

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

George C. James, Jr., Circuit Court Judge

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

Howard Hammer.....Plaintiff/Appellant

v.

Shirley Hammer.....Defendant/Respondent

Case No. 2009-CP-40-0511, Appellate No. 2013-001638

1634 Main, LP.....Plaintiff/Appellant

v.

Shirley Hammer.....Defendant/Respondent

v.

Howard Hammer.....Third-Party Defendant on Counterclaim/Appellant

HOWARD HAMMER'S RETURN TO RESPONDENT'S MOTION TO DISMISS

STATEMENT OF THE CASE

The Respondent, Shirley Hammer, has made a Motion to Dismiss the above appeals on the grounds that the Appellants have not complied with Rule 207(a)(1). Appellant, Howard Hammer files the following Return in opposition to that Motion insofar as it seeks dismissal of

his appeal in Case Number 2009-CP-40-05911 (Appellate Number 2013-001652) (declaratory judgment action).

STATEMENT OF THE FACTS

Howard Hammer's attorney filed the Notice of Appeal in the declaratory judgment action on July 17, 2013. That same day, Howard Hammer's attorney sent letters to two court reporters, Hattie O. Gordon (Exhibit 1) and Karen Ambroziak (Exhibit 2).¹ These letters requested preparation and delivery of the transcripts for the trial of and the posttrial hearings in the declaratory judgment action.

In the letters to the court reporters, Howard Hammer's attorney offered to prepay an amount for estimated costs or to pay over an invoice at the court reporters' election. Howard Hammer's attorney heard nothing further from the court reporters, and he quite naturally believed that the court reporters had elected to be paid over invoices and that they had handled the formalities for processing his order of the transcripts.

ARGUMENT

Rule 207(a)(1) SCACR sets the requirements and deadlines for ordering the transcript of proceedings in the trial court. The Rule imposes a ten (10) day time limit for ordering the transcript and for making "satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript." It seems that the Respondent concedes that the transcripts were properly ordered within the ten (10) day time limit but argues that satisfactory arrangements were not made with the court reporter for furnishing the transcript within the ten (10) day time limit.

¹ It has now come to light that there was a third court reporter, Crystal Holmes. No letter requesting a transcript was sent to Ms. Holmes because of pure oversight of Howard Hammer's attorney. This oversight has been cured because the transcript of the hearing reported by Ms. Holmes has since been requested by the attorney for 1634 Main, LP in Case No. 2009-CP-40-0511 (Appellate Number 2013-001638).

The letters sent to Ms. Gordon (Exhibit 1) and Ms. Ambroziak (Exhibit 2) are satisfactory arrangements in writing for those court reporters to furnish the transcripts of the proceedings that they reported. The letters give the judge, the date of the proceeding and the caption of the case. The letters also permit the court reporters to elect between two logical methods of payment.

CONCLUSION

For the foregoing reasons this Court should deny the Respondent's Motion to Dismiss.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

By: 

ARTHUR K. AIKEN

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Columbia, South Carolina 29205

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ATTORNEYS FOR HOWARD HAMMER

Columbia, SC
September 30, 2012

AIKEN & HIGHTOWER, PA

Attorneys at Law

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

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Arthur K. Aiken

A. Bea Hightower

July 17, 2013

Hattie O. Gordon

PO Box 597

Wallace, SC 29596-0597

Re: Howard Hammer v Shirley Hammer
Circuit Court Case No.: 2009-CP-40-05911

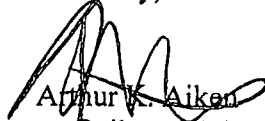
Dear Ms. Gordon:

You reported a hearing (May 17, 2013) presided over by Judge George C. James in the above case. Please deliver a transcript of these proceedings to me.

I will either prepay for the estimated costs or pay for the transcript over an invoice as you choose.

Thank you for your help.

Sincerely,



Arthur K. Aiken
art@aikenandhightower.com

Cc: Desa Ballard
The South Carolina Court of Appeals
South Carolina Court Administration

EXHIBIT 1

AIKEN & HIGHTOWER, PA

Attorneys at Law

2231 Devine Street, Suite 201

Columbia, SC 29205

Phone: 803-799-5205

Fax: 803-799-5206

Arthur K. Aiken

A. Bea Hightower

July 17, 2013

Karen Ambroziak
1083 Langford Road
Blythewood, SC 29016

Re: Howard Hammer v Shirley Hammer
Circuit Court Case No.: 2009-CP-40-05911

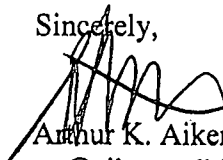
Dear Ms. Ambroziak:

You reported a trial (October 29 and 30, 2012) and a hearing (January 15, 2013) presided over by Judge George C. James in the above case. Please deliver a transcript of these proceedings to me.

I will either prepay for the estimated costs or pay for the transcript over an invoice as you choose.

Thank you for your help.

Sincerely,



Arthur K. Aiken

art@aikenandhightower.com

Cc: Desa Ballard
The South Carolina Court of Appeals
South Carolina Court Administration

EXHIBIT 2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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George C. James, Jr., Circuit Court Judge

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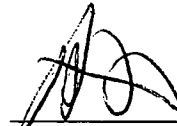
Shirley Hammer.....Defendant/Respondent

v.

Howard Hammer.....Third-Party Defendant on Counterclaim/Appellant

PROOF OF SERVICE

I certify that I have served Howard Hammer's Return to Motion to Dismiss Appeal on the Respondent by mailing a copy of that paper to her attorney of record: Desa Ballard, Ballard Watson Weissenstein, PO Box 6338, West Columbia, SC 29171-6338 on July 17, 2013.



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September 30, 2013
Columbia, SC