

On August 1, 2013, Ms. Hammer filed in the Supreme Court a Motion for Certification, Consolidation and to Expedite the appeal of 1634 Main, L.P. with a separate case not involving Plaintiff/Appellant 1634 Main, L.P. Since there was a

pending Motion to Remand and consent to the Motion, the undersigned on behalf of 1634 Main, L.P. moved the Court to Strike or Dismiss the Motion as premature. By Order dated September 18, 2013, the Supreme Court denied that Motion, but did remand the case in order for Judge James to issue an Order on the Motion to Reconsider. The Order required that Judge James rule on the Motion to Reconsider by September 20, 2013, and ordered that any appeal be served and filed by 5:00 P.M. on Monday, September 23, 2013.

In accord with the foregoing facts, applicable law, and reasons set forth herein, it is respectfully submitted that the Motion to Dismiss of Shirley Hammer based on any alleged failure to order and make arrangements to pay for the transcripts, should be denied.

Respectfully submitted,



Susan Batten Lipscomb
LIPSCOMB LAW FIRM, P.A.
1634 Main Street, Suite 200
Columbia, SC 29201
Tel: (803) 233-6654 Fax: (803) 233-6663
SBL@LipscombLawFirmSC.com
Counsel for Plaintiff/Appellant 1634 Main, L.P.

September 20, 2013

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge George James, Jr., Circuit Court Judge
James F. Barber, Supervising Circuit Court Judge

RECEIVED

SEP 20 2013

S.C. Supreme Court

Howard Hammer, Appellant

v.

Shirley Hammer.....Respondent
Case No. 2009-CP-40-05911, Appellate No. 2013-001652

1634 Main, L.P.Plaintiff/ Appellant

v.

Shirley Hammer a/k/a Shirley Grace HightowerDefendant and Third Party
Plaintiff/Respondent

v.

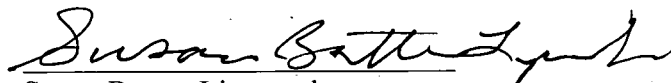
Howard Hammer.....Appellant/Additional
Defendant on Counterclaim/Appellant
Case No. 2010-CP-40-2889, Appellate No. 2013-001638

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Plaintiff/Appellant, 1634 Main, L.P., do hereby certify that on September 20, 2013, **RETURN OF 1634 MAIN L.P., PLAINTIFF/ APPELLANT TO MOTION TO DISMISS OF RESPONDENT SHIRLEY HAMMER** was served on counsel of record by placing a copy thereof in the U.S. Mail to the addresses as set forth below:

Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
Law Offices of Desa Ballard
226 State Street
West Columbia, SC 29169

Howard Hammer, *pro se*
1609 Catawba Street
Columbia, SC 29205


Susan Batten Lipscomb

Chron

1634 Main St., Suite 200
Columbia, SC 29201

LIPSCOMB LAW FIRM, PA

Attorneys at Law

Tel.: (803) 233-6654
Fax: (803) 233-6663

Susan Batten Lipscomb
Susan@LLFSC.com

John Richard Lipscomb
John@LLFSC.com

Kelsey Katrina Lipscomb
Kelsey@LLFSC.com

July 25, 2013

Karen Ambroziak
1083 Langford Rd.
Blythewood, SC 29016

Re: 1634 Main, LLP v. Shirley Hammer
Civil Action #: 2010-CP-40-2889

Dear Ms. Ambroziak:

The referenced matter was before the Honorable George C. James for trial on October 29 and 30, 2012, and was before him for a hearing on January 15, 2013 for which you were the court reporter.

Please provide me with a copy of the transcript of the trial on October 29 and 30, 2012 and a copy of the transcript of the January 15, 2013, hearing. I will either prepay for the estimated cost or pay for the transcript on receipt of an invoice as you direct.

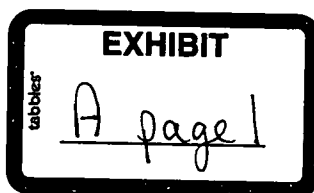
Thank you for your assistance in this regard.

Yours very truly,



Susan Batten Lipscomb

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
The South Carolina Court of Appeals
South Carolina Court Administration
Howard Hammer



Chron

1634 Main St., Suite 200
Columbia, SC 29201

LIPSCOMB LAW FIRM, PA

Attorneys at Law

Tel.: (803) 233-6654
Fax: (803) 233-6663

Susan Batten Lipscomb
Susan@LLFSC.com

John Richard Lipscomb
John@LLFSC.com

Kelsey Katrina Lipscomb
Kelsey@LLFSC.com

July 25, 2013

Crystal M. Holmes
Post Office Box 611
Columbia, SC 29202

Re: 1634 Main, LLP v. Shirley Hammer
Civil Action #: 2010-CP-40-2889

Dear Ms. Holmes:

The referenced matter was before the Honorable George C. James on a hearing on May 1, 2013, for which you were the court reporter.

Please provide me with a copy of the transcript of the May 1, 2013, hearing. I will either prepay for the estimated cost or pay for the transcript on receipt of an invoice as you direct.

