

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

William C. Tindal, Special Referee

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Case No. 2008-CP-29-1084  
Appellate Case No. 2013-002370

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Ned Gregory, Jr.,

Plaintiff/Respondent,

v.

Howell Jackson Gregory and  
The Gregory Company, Inc.,

Defendants/Appellants.

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REPLY TO RETURN TO PETITION FOR SUPERSEDEAS

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H. Jackson Gregory  
P. O. Box 7111  
Myrtle Beach, SC 29572-0006  
(843) 222-4800  
Pro Se Appellant

James T. Irvin, Jr., Esquire  
IRVIN LAW FIRM, LLC  
P. O. Box 2677  
Myrtle Beach, SC 29578-2677  
Attorney for The Gregory Company, Inc.,  
Appellant

Palmer Freeman, Esquire  
P. O. Box 8024  
Columbia, SC 29202  
(803) 799-9400  
Attorney for Ned Gregory, Jr., Respondent

APPELLANT'S REPLY TO RESPONDENT'S RETURN TO PETITION FOR  
SUPERSEDEAS AND STAY OF SALE ORDERED FOR DECEMBER 2, 2013

DENY RESPONDENT'S RETURN

The Return to Petition for Supersedeas by Respondent should be denied as it does not satisfy the requirement of the Rule 240 (e), SCRAP wherein it states "The provisions of Rule 240 (c), SCRAP shall apply to a return." Under Rule 240 (c) (3), SCRAP with no (as is the case here) Record on Appeal on file "the parties shall file affidavits and other documents in support of their positions." Respondent failed to file an affidavit and thereby fails to satisfy the directive word "shall" which appears in both sections of the rule.

APPELLANT'S EXTRAORDINARY CIRCUMSTANCES

Appellant was dealt with the following set of facts on November 4, 2013 when the Order dated October 31, 2013 from Special Referee William C. Tindal and filed November 1, 2013 was received in the mail denying the Rule 59(e), SCRCP motion to reconsider his Order of April 30, 2013 that originally ordered the sale of the Lancaster tract and now the date of December 2, 2013 was ordered as the sale date along with the Notice of Sale for the Lancaster newspaper to advertise once a week for three weeks beginning Friday November 15, 2013 and on Friday November 22, 2013 and on Friday November 29, 2013. Also, Thanksgiving week exists between the last two Fridays and the sale date of December 2, 2013 is the Monday after Thanksgiving.

Appellant literally had three choices to make in a few hours, to wit:

1. File another motion with the special referee and request a stay, but due to the short

time frame this option appeared deadly as time did not permit and Thanksgiving was looming so only three weeks actually existed to get another order and the stay which looked risky from the standpoint that the last two orders ordered the sale and the unknown factor of how long would he take to rule after opposing counsel had an opportunity to ask for a denial over a ten day period after the request.

2. Ask for a supersedeas ex parte from one member of the Court of Appeals.
3. File the Notice of Appeal and Petition for Supersedeas simultaneously since the two orders needed to ultimately be ruled upon at the Court of Appeals and this seemed a safer method of handling the matter given the time constraints for the return and the reply to the petition under Rule 240, SCRAP.

A command decision was made and by November 7, 2013 the Notice of Appeal and Petition for Supercedeas were in the office of the clerk of the SC Court of Appeals. As calculated the Return to the Petition was received in the mail on Monday November 18, 2013 and an immediate Reply is being made to get into the Court this week and before Thanksgiving Week.

#### BOND OR SECURITY FOR STAY SHOULD BE LANCASTER TRACT

This case presents a unique situation that should allow the Lancaster tract to stand as security for the stay of sale until the appellate court issues a "final judgment" in the matter as the amount of the judgment is in question as described in the accompanying affidavit of appellant, H. Jackson Gregory dated November 19, 2013. Also, when The Gregory Company, Inc. purchased the Lancaster tract in 2005 it contained three vacant commercial buildings needing serious repair as two of the buildings during that time

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frame (2005 to 2009) were condemned by the city. The purchase price at public sale was \$170,000.00. All three buildings are now occupied with total rental income of \$1,500.00 monthly. In order to induce the two tenants in 2010 and 2012 they were offered long term leases of 30 years in return for their significant structural improvements that they paid for to the buildings. In short there is income here that will satisfy the security requirements for the stay in lieu of a bond as there are no liens against the Lancaster tract, except for respondent's third lis pendens filed in 2008.

