

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
J Stanton Cross, Jr., Master in Equity  
Cynthia Graham Howe, Master in Equity

Case No. 2002-CP-26-1706

APPEAL FROM LANCASTER COUNTY  
William C. Tindal, Special Referee

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.

MOTION FOR CONSOLIDATION

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

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

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

RECEIVED  
DEC 09 2013  
SC Court of Appeals

70610

TO: THE HONORABLE CHIEF JUDGE AND THE ASSOCIATE JUDGES OF  
THE COURT OF APPEALS OF SOUTH CAROLINA:

Appellants move to consolidate the two cases on appeal on the basis that the same question is involved in two appeals in different cases under Rule 214, SCRAP.

#### BACKGROUND

Both cases on appeal are the outgrowth of a partition case filed by Respondent in Lancaster County in 2000 that was moved to Horry County in 2002 and after hearings Master in Equity J. Stanton Cross, Jr. issued his Order of Partition and sold the two parcels of real estate, to wit: the Horry tract consisting of a beach house in Myrtle Beach in May, 2005 and the Lancaster tract consisting of three vacant commercial buildings in Lancaster in June, 2005. That pro se Appellant purchased the Horry tract and Appellant The Gregory Company, Inc. purchased the Lancaster tract.

That in 2006 Master in Equity J. Stanton Cross, Jr. conducted several hearings to conclude the closing of the Lancaster sale, awarding claims to both parties in two orders dated April 25, 2006 and a Nunc Pro Tunc on August 10, 2006 for April 25, 2006 and the execution of the deed of conveyance of the Lancaster tract to The Gregory Company, Inc. on October 30, 2006. These two 2006 orders of Master in Equity J. Stanton Cross, Jr. were not appealed and are the law of the case.

After the deed to the Lancaster tract was recorded on June 4, 2008 Respondent requested a transcript of judgment from the Horry County Clerk of Court who prepared one dated June 10, 2008; however, it omitted the pro se Appellant's setoffs as ordered by Master in Equity J. Stanton Cross, Jr. in 2006.

On September 19, 2008 Respondent filed a third lis pendens against the Lancaster tract, six years after the second lis pendens in 2002 and the first in 2000 in an effort to

bootstrap the new action to set aside the Lancaster tract deed with the original partition case. Not until February 7, 2012 did Respondent present the faulty June 10, 2008 transcript of judgment at a pre-trial conference with the special referee assigned to hear the Lancaster suit. Respondent then amended his complaint to allege that the deed to the Lancaster tract violated the statute of Elizabeth in an effort to parlay the faulty transcript of judgment there and allege that the pro se Appellant owes Respondent more money than he actually does from the partition action. With the faulty document pro se Appellant inquired of the Horry Clerk in 2012 and the omission error was admitted. On November 2, 2012 the Clerk attempted to amend the transcript of judgment; however, when presented to the successor Master in Equity Cynthia Graham Howe by pro se Appellant in 2013 via motion the correction was disregarded and the implementation of the 2006 Cross orders was denied. Also the 2013 Howe orders violate Rule 63, SCRPC. One Howe Order dated May 15, 2013 reduced the judgment by \$7,597.03 to \$37,490.44 when Respondent and his counsel conceded two checks totaling that sum; however, pro se Appellants setoff awards of \$25,517.99 are still outstanding and the current judgment amount of \$37,490.44 is non final. The Howe Orders are on appeal to this Court.

Respondent's Lancaster action is based upon the \$37,490.44 non final judgment from the Horry partition action as the ordered sale of the Lancaster tract originally set for December 2, 2013 after holding that the conveyance of the Lancaster tract violates the statute of Elizabeth has been stayed pending the appeals and the common factor in both cases on appeal is the faulty judgment by the denial of pro se Appellant's \$25,517.99 setoffs from the Cross orders of 2006. The Lancaster special referee order is based upon the same faulty non final judgment amount of \$37,490.44 from the Howe Orders.

ARGUMENT AND BASIS FOR CONSOLIDATION UNDER RULE 214, SCRAP

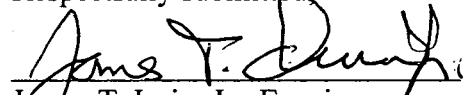
The appeal of the Horry partition case holds the key to the ruling by the special referee in the Lancaster statute of Elizabeth case and that is the amount of the judgment that is relied upon in that case and issued by the trial judge J. Stanton Cross, Jr. as Master in Equity in 2006. Those orders provide that the pro se Appellant have setoffs for items that he paid for that were not contributed towards by Respondent and those items amount to \$25,517.99. The faulty non final judgment of \$37,490.44 that is currently relied upon must be reduced by the \$25,517.99 setoffs to be final and the final judgment should then be \$11,972.45. The ruling in the Horry case will then be the ruling in the Lancaster case.