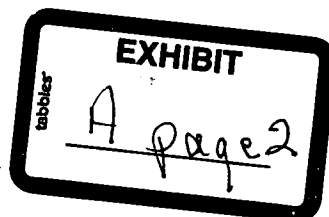
Thank you for your assistance in this regard.

Yours very truly,



Susan Batten Lipscomb

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
The South Carolina Court of Appeals
South Carolina Court Administration
Howard Hammer



Caron

1634 Main St., Suite 200
Columbia, SC 29201

LIPSCOMB LAW FIRM, PA

Attorneys at Law

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Susan Batten Lipscomb
Susan@LLFSC.com

John Richard Lipscomb
John@LLFSC.com

Kelsey Katrina Lipscomb
Kelsey@LLFSC.com

July 25, 2013

Hattie O. Gordon
Post Office Box 597
Wallace, SC 29596-0597

Re: 1634 Main, LLP v. Shirley Hammer
Civil Action #: 2010-CP-40-2889

Dear Ms. Gordon:

The referenced matter was before the Honorable George C. James for a hearing on May 17, 2013, for which you were the court reporter.

Please provide me with a copy of the transcript of the May 17, 2013, hearing. I will either prepay for the estimated cost or pay for the transcript on receipt of an invoice as you direct.

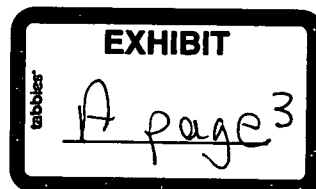
Thank you for your assistance in this regard.

Yours very truly,



Susan Batten Lipscomb

cc: Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
The South Carolina Court of Appeals
South Carolina Court Administration
Howard Hammer



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge George James, Jr., Circuit Court Judge

Case No. 2010-CP-40-2889

1634 Main, L.P.Appellant

v.

Shirley Hammer a/k/a Shirley Grace
Hightower.....Respondent

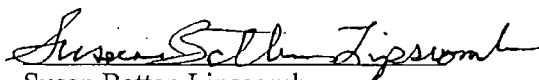
v.

Howard Hammer.....Third Party Defendant

NOTICE OF APPEAL IN A CIVIL CASE

1634 Main, L.P. appeals the following Orders of the Honorable George C. James, Jr.: **Order dated January 28, 2013**, filed January 29, 2013, attached as **Exhibit A**, and **Order Addressing Post-Trial Motions dated June 3, 2013**, filed June 6, 2013, attached as **Exhibit B**. Appellant received written notice of the entry of the Order on July 9, 2013.

July 15, 2013



Susan Batten Lipscomb
Lipscomb Law Firm, P.A.
1634 Main Street, Suite 200
Columbia, SC 29201
(803) 233-6654
Attorney for Appellant

Other Counsel of Record:

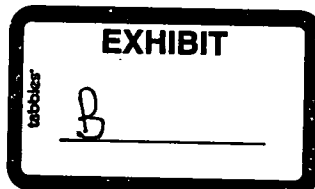
Desa Ballard
Stephanie Weissenstein
226 State Street
West Columbia, SC 29169
Attorney for Respondent

Howard Hammer, *pro se*
1609 Catawba Street
Columbia, SC 29205

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JUL 16 2013

SC Court of Appeals



THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Judge George James, Jr., Circuit Court Judge

Case No. 2010-CP-40-2889

1634 Main, L.P.Appellant

v.

Shirley Hammer a/k/a Shirley Grace
Hightower.....Respondent

v.

Howard Hammer.....Third Party Defendant

PROOF OF SERVICE

I, Susan Batten Lipscomb, attorney for Appellant, 1634 Main, L.P., do hereby
certify that on July 15, 2013, Notice of Appeal in a Civil Case was served on counsel of
record by placing a copy thereof in the United States Mail, postage prepaid, addressed as
set forth below:

Desa Ballard, Esquire
Stephanie Weissenstein, Esquire
Law Offices of Desa Ballard
226 State Street
West Columbia, SC 29169

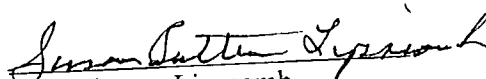
Howard Hammer, *pro se*
1609 Catawba Street
Columbia, SC 29205

RECEIVED

JUL 16 2013

SC Court of Appeals

July 15, 2013


Susan Batten Lipscomb



**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

Wednesday, July 31, 2013

Via U.S. Mail and Email
Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

Re: 1634 Main LP v. Hammer v. Hammer
Case No. 2010-CP-40-2889 (no appellate tracking number yet assigned)

Dear Ms. Kitchings:

We are in receipt of Ms. Lipscomb's Motion to Remand dated July 31, 2013. Reserving all rights regarding service, timeliness and sufficiency of the content of the Notice of Appeal, Mrs. Hammer consents to remand for the purposes set forth in Mrs. Lipscomb's motion.

With warm personal regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

cc: Arthur K. Aiken Esquire (Via Email)
✓Howard Hammer, Esquire (Via US Mail)
Susan Batten Lipscomb (Via Email)
Shirley Hammer (Via Email)