#### A FINAL JUDGMENT IS NEEDED

South Carolina Code section 15-35-810 provides that "Final judgments ... shall be declared to create a lien ...." The basis for respondents claim in the case on appeal is a transcript of judgment dated June 10, 2008 that is in error and due to the actions of the successor Master in Equity for Horry County Howe in preventing the clerk of court from correcting her omission of \$25,517.99 due appellant from the two orders of the trial Master in Equity Cross in 2006 that are the law of the case as no appeal was taken Judge Howe is in violation of Rule 63, SCRPC in changing a prior judges order by not allowing it to be implemented and so a non final judgment has been created here. A sale under these facts is premature or putting the cart before the horse.

It would be unfair and inequitable to allow respondent to receive benefits while the matter is pending on appeal; therefore, a stay until a final judgment can be determined by the appellate court is in order here and the proper approach under the notions of fair play and substantial justice.

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## CONCLUSION

Rule 241 (c)(3), SCRAP provides "The granting of supersedeas ... may be conditioned upon such terms, including but not limited to the filing of a bond or undertaking, as the lower court, administrative tribunal, appellate court or judge or justice of the appellant court may deem appropriate."

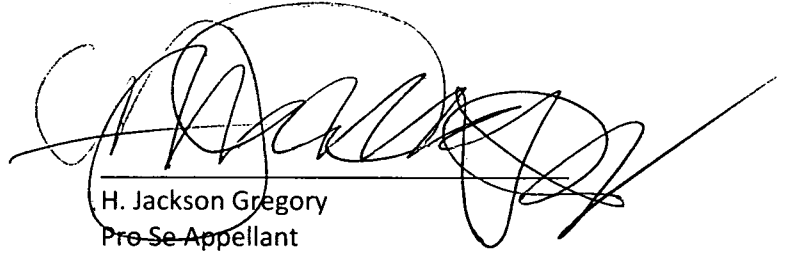
As proposed the Lancaster tract can stand as collateral or security for the amount of the final judgment as it is unencumbered and the value should be considerably more than the \$170,000.00 it brought in June, 2005 at public sale when the three vacant buildings were in need of extensive repair. Today the Lancaster tract is in the best condition and position as can be achieved over the past eight years. All of the three buildings now have tenants and producing annual income based on the rent rolls projection of \$18,000.00 for 2013 under long term leases. The only expense is the annual county tax which is under \$2,800.00. It is due and payable by mid-January, 2014.

As we read the rules the Court of Appeals can set the terms of the undertaking requirements as it is not an exclusive job for the lower court. The unencumbered Lancaster tract can be held liable for the final judgment when determined on appeal as security for that debt and in the interim a reasonable sum of the rents collected could be held in a special fund awaiting that decision and the sale stayed during the appeal.

A remand from the Court of Appeals to the Special Referee to establish this fund and maintain it as the desired undertaking seems reasonable pending the appeal and final judgment determination and the staying of the ordered December 2, 2013 sale.

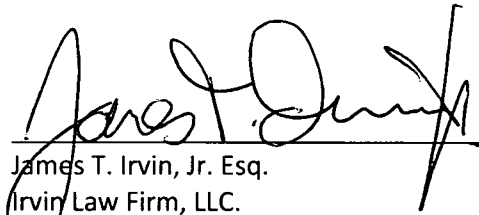
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Respectfully submitted,



H. Jackson Gregory  
Pro Se Appellant  
P.O. Box 7111  
Myrtle Beach, SC 29572-0006  
(843) 222-4800

November 19, 2013



James T. Irvin, Jr. Esq.  
Irvin Law Firm, LLC.  
P.O. Box 2677  
Myrtle Beach, SC 29578-2677  
(843) 222-3228  
Attorney for The Gregory Company, Inc.  
Appellant

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STATE OF SOUTH CAROLINA

AFFIDAVIT OF HOWELL JACKSON GREGORY

COUNTY OF HORRY

PERSONALLY APPEARS HOWELL JACKSON GREGORY, who after being first duly sworn deposes and says:

That affiant is a citizen and resident of Horry County, South Carolina residing at 302 70<sup>th</sup> Avenue North in the city of Myrtle Beach and submits this affidavit in furtherance of a petition for supersedeas and stay filed in the Court of Appeals for South Carolina and in reply to the return pursuant to the South Carolina Appellate Rules for Motions and Petitions generally, Rule 240 as provided in section (c) subsection (3) and section (f) as the Record on Appeal or Appendix has not been filed.