The SC Code Ann. 15-35-810 states that "Final judgments...shall be declared to create a lien, etc." Until the appellate court determines the final judgment the two identical faulty judgment amounts in the two cases on appeal are non final judgments.

CONCLUSION

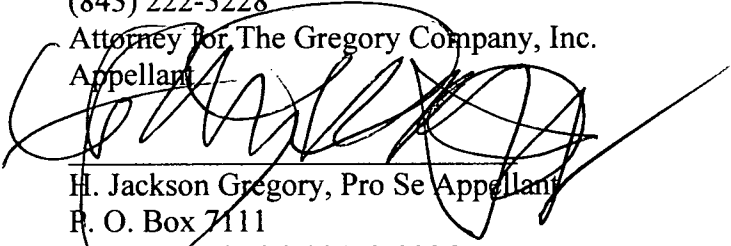
A consolidation of the two appeals would create economy of justice and judicial economy.

Respectfully submitted



James T. Irvin, Jr., Esquire  
P.O. Box 2677  
Myrtle Beach, SC 29578-2677  
(843) 222-3228

Attorney for The Gregory Company, Inc.  
Appellant



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

December 6, 2013  
Myrtle Beach, SC

STATE OF SOUTH CAROLINA

AFFIDAVIT OF H. JACKSON GREGORY

COUNTY OF HORRY

COMES NOW, H. JACKSON GREGORY, who after being first duly sworn states that he is the pro se Appellant in both appeals pending in The South Carolina Court of Appeals and who submits this affidavit in support of the motion to consolidate the cases on appeal under Rule 214, SCRAP.

After Horry County Master in Equity J. Stanton Cross, Jr.'s Order of Partition in 2005 two sales occurred and in 2006 after several hearings other issues were addressed and resulted in two orders of April 25, 2006 and a Nunc Pro Tunc on August 10, 2006 for April 25, 2006 (copies attached) awarding Respondent his claims for rent and accounting and awarding Affiant his claims as a setoff against Respondents claims for items Affiant proves he paid for that Respondent did not contribute towards. Those items are:

- a) payment of \$7,940.00 for removal of gas tanks on the Lancaster tract that was conceded at trial by Respondent and his counsel;
- b) payment of \$4,077.99 for 2002, 2003 and 2004 Horry County real estate taxes proved by three cancelled checks payable to the Horry County Treasurer; and
- c) payment of \$13,500.00 for a new roof to 331 South Main Street, Lancaster, SC building condemned in 2003 proved by a \$15,500.00 cancelled check to roofer's attorney in 2005 as Cross disallowed the \$2,000.00 paid therein as attorney fees.
- d) Total of Affiant's setoffs is \$25,517.99.

Respondent was awarded a total of \$42,859.47 in the April 25, 2006 Cross Order. On June 10, 2008 the Horry County Clerk of Court issued a transcript of judgment (copy attached) stating in error that Respondent had a judgment against pro se Appellant in the amount of \$45,087.47. The error was the omission of Affiants setoffs and the credit for two checks written to the Horry County Master in Equity on August 9, 2006. Those two

checks for benefit of Affiant totaled \$7,597.03 and concluded the Lancaster tract sale with Master in Equity J. Stanton Cross, Jr. on August 9, 2006.

Respondent brings the Lancaster action filing a third lis pendens against the Lancaster tract on September 19, 2008 six years after the second lis pendens in 2002 and first in 2000. His complaint was amended in 2012 and he asks for the deed from Master in Equity J. Stanton Cross, Jr. to The Gregory Company, Inc. to be declared fraudulent and in violation of the statute of Elizabeth. Special Referee William C. Tindal rules so and uses as basis for the judgment amount the same faulty amount from 2013 Howe orders.

In late 2012 after Affiant and his counsel saw for the first time the faulty transcript of judgment dated June 10, 2008 at a pre-trial hearing on February 7, 2012 with the special referee in Lancaster, SC. AFFIANT then brought the error to the attention of the Horry County Clerk of Court who recognized the omission and on November 2, 2012 amended the transcript of judgment (copy enclosed), but in hearings in 2013 the successor Master in Equity Cynthia Graham Howe disregarded the amendment.