This matter is the outgrowth of a partition suit brought in Lancaster County in 2000 by the brother of affiant over the two real estate properties, to wit: a beach house located in Myrtle Beach, SC built in 1948 by the father of affiant and three vacant commercial buildings on Main Street in Lancaster, SC built in the mid-1950's. The case was moved to Horry County in 2002 and after hearings in 2004 the two properties sold in 2005 at public auction. Affiant bought the beach house where affiant now resides and affiant subsequently bid in the Lancaster commercial property and J. Stanton Cross, Jr., Master in Equity for Horry County deeded that property in 2006 to The Gregory Company, Inc., a South Carolina subchapter S corporation that affiant owns.

That affiant in 2004 hired a roofing contractor to replace the roof on the corner building as the city of Lancaster had condemned the building in 2003 and forced the tenant to abandon the premises and also the city threatened to have the building razed and

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fine affiant and his brother \$1,000. per day if not repaired. Affiant did send two memos to his brother in 2004 and 2005 before the sale, but got no response. (copies attached) Affiant paid \$13,500. for the roof job in September, 2005 with no contribution from affiant's brother and in April, 2006 affiant's corporation paid the bid amount for the purchase of the Lancaster tract and subsequently recorded the Cross deed in 2008.

Master in Equity Cross in 2006 issued two orders dealing with side issues that arose during and after the partition case trial. Respondent was awarded rent and accounting amounting to \$42,859.47 and affiant was awarded \$25,517.99 for payment of improvements not contributed to by Respondent. Those items include the amount of \$7,940. for the removal of the gas tanks which amount was conceded at trial by Respondent and his counsel. Also, the payment of three years taxes on the beach house amounting to \$4,077.99 for the years 2002, 2003 and 2004 and the previously described new roof job of \$13,500. in 2005 as Respondent did not contribute toward those expenses made by affiant. Those two Cross orders were not appealed and are the law of the case.

In 2008 affiant recorded the Lancaster deed and a week later the Horry County Clerk of Court issued a Transcript of Judgment that affiant was indebted to Plaintiff in the erroneous sum of \$42,859.47 omitting affiant's setoffs as ordered. Respondent then used the erred Transcript of Judgment claim and instituted the lawsuit against affiant and affiant's corporation in Lancaster to have the Cross deed set aside for fraud, but in 2012 before the trial Respondent amended his pleadings to allege that the Cross deed to The Gregory Company, Inc. was a violation of the statute of Elizabeth and asked to have the

Lancaster tract sold at public auction and the orders from the special referee dated October 31, 2013, filed November 1, 2013 and received by affiant November 4, 2013 has set the sales date for December 2, 2013.

Affiant in the meantime and during 2013 attempted through two post trial motions to have Cynthia Graham Howe the current Master in Equity for Horry County to assist the Horry County Clerk of Court having the erred Transcript of Judgment dated June 10, 2008 modified or corrected; however, after ruling the Cross orders of 2006 are the law of the case she also ruled that the June 10, 2008 erred Transcript of Judgment stands and to make the facts more complicated she orally rules on October 14, 2013 that she takes judicial notice that the June 10, 2008 Transcript of Judgment is in error. By these conflicting rulings Master in Equity Howe is violating Rule 63, SCRCP in that she is preventing the law of the case from being carried out and in essence is changing the Cross orders of 2006 by upholding the erred June 10, 2008 Transcript of Judgment and creating a non final judgment (incorrectly referred to in earlier affidavit as June 8).

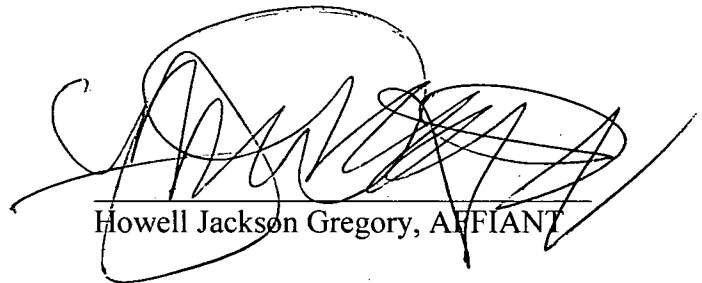
A sale of the Lancaster property on December 2, 2013 did not give affiant or The Gregory Company, Inc. sufficient time to file another motion in circuit court to stay the sale as the special referee had already made his intentions known by ordering the sale in his April 30, 2013 order and denying the Rule 59(e) motion and setting the sale date in the current order that was received November 4, 2013. Running out of time with a sale in less than a month and Thanksgiving Day during the last week presented an extraordinary circumstance and a command decision had to be made under those circumstances. The

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three choices were weighed and the best approach was to immediately file the Notice of Appeal and Petition for Supersedeas for the stay of the Lancaster property sale until the correct final judgment amount is reached by the Court of Appeals.


Affiant on November 18, 2013 just received in the mail Respondent's Return to the Petition for Supersedeas and has five days to reply. Time runs out as Thanksgiving week begins Monday November 25 a week from receipt day and the next Monday is sales day, December 2, 2013. Time was critical here and this was the most logical choice.

AFFIANT SAYETH NAUGHT.



Howell Jackson Gregory, AFFIANT

SWORN to before me this  
19<sup>th</sup> day of November, 2013.

 L.S.  
Notary Public for South Carolina  
My Commission Expires: 4/11/23

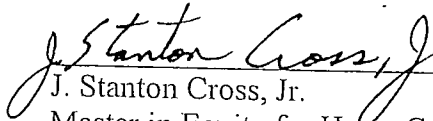


BEING the identical property conveyed to Ned Gregory and Toy R. Gregory by deed of A. J. Gregory, et al. recorded September 1, 1942, in Deed Book N-3 at Page 283; Toy R. Gregory conveyed his one-half interest to Ned Gregory by deed recorded August 12, 1946, in Deed Book S-3 at Page 227, Ned Gregory subsequently conveyed one-sixth interest to C. D. Gregory by deed recorded in Deed Book W-4 at Page 233, to C. D. Gregory, Jr. by deed recorded in Deed Book W-4 at Page 234; the four-sixths interest were re-conveyed to Ned Gregory as follows: from James Stony Drake, Jr. by deed recorded October 5, 1959, in Deed Book W-45 at Page 330, from Toy R. Gregory by deed recorded May 2, 1961, in Deed Book Z-4 at Page 423, and from C. D. Gregory, Jr. and Gladys G. Gregory (see also Will of C. D. Gregory, Sr.) recorded May 23, 1967, in Deed Book W-5 at Page 104. Ned Gregory, Sr., died testate November 27, 1985 (See Probate File 85-ES-29-302) and Will at W/1422, Estate of Ned Gregory, Sr. filed September 23, 1986.

TOGETHER with all and singular the hereditaments, rights, members and appurtenances whatsoever to the said premises belonging or in any wise appertaining, and the reversions and remainder, rents, issues and profits thereof, and the reversions and remainder, rents, issues and profits thereof; and also the estate, right, title interest, dower, possession, property benefit, claim and demand whatsoever of all the parties to the said suit, as well as of all other persons, rightfully claiming or to claim the same or any part thereof by, from and or under them or through either of them.

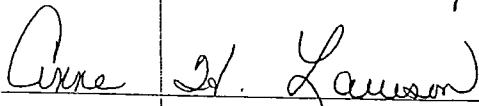
TO HAVE AND TO HOLD, the said premises, with its hereditaments, privileges and appurtenances, unto the said parties of the second part, The Gregory Company, Inc., Its Successors and/or Assigns forever.

IN WITNESS WHEREOF, I the said J. Stanton Cross, Jr., as Master in Equity for Horry County, under and by virtue of the said Decretal Final Order, have hereto set my Hand and Seal this the ~~11~~<sup>30</sup>th day of ~~September~~<sup>October</sup> in the year of our Lord Two Thousand Six and in the Two Hundred Twenty Ninth year of Sovereignty and Independence of the United States of America.

  
\_\_\_\_\_  
J. Stanton Cross, Jr.  
Master in Equity for Horry County

WITNESS

  
\_\_\_\_\_

  
\_\_\_\_\_

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STATE OF SOUTH CAROLINA )

COUNTY OF LANCASTER )

PROBATE

PERSONALLY appeared the undersigned witness and made oath that he/she saw J. Stanton Cross, Jr., as Master in Equity for Horry Count, sign, seal and deliver the within Deed; and that deponent together with the other witness singed their names thereto.