At the April 25, 2013 hearing with successor Master in Equity Cynthia Graham Howe Respondent and his counsel conceded that the \$7,597.03 (two checks) be credited to Affiant and the judgment as reflected on the June 10, 2008 transcript of judgment was reduced by that amount and is now reflected as \$37,490.44 per that May 15, 2013 Howe Order. On October 14, 2013 successor Master in Equity Howe took judicial notice of the fact that the June 10, 2008 transcript of judgment was in error.

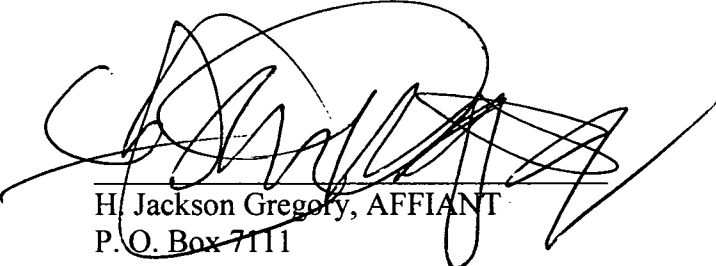
However, the successor Master in Equity Howe fails and refuses to give the two Cross orders of April 25, 2006 their due as they are the law of the case and the \$25,517.99 has yet to be credited for Affiant against the judgment total. If credited

the real final judgment amount would be \$37,490.44 less \$25,517.99 or \$11,972.45.

The special referee in the Lancaster case in ruling a violation of the statute of Elizabeth exists with the transfer of the Lancaster tract from J. Stanton Cross, Jr. as Master in Equity for Horry County to The Gregory Company, Inc. also relies on the judgment amount from the Horry partition case and at present the non final judgment amount in this order is \$37,490.44 as based upon the Horry partition case orders of the successor Master in Equity Cynthia Graham Howe. By her denial Howe violates Rule 63, SCRCF as it changes the 2006 decisions of the retired Master in Equity Cross.

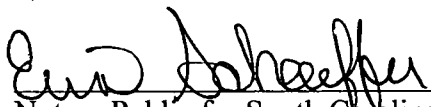
After a supercedeas hearing on November 26, 2013 a stay was issued and the sale set for December 2, 2013 was cancelled by the special referee. In lieu of bonds hazard insurance is being utilized as security until the ruling on appeal of the correct amount of the judgment in the cases has been determined. The decision of the final judgment amount on appeal will satisfy that issue in both cases and that is the same question involved in the two appeals. Therefore, the two cases should be consolidated on appeal.

AFFIANT SAYETH NAUGHT.



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

SWORN to before me this  
6 day of December, 2013.

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

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NUMBER: 2002-CP-26-1706

NED GREGORY, JR. )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
H. JACKSON GREGORY, )  
 )  
Defendant. )  
\_\_\_\_\_ )

ORDER

FILED  
COUNTY CLERK  
2006 APR 25 PM 4:09

This Order follows Hearings held before this Court on February 16, 2006 and on March 17, 2006. These Hearings were held to address the issues of rent on the Myrtle Beach property, the accounting between the parties, Defendant's failure to comply with his bid on the Lancaster property from the June, 2005, sale, and the re-sale of the Lancaster property.

Addressing the issue of rent, it appears we are talking about a period of fifty-five (55) months of rent the Defendant owes on the Myrtle Beach property. This is the period of time from when the Defendant moved into the Myrtle Beach property fulltime in September 2000, until the property sold at Auction on May 2, 2005. The Plaintiff presented the Court with expert testimony stating the rental value of the subject property was between \$1,500.00 and \$1,800.00 per month. The Defendant testified the property was uninhabitable and therefore had no value. However, the Defendant and his wife and at times his daughter, lived in the structure throughout the period in question. Therefore, the Court finds that the Defendant should pay the Plaintiff rent for the fifty-five (55)

months he maintained exclusive possession of the Myrtle Beach house, in the amount of Twenty Thousand Nine Hundred (\$20,900.00) Dollars.

The accounting issue has been greatly simplified by the parties in that there was not any evidence introduced to contradict the accounting presented by the Plaintiff. After reviewing the accounting done by the Plaintiff for the period of June, 1992, through June 30, 2005, the Court finds that the Plaintiff spent his own funds for necessary and proper expenses in the upkeep of the subject property, without contribution by the Defendant, in the amount of Twenty One Thousand Nine Hundred Fifty Nine & 47/100 (\$21,959.47) Dollars, for which he is entitled to be reimbursed by the Defendant.