Deanne A. Bishop

SWORN to before me this 30 day of Oct, 2006.

Anne H. Lawson

Notary Public for South Carolina

My Commission expires: 10-4-15

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MEMO TO NED GREGORY:

20 July 2004

RE: 331 South Main Street, Lancaster, SC  
Tax Map: 81A-F-22.00

I don't know about you, but I certainly can't afford to owe the City of Lancaster One Thousand Dollars a day and have all of the inheritance stand as collateral for the debt and I think you are far too smart to not to agree with me on that issue. Therefore, I have called Tod Snipes and asked him to start work on the old Texaco building ASAP. He has finished the Jimmy McDonald job here at the beach except for some parts on order and is putting a roof on a small building in Lancaster now and can begin about August first.

The bank said they would take a mortgage on the \$13,500.00 cost to turn key the work. This is the same estimate that Tod gave you about a year ago. I got another estimate from John Minors in April, 2004 and it was for \$18,000.00, copy enclosed. Both of these folks are on the City of Lancaster approved list. Also enclosed is Tod's estimate of 10-24-2003.

You can call Steve Sherrill at First Citizens Bank in Lancaster at (803) 283-6940 and confirm the deal. I would suggest a note and mortgage from the Ned Gregory Trust and you and I sign as co-trustees. I think as soon as it is habitable it will rent for Eight Hundred a month which is sufficient to pay back the loan. I talked with Parker and he will move back into the location at that time and for that rental. Bubber is getting that for the car lot so I know that the rental is fair and Parker did not question it when I told him it would be that figure.

Now, you can either work with me or continue to be obstinate. You have basically fifty hours to decide as the Zoning Board meets at 6:00 PM Thursday 22 July 2004. As you know I had the gas tanks removed at no cost to you and if I had not done so then the cost today would be in excess of Twenty Five Thousand Dollars. I am willing to eat that Nine Thousand Dollars and share in the cost of the salvaging of the building with you. If you don't think that is a fair resolution of the current problem with the captioned property, then send me a proposal of what you think is fair.

Your Brother,  Jack

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HP OfficeJet K Series K80xi  
Personal Printer/Fax/Copier/Scanner

Log for  
Jim Irvin  
4672202  
Jul 20 2004 11:06am

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Last Transaction

<u>Date</u>	<u>Time</u>	<u>Type</u>	<u>Identification</u>	<u>Duration</u>	<u>Pages</u>	<u>Result</u>
Jul 20	11:03am	Fax Sent	18032833326	2:09	6	OK

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MEMO TO NED GREGORY:

18 January 2005

RE: 331 South Main Street, Lancaster, SC  
Tax Map : 81A-F-22.00

It has now been six (6) months since my memo to you dated 20 July 2004 and I have not heard a word from you about the captioned property. Since then the roof has been fixed and the roofer has filed a mechanics lien on the captioned property. I would think that Steve Sherrill at First citizens Bank would still finance the work, but two signatures are needed. I have advised you that I will sign and you will need to do so in order to avoid this delimma. Call Steve and confirm. I can sign anytime. Parker will rent for \$800.00 per month which will be ample income to pay the note off in less than two (2) years at seven or eight percent interest.

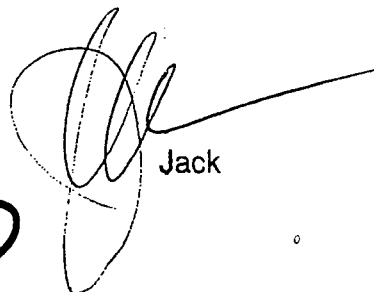
Waiting for something to happen is not smart. Getting the roof on prevented the city from moving forward on the condemnation. As soon as Tod Snipes gets paid he will give the city the OK for them to issue the C.O. and then it can be rented. This could have been done two (2) months ago. What are you waiting on?

Where are the rents from the building next door going? Are you paying the taxes from that? If those rents are used also, the bank could probably be paid off in one (1) year. Why not?

The Lancaster Fire Chief told me that the big window pane on the south side of the corner building had broken and was a hazard. Did you know that? Did you get it fixed? I asked Tod's lawyer, Dan to tell Tod to fix it and add it to the bill, but I got the the notice of mechanic's lien at the same time (same day) that I left that message. I don't know if he did fix it or not.