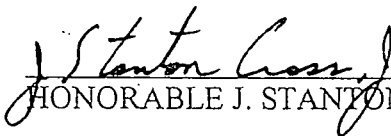
*PL*  
*2*  
The Defendant is entitled to a setoff to the amount expended by the Plaintiff, of any funds that he can prove that he contributed, without contribution from the Plaintiff. It is conceded that Defendant spent Seven Thousand Nine Hundred Forty (\$7,940.00) Dollars to remove the gas tanks from the Lancaster property. The only other contribution by the Defendant was for real estate taxes for the Myrtle Beach house. The Defendant will be given credit for any real estate taxes he paid on the Myrtle Beach property for the years 2002, 2003 and 2004, if paid receipts are produced.

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The Lancaster property sold at Auction on June 6, 2005, to the Defendant. To date, the Defendant has not complied with his bid. Therefore, the property must be resold. The Defendant must pay the costs from the June, 2005, sale. This includes the cost of publications (\$528.23) and the Special Referees Commission (\$1,700.00) Dollars. This totals Twenty Two Hundred Twenty Eight & 23/100 (\$2,228.00) Dollars to be paid within ten (10) days from the date of this Order to counsel for the Plaintiff.

The Lancaster property shall be readvertised and sold by the Special Referee in Lancaster County. Because of the Defendant's failure to comply with his bid made during the June, 2005, sale, if the Defendant is the successful bidder, the bidding shall be suspended until the appropriate amount of cash is posted by the Defendant. If the Defendant does not immediately post the appropriate amount of cash, as required by the Special Referee, the bidding shall continue, until there is another successful bidder. After the successful bidder complies with the bid, the Special Referee shall deduct his commission and any costs he sustains and forward the remainder of the sale price to the undersigned.

IT IS SO ORDERED.

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HONORABLE J. STANTON CROSS

April 25 2006

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CERTIFIED COPY

STATE OF SOUTH CAROLINA <sup>2017 SEP 21</sup> PM 2: 33

COUNTY OF HORRY *Marie Higgins-Ward*

NED GREGORY, JR., CLERK OF COURT  
HORRY COUNTY

Plaintiff,

-vs-

HOWELL JACKSON GREGORY,

Defendant.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO.: 2002-CP-26-1706

NUNC PRO TUNC ORDER

HORRY COUNTY  
26 SEP 11 AM 11:18  
MELANIE HUGSON  
CLERK OF COURT

This Order follows Hearings before this Court on February 16, 2006 and on March 17, 2006 and addresses certain matters not mentioned, but before the Court and mentioned items, but awaiting additional proof thereof as set forth in the Order of the Court dated April 25, 2006.

Addressing the amounts that the Defendant is entitled to setoff to the amount expended by the Plaintiff, of any funds that he can prove that he contributed, without contribution from the Plaintiff and in addition to the \$7,940.00 that Defendant paid for the removal of the gas tanks from the Lancaster property, the Defendant shall be entitled to setoff the cost he paid for the new roof to the Lancaster property in the amount of \$13,500.00. Also, Defendant shall be given credit for real estate taxes he paid on the Myrtle Beach property in the amount of \$4,077.99.

Since Defendant paid Ninety Three Thousand Nine Hundred Twenty Five (\$93,925.00) to this Court on April 28, 2006 prior to the readvertised 2006 sales date for this property, therefore it is cancelled. An additional sum amounting to \$7,597.03 is needed for interest due the Court to finalize the 2005 sale. Giving Defendant credit for the rent paid into the Court by the tenant of the Lancaster property amounting to \$2,500.00 during the year 2005, the Defendant now owes this Court \$5,097.03 as the interest balance on the bid he made at the 2005 sale.

IT IS SO ORDERED.

*J. Stanton Cross, Jr.*  
HONORABLE J. STANTON CROSS, JR.  
HORRY COUNTY MASTER IN EQUITY

NUNC PRO TUNC APRIL 25, 2006  
July 8-10, 2006  
Conway, South Carolina





Ned Gregory Jr

Plaintiff

AMENDED

TRANSCRIPT OF JUDGMENT

VS.

Howell Jackson Gregory

Defendant

Melanie Huggins-Ward, being duly sworn, says that she is the Clerk of Court for the Court above named and that the Plaintiff(s) above named obtained Judgment against the Defendant in the above action, said Judgment having been duly and properly enrolled in the Office of the Clerk of Court for Horry

County, South Carolina on and appearing as Judgment Roll Number 2002CP2601706

Names of Parties Against Whom Judgment Has Been Obtained

Attorneys

Howell Jackson Gregory

Names of Parties in Whose Favor Judgment Has Been Obtained

Attorneys

Ned Gregory Jr

Damages and Costs

Amount of Judgment : \$ 24,666.51

Costs: \$

Attorney's Fees : \$

Prejudgment Interest : \$

\*Set-Off Order filed on 8/24/06 was applied on 11/02/2012

Total Judgment : \$ 24,666.51

Plus Interest, Costs and Disbursements

I certify that the foregoing is a correct transcript from the Docket of Judgment kept in my office.

Melanie Huggins-Ward

MELANIE HUGGINS-WARD

Clerk of Court, Horry County, South Carolina

PROOF OF SERVICE

The undersigned certifies that on the 6 day of December, 2013 he placed into the United States Mail with sufficient postage placed thereon the following documents addressed to the following persons.

RE: Motion for Consolidation under Rule 214, SCRAP of Horry County Case and Lancaster County Case as Ned Gregory, Jr. v. Howell Jackson Gregory and The Gregory Company, Inc. Appellate Case No. 2013-002370 (Lancaster Case No. 2008-CP-29-1084) and Horry Case No. 2002-CP-26-1706.

DOCUMENTS:

Motion for Consolidation Rule 214, SCRAP with authorities  
Affidavit of H. Jackson Gregory with exhibits  
Proof of Service

RECEIVED  
DEC 09 2013  
SC Court of Appeals

ADDRESSED TO:

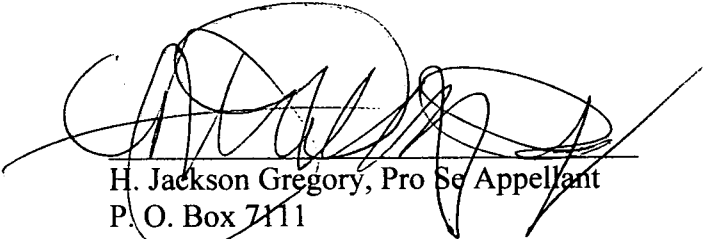
TYPE:

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

Original and Six copies

Palmer Freeman, Esquire  
P. O. Box 8024  
Columbia, SC 20202

One copy

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

# IRVIN LAW FIRM, LLC

---

James T. Irvin, Jr., Esquire  
1101-C 3<sup>rd</sup> Avenue South  
P.O. Box 2677  
Myrtle Beach, SC 29578

Office: (843) 445-6200  
On the Web: [www.jimirvinlawfirm.com](http://www.jimirvinlawfirm.com)

Cell: (843) 222-3228

Fax: (843) 445-6202  
Email: [irvinlawfirm@aol.com](mailto:irvinlawfirm@aol.com)

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December 6, 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

RECEIVED

DEC 09 2013

SC Court of Appeals

RE: Ned Gregory Jr. v. Howell Jackson Gregory & The Gregory Company Inc.  
Appellant Case No. 2013-002370  
&  
Ned Gregory Jr. v. Howell Jackson Gregory  
Case No. 2002-CP-26-1706

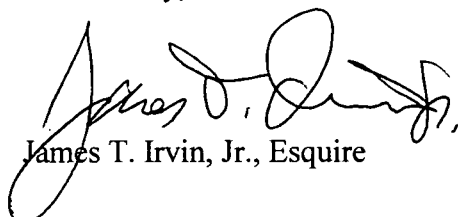
Dear Mrs. Kitchings:

Enclosed herewith please find a \$25.00 money order for the motion for consolidation of the two captioned cases pending in your court. Also enclosed please find original and 6 copies of the Appellants MOTION FOR CONSOLIDATION along with affidavit of H. Jackson Gregory, exhibits and proof of service.

Please clock in the extra copy of this letter and mail it back to us in the self-addressed stamped envelope.

We are serving opposing counsel Palmer Freeman, Esq. with copies of the enclosures.

Yours Truly,



James T. Irvin, Jr., Esquire

Enclosures as stated:

Cc: Palmer Freeman, Esquire