I guess since I paid for the removal of the gas tanks then you should pay for the roof. Is that fair? If not, then what is? Your silence and inaction is creating waste. I don't think that Ned and Lucille raised wasteful children or at least they did not intend to do so. I remember big Ned saying "Haste makes waste". You are proving his point to the opposite extent. How singular.

Your Brother,



Jack

16 20  
FAXED 18 JAN 5 @ 1045 AM  
TO 803 283-3326 - ZDPA . CC 249 2043 Cliff Welsh, Esq.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

William C. Tindal, Special Referee

**RECEIVED**

NOV 20 2013

**SC Court of Appeals**

Case No. 2008-CP-29-1084

Appellant Case No. 2013-002370

Ned Gregory, Jr., .....Plaintiff/Respondent,

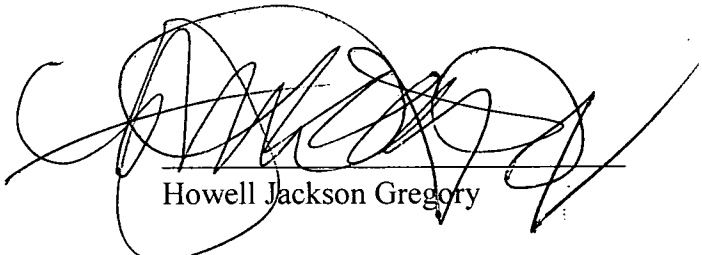
v.

Howell Jackson Gregory  
and the Gregory Company,  
Inc., .....Defendants/Appellants.

PROOF OF SERVICE

I certify that I have served the Reply to Return to Petition for Supersedeas on Palmer Freeman by depositing a copy of it in the United States Mail, postage prepaid, on November 19, 2013, addressed to Palmer Freeman, P.O. Box 8024, Columbia, SC 29201, attorney for Respondent. The original and 6 copies are served by Federal Express to The Honorable Jenny Abbott Kitchings Clerk, SC Court of Appeals, at 1015 Sumter Street, Columbia, SC, 29201 on November 19, 2013.

November 19, 2013



Howell Jackson Gregory

# IRVIN LAW FIRM, LLC

---

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Email: [irvinlawfirm@aol.com](mailto:irvinlawfirm@aol.com)

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November 19, 2013

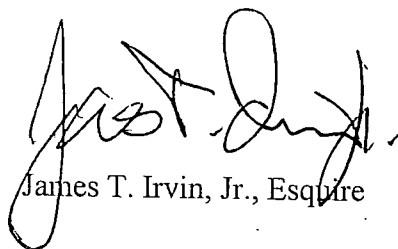
The Honorable Clerk Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
Post Office Box 11629 – Zip Code: 29211  
1015 Sumter St.  
Columbia, SC 29201

RE: Ned Gregory Jr. v. Howell Jackson Gregory & The Gregory Company Inc.  
Appellant Case No. 2013-002370

Dear Mrs. Kitchings:

Enclosed herewith please find the original and 6 copies of the Appellants REPLY TO RETURN TO PETITION FOR SUPERSEDEAS in the captioned matter.

Yours Truly,

  
James T. Irvin, Jr., Esquire

**RECEIVED**

NOV 20 2013

**SC Court of Appeals**

Enclosures as stated:

Cc: Palmer Freeman, Esquire

# IRVIN LAW FIRM, LLC

---

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November 19, 2013

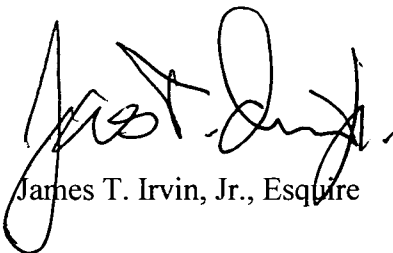
The Honorable Clerk Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
Post Office Box 11629 – Zip Code: 29211  
1015 Sumter St.  
Columbia, SC 29201

RE: Ned Gregory Jr. v. Howell Jackson Gregory & The Gregory Company Inc.  
Appellant Case No. 2013-002370

Dear Mrs. Kitchings:

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Yours Truly,



James T. Irvin, Jr., Esquire

Enclosures as stated:

Cc: Palmer Freeman, Esquire

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**SC Court of Appeals